

## INDEX.

|  | PAGE |
|--|------|
| Bill of Complaint .....  | 1    |
| Last Will and Testament of Helen Ibach ....                              | 9    |
| Answer of Defendants, Robert K. Robertson<br>and August Westbrock .....  | 15   |
| Order for Amendment .....  | 19   |
| Process .....  | 20   |
| Answer of Paterson General Hospital Association .....                    | 21   |
| Answer of Defendant, Laura Pettit .....                                  | 22   |
| Answer of Paterson Orphan Asylum Association .....                       | 24   |
| Answer of Defendant Evangelical Lutheran<br>Bethlehem Congregation ..... | 26   |
| Answers filed for other Defendants by Mackay<br>and Mackay.. ..          | 28   |
| Decree Pro Con .....   | 29   |
| Case .....   | 29   |

### WITNESSES:

|                          |              |    |
|--------------------------|--------------|----|
| Dr. Harry Howard Pettit, | Direct ..... | 30 |
|                          | Cross .....  | 36 |
| William L. Vroom,        | Direct ..... | 36 |
|                          | Cross .....  | 37 |
| Emily Hill,              | Direct ..... | 37 |
|                          | Cross .....  | 41 |
| Benjamin Van Nortwick,   | Direct ..... | 51 |
|                          | Cross .....  | 52 |
| Mrs. Katherine Muirhead, | Direct ..... | 56 |

|   | PAGE |
|---|------|
| Mr. J. Blauvelt Hopper,                                       |      |
| Direct .....  | 57   |
| Cross .....   | 59   |
| Mrs. Anila Griffith,  |      |
| Direct .....  | 60   |
| Mrs. Josephine Gatgen,  |      |
| Direct .....  | 63   |
| Mrs. Marie A. Scheelje,                                       |      |
| Direct .....  | 64   |
| Mrs. Florence K. Wittemore,                                   |      |
| Direct .....  | 66   |
| Cross .....   | 67   |
| Mrs. Amanda Kroder,   |      |
| Direct .....  | 67   |
| Mrs. Lillian A. Winans,                                       |      |
| Direct .....  | 69   |
| Miss Anna T. Mihn,  |      |
| Direct .....  | 70   |
| Mrs. Anna V. Dusenberry,                                      |      |
| Direct .....  | 71   |
| Helen Brainard Smith,   |      |
| Direct .....  | 78   |
| Cross .....   | 79   |
| Final Decree .....  | 80   |
| Memorandum Opinion .....                                      | 81   |
| Notice of Appeal .....  | 84   |
| Petition of Appeal .....                                      | 85   |
| Acknowledgment of Service of Copy of Petition of Appeal ..... | 87   |
| Proof of Service of Petition of Appeal .....                  | 87   |
| Answer of Laura Pettit to Petition of Appeal .....            | 88   |
| Answer of St. Joseph's Hospital to Petition of Appeal .....   | 89   |
| Answer to Petition of Appeal of Other Respondents .....       | 90   |

## EXHIBITS.

|  | Offered<br>Page | Printed<br>Page |
|--|-----------------|-----------------|
| C-1—Announcement of Complainant's Marriage .....             | 63              | 91              |
| C-2A—Complainant's Grammar School Diploma .....              | 72              | 91              |
| C-2B—Watch Engraved "A.V.I." ....                            | 72              | 98              |
| C-3—Pinafore Program .....                                   | 73              | 92              |
| C-4—Certificate of Complainant's Marriage .....              | 75              | 93              |
| C-5—Triple Framed Photographs...                             | 75              | 98              |
| C-6—Snap Shot of Complainant and Helen Ibach .....           | 75              | 98              |
| C-7—Photograph of Complainant and Helen Ibach .....          | 76              | 98              |
| C-8—Program—Reformed Church Entertainment .....              | 76              | 93              |
| C-9—Photograph — Complainant, Hugo and Helen Ibach ....      | 76              | 98              |
| C-10—Program — Musical Entertainment .....                   | 76              | 94              |
| C-11—Program — Musical Entertainment .....                   | 77              | 95              |
| C-12—Card sent with Flowers, by Mrs. Ibach .....             | 77              | 96              |
| C-13A—Program .....  | 77              | 97              |
| C-13B—Ridgewood Herald, Printed Article as to Marriage ..... | 79              | 98              |
| Stipulation as to Exhibits .....                             |                 | 98              |

Index

|     |                                     |
|-----|-------------------------------------|
| 1   | Introduction                        |
| 2   | 1. The History of the Church        |
| 3   | 2. The Doctrine of the Church       |
| 4   | 3. The Ministry of the Church       |
| 5   | 4. The Sacraments of the Church     |
| 6   | 5. The Church and the World         |
| 7   | 6. The Church and the Future        |
| 8   | 7. The Church and the State         |
| 9   | 8. The Church and the Society       |
| 10  | 9. The Church and the Culture       |
| 11  | 10. The Church and the Mission      |
| 12  | 11. The Church and the Unity        |
| 13  | 12. The Church and the Peace        |
| 14  | 13. The Church and the Justice      |
| 15  | 14. The Church and the Love         |
| 16  | 15. The Church and the Hope         |
| 17  | 16. The Church and the Faith        |
| 18  | 17. The Church and the Charity      |
| 19  | 18. The Church and the Wisdom       |
| 20  | 19. The Church and the Power        |
| 21  | 20. The Church and the Glory        |
| 22  | 21. The Church and the Kingdom      |
| 23  | 22. The Church and the Eternal      |
| 24  | 23. The Church and the Infinite     |
| 25  | 24. The Church and the Divine       |
| 26  | 25. The Church and the Holy         |
| 27  | 26. The Church and the Blessed      |
| 28  | 27. The Church and the Glorious     |
| 29  | 28. The Church and the Victorious   |
| 30  | 29. The Church and the Triumphant   |
| 31  | 30. The Church and the Everlasting  |
| 32  | 31. The Church and the Immortal     |
| 33  | 32. The Church and the Eternal      |
| 34  | 33. The Church and the Infinite     |
| 35  | 34. The Church and the Divine       |
| 36  | 35. The Church and the Holy         |
| 37  | 36. The Church and the Blessed      |
| 38  | 37. The Church and the Glorious     |
| 39  | 38. The Church and the Victorious   |
| 40  | 39. The Church and the Triumphant   |
| 41  | 40. The Church and the Everlasting  |
| 42  | 41. The Church and the Immortal     |
| 43  | 42. The Church and the Eternal      |
| 44  | 43. The Church and the Infinite     |
| 45  | 44. The Church and the Divine       |
| 46  | 45. The Church and the Holy         |
| 47  | 46. The Church and the Blessed      |
| 48  | 47. The Church and the Glorious     |
| 49  | 48. The Church and the Victorious   |
| 50  | 49. The Church and the Triumphant   |
| 51  | 50. The Church and the Everlasting  |
| 52  | 51. The Church and the Immortal     |
| 53  | 52. The Church and the Eternal      |
| 54  | 53. The Church and the Infinite     |
| 55  | 54. The Church and the Divine       |
| 56  | 55. The Church and the Holy         |
| 57  | 56. The Church and the Blessed      |
| 58  | 57. The Church and the Glorious     |
| 59  | 58. The Church and the Victorious   |
| 60  | 59. The Church and the Triumphant   |
| 61  | 60. The Church and the Everlasting  |
| 62  | 61. The Church and the Immortal     |
| 63  | 62. The Church and the Eternal      |
| 64  | 63. The Church and the Infinite     |
| 65  | 64. The Church and the Divine       |
| 66  | 65. The Church and the Holy         |
| 67  | 66. The Church and the Blessed      |
| 68  | 67. The Church and the Glorious     |
| 69  | 68. The Church and the Victorious   |
| 70  | 69. The Church and the Triumphant   |
| 71  | 70. The Church and the Everlasting  |
| 72  | 71. The Church and the Immortal     |
| 73  | 72. The Church and the Eternal      |
| 74  | 73. The Church and the Infinite     |
| 75  | 74. The Church and the Divine       |
| 76  | 75. The Church and the Holy         |
| 77  | 76. The Church and the Blessed      |
| 78  | 77. The Church and the Glorious     |
| 79  | 78. The Church and the Victorious   |
| 80  | 79. The Church and the Triumphant   |
| 81  | 80. The Church and the Everlasting  |
| 82  | 81. The Church and the Immortal     |
| 83  | 82. The Church and the Eternal      |
| 84  | 83. The Church and the Infinite     |
| 85  | 84. The Church and the Divine       |
| 86  | 85. The Church and the Holy         |
| 87  | 86. The Church and the Blessed      |
| 88  | 87. The Church and the Glorious     |
| 89  | 88. The Church and the Victorious   |
| 90  | 89. The Church and the Triumphant   |
| 91  | 90. The Church and the Everlasting  |
| 92  | 91. The Church and the Immortal     |
| 93  | 92. The Church and the Eternal      |
| 94  | 93. The Church and the Infinite     |
| 95  | 94. The Church and the Divine       |
| 96  | 95. The Church and the Holy         |
| 97  | 96. The Church and the Blessed      |
| 98  | 97. The Church and the Glorious     |
| 99  | 98. The Church and the Victorious   |
| 100 | 99. The Church and the Triumphant   |
| 101 | 100. The Church and the Everlasting |

## Bill of Complaint.

(Filed, Jan. 7, 1924.)

### IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE EDWIN ROBERT WALKER,  
CHANCELLOR OF THE STATE OF NEW JERSEY:

10

The complainant, Anna V. Ibach Dusenberry, nee Schneppendahl, residing at No. 221 Mount Hope Place, New York City, respectfully shows:

1. That complainant was born in New York City, New York, on the 27th day of January, 1889.

2. That complainant's mother, Marie Schneppendahl, died at New York City in the State of New York, on the 7th day of June, 1891.

20

3. That complainant's father, Otto Schneppendahl, died at Hazelton, Luserne County, Pennsylvania, on the 27th day of September, 1897.

4. That Helen Ibach, nee Buëddemann, the wife of Hugo Ibach, was a daughter of the first marriage of complainant's father's sister, Ide Schneppendahl Buëddemann Inderlied, and a cousin of the complainant.

30

5. That Hugo Ibach and Helen Ibach, his wife, never had any child or children born of their marriage.

6. That on various occasions in the years 1892 to 1897 inclusive, and prior to the death of complainant's father, the said Hugo Ibach and Helen Ibach, his wife, repeatedly requested complainant's father to permit them to take complainant to live

40

## BILL OF COMPLAINT.

with them as their child, offering to legally adopt her, and to provide for her and leave her their estate upon the death of the survivor of them; but complainant's father, being unwilling to part with the love and affection of complainant, his child, always refused, except as hereinafter mentioned, to  
10 comply with their request.

7. That finally at a time when complainant was a minor of tender years, and when complainant's father was mortally ill and shortly before his death as aforesaid, the said Hugo Ibach and Helen Ibach, his wife, having renewed their requests as aforesaid, complainant's father, having three other children and having full confidence in the said  
20 Hugo Ibach and Helen Ibach, his wife, mutually agreed with the said Hugo Ibach and Helen Ibach, his wife, to surrender the care, custody and control of complainant to the said Hugo Ibach and Helen Ibach, his wife, in consideration of the promises of said Hugo Ibach and Helen Ibach, his wife, to give to complainant full parental care and affection, to legally adopt complainant, and to take her into their home, to treat her in all respects as their own child, having their fullest affection—to care for her, rear, support and educate her, and  
30 upon the death of the survivor of them, to leave to complainant all the property of which they or the survivor of them should die possessed, all of which the said Hugo Ibach and Helen Ibach, his wife, then and there promised and agreed to do.

8. That pursuant to said agreement, complainant in or about September, 1897, being then about eight years of age, went to live at the home of said Hugo Ibach and Helen Ibach, his wife, at Hohokus (then  
40

## BILL OF COMPLAINT.

known as "Undercliff") in the County of Bergen, in the State of New Jersey, and continued without interruption to live with said Hugo Ibach and Helen Ibach, his wife, as their child, until complainant's marriage to her husband, D. Russell Dusenberry, on October 19th, 1920.

10

9. That during all the time complainant lived in the home of the said Hugo Ibach and Helen Ibach, his wife, she conducted herself as an affectionate and obedient child and received in return the loving care and attention of parents for a child.

10. That from the time complainant so entered the home of the said Hugo Ibach and Helen Ibach, his wife, and as soon as she was able to do so, and continuing without interruption until her marriage, and in constantly increasing manner as she grew older and more able, complainant assisted with the work in the home of the said Hugo Ibach and Helen Ibach, his wife, and served them in every way as a dutiful child and daughter.

20

11. That from the time complainant entered the home of said Hugo Ibach and Helen Ibach, his wife, as aforesaid, at their request and by their direction, complainant took the name of Anna V. Ibach, and the position of their daughter, in all respects as though she had been a natural born child of said Hugo Ibach and Helen Ibach; in which name and relationship complainant was entered and graduated from the Grammar Grades of the public school and attended High School, was always introduced by the said Hugo Ibach and Helen Ibach, his wife, to their relatives and friends, partook in various public musicales, etc., in which complain-

30

40

## BILL OF COMPLAINT.

ant's name always appeared in the programmes and public prints as Anna V. Ibach; and was registered by them as their daughter at hotels while on vacation trips together, and in which name and relationship said Helen Ibach, after the decease of said Hugo Ibach, publicly announced in the newspapers circulating in said vicinity and by a formal wedding announcement, complainant's engagement and marriage to her said husband.

12. That at the request and by the direction of said Hugo Ibach and Helen Ibach, his wife, complainant always called them "father and "mother" respectively, and was required to address all the relatives according to their kinship to the complainant as if she had been, in fact, the natural born child of said Hugo Ibach and Helen Ibach, his wife, and at their request and direction even addressed and referred to her own sisters as her cousins.

13. That the said Hugo Ibach, in the presence of his said wife, Helen Ibach, continually assured complainant from the time she entered his household, that she was in all respects his daughter and child and that in the event of his death she need not worry as she would always be provided for; and at his request, relying upon said promises, complainant left High School at the request of said Hugo Ibach before completing her studies, which would have properly equipped complainant for earning her own living if such had been necessary, in order more fully to devote her time and services to the care, comfort and assistance in every way possible of the said Hugo Ibach and Helen Ibach, his wife.

## BILL OF COMPLAINT.

14. That Hugo Ibach died on May 16, 1919, and shortly before his death, he called complainant to her bedside and again renewed his promises to complainant, more particularly stating that he knew he was about to die, and that he desired to thank complainant for all she had done, that he was grateful for the good girl she had been and for the happiness she had brought to his home, that he always had had her interest at heart, spoke of the possibility of her marriage and gave her his blessing, and finally said that she would never have to worry as she would always be provided for. 10

15. That after the death of the said Hugo Ibach as aforesaid, his last will and testament dated January 20th, 1892, was probated in the Surrogate's Court of the County of Bergen in the State of New Jersey on the 6th day of June, 1919, in and by which the said Hugo Ibach left his entire estate to his widow, the said Helen Ibach, nominating her as his executrix. 20

16. That the said estate of Hugo Ibach consisted of approximately \$100,000 in personalty and the family residence in the Village of Ridgewood in the County of Bergen in the State of New Jersey, the title to which realty was in the name of the said Helen Ibach. 30

17. That complainant believes, as she always has, and still does, that complainant was in fact lawfully the child of the said Hugo Ibach and Helen Ibach, his wife, and that the said Hugo Ibach intended fully to perform the said agreement as aforesaid, and that the complainant should receive, after his death and the death of the said 40

## BILL OF COMPLAINT.

Helen Ibach, his wife, all of their property, and that the said Hugo Ibach believed and intended that his said wife, Helen Ibach, by her will or otherwise, would give or leave said property to complainant.

- 10 18. That thereafter, and on or about the 25th day of September, 1923, the said Helen Ibach died, leaving a last will and testament dated June 24, 1922, and a codicil thereto dated September 13, 1923, both of which were probated in said Surrogate's Court on the 19th day of October, 1923, copies of which are hereunto annexed and made a part hereof, wherein the said Helen Ibach bequeathed to complainant the sum of \$5,000 only and to others, principally religious and charitable institutions, the rest of her estate, amounting approximately to the sum of \$100,000 in personalty, all or nearly all of which had come to her by the will of her husband, Hugo Ibach, as aforesaid, and certain real property which she had acquired after his death as hereinafter mentioned.
- 20

19. That after the death of the said Hugo Ibach the said Helen Ibach disposed of the said family residence mentioned in paragraph 17 and purchased in place thereof the following real property of which she died seized as aforesaid, to wit:
- 30

ALL that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Village of Ridgewood in the County of Bergen and State of New Jersey: BEGINNING at a point on the easterly line of Walnut Street distant 325 feet northerly from its intersection with the northerly line of Franklin Avenue

## BILL OF COMPLAINT.

and running thence (1) Easterly and parallel with Franklin Avenue, 185 feet; thence (2) Northerly and parallel with Walnut Street, 65 feet more or less to the line of lands of Harriet Louise Mills; thence (3) Westerly along said lands of said Harriet Louise Mills, 185 feet to the easterly line of Walnut Street; thence (4) Southerly along said line of Walnut Street, 65 feet more or less to the point or place of beginning. Together with all the right, title and interest of the party of the first part of, in and to the land lying in front of and immediately adjacent to said premises to the center line of Walnut Street. 10

20. Complainant is informed and verily believes that said Helen Ibach purchased, after the death of the said Hugo Ibach, and with part of the estate left by him to her as aforesaid, certain real property in the State of Florida, the location of which is unknown to complainant. 20

21. That Robert A. Robertson, residing at Paterson, in the State of New Jersey, and August Westbrook, residing at Midland Park, in the State of New Jersey, were named as executors in the said last will and testament of Helen Ibach, and have duly qualified and are now acting as such executors. 30

22. That the estate of the said Helen Ibach is now in the custody of the said executors and in the process of administration and in the ordinary course will soon be distributed in accordance with the terms of the said last will and testament of Helen Ibach.

23. That the complainant and her said father have fully performed their agreement as aforesaid 40

## BILL OF COMPLAINT.

on their part, by yielding and surrendering the possession and control of complainant to the said Hugo Ibach and Helen Ibach, his wife, and by the complainant yielding to the said Hugo Ibach and Helen Ibach, his wife, the obedience, services, relationship and devotion of a child for over 23 years; that the said Hugo Ibach fully expected and intended complainant should, after his death and the death of his wife, the said Helen Ibach, receive their property and that the said will of Helen Ibach is a breach of said agreement as aforesaid, and is a fraud upon the complainant and said Hugo Ibach.

24. The complainant is without adequate remedy in the courts of law, and therefore prays:

20 a. That a writ of subpoena may issue commanding the defendants to answer this bill of complaint, and that in default thereof such decree may be made against them as the Chancellor shall think equitable and just;

b. That the defendants, Robert K. Roberson and August Westbrook as executors of Helen Ibach, deceased, may answer this bill of complaint without oath, and each statement therein made;

30 c. That specific performance of said agreement as aforesaid may be decreed;

d. That complainant may be decreed to have the same right to the property and estate of the said Hugo Ibach and Helen Ibach, his wife, as though she had been legally adopted by them and said agreement had been by them fully performed;

e. That the complainant may be decreed to be the

## BILL OF COMPLAINT.

owner of and entitled to all the property of which said Hugo Ibach and Helen Ibach, his wife, died seized and possessed; and to hold said property free from any claims or rights of the defendants, Robert K. Robertson and August Westbrook, as executors of Helen Ibach, deceased, or of any one claiming said property or any part thereof through them as such executors, by reason of said will of Helen Ibach, deceased;

10

f. That the defendants, Robert K. Robertson and August Westbrook, executors as aforesaid, be restrained by this Honorable Court from distributing said estate or any part thereof or doing any act or suffering anything to be done with respect to said estate other than conserving the same and doing such acts as may be necessary thereto, and be directed to keep the said estate of Helen Ibach in their custody subject to the further direction of this Honorable Court;

20

g. That said defendants may be decreed to account to complainant for said property and to transfer and deliver the same to her;

h. That complainant may have such other and further relief as she may be entitled to in this Honorable Court.

30

MORRISON, LLOYD & MORRISON,  
Solicitors for and of Counsel with Complainant.

---

**In the Name of God, Amen.**

I, HELEN IBACH, of the Village of Ridgewood, in the County of Bergen and State of New Jersey

40

## LAST WILL AND TESTAMENT.

being of sound and disposing mind, memory and understanding, do make and publish this my last will and testament as follows:

10 FIRST.—I direct the payment of all my debts and funeral expenses, as soon as can conveniently be done after my decease.

SECOND.—I give and bequeath the sum of Five Thousand Dollars to Anna Ibach, daughter of John Ibach.

THIRD.—I give and bequeath the sum of Five Thousand Dollars to Pauline Ibach, daughter of John Ibach.

20 FOURTH.—I give and bequeath the sum of Two Thousand Five Hundred Dollars to Ella Ibach, widow of Ernest Ibach.

FIFTH.—I give Anna Dusenberry, the sum of Five Thousand Dollars.

SIXTH.—I give and bequeath the sum of One Thousand Dollars to my brother Emil Bueddeman.

SEVENTH.—I give and bequeath the sum of One Thousand Dollars to Julia Kattenstroth.

30 EIGHTH.—I give and bequeath the sum of Five Hundred Dollars to Laura Pettit.

NINTH.—I give and bequeath the sum of Five Hundred Dollars to Elizabeth Richter.

TENTH.—I give and bequeath the sum of One Thousand Dollars to my aunt Alaine Groeschel.

ELEVENTH.—I give and bequeath the sum of One Thousand Dollars to Reverend Frederick A. Ottman.

## LAST WILL AND TESTAMENT.

TWELFTH.—I give and bequeath the sum of One Thousand Dollars to the Old Ladies Home, at Hackensack.

THIRTEENTH.—I give and bequeath the sum of Two Thousand Five Hundred Dollars to the Lutheran Orphan Asylum at College Point, Long Island. 10

FOURTEENTH.—I give and bequeath the sum of Two Thousand Dollars to the Lutheran Orphan Asylum, at Roxbury, Massachusetts.

FIFTEENTH.—I give and bequeath the sum of Two Thousand Five Hundred Dollars to the Lutheran Old Peoples Home of East New York.

SIXTEENTH.—I give and bequeath the sum of Two Thousand Dollars to the Evangelical Lutheran Church, Missouri Synod, Missouri, for the benefit of the Missionary Fund. 20

SEVENTEENTH.—I give and bequeath the sum of Two Thousand Dollars to Concordia College of New York.

EIGHTEENTH.—I give and bequeath the sum of Two Thousand Dollars to Concordia College of St. Louis, Missouri.

NINETEENTH.—I give and bequeath the sum of Five Thousand Dollars to the Lutheran Lawmens League of the Evangelical Lutheran Synod of Missouri. 30

TWENTIETH.—I give and bequeath the sum of Two Thousand Dollars to the Dutch Reformed Church of Ridgewood.

TWENTY-FIRST.—I give and bequeath the sum of Ten Thousand Dollars to the Lutheran Church of 40

## LAST WILL AND TESTAMENT.

Ridgewood to be applied toward the annual expenditures of the church.

10 TWENTY-SECOND.—I give and bequeath the sum of Ten Thousand Dollars to the Ridgewood Fidelity Title Guarantee Company in trust, to invest the same and to pay the interest thereof to my sister Antonia Bueddeman for and during the term of her natural life, and immediately thereafter to pay the principal and any accumulated interest thereon to the Paterson General Hospital, St. Joseph's Hospital of Paterson, and the Paterson Orphan Asylum share and share alike.

20 TWENTY-THIRD.—I give and bequeath to Helen Jessup, daughter of Frank Jessup, my diamond bar pin.

20 TWENTY-FOURTH.—I give and bequeath to Helen Atherton Schiller, daughter of Mary Atherton, my diamond broach.

TWENTY-FIFTH.—I give and bequeath to Helen Ware, daughter of Martin W. Ware of New York, my diamond bracelet.

30 TWENTY-SIXTH.—I give and bequeath to Helen Pettit, daughter of Harry H. Pettit, my diamond lavalier.

TWENTY-SEVENTH.—I give and bequeath to Helen Robertson, daughter of R. K. Robertson, my gold ring with two diamonds and a pearl.

TWENTY-EIGHTH.—I give and bequeath to Ruth Scheelje daughter of William Scheelje, my diamond wrist watch.

40 TWENTY-NINTH.—I give and bequeath to Gretchen Diesler, my diamond solitaire ring.

## LAST WILL AND TESTAMENT.

THIRTIETH.—I give and bequeath to Cornelius E. Ackerman and Sarah Ackerman, his wife of Ridgewood, my living room furniture, consisting of a sofa and three chairs.

THIRTY-FIRST.—I give and bequeath to Mrs. Robert K. Robertson, the Oriental rug in my living room. 10

THIRTY-SECOND.—I give and bequeath to William Scheelje and Marie Scheelje, his wife, the Oriental rug in my dining room.

THIRTY-THIRD.—I give and bequeath to Harry H. Pettit and Edna Pettit, his wife, the next largest Oriental rug, which is approximately nine feet by eleven feet.

THIRTY-FOURTH.—I give and bequeath to Josie Gatjen, the small Oriental rug in my living room. 20

THIRTY-FIFTH.—I give and bequeath to Amorita Schwartz of Ridgewood, the old rose Oriental rug.

THIRTY-SIXTH.—I give and bequeath to Anna Dusenberry, my victrola and a bed-room suit, to be selected by her.

THIRTY-SEVENTH.—I give and bequeath to Ernest Ibach and Walter Ibach, Jr., all the flat silver marked with the letter "I". 30

THIRTY-EIGHTH.—I give and bequeath all other silver to my sister Antonia Bueddeman.

THIRTY-NINTH.—I give and bequeath all the personal property in my home not above mentioned to my sister, Antonia Bueddeman, and also the sum of One Thousand Dollars.

FORTIETH.—All my remaining personal property 40

## LAST WILL AND TESTAMENT.

of every kind and description, including the moneys derived from the sale of my real estate, I give and bequeath to the Paterson General Hospital, St. Joseph's Hospital of Paterson, and the Paterson Orphan Asylum share and share alike.

- 10 FORTY-FIRST.—I give, bequeath and devise all my real estate to my executors hereinafter named, in trust, to sell the same at public or private sale at such times and upon such terms and in such manner as to *him* shall seem meet.

FORTY-SECOND.—I hereby constitute and appoint Robert K. Robertson and August Wostbrock executors of this my last will and testament.

- 20 IN WITNESS WHEREOF, I have hereunto set my hand and seal this twenty-fourth day of June, Nineteen Hundred and Twenty-two.

HELEN B. IBACH (Seal)

- 30 Signed, sealed, published and declared by the said Helen Ibach, as and for her last will and testament, in the presence of us, who were present at the same time, and who subscribed our names as witnesses in the presence of the testatrix and each other.

ALBERT COMSTOCK.  
ANITA C. GOODMAN.

Ridgewood, N. J.,  
55 Walnut St.,  
September 13, 1923.

- 40 I declare this to be a Codicil to my last will.  
I give to Robert Franklin Dusenberry One Thou-

## LAST WILL AND TESTAMENT.

sand Five Hundred Dollars (\$1,500 00/100) to be so invested as to provide an income for him, the principal to be paid when he becomes of age.

I direct my executors to have my name together with date of birth and death cut on my marker in Valleau Cemetary as soon as convenient after my death. 10

I also instruct my executors to pay the Valleau Cemetary Committee One Hundred Dollars (\$100 00/100) the interest to be used in caring for the shubbery on my burial plot.

(Signed) HELEN B. IBACH.

Witnessed by and in the presence of each other,

JULIA KATTENSTROTH. 20

DAISY BLAUVELT DE MUND.

---

**Answer of the Defendants, Robert K. Robertson and August Wostbrock, Executors of the Estate of Helen Ibach, Deceased.**

(Filed, Feb. 16, 1924.)

These defendants, answering the bill of complaint, say: 30

1. They have no knowledge or information sufficient to form a belief as to the matters alleged in paragraphs one, two and three.

2. They admit paragraphs four and five.

3. They deny paragraphs six, seven and eight.

4. They have no knowledge or information suf- 40

ANSWER OF THE DEFENDANTS, ROBERT K. ROBERTSON AND AUGUST WOSTBROCK, EXECUTORS OF THE ESTATE OF HELEN IBACH, DECEASED.

ficient to form a belief as to the matters alleged in paragraph nine.

5. They deny paragraph ten.

10 6. They have no knowledge or information sufficient to form a belief as to the matters alleged in paragraph eleven.

7. Paragraphs twelve, thirteen and fourteen they deny.

8. They admit paragraphs fifteen and sixteen.

9. They deny paragraph seventeen.

20 10. Answering paragraph eighteen these defendants say that Helen Ibach died September 25th, 1923, leaving a last will and testament dated June 24th, 1922, and a codicil thereto dated September 13th, 1923, both of which were probated in the Surrogate's Court of Bergen County on the 19th day of October, 1923, and that complainant was bequeathed the sum of Five Thousand Dollars under the fifth clause of the will and also was bequeathed the Victrola and bed room suite to be selected by her under the thirty-sixth clause of the will. That part of the property came to the said  
30 Helen Ibach by the will of Hugo Ibach, her husband, and part of the property was her own at the time of Hugo Ibach's death.

40 11. Answering paragraph nineteen these defendants say that Helen Ibach disposed of the residence which was a gift to her and purchased certain property as described in paragraph nineteen of the bill of complaint, and erected thereon a two family house and lived in the upper apartment.

ANSWER OF THE DEFENDANTS, ROBERT K. ROBERTSON AND AUGUST WOSTBROCK, EXECUTORS OF THE ESTATE OF HELEN IBACH, DECEASED.

12. Answering paragraph twenty these defendants say that Helen Ibach purchased, after the death of Hugo Ibach, three lots in Florida for which she paid part by cash, and part by two notes and received a deed for the same. 10

13. They admit paragraph twenty-one.

14. They admit paragraph twenty-two insofar as it alleges that the estate so far as possible is in the custody of the executors and in process of administration and in the ordinary course will soon be disposed of in accordance with the terms of the will.

15. They deny paragraph twenty-three. 20

16. These defendants submit that the rest of the paragraphs in the bill of complaint require no answers.

FIRST SEPARATE DEFENSE:

These defendants will contend that the bill of complaint should be dismissed because of the non-joinder of all of the beneficiaries named in the last will and testament of Helen Ibach, deceased. 30

SECOND SEPARATE DEFENSE:

These defendants will contend that the bill of complaint should be dismissed because any alleged agreement set forth therein is void under the Statute of Frauds of the State of New Jersey in that it is not in writing and is an agreement not to be performed within a year. 40

ANSWER OF THE DEFENDANTS, ROBERT K. ROBERTSON AND AUGUST WOSTBROCK, EXECUTORS OF THE ESTATE OF HELEN IBACH, DECEASED.

THIRD SEPARATE DEFENSE:

10 These defendants will contend that the bill of complaint should be dismissed because the complainant, upon any alleged agreement set forth therein, has an adequate remedy at law and the alleged agreement as set forth in the bill of complaint is such that a court of equity should not take jurisdiction thereof.

FOURTH SEPARATE DEFENSE:

20 These defendants will contend that the bill of complaint should be dismissed because the complainant is guilty of laches.

FIFTH SEPARATE DEFENSE:

30 These defendants will contend that the bill of complaint should be dismissed because the alleged agreement as set forth in the bill of complaint is an attempt to alter, vary and change the terms of a written instrument, namely, the last wills and testaments of Hugo Ibach and Helen Ibach, deceased.

SIXTH SEPARATE DEFENSE:

40 These defendants will contend that the bill of complaint should be dismissed because this Court is without jurisdiction to set aside or collaterally attach the last wills and testaments of Hugo Ibach and Helen Ibach, deceased, which were duly admitted to probate by a court of competent jurisdiction.

ANSWER OF THE DEFENDANTS, ROBERT K. ROBERTSON AND AUGUST WOSTBROCK, EXECUTORS OF THE ESTATE OF HELEN IBACH, DECEASED.

SEVENTH SEPARATE DEFENSE:

These defendants will contend that the bill of complaint should be dismissed because the said bill of complaint and the proofs as filed do not set forth a cause of action against these defendants. 10

These defendants therefor pray that the said bill of complaint may be dismissed and the restraining order issued thereunder vacated with their reasonable costs and charges in their behalf most wrongfully sustained.

MACKAY & MACKAY,  
Solicitors for Defendants.

20

---

**Order for Amendment.**

(Filed, March 5, 1924.)

On motion of Morrison, Lloyd and Morrison, solicitors for the complainant, it is on this 5th day of March, 1924, ORDERED that the complainant's bill be amended by inserting after paragraph 18, a new paragraph as follows: "18-A—That Anna Ibach; Pauline Ibach; Ella Ibach; Emil Buedde- man; Julia Kattenstroth; Laura Pettit; Elizabeth Richter; Alaine Greoschel; Rev. Frederick A. Ott- man; Old Ladies Home of Hackensack, N. J.; Lutheran Orphan Asylum of College Point, Long Island; Lutheran Orphan Asylum of Roxbury, Mass.; Lutheran Old Peoples Home of East New York; Evangelical Lutheran Church, Missouri Synod, Missouri; Concordia College of New York; Concordia College of St. Louis, Missouri; Lutheran 30 40

## ORDER FOR AMENDMENT.

10 Laymen's League of Evangelical Lutheran Synod of Missouri; Dutch Reformed Church of Ridgewood; Lutheran Church of Ridgewood; Ridgewood Fidelity Title Guaranty Company, Trustee; Antonia Bueddeman; Paterson General Hospital; St. Joseph's Hospital of Paterson; Paterson Orphan Asylum, are beneficiaries named in the aforesaid last will and testament of Helen Ibach, deceased, and by reason thereof are made defendants in this bill;

AND FURTHER ORDERED that paragraphs 24b and 24g be amended by inserting the names of the persons named as defendants in the aforesaid paragraph "18-A".

20

E. R. WALKER,  
Chancellor.

We consent to the making of the foregoing order.

MACKAY & MACKAY,  
Solicitors of Helen Ibach Executors.

30

---

**Process.**

Subpoenas were duly served on the defendants residing in this state, and an order for publication was duly made and complied with as to the non-resident defendants.

40

**Answer of Paterson General Hospital Association, Referred to in the Order for Amendment Made in the Above Entitled Cause on the Fifth Day of March, 1924, as Paterson General Hospital.**

(Filed, April 15, 1924.)

1. Said defendants has no knowledge or information sufficient to form a belief as to the matters alleged in the first six paragraphs of said bill of complaint. 10
2. Said defendant denies paragraphs seven and eight.
3. Said defendant has no knowledge or information sufficient to form a belief as to the matters alleged in paragraphs nine, ten, eleven, twelve, thirteen and fourteen. 20
4. Said defendant admits paragraph fifteen.
5. Said defendant has no knowledge or information sufficient to form a belief as to the matters alleged in paragraph sixteen.
6. Said defendant has no knowledge or information sufficient to form a belief as to the matters alleged in paragraph seventeen, except that the defendant denies the alleged agreement referred to in said paragraph. 30
7. Said defendant admits the allegations in the eighteenth paragraph regarding the death of said Helen Ibach and the probate of her last will and testament and codicil thereto, and in regard to the provisions of said last will and testament, and codicil, but said defendant has no knowledge or information sufficient to form a belief in regard to the remaining allegations in paragraph eighteen. 40

ANSWER OF PATERSON GENERAL HOSPITAL ASSOCIATION, REFERRED TO IN THE ORDER FOR AMENDMENT MADE IN THE ABOVE ENTITLED CAUSE ON THE FIFTH DAY OF MARCH, 1924, AS PATERSON GENERAL HOSPITAL.

10 8. Said defendant has no knowledge or information sufficient to form a belief as to the matters alleged in paragraphs nineteen and twenty.

9. Said defendant admits paragraphs twenty-one and twenty-two.

10. Said defendant denies paragraphs twenty-three and twenty-four.

HUMPHREYS & SUMNER,  
Solicitors of Defendants,  
Paterson General Hospital Association.

20

**Answer of the Defendant, Laura Pettit, of the Village of Ridgewood, in the County of Bergen, and State of New Jersey, Mentioned in the Subpoena to Answer of "Laura Pettit", of Ridgewood, New Jersey.**

(Filed, April 19, 1924.)

30 1. She has no knowledge or information sufficient to form a belief as to the matters alleged in paragraphs one, two and three.

2. Upon information received, she admits paragraphs four and five.

3. She denies paragraphs six, seven and eight.

40 4. She has no knowledge or information sufficient to form a belief as to the matters alleged in paragraph nine.

ANSWER OF THE DEFENDANT, LAURA PETTIT, OF THE  
VILLAGE OF RIDGEWOOD, IN THE COUNTY OF  
BERGEN, AND STATE OF NEW JERSEY, MEN-  
TIONED IN THE SUBPOENA TO ANSWER OF  
"LAURA PETTIT", OF RIDGEWOOD, NEW JERSEY.

5. She denies paragraph ten.

6. She has no knowledge or information suf- 10  
ficient to form a belief as to the matters alleged in  
paragraph eleven.

7. She denies paragraphs twelve, thirteen and  
fourteen.

8. Upon information received, she admits para-  
graphs fifteen and sixteen.

9. She denies paragraph seventeen.

10. She admits the allegations in the eighteenth 20  
paragraph regarding the death of said Helen Ibach  
and the probate of her last will and testament and  
codicil thereto, and in regard to the provisions of  
the said last will and testament and codicil, the  
said defendant has no knowledge sufficient to form  
a belief in regard to the remaining allegations in  
paragraph eighteen.

11. This defendant, answering paragraph nine- 30  
teen says that Helen Ibach disposed of the resi-  
dence which was a gift to her, and purchased cer-  
tain property as described in the nineteenth para-  
graph of the bill of complaint and erected thereon  
a two-family house and lived in the upper apart-  
ment.

12. This defendant, answering paragraph twenty 40  
says that she is informed that Helen Ibach pur-  
chased after the death of Hugo Ibach, three lots in  
Florida for which she paid part in cash and part  
in two notes and received a deed for the same.

ANSWER OF THE DEFENDANT, LAURA PETTIT, OF THE VILLAGE OF RIDGEWOOD, IN THE COUNTY OF BERGEN, AND STATE OF NEW JERSEY, MENTIONED IN THE SUBPOENA TO ANSWER OF "LAURA PETTIT", OF RIDGEWOOD, NEW JERSEY.

13. She admits paragraph twenty-one.

10 14. She has no knowledge regarding the matters alleged in paragraph twenty-two.

15. She denies paragraph twenty-three.

16. This defendant submits that the rest of the paragraphs in the bill of complaint require no answer.

This defendant prays to be hence dismissed with her reasonable costs and charges in her behalf not wrongfully sustained.

20

FREDERICK V. WATSON,  
Solicitor for and of Counsel  
for Defendant, Laura Pettit.

**Answer of the Paterson Orphan Asylum Association Being Designated in Said Bill of Complaint as "Paterson Orphan Asylum."**

30

(Filed, April 23, 1924.)

This defendant answering says:

(1) It has no information as to the matters and things set forth in the first, second, third, fourth, fifth, sixteenth, nineteenth and twentieth paragraphs of the complainant's bill of complaint, but defendant requires proof to be made by the complainant of all matters and things therein set forth.

40

ANSWER OF THE PATERSON ORPHAN ASYLUM ASSOCIATION BEING DESIGNATED IN SAID BILL OF COMPLAINT AS "PATERSON ORPHAN ASYLUM."

(2) It denies the allegations set forth in the sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, seventeenth and twenty-third paragraphs of the complainants bill of complaint.

10

(3) It denies the allegations set forth in the fourteenth paragraph of the complainant's bill of complaint, excepting in that it believes that the said Hugo Ibach died May 16, 1916.

(4) It has no information regarding the matters and things set forth in the fifteenth paragraph in said bill of complaint but this defendant believes them to be true.

(5) It has no knowledge of the matters set forth in the eighteenth paragraph of said bill of complaint but believes the facts to be substantially as therein set forth.

20

(6) It has no exact knowledge of the matters and things set forth in paragraph eighteen-A of said complainant's bill of complaint but says that it believes that it contains a list of the beneficiaries in said will named.

(7) It admits the twenty-first paragraph of said bill of complaint and believes that the matters and things set forth in the twenty-second paragraph of said bill of complaint are true.

30

(8) It avers and insists that it is entitled to have and receive the gifts, devises and bequests made to it under and by virtue of the provisions of said last will and testament of said Helen Ibach, deceased, and that the testamentary dispositions of the property of the said Hugo Ibach and Helen Ibach re-

40

ANSWER OF THE PATERSON ORPHAN ASYLUM ASSOCIATION BEING DESIGNATED IN SAID BILL OF COMPLAINT AS "PATERSON ORPHAN ASYLUM."

ferred to in said bill of complaint should be carried into effect in accordance with the terms and provisions therein contained.

10 (9) This defendant further answering says that it submits to this Honorable Court that all and each of the matters in the said complainant's bill mentioned and complained of are matters with respect to which the said complainant is not entitled to any relief in this Court; and this defendant hopes it shall have the same benefit of this defence as if it had demurred to the said complainant's bill.

20 And this defendant humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CHARLES C. SCOTT,  
Solicitor of Defendant, Paterson  
Orphan Asylum Association.

30 **Answer of the Defendant, the Evangelical Lutheran Bethlehem Congregation of Ridgewood, New Jersey, Mentioned in Subpoena to Answer as the "Lutheran Church of Ridgewood", of Ridgewood, New Jersey.**

(Filed, April 21, 1924.)

1. It has no knowledge or information sufficient to form a belief as to the matters alleged in paragraphs one, two and three.

40

ANSWER OF THE DEFENDANT, THE EVANGELICAL  
LUTHERAN BETHLEHEM CONGREGATION OF  
RIDGEWOOD, NEW JERSEY, MENTIONED IN SUB-  
POENA TO ANSWER AS THE "LUTHERAN CHURCH  
OF RIDGEWOOD," OF RIDGEWOOD, NEW JERSEY.

2. Upon information received, it admits paragraphs four and five. 10
3. It denies paragraphs six, seven and eight.
4. It has no knowledge or information sufficient to form a belief as to the matters alleged in paragraph nine.
5. It denies paragraph ten.
6. It has no knowledge or information sufficient to form a belief as to the matters alleged in paragraph eleven. 20
7. It denies paragraphs twelve, thirteen and fourteen.
8. Upon information received, it admits paragraphs fifteen and sixteen.
9. It denies paragraph seventeen.
10. It admits the allegations in the eighteenth paragraph regarding the death of said Helen Ibach and the probate of her last will and testament and codicil thereto, and in regard to the provisions of the said last will and testament and codicil, the said defendant has no knowledge sufficient to form a belief in regard to the remaining allegations in paragraph eighteen. 30
11. This defendant, answering paragraph nineteen says that Helen Ibach disposed of the residence which was a gift to her, and purchased certain property as described in the nineteenth paragraph of the bill of complaint and erected thereon 40

ANSWER OF THE DEFENDANT, THE EVANGELICAL  
LUTHERAN BETHLEHEM CONGREGATION OF  
RIDGEWOOD, NEW JERSEY, MENTIONED IN SUB-  
POENA TO ANSWER AS THE "LUTHERAN CHURCH  
OF RIDGEWOOD," OF RIDGEWOOD, NEW JERSEY.

a two-family house and lived in the upper apart-  
ment.

10

12. This defendant, answering paragraph twenty  
says that it is informed that Helen Ibach pur-  
chased after the death of Hugh Ibach three lots  
in Florida for which she paid part in cash and  
part in two notes and received a deed for the same.

13. It admits paragraph twenty-one.

14. It has no knowledge regarding the matters  
alleged in paragraph twenty-two.

20

15. It denies paragraph twenty-three.

16. This defendant submits that the rest of the  
paragraphs in the bill of complaint require no an-  
swer.

This defendant prays to be hence dismissed with  
its reasonable costs and charges in its behalf not  
wrongfully sustained.

30

MACKAY & MACKAY,  
Solicitors and of Counse of Defendant,  
Evangelical Lutheran Bethlehem  
Congregation of Ridgewood, New Jersey.

---

**Answers in the Same Form as the Last Were  
Filed for the Following Defendants, by  
Mackay and Mackay, Solicitors.**

40

Evangelical Lutheran Church, Missouri, Synod;  
Frederick T. Ottman;

ANSWERS IN THE SAME FORM AS THE LAST WERE  
FILED FOR THE FOLLOWING DEFENDANTS, BY  
MACKAY & MACKAY, SOLICITORS.

Concordia College of Bronxville, N. Y.;  
Lutheran Orphan Asylum of West Roxbury,  
Mass.;

Anna Ibach ;  
Pauline Ibach; 10  
Ella Ibach;  
Antonia Buëddemann;  
Aline Groeschel;  
Emil Buëddemann;  
Julia Kattenstroth.

---

**Decree Pro Con.**

(Filed June 6, 1924.) 20

Decree Pro Con against following defendants:

Elizabeth Richter;  
Old Ladies Home of Hackensack;  
Lutheran Orphan Asylum of College Point, L. I.;  
Lutheran Old Peoples Home of East New York;  
Concordia College of St. Louis, Miss.;  
Lutheran Laymen's League;  
Dutch Reformed Church of Ridgewood;  
Ridgewood Fidelity Title Guaranty Co., Trustee; 30  
St. Joseph's Hospital, Paterson.

---

**Case.**

Testimony taken in the above-entitled cause, at  
the Chancery Chambers, Paterson, New Jersey, on  
the eleventh day of February, Nineteen Hundred

40

## CASE.

and Twenty-five, before Hon. Vivian M. Lewis, Vice Chancellor.

## APPEARANCES:

- 10 WILLIAM J. MORRISON, JR., for the Complainant;  
 MACKAY & MACKAY, Esqs., for the Defendants;  
 WILLIAM A. SUMNER, Esq., of Humphreys & Sumner, for the Defendant, The Paterson General Hospital Association;  
 CHARLES C. SCOTT, Esq., representing The Paterson Orphan Asylum, Defendant;  
 FREDERICK V. WATSON, Esq., representing Mrs. Pettit, a Defendant.

20

---

Mr. Morrison: We will call this witness out of turn.

---

DR. HARRY HOWARD PETTIT, being duly sworn, testified as follows:

30 Direct Examination by Mr. Morrison:

Q. You reside and practice in Ridgewood, New Jersey? A. Yes, sir.

Q. How long have you practiced there? A. 18 years.

Q. During that time you knew Mr. and Mrs. Hugo Ibach Anna? A. Yes, sir.

Q. And during what period of time? A. For the last fifteen years.

40

DR. HARRY HOWARD PETTIT—*Direct.*

Q. How often did you see them? A. In the last few years frequently, practically every day.

Q. Were you attending any of those three persons professionally? A. Yes, sir.

Q. Which ones, please? A. All three.

Q. What did you observe of Anna's relationship to Mr. and Mrs. Ibach? A. What do you mean by that? 10

The Court: It is leading and may call for a conclusion.

Q. Did you ever hear Mr. Ibach say anything about what relation Anna was to him?

Mr. Sumner: Objected to as leading.

Q. In your business at the Ibach home, were you at any time introduced to Anna? A. Yes, sir. 20

Q. By whom? A. I don't recall, either by the father or the mother, when I first met the family.

Q. Who composed the household? A. Mr. and Mrs. Ibach and Anna Ibach.

Q. How was she introduced to you—by what name? A. (No answer.)

By the Court:

Q. Was she introduced to you? A. I cannot recall. 30

Q. How old was she when you first went to the house? A. I don't know that either.

Q. How long ago is it that you first went to call there as a physician? A. Fifteen years ago.

Q. How long did you continue to go there? A. For the time of their residence in Ridgewood.

Q. How long was that? A. Up to the death of Mr. and Mrs. Ibach. 40

DR. HARRY HOWARD PETTIT—*Direct.*

Q. When was that? A. Mrs. Ibach died a year ago last spring, if I remember correctly.

Q. And you continued to go until she died? A. Yes, sir.

Q. How frequently did you go there? A. I went there frequently.

10 Q. You attended them frequently? A. Yes, sir.

Q. Did you administer to them as a physician? A. Yes, sir.

Q. You were not socially acquainted with them? A. I called on them socially as well as a physician.

Further Direct:

Q. During the course of your visits to the house of the Ibachs, which you have just described to the Court, did Mr. Ibach ever refer to Anna, speak of Anna, in talking with you? A. No, sir, other than she would come in the conversation.

20

Mr. Mackay: Counsel apparently is trying to bring out statements of the deceased; I object to that.

The Court: Your case, as I understand from your opening, you want to prove she was an adopted daughter?

Mr. Morrison: There was never a formal adoption.

30

Mr. Sumner: If the purpose of calling this witness is to prove statements by the deceased, we object.

The Court: Is that the object of calling this witness?

Mr. Morrison: Yes, sir; Mr. Ibach always called this young woman his daughter.

The Court: Objection overruled.

DR. HARRY HOWARD PETTIT—*Direct.*

Further Direct:

Q. In your visits to the Ibach home, did you ever hear Mr. Ibach refer to Anna, describing her relationship to him?

Mr. Mackay: Objected to on the same ground. 10

Mr. Morrison: Question withdrawn.

Q. Did you know the relationship of Anna to Mr. and Mrs. Ibach?

Mr. Sumner: We object to that.

The Court: Objection overruled. Answer "Yes" or "No."

A. (No answer.) 20

By the Court:

Q. Did you know it of your own information, what you gathered? A. That is hard for me to say, but I know what I thought was the relation; I don't know, I just know what I thought—had always thought.

Further Direct:

Q. What did you see Anna do in and about the Ibach home while you were there? A. She did the things that— 30

By the Court:

Q. What did you see her do? A. She did the things that a daughter would do.

The Court: Strike that out.

DR. HARRY HOWARD PETTIT—*Direct.*

Q. What did you see her do? A. I saw her do household work; I saw her do household work; I saw her wash dishes; clean up the rooms, and get meals.

Q. Did you see her cook the meals? A. Yes, sir.

10 Q. Did you ever sit down to one of the meals that she cooked? A. Yes, sir, I think I did, too.

Further Direct:

Q. What did you see her do at the times when either of the older folks were sick and under your care as a physician? A. I saw her take care of them.

Q. What did she do in taking care of them—just in brief detail? A. Bathed them and gave them their medicine—changed dressings in a surgical case.

20 Q. During how long a period of illness did such services as those continue? A. They varied; I have seen a number of illnesses from, say a week to months.

Q. During the long illnesses, what did you see Anna do for either of the older people? A. Run the house and administer medicine; general care of the sick.

30 By the Court:

Q. Did they have any maid or servant there at that house? A. No, sir.

Further Direct:

Q. When you have, as you have said, met the Ibachs socially, did you see Anna; did you spend the evening there? A. Yes, sir, got refreshments and sat around and talked.

Q. Did you ever see them socially outside of their own home? A. Yes, sir.

40

DR. HARRY HOWARD PETTIT—*Direct.*

Q. Do you remember any occasion with fair distinctness—can you recall any one occasion with a fair distinctness of recollection? A. Well, not where all three were together.

Q. On any occasion when Anna was there with either of the others? A. In our own home.

Q. Your own home? A. Yes, sir.

10

Q. What did you see Anna do when she and one of the Ibachs were at your home? A. That I don't recall; I know they have been to our home when I have been there, simply as other guests would come in, Mrs. Ibach and Anna. I cannot recall anything that took place.

Q. How did Anna address the Ibachs on these occasions when you have observed her in the Ibach home? A. As "Mother" and "Father."

Q. What did they call her? A. "Anna."

20

Q. What did she call them when they were out of their own home? A. She would call them "Mother" and "Father."

Q. What did they call her? A. "Anna."

Q. Do you remember when that form of address first began during the period of your acquaintance with them? A. I don't recall; I presume it was from the beginning; I don't recall just when.

Q. Do you remember when Anna become engaged and was married to Mr. Dusenberry? A. Yes, sir.

30

Q. How did you learn of that event?

Mr. Sumner: How is that material?

The Court: What is the object of that?

Mr. Morrison: We hope to show that Mrs. Ibach announced the marriage of her daughter.

The Court: Objection overruled.

A. I remember it, but I don't remember how I

40

DR. HARRY HOWARD PETTIT—*Direct.*

got the information; I can only presume how I received it.

Cross Examination By Mr. Mackay:

10 Q. You know that they had a coachman? A. Yes, sir.

Q. And that coachman also used to do some of the household work, wash windows, etc.? A. Yes, sir, I know that.

Q. And did household work? A. Yes, sir.

Q. You say Anna did household work? A. Yes, sir.

Q. So they both did household work? A. Yes, sir.

20 Q. The coachman was not a son, was he? A. No, sir.

---

WILLIAM L. VROOM, being duly sworn, testified as follows:

By the Court:

Q. You are a resident of Ridgewood? A. Yes, sir.

30 Direct Examination by Mr. Morrison:

Q. Did you know the Ibachs? A. Yes, sir.

Q. Did you ever minister to them in any way? A. Perhaps occasionally, some years ago.

Q. How many years ago? A. Say, probably, twenty years ago—within twenty years.

Q. Did you know who made up the family of that home? A. Yes, sir.

40 Q. Who were they? A. Mr. and Mrs. Ibach and their adopted child.

WILLIAM L. VROOM—*Direct.*

Q. Do you see the adopted child in the court room now? A. I do not recognize her now.

Q. She is no longer a child? A. No, sir; I knew her as a child.

Q. Did you know them socially after the time of your professional attendance? A. Only as neighbors.

10

By the Court:

Q. Did you go back and forth to their home? A. Occasionally.

Cross Examination by Mr. Mackay:

Q. Did you say that twenty years ago you saw Mr. and Mrs. Ibach, and did you see an adopted child? A. Within that time; I knew them during the last twenty years.

20

Q. Do you say you saw an adopted child? A. I knew her as an adopted child.

Q. Did you know she was adopted? A. No, sir.

Q. You just presumed she was? A. Everyone said so; I supposed she was; that is all I know—hearsay entirely.

---

 30

EMILY HILL, being duly sworn, testified as follows:

Direct Examination by Mr. Morrison:

Q. Where do you reside? A. In Wortendyke, New Jersey.

Q. Do you know Mrs. Anna Dusenberry? A. Yes, sir.

40

EMILY HILL—*Direct.*

Q. How long have you known her? A. Since she was about three years old.

Q. Where was she living when you first knew her? A. Hazelton, Pennsylvania.

Q. Did you live there also? A. Yes, sir.

10 Q. With whom was Anna living at that time?  
A. At her step-father's home.

Q. Her father was then living? A. Yes, sir.

Q. What was his name? A. Otto Schneppendahl.

Q. Where did they live in relation to your home?

A. About one and a half streets from where I lived.

Q. Did you know Hugo Ibach in his lifetime?

A. I did.

20 Q. Did you know him at the time you have mentioned, when Anna was a three year old girl? A. I cannot recall just how old she was when I first met him.

Q. Did you know Mr. Ibach when Anna was a girl living at home with her father, Mr. Schneppendahl? A. Yes, sir.

Q. Did you ever see Hugo Ibach and Otto Schneppendahl in a conversation? A. I did.

Q. Did you ever hear a conversation between those two men in relation to Anna? A. I did.

30 Q. What was the conversation?

Mr. Mackay: Same objection.

The Court: Fix the time when she heard the conversation.

A. I cannot tell you the date; it is about 25 or 23 years ago.

Q. Can you fix the date by anything else that happened? A. There was a masquerade ball at one time that they had at the Manicord Hall, a

EMILY HILL—*Direct.*

German singing society; it was in December, and it was on the 28th of December; it was my wedding day, I know that.

Q. What year? A. That I cannot positively say.

Q. What happened to any of the persons who were present near that time, that you remember? 10

A. I remember that Mr. Ibach came there in a masquerade to surprise his uncle, Mr. Scheppendahl, Anna's father, and they were carrying on, and Mr. Scheppendahl objected to the carrying on, and they were masked, and then they took off their masks and surprised him.

Q. Was Mr. Scheppendahl in good health at that time? A. He was never in very good health.

Q. How long after that did Mr. Scheppendahl live? A. I think about four or five years. 20

Q. This conversation was four or five years before the death of Mr. Scheppendahl? A. Yes.

Q. Proceed.

Mr. Sumner: What is the purpose of this? The contract was made a very short time before this man died, within a few days. Now, we have a conversation four or five years before then.

The Court: I will note the objection. 30

Q. What was the conversation between Mr. Scheppendahl and Mr. Ibach that you have first spoken of? A. Mr. Ibach was very fond of Anna and had spoken of that.

The Court: Strike that out.

A. He wanted her as his child.

Q. Who? A. Anna; he wanted to take her; he said— 40

EMILY HILL—*Direct.*

Q. What did he say to Mr. Scheppendahl? A. That he would like himself to take the girl as his own, Mr. Ibach's, and rear her as his own; he said it in German, and I cannot repeat it in German, while I understand it; and he said he would take her as his own, and all that he had would go to her.

10

Q. What did Mr. Scheppendahl say? A. He said he could not give her up just then.

Q. When was the matter again discussed by these two men in your presence? A. After Mr. Scheppendahl had been in the country when he was real ill.

Q. And how long before Mr. Scheppendahl's death? A. About two months.

Q. Who were present on that occasion? A. Nobody but we three.

20

Q. Who? A. Mr. Scheppendahl, Mr. Ibach and myself.

Q. What was said, and by whom was it said? A. Mr. Scheppendahl said, that if anything happened to him, Mr. Ibach could have this child as his own; and Mr. Ibach said he would gladly take her, and she would be his own, and he would rear her as his own, and all he had would go to her.

Q. Did you ever hear any other conversation between these two men on this subject? A. As near as I can remember, there has been just those two. There have been times when we talked about the child.

30

Q. You say "there were times that we talked about the child"; whom do you mean by "we"? A. Mr. Scheppendahl and the girls and my husband and different people that have been there.

Q. But not Mr. Ibach? A. No, sir.

By the Court:

EMILY HILL—*Direct.*

Q. Where do you live now? A. In Wortendyke, New Jersey, now.

Cross Examination by Mr. Mackay:

Q. Were you with Mr. Scheppendahl just before his death? A. Yes, sir, I helped nurse him.

Q. Were you in the room with him the day before he died? A. I was. 10

Q. And were you in the room two days before he died? A. I was.

Q. Do you know Mrs. Greschall? A. Yes, sir.

Q. Was she there with him constantly during those two days? A. Not constantly; she had just come from a trip to Europe, I believe.

Q. You were in the room when she was there, were you? A. Oh, yes.

Q. You were in there when she was there, do you say? A. Yes, sir. 20

Q. How many days before Mr. Scheppendahl's death was it that Mrs. Greschall came there? A. I think it was two days.

Q. You don't know whether its two or four days? A. I don't know positively.

Q. You could not say whether it was three or five days? A. I could not say positively.

Q. But you know she was there and with him there constantly for several days? A. I know she was there; I cannot say she was with him constantly, but I know every time I went over, that she was there, and I met her in different parts of the house. 30

Q. And she stayed right in the house, taking charge, didn't she? A. I cannot say that: I think the girls were capable of taking charge themselves.

Q. How old was the eldest girl then? A. 23, I think. 40

EMILY HILL—*Direct.*

Q. And how old was Anna? A. Anna was about eight.

Q. And the oldest girl was 23? A. Yes, sir.

Q. What was the name of the eldest girl? A. Mary.

10 Q. She is living at the present time? A. Yes, sir.

Q. What is the next girl? A. Eileen.

Q. How old was she then? A. About 18, I think.

Q. Who was the next daughter? A. Clara, she was about 14 or 15 years of age.

Q. So all the four girls were there, and Mrs. Greshall was there? A. Yes, sir.

20 Q. And they were all helping to take care of Mr. Scheppendahl and take care of the house; is that right? A. I think when it came to taking care of Mr. Scheppendahl, Mary and I did the better part of that.

Q. Why were you taking care of him? A. These children—the father never knew positively if they had been baptized, and I was doing missionary work, and I had them baptized and confirmed in the Episcopal Church; and furthermore, the people that had had me meet them, knew that I came from New York; that I did the sewing for these girls, for the Scheppendahl girls.

30 Q. Were you doing sewing at this particular time before his death? A. The last few days after Mrs. Greshall got there—

Q. Were you doing sewing the few days before his death for the girls? A. Yes, sir.

Q. How long before did you come there to do sewing? A. I had sewed for them for years.

Q. How long before his death did you do sewing? A. I did the sewing at my own home; I did sewing for them at my own home.

EMILY HILL—*Direct.*

Q. You did not go to that home to stay in that home to do sewing? A. No, sir, I went there to take care of Mr. Scheppendahl; I stayed there day and night; he was ill in bed.

Q. She was 23 years old, Mary? A. You will see her in a few minutes, and you will see she was not able to do it; her eyesight was very bad. 10

Q. Then there was a good reason why Mrs. Greshall should be there helping if the girl's condition is what you say it was, then there was a good reason for Mrs. Greshall to be there to help? A. There ought to have been a good reason; but I cannot say that she helped.

Q. Was Mrs. Greshall a young woman? A. No, sir, she was as old as I am to-day, and I was a young woman then. 20

Q. She was older than you? A. Oh, yes.

Q. Was the step-mother living there at that time? A. No, sir.

Q. She was not living there? A. No, sir.

Q. When did she go away? A. I think in the spring before Mr. Scheppendahl died, or perhaps a little earlier; I knew her.

Q. Mr. Scheppendahl died in 1897? A. Yes, sir.

Q. And the step-mother then was living there until 1896? A. I know it was not quite a year before he died. 30

Q. So that would be sometime in the year 1896? A. Yes, sir.

Q. You say the first time you went there was about 1892? A. Yes, sir, when they moved there.

Q. And then from 1892 to 1896, the step-mother was living there? A. Yes, sir.

Q. And was the step-mother there every time you called? A. Surely. 40

EMILY HILL—*Direct.*

Q. Doing the work? A. No, sir, she did not do the work; she played the lady.

Q. So that, from 1892 to 1896, the step-mother was there any time you were there, but she was not working? A. That is correct.

10 Q. What did you do? A. I took the clothes, in case the girls were busy, and I would fit them at this home.

Q. You came in because you were called in to do some work? A. Yes, sir.

Q. To do some sewing? A. Yes, sir.

Q. But you did not do the sewing in that home? A. I did it in my home.

Q. But you may have stayed in the home and done some fitting? A. Yes, sir.

20 Q. Was Mr. Scheppendahl himself in business? A. He had business, he had this Manicord Hall, and they had dances there, and there are lodge rooms.

Q. That was his business, conducting the dances? A. Yes, sir.

Q. That would be in the evenings? A. Yes, sir.

Q. Afternoons? A. Yes, sir.

30 Q. So that if you went to the house it was purely called in there as a business matter, and you would probably stay there and fit the girls, and then go away and do the sewing for them and bring it back? A. That is correct.

Q. Did you do anything else? A. We were very intimate friends; the girls came to me with every little trouble, they would come to me.

Q. And tell you their troubles? A. Yes, sir.

Q. Did Mr. Scheppendahl tell you all his troubles? A. He told me a great many.

40 Q. Did he come to your home and visit you also? A. Only twice.

EMILY HILL—*Direct.*

Q. And on this occasion that you speak of, this first occasion that you mentioned, on the anniversary of your wedding, what anniversary was that? A. What year?

Q. Yes, was it the fifth year, the tenth year, or what? A. About the eighth year.

Q. 1892? A. Yes, sir.

Q. When were you married? A. 1885.

Q. That would be about the seventh year, then? A. Yes, sir.

Q. You knew this was your wedding anniversary? A. Yes, sir.

Q. And that was the date you visited the Schependahl's home, or did they visit you? A. When they had these Manicord dances, we would go up in the balcony and look down at them dancing.

Q. Was it at this big dance that you heard this remark made by Mr. Ibach to Mr. Scheppendahl? A. Yes, sir.

Q. And Mr. Scheppendahl absolutely refused at that time? A. He said he could not give her up just then; he refused to let her go at that time.

Q. Was there any other time that you recall, between that and the date of his death that there was a refusal? A. No, sir.

Q. When again after 1892 did you see Mr. Hugo Ibach? A. I saw him several times, but I could not tell you the date, because he sold materials up there. He did business in Hazelton—he had several customers there I understood; and he would come down to the home, and he came there when I was helping Mary take care of Mr. Scheppendahl; he was in bed two months before his death, and I went over there and stayed all night with Mary.

Q. Was there another refusal in 1892 and before his death, where he said he would like to have

EMILY HILL—*Direct.*

Anna for his daughter and take her as his own?

A. They often spoke of it, but I cannot remember that rightly.

Q. Was there ever another refusal? A. Not that I can remember.

10 Q. So that all you remember now is, this one conversation about in 1892? A. Yes, sir.

Q. And the next time was when Mr. Scheppendahl was very ill before he took to his bed? A. Yes, sir, when he knew he was going to die; he was not in bed yet.

Q. Then it was that he met Mr. Ibach? A. Yes, sir.

Q. And was this at Mr. Scheppendahl's home? A. Yes, sir.

20 Q. And in the meantime, Scheppendahl's second wife had gone away? A. Yes, sir.

Q. And left him? A. Yes, sir.

Q. And had been gone for about a year? A. Yes, sir.

Q. And Mr. Scheppendahl had been left with the four girls, hadn't he? A. Yes, sir.

Q. And their ages were just as you told me a little while ago? A. As near as I can remember.

30 Q. Were you present when Mr. Scheppendahl died? A. I was; he called for us; I was there, Rev. Scott and myself and the children and Mrs. Greshall and Mr. Hill.

Q. After his death, when he was dead, you were there? A. Yes, sir.

Q. You saw the girls go away? A. I came with them to the funeral.

Q. The funeral was held somewhere in Brooklyn? A. It was held at the Lutheran Cemetery in Brooklyn.

40 Q. And Mr. Ibach and his wife were at the cem-

EMILY HILL—*Direct.*

etery? A. Mr. Ibach was at the funeral up in Pennsylvania, and he came down with us; my mother was there, and there were two women spoke to her; they knew that she was waiting for a funeral; and they accosted her because I looked like her, and they happened to be Mr. Ibach's mother and Mrs. Ibach.

10

Q. Did you know Mrs. Ibach? A. I met her two or three times, that was all.

Q. Did you meet her at the cemetery? A. No, sir, I did not, not Mrs. Ibach; I did aunt Ida.

Q. Don't you know she was at the cemetery? A. They said she was there.

Q. And she was at the cemetery with Mr. Ibach? A. Mr. Ibach was there, and he had hold of Anna's hand.

Q. And the services were held at the cemetery? A. Yes, sir.

20

Q. And after the services Mr. Ibach and Mrs. Ibach and Anna went away together? A. That I cannot tell you; I went home with my mother; I went to New York with my mother; they put us in the coach, and we went to New York.

Q. Do you know where Mary went to live after the funeral; where did she go; to whose home did she go? A. To my home.

Q. Where did Eileen go to? A. They all went back to Hazleton.

30

Q. How long did they stay there; did you go back? A. Yes, sir, I met them at the station and took them home; we went together.

Q. Did you come back with them again to New York? A. No, sir.

Q. They were left alone? A. Yes, sir.

Q. They went away alone? A. Yes, sir.

Q. They came back themselves, didn't they, with-

40

EMILY HILL—*Direct.*

out you? A. Two of them lived with me for over a year.

Q. That was after Mr. Scheppendahl's death? A. That was after they sold the place.

10 Q. And which one did not stay? A. Anna and Eileen stayed for two months, I think it was; then she went down to Mrs. Greshall in Jersey City.

Q. And lived with her for some time? A. She did not live there until she was married.

Q. Did you visit her there at Jersey City? A. No, sir.

Q. Then you don't know how long she was there? A. Well, I corresponded with her.

Q. Very often? A. Once a month.

Q. You haven't any of her letters? A. No, sir.

20 Q. You did not save any correspondence? A. No, sir.

Q. During the last illness, or after the death of Mr. Scheppendahl, did the second wife put in an appearance at all? A. No, sir.

Q. You never heard from her? A. No, sir.

Q. After you saw Anna at the cemetery, when did you next see her personally? A. Not until Clara's death; that was about two years ago.

Q. That was 1923? A. Yes, sir.

30 Q. So you did not see Anna from 1897 until 1923? A. No, sir, I have not seen her all that time.

Q. 26 years? A. Yes, sir.

Q. Never saw her at all? A. No, sir.

Q. Never communicated with her? A. No, sir, I only heard of her through her sisters.

Q. Just indirectly? A. Yes, sir.

40 Q. You said during the years just prior to Otto Scheppendahl's death, you took a personal interest and practically acted as the mother, in fact, be-

EMILY HILL—*Direct.*

came the godmother of this girl? A. Of Anna; she was baptized in her own father's sitting room.

Q. You became her godmother? A. Of the four of them; he was Lutheran and we were Episcopalians.

Q. And yet you never communicated with her for 26 years, did you? A. No, sir, I did not. 10

Q. When you did hear from her in 1923, was that after Mrs. Ibach's death? A. Just before.

Q. How long before? A. Not many months before Mrs. Ibach's death.

Q. How long before Mr. Ibach's death? A. Oh, Mr. Ibach had been dead two years.

Re-direct Examination by Mr. Morrison:

Q. During these 23 years, when you have answered the Senator and said you had no communication with Anna, you mean, of course, no direct communication? A. That is what I meant; I heard of her through her sister, Mrs. Denck. 20

By the Court:

Q. You never had any letters from Anna or wrote to her? A. Not Anna.

Re-cross Examination by Mr. Mackay: 30

Q. You knew, of course, after 1897, where Anna was living, didn't you? A. I knew she was living with Mr. and Mrs. Ibach.

Q. You knew where their home was? A. Not all the time, no; I had heard.

Q. Then you moved from Pennsylvania and came to Wortendyke, New Jersey? A. Yes, sir, three years ago.

EMILY HILL—*Re-cross.*

Q. Then it was not until you came to Wortendyke that you met Anna? A. That is right.

Q. You had been living in Wortendyke how long before you saw her? A. Not quite a year, I don't think it was; I did not know she lived so near, and it was through Clara's death that I got to find out where she was.

Q. Calar is one of her sister's? A. Yes, sir.

Q. She died? A. Yes, sir.

Q. You did not know, then, when you were living in Pennsylvania, that Mr. Ibach was living in Ridgewood, New Jersey? A. Yes, sir.

Q. You never asked him where his home was? A. No, sir.

Q. You never mentioned the fact about his home? A. No, sir.

Q. And you did not know Mrs. Ibach at all, even at the cemetery, did you? A. I had met her before then, but I did not see her.

Q. You did not know her to speak to? A. I knew her to speak to.

Q. Do you remember seeing her there? A. No, sir.

Q. You knew she was there?

30 The Court: She said she heard she was there.

By the Court:

Q. Did you know she was there; did you know Mrs. Ibach was there? A. I cannot tell positively.

BENJAMIN VAN NORTWICK—*Direct.*

BENJAMIN VAN NORTWICK, being duly sworn,  
testified as follows:

## Direct Examination by Mr. Morrison:

Q. Where do you live? A. Hohokus, New Jersey. 10

Q. How long have you lived there? A. About two years.

Q. Where did you live before that? A. Ridgewood.

Q. How long did you live there? A. Eleven years.

Q. Did you know Hugo Ibach? A. Yes, sir.

Q. How long did you know him? A. About thirty years.

Q. Did you know his wife? A. Yes, sir. 20

Q. How long did you know her? A. Since about 1895.

Q. Did you know Anna? A. Yes, sir.

Q. How long had you known her? A. Since the day of the funeral that has been spoken about, Mr. Scheppendahl's funeral.

Q. Were you there at that time? A. No, sir, I was at his house, at Mr. Ibach's house, on the evening of the funeral; I went there with my wife.

Q. What time? A. It was about eight o'clock at night; and Mrs. Ibach said he was coming up on the train which got to Hohokus at 8:30; and I went to the train to meet him, and he brought a girl with him off the train, the young girl; and he said, "This is Anna"; and he said that was to be his daughter; he said he was to raise her as his daughter. 30

Q. Where was this said? A. At the station when he got off the train.

BENJAMIN VAN NORTWICK—*Direct.*

Q. Where did you go from there? A. Back to Mr. Ibach's house.

Q. You went with him? A. Yes, sir.

Q. And since that time have you known, until his death, Mr. Ibach? A. Certainly.

Q. And Anna? A. Yes, sir.

10 Q. How often have you seen them? A. Not very often.

Q. Did you see them after the night when he brought Anna home? A. Yes, sir, I called at his house several times; we were intimate.

Q. What did you see Anna do during that time? A. Everything a child would naturally do.

Q. What did you see the Ibachs do for her? A. They treated her as they would a child.

20 Q. What did they do for her as a child? A. I saw them treat her as a daughter.

The Court: Strike that out as a statement of a conclusion.

By the Court:

Q. Did you see her do anything? A. I saw her move around the house.

30 Cross Examination by Mr. Mackay:

Q. You say you called with your wife, or did you call alone at the Ibach home? A. I called with my wife at the Ibach home.

Q. About eight o'clock in the evening? A. Around that time.

Q. And was Mrs. Ibach at the home? A. Yes, sir.

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

Q. Positive of that? A. Absolutely positive.

40

BENJAMIN VON NORTWICK—*Cross.*

Q. Where was Mr. Ibach? A. He was not home; he had not got home yet.

Q. He was at a funeral, wasn't he? A. I suppose so; I don't know where he was, not of my own knowledge.

Q. And you did not inquire? A. I knew he was coming on this train from a funeral; his wife told me that; and she was there in the house and he was not there, and this girl Anna was not there. 10

Q. Didn't you know she was at a funeral, too? A. How did I know? Mrs. Ibach said he was coming home from a funeral.

Q. You said you went to the train to meet him? A. Yes, sir.

Q. How did that happen? A. I went up with a lantern to light him down. 20

Q. What did you go there for? A. I went there to play cards, and we did play cards when he got back.

Q. How long before that were you invited to that home? A. I went there without an invitation.

Q. Then Mrs. Ibach did not invite you to the home that night? A. No, sir.

Q. Why did you say, "that on the evening of September 27th or 28th, deponent (meaning you) and your wife, visited on the invitation of Helen Ibach"; why did you say that under oath? A. I don't know. 30

Q. That was not right? A. I don't think so.

Q. You were not invited there? A. I don't think so.

Q. You went there to the home and you found her there? A. I had a general invitation to go there any time.

Q. You had no special invitation at that time? A. I cannot say. 40

BENJAMIN VON NORTWICK—*Cross.*

Q. Didn't you swear to that for use in a previous trial? A. I must have believed it when I swore to it.

Q. Were you right then or now? A. I had a general invitation.

10 Q. That you could go to any house at all where you happened to know the people; is that what you call an invitation? So you got there about eight o'clock with your wife and met Mrs. Ibach there alone; is that right? A. I have said that two or three times.

Q. Then you said that she said something about Mr. Ibach coming home on the train? A. Yes, sir.

Q. What time was that train due to arrive? A. I cannot tell you exactly; it is so many years ago; I could look it up.

20 Q. Have you got a time-table of 1897? A. I could get one.

Q. Do you know how long after eight o'clock it was that you went there? A. It was before nine o'clock.

Q. You took a lantern and you walked down to the depot from the Ibach home? A. I have answered that two or three times; I am certain I took a lantern with me.

30 Q. How far was their home from the depot? A. I never measured it.

Q. About how far? A. Probably ten minutes' walk, from six to ten minutes' walk.

Q. You walked there? A. Yes, sir.

Q. Did you take your wife along? A. No, sir, I went alone.

Q. And this Mr. Ibach got off the train with the girl Anna? A. Yes, sir.

Q. And I suppose the first thing he said to you was, "This is my daughter," or something like that?

40 A. Naturally he would, and he did so.

BENJAMIN VON NORTWICK—*Cross.*

Q. What was the first thing he said to you when he got off the train? A. He introduced the girl.

Q. She was a little girl seven or eight years old?

A. Yes, sir.

Q. Rather a small child? A. Yes, sir.

Q. And he introduced her? A. He said, "This is Anna, my new daughter," or words to that effect.

10

Q. What did you say to that? A. I don't remember.

Q. What did he say then? Anything else; was that all he said then? A. General conversation, speaking of the child.

Q. You can specifically remember he said, "This is Anna, my new daughter"; the rest of it was a general conversation that you cannot remember; is that correct? A. Yes, sir.

20

Q. Was that walking back on the way to his home? A. That was as soon as he got off the train he spoke about the child, and then he talked about the child as he went down.

Q. You cannot remember anything except what you have told us? A. No, sir.

Q. This is particular and important, so I ask you again, you walked down to the depot with the lantern and he got off the train? A. Yes, sir.

Q. And he made the remark and used the words that you say he did about Anna being his daughter? A. Words to that effect.

30

Q. And those are the only words from the time he got off the train until you got back into the home that you can directly remember his saying? A. Yes, sir.

Q. And when you got in the home you say you played cards? A. Yes, sir.

Q. And did he talk about her after he got in the home? A. Yes, sir.

40

BENJAMIN VON NORTWICK—*Cross.*

Q. Do you recall anything else specifically? A. In a general way they talked of this girl as their daughter.

Q. Do you recall any specific words that he used? A. No, sir.

10 Q. Your general recollection is simply to the effect that he said, "This is our new daughter"? A. Yes, sir.

Q. And that is everything? A. Yes, sir.

Q. Do you remember whether you stayed late that night? A. Until about 11 o'clock, perhaps; we played pinochle that night.

20 MRS. KATHERINE MUIRHEAD, being duly sworn, testified as follows:

Direct Examination by Mr. Morrison:

Q. Where do you live? A. In Demarest, New Jersey.

Q. How long are you acquainted with Anna, who is now Mrs. Dusenberry? A. It seems to me all her life.

30 Q. Were you acquainted with her father, Mr. Scheppendahl? A. Yes, sir.

Q. Do you remember the time of his death? A. Yes, sir.

Q. Were you at the funeral? A. Yes, sir.

Q. Did you see Mr. Ibach there? A. Yes, sir.

Q. Who else were in his immediate neighborhood? A. The little girl Anna; he held on to her as though he was likely to lose her.

40 Q. Were you near him? A. Yes, sir, I was speaking with him, and my mother was speaking with him.

MRS. KATHERINE MUISHEAD—*Direct.*

Q. What was said? A. About the father of the little girl; he told my mother and myself, that he was going to take Anna home for his little girl.

Mr. Mackay: Objected to.

The Court: Objection overruled.

10

By the Court:

Q. Did he tell you? A. He told us both; we were standing together; he said he was going to take the little girl home.

Further Direct:

Q. State that conversation again, the statement that Mr. Ibach made, as you remember it now. A. Just in regard to Anna; there was a general conversation, of course, and then he spoke about Anna and her father, and that he was going to take Anna home to be his little girl; that he intended to adopt her.

20

No cross examination.

---

MR. J. BLAUVELT HOPPER, being duly sworn, testified as follows:

30

Direct Examination by Mr. Morrison:

Q. You live in Ridgewood? A. Yes, sir.

Q. How long have you lived there? A. 55 years.

Q. Did you know Mr. Ibach in his lifetime, Hugo Ibach? A. Yes, sir.

Q. And his wife, in her lifetime? A. Yes, sir.

Q. And Anna? A. Yes, sir.

40

MR. J. BLEUVELT HOPPER—*Direct.*

Q. How long have you known those three persons? A. For about 25 years.

Q. How frequently did you see them? A. Probably once a month.

10 Q. In what way did you come to see them? What brought about your monthly visits? A. Do you want me to explain the first time I met them?

Q. No; answer the question. A. Socially.

By the Court:

Q. Cards? A. Yes, sir.

Q. Pinochle? A. Yes, sir.

Further Direct:

20 Q. When did you first see Anna, who is now Mrs. Dusenberry? A. As near as I can recall, probably in 1900 was made our first call in Mr. Ibach's house, and Anna was there.

Q. Which of the three had you met first? A. Mr. Ibach.

Q. When you met his wife, did he introduce you? A. Yes, sir.

Q. When you met Anna was she introduced? A. Yes, sir.

30 Q. Do you remember the form of the introduction? A. He called Anna his daughter.

Q. What did you see Anna doing in the Ibach home on the occasions you were there? A. The same as any child would do in a home; she helped to wait on the table, and helped entertain.

Q. In what way would she entertain? A. If there were refreshments, she would help Mrs. Ibach to serve it.

40 Q. Do you remember any occasion when the Ibachs, or either of them, were not in good health;

MR. J. BLEUVELT HOPPER—*Direct.*

did you ever see them when they got into their last illnesses? A. I did Mr. Ibach.

Q. Did you see Anna? A. She helped around the house.

Q. Did you ever see them out of their own home in other social contacts? A. At my house, where we played cards. 10

Q. Did they bring Anna? A. Sometimes.

Q. What would she do? A. Sit and read.

Q. Were there any conversations in which Anna was referred to by Mr. and Mrs. Ibach; did they speak of her? A. Whenever they introduced her to anyone else, they called her their daughter.

Q. What did she call them? A. "Father" and "Mother"; I did not know anything to the contrary. 20

Q. What did they call her? A. As a rule, they called her "Anna"; but when they introduced her to anyone, they would refer to her as their daughter.

Cross Examination by Mr. Mackay:

Q. You do not keep help in your home? A. No, sir.

Q. Have you visited homes where they have a maid? A. Yes, sir.

Q. Did the maid ever wait on you at the table? A. In some cases, yes, and in some cases, no. 30

Q. In those cases where it was "Yes", was it the daughter or the maid; could you distinguish whether it was the daughter or the maid who waited on you? A. Yes, sir.

Q. The maid would wait on the table the same as the daughter? A. Yes, sir.

Q. So merely because a person did work around the house would not make them the daughter? A. No, sir. 40

MR. J. BLEUVELT HOPPER—*Direct.*

Q. You know Mr. Ibach died in 1919? A. Around that date, yes, sir.

Q. You were Surrogate at the time? A. Yes, sir, I probated the will.

Q. You knew he left everything to his wife? A. Yes, sir.

10

---

MRS. ANILA GRIFFITH, being duly sworn, testified as follows:

By the Court:

Q. Where do you reside? A. Ridgewood.

Q. Did you know Mr. Ibach? A. Yes, sir.

Q. And his wife? A. Yes, sir.

20 Q. Did you know Anna? A. Yes, sir.

Q. How long did you know them? A. About 18 years.

Q. Did you ever visit their house? A. Yes, sir.

Q. Whom did you go to visit? A. Anna.

Q. You were a friend of hers? A. Yes, sir.

Q. Did you go to school with her? A. No, sir, she was going to school when I first met her, but I was over school days.

30 Q. How frequently did you visit Anna at Ibachs'? A. A great deal.

Direct Examination by Mr. Morrison:

Q. Did she ever visit at your house? A. A great deal.

Q. What did Anna do in the Ibach home? A. Helped her mother with the housework; the two of them seemed to do everything together; and she played the piano a great deal; she seemed to entertain their guests a great deal in that way.

40

MRS. ANILA GRIFFITH—*Direct.*

Q. Who asked her to do it? A. Her mother.

Q. How did she ask her to do it? A. I don't remember the words.

Mr. Sumner: I object; I think that is immaterial.

Q. Did you ever see Anna in the Ibach home when the Ibachs were sick? A. Downstairs I was visiting there when both of them were sick at different times, but I was not upstairs. 10

Q. What did you see her do downstairs? A. She was running around a great deal one time when I was there; she was helping the nurse.

Q. Did you ever meet any of Anna's sisters? A. Yes, sir, the first time I met one of her sisters was in the kitchen at their home, in Mrs. Ibach's home, and Anna and I had been somewhere and we came in, and Mrs. Jessop, an old friend of Mrs. Ibach's was in the kitchen; Mrs. Ibach and this strange person, and Anna started to introduce this stranger to me as her sister, but she did not finish with the introduction because— 20

Mr. Mackay: Objected to as hearsay.

Mr. Morrison: We think we know the value of this.

The Court: All right, proceed. 30

A. She did not finish with her introduction of the sister, because her mother interrupted.

Mr. Mackay: We object; we think it is not pertinent.

The Court: I will note the objection and will take the testimony.

A. And her mother said, "Why Anna, you have 40

MRS. ANILA GRIFFITH—*Direct.*

no sister"; and she said, "My cousin, I mean"; and that was the first I had any inkling at all that she was not their own daughter.

Q. Did you ever see Anna do any work to earn money? A. No, sir, they would not let her earn money.

10

Mr. Mackay: Objected to as a conclusion.

By the Court:

Q. Did you ever see her do any work to earn money? A. No, sir.

Q. Do you know how far Anna went in High School? A. She did not finish High School; she was in High School when I first knew her, but she dropped out.

20

Q. Do you remember when she got married? A. Yes, sir.

Q. Who told you she was going to get married? A. I received an invitation.

Mr. Mackay: Objected to.

Mr. Morrison: Mrs. Ibach said, "My daughter is about to be married."

The Witness: It was in the invitation as Ibach; it was not her own name; the invitation was "Ibach."

30

By the Court:

Q. A written invitation? A. Yes, sir.

Further Direct:

Q. Is that the sort of an announcement your received? A. Yes, sir, I received this after the marriage.

40

MRS. ANILA GRIFFITH—*Direct.*

Q. By what method did it come to you? A. Through the mail.

(Mr. Morrison was examining a paper when asking these questions.)

Mr. Mackay: I don't see how that is material.

10

The Court: Objection overruled.

Marked "Exhibit C-1 for identification."

Q. What, besides the housework did you ever see Anna doing in the Ibach home—housework and nursing? A. She gave parties and entertained.

Mr. Mackay: I object; I don't think that question is just exactly right.

Q. What besides doing housework did you see Anna do in the Ibach home? A. She played the piano; went around socially with them and with her friends; she entertained. 20

Q. Did she ever have any other artistic work than playing the piano? A. She painted china; hand-painted china; I gave her lessons in that.

Q. What was done with her work? A. She gave most of it away.

Q. What became of the rest of it? A. I guess she has got it yet. 30

No cross examination.

MRS. JOSEPHINE GATGEN, being duly sworn, testified as follows:

Direct Examination by Mr. Morrison:

Q. Where do you live? A. Paterson, New Jersey. 40

MRS. JOSEPHINE GATGEN—*Direct.*

Q. How long did you know Mr. and Mrs. Ibach and Anna? A. About 25 years.

Q. How frequently did you see them? A. Quite often.

Q. And where? A. At their home, and my home.

10 Q. Both in their home and yours? A. Yes, sir.

Q. When Anna was present, what did you see her do? A. A little of everything in the house, the same as anyone would do in the home.

Q. When she was in your house what did she do? A. She just visited.

Q. She visited at your house? A. Yes, sir.

Q. How old was she when you first knew her? A. Eight or nine years, I suppose.

20 Q. How old was she at the time her father died, about?

Mr. Mackay: Objected to.

The Court: Objection overruled.

A. I dont' remember just that.

Q. Did you receive any announcement of her marriage? A. Yes, sir.

Q. I show you paper, marked "C-1 for identification"; is that the announcement that you received?

A. Yes, sir, just the same thing.

30 No cross examination.

---

MRS. MARIE A. SCHEELJE, being duly sworn, testified as follows:

Direct Examination by Mr. Morrison:

40 Q. Where do you live? A. Ridgewood, New Jersey.

MRS. MARIE A. SCHEELJE—*Direct.*

- Q. Did you know the Ibachs? A. Yes, sir.  
 Q. And Anna? A. Yes, sir.  
 Q. How long had you known them? A. Fourteen years.  
 Q. How frequently did you see them? A. On an average of once a week.

Q. And where did you see them? A. Either at their house or my house, or at the house of intimate friends of both of us. 10

Q. How far was your house from Ibach's? A. About a mile.

Q. What did you see Anna do in the Ibach house? A. She did general helping around the house, the same as a daughter would do; the same as my daughter does.

Mr. Mackay: I ask to have that struck out. 20

The Court: Strike out the last part.

Q. What did you see her do when they came visiting at your house? A. They usually came principally to play a game of cards.

Q. Would she play with all the others? A. Yes, sir; I don't know that she ever came with Mrs. Ibach to play cards, but she came with Mr. Ibach.

Q. What did she call Mr. and Mrs. Ibach? A. "Father" and "Mother." 30

Q. What did they call her? A. "Anna."

Q. Did you get one of those announcements of the wedding, marked "Exhibit C-1 for identification," which I show you? A. Yes, sir.

Q. One like that? A. Yes, sir.

No cross examination.

MRS. FLORENCE K. WHITTEMORE—*Direct.*

MRS. FLORENCE K. WHITTEMORE, being duly sworn, testified as follows:

Direct Examination by Mr. Morrison:

- Q. Where do you live? A. Ridgewood.
- 10 Q. How long have you lived there? A. For the last 28 years.
- Q. During that time did you know Mr. and Mrs. Ibach and Anna? A. Yes, sir.
- Q. How long? A. 26 years.
- Q. How frequently did you see them? A. A great deal during the first ten years, and not very much during the last.
- Q. Where did you most frequently see them? A. At their home.
- 20 Q. Did you meet the other persons who came to their home? A. Yes, sir, a great deal.
- Q. Did you ever meet any other members of the family? A. Yes, sir.
- Q. Do you remember any of them being introduced? A. Yes, sir.
- Q. Who do you remember? A. Her sisters were always introduced as cousins.
- Q. By whom were they so introduced? A. By Mrs. Ibach.
- 30 Q. Any of the other relatives? A. There was an aunt Tony introduced.
- Q. How was she introduced? A. As an aunt.
- Q. By whom was she introduced? A. By Mrs. Ibach, I guess; I cannot say definitely.
- Q. Do you know what her real relationship was? A. No, sir.
- Q. What did the Ibachs call Anna in referring to her? A. "Anna."
- 40 Q. What did she call them? A. "Mother" and "Father."

MRS. FLORENCE K. WHITTEMORE—*Direct.*

Q. What did you see Anna do in the home in a general way? A. I saw her washing, doing dishes, cooking, cleaning chicken coops, playing the piano, entertaining her friends—

Q. Did you frequently see her playing the piano? A. Yes, sir, most every day; she could not come out to play because she had to practice. 10

Q. Did she ever play in public or before the guests of the family? A. Yes, sir.

Q. Did she ever give lessons to people? A. Not that I know of; I don't know.

Q. Did you ever while you were there, meet any relative of Mrs. Ibach? A. I met so many there that I don't know.

Q. Did you ever meet Mrs. Ibach's own mother? A. One I always, thought was her mother. 20

Q. Did she introduce her to you? A. There was one lived there that they called "Grandma," and I called her "Grandma," too.

Q. What was her name? A. I don't know, I only knew her as "Grandma."

Cross Examination by Mr. Mackay:

Q. They called her "Grandma," but that did not make her Grandma, as far as you know? A. No, sir.

30

MRS. AMANDA KRODER, being duly sworn, testified as follows:

By the Court:

Q. Where do you reside? A. Ridgewood, New Jersey.

Q. Did you know the Ibachs? A. Yes, sir.

Q. Did you know Anna? A. Yes, sir. 40

MRS. AMANDA KRÖDER—*Direct.*

Direct Examination by Mr. Morrison:

Q. How long have you known the Ibach family?

A. Several years.

Q. How often did you see them? A. Not often; we visited them occasionally at their home.

10 Q. Did they ever come to your house? A. Yes, sir.

Q. Did you see Anna with them? A. Yes, sir.

Q. What did she do when you saw her in her own home? A. She helped entertain when we were at her house.

Q. What did she call the Ibachs? A. "Mother" and "Father."

Q. What did they call her? A. "Anna."

20 Q. Did you ever hear them address other members of the family; do you know this Grandma that has been spoken of? A. No, sir, I did not know her.

Q. Did you get an announcement of the wedding? A. Yes, sir.

Q. I show you "Exhibit C-1 for identification;" is that the form of announcement you got? A. Yes, sir.

30 Q. After you received the announcement of the marriage, did you continue your acquaintance with Anna? A. Yes, sir.

Q. Did you know her at the time of the birth of her son? A. Yes, sir.

Q. Who told you that a boy had been born? A. Mrs. Ibach called me up on the telephone and said that she had something that I would never have, and I asked her what it was, and—

Mr. Mackay: We object to this.

Mr. Morrison: It is part of the same

MRS. AMANDA KRODER—*Direct.*

thing; we are trying to show that Mrs. Ibach repeatedly said that she was Anna's mother.

The Court: I will take it.

A. She called up and said, "I have something that you will never have; I have a grandson;" and I said, "I am sorry to say, I never will"; and I said, "I suppose you are very proud"; and she said, "I certainly am." 10

No cross examination.

---

MRS. LILLIAN A. WINANS, being duly sworn, testified as follows: 20

Direct Examination by Mr. Morrison:

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

Q. You knew the Ibachs, I believe?

Q. You know Anna? A. Yes, sir.

Q. Did you visit the house? A. I visited it very frequently.

Q. Did she visit you? A. Anna visited me in my own home. 30

Q. What did Anna do in the Ibach home? A. She entertained with her mother, and did everything that anyone would do that was a daughter.

Q. Did you ever see her do work there that ordinarily was the work of servants? A. Yes, sir, everything.

Q. Did you ever see her work at anything outside of the home to earn money? A. No, sir, they would not let her. During the war I suggested that 40

MRS. LILLIAN A. WINANS—*Direct.*

she take a position; my niece got one at \$35.00 a week, and we suggested it to Mrs. Ibach, and she said, "No, Mr. Ibach would not let her work."

No cross examination.

10

MISS ANNA T. MIHN, being duly sworn, testified as follows:

Direct Examination by Mr. Morrison:

Q. Where do you reside? A. Ridgewood, New Jersey.

Q. You are a trained nurse by profession? A. Yes, sir.

20 Q. Did you ever attend either Mr. or Mrs. Ibach?  
A. I was first called there ten years ago for Mr. Ibach.

Q. Was Anna there at the time? A. Yes, sir.

Q. Were you introduced to her? A. Yes, sir.

Q. By whom? A. By Mrs. Ibach and Mr. Ibach; they introduced her to me as "My daughter Anna." I saw her wash dishes, wash dishes, clean.

Q. Did you attend Mr. Ibach in his last illness?

30 A. No, sir, I attended Mrs. Ibach in her last illness.

Q. What did Anna do then? A. That was at the hospital.

Q. After your first services to Mr. Ibach, did you continue the acquaintance with them? A. Yes, sir.

Q. Did you ever visit frequently? A. Yes, sir.

Q. How frequently? A. At intervals of once a week, and then again, sometimes, I would not see them for two months.

40

MISS ANNA T. MIHN—*Direct.*

Q. During that time, what was the conduct of Anna towards the Ibachs? A. As a daughter, and she called them "Mother" and "Father."

Q. What did they call her? A. And they called her "Anna."

No cross examination.

10

MRS. ANNA V. DUSENBERRY, being duly sworn, testified as follows:

By the Court:

Q. Where do you live? A. New York City.

Q. You are the complainant in this case? A. Yes, sir.

20

Direct Examination by Mr. Morrison:

Q. Mrs. Dusenberry, when you went to school, where did you go to school? A. I went to the Ridgewood High School, the Beach Street school.

Q. Who took you there? A. My mother.

Q. Did you go to Grammar School before you went to High School? A. Yes, sir.

Q. Where did you go to Grammer School? A. In the same school.

30

By Mr. Sumner:

Q. Who took you to the Grammar School? A. My mother.

Further Direct:

Q. I show you a paper and ask you what this paper is? A. That was my diploma from the

40

MRS. ANNA V. DUSENBERRY—*Direct.*

Ridgewood Grammar School, the Beach Street Grammar School.

Mr. Mackay: It is entirely irrelevant; I object; and it is incompetent.

10 Mr. Sumner: I object to it as incompetent and immaterial.

Mr. Morrison: I ask that this be marked for identification.

Marked "Exhibit C-2 for identification."

Q. I show you a watch, and ask you whose watch that is? A. That is mine.

Q. Where did you get it? A. Father gave it to me.

20 Mr. Morrison: I ask that that be marked in some way in evidence. It has the initials on the back of it, "A. V. I." (three initials).

The Court: We generally impound them in the hands of the sergeant-at-arms.

Q. The marking on the back of the watch, was that on when you received it? A. Yes, sir.

30 Q. I show you another paper, and ask you what this is? A. That is a program of a little play that Mrs. C. B. Francisco gave in Ridgewood, called "Pinafore"; and I took part in it, I think in the chorus, and my name appears as Anna V. Ibach."

Q. Were Mr. and Mrs. Ibach present at that performance? A. Yes, sir.

The Court: I did not imagine at all that there was any dispute about the fact that she went by the name of "Anna Ibach."

40 Mr. Mackay: There is an announcement of a wedding; it does not mention her name as "Ibach"; it says: "Our daughter, Anna

MRS. ANNA V. DUSENBERRY—*Direct.*

Valentine," but when we produce the application for the marriage license, we find it is in the name of "Anna V. Scheppendahl, Registrar's Office."

Marked "Exhibit C-3 for identification" (the program "H. M. S. Pinafore—The Lass that Loved a Sailor").

10

Q. Senator Mackay has kindly given me a copy, a certified copy of the certificate and record of marriage; is that the certificate and record of your marriage? A. Yes, sir, it is.

Q. I call your attention to the fact that the name of the wife, maiden name of the wife, is given as "Anna Valentine Scheppendahl"; that was your name? A. That was my name.

20

Q. Who were present when that name was given? A. Mr. Morris, Village Clerk of Ridgewood, mother and my husband, and Dr. Pettit's infant child, Helen.

Q. What was said in respect to the name, the maiden name of the wife in this marriage that was then being arranged?

Mr. Mackay: Objected to.

By the Court:

30

Q. Was there any conversation? A. Yes, sir.

Q. What was the conversation? A. (No answer).

By Mr. Sumner:

Q. Who was the conversation with? A. With Mr. Morris and with mother.

Q. What was the conversation? A. Mr. Morris said to me—

40

MRS. ANNA V. DUSENBERRY—*Direct.*

Mr. Sumner: We object to what Mr. Morris said.

10 A. He opened the conversation; Mr. Morris said to me, "What is your full name, Miss Ibach"? And I answered, "I don't know if I will be legally married if I am married by the name of Ibach"; mother interrupted and said—

Mr. Sumner: We object to any statement of the mother.

A. Mother interrupted and said, "Of course, you can marry by the name of Ibach." Mr. Morris turned to mother and said:

20 Mr. Mackay: There is a written instrument, and apparently an attempt now being made by verbal testimony to contradict it and change it and vary it; and I say that it is clearly objectionable and inadmissible, and I do not see on what theory it can go in. What is the use of having, a Registrar to take down and publish, and somebody can come in and say, "That is not the name at all, that is only something entirely wrong, and you are entirely mistaken about it." 30 You might just as well say about the diploma in school; they put in "Ibach"; they might just as well have put in "Scheppendahl." It probably has no significance, but who is going to go back of it to attack it when the thing is in writing?

The Court: I will allow it under the rule laid down by Vice Chancellor Pitney in the O'Brien case and similar cases; I will allow it. You may note an objection to it.

40

MRS. ANNA V. DUSENBERRY—*Direct.*

By the Court:

Q. Proceed. Mr. Morris said what? A. He said to mother, "Has she been legally adopted?" and mother said, "No"; then Mr. Morris replied, "Then she cannot marry by the name of Ibach; she would not be legally married; she must marry under her original name." 10

Further Direct:

Q. Mrs. Dusenberry, I show you a triple frame with three photographs; where did that come from? A. Mother had these pictures taken, these two small pictures taken in Binghampton, New York, of her and myself; and after we came back from Binghampton, father had his picture taken so that we would have the three pictures in the one frame. 20

Q. What part of the home did that come from? A. It stood on our mantelpiece from the time it was taken, my aunt only gave it to me after mother's death.

Q. I show you another picture, and ask you when that was taken? A. That was taken before I moved to Ridgewood, in Undercliff; it is a picture of mother and myself.

Mr. Morrison: Certificate and record of marriage offered in evidence. 30

Marked "Exhibit C-4."

Mr. Morrison: The picture with the three of them is offered.

Marked "Exhibit C-5."

Mr. Morrison: The picture, the snapshot, is offered in evidence.

Marked "Exhibit C-6."

Q. I show you another photograph, Mrs. Dusen- 40

MRS. ANNA V. DUSENBERRY—*Direct.*

berry, and ask you whose picture that is? A. That is mother's picture and myself; that was taken the first Christmas that I came to Undercliff, either the first or second, I don't recall.

Marked "Exhibit C-7 for identification."

10

Q. I show you a paper and ask you what that is?

A. That is a program of a musical recital in Broadway Reformed Chapel at Paterson, in which I took part.

Q. Were Mrs. and Mrs. Ibach present? A. They were both present.

Mr. Morrison: I offer that for identification.

Marked "Exhibit C-8 for identification."

20

Q. I show you another photograph, a snapshot?

A. That was taken at the same time the other snapshot was taken in Undercliff; this is father, mother and myself.

Marked "Exhibit C-9 for identification."

Q. I show you another paper, and ask you what that is? A. This is also given by Mrs. C. D. Francisco, and I took part in it.

30

Q. Were Mr. and Mrs. Ibach present? A. Yes, sir, they were present.

Mr. Morrison: I offer this for identification.

Marked "Exhibit C-10 for identification."

Q. I show you another paper and ask you what that is? A. That is another musical that I took part in, at the Ridgewood Opera House.

40

MRS. ANNA V. DUSENBERRY—*Direct.*

Q. Were Mr. and Mrs. Ibach present? A. Yes, sir.

Mr. Morrison: I offer this for identification.

Marked "Exhibit C-11 for identification."

Q. I show you a card, and ask you what that is?  
A. When I returned home from my honeymoon, mother had a bouquet of flowers on the mantelpiece for me with this card standing in front of the flowers.

10

Mr. Morrison: I offer it for identification.  
Marked "Exhibit C-12 for identification."

Q. I show you still another paper and ask you what that is? A. This is another musical that was held at the Broadway Reformed Chapel, in which I took part.

20

Q. Were Mr. and Mrs. Ibach present? A. Yes, sir, they were present.

Mr. Morrison: I offer it for identification.

Marked "Exhibit C-13 for identification."

No cross examination.

Mr. Morrison: We have one witness who will not be here until two o'clock. May we rest, with the exception of that witness?

30

The Court: We will take a recess now until this witness arrives.

Recess to 2 P. M.

After Recess.

40

HELEN BRAINARD SMITH—*Direct.*

HELEN BRAINARD SMITH, being duly sworn, testified as follows:

Direct Examination by Mr. Morrison:

- Q. You reside in Ridgewood? A. Yes, sir.
- 10 Q. Were you acquainted with Mr. and Mrs. Ibach and Anna? A. Yes, sir.
- Q. For how long a period? A. Fifteen years.
- Q. How frequently did you see them? A. Quite frequently; I visited at their home a number of times.
- Q. Did they ever visit any places where you were visiting, or at your home? A. Yes, sir.
- Q. When you visited at their home, what did you observe as to Anna's activities at the home?
- 20 A. I thought she was their daughter; I had no idea that she was not.
- Q. What did you see her doing? A. All the duties of a daughter about the house; the entertainment just as a daughter would entertain, assisting her parents in entertaining; she seemed just exactly like their daughter in every way.
- Q. What did she call them? A. "Father" and "Mother," and they called her "Daughter."
- Q. Did you continue their acquaintance with the family until Anna was married? A. Yes, sir.
- 30 Q. Did you ever meet Mrs. Ibach herself in respect to the marriage or in preparation of the marriage? A. Yes, sir.
- Q. In what way? A. She came into the office of the "Ridgewood Herald," and gave me the announcement of the engagement, prepared by herself in her writing, and it appeared in the "Herald" of the 29th of July, 1920.
- 40 Q. I show you the issue of that paper of the 29th of July, 1920, and call your attention to a marked

HELEN BRAINARD SMITH—*Direct.*

item; is that the one you have just mentioned? A. Yes, sir.

Mr. Sumner: This is all subject to our general objection.

The Court: Yes.

Marked "Exhibit C-13 for identification." 10

Cross Examination by Mr. Mackay:

Q. You say that she prepared it herself and gave it to you? A. Yes, sir.

Q. So that it was something that she had attended to in her own way? A. Mrs. Ibach, yes.

Q. As I recall it, that does not read "Anna V. Ibach," it reads, "Anna V.," without any last name? A. Her daughter.

Q. Without any last name? A. That is it. 20

Mr. Morrison: We offer in evidence the several exhibits which have been marked for identification.

The Court: Of course, they are not properly proved in some instances. There is one thing that has gone in, and that is the marriage certificate; that went in evidence. I will received them anyhow, subject to the objection. 30

Complainant Rests.

Mr. Mackay has made the motion to dismiss the bill, and the motion will be granted.

Mr. Morrison: May I apply for leave to amend our complaint to conform with the proofs?

The Court: The only thing I can do is to dismiss without prejudice. I will not shut you out from any amendment you want to have. 40

**Final Decree.**

(Filed, Sept. 21, 1925.)

10 This cause coming on to be heard in the presence  
of Morrison, Lloyd, & Morrison, William J. Mor-  
rison, Jr., of counsel with the complainant, and  
Mackay & Mackay of counsel with the defendants  
20 Robert K. Robertson and August Wostbrock, execu-  
tors of the estate of Helen Ibach, deceased, and  
Emil Bueddemann, Julia Kattenstroth, Aline Groe-  
schel, Antonia Bueddemann, Ella Ibach, Pauline  
Ibach, Anna Ibach, Frederick T. Ottman, Lutheran  
Orphan Asylum of West Roxbury, Massachusetts,  
Concordia College of Bronxville, N. Y., Evangeli-  
cal Lutheran Church, Missouri, Synod, St. Louis,  
Missouri and Bethlehem Evangelical Lutheran  
30 Congregation of Ridgewood and William A. Sum-  
ner of counsel with the defendant Paterson General  
Hospital and Frederick V. Watson of counsel with  
the defendant Laura Pettit and Charles W. Scott  
of counsel with the defendant Paterson Orphan  
Asylum, and the pleadings and proofs having been  
read and the arguments of the respective counsel  
having been heard and considered, and the Court  
having only considered the said pleadings, proofs  
and arguments and it appearing to the Court that  
the complainant is not entitled to the relief sought  
and prayed for by her in her bill of complaint;

IT IS, on this 16th day of September, Nineteen  
Hundred and Twenty-five, by his Honor Edwin  
Robert Walker, Chancellor of the State of New  
Jersey, ORDERED, ADJUDGED and DECREED, that the  
complainant's bill be and the same is hereby dis-  
missed with costs.

Respectfully advised,

VIVIAN M. LEWIS,

40

V. C.

E. R. WALKER.

C.

**Memorandum Opinion.**

(Decided February 11, 1925.)

(Filed, April 24, 1926.)

LEWIS, V. C. :

This is a bill for specific performance of an alleged agreement between Hugo Ibach and Helen Ibach and Otto Schnependahl, father of the complainant. The complainant claims the rights of a natural child in the estate of Helen Ibach, and brings this action against her executors. In re: Book—N. J. Equity 549, at 552. 10

Complainant contends that the case is within the principles laid down in *Van Dyne v. Vreeland*, 11 New Jersey Equity, 370, but the evidence in the instant case is entirely different. The learned Chancellor said, in his resume of the testimony in the *Van Dyne* case: 20

“The complainant has been greatly wronged. He has devoted the prime of his life to the service of the defendant *Vreeland*. He served him twenty-five years upon the faith of an agreement made at the solicitation of the defendant with the complainant’s father and for such services the complainant should be provided for at the defendant’s death as his own son. He was deprived of a participation in his father’s property upon the assurances of the defendant made to that father that he need make no provision for his son because the defendant, in fulfilment of his agreement, would stand toward him in the place of his parent and, as he had stipulated, would provide for him by will. He received the complainant into his family upon the terms of the agreement and the services of the complainant were ren- 30  
40

## MEMORANDUM OPINION.

10 dered and were accepted upon the expectation of that agreement being carried out in good faith. The defendant has repeatedly acknowledged his obligation to fulfill the agreement by making different wills from time to time in accordance with its provisions and the understanding of the parties. He has verbally renewed the agreement frequently with the complainant and induced him to continue his services assuring him that the fulfilment of the agreement by him should be a reward to the complainant for his fidelity. For twenty-five years the defendant accepted the services of the complainant upon the understanding that the agreement was the basis of the relationship existing between them. Now the defendant, 20 for the sole purpose of defrauding the complainants, has fraudulently put out of his hands all of his property out of which he was to make the provision which he had stipulated to make by the agreement."

30 Another situation is presented by the facts in this case. The complainant entered the home of Hugo and Helen Ibach as an orphan and lived with them until her marriage. She went there after the death of her parents and was reared and educated by the Ibachs. She was treated as a member of the family, secured an excellent home, and was the object of their tender consideration, attention and a beneficiary generally. There was no formal adoption but this Court may enforce an agreement for informal adoption of a child where there is sufficient consideration to sustain it. *Drake v. Lanning*, 49 N. J. Equity, 452. In this case, however, I find no consideration upon which the com- 40

## MEMORANDUM OPINION.

plainant can rely, which would warrant a decree in her favor against the executors of Helen Ibach. No fraud was practised on the complainant but her condition in life was ~~imposed~~<sup>improved</sup> by her transfer to the Ibach home. She married from there, and significantly enough, gave the name of Anna Schneppendahl in obtaining the marriage license.

The testimony heard by me was very brief and at its conclusion the defendant rested without tendering any proofs and the bill was dismissed. A careful perusal of this evidence fails, to my mind, to reveal any agreement enforceable at this time against the Executors of Helen Ibach. The right of the complainant must, of course, be clearly established to entitle her to the remedy now sought in her behalf. The consideration shown, and the generosity of the Ibachs to the complainant, and the surrounding circumstances generally, might lead to a Court to withhold specific performance at this time. It is true that an attempt was made to show an agreement on the part of Hugo Ibach, the husband of Helen Ibach with Otto Schneppendahl, the father of the complainant, but I am not satisfied that the proofs offered establish it, although at the best it is simply between Hugo Ibach and the father of the complainant. There was no ratification by Helen Ibach. It rests largely on the testimony of a Mrs. Hill, who says that at the death bed to the father of the complainant, about thirty years ago, she heard him say that if anything happened to him Mr. Ibach might have his child as his own and that Mr. Ibach said he would gladly take her and she would be his own. Others testify to the pleasant home life of the complainant with the Ibachs and to their constituting a family group. Hugo Ibach predeceased his wife and in his

10

20

30

40

## MEMORANDUM OPINION.

10 will he made no provision for the complainant but left his entire estate to his widow, Helen Ibach. He made no mention in this will of any agreement and upon the death of his widow, Helen Ibach, she left a legacy to the complainant and to the complainant's child and made other bequests. It is quite apparent that she had no knowledge of the alleged agreement.

Complainant has been guilty of surprising delay and lack of diligence, unless an attempt is now being made to establish a false claim. She knew at the time of Hugo Ibach's death that he had made no provision for her in his will, or any mention of an alleged agreement, but now that both the Ibachs' lips are sealed in death she institutes the present proceeding.

20 The bill should be dismissed.

---

**Notice of Appeal.**

(Filed, March 4, 1926.)

30 The complainant, Anna Dusenberry, hereby appeals from the final decree made in the above entitled cause on September 16, 1925, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all cases.

Dated, March 1, 1926.

MORRISON, LLOYD & MORRISON,  
Solicitors for Complainant.

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

40

WM. J. MORRISON, JR.,  
Of Counsel with Complainant.

## NOTICE OF APPEAL.

Service of the foregoing notice of appeal was duly acknowledged by the following:

Mackay and Mackay, counsel for Robert K. Robertson and August Westbrock, executors of the estate of Helen Ibach, deceased; Emil Bueddemann, Julia Kattenstroth, Aline Groeschel, Antonia Bueddemann, Ella Ibach, Pauline Ibach, Anna Ibach, Frederick T. Ottman, Lutheran Orphan Asylum of West Roxbury, Mass., Concordia College of Bronxville, N. Y., Evangelical Lutheran Church, Missouri Synod, St. Louis, Missouri, and Bethlehem Evangelical Lutheran Congregation of Ridgewood.

10

Frederick V. Watson, counsel for Laura Pettit.

Charles C. Scott, counsel for Paterson Orphan Asylum and Humphreys and Sumner, counsel for Paterson General Hospital.

20

---

**Petition of Appeal.**

(Filed, March 7, 1926.)

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of Anna Dusenberry, the appellant in the above entitled cause, respectfully shows that:

30

1. 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, bearing date the 16th day of September, 1925, in a certain cause in said Court of Chancery wherein the said Anna Dusenberry was complainant and the said Robert K. Robertson and August Westbrock as executors of Helen Ibach,

40

## PETITION OF APPEAL.

deceased, Anna Ibach, Pauline Ibach, Ella Ibach, Emil Bueddeman, Julia Kattenstroth, Laura Pettit, Elizabeth Richter, Alaine Groeschel, Rev. Frederick A. Ottman, Old Ladies Home of Hackensack, N. J., Lutheran Orphan Asylum of College Point, Long Island, Lutheran Orphan Asylum of Roxbury, Mass., Lutheran Old Peoples Home of East New York, Evangelical Lutheran Church, Missouri Synod, Missouri, Concordia College of New York, Concordia College of St. Louis, Missouri, Lutheran Laymen's League of Evangelical Lutheran Synod of Missouri, Dutch Reformed Church of Ridgewood, Lutheran Church of Ridgewood, Ridgewood Fidelity Title Guaranty Company, Trustee, Antonia Bueddeman, Paterson General Hospital, St. Joseph's Hospital of Paterson, and Paterson Orphan Asylum were defendants, in this respects, to wit, that the said decree adjudges that the complainant's bill be and is thereby dismissed.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the decree should have adjudged that complainant is entitled to such part of the estate of Hugo Ibach, deceased, as she would have taken had she been his daughter, and had he died intestate; and should further have ordered the defendants to account to her for said share of said estate, and to pay said share to her.

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

MORRISON, LLOYD & MORRISON,  
Of Counsel with Complainant-Appellant.

**Acknowledgment of Service of Copy of  
Petition of Appeal.**

(Filed, March 16, 1926.)

We hereby acknowledge service of a copy of the petition of appeal filed in the above entitled matter on March 8th, 1926.

MACKAY & MACKAY, 10

Solicitors for Westbrook and Robertson,  
Executors, etc., Lutheran Church of  
Ridgewood; Evangelical Lutheran  
Church, Missouri Synod, Missouri;  
Fredk. A. Ottman; Concordia College  
of New York; Lutheran Orphan  
Asylum of Roxbury, Mass.; Anna  
Ibach, Pauline Ibach; Ella Ibach;  
Antonia Bueddeman; Aline Groeschel;  
Julia Kattenstroth and Emil  
Bueddeman. 20

CHAS. C. SCOTT,  
Solicitor for Paterson Orphan Asylum.

HUMPHREYS & SUMNER,  
Solicitors for Peterson General Hospital.

FREDERICK V. WATSON,  
Solicitor for Laura Pettit. 30

**Proof of Service of Petition of Appeal.**

(Filed, March 16, 1926.)

State of New Jersey,      ss.:  
County of Bergen,

FRANCIS P. ODDO, of full age, being duly sworn,  
according to law on his oath says that; on Thurs-

40

## PROOF OF SERVICE OF PETITION OF APPEAL.

day, March 11, 1926, I served a copy of the petition of appeal in this matter upon the defendant, Old Ladies Home of Hackensack, N. J., by delivering a copy to C. E. Merrill, matron, at said home; on the defendant Elizabeth Richter by delivering a copy at her residence, 200 South Irving Street, Ridgewood, N. J., to her daughter Mrs. G. V. De-Moya; on the defendant Dutch Reformed Church, by delivering a copy at the parsonage, 16 Union Street, Ridgewood, N. J., to Mrs. C. Hogg, wife of the pastor of said church; on the defendant St. Joseph's Hospital by delivering a copy at said Hospital to Sister Natalie in charge of said Hospital; and on the defendant, Fidelity Title and Mortgage Guaranty Company by delivering a copy to Frederick C. Koester, Vice President of said Company at its office, Main and Morris Streets, Hackensack.

FRANCIS P. ODDO.

Sworn to and subscribed before me  
this 15th day of March, 1926.

MADELINE BACHMAN,  
Notary Public,  
New Jersey.

---

**Answer of Laura Pettit to the Petition of Appeal.**

(Filed, April 1, 1926.)

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that the decree was on September 16th, 1925, made and entered in the Court of Chancery of New

ANSWER OF LAURA PETTIT TO THE PETITION OF  
APPEAL.

Jersey in the above entitled cause for the purpose in said petition named and as therein set forth, but as to the substance and form of said decree, this respondent begs leave to refer thereto when the same shall be produced.

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

10

FREDERICK V. WATSON,  
Solicitor for and of Counsel with Laura Pettit.

**Answer of St. Joseph's Hospital to the  
Petition of Appeal.**

20

(Filed, April 10, 1926.)

This respondent, St. Joseph's Hospital, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless, says and admits that a decree was, on the 16th day of September, 1925, 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, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and it prays that the same may be affirmed, with costs to be adjudged to this respondent.

30

JOHN M. NOLAN,  
Solicitor for and of Counsel with  
St. Joseph's Hospital of Paterson, N. J.

40

### Answer to Petition of Appeal.

(Filed, March 12, 1926.)

10        These respondents, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admit that the decree was on September 16th, 1925, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purpose in said petition named and as therein set forth, but as to the substance and form of said decree, these respondents beg leave to refer thereto when the same shall be produced.

      These respondents are advised and believe that the said decree is agreeable to equity; and they pray that the same may be confirmed with costs to be taxed in favor of these respondents.

20

MACKAY & MACKAY,

30

Solicitors for and of counsel with Robert K. Robertson and August Wostbrock, executors of the estate of Helen Ibach, deceased, and Emil Bueddemann, Julia Kattenstroth, Aline Groeschel, Antonia Bueddemann, Ella Ibach, Pauline Ibach, Anna Ibach, Frederick T. Ottman, Lutheran Orphan Asylum of West Roxbury, Massachusetts, Concordia Colleg of Bronxville, N. Y., Evangelical Lutheran Church Missouri Synod, St. Louis, Missouri and Bethlehem Evangelical Lutheran Congregation of Ridgewood.

40

**Exhibit C-1.**

Mrs. Hugo Ibach  
announces the marriage of her daughter  
Anna Valentine  
to

Mr. Daniel Russel Dusenberry  
on Tuesday, the nineteenth of October  
One thousand nine hundred and twenty  
Ridgewood, New Jersey

10

**Exhibit C-2A.**

STATE OF NEW JERSEY  
DEPARTMENT OF PUBLIC INSTRUCTION  
County Grammar School Diploma

This certifies that Anna V. Ibach has completed  
the course of study prescribed for Grammar Schools  
in Bergen County, and has, by examination and  
excellent record as a student, fully established her  
right to receive this honorable testimonial.

20

Issued in compliance with the Rules of the State  
Board of Education.

IN WITNESS WHEREOF we have set our  
hands this 23d day of June, 1905.

30

B. C. WOOSTER,  
County Superintendent.

B. C. WOOSTER,  
Principal.

40

### Exhibit C-3.

"H. M. S. PINAFORE"

or

"The Lass That Loved A Sailor"

#### Cast of Characters

10 The Rt. Hon. Sir Joseph Porter, K. C. B., First Lord of the Admiralty Harry I. Marble  
 Captain Corcoran, Commanding H. M. S. Pinafore A. Stephen Bogart  
 Ralph Rackshaw, Able Seaman H. A. Arthur  
 Dick Deadeye, Able Seaman Frank Martin  
 Bill Bobstay, Boatswain's Mate H. S. Hixon  
 Bob Becket, Carpenter's Mate Lee Don  
 Tom Tucker, Midshipmite Mildred Rouclere  
 Josephine, the Captain's Daughter L. Isabelle Irving  
 Hebe, Sir Joseph's First Cousin Bessie H. Vreeland  
 Little Buttercup, a Portsmouth Bumboat Woman Jane Alva Young

20 Chorus of First Lord's Sisters, his Cousins, his Aunts  
 Sailors, Marines, Etc.

Scene Quarterdeck H. M. S. Pinafore  
 Act I. Noon Act II. Night

#### THE CHORUS

30 Mrs. J. H. Morey Alice F. Wilkinson  
 Mrs. W. O. Cruse Nellie S. Veenschoten  
 Clara W. Kruse Helen Brainard Smith  
 Nettie Wilkinson Maud C. Walthery  
 Lillian A. Roy Mrs. A. A. Lomar  
 Florence M. Marble Anna V. Ibach  
 Mrs. W. R. Haight Alis Helen Estes  
 Mae Hopkins Helena L. Keyser  
 Isabel Bridgman Ethel Forde Hillyer  
 Eleanor R. Smack  
 W. H. Rossell E. J. Costa  
 W. Graydon H. G. Eichells  
 W. Gerdes Stacey S. Rumpelstin  
 S. L. Greason W. R. Haight  
 Tal Rees La Roy Lally  
 H. E. Estes, Jr. C. W. Eichells  
 S. S. Hazzard W. J. Clickner  
 Donald Don G. M. Schinzel  
 James May William S. Martine

40 Musical Director, Frekerick A. Parker.  
 Costumes and wigs, A. W. Tams.  
 Presented and managed by Permealie J. Francisco.  
 There will be dancing after the performance of May seventh.

**Exhibit C-4.**

|                      | GROOM   | BRIDE                     |    |
|----------------------|---|---------------------------|----|
| Name                 | Daniel Russell Dusenberry   | Anna Valentine Schnepdahl |    |
| Date of Marriage     | October 19, 1920  |                           |    |
| Residence            | Ridgewood, N. J.  | Ridgewood, N. J.          |    |
| Age                  | 31  | 31                        |    |
| Previous Condition   | Single  | Single                    |    |
| Occupation           | Office Mgr. Telephone Co.   |                           |    |
| Country of Birth     | Washington, N. Y.   | New York City             |    |
| Father's Name        | John Franklin Dusenberry  | Otto Schnepdahl           | 10 |
| Mother's Maiden Name |   |                           |    |
| By whom Married      | Alice Giles   | Mary Coist                |    |
| Witnesses            | Rev. J. A. Van Neste<br>Helen Ibach, Ridgewood, N. J.<br>Mrs. J. Franklin Dusenberry, Washington, N. Y. |                           |    |

**Exhibit C-8.**

## BROADWAY REFORMED CHAPEL

Tuesday Evening, March 5, 1901

at 8.15 o'clock.

20

MUSICAL EVENING FOR THE STUDENTS,  
of the  
PATERSON CONSERVATORY OF MUSIC,  
158 Ellison Street  
PROGRAMME.

- |  |                      |    |
|--|----------------------|----|
| 1 The Merry Farmer, Op. 68, No. 10,<br>Master John Looschen.   | Schumann             |    |
| 2 (a—Cradle Song, Op. 124, No. 6,<br>(b—The Wild Horseman, Op. 68, No. 12<br>Miss Lulu Deubler.  | Schumann<br>Schumann |    |
| 3 Slumber Song, Op. 124, No. 16,<br>Miss Ethelind Zabriskie.   | Schumann             |    |
| 4 Scherzo, Op. posth,<br>Miss Annie Ibach.   | Schubert             | 30 |
| 5 Selections from Carnival, Op. 9,<br>(a—Chopin,<br>(b—Valse Allemande, Paganini,<br>(c—Marche des Davidsbundler contre les Philistins,<br>Miss Daisy Fairhurst. | Schumann             |    |
| 6 Dio posente, Faust,<br>Mr. J. Stewart  | Gounod               |    |
| 7 Forest Scenes, Op. 82,<br>(a—Entrance,<br>(b—Hunter on the Watch,  | Schumann             |    |

40

## EXHIBITS.

- (c—Solitary Flowers,  
 (d—Haunted Spot,  
 (e—Pleasant Landscape,  
 (f—Roadside Inn,  
 (g—The Prophet Bird,  
 (h—Hunting Song,  
 (i—Farewell,  
 10 Misses Thayer, Getman and Dr. Westbrook  
 (a—At Evening, Op. 12, No. 1, Schumann  
 8 (Whims, Op. 12, No. 2,  
 (c—Night Pieces, Op. 23, No. 4,  
 9 Novellette, Op. 21, No. 1,  
 Dr. E. M. Westbrook  
 N. B.—The Forty-eighth Entertainment, Tuesday evening,  
 April 2nd. Chopin the King of Piano Composers.

20

## Exhibit C-10.

## THE MIKADO

or

## THE TOWN OF TITIPU

## Cast of Characters

- THE MIKADO Harry I. Marble  
 His son, disguised as a wandering minstrel  
 NANKI-POO and in love with Yum-Yum W. R. Hewitt  
 30 KOKO Lord High Executioner of Titipu George Denio  
 POO-BAH Lord High Everything Else Alfred E. Hewitt  
 PISH-TUSH A Noble Lord H. S. Hixon  
 PITTI-SING ) (Helen L. Link  
 YUM-YUM ) Three Sister, (Hazel M. Elliot  
 PEEP-BO ) Wards of Ko-Ko (Elizabeth B. Van Emburgh  
 KATISHA An elderly lad in love with Nanki-Poo  
 Mrs. George F. Brackett  
 Chorus of School Girls, Nobles, Guards and Coolies

40

Musical Director  
 Costumes and WigsFrederick A. Parker  
 A. W. Tams

## EXHIBITS.

## SYNOPSIS OF SCENERY

ACT 1. Court Yard of Ko-Ko's Official Residence.

ACT II. Ko-Ko's Garden.

## CHORUS

|                       |                     |    |
|-----------------------|---------------------|----|
| Alice H. Estes        | Helena L. Keyser    |    |
| Mae T. Hopkins        | Ida Warren Malbie   |    |
| Eleanor R. Smack      | La Roy Lally        | 10 |
| Beulah M. Francisco   | Edw. J. Costa       |    |
| Adelaide Avery        | James S. May        |    |
| Nellie S. Veenschoten | Wm. S. Martine      |    |
| Mina Van Emburgh      | C. C. Van Emburgh   |    |
| Alice Don             | Paul W. Douglass    |    |
| Florence Marble       | J. Theodore De Mund |    |
| Lillian A. Roy        | S. L. Greason       |    |
| Isabel Bridgman       | H. Warner Fink      |    |
| Anita Van Emburgh     | S. S. Rumpelstin    |    |
| Anna V. Ibach         | J. D. Nickerson     |    |
| Mrs. Wm. Cruse        | J. G. Zabriskie     |    |
| Ethel A. Smack        | C. W. Eichells      |    |
| Clara Kruse           | Lee Don             | 20 |
| Ethel E. Elliot       | C. B. Francisco     |    |

There will be dancing after the  
performance of April Eleventh

## Exhibit C-11.

## ANNIVERSARY

of the

RIDGEWOOD PUPILS

of

Dr. E. M. WESTBROOK,

Director and President

PATERSON CONSERVATORY

OF MUSIC

158 Ellison Street,

Founded 1892, Incor. 1897.

in

RIDGEWOOD OPERA HOUSE,

Wednesday, June 5, 1901,

at 8.15 o'clock.

30

40

EXHIBITS.  
PROGRAMME.

## PART I.

- |    |                                  |                   |
|----|----------------------------------|-------------------|
|    | 1. Overture to Barber of Seville | Rossini           |
|    | Misses Don & E. Zabriskie        |                   |
|    | 2. Il Trovatore Verdi Op 114     | Krug              |
|    | Miss La Fetra                    |                   |
| 10 | 3. Sonatina Op 36 No. 4          | Clementi          |
|    | a. Con Spirito                   |                   |
|    | b. Andante Con Expressione       |                   |
|    | c. Rondo                         |                   |
|    | Miss Nellie Doremus              |                   |
|    | 4. Fedora' Scherzo Valse Op 495  | Kirchner          |
|    | Miss Ibach                       |                   |
|    | 5. Galopp Op 237 No. 3           | Spindler          |
|    | Miss Mabel Doremus               |                   |
|    | 6. If thou didst love me         | Denza             |
|    | Miss Barton                      |                   |
|    | 7. Gavotte Moderne in C          | Tours             |
|    | Master White                     |                   |
| 20 | 8. Album Leaf                    | Scholtz           |
|    | Miss Greaves                     |                   |
|    | 9. Danse Espagnole Op 24         | Ascher            |
|    | Miss White                       |                   |
|    | 10. Song of the Brook, Pastorale | George Wm. Warren |
|    | Miss Hattie Zabriskie            |                   |

---

Exhibit C-12.

## WELCOME HOME.

30

May all those things  
which cheer and bless  
Combine to bring you  
happiness

MOTHER.

40

**Exhibit C-13A.**

BROADWAY REFORMED CHAPEL.

Tuesday Evening, Nov. 13, 1900,  
at 8:15 o'clock,

MUSICAL EVENING FOR THE STUDENTS

of the

PATERSON CONSERVATORY OF MUSIC  
158 Ellison Street.

10

## PROGRAM.

|   |   |               |    |
|---|---|---------------|----|
| 1 | Tarantelle                                    | Behr          |    |
|   | Miss Florence Goodwin                         |               |    |
| 2 | Bird's Carol, Polka                           | Morley        |    |
|   | Miss Annie Ibach                              |               |    |
| 3 | Merry Thoughts                                | Valmont       |    |
|   | Miss Elizabeth Toole                          |               |    |
| 4 | Feodora Waltz                                 | Kirchner      |    |
|   | Miss Mabel Greaves                            |               |    |
| 5 | Idylle  | Hackh         | 20 |
|   | Miss Ethelind Zabriskie                       |               |    |
| 6 | Andalusion Dance                              | La Villa      |    |
|   | Miss Alice Don                                |               |    |
| 7 | Les Couriers Caprice                          | Ritter        |    |
|   | Miss Violet Thayer                            |               |    |
| 8 | Prelude in C sharp minor                      | Rachmanninoff |    |
|   | Miss Daisy C. Fairhurst                       |               |    |
| 9 | <i>Dr. E. M. Westbrook</i>                    |               |    |
|   | Op. 1, Eugenie, Polka Fantastique             |               |    |
|   | Op. 2, Valse Rustique                         |               |    |
|   | Op. 3, Rays of Hope, Mazurka Characteristique |               |    |
|   | Op. 4, Dancing Ripples, Brilliant Waltz       |               |    |
|   | Op. 6, Leila, Caprice Polka                   |               | 30 |
|   | Edward M. Westbrook, Mus. Doc.                |               |    |

---

N. B. On Tuesday evening, December 11th, Dr. Westbrook will give a short Lecture on what he considers Good Piano Teaching, from 16 years' personal experience, with illustrations by students.

**Exhibit C-13B.**

Mrs. Hugo Ibach of West Frankline Avenue, announces the engagement of her daughter, Anna V., to D. Russell Dusenberry, son of Mr. and Mrs. J. Franklin Dusenberry, of Washingtonville, N. Y.

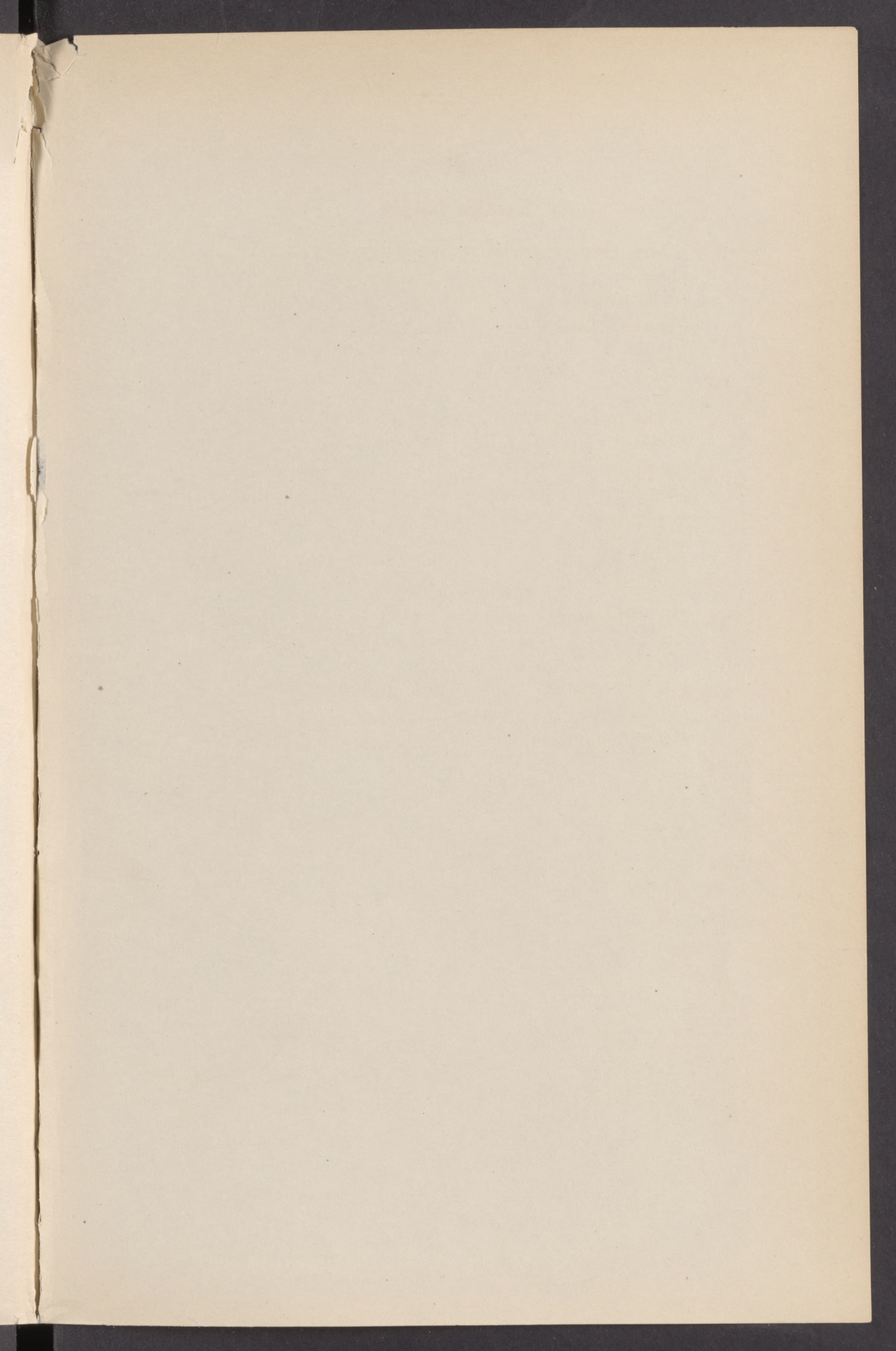
10

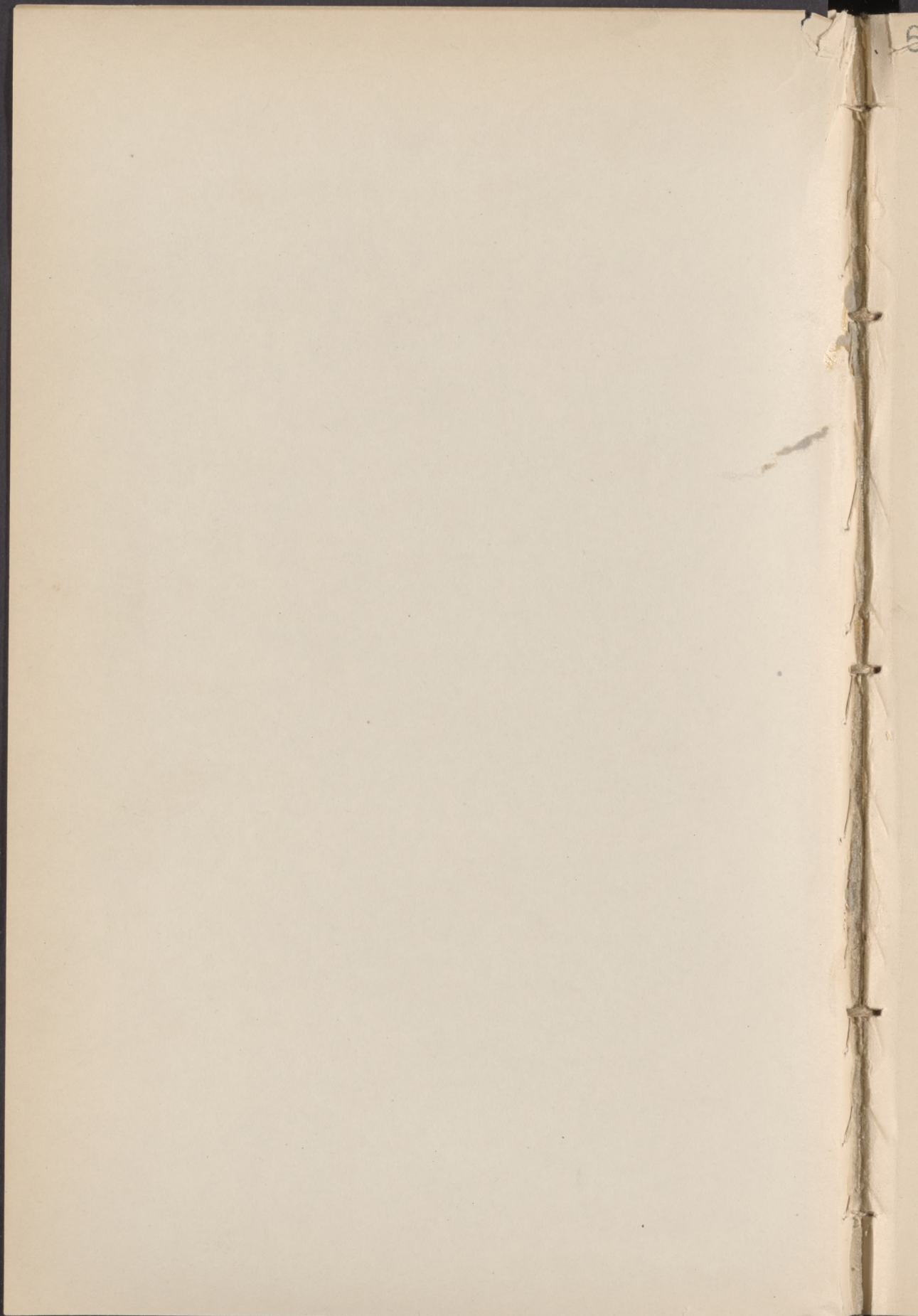
The following exhibits cannot be printed in the State of Case, being articles of jewelry, and photographs of which the negatives are no longer available for reproduction. Counsel for the appellant has delivered them to the Sergeant-at-Arms for the use of the Court and Counsel:

- C-2B—Open faced ladies watch; gold engraved  
"A.V.I." on back.
- 20 C-5—Photographs of Complainant, Hugo Ibach,  
and Helen Ibach, in three gilt frames,  
hinged together.
- C-6—"Snapshot" of Complainant and Helen Ibach.  
C-7—Photograph of Complainant and Helen Ibach.  
C-9—Photograph of Complainant, Hugo Ibach and  
Helen Ibach.

30

40





# NEW JERSEY COURT OF ERRORS AND APPEALS

|  |   |   |
|--|---|---|
| ANNA DUSENBERRY,<br><del>Complainant</del><br><del>Claimant</del> Appellant,<br>vs.<br>HELEN IBACH'S Executors, et als.,<br><i>Defendants-Respondents.</i> | } | On appeal<br>from Court<br>of Chancery. |
|--|---|---|

## BRIEF FOR COMPLAINANT-APPELLANT.

### Statement.

Appellant claims that she is entitled to such part of the estate of Hugo Ibach, deceased, as she would have taken had she been his daughter and had he died intestate (Petition of Appeal; Case, p. 86, lines 28-30).

The facts upon which she bases this claim are not in dispute; no witnesses were called for the defense, the appellant's bill having been dismissed at the close of complainant's case on motion of defendants' counsel (Case, p. 79, lines 30-40; Final Decree, Case, p. 80; Opinion, p. 83, lines 11-13). These facts are as follows. The appellant was the daughter of Otto Schneppendahl and Marie Schneppendahl. Hugo Ibach's wife, Helen Ibach, was her cousin. No children were ever born to Mr. and Mrs. Ibach. Ibach and his wife were much older than Anna (the appellant) as they had already been married when she was still a little child. Ibach desired to take Anna and have her as his child.

### THE PROPOSAL.

Talking with the child's father, several years before the father died, Ibach said:

“He would like himself to take the girl as his own, Mr. Ibach’s, and rear her as his own. \* \* \*” “He said he would take her as his own and all that he had would go to her.” Mrs. Hill (Case, p. 40, lines 1-10).

This proposal was often discussed and finally led up to

### THE AGREEMENT

made at the deathbed of Anna’s father, Schneppendahl.

“Mr. Schneppendahl said that if anything happened to him, Mr. Ibach could have this child as his own, and Mr. Ibach said he would gladly take her and she would be his own, and he would rear her as his own and all he had would go to her.” Mrs. Hill (Case, p. 40, lines 24-28).

### THE PUBLICATION AND RATIFICATION OF THE AGREEMENT.

At the Schneppendahl funeral, at the cemetery:

“Mr. Ibach was there and he had hold of Anna’s hand.” Mrs. Hill (Case, p. 47, lines 18-19).

“The little girl Anna, he held on to her as though he was likely to lose her” (Case, p. 56, lines 35-36). “He told my mother and myself that he was going to take Anna home for his little girl” (Case, p. 57, lines 5-6). “He told us both, we were standing together, he said he was going to take the little girl home” (Case, p. 57, lines 12-14). \* \* \* “That he was going to take Anna home to be his little girl,

that he intended to adopt her." Mrs. Muirhead (Case, p. 57, lines 20-25).

at his home, on returning from the funeral:

"I went to the train to meet him and he brought a girl with him off the train, the young girl, and he said, 'This is Anna' and he said that was to be his daughter; he said he was to raise her as his daughter." Van Nortwick (Case, p. 51, lines 32-38).

Vice Chancellor Lewis said in his opinion:

"The testimony heard by me was very brief and at its conclusion the defendant rested without tendering any proofs and the bill was dismissed. A careful perusal of this evidence fails, to my mind, to reveal any agreement enforceable at this time against the Executors of Helen Ibach. The right of the complainant must, of course, be clearly established to entitle her to the remedy now sought in her behalf" (Case, p. 83, lines 11-19).

The agreement was made in 1897, when Anna was not yet nine years of age, and as the testimony was given about 25 years later, the appellant is fortunate in being able to produce any testimony at all as to the making of the agreement. It appears that the witness, Mrs. Hill, was present and that Mr. Schnependahl and Mr. Ibach made the agreement. The former was about to die, his wife had left him (Case, p. 43, lines 21-30; p. 46, lines 19-25), he had four daughters, the eldest 23 and nearly blind; the youngest (Anna) only about 8 (Case, p. 41, lines 35-40; p. 42, lines 1-16; p. 43, lines 8-10). It is reasonable to assume that the strain and anxiety of the situation were great. It is not

unreasonable nor uncommon for a father under such conditions to give up his child to the care of a relative and friend. And what of the circumstances of Mr. Ibach and his wife? They were good people and were childless. They had the natural desire for a child, and having none born to them, sought the child of another. Mrs. Hill, who was present when the promise was made and heard what was said, now testifies to the fact. Is not this testimony consistent with human experience? One unacquainted with the anxiety of a dying parent for his little child's welfare, and the desire of childless parents for a child, might not understand it. It is most natural for two men, one about to die and leave his little child unprovided for, and the other childless, to agree that the latter should take as his own the child of the former.

(Paraphrased from *Eggstaff v. Phelps*, 226 Pac. Rep. 82, at p. 87, in which the Supreme Court of Oklahoma granted the child relief in a case similar to this).

But we do not rely for proof of the agreement upon this testimony standing alone. It is fully and strongly corroborated by the undisputed testimony showing that for over twenty years, from the death of Anna's father in 1897 to his own death in 1919, Hugo Ibach and his wife, Helen Ibach, fully performed the agreement, and that for over four years thereafter, until her own death in 1923, Helen Ibach, continued to perform it.

#### THE PART PERFORMANCE OF THE AGREEMENT.

The testimony of all the witnesses shows that after Anna had been taken, as a little girl, into the home of Mr. and Mrs. Ibach, these three lived to-

gether and served one another as members of a family; father, mother and child.

Dr. Pettit, the family physician, saw Anna do the "household work, wash dishes, clean up the rooms, and get meals" (Case, p. 34, lines 1-10); saw her taken care of the older folks when they were sick and under his care as their physician (Case, p. 34, lines 12-28); and heard her call them "Father and Mother" (Case, p. 35, lines 18-25).

Benjamin Van Nortwick, a friend of Mr. Ibach's, who often visited the house, saw Anna do "everything a child would naturally do," and as to the Ibachs, "They treated her as they would a child" (Case, p. 52, lines 15-20).

J. Blauvelt Hopper (now Surrogate of Bergen County) who had frequently visited the Ibach home socially and occasionally on business, and who had entertained the Ibach family at his own home, said:

"Q. When did you first see Anna, who is now Mrs. Dusenberry?

A. As near as I can recall, probably in 1900 was made our first call in Mr. Ibach's house, and Anna was there.

Q. Which of the three had you met first?

A. Mr. Ibach.

Q. When you met his wife, did he introduce you?

A. Yes, sir.

Q. When you met Anna was she introduced?

A. Yes, sir.

Q. Do you remember the form of the introduction?

A. He called Anna his daughter" (Case, p. 58, lines 19-30).

And—

“Q. Were there any conversations in which Anna was referred to by Mr. and Mrs. Ibach; did they speak of her?”

A. Whenever they introduced her to anyone else, they called her their daughter.

Q. What did she call them?

A. ‘Father’ and ‘Mother’; I did not know anything to the contrary.

Q. What did they call her?

A. As a rule they called her ‘Anna’; but when they introduced her to anyone, they would refer to her as their daughter” (Case, p. 59, lines 14-23).

Mrs. Anila Griffith, a friend of Anna’s who visited the Ibach home, said:

“Q. Did you ever see Anna in the Ibach home when the Ibachs were sick?”

A. Downstairs I was visiting there when both of them were sick at different times, but I was not upstairs.

Q. What did you see her do downstairs?

A. She was running around a great deal one time when I was there; she was helping the nurse.

Q. Did you ever meet any of Anna’s sisters?

A. Yes, sir, the first time I met one of her sisters was in the kitchen at their home, in Mrs. Ibach’s home, and Anna and I had been somewhere and we came in and Mrs. Jessop, an old friend of Mrs. Ibach’s was in the kitchen; Mrs. Ibach and this strange person, and Anna started to introduce this stranger to me as her sister but she did not finish with the introduction because—”

Mr. Mackay: Objected to as hearsay.

Mr. Morrison: We think we know the value of this.

The Court: All right, proceed.

A. She did not finish with her introduction of the sister because her mother interrupted.

Mr. Mackay: We object; we think it is not pertinent.

The Court: I will note the objection and will take the testimony.

A. And her mother said, 'Why Anna, you have no sister'; and she said, 'My cousin, I mean'; and that was the first I had any inkling at all that she was not their own daughter" (Case, p. 61, lines 10-40; p. 62, lines 1-8).

Mrs. Florence K. Wittemore, who had been a friend of the family for twenty-six years, and had seen them frequently, said:

"Q. How frequently did you see them?

A. A great deal during the first ten years, and not very much during the last.

Q. Where did you most frequently see them?

A. At their home.

Q. Did you meet the other persons who came to their home?

A. Yes, sir, a great deal.

Q. Did you ever meet any other members of the family?

A. Yes, sir.

Q. Do you remember any of them being introduced?

A. Yes, sir.

Q. Who do you remember?

A. Her sisters were always introduced as cousins.

Q. By whom were they so introduced?

A. By Mrs. Ibach" (Case, p. 66, lines 15-29).

Mrs. Amanda Kroder, another old friend of the family, speaks of Anna after Ibach's death and after Anna's marriage. She says:

"Q. Did you know her at the time of the birth of her son?

A. Yes, sir.

Q. Who told you that a boy had been born?

A. Mrs. Ibach called me up on the telephone and said that she had something that I would never have, and I asked her what it was, and—

Mr. Mackay: We object to this.

Mr. Morrison: It is part of the same thing; we are trying to show that Mrs. Ibach repeatedly said that she was Anna's mother.

The Court: I will take it.

A. She called up and said, 'I have something that you will never have; I have a grandson'; and I said, 'I am sorry to say I never will'; and I said, 'I suppose you are very proud'; and she said, 'I certainly am'" (Case, p. 68, lines 31-40; p. 69, lines 1-15).

Mrs. Anna T. Mihn, a trained nurse, who had attended both Mr. and Mrs. Ibach, said:

"Q. Did you ever attend either Mr. or Mrs. Ibach?

A. I was first called there ten years ago for Mr. Ibach.

Q. Was Anna there at the time?

A. Yes, sir.

Q. Were you introduced to her?

A. Yes, sir.

Q. By whom?

A. By Mrs. Ibach and Mr. Ibach; they introduced her to me as 'My daughter Anna'" (Case, p. 70, lines 20-26).

Anna was taught to play the piano and to paint china, accomplishments usual for people of Ibach's social status at that time (Case, p. 67, lines 1-14; p. 63, lines 24-28). She gave parties and entertained (Case, p. 63, lines 15).

The exhibits show that the relationship existing between Mr. Ibach as her father, Mrs. Ibach as her mother and Anna as their child, was always acknowledged, not only at home and at the homes of friends, but to the public generally. She was given a gold watch engraved with the initials "A.V.I." (Exhibit C-2B, Case, p. 98, lines 17-18). Her grammar school diploma was issued to "Anna V. Ibach" (Exhibit C-2A, Case, p. 91, lines 15-40); she took part in local entertainments and was announced on the program as Anna V. Ibach (Exhibit C-3, Case, p. 92, lines 1-40, at line 38, second column; Exhibit C-10, Case, pp. 94-95; at p. 95, lines 17, first column); Miss Annie Ibach (Exhibit C-8, Case, p. 93, lines 18-40, at line 32; Exhibit C-13A, Case, p. 97, lines 1-40, at line 15); as Miss Ibach (Exhibit C-11, Case, pp. 95-96, at p. 96, line 12).

The fact that Anna's name was given, in the application for a marriage license (Exhibit C-4, Case, p. 93, lines 1-16, first line, right hand column) as Anna Valentine Schneppendahl, does not disprove the fact of the relationship between Mr. and Mrs. Ibach and Anna, for the explanation of the use of the name is quite clearly shown to be a desire to comply with the requirements of the law, no matter how strict or how inequitable, in the important transaction then being undertaken. The testimony as to this is as follows:

"Q. Senator Mackay has kindly given me a copy, a certified copy of the certificate and record of marriage; is that the certificate and record of your marriage?"

A. Yes, sir, it is.

Q. I call your attention to the fact that the name of the wife, maiden name of the wife, is given as 'Anna Valentine Scheppendahl'; that was your name?

A. That was my name.

Q. Who were present when that name was given?

A. Mr. Morris, Village Clerk of Ridgewood, mother and my husband, and Dr. Pettit's infant child, Helen.

Q. What was said in respect to the name, the maiden name of the wife in this marriage that was then being arranged?

Mr. Mackay: Objected to.

By the Court:

Q. Was there any conversation?

A. Yes, sir.

Q. What was the conversation?

A. (No answer.)

By Mr. Sumner:

Q. Who was the conversation with?

A. Mr. Morris and with mother.

Q. What was the conversation?

A. Mr. Morris said to me—

Mr. Sumner: We object to what Mr. Morris said.

A. He opened the conversation; Mr. Morris said to me, 'What is your full name, Miss Ibach?' And I answered, 'I don't know if I will be legally married if I am married by the name of Ibach'; mother interrupted and said—

Mr. Sumner: We object to any statement of the mother.

A. Mother interrupted and said, 'Of course,

you can marry by the name of Ibach.' Mr. Morris turned to mother and said:

(Discussion by counsel.)

By the Court:

Q. Proceed, Mr. Morris said what?

A. He said to mother, 'Has she been legally adopted?' and mother said, 'No'; then Mr. Morris replied, 'Then she cannot marry by the name of Ibach; she would not be legally married; she must marry under her original name' " (Case, p. 73, lines 12-40; p. 74, lines 1-40; p. 75, lines 1-10).

And although the appellant's own testimony as to what Mrs. Ibach said, at the time appellant's marriage license was issued, and her testimony as follows:

"Q. I show you a card and ask you what that is?

A. When I returned home from my honeymoon, mother had a bouquet of flowers on the mantelpiece for me with this card standing in front of the flowers" (Case, p. 77, lines 10-15),

referring to a card reading:

"WELCOME HOME.

May all those things  
which cheer and bless  
Combine to bring  
you happiness.

MOTHER."

(Exhibit C-12, Case, p. 96, lines 25-35.)

may be inadmissible in her suit against these executors, the fact that Mrs. Ibach at that time considered Anna to be her daughter, is clearly shown by the testimony of other witnesses, who are not silenced by the rule against an adverse party testifying to transactions with the deceased.

Mrs. Ibach announced "the marriage of her daughter, Anna Valentine" by sending to her friends the customary engraved announcement (Exhibit C-1, Case, p. 91, lines 1-12) and by inserting the following notice in the local newspapers:

"Mrs. Hugo Ibach of West Frankline Avenue, announces the engagement of her daughter, Anna V., to D. Russell Dusenberry, son of Mr. and Mrs. J. Franklin Dusenberry of Washingtonville, N. Y."

Mrs. Griffith testified that she received one of the announcements, C-1 (Case, p. 62, lines 20-40; p. 63, lines 1-10); Mrs. Gatjen received one (Case, p. 64, lines 25-30); Mrs. Scheelje received one (Case, p. 65, lines 33-36); and Mrs. Kroder received one (Case, p. 68, lines 23-27).

The newspaper notice was prepared by Mrs. Ibach in her own handwriting and was taken by her to the office of the newspaper to be published therein (Testimony of Helen Brainard Smith; Case, p. 78, lines 31-40; p. 79, lines 1-10).

The photographs and snapshots, C-6, C-7 and C-9 (Case, p. 98, lines 20-26) show Anna and her foster parents as parent and child are accustomed to "have their pictures taken." Exhibit C-5, which stood on the mantelpiece of the house from the time it was taken when Anna was a young girl, until after Mrs. Ibach's death (Case, p. 75, lines 15-25) speaks by the symbolism so dear to people of their race. It consists of a separate photograph

of each of them as an individual, each mounted in a gilt frame and the three frames joined together. Could there be more convincing proof than the enshrining of this picture in the heart of their home, that these three were bound together as members of one family, as father, mother and child?

That Anna was in fact the child of Hugo and Helen Ibach, in every way except by birth or by formal statutory adoption, is proven not only by the foregoing testimony but perhaps even more convincingly by the "eloquent silence" of the defendants. Many relatives of the Ibachs were made defendants as beneficiaries under Mrs. Ibach's will, many of these relatives filed answers and were represented by counsel at the trial, and we may presume without unfairness to them, that these beneficiaries were so near and dear to Mrs. Ibach that some, and perhaps many of them, knew the facts as to the relationship of Anna to her foster father and foster mother. None of them were called to controvert the evidence of the friends and neighbors of the family who testified for Anna and it is a fair presumption that none of them could deny that she was in every way except by birth or adoption, the child of Hugo and Helen Ibach.

#### WHAT WAS NOT DONE.

But, Hugo Ibach never went through the legal formalities required by statute for the adoption of Anna, and he made no provision for her in his will. In fact his will, as admitted by the answers, was made January 20, 1892, five years before he took Anna as his child in 1897 (Bill of Complaint, Case, p. 5, lines 18-19; Answers, Case, p. 16, line 15; p. 21, line 22; p. 23, lines 17-18; p. 25, line 17; p. 27, lines 24-25).

Upon the probate of this old will, Mrs. Ibach took all of her husband's estate, about \$100,000, and by her own will made about three years after his death, and a codicil made a little later, she has disposed of all of her husband's assets and all of her own, giving to Anna \$5,000 by paragraph fifth, a victrola and bedroom suit by paragraph thirty-six, and to Anna's son, \$1,500 by the codicil (will of Helen Ibach, Case, pp. 9-15).

In behalf of appellant, we respectfully contend that on the facts in this case, and the principles of equity applicable thereto, Anna is entitled to such part of the estate of Hugo Ibach, deceased, as she would have taken had she been his daughter and had he died intestate, and that the executors of his widow, Helen Ibach, should account to appellant therefor out of so much of the widow's estate as she received under his will.

## I.

### **The appellant is entitled to a child's share in Hugo Ibach's estate.**

It is the duty of a parent, when disposing of his estate, to consider his children. We concede that a parent, for sufficient reasons, may make a will disinheriting his child, and that, conversely, no child has an absolute right, enforceable under all circumstances, to compel his parent to leave him anything out of the parent's estate.

But the injustice done when a parent disinherits his child without sufficient reason, so shocks the conscience that our courts and our Legislatures have restricted within very narrow limits the parent's right so to do. One of the established tests of testamentary capacity is the ability to consider

the natural objects of one's bounty; a will preferring others to the testator's own children puts upon the beneficiary the burden of disproving fraud, duress and undue influence; a will disinheriting a child is presumptively invalid and can only stand by convincing proof that the testator knew what he was doing and did it of his own volition.

A child is sometimes disinherited by the negligence of his parent. Parents sometimes neglect to change a will so as to provide for children who come to them after the execution thereof. Although at common law in England a will made after marriage was not void if children were afterwards born (it being presumed in those days that when people married they expected to have children), many of our American courts held such wills void, on the presumption that no sane man would do such a thing, that he must have intended to revoke the stale will. This has been the statutory law in our state since 1824 (Elmer's Digest, pp. 600-601).

"Every last will and testament made when the testator had no issue living, wherein any issue he might have is not provided for or mentioned, if at the time of his death he leave a child, children or issue, or leave his wife enciente of a child or children, which shall be born, such will shall be void, and such testator be deemed to die intestate."

(Act Concerning Wills, 4 C. S., 1910, at p. 5865, Sect. 20.)

By virtue of this section and the following section of our Wills Act, our courts have, in many cases, sustained the right of an after born natural child to its share in the estate of his parent.

By the fourth section of our Adoption Act (originally, P. L., 1877, p. 123, now 1 Cum. Supp., 1924, p. 1555, pars. 97-16).

“\* \* \* the adopting parent or parents of the child shall be invested with every legal right in respect to obedience and maintenance on the part of the child as if said child had been born to them in lawful wedlock; and the child shall be invested with every legal right, privilege, obligation, and relation in respect to education, maintenance and the right of inheritance to real estate or to the distribution of personal estate on the death of such adopting parent or parents as if born to them in lawful wedlock. \* \* \*”

Construing this act, in its relation to our statutes concerning wills, descents, and distribution, Chief Justice Gummere, delivering the opinion of this Court in which all concurred, said that all of these statutes must be read together, being in *pari materia*, and must be taken and construed together as one system, and as explanatory of each other—

“Applying this rule, we are of opinion that the legislative intent to be gathered from a reading of all these statutes was to vest in adopted children all the rights and privileges which, by the act concerning wills, the statute of descents, and the statute of distribution, had been conferred upon children born in wedlock; that is to say, to place them in the same position as if they had been natural born children of the decedent, so far as those statutes are concerned—to substitute the lawful children of the decedent, no matter what the source of their origin, in the place of those

born of his body. To give this legislative purpose its full significance the meaning of the words 'child', 'children' and 'issue', wherever appearing in the various statutes comprising the legislative system embodied therein, when used with relation to the testator or intestate, must be considered to have been enlarged so as to include adopted as well as natural born children within their scope."

In re Book, 90 N. J. Eq., 549 at 553.

Relying upon the decision of this Court in the Book case (supra), Vice Chancellor Foster, sitting as Vice Ordinary in the Prerogative Court, denied probate to a will by which a woman left her entire estate to her husband, when it was proven that the testatrix had no children when she made her will, but had adopted a child (by the statutory procedure) after it was made, and that this adopted child survived her.

In re Alter, 92 N. J. Eq., 415.

If appellant had been adopted by Hugo Ibach, by the statutory procedure, she would have been able to prevent the probate of his will, and would have taken a child's share in his estate. If she had been so adopted, she would have had an adequate remedy in our probate courts. But, although Hugo Ibach promised to make her his child, and although he and his wife have in all other respects fully performed that promise, she was never adopted by the procedure required by our statute. She has, therefore, no adequate remedy at law, as alleged in the "Third Separate Defense" pleaded in the answer of the executors (Answer, Case, p. 18, lines 1-15). Nor do we now contend that appellant is entitled to strike from the records the will of Hugo Ibach as void. He promised to make her his child,

to give her the rights of his child. Had he done this in the manner required by our adoption act she would have taken a child's share in his estate. We cannot ask a Court of Equity to disregard this statute, but we can and do ask a Court of Equity to give to this child a child's share in Hugo Ibach's Estate, by directing those into whose custody and possession the assets of said estate now have passed, to account to her for the share she would have taken had she been, at law as well as in equity, the child of Hugo Ibach.

We ask no new or unusual remedy. In *re Van Dyne v. Vreeland*, 11 N. J. Eq., 370, in 1857, Chancellor Williamson held:

"The father of an infant child made an agreement with an uncle of the infant, at the uncle's request, to this effect, that the uncle should take the infant and adopt him as his own child, and that he would treat him as his own son, and that the property he should have should be given to the child, so that it should belong to him at the death of the uncle and his wife. The uncle took the child, and had him baptized, and the child assumed his surname, and lived with him twenty-five years. Held that the child might maintain his bill upon the agreement after such performance."

In the cited case, the defendant in his lifetime, had conveyed away his property, in violation of the agreement, and the bill was filed to impress a trust on the lands for the benefit of complainant. This case has been recognized as an authority and has been cited and followed by our courts.

In *Vreeland v. Vreeland*, 53 N. J. Eq. 387:

"Where a farmer, seventy years of age, re-

siding on a farm about five miles from the city of Paterson, with an invalid wife and daughter, and another daughter who was about to marry and leave home, proposed to his eldest son, who was engaged in business in Paterson, that if that son and his wife would take up their residence at the farm and there make a home for the parents for the parents' lives, that he would give the son the farm under specified limitations, and the son accepted the proposition, and thereafter, with his wife, moved to the farm, and, to the detriment of his business and by the labor of his wife and himself, fully performed upon his part the agreement made by the proposition and its acceptance" \* \* \*

Chancellor McGill held:

"that at the instance of the son, equity will compel the performance of the agreement upon the part of the father."

Citing *Van Dyne v. Vreeland*, 11 N. J. Eq. 370, and other cases, at page 389.

In *Young v. Young*, 45 N. J. Eq. 27:

"A father verbally agreed with his son that if the son would live upon a designated farm, which belonged to the father, and repair, cultivate and improve it at his own expense, that he would give the farm to his son when he (the father) should be done with it; that he would either convey or devise the farm to the son. In reliance upon this agreement, the son entered into possession of the farm, and repaired, cultivated and improved it for twenty years, till he died, and thereafter his wife, and his heir-at-law continued the performance of

the contract upon his part, till the father died " \* \* \*

And Chancellor McGill held :

"that the contract was a valid one, which because of the performance of it by and in behalf of the son, although not in writing, is enforceable in equity."

Citing *Van Dyne v. Vreeland*, 11 N. J. Eq. 370, as a precedent. He also held, at page 40, that the complainant was entitled to a decree against two other sons of the father, to whom the premises had been conveyed on the ground that they were not purchasers for value and without notice.

It has been cited in many other cases in which the facts are not similar to those in the present case, although the same principles were applied, and which we will, therefore, not set out in this brief.

In *Van Dyne v. Vreeland*, (*supra*) the defendant demurred to the bill, relying upon the Statute of Frauds as the defendant executors do here see (Second Separate Defense, Case p. 17, lines 35-40); alleging that the complainant, not having been a party to the agreement, could not enforce it at p. 379); and upon a general lack of equity in the bill at p. 379). Chancellor Williamson said at pp. 380-381):

"Why should not the complainant have redress? It is said the character of the agreement is such that the court ought not to entertain a bill upon it. There is no consideration of public policy which should forbid the court's countenancing such an agreement. Considering the situation of the parties, and their circumstances in life, it was beneficial to

all parties, and cannot be considered as injudicious or unreasonable. The father made a beneficial arrangement for his offspring, and Vreeland's affections were satisfied by the adoption of a son. The agreement is alleged to have been unreasonable, because it deprived Vreeland of the free disposal of his property. But this is not so. It provided him with a son, and only obligated him, in the disposal of his property, to make such provision for the child of his adoption as might reasonably be expected from parental obligation and affection. There was nothing unnatural, situated as he was, in his assuming such an obligation, and of his making the complainant the object of his affections."

And overruled the demurrer.

In *Van Tine v. Van Tine*, 15 Atl. 249, (not officially reported) Vice Chancellor Bird, in 1888, in a partition suit, held that a child situated as the appellant is in this case was entitled to the real estate of her foster mother, and directed the heirs at law (brothers and sisters) of the foster mother, to convey the land to the child she had taken as her own, but had never adopted by the statutory procedure. Vice Chancellor Bird said (at p. 250):

"The obligations of parties to each other are ascertained as well by what they say as by what they do; admissions often giving the best and truest interpretation to contracts previously entered into; or doings, showing what has previously been agreed to be or promised should be done. When Mrs. Stryker, being childless, said to her brother Peter, the father of Jessie, that she would take Jessie and would treat her as her own child, she meant just

what she said, both in law and in conscience. She meant that Jessie should have all the benefit of the relation of parent and child. If individuals are ever to be taken at their word, and held to it by the courts, surely they should be so taken under such circumstances as are her presented. How can the court say that Mrs. Stryker did not mean just what she said? And how can it say that she did not, by what she said, mostly fully and distinctly bind herself to perform all the obligations of a parent towards a child toward Jessie? And were not those obligations, so made, of the same force as she would have been under to a child of her own loins? I cannot see how obligations so voluntarily assumed by a citizen so affecting highest welfare of an infant of the tenderest years, can be regarded as otherwise than the most sacred and binding."

This case, although not officially reported in our own state, nor so far as we can find, cited by our courts, has been cited and followed by the courts in many other jurisdictions. Like "the stone the builders rejected" it has thus become a leading case on this point.

In *Wright v. Wright*, 58 N. W. 55, 99 Mich. 170, the Supreme Court of Michigan followed the decision of Chancellor Williamson in *Van Dyne v. Vreeland*, supra, and of Vice Chancellor Bird in *Van Tine v. Van Tine*, supra, and held that a defendant who had been adopted under a law afterwards held unconstitutional, was entitled, by way of specific performance, to enforce his rights as a child to the property of his foster father. The Michigan Court reviewed the earlier cases, which had upheld the same principle, and those which had held the opposite (at p. 55, second column bot-

tom, and p. 56, first column), and said (at p. 56, first column, end of first paragraph):

“We think the better reasons support the conclusions reached by the New Jersey court.”

In *Kofka v. Rosicky*, 59 N.W. 788, 41 Neb. 328, 25 L.R.A. 207, 43 Am. St. Rep. 685, the Supreme Court of Nebraska in a case in which a girl child who had been given to her uncle and aunt and had lived with them ten years as their child, and after their death without providing for her sued by next friend, to establish in equity her right as a child to their property, followed these two New Jersey cases (see p. 792-second column and 793, first column) and said (at p. 794, second column, last paragraph):

“We are fully convinced that the weight of authority and reason preponderates in favor of the position that the contract in the case at bar was such a one as a part performance will relieve from the operation of the Statute of Frauds; that there was a full performance of the contract on the part of the plaintiff, and such part performance by the Spilinecks as did so take it out of the operation of the statute. We are further satisfied that the child had a right to bring the action to enforce the contract made for it by the parents, and that the proof of the contract was sufficiently clear, definite and satisfactory, and unequivocal to call for its enforcement by a court of equity, in the exercise of its discretion.”

In *Teske v. Dittberner*, 98 N. W. 57, 70 Neb. 544, the Supreme Court of Nebraska held (Syl. 2) that:

“In such a case equity will impress a trust upon the property which will follow it into

the hands of personal representatives of the promisor or grantees without consideration.”

citing (at p. 58, second column) the New Jersey decision in *Van Tine v. Van Tine*, and citing, following and sustaining their own case of *Kofka v. Rosicky* (*Supra*).

In *Chehak v. Battles*, 110 N. W. 331, 133 Iowa 107, the Supreme Court of Iowa considered the effect of a written agreement, similar in form to a deed, by which a mother said:

“ \* \* \* I \* \* \* have given and granted and by these presents do give and grant unto the said Mary J. Battles and Edward Battles, my infant daughter, not yet named. Said child is given to them as their own child and for no other purposes \* \* \*

And the said Mary J. Battles and Edward Battles hereby covenant \* \* \* that they and each of them accept the rights, duties and relations of a parent to this child and shall in all respects be that of a child born to themselves in lawful wedlock, and that the same shall include all the rights of inheritance by law.”

Mrs. Battles survived her husband and at her death was survived by three daughters (the plaintiffs in this case) and by the child as to whom the agreement was made. The agreement failed as an adoption, as the statutes then in force in Iowa required that an adoption agreement be acknowledged and recorded, which this agreement was not. The Court said, at p. 331, second column:

“Though a contract of adoption could not be sustained at common law, the courts of equity enforce such contracts whether oral or

in writing, with respect to property rights involved."

Citing the New Jersey case, *Van Tine v. Van Tine*, (supra) and cases from other states, and (at p. 335, first column) the court said:

"The consideration \* \* \* has been fully paid on the one side, the child surrendered by her mother, the name of the foster parents borne, and all the advantages which youth and affection can bestow enjoyed; while, on the other, though the adoptive parents have cherished and maintained her as their own, they have not performed that portion of their promise which entitled her to share in their estate, and this we hold ought in justice and good conscience, to be specifically enforced."

In 121 Pac. 1007, *Furman v. Crane*, it was held in California that a child could enforce a written agreement to take the child and "give her all the rights of a child in and to her estate and to make plaintiff her heir at law." At page 1009, first column, the Court said:

"The right of plaintiff for specific enforcement of the alleged contract upon the facts found is supported by overwhelming authority."

Citing the New Jersey case of *Van Tine v. Van Tine* (supra) and cases from other States.

In 177 Pac. 890, *Barney v. Hutchinson*, the Supreme Court of New Mexico held that:

"A contract to adopt a child according to existing statutory law is valid in equity, and where everything required to be done has been

performed, except taking the necessary statutory steps to perfect legal adoption, equity will consider that done which ought to have been done, and decree specific performance of the contract, to the end that the foster child shall be entitled to the rights of inheritance prescribed by statute."

Citing the New Jersey case of *Van Tine v. Van Tine* (supra) as an authority on this point (at p. 891, end of second column).

In 117 S. W. 219, *Starnes v. Hatcher*, the Supreme Court of Tennessee <sup>REVERSED</sup> ~~reversed~~ a Chancery decree dismissing on demurrer, a bill similar to appellants, and held that:

"If a person contracted in writing to adopt children and also to leave them his property as his heirs, the fact that he had died without adopting them, thus rendering that part of the contract impossible of performance, would not preclude them from obtaining specific performance of the other part of the contract to leave them his property, the two obligations being distinct in character."

and said, citing *Van Dyne v. Vreeland* (supra) at page 222, first column:

"Upon an examination it will be found that the courts have gone very far in reaching the equity growing out of contracts such as the one set up in the bill in this cause" and citing *Van Tine v. Van Tine* (at p. 222, second column) that in that case, "the principal is carried very far."

In 159 S. W. 82, *Thompson v. Waits*, it was held in Texas that a contract to adopt (written but de-

fective) upon compliance by the beneficiary, is enforceable in equity. Citing Van Tine case and others, at page 85, first column.

In 69 So. 907, *Prince v. Prince*, the Supreme Court of Alabama held that although an adoption paper was void for want of an acknowledgement, the child was entitled to the estate of adopting father. At page 907, first column, the Alabama court said:

“By the weight of authority, and upon the soundest principles of equity, justice and sound policy, it is held that although a declaration of adoption is invalid by reason of its non-compliance with statutory requirements, yet where the actual parent, or some one in loco parents, has surrendered the custody of the child to the adoptive parent, upon the mutual agreement that such child shall be adopted by and made the legal heir of the latter, and this agreement is fully performed by the child, a Court of Chancery will decree a specific performance of the adoption contract by such parent, his heirs, or representatives, to the extent of investing in the child the whole or such part of the adoptive parent’s estate as he would have been entitled to receive under the adoption contract if properly executed.”

Citing *Van Tine v. Van Tine*, *Van Dyne v. Vreeland*, and cases from other states.

These two New Jersey cases have often been cited as leading cases, in opinions which declined to follow them but usually because of some local statute pertaining to adoption, descent, or distribution.

We do not contend that the decision of Vice Chancellor Bird, nor the decisions of courts of these other states, are binding precedents to be

followed by this court, but we do respectfully argue that the reasoning of Vice Chancellor Bird is sound, that his decision has been followed by many eminent judges, and that there is no reason why this court should not, in this case, give to Anna that to which she is so clearly equitably entitled.

When Hugo Ibach made his will, leaving his entire estate to his wife, he did not know that he would subsequently have a child. Had he thereafter had a child born to him, or had he adopted one by the statutory procedure, that will would unquestionably have been void by our express statutory law. We contend, for this reason, that Anna is entitled to that part of his estate which a child of his would have taken. We cannot so contend as to Helen Ibach's own estate, for her will was made after Anna became her child and provision, although meager, is made therein for Anna. And we respectfully submit that this court in determining what these parents should have done, in equity and good conscience, would be justified in finding that Helen Ibach's will, leaving to Anna and her son so small a part of the estate of the persons who had undertaken to be father and mother to her, was a breach of faith, not only with Anna but with Hugo Ibach who had, we presume, either forgotten the existence of this old will or like many a father, left his entire estate to his wife confident no doubt that before distributing the estate to more distant relatives and strangers, she would provide for their child in a manner in keeping with their circumstances.

IT IS RESPECTFULLY SUBMITTED THAT APPELLANT IS ENTITLED TO SO MUCH OF HUGO IBACH'S ESTATE AS SHE WOULD HAVE TAKEN HAD SHE BEEN HIS CHILD AND HAD HE DIED INTTESTATE; AND THAT THE DEFENDANT'S EXECUTORS SHOULD ACCOUNT TO HER FOR THAT.

## II.

**Other Cases Distinguished.**

Our courts have considered, in several cases other than those cited and relied upon under Point I of this brief, the rights arising from agreements to take a child "as their own" when there has been no formal statutory adoption. We respectfully submit, for the reasons stated below, that none of these cases bar appellant from the remedy she seeks.

In *Stout v. Cook*, 77 N. J. Eq. 153, Vice Chancellor Howell construed a will of a testator who had died before the enactment of Section 4 of our Adoption Act. While the sixth paragraph of the head notes says:

"Act of 1877 (P. L. 1877, p. 126, Sec. 4), investing an adopted child with the right of inheritance from the adopting parent, does not create in such child capacity to take the share which the deceased adopting parent would have taken under such will, if living."

it is apparent upon reading the opinion that this statement does not affect appellant. Audrey Osborn, the claimant in the cited case, was not the adopted child of John W. Stout, the testator, but had been adopted by Jacob, one of testator's sons, and she claimed, through her foster parent a share in the estate of the latter's father. Vice Chancellor Howell was construing the will of John W. Stout and he said, at page 163:

"The paramount rule for the construction of testamentary instruments is that the court must strive to ascertain the intention of the testator as expressed by the words of the instrument."

And at page 165:

“It is quite manifest that the testator did not have in mind the devolution of the title of any portion of his estate on an adopted child of either of his children for the reason that there was no law of this state under which such adoption could be had until 1877, and it appears that there was no law in the State of New York, the place of Jacob Stout’s domicile, until 1873, and inasmuch as Audrey Osborn must claim under the will in question, it is plain that her succession to any portion of his estate is quite beyond the testator’s intention. The will speaks only of ‘child or children’, which could mean to the mind of the testator only blood relations, and not relations by adoption. To hold in her favor would be to hold that she is within the terms of the will a child, and that, in the face of the fact that Thomas Stout never had any children, and in the face of the other fact, which must be conceded by the allegation of adoption, that she was somebody else’s child, and therefore not the child of Jacob Stout. Neither is she Jacob Stout’s child by implication of the statute. Section 4 of the act of 1877 provides that a child or children (so adopted) shall be invested with every legal right, privilege, obligation and relation in respect to education, maintenance and the rights of inheritance to real estate or to the distribution of personal estate on the death of such adopting parent or parents as if born to them in lawful wedlock. In other words, such adopted child may inherit from the foster parent, but the adoption shall not operate to create a capacity to take as a child under the will of some other person.”

Upon an appeal by the adopted<sup>ed</sup> child, Audrey Osborn, (*Stout v. Cook*, 79 N. J. Eq. 640) this court affirmed the decree excluding her from a share in the estate, but for the reason stated in the opinion by Chief Justice Gummere in an appeal by testator's executor (*Stout v. Cook*, 79 N. J. Eq. 573) which was that (at p. 579) :

“We find nothing in any of its provisions which will justify the conclusion that the testator used the words ‘my surviving children’ in other than their ordinary and natural sense; and, therefore, we hold that, by the true construction of the provision under consideration, the two sons of the testator, Gideon L. and Thomas, and their respective children, were alone entitled, upon the death of their sister Augusta, to share in the distribution of that portion of the testator's estate which had been set aside for her benefit during her life.”

We respectfully submit that neither the reason given by Vice Chancellor Howell, nor those given by Chief Justice Gummere apply in the present case.

In *Dorsett v. Vought*, 89 N. J. L. 303, this court considered an appeal from the Supreme Court in an ejectment suit. Mr. Justice Minturn, delivering the opinion, said (at p. 304) :

“The plaintiff sued in ejectment, to recover an undivided fourth interest in certain lands, adjoining the city of Paterson, known as Pope's Hall and Smith's Quarry, the property in his lifetime of Samuel Pope, and of which he died seized.

The testator had taken into his family, quite early in her youth, Ida Vought, the mother of

the defendant. She afterwards married and had two children, of whom this defendant is the survivor. The testator's nearest blood relations were four first cousins, of whom one is the plaintiff.

The will of the testator was duly probated, and therein he devised to his wife a life estate in the locus in quo and left the residuary estate undisposed of. In the will he refers in another connection to the defendant and his deceased sister as 'the two minor children of my adopted daughter, Ida Vought, now deceased.' "

And (at p. 305) :

"\* \* \* the right of a child by adoption to inherit is entirely of statutory creation; that the right being in derogation of the common law must be strictly construed, and will be denied unless the act of adoption shall have been consummated in strict accordance with the statute."

But appellant in the present case is not a child of an "adopted" child, nor is she seeking to establish in a court of law her title to real estate by right of inheritance. She claims here that Hugo and Helen Ibach agreed to make her their child, and to give her the rights of their child; that Hugo Ibach has not given her those rights. She is not seeking to enforce a statutory right of descent or distribution, but is seeking in a court of equity, an equivalent for what she should have had and did not receive.

It is respectfully submitted that the case last cited does not bar appellant from the relief she asks.

In *Cooper v. Colson*, 66 N. J. Eq. 328, this court held that:

“Special acts, personal service or the like, ordinarily compensated for upon a quantum meruit, although performed under an oral agreement to devise or convey land therefor, are not such performance as, standing alone, will take the case out of the statute of frauds.”

But in the opinion by Mr. Justice Fort he said, discussing the earlier cases, at page 331:

“Chancellor McGill says ‘that equity will specifically enforce such a parol agreement at the instance of a complainant who shall have completely performed it upon his part, is now established in this state beyond controversy. The remedy is afforded upon the ground that it will work a fraud upon him who, induced by the agreement, has, in good faith, so ‘performed it as to irretrievably change the situation of the parties to his disadvantage, to permit the other party to refuse fulfillment upon his part. It has had frequent recognition and application in adjudged cases in our courts.’ He cites all the New Jersey cases. *Vreeland v. Vreeland*, 8 Dick. Ch. Rep. 387, 389.

As a general statement, this language is unexceptionable. But the mere proof of the performance of services is not sufficient. Such services may be adequately compensated for by a recovery of damages. Such services, thus performed, are of no greater efficacy to take the case out of the statute than would be a payment in whole or in part of the consideration money agreed to be paid upon a parol contract to convey land for cash.

It must appear, to constitute ground for a

decree for the specific performance of an oral agreement to convey land, founded upon alleged services, that the services were in some respects of an exceptional character and that it is obvious that the parties not only did not intend that they should be measured by ordinary pecuniary standards, but that they were of such a peculiar character that it is impossible to estimate their value by any such standard. 1 Lead. Cas. Eq. 1054, 1055; *Rhodes v. Rhodes*, 3 Sand. (N. Y.) Ch. 279.

Where it appears, as in *Van Duyne v. Vreeland*, supra, that the result of the performance of the labor and service under the agreement has been such as to change the whole course of the life or life work of the complainant, on the faith of the contract to devise or convey, the case is one which is within the same rule as to part performance, as where possession of the land has been taken or improvements made thereon. Pom. Spec. Perf. 161, Sec. 114.

The true rule seems to be, as stated by Chancellor Williamson in *Van Duyne v. Vreeland*, 'that when there has been such a performance on both sides as puts the complainant in a situation which is a fraud upon him unless the agreement is fully performed', specific performance should be decreed.

If such fraud exists it estops the defendant from setting up the statute as a bar to the right of specific performance, because the agreement to convey was not in writing."

In the cited case Mr. Justice Fort said, (at p. 333, last paragraph):

"She in no way changed her mode of living, or course of life, or life work, because of them.

What she did was of such a character as to be easily and adequately compensated on the quantum meruit. There is nothing to establish that she had abandoned any other plan of life work or calling to devote herself to the deceased in consideration of the promised conveyance of a farm."

This, we respectfully submit, clearly distinguishes this case from the present in which the appellant radically changed her course of life by becoming a child of the Ibachs. And who can fix, on the quantum meruit, the monetary value to a childless couple, of the love, affection and service of a child?

### III.

#### **The Appellant is not Barred by Laches.**

The respondent executors have pleaded laches (Fourth separate defense, Answer, Case p. 18, L. 15-20); and Vice Chancellor Lewis has said, in his opinion:

"Complainant has been guilty of surprising delay and lack of diligence, unless an attempt is now being made to establish a false claim. She knew at the time of Hugo Ibach's death that he had made no provision for her in his will, or any mention of an alleged agreement, but now that both the Ibachs' lips are sealed in death she institutes the present proceeding, (Opinion Case p. 84, L. 12-19).

But we respectfully submit that as both Hugo Ibach and his wife had, in his lifetime, fully performed the agreement that Anna should be their child, and had never suggested that the perform-

ance of that agreement would not be continued until it had been fully consummated, there was no reason why she should, in Hugo Ibach's lifetime, have attempted to fortify her position by insisting upon a statutory adoption, a formal agreement, or by instituting litigation. They had led her to rely on them as her father and mother, and she was justified in confidently trusting them to perform, in the future, as they had always done in the past, all the duties of parents to a child.

In *Van Dyne v. Vreeland*, opinion after final hearing, 12 N. J. Eq. 142 (cited above as *Van Dyne v. Vreeland*, 11 N. J. Eq. 370, opinion overruling demurrer) Chancellor Williamson said, in a case like this, at page 147:

"Now I do not think there is the least difficulty as to the legal construction to be put upon the agreement, as it is stated in the bill. The complainant, during the lifetime of Vreeland and his wife, or either of them, could not make any demand for any part of their property, or for the execution of any deed or writing to secure to him its enjoyment after their death. It was upon their death that he was entitled to the property, and it mattered not to him whether he derived it by deed or by devise. The agreement put no restraint whatever upon the parties to the free and unrestricted enjoyment of their property. They might give it away while they lived, but they could not make a disposition of it to take effect at their death. What property they left at their death, they had agreed that the complainant should have."

So in the present case, while Hugo Ibach lived and treated Anna as his child (as he did) she could demand no more. And at page 157, Chancellor Williamson said:

"If Vreeland was dead, the complainant could now ask the court to declare the conveyance to Brickell a fraud, and to compel him to convey the property upon such terms as would be equitable."

When Hugo Ibach died (May 6, 1919), we contend appellant was entitled, for the reason given in this brief, to a child's share in his estate. When his will was probated (June 6, 1919) appellant had notice, perhaps actual and certainly constructive, that he had left his entire estate to his wife. Appellant had not then, nor has she now, any legal status to attack that will in the probate courts; being neither a natural nor adopted child. True she might have started, at that time, a suit of the same nature as the present suit. If she had done so her adversary would have been Helen Ibach. But mere delay, unless the other party changes her position or loses the benefit of evidence which might have been adduced, had the suit been started promptly, is not such laches as will bar relief.

In a recent case, *Massie v. Asbestos Brake Co.* 95 N. J. Eq. 298, this court affirmed a Chancery decree for the reasons given in the opinion of Vice Chancellor Buchanan (printed here). At page 311, Vice Chancellor Buchanan said:

"Neither do I find laches. True it is that the action which has now been taken by this suit could have been taken equally well at any time during a period of about eight years prior to the filing of the bill. But laches involves something more than mere delay, mere lapse of time. There must be delay for a length of time which, unexplained and unexcused, is unreasonable under the circumstances, and which has been prejudicial to the defendant." (Citing earlier New Jersey cases).

In *Johnston's Executor v. McKenna*, 76 N. J. Eq. 217, Vice Chancellor Howell held that laches which does not prejudice the defendant, but injures only the complainant, cannot defeat the suit, and this court in *Johnston's Executor v. McKenna*, 77 N. J. Eq. 555, in an opinion by Mr. Justice Swayze, referring only to the amount chargeable against defendants, affirmed the Chancery decree.

Did Helen Ibach change her position after her husband's death, in any way relying upon appellant's failure to assert her claim at that time? On the contrary she continued to accept Anna as her daughter, to treat her as her daughter, to refer to her as her daughter publicly, in the newspaper announcement of her daughter's marriage, and to her own friends by the engraved announcement of her daughter's marriage; she recognized appellant's child as her grandson and evidenced a grandmother's joy and pride in his birth. So far as we now recall none of the property which Helen Ibach took by her husband's will has passed to purchasers for value and without notice. If perchance, some part of it has so passed, we concede that appellant cannot follow it. In the face of the plenary evidence of the lifelong relationship of these three persons, as father, mother and child, and of the continuance of that relationship by the mother and the child after the father's death, what evidence to the contrary could Helen Ibach have given had this suit been started in her lifetime?

The respondents who seek now to deny Anna's right to a child's share in Hugo Ibach's estate are Helen Ibach's beneficiaries and the executors as fiduciaries representing them. But our courts have held repeatedly and emphatically that a man (or a woman) must be just before he can be generous, and we respectfully submit that in equity the right of these respondents to take the gifts made to them

without consideration, by Helen Ibach's will, is not superior to the right of the appellant to have what she is entitled to as Hugo Ibach's child and for which she has furnished an adequate consideration by satisfying the heart hunger of these two childless people by giving to them, for half a lifetime, her filial love and service.

Helen Ibach died September 25, 1923, her will was probated October 19, 1923, and the bill in this case was filed Jan. 7, 1924.

Many years had passed since the agreement was made, many years had passed during which it was being performed. Surely a delay of a few months, to seek and find the necessary evidence before filing the bill, is not in a case of this kind, laches which will bar the appellant from the relief to which she is so clearly entitled.

**IT IS RESPECTFULLY SUBMITTED THAT APPELLANT IS NOT BARRED BY LACHES.**

#### IV.

**It is respectfully submitted that the decree should be reversed, and that the Court of Chancery should be directed to enter a decree that Appellant is entitled to a child's share of the assets of the Estate of Hugo Ibach, and directing the Defendants to account to Appellant therefor.**

Respectfully submitted,

MORRISON, LLOYD & MORRISON,  
Solicitors and of Counsel with Appellant.

WM. J. MORRISON, JR.,  
Of Counsel.

THE STATE OF NEW YORK

IN SENATE

JANUARY 1, 1900

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

FOR THE YEAR 1899

ALBANY:

ANDREW DEWEY, STATE PRINTER

1900

100

100

100

100

100

100

100

100

100

100

## New Jersey Court of Errors and Appeals

Anna Dusenberry,  
Complainant-Appellant,  
vs.

Robert K. Robertson, et al,  
Executors under the last  
will and testament of Helen  
Ibach, deceased,  
Defendants-Respondents.

On Appeal from  
Court of  
Chancery  
Decree advised  
by Vice  
Chancellor Lewis

### BRIEF FOR DEFENDANT, PATERSON GENERAL HOSPITAL ASSOCIATION.

The Paterson General Hospital Association is a specific legatee and also one of the residuary legatees and devisees under the will of Helen Ibach, deceased.

It appears by the brief of the complainant-appellant that her counsel have now abandoned the original cause of action set forth in the bill, which they attempted to establish upon the hearing before the Vice Chancellor.

The original cause of action, which was tried before the Vice Chancellor, was based upon an express contract, the terms of which are set forth in the seventh paragraph of the bill of complaint as follows:

Complainant's father \* \* \* mutually agreed with the said Hugo Ibach and Helen Ibach, his wife, to surrender the care,

custody and control of complainant to the said Hugo Ibach and Helen Ibach, his wife, in consideration of the promise of said Hugo Ibach and Helen Ibach, to give to complainant full parental care and affection, to legally adopt complainant, and to take her into their home, to treat her in all respects as their own child, having their fullest affection \* \* \* to care for her, rear, support and educate her, and upon the death of the survivor of them, to leave to complainant all the property of which they, or the survivor of them, should die possessed, all of which the said Hugo Ibach and Helen Ibach, his wife, then and there promised and agreed to do.

(Page 2, line 17-34.)

It will be noted that it is therein expressly alleged that not only Hugo Ibach, but his wife, Helen, at a specific time and place, namely, sometime shortly before the death of the complainant's father, expressly agreed to do the things therein alleged, among others, upon the death of the survivor, to leave to the complainant all the property of which they, or the survivor of them, should die possessed.

The existence of any such contract was denied in the answers filed by the defendants, and the issue so presented was tried before the Vice Chancellor. He dismissed the bill, upon the ground, among other things, that the evidence failed to reveal any agreement enforceable at this

time against the executors of Helen Ibach. (P. 83, lines 14-16.)

Counsel, apparently realizing that that finding of fact by the Vice Chancellor would be sustained by this court, now entirely abandons any claim against the separate estate of Helen Ibach, and attempt to assert a new claim, not set forth in the bill, or presented to the Vice Chancellor, namely, that the complainant is entitled to such part of the estate of Hugo Ibach, deceased, as she would have taken had she been his daughter, and he had died intestate; and that the Court of Chancery should be directed to enter a decree that appellant is entitled to a child's share of the assets of the estate of Hugo Ibach, and directing the defendants to account to the appellant therefor.

Having thus abandoned their original cause of action, we respectfully submit that under the evidence, and the law applicable thereto, the newly asserted claim is no stronger than the original.

Both claims were based upon the agreement alleged to have been made at the death-bed of the complainant's father, Schneppendahl. (Page 2, appellant's brief.)

If, therefore, counsel admit, as they tacitly do by abandoning their original cause of action, that their proofs have failed to establish that part of the alleged agreement that "all he had would go to her," namely, that Hugo Ibach would, by testamentary disposition, leave his entire estate to the complainant, then those proofs equally fail

to establish any promise to adopt the complainant as his child so that she would be entitled to a child's share of his estate.

The case is now entirely abandoned so far as any claim against the separate estate of Helen Ibach is concerned, evidently because counsel realize that there is no evidence whatever to show any promise or agreement on her part.

### *THE ARGUMENT*

The evidence offered in behalf of the complainant, in an endeavor to establish a contract of the nature alleged in the bill, consisted entirely, with the exception of a single witness, of the testimony of witnesses who were more or less familiar with, and testified regarding the apparent relations existing between the complainant and Hugo Ibach and his wife.

This evidence tended to show that the complainant enjoyed the privileges of a child, and performed the simple household duties which would naturally be expected of a member of the family.

With the single exception of the witness Emily Hill, there is no word in the testimony establishing, or attempting to establish, any promise on the part of either Mr. Ibach or his wife, to make any testamentary disposition in favor of the complainant, or to adopt her as their child.

The only evidence in the case in attempting to prove any such promise is that of the witness

Emily Hill. She testified that she over-heard a conversation between Mr. Schnependahl and Mr. Ibach about two months before the death of the former (page 40, lines 13-20), and that

“Mr. Schnependahl said, that if anything happened to him, Mr. Ibach could have this child as his own; and Mr. Ibach said he would gladly take her, and she would be his own, and he would rear her as his own, and all he had would go to her.”

(P. 40, lines 24-28.)

It is upon evidence of this character that the complainant relied in asserting the original cause of action before the Vice Chancellor, in her attempt to strip this estate of all its assets, and upon which her counsel now rely in this court, in their modified claim, to get that portion of the estate which Mrs. Ibach acquired under her husband's will, to which a natural or legally adopted daughter of Hugo Ibach would have been entitled had he died intestate.

***THE ALLEGED AGREEMENT, WHICH WAS ENTIRELY EXECUTORY IN CHARACTER, WAS WITHOUT CONSIDERATION, AND LACKED ANY ELEMENT OF MUTUALITY.***

Counsel in their brief (page 14 et seq.) after noticing the fact that the will of Hugo Ibach was executed several years prior to the date of the alleged promise to adopt the complainant as his child, and arguing that the rights of a legally adopted child are the same as the statutory rights

of a natural born child in respect to a will, made when a testator had no issue living, expressly admit, that as there was no legal adoption in this case, no such statutory right can be asserted in respect to the estate of Hugo Ibach. But relying on the alleged promise to adopt, counsel insist the same result can be effected by a court of equity treating the promise to adopt as if it had been legally performed. (We respectfully again call attention to the variation between this claim, now for the first time asserted in counsel's brief, and the cause of action set forth in the bill of complaint, and tried before the Vice Chancellor.)

Counsel therefore base their present claim upon the alleged promise to adopt; and we submit, that assuming that the court shall find that the flimsy evidence in the case is sufficient to establish the fact that any such promise was ever made, it was without consideration, and therefore is unenforceable.

Read in conjunction with the other evidence, what this dying man Schneppendahl said to the complainant's subsequent benefactor, Ibach, was in effect: "After I am dead, and my youngest child is left homeless, and in want, you, Mr. Ibach, can take her"; and to this Mr. Ibach replied in effect that he would gladly take the child, rear her as his own, and leave her his property.

Assuming that the testimony of the witness Hill is reliable and that she was able accurately to recollect, without prompting, or suggestion, a conversation which took place twenty-eight years previous

to her testimony, the promise so proved did not constitute a binding contract. It was without consideration; it neither conferred a benefit upon the one party, Ibach, nor caused a detriment to the other, either to Scheppendahl himself, or to his child, the complainant. On the contrary, the only burden was assumed by Ibach; namely, to take the child into his home and rear her, and the benefit was to the homeless child.

The contract was executory in character. Nothing was to be done until after the father's death. It lacked any element of mutuality. The father neither bound himself, nor his child, to do or forbear doing, anything. No consideration passed to Hugo Ibach.

The facts in the case are quite different from those in *Van Duyne vs. Vreeland*, 11, N. J., 370; S. C. 12, N. J. Eq., 142.

In that case the complainant, when only one year of age, and during the lifetime of his natural parents, left their home and entered the home of the defendant Vreeland, and continued to live there until his marriage, and he worked on the farm all the time until he was about twenty-five years of age, and for a number of years longer. Shortly before his death, the father of the complainant, relying upon the agreement with Vreeland to leave his property to complainant, made his will, whereby he divided his property between all his children, excepting the complainant, to whom nothing was given, the only reason why his share of the property was not given

to the complainant being in consequence of the repeated promises of said Vreeland.

In the Van Duyne case, therefore, there was ample consideration for the contract, the terms of which were clearly established. The complainant, relying upon the promise of Vreeland, performed services on the farm for Vreeland for many years, and he lost his natural share of his own father's estate.

Likewise, in the case of Vantine vs. Vantine, 15 Atl., 249, so frequently referred to in the appellant's brief, the contract was executed in the lifetime of the child's natural father, who surrendered all his parental rights. When the child became about twenty-one years of age, she desired to learn a trade, and forbore doing so, relying upon the promise of her adopted mother that if she would stay with her adopted mother, all of her property she would give to the child. In performance of that promise, the adopted mother actually did execute a will, in which she left to the child all her personal estate, being all the property she then owned.

The suit was to partition certain real estate which the testatrix, the adopted mother, had acquired long after having made the will before mentioned. The child was made a defendant in the suit in respect to an interest which she had acquired in the property by purchase. She filed a cross-bill in which she asserted that by virtue of the aforesaid promise she was entitled in equity to the whole estate, and the Vice Chancellor sustained that claim.

In that case, there was ample evidence of an express executed agreement, based upon a good consideration.

In *Vreeland vs. Vreeland*, 53 N. J. Eq., 387, and *Young vs. Young*, 45 N. J. Eq., 27, cited in appellant's brief, the consideration for the contracts enforced in those cases sufficiently appears from the excerpts from the cases contained in the brief.

***THERE WAS NO EVIDENCE OF PART PERFORMANCE OF THE ALLEGED PROMISE.***

Counsel argue that because the evidence shows that after the death of the complainant's father, Schneppendahl, she went from his funeral to the Ibach home, and remained there and was treated by Hugo Ibach and his wife as they would have treated a natural child, and that as the evidence shows she performed the household duties a child would naturally perform, it follows that such actions on both sides were done in part performance of the alleged promise. We submit that the argument is vicious; that under the evidence, the argument, *post hoc, ergo, proctor hoc*, is an egregious *non sequitur*.

The argument begs the question as to whether the alleged promise was ever made. There is nothing to indicate that the actions of Hugo Ibach and his wife were done under any sense of obligation arising out of any promise to the child's father rather than out of their natural kindness and benevolence.

There is certainly no evidence that the child performed her simple household duties in performance of any agreement made for her by her father. For there is no evidence in the case that the child had any knowledge of any such agreement that she acquired during the time she was a member of the household or during the lifetime of either Hugo Ibach or his wife.

Counsel admit that the present case is governed by the Statute of Frauds, unless it can be taken out upon the theory of part performances.

In the case they cite, *Cooper vs. Colson*, 66 N. J. Eq., 328, this court stated the rule, that the acts relied on as part performance must be exclusively referable to the contract; and, as we have already stated, it is impossible truthfully to assert that the appellant performed her childish household duties, relying upon an agreement, of which she had no knowledge at the time those duties were being performed.

***THE COMPLAINANT HAS BEEN GUILTY OF LACHES.***

If there is any basis of truth in the complainant's present claim, the time when she should have asserted it was immediately after the death of Hugo Ibach, and after the terms of his will, whereby he left all his estate to his wife, became known. Then had she asserted her claim, the widow might have been heard. The complainant waited, however, several years until after the widow's lips had been seal-

ed in death. This unexplained delay in asserting the claim casts a very deep shadow of suspicion upon it.

As stated by the Vice Chancellor:

“Complainant has been guilty of surprising delay and lack of diligence, unless an attempt is now being made to establish a false claim.”

I respectfully submit that the decree dismissing the bill of complaint should be affirmed.

WILLIAM A. SUMNER.  
Of counsel with defendant,  
Paterson General Hospital Association.

63  
1/2

63 MAY.T.1926

## New Jersey Court of Errors and Appeals

ANNA DUSENBERRY,  
Complainant-Appellant,

*vs.*

HELEN IBACH'S EXECUTORS, *et al.*,  
Defendants-Respondents.

On Appeal  
from Court  
of Chancery.

### BRIEF FOR RESPONDENT ST. JOSEPH'S HOSPITAL.

#### Statement.

Hugo Ibach made a proposal in 1892, to complainant's father, to take complainant as his own child, but the father definitely rejected it (p. 40, l. 10). He said he could not give her up just then (p. 40, l. 10-12). This was four or five years before his death (p. 39, l. 20-30)—about the year 1892 (p. 45, l. 10-30).

About two months before his death, when he knew he was going to die (p. 46, l. 14) complainant's father said to Hugo Ibach "that if anything happened to him, Mr. Ibach could have this child as his own; and Mr. Ibach said he would gladly take her, and she would be his own, and all he had would go to her" (p. 40, l. 18-30).

The father died in 1897 (p. 43, l. 28). But there was no surrender of the daughter, and no change of her position took place until after the death of her father.

Upon the death of her father, complainant's family home was given up (p. 48, l. 1-10), and the children scattered to live with various persons (p. 47-48). Her mother had died some years before her father's death, and her step-mother had left her father the year before his death (p. 43, l. 20-30).

With the breaking up of the family thus foreshadowed, Hugo Ibach took the complainant, then about eight years old, and treated her as if she were his own child. He educated her, gave her lessons in music and china painting, and provided for her health and entertainment. He referred to her as his daughter. She appears to have requited his acts with her own affection and service.

Mrs. Helen Ibach was not a party to the conversations between complainant's father and Hugo Ibach, did not ratify them, and no proof is offered that she agreed to adopt complainant or give her anything, or that she knew of any alleged agreement. The bill of complaint alleges that Mrs. Ibach was a party to all that took place, but no evidence of this was produced. Mrs. Ibach evidently bore affection for complainant, and referred to her as her daughter.

Complainant's life in her new home appears to have been happy, and she seems to have gained by her relations with the Ibachs for twenty-three years. In addition Mrs. Ibach left her \$5,000.00 and some furniture by her will, and left to complainant's son \$1,500.00.

Complainant did not lose any part of the estate of her parents, did not give up any prospects in life, did not suffer any detriment, and no fraud was practised upon her. She was elevated from the uncertainty of orphanage by the acts of the Ibachs.

She now complains that the grace conferred upon her produced rights which were not hers by nature.

### I.

#### **The breach pleaded by complainant has not been proved.**

The bill of complaint makes the allegation of fact that Helen Ibach also made the contract to will everything to complainant (p. 2, par. 7).

The allegation of fact is made against Helen Ibach, that Hugo Ibach continually assured complainant in Helen Ibach's presence, that, in the event of his death she would always be provided for (p. 4, par. 13). The further allegation is made that Hugo Ibach always intended and believed that Helen Ibach by her will or otherwise would give or leave "said" property to complainant (p. 6, l. 1-5).

Hugo Ibach is thus exculpated from any breach of contract.

The bill of complaint then alleges that Hugo Ibach and complainant fully performed their agreement, and that "the said will of Helen Ibach is a breach of said agreement as aforesaid and is a fraud upon the complainant and said Hugo Ibach" (p. 8, l. 14-16).

This is the only breach pleaded.

No proof was offered that Helen Ibach ever knew anything of the contract, ever ratified it, or ever heard Hugo Ibach say that complainant would always be provided for.

A judgment in complainant's favor would not be *secundum allegata et probata*.

## II.

**No contract was proved.**

(a) *The proposal never ripened into a contract.*

The proposal of Hugo Ibach to take the child was definitely rejected by complainant's father five years before his death (p. 40, l. 1-12).

The new proposal of complainant's father, in his last illness was that "if anything happened to him, Mr. Ibach could have this child as his own" (p. 40, l. 20-30). To which Mr. Ibach replied that he would gladly take her, and she would be his own, and all he had would go to her.

Upon the death of complainant's father, her guardianship rested, in the order of nature, upon some of her relatives. Her oldest sister was twenty-three, and was unable to take care of her father (p. 43, l. 1-10). The next sister was eighteen and the next one was fourteen (p. 42, l. 10-20). She had no brothers. Mrs. Helen Ibach was her cousin (p. 1, l. 20-30). There is mention of an aunt Ida (p. 47, l. 14) and an aunt Tony (p. 66, l. 30), though the person to whom they were aunts is not mentioned. None of these persons seems to have assumed control of the child.

There was no surrender or transfer of the services or affection of complainant to Hugo Ibach by anyone. What the father did was to assure a future for his child for the time when he could do nothing for her and claim nothing from her. No consideration passed from him to Hugo Ibach, and he suffered no detriment. The child lost nothing, and suffered no detriment, but on the contrary gained.

(b) *The promise of Hugo Ibach was unilateral.*

The agreement was *in futuro* and contingent. No change of possession or dominion over the child occurred *in praesenti*. When death intervened, two months after the proposal, Mr. Ibach assumed control over her.

A unilateral promise does not rise to the dignity of a contract, where acts distinctly referable to it are not performed by the promisee on the faith of the promise.

A voluntary intention to devise is not enforceable.

Ackerman *v.* Ackerman, 24 N. J. Eq., 585.  
Wittingham *v.* Lightpipe, 46 N. J. Eq.,  
429.

Where a child was taken from an infant's home when five years old and lived with decedent, testimony of admissions made by the decedent as to his intentions was held insufficient to establish a contract to adopt or devise, in

Holt *v.* Tuite, 188 N. Y., 17.

Where a divorce had taken place between parents and the custody of a child awarded to the mother, an agreement entered into by the father for the adoption of the child was held without consideration.

Fugate *v.* Allen, 119 Mo. App., 183, 95  
S. W., 890.

Where two children were taken out of an orphan asylum, after the death of their parents, it was

held that they could not claim a contract against the estate of their benefactor, in

Bauman *v.* Kusian, 164 Cal., 582, 129 Pac., 986.

(c) *The contractual intent is at most doubtful.*

The witness in the case at bar who testified about the original proposal of Mr. Ibach in 1892 said that it was made in the German language, at a masked ball, and that she could not repeat it in German, but that she understood it (p. 38, lls. 30-40; p. 40, lls. 1-10). The persons present are not mentioned. The occasion was hardly one for the making of a solemn contract. Mr. Ibach had been carrying on (p. 29, lls. 10-20).

The circumstances surrounding the making of the dying agreement are meagrely mentioned. The place, the time, whether the language was German or English, the financial condition of the parties, are not shown. Mr. Ibach is made to use the identical words he had used five years before at the masked ball. This all indicates that the witness has made her own interpretation of what was said, and that her story is perhaps unconsciously affected by what she thinks should be the just disposition of Hugo Ibach's property.

Did Hugo Ibach intend to exclude his wife from proper participation in his estate, although he had previously made a will leaving her his whole estate, dated January 20, 1892? (p. 5, par. 15). Did he mean to give complainant all that he then had or all that he acquired in the following twenty-two years? Or did he intend to give her, as now claimed, a child's share?

Where all the proof leaves it in doubt whether an alleged agreement was an obligatory contract or a declaration of a purpose to confer a benefit, specific performance will not be decreed.

*Wolfinger v. McFarland*, 67 N. J. Eq., 687.

So, also, of an alleged agreement to devise.

*McTague v. Finnegan*, 54 N. J. Eq., 454.

*McNamara v. Bohn*, 108 A., 764.

*Mahaney v. Carr*, 175 N. Y., 454.

### III.

#### **The contract was within the Statute of Frauds.**

The answers set up the bar of the statute (p. 17, lls. 30-40).

A contract to devise is within the statute.

*Lozier v. Hill*, 69 N. J. Eq., 300.

The rule is that the statute may be invoked unless it works a fraud upon the complainant.

*Van Duyne v. Vreeland*, 11 N. J. Eq., 370; 12 N. J. Eq., 142.

*Cooper v. Colson*, 66 N. J. Eq., 328.

*Vreeland v. Vreeland*, 53 N. J. Eq., 387.

*Cooper v. Carlisle*, 17 N. J. Eq., 525.

Complainant did not change her course of life, except to her advantage. No fraud was practiced upon her, no consideration was given by her father, and she did not lose her patrimony.

## IV.

**Complainant is guilty of laches.**

Laches was pleaded (p. 18, lls. 18-20).

Complainant knew at the time of the death of Hugo Ibach on May 16, 1919, that he had not provided for her in his will. She was married Oct. 19, 1920, under the name of Anna Valentine Schnepfdahl (p. 93, Ex. C-4). She knew then that she was not legally adopted (p. 75, lls. 1-10), and said she did not know if she would be legally married by the name of Ibach (p. 74, lls. 1-10). The bill of complaint was filed herein on January 7, 1924.

As no proof was offered against Helen Ibach on the question of the making or ratification of a contract, the time when complainant was put upon notice began at least upon the probating of Hugo Ibach's will, June 6, 1919 (p. 5, par. 19). She gives no explanation of the delay. After the lips of both Hugo and Helen Ibach are closed in death, their proof is lost to the defendants.

Where complainant alleged an agreement on the part of her brother to devise to her, but did not assert or make known her claim until after the death of his wife, to whom he devised his estate, it was held that complainant was guilty of laches.

*Lozier v. Hill*, 68 N. J. Eq., 300.

While the time in the *Lozier* case was longer than the time in the case at bar, length of time is not the essential of laches. It is the change of position and disadvantage of parties produced by the delay.

## V.

**Specific performance does not lie.**

(a) *There was no valuable consideration for the promise.*

Complainant's father did not part with the service or affection of his daughter, and complainant did not depart from her father, nor lose her patrimony. Until the death of the father, the normal relations of parent and child continued uninterrupted by any act of the Ibachs.

There must be a consideration by way of detriment at least, to support the remedy of specific performance.

Drake *v.* Lanning, 49 N. J. Eq., 452.

(b) *No pecuniary loss was suffered by complainant or her father.*

She was not deprived of anything. She had a pecuniary profit for twenty-three years, in addition to the legacies.

(c) *Neither Complainant nor her father incurred obligations.*

The alleged agreement did not provide that complainant or her father was to do anything. She herself made no promise, and was free to depart from the Ibachs at any time. The agreement was lacking in mutuality. The services of the complainant to the Ibachs are not referable to the agreement, but to a choice between the Ibach's home and some other place.

Cooper *v.* Colson, 66 N. J. Eq., 328.

(d) *The failure to provide for complainant is not a basis for the remedy.*

The present material position of the complainant is not shown. She may be wealthy. Or she may be in the position of the child brought up in luxury who is cut off by the will of a parent and thus forced into a life for which he had not been trained. If the parent promise to provide for the child, the promise is not enforceable unless the child has changed his position to his disadvantage on the faith of the promise.

(e) *Specific Performance would cut off the rights of Helen Ibach.*

In order that complainant shall take all, as claimed in the bill of complaint, the widow would lose all except her dower. The land had been put in her name in Hugo Ibach's lifetime (p. 5, par. 16).

Where a complainant claimed a breach of a contract to provide by will or otherwise for the accession by the complainant upon the death of a testator, to a parcel of land and a large share of the remaining estate, and it appeared that the testator had disposed of the land in his lifetime, a bill in the nature of a bill for specific performance, demanding compensation or damages, was dismissed, in

Van Horn v. Demarest, 76 N. J. Eq.,  
386.

(f) *The inferential promise to adopt cannot be now enforced.*

If it can be said that the promise amounted to a contract to adopt as claimed (p. 8, par. 24d), it

cannot be now enforced because of the death of Hugo Ibach and of the fact that adoption is a purely statutory proceeding. Under our statute, his wife would have had to consent. But no consent is shown.

A contract to adopt cannot be specifically enforced.

*Erlanger v. Erlanger*, 102 Misc., (N. Y.), 236, where it is said that no case has been found working the compulsion, except in effect by specific performance in its property aspects only, where a defaulting party is dead.

## VI.

### **The funds bequeathed by Mrs. Ibach cannot be reached.**

If Hugo made a contract which could be enforced against him or his beneficiary, it cannot be enforced against the beneficiaries of his beneficiary.

Mrs. Helen Ibach knew nothing of such an agreement, did not ratify it, and was not unjustly enriched by it.

The identical property which was received by her is not traced, and no attachment or restraint has issued. The real property was sold (p. 6, par. 19; p. 16, par. 11). After his death, she purchased Florida lands, and afterwards sold them (p. 7, par. 20; p. 17, par. 12). Part of the property which she bequeathed came to her from Hugo Ibach, and part of it was her own (p. 6, par. 18; p. 16, par. 10).

The position in which the allegations and proofs put the complainant seems to be that Hugo Ibach

made the agreement; that both Hugo and Helen treated her as a daughter; that Hugo performed the agreement and expected Helen to will the property to complainant (complainant being bound by her pleadng, p. 6, l. 1-5); and that Helen's will is a fraud upon the complainant and upon Hugo.

If such a case existed in fact, the proper remedy would seem to be the impressing of the property received by Helen's legatees with a trust *ex maleficio* and seizing the property, and not by a personal decree for performance and relief.

In *Heinisch v. Pennington*, 73 N. J. Eq., 456, aff. 75 N. J. Eq., 606, the complainant alleged that the will of Thomas Rogers in favor of his son Jacob, was left unaltered by the testator, because Jacob promised his father that he would do certain things for her.

Held, that specific performance would not lie against the beneficiaries of Jacob.

## VII.

### The decree should be affirmed.

Respectfully submitted,

JOHN M. NOLAN,  
Solicitor for and of Counsel with  
St. Joseph's Hospital, Respondent.

63 MAY.T.1926

Br

See v. St

## New Jersey Court of Errors and Appeals

|  |   |   |
|--|---|---|
| ANNA DUSENBERRY,<br>Complainant-Appellant,<br><br>v.<br><br>HELEN IBACH'S EXECUTORS, <i>et als.</i> ,<br>Defendants-Respondents. | } | ON APPEAL<br>FROM COURT<br>OF CHANCERY. |
|--|---|---|

### BRIEF FOR DEFENDANTS- RESPONDENTS.

#### Statement.

The bill of complaint in the above cause alleges an agreement between Hugo Ibach and Helen Ibach, his wife, and Otto Schneppendahl, the deceased father of the appellant. The bill prays for an injunction and specific performance by the executors of Helen Ibach, deceased, of the alleged agreement. Neither the affidavit attached to the bill nor the proofs submitted at the hearing in any way show any agreement on the part of Helen Ibach, deceased. The most that can be said is that the appellant attempted to prove at the trial, an agreement on the part of Hugo Ibach in his lifetime, so that we fail to see how the appellant can, in any way, be entitled to specific performance of an agreement alleged to have been made by Helen Ibach.

Specific performance is not a matter of right, it is entirely within the discretion of the Court. Unless the appellant's right is clearly established, a court of equity will not undertake to compel performance. The cases on this are so numerous that

it is useless to cite them, but for convenience we may mention a case recently decided by Vice-Chancellor Lewis, *Rabinowitz, et al. v. Rooney, et al.*, 3 Adv. Rep., 1099, where he states:

“Specific performance is only to be exercised in the sound discretion of the Court and is not a matter of right. To warrant specific performance the proof must be clear and convincing. If the proof is substantially, evenly balanced, or if the Court is left in doubt because of the lack of clearness of it, it denies specific performance and leaves the parties to their remedy at law.” Citing *Lindley v. Keim*, 54 N. J. Eq. 418.

Appellant's brief seems to contend that the alleged agreement made by Hugo Ibach was ratified by Helen Ibach. We do not see how they can advance the doctrine of ratification so as to apply it against Helen Ibach. Surely any alleged agreement made by Hugo in his lifetime was not made for the benefit of Helen Ibach but would be made for the benefit of the appellant, and Hugo had no authority or right, in any way, to make an agreement for Helen Ibach. We doubt very much whether any such agreement as contended by the appellant ever existed, for the reason that when Hugo Ibach died, he surely would have made some mention of the fact in his last will and testament. Not having done so, it appears quite conclusively that Helen Ibach had no knowledge of any such agreement, for the reason that she made her last will and testament, in which she made numerous bequests, among which was the legacy to the appellant and her child. The situation as developed in this case, is somewhat similar to the case of *Shinn v. Smiley*, 1 New Jersey Miscellaneous Reports, page 459, where Vice-Chancellor Leaming says:

"The difficulties arise from the fact that throughout no agreement has been made in the name of Clarence, or suggesting the name of Clarence, as the person to be bound, nor has Clarence signed any agreement of any kind, nor has his name been even mentioned or suggested in any of the negotiations or transactions with complainant. Accordingly the relief here sought is against Clarence as an undisclosed principal. In this respect the situation is practically identical with that considered and determined in *Schenck v. Spring Lake Beach Improvement Co.*, 47 N. J. Eq. 44. Without overruling and wholly disregarding the decision of this court in that case it is clearly impossible through the medium of parol evidence to make Clarence a party to the contract here sought to be enforced."

As already stated, the most that could be contended for the appellant, is an agreement alleged to have been made by Hugo Ibach in his lifetime with one Otto Schnependahl in his lifetime, the father of the appellant.

The appellant relies particularly upon the case of *Van Dyne v. Vreeland*, 11 N. J. Eq., 370, and 12 N. J. Eq., 142, but we fail to see how that case is in any way similar to the appellant's, for the reason that in the *Van Dyne* case the person alleged to have made the agreement to adopt was living, whereas, in the present case, both Hugo and Helen Ibach are deceased and also Otto Schnependahl. As Vice-Chancellor Pitney said in *Drake v. Lanning*, 49 Equity, 452, on page 460:

"In *Van Dyne v. Vreeland*, 3 Stock. 370; S. C. 1 Beas. 142, the consideration was the loss by the complainant of the share which he would otherwise have received in his own father's estate, and his continued services for the defendant from his infancy until he was twenty-five years old."

He further states:

“The promise by one to make a particular testamentary disposition of property for the benefit of another is unenforceable unless founded upon sufficient consideration.”

There does not appear to be any consideration in the present case because it is admitted that the appellant went into the home of Hugo and Helen Ibach after the death of her parents and after she became vested with a share or interest in their estates. In other words, she entered the home of Hugo and Helen Ibach as an orphan and was cared for and educated by them and reared to womanhood until her marriage.

In *36 Cyc.*, under specific performance, page 675, we find:

“*Informal adoption of child.* Specific performance has been refused in this class of cases, not only on the ground that the acts on plaintiff’s part do not point to a contract concerning land, but for the reason that no fraud is worked upon the child by refusal of relief, since its condition in life was improved by the adoption,”

citing several cases.

It seems that the court of equity may enforce the agreement for the informal adoption of the child where there is a sufficient consideration to sustain it. What would be a sufficient consideration is difficult to determine. If the appellant’s parents had been living at the time she went with the decedents upon such an alleged agreement and she thereby gave up her home with her own parents and gave up her right to share in their estate upon their deaths, the courts may be inclined to enforce such an agreement, but where she had no home and was taken in by the decedents and received

all the benefits during their lifetime they could give her, it is our opinion that the Court cannot escape the conclusion that there was no consideration upon which she can rely.

It is admitted in the present case that there were no adoption proceedings of any kind and further, that even up to the time the appellant married, she gave her name for the purpose of obtaining a marriage license as Anna Schneppendahl. This seems to us very conclusive and convincing of the fact that she did not consider that she had been adopted as the child of Hugo and Helen Ibach.

We want to call the Court's attention to the prayer for relief in the bill of complaint as filed (Case, p. 8) in which it prays (c) for specific performance of an alleged agreement between Hugo and Helen Ibach and Otto Schneppendahl the appellant's father; (d) that appellant may be decreed to have the same right and estate of the said Hugo Ibach and Helen Ibach, as though she had been legally adopted by them and said agreement had been by them fully performed; (e) that appellant may be decreed to be the owner of and entitled to all the property of which Hugo Ibach and Helen Ibach died seized and possessed, etc.

The original theory upon which this case was tried before the Vice-Chancellor was that there had been an agreement by both Hugo and Helen Ibach to adopt the appellant. This they failed to establish. In appellant's brief, counsel appears to have abandoned any thought of having established an agreement upon the part of Helen Ibach. Under Point I, page 14 of their brief, they say: "The appellant is entitled to a child's share in Hugo Ibach's estate." This to us, seems very significant.

If by any stretch of the imagination it can be said that an agreement existed between Hugo Ibach and appellant's father (Otto Schneppendahl), it

seems to us that what the Vice-Chancellor said in his opinion is very significant (Case, p. 81, at p. 84):

“Complainant has been guilty of surprising delay and lack of diligence, unless an attempt is now being made to establish a false claim. She knew at the time of Hugo Ibach’s death that he had made no provision for her in his will, or any mention of an alleged agreement, but now that both the Ibachs’ lips are sealed in death she institutes the present proceeding.”

Hugo Ibach died on or about June 6th, 1919, and from that time on, until the death of Helen Ibach, nothing appears in the testimony whereby Helen Ibach recognized or intimated in any way that she knew of any alleged agreement that had been made by Hugo Ibach with appellant’s father, nor does it appear that Helen Ibach ever led appellant to believe that she would be her sole beneficiary. Notwithstanding this, appellant stood by until after Helen Ibach died, although she knew at the time of the death of Hugo Ibach that he had made no provision in his will requiring Helen Ibach his wife, to continue the alleged agreement. Why did she not, immediately upon the death of Hugo and upon discovery by her that he had made no provision in his will requiring Helen to continue the alleged agreement, act promptly and diligently, so that Helen could be given an opportunity to testify and say whether or not any such alleged agreement existed?

We seriously contend that when appellant waited until all of the parties to the contract, and the main ones who could testify as to any alleged agreement, were gone, she put herself in a very embarrassing and serious position in so far as asking the Court to spell out a contract for her

and then compel performance thereof. As we urged in our answer, appellant is guilty of gross laches.

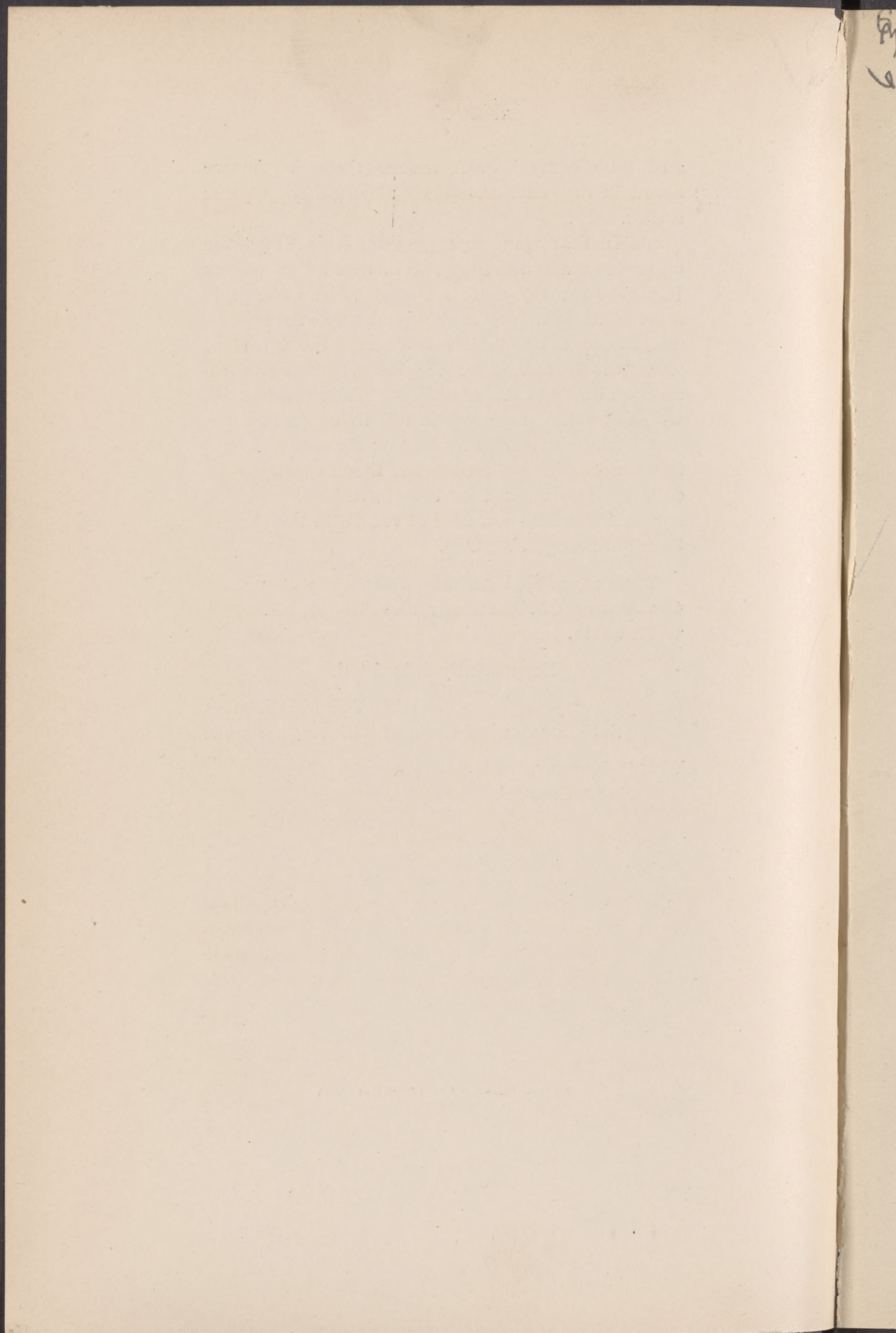
We further want to urge upon this Court the other separate defenses set forth in the answer (Case, p. 18) (a) that appellant had an adequate remedy at law; (b) that appellant's claim is an attempt to alter, vary and change the terms of written instruments, namely, the last wills and testaments of Hugo Ibach and Helen Ibach, deceased, which she had an opportunity to contest in the appropriate jurisdiction; (c) that the last wills and testaments of Hugo and Helen Ibach could not be collaterally attacked, for they have been probated and still stand as a matter of record in the Bergen County Surrogate's Office.

**We respectfully submit that the decree of the Court of Chancery should be affirmed, with costs.**

Respectfully submitted,

MACKAY & MACKAY,  
Solicitors and of Counsel with Respondents.

WM. B. MACKAY,  
Of Counsel.



## NEW JERSEY COURT OF ERRORS AND APPEALS

|  |   |  |
|--|---|--|
| <p style="text-align: center;">ANNA DUSENBERRY,<br/><i>Complainant-Appellant,</i></p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">HELEN IBACH'S Executors, et als.,<br/><i>Defendants-Respondents.</i></p> | } | <p style="text-align: center;">On Appeal<br/>from Court<br/>of Chancery.</p> |
|--|---|--|

### REPLY TO RESPONDENTS' BRIEFS.

Counsel for the several respondents (Messrs. Mackay and Mackay, at page 5 of their brief; Messrs. Humprey and Sumner, at pages 1-4 of their brief; and Mr. Nolan, Point I of his brief, page 3) contend that the relief appellant now asks is not within the pleadings filed in the court below.

We respectfully direct attention to the express allegation in paragraph 7 of the bill of complaint, that Hugo Ibach and Helen Ibach agreed "to legally adopt complainant and to take her into their home, to treat her in all respects as their own child" (Bill of Complaint, Case, page 2, lines 26-28); and to prayer (d) (Bill of Complaint, Case, page 8, lines 34-38), which reads:

"That complainant may be decreed to have the same right to the property and estate of the said Hugo Ibach and Helen Ibach, his wife, as though she had been legally adopted by them and said agreement had been by them fully performed."

This allegation and this prayer are, we respectfully submit, sufficient to entitle the appellant to claim, upon the evidence given in the court below and the precedents cited in our brief in her behalf,

that she is entitled to such part of the estate of Hugo Ibach and of that of Helen Ibach, as she would have been entitled to receive had she been their daughter. We do not contend that the alleged promise "to leave to complainant all the property of which they or the survivor of them should die possessed" (Bill of Complaint, Case, page 2, lines 30-32) has been so convincingly proven as to warrant specific performance. We concede (at page 28 of our brief, lines 15-18) that under Helen Ibach's will appellant, even though she had been a daughter by birth or adoption, could claim no more than the bequest therein made to her. But we do claim that had appellant been a daughter by birth or adoption, Hugo Ibach's will would have been void, by our Statute, and she would have taken a child's share in his estate, and that appellant, for nearly her whole lifetime having been (in all respects except birth or formal adoption) the daughter of Hugo Ibach and Helen Ibach, she is, in equity, entitled to the rights which by law their child would have taken.

Respectfully submitted,

MORRISON, LLOYD & MORRISON,  
Counsel for Complainant-Appellant.

