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NEW JERSEY COURT OF ERRORS AND APPEALS

Between OSIRIS D. MCCONNEL, Executor of Steward K. Heitsman, deceased, Complainant-Appellee, AND KATHERINE N. STRYKER, Defendant-Appellant.	ON BILL, ETC. PETITION OF APPEAL.

September 14, 1928.

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

The petition of Katherine N. Stryker, the appellant in the above entitled cause, respectfully shows that:

1. Your Petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice Chancellor Malcolm G. Buchanan, bearing date May 21, 1928, in a certain cause in said Court of Chancery wherein the said Osiris D.

McConnel, executor of Steward K. Heitsman, deceased, was complainant and the said Kathryn N. Stryker and B. Frank Heitsman, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman were defendants in this respect, to wit:

That said final decree adjudges that said Steward K. Heitsman did not in his lifetime, make a completed and valid gift to the said Katherine N. Stryker of $30,000 par value liberty loan bonds mentioned in complainants' bill and that the said defendant, Katherine N. Stryker, do forthwith after service upon her of her solicitors of a copy of the decree, restore and deliver to the complainant said liberty loan bonds; that she also forthwith after such service do pay to the complainant the interest of said $30,000 of liberty loan bonds at the rate of 4¼% per annum from January 31, 1926, the date of the death of the said Steward K. Heitsman, until November 15, 1927, and from any other parts of said decree as are inconsistent with the contention of the defendant, Katherine N. Stryker, that said bonds were a valid gift from Steward K. Heitsman, deceased, made in the lifetime of said Steward K. Heitsman and to which she has an absolute right and title.

Petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the grounds that the same is erroneous for the following reasons:

1. The proofs established a valid gift inter vivos by Steward K. Heitsman to Katherine N. Stryker of the $30,000 of liberty bonds described in the bill of complaint.

2. The court, without authority or right in law or equity, amended the bill of complaint for advice and direction in such a manner as to deprive the defendant of her right to a trial by jury determining the title to the bonds.

3. The court, at the conclusion of the hearing, amended the bill of the plaintiff so as to constitute a new cause of action not in the pleadings and deprived the defendant, Katherine N. Stryker of her lawful rights which she might have asserted in the original hearing of the bill as amended.

4. Because the testimony of the defendant, Katherine N. Stryker, relative to conversations and transactions with Steward K. Heitsman, the testator, was stricken out.

5. Because the testimony of the defendant, B. Frank Heitsman, relative to conversation and transactions with Steward K. Heitsman, the testator, were stricken out.

6. Because the decree was based on the finding that the evidence fails to show that he, before his death, made a completed gift to take effect immedately, which was contrary to the law and equity and the evidence adduced at the hearing.

7. Because, on the pleadings and proofs at the hearing and under the principles of law and equity, the decree should have been in favor of the defendant, Katherine N. Stryker.

Petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this court shall seem proper.

SYLVESTER C. SMITH, JR.,
Solicitor for and of Counsel with Appellant, Katherine N. Stryker.

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ENDORSED: Consent is hereby given to the filing of the within petition as in time.

O. D. MCCONNEL,
Solr. pro se of the Complainant-Appellee.

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WILLIAM C. GEBHARDT & SONS,
Solicitors for Alma B. Hildebrant, Isabella Kirkpatrick, Anna M. Kunsman and Dora M. Heitsman, Defendants-Respondents.

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NEW JERSEY COURT OF ERRORS AND APPEALS

Between OSIRIS D. MCCONNEL, Executor of Steward K. Heitsman, deceased, Complainant-Appellee, AND KATHERINE N. STRYKER, Defendant-Appellant, AND ALMA HILDEBRANT, ISABELLA KIRKPATRICK, ANNA KUNSMAN, and DORA HEITSMAN, Defendants-Respondents.	ON BILL, ETC. ON APPEAL. ANSWER TO PETITION OF APPEAL.

The answer of the respondents, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman, and Dora Heitsman, to the petition of appeal of the above-named appellant, Katherine N. Stryker.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit that a decree was on the twenty-first day of

May last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe, that the said decree is agreeable to equity, and they pray that the same may be affirmd, with costs to be adjudged to these respondents.

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WILLIAM C. GEBHARDT & SON,
Solicitors for, and of Counsel with, Respondents, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman, Dora M. Heitsman.

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NEW JERSEY COURT OF ERRORS AND APPEALS

Between

OSIRIS D. MCCONNEL,
Executor of the last will and testament of Steward K. Heitsman, deceased,
Complainant-Appellee,

AND

KATHERINE N. STRYKER,
Defendant-Appellant,

AND

ALMA HILDEBRANT, ISABELLA KIRKPATRICK, ANNA KUNSMAN, DORA HEITSMAN AND ALMA HILDEBRANT,
Defendants-Appellees.

ON APPEAL

FROM COURT OF CHANCERY.

ANSWER TO PETITION OF APPEAL.

The answer of Osiris D. McConnel, executor of the last will and testament of Steward K. Heitsman, deceased, one of the above-named appellees, to the petition of appeal of Katherine N. Stryker, the above-namd appellant.

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was,

on May 21, 1928, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced.

This appellee is advised and believes that the said decree is agreeable to equity; and he prays that the same may be affirmed with costs to be taxed in favor of this appellee.

OSIRIS D. MCCONNEL,
Solicitor and counsel pro se for appellee.

BILL OF COMPLAINT

(Filed August 20, 1926)

IN CHANCERY OF NEW JERSEY

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainant, Osiris D. McConnel, of the Town of Phillipsburg, in the County of Warren and State of New Jersey, executor of the last will of Steward K. Heitsman, deceased, respectfully shows that:

1. On January 31, 1926, Steward K. Heitsman, a resident of the Town of Phillipsburg, Warren County, New Jersey, died leaving a last will bearing date February 23, 1916, and a codicil thereto bearing date June 12, 1918, wherein, among other things, he appointed complainant his executor. Said last will and codicil were duly admitted to probate by the Surrogate of the County of Warren on Febraury 13, 1926, and letters testamentary thereon were issued by said Surrogate to complainant on the same day, and complainant thereupon took upon himself the burden of the administration of said estate. True copies of said last will and codicil are hereto annexed and made a part hereof and marked Schedules A and B, respectively.

2. By virtue of the fourth paragraph of said last will, said Steward K. Heitsman directed his executor to divide the proceeds of the sale of his farm among his two

brothers, B. Frank Heitsman and Chester Heitsman, and his nieces Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman, Alme Heitsman and Katherine N. Stryker, share and share alike, one-seventh thereof to each of them.

3. Said Steward K. Heitsman sold said farm in his lifetime and by deed bearing date August 1, 1918, and recorded in the Warren County Clerk's Office on October 25, 1918, in Book 211 of Deeds, pages 434, etc., conveyed said farm to M. Murt Coogan, the same consisting of two tracts of land of 66.43 acres and 8.77 acres respectively, situated in the Township of Lopatcong, Warren County, New Jersey.

4. As a part of the consideration for said farm, $30,000, face value, of bonds of the United States of America, known as Second Converted Liberty Loan Bonds were delivered to said Steward K. Heitsman, and the latter took said bonds and placed them in his safe deposit box in the Phillipsburg National Bank, in the Town of Phillipsburg aforesaid, the corporate name of which bank was subsequently changed to Phillipsburg National Bank and Trust Company.

5. After the probate of the will of the said Steward K. Heitsman, deceased, and the issue of letters testamentary to complainant as aforesaid, complainant went to said Phillipsburg National Bank and Trust Company and opened the safe deposit box of Steward K. Heitsman in said bank, and found that there were none of said bonds in said box. Upon inquiry complainant thereafter learned that said $30,000 of bonds were in a safe deposit box in said bank standing in the name of Katherine N. Stryker, who resided with said Steward K. Heitsman at the time

of his death and for a number of years prior thereto. On or about February 14, 1916, Emma Heitsman, the wife of said Steward K. Heitsman, died. For a number of years prior to her death they resided together in the Town of Phillipsburg aforesaid, and said Katherine N. Stryker, who was a niece of said Emma Heitsman, resided with them. Said Katherine N. Stryker was, at the time of the death of the said Emma Heitsman, a school teacher, and, some time after the death of the said Emma Heitsman, said Katherine N. Stryker gave up her position as school teacher and became the housekeeper for said Steward K. Heitsman at his residence in the Town of Phillipsburg aforesaid. She continued to act as his housekeeper down to the time of his death.

6. Said Steward K. Heitsman was 86 years of age at the time of his death. During the last five years or more of his life said Steward K. Heitsman was in poor health, and said Katherine N. Stryker nursed him and took care of him. She also attended to his business affairs, including the going into his safe deposit box to clip the coupons on the Liberty Loan Bonds, the depositing of these coupons and checks for dividends upon some shares of stock which he held and other moneys, and the writing of checks for him. She was his duly appointed deputy and had access to his safe deposit box in said bank.

7. Said Katherine N. Stryker claims that said $30,000 of Liberty Loan Bonds were transferred to her by said Steward K. Heitsman in his life time as compensation for her services in acting as his housekeeper, nursing and taking care of him, and attending to his business affairs,

and that $15,000 of said bonds were transferred by said Steward K. Heitsman to her about five years ago, and that the remaining $15,000 of said bonds were transferred by him to her in September, 1925.

8. At the time when said Katherine N. Stryker alleges that the first $15,000 of said bonds were transferred to her, as aforesaid, said Steward K. Heitsman was aged, infirm and in poor health; he was dependent upon her for her ministrations in the household and for care and nursing; he entrusted her with the transaction of his business and reposed the utmost confidence in her.

9. In September, 1925, when said Katherine N. Stryker claims that the remaining $15,000 of said bonds were transferred to her, as aforesaid, and for some time prior thereto, said Steward K. Heitsman was confined to his home with sickness and the infirmities of age, was unable to leave his home down to the time of his death, and was, during all of that time, entirely dependent upon the said Katherine N. Stryker for ministrations, care and nursing and the transactions of his business affairs, and he reposed the utmost confidence in her.

10. After Katherine N. Stryker placed the first $15,000 of said bonds in her safe deposit box, as aforesaid, she cut the coupons therefrom every six months, and she deposited them, together with the coupons cut from the remaining $15,000 of bonds, which remained in the safe deposit box of said Steward K. Heitsman, in the account of decedent at said bank. This was done every six months down to the time when said Katherine N. Stryker placed

the remaining $15,000 of said bonds in her safe deposit box as aforesaid.

11. When the next six months' interest fell due on said bonds after the alleged transfer to her of the remaining $15,000 thereof, which was on November 15, 1925, and when all of said bonds were in her safe deposit box at said bank, said Katherine N. Stryker cut the coupons on all said bonds and deposited the same in her own bank account at said bank, but she subsequently drew checks upon the deposit for the expenses of the household and the expenses of the sickness of the said Steward K. Heitsman.

12. Said Steward K. Heitsman by his said last will bequeathed to said Katherine N. Stryker 30 shares of the stock of the said Phillipsburg National Bank and 24 shares of stock of the People's Water Company, and by virtue of the said codicil to his last will he bequeathed to her 10 more shares of stock of the Phillipsburg National Bank and 24 more shares of stock of the People's Water Company, and all of his household goods, and furniture, bedding, dishes and silverware. At the time of the death of said Steward K. Heitsman the value of the said 40 shares of stock of the Phillipsburg National Bank was $7,400, the value of the said 48 shares of stock of the People's Water Company was $720, and the value of the household goods and furniture, bedding, dishes and silverware, bequeathed by him to said Katherine N. Stryker, was $414.95, and the said stock, household goods and furniture, bedding, dishes and silverware are still of the same aggregate value of $8534.95, or more.

13. After the alleged transfers of said bonds of said Katherine N. Stryker, the property which said Steward K. Heitsman had left was worth about $11,000 or $12,000, and he thereby divested himself of the greater portion of his property, without leaving sufficient property to provide for his support. As far as complainant can ascertain, said Steward K. Heitsman did not receive independent advice at the time of making said alleged transfers.

14. Said Chester Heitsman, the brother of said Steward K. Heistsman, mentioned in the latter's will, died on December 21, 1917, in the lifetime of the said Steward K. Heitsman, and leaving as his only child, Alma Heitsman. Said Alma Heitsman has intermarried with one E. Gifford Hildebrandt, and she resides in the Borough of Washington, Warren County, New Jersey.

15. Said B. Frank Heitsman and Katherine N. Stryker reside in the Town of Phillipsburg aforesaid. Said Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman all reside in the City of Easton, Northampton County, Pennsylvania.

16. The said B. Frank Heitsman, Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman, Alma Hildebrant and Katherine N. Stryker are all of full age.

17. Said Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman, and Alma Hildebrant contend that the said Katherine N. Stryker is not entitled to said bonds, but that the same belong to the estate of said Steward K. Heitsman, deceased, and have so notified complainant.

18. Complainant is uncertain whether valid transfers were made of said bonds to said Katherine N. Stryker by said Steward K. Heitsman, in his lifetime, and whether said Steward K. Heitsman intended, by the alleged transfers of said bonds, to make presently effective transfers thereof or transfers which should take effect after his death, and whether said Steward K. Heitsman received independent advice at the time when said transfers were alleged to have been made; and whether said bonds belong to said Katherine N. Stryker or to the estate of the said Steward K. Heitsman, deceased, and it is necessary for complainant to have the advice and direction of this honorable court in the premises.

Complaint is without adequate remedy in the courts of law and therefore prays:

(1) That he may have the advice and direction of this honorable court as to whether said $30,000, face value, of Liberty Loan Bonds belong to the said Katherine N. Stryker or to the estate of the said Steward K. Heitsman, deceased.

(2) That Katherine N. Stryker, B. Frank Heitsman, Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman and Alma Hildebrant, who are the defendants in this suit, may answer this bill of complaint and each statement therein made.

(3) That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

(4) That complainant may have such further or other relief in the premises as the nature and circumstances of the case may require, and as may be agreeable to equity and good conscience.

O. D. McConnel,
Solicitor and counsel pro se.

SCHEDULE A

COPY OF WILL OF STEWARD K. HEITSMAN, DECEASED

I, Stewart K. Heitsman, of Phillipsburg, Warren County, New Jersey, being of sound and disposing mind and memory, do hereby make and publish this my last will and testament as follows, hereby revoking all former wills by me made:

First—I direct that all of my just debts and funeral expenses be paid as soon as may be reasonable after my decease.

Second—I give and bequeath unto my niece, Katharine N. Stryker, and to her heirs forever, my secretary, thirty shares of the stock of the Phillipsburg National Bank, of Phillipsburg aforesaid, and twenty-four shares of the stock of the People's Water Company.

Third—I direct my executor to sell, at such time and upon such terms as he shall deem best for the interests of my estate, my farm of about seventy two acres; situated

in Lopatcong Township, Warren County, New Jersey, on the road leading from Phillipsburg to Belvidere, and adjoining lands of Elmer F. Schiffert and George Merrit, and I hereby authorize my executor to sell the same at either public or private sale, and to execute, acknowledge and deliver good and sufficient conveyances in the law for the same.

Fourth—I direct my executor to divide the proceeds of the sale of my farm among my two brothers: B. Frank Heitsman and Chester Heitsman, and my nieces Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman, Alma Heitsman, and Katherine N. Stryker, share and share alike, one seventh thereof to each of them, the same to be to them, their heirs and assigns forever.

Fifth—I give, devise and bequeath all the rest of my estate, both real and personal, unto the said B. Frank Heitsman, Chester Heitsman, Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman, Alma Heitsman and Katherine N. Stryker, share and share alike, to them and their heirs forever.

Sixth—I hereby appoint Osiris D. McConnel, of Phillipsburg aforesaid, sole executor of this my last will and testament.

In witness whereof I have hereunto set my hand and seal this twenty third day of February, nineteen hundred and sixteen. Signed, sealed, published and declared by the above-named Stewart K. Heitsman to be his last will and testament in the presence of us, who were present at the same time, and who, in the

presence of the said testator and each other, and at the testator's request, subscribed our names as witnesses. (The word "last" inserted in attestation clause before signing.)

STEWARD K. HEITSMAN

OLINDA B. LEH
BERTHA L. CASE

SCHEDULE B

COPY OF CODICIL TO WILL OF STEWARD K. HEITSMAN, DECEASED

I, Stewart K. Heitsman, of Phillipsburg, Warren County, New Jersey, being of sound and disposing mind and memory, do hereby make and publish this codicil to my last will and testament, which bears date February 23, 1916, as follows:

First—I 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.

Second—In addition to all legacies and devises given by me to my niece, Katherine N. Stryker, which I hereby ratify and confirm, said legacies and devises being given by me to her in my said last will, I hereby give and bequeath unto my said niece Katherine N. Stryker, and to her heirs forever, ten more shares of the stock of the Phillipsburg National Bank, twenty-four more shares of the stock of the People's Water Company, and all of my household goods and furniture, bedding, dishes, and all of my silverware.

In witness whereof I have hereunto set my hand and seal this twelfth day of June, nineteen hundred and eighteen.

Signed, sealed, published and declared by the above-named Steward K. Heitsman to be a codicil to his last will and testament in the presence of us, who were present at the same time, and who, in the presence of said testator and each other and at the testator's request, subscribed our names as witnesses.

STEWARD K. HEITSMAN (l.s.)

GEORGE M. BEBLER
F. R. DEICHMAN

IN CHANCERY OF NEW JERSEY

ANSWER OF KATHERINE N. STRYKER

(Filed Nov. 6, 1926)

The answer of the defendant, Katherine N. Stryker. This defendant, answering the bill of complaint, says:

1. Paragraphs 1, 2, 3 and 4 are admitted.

2. The allegations in Paragraph 5, except as to acts of complainant at the Phillipsburg National Bank, are true.

3. Defendant admits the age of said Stewart K. Heitsman as set forth in Paragraph 6 but denies that during

the last five years or more of his life, the said Stewart K. Heitsman was in poor health. She admits that she took care of the said Stewart K. Heitsman, giving him such care and attention as a daughter might give to her father and she admits that she attended to his business affairs but only as directed by him, including the going into his safe deposit boxes to clip the coupons on the Liberty Loan Bonds. That she did deposit the coupons and checks for dividends on some share of stock which he had in the bank and sometimes wrote his checks when requested by him. She denies that she was his duly appointed deputy or that she had access to his safe deposit box in the bank except on different occasions when he would give her the key and ask her to open the box.

4. She admits the allegations in Paragraph 7 with the additional statement that the transfer of the $30,000.00 in Liberty Bonds was done voluntarily by the said Stewart K. Heitsman.

5. She denies the statement in Paragraph 8, that at the time the first $15,000 of said bonds were transferred to her, the said Stewart K. Heitsman was infirm and in poor health. She admits that he depended upon her for her ministration in his household and that he entrusted her with transactions of business matters and reposed utmost confidence in her but says that all business transactions entrusted to her by the said deceased, were directed in detail by the said Stewart K. Heitsman.

6. She admits the allegations in Paragraph 9. The said Stewart K. Heitsman was not as well able to get around to attend to his business affairs as he had been, but denies that he was entirely dependent upon her for

the transaction of his business affairs. She admits that he did repose confidence in her.

7. She admits the allegations in Paragraphs 10, 11 and 12.

8. She denies Paragraph 13.

9. She admits Paragraphs 14, 15 and 16.

10. As to Paragraph 17, defendant has no direct information as to the contentions of the said Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman and Alma Hildebrant but she denies the allegation that she is not entitled to said bonds and that they belong to said estate.

11. As to Paragraph 18, defendant, Katherine N. Stryker, insists that the transfer of said bonds to her by the said Stewart K. Heitsman, gave her the absolute ownership at the time of said transfer.

SMITH & SMITH,
Solicitors of the defendant,
Katherine N. Stryker.

ANSWER OF B. FRANK HEITSMAN

(Filed November 6, 1928.)

The answer of the defendant, B. Frank Heitsman.

This defendant answering the bill of complaint, says:

1. That he has no desire to contest or deny the right of the said Katherine N. Stryker to the bonds given to her by the said Stewart K. Heitsman, brother of this defendant, as set forth in the bill of complaint.

2. That the deponent was a member of the household of the said Stewart K. Heitsman for many years and knew the relation existing between the said Katherine N. Stryker and her uncle the said Stewart K. Heitsman and believes that the transfer of said bonds from the said Stewart K. Heitsman to his niece the said Katherine K. Heitsman is entirely valid and done by the said Stewart K. Heitsman in acknowledgment of the sacrifices and services which she had made and rendered to him and as a mark of his affection for her.

SMITH & SMITH,
Solicitors of the defendant,
B. Frank Heitsman.

ANSWER AND COUNTER CLAIM OF DEFENDANTS, ALMA HILDEBRANT, ISABELLA KIRKPATRICK, ANNA KUNSMAN AND DORA HEITSMAN

(Filed Nov. 12, 1926)

The answer of the defendants, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman.

The defendants, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman, answering the bill of complaint say that:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted, except that these defendants deny that the said Katherine N. Stryker nursed the said Stewart K. Heitsman.

7. Paragraph 7 is denied, except that these defendants admit that the said $30,000 of Liberty Loan Bonds mentioned in Paragraph 7 are now in the possession of the defendant, Katherine N. Stryker, but these defendants deny that she obtained them by virtue of any valid or

legal transfer of the said bonds, of any kind, by the said Steward K. Heitsman, to her.

8. Paragraph 8 is admitted, except that these defendants deny that any valid transfer of the said bonds was ever made by the said Steward K. Heitsman to the said Katherine N. Stryker.

9. Paragraph 9 is admitted, except that these defendants deny that any valid transfer of the said bonds was ever made by the said Steward K. Heitsman to the said Katherine N. Stryker.

10. These defendants have no knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 10.

11. These defendants have no knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 11.

12. Paragraph 12 is admitted.

13. Paragraph 13 is admitted and these defendants aver that the alleged transfers of the said bonds were improvident and made without any independent advice received by the said Steward K. Heitsman.

14. Paragraph 14 is admitted.

15. Paragraph 15 is admitted.

16. Paragraph 16 is admitted.

17. Paragraph 17 is admitted.

18. As to paragraph 18, these defendants say that the defendant, Katherine N. Stryker, never came into the possession of the said bonds by virtue of any valid transfer of the said bonds to her by the said Steward K. Heitsman. That the said Steward K. Heitsman never intended to make a transfer of the said bonds to the said Katherine N. Stryker at the time of the alleged transfers or at any other time. That if the said Steward K. Heitsman did intend to transfer the said bonds to the said Katherine N. Stryker, that he did not intend to make a then presently effective transfer of the said bonds, but intended to make a transfer of the same effective at the time of his death, and that the said attempt to make the said alleged transfer or transfers was lilegal, invalid and contrary to law.

That the alleged transfers were the result and product of undue influence exercised by the defendant, Kathrine N. Stryker, upon the said Steward K. Heitsman, and that he did not understand or comprehend the nature or meaning or effect of the said alleged transfers. That the said alleged transfers were improvident and that no independent advice was received by the said Steward K. Heitsman at the time of the alleged transfers, or prior thereto. Wherefore these defendants aver that the said Liberty Bonds are, and should be adjudged to be, a part of the estate of Steward K. Heitsman, deceased.

By way of counterclaim against the defendant, Katherine N. Stryker, these defendants, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman, say that:

1. Paragraphs 1, 2, 3, 4, and 5 of the Bill of Complaint are hereby repeated and made a part of this counterclaim.

2. At the time of his death the said Steward K. Heitsman was eighty-six years of age. For a period of more than six years prior to the death of the said Steward K. Heitsman, and for a long time prior thereto, the said Katherine N. Stryker was his servant and housekeeper, and during that time the said Steward K. Heitsman was in poor health and was infirm and aged and was unable to carry on his business affairs without the assistance of the said Katherine N. Stryker, and she rendered him extensive help in conducting his business affairs, and he relied upon her for the said assistance and he reposed great confidence in here and entrusted her with the management of his business affairs, including the going into his safe deposit box in the Phillipsburg National Bank, to clip the coupons on the said Liberty Bonds and deposit these coupons and also checks for dividends upon the shares of stock which he owned, and other moneys, and the writing of checks for him. During the said period she was also his duly appointed deputy and had access to his said safe deposit box. At the times that the said Katherine N. Stryker alleges that the said Steward K. Heitsman transferred to her the said bonds, he was then aged, infirm, and in poor health, and was dependent upon her for her ministrations in his household, and for care, and entrusted her with the transaction of his business and reposed the utmost confidence in her as aforesaid. For a considerable time previous to his death, the said Steward K. Heitsman was confined to his home with sickness and was unable to leave his home.

3. These defendants further aver that the defendant, Katherine N. Stryker, is not now in the rightful possession of the said bonds, and that she is not entitled to the same, and that she never obtained possession of the said bonds or any of them by virtue of any legal or valid transfer to her by the said Steward K. Heitsman.

4. These defendants further say that the said Steward K. Heitsman did not transfer the said bonds to the said Katherine N. Stryker voluntarily and of his own free will, but that if he did do so, it was the result of undue influence and persuasion exercised upon him by the said Katherine N. Stryker, and that on this account the said alleged transfers are invalid. That the said Steward K. Heitsman did not understand or comprehend the nature or meaning or effect of the alleged transfers of the said bonds.

5. These defendants further say that if the said Steward K. Heitsman did transfer the said bonds to the said Katherine N. Stryker, that he did not thereby intend to make a then presently effective transfer of the same, but that he intended to make a transfer of the same effective as of the time of his death, and that such an attempted transfer or transfers were wholly illegal and invalid and contrary to law.

6. The said Steward K. Heitsman by his last will bequeathed to the said Katherine N. Stryker 30 shares of stock of the said Phillipsburg National Bank and 24 shares of stock of the People's Water Company, and by virtue of the said codicil to his last will he bequeathed to her 10 more shares of stock of the Phillipsburg National Bank and 24 more shares of stock of the People's Water

Company, and all of his household goods and furniture, bedding, dishes and silverware. At the time of the death of the said Steward K. Heitsman the value of the said 40 shares of stock of the Phillipsburg National Bank was $7,400; the value of the said 48 shares of stock of the People's Water Company was $720; and the value of the household goods and furniture, bedding, dishes and silverware, bequeathed by him to said Katherine N. Stryker, was $414.95 or thereabouts, and the said stock, household goods and furniture, bedding, dishes and silverware are still of the same aggregate value of $8,534.95 or more.

7. After the alleged transfers of the said $30,000 of Liberty Bonds to the said Katherine N. Stryker, the estate and property which the said Steward K. Heitsman had remaining was worth between $11,000 and $12,000, a part of which was not income producing property, and all of which property was not sufficient to properly maintain the said Steward K. Heitsman in comfort for the rest of his life. That by the said alleged transfers the said Steward K. Heitsman divested himself of far more than the greater part of his property. That the said alleged transfers were improvident within the meaning of the law of this state.

8. That neither at the time of the alleged transfers nor at any time prior thereto, did the said Steward K. Heitsman receive any independent advice or any advice whatsoever as to the nature or meaning or effect of the alleged transfers. Wherefore the said alleged transfers were invalid.

9. Paragraphs 14, 15, 16 and 17 of the Bill of Com-

plaints are hereby repeated and made a part of this counterclaim.

These defendants therefore pray:

(1) That the defendant, Katherine N. Stryker, may answer this counterclaim and each statement therein made.

(2) That the alleged transfers of the said Liberty bonds alleged to have been made by the said Steward K. Heitsman to the said Katherine N. Stryker, be declared null and void, and of no effect.

(3) That the title to the said Liberty bonds be adjudged to be in the estate of the said Steward K. Heitsman, deceased.

(4) That the said Katherine N. Stryker be decreed to transfer the said Liberty bonds to the complainant herein as the executor of the last will and testament of Steward K. Heitsman, deceased, forthwith.

(5) That these defendants may have such other or further relief in the premises as the nature and circumstances of the case may require, and as may be agreeable to equity and good conscience.

WILLIAM C. GEBHARDT & SON
Solicitors for and of Counsel with the defendants, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman.

COUNTERCLAIM OF DEFENDANTS ALMA HILDERANT, ISABELLA KIRKPATRICK, ANNA KUNSMAN, AND DORA HEITSMAN.

(Filed November 13, 1926)

The defendant, Katherine N. Stryker, joins issue on the answer of the defendants, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman:

1. As to counterclaim contained in said answer, defendant says she denies the allegations of paragraph 2 except so far as they are admitted in her answer.

2. Paragraphs 3, 4 and 5 are denied.

3. Paragraph 6 is admitted.

4. Paragraphs 7 and 8 are denied.

SMITH & SMITH
Solicitors of the Defendant
Katherine N. Stryker.

REPLICATION

(Filed November 16, 1926)

The complainant joins issue on the answer of the defendants, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman.

O. D. MCCONNEL
Solicitor pro se.

REPLICATION

(Filed November 16, 1926)

The complainant joins issue on the answer of the defendant, B. Frank Heitsman.

O. D. McConnel
Solicitor pro se.

REPLICATION

(Filed November 16, 1926)

The complainant joins issue on the answer of the defendant, Katherine N. Stryker.

O. D. McConnel
Solicitor pro se.

JOINDER OF ISSUE

(Filed November 22, 1926)

These defendants, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman, and Dora Heitsman, join issue on the answer of the defendant Katherine N. Stryker, one of the defendants to the counter claim of this defendant.

Wm. C. Gebhardt & Sons,
Solicitors of defendants, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman.

STIPULATION

(Filed March 16, 1927)

The solicitors of all the parties in the above-stated cause hereby stipulate as follows:

1. That a copy made by the Phillipsburg National Bank and Trust Company of the deposits made to the credit of Steward K. Heitsman and of the withdrawals therefrom, during the period from January 1, 1916, to date, shall be admitted in evidence and marked Exhibit C1, in lieu of the ledger of said bank.

2. That the deposit slips pertaining to the account of Steward K. Heitsman, when produced by James L. Lomerson, cashier of the Phillipsburg National Bank and Trust Company, and identified by him as being in the custody of said bank and trust company, shall be admitted in evidence and marked Exhibits C2 to C49, both inclusive.

3. That Steward K. Heitsman held a safe deposit box in the Phillipsbug National Bank, the corporate name of which was afterwards changed to the Phillipsburg National Bank and Trust Company; that the number of said box was 267; that is was registerd in the name of Steward K. Heitsman; that he never changed his box at said bank and that this was his only safe deposit box during the period from January 1, 1916, down to the date of his death; that this was the only box that he held at said bank and that he held no other box jointly with any other person or persons; and that said box was surren-

dered by Osiris D. McConnel, executor of the last will of Steward K. Heitsman on or about February 18, 1926.

4. That said Katherine N. Stryker was duly authorized by Steward K. Heitsman to have access to his said safe deposit box in said bank as his deputy, during all of the period that he held said box; that the statement of the dates and hours when access was had to said box, which was prepared under the supervision of said James L. Lomerson, and which shows all of the times when access was had to said box either by said Steward K. Heitsman or said Katherine N. Stryker, and which is marked Exhibit C50, shall be admitted in evidence for the purpose of convenience, but that the books of said bank containing the original entries showing access to said box shall be produced and also admitted in evidence; that the name of S. K. Heitsman on said statement indicaes the times when S. K. Heitsman signed personally for access to said box; that the name of K. N. Stryker on said statement indicates the times when K. N. Stryker signed for access to said box; and that the card which was signed by said Steward K. Heitsman when he rented said box, and which contained the written deputization of said Katherine N. Stryker on the back thereof, was destroyed upon the surrender of said box, as above mentioned, according to the custom at that time of said bank.

5. That the statement prepared under the supervision of said James L. Lomerson, showing all shares of the stock of said Phillipsburg National Bank acquired by said Steward K. Heitsman during his lifetime, and all shares of said stock sold by him during his lifetime, and the dividends paid upon the stock held by said Steward K. Heitsman during the period from October 13, 1915, to

October 13, 1926, both inclusive, and also the original checks for said dividends, which are 21 in number and are marked Exhibits C52 to C72, both inclusive, shall be admitted in evidence; and that said Steward K. Heitsman during the period from January 1, 1916, down to the date of his death, which was on January 31, 1926, held 40 shares of the stock of said bank.

6. The production of and formal proof of the books of Phillipsburg National Bank, the name of which was subsequently changed to Phillipsburg National Bank and Trust Company, showing all deposits made in said bank to the credit of Katherine N. Stryker, with the dates and amounts of each deposit, and of each withdrawal therefrom, from January 1, 1916, to the date hereof, are waived; that the statement prepared under the supervision of said James L. Lomerson, showing the moneys deposited to the credit of said Katherine N. Stryker, and the withdrawals from the same, and running throughout the period from October 22, 1920, to February 25, 1927, which statement is marked Exhibit C74, shall be admitted in evidence in lieu of said original books; and that the bank account represented by said statement, marked Exhibit C74, is the only bank account that said Katherine N. Stryker, individually or jointly, had at any bank during the period from January 1, 1916, to the date hereof.

7. That the residence in which said Steward K. Heitsman resided, being No. 115 South Main Street, in the Town of Phillipsburg, New Jersey, was furnished throughout during the period from January 1, 1916, down to the date of his death; that said household goods and furniture were worth in 1921 approximately $500;

that said household goods and furniture were worth in September, 1925, approximately $500; and that there are in said residence 4 rooms on the first floor, 3 bedrooms and a small hall room and a bathroom on the second floor, and 1 bedroom on the third floor.

8. That during the period from January 1, 1916, to January 31, 1926, said Steward K. Heitsman held 17 shares of the stock of the Easton National Bank, of Easton, Pennsylvania; that the value of said stock per share in 1921 was $67; that the value of said stock per share in September, 1925, was $71; that during the period last mentioned said Steward K. Heitsman received the dividends on said shares of stock of the Easton National Bank, which are shown on the statement made by the Easton National Bank of dividends paid to Steward K. Heitsman from January 1, 1915, to and including January 1, 1926, which statement is marked Exhibit C75 and shall be admited in evidence.

9. That during the period last mentioned said Steward K. Heitsman held six shares of the capital stock of the First National Bank of Easton, Pennsylvania; that the fair value of said stock per share in 1921 was $66; that the fair value of said stock per share in September, 1925, was $83; that the dividends received by said Steward K. Heitsman upon said stock of the First National Bank of Easton are shown upon a letter, bearing date December 20, 1926, signed by Frank W. Simpson, cashier of the First National Bank of Easton, which letter is marked Exhibit C76 and shall be admitted in evidence.

10. That during the period above mentioned said Steward K. Heitsman owned the following number of

shares of the capital stock of the People's Water Company, of Phillipsburg, New Jersey: From January 1, 1916, to March 27, 1916, 24 shares; from Marcch 28, 1916, to November 11, 1918, 48 shares; and from November 12, 1918, to January 31, 1926, the date of his death, 74 shares; that said stock was of the fair value of $15 per share in 1921; that said shares were of the fair value of $19.50 per share in September, 1925; and that the dividends received by said Steward K. Heitsman upon his said shares of stock of the People's Water Company are shown upon a letter, dated December 21, 1926, and signed by Robert E. Bachman for the Treasurer of said Company, which letter is marked Exhibit C77, and shall be admitted in evidence.

11. That the fair value of the stock of the Phillipsburg National Bank in 1921 was $174; and that the fair value of said stock in September, 1925, was $185.

12. That the average balance to the credit of said Steward K. Heitsman in his account at said Phillipsburg National Bank during 1921 was $1,679.00; and that the average balance to the credit of said Steward K. Heitsman in said bank in September, 1925, was $1,489.13

13. That the statements of the account of said Steward K. Heitsman in said Phillipsburg National Bank, when properly proved by said James L. Lomerson, shall be admitted in evidence, but it shall not be necessary to produce the original entries nor suppletory proof.

14. That the bonds which the defendant, Katherine N. Stryker, alleges were given to her by the said Steward K. Heitsman in his lifetime consist of $30,000, par value, of

United States Second Converted Liberty Loan Bonds, bearing interest at 4 1-4 per centum per annum, payable semi-annually on May 15th and November 15th in each year, and that all of said bonds are coupon bonds.

15. That at the time when box No. 267 was rented to said Steward K. Heitsman by the Phillipsburg National Bank, the two keys of said box were delivered by said bank to Steward K. Heitsman; and that said Katherine N. Stryker, as his deputy, could not have access to said box except by the use of one of said two keys.

16. That said Katherine N. Stryker has held a safe deposit box in said Phillipsburg National Bank, the number of said box being 200, from 1914 to date; that the statement of the dates and hours when access was had to said box, prepared under the supervision of said James L. Lomerson, and which shows all of the times when access was had to said box during said period, and which is marked Exhibit C78, shall be admitted in evidence for the purpose of convenience, but that the books of said bank containing the original entries showing access to said box shall be produced and also admitted in evidence.

17. That the checks for dividends received by said Steward K. Heitsman and by his executor, after his death upon his stock in the First National Bank of Easton, Pennsylvania, 10 in number; the Easton National Bank, 25 in number, and People's Water Company, 9 in number, shall be admitted in evidence and are marked Exhibits C79 to C122, both inclusive.

18. That the deposit slips pertaining to the account of Katherine N. Stryker, at the Phillipsburg National Bank,

the name of which was subsequently changed to Phillipsburg National Bank and Trust Company, when produced by James L. Lomerson, cashier of said bank and trust company, and identified by him as being in the custody of said bank and trust company, shall be admitted in evidence and marked Exhibits C123 to C169, both inclusive.

19. That the checks in the possession of Osiris D. McConnel, executor of Steward K. Heitsman, deceased, all of which were signed by Steward K. Heitsman, being 131 in number, shall be admitted in evidence and marked Exhibits C170 to C300, both inclusive; that the stubs of check books of said Steward K. Heitsman in the possession of said executor, shall be admitted in evidence and said books marked Exhibits C301 to C305, both inclusive; that all of said check stubs which are marked with a blue dot are in the handwriting of said Katherine N. Stryker; and that the body of all of said checks that are marked with a blue check are in the handwriting of said Katherine N. Stryker, the signature to each check being in the handwriting of Steward K. Heitsman.

20. That none of the parties in the cause know of any real estate that said Steward K. Heitsman owned, during the period from January 1, 1916, to the aforesaid date of his death, except the farm mentioned in paragraphs 2 and 3 of the bill of complaint in this cause, and which was sold and conveyed by said Steward K. Heitsman in 1918.

21. That the payee of check No. 118 of Steward K. Heitsman, W. Kroner, is engaged in the business of hardware and furnishing seeds and supplies to farmers; and

that the following payees of various checks of Steward K. Heitsman have the following business and location, respectively: William Laubach and Sons, department store in Easton, Pennsylvania; T. Newman, meaning Thomas Newman, engaged in the coal business in Phillipsburg, New Jersey; F. T. Hawk was engaged in the butcher business on south Main Street, Phillipsburg, New Jersey, about ten doors above the residence of Steward K. Heitsman; Charles V. Duffy, collector of internal revenue of the United States in 1919; Frank Miller, whose full name is Frank M. Miller, was a grocer whose store was situated on south Main Street, a short distance from the residence of Steward K. Heitsman on the opposite side of the street; J. F. Storm was and is engaged in the coal business in Phillipsburg, New Jersey; Rader and Brother was an incorporated department store in Easton, Pennsylvania; Bush & Bull is a large department store engaged in business in Easton, Pennsylvania; Harry T. Hess, whose true name is Harry L. Hess, was engaged in the business of paperhanging and interior decorating; Peter V. Yearance is engaged in the business of cleaning cesspools; Orr Company is a department store in the City of Easton, Pennsylvania; Dr. H. W. Souders is a dentist whose residence and office is opposite the residence of Steward K. Heitsman in Phillipsburg, New Jersey; Clarence Walters is an attorney at law in Phillipsburg; Werner Co. is a large furniture and music store in the City of Easton, Pennsylvania; Dr. H. C. Fisler is a physician in Easton, Pennsylvania; Dr. H. R. West is a physician living four doors away from the residence of Steward K. Heitsman; H. A. Weaver was the treasurer of the Board of Trustees of the Warren Hospital at Phillipsburg, New Jersey; Anna F. Howell was the wife of H. B. Howell,

superintendent of schools of the Town of Phillipsburg and is since deceased, and she resided during this period in Jersey City, New Jersey, check No. 287 for $89.50 to Anna F. Howell was for a coat for the defendant, Katherine N. Stryker, given to her by Steward K. Heitsman, and for which said Anna F. Howell paid for in the first instance; Sherer Brothers are engaged in the business of men's furnishings, suits and clothing; Welfare Chest was the Community Chest organization of the Town of Phillipsburg; Wilson Stove Manufacturing Company is engaged in manufacturing, selling and repairing of stoves and other hardware supplies and kitchen furnishings; F. Kline is engaged in the business of upholstery of furniture.

OSIRIS D. MCCONNEL,
Solicitor pro se.

SMIITH & SMITH
Solicitors of defendants, Katherine N. Stryker and B. Frank Heitsman.

WILLIAM C. GEBHARDT & SONS
Solicitors of defendants, Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman and Alma Hildebrant.

Dated March 15, 1927.

STIPULATION

(Filed July 18, 1927)

The solicitors of all the parties in the above-stated cause hereby stipulate as follows:

1. It appearing that Minnie Fine, a witness called on behalf of the defendant, Katherine N. Stryker, in the above-stated cause, was not, through inadvertence, sworn before she gave her testimony, we therefore stipulate that the testimony given by the said Minnie Fine in the above-stated cause be considered as if she had been duly sworn before giving her said testimony and we waive all objections to the admission and consideration of her testimony by reason of the said omission in administering the oath to her before testifying.

2. We further stipulate that the lowest quotations for Second Converted United States Liberty Loan Bonds on the New York Stock Exchange on December 19, 1921, was 95.24, and on September 5, 1925, was 100 1-32.

O. D. McConnel
Solicitor pro se.

Smith & Smith
Solicitors for defendants, Katherine N. Stryker and B. Frank Heitsman.

William C. Gebhardt
Solicitors for defendants, Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman and Alma Hildebrant.

Dated May 6, 1927.

ORDER AMENDING PLEADINGS

(Filed September 21, 1927)

This cause coming on to be heard in the presence of O. D. McConnel, of counsel pro se, Smith & Smith, of counsel with defendants, Katherine N. Stryker and B. Frank Heitsman, and William C. Gebhardt & Son, of counsel with defendants, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman, and it appearing that the complainant has duly given notice of an application to amend the pleadings in said cause, and the court having heard the arguments of the respective counsel, and having considered the matter, and it appearing that said application should be granted:

It is, therefore, on this 13th day of September, 1927, on motion of O. D. McConnel, counsel pro se, ordered that the complainant's bill in the above-stated cause be, and the same hereby is, amended in the following particulars:

I. By striking out the last sentence of paragraphs 13 of said bill, which sentence reads as follows:

"As far as complainant can ascertain, said Steward K. Heitsman did not receive independent advice at the time of making said alleged transfers", and by inserting in lieu thereof the following sentence:

"Said Steward K. Heitsman did not, at the time of making said alleged transfers, or at any time prior thereto, receive competent and independent advice as to the effect of such transfers."

II. By striking out paragraph 18 of said bill.

III. By inserting the following paragraphs in said bill:

"18. Complainant charges that said Steward K. Heitsman did not intend, by the alleged transfers of said bonds, to make presently effective transfers thereof to said Katherine N. Stryker, but, on the contrary, intended at most to make transfers thereof which should become effective at or after his death, and said alleged transfers are invalid.

"19. Complainant charges that said Steward K. Heitsman did not, in his lifetime, make presently effective transfers of said bonds to said Katherine N. Stryker, and said alleged transfers are invalid.

"20. Complainant charges that, if presently effective transfers of said bonds were made by said Steward K. Heitsman in his lifetime to said Katherine N. Stryker, which complainant denies, said transfers were obtained by undue influence exercised by said Katherine N. Stryker upon said Steward K. Heitsman, and said alleged transfers are invalid.

"21. Complainant charges that, it presently effective transfers of said bonds were made by said Steward K. Heitsman in his lifetime to said Katherine N. Stryker, ~~said Steward K. Heitsman receiving competent and inde-~~ said alleged transfers were improvident and were made without said Steward K. Heitsman receiving competent and independent advice as to the effect of such transfers, and said alleged transfers are invalid."

IV. By striking out paragraph (1) of the prayer of said bill, contained on the last page thereof, and by inserting in lieu thereof the following:

"(1) That, if there were no completed gifts made by said Steward K. Heitsman to said Katherine N. Stryker of said $30,000, par value, of Liberty Loan Bonds, said Katherine N. Stryker be compelled to account to complainant for and to restore to complainant the said Liberty Loan Bonds and the interest thereon from January 31, 1926, the date of the death of the said Steward K. Heitsman; or, if there were completed gifts made by said Steward K. Heitsman in his lifetime to said Katherine N. Stryker of said bonds, that said gifts be set aside as improvident, and made without independent advice, or as the result of undue influence exercised by said Katherine N. Stryker upon said Steward K. Heitsman, and that said Katherine N. Stryker be compelled to restore to complainant the said bonds and the interest thereon from the aforesaid date of the death of the said Steward K. Heitsman."

And it is further ordered that the answers of the defendants, Katherine N. Stryker and B. Frank Heitsman, be, and the same hereby are, amended to the extent of being considered as denying the allegations of said paragraphs 13, 18, 19, 20 and 21 of the bill as amended.

And it is further ordered that the answer of the defendants, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman, be, and the same hereby is, amended to the extent of being considered as admitting the allegations of said paragraphs 18, 19, 20 and 21 of the bill amended.

Respectfully advised.

The foregoing order is satisfactory to us as to form.

Solicitors of defendants, Katherine N. Stryker and B. Frank Heitsman.

Solicitors of defendants, Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman.

IN CHANCERY OF NEW JERSEY

Between,
OSIRIS D. MCCONNELL,
Executor, &c.,
Complainant,
AND
KATHERINE N .STRYKER, *et al,*
Defendant.

MEMORANDUM

ON FINAL HEARING

MR. O. D. MCCONNEL, for Complainant.

MESSRS. SMITH & SMITH, for Defendant Katherine Stryker and B. Frank Heitsman.

MESSRS. WM. C. GEBHARDT & SON, for Defendants Alma Hildebrant, et al.

BUCHANAN, V. C.

The bill is filed by complainant as executor of the will of Steward K. Heitsman, deceased, who by his will and codicil left certain bequests to the defendant Katherine Stryker and gave all the rest of his estate equally among

two brothers (one of whom predeceased testator) and five nieces (including Miss Stryker). Subsequent to the making of the will and codicil testator turned over possession of $30,000.00 in Liberty Bonds to his niece, Miss Stryker,. At his death she claimed them as her own, as having been given to her by testator.

A perusal of the bill shows that its prayer is for the "advice and direction" of the Court as to whether the said bonds belong to the niece or to testator's estate. The appropriate and speedy way to determine that question would be by suit at law in replevin or trover. However the suit has been completely tried, and at great length, by all parties, without any objection to the jurisdiction, on the theory of a determination as to whether there had been a valid gift of the bonds *inter vivos*. The bill can doubtless be sustained as a bill in the alternative, to compel an accounting or restoration of property by an agent or fiduciary (if there was no completed gift; or to set aside the gift (if made) as improvident or the result of fraud or undue influence. The pleadings should be appropriately amended before decree.

Some of the testimony of Miss Stryker relative to conversations and transactions with complainant's testator was admitted at the hearing, subject to later determination as to its validity. The doubt at the hearing arose from the fact that the objection to this testimony was not made by the executor, but by counsel for the other legatees. The language of the statute however seems sufficiently broad to require the exclusion of such testimony, even in such case; and the testimony objected to in that behalf must be stricken out.

The careful consideration which I have given to the evidence leads me to the conclusion that the testator did intend Miss Stryker to have the bonds in question; but that the evidence fails to show that he did in fact before his death make a completed gift to take effect immediately. Rather does the evidence show the contrary.

By his answer B. Frank Heitzman admits the right of Miss Stryker to the bonds, and thereby waives claim or interest as to the share bequeathed to him by the will.

The decree will direct the return by Miss Stryker to the complainant of the bonds and income accrued since testator's death, less the share which would have gone to B. Frank Heitsman.

Under all the circumstances the costs of all parties should be paid by the estate.

FINAL DECREE

(Filed May 21, 1928)

This cause coming on to be heard in the presence of O. D. McConnel, counsel pro se, Smith & Smith, of counsel with defendants, Katherine S. Stryker and B. Frank Heitsman, and William C. Gebhardt & Son, of counsel with defendants, Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman and Alma Hildebrant, and the complaintant's bill having been duly amended, and the pleadings having been read, and the proofs having been taken, and the arguments of the respective counsel having been heard,

and the court having duly considered said pleadings, proofs and arguments:

It is, on this twenty-first day of May, 1928, on motion of O. D. McConnel, counsel pro se, ordered, adjudged and decreed that the said Steward K. Heitsman did not in his lifetime make a completed and valid gift to said Katherine N. Stryker of said $30,000, par value, of Liberty Loan Bonds, mentioned in complainant's bill as amended, and that said defendant, Katherine N. Stryker, do forthwith, after the service upon her or her solicitors of a true copy of this decree, which copy may be certified by the complainant as solicitor pro se, restore and deliver to the complainant said Liberty Loan Bonds, amounting to $30,000, par value, and that she also forthwith after such service do pay to the complainant the interest on said $30,000 of Liberty Loan Bonds at the rate of 4 1-4% per annum from January 31, 1926, the date of the death of said Steward K. Heitsman, until November 15, 1927.

And it appearing that the defendant, B. Frank Heitsman, by his answer admits the right of said defendant, Katherine N. Stryker, to said bonds, and thereby waives all claim or interest as to the share therein bequeathed to him by the last will and testament of said Steward K. Heitsman, deceased, being a one-seventh share:

It is therefore further ordered, adjudged and decreed that said defendant, Katherine N. Stryker, shall be entitled, on the final distribution of the estate of said Steward K. Heitsman, deceased, to the one-seventh share of said bonds which was bequeathed by him by said last will and testament to B. Frank Heitsman after deducting from said one-seventh share its proportionate part of the lawful debts and funeral expenses of said Steward K. Heitsman and the costs and expenses of the administration of said

estate, including executor's commissions, counsel fees and the costs and counsel fees in this suit, the other personal estate of said Steward K. Heitsman, deceased, not specifically bequeathed, to be first applied to the payment of said debts, funeral expenses and the costs and expenses of administration.

And it is further ordered, adjudged and decreed that a counsel fee of $1100, be allowed and paid unto O. D. McConnel, solicitor and counsel pro se, and that a counsel fee of $1,200 be allowed and paid to Smith & Smith, solicitors for and of counsel with the defendants Katherine N. Stryker and B. Frank Heitsman, and that a counsel fee of $1,500 be allowed and paid to William C. Gebhart & Son, solicitors for and of counsel with the defendants, Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman and Alma Hildebrant, and that said counsel fees be paid out of the estate of said Steward K. Heitsman, deceased.

And it is further ordered that the costs of the complainant and defendants, to be taxed, be paid out of the estate of said Steward K. Heitsman, deceased, including the cost of copies of the testimony taken in the cause.

And it appearing that the said Katherine N. Stryker did, during the lifetime of the said Steward K. Heitsman, render services to the said Steward K. Heitsman, for which she is entitled to be paid, as an equitable condition to the equitable relief prayed by complainaint, and that the parties hereto have agreed in open court that the amount of such compensation shall be the sum of $7,500, it is further ordered, adjudged and decreed that concurrently with said return of said Liberty bonds complainant shall pay to said Katherine N. Stryker the said sum of $7,500 in full satisfaction for said services and of all claim and demand of the said Katherine N. Stryker

against the estate of said Steward K. Heitsman as a creditor of said Steward K. Heitsman.

And it is further ordered that this decree be entered as of January 31st, 1928.

Respectfully advised,

MALCOLM G. BUCHANAN
V. C.

E. R. WALKER
C.

A true copy:
O. D. MCCONNEL, Solr. pro se.

NOTICE OF APPEAL

(Filed July 20, 1928)

The defendant, Katherine N. Stryker, hereby appeals from so much of the final decree made in the above entitled cause, on the 21st day of May, 1928, by the Chancellor, on the advice of Vice Chancellor Malcolm G. Buchanan, as adjudges and decrees that the said Steward K. Heitsman did not in his lifetime, make a completed and valid gift to the said Katherine N. Stryker of said Thirty Thousand Dollars ($30,000.00) par value of liberty loan bonds mentioned in complainant's bill and that the said defendant, Katherine N. Stryker, do forthwith after service upon her or her solicitors of a true copy of this decree, restore and deliver to the complainant said liberty loan bonds; that she also forthwith after such service, do pay to the complainant the interest of the said $30,000.00 of liberty loan bonds at the rate of 4¼% per

annum from January 31, 1926, the date of the death of the said Steward K. Heitsman, until November 15, 1927, and to such other parts of the decree as are inconsistent with the contentions of the defendant, Katherine N. Stryker, that said bonds were a valid gift from Steward K. Heitsman, deecased, to the Court of Errors and Appeals in the Last Resort in All Causes.

SMITH & SMITH
Solicitors for and of counsel with the defendant Katherine N. Stryker.

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

SYLVESTER C. SMITH

(6L-526)

TESTIMONY

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Wednesday, the sixteenth day of March, 1927, at 11 o'clock A. M.,

Before HON. MALCOLM G. BUCHANAN, Vice Chancellor.

APPEARANCES

O. D. McConnel, pro se (William P. Tallman, of counsel) for complainant;

William C. Gebhardt & Son for defendants Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman;

Smith & Smith, by Mr. Sylvester C. Smith, Jr., for defendants Katherine N. Stryker and Frank Heitsman.

JAMES L. LOMERSON, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

MR. McCONNEL: Counsel have stipulated a great many facts, especially in reference to the records of the bank in which the bank account of the decedent was kept,

and also where he had a safe deposit box, and also Miss Stryker has one. The stipulation is in writing, and I will hand that to the Court.

DIRECT EXAMINATION

BY MR. McCONNEL:

Q. You live where?
A. Phillipsburg.
Q. What is your occupation?
A. Cashier of the bank.
Q. What bank?
A. The Phillipsburg National Bank.
Q. Is that the present name of that bank?
A. No.
Q. What is the bank's present name?
A. The Phillipsburg National Bank and Trust Company.
Q. When was the name of the bank changed to the Phillipsburg National Bank and Trust Company.
A. About two years ago.
Q. How long have you been cashier at the bank?
A. About 20 years; I can't fix the date; more than twenty years.
Q. Last past.
A. Yes, sir.
Q. And you have with you today the books of the bank?
A. Yes, sir.
Q. In obedience to a suponea duces tecum?
A. I have (producing them.)

MR. McCONNELL—I have here a statement from the bank of the account of Steward K. Heitsman. It is a copy of the deposits of the bank. I offer it in evidence.

Said statement is marked "Exhibit C 1."

MR. McCONNEL—I also offer the deposit slips in the account of Steward K. Heitsman from January, 1916, to date.

Q. Have you those?
A. I have.
Q. Where did they come from?
A. From our bank vault, Steward's vault.
Q. State whether they are the original deposit slips made to the credit of Steward K. Heitsman's account?
A. Yes, the original slips.
Q. They are from what date?
A. From January 5, 1916.
Q. To date?
A. Yes.

MR. McCONNEL—I offer them now in evidence.

Q. How have you arranged these slips?
A. In groups as to who made out the slips; where Steward K. Heitsman made out the slip I have them in one group, and where they were made out by myself in another group, and any body else who made them out.
Q. How many groups are there?
A. I didn't count the groups.
Q. Will you kindly do so now.
A. Six.

Q. Who were all the parties who made out these slips?

A. Steward K. Heitsman, my daughter, who was assisting me at that time—

Q. What is her name?

A. Elizabeth A. Lomerson. R. C. Bachman, H. J. Curry and Katherine M. Stryker.

Q. R. C. Bachman and H. J. Curry, they were also connected with the bank?

A. Yes.

(Said groups of slips are marked "Exhibits C 3, C 4, C 5, C 6, C 7 and C 8," respectively)

Q. Please identify by the numbers which Mr. Powis has given to the groups, the persons in whose handwriting those deposits were made.

A. "C 3," Steward K. Heitsman; "C 4," J. L. Lomerson; "C 5," Elizabeth A. Lomerson; "C 6," R. C. Bachman; "C 7," H. J. Curry; "C 8," Katherine N. Stryker.

Q. You have the original books of the bank showing—

A. Yes, sir.

Q. Beginning from January 1st, 1916?

A. Yes.

Q. How many books are there?

A. Two.

Q. You also prepared a statement for convenience, showing date and hour, and the person by whom access was had to the box?

A. Yes, sir.

Q. To Box No. 267?

A. Yes, sir.

Q. Steward K. Heitsman's box was No. 267?

A. Yes.

MR. McCONNEL—I offer that stipulation in evidence.

(Said statement from the safe deposit box books of the Phillipsburg National Bank in reference to safe deposit box No. 267, showing the date and hour of visitation, and by whom the box was taken out, is marked "Exhibit C 9.")

Q. You also prepared a statement showing the number of shares of stock held in the same bank by Steward K. Heitsman during his lifetime, shares sold by him and the dividends paid by the stock held by him during this period from October 13, 1915 to October 13, 1926, both inclusive. I show you that statement and ask you if that is the statement that you prepared for that purpose?

A. It is.

MR. McCONNEL—I offer that in evidence.

(Said statement of the Phillipsburg National Bank from the stock ledger, account of Steward K. Heitsman, showing the shares of stock acquired, the shares sold, and dividends paid on the stock, including the dates, is marked "Exhibit C 10")

MR. McCONNEL—I also offer in evidence the two books.

(Said safe deposit books of the Phillipsburg National Bank are marked "Exhibits C 11" and " C 12," respectively.)

MR. McCONNEL—By the fourth paragraph, or the eighth paragraph, Steward K. Heitsman held 17 shares of stock of the Easton National Bank, and I have a letter here from the bank which gives a list of the dividends paid in his lifetime and after his death to the executor; and that is to go in evidence without producing the books of the bank. That has been agreed by counsel. I offer it in evidence.

(Said "Statement of Dividends paid to Steward K. Heitsman from January 1, 1915 to and including January 1, 1926," on stock held by him in the Easton National Bank of Easton, Pennsylvania, is marked "Exhibit C 13.")

MR. CONNEL—In paragraph 9, he held six shares of stock of the First National Bank of Easton, Pennsylvania, and I have a similar statement showing a statement of dividends paid during the same period from that bank. I offer that in evidence.)

(Said statement of the First National Bank of Easton, Pennsylvania, signed by Frank W. Simpson, Cashier, addressed to Mr. O. D. McConnel, and dated December 20, 1926, is marked "Exhibit C 14.")

MR. McCONNEL—According to paragraph 10, during this same period I have a statement specifying the number of shares of stock held in the People's Water Company, and we have the statement in the form of a letter from the People's Water Company, from the treasurer of the company, setting forth the dividends paid on that stock, which is also to be offered in evidence, and I offer that at this time.

(Said statement, on the letterhead of the Phillipsburg National Bank and Trust Company, signed "R. C. Bachman, for the Treasurer," addressed to Mr. O. D. McConnel, and dated December 21, 1926, showing dividends received by Steward K. Heitsman from the People's Water Company, from November1, 1915 to March 1, 1926, is marked "Exhibit C 15.")

Q. You have with you the individual ledger on account of Steward K. Heitsman at the bank?

A. I have.

Q. In how many sheets is that?

A. Five.

MR. McCONNEL—I offer in evidence the original individual ledger sheets, showing the account of Steward K. Heitsman, containing five separate sheets.

(Said ledger sheets of the Phillipsburg National Bank, are marked "Exhibit C 16.")

Q. I would like to get the balance in Steward K. Heitsman's account on December 19, 1921.

A. $2,059.71.

Q. $2,059.71?

A. And 71 cents.

Q. And also the balance in his account on December 5, 1925.

A. The ledger sheet shows no entry on the 5th; the last entry preceding the 5th was September 2nd.

Q. I want the balance.

A. Which was $1,539.13 on September 2, 1925, and the account remain unchanged September 15th.

Q. What is the balance; I just want the balance.

A. $1,539.13.

Q. Katherine N. Stryker held a safe deposit box also?

A. Yes.

Q. In the same bank?

A. Yes.

Q. What was the number of that?

A. 200.

Q. Did she ever change the number?

A. No.

Q. Neither one of them ever changed their number?

A. No, sir.

Q. Have you prepared a statement similar to that of Steward K. Heitsman, showing the hours of access and the persons by whom access was made?

A. Yes, sir.

Q. I show you a paper and ask you if that is the statement showing access?

A. That is the statement showing access to Box 200 by Katherine N. Stryker.

MR. McCONNEL—I offer that in evidence.

(Said statement showing date and time of "Entries to Safe Deposit Box No. 200 by Katherine N. Stryker," is marked "Exhibit C 17.")

Q. During what time did Katherine N. Stryker have this safe deposit box No. 200 at your bank?

A. From 1914, April 15, 1914, she rented the box and still holds it.

Q. Do you have the card there signed by Miss Stryker for the contract on the renting of the box?

A. Yes, a card showing the payment of the rent for

the box, and showing the time—I don't think I have the other card.

Q. Do you have the card contract signed by Steward K. Heitsman upon renting his box 267?

A. I have not.

Q. You haven't?

A. No.

Q. Do you know what became of that?

A. Only on the statement of the clerk who received the surrender of the keys for the box.

Q. Not of your own knowledge?

A. No.

Q. Have you seen that card at different times?

A. I couldn't testify that I had; I imagine I had; in going through the bank books different times. Imagine I have seen the card, but I couldn't say positively if I had.

Q. Did Miss Stryker have an account at the Phillipsburg National Bank also?

A. Yes.

Q. From what period—never mind. Did you prepare a statement showing deposits and withdrawals in her account from the time it began down to date?

A. From 1920 to date, I have it. I think that was the beginning of the account, October 22, 1920, to date.

Q. You prepared a statement, did you, showing that?

A. I did.

Q. And the statement is correct, to the best of your knowledge?

A. It is.

Q. It is taken from the original books?

A. Yes, from the original ledger.

Q. Is that the statement you prepared? (Showing witness paper).

A. That is correct.

MR. CONNEL—I offer that in evidence.

(Said statement from the books of the Phillipsburg National Bank in the acount of that bank with Katherine N. Stryker, from October 22, 1920 to February 5, 1927, is marked "Exhibit C 18.")

Q. Have you the original ledger sheets, the individual ledger sheets of the account of Katherine N. Stryker?

A. Not here, no.

Q. Have you the deposit slips showing deposits made in the account of Katherine N. Stryker?

A. I have.

Q. How many are there of them do you know? Have you arranged them in sections?

A. Yes.

Q. How many have you?

A. Eight groups.

MR. CONNEL—I offer them in evidence.

(Said groups of bank slips of the Phillipsburg National Bank are marked "Exhibits C 19, C 20, C 21, C 22, C 23, C 24, C 25" and "C 26," respectively.)

Q. Can you identify those as to handwriting?

A. Yes.

Q. Identify these groups according to the handwriting of the persons who made them out?

A. "C 19," J. L. Lomerson; "C 20," Katherine N. Stryker; "C 21," Elizabeth A. Lomerson; "C 22," R. C. Bachman; "C 23," Stanley S. Young; "C 24," John E.

Wyckoff; "C 25," Charles G. Smith; "C 26," John T. Youpa.

Q. Were all of those parties, except Miss Stryker, connected with the Phillipsburg National Bank?

A. They were, yes.

Q. What other documents have you there?

A. I have the dividend checks payable to Steward K. Heitsman.

Q. Dividend checks?

A. Yes, sir.

Q. How many are there?

A. 21.

Q. Are they all indorsed by Steward K. Heitsman?

A. Yes.

MR. McCONNEL—I offer them in evidence.

(Said dividend checks of the Phillipsburg National Bank, are marked "Exhibit C. 27.")

Q. What others?

A. The release by the comptroller of the estate, and the short form of the Surrogate's certificate to yourself, and the signature of Steward K. Heitsman when he opened his personal checking account.

Q. At that time you kept the signatures in a book?

A. Yes.

Q. Do you do that now?

A. No, we use a card system.

Q. Have you the book containing the signature?

A. I have.

Q. Upon what page of the book is the signature?

A. The book is not paged.

Q. What is the date?

A. Nor dated.

Q. How do you—

A. It comes under the letter "H" in the index.

MR. McCONNEL—I offer the book in evidence.

THE COURT—Of what materiality is it?

MR. McCONNEL—I suppose as long as there is no contest on that it is not material; I will withdraw that.

Q. What other documents have you there?

A. The average balance for Steward K. Heitsman's account for the year in which you asked it.

Q. We don't need that.

A. That's all I have.

Q. You have been in the teller's cage for a number of years in that bank?

A. Yes.

Q. How long?

A. Thirty some years.

Q. Up to what time?

A. Almost two years ago.

Q. You say "almost?"

A. Yes.

Q. What do you mean?

A. Probably August, 1925, I think it was, that I left the cage.

Q. Will you please state whether during that time Steward K. Heitsman came to the bank at various times on business?

A. Yes.

Q. How often?

A. Very frequently.

Q. For the last ten years of his life, who came with him, usually?

A. Usually Miss Stryker.

Q. Katherine N. Stryker?

A. Yes, possibly he came alone at times, but if anybody was with him I don't recollect anyone but Miss Stryker.

Q. From 1920 on down, who was usually with him?

A. Miss Stryker.

Q. What was their method of doing business at the bank when they came there?

A. They would both come to the teller's window—I couldn't state which one handed the deposet in, whether it was Miss Stryker or Mr. Heitsman; early in 1920, for instance, I think Mr. Heitsman would hand the deposit in himself; I think he would.

Q. Mr. Heitsman?

A. Yes.

Q And after that?

A. Latterly, perhaps, Miss Stryker would hand the book in, but he would usually be standing by her in front of the teller's cage.

Q. They would be together?

A. Yes.

Q. From 1920 on down, will you state whether or not he was in poorer health than usual?

A. I think he was failing somewhat, but in 1921, we considered him in a state of health fit to act as a teller in the stockholders' meeting of the bank; that was in 1922, in January.

Q. That was the last year?

A. Yes, January, 1922.

Q. He was teller at the meeting?

A. Yes.

Q. What were the duties of teller?

A. The duties of teller at any stockholders' meeting are, that he receives the ballots and counts them, and prepares a statement showing the result of the election.

Q. What was the usual method of access to his safe deposit box?

A. Usually, I think, Miss Stryker came with him, from 1920 on, and they would go to the entrance of the deposit department and present the two keys on a little ring; they would give the ring to the clerk standing nearest to the entrance of the deposit vault, and the clerk standing nearest to it would open the gate and open their box for them; he would put the master key in and open the box and hand the box to them, and they would go in the coupon booth or in the directors' room unless that was being used, and open the box there.

Q. From 1920 on down, to whom was the box handed, usually, as far as your observation went?

A. I imagine to Miss Stryker; I couldn't say; my back would be turned toward the vault; my back would be turned in the teller's window.

Q. What did you observe?

A. I can't recollect observing anything.

Q. Who received the box, and who brought it back to the attendant?

A. That I don't recollect positively at all, only in a general way I could answer that; I don't remember any instance in particular.

Q. Will you please state what the custom of the bank was at that time in reference to these card contracts for deposit boxes, upon surrender of the box; that is, I mean in February, 1926, February 18, I think.

A. I think at that time we had a loose leaf register of the rental of the box and the appointment of the deputy on the back. When the box was surrendered and re-rented to a new depositor, the old sheet was destroyed.

Q. Have you a form that you used at that time?

A. Yes, sir, I have a blank sheet.

MR. McCONNEL—I offer that in evidence.

(Said sheet headed "Safe Deposit Box Record and Ledger," also containing a "Surrender and Receipt," with the "Appointment of Deputy and Assent to Contract" on the reverse side, is marked "Exhibit C 28.")

Q. I ask you whether, after the death of Steward K. Heitsman, it would have been possible for his executors to have gone into his box without being attended by the supervisor for the transfer of inheritance tax for that district; would it have been possible?

A. No.

Q. I would ask you, Mr. Lomerson, to take those safe deposit stock books and turn to the entry of December 19, 1921, in each box, 267 and 200.

A. I have it.

Q. Who signed for box 267 on that day?

A. Katherine N. Stryker signed, "S. K. Heitsman by K. N. Stryker."

Q Are you familiar with her handwriting?

A. Yes.

Q. State whether Miss Stryker's box, 200, was entered that day?

A. It was.

Q. Who signed for that?

A. Katherine N. Stryker.

Q. What hour?

A. 2:25 on the 19th of December.

Q. Turn to September 5, 1925, and let us know who signed for access to the boxes at that time?

A. Katherine N. Stryker.

Q. She signed?

A. Yes.

Q. She signed for what box?

A. She signed for Box 267, "Steward K. Heitsman by K. N. Stryker."

Q. And for the other?

A. And for Box 200, "Katherine N. Stryker."

Q. Do you know the hour of the entry?

A. 9:20 in the morning.

Q. For which box?

A. Both boxes.

MR. McCONNEL—In order to save time, we have stipulated that for convenience the statement should go in evidence showing times of access, and it specifies in those statements by whom access was had; so I don't think it necessary at this time to go into each separate date of access to boxes. That is a matter for cross-examination, or any examination of the box that the Court wishes to make. But we have arranged with counsel, that when it is signed "S. K. Heitsman," that means he signed for it personally; and when it is signed "K. N. Stryker." that means she signed for him in one way or the other. The statements will show that without proof.

MR. SMITH—I want this understood, that the mere fact that she may have signed would not indicate that on that particular day she was alone.

THE COURT—Oh, no; it has been testified here that they frequently came together.

CROSS-EXAMINATION

BY MR. GEBHARDT, JR.:

Q. One or two questions, Mr. Lomerson. I understood you to say that this form of card contract that was offered in evidence with refernce to the safe deposit box, was in use at that time?

A. Yes.

Q. Now, what time did you refer to?

Q. From the time Mr. Heitsman rented his box for about three years, I think; then we went back to another form. Mr. Heitsman was not one of the original renters of our safe deposit boxes when—

By THE COURT:

Q. This form which has been offered in evidence, was of the kind in use when he rented this box?

A. Yes.

Q. And you know it was a form of that kind that he signed?

A. Yes.

Q. That you know?

A. Yes.

By MR. GEBHARDT, JR.:

Q. Have you made any search among your bank records for the original card, deposit slip or card, that Mr. Heitsman presumably signed, or was issued to him when he rented the safe deposit box at the outset in 1918?

A. Yes. We couldn't find anything.

Q. You couldn't find that?

A. No.

FURTHER CROSS-EXAMINATION

By MR. SMITH:

Q. Mr. Lomerson, how long had Mr. Heitsman been going to the Phillipsburg National Bank and doing business there?

A. In December, 1886, he was a customer at that time, and previous to that time, but that is the time I entered the bank. I think in '74 his account was opened.

Q. How long had Miss Stryker come with Mr. Heitsman to the bank to do business prior to 1920?

A. I couldn't answer that question without something to indicate it.

Q. You don't know that?

A. I couldn't answer that.

Q. You recall the time when Mr. Heitsman's wife died?

A. Yes.

Q. State how many times after that, before 1920, Miss Stryker would come with Mr. Heitsman to the bank.

A. I couldn't answer a question of that kind without some books.

Q. You can't answer that, then?

A. Not without some books to indicate it.

Q. Did he ever come accompanied by Miss Stryker prior ot 1920?

A. I would think not, but I couldn't answer positively

to that without getting some books to indicate whether Miss Stryker was with him or not.

Q. Did he ever come alone after 1920?

A. He did; at the stockholders' meeting in January, 1922, he was alone then.

Q. Did you ever discuss his business transactions at the cage when he presented the book?

A. Frequently. He had one of the very, very old pass-books, and I know we frequently commented on the condition of the book as being the oldest book presented by any customer that came to the window.

Q. You say he was failing in 1920?

A. Yes.

Q. Do you have reference to his mental condition?

A. No, physical more, old age, more feeble.

Q. What sort of a mind did he have?

A. Of a mind?

Q. Yes.

MR. McCONNEL—That is objected to. It is not cross-examination; I didn't ask him anything with reference to his mental condition.

THE COURT—I think you did ask him about his failing health; I don't recall just how that was, whether it was in response to a question or whether it was stated voluntarily; but what difference does it make?

MR. SMITH—I will withdraw the question.

Q. (Stenographer repeats the question, as follows): "What sort of a mind did he have?"

A. Very clear, very keen.

Q. Up to the last time you remember talking to him, what kind of a mind did he have?

A. Just as clear as ever.

Q. Do you know from your experience with him, what kind of a man he was in reference to will power?

A. Well, I would say pretty strong will power; it's a family trait, and I think he possessed it to a marked degree; a very strong will.

Q. Did that continue up until the last time you saw him?

A. Yes.

Q. When was the last time you saw him to talk to him prior to his death.

A. In January, '22, I know I did, at the stockholders' meeting; I looked up the minute book at the bank and saw he was there and acted as teller in 1922, in January; I couldn't fix any other date later than that.

Q. But you saw him then?

A. Yes.

Q. Can you state whether or not you saw him after that time?

A. I think I did, but I am not positive; I couldn't state.

Q. But you believe you did?

A. Yes.

Q. Was there any change in his condition with reference to will power and strong-mindedness?

A. No, I think not; it was only physical; he was a little tottering, a little more trembling; his hand was a little more trembling; he loved to give a joke and he laughed and joked the last time I saw him.

By THE COURT:

Q. You can't recall whether you saw him at all in the four years between 1922 and 1926?

A. I think I undoubtedly did, but I couldn't name any date.

Q. I am asking you whether you did see him during those four years?

A. I did.

Q. More than once?

A. Yes.

Q. How many times?

A. I should say several times.

By MR. SMITH:

Q. How far was the bank situated from the residence, 116 South Main Street?

A. Ordinary walking; I think about five minutes, ordinary walking.

Q. Do you recall at any time admitting Mr. Heitsman to the safe deposit box?

A. No, I think I never did.

Q. You didn't?

A. If I had admitted him, his name would be registered on the register in my handwriting, and I don't find any in my handwriting.

Q. Do you have the card there wherein Miss Stryker rented her box?

A. Yes.

Q. Is that the one with the—

A. No, it shows payment of the rent.

Q. When did she first take out her box at the bank?

A. April 15, 1914.

Q. When did Mr. Heitsman take out his box?

A. I can tell you the time he first entered the box, but the card like this wasn't being used at that time, and we haven't any record of that.

Q. Do you know whether the time he first entered the box was about the time he rented it?

A. Yes.

Q. That was in 1918, was it not, October 24, 1918?

A. That's right, 1918, October 24th.

Q. Now, these deposit slips were signed by the officers at the bank, who were either tellers or at the window in the bank?

A. Yes.

Q. They were made out at the request of the depositor?

A. Yes.

Q. Is that the custom at that bank?

A. Yes, it is the custom; we are trying to break it, but it is hard to do.

By THE COURT:

Q. You do that for all depositors?

A. If they ask us to do it. We prefer to have it in their writing, of course; but when they request us, we do it.

By MR. SMITH:

Q. Referring to "C 3," these are deposit slips made out by Steward K. Heitsman himself?

A. Right.

Q. How many slips are there there?

A. Seven.

Q. Seven slips. What period do they cover, the last date?

A. From January 5, 1916, to November 27, 1919.

Q. Tell me how many deposit slips in "Exhibit C 4" were made out by yourself for Steward K. Heitsman.

THE COURT—Is it worth while to take up time with this?

MR. SMITH—It doesn't appear how many were made out by the depositor himself.

A. Thirty.

Q. Can you tell the period they cover?

A. From February 23, 1916, to January 5, 1925.

Q. And the others are by other persons for Steward K. Heitsman, including Miss Stryker?

A. Yes, sir.

Q. What conversation took place between yourself and Mr. Heitsman or Miss Stryker, when they would come to the bank to make a deposit?

A. I can't recall; a great many, I think; or once or twice it was upon—I think comment was made once or twice upon the fortunate sale he made of his farm, and at least two or three times we spoke of the preservation of his passbook.

Q. Who would hand the passbook up?

A. Well, I think sometimes one and sometimes the other.

Q. Either one?

A. Yes; I think generally he did it himself. It might have been the last two instances when he was in the bank she handed it up.

Q. Do you recall Mr. Heitsman coming to the bank to have checks cashed?

A. Yes.

Q. Did he come alone?

A. I think occasionally alone; and other times Miss Stryker was with him.

Q. Sometimes alone and sometimes with Miss Stryker?

A. Yes.

Q. Do you recall his coming alone any time around 1921 or 1922?

A. I wouldn't want to state that.

Q. You cannot fix the date?

A. No; if I had the check I might identify it, but I couldn't tell, roughly speaking.

RE-DIRECT EXAMINATION

By MR. McCONNEL:

Q. If you will, just briefly state the period covered by those statements I hand you and state in each case whether it is a statement made from the books of the bank.

A. I have the statement starting January 4, 1923, and closing February 18, 1924; they are statements made by our ledger clerk, and accompanied by checks signed by Steward K. Heitsman; they seem to have all been signed by him. Another statement, starting January 10, 1922, and closing January 4, 1923, accompanied with several checks signed by Steward K. Heitsman. This statement was also made out by our ledger clerk; also statement beginning February 18, 1924, and closing October 6, 1926, accompanied by checks signed by Steward K. Heitsman, with the exception of the last, which was signed by his legal representative, the executor. This statement is also on our statement sheets as made out by one of our ledger clerks.

MR. McCONNEL—I offer the three statements in evidence and the checks accompanying them.

(Said statements, the first accompanied by 43 checks, the second accompanied by 26 checks, and the third, accompanied by 62 checks, are respectively marked "C 29, C 30" and "C 31".)

(It is admitted that the indorsement of Katherine N. Stryker upon any of the checks is genuine.)

RE-CROSS EXAMINATION

By MR. GEBHARDT, JR.:

Q. During the period from 1916 on down to the date of his death, which I understand was the last ten years of his life, will you please tell me whether or not Steward K. Heitsman was engaged in any active business of any kind?

A. No.

Q. Do you recall when he retired from active business?

A. I think previous to the time of my going to Phillipsburg; in 1886, I think; from '86 on he lived retired. I think he was retired as far back as 1886.

Q. What was his business prior to the time of his retirement?

A. Farmer.

Q. He was a farmer?

A. A farmer. I think he acted as the landlord of a farm subsequent to 1886, but he wasn't tilling the soil; he wasn't farming himself.

Q. Was he ever engaged in any other business except that of farming?

A. No, I have no knowledge of any other business.

Q. From your acquaintanceship with him and knowledge of his habits, etc., will you tell me whether he was a thrifty man or a spendthrift man?

A. Very thrifty.

Q. Was he close in money matters, or inclined to be unusually liberal?

A. Well, the average in that respect. He considered it—

Q. I don't mean that. I mean, was he careful about money matters?

A. He was very careful, always.

Q. Always?

A. Yes.

Q. Can you recall at any time when he was at your bank after the date of 1922, when he acted as teller at your election?

A. No, I can't establish any date.

Q. Did he come as frequently after that as he had theretofore, or not?

A. I think less frequently after '22 than he had previous to that—

Q. Take the last year of his life, which was practically the year 1925, did he come at all?

A. I am not sure he came to the bank at all in 1925; I am quite sure he did not. He died the last of January, 1925, I think.

Q. '26?

A. I will withdraw that, then.

Q. You can't recall any time he was at the bank in 1925?

A. No, I couldn't at the present moment establish any date.

Q. I understand you to say, in response to Mr. Smith's question, that his mind was clear when you saw him last?

A. Yes.

Q. Will you please give that date?

A. Well, the last day I can fix was the second Tuesday in January, 1922; that is the last date I can absolutely establish.

Q. Did Miss Katherine Stryker also go to the bank occasionally to cash checks for Mr. Heitsman?

A. Yes.

Q. Throughout this period from 1920 down to the time of Mr. Heitsman's death?

A. Yes.

FURTHER RE-CROSS EXAMINATION

By MR. SMITH:

Q. Did you see Mr. Heitsman after that meeting in January, 1922?

A. Yes.

Q. You mean, you can't fix the defintie time?

A. I can't name any particular date, but I know I did see him subsequent to 1922.

Q. Can you tell how long before his death in 1926, as near as you can approximately, was it that you saw him?

A. Not more than two years before his death I saw him, I am sure, but just what date it was I couldn't fix.

Q. You say he was a landlord of a farm?

A. Yes.

Q. Was he shrewd in business affairs?

A. I think he was very careful; I don't think he was —yes, he was shrewd; I think that term is all right.

Q. Did he attend to looking after the farm up until 1918?

A. I think so; I used to see him drive through the square out to the farm.

Q. In 1918, up to the time he sold the property?

A. I couldn't say he went there the last year that he owned the farm, but frequently he would say something about it. I was a farm boy myself, and he knew that, and he would converse with me on farm topics and say what he had brought in, or something of that kind.

Q. Was he well versed in such matters?

A. Yes.

Q. And with the business affairs of the farm?

A. Yes, sir.

Q. Are you acquainted with the marketability of the stock of the People's Water Company, and the Phillipsburg National Bank and Trust Company, and the Easton National Bank, and the First National Bank of Easton, in Phillipsburg?

A. I am.

MR. GEBHARDT, JR.—That is objected to; that is included in the stipulation.

MR. SMITH—Not as to marketability.

THE COURT—Well, the witness says he is.

Q. In 1921, will you state whether the stock of the People's Water Company had a ready market in Phillipsburg?

A. It has always had a ready market in Phillipsburg.

Q. That was true in 1925, in September.

A. I think so.

Q. State whether or not the Phillipsburg National Bank and Trust Company stock had a ready market in 1921 and 1925?

A. It had.

Q. How great is the demand for that stock?

A. So great you could scarcely buy it.

Q. State whether the stock of the First National Bank of Easton, Pennsylvania, had a ready market in Phillipsburg and Easton?

A. Not as ready as either of the other corporations you have named.

Q. Was there a demand for it in 1921 or 1925?

A. Yes.

Q. State whether the stock of the Easton National Bank had a ready market.

A. Yes.

Q. Could it be sold without any trouble in, perhaps, two or three days' time?

A. Oh, yes, always.

Q. At a fair market price?

A. Yes.

WILLIAM P. TALLMAN, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. McCONNEL:

Q. You are a member of the New Jersey Bar?

A. I am.

Q. Practicing where?

A. In the Town of Phillipsburg.

Q. Did you make an examination of the records of Warren County to ascertain what real estate, if any, Steward K. Heitsman had during his lifetime?

A. Yes, I did.

Q. When did you make the examination?

A. Yesterday.

Q. Please state to the court what you found with reference to his holdings of real estate down to the date of his death, January 31, 1926.

A. So far as the records in the County Clerk's Office were concerned, I found that he only had one conveyance to him, dated April 1, 1886, conveying two tracts in Lopatcong Township, the first tract 66 33/100 acres; the second tract, 8 and 77/100 acres; recorded in Book 129 of Deeds, page 468, &c., in Warren County Clerk's Office. The consideration was $9,024.00.

Q. Who were the grantors?

A. Henry S. Heitsman and wife, Benjamin F. Heitsman and Chester T. Heitsman and wife, to Steward K. Heitsman.

Q. What became of that property, according to the records?

A. According to the records, I find that that same two tracts were sold by Steward K. Heitsman to F. Murt Coogan, by deed dated August 1, 1918, recorded October 25, 1918, in Book 211 of Deeds, page 434; the consideration was marked $1.00 and the deed had $31.00 in revenue stamps on it. It conveyed the same two tracts that were granted to Steward K. Heitsman. It reserves the rights of the tenant to occupy both premises up to April 1, 1919, and to his crops "are hereby reserved", and also the "grantors' share of the crops on both premises are hereby reserved".

Q. Outside of those two parcels of real estate, please state whether or not Steward K. Heitsman has, by the records, owned any real estate in Warren County.

A. Not so far as the records in the County Clerk's Office are concerned.

Q. What official position do you occupy?

A. Official District Superintendent for Warren County for the Comptroller, for the Transfer Inheritance Tax department.

Q. Do you recall going to the Phillipsburg Bank?

A. I have that recollection.

Q. What did you do?

A. Yes, I have two memos. from my release book. It says it is dated February 18, 1926, and from my inventory, my original notes made on that date for the purpose of notifying the Comptroller of the contents, I have that statement, too.

Q. You had access to the box, the safe deposit box, on that day?

A. Yes.

Q. State whether you have ever had any other access to that box except that time?

A. None, except that time.

Q. What did you find in the box?

A. On the 18th of February, '26, I have this memoranda, Certificate 942, 20 shares of the People's Water Company, Phillipsburg; Certificate 1179, the same, four shares; Certificate 1381, 24 shares of the same; Certificate 1571, 26 shares of the same, total, 74 shares. The next item is 17 shares of the Easton National Bank, Easton, Pennsylvania, Certificate 2961. The next item, the First National Bank of Easton, three shares, Certificate 3406, the First National Bank of Easton, 3 shares, Certificate 3864; total, 6 shares. The Phillipsburg National Bank, Certificate 187, 12 shares; Certificate 267, 7 shares; Certificate 300, 4 shares; Certificate 476, 2 shares; Certificate 1029, 5 shares; Certificate 1484, 10 shares, total, 40 shares.

Q. State whether any other securities of any kind were found in the box?

A. None whatever; this is the list of contents.

MR. McCONNEL—I have the originals here; I don't want to offer them unless it is necessary.

THE COURT—I don't think it is necessary unless counsel desires it.

MR. SMITH—No questions.

THOMAS F. MARNEL, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. McCONNEL:

Q. Mr. Marnel, you reside where?

A. Phillipsburg.

Q. What is your business?

A. Real estate and insurance.

Q. Were you one of the appraisers of the Estate of Steward K. Heitsman?

A. I was.

Q. I show you a paper, the original inventory borrowed from the Secretary of State, and I ask you if that was the inventory which was taken and signed and verified by the appraisers?

A. Yes.

Q. And what would you say with reference to the values given to the various items in the appraisement?

A. Why, a fair market value.

Q. Will you also state whethere there were any assets of the estate of which you had any knowledge, or which were brought to your attention, which were not appraised?

A. No, sir, there were none; they were all appraised that were brought to our attention.

MR. McCONNEL—Will counsel admit that the house in which Steward K. Heitsman and Miss Stryker lived,

belonged to his wife, Mrs. Heitsman; that the house and premises No. 115 S. Main Street, being one side of a double house in which Mr. Heitsman and his wife resided until her death on February 14, 1916, and in which Katherine N. Stryker and Steward K. Heitsman resided after her death and down to the date of his death, January 31, 1926, was the property of Emma Heitsman, and that she died intestate, and that there were never any children born to Steward and Emma Heitsman; that Steward K. Heitsman continued to reside there after the death of his wife, by some arrangement with the heirs at law?

MR. SMITH—I am not going to stipulate that latter part, because Miss Stryker had one-sixth in the property; she was one of the heirs at law.

MR. McCONNEL—We will stipulate that. And that he paid no rent for the premises from the date of his wife's death until his death.

MR. SMITH—I am not going to admit that. I don't think we should be called upon to admit everything.

THE COURT—It strikes me that it is in your favor, Mr. Smith.

MR. SMITH—Well, I suppose probably it is.

MR. McCONNEL—I will withdraw that.

MR. SMITH—I will say, after the death of his wife he paid no rent to the heirs of the estate.

MR. McCONNEL—It has been withdrawn. Will you also admit that a claim was made by three of the heirs, C. Albert Sandt, Katherine Nicholas and Elizabeth Shingle, upon the executor after his death for their one-third shares with six years' interest on the property. It was prepared in your office.

MR. SMITH—I have no personal knowledge of it; if it was done, we will admit it. I would like to have it admitted that they had not pressed their claim.

MR. McCONNEL—Surely; the amount of the claim being $670.00.

MR. McCONNEL—I offer that claim in evidence.

(Said claim, consisting of an affidavit made July 28, 1926, by C. Albert Sandt, taken before James E. Smith, Notary Public, is marked "Exhibit C 32".)

MR. McCONNELL—Also, that the executor notified said claimants that their claim was disputed, and that no suit was brought within three months after the receipt of that notice.

Q. How long have you been a real estate broker?
A. About 17 years.
Q. Do you know the premises No. 115 South Main Street?
A. Yes.
Q. Phillipsburg?
A. Yes.

Q. What kind of a house is it, a single house or part of a double house?

A. Part of a double house.

Q. Half of a double house, approximately?

A. Yes.

Q. What would be a fair rental value of that property in 1921 per month?

A. You mean the half?

Q. No. 115, occupied by Mr. Heitsman and Miss Stryker.

A. I would say possibly $75.00 or $80.00 per month.

Q. State whether or not you went through the house?

A. Yes.

Q. To make the appraisement?

A. Yes, sir.

Q. And what would be a fair rental value per month in September, 1925?

A. I don't think the rents would change between those years; $75.00 or $80.00 would be a fair rental at that time.

CROSS-EXAMINATION

By MR. SMITH:

Q. This house was on the main street, in what would be considered the best residential section of Phillipsburg?

A. No, I wouldn't say that; it was probably the best residential section of Main Street.

Q. That is what I mean; and in the neighborhood

were a number of people who were active in the business life of the community?

A. Yes.

Q. It had a ready market value?

A. Yes.

Q. Do you know what the properties brought at public sale when it was sold in 1926?

A. No, I don't know; I think it was in the neighborhood of $30,000, although I am not sure of that.

Q. Do you remember it was $30,350.00?

A. No, I don't remember.

Q. That included another brick house and two frame houses in the rear?

A. Yes.

Q. In connection with this there was a large yard at the side?

A. Yes.

Q. And this was really a desirable house, because it faced on the South side of the two houses; isn't that true?

A. I don't know that that had any value to it; the vacant lot adjoining might have a tendency to give more light and sun to that particular side of the house.

Q. Isn't that the situation?

A. Yes, it is.

Q. You don't think that would make it more desirable or valuable for residential purposes?

A. It would as long as that lot remained vacant.

Q. It did remain vacant during that period?

A. Yes.

Q. There was this yard connected with it?

A. Yes.

Q. You say $75.00 or $80.00 a month would be a fair rental?

A. Yes.

Q. Do you think it could have been rented for any more than that during that period?

A. No, I don't, not as the house now stands. It might be converted into a two-family house and bring more revenue.

Q. That could be done?

A. Yes.

Q. How much revenue would it have brought then?

MR. GEBHARDT, JR.—I object to that; it is speculative.

Q. Could it readily have been divided so two families could have occupied the house?

A. Yes.

Q. Could it have been rented to two families at the rate of $50.00 a month?

MR. GEBHARDT, JR.—I object to that; I think it is immaterial.

THE COURT—You may ask those questions; but I am not going to take much time on them.

A. Why, it might bring a rental of, say $50.00 for the first floor and probably $40.00 or $45.000 for the second floor.

Q. That could have been done with practically no change in the house?

A. With very little expense.

RE-DIRECT EXAMINATION

By MR. McCONNEL:

Q. When you say the property sold for about $30,000, you mean the whole property?
A. Yes, sir.

MR. McCONNEL—I offer in evidence a certified copy of the inventory.

(Said certified copy of inventory, certified to on March 14, 1927, by Clayton Willever, Surrogate of Warren County, is marked "Exhibit C 33.")

MR. SMITH—I want to ask whether the stipulation fixing prices would not supersede the stipulated value of the stock. It was stipulated—

MR. McCONNEL—The stipulation, I understand, will stand the values of what he had left after each transfer. This was merely to show the extent of the estate.

Do you admit Miss Stryker's age? I would not ask that if it did not seem to be necessary.

MR. SMITH—42 years, yes.

MR. McCONNEL—The other matter is, whether Steward K. Heitsman in 1921 owned any other property besides the Liberty Loan Bonds, the stock of the First National Bank of Easton, the stock of the Easton Na-

tional Bank, the stock of the Phillipsburg National Bank, the stock of the People's Water Company, the deposit in the Phillipsburg National Bank, and his household goods and furniture. Can you admit that there was no other property, as far as your knowledge goes, in 1921?

MR. SMITH—Well, at that time there were two Liberty Loan Bonds which were subsequently given to Miss Stryker at Christmas time as a Christmas present, of $100.00 each.

MR. McCONNEL—In the same year?

MR. SMITH—In different years. He owned the bonds in 1921.

MR. McCONNEL—And that this is the only additional property he owned besides the Liberty Loan Bonds, the deposits in bank, and his household goods, and the People's Water Company stock, the stock of the Easton National Bank, the stock of the First National Bank of Easton, and the stock of the Phillipsburg National Bank, and as I say, his deposit in the Phillipsburg National Bank, and his household goods and furniture. That was all, with the exception of what you have stated?

MR. SMITH—I suppose it was.

MR. McCONNEL—Now, with reference to September, 1925, as to any property he owned in addition to the items already mentioned—

MR. SMITH—I have no knowledge of any.

MR. McCONNEL—That he owned no other property except those above mentioned?

MR. SMITH—Of course, before a certain time in September.

THE COURT—He didn't own anything more than that; he had nothing else outside of that?

MR. SMITH—No, not as far as we have any knowledge.

MR. McCONNEL—I offer in evidence, also, the dividend checks of the People's Water Company to Steward K. Heitsman upon his stock in that company; dividend checks to Steward K. Heitsman upon his stock in the First National Bank of Easton, Pennsylvania; dividend checks of the Easton National Bank to Steward K. Heitsman on his stock held in that bank.

(Said checks of the Easton National Bank, 25 in number, are marked "Exhibit C 34.")

(Said checks of the Phillipsburg National Bank, 9 in number, are marked "Exhibit C 35.")

(The checks of the First National Bank, of Easton, Pennsylvania, 10 in number, are marked "Exhibit C 36.")

MR. McCONNEL—It is admitted that the indorse-

ment of Katherine M. Stryker upon any of said dividend checks is genuine?

MR. SMITH—Yes.

MR. McCONNEL—I also offer in evidence five books of check stubs from which checks were taken upon the account of Steward K. Heitsman in the Phillipsburg National Bank, and the Phillipsburg National Bank and Trust Company, as it was afterwards named, and I ask that they also be marked.

THE COURT—Are they important?

MR. McCONNEL—They show the handwriting as to who drew the checks, and our stipulation provides that there has been blue marks made on all of these checks which are in the handwriting of Katherine N. Stryker, except the signatures, which is in the handwriting in each case of Steward K. Heitsman, and that there is a blue dot placed upon each check stub in the five check books, which indicate check stubs which are in her handwriting.

(Said check stub books are marked "Exhibits C 37" to "C 41," respectively, inclusive.)

EDWIN E. SITGREAVES, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. McCONNEL:

Q. Mr. Sitgreaves, where do you reside?
A. 59 South Main Street, Phillipsburg.
Q. What is your occupation?
A. Bank messenger.
Q. What bank?
A. Phillipsburg National Bank and Trust Company.
Q. How long have you been connected with the Phillipsburg National Bank and Trust Company?
A. Since 1921.
Q. You knew Steward K. Heitsman in his lifetime?
A. I have seen him in the bank.
Q. You have known Katherine N. Stryker, also?
A. Yes, sir.
Q. Do you have any recollection of the original contract cards by Steward K. Heitsman for the box in your bank?
A. His card?
Q. Yes.
A. Yes, I have handled it several times.
Q. Will you state whether or not the contract made with Steward K. Heitsman was on that form (showing witness "Exhibit C 28")?
A. Yes, sir.

Q. What was there on the reverse side of that contract?

A. It showed the deputy.

Q. Who was the deputy?

A. Katherine N. Stryker.

Q. What became of that card?

A. Well, when the box was surrendered and the box laid idle for two months, I re-rented the box, and I didn't think the old sheet was of any value laying about, and I threw it away and put the new form in.

Q. What was done with this particular sheet?

A. I destroyed it, threw it in the wase paper basket.

Q. Will you tell us whether you have seen Mr. Heitsman and Miss Stryker come to the bank together?

A. Well, I have seen them in there.

Q. Will you state whether you have let them in that safe deposit vault?

A. Yes, I have let them in.

Q. What was their manner in coming for access to the box?

A. They would come to the safe deposit department and offer the key, and I would get the box out and hand it to Miss Stryker or whoever would come to the door, and they would take it into the booth or the directors' room.

Q. Who brought the box back usually?

A. Katherine Stryker, as a rule, would bring it back, and it would be put away by one of the clerks. I very often waited on different customers, and then in the meantime go out of the bank, and somebody else would take care of the box and put it away, some of the other clerks.

Q. Do you recollect Steward K. Heitsman being in the bank for about two years before his death?

A. Well, I would say around '23, along in there.

Q. About 1923?

A. Yes.

Q. Was that the last time you recollect his being in the bank?

A. Yes.

Q. That was the last time?

A. That was the last time I recollect.

Q. His being in the bank?

A. Yes, sir.

CROSS-EXAMINATION

By MR. GEBHARDT, JR.:

Q. As a general rule, Mr. Sitgreaves, when Miss Stryker and Mr. Heitsman came to the bank, which one of them would present the key?

A. Miss Stryker, as a rule.

Q. She would present the key?

A. Yes.

Q. Did you notice any change in Mr. Heitsman's general condition of health and vitality down to 1923, the last time he was in the bank?

A. A very little change I noticed.

FURTHER CROSS-EXAMINATIOIN

By MR. SMITH:

Q. Now, do you recall Mr. Heitsman giving you the keys at times you let him in when he came to the box?

A. I don't know, I can't just recall.

Q. You don't recall that?

A. No.

Q. Did he sign for the box when you would admit him?

A. Well, I think on one occasion, on one or two occasions; I can't recall.

Q. Did you ever have any conversation with Mr. Heitsman when he came to the bank on these occasions?

A. No.

Q. Was he a quiet man in his demeanor, a man of few words?

A. Yes, sir, a man of few words.

Q. He said very little?

A. Not much.

Q. And appeared to be the same during the entire time he went to the bank?

A. Yes.

Q. Would he know what he was doing?

A. Yes.

Q. He was a man of strong will power and good mind?

A. Yes, sir.

ELIZABETH HEITSMAN, a witness produced on behalf of defendants Alma Hildebrant and others, being duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. GEBHARDT, JR.:

Q. Mrs. Heitsman, where do you live?
A. Broadway, New Jersey.
Q. How far is that from Phillipsburg?
A. 12 miles.
Q. Are you any relation, by marriage or otherwise, to Steward K. Heitsman?
A. Yes.
Q. Or were you in his lifetime?
A. I am a sister-in-law.
Q. What was your husband's name?
A. Chester T. Heitsman.
Q. He was a brother to Steward?
A. Yes.
Q. About when was it that your husband died?
A. 1917.
Q. Are you the mother of Alma Hildebrant, a defendant in this case?
A. I am.
Q. Were you mentioned in any way either in the will or the codicil to the will of Steward K. Heitsman?
A. I am not.
Q. Not in any way?
A. No.

Q. How long have you known Katherine Stryker, approximately?

A. Since she was eight years old.

Q. And about how old was she when she first came to Phillipsburg?

A. Well, seven and a half or eight years old.

Q. And you have known her since that time?

A. Yes.

Q. What relation was she to Steward Heitsman?

A. She was no relation to Steward Heitsman, but to Emma Heitsman.

Q. What relation was she to her?

A. She was a niece of Steward's wife, Emma.

Q. How did she get to Phillipsburg to live when she was about eight years old?

A. Her aunt Emma and Mrs. Stryker went down to get her to Texas, and brought her up here.

Q. And Mrs. Stryker was what relation to Katherine Stryker?

A. Grandmother.

Q. After she was brought to Phillipsburg to live where was it she lived and who brought her up?

Q. She lived with Steward Heitsman, her uncle, and her grandmother, Mrs. Stryker, was interested, and her aunt Emma and her uncle, Steward Heitsman.

Q. What had become of her father and mother?

A. They died.

Q. Previous to her coming to Phillipsburg, or about that time?

A. About that time, I think.

Q. And did she have any brothers and sisters who also lived there?

A. She had a Brother Steve.

Q. Where did he live?

A. With Steward Heitsman and Emma Heitsman and Mrs. Stryker.

Q. Is he living now?

A. No, he is dead.

Q. How long did Katherine Stryker continue to live in Steward Heitsman's household?

A. On up to her lifetime, so far.

Q. Up to the time of his death?

A. Yes.

By THE COURT:

Q. When did Steve Stryker die?

A. I can't recall.

A. About how long?

A. He was at Lafayette College—

MR. SMITH—We will admit it was January 4. 1905.

Q. What education, if any, do you know that Katherine Stryker received, and who was it that gave it to her and saw that she got it?

MR. SMITH—That is objected to.

THE COURT—The objection is overruled. I suppose you might admit all this.

Q. About when was it that Emma Heitsman died?

THE COURT—That is in the record.

A. 1916.

Q. And what was Katherine Stryker engaged in doing at that time?

A. Teaching school.

Q. Did she continue to teach school after that, or what did she do?

A. No, she stopped and kept house for her uncle.

Q. Steward?

A. Uncle Steward Heitsman.

Q. After Emma Heitsman died, who made up the household of Steward K. Heitsman?

A. Steward Heitsman and Frank Heitsman and Katherine Stryker.

Q. Was there any change in that household then down to the time of Steward's death or not?

A. No.

By THE COURT:

Q. Who was Frank Heitsman?

A. A brother of Steward Heitsman.

Q. And lived there together?

A. Yes, boarded there.

Q. Frank boarded his brother Steward?

A. He boarded with his brother, Steward Heitsman.

Q. How old a man is Frank Heitsman at this time?

A. 81.

Q. Beginning with the period and including the year 1921, down to the time of Steward Heitsman's death, can you please tell me whether or not you visited or were in Steward K. Heitsman's household frequently?

A. I did.

Q. You visited there?

A. I did.

Q. Did you have occasion to observe how the household was run, and who kept house, etc?

A. Katherine Stryker kept house, ran the house.

Q. Who paid the bills during that period?

A. Katherine Stryker.

Q. She paid the bills?

A. Yes.

Q. Where did she get the money?

A. To pay the bills?

Q. Where did she get the money from to pay the bills?

A. From her uncle, Steward Heitsman.

Q. Who did the shopping during that period?

A. Katherine Stryker.

Q. Can you tell me what method was used to furnish the money to pay the household bills, etc., during that period?

A. She would draw up the checks, and he would sign them, and she would take them to the bank and get them cashed and bring it back and give him some money and she would keep the remainder to run the household, whatever might be necessary.

Q. And during that period do you know what she got from Steward Heitsman in the way of compensation for her services?

A. Well, he was very generous.

Q. Very generous to her, do you mean?

A. He was very generous to her.

Q. In what respect?

A. Well, in many ways, giving her things.

Q. Anything in the way of clothes?

A. Helping her with her clothes, and gave her a Victrola and radio, and many things.

Q. Did she do any entertaining with her friends?

A. Oh, yes, she entertained a great deal.

Q. Did she go on pleasure trips?

A. She went on pleasure trips and business trips.

Q. She went on pleasure trips?

A. Yes.

Q. Now, do you know anything about what became of the board money that Frank Heitsman paid?

A. Katherine Stryker told me she got the board money, that she received board from her uncle; her uncle gave it to her, her uncle Steward.

Q. How much did that amount to during this period?

A. Five dollars,—I'm not sure.

Q. Five dollars a week, or a month, or what?

A. A week.

Q. During the year 1921, what was the general condition of health of Steward Heitsman?

A. Not very good.

Q. What do you mean by that?

MR. SMITH—Is this witness qualified?

THE COURT—She said she visited there frequently.

MR. SMITH—I object to it on that ground.

THE COURT—The objection is overruled! it will be subject to cross-examination, of course.

Q. What do you mean by saying he was not in very good health, or whatever it was you said?

A. Well, he was then an old man and needed a great deal of attention, and he was more or less crippled with rheumatism, and stiffened, and occasionally would get heart attacks, and needed attention.

Q. What was the nature of these heart attacks; did they cause him to go to bed, or be prostrated?

A. At times.

Q. To what extent did his rheumatism interfere with his getting around?

A. He wasn't sure of his footing; it stiffened him; he often had to be helped off the chair, and Katherine Stryker would lead him across the room.

Q. Did he use any artificial assistance in walking?

A. Yes, he used a cane always.

Q. Were you there any more frequently during the last years of his lifetime?

A. Yes.

Q. How did it happen that you were there very often?

A. Because his condition wouldn't allow him to be left alone; in case she wanted to go away or anything of that kind, I was sent for.

Q. Did you go?

A. Yes; I was free to go at that time.

Q. When you went there, what part of the household duties did you do when she was away?

A. I took charge of the household.

Q. The same as she did?

A. Yes.

Q. You became the housekeeper?

A. Yes.

Q. Did you give him any attention or assistance?

A. Yes, sir, I did.

Q. Steward?

A. I did.

Q. Were you there on any occasions when you went down there to help, when Katherine was at home in the household?

A. What?

Q. Were you there on any occasions when you went to help, when she was at home?

A. Yes, I was very frequently when she was home, and always would lend a hand around the house.

Q. Can you give me the longest period, approximately, that you were there alone, that she was away?

A. That was when she was in court; she was one of the jurors.

Q. About how long?

A. Well, I think, as near as I can tell, somewhere around a month or six weeks, that court closed and opened again, and I went back again; so I am almost positive I was there four or five weeks at that time.

Q. Can you tell me briefly, a few other occasions when she was away, where she was and how long you were there?

A. Yes; she went to Boston and I was there a week or so.

Q. About a week?

A. Yes.

Q. Any other?

A. Washington City I was there, and to Trenton and to New York.

Q. When you kept house when she was not there or was there, when you gave this assistance, tell me whether you received any compensation for that?

A. I did not, only gifts.

Q. Did you ask for any compensation?

A. I did not.

Q. Now, will you tell me how Steward Heitsman's health became on down and including the year 1925, and so much of 1926 as he lived, did he get better or worse?

A. No, he got worse.

Q. In what respects?

A. Well, those heart attacks were close together and more severe.

Q. For how long a period would he have to go to bed when he got those heart attacks?

A. Sometimes a week, a very short time.

Q. Do you know whether that was the cause of his death, a heart attack?

A. Well, that was my idea; I had not seen the doctor's certificate.

Q. How did his rheumatism get; did it get better or worse?

A. No, no better nor no worse, at the time of his death.

Q. How much assistance, particularly in the year 1925, did he require around the house, and so on, his personal needs?

A. A great deal.

Q. Can you briefly mention some respects in which he required help and assistance?

A. Katherine Stryker would help him up the steps to bed, and very often had to undress him, and the last year she gave him his bath.

Q. Did she receive any extra compensation for giving him his bath?

A. Well, he gave her a dollar every time she gave him his bath.

Q. During the period beginning 1921, down to the time of his death, what assistance did Steward Heitsman receive in the conduct of his business affairs?

A. She attended to his business.

Q. Katherine did?

A. Katherine Stryker.

Q. Tell us what she did?

A. She would write out the checks and he would sign them.

Q. Go on.

A. And she would take them to the bank and get them cashed.

Q. Can you tell me whether there was any time during his life he was entirely unable to go to the bank personally?

A. Well, he wasn't to the bank the last two years to my knowledge, and probably later back to my knowledge; I couldn't say.

Q. Did his physical condition permit him to go that far back for the last two years of his life, as far as the bank?

A. No.

Q. Not as far as the bank?

A. No.

Q. And after the checks were cashed and the money came back, what was done with that?

A. With the money?

Q. Yes?

A. She would give him a portion of it and she kept the balance.

Q. What for?

A. To run the household.

Q. And on the occasion when you lived there alone,

to keep house when Katherine went away, from whom did you get the money then to run the household?

A. Katherine Stryker.

Q. Where did she take it from?

A. Her pocketbook.

Q. Will you tell me whether that is where the money went into after she cashed Steward Heitsman's checks?

A. In the pocketbook.

Q. Into the same pocketbook?

A. Yes.

MR. GEBHARDT, JR.—May I inquire; there are some admissions of the defendant, Katherine Stryker, with reference to some transactions that occurred after this which are a part of her case. Does your Honor want us to go into that now or at some future time?

THE COURT—I don't know of anything to take it out of the general rule and I see no reason why you should not go into that at the present time.

Q. How intimately—with respect to Frank Heitsman's board, he paid that direct to Katherine, or direct to Steward?

A. I couldn't answer that question. She told me she got Frank's board.

Q. She said that herself?

A. She said that.

Q. During this period, from 1921, on down to the time of his death, on how intimate terms were you with Katherine Stryker?

A. Very intimate.

Q. You were very intimate with her?

A. Very intimate. I think a great deal of her.

Q. And during that same period will you please tell me the extent to which Steward Heitsman relied upon her in the conduct of his business affairs?

MR. SMITH—Isn't that a conclusion?

THE COURT—You may have her state what the facts are; what she saw or anything that bears upon that point.

Q. Will you please tell me what facts or what things you saw there that indicated whether or not Steward Heitsman relied upon Katherine Stryker to assist in the conduct of his business during that period?

A. She attended to his business.

Q. Did he rely upon her?

A. He relied upon her. He trusted her to take care of his business—

By THE COURT:

Q. What did you see?

A. Myself?

Q. Yes.

A. I seen her write out the checks and he would sign them.

Q. What you saw was that he would sign the checks after she wrote them out.

A. Yes.

By MR. SMITH:

Q. And who would take them?

A. Katherine Stryker.

Q. Where?

A. She would take them out.

Q. Can you recall anything else that would indicate whether or not he relied upon her in the conduct of his business?

A. No.

Q. Did he?

A. I don't know.

Q. Who was it that attended to the depositing of his money during the period he was unable to get to the bank?

A. Katherine Stryker.

Q. Particularly during that period?

A. Katherine Stryker.

Q. Did Katherine Stryker, during this period, from 1921 down to the date of his death, and subsequent to that time, in fact, down to the present time, did she ever discuss with you her personal, private affairs?

A. Did she talk to me about it?

Q. Yes?

A. Yes, sir.

Q. Did she, at any time during that period, intimate to you in any way, that Steward K. Heitsman had transferred to her thirty thousand dollars worth of Liberty bonds?

A. No.

Q. Did she, at any time during that time, intimate to you at all, that Steward K. Heitsman had transferred to her any part of these thirty thousand dollars worth of Liberty bonds?

A. No.

Q. She said nothing about that?

A. No.

Q. Do you recall the conversation that took place between Katherine Stryker and Steward K. Heitsman, a short time after Emma Heitsman's death?

A. How?

Q. With respect to the making of a will?

A. Oh, yes, I understand.

Q. Do you recall any conversation that took place between Katherine Stryker and Steward shortly after Emma Heitsman's death, with respect to the making of a will?

A. Yes, sir.

Q. About how long after Emma Heitsman's death did that take place?

A. A week or two.

Q. A week or two after?

A. A week or two, I couldn't just recall.

Q. But about that?

A. Within that time.

Q. Where did it take place?

A. He was gone some length of time and she was very much alarmed about him and when he did come home she said to him, "Why, Uncle Steward, where have you been, I have been so worried about you?"

Q. What did he say?

A. He said, "I have been making my will," and, he said, "You won't have to worry, you are well provided for."

Q. Now, were you at the house the day of Steward's funeral?

A. I was.

Q. Do you recall the conversation that took place in the room there, before the relatives had left, with respect to the will, after the will was read?

A. Well, my daughter came to me and said, "I don't quite understand the will—

By THE COURT:

Q. Was Miss Stryker there?

A. Miss Stryker was within hearing, yes.

Q. Katherine Stryker was within hearing distance of you?

A. Yes.

Q. All right, proceed.

A. "Don't quite understand the will." I turned to John Kirkpatrick and said, "John, do you understand it?" He said, "I do," he said, "if the proceeds of the farm wasn't invested in bank stocks and water shares," we each of us would get one seventh of the proceeds of the farm.

By MR. GEBHARDT, JR.:

Q. Of the thirty thousand dollars worth of Liberty bonds?

A. Liberty bonds.

Q. What was the rest of the conversation?

A. Later on?

Q. The rest of that conversation, what happened after Mr. Kirkpatrick said that?

A. Louella—

Q. Who is she?

A. Louella Silkman said, she said, they were in Government bonds, Liberty bonds, or bonds. The farm was paid in Liberty bonds. The farm was paid in Liberty bonds—I don't just recall.

Q. Did she say anything else to anybody else,—Miss Silkman?

A. Yes, then we were out in the kitchen?

Q. Who?

A. All of us.

Q. Was Miss Katherine there at that time?

A. Miss Katherine Stryker was there—

Q. In the kitchen?

A. Miss Katherine Stryker was there in the kitchen with Miss Silkman and myself.

Q. Was this the same day?

A. The same afternoon after the will was read.

Q. What happened?

A. And she put her fist up and said, "Cousin Louella, why don't you keep your mouth shut? The bonds are in my box and no one would have known where they were."

Q. Miss Stryker said that?

A. Yes, sir, Miss Stryker.

Q. Did this take place before or after the conversation in which Mr. Kirkpatrick took part?

A. After.

Q. About how long after ?

A. I imagine about half an hour, as near as I can.

Q. Had the relatives gone at that time or not?

A. Yes.

Q. They were not there?

A. No, sir.

Q. Now you made a gesture there with one of your hands?

A. Yes, sir.

Q. Will you describe how Miss Katherine used her hands?

A. She put her fist up to her and said, "Cousin Louella, if you had kept your mouth shut, the bonds were in my box and no one would have known where they was."

Q. Was that fist open or closed?

A. As near as I can tell it was closed.

Q. This was after Steward Heitsman's death?

A. Yes.

RECESS UNTIL TWO O'CLOCK

AFTER RECESS

Q. Do you remember a conversation, Mrs. Heitsman, that you had with Katherine Stryker, during Steward's lifetime, with reference to the Liberty bonds and something about some inheritance tax or something?

A. Yes.

Q. You have that conversation in mind?

A. Yes.

Q. When did that conversation take place?

A. Before Steward Heitsman's death.

Q. And about when, if you can tell me?

A. Well, it was late in the fall.

Q. Late in the fall of the year?

A. Late in the fall, as near as I can remember.

Q. Of what year?

A. 1926, or '86.

By THE COURT:

Q. Well, of course, you don't mean that; two or three months before his death, do you mean?

A. Yes, sir.

By MR. GEBHARDT, JR.:

Q. You heard the conversation?

A. Yes.

Q. Give me the conversation?

A. Yes.

Q. What was the conversation?

A. She said to me, "Aunt Lizzie, don't you think Uncle Steward ought to let me have the Government bonds, the Liberty bonds, to escape the inheritance tax?" and also said that she wanted him to let her put the bonds in an envelope and put his name on them and if she died they were his and if he died they were hers, in her box.

Q. Which bonds are you referring to now?

A. The Liberty Bonds.

Q. Which?

By THE COURT:

Q. What Liberty Bonds?

A. The proceeds of the farm.

Q. Well, what did you say?

A. I don't understand.

Q. What did you say?

A. I made no reply.

Q. Was that all the conversation there was?

A. At that time, yes.

Q. Well, at any other time?

A. Well, yes, there was another time that we were together—

Q. You didn't make any reply?

A. No.

By MR. GEBHARDT, JR.:

Q. Why not? She asked you a question, why didn't you answer it?

A. It was none of my affairs, I considered.

Q. Well, you might have told her that?

A. But I made no reply.

Q. You say there was another time?

A. Yes, sir.

Q. Later?

A. Yes, later.

Q. How much later?

A. Well, this was after his death, a week or so after his death. We roomed together at night and in the morning we were talking and she said to me, she said, "Aunt Lizzie, don't you think that the heirs, nephews, the nieces should let me have the bonds my life time and then I will will them back to them?" and I made no reply to that.

Q. You did not reply?

A. No.

Q. Why did you make no reply?

A. I wasn't an interested party at that time.

Q. You would not get into the bonds at any event?

A. What?

Q. You would not get into the bonds at any event?

A. No.

Q. These bonds you refer to in these various conversations were what, Government bonds? Whom did they belong to?

A. They belonged to Steward Heitsman.

Q. Were they these thirty thousand dollars worth of Liberty Bonds that were the proceeds of the sale of the farm or not?

A. Yes.

Q. Those were the bonds?

A. Yes.

Q. Now, going back to the conversation which took place in 1925, about putting the Liberty Bonds in an envelope, you remember that?

A. Yes, sir.

Q. Was there anything said about what was to be done about the Liberty Bonds after they were put in the envelope?

MR. SMITH—That is objected to as leading.

Q. Give us that conversation in detail so we will have it complete?

THE COURT—She has already done that.

MR. GEBHARDT, JR.—May I ask the witness one more question?

THE COURT—Yes.

Q. Was there anything said in this conversation in reference to putting the bonds in an envelope about any safe deposit box?

MR. SMITH—That is objected to.

THE COURT—She has already said so as I understood her.

Q. Was any reference made in that conversation as to whose box they would be put in?

A. Yes.

Q. What?

A. Put it in Katherine Stryker's box.

Q. Now, did you have any conversation with Katherine after Steward's death about the bonds and the heirs in any other connection?

A. Yes, sir.

Q. What was it?

A. There was another time she mentioned she would give each of the heirs one thousand dollars of the Liberty Bonds, proceeds of the farm.

Q. She would do that if what?

A. If they would let her have them.

By THE COURT:

Q. When and under what circumstances was this statement made?

A. I don't know, it was just made.

Q. To whom?

A. To me.

Q. Who else was present?

A. Just Katherine and I.

Q. Just you two?

A. Yes, sir.

Q. When was it?

A. After his death.
Q. After Steward Heitsman's death?
A. Yes, sir.
Q. How long after his death?
A. Well, I imagine a couple of weeks.
Q. Did you make any reply to that?
A. No, I didn't.
Q. No reply at all?
A. No, sir.

By MR. GEBHARDT, JR.:

Q. Did you have any further talk with Katherine Stryker later on, after Steward's death, with respect to the coupons on these bonds?
A. Well, yes.
Q. What was it?
A. She came home from Texas and seemed to be very poor, that she didn't have enough to live on, and she said, "I can go and clip the coupons," and Frank Heitsman spoke up and said, "Why don't you do it?" She made the reply, "I'm afraid I will have to put them back."
Q. This was Katherine?
A. Yes, sir.
Q. How long was this after Steward's death?
A. In the fore part of June.
Q. 1926?
A. 1926.
Q. The fore part of June?
A. Yes, sir.
Q. What was Steward K. Heitsman's general charac-

ter with respect to money affairs as to whether he was careful or not careful?

A. Very careful. He, himself, spent very little money on clothes or anything.

CROSS EXAMINATION

By MR. SMITH:

Q. He was a generous man, though?

A. He was generous with Katherine Stryker.

Q. And he was generally generous?

A. I don't know.

Q. And he gave to charity?

A. I can't say.

Q. Did you know of any case when he did give to any charity?

A. Not to my knowledge.

Q. You don't know of any?

A. No.

Q. Did you stay there at the home after Mrs. Emma Heitsman died?

A. I was there very frequently, not staying—

Q. How often in 1916 were you there?

A. I couldn't just recall, frequently I was in and out.

Q. How long would you stay when you were there?

A. When she was living I only stayed a day.

Q. That was when she was alive?

A. Yes.

Q. And after her death?

A. After her death I would stay a few days, different times I was needed.

Q. How many times in the year 1916 did you say?

A. In the year 1916?

Q. Yes?

A. How many days did I stay?

Q. Yes?

A. I didn't stay no days, I only went in and ate meals.

Q. How many times in the year 1916 did you stay?

A. I couldn't recall.

Q. About?

A. I couldn't recall, I was there a number of times.

Q. Did you stay over night?

A. Yes, sir.

Q. You were visiting with Katherine?

A. I did.

Q. And did that become more frequent in the year 1919 than it had been previously, did you go more often?

A. I went very often in the later years, yes. The last four years of his life I was there often.

Q. In the last four years?

A. Yes, sir.

Q. You came to stay with Miss Stryker while she was called to jury duty at Belvidere?

A. I did.

Q. That would last a few days and then there would be an intermission of a week or so, wouldn't there, and then she would return again?

A. That is true.

Q. You didn't go to your home in Broadway in the days in between?

A. Yes, my home was not at Broadway at that time.

Q. Where was your home?

A. At Washington.

Q. You say that service covered a period of six weeks?

A. To my knowledge, I can't just recall. I know it was quite a little length of time.

Q. Katherine was home over night?

A. Yes.

Q. Every night?

A. Every evening.

Q. And asked you to come and stay with Mr. Frank Heitsman, the brother who lived there too and with Steward Heitsman?

A. Nothing was said about Frank. It was Steward Heitsman.

Q. Wasn't Frank Heitsman there all the time?

A. He was.

Q. He was always there?

A. He was.

Q. And that was his home during all this period up to the present time?

A. That was his home. He paid his board.

Q. Frank paid his board?

A. Yes, sir.

Q. Did you see the way he did pay his board?

A. I did not.

Q. Do you know whether he paid it by check?

A. I do not.

Q. How do you know he paid board?

A. Miss Katherine Stryker told me.

Q. And that is the way you know?

A. Yes.

Q. You don't know whether it was paid directly to him?

A. Frank Heitsman told me he paid board.

Q. Did he tell you how much?

A. No.

Q. You don't know how he paid it or whom he paid it except what Katherine told you?

A. Yes, she said her Uncle Steward gave her the board money.

Q. When Steward Heitsman needed money would he tell Katherine to make out the check?

A. I can't answer that question. Katherine would always say she needed money.

Q. She would tell that to him?

A. Yes, sir.

Q. What would Mr. Heitsman say?

A She would write out the check and he would sign it.

Q. What did he say?

A. I can't say.

Q. Weren't you there?

A. Yes.

Q What did he say?

A. I suppose he was willing to.

Q. You suppose he was willing?

A. Yes, or he wouldn't sign it.

Q. He wouldn't sign the check unless he was willing to?

A. I suppose so.

Q. He was a man of very strong will?

A. Yes, sir.

Q. All of the Heitsman family were men of strong will and great determination?

A. Well, they had will power.

Q. They were what you would call more or less bull headed at times , weren't they?

A. I wouldn't say so. I didn't consider my husband bull headed.

Q. Would you say Mr. Frank Heitsman had a mind of his own?

A. He did at that time.

Q. Until possibly when?

A. Until late years, I don't know.

Q. When do you recall any particular time that you were present when Mr. Heitsman signed a check in your presence?

A. Well, at different times, but I couldn't recall the dates.

Q. You couldn't recall the dates?

A. No.

Q. And Katherine made it out?

A. Yes.

Q. Did she ever ask him how much it was to be made out for?

A. The only time was when she paid for the three piece furniture.

Q. What was said then?

A. She wrote out the check and he signed it.

Q. The same way?

A. Yes.

Q. What was said?

A. He was willing for her to have it.

Q. Three pieces of furniture?

A. Yes.

Q. What furniture was that?

A. It was a long tete and two chairs, a sofa.

Q. Do you know from whom that furniture was purchased?

A. I couldn't say.

Q. You don't know?

A. No.

Q. Where was that furniture?

A. She has it in her living room.

Q. Wasn't that sofa—didn't that sofa belong to Grandmother Stryker?

A. I don't know.

Q. Don't you know that?

A. I don't know where she got the long sofa, that I couldn't say. It is a long old style sofa. I never saw it there until it was brought in.

Q. To whom was this check made payable?

A. I don't know.

Q. Didn't you see it?

A. The man that covered the furniture.

Q. It was for covering this furniture?

A. Yes, upholstering it.

Q. Do you remember whether the man's name was Mr. Kline?

A. I couldn't say, I don't know the man.

Q. How long had you been staying there at that time?

A. I can't recall, I used to stay a week at a time and two weeks at a time.

Q. Was this conversation with reference to the bonds you have testified to, after that?

A. Yes.

Q. How long after that?

A. This was before Steward Heitsman's death.

Q. Which?

A. And the bonds was after his death.

Q. Didn't you have any conversation with reference to bonds before his death, with Miss Stryker?

A. With her?

Q. Yes?
A. Well, yes, that was before his death.
Q. When was this with reference to—
A. It was late in the fall, as near as I can tell.
Q. How late?
A. I don't know.
Q. Was it near Christmas?
A. I couldn't just say, but it was late in the fall. I couldn't say it was before Christmas—yes, I imagine so.
Q. It was before Christmas?
A. Yes.
Q. How long before Christmas?
A. I couldn't say.
Q. About?
A. I don't know.
Q. Was it in November, would you say?
A. I wouldn't like to say because I don't know, I can't recall it.
Q. Did you ever hear Mr. Heitsman tell Katherine to make out a check?
A. Yes, she would make out a check.
Q. I said, did you ever hear Mr. Heitsman tell Katherine to make out a check?
A. To tell her?
Q. Did you ever hear him tell her?
A. No, I don't know that I did, but I was present when she would make out a check.
Q. You never heard him tell her to make it out?
A. I can't recall it.
Q. Would she show it to him?
A. Oh, yes, she would be right by him.
Q. Would he look at it?
A. Sure, he signed it.
Q. Before he signed it?

A. What?

Q. Before he signed it, did he look it over?

A. I think he was that kind of a man.

Q. You think he was?

A. Yes, sir.

Q. He wouldn't sign anything unless he would read it over?

A. He knew what the check was going out for.

Q. Do you know how much the checks were for?

A. No, I don't.

Q. Didn't you see them?

A. I didn't take notice.

Q. Do you know how much money Katherine turned back to him after she came from the bank?

A. I do not.

Q. You can't testify whether she turned all the money back or not?

A. At the times I was present she turned some money back to him.

Q. I said all?

A. Yes.

Q. You don't know whether that was all the money or not?

A. And she kept the balance to run the house.

Q. Well, how much did she turn back?

A. I cant tell you, I didn't handle the money, I don't know.

Q. You don't know whether she turned back all the money the check called for or not, do you?

A. I do not, she had charge of the house.

Q. Did you ever hear her ask her uncle for money?

A. Yes.

Q. Did you ever see him give it to her from his pocketbook?

A. Yes.

Q. She said she needed money to get some things?

A. Yes.

Q. And she ran the household?

A. He gave her money and she ran the household.

Q. Did she buy economically when you were with her?

A. Well, she always had full and plenty.

Q. But she was not extravagant, was she?

A. Well, of course, I was not situated like she was. Of course, it would be for me. I couldn't do the things she did. I couldn't call it extravagant.

Q. I mean with reference to buying things to eat for the house, would you call her extravagant in those things?

A. I hardly think so. She used it freely.

Q. When was the last time you saw Mr. Heitsman sign a check before his death?

A. The last time?

Q. Yes?

A. I don't believe I can recall that, Mr. Smith.

Q. You don't recall?

A. I can't recall. I saw him several times, but I can't recall.

Q. You don't know when?

A. No.

Q. How long before his death were you visiting Katherine?

A. I was there when he died. He wanted me there. He wasn't satisfied unless I was there.

Q. How long before that had you got to the house?

A. For the last four years.

Q. When you came to stay and stayed over night?

A. How is that?

Q. How long before his death did you come there to stay with Katherine and Mr. Heitsman.

A. How long?

Q. Yes, how long before his death?

A. I stayed the last four years.

Q. Were you there constantly?

A. No, not constantly, but I were there a great deal.

Q. I mean were you there at the time of his death?

A. Yes.

Q. When did you come to his house before his death?

A. Oh, I came there, I think it was the first of the week and he died on Saturday, if I remember right.

Q. You came there the first of the week?

A. Yes

Q. Who invited you to come?

A. Because he asked me to come.

Q. Who asked you?

A. Katherine asked me and Steward Heitsman asked me.

Q. Katherine sent word for you to come that week?

A. No, when I went home Steward Heitsman asked me if I wouldn't stay long, if I would come right back. I said, "Yes, I'll be back within a week." He said, "You will surely come." I said, "Yes," and Katherine asked me back too.

Q. How long had you been away?

A. I was home one week before I came when he died.

Q. Were you there at Christmas time, 1925?

A. No, as a rule I was never there on Christmas. I don't know whether I was there on Christmas or not.

Q. You don't know the last time you saw him sign the check?

A. No, I can't recall the day.

Q. Things were running the same in 1925 as before?

A. What?

Q. Well, things were running the same in 1925 with reference to the signing of the checks and giving the money as in 1923?

A. Yes, he had to be helped a great deal in business, yes.

Q. He didn't like to write very much, did he?

A. I don't know.

Q. Don't you know he didn't?

A. No, I don't know. He never wrote a great deal.

Q. Everything was handled just as it was in 1923 at the time you visited there in 1925, isn't that so?

A. How is that?

Q. In 1925, at the time you were visiting there, everything was handled just the same as it was in 1923, isn't that true.?

A. Yes, Katherine ran the house.

Q. And the money transactions that you saw, signing the checks, was just as it had been done in 1923?

A. Yes.

Q. And before?

A. I suppose so.

Q. And in 1920?

A. I couldn't say in 1920.

Q. Why not?

A. Because I wasn't there long enough to know. I was only in and out at that time.

Q. When did you first go there to visit?

A. I have always gone there more or less.

Q. I mean to stay?

A. After his death to stay.

Q. You stayed after his death at the request of Katherine?

A. Yes, I went home a couple of weeks after he died or something like that and she was going to take a trip and she asked me to come back and run the house.

Q. While she went away she wanted you to run the house for Frank Heitsman a brother, who was an old man?

A. Yes.

Q. When did you first start to go and stay at the home of Katherine and Steward Heitsman?

A. As I told you, I have been frequently there.

Q. When you stayed over night or stayed for any period of time?

A. I can't recall that I stayed any length of time when Steward was living. I was only out and in.

Q. While he was living?

A. Yes.

Q. How long were you there when Steward was living. What was the longest time you stayed when he was living?

A. That was when she would be on her trips?

Q. And you would do it for her?

A. Yes.

Q. Was that longer than the jury duty?

A. No.

Q. How long was she gone on that trip to Boston?

A. A week.

Q. She was away a week?

A. Yes.

Q. How long on the trip to Washington?

A. Well, I can't just recall.

Q. Don't you remember?

A. I don't know, it was two or three days, it might have been longer, I can't recall.

Q. Katherine asked you to come and stay?

A. Yes.

Q. She asked you to come and stay with Mr. Heitsman on both of those occasions?

A. She did.

Q. When she went to Trenton she was only gone for a day, isn't that so, or two days?

A. A day or two, I couldn't say.

Q. You say the only thing you received were gifts? Who gave you any gifts?

A. Katherine Stryker.

Q. What kind of gifts were they?

A. She gave me a pocketbook and different little things.

Q. Did Steward Heitsman ever offer to pay you?

A. Yes, Katherine brought it to me and said Uncle wanted me to have $5. I had to have $5. I said I didn't want it. She said, "You must take it. He has plenty of this world's goods." I did take it, but that is the only time.

Q. That was the only time?

A. Yes.

Q. Did he ever offer to pay you any other time?

A. No.

Q. She has a half brother living in Texas, hasn't she?

A. I don't know. I heard her tell that.

Q. You have heard her say that?

A. Yes.

Q. She went to visit in Texas after Steward Heitsman's death last spring, didn't she?

A. That is where she told me she was going.

Q. And during that time you took care of Frank Heitsman, didn't you?

A. I did.

Q. And kept house for him?
A. I did.
Q. In her place?
A. Yes.
Q. Did they offer to pay you for that?
A. No.
Q. Never offered to pay you?
A. No.
Q. Did they sign a check?
A. What do you mean?
Q. Did they send you a check?
A. Katherine did that, but that was through a letter she had received. She was very angry over the letter and she sent me this check. I sent it back and I said I didn't want anything for keeping house for her, that I did it free gratis.
Q. How long did you keep house while she was away?
A. She was gone nearly two months. I can't tell. She came home the first of June, I believe.
Q. Mr. Heitsman was a man with a keen sense of humor, wasn't he?
A. Mr. Steward Heitsman?
Q. Yes?
A. Yes, he was.
Q. And always ready for a joke?
A. Yes.
Q. He had a keen mind, didn't he?
A. Well, I don't know, I can't tell you.
Q. You couldn't observe that, whether he had a keen mind or not?
A. He always acted so, I couldn't say.
Q. You would think so?
A. He acted so.

Q. He always knew what he was doing?

A. Yes.

Q. And up to the time of his death he had a keen mind?

A. Of course, he was old and feeble.

Q. That means that he couldn't get around very well, walk around or get up stairs, very well, isn't that so?

A. No, he couldn't get up the steps. Katherine had to help him.

Q. And she did?

A. Yes, she helped him.

Q. He walked around the lower part of the house?

A. Yes.

Q All the time?

A. At times and at times Katherine would help him.

Q. He walked around the yard?

A. Yes.

Q. And he did that a few months before his death, didn't he?

A. Yes, but he often times had to be assisted. I have seen her assist him all the way across the house.

Q. In going across the room?

A. Yes.

Q. She always assisted him during the last two years up to the date of his death, didn't she?

A. When she didn't, I did.

Q. And he needed some assistance on dressing himself?

A. Yes, I have undressed him and put him to bed.

Q. The same kind of service?

A. I certainly did.

Q. The same as Katherine did?

A. Yes.

Q. Katherine and Steve Stryker came to live with their grandmother, Mrs. Stryker?

A. Yes.

Q. Who owned that house, isn't that so?

A. Yes.

Q. Steward Heitsman and Mrs. Emma Heitsman, Katherine's aunt, lived there?

A. Yes.

Q. At this house which was owned by Mrs. Heitsman's mother?

A. Yes, sir.

Q. Isn't that so?

A. Yes.

Q. And Katherine grew up as a child in that household?

A. Yes.

Q. And Steve died when he was attending college, I think you testified?

A. Yes.

Q. Did Katherine continue to go to the public school?

A. She did.

Q. Until she graduated?

A. Yes, and then she went off to school.

Q. After that did she teach in the school as a substitute?

A. She did.

Q. Was she teaching in 1915, before her aunt died?

A. She was teaching before her aunt died.

Q. What happened after her aunt's death?

A. She quit teaching.

Q. And what did she do?

A. She kept house for her uncle.

Q. At this house?

A. Yes, sir.

Q What kind of services did she render to Steward Heitsman during all this time she kept house for him?

A. She rendered him good service. She was very good to him.

Q. She was good to Mr. Heitsman?

A Yes.

Q. Was it the ordinary attention a paid housekeeper would give to such a person?

A. I should think so, especially a relative.

Q. As a relative would give?

A. Yes.

Q. What kind of service was it?

A. Well, she waited on him. She would help him up off the chair if he couldn't get up. She would take him to bed. She would undress him when he got up stairs. When he got up stairs he would be all in.

Q. Did Mr. Heitsman ever express himself as to Katherine as to his affection in any way?

A. As to his affection?

Q. Did he ever express himself as to his effection?

A. Yes, I think he placed great confidence in her.

Q. About his affection for her?

A. I couldn't say. He never expressed it to me.

Q. Did you ever hear him discuss business affairs?

A. No.

Q. He was a man who was very quiet and secretive about those matters?

A. Yes, sir.

Q. And he didn't say much about it?

A. No.

Q. You never knew the exact amount which was paid for the farm, did you, until after his death?

A. Yes, I did.

Q. When did you first find that out?
A. Katherine Stryker told me. I can't recall it.
Q. You say you heard it from Katherine?
A. Yes.
Q. Mr. Heitsman never discussed it?
A. No.
Q. Never said anything about it?
A. No, sir.
Q. You say he was very generous to Katherine?
A. Yes, sir.
Q. Do you recall the time he gave her the radio?
A. Yes.
Q. When?
A. I don't know.
Q. When was it about?
A. I can't recall those dates.
Q. In reference to the time of his death, when was it?
A. I can't recall the dates. That was before his death, of course. Oh, I imagine a year or so, I can't recall.
Q. So that was about a year before?
A. Well, I say about a year or so, I can't recall.
Q. He gave her the money to buy the radio, didn't he?
A. Yes.
Q. How?
A. He gave her a check.
Q. Do you know the amount of it?
A. Not exactly. It was a legacy that they all got and he turned it over to Katherine. He gave it to her.
Q. You don't know the amount?
A. No.
Q. Was it $300?
A. Well, Mr. Smith, I can't just recall.

Q. You say he gave her a phonograph?

A. A victrola.

Q. Isn't that the victrola, the Edison phonograph, four years old and records in the living room, the front parlor?

A. I never saw but one there.

Q. And that is the one?

A. I only saw one.

Q. That is the only one?

A. I never saw but the one.

Q. He just bought that for the house, didn't he?

A. Well, she always claimed it.

Q. She claimed it?

A. Yes.

Q. But do you know where they got that from?

A. Well, I heard her say her uncle gave it to her and the radio too. She said, "That is mine."

Q. Do you know who they bought the phonograph from? Was it Werner in Easton, Pennsylvania?

A. I don't know whether it was Werner or Kelly's. It was in Easton it was bought.

Q. They bought it over there?

A. Yes.

Q. The Werner Company is a music store?

A. I know it is.

Q. During these years Katherine had no salary of her own during the time she was there keeping house for Steward Heitsman?

A. Only what Steward gave her and the board money. I don't know what she had. I understand she got Louella's rent money—Mrs. Silkman.

Q. She got her rent?

Q. Yes.

Q. Do you know that?

A. I understand so.

Q. Now, Mrs. Silkman occupied a part of the house, didn't she?

A. She did.

Q. And you were there occupying the house when she lived there, is that true?

A. I was.

Q. Now, can you tell me, when this first conversation, how soon after that first conversation took place with reference to these Liberty Bonds you have testified to?

A. About the heirs? It wasn't long after the death, a week or two, I can't say.

Q. A week or two?

A. Yes.

Q. You were staying there with Katherine?

A. I was.

Q. You testified here—see if this is correct—that Katherine asked you, "Aunt Lizzie, don't you think I ought to have the Liberty Loans?"

A. Katherine says, "Aunt Lizzie, dont you think the nieces ought to let me have the Liberty Bonds my life time, then I will will them back to them?"

Q. That was after his death?

A. Yes, that was after his death.

Q. And she said that to you?

A. Yes, sir.

Q. What was this conversation you heard about Katherine three months before?

A. The bonds, do you mean?

A. Yes.

A. Well, we were coming home from Easton together and she said to me—

Q. Katherine and you?

A. Yes.

Q. Go on?

A. And she said to me, "Aunt Lizzie, I wanted Uncle Steward to let me have the Liberty Bonds to escape the inheritance tax."

Q. Then, she didn't ask you a question?

A. Yes.

Q. She didn't say to you," Don't you think that Uncle Steward ought to let me have the Liberty Bonds?"

A. Yes, she did.

Q. What did she say?

A. She said: "Don't you think Uncle Steward ought to let me have—

Q. You made no reply?

A. I made no reply.

Q. You didn't say anything?

A. No.

Q Not a word?

A. No, sir.

Q. And she didn't ask you for an answer?

A. No, sir.

Q. And made no effort?

A. I made no effort to answer.

Q. And you didn't answer anything when she said to you, "Don't you think the nieces ought to let me have the bonds during my lifetime?"

A. I made no reply.

Q. Nothing at all.

A. Nothing at all.

Q. Neither time?

A No, sir.

Q. Now, this time of the conversation with reference

to the $1,000, when that took place, had this matter of the bonds been discussed with your daughter, in your presence or anyone else in connection with this matter?

A. No. I went home and told my daughter what she had told me.

Q. You told your daughter?

A. Yes, sir, I told her.

Q. Your daughter is one of the defendants and one of the beneficiaries under the will?

A. She is.

Q. And she is your only child?

A. She is my only child.

Q. After Katherine came home from Texas you say she was short of funds?

A. Yes, sir.

Q. And she spoke to you about clipping the coupons?

A. Yes, sir, she did.

Q. She told you she had consulted her lawyer, Mr. Smith?

A. Yes.

Q. And that he had advised her to do that?

A. Yes, to clip them.

Q. That he had advised her?

A. Yes.

Q. Had the suit been brought at that time?

A. I hardly think so.

Q. Don't you know?

A. I can't just recall.

Q. You don't recall?

A. I can't, hardly.

Q. Don't you know then, that they were claiming these bonds, the daughter and these others were claiming the bonds?

A. Certainly, it was willed to them.

Q. They claim that they ought to have the bonds?

A. Yes, sir, I know what the will said.

Q. You say that after these heart attacks Steward Heitsman would be in bed for a week at a time?

A. I have known him to be in bed.

Q. What for?

A. He would have a cold and have those heart attacks. He would have an attack—

Q. Was it because of the heart attack or because of the cold that he was in bed?

A. Well, he would have a cold and he would have a heart attack. Sometimes when he would have a cold a heart attack would come on him.

Q. How many times was he in bed the last year of his life?

A. I can't recall.

Q. Don't you know that?

A. No.

Q. Can't you give any idea?

A. He was up stairs the last year and she would not allow him to come down stairs. He walked from one room to the other.

Q. He had a fall, didn't he, in December, 1925?

A. I can't recall the date, but—

Q. He did have a fall?

A. He had a fall, yes, he had a fall.

Q. About how long before his death?

A. I don't know.

Q. Would you say about two months?

A. Well, yes, it was the same year. I couldn't tell you whether it was two months or three months.

Q. But it was the same year?

A. Yes, sir.

Q. And that time he was up stairs most of the time?

A. For a while.

Q. He came down stairs again, did he?

A. Yes, he wasn't up stairs up until he died.

Q. He was down stairs when he died?

A. He certainly was.

Q. This care and attention shown by Katherine to her Uncle Steward, was that the ordinary attention—

A. Yes, sir.

Q. The ordinary attention that a paid housekeeper would give to Mr. Heitsman?

A. Well, it was her home, it was her home.

Q. Did she evince any affection?

A. Yes, I think she thought a great deal of her uncle.

Q. You think she did?

A. Yes, sir.

Q. Did she serve him very faithfully?

A She did.

Q. She did a great many things that ordinarily would not be done by a housekeeper?

A. She was very good to him.

Q. And that continued up to the very time of his death?

A. Yes, sir.

Q. Right to the end?

A. It did.

Q. Did you have any conversation with Katherine after the death of her Aunt Emma, with reference to her getting married?

A. Yes.

Q. What was it?

A. She told me she had a gentleman friend and that he wanted to marry her but she stayed home with her uncle.

Q. Did she tell you her Uncle Steward wouldn't go out West where this man had his home?

MR. GEBHARDT, JR., I object to that as not cross examination.

THE COURT—It is leading.

Q. Was there anything else said?

THE COURT—It is not cross examination.

RE-DIRECT EXAMINATION

By MR. GEBHARDT, JR:

Q. Do you recall a conversation, at the table one day, during Steward's lifetime, about Katherine being paid for baths she gave him?

A. Yes.

Q. Was she there?

A. Yes.

Q. Where was she?

Q. She was at one end of the table and her uncle at the other.

Q. What was said?

A. And she said, "By the way, Uncle, you owe me a dollar for last week's bath."

Q. What else was said or done?

A. He gave it to her.

Q. What did he say?

A. Yes, he put his hand in his pocketbook and he said, "That's all I have."

RE-CROSS EXAMINATION

By MR. SMITH:

Q. What did she do with that dollar?

A. Don't ask me, it was hers.

Q. As a matter of fact, don't you know she saved those dollars and all the dollars she could get from her uncle in that way?

A. What?

Q. Don't you know that she saved those dollars and all the dollars she got from her uncle in that way?

A. I knew she was saving dollars, I didn't know what she did with it.

Q. Didn't she say she saved them and bought some silver with it?

A. Glassware.

Q. He considered this dollar business a joke, didn't he and laughed at it?

A I don't know. I think he really needed help. She had to wait on him.

Q And this payment of $1 was a sort of a little fun between Katherine and her uncle, isn't that true?

A. He paid her for her services of giving him a bath.

ALFRED E. CASE, a witness produced on behalf of the complainant, being duly sworn testifies as follows:

DIRECT EXAMINATION

By MR. McCONNEL:

Q. Mr. Case, where do you live?
A. Phillipsburg.
Q. New Jersey?
A Yes.
Q. What position do you hold?
A. Secretary to the Board of Education.
Q. Of what place?
A Phillipsburg
Q. How long have you had that position?
A. Since 1096.
Q You have been subpoenaed to produce the records of the School Board, showing the date of the election of Katherine N. Stryker, as a regular teacher of the school?
A. Yes.
Q. Have you the record with you?
A I have.
Q. In what form is the record?

THE COURT—I don't know that that will be disputed.

MR. SMITH—I don't think so.

By THE COURT:

Q What is the date?

A. November 4th, 1915.

By MR. McCONNEL:

Q. And when did she resign?
A April 6, 1916.
Q. To what grade was she elected?
A. To the second grade.
Q. What salary did she receive by the month during the time she was a regular teacher?
A. $45 a month.

MR. McCONNEL—I offer the record in evidence.

THE COURT—Is there any contradiction of it?

MR. SMITH—No contradiction.

THE COURT—I will not receive the record.

CROSS EXAMINATION

By MR. SMITH:

Q. Is there a salary schedule in the Town of Phillipsburg?
A. There is.
Q. That increases in accordance with the services rendered by the teacher?
A. Yes, sir.
Q. What is that?
A. They are increased every year.
Q. Will you state what salary Miss Stryker would have received in 1925, based upon the salary schedules of the Board of Education of the Town of Phillipsburg?

MR. GEBHARDT, JR: That is objected to. This witness is not competent to testify, necessarily, as to what she would have got.

THE COURT—The objection is overruled. He may state what the schedule is.

A. 1925?
Q. 1925?
A. $1,300.
Q. That is what she would have received?
A. Yes.
Q In the year 1925?
A. 1925.
Q. Can you show what she would have received during the intervening years?
A. Yes.
Q. What?
A. $450 was the starting and the next year increased $25. Every year they gradually increase—

THE COURT—It seems to me useless to take up the time with these details.

MR. SMITH—I want to show there was quite a large jump soon after 1915 on account of war conditions, so that the average was different after that time. The average was above the difference between $45 a month and what she would receive during 1925. I don't want to take up the time of the Court if the Court does not think it advisable.

THE COURT—It is not worth while for my purpose.

MR. SMITH—I will not go into it.

Q. Is she a member of the Board of Education at the present time?

A. Miss Stryker?

Q. Yes?

A. Yes.

Q. How long has she been a member?

A. I think it is five years.

Q. This is her third reappointment or term she is serving now?

A. Her second, I think.

Q. Are there any pension rights in connection with this salary she would have had if she had continued in this service?

A There is a disability fund—

THE COURT—Can't the Court take judicial notice of that?

MR. SMITH—I think so.

MR. GEBHARDT, JR: No questions.

LUELLA C. SILKMAN, a witness produced on behalf of the defendants Alma Hildebrant and others, being duly sworn, testifies as follows:

DIRECT EXAMINATION

By MR. GEBHARDT, JR.:

Q. Where do you live?

A. I live at Washington, N. J.

Q. Where did you live prior to going to Washington to live, Miss Silkman?

A. Until yesterday—I moved to Washington yesterday—I lived in two rooms I rented from Katherine Stryker at Phillipsburg.

Q. Is that Steward Heitsman's house or not?

A. It is his home; he was head of the family, and—

Q. It is?

A. Yes; he was head of the family.

Q. How long was it you had these rooms there?

A. It would be, the latter part of this month, seven years. I was there about—

Q. Are you any relation to Katherine Stryker?

A. She is a cousin once removed.

Q. Your cousin?

A. Yes, once removed.

Q. Are you any relation to Mrs. Chester Heitsman?

A. No. That is—

Q. You are not?

A. No, I am not related to the Heitsman family. Mrs. Steward Heitsman was my cousin.

Q. How long have you known Katherine Stryker?

A. How long?

Q. Approximately have you known Katherine Stryker?

A. Oh, I thin k she—after she came from Texas, her Aunt Emma and Katherine and Steve came down to see us—I guess she wasn't more than nine or ten years old—to visit us.

Q. You saw her then?

A. Yes.

Q. Was there any separate entrance to these rooms you occupied, or were they just rooms on the third floor of the house?

A. There was a stairway, a closed stairway from the second to the third floor.

Q. That is what you used?

A. Yes, sir.

Q. Did you have to go through their living quarters in order to get to your rooms?

A. No, I didn't, it wasn't like that—

Q. What did you do?

A. I could go right up stairs, or I could go, I had to go to the end of Katherine's room to get to the bath room; that was all.

Q. Did you ever have occasion during these seven years to be in Steward's house,—his part of the house?

A. Oh, yes, every morning I went down about eleven or a quarter after to read the morning paper every day. I knew I could have it then. She had read it, and I had a conversation with both Katherine and Steward at different times about different things. I was almost like a member of the family.

Q. Did you at any time render any service or assistance to Katherine or to Steward?

A. Yes, sir, before Aunt Lizzie came and if

Katherine wished to go away, it was always, "Luella, wil you get dinner or supper for me?" Always. That was before Aunt Lizzie came; she would always ask me, and I would do it, of course; I was glad to. Once when she went up the Hudson on a trip, I had to get breakfast, dinner and supper for her, every meal. I wish I had count on how many times I helped her. I was glad to do it. I simply wish I had—

Q. You did it frequently?

A. Yes, and then Katherine asked Aunt Lizzie to come. But before that she called on me.

Q. And you did it?

A. Yes.

Q. And after Mrs. Lizzie Heitsman came, did you have any occasion to be in the Heitsman household?

A. As I told you—

Q. Did you?

A. As I told you, I went down to read the paper, and she was there frequently.

Q. Did you ever render any assistance to Steward, himself?

A. Yes, sir, when she went to a movie in Easton one afternoon—I have a place in the cellar where I kept my food—I took a walk about five o'clock every afternoon, and I heard him groaning this time, and I looked and he was lying on the floor in the library, and he struck his nose, and his head was full of blood. I don't know how long he was there.

Q. He was lying there injured?

A. Yes.

Q. Did you assist him?

A. Yes, he had—his feet were tangled up under a rocking chair. How he ever got them under there I don't

know. And his glasses and cigar and cane were on the floor. He was very strong in his arms but weak in his legs, and he grasped this table. I couldn't get him away. I went out and said, "Wait, I will get somebody to help you." I wasn't strong enough to get him up from the floor. I went out to Frank Heitsman and asked him, I said, "We will try it, and if we can't do it I will get outside"—

Q. Well, did you take care of him?

A. Yes, Frank went on the floor and I went into a rocking chair, and we finally got him up.

Q. How long was that before his death?

A. Before his death?

Q. Yes?

A. Oh, several years before he died. I haven't any idea. It was several years before he died.

Q. Did you render him any other assistance any time, Miss Silkman?

A. Yes, several times. Another time Katherine had gone somewhere; I don't know where. Frank Heitsman came, and he called, "Luella!" and I ran down and Uncle Steward was lying on the couch deathly ill. I got the hot water bottle and put it on his heart. He had a heart attack. And I think one other time—

Q. What rent did you pay for your rooms?

A. I paid $7.50, but I had no light or heat.

Q. A month or a week?

A. A week.

Q. Whom did you pay that to?

A. To Katherine; I gave her a check.

Q. How did you come to pay it to her?

A. Well, the first time I went down and said, "Uncle Steward, do I make out my check to you or Katherine?"

He laughed and said, "Well, I give Katherine Frank's rent; she just might as well have it." And I made it out to her after that.

Q. Did that occur during the entire period you were there?

A. The entire period I was there I made it out on the fifteeenth of every month.

Q. Coming back to the year 1921, what condition of health, physically, was Steward Heitsman in at that time?

A. I went there the spring of 1920, and he was very feeble until he died. He was very feeble the last two years; very feeble.

Q. In what way was he feeble in 1921?

A. He had rheumatism, and these heart attacks, and other times he was quite comfortable; he was feeble; but he always walked with a cane, of course and had to be helped up stairs, and he grew more feeble until the last three years of his life, and the last year he was very feeble; very feeble.

Q. During all this period did he require any assistance from time to time or not?

A. Yes, he had to have somebody to help him. Aunt Lizzie helped him and I helped him; Katherine always helped him. He had to have someone there to help him.

Q. Take the last year of his life, what was his general condition then?

A. The last year?

Q. Yes?

A. Oh, he was very feeble that last year; very feeble; he was very feeble.

Q. How much help did he require then?

A. Sometimes he was up stairs in bed for a week or two at that time.

Q. He was in bed for a week or two?

A. For a week or two at a time, and he—

Q. Did he require any help in personal matters, such as undressing and taking a bath?

A. Yes, she had to undress him and put him to bed, and she gave him a bath every week the last year and he gave her a dollar for it.

Q. A dollar each time?

A. A dollar each week.

Q. For giving him his bath?

A. Yes, sir.

Q. In the year 1921, and through all this period, will you please tell me who, if anybody, gave him any assistance in the conduct of his business affairs?

A. I have always understood that Katherine—

MR. SMITH—That is objected to.

A. Well, she did; I have seen him sign the checks.

Q. What would be done with them?

A. I didn't see her ever take cash out of the bank, but she would take them and go out of the house, and then I have seen her come back and keep part of the money and give the rest to him.

Q. Did she give all to him or not?

A. No, she didn't give all to him.

Q. Do you known what she got in the way of compensation, in money or clothes or anything ?

A. I think he was very generous. If she wanted anything she would talk about it and talk about it, and finally she would get it. She was very insistent about everything.

Q. What did she get that way?

A. A victrola, a radio, a fur coat done over, a sofa and chairs, a rug. If she wanted it she would talk to him about it for a while and then she would get it. She was very insistent.

Q. Didn't he agree to give it to her at once?

A. No, sometimes he demurred. He promised she might have a radio. And then he said, "Do you actually want that radio? You will grow tired of it like the victrola." And he tried to presuade her not to have it, but he finally gave her a check, and she showed it to me and told me she got it.

Q. Do you know how much it was?

A. What?

Q. The check?

A. I didn't examine the check; she waved it in front of me; that's all.

Q. Did she tell you how much it was?

A. Well, if she did, I don't know. She waved the check and said, "Uncle gave it to me for a radio."

Q. Were there any other occasions when he didn't seem to want her to have something and he finally gave it to her and she got it?

A. No; I remember that radio, especially.

Q. What was his general attitude towards her taking trips and spending money in various ways?

A. He thought she was very extravagant, I know.

Q. What would he say?

A. Well, I have heard him say more than once she would go, go, go, and spend and spend and spend. He thought she was too extravagant, and he didn't like to have her go off and leave him; he was lonely, poor old man; I felt sorry for him.

Q. On those occasions when he complained about the

way the money was spent by her, did he have his way or did she have hers?

A. Well, Katherine kept at a thing. She generally—

Q. What happened,—did she get her way?

A. She had her own way. She went to Boston, and then to Washington and then took a trip up the Hudson. She went just the same; it didn't make difference what he said.

Q. Do you recall anything about whether or not he bought her any clothes or anything of that kind during this period?

A. Well, if she wanted anything—he gave her a hundred dollars for a fur coat, and if she wanted anything she would ask him for money and she would buy something nice for it.

Q. Did she dress good?

A. Yes, the neighbors said, "Katherine dresses a great deal better than she used to," and people seen it. They said—

Q. Did she entertain?

A. She was very lavish in entertaining. She is young, and I don't blame her, and she likes to go.

Q. Do you know anything about how long it was before his death, that Mr. Steward Heitsman was unable to go to the bank, or to get out and around that much?

A. Well, I don't know exactly; at least two years, and perhaps longer; he didn't go on the street that length of time. He would occasionally go up and down the yard.

Q. He didn't go to the bank?

A. No.

Q. Who went to the bank for him?

A. Katherine was the only one.

Q. She went for him?
A. She went.
Q. Did he depend upon her ?

THE COURT—It is very probable that all this is not going to be contradicted, and there is no use of taking up the time if it is not going to be disputed.

Is it admitted, Mr. Smith, that for the two years prior to the death of Mr. Heitsman, he was not able to go out on the street or to the bank?

MR. SMITH—Well, he would nearby to the store to get cigars. It was right next door. But he didn't go to the bank for two years.

THE COURT—And that Miss Stryker, during those two years, did that for him?

MR. SMITH: Yes, sir: that is so. But we submit that that was done at his direction.

MR. GEBHARDT, JR.—There is no dispute but what she ran the house, and so forth, is there?

MR. SMITH—There is no dispute that she bought the things for the house, and did everything that a housekeeper would do. She did that for ten years.

Q. Can you tell me, Miss Silkman, what were the relationships with each other,—Steward and Katherine—which one appeared to, perhaps, dominate the other, if that was the case?
A. Well—

Q. Which one dominated the other, if that was the case?

MR. SMITH—That is objected to as calling for a conclusion.

THE COURT—The objection is sustained. She may state what she saw.

Q. Can you give us any facts that will throw any light upon that question, as to whether or not she took the lead in the household or whether Steward Heitsman took the lead there?

A. Katherine always did; she had charge of the house and she attended to everything for him.

Q. On occasions when a transaction came up with respect to what should be done around the household, or what should be paid or done in a business way—when such a transaction arose between Steward and Katherine, who, as a general rule, would prevail?

MR. SMITH—Objected to.

THE COURT—Objection sustained.

Q. Were you there the day of the funeral of Steward Heitsman?

A. I was.

Q. Were you present during a conversation that took place after the will was read?

A. I was, after Mr. McConnel read the will, and the other heirs had gone.

Q. Was Miss Stryker present during that conversation?

A. Yes, she was not very far from us, and she shook her fist in—

Q. Referring to the first part of the conversation, while the relatives were still there, did you hear that part of the conversation?

A. Yes.

Q. What was said and who said it?

A. I don't know.

Q. Did you hear anything said by Mr. Kirkpatrick about the proceeds of the farm?

A. Yes, he started it, and I was the one who said I heard—

Q. You heard what he said?

A. Yes.

Q. What did Mr. Kirkpatrick say?

A. He said something about "If they are not invested in the bank or water stock," they could have it divided, or something like that.

Q. What?

A. The proceeds from the farm. And then is when I told him it was invested in liberty bonds. Steward Heitsman told me that himself. He sold his farm just after I went there—the $30,000.00 in liberty bonds—

Q. Just a minute. He got it in liberty bonds?

A. Yes.

Q. After you said that the proceeds of the farm were invested in liberty bonds, what was said then?

A. Then they left; Mr. McConnel and the other heirs left and then Katherine said, "Why didn't you keep your mouth shut? Those bonds are in my box and no one knows I have them." That is because I told Mr. Kirkpatrick that, as I said.

Q. When did the last conversation take place?

A. After the funeral, after the other heirs had gone. Then we went out to get supper ready—

Q. Was there anything said at that time, after Katherine said this to you and put her fist up to your face? Did she say anything else?

A. We all went into the kitchen. Aunt Lizzie and Katherine had gone to get supper. I said, "Katherine, according to the will, I don't see how you can keep those bonds." She got hysterical and said, "If I can't I can't buy this house and I can't live the way I am accustomed to I will have to go to work. If I have to take care of old folks again, I'm going to get all they have, and I'm going to see I get it." And in that strain. It was terrible.

Q. Do you recall anything else said at that time with reference to the bonds or—

A. No. The next day she went to see some friends, or her lawyer, and when she came back I asked her if her uncle had given her a signed paper telling her the bonds belonged to her. She said, "No, I didn't know I had to have it or anything. I haven't anything." And she said her lawyer told her she could get the coupons and cut them, she could cut the coupons, and when she asked him if she could buy the house with them he told her yes.

Q. Do you recall another occasion after that when you had a conversation with her with respect to Mr. McConnel, or in which Mr. McConnel's name was mentioned?

A. Yes, sir, she was deathly afraid of Mr. McConnel, and she was afraid he would call her into court and make her say black was white and make her out a liar and a thief. I said, "Why are you afraid of him? He couldn't

make me a liar and a thief." But she seemed deathly afraid of him.

Q. Do you recall another conversation after that where she made some reference to her knowledge of a will and where the will had been, whether it had been in the box, or something?

A. Some one was there talking, and she said she had been through her— How was that— She said, "I went through Uncle's box thoroughly, and I didn't find that will. If I had I should have had it changed instantly." And then this person made the remark, who was there, "So you are going to keep what you hold?"

Q. Is that all that conversation?

A. Yes, I think that is all I recall at that time. That was another time later, several months afterwards.

Q. Do you recall any other conversation with her where Mr. Smith's name was mentioned?

A. Yes, I told you he said she could use the coupons and cut them and use them to buy a house. She asked him that. He told her she could cut the coupons and use them, and she said to him, "Can I buy the house with them?" And he said, "Yes." She told me that herself, so it must be so.

Q. Will you please tell me, if you can remember, about how far back he had these attacks of the heart that you have desccribed?

A. He may—

Q. Did he have them when you went there?

A. He may have had them before I went there in the spring of 1920. Any little thing exhausted him and he would have a heart attack. I had to send for Dr. West once he had a bad attack, and it was cold, and I went out in the snow. I just put a wrapper on, in the cold weather, and I went—

Q. How often did he have these heart attacks when you first went there in 1920?

A. Not so often or so long as he did later.

Q. They came oftener?

A. Yes, and lasted severe until he died. I can hardly tell you how often he had them first.

Q. Do you know what was the cause of his death, whether it was a heart attack or not?

A. I don't know. It always seemed strange to me.

By THE COURT:

Q. It always seemed strange to you that a man of his age should die?

A. No, but I know Dr. West came over and stayed three different times and then—

Q. I just want to know what I ask you, and that is all.

CROSS EXAMINATION

By MR. SMITH:

Q. Miss Silkman, where do you live since yesterday?

A. I live at Washington, after nearly seven years at Number 115—

Q. Where did you move to yesterday?

A. Washington, N. J.

Q. To what house?

A. Mrs. Miller's.

Q. Mrs. Miller's?
A. Yes.
Q. When did you rent those rooms there?
A. Oh, about two weeks ago.
Q. Was anyone with you when you rented them?
A. No, not when I decided to rent them. Someone told me about them.
Q. Who told you about it?
A. Alma Hildebrant. I'll tell you how it happened. I had been hunting up rooms up and down South Main and I couldn't find anything, and I went then—

THE COURT—Stop. You have answered.

THE WITNESS—I'm going to tell him how it happened.

A. I was hunting—

THE COURT—I am going to tell you how much you shall answer. Stop.

THE WITNESS—I was explaining that—

THE COURT—I have told you to stop. When I tell you you have fully answered a question I want you to stop and not attempt to go on with more.

THE WITNESS—All right.

By MR. SMITH:

Q. What is Alma Hildebrant's husband's name?
A. Gifford.

Q. And Alma is the defendant in this suit who claims a share in these bonds?

A. She never said anything to me about it. I know she—

Q. She talked to you about it?

A. She told me in Easton.

Q. Have you visited her recently?

A. No, I haven't been there until last October. Aunt Lizzie—

Q. Have you visited Aunt Lizzie recently?

A. No.

Q. You have not visited Alma?

A. No.

Q. When did you see her and have lunch with her?

A. I think a week ago last Tuesday at Easton. She and her mother should come down, and then she invited me to come over; then when I said I had no place to go—

Q. The house that Katherine had an interest in, that property has been sold?

A. Yes, that is the way I understood it—

Q. You and Katherine haven't been able to get along very well—

A. Ask her whose fault it is.

THE COURT—You answer the question.

Q. You have not been getting along very well, have you?

A. No.

Q. Did you ever have any talks in which you were angry?

A. No, but she has been angry with me many a time and said terrible things to me and Aunt Lizzie.

Q. But you never got angry with her at all?

A. I never got angry to raise my voice. I told her some things I thought, but not getting angry like she did.

Q. You have not got along very congenially?

A. Not this last year.

Q. And when you were served with this subpoena you were very resentful, weren't you?

A. She told me—

THE COURT—Strike it out. Answer the question.

Q. You were resentful?

A. No, I wasn't resentful. That is the only time, I said, "You'll be punished for the things you said and done to me." I didn't raise my voice. That is the only time I ever did that. I said nothing.

Q. Didn't you say you would tell good and plenty?

A. No, I didn't. I don't use such language—"good and plenty." What do you mean by that? I never said that. I merely said—

Q. Didn't you say that to Sheriff Weeder?

A. No, I said "I did all these things to be served with a warrant and called into court, and I said "You will be punished for what you have done to me while I have been in this house." That is all I said. I never answered her.

Q. When she entertained she usually entertained at the D. A. R. society, didn't she?

A. Yes.

Q. Is that what you mean by her lavish entertainment?

A. Well, she has entertained the school board and

the D. A. R., and had other entertainments. She belonged to several clubs, and Christmas parties. I always helped her, three hours at a time.

Q. This continued for some time and you continued to help her, didn't you?

A. I helped her when I first went there. I did it gladly. I liked her. It is only the past year since her uncle died that she has treated me so.

Q. It is—

A. I helped her, and no thanks whatever. She didn't say, "Thank you."

Q. Did she thank you when you helped her before her uncle died?

A. I don't recollect that.

Q. You don't recollect?

A. No, she didn't, as a general thing, say "Thank you" at all, only once in a great while, she never thanked me, and she—

Q. When did you come down stairs usually in the morning?

A. Well, at various times; sometimes seven and sometimes half past.

Q. When did you come in the room to read the paper?

A. About eleven or a little afterwards, when she was through with it, and her uncle never read the paper, nor Frank either.

Q. You say Mr. Heitsman never read the paper?

A. I never saw him read the paper.

Q. You don't know who read it before you went down?

A. No, but Katherine was through with it. I knew nobody would have it.

Q. When you say Katherine went away on visits and up the Hudson—when she went away on a visit up the Hudson, how long was she away that day?

A. How long was she away?

Q. How long was she gone that day?

A. That was only one day, but that time I got breakfast, dinner and supper, so that—

THE COURT—Strike it out. Just answer the question and stop.

Q. When she went to—

A. You ask me a question and then won't let me answer it.

Q. When she went to Washington how long was she gone?

A. Well, she generally went Monday and come home Saturday—three or four days to the D. A. R.

Q. Did she go more than once to Washington?

A. Oh, yes, she went more than once. I can't tell you how many times, but she went more than once.

Q. Do you recall she went and returned?

A. Yes, she returned ill and I took care of her five or six days. Then she went to the hospital, and I bathed her and took care of her—

Q. When was that?

A. Before she had her tonsils removed. I can't recall.

Q. How long ago was that?

A. About four years ago.

Q. Four years ago?

A. About that.

Q. How sick was she?

A. Her cousin took charge while she had gone to the hospital, but I took care of her when she came from Washington, and got her meals and took care of her and bathed—

THE COURT—Stop.

Q. What was her condition after she returned from the hospital?

A. I don't know. She did her work.

Q. She did her work?

A. Yes.

Q. Was she ill?

A. I didn't notice it. She was able to do her work.

Q. You couldn't see whether she felt well or not?

A. I couldn't see from her actions whether she was. She did her work just the same.

Q. She kept the house clean?

A. Yes.

Q. She cleaned the house twice a year?

A. Yes, she had a woman.

Q. She was a very good housekeeper?

A. Yes, she had a woman come in and help her. She didn't do it alone.

By THE COURT:

Q. Did anybody ask you anything at all about a woman coming in to help her with the work?

A. No.

Q. Then why do you persist in that?

A. I just told him.

Q. You are here to answer the questions, and not to volunteer anything more. If you persist in disobey-

ing me I shall be compelled to strike your entire testimony out.

By MR. SMITH:

Q. When did you have this conversation in which Katherine— You say Katherine said she had been through her uncle's box thoroughly and she couldn't find a will?

A. Yes.

Q. When was that conversation?

A. I don't recollect.

Q. Who was the other person present?

A. Mr. Frank Heitsman.

Q. That is the uncle, or what they call uncle—a brother of Steward Heitsman?

A. Yes.

Q. Who else was there? Was this the only one who heard it?

A. No.

Q. No?

A. No, sir.

Q. Who else was there?

A. Henry Walters.

Q. Where did the conversation take place?

A. In the house.

Q. When was it?

A. I don't recollect.

Q. You don't know?

A. I don't recollect.

Q. How long before Steward Heitsman died?

A. I can't tell you.

Q. Where was Steward Heitsman at the time?

A. Dead.

Q. I thought you said this took place in his lifetime?

A. I did not.

Q. Am I mistaken about that?

A. I did not.

Q. When did it take place?

A. I don't recollect.

Q. How long after he died?

A. I said I don't recollect the exact time.

Q. Can you place it within six months?

A. Sometime within a year after he died.

Q. Well, he has been dead just about a year and two months now?

A. I say it was sometime—I don't know whether it was six months or five months.

Q. Was it three months ago?

A. Oh, no; it was longer than that.

Q. Was it six months ago?

A. No, I think longer than that.

Q. You say Mr. Henry Walters was present?

A. Yes.

Q. To whom was the remark addressed?

A. He came to see Mr. Frank Heitsman about buying some bonds, is the reason he happened to be there.

Q. You were present?

A. No, I happened to be going through the hall, and I just heard it.

Q. To whom did Katherine address this remark?

A. I suppose she did to Mr. Walters. She wouldn't to Frank Heitsman.

Q. She wouldn't to him?

A. No, hardly.

Q. You happened to be going through the hall?

A. Yes, sir, I was in the hall and I heard it very distinctly.

Q. Did you stop and listen?

A. No, I heard it.

Q. Katherine, after her uncle's death, was quit nervous, wasn't she, the day of the funeral?

A. She was hysterical.

Q. Hadn't she been very close to her Uncle Steward Heitsman?

A. Well, she took charge of his house for him.

Q. Didn't she look to him practically as a father?

A. She never told me so.

Q. Didn't you observe any affection on her part towards him?

A. No.

Q. You didn't?

A. Neither one was demonstrative.

Q. Didn't you?

A. Neither one is demonstrative.

Q. After his death did she show any signs of loss over his going, over his death?

A. No.

Q. Any sorrow?

A. I didn't see that she did. She had nervous attacks.

Q. I mean during the time from when he died to the time of the funeral. You were there?

A. I was.

Q. You saw her?

A. I did.

Q. Did you see any sorrow at all?

A. I told you neither one was demonstrative.

Q. Did you see any?

A. I didn't see it.

Q. You didn't see anything of that kind?

A. No.

Q. On the day of the funeral did she show any sorrow on the death of her husband?

A. Uncle.

Q. Uncle.

A. She didn't cry. She was quiet like the rest of us.

Q. Didn't she resent your interfering and trying to talk on that day, on the day of the funeral? Isn't that why she shook her fist at you?

A. Well, I don't know.

Q. Didn't she object to your interfering and meddling?

A. She objected to my telling John Kirkpatrick—

Q. She had complained about your meddling frequently, hadn't she?

A. Not to me; she may have to others.

Q. You never quarreled with her about meddling in her business?

A. No, I told you. I said—

THE COURT—Stop. When you have said "No", you have answered the question.

Q. You say you have seen her make out checks and Steward Heitsman signed them?

A. I have.

Q. Did you ever hear him tell her to make out a check?

A. I did not.

Q. Did you ever hear him say anything to Katherine about making out a check?

A. No.

Q. You didn't?

A. No.

Q. What was said when the check was made out?

A. She said, "We need money for the house," and she would have to have it. She knew—

Q. What did Mr. Heitsman say?

A. He signed it. I have seen him at the end of the dining room table signing checks.

By THE COURT:

Q. What did he say?

A. Nothing.

By MR. SMITH:

Q. You never heard him say anything when she started to make out a check. He never said anything?

A. I don't know.

Q. He never told her to make out a check?

A. I never heard him.

Q. Did he read over the check or look at it before he signed it?

A. I haven't the slightest idea. I remember seeing him sitting there, signing it.

Q. You saw her write them?

A. Yes, she wrote the check.

Q. Did you see her hand it to him?

A. She wrote on the paper, had a newspaper on the dining room table. I don't know. I saw that done twice. He got up and signed it.

Q. He got up himself?

A. He got in, out of a rocking chair, into a straight chair?

Q. You saw that twice?

A. Yes, I saw that twice.

Q. What happened to the check?

A. She took it.

Q. Did he hand it to her?

A. I don't recollect, but she took it and went through the house.

By THE COURT:

Q. You say you saw him get up out of the rocking chair and go to a straight chair?

A. Yes.

Q. And take the pen and sign this check.

A. Yes.

Q. You saw all that?

A. I did.

Q. Yet, you have not the faintest idea whether he read that check before he signed it?

A. I suppose he did.

Q. Why did you say you hadn't the slightest idea?

A. I don't know whether he did. I suppose he read it, of course no one would sign a check without reading it.

By MR. SMITH:

Q. Steward Heitsman would not sign anything unless he knew what he was doing, would he?

A. He was very careful about everything, very economical in everything he did.

Q. And he knew exactly what he was doing up to the time of his death?

A. I think so.

Q. He had a good clear mind, didn't he and a keen sense of humor?

A. He wasn't so funny the last year.

Q. Up to that he always had a clear—

A. Yes, but that last year—

Q. He didn't feel well physically?

A. No, he didn't answer like he did first. In the last year he wasn't so humorous and not strong in any way as he was before that.

Q. You heard the conversation about the radio?

A. I did.

Q. And when did that take place?

A. You will have to ask her when she got it?

Q. Don't you recall?

A. I never expected to be quizzed, about two years ago. She knows better, because she paid for it.

Q. Did he tell her to go ahead and get the radio in your presence?

A. No, after he promised it he didn't want to let her have it.

Q. After he promised it he didn't want to let her have it?

A. No, he tried to persuade her not to get it.

Q. He promised her she could get it?

A. Well—

Q. Did he promise her she could get it?

A. She said—

Q. Didn't you hear him promise her?

A. No, I didn't.

Q. You did not?

A. No, but I heard him say, "Do you really want it, do you really want to get it? You will be tired of it as you did with the victrola." She told me before that that he promised to get it for her. I took her word for it.

Q. It seemed that he wanted to get it to fulfill her wish?

A. Yes, sir.

Q. He was very generous to her?

A. He certainly was very generous to her.

Q. Didn't he look upon her practically as a father would a child?

A. I never saw anything demonstrative between her and him.

Q. You say he was a very lonely man?

A. Yes.

Q. And he objected to Katherine going away and leaving him?

A. He was lonely.

Q. She used to devote practically all of her time to him, didn't she, taking care of the house and taking care of him?

A. No, when she wanted to go away for three or four days she went.

Q. How many times did she go while you were there for three or four days. How many trips did she make to Boston?

A. I only know of one.

Q. Just one?

A. Yes.

Q. How long was she gone then?

A. Five or six days.

Q. When was that?

A. Let's see, I came home from there—why, it was in September, I had been away. I went away, I think, the first week in September and on the twenty-fourth—and Aunt Lizzie was there keeping house.

Q. How often did she go to Washington that you can recall, Washington, D. C.?

A. When she went with the D. A. R., I know she went once and another time came home ill when I took care of her.

Q. That is when you took care of her?

A. Yes, sir.

Q. Two times?

A. Maybe more, I don't recollect.

Q. Do you remember when that was?

A. Yes, before she had her tonsils removed.

Q. She didn't go after she had her tonsils removed, did she?

A. Yes, she went just before she went on the Texas trip.

Q. That was after the death of Steward Heitsman?

A. Yes, sir.

Q. I mean before?

A. Twice, that's all I recollect, but she may have gone more, but I recollect twice.

Q. When did she go away for any other time to stay a week or three or four days?

A. She generally went every—

Q. How many times did she do that during the period that you stayed at this house?

A. I don't recollect, I didn't put it down.

Q. How many times in a month?

A. I don't know but in a year she would go—

Q. Three or four times a year?

A. Yes.

Q. Is that the most?

I. I don't remember.

Q. Was it any more?

A. Well, I think some years she went more and other years not so often.

Q. Is that a fair average? Three or four night she would stay away over night?

A. Yes, I should think three or four would be about an average.

Q. Did she stay at home more during the last two years of Steward Heitsman's life than she did previously?

A. I don't recollect. I think she went away just as much as she ever had.

Q. You don't recall her going away to stay a week during the last two years of his life, did you?

A. No, anymore than over night or something like that?

Q. During the time she was there she gave him good care and attention?

A. Yes, sir, she gave him good care.

Q. And she gave him personal attention?

A. Yes.

Q. That any daughter could give a father?

A. Yes, she was his housekeeper and took great care of him and took him to bed and give him a bath and as much as a relative would.

Q. She did more than a housekeeper would do?

A. Yes.

Q. And did everything that a daughter would do for a father, isn't that true?

A. Yes, I think so.

Q. You say he never expressed himself to you about Katherine?

A. Never. He was a very quiet man and never said much.

Q. He was very reticent?

A. Yes, sir. He might have thought a great deal of her but he never said anything and I never saw him demonstrative about Katherine, never.

Q. You didn't?

A. No.

MR. McCONNEL—I offer in evidence the bank book, the only one coming into my possession, of Steward K. Heitsman, from 1918 on.

Said bank pass book of the Phillipsburg National Bank, in account with S. K. Heitsman No. 2, is marked Exhibit C-42.

COMPLAINANT RESTS

Adjourned until Wednesday, March 30th, 1927 at 10:30 A. M., at the State House, Trenton, New Jersey.

SECOND DAY

Testimony taken in the above entitled cause, at the State House, Trenton, New Jersey, on Wednesday, the thirtieth day of March, 1927, at eleven o'clock, A. M.,

Before HON. MALCOLM G. BUCHANAN, Vice Chancellor.

APPEARANCES

As heretofore noted. (Except that Mr. William C. Gebhardt, Sr., was not present.)

DORA M. HEITSMAN, a witness produced on behalf of the defendants Alma Hildebrant and others, being duly sworn, testifies as follows:

DIRECT EXAMINATION

By MR. GEBHARDT:

Q. Mrs. Heitsman, you are one of the defendants in this suit, you are one of the defendants in this suit, are you not?

A. Yes, sir.

Q. What relation were you to Steward K. Heitsman?

A. A niece.

Q. Are you acquainted with the condition of health of Steward K. Heitsman, in the years 1920 and 1921, and from then on down to the time of his death?

A. Yes.

Q. What was it?

A. He was a very feeble old man, crippled up with rheumatism, and walked with a cane, and walked very slowly and took short steps.

Q. Took short steps?

A. Short steps, in 1919 and 1920. I saw him at Uncle Henry Walters' funeral.

Q. What was his condition then?

A. We were in the same room and we walked out together, and he had to be assisted by Katherine down the front steps, and then—

Q. Have you seen Katherine give him any assistance at any other times, or by anyone else, during this period?

A. I saw him once afterwards, and then he had to be assisted, at Uncle Chester Heitsman's funeral. That was in 1917, he had to be assisted, and Mr. Kirkpatrick and Katherine assisted him.

Q. Did he grow better or worse or remain the same from 1920 down to the time of his death?

A. He grew worse. He was up to our place in 1924 for dinner, and Katherine and Uncle Frank Heitsman, and he had to be assisted through the room by Katherine, and when he got up and down from the chair he had to be assisted. He would have to steady himself with the cane, and then he had to be assisted across the place.

Q. Did you see him in his home frequently after his wife died in 1916?

A. No, not frequently.

Q. Why not?

A. I didn't feel as if I was welcomed by Katherine.

Q. What was Mr. Heitsman's feeling toward you,—Steward's feeling?

A. Always very pleasant.

Q. What assistance, if any, did he have to have from Katherine, or anyone else, around his home, during this period from 1920 on?

A. He had to be assisted.

Q. In what respect, do you recall, in any particular way?

THE COURT—You don't need to go over it again.

A. In business; she did the buying and she also attended to his banking affairs.

Q. Do you remember any occasion, or did you ever make any offer to Katherine, to give Steward Heitsman any assistance of any kind or help around the house?

A. Yes, sir, several times I told Katherine that if she needed any assistance I would gladly come, and she told me Uuncle didn't want anyone around.

Q. Do you remember a conversation you had with Katherine shortly after Emma Heitsman's death, in respect to some household goods?

A. Yes, Katherine said Uncle had given her the household goods, but she wanted it in black and white.

Q. How long after her death was that?

A. A couple of weeks after her death.

Q. Did you have any conversation with her about the same time as to whether he had provided for her?

A. Yes, sir, she told me he had made a will and provided for her, but in what way she didn't know.

Q. Do you recall a conversation perhaps in 1922 with respect to a legacy that Steward Heitsman got?

A. Yes, sir, Katherine told me that Uncle Steward had received a check on a small legacy and he said she could have this check, and she said when it came, she said, "Uncle Steward says I could have that." Uncle Steward said, "No." And she said, "Yes, you did, didn't he, Aunt Lizzie," Aunt Lizzie Heitsman. And Mrs. Heitsman said, "Yes, hand it over."

Q. What was said?

A. Mrs. Heitsman told me he gave it to her.

Q. What did Katherine tell you?

MR. SMITH—I object to that?

THE COURT—Strike it out.

A. Katherine told me he gave it to her.

Q. Do you remember a conversation in 1921, a conversation you had with Katherine about what Steward Heitsman would give her?

A. Yes, she said she had a conversation with Uncle Steward and they had been talking about the taxes.

Q. What kind of taxes?

A. Inheritance taxes, and she urged Uncle Steward to give her the securities that he intended her to have in the will, while she was living, and she would put them in her box, and he said, "No, I won't."

Q. Was there anything said about the purpose of doing that?

A. To escape the inheritance taxes.

Q. Were you present during the conversation on the day of the funeral after the will was read?

A. Yes, sir.

Q. In Katherine's presence?

A. In Katherine's presence.

Q. What was the conversation?

A. After the will was read Alma Hildebrant said to her mother, "I don't understand the will, do you?" Her mother replied, "No." And she asked John Kirkpatrick whether he did or not? and he said, "Yes." And he explained, he said, "Providing none of the proceeds of the farm were invested in the bank stock or the water stock, which he did give her, then the proceeds would be divided into seven equal parts." Miss Silkman said, "No, it was put into Liberty Bonds, wasn't it Katherine?" And Katherine replied, "I don't know." Miss Silkman said, "You don't? Steward told me it was put in Liberty Bonds, $30,000.00."

Q. Can you tell me, from your visits you made there, from 1920 on down, whether Steward Heitsman needed someone to look after him, whether he required that much assistance from anyone?

Q. Yes, sir, for the last five or six years he did require a deal of assistance, and if he hadn't had assistance he would have to have a nurse.

Q. Did you ever have any conversation with Katherine about the compensation or money that Steward gave her for her services?

A. Well, she received Uncle Frank Heitsman's board money, and she also got the rent from Miss Silkman's room.

Q. She got that?

A. Yes, sir.

Q. Was there any incidental money she got?

A. Yes, sir, he gave her money to run the house with.

Q. Any money for her own purposes, or didn't he give her any for that?

A. He didn't give her any salary, but he gave her what she needed.

CROSS EXAMINATION

By MR. SMITH:

Q. Do you know who paid the taxes on the house where they lived?

A. That was supposed to come out of the estate.

Q. Out of what estate?

A. Mrs. Emma Heitsman's estate.

By THE COURT:

Q. Do you know who paid them?

A. No, I don't.

By MR. SMITH:

Q. Katherine never told you that?

A. No, Katherine didn't.

Q. Do you ever see Katherine attending to the banking business of your Uncle Steward?

A. No, Katherine told me.

Q. Katherine told you that?

A. Katherine told me that.

Q. Did you ever—You never saw any of that at all. How often did you visit in 1925 your Uncle Steward?

A. I wasn't there.

Q. You were not?

A. No.

Q. How often did you visit in 1922 your Uncle Steward?

A. I was there at a party and once afterwards.

Q. Who had the party?

A. Katherine had it for Uncle Steward.

Q. Katherine's party?

A. Yes.

Q. You were invited?

A. Yes, sir.

Q. You were there for dinner on a number of occasions between the year 1916 and the time your Uncle Steward died, weren't you?

A. No, I wasn't.

Q. Only once you were there?

A. I was never invited.

Q. You were invited at this dinner party?

A. It was just an evening party.

Q. An evening party?

A. An evening party

Q. Were you ever at any meals at the home during that period of time?

A. No, I was not.

Q. How many times during that period did you visit your Uncle Steward?

A. I don't know.

Q. How many times did they come and visit you?

A. Not at all. Mrs. Heitsman came over, very often, and while Mrs. Heitsman was living I was there quite often,

Q. How often did Uncle Steward and Katherine and Mr. Frank Heitsman come and visit you during the ten years before his death?

A. Not at all.

Q. Why didn't you testify that they had been there to dinner?

A. In 1924 Mr. Heitsman, Katherine and Uncle Frank were up to Mrs. Kirkpatrick's house for dinner.

Q. Oh, that was not at your home?

A. No.

Q. At Mrs. Kirkpatrick's?
A. Yes, sir.
Q. Where did you live?
A With Mr. Kirkpatrick.
Q. Where is that?
A. In College Hill.
Q. What kind of floors are there in that home?
A. Hard wood floors.
Q. Hardwood floors?
A. Yes, sir.
Q. What kind of floors are there in the house at 115 South Main Street?
A. 115 South Main Street?
Q. Yes.
A. Plain floors with rugs on.
Q. With rugs on?
A. Yes, sir.
Q. Uncle Steward was never very sure of his footing for the past few years before his death?
A. He was not sure.
Q. Did you ever see him walk alone?
A. Uncle Steward?
Q. Yes.
A. I did.
Q. You did see him?
A. I did.
Q. How long before his death was the last time?
A. I saw him in 1924.
Q. Did he walk alone then?
A. No, he was assisted.
Q. In 1924?
A. 1924.
Q. He was assisted then?
A. Yes, sir.

Q. All the time?

A. Always assisted.

Q. How often did you see him in 1924?

A. Twice.

Q. When was the other occasion beside this time that you saw him at Mrs. Kirkpatrick's?

A. I was over there one time.

Q. When did you go over? What time was it, do you recall now?

A. No, I don't recall.

Q. Was there any one with you?

A. No, no one was with me.

Q. How often did you see Katherine?

A. Quite often.

Q. Where did you see her?

A. I saw Katherine in Easton around the markets.

Q. At Easton?

A. Yes, sir.

Q. Did you talk to her?

A. Yes, sir.

Q. You were very cordial?

A. Yes, very cordial.

Q. It was at the markets, then, that you had these conversations and talked, that she had these conversations and talked to you and told you about these different matters you have testified to?

A. At the markets and sometimes when I met her on the streets.

Q. Where was she when she had conversation about attending to his banking affairs?

A. At different times.

Q. Can you recall any particular occasions?

A. I can't say just exactly.

Q. Can't say?

A. No.

Q. Can you recall some of her exact words?

A. She said Uncle Steward couldn't get around and she attended to his banking affairs and did all his business for him.

Q. Is that all she said?

A. That is all she said.

Q. That was all?

A. Yes.

Q. Do you recall how long that was before his death?

A. Sometime between '20 and up until his death.

Q. You can't recall just when that was?

A. No, I can't recall.

Q. You don't know now, then,—You say that Steward Heitsman, after Emma Heitsman's death, Steward Heitsman had given Katherine her household goods—

A. Yes.

Q. And that she wanted it in black and white?

A. Yes, she told me that.

Q. Emma Heitsman was Katherine's own aunt?

A. Yes.

Q. That is right?

A. Yes, sir.

Q. And a blood relation?

A. Yes, sir.

Q. Was the furniture there—did that belong to Katherine or to Katherine's aunt, Mrs. Heitsman?

A. Some of it belonged to her Aunt Emma.

Q. Do you know how much of it belonged to her Aunt Emma?

A. No, I don't.

Q. You say Katherine told you her Uncle had given her that but she wanted it in black and white?

A. Yes, sir, she did.

Q. How long after that did she tell you that her Uncle had made a will?

A. Nearly at the same time, or shortly afterwards.

Q. Did she tell you what was in the will?

A. No, she didn't, but she said Uncle Steward provided for her, but in what way she didn't know.

Q. Didn't she at the same time tell you that she had agreed to stay there?

A. Yes, sir, she told me she had agreed to stay there.

Q. She told you that?

A. Yes, sir.

Q. And didn't at the same time she tell you about her being engaged to a man in Wyoming, and that her Uncle Steward refused to go out there with her?

MR. GEBHARDT—I object to any testimony about her getting married.

THE COURT—The objection is overruled. Counsel has a right to have the entire conversation.

Q. Answer the question?

A. No, she never told me she was engaged.

Q. Did she tell you her Uncle Steward would not go out to live in Wyoming; that he wanted to stay there at that time?

A. No, not at that time.

Q. She did not?

A. No, sir.

Q. Did you have any conversation at any time outside of these times you have testified to?

A. She told me at one time, but I can't just place when it was, but it wasn't at that time.

Q. How long was it after the death of Mrs. Emma Heitsman that you had a conversation with her with reference to that?

A. I can't tell you.

Q. You don't know?

A. I can't say.

Q Was it shortly after that?

A. No, it wasn't shortly after that.

Q. How long after that.

A. I can't tell you just how long.

Q. Was it after the war.

A. No, it was not after the war.

Q. At that time was Katherine talking about her Uncle Steward?

A. We always talked whenever we met about Mr. Steward—

Q. Didn't she tell you then that her Uncle Steward would not speak to her because of her proposition about going out to Wyoming to live?

A. No.

Q. What did she with reference to that?

A. I don't know.

Q. Didn't she tell you that she had an opportunity to be married and go out to Wyoming to live?

MR. GEBHARDT—That is objected to. That is not a part of this other conversation.

THE COURT—Yes, it is. Objection is overruled.

A. Why, she told me she had a friend out west, but she never told me she was to be married.

Q. She did not?

A. No.

Q. Didn't she tell you that at the same time her Uncle Steward would not move away, would not go along with her?

A. Not that I remember.

Q. You don't remember that?

A. No.

Q. Didn't she tell you at the same time that this man had said that their home would be your Uncle Steward's home? Didn't she say that?

A. No, sir.

Q. But that you Uncle Steward refused to leave Phillipsburg, saying that he had lived there all his life?

A. Never told me that.

Q. She did not?

A. No, sir.

Q. Didn't she say anything else at all, other than what you have testified to, with reference to her staying in Phillipsburg and not going out West?

A. Not that I know of.

Q. Your testimony with reference to this check, this legacy; were you present when that conversation took place, Mrs. Heitsman?

A. Katherine told me.

Q. Just what did Katherine tell you?

A. Why, she told me that Uncle Steward had a check on the small legacy, and Uncle Steward said she could have it, and when it came she asked for it, and Uncle Steward said, "No, I didn't." Katherine said, "Yes, you did." And she said to Aunt Lizzie Heitsman, "Didn't he, Aunt Lizzie?" And Aunt Lizzie said, "Yes, give it to her."

Q. Aunt Lizzie Heitsman?

A. Aunt Lizzie Heitsman.

Q. Katherine told you that?

A. Katherine told me that.

Q. She told you her Uncle Steward had given her the check, did she?

A. Yes, sir.

Q. Do you know what legacy this was?

A. Yes, sir, it was a legacy from Uncle Louis Segrey's estate.

Q. Did she tell you how much the legacy was?

A. No, she said she didn't suppose it would amount to much. I said, "Well, it's most three hundred dollars."

Q. Was that at the same time that she told you that Steward had given her the check?

A. Yes.

Q. And she said she didn't suppose it would amount to much. Is that right?

A. I said it was $300.00

Q. Did you ask her how much it was?

A. I knew.

Q. When did this conversation take place, with reference to the inheritance tax?

A This took place in Easton.

Q. Where in Easton?

A. Right at the circle.

Q. You mean that that is a public square in Easton, Pennsylvania?

A. Yes, sir.

Q. What were you doing there at that time?

A. Simply standing there talking.

Q. Just when was this conversation?

A. Why, it was either sometime in 1920 or 1921.

Q. How did you come to talk about that?

A Well, we were talking about Uncle Steward.

Q. Had you seen him recently?

A. No, only I saw him in 1919.

Q. Just what did Katherine say?

A. She said Uncle Steward and she had a conversation about taxes, and Katherine said, "Well, Uncle Steward, if you give me the securities that you intend me to have in your will, I will put them in my box to escape the inheritance tax."

Q. That is what Katherine told you?

A. That is what Katherine told me.

Q. Now, didn't she say anything else?

A. Uncle Steward didn't agree to it.

Q. She told you Uncle Steward didn't agree to it?

A. Yes.

Q What else did she tell you?

A. That was all.

Q. That was all the conversation?

A. That was all the conversation

Q. You say this was at the public square in Easton?

A. Yes, sir, it was.

Q. At the Circle?

A. It was.

Q. What did you say to her?

A. Nothing.

Q Did you ask her any questions?

A. I asked her about Uncle Steward,—how he was,—as I always did.

Q. After she said this did you ask her anything else?

A. No, I didn't.

Q. What did you say after she had made this statement to you?

A I didn't say anything.

Q. Not a word?

A. No, I didn't.

Q. To whom did you tell it?

A. What?

Q To whom did you tell it, that you had this conversation?

A. I didn't tell it to anyone until some time afterwards.

Q. How long afterwards?

A. I told my sister

Q. When?

A. I don't know just when I told her. After this thing came up then I told it.

Q. You didn't tell it right up to this?

A. No.

Q. Your sister, Mrs. Kirkpatrick—

A. Was the first one I told it.

Q. Mrs Kirkpatrick?

A. Yes, sir.

Q. Was she the first person you told it to?

A. No.

Q. Just what word was used in reference to the taxes?

A. She said, "Uncle Steward told me the taxes had to be paid out." Katherine said, "Give me the securities you will give me in the will and I will put them in my box."

Q. What for?

A. To escape the inheritance taxes.

Q. Did Katherine say the words "inheritance taxes"?

A. No, but that is the only taxes there is to be paid after death.

By THE COURT:

Q. Well, madam, you were asked what was said. You are under oath. Tell us what was said?

A. To escape the taxes.

By MR. SMITH:

Q. Did you ever have any other conversations with Katherine with reference to the taxes?

A. No.

Q. That was the only time?

A. That was the only time.

Q. As near as you can place it that was 1920?

A. 1920 or 1921.

Q. That is as near as you can place it?

A. That is as near as I can place it.

Q. You say that in 1925, that you visited your Uncle Steward, the year before he died, in January, did you visit him?

A. I don't recollect.

Q. You lived in Easton, on the other side of the river from Phillipsburg?

A. Yes, sir.

Q. The trolley runs by his house. It is the same trolley you had to use at your home. Is that right?

A. Yes.

Q. When was the last time you did visit him?

A. I can't place the time.

Q. Was it in 1924?

A. 1924.

Q. What time did you go there, what time of the day?

A. It was always in the afternoon.

Q. Where was your Uncle Steward at the time you got there?

A. Why, he was in the house.

Q. What part of the house?

A. He was sitting in the living room.

Q. He would sit there in the chair?

A. In the chair.

Q. Where he could look out in the street?

A. Yes, sir.

Q. Where was Katherine?

A. Katherine was not at home.

Q. How long did you stay?

A. Not very long.

Q. Well, about how long?

A. Well, I can't tell.

Q. You didn't see your Uncle Steward assisted that day, did you?

A. No, not that day, I didn't see him assisted.

Q. Did you see him assisted at the time you were there before?

A. He was always sitting in the chair.

Q. How many times did you see him assisted in his own home?

A. I can't place it.

Q. Did you see him assisted any times?

A. What?

Q. Did you see him assisted any times, any number of times, between 1920 and 1925, in his own home?

A. Not often.

Q. Did you ever see him assisted there?

A. I did.

Q. Can you recall that particular time?

A. Why, we were up to Mrs. Kirkpatrick's—

Q. In his own home?

A. He was sitting in a chair and he had to raise himself up and brace himself on the arms of the chair and then steady himself with the cane.

Q. You always had conversations with him?

A. Sure.

Q. And your Uncle Steward always seemed to be the same?

A. Very pleasant.

Q. Always a very jolly man?

A. Very jolly.

Q. Did he talk about everything pretty generally?

A. Yes.

Q. Did he discuss his business affairs with you?

A. No.

Q. Ever?

A. No.

Q. Did he ever talk to you about his business affairs?

A. No.

Q. Did he ever talk to you about Katherine?

A. No.

Q. What did you mean when you said that he required a great deal of assistance?

A. Well—

Q. Wait a minute. What did you mean when you said that he required a great deal of assistance during the last years of his life?

A. Because he was very, very feeble.

Q. Did you see him?

A. I sure did see him.

Q. When you say he was very feeble whenever you saw, was he very, very feeble?

A. The last years he was feeble.

Q. And the last time you saw him, was he simply feeble or very, very feeble?

A. Why, he was very feeble.

Q. And that was your opinion from what you saw of him and the number of times you saw him during the last years of his life?

A. Yes, sir.

Q. Now, you were present the day your Uncle Steward was buried after the will was read?

A. Yes, sir.

Q. You talked to Katherine that day, didn't you?

A. I sure did.

Q. Didn't you tell her that you were very well satisfied, that you didn't expect anything?

A. I said I was glad she got what she got.

Q. Didn't you say you were well satisfied, that you didn't expect anything?

A. I didn't expect anything.

Q. And you so told Katherine that day, didn't you?

A. I told her I didn't.

RE-DIRECT EXAMINATION

By MR. GEBHARDT:

Q. At any of these conversations that you had with Miss Katherine, did she on any occasion tell you that your Uncle Steward had given her the $30,000.00 worth of Liberty Bonds, or any part thereof?

A. No.

MR. SMITH—Objected to.

THE COURT—The objection is overruled.

Q. How did you come to know what the amount of that legacy was, Miss Heitsman?

A. Because I received a check myself, as my father's share of the estate.

ISABELLA KIRKPATRICK, witness produced on behalf of the defendants Alma Hildebrant and others, being duly sworn, testifies as follows:

10

DIRECT EXAMINATION

By MR. GEBHARDT:

Q. You are one of the defendants in this suit?
A. I am.
Q. You are what relation to Steward K. Heitsman?
A A niece.
Q Did you go to see Steward K. Heitsman occasion-
20 ally during the period from 1920 on down to the time of his death?
A. I did.
Q. You did?
A. I did.
Q. What was the condition of his health during that time as it appeared to you?
A. He had rheumatism, he was crippled with rheumatism and he needed help. At my father's funeral they assisted him into the house, and we didn't go up stairs
30 because Uncle Steward said he couldn't go up the steps, and we all come down stairs in the dining room, and it was the same way with Uncle Ches' funeral there. Katherine asked my husband to assist him. He couldn't get off and on the trolley cars. We didn't go to the funeral,

so he asked Mr. Kirkpatrick if he would assist him in getting off and on the trolley cars.

Q. What year was that in?

A. That was in 1917. And at my mother's funeral it was the same way. We sat down stairs because it was too hard for him to go up and down the steps.

Q. What year was that in?

A. 1918.

Q. 1918?

A. Yes, sir.

Q. From this time down to the time of his death, did he improve or grow worse or remain thesame?

A The older he got I think he needed more assistance.

By THE COURT:

Q. Do you know anything about it?

A. Yes.

By MR. GEBHARDT:

Q. Did you see him occasionally during that period?

A I did.

Q. Under what circumstances and where?

A. I saw him over to his place. When the children didn't go with us in the machine, we generally went over and took Uncle Frank and Catherine and Uncle Steward out with us

Q. Out for a ride?

A. Yes, sir.

Q. And on those occasions then what was his condition of health during this period from 1920 on?

A Why, he always became very stiff, and Katherine and Mr. Kirkpatrick both used to lead him into the house.

Q. After he got out of the car?

A Yes, sir, my husband also assisted him into the machine.

Q. Mr. Kirkpatrick did?

A. Yes.

Q Did he grow better or worse as time went on?

A. He grew worse, and a couple of times I was there, once he had a very heavy cold; I guess it was the next thing to pneumonia, and in 1925, I was there and found him in bed, also.

Q. Do you recall a conversation you had with Miss Katherine Stryker after Steward died and before he was buried?

A. Yes, I do.

Q. State under what circumstances that conversation took place?

A The morning before the funeral Katherine called me up on the telephone and asked me if my brother-in-law, Mr. Kunsman, was going to be a pall bearer. I said, "Yes." And she said Lawyer McConnel had called her up and said that he had—that there was a will, but what was in the will she didn't know, and Uncle Frank and Uncle Chester and Katherine and Alma Hildebrant and Anna Kunsman and I were mentioned

Q. Yes.

Q. I said, "Who did you say wrote the will?" She said "Lawyer McConnel." I said, "I am surprised at that. I thought one of his cousins would write that." She said, "Well, Uncle Steward always used to think they need not know his affairs.

Q. Whom did you mean by cousins?

A. The Walters boys.

Q. They are practicing attorneys?

A. They are.

Q. Go on?

A. She said how much or how little she would receive she didn't know. I said, "A little is better than nothing," and it was nice to be remembered, and I was glad to be remembered. And she related one day Uncle Steward was late for dinner and she didn't know where he was, and when he came she said, "Where have you been, Uncle?" Steward said, "I was at Lawyer McConnel's office and made my will. I have provided for you," but in what way she didn't know, and that Uncle Steward had told her a short time before he died, that as the will read—her voice lowered. I said, "What was that?" And she repeated that Uncle Steward had said to her, "As the will read, so it shall be." I said, "We will have to wait and find out what it is."

Q. That was on the telephone?

A. Yes, sir.

Q Did she say how long before his death Steward Heitsman said that,—"As the will read so it shall stand," or whatever it was?

A. She said a short time before.

Q. A short time?

A. Yes.

Q. Were you present on the day the will was read?

A I was.

Q. And during that conversation?

A. I was.

Q. Was Miss Katherine present or not?

A. Yes.

Q. What was the conversation?

A. Miss Hildebrant didn't understand the will. She said to her mother, "Do you?" And her mother said to my husband, "John, do you understand it?" He said, "Yes." He said, "Provided none of the proceeds of the

farm have been used to buy the water stock or the bank stock," which Katherine had received in the will, then we would each receive one-seventh of the proceeds of the farm, and the residue of the estate. And then Miss Silkman spoke up. She said, "No, the farm was paid for in $30,000.00 Liberty Bonds, wasn't it Katherine?" And in an angry tone she said, "I don't know." And Miss Silkman said, "Yes, it was Steward Heitsman that told me so."

Q. Was anything said in any of these conversations that you had with Miss Katherine, to the effect that Steward had given her any part of the $30,000.00 worth of Liberty Bonds?

A. No.

Q. There wasn't?

A. No, sir.

Q. How frequently did you go over to see Steward Heitsman after Mrs. Heitsman's death?

A. I went frequently, I'll say. Well, twice a year, anyway. Whenever we just thought we would like, and our machine wasn't full and we thought we would like to take the old folks out for a ride, a change of view.

Q. On these occasions did Katherine make you welcome or did she not?

A. Well, oftentimes I got in the machine and I would say to my husband—

MR. SMITH—That is objected to.

Q. You can't tell what you said to your husband. The question was whether or not Miss Katherine was cordial or not?

A. I often thought I wasn't wanted. And the old gentleman was very pleasant to me.

By THE COURT:

Q. You went twice a year?
A. Yes, sir.
Q. That is what you call frequently and often?
A. Twice a year, frequently, yes.

CROSS EXAMINATION

By MR. SMITH:

Q. You usually visited when you learned that Uncle Steward was sick, is that right?
A. No, I went there before he was sick, when he wasn't sick.
Q. You did?
A. Yes, sir.
Q. In 1925 you went there and found him in bed?
A. Yes, sir, he was in bed.
Q. What time of the year?
A. I would say in was in the spring of the year or summer. Spring or summer?
A. Spring or summer.
Q. Was he suffering from a cold?
A. No, I think he had a heart attack or acute indigestion, one or the other.
Q. Was Katherine there?
A. She was.
Q. Taking care of him?
A. Yes.
Q. You talked to your Uncle Steward, didn't you?
A. I did.

Q. What did you say?

A. I sat in his room.

Q. He was always jolly and pleasant, wasn't he?

A. Very.

Q. He always had a good clear mind when you talked to him?

A. Yes.

Q. And always seemed to be the same so far as talking was concerned?

A. Yes, sir, as far as talking.

Q. You say he was feeble?

A. Yes.

Q. He was a man that had very bowed legs?

A. Yes.

Q. As he grew older he was not very steady on his feet?

A. He was not steady.

Q. And that began in 1916 or 1917?

A. Yes, sir.

Q. Before Mrs. Heitsman's death, did you notice it?

A. I did.

Q. You saw him assisted then?

A Yes, sir, I did.

Q. And you saw him assisted in 1918 when your mother died?

A. Yes, sir.

Q. That was in 1918?

A. Yes.

Q. He always got to those funerals though, didn't he?

A. Well, I will say, we sent the machine for my father's funeral.

Q. How about the other funerals, your Uncle Chester's funeral?

A. He went on the trolley there.
Q. At that time he used the trolley?
A. Yes.
Q. How about Uncle Henry Walters' funeral?
A. I wasn't there?
Q. You were not?
A. I was not there.
Q. Did you ever see him walking out in the yard when you came to visit him at those times, ten years before his death?
A. As a rule hew as sitting in the arm chair.

By THE COURT:

Q. Did you ever see him walking in the yard?
A. I can't recall.

By MR. SMITH:

Q. You never found him anywhere but in the arm chair as near as you can remember?
A. As near as I can remember.
Q. Did he get up and walk in his own home at all?
A. Yes, sir, he did.
Q. He did?
A. I did see him walk in his own home
Q. Unassisted?
A. Always with a cane.
Q. When did you take him for a ride in the four or five years prior to his death; what particular time?
A. Well, we met him on Main Street and we drove up and we asked him, we spoke to him and my husband said, "Uncle Steward, how are you?" and he said, "I can't get around," he said, "You don't get to Easton very

often, do you?" He said, "No, I haven't been to Easton for a long time."

Q. When was this?

A. I can't tell you.

Q. Two or three years before his death?

A. I believe it was longer than that. I believe it was shortly after Aunt Emma's death. My husband asked him to go to Easton and he did. We took him around Wilson Borough.

By THE COURT:

Q. What was he doing on Main Street?

A. On the street.

Q. What was he doing?

A. Walking.

Q. Alone?

A. Yes.

By MR. SMITH:

Q. Did you see him after that anywhere on the street?

A. Not that I can recall.

Q. How often that did you come and take him for a ride?

A. I believe we had him out five or six tmes.

Q. How long before his death was it?

A. In the fall of 1925.

Q. He was able to go for a ride?

A. Yes, but that was the time Katherine assisted in putting on his overcoat and my husband assisted him and Katherine and Mr. Kirkpatrick assisted him back into the house when he came back.

Q. He seemed to enjoy the ride?

A. He complained he didn't care about going because it made him very stiff and my husband took hold of his one leg to help him get out.

Q. How long a ride did you take?

A. We went up around through Hilcrest and then—

Q. That was the farm?

A. Yes.

Q. It is sold off now, I believe over there?

A. Yes. And showed him the new high school building.

Q. Did you talk to him that day?

A. I sure did.

Q. Did he seem to be just the same as he always had?

A. Sure.

Q. Just the same?

A. Sure.

Q. He never changed very much. Was Katherine there when you visited him at the house?

A Yes.

Q. Did you see how she took care of him?

A. She was always very good to him.

Q. Did you meet her any other place besides the house?

A. Well, I very seldom ran across Katherine any place.

Q. You invited Steward Heitsman and Frank Heitsman to dinner in 1924, didn't you?

A. Yes, I did.

Q. They were up there on a Sunday?

A. Yes, sir, it was my twenty-fifth wedding anniversary?

Q. You have hard wood floors in your house, don't you?

A. I do.

Q. Did Steward, at that time, mention the fact that he wasn't used to that kind of floors and rugs?

A. I can't recall, but I was afraid he might fall.

Q. So he was assisted around your house?

A. He was.

Q. Did you talk to him that day for quite a long time?

A. I talked to him.

Q. Was your sister, Mrs. Kunsman there?

A. No.

Q. Wasn't she there that day?

A. No.

Q. Sure.

A. Yes, sir.

Q. Was your sister Dora Heitsman there?

A. My sister makes her home with me.

Q. How long did Steward Heitsman stay that day?

A. Katherine went to church, I believe, in the morning and she told Mr. Kirkpatrick to come over around noon and we sat on the porch a while and talked and then rode over to College Hill. We took a ride over College Hill and different places and out to the cemetery.

Q. Do you remember the exact date?

A. Yes, sir, June 15th.

Q. Your wedding anniversary?

A. Yes, sir.

Q. That is why you remember it?

A. Yes, sir.

Q. This conversation you have testified to that you had with Katherine, was over the telephone?

A. It was.

Q. A telephone conversation?

A. It was.

Q. And all that she said was said to you over the telephone?

A. It was.

Q. This, "So it shall be," was that said over the telephone?

A. Yes, it was said over the telephone.

Q. She lowered her voice, did she?

A. Yes, sir.

Q. She called you up and told you Mr. McConnel would read the will after the funeral?

A. Yes.

Q. And also that Mr. McConnel said that Chester, yourself, Mrs. Kunsman and your sister Dora were mentioned in the will?

A. Yes, sir.

Q. And that they should be there?

A. Yes, sir.

Q. And the rest of this conversation that you have testified to continued over the telephone?

A. Yes.

Q. How long did you talk over the telephone?

A. Well, I suppose it was ten minutes.

Q. Did you ever ask Katherine about these bonds that you speak of?

A. I did not.

Q. Never said anything to her?

A. No.

Q. You didn't know anything about it, did you?

A. I did not. I knew there was bonds but I never knew that Katherine claimed them until around May. I went to the Court House and found out she did claim them.

Q. On the day of Uncle Steward's funeral you testified that Miss Silkman talked?

A. Yes, sir.

Q. She said a lot of other things, didn't she, besides that at that time?

A. Well, I can't recall.

Q. When she volunteered the information that your Uncle Steward had said to her that he had got thirty thousand dollars in Liberty Bonds?

A. Yes.

Q. She said that?

A. Yes.

Q When she said that, did she mention the amount of the Liberty Bonds or just Liberty Bonds?

A. Thirty thousand dollars in Liberty Bonds.

Q. And she spoke up, and were all the other people there relatives besides Miss Silkman?

A. No.

Q. There were other people there who were not relatives?

A. Yes, sir.

Q. Had Katherine been crying at the funeral or nervous?

A. Yes, she cried.

Q. She showed a great deal of grief, didn't she, over the loss of her uncle?

A. Yes.

Q. And was very much broken up?

A Yes.

Q She demonstrated that? You could see it,—it was not inward grief but it was visible?

A. Yes, sir.

Q. Was she nervous when this conversation took place?

A. About the thirty thousand dollars?

Q. Yes.
A. I don't know, she was very angry, I know
Q. Wasn't she angry at Miss Silkman's constant talking?
A. I don't believe I heard Miss Silkman speak before that.
Q. That is the first thing?
A. Yes, sir.
Q. Did you hear her speak after that?
A. Yes, but nothing in reference to this
Q. Did she talk very much then?
A. It was only when she saw the bus coming.
Q. That is the only part of the conversation she talked in?
A. That is all I heard.
Q. Katherine never discussed her business affairs with you?
A. No.
Q. She never did that?
A. No.
Q. Did your Uncle Steward ever discuss business affairs with you?
A. No.
Q. Did you see him after he had sold the farm?
A. Why, yes.
Q. Did you ask him what kind of a deal he made on the farm?
A. No, I didn't.
Q. You made no such statement to him?
A. No.

By THE COURT:

Q. Why didn't you?

A. Why didn't I?

Q. Yes.

A. I never had occasion to ask him on that subject or on money matters.

Q. What do you mean?

A. What?

Q. You say, you never had occasion to, what do you mean?

A. I never once spoke about money matters.

Q. And I ask you why, weren't you curious ?

A. No, because I heard it beforehand.

Q. Oh, you already knew it?

A. My husband told me, but not that price.

By MR. SMITH:

Q. You heard another price?

A. More than that.

Q. What price did you hear?

A. Thirty-four.

RE-DIRECT EXAMINATION

By MR. GEBHARDT:

Q. You said that you Mr. Mr. Heitsman on the street after his wife's death?

A. Yes.

Q Can you tell me about when that was, approximately, the year?

A. No, I can't, I don't remember the year.

Q. Was it before 1920 or afterwards or what?

A. I couldn't say.

Q. When Katherine had this telephone conversation with you that you have related, did she appear to be cool or calm or upset?

A. I thought she was nervous.

Q. Upset?

A. Yes.

RE-CROSS EXAMINATION

By MR. SMITH:

Q. That was the day before—

A. That was February the second.

Q. The day before—

A. The funeral.

Q. She was emotional?

A. Yes.

Q. She was nervous?

A. Yes, sir.

Q Was that because of her grief over the death and loss of her Uncle Steward?

A. Well, I should say so.

JOHN KIRKPATRICK, a witness produced on behalf of the defendants Alma Hildebrant and others, being duly sworn, testifies as follows:

DIRECT EXAMINATION

By MR. GEBHART:

Q. Mr. Fitzspatrick, you are the husband of Mrs. Kirkpatrick who was just on the witness stand?

A. I am.

Q And were you acquainted with Steward K. Heitsman in his lifetime?

A. I was.

Q. What was his general condition of health from 1920 on down to the time of his death?

A. Well, he was, I should say, feeble and he needed help with a cane to get around on account of his rheumatic troubles.

Q. Where was that trouble?

A. I imagine in his limbs, the way it appeared to me.

Q. Anything else you can say about his condition? Did he have any other ailments?

A No, outside of heart attacks. I don't know that myself, only what was told.

Q. Did you ever take him out riding or see him during that time?

A. Yes, I recall in 1917, at Uncle Chester's funeral, we went to Washington, New Jersey, to attend Uncle Chester's funeral—

THE COURT—Stop. You have answer the question. You have said, "Yes."

Q. On those occasions you would take him out riding, did he require any assistance to get in and out of the machine?

A. He did.

Q. He had to be assisted?

A. Yes, sir.

Q. How did the riding affect him, did he enjoy it or not?

A. He seemed to enjoy it all right but he told me one time coming back that it made him very stiff. He sat in front with me.

Q. Did you see him in his home on any occasions?

A. Yes, different times.

Q. Did Katherine give him any assistance or help him around the home?

A. I don't remember any times she assisted him that I can recall. Twice he was in bed. I don't know whether he was sick or just resting.

Q. Who was looking after him while he was in that condition?

A. Katherine.

Q. Were you present during the conversation on the day of the funeral, after the will was read?

A. Yes, sir.

Q. What was that conversation?

A. Miss Hildebrant didn't seem to understand the will. She asked her mother if she understood it and then she asked me whether I understood it. I said I did, at least I said I thought I did and I said, "If none of the proceeds of the farm were invested in the bank or water stock, the proceeds would be divided into seven equal parts." Miss Silkman said, "No, the proceeds of the farm are in thirty-thousand dollars' worth of Liberty Bonds." About that time Katherine came through the

room and she said, "Isn't that so, Katherine?" and Katherine did, in an angry voice say, "I don't know."

CROSS EXAMINATION

By MR. SMITH:

Q. She resented Miss Silkman's talking?

A. I don't know what she meant by it, whether she didn't want us to know—

Q. Isn't that the way it appeared to you?

A. Not exactly, I thought she didn't want us to know about the bonds.

Q. Had you ever seen her with Miss Silkman before?

A. I did not.

Q. You didn't know of any feeling that might have existed between Miss Silkman and Katherine?

A. No.

Q. Did Miss Silkman say anything else?

A. Not that I recall except that conversation about Mrs. Hildebrant and her husband waiting for a bus and they arranged that he should hold up his finger when the bus came and Miss Silkman kept on saying, "When the bus comes he will hold up his finger."

Q. How many times did she say it?

A. I don't know.

Q. More than once?

A. I don't know.

By THE COURT:

Q. Why did you say she kept saying it then?

A. Well, I don't know. I didn't say that.

Q. Yes, you did.
A. I don't know.
Q. Did she?
A She said it more than once.

By MR. SMITH:

Q. That is all Katherine said that you heard?
A. So far as I remember, yes.
Q. You say Mr Heitsman sometimes got along without assistance?
A Whenever I took him out in the machine he always required assistance and one time in 1925 I recall of helping him down the front steps and Katherine assisted him in the machine.
Q. Did he walk across the sidewalk?
A. Yes, but I had him by the arm and he also had his cane.

MR. GEBHARDT—We rest.

MINNIE FINE, a witness produced on behalf of the defendant, Katherine N. Stryker, being duly sworn, testifies as follows:

DIRECT EXAMINATION

By MR. SMITH:

Q. Mrs. Fine, where do you live?
A. Roxburg, New Jersey.
Q. How far is that from Phillipsburg?
A. About nine miles, I should judge.
Q. How do you get there?
A. Mostly by rail.
Q. Pennsylvania Railroad?
A. Yes.
Q. What was your husband's name?
A. William Erdman Fine.
Q. When did he die?
A. Five years ago this winter, the seventh of January?
Q. 1922?
A. Yes.
Q. Was he any relation to Steward K. Heitsman?
A. His cousin.
Q. How long had you known Steward K. Heitsman?
A. For forty-eight years or more.
Q. How often have you visited his home at 115 South Main Street?
A. Quite frequently since his wife died. I did visit always since we have been married.
Q. How frequently since his wife died have you visited Steward Heitsman's home?

A. On an average of once a month or a little over, perhaps.

Q. When your husband was living, did he visit?

A. Well, not so often because he always had me to go. We had our farm.

Q. How long have you know Katherine Stryker?

A. Every since she came there.

Q. How old was she when she came?

A. I don't know exactly.

Q. Was she a young girl?

A. A little girl.

Q. How long did she continue to live there?

A. Ever since.

Q. Now, after Steward K. Heitsman's wife died in 1916, what did Katherine do in the household there when you visited her?

A. Well, she did all the house work, cooking, etc.

Q. What had she been doing prior to her Aunt Emma's death?

A. Teaching, that year.

Q. How soon after her Aunt Emma died did she give up teaching?

A. I think she give it up right away, I think so.

Q. How often were you there visiting after Mrs. Mrs. Emma Heitsman died?

A. That's what I said before, once a month or something like that, yes.

Q. Now, at that time, did you haev any conversation with Steward K. Heitsman, after his death, with reference to Katherine?

THE COURT—After his wife's death do you mean?

Q. After his wife's death.

A. Yes, I said he was fortunate in having Katherine with him.

Q. What was said by him, if any thing?

A. He was pleased that he had and he said he would leave her well provided for.

Q. How soon after his wife's death was that conversation?

A. That was not long after her death because that was—

Q. During your visits after that, did you ever have any conversation with Steward K. Heitsman in which Katherine was discussed? ?

A. I don't think so, not so much.

Q. When you were there, what kind of attention and care did Katherine give Steward K. Heitsman?

A. I think she gave him very good care.

Q. Who managed the household?

A. She did.

THE COURT—There doesn't seem to be any issue on that.

MR. SMITH—I want to bring out that this was the kind of care that was not the ordinary care.

THE COURT—I think that sufficiently appears. I think a number of witnesses on the other side said that.

MR. SMITH—Then I don't want to go into it.

By MR. SMITH:

Q. Were you present one time when Katherine was buying a coat and Steward K. Heitsman was present.

A. I was present when it was brought there to her home.

Q. Do you know how many coats were sent there at that time?

A. Only the one .

Q. Just what took place?

A. She tried it on and he said he didn't like the coat.

Q. You mean Steward K. Heitsman?

A. Yes Mr. Heitsman

Q. What else if anything took place?

A She said she didn't like it either, that there was another coat but she didn't feel she could afford it. He told her to take this coat back and pay the difference, he would pay the difference, and she could have the other coat.

Q. From your conversations with Mr. Heitsman, during the last ten years of his life, state what kind of a mind he had?

A. A very keen mind, I think, for a man of his age.

THE COURT—There doesn't seem to be any issue upon that, does there?

Q. What kind of a will did he have? State whether he was strong minded.

MR. GEBHARDT—That is objetced to. Any act that would indicate it would be proper but I don't think that is a proper question.

BY THE COURT:

Q. Yes, you may state any fact that you know?

A. Well, I don't think anybody could have any influence over him. He seemed to have a will of his own.

MR. GEBHARDT—I object to that as not responsive.

THE COURT—That is not an objection for you to make. That would be for examining counsel.

By MR. SMITH:

Q. Did that continue down to your last visit?
A. Yes.
Q. When did you visit him last?
A. December, 1925.
Q. Did you talk with him then?
A. Yes.
Q Can you state whether he has ever been assisted around the house in these visits you made during the last two years of his life?
A. I think he assisted himself moving from chair to chair but if he had to go up steps he needed assistance.
Q. Who helped him?
A. Well, Katherine did, when I was there.
Q. Was that the only kind of assistance he required?
A. That's all I saw, yes.
Q. That is the only kind?
A. As far as I saw.

CROSS EXAMINATION

By MR. GEBHARDT:

Q. Are you quite friendly with Miss Katherine?
A. Well, I have always been friendly with her, yes, surely.
Q. And prior to the time of Emma Heitsman's death,

when Miss Stryker was teaching school, she made her home then at Heitsman's home, just the same?

A. Just the same, yes.

Q. Now you referred to an episode about the purchasing of a coat?

A. Yes.

Q. Was it true on other occasions, as it was on that occasion, that Stewart Heitsman wanted her to be well dressed and well cared for?

A. He always seemed to want her to be well dressed.

Q. Was he generous with her?

A. He seemed to be, yes.

Q. You referred to a conversation that took place shortly after Mrs. Heitsman's death, that he was pleased Katherine was there?

A. Yes.

Q. Give me that?

A. I said, he was fortunate in having one as good as Katherine to be with him and he said, "Yes," and he seemed to be pleased with her.

Q. That was all the conversation?

A. That was all except he said, "I will leave her well provided for."

Q. He didn't say how?

A. No.

Q. Didn't he say he expected to do that by his will?

A. He didn't say.

Q. I understood you to say that the only kind of assistance that Katherine gave him was to help him upstairs?

A. That was when he needed assistance the most, unless he was sick, or afflicted with his heart or something like that, then he would need more assistance.

Q. But, of course, he required some attention?

A. Yes.

Q. He couldn't have got along alone, could he?

A Oh, no, not at that time.

Q. And he depended upon her for such assistance as he required?

A. Yes.

Q. The relationship between them was very close?

A Very close. He always seemed to be very fond of his niece.

Q. Very fond of her?

A. Yes.

Q Miss Katherine was an educated woman?

A. Yes, sir.

Q. And in good health?

A. Yes, most of the time, but she has had sickness.

Q. And she ran the affairs of the household?

A. I think she did, yes.

Q. And can you tell me, Mrs. Fine, from what you know, from your visits there, as to whether or not Miss Katherine had some hired assistants to do some work of the household?

A The only time, I think, was in housecleaning or something of that sort.

Q. You don't recall any other occasions?

A. Mrs. Heitsman would be there and I think she assisted her

Q. You refer to Mrs. Elizabeth Heitsman?

A Mrs Elizabeth Heitsman.

Q When she was there she gave Katherine assistance?

A Yes.

By THE COURT:

Q. You say you were friendly with Miss Katherine?
A Yes.
Q Was she friendly with you?
A. Yes.
Q. Did she ever tell you anything about what her Uncle Steward had promised to do for her?
A. No, only just what he said. That is all I know. Katherine never told me. She never discussed her affairs like that to me.
Q. Did she ever tell you about his having made a will?
A. I didn't know that until—
Q. Did she ever tell you?
A. No, she didn't. I didn't know.

CARRIE F. KLINE, a witness produced on behalf of the defendant, Katherine N. Stryker, being duly sworn, testifies as follows:

DIRECT EXAMINATION

By MR. SMITH:

Q. Where do you live?
A. 118 South Main Street.
Q. That is directly accross the street from 115 South Main Street where Steward K. Heitsman lived?
A. Yes.
Q. How long have you lived there?

A. About twenty-four years.

Q. How long have you known Katherine Stryker?

A. Ever since I lived there.

Q. How long have you known Steward K. Heitsman?

A. Ever since I lived there.

Q. Have you visited their home at 115 South Main Street during the past ten years?

A. By calling?

Q. Calling?

A. Very often.

Q. How often during the past five years of Mr. Heitsman's life did you go in and visit?

A. Sometimes every day and sometimes twice a week and sometimes three times a week.

Q. You are friendly with Katherine?

A. Decidedly so.

Q. Would you see Mr. Heitsman on the occasion of these visits?

A. Almost every time.

Q. Where was he usually when you visited the house?

A. Sometimes in the kitchen, if I happened to go in the kitchen and if I went in the front room he might be in the living room or in the dining room.

Q. Did you ever see him outside of the house during the past two years of his life?

A. Yes.

Q. Where?

A. He would go from his house to the fruit stand next door, or at the gate or in the yard or on the street.

Q. Would he walk unassisted?

A. Yes, with nobody with him.

Q. How long has Mr. Heitsman been more or less unsteady on his feet?

A. I couldn't say. I couldn't say the number of years but it seems quite a little while.

Q. Did you visit there in September, 1925, before he died? I mean, calling at the house?

A. Well, I think I was in Mr. Heitsman's house every week within the last few years.

Q. Did you talk to him during the period of six months before his death?

A. Almost every time I went in.

Q. Did you have any conversation with him in reference to Katherine?

A. Only that he thought a great deal of Katherine and was fortunate in having Katherine there.

Q. When did he ever say that?

A. Well, I think within the last six months. I can't recall any special date.

Q. On any other occasion, did he ever say anything about Katherine in any talk with you?

A. I don't recall.

Q. Could you tell, from your conversation with him and his action, his attitude towards Katherine during the time you have known him?

A. Yes, I would say he regarded Katherine as a daughter.

Q. What was his condition with reference to his mind up to six months before his death and his will power as you found it?

A. I would say that his mind was all right.

Q. How long did you see him before he died?

A. I think a few days before he died.

Q. Did you talk to him then?

A. Yes.

Q. Was he, in conversation, any different than he had been prior to that for some time?

A. Not at all.

Q. What kind of attention did Katherine give Steward Heitsman during the last few years of his life?

THE COURT—There is no dispute about that.

MR. SMITH—I will withdraw it.

Q. Did you ever have any conversation with Katherine prior to Steward Heitsman's death, in reference to bonds?

THE COURT—The objection is overruled. He may answer yes or no.

A. Yes.

Q. When was that conversation?

A. I don't recall the date but it was in the fall before he died.

Q. What was the conversation?

MR. GEBHARDT—That is objected to as a self-serving declaration.

THE COURT—Is it a matter of contradiction of something that has been testified to?

MR. SMITH—There has been testimony here tending to show that she was trying to conceal the fact that she had these bonds—

THE COURT—I will hear the testimony now and you may reserve the right to move to strike it out.

Q. What was the conversation?

A. She came over to my house and she said that her uncle had given her the bonds. I said, "I think that was very good."

MR. GEBHARDT—I move to strike it out as being a self-serving declaration.

THE COURT—I will not strike it out but, of course, it will not be considered as any evidence of the fact that such a gift was made.

By THE COURT:

Q. Can you fix the date of that conversation?

A. No, I can't.

Q. Approximately?

A. Well, I think it was late in the fall, possibly after September. It was not early, but I don't recall the date.

CROSS EXAMINATION

By MR. GEBHARDT:

Q. You are a very close friend of Miss Stryker?

A. Decidedly so.

Q. And, I presume, you went in and out as women neighbors are quite likely to do, calling, etc., during this time, because of your friendship with Katherine?

A. I was to Katherine's a great many more times than Katherine was to my house because I was interested in her.

Q. You went over very frequently.

A. Very frequently.

Q. You said Steward did tell you, within the last six months of his life that he thought a great deal of Katherine and was fortunate in having her there?

A. He did.

Q. He told you that?

A. He did.

Q. But you couldn't recall his having said that to you any time before that? Did I understand you correctly?

A. You did.

Q. The relationship between them was extraordinarily close, practically that of father and daughter?

A. I would say so, from observation.

Q. He depended upon her to the greatest extent for help and assistance of various kinds?

A. Yes, I would say so.

Q. And he relied upon her and trusted her and confided in her, etc.?

A. Well, as far as confiding was concerned I couldn't say but he had a great deal of confidence in Katherine to do the right thing by him.

Q. He had confidence in her?

A. Yes.

Q. And you knew that?

A. Yes, sir.

Q. And he reposed a great deal of trust in her, did he not?

A. Yes.

Q. Did I understand you that this conversation you referred to was in September or December or when? I didn't quite hear that?

A. I didn't say any date but I thought it was after September because it was late in the fall.

Q. Late in the fall?
A. Late in the fall.

THEOPHILUS WIELDER, a witness produced on behalf of the defendant, Katherine N. Stryker, being duly sworn, testifies as follows:

DIRECT EXAMINATION

By MR. SMITH:

Q. Where do you live?
A. 113 South Main Street, Phillipsburg, New Jersey.
Q. A former sheriff of the County of Warren?
A. Yes, sir.
Q. What is your present business?
A. A special agent for the Lehigh and Hudson Railroad.
Q. Your home is part of the Heitsman property?
A. Yes.
Q. Next to the residence of Stewart Heitsman and Katherine Stryker.
A. Yes.
Q. How long have you lived there?
A. Six years last November.
Q. Where did you live prior to that?
A. 122 South Main Street.
Q. That was on the opposite side of the street directly across from this residence?
A. Yes, sir.

Q. How long did you live there?

A. Moved there in 1912.

Q. How long have you known Steward K. Heitsman?

A. Since about 1908.

Q. How long have you known Katherine Stryker?

A. The same length of time.

Q. During the last period of five or six years that you have lived next to Steward Heitsman's, have you seen him very often?

A. Yes, sir, quite often.

Q. Where would you see him?

A. I would see him, sometimes, right by our back doors and other times up through the lot, through the alley and by the front gate and in the front room as I walked by.

Q. Did you talk to him on those occasions?

A. Quite often, I did.

Q. Give us an idea approximately how often you would see him to talk with him?

A. Sometimes when I saw him I would see him every day and sometimes twice a week, when I was home.

Q. Your business calls you away frequently?

A. Yes, I am away sometimes a week at a time.

Q. How long before his death was it you saw him out in the yard, as near as you can recall?

A. Late in the fall I would say October.

Q. Was he able to walk then?

A. Yes, he walked with a cane.

Q. Have you seen him prior to that any time lifting anything?

A. I saw him carry things from the shanty into the house—it is an out kitchen a little ways from the other house.

Q. Have you ever seen him carry ashes?

A. I have.

Q. How long before his death was he able to carry ashes?

A. In the fall, after they started a fire in September and October.

Q. He was able to carry them?

A. He was.

Q. Did you ever have any conversation with Mr. Heitsman about Katherine Stryker?

A. Yes.

Q. What?

A. Well I had him talk to him about her.

Q. When was the first conversation, as near as you can remember?

A. Oh, right soon after I moved over there.

Q. Where would the conversations take place?

A. He may be at the front gate or right back at the back door. I usually saw him there oftener than any where else.

Q. What was this conversation?

A. Would talk about Aunt Emma dying, the Mrs. and how fortunate he was to have Katherine and someone to look after him and what good care she took of him.

Q. What was said by Steward Heitsman?

A. He said he had already provided for her and was going to give her some more later on.

Q. How long ago was that conversation? You say it was right after you moved there?

A. It was about, maybe, '24. Twenty-four, I would say.

Q. Did you have any other conversations with him with reference to Katherine after that?

A. Yes, sir, he talked with me along in, I would say, July. It was warm weather. He was sitting on the porch and I sat down to talk to him. It was hot weather. Either July or August.

Q. Prior to his death?

A. Yes.

Q. What was said that time?

A. What was said?

Q. Yes, what was said?

A. I come along and said, "How do you do, Uncle Steward," and I asked him how he felt. He said, "Pretty good," and then he talked and Katherine came in and walked in by us while we were there in the door and he said how fortunate he was to have someone that looked after him and everything, that, that looked after him and Frank and took good care of him like they did and he had already provided for her and was going to give her some more.

Q. Did he ever say anything else to you?

A. He did not.

Q. Nothing else?

A. No.

Q. Did he ever discuss his business affairs?

A. He never did except that time and the time before. He talked of other things about the farm and things like that and where he lived.

Q. He talked about the farm?

A. Yes.

Q. That was reminiscing?

A. Yes.

Q. From your observation were you able to tell who was really the head of that house during Steward Heitsman's life?

A. Yes.

Q. Who?

A. He was.

Q. Can you state how you happen to know that?

A. Well, he would talk about buying things and how he sold his farm and his mind was very keen at all times. He used to tell me where the first house was built in Phillipsburg and where they had wheat and corn in them and things like that.

CROSS EXAMINATION

By MR. GEBHARDT:

Q. You said that you had seen Steward Heitsman by his back door by the front gate, in his front room and by the alley?

A. Yes.

Q. Where is the alley?

A. About 75 or 80 feet north of the buildings, Reese Alley, I should have said.

Q. How far from his home?

A. Oh, that's a hundred feet from the back end, 125 feet from the back end of his house.

Q. You recall having seen him in those different places?

A. Yes.

Q. You said you saw him in the yard in the fall?

A. Yes.

Q. What fall was that?

A. '25.

Q. You said you had seen him carry some ashes?

A. Yes, sir.

Q. When was that?

A. That was in the fall of '25.

Q. How big a load of ashes was it?

A. A common ordinary coal scuttle.

Q. How far did he carry it?

A. From out of the kitchen door to outside the shanty, between the shanty and the house, on the walk.

Q. What distance was that?

A. Oh, maybe ten feet.

Q. Did he have a cane to assist him as he went along?

A. He had a cane in one hand.

Q. You said you had a couple of conversations with Steward about Katherine?

A. Yes.

Q. Can you fix the time when the first one took place?

A. Not exactly.

Q. About?

A. Not exactly, it was sometime in warm weather. I talked to him sometimes every day; never went in or out hardly that he wasn't standing at the door and I used to talk to him. I could never fix the date. I got nothing to fix the date, it was in warm weather.

Q. You couldn't give me what year it was?

A. '24.

Q. How do you happen to remember it was 1924?

A. Well, it was just two years after I moved over there.

Q. He said he had provided for her?

A. Yes.

Q. Did he tell you how he had provided for her?

A. No, he didn't.

Q. Or in what way he was going to provide for her?

A. No.

Q. Didn't make any mention of that at all?

A. No.

Q. Then you said the second conversation occurred in July?

A. Yes, sir.

Q. What year was that?

A. '25.

Q. How do you fix that as being 1925?

A. It was just the fall before he died; in that summer, as he died that winter, in January.

Q. Well, one time you said fall and another time you said summer?

A. Well, it was warm weather. He was sitting out on the porch.

Q. Well, it might have been September?

A. No, I think it was in warm weather.

Q. What makes you so sure?

A. Because it was a hot day and we were talking about the hot weather.

Q. Well, it might have been a hot day in September?

A. No, I don't think so. It was in August or July.

Q. You feel sure of that?

A. Yes.

Q. Either in July or August?

A. Either in July or August.

Q. Did he tell you how he had provided for her or how he was going to provide for her?

A. No.

Q. He didn't tell you that?

A. No, sir.

Q. He didn't give you any intimation of how that was?

A. He didn't say.

Q. Was Katherine present at that time?

A. No, sir.

Q. Which conversation was she present at?

A. Neither one.

Q. I understood you to say in—

A. I said she walked by while I sat on the stoop talking to him.

Q. Now you have testified that he was the head of the house?

A. Yes.

Q. Of course, she ran the house. She was the housekeeper, wasn't she?

A. She was.

Q. She ran the house and managed it and bought the supplies and everything of that kind?

A. As far as I know.

Q. And paid the bills, etc?

J. WALTER RUSH, a witness produced on behalf of the defendant, Katherine N. Stryker, being duly sworn, testifies as follows:

A. Yes.

DIRECT EXAMINATION

By MR. SMITH:

Q. Mr. Rush, where do you live?
A. Phillipsburg, 1413 South Main Street.
Q. What is your business?
A. Milk business.
Q. How long have you been engaged in that business?
A. Sixteen years this fall.
Q. Do you know Steward K. Heitsman?
A. Yes.
Q. Do you know Miss Katherine Stryker?
A. Yes.
Q. How long have you known Mr. Heitsman?
A. Practically twelve years.
Q. Was he one of your milk customers during his lifetime?
A. Yes.
Q. How long did you deliver milk to him.
A. About twelve years.
Q. Up to the time of his death?
A. Yes.
Q. Ho w often would you make edelivery to him?
A. Every morning.
Q. Who would pay you?
A. Mr. Heitsman.

Q. How long did he continue to pay you?

A. Every morning. Once and a while he wouldn't pay it and the next morning he would pay.

Q. In case he was sick, what happened?

A. Sometimes he would go two or three days and once in a while she would get the money and pay me.

Q. How long before his death did he pay you before his death, for the milk?

A. I don't remember. I think it was not over a month.

Q. Did you see where he got the money from?

A. Yes.

Q. Where?

A. His pocketbook.

Q. Did he ever talk to you about Miss Stryker?

A. No, sir.

Q. You would just deliver the milk?

A. I would just deliver the milk and say a few words and that's all.

Q. Could you tell whether there was any difference in his manner, his appearance and mind during the last few months you delivered milk there before he died?

A. No, I couldn't, I never saw any change.

CROSS EXAMINATION

By MR. GEBHARDT:

Q. You think that he remained exactly in the same condition of health?

A. I couldn't see any difference.

Q. You say he remained in exactly the same condition

of health, just as strong , and no more feeble during all the last twelve years of his life?

A. He was a little more feeble in getting up and down but his mind, I think I was asked about.

Q. But physically, he did become quite feeble?

A. I think he did, with age.

Q. As time went on and the time of his death approached?

A. Yes.

GEORGE RILBERND, a witness produced on behalf of the defendant, Katherine N. Stryker, being duly sworn, testifies as follows:

DIRECT EXAMINATION

By MR. SMITH:

Q. Where do you live?

A. 329 Washington Street, Phillipsburg.

Q. What is your business?

A. I run a paper wagon for—

Q. How long did you run a paper wagon?

THE COURT—Is this testimony to prove his mental condition?

MR. SMITH—And as to the payments right on up to the time of his death.

By MR. SMITH:

Q. How long have you known him?

A. I have been serving bread there for fifteen years every day. I have known him since that.

Q. You deliver bread in the morning?

A. Yes.

Q. Who would pay you?

A. Well, Mr. Heitsman used to come to the front door. He would pay me and sometimes Katherine would come there and she said, "Uncle will pay you tomorrow," and then when he got out again he would pay me.

Q. Did you see where he got his money from?

A. Out of his pocketbook.

Q. He was always there to pay you?

A. Always there to pay me.

By THE COURT:

Q. Do you mean that he paid you every day?

A. Yes, sir, sometimes he would let it go a couple of days.

By MR. SMITH:

Q. When Miss Katherine would come and get the bread would she pay you?

A. Very seldom, once in a while, most times she said, "Uncle will pay you to- morrow."

Q. And he would pay the bill?

A. And he would pay the bill, yes.

Q. How long before his death did Mr. Heitsman continue paying?

A. I think it was a little over a year, about nine months. He would come to the front door with a cane and pay me.

By THE COURT:

Q. You mean up until a year or nine months before his death?

A. About nine months before his death.

By MR. SMITH:

Q. You continued to deliver bread after that?

A. Yes, I do yet.

Q. Who paid you after the time he stopped?

A. Katherine paid me.

CROSS EXAMINATION

By MR. GEBHARDT:

Q. Previous to the nine months or a year previous to his death, when he was ill or couldn't get out, Katherine would pay you?

A. I think that was when he couldn't get out.

Q. On those occasions Katherine would pay you?

A. Katherine would pay me, yes.

Q. That is true?

A. Yes, sir.

JOHN A. BACHMAN, a witness produced on behalf of the defendant, Katherine N. Stryker, being duly sworn, testifies as follows:

DIRECT EXAMINATION

By MR. SMITH:

Q. Mr. Bachman, where do you live?

A. 111 South Main Street, Phillipsburg

Q. New Jersey?

A. New Jersey.

Q. What position do you hold with the Phillipsburg National Bank?

A. President.

Q. How long have you been President?

A. Nineteen years.

Q. And before that what was your position?

A. Cashier.

Q. How long have you been connected with that bank?

A. Fifty-three years.

Q. What is your age?

A. Eighty-two—eighty-one.

Q. You walk with a cane. How long have you had to use a cane?

A. About two years now.

Q. Did you have a fall in which you broke your hip?

A. Yes.

Q. Since then you have been unable to walk without the use of a cane?

A Yes, sir.

Q. Do you know Steward K. Heitsman?

A Yes.

Q. How long have you known him?

A. Forty-odd years.

Q. What was his business when you first knew him?

A. Well, I think he was farming.

Q. How long after you first knew him did he come to live in Phillipsburg?

A Well, he lived there a neighbor of mine about twenty years; longer than that.

Q. He lived in the Stryker homestead?

A. Yes.

Q. And continued to live there at the time of his death?

A. Yes, sir.

Q. Do you recall when Katherine Stryker and her brother, Steve, came to live with Mr. and Mrs. Heitsman?

A. I do.

Q About when was that?

THE COURT—There is no dispute about that.

Q. At that time, when they first came there, a number of years ago, did Katherine continue to live at that address with Mr. and Mrs. Heitsman, during her lifetime?

A. Yes, sir.

Q. Did Steward Heitsman ever, during your acquaintance, discuss business affairs with you?

A. Oh, very often.

Q. What kind of a man was he with reference to talking about his own private business affairs?

A. Wel, he would talk to me frequently, because of my position. He was a stockholder in the bank and he was inspector of elections for a number of years and, of

course, we were well acquainted and he had lots of confidence in me.

Q. Did he ever talk to others about his business affairs, do you know?

A. Well, Mr. Stryker—

Q. He is since dead?

A. Yes.

Q. He was also a director of the Phillipsburg National Bank and President of the Peoples Water Company?

A. Yes, sir.

Q. Was he related to Mr. Heitsman?

A. Yes, sir.

Q. Was he disposed to speak of his business affairs to people generally?

A. No.

Q. Do you recall what Miss Stryker was doing at the time that Mrs. Emma Heitsman died?

THE COURT—There is no dispute about that. Let us not waste time.

MR. SMITH—I don't want to waste time, Your Honor.

Q. Do you know what Katherine was doing at the time her Aunt Emma Heitsman died?

A. She was teaching school, I think.

Q. After her death did she go to live with Steward Heitsman?

A. Yes.

Q. Did she give up her position in the school?

A. She did.

Q. Now, did you ever have any conversation with Steward Heitsman, with reference to Katherine, on any occasion, after Mrs. Heitsman died?

A. After she died?

Q. Yes?

A. Well, about the bonds.

Q. I refer to any conversation you had. Did you ever have any conversation with him when he mentioned bonds?

A. Yes.

Q. When was the first conversation?

A. Five or six years ago.

Q. Where was that conversation?

A. It was over at his house, on the back porch.

Q. On his back porch?

A. Yes.

Q. What was said by Mr. Heitsman at that time?

A. Why, he told me that he had given Katherine $15,000 of the bonds and he said that in addition to that, he said, "Later on, I will give her the balance."

By THE COURT:

Q. "Later on I will give her the balance?"

A. Yes, the balance of the bonds.

Q. Did you know what bonds he meant?

A. Yes, sir, I knew what bonds he meant.

Q. How did you know, did you know before hand that he had these bonds?

A. Yes.

Q. They were the bonds he got for the farm?

A. Yes.

By MR. SMITH:

Q. You were acquainted with the transaction?
A. Oh, entirely.
Q. He had consulted you with reference to that?
A. Yes.
A. At the time?
A. Yes.
Q. Was there any other conversation after that with Steward Heitsman in which bonds were mentioned?
A. When I came back from the vacation, the year before he died—he died in January, I think, when I came back, in September, I understod he was sick, so I went over to his house to see how he was and he told me then, he said, "I have fixed it all up with Katherine. I give her—
Q. Anything else said at the time?
A. No.
Q. Did you see him at any time after that?
A. No. Well, I did see him, yes, but didn't go in the house.
Q. Didn't discuss it?
A. No.
Q. From your dealings with him, will you state what kind of a will he had?

MR. GEBHARDT—That is objected to. I think he should state as to only what he saw.

THE COURT—He may state what he knows about the facts concerning that.

Q. State what you know with reference to the facts of his being a man with will power?
A. He told me he made a will.

Q. No, his will power?

A. Oh, his will power was very strong, very keen.

Q. And did you have a conversation with him or conversations with him frequently for a year before he died?

A. Oh, yes, you see our houses were pretty nearly adjoining, our yards were open and I would go to his porch and talk to him.

Q. On any of these occasions did he discuss Katherine?

A. Oh, yes, his discussions were always very favorable to Katherine. He treated her as his daughter.

Q. Did he ever make any statement with reference to that; what did he say on any ocasion that you can recall?

A. I don't know. I frequently talked to him. He volunteeered that himself.

By THE COURT:

Q. You say he spoke about her?

A. Yes, sir.

Q. And spoke about her favorably?

A. Yes, sir.

Q. What did he say?

A. Everything was favorable.

Q. What did he say? Tell us some of the things he said?

A. He said he was very fortunate in having a person like Katherine to stay with him and take care of him and he never could do enough for her. That's as near as I can make out.

CROSS EXAMINATION

By MR. GEBHARDT:

Q. Mr. Bachman, how long have you known Miss Katherine Stryker?

A. Ever since she came to Phillipsburg.

Q. You have known her quite intimately during all that time?

A. Oh, yes.

Q. And have you been on very friendly terms with her?

A. Yes.

Q. And still are, I presume?

A. Yes.

Q. You said that Steward Heitsman was originally a farmer?

A. Yes.

Q. Do you ever recall when he retired from the active business of farming, himself?

A. It might be fifty years.

Q. Fifteeen years?

A. Fifty. He lived in the neighborhood where I lived nearly all that many years.

Q. All of that time he was not on the farm?

A. No, he wasn't on the farm.

Q. Did he ever follow any other business except farming?

A. I didn't hear of it?

Q. Was he a man of any particular education or unusual experience of any kind?

A. Just a common school education.

Q. That was all?

A. Yes.

Q. He had had no other education and no other unusual experience in the business world had he?

A. No.

Q. And you say he was not inclined to discuss his affairs with anybody so far as you know, except you?

A. And Mr. Stryker.

Q. Outside of Mr. Stryker?

A. Yes

Q. Now, as I understand you, as I understood the situation, Katherine lived at the home of Steward Heitsman, from the time she came to Phillipsburg, when she was a small girl?

A. That is right.

Q. And during all the time that she taught school, or anything like that, that was her home?

A. It was.

Q. While she was in any occupation?

A. Yes.

Q. You say Steward Heitsman regarded her as a daughter?

A. Yes.

Q. That relationship existed throughout all the period she lived there, from the time she was a small girl, did it not?

A. Well, I couldn't say that. After she was grown up, and her aunt died, he regarded her as his daughter.

Q. Previous to that time she had been brought up in his home?

A. Yes.

Q. He had looked out for her support and educated her, had he not?

A. Yes.

Q. And during all of that time he gave her the care and attention and affection, etc., that a man would give a daughter, did he not?

A. Yes.

Q. And that was her home?

A. Yes.

THE COURT—All of that testimony has been useless because there seems to be no intention on the part of anybody to contradict it.

Q. Are you actively engaged in any business now?

A. I am still president of the bank.

Q. Are you active or not?

A. No.

Q. You have not been so active for how long?

A. Since I was hurt.

Q. And that was about what date?

THE COURT—About two years ago or two and a half years ago.

Q. Will you fix for me, as near as you can, the time when you first had this talk with Steward Heitsman about the bonds?

A. I think about five or six years ago. I couldn't locate the date because I wasn't trying to keep a memorandum of it.

Q. Five or six years ago from the present time, is that correct?

A. Yes, sir.

Q. Can you recall what time of the year it was, or anything of that kind?

A. No, I couldn't do that.

Q. Will you tell me again, as near as you can, what the conversation was, and how it came to take place?

A. Yes, sir.

Q. Please do so?

A. Why, he told me that he had given $15,000.00 in Liberty Bonds to Katherine, and he thought he would give the balance thereafter. And that was confirmed by me seeing him just before he died,—in September before he died. In September.

Q. I am referring to the conversation five or six years ago. What you have just told me now is all of the conversation. Is that correct?

A. Oh, I don't think so; I think more or less was talked about, but I don't remember.

Q. That is all the conversation you can now recall?

A. Yes.

Q. Is that right?

A. Yes.

Q. Can you give me any idea of how it was that he came to tell you that he had given Katherine these bonds? Did you suggest the matters to him?

A. No, no suggestion of mine.

Q. Did you ever suggest to him that he should take care of Katherine?

A. No, sir.

Q. Or that she ought to be taken care of, or anything of that kind?

A. No, sir.

Q. You never spoke to him along those lines at all?

A. No.

Q. And did he mention just the word "bonds," or "Liberty Bonds," or how did he refer to the word "bonds"?

A. He said the bonds he got from the farm. I knew they were Liberty Bonds. And he spoke of them.

Q. He didn't say so in so many words?

A. Yes, he did.

Q. How did he refer to the bonds?

A. He said, "Liberty four per cent bonds."

Q. Did he tell you where the bonds were or where they had been or anything of that kind?

A. He had them in his box in the bank.

Q. Did he tell you that in this conversation?

A. I didn't ask him. There was no doubt in my mind that he had them in the box.

Q. Did he tell you how it was that he came to give her these bonds,—for what reason?

A. Well, a good many reasons,—her kindness to him, taking care of him—

Q. I only want what he told you in this conversation. Did he give you any reason in this conversation why he had given her these bonds?

A. For her loyalty to him and acting as a daughter faithfully to him and helping him, and, oh, a good many other things I can't remember.

Q. He actually said this in this conversation?

A. Yes, sir.

Q. Did he give you any other reason for giving her the bonds at that particular time?

A. No, I don't remember that.

Q. Did he, in any way, give you to understand why it was he gave her the bonds instead of providing for her in that way in his will?

A. Well, he did say he didn't want to have it in his will. That was an outside affair between him and Katherine.

Q. Did he give any other reason why he didn't want to have it in his will?

A. Well, it seemed to be they had an idea they would get clear of the inheritance taxes.

Q. He said that if he handed them over to her at that time, then probably he would not have to pay any inheritance taxes?

A. Something about that, but I give him no advice whatever.

Q. Is that it?

A. Something about it.

Q. What did he say to you about inheritance taxes?

A. He said he was told by somebody, I don't know whether it was Mr. Stryker, that he thought he might save the inheritance taxes.

Q. And that was his purpose in handing them over to her at that time?

A. No, I don't think that was much of a factor. It was his love for her.

Q. Was that the reason he handed them to her at that time instead of providing in his will that she should get them?

A. He never mentioned the will to me.

Q. He never did?

A. No.

Q. He didn't mention the will at all?

A. No, I asked him one time why he didn't have his will, why he didn't have it in his will, and he said, "I don't want it in my will."

Q. Did he say why not?

A. Well, he wanted to give Katherine the bonds.

Q. Was it because of the inheritance tax?

A. No.

Q. You are sure about that?

A. I never discussed the inheritance tax with him at all.

Q. You said a moment ago you did ?

A. That was between him and his lawyer. I didn't mix in the affairs that way.

Q. But didn't you say—

A. I didn't mix in that.

Q. But you say he did mention it to you on one occasion, did you not?

A. I couldn't be sure about that.

Q. You are not sure?

A. I couldn't be sure.

Q. You couldn't be sure about that?

Q. Did he give you any details about when the transfer was made?

A. No, I think I got that from Mr. Stryker.

Q. Or how it was made, or anything of that kind?

A. No, I only know the beginning of it and the end.

Q. That is all you know?

A. Yes, sir.

Q. He didn't mention anything else at all?

A. No, I didn't have no conversation with him.

Q. Now, coming down to the second talk you had with him, Mr. Bachman—

THE COURT—Before starting with the second talk, we will take a recess to two o'clock.

RECESS UNTIL TWO O'CLOCK.

MR. SMITH—If Your Honor please, I would like to substitute another witness for Mr. Bachman, if I may,

and call Mr. Bachman later. On account of his injury he is rather slow getting around, and he has not yet returned.

THE COURT—You may.

WILLIAM HENRY WALTERS, a witness produced on behalf of the defendant Katherine N. Stryker, being duly sworn, testifies as follows:

DIRECT EXAMINATION

By MR. SMITH:

Q. Mr. Walters, you are a lawyer in Phillipsburg?
A. Yes.
Q. Do you know Frank Heitsman?
A. I do.
Q. Brother of the late Steward Heitsman?
A. Yes.
Q. Your name is William Henry Walters?
A. Yes.
Q. And they call you Henry Walters?
A. They call me either Wiliam or Henry, yes.
Q. Did Katherine Stryker, since the death of Steward K. Heitsman, say to you in the presence of Frank Heitsman, in the residence of Steward K. Heitsman, "I went through Uncle's box thoroughly and I didn't find that will. If I had I should have changed it instantly"?
A. I never heard it.

By THE COURT:

Q. Or anything like that?
A. I heard nothing like it.

By MR. SMITH:

Q. Did any person present say to her, in answer to such remark, or use these words, "So you are going to keep what you hold?"
A. No recollection of anything like it.

By THE COURT:

Q. You would have recalled it if any such thing had been said, wouldn't you?
A. I certainly would, yes, sir.

CROSS EXAMINATION

By MR. GEBHARDT:

Q. Do you remember on one ocasion, after Steward's death, when you were at the Heitsman home to see Mr. Frank Heitsman about some bonds or something he was going to invest in?
A. My path from my home to the office passes his house. Mr. Heitsman asked me to assist him in investing some—to invest some of his money. I don't think I was in his house in regard to that investment. Generally he met me out in front of his house inquiring about it, and I think on one occasion, possibly twice, knowing that he was a little timid over his investment, I stopped in and discussed the matter with him—a very few minutes.

Q. You are a busy lawyer, aren't you?

A. Well, I would rather somebody else state that.

THE COURT—I think you can answer that, Mr. Walters, without violating your sense of modesty.

A. Yes, I will say.

Q. Having conferences with a great many clients?

A. I suppose I am doing considerable business, office business more than anything else.

Q. And it is difficult sometimes to remember the details of all your conversations?

A. I could have remembered that very well, because it would strike my attention, for her to make any remark of that kind.

Q. You have no recollection of that?

A. None whatever.

JOHN A. BACHMAN, resumes the witness stand.

CROSS EXAMINATION (Continued).

By MR. GEBHARDT:

Q. Referring to the second conversation you had with Steward Heitsman in reference to these bonds, will you please tell me what that conversation was, just as near as you can recall it?

A. There wasn't much conversation. I called to see him. He was sick at the time, and he passed the remark, he said, "I have taken care of Katherine and have passed over the balance of the bonds." That is all I know. That is all.

Q. What was that last?

THE COURT—"I have passed over the balance of the bonds."

Q. That is all that was said?
A. That is all.
Q. Was he in bed?
A. No, he was around the house.
Q. But he was sick?
A. Yes, sir.
Q. You can't fix the exact time of that, I understand?
A. In September, when I came back from my vacation.
Q. You don't recall what time in September?
A. No, I don't know the exact date.

RE-DIRECT EXAMINATION

By MR. SMITH:

Q. When you returned it was rather late in September, when you returned?
A. Labor Day.
Q. When you returned from the Poconos?
A. Yes.
Q. This was after you had come back?
A. Yes, probably the next day.

HESTON R. WEST, a witness produced on behalf of the defendant Katherine N. Stryker, being duly sworn, testifies as follows:

DIRECT EXAMINATION

By MR. SMITH:

Q. Dr. West, you are a practicing physician in Phillipsburg?

A. Yes, sir.

Q. How long have you been practicing medicine?

A. Forty-two years.

Q. During that time you have practiced entirely in Phillipsburg, N. J.?

A. Yes, sir.

Q. Where is your residence at the present time?

A. 29 South Main Street, Phillipsburg.

Q. How long did you know Steward Heitsman before his death?

A. Forty-two years.

Q. How close relationship did you have with him during that time?

A. For ten years I was under the same roof, on the other side of the house, and the balance of my life alongside of him.

Q. Two doors away from his residence. You live next to Mr. Bachman's residence?

A. Yes, sir, but his residence wasn't there only of late years.

Q. How long did you attend Steward Heitsman professionally before his death?

A. I presume I doctored him ever since I lived there, not continuous; whenever they were sick.

Q. What was the condition of his health up to 1916, the time his wife died?

A. Quite good.

Q. What was his condition with reference to walking at that time?

A. He walked then all right

Q. Did you attend him subsequent to that frequently or infrequently?

A. Not often.

Q. What did you find him ailing and complaining from during the last ten years of his life, principally?

A. His principal trouble was heart disease, gastralgia, trouble in the stomach, rheumatism.

Q. Did you treat him for anything else?

A. I believe he had the grip once.

Q. What was the effect of the rheumatism?

A. That made him rather stiff in his limbs and the motion of his limbs.

Q. And made it difficult for him to walk?

A. Somewhat, yes.

Q. He had to use a cane?

A. Yes, he used the cane.

Q. And sometimes the effect was more than at others?

A. Yes.

Q. So that sometimes, under unusual exertion, he might have to have the assistance of someone else in getting up and down stairs, or things of that kind?

A. Yes, sir.

By MR. SMITH:

Q. Did this heart condition from which he suffered necessitate his walking slowly in going up and down stairs?

A. Yes.

Q. Now, did any of these complaints have any effect upon his mental condition?

A. No.

Q. What was the state of his mental condition a short time before his death?

A. Good.

Q. Was there any change in his mind, in his mental condition, during the last ten years of his life, up to the time of his death?

A. No.

Q. How could you tell that?

A. Tell by talking to him and hearing him talk and his answers.

By THE COURT:

Q. You say you did not treat him professionally during that period, but you saw him other times when you didn't treat him professionally?

A. I didn't treat him often until ten years ago.

Q. In addition to the times you treated him, did you see him other times?

A. Oh, yes.

Q. You were friends as well as his physician?

A. Yes, sir, I presume I have been in his house a thousand times; more than that.

By MR. SMITH:

Q. During the conversation you had with him during the past year of his life, was there any change in his mental condition?

A. No.

Q. Do you know of any facts with reference to his being a man of strong will?

A. He had a strong mind.

Q. How could you tell that?

A. Well, you couldn't persuade him; he couldn't be persuaded by anybody.

Q. Did you find that out from your own experience as a physician?

A. Yes, all through life.

Q. Do you know his brother, Frank Heitsman?

A. Yes, sir.

Q. You called upon him this morning and found him in bed, didn't you?

A. Yes.

MR. GEBHARDT—We will take counsel's word for that.

Q. You did?

THE COURT—Counsel says he will take your statement for that.

Q. What was the condition between the two brothers and their general attitude toward people?

MR. GEBHARDT—I object to that. I don't see how that is material.

THE COURT—Of what materiality is it?

MR. SMITH—We contend that Frank Heitsman was very silent and never talked to anyone; the other man was jolly, but these men never spoke to each other, and they didn't make free with one another. I think it is material with reference to later testimony.

Q. (Stenographer repeats the question.)

A. Frank Heitsman was a man that never talked to anybody much, you might be with him for an hour and he would not say more than ten words, where Steward Heitsman would be talking all the time—cheerful, jolly disposition.

Q. He was jolly?

A. Yes, sir.

Q. Were you able to observe the relationship, so far as conversation in other matters, between Steward Heitsman and his brother Frank Heitsman?

A. Yes.

Q. What was the relationship?

A. Why, they agreed all right. There was no hard feelings between them.

By THE COURT:

Q. No friction between them of any kind?

A. No, only he was quiet; he never talked. He would go down the street every day and back again. He would go down in the morning and he would come back at noon, and maybe meet twenty people on the street and never say a word to them.

By MR. SMITH:

Q. That was Frank Heitsman?

A. Yes.

Q. Did you ever see Frank and Steward Heitsman talking together holding a conversation together on occasions?

A. Saw them speak to each other.

Q. What do you mean by speaking to each other?

A. Well, referring to some of the things around the yard or in the house.

Q. How frequently did they talk to one another during the day?

A. Not very frequently.

Q. They were entirely different dispositions?

A. Yes.

Q. During the time of the past six years, how often have you attended Steward Heitsman professionally?

A. Very frequently.

Q. What, principally, were you called upon to treat him for during that time?

A. For cramps and heart attacks.

By THE COURT:

Q. What does very frequently mean, once a week?

A. Sometimes I would see him every other day and then again I would not see him once in three weeks. During the past ten years there have been times I haven't seen him for six months; that is, to prescribe for him.

By MR. SMITH:

Q. What was the nature of these heart attacks that he would have?

A. Weakness of the heart.

Q. And that was caused by what, so as you diagnosed it?

A. The rheumatism and old age together.

Q. Did that have any effect upon his mental condition?

A. None.

Q. His mind?

A. None.

Q. Or his will power?

A. None.

Q. How long have you known Katherine Stryker?

A. Ever since I have lived in Phillipsburg.

Q. Have you observed her treatment of her Uncle during the past ten years, since she has kept house for him?

A. Yes.

Q. What have you observed her do during that time?

THE COURT—Is this worth while? It seems to be admitted that she took care of him.

MR. SMITH—I will withdraw the question.

Q. Did Mr. Heitsman ever talk to you about Katherine after Mrs. Emma Heitsman died?

A. Yes, sir.

Q. How long after Mrs. Heitsman's death?

A. A short time afterwards.

Q. Where did that conversation take place?

A. Talked to him about it in his house.

Q. What was said at that time with reference to Katherine by Mr. Heitsman?

A. He told me that he and Katherine were left alone in this world, and that it was the intentions for to leave the homestead to Katherine, but Mrs. Heitsman was taken sick so suddenly and severely, and it lasted such a very short time, that they didn't make a will; and he wanted to see that everything was provided for her in the future. That was it.

Q. Did he say anything with reference to a will?

A. Yes.

Q. What did he say about that?

A. He told Key Stryker and I in the house that he had made a will and fixed his things for the time being.

Q. When was that conversation,—how long ago?

A. That was a short time after his wife died.

Q. Was Katherine's name mentioned at that time?

A. Yes.

Q. What was said, if anything?

A. He said he had turned over all his bank stock, given her the bank stock and the water stock.

Q. Now, did you have any conversation with him after that with reference to Katherine?

A. I never talked to him—that is, I never broached the subject; he talked to me different times.

Q. What did he say after that on any occasion that you now recall?

A. He told me that he had turned over part of his government bonds to her.

Q. How long ago was that conversation?

A. Oh, it must have been four years ago.

Q. Did he say anything else that you recall, at that time, as to why he did it? What happened? State any other conversation at that time that you remember.

A. Only that he wanted to see that she had those things, that he hadn't made provision for her in his will.

Q. Now, did you have any other conversation in which he said anything in reference to Katherine?

A. I had a conversation with him— What about?

Q. About Katherine, bonds, or anything else with reference to Katherine?

A. A couple of months before he died he told me that he had turned over the balance of the bonds to her.

Q. To Katherine?

A. Yes.

Q. Where was that conversation?

A. In his house.

Q. Where?

A. In his dining room.

Q. How did you happen to be there that day?

A. He was sick.

Q. What was the trouble?

A. He had a heart attack.

Q. Just what was said by yourself or by him prior to that?

A. I told him these attacks were coming harder and harder all the time and more frequent, and some of these times one of them would take him off, and if he had anything he wanted to attend to he had better do it.

Q. What was said by him?

A. He told me he had attended to everything. He said he had given her all his bonds.

Q. Did he say anything about his will?

A. Not at that time.

By THE COURT:

Q. Well, at any other time? You say he did not say anything about his will at that time?

A. No.

Q. Did he say anything about it at any other time?

A. He told me after he made his will, that was after his wife died.

Q. Did he ever speak about a will at any other time?

A. Yes, he said that the balance of his property was recorded in his will, but the bonds were not mentioned and had nothing to do with the will, and he turned them over to Katherine so as everything would be straight.

Q. When was it he told you that?

A. That was in December, I think, 1925.

Q. A month or two before he died?

A. Yes, sir, a month and a half or two months before he died.

Q. Did you know these bonds had been obtained by him as the price of the farm?

A. Yes.

Q. And did you know that in his will he had originally left the farm to these seven relatives?

A. Yes.

Q. And you knew, therefore, that the giving of the bonds to Katherine deprived these seven relatives of what they would have got if he had not sold the farm and given the proceeds to Katherine?

A. Yes.

Q. Did he ever say why he did it?

A. He spoke of the farm that he didn't consider it worth much until the war started and the Ingersoll people wanted to build a factory; they had a factory, and they were buying up different farms in that locality, which was supposed to keep other plants out.

Q. Is that all he said?

A. All I can remember just now.

Q. I asked you whether or not he had said anything about why he had made the change, instead of having

these seven relatives get the bonds or the farm he had given the proceeds to Katherine Stryker?

A. He said that Katherine had been with him all that time and had taken care of him and he regarded her as his daughter.

Q. And he gave it to his daughter?

A. Yes.

Q. Well, I understand you to mean that he explained that, when he had left this farm to these seven children, or these seven relatives in his will, he didn't consider it worth much?

A. Not so much at that time. Land was not of much value in that vicinity at that time.

By MR. SMITH:

Q. Doctor, do you recall one time when Steward Heitsman came to your office after going to the bank, and you found him there in a bad condition in front of your office?

A. Yes, sir.

Q. When was that, as near as you can tell?

A. That was a few weeks after his wife died.

Q. What was his condition at that time?

A. He was very low.

Q. What was he suffering from?

A. Heart trouble. He couldn't get in the house. He was pale, his lips were dark. We carried him in and put him on the couch, and for twenty minutes you couldn't detect his pulse. We thought he was gone, or was going.

Q. How long was he in that condition?

A. He was in that condition about twenty minutes, and I kept him quiet and wouldn't allow him to be moved at all until between eight and nine o'clock that night, and

then I went in my office and had four men come in and they carried him over and put him in his bed.

Q. Was he able to talk after a while?

A. Later on, oh, yes.

Q. What was said by him when he was able to say anything?

A. Well, for a while he didn't talk very much, and I don't know what he did say. It was mostly about his condition, what he said.

Q. Did he ask for anyone?

A. He asked for Katherine.

Q. Now, did he recover from that temporary condition so as to be able to walk after that?

A. Yes, sir.

Q. Did he go to the bank after that?

A. Oh, yes.

Q. That was just a heart condition?

A. Oh, yes.

Q. At any time during your visits at the house did you ever see any attempt on the part of Katherine to exercise any influence on her uncle with respect to business matters, at all?

A. No.

Q. Did you see any influence exercised by anyone?

A. No.

Q. Do you know how often Katherine was away during the past ten years?

A. Not very frequently.

Q. Can you tell us about how often she was away?

A. She went to Washington, D. C., to the D. A. R. meeting a couple of times and went to Poughkeepsie one day, and another day to New York and two or three days to Boston. She didn't go much.

Q. What was her condition during the past five years with reference to her health?

A. Fair.

Q. During that time was she seriously ill?

A. Yes, she was seriously ill.

Q. What was she suffering from?

A. She had acute Bright's disease, dropsy through the arms, head, face, body, neck, legs—about twice her natural size.

Q. Doctor, about how long did that illness continue?

A. Two weeks.

Q. How long before she fully recovered from that condition?

A. Oh, some little time.

Q. During that time was she able to look after her Uncle Steward?

A. Oh, not when she was sick.

Q. Who looked after him then?

A. He attended to himself.

Q. And got his meals for himself and his brother?

A. Yes.

Q. Anyone there to look after Katherine?

A. We had Katherine in the hospital for two weeks. I attended her in the hospital.

Q. Were you called in the last illness of Steward Heitsman?

A. Yes, sir.

Q. Where was he taken sick?

A. Down stairs, I think.

Q. In the kitchen of his home?

A. In the dining room; yes, the dining room.

Q. When you went there was he conscious?

A. Yes, sir.

Q. Did you talk to him?

A. I did.

Q. And what was the cause of his death?

A. Heart failure; heart weakness.

Q. Was it a natural death?

A. Perfectly natural. There was nothing given him to hurry his death, whatever.

CROSS EXAMINATION

By MR. GEBHARDT:

Q. You are quite friendly with Miss Katherine Stryker, Dr. West?

A. Yes.

Q. And have been for a good many years?

A. Yes, sir.

Q. I think that you said it was shortly after his wife's death that he had this very severe attack when you could not detect his pulse?

A. Yes.

Q. Is that right?

A. It is.

Q. And he had attacks of heart trouble right on down to the one that took him off, from time to time?

A. For several years he didn't have any attacks. They came later on in life, but he had a very severe attack two or three weeks after his wife died.

Q. Two or three weeks after?

A. Yes, sir.

Q. These attacks came on the last six or seven years of his life. Would that be about right, do you think?

A. I would say the heart attacks came about the last three years.

Q. And as time went on they became more frequent and more severe?

A. More severe.

Q. And on those occasions it was necessary for you to attend him very frequently?

A. Quite frequently.

Q. You said, Dr. West, that he would not allow himself to be persuaded by anyone?

A. Yes.

Q. Can you tell me of any specific instance when you noticed that trait in him?

A. I always noticed it in him.

Q. Always?

A. Yes.

Q. Can you give me any specific instance of that?

A. No. I have noticed it at times when they would want him to do something and he would exercise his own judgment and with regard to his clothing, etc., you couldn't persuade him.

Q. That was with reference to personal matters, his own clothes, etc?

A. Personal matters.

Q. Can you remember any specific instance that particularly impressed itself on your mind so that you recall it yet today?

A. I know that whatever he said was law and had to be obeyed in his house.

Q. Yes, you have said that before, can you give me any particular instance of that that has impressed itself on your memory?

A. Well, yes, there have been times when I have known that the son wanted to go out, wanted to go to

town and he would tell him to stay home and he would plead with him. He would go and plead with him to go and he said, "No," and when he said no he meant no.

Q. How long before his death?

A. I don't know.

Q. Fifteen or twenty years?

A. Yes, sir, longer than that.

Q. Longer than fifteen or twenty years?

A. Yes.

Q. Do you recall any other instance of that nature?

A. Many a time I wanted him to go out riding with me. His barn and my barn were located side by side and I wanted him to go out with me but I couldn't persuade him to not unless he felt just like it.

Q. And, did he ever discuss his business affairs with you outside of the time you have mentioned here on direct examination?

A. Yes, sir.

Q. Was he a man who frequently discussed his business affairs with people, or only infrequently?

A. Oh, when it come to financial business he never said much to anyone. I don't believe he ever mentioned financial business outside of his family, Key Stryker, John Martin and myself.

Q. And he didn't mention it to you people very often?

A. Well, he talked to me oftener, I guess, than to anybody else. I lived in his house for some time under the same roof and I was over there every day a half a dozen times sometime.

Q. You were very friendly with him and his family?

A. Very friendly.

Q. Did he have hardening of the arteries?

A. Yes.

Q. Does that affect the activity of the brain to some extent some times?

A. Not necessarily.

Q. Does it in some instances?

A. It might, yes.

By THE COURT:

Q. Did it in his instance?

A. No, sir.

By MR. GEBHARDT:

Q. Coming down to these conversations, Doctor, will you repeat to me the first conversation in which he said he and Katherine were left alone in the world?

A. When do you mean?

Q. You said on one occasion he said to you, he and Katherine had been left alone in the world?

A. Yes.

Q. Give that conversation again, please?

A. He told me that he and Katherine were left alone in the world.

Q. Is that all?

A. Yes.

Q. What did he say about his brother, Frank?

A. Well, he said Frank was there.

Q. How is that?

A. Frank, he referred to Frank as getting along in years and couldn't depend on Frank as far as care was concerned.

Q. The only one he had to depend on was Miss Katherine?

A. Yes, sir.

Q. All right, now, give us the rest of that conversation, will you please?

A. The conversation at what time?

Q. What you just started here, in which he said he and Miss Katherine were left alone in the world?

A. He said he was going to look after her.

Q. Was that all that conversation?

A. No, he spoke of giving her the bonds.

Q. But that was later, wasn't it?

A. About three years before—

Q. I am speaking of this conversation where he said he and Katherine were left alone in the world and he intended to provide for her?

A. Yes.

Q. Was anything else said in that conversation?

A. I often heard him—

Q. In this particular conversation?

A. I heard him repeat at different intervals referring to he and Katherine being alone.

Q. And that he was going to make a will and provide for her?

A. Yes.

Q. Can you give me the last time he told you that, the approximate date of that?

A. Well, the last time he was talking pertaining to her was in December, 1925?

Q. The last time where he said to you as you say he said to you frequently, that he intended to provide for her by his will, or something to that effect?

A. He said so different times.

Q. When was the last time he said that?

A. Well, he said that he was telling me three years before his death that he had provided for her.

Q. That he had provided for her?

A. That he had provided for her.

Q. Did he say how he had provided for her?

A. Yes, sir.

Q. What did he say?

A. He told me he had given her $15,000 of bonds.

Q. Did he say how he had done that by his will or how?

A. He said he had given her the bonds.

Q. The bonds themselves?

A. Yes, sir.

Q. Now, can you give me as near as you can, the date when that conversation took place?

A. About three years before he died, approximately.

Q. Three years before he died?

A. Yes, sir, it might have been a little more or it might have been a little less, in the neighborhood of three years.

Q. How did he come to tell you that, do you know?

A. I don't know how he come to tell me. He was talking about Katherine and his being sick and his heart attacks.

Q. Referring to that conversation again, can you give me as nearly as possible the exact words he used when he told you that?

A. I can't gve you the exact words .

Q. You can't?

A. No, sir.

Q. Well, give them to me as near as you can?

A. "I have given Katherine fifteen thousand of my Government bonds. She has those in her possession."

Q. That is as near as you can recall, was it?

A. Yes, sir.

Q. Then, the last conversation you said, he told you he turned over to her the balance of the bonds?

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. And you said at that time he was sick with a heart attack?

A. Yes, sir.

Q. Is that correct?

A. Yes, that was in December.

Q. Was he in bed at that time?

A. He had been in bed sick. These heart attacks, they wouldn't last long. It goes down quickly. I give him a hyperdermic injection or two and the next day he would be around.

Q. But he was sick when he told you that?

A. Yes. When he had the attacks he wouldn't tell me much then. He was too sick to tell me. The next day I would go in and see him and as a rule then he would be very talkative.

Q. Tell me the conversation again in which he referred to his will, in which he said he had not mentioned the bonds in his will?

A. Oh, that was a little while after Mrs.—he spoke of his will after Mrs Heitsman had died a few weeks.

Q. A few weeks after her death?

A. Yes.

Q. When was the conversation and what was it in which he said he had not mentioned the Liberty Bonds in his will?

A. Oh, that was later on.

Q. About when?

A. Three years before he did.

Q. Three years before he died?

A. Yes, sir.

Q. And just give me that conversation again .

A. He said that he had given Katherine fifteen thousand Government Bonds.

Q. Yes?

A. And he referred that he hadn't mentioned that, that part wasn't in his will.

Q. That he had not mentioned the Liberty Bonds in his will?

A. No, he didn't have any Government Bonds in his will at that time. When he made his will I don't think he had any Government Bonds.

Q. Did he say whether or not he had them at the time he made the codicil to his will?

A. I don't know nothing about the codicil.

Q. He never mentioned that to you?

A. I heard the codicil mentioned but I don't know anything about when it was or what it was.

Q. You don't know that?

A. No.

Q. You are sure that conversation took place three years before his death? I understood you on direct examination to say it took place in December, 1925?

THE COURT—That was the second conversation.

A. In 1925 he told me that he had given Katherine the balance of his Government Bonds.

Q. Any mention made at that time that they were not in the will?

A. He did mention it that they weren't in the will.

Q. In the same conversation?

A. I think he mentioned it.

Q. When?

A. At that time.

Q. After Miss Katherine had the attack of Bright's

disease she made a complete recovery so that since that time she has been in very good health?

A. Yes.

Q. You referred to this farm that Steward K. Heitsman owned, Doctor?

A. Yes.

Q. That farm is located on what was at that time the outskirts of Phillipsburg?

A. Yes.

Q. And is now one of the suburbs of Phillipsburg?

A. Yes.

Q. And for quite a long time that has been a very valuable piece of property?

A. Not until the war time, not so very valuable.

Q. Do you mean the time we got in the war or 1914?

A. The time we got in the war.

Q. From 1917 on down?

A. Yes, I can give you an idea of the value of a farm between the Ingersoll Plant and Phillipsburg. I had an option on it for $7,000 by J. I. Blair Reiley.

Q. When was that?

A. After the Ingersoll Plant moved to Phillipsburg.

By THE COURT:

Q. That doesn't mean anything to me. When was it that the Ingersoll Plant located in Phillipsburg?

A. Twenty-five years ago, maybe a little more. That was 56 acres. I had an option on it that lasted for a few days at $7,000.

Q. How big was Mr. Heitsman's farm?

A. I think it was 88 but that wasn't located like this farm. It was located away off from the Ingersoll plant.

By MR. GEBHARDT:

Q. From 1917 down it has been a valuable piece of property, is that so?

A. Yes.

RE-DIRECT EXAMINATION

By MR. SMITH:

Q. Is there a large vacant tract of land between this farm and Phillipsburg owned by the Roseberry family?

A. Yes.

Q. Was that unbuilt and undeveloped at the time this farm was sold?

THE COURT—It was unbuilt if it was vacant.

Q. Was it not laid out?

A. Yes. That is, the farm I had the option on.

Q. That was practically up against the built up section of Phillipsburg?

A. Yes, sir.

RE-CROSS EXAMINATION

By MR. GEBHARDT:

Q. This farm has become very valuable since that time?

A. Yes, sir.

Q. It was very valuable in 1918 down to the present time?

A. Yes.

Q. And quite largely built upon now?

A. Yes, there are some building, buildings going up on it.

By THE COURT:

Q. When did the increase in real estate values take place there in 1917 or 1918?

A. After the war started. The Ingersoll plant had located there and during the war—

Q. I want to know what year it was that that increase took place?

A. The big increase come after we entered the war.

Q. How long after we entered the war?

A. About two years and as it kept building up it kept increasing.

By MR. GEBHARDT:

Q. Hadn't there been a very large increase in the value of real estate when he sold the farm?

A. There was an increase in the value of the lots in Phillipsburg near the center of the town, the hill section, lots doubled in value, but on the outskirts of the town, over in Delaware Park, there were lots sold for $25, 50 foot front and 175 feet deep.

Q. At what time?

A. Just a little while before that, before the war, and this Delaware Park that I speak of, Heitsman's farm was beyond that yet.

Q. Assuming that at the time Mr. Heitsman sold his farm in 1918 he received $30,000 and perhaps more than that for the farm, would you then say the increase in real estate values had begun or had taken place before—

A. Not much before that.

Q. In your opinion this farm was worth about $30,000 quite a while prior to that?

A. No, sir.

Q. How do you reconcile it?

THE COURT—That is what he said.

A. Before it was sold I wouldn't give $8,000 for it.

Q. How long before the farm was sold did this increase start?

A. About the time it was sold. That is the time the Ingersoll plant was buying up those farms.

Q. That is about the time?

A. Yes.

Q. Can you give me any information about real estate values outside of this one farm which you had an option on in that vicinity?

A. Any others?

Q. Yes?

A. Yes, there was one, there was the Klymer farm.

THE COURT—I don't see that this is worth while. It is a matter of common knowledge that there was an increase in real estate values in 1918. The Court will take judicial notice of that. It has nothing to do with the main question of cost.

MR. GEBHARDT—The question is withdrawn.

KATHERINE N. STRYKER, the above named defendant, being duly sworn in her own behalf, testifies as follows:

DIRECT EXAMINATION

By MR. SMITH:

Q. You are the Katherine Stryker in this suit?
A. Yes.
Q. The defendant?
A. Yes.
Q. How old are you?
A. Forty-two.
Q. How long have you lived with your aunt, Mrs. Emma Heitsman and her husband, Steward Heitsman, up to the time of Steward Heitsman's death?
A. Thirty-four years, I came to Phillipsburg in January, 1892.
Q. Thirty-four years?
A. Thirty-four years.
Q. What were you doing in 1916, at the time your aunt died?
A. Teaching school.
Q. How long was your aunt illl?
A. Two days.
Q. After that, what did you do?
A. I stayed home.
Q. And did you ever go back teaching again?
A. I did not.
Q. You stayed home with you uncle?
A. Yes.

Q. How did you happen to stay at home with your uncle?

A. He asked me.

MR. GEBHARDT—That is objected to on the ground that the answer to the question apparently is likely to relate to a transaction with the decedent.

THE COURT—There has been a good deal in the testimony concerning that. You do not represent the Executor.

MR. GEBHARDT—No, sir, but I do represent a party to the suit, and she does not want to be bound by anything the decedent may have said.

THE COURT—In order to save time I will take the testimony now and rule on it later.

Q. (Stenographer repeats the question.)

A. My uncle asked me to.

Q. And what did you do after you stopped teaching school?

A. I kept house for Uncle.

Q. And did that continue down to the time of his death?

A. Down to the time of his death.

Q. From 1916 until he died in 1926, how often were you away?

A. Not very often.

Q. Can you tell us just how often? Were you away for more than one day?

A. I was in the hospital for two weeks when I had acute Bright's disease, in 1917 and I was in the Easton

hospital six days when I had my tonsils out, that was in 1922. I went to Washington, twice, I think, to the D. A. R. meeting and I was away a number of times just for the day, and I was at Boston five days.

Q. Were they the only times you were away over night during that ten years?

A. A couple of times I was in Trenton at the D. A. R. meeting.

Q. Did you stay over night then?

A. I did twice, I think, and I was to Jersey City once, over night, too.

Q. Did you receive any compensation from your uncle for acting as his housekeeper and taking care of him?

MR GEBHARDT—That is objected to on the same grounds. Will it be necessary Your Honor for me to object to each question or may I have a general objection.

THE COURT—I think you had better object to each question. I shall make the same ruling.

Q. Did you receive any compensation for that?

A. No regular compensation, no.

Q. You say, "No regular compensation"?

A No.

Q. From whom did you get the money to buy things for the house?

A. Uncle Steward.

Q. Steward K. Heitsman?

A. Steward K. Heisman.

Q. How often would you get money from him?

MR. GEBHARDT—Objected to on the same grounds.

THE COURT—Same ruling

A. Whenever I needed it. He never gave me an allowance to run the house.

Q. How often did you go to the bank with him during the ten years—

MR. GEBHARDT—The same objection.

THE COURT—Objection overruled.

A. I don't know.

Q. Where would he get the money from?

MR. GEBHARDT—I object to that on the same ground.

THE COURT—Same ruling.

A. From the bank.

Q. When was the last time he went to the bank?

MR. GEBHARDT—Objected to on the same ground.

THE COURT—The same ruling.

A. I am not sure. I should say two or three years before he died, possibly longer.

Q. You don't recall the date?

A. I don't recall the date.

Q. How often did you go with him when he went to the bank during the last ten years of his life?

MR. GEBHARDT—Objected to on the same ground.

THE COURT—Overruled.

A. Well, the last four or five years of his life I presume I went almost every time he went to the bank.

Q. And prior to that?

MR. GEBHARDT—That is objected to on the same ground.

THE COURT—Same ruling.

10 A. Very often.

Q. When did you start writing out checks for your uncle?

MR. GEBHARDT—Objected to on the same ground.

THE COURT—Objection overruled.

A. A couple of years before he died, maybe three, I don't know.

20 Q. How did you come to do that ?

MR. GEBHARDT—Objected to on the same ground.

THE COURT—Same ruling.

A. He asked me to.

Q. Who told you what to put on the checks and to whom to make them payable?

30 MR. GEBHARDT—The same objection.

THE COURT—The same ruling.

A. Uncle Steward did.

Q. Who signed the checks?

MR. GEBHARDT—Objected to for the same reason.

THE COURT—The same ruling.

A. He did.
Q. Did you ever sign his name to the check?
A. I never did.
Q. You did not?
A. No.
Q Now, when you went to the bank to go to the safe deposit box, who had the keys to his safe deposit box?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. He did.
Q. Where were they kept?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. In his trousers' pocket.
Q. How many keys were there to that box?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

Q. Were they fastened together?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. He had to have two keys to get in the box. They were two locks. He had those two keys on a smaller ring and he carried those on a larger ring with his other keys.

Q. When you went to the box alone where did you get the keys?

MR. GEBHARDT—I object for the same reason.

THE COURT—Same ruling.

A. He gave them to me.

Q. What would happen after you had gone to his box and gone back?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I gave them back to him when I brought them back and he put them back on a larger ring.

Q. Did you ever keep them?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I never did. I never had them five minutes after I got in the house.

Q. How did you happen to go to the bank to go into his safe deposit box?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. He asked me to.

Q. Did you, in—how often would your uncle ask you to go to the bank for him?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I don't know, just whenever his business called for it.

Q. Did he always request you to go?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Yes, sir, he did.

Q. Now there are some checks here and stub books and some items that refer to William Laubach and Sons, specifically, for instance, referring to check No. 122, not by reference to the Exhibit. The stub, I believe says, window shades, where were those window shades used?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. In front of our house.

Q. Another item here of two nineteen for $104.75, 1921, with reference to rugs, where were those rugs used?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. In the front parlor.

Q. There are some items here from Bush and Bull, check No. 208 for $24.74, sheets and table linen, where were those items used?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. In our house.

Q. Who made the repairs to No. 115 South Main Street during the time your uncle was living?

A. He paid for most of them.

Q. What income did you receive from any part of that house?

MR. GEBHARDT—I make the same objection so far as it relates to the decedent.

THE COURT—Same ruling.

A. I didn't receive any income from him.

Q. Did you have Miss Silkman's—

A. Oh, yes, I got her rent.

Q. Who paid the taxes on the property?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I paid it out of my Aunt's Estate money.

Q. Did you get the rents from the two houses in the rear of the alley, also Sheriff Wieder's property?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. That went into the Estate.

Q. Out of this rent you paid for the taxes on the property including the taxes on 115 South Main Street?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Yes.

Q. Was the $7.50 a month paid by Miss Silkman sufficient to pay the taxes on 115 South Main Street?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I would have to figure it up.

Q. Would it?

A. I shouldn't think so.

Q. Don't you know?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I never figured it out. No, I know it wouldn't be.

Q. I call your attention to an item here of check No. 258, January 25, 1923, K. N. Stryker, $100, hospital and ask you what became of the money you received on that check?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I paid it over to the Warren Hospital.

Q. Was there anything said at the time that check was given by your uncle?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Yes.

Q. What?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. They were having a drive for the hospital . He was going to give $200 and he wasn't able to go to the meetings. He said if he gave me the $100 and it went in my name I could have the vote when they had the annual meeting.

Q. There is an item here, check No. 289, Anna F. Howell, I think the amount is $16.20, who was Mrs. Howell?

A. The wife of the superintendent of schools in Phillipsburg.

Q. Where did she live?

A. In Jersey City.

Q. The check book refers to curtains.

MR. GEBHARDT—That is objected to, same ground.

THE COURT—Same ruling.

A. I bought them at Bambergers in Newark, curtain material it was.

Q. Where was it used?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. In the house.

Q. I call your attention to item No. 353, check number, to F. Kline, $80 for a sofa. Who was F. Kline?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. An upholsterer.

Q. What work did he do on the sofa?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. He recovered the sofa, that belonged to my grandmother, and two chairs.

Q. They were used in the house of your Uncle Steward?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Yes, sir.

Q. Were you present when your uncle, Mr. Henry Walters, agreed upon the sale of the farm?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I was.
Q. What was the amount to be paid for the farm.

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. $30,000.
Q. Were you present when the deed was delivered?

MR. GEBHARDT—Objected to for the same reason.

THE COURT—Same ruling.

A. I think so but I am not sure.
Q. What did your uncle receive as consideration for the farm?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Thirty thousand Liberty Bonds.
Q. Now, what became of those Liberty Bonds when they were given to your Uncle?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. He rented a box in the Phillipsburg National Bank and put them in it?

Q. He put them in the box?
A. Yes.
Q. Were you with him at the time?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I was.
Q. Had he ever had a box before that?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. He had not.
Q. He had not?
A. He had a tin box.
Q. Did he ever have a safe deposit box before that?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. No.
Q. What became of those bonds later?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

He gave them to me.
Q. When?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. He gave half of them to me as near as I can judge, about three or four years ago, possibly more or less, more, I should judge.

Q. Do you recall how long before his death?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Well, it seems to me it must have been three or four years before his death.

Q. Where was the delivery made?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. At the Phillipsburg National Bank.

Q. At the bank?

A. Yes.

Q. What was done with the Bonds?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. He gave them to me.

Q. What did you do with them?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. And I put them in my box.

By THE COURT:

Q. You mean a separate box?
A. Yes, sir, in my own personal box.

By MR. SMITH:

Q. Where have they been ever sincee?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. In my box.
Q. What became of the other $15,000 of bonds?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. He gave those to me.
Q. When?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Sometime in September, 1925.
Q. Where were the bonds at the time?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. In his box.
Q. Where was he?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. He was home.
Q. Who got the bonds?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I did.
Q. How did you come to get them?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. He gave me his key and told me to go get them
Q. Did he tell you what to do with them?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Yes.
Q. What?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. He told me to put them in my box.
Q. Did you put them in your box?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I did.
Q. Have they been there ever since?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Yes.

THE COURT—They are not transactions with the decedent. They are not open to your objection.

Q. Who cut the coupons in these first fifteen thousand bonds which were in your box?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I did.

Q. Did anyone have access to your box except yourself?
A. No, sir.
Q. Who cut the coupons on the second lot of $15,000?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I did.

Q. What was done with the coupons that you clipped in the bonds in the first fifteen thousand?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I put them in Uncle's bank account.

Q. How did you come to do that?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Because Uncle always said he handled the money and I didn't like to do it. He told me often to put them in mine but I didn't like to do it.

Q. From whom did you get the money for your support?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I had a small income of my own.

Q. Did you have any other regular income?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. No.

Q. After the second lot of bonds had been delivered and you cut the coupons, what did you do with those?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Put them in my bank account.

Q. Why did you do that?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Because Uncle didn't like to write checks any more and he told me to.

Q. Mrs. Heitsman has testified that two or three months before your uncle died that you said to her, "Aunt Lizzie don't you think Uncle Steward ought to let me have the Government Bonds, the Liberty Bonds to escape the inheritance tax," and also that you wanted your Uncle Steward to let you put the bonds in an envelope and put his name on it and if you died they were his and if he died they were yours, in your box, did you have any such conversation?

A. I have no recollection of it.

Q. Well, did you have any?

A. I might have talked that way after his death but never before.

Q. Did you ever mention Liberty Bonds to Mrs. Heitsman before his death?

A. I don't think so.

Q. You did not?

A. I don't think so.

Q. Did you ever ask her that question?

A. I did not.

Q. After the death of your uncle, when Mrs. Lizzie Heitsman was visiting you, did you say to her, "Aunt Lizzie, don't you think the heirs, nephews and nieces should let me have the bonds my lifetime and then I will will them back to them," and she made no reply to that, did you have any such conversation with her?

A. I don't recollect. I had not in just those words.

Q. When did you have any conversation with her?

A. We talked at various times.

Q. What was said with reference to having the bonds during your lifetime?

A. I said I dreaded having to go through Court proceedings. I would rather give each one of them $1,000 than to have to go through the Courts.

Q. Was that after this suit was started?

A. No, it was in the spring, before I went away. I have never seen her since the suit was started to talk to her.

Q. Not since the suit was started?

A. No.

Q. At that time was there trouble about these bonds?

A. No, it hadn't been started. I had had a conversation, of course, with Mr. McConnel.

Q. Now, I think it was testified that you entertained lavishly, how often did you entertain in your uncle's home during his lifetime?

A. I entertained my D. A. R. Chapter every year and sometimes a couple of times a year.

Q. What kind of entertainment would that be?

A. What kind?

Q. Yes?

A. Just an afternoon meeting and I would have refreshments, of course.

Q. Any other?

A. I had dinner for the school board once during my uncle's lifetime. I belonged to a little two table card club about two years before he died and I entertained them once or twice in the winter.

Q. The card club?

A. Yes.

Q. Was that all the entertainment you had?

A. I would have dinner parties occasionally, Thanksgiving time and Christmas time.

Q. Who would be present at those?

A. One Thanksgiving time I had Dr. and Mrs. Howell and their two children.

Q. That is the superintendent of schools?

A. Yes, sir, and Mrs. Heitsman was there.

Q. And your uncle?

A. Yes, that was the year I was going to Court.

Q. Did you have any conversation with Mrs. Kunsman with reference to these bonds prior to the death of your uncle?

A. I don't recall that I did.

Q. Well, can't you recollect whether you had or didn't?

A. Mr. Kunsman?

Q. Yes?

A. I don't think I did.

Q. Did you have any conversation with reference to these bonds with reference to Mrs. Dora Heitsman?

A. No.

Q. She has testified, before your uncle died, that you talked to her with referencce to the $30,000 of bonds, did you have any—

A. I have no recollection of it.

Q. Did you ever discuss any business matters?

A. I did.

Q. Prior to your uncle's death with her?

A. Yes, I did talk with her.

Q. Did you say to Frank Heitsman or to Henry Walters within six months or sometime after the death of your Uncle Steward, at the house, "I went through Uncle's box thoroughly and I didn't find that will. If I had, I should have changed it instantly"?

A. I did not.

Q. Did you ever make such a statement?

A. I did not.

Q. To any persons? Did you ever do such a thing?

A. I did not. I knew his will was not in his box. He told Mr. McConnel had it.

Q. Did the persons who were there, Mr. Walters and Mr. Heitsman say, "So you are going to keep what you hold?"

A. No.

Q. Was there any such conversation?

A. Not that I know of.

Q. Or anything like that?

A. Not that I know of.

Q. Was your Uncle Steward able to walk about the house up until the time of his death?

A. Yes.

Q. Did he require assistance?

MR. GEBHARDT—That is objected to on the same ground.

THE COURT—The same ruling.

A. He came down stairs the morning of the day he died alone.

Q. Came down alone?

A. Yes.

Q. How was his mental condition up until the time of his death?

A. Fine.

Q. Now, were you present at Dora Heitsman's or rather Mrs. Kirkpatrick's in 1924 at dinner, with your Uncle Steward and your Uncle Frank and had dinner there?

A. Yes, sir.

Q. How did it happen that he was assisted across the floors of that house?

A. He wasn't used to hardwood floors.

Q. Is that the reason?

A. Yes, sir.

Q. Did you, after the death of Mrs. Heitsman, did you tell Mrs. Dora Heitsman that your uncle had given you her household goods, that you wanted it down in black and white?

A. I may have.

Q. Did you say to Mrs. Dora Heitsman, prior to the death of your uncle, that your uncle had received a legacy and had told you about it and promised you to give it to you?

A. I very probably did.

Q. And did you tell her about that legacy and receiving it at the time?

A. I don't recall but I may have.

Q. Did you ever have any conversations with Dora Heitsman, prior to his death, in which you told her that your Uncle Seward had been talking about inheritance taxes, you had been talking with him about them and that you had urged your Uncle Steward to put these bonds in your box?

A. I don't remember it.

Q. You don't remember it?

A. No.

Q. So as to avoid inheritance taxes?

A. I don't remember that I did.

Q. Well, did you ever have such a conversation with her before your uncle's death?

A. Not to my knowledge.

Q. Do you know whether you did or not?

A. I don't think I mentioned bonds to anybody before my uncle's death with the possible exception of Mrs. Kline.

Q. Why?

A. Because when my uncle gave them to me he said, "Its nobody's business, keep it to yourself."

MR. GEBHARDT—I move to strike it out. I didn't know he was going to testify to that, of course.

THE COURT—Same ruling.

Q. Did you offer to pay Lizzie Heitsman for coming and taking care of your uncle while you were away?

A. Uncle offered to.

Q. Did you?

A. No.

Q. Did you make any attempt to pay her?

A. I didn't, myself.

Q. Did he?

A. Yes, he offered to.

Q. And what did he do in reference to paying her?

A. He didn't pay her because she wouldn't accept it.

Q. How long did she come to stay at your house to take care of your uncle during the last two years of his life?

A. She came whenever I asked her to.

Q. Did you request her to come?

A. Yes, sir.

Q. And after your uncle's death, did you request her to come and stay with you?

A. I talked about going and she said she would come and keep house for Frank.

Q. Was she there after that?

A. Yes, sir.

Q. Where were you going?

A. To Texas.

Q. Who gave you the money to get the radio?

MR. GEBHARDT—That is objected to on the same ground.

THE COURT—Objection overruled.

A. Uncle Steward.

Q. From whom did you purchase the radio?

A. Mr. Cameron.

Q. How much did it cost?

Q. A hundred and sixty some dollars, I think it was.

Q. There is an item here, a check for $300, K. N. Stryker, was that money given to you?

A. Yes.

Q. By your Uncle Steward?

A. Yes.

Q. For what was that money used?

A. To pay for the radio.

Q. Was there any money over after that?

A. Yes, there is some difference between $163 and that.

Q. What was that money used for?

A. I don't know.

Q. There is an item here on the checks, Warner and Company, $241.60, in 1922, what was that for?

A. An Edison phontograph.

Q. Was that included in the inventory?

A. Yes, sir.

Q. Was that used in the house?

A. It was.

Q. Two items here, 1922, Dr. Fisler and the Easton Hospital was that for medical services rendered to you?

A. When I had my tonsils out.

Q. Did you ever attempt to influence your uncle in any way to give you these bonds?

MR. GEBHARDT—That is objected to on the same grounds.

THE COURT—The same ruling.

A. I did not.

Q. Did you ever influence your uncle or attempt to bring any influence on him to give you anything?

MR. GEBHARDT—Objected to on the same ground.

THE COURT—Objection overruled.

A. I did not.

Q. Did you ever influence your uncle as to anything?

MR. GEBHARDT—Objected to on the same ground.

Q. Did you ever influence your uncle or did you ever attempt to influence him or to bring any influence to bear on him to give you anything whatever?

A. No. I asked him for things when I wanted him to but I didn't use any influence.

Q. When you wanted things you asked him?

MR. GEBHARDT—Objected to on the same ground.

THE COURT—Same ruling.

A. Yes, sir.

Q. Would he always accede to your request?

MR. GEBHARDT—That is objected to on the same ground.

THE COURT—Same ruling.

A. No.

Q. What business affairs did you attend to for your uncle during the last five years of his life?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. Whatever he asked me to do.

Q. Did you ever do anything of your own initiative?

MR. GEBHARDT—Same objection.

THE COURT—Same ruling.

A. I did not.

MR. SMITH—Cross examine.

MR. GEBHARDT—May I reserve the right without losing the benefit of my objection, to have the privilege of cross examination on that subject.

THE COURT—You may.

THE COURT—Do I understand that this is your last witness, Mr. Smith?

MR. SMITH—Yes, sir.

THE COURT—Will you have any rebuttal Mr. Gebhardt?

MR. GEBHARDT—I can't tell, Your Honor, but it will be very brief, however, if I do .

THE COURT—How long will your cross examination of Miss Stryker take?

MR. GEBHARDT—I thing a half an hour will be a fair estimate.

Adjourned to Monday, the fourth day of April, 1927 at 10:30 A. M. at the State House, Trenton, New Jersey.

TESTIMONY

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Monday, the fourth day of April, 1927, at 11 o'clock, A. M.,

Before HON. MALCOLM G. BUCHANAN, Vice Chancellor.

APPEARANCES

O. D. McConnel, pro se

William C. Gebhardt & Son for defendants Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman;

Smith & Smith, by Mr. Sylvester C. Smith, Jr., for defendants Katherine N. Stryker and Frank Heitsman.

KATHERINE N. STRYKER, resumes the witness stand.

MR. SMITH—I would like to ask the witness a few questions which I overlooked the other day.

THE COURT—Very well, you may.

DIRECT EXAMINATION (Continued)

By MR. SMITH:

Q. What was done with the checks of Frank Heitsman that were turned over to you by your Uncle Steward?.

MR. GEBHARDT, JR.—I make the same objection as was made at the last hearing.

THE COURT—Same ruling.

A. I took them to the bank and had them cashed.
Q. What was done with the money?

MR. GEBHARDT, JR.—The same objection.

THE COURT—Same ruling.

A. I used most of it for the house.
Q. And the rest of it?

MR. GEBHARDT, JR.—Same objection.

THE COURT—Same ruling.

By MR. SMITH:

A. Sometimes I used some of it for myself.
Q. Did you say to Dora Heitsman in Easton, Pennsylvania or any place that you had said to your Uncle Steward, "Well, Uncle Steward, if you give me the securities that you intend me to have in your will I will put them in my box to escape the inheritance tax?"
A. No.
Q. Or anything to that effect?
A. No.
Q. Did you say anything like that to Dora Heitsman?
A. I did not.
Q. Did you say to Dora Heitsman, "Uncle Steward

told me the taxes had to be paid out," Katherine said, "Give me the securities you will give me in the will and I will put them in my box"?

A. No.

Q. Did you say to Mrs. Kirkpatrick over the telephoe after the death of your uncle and before the funeral that Uncle Steward had told you a short time before he died that as the will read, and you lowered your voice, Mrs. Kirkpatrick said, "What was that," and you replied that Uncle Steward had told you "As the will read so it shall be." Did you use those words?

A. I did not.

Q. You didn't?

A. No.

Q. Did you say anything like that?

A. I did not.

Q. When did Mr. Key Stryker die?

A. August, 1925. I don't remember the exact date.

Q. In August, 1925?

A. Yes, sir.

Q. Did that have any effect on your Uncle Steward?

A. It did.

Q. What?

A. He was very much upset about it.

Q. Where were you when the conversation took place with reference to the bonds in September, 1925?

MR. GEBHARDT, JR.—I make the same objection to that.

THE COURT—There will be the same ruling.

A. In the dining room.

Q. Just state what was said at that time.

MR. GEBHARDT, JR.—Same objection.

THE COURT—Same ruling.

A. Why, my Uncle said that he wanted me to have the rest of those bonds and he took his keys out of his pocket and gave them to me and told me to go down to the bank and get them and put them in my box.

Q. Your Uncle Steward told you that?

A. Yes, sir.

Q. Had you spoken to him prior to that time about the bonds?

MR. GEBHARDT, JR.—Same objection.

THE COURT—Same ruling.

A. About his giving them to me?

Q. Yes?

A. No, I didn't ask him about them. He started the conversation.

CROSS EXAMINATION

By MR. GEBHARDT, JR.:

Q. Miss Stryker, you testified, I believe, last week when you were on the witness stand that you started to write out checks for your uncle a couple of years before he died, maybe three. Now. I ask you whether or not, in point of fact, it was not about five years before his death that you began to write out checks for him?

A. I may have written some. It may have been five

years that I wrote some of them, not all of them. I wrote them when he asked me to.

Q. Won't you please search your recollection and see if you cannot recall that beginning in the month of February and for five years before his death that you at that time began writing out all of his checks and all of the stubs and continued to do that from then on down to the time of his death?

A. I couldn't recall it from my memory. The checks will show.

Q. You can't recall about that one way or the other?

A. Do you mean the exact date?

Q. The approximate date?

A. I could not. It would seem to me like three or four years. It may have been more or it may have been less.

Q. It might have been as much as five years?

A. It might be. I wrote them whenever he asked me to.

Q. Now, you testified that you received no regular compensation?

A. Yes.

Q. What did you mean by that, Miss Stryker?

A. No regular compensation, just that.

Q. But, as I understand it, you lived there in the household and received from Steward Heitsman money to provide for your clothes and for these various trips that you went on?

A. No.

Q. And for entertaining your friends such as you have described here and for your general expenses?

A. No.

Q. Is that correct?

A. No, sir.

Q. That is not correct?

A. No, sir.

Q. Tell me what he did provide for you?

A. He bought food for the home and occasionally he bought me a dress or a coat.

Q. Is that all he did, Miss Stryker?

A. He bought things for the house, yes, household goods.

Q. And he occasionally presented you with a gift?

A. Yes, he always did at Christmas time.

Q. And he did on another occasion when he gave you $300 for the radio?

A. Yes. He enjoyed that himself with me.

Q. Exactly, but there was a balance over and above the price of the radio which, I think, was $163 or something like that, which you had for yourself?

A. I used it to pay for the radio. It costs every month.

Q. But the balance of that check you had for yourself, did you not?

A. I don't recall that I did. I don't recall just what I spent it for.

Q. You can't recall whether you did or not?

A. No.

Q. You say that?

A. Yes, sir.

Q. What I am now asking you was whether or not that was retained by you for your own use?

A. Not necessarily.

By THE COURT:

Q. It was retained by you and you would have felt free to use it for yourself if you so desired?

A. Yes, sir.

By MR. GEBHARDT, JR.:

Q. Now, I observe—is it not also a fact, Miss Stryker, that Steward Heitsman paid for your education in large part at least?

A. No, he didn't.

Q. Did he pay for any of it?

A. Not to my knowledge, my aunt paid for it.

Q. Mrs. Heitsman, his wife?

A. Mrs. Heitsman paid for it all.

Q. You mean his wife?

A. Yes.

Q. Then it came from one or the other of them?

A. It came from my aunt, she borrowed most of the money from my grandmother to pay for it.

Q. It came from the wife of Steward Heitsman?

A. Yes.

Q. And I observe from the checks, there is a check dated March 13th, 1919 to K. M. Stryker for $60, do you recall what that was for or whether it was for your own use or not?

A. I couldn't tell unless there is something to recall it to my memory.

Q. You don't know?

A. I can't recall.

Q. Well, the various checks that are in evidence, which are made out to K. N. Stryker, or Katherine N. Stryker, whatever it might be, were they checks given to you by Steward K. Heitsman for your own use?

A. No, not always.

Q. How many of them were, do you know?

A. I couldn't tell unless I would see them. If I saw the list I could tell what they were.

Q. All right, I will allow you to examine the list.

(Showing witness a paper).

A. The one of March 13, 1919 for $60 I don't recall.
Q. You don't recall that?
A. No.
Q. The next is April 16th?
A. April 16th was for household money, $25.
Q. How do you recall that, Miss Stryker?
A. Because, when Uncle couldn't go to the bank himself he would make them out to me for me to go to the bank.
Q. Can you give me any means how you can recall that that particular check, that long ago, was not given to you personally but was for household expenses?
A. By the amount of it.
Q. Did he never give you an amount other than $25?
A. I suppose so.
Q. Did he never give you, yourself, an amount of $25?
A. Not unless it would be for a present.
Q. I mean for a present?
A. I mean on Christmas or my birthday.
Q. That is not the only time?
A. Yes.
Q. Proceed?
A. Then there is one, June 3, 1919, that was for $50? $25 of that was for house money and the other $25 for my birthday.
Q. You will observe as you look over that list that there are a number of checks that are made out to you?
A. Yes.

Q. Can you give me any idea what proportion of them were for your own use?

A. Not very many of them.

Q. You can't give me any idea of what amount of them—what amount they involved altogether, or anything of that kind?

A. No, I haven't figured it up.

Q. A number of these checks are made out to the department store of Laubach and also to Bush and Bull?

A. Yes.

Q. To those two department stores?

A. Yes.

Q. I suppose most of them or practically all of them were checks to pay for clothes you had purchased for yourself there?

A. Not necessarily.

Q. Were they or not?

A. Some of them might have been.

Q. Some of them were?

A. They might have been.

Q. They were. And can you tell me of any that you recall for any other purpose than for clothes for you?

A. Yes.

Q. Which?

A. One to Rader Brothers for covering chairs.

By THE COURT:

Q. The checks to these two department stores were for what?

A. Household linens. The household linens began to wear out and also the pillow cases and sheets and I had to get new ones and for new curtains and new draperies.

By MR. GEBHARDT, JR.:

Q. Those checks of those two department stores—that does not appear on the stub that they are spent for sheets or table linens, as it does in some instances. The other checks that are not so designated I presume were for clothes for you?

A. Not all of them. I bought Uncle's clothes. I bought all of his underwear and shirts.

Q. Where did you buy them?

A. At Bush and Bull's.

Q. Sometimes at either place?

A. Sometimes.

Q And sometimes at other places?

A. Sometimes at Laubach's.

Q. You said you had an independent income of your own?

A. Yes, sir.

Q. How much, about, was that?

A. You want to know just what my securities were?

Q. No, I was interested to know about what your income was.

A. I have somewheres about $5,000, income from that, from my grandmother and later on I got something around $2,000 out of my grandfather's estate, possibly not that much, I guess it was about $1,200.

Q. The last five years of Steward Heitsman's lifetime, can you give me about what your income amounted to?

A. The last five years?

Q. Yes?

A. I should judge around $200.

Q. In other words it was never so large that you paid any income tax or made any income tax return?

A. No.

Q. At any time?

A. No, sir.

Q. Now, you stated, I believe, on direct examination that the first half of this $30,000 worth of Liberty Bonds were given to you as near as you could judge, about three or four years ago, possibly more or less, "More, I should judge"—

MR. GEBHARDT, JR.—I will withdraw that question.

Q. You stated on direct examination that you were present, I think, when the agreement for the farm was made, or when the deed was delivered, I don't just recall which, that was in 1918, was it not?

A. I think it was.

Q. And do you recall the fact that the negotiations for the sale of that farm were pending for a number of months before the deed was actually made out?

A. I think they first came to see him some time along in August, I won't be sure. It was in the summer time.

Q. It appears that the deed was dated in August, is it not a fact that it was some time previous to that that the negotiations for the sale started?

A. I don't think very long.

Q. How long?

A. I don't know exactly.

Q. Two or three months previous?

A. I don't think so.

Q. Well, about how long?

A. I couldn't say.

Q. About how long do you think?

A. I wouldn't know definitely but it would seem to me that was not over a month.

Q. Not over a month?

A. I wouldn't think so. It has been a good while.

Q. It might have been longer than that, I presume?

A. It might have been but I don't think so.

Q. But it might have been?

A. Yes, but I don't think so.

Q. And was there an agreement for the sale of that farm drawn up, do you know?

A. Yes, sir, I think there was.

Q. And that was done sometime before the deed was made out. I presume there was a search to be made, etc?

A. I think it was a little while before.

Q. Quite some time before?

A. Not very long.

Q. And did Mr. Heitsman have that agreement or a copy of the agreement, do you know,—Steward Heitsman?

A. I don't know.

Q. You don't know about that?

A. No.

Q. Therefore, you don't know where it is now, I presume?

A. No.

Q. Now, I presume, Miss Stryker, that after this suit was begun and previous to the time your counsel filed their answer, that you talked this matter over with them and gave them the information upon which they based

the making and filing of the answer on your behalf in this suit, is that correct?

MR. SMITH—That is objected to.

THE COURT—This party is responsible for the pleadings filed in her name. I don't think there is much use going on with that.

MR. GEBHARDT, JR.—Perhaps, I may withdraw that then.

THE COURT—Yes.

By MR. GEBHARDT, JR.:

Q. You were the housekeeper in charge of the house during the time you kept house for Steward Heitsman from the death of his wife down to the time of his death?

A. Yes.

Q. You managed the household carefully from a financial standpoint?

A. I thought I did.

Q. You certainly tried to?

A. Yes.

Q. You and Steward Heitsman lived in a simple way, comparatively speaking?

A. Yes.

Q. Is that correct?

A. Yes, sir.

Q. You didn't spend any more money, and he didn't, for his support and for the running of the household there and his care and so on than was reasonably necessary during all that time, did you?

,A. I tried not to.

Q. Well, you accomplished it pretty well, didn't you?

A. I think so.

Q. Have you told us, Miss Stryker, all that was said at that time that—on the two occasions when these bonds were given to you?

Q. You told everything?

A. I think so.

Q. And have you also told us all that was done on those two occasions?

A. Yes, sir.

MR. SMITH—The defendant Stryker rests with the understanding that we offer in evidence the deposition of Frank Heitsman.

MR. GEBHARDT, JR.—We also rest.

THE COURT—This transcript of the testimony of B. Frank Heitsman, taken before Mr. Samuel Powis, Jr., as Master on April second, 1927, is before me and it is agreed by and between counsel that it be received in evidence and considered as though it had been taken before this Court.

MR. SMITH—Yes, sir.

MR. GEBHARDT, JR.—That is right.

Said deposition is marked Exhibit DS—1.

MR. McCONNEL—I offer in evidence the agreement of sale of the farm if it can be located. There has no copy ever been given to me as Executor and I cannot

locate it but I will endeavor to and if we can find it we would like to offer it in evidence.

THE COURT—Well, I am not going to give you time to search for it but I suppose counsel will be very glad to have it offered in evidence if you find it.

MR. GEBHARDT, JR.—If Your Honor please I would like to have an opportunity in this case to file briefs.

MR. SMITH—That will be satisfactory to me, Your Honor. It is perfectly satisfactory to me to file briefs.

THE COURT—You may file briefs. In those parts of the briefs that deal with the evidence I desire counsel not to make a general statement but anything that is of any importance I would like you to give it and refer to the testimony itself. And where counsel say that there is no testimony upon a certain point I am going to accept that as a fact unless opposing counsel point out specifically where the testimony is, that counsel says is not in the record. Briefs may be in by the first of May.

(EXHIBIT C 1)

PHILLIPSBURG NATIONAL BANK
Name—Stewart K. Heitsman

				Dr.	Cr.
	1916				
	Jan.	1	Balance		$1,204.39
10		4		2.60	
		5		5.79	42.16
		25		18.83	
		28			49.80
		29			75.00
	Feb.	11		3.00	
		11		25.00	
		23			67.36
		24		5.00	
		29		14.00	
20	Mar.	10		25.00	
		13			249.00
		15		259.00	
		24		25.00	
	Apr.	20		17.00	
		24		23.00	
		25		26.30	
	May	19		43.00	
		31		10.61	
30	June	16		25.00	
	July	5		11.42	
		6		62.80	
		13		25.00	
	Aug.	1		18.53	
		4		11.74	

PHILLIPSBURG NATIONAL BANK
Phillipsburg, N. J.
Name—Stewart K. Heitsman

		Dr.	Cr.	
1916				
Aug.	8	25.00		
	28	25.00		
Sep.	6	12.64		10
	20	25.00		
Oct.	3	11.50		
	13	25.00		
Oct.	30	25.00		
Nov.	14	50.00		
	20	4.15		
Dec.	6		328.00	
	7		135.00	
	20	81.55		
	21	25.00		20
	30	10.00		
1917				
Jan.	2	30.00		
	4	25.00		
	30		80.00	
Feb.	14	60.00		
	16	25.00		
Mar.	6		291.56	30
	17	25.00		
	30	25.00		
Apr.	21	25.00		
	26	50.00		
May	11	26.01		

PHILLIPSBURG NATIONAL BANK

Name—Stewart K. Heitsman

			Dr.	Cr.
	1917			
	May	29	25.00	
		17		140.00
	June	11		114.97
10		12	4.95	
		20	13.80	
		22	25.00	
		26	25.00	
	July	2	17.00	
		13	25.00	
		27	25.00	
	Aug.	7	41.40	
		20	25.00	
	Sep.	4	25.00	
20		13	25.00	
		14	20.40	
		27	28.80	
		28	25.00	
	Oct.	13	25.00	
		17	58.00	
		26	25.00	
	Nov.	9		188.00
		22	25.00	
		27		100.00
30	Dec.	18	25.00	
		21	75.00	
		24	50.00	
		29	3.38	

PHILLIPSBURG NATIONAL BANK

Name—Stewart K. Heitsman

		Dr.	Cr.
1918			
Jan.	18	15.24	
	21	7.45	
Feb.	26		205.37
Mar.	11		798.00
	22	25.00	
Apr.	3	50.00	
	12	500.00	
	18	25.00	
	18		140.00
May	2	25.00	
	2	3.50	
	13	38.39	
June	7	25.00	
	17	50.00	
July	3	25.00	
	17	6.60	
	19	25.00	
Aug.	3	25.00	
	16	25.00	
	30	25.00	
Sep.	17	25.00	
	27	25.00	
Oct.	9	25.00	
	21	25.00	
Nov.	1	25.00	
	7		188.00
	19	29.74	
Dec.	2	25.00	

PHILLIPSBURG NATIONAL BANK
Name—Stewart K. Heitsman

			Dr.	Cr.
	1918			
	Dec.	9	25.00	
		17	25.00	
		18		637.50
		21	16.76	
10		23	25.00	
		27	83.45	
	1919			
	Jan.	10	25.00	
		28	25.00	
	Feb.	11	8.90	
		14	25.00	
		28	25.00	
20	Mar.	13	60.00	
		17	1,111.68	311.60
		21	25.00	
	Apr.	4	25.00	
		16	25.00	686.23
		28	25.00	
	May	10	200.00	
		15	72.40	
		28	25.00	
	June	2	25.00	637.50
30		3	50.00	
		13	25.00	
		18	10.50	
		27	25.00	
	July	10	25.00	

PHILLIPSBURG NATIONAL BANK
Name—Stewart K. Heitsman

		Dr.	Cr.
1919			
July	23	25.00	
Aug.	6	25.00	
	11	25.00	
	15	25.00	
	28	25.00	10
Sep.	10	25.00	
	22	25.00	
Oct.	3	25.00	
	15	25.00	140.00
	30	30.00	
Nov.	7	50.00	
	14	25.00	
	25	25.00	
Dec.	3	25.00	20
	15	25.00	642.26
	18	4.76	
	22		5.42
	29	25.00	
	30	8.84	
	30	25.00	
1920			
Feb.	6	25.00	
	13	25.00	30
	27	25.00	
Mar.	1	20.00	
	2		59.20
	8	50.00	

PHILLIPSBURG NATIONAL BANK

Name—Stewart K. Heitsman

			Dr.	Cr.
1920				
	Mar.	17	25.00	
		25	50.00	
		26	27.00	
		29	5.60	
10		30	20.00	
	Apr.	8	25.00	
		16	25.00	140.00
		29	25.00	
	May	12	25.00	
		19	25.00	
		29	25.00	
	June	2	711.92	637.50
		9	25.00	
20		16	25.00	
		25	8.30	
		29	25.00	
	July	3	88.00	
		8	25.00	
		20	4.93	
		22	25.00	
	Aug.	6	25.00	
		23	25.00	
	Sept.	2	25.00	
30		10	25.00	
		23	50.00	
		29	25.00	
	Oct.	13	50.00	140.00
		22	100.00	

PHILLIPSBURG NATIONAL BANK

Name—Stewart K. Heitsman

		Dr.	Cr.	
1920				
Nov.	1	5.67		
		25.00		
	18	25.00	637.50	
Dec.	3	25.00		10
	10	25.00		
	18	25.00		
	28	25.00		
	30	25.00		
1921				
Jan.	21	25.00		
Feb.	4	25.00		
	18	25.00		
Mar.	18	24.40		20
	19	57.00		
		59.50		
	26	25.00		
Apr.	4	25.00		
	8	50.00		
	15	25.00	140.00	
	29	25.00		
May	16	25.00		
	26	7.28		
	27	25.00		30
June	4	25.00		
	9		637.50	
	15	25.00		
	23	24.74		
	25	25.00		

PHILLIPSBURG NATIONAL BANK

Name—Stewart K. Heitsman

			Dr.	Cr.
	1921			
	July	6	25.00	
		8	116.00	
		29	25.00	
10	Aug.	9	25.00	
		20	50.00	
		31	20.00	
	Sep.	13	50.00	
		28	35.50	
	Oct.	3	31.90	
		5	104.75	
		5	50.00	
		24	50.00	140.00
20	Nov.	18	25.00	
		30	12.30	
			9.92	
			37.49	
	Dec.	2	50.00	
		19		637.50
		23	50.00	
	1922			
	Jan.	14	34.50	
30		24	2.50	
		27	50.00	
	Feb.	21	50.00	
	Mar.	4	241.60	
		25	23.80	
	Apr.	5	50.00	

PHILLIPSBURG NATIONAL BANK
Name—Stewart K. Heitsman

		Dr.	Cr.
1922			
May	2		150.50
	8	50.00	
	20	37.50	
	24	36.50	
	29	50.00	637.50
June	22	50.00	
July	1	24.68	
	6	117.25	
	11	8.00	
	20	31.70	
	21	50.00	
	31	59.50	
Aug.	11	50.00	
Sep.	1	50.00	
	27	50.00	
Oct.	16	50.00	180.00
	25	63.05	
Nov.	1	50.00	
	17	50.00	
	24		637.50
Dec.	14	50.00	
1923			
Jan.	2		25.50
	5	50.00	
	20	11.90	
	26	100.00	
		100.00	
	31	50.00	

PHILLIPSBURG NATIONAL BANK
Name—Stewart K. Heitsman

			Dr.	Cr.
	1923			
	Feb.	7	10.00	
		14	6.10	
		16	50.00	
		21	11.90	
10	Mar.	9	11.90	
		23	11.90	
		28	50.00	
	Apr.	13	50.00	180.00
		17	11.90	
		24	50.00	
	May	4	50.00	
		12	44.40	
		14	19.54	
20		17	11.90	
		23	50.00	637.50
	June	6	50.00	
		21	50.00	
	July	2	50.00	
		24	50.00	
	Aug.	7	50.00	
		23	119.00	
		24	19.65	
			21.99	
30		30	50.00	
	Sep.	14	50.00	
		24	50.00	
	Oct.	13	50.00	
		27		180.00

PHILLIPSBURG NATIONAL BANK
Name—Stewart K. Heitsman

		Dr.	Cr.
1923			
Nov.	2	89.50	
	5	50.00	
	15	16.20	
	21	50.00	
			10
Dec.	10	50.00	
		50.03	
	17		637.50
	21	50.00	
1924			
Jan.	10	50.00	
	31	50.00	
Feb.	9	49.37	
	18	50.00	
			20
Mar.	4	30.00	
	29	25.00	
	31	50.00	
Apr.	10	47.67	
	16	50.00	180.00
	29	134.75	
	30	50.00	
May	21	50.00	637.50
	29	50.00	
June	13	38.45	
			30
		21.20	
	18	50.00	
	30	50.00	
July	24	50.00	

PHILLIPSBURG NATIONAL BANK

Name—Stewart K. Heitsman

			Dr.	Cr.
1924				
		31	29.36	
	Aug.	11	50.00	
	Sept.	2	60.00	
		18	50.00	
10			19.20	
			25.50	
		20	26.80	
	Oct.	2	50.00	
		14	50.00	180.00
		28	50.00	
	Nov.	20	50.00	
	Dec.	11	50.00	
		26	50.00	
20	1925			
	Jan.	5	100.00	637.50
		16	50.00	
		21	21.08	
	Feb.	2	18.10	
		5	300.00	
			50.00	
		24	50.00	
	Mar.	21	50.00	
	Apr.	1	50.00	
30		2	18.64	
		11	61.44	
	May	9	50.00	
		20	50.00	
		22	45.35	

PHILLIPSBURG NATIONAL BANK
Name—Stewart K. Heitsman

		Dr.	Cr.
1925			
June	1	50.00	637.50
	16	50.00	
July	1	50.00	
	16	142.20	
	24	50.00	
	27	35.03	
Aug.	6	50.00	
Aug		11.55	
	22	50.00	
Sep.	2	50.00	
	17	50.00	
	28	50.00	
	30	16.50	
Oct.	9	50.00	
	19	80.00	
	19		180.00
	22	50.00	
Nov.	12	50.00	
	23	50.00	
Dec.	14	50.00	
	24	50.00	
1926			
Oct.	1	1,222.63	

(Exhibits C-3 to C-8)

Exhibit C-3 consisted of seven deposit slips of Steward K. Heitsman in the handwriting of Steward K. Heitsman, for deposits made in the Phillipsburg National Bank and Trust Company, on the following dates: 1/5/16; 1/28/16; 1/29/16; 1/30/17; 3/6/17; 5/17/18; 11/27/19.

Exhibit C-4 consisted of thirty-one deposit slips of Steward K. Heitsman in the handwriting of James L. Lomerson, cashier of the Phillipsburg National Bank and Trust Company, for deposits made in the Phillipsburg National Bank and Trust Company, on the following dates: 2/23/16; 3/13/16; 11/6/16; 12/7/16; 6/11/17; 11/9/17; 2/26/18; 3/11/18; 4/18/18; 11/7/18; 12/18/18; 3/17/19 4/16/19; 6/2/19; 10/15/19; 12/15/19; 12/22/19; 3/2/20; 4/16/20; 6/2/20; 10/13/20; 11/18/20; 4/15/21; 6/9/21; 10/24/21; 12/19/21; 5/2/22; 11/24/22;; 1/2/23; 12/17/23; 1/5/25.

Exhibit C-5 consisted of four deposit slips of Steward K. Heitsman in the handwriting of J. A. Lomerson, for deposits made in the Phillipsburg National Bank and Trust Company, on the following dates: 10/16/22; 4/13/23; 5/23/23; 5/21/24.

Exhibit C-6 consisted of one deposit slip of Steward K. Heitsman in the handwriting of Robert C. Bachman, for deposit made in the Phillipsburg National Bank and Trust Company, on the following date: 5/29/22.

Exhibit C-7 consisted of one deposit slip of Steward K. Heitsman in the handwriting of H. J. Curry, for deposit made in the Phillipsburg National Bank and Trust Company, on the following date: 6/1/25.

Exhibit C-8 consisted of four deposit slips of Steward K. Heitsman in the handwriting of Katherine N. Stryker, for deposit made in the Phillipsburg National Bank and Trust Company, on the following dates: 10/27/23; 4/16/24; 10/14/24; 10/19/25.

(Exhibit C-9)

PHILLIPSBURG NATIONAL BANK
Phillipsburg, N. J.

Safety Deposit Box No. 267

Date	Hour	Visited By
Oct. 24, 1918	10:00	S. K. Heitsman
Dec. 17, 1918	1:55	S. K. Heitsman
May 31, 1919	9:45	S. K. Heitsman
Dec. 15, 1919	1:30	S. K. Heitsman
Dec. 22, 1919	9:55	S. K. Heitsman
July 19, 1920	9:30	S. K. Heitsman
July 30, 1920	9:25	K. N. Stryker
Nov. 18, 1920	9:10	S. K. Heitsman
June 9, 1921	9:30	S. K. Heitsman
Dec. 19, 1921	2:25	K. N. Stryker
May 29, 1922	9:20	K. N. Stryker
Nov. 24, 1922	10:40	K. N. Stryker
May 23, 1923	2:25	K. N. Stryker
Dec. 17, 1923	1:25	K. N. Stryker
May 21, 1924	2:10	K. N. Stryker
Jan. 5, 1925	9:40	K. N. Stryker
June 1, 1925	9:30	K. N. Stryker
Sept. 5, 1925	9:20	K. N. Stryker

(Exhibit C-10)

PHILLIPSBURG NATIONAL BANK
Phillipsburg, N. J.

Stock Ledger—Account Stewart K. Heitsman

SHARES SOLD		10
Dec. 1, 1882, To E. P. Heitsman	10	
Oct. 30, 1885, To L. Segrieves	15	
Nov. 7, 1885, To J. C. Boyer	5	
Jan. 16, 1886, To C. Cline	5	
	35	
SHARES ACQUIRED		
Apr. 16, 1879, From W. F. Boileau		20
Ctf. No. 187	12	
June 25, 1881, From I. C. Wyckoff		
Ctf. No. 267	7	
Dec. 1, 1882, From S. A. Ott		
Ctf. No. 300	14	
July 27, 1885, From M. A. Heitsman		
Ctf. No. 397	15	
Sept. 28, 1885, From G. H. Heitsman		
Est. Ctf. No. 402	15	
July 8, 1887, From L. Segreaves		30
Ctf. No. 408	2	
March 24, 1916, From E. P. Heitsman		
Est. Ctf. No. 476	10	
	75	

DIVIDENDS PAID ON ABOVE STOCK

Date	Amount Paid
1915—Oct. 13	$105.00
1916—Apr. 13	140.00
Oct. 13	140.00
1917—Apr. 13	140.00
Oct. 13	140.00
1918—Apr. 13	140.00
Oct. 13	140.00
1919—Apr. 13	140.00
Oct. 13	140.00
1920—Apr. 13	140.00
Oct. 13	140.00
1921—Apr. 13	140.00
Oct. 13	140.00
1922—Apr. 13	140.00
Oct. 13	180.00
1923—Apr. 13	180.00
Oct. 13	180.00
1924—Apr. 13	180.00
Oct. 13	180.00
1925—Apr. 13	180.00
Oct. 13	180.00
1926—Apr. 13	180.00
Oct. 13	180.00

(C—13.)

THE EASTON NATIONAL BANK

Easton, Penna.

Statement of Dividends Paid to Stewart K. Heitsman From January 1, 1915 to and Including January 1, 1926.

		Check
January 1,	1915	25.50
July 1,	1915	25.50
January 1,	1916	25.50
July 1,	1916	25.50
January 1,	1917	25.50
July 1,	1917	25.50
January 1,	1918	25.50
July 1,	1918	25.50
January 1,	1919	25.50
July 1,	1919	25.50
January 1,	1920	25.50
July 1,	1920	25.50
January 1,	1921	25.50
July 1,	1921	25.50
January 1,	1922	25.50
July 1,	1922	25.50
January 1,	1923	25.50
July 1,	1923	25.50
January 1,	1924	25.50
July 1,	1924	25.50
January 1,	1925	25.50
July 1,	1925	25.50
January 1,	1926	25.50

(C-14)

FIRST NATIONAL BANK
of Easton, Pa.

Dec. 20, 1926

Mr. O. D. McConnel,
Phillipsburg, N. J.

Dear Sir:

Your letter of the 18th received asking for information regarding dividends paid to Steward K. Heitsman. We are giving you herewith a list of the dates and the amounts:

May 4, 1915—3 shares, 3½%—$5.25
Nov. 2, 1915—3 shares, 3½%— 5.25
May 2, 1916—6 shares, 3½%—10.50
Nov. 7, 1916—6 shares, 3½%—10.50
May 1, 1917—6 shares, 3½%—10.50
Nov. 6, 1917—6 shares, 3½%—10.50
May 7, 1918—6 shares, 3½%—10.50
Nov. 5, 1918—6 shares, 3½%—10.50
May 6, 1919—6 shares, 3½%—10.50
Nov. 4, 1919—6 shares, 3½%—10.50
May 4, 1920—6 shares, 3½%—10.50
Nov. 2, 1920—6 shares, 3½%—10.50
May 3, 1921—6 shares, 3½%—10.50
Nov. 1, 1921—6 shares, 3½%—10.50
May 2, 1922—6 shares, 3½%—10.50
Nov. 7, 1922—6 shares, 3½%—10.50

May 1, 1923—6 shares, 3½%—10.50
Nov. 6, 1923—6 shares, 3½%—10.50
May 6, 1924—6 shares, 3½%—10.50
Nov. 4, 1924—6 shares, 4% —12.00
May 5, 1925—6 shares, 4% —12.00
Nov. 3, 1925—6 shares, 4% —12.00

Very truly yours,

(Signed) FRANK W. SIMPSON,
Cashier.

FWS:EIS

(C-15)

The
PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY
Phillipsburg, New Jersey

December 21, 1926.

Mr. O. D. McConnel:
Phillipsburg, N. J.

Dear Mr. McConnel:

At the request of Mr. Barnitt, I wish to advise you that Steward K. Heitsman received $597.20 in dividends from the People's Water Company from 1915 to 1926, inclusive.

Nov. 1,	1915	$24.00
	1916	48.00
	1917	48.00
	1918	48.00
Mar. 1,	1920	59.20
	1921	59.20
	1922	59.20
	1923	59.20
	1924	59.20
	1925	66.60
	1926	66.60
		$597.20

Trusting that this information may serve your purpose, I am

Very truly yours,
R. C. BACHMAN,
For the Treasurer.

(C-17)

ENTRIES TO SAFETY DEPOSIT BOX NO. 200
BY KATHERINE N. STRYKER

Date	Time
July 1, 1914	11:00
Sept. 5, 1914	10:30
May 8, 1915	2:10
July 9, 1915	1:35
Jan. 3, 1916	11:40
Feb. 7, 1916	11:40
Apr. 1, 1916	9:14
July 11, 1916	9:25
Jan. 15, 1917	1:50
Sept. 11, 1917	2:10
Mar. 2, 1918	1:15
July 15, 1918	2:25
Oct. 24, 1918	10:05
Dec. 17, 1918	1:55
Jan. 9, 1919	2:00
July 1, 1919	9:15
Dec. 15, 1919	1:30
Jan. 18, 1920	2:20
July 30, 1920	9:25
Nov. 18, 1920	9:10

Jan. 28, 1921	10:13
June 15, 1921	10:00
July 2, 1921	10:35
Dec. 19, 1921	2:25
Jan. 14, 1922	2:10
May 29, 1922	9:20
July 7, 1922	1:30
Nov. 24, 1922	10:40
Jan. 2, 1923	2:10
May 23, 1923	2:25
July 10, 1923	2:30
Dec. 17, 1923	1:25
May 21, 1924	2:10
July 1, 1924	10:25
Jan. 5, 1925	10:00
June 1, 1925	9:30
Sept. 5, 1925	9:20
Dec. 18, 1925	2:15
Feb. 10, 1926	3:00
Mar. 17, 1926	1:30
Sept. 20, 1926	10:25
Oct. 6, 1926	9:45
Dec. 13, 1926	2:05
Jan. 9, 1927	2:45

(Exhibit C-18

PHILLIPSBURG NATIONAL BANK
Phillipsburg, N. J.
Name—Katherine N. Stryker

		Dr.	Cr.
1920			
Oct.	22		107.50
Nov.	15	10.80	
	18		25.51
	24	78.00	
Dec.	7	4.00	
	24	10.00	
	31	10.00	60.00
1921			
Jan.	4	11.64	
	5	7.00	
	10	17.00	
	12	2.50	
	27	5.00	
	28		58.00
	29	9.19	
	31	24.51	
		16.00	
Feb.	16	12.13	
Mar.	2	9.25	
	14	4.75	
	16	7.64	
	24	2.00	
	26	5.50	
Apr.	8		50.00
	29	17.65	

PHILLIPSBURG NATIONAL BANK
Phillipsburg, N. J.
Name—Katherine N. Stryker

			Dr.	Cr.
	1921			
	May	2	26.66	
		14	1.94	
	June	15		33.55
10	July	2		60.00
		6	2.25	
			27.94	
		16	37.86	
		20	6.50	
			2.00	
	Aug.	30	9.00	
	Oct.	3	2.00	
		26	1.90	
	Dec.	7	5.25	
20		21	2.35	
	1922			
	Jan.	16	1.00	40.00
		20	2.00	
		20	2.50	
		30		287.03
	Feb.	1	24.30	
		3	50.60	
		8	9.00	
		25	3.00	
30		28	3.00	
	Mar.	17	115.00	
		31	13.00	
	Apr.	1	57.18	
		5		102.50
		21	25.00	

PHILLIPSBURG NATIONAL BANK
Phillipsburg, N. J.
Name—Katherine N. Stryker

		Dr.	Cr.
1922			
May	1	14.30	
	12	36.47	
	13	33.25	
	18	3.25	
	29		38.00 10
June	1	14.00	
	22		30.85
	24	17.30	
July	7		67.50
	8	10.00	
	24	14.50	
	29	5.00	
Aug.	3	5.00	
	7	3.00	20
	15	3.00	
	19	8.00	
Sep.	21	12.00	
Oct.	6	2.50	
Nov.	2	1.50	
		15.70	
	13		30.00
	16	13.00	
	20	2.50	
Dec.	27	20.00	30
1923			
Jan.	2		147.50
	3	3.00	
	9	2.50	
	10	18.50	

PHILLIPSBURG NATIONAL BANK
Phillipsburg, N. J.
Name—Katherine N. Stryker

			Dr.	Cr.
1923				
		11	20.00	
		17	13.25	
			39.75	
	Feb.	1	5.00	
10		2	18.50	
	Mar.	2	11.95	
			11.95	
		9	9.72	
	Apr.	2	10.00	
		3		60.00
	May	2	10.00	
		10	5.00	
		12	5.00	
20		23		62.57
	June	6		200.00
		21	5.00	
		28	8.00	
		30	10.59	
	July	2	12.00	60.00
		9	3.00	
		10	5.75	60.63
		13	28.00	
	Aug.	13	2.75	
30		17	6.50	
			2.00	
		21	2.00	
	Sep.	5		1,240.79
		13	15.00	
		22	8.00	

PHILLIPSBURG NATIONAL BANK
Phillipsburg, N. J.
Name—Katherine N. Stryker

		Dr.	Cr.	
1923				
	24	14.75		
		16.00		
		3.00		10
	29	8.00		
Oct.	3	6.50		
	16	10.00		
		26.45		
	25	2.00		
	27		84.54	
Nov.	3	3.75		
Dec.	4	10.50		
	10	36.18		
	17	175.00	27.62	20
	22	6.50		
	26	5.00		
1924				
Jan.	2	10.00	117.50	
	11	5.00		
		2.50		
	15	2.00		
Feb.	9	5.50		
		29.50		
	18	7.00		30
Mar.	3	6.50		
		12.00		
	5		21.90	
	12	6.00		
	19	25.00		

PHILLIPSBURG NATIONAL BANK
Phillipsburg, N. J.
Name—Katherine N. Stryker

			Dr.	Cr.
	1924			
		24	3.00	
			15.00	
10		27	5.00	
		29	10.00	
		31		60.00
	Apr.	7	10.00	
		9	5.00	
		9	5.00	
		16	3.00	
		28	43.00	
	May	5	10.00	
		6	25.00	
20		14	22.25	
		21		24.50
	June	2	13.10	
		5	1,000.00	
		10	2.00	
	July	1		101.22
		2	80.00	
		3	5.00	
		31	6.40	
			48.00	
30	Aug.	2	16.00	
		26	40.00	
	Sept.	6	45.50	
		8	20.00	
		26	6.75	

PHILLIPSBURG NATIONAL BANK
Phillipsburg, N. J.
Name—Katherine N. Stryker

		Dr.	Cr.
1924			
Oct.	2		80.00
	28	40.00	
	29	4.50	10
Nov.	1	19.00	
	7	11.00	
	17	10.00	
Dec.	30	10.00	
1925			
Jan.	5		97.50
	7	40.00	
		9.48	
	12	5.00	
		2.50	20
	22	30.00	
	31	10.00	
Feb.	2	2.00	
	5		300.00
	25	40.00	
	26	35.48	
		31.54	
Mar.	2	16.00	
	5	6.00	
	12	163.25	30
Apr.	2	2.25	
	3	3.00	
	6	2.00	
	7	3.00	
	11	15.98	

PHILLIPSBURG NATIONAL BANK

Phillipsburg, N. J.

Name—Katherine N. Stryker

			Dr.	Cr.
	1925			
	May	1	40.00	
		23	5.00	
10	June	6	5.00	
		8		30.00
	July	3	40.00	
		7		132.62
		9	5.00	
		20	15.90	
		25	3.00	
			50.50	
		29	25.00	
20	Aug.	8	14.25	
		26	40.00	
	Sep.	10	56.25	
		26	16.27	
		29		130.00
	Oct.	2		60.00
		13	101.17	
		24	24.34	
		26	40.00	
	Nov.	23		113.02
	Dec.	9	10.00	
30			4.55	
		10	13.00	
			31.10	
			10.93	
		12	3.00	
			1.00	

PHILLIPSBURG NATIONAL BANK
Phillipsburg, N. J.
Name—Katherine N. Stryker

		Dr.	Cr.	
1925				
	21	50.00	667.93	
	26	3.00		
1926				10
Jan.	5	37.75		
	18	5.00		
		20.65		
	20	57.97		
	25	17.45		
	30	1.00		
Feb.	2	75.00		
	8	36.00		
	10		37.50	20
	13	50.00		
	15	35.00		
	16	4.55		
	17	2.00		
	18	49.50		
	23	2.00		
	25	5.00		
	26	50.00		
Mar.	17	25.00	1,461.68	
	18	20.00		
		21.50		30
	22		31.00	
	24	7.10		
	27	6.00		
	31	5.00		

PHILLIPSBURG NATIONAL BANK

Phillipsburg, N. J.

Name—Katherine N. Stryker

			Dr.	Cr.
	1926			
	Apr.	12	50.00	
			5.97	
10		13	9.45	
		14	45.55	
		15	11.25	
		16	41.60	
			150.00	
		21	1,000.00	
	May	3	40.00	
		14	25.00	
		29	15.00	
	June	2	150.00	
20		8	50.00	
		23	2.00	
		26	50.00	318.75
	July	6	2.50	
		12		137.50
		14	16.00	
			25.30	
		17	15.21	
		19	5.00	
		23	150.00	
30		28	31.90	
	Aug.	16	37.00	
		17	2.00	
		24	25.00	
		26	19.50	

PHILLIPSBURG NATIONAL BANK

Phillipsburg, N. J.

Name—Katherine N. Stryker

		Dr.	Cr.
1926			
Sep.	10	25.00	
	17		4,946.95
	22	37.50	10
	28	25.00	
Oct.	1	5.00	
	2	3.87	
	6	2.00	100.66
	11	2.00	
	14	54.15	
	18	35.00	
	22	25.00	
	27		37.50
Nov.	15	25.00	20
	18	35.00	
	30	25.00	
Dec.	13		
	13		561.25
	16	35.00	
	18	11.50	
		10.00	
	22	8.00	
	23	35.00	
	27	75.00	30
		10.50	
	31	10.00	
1927			
Jan.	10	7.10	

PHILLIPSBURG NATIONAL BANK
Phillipsburg, N. J.
Name—Katherine N. Stryker

			Dr.	Cr.
	1927			
			10.00	
		11	47.50	
		12	11.50	
10			1,986.78	
		14	30.43	
		17	2,000.00	
		19	35.00	45.00
		21	2.00	
		24	5.00	
		26	6.00	
			25.00	
		31	17.50	
20	Feb.	4	11.00	
		10	35.00	
		15	5.00	
		21	2.00	
			35.00	
		25	5.00	
30				

(Exhibits C-19 to C-26)

Exhibit C-19 was 19 deposit slips of Katherine N. Stryker in the handwriting of James L. Lomerson, cashier of the Phillipsburg National Bank and Trust Company, for deposits made on the following dates: 10/22/20; 11/18/20; 12/31/20; 1/28/21; 4/8/21; 6/15/21; 1/30/22; 4/5/22; 6/22/22; 7/7/22; 11/13/22; 4/3/23; 6/6/23; 9/5/23; 12/17/23; 7/1/24; 1/5/25; 2/5/25; 7/7/25.

Exhibit C-20 consisted of twelve deposit slips of Katherine N. Stryker in the handwriting of Katherine N. Stryker, for deposits made in the Phillipsburg National Bank and Trust Company, on the following dates: 10/27/23; 1/2/24; 3/31/24; 10/2/24; 6/8/25; 10/2/25; 11/23/25; 9/17/26; 10/6/26; 10/27/26; 12/13/26; 1/19/27.

Exhibit C-21 consisted of six deposit slips of Katherine N. Stryker in the handwriting of Robert C. Bachman, for deposits made in the Phillipsburg National Bank and Trust Company, on the following dates: 7/2/21; 1/16/22; 5/23/23; 7/10/23; 3/5/24; 5/21/24.

Exhibit C-22 consisted of two deposit slips of Katherine N. Stryker in the handwriting of Robert C. Bachman, for deposits made in the Phillipsburg National Bank and Trust Company, on the following dates: 5/29/22; 7/2/23.

Exhibit C-23 consisted of two deposit slips of Katherine N. Stryker in the handwriting of Stanley Young, for deposits made in the Phillipsburg National Bank and Trust Company, on the following dates: 1/2/23; 3/22/26.

Exhibit C-24 consisted of three deposit slips of Katherine N. Stryker in the handwriting of John E. Wyckoff, for deposits made in the Phillipsburg National Bank and Trust Company, on the following dates: 12/21/25; 2/10/26; 6/26/26.

Exhibit C-25 consisted of two deposit slips of Katherine N. Stryker in the handwriting of Charles G. Smith, for deposits made in the Phillipsburg National Bank and Trust Company on the following dates: 7/12/26; 3/17/26.

Exhibit C-26 consisted of two deposit slips of Katherine N. Stryker in the handwriting of John T. Youpa, for deposits made in the Phillipsburg National Bank and Trust Company on the following date: 9/29/25.

(C-28)

SAFE DEPOSIT BOX AND LEDGER

Assent to Contract

..... 19.....

I hereby acknowledge to have received this day from 10
Receipt No. ..... for one years rent of Safe Deposit Box No. ..... which receipt embodies the whole contract pertaining to the rental of safe Deposit Box, and I hereby agree to be bound by said contract. I also acknowledge receipt of ..... keys to said Safe Deposit Box

Witness..... Signed.....

Appointment of Deputy 20

..... 19.....

I hereby designate .....
of ..... as
my Deputy, to have access to and control the contents of the above Safe Deposit Box, until this authority is revoked in writing .....
.....

Signed 30
Signature
of Deputy .....

Witness
.....

STIPULATION IN LIEU OF EXHIBITS

C-29, C-30, C-31, C-37, C-38, C-39, C-40 and C-41 it is stipulated by the counsel for all parties that the following summary shall be printed in the State of the Case in place of Exhibits C-29, C-30, C-31, the checks of Steward K. Heitsman, and exhibits C-37, C-38, C-39, C-40 and C-41, the check book stubs.

It is further stipulated that where the check numbers are preceded by the letter S that the signature on said checks was the genuine signature of Steward K. Heitsman in his own handwriting, and the remainder of the handwriting on the stubs in the check book and the checks themselves, was in the handwriting of the defendant, Katherine N. Stryker, and also that the words following the amounts of said checks were notations either on said checks or in the stubs of the check book.

Check No.	Date	Payee	Amount
117	Nov. 1, 1918	S. K. Heitsman	$ 25.00
118	Nov. 18, 1918	W. Kroner	29.75
119	Dec. 2, 1918	S. K. Heitsman	25.00
120	Dec. 9, 1918	S. K. Heitsman	25.00
121	Dec. 17, 1918	S. K. Heitsman	25.00
122	Dec. 19, 1918	Wm. Laubach & Sons (Window shades)	16.76
	Dec. 23, 1918	S. K. Heitsman	25.00
	Dec. 23, 1918	T. Newman (Coal)	83.45
125	Jan. 10, 1919	S. K. Heitsman	25.00
126	Jan. 28, 1919	S. K. Heitsman	25.00
127	Feb. 1, 1919	F. T. Hawk	8.90
128	Feb. 1919	S. K. Heitsman	25.00

Check No.	Date	Payee	Amount
129	Feb. 28, 1919	Cash	25.00
130	Mar. 7, 1919	Charles V. Duffy (Federal Coll.)	1,111.68
131	March 13, 1919	K. N. Stryker	60.00
132	March 21, 1919	S. K. Heitsman	25.00
133	March 4, 1919	S. K. Heitsman	25.00
134	April 16, 1919	K. N. Stryker	25.00
135	April 28, 1919	S. K. Heitsman	25.00
136	May 9, 1919	P'burg Nat. Bank Bonds	200.00
137	May 14, 1919	Thomas Newman	72.40
138	May 28, 1919	S. K. Heitsman	25.00
139	June 2, 1919	S. K. Heitsman	25.00
140	June 3, 1919	K. N. Stryker	50.00
141	June 13, 1919	S. K. Heitsman	25.00
142	June 17, 1919	Frank Miller	10.50
143	June 27, 1919	S. K. Heitsman	25.00
144	July 10, 1919	S. K. Heitsman	25.00
145	July 23, 1919	S. K. Heitsman	25.00
146	Aug. 6, 1919	S. K. Heitsman	$25.00
147	Aug. 8, 1919	K. N. Stryker	25.00
148	Aug. 15, 1919	S. K. Heitsman	25.00
149	Aug. 28, 1919	S. K Heitsman	25.00
150	Sept. , 1919	S. K. Heitsman	25.00
151	Sept. 22, 1919	S. K Heitsman	25.00
152	Oct. 3, 1919	S. K. Heitsman	25.00
153	Oct. 15, 1919	S. K. Heitsman	25.00
	Oct. 29, 1919		25.00
155	Nov. 6, 1919	K. N. Stryker	50.90
	Nov. 14, 1919	S. K. Heitsman	25.00
	Nov. 25, 1919	S. K Heitsman	25.00
	Dec. 3, 1919	S. K. Heitsman	25.00

Check No.	Date	Payee	Amount
159	Dec. 15, 1919	S. K Heitsman	25.00
		31 Checks Missing	
190	Dec. 18, 1920	S. K. Heitsman	25.00
	Dec. 28, 1920	Cash	25.00
192	Dec. 30. 1920	.....	25.00
192		.....	25.00
193	Feb. 4, 1921	S. K. Heitsman	25.00
S 194	Feb. 18, 1921	Cash	25.00
S 195	March 15, 1921	J. F. Storm Coal	24.40
S 196	March 17, 1921	Rader & Bro. Recovering 3 chairs	57.00
S 197	March 17, 1921	Bush & Bull Coat ...	59.50
S 198	March 26, 1921	Cash	25.00
S 199	April 4, 1921	Cash	25.00
S 200	Apr. 4, 1921	K. N. Stryker Dress	50.00
S 201	Apr. 15, 1921	K. N. Stryker for S K. Heitsman	25.00
S 202	April 29, 1921	K. N. Stryker for S. K. Heitsman	25.00
S 203	May 16, 1921	K. N. Stryker for S. K. Heitsman	25.00
S 204	May 24, 1921	J. S. Randels Taxes	7.28
S 205	May 27, 1921	K. N. Stryker for S. K. Heitsman	25.00
S 206	June 4, 1921	K. U. Stryker	25.00
S 207	June 15, 1921	Cash	25.00
S 208	June 15, 1921	Bush & Bull Sheets & table linen	24.74
S 209	June 25, 1921	Cash	25.00
S 210	July 6, 1921	J. F. Storm Coal	116.00
S 211	July 6, 1921	Cash	25.00
S 212	July 29, 1921	Cash	25.00

Check No.	Date	Payee	Amount
S 213	Aug. 9, 1921	Cash	25.00
S 214	Aug. 20, 1921	Cash	50.00
S 215	Aug. 31, 1921	K. N. Stryker	20.00
S 216	Sept. 13, 1921	Cash	50.00
S 217	Sept. 27, 1921	Harry T. Hess Papering parlor	35.50
S 218	Oct. 1, 1921	Peter V. Yerance Cleaning privy	31.90
S 219	Oct. 3, 1921	Wm. Laubach & Son Rugs	104.75
S 220	Oct. 6, 1921	Cash	50.00
S 221	Oct. 25, 1921	Cash	50.00
S 222	Nov. 18, 1921	Cash	25.00
S 223	Nov. 28, 1921	Wm. Laubach & Sons	37.49
S 224	Nov. 28, 1921	Orr Co.	9.92
S 225	Nov. 28, 1921	Bush & Bull	12.30
S 226	Dec. 2, 1921	Cash	50.00
S 227	Dec. 23, 1921	Cash	50.00
S 228	Jan. 9, 1922	Dr. Souders	34.50
S 229	Jan. 21, 1921	Clarence Walters Release	2.50
S 230	Jan. 27, 1922	Cash	50.00
S 231	Feb. 21, 1922	Cash	50.00
S 232	March 2, 1922	Werner Co.	241.60
S 233	March 24, 1922	J. F. Storm 2 tons coal	23.80
S 234	April 5, 1922	Cash	50.00
S 235	May 8, 1922	Cash	50.00
236			
S 237	May 17, 1922	Dr. H. C. Fisler Operation	36.50

No. Check	Date	Payee	Amount
S 238	May 17, 1922	Easton Hospital Board	37.50
S 239	May 29, 1922	Cash	50.00
S 240	June 22, 1922	Cash	50.00
S 241	June 28, 1922	Dr. H. R. West	117.25
S 242	June 30, 1922	Bush & Bull	24.68
S 243	July 6, 1922	F. N. Miller	8.00
S 244	July 19, 1922	Bush & Bull	31.70
S 245	July 21, 1922	Cash	50.00
S 246	July 27, 1922	J. F. Storm 5 tons coal	59.50
S 247	Aug. 11, 1922	Cash	50.00
S 248	Sept. 1, 1922	Cash	50.00
S 249	Sept. 27, 1922	Cash	50.00
S 250	Oct. 16, 1922	Cash	50.00
S 251	Oct. 23, 1922	Bush & Bull	63.05
S 252	Nov. 1, 1922	Cash	50.00
S 253	Nov. 17, 1922	Cash	50.00
S 254	Dec. 14, 1922	Cash	50.00
S 255	Jan. 5, 1923	Cash	50.00
S 256	Jan. 18, 1923	J. F. Storm	11.90
S 257	Jan. 25, 1923	H. A. Weaver, Treas. Warren Hosp.	100.00
S 258	Jan. 25, 1923	K. N. Stryker Hospital	100.00
S 259	Jan. 31, 1923	Cash	50.00
S 260	Feb. 5, 1923	Werner Co.	10.00
S 261	Feb. 12, 1923	J. F. Storm Coal ½ ton	6.10
S 262	Feb. 15, 1923	Cash	50.00
S 263	Feb. 20, 1923	J. F. Storm Coal	11.90
S 264	March 7, 1923	J. F. Storm	11.90

S 265	March 22, 1923 J. F. Storm	11.90	
S 266	March 28, 1923 Cash.....	50.00	
S 267	Apr. 13, 1923 Cash	50.00	
S 268	Apr. 16, 1923 J. F. Storm Coal 1 ton	11.90	
S 269	April 24, 1923 Cash	50.00	
S 270	May 4, 1923 Cash	50.00	
S 271	May 10, 1923 Bush & Bull	44.40	
S 272	May 10, 1923 Wm. Laubach & Sons ..	19.54	10
S 273	May 16, 1923 J. F. Storm Coal 1 T. ..	11.90	
S 274	May 23, 1923 Cash	50.00	
S 275	June 6, 1923 Cash	50.00	
S 276	June 21, 1923 Cash	50.00	
S 277	July 2, 1923 Cash	50.00	
S 278	July 24, 1923	50.00	
S 279	Aug. 8, 1923 Cash	50.00	
S 280	Aug. 22, 1923 W. Laubach & Sons....	21.99	
S 281	Aug. 22, 1923 Bush & Bull	19.65	
S 282	Aug. 22, 1923 J. F. Storm 10 T. Coal .	119.00	20
S 283	Aug. 30, 1923 Cash	50.00	
S 284	Sept 14, 1923 Cash	50.00	
S 285	Sept. 24, 1923 Cash	50.00	
S 286	Oct. 13, 1923 Cash	50.00	
S 287	Oct. 26, 1923 Anna F. Howell Coat ..	89.50	
S 288	Nov. 5, 1923 Cash	50.00	
S 289	Nov. 5, 1923 Anna F. Howell Curtains	16.20	
S 290	Nov. 21, 1923 Cash	50.00	
S 291	Dec. 6, 1923 Bush & Bull	50.03	30
S 292	Dec. 10, 1923 Cash	50.00	
S 293	Dec. 21, 1923 Cash	50.00	
S 294	Jan. 10, 1924 Cash	50.00	
S 295	Jan. 31, 1924 Cash	50.00	
S 296	Feb. 7, 1924 W. Laubach & Sons	49.37	

Check No.	Date	Payee	Amount
S 297	Feb. 18, 1924	Cash	50.00
S 298	Feb. 29, 1924	Sherer Bros. Suit	30.00
S 299	March 26, 1924	Welfare Chest	25.00
S 300	March 31, 1924	Cash	50.00
S 301	Apr. 8, 1924	Bush & Bull	47.67
S 302	April 16, 1924	Cash	50.00
S 303	April 28, 1924	J. F. Storm Coal 11 tons	134.75
S 304	Apr. 30, 1924	Cash	50.00
S 305	May , 1924	Cash	50.00
S 306	May 29, 1924	Cash	50.00
S 307	June 11, 1924	Wm. Laubach & Sons	38.45
S 308	June 11, 1924	Bush & Bull	21.20
S 309	June 18, 1924	Cash	50.00
S 310	June 30, 1924	Cash	50.00
S 311	July 24, 1924	Cash	50.00
S 312	July 29, 1924	Bush & Bull	29.36
S 313	Aug. 11, 1924	Cash	50.00
S 314	Sept. 2, 1924	Cash	60.00
S 315	Sept. 16, 1924	Bush & Bull	26.80
S 316	Sept. 16, 1924	Harry L. Hess	19.20
S 317	Sept. 16, 1924	J. F. Storm Coal	25.50
S 318	Sept. 18, 1924	Cash	50.00
S 319	Oct. 2, 1924	Cash	50.00
S 320	Oct. 14, 1924	Cash	50.00
S 321	Oct. 28, 1924	Cash	50.00
S 322	Nov. 20, 1924	Cash	50.00
S 323	Dec. 11, 1924	Cash	50.00
S 324	Dec. 24, 1924	K. N. Stryker Xmas	100.00
S 325	Dec. 26, 1924	Cash	50.00
S 326	Jan. 16, 1925	Cash	50.00

Check No.	Date	Payee	Amount
S327	Jan. 19, 1925	H. L. Hess Papering dining room	18.10
S 328	Jan. 19, 1925	Bush & Bull	21.08
S 329	Feb. 4, 1925	Cash	50.00
S 330	Feb. 4, 1925	K. N. Stryker	300.00
S 331	Feb. 24, 1925	Cash	50.00
S 332	March 20, 1925	Cash	50.00
S333	March 31, 1925	W. Laubach & Sons	18.64
S334	Apr. 1, 1925	Cash	50.00
S335	Apr. 8, 1925	Bush & Bull Coat	61.44
S336	May , 1925	Cash	50.00
S337	May 20, 1925	Bush & Bull	45.35
S338	May 20, 1925	Cash	50.00
S339	June 1, 1925	Cash	50.00
S340	June 16, 1925	Cash	50.00
S341	July 1, 1925	Cash	50.00
S 342	July 10, 1925	J. F. Storm 12 T. Coal	142.20
S 343	July 23, 1925	Bush & Bull	35.03
S344	July 23, 1925	Cash	50.00
S345	Aug. 6, 1925	Wilson Stove	11.55
S346	Aug. 6, 1925	Cash	50.00
S347	Aug. 22, 1925	Cash	50.00
S348	Sept. 2, 1925	Cash	50.00
S349	Sept. 17, 1925	Cash	50.00
S 350	Sept. 28, 1925	Dr. Souders	16.50
S 351	Sept. 28, 1925	Cash	50.00
S 352	Oct. 8, 1925	Cash	50.00
S 353	Oct. 17, 1925	F. Kline Sofa	80.00
S354	Oct. 22, 1925	Cash	50.00
S355	Nov. 12, 1925	Cash	50.00
S356	Nov. 23, 1925	Cash	50.00
S357	Dec. 14, 1925	Cash	50.00
S358	Dec. 24, 1925	Cash	50.00

(C-32)

STATE OF NEW JERSEY
COUNTY OF WARREN } ss:

C. Albert Sandt being duly sworn on his oath says that the Estate of Stewart K. Heitswan, is justly indebted to the heirs at law of Emma Heitsman, deceased, for rent or use and occupancy of property No. 115 South Main Street, Phillipsburg, New Jersey, from the 31st day of January, 1920, to the 31st day of January, 1926, being rent for six years at the rate of $336 per year, making a total of $2,016. That indebtedness represents amount due himself and his two sisters, Katherine Nicholas and Elizabeth Shingle, who are owners of one third of the property in Phillipsburg, New Jersey, of which Emma Heitsman died seized and that he claims for himself and said sisters the sum of $672, being one third the amount of said rents accrued and due as aforesaid. Deponent further says that no part of said debt has been paid.

C. ALBERT SANDT

Subscribed and sworn to before
me this 28th day of July, 1926.

JAMES E. SMITH,
Notary Public.

(C-33)

WARREN COUNTY SURROGATE'S COURT.

Inventory and Appraisement.

In the Matter of the Estate of Steward K. Heitsman, deceased.

An inventory and appraisement of the goods and chattels, rights and credits, moneys and effects of Steward K. Heitsman, of the Town of Phillipsburg, County of Warren and State of New Jersey, deceased, made by Osiris D. McConnel, executor, and Thomas F. Marnell and William P. Cavanaugh, appraisers.

3rd Floor Front Bedroom.	
Bureau	$ 1.50
Cot-Folding	2.00
Book case	.50
1 chair	.15
Rocker chair	.35
I Wardrobe	2.00
Carpet	1.00
3rd floor stairway carpet	.75
2nd floor hall carpet	2.00
2nd Floor Hall Room	
1 sewing machine	5.00
1 chair	.25
2nd Floor Front Bedroom.	
1 chiffonier	5.00
2nd Floor Middle Bedroom.	
1 bedroom suite—walnut	10.00
Carpet	2.00

REAR BEDROOM.	
1 bedroom suite—oak	12.00
Rug	5.00
Mahogany-veneer Secretary	5.00
1 lot of bedding, sheets, towels, etc.	15.00
LIVING ROOM FRONT PARLOR	
1 rocking chair	.65
1 chair	.60
1 Edison Phonograph—4 years old and records	75.00
6 pictures	6.00
3 vases	3.00
2 rugs	12.00
Forwarded	$166.75
Brought Forward	$166.75
SITTING ROOM 1st FLOOR	
Parlor set, sofa and chair	10.00
1 corner cupboard	5.00
1 set Haviland dishes	55.00
Odd dishes in corner cupboard	5.00
1 rug—large	10.00
1 rug—small	2.00
1 cane rocker	.50
3 pictures	3.00
Mantel ornaments	2.00
DINING ROOM.	
1 table—walnut	2.00
5 oak chairs	12.00
1 rocking chair	5.00
1 clock	1.00
1 rug and runner	10.50
5 pictures	5.00
1 cot bed	2.00

Table linens	5.00	
4 table cloths)		
1½ doz. napkins)	3.00	
1 carving set	2.50	
1 oak stand	1.00	
I doz silver plated knives	6.00	
1 doz. silver plated forks	6.00	
½ doz. silver plated knives	3.00	
½ doz. silver plated forks	3.00	10
1½ doz. silver teaspoons	5.40	
½ doz. silver tablespoons	1.80	
½ doz. teaspoons silver	6.00	
KITCHEN		
2 cupboards	1.75	
1 table	.75	
I porch rocker	.75	
2 chairs	.25	
1 cloth rack	.25	
1 linoleum	5.00	20
Cooking utensils	8.00	
1 step ladder	1.50	
2 ironing boards	1.00	
Kitchen dishes and utensils	1.50	
1 small clock, lamp and hat rack	.50	
12 kitchen towels	1.80	
CELLAR.		
24 cans of fruit—pint jars	6.00	
2 benches—wood	.50	
1½ tons coal—chestnut	17.85	30
2 galvanized iron washtubs	1.00	
1 porch rocker chair	.75	
Forwarded	$ 388.60	

Brought Forward	$ 388.60	
1 chain	5.00	
Cash in pocketbook	4.57	
9 shades front windows	4.50	
13 shades rear windows	2.60	
5 pairs sash curtains	1.25	
2 pairs curtains—dining room	2.00	
3 pairs parlor curtains	6.00	
2 pairs draperies	10.00	$424.52
74 shares of stock of People's Water Company, $15.00		1,110.00
17 shares of stock of Easton National Bank, @ $66.00		1122.00
6 shares of stock of The First National Bank of Easton, @ $85.00		510.00
40 shares of stock of Phillipsburg National Bank @ $185.00		7400.00
Cash on deposit in Phillipsburg National Bank		$1222.63
		$11789.15

Osiris D. McConnell, Executor.

Thomas F. Marnel,
William Cavanaugh,
Appraisers.

Said Steward K. Heitsman in his lifetime owned $30,000, par value, of United States Liberty Loans Bonds. Miss Katherine N. Stryker claims that said Steward K. Stryker claims that said Steward K. Heitsman gave said Liberty Bonds to her in his lifetime.

Warren County ss:

Executor Steward K. Heitsman

Osiris D. McConnel deceased, being duly sworn on his oath did—depose and say that the within writing contains a true and perfect Inventory of all and singular the goods, chattels and credits of the said Steward K. Heitsman deceased, so far as have come to his knowledge or possession, or the possession of any other person or persons for his use to his knowledge;

OSIRIS D. MCCONNEL

Sworn and subscribed, this 14th day of April A. D., 1926, before me,

YOLANDA TRAVAGLINI,
Notary Public of N. J.

(SEAL)

WARREN COUNTY SS:

Thomas F. Marnel one of the Appraisers of the within inventory, on his oath did depose and say that the goods, chattels and credits in the said inventory set down and specified were by them appraised according to their just and true respective rates and values after the best of their judgment and understanding, and that William P. Cavanaugh the other appraiser whose name is thereunto subscribed was present at the same time and consented in all things to the doings thereof; and that they appraised all things that were brought to their view for appraisement.

THOMAS F. MARNEL,

Sworn and subscribed, this 21st day of April, A. D. 1926, before me.

YOLANDA TRAVAGLINI
Notary Public of N. J.

(SEAL)

(Exhibit DS-1)

IN CHANCERY OF NEW JERSEY

Between
OSIRIS D. McCONNNEL, Ex'r.,
Complainant,
AND
KATHERINE N. STRYKER, et al.,
Defendants.

ON BILL, &c.
TESTIMONY.

Testimony taken in the above entitled cause, at Number 115 South Main Street, Phillipsburg, New Jersey, on Saturday, the Second day of April, 1927, at eleven o'clock A. M., in pursuance of an order of this court,

Before SAMUEL POWIS, JR., Master.

APPEARANCES:

O. D. McCONNEL, Pro Se;

WILLIAM C. GEBHARDT and SON, by Mr. GEBHARDT, JR., for defendants Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman;

Messrs. SMITH and SMITH, by Mr. SYLVESTER C. SMITH, JR., for defendants Katherine Stryker and Frank Heitsman.

B. FRANK HEITSMAN, a witness produced on behalf of the defendant Katherine Stryker, being duly sworn, testifies as follows:

DIRECT EXAMINATION

By MR. SMITH:

Q. Mr. Heitsman, you are a brother of Steward Heitsman, who died in 1926?

A. Yes.

Q. How old are you?

A. Eighty-one.

Q. How long have you lived here at 115 South Main Street?

A. Thirty-five years.

Q. You and your brother lived together here as long as he lived?

A. Yes.

Q. Did you ever talk to your brother about business affairs, his business affairs?

MR. GEBHARDT—I object to that on the ground that it calls for an answer concerning a statement of a transaction with decedent, Steward K. Heitsman, because of the fact that it appears that the witness, B. Frank Heitsman, as I understand this matter, is antagonistic to the executor of the estate, and to the estate; therefore, he is incompetent to testify in view of the fact that the executor has not offered himself as a witness for any such purpose.

A. Not very often.

Q. Did he ever talk to you about Katherine Stryker?

MR. GEBHARDT—Same objection.

A. No.
Q. To whom did you pay your board?

MR. GEBHARDT—Same objection.

A. Him, Steward Heitsman.
Q. Are these cancelled checks made by you for board?

(Showing witness checks).

MR. GEBHARDT—Same objection.

A. Yes, all of them.
Q. And to whom were those checks delivered?

MR. GEBHARDT—Same objection.

A. Delivered?
Q. To whom did you give those checks?

MR. GEBHARDT—Same objection.
A. Him sometimes and sometimes to Katherine.

MR. SMITH—I offer them in evidence.

MR. GEBHARDT—The offer of the checks is objected to on the ground that they are evidence of a transaction with decedent, and therefore, they are objected to on the same ground as already stated as a ground for my objection to the witness testifying to any statement of a transaction with the decedent; and also on the ground that they are incompentent, irrelevant and immaterial to

the issue involved; and also on the further ground that there has been no proper proof of the signatures on the back of the checks, that is, the handwriting of the endorsements.

MR. SMITH—Do I understand that you won't admit that it is the handwriting of Steward K. Heitsman and Katherine N. Stryker?

MR. GEBHARDT—I will waive formal proof on the record of the signature of Steward K. Heitsman and the signature of Katherine N. Stryker, as they appear on these checks, and admit that where the signature of Steward K. Heitsman appears, that it is his genuine signature, and that where the signature of Katherine N. Stryker appears, that it is her genuine signature. But, of course I retain my objection.

Mr. McConnel: The complainant admits that the signatures of B. F. Heitsman, as maker of the checks, and the endorsements of Steward K. Heitsman and Katherine N. Stryker, are all genuine.

Said checks, forty-four in number, made by B. F. Heitsman to the order of Steward Heitsman, are marked Exhibit DS—1.

Q. Did your brother Steward Heitsman ever talk to you about his government bonds?

MR. GEBHARDT—Same objection.

A. No, he never said much about it.

Q. Do you know where he kept the keys of his safe deposit box?

MR. GEBHARDT—Objected to for the same reason.

A. No.

Q. Did you ever see him get the keys out?

MR. GEBHARDT—Same objection.

A. No.

Q. Do you know where they were after his death?

A. No.

Q. You don't recall anything about that?

A. No.

Q. Louella Silkman has testified and sworn that after the death of Steward Heitsman, at the house here, Katherine, talking to you and Henry Walters, said to you or Henry Walters, "I went through Uncle's box thoroughly and I didn't find that will; if I had I should have changed it instantly." Did Katherine Stryker ever say such a thing to you?

A. No, no sir.

Q. Did your brother Steward ever say anything to you about taking care of Katherine?

MR. GEBHARDT—Same objection.

A. No.

Q. Did he ever talk to you about Katherine?

MR. GEBHARDT—Same objection.

A. Oh, sometimes, a little.

Q. What did he say?

MR. GEBHARDT—The same objection; and also that it has been asked and answered when he said he had not talked to him.

Q. What did he say?

Mr. GEBHARDT—Same objection.

A. He said he had provided for her.
Q. How long before his death did he tell you that?

MR. GEBHARDT—Same objection.

A. Oh, not very often— He had provided for her in the way of bonds, and so on.

Q. Now, Mr. Heitsman, we, as your lawyers, have filed an answer in this suit, in which we say that you have "no desire to contest or deny the right of Katherine N. Stryker to the bonds given to her by the said Steward K. Heitsman, brother of this defendant, as set forth in the bill of complaint," and further, that you were a member of the household of Steward K. Heitsman for many years, and knew the relations existing between Katherine N. Stryker and her Uncle, the said Steward K. Heitsman, and believes that the transfer of said bonds from Steward K. Heitsman to his niece, the said Katherine N. Stryker, is entirely valid and done by the said Steward K. Heitsman in acknowledgment of the sacrifices and services which she made and rendered to him, as a mark of his affection for her." Did you authorize your attorneys to file that answer?

MR. GEBHARDT—That is objected to as immaterial, and also on the ground that it is presumed that he did also that the answer stands as a pleading in the cause and speaks for itself.

A. No.

Q. Did you authorize my father, as your lawyer, to file an answer for you?

MR. GEBHARDT—Same objection.

A. Oh, yes, yes.

Q. And was that the answer?

MR. GEBHARDT—I make the same objection, and also that it is leading.

A. Yes; I didn't quite understand.

Q. After the death of Steward Heitsman, did Katherine Stryker ask you to be present when she took some keys from the pockets and clothes of Steward Heitsman?

A. Yes.

Q. Where were those keys taken from?

A. In his pocket,—his pants pocket.

Q. Who else was present?

A. Lizzie. What's her name?

Q. Heitsman?

A. Yes.

Q. Your brother Chester's widow?

A. Yes.

Q. Where were the clothes hanging at the time?

Q. And what keys did Katherine take from his pockets, from the key ring?

A. From the key rings?

Q. Yes.

A. I don't know.

Q. Do you recall whether she took any keys off the big key ring?

A. No, I think she took them all.

Q. Did you ever see Steward K. Heitsman, your brother, give Katherine any keys at any time?

MR. GEBHARDT—Same objection.

A. No.

Q. During the time that you have lived here did Katherine Stryker ever try to influence Steward Heitsman?

MR. GEBHARDT—Objected to on the same ground.

A. No, no, no, he had a will of his own.

MR. GEBHARDT—Before proceeding with the cross examination, I want to note on the record that I desire to reserve my right, of course, to press my objection to any testimony of the witness with respect to any transactions where the statement is by the decedent, Steward K. Heitsman, my cross-examination on any such points being merely done with the view that if the Vice Chancellor should allow such testimony to stand, that I have a right to my cross examination on it.

CROSS EXAMINATION

By MR. GEBHARDT:

Q. Mr. Heitsman, for quite a long time you have not been in good health, have you?

A. No.

Q. You don't get around very much at the present time, do you?

A. I don't get around at all.

Q. But even when you are confined to your bed, even then you don't get around very much, do you?

A. No.

Q. And for how long has your health been rather weak and uncertain?

A. Oh, about a year.

Q. And previous to that time were you able to get around as much as you used to, or somewhat less?

A. Oh, no; less.

Q. And you have been able to get around less, and less, and less, for a number of years past. Is that right?

A. Yes.

Q. And is it a little difficult for you, sometimes, Mr. Heitsman, a little hard for you to keep things in mind and remember things?

A. Oh, yes, yes.

Q. That is a thing which has come with your old age. Is that right?

A. Yes.

Q. And there are times when you forget things that have taken place. Is that right?

A. Yes.

Q. You sometimes forget things that people have said. Is that right?

A. Yes.

Q. So that when you say that Miss Katherine did not say to you, or in your presence, that she had gone through the box and didn't find the will, and if she had she would have changed it, it might be that you would have forgot that she said that?

A. No, she never said that.

Q. She didn't?

A. No.

Q. How is it that your memory is good about that and that once in a while your memory fails you about other things, Mr. Heitsman?

A. Sometimes it does and sometimes it don't.

Q. And this might have been one of the things you would have forgot?

A. No, I don't think I would have forgot that

MR GEBHARDT—I move to strike out what he thinks as not responsive.

Q. You have quite often forgot things that people have told you, or that you have heard?

A. Yes, I do now.

Q. And that has been the case for a year or so back?

A. Oh, yes, yes.

Q. Now, you say that Steward told you that he had provided for Miss Katherine?

A. Yes.

Q. Was that all that he said?

A. Yes.

Q. That is all you can remember, is it?

A. That's all I can remember.

Q. Whom did you say was present when the keys were taken from Steward's pocket of his pants after he had died, Mr. Heitsman?

A. What's her name?

Q. Are you able to recall her name?

A. I can't think of it. Lizzie Heitsman, ain't it?

Q. That's right; you got it that time. How long have you lived in the same house with Miss Katherine, Mr. Heitsman?

A. Thirty-five years.

Q. Thirty-five years And during that time you have been very good friends with her, have you?

A Yes.

Q. You think a great deal of Miss Katherine, do you?

A. Yes, she's the housekeeper; she's good.

Q. You are very fond of her?

A. Yes.

Q And are anxious to do anything you can to help her. Is that right?

A. Yes.

Q. Do you know Mr. John Kirkpatrick?

A. Yes.

Q. Do you remember saying to him on one or more occasions—

MR. GEBHARDT—I will withdraw that.

Q. When was it that these keys were taken from your brother Steward's pocket?

A. After he died.

Q. Do you know what day it was?

A. No, I can't think of the day now.

Q. Do you know how long it was after he had died?

A. Why after he died, in the morning. I don't know what day it was.

Q. All that you saw was simply a bunch of keys taken from his pocket. Is that right?

A. Yes.

Q. You don't know what was done with them, or anything?

A. They took charge of them, I suppose.

you?

A. No, I suppose they were in good hands.

MR. GEBHARDT—I move to strike that out.

RE-DIRECT EXAMINATION

By MR. SMITH:

Q. Has Katherine tried to influence you in this matter, Mr. Heitsman?

A. No, no.

I, Samuel Powis, Jr., being the Master in Chancery, directed by this Court to take the testimony of one B. Frank Heitsman, and to reduce it to typewriting, in the cause pending in this Court, wherein Osiris D. McConnel, Executor, &c., is Complainant and Katherine N. Stryker and others are Defendants, do hereby respectfully report that the foregoing testimony and proceedings were taken before me, as said master, and by me taken down stenographically and reduced to writing, after the said B. Frank Heitsman was duly sworn by me; and that the foregoing transcript accurately sets forth the testimony of the witness, the said B. Frank Heitsman, and the proceedings had in connection with his said examination.

Master in Chancery of New Jersey.

(Ex. DS-1)

LIST OF CHECKS GIVEN ON THE PHILLIPSBURG NATIONAL BANK

By B. F. Heitsman to Steward Heitsman for Board

Date	Amount	Endorsed
Apr. 2, 1913	$48.00	Steward K. Heitsman
July 1, 1913	48.00	Steward K. Heitsman
Oct. 2, 1913	48.00	Steward K. Heitsman
Jan. 2, 1914	48.00	Steward K. Heitsman
Jan. 3, 1916	48.00	Steward K. Heitsman
Apr. 1, 1916	48.00	Steward K. Heitsman Katherine N. Stryker
July 1, 1916	48.00	Steward K. Heitsman Katherine N. Stryker
Oct. 12, 1916	48.00	S. K. Heitsman Katherine N. Stryker
Jan. 2, 1917	48.00	Steward K. Heitsman Katherine N. Stryker
Apr. 2, 1917	48.00	Steward K. Heitsman
July 2, 1917	60.00	Steward K. Heitsman Katherine N. Stryker
Oct. 1, 1917	60.00	Steward K. Heitsman Katherine N. Stryker
Jan. 2, 1918	60.00	Steward K. Heitsman Katherine N. Stryker
Apr. 1, 1918	60.00	Steward K. Heitsman Katherine N. Stryker

Date	Amount	Endorsed
July 1, 1918	60.00	Steward K. Heitsman Katherine N. Stryker
Oct. 1, 1918	60.00	Steward K. Heitsman Katherine N. Stryker
Jan. 1, 1919	60.00	Steward K. Heitsman Katherine N. Stryker
Apr. 1, 1919	60.00	Steward K. Heitsman Katherine N. Stryker
July 1, 1919	60.00	Steward K. Heitsman Katherine N. Stryker
Oct. 1, 1919	60.00	Steward K. Heitsman Katherine N. Stryker
Dec. 31, 1919	60.00	S. K. Heitsman Katherine N. Stryker
Apr. 1, 1920	60.00	Steward K. Heitsman Katherine N. Stryker
July 1, 1920	60.00	Steward K. Heitsman Katherine N. Stryker
Oct. 1, 1920	60.00	Steward K. Heitsman Katherine N. Stryker
Dec. 31, 1920	60.00	Steward K. Heitsman Katherine N. Stryker
Apr. 1, 1921	60.00	Steward K. Heitsman Katherine N. Stryker
July 1, 1921	60.00	S. K. Heitsman Katherine N. Stryker
Oct. 1, 1921	60.00	S. K. Heitsman Katherine N. Stryker
Jan. 2, 1922	60.00	Steward K. Heitsman Katherine N. Stryker

Date	Amount	Endorsed
Mar. 31, 1922	60.00	Steward K. Heitsman Katherine N. Stryker
June 30, 1922	60.00	Steward K. Heitsman Katherine N. Stryker
Oct. 2, 1922	60.00	Steward K. Heitsman Katherine N. Stryker
Jan. 1, 1923	60.00	Steward K. Heitsman Katherine N. Stryker
Mar. 31, 1923	60.00	Steward K. Heitsman Katherine N. Stryker
July 2, 1923	60.00	Steward K. Heitsman Katherine N. Stryker
Oct. 1, 1923	60.00	Steward K. Heitsman Katherine N. Stryker
Dec. 31, 1923	60.00	Steward K. Heitsman Katherine N. Stryker
Mar. 31, 1924	60.00	Steward K. Heitsman Katherine N. Stryker
June 30, 1924	60.00	Steward K. Heitsman Katherine N. Stryker
Oct. 1, 1924	60.00	Steward K. Heitsman Katherine N. Stryker
Jan. 1, 1925	60.00	Steward K. Heitsman
Mar. 31, 1925	60.00	Steward K. Heitsman Katherine N. Stryker
July 1, 1925	60.00	Steward K. Heitsman
Oct. 1, 1925	60.00	Steward K. Heitsman Katherine N. Stryker

NEW JERSEY COURT OF ERRORS AND APPEALS

Between OSIRIS D. MCCONNEL, Executor, of the last will and testament of STEWARD K. HEITSMAN, deceased, Complainant-Appellee, and KATHERINE N. STRYKER, Defendant-Appellant.	ON APPEAL FROM THE COURT OF CHANCERY BRIEF OF THE DEFENDANT-APPELLANT, KATHERINE N. STRYKER.

STATEMENT OF THE CASE

This is the appeal of the defendant, Katherine N. Stryker, from a final decree, (p.48), advised by Vice Chancellor Buchanan in which it was adjudged that the complainant's decedent, Steward K. Heitsman, did not in his lifetime make a completed and valid gift to the defendant-appellant, Katherine N. Stryker, of thirty thousand dollars of liberty bonds and directed the restoration to the complainant, as executor of Steward K. Heitsman, of the bonds.

The bill of complaint was filed by the executor of Steward K. Heitsman, deceased, under Section 7 of the 1915 Chancery Act which provides, subject to rules:

> "Any person claiming a right cognizable in court of equity under a deed, will or written instrument, may apply for the determination of any question of construction thereof, so far as the same affects such right and for a declaration of the rights of the persons interested."

The prayer was for advice and direction of the court as to whether said bonds belonged to the defendant, Katherine N. Stryker, or to the testator's estate. The appellant, Katherine N. Stryker, and the other residuary legatees were made a party to that suit.

The will of Steward K. Heitsman, (p.16), was made February 23, 1916, and at the time, the testator was the owner of a farm in Lopatcong Township, Phillipsburg, New Jersey, which he still owned at the time that he made the codicil to the will, (p.18), on June 12, 1918. By virtue of the 4th paragraph of the will, the executor was directed to divide the proceeds of the sale of the farm among seven persons all of whom are defendants in this suit, with the exception of Chester Heitsman, who died in 1917, leaving him surviving as his only child, Alma Heitsman.

Steward K. Heitsman sold his farm on August 1, 1918, for thirty thousand dollars and received as consideration, that amount in second Liberty Loan bonds. This transaction was after the will and codicil to the will had been made.

The bill of complaint, (p.9), alleged that these $30,000 of liberty bonds, at the death of Steward K. Heitsman, were in the safe deposit box of Katherine N. Stryker, defendant-appellant, and further that she claimed a valid gift of the bonds on two different occasions, approxi-

mately four years apart, fifteen thousand dollars, par value, of them in 1921, and the other fifteen thousand dollars, par value, in 1925. The executor avers that the relationship between Katherine N. Stryker, appellant, and the testator was confidential, and one in which she relied upon him, and further that the gift was the greater portion of his estate, and prayed the advice and instruction of this Court for a determination as to whether the bonds were a part of the estate of Steward K. Heitsman.

The defendant-appellant, Katherine N. Stryker, by her answer (p.19), denied that Steward K. Heitsman was in poor health and further stated that she only attended to the business affairs of Steward K. Heitsman at his direction and under his instructions and that she never had access to the safe deposit box of Steward K. Heitsman, except on occasions when he would give her the key. She further contended that these bonds were voluntary gifts inter vivos and that transfer gave her the absolute ownership and the control of the bonds in question, in the lifetime of the testator.

The defendant, B. Frank Heitsman, a brother of the testator who has a one-seventh interest with the other five defendant-respondents, in the residuary estate, by his answer set up that he did not desire to contest or deny the right of the defendant-appellant, Katherine N. Stryker, to the bonds, and that they were a gift from the testator, Steward K. Heitsman, in his lifetime, to the defendant, Katherine N. Stryker.

The other defendant-respondents, who are thus referred to in this brief, filed an answer and also a counterclaim. The counterclaim was in the nature of a bill to set aside the alleged transfer of liberty bonds on the ground that it was not a voluntary gift and was the re-

sult of undue influence and fraud, and further that the transfer was not to take effect until after the death of Steward K. Heitsman, and lastly, because the same was improvident and made without independent advice. Issue was joined on the counter claim by the defendant-appellant, Katherine N. Stryker.

The hearing proceeded on the bill for advice and instruction and the issues joined by the answers of the various defendants, at the conclusion of which the Vice Chancellor filed a memorandum in which he stated, (p.47) :

> "A perusal of the bill shows that its prayer is for the 'advice and direction' of the Court as to whether the said bonds belong to the niece or to the testator's estate. The appropriate and speedy way to determine that question would be by suit at law in replevin or trover. However, the suit has been completely tried, and at great length by all parties, without any objection to the jurisdiction, on the theory of a determination as to whether there had been a valid gift of the bonds inter vivos. The bill can doubtless be sustained as a bill in the alternative to compel an accounting or restoration of property by an agent or fiduciary (if there was no completed gift) ; or to set aside the gift (if made) as improvident or the result of fraud or undue influence. The pleadings should be appropriately amended before decree."

And on September 21, 1927, an order was made amending the complainant's bill for advice and direction

and the prayer for relief in accordance with the memorandum so that as amended, it was a bill to require an accounting for the bonds or in the alternative, to set aside the gift on the ground of improvidence or undue influence.

The Vice-Chancellor further found, according to the memorandum, (p.48):

> "The careful consideration which I have given to the evidence leads me to the conclusion that the testator did intend Miss Stryker to have the bonds in question but that the evidence fails to show that he did in fact, before his death, make a completed gift to take effect immediately. Rather does the evidence show the contrary."

This finding of the Vice-Chancellor is one of the grounds of appeal, and appellant contends that the evidence shows a completed delivery in testator's lifetime of the bonds.

At the hearing, two of the defendant-respondents, Dora Kunsman, and Isabella K. Heitsman, testified as to transactions with the decedent in his lifetime. The defendant, Katherine N. Stryker, was permitted to testify subject to objection made by counsel for the defendant-respondents, the residuary legatees, who claimed that the bonds were part of the residuary estate and that there was no valid gift. No objection was made to the testimony of Miss Stryker by the executor, who was counsel pro se.

The testimony of B. Frank Heitsman was taken by deposition and offered in evidence. Objection was made to the testimony of B. Frank Heitsman on the ground

that he was disqualified from testifying as to transactions with the decedent in his lifetime. The objection in this case was made by Mr. Gebhardt, representing the defendant-respondents.

The Vice-Chancellor ruled out the testimony of Miss Stryker and Mr. Heitsman. The appellant contends that this was error and that the testimony was admissible and should be considered.

The testimony at the hearing disclosed substantially the following facts:

The defendant-appellant, Katherine N. Stryker, was a niece of the wife of Steward K. Heitsman. She and her brother, Steve, were left orphans and were brought from Texas to live at the residence of her grandmother, Mrs. Stryker, on South Main Street, Phillipsburg, New Jersey, where her aunt, Mrs. Emma Heitsman and her uncle, Steward K. Heitsman, (the testator in the present suit) resided, (p.100). Her brother, Steve Stryker, died on January 4th, 1905, while attending college. Katherine N. Stryker continued to reside with her aunt and uncle. She was teaching school in 1916 when her aunt, Emma Heitsman, died, and she thereupon gave up her position of teaching school and kept house for her uncle, Steward K. Heitsman, (p.102), from that time down to the time of his death on January 31, 1926.

Shortly after the death of his wife in 1916, Steward K. Heitsman made a will (p.16), which was dated February 23, 1916. He then possessed an estate of approximately $19,000.00, which consisted of shares of bank stock and water company stock and a farm near Phillipsburg. By the terms of his will, Katherine N. Stryker, appellant, was bequeathed thirty shares of Phillipsburg National Bank stock and twenty-four shares

of People's Water Company stock and one-seventh interest in the residuary estate. According to the evidence, her share under the provisions of this will at that time was valued at $6,650.00, or about thirty-five per cent of his entire estate.

Subsequently, on June 12, 1918, before he had disposed of the farm, the testator, Steward K. Heitsman, made a codicil to his will, bequeathing additional bank stock and water company stock and all of the household goods, furniture, bedding, dishes and silverware to Katherine N. Stryker, thereby increasing her interest in his estate by approximately $2000.00, so that by will and cidicil made in June, 1918, he bequeathed forty-five per cent of his entire estate to her.

On August 1, 1918, Steward K. Heitsman sold the seventy-five acre farm and received as consideration, $30,000 face value, of second converted liberty loan bonds. Katherine N. Stryker continued to keep house for Steward K. Heitsman in the home of which her aunt died seized, and in which Katherine had an undivided one-sixth interest, cooking the meals and doing the housework, and when ill, nursing him.

Stewark K. Heitsman had a safe deposit box and a bank account in the Phillipsburg National Bank. He had appointed Katherine N. Stryker as a deputy to enter the box. The testimony is clear on the part of his physician, (p.267), and other disinterested witnesses, that his mental condition was good up to the time of his death, and that his physical ailment consisted of a heart condition which necessitated his walking slowly in going up and down stairs, and rheumatism, which made him stiff in his limbs and impaired his ability to walk so that he had to use a cane. Until two or three years before his death,

he went to the bank accompanied by the appellant, Katherine N. Stryker, and attended to his business. On those occasions, Katherine N. Stryker would sometimes sign for Mr. Heitsman in the register of persons who had access to the safe deposit boxes. His rheumatic condition made it difficult for him to write so that his checks were made out in the handwriting of Katherine N. Stryker, but all of the checks were signed by him, the last check being dated December 24, 1925. He died January 31, 1926.

Frequently, after 1916, he expressed his intention to "do well by Katherine", and expressed his appreciation of her kindness and her splendid care and treatment of him in his old age. He had few intimate friends in whom he confided his business matters. One of them, however, was the president of the Phillipsburg National Bank, John A. Bachman, who had lived next door to him or immediately opposite him on the same street for longer than twenty years. Another was his family physician, Dr. Heston R. West, who knew Steward K. Heitsman for forty-two years and for ten years had lived under the same roof with him (p.265), and the balance of the time, two doors away from his residence. Dr. West was his attending physician during that entire time. Another neighbor was Theophilus Wieder, a former Sheriff of Warren County, a special agent for the Lehigh and Hudson Railroad Company, who had lived next door to him for about six years prior to his death and immediately across the street for approximately eight years. To each of these men he stated, on different occasions, that he had already provided for her and was going to give her some more later on. To Mr. Bachman and to Dr. West, he stated specifically that he had given Katherine $15,000.00

of the bonds. This was sometime after 1921, and in September, 1925, and December, 1925, just before his death, he told both of these witnesses that he had given Katherine N. Stryker the balance of the bonds, (p.273).

After the death of Steward K. Heitsman, (not considering the testimony of the appellant, Katherine N. Stryker), his executor found no bonds in his safe deposit in the bank, but it was admitted that they were in the safe deposit box of Katherine N. Stryker, also that the last entry in the box of Steward K. Heitsman was on September 5, 1925, (Ex-C9, p.350). On December 18, 1925, Katherine N. Stryker had entered her safe deposit box at the Phillipsburg National Bank and on December 21, 1925, she had deposited to her own account, the interest coupons on $30,000 of second liberty loan bonds. Prior to that time, all of the interest had been credited to the account of Steward K. Heitsman and the household expenses had been met by checks drawn by him on his own cash account. At the time of his death, Steward K. Heitsman left an estate, exclusive of the $30,000.00 of bonds, according to the inventory and appraisal, of $12,000.00, $424.52 of which was household furniture and $1,222.63, cash on deposit at the Phillipsburg National Bank, and the remainder bank and water company stocks of ready market value, all paying dividends. He was eighty-six years of age at the time of his death.

The defendant-respondents offered some testimony for the purpose of showing that the gift of the bonds, if made, was made for the purpose of escaping the transfer inheritance tax. Elizabeth Heitsman, the mother of Alma Hildebrandt, who is entitled under the will to a two-sevenths part of the residuary estate, testified that Miss

Stryker had made some such statement to her, (p.117). On cross examination of Elizabeth Heitsman, (p.141) witness testified that she made no reply on either occasion. Miss Stryker denied absolutely ever making any such statement, (p.309).

Likewise the testimony of Dora M. Heitsman, one of the residuary legatees (p.196) of a statement purporting to have been made by Miss Stryker was denied categorically by Miss Stryker, (p.320, 1.35).

The opinion of the Vice Chancellor clearly admits the intention of the testator to give the bonds to Katherine N. Stryker but fails to find that the delivery was completed in the lifetime of the donor, (p.50). The Appellant contends that this finding was legal error, and that the proofs establish a completed delivery in the lifetime of Steward K. Heitsman. Furthermore, if the testimony of Katherine N. Stryker were admitted as appellant contends it should have been admitted and the testimony of B. Frank Heitsman were considered, the proofs clearly establish a valid gift inter vivos. It also appears in the evidence that the other residuary legatees paid practically no attention to this old man, although they were blood relatives and visited him not more than twice a year, sometimes less, which they deemed "frequent".

ARGUMENT

I.

THE PROOFS ESTABLISH THAT THE DONOR HAD IN FACT BEFORE HIS DEATH MADE A COMPLETED GIFT OF THE BONDS TO TAKE EFFECT IMMEDIATELY

This court has held that the requisites to establish a gift inter vivos are: (1) donative intent on the part of the donor; (2) an actual delivery of the subject matter of the gift and least to the extent practicable or possible, considering the nature of the thing given; (3) stripping of the donor of all ownership and dominion over the subject matter of the gift at least to the extent practical or possible, considering the nature of the thing given. *Besson vs. Stevens,* 94 *N.J.E.* 556; *Swayze vs. Huntington,* 82 *N.J. E.* 127, 133 *aff.* 83 *N.J.E.* 335.

The first essential element of a gift inter vivos, a donative intent on the part of the donor, has been found by the Vice Chancellor. The memorandum (p.48, 1.1) states that:

> "The careful consideration which I have given to the evidence leads me to the conclusion that the testator did intend Miss Stryker to have the bonds in question."

This burden of proof has been met by the defendant-appellant, Katherine N. Stryker, to the satisfaction of the court and is not to be questioned on appeal.

The sole questions are whether or not the second and third essentials, actual delivery and a complete stripping of ownership and dominion, were established by the proofs.

The subject matter of the gifts were negotiable liberty loan bonds. Title passed by delivery. The pleadings and the evidence show that after they had been received in 1918, they were placed in the safe deposit box No. 167 of Steward K. Heitsman, the donor, in the Phillipsburg National Bank.

The box was taken out by Mr. Heitsman on October 24, 1918, after the sale of the farm and the delivery of the bonds, (testimony of James L. Lomerson, cashier of the Phillipsburg National Bank, p. 74). The original rental agreement was destroyed after the keys had been surrendered by the executor, but it was on the form shown as Ex. C-28, (p.373).

Ex. C-9 (p.350) is a schedule showing the dates when the box was visited and by whom it was visited although the testimony is clear that frequently both Mr. Heitsman and Katherine N. Stryker came to the bank together and that on some of these occasions Miss Stryker signed the book "S. K. Heitsman by K. N. Stryker" (p.68). It appears that the keys would be handed to the clerk at the bank, sometimes by Mr. Heitsman and sometimes by Miss Stryker and the box handed to either one of them.

After the death of Steward K. Heitsman in January, 1926, the executor, Mr. McConnel, with William P. Tallman, the transfer inheritance tax appraiser, on February 18, 1926, inspected the safe deposit box of Steward K. Heitsman at the Phillipsburg National Bank and they found no liberty bonds in the box, (p.84). The defend-

ant-appellant Katherine N. Stryker, admits by her answer that the liberty bonds were in her possession in her safe deposit box No. 200 at that time, and that $15,000 had been in her possession since 1921 and that the balance were in her possession since September, 1925. The evidence shows that on December 18, 1925, at 2:15 P. M., Katherine N. Stryker visited her safe deposit box No. 200 in the Phillipsburg National Bank, Ex. C-17 (p.357) and on December 21, 1925, she deposited to her account at the Phillipsburg National Bank, Ex. C-18, (p.367) $667.93 the coupons of $30,000 of liberty bonds. This was prior to the death of Steward K. Heitsman.

The defendant-appellant therefore contends that so far as the physical possession of the $30,000 of liberty loan bonds was concerned, the evidence is clear and uncontradicted that they were in the possession and control of Katherine N. Stryker before the death of Steward K. Heitsman, and were not in his possession in his safe deposit box, nor was there any transfer or entry in his safe deposit box after September 5th, 1925. Without the testimony of Katherine N. Stryker, the appellant, to explain it, how these bonds were physically transferred from one box to the other cannot be proved, except that she made the actual transfer.

It is true that mere possession of the subject matter of a gift by the donee cannot be held to establish a gift *causa mortis* as was pointed in *Beucker vs. Carr,* 60 *N.J.E.* 300, 304.

This is not true of gifts inter vivos. In *Green vs. Tulane* 52 *E.* 169, the subject matter of the gift was bonds and they were delivered to one Judge Green or his partner, with a note attached.

Vice-Chancellor Pitney, p. 171, said:

> "In this case, the subject of the gift was negotiable bonds which passed by delivery. No writing or assignment on the part of the donor or transfer on the books of state was necessary in order to transfer the title."

The proof was practically limited to possession of the bonds.

In the present case, it is significant that in order to have the bonds transferred to her own safe deposit box, the donor, whom the Vice-Chancellor said intended to give the bonds to the appellant, would have had to deliver the key to the safe deposit box to her. If that key was not given to her by the donor and she transferred them from the box of the donor to her own safe deposit box, the bonds must have been stolen by her. It is insisted that the mere possession of these bonds by Katherine N. Stryker, the appellant, without any explanation leads to only one of two conclusions; either that she wrongfully took possession of these bonds and transferred them to her own safe deposit box or that Steward K. Heitsman gave her the key to the safe deposit box with authority and direction to get the bonds, or actually delivered them to her personally.

The appellant insists that the proof in this case is not limited to mere possession, but that there is plenty of competent and credible evidence that the bonds were actually given and turned over to Katherine N. Stryker. This evidence consists of the declarations of the donor made by him to his confidential friend and banker, John A. Bachman, and his family physician.

As is pointed out in *Smith vs. Burnett* 35 *N.J.E.* 314 323, the evidence of such declarations become relevant where there is evidence of a transference of the chattel in the possession of the alleged donor to the donee and the evidence of such declaration becomes important in fixing the meaning of the act transferring the possession.

By the weight of authority, delivery may be proved by the declarations of the donor just as the gift itself may be. 28 *C.J.* 682 *Note 7* and cases cited

There was an underlying motive on the part of the donor which led him to make this gift. The evidence is uncontradicted, in fact substantiated by Elizabeth Heitsman, a witness for the defendant-respondents, that Katherine N. Stryker, the appellant, served this old uncle very faithfully and that she was very good to him up to the very time of his death. (p.144, 11 15-25). He spoke of this to his neighbors frequently. Mrs. Carrie F. Kline, who lived across the street for twenty-four years, and was in his residence sometimes every day and sometimes twice a week during the last five years of his life, testified that the donor told her that he thought a great deal of Katherine and was fortunate in having Katherine there. His next door neighbor, Theophilus Wieder, (p.231), a former Sheriff of Warren County, testified that the donor had talked about "his wife's dying and how fortunate he was to have Katherine and someone to look after him and what good care she took of him" and further that in 1924, the donor told him that he had already provided for her and was going to give her some more later on and that afterwards in July or August, 1925, before his death, he again repeated this conversation. Similar testimony was given by Minnie Fine, and frequent visitors at the house.

To his next door neighbor, the President of the Bank, and his business confident, however, he revealed not only his intention, but what he had done. John A. Bachman, for forty-three years connected with the Phillipsburg National Bank, nineteen years as president of the institution, testified (p.249), that Steward K. Heitsman talked to him frequently and that (p.251) five or six years before the hearing, *i.e.* 1921, Mr. Heitsman told him that he had given Katherine $15,000 of the bonds and he said in addition to that, 'Later on I will give her the balance". Again (p.252), he testified that when the witness, John A. Bachman, came back from his vacation in 1925, he had another conversation with Steward K. Heitsman. He understood that Mr. Heitsman was sick so he went over to the house to see how he was and Steward Heitsman told him he had fixed it all up with Katherine, that he had given her the balance of the bonds. Counsel for the defendant-respondents attempted to impeach his testimony on cross examination, but only further developed the conversation which Steward Heitsman had with him. He testified, p. 257:

> "He told me that he had given $15,000 in liberty bonds to Katherine and he thought he would give the balance thereafter and that was confirmed by me seeing him just before he died, in September before he died."

He further testified:

> "I asked him why he did not have it in his will, and he said, 'I don't want it in my will.'" (p.259, l.28).

Counsel attempted to get the witness to say that the reason why he wanted to give Katherine the bonds was because of the inheritance tax, but the witness denied this (p.259 l.34).

He further developed the second conversation, (p.263 l. 30) which took place after Labor Day in September, 1925, when the witness returned from the Poconos. He testified:

> "There was not much conversation. I called to see him. He was sick at the time and he passed the remark, he said, 'I have taken care of Katherine and have passed over the balance of the bonds.' That is all I know."

It is insisted that this conversation explains readily the delivery of the bonds and the transfer of them to Katherine, in pursuance of the intention to give them to her which was found by the Court. Attention is further called to the fact that this statement was made after September 5, 1925, the last date of any entry in the safe deposit box of Steward K. Heitsman. The character of this witness, his position as banker, and his close relationship with the donor lend great credibility to his testimony.

In addition to that there is the clear and convincing testimony of the family physician, Dr. Heston R. West. Forty-two years acquainted with Steward K. Heitsman, the donor, and ten years living under the same roof and the balance of his life alongside of him, during all of that period his personal physician, it was both proper and reasonable that Steward K. Heitsman would disclose to him not only his intention but what he actually did.

This he did. Immediately after the death of his wife, the donor discussed with Dr. West, her death and failure to make a will and his interest that Katherine be provided for, (p.272). He even disclosed at that time roughly, the kind of a will that he had made.

In 1922 or 1923 there was another conversation in which Mr. Heitsman stated to the witness that he had delivered over part of his government bonds to Katherine (p.272 1.27). Finally, a couple of months before he died, the doctor called the donor's attention to the fact that the heart attacks were becoming more frequent and that if he wanted to attend to anything he had better do it and the donor told him that he had attended to everything, that he had given Katherine all his bonds.

On cross-examination, counsel for the defendant-respondents further developed these conversations. The witness testified clearly as to the first gift of $15,000 of the bonds, (p.283) some three years before the donor's death.

Here is a witness who has no interest in the outcome of this suit, of unquestioned standing in the community, of intelligence, whose life-long friendship and association with the donor make reasonable such confidences as he testified to. It is insisted that his testimony is not only credible but clear and convincing explanation and corroboration of a valid transfer and delivery of the bonds to Katherine N. Stryker.

In view of the fact that the memorandum filed in this case does not clearly disclose that the testimony of B. Frank Heitsman, Ex. DS-1 p. 388, in so far as it related to transactions or conversations with the donor, was not considered, it is suggested that his testimony if it were considered, would add further proof. He was single

and made his home with Steward K. Heitsman for thirty-five years, (p.389). He testified that his brother, Steward K. Heitsman, told him before his death that he had provided for her in the way of bonds (p.393), and further his answer filed in this suit also sets up that the bonds were given by Steward K. Heitsman, in his lifetime, to Katherine N. Stryker.

In *Mathews vs. Hoagland,* 48 *N.J.E.* 455 *at* 485, the rule is stated:

> "The actual delivery of bonds known in the market as transferable by delivery made by one holder to another if delivered with words or acts indicating a present absolute gift, constitutes a valid gift inter vivos." *Morris Canal v. Fisher,* 1 *Stock.* 667; *Morris Canal v. Lewis,* 1 *Beas.* 323; *Boyd v. Kennedy,* 9 *Vr.* 146; *notes to Miller v. Race,* 1 *Sm. Lead. Cas.* 746; *London and C. Banking Co. v. London and R. B., L. R.* (21 *Q.B.Div* 535).

And in that case a transfer of negotiable bonds was upheld as a valid completed gift inter vivos.

In a recent case, *Muir vs. Gregory,* 168 *Fed.* 641, *aff* 158 *Fed* 122, it was held that property in safe deposit box may be the subject of a gift after it is reduced to the donee's possession. Whether the person removes the property at once or allows it to remain for a considerable time is immaterial so long as he removes it before revocation.

Assuming that manual delivery of the bonds was established by the testimony heretofore outlined, it is significant that Katherine N. Stryker, in December, 1925, before

the death of Steward K. Heitsman, deposited in her own bank account the coupons on these bonds. If delivery were made this act itself clearly establishes a completed gift in the lifetime of the donor.

To sum up the argument, it is therefore contended that the court erred in its conclusions and that the proofs established the second essential of a valid gift into vivos, *i.e.* a delivery of the subject matter of the gift, negotiable bonds, in the lifetime of the donor, first, by the undisputed evidence that they were in the possession of the donee and the income thereof was used by her, and second, this possession explained and corroborated by the declarations of this donor to disinterested persons in whom he confided, that he had made a gift to the donee of the bonds.

There remains, however, the third essential element of gift inter vivos, a stripping by the donor of all ownership and dominion over the subject matter of the gift.

In this case, these negotiable bonds passed by delivery and his manual transfer from the possession of one to the other gave to the donee an absolute right and ability to sell and dispose of them; to clip the interest coupons from time to time and apply them to such use or uses as the donee might desire. In the present case, Steward Heitsman well knew the character of these bonds, he had gone to the bank and clipped the coupons and had deposited them to his own bank account, on previous occasions. If, therefore, he had passed over the bonds to Katherine Stryker, as he stated to Mr. Bachman and Dr. West, he stripped himself of all dominion and control and ownership of the bonds. When they went into the possession of Katherine N. Stryker, and in her safe deposit box, sometime prior to September 5th, 1925, be-

fore his death, he no longer had control of them. By giving them to her and permitting her to place them in her safe deposit box, he gave to her the right to dispose of the bonds or to use the coupons as they fell due.

It is not disputed that in December, 1925, Miss Stryker clipped the coupons and deposited them to her own account. The entries in the bank book of Steward K. Heitsman, consistently show a credit for the interest up until June 1, 1925. As late as October 19, 1925, Steward K. Heitsman had made a deposit in his account. There were checks drawn against the account and signed by him as late as December 24, 1925 (Ex. C-1, p.347). He died on January 31, 1926.

It is insisted that these facts clearly establish a relinquishment of control and dominion as well as ownership of the bonds by Steward K. Heitsman, the donor, and an acceptance of the gift, and an exercise of ownership by Katherine N. Stryker.

If she had no right to the bonds, her clipping of the coupons and crediting them to her account was wrongful conversion.

As was pointed out in *Mathews vs. Hoagland,* 48 *N.J. E.* 455, to accede to this proposition it must be assumed that Miss Stryker wilfully committed the crime of larceny.

A statutory rule of evidence prevents her from speaking or defending herself. Equity does not presume wrong. The evidence discloses that Miss Stryker is forty-two years old. She was a member of the local chapter of the D. A. R., and that she was, at the time of the hearing, serving her second five-year term as member of the Board of Education of the Town of Phillipsburg.

Her relationship with this old gentleman was that of

father and daughter. Her affection for him was unchallenged. Her service bespoke her love, devotion, and her loyalty and sacrifice of her own interests. To assume that she deliberately misused these bonds or converted them to her own use is to assume that she attempted to defraud this old gentleman whom she had faithfully served for ten years, since the death of her aunt.

It has been suggested that although the bonds were delivered to Miss Stryker, nevertheless, the donor never intended that the gifts should take effect until after his death. The answer to that is that the gift actually did take effect without contradiction, in December, 1925, when the donee clipped the coupons and deposited them to her own account, although there are many cases which told that whether the donee accepts the gift at once or not, is immaterial so long as the donee accepts the gift and exercises dominion and ownership over the subject matter of the gift before it is revoked. 28 C.J. 643-644.

II.

THE TESTIMONY OF KATHERINE N. STRYKER WITH RESPECT TO STATEMENTS BY OR TRANSACTIONS WITH STEWARD K. HEITSMAN WAS ADMISSIBLE AND THE COURT ERRED IN STRIKING OUT THAT TESTIMONY.

This suit as it was tried was an action brought by the executor against all of the residuary legatees for advice and instruction as to the validity of a certain gift of bonds. The defendant-respondents, by filing a counterclaim, became adverse parties to Katherine N. Stryker, the appellant.

At the hearing the executor did not object to any of the testimony of Katherine N. Stryker as to transactions with the decedent. The sole objection was raised by Mr. Gebhardt, counsel for the defendant-respondents, the residuary legatees. The court called the atention of Mr. Gebhardt to the fact that he did not represent the executor, (p.291 1.10).

After the bill was amended, no further testimony was taken and the final decree was entered upon the record of the hearing without further testimony. The amended bill of complaint was a bill by the executor to have the alleged gift set aside on the ground that it was not a valid completed gift inter vivos and further on the ground of fraud and undue influence and prayed for the accounting and restoration to the complainant as executor of the liberty bonds. It is clear that the executor alone could maintain such a suit in equity since he stood in the shoes of the testator and was entitled to the personal property. The defendant-respondents were not entitled to the relief prayed for in the amended bill of complaint.

In this situation, it is a fundamental rule that if one fails to object to the admission of evidence, his silence shall be construed as a waiver of his right. The failure of the executor at the hearing to enter an objection to this testimony so far as the executor is concerned therefore constituted a waiver of his right to object.

In *Rollin vs. Rollin,* 40 *N.J.E.* 281, 282, the facts were that in the taking of testimony in the cause before the master, the evidence of one Roland was received without objection, although in all important features, it related to transactions with and statements by the decedent. Subsequently, a motion was made to suppress this part of the testimony and an order was made

to that effect. The complainants attacked the order and insisted that the evidence should be considered, and the Court of Errors held that the testimony should be allowed and gave as its reason that the admission of such testimony affects no one but the parties and none but the parties are interested in the exercise of the power given to exclude this testimony. The rule is well settled that a party cannot sit by and accept the chance of a witness making evidence in its favor and then afterwards raise for the first time, an objection to its competency.

"The only exceptions to this rule is where the ground for its exclusion was not discovered until after the evidence was in, or on grounds of public policy. At the time the testimony is given, the party is presumed to have waived the objection."

This Court approved this ruling specifically in the case of *Grannon vs. Fox,* 100 *N.J.L.* 288, 289. See also *Electric Park vs. Psichos,* 83 *N.J.L.* 262, 265.

It is therefore insisted that on the amended bill of complaint the testimony of Katherine N. Stryker, as to transactions with the testator, having been offered without objection by the Executor, it was error to strike it out.

But counsel for the defendant-respondents, argue that objection made by them is sufficient to exclude the testimony. That if they were proper parties they were suing in a representative capacity, as against appellant.

In *Greenwood vs. Henry,* 52 *N.J.E.* 449, there was a suit for specific performance of a contract made by one Eliza R. Thompson who died testate leaving the defendant, Mrs. Henry, her only heir at law and sole next of kin. The defendant, Ogden, was appointed administrator. The other party to the contract, Greenwood, filed

a bill for specific performance against Mrs. Henry as heir at law and Ogden as administrator.

On p. 449 the Vice-Chancellor says:

> "If this suit had been confined to a recovery of the realty, and Mrs. Henry was, as well she might be, the only party defendant, the complainant's position would have been above dispute, for Mrs. Henry would have found herself in this dilemma: if she was not sued in a representative capacity, then complainant was clearly competent; if she was sued in a representative capacity, she had rendered him competent by offering herself as a witness and testifying in her own behalf within the interdicted range.
>
> "The real merits of the question are not changed by the fact that complainant, by this suit, claims the personal estate as well as the realty, and makes the personal representative a party, since Mrs. Henry is sole next of kin as well as heir-at-law, and is the only person in the least degree interested adversely to the complainant in any party of the estate. The amount of the indebtedness of deceased was but trifling as compared with the amount of the personal estate, so that Mrs. Henry as sole next of kin, was clearly master of the suit and entirely responsible for being called as a witness.
>
> "The defendant, Mrs. Henry, being thus sued in a representative capacity, and having been offered and sworn as a witness in her own behalf, and having testified to conversations with,

> and transactions by her ancestor, she thereby, under the canon laid down in McCartin vs. McCartin, rendered the complainant competent to give testimony on all subjects."

The defendant-respondents are in the same position. Dora Heitsman, one of them, clearly testified to transactions with the deceased donor, Steward K. Heitsman, which he, if he were living, might deny.

On p. 183, she testified that she had seen him in his home after the death of his wife in 1916, that Mr. Heitsman always found her very pleasant and that he had to be assisted in business and further that Steward K. Heitsman gave Katherine money to run the house with.

Another defendant-respondent, Isabella Kirkpatrick, testified, p. 202, to taking him out for a ride and assisting him in and out of the car. Furthermore, she testified directly to a conversation with Steward K. Heitsman, p. 209, l. 30, 31.

It is insisted that this testimony is clearly within the rule which defines transactions, something which Steward K. Heitsman, if he were living, could either affirm or deny.

Applying the rule in *Greenwood vs. Henry, supra,* if these defendants were sued in a representative capacity in place of deceased, by their testimony as to transactions with the decedent, they opened the door for testimony of Katherine N. Stryker. It surely is not equity to permit these defendants claiming the bonds as residuary legatees, to testify to transactions with the decedent for the purpose of strengthening their claim to these bonds and not to permit Katherine N. Stryker to testify to transactions with the decedent. The design of the legisla-

tion is to produce equality. *Woolverton vs. Van Syckel,* 57 *N.J.L.* 393.

In *McKinley vs. Coe,* 66 *N.J.E.* 70, Vice-Chancellor Emery said that the Court of Errors and Appeals had held that the test of representative capacity was whether one party or the other appeared on the record as a representative of the decedent. A thorough review of all of the cases in New Jersey on this point is set out in that opinion. *Burr vs. Bloomsbury,* 5 *Adv. Rep.* 1241.

But the counsel for respondents may argue that if that be so as to these two defendants, it should not apply to the others but in this suit. Mr. Gebhardt represented all of the counter-claiming defendants and under the statute that is sufficient to qualify the defendant, Katherine N. Stryker. This very question had been decided in the Court of Chancery in *Kempton vs. Bartine,* 59, *N.J.E.* 149-150. adversely to that contention.

Appellant therefore insists that the testimony of Katherine N. Stryker, relating to conversations and transactions with testator, was admissible and should not have been stricken out; first, because no objection was made by the executor who was complainant, to her testimony; second, because, under the bill of complaint as amended and upon which the decree appealed from is based, the executor alone stood in the representative capacity and his failure to object at the hearing constituted a waiver of his right to exclude this testimony of Katherine N. Stryker, with reference to transactions with the testator; and third, that assuming that the defendant-respondents were parties to the suit in a representative capacity, the testimony of two of them offered in behalf of all as to transactions with the decedent, made admissible the testimony of Katherine N. Stryker; and fourth, if the de-

fendant-respondents were not parties in a representative capacity, adverse to Katherine N. Stryker, their objection to her testimony was improperly made and the testimony improperly stricken out.

III.

THE TESTIMONY OF B. FRANK HEITSMAN AS TO TRANSACTIONS OR CONVERSATIONS WITH HIS BROTHER, THE TESTATOR, STEWARD K. HEITSMAN, WERE IMPROPERLY STRICKEN FROM THE RECORD.

The objection made to the testimony of B. Frank Heitsman, brother of the testator, who is one of the residuary legatees with reference to transactions with the testator, was made by Mr. Gebhardt, representing the defendant-respondents. At the taking of the deposition, Mr. McConnel was present but entered no objection. In the memorandum filed by the Vice-Chancellor, (p.47 l. 22) it is not clear that the testimony of B. Frank Heitsman, was considered and assuming that it was not considered, we submit that it was error to strike it out: first, because B. Frank Heitsman, while a party to the suit, disclaimed any interest in the subject matter of the suit, and second, for the same reasons that the testimony of Katherine N. Stryker as to transactions with the testator were admissible, it is urged that this testimony of B. Frank Heitsman was admissible.

IV.

THE AMENDMENT OF THE BILL AFTER HEARING WAS TOO BROAD INSOFAR AS IT PERMITTED AN ALLEGATION OF UNDUE INFLUENCE OR AN IMPROVIDENT GIFT BECAUSE SUCH AN AMENDMENT WAS NOT SUPPORTED BY THE PROOFS.

The power of the court to order an amendment, even on final hearing, is unquestionable, but it is a power never exercised except when the ends of justice render it absolutely necessary and its exercise will not substantially impair or abridge the right of the defendants. *Ogden vs. Thornton,* 30 *N.J.E.* 569, 573. *Midmer vs. Midmer,* 26 *N.J.E.* 299.

In *Ogden vs. Thornton,* 32 *N.J.E.* 723, this court, on appeal, reversed the case and one of the reasons stated was (p.276) that the amendment if made, was not supported by the evidence. In *Ditman vs. Distilling Co. of America,* 64 *N.J.E.* 537, 553, it is stated that the general rule applicable to amendments applied for under such circumstances is that amendments may then be made, (*i.e.,* after hearing), if necessary, and proper, in order that issues which have been in fact tried by the parties and upon which both parties have been practically and fully heard, may be formally set out in the pleadings so that pleadings may conform to the proofs. *Story Eq. P* 1.905; cases cited in *Ogden vs. Thornton,* 3 *Stew. Eq.* 569, 573, *etc.* But complainant cannot amend at the hearing in order to present a new or inconsistent case.

It is insisted that the order amending the complaint went too far. The conclusions of the Vice-Chancellor do not indicate either undue influence, fraud or an improvident gift. The final decree from which this appeal is taken simply adjudges that Steward K. Heitsman, did not in his lifetime, make a completed and valid gift to said Katherine N. Stryker, of $30,000 of par value of Liberty loan bonds, (p.49). The Vice-Chancellor did not find undue influence, fraud or an improvident gift.

This ground of appeal is argued because it has been suggested that it will be argued on the appeal, that even though the proofs would establish a completed gift inter vivos, nevertheless, the gift should have been set aside because it was improvident and made without independent advice . It is insisted that this, under the state of the case, should not be raised at this time since the amendment that might bring this question before the court for decision was made erroneously.

V.

ASSUMING THAT THE GIFT WERE A COMPLETED GIFT INTER VIVOS IN THE LIFETIME OF THE DONOR THE GIFT SHOULD NOT BE SET ASIDE BECAUSE OF UNDUE INFLUENCE, FRAUD OR THE FACT THAT IT WAS IMPROVIDENT AND MADE WITHOUT THE BENEFIT OF INDEPENDENT ADVICE

It will no doubt be argued by the respondents that even though the gift were a completed gift inter vivos nevertheless the gift was involved and should be set aside because of said fraud, undue influence or the fact that the gift was improvident and Steward K. Heitsman, donor, did not have the benefit of independent advice. For this reason the appellant argues these particular phases of the case, calling attention to the fact, however, that there is no proof of actual fraud, or undue influence.

A review of the cases in New Jersey, after careful consideration, leads one to the conclusion, that the principles of law involved are clearly stated and set forth in the case of *In re: Fulper,* 99 *N.J.E.* 293, with which appellant agrees, with *one* exception to which reference will be made later.

We undertake to quote from that opinion:

> "The principles here involved are those relative to transfers from the subordinate one of two persons, between whom exists a relationship of trust and confidence to the dominant one.

> Where such a transfer has been made, it is voidable (in the absence of equitable defenses) at the instance of the transferer (or those standing in his stead) if there was any deception, if there was any undue influence, if there was any unfairness, any concealment, any coercion, or if the transaction was not thoroughly understood by the transferer. In any case where the avoidance of such transfer is sought, there is a (rebuttable) presumption on all those points adverse to the transferee, and the duty is cast upon him to overcome that presumption, upon such presumption, upon each point, by a preponderance of the evidence. If he fails so to do, on any one of the points, the transfer will be set aside. In certain of such transfers, where special circumstances are present, the presumption is not rebuttable, but is conclusive against the transferee, unless the transferer actually had competent advice from someone not tainted with any interest in favor of the transferee, and the burden of proving such independent advice, by the preponderance of evidence is upon the transferee."

In the present case, the transaction is alleged to have been a gift. The burden was upon those seeking to have the gift set aside, to establish, 1st: a relationship of trust and confidence, 2nd, that the gift was not intended to take effect until after the death of the donor.

VI.

THE APPELLANT, KATHERINE N. STRYKER, CONTENDS THAT THE COMPLAINANT OR DEFENDANT-RESPONDENTS FAILED TO PROVE DOMINANT CONFIDENTIAL RELATIONSHIP.

In the case *In re: Fulper* 99 *N.J.E.* 293, 314, it is pointed out that the nature of the relation is difficult of exact definition or delimitation, and quoting from a leading New York case, *Cowie vs. Cornell,* 75 *N.Y.* 91, it is said that "it comprehends all cases, or where the relations between the parties appear to be of such a character as to render it certain that they do not deal on terms of equality but whether on the one side from superior knowledge of the matter derived from a fiduciary relation or from over mastering influences or on the other, from weakness, dependance or trust, justifiably reposed, unfair advantage is rendered probable."

The case of *Slack vs. Reeves,* 66 *N.J.E.* 447, is further quoted:

> "Where the parties hold position in which one is more or less dependent on the other."

Among the confidential relationships which are natural are those of parent and child. In the present case there was no blood relationship between the testator and the donee. Any position which she held in the household and in the affection of the donor, was due to the donor's attitude toward her.

It was said in *In re: Fulper, supra,* that "mental weakness is by no means a necessary circumstance in order to bring the case within the comprehension of the term 'dominant, confidential relationship'." However, in that opinion, *p* 706, the Vice Ordinary says:

> "And the question of mental weakness is perhaps more nearly a controlling circumstance as between persons who are not parent and child or blood relatives."

It is with reference to this statement alone which would not seem to be material in determining the case, *In re Fulper, supra,* that we take exception. In practically every case of importance, there is affirmative proof showing mental condition which, while perhaps not being such a condition as can be determined "mental weakness", invariably tends to show a mental flexibility.

In every case, practically without exception, where the gift was not improvident, there has been proof of a weakness of will power, proof of such a state of mind as was readily and easily influenced or dominated. It is respectfully urged that a careful and proper statement of the principle of law is: Mere proof of relationship of parent and child or trust and confidence between the parties, is not sufficient to raise the presumption; the burden is upon the party seeking to set aside the gift to establish by affirmative proof that the donor was dominated by the donee, i.e.: that the donor was subject to the will of the donee and this requires affirmative proof of a subjective state of mind or mental condition on the part of the donor.

This is not in conflict with *Slack vs. Reeves,* or *Post vs. Hagan,* which can be distinguished.

In *Slack vs. Reeves,* 86 *N.J.E.* 447, 448, it is said:

> "By the progress of the disease, locomotor ataxia, his physical powers became gradually weakened and his mental powers also were somewhat affected."

There was evidence of dependence in this case and domination but the important distinction is that the deed was improvident.

In *Post vs. Hagan,* 71 *N.J.E.* 234, Mr. Justice Garrison points out the distinguishing feature, which we contend applies in that case:

> "This distinguished circumstance, namely that a person already aged or infirm or otherwise dependent should give to the one upon whom he does depend, practically his whole living, beyond recall, and at the very time when apparently, he had most need to retain it, raises in the mind of a Chancellor the presumption that the donor may not have appreciated the irrevocable character of his act or that he did not foresee the legal consequences to himself."

Thus, the Court of Errors distinguished in these of improvident gifts or conveyances.

In *Soper vs. Cisco,* 85 *N.J.E.* 165, the relationship was parent and child. The Court of Errors points out, on p. 168, that the conveyances were not mere voluntary gifts and were to be distinguished on that ground, and the decree of the Court of Chancery setting aside the gifts, was reversed and no question was considered by

the court, it appears, as to whether the relationship was sufficient to raise the presumption. It would appear that this was more or less taken for granted.

In *Douglas vs. Speer,* 97 *N.J.E.* 25, which was referred to in the *Fulper case,* Vice-Chancellor Leaming while pointing out that the woman enjoyed a high degree of intelligence and that her mental appearance at the time of the trial would appear to be but little impaired, goes on to say:

> "But it is clear as the obvious can be made clear, that to an extreme and unfortunate degree, she shows a tendency to place implicit confidence in those, whom for the moment she trusts, and pending the suit and on the eve of the day it was first set down for hearing, Complainant's son induced her to dismise the complaint until her husband talked to her, when she completely changed her mind."

In *Melos vs. Hagan,* 99 *N.J.E.* 683, Vice-Chancellor Bentley found that the woman was "of a pliable disposition, or as was not inaptly said, of one like putty."

In *Coffee vs. Sullivan,* 63 *N.J.E.* 296, 298, referred to in *Kelso vs. Kelso,* 96 *N.J.E.* 354, where the parties to the transaction were father and son, the opinion states that the mental capacity of the father about the time of the execution of the deed is in dispute under the evidence; two witnesses testifying that in their opinion his mind was very feeble and two witnesses swore on the contrary that in their opinion his mind was good; and the conveyance was an improvident one of the entire estate.

In the present case, we argue that if the complainant and defendants who filed the counter claim (to whom we will hereinafter include with the complainant and refer to them inclusively as respondents) failed to prove that the gift or gifts were improvident; and they failed to prove affirmatively that the mind and will of Stewart K. Heitsman was subject to the domination of the defendant, Katherine N. Stryker; and also fail to prove any mental impairment, then the burden of proof to show a dominant confidential relationship, has not been met.

What proof did the respondents offer to show this confidential relationship?

As we read the testimony, they lay stress upon the fact that deposit slips of Steward K. Heitsman were made out in the handwriting of Katherine N. Stryker (Exs. C-3 to C-8, p. 348), but the evidence discloses, (testimony James L. Lomerson, p. 56) that seven of these deposit slips were in the handwriting of Steward K. Heitsman, four by Katherine N. Stryker, (Ex. C-8) and thirty-seven by four other persons, officers of the Phillipsburg National Bank . On p. 62 (testimony of James L. Lomerson) it is disclosed that the deposit slips of Katherine N. Stryker, the defendant, which were offered in evidence during the same period (Exs. C-19 to C-26, p. 371) were in the handwriting of seven other persons besides Katherine N. Stryker. Does this mean that she was dependent upon the officers of the bank where she deposited and by reason of that she was a person dependent and dominated by them in business affairs?

But the respondents say that during the last years of the life of the testator, Steward K. Heitsman, she attended to all of his business affairs. She went to the safe deposit box and clipped the coupons for him, (testimony

of James L. Lomerson, p. 57 Ex. C-9 p. 350) discloses that the safe deposit box, number 267, of Steward K. Heitsman was entered eighteen times during the life of Steward K. Heitsman. Eight times from October, 1918, to June 21, 1919, Steward K. Heitsman signed the book himself, once during that period, Katherine N. Stryker signed the book for Steward K. Heitsman. Subsequently, Katherine N. Stryker signed the book nine times for Steward K. Heitsman. The box was rented October 24, 1918. The original renting card does not appear in evidence, having been destroyed by an employee at the bank after the box was surrendered, (testimony of Edwin H. Sitgreaves, p. 96), but it was testified that on the reverse side of the contract, Katherine N. Stryker was deputized to enter the safe deposit box. From the very time that the box was rented, Steward K. Heitsman of his own free will, deputized Katherine N. Stryker to enter the safe deposit box. This was the time that he had sold his farm for $30,000 and there seems to be no question but that he was then perfectly capable and responsible. Only three months before he had made a codicil to his will and surely the respondents must admit that he was not subject to influence or domination of Katherine N. Stryker at that time.

The testimony discloses that on fifteen out of the eighteen occasions when the safe deposit box of Steward K. Heitsman was visited, that Katherine N. Stryker went to her own safe deposit box. (Ex. C-17, p. 357).

What took place on these visits was testified to by Edwin E. Sitgreaves, employee of the bank, (p. 96 l. 22).

> "They would come to the safe deposit department and offer the key, and I would get the box

out and hand it to Miss Stryker or whoever would come to the door and they would take it into the booth or the directors' room.

"Q. Who brought the box back usually?

'A. Katherine Stryker, as a rule, would bring it back, and it would be put away by one of the clerks. I very often waited on different customers, and then in the meantime go out of the bank, and somebody else would take care of the box and put it away, some of the other clerks."

Witness further testified he recalls Steward Heitsman being in the bank as late as 1923.

It should be noted that when Steward K. Heitsman went to the safe deposit box in 1923, with Katherine N. Stryker, that she signed for the box.

But what evidence is there as to the custody of the keys which, it is testified, were together on a small ring. The complainants do not show that these keys were in the possession of Katherine N. Stryker and yet no access could be had to the safe deposit box without them. To infer that she took them wrongfully from Steward K. Heitsman would be unjust. The visits were made at the time that the coupons on the bonds fell due and the only reason why Steward K. Heitsman did not go to the bank, according to the complainants' own witness was that he was physically unable to walk any distance. By reason of old age he was feeble and it therefore became necessary for him to send someone to the bank. This mere act of going to the safe deposit box, clipping the coupons, in itself is a perfectly reasonable and natural act for an agent. Busy men frequently deputize confidential secre-

taries to enter their safe deposit box, giving them the keys for a specific purpose and with instructions to go to the box and clip the coupons or to do some other act, in the perfectly normal transaction of business.

Justice Fletcher Moulton in *Coomber vs. Coomber* (1911 1. *Ch. 729*), observes that although the relationship between himself and his errand boy was a confidential one, it did not follow that the latter had any influence over him. As influence, in turn, implies that dominance has been achieved and it can only be assumed in relationships where the one party occupies a dominant position towards the other.

The respondents further offer in evidence checks of Steward K. Heitsman, but the bodies of which were in the handwriting of Katherine N. Stryker. In everyday life, almost every busy lawyer has a stenographer write out the body of the check but the lawyer signs the check. No other relationship so far as his personal business affairs, existed between Katherine N. Stryker and Steward K. Heitsman. The most important witness offered by the complainant, Lizzie Heitsman, clearly testified to this. On direct examination, (p.108), she testified as follows:

"A. She attended to his business.
Q. Katherine did?
A. Katherine Stryker.
Q. Tell us what she did?
A. She would write out the checks and he would sign them.
Q. Go on.
A. And she would take them to the bank and get them cashed.

Q. Can you tell me whether there was any time during his life he was entirely unable to go to the bank personally?

A. Well, he wasn't to the bank the last two years to my knowledge, and probably later back to my knowledge; I couldn't say.

Q. Did his physical condition permit him to go that far for the last two years of his life, as far as the bank?

A. No.

Q. Not as far as the bank?

A. No.

Q. And after the checks were cashed and the money comes back, what was done with that?

A. With the money?

Q. Yes.

A. She would give him a portion of it and she kept the balance.

Q. What for?

A. To run the household.

On cross examination she testified, pp. 124 l. 7 to 1.9:

"Q. When Steward Heitsman needed money would he tell Katherine to make out the check?

A. I can't answer that question. Katherine would always say she needed money.

Q. She would tell that to him?

A. Yes, sir.

Q. What would Mr. Heitsman say?

A. She would write out the check and he would sign it.

Q. What did he say?

A. I can't say.

Q. Weren't you there?
A. Yes.
Q. What did he say?
A. I suppose he was willing to.
Q. You suppose he was willing?
A. Yes, or he wouldn't sign it.
Q. He wouldn't sign the check unless he was willing to?
A. I suppose so.
Q. He was a man of very strong will?
A. Yes, sir."

But particularly on p. 127 l. 20, her testimony discloses that all that Katherine N. Stryker did was subject to approval and direction of Steward K. Heitsman.

"Q. Did you ever hear Mr. Heitsman tell Katherine to make out a check?
A. To tell her?
Q. I said, did you ever hear Mr. Heitsman tell Katherine to make out a check?
A. To tell her?
Q. Did you ever hear him tell her?
A. No, I don't know that I did, but I was present when she would make out the check.
Q. You never heard him tell her to make it out?
A. I can't recall it.
Q. Would she show it to him?
A. Oh, yes, she would be right by him.
Q. Would he look at it?
A. Sure, he signed it.
Q. Before he signed it?
A. What?

Q. Before he signed it, did he look it over?

A. I think he was that kind of a man.

Q. You think he was?

A. Yes, sir.

Q. He wouldn't sign anything unless he would read it over?

A. He knew what the check was going out for."

Does this show domination by Katherine Stryker, of the testator?

To show that he had control of the money, the testimony of the respondents' own witness is clear that Katherine N. Stryker turned back money to him when she was sent to the bank, retaining only what was necessary for household purposes.

His reason for having Katherine write the checks was his aversion to writing. It is testified he never wrote a great deal, (p. 131 l. 11) and it is clear that with his old age and the fact that he never, at any time, wrote a particularly clear hand, it worried him and made him nervous, and he was glad to be relieved of this clerical task. But was this proof of domination of Steward K. Heitsman by Katherine N. Stryker? Would this in itself be sufficient to prove dependence or to establish a confidential relationship, so as to raise a presumption of fraud? It is undisputed that this was the same system from 1918 down to the month before his death.

Steward K. Heitsman was always the head of the household. Katherine N. Stryker, coming to his home as an orphan and living with her grandmother and her aunt, Emma Heitsman, was always an orphan dependent, even up to the time of Steward Heitsman's death.

Louella Silkman, whose bias was evident on the stand, (p. 167 11 15-29) testified:

> "I said, 'You'll be punished for the things you said and done to me' * * * "
>
> "Then I said, 'I did all those things to be served with a warrant and called into court' and I said, 'You will be punished for what you done to me while I have been in this house'."

On cross examination, testifying with reference to the signing of the checks, she says: (p. 145 to 148):

'Q. You say you have seen her make out checks and Steward Heitsman sign them?

A. I have.

Q. Did you ever hear him tell her to make out a check?

A. I did not.

Q. Did you ever hear him say anything to Katherine about making out a check?

A. No.

Q. You didn't?

A. No.

Q. What was said when the check was made out?

A. She said: "We need money for the house," and she would have to have it. She knew—

Q. What did Mr. Heitsman say?

A. He signed it. I have seen him at the end of the dining room table signing checks.

BY THE COURT:

Q. What did he say?

A. Nothing.

Q. You never heard him say anything when she started to make out a check. He never said anything?

A. I don't know.

Q. He never told her to make out a check?

A. I never heard him.

Q. Did he read over the check or look at it before he signed it?

A. I haven't the slightest idea. I remember seeing him sitting there, signing it.

Q. You saw her write them?

A. Yes, she wrote the check.

Q. Did you see her hand it to him?

A. She wrote on the paper, had a newspaper on the dining room table. I don't know. I saw that done twice. He got up and signed it.

Q. He got up himself?

A. He got in, out of a rocking chair, into a straight chair.

Q. You saw that twice?

A. Yes, I saw that twice.

Q. What happened to the check?

A. She took it.

Q. Did he hand it to her?

A. I don't recollect but she took it and went through the house.

BY THE COURT:

Q. You say you saw him get up out of the rocking chair and go to a straight chair?

A. Yes.

Q. And take the pen and sign this check?

A. Yes.

Q. You saw all that?

A. I did.

Q. Yet you have not the faintest idea whether he read that check before he signed it?

A. I suppose he did.

Q. Why did you say you hadn't the slightest idea?

A. I don't know whether he did. I suppose he read it, of course, no one would sign a check without reading it.

Q. Steward Heitsman would not sign anything unless he knew what he was doing, would he?

A. He was very careful about everything, very economical in everything he did.

Q. And he knew exactly what he was doing up to the time of his death?

A. I think so."

This method of writing in the checks was not new. Check No. 12, dated December 19, 1918, was made out by Katherine N. Stryker, and so was check No. 124, dated December 23, 1918; check No. 131, dated March 13, 1919; check No. 134, dated April 16, 1919; check No. 136, dated May 9, 1919, and so on.

We submit that with this clear proof that this method of having Katherine Stryker do the clerical work of writing in the body of the check, practically from the beginning, is not evidence of such reliance and dependence, as will raise the presumption of fraud.

In addition to the admissions of the witnesses, Lizzie Heitsman, Louella Silkman and James L. Lomerson, that Steward Heitsman was a man of strong will, with a mind of his own, careful and shrewd in business af-

fairs, as is set forth, Mrs. Kilpatrick, one of the nieces, testified, (p. 208 11. 1-11):

"Q. You talked to your Uncle Steward, didn't you?
A. I did.
Q. What did you say?
A. I sat in his room.
Q. He was very jolly and pleasant, wasn't he?
A. Very.
Q. He always had a good clear mind when you talked to him?
A. Yes.
Q. And always seemed to be the same so far as talking was concerned?
A. Yes, sir, as far as talking.

It is very significant that no attempt was made by the complainants to show that Steward K. Heitsman's mental condition changed in any way during the ten-year period. While there was a great deal of examination with reference to his physical condition and inability to walk without a cane and assistance, there was no examination with reference to his mental condition.

Why did not counsel ask if his mind was enfeebled?

Certainly Lizzie Heitsman, who had seen him, according to her testimony, "frequently" from 1921 to the time of his death, should have been able to have testified to evidence of a change in his strong will power, during this period. The presumption of undue influence as we understand the law, refers to a mental state. Influence is upon the mind which controls in business transaction, transfers of property. When one influences another they exert a force which effects the mind of the other. It is

a mental process and the very failure of the complainants to lay stress upon this fact and the respondents' own testimony that he was a man of strong will, even up to the time of his death, that he was the kind of a man who would not sign a check unless he knew what it was for, are the strongest admissions of the fact that Steward K. Heitsman, even up to the time of his death, was a man who could not be wrongfully or unduly influenced, that he was in the control of the property which belonged to him and that what he did with it would be his will and not the will of Katherine N. Stryker.

Counsel for the respondents argue that Steward K. Heitsman had but a common school education and no business experience except that of farming. It is suggested that the business of farming is a simple matter without any involved difficulties. Certainly that is not the fact. Furthermore, Steward K. Heitsman had acquired stock in the national banks and a water company and had apparently transacted his business as the witnesses testified to, in a shrewd, careful and economical manner.

But respondents' counsel say Katherine N. Stryker, on the other hand, was an educated woman, active in social affairs and a member of the Board of Education in the Town of Phillipsburg. Is the fact that a person is educated to be taken by a court of equity as sufficient to raise a presumption of fraud? Is the fact that two mayors of the Town of Phillipsburg had thought sufficiently of her ability, placed sufficient trust and confidence in her to appoint her for two terms, a member of the Board of Education of the Town of Phillipsburg, to be taken as proof of dominance sufficient to raise a presumption of fraud or undue influence? Certainly

this speaks for the high character of the defendant, and it tends to rebut such a presumption.

There are no facts similar to those in cases where the donor could neither read nor write; and where his ignorance was clear and where one who could read or write could readily take advantage of it. There is no evidence here that Steward K. Heitsman was blind and could not see what he was doing. The evidence tends to show that he was a shrewd and careful business man, and so continued down to his death, and the argument advanced by counsel suggesting that this disparity in educational advantages proves dominance, is far fetched and unsound.

It is not disputed, nor was there any attempt to dispute the matter when properly presented at the hearing, that Steward K. Heitsman from 1920, then eighty years old, continued by reason of his age, to become physically feebler and less able to walk without assistance, that he was subject to heart attacks which required rest and relaxation; and that during the last years this increased. The testimony of Dr. West on that subject is unquestioned, and much time was taken up through attempts to show that he had to be assisted at times in walking, once while visiting Mrs. Kilpatrick on College Hill, where there were hard wood floors, and a number of times in the house; generally he used a cane to aid and assist him in walking; and during the last year he required assistance of another in taking his bath. That assistance was given by Katherine Stryker.

If proof of such dependence will raise a presumption of fraud or undue influence then can it not be argued Lizzie Heitsman, who testified, (p. 135, l. 30) that she assisted Steward Heitsman when Katherine did not:

"Yes I did undress him and put him to bed
* * * the same as Katherine did."

would have been presumed to have used fraud or undue influence and that a court of equity would determine that ministration a relation and dependence sufficient to raise a presumption? Proof of his physical condition and need of assistance in walking and getting around is indicative of one fact, that he required such care and assistance, and if the defendant, Katherine N. Stryker had not performed this care as she was unable to do when she was away, any other person could have come in and performed it and Steward K. Heitsman would have had to have paid for this attention and assistance He had to have a housekeeper, some one to cook and manage the household and it is undisputed that Katherine Stryker did this work, that she received nothing for it by way of regular compensation except her meals. The court should keep in mind that this was her home, that she was a co-tenant, in possession of the property and so far as that goes, Steward K. Heitsman, was receiving directly from her a very great benefit.

Respondents' counsel may lay stress on the fact that Katherine Stryker would constantly ask for money when she needed it and get it, but invariably the testimony is clear that this money was for household purposes and was applied accordingly. It was only on one other occasion that she asked for money for furniture and respondents' witness testified that Stewart Heitsman was willing that she should have it. Neither Lizzie Heitsman nor Louella Silkman, two of the witnesses that respondents rely upon, ever recalled what Steward Heitsman said. It seems very significant that Mrs. Heitsman knew

that the money was to be used for household purposes and that she testified that Steward Heitsman knew what the money was going out for and was willing to pay out the money accordingly.

But the belligerent Miss Silkman, who wanted to punish her cousin Katherine Stryker, on p. 156 l. 31, testified:

"She was very insistent about everything."

She mentioned the victrola. This belonged to Steward K. Heitsman and is included in the inventory taken at the time of his death. (Ex. C-33).

We contend that Miss Silkman's testimony in these matters is so colored and biased that little or no weight should be given to it, and further that she willfully testified falsely on the stand, so anxious was she to swear to anything which she calculated would injure Katherine Stryker. She testified on direct examination, p. 163, l. 3, as follows:

"Q. Do you recall another conversation after that where she made some reference to her knowledge of a will and where the will had been, whether it had been in the box, or something?

A. Some one was there talking, and she said she had been through her—How was that—She said, 'I went through Uncle's box thoroughly and I didn't find that will. If I had I should have had it changed instantly'. And then this person made the remark, who was there, 'So you are going to keep what you hold?'

Q. Is that all that conversation?

A. Yes, I think that is all I recall at that time."

It is to be noted that she said: "Some one" was there talking, "This person" made the remark, etc. On cross examination, the falsity of her testimony was clearly indicated by her evasive manner and finally being compelled to answer and to state with whom this conversation was held, she mentioned the name of Henry Walters, a reputable lawyer of Phillipsburg. It is worth while reading the testimony, p. 171-173.

We say that this testimony is false and not credible, first, because it is apparent that Katherine Stryker knew there was a will and knew that the will was in the office of Mr. McConnel; second, Mr. Walters, who is a reputable lawyer in Phillipsburg, on p. 261-262, of the testimony, makes a complete denial of any such conversation, and Miss Stryker, on p. 312 11. 11-25 makes an absolute denial of any such conversation. This is the witness who testified: "She was very lavish in entertaining. Yes, the neighbors said, 'Katherine dresses a great deal better than she used to'." Her willingness to exaggerate undoubtedly was the result of her desire to aid the respondents in every way possible so that she might wreak her vengeance against Katherine.

But counsel argue that the testimony with reference to the radio is of importance and yet the evidence itself indicated that Katherine looked to Steward Heitsman for these small gifts and that he was not readily persuaded. This evidence of itself should be taken against the party that offers it.

Again, Dora Heitsman, on p. 185, an interested defendant-respondent, who will benefit in this suit, testifed that Katherine told her:

> * * * that Uncle Steward had received a check on a small legacy and he said she could have this check, and she said when it came, she said, "Uncle Steward says I could have that," Uncle Steward said, "No", and she said, "Yes, you did, didn't he, Aunt Lizzie". Aunt Lizzie Heitsman. And Mrs. Heitsman said, "Yes, hand it over."

Katherine Stryker, on p. 313, admits that she probably told Dora Heitsman, Mr. Heitsman had promised to give her the legacy. There was no reason to be secretive about it. Katherine was open and frank. It is testified this took place in 1922, but if the exact words were used, why did not Lizzie Heitsman so testify. If, as counsel argues, this was "Evidently against his will", why was not Lizzie Heitsman, who was present, called upon to prove the conversation between Steward Heitsman and Katherine Stryker? Here was an opportunity to offer primary evidence.

We contend that the version given by Miss Heitsman was hearsay and that it was told to her by someone else.

We point out another distinction in cases of this kind. In every case the person or persons who have suffered are first: the donor, where the suit was brought by him in his lifetime; second, brothers or sisters who were deprived of their share of the estate; third, husband or wife who were excluded as against children, or vice versa.

In *Hall vs. Oterson*, 53 *N.J.E.* 522, there was the case of the husband dominating the wife, six days before the expected birth of a child, the wife entirely inexperienced, the husband, a lawyer of prominence in Philadelphia.

In *Mock vs. Mock*, 49, *N.J.E.* 192, the complainant

was adjudged a lunatic with lucid moments and the suit was by her guardian to set aside the deed.

In *Haydock vs. Haydock,* 34 *N.J.E.* 570, the court in its opinion says:

> "The evidence in the case has impressed me with the conviction that at the time when these transfers were made the mind of the donor approached so closely to the line which defines the limit of legal mental capacity and that upon the ground of a want of such capacity I shall incline to hold these gifts void."

Magie, in a separate opinion, voting to affirm the decree, says:

> "I vote to affirm the decree below but prefer to put my vote solely upon the ground of the incapacity of Mr. Haydock to make the gifts in question in this cause."

The suit was filed by the executors against the wife to whom the alleged gifts were made but the gift was made several weeks before the death of the donor.

In *Grimminger vs. Alderton,* 85 *N.J.E.* 425, the complainant was an epileptic and mentally incompetent, and the opinion in detail shows an extreme mental weakness.

In *Kern vs. Force,* 99 *N.J.E.* 417, it was a suit by a sister against a brother and sister and the bill charged fraud, and the decision was not based upon any presumption of undue influence but actual fraud, as a careful reading of the opinion will show.

In *Roosma vs. Roosma,* 100 *N.J.E.* 61, the donor was

eighty years old and practically blind and could not sign her name and the evidence clearly raised the question as to whether her mark had been made by herself. She did not clearly understand English. The gift was improvident and of her entire estate, but the Vice-Chancellor held that defendant was entitled to be fairly compensated for her services.

In *Pierce vs. Stines, 79 N.J.E. p.* 51, the property consisted exclusively of real estate. The house and lot was valued at $3,020 and the other land all of which was unimproved, for $3,759, to which should be added the value of the household furniture and again was a suit by children.

In *Siebold vs. Ziebolt, 93 N.J.E. 327*, the suit was brought by children of the donor who by reason of the conveyance would be deprived of what would naturally come to them.

In the *Fulper case, 99 N.J.E. 293*, the other children would have been deprived of their share by reason of the conveyance.

In the present case, the nearest relative is B. Frank Heitsman, who had lived with his brother and the defendant, Katherine Stryker, for a number of years. He is the nearest blood relative to be affected by the gifts which it was alleged were made and he joins with the defendant, Katherine Stryker, in the contention that the gift was valid, voluntary and fair. Who were the other relatives? A niece, Alma Heitsman, who seldom if ever visited Steward K. Heitsman in his lifetime; another niece, Anna Kunsman, who did not take the stand. There is no evidence showing that she in any way was interested in or visited her Uncle Steward during the last few years of his life. Mrs. Kirkpatrick and Dora Heits-

man, nieces, who "frequently" visited their uncle and subsequently testified that "frequently" meant twice a year, (p. 207 11.1-6) although they lived practically in the same community in Easton, Pennsylvania. The close relation between Steward K. Heitsman and Katherine Stryker was the very result of the neglect and failure of these blood relatives to care and attend this old man. They left it to this foster child. The uncontradicted evidence is that she, with the devotion of a faithful daughter, sacrificed her whole career, the opportunity of marriage, her own independence and the very best years of her life and gave him that care and attention as a housekeeper and a nurse that any daughter would have given, and with that, attended as he directed to his business affairs.

The testimony leaves no room for doubt that for her alone he had the greatest love and affection, so much so that under his will made in 1916, she was the principal beneficiary, and received the largest share, and in 1918, the testator having received this loving attention and care for a period of two years, changed his will so as to add to his original bequest to her, giving to her practically all of his personal property.

On these facts and under these circumstances, it is insisted that, if the gifts alleged were not improvident, the complainants have failed to meet their burden of proof in establishing a dominant confidential relationship.

VII.

NEITHER THE FIRST GIFT OF $15,000 BONDS NOR THE SECOND GIFT OF $15,000 BONDS WERE IMPROVIDENT

In *Pierce vs. Stines,* 79 *N.J.E.* 51, 54, classification of gifts inter vivos is set forth, an improvident gift is said to mean a "gift of all, or as it is phrased in *Post vs. Hagen,* 'practically all of the donor's property'."

A recent case, *Morrison vs. Morrison,* 94 *N.J.E.* 645, *aff.* 94 *N.J.E.* 801, where the question of dominant condential relationship was practically eliminated, the question resolved itself into a question as to whether the gifts were improvident. Vice-Chancellor Griffin says:

> "The question—and the only question in the whole case, that I can see—is, first, being possessed of this real estate (which at the time of the gift to the daughter was regarded as worth $4,500, but a year and a half later sold for $10,000) was this gift improvident if he still held $4,200 in cash, considering, also, his age and the probability that his working days were about to terminate, or, at least, would terminate in the near future, holding only about $4,200 to care for him for the balance of his days, which, taking the testimony of Dr. Connolly, could hardly be many.
>
> "As to the first gift of $2,400 in February 13th, 1918, this gift was clearly not improvident. Where several gifts are made at differ-

ent periods of time, later gifts might be held improvident without impairing the validity of the earlier ones. At the time of this gift he owned the house in question, valued at about $4,500 and had in the neighborhood of about $5,000 in bank, making upwards of $9,000; and as, I have found that there was no fraud or undue influence, and it was the voluntary act of the donor the gift was good.

"When the deed was made, on May 14th, 1920, the donor had upwards of $4,200 in bank, possibly $5,000. He did not have independent advice, but it was his voluntary deed, unaffected by influence which might be considered undue. The only influence that actuated him in making the gift was love for his child and a purpose to reward her for the services which she had rendered. The question, therefore, is, Was the act improvident? I will not deal at length with this question because it is fully covered in the opinion of Vice-Chancellor Stevens in *Pearce vs. Stines, 79 N.J.E.* 51, where he analyzes all the authorities and deals with the question as to what proportion of a man's property given to the donee would be regarded as improvident. Under the circumstances of this case, if he gave to his daughter the house valued at $4,500 and retained the $4,200 in bank, he would have reserved to himself a sum which, in my judgment, did not render the gift of the house improvident."

The total of the estate of Steward K. Heitsman in 1921, at the time of the first gift was $41,984. Of this amount, only $500 represented furniture or non-income producing property. It is not disputed that all the securities had a ready market and could be sold without delay or difficulty. Testimony of James L. Lomerson, p. 81. The first gift of $15,000 principal of the bonds, was a little more than one third of his estate, but it can not be seriously argued that a man who still has $26,000 in cash and securities of ready market value, such as liberty bonds and local bank stock, "is a man stripped of practically all of the donor's property." At that time, Steward K. Heitsman was 82 years old, and his possible expectancy in life could not reasonably have been more more than 10 years. He still had left, if he had no income whatever, and merely the use of the principal of the estate, $26,000 to provide for his support and maintenance. Furthermore he had not been accustomed to a large income but lived in a very simple manner. Reference to Ex. C-1, C-10, C-13, C-14, C-15, the statement of his account and statements showing dividends, will lead to the following summary of his income and disbursements in the years preceding the sale of the farm, and the years 1919 and 1920 before the gift of the first $15,000.

	1916	1917	1918	1919	1920
Total amount deposited in bank:	$946.32	$914.53	$1,968.87	$2,423.01	$1,814.20
Total amount paid by check:	987.46	928.74	1,251.13	2,585.38	1,866.42
Dividends received but not deposited:	400.00	260.00	260.00	72.00	72.00

Total income deposited and not deposited:

1,346.32 1,174.53 2,028.87 2,495.01 1,686.20

Total amount expended:

1,387.46 1,188.74 1,511.13 2,657.38 1,938.42

Note: In December, 1918, first coupons on bonds were received and during same period a check for $500, purpose of which is not in evidence was paid, probably for liberty bonds. In 1919 $1,111.68 was paid for income tax.

Out of this total income of 1916, 1917, 1918, Steward K. Heitsman was able to live in a simple economical manner, paying his share of the taxes on the farm and his share of seeds and other expenses in the maintenance of the farm.

We submit a table showing the disbursements by check from 1919 to 1925 (with the year 1920 missing because there is not complete evidence as to the purpose of expenditures, by reason of missing checks).

1919	1921	1922	1923	1924	1925
Cash:					
$700.00	$720.00	$700.00	$950.00	$1010.00	$1100.00
Groceries, meat, etc.:					
28.24		8.00			
Income tax:					
1111.68					
K. N. Stryker, clothing, etc.:					
185.90	169.21	119.43	245.11	212.85	181.54
Coal:					
72.40	140.11	83.30	196.50	159.85	142.20
Taxes:					
4.76	7.28				

Bonds, investments:					
200.00					
Furniture, new victrola, etc.:					
	186.49	241.60	26.20		
Repairs to residence:					
	67.40			19.20	109.75
Doctor, dentist, legal:					
		154.25			16.50
K. N. Stryker, hospital expense:					
		74.00			
Suit of clothes, Steward K. Heitsman:					
				30.00	
Welfare Chest:					
				25.00	
K. N. Stryker, gift, radio:					
				100.00	300.00
Warren Hospital:					
			800.00		
$2302.98	$1290.49	$1380.58	$1617.81	$1557.10	$1849.99

We have included in the classification, Katherine N. Stryker, clothing, the bills of Bush & Bull, Laubach's, Rader's and other department stores although the testimony shows that these bills were for household supplies, Steward K. Heitsman's clothing, etc., as well as for clothing of Katherine N. Stryker.

It should also be noted that in 1919 a large income tax was paid, and $200 worth of Liberty Bonds were purchased. In 1923, $200 was given to the Warren Hospital, in 1924, $125 was given to the Welfare Chest and as a Christmas gift, and in 1925, the last year of Steward K. Heitsman's life, $300 was given (the radio gift) to Katherine Stryker.

Making possible allawances and deductions it is clear that Steward K. Heitsman was able to live comfortably from the period of 1919 to 1925 and to provide for the *clothing and support necessary for Katherine Stryker and himself,* on an average of $1,350.00.

The first gift was not improvident, because Katherine Stryker continued the practice that had been carried on prior to the gift, having her Uncle Steward act as the banker and head of the household for herself as well as himself, giving to her uncle the interest on the $15,000 given her and with that money took care of the household expenses. Thus he was enabled without touching the remaining principal to continue living in the same manner and in fact, with more care and attention until 1925. The record is against improvidence; during that period he was not injured, defrauded or deprived by reason of his gift. So interwoven were the lives and interests of Steward K. Heitsman and Katherine Stryker that it was almost a joint enterprise and from this common fund both of them were clothed, fed, the house kept in repair, gifts made to charity, dentist, medical and legal bills paid without question.

But counsel for the respondents will argue the second gift was clearly improvident. The balance of Steward K. Heitsman's estate, after he had made the first gift had increased in value from $26,984 to $27,537 in September, 1925, by reason of the increased market value of the securities which he held, (Stipulation, p. 35-36); and without any appreciation in value of the balance of liberty bonds in his possession which are included in the balance. Of this total estate, in September, 1925, mindful of his increased age and the more frequent occurrence of

heart attacks, Steward K. Heitsman gave the remaining $15,000 bonds to Katherine, which left him with bank stock and water stock readily salable in nearby market and cash on hand of $12,037.13.

Did he then by that act strip himself? Was he without means for his support and maintenance the remainder of his life? He could not be called a poor man. The securities that he still owned were paying him dividends at the rate of $501.60. He had approximately $1,500 cash on hand and in addition to this he was receiving board of his brother, B. Frank Heitsman, amounting to approximately $240 a year (page 320 Ex. DS-1). Based upon the case of *Morrison vs. Morrison, supra,* this left Steward K. Heitsman, 86 years old, after the second gift with more than sufficient funds to provide for himself during the remainder of his life.

Steward K. Heitsman never did pay any rent and in this matter we are dealing with facts. If he had had to pay rent, he certainly could never have afforded to pay $75 or $80 a month, when his income including the interest on the bonds which he had given away never exceeded $1,766.20. Under the law, Katherine Stryker, the defendant was a co-tenant in possession and could be held for an accounting by her co-tenants for the use of the property.

It is argued strenuously that the physical condition of Steward K. Heitsman was such that he might at any time require special nursing and expensive medical attion but upon what evidence is this argument advanced? He did receive nursing, very special and frequent medical attention, and this was not so expensive as counsel for complainants would lead one to believe. The attention and care which he needed for his heart ailment was

not that of a trained nurse but as a housekeeper might give, to whom he would give shelter and food. Furthermore it is well known and the court can take judicial notice of the fact that there are homes for the aged where they would have been glad to have cared for him, in consideration of his income, remaining after the last gift.

Referring particularly to the cases which may be relied upon by counsel in *Mulch vs. Harkey,* 69 *At.* 736 the estate was very small and it was clearly an improvident gift with nothing but a lease for life in real estate. So in *Hunt vs. Naylor,* 84 *N.J.E.* 646, the entire estate consisted of $1,000 of government bonds and a bank deposit of $1,147.44 and the gift which was set aside consisted of $1,147.44, the bank deposit. In this case, Vice-Chancellor Backes points out that the donor was mentally weak. In the *Fulper* case, supra, practically the entire personal estate was given to the son leaving the father nothing for his support with the exception of some $700.00. The entire estate consisted of approximately $6,000, $4,200 the gift in question, $700 personal property and a small farm worth approximately $2,500; a farm which could not be rented and which the donor himself was unable to farm.

In *Siebold vs. Ziebolt,* 93 *N.J.E.* 327, *aff.* 93 *N.J.E.* 500, the income of $80 a month was reserved after a gift of the real estate of the donor to his children, reserving the income with rent free and an apartment. But the facts are very different from the present case. With the remaining cash on hand of $8,244.62, this man, 77 years old, bought property and arranged to place the title in the defendants, who were no blood relation. Furthermore the donor left him surviving, a wife who had to be supported and provided for, and the gift amounting to

$8,000 out of $8,244.62 was clearly improvident. Ingeniously, counsel for respondents has attempted to capitalize the income of $95 per month of the two old people in this case but he fails to set forth the fact that the donor at the time had *previously given this property to his children as a voluntary gift with the income and free rent* and further, as Vice-Chancellor Griffin points out, that it was plain from the testimony that there was an agreement between the old people and the defendants, reserving the right of lodging and support during the life of the deceased, which was not incorporated in the deed. In *Slack vs. Rees* 66 *N.J.E.* 447, the conveyance was all the real estate of the decedent who had not sufficient property to pay his debts.

In no case can counsel cite an incident where the donor remained seized, after the gift, of an estate of $26,000; or even of an estate of approximately $12,000 as in the present case. Clearly the first transfer was not improvident nor was the second transfer at the time when made, under the conditions it was alleged made, improvident. In the terms of everyday life, one with such an estate would be termed "comfortably fixed".

VIII.

RESPONDENTS DID NOT MEET THE BURDEN OF PROOF THAT THE GIFT WAS NOT TO BECOME IMMEDIATELY EFFECTIVE DURING THE LIFETIME OF THE DONOR

A gift inter vivos becomes perfect by delivery and acceptance and a title thus acquired is just as perfect as a title acquired by purchase. *Corle vs. Monkhouse,* 50

N.J.E. 537, and it has been pointed out that the actual delivery of negotiable bonds when words or acts indicate a present absolute gift, constitutes a valid gift inter vivos. *Mathews vs. Hoagland,* 48 *N.J.E.* 455.

If the gift is absolute, the mere postponement of the enjoyment until the death of the donor is not material and will not defeat it. *Dunn vs. Houghton,* 51 *At.* 71.

Where a party delivered a negotiable check on a bank to another and requested that it be not presented for payment until after his death, the payee gained such possession and control of the thing given as to constitute a completed perfect gift. *Pullen vs. Placer County Bank,* 138 *Cal.* 69. 66 *P.* 740, 71 *P.* 83.

It is insisted that the correct rule is that where an actual delivery of the subject matter of the gift has been established and donative intent established, and the donee has accepted the gift and exercised dominion and ownership over the gift, the burden is upon the person attacking the gift to prove that the gift was not to take effect immediately. The complainant and respondents failed to do this at the conclusion of their case. The evidence showed that the bonds, after the death of Steward K. Heitsman, were in the possession of Katherine N. Stryker and that she had clipped the interest coupons and obtained possession of the bonds before the death of the testator, and an assertion by the executor in the pleadings of a claim of a gift on the part of Katherine N. Stryker. The only evidence offered to show that the bonds were not given to Katherine N. Stryker to take effect immediately, were statements alleged to have been made by Katherine N. Stryker to Elizabeth Heitsman, the mother of the defendant-respondent, Alma Heitsman, who had a two-sevenths residuary interest, and Dora Heitsman, who had

a one-seventh interest in the estate, and would greatly gain if they were successful in this suit. Lizzie Heitsman's testimony on this proposition is highly improbable. She testified that she had a conversation with Katherine N. Stryker in the fall of 1925, but it appears that it was not a conversation, but a question to which Lizzie Heitsman made no reply. Her testimony is improbable, unnatural and rings false in its entirety.

"A. She said to me, 'Aunt Lizzie, don't you think Uncle Steward ought to let me have the Government Bonds, the Liberty Bonds to escape the inheritance tax and also said that she wanted him to let her put the bonds in an envelope and put his name on them and if she died they were his and if he died they were hers, in her box.

Q. Which bonds are you referring to now?

A. The Liberty bonds.

Q. Which?

By THE COURT:

Q. What liberty bonds.

A. The proceeds of the farm.

Q. What did you say?

A. I made no reply.

Q. Was that all the conversation there was?

A. At that time, yes.

Q. Well, at any other time?

A. Well, yes, there was another time that we were together—

Q. You didn't make any reply?

A. No.

Q. Why not? She asked you a question, why didn't you answer it?

A. It was none of my affair, I considered.

Q. Well, you might have told her that?

A. But I made no reply.

Q. You said there was another time?

A. Yes, sir.

Q. Later?

A. Yes, later.

Q. How much later?

A. Well, this was after his death, a week or so after his death. We roomed together at night and in the morning we were talking and she said to me, she said, 'Aunt Lizzie, don't you think that the heirs, nephews and nieces should let me have the bonds my life time and then I will will them back to them?' and I made no reply to that.

Q. You did not reply?

A. No.

Katherine Stryker denied this, (p.309) and said:

"A. I don't think I mentioned bonds to anybody before my uncle's death with the possible exception of Mrs. Kline."

Dora Heitsman testified as to a conversation in 1921, four years prior to the conversation that Lizzie Heitsman alleges she had with Katherine. On cross-examination she testified that it was at the market in the City of Easton, and the public square. She testified also that she did not say a word after Katherine had made this statement to her and she did not tell anyone about the

conversation until after this matter came up when she spoke to her sister, Mrs. Kirkpatrick. She was uncertain in her testimony as to whether Katherine had used the words "inheritance tax" and finally to the court answered that Katherine said "to escape the tax".

Miss Stryker denies any such conversation. It is submitted that it is highly improbable that Katherine Stryker would have had any such conversation with Dora Heitsman to whom she was not related and whom she met only in a casual manner in the public streets, this blood relative of Steward Heitsman, who, in her own language, said that she visited her Uncle Steward Heitsman frequently, and that "frequently" meant twice a year, and further went on to indicate that Katherine acted as though she did not want her to come and visit her uncle Steward.

The last attempt to intimate that the matter of inheritance tax had something to do with the case was in the cross-examination of Mr. John A. Bachman of the Phillipsburg National Bank. It developed in that testimony, p. 259, that counsel for the respondents strenuously tried to suggest and confuse the witness and place in this conversation a purpose of avoiding the inheritance tax, hoping by so doing it would spell out an intention on the part of the donor to have the gift take effect after death, but examination of the testimony will disclose that the witness insisted that the truth was that the reason for the gift to Katherine was her kindness to the donor, taking care of him and "for her loyalty to him and acting as a daughter, faithfully to him", and on p. 259, 1.19,20, when it was suggested that the purpose of Steward K. Heitsman was that he might, in handing over the bonds to her, save the inheritance tax, the

witness promptly replied: "No. I don't think that was much of a factor. It was his love for her."

Thus, it is insisted, the evidence as to a purpose of avoiding the inheritance tax by handing over these bonds in the lifetime of the donor and reserving the income until after his death, which is all that could be spelled out of the testimony, is not only meager but of the unsubstantial character that should not weigh in the face of clear and convincing testimony. Particularly, since the donor himself, by the delivery of these negotiable bonds had stripped himself of his control over the bonds, and since Katherine Stryker had exercised the right of ownership in his lifetime.

All of this argument has been based on the premise that the testimony of Katherine N. Stryker was improperly stricken out. If her testimony was improperly stricken and not considered in the determination of the suit and the rendering of the final decree, her explanation, her evidence, if credible, clearly explains a present gift to take effect immediately.

In *Green vs. Tulane*, 52 *N.J.E.* 169, it was pointed out that a donor may make a gift of property reserving to himself a life interest in or a life income from the property.

IX.

ANY PRESUMPTION OF UNDUE INFLUENCE OR FRAUD BY THE DEFENDANT HAS BEEN REBUTTED.

The undisputed evidence in this case is by Dr. West, by John A. Bachman, by Mrs. Kline, by Mrs. Fine, James A. Lomerson, Elizabeth Heitsman, and Louella Silkman, that the donor, Steward K. Heitsman, was a man of strong will power, who knew what he was doing up to the very time of his death. The transactions to which they testified and the relationship between Katherine Stryker and Steward K. Heitsman was open and frank. Her conduct in the matter was not that of a person trying to conceal something. When they attempted to show that she had never mentioned the fact that her uncle had given her the bonds until after his death, Mrs. Kline testified, contradicting the evidence, that in September or in the fall of 1925, Katherine had told her that her uncle Steward had given her the bonds.

The statements made by Steward K. Heitsman in the absence of Katherine, to these confidential friends in which he declared what he had done, stating his intention of giving more to Katherine, and finally, in 1925, when he told them that he had given Katherine the balance of the bonds, all tend to prove that this act was done by him, voluntarily and without any influence. In this respect, the court in doing equity must consider that Steward Heitsman, this old man, knew better than anyone else the equity of the transaction and he spoke of it to all of these witnesses with the exception of Lizzie

Heitsman who denies that he ever discussed Katherine in his conversations with her. Some emphasis is laid upon the fact that the day of Steward Heitsman's funeral, Katherine became angry at a remark that Louella Silkman made and it is suggested that this was because she desired to conceal the fact that her uncle had given her the bonds. We suggest, in her behalf, that this was because she did not desire this busy body, whose bias and desire for revenge and punishment is clearly evident, to interfere with her personal and private matters. Her conduct on that day, even if it be as these witnesses stated, and it is to be noted that their language is almost word for word identical, is not unusual or passing strange. The man who stood in place of her father since she was nine years old had been buried that day. She was grief stricken. To him she had devoted ten of the best years of her life, and, surrounded by these blood relations who thought so little of him that they only visited him twice a year or less during that period and had left to her his entire care and attention, they immediately entered upon a discussion as to his property, how much they would get out of his estate.

Into this circle came the flustering busy body, whose constant prattling and chattering led to disagreements with Katherine. The loquacious Louella, anxious to disclose the great knowledge that she had and eager to hear the news of the day and the private affairs and matters of the estate of Steward K. Heitsman, spoke. There was a natural resentment on the part of Katherine Stryker. Such an action was not evidence of an attempt to conceal a fact. Her pleadings indicate the contrary. How did the executor learn about these bonds from Katherine Stryker? How did he obtain the information as to her

story and what happened to the proceeds of the farm? If she had concealed it why should she not first conceal it from him? He could then have testified in the matter. It would not have been a transaction with the decedent but with her.

Furthermore, it is perfectly natural that Katherine Stryker should have spoken of a settlement of this dispute as soon as she learned that a suit was impending. This woman was not keen, as no reasonable person is, to rush into court. She had a lawyer and the testimony is that she followed his advice.

It was not evidence of concealment when she openly in her own bank account, deposited coupons of these bonds, which she well knew could be traced without question.

Seldom in Courts of New Jersey is there a case where there is greater equity on the side of a party than the present case. Appellant, a woman holding a position of public trust and confidence in the community in which she lives, with limited social activity, after ten years of supreme sacrifice, giving up a position of teaching in the public schools, surrendering the opportunity for marriage, is hailed into court by these grasping blood relations of Steward Heitsman and accused by the pleadings of being a humbug, a fraud, a liar and a cheat. The executor clearly is acting only upon their urging in order that he may not be held liable in person.

The appellant was thirty-one years old in 1916 when she came into the household of Steward K. Heitsman at his request, to take the place of her aunt, who had suddenly died. At that time she was a teacher and normally could have increased her earnings so that she would have practically been independent to come and go

as she desired. Later there was an opportunity of marriage which she gave up in order that she might continue the trust she had assumed and care for, aid and assist this old man who to her was a father. The golden years of her life were devoted to him. Only occasionally and for very short visits, usually conventions of the D. A. R., was she able to leave him and always then would she have to think of this old man and his brother and arrange with some one competent to give them the care and assistance which they needed because of their age and physical condition.

The testator was happy in her company, lonely without her, wanted her well dressed, regarded her as his daughter. After his wife's death as he explained to Dr. West, there was only Frank and Katherine and himself; Frank, the old brother, who seldom spoke to him or anyone else. No pages of evidence can disclose the happiness which the appellant brought to this old man, Steward Heitsman, in his twilight hours and autumn years.

As the years passed, and he found that she would do the right thing by him and stick to him to the very end, his love for her grew and his desire to reward her expressed itself in many ways. First, the will, whereby he gave her more than one-third of his estate, then the codicil to the will adding ten per cent, the $200.00 of liberty bonds for a Christmas present, then after five years, fifteen thousand dollars of bonds and after nine years and with a sudden apprehension of the fact that he might be taken away at any time, the balance of the bonds. With such evidence of devotion on the part of this woman who was no relation by blood, what was more natural than that this old man would make her his greatest bene-

ficiary. She received no other compensation. She had sacrificed everything for him.

And where, in these last years, were the defendant-respondents, the nieces who claim that these bonds are a part of the estate? Living practically in the same town, in a different state, just across the river, they saw this old man "frequently", which was twice a year or on the occasion of a funeral of other relatives. Strangers, neighbors and others, the evidence discloses, would visit regularly but these nieces came but twice a year. However, they always arrived in time for the funeral and the reading of the will.

It is insisted in behalf of the appellant that the court below erred and that the clear and convincing evidence of this case lies on the side of the appellant, the equity is on the side of the appellant. To deprive her of these bonds under the facts and circumstances, under the proofs submitted, and in such a situation, would tend to discourage any young person from similar noble service and sacrifice, care and attention to the aged. To whom would Steward Heitsman have gone, if Katherine had failed? Which of these nieces would have performed the same service without asking for as great a compensation? No attempt on the part of the Court of Chancery to reward the appellant for her services will do equity to her if this old man intended to reward her, as it is insisted he intended to do, and gave into her possession $30,000.00 of liberty bonds to be hers absolutely, well knowing as he did that she had been faithful up to that time and that she would be faithful unto the end.

In conclusion, the appellant contends that:

1. The conclusion of the Vice-Chancellor was error because the proofs clearly and convincingly show an actual physical delivery of the negotiable bonds with the clear and convincing evidence of the statements of the donor to disinterested persons, explaining the manner, means and intent of the transfer, and further, a complete stripping of ownership, first by actual delivery and second by the open exercise of ownership on the part of the donee and the clipping of the coupons on the bonds in the lifetime of the donor.

2. Because the testimony of Katherine N. Stryker was improperly stricken out; and it was admissible because no objection was made on the part of the executor and he thereby must be deemed to have waived objection, and further because under the amended bill, the executor alone was a party to the suit in a representative capacity and his failure to object made her testimony admissible and the objection of counsel for respondents not representing the executor, was improperly made.

3. Because, if the defendant-respondents were parties to the suit in a representative capacity, the testimony of two of them offered in behalf of all of them, qualified Katherine Stryker as a witness to transactions or statements between the decedent. It is further insisted, that her testimony, if admitted, is credible and would sustain a valid and completed gift in the lifetime of the donor.

4. Because the court erred in not considering the testimony of the defendant, B. Frank Heitsman, as to transactions and statements with the decedent.

5. Because the amendment of the bill in so far as it permitted to be raised again after final hearing the questions of fraud, undue influence and improvidence, which were not found as facts by the vice-chancellor to have existed, was broader than the rule empowering the court to amend, allowed.

6. Because the respondents failed to show a dominant confidential relationship as contemplated under the rules of law and equity in such cases.

7. Because any presumption of fraud or undue influence was rebutted and explained by clear and convincing testimony at the conclusion of the case.

8. Because there was no evidence of any improvident gift on the part of the donor.

It is respectfully urged that for these errors the judgment of the court below be reversed and judgment found in favor of the appellant.

Smith & Smith

Solicitors of KATHERINE N. STRYKER,
Defendant-Appellant.

Sylvester C. Smith, Jr.

Of Counsel

New Jersey
Court of Errors and Appeals

BETWEEN

OSIRIS D. McCONNEL, Executor of the last will and testament of Steward K. Heitsman, deceased,
Complainant-Appellee,

and

KATHERINE N. STRYKER,
Defendant-Appellant,

and

ALMA HILDEBRANT, DORA HEITSMAN, ISABELLA KIRKPATRICK and ANNA KUNSMAN,
Defendants-Respondents.

On Appeal From the Court of Chancery.

Brief of Osiris D. McConnel, Executor of the last will and testament of Steward K. Heitsman, deceased, Complainant-Appellee, and Alma Hildebrant, Dora Heitsman, Isabella Kirkpatrick and Anna Kunsman, Defendants-Respondents.

STATEMENT OF FACTS.

This is an appeal from a final decree entered in this cause as advised by Vice-Chancellor Buchanan. We will first set forth the facts and the history of the matter.

The complainant, Osiris D. McConnel, executor of the last will and testament of Steward K. Heitsman, deceased, filed a bill for instructions as to whether or not $30,000 of United States Liberty Bonds are a part of the estate of this decedent, or whether they properly belong to Katherine N. Stryker, one of the defendants. Katherine N. Stryker claims that they belong to her as the result of transfers of them to her by the decedent in his lifetime. Her uncle, B. Frank Heitsman, has indicated in his answer his willingness that she should have the bonds, whereas the other four defendants take the position that they are part of the estate.

About 1883, Steward K. Heitsman was living in Phillipsburg with his wife, Emma Heitsman, and her mother, Mrs. Stryker, and his brother, B. Frank Heitsman. At or about that time the father and mother of Katherine N. Stryker, who was a niece of Emma Heitsman, died. Katherine N. Stryker was then about eight years of age, and Emma Heitsman and her mother went to Texas where Katherine N. Stryker lived, and brought her and her brother, Stephen Stryker, up to Phillipsburg, and they were reared in Steward K. Heitsman's home. (p. 100, ll. 1-30.)

Emma Heitsman died in 1916, and then Katherine N. Stryker stopped teaching school and remained at home and kept house for Steward K. Heitsman and B. Frank Heitsman, who boarded with Steward.

As time went on, Steward K. Heitsman became in ill health and he gradually became more and more feeble so that it was necessary for Katherine N. Stryker to take care of him and of his business affairs. She did this to a much greater extent in the later years of his life.

On February 23, 1916, Steward K. Heitsman made a will, disposing of his property as follows: To Katherine N. Stryker 30 shares of the stock of the Phillipsburg National Bank and 24 shares of the stock of the People's Water Company. He then directed that his farm be sold and that the proceeds thereof should be divided equally among his two brothers, B. Frank Heitsman and Chester Heitsman, (now deceased) and his nieces, Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman, Alma Hildebrant, and Katherine N. Stryker. He bequeathed the residue of his estate to the same seven individuals.

On June 12, 1918, he made a codicil to his will in which he gave to Katherine N. Stryker 10 more shares of the Phillipsburg National Bank stock and 24 more shares of stock of the People's Water Company, and also his household goods and silverware. He made no other change in his will.

In 1918 he sold the above mentioned farm and received in payment therefor, $30,000 in liberty bonds which he placed in his safe deposit box in the Phillipsburg National Bank.

The defendant, Katherine N. Stryker, claims that Steward K. Heitsman gave her $15,000 worth of these bonds in 1921 (according to her Answer), and the second $15,000 worth in September, 1925. The coupons from all of the bonds were deposited in Steward K. Heitsman's account until November, 1925, when they were deposited in Katherine N. Stryker's account for the sake of convenience in using the money for the expenses of the household and

sickness of Steward K. Heitsman, so as to avoid the necessity of his signing checks.

Steward K. Heitsman died on January 31, 1926, after which time the executor of his estate learned that Katherine N. Stryker claimed the absolute ownership of these bonds, and he accordingly filed this bill for instructions.

After the conclusions of the Vice-Chancellor had been filed, an order was made amending the bill (pages 42 to 44) so that the bill as amended included allegations to the effect that the decedent, Steward K. Heitsman, did not intend by the alleged transfers of the said bonds to make presently effective transfers thereof to the said Katherine N. Stryker, and did not do so; that if presently effective transfers of the bonds were made to the said Katherine N. Stryker, the said transfers were obtained by undue influence exercised on Steward K. Heitsman by Katherine N. Stryker and without the said Steward K. Heitsman receiving competent and independent advice as to the effect of the said transfers; that the said transfers were improvident and invalid. In the bill as amended, the complainant prayed for alternative relief, namely, that the defendant, Katherine N. Stryker be compelled to account to the complainant for, and to restore, the said bonds, or that in case it was deemed that they had been transferred to her, that the transfers be set aside.

This is a brief sketch of the facts in the case. A great many other details will be included in the subsequent parts of the brief, and the position of the appellee and respondents with respect to the matter will be set forth in the outline of the argument which follows below.

OUTLINE OF THE ARGUMENT.

The appellee and respondents in this case contend

that the alleged transfers of these Liberty bonds should be set aside and that Katherine N. Stryker should be compelled to restore them to the estate for the reasons indicated in the following points, and we propose to set forth below a skeleton outline of the points to be argued in this brief.

1. A relationship of trust and confidence existed between Steward K. Heitsman and Katherine N. Stryker of such a nature as to clearly place the burden of proof upon her of showing that the alleged transfers were free from fraud, coercion, undue influence and concealment, and that they were made in a fair, open and aboveboard manner, and were fully understood by the decedent, and that he had the benefit of independent advice before making the transfers. Under this point we propose to answer Points Nos. 6 and 9 in the appellant's brief.

2. The testimony of Katherine N. Stryker with reference to any statements by, or transactions with, the decedent, Steward K. Heitsman, was not admissible. Likewise, such testimony on the part of B. Frank Heitsman was not admissible. In this point we propose to answer Points Nos. 2 and 3 of appellant's brief.

3. There was not sufficient evidence of a presently effective gift either with or without taking into consideration the testimony of Katherine N. Stryker. Here we propose to answer Points Nos. 1 and 8 of appellant's brief.

4. Both transfers were invalid, in any event, because they were improvident and because the decedent did not have the benefit of competent and proper independent advice as to the effect of the transfers before the same were made. Under this title we will answer Points Nos. 5 and 7 in appellant's brief.

5. Both transfers were invalid, in any event, be-

cause there was no evidence, at least sufficient to overcome the presumption referred to in Point No. 1 above, of our brief, that the transfers were fair and open, free from undue influence, coercion and fraud, and that they were understood by the decedent. This will serve to answer Points Nos. 5 and 9 in appellant's brief.

6. Katherine N. Stryker will have been amply compensated for all of the services rendered by her to Steward K. Heitsman. In this point we will answer Point No. 9 of appellant's brief.

7. The amendment of the Bill was proper. Here we are answering Point No. 4 of appellant's pellant's brief.

POINT No. 1.

THE RELATIONSHIP OF TRUST AND CONFIDENCE THAT EXISTED BETWEEN STEWARD K. HEITSMAN AND KATHERINE N. STRYKER WAS OF SUCH A NATURE THAT THE BURDEN OF PROOF WAS SHIFTED TO HER.

In this Point we answer Points Nos. 6 and 9 of appellent's brief.

Perhaps the most succinct statement of the well settled law applicable to a situation of this kind is that contained in the leading case of Hall vs. Otterson, 52 N. J. E. 522, affirmed by the Court of Errors and Appeals in 53 N. J. E. 695. We quote from the opinion in 52 N. J. E. at page 528.

> **"In all transactions between persons occupying relations, whether legal, natural or conventional in their origin, in which confidence is naturally inspired, is presumed, or in fact reasonably exists, the burden of proof is thrown upon**

the person in whom the confidence is reposed and who has acquired an advantage, to show affirmatively, not only that no deception was practiced therein, no undue influence used, and that all was fair, open and voluntary, but that it was well understood."

The same rule was laid down in the case of Mott vs. Mott, 49 N. J. E. 192, and in Slack vs. Rees, 66 N. J. E. 447, and in Soper vs. Cisco, 85 N. J. E. 165; also in Walsh vs. Harkey, 69 Atl. 726.

The rule is also settled that such a relationsihp casts upon the donee the burden of showing, where the gift is improvident, that the donor had the benefit of independent advice. This rule was set forth clearly in the opinion of the Court of Errors and Appeals in the case of Post vs. Hagan, 71 N. J. E. 234, at page 243.

"This presumption of apparent improvidence gives rise to the special rule followed in Slack v. Rees which may be called the rule of independent advice. By force of this rule, if a person upon whom another has in fact come to be dependent accepts a gift from such dependent person of all of his or her estate, a court of equity, moved by the apparent improvidence of such a gift, casts upon the donee the burden of showing that the donor had the benefit of proper independent advice. Proper independent advice in this connection means that the donor had the preliminary benefit of conferring fully and privately upon the subject of his intended gift with a person who was not only competent to inform him correctly as to its legal effect, but who was furthermore so disassociated from the interests of the donee as to be in a position to advise with the donor impartially and confident-

ly as to the consequences to himself of his proposed benefaction."

That such a relationship of trust and confidence existed in this case, is beyond dispute.

As we have already pointed out, Katherine N. Stryker was taken into Steward K. Heitsman's home as an orphan, and was brought up in his household, and cared for and educated by him or his wife. One of Katherine N. Stryker's witnesses, John Bachman, testified (p. 225, l. 21—p. 256, l. 6) that Steward K. Heitsman looked out for her, supported, educated her, and gave her the care, attention and affection that a man would give to his daughter. After she had grown up she continued to make her home there and there is no evidence that up to the time that Emma Heitsman died she performed any services in the household or paid any board, although she was at that time teaching school, and was about thirty-three years of age.

During Katherine's childhood, of course, Steward K. Heitsman occupied the dominant position, and she was dependent upon him, but as time went on, their positions became reversed so that she was the dominant personality, and he grew more and more dependent upon her.

The time of the first alleged transfer is admitted by Katherine N. Stryker in her answer (par. 4, p. 20, ll. 17-20), to have been in 1921. She testified on page 304, ll. 3-5, that it took place three or four years ago, which would make it 1923 or 1924, and then on page 304, ll. 12-13 she said that it was three or four years before his death, which would have been 1922 or 1923. This makes the time of the first transfer uncertain, but Mr. Heitsman must have been anywhere from eighty-one to eighty-four years of age when the first transfer took place, and eighty-five or eighty-six when the second one occurred. Katherine N. Stryker must

have been between thirty-six and thirty-nine on the first occasion, and about forty on the second occasion.

Steward K. Heitsman had only a common school education and never followed any business except that of farming, and had been retired from actively engaging in this for a long time (p. 254, ll. 21-31). He had had no other education and no other unusual experience in the business world, and apparently spent practically all of his life on the farm near Phillipsburg, and living in Phillipsburg. The only property that he owned outside of this farm and the liberty bonds that he got upon the sale of it, was bank stock and water stock of local concerns. He was a thrifty man, careful in money matters (p. 120, l. 34-p. 121, l. 4), and lived simply and economically. (p. 76, ll. 32-34.)

Katherine N. Stryker, on the other hand, was an educated woman, in good health most of the time (p. 228, ll. 13-15) and apparently a shrewd, capable housekeeper. She was active in social affairs, and was a member of the Board of Education of the Town of Phillipsburg.

The testimony in the case is replete with evidence of the failing health of Steward K. Heitsman from 1920 on especially, and of his consequent dependence upon Katherine N. Stryker for help and assistance in the fulfilling of his physical wants and the conduct of his business affairs.

Doctor West testified in 1916 that he had such a severe heart attack that his pulse was imperceptible for about twenty minutes (p. 275, l. 27 to p. 276, l. 3). He also said that during the last ten years of his life his principal ailments were heart disease, gastralgia, trouble in the stomach and rheumatism, (p. 266, ll. 15-16), and that during the last six years he attended him professionally **"very frequently."** (p. 266, ll. 10-20.)

Mrs. Elizabeth Heitsman, who took care of him and the household when Katherine N. Stryker was away, and who was there on frequent other occasions, testifies as follows at page 104, l. 19 to p. 105, l. 23:

"Q. During the year 1921, what was the general condition of health of Steward Heitsman?

A. Not very good.

Q. What do you mean by that?

Mr. Smith: Is this witness qualified?

The Court: She said she visited there frequently.

Mr. Smith: I object to it on that ground.

The Court: The objection is overruled; it will be subject to cross-examination, of course.

Q. What do you mean by saying he was not in very good health, or whatever it was you said?

A. Well, he was then an old man and needed a great deal of attention, and he was more or less crippled with rheumatism, and stiffened, and occasionally would get heart attacks, and needed attention.

Q. What was the nature of these heart attacks; did they cause him to go to bed, or be prostrated?

A. At times.

Q. To what extent did his rheumatism interfere with his getting around?

A. He wasn't sure of his footing; it stiffened him; he often had to be helped off the chair, and Katherine Stryker would lead him across the room.

Q. Did he use any artificial assistance in walking?

A. Yes, he used a cane always.

Q. Were you there any more frequently during the last years of his lifetime?

A. Yes.

Q. How did it happen that you were there very often?

A. **Because his condition wouldn't allow him to be left alone; in case she wanted to go away or anything of that kind, I was sent for."**

She testified further about his condition from 1921 on down to the time of his death (p. 107, ll. 3-30).

"Now, will you tell me how Steward Heitsman's health became on down and including the year 1925, and so much of 1926 as he lived, did he get better or worse?

A. No, he got worse.

Q. In what respects?

A. Well, those heart attacks were close together and more severe.

Q. For how long a period would he have to go to bed when he got those heart attacks?

A. Sometimes a week, a very short time.

Q. Do you know whether that was the cause of his death, a heart attack?

A. Well, that was my idea; I had not seen the doctor's certificate.

Q. How did his rheumatism get; did it get better or worse?

A. No, no better nor no worse, at the time of his death.

Q. How much assistance, particularly in the year 1925, did he require around the house, and so on, his personal needs?

A. A great deal.

Q. Can you briefly mention some respects in which he required help and assistance?

A. **Katherine Stryker would help him up the steps to bed, and very often had to undress him, and the last year she gave him his bath."**

She also said that he was unable to go to the bank for the last two years of his life (p. 108, ll. 10-25)

although this was only about five minutes walk from his house (p. 73, ll. 16-20). Katherine N. Stryker testified that he was unable to go to the bank for two or three years, possibly longer, before his death (p. 293, ll. 20-30).

Mrs. Heitsman also said that Katherine had to help him up the steps (p. 135, ll. 6-13), and that he had to have assistance in undressing himself (p. 135, ll. 25-34). Louella Silkman testified that he had severe heart attacks, that he would fall over, and had to be helped to bed or otherwise assisted (p. 153, l. 21 to p. 155, l. 26).

She testified as follows as to his condition on page 155, ll. 14-25:

"Q. In what way was he feeble in 1921?

A. He had rheumatism, and these heart attacks, and other times he was quite comfortable; **he was feeble;** but he always walked with a cane of course **and had to be helped up stairs, and he grew more feeble until the last three years of his life, and the last year he was very feeble; very feeble.**

Q. **During all this period did he require any assistance from time to time or not?**

A. **Yes, he had to have somebody to help him. Aunt Lizzie helped him and I helped him; Katherine always helped him. He had to have someone there to help him."**

Miss Dora Heitsman testified similarly on page 183, ll. 1-30 as well as Isabella Kirkpatrick on page 202, l. 20—page 203, l. 13 and John Kirkpatrick on page 218, ll. 17-35. The baker who supplied the family, testified that for a period of nine months or a year before his death, Steward K. Heitsman did not pay him for his goods, although he had been accustomed to doing so before, which was undoubtedly

due to his impaired health (p. 246, l. 31 to p. 247, l. 5).

The uncontradicted testimony is, that it was impossible for Steward K. Heitsman to get along without the administrations of Katherine N. Stryker. Dora Heitsman testified to this effect on page 186, ll. 14-20 as follows:

"Q. Can you tell me, from your visits you made there, from 1920 on down, whether Steward Heitsman needed someone to look after him, whether he required that much assistance from anyone?

A. Yes, sir, for the last five or six years he did require a great deal of assistance, and if he hadn't had assistance he would have to have a nurse."

Mrs. Minnie Fine, one of Katherine N. Stryker's witnesses, testified to the same effect on page 228, ll. 1-7:

"Q. **But, of course, he required some attention?**

Y. **Yes.**

Q. **He couldn't have got along alone, could he?**

A. **Oh, no, not at that time.**

Q. **And he depended upon her for such assistance as he required?**

A. **Yes.**"

There is also abundant evidence of the dependence of Steward K. Heitsman on Miss Stryker for the conduct of his business affairs, and of the unlimited confidence that he reposed in her, and also of his inability to attend to business matters for the period from 1921 on.

Katherine began writing check stubs, and presumably checks, for him as far back as February 18, 1921, and wrote practically every one for him from

then on down to the time of his death (pp. 374-381). Miss Silkman, who lived in the same house and saw Katherine and Steward K. Heitsman every day, saw Katherine write out checks and Steward K. Heitsman sign them, but said that she had never heard Steward tell Katherine to make out the check, thus indicating clearly that Katherine took the lead and dominated the situation (p. 175, ll. 20-30). After the check was signed, Katherine would take it to the bank to get it cashed, and hand over part of the money to Steward K. Heitsman, and keep the balance to run the house on (p. 108, l. 30—p. 109, l. 11).

Mr. Sitgreaves, one of the employees of the Phillipsburg National Bank, says that the last time he remembers Steward K. Heitsman being at the bank was in 1923 (p. 95, l. 34—p. 96, l. 11), and Mr. Lomerson, who was the cashier at the bank, cannot fix any date that he was there after 1922 (p. 78, l. 19—p. 79, l. 16). The deposit slips offered in evidence showed that those filled out by himself, personally, were scattered over the period from January 5, 1916, to November 27, 1919, and none were made out by him after that (p. 74, ll. 27-34).

When they came to the bank together for the purpose of obtaining access to his safe deposit box, it is evident that Katherine took the lead, and actually conducted the business. As a rule, she handed the keys to the attendant, and she often took the box and they went together into the directors' room, and then when they came out she handed the box back again (p. 96, ll. 19-31; p. 97, ll. 18-23). After 1920 she would hand the bank book in at the teller's window (p. 65, ll. 1-25).

Moreover, Katherine N. Stryker was his duly authorized deputy for access to his safe deposit box, and was at liberty to go to the bank at any time that she had the keys, and enter the box upon the mere pre-

sentation of the keys, and as a matter of fact, she did enter it alone exclusively for at least the last two years of his life, and it may be on other occasions. We submit that it is exceedingly seldom that a person goes to this extent in entrusting the conduct of their business to some one else, and this affords indisputable proof of the close relationship of trust and confidence between them.

And over a long period of years extending from 1920 on, Katherine signed for access to the box. How many of these times she entered the box alone, beside during the period of the last two years of his life, it does not appear, and it is highly significant that she did not testify concerning this, or clear up this question as to the extent to which she had access to the box alone. In view of the fact that Steward K. Heitsman was able to sign his name, it is a fair inference that where she signed for the box, that she had access to the box alone, particularly in view of the fact that she did not deny that this was the case, or attempt to explain it.

The record of the entries to the safe deposit box presents such a striking picture of the extent to which Katherine was entrusted by Steward K. Heitsman with the most intimate conduct of his business, and of the unusual position of trust that she occupied with him, that we set it forth in detail. (Exhibit C-9, p. 350).

Phillipsburg National Bank, Phillipsburg, N. J.
Safety Deposit Box No. 267

Date	Hour	Visited By
Oct. 24, 1918	10:00	S. K. Heitsman
Dec. 17, 1918	1:55	S. K. Heitsman
May 31, 1919	9:45	S. K. Heitsman
Dec. 15, 1919	1:30	S. K. Heitsman
Dec. 22, 1919	9:55	S. K. Heitsman
July 19, 1920	9:30	S. K. Heitsman

July 30, 1920	9:25	K. N. Stryker
Nov. 18, 1920	9:10	S. K. Heitsman
June 9, 1921	9:30	S. K. Heitsman
Dec. 19, 1921	2:25	K. N. Stryker
May 29, 1922	9:20	K. N. Stryker
Nov. 24, 1922	10:40	K. N. Stryker
May 23, 1923	2:25	K. N. Stryker
Dec. 17, 1923	1:25	K. N. Stryker
May 21, 1924	2:10	K. N. Stryker
Jan. 5, 1925	9:40	K. N. Stryker
June 1, 1925	9:30	K. N. Stryker
Sept. 5, 1925	9:20	K. N. Stryker

Surely there was practically nothing else that Steward K. Heitsman could do to give to Katherine N. Stryker the absolute control of his business affairs. We submit that the evidence of the fiduciary relationship in this case is infinitely stronger than in many other cases where such a relationship has been held to have existed.

That the relationship between them was extremely confidential, and his dependence upon her great, is admitted even by her own close friend, Mrs. Kline, who testified as follows at page 234, ll. 12-29:

"Q. The relationship between them was extraordinarily close, practically that of father and daughter?

A. I would say so, from observation.

Q. **He depended upon her to the greatest extent for help and assistance of various kinds?**

A. **Yes, I would say so.**

Q. **And he relied upon her and trusted her and confided in her, etc.?**

A. **Well, as far as confiding was concerned I couldn't say but he had a great deal of confidence in Katherine to do the right thing by him.**

Q. **He had confidence in her?**

A. **Yes.**

Q. **And you knew that?**

A. **Yes, sir.**

Q. **And he reposed a great deal of trust in her, did he not?**

A. **Yes."**

Moreover, Katherine N. Stryker admits in her answer that this relationship of trust and confidence existed. We quote from paragraph 5 thereof (p. 20, ll. 22-30):

"5. She denies the statement in Paragraph 8, that at the time the first $15,000 of said bonds were transferred to her the said Steward K. Heitsman was infirm and in poor health. **She admits that he depended upon her for her ministration in his household and that he entrusted her with transactions of business matters and reposed utmost confidence in her but says that all business transactions entrusted to her by the said deceased, were directed in detail by the said Steward K. Heitsman.**

Paragraph 9 of the bill was as follows (p. 12, ll. 14-25):

"9. In September, 1925, when said Katherine N. Stryker claims that the remaining $15,000 of said bonds were transferred to her, as aforesaid, and for some time prior thereto, said Steward K. Heitsman was confined to his home with sickness and the infirmities of age, was unable to leave his home down to the time of his death, and was, during all of that time, entirely dependent upon the said Katherine N. Stryker for ministrations, care and nursing and the transaction of his business affairs, and he reposed the utmost confidence in her."

We also quote the answer of Katherine N. Stryker as contained in paragraph 6 of her answer (p. 20, l. 31—p. 21, l. 3):

"6. **She admits the allegations in Paragraph 9. The said Steward K. Heitsman was not as well able to get around to attend to his business affairs as he had been, but denies that he was entirely dependent upon her for the transaction of his business affairs. She admits that he did repose confidence in her."**

We desire to point out, furthermore, that Katherine N. Stryker had acquired in all these years a great deal of influence upon, and domination over, Steward K. Heitsman.

Mrs. Elizabeth Heitsman testified that Katherine would customarily ask for money when she needed it, and get it (p. 124, ll. 10-16). Neither Mrs. Heitsman nor Miss Silkman, both of whom were in the household a very great deal, ever heard him give the order to her to make out the check, and apparently it always came from her (p. 127, l. 20—p. 128, l. 5), and with one exception she never asked him for how much the check should be made out (p. 125, ll. 18-30), Mrs. Heitsman said.

Miss Silkman testified that Katherine was very insistent and that if she wanted anything from Steward K. Heitsman, she would continue to insist on it until she got it. We quote from her testimony (p. 156, l. 27—p. 157, l. 11):

"Q. Do you know what she got in the way of compensation, in money or clothes or anything?

A. I think he was very generous. **If she wanted anything she would talk about it and talk about it, and finally she would get it. She was very insistent about everything.**

Q. What did she get that way?

A. A victrola, a radio, a fur coat done over, a sofa and chairs, a rug. If she wanted it she

would talk to him about it for a while and then she would get it. **She was very insistent.**

Q. Didn't he agree to give it to her at once?

A. No, sometimes he demurred. He promised she might have a radio, and then he said, 'Do you actually want that radio? You will grow tired of it like the victrola.' And he tried to persuade her not to have it, but he finally gave her a check, and she showed it to me and told me she got it."

Again at page 160, ll. 10-15:

"Q. Can you give us any facts that will throw any light upon that question, as to whether or not she took the lead in the household or whether Steward Heitsman took the lead there?

A. **Katherine always did; she had charge of the house and she attended to everything for him."**

On another occasion Katherine induced Steward K. Heitsman, evidently against his will, to hand over to her a legacy amounting to about $300.00. We quote from Dora Heitsman's testimony at page 184, l. 34—p. 185, l. 19):

"Q. Do you recall a conversation perhaps in 1922 with respect to a legacy that Steward Heitsman got?

A. Yes, sir, Katherine told me that Uncle Steward had received a check on a small legacy and he said she could have this check, and she said when it came, she said, 'Uncle Steward says I could have that.' Uncle Steward said, 'No.' And she said, "Yes, you did, didn't he, Aunt Lizzie,' Aunt Lizzie Heitsman. And Mrs. Heitsman said, 'Yes, hand it over.'

Q. What was said?

A. Mrs. Heitsman told me he gave it to her.

Q. What did Katherine tell you?
Mr. Smith: I object to that.
The Court: Strike it out.
A. Katherine told me he gave it to her."

It is highly significant that Katherine N. Stryker did not deny any of these occurences, but on the contrary admitted that she not only got the radio, which cost $163.00, but at the same time the balance of the check of $300.00 for her own use (p. 315, l. 30—p. 316, l. 11).

Nor did she deny that she occupied this position of trust and confidence toward Steward K. Heitsman, or make any attempt so to do, so the proof is conclusive that such a relationship existed between them.

The undisputed testimony in the case from several sources, including the answer of Katherine N. Stryker herself (par. 3, p. 19, l. 35—p. 20, l. 15), is that the relationship between Steward K. Heitsman and Katherine N. Stryker was practically that of father and daughter, and it seems absolutely clear, therefore, that the case is to be treated as if such were, in fact, the relationship.

This being so, it seems to us so obvious so as to admit of no argument that the case falls in line with the many cases in our state, that such a relationship shifts the burden of proof in a case of this kind, to the donee.

We cannot agree with the position of counsel in their brief that where the gift is not improvident, some mental weakness must be shown to shift the burden of proof to the donee. The cases have uniformly held that where the relationship of trust and confidence exists, this is sufficient to raise the presumption, irrespective of any mental weakness.

In the case of In re Fulper, 99 N. J. E. 293, where the question with respect to mental weakness was raised, the Court said at page 315:

"But that mental weakness is not a necessary factor as between parent and child is shown by Slack v. Rees, supra, where it was found as a fact (at p. 448) that the grantor had adequate mental capacity, and Post v. Hagan, supra, where a similar situation appeared (at pp. 236, 237). It also appears by Soper v. Cisco, supra (at p. 170), where a mother seventy-seven years old, of 'at least average mental and physical health' for her age (at p. 172), made a transfer to a daughter, aged forty-five, with whom she lived and upon whom she was practically dependent, and the same court holds that, without doubt, the dominant confidential relationship was shown and the burden cast on the transferee. In Kelso v. Kelso, supra (at p. 385), it is said (italics mine) **'either** the bodily or the mental condition of a father may reverse the original relation and make his child the dominant one of the two." In Douglas v. Spear, 97 N. J. Eq. 25, it was found that a son occupied the dominant confidential position toward a mother of high intelligence and strong memory and mental powers."

The general rule is well stated in the case of Haydock vs. Haydock, 34 N. J. E. 570, at page 574.

"I take the rule to be settled that where a person enfeebled in mind by disease or old age, is so placed as to be likely to be subjected to the influence of another, and makes a voluntary disposition of property in favor of that person, the courts require proof of the fact that the donor understood the nature of the act, and that it was not done through the influence of the donee. Huguenin v. Baseley, 2 L. C. in Eq. (4th Am. ed.) notes, pp. 1183-1185, American notes pp. 1192-1194.

"The presumption against the validity of the gift is not limited to those instances where the relation of parent and child, guardian and ward or husband and wife, exists but in every instance where the relation between donor and donee is one in which the latter has acquired a dominant position. The parent, by age, may come under the sway of his children. Highberger v. Stiffler, 21 Md. 338. And so, as in the present case, the husband may become the dependent of the wife, and their natural position become reversed."

The court continued on page 575 as follows:

"The influence which is undue in cases of gifts inter vivos, is very different from that which is required to set aside a will. In testamentary cases, undue influence is always defined as coercion or fraud, but, inter vivos, no such definition is applied. Where parties hold positions in which one is more or less dependent upon the other, courts of equity hold that the weaker party must be protected, and they set aside his gifts if he had not proper advice independently of the other. Huguenin v. Basely, supra, notes p. 1271."

In the very familiar case of Slack vs. Rees, 66 N. J. E. 447, the Court of Errors and Appeals found that the deceased retained mental capacity sufficient to dispose of his property; that he was only sixty-eight years old; that he had only been in the home of his daughter, the donee, for about three months before the gift, but nevertheless held that the burden of proof was shifted to the daughter. The case at bar, is, of course, infinitely stronger than this, for the decedent here had lived with the donee for more than thirty years before his death. See also Grimminger vs. Alderton, 85 N. J. E. 425.

A very recent case is that of Douglas vs. Spear, 97 N. J. E. 25, affirmed 100 N. J. E. 345. In this case complainant, who, the court said, was a woman who enjoyed a high degree of intelligence, and whose memory and mental powers at that time appeared to be but little impaired, conveyed three properties to a corporation controlled by her son. It does not appear how old she was, and although the Vice Chancellor found that the mutual purpose and expectation appeared to be that the mother should own and enjoy the property as long as she lived, and then it should go to her son, he came to the conclusion that the burden of proof rested upon the shoulders of the son, that he had not sustained it, and therefore set the conveyances aside.

A similar case is that of Kern vs. Force, 98 N. J. E. 153, aff. 99 N. J. E. 888, where a mother, a few years before her death conveyed real estate worth about $16,000.00 to her daughter with whom she lived, and the transfer was set aside.

In the case of Roosma vs. Roosma, 100 N. J. E. 61, the decedent, who was eighty years old, transferred to the defendant, who was taking care of her and paying her bills and treating her kindly, a mortgage and some cash in the bank without any independent advice. Although there is little allusion in the opinion to any confidential relationship, still it appeared that the decedent was dependent upon the defendant, and therefore the Vice Chancellor found a relationship of trust and confidence existed, and that therefore the gift must be set aside for lack of independent advice.

In the case of Pearce vs. Stines, 79 N. J. E. 51, where a father gave some real estate to his daughter with whom he lived, the court found that the father at the time thoroughly understood what he was doing, and there was no evidence that "he did not in a

reasonable manner comprehend the nature, and effect of the act he was doing," and there was no proof of any undue influence, but nevertheless held that there must be proof of independent advice, and this being absent, the transfer was set aside.

Another recent case is that of Siebold vs. Zieboldt, 93 N. J. E. 327, aff. 93 N. J. E. 500. The transfer was of some real estate to the defendants who were not related to the donor or his wife, who were about seventy-seven years of age, although the defendant, Anna Zieboldt did take care of Mrs. Siebold to some extent. It is apparent that the relationship here was not anywhere near as close as in the case at bar, but still it was held that the burden of proof was shifted to the donees, and that it had not been met; consequently that the transfer would be set aside. See also Thorp vs. Smith, 65 N. J. E. 400.

In the case of Melos vs. Hagen, 99 N. J. E. 683, where a wealthy ward conveyed a valuable piece of real estate to her former guardian, after she had obtained her majority, and after the guardian's account had been submitted, the court held that the relationship of trust and confidence still existed, and that the burden of proof was on the defendant, and that he had failed to sustain it, and therefore set the gift aside.

Another very recent case is that of In Re Estate of William Fulper, deceased, 99 N. J. E. 293, in which the proof of the relationship of trust and confidence was not nearly so strong as in the case at bar. In the Fulper case the decedent's mind was still practically unimpaired, if in fact, not wholly so, and although he was at the home of his son, the donee, at the time of the transfer, he did not always live there. While his son assisted him some in his business, he did not do so to anything like the extent that it was done in the instant case. The court held, however, that

the burden of proof was shifted to the donee, and the transfer was set aside.

A very recent case that bears a striking similarity to the case at bar is that of Wright vs. Sanger, 137 Atl. 657 (N. J. Ch.) where the donor was seventy-four years of age at his death and had been an invalid for a number of years before his decease. Several years before his death, he transferred $25,000 in bonds to his housekeeper who resided with him and who attended to considerable of his business affairs for some time prior to his death. The decedent furnished the donee with the necessary funds to maintain the home. It was held that a confidential relationship existed and that the burden of proof shifted to the donee to prove the gift, and it was held that (page 657):

> "The naked and uncorroborated testimony of the defendant as to the alleged gift (the testimony of Mr. Charles Lighthipe varying as it does from the testimony of the defendant in essential particulars, and refuting her testimony in part, thus minimizing the import thereof), is insufficient to sustain the defendant's claim against the estate of the decedent."

It is respectfully submitted that the overwhelming evidence in the case at bar is that there was a very close relationship of trust and confidence existing between Steward K. Heitsman and Katherine N. Stryker, and also of dependence upon her and that therefore the burden of proof is clearly shifted to Katherine N. Stryker to show that each transaction in question was without any deception, undue influence, unfairness or concealment, and that the transfers were fair, open, and above-board, and that the nature and effect of the same were fully comprehended by the decedent, and furthermore that he received independent advice.

POINT No. 2.

THE TESTIMONY OF KATHERINE N. STRYKER AND B. FRANK HEITSMAN WITH RESPECT TO STATEMENTS BY, OR TRANSACTIONS WITH STEWARD K. HEITSMAN, WAS NOT ADMISSIBLE.

This will answer Points Nos. 2 and 3 of appellant's brief.

We now pass to the consideration of the next point in the case, namely, as to the admissibility of the testimony of the donee, Katherine N. Stryker, as to any statements by, or transactions with, the decedent. Due and timely objection was made by counsel for the defendants, Alma Hildebrant, Anna Kunsman, Dora Heitsman and Isabella Kirkpatrick, to the admission of the testimony, and the testimony was received upon the understanding that the question of its competency would be argued in the briefs, and decided later. The Vice Chancellor came to the conclusion that it was not admissible.

The statute applicable to the situation is the familiar Section 4 of the Evidence Act, found in Comp. Stat. page 2218:

> "4. Party to civil action; representative capacity of other parties; transactions with decedents. In all civil actions any party thereto may be sworn and examined as a witness, notwithstanding any party thereto may sue or be sued in a representative capacity; provided, this section shall not extend to permit testimony to be given by any party to the action as to any transaction with or statement by any testator or intestate represented in said action, unless the representative offers himself as a witness on his own behalf, and testifies to any trans-

action with or statement by his testator or intestate, in which event the other party may be a witness on his own behalf as to all transactions with or statements by such testator or intestate, which are pertinent to the issue. (P. L. 1900, p. 363)."

There are numerous decisions in the books applying this rule and holding that where the representative does not offer himself to testify as to any transactions with, or statements by, the decedent, that then a party to the suit cannot do so. This rule was very well stated in the case of Smith vs. Burnet, 35 N. J. E. 314, at page 321, referring to the statute.

"Their purpose is, in the language of Dr. Wharton, to provide that when one of the parties to a litigated obligation is silenced by death, the other shall be silenced by law."

Again at page 322.

"It is apparent that the object of the legislature is to be primarily regarded, and that the object is to close the mouth of a party whose interest is antagonistic to the estate of a deceased person in regard to those transactions and conversations in which the deceased bore a part, and concerning which he, if living, would be the most important, perhaps the only witness beside the opposing party."

This rule was reiterated in the very recent case deabove referred to, of In Re Estate of William Fulper, deceased.

In the case at bar, Osiris D. McConnel, Esquire, the executor of the estate, filed a bill for instructions and made all of the legatees under the will who would be entitled to the liberty bonds, if they were declared to be a part of the estate, parties defendant. The executor did not take the witness stand for any purpose, and the objection to the testimony was

made on behalf of the four defendants, Isabella Kirkpatrick, Anna Kunsman, Dora Heitsman and Alma Hildebrant, who were defendants in the suit.

The only possible reason that can be advanced for the admissibility of the testimony of Katherine N. Stryker in these respects, is that two of the defendants, Isabella Kirkpatrick and Dora Heitsman, testified concerning the physical condition of the decedent. They did not testify to anything else except this, and did not testify in any way to any business transactions of the decedent, with themselves, or anyone else, or as to the transfer of the bonds.

Counsel for Katherine N. Stryker rely on the few cases which hold that under certain circumstances the heirs or devisees of land, when parties to a suit under certain conditions, are deemed to be the representatives of the decedent within the meaning of this statute.

A careful analysis of the cases, however, will reveal the fact that this rule is exceedingly narrow in scope, and that it has no application to the case at bar whatever.

In the first place, all of these cases are cases where real estate is involved, and where the heirs or devisees sue or are sued as representatives of the decedent. We know of no case where the rule is extended to apply to a case where the subject of the litigation is personal property, only, as is the case here.

Moreover, practically all of the cases are those brought under the Heirs and Devisees Act, where, of course, the executor or administrator is not a party, and therefore the heirs or devisees are held to be the representatives of the estate, and to be entitled to the protection of the statute. **Furthermore, it has been clearly and definitely held that the rule does not apply in cases where, even though the heirs or devisees are parties, they do not occupy the STATUS of rep-**

resentatives of the estate. The test is not whether they have an interest in the outcome of the litigation, but whether or not their STATUS as parties to the suit is that of representatives of the estate.

This rule was well set forth by the court in the case of Crimmins vs. Crimmins, 43 N. J. E. 86, which was a suit instituted by a widow against the heirs at law of her deceased husband to set aside a deed on the ground of fraud, and it was held that the widow was competent to testify as to statements by, or transactions with, her husband on the ground that the heirs did not occupy the **STATUS** of representatives of the deceased. We quote from the opinion at page 88.

> "Hodge v. Coriell, 15 Vr. 456, is an exact pattern, in all material respects of the case in hand. Although the suit in Hodge v. Coriell was prosecuted against the defendant in his individual capacity, the defendant made no pretence of a personal right to the subject matter of the controversy, but, on the contrary, declared, by one of his pleas, that his right thereto was only such as inhered in him as the administrator of a decedent. The plaintiff, on the trial of the case, offered himself as a witness in his own behalf, and was allowed, under objection, to give in evidence statements made by the defendant's intestate, in his lifetime, touching the ownership of the property in controversy. The plaintiff was held to be a competent witness to give such evidence. **This ruling was put distinctly upon the ground, that by the plain words of the statute, it is only in cases where one or the other of the parties to a suit, appear upon the record, as representing a testator or intestate, that the other is incompetent to give evidence respecting transactions with or statements made by the**

decedent, and that it is not enough to render the living party incompetent to give such evidence, that the other party is interested in the subject of the litigation as the representative of a decedent, but the incompetency of the living party only exists in cases where, by the record, it appears that the STATUS of his adversary is that of a party suing or being sued in the particular case, as the representative of a testator or intestate. The chief-justice, in declaring the opinion of the supreme court, said: 'A party to a suit is not prevented, by the law of this state, from testifying with respect to the declarations of any interested deceased person touching the subject of the controversy, except in one specified condition of affairs. Such exclusion arises only when the party testifying, or the opposite party, is suing, or is being sued, in a representative capacity. **It is not enough that one of the parties is interested in the subject of the litigation as the representative of a decedent. . . The statutory criterion is clear and definite, and it is, that one or the other of the litigants must appear, upon the record, as a party suing or being sued in a representative capacity . . . . It may be that the interest of the party in the cause of action, by reason of his being the representative of a decedent, rather than his STATUS as a party suing or being sued, would, in some respects, be the better criterion for the exclusion of the adverse party.'** But that is not the criterion prescribed by the statute. This construction was adopted by the court of errors and appeals. S. C. on error, 17 Vr. 354. It was subsequently re-affirmed in the case of Palmateer v. Tilton, 13 Stew. Eq. 555. The court, speaking by the chief-justice, in the last case, said: 'The statute

itself enumerates the cases in which the testimony is to be rejected, and no case can be added to that enumeration. If we attempt to leave the plain terms of the act we enter into an undefined field of inference and conjecture.' "

In the case of Shotwell vs. Stickel, 83 N. J. E. 188, which was a partition suit brought by the heirs at law of the deceased wife, and the husband claimed a resulting trust, it was held that the heirs did not represent the decedent, and that therefore the husband was a competent witness.

Likewise in the case of Cowdrey vs. Cowdrey, 71 N. J. E. 353, aff. 72 N. J. E. 951, where the widow brought suit for the purpose of establishing an equitable title in certain real estate by virtue of an antenuptial agreement with her deceased husband, it was held that she might testify as to statements by, or transactions with, the deceased, for the heirs at law who were the defendants, were not the representatives of the decedent and were not so sued.

A similar case is that of Small vs. Pryor, 69 N. J. E. 606, aff. 72 N. J. E. 939, where in a partition suit the widow of the deceased, who was a party, set up a claim that she was entitled to the property under a resulting trust on the ground that she had furnished the purchase money, although the title was taken in the name of her husband. The court held that her testimony as to statements by, or transactions with, the decedent, was admissible on the same ground.

Again in the case of McKinley vs. Coe, 66 N. J. E. 70, where the payee of a note, given him by the testatrix whose will charged her debts on her lands, petitioned that the proceeds of land sold in partition proceedings between devisees be applied to the payment of her note, the court held that the testimony of the petitioner as to the execution of the note, and its

consideration was not incompetent, the devisees not being sued in a representative capacity.

The rule laid down in the case of Crimmins vs. Crimmins, supra, and Hodge vs. Coriell, 44 N. J. L. 456, was expressly approved by the Court of Errors and Appeals in the case of Smith vs. Smith, 52 N. J. L. 207. In that case the widow brought an action for dower against the devisees under the will, and the Court of Errors and Appeals said that she was competent to testify as to statements by, and transactions with, the decedent, because of the fact that the devisees were sued as such under the will, and not as executors or legal representatives.

The case of Reardon, Adm. vs. Sampson, 67 N. J. L. 346, is a case very similar to the case at bar. In this case the administrator of an estate brought suit to recover money due the estate, and the widow of the administrator's intestate, who was, of course, interested in the outcome of the litigation, but who was not a party on the record, testified as to the transactions with the deceased on the administrator's side. It was then contended that the defendant should be allowed to testify as to transactions with the deceased, apparently on the theory that the widow had testified as the representative of the estate, **but the Court of Errors and Appeals held that so long as the administrator had not testified, the defendant's testimony was not admissible.**

The case which is exactly on all fours with the case at bar, and which is dispositive of this phase of it, is that of Tichenor vs. Tichenor, 43 N. J. E. 163. This case was affirmed by this court, 45 N. J. E. 303, but the question involved here were not passed on.

In that case the executors of James H. Tichenor were Francis M. Tichenor and James F. Tichenor. Francis filed exceptions to the account of his co-executor, James. The exceptant, Francis, testified

as to the signature to certain drafts and notes and the possession of them at the time of his death by the testator, and this evidence was introduced for the purpose of charging his co-executor, James, with the amount of these notes. Thereupon James offered himself as a witness to testify concerning the transactions for the purpose of relieving himself from liability on these obligations, and Francis objected to the admission of his testimony. The Prerogative Court held that although Francis was one of the executors of the decedent, his **STATUS,** as a party to the suit, was not that of executor in the performance of official duty, but rather as legatee and devisee under the will, and that it was as such that he filed the exceptions to the account of his co-executor, James; that therefore his testifying himself was not in the capacity of a representative of the estate, but rather as legatee and devisee under the will, and that consequently he had not thereby opened the door for his co-executor, James, to testify concerning transactions with the deceased, and that the testimony of James was inadmissible. We quote from the opinion of the court at page 166.

> "It is apparent that if the testimony of James F. Tichenor, who was sworn as a witness in his own behalf before the orphans court, notwithstanding the objection of the exceptant, is not considered, the decree properly charged him with the amount due upon these instruments. But for the fact that the exceptant below, Francis M. Tichenor, is an executor of the estate of James H. Tichenor, and was called as a witness to prove the signature to the note and drafts and the possession of them by the decedent at his death, the case would be precisely within the ruling of this court and the court of errors and appeals in Smith v. Burnet, 7 Stew. Eq. 219;

S. C. on appeal, 8 Stew, Eq. 314. It is claimed, however, that this case differs from Smith vs. Burnet in that the exceptant, who was a co-executor with the accountant, was called as a witness in his own behalf and admitted, and that because the exceptant was sworn as a witness the accountant might lawfully be sworn and testify to any transaction with or statement by the testator, who was represented by the exceptant in the action. Rev. 378, par. 4. The orphans court accepted this view of the case.

Although, in fact, the exceptant was one of the executors of the will of James H. Tichenor, he did not, in that character, present the exceptions. He was a devisee and legatee under the will, and expressly as such filed the exceptions. His status as a party to this proceeding is then as legatee and devisee, protesting his individual interests, and not as executor in the performance of official duty. Hodge v. Corriell, 15 Vr. 457, affirmed on appeal, 17 Vr. 354.

This being so, the case is within the ruling of Smith v. Burnet, and the testimony of James F. Tichenor was wholly incompetent."

It seems to us to be perfectly clear that in this case the executor was the representative party, and the only representative party within the meaning of the Evidence Act. It was the executor who instituted the action and asked this court to determine the question of whether these bonds are the property of Katherine N. Stryker, or whether they belong to the estate. He set up in the bill the full facts in the matter, including all of the allegations upon which these four defendants rely to have the transfer set aside, and furthermore he established by evidence the allegations that he set up in the bill, and offered

two of the most important witnesses in the case, Elizabeth Heitsman and Louella Silkman, as his witnesses.

If these transfers are set aside, the bonds will necessarily have to be delivered to the executor because the estate is in process of settlement, and it will be incumbent upon the executor to complete the settlement of the estate, which, of course, would include the payment of debts in case any other claims are presented to the estate, and the payment of the inheritance tax on these bonds, the making of the accounting, the allowance of commissions on this additional amount, and the distribution of the estate to not only these four defendants, but also to the defendants Katherine N. Stryker and B. Frank Heitsman.

Furthermore, at the end of Point No. 2, (we are unable to give the page for we do not have a printed copy of appellant's brief) counsel for appellant in arguing that the executor alone had the right to object, specifically states that the "executor alone stood in the representative capacity."

We think that it is obvious that the executor was a necessary party and that he alone, was the representative of the estate in this proceeding. In the case of Lipp vs. Fielder, 72 N. J. E. 439, where a husband was suing to compel specific performance of a contract between him and his deceased wife, and the defendant was the wife's executor and her devisee, the Court of Errors and Appeals held that the husband could not testify because the executor was a necessary party, because he had a power of sale under the will, and might need the proceeds of the sale to pay the debts.

Moreover, inasmuch as Katherine N. Stryker and B. Frank Heitsman are each entitled to one-seventh of the bonds under the will, if they are brought back into the estate, they might just as well be said to be

the representatives of the estate, but it is obvious that this could not be so, and likewise it is not logical to hold that these four defendants are representatives of the estate, where the executor is not only a necessary party, but the complainant in the case.

Again only two of the defendants took the witness stand. The other two, Anna Kunsman and Alma Hildebrant, did not testify, so it cannot possibly be said as to them, the testimony of Katherine was admissible, for they did not offer themselves as witnesses. This fact also adds strength to our position that in a situation such as this, the only person who can open the mouth of the donee, Katherine N. Stryker, is the executor. Otherwise, great confusion would ensue and the question would come up as to how many of the legatees would be required to testify in order to make the donee competent.

Moreover, the two defendants who did testify, only testified as to his physical condition, concerning which there was no particular dispute, so it cannot be said that the rejection of Katherine's' testimony would place her at any unfair disadvantage, but rather would carry out the very purpose of the statute, namely, that where the mouth of one party to a transaction is closed by death, the other will be closed by law. To allow Katherine N. Stryker to testify as to transactions with, or statements by, the decedent, puts the legatees interested in the estate, to a decided disadvantage, for, of course, they are unable to directly ascertain the truth or falsity of her version of the transfers, because the lips of the decedent, the only other person who knows what occurred, are sealed in death. It was to prevent just such a situation as this, that this statute was passed.

Counsel, in discussing the question of the admissibility of Katherine N. Stryker's testimony, has stressed considerably the point that it would be un-

fair not to allow Katherine to testify after two of the other defendants had done so. But, of course, it is obvious that counsel for Katherine N. Stryker could readily have objected to the other defendants testifying if they had chosen to do so, and now, not having done so, it ill becomes them to complain because they testified.

The defendant, Katherine N. Stryker, was asked several questions on page 316 l. 23 to p. 317, l. 13, with reference to whether or not she used any undue influence on Steward K. Heitsman. An objection appears on the record to all of these questions but one, and we desire to respectfully suggest that we believe that there was an error in the transcribing of the testimony, and that such objection was actually made, particularly since all the other questions before and afterward were objected to, and counsel intended and desired to object to each of these questions.

That the denial of the exertion of undue influence is testimony with reference to a transaction with a deceased, and therefore inadmissible on that ground, was held by the Prerogative Court, in the case of In Re Estate of William Fulper, 99 N. J. E., 293. In the Fulper case the executor was the donee of a bank account alleged to have been given him by his testator in the latter's lifetime. Exceptions were filed to the executor's inventory because he failed to include this account in his inventory. The Court held that the testimony of the executor was not admissible even as to his mere denial of the charge that he procured the gift as the result of undue influence.

Counsel for the appellant argues tthat the testimony of Katherine N. Stryker should have been admitted because the objection was made by the four defendants rather than by the executor, and they seem to contend that the defendants had no right to object to

the admission of this testimony. But obviously, the four defendants being parties to the suit, they certainly had the right to object to any illegal testimony, whether it be on the ground that it was hearsay or related to transactions with the decedent or for whatever other reason. Moreover counsel is unable to cite any authority in this State or elsewhere for the rather astonishing proposition that a party to a suit who has an interest in the outcome of the litigation cannot successfully object to any testimony that is not properly admissible.

Then counsel for appellant contend that the executor was the only one that could object to the testimony and that since he did not do so, the testimony cannot be ruled out. But there was no necessity for the executor to object, since the objection was duly made by counsel for these four defendants on the only ground upon which the executor could have objected and, therefore, another objection by the executor was wholly unnecessary and would have been merely superfluous.

In support of this point counsel refers to the fact of the amendment of the bill, but it is to be noted that the amendment was not made until after final hearing and after the Vice Chancellor's conclusions had been filed, and we do not think changed the situation anyway, at least so far as the admissibility of this testimony is concerned. The case of Rowland vs. Rowland, 40 N. J. E., 281, cited by counsel on this point does not present an analogous situation, because no objection was made at all by any one in the Rowland case.

We would also like to point out that the case of Greenwood vs. Henry, 52 N. J. E., 447, relied upon by counsel for the appellant is one where real estate was involved and was treated by the Vice Chancellor as if only real estate was involved, and as being in

that class of cases above referred to. It affords no difficulty, therefore, for we have already distinguished this class of cases from the case in bar and pointed out the true rule to be applied.

It is therefore respectfully submitted that the testimony of Katherine N. Stryker with respect to transactions with, or statements by, the decedent, was not admissible.

Counsel for these defendants also made due objection to the admission of testimony on the part of B. Frank Heitsman, as to any statement by, or transaction with, the decedent. This objection was made on the ground that inasmuch as he took the position in his answer that he believed that Katherine was entitled to the bonds, rather than the estate, his interest in the litigation was therefore **antagonistic** to the estate, and consequently his testimony was inadmissible.

That such is the rule, is clearly indicated in the case of Adous vs. Spencer, 62 N. J. E. 782. In this case creditors were suing to charge the property of her deceased husband on which his widow held a mortgage, with the debt of the complainants. The estate was insolvent, and the administrator was therefore a necessary party, and the widow was also a party. It was held by the Court of Errors and Appeals that inasmuch as her interest in the matter was **antagonistic** to the estate, that she could not testify as to transactions with, or statements by, her husband.

POINT No. 3.

THERE WAS NOT SUFFICIENT EVIDENCE OF A PRESENTLY EFFECTIVE GIFT, (a) **WITHOUT** KATHERINE N. STRYKER'S TESTIMONY; OR (b) **WITH** HER TESTIMONY.

A.

We propose under this title to answer Points Nos. 1 and 8 of appellant's brief.

As we have already pointed out under point No. 1, the burden of proof in this case is upon Katherine N. Stryker, to show that there was a presently effective gift of these bonds. See Smith vs. Burnet, 35 N. J. E. 314, at page 323.

This court laid down the rule as to the essential elements of a gift inter vivos in the following language in the case of Besson vs. Stevens, 95 N. J. E. 549, at page 556:

> **"The requisites to establish a gift inter vivos (and, of course, there was here no claim or pretence of a gift causa mortis) are (1) a donative intent on the part of the donor; (2) an actual delivery of the subject-matter of the gift, at least to the extent practicable or possible considering the nature of the thing given; and (3) a stripping of the donor of all ownership and dominion over the subject-matter of the gift, at least to the extent practicable or possible considering the nature of the thing given. Swayze vs. Huntington, 82 N. J. Eq. 127 (at p. 133); affirmed, 83 N. J. Eq. 335."**

We submit that it is apparent that without Katherine's testimony, at least, there was no direct evidence of the nature that is required to establish a gift inter vivos. Outside of Katherine's testimony, the main evidence relied upon to establish the gift was that of

Theophilus Wieder, John Bachman and Doctor West, and much of the testimony of these men, although they were all men of intelligence and ability, was uncertain, indefinite and at times, contradictory. **There was nothing in their evidence whatever that indicated clearly a donative intent to make an absolute gift outright to Katherine, and no direct evidence of the manual delivery of the bonds to her, or the acceptance of them by her, and nothing to show that the decedent had stripped himself of all ownership and dominion over the bonds, all of which, of course, are necessary and indispensable elements of a valid gift.**

All that Steward K. Heitsman told Mr. Wieder was that he had already provided for her, and was going to give her some more (p. 237 ll. 27-34). This was in 1924, and the witness testified that Steward said the same thing over, using almost the identical language, in 1925 (p. 238, ll. 1-25). It is very singular indeed that the decedent would happen to use almost exactly the same language on two different occasions, a year or so apart. And on cross-examination, Mr. Wieder stated that Steward did not say how he had provided for her, or how he intended to provide for her. Apparently no mention was ever made of the bonds, or any intimation made that he had given them to Katherine. His language might just as well have referred to his will or his codicil or some future codicil that he intended to make.

Mr. John Bachman, an old man, some eighty-one years old, and admittedly a close friend of Katherine, (p. 254, ll. 6-17), whose memory was obviously faulty, testified that Steward said to him that he had given Katherine $15,000 of the bonds and that in addition to that, later on he would give her the balance (p. 251, l. 5—p. 252, l. 26). This talk took place, the witness said, some five or six years ago (although he could not remember the year) which

would have been 1921 or 1922 (p. 256, l. 23 to p. 257, l. 10) which obviously is at direct variance with Katherine's testimony that the first transfer took place three or four years ago (p. 304, ll. 3-5). Moreover, it is of great importance to note that Mr. Bachman testified that he did not remember all of the conversation (p. 257, ll. 10-20). Such testimony is to be received with great caution, for perhaps, if the rest of the conversation were related, it would throw an entirely different light on the whole situation.

Then the witness also said that in September, 1925, when Steward was sick, he said to him "I have fixed it up with Katherine. I give her—(p. 252, ll. 1-17)." The witness then stated that that was all that Steward said at that time. He also testified on page 260, ll. 10-26 that he could not give any of the details of when or how the transfer was made.

It is obvious that the testimony related above is very far from sufficient to establish the necessary elements of a gift.

The other witness who testified in detail about conversations with the testator with reference to the bonds, was his physician, Doctor H. R. West, who likewise stated that he was friendly to Katherine. This witness's memory of his talks to the testator was apparently uncertain, and we shall allude to various discrepancies in his testimony as we take it up.

He said that Steward told him a short time after his wife died, that "he had turned over all his bank stock, given her the bank stock and the water stock" (p. 272 ll. 19-20). Obviously the doctor was mistaken about this conversation, for by his will made in 1916, shortly after his wife died, the testator only left Katherine 24 shares of the water stock and 30 shares of stock of the Phillipsburg National Bank, and his codicil was not made until 1918, and then, including all that he left her in both documents, she was

to get only 48 of the 74 shares of the water stock, and all of the Phillipsburg National Bank stock, but none of the stock of the First National Bank of Easton or of the Easton National Bank.

The doctor then testified (p. 272, ll. 28-32) that he had had a talk with Steward four years ago, or 1923, in which "he told me that he had turned over part of his government bonds to her" and that at that time Steward said that "he wanted to see that she had those things, that he hadn't made provision for her in his will," which obviously was not so, for he had provided for her in his will.

Then the witness said that (p. 273, ll. 20-30) when Steward had evidently had a very severe heart attack, he told the doctor that "he had attended to everything" and that "he said he had given her all of his bonds." It is highly important to note that there is no reference at this point to his giving her the **balance** of the bonds—he merely said that he had given her **all** of the bonds, **which might just as well mean that he had given them all to her in one lot.**

On page 274, ll. 4-8, Doctor West testified as follows:

> "Q. Did he ever speak about a will at any other time?
>
> A. Yes, he said that the balance of his property was recorded in his will, but the bonds were not mentioned and nothing to do with the will, and he turned them over to Katherine so as everything would be straight."

Here again it is apparent that the conversation is not correctly stated, or that if it was, the decedent's memory was failing him, for he had expressly provided in his will that the proceeds from the sale of the farm (which were those very bonds) should be divided among the seven legatees.

The following extract from Doctor West's testi-

mony will clearly indicate how confused and uncertain he became on cross-examination (p. 284, ll. 19-31). (It is to be noted that Steward's wife died in 1916 and that he died in 1926).

"Q. Tell me the conversation again in which he referred to his will, in which he said he had not mentioned the bonds in his will?

A. **Oh, that was a little while after Mrs.— he spoke of his will after Mrs. Heitsman had died a few weeks.**

Q. **A few weeks after her death?**

A. **Yes.**

Q. When was the conversation and what was it in which he said he had not mentioned the Liberty Bonds in his will?

A. Oh, that was later on.

Q. About when?

A. **Three years before he died."**

The bias of this witness was clearly shown in that part of his testimony with respect to the value of the decedent's farm. **He testified at great length that he was familiar with the value of real estate in this neighborhood and said (p. 289, l. 9) that before the farm was sold he would not give $8,000 for it, thereby intending to indicate his idea of the value of it. And this was in the face of the fact that William P. Tallman, the attorney who searched the records, had already testified (p. 82, l. 31) that the consideration recited in the deed when Steward bought the farm way back in 1886, was $9,024.00, and that when it was sold in 1918, the purchase price was $30,000.**

There is likewise not sufficient in Doctor West's testimony, even when it is combined with that of Mr. Wieder and Mr. Bachman, to establish the necessary elements of a valid gift.

In the case of Smith vs. Burnet, 35 N. J. E. 314,

a witness testified that she heard the decedent say that he had given the stock to the executor and the executor himself swore that he had had possession of the stock since January 7, 1875. It was also shown that the deceased gave the executor on January 7 a power of attorney to receive and assign scrip or dividends, and that the executor drew the dividends due after the death of the deceased, and paid out of the amount, interest upon a mortgage due from the deceased, and that he afterwards assigned the scrip as executor. The Court of Errors and Appeals held that the executor failed to show that the stock passed to him by gift. We quote from the opinion of the court at page 323:

"The important question is, whether, upon the evidence as it stands, Stephen has proved a gift to himself by his father. **The burden of proving a valid donation of the stock is upon him.** 2 Kent 244; Irons v. Smallpiece, 2 Barn. & Ald. 551; Walter v. Hodge, 2 Swanst. 97; Grey v. Grey, 47 N. Y. 552; Dilts v. Stevenson, 2 C. E. Gr. 407.

The chancellor found that the testimony was insufficient to show a delivery of the stock in pursuance of an intention to confer absolute title to Stephen.

The declarations of the deceased, if made as sworn to, standing alone, would be of little or no force.

A gift without consideration requires, as an essential element, a delivery. To a mind unacquainted with the technical rule that in law an actual or symbolical tradition of the chattel is necessary to transfer the title, such an act would ordinarily not appear important. A statement, therefore, that a gift had been made would not, I think, of itself, import a compliance with all

the technical requirements of a legal gift. The supreme court of Massachusetts has held that the delivery of a chattel necessary to the validity of a gift causa mortis, was not proved by subsequent declarations of the deceased made shortly before his death to a person not connected with the gift. Rockwood v. Wiggin, 16 Gray 402."

There was no first hand proof that Katherine had had these bonds in her own possession since the alleged transfers, except her own testimony, and that was clearly objectionable on this point as being a part of the transaction with the deceased. Such was the view of the Court of Errors and Appeals in the case of Smith vs. Burnet, supra, at page 323.

"In this case, Stephen swore that he had possession of the stock from February 7th or 8th. This evidence was not the subject of objection. **Had it been, then, as such possession was by him referable to an act of the deceased in passing possession to him, it would probably have been as objectionable as the evidence propounded in the offer."**

Moreover, mere possession of the subject matter of the gift is not sufficient. On this point we quote from the opinion of the court in the case of Buecker vs. Carr, 60 N. J. E. 300, at page 305.

"It appears to be entirely settled that mere possession of the subject matter of the gift by the claiming donee, cannot of itself be held to establish a gift causa mortis, especially if the claimant had opportunity to obtain wrongful possession from the alleged donor. There must be proof that the subject matter of the gift was so delivered to the claimant by the donor himself, by action, or speech, or both, that he abandoned all dominion over it, subject only to the happening of any of the incidents which make

such gifts revocable. Delmotte v. Taylor, 1 Redf. Surr. 417. Should mere possession be held to establish such gift and to cast upon the representatives of the estate the burden of disproof, it would be adding a new terror to death, an actual invitation to the seizure of the effects of sick persons, in articulo mortis, when they are least able to care for them."

Moreover, there was no evidence that the decedent stripped himself of all ownership in, and dominion over, the bonds. We shall have more to say on this phase of the matter under the next point.

Counsel for the appellant contend that there was no question about the element of donative intent having been established because the Vice-Chancellor below so found. As a matter of fact, the Vice-Chancellor did not go so far as to say that there was intent to make a **presently effective gift** as was required, but merely found as follows, page 48, ll. 2-7:

> "The careful consideration which I have given to the evidence leads me to the conclusion that the testator did intend Miss Stryker to have the bonds in question; but that the evidence fails to show that he did in fact before his death make a completed gift to take effect immediately. Rather does the evidence show the contrary."

And in any event this Court has the power to review all of the facts in a case of this character.

On the question of donative intent on the part of the decedent, counsel argue at great length that the mere expression of his intent to provide for Katherine was sufficient to establish this, but we submit that under the well settled law this is not enough. The proof must go further than this, and establish just what his intent was, with respect to the nature of the gift, especially when it should take effect, and

whether it was an absolute gift or not, and the other terms of it.

This is particularly true in view of the fact that it is apparent from the will of the testator that it was his fixed intention to leave the proceeds of this farm to these four defendants and Katherine N. Stryker and B. Frank Heitsman, and Chester Heitsman, since deceased, and this strong evidence of intent as to the disposition of his property was not changed any by the codicil to his will, for he made no alteration in this part of it. This evidence of intention is of the strongest character, and we submit has not been overcome by evidence produced by Katherine N. Stryker.

Counsel further state that it was admitted that the bonds were in Katherine N. Stryker's safe deposit box at or before the time of the decedent's death. This was not admitted by these four defendants in their pleadings and the only proof of it was that found in the testimony of Miss Stryker.

Counsel argue also that since, as they assert, Miss Stryker was in possession of the bonds at the time of the decedent's death and that since if he did not give them to her she must have stolen them, and since she was a woman of good reputation and would not steal them, that therefore the elements of a gift must be presumed. But counsel are unable to cite any authority for such an unusual proposition, for, obviously if this were the law, it would practically never be necessary to establish the elements of a gift. It is not a question of whether Miss Stryker stole these bonds or not,—that is not the issue. The question is, whether she has met the burden of proof that has been justly put upon her by the law, of proving the various essentials of a gift. If she has not done so, as the court below found, then she is not entitled to the bonds and this does not carry with it any imputation of lack of integrity on her part. We

submit that argument of this kind by counsel is an admission of the failure of the appellant to prove the essential elements of a presently effective gift.

Then counsel cite the case of Green v. Tulane, 52 N. J. E. 169 as authority for the contention that in the case of gifts inter vivos it is not necessary to show a delivery and acceptance,—that mere proof of possession by the donee is sufficient. But in that case, the proof was that there was an actual delivery to a third party for the benefit of the donee, and nowhere in the opinion does the ViceChancellor intimate that the rule as to gifts inter vivos does not require proof of delivery and acceptance. On the contrary, the Vice-Chancellor specifically held that proof of delivery was required, (page 171). Moreover, as we pointed out above, this Court held positively that proof of delivery was necessary in a gift inter vivos, in the case of Besson v. Stevens, 94 N. J. E. 549. That mere declarations of the donor as to delivery are not sufficient to prove delivery is clearly held by this Court in Smith v. Burnett, 35 N. J. E. 314, as we have already pointed out.

It is respectfully submitted that without Katherine's testimony, there is not even a small fraction of the evidence present necessary to sustain the transfers as gifts inter vivos, or on any other ground.

B.

EVEN WITH KATHERINE'S TESTIMONY INCLUDED, THERE IS NOT SUFFICIENT EVIDENCE OF A VALID GIFT.

We now pass to the consideration of the question of whether, even if Katherine's testimony should be considered to be admissible (which we strenuously contend it is not), there is sufficient evidence of a gift. We contend there is not, for several reasons which we shall take up in order.

In the first place, the rule is well established that where the testimony of a donee is received under such circumstances, it is to be scrutinized very closely and not too great weight attached to it.

Particularly in view of the fact that Katherine is a highly interested party, and a woman of education, intelligence and experience in the world, it is nothing short of remarkable how uncertain and vacillating and lacking in conviction her testimony was.

One of the most striking respects in which this is painfully evident, is the fixing of the time of the two transfers. **According to her own testimony at the time of the hearing, her private income had only been $200.00 a year (p. 328, l. 34) and therefore obviously the gift of $15,000 of liberty bonds in each instance must have been a great event in her life and so outstanding, in fact, that it is fair to assume that not only the year, but the month and the day, and perhaps even the hour, would have become so indelibly stamped on her memory as never to be erased. How could one in her station of life fail to remember two dates when she says she got bonds worth in the aggregate $30,000?**

And yet the astonishing fact is that she did not remember the dates, and although she must have known that if her testimony was admitted, she would be called upon to fix the time, and although there was in evidence a record of the times that she had access to her safe deposit box and to that of the decedent, nevertheless she was wholly unable to fix the time of the first transfer with any definiteness at all, and on the contrary floundered around miserably in her attempt to do so.

In paragraph 4 (p. 20, ll. 17-20) of her answer she admits the allegations in paragraph 7 (p. 11, l. 30—p. 12, l. 5) of the bill to the effect that the first transfer was made five years before the bill was filed,

which would have been 1921, or five years before Steward's death. On the witness stand she tells an entirely different story. She testified as follows on page 303, l. 26—page 304, l. 5:

"Q. What became of those bonds later?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. He gave them to me.

Q. When?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. He gave half of them to me as near as I can judge, about three or four years ago, possibly more or less, more, I should judge."

This would, of course, make the transfer in 1923 or 1924.

And then in the very next breath she changed it and made it one year earlier, which was 1922 or 1923 (p. 304, ll. 6-13).

"Q. Do you recall how long before his death?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. Well, it seems to me it must have been three or four years before his death."

And she could not even fix the definite date of the second transfer, which was little more than a year and a half before she testified, and only a few months before the decedent's death. She said with reference to this that it was "some time in September, 1925" (p. 305, ll. 28-32). The only time that she had access to Steward's box in September, 1925, was on September 5, 1925, so obviously the transfer must have been made at that time and yet this highly interested party was unable to fix the time of this transfer. Surely that is most singular.

We submit that this great uncertainty and contra-

diction in fixing such important dates, casts great doubt on her whole testimony, and her whole case.

Another respect in which Miss Stryker's memory shows a surprising lapse, is in her testimony with respect to when she started making out checks for her uncle. Her answer was on this point as follows: "A couple of years before he died, maybe three, I don't know" (which would have been 1923 or 1924). As a matter of fact, the check stubs offered in evidence (pp. 374-81) indicated that she had been making out the stubs, and presumably therefore, also the checks, since February 1921, and, in fact, practically all of them that we have a record of were made out by her since that time, and those check stubs had already been offered in evidence when she testified. Other weaknesses in her testimony will be pointed out subsequently.

In the second place, there was no evidence in her testimony of an actual manual delivery of the bonds to her by the decedent at the first transfer, and, of course, no evidence at all of such a delivery at the second transfer.

Her testimony with reference to the first transfer was as follows (p. 303, l. 26—p. 305, l. 16):

Q. What became of those bonds later?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. He gave them to me.

Q. When?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. He gave half of them to me as near as I can judge, about three or four years ago, possibly more or less, more, I should judge.

Q. Do you recall how long before his death?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. Well, it seems to me it must have been three or four years before his death.

Q. Where was the delivery made?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. At the Phillipsburg National Bank.

Q. At the bank?

A. Yes.

Q. What was done with the bonds?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. He gave them to me.

Q. What did you do with them?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. And I put them in my box.

By the Court:

Q. You mean a separate box.

A. Yes, sir, in my own personal box.

Q. Where have they been ever since?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. In my box."

She also testified on page 332, ll. 4-11 as follows:

"Q. Have you told us, Miss Stryker, all that was said at the time that—on the two occasions when these bonds were given to you?

A. I think so.

Q. You told everything?

A. I think so.

Q. And have you also told us all that was done on those two occasions?

A. Yes, sir."

She failed absolutely to give any account of how they came to go to the bank that day; of where in the bank the transfer was made; and under what cir-

cumstances; as to whether any one else was present; as to whether the decedent took the bonds from his box and handed them to her, or whether she got them out of the box, or whether, in fact, he handed them to her at all, or did any other act of this kind, or whether the coupons were clipped at the same time, or, in fact, any details whatsoever of the transfer.

In order to establish a valid gift inter vivos there must be evidence of an actual delivery of the subject matter of the gift, especially where it is claimed that there was an actual delivery. We again say that there was a total lack of clear evidence with respect to the first transfer to show an actual delivery.

We also desire to point out that there was a great element of mystery about this transfer. According to her story, in some way or other he gave her these bonds at the bank, and although he was an old man, in feeble health, largely dependent upon her for care and assistance, both physically and to transact his business, a man who was careful and economical in money matters, and the transfer was of a large amount of securities, and a considerable part of his property, absolutely nothing was said by him at the time of the transfer, and absolutely nothing was said by her.

She swears that there was no word of explanation by him of the reason for their going to the bank that day, and nothing said by him when the bonds were given to her, and nothing said by her in return by way of gratitude to him for this large gift to her, although that must have been a great event in her life, particularly in view of her very modest circumstances.

We submit that the mere statement of her testimony on this point in and of itself, without any argument on our part, proclaims aloud the glaring improbability of her story.

Certainly the very least that could be said about her account of this transfer is that this is the flimsiest

kind of evidence, and a far cry from the clear and convincing evidence, that the courts have held must be produced to over come the presumption raised by their relationship, and that is necessary to take away from an estate such a large proportion of it.

Her testimony as to the second transfer was as follows (p. 305, l. 16—p. 307, l. 18):

"Q. What became of the other $15,000 of bonds?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. He gave those to me.

Q. When?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. Sometime in September, 1925.

Q. Where were the bonds at the time?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. In his box.

Q. Where was he?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. He was home.

Q. Who got the bonds?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. I did.

Q. How did you come to get them?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. He gave me his key and told me to go get them?

Q. Did he tell you what to do with them?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. Yes.

Q. What?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. He told me to put them in my box.

Q. Did you put them in your box?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. I did.

Q. Have they been there ever since?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. Yes.

The Court: They are not transactions with the decedent. They are not open to your objection."

When she resumed the stand on the last day of the hearing, she added the following to the account (p. 321, l. 25 to p. 322, l. 21):

"Q. Where were you when the conversation took place with reference to the bonds in September, 1925?

Mr. Gebhardt, Jr.: I make the same objection to that.

The Court: There will be the same ruling.

A. In the dining room.

Q. Just state what was said at that time.

Mr. Gebhardt, Jr.: Same objection.

The Court: Same ruling.

A. Why, my uncle said that he wanted me to have the rest of those bonds and he took his keys out of his pocket and gave them to me and told me to go down to the bank and get them and put them in my box.

Q. Your Uncle Steward told you that?

A. Yes, sir.

Q. Had you spoken to him prior to that time about the bonds?

Mr. Gebhardt, Jr.: Same objection.

The Court: Same ruling.

A. About his giving them to me?

Q. Yes.

A. No, I didn't ask him about them. He started the conversation."

It is indeed strange, to say the least, that in her first story of the second transfer she merely said that the decedent told her to go get the bonds and put them in her box and said nothing about why she was to put them in her box, or anything to indicate that there was any intention to make a gift of them.

Moreover, it is highly significant that although she testified that she had told all that was said or done, there was not even a word uttered by her of gratitude on her part for this second gift of $15,000. **Here again, this fact casts a long shadow of doubt on her story.**

There is no pretence made that there was any manual delivery of the second lot of bonds, a mere constructive delivery being relied upon. It is contended that under the rule adopted by the Court of Errors and Appeals in a similar case, that the mere handing of the keys to her of his safe deposit box with instructions to put the bonds in her box, was not sufficient evidence of delivery, particularly where she had had the same keys many times before, and had entered his box on frequent other occasions, and where apparently she handed the keys back to him after she returned from the bank, which she said was her custom (p. 246, ll. 18-22).

There was nothing out of the ordinary about this act on the decedent's part, and it was not in its nature an unequivocal act, and there was nothing in the physical act itself of handing her the keys, that would have the effect of depriving him of the possession of the bonds. In the case of Keepers vs. Fidelity Title

and Deposit Company, 56 N. J. L. 302, the proof was that the plaintiff's sister on her death bed delivered to the plaintiff a key of a box saying, "I give you the box and all its contents." The box was in another room of the house located in a closet, and the key of this closet was in the possession of the plaintiff's mother, with whom the sister resided. The Court of Errors and Appeals held that there had not been a sufficient delivery of the securities contained in the box to constitute a valid gift causa mortis. We quote from the opinion of the Court at page 308.

> **"We are not willing to approve the extreme views which have been adopted in the cases cited. We agree with the sentiment expressed in Ridden v. Thrall, 125 N. Y. 572, that 'public policy requires that the laws regulating gifts causa mortis should not be extended, and the range of such gifts should not be enlarged.' When it is remembered that these gifts come into question only after death has closed the lips of the donor; that there is no legal limit to the amount which may be disposed of by means of them; that millions of dollars' worth of property are locked up in vaults the keys of which are carried in the owners' pockets, and that under the rule applied in those cases, such wealth may be transferred from the dying owner to his attendant, provided the latter will take the key and swear that it was delivered to him by the deceased for the purpose of giving him the contents of the vault, the dangerous character of the rule becomes conspicuous. Around every other disposition of the property of the dead, the legislative power has thrown safeguards against fraud and perjury. Around this mode the requirement of actual delivery is the only substantial protection, and the courts should not**

weaken it by permitting the substitution of convenient and easily-proven devices.

We think the trial justice properly decided that the evidence would not warrant the jury in finding such a delivery as is essential to a donation mortis causa."

It is manifest that the facts in the Keeper case were very much stronger indeed than in the case at bar, and yet it was held that a valid gift had not been established.

In the third place, we submit that there was absolutely nothing in her testimony to show that he meant to make a presently effective gift. On the contrary, the evidence in the whole case is clear that if he meant to make a transfer at all, his intention was to make one which would not be effective until his death, the purpose being to avoid the payment of inheritance tax.

A reading of her testimony as to what was said on the occasion of each transfer, makes it at once appear that there is nothing there to indicate that he meant to give her the bonds as an absolute gift, effective at that time.

That this was the real intention of the testator is supported by the testimony of Mrs. Elizabeth Heitsman of what Katherine told her, as follows (p. 116, ll. 11-20):

"Q. What was the conversation?

A. She said to me, 'Aunt Lizzie, don't you think Uncle Steward ought to let me have the Government Bonds, the Liberty Bonds, to escape the inheritance tax?' and also said that she wanted him to let her put the bonds in an envelope and put his name on them and if she died they were his and if he died they were hers, in her box.

Q. Which bonds are you referring to now?

A. The Liberty Bonds."

This suggestion of Katherine's is most illuminating so far as the whole situation is concerned, and is undoubtedly the scheme that she had in mind which after a number of years of insistence upon, she finally persuaded the decedent to adopt. It dovetails completely with all the other facts in the case.

Of course, Katherine N. Stryker denied having this talk with Mrs. Heitsman, but her denial is uncertain, weak, and far from convincing. We quote from her testimony at page 309, l. 30—page 310, l. 5:

"Q. Mrs. Heitsman has testified that two or three months before your uncle died that you said to her, 'Aunt Lizzie, don't you think Uncle Steward ought to let me have the Government Bonds, the Liberty Bonds to escape the inheritance tax,' and also that you wanted your Uncle Steward to let you put the bonds in an envelope and put his name on it and if you died they were his and if he died they were yours, in your box, did you have any such conversation?

A. I have no recollection of it.

Q. **Well, did you have any?**

A. **I might have talked that way after his death but never before.**

Q. Did you ever mention Liberty Bonds to Mrs. Heitsman before his death?

A. **I don't think so.**

Q. You did not?

A. **I don't think so.**

Q. **Did you ever ask her that question?**

A. **I did not.**"

It was not until she was asked **five different times** about the conversation that she finally said right out that she had not had it. Previous to that she did admit that she "might have talked that way after his

death." Under all the circumstances, this was equivalent to an admission that she had had such a conversation after his death, and that therefore this was, in reality, her plan, and the one adopted by the decedent, and that therefore, in fact, the transfers were merely attempted testamentary dispositions.

And in the face of the fact that she knew that this was the claim of these defendants, she failed to specifically deny on the witness stand that such was really the intention, and there was nothing in her account of the transfer to negative this idea, and she likewise failed to specifically state that the transfers were meant to give her the absolute title at that time to the bonds.

Moreover, Mrs. Heitsman's testimony is to be given great weight, particularly as opposed to that of Katherine, who was a highly interested party, for Mrs. Heitsman had no interest in the case, and her testimony was clean-cut, straight forward, and entirely worthy of belief. She testified that she thought a great deal of Katherine (p. 110, l. 1), and that Katherine was good to Steward K. Heitsman (p. 137, ll. 1-10). She went there and took care of him for Katherine whenever Katherine asked her to (p. 315, ll. 8-15), and all she received for doing this was small gifts (p. 106, ll. 31—p. 107, l. 3, and p. 133, ll. 10-25), and she did not ask for any compensation (p. 107, ll. 1-2). She was held in high regard by Steward K. Heitsman, for he wanted her there the last week of his lifetime, and insisted just before she went away, previous to that last week, that she should return (p. 130, ll. 19-20). After his death she came and kept house there for B. Frank Heitsman for Katherine while the latter was in Texas for about two months, for which she would take no compensation (p. 133, l. 30 to p. 34, l. 20).

Furthermore, Dora Heitsman told of a similar talk

with Katherine in 1921 as folows (p. 185, ll. 17-28):

"Q. Do you remember a conversation in 1921, a conversation you had with Katherine about what Steward Heitsman would give her?

A. Yes, she said she had a conversation with Uncle Steward and they had been talking about the taxes.

Q. What kind of taxes?

A. Inheritance taxes, and she urged Uncle Steward to give her the securities that he intended her to have in the will, while she was living, and she would put them in her box, and he said, **'No I won't.'**

Q. Was there anything said about the purpose of doing that?

A. To escape the inheritance taxes."

This conversation clearly indicates that Katherine had this scheme in mind as far back as 1921, and was then urging it upon him, but up to that time he was opposed to it. Undoubtedly by the exertion of the influence at her command, she kept at the old man until he finally gave in and yielded to her desire.

Here again, Katherine N. Stryker's denial of this conversation was most uncertain. She testified on page 311, l. 33—page 312, l. 9, as follows:

"Q. Did you have any conversation with reference to these bonds with reference to Mrs. Dora Heitsman?

A. No.

Q. She has testified, before your uncle died, that you talked to her with reference to the $30,000 of bonds, did you have any—

A. **I have no recollection of it.**

Q. Did you ever discuss any business matters?

A. **I did.**

Q. Prior to your uncle's death with her?

A. **Yes, I did talk with her."**

Later on she was asked again about this conversation, and testified as follows (p. 314, ll. 2-22):

"Q. Did you ever have any conversations with Dora Heitsman, prior to his death, in which you told her that your Uncle Steward had been talking about inheritance taxes, you had been talking with him about them and that you had urged your Uncle Steward to put these bonds in your box?

A. **I don't remember it?**

Q. You don't remember it?

A. **No.**

Q. So as to avoid inheritance taxes?

A. **I don't remember that I did.**

Q. Well, did you ever have such a conversation with her before your uncle's death?

A. **Not to my knowledge.**

Q. Do you know whether you did or not?

A. I don't think I mentioned bonds to anybody before my uncle's death with the possible exception of Mrs. Fine.

Q. Why?

A. Because when my uncle gave them to me he said, 'It's nobody's business, keep it to yourself.' "

It was not until she came back on the witness stand on the last day that she denied this conversation unequivocably (p. 320, ll. 22-30).

And out of the mouth of one of Miss Stryker's main witnesses comes testimony which absolutely clinches the matter and leaves not a vestige of doubt but that the real intent of the decedent was to make a testamentary disposition (John Bachman, p. 258, l. 28—p. 259, l. 15):

"Q. Did he, in any way, give you to under-

stand why it was he gave her the bonds instead of providing for her in that way in his will?

A. Well, he did say he didn't want to have it in his will. That was an outside affair between him and Katherine.

Q. Did he give any other reason why he didn't want to have it in his will?

A. **Well, it seemed to be they had an idea they would get clear of the inheritance taxes.**

Q. **He said that if he handed them over to her at that time, then probably he would not have to pay any inheritance taxes?**

A. **Something about that, but I gave him no advice whatever.**

Q. Is that it?

A. Something about it.

Q. **What did he say to you about inheritance taxes?**

A. **He said he was told by somebody, I don't know whether it was Mr. Stryker, that he thought he might save the inheritance taxes."**

Another factor which bears out this theory strongly is that Miss Stryker admitted by paragraph 4 of her answer, page 20, that these bonds were transferred to her as compensation for services rendered, and therefore, of course, they would be subject to income tax, but she testified on page 329, ll. 1-5, that she had never even made an income tax return, thus clearly indicating that she did not regard the transfer as becoming effective until his death.

Moreover, it is exceedingly improbable that Steward meant to give her the bonds outright. He was evidently a close, economical, saving man. He had already made a will and a codicil, indicating a well settled intent not to give her certain property until his death. What reason could there possibly be for him to strip himself absolutely of $30,000 worth of

bonds? **The irresistible conclusion is that he merely meant to transfer the bonds to her to take effect at his death, and in order to avoid the payment of inheritance tax.**

Furthermore, the fact that Steward K. Heitsman continued to get the income from these bonds (which we will discuss more at length in the next point), is another cogent factor pointing toward the same theory that the transfers were not to take effect until his death.

Finally, the numerous efforts of Katherine N. Stryker, both before and after his death, to conceal the transfers (which we will refer to further later), serves to make still more apparent the weak and unconvincing character of her testimony as to these transfers.

In the case of Taylor vs. Coriell, 66 N. J. E. 262, the court found that the intention of the donor was to have the gift take effect at his death, and that therefore, the gift was invalid. The court said at page 270:

> "To make a gift effective the evidence should show an intention on the part of the donor to divest himself of the possession of his property, and it should be inconsistent with any other intention. In re Bolin, 136 N. Y. 177. All of this evidence tends to disprove the claims of the complainant of any present gift of the fund, and shows that whatever intention the father had with reference to it related to its disposal after his death."

A somewhat similar case is that of Stevenson vs. Earl, 65 N. J. E. 721, where the Court of Errors and Appeals held that the transfer was invalid as a gift inter vivos, because the real intention was that it should take effect at death. We quote from the opinion of the court at page 725.

"The expressed intention of the deceased was

only to bestow upon his wife so much of his deposit as should remain undrawn by him at his death. Such a gift, it seems to us, is purely testamentary in its character. If it is not, then it is a perfectly easy thing for a person to retain the absolute control and dominion over his moneys and personal securities during his life and transfer that dominion to another at his death, with total disregard of the requirements contained in the statute of wills, by the simple device of depositing such moneys and securities, under an agreement with the depositary that he shall have the right to use them or deal with them as he pleases during his life, and that at his death so much of them as may remain shall be delivered to such person as is named in the agreement, who shall then become the owner thereof, and then delivering the agreement to the beneficiary with a statement of the same purport as that made by the deceased to his wife when he gave the pass-book to her. To hold that such a method of disposing of property by the owner at his death is valid, would be to practically repeal the statute of wills in its operation upon personal property, so far as its mandatory provisions are concerned."

A case that bears a striking similarity to the case at bar is that of Hunt vs. Naylor, 84 N. J. E. 646, where a niece who had been reared by her uncle was given a bank deposit by him. She lived with him and his aged sister for more than ten years, and conducted the household, and attended to their affairs, and the uncle was aged, physically weak and mentally infirm, and dependent upon her. We quote from the opinion of the court at page 649.

"The evidence is far from satisfying me that in the first instance the uncle gave the fund, or

the check representing it, to Elizabeth, with donative intent, and that he then intended to, and actually did, strip himself of all dominion over it—requisites essential to a gift inter vivos; or, that he subsequent to the deposit, made a gift of it to her. Elizabeth's act of making the joint deposit, and her suggestion to the complainant that his name be included as one of the depositors, challenges seriously the idea that she had become the absolute owner of the fund, and the view she entertained of her relation to it, evinces that she understood that the enjoyment of the fund was to be hers, if at all, only when her uncle had finished—a disposition, testamentary in character, in violation of our statute of wills, and falls within the rule laid down in Stevenson v. Earl, 65 N. J. Eq. 721.

But, even if all of the formalities for the making of a valid gift had been observed, with donative purpose, yet the transaction could not be sustained because of the unrebutted presumption of undue influence raised by the confidential relation which existed between Elizabeth and her aged and enfeebled uncle, and the dependency of the latter upon her, which presumption cast upon the defendant the burden of showing by clear, convincing and satisfactory evidence that the gift was the voluntary and intelligent act of the donor. Coffey v. Sullivan, 63 N. J. Eq. 296."

It is respectfully submitted that there was no evidence of an intention on the part of the testator to make a presently effective gift in either instance, but that on the contrary, what little evidence there was indicated that the intention was to have the transfer take effect at death.

In the fourth place, we submit that there was not

sufficient evidence that the deceased, by these transfers, completely stripped himself of all ownership in, and dominion over, these bonds. There is absolutely nothing in the testimony anywhere in the whole case that indicates clearly that there was any decided change in the relation of the testator to the bonds, except the change of location from one safe deposit box to another, which was testified to only by Miss Stryker.

On the contrary, the uncontradicted evidence is that the testator continued to get the income from these bonds directly down to November, 1925, (para. 10, Bill of Complaint, page 12, admitted by paragraph 7 of her answer) and then it was deposited in her account only for the sake of convenience, and to avoid the necessity of his signing checks, (p. 309, ll. 18-20), (undoubtedly because of his weakened condition), and Katherine N. Stryker subsequently drew checks upon the deposit for the expenses of the household, and for the sickness of the decedent. (Bill of Complaint, para. 11, page 13, admitted by paragraph 7 of her answer page 21).

Katherine attempted to explain the reason for this, but failed to do so in the following testimony. On the contrary she establishes beyond dispute that he retained the complete benefit of the income, not only during the time when the coupons were deposited in his account, but also afterward on the one occasion when they were deposited in her account, and as a matter of fact, only one lot of the coupons was deposited by her in her account (p. 308, ll. 6-22).

"Q. What was done with the coupons that you clipped in the bonds in the first fifteen thousand?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. I put them in Uncle's bank account.

Q. How did you come to do that?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. Because Uncle always said he handled the money and I didn't like to do it. He told me often to put them in mine but I didn't like to do it."

Again at page 309, ll. 4-16:

"Q. After the second lot of bonds had been delivered and you cut the coupons, what did you do with those?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. Put them in my bank account.

Q. Why did you do that?

Mr. Gebhardt: Same objection.

The Court: Same ruling.

A. Because Uncle didn't like to write checks any more and he told me to."

Of course, it is obvious that if she and he regarded the coupons as belonging to her, she could have deposited them in her account, and then given him a check for all or part of the amount they covered. But this was not done. On the contrary, they continued to be deposited in his account just as they had been done theretofore, continuously, until he got to the point where he did not want to sign checks. And when money was to be given her for her own use, some of the coupons were not retained by her, but it came from Steward K. Heitsman's account.

Obviously, all of this, expressly negatives any idea of an absolute gift.

Nor was there any other act done, which in the slightest degree indicated that either regarded the income as belonging to any one but the decedent, and as a matter of fact, Katherine did not testify herself that she regarded or treated the income as her own,

and that she gave it to him. **She could easily have said so if that were the case, and her failure so to do is the strongest kind of proof that it was not.**

That the retention of the income by the donor is strongly contradictory of an intent to make an absolute gift, was held in the case of Reiley vs. Fulper, 93 N. J. E. 112. We quote from page 117.

> "Neither is there any proof that at the time of the placing of the certificate in the safe deposit box it was done with the then existing intent on the part of the father that there should thereby be accomplished a completed, then present, gift to his daughter. The evidence is not clear as to the time when the certificate was deposited in the box. If we assume (and the evidence is compatible with that assumption) that it was fully signed by the company's officers and placed in the box prior to July 10th, then the evidence as to the July dividend (as to which more hereafter) disproved the existence of such an intent at the time of the deposit."

We quote again from page 118.

> **"There is no evidence whatever that the father intended to make a gift, or that if he did intend to make a gift he intended to make it there and then. The evidence does show, as I have said, that he intended to make at some time a transfer of ownership, but it does not show that that transfer was not to be conditioned upon or in exchange for the payment or performance of some consideration by the daughter. Neither does it show that he intended that the transfer of ownership, whether by gift or for consideration, was to take effect immediately at that time, rather than at some future time, such as Christmas or a birthday, or even his own death (if a gift was intended); or at a time**

agreed upon (if a transfer for consideration was intended). The evidence is perfectly compatible with any of these possibilities.

Indeed, the evidence contradicts the theory that the father intended that any transfer of ownership, whether by gift or otherwise, should take place at that time. It tends to prove that he did not intend that by the exchange of certificates a completed change of ownership should be effectuated. **The proofs as to the July dividend show of course that both father and daughter at that time, three or four months after the issuance of the new certificate, still regarded the father as being, and the daughter as not being, the owner of the stock, and that they both acted in accordance with that regard."**

See also Coffey vs. Sullivan, 63 N. J. E. 295, and Smith vs. Burnet, 35 N. J. Eq. 314 at p. 325.

In the case of Swayze vs. Huntington, 82 N. J. E. 127, aff. 83 N. J. E. 335, this Court held that a gift had not been established, largely on the ground that the donor had retained the income on the stock alleged to have been given by him, and the Court found that the real intent of the decedent in this case was to perform a testamentary act without the formality of a will.

Another case which is on all fours with the case at bar, is the very recent one of Wright vs. Sanger, 137 Atl., 657 (N. J. Ch.). As we have already pointed out above, in this case the Court found that the burden was upon the donee, who had been the decedent's housekeeper, to prove all the requisites of the gift of $25,000 in bonds claimed to have been given her by the decedent in his lifetime. The rule was also laid down that all of what was said at the time of the transaction must be considered (page 658) and that "admissions by the defendant inconsistent with the

claim of gift asserted, are competent." The Court also found that the transfer was testamentary in character and therefore void.

It is respectfully submitted that even taking Katherine's testimony into consideration, she has fallen far short of sustaining the burden of proof of showing that these were valid gifts inter vivos.

POINT No. 4.

THE TRANSFERS WERE INVALID BECAUSE THEY WERE IMPROVIDENT, AND NO INDEPENDENT ADVICE WAS GIVEN.

Under this Point, Points Nos. 5 and 7 of appellant's brief will be considered.

The next question to be considered is as to whether or not each of the transfers was improvident. While there is no direct evidence outside of Katherine's testimony that there were two separate transfers, instead of just one, we shall argue the matter from both standpoints.

As we have already pointed out, Katherine by her answer admitted the first transfer was in 1921, and accordingly the proof as to the value of his property was presented on that basis. Even though the transfer was some time later, it is fair to assume that the value of his property was practically the same as in 1921. We propose to discuss the question, first, from the standpoint of the principal of his property and then more particularly from the standpoint of income (as we believe that to be the true criterion).

There is no dispute as to the extent and value of his property as set forth in the stipulation, paragraphs 5, 7, 8, 9, 10 and 12, pages 33-36, as follows:

40 shares of Phillipsburg National Bank stock at $174.00 ..... $ 6,960.00

74 shares of People's Water Company stock at $15.00	1,110.00
17 shares Easton National Bank stock at $67.00	1,139.00
6 shares of stock of the First National Bank of Easton, at $66.00	396.00
Liberty Bonds	30,200.00
Furniture	500.00
Average bank balance	1,679.00
Total	$41,984.00
Less Non Income producing property (Furniture and Bank Balance)	2,179.00
Balance	$39,805.00
Less Liberty Bonds	15,000.00
Balance	$24,805.00

It is apparent that by the first transfer he parted with about 35% of his property, which, in view of the figures that we shall submit a little later as to income and expenses, did not leave enough under all the circumstances, to guard himself against the necessities of the future.

We now present similar data as to the value of his property in the year 1925.

40 shares of Phillipsburg National Bank stock at $185.00	$ 7,400.00
74 shares People's Water Company stock at $19.50	1,443.00
17 shares Easton National Bank stock at $71.00	1,207.00
6 shares of stock of the First National Bank of Easton, at $83.00	498.00
Liberty Bonds	15,000.00
Furniture	500.00

Average Bank Balance	1,489.13
Total	$27,537.13
Less Non Income producing property (Furniture and Bank Balance)	1,989.13
Balance	$25,548.00
Less Liberty Bonds	15,000.00
Balance	$10,548.00

In this instance, the decedent transferred about 54% of the balance of his property, and with the two transfers put together, he transfered about 70% of his estate, even at the valuation of 1925. We submit that it is obvious that for him to strip himself of 70% of his estate, leaving only $10,548.00 for himself, is clearly improvident.

We now pass to the matter of income. For the purpose of clarity, we set forth below a table showing the total annual income of the decedent; also the part thereof that was not deposited in his bank account; also the amount paid out by check, and the last column thereof shows the total annual expenditures, which was obtained by adding to his expenditures by check, the amount of his income that was collected by him, but not deposited in the bank, the fair inference being that if he did not deposit it, it was spent by him. For the sake of convenience, the names of the banks and the water company have been abbreviated. We have omitted any income from the $200.00 of Liberty Bonds which he gave Katherine subsequent to 1921 (p. 92, ll. 8-12), because there is no proof of when he gave them to her.

Div. & Int. Recd.		Div. & Int. Not Deposited	Amt. Paid by Checks	Total Expend-itures
		1921		
P. N. B. .	$ 280.00			
1st N. B. .	21.00	$ 21.00		
E. N. B. .	51.00	51.00		
P. W. Co.	59.20	59.20		
L. L. Bonds	1,275.00			
	$1,686.20			
Less L. L. Bond int.	637.50			
Balance of income	$1,048.70		$1,290.78	$1,421.98
		1922		
P. N. B. .	$ 320.00			
1st N. B. .	21.00	$10.50		
E. N. B. .	51.00	51.00		
P. W. Co.	59.20	59.20		
L. L. Bonds	1,275.00			
	$1,726.20			
Less L. L. Bond int.	637.50			
Balance of income	$1,088.70		$1,380.58	$1,501.28
		1923		
P. N. B. .	$ 360.00			
1st N. B. .	21.00	$21.00		
E. N. B. .	51.00	25.50		
P. W. Co.	59.20	59.20		
L. L. Bonds	1,275.00			
	$1,766.20			

Less L. L. Bond int.	637.50			
Balance of income	$1,128.70		$1,717.81	$1,823.51
		1924		
P. N. B. .	$ 360.00			
1st N. B. .	22.50	22.50		
E. N. B. .	51.00	51.00		
P. W. Co.	59.20	59.20		
L. L. Bonds	1,275.00			
	$1,767.70			
Less L. L. Bond int.	637.50			
Balance of income	$1,130.20		$1,457.30	$1,590.00
		1925		
P. N. B. .	$ 360.00	$180.00		
1st N. B. .	24.00	24.00		
E. N. B. .	51.00	51.00		
P. W. Co.	66.60	66.60		
L. L. Bonds	637.50			
	$1,139.10			
Less L. L. Bond int.	318.75			
Balance of income	$ 820.35		$1,949.89	$2,271.49

We now present another table showing the total amount of his income for these years, that he would have had remaining if he had not received the income on the liberty bonds, and also the total expenditures in each of the same years. The fourth column shows

the deficit that he would have had if he had not had the income from the liberty bonds, and the fifth column shows what the deficit would have been if he had had to pay rent, which was estimated at $75.00 to $80.00 per month (p. 88, ll. 6-21). We have used the lower figure of $75.00.

Year	Income	Expenditures	Deficit	Deficit If He Had Paid Rent
1921	$1,048.70	$1,421.98	$ 373.28	$1,273.28
1922	1,088.70	1,501.28	412.58	1,312.58
1923	1 128.70	1,823.51	694.81	1,594.81
1924	1,130.20	1,590.00	459.80	1,359.80
1925	820.35	2,271.49	1,451.14	2,341.14
1926	501.60	(estimated)		

The evidence is uncontradicted that Steward K. Heitsman was careful in money matters, and economical (p. 176, ll. 30-35). It is likewise undisputed that Katherine ran the house carefully, and that they did not spend any more money for his support and for the running of the household, and for his care than was reasonably necessary, during all this period. Katherine herself so testified on page 331, ll. 30-35.

Katherine claims that she was paid no regular salary and Mrs. Elizabeth Heitsman was not paid for what she did, (p. 134, ll. 1-15), so it is apparent that if they had both insisted on being paid at any time, this would have added a considerable item to his expenditures.

There is also abundant evidence that is not controverted that Steward needed some one to look after him and take care of him, and that he could not have gotten along alone. Miss Silkman testified to this effect on page 155, ll. 20-30, and so did Dora Heitsman on page 186, ll. 15-22, as well as Katherine's own witness, Mrs. Fine (p. 227, l. 29—p. 228, l. 8),

and Katherine did not deny it. It is obvious, therefore, that if Katherine had died or had been married, or for some other reason had gone elsewhere, he would have had to employ a nurse, which would have added a great deal to his living expenses.

During all this time, apparently, he was paying no rent (p. 86, ll. 20-25), there being no checks or anything to indicate that he did, but he might have been compelled to at any time, for he had no right to occupy this property, rent free. As a matter of fact, after his death, some of the heirs who owned this property, presented a claim for rent against Steward's estate (p. 86, ll. 30-34). There should be added, therefore, to his expenditures, some reasonable amount to represent the rent he might have had to pay, and the testimony was, that a fair amount would have been $75.00 to $80.00 per month (p. 88, l. 11).

After the first transfer, therefore, it is apparent from the above table, that his remaining property was far below what would have been necessary for his support, even not considering the payment of a salary for a nurse, or the item of rent. He lived to a ripe old age, and might have lived longer than he did. He might well have had a long sickness requiring one or more trained nurses and physicians, which would have caused his expenses to amount still higher. Indeed, the last year of his life they reached the high water mark of $2,271.49.

Moreover, both he and she very evidently thought that he needed the income from all of the bonds, for the income was regularly deposited in his account until he did not want to sign checks any more.

Furthermore, if he did not need this much income from the bonds for his support, there was one person who knew more about that than almost any one else, and who could have so testified if that was the case,

and that was Katherine N. Stryker, but she did not do so.

We submit that it is perfectly clear that the first transfer was improvident.

And **a fortiori** the second transfer was improvident. His actual expenses in the year 1925 were $2,271.49, whereas his income, after the bonds had all been given away would have been reduced to $501.60, without the income from the bonds. Certainly he could not have lived on this amount, and would necessarily have become the object of charity.

The rule is well settled by a long line of cases that where a person under these circumstances makes an improvident gift, the burden of proof is upon the donee to show that the donor had the benefit of independent advice. While it may be that the rule as originally laid down was that it applied to cases where the donor gave away all his property, the rule has since been modified so that the test is whether or not the gift was in fact improvident. This will appear from the cases cited below.

We desire to point out that in the case at bar there is absolutely no proof, even in Katherine N. Stryker's testimony, of any independent advice.

In the case of Walsh vs. Harkey, 69 Atl. 726, where the donor gave away property worth $2,000, leaving her some $200.00, and a lease for life was given back to her, the gift was held to be improvident nevertheless, and was set aside because there was no proof of independent advice.

So in the case of Hunt vs. Naylor, 84 N. J. E. 646 where the gift was of a bank account of $1,147.00, leaving the donor $1,000 in land, the transfer was held to be improvident, and consequently was set aside on account of lack of proof of independent advice.

In the very recent case of In Re Estate of William

Fulper, 99 N. J. E. 293, where the testator gave his bank deposit of some $4,200.00 to his son, and he had left personal property worth about $700.00, and his farm worth $1,000 to $2,500, the court held that even though the value of the farm be fixed at $2,500, and despite the fact that there was a verbal agreement on the part of the donee to support the deceased the rest of his life, that the transfer was improvident, and set it aside because there was no independent advice.

A very recent case which is closely analogous to the case at bar is that of Siebold vs. Zieboldt, 93 N. J. E. 327, aff. 93 N. J. E. 500. Here the proof was that the donor gave away the sum of $8,000 of a bank account of $8,244.62. He had remaining an income of $80.00 per month, and the rent free fixed at $15.00, or $95.00 in all. Although he had this much income left, and although there was a parol agreement with the donee reserving to the decedent the right of lodging and support during his life, nevertheless the court held that the gift was improvident and invalid for lack of independent advice. If the income of $95.00 per month were capitalized at six per cent., it would amount to $19,000, which would have given the donor the equivalent of a capital of about $27,244, before he made the gift, so that he only gave away about 30% of his potential capital, whereas, in the case at bar, the first time the decedent transferred about 35% of his estate, and after the full $30,000 was given away, he had transferred about 70% of his original estate, so we submit that in the case at bar the gift was still more improvident than in the Siebold case.

The rule as to independent advice was laid down in the leading case of Haydock vs. Haydock, 34 N. J. E. 570, and followed in Slack vs. Rees, 66 N. J. E. 447; Thorp vs. Smith, 65 N. J. E. 400; Albert vs.

Haeberly, 68 N. J. E. 664; Walz vs. Oser, 93 N. J. E. 280; Mott vs. Mott, 49 N. J. E. 192, and many other cases.

The case of Morrison v. Morrison, 94 N. J. E. 646, relied upon by counsel for the appellant, is easily distinguishable from the case at bar, for in that case it was apparent from the facts that the donee did not occupy the dominant position, but that on the contrary the donee was, as the Vice-Chancellor said, "a simple-minded girl" and was not "even of average mentality." Moreover, the Vice-Chancellor found that the transfer was made by deed "which was the voluntary act of the father, free from even a suspicion of undue influence exerted upon him by his daughter." This makes the situation here entirely different from the one at bar.

Another case analagous to the instant case is that of In Re Winans, 4 Misc., 367, decided by the Essex County Orphans' Court. In that case the estate was valued at about $45,000, and the gift in question was of about $25,000, and the court set the gift aside on the ground of improvidency. This case is particularly important, for this is more than Steward K. Heitsman had left in income-producing property after the first transfer, and, of course, far more than he had left after the second.

It is submitted that both of these transfers were improvident and therefore invalid for lack of independent advice.

POINT No. 5.

THE TRANSFERS WERE INVALID WHETHER IMPROVIDENT OR NOT, BECAUSE THE APPELLANT FAILED TO SHOW BY CLEAR, CONVINCING AND SATISFACTORY EVIDENCE THAT THEY WERE FAIR, VOLUNTARY, OPEN, ABOVEBOARD, FREE FROM CONCEALMENT, AND UNDERSTOOD BY THE DECEDENT.

We desire at the outset to emphasize that the elements referred to in the title above must be proved by the donee, not merely by a preponderence of the evidence but by clear, convincing and satisfactory evidence. Here we are answering Points Nos. 5 and 9, appellant's brief.

In the first place, the burden of proof was clearly upon Katherine N. Stryker to establish that the testator understood the nature of the transfers, and thoroughly comprehended the consequences of them, **and this is the rule regardless of whether the transfers were improvident or not.**

Even taking into consideration, Katherine N. Stryker's testimony, **there was a total lack of proof in the case that the testator understood that he was making a presently effective gift.** On the contrary, what evidence there is on this phase of the matter (as we have already pointed out), points toward a testamentary disposition in each case, rather than a gift.

We have already discussed the conversations of the decedent with Doctor West, Mr. Wieder and Mr. Bachman, and there is nothing in them anywhere to indicate that the decedent appreciated the nature of his acts.

And if there was any one who knew whether he did understand the transactions, or who could have

cleared up this question, it was Katherine N. Stryker. **But on the contrary, her testimony makes it certain beyond peradventure of doubt that he did not understand them at all.** She says at the first transfer that nothing was said by him or her. On the second occasion, there is nothing whatsoever in the conversation to indicate that he understood that he was making a presently effective gift. These facts, in addition to that of his retention of the income, make it clear that he did not understand the transfers, at least as being presently effective gifts, and therefore, Katherine N. Stryker has failed to sustain the burden of proof on this point, and therefore the transfers should be set aside.

In the second place, there is no evidence that the transfers were fair. There was not even a suggestion on her part that there was even a verbal agreement that she would, in return for the gift of this large amount of securities, look out for him and care for him, and support him, for the remainder of his life. There was no reason at all why he could not have left these bonds to her by his will, and so retain his estate intact for his protection during his lifetime, and it would have been wiser to do so.

In the third place, the cases hold that the burden of proof is upon the donee to show that the transfer was voluntary, that is, that the idea proceeded from the donor rather than from the donee. In this case, however, the proof was exactly to the contrary, for from her conversations with Dora Heitsman and Mrs. Heitsman about the inheritance tax, it is apparent that the idea was Katherine's scheme from the beginning, and originated with her rather than with him.

In the fourth place, the authorities held that the burden is on the donee to show that there was no concealment of the transaction by the donee.

That there was great effort made by Katherine N.

Stryker to conceal the fact of these gifts, both before and after his death, is beyond dispute. She did not tell Mrs. Heitsman, although the latter was there a great deal, and they were on such intimate terms that they slept together, that she had been given the bonds (p. 111, ll. 28 to 36). Neither did she tell Dora Heitsman or Mrs. Kirkpatrick (p. 201, ll. 24-30 and p. 206, ll. 10-15), or any of the relatives, or any one else, except Mrs. Kline (p. 314, ll. 18-21), her friend, about the gifts. She did not even tell her close friend, Mrs. Fine (p. 229, ll. 3-18), and apparently she did not tell Mrs. Kline about each transfer for Mrs. Kline only testified concerning one talk with her on the subject (p. 233, ll. 13-35).

Katherine endeavored to explain why she told practically no one, saying that the reason for this was that the decedent had told her not to tell any one, (p. 314, ll. 20-24), but that cannot be reconciled with the fact that Mr. Heitsman himself turned right around and told Doctor West and Mr. Bachman about it. **We submit that if these transfers were open and fair and voluntary, that she would have had no reason to conceal them, and that on the contrary it is highly probable that she would have been exuberant over her good fortune, and would have told a number of people. It is also very singular that she said nothing to B. Frank Heitsman about it.**

Moreover she continued her policy of concealment even after his death. This is apparent from the following conversation testified to by Dora Heitsman (p. 186, ll. 2-13), which occurred at the home just after the will had been read and the legatees under the will were all together.

> "A. After the will was read Alma Hlidebrant said to her mother, 'I don't understand the will, do you?' Her mother replied, 'No.' And she asked John Kirkpatrick whether he did or not, and he said, 'Yes,' and he explained, he

said, 'Providing none of the proceeds of the farm were invested in the bank stock or the water stock, which he did give her, then the proceeds would be divided into seven equal parts.' Miss Silkman said, 'No, it was put into Liberty Bonds, wasn't it Katherine?' And Katherine replied, 'I don't know.' Miss Silkman said, 'You don't? Steward told me it was put in Liberty Bonds, $30,000.00.' "

Mrs. Heitsman testified concerning this conversation also (p. 113, ll. 20-35) as well as Miss Silkman (p. 161, l. 20—p. 163, l. 25) and John Kirkpatrick (p. 219, ll. 26-35). **Moreover, the conversation was not denied, or in any wise explained by Katherine, and therefore stands uncontradicted.**

This question was asked of her in the presence of the legatees who had a right to know the facts, and yet she deliberately sought to mislead them and made no subsequent explanation to them.

Moreover she was very angry because the Liberty Bonds had been referred to and showed clearly that she did not intend any one to know anything about the bonds as will appear from the following conversation which occurred one-half hour or so after the one referred to above and the relatives had gone home. We quote this conversation as related by Mrs. Heitsman, page 114, ll. 9-26:

"A. Miss Katherine Stryker was there in the kitchen with Miss Silkman and myself.

Q. Was this the same day?

A. The same afternoon after the will was read.

Q. What happened?

A. **And she put her fist up and said, 'Cousin Louella, why don't you keep your mouth shut? The bonds are in my box and no one would have known where they were.'**

Q. **Miss Stryker said that?**

A. **Yes, sir, Miss Stryker.**

Q. Did this take place before or after the conversation in which Mr. Kirkpatrick took part?

A. After.

Q. About how long after?

A. I imagine about half an hour, as near as I can.

Q. Had the relatives gone at that time or not?

A. Yes."

Miss Silkman testified concerning the same conversation and also to another conversation with Katherine as follows (p. 162, ll. 3-14):

"Q. Was there anything said at that time, after Katherine said this to you and put her fist up to your face? Did she say anthing else?

A. We all went into the kitchen. Aunt Lizzie and Katherine had gone to get supper. I said, 'Katherine, according to the will, I don't see how you can keep these bonds.' She got hysterical and said, 'If I can't I can't buy this house and I can't live the way I am accustomed to. I will have to go to work. If I have to take care of old folks again, I'm going to get all they have and I'm going to see I get it.' And in that strain. It was terrible."

Miss Silkman also testified to another conversation with Katherine concerning Mr. McConnel the executor, p. 162, l. 26—p. 163, l. 2:

"Q. Do you recall another occasion after that when you had a conversation with her with respect to Mr. McConnel, or in which Mr. McConnel's name was mentioned?

A. Yes, sir, she was deathly afraid of Mr. McConnel, and she was afraid he would call her into court and make her say black was white

and make her out a liar and a thief. I said, 'Why are you afraid of him? He couldn't make me a liar and a thief.' But she seemed deathly afraid of him."

We submit that this is the strongest kind of evidence of a fixed intent to conceal the transfers of these bonds from the legatees, who were entitled to them under the will. And the fact that absolutely clinches it is that Katherine Stryker did not deny these conversations nor did she make any attempt to explain them in any way when she was on the witness stand. They, therefore, stand in their entirety as revealing her purpose to keep the whole matter secret from the very persons who had the right to know about it. Moreover, she told Mrs. Kirkpatrick, before the funeral, that a short time before he died, Steward Heitsman told her that "as the will read so it should stand" (p. 205, ll. 18-25), which was utterly inconsistent with the fact of these transfers.

Moreover the following conversations that Katherine had with Mrs. Heitsman indicate clearly that to say the least, Katherine did not feel sure of her right to the bonds. Mrs. Heitsman testified on page 117, ll. 18-24 as follows:

"A. Well, this was after his death, a week or so after his death. We roomed together at night and in the morning we were talking and she said to me, she said, 'Aunt Lizzie, don't you think that the heirs, nephews, the nieces should let me have the bonds my life time and then I will will them **back to them**?' and I made no reply to that."

Again on page 119, ll. 16-20:

"A. There was another time she mentioned she would give each of the heirs one thousand dollars of the Liberty Bonds, proceeds of the farm.

Q. She would do that if what?

A. If they would let her have them."

Again on page 120, ll. 18-23:

"A. She came home from Texas and seemed to be very poor, that she didn't have enough to live on, and she said, 'I can go and clip the coupons,' and Frank Heitsman spoke up and said, 'Why don't you do it?' She made the reply, 'I'm afraid I will have to put them back.' "

The rule applicable to cases of this kind was laid down in the case of Hall vs. Otterson, 52 N. J. E. 522, aff. 53 N. J. E. 695. We quote from 52 N. J. E. at page 528.

"In all transactions between persons occupying relations, whether legal, natural or conventional in their origin, in which confidence is naturally inspired, is presumed, or in fact reasonably exists, **the burden of proof is thrown upon the person in whom the confidence is reposed and who has acquired an advantage, to show affirmatively, not only that no deception was practiced therein, no undue influence used, and that all was fair, open and voluntary, but that it was well understood."**

That this rule applies whether the gifts were improvident or not and even though independent advice was not required, was clearly held by the Court of Errors and Appeals in the case of Baur vs. Cron, 71 N. J. E. 743, although the facts were not nearly as strong in that case, as to the relation of trust and confidence, as the case at bar. We quote from the opinion at page 744:

"His story is this: That in March, as his mother died on the 11th of May following, she, being then ill, gave him this bond and mortgage; in other words, made him a present of it. That he took possession of the bond and mort-

gage, and had since held it in possession. Mr. Wilson, an attorney, was on the 16th day of April, preceding her death in May, present to obtain the material for drafting a will for Mrs. Cron, and he testifies that during a conversation on that occasion she told him that she had given this bond and mortgage to her son Louis; that he inquired how she had made the transfer, and finding that it was only by delivery, he advised her that she would have to make a formal assignment of it, which he says was afterwards carried out. It appears in the case that the only persons in the house taking care of Mrs. Cron during her last illness were her son, the donee, and a Mrs. Reddinger, who was employed as a nurse; that the care and attention which she received during the latter days of her life came entirely from these two persons. Under this condition of affairs it seems to me that the burden of maintaining this gift is cast upon the party claiming it, and that this conclusion is sustained by the opinion written in Slack v. Rees, 66 N. J. Eq. (21 Dick.) 447, 448, by the chief justice, in a case determined by the court of errors and appeals of this state."

Again at page 748:

"But upon these facts we think the **complainant is entitled to a decree, not upon the ground that the donor of the mortgage in question was without independent advice,** at the time it is alleged she gave it to her son, the defendant, or at the time she made the formal assignment thereof to him, but because we think the facts established by the proof raise a presumption of undue influence on the part of the defendant in procuring the alleged gift, and that, because of the presumption, **the burden was cast upon**

the defendant to show, by clear, convincing and satisfactory evidence, that the gift of the mortgage was the voluntary and intelligent act of the donor. Coffey v. Sullivan, 63 N. J. Eq. (18 Dick.) 296, 302; 20 Cyc. 1219.

"In this respect he had failed to carry this burden of proof, and therefore we think the decree below was right, and that the case is governed in its decision by the opinion of this court in Haydock v. Haydock, 34 N. J. Eq. (7 Stew.) 570, rather than by that of Slack v. Rees, 66 N. J. Eq. (21 Dick.) 447, upon which the learned vice-chancellor who advised the decree below seems to have put it."

See also:

Drake vs. Mann, 81 N. J. E. 201.
Coffey vs. Sullivan, 63 N. J. E. 296 at p. 302.
Thorp vs. Smith, 63 N. J. E. 70, aff. 65 Id. 400.
In re Fulper, 99 N. J. E. 293.
Mulock vs. Mulock, 32 N. J. E. 348.
Hunt vs. Naylor, 84 N. J. E. 646.
Siebold vs. Zieboldt, 93 N. J. E. 327.

In the very recent case of Wright v. Sanger, 137 Atl. 657 (N. J. Ch.) above referred to, the Court held as follows:

"The evidence to substantiate the defendant's claim should be so cogent as to leave no doubt in the mind of an unbiased person. 28 C. J. 681, para. 86 (5) . . . . A gift first asserted after the death of a donor, as in this case, must be regarded with suspicion, and the rule of law requiring gifts to be established by clear and convincing evidence, applicable in such cases, is particularly applicable in this case, where a confidential relation existed between the decedent and the defendant. 28 C. J. 681, para. 86 (5).

See, also, In re O'Connell, 33 App. Div. 483, 53 N. Y. S. 748.

"The naked and uncorroborated testimony of the defendant as to the alleged gift (the testimony of Mr. Charles Lighthipe varying as it does from the testimony of the defendant in essential particulars, and refuting her testimony in part, thus minimizing the import thereof), is insufficient to sustain the defendant's claim against the estate of the decedent. Berg v. Baldwin, 84 N. J. Eq. 90, 92 A. 90; Taylor on Evidence, para. 965; Heyer v. Sullivan, 88 N. J. Eq. 165, 102 A. 248."

It is submitted that regardless of whether or not these gifts were improvident, they should be set aside because the donee has not sustained the burden of proof of showing by clear, convincing and satisfactory evidence that they were fair, voluntary, open, aboveboard, free from concealment and understood by the decedent.

POINT No. 6.

KATHERINE N. STRYKER WILL HAVE BEEN AMPLY COMPENSATED FOR ALL OF THE SERVICES RENDERED BY HER TO STEWARD K. HEITSMAN.

This will serve to answer Point No. 9 of appellant's brief insofar as we have not already done so.

At the outset, counsel made a violent attack on these four defendants stating that Katherine N. Stryker was "hailed into Court by these grasping relatives of Steward K. Heitsman and accused by the pleadings of being a humbug, a fraud, a liar and a cheat." We know not the cause of such warmth of language on the part of counsel and merely assert in reply, that nowhere in the pleadings or otherwise,

is Miss Stryker so characterized, and that neither these four defendants nor the executor is in the slightest degree interested in making any personal attack on Miss Stryker, and we certainly have not done so anywhere in our brief.

Then in the same Point counsel for Katherine N. Stryker make a very strong appeal for the sympathy of this Court on behalf of their client. We submit that the case is not to be decided according to sympathy any more than any other case, but rather on the principles of law and justice, and we have no doubt whatever that such principles will guide the Court exclusively in the determination of the issues raised in this case.

Counsel also expatiates at great length on the faithful services rendered to Steward K. Heitsman by Katherine N. Stryker, and on the fact that she was very good to him, and did a great deal for him. None of this, however, is disputed by these defendants or the executor; on the contrary, they freely admitted this at the hearing.

And, with respect to these services, counsel fail entirely to take into consideration the fact that Katherine N. Stryker in thus caring for the decedent in his failing years, was merely in some measure, returning to him what he had done for her through all the years of her childhood and young womanhood, from the time that she was brought to his household at the tender age of eight, as an orphan, along with her brother, and taken in and raised, and supported, and educated by Steward K. Heitsman and his wife, although she was no blood relation to the former at all.

During the lifetime of her brother Steven (who died when he was in college) and during the thirteen years that elapsed from the time that Katherine came there until she was twenty-one, Steward was a virtual

father to these two orphans. And after she became twenty-one, Katherine remained there in the household, making her home there, and so far as the evidence shows, did not pay any board or perform any unusual service in the household, until 1916, when Mrs. Keitsman died, at which time Katherine was about thirty-one. **This made a period of about twenty-three years altogether that she had enjoyed the support and the comfort and help and love of Steward K. Heitsman, as a father, without making any specific return therefor so far as the evidence shows.**

There is no contradiction of the abundant testimony in the case that Steward K. Heitsman was good to Katherine, not only until she became thirty-one years of age, but on until the time of his death. She received her board and clothes and incidental expenses, and was able to take some trips, and entertain, and apparently did not want for anything. In addition to this, she received the board of B. Frank Heitsman of $5.00 per week (p. 104, ll. 12-18), and the rent of Louella Silkman of $7.50 per month (p. 154, ll. 26-30). She also received gifts from time to time from Steward K. Heitsman, among which were Liberty Bonds of $200.00 (p. 92, ll. 8-12), a legacy of about $300.00 (p. 185, ll. 1-10 and p. 195, ll. 10-20), and also a check of $100.00, Check No. 324 (p. 315, ll. 34-35).

And furthermore under the will and codicil, even if these transfers were set aside, she would get the following property, (considering the gross amount of the estate):

40 shares of Phillipsburg National Bank Stock at $185	$ 7,400.00
48 shares of People's Water Company Stock at $19.50	936.00
1-7 of $30,000 in Liberty Bonds	4,285.00

Household goods 500.00

Total $13,121.00

If there is added to this, the one-seventh share of the Liberty Bonds, which B. Frank Heitsman would be entitled to under the will, which he says he wants Katherine to have, her share would total $17,406. Then there is to be added the sum of $7,500. allowed by the Vice Chancellor for her services,, which would make the whole amount $24,906 (gross), or $2,490. per year for services, besides her board, clothes, incidental expenses, gifts, and $27.50 per month for the board and rent of B. Frank Heitsman and Louella Silkman, together. Certainly she would thereby be well paid for her services even if they are to be put on a money basis. On the other hand, if she gets the entire $30,000 worth of Liberty Bonds, her share would amount to approximately $38,836.00, making no allowance for debts, which would be $3,883.00 per year for her services besides all the other items above mentioned. **And this would be in face of the fact that in 1916 when she started to keep house, she was at that time only making $450.00 a year at teaching, and even had she continued, in 1925, she would only have made $1,-300.00 a year at teaching, out of which, of course, she would have had to pay for her board, clothes and other incidental expenses.**

We fail to see how counsel can logically argue now that Miss Stryker is entitled to more than $7,500. for her services, since they agreed in open Court, before the Vice Chancellor, upon the figure of $7,500, to compensate Miss Stryker for her services (p. 50, l. 24—p. 51, l. 3). Moreover, no appeal is taken from the allowance of $7,500.

We desire to point out that this amount of $7,500. was agreed to by all parties and certainly evinces a

very generous attitude on the part of the executor and of the four defendants toward Katherine, and a desire on their part to have her well compensated for her years of service, and to be fair to her.

POINT No. 7.

THE AMENDMENT OF THE BILL WAS PROPER.

This is Point No. 4 in appellant's brief and in it counsel argue that the amendment made to the bill after the hearing was improper.

This amendment is found at page 42, l. 1 to page 45, l. 13. The amendment was made following the suggestion of the Vice Chancellor in his memorandum, as follows page 47, ll. 8-25:

> "A perusal of the bill shows that its prayer is for the 'advice and direction' of the Court as to whether the said bonds belong to the niece or to testator's estate. The appropriate and speedy way to determine that question would be by suit at law in replevin or trover. However the suit has been completely tried, and at great length, by all parties, without any objection to the jurisdiction, on the theory of a determination as to whether there had been a valid gift of the bonds **inter vivos.** The bill can doubtless be sustained as a bill in the alternative, to compel an accounting or restoration of property by an agent or fiduciary (if there was no completed gift; or to set aside the gift (if made) as improvident or the result of fraud or undue influence. The pleadings should be appropriately amended before decree."

We contend that the amendment was entirely proper for the following reasons:

First. It did not contain any allegation that had

not already been set up in the Answer and Counter-claim of the four defendants. The allegations of the first section of the amendment (p. 42) are found in paragraph 18 of the Answer, (p. 25), and paragraph 8 of the Counter-claim (p. 28). The allegations of paragraph 18 of the Amendment (p. 43) are found in paragraph 18 of the Answer (p. 25), and paragraphs 3 and 4 of the Counter-claim (p. 27). Those of paragraph 19 of the Amendment (p. 43) are found in paragraph 18 of the Answer, (p. 25), and paragraphs 3 and 4 of the Counterclaim (p. 27). The allegations of paragraph 20 of the amendment (p. 43) are found in paragraph 18 of the Answer (p. 25), and paragraph 4 of the Counter-claim (p. 27). Those of paragraph 21 of the amendment (p. 43) are found in paragrph 18 of the Answer (p. 25), and paragraphs 7 and 8 of the Counter-claim (p 28). The prayer for relief in the amendment (p. 44) was in substance the same as that in the Counter-claim (p. 29).

Counsel does not allege surprise in any way and could not do so, for all of these issues were already in the case. Nor does counsel deny that the case has been fully, fairly and completely tried on its merits.

Counsel argued further that the bill should not have been amended because there was nothing in the Vice-Chancellor's memorandum to the effect that he found any undue influence, fraud or improvidency; but while this is so, the reason for it is obvious, namely, that he found that the evidence failed to show a presently effective gift and it was therefore unnecessary to decide these other issues. **Moreover he did suggest the very amendments that were made.**

Second. There is nothing in the record to show that at the time that the amendment was made, any exception or objection thereto was made by counsel

for the appellant, so we fail to see how they can now take advantage of this matter on appeal. On the contrary, the order shows that counsel consented to the form thereof, at least (p. 45, ll. 3-13).

Third. The power of the Court of Chancery under the modern practice to grant amendments, and in fact, even of the Court of Errors and Appeals, has been settled by a long line of cases.

The rule was laid down in the case of Seymour v. Long Dock Co., 17 N. J. E., 169 at page 170 as follows:

> "Where, upon the final hearing, or even after appeal, it appear clearly from the evidence, that the complainant has a case which entitles him to relief, but which, by reason of some defect or omission in the charges or allegations of the bill, is not brought fairly within the issue, he will be permitted to adapt the allegations of the bill to the case as proven."

The power of even the Court of Errors and Appeals to amend the pleadings was well stated in the case of Levenson Wrecking Co. v. Gatti-McQuade Co., 93 N. J. L. 184 at page 186 as follows:

> "Where, as here, the real question in controversy has been fully and fairly tried, though not precisely pleaded, and the complaining party has not been surprised or injured, this court on appeal has the power to amend the pleadings in order to support the judgment, and will in such case, in the interest of justice, exercise the power. Chess v. Vockroth, 75 N. J. L. 665; Van Houten v. Van Houten, 89 Id. 301."

CONCLUSION.

In conclusion, we desire to say that where a person who is old and infirm, as was the decedent here,

makes a transfer of property to one, between whom and the donee there exists a relationship of trust and confidence, as in the instant case, our courts have wisely thrown up around such person, certain safeguards already referred to at length. The law requires that this protection must always be afforded to the donor under these circumstances, without exception and regardless of the fact that where it results in the transfer being set aside, the donee is deprived of the property thus acquired. Such is the law and we respectfully submit that it should be applied to the case at bar, and that as a consequence thereof, the transfers should be set aside.

For the above reasons, it is respectfully submitted that the decree of the Court of Chancery should be affirmed.

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Solicitors of Alma Hildebrant, Isabella Kirkpatrick, Anna Kunsman and Dora Heitsman, Defendants-Respondents.

W. Reading Gebhardt
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