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Petition.

Essex County Surrogate's Court.

In the Matter
of the
Probate of the alleged will of
John Strang, deceased.

On Petition
for Probate.
Petition.

10

To the Surrogate of the County of Essex:

The petition of Edward W. J. Kaysel, and Lydia Kaysel who resides at No. 25 Windsor Place, Glen Ridge, N. J. respectfully shows that: 20

1. John Strang, late of the Town of Bloomfield, in the County of Essex and State of New Jersey, departed this life more than ten days ago, to wit, on the 12th day of February 1930, having first duly made and executed a paper writing purporting to be his last will and testament, bearing date the 24th day of November 1919, wherein your petitioners are named as executors thereof.

2. The next kin and heirs at law of the said testator with their respective residences or post office addresses and the manner and degree in which they severally stand related to the said testator, so far as the same are known to your petitioner are as follows: 30

Names	Residences	Relationship
Sarah Skinner	California	
Caroline Reid,	Bloomfield, N. J.,	sisters

40

Petition.

No sons or daughters, no other brothers or sisters or issue thereof surviving.

All of the foregoing are of full age.

Your petitioners therefore pray that the said paper writing be admitted to probate as the last will and testament of the said testator and that letters
 10 testamentary thereon be granted to your petitioners.

Dated, Newark, N. J.,
 February 24, 1930.

LYDIA KAYSEL.
 EDWARD W. J. KAYSEL.

State of New Jersey, }
 County of Essex. } ss.:

20 Edward W. J. Kaysel & Lydia Kaysel, of full age, being duly sworn according to law, upon their oaths deposes and say that they are the petitioners in the foregoing petition named and that the matters and things therein contained are true to the best of their knowledge and belief.

LYDIA KAYSEL.
 EDWARD W. J. KAYSEL.

30 Subscribed and sworn to this
 24th day of February A. D.,
 1930, at Newark, N. J., be-
 fore me,

O. A. Hanretty,
 Notary Public of
 New Jersey.

Petition.

IN THE NAME OF GOD, AMEN.

I, John Strang of the Town of Bloomfield in the County of Essex and State of New Jersey being of Sound Mind, Memory and Understanding, do on this twenty fourth day of November A. D. 1919, make, and publish this my last Will and Testament in manner following, that is to say: 10

First: I will and direct that all my just debts and funeral expenses be paid as soon as may conveniently be done after my decease.

Second: I will and bequeath unto my sister, Sarah Skinner the sum of Three Hundred Dollars.

Third: I will and bequeath unto my sister, Caroline Reid, the sum of One Hundred Dollars.

Fourth: I devise and bequeath all the rest, residue and remainder of my estate and effects whatsoever and wheresoever, both real and personal, to which I may be entitled, or which I may have power to dispose of at my decease, unto my friends, Lydia Kaysel and Edward W. J. Kaysel, her husband, absolutely. 20

I hereby appoint my friends, Edward W. J. Kaysel and Lydia Kaysel, executors of this my last will and testament.

In Witness Whereof, I have hereunto set my hand and seal this twenty-fourth day of November, Nineteen Hundred and Nineteen. 30

JOHN STRANG (L S.)

Signed, Sealed, Published and Declared by the testator, John Strang, as his last will and testament in the presence of us, who at his request and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses, 40

Petition.

the above testamentary clause being read over and approved by the testator before executing the foregoing will.

Frederic M. Payne, Newark, N. J.

Marguerite I, Jarvis, Newark, N. J.

10 State of New Jersey, }
County of Essex. }*ss.* :

Marguerite J. Ryan nee Jarvis,

One of the witnesses to the annexed writing, purporting to be the last will and testament of John Strang the testator therein named, deceased, being duly sworn on her oath, says that she saw the testator sign and seal the said annexed writing, and heard him publish, pronounce and declare the same as and for his last will and testament.

20 That at the time of the doing thereof the said testator was of sound and disposing mind, memory and understanding, as far as this deponent knows and verily believes; that Frederic M. Payne the other subscribing witness thereto, was present at the same time with this deponent when the said will was signed by the said testator and by him published and declared as and for his last will and testament as aforesaid; and that the said Frederic M. Payne and deponent subscribed their names to
30 said will as witnesses in the presence of said testator and of each other, at the request of said testator.

MARGUERITE J. RYAN nee Jarvis.

Sworn February 24, 1930,

before me,

O. A. Hanretty,

Special Probate Clerk.

Petition.

State of New Jersey, }
 County of Essex. } ss.:

Edward W. J. Kaysel and Lydia Kaysel, the ex-
 cutors in the annexed writing named, being duly
 sworn on their oaths say the annexed writing con-
 tains the true last will and testament of John
 Strang the testator therein named, deceased, as far 10
 as they know and as they verily believe; that they
 will, as the executors thereof well and truly per-
 form the same, first by paying the debts of said
 deceased, and then the legacies, therein specified,
 as far as the goods, chattels and credits of said de-
 ceased will thereunto extend, and the law charge
 them; that they will when lawfully required make
 and exhibit into the Surrogate's Office of the Coun-
 ty of Essex a true and perfect inventory of all and 20
 singular the said goods, chattels and credits as far
 as the same have or shall come to their possession
 or knowledge, or to the possession of any other per-
 son or persons to their use, to their knowledge, and
 they will well and truly account when thereunto
 lawfully required, and that said testator died Feb-
 ruary 12, 1930.

LYDIA KAYSEL.

EDWARD W. J. KAYSEL.

Sworn February 24, 1930, 30
 before me

O. A. Hanretty,
 Special Probate Clerk.

Order for Probate.

ESSEX COUNTY SURROGATE'S COURT.

10	<p style="text-align: center;">In the Matter</p> <p style="text-align: center;">of the</p> <p style="text-align: center;">Probate of the alleged will of John Strang, deceased.</p>	}	<p>On Petition for Probate. Order for Probate.</p>
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20 On reading and filing the petition of Edward W. J. Kaysel and Lydia Kaysel for the Probate of the Last Will and Testament of John Strang deceased, and for Letters Testamentary thereon, and the Surrogate having inquired into the circumstances and taken proof, and being satisfied of the genuineness of the Will produced, the validity of its execution and competency of the testator, and it further appearing that the said testator died on the 12th day of February, Nineteen Hundred and thirty and more than ten days ago, and that no caveat has been filed against the probate of said Will.

30 It is thereupon, on this 24th day of February, Nineteen Hundred and thirty ordered and adjudged that the instrument offered for probate in this matter be and the same hereby is established as the Last Will and Testament of the said John Strang deceased, and that the same be and hereby is admitted to probate.

It is further ordered that Letters Testamentary

Order for Probate.

thereon be issued to Edward W. J. Kaysel and Lydia Kaysel the executors named in said Will upon their qualifying as such Executors.

ANDREW J. WHINERY,
Surrogate.

10

Certificate of Surrogate.

STATE OF NEW JERSEY

ESSEX COUNTY SURROGATES COURT.

I, Andrew J. Whinery, Surrogate of the County of Essex, do hereby certify the annexed to be a true copy of the last will and testament of John Strang, late of the County of Essex, deceased, and that Edward W. J. Kaysel and Lydia Kaysel the executors therein named, proved the same before me and are duly authorized to take upon themselves the administration of the estate of the testator agreeably to the said will. 20

Witness my Hand and Seal of Office, this twenty-fourth day of February, in the year of our Lord, one thousand nine hundred and thirty.

ANDREW J. WHINERY,
Surrogate.

30

40

Petition.

ESSEX COUNTY SURROGATE'S COURT.

In the Matter of the 10 Estate of John Strang, deceased.	On Appeal from Probate of Will by Surrogate.
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To the Surrogate of the County of Essex:

The petition of appeal of Caroline Strang Reid, of the Town of Bloomfield, County of Essex and State of New Jersey respectfully shows that:

1. Your petitioner is a sister of John Strang late of the County of Essex, deceased who died on
 20 February 12, 1930 leaving him surviving as his next of kin, your petitioner and her sister, Sarah M. Skinner, the latter residing in Los Angeles, California.

2. On February 22, 1930, one, Lydia Kaysel produced before the Surrogate of the County of Essex, for probate a paper writing purporting to be the last will and testament of said John Strang, deceased, wherein the said Lydia Kaysel was named
 30 as one of the devisees, and said Lydia Kaysel and Edward W. J. Kaysel, her husband were named as the sole Executors. And the said Surrogate on February 24, 1930 made his order admitting the said paper writing to probate as and for the last will and testament of the said John Strang, deceased, and granting letters testamentary thereon to said Lydia Kaysel and Edward W. J. Kaysel, which letters were issued on the day last aforesaid.

Petition.

3. Your petitioner claims and alleges that the whole and every part of the said order of the said Surrogate admitting the said will to probate and issuing letters testamentary thereon to said Lydia Kaysel and Edward W. J. Kaysel, as aforesaid is, erroneous, improper and contrary to law and that your petitioner is aggrieved thereby. 10

Your petitioner alleges for grounds of appeal as follows:

(a) At the time of the making and supposed execution of said writing and for a long time prior thereto the said John Strang was of unsound mind and as such incapable of disposing of his estate by will.

(b) The said Lydia Kaysel and Edward W. J. Kaysel, her husband did illegally, and fraudulently influence the said John Strang in respect to the making and the supposed execution of the said paper writing. 20

(c) The supposed execution of the said paper writing is illegal and insufficient under the laws of this state to constitute the same as the last will and testament of the said John Strang deceased, for that the said John Strang, did not at the time of the supposed execution thereof, sign, publish and declare the said paper writing as and for his last will and testament in the presence of two witnesses present at the said time pursuant to the statute in such case made and provided. 30

4. The names of the only persons concerned in this proceeding other than those of the petitioner are Lydia Kaysel and Edward W. J. Kaysel alleged executors. 40

Petition.

Your petitioner therefor prays that the above named persons concerned in this proceeding may be cited to appear in the Orphan's Court pursuant to the rules and practice thereof and that the aforesaid order of the Surrogate and the proceedings thereon may be reversed and set aside by the said Orphans' Court and that the letters testamentary issued to the said Lydia Kaysel and Edward W. J. Kaysel may be revoked.

Dated April 24, 1930.

G. M. BELFATTO,
Proctor.

State of New Jersey, }
County of Essex. } ss. :

20 Caroline Strang Reid, being duly sworn according to law upon her oath deposes and says that she is the petitioner in the foregoing petition named, and the matters therein contained are true to the best of her knowledge and belief.

CAROLINE STRANG REID.

Sworn to and subscribed before me
this 25th day of April, 1930.

30 Vincent Belfatto,
Attorney at Law
of N. J.

Citation.*Essex County, ss. The State of New Jersey*

To

Caroline Strang Reid
 Sarah Skinner
 Lydia Kaysel
 Edward W. J. Kaysel

10

Greeting:

We cite and command you, that you personally be and appear before the Orphans' Court, to be holden at the Court House in Newark, in and for the County of Essex, on Wednesday the 14th day of May, A. D., one thousand nine hundred and thirty at ten o'clock in the forenoon, in the matter of the appeal of Caroline Strang Reid, from an order of the Surrogate of the County of Essex, dated February 24, 1930, admitting to probate a certain paper writing purporting to be the last will and testament of John Strang, deceased, and to abide the judgment of the said Court in the premises.

20

Witness, Hon. Dallas Flannagan, Presiding Judge of our said Orphans' Court at Newark aforesaid, this 14th day of May, A. D., one thousand nine hundred and thirty.

ANDREW J. WHINERY,
 Surrogate and Clerk.

30

40

Testimony.**ESSEX COUNTY ORPHANS' COURT.**

Thursday, August 14, 1930.

10	In the Matter of the Estate of John Strang, deceased.	}	On Appeal from Probate of the Will by the Surro- gate of Essex County.
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Before—HON. WALTER D. VAN RIPER, Judge.

APPEARANCES:

20	GAETANO M. BELFATTO, for the appellants. FELIX FORLENZA and HUBERT J. HARRING- TON, for the respondent
----	--

30	Mr. Belfatto: This is an appeal from the probate, your Honor. Now, in the first place I wish to make the record in such a manner that we can consider it perfect. As I stated to the Court yesterday, Sarah Skinner, who is very much interested in this contest, died at Los Angeles, California, on or about the 15th day of July last, leaving four children. I contend that before we can proceed with this case these four children should be cited by the Surrogate of this County, and in place of the citation, as I understand the law, it would be proper to have an administrator appointed now; but your Honor disagrees with me on that score because the contest now is simply between one sister of the testator and not the other party interest-
40	ed. So I simply wish to say to the Court that

Caroline Strang Reid—Direct.

I will proceed in this case under an exception to that ruling which your Honor would be kind enough to grant me.

The Court: Oh, yes. You may have the exception.

Mr. Belfatto: Now, I have subpoenaed the Surrogate to produce the will.

The Court: I have the will here.

10

CAROLINE STRANG REID, being duly sworn in behalf of the appellants, testifies as follows:

Mr. Harrington: Your Honor, at this time I would like to suggest that, this being an appeal from the probate of the will, it ought to be proven in solemn form, and then have Mr. Belfatto proceed.

20

The Court: Why not get down to the merits of the objections to the will?

Mr. Forlenza: That is satisfactory.

The Court: There isn't any question about the will.

Direct-examination by Mr. Belfatto:

Q. Mrs. Reid, how old are you? A. I am about seventy-two.

30

Q. Where do you live? A. I live at 80 Orange Street, Bloomfield.

Q. Are you related to John Strang? A. I am his sister, sister of John Strang.

Q. Do you know where your brother resided at the time of his death? Where did he live when he died? A. Well, he lived at 190 Thomas Street, but he died at 24 Windsor Place.

Q. For how long did he live at Thomas Street? 40

Caroline Strang Reid—Direct.

For how long did your brother live at Thomas Street? How many years did he live there? A. Well, he lived a great many years there. My brother is a good deal older than me.

10 Q. How many years? Mention the number of years approximately. A. Well, let us see—twenty-eight—I guess about forty years.

Q. In the same house? A. Same house.

Q. What was his business? A. Well, he was a gardener. He had a little farm there. He worked, and he also done little odd jobs or carpenter work.

Q. Did you visit your brother while he was living? A. I certainly did.

Q. How often did you go there? A. Well, quite often I did, you know.

20 Q. Well, quite often isn't any certainty. Now, how often did you go there in a week or a month? A. Well, he had his wife living, of course, you know, and she has been dead twenty-eight years, the wife.

Q. His wife died twenty-eight years ago? A. Yes.

Q. And after his wife died did you go there to see him? A. Yes, I went there.

30 Q. Did you do anything for him? A. Well, not right away I did not, because her folks came and done for him, his wife's sister.

Q. For how long did her folks attend to him, if you know; for how many years? A. Well, I guess about twenty-five years.

Q. Do you understand my question? A. Yes.

Q. You say that the folks did some work for him. For how many years did they do work for him? A. Well, not long.

40 Q. Can't you mention the number of years? A.

Caroline Strang Reid—Direct.

Just a few years.

Q. A few years? A. Yes.

Q. For how long did you go there to attend to him? A. Well, I went ever since his people went away to California.

Q. For how many years? A. I guess it is over twenty-five years. 10

Q. What did you do there? A. Well, I cleaned and I washed and I made soup and canned things.

Q. You cooked for him did you? A. Yes.

Q. You washed for him? A. Yes.

Q. You cleaned the place where he lived? A. Yes.

Q. Did you get any pay for your work? A. No; I didn't ask no pay, no.

Q. Now, was he alone or did he have somebody else to help him? A. He was alone; yes, sir. 20

Q. He was alone? A. Yes.

Q. For how long was he alone, if you know, or did he ever have any help beside yours? Yes or no. A. No, he did not.

Q. Do you know whether Amelia Skinner, one of the nieces of John Strang, called at his place at any time? A. Yes, Ella went up there. I called her Ella.

Q. For how many years did she go there? A. 30 She went there and she used to pick cherries, get up the tree and pick cherries and pick corn and different things and went around and sold them for my brother.

Q. She sold vegetables for John Strang, for your brother? A. Yes. The fruit mostly, you know.

Q. For how many years did she do that? A. Well, she done it off and on.

Q. Can you mention the number of years? A. 40 How many? A. Well, she done it off and on dur

Caroline Strang Reid—Direct.

ing those year.

Q. Was it two years, three years, ten twenty or what? A. Well, about twenty years.

Q. Twenty years? A. Yes.

Q. Do you know if anybody else helped your brother in his business as a farmer? A. No. He
10 was pretty spry and generally done most of the work around there himself.

Q. Now, do you know Lydia Kaysel? A. Yes, I have met her.

Q. For how long have you known her? A. Well, I guess about twenty years.

Q. Where did you meet her first? A. Well, I met her first I think over in Orange. My sister over in Orange was living there then, and I met her over there.

20 Q. Over where? A. Over in Orange at my sister's.

Q. Did you ever see her at your brother's place? A. Yes.

Q. John Strang's place? A. Yes, quite often.

Q. Well, now, do you remember the first time you met her there? Tell me how many years ago. A. Well, I guess it was something like twenty years ago.

30 Q. That is the first time you saw her? A. Yes.

Q. Now, what was she doing there? A. Well, I don't know. She used to come there for things out of the garden, you know, one thing and another.

Q. Did she buy any vegetables off your brother? A. Yes, she got them.

Q. How often did you see her? A. Well, quite often.

Q. She bought vegetables from your brother? A. She got them.

40 Q. Did she pay for them? A. I don't know. I

Caroline Strang Reid—Direct.

didn't see any money passed.

Q. Did you ever talk to her? A. Yes, I was talking to her.

Q. Did you ask why she was coming there for besides buying vegetables?

Mr. Harrington: I object to that.

10

A. No, I didn't ask her.

Q. Do you know whether she lived near your brother's house? A. Well, she lived a year I believe beside my brother, but I guess twenty years ago she lived right next door.

Q. Do you know whether she ever bought any vegetables or groceries of your brother. A. Well, not nearly recently. If he wanted anything from the store and she had the telephone, she would telephone and order the coal for him, you know, and thing like that, you know. She had the telephone, see, and he would give her the money to pay for them. If he wanted anything from the store she would stop in.

20

Q. Now, where did you live at that time during these twenty-five years that you visited your brother? Where did you live? A. Well, I worked at that time. I worked out in former years.

Q. Where was your residence, your house? A. My residence is 80 Orange Street.

30

Q. You were there all the time. A. Recently, yes.

Q. How often did you visit your brother while you were living there? A. How often?

Q. Yes. As I understood it, you went there every day? A. Not every day, no.

Q. Every other day? A. Well, maybe once a week or something like that, you know. He was

40

Caroline Strang Reid—Direct.

pretty spry, you know, and he was very independent too, and he liked to help himself, he did.

Q. Now, did you ever have any conversation with him with reference to Mrs. Lydia Kaysel calling at his place?

10 Mr. Harrington: I object to that.

The Court: You may answer that yes or no, whether or not you ever had any conversation.

By the Court:

Q. Did you ever talk to him about Mrs. Kaysel coming there? A. Yes.

20 Mr. Harrington: Your Honor, I do not see the purpose of this testimony at all. It has no bearing whatsoever on the issues in this matter.

The Court: I do not see any use in arguing it. I let her answer yes or no, and she has not told the conversation.

By Mr. Belfatto:

30 Q. You say that you had a conversation with your brother in her presence? A. In her presence, no.

Q. Well, out of her presence did he ever say anything to you? Did he speak to you about her?

The Court: She says yes.

Q. What was the conversation?

Mr. Harrington: I object to that.

The Court: Objection sustained.

40 Mr. Belfatto: If your Honor please, that question is admissible because we are not

Caroline Strang Reid—Direct.

trying to prove undue influence, but we are going to prove the state of mind of the testator with reference to the undue influence.

Mr. Harrington: Then do I understand that counsel abandons that count?

Mr. Belfatto: We abandon nothing. I want that to be understood.

10

The Court: How is the conversation with the deceased permissible?

Mr. Belfatto: In many cases it has been decided—

The Court: Give me one.

Mr. Belfatto: All right, sir. Now, the leading case in this state, your Honor, and on this case all the rest of the decisions are based. Now, this case was decided in 1874 and I find that it is the basis of all the decisions.

20

The Court: Let me see the case; will you? What is there about this that says that this testimony is admissible?

Mr. Belfatto: In reading the whole case, your Honor. There are other cases in addition to that.

The Court: You say this is the leading case and all the cases are founded on it. What is there in this case that says a witness can testify to a conversation with the deceased?

30

Mr. Belfatto: Well, that decision practically by inference—

The Court: Let me call your attention to this. A conversation between Elizabeth and her father not long before he died about the contents of the will and the reasons why he gave James so much of his property was tes-

40

Caroline Strang Reid—Direct.

10 tified to by her; the conversation by the witness and the deceased before he died was testified to by her, and if admissible as evidence, would exhibit the influence which he said induced him to do it. "I am of the opinion that these declarations of the testator shortly after the will was made cannot be regarded as evidence. They were objected to by the counsel of the complainant and must be excluded from the case."

 Mr. Belfatto: That is not the fact in this case.

 The Court: That is what you are trying to do now.

 Mr. Belfatto: I am not trying to prove undue influence.

20 The Court: You are trying to prove a conversation.

 Mr. Belfatto: I am trying to prove the state of mind of the testator. Now, there are two more cases, your Honor, of recent date, and that is the case of Cooper in 75 N. J. E. 177 in which the Court held that the declaration of a testator made by him before or subsequent to the execution of his will was admissible on an issue of undue influence to prove the state of mind and his objection to those who may have an interest in his will. That is 75 Equity and 76 Equity.

30

 The Court: Suppose you proceed with something else while these are being looked up.

By Mr. Belfatto:

40 Q. Mrs. Reid do you know whether Eleanore

Caroline Strang Reid—Direct.

lived at any time with your brother? A. She stayed there quite sometime off and on when she was

Q. She lived with you, did she? A. Well, she stayed with me, you know.

Q. And whenever she worked for your brother she came to your house? A. She went up there in the daytime, you know, and done for him, see. 10

Q. Did you ever talk about a will to your brother?

Mr. Harrington: Will counsel fix the time?

Mr. Belfatto: At any time.

Mr. Harrington: It is very important because it has to be at the time this will was executed. 20

By the Court:

Q. Did you ever talk to your brother about a will? A. Well, he talked to me and he was talking about my sister.

Q. He talked to you about a will, did he? A. About my sister.

By Mr. Belfatto:

Q. What did he say? A. Well, he said that my 30

The Court: Wait a minute. Fix the time first. When was it?

Q. When was it? Try to remember the time. A. Well, it was about in 1919.

Q. What did he say?

Mr. Harrington: I object to the conversation. 40

Caroline Strang Reid—Direct.

The Court: What are these citations you gave me? 75 Equity, what page?

Mr. Belfatto: Page 177, and 76 Equity 614.

10 The Court: That is the same case. One of them is the Court of Errors decision and the other is the opinion by the Ordinary.

Mr. Belfatto: Now, in that case the Court held that declarations made before or after the execution of a will are admissible.

The Court: For what purpose?

Mr. Belfatto: For the purpose of showing the testator's mind or state of mind with reference to making the will. That is the way I understand that law, your Honor.

20 The Court: It is very simple to construe. It says they were admissible to show that she was aware of the contents of the will. It is a case where her lawyer drew the will and was made the beneficiary for a very large share of it. It is a question of whether or not he exercised undue influence and possibly put in her will things she knew nothing about.

30 Mr. Belfatto: They are admissible as an issue of influence. What are the issues?

In other words, that is the only way to prove the state of mind of a testator. That is the way I construe that case, your Honor.

Mr. Harrington: Your Honor, we don't need to put the issue in. We already have it.

40 Mr. Belfatto: The issue of undue influence is not an easy issue, if your Honor please. It is a very complicated issue and has never been defined by the courts, and it is not an

Caroline Strang Reid—Direct.

easy matter to discuss or to ascertain.

The Court: Well, are you going to attempt to prove now that the testator did not make this will of his own volition?

Mr. Belfatto: Yes, sir.

The Court: Of his own free mind?

Mr. Belfatto: Yes, sir. 10

The Court: You are going to attempt to prove by this testimony that there was influence exercised over him that took away his own free mind?—

Mr. Belfatto: Yes, sir,—

The Court: Well, I do not think it is admissible, but rather than have any question about it—I can strike it out later not only out of the record but out of my mind, it not being before a jury—I think I will hear it. 20

Mr. Harrington: Exception.

Q. What did your brother say with reference to making a will? A. He said he didn't believe in wills.

Q. He didn't want any wills? A. He didn't believe in them, and he says that his mother and father didn't want a will and he was going to do the same. 30

Q. Will you repeat that?

The Court: He said that his mother and father didn't want a will and he was going to do the same.

Mr. Harrington: At that point I would like to fix the time of the conversation.

Mr. Belfatto: She has already stated in 1919.

Mr. Harrington: That is rather indefinite. 40

Caroline Strang Reid—Direct.

The Court: We have got to take into consideration a little bit the witness.

Q. Now how many times did he say that to you?

A. He said it different times.

Q. After 1919? A. Yes, he said it different times.

10

Q. Do you know whether that statement was at any time made in the presence of Mrs. Lydia Kaysel? Was she there? A. No, she wasn't there.

Q. She wasn't there? A. No.

Q. Did you ever hear an argument between your brother and Lydia Kaysel at any time while she was there as to the making of a will? A. No.

Q. Well, what did your brother say with reference to the visits which this lady was paying to him so frequently?

20

Mr. Harrington: I object to that.

Mr. Belfatto: Why, this is admissible.

The Court: Sustain the objection.

(Counsel argue)

The Court: What difference does it make whether they were or not? What you have got to show is that there was undue influence used, that he did not make this will of his own free mind, of his own volition. If you can show that, go ahead.

30

Mr. Belfatto: Exactly. Now, this is on that point. A person may not be *persona grata*—

The Court: I suppose the quickest way to go through it is to let it go in, judging from the controversy in the past, rather than have any argument about that.

40

Caroline Strang Reid—Direct.

Q. Did you hear any conversation by your brother and Mrs. Kaysel as to her calling at the house? If so what was the conversation? A. He says she was always coming around, he says, and then I says to him well, I says, "What do you want to bother with her for?" and he says he couldn't get rid of her. He says, he said she was always coming in and taking up his time and bothering him. 10

Q. When was this conversation. A. In his own house.

Q. What year? A. 1919.

Q. Now, your brother died at a place where he resided, as I understand it. Was he at any time sick in that place during the year 1919 or thereafter? A. No, he wasn't sick in 1919. He was pretty lively going around. 20

Q. Now, afterward was he ever sick before he died? A. Was he sick before he died?

Q. Yes. A. Well, he was sick about eight days before he died.

Q. Eight days? A. Yes, but he didn't die in his own house.

Q. Did you go to see him when he was sick? A. Yes, I went to see him.

Q. How often did you go there? A. Well, I went there every day until he died. 30

Q. On the day of the death were you present at the house of your brother? A. Well, that was Lincoln's Birthday when he died, you know.

Q. Where did you see him? A. At Mrs. Kaysel's. She had got him and taken him up to her house against the doctor's orders. The doctor said that the best place for him was the hospital, but no, she would take him up to her house. 40

Caroline Strang Reid—Direct.

Mr. Harrington: Your Honor, I would like to know how the witness knows that.

The Court: I do not think that makes any difference.

Q. Who told you that?

10 Mr. Harrington: I object to who told her.

The Court: I do not care about it one way or the other.

Q. Who told you that the doctor advised your brother to be taken to the hospital? A. Well, she told me that—

The Court: I do not care anything about that. What difference does it make who told it? It is not evidential.

20 Q. You say that your brother died at Mrs. Kay-
sel's house? A. Yes.

Q. On the 12th day of February, 1930, this year?
A. Yes.

Q. When did you call at Mrs. Kaysel's house when your brother died? What day was it. A. He had been up there about four days before she let me know that he was there.

30 Q. Did you receive any notice from her that your
brother was very sick at her home? Yes or no.
Did you receive any notice? Did she notify you?
A. Not when she first brought him there. no.

Q. So for four days you knew nothing about it?
A. No.

Q. How did it happen that you went there?

The Court: What difference does that make?

40 Mr. Belfatto: There is this difference, your
Honor. If this Mrs. Kaysel had absolute

Caroline Strang Reid—Direct.

control of the situation, that is an element tending to show undue influence.

The Court: But this is 1930. The will was made in 1919 eleven years before.

Mr. Belfatto: That condition, your Honor, continues. It does not stop.

The Court: Well, if it does you will have to start with it in 1919. 10

Mr. Belfatto: We want to prove that on the day of the death Mrs. Kaysel was still in control of John Strang.

The Court: If she was in control of him the day of his death, it doesn't make any difference unless you can show she was in control in 1919 when the will was made. If you can show that she dominated him then, I am willing to let you carry it along. You have got to start in prior to 1930; that is too late. 20

Mr. Belfatto: Your Honor, this is an element of the case and the real crux of the case. The contention that he was under the control of a human being must be and is admissible.

The Court: Yes, certainly, but it has got to be sometime within the proximaty of the time the will was drawn. 30

Mr. Belfatto: Not at all; at any time afterward. Now, your Honor will rule on it and that is all there is to it. Now, I say that control continues.

The Court: I do not see how you can argue even as a matter of reasonableness, let alone as a matter of law, that the fact that the person may have been dominated eleven years after the will was drawn—how old was this man when he died? 40

Caroline Strang Reid—Direct.

Q. How old was your brother when he died? A. He was eighty-seven.

The Court: Well, you see there is a big difference. Most people of eighty-seven ought to be dominated. Some of us ought to be dominated when we are less than that.

10

Q. Now, he was eighty-seven, and you say that for four days you knew nothing about his sickness?

A. No.

Q. Now, did you talk to Mrs. Kaysel when you went there to see your brother? A. Yes, she was playing the phonograph when I went up there.

The Court: I do not think that is material at all, what Mrs. Kaysel was doing.

20

Mr. Belfatto: Oh, yes, your Honor. It is very much material. I respectfully submit to your Honor that when a beneficiary is awaiting anxiously for the result of a will, that is the most longing part of life of a testator.

The Court: It might be all of that, but I do not think that proves undue influence as to a will that was made eleven years before.

Mr. Belfatto: Your Honor, will rule.

30

The Court: I won't admit it. I will allow you an exception.

Q. You spoke to Mrs. Kaysel? You spoke to her, didn't you? A. Yes.

Q. Did she tell you why your brother was not taken to the hospital?

Mr. Harrington: I object to that.

The Court: I will not admit that. It is the same thing.

40

Caroline Strang Reid—Direct.

Mr. Belfatto: Exception.

The Court: I am not interested in any of the conversation or anything that Mrs. Kaysel did at or about the time that the testator was dying, unless you can connect it up.

Mr. Belfatto: I will connect it up.

The Court: All right. After you have 10
connected it, I will let you put it in.

Q. You went there only once to see your brother in Mrs. Kaysel's house? A. I went there every day till he died.

Q. Did you see any doctor there attending him?

A. Oh, yes.

Q. Where was your brother? In which room was he lying? A. He was upstairs in a small room on the east side. 20

Q. What kind of room was it?

Mr. Harrington: Your Honor, I think that counsel is wasting a lot of time of this Court. Not one bit of the evidence so far adduced bears on this issue. In all this witness' testimony there is absolutely no bearing on the issue he has advanced in this case. What difference is it what room the man was in? 30

The Court: I do not see that the circumstances surrounding the deceased's death are admissible at all in the present state of the case.

Mr. Belfatto: Your Honor will grant me an exception?

The Court: I will allow you an exception.

Q. Did you speak to your brother? A. When? 40

Caroline Strang Reid—Direct.

Q. When you went there. A. He was unconscious.

Q. He was unconscious, so you couldn't speak to him? A. Well, I tried to make him see and hear me, but he was too far gone.

Q. Who else was in the room where your brother was?

10

The Court: I see these rulings of mine do not seem to mean anything.

Mr. Belfatto: Your Honor, as I understand it, has ruled out any conversation between this lady, the witness, and Mrs. Kay-sel as irrelevant and inadmissible.

20

The Court: Not only conversation, but I said that the circumstances, any testimony with regard to the circumstances surrounding his death in 1930 have no bearing at this stage of the proceedings upon his state of mind in 1919.

Mr. Belfatto: Why, we are now attempting to prove admissions on the part of the beneficiary of the will.

The Court: Admissions with reference to something that was done at the time the will was made?

30

Mr. Belfatto: With reference not to the will. We can talk about the will alone—we can talk about circumstantial evidence.

The Court: With reference to admissions with reference to what?

Mr. Belfatto: With reference to her attitude toward John Strang.

The Court: In 1930?

Mr. Belfatto: In 1930.

The Court: What do I care about that?

40

Mr. Belfatto: I do, your Honor. The at-

Caroline Strang Reid—Direct.

titude is a part of my case.

The Court: I know, but unfortunately it does not help your case any unless you can connect it with some attitude in 1919 when the will was made.

Mr. Belfatto: We are not confined to 1919. I know of no cases that confine me to that point, to that date or that year. 10

The Court: I do not think you mean that statement, Mr. Belfatto. I think you know very well that if you want to upset a will on the ground of undue influence, what you want to do is to show that the undue influence existed at the time the will was made.

Mr. Belfatto: Not at all. The way I understand, and I most respectfully submit to your Honor, is to prove the attitude of the beneficiary before, at the time of the will, or afterward, not too remote, but the attitude is an element that is important. 20

The Court: What about the attitude of the testator? Do you take that into consideration at all?

Mr. Belfatto: Absolutely important.

The Court: When? At what time?

Mr. Belfatto: At the time of his death? 30

The Court: At the time of his death?

Mr. Belfatto: He can speak and we can follow him.

The Court: What about his attitude at the time he made the will?

Mr. Belfatto: That is very relevant.

The Court: I agree with you on that.

Mr. Belfatto: Now, if the attitude continued—

The Court: If it continued I might let it 40

Caroline Strang Reid—Direct.

in, but you have not started it yet. The trouble is you are starting with 1930.

Mr. Belfatto: If your Honor please, I won't be confined to 1919.

The Court: No, I won't confine you to 1919, but I won't let you start in 1930.

10

(Counsel argue.)

Mr. Belfatto: What I want to prove by this witness, your Honor, admissions of this beneficiary, Mrs. Kaysel, at the time of the death of John Strang.

The Court: I will not admit that.

Mr. Belfatto: And you will give me an exception?

The Court: Allowed.

20

Mr. Belfatto: I will also ask her whether she went to her brother's house on the day of his death.

The Court: I won't permit it. I will allow you an exception.

Mr. Belfatto: And ascertain whether everything was in good shape.

The Court: The same ruling. You may have an exception.

30

Mr. Belfatto: And you grant me an exception in each case? Now I will withdraw the witness. You may take the witness.

Cross-examination waived.

40

Marion A. Skinner—Direct.

MARION A. SKINNER, being duly sworn in behalf of appellant, testifies as follows:

Direct-examination by Mr. Belfatto:

Q. Mrs. Skinner, where do you live? A. 8915 Ridge Boulevard, Bay Ridge, Brooklyn. 10

Q. Are you married? A. Yes.

Q. Are you any relation to John Strang? A. Well, I married his nephew.

Q. Do you live with your husband? A. I do.

Q. Where? A. 8915 Ridge Boulevard.

Q. How long have you been living there? A. We have lived there 13 years.

Q. Did you know John Strang? A. I certainly did.

Q. Did you ever call upon him? A. I certainly did. 20

Q. How often did you call? A. Well, I guess on the average of once a month or once every two months.

Q. From what time to what time did you call on him? A. Well, from the years of my marriage, 1911, until the last years of his life, 1930.

Q. Now, what was the purpose of going there, of your going there? A. Why, to see him, to see how he was getting along, to see if everything was all right with him. 30

Q. Did you go there alone or was your husband with you? A. My husband came with me several times, and sometimes I was alone.

Q. Was he always in your company? A. Who?

Q. Your husband. A. Not always. He came with me sometimes. My husband worked.

Q. Did you speak to John Strang sometimes? A. I certainly did, always. 40

Marion A. Skinner—Direct.

10 Q. With reference to making a will? A. Yes, I did, not directly, because in 1917 we bought our home and I went out there to see him, and we told him about it, and I told him that it was quite an adventure for us, and I told him that we had bought the property. Well, he said "See that it is all right," he says, "And everything is straight, because in buying property you so often get involved." I said "Everything is all right," and I said, "Well, I suppose now that we are property owners, that it will necessitate making wills and things like that," but we didn't dwell on a will. We didn't go into the conversation, but I know, the way he answered me—

Mr. Harrington: I object to that.

20

The Court: Strike it out.

Q. We want to know his answers and not your mind. A. He just simply said that he didn't believe in wills and I told him I did. That was all.

Q. When was that? A. About 1917 when we went out to tell him that we bought the house.

Q. Did you hear any conversation between John Strang and Mrs. Lydia Kaysel?

30

Mr. Harrington: I object to that.

The Court: Objection sustained.

Mr. Belfatto: Exception.

Q. Did you ever see Mrs. Kaysel there? A. Yes, I did see her there.

Q. How often did you see her there. A. Very often.

Q. Very often? A. Quite often, yes.

Q. Doing what? A. Well, visiting him.

40

Q. What was she doing? A. I recall him in the

Marion A. Skinner—Direct.

summer standing out in the garden as though she was talking to him while he was gardening.

Q. Was John Strang there? A. Yes.

Q. Talking to her? A. Yes, he was talking to her.

Q. Did you hear the conversation? A. Not all of it because when I came she left shortly after my arrival, went home. I don't know just particularly what they were talking about. Just talking to one another. 10

Q. When you called at his house did you find Mrs. Lydia Kaysel there? A. Yes.

Q. At any time? A. Yes, I did.

Q. How many times altogether since 1917? A. Oh, I can't tell you exactly how many times, but many times I saw her there, and I knew she was there, and on several occasions when she was there she locked the door and I couldn't get in. 20

Q. How many times did she lock the door? A. Well, I can't recall exactly the times, but I know that she did so saying that it was his orders, that he told her to lock the door and keep us the hell out of there. That was her conversation to me.

Q. Well, did you get in after that conversation? A. Well, I went away. I did come back. I went away and one time I came back four times. I got there in the evening and I found him outside. It was rather cold, and I told him so. So we went inside and we talked about various things, and he told me—I said, "Uncle John, I have been here several times today to see you." 30

The Court: How is that material?

Mr. Belfatto: If your Honor please, that is in answer to the conversation at the time Mrs. Kaysel was there. 40

Marion A. Skinner—Direct.

By the Court:

Q. It did not have anything to do with the making of a will, did it, Mrs. Skinner? A. Well, I don't know exactly, but I spoke to him that evening.

10 Q. Well, did he talk about making a will? A. Well, I wanted to get up to that.

Q. Maybe I can help you. A. Yes, he did. I tell you, we had a picture of my aunt Anna in his hand, and he said to me she was rather pretty. I said yes, she was. He said "I have been keeping it upstairs." I said, I have been here to see you. This is the fourth today, but I knew you were here." I said, "I saw the smoke, or smoke like a cigarette." I said, "I knew somebody was here." He
20 said, "A woman was there." I says, "Oh, I know her." He says, "Oh, no, I don't think you do." I said, "Then I don't know who she was." He said, "No". He said, "She comes here a lot." He said, "She bothers me sometimes", and he had the picture in his hand, and I said, "Uncle John, do you ever think what you are going to do with these things?" He said, "No". He said, "When I am gone", he said, "I want it to go back to the family." I said, "Did you ever make a will? How can they
30 come back if you don't?" He said, "I don't believe in wills." He said, "My father and mother didn't make one and everything came to us as it should." I said, "If you don't make a will how can it, because", I said, "that is the only thing that will count." But he sort of resented us. He resented us asking his personal business. I said, "Unless you say so, how can it?" but he didn't want to dwell on it. He said, "Marion, I want you and
40 Freddie to have something," and he mentioned a

Marion A. Skinner—Direct.

watch that was his, and he said Freddie should have it. Now, those things was all taken.

By Mr. Belfatto:

Q. Now, Mrs. Skinner, you say you went there several times? A. Yes.

Q. You found the door locked? A. Yes, I found the door locked. 10

The Court: We have been all over that. It has been told to you only ten minutes ago.

Q. How many times did you see Mrs. Lydia Kaysel in the rooms after the door was found locked?

The Court: You cannot answer that question. Now, I am not going to permit just a deliberate waste of time. 20

Mr. Belfatto: Your Honor will give me an exception? 20

The Court: No, I won't, because there is not anything to take an exception to. The question has been answered three or four times.

Mr. Belfatto: I have not heard that conversation with reference to the closing of the door.

The Court: I have ruled on the question. It cannot be answered. 30

Q. Now, did you ever hear John Strang talk to Mrs. Kaysel in your presence?

Mr. Harrington: I object to that.

The Court: Objection sustained.

A. You asked me that before. Yes, I did.

Q. Was there at any time a quarrel between John Strang and Mrs. Kaysel? 40

Marion A. Skinner—Direct.

Mr. Harrington: I object to that.

The Court: Sustained.

A. No, I didn't hear a quarrel, but I didn't know

10

The Court: When I have sustained the objection do not answer.

Mr. Belfatto: Exception.

The Court: Exception allowed.

Q. You say that you did some work for him, for John Strang?

20

Mr. Harrington: Your Honor, I am going to object to all the questions from now on because none of the testimony of this witness has anything to do with the issue.

The Court: Sustain the objection.

Mr. Belfatto: Exception.

The Court: Allowed.

Q. Did you ever do any work for John Strang?

The Court: I just ruled on that.

(Counsel argue)

The Court: I have ruled that question out before.

30

Mr. Belfatto: Exception.

Q. Do you remember when John Strang died?

Mr. Harrington: I object to that.

The Court: I will permit that.

A. Oh, yes, he died in February, February 12th.

Q. Did you see him at the place where he died?

A. No, I wasn't notified of his death.

Q. Did you go to the funeral? A. No, we weren't notified of it.

40

Marion A. Skinner—Direct.

Q. Did you see Mrs. Kaysel at the time of John Strang's death? A. No, I saw her after the death.

Q. How long after? A. Perhaps a month or so.

Q. Where did you see her? A. At her home and on Uncle Johnnie's place.

Q. Was she there alone? A. At Uncle Johnnie's place? 10

Q. Yes. A. No, she wasn't there alone. We were there. We went there to look it over.

Q. Did you enter the house of John Strang? A. No, we couldn't because it was locked.

Q. Why not? A. It was locked.

The Court: I do not see that that is at all material. That is eleven years after the will was made.

Mr. Belfatto: That is simply to show the attitude of this lady, your Honor. 20

The Court: All right, you may offer it for that purpose and I will refuse to admit it. You may have an exception.

Mr. Forlenza: This is a month after the death. I believe it is at the time the executor was appointed and had a right to take possession of all the property of the deceased and perhaps that is the reason why she could not get in. 30

The Court: Well, I am not very much interested whether an executor was appointed or not, eleven years after the will was made.

Mr. Belfatto: On the day of his death I am asking the witness whether she called at John Strang's house.

The Court: She says she did not.

The Witness: We weren't notified. 40

Jane Meyers—Direct.

Q. How many days after did you call there? A. At John Strang's house?

Q. Yes. A. Well, about I think a week after his death maybe, or longer.

Q. A week after death? A. About that I presume. I can't just exactly remember the time.

10 Mr. Belfatto: Now I am going to ask her whether she had any conversations with Mrs. Lydia Kaysel at John Strang's house.

The Court: You asked her and I refused to admit it.

Mr. Belfatto: I will take an exception.

Cross-examination waived.

20 JANE MEYERS, being duly sworn in behalf of the appellants, testifies as follows:

Direct-examination by Mr. Belfatto:

Q. Mrs. Meyers, where do you live? A. I live at Bloomfield Center.

Q. How long have you been living there? A. Only three months.

30 Q. Did you know John Strang? A. Yes, I knew him well.

Q. For how long did you know him? A. I know him twenty-eight or thirty years.

Q. How far did you live from his place during that time? A. Well, I couldn't exactly measure, you know. Three or four blocks or something.

40 Q. Did you ever call upon him? Did you ever go to see him? A. Well, once in a while I did, but I bought lots of vegetables off him. He used to

Jane Meyers—Direct.

sell vegetables and everything. I bought lots of stuff off him. He was a very fine man, Mr. Strang.

Q. Now, do you know his habits with reference to temperance?

Mr. Harrington: I object unless he fixes the time.

A. No.

10

The Court: I do not see that it is material anyway.

Q. Did you see Mrs. Kaysel at any time there?

A. There? No, I did not.

Q. You never saw her there? A. No.

Q. How often did you call up at his place to buy vegetables? A. Once or twice a week, or two or three times. Any time I needed them.

20

Q. For how long a period? A. Any time I needed vegetables I used to go over there; once a week or twice a week.

Q. And you did that for thirty years? A. Yes, I knew him for thirty years.

Q. Did you see Mrs. Carrie Reid, John Strang's sister? A. Yes.

Q. How often did you see her there? A. To her brother's?

Q. Yes. A. I saw her a few times. I just couldn't tell you how many times.

30

Q. Well, for how many years did you see Mrs. Reid at her brother's farm there in Bloomfield? A. Well, just as it happened as I went to him to get things she might be there, and she might not. She was there four or five times I know.

Q. Whenever you went there did you see Carrie Reid the sister of John Strang?

40

Jane Meyers—Direct.

Mr. Harrington: Your Honor, I want to object once again. What difference does it make whether she saw Carrie Reid or not?

The Court: I do not think that makes a bit of difference.

10 Q. What was Carrie Reid doing whenever you saw her at her brother's house?

Mr. Harrington: I object to the question.

The Court: I will let it in.

A. I have seen her washing dishes one night.

Q. What else? A. That is all I seen her then.

Q. Only washing dishes? A. Yes.

Q. Did she cook for him? A. I think she did.

20 Q. You say that you saw her whenever you went there, is that right? A. Yes.

Q. Did you ever have any talk with John Strang with reference to making a will? A. No.

Q. When was the last time that you spoke to John Strang? A. A good while before he died. I couldn't tell you. I met him on the street.

Q. When? A. About three years ago.

30 Q. What did he say to you? A. And he crossed the road. I was standing on the sidewalk at the Center. He crossed over and he says, he hollered at me, "How do you do, Mrs. Meyers?" I said, "I am all right. Mr. Strang, how are you?" He said, "Well," he said, "I just feel all right." He said, "You know", he said, "the people, you know people is awful?" I said, "Yes, how is that?" He said, "Well", he said, "they do you." I said, "Yes; why do you let them?" "Well", he said, "I can't help it." He said, "And they did do me and they did do me."

40 Q. Did he mention any names? A. Yes.

Eleanor S. Skinner—Direct.

Q. Who? A. I said, "How is that? I thought you were an active man." He said, "Well, Mrs. Kaysel—"

Q. Kaysel? A. Yes.

Q. What did you say to him? Did you answer that?

Mr. Harrington: I object to that. I object to all this line of testimony. 10

The Court: I am just letting it go in to save time.

Q. What did you say? A. I told him, I says, "You ought not let anybody do that. I couldn't help it. I couldn't help it", he said, "Mrs. Meyers, I couldn't help it. They done me, and that is all."

By the Court:

20

Q. This was three years ago, you say? A. Yes, three or four I know, but I just haven't got the right date, you know.

Cross-examination waived.

ELEANOR S. SKINNER, being duly sworn in behalf of appellants, testifies as follows: 30

Direct-examination by Mr. Belfatto:

Q. How old are you, Madam? A. Fifty-four.

Q. You are the niece of John Strang, are you?
A. Yes.

Q. Through your mother? A. My mother's brother.

40

Eleanor S. Skinner—Direct.

Q. Your mother was sister to John Strang? A. Yes.

Q. Did you ever call at John Strang's place? A. Yes, a good many times.

Q. From what time to what time did you call there? A. Well, it is twenty years or twenty-five years.

10 Q. Did you ever work for him? A. Yes, many summer.

Q. How often did you work for him? A. Well, a good many summers.

Q. How many summers altogether, or approximately, if you can remember? A. Well, every time I got a chance.

Q. For how many years? A. Well, it is about thirteen or fourteen years anyhow.

20 Q. You went there during the summer? A. Yes.

Q. What did you do there during the summer? A. I picked the cherries for him. I pulled weeds for him, and I pulled the beans, and helped to sell his eggs for him, and peddle his stuff.

Q. You went around to sell fruits, didn't you, and vegetables? A. Yes, went around with a basket and sold his fruits.

30 Q. Did you ever get any money from him? A. No. I wouldn't take it from him. I thought he needed it.

Q. Did he ever offer you any money? A. Well, he did, I didn't want to take it, but he said, "I won't forget you", he says.

Q. What else did he say? A. He said, "I will get all I can while I am living, and then when I am through with it, I don't need it any more and you folks could have it."

40 Q. Did you go there during the winter months?

Eleanor S. Skinner—Direct.

A. Yes. Every time I got an opportunity to get there.

Q. You went there too? A. Yes.

Q. What kind of work did you do during the winter? A. Well, domestic work.

Q. Mention some of the work.

The Court: That is plain. I understand 10
what she means. You don't have to go into
all the details.

Q. While you were there did you see Carrie Reid at the place? A. Yes, she often came with me. I went over for her and we went together to Uncle's.

Q. How often did you see her working there? A. Well, many times we went together, and it was always her thought you know, her sole thought was her brother, see how Uncle John is, that he is comfortable. 20

Q. During the thirteen years you worked for him during the summer and winter, did you go there with Carrie Reid, his sister? A. Sometimes I went alone and sometimes with her.

Q. Where did you sleep at night? A. Well, after I got through I went with her because there was no place there for me, you know, to stay.

Q. Did you see Lydia Kaysel there? A. Well, I 30
seen her there.

Mr. Harrington: I want to object once again to all of this testimony.

The Witness: I seen her there.

The Court: That is the same testimony.
Let her put it in.

A. (continuing) I seen her there, but when I seen anybody talking to him I would stand aloof, and 40

Eleanor S. Skinner—Direct.

then when they got through, I would come, because I didn't want to interfere with his company.

Q. When was that? Can you fix the time of year? A. Well, different times when I went there; no particular time.

Q. Did you hear John Strang talking to her? A. Yes.

10 Q. What did he say to her? A. I didn't hear because I was always shy. I shied off and, well, I didn't want to bother with the neighbors.

Q. That is all you remember? That is all you know about it. A. Yes, I just seen her at a glance, you know different times, you know.

Q. Did you see her in John Strang's house? A. Well, yes, she was in there.

20 Q. Doing what? A. I seen her through the window.

Q. What was she doing there? A. I suppose she went there to buy vegetables and things.

Q. Did you see her buy any vegetables? Did she buy vegetables? A. I suppose that is her idea because, he told me that.

30 Q. Did you see vegetables in her hands or something in her hands? Was it fruits and vegetables or what? A. She had something like fruits. I don't know what it was.

Q. So she came to buy vegetables? A. Yes.

Q. Did she pay for them? A. I didn't see that, no.

Q. Did you ever hear an argument between John Strang and Mrs. Kaysel? Did they ever fight? A. Well, no.

40 Q. Now, that is all you know? A. Yes. He says, "That woman is always coming around and she bothers me." I said, "Well, Uncle Johnnie, you don't have to be bothered by anybody."

Caroline Strang Reid—Recalled—Direct.

Q. How many times did he say that? A. Different times.

Q. How many times a week? A. Well, a dozen times.

Q. He said she was coming around? A. Yes.

Q. Bothering him all the time? A. Yes, annoying him. 10

Q. But you never saw her talking to him? A. Well, at a distance, because when I would see anybody there—

The Court: She said that she saw her talking to him but she never listened; didn't know what the conversation was.

Cross-examination waived.

Mr. Belfatto: I want to recall Mrs. Reid for a moment, your Honor. 20

CAROLINE STRANG REID, recalled.

Direct-examination by Mr. Belfatto:

Q. Mrs. Reid, I understood you to say that you saw Mrs. Lydia Kaysel many times at your brother's place. A. Yes. 30

Q. In what condition was she there at the time you saw her?

Mr. Harrington: I object to that.

The Court: I do not see how it is material at all. What difference does that make?

Q. What did you notice, if anything, in her deportment or attitude at the time you saw her? 40

Caroline Strang Reid—Recalled—Direct.

Mr. Harrington: I object to that.

The Court: When?

Mr. Belfatto: In 1919. That is what she had testified to.

Mr. Harrington: When in 1919?

Mr. Belfatto: The record shows 1919.

10 A. She was drinking.

Q. What? A. Drinking.

Q. Drinking what?

Mr. Harrington: I object to that. How does this witness know what this woman was doing?

The Court: Suppose that she was. What difference would that make?

20 Q. She was drinking? A. Yes, and I went there and my brother was drunk too, staggering around the ground. That was in 1919.

Q. Your brother was drunk too? A. That same day, walking around the yard.

Q. Now, did you talk to either your brother or Mrs. Kaysel at that time when you saw them in that condition? Did you speak to them? A. My brother's tongue was so thick he could hardly speak,

30 and I told him to go lay down, and he did.

Cross-examination waived.

Frederick D. Skinner—Direct.

FREDERICK D. SKINNER, being duly sworn in behalf of appellants, testifies as follows:

Direct-examination by Mr. Belfatto:

Q. Mr. Skinner, where do you live? A. 8915 Ridge Boulevard, Brooklyn. 10

Q. What is your business? A. Photo engraving.

Q. Did you know John Strang in his lifetime? A. I knew him for about thirty years, approximately thirty years.

Q. Are you related to him? A. I am his nephew.

Q. How often did you call at his place in Bloomfield during the thirty years? A. It would average a dozen times a year.

Q. A dozen times a year? A. A year. 20

Q. Did you go there alone? A. Sometimes, and sometimes with my wife.

Q. When you went there were you able to enter the house? A. No, not always.

Q. Tell me why not. A. I found it locked.

Q. Why not? A. I found the door locked and the odor of perfume and cigarettes.

Q. What happened after you found the door locked? What did you do? A. I walked away and returned later. 30

Q. What did you find when you returned? A. I found the room perfumed with rum and cigarettes and perfume.

Q. Did you speak to anybody there? A. I spoke to my uncle when I could, when I returned.

Q. When was that? Can you fix the time when you spoke to him first about this condition? A. It might have been sixteen, fifteen—1916 or 1915. 40

Frederick D. Skinner—Direct.

Q. What did he say to you? A. I don't recall the conversation.

Q. Did you at any time see Mrs. Kaysel there?

A. Yes, I saw her through the open window, or rather, through the window, the closed window.

Q. In which house? A. In his house.

10 Q. Was that before you saw the house locked, the door locked or afterward? A. That was at the time. The door was locked, I peered through the window.

Q. When you came back did she come down from upstairs? A. I don't know.

Mr. Harrington: There is no evidence that she was there.

Q. Where was she, upstairs or downstairs; what
20 kind of window? A. I couldn't tell.

Q. You can tell whether it was the first floor or second floor. A. The first floor was lighted. The top floor was not.

Q. Was the window on the second floor or on the first; which? A. The window I peered through was the first floor.

Q. Now, when you returned did you talk to her? A. I didn't see her. She had gone.

30 Q. But you talked to John Strang? A. I did.

Q. What did you say to him?

The Court: He said he did not recall the conversation.

Q. No conversation at all? A. I don't recall the conversation.

Q. None of the conversations? You say that you had several conversations with him? A. I did.

40 Q. You called there six times a year? A. On these particular occasions?

Frederick D. Skinner—Direct.

Q. Yes. A. I don't recall the conversation.

Q. You never spoke to John Strang, did you?

A. I spoke to him on business.

The Court: He said he spoke to him.

Q. What? A. On business, on his business, the family relations.

Q. Did you ever speak to him about making wills? A. No, I wasn't interested; I wasn't interested at that time.

Q. Did you ever hear any arguments between him and Mrs. Kaysel?

Mr. Harrington: I object to that.

The Court: Objection sustained.

Mr. Belfatto: Exception.

The Court: Exception allowed.

Q. Did you ever see or hear Mr. Strang speaking to your wife? A. I did.

Q. What did he say? A. He told her the woman bothered him very much, trying to influence him in making a will.

Q. How many times did he say that? A. More than once. That I know.

Q. What did you say? Did you say anything at all after he passed that remark? A. No, I wasn't mercenary.

Q. What did your wife say to him? A. She was more interested or more alive to the situation.

Q. What did he say when he said, "I don't believe in making wills"? What did he say in addition to that? A. I don't recall.

Cross-examination waived.

Walter M. Mohr—Direct.

WALTER M. MOHR, being duly sworn in behalf of appellants, testifies as follows:

Direct-examination by Mr. Belfatto:

10 Q. Mr. Mohr, what is your business? Maintaining church organs.

Q. Where is your place of business? A. 2899 Valentine Avenue, Bronx.

Q. Are you related to John Strang? A. My wife was his niece.

Q. Do you ever call at John Strang's place in Bloomfield? A. I have.

Q. Will you tell us when, approximately? A. I called there several times during the lifetime of my wife, which was approximately the year 1910.

20 Q. 1910? A. 1910, and I called there since approximately around 1928.

Q. Did you ever talk with him? A. I did.

Q. Was he alone at the time you spoke with him? A. Well, I called there the first time with my wife, so my wife was there. The second time I called with Mrs. Reid, and once or twice after that alone.

Q. Now what did he say to you with reference to your going there?

30 Mr. Harrington: Is this 1928 you are speaking of, counsel?

Mr. Belfatto: Yes.

Q. When was it? 1928? A. Yes, in 1928. He simply showed me around his garden, of which he was very proud. He showed me his chickens and his barns, and we were interested because he gave me several flowers for my place.

40

Walter M. Mohr—Direct.

Q. Did you speak to him about a will? A. Never.

Q. Now, did you call at his place after that, after 1928? A. It may have been—I may have called twice during 1928 I may have called in the spring of 1929, but not since then.

Q. Did he ever have anybody working for him, did you notice? A. I never saw anybody there. 10

Q. When you first went there, I understand that was in 1910? A. Yes.

Q. Was there anybody working for John Strang then? A. I didn't see anybody.

Q. He was working alone? A. He was alone on the place.

Q. Do you know Eleanor Skinner? Do you know whether she ever worked for John Strang? A. I understand she did. 20

Q. Do you know for how long? A. No, I cannot say.

Q. Do you know Mrs. Kaysel? A. I have met her.

Q. When? A. About two weeks ago.

Q. At what place? A. At her home.

Q. Did you have any conversation with her? A. Yes.

Q. What was the conversation? A. I asked her about— 30

Mr. Harrington: I object to that.

The Court: Objection sustained.

Q. Did you speak to her about the will of John Strang? A. I did.

Mr. Harrington: I object.

The Court: He may answer that yes or no. 40

Walter M. Mohr—Direct.

A. Yes.

Q. Well, now, what did you say to her?

Mr. Harrington: I object to that.

Mr. Belfatto: Now with reference to the making.

10 The Court: Then it is not admissible if it is not with reference to the making of it.

Q. Did you have any conversation with her about the will of John Strang? A. Yes.

The Court: You say that the conversation was not with reference to the making of the will.

Q. What was the conversation about. The will of John Strang.

20 Q. Did you say anything? A. Did I say anything?

Q. Did she say anything? A. Yes.

Q. What did she say?

Mr. Harrington: I object to that.

The Court: I will let it go in. Go ahead. What did she say?

30 A. She told me that she and her husband inherited the property of Mr. Strang with the exception of two legacies, one left to one sister and one left to the other sister, one legacy. One legacy amounted to \$100. The other legacy amounted to \$300.

Q. Was there anything else she said about it, about the will being in her possession? A. Oh, she told me that the will was in her possession since 1925, when Mr. Strang gave it to her.

Arthur William Wyker—Direct.

Q. Did she say in whose presence the will was given to her by John Strang? A. No.

Cross-examination waived.

ARTHUR WILLIAM WYKER, being duly 10
sworn in behalf of appellants, testifies as follows:

Direct-examination by Mr. Belfatto:

Q. Mr. Wyker, you were subpoenaed by me? A. Yes, sir.

Q. Dr. Wyker? A. Yes.

Q. You said that you could not come to the court this morning? A. I was away and got the subpoena and came down to be here. 20

Q. And I told you—

The Court: Never mind about that. The witness is here.

Q. Did you know John Strang?

Mr. Harrington: Of course we will admit the doctor's qualifications.

Mr. Belfatto: I also admit the qualifications. 30

Q. Did you know John Strang? A. Yes.

Q. Did you attend to him during his sickness? A. Yes, sir.

Q. Do you remember his last sickness? A. Yes, sir.

Q. Where did you go to see him during his last sickness? A. 25 Windsor Place, Glen Ridge, New Jersey. 40

Arthur William Wyker—Cross.

Q. Do you remember the date? A. February 4, 1930.

Q. In whose house was he? A. Mrs. Kaysel's.

Q. For how long did he remain in the house before he died? A. He was there from February 4, to the 12th and he died on the 12th.

10 Q. Do you remember when he was taken there?
A. Taken there on the 4th, the day I saw him.

Q. You were at John Strang's house on the 4th?
A. No, sir. I was at Mrs. Kaysel's house.

Q. Did you advise Mrs. Kaysel to take John Strang to her house?

Mr. Harrington: I object to that.

The Court: Objection sustained.

Mr. Belfatto: Exception.

20 Q. Did you suggest where John Strang was to be taken when you found that he was sick?

Mr. Harrington: I object to that.

The Court: Sustain the objection.

Mr. Belfatto: Exception.

Q. Now, did you attend John Strang at the house while he was there? A. At Mrs. Kaysel's home in Glen Ridge, 25 Windsor Place, I attended him there.

30 Q. And he died there? A. Yes, sir.

Cross-examination by Mr. Harrington:

Q. Did you order a trained nurse to come and take care of the man? A. Yes, sir.

Q. When did she come? A. She came the next day, the 5th and I saw him the 4th.

40 Q. Was she in attendance all the time until the time of death? A. Yes.

Robert N. Standard—Direct.

Q. And he was taken care of properly and given every comfort a man in his condition could hope for? A. Yes.

ROBERT N. STANDARD, being duly sworn in behalf of appellants, testifies as follows: 10

Direct-examination by Mr. Belfatto:

Q. Mr. Standard, you are connected with the Bloomfield Trust Company? A. That is right.

Q. In what capacity? A. Securities teller.

Q. Did you know John Strang? A. No.

Q. Have you got any deposit slip in your possession? A. No. 20

Mr. Harrington: I object to anything further than that.

The Court: Now, wait a minute; let us see what it is.

Q. Do you know whether John Strang had ever deposited in your bank? A. Yes.

Q. Have you the slip which he signed when he first came to your place? A. No. 30

Q. To deposit money?

Mr. Harrington: I object to that. What bearing has that?

The Court: I do not know, but I am just interested enough to find out.

Mr. Belfatto: The bearing is upon the signature of John Strang to the will.

The Court: You want the signature?

Mr. Belfatto: Yes. 40

Robert N. Standard—Direct.

Mr. Harrington: That is not in doubt. They admitted it already.

The Court: Is the signature to the will questioned?

Mr. Belfatto: Why, absolutely it is questioned, your Honor.

10 Mr. Harrington: He has not said so in his objections to the will.

Mr. Belfatto: And I want him to produce now the signature of John Strang.

The Court: All right. Go ahead.

Q. Have you got that signature? A. Here are three withdrawals with his signature on it.

20 Mr. Harrington: Your Honor, I would like to take an exception to that at this time, because this is not one of the points raised in the appeal and not mentioned in the notice of appeal.

Mr. Belfatto: Yes, that is in the notice. It is one of the grounds of the appeal. We question the validity of that signature, I mean the genuineness of that signature.

The Court: All right.

30 Mr. Belfatto: I offer these in evidence, your Honor.

By the Court:

Q. Did you see Mr. Strang sign these, Mr. Standard? A. No.

Q. Do you know, of your own knowledge, whether or not this is his signature? A. I would say this one here is. It was okayed by one of our officers.

Q. That is the only reason you say so, because

40

Roland B. Callahan—Direct.

it was okayed by one of the officers; is that right?

A. Yes.

Q. I mean you yourself would not know whether it was his signature or not. A. No.

Mr. Belfatto: If your Honor please, I have subpoenaed the proper officer in this case, and not this young man. If it is necessary for me to produce him, I shall re-subpoena him and compel him to come here and testify about the genuineness of these three documents and the signatures. 10

The Court: Well, we will just hold them for the time being.

(The papers referred to are marked Exhibit A-1 for identification.)

20

ROLAND B. CALLAHAN, being duly sworn in behalf of appellants testifies as follows:

Direct-examination by Mr. Belfatto:

Q. Mr. Callahan, where do you live? A. 99 Commerce Street, Bloomfield.

Q. Did you know John Strang? A. I did. 30

Q. For how long did you know him? A. Well, all my life.

Q. How far did you live from his place? A. Right next door.

Q. Did you speak to him frequently? A. Yes.

Q. Did he have anybody working for him? A. Yes.

Q. Who? A. Different men.

Q. Doing what? A. Helping him with his garden work. 40

Roland B. Callahan—Direct.

Q. He was a gardener? A. Yes, a kind of gardener, yes.

Q. Did you ever see Mrs. Carrie Reid, his sister, there? A. I did.

Q. How often did you see her? A. Occasionally, not very often.

10 Q. During the time of your acquaintance with John Strang, how often did you see Mrs. Reid there? A. Not very often. Maybe once or twice a year I would see her around there.

Q. What was she doing there? A. Any time I saw here there she was doing the same anybody else I saw there, talking to her.

Q. Did you see her working for her brother? A. Never.

20 Q. Did you see his niece working for him? A. I am not acquainted with his niece.

Q. Eleanor Skinner, the lady who testified in this case. You never met her? A. Never.

Q. Did you ever see Mrs. Lydia Kaysel there? A. Yes.

Q. How often did you see her? A. Well, I see her there frequently. I don't know just how often.

30 Q. Doing what? A. I don't know what she was doing. I saw her talking to him on different occasions.

Q. Talking with her? Inside the house? A. No, I never saw her inside of the house.

Q. Outside. For how long did the conversation last when you saw them? A. I don't know. I didn't time the conversations. A lot of neighbors used to come in there, and I used to see her there the same as I did the rest of them. He used to sell his garden products and neighbors used to come there and get them.

40 Q. Did you see her buying vegetables and fruits

Roland B. Callahan—Cross.

and different things? A. I couldn't say whether she bought vegetables or fruits or not. She was a neighbor there.

Q. For how long was she a neighbor, if you know? A. Well, I don't know. I think she came around 1912. She might have been there for ten or fifteen years in that neighborhood living there. I couldn't say off hand. 10

Q. Was she a neighbor in 1919? A. I think she was.

Q. Living where; do you know? Where she was living? A. She lived at 117 Thomas Street. That is on the north side of Mr. Strang's place.

Q. For how long had she been living there? A. Ten or fifteen years.

Q. After 1919 did she continue to live there? A. Yes, she was living there. 20

Q. For how long? A. Well, I don't remember just when she moved over there, but she lived there I think after 1919.

Q. Do you remember when Mr. Strang died? A. Yes.

Q. Do you know when he died?

The Court: There is not any question about that. Why take up time?

Mr. Belfatto: Take the witness. 30

Cross-examination by Mr. Harrington:

Q. Mr. Callahan, how near to Mr. Strang did you live? A. I lived right next door.

Q. And you lived there for how long? A. I lived there all my life.

Q. You saw Mr. Strang quite frequently? A. I saw him occasionally, yes. 40

Roland B. Callahan—Redirect.

Q. Did you carry on conversation with him and talk to him? A. At times, yes.

Q. Did you know him 1919? A. Yes.

Q. From your observation and your conversation with him what would you say as to his mental alertness?

10

The Court: In 1919?

Mr. Harrington: In 1919.

A. He was always all right as far as I could see.

Q. From your observation of him, would you say that he was a man that was easily influenced or not? A. No. He was kind of hard to influence.

Q. He held firmly to his own opinions? A. Oh, yes.

20

Redirect-examination by Mr. Belfatto:

Q. Now, you say that he wasn't susceptible of being influenced. Do you know whether he was of a lonesome nature? A. Why, no. He didn't seem to be very lonesome.

30

Q. Is it true that he preferred to be left alone? Did he prefer to live alone without anybody's company? A. I don't think so. He always used to have people around him there.

Q. Buying fruits and vegetables, but how about his home life? What would you say to that?

Mr. Harrington: I object to that.

The Court: Let it go in.

A. I don't know anything about his home life.

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

40

Alice A. Booth—Direct.

ALICE A. BOOTH, being duly sworn in behalf of appellants, testifies as follows:

Direct-examination by Mr. Belfatto:

Q. Mrs. Booth, where do you live? A. I live at 14 Grace Street. 10

By the Court:

Q. Bloomfield? A. Bloomfield.

By Mr. Belfatto:

Q. For how long have you been living there? A. Oh, about twelve years.

Q. Did you know John Strang in his lifetime? A. I knew him all my life.

Q. Did you ever call at his place? A. No, I never have. My husband has, but I never have. 20

Q. Did you ever meet him? A. Lots of times.

Q. Where? A. Well, I had a store one time. He used to drop in every time I saw him. That was about thirteen years ago. Every time he would pass he would drop in.

Q. Do you know his sister, Carrie Reid? A. Yes, I do, very well.

Q. For how long have you known her? A. All my life. 30

Q. Did you ever see her at her brother's place? A. No, it is too far away.

The Court: She said she had never been to Mr. Strang's place.

Q. Did you ever see his sister going there?

The Court: How can she tell whether the sister was going there or not? She said she has never been at the place. 40

Lydia Kaysel—Direct.

Q. Did you ever talk to John Strang with reference to his sister working for him? A. Yes.

The Court: In the first place that is not material. In the second place, there does not seem to be any question about the fact that his sister went there and worked at times.

10

Mr. Belfatto: I wanted to establish that much.

The Court: I think you have established that.

Q. Did you ever speak to John Strang with reference to making a will? A. Never.

Q. Did he ever tell you whether he had made a will? A. No, never.

20

Cross-examination waived.

Mr. Harrington: We have no objection to these going in evidence, your Honor.

(The papers previously marked Exhibit A-1 for identification are received in evidence and marked Exhibit A-1)

30 LYDIA KAYSEL, being duly sworn in behalf of appellants, testifies as follows:

Direct-examination by Mr. Belfatto:

Q. Mrs. Kaysel, how old are you? A. Forty-eight.

Q. You are married? A. I am.

Q. What is your husband's name? A. Edward.

40

Lydia Kaysel—Direct.

Q. Where does he live? A. He lives with me.

Q. Where? A. Glen Ridge.

Q. For how long have you lived there? A. I don't know. About fourteen years.

Q. What is the number of the place in Glen Ridge? A. 25 Windsor Place.

Q. You have lived there fourteen years? A. 10 Fourteen years.

Q. Where did you live before that time? A. I own a house at 156 Thomas Street, near Windsor Place.

Q. Did you ever live near John Strang's house? A. For two years. I rented a house two doors from him.

Q. For three years? A. Two years.

Q. What were those two years? A. In 1910 and 1911. 20

Q. Where did you live after that? A. 156 Thomas Street.

Q. How far is Thomas Street from John Strang's place? A. Why, over a block.

Q. Did you at any time call at John Strang's house? A. Most every day.

Q. From what time until what time? A. Any time, all times.

Q. All times? A. Any time, morning, noon and 30 night I have been there.

Q. What was the purpose of going there morning, noon and night?

Mr. Harrington: I object to that.

The Court: Oh, I will let him put it in.

Mr. Harrington: I will withdraw the objection.

Lydia Kaysel—Direct.

Q. Answer the question. A. Well, I went down there to get vegetables or stop there when I was going to the store to see if he wanted anything.

Q. Were you interested about buying vegetables?

A. I always bought my vegetables from Mr. Strang.

Q. And that was the only purpose of your going there? A. Not the only, no. I went there to visit him as a friend.

Q. As a friend? A. Yes, of twenty-five years' standing.

Q. You went there as a friend? A. Yes.

Q. You were married, were you not? A. Yes.

Mr. Harrington: I object to that. What has that got to do with it?

The Court: Well, that is apparent. The witness has testified she was married. She can still be a friend of Mr. Strang and be married. There is nothing wrong about that.

Q. When you went there did you go into his house? A. I certainly did, yes, always.

Q. How long would you remain in the house? A. Two or three, four hours.

Q. Who else was there at the time you were in the house? A. Nobody.

Q. Nobody? A. No.

Q. How many times were you in the house alone with John Strang? A. Always.

Q. During the period of how many years? A. Twenty-five years.

Q. And you were married at that time? A. I am married at that time, yes.

Q. You did smoke there sometimes? A. I smoke cigarettes since I am ten years old.

Lydia Kayser—Direct.

Q. And you also drink once in a while? A. I don't drink.

Q. You never drink? A. When they had beer, I drank beer, yes.

Q. Did you ever drink anything in his place, John Strang's? A. A bottle of beer, yes.

Q. Do you know Carrie Reid? A. I am well acquainted with her, yes. 10

Q. Did you see her coming there? A. I saw her twice.

Q. You saw her coming to see her brother? A. Twice she has been there.

Q. And you had many arguments with her, did you not? A. Never had an argument with her in my life.

Q. How many arguments did you have with John Strang? A. Never had an argument with him in my life. 20

Q. Didn't John Strang tell you that he wanted to be left alone? A. Never in his life, never.

Q. Do you remember John Strang having spoken to you about wills? A. He never mentioned a will to me until 1925, when he gave it to me.

Q. He gave it to you? A. Yes.

Q. What did he say when he gave it to you? A. He told me to take it and keep it and put it in the vault and take care of it. 30

Q. In whose presence did he say that? A. In the presence of my husband.

Q. Your husband was there? A. My husband was there.

Q. In what place did he give you the will? A. In my home in 1925. He was sick in my home for three months, and I took care of him.

Q. Do you know who prepared the will? A. Lawyer Payne. 40

Lydia Kaysel—Direct.

Q. Did you ask him to prepare it? A. I didn't know anything about it until 1925.

Q. You never had anything to do with that will, did you? A. Never knew anything about it until 1925.

10 Q. He simply gave you that will as a present?
A. He did not, no. He gave it to me to take care of it.

Q. What did you do for him? A. I never did anything for him unless he asked me to do him a favor.

Q. Did you ever work for him? A. No.

Q. Did you ever cook for him? A. I never did, no.

20 Q. Did you ever take care of him while he was sick at his house? A. He never was sick at his house.

Q. The only time you took care of him was when he was sick at your house? A. He asked me to take care of him at my house. He didn't want to go to the house.

Q. That was when he died? A. No, sir; that is not.

Q. When was that? A. 1925 I am referring to.

30 Q. That is the time you obtained the will from him? A. That is the time he gave me the will, told me to go down to the house and get it.

Q. For how long did you have him in your house? A. About three months.

Q. Did you have a doctor? A. Certainly.

Q. Did you notify his sister? A. I notified his sister, yes. His sister knew he was sick but never came near him in 1925.

40 Q. Where did you notify her? A. Mr. Kaysel wrote to her.

Lydia Kaysel—Direct.

Q. Where did you notify Mrs. Carrie Reid in 1925 when her brother John Strang, was sick? A. Mr. Kaysel sent her a mail that he was ill.

Q. Then he wrote her a letter? A. Then he wrote her a letter.

Q. He didn't go there personally. A. He did not go, no, and I could not go. 10

Q. Did you go? A. I couldn't leave Mr. Strang. I had only a night nurse. I was day nurse.

Q. How far did you live from Carrie Reid at that time? A. From what?

Q. How far was your house from Carrie Reid's house in 1925? A. It is over a mile.

Q. Over a mile? A. Yes, sir.

Q. You didn't go there at all but had your husband write a letter? A. My husband wrote and told her Mr. Strang was at our home sick. 20

Q. You were friendly with Carrie Reid, were you not? A. Friendly with her?

Q. Yes. A. Friendly with everybody.

Q. You never had any argument with her? A. I never argue with anybody.

Q. How long have you been married? A. Twenty-five years.

Q. You have lived with your husband all the time? A. Always; expect to always will too. 30

Q. Do you remember when Mr. and Mrs. Skinner came from Brooklyn to visit John Strang? A. He never told me they were there. I never saw them there. He didn't want anything to do with the family.

Q. Did you lock the doors whenever his people came from Brooklyn? A. Never in my life, never touched his keys.

Q. Were you at any time inside the house with 40

Lydia Kaysel—Direct.

the doors locked? A. Never when I was there. There was no necessity for it.

Q. You never locked the doors? A. Never, no.

Q. When Mr. Strang died was he at your house?

A. He came to my house sick.

By the Court:

10

Q. He died at your house, didn't he? A. He died at my house, yes.

By Mr. Belfatto:

Q. Who took him there? A. Mr. Callahan and Mrs. Kaysel.

Q. Were you there? A. Me, yes.

Q. Now, where did you find Mr. Strang? A. On the floor.

20

The Court: What difference does it make?

Mr. Belfatto: Oh, yes. I want that to be testified to. I think it is very material.

The Court: I have ruled it out about seven times. I do not see any reason why I should admit it at this time.

Mr. Belfatto: I pray an exception.

30

Q. He died at your house and you had the funeral in your house? A. Well, there was nowhere else to have the funeral. The sister didn't offer to take him.

Q. Did the doctor tell you that John Strang was to be sent to the hospital?

The Court: What difference does it make? We have ruled on that so many times.

Mr. Belfatto: Not that question.

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Lydia Kayser—Direct.

The Court: Well, all right. Then I am ruling on it now.

Mr. Belfatto: Exception.

Q. You say that you have known Carrie Reid for many years? A. I did not say anything of the kind. I have met her twice at his house in twenty-five years. 10

Q. Did you ever ask Mr. Strang whether he had any relatives, sisters, brothers? A. Oh, he told me that when I first met him. He told me the whole family history after I had known him a year or so.

Q. Did he tell you that he had two sisters living? A. Yes, and he had no use for either one of them he told me. 20

Mr. Belfatto: I move that the second part be stricken out.

The Court: I do not think that any of it is material. I cannot see the materiality of it. We know that he had two sisters; no question about that.

Q. Do you know whether the sisters were in a poor condition? A. No, his sisters are very well fixed. 30

The Court: What difference does that make?

Mr. Belfatto: If your Honor please, I have same purpose for asking these questions.

The Court: What difference does it make whether she knew that they were in poor condition or not?

Mr. Belfatto: The poor condition should 40

Lydia Kaysel—Direct.

be established not for the purpose of showing undue influence but it is an element which is very important to this extent.

The Court: What element is it?

10 Mr. Belfatto: That if the sisters were poor it was his duty first to provide for them and not for a stranger.

The Court: I cannot punish him for not doing his duty.

Mr. Belfatto: But, your Honor, who can be the arbiter of these conditions? We are reading men's minds.

The Court: The question is whether or not this witness knew they were poor. That does not make any difference.

20 Mr. Belfatto: I am perfectly willing to stand by your Honor's rulings.

Q. Now, did your husband call on John Strang in your company at any time? A. Yes, sir.

Q. Did John Strang know that you were married? A. He certainly did.

Q. All the time? A. Always.

30 Q. Can you tell how many times you and your husband called upon him? A. Many, many times, too many, too numerous to mention.

Q. Was it for the purpose of buying vegetables? A. No, it was for the purpose of visiting and get vegetables or whatever we wanted at the same time.

Q. He never told you to keep away from the house? A. Who?

Q. John Strang. A. He never did. If I wasn't there one day he would be up there that night to see what was the matter with me.

Lydia Kayser—Direct.

Mr. Belfatto: I move that that be stricken out.

The Court: All right. The answer is no, he never told her.

Q. Do you know Mrs. Reid?

The Court: Now, Mr. Belfatto, how many times are you going to ask that question? 10

Q. I mean, do you know Mrs. Meyers? A. Yes, I know Mrs. Meyers.

Q. Did you ever get any money from John Strang to give to Mrs. Meyers? A. Never in my life, never.

Q. Did you ever get any money from him to lend it to her? A. Never. He never loaned her a cent. He had two mortgages on her property.

Q. Did you ever suggest to Mrs. Meyers to ask for a loan from Mr. Strang? 20

Mr. Harrington: I object to that.

The Court: Sustained.

Q. Do you remember that after the funeral Mrs. Reid wanted to go to her brother's house?

Mr. Harrington: I object to that.

The Court: Objection sustained. Do not answer. 30

Mr. Belfatto: Exception.

The Court: Allowed.

Mr. Belfatto: That is all.

Cross-examination waived.

APPELLANTS REST.

Colloquy.

The Court: Well, there is not a single word of testimony in the whole case that goes to the mental condition of Mr. Strang at the time that he made this will. Is there?

Mr. Belfatto: Why, if your Honor please, we have established a case here.

10

The Court: You have?

Mr. Belfatto: We are not going to change your Honor's mind if your Honor is ruling in the record. I simply say that we have proven that there was more than undue influence.

The Court: I ask you to point out to me now one single bit of testimony which shows the state of mind of Mr. Strang at the time this will was made in 1919.

20

Mr. Belfatto: No, sir.

The Court: Is there any?

Mr. Belfatto: Not at all. We do not claim that, your Honor.

The Court: What do you claim?

Mr. Belfatto: We claim that the mind of John Strang was unduly influenced.

The Court: When?

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Mr. Belfatto: During the period of 1910, 1919, up to the time of his death.

The Court: Now, I ask you again to point out to me any single bit of testimony which shows anything about his mind or mental condition in 1919 when he made the will.

Mr. Belfatto: There is enough evidence to show, your Honor, that he was nothing but annoyed by this lady here, who claims to be

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Colloquy.

the beneficiary of that property. There is not any evidence at least which gives her the right to inherit that property, but there is a great deal in this case of circumstantial evidence to establish that there was a certain influence exercised upon his mind; and that he was eighty-seven years of age. Now, that is our case, your Honor. 10

The Court: Unfortunately for you it is not any case at all, so far as this appeal is concerned. The appeal is dismissed.

Mr. Belfatto: Exception.

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Decree Affirming Order of Surrogate.

ESSEX COUNTY ORPHANS' COURT.

10	<p align="center">In the Matter of the Estate of John Strang, deceased.</p>	<p>On Appeal from Probate of Will by Surrogate. Decree affirm- ing Order of Surrogate.</p>
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Caroline Strang Reid, one of the sisters of John Strang, late of the County of Essex, deceased, having presented her petition of appeal from an order of the Surrogate of the County of Essex, made on the 24th day of February, 1930, admitting to probate a certain paper writing purporting to be the Last Will and Testament of the said John Strang, deceased, and granting letters testamentary thereon to Edward W. J. Kaysel and Lydia Kaysel the executors therein named, and it appearing that citations were thereupon duly issued by the Surrogate of the County of Essex to all persons concerned to appear in this court on the 28th day of May, 1930, at ten o'clock in the forenoon on the hearing of said appeal and that said citations have been returned duly reserved upon the persons to whom they were respectfully directed and the court having taken testimony and heard the allegations of the parties herein and being satisfied that said paper writing was duly executed by the said John Strang as his Last Will and Testament in manner and form prescribed by the Statute in such case made and provided and that the said John Strang at the time of making said will was of sound and disposing mind, memory and understanding and that said will was not the product of undue influence.

Decree Affirming Order of Surrogate.

It is thereupon on this 21st day of August, 1930, Ordered, Adjudged and Decreed that the aforesaid Decree of the Surrogate admitting to Probate the said paper writing as and for the last Will and Testament of John Strang, deceased, and directing that letters testamentary thereon issued to Edward W. J. Kaysel and Lydia Kaysel, the executors therein named, be and the same is hereby in all things ratified and confirmed and that the said paper writing is the Last Will and Testament of the said John Strang, deceased, 10

And it is further Ordered that a counsel fee of Twenty-five Hundred Dollars be allowed to Forlenza & Harrington, Proctors for proponent, and the court being satisfied that the appellant herein had reasonable cause for contesting the validity of the said Will, it is further Ordered that a counsel fee of Fifteen Hundred Dollars be allowed to G. M. Belfatto, Proctor for the appellant, the aforesaid counsel fees to be paid by the said Edward W. J. Kaysel and Lydia Kaysel, the executors named in said Will out of the estate of the said testator. 20

WALTER D. VAN RIPER,
Judge.

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Notice of Appeal to Prerogative Court.

ESSEX COUNTY ORPHANS' COURT.

10	In the Matter of the Estate of John Strang, deceased.	}	On Petition of Appeal. Notice of Appeal to Prerogative Court.
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20 Caroline Strang Reid, sister of John Strang, deceased, hereby demands appeal and does hereby appeal to the Prerogative Court of the State of New Jersey from the order or decree of the Orphans' Court of the County of Essex entered herein on the 21 day of August 1930 confirming an order of the Surrogate of said County made in the above matter on the 24th day of February 1930, admitting to probate a certain paper writing as the last will and testament of John Strang deceased and also ratifying testamentary letters granted to Lydia Kaysel and Edward W. J. Kaysel by said Surrogate.

Dated Newark, N. J., August 22, 1930.

30 G. M. BELFATTO,
 Proctor for and of Counsel
 with Caroline Strang Reid.

Service of a true copy of Notice of Appeal acknowledged this 22nd day of August, 1930.

FORLENZA & HARRINGTON,
 Proctors of Lydia Kaysel & Edward
 W. J. Kaysel proponents of will.

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Notice of Appeal.

ESSEX COUNTY ORPHANS' COURT.

<p style="text-align: center;">In the Matter of the Estate of John Strang, deceased.</p>	}	<p>On Petition of Appeal. Notice of Appeal.</p>	10
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Lydia Kaysel and Edward W. J. Kaysel, Beneficiaries under the Last Will and Testament of the deceased hereby appeal to the Prerogative Court from that portion of the decree entered herein on the 21st day of August, 1930, wherein Gaetano M. Belfatto, Proctor for and of Counsel with Caroline Strang Reid, was allowed Fifteen Hundred (\$1500) Dollars as Counsel fee. 20

FORLENZA & HARRINGTON,
Proctors for and of Counsel with
Lydia Kaysel and Edward W. J. Kaysel.

Service of the within Notice of Appeal is hereby acknowledged this 28th day of August, 1930.

G. M. BELFATTO,
Proctor for and of Counsel
with Caroline Strang Reid. 30

Certificate of Surrogate.

STATE OF NEW JERSEY

ESSEX COUNTY SURROGATES COURT.

I, Andrew J. Whinery, Surrogate of the County of Essex, and Clerk of the Orphans' Court of said County, do hereby certify the foregoing to be a true
10 copy of a transcript of all the proceedings before the Orphans' Court in the matter of the appeal of Lydia Kaysel and Edward W. J. Kaysel, from an order of the Surrogate of the County of Essex, dated August 21, 1930, admitting to probate a certain paper writing purporting to be the last will and testament of John Strang, deceased, as the same appears on file and of record in this office.

20 Witness my Hand and Seal of Office, this 11th day of September in the year of our Lord, one thousand nine hundred and thirty.

ANDREW J. WHINERY,
Surrogate and Clerk.

30

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Certificate of Judge.

ESSEX COUNTY ORPHANS' COURT.

State of New Jersey, }
 County of Essex. } ss. :

I, Walter D. Van Riper, Judge of the Orphans' Court of the said County of Essex, in said State, do hereby certify that Andrew J. Whinery, whose name, in his own handwriting, is subscribed to the foregoing certificate, is, and was, at the time the same bears date, Surrogate of said County and Clerk of the Orphans' Court thereof, and that full faith and credit are due to his official acts. And further, that the seal attached to said certificate is his official seal of the said Surrogate's Court, and that the said certificate is in due form and made by the proper officer, and would be received in evidence in the Courts of this State.

In Testimony Whereof, I have hereunto set my hand this 11th day of September, A. D. one thousand and nine hundred and thirty.

WALTER D. VAN RIPER,
 Judge of the Orphans' Court.

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Certificate of Surrogate.

ESSEX COUNTY SURROGATE'S OFFICE.

State of New Jersey, }
 County of Essex. } ss.:

10 I, Andrew J. Whinery, Surrogate and Clerk of
 the Orphans' Court of the said County of Essex,
 in said State, do hereby certify that Walter D. Van
 Riper, whose name is subscribed to the preceding
 certificate, is Judge of the Orphans' Court of the
 said County of Essex, duly commissioned and qual-
 ified, and that his signature to said certificate is
 genuine. To all whose acts as such full faith and
 credit are due and given as well in courts of judi-
 cature as elsewhere.

20 In Testimony Whereof, I have hereunto set my
 hand and affixed my official seal of office this 11th
 day of September A. D. one thousand nine hundred
 and thirty.

ANDREW J. WHINERY,
 Surrogate and Clerk of
 the Orphans' Court.

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Petition of Appeal.

NEW JERSEY PREROGATIVE COURT.

On Appeal from the Decree of the Orphans' Court of the County of Essex, confirming probate by the Surrogate of said County of a certain paper writing as the last will and testament of John Strang, deceased.

10

In the Matter
of the
Estate of John Strang, deceased.

Petition of
Appeal.

To the Ordinary of the State of New Jersey:

The petition of Caroline Strang Reid of the Township of Bloomfield, in the County of Essex in the State of New Jersey respectfully shows:

20

1. Your petitioner is the sister of John Strang late of the County of Essex deceased.

2. On February 24, 1930 the Surrogate of the County of Essex made its order admitting to probate a certain paper writing purporting to be the last will and testament of said John Strang, deceased, and granting letters testamentary thereon to Lydia Kaysel and Edward W. J. Kaysel her husband executors mentioned therein and residuary devisees; subject to the payment of \$100. to petitioner and \$300 to petitioner's sister Sarah Skinner also a sister of said John Strang who died in Los Angeles, California, on July 14, 1930; both being mentioned therein as legatees.

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Petition of Appeal.

3. On April 25, 1930 the petitioner filed in the Essex County Surrogates' Court a Petition of Appeal, appealing from the order of said Surrogate to the Orphans' Court of the County of Essex, alleging therein, that at the time of making of the said paper writing he, the said John Strang was of
10 unsound mind and incapable of disposing of his estate by will; and that the said Lydia Kaysel and Edward W. J. Kaysel, did unduly, illegally and fraudulently influence the said John Strang in respect to the making and execution thereof; that the said paper writing was illegal and insufficient under the laws of this State to constitute the last will and testament of said John Strang, deceased, and that the same was not executed pursuant to
20 the Statute in such cases made and provided; and praying that the order of said Surrogate and all proceedings thereon might be reversed and set aside; and that the letters testamentary issued by said Surrogate to said Lydia Kaysel and Edward W. J. Kaysel might be revoked.

4. That such proceedings were had on said appeal and that on August 21, 1930 the said Orphans' Court of the County of Essex made an order by
30 which it was adjudged and decreed that the said paper writing was duly executed by the said John Strang as his last will and testament in manner and form prescribed by the Statute in such case made and provided; that the said John Strang at the time of making said will was of sound and disposing mind, memory and understanding; and that said will was not the product of undue influence; and that the decree of Surrogate admitting to probate the said paper writing as the last will and
40 testament of John Strang deceased, and that said letters testamentary issued thereon to Edward W. J.

Petition of Appeal.

Kaysel and Lydia Kaysel therein named as executors were in all things ratified and confirmed and that the said paper writing decreed to be the last will and testament of said John Strang deceased; and allowing a counsel fee of \$2500 to Forlenza & Harrington as proctors for proponents.

5. Your petitioner is aggrieved thereby and alleges for grounds of appeal as follows: 10

(a) That the order of the Surrogate of the County of Essex admitting to probate the said paper writing as the last will and testament of said John Strang deceased and letters testamentary issued thereon is erroneous, improper and contrary to law.

(b) That the said Lydia Kaysel and Edward W. J. Kaysel did unduly, illegally and fraudulently influence the said John Strang in respect to the making and execution of the said paper writing, purporting to be the last will and testament, of John Strang, deceased. 20

(c) That the supposed execution of said paper writing is illegal and insufficient under the laws of this State to constitute the same as the last will and testament of John Strang deceased, for said John Strang did not at the time of the supposed execution thereof, sign, publish and declare the said paper writing as and for his last will and testament in manner and form as required by the Statute in such case made and provided. 30

(d) That the counsel fee of \$2500 allowed by said Orphans' Court to Forlenza & Harrington as proctors for proponents is excessive, they having

Petition of Appeal.

failed to produce any witnesses or cross-examine the witnesses produced by the petitioner at the trial of said cause.

10 Your petitioner therefore prays that the aforesaid order of the Surrogate of the County of Essex be vacated and set aside and the letters testamentary revoked and that those parts of the order or decree of the Orphans' Court of the County of Essex set forth in paragraph four of this petition be reversed and set aside and said paper writing be decreed not to be the last will and testament of said John Strang deceased; and that the counsel fee of \$2500 allowed as aforesaid be reduced.

20 G. M. BELFATTO,
Proctor and of Counsel
with Petitioner-Appellant.

State of New Jersey, }
County of Essex. } ss.:

30 Gaetano M. Belfatto being duly sworn according to law on his oath deposed says that he is the Proctor and Counsel for the petitioner Caroline Strang Reid named in the within petition of appeal, and that the matters therein contained are true.

GAETANO M. BELFATTO.
Sworn to and subscribed before me
this 11 day of September, 1930.

Answer.**NEW JERSEY PREROGATIVE COURT.**

<p>On Appeal from the Decree of the Orphans' Court of the County of Essex, confirming the probate by the Surrogate of said county of a certain paper writing as the Last Will and Testament</p> <p style="text-align: center;">of</p> <p style="text-align: center;">JOHN STRANG, deceased.</p>	}	<p>Petition on Appeal. 10</p> <p>Answer.</p>
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The answer of Lydia Kaysel and Edward W. J. Kaysel, Respondents, to the Petition of Appeal of Caroline Strang Reid, Appellant. 20

1. These respondents, answering, say that they admit the allegations contained in paragraphs 1, 2, 3 and 4 of the petition of appeal filed herein.

2. These respondents are advised, believe and submit that said decree is just and in accordance with law, and deny that said decree or any part thereof is erroneous, improper or illegal but on the contrary, allege that said decree and every part thereof is legal, proper and correct. 30

3. These respondents deny the allegations contained in paragraphs b, c, and d, of the petition of appeal filed herein.

These respondents therefore pray that the said decree may be in all things affirmed with costs to be adjudged to these respondents.

FORLENZA & HARRINGTON,
Proctors for and of Counsel with Respondents. 40

Reply.

NEW JERSEY PREROGATIVE COURT.

*On Appeal from the Decree of the Orphans' Court
of the County of Essex, confirming probate by
the Surrogate of said County of a certain paper
writing as the last will and testament of John
Strang, deceased.*

10

In the Matter
of the
Estate of John Strang, deceased.

} Reply.

The petitioner Caroline Strang Reid joins issue
on the answer of the respondents Lydia Kaysel and
Edward W. J. Kaysel.

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G. M. BELFATTO,
Petitioner for and of Coun-
sel with Petitioner.

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Notice.

NEW JERSEY PREROGATIVE COURT.

On Appeal from the Decree of the Orphans' Court of the County of Essex, confirming probate by the Surrogate of said County of a certain paper writing as the last will and testament of John Strang, deceased.

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<p style="text-align: center;">In the Matter of the Estate of John Strang, deceased.</p>	}	Notice.
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TO FORLENZA & HARRINGTON, ESQS.,

Proctors for and of Counsel with Respondents.

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Take notice that on Monday October 20 instant at the hour of 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, I shall apply to the Honorable Alonzo Church, Vice Chancellor, at his Chamber in the Prudential Bldg. in the City of Newark, for an order fixing the day for the hearing of said cause.

Respectfully,

G. M. BELFATTO,
Proctor for and of Coun-
sel with Appellants.

30

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Order Fixing Day for Hearing.

NEW JERSEY PREROGATIVE COURT.

10 *On Appeal from the Decree of the Orphans' Court of the County of Essex, confirming probate by the Surrogate of said County of a certain paper writing as the last will and testament of John Strang, deceased.*

In the Matter
of the
Estate of John Strang, deceased.

Order fixing
day for hear-
ing.

20 The above cause having been referred to me, one of the Vice Chancellors by an order of reference made on the 7th day of October, 1930, on application of G. M. Belfatto, Esq., Proctor for and of counsel with appellant, in the presence of Forlenza and Harrington, Esqs., Proctors for and of counsel with Respondents, I do thereupon on this 20 day of October, 1930, fix the 20 day of November, 1930, at 10 o'clock A. M. at the Chancery Chambers in the City of Newark as the time and place for the hearing of said cause.

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E. R. WALKER,
Ordinary.

Respectfully advised,
ALONZO CHURCH,
V. C.

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Testimony.

NEW JERSEY PREROGATIVE COURT.

<p style="text-align: center;">In the Matter</p> <p style="text-align: center;">of the</p> <p style="text-align: center;">Estate of JOHN STRANG, Deceased.</p>	}	10
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November 20, 1930.

Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor, ALONZO CHURCH, Vice Ordinary, at the Chancery Chambers, Newark, New Jersey, in the presence of G. M. BELFATTO and RALPH LUM for petitioner; FORLENZA & HARRINGTON (by MR. HARRINGTON) for respondent. 20

Mr. Belfatto: This is an appeal from the decree of the Orphans Court, admitting to probate a certain writing, purporting to be a will of John Strang. Now, the Surrogate admitted to probate the will, an appeal was taken to the Orphans Court and now we are appealing to your Honor. 30

The Court: Did the Orphans Court sustain the will?

Mr. Belfatto: Yes.

The Court: What do you want to do with that?

Mr. Belfatto: Now, we want to put in additional testimony to show that the Orphans Court was mistaken in this case. 40

Argument.

Mr. Harrington: If the Court please, of course, I strenuously object to any further testimony.

The Court: As I understand it, the question of additional testimony is in the discretion of the Prerogative Court.

Mr. Harrington: Absolutely.

10 The Court: Were witnesses called before the Surrogate or before the Orphans Court?

Mr. Harrington: Yes, all of them.

Mr. Belfatto: Yes, with the exception of two or three.

The Court: I do not think, unless there are extraordinary circumstances, the Prerogative Court will reopen the case when you have had your day in court, one of them.

20 Mr. Belfatto: Your Honor please, it is absolutely in the jurisdiction of this Court to take additional testimony.

The Court: It is within the discretion of the Court. I can do it or I need not do it.

30 Now, as I understand it, this matter was tried out before the Orphans Court and I don't see any reason why I should hear any additional testimony, but if you think the testimony before—that the Orphans Court erred in its decision on the testimony before it, why, I will ask you gentlemen to submit briefs and explain why they are wrong.

Mr. Belfatto: We can do that.

The Court: But I won't permit any more testimony.

Mr. Belfatto: It is a very clear exception.

The Court: I will allow you gentlemen to submit memorandums.

40 Mr. Belfatto: Will your Honor give Mr. Lum, who is associated with me, a minute?

The Court: Surely.

Argument.

Mr. Belfatto: Your Honor please, there is a counter appeal here, there is an appeal from the order or decree of the Orphans Court, allowing a counsel fee.

The Court: That is merely argument.

Mr. Harrington: Yes, your Honor.

Mr. Belfatto: That is their appeal.

10

Mr. Harrington: It is very clear in the hearing before the Orphans Court, if the Court will read this testimony, you will find there was not one witness' testimony—there were two allegations abandoned, and they centered on one, that there was undue influence and there is not one witness' testimony on that point.

The will was executed ten years before the man died, and there is not one bit of testimony to bear on the undue influence supposed to have been exercised before that time.

20

The Court: Now, you want a counsel fee on this motion in this case?

Mr. Harrington: No.

Mr. Belfatto: If your Honor please—

Mr. Harrington: Just a minute, please. Mr. Belfatto was allowed \$1500 counsel fee by the Orphans Court. We filed an appeal that that was not permissible because there was not any reasonable ground for attacking this will, and there are plenty of cases that substantiate our stand.

30

The Court: That is a matter of argument also, on memorandum.

Mr. Harrington: On memorandum, exactly.

Mr. Belfatto: The other side was allowed \$2500.

The Court: Well, I am not—you have not appealed from that, have you?

Mr. Belfatto: Well, I did, after they appealed from mine.

40

Argument.

The Court: All right. You can argue that they are not entitled to it. Very well. I don't see any reason why I should wait for Mr. Lum. It is a discretionary matter with this Court and I will decide that I won't receive any more testimony.

10 Now, you can prepare your memorandums and send them in on your appeal. Each one can object to the other's counsel fee, and you can tell me why you think this will, under the evidence in the Orphans Court is wrongly admitted.

Mr. Belfatto: Yes, sir.

The Court: And for this gentleman— What is your name?

Mr. Harrington: Mr. Harrington of Forlenza & Harrington.

20 The Court: Mr.—Mr. Harrington can tell me why he thinks the Orphans Court ought to be sustained. You can have ten days if you want.

Mr. Harrington: Yes.

The Court: All right.

Mr. Belfatto: Now, your Honor please, there is another question, the testimony of an expert witness is essential to this case. We want to prove the signature of John Frank—is that his name?

Mr. Harrington: Your Honor—

30 Mr. Belfatto: That was not proved before.

The Court: I am not going to allow any more testimony.

Mr. Harrington: It is not necessary. We have already admitted that we did not contest that, in the Orphans Court.

Mr. Belfatto: We should have the opportunity of doing that in this court. If your Honor says no—(interrupted)

40 The Court: No, you won't have an opportunity

Argument.

to present any more evidence. You can argue on what is in before the Orphans Court.

Mr. Belfatto: I should be very glad to do that, your Honor.

The Court: All right.

10

Memorandum.

NEW JERSEY PREROGATIVE COURT.

In the Matter
of the Appeal

From a part of the Decree of
the Orphans Court of the County
of Essex, admitting a certain
paper writing as the Last Will
and Testament of JOHN STRANG,
Deceased,

Memorandum.
(Not for
print).

20

*This Memorandum is not to be published in the
official or unofficial reports.*

MR. G. M. BELFATTO, for Appellants. 30
MESSRS. FORLENZA & HARRINGTON, for Re-
spondents.

CHURCH, V. O.

This is an appeal from the decree of the Orphans
Court of the County of Essex, admitting to probate
the last will and testament of John Strang, deceas-
ed. The appeal is taken by the appellant Reid
against the probate of the will. - The only ground
for the appeal is that of undue influence. It clear 40

Memorandum.

ly appears from the testimony in the court below that the will was properly admitted to probate. The court below asked counsel, at the conclusion of the case :

10 "I ask you to point out to me now one single bit of testimony which shows the state of mind of Mr. Strang at the time this will was made in 1919."

Answer by counsel: "No, sir."

The Court: "Is there any?"

Counsel: "Not at all. We do not claim that, your Honor."

The Court: "What do you claim?"

20 Counsel: "We claim that the mind of John Strang was unduly influenced."

The Court: "When?"

Counsel: "During the period of 1910, 1919, up to the time of his death.

30 The Court: "Now, I ask you again to point out to me any single bit of testimony which shows anything about his mind or mental condition in 1919 when he made the will."

Counsel: "There is enough evidence to show, your Honor, that he was nothing but annoyed by this lady here, who claims to be the beneficiary of that property. There is not any evidence at least which gives her the right to inherit that property, but there is a great deal in this case of circumstantial evidence to establish that there was a certain influence exercised upon his mind; and that he was

Memorandum.

eighty-seven years of age. Now, that is our case, your Honor."

The Court: "Unfortunately for you it is not any case at all, so far as this appeal is concerned. The appeal is dismissed."

I shall, therefore, advise a decree dismissing the appeal from the probate of the will. 10

Counsel for the executors appeal from an allowance in the court below of \$1500. to counsel for the contestant. The appeal is on the sole ground that no counsel fee of any kind should be allowed. There is no question as to the reasonableness of the sum if any were granted. The latest case in regard to the allowance of counsel fees and costs to unsuccessful contestants is that of *In re Wandell*, 92 N. J. Eq. 195. I quote the conclusion of Chancellor Walker reported at page 200. 20

"In the case before me the will was admitted to probate after contest. Section 197 of the Orphans Court act provides, as shown above, that if the probate be granted, and it shall appear to the court that the person contesting had reasonable cause therefore, the court may order that the costs and expenses of the litigation, including those of the contestant, be paid out of the estate of the deceased. This does not confide the power of award to the mere discretion of the court, and, if it did, that would doubtless comprehend a sound judicial discretion, which is appealable. The statute, however, makes the award dependent upon reasonable ground existing for the contest; and the Orphans Court has adjudged in this case that such 30 40

Memorandum.

ground existed. While on appeal I affirmed the decree of probate and denied an allowance to the caveator appellant and took occasion to remark that a person who would be the natural object of a testator's bounty may well make a contest against the probate of his will in the Orphans Court for the purpose of obtaining the judgment of that tribunal thereon, and, though unsuccessful, be allowed expenses, including counsel fees, if in the judgment of that court there was reasonable ground of contest; but having taken the judgment of the court of first instance upon the question, an appeal to the Prerogative Court stands in a somewhat different position, and costs and counsel fees out of the estate will be denied in this court, if in its opinion the case made in the Orphans Court demonstrated there was no reasonable ground for the appeal to this court. I think awards of Orphans Court in this class of cases ought not to be overthrown, unless it quite conclusively appears that the contest below developed no reasonable ground for further litigation, or that the allowance was excessive (in which case it should be reduced), and where the decision of the Orphans Court that the unavailing contest was reasonable, can be upheld, it should be. No hard and fast rule in the nature of things can be laid down in those cases; each must very largely depend upon its own facts and circumstances and when the judge of the Orphans Court, who tried the cause and saw and heard the witnesses, concludes that there

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Memorandum.

was reasonable ground of contest, he should be upheld, if he may be, without doing violence to the case as it appears upon the record, in this case I am unwilling to say that the judge of the Orphans Court erred in making the allowance in question, and the order appealed from will therefore be affirmed." 10

I, therefore, will dismiss the appeal as to the allowance in the Court below because I assume that in the judgment of that court there was a reasonable ground for contest. However, as the Chancellor points out, the case is different when it comes before this Court of appeal. It seems to me that there was no reasonable ground for an appeal to this court. I shall, therefore, deny all allowances to counsel for appellant Reid in this court. 20

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*Decree Confirming Decree of Orphans Court of
Essex County.*

and that the appeal from the decree of the Orphans Court of the County of Essex confirming the order of the Surrogate of said County admitting to probate a certain paper writing as the last will and testament of John Strang, deceased, be and the same is hereby dismissed;

And it is further ordered that there be allowed as counsel fee to be paid out of the Estate of the said John Strang, deceased the sum of \$150 to Forlenza & Harrington, Proctors for the respondents, besides costs to be taxed against appellant.

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EDWIN R. WALKER,
Ordinary.

Respectfully advised,
ALONZO CHURCH,
V. O.

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Petition of Appeal.

Filed Jan. 19, 1931.

NEW JERSEY PREROGATIVE COURT.
 TO NEW JERSEY COURT OF ERRORS AND
 APPEALS.

 In the Matter

of the

 Estate of JOHN STRANG,
 Deceased.

 On Appeal
 from the
 Decree of the
 Ordinary, &c.

 Petition
 of Appeal.

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*To the Honorable Court of Errors and Appeals in
 the Last Resort in All Causes:* 20

The petition of Caroline Strang Reid the appellant in the above stated cause respectfully shows that the petitioner finds herself aggrieved by a final decree made in the New Jersey Prerogative Court by his Hon. Edwin R. Walker, Ordinary, bearing date of January 17th, 1931, wherein the said Caroline Strang Reid was appellant and Lydia Kaysel and Edward W. J. Kaysel, her husband, executors, &c., were appellees, in this respect, to wit: 30

“And the court having read and considered the pleadings and proofs and arguments of the counsel and the court being of the opinion that the testator was of sound mind at the time of the execution of said will and that no undue influence was exercised upon him and that appellant is not aggrieved by the decree of the said Essex County Orphans 40

Petition of Appeal.

Court admitting the said will to probate:

10 It is on this 17th day of January, 1931, by his Honor, Edwin Robert Walker, Ordinary of the State of New Jersey, ordered, adjudged and decreed, that the said decree of the Essex County Orphans Court be and the same is hereby affirmed, and that the appeal from the decree of the Orphans Court of the County of Essex confirming the order of the Surrogate of said County admitting to probate a certain paper writing as the last will and testament of John Strang, deceased, be and the same is hereby dismissed."

20 And also because the Vice Ordinary refused to take and hear evidence of the witness in said cause produced by the appellants at the hearing before said Vice Ordinary, by reason whereof the petitioner was deprived of the right to prove her case on appeal from said decree of the Orphans Court.

And also because the said Prerogative Court erroneously made the decree on the sole evidence taken and heard by the Orphans Court and on briefs submitted by the proctors for the respective parties by order of the Vice Ordinary.

30 And your petitioner humbly appeals from said decree of the Prerogative Court upon the ground that the same is erroneous for that the said decree should have ordered and directed viz:

40 1. That from the evidence taken and heard before the Orphans Court of the County of Essex it appears that the supposed execution of said paper writing was illegal and insufficient under the laws of this state to constitute the same as the last will and testament of John Strang deceased, for said

Petition of Appeal.

John Strang did not at the time of the supposed execution thereof, sign, publish and declare the manner and form as required by the Statute in such case made and provided.

2. That said Lydia Kaysel and Edward W. J. Kaysel did unduly, illegally and fraudulently influence the said John Strang in respect to the making and execution of the said paper writing purporting to be his last will and testament. 10

3. That the decree of the Orphans Court of the County of Essex confirming the order of the Surrogate of said County admitting to probate the said paper writing as the last will and testament of said John Strang deceased is erroneous, improper and contrary to law, and the same is hereby reversed and set aside and letters testamentary issued thereon revoked. 20

The petitioner therefore prays that the decrees of the Prerogative Court and of the Essex County Orphans Court and the order of the Surrogate of said County admitting to probate the said paper writing as the last will and testament of John Strang deceased be vacated and set aside and testamentary letters issued thereon revoked, and that said paper writing be decreed not to be the last will and testament of John Strang deceased or in the alternative that the cause be remanded to the Prerogative Court for formal hearing at which the evidence of witnesses for the petitioner shall be heard. 30

G. M. BELFATTO,
Proctor for and of Counsel with Petitioner. 40

Answer to Petition of Appeal.NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	<p style="text-align: center;">In the Matter</p> <p style="text-align: center;">of the</p> <p style="text-align: center;">Estate of JOHN STRANG, Deceased.</p>	}	<p>On Appeal from Prerog- ative Court.</p> <p>Answer to Petition of Appeal.</p>
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The answer of Lydia Kaysel and Edward W. J. Kaysel, Respondents to the petition of appeal of Caroline Strang Reid, Appellant:

20 1. These Respondents answering say, they admit the entering of a decree by the Prerogative Court dismissing the appeal of the Appellant made from a decree of the Orphans Court, and which decree of the said Prerogative Court is dated January 17, 1931.

2. These Respondents deny the allegations contained in Paragraphs 1, 2 and 3 of the petition of appeal filed herein.

30 3. These Respondents are advised, believe and submit that the said decree of the Prerogative Court entered on January 17, 1931 is just and in accordance with law, and deny that said decree, or any part thereof, is erroneous, improper and illegal, but on the contrary allege that said ~~said~~ decree and every part thereof is legal, proper and correct.

These Respondents therefore pray that the said decree may, in all things, be affirmed with costs to be adjudged to these Respondents.

40 FORLENZA & HARRINGTON,
Proctors for and of Counsel
with Respondents.

96 May Term 1931

New Jersey Court of Errors and Appeals

<p style="text-align: center;">In the Matter</p> <p style="text-align: center;">of the</p> <p style="text-align: center;">Estate of JOHN STRANG, Deceased.</p>	}	<p>On Appeal from Essex County Or- phans Court.</p>
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BRIEF OF APPELLEES.**Fact and Statement.**

John Strang died on February 12, 1930, a resident of the Town of Bloomfield, New Jersey. His will now forming the subject of this appeal was executed on November 24, 1919 at the office of his then attorney, Frederic M. Payne, who has since died.

Strang died on February 12, 1930, or approximately eleven years after the execution of his will. Strang's Will was kept in his possession until some time in 1925 when it was delivered to Mrs. Lydia Kaysel one of the residuary legatees. The reason apparently for the delivery of the Will at this time to Mrs. Kaysel was that Strang was seriously ill. The Will remained in the possession of Mrs. Kaysel until the Testators' death when it was offered for probate. The Will was offered for probate on February 24, 1930 and was admitted by the Surrogate of the County of Essex and letters testamentary were issued thereon to Lydia Kaysel and

Edward W. J. Kaysel, executors of the said Will (S. C., pp. 6-7).

On April 24, 1930 Caroline Strang Reid appealed to the Orphans Court of the County of Essex from the order of the Surrogate admitting said Will to probate on the following grounds:

(a) At the time of the making and supposed execution of said writing and for a long time prior thereto the said John Strang was of unsound mind and as such incapable of disposing of his estate by will.

(b) The said Lydia Kaysel and Edward W. J. Kaysel, her husband did illegally, and fraudulently influence the said John Strang in respect to the making and the supposed execution of the said paper writing.

(c) The supposed execution of the said paper writing is illegal and insufficient under the laws of this State to constitute the same as the last will and testament of the said John Strang deceased, for that the said John Strang, did not at the time of the supposed execution thereof, sign, publish and declare the said paper writing as and for his last will and testament in the presence of two witnesses present at the said time pursuant to the statute in such case made and provided.

On August 14, 1930 the appeal from the probate was heard by the Orphans Court of Essex County and the order of the Surrogate affirmed and on August 21, 1930 a decree to this effect was entered in the said Orphans Court.

On August 22, 1930 an appeal from the decree of the Orphans Court was taken to the Prerogative Court on the following grounds:

(a) That the order of the Surrogate of the County of Essex admitting to probate

the said paper writing as the last will and testament of said John Strang deceased and letters testamentary issued thereon is erroneous, improper and contrary to law.

(b) That the said Lydia Kaysel and Edward W. J. Kaysel unduly, illegally and fraudulently influenced the said John Strang in respect to the making and execution of the said paper writing, purporting to be the last will and testament of John Strang, deceased.

(c) That the supposed execution of said paper writing is illegal and insufficient under the laws of this State to constitute the same as the last will and testament of John Strang deceased, for said John Strang did not at the time of the supposed execution thereof, sign, publish and declare the said paper writing as and for his last will and testament in manner and form as required by the Statute in such case made and provided.

(d) That the counsel fee of \$2500 allowed by said Orphans Court for Forlenza & Harrington as proctors for proponents is excessive, they having failed to produce any witnesses or cross-examine the witnesses produced by the petitioner at the trial of said cause. (p. 85)

On November 20, 1930 the matter of the appeal for hearing came up in the Prerogative Court and was heard before the Honorable Alonzo Church, Vice Ordinary, who refused to take any further testimony and directed Proctors for the respective parties to file briefs and arguments within ten days thereafter.

On January 13, 1931 Vice Ordinary Church filed an opinion dismissing the appeal from the order of the Surrogate admitting the said Will to probate and confirming the allowance of the counsel

fee to the Proctor for Appellant; and on January 17th, 1931 a final decree in accordance with said opinion was filed.

It is from that part of the final decree admitting to probate the Will of the said John Strang that Caroline Strang Reid now appeals to this Court.

At the hearing before the Orphans Court and in the brief of the opponent filed in the Prerogative Court and in this Court, there was absolutely no objection made by the Appellant, Caroline Strang Reid, to the due and legal execution of the Last Will and Testament of the said John Strang, deceased (S. C., p. 13, l. 20); that the said Appellant offered not one iota of testimony attempting to show or indicate the state of mind of the said John Strang, deceased, at the time of the making of his Will; and that the Proctor for the said Appellant, Caroline Strang Reid, when so asked by the Court, admitted that no such claim that the said John Strang, deceased, was other than in a normal mental condition at the time of the execution of his will was made by the said Appellant, Caroline Strang Reid (S. C., p. 74, l. 20).

At the hearing before the Orphans Court the Appellant, through her Counsel, expressly limited the grounds for appeal against the probate of the Last Will and Testament of the said John Strang, deceased, to the one claim that the mind of the said Testator was unduly influenced. (S. C., p. 74, l. 25).

The only other ground that the Appellant has set out in her appeal to this Court (although it is not argued in Appellant's brief), is that the Vice Ordinary refused to take any further evidence at the hearing before the Prerogative Court.

Therefore, it is the Appellees' contention that inasmuch as the Appellant has limited her appeal be-

fore the Orphans Court and the Prerogative Court to the one ground of undue influence and inasmuch as in the brief filed by the Appellant before this Court there is no attempt to prove any other ground than undue influence and the only other ground that may possibly be argued is the one that the Prerogative Court was in error in refusing the Appellant to take additional testimony at the hearing, the Court may assume that any other ground of the Appellant is waived.

See

A. Makray, Inc. vs. William McCollough,
103 N. J. L. p. 346.

Allen vs. Paterson Theatre, 99 N. J. L.
489.

3 Corpus Juris 1428, par. 1591.

Punk vs. Botany Worsted Mills, 105 N. J.
L. 647.

Appellant therefore bases her appeal on the following grounds:

(1) That the Prerogative Court was in error in refusing to permit Appellant to offer further testimony; and

(2) That the said Testator, John Strang, was unduly influenced in the making of his Will.

ARGUMENT.

POINT I.

In an appeal from the Orphans Court to the Prerogative Court the taking of additional testimony or the granting, in effect, of a trial de novo is within the absolute discretion of the court.

It is well settled that the Prerogative Court may permit new testimony to be taken and used on the hearing of an appeal from the Orphans Court, but that the granting of such permission is absolutely within the discretion of the Court:

See

Rusling vs. Rusling, 36 N. J. Equity 603.

Smith vs. Smith, 48 N. J. Eq. 566.

Read vs. Drake, 2 N. J. Eq. 78.

Sayre vs. Sayre, 16 N. J. Eq. 505.

Personette vs. Johnson, 40 N. J. Eq. 173.

White vs. Starr, 47 N. J. Eq. 244.

Kayhart vs. Whitehead, 77 N. J. Eq. 12

(Affirmed 78 N. J. Eq. 580)

The Prerogative Court therefore was well within its rights in refusing to take any further testimony than that heard on the hearing before the Orphans Court.

POINT II.

The appellant produced not one whit of testimony that would indicate the exercise of undue influence over the testator at the time of the execution of his will.

In the testimony as set out in the State of the Case, the excerpts of testimony and the alleged errors of the Orphans Court assigned in the brief of the Opponent, there is absolutely nothing to indicate the exercise of any undue influence on the Testator at the time of the making of his Will. As a matter of fact, the excerpts and assignments of error as set out in the brief of the Opponent to this Court are highly misleading, if not deliberately so.

In the conclusion set out in the Opponent's brief to this Court alleging that the Testator stated at some indefinite time that Mrs. Kaysel was "trying to convince him to make a Will", there is not one bit of testimony, either remote or otherwise, to substantiate such a conclusion.

The conclusion reached above is based on one of the excerpts of the testimony of Mr. Frederick D. Skinner. In an examination of the testimony of Mr. Skinner, the nearest approach that can be made to the above testimony is found on Page 51 beginning at line 20, which is as follows:

Ques. "Did you ever see Mr. Strang speak to your wife?"

Ans. "I did."

Ques. "What did he say?"

Ans. "He told her—the woman was bothering him very much trying to influence him in making a Will."

There is absolutely no reference to Mrs. Kaysel or her husband in this statement. Moreover the Court will note that the statement trying to convince him to make a will was alleged to have been made in the presence of Mr. Skinner and his wife, Marian Skinner and Mr. Strang. Yet the Court will observe in the testimony of Marian Strang there is not one iota of reference or note of any kind to the statement quoted above and alleged to have been made by Mr. Strang in the presence of herself and her husband.

By reading together the testimony and the excerpts and the assignments of error, the truth of our contention, we feel, will be clearly and forcibly demonstrated. So pronounced was the lack of proof of undue influence in the hearing before the Orphans Court, that at the conclusion of the Opponent's case the Court asked Counsel for the Opponent: "to indicate any single bit of testimony" bearing out Opponent's contention that the will of the Testator was the product of undue influence and Counsel could not.

After the Testator executed his Will in the office of his attorney, he kept it in his possession until 1925 when he delivered it to the residuary legatees. This has been held to be a strong indication that he was aware of its contents.

See *Cooper*, 75 N. J. Eq. 177.

"The influence which is said by law to be undue influence and therefore to vitiate a Will, must amount to moral or physical coercion, which destroys the free agency that constrains its subject to do that which, but for it, he would not have done."

See *Buckman's Case*, 80 N. J. Eq. 556
(564)

See also—*Waddington vs. Buzby*, 45 N. J. Eq. 175.

In re: *Johnson's Will*, 80 N. J. Eq. 525.

See *Turner vs. Cheesman*, 15 N. J. Eq. 243.

Mere passion and prejudice, the influence of peculiar religious or secular training, of personal associations, of opinions, right or wrong, imbibed in the natural course of one's experience and contact with society, cannot be set up as undue to defeat a Will.

See *Haydock vs. Haydock*, 33 N. J. Eq. 494.

“To invalidate a will on the ground of fraud, compulsion or undue influence, such conduct must be of such a character as to destroy the Testator's free agency, and substitute for his own, another person's will.”

See

Haydock vs. Haydock, 33 N. J. Eq. 494.

Turner vs. Cheesman, 15 N. J. Eq. 243.

In the absence of fraud or imposition or undue influence, the Court will not speculate as to the probable motives of the Testator. Lawful influence such as grows out of legitimate or social relations must be allowed to produce its natural fruit even in wills, and the exertion of a natural influence upon the testator can never afford adequate ground of itself for setting a testament aside.

See *Lowe vs. Williamson*, 2 N. J. Eq. 82.

The constraint or fraud or undue influence necessary to set aside a will must be a present restraint, fraud, or undue influence, operating upon the testator's mind in the very act of making the

will, and affecting its execution or the disposition it makes.

See *Moore vs. Blauvelt*, 15 N. J. Eq. 367.

Chancellor McGill, sitting as Ordinary in the case of *Fritz vs. Turner*, 46 N. J. Eq. 515, said:

“That influence which will vitiate a will must be such as so far to destroy the free agency of the testator as to constrain him to do that which is against his will, or that which he would not have done if he had been left to himself. It must be some species of moral or physical coercion, which, under the conditions in which he was placed, he was unable to resist—no matter from what source it comes or what character it appears in, whether it be in the shape of physical force, threats, importunity, or other species of domination.”

See *Den. Trumbull vs. Gibbons*, 22 N. J. Law 117, 136 (51 Am. Dec. 253).

See *Moore vs. Blauvelt*, 15 N. J. Eq. 367.

See *Lynch vs. Clements*, 24 N. J. Eq. 431.

See *Haydock vs. Haydock*, 33 N. J. Eq. 494, 496.

See S. C. on Appeal, 34 N. J. Eq. 570 (38 Am. Rep. 385).

See *Waddington vs. Buzby*, 45 N. J. Eq. 173 (16 Atl. 690, 14 Am. St. Rep. 706)

See *Dumont vs. Dumont*, 46 N. J. Eq. 223 (19 Atl. 467)

Mere declarations, whether previous or subsequent to the will, amount of themselves to very little in the face of a prima facie showing that the testator was a thoroughly competent person, enjoying normal health, and under no apparent coercion or stress of error when he executed the in-

strument, especially if he looked personally after the details of drawing and executing his own will.

See *Pemberton*, 40 N. J. Eq. 520.

Therefore it is respectfully urged in the evidence produced by the Appellant before the Orphans Court and the Prerogative Court there is nothing that even indicated in the slightest degree that the Testator was influenced in any way in the making of his Will and that therefore the appeal to this Court should be dismissed.

POINT III.

The burden of proving fraud or undue influence is upon the appellant.

In *Schuchhard vs. Schuchhard*, 62 N. J. Eq. 710 it was held that :

“The inference that undue influence over testator’s intent and inducing him to do what he would not otherwise have done, must stand upon preponderating proof, excluding other reasonable inference.”

The burden of proving fraud or undue influence never shifted because that burden was at all times upon the appellants.

Schuchardt vs. Schuchardt, 62 N. J. Eq. 710;

Barkman vs. Richards, 63 N. J. Eq. 211;

In re Anastasia Davis, 73 N. J. Eq. 617;

In re George F. Johnson, 80 N. J. Eq. 525.

In the *Schuchardt* case Chancellor Magee says (page 713) :

“The burden of undue influence is upon those who assert it.”

He used similar language in *Barkman vs. Richards*, and in the *Johnson* case the Court of Errors and Appeals adopted the following language of the Probate Court:

“The presumption of the law is in favor of capacity and the burden of proof is upon those who assert to the contrary.”

A comprehensive statement of the law and review of the cases relating to the burden of proof by a party alleging fraud or undue influence are contained in Vol. I Kocher's New Jersey Probate Law, page 161.

The burden of proof of the exercise of undue influence on the mind of the Testator, John Strang, at the time of the making of his will being upon the Appellant and not having been substantiated, the Appellees therefore pray that this appeal be dismissed.

In conclusion it is respectfully pointed out that inasmuch as the Appellant has not in any way substantiated her contention that the will of the Testator, John Strang, was the product of undue influence, it is respectfully urged by the Appellees that this appeal be dismissed.

FORLENZA & HARRINGTON,
Proctors for and of Counsel with
Lydia Kaysel and Edward W.
J. Kaysel, Executors of the
Last Will and Testament of
John Strang.

New Jersey Court of Errors and Appeals

<p style="text-align: center;">In the Matter</p> <p style="text-align: center;">of the</p> <p style="text-align: center;">Estate of JOHN STRANG, Deceased.</p>	}	<p>On Appeal from Final Decree of the New Jersey Prerogative Court.</p>
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BRIEF OF APPELLANT.

This is an appeal from the final decree of the New Jersey Prerogative Court dismissing the appeal from the decree of the Orphans Court of the County of Essex affirming the order of the Surrogate of said County admitting to probate a certain paper writing purporting to be the last will and testament of John Strang, deceased.

Facts.

John Strang, a farmer, 87 years of age, died on February 12, 1930, at Bloomfield, N. J., leaving him surviving two poor sisters, the appellant Caroline Strang Reid, 70 years of age, and Sarah Strang Skinner, 73 years of age. The latter died at Los Angeles, Calif., on July 14, 1930. Under the alleged will Caroline is given a legacy of \$100 and Sarah \$300. The rest of the estate valued at about \$70,000 is bequeathed to Lydia Kaysel and Edward W. J. Kaysel, her husband, not related to said John Strang, (State of Case, p. 3).

On February 24, 1930, the alleged will was admitted to probate by the Surrogate of the County of Essex and letters testamentary were issued thereon to said Lydia Kaysel and Edward W. J. Kaysel, executors of said will, (p. 6).

On April 24, 1930, said Caroline Strang Reid appealed to the Orphans Court of the County of Essex from the order of the Surrogate admitting said will to probate on the following grounds:

(a) At the time of the making and supposed execution of said writing and for a long time prior thereto the said John Strang was of unsound mind and as such incapable of disposing of his estate by will.

(b) The said Lydia Kaysel and Edward W. J. Kaysel, her husband did illegally, and fraudulently influence the said John Strang in respect to the making and the supposed execution of the said paper writing.

(c) The supposed execution of the said paper writing is illegal and insufficient under the laws of this State to constitute the same as the last will and testament of the said John Strang deceased, for that the said John Strang, did not at the time of the supposed execution thereof, sign, publish and declare the said paper writing as and for his last will and testament in the presence of two witnesses present at the said time pursuant to the statute in such case made and provided.

On August 14, 1930, the trial was had and the appeal dismissed and the order of the Surrogate affirmed. On the 21st day of said month the Orphans Court made a decree to that effect, (page 76).

On August 22, 1930, an appeal was taken to the

New Jersey Prerogative Court from said decree on the following grounds:

(a) That the order of the Surrogate of the County of Essex admitting to probate the said paper writing as the last will and testament of said John Strang deceased and letters testamentary issued thereon is erroneous, improper and contrary to law.

(b) That the said Lydia Kaysel and Edward W. J. Kaysel unduly, illegally and fraudulently influenced the said John Strang in respect to the making and execution of the said paper writing, purporting to be the last will and testament of John Strang, deceased.

(c) That the supposed execution of said paper writing is illegal and insufficient under the laws of this State to constitute the same as the last will and testament of John Strang deceased, for said John Strang did not at the time of the supposed execution thereof, sign, publish and declare the said paper writing as and for his last will and testament in manner and form as required by the Statute in such case in manner and form as required by the Statute in such case made and provided.

(d) That the counsel fee of \$2500 allowed by said Orphans Court for Forlenza & Harrington as proctors for proponents is excessive, they having failed to produce any witnesses or cross-examine the witnesses produced by the petitioner at the trial of said cause. (p. 85)

On November 20, 1930, the appeal came up for hearing before the Hon. Alonzo Church, Vice Ordinary, but he refused to hear any evidence and ordered the proctors for the respective parties to file briefs within 10 days thereafter, (p. 97).

On January 13th, 1931, said Vice Ordinary filed

a memorandum dismissing the appeal and confirming the allowance of a counsel fee to the proctor for appellant, the proponents of said will having appealed from that part of the decree of the Orphans Court allowing said counsel fee, (p. 101).

On January 17, 1934, said Vice Ordinary made a final decree to that effect, from which decree an appeal is taken to this Honorable Court on the following grounds:

1. That from the evidence taken and heard before the Orphans Court of the County of Essex it appears that the supposed execution of said paper writing was illegal and insufficient under the laws of this State to constitute the same as the last will and testament of John Strang deceased, for said John Strang did not at the time of the supposed execution thereon sign, publish and declare in manner and form as required by the Statute in such case made and provided.

2. That said Lydia Kaysel and Edward W. J. Kaysel did unduly, illegally and fraudulently influence the said John Strang in respect to the making and execution of the said paper writing purporting to be his last will and testament.

3. That the decree of the Orphans Court of the County of Essex confirming the order of the Surrogate of said County admitting to probate the said paper writing as the last will and testament of said John Strang deceased is erroneous, improper and contrary to law, and the same should be reversed and set aside and the letters testamentary issued thereon revoked.

4. "And also because the Vice Ordinary refused to take and hear the evidence of the witness in said cause produced by the appellants at the hearing before said Vice Ordinary."

nary, by reason whereof the petitioner was deprived of the right to prove her case on appeal from said decree of the Orphans Court."

5. And also because the said Prerogative Court erroneously made the decree dismissing said appeal on the sole evidence taken and heard by the Orphans Court and on briefs submitted by the proctors for the respective parties by order of the Vice Ordinary.

The following are excerpts from the uncontradicted testimony of witnesses produced by the appellant at the trial before the Essex County Orphans Court.

CAROLINE STRANG REID, appellant, testified:

"I went to his (testator's) house every other day for 25 years and washed, cleaned, cooked and canned things for him.

I did not get any money nor asked for any.

Many times in 1919 my brother said to me, 'I don't believe in wills, my mother and father did not want a will and I am going to do the same.'" (23, line 20-30; 24, line 1-10)

"Mrs. Kaysel always comes around and I cannot get rid of her. She takes up my time and bothers me." (25, line 1-10)

"On a certain day in 1919, I found Mrs. Kaysel drinking and my brother drunk staggering around the ground and his tongue was so thick that he could hardly talk." (48, line 20-30)

MARION SKINNER, testator's niece, testified:

"Mrs. Kaysel locked the door and we could not get in saying that it was John Strang's order to lock the door to keep us, 'the hell out of there.'"

"My uncle John Strang said to me, 'A woman was here; she comes here a lot and bothers me.'"

"I said to him, 'Did you ever make a will?' He answered, 'I don't believe in wills, my father and mother did not make one and everything came to us as it should.'" (36-37).

ELEANORE SKINNER, testator's niece, testified:

"My uncle said to me, 'I will get all I can while I am living, and when I am through with it, you folks can have it.'"

"Many times he said to me, 'Mrs. Kaysel is always coming around and bothers me.'" (46, line 30-40)

FREDERICK D. SKINNER, testator's nephew, testified:

"When we got there, we found the door locked. I peered through the window and saw Mrs. Kaysel."

"The rooms were perfumed with rum and cigarettes." (49, line 10-40)

"Many times my uncle said to me and my wife, 'Mrs. Kaysel bothers me very much trying to influence me to make a will, but I don't believe in wills.'" (p. 51)

WALTER MOHR, testator's nephew, testified:

"She (Mrs. Kaysel said to me) that the will had been in her possession since 1925 when John Strang gave it to her." (54, line 30-40)

JANE MEYERS, testified:

He (the testator said to me) "You know the people are awful they do you." I can't help it, and they did me." He mentioned "Mrs. Kaysel * * *

"I could not help it, I could not help it,"

They done me and that is all." (42, line 30-40; 45, l. 1-20)

LYDIA KAYSEL, proponent of the will, testified:

"I lived near John Strang in 1910-1911. I called at his house for 25 years most every day at any time, all times, morning, noon and night. (65) Each time I remained alone with him 3 or 4 hours." (66, line 20-40)

"I did not work, cook or do anything for him, unless he asked me to do him a favor." (68, line 10-20)

"John Strang never mentioned a will to me until 1925 when he gave it to me at my house. He then told me to take it and keep it, and put it in the vault and take care of it." (68, line 1-10)

"He was sick at my house for three months. He then told me to go down to his house and get the will." (68, line 30-40)

The Orphans Court erroneously excluded the following testimony tending to show:

1. That the will was improperly executed and probated, (page 13, lines 10-20).
2. That the testator had two poor sisters living, (71, line 10-40) (72, line 1-20).
3. Why Mrs. Kaysel was calling so frequently upon the testator, (18, line 30-40) (23, line 10-20).
4. Why Mrs. Kaysel locked the door whenever Mrs. Skinner and her husband called upon the testator, (37, line 20-40).
5. That Mrs. Kaysel loaned money belonging to testator, (74, line 10-20).

6. That Mrs. Skinner had done work for the testator, (38, line 1-20).

7. The number of times Mrs. Skinner, testator's niece had seen Mrs. Kaysel in the testator's room, when the door was found locked, (37, line 10-30).

8. Conversation between Mrs. Skinner and Mrs. Kaysel at testator's home a week after his death, (40, line 1-10).

9. Quarrel between the testator and Mrs. Kaysel, (38, line 1-20) (51, line 1-20).

10. Admissions by Mrs. Kaysel with references to the making of the will, (30, line 1-40) (31-32).

11. Conversation between Mr. Mohr, testator's nephew and Mrs. Kaysel regarding the circumstances surrounding the making of the alleged will (54, line 1-10).

12. In what part of the testator's house was he found at the time he was taken by Mrs. Kaysel to her home, (70, line 20-30).

13. That the testator was not taken to the hospital by Mrs. Kaysel as ordered by doctor, (28, line 10-40).

14. That Dr. Wyker had ordered the testator to be taken to the hospital and not to Mrs. Kaysel's home, (56-70, line 30-40).

15. The kind of bedroom occupied by testator at Mrs. Kaysel's home when his sister called and found him unconscious and also the circumstances surrounding the testator's death.

Law.

It is respectfully submitted that the evidence before the Orphans Court clearly shows that the alleged will was the result of undue influence exercised by said Lydia Kaysel and her husband upon John Strang before and at the time of the execution of the will.

Undue influence need not as a rule be shown by direct proof. In fact it is not usually susceptible of direct proof but must be gathered from all the circumstances as it is not usually exercised openly in the presence of others.

Fritz vs. Turner, 64 E. 518.

Matter vs. Sickles, 63 E. 233.

134 Atl. 342.

Influence exerted by means of advice, arguments, persuasion, solicitation, suggestion or entreaty is not undue influence unless it is so *importuned and persistent* or otherwise so operates as to subdue and subordinate the will and take away the free agency.

Where prima facie presumption of undue influence arises the burden shifts to the beneficiary and he must show by satisfactory proof that the advantage derived by him is not the result of any undue influence.

Porter vs. Woodruff, 36 E. 174.

Matter vs. Sparks, 63 E. 242.

Parkman vs. Richards, 63 E. 211.

94 E. 791—97 E. 248.

Declarations of a testator contemporaneous with the execution of the will are admissible as part of

the *res gestae* for the purpose of showing the existence of undue influence.

Rusling vs. Rusling, 36 E. 603; 85 E. 103;
96 E. 24.

Middledi vs. Williams, 45 E. 726.

Prior declarations of the testator which show that the will is contrary to his intentions are admissible.

Turner vs. Chessman, 15 E. 243.

Declarations are, however, universally held admissible as evidence of the state and condition of the testator's mind at the time of the execution of the will, when made within a reasonable time either before or after its execution.

Boylan vs. Meeker, 28 L. 274.
30 L. 95—104 L. 523.

Declarations of feelings of the testator toward those charged with having exercised undue influence are admissible.

State vs. Ready, 78 L. 600.

The appellant therefore prays, that the decrees of the Prerogative Court and of the Essex County Orphans Court and the order of the Surrogate of said County admitting to probate the said paper writing as the last will and testament of John Strang deceased be vacated and set aside, and the testamentary letters issued thereon revoked, and

that said paper writing be decreed not to be the last will and testament of John Strang deceased or in the alternative that the cause be remanded to the Prerogative Court for formal hearing at which the evidence of witnesses for the petitioner shall be heard.

Respectfully submitted,

G. M. BELFATTO,
Proctor for and of Counsel
with Appellant.

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