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NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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JOHN MYERS,  Defendant in Error,  vs.  CHARLES G. MYERS,  Plaintiff in Error.	}	In Ejectment.
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BRIEF FOR JOHN MYERS.

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I.

Charles Myers died January 5, 1897, at his home in Ocean City. He had been married four times. By his first two wives he had twenty-two children (147). The defendant in error is one of them. His third wife was Pauline Hall, the actress, whom he divorced (149, 150), "not for his own good, but for the good of his children." His last wife, Sallie R. Griffen, came into his home as housekeeper. If the story of Jerome S. Rush is true, and the jury could have so found, (279, 280, 281, 282, 283) his marriage to his housekeeper was an act of profound significance. His divorce from Pauline Hall for the good

of his children proclaimed a remarkable character. His animal power swept his body into the arms of this fascinating woman, but the quiet behest of a sober reason enabled him to restore his life and affection to his children. For he was at once a man of the world and one of keen religious nature. When Sallie R. Griffen, by cunning and sexual omnipotence, caused both Charles Myers and his son, William, a man with a wife and family of children, to surrender to her embraces, either the father had to marry her or his son and his family had to be sacrificed. From the moment of his decision to his dying hour Charles Myers' life was immolation. It is a key to his character. To say the least, the paternity of the defendant in error, the fruit of that illicit passion, is involved in doubt. The testator told his daughter, Mary, the same thing (76). The whole case, in consequence of these facts, takes on unusual interest.

## II.

The will drawn in question as a muniment of title purports to have been acknowledged and attested the ninth day of April, 1895, two years and nine months before the testator's death. He had made other wills (275, 276). Why he did so may well find a suggestive answer in the strange history above cited. In addition to this, is the fact that Sallie R. G. Myers herself said there were three wills and she tore up two of them (176). Myers was a business man with wide and successful experience. Why all these wills, and why the destruction of two by this housekeeper-wife, considering Myers'

experience and ability, will excite the curiosity of anyone. Against the validity of the will in question we make two criticisms: (1) that it was not properly executed; (2) that it was the will, not of Charles Myers, but of Sallie R. G. Myers.

AS TO THE EXECUTION OF THE WILL.

1. The paper signed and witnessed by Mr. and Mrs. Rush was not and could not have been the will in question. The will purports to have been signed April 9, 1895 (362). Both Mr. and Mrs. Rush signed and witnessed a paper which the testator said was his will, sometime in the winter, in January, and not in April. They signed and witnessed no other will or paper for Myers (292, 293, 295, 299, 313, 315, 316, 320, 324). If their evidence is true, and the jury could so find, then the will of April 9, 1895, was not the will they signed, or the date of the will was made for some purpose not in accord with the truth. At any rate, the will lies on its face. It says it was signed, sealed, attested, April 9, 1895. It was not according to the evidence of Mr. and Mrs. Rush.

2. But another circumstance puts the matter beyond question. The will in dispute is so written on the last page that it could not have been so folded as to conceal a part of the will and the attestation clause. But both Mr. and Mrs. Rush are certain that the paper they signed was folded, that there was no writing to be seen on the paper, that there was no attestation clause, and only the names of Myers, Brower and their own (295, 296, 297, 298, 299, 300, 321, 322, 323, 324). The conclusion

is resistless that the will in question was not the paper signed and witnessed by these two people on April 9, 1895.

3. It is very doubtful whether the word "April" was ever written in the signature clause by Charles Myers. It does not look like his chirography. It appears to have been written in a different ink. At least it so appeared at the trial. And Mrs. Rush, who was very familiar with Esquire Myers' penmanship, said, on careful examination, "I cannot identify that as his handwriting" (320). Taken with the foregoing and succeeding circumstances, a jury question of force and propriety arose.

4. Mary Davidson, a witness, was not there. Mrs. Rush did not see her (317, 318). Mr. Rush did not mention her name. Mr. Brower, a witness to the purported will, says that he did not see her (185). Mrs. De-Roche, who was present, says that Mary Davidson was not in the house at all (186), and that about one week afterwards, Mrs. Myers told Mary Davidson to go into her father's office where he wanted her to sign something, that she went in, that, when she came out, her step-mother asked if she had signed it, and she replied that she had (88). Mr. Myers had probably written and superintended the execution of dozens of wills. He knew, if he was acting by his own volition, that Mary Davidson's signature was unessential and that, as a witness to his will, she could never qualify. Note the part Mrs. Myers took in the transaction. The question is why, if the will was honest, this strange thing was done.

Did not Mrs. Myers, in her ignorance, but in domination of the feeble old man, require it to be done? If she did, the will in all human probability, was not his, but his wife's. It is perfectly certain that the appearance of the Davidson name on the will was not his act. He knew how valueless it was. He knew that it was not lawful and not necessary. Therefore, not being his act, it must have been the imperious act of Sallie R. G. Myers. But, if she could compel her husband to add the name of Davidson, she could compel him to make the will as she wanted it. If she did the one thing, as she plainly did, she plainly did the other.

5. Add here the most impressive circumstances detailed by Mrs. Rush (246, 247). Mr. Myers said, "I wish that damnable piece of work was with the devil, where it belongs, and that she was with it." "Your name is on it." "If I get well, I am going to see that all are provided for, that they won't hate their father when he is dead." This was a death-bed scene. Had Esquire Myers written and published his will, the "damnable piece of work," as his own act and wish, he would never have wished the devil had it and her also. It was a "damnable piece of work," because his wife, dominating his weakened mind, had compelled its creation.

6. Mary DeRoche was an intelligent witness. Of course, she is subject to the charge of bias. Yet, it is difficult to disregard her narrative of the occurrences on the evening of the will's execution. She says that Mrs. Myers invited Brower and the Rushes to come to the

house. In this she is corroborated by the three witnesses. She says Mary Davidson was not there. In this she is likewise corroborated. She says that Mrs. Myers was in and out the room where the will was signed. In this she is also corroborated. Then she details minutely what occurred (80 to 88 inclusive). Her father had been drinking hard that day (84). She says that no two of these witnesses went into the room at the same time, and that no two were in the room at the same time when the will was signed. Brower (184) said there was no one in the room when he signed. This sustains Mrs. DeRoche. Before the Surrogate he swore that the Rushes "were present there in the house" (190). To the question: "These others were present when you signed," he said "they were in the house." "I won't say that," "I won't say positively they were in the room" (192), nor would he say that they were not in the room. It is certainly curious that this witness could not be made to say that they were all present together in the room. He is an extremely careful man. It is impressive that one called to witness a will, one who wanted to know what he was doing (191) should not have seen other witnesses present and seen them sign. Brower went in first (85). Certainly Brower signed first (see will, 362). Note now that Brower said before the Surrogate (192) "I think rather that Mr. Jerome Rush was (in there), but I wouldn't like to swear to that" (192). This implies that Mrs. Rush was not there. But Mr. Rush was the next witness called in (186). He is next in order of names on the will. Doubtless Brower saw Jerome Rush enter

the room as Brower was leaving. If so, it sustains Mrs. DeRoche. But Brower says he knew who the other witnesses were (195). He got the impression from others (196). Surely he did not see them sign, or he would not rest his knowledge on information he got afterwards from them. He knew who was in the house, but not who was in the room (197). A careful study of Brower's testimony powerfully sustains Mrs. DeRoche. It must be admitted that there is apparent conflict between these two witnesses and the Rushes on this point. But Mr. Rush is quite uncertain. Probably neither of them appreciated the exactitude by which counsel, by leading questions, drove them to answer. It is quite as likely that they failed to distinguish between being in a house, being in the next room, going back and forth. But Mrs. Rush did say that she and her husband signed, not in April, but in the Winter, the very paper in question. So that it follows that a serious difference of statements as to what actually occurred required the judgment of a jury. Many other facts, besides those above mentioned, served to complicate the situation and rendered the truth uncertain.

7. Mrs. Myers said, (122) "they were all drunk when the will was made," that is when it was signed. On page 171 she says, "Mary, you withdraw the caveat and I will break the will, for, you know they were all drunk, and I will fix everything for you." Much significance is to be attached to this testimony. It appears that Mr. and Mrs. Myers often drank and often got drunk. Mrs.

Myers had arranged the meeting designfully, as the evidence abundantly shows. He had been drinking hard that day, as above pointed out. Brower, Rush, Hickey, who were not called, by the way, were convivial companions. It is not unlikely that intoxicants were freely used on the occasion. If so, of course the Rushes would not naturally admit it. But, if they were under the influence of drink, a fact quite probable, according to the methods and purposes of Mrs. Myers, they would not only fail to remember exactly what occurred, but would very naturally have disregarded the requirements of the law. The jury was fully justified in considering all these circumstances.

8. Then why would Mr. Myers, a man of experience and ability and judgment, it is alleged, choose such an occasion for acknowledging his will? He did not invite those people there, but his wife did. Surely Mrs. De-Roche is accurate about this circumstance. After they go there, Mrs. Myers (84) told her husband that these witnesses were coming there and the paper should be signed. He said, "that is so, I will" (84). "My step-mother said now is the time." Mr. Myers had been drinking pretty hard that day (84). She said, "now is the time to sign that" (85). He said to Hickey, "he has signed his death warrant" (87). Mrs. Myers was passing to and fro (87). She was seeing that "the damnable piece of work" was done. Had Charles Myers made his own will, he would have chosen another time, another place, and other witnesses. A document of such importance would have been in the hands of a lawyer.

9. But this very will was in the safe. Mrs. Myers knew where it was and what its provisions were. "She said she knew all about the wills, and she had things fixed up fine" (127). "She said she was a good while getting him, and she had a great deal of trouble and the children were bad to her, but she made her point and got him at last" (134). "She said she got the old bugger at last" (135). "He was a great deal better towards her than he used to be" (135). She had got him down. "They, the children, always tried to make trouble for her, but she got the best of them" (136). "She be God-damned if she wouldn't see that none of the children got a cent" (140). "She would be God-damned if they would ever get a cent, if she could stop it" (141). "Nevermind, John. You didn't get your farm, but James and me will see that you get it" (142). James was the executor and trustee. She says "don't you think Jim and me will get along, if Pop leaves things to us" (142). "She said she would knife him, if she couldn't have her own way" (156). "Annie, if you are cut, I will see that you never want." "Mary had cut herself for her impudence" (158). She would see that I got the cemetery lots (158), which was in the will. Mrs. Myers said there was \$500 in the will for the burial lot. This was the night Mr. Myers died (159, 160). She knew where the will was and what was in it. "Well, I have fixed Mary. I know she only gets \$50, and Jennie don't get much more," which was true according to the will (166, 167, 168). This was in 1896. "She said she was damned glad he was dead; now she would have her own way"

(173). When the safe was opened and the will read "she said there would be hell" (175). This was before the safe was opened and before the will was read. "She said there was three (wills), but she tore up two, but she didn't say when" (176). "She said she knew what she was about" (203). "She said if she heard any more she would wash her hands in his blood and dance on his dead body" (207). "She said she would be even with him" (207). "There is a secret drawer in 'Squire's desk and I think you know about it—there is a paper there I want" (230). "She said she hated him; that she was glad she was free" (231). "She said she had thrashed the old man at last, he has got to come under me. If he don't I will wash my hands in his blood and dance on his dead body" (232). "She said they (Myer's children) were a nest of vipers" (239). "She said she would make Mary come to her for money" (240) and she did. After the will was signed, she said, "I wonder what is in that will, and I am going to find out. I wonder if he cut the children off, as he said he would. He ought to have left Charlie more than the rest, because he is afflicted. I have seen the will and it is just as I thought it would be" (242). "How is it she hates my children so" (249). "She wouldn't leave father there with Mary and Jennie, because they could just wind him around their fingers" (250). "She swore to father that she would see that I wouldn't get one damned cent more than the law would allow me to have" (267). This was in 1882. "He wanted to "end his days in peace (269) with his son John." There were other wills (275, 276).

These bits of testimony cannot be expunged nor ignored. They have frightful import. They had to be analyzed and reasoned about. From them are deducible not only the inference of the domination of Mrs. Myers' purpose, hate, and cunning, but as well the inference that the will was not properly signed and attested. No honest will ever arose out of such condition of weakness, strength and venom. At least there is enough in all these circumstances combined to force the question of the due execution of the will to a jury.

#### AS TO UNDUE INFLUENCE.

The elements of the argument are found in the following citations and references to the evidence:

1. Esquire Myers loved his children to the very hour of his death (32, 36, 41, 45, 46, 49, 52, 53, 55, 57, 58, 59, 107, 108, 110, 130, 131, 132, 148, 149, 150, 153, 154, 157, 201, 211, 212, 214, 234, 243, 244, 247, 260, 261, 262, 263, 264, 268, 269, 270). There is nothing causeless. It would require an adequate cause to turn the natural course of a father's affection from his children. There is no proof that his children were hostile, indifferent or disobedient. On the contrary they were affectionate, industrious and attentive. Therefore, some unnatural and unusual influence worked a change sufficient to compel an affectionate father to refuse to divide his estate amongst the children he loved. Besides they were poor and needed his assistance.

2. Mrs. Myers hated Mr. Myers' children. She abused and maligned them. She endeavored to turn

their father against them. She succeeded. (33, 34, 36, 37, 38, 39, 41, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 64, 65, 66, 67, 72, 74, 75, 77, 111, 112, 113, 116, 126, 134, 135, 136, 137, 139, 140, 141, 151, 152, 153, 156, 160, 164, 165, 166, 167, 170, 174, 175, 177, 178, 186, 201, 202, 203, 204, 205, 206, 207, 231, 232, 233, 235, 236, 237, 238, 239, 240, 241, 242, 243, 249, 250, 251, 252, 265, 266, 267). The hate of Mrs. Myers towards these children would, provided she could control the testator, be adequate to explain his repudiation of the children he loved and the bestowal of his estate upon a woman, who hated and abused him as well as his children, and, upon a son whose paternity was in doubt.

3. She hated her husband and was glad he was dead (134, 135, 173, 207, 231). She swore at him (71). They quarreled (152, 155, 163, 204, 205, 206). She beat and threatened him (69, 70, 71, 72, 73, 78, 79, 89, 114, 157, 171, 172, 232). He was afraid of her (75, 76, 77), afraid she would poison him (77). His death was mysterious. He had a mark on his face. They had a fight in the bath room. Mrs. Myers told different stories about it. She was afraid to go in the bath room, was afraid of his ghost. She gave him laudanum and asked God to forgive her for what she had done that night. She said she would poison him (72, 78, 79, 90, 91, 125, 157, 171, 172, 231, 246). These horrible circumstances show the impossibility of Myers giving his estate to such a woman and her son to the exclusion of his children. They show the purpose, motive, wickedness of Mrs.

Myers. They show that she had control of him. They show that he would likely submit to her power and wish.

4. They were both addicted to drink. Esquire Myers declined in health and strength the latter years of his life. She would not let him out of her sight. It all tends to show that the unnatural will was hers, not his (35, 68, 115, 129, 133, 145, 147, 151, 163, 169, 187, 213, 214, 233, 245). He was an easy subject; she an efficient cause.

5. He was a Presbyterian (31); she a Catholic when she entered his home. Towards the latter years of his life he went to the Catholic Church (113). She was a religious bigot and disliked Mrs. Hamscher, because she did not attend the christening of Charlie, her son (165). They were married as Methodists (148), Myers and his first wife. Now, the fact that she so far controlled Myers as to make a Catholic of him and cause provisions for a Catholic Church in his will (359) goes far to indicate her sway.

6. Mrs. Myers brought about the marriage of the daughter Jennie and the daughter Mary (42, 43, 44, 45, 61, 62, 63). She feared the influence of these girls on their father. They could twist him around their fingers (250). She was even afraid that "Annie would put the devil in him" (207). It was part of her scheme to get these two daughters out of the house. She succeeded.

7. From the beginning she controlled Mr. Myers and studiously alienated him from his children by traducing

their character and motives (37, 38, 39, 41, 42, 43, 44, 45, 47, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63, 64, 65, 66, 67, 68, 72, 74, 75, 77, 126, 130, 136, 138, 139, 152, 153, 156, 165, 166, 173, 174, 202, 233, 234, 235, 236, 237, 238, 239, 241, 245, 249, 250, 251). She had a purpose in view. It was to secure the estate by turning their father against them. She succeeded.

8. She had only the one child, Charles, the plaintiff in error, after her marriage to Mr. Myers. It is a circumstance of significance. Either she could or could not have children by Myers. If she could not, it proves the paternity of Charles. It makes him the son of William Myers (see Rush's story, 281 et seq.). If she could and purposely avoided maternity, it proves her statement (169) that "she would never have had him, but she brought him into the world to take away from the others."

9. However ill-advised may have been the actions of Mary DeRoche and John Myers in abandoning the caveat against the will, the incident carries weight in this discussion (93, 94, 95, 99, 105, 120, 122, 168, 170, 171, 271, 272, 273, 274). She got on her knees and begged the withdrawal of the caveat (122). The story shows a tremendous concern on her part to avoid a contest in the Orphans' Court. Why? If the will had been honest, why should she care? If the bath room incident had no horror behind it, why should she care? Had the will been Charles Myers' and not hers, what difference would it make? She hated these children. Why beg

them to stop the exposure? She had at last got the best of them (136); why not let the matter go on? Were she guiltless, no harm could come to her or her son. Her dishonesty and treachery in procuring the subduction of the caveat only serve to confirm the belief that she made the will. She had said (204), "I don't know how much money he has, but whatever he had, he isn't going to do me out of it; he isn't going to do me." She must avoid a contest over the will in order to avoid being done out of his money.

10. Mr. Myers hated, as well as feared, his wife. He said (206) "I don't care what becomes of her. She has worried me to death." He was going to sell his house (205) in order to get rid of her. Then it was she declared she would wash her hands in his blood and dance on his dead body (207). He feared her as much as he disliked her. "He didn't know why he ever married such a woman" (213). This was while he intended to buy John a farm (214). "You see the condition she is in now" (247) said the old man on his death-bed. He had determined to undo the wrong in the will (247). "How is it she hates my children so" (249) he cried in agony. He wished as he was dying, (247) that she was with the devil, where the will belonged. In December before his death (263) he was bent on purchasing a farm for John. He wanted to spend his last days with his son (268) in peace (269) and he did not care whether his wife came or not. He wanted one room (269). "He was going to make a radical change" (269). It is not believable that this old man, so situated, torn and tossed, could have

given voluntarily his whole estate to the woman who hated him, whom he hated and feared, and to the son of such a woman, to one whose paternity he was not certain about, a fact which caused him so much anguish.

But, about this time he was taken mysteriously ill. The fight in the bath room occurred. The laudanum incident arose. "God forgive me, if he should die for what I have done this night!" "She was always afraid to go to the bath room" after that (171). "She was afraid that if the strain continued on she would go out of her mind, and she was afraid to go to the bath room at night" (231). John did not get his farm. The "radical change" was not made. The old man did not end his days in peace in that little room in his son's house. The caveat was withdrawn. And she was not done out of his money. It is idle to say that he might have done this, that, and the other. His powers had declined. He was in terror of his life. The secret forces which held together this tragic situation, which brought the witnesses to his house, which found expression in so many remarkable facts and circumstances cannot be disposed of as a matter of law. The jury heard and saw the witnesses. It was for them to decide what the truth was. And their finding should stand.

On the admissibility of plaintiff's evidence see Abbott's Trial Evidence, 2 Ed., pp. 156, 157, and cases cited.

Respectfully submitted,

MATTHEW JEFFERSON,  
JOHN W. WESCOTT,  
Attorneys for Defendant in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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John Myers,  
Plaintiff and Defendant in Error,

vs.

Charles G. Myers,  
Defendant and Plaintiff in Error.

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} In Ejectment  
} Writ of Error

The writ of error in this case is directed to the Cape May Circuit Court and brings up the record and testimony in an action of ejectment in which the title to the property in suit depended upon the validity of the will of Charles Myers, deceased.

At the trial of the cause plaintiff proved that Charles Myers died seized of the property in suit; that he was the son of the said decedent; established the names of the other children and heirs of law of said decedent, and that the land in suit was in possession of defendant, and then rested.

Defendant offered in evidence the will of the said Charles Myers and the decree of the Orphans' Court of Cape May County, admitting the same to probate, and rested.

Charles Myers was a Justice of the Peace and real estate dealer in Ocean City, where he had resided for about

twenty years prior to his death. He died in January, 1897, leaving a paper purporting to be his last will and testament, which was signed April 9th, 1895, about twenty-one months prior to his death. This will was found, after the testator's death, locked up in his safe, and no one knew the combination of the lock on the safe except testator's son James, who was named in the will as executor and trustee.

The will is holographic, and an examination of this instrument shows that testator possessed a high degree of intelligence and had considerable knowledge touching the preparation and publication of a will.

Testator transacted all his own business, and was a Justice of the Peace and real estate agent, and transacted the business of others down to the time of his death.

He left him surviving, his widow, Sallie G. Myers, to whom he was married about twenty years prior to his death, and by whom he had one child, Charles G. Myers, the defendant in this suit. The widow died about two years ago.

Testator had been married three times before, and he had two sets of children and some grandchildren and great grandchildren, as a result of these prior marriages. The names of the children by two prior marriages are as follows: Annie Hamscher, John Myers (the plaintiff), Jennie Wilson, Mary De Roche and James Myers.

It will be observed, that after leaving several legacies to his children and grandchildren and other benefactions, testator bequeathed to his widow, Sallie G. Myers, an annuity of \$1000 per annum, in lieu of her dower, a much smaller amount than she would have taken under intestacy, and he devised the residue of his estate to be held in trust until the defendant should attain the age of twenty-one

years, and further provided that in the event of the death of the defendant before arriving at the age of twenty-one, and the death of his mother, testator's entire estate should go to his other children, of which plaintiff was one. This son was a boy of about twelve years at the time of his father's death, and he had a nervous affliction which threatened to incapacitate him for life, and made his death before the age of twenty-one a probable event in the mind of testator. (See testimony of the Bill, 217.) He and Mary De Roche were the only children living home with testator when the will was made. The other children were all married and settled in life. James, an elder son and executor and trustee under the will, was a real estate broker in Philadelphia, and John, the plaintiff, was a farmer in Chester County, Pennsylvania.

After the death of testator, a caveat was filed by Mary De Roche against the probate of the will, and upon the taking of testimony the caveat was withdrawn in open Court and the will was admitted to probate on July 3d, 1897. The executor took out letters testamentary and settled the estate as executor according to law, and shortly after he had filed his final account as trustee preparatory to turning over the residuary estate to Charles G. Myers, in accordance with the provisions of the will, an effort was made by testator's children by the prior marriages to reinstate the caveat, and the Orphans' Court of Cape May County made an order reinstating the same. This litigation was carried to the Prerogative Court, which reversed (1 Rob. 561) the lower Court, the decree of which Court was affirmed by the Court of Errors and Appeals, June term, 1906, in an opinion by Mr. Justice Dixon. (See 64 Atl. Rep. 138.)

The action of ejectment was begun in January, 1905,

six years after testator's death, and the case was tried more than nine years after. Testator's capacity to make a will was not questioned, for the will itself in testator's own handwriting, and the circumstances under which it was signed, furnished evidence of unusual testamentary capacity.

The will in rebuttal was attacked by plaintiff upon these specific grounds:

FIRST—That testator was incapacitated by drunkenness.

SECOND—That it was not executed according to law, and

THIRD—That it was the product of undue influence exerted on the part of testator's wife, Sallie G. Myers, in the interest of her son, the defendant.

Upon the first point the only testimony was that of Mary De Roche (pages 67, 68, 69, printed notes), who declares that in the later years of his life testator was under the influence of liquor most all of the time; that he had uncontrollable spells of intoxication; that he was a regular, habitual drinker. Upon this point she is contradicted by many of the leading citizens of Ocean City, where testator lived and died, men who were accustomed to transact business with him every day, all of which testify that he was a man of unusual business capacity, and that they never saw him under the influence of drink. Mary De Roche herself does not attempt to say that he was intoxicated at the time of the execution of the will, and all of the subscribing witnesses testify unhesitatingly that he was sober and capable of the execution of the will.

Upon the second point three subscribing witnesses to the will testified in the case, namely John Brower, Jerome Rush and his wife, Mary T. Rush. The other subscribing

witness, Mary Davidson, was in Ireland at the time of the trial (p. 88). The testimony of Jerome Rush (pp. 294 and 295) and Mary T. Rush (pp. 313 and 316) leaves no doubt about the legality of the execution of the will. Witness Brower's recollection is not so clear as the others, but on Page 196 he testified to substantially all the requisite facts.

Upon the third point it was claimed by plaintiff that testator's wife had prejudiced him against his children by the prior marriages; that she evinced hatred for these children (except the plaintiff), and spoke ill of them to testator and to strangers, but the evidence shows that she was always friendly with plaintiff and never said anything against him. He was always a welcome guest at her home, and the testator at the time of his death was engaged in negotiations to purchase for and present him with a farm.

The testimony upon this point consists of declarations alleged to have been made by Sallie G. Myers, wife of testator, respecting two daughters (not parties to this suit), accusing them of unchastity, immorality, stubbornness and disobedience, and of quarrels between testator and the said Sallie G. Myers upon domestic subjects. No allegations are made of any attempt by Mrs. Myers or any other person to influence him in the testamentary disposition of his property, or in the making of his will.

The assignments of error relate in the main to these propositions:

(1) The Court admitted incompetent, irrelevant and hearsay evidence.

(2) The Court should have taken the case from the jury, because there was no question of fact requiring its action.

(3) The Court erred in charging the jury, and also erred in refusing to charge as requested by defendant.

The defendant has upward of thirty assignments of error, upon each of which they claim the right of the defendant to reversal. Some of them are not argued in this brief, because to do so and to cite the objectionable testimony admitted by the learned trial Judge would unduly enlarge the printed matter in the case. They believe those here fully argued are controlling, but do not abandon the others.

## ARGUMENT.

### FIRST.

Fourth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, thirty-first assignments of error.

### THE COURT ADMITTED INCOMPETENT, IRRELEVANT AND HEARSAY TESTIMONY.

The learned trial Judge admitted testimony to show the disposition of Mrs. Myers toward the children of testator and declarations respecting them without regard to its remoteness from the execution of the will or to the fact that her declarations were not brought home to testator.

MARY DE ROCHE (page 34) was permitted to testify against the objection of defendant, that at a period sixteen years before the execution of the will Sallie Myers had told their teacher at the convent school that "I (witness) was saucy and stubborn to them, that they would have to watch me and that my sister was very careless and frivolous and that she needed to be controlled and, in fact, she gave the teachers a very poor impression of us."

She was also permitted to testify (page 35) against the objections of defendant, that when Mrs. Myers visited herself and sister at the school at this time she was in an intoxicated condition. This was several years prior to the birth of defendant in this suit, and was never communicated to testator; and was intended to prejudice the jury against Mrs. Myers.

She was permitted to testify against the objections of defendant (page 64) that Mrs. Myers said to her brother James and to a Mr. Deegan that she, the witness, had had a miscarriage. That this was said to these parties in Philadelphia, not in the presence of the testator, and was never communicated to him.

She was also permitted to testify against the objections of defendant (page 68) that the said Sallie G. Myers was given up to habits of intoxication, and that she was under the influence of liquor most of the time.

She was also permitted to testify, against the objections of defendant (page 71), that Mrs. Myers was accustomed to habits of profanity; also (on page 72) she was permitted to testify to threats to do testator bodily injury respecting matters having no relation whatever to his will, which said threats were never communicated to testator.

She was permitted to testify, against the objections of defendant (page 90), that long after the execution of the will, about one week before testator's death, that Sallie Myers went to the bathroom, rinsed some glasses and said, "God forgive me for what I have done," and that there was a deep gash on testator's cheek bone as he lay in his coffin, and that Sallie Myers had told conflicting stories respecting the manner in which the mark was received (page 78); and that Mrs. Myers in the last illness of testator had procured her (page 91), the witness, to go to a

drug store to buy ten cents' worth of laudanum and ten cents' worth of castor oil, intending to convey the idea to the jury that Sallie Myers had murdered testator, and thereby prejudiced the jury against her.

The trial Judge also permitted Mary De Roche to testify, against the objections of defendant (page 93), as to her having filed a caveat against the will after the death of testator, and as to her reasons for having withdrawn the same.

She was also permitted to testify (page 95), that Mrs. Myers persuaded her to withdraw the caveat; that she, Mrs. Myers, would break the same, because the parties were all drunk at the time it was executed.

LILLIAN McGLATHERY (page 124) was permitted to testify that after the death of testator Mrs. Myers visited her (page 125) and asked that the witness be permitted to sleep with her, and gave as her reason that she, Mrs. Myers, was afraid of the testator, that he might haunt her. That she never done anything to him that he should haunt her, but that she was afraid of his ghost, and that she was afraid to sleep by herself; and that she at that time warned witness not to have anything to do with Mary De Roche or her sister Jennie. She said that they were bad and ran around with fast men (page 126).

MICHAEL DEEGAN was permitted to testify (page 134) that Mrs. Myers said to him that she was a good while getting Mr. Myers, that she had a great deal of trouble, that the children were bad to her, and that she got him at last; and also declared at the same time that testator's children had always tried to make trouble for her, but that she got the best of it.

He was also permitted to testify (page 136) as to the declaration made by Mrs. Myers to him and to James

Myers that Mary De Roche was in a family way, and also (page 141) that Mrs. Myers declared, after the death and burial of testator, that she "would be God-damned if the children would ever get a cent if she could stop it;" and also (page 142) that Mrs. Myers had said to John Myers, plaintiff in this case, "Never mind, John, you did not get your farm, but James and me will see that you do get it."

ANNIE HAMSCHER was permitted to testify (page 151) that Mrs. Myers treated her coolly when she visited her father with her children; also (page 157) that she saw marks upon the face of testator in his coffin and that Mrs. Myers had told conflicting stories respecting the manner in which he received the same.

IDA EPPENHEIMER (page 162) was permitted to testify that after testator's death she, Mrs. Myers, desired to sleep with her because she was afraid of testator's ghost, and that she was glad he was dead.

MARY DUEL, testified (page 300) that Sallie Myers told her that Jennie Wilson was pregnant, had a venereal disease, which statement was not made in the presence of testator and was never communicated to him.

MARY T. RUSH (page 252) was permitted to testify that Mrs. Myers took witness to see the baby of Jennie Wilson and said that it resembled someone in Ocean City, implying that it was a bastard child. This was not stated in the presence of testator.

JOHN MYERS, plaintiff, was permitted to testify (page 271) that after the death of the testator, Mrs. Myers made him certain promises and inducements not to join in the proceedings that had been instituted against the will. She made him a promise of a farm and five thousand dollars.

These are but individual instances and minute illustra-

tions of the error complained of. No single witness was called for the plaintiff whose testimony was not permeated with evidence of this kind. These witnesses were also all permitted to testify to the fact that Mrs. Myers was a Catholic, and this fact, together with the allegations as to her habits of intoxication and her habits of profanity and her alleged libelous statements made to three parties respecting testator's children, were relied upon by plaintiff to create a prejudice in the minds of the jury against the will.

## SECOND.

Eighth, ninth, tenth Assignments of Error.

THE TRIAL COURT ERRED IN CHARGING THE JURY AND IN REFUSING TO CHARGE THE REQUESTS SUBMITTED BY THE DEFENDANT.

THE COURT ERRED IN REFUSING TO CHARGE THE FIFTEENTH REQUEST, to wit:

"The plaintiff failed affirmatively to show that testator was incapacitated by drink at the time of the execution of the will, and therefore the jury is not warranted in finding that said testator was so incapacitated at the time of the execution of the will," should have been charged.

"The plaintiff introduced testimony to show that the testator was an habitual drunkard, that he was intoxicated frequently at or about the time the will was executed, and relied upon this testimony to show lack of testamentary power.

"Mary De Roche (pages 67, 68, 69; printed notes) declares that in the later years of his life testator was under the influence of liquor most all of the time; that he had

uncontrollable spells of intoxication; that he was a regular, habitual drinker. Upon this point she is contradicted by many of the leading citizens of Ocean City, where testator lived and died, men who were accustomed to transact business with him every day, all of whom testify that he was a man of unusual business capacity, and that they never saw him under the influence of drink. Mary De Roche herself does not attempt to say that he was intoxicated at the time of the execution of the will, and all of the subscribing witnesses testify unhesitatingly that he was sober and capable of the execution of the will.

The testimony of Mr. Rush (p. 294), Mrs. Rush (p. 313), and Mr. Brower (p. 187) shows that the testator, at the time of the execution of the will, was not under the influence of liquor; that he was in a proper condition to execute a will, and that his mental capacity to execute the will was not questioned.

In view of this testimony, and inasmuch as drunkenness is one of the grounds upon which the plaintiff sought to attack the validity of the will, it was highly important that the jury should have been instructed in the language of this request.

#### LAW.

"It is established by abundant authority, that inebriety, though long continued, . . . does not require proof of lucid intervals to give validity to the acts of the drunkard . . . consequently where habitual intoxication is shown there will be no presumption that incapacitating drunkenness existed at the time of making the will. Such

a condition at the time must affirmatively appear, or the presumption of capacity will prevail."

Koegel vs. Egner, 9 Dick. 627.

"It is not the law that a dissipated man cannot make a contract or execute a will nor that one who is in the habit of excessive indulgence in strong drink must be wholly free from its influence when performing such acts."

Fluck vs. Rea, 6 Dick 235.

Bannister vs. Jackson, 18 Stew. 702.

In Gilman's case, 19 Dick. 717, the Court found as a fact that the deceased (a female) took whisky in considerable quantities during the period of six months prior to the execution of the will, yet a decree admitting the will to probate was affirmed.

THE COURT ERRED IN REFUSING TO CHARGE THE TWENTIETH REQUEST (page 357), to wit:

"Unless a will carries upon its face clear marks of being the product of an unsound or undue influence, neither its injustice or unreasonableness ought to be the foundation of a verdict against it."

#### LAW.

That the unreasonableness of the testator's prejudices and unfairness in the disposition of his property will not of themselves avail to induce its repudiation by a Court or jury, is well settled and the jury should have been so instructed.

In re Glesspin, 11 C. E. Gr. 523.

Arnault vs. Arnault, 7 Dick. 801.

Middleditch vs. Williams, 18 Stew. 736.

THE COURT ALSO REFUSED TO CHARGE THE SEVENTEENTH REQUEST submitted by the defendant (p. 352), to wit:

"The attestation clause, stating perfectly all the requirements of the estate, is prima facie evidence of its contents, and the jury is not warranted in rejecting the instrument because the witnesses failed to remember the mode of its execution." This was error.

#### LAW.

"Where the attestation clause of a will is perfect, and one attesting witness testified in corroboration of its accuracy as to the due execution thereof, the testimony of the other attesting witness suggesting doubt, or his own want of recollection as to the transaction is not enough to deny probate of the will."

McCurdy vs. Neall, 15 Stew. 333.

"In *Allaire vs. Allaire*, 8 Vr. 312, it is laid down that if the attestation clause is perfect, and shows on its face that all the forms required by the statute have been complied with, and the subscribing witnesses when called, admit their signatures, and through defect of memory or any other reason, fail to testify to the due execution of the will, it may be established upon the presumption arising from the form of the attestation clause unless there be affirmative evidence given to disprove the statements. In *Tappen vs. Davidson*, 12 C. E. Gr. 459, it was held that if in such case it be merely doubtful from the evidence whether the statutory requisites have been complied with, the presumption arising from the attestation clause is not overcome."

McCurdy vs. Neall, *supra*. 335.

"A paper writing produced and offered for probate as a will is shown to have been written and signed by the testator. It has a complete attestation clause appended, also in the handwriting of the testator, and beneath that clause are the admitted signatures of two competent witnesses—HELD that a presumption of due execution is thereby raised which will require the admission of the paper to probate, unless overcome by strong and convincing evidence."

Bergan's case, 20 Dick. 681.

THE COURT ALSO ERRED IN CHARGING THE JURY (p. 351):

"Did Mrs. Myers, as claimed by plaintiff, by continued and persistent detraction of the children of Charles Myers by a former marriage, so poison and prejudice his mind against them that he gave them only a few legacies, etc."

In the first place, there was no evidence that Mrs. Myers ever defamed the plaintiff or his brother James or any of his grandchildren; secondly, there was no testimony that the statements made were untrue; thirdly, the statements, if made, did not prove that the will was the product of undue influence or the result of such statements; fourthly, such statements were the admissions of a legatee under the will and inadmissible; and fifthly, such statements were not binding upon the defendant.

### THIRD.

First, sixth and seventh Assignments of Error.

THE COURT SHOULD HAVE NONSUITED PLAINTIFF (p. 341), OR DIRECTED A VERDICT FOR DEFENDANT (p. 348), BECAUSE THE EVI-

DENCE FAILED TO ESTABLISH EITHER THAT TESTATOR WAS INTOXICATED OR THAT THE WILL WAS ILLEGALLY EXECUTED OR THE PRODUCT OF UNDUE INFLUENCE.

First—The question of intoxication has been previously disposed of, and there was no evidence on this point to submit to jury.

Second—The only evidence of the informal execution of the will was that of

MARY DE ROCHE (p. 85-86), who was not a subscribing witness to the will, was placed on the stand by plaintiff for the purpose of creating some doubt about its formal execution, yet a careful inspection of her testimony will show that the occurrences related by her happened on April 5th (p. 79-80), while the will is dated April 9th (p. 362). Besides, witness discloses no knowledge whatever regarding the execution of the will, and for aught that appears, it might have been a different occasion altogether, and it might have been a different transaction, because testator carried on a large business. In other words, our criticism is that the specific transaction is not identified; witness heard nothing said about a will, saw no paper and saw no signing of any paper. Besides, she testified to no facts or circumstances from which the jury could find any irregularity in the formal execution of the will. Especially in view of the fact that the will was proved in solemn form nine years before. Her testimony was simply to the effect that the witnesses were not in the room where the will was published by testator at the same time, but that they were in an adjoining room (sitting room), with the door open between—and she admitted upon cross-examination (p. 118) that upon a previous trial she had testified that

anybody in the sitting room was in a position to see what was going on in the dining room.

The three subscribing witnesses, Jerome S. Rush (pp. 294 and 295), Mary T. Rush (pp. 313-317), and John Brower (pp. 195-196), proved the legal execution of the will beyond any question.

In view of this situation the trial Judge should have resolved all the facts in favor of the due and proper execution of the will and so directed the jury. Cite instances:

#### LAW.

The statutes of New Jersey do not exact the requirement that the witnesses should sign in the presence of each other.

Opinion *Vic Reed Clark's Will*, 52 Atl. Rep. 222.

Where it is at most doubtful on the evidence whether the legal requirements of the execution of a will were all complied with respecting the presence of testator and witnesses, the presumptions arising from the statement of the attesting clause are not overcome.

*Toppen vs. Davidson*, 12 C. E. Green 459.

Third—There is no such proof of undue influence as would justify a Court in sustaining a verdict.

THERE IS NO ALLEGATION IN THE TESTIMONY THAT THE DEFENDANT EXERCISED ANY INFLUENCE OVER THE TESTATOR AT THE TIME OF MAKING THE WILL OR IN THE MAKING OF THE WILL.

But the plaintiff says, while I may not have produced evidence as to the exercise of undue influence at the time of the execution of the will, or any influence whatever over my father's testamentary intentions, yet I have produced evidence of statements made from 1890 to 1894, by Sallie G. Myers to the testator and to others in his presence, respecting my two half sisters; and I have also produced evidence as to statements made by her in 1896, after the execution of the will respecting these relatives, which was calculated to poison his mind against them, and which the jury might infer was the cause of their being discriminated against in the will. And while it is true that the evidence shows that my father left but a small provision in the will for me because he intended to provide for me outside of the will by the purchase of a farm, yet if I can show that any portion of this will was procured by undue influence the whole must fall, and I must therefore prevail in these proceedings.

But the answer to that is that such evidence as this is not sufficient to overthrow the will. Mere evidence as to statements alleged to have been made derogatory to two daughters of testator amount to nothing unless it is shown that such statements unduly influenced the testator and subjugated his will power, and that such effect continued up to the time of making the will, and operated to produce a will as the mind of the influencing party, and not as the mind of the testator.

In order that the Court may have before it a reference to the testimony so as to show the dates and substance of the alleged statements, an analysis of the testimony is here submitted.

While the testimony of all the plaintiff's witnesses, of

which there were eleven in number, covers over two hundred pages of printed matter, all of the evidence respecting the alleged undue influence is contained in the testimony of Mary De Roche, which begins on page 25 and ends on page 127. The other witnesses add no new facts on the subject of undue influence.

A careful analysis of this evidence shows that up to page 48 of the printed notes the testimony of Mary De Roche consists in statements made by her stepmother, Sallie G. Myers, to the testator respecting witnesses' sister, Jennie Wilson, generally without dates, but limited to the period between 1890 and the latter part of 1894, at which time Jennie was married and left home. It consists of various statements alleged to have been made by Mrs. Myers to testator, charging Jennie with improper connection with men; with improper personal habits, with laziness, stubbornness and insolence; and the further improbable statement that at one time when she was sick under the care of the family physician in testator's own home that she had had her ovaries removed.

It also further establishes the fact that in the latter part of 1894 Jennie was married against the wishes of her father, the testator, and in spite of his protests, and that he told her on the day she left her home to be married that the car bell that rang to take her out of Ocean City would sound her death knell to him. The said Jennie was not a party to this contest; she did not appear in Court to testify in the case, and has accepted the provisions of the will.

The testimony from page 49 to page 67 consists of statements alleged to have been made by Mrs. Myers to testator respecting the conduct of the witness, Mary De Roche. It consists of statements to the effect that witness was guilty of a solitary vice; that she was "man

crazy;" that she was also impudent; that she had improper connection with men and general statements derogatory to the character of witness, most of which were made to testator in the presence of witness. The statements are almost wholly without dates, but confined chiefly to the period between 1890 and 1894, when Jennie was married, and all of them prior in date to the time of making the will, which occurred in 1895.

The testimony also discloses the fact that while, during the years 1890 and 1894, these statements apparently made an impression upon testator, as shown by his treatment of Jennie and witness, yet shortly after Jennie married, and prior to the making of the will, his affection for witness returned, and his attitude toward her changed entirely; that he became tender and affectionate; that he bought her clothes, jewelry, bedroom suit and other articles, and from that time on until the time of his death he treated her with kindness, tenderness and consideration.

Her testimony, from page 67 to page 73, refers to testator's habits of intoxication, and to quarrels between Mrs. Myers and testator, none of which, however, have any possible relation to the subject matter of the will, and that all arose out of domestic affairs. Her testimony, from page 80 to page 89, has reference to the formal execution of the will, and her concluding testimony to events occurring after the death of testator.

The testimony of the other witnesses adds not a single fact upon the subject of undue influence. It consists of some corroboration of her evidence, and a mass of irrelevant statements respecting the conduct of Mrs. Myers, tending to prejudice her in the mind of the jury, uncommunicated to testator, and much of it respecting events happening after his death.

The entire testimony, therefore, respecting the alleged undue influence that was exercised by Mrs. Myers over the testator is confined to the pages before alluded to. It consists simply of fault-finding upon the part of Mrs. Myers against witness and her sister, Jennie Wilson, and general allegations of unchastity and impure personal habits, made between the period of 1890 and 1894; made chiefly in the presence of the witness herself and wholly destitute of any attempt to exercise any influence over him to procure the making of a will or of any suggestion to him of any desire on her part of the wisdom, justice or advisability of discriminating against them in the disposition of his estate. And we submit that it is far short of that degree of physical or moral coercion that destroys the free agency of the testator at the time the will was made, or that it substitutes the will of another for that of testator.

#### LAW.

The law upon this subject is so perfectly clear as to need no citation of authorities. The following cases clearly establish the doctrine of undue influence in this State, and show the necessity of the dominating mind being operative the very act of making the will that is the subject of attack.

“The influence which the law denounces as undue influence over a testator must be such as to destroy his free agency and amount to moral and physical coercion. It must be proved, moreover, that the act done was the result of such coercion—there must be a control exercised over the mind of the testator or an importunity practiced

which he cannot resist, or to which he yielded for the sake of peace.”

Trumbull vs. Gibbons, 2 Zab., 117, 136.  
 Haydock vs. Haddock, 6 Stewart's Eq., 494.  
 Dumont vs. Dumont, 46 N. J. Equity, 223,  
 236.

The exertion of a wife's influence over her husband is no reason for impeaching a will made in her favor, even to the exclusion of the residue of his family.

Small vs. Small, 4 Me., 220; 16 Amer. Dec.,  
 253.

Mere proof that a testator's wife urged upon him the propriety of leaving his property to her does not establish undue influence.

Hughes vs. Murtha, 32 N. J. Eq., 288.

If no evidence be offered of any influence exerted upon the testator at or about the time of making the will, nor of any fraud, misrepresentation or constraint, it is error to submit to the jury the question whether any undue influence had been exerted.

Eckert vs. Flowey, 43 Pa. 51, 46.

When the party upon whom is charged the exercise of undue influence derives inconsiderable or no benefit from the will there must be evidence of such direct influence used in its making as to destroy the free agency of the testator.

Boyd vs. Boyd, 66 Pa. St. 283.

As before stated, there is no evidence to show any derogatory statements made to testator about the plaintiff in this case. The evidence is quite conclusive that the plaintiff, John Myers, understood that his father was to provide for him outside of the will. His own testimony, beginning on page 259, shows that his father always had a most affectionate regard for him (page 262), shows that a short time prior to his death he sent for him at Cape May County, took him to a farm, examined it and offered to purchase the property for him, fix it all up complete and buy him a thousand hens to start him in business; but the contemplated provision by the father did not suit plaintiff. He was afraid his wife would not like the neighborhood, and he declined to accept the bounty, hoping for something better. Just one week prior to his death, the last act of the testator, as testified to by plaintiff (page 263) was his negotiation to purchase another farm for plaintiff, which plan was prevented only by his death.

These facts are corroborated by nearly all of the witnesses in the case. So that we have therefore in this case this unique state of facts, unprecedented we believe, in this State or in any other state, in an attempt to overthrow a will on the ground of undue influence in its execution.

First—There existed no confidential relations between the testator and the person upon whom is charged the exercise of undue influence.

Second—The person alleged to have exercised the undue influence is herself seriously discriminated against by the provisions of the will.

Third—The person seeking to overthrow the will was a favorite of the testator, and no word derogatory to him was ever uttered against him, the purpose of the testa-

tor is clearly established, to provide for him outside of the will.

Fourth—Testator was a man of remarkable mental soundness and firmness of character. The will was prepared and written by himself without consultation or advice with anybody, and is consistent with the general purpose of the testator, as evinced by the whole testimony of this case.

It is apparent, therefore, that the evidence upon the whole case establishes the fact that the will in question was made by the testator with the full possession of all of his faculties; that its construction both mental and manual indicates a sound and sober mind and absence of all controlling influence; that it was written by him in his own hand and was in his personal custody and possession for a period of two years before his death; that he could at any time have altered or changed it or made a new will without the knowledge of his wife or of any other person; and the fact that he did not do so is legal proof of the fact that his intention was to leave his property according to the scheme originated by himself.

His son Charles, the defendant, was a delicate child. He did not expect him to survive the age of twenty-one years; and if he did so survive there was every indication at the time of the execution of the will of his being a hopeless cripple for life (testimony of Alonzo Bell, page 217). The provisions of the will are that in the event of his death during his minority and the death of his mother, that the entire estate is to go to and be enjoyed by the testator's immediate family, including the plaintiff in this case.

Jennie married against his wishes and according to Mary De Roche's testimony (pages 43 and 44) he told her at the time she left his home that "The car bell which

rang to take her out of Ocean City sounded her death knell to him." He had already expended large sums on Mary and Jennie for their education. (Testimony of Bell, p. 218.) His other children he intended to provide for outside of the will by purchasing property for them in his lifetime. (Testimony of Annie Hamscher, page 154.)

The testimony of nearly all the witnesses shows these declarations made by him. Immediately before his death he sent for his son John, the plaintiff, to look at a farm that he intended to purchase for him. John was not suited by the contemplated purchase, and declined to accept it, and arrangements were in progress at the time of his death for the purchase of another (page 262), as before set forth. These declarations are all established by the mouths of the plaintiff's own witnesses, and are confirmed by the defendant's testimony, and they evince beyond a doubt that he had full knowledge of the provisions of the will, and he intended that the provisions therein made should stand, and his other children should be provided for in his lifetime. He died after a brief illness, suddenly and unexpectedly, before these purposes had been accomplished.

There is no testimony anywhere in this case that Mrs. Myers endeavored in any way to dissuade him from these contemplated gifts to his children. His purpose was known to her and was prevented only by his death.

Another significant fact conclusively showing that the statements alleged to have been made by Mrs. Myers to testator against his daughters, Mary and Jennie, had no effect in producing this will is found in the fact that his son, James Myers, against whom no statements of any kind were ever made, and in whom he reposed especial confidence, was made by the testator, executor of his will and testamentary guardian of his son, Charles, defendant in

this case, is treated almost exactly like the other children. He leaves him the sum of \$2000 and any interest that he, the testator, might have in the fixtures at the real estate office, at Eighth street and Germantown avenue, Philadelphia, a very insignificant and unsubstantial sum compared with the value of the estate.

These uncontroverted facts establish fully the theory that the testator's plan of distribution was one of his own creation; that to his afflicted and sickly young child, who was scarcely expected to survive his majority, he left the substantial portion of his estate in the event of his surviving the age of 21, with directions over to his other children in the event of the death of his son Charles, defendant in this suit. These provisions for the delicate child he intended to secure absolutely by the provisions of the will; for his other children he intended to provide by the purchase and gift of property in his lifetime and that this intent was frustrated only by his sudden death.

This theory is in accordance with all the facts in the case, fully established by the evidence, and explains any apparent hardship that appears on the face of the will.

These facts, therefore, so fully established, together with the total absence of any testimony that could by legal construction reach the standard required by the laws of this State to establish undue influence, we submit, made it the duty of the learned trial Judge to have granted the request of defendant (page 348) to direct a verdict for defendant, which is the subject of the first, sixth and seventh assignments of error.

## LAW.

This position is amply sustained by the following cases:

"When, upon the uncontroverted facts, a plaintiff is not entitled to recover, and a verdict in his favor would be set aside, it is the duty of the Court to non-suit."

McCormick vs. Standard Oil Co., 31 Vr. 245.

"The power of a Judge to order a non-suit or direct a verdict, does not depend upon the absence of all testimony in opposition to the case in favor of which the ruling is made, but the test is whether there is any testimony from which the jury can reasonably conclude that the facts sought to be proved are established."

Baldwin vs. Shannon, 14 Vr. 597.

Lippincott vs. Royal Arcanum, 35 Vr. 311.

Boylen vs. Meeker, supra. page 278.

"If no evidence be offered of any influence exerted upon the testator at or about the time of making the will, nor of any fraud, misrepresentation or constraint, it is error to submit to the jury the question whether any undue influence had been exerted.

Eckert vs. Flowery, 43 Pa. St. 46.

These assignments of error not argued in extenso relate chiefly to the incompetency of Mary De Roche and Sallie R. G. Myers, legatees under the will to impeach the will.

This principle is established by

Caulfield vs. Ball, 4 Hals. Ch. 582.

The rule is that admissions of one legatee or devisee is not admissible except against the devisee who makes them.

Hayes vs. Bunkan, 51 Ind. 130.

Shailer vs. Bemstead, 99 Mass. 112.

Clarke vs. Morrison, 25 Pa. St. 453.

Other assignments not argued relate to declarations by testator before and after making the will, as to undue influence, because they are hearsay evidence, where there is no question of mental incapacity involved.

This principle is fully established by

Rusling vs. Rusling, 36 N. J. Eq. 603.

Middleditch vs. Williams, 45 N. J. Eq. 726.

Justice to Sallie Myers, wife of testator, who was dead at the time of the trial and therefore unable to testify, requires us to say that the stories related by Mary De Roche, her stepdaughter, as to the scandalous statements alleged to have been made by Sallie Myers to testator, are, in the judgment of the attorneys for defendant, amply refuted by the conduct of Mary De Roche toward her stepmother subsequent to the death of the testator and for a long period of time thereafter. The evidence discloses the fact that she accepted the provisions of the will executing her release to the executor; that she wrote affectionate letters to her stepmother for a considerable period of time after the death of her father, in which she thanked her for her bounty, her generosity and for her continued acts of kindness, in which she speaks of the good-heartedness of the said Sallie Myers toward her; and lauds her for her

devoted and affectionate conduct and assistance (pages 268 and 269, printed notes). And while it could and should have no influence over the Court in this case, yet defense of the memory of a woman so assailed, surely justifies us in saying that in a previous trial in the same Court, involving exactly the same questions, when Mrs. Myers was alive, she denied the whole story in toto.

It is therefore respectfully submitted that the judgment should be reversed.

CARROW AND KRAFT,  
WILLIAM T. BOYLE and  
R. O. MOON (of Philadelphia Bar),  
Counsel for Plaintiff in Error.

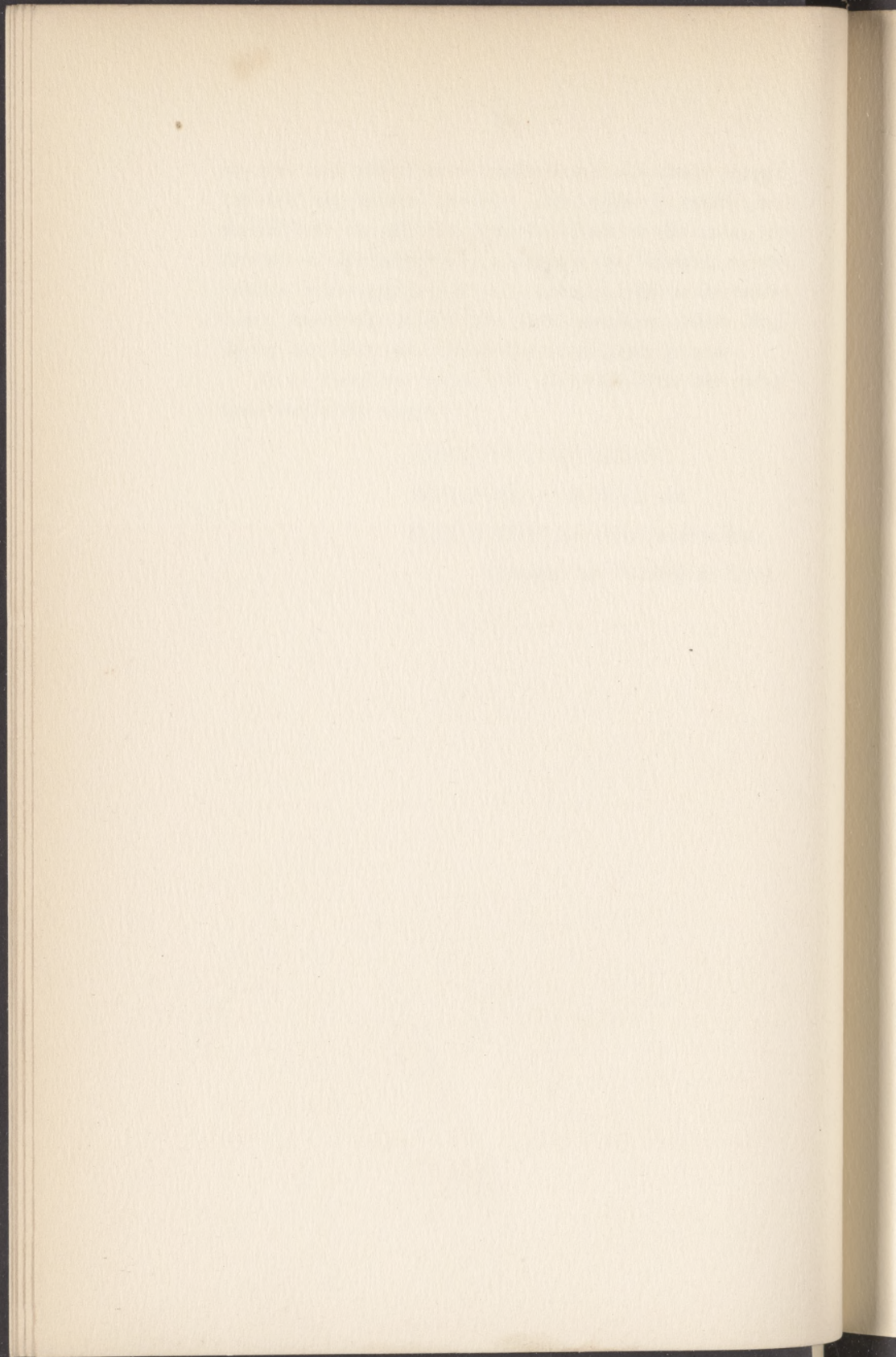
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SECTION AND HEAVY

WILLIAM T. BOYD

W. O. BOYD, of Lincoln, Pa.

Lawyer for Thomas A. Boy







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# New Jersey Court of Errors and Appeals

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JOHN MYERS,

Plaintiff and Defendant in Error,

VS

CHARLES G. MYERS,

Defendant and Plaintiff in Error.

ON ERROR  
TO  
CAPE MAY  
COUNTY CIRCUIT  
COURT.

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## STATE OF THE CASE.

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WILLIAM T. BOYLE,

HOWARD CARROW,

R. O. MOON, of Phila. Bar.

For Plaintiff in error.

MATTHEW JEFFERSON,

JOHN W. WESTCOTT,

For Defendant in error.

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## WRIT OF ERROR.

(Seal) The State of New Jersey to Allen  
B. Endicott, Esq., Judge of our Circuit  
Court at Cape May Court House, in  
and for the County of Cape May,

### GREETING:

Forasmuch as in the record and pro- 10  
ceedings, and also in the giving of judgment in a certain  
plaint, which was in our said Circuit Court, holden at Cape  
May Court House, in and for the County of Cape May,  
before you, between John Myers, plaintiff, and Charles G.  
Myers, defendant, in an action in ejection, manifest  
error hath intervened to the great damage of the said  
defendant, as it is said; we being willing that the error, if  
any there be, should, in due manner be corrected, and full  
and speedy justice done to the parties aforesaid in that  
behalf, do command you distinctly and openly, to send 20  
under your seal, the record and proceedings aforesaid,  
with all things touching the same, to our Judges of our  
Court of Errors and Appeals in the last resort in all causes  
at Trenton, on the 17th day of December next, together  
with this writ, that the record and proceedings aforesaid,  
being inspected we may cause to be done thereupon, for  
correcting that error, what of right, and according to the  
law and custom of the State of New Jersey ought to be  
done.

Witness, William J. Magie, Chancellor, and President 30  
Judge of our said Court of Errors and Appeals, at Tren-  
ton aforesaid the twenty-eighth day of November, A. D.  
nineteen hundred and six.

S. D. DICKINSON,  
Clerk.

HOWARD CARROW,  
WILLIAM T. BOYLE,  
Attorneys.

## RETURN.

The answer of Allen B. Endicott, Esq., Judge of the Cape May County Circuit Court, within named, the record and proceedings of the plaint, whereof mention is within made with all things touching the same, I certify to the Court of Errors and Appeals at the day and year within contained, in a certain schedule to this writ annexed as I am commanded.

ALLEN B. ENDICOTT,

10

Judge.

## SUMMONS.

New Jersey, SS.      The State of New Jersey to the  
(Seal)                      Sheriff of the County of Cape May,

## GREETING:

We command you to summon Charles Myers to appear before our Circuit Court, at Cape May Court House, on the thirtieth day of January instant, to answer unto John F. Myers, who demands possession of the equal undivided one-eighth part of two certain tracts  
20 of land, with the appurtenances, and the premises thereon erected, situate, lying and being in the City of Ocean City, in the County of Cape May and State of New Jersey, more particularly described as follows:—

No. 1. BEGINNING at a point in the northwesterly line of Bay avenue at a distance of nineteen feet southwesterly from the southwesterly line of Seventh street and runs (1) southwesterly in the line of Bay avenue, four hundred and eighty-one feet, more or less, to a point  
30 in the northwesterly line of Eighth street, if extended; thence (2) northwesterly at right angles to said Bay avenue, and in the easterly line of Eighth street, six hundred and forty-seven and four-tenths feet to the exterior wharf line established by the Commissioners appointed under the authority of the Act entitled "An Act to ascertain the right of the State and the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State," approved April 11th, A. D. 1864, and the supplements thereto; thence (3) northeast-

erly along the said exterior wharf line, as shown on the map attached to the deed from the Riparian Commissioners to the Ocean City Association, five hundred and five feet and five-tenths of a foot, more or less, to the southwesterly line of Seventh street; thence (4) southeasterly in the southwesterly line of Seventh street, if extended, six hundred and eighteen feet, more or less, to a point in the southwesterly line of Parker Miller et al. lands; thence (5) in said line south twenty-six degrees and forty minutes east (in 1880) eighty-five feet and one-tenth of a foot to the place of beginning. 10

No. 2. BEGINNING on the northwesterly side of Asbury avenue and the southwesterly line of Tenth street, containing in front or breadth on said Asbury avenue, forty feet, and of that width extending in length or depth northwesterly between lines parallel with said Tenth street, one hundred feet to a fifteen feet wide street.

And in default of his appearing and defending this action judgment will be entered against him, and he will be turned out of possession of said lands. 20

And you have then and there this writ.

Witness, James H. Nixon, Judge of said Court, at Cape May Court House, the thirteenth day of January, nineteen hundred and three.

JULIUS WAY,  
Clerk.

JOHN W. WESCOTT,  
MATTHEW JEFFERSON,  
Attorneys,

(Endorsed.)

CAPE MAY COUNTY CIRCUIT COURT. 30

John F. Myers

vs.

Charles Myers

In Ejectment

Summons.

Summons Retble. January 30, 1903.

JOHN W. WESCOTT,  
MATTHEW JEFFERSON,  
Attorneys.

## DECLARATION.

Cape May County Circuit Court, of the thirtieth day of January, nineteen hundred and three.

Cape May County, ss.

John F. Myers, the plaintiff in this suit, by John W. Wescott and Matthew Jefferson, his attorneys, demands of Charles Myers, the defendant therein, the possession of an equal undivided one-eighth part of two certain tracts of land, with the appurtenances, and the premises thereon  
 10 erected, situate, lying and being in the City of Ocean City, in the County of Cape May and State of New Jersey, more particularly described as follows:

No. 1. BEGINNING at a point in the northwesterly line of Bay avenue at a distance of nineteen feet southwesterly from the southwesterly line of Seventh street and runs (1) southwesterly in the line of Bay avenue, four hundred and eighty-one feet, more or less, to a point in the northwesterly line of Eighth street, if extended; thence  
 (2) northwesterly at right angles to said Bay avenue, and  
 20 in the easterly line of Eighth street, six hundred and forty-seven and four-tenths feet to the exterior wharf line established by the Commissioners appointed under the authority of the act entitled "An Act to ascertain the right of the State and the Riparian Owners in the lands lying under the waters of the Bay of New York and elsewhere in this State," approved April 11th, A. D. 1864 and the supplements thereto; thence (3) northeasterly along said exterior wharf line, as shown on the map attached to the  
 30 deed from the Riparian Commissioners to the Ocean City Association, five hundred and five feet and five-tenths of a foot, more or less, to the southwesterly line of Seventh street; thence (4) southeasterly in the southwesterly line of Seventh street, if extended, six hundred and eighteen feet, more or less, to a point in the southwesterly line of Parker Miller et al. lands; thence (5) in said line south twenty-six degrees and forty minutes east (in 1880) eighty-five feet and one-tenth of a foot to the place of beginning.

No. 2. BEGINNING on the northwesterly side of Asbury avenue and the southwesterly line of Tenth street, containing in front or breadth on the said Asbury avenue, forty feet and of that width extending in length or depth northwesterly between lines parallel with said Tenth street, one hundred feet to a fifteen-feet wide street; and also the sum of ten thousand dollars for mesne profits and damages.

And the plaintiff says that his right to the possession of the same accrued on the fifth day of January, eighteen hundred and ninety-seven, and that the defendant wrongfully deprives him of the possession thereof, to his damage ten thousand dollars.

JOHN W. WESCOTT,  
MATTHEW JEFFERSON,  
Attorneys for Plaintiff.

Duly served January 21st, 1903, by handing a copy of this writ to an adult member of the family at the dwelling of the defendant and showing them the original. 20  
(Endorsed.)

SAMUEL E. EWING,  
Sheriff.

(Endorsed.) 920.

CAPE MAY COUNTY CIRCUIT COURT.

John F. Myers  
vs.

Charles Myers  
In Ejectment 30  
Summons and  
Declaration.

Returnable Jan. 30, 1903.

JOHN W. WESCOTT,  
MATTHEW JEFFERSON,  
Attorneys.

Take Notice. That unless you appear and plead or demur to the within declaration, within thirty days after the

service of a copy thereof upon you, judgment by default will be entered against you, according to the statute in such case made and provided.

JOHN W. WESCOTT,  
MATTHEW JEFFERSON,  
Attorneys for Plaintiff.

Original.

Sheriff Fees 4.12.

Filed Jan. 30, 1903.

10

JULIUS WAY,  
Clerk.

PLEA.

CAPE MAY COUNTY CIRCUIT COURT.

Charles Myers

ads

John F. Myers

In Ejectment

Plea.

20

And the said Charles G. Myers, by Howard Carrow, his attorney, appears and defends this action, and says he is not guilty of the injury whereof the said John F. Myers complains in his declaration, nor of any part thereof, and of this he puts himself upon the country.

HOWARD CARROW,  
Attorney of Defendant.

30 State of New Jersey

SS.

County of Camden.

Charles G. Myers, being duly sworn according to law, on his oath, deposes and says, that he is the defendant in the above plea mentioned; that said plea is not filed for the purpose of delay, but that he, this defendant, verily believes that he has a just and legal defense to said action on the merits of the case.

Sworn and subscribed before me this 30th day of January, 1903.

CHARLES G. MYERS.  
HENRY HOLLINSHED, JR.,  
(Off.)  
(L.S.) Notary Public of New Jersey.  
(Endorsed.)

CAPE MAY COUNTY CIRCUIT COURT.

Charles Myers  
ads 10

John F. Myers  
In Ejectment  
Plea.

HOWARD CARROW,  
Attorney.

Consent is hereby given to filing this plea as of Feb. 9,  
A. D. 1903.

JOHN W. WESCOTT,  
MATTHEW JEFFERSON,  
Attorneys for Plaintiff. 20

Filed May 12, 1903.

JULIUS WAY,  
Clerk.

NOTICE OF TRIAL.

CAPE MAY COUNTY CIRCUIT COURT.

John Myers  
vs.

Charles G. Myers  
In Ejectment.

Take notice of trial in the above stated cause, before the  
Circuit Court to be holden at Cape May C. H. in and for 30  
the County of Cape May on the 28th day of April, 1903, at  
ten o'clock in the forenoon of that day, or as soon there-  
after as the same can be heard by the Court.

Dated April 1, 1903.

Yours ob't servant,

JOHN W. WESCOTT,  
MATTHEW JEFFERSON,  
Attorneys for Plaintiff.

To HOWARD CARROW, Esq.,  
 Attorney of Defendant.  
 (Endorsed.)

CAPE MAY COUNTY CIRCUIT COURT.

John F. Myers

vs.

Charles G. Myers  
 In Ejectment  
 Notice of Trial.

10 Original Process retble. Jan. 30, 1903.  
 Issue joined. 190.

JOHN W. WESCOTT,  
 MATTHEW JEFFERSON,  
 Attorneys.

Service of within notice of trial hereby acknowledged.

HOWARD CARROW,  
 Attorney of Defendant.

Dated April 1, 1903.

20 Filed April 6, 1903.

JULIUS WAY,  
 Clerk.

ORDER OF REFERENCE.

April Term, 1903.

CAPE MAY COUNTY CIRCUIT COURT.

John Myers

vs.

Charles G. Myers  
 In Ejectment.

30 Referred to James H. Nixon for trial and afterward  
 postponed for the term.

NOTICE OF TRIAL.

CAPE MAY COUNTY CIRCUIT COURT.

John F. Myers

vs.

Charles G. Myers  
 In Ejectment.

Take notice of trial, in the above stated cause, before the Circuit Court to be holden at Cape May Court House, in and for the County of Cape May, on the fourth Tuesday of September, at ten o'clock in the forenoon of that day or as soon thereafter as the same can be heard by the Court.

Dated September 1, 1903.

Your ob't servant,

JOHN W. WESCOTT,  
MATTHEW JEFFERSON, 10  
Attorneys of Plaintiff.

To HOWARD CARROW, Esq.  
Attorney of Defendant.

(Endorsed.)

CAPE MAY COUNTY CIRCUIT COURT.

John F. Myers

vs.

Charles G. Myers

In Ejectment

Notice of Trial. 20

Process retble. Jan. 30, 1903.

JOHN W. WESCOTT,  
MATTHEW JEFFERSON,  
Attorneys.

Service of within notice of trial hereby acknowledged.  
HOWARD CARROW,  
Attorney of Defendant.

Dated September 2, 1903.

Filed September 11, 1903.

JULIUS WAY, 30  
Clerk.

September Term, Wednesday, 23, 1903.

CAPE MAY COUNTY CIRCUIT COURT.

John F. Myers

vs.

Charles G. Myers

In Ejectment.

By agreement of counsel this case is postponed for the term.

CAPE MAY COUNTY CIRCUIT COURT.

John F. Myers

vs.

Charles G. Myers

Costs on Adjournment.

Vacation and September term, 1903.

	Atty.	Clk.	Crt.	Als.
10 Attorney's Term fee	.80			
Drawing Costs, notice, copy tax- ing and filing,		1.12		
Notice of trial, filing, etc.,	.65	.08		
10 Domestic Witnesses, 1 day,				5.00
2 Foreign " " 1 "				10.00
Motion for trial,	1.25	.08		
Stenographer's fee,				1.00
		<u>1.28</u>		<u>16.00</u>
20 Costs taxed at nineteen dollars and ninety-eight cents.				
Attorney,				2.70
Clerk,				1.28
Court,				
Als,				<u>16.00</u>
Total,				19.98

JULIUS WAY,  
Clerk.

NOTICE OF TRIAL.

30 CAPE MAY COUNTY CIRCUIT COURT.

John Myers

vs.

Charles G. Myers

In Ejectment.

Take notice of trial in the above stated cause before the Circuit Court to be holden at Cape May Court House in and for the County of Cape May on the twelfth day of December, at ten o'clock in the forenoon of

that day or as soon thereafter as the same can be heard  
by the Court.

Dated Nov. 21st, 1905.

Your ob't Servant,

MATTHEW JEFFERSON,  
JOHN W. WESCOTT,  
Attorney of Plaintiff.

To HOWARD CARROW, Esq.,  
Attorney of Defendant.

(Endorsed.)

10

CAPE MAY COUNTY CIRCUIT COURT.

John Myers  
vs.

Charles G. Myers  
In Ejectment  
Notice of Trial.

O. P. R., 9.5.'02.

MATTHEW JEFFERSON,  
JOHN W. WESCOTT.

Attorneys. 20

Service of within notice of trial hereby acknowledged.

H. CARROW,  
Attorney of Defendant.

Dated 190 .  
Filed Dec. 1, 1905.

JULIUS WAY,  
Clerk.

December Term, 1905.

CAPE MAY COUNTY CIRCUIT COURT.

John Myers  
vs. 30

Charles G. Myers  
In Ejectment.

It is agreed by counsel that this case go off for the term.

NOTICE OF TRIAL.

John Myers  
vs.

Charles G. Myers  
In Ejectment.

Take notice of trial in the above stated cause before the Circuit Court to be holden at Cape May Court House, in and for the County of Cape May, on the eleventh day of September, at ten o'clock in the forenoon of that day, or as soon thereafter as the same can be heard by the Court.

Dated Aug. 15th, 1906.

Your ob't Servant,

MATTHEW JEFFERSON,  
JOHN W. WESCOTT,

Attorney of Plaintiff.

10

To HOWARD CARROW, Esq.,  
Attorney of Defendant.

(Endorsed.)

CAPE MAY COUNTY CIRCUIT COURT.

John Myers

vs.

Charles G. Myers

In Ejectment

Notice of Trial.

20

O. P. R. 1.31.1903.

MATTHEW JEFFERSON,

Attorney.

Service of within notice of trial hereby acknowledged.

HOWARD CARROW,

Attorney of Defendant.

Dated August 22, 1906.

Filed September 1, 1906.

JULIUS WAY,

Clerk.

30

SUBPOENA.

Cape May County, SS.; The State of New Jersey, to Jerome S. Rush (Court Seal) and Mrs. M. T. Rush, GREETING. We command you and each of you that laying aside all and singular businesses and excuses you and each of you be and appear in your proper person, before our Circuit Court to be holden at Cape May Court House in and for the County of Cape May, on Thursday

the 4th day of Oct., at 10.30 in the forenoon of the same day, to testify all and singular what you know in a certain cause now pending and undetermined in our said Circuit Court, between John Myers, plaintiff and Charles G. Myers, defendant, in an action on the part of the defendant, and this you are in no wise to omit, under the penalty of one hundred dollars. Witness Allen B. Endicott, Esquire, of our said Circuit Court at Cape May Court House, the 3rd day of Oct., one thousand nine hundred and six.

Attorney.

JULIUS WAY, 10  
Clerk.

(Endorsed.)

CAPE MAY COUNTY CIRCUIT COURT.

John Myers

vs.

Charles G. Myers

In Ejectment.

Subpoena to Testify.

For Jerome S. Rush, Mary T. Rush.

Witness for defendant.

Returnable Oct. 4, 1906, at 10.30 o'clock A. M.

20

I hereby return this subpoena duly served.

LESLIE CHAMPION,  
Constable.

Filed Oct. 4, 1906.

JULIUS WAY,  
Clerk.

TRIAL.

September Term, 1906.

At a Circuit Court held at Cape May Court House, N. J., on Oct. 2, 1906, present at 11 A. M., Hon. Allen B. Endicott, Circuit Court Judge; William H. Bright, Sheriff; Julius Way, Clerk.

John Myers  
Plaintiff,

vs.

Charles G. Myers,

Defendant,

In Ejectment.

The parties to this suit being ready for trial, it is ordered by the Court that the Sheriff return a panel of jurors and that the trial do now come on. Whereupon the following jurors' names were called, appeared and were severally duly sworn, to wit:

## JURY.

1. William Brammell
2. Frank Hebentha
- 10 3. John Chambers
4. William Sheppard
5. Leverett Smith
6. John S. Cresse
7. Mark Loper
8. Daniel Focer
9. Leonard Hand
10. Reuben Reiner.
11. Ralph Norton
12. Harry Kates

20 Matthew Jefferson,  
Attorney for Plaintiff.  
Evidence for Plaintiff.

Howard Carrow,  
Attorney for Defendant.  
Evidence for Defendant.

1. Mary Deroche.
2. Lillian McGalaterhy.

Court adjourned at 4 P. M. until to-morrow, then called present before 11 A. M. (Oct. 3, '06.)

3. Mr. Diggin.
4. Annie Hamscher.
- 30 5. Ida Eppenheimer.
6. John Brower.
7. Mrs. Gould.
8. William Hagel.
9. Mary Rush.

Court adjourned at 4 P. M. until to-morrow, Oct. 4, at 9 A. M., then called present as before.

10. John Myers.
11. Jerome Rush.

## EVIDENCE FOR DEFENDANT.

1. Edward Sutton.
2. Carlos Corson.
3. Joseph Champion.
4. Richard Townsend.
5. N. Diamond.
6. James K. Morey.
7. William Bridgewater.
8. Henry Clouting.
9. Joseph I. Scull.
10. Lewis M. Cresse.
11. R. B. Stites.
12. Frank Champion.
13. Linneaus Townsend.
14. Alonzo Bell.
15. Prof. Thomas.

10

Court adjourned at 4 P. M. until to-morrow (Oct. 5) at 9 A. M., then called present as before.

The evidence being closed up and the arguments of counsel being summed up, the Court charged the jury and they retired to their room to consider of their verdict, with Walter Hurrell, a Constable duly sworn to attend them, after which the said jury returned into Court attended by said Constable, and being called all appeared and being asked, say they have agreed upon their verdict and by their foreman, William Brammell, do say they find the said defendant guilty and so say they all. 20

Therefore, it is considered that the said plaintiff do recover the possession of the said premises in the declaration described and also the sum of ninety-one dollars and ninety-six cents (\$91.96) costs of suit. 30

And the said defendant in mercy, &c.

CAPE MAY COUNTY CIRCUIT COURT.

John Myers

vs.

Charles G. Myers

In Ejectment.

Costs on Judgment after verdict.  
 Vacation and September term, 1906.

	Atty.	Clk.	Crt.	Als.
Retaining fee,	1.17	.08		
Drawing Summons, sealing service, return, &c.,	.34	.48	1.00	
Motion for return of sums, Attorney, Clerk and Sheriff,	1.25	.26		4.12
Clerk entering motion,		.10		
10 Motion for rules and clerk's fees,	2.05	.36		
Drawing declaration, copy & filing,	2.25	.08		
Notice on declaration to plead within thirty days, copy and filing,	.45	.08		
Copy of declaration and schedule to serve and service,	.75			
Drawing affidavit of service, copy jurat and filing,	.21	.08		.20
20 Search for affidavit of merits,		.12		
Search for plea,		.12		
Term fee,	.80			
Notice of trial, 3 copies service and filing,	1.95	.24		
2 subpoena, 10 tickets & service,		1.70		3.50
4 domestic witnesses 3 days,				6.00
3 foreign witnesses 3 days & mileage,				21.00
30 3 foreign witnesses 2 days & mileage,				18.00
Drawing venire, sealing service return,	.60	.48		1.00
Motion for trial and clerk's fee,	1.25	.18		
Motion for return of panel and clerk's fee,	1.25	.18		
Breviat & copy Judge's and Attorney's trial fee,	2.54			2.00
Stenographer's fees, 3 terms,				3.00

Clerk and crier calling and swearing jury, crier calling action,	.20			
Clerk and crier calling and swearing 26 witnesses and exhibits,	1.56			
Clerk and crier swearing constable to attend jury and constable's fee and order,	.26			
Calling jury and taking and entering verdict,	.08			
Motion for judgment nisi rule entering and copying,	1.25	.18		10
Motion for judgment final and clerk's fee,	2.05	.18		
Entering, recording and signing judgment,	1.08	.50		
Attorney's term fee,	.80			
Drawing costs, copy taxing and filing,	1.12			
Drawing, fi. fa. de bon. et. ter., sealing and recording, &c.,	1.48			
	<u>20.96</u>	<u>10.68</u>	<u>3.50</u>	<u>56.82</u>
				20

Costs taxed at ninety-one dollars and ninety-six cents.

Attorney,	20.96
Clerk,	10.68
Court,	3.50
Als.,	56.82
Total,	<u>91.96</u>

JULIUS WAY,  
Clerk.

JUDGMENT.

CAPE MAY COUNTY CIRCUIT COURT. 30

John Myers,  
Plaintiff,

vs.

Charles G. Myers,  
Defendant.

On verdict of Jury.  
In Ejectment.

MATTHEW JEFFERSON,  
Attorney for Plaintiff.

and now to wit, On this fifth day of October, A. D. nineteen hundred and six, judgment is rendered in the above stated case in said Circuit Court in favor of John Myers, the above named plaintiff and against Charles G. Myers, defendant, and the recovery is the possession of the premises, as in the plaintiff's declaration described and also the sum of ninety-one dollars and ninety-six cents costs of suit. \$91.96.

And the said defendant in mercy, &c.

10 Judgment entered and signed this 5th day of October, A. D. 1906.

STATE OF NEW JERSEY, CAPE MAY COUNTY, SS.

I, JULIUS WAY, Clerk of the Circuit Court in and for the said County of Cape May, in the State of New Jersey do hereby certify that the above or foregoing is a true copy of the proceedings and judgment in a certain  
20 cause wherein John Myers is plaintiff and Charles G. Myers is defendant, with all things touching and concerning the same, as the same remains of record in my office and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my  
(Seal) hand and affixed the seal of the said Court, at Cape May Court House, this  
30 FOURTH day of December, A. D. nineteen hundred and six (1906).

JULIUS WAY,  
Clerk.

## CAPE MAY COUNTY CIRCUIT COURT.

JOHN MYERS,  
Plaintiff,

vs.

CHARLES G. MYERS,  
Defendant.

IN EJECTMENT.

CAPE MAY COURT HOUSE, N. J., OCT. 2, 1906.

## TESTIMONY.

10

Before HON ALLEN B. ENDICOTT, Judge, and a Jury.

## APPEARANCES.

For Plaintiff— JOHN W. WESCOTT and MATTHEW JEFFERSON, ESQS.

For Defendant—HOWARD CARROW, REUBEN O. MOON and WILLIAM T. BOYLE, ESQS.

MR. WESCOTT: May your Honor please, counsel on the other side agreed to waive the necessity of calling proof to establish the formal parts of this case, and they admit that the land described in the declaration was the land of Charles Myers, deceased, at the time of his death; furthermore, that he left surviving him the following heirs: Annie Hamscher, John Myers, Jennie Wilson, Mary De Roche, Charles G. Myers, James Myers and the children of William Myers, deceased, Mabel, Jennie and Charles, and the children of Georgiana Hamscher are Joseph Hamscher and Mabel Biggar; and further that the defendant is in possession of the property described in the declaration.

MR. BOYLE: I wonder whether you have all the heirs. I noticed in the second petition before Judge Voorhees that there was a different set of heirs that weren't heard of before. Are they in this statement?

MR. WESCOTT: Yes, the Hamscher children. There are two sets of Hamscher children. Whoever are the names, if I have omitted any or named them incorrectly, they are to be added by your side. I will make a brief opening to the jury. Gentlemen: This case is in form, an ejectment, a suit in ejectment, which is a suit to try the title out and

get possession of a piece of property located in Ocean City, but really it is a Will contest. Under the facts already put on record as admitted facts in this case, the plaintiff would be entitled to a verdict, and his Honor would direct you to find a verdict in favor of the plaintiff if the proof stopped right here, because we have shown Charles Myers owned this property and he left certain heirs and by the operation of the law that property would descend to those heirs. The other side will offer in evidence the last Will or a Will of Charles Myers which causes this property to go otherwise than it would go but for that Will; and if there was no other proof after this Will was offered in evidence, then the Judge would have to order you to find a verdict in favor of the defendant; but we attack this Will on two grounds; first, that it was never properly executed, as the law of the state demands—the law requires that in the execution of every Will that the man who makes the Will should publish and declare that to be his last Will and Testament in the presence of two witnesses who were there together at the same time and witnessed his publication to that Will. Now, we will show that that wasn't done in this

20 case, and if we convince you that that is the truth then, of course, your verdict would be in favor of the plaintiff, and the property would go as though there had been no Will.

The further ground upon which we contest this will is what is usually called undue influence. Every man who makes a Will must make the Will himself. If some one else intervenes with overmastering influence and dominating purpose and mind and makes that man make a Will that he otherwise wouldn't make, then it is not his Will, and we shall furnish proof here to show that this Will is not the

30 Will of Charles Myers at all, but the Will of his wife, Sallie R. Myers. The proof will be very extensive and voluminous on this point, and if we shall convince you that Mr. Myers didn't express his mind in that Will, but it is the mind of his wife, then your verdict would be in favor of the plaintiffs. Now, with that explanation, we will proceed with the proof.

Mr. Boyle: We will have to offer the Will.

Mr. Wescott: Yes, that is so; you offer the Will now.

Mr. Carrow: We don't offer anything until you get through.

Mr. Boyle: Under the agreement, we have consented to the preliminary facts.

Mr. Carrow: We have consented that this man died seized of certain property and had certain heirs, and this man is one of them.

Mr. Boyle: Then they rest, as I understand?

Mr. Wescott: I supposed we were going to waive all formalities; simply introduce the Will and then go on with the contest.

Mr. Carrow: For the purpose of the record, when you conclude your prima facie case, we want you to rest. 10

Mr. Wescott: Upon your admission of the facts as stated, we rest.

PLAINTIFF RESTS.

MOTION FOR NONSUIT.

Mr. Carrow: If the Court please, plaintiff having rested at this point, I desire to move that the plaintiff be nonsuited, upon the ground that no right of recovery has been shown in this case; and another ground that I wish to urge is that this plaintiff, along with some other interested parties, filed a petition in the Orphans' Court of this county in which they prayed that the decree of the Orphans' Court admitting the Will to probate, be vacated and set aside, and a caveat reinstated; that a rule to show cause was allowed on that petition and the testimony was taken on the rule to show cause in the Orphans' Court, and an order was made in the Orphans' Court vacating the decree admitting the Will to probate. An appeal was taken from the Orphans' Court to the Ordinary, and a decree was made by the Ordinary reversing the action of the Orphans' Court in disturbing the probate of the Will. An appeal was taken by this plaintiff from the decision of the Ordinary to the Court of Errors and Appeals, where the whole matter was fully and exhaustively threshed out by that tribunal, and recently, I think, one of the last judicial acts of Justice Dixon of the Court of Errors and Appeals, was to file an opinion affirming the decision of the Ordinary, and, of course, reversing the Orphans' Court. Now, there was an attack upon the Will in that manner in those tribunals, and I think the learned Judge here states briefly in one or two paragraphs all of the facts, which facts, I 20 30

think, show that these very questions were involved in that controversy. They set forth in their petition that the Will was not executed according to the Statute.

The Court: Let me understand. Was the Will first admitted by the Surrogate to probate?

Mr. Carrow: No. I am giving you the facts probably not in their chronological order. The Will was filed in the usual way with the Surrogate. A caveat was filed by one of the children of the testator, and after one or two postponements the matter came up in open Court right here.

10 The Court: The Orphans' Court?

Mr. Carrow: The Orphans' Court, on the caveat, and the caveat was withdrawn in open Court and the Will was proved by the subscribing witnesses in solemn form in open Court, four subscribing witnesses. Now, that was in '97. The Will was made in '95 and the testator lived two years afterwards. He wrote his own Will. We have the Will here. It is in his handwriting, and on July 3rd, I think it was, '97, the Will was formally admitted to probate in open Court in the presence of this plaintiff and his

20 counsel. The matter rested there until two or three years after that. One of those heirs brought an action of ejectment and recovered a verdict in this county before Judge Nixon. That was carried to the Supreme Court and sent back, and then this suit was instituted about the time the petition was filed, the petition which undertakes to open up the proceedings in the caveat. Now, it seems to me, everything has been adjudicated, but we have a situation; we have this remarkable situation—

The Court: Now, this petition was filed in the Orphans' Court?

30 Mr. Carrow: Filed in the Orphans' Court.

The Court: And the petition prayed what?

Mr. Carrow: To reinstate the caveat.

The Court: What was the decision of the Orphans' Court?

Mr. Carrow: There was a decree doing that.

The Court: Reinstating the caveat?

Mr. Carrow: Reinstating the caveat. Then there was an appeal to the Ordinary, and the Court of Appeals sustained the Ordinary, and now this Will stands as a valid

instrument, absolutely valid instrument, and this plaintiff, it seems to me, is bound and precluded from any further contest in regard to its validity by the action of the Court of Appeals which he invoked himself. You see he threshed it out from the Ordinary to the Court of Errors and Appeals.

The Court: The Court of Errors and Appeals simply dealt with the question of procedure, I take it, from what you have stated.

Mr. Carrow: Well?

10

The Court: The question of proper execution of the Will and undue influence has never yet been determined.

Mr. Carrow: Yes, all of these questions were in this opinion. I will just briefly state that the petition alleged fraud and undue influence and irregularity in the execution of the instrument. Now, under this decree, James qualified as executor and administrator of the estate; his final account was settled and allowed by the Court in '98. In January, 1903, Hamscher, a grandson of the testator, residing in Pennsylvania, presented the Orphans' Court a 20 petition, stating that no citation had been issued to him; also reciting that (Reads.) On appeal to the Prerogative Court that order was reversed and the petitioner now appeals to this Court against such reversal; so you see the same question was raised in that proceeding. Now, my point is that this plaintiff, having been a participant in that proceeding which involved the attack on the Will upon the ground of irregularity in its execution, is now estopped upon the doctrine of res adjudicata, raising the same question as he does now. 30

The Court: As I understand, these proceedings resulted in nothing but a refusal to disturb the usual probate of the Will?

Mr. Wescott: That is right.

The Court: And the issue now sought to be raised has not been adjudicated; that so far as it is disclosed, it is a question of procedure which was being litigated in the Prerogative Court and in the Court of Errors and Appeals.

Mr. Carrow: I raised another point. My first ground is that nothing has been shown to entitle the plaintiff to a recovery in this case. He has merely shown that a man by the name of Myers died in this county, seized of an estate described in the proceedings, and that he left children and that the plaintiff is one of those children. Now, they must, it seems to me, prove more. They must prove that he died intestate.

The Court: Do I understand the admission to be that 10 certain persons, plaintiffs here, are the heirs of the decedent, Charles Myers, was it?

Mr. Wescott: That is admitted.

The Court: And that the defendants are in possession?

Mr. Boyle: I don't think that the language is "heirs," grandchildren, because that might exclude us from the controversy.

The Court: I suppose that the purpose was to admit a prima facie case. If that hasn't been done, let us have it settled first. Is it stated that the defendant is one of the 20 heirs?

Mr. Carrow: One of them.

The Court: Now, the admission is that he did leave certain heirs, naming them, and that the defendants are in possession. It should be proven or admitted that the plaintiff is one of those heirs.

Mr. Carrow: That is admitted.

Mr. Wescott: Mr. Jefferson has stated in writing the correct names of the heirs and it was agreed, if your Honor will recall—

30 The Court: They may be handed to the stenographer. The motion to nonsuit is refused.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Mr. Carrow: Do I understand that plaintiff's counsel admit that this paper purports to be the last Will and Tes-

tament of Charles Myers, deceased, and that it was admitted to probate in the Orphans' Court of this county?

Mr. Wescott: Yes.

Mr. Carrow: And that formal proof by the Surrogate and production of the order admitting the Will to probate is waived?

Mr. Wescott: The production of the order. I wouldn't admit the proof.

Mr. Carrow: What is that?

Mr. Wescott: I wouldn't admit any proof. The Will 10 speaks for itself, and I will admit that that Will purports to be the last Will of Charles Myers, and that as such it was probated by the Surrogate.

Mr. Carrow: The Orphans' Court, not Surrogate.

Mr. Wescott: The Orphans' Court, I believe it was.

Mr. Carrow: I then offer the Will and the order of the Orphans' Court admitting it to probate.

(Will marked Exhibit P 1. Order marked Exhibit P 2.)

Mr. Boyle: In addition to producing the original order 20 and the Will, I produce the proofs that were taken at the time of the hearing by the stenographer in the presence of the Court; the proofs upon which the Court made the order; that is the offer.

Mr. Wescott: We object to that.

The Court: What do you mean by the proofs? The stenographer's reports?

Mr. Boyle: Yes, the stenographer's reports. The only proof that would be taken in any contest.

The Court: The offer is overruled. 30

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

DEFENDANT RESTS.

Adjourned to 1.20 P. M.

MARY DE ROCHE, sworn for the plaintiff.

## DIRECT EXAMINATION BY MR. WESCOTT:

Ques. What was your father's name?

Ans. Charles Myers.

Ques. When did he die?

Ans. He died January, 1897, January 5th, 1897.

By the Court:

Ques. Is this the daughter?

Mr. Wescott: Yes.

By Mr. Wescott:

10 Ques. When did Mr. Myers die?

Ans. January 5th, 1897.

Ques. Where did he live at that time?

Ans. He lived in Ocean City, New Jersey.

Ques. Did you know Sallie R. Myers?

Ans. Yes, sir, I did.

Ques. Or Griffin?

Ans. Yes, sir.

Ques. What is your first recollection of her?

20 a Ans. She came to my father's house when I was quite a child, and she came to take—well, she came to my father's house—

Mr. Carrow: We object to this as irrelevant.

The Court: The Court cannot tell at this time whether it is or not. Who is the person inquired about?

Mr. Wescott: Sallie R. Myers.

The Court: That is the widow?

Mr. Carrow: She is dead.

The Court: The person who is alleged to have used the  
30 undue influence?

Mr. Wescott: Yes.

The Court: It is allowed.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Where was your father living at that time?

Ans. 2356 North Eighth Street, Philadelphia.

Ques. What did she do there?

(Objected to.)

Ans. Came to take care as nurse of a sick daughter.

(Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. She came to take care of a sick daughter, to be seamstress and sort of general housekeeper. 10

Ques. What was her name?

Ans. Her name was Sallie Griffin.

Ques. What was the name of your sister whom she came to take care of?

Ans. Laura Myers.

Ques. Did she live or die?

Ans. She died.

Ques. After her death what did Sallie Griffin do?

Ans. Sallie Griffin still remained in the house. 20

Ques. For how long a time?

Ans. She continued there.

Ques. And did she live with your father after that time down to the time of his death?

Ans. Yes.

(Objected to as irrelevant.)

(Objection overruled.)

(Whereupon the defendant, by his counsel prays a bill of exceptions, which is hereby allowed and sealed accordingly.) 30

ALLEN B. ENDICOTT, J. (Seal)

Ques. When you were living at that house in Philadelphia did she give you any directions as to how she should be addressed?

Ans. Yes, sir.

(Objected to as irrelevant.)

(Objection overruled.)

(Whereupon the defendant, by his counsel prays a bill

of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What?

Ans. She told my sister Jennie and I to go on an errand to a neighbor near by and told us to say that mamma had sent us.

The Court: Hold on. Now she is relating something this lady is said to have told her sister?

10 The Witness: Yes.

The Court: It does not appear that that is competent, that this lady heard it.

By Mr. Wescott:

Ques. Did she say that to your sister and yourself?

Ans. My sister and I.

Mr. Carrow: I ask that that be stricken out as irrelevant testimony, and the question also. It tends to develop irrelevant testimony. We might as well, in order to save as much time as possible, meet the position fully. We take  
20 the ground, if your Honor please, that anything that Sallie Myers did or said would be irrelevant in this case. She is now undertaking to narrate circumstances that occurred years ago in Philadelphia; because these things evidently occurred before the testator married Sallie Myers. She left a son, who is now twenty-five years of age, and things that occurred a quarter of a century ago could not possibly have any material bearing upon the controversy now arising upon a will that was made in 1895, eleven years ago.

Mr. Wescott: If your Honor wishes to hear any reply  
30 about this I state that this is an important circumstance, because it shows, first, the relations between Sallie Myers and this lady's father. She went there as a seamstress and to do general housework. She remained from that time on with Mr. Myers, and that early she began to show her dominating influence in the family by requiring these two young ladies to call her mother, when she was not their mother. Now that is the beginning and all these circumstances are proper, it seems to me, to go to the jury in

order that they may measure the type of character and the power of the character of this woman in that family; and it will be traced from that down to the last moment. This is a contest of a will, and this evidence goes to the question of the undue influence of this woman in bringing about this will, and this is the beginning of the stream, at its very source, and in my judgment perfectly legitimate evidence for that purpose.

The Court: I am not certain that her declaration would be competent under any circumstances, that is, to this witness, unless it pointed directly at the influence in the making of the will. 10

Mr. Wescott: Whatever this woman said or did in this family which tends to show her purpose, her type of character and power of her character, is adequate, provided it leads up to the final result, to wit. the manufacture of this will. Whatever she did or said, in my judgment, is evidence. If it is not, of course the case will have to drop right here. If we cannot prove anything that this woman did or said, of course we cannot make out our case. 20

Mr. Carrow: I do not see how you are going to invalidate the will of Charles Myers by showing what his wife, when she was living at his house as a seamstress, or any other time, did, unless that influence was exerted at the time and had direct reference to the execution of this will.

Mr. Wescott: Of course, I do not want to unnecessarily worry your Honor.

The Court: It is not worrying me. It is an interesting question to me. 30

Mr. Wescott: In a case of this sort the latitude is wide. It is a question whether or not this woman's dominant hand and mind ended in this will. Now whatever she did in the circle of that family and whatever she said in the circle of that family, the family being the subject matter of her operation and influence—it could not have been anywhere else—is admissible in this case, provided it is so concatenated as to lead inevitably to the conclusion that

she dominated Myers, dominated this will, for the purpose of diverting this estate to herself and her son. Presumably her conduct there, she having been hired by Mr. Myers, was known to Mr. Myers. It occurred within the family. Her influence began that early, and it is a most remarkable circumstance that a woman introduced into the house as a seamstress and housekeeper, long before she became this man's wife, if she ever did, should so far dominate the custom and practice of that family as to make these little children call her mother. It shows at the very outset that she had a commanding and controlling influence.

The Court: When was this?

Ques. When was it?

Ans. About twenty-five years ago.

The Court: It seems to me very remote.

Mr. Wescott: Of course it is a long way back, but that does not rob it of its imperative force in the evolution of what ended in this will.

20 The Court: I will strike out the testimony and you may note an exception, Judge, as to this declaration made to this witness and her sister.

(Exception noted for plaintiff.)

Ques. Now, when did you leave Philadelphia, do you remember?

Ans. When I was seven and a half years old I left Philadelphia.

Ques. How old are you now?

Ans. Thirty years old.

30 Ques. And from Philadelphia where did you go?

Ans. I went to a convent in Chestnut Hill, Philadelphia.

Ques. How long were you there?

Ans. I was there nine years.

Ques. Who put you in the convent?

Mr. Carrow: I object because the testimony would be irrelevant.

The Court: I will take this testimony. Note an exception and proceed.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Who put you in the convent?

Ans. My stepmother put me in the convent.

Ques. Mrs. Myers?

Ans. Yes, sir.

Ques. What was your religion? 10

Mr. Carrow: I object. Now it seems to me it is immaterial, the movements of this witness. She is not the plaintiff in this case. I say her movements, where she was educated, what her religion was, are absolutely immaterial and cannot be made relevant in this controversy.

The Court: The testimony may be taken.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.) 20

ALLEN B. ENDICOTT, J. (Seal)

Ans. I was christened in the Presbyterian Church in Philadelphia.

Ques. What was the religion of your father and mother?

Ans. Presbyterian.

(Objected to.)

(Objection overruled.)

Ques. What was the religion of Mrs. Myers, Sallie R. 30  
Myers?

Ans. She was a Catholic.

Ques. Did she visit you while you were in the convent?

Ans. Yes, sir; she came there.

Ques. Often or—

Ans. Not very often; about ten or eleven times.

Ques. Did your father visit you there?

Ans. Yes, sir; he came quite often.

Ques. Well, who was with you there?

Ans. My sister Jennie.

Ques. Did she stay there the same length of time you did?

Ans. Yes, sir.

Ques. You were there together about seven years?

Ans. About nine years.

Ques. Nine years?

Ans. Yes, sir.

10 Ques. What was the treatment of your father towards you and your sister while you were in this convent?

Ans. Very kind to us and affectionate to us when he came to see us; interested in us and seemed proud of us, that we were getting along nicely; brought us things when he came to see us. Whatever I happened to write for he brought it to us, presents of different things of different kinds.

Ques. Kept your wants all supplied, did he?

Ans. Yes, sir.

20 Ques. Now, while you were there did Mrs. Myers—how did she treat you?

Mr. Carrow: I object, because it is irrelevant.

The Court: I will take the testimony.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

30 Ans. Well, she didn't treat us very well. She was rather glad that we were not home.

Mr. Carrow: I object.

The Court: Yes.

Ques. Well, now, why do you say that?

Mr. Carrow: Is that stricken out?

The Court: Yes.

Ans. I don't think she wanted the care of us.

Mr. Carrow: I object and ask that that be stricken out.

Ques. What makes you think that she didn't want the care of you? What did she do or say?

Ans. She talked to our teacher about us.

Mr. Carrow: I object to anything that Mrs. Myers said or did.

The Court: You are speaking now about something when you were not present? Did you hear her talking 10 about you to the teacher?

Ans. Yes.

Mr. Carrow: I object to anything that Mrs. Myers said or did.

The Court: I suppose they may show the disposition of Mrs. Myers towards the heirs.

Mr. Carrow: But this was not Mrs. Myers' will.

The Court: No, that is your position; but I understand 20 that the other side claim that it is.

Ques. Let me, before you answer that question, take your mind back a moment to another. Was your father in these years a very religious man?

Ans. Yes, sir.

Ques. And attended church regularly?

Ans. He went to church with my mother most every Sunday, the Presbyterian church.

Ques. Now, going back to the time that Mrs. Myers came to see you there at the school, tell us if you recollect 30 what she said to the teachers about you or your sister, either or both of you?

Ans. Well, she said I was—

By Mr. Carrow:

Ques. Was this in your presence?

Ans. I heard her say it. She said that I was saucy and stubborn to them; they would have to watch me; and that

my sister was very careless and frivolous, and she needed to be controlled, in fact, she gave the teachers a very poor impression of us.

Ques. During the times that she visited you there in the school did she bring you anything?

Ans. No, sir.

Ques. Never brought you anything?

Ans. Never brought us anything.

Ques. Did you notice anything about her condition when  
10 she came there to visit you?

(Objected to as irrelevant.)

The Court: I don't know what this is leading to.

Mr. Wescott: Well, the argument is this, or will be finally when all the proof is in. We have started now to trace this woman in this family. We have got her from the time she entered this household, although not a mother in any sense of the word to these children, directing them to call her mother. We have got her sending these chil-  
20 dren to this convent. The father now, a very religious man, is evincing his natural affection for these children, not only by frequent visits, by caring for them as a father and exhibiting his fondness and affection for them. We have this woman going there a few times, not taking them anything, but on the contrary telling their teachers that they were unsuitable characters, or what is in effect that. Now, I propose to show that on some occasions when she went to this convent she was intoxicated. That was many years ago. Your Honor will very well see that up to  
30 this time now the situation is quite a remarkable one. I will follow it and show that it was the habit of this woman to get not only drunk, but beastly drunk, and abuse these children and abuse Mr. Myers, assaulting him, threatening his life, making various statements to him. Do I need now to say that such a woman could by any possibility in the natural course of events have control of this estate against an affectionate father? Now, there is the argument. You see the question of undue influence is a question of infer-

ences to be drawn from facts. All relations and all facts relating to these relations between this woman and Mr. Myers and these children are germane; and this very argument will be made when the evidence is finished, that Mr. Myers could by no possibility have been controlled by such a woman, but, on the other hand, he would have been hostile to such a woman and refused to comply with her wishes; he would have refused to give over to her and her son this large estate. Now, inasmuch as he did, the only inference can be that it was due to some powerful influence. Of course, we will adduce facts to show what that powerful influence was; but the type of character we must develop; all its relations to this girl and her husband we must develop. One of them is her habit of intoxication, thus early, before she had criticised these girls to their teacher and had sent them to call her mother; she had exhibited herself as a drunkard. It is on that general ground, that general view, that I think the evidence is proper.

The Court: I will take the testimony.

20

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What was her condition when she came to the school?

Ans. She was intoxicated.

Ques. More than once?

Ans. I only remember the once. She was always under a certain amount of liquor.

Ques. When she came to the school?

Ans. Yes, sir.

Ques. Now, coming to your graduation from this school, did you graduate there?

Ans. No, sir; my sister did.

Ques. You did not?

Ans. No, sir.

30

Ques. Coming to the graduation of your sister, who attended that graduation?

Ans. My father was there at the graduation.

Ques. And was Mrs. Myers there?

Ans. No, sir; she was not.

Ques. Were you there?

Ans. Yes, sir.

Ques. What did your father do or say at that time about you girls there in the school that showed his feeling towards you?

10 Ans. He was very proud of us in school. When sister graduated he gave her jewelry as a present for honors, and was very proud and introduced her to everybody as his daughter that had just graduated; took us home from there and was generally proud of us.

Ques. Where did he take you from, or where did he take you to from that place?

Ans. He took us to Ocean City, New Jersey.

Ques. Where?

20 Ans. Ocean City, New Jersey.

Ques. Did you live there ever afterwards?

Ans. Yes, sir.

Ques. How long did your sister Jennie live there?

Ans. She lived there four years.

Ques. Do you remember the year that she left Ocean City?

Ans. 1894.

Ques. Where does she live now?

Ans. She lives in New York City now.

30 Ques. Now, while she was living in Ocean City, your sister Jennie, did you hear Mrs. Myers say anything to your father about Jennie?

Ans. Yes, sir; I did, very frequently.

Ques. Now tell us what you heard her say to your father about your sister Jennie?

Ans. Well, every time she was—every month, she was a nervous wreck, and every time she was sick my step-mother would tell her father something else was wrong with her.

Ques. Did she say what?

Ans. She said she was in the family way—all such talk as that to him.

Ques. How long was that before she left home?

Ans. That was about 1893.

Ques. And do you recall anything else that she said to your father about your sister Jennie?

Ans. Well, she found fault with her, said she was crazy after the men, met men out, went to Philadelphia to meet them; and one time she was sick and she told my father 10 she had an operation performed.

Ques. An operation for what?

Ans. She had her ovaries taken out, she said.

Ques. Did she afterwards become, after she was married, have children?

Ans. Yes, sir; she has four children.

Ques. Do you recollect her saying to your father about your sister's personal habits?

Ans. Yes, sir; she spoke of that, too.

Ques. What was it she said.

20

Ans. She said she was subject to personal habits that were very scandalous to us.

Ques. It is something you don't care to repeat?

Ans. Well, it is not very nice.

Ques. Did it relate to her sexual nature?

Ans. Yes, sir.

Ques. Do you remember any incident about horseback riding?

Ans. My father told a gentleman to take her out horseback riding, that it would be good for her health; she 30 was not very strong. So he did, and my stepmother told my father that this gentleman and her had improper relations with each other.

Ques. Well, how frequently did these things occur, Mrs. De Roche?

Ans. Most all the time she was fault-finding. She didn't give but very little peace at all. She was always finding fault with us.

Ques. Did you notice what effect she had upon your father by these statements towards your sister Jennie?

Ans. Yes, sir; naturally it made him very cross and disagreeable to her and irritable. He hadn't much time for her.

Ques. Do you remember his saying anything to her about what she would have to do?

Ans. He said she would have to leave home, couldn't stay home, if she didn't behave herself better than that.

10 Ques. Do you remember any incident about a man by the name of Fisher?

Ans. Yes, sir.

Ques. What was that?

Ans. That was the gentleman that my father told to take her out horseback riding.

Ques. During the years before your sister Jennie left home did you hear your father and Mrs. Myers in their room talking about your sister Jennie?

Ans. Yes, sir; very often.

20 Ques. What was the nature of that conversation?

Mr. Carrow: I object, because the proof would be irrelevant. Jennie is not a party to this suit.

The Court: I understand the will as a whole, its various provisions, will be considered by the Court in judging.

Mr. Wescott: It will appear that Jennie was excluded from the will, the same as the others.

The Court: I will take the testimony.

30 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What was the nature of that conversation that you heard at night?

Ans. She said that she was lazy and that she was careless and good for nothing, and all she thought about was

the men; she did things that were wrong; she was an expense to him and was sponging.

Ques. Well, did you notice the next morning anything about your father's manner towards Jennie?

Ans. Yes, sir; he was very cross and disagreeable to her.

Ques. Had he ever been cross and disagreeable to her before, to your knowledge?

Ans. No, not like he was then.

Ques. What were the circumstances of your sister Jennie leaving home? 10

Mr. Carrow: I object, for the same reason, the question of materiality.

(Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. My sister left home to get married. She had 20 known this gentleman for some time. He wanted to marry. Of course, my stepmother raised trouble between them by saying that this gentleman made a remark around town that he was going to marry the daughter and come into some of the old man's money when he died. So, of course, that set the father against this gentleman that she was going to marry. And this gentleman came down to ask her to go away with him to get married.

Ques. Did you hear this?

Ans. Yes, sir; but he didn't want to take her away. 30

By Mr. Carrow:

Ques. Was this in the presence of your father?

Ans. She told my father that this gentleman—

Mr. Carrow: I object, upon the ground that this is all hearsay evidence.

Ans. I heard her say that.

The Court: Do you propose now to relate conversations and declarations of Mrs. Myers, do I understand?

Mr. Westcott: Yes, conversations had with her about the marriage of this daughter, Jennie.

The Court: All right; I will take the testimony.

Mr. Carrow: She is undertaking now to relate conversations with this young man that was going to marry her sister—a conversation between her sister and this young man.

10 The Court: That I don't think would be competent. I understand the offer is to see what Mrs. Myers said.

Mr. Westcott: What was said to Mrs. Myers, what Mrs. Myers said, and what was said to her about this marriage.

Ans. Mrs. Myers told my father that this man went around town making brags that he was going to marry the daughter and come in for some of the old man's money.

20 Ques. And what else did she say?

Ans. That is all she said relative to that.

Ques. What did your father say to that?

Ans. My father said "yes" to her, as he did most everything. Of course he humored her.

Ques. What was this young man's name?

Ans. Mr. Stacy Wilson.

Ques. Did Wilson come to see your father and Mrs. Myers about taking your sister away?

30 Ans. He had been to see them, not just then, because he had been refused admittance; but he sent a message to my father relating to that, asking if he could take the daughter away as a man, and a child brought the message and waited for an answer, and my father said, "No answer," and the child went away.

Ques. When your sister Jennie first came home from the convent what did your father say or do to indicate his state of mind towards her?

Ans. When she first came from the convent?

Ques. Yes, when she first came from the convent?

Ans. He was very proud of her. He invited people to the house to hear her play.

Ques. Play the piano?

Ans. Play the piano; and he exhibited her paintings to people, spoke of how beautiful she painted, and her fancy work that she had done at school.

Ques. Give her any presents, valuable presents?

Ans. Gave her jewelry and new clothes.

Ques. What did the jewelry consist of?

Ans. A diamond ring, and ear rings and another ring, a very handsome ring. 10

Ques. How was your sister dressed at that time?

Ans. She was dressed very nicely at that time, after she left the convent.

Ques. Before she went away from home with her husband how was she dressed?

Ans. Dressed very shabby. She hadn't shoes to her feet that were fit to wear.

Ques. Was your father at that time a man of large 20 means?

Ans. He could afford to keep her better than that.

Ques. Do you remember any circumstance about your sister's playing duets, or teaching anybody music?

Mr. Carrow: I object, because the evidence would be irrelevant.

The Court: What is the purpose of this offer, Judge?

Mr. Westcott: To show certain circumstances which the witness, probably, if she recollects, will narrate, which show the relations between Mrs. Myers and these children 30 and her own son.

The Court: Proceed.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, we played duets together, and then my step-mother made her stop it. She said it made her nervous. Then my father asked me—

Ques. Well, I will come to that afterwards, I am misleading you. It does not come in in this place. What did Mrs. Myers say, if anything, to your father about letting your sister Jennie go with Wilson?

Ans. Go away to be married, do you mean?

Ques. Yes.

10 Ans. She said she could do as she pleased as far as she was concerned.

Ques. Did you hear her undertake at any time to persuade your father to let her go?

Ans. Well, she said she was an expense to him and sponging on him.

Ques. And before she went to live with Mr. Wilson, before she married him, do you recollect any time Mrs. Myers saying anything to your father about your sister Jennie going out to get a position to take care of herself?

20 (Objected to as irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, she said that she could earn her own living, get her own living.

Ques. She said that to your father?

30 Ans. To my father.

Ques. Did you hear her say that more than once?

Ans. Yes.

Ques. What did your father say in reply to it?

Ans. Well, he didn't say anything exactly to her, but he said something to the daughter, to my sister.

Ques. What?

Ans. He told her to that effect, that she should earn her clothes like other girls.

Ques. Did you hear your father say anything to your sister Jennie about her being old enough to earn her own living?

Ans. Yes, he said she should get a position and get out and not sponge on him any more.

Ques. And that was while she was living there at Ocean City, after she came from the convent?

Ans. After she came from the convent.

Ques. How old was she when she married Wilson?

Ans. Twenty-two years old.

10

Ques. Can you recall a circumstance about your father going to Williamsport once?

Ans. Yes, sir; he went to Williamsport one time.

Ques. Do you remember when that was?

Ans. That was about the winter of 1893 or 1894.

Ques. Just go on and tell us all about that. Just go on and tell us all about that.

Ans. And he came home from Williamsport and brought a present for each one that were in the house at that time; 20 and those that were there were my stepmother and myself and the colored boy.

Ques. A colored boy?

Ans. A colored boy. And he brought a present to each one of us. My sister was also there, and she received no present from him.

Ques. Was Jennie there?

Ans. Yes, sir.

Ques. Was anything said to her about this matter? 30

Ans. No, sir; nobody said anything to her.

Ques. Now, when Mr. Wilson came to take your sister away, or before, do you remember any statements made by your father to her?

Ans. Yes, sir; he said that when the car bell rang it would be as her death knell to him.

Ques. When the car bell rang?

Ans. Yes, that was to take her away.

Ques. How long was that before she left?

Ans. That was just before she left to get married. That was in 1894.

Ques. She did get married to Mr. Wilson, did she?

Ans. Yes, sir.

Ques. And they went away?

Ans. They went to New York.

Q. Were your father and Mrs. Myers invited to the wedding?

10 Ans. Yes, sir; they were.

Ques. Did they go?

Ans. They did not go.

Ques. Neither of them?

Ans. Neither of them went.

Ques. When this incident arose that you have already testified to, namely Mr. Wilson sending a note to your father, do you remember whether your sister did anything or said anything right after that to your father?

20 Ans. Yes, sir.

Ques. What was that?

Ans. She went to my father and she told him that she loved him and loved the man that she was going to marry, but she said that she didn't like to do anything that was displeasing to him, but that she would like him to consent to the marriage.

Ques. And what was the balance of the conversation, if you can recall it?

30 Ans. Well, he didn't say anything to her. He told her when she went that would be the end of her and death knell to him.

Ques. Was that the occasion when he used that expression that the car bell would be her death knell to him?

Ans. Yes, sir.

Ques. Was Mrs. Myers there then?

Ans. Yes, sir; she was there.

Ques. She was in the room?

Ans. Yes, sir.

Ques. Did she say or do anything?

Ans. No, sir.

Ques. Do you know whether your father went to see your sister after her marriage?

Ans. Yes, sir; he did go. At least, he saw her after; that is, went to see her.

Ques. Where was it? Where did he go?

Ans. That was in Philadelphia, 2356 North Eighth Street.

Ques. Were you present?

10

Ans. Yes, sir.

Ques. Just tell what occurred between your father and your sister Jennie at that time?

Ans. At that time?

Ques. Yes?

Ans. He was very, very pleased to see her. He made her child a present of diamond ear rings.

Ques. How did he treat her?

Ans. He treated her very nicely and very affectionately.

Ques. Well, tell us what he did?

20

Ans. Well, asked about her, how she was and how she was getting along, and invited her to come and see him.

Ques. Did he shake hands with her, or kiss her, or hug her, or anything of that kind?

Ans. Yes, sir.

Ques. What did he do?

Ans. She returned it and he was very affectionate to her.

Ques. Do you know where he got the jewelry for the child?

30

Ans. Yes.

Ques. Where?

Ans. Got it of a jeweler named Koons, on Arch Street.

Ques. Do you recollect your father sending for your sister Jennie any time after that?

Ans. Yes, sir; one time when he was sick in bed. He got me to write a letter telling her to come home, he wanted to see her.

Ques. When was that?

Ans. About 1894.

Ques. Was it as far back as that, do you think?

Ans. No; it was 1896.

Ques. And did you write the letter?

Ans. I wrote the letter.

Ques. Did she come?

Ans. She came; yes, sir.

Ques. Did she come alone?

10 Ans. She brought the child with her.

Ques. Did her husband come?

Ans. Her husband came later on.

Ques. How long did she stay?

Ans. Just stayed over night.

Ques. How did your father treat her when she came there?

Ans. Father treated her very nicely; very glad to see her.

Ques. How did he manifest his affection towards her then?

20 Ans. He kissed her and held conversations with her, very pleasant conversations.

Ques. And how about the child?

Ans. The child—he was very proud of the child and very much pleased with it; took it on his lap and talked with it like a grandfather would.

Ques. Was Mrs. Myers there then?

Ans. She was there; yes, sir.

Ques. Was there anything said between your father, between Jennie and your father, about correspondence?

30 Ans. Yes, sir; he told her she should write often and tell him all what was going on, how she was going on.

Ques. Did they interchange letters?

Ans. Yes, sir; he wrote several. I saw the letters.

Ques. Affectionate letters; were they?

Ans. Yes, sir.

Ques. Do you know whether he sent her presents during that time when these letters were being interchanged?

Ans. I don't remember any presents.

Mr. Boyle: What period is this?

Mr. Wescott: When she responded to her father's letter to come and see him at Ocean City.

Mr. Boyle: What year was it?

Ques. What year was this?

Ans. 1896.

Ques. Had you occasion to notice Mrs. Myers' conduct towards your sister Jennie when she came to see your father on that occasion? 10

Ans. Yes, sir.

Q. What was it?

Ans. Well, she was very indifferent, very unsociable.

Ques. After she went away, after your sister Jennie went away, did Mrs. Myers have anything to say about the paternity of her child?

Ans. Yes, she said the child didn't belong to her husband.

Ques. Whom did she say that to? 20

Ans. Said that to my father, and she also said it to another party.

Ques. To what?

Ans. To another party she told.

Ques. Did she say who the father of the child was?

Ans. Yes, sir.

Ques. Who?

Ans. Said it was a man by the name of Mr. Reuben Edwards.

Ques. Now, do you remember shortly after that of a circumstance where a Mrs. Rush appeared? 30

Ans. Yes, Mrs. Rush stopped in.

Ques. Stopped in at your house?

Ans. Stopped in at our house. She invited her upstairs to see my sister's baby and child, and she asked her if she noticed the resemblance between the child and this man.

Mr. Carrow: I object to any conversation between her and Mrs. Rush as irrelevant and immaterial.

Ques. Was Mrs. Myers there?

Ans. Yes, sir.

Ques. Do you recall whether your sister Jennie was called home any time after that?

Ans. Not after that time; no, sir.

Ques. Was she at your father's deathbed?

Ans. No, sir.

Ques. I am coming now to your own experience, Mrs. De Roche. When you came home from school, from the  
10 convent, what was your father's treatment of you at home?

Mr. Carrow: I object to that as irrelevant.

The Court: The question is allowed.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Mr. Wescott: Oh, well, before I ask that question I  
20 will withdraw it. I want to ask this general question.

Ques. What was the conduct and deportment of your sister Jennie towards your father while she was living at home, and while she was in the convent? How did she act towards your father.

(Objected to as immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed  
30 accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. My sister was most respectful and obedient to my father. She was of an amiable disposition, and a very fine girl, and she treated her father with the utmost respect.

Ques. Always?

Ans. Always.

Ques. Now I will recur to the question how your father treated you when you first came home from the convent?

Ans. Well, when I first came home from the convent he was proud of me, also invited people to hear me play the piano, took me around with him and introduced me to people and showed my letters to people that I had written while I was in the convent.

Ques. And how were you dressed when you were in the convent?

10

Ans. After I left the convent?

Ques. No, while you were there?

Ans. In the convent?

Ques. Yes?

Ans. Well, I was dressed according to the rules of the convent, very comfortably dressed, when I was in the convent.

Ques. And when you came home?

Ans. After I came home he continued to dress me nicely and got me nice clothes to wear, and gave me presents. 20

Ques. Gave you jewelry?

Ans. Gave me a diamond breast pin and my mother's watch and ring.

Ques. Just let's get these dates again. When was it you came from the convent?

Ans. 1890.

Ques. And how long did you stay home?

Ans. Stayed home five years.

Ques. Down to 1895?

Ans. 1895. I stayed home until January, 1897.

30

Ques. January, 1897?

Ans. Yes, sir.

Ques. Well, did you notice any change as time went on with your father towards you?

Ans. Yes, sir; I did.

Ques. What was it like?

Ans. Well he treated me very coolly and indifferently and didn't want to bother about me there, either.

Ques. What did he say about your being home?

Ans. Said I should get something to do, get my own clothes, like other girls, and I should not be an expense to him any longer.

Ques. Was this remark or remarks similar to that frequently made to you by your father, or infrequently?

Ans. Yes, sir; always, whenever I asked him for anything, always used the same remark.

Ques. Was that the first time in your life that you had  
10 ever been talked to by your father in that way?

Ans. Yes, sir.

Ques. Did you during that time hear Mrs. Myers say anything to your father about you?

Ans. Yes, sir; she told him lots of stuff about me also.

Q. What did you hear her say to your father about you?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill  
20 of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. I heard her tell him that I was also man crazy, and I was lazy and didn't want to work, and raced the streets all the time and went out and picked up men on the boardwalk and was also subject to vices not very nice to mention; also when I was sick on one occasion she misrepresented that.

Ques. What did she say was the matter with you?

30 Ans. She said I had a miscarriage when I had typhoid fever.

Ques. Were you married then?

Ans. No, sir; I was not.

Ques. Did she say these things to your father?

Ans. Yes, sir.

Ques. Well, what did he say to you about these things?

Ans. Well, he told me I would have to do better or I would have to leave home.

Ques. What did you say in response to it?

Ans. I told him they were not so, that I was willing to do anything that could be done around the house, willing to do what was right. He said that she knew better.

Ques. Was there a circumstance about your making a complaint that you had too much work to do?

Ans. Yes, she said we complained that we had too much work to do.

Ques. Whom did she say that to?

Ans. She said that to my father that we complained to 10 everybody about too much work to do.

Q. What did he say?

A. Well, he said that we should not do any work, that I should just attend to upstairs. So I did; and then when she went to bed at night she would tell me not to make her bed, and then when they went upstairs to bed I would hear her tell him that I was too lazy, that I didn't even make the bed, that she told me not to.

Ques. After she had told you not to?

Ans. After she had told me not to.

20

Ques. Did your father speak to you about that?

Ans. Yes, sir.

Ques. What did he say?

Ans. He asked me why I was so lazy, why didn't I get to work and help and do something—scolded about it.

Ques. What did you say?

Ans. I told him I was told not to make the bed, and I was willing to do anything that could be done around the house.

Ques. Was there any circumstance about music les-30 sons? I think you started to tell it a moment ago. Will you tell us what it was?

Ans. My father told me to teach her son music lessons.

Ques. And who was her son; what was his name?

Ans. Charles Myers, Jr.

Ques. Let me ask you right here, while we are on that subject, was he Mrs. Myers' child.

Ans. Yes, sir; as far as I know.

Ques. And was he the only child that appeared in the family after the marriage, if there was one, between your father and Mrs. Griffin?

Ans. Yes, sir.

Ques. Well, now go on and tell us about the music lessons.

(Objected to as immaterial and irrelevant. Objection overruled.)

10 Ans. I started to teaching him, and took as much interest in him as I would anybody else, but he didn't practice, but of course she blamed us and said I took no interest in him. I told my father that he would not practice, so he said, never mind, let it drop.

Ques. What did you do generally about the house after you came out of the convent, came home? What was your work, generally speaking?

20 Ans. Well, I attended to things like dusting or doing anything like that. I generally cleaned my father's office room; he always gave me that to do, told me to clean his room for him.

Ques. Did you do any other work for your father?

Ans. I also did writing for him, wrote his mortgages and business writing that he had at that time, for him, or any letters that he had to write that he didn't feel like writing he would get me to write for him.

Ques. You wrote his legal documents for him?

Ans. Yes, sir.

30 Ques. Did you wait on him generally?

Ans. Yes, sir; all I could.

Ques. In what way, what particular things did you do for him, enumerate them?

Ans. I brought him his slippers when he came home, sewed buttons on his clothes when they were off, and he asked me to do those things, and I did, and things around that he asked me to do I always attended to.

Ques. How did you treat your father? What was your manner towards him?

Ans. Well, I thought a great deal of my father, and I treated him that way, affectionately, like any other child would do.

Ques. Did you have any trouble with your father outside of his talking to you as the result of what Mrs. Myers said to him?

Ans. No, sir.

10

Ques. Did you hear Mrs. Myers make any comments to your father or statements to him about your object in waiting on him as you did?

Ans. Yes, sir; she told him that I wanted to curry his favor, is the reason I looked after him.

Ques. Were such remarks frequently made by her?

Ans. Yes, sir; very frequently.

Ques. And you heard them?

Ans. I heard them.

Ques. What did he say, if anything?

20

Ans. Well, sometimes he would say, "Is that so?" and other times he wouldn't say anything.

Ques. Do you remember undertaking to wait on your father when he was ill?

Ans. Yes, I tried to wait on him when he was sick one time, and she forbid me to do it.

Ques. Just explain what was said about that?

Ans. Well, she said her son should take his meals up to him and attend to him, he was younger than I was and he could do that. My father was asleep whenever I wanted to go up to him, she always said he was asleep, and not to bother him, and then when I did go in to see him in the evening, when I was allowed to go in, he reprimanded me for not coming in to see how he was, and I told him I had made efforts to come and my stepmother said he was asleep and I didn't want to disturb him.

Ques. What did he say to that, if you can recollect?

Ans. Well, he didn't say anything.

30

Ques. Towards the latter part of your stay at home can you recall whether or not your father frequently brought to your attention the necessity of your taking care of yourself or leaving home?

Ans. Yes, sir; he told me that I should get something to do.

Ques. What did you say to him?

Ans. I said I would get something to do if there was anything that could be done at that time in Ocean City,  
 10 that times were dull and I could not get anything right there. I did, though; I did get something to do. I kept books later on for Mr. Champion in Ocean City.

Ques. Do you remember what year it was that you kept books?

Ans. Either in 1895 or 1896.

Ques. And what was done with your wages?

Ans. Well, Mr. Champion paid my father my wages and he took—or least he didn't pay him, but he took the coal,  
 20 he took it out that way, in coal.

Ques. Coal bill?

Ans. Coal bill.

Ques. Did you get anything at all for it?

Ans. No, sir.

Ques. When your father, as the result of Mrs. Myers' statement to you about your meeting men on the board-walk or other places, mentioned the subject to you what did you say to him, to your father?

Ans. I told him they were not so.

30 Ques. And what did he say?

Ans. Well, he said that she knew better, and that was all there was about it.

Ques. Did your father, towards the latter part of your stay there, scold you a good bit, find a good bit of fault with you?

Ans. Yes, sir.

Ques. Did that increase?

Ans. That increased quite a while.

Ques. Do you remember when he died?

Ans. Yes, sir; I do.

Ques. When was it?

Ans. January 5, 1897.

Ques. What kind of health had you between the time you left the convent and went away from home?

Ans. Well, I was always delicate.

Ques. Did you have a spell of sickness before you went away from home? 10

Ans. Yes, sir.

(Objected to as irrelevant and immaterial.)

Ques. When was that?

Ans. That was 1896.

Ques. What was the trouble?

Ans. I had typhoid fever.

Ques. Were you seriously sick?

A. I was very seriously sick.

Ques. What was your father's manner towards you and treatment of you when you were sick? 20

Ans. Well, when I was sick he was very anxious about me and got up one night in the middle of the night to give me my medicine, and seemed very anxious and concerned about me at the time.

Ques. Was he near you frequently?

Ans. Yes, sir; he came to the room and brought me fruit and anything that the doctor ordered he got for me.

Ques. Before your sister Jennie went home did your father ever ask you any questions about her conduct, about her meeting other men? 30

Ans. Yes, sir; he asked me about my sister.

Ques. What did he ask you?

Ans. Asked me if it was so that she met men outside, and I said no; I never seen her meet anybody.

Ques. Did he say anything about her having clandestine meetings with Wilson?

Ans. Yes, sir.

Ques. What was the conversation on that subject?

Ans. He said, did she meet Wilson anywhere on the island, and I said no, that I hadn't seen him anywhere on the island; he was not on the island.

Ques. Did you ever hear him say anything with reference to your sister Jennie and you going over to Sea Isle City?

Ans. Yes, sir; she said we came over to Sea Isle City to flirt with different people that were over there.

10 Ques. You heard her tell your father that?

Ans. Yes.

Ques. What did he say?

Ans. Well, he forbid us to go over any more.

Ques. What was it took you over there?

Ans. Well, we went over to play the organ in the church and my sister went over to church.

Ques. What kind of a church?

Ans. Well, that was the Catholic church.

20 Ques. Who got you to go there?

Ans. My stepmother brought us up Catholics.

Ques. Did your stepmother say anything about why you went there, particularly?

Ans. Why we went to Sea Isle?

Ques. Yes, why you particularly went there?

Ans. Well, she said we went there, that I was in love with somebody there.

Ques. Who?

30 Ans. A man by the name of Bobby Short.

Ques. How old were you?

Ans. I was about eighteen, seventeen or eighteen.

Ques. And did your father speak to you about that?

Ans. Yes.

Ques. What did you say to him?

Ans. I said it was not so, I had no idea of such a thing. I was asked to play the organ in the church, and I went over there for that.

Ques. His reply was what, if anything?

Ans. He said we had better not go any more if we couldn't behave ourselves.

Ques. Did your father say anything about your sister Jennie and you being impudent and saucy to Mrs. Myers?

Ans. Well, he told me about it, told my sister, and I said it was not, I said that things were not so that she said about both of us.

Ques. What did your father say on that occasion?

Ans. Well, he said that she knew better, that she would 10 not say those things if they were not so.

Ques. Did he say anything about your having to leave home on that occasion?

Ans. Well, he said yes, that I had to leave home if I didn't make things more pleasant and if things were not—if I didn't do better I would have to leave home.

Ques. Did Mrs. Myers make any complaint to your father about your running her down to other people?

Ans. Yes, she said—

(Objected to as irrelevant and immaterial. Objection 20 overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, she said that we talked about her to other people.

Ques. Did she tell your father that in your presence?

Ans. Yes, sir. 30

Ques. What did you say in explanation of that?

Ans. I said I didn't hear anything about her at all.

Ques. Now, right after your sister Jennie went away from home, did your father manifest any particular interest in you or affection for you in any way that you can recall?

Ans. After she went away from home he treated me very nicely from what he had been, started to treat me then better.

Ques. What did he do for you?

Ans. Bought me some new clothes and fixed me up generally.

Ques. Some new clothes and jewelry?

Ans. Gave me some new clothes and jewelry.

Ques. Do you recollect anything about a bedroom suit?

Ans. Oh, yes; he bought me a nice bedroom suit, fitted my bedroom up; repapered it and carpeted it, and he bought me a bedroom suit.

10 Ques. Were they given to you by your father?

Ans. He gave them to me.

Ques. After your father's death what became of those things?

Ans. They remained there at the house. I never got them.

Ques. Why not?

Ans. Well, I wrote for them and she wouldn't give them to me.

Ques. Mrs. Myers kept them?

20 Ans. Mrs. Myers kept them.

Ques. Did Mrs. Myers know about your father giving you these things?

Ans. Yes, sir.

Ques. Did your treatment of your father change in the course of these years when he was finding so much fault with you and telling you these things that Mrs. Myers said?

Ans. Did he change?

Ques. Did your treatment of your father change any?

30 Ans. Oh, no; I always treated my father like a child should treat their father, always loved him.

Ques. Come now to your own marriage. Whom did you marry?

Ans. I married Mr. Henry A. De Roche.

Ques. Is he living or dead?

Ans. He is dead.

Ques. Did he testify in respect to this matter once before?

Ans. Yes, sir; he did.

Ques. I want now to direct your mind to this attack of typhoid fever that you had and the period of your recovery. Will you tell us how long you were sick?

Ans. I was sick over a month.

Ques. About the time of your recovery what did your father say to you, if anything, about what he was going to do with his property?

Ans. He said that he was going to make a radical change in affairs, and was going to see that his children would get an ample supply, that they would not have to work like he had in his young days. 10

Ques. Did he say anything about how he was going to divide his property?

Ans. He was going to see that they all got alike, and were all treated without any partiality.

Ques. Where was he when he told you that?

Ans. Where was he? At home in Ocean City.

Ques. Where were you in the home when he told you that? 20

Ans. It was in the office room.

Ques. Had you got well yet when he told you that?

Ans. Yes, sir.

Ques. Or were you convalescent?

Ans. Well, I was convalescent, was not well.

Ques. That was in 1896?

Ans. 1896.

Ques. Was Mrs. Myers present when you were told that by your father? 30

Ans. No, sir; she was not there.

Mr. Carrow: I have Mr. Kelly here upon subpoena to produce his notes of the evidence that were taken upon the contest over the Will, on the caveat, and Mr. Kelly has gotten a telegraph requiring him to leave, and I understand that Judge Wescott will not require me to keep him here.

Mr. Wescott: Certainly not.

Mr. Carrow: You don't question that that is an accurate report of the testimony?

Mr. Boyle: Your Honor will, of course, understand that in case something is testified that is not in accordance with the previous testimony, we want to be in a position to contradict these statements. The only proper way is to bring Mr. Kelly here—

10 Mr. Wescott: No, the only proper way is to put Mr. Kelly on the stand and ask him if that is a correct statement.

Mr. Boyle: We want first to bring him on to contradict what has already been testified to.

Mr. Carrow: I understand Judge Wescott will not require us to produce Mr. Kelly, but if the testimony is admitted, we will use these reports.

Mr. Wescott: Mr. Kelly wouldn't transcribe in the testimony anything that didn't occur.

20 The Court: Then they can use it if it is legally usable.

Mr. Boyle: It is not our intention to use it in bulk. We want the Court to understand why we are relieving Mr. Kelly.

Ques. Now, right after or about the time that Mr. Myers told you that he was going to distribute his property amongst his children, did you notice any particular change in Mrs. Myers toward you?

(Objected to. Question allowed.)

30 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. What was it? In what way did that manifest itself?

Ans. Well, she didn't treat me any better than she had.

Ques. Do you recall anything about your getting married at that time?

Ans. Yes.

Ques. What hand did she take in that?

Ans. "She made a catch for me, and that when she made the catch, that she would have me out of the house entirely."

Ques. Do you remember about that time her saying anything to your father about your having a venereal disease?

10

Ans. Yes.

Ques. What was it?

Ans. Well, told him that this disease—the clothing was filled with it, in the sheet and all that.

Ques. Was that just before you got married?

Ans. Yes, that was before I got married, some time.

Ques. What did you say to your father about that?

Ans. Said it wasn't so; didn't know anything about such things; he said that I must mend my ways or I would be under the sod.

20

Ques. Must mend your ways or you would be under the sod?

Ans. Yes.

Ques. Was that after he told you how he was going to dispose of his property?

Ans. Yes, sir.

The Court: When was this declaration, that she is testifying to, of her father, as to the distribution of the property?

Ques. When was that, about, when he told you how he was going to distribute the property?

30

Ans. That was about October or November, 1896.

Ques. Fall before he died, wasn't it?

Ans. Yes.

Ques. Did you do anything further towards taking care of yourself, trying to earn your way?

Ans. Yes; I taught music, and sewing, dressmaking when I could get it to do.

Ques. Was that in addition to the bookkeeping of Champion?

Ans. That was after I had kept the books.

Ques. Let us go on with that subject about your getting married. What did Mrs. Myers do to bring that about, to your knowledge?

(Objected to as irrelevant and immaterial. Question allowed.)

10 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, she invited this gentleman to the house, and she praised him up to me and praised me up to him, and then she talked to my father about it.

Ques. What did she say to your father about it?

20 Ans. Well, told my father she thought he was a very nice young man, and she told him that he was so awfully nice, and then she told him I would make him a good wife, and that if he would marry me that my father thought well of him, it would please him; and so, of course, he asked me for my steady company, and she told me it would please my father if I did all this, and of course I didn't want to displease my father, and of course I entered into the thing and the match was made finally.

30 Ques. Was there anything said, finally, about what was going to be done for you, if you married him?

Ans. She said papa would see that we were all right, that he would have a home for us, and he said also that he would get a home for us, he would give me what things belonged to me in the house, what things he had given me, bedroom suit, piano and sewing machine and other things that he would dispose of in the house, he would give me.

Ques. How long was that before he died?

Ans. That was just the Fall before he died.

Ques. And how long were you married before he died?

Ans. After he died; I wasn't married until after he died, the Sunday after he died.

Ques. Well, as a result of what was said by Mrs. Myers and your father, did you engage yourself to this young man?

Ans. Yes, sir.

Ques. Did he come there to the house to see you?

Ans. Came to the house to see me; well, he generally played cards with my father; not to see me, exactly; I didn't know him very long, of course, only knew him six weeks, so all she said we should get married. He told my father that he was kind of—

(Objected to.)

Ques. Go ahead.

Ans. Said that he didn't understand Mrs. Myers' motive for pushing the matter so.

Ques. Was she pushing the matter?

Ans. Sort of encouraging him to marry me, and told her, of course, that he wasn't ready to marry, financially, and father said that was all right, he would see to that part of it, and he also told me to go to Sea Isle and be married, and let him know when I was to be married and he would come over to the wedding. So I went over to Sea Isle and sent him a telegram, stating that I wouldn't be married this Sunday, but the next Sunday, and Tuesday morning he died.

Ques. Do you remember any circumstances about meeting Mrs. Myers at Market street, Philadelphia?

Ans. Yes, sir; it was after a visit to my sister in Ocean Grove.

Ques. When was that?

Ans. That was the summer of 1896.

Q. What was that circumstance?

Ans. I felt very badly—

(Objected to on the ground that it is irrelevant.)

The Court: I will take the testimony.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. You felt very bad?

Ans. Felt very badly, as I was bordering on this typhoid fever; thought the change would do me good. I went on to see my sister, and was very sick while there. So she  
10 met me on my way home and I came home with her.

Ques. Well, what occurred?

Ans. Then I went to bed and the doctor was called in and I was sick for over a month with this typhoid fever.

Ques. Was any statement made by anybody then that you recollect?

Ans. Yes; she went around and said that I had a mis-carriage.

(Objected to as irrelevant.)

20 Ques. Who was present when she said that?

(Objected to.)

By the Court:

Ques. You didn't hear her say it?

Ans. She told my brother James and Mr. Diggins.

Ques. This was not in your presence?

Ans. Yes, it was in my presence.

(Objected to as irrelevant and immaterial.)

30 The Court: So much of the statements as were made when this witness was present may stand.

Ans. She told them that on the train coming in; said she was very sorry that I was in that condition.

By Mr. Wescott:

Ques. Where was the train?

Ans. On the train from Philadelphia to Ocean City, and I was on my way from Ocean Grove.

Ques. Were you on the train together from the ferry?

Ans. We were on the train together when she told them this.

Ques. Did you come home that night?

Ans. Yes; I came home.

Ques. And how soon did this sickness, fever, break out?

Ans. I was about a week home when the fever broke out, the doctor was called.

Ques. What, if anything, did you ever hear Mrs. Myers say with respect to the other children of your father? 10

Mr. Carrow: I object. He hasn't apprised us of the time and place, and because Mrs. Myers is dead, and they have no right to introduce such statements, that may have occurred twenty-five years ago, or it may have occurred two years after the making of the Will, or one year. I object.

The Court: Will you indicate the time first that this relates to?

Ques. I call your attention, for the purpose of fixing<sup>20</sup> the time, to a conversation between Mrs. Myers and your father about her care of him and his children, not taking care of him, and that sort.

Mr. Carrow: I object to that as irrelevant and improper.

The Court: Let us fix a time.

Ans. That occurred about 1895.

Ques. And where?

Ans. There in that house in Ocean City. 30

By Mr. Boyle:

Ques. What time in 1895?

Ans. That was the spring of 1895.

Mr. Carrow: Well, we object to the testimony, because the Will was made, I think, in January of 1895.

The Court: Give me the date of the Will while we are speaking of it.

Mr. Carrow: 19th day of April, '95.

The Court: I will take the testimony.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

By Mr. Wescott:

10

Ques. What did he say or what did she say?

Ans. She said it was a good thing that he had her, because there was none of his children that would ever do anything or would take care of him.

Ques. Did you hear her say that to him more than once?

Ans. Yes, sir.

Ques. During the years that you were there, and before you got married before your father's death, what did you notice about his treatment of Charles Myers, the

20 young fellow, the young child?

Ans. I noticed he didn't treat him any way but nice.

Ques. Was there any difference between his treatment of him and the treatment of you two girls?

Ans. Yes; considerable difference.

Ques. What was it?

Ans. I never saw him reprimand him for anything he did, or find fault for anything he did; always took him around with him and made him his company; was associated with him.

30 Ques. Did you, during those years, ever hear her complain to your father about Charles, the young fellow, the young child?

Ans. No, sir; I never heard her make any complaints against him.

Ques. Did your father, during these years, present him with different things?

Ans. Yes, sir; gave him a bicycle and box of paints, and started a bank account for him.

Ques. How did he dress him?

Ans. Very comfortably, and give him everything he needed.

Ques. Better than you two girls?

Ans. Yes.

Ques. How were you two dressed the latter two years?

Ans. Didn't have much worth speaking of when I was married.

Ques. Did you hear, during those two years, Mrs. Myers say anything how Charles should behave toward 10 your father?

Ans. Yes, sir; said he should stick to his father, and he would never want for anything.

Ques. When was your father taken sick?

Ans. He was taken sick in January.

Ques. I know, but what day.

Ans. Well, he died the 5th of January. He was taken sick—he was sick about five days.

Ques. I want to ask you now about your father's habit of drinking; what was that? 20

Ans. Well, my father drank very hard; drank to excess at times; in fact, the later years of his life he was under the influence of liquor most all the time.

Ques. How excessively was he under the influence of liquor?

Ans. He was uncontrollable when he was in those spells.

Ques. How would you know? What was there about him that indicated that he was under the influence of liquor? 30

Ans. I could tell by his appearance.

Ques. What was his appearance?

Ans. His eyes were bulged out and he had a bloated expression.

Ques. Face red?

Ans. Face red; I could tell that he was drinking. On several occasions neighbors had to be called in to control him.

Ques. Was he a regular, habitual drinker?

Ans. Toward the latter years he was.

Ques. Where did he keep his drink?

Ans. He kept it in a closet in his room.

Ques. And during that same time, what was Mrs. Myers' habits as to drinking?

Mr. Carrow: I object to what her habits were.

The Court: I will take the testimony.

- 10 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. She drank, too.

Ques. Well, how much?

Ans. Well, she was under the influence of liquor most all the time, whenever she got a chance.

Ques. Did they drink together?

Ans. Yes, sir.

- 20 Ques. Got drunk together?

Ans. Yes, sir.

Ques. Often?

Ans. Yes, sir.

Ques. Was there any time when your father began to drink hard that you can recall—how long before his death?

Ans. Well, the last four or five years before his death he drank very hard.

Ques. Was that after he went to Ocean City?

Ans. Yes, sir.

- 30 Ques. Have you any idea how much rum he had on hand at the time?

Ans. I saw the bill of the liquor; it amounted to thirty dollars at the time.

Ques. Was he rum dumb at times?

Ans. I should say in that condition.

Ques. Did you see him and your stepmother drink together?

Ans. Yes.

Ques. Often?

Ans. Yes.

Ques. How often, about?

Ans. When he was on his drinking spells she got the liquor for him and of course she helped herself.

Ques. Have you any knowledge of any quarrels between Mrs. Myers and your father?

Ans. Yes, sir; I remember them quarreling.

Ques. How frequently did they quarrel? 10

Ans. On several occasions; they quarreled at different times.

Ques. You say on different occasions; can you be any more accurate as to the number of times, whether it happened often or infrequently?

Ans. Well, it happened quite often.

Ques. Do you remember her saying anything to him in those quarrels?

Ans. Yes, she wanted to go away, and he objected, and 20 she said she would go by fair means or foul. She said nobody would ever thwart her in her plans, and that she would see him or anybody else dead and dance on their dead body and wash her hands in his blood if he didn't do as she wanted him to.

Ques. Did you hear her use such expressions more than once?

Ans. Yes, sir.

Ques. Did you ever hear her tell him that she would have her own way or die in the attempt? 30

Ans. Yes, she told him that.

Ques. Lots of times?

Ans. Yes, sir; lots of times.

Ques. Did you ever see them fight?

Ans. Yes.

Ques. How many times?

Ans. Well, I seen them twice, as I remember; they quarreled.

Ques. When were those two fights? How long before he died?

Ans. About three years before he died.

Ques. And what were those two fights?

Ans. Well, she run after him with a knife one time and another time she took hold of his hands, and the marks of her nails were in his hands.

Ques. Was he drunk then?

Ans. Well, yes; he had been drinking heavily.

10 Ques. Had been drinking?

Ans. Yes.

Ques. Had she been drinking also?

Ans. Yes, sir, she was drinking, but not as much as she had sometimes.

Ques. Was this after your sister left home, after she got married?

Ans. Yes.

Ques. What was that trouble about?

Ans. Well, she generally wanted to go away, and he 20 objected to it.

Ques. That brought on the fight then?

Ans. Yes.

Ques. Did they use any profanity towards each other?

Mr. Carrow: I object to that as wholly irrelevant. There ought to be some limit to this.

The Court: I think the relationship of the parties may be shown fully.

30 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, I don't know if there was any cursing done between them very much, except her determined way of speaking to him.

Mr. Carrow: I ask to have that stricken out as not responsive.

The Court: Strike out that answer. You can answer that question yes or no.

Ques. Did you hear him use profanity?

Ans. Well, my father wasn't a man to curse.

Mr. Carrow: I move that the answer be stricken out.

Ques. Did you hear her use profanity?

Ans. I heard her use it to him.

Ques. What did you hear her say to him?

Mr. Carrow: I object to that as irrelevant, what she said, profanity to her husband. 10

The Court: I will take the testimony.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What profanity did you hear her use toward him?

Ans. Well, she would say—she damned him and his whole family, and used such terms as that to him.

Ques. How long was that before he died? 20

Ans. About three years before he died.

Ques. Did you ever see her hit him with a chair?

Mr. Carrow: I object to that as irrelevant and immaterial.

The Court: I will take the testimony.

Ans. Yes.

Ques. When was that?

Ans. That was about that same time, later on.

Ques. What was the occasion of her hitting him with a chair? 30

Ans. They were quarreling, and she picked up the chair and he ran in the other room and shut the door; was afraid of her.

Ques. Did she hit him with the chair?

Ans. No, I don't say she hit him with the chair, but he would have gotten hit if he had not run in the room and shut the door after him.

Ques. Did you ever, in any of those moments, hear her say anything to your father as a family?

Ans. About the family?

Ques. As a family; say anything about the family?

Ans. Yes; she said they were no good; a nest of vipers; none of them any good.

Ques. You heard her use that language, they were a nest of vipers?

Ans. Yes, sir.

10 Ques. Did you ever hear her make any threats toward your father?

(Objected to as immaterial. Question allowed.)

(Whereupon, the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes.

Ques. How long was that before he died?

20 Ans. It was about two or three years before he died.

Ques. What threats did you hear her use toward your father?

Ans. Said she would poison him; as I said before, she would dance over his dead body, and wash her hands in his blood, and see anybody dead before she would have her way or die in the attempt.

Ques. Did you hear her make those threats more than once?

Ans. Yes, sir.

30 Ques. Did you ever see her go after your father with a knife?

Ans. Yes, sir.

Ques. When was that?

Ans. About three years before he died.

Ques. What part of the house did that occur in?

Ans. That was in the kitchen or dining room.

Ques. What did he do?

Ans. He ran from her; would be afraid of her.

Ques. What else did he do after he ran. Where did he go to?

Ans. He went into his room and shut the door; locked the door on her.

Ques. Did you ever hear her make any threats about cutting his heart out?

Ans. Yes.

Ques. I just asked you whether you had ever heard her make any threats to cut your father's heart out?

(Objected to as irrelevant. Objection overruled.) 10

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Mr. Boyle: Your Honor will allow us a general exception to that line of testimony?

The Court: Yes.

Ans. She said she would cut the heart out of him or 20 any one else that she couldn't have her own way.

Ques. Did you hear her use that expression frequently?

Ans. Yes, sir.

Ques. Towards your father, to your father?

Ans. Towards my father; yes, sir.

Ques. Do you remember any special occasion when she used that language? If you don't recall, pass on. Did you ever hear an expression used of cutting his heart out in cold blood?

(Objected to as leading.) 30

The Court: Yes, it is rather leading, but in view of the testimony to that effect, which is partially in already, I will allow this to pass.

Ques. Did you hear her use that phraseology to him; that language?

Ans. Yes, sir; I heard her say that to him, different things she wanted.

Ques. More than once?

Ans. Yes, sir.

Ques. Did Mrs. Myers shortly before you left Ocean City say anything to you about what Mr. Myers' children would get out of his estate?

Mr. Carrow: I object, because it is irrelevant and immaterial, made at a time after the execution of this will.

The Court: What is the purpose of the declaration after  
10 the execution of the will?

Mr. Westcott: I don't know that it was after the execution of the will, and even if it was it would not invalidate the testimony. A man may make a thousand wills if he wants to. The only will that is pending is the one that is properly made and properly proven. It is the attitude of the mind that I am at in this case and the motive and purposes of the *dramatis personæ*.

20 The Court: You may take the testimony.

Ques. Did you ever hear her say anything about—

Mr. Carrow: What was your ruling?

The Court: I allowed the question.

Ques. —about what estate your father's children would get; what they would get out of the estate?

Ans. Well, I heard her say that they would not get a cent of his money; that I would have to crawl to her for  
30 a red cent.

Ques. When was it she said that, about how long before your father died?

Ans. About three years before he died.

Ques. What was the occasion of her making that statement to you; do you remember?

Ans. Well, she had been finding fault with me, and of course she was angry and bore malice toward me, and that is what she told me.

Ques. Do you remember whether it was on an occasion when you tried to explain to your father that she was wrong in what she said about you?

Ans. Yes, sir; she said that I did nothing but race the streets, and I said that she had given me her permission to go out and she said that he said—she said that I was out hunting a man, or something to that effect, and I said that I was not, and he said that if it was a man I wanted that the man would make it up to me in money. That was the occasion. 10

Ques. Did she say anything about make you come to her for what you wanted before she died?

Ans. Yes; she said I would crawl to her for what I wanted before I died.

Ques. Did you ever hear your father and Mrs. Myers quarreling in the room, in their bedroom at night?

Ans. I heard her talking against us at night.

Ques. Did you ever hear them quarreling in their bedroom at night? Not talking about you—you testified to 20 that, but hear them quarreling?

Ans. No, I don't remember hearing them quarreling.

Ques. When she scratched his hands and said she would dance over his dead body and wash her hands in his blood, what room did that occur in in the house?

Ans. That occurred in the dining-room.

Ques. Now, after she left on this occasion when this language was used and she committed this assault on him, did your father say anything to you?

Ans. Well, he said—he told me afterward that he was 30 afraid of her.

Ques. Did he use any other expression that you recall?

Ans. He said he was afraid of her, and he expressed an opinion about something else later on.

Ques. Did he say anything about his own mental condition as due to his relations to his wife?

Ans. He said he was broken down; he was in a very nervous state.

Ques. Did he say anything about being almost crazy?

Ans. Yes; said he was almost crazy at times; didn't know what to do.

Ques. Did he say that to you more than once?

Ans. Yes, sir.

Ques. How long was that before you left home?

Ans. It was about three years before I left home.

Ques. Did he mention any particular subject when he said made him pretty nearly crazy?

10 Ans. Yes; he said he doubted his child; he didn't think that his child was his child.

Ques. What?

Ans. He didn't think that was his child at all.

Ques. His child?

Ans. Yes, sir.

Ques. Well, what child. We don't know.

Ans. Well, his son.

Ques. Charlie Myers?

20 By Mr. Carrow: You mean the defendant here?

Ans. Yes, sir.

By Mr. Westcott:

Ques. You mean Charlie Myers, do you?

Ans. Yes.

Ques. The son that she had?

Ans. Yes.

Ques. Is that the person you mean?

30 Ans. That is the person I mean.

Ques. Did he on any occasion express to you fear about his life?

Ans. Yes, sir; he said he was afraid of her.

Ques. Well, tell us all he said. Nobody will hurt you. Just tell us the whole truth.

Ans. Well, of course my father never held a very lengthy conversation with me because he never had a chance; but he would say things to me now and then.

Ques. Recall to us, if you can, what he said about his being afraid of his life. What language did he use?

Ans. Well, he said he was afraid of her; afraid she might do something to him when she was in those tempers of passion.

Ques. Did he ever say anything about poison.

Ans. Afraid that she might poison him at times.

Ques. Did he mention that subject to you more than the once, Mrs. DeRoche?

Ans. Well, he didn't mention that so very often to me. 10

Ques. Well, did he mention it more than the once?

Ans. Well, more than the once he said that to me.

Ques. How old was he when he died?

Ans. Seventy-three years old.

Ques. Can you tell whether or not he was very much broken down in health for several years before he died; the last two or three years of his life?

Ans. Yes, sir; he was all broken up and very nervous and broken down physically.

Ques. Feeble? 20

Ans. Very feeble. And was kind of a total wreck, I should say, from his nerves.

Ques. Do you remember there ever being any discussions in the family the last few years of your father's life about purchasing anything or going on journeys or anything of that sort?

Ans. Yes, sir; I remember him saying he was going to buy his son John a farm.

Ques. Not meaning to reach that subject yet, but whether there was—were there ever any discussions about 30 your buying clothes or going on a vacation or on a journey or anything of that sort that you can recall? If so, who decided it?

Ans. Well, my stepmother generally decided whatever—the matter of clothes she always influenced him either for or against that.

Ques. Were you home when your father died?

Ans. No, sir.

Ques. Did you see him after he died?

Ans. Yes, sir; I saw him after he died.

Ques. Where did you see him?

Ans. I saw him up in the bedroom where he was laid out.

Ques. At his home?

Ans. Yes, sir; at his home.

Ques. Did you notice anything about his face?

Mr. Boyle: I object, if your Honor please, as irrelevant. This happened now at the time of the man's death, two  
10 years after the making of the will. Something in relation to the appearance of the corpse, as I understand it, she is being asked about.

The Court: I will take the testimony. I hope you won't open the door very wide.

(Whereupon, the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

20 Ques. Did you notice any mark upon his face?

Ans. Yes, sir; I noticed that he had a deep gash on his cheek bone.

Ques. Do you remember which cheek it was?

Ans. It was the left cheek bone.

Mr. Boyle: Our objection applies to all this line of testimony on the same ground as irrelevant and immaterial.

The Court: Yes.

Ques. Was that mark concealed in any way by anything?

30 Ans. Yes; there was a handkerchief over his face.

Ques. Was he in the coffin when you noticed that?

Ans. I noticed this in the coffin and also when I saw him in the bedroom.

Ques. Now, did Mrs. Myers tell you, or tell anybody in your presence how your father got injured, how he got that mark?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. What did she say?

Ans. Well, she said he fell; said he fell in two different places.

Ques. Said what?

10

Ans. Said he fell and hurt his cheek bone.

Ques. Said he fell and you said something else?

Ans. Said he fell in two different places; I couldn't tell which, whether it was in the bath-room or in the hotel, in Peterson's Hotel in Sea Isle City. First she said one place and then she said the other.

Ques. Tell us exactly what she said on each occasion?

Ans. Well, she said pop had fell one night in the bath-room and hit his cheek bone against the tub; and she also said that he fell over in Peterson's hotel.

20

Ques. Right after your sister Jennie went away from home do you recall Mrs. Myers telling you anything about a will that your father had made?

Ans. Yes, sir; she told me that my father had made a will disinheriting Jennie, and that Charlie and I were the favored ones in the will.

Ques. How soon after your sister went was it that she told you that?

Ans. Well that was shortly after she went.

Ques. What year?

30

Ans. Well, that was 1894.

Ques. Now, I want you to bring in the subject of making this will. I want you to be very accurate and particular about it, if you please, Mrs. DeRoche. Do you remember the night the will was signed?

Ans. Yes, sir.

Ques. When was it?

Ans. It was April 5, 1895.

Ques. April 9 or 5?

Ans. April 5.

Ques. Do you remember the night?

Ans. I remember the night very well.

Ques. Where was it, Ocean City?

Ans. Yes, sir; it was in Ocean City, in that house.

Ques. Do you know a Mr. Brower?

Ans. Yes, sir; I know Mr. Brower.

10 Ques. What is his first name?

Ans. John.

Ques. Is he one of the witnesses to this will?

Ans. Yes, sir.

Ques. Do you know J. S. Rush?

Ans. Yes, sir; I know him.

Ques. And M. T. Rush?

Ans. Yes, sir.

Ques. And Mary Davidson?

Ans. Yes, sir.

20 Ques. Who was Mary Davidson?

Ans. She was a servant girl at the house at that time.

Ques. How did Mr. Brower happen to come to your house that evening?

Ans. Well, he was invited to the house. My stepmother invited him to the house that morning. He was passing the house and she told him to come up that evening and have a game of pinochle and he said he would.

Ques. Did she say anything about coming to cheer pop  
30 up?

Ans. Said come up and have a game of cards and cheer pop up, and he said he would.

Ques. That was in the morning?

Ans. That was in the morning.

Ques. About what time?

Ans. About ten o'clock.

Ques. Mr. Brower happened to be going by?

Ans. Yes.

Ques. Was Mrs. Myers in the yard or in the house, or go out, or how?

Ans. She was in the yard and talked to him at the gate.

Ques. Did you hear her say anything to Mrs. Rush?

Ans. I heard her invite her up. Mrs. Rush stopped in in the afternoon and she said for she and Mr. Rush to come up that evening, and they would have a game of pinochle and cheer pop up:

Ques. Well, did these people say they would come?

Ans. And they said they would come.

10

Ques. Did they come?

Ans. And they came; yes, sir.

Ques. Now who came first?

A. John Brower came first and then Mr. and Mrs. Rush came shortly after.

Ques. Now what room did they go into when they came; what room of the house?

Ans. They went into the sitting room when they came.

Ques. Into the sitting room?

20

Ans. Yes.

Ques. Let's understand now how this house was constructed on the ground floor. Was this the ground floor?

Ans. This was the ground floor; yes, sir.

Ques. Just tell us how many rooms there were on the ground floor?

Ans. Well there were four rooms and a shed.

Ques. Four rooms and a shed?

Ans. Four rooms and a shed.

Ques. What were those four rooms?

30

Ans. Well, there was the parlor and father's office room and then the sitting room and the dining room and the shed.

Ques. Where was your father's office with reference to the dining room?

Ans. My father's office was not near the dining room; it was near the sitting room.

Ques. It was near the sitting room?

Ans. Yes.

Ques. And how big, about, was this office?

Ans. Well, that office, I should judge, was about a sixteen by sixteen room.

Ques. And how big was the sitting room?

Ans. The sitting room was a little less than that.

Ques. How were they related to each other; how did you get from one to the other?

Ans. Just one door.

Ques. A door that swung on hinges?

10 Ans. Yes, sir.

Ques. And where was that door in relation to the office?

Ans. Well, that door was towards the parlor.

Ques. It was not in the middle of the room?

Ans. No; it was not in the middle of the room. There was a door from the parlor, and if you didn't go into that door for the parlor and kept on a ways you would strike the door of the office room.

Ques. Look at that diagram, please, and see if you can understand it. (Diagram shown witness.)

20 Ans. That was the parlor and this was the sitting room and this was the dining room and that was his office room, this one over here.

Ques. No; that is the porch, marked porch.

Ans. Where is the office room?

Ques. I want to see if you understand it.

Ans. Well, I don't understand it if the office room is not there, because it was there; there was a sitting room and there was the dining room and here was the office room.

Ques. Oh, yes; that is the office room?

30 Ans. That is the office room and here was the dining room.

Ques. That was not the office over there?

Ans. No; that was that outside kitchen or shed.

Ques. And you think that is the office out there?

Ans. No; this is the office.

Ques. Marked porch on there. Was there a porch there?

Ans. Yes; this is a door that goes out on to a little porch and down the steps.

Ques. Now, on that diagram one room is marked "parlor" and the other the main sitting room and another and the other dining room, with something that indicated a stairway; is that correct?

Ans. Yes, sir.

Ques. And a table?

Ans. That is correct; yes.

Ques. And an opening indicating doors?

Ans. That was a door (indicating on diagram).

Ques. And the room that is marked there "main room" 10 or "sitting room" is the one that these people came into first when they entered the house?

Ans. That is the steps that they came up; came into the sitting room.

Ques. Then these rooms marked as I have read indicate the ground floor of the house?

Ans. Yes, sir.

Ques. And you say that Mr. Brower came in first?

Ans. Yes, sir.

Ques. What did he do when he came in? 20

Ans. Well, when he first came in he stood up and talked for a while.

Ques. Before anybody else came in?

Ans. Yes, sir.

Ques. And what room was he in when he was talking?

Ans. In the sitting room.

Ques. Then who came in afterwards?

Ans. Then Mr. and Mrs. Rush came.

Ques. And what did they do when they came in?

Ans. They talked a while and then they sat down in the 30 sitting room.

Ques. Who was in the sitting room then besides Mr. Brower and Mr. and Mrs. Rush?

Ans. Well, my father and stepmother in the room, and myself.

Ques. No one else?

Ans. Mr. Brower and Mr. and Mrs. Rush and myself and stepmother and father.

Ques. And no one else?

Ans. No one else just then.

Ques. Well, that is what I want you to say. You were the ones that were there?

Ans. We were the only ones that were there.

Ques. Had your father been drinking much that day?

Ans. Yes, sir.

Ques. Did you hear Mrs. Myers say anything to your father during the day about doing anything that night?

10 Ans. Well, she said they were all coming to the house that night to have a game of cards and that he should get them to sign that.

Ques. And what?

Ans. He should get them to sign those papers, whatever it was to be signed.

Ques. You heard her say that to your father?

Ans. Yes, sir.

Ques. Where was he when she said that to him?

20 Ans. He was in the sitting room then.

Ques. And what did he say?

Ans. He says, "That is so." He says, "That is so, I will."

Ques. He had been drinking pretty hard that day?

Ans. Yes, sir.

Ques. Well, after they had been in there a while, or when they first came, what was the character of the conversation, merely ordinary conversation?

Ans. Just ordinary conversation.

30 Ques. After they had been there a little while did anybody say anything especial that you recollect?

Ans. My stepmother said that now was the time to get them to sign that and he said that was so, and he went into his office and he brought out the paper and pen and ink and went into the dining room.

Ques. Went into the dining room where there is a table indicated on this diagram?

Ans. Yes, sir.

Ques. When she said "Now is the time to sign that," or whatever it was she did say, he went into his office and came out with what?

Ans. Came out with a paper, pen and ink.

Ques. Do you know about how long he was gone in the office?

Ans. He wasn't gone very long; in time to get the articles.

Ques. When he went into the office where were the other people, you and Mrs. Myers and Brower and the two Rushes?

Ans. We were in the sitting room.

Ques. After he went into the dining room what was the next thing that occurred?

Ans. After he went into the dining room—

Ques. I mean after he went in with this paper, and pen, and ink?

Ans. Well, he called Mr. Brower into the dining room.

Ques. Did he come out of the dining room to call?

Ans. No; he just said, "John, come in here;" and Mr. Brower went in; and then he was in there a very short time and he went out.

Ques. Now, pardon me, while he was in there, while Brower was in, where were you and Mrs. Myers and the two Rushes?

Ans. We were in the sitting room.

Ques. What part of the sitting room?

Ans. Well, I was sitting by the centre-table that was in this room.

Ans. And where were they sitting?

30

Ans. They were sitting back a little from me towards the wall.

Ques. Towards the wall?

Ans. Yes.

Ques. Were they sitting so that they could not see into the door that entered into the dining room?

Ans. No; unless you sit right in about the centre of that sitting room you couldn't see directly into this dining room.

Ques. Well, were they sitting near the centre?

Ans. They were not sitting near the centre. I was sitting near this little centre-table.

Ques. Were they sitting towards the front or back part of the room?

Ans. They were sitting near the bay window on the diagram.

Ques. What were they doing while Mr. Brower was in there?

10 Ans. They were talking sociably.

Ques. You and Mr. and Mrs. Rush and Mrs. Myers?

Ans. Yes, just talking over things.

Ques. You say he went in and was gone a little while and then came out?

Ans. Came out and father called Mr. Rush in and he went in and was in there a very short time and came out and told his wife to come in.

Ques. He called Mr. Rush in?

20 Ans. Yes, sir; he went in next.

Ques. He went in next and was only gone a short time, and as he came out he told his wife to go in?

A. Told his wife to go in; told his wife that the Squire wanted her, and she went into the room and she came out.

Q. Were any of these people there together in the room where your father was at the same time?

Ans. No, sir.

Ques. None of them?

Ans. No, sir.

30 Ques. Are you sure of that?

Ans. Positive.

Ques. Was Mary Davidson there?

Ans. No, sir; she was not there.

Ques. Wasn't there at all?

Ans. No, sir.

Ques. Wasn't she there that evening at all?

Ques. No; she was not there—well, she was there for the night, but not that evening.

Ques. Where was she, do you know?

Ans. I think she was out visiting a friend of hers.

Ques. Do you remember a Mr. Hickey calling there?

Ans. Yes, sir; Mr. Hickey, the conductor on the train, rung the bell and came in and my father still had the paper, pen and ink in his hand. He was on his way into the office to put them away.

Ques. That was after these people had——

Ans. It was after these people——

Ques. Had gone in? 10

Ans. Had gone in and come out; and Mr. Hickey, seeing him with these articles in his hand asked him if he had signed his death warrant, and my father answered yes.

Ques. And what else did he say?

Ans. That is all there was of it; he didn't say any more.

Ques. Well, what was done after that?

Ans. Well, after that my father invited them into the dining room to have a game of pinochle.

Ques. Did they have a game of pinochle? 20

Ans. Yes, sir.

Ques. Where was Mrs. Myers while this signing was going on?

Ans. She was in the sitting room. She had gone into the dining room now and then—I don't know when—but passing to and fro.

Ques. While the signing was going on did she go into the dining room where the signing was going on?

Ans. Yes; she went in there.

Ques. How long did she stay? 30

Ans. Didn't stay very long; just went in and came right out.

Ques. Did you hear anything said by these people while they were in the dining room, any of them, with your father?

Ans. No, sir.

Ques. Heard no conversation going on there?

Ans. No, sir.

Ques. Were any of these people, Mr. and Mrs. Rush or Mr. Brower, where they could see when they were in the main room or sitting room, where they could see what was going on in the dining room?

Ans. No, sir.

Ques. Could not?

Ans. No, sir; not unless you were sitting in the centre of the room.

Ques. Well, I know, but from where they were sitting, 10 could they see in the dining room?

Ans. No; they were sitting back towards the bay window. They couldn't see into the dining room from there.

Ques. Do you know anything about Mary Davidson signing this will?

Ans. Yes, sir. My stepmother told her to go into my father's office; he wanted her to sign something; and I was washing the dishes for her at the time and she said, all right, she would, and when she came out she asked her if she had signed it and she told her yes.

20 Ques. When was that, how long after the evening that you have spoken of when the will was signed by these other people?

Ans. It was about a week.

Ques. About a week afterwards?

Ans. Yes, sir.

Ques. Where is Mary Davidson; do you know?

Ans. Over in Ireland now.

Ques. How long has she been in Ireland, if you know?

Ans. Well, she has been there about the last nine years.

Ques. Have you heard Mrs. Myers ever state that she 30 was married to your father?

Ans. Yes, sir. I heard her say that she was married to him.

Ques. Did you hear her state where and when she was married?

(Objected to as immaterial. Objection overruled.)

Ans. She said she was married in two different places. She said she was married in St. Peter's Church, Philadelphia, and then she said she was married in the Magistrate's office.

By the Court :

Ques. You say she said she was married at two different places. Do you mean on the same occasion she told of this marriage at different places, or was it at different times?

Ans. It was at different times.

By Mr. Wescott :

Ques. When you saw this mark on your father's face did you hear her say anything, when you stood looking at the mark on your father's face?

Ans. No ; I didn't hear anything about it. She was anxious for it not to be seen. She tried to conceal it as much as she could.

Ques. Did you know how this mark came on your father's face?

Ans. No, sir ; I don't know how it came there.

Ques. Did Mrs. Myers say how it got there?

Ans. Yes ; she told me.

Ques. What did she say?

Mr. Boyle : I object to that, if your Honor please. It has already been testified to. 20

The Court : Yes, that has been testified to.

Ques. She spoke about those two different places where he fell?

Ans. Yes, sir.

Ques. Did you reach your father's house before he died?

Ans. No, sir ; I wasn't there.

Ques. Were you there to say there at night after he died?

Ans. After he died?

Ques. Yes.

Ans. Yes, sir.

Ques. What night was it you stayed there? 30

Ans. Well, that was that winter after he died ; one night that winter.

Ques. One night?

Ans. Yes.

Ques. Do you remember someone sleeping with you there?

Ans. Before he died, yes, sir ; my sister-in-law was visiting the house and she slept with me. That was before I went away from home.

Ques. Do you remember anything happening in that house when your sister-in-law was sleeping with you?

Ans. Yes, sir; my stepmother came into the room——

Ques. Wait a minute. What night was that?

Ans. That was about a week before he died.

(Objected to.)

The Court: I will take the testimony.

Ques. Well, just tell us the circumstance. What was it?

10 (Objected to as irrelevant.)

The Court: It is allowed. Take an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, my sister-in-law was staying with me and we slept together, and my stepmother came into the room with  
20 a candle in her hand, lit, and stood at the end of the bed. I didn't see her the first time, but she came in again and then I saw her.

Ques. Why didn't you see her the first time?

Ans. Well, I was asleep the first time and I didn't see her; but my sister-in-law saw her and then she came in again and I saw her and she went out. She didn't know that I seen her. And then my sister-in-law asked me what she meant by coming into the room and I said I didn't know  
30 what she meant. So then I heard the glasses rattling in the bath room as though she was mixing up something or other; and then she came out of the bath room and went into the bed room and went back into the bath room again and I heard the glasses—I judged them to be glasses—being washed; and as she came out she heaved a sigh and said, "God forgive me if he should die for what I have done this night;" that is what I heard her say.

Ques. Do you know Dr. Abbott?

Ans. Yes, sir.

Ques. Was he in attendance upon your father?

Ans. Yes, sir; he attended my father.

Ques. Did your stepmother during your father's last illness get you to buy some—go to the drug store and buy something?

Ans. Yes; she sold me to buy ten cents worth of—

(Objected to as irrelevant and immaterial.)

The Court: The testimony may be taken.

Ans. Well, she told me to get ten cents worth of laudanum and ten cents worth of castor oil; she wanted to give my father a dose of castor oil and put some laudanum in it.

Ques. Did she explain what she wanted to give that to him for; what she wanted to accomplish by it?

Ans. Well, she didn't just say what she wanted of the castor oil; the laudanum, she said what she wanted to put that in for.

Ques. What did she say?

Ans. Well, she said to keep it from griping.

Ques. Did you file a caveat against the proof of this will? 20

Ans. Yes, sir.

Ques. Who was Mrs. Myers' lawyer at that time?

(Objected to as irrelevant and immaterial.)

The Court: I don't see its relevancy. What is it, Judge?

Mr. Wescott: The balance of this lady's testimony—I am getting toward the end of it—and a great deal of the testimony from the other witnesses will relate to what was done about this caveat by Mrs. Myers. We will produce an abundance of good evidence to show that Mrs. Myers 30 induced these people to withdraw this caveat on the promise that she herself would see that they had their share in their father's estate; and that after the caveat had been filed and the contest commenced and a very little evidence taken, acting upon her promises and representations, they withdrew this caveat. Now of course that fact standing alone would mean nothing; but in conjunction with the rest of the proof in the case, after it is all in, it means this: that

she did not want and could not afford to have a contest of this will, because she knew what was going to come out if there was a contest of this will. Perhaps her very life was at stake. Therefore there was every reason in the world why she should induce this weak girl to withdraw this caveat. And when all the circumstances are linked together and a proper argument made, it is perfectly clear that her after conduct throws just as much light upon the subject as her previous conduct. The two sides of the drama are  
 10 to be taken together in order to show us where the whole truth lies.

Mr. Carrow: I object to any evidence introduced in the line suggested by counsel, because the evidence would be irrelevant and immaterial.

The Court: It does not seem competent to me.

Mr. Wescott: I hope your Honor will consider that carefully; it is so vital in this case. The judge who tried the case before had no doubt about the competency of this  
 20 evidence at all. You see it is not only what the woman does beforehand, but what she does afterwards in respect to the same matter, the same subject matter, which goes to interpret her motives and conduct. If she induced by unholy means these people from contesting this will she had a motive for doing it. Now, what was it? Why, her motive is found in what she did before. If she made the will, if she compelled this will to be made for her own purposes, and if there were circumstances surrounding this man's death which could not bear the light of day, now it was  
 30 altogether important for her to stop this controversy; but if she were honest about it and had nothing to do with the manufacture of this will, nothing to do with the taking off of her husband, then she could say, "Go ahead with your caveat." But I will show by perfectly convincing, overwhelming proof, if your Honor thinks it admissible, that she did stop this will contest and she had a motive for doing it. As I said, what was that motive? Why, the very thing that I have explained, her conduct theretofore, was her

motive for stopping the contest of this will. Suppose now she had said to a thousand people, "I want to stop this contest and I am going to do it if it costs me a fortune, because I made that will, and because there is conduct back of that will that I do not dare allow see the light of day." Suppose she had said that to your Honor and these twelve men, all of us ; is it conceivable that that would not be good evidence in this case? That is the kind of evidence I want to introduce now. Of course she did not use that language, but she did that which means the same thing; and therefore it seems to me it is perfectly relevant. It would be a great misfortune if it was left out. 10

The Court: Well, I will take the testimony, subject to objection, if counsel desires to put it in.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal) 20

Mr. Wescott: Of course if it is not good evidence it is all the better for them in case they get defeated in this case and all the worse for us.

Ques. Who was your stepmother's lawyer at the time you filed a caveat?

Ans. Well, she had several lawyers. She went to see several lawyers.

Ques. Well, who were they?

Ans. One of them by the name of Wagner. 30

Ques. Oh, yes; Wagner was one of them. Do you know Mrs. Annie Hamscher?

Ans. Yes, sir.

Ques. Did you get a letter from her?

Ans. From her daughter Ida I got the letter.

Ques. From her daughter?

Ans. Yes, sir.

Ques. Where is that letter?

Mr. Boyle: We want to get our objection in in time. I object to the contents of any such letter and any evidence in relation to it as irrelevant.

Ques. After you got that letter did you go see Mrs. Myers?

Ans. Yes, sir.

Ques. And was it because you got the letter that you went to see her?

10 Ans. Yes; it was because I received a letter.

Ques. Don't state what was in it. Where did you go to see Mrs. Myers?

Ans. In Ocean City.

Ques. Where were you living at the time you got this letter?

Ans. I was living at Sea Isle City.

Ques. When you went to see Mrs. Myers did you speak to her about the letter?

Ans. Yes; she spoke to me about it and I spoke to her  
20 about it.

Ques. Did you tell her you had received such a letter?

Ans. Yes.

Ques. Did you show it to her?

Ans. Yes, sir.

Ques. What did she say to you after that?

Ans. Well, she said to me what she had told me in the letter. She told me that if I would withdraw this caveat that I had filed that she would see that we all got our share.

Mr. Boyle: Your Honor understands we object to that  
30 letter and its contents.

The Court: Yes. Note an exception. She is stating now what Mrs. Myers said.

Mr. Boyle: She is now giving evidence of the contents of some letter that she claims was written by Mrs. Myers.

Mr. Carrow: We want to object to the admission of any proof in regard to the withdrawal of the contents on the caveat.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What was it she said?

Ans. Well, she said if I withdrew the caveat she would stand by us all and she would see that we could get our share, and also our share of the fortune.

Ques. Share of what?

Ans. Our share of this fortune, the money in question,<sup>10</sup> and also that I would get those things that my father had promised me.

Ques. Did she tell you that more than once?

Ans. Yes, sir.

Ques. Well, in consequence of that, what did you do?

Ans. Well, in consequence of that I withdrew the caveat or had my attorney to withdraw it.

Ques. Did you afterwards then go to see Mrs. Myers?

Ans. Yes, sir; I went to see her afterwards.

Ques. What did you say to her?

20

Ans. I asked her if she would fulfill those promises and she refused to do so.

Ques. What did she say?

Ans. She said that she hadn't the means to do so and couldn't do so.

Ques. Was there anybody interested with you in this caveat, anybody back of you, helping you?

Ans. You mean an attorney?

Ques. No; any person at all; I don't care, attorneys or anybody else, or angels.

30

Ans. Yes, the other children, or heirs.

Ques. They were with you?

Ans. They were with me in this contest.

Ques. Did Mrs. Myers get you to see any of them?

Ans. Yes, sir.

Ques. Which ones did she tell you to see?

Ans. Well, she told me to see my brother John and get him also to stop this fight, or what we were intending to do and she would stand by us all.

Ques. Did she tell you to tell John what she would do?

Ans. Yes, sir.

Ques. Did you tell him?

Ans. Yes, sir.

Ques. Do you know whether any of the rest of these children saw Mrs. Myers? Were you present when any of them saw her?

Ans. About the caveat?

Ques. Yes.

10 Ans. No; I was not present when any of the others were there.

#### CROSS-EXAMINATION.

By Mr. Carrow :

Ques. How old was your brother at the time this conversation was had? I am speaking now with reference to the conversation with regard to the withdrawal of the caveat. How old was your brother Charlie, the one who had been left the estate?

20 Ans. Well, this was nearly nine years ago.

Ques. Yes; and he is twenty-five now?

Ans. Well, he was about sixteen.

Ques. He was about sixteen years old, or about sixteen years of age, wasn't he?

Ans. Yes, sir.

Ques. And the entire residuary estate, you understood, had been left to him by your father?

Ans. Yes, sir.

30 Ques. To the exclusion of yourself and your sister and brother and your stepmother. Your stepmother was also left out of the will, was she not?

Mr. Wescott. I object. If your Honor please, in the first place, this girl is not competent, perhaps don't know, and in the second place she cannot state the terms of the will. The will is in evidence; it speaks for itself.

The Court: I suppose the will speaks for itself.

Mr. Carrow: But she has spoken of the caveat and she has also given us her reasons for filing the caveat.

Ques. Now, did you say that this stepmother, who got nothing from your father's estate, as you understood, agreed to divide your stepbrother's estate up between your father's children, if you would withdraw the caveat? Is that your understanding?

Mr. Wescott. I must object to that question because it imputes a fact.

Mr. Carrow: I am cross-examining.

Mr. Wescott. You can cross-examine all you please. I can object to the question. I am objecting to the question because she said she knew that Mrs. Myers didn't get anything out of this will, which is not a fact. She got a great deal by the will.

(Question overruled.)

Ques. Do you say that your stepmother, who had no control over your father's estate, agreed with you to divide up the estate in case you withdrew the caveat between yourself and your brothers and sisters?

20

(Objected to. Objection sustained.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

Mr. Carrow: That is precisely what she said. She said she was induced to withdraw the caveat.

The Court: You may ask her about that, but it is the interjection of the assumption of her control over the estate that is objectionable in the Court's mind. If you strike that out I will allow the question.

Ques. You filed a caveat to the will, didn't you?

Ans. Yes, sir.

Ques. You knew the contents of the will, didn't you?

Ans. Yes, sir, I had read it through.

Ques. Yes; you read and you knew the contents of the will, and you knew the contents of the will when you filed the caveat, did you not?

Ans. Yes, sir.

Ques. Then with the knowledge of the contents of the will when you filed your caveat, and when the controversy was pending in the Orphans' Court and when the matter was up before the Orphans' Court and you were there and your lawyers were there and your witnesses were there, do you mean to say that you made an agreement with your mother-in-law whereby your mother-in-law was to divide this estate up between you and your brothers and sisters?

Ans. She didn't make that statement before any of those  
10 brothers and sisters in my presence; she said that to me personally, wrote to me about it.

Ques. That is what I mean?

Ans. She wrote to me.

Ques. And at the same time you knew the contents of the will? I say you knew the contents of the will?

Ans. Well, yes; I knew the contents of the will.

Ques. And you knew that by the terms of the will the entire residuary estate had been left to your infant brother, didn't you?

20 Ans. Well, infant brother, I don't know. I knew that, of course. I knew that.

Ques. Who were your lawyers at that time?

Ans. Albert Howell was my lawyer at that time.

Ques. And Mr. John F. Harned, of Camden, was also of counsel?

Ans. Well, I don't know about him. I didn't have any communication with him. All I know about is Albert Howell.

Ques. You were present in the court room when the  
30 subscribing witnesses to the will were sworn and examined, were you not?

Ans. No, sir; I was not.

Ques. Weren't you there when your caveat was withdrawn?

Ans. No, sir.

Ques. Did you attend any of the sessions of court while the caveat was pending?

Ans. No, sir.

Ques. No other caveat was filed. No one was mentioned in the caveat but you, was there?

Ans. Well, I didn't see the caveat. I just knew that it had been entered or filed. I didn't know what was mentioned in it.

Mr. Jefferson: It speaks for itself.

Ques. Now, when did you have these conversations that you have mentioned with your stepmother, Sallie G. Myers? <sup>10</sup>  
When did you have these conversations?

Ans. About in 1897, in the year 1897.

Ques. How soon after the caveat was filed?

Ans. Shortly after the filing of the caveat.

Ques. And when did you go to see her and ask her to fulfill her promises to divide up the estate, as you say she said she would between you and your brothers and sisters? When did you go to her and ask her to divide this estate up that had been left to your infant brother? <sup>20</sup>

Ans. Well, I went there after I had withdrawn the caveat.

Ques. How soon afterwards?

Ans. Soon after I had withdrawn the caveat.

Ques. In a month?

Ans. About that time.

Ques. What did she tell you?

Ans. Well, she told me that she couldn't do it.

Ques. Told you she couldn't do it; she had no control or authority to do it, did she not? <sup>30</sup>

Ans. No, she didn't say those words, that she had no control, but she said she wouldn't do it.

Ques. Said she wouldn't do it? You took no appeal from the probate of the will?

Ans. I don't remember any.

Ques. You knew at the time that James Myers, your eldest brother, was the executor of your father's estate?

Ans. Yes, sir; I knew that.

Ques. You knew that at the time, that James was the executor and the trustee under your father's will; you knew that at the time, didn't you?

Ans. Yes, sir.

Ques. You knew also that James was the guardian of your brother Charles?

Ans. Yes, sir.

Ques. And that the estate was left in James' control and possession until Charles should arrive at the age of twenty-  
10 one years? You knew that, didn't you?

Ans. Well, if that was in the will I knew that because I had read the will.

Ques. Yes, you knew that; you knew that at the time that the caveat was withdrawn?

Ans. Yes.

Ques. And before? You knew you came here and read the will, didn't you?

Ans. I didn't come here and read it, no.

Ques. Where did you read it?

20 Ans. I read it home, it was given to me.

Ques. Who gave it to you?

Ans. The executor give me a will.

Ques. Who was the executor?

Ans. James Myers, my brother.

Ques. James Myers, your brother, the executor, gave you the will or a copy of it?

Ans. A copy of it.

Ques. Gave you a copy of the will at once; right after  
30 your father's death?

Ans. Yes, sir; soon after.

Ques. And before you filed a caveat?

Ans. Yes, sir.

Ques. James Myers, you say, is your oldest brother?

Ans. Not my oldest brother. There is an older brother.

Ques. He is not the oldest?

Ans. He is not the oldest.

Ques. Who is the oldest?

Ans. John is the oldest.

Ques. Well, is James the second child?

Ans. Well, I don't know how they range in birth, but I know that James is younger than John.

Ques. Where does James live?

Ans. He lives in Philadelphia.

Ques. What is his business?

Ans. Real estate business.

Ques. He succeeded your father in the real estate business in Philadelphia, did he not? 10

Ans. Well, not directly. Another brother succeeded him.

Ques. What brother was that?

Ans. William.

Ques. He is dead, isn't he?

Ans. He is dead.

Ques. Where is James in business?

Ans. Where is his business?

Ques. Yes. 20

Ans. In Philadelphia, 2356 North Eighth Street.

Ques. What aged man?

Ans. A man of about forty-four years.

Ques. Is he your own brother?

Ans. No, sir.

Ques. He and John and William and Annie Hamscher were by an earlier marriage, was it?

Ans. Yes, sir.

Ques. Your father was married three times or four times? 30

Ans. He was married four times. He had four wives.

Ques. Four wives?

Ans. Yes, sir.

Ques. Now, did I understand that you dispute the marriage between your father and Sallie G. Myers or Sallie G. Griffin, as you call her?

(Objected to. Objection overruled.)

Ques. You have already said that your mother-in-law gave different accounts to create the impression that you had some doubt about the fact of marriage. Now, do we understand that you doubt whether your father was ever married to this woman?

Ans. Well, according to her own version of it, it would leave one in doubt, as she told you different stories relative to the fact.

10 Ques. Now, when did you leave home? I am speaking now when you got married and went to Sea Isle to live.

Ans. I left home—when I got married, to be married, do you mean?

Ques. When were you married?

Ans. Well, I was married January 10, 1897.

Ques. Now, when did you leave home?

Ans. Left home the Saturday week before.

Ques. Now, were you on good terms with your step-mother when you left home or were you on bad terms?

20 Ans. Well, I was on friendly terms with her.

Ques. You were on friendly terms? Now, what did she do for you in the way of providing you with a home at Sea Isle City when you got married?

Ans. Didn't do anything.

Ques. Did she buy you a lot?

Ans. No.

Ques. Did she put up the money for you to buy a house and lot?

Ans. In Ocean City?

30 Ques. Well, Sea Isle City, wasn't it?

Ans. When I got married?

Ques. Yes.

Ans. No; not directly when I got married.

Ques. Was it after you were married?

Ans. Well, after I was married a while; yes, sir.

Ques. Didn't she buy a house and lot?

Ans. Didn't buy me any house; she paid off a little money on a lot.

Ques. She paid off how much money?

Ans. \$200 on a lot.

Ques. What else?

Ans. That is all.

Ques. She gave you \$200 to pay on a lot?

Ans. Yes, sir.

Ques. Now, did she help you build the house; put up any money for material to build the house?

Ans. No, sir.

Ques. Did she help you to furnish the house?

10

Ans. No, sir.

Ques. Did she send things down to you?

Ans. Did she send things down?

Ques. Yes.

Ans. Yes; not very much.

Ques. What did she send down to you?

Ans. Oh, she sent some baby clothes when I was in hard luck.

Ques. Baby clothes, and what else?

20

Ans. Some vegetables and a head of cabbage and a watermelon, and things like that.

Ques. Sent groceries down by the basket?

Ans. No; she didn't send any groceries by the basket.

Ques. Well, did she send some groceries down?

Ans. Well, she sent a half of a ham down and I was afraid to use it for fear I would get poisoned, because it looked as though it was not fit to be used.

Ques. Well, was you afraid to use this \$200?

Ans. No; I wasn't afraid to use that.

30

Ques. Were you afraid to put the baby clothes on your baby for fear it might be poisoned?

Ans. No; I wasn't afraid of that.

Ques. These other things—weren't you constantly getting things from her?

Ans. No; not in the line of food.

Ques. Well, weren't you getting money from her?

Ans. No, sir.

Ques. Now, did you write her any letters during this time?

Ans. Oh, yes; I wrote her letters.

Ques. I call your attention to a letter under date of July 21, 1898, and ask you to be kind enough to examine the handwriting and see whether that letter was written by you to your stepmother, Sallie G. Myers?

Ans. Yes, sir; that letter was written by me.

Ques. I also call your attention to the letter under date 10 of August 30, 1898, and ask you whether that letter was written by you to your stepmother?

Ans. Yes; that letter also.

Ques. Also another letter which does not bear—I hand you another letter in lead pencil and ask you whether that letter was written by you to your stepmother, too?

Ans. Yes; they were all written by me.

Ques. Did your mother also request your brother James, the trustee and executor of the estate, to advance you some money?

20 Ans. Yes, sir.

Ques. How much?

Ans. Well, \$25. Twice he gave me. I was in very hard luck and she took advantage of those.

Ques. Didn't she go with you to the trustee and get some money?

Ans. Didn't go with me, but she told me to write to him and ask him for this money.

Ques. He had the entire charge of the property, didn't he?

30 Ans. He had.

Ques. Yes.

Ans. I suppose he had.

Ques. He has it yet, hasn't he?

Ans. Yes, sir.

Ques. She didn't have any control over the property, did she, your stepmother?

Ans. Well, I suppose she could have exercised a certain influence; I don't know.

Ques. With who, your brother?

Ans. She might have. She was a person of that stamp, that could work things her own way.

Ques. Examine those papers, please, and say whether the signature there is yours?

(Papers shown witness.)

Ans. Yes; they are mine.

Ques. I also call your attention to a letter under date of January 6th, 1899, to Charlie, and ask you to examine that, please. Did you write that letter? 10

Ans. Yes; I wrote that. There is nothing at all about that letter that is any ways mean.

Ques. Now, was your stepmother visiting you during the time that you were writing these letters?

Ans. No, sir.

Ques. A year or two after your father's death?

Ans. No, sir; she never visited me.

Ques. Did you visit her?

Ans. Yes, sir. 20

Ques. How often?

Ans. Well, not very often.

Ques. Well, how long did you stay when you went up there?

Ans. Only stayed for the day.

Ques. How often did you go?

Ans. Oh, about two or three times; that is all.

Ques. About two or three times?

Ans. Yes, sir. 30

Ques. How many times did you go there after she told you that she couldn't divide up the estate?

Ans. I went once.

Ques. What?

Ans. I went once after I had withdrawn the caveat.

Ques. You went once, but you wrote several of these letters afterwards, didn't you?

Ans. Afterwards; yes, sir.

Ques. You got that money afterwards, too, didn't you; that \$200?

Ans. Yes, sir.

Ques. When did you get the \$200?

Ans. Well, that has been about seven or eight years ago, Judge.

Ques. Seven or eight years ago?

Ans. Yes, sir.

Ques. How long has your husband been dead?

10 Ans. Been dead four years in September.

Ques. How long has your stepmother been dead?

Ans. She died last winter.

Ques. What was her age?

Ans. Indeed, I am not sure of her age. I couldn't tell you exactly. I should judge she was about sixty; somewhere along about there.

Ques. Did she continue to reside in your old home at Ocean City after your father's death?

Ans. Yes, sir.

20 Ques. She kept up the home, did she?

Ans. She lived there in the house.

Ques. And when you went to see her at Ocean City you saw her there, did you?

Ans. Yes, sir.

Ques. Now, what year was your sister Jennie married?

Ans. She was married in 1894.

Ques. You told us that at the time of her marriage, or before the marriage, your father objected to her marrying  
30 the man that she married because information was brought to him to the effect that the young man was blowing around Ocean City that he expected to make some money by the marriage; isn't that so?

Ans. I said that turned him against this—

Ques. That turned your father against the young man that was trying to marry your sister?

Ans. Yes, sir.

Ques. Up to that time, up to the time this information was brought to your father, your father was satisfied with the young man, wasn't he?

Ans. Yes, sir.

Ques. And he argued with your sister that he didn't think the young man was a suitable man?

Ans. Yes, sir.

Ques. Your father was interested in your sister, wasn't he? 10

Ans. I suppose he was.

Ques. What is that?

Ans. I suppose that he had a fatherly interest in her, naturally.

Ques. He always seemed kind and nice to her, didn't he?

Ans. Oh, no; not all the time.

Ques. Well, as a general thing. Do you mean to say that your father's attitude towards Jennie and towards you was not friendly, was not affectionate? 20

Ans. Yes, sir; I mean to say that it was not.

Ques. It was not?

Ans. At certain times.

Ques. At certain times? Well, now for how long a period did that last?

Ans. Well, it lasted for three or four months at a time.

Ques. I thought you told us that your father, after your sister married this young man, your father went on to Philadelphia to see her and embraced her and showed great affection for her; is that not so? 30

Ans. I said that; yes, sir.

Ques. Well, when was that?

Ans. Well, that was about the Christmas following.

Ques. The Christmas following what?

Ans. Her marriage.

Ques. Well, what year was that?

Ans. She was married in 1894. That made about 1896, or 1895.

Ques. And you have also said in 1896 you were stricken with typhoid fever and your father was so exercised about your condition that he came down in the middle of the night and gave you your medicine; did you say that?

Ans. No; he slept in the room next to me.

Ques. Well, came in then with your medicine?

Ans. The doctor said I should have my medicine every hour—I was very sick—and he came into the room at night and gave me my medicine.

10 Ques. Was he kind to you?

Ans. Very kind.

Ques. Did he seem to be anxious about your condition?

Ans. Seemed to be worried and anxious about me.

Ques. Did you ever have any doubt about your father's love for you and his confidence in you?

Ans. No; I really thought my father loved me.

Ques. Did you love your stepmother?

Ans. No; I didn't love her.

20 Ques. Did you tell her that you loved her in these letters?

Ans. No; I didn't say I loved her in those letters.

Ques. Did you send your love to her in those letters?

Ans. Well, I did; naturally when you write to a person you send love.

Ques. And you didn't mean it?

Ans. Well, it is a matter of form; you don't always.

Ques. It is a matter of form, is it?

30 Ans. Sometimes it is meant and sometimes you say it for a matter of form.

Ques. Now, all this time, as I understand you, all this time that your father was doing these things, do you say now that your father was drunk; so drunk that he didn't know what he was about?

Ans. Sometimes he was.

Ques. What did you say?

Ans. At times he was in those conditions.

Ques. Oh, at times?

Ans. At times.

Ques. You don't mean to say that he was drunk all the time?

Ans. No; I don't mean to say he was drunk all the time.

Ques. Do you mean to say that your stepmother was drunk all the time?

Ans. No; not all the time. I would give her a little time—

Ques. Then she was only occasionally sober?

Ans. No; I wouldn't say occasionally.

Ques. She was not sober occasionally? 10

Ans. I would say most of the time.

Ques. Most of the time drunk?

Ans. Yes, sir.

Ques. Was she drunk when she gave you the \$200?

Ans. No; I couldn't say she was.

Ques. Was she drunk when she gave you the clothes for your baby?

Ans. Well, I didn't see her. She sent them.

Ques. Was she drunk when she sent you those things 20 when you were in hard luck?

Ans. I don't know.

Ques. Was she drunk when she got the money from James?

Ans. I don't know.

Ques. Was she drunk when she sent you the groceries and vegetables?

Ans. She must have been when she sent the cabbage and watermelon.

Ques. You object to the cabbage and watermelon? 30

Ans. No; I thought it was a very peculiar present.

Ques. Did you object to the cabbage and watermelon?

Ans. No; but the cabbage and watermelon, I didn't think they seemed to correspond.

Ques. I suppose that is altogether a matter of taste?

Ans. It is not my taste.

Ques. Where is Jennie?

Ans. She is in New York just now.

Ques. She doesn't take any stock in this litigation, does she?

Ans. Oh, yes, she does.

Ques. Has she ever been here?

Ans. Been here present in Court?

Ques. Never been present at any litigation, has she?

Ans. She has not.

Ques. Now you were in a convent for seven years?

Ans. Nine years.

10 Ques. Nine years, were you?

Ans. Yes, sir.

Ques. Were you being educated in this convent?

Ans. Yes, sir.

Ques. What was the name of the convent?

Ans. Mount Saint Joseph's, Chestnut Hill.

Ques. A very celebrated place, isn't it?

Ans. Yes; it is quite an academy.

Ques. Quite an academy? How many other girls were there?

20 Ans. Well, I guess there is over a hundred girls.

Ques. A good institution?

Ans. Very good.

Ques. And you were there nine years, you and your sister?

Ans. Yes, sir.

Ques. Had nine years' education?

Ans. Yes, sir.

Ques. Did it cost some money?

Ans. Well, I judge it did.

30 Ques. How much?

Ans. Well, I don't just remember.

Ques. An expensive place, isn't it?

Ans. Yes; it is quite expensive.

Ques. It is one of the noted institutions of learning for young ladies?

Ans. Well, it is a little different now from what it was then. It is a little more up-to-date, and I suppose it is more expensive now than it was then.

III

Ques. You don't recollect how much it cost a year, do you?

Ans. I think it was about \$200 tuition.

Ques. \$200 for you and \$200 for your sister?

Ans. Yes, sir.

Ques. That didn't include your clothing at all, did it?

Ans. No, sir.

Ques. No. You had to be kept besides?

Ans. Yes, sir.

10

Ques. Now, did you graduate there?

Ans. No, sir; I didn't graduate.

Ques. Did your sister graduate?

Ans. Yes, sir; she did.

Ques. After you came out of the convent did you go to Ocean City to live with your father?

Ans. Yes, sir.

Ques. You lived with your father?

20

Ans. Yes, sir.

Ques. And stepmother?

Ans. Yes, sir.

Ques. Like any other young woman would, down until the time of your marriage?

Ans. I lived there with them.

Ques. And your sister Jennie also lived with your father and mother?

Ans. She lived there; yes, sir.

30

Ques. Like any other single woman would, down to the time of her marriage?

Ans. Well, we didn't live like any other person would live.

Ques. Why not?

Ans. Because we were deviled to death most all the time.

Ques. Deviled to death?

Ans. Yes, sir.

Ques. Do you call it being deviled to death because your stepmother objected to your sister meeting strange men on the boardwalk in Ocean City?

Ans. No; I wouldn't call that deviled to death, if that were so; but when they were not so, then I mean to say—

Ques. Do you mean to say that your mother-in-law was unreasonable in her care in looking after you and your sister's conduct? You realize that you were a young woman in a gay place—I don't know how gay it is down  
10 in Ocean City—but was your stepmother's conduct unreasonable, the surveillance that she gave your conduct?

Ans. Yes, sir; for we didn't do anything different from what the generality of young people did, and she exaggerated things that we did do.

Ques. She always gave you good advice, didn't she? Did she ever advise you to do anything bad?

Ans. She didn't advise us at all.

Ques. Did she ever advise you to do anything bad?

Ans. Well, no; she didn't advise me to do anything bad.

20 Ques. Now, you started out by saying that your father and mother were Presbyterians?

Ans. Yes, sir.

Ques. You mean your own mother?

Ans. Yes, sir.

Ques. Your own mother was a Presbyterian, wasn't she?

Ans. Yes, sir.

Ques. Do you say that your father was a Presbyterian?

Ans. I say he went to church with her.

Ques. Oh, he only went to church with her?

30 A. Yes, sir.

Ques. But you knew that your father had been confirmed when a boy in Saint Joseph's Catholic Church in Philadelphia, didn't you?

Ans. No; I did not. I don't remember the occurrence.

Ques. I don't suppose you remember the occurrence, but you knew that your father came from Catholic people, didn't you?

Ans. No, sir; I don't.

Ques. When did he begin to go to the Catholic Church?  
Did he go to the Catholic Church at all?

Ans. Yes, he did; toward the latter years of his life.

Ques. With your mother?

Ans. Stepmother.

Ques. Stepmother?

Ans. Yes.

Ques. Well, he was also friendly to other churches,  
wasn't he?

Ans. No.

10

Ques. Wasn't he friendly to the Methodist Church?  
Didn't he advance them money?

Ans. He had a mortgage on the Methodist Church; that  
is all.

Ques. He also went to church sometimes, didn't he; the  
Methodist Church?

Ans. No; I don't remember him going to the Methodist  
Church.

Ques. Well he was interested in these Methodist people<sup>20</sup>  
over there at Ocean City, wasn't he, mixed up with them?

Ans. Well, he couldn't help but be, because there were  
very few Catholics at the time.

Ques. When you went to Ocean City to live there were  
nobody but Methodists there, were there?

Ans. Well, indeed, I don't remember. They were mostly  
Methodists. I didn't inquire if there were any Catholics  
at the time.

Ques. Now, was the young man that Jennie married a<sup>30</sup>  
Catholic or Protestant?

Ans. He was a Methodist, a Protestant.

Ques. Was that young man that married you a Meth-  
odist?

Ans. He was a Catholic.

Ques. Now in regard to the terms upon which your  
father and stepmother lived together, do I understand you  
to say that they frequently had quarrels?

Ans. Yes, sir.

Ques. They quarreled a good deal?

Ans. Yes, sir.

Ques. If I understand what you mean is that they had differences of opinion in regard to marriage?

Ans. No; I didn't say about marriage.

Ques. I don't mean marriage, I mean in regard to different matters?

Ans. Matters, yes.

Ques. Difference of opinion between them?

10 Ans. Yes, sir.

Ques. Did you ever see your father strike your mother?

Ans. No, sir; I didn't.

Ques. Seen him strike at her, haven't you?

Ans. No; I never saw him.

Ques. Haven't seen him chase her out of the house?

Ans. No, sir; I didn't.

Ques. Well, you have seen him scold here severely, haven't you?

Ans. Well, I wouldn't call it scolding.

20 Ques. And said she was mixing in too much?

Ans. No; I never heard him say that. He generally kept his mouth shut and took it all.

Ques. Well, did you ever see her strike your father?

Ans. Yes, sir.

Ques. With what?

Ans. Well, I saw her strike him or going to strike him with a chair.

Ques. Didn't hit him, though, did she?

Ans. No; I suppose she meant to.

30 Ques. Well, did you see her cut him with any of these knives that you saw her swinging around?

Ans. No; she didn't cut him.

Ques. Well, did you ever know of her poisoning him?

Ans. No; I didn't know of her poisoning him.

Ques. Would she be drunk when she would be swinging these knives around and would he be drunk when he was quarreling with her, or were they generally sober?

Ans. Well, they were generally under the influence of liquor.

Ques. Generally under the influence of liquor?

Ans. Yes, sir.

Ques. Your father was a Justice of the Peace, was he not?

Ans. Yes, sir.

Ques. Where did he get his liquor?

Ans. Well, he got it in Philadelphia.

Ques. Ocean City is a prohibition town, isn't it?

Ans. Yes, sir. Well, he got his from Philadelphia.

Ques. Got it from Philadelphia?

10

Ans. Yes, sir.

Ques. In what quantities did he get it?

Ans. Got it in large quantities.

Ques. Well, by the barrel?

Ans. Well, it didn't come by the barrel; it came in boxes, packed.

Ques. Come in boxes.

Ans. Yes, sir; generally.

Ques. Did he perform the duties of his office as a Jus-<sup>20</sup> tice of the Peace while under the influence of liquor?

Ans. No; he didn't when he was under the influence of liquor?

Ques. What?

Ans. He was not capable when he was under the influence of liquor.

Ques. While he was attending to his own business, looking after his estate, was he under the influence of liquor or was he sober?

30

Ans. Well, I should say he was under the influence of liquor at times when he was attending to his own matters.

Ques. You think he was? You think he was under the influence of liquor when he was accumulating this estate?

Ans. Well, I don't know so deeply about his business affairs—

Ques. What was his business?

Ans. In the real estate business he started.

Ques. Well, what was his business during the late years of his life when you and your sister were home there?

Ans. Well, he didn't have any special business. He was interested in several things.

Ques. Lived on his income, didn't he?

Ans. Well, partly lived on his income, and had other interests besides.

Ques. Did he manage his own business?

Ans. Indeed, I couldn't tell you, for I—

10 Ques. Well, did he have any guardian looking after him?

Ans. Well, I don't know, because he didn't tell his business to me.

Ques. Well, now you know that your father attended to his own business, don't you?

Ans. I knew he had a business that he attended to, but I don't know whether he had any assistance or not.

Ques. Well, you knew who was in his office, didn't you?

Ans. No; he had nobody in his office.

Ques. Did James come home?

20 Ans. Yes; he came down.

Ques. To visit his father?

Ans. Yes, sir.

Ques. John?

Ans. Yes, sir.

Ques. The other children?

Ans. Yes, sir.

Ques. All these years that your father and your step-mother lived together the house was open for these children to come and go as they pleased; is that not true?

30 Ans. Well, not as they pleased; not to come and go as they pleased.

Ques. Well, then, put it in your own way.

Ans. There were times when they daren't.

Ques. Why?

Ans. Because he was turned against them and they daren't come.

Ques. Well, when was that?

Ans. Well, for instance, my sister; she daren't come home.

Ques. Now, what time in 1896 was that you had typhoid fever?

Ans. It was in the fall of 1896.

Ques. Who nursed you?

Ans. Well, my stepmother nursed me.

Ques. Your stepmother nursed you; this very lady that was so cruel to you?

Ans. Yes, sir.

Ques. She nursed you the whole length?

Ans. Yes, sir. 10

Ques. Did she sleep with you?

Ans. No, sir.

Ques. Did she stay in the room with you?

Ans. She stayed in the next room.

Ques. Did she give you your medicines?

Ans. Yes, sir.

Ques. And washed and dressed you?

Ans. Yes, sir.

Ques. Did all that? 20

Ans. Yes; and went around and talked about me besides.

Ques. You testified in an ejectment case some time ago in which you were plaintiff against Sallie R. Griffin? You recollect your ejectment suit, don't you?

Ans. Yes, sir.

Ques. I call your attention now to these questions and answers and I want you to say whether you heard these questions and whether you made these answers: "Ques. Was the door open so you could see? Ans. Yes, sir." This 30 testimony relates to what occurred at the time the will was executed by these four persons. You were asked this question: "Ques. Was the door open so you could see? Ans. Yes, sir. Ques. They are practically one room, then, are they, the sitting room and dining room? Ans. I wouldn't call them one room." Did you say that?

Ans. Yes, sir.

Ques. "Ques. Was the door wide open. Ans. The door was wide open; yes, sir. Ques. And anybody in the sitting room was in a position to see what was going on in the dining room? Ans. Yes, sir. Ques. You are satisfied of that? Ans. Yes, sir." Did you say that?

Ans. I guess I said that at that time. I mean it would all depend upon the position they were in, where they were in this room.

10 Ques. Your recollection at that time was clearer than it is now of the occurrence, was it not?

Ans. No; just as clear now as it was then about that night, about that occurrence.

Ques. And you think that the fact that three or four years has intervened since you testified this way would not effect your testimony?

Ans. Yes; it has been about four years.

20 Ques. You don't think the intervening four years has dimmed your recollection?

Ans. Well, not much.

Ques. You testified to the truth then, didn't you?

Ans. I testified to the truth; yes, sir.

Ques. And that was the truth?

Ans. Well, it was the truth.

Mr. Carrow: I offer this letter in evidence.

30 Mr. Wescott: I object to it.

Mr. Carrow: I understand there is an objection to the introduction of these letters in evidence, the letters which the witness has said she wrote to her stepmother, July 21, 1898. There is an objection to the admission of this letter in evidence.

The Court: What is the purpose of the offer?

Mr. Carrow: The purpose of the offer is to show the relation of this woman and her attitude toward Mrs. Myers, in contradiction of the attitude which she has attributed to Mrs. Myers, utterly inconsistent. Instead of there being hostility between these parties, they were on the warmest terms of friendship and affection. Instead of Mrs. Myers being a cruel and hard woman, this woman was kind.

The Court: Well, you may make the offer. I will pass upon it later.

10

Mr. Wescott: He can't get his case into mine that way. He can offer it, subject to the defense, but he can't make it a part of my case.

The Court: He can't offer it now, no; if that is the object.

Mr. Carrow: I want to read this letter to the witness and then offer it as a part of my cross-examination.

Mr. Wescott: You can't do that.

20

Mr. Carrow: I don't understand there is any practice which limits me to any particular time to offer documentary proof.

(Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

30

Redirect examination by Mr. Wescott:

Ques. What was this \$200 sent for, do I understand?

Ans. They were sent to pay off a lot that I had bought.

Ques. And the baby clothes and vegetables and head of cabbage and half a ham and such things were sent along at different times during the pendency of your expectations that you were going to get your share of your father's estate?

Mr. Carrow: She has already said that that was repudiated in a month's time.

Ques. Was it during the pendency of your expectations that you would get your interest in your father's estate?

(Objected to as leading.)

The Court: Yes; I think that is rather objectionable as  
10 leading.

Ques. Well, were you expecting that your mother-in-law's promises would be fulfilled when you were the recipient of all these bounties, particularly the head of cabbage?

Mr. Boyle: I make the same objection on the same ground.

20 The Court: Yes.

Ques. What was your expectancy?

Ans. I expected that she would fulfill her promises.

Ques. Why, of course you were. And wasn't the head of cabbage enough to make you believe it?

(No reply.)

By Mr. Carrow:

30 Ques. When did you get the \$200?

Ans. That has been about eight years ago.

Adjourned till October 3, 1906, 9.20 A. M.

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CAPE MAY COURT HOUSE, N. J., October 3, 1906.

Trial of the cause resumed at 9.20 A. M.

MARY DEROCHE, resumed:

Mr. Boyle: Judge, before you ask any questions in direct, pardon me, while I ask a question now in reference to cross-examination.

Mr. Wescott: If it is not to be continued any time.

Mr. Boyle: No; only one matter. I want to introduce these letters, if you will admit it.

Mr. Wescott: For the purpose of identifying them?

Mr. Boyle: That is what I mean, for the purpose of identifying it. <sup>10</sup>

By Mr. Boyle:

Ques. Is that your signature, Mary DeRoche?

Ans. Yes, sir.

Ques. Did you sign that?

Ans. Yes, sir.

Ques. Did you receive the \$50 legacy that was given to you under the will?

Ans. Yes, sir; I did. 20

#### REDIRECT EXAMINATION (Continued).

By Mr. Wescott:

Ques. There was one circumstance that escaped my attention yesterday. Mrs. DeRoche, do you recall a circumstance occurring in the bedroom of Mrs. Myers' house that I did not call your attention to yesterday?

Ans. In the bedroom in Ocean City? 30

Ques. Yes.

Ans. I remember one incident.

Ques. Can you give us about the time of this occurrence?

Ans. It was about March, February or March, 1897.

Ques. Who was present at the time?

Ans. My stepmother and her grandchild was present.

Ques. What is the grandchild's name?

Ans. Mrs. Eppeheimer.

Ques. Will you narrate the incident now?

(Objected to as irrelevant and immaterial.)

The Court: Take the testimony and note an exception.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

10

ALLEN B. ENDICOTT, J. (Seal)

Ques. State what it was?

Ans. Well, I went to Ocean City in answer to a letter I had received from this grandchild stating—

The Court: Don't state what was in the letter.

Ques. Don't state what was in the letter; just state the incident, what occurred.

20

Ans. When I went over Mrs. Myers and this grandchild was in the bedroom; I was there also; and she got down on her knees before me and begged me to withdraw the caveat. She said she would try to break the will herself, as she said they were all drunk when the will was made.

#### RE-CROSS-EXAMINATION.

By Mr. Carrow:

30

Ques. A question I want to ask you; I believe you said on the morning the will was executed that your mother requested Mr. and Mrs. Rush and Mr. Brower to come in that night and have a game of pinochle; is that so?

Ans. I didn't say those words; not exactly like that.

Ques. What did you say?

Ans. I said that the will was signed that evening, not in the morning.

Ques. Well, there is a misunderstanding between you and me. When were Mr. and Mrs. Rush and Mr. Brower requested to come to your father's house?

Ans. Mr. Brower was requested to come in the morning.

Ques. In the morning?

Ans. About ten o'clock in the morning he was invited.

Ques. Invited in the morning?

Ans. Invited in the morning.

Ques. And when were Mr. and Mrs. Rush invited?

Ans. Mrs. Rush was invited in the afternoon about one 10  
o'clock.

Ques. And they were invited to come and play pinochle with your father and stepmother, were they not?

Ans. Yes, sir.

Ques. And they did play pinochle that very night with your father and mother, did they not?

Ans. Yes, sir.

Mr. Wescott: That has all been testified to by her. What is the use of repeating it? 20

Mr. Carrow: No; it has not.

Ques. How late did they play pinochle?

Ans. I judge it was half-past ten or eleven when they left the house.

Ques. And who played pinochle? Who were the parties playing?

Ans. John Brower and Mr. Rush and Mr. Hickey and my father. 30

Ques. That was the very night the will was signed?

Ans. Yes, sir.

Ques. Did you play?

Ans. No sir; I did not.

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LILLIAN McGLATHERY, sworn for plaintiff.

Direct examination by Mr. Westcott:

Ques. What is your name.

Ans. Lilian McGlathery.

Ques. Who was your father?

Ans. John Myers.

Ques. Did you know his father, Charles Myers, your grandfather?

Ans. Yes, sir.

10 Ques. Did you know Mrs. Myers?

Ans. Yes, sir; I remember her.

Ques. Sallie R. Myers?

Ans. Yes, sir.

Ques. Do you remember her coming to your parents' house in Philadelphia?

Ans. No, not Philadelphia. She came up when we lived at Berwind, this side of Berwind.

Ques. Do you remember when that was?

Ans. It was in March, 1887.

20 Ques. How long did she stay there?

Ans. She stayed two or three days; two days I think anyhow.

Ques. With whom did she sleep?

Ans. Slept with my sister and I.

Ques. Your sister and you?

Ans. Yes, sir; my sister and I.

Ques. Do you know why she slept with you two?

Mr. Boyle: We object. That certainly, if your Honor  
30 please, is irrelevant and immaterial.

Ques. You are speaking of Mrs. Myers now?

Ans. Yes, sir.

The Court: I suppose her declaration might be competent.

Mr. Boyle: Did you hear the question?

The Court: Yes, the question as asked I overrule.

Ques. Did she state if anything the reason why she slept with you?

Mr. Boyle: We still object. That is certainly irrelevant and immaterial. This is an incident occurring in March, 1897, after the death and burial of the testator, and in addition asking concerning statements of Mrs. Myers he is asking about certain reasons that she may have had for sleeping with this young lady. It certainly could not be competent. We object to it.

10

The Court: Let the testimony be taken and note an exception.

(Whereupon the defendant, by his attorney, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Will you state what was said?

20

Ans. She asked mamma if she might sleep with us; she said she was afraid to sleep by herself.

Ques. Well, what else did she say?

Ans. She said she was afraid of grandfather, that he might haunt her, and she had never done anything to him why he should haunt her; she was afraid of his ghost, she was afraid to sleep by herself.

Ques. Did she on that occasion say anything about your aunt Mary, Mrs. De Roche, the witness that was just on the stand?

30

(Objected to as irrelevant and immaterial.)

The Court: That was after the execution of the will, I understand.

Mr. Carrow: Yes.

Mr. Boyle: And after the death of the testator.

Mr. Wescott: Well, what difference does that make? There is one personality that exercised itself long before this will was made, and exercised itself after the will was made in reference to the will and the parties interested. Not all that she did or said both before and after about this matter is competent, according to all the decisions. The authorities hold that any declarations or acts by any parties interested in a will, the subject matter of the will or the parties interested in the subject matter of the will, 10 may be received in evidence in a case of this character.

The Court: Of course I don't know what the testimony is going to be. I will take it and see.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did she say anything about Mrs. De Roche?

20 Ans. She warned us not to have anything to do with Aunt Mary or Jennie. She said they were bad and ran around with fast men. She said we should have nothing to do with them.

Ques. She said that at the time she was there at your house?

Ans. Yes, she said that to me.

Ques. In 1897?

Ans. Yes, sir.

30 Ques. Did she say anything about wills on that occasion?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did she?

Ans. Yes, she said she knew all about the wills; and she had things fixed up fine.

Ques. Do you know whether at that time she was under the influence of liquor?

(Objected to as irrelevant and immaterial. (Objection overruled.)

Mr. Boyle: This, if the Court please, is after the death of the testator.

10

The Court: Yes.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. She had whisky with her and she was taking it.

Ques. Where did she keep it?

Ans. She had it sitting on a chair beside the bed.

20

#### CROSS-EXAMINATION.

By Mr. Boyle:

Ques. How long after your grandfather's death was this that the conversation took place?

Ans. This was in March, and grandfather's death was in January.

Ques. Well, did you know what the will was at that time?

30

Ans. No, sir; I didn't know anything about the will.

Ques. Did you know what was in the will at the time?

Ans. No; I don't think I did.

Ques. Hadn't heard anything about it?

Ans. No; I hadn't heard anything about it.

---

MICHAEL DEEGAN, sworn for plaintiff.

## DIRECT EXAMINATION.

By Mr. Wescott:

Ques. Where do you live, Mr. Deegan?

Ans. Philadelphia, sir.

Ques. How old a man are you?

Ans. Sixty-four.

Ques. Did you know Charles Myers in his life?

10 Ans. Yes, sir.

Ques. How long did you know him?

Ans. Oh, I guess I knowed him about twenty-five or thirty years.

Ques. Did you know Sallie R. Myers?

Ans. Yes, sir.

Ques. How intimately acquainted with Mr. Myers were you?

Ans. Well, I was very well acquainted.

20 Ques. Did you go to see him at Ocean City?

Ans. Yes, sir.

Ques. Did he come to see you in Philadelphia?

Ans. Occasionally, yes, sir.

Ques. Do you know why Mr. Myers left Philadelphia and went to Ocean City?

Ans. Well, I don't very well know anything, but I heard it was about his wife drinking.

(Objected to.)

30 The Court: Just answer the question yes or no, whether you know.

Ans. Well, I don't really know at that time, but I heard; but what I heard.

Ques. In the latter years of Mr. Myers' life in Ocean City have you any knowledge as to his drinking habit?

(Objected to. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. Well, what was its course? Did it grow more pronounced or less?

Ans. Gradually worse all the time, as far as I know.

Ques. Do you know how much he drank, or how excessive his habit was of drinking?

Ans. Well, a great deal while in my company, while I was there.

Ques. You drank with him, did you, sometimes?

Ans. Sometimes I took a drink; never got drunk, though.

Ques. What was there about his appearance the last year or two of his life that would indicate that he was a drinker?

(Objected to. Objection overruled.) 20

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, he had the appearance of being drinking heavily.

Ques. What was that appearance?

Ans. Well, he was very simple in his way, for one; rum<sup>30</sup> dumb in his way, for one. That is a rough way of saying it. And when me and his son James would come down he would act very simple and cry like and seem melancholy like. I took notice of him and his son James took notice of him, too. We generally went down together.

Ques. What about his complexion, his nose and so on?

Ans. Well, he always had a red complexion as long as I knew him, very flush in the face.

Ques. Was his face bloated in the latter part of his life?

Ans. Well, not much more than usual.

Ques. Did he ever take you to the convent with him to see his daughters?

Ans. He did.

Ques. What was his manner towards his daughters then? How did he treat them?

Ans. Very affectionate, as far as I could see.

Ques. Do you recall a circumstance of his coming to your office to see you about the purchase of a farm for one of his sons?

Ans. Yes.

Ques. Which one of his sons was it?

Ans. John.

Ques. When did that occur, Mr. Deegan?

(Objected to as immaterial and irrelevant.)

The Court: The testimony will be taken. Note an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Mr. Wescott: We can't get everything out at once.

Ans. Well, I hadn't been doing anything at the time, and I happened to go up about some of my property that evening, and he happened to be in James' office.

Ques. Can you tell about when that was, Mr. Deegan?

Ans. Well, I judge it was about six months before he died, as near as I can judge. I couldn't say the exact time, but I never seen him after that.

Ques. Well, tell us the circumstance. Tell us the details.

Ans. Well, he said to me, "Deegan—"

Mr. Carrow: We object to any testimony by this witness of any conversation with the testator after the execution of the will, because it would be irrelevant and immaterial.

(Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

10

ALLEN B. ENDICOTT, J. (Seal)

Mr. Carrow: The reason I ask your Honor for an exception is because Mr. Kelly ought to take it down; I think to save time he ought to note an exception.

The Court: Well, I think we will not vary the habit and custom.

Ques. Just state what the circumstances were.

20

Ans. Well, he said to me—he always called me Deegan—he says, “Deegan, as you do nothing, you might step down to Mr. Ely’s some day and ask him what kind of farms he had.” I says to him, “How high would you go?” His son James came in at the words; he was standing there listening. “Well,” he says, “\$7000 or \$8000.”

Ques. Did he say for whom he wanted to get the farm?

Ans. For his son John. And I stopped at Ely’s, and Ely had moved, and I never did look after about it, and I never seen the Squire after alive.

30

Ques. Well, during the last years of your acquaintance with him, how did he speak of his children to you?

(Objected to as irrelevant and immaterial.)

The Court: The testimony will be taken. Note an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, I never heard him say much to the children. He seemed to always like them, as far as I seen, as far as my conversation with him.

10 Ques. Did he make any complaints to you of them?

Ans. No; he didn't. He seemed to always have a welcome for them and liked to see them, especially his son James, and all of them, as far as I seen; his daughters, too.

Ques. Did you hear him about that time make any reference to what his life had been and what the life of his children was, and what it was going to be?

(Objected to as irrelevant and immaterial. Objection  
20 overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. He said to me that his children was luckier than what he was; that he had to sell papers and work very hard and go bare-footed when he was young, and all such  
30 talk as that; and his children, if they had done right, would have all been pretty well fixed, and so on. That is what he used to say.

Ques. When you visited Ocean City did you hear any quarrels between Charles Myers and his wife?

Ans. Very seldom.

Ques. Well, did you hear some?

Ans. I did; but it wasn't very often.

Ques. Did you notice Mrs. Myers' treatment of her husband while you were there at the house, when he was in a state of intoxication?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

10

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, I didn't see anything wrong. We all had a drink together.

Ques. How many times did he drink a day, about, while you were there?

(Objected to.)

The Court: It is allowed. Fix the time, please.

20

Ques. When were you at Ocean City the last time, how long before his death?

Ans. Well, I should judge about eight months or so before his death.

Ques. At that time how many drinks did he take a day? Have you any idea?

(Objected to. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill<sup>30</sup> of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, I couldn't say how many he took.

Ques. What was his physical health at that time? How did he seem?

(Objected to. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, he seemed to be breaking down very much.

Ques. Do you remember Mrs. Myers coming to Philadelphia once and your meeting her?

10 Ans. Yes, sir.

Ques. About how long was that before Mrs. Myers' death?

Ans. Well, I guess it was a year or two. About two years, I suppose, or thereabouts.

Ques. Well, where did you walk with her, do you remember there. I walked I suppose about four squares with her.

Ans. Well, she was over at my house, and I walked over member?

Ques. On what street?

20 Ans. On the cars.

Ques. Oh, on the cars?

Ans. I put her on the cars and she went on downtown.

Ques. When you put her on the cars what street was she on?

Ans. On Germantown road.

Ques. Did she say anything to you on that occasion about Mr. Myers?

(Objected to as immaterial and irrelevant. Objection overruled.)

30 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, she said to me that she was a good while getting him, and she had a great deal trouble and the children was bad to her, but she made her point and got him at last.

Ques. What expression did she use?

Ans. Well, she said she got the old bugger at last; that was the expression she used; she was a good while about it; that was the expression she used.

Ques. Did she say anything to you on the subject of your noticing how good he was to her of late?

(Objected to. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes.

Ques. What did she say about that?

Ans. Why, she said he was a great deal better than he used to be. Well, I know that myself, from former years.

Ques. Did she say anything else in connection with that, about fights she had with him?

20

(Objected to. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, I don't remember about that.

Ques. Did she say anything about getting ahead of the children?

30

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

The Court: You may have an exception to this line of testimony which has been taken.

Ques. Did she say anything about the trouble the children had made her?

Ans. Well, she said they always tried to make trouble for her, but she got the best of them.

Ques. What was it she said?

Ans. Yes, she said she had a great deal trouble with the children generally, but that she got the best of them  
10 now.

Ques. Do you remember her saying anything about her daughter Mary in the presence of James Myers?

Ans. Yes; me and him was going down to Ocean City one day and we happened to meet her accidentally.

Ques. How long was that before Mr. Myers' death, about?

Ans. Well, it might be about two years or so.

Ques. What was it she said then?

20 (Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, it was about two years, I suppose.

30 Ques. Well, what was it she said?

Ans. Well, she came to James and me and she said she was very sorry, she had something to tell him. James says, "What is it?" I didn't speak at all. "Well," she says, "I was up after Mary to bring her home. She has been up-town sick, visiting somewhere," I couldn't tell where. And James says, "What is the matter?" "Why," she says, "she is in the family way."

Ques. Did she say anything about the habits of Mary and Jennie otherwise than—

(Objected to as irrelevant and immaterial. Objection overruled.)

Mr. Boyle: We would like to call the Court's attention to the fact that these statements are not being made to one party in the presence of any of the parties to this suit, but in the presence of an outsider, to perfect strangers to this suit. 10

The Court: The declaration is by one of the legatees who is alleged to have influenced the making of this will; therefore I will take the testimony.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal) 20

Ques. What did she say about these girls?

Ans. Well, she said that—Jim asked her what was the matter.

Ques. No, you stated that. About the two daughters that were there?

Ans. Well, I didn't finish about that.

Ques. Well, go on?

Ans. Well, she said she didn't know how she would tell pop. Now, that is all there was about it. And I think Mary was sitting listening herself in the opposite seat. 30

Ques. Did she say anything further about these girls, whether they were industrious or lazy or anything about their habits?

(Objected to as irrelevant and immaterial. (Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, when I always would go down there she would tell me that they didn't do right, and one thing and another; and of course I didn't bother myself much about the womens' affairs. I went down to see the Squire, and  
10 not her.

Ques. He was a Justice of the Peace, wasn't he?

Ans. Yes; although she was a good friend of mine and I was of hers.

Ques. He was a Justice of the Peace, wasn't he?

Ans. He was in Philadelphia. I don't know what he was down there. I heard he was down there, too.

Ques. He was a man that had a good deal of experience in business affairs?

Ans. Yes, in his young days he was a man of a good  
20 deal of knowledge of affairs; at least, I thought so.

Ques. He was a man of ability, wasn't he?

Ans. Yes, in his young days.

Ques. What sort of business did he carry on in Philadelphia?

Ans. Well, real estate business, as far as I know. Of course, I had some property that I went there about. I had been going there thirteen years, and going there yet for my rents and things.

Ques. Do you remember an occasion in Ocean City when  
30 Mary was crying once?

Ans. Oh, yes; I do.

Ques. State what that was?

(Objected to.)

Mr. Boyle: Let's find out the time first.

Ques. When was it, Mr. Deegan?

Ans. That was about nearly the last time I was there, or nearly the last.

By Mr. Carrow:

Ques. What year?

Ans. Well, it was about—I couldn't tell you what year, but it was about two years before he died or so.

By Mr. Wescott:

Ques. Just state what that was?

(Objected to as irrelevant and immaterial. Objection 10 overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, I went down with Jim for to plant some bulbs in the garden. I know a little about gardening. The 20 Squire always invited me down, and I was planting the bulbs and going in once in a while; and once, at one time, I went down there to stay all night, and both of them, it seemed, was drunk.

Ques. Mr. and Mrs. Myers?

Ans. Yes. And Charlie and me, we fixed the garden, done whatever little thing was to be done; and they quarreled there, and Mary quarreled with them, and we got Mrs. Myers upstairs, Charlie and me, and the Squire laid in the sitting room, and Mary was crying; and she asked 30 me if I would loan her her fare to go away, and I said I had no money with me; and I asked her what the trouble was and she said—

(Objected to.)

The Court: Are you telling now what Mary said?

The Witness: Yes, sir.

The Court: Don't tell what Mary said.

Ques. Were Mr. and Mrs. Myers present when you had this talk with Mary?

Ans. No; they were both asleep.

Ques. Can you recall an occasion down there when she used language about her children, that you recall?

(Objected to as immaterial and irrelevant.)

Ques. With profanity in it?

10 (Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, I don't remember that very well.

Ques. Well, let me see if I can refresh your memory.

20 Can you recall her using this language: "That she would be God damned if she would not see that none of the children got a cent."

(Objected to as immaterial and leading.)

The Court: Yes, it is leading. Under the circumstances, for the purpose of calling his attention to the question, I will allow it.

Mr. Carrow: May I have an exception.

30 The Court: Yes, if an exception to a leading question will benefit you.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. I remember it very well, but that was in Philadelphia, at my house.

Ques. She said that, did she?

Ans. Yes, sir; she said that at my house in Philadelphia, in Pine street. And James came down there to meet her. They wanted to buy some clothes for Charlie, and James had a few words there, and after James went away that is what she said.

Ques. What was it she said?

Ans. That she would be God damned if they would ever get a cent if she could stop it. That is the words she said. 10

By Mr. Carrow:

Ques. Will you fix the time?

By Mr. Wescott:

Ques. About when was that, have you any idea?

Ans. That was after the Squire died.

Ques. After the Squire died?

Ans. Yes, sir, and he was buried. 20

Mr. Carrow: I ask that that be stricken out as immaterial and irrelevant.

(Motion refused.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal) 30

Ques. Do you remember an occasion when John was sitting on a lounge up in Philadelphia, when Mr. Myers' dead body was brought up?

Ans. I do, very well.

Ques. Just state what occurred there?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, she said—she sat opposite John on the lounge, and she tapped John on the back, and she says, “Never mind, John. You didn’t get your farm, but James and me will see that you get it.” Everybody in the house  
10 heard her say that as well as me.

Ques. On that occasion did she say that she and her son James would have all to do with pop’s estate?

(Objected to as irrelevant and immaterial and leading.)

The Court: Yes, it is rather leading. Let him tell what was said at that time as touching that.

Ques. Well, was there anything said on that point about who would have to do with pop’s estate?

(Objected to as immaterial and irrelevant. Objection  
20 overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. At Ocean City that was.

Ques. Ocean City?

Ans. Yes, sir; coming up from the beach.

Ques. What was it she said?

30 Ans. Why, she said—it started about this way: pop and her and me and Jim was down on the beach. The four of us was down on the beach; at least she used to call him pop. Well, we were walking up. Jim walking ahead of us had got into some conversation of some kind and pop walked ahead of her and mother and me was back; and she said, “Mike”—she called me—“Don’t you think,” she says, “Jim and me will get along if pop leaves things to us?”

Ques. If what?

Ans. "If pop leaves things in our charge, that Jim and me will get along." "Well," I says, "now Jim always trusts you. I never heard him say a word against you;" and neither I didn't. And I says, "I suppose you will." That was down in Ocean City at one of the visits, and not very long before he died.

Ques. Do you know whether Mr. Myers grew very childish towards the end of his life?

Ans. I do, and his son knowed it, too.

10

Ques. Did he grow childish?

Ans. He did, decidedly.

Ques. Do you remember a propensity he had to cry the latter part of his life when you were down there when others were making fun and laughing?

(Objected to. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. He had that habit, did he?

Ans. Well, of late years he did.

Ques. Do you remember any conversation between Mrs. Myers and Mr. Myers about the time the will was made?

(Objected to as immaterial and irrelevant. Objection overruled.)

30

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Mr. Carrow: It is also leading.

The Court: The same ruling.

Ques. About getting something written?

Ans. She said, "Mr. Myers"—she said, "Pop, did you get him to look at that?" "No, by the way," he says, "I forgot it, but I will before he goes home." That is all I remember about that, signing a writing or anything else.

Ques. You don't remember what it was they were talking about?

Ans. No, I don't; but I judged from the—

(Objected to.)

10 The Court: No; don't tell what you judged.

Ques. Don't tell what you judged. Can you fix that time?

Ans. It was, as near as I can—I think about the time he made the will.

Ques. Was there anything said about there being time enough, or something of that sort?

(Objected to as leading, immaterial and irrelevant. Objection overruled.)

20 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. The father made the remark back that it was time enough before he would go home.

Ques. Do you remember during your visit there anything with respect to Mrs. Myers getting Mr. Myers to  
30 take a drink?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, I don't understand you right.

Ques. Well, did she ask her husband to drink, get him to drink?

Ans. Oh, yes; she would propose it regularly. She would say, "Give Mr. Deegan a drink," and so on. That was about all I took notice of.

### CROSS-EXAMINATION.

By Mr. Boyle:

Ques. Are there any other friends that you call on that occasionally want to give you a drink, Mr. Deegan? 10

Ans. No, sir; I didn't call on anybody else there.

Ques. I mean at any other place?

Ans. Well, yes; many friends I have always ask me to take a drink.

Ques. Certainly; nothing unusual among your friends, is it?

Ans. No.

Ques. Not unusual among those friends of yours? 20

Ans. No, but I don't visit very many that keeps liquor in their house. I never was drunk in my life. Don't care enough for drink; never did.

Ques. You went fishing when you were on these trips, did you not?

Ans. Pretty much all the time, sir.

Ques. Did you catch any fish?

Ans. Yes, often.

Ques. Have you any acquaintance with James Myers, Jr.? 30

Ans. Yes, sir.

Ques. Did he visit his father and mother very often?

Ans. Oh, almost every time I went down he would go.

Ques. He would go down with you?

Ans. Yes, sir.

Ques. Well, on what sort of terms was he with his father and stepmother?

Ans. First rate.

Ques. They came to be on good terms, did they not?

Ans. They did.

Ques. When was the will made, to your knowledge?

Ans. Well, I couldn't really tell that, sir; I couldn't tell that.

Ques. Then you don't know much about what time the will was made, do you?

Ans. Well, I couldn't tell what time, but I heard them say—well, that it was about two years before he died or so.  
10 I don't know when it was made.

Ques. That is all you know about it?

Ans. That is all I know about it.

Ques. Now, James was quite a business man, was he not, had the confidence of his father?

Ans. Oh, yes; very much, yes.

Ques. He was considered by his father as quite a business man, wasn't he?

Ans. Well, no; he was not very competent in the business, because he hadn't been in it. His brother that died  
20 was the business man, and he took his place.

Ques. Jim took his father's business?

Ans. No, he didn't; he took his brother's business.

Ques. His brother's business?

Ans. Yes.

Ques. The brother succeeded his father, didn't he?

Ans. The first brother did, the one that died, but James didn't. He succeeded the one that died, William, he was the business man.

30 Ques. At the time that John was sitting on the lounge, in the question Judge Wescott said something about the corpse being brought to Philadelphia. Was the corpse around at the time that conversation took place?

Ans. The Squire was lying in the ice box, right in the room.

Ques. In the room?

Ans. In the next room to where they were sitting. He was in the front room.

Ques. And the Squire was dead several days at the time?

Ans. I believe so. They had brought him up from Ocean City.

Ques. Was Mr. Myers in any condition to do business, in your judgment, at or about the time he died, several years before he died?

Ans. Oh, several years before he died, of course he was; no doubt of that.

Ques. Well, did he seem to understand all the conversation that you and he had together? 10

Ans. Yes. Of late years he was not as active as he was before that, as physically he was breaking down.

Ques. Oh, he was breaking down physically?

Ans. Yes.

Ques. But did he seem to talk intelligently at the time?

Ans. Yes, he talked clearly, with the exception that you would see a little change in him about being melancholy like. He was not a man to get that way, you know, when he was a young man.

20

MRS. ANNIE HAMSCHER, sworn for the plaintiff.

DIRECT EXAMINATION.

By Mr. Wescott:

Ques. Where do you live, Mrs. Hamscher?

Ans. I live at 2703 Broad street, Bridesburg.

Ques. How were you related to Charles Myers? 30

Ans. I am his daughter by the first wife, the oldest child.

Ques. How many times was he married?

Ans. Four times.

Ques. How many children did he have?

Ans. There were twenty-three children altogether. There was eighteen by the first wife, and four afterwards.

Ques. How many were living at the time of his death?

Ans. He left eight when my mother died.

Ques. What was his religion, originally?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

10 Ans. They were married as Methodists, those two.

Ques. Do you remember what his business was?

Ans. Why, he was a printer when I was a little girl.

Ques. And then what did he do?

Ans. And he opened a printing office in his front room and I helped him there. I ran the foot press for him all day and half the night. I helped him earn many a dollar.

Mr. Carrow: I object to that as immaterial and irrelevant, and move that the testimony be stricken out as not  
20 responsive to the question.

The Court: Yes, it is not responsive. Strike it out.

Ques. What other business did he go into?

Ans. He opened a real estate office. He was an alderman first, before he opened a real estate office. He was alderman five years.

Ques. What was his treatment of his children always?

(Objected to. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill  
30 of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What was his treatment of his children always?

Ans. Always good.

Ques. Affectionate?

Ans. While we were little, yes, sir. And always was good to me while I was big, always respected me well.

Ques. Well, how about the rest?

Ans. Why, always good, excepting the two last ones.

(Objected to.)

The Court: Well, you have an exception to the question about his treatment of his children.

Ques. Who was the last one he married?

Ans. Sallie Myers.

Ques. And who before her?

Ans. Well, I don't know. Some said it was Pauline<sup>10</sup> Hall and some said Myers.

Ques. An actress?

Ans. Yes. Some said her name was Hall and some said her name was Myers. I don't know.

(Objected to as immaterial and irrelevant.)

The Court: The testimony may stand.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)<sup>20</sup>

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did he get a divorce from her?

Ans. Yes, sir.

(Objected to as irrelevant and immaterial.)

The Court: The testimony may stand.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)<sup>30</sup>

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did he tell you why he got a divorce?

(Objected to as irrelevant and immaterial.)

The Court: The question is overruled.

Mr. Wescott: If your Honor please, the answer to that question is a very material one, because it is expressive

of his state of mind towards his children and his intentions towards his children. Of course the question apparently might not be a proper question.

The Court: Any declarations showing his friendly feelings towards his children may be taken.

Ques. What did he say? What did he say **was his purpose** towards his children when he got a divorce?

(Objected to as irrelevant and immaterial.)

10 The Court: The Court has overruled **his declarations** as to his purpose in obtaining a divorce, **but will allow any** declarations made showing his friendly sentiment towards his children.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What did he say about his children?

20 Ans. He said he wasn't doing it for his own good, **but** for the good of his children. He told me—that **was the** morning he was going to get the divorce.

Ques. Never mind, you have answered the question. Did he ask you to come to Ocean City to visit him?

Ans. Yes, sir.

Ques. And bring your children?

Ans. Yes. I didn't go down till he was down there six years.

Ques. Well, just answer the question. We will get along so much faster. Did you take your children?

30 Ans. Yes, sir.

Ques. How long were you asked to stay before you went there?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. How many days?

Ans. I went down on Saturday and stayed till Wednesday.

Ques. How long were you going to stay?

Ans. Went down to stay ten days, but didn't stay.

Ques. Why didn't you stay the ten days?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill 10 of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Why didn't you stay the ten days?

Ans. Well, because I didn't think I was treated right.

Ques. Who treated you wrong?

Ans. Well, my father treated me right, but there was a coolness with the mother that I saw that I couldn't stand.

Ques. Who was the mother?

Ans. Well, Myers was her name. 20

Ques. Did your father coax you to stay on that occasion?

Ans. Yes; coaxed me to stay. He said I was foolish to make my stay so short.

Ques. At that time was he drinking much?

Ans. Yes; he was drinking a good bit at the time.

(Objected to as irrelevant and immaterial. Objection.)

(Whereupon the defendant, by his counsel, prays a bill 30 of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Do you know while you were there he was laid up in bed from drunkenness?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Do you know whether he was laid up with drunkenness while you were there?

Ans. I noticed one day that he was.

Ques. While you were there were there any words between him and Mrs. Myers?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did they have any words?

Ans. Yes, sir; I heard them have words.

Ques. What was it about?

Ans. Well, I couldn't say. It was on account of his drinking. I couldn't repeat the words. They were in the room together.

Ques. When you were there did Mrs. Myers go to your father with complaints about Mary?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did she? Did she go to your father with complaints about them?

Ans. Yes, sir.

Ques. What did she complain about?

Ans. Why, she spoke about Mary running around and

not doing what was right, and in the way that she spoke it provoked him; he didn't like it.

Ques. At the time you were there was your father strong and healthy, or feeble, or how?

Ans. Why, pop was getting feeble just then; wasn't very strong.

Ques. When was that, Mrs. Hamscher?

Ans. That was the year before he died, in 1896.

Ques. Did you, on this occasion, hear him say anything about what he was going to do for his children?

10

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, he said that in my house in Bridesburg, in my house.

20

Ques. What did he say in your house at Bridesburg on that subject?

Ans. He was there in October before he died—

(Objected to as irrelevant and immaterial.)

Mr. Carrow: What he said in the month of October in her house or anywhere else to her in reference to his testamentary disposition of his property is immaterial and irrelevant.

The Court: I will take the testimony and note an exception.

Mr. Carrow: The will having been made in January of 1895.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What did he say?

Ans. Well, he said he intended to buy John a farm, brother John a farm; and he said he would pay \$5000, and not over, he said. And he says, "Annie," he says, "you have worked hard," he says, "and when I have John fixed I will fix you," he says. He says, "I intend to fix all my children," he says. That was in the month of October.

Ques. What year?

10 Ans. That was in 1896. He died in 1897 and he was there in November to see me, and Christmas day. In November he brought me a barrel of flour then.

Ques. On that occasion do you remember his saying anything in praise of his children?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

20 ALLEN B. ENDICOTT, J. (Seal)

Ans. Oh, he always praised them; he always praised his children, all of them.

Ques. Do you remember his saying anything about their writing or painting or anything?

Ans. Oh, yes, sir; showed me their letters and showed me their paintings.

Ques. What did he say on those occasions?

Ans. Oh, he was always proud.

30 Ques. Do you remember anything about his habit of sending his children presents?

Ans. Oh, yes; he often sent presents.

Ques. To all of his children?

Ans. Yes, sir; I have a present from him to-day—I haven't got it made—that he sent me.

Ques. Now, in any of your visits down there did you hear Mrs. Myers say anything about Protestants?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. If so, what?

Ans. Oh, she often spoke of the church back.

(Remainder of answer ordered stricken out.)

Ques. Did you ever hear her say anything in the way of a threat about her husband while you were down there? 10

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

The Court: Judge, do you think a general exception in relation to these questions concerning the children and their mother would answer the purpose? It would save 20 a good deal of time and a good deal of money in printing the book, your answer, because the objections and exceptions are taking a good deal more room than the testimony. If you think a general exception would answer your purpose I am willing to grant it in advance.

Mr. Carrow: Well, the Court will not consider a general exception.

Ques. Did you?

Ans. Yes, sir. 30

Ques. What was it?

Ans. Why, she would quarrel with him—

Mr. Carrow: Judge Wescott, to conclude this excepting business just now, I say I object to this question because it tends to elicit evidence to show what Sallie Myers said or did in reference to the children of Charles Myers.

(Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Please tell us what you heard her say?

Ans. Why, she said to me if she couldn't have her own way she would knife him. She said it different times to me.

10 Ques. Did she say anything to you on these visits about the children being onery?

Ans. Yes, sir.

Ques. What did she say?

Ans. Well, she spoke of Mary running around and what she did, about Jennie's bad habits.

Ques. Well, what did she say they did?

Ans. Oh, she spoke of Mary to my father, and he didn't like it; it provoked him. Of course I don't just like to say.

20 Ques. You don't like to speak out the words?

Ans. No.

Ques. What did she say about Jennie?

Ans. Well, she said that Jennie was in trouble and had to get married, she told me.

Ques. Do you remember a circumstance about the christening of her son Charlie?

Ans. Yes.

Ques. Tell us about that.

30 (Objected to as irrelevant and incompetent.)

The Court: When was this?

Ques. When was that, Mrs. Hamscher?

Ans. That was now twenty-five years last month.

The Court: That would be rather remote.

The Witness: Yes, twenty-five years.

Mr. Wescott: Well, it is a long way back, but religious hatred, you know, goes a good ways back.

Ques. When he died were you sent for?

Ans. Yes, I was sent for on Sunday, but I didn't get down there until Monday night.

Ques. Who sent for you?

Ans. My father sent for me. He sent for me at his expense; and when I got down there he asked me what train I made, took my hand and asked me what train. He said, "Annie, what train?"

Ques. Did he say anything else?

Ans. I couldn't understand anything else that was said. 10

Ques. Did you notice any mark on his face when you were there?

(Objected to as irrelevant and immaterial.)

The Court: That was allowed yesterday upon the presumption that it was going to be followed up with other testimony which would make it competent.

Mr. Wescott: It will be followed up by other testimony.

The Court: You may take the testimony. 20

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did you see any mark on his face?

Ans. Yes, and I asked her how it happened and she said he fell at Sea Isle City on New Year's day; and in a few minutes she came to me again and said he hurt himself up in the bathroom; so, of course, I don't know anything further. 30

Ques. The next morning after you got there did Mrs. Myers come to you and say anything about what she had done?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. She said to me this way. He wasn't dead one hour before she came to me and she said, "Annie, if you are cut I will see that you never want," and she said that Mary had cut herself for her impudence. She didn't state what it was. And she says, "If you are cut, I will see that you never want," she says to me.

Mr. Carrow: I ask that that be stricken out as irrelevant and immaterial.

(Motion refused.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

20 Ques. That was within an hour after your father died?  
Ans. That was within an hour after my father died; yes, sir.

Ques. Do you remember her making any statement about cemetery lots?

Ans. Well, she said that she would see that I got these cemetery lots, the Odd Fellows cemetery lots.

Ques. The lots referred to in the will?

Ans. That were in the will, yes, sir, but I didn't know it at the time when she spoke that, that they were in the will.

30 Ques. Had you some children in this cemetery?

Ans. I have a child laying there.

(Objected to as irrelevant and immaterial.)

The Court: Well, it may stand.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did you hear anything about the combination to the safe?

Ans. Yes, sir.

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal) 10

Ans. The day that pop died brother James said that he could not—

The Court: Wait a minute. What James said is overruled.

Ques. Was Mrs. Myers there?

Mr. Carrow: I object to this line of testimony, because of its irrelevancy and immateriality.

20

The Court: I think you had better disclose, Judge, what the purpose is to show.

Mr. Wescott: I want to show her knowledge about this safe, the whereabouts of the will and what was in it.

The Court: That testimony I will take.

Mr. Wescott: Of course, it doesn't all come out of this lady, but others will testify on it, that she knew all about the will, what was in it and when it was taken out of the safe.

30

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What was that circumstance about the combination?

Ans. Mrs. Myers said that there was \$500 in the will for the burial lot, and it was not necessary for him to go up to Philadelphia to get the combination to the safe. So he went up and then he came back again. He didn't get it that day; and that is all I know about that.

#### CROSS-EXAMINATION.

By Mr. Boyle:

10 Ques. Why did he go to Philadelphia for the combination to the safe?

Ans. I believe the combination to the safe was up at Philadelphia at the office.

Ques. At whose office?

Ans. At his office there, on Eighth street, at brother James'.

Ques. He had to go to Philadelphia, then, for it?

Ans. He had to go up after it, yes. He got it afterwards, but I wasn't there then.

20 Ques. James had charge of the matter, then, had he?

Ans. I didn't know it at that time, but he had.

Ques. You say you visited Mrs. Myers several visits of a week and ten days at a time?

Ans. Yes, I was down there just a few days this one time, down there ten days.

Ques. You brought your children with you on these visits?

Ans. Yes, always brought the children.

Ques. How many children had you then?

30 Ans. I had three and four with me. She always treated the children right, but didn't treat me right.

Ques. What would she say to you then?

Ans. Well, she treated me cool. Any person can tell about that.

Ques. And might that not have been due to your sensitive disposition?

Ans. Oh, no.

Ques. She treated your children right?

Ans. Yes.

Ques. Eat at the same table?

Ans. Oh, yes.

Ques. Have a room to yourself?

Ans. Well, sometimes I would.

Ques. Sometimes while you were there?

Ans. Certainly.

Ques. If there was room enough you would have a room to yourself?

Ans. Yes.

Ques. Did she tell you to go home?

10

Ans. Oh, no; she never told me that.

By Mr. Carrow:

Ques. Were you present when the safe was opened by James?

Ans. No, sir, I wasn't there. I had a daughter there, I believe, but I wasn't there.

Ques. You didn't see him open the safe and get the will?

Ans. No, sir, I wasn't there.

20

Ques. But it was known in the family that the will was in the safe, was it?

Ans. Yes, as far as I heard Mrs. Myers say.

Ques. Your father's own safe in his own house, wasn't it?

Ans. Yes, sir; there in his office.

Ques. And your brother James, of Philadelphia, the executor and trustee of your father, had the combination of the safe?

30

Ans. Yes, sir.

Ques. And it was necessary for him to come down and get the will out?

Ans. Yes.

By Mr. Wescott:

Ques. That is, as far as you know that is the case?

Ans. Yes, that is as far as I know, but I—

Mr. Carrow: No, much obliged. It would be very entertaining, but—

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MRS. IDA EPPEHEIMER, sworn for plaintiff.

DIRECT EXAMINATION.

10 By Mr. Wescott:

Ques. Who is your mother, Mrs. Eppeheimer?

Ans. Mrs. Hamscher.

Ques. The lady that just went off the witness stand?

Ans. Yes, sir.

Ques. Did you know Mrs. Griffin, or Sallie R. Myers, before she was married to your father?

Ans. Yes, sir.

Ques. Or, your grandfather, I mean?

Ans. Yes, sir.

20 Ques. What was she doing at his house when you were there?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

30 Ans. She went to take care of Aunt Laura, that was sick.

Ques. Do you remember her giving any directions to the girls how to address her?

(Objected to as irrelevant and immaterial.)

The Court: This was before her marriage, wasn't it?

Mr. Wescott: Yes.

The Court: I think I will overrule that.

Ques. Do you know whether when Mrs. Myers and your grandfather were living in Philadelphia that they quarreled?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal) 10

Ans. Yes, sir.

Ques. They did quarrel?

Ans. Yes, sir.

Ques. What did they quarrel about?

Ans. Over her drinking.

Ques. Do you remember an incident of his whipping one of his daughters because of Mrs. Myers' influence while they lived in Philadelphia?

(Objected to as immaterial and irrelevant. Objection overruled.) 20

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Do you remember such a thing?

Ans. Yes, sir; I do.

Ques. State what it was, will you?

Ans. Well, she went to see a lady over on Arizona Street by the name of Leary; and of course she had stayed there all day and grandfather was out, and when he came back he asked where she was. She was upstairs in bed and Jennie said she had been out drinking, and so, of course, grandpop goes upstairs to her, and of course they had a few words and they came downstairs, and the next thing I knew he took a cowhide and whipped Jennie, and of course he knocked her on the floor and she frothed at the mouth. 30

Ques. Did she say anything? Did Mrs. Myers say anything about it?

Ans. Not at that time she didn't say anything about it, for I was downstairs.

Ques. What did she say to him that made him do that, do you know?

(Objected to as immaterial and irrelevant.)

The Court: If you heard it you may tell.

10 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. She says that she said to Jennie for lying about her, that she wasn't around there.

Ques. Did you become more or less intimate with Mrs. Myers?

Ans. More and more all the time.

20 Ques. Did she during your intimacy with her tell you why she didn't like your mother?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

30 Ans. Well, that was in 1896, was the first time that I— No, it was the second time, I think, that I was in Ocean City. She was out again that day and of course when I went there I knew that I wasn't treated right either. I saw a difference. So when she came home at night she had been drinking, and grandfather and my husband were downstairs playing cards. She came up to me and she got to talking about the girls, how they done, and after a while she said to me, she says, "Ida, I have never liked

your mother, ever since she wouldn't come to the christening of Charlie." "Why," I says, "grandmom," I says, "mamma wasn't able. You know she had a baby," I says, "the same time that you did."

Ques. Well, you say she talked about the girls. What did she say about them?

By Mr. Carrow:

Ques. This was in 1896, was it?

Ans. Oh, no; she said this afterwards.

Ques. After 1896?

10

Ans. Yes, sir.

Mr. Carrow: I object to that as immaterial and irrelevant because the occurrence took place after the making and execution of this will on paper.

The Court: The Court's notion is that the feeling of this Mrs. Myers towards the children may be shown. Of course the feeling at the time of the execution of the will is the principal thing, but as throwing light upon that I think her sentiments towards the children, both before and soon after its execution may be taken. Note an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Why, she said they were both onery and she said that Jennie had to get married, and she said that Mary<sup>30</sup> was running around with so many men that she was tired of it.

Ques. Did you hear her say that?

Ans. I did; I heard her say that to grandpop Myers on the front porch.

Ques. Did you hear her make such complaints more than once?

Ans. Yes, sir; more than once.

Ques. How often? How frequently did you visit their place in Ocean City?

Ans. Before grandpop died?

Ques. Yes.

Ans. I think I was there twice, twice before grandpop died.

Ques. Do you recall when those instances were?

Ans. Well, the last time was in 1896, the summer of 1896.

10 Ques. Do you remember an occasion when Mary went out and Mrs. Myers saying something?

Ans. Yes; we were sitting on the porch.

Ques. Just tell us that?

Ans. Grandpop Myers and myself and a sister-in-law of mine and the grandmother. Mary went out and she asked my sister-in-law and I to go, and grandmom said for us not to go with her; and after she had left the porch she said—

(Objected to as immaterial and irrelevant. Objection  
20 overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. She said what?

Ans. She said: "Pop, if I was you I would follow her, for," she says, "all she does is to go around under the  
30 boardwalk with men." "Oh," he says, "that is bosh."

By Mr. Carrow:

Ques. That was in 1896, was it?

Ans. Yes, sir; in 1896.

By Mr. Wescott:

Ques. Did you hear her any time in the year 1896 say anything about fixing Mary and Jennie?

Ans. Yes, sir.

Ques. What did she tell you?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. I was lying on the bed, and I don't know whether she thought I was asleep or not, but my sister-in-law and her were great talkers and she said, "Well," she says, "I have fixed Mary;" she says, "I know she only gets \$50, and Jennie don't get much more." 10

Ques. Did she say at that time why she fixed them?

Ans. Why, talking about her being onery and saucy around the house, and wouldn't do any work; she was lazy and disobedient.

Ques. Did she say anything about what the others would get?

(Objected to as immaterial and irrelevant. Objection overruled.) 20

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Mr. Wescott: Very well, I will withdraw that question, because I don't think this lady is competent to speak on this subject. I don't think she knows about it. 30

Ques. Did you hear her say anything about Uncle John and your mother fighting the will, and what would happen?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did you or didn't you?

Ans. Yes, sir; I did.

Ques. When was it?

Ans. Why, that was after grandpop had died.

Ques. How long after he died?

Ans. He was buried on Friday, and this was on Saturday, the day after.

Ques. Where were you?

Ans. We were going down on the train to—

10 Ques. What did she say?

Ans. Why, she said—

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

20 Ans. She said, "Ida," she says, "Mary gets \$50," she says, "and Jennie don't get much more." And she says, "If John and Annie doesn't fight against me," she says, "I will give them \$5000 out of my dowry;" and she had me write that to my mother.

(Objected to as immaterial and irrelevant.)

The Court: You have your objection and exception.

Mr. Carrow: Well, the writing.

The Court: Well, enter another objection. I overrule the objection.

30 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did she want you to notify John to that effect?

Ans. No; I didn't notify Uncle John.

Ques. Well, did she want you to or ask you to?

Ans. Why, she told me to tell mother to do that.

Ques. Did she tell you anything about the reason why she brought Charlie into the world?

Ans. Yes, sir.

Ques. What.

Ans. She said she would never have had him, but she brought him into the world to take away from the others.

Ques. Did you notice what your grandfather's conduct was as to drunkenness as time went on?

Ans. Yes; he drank pretty heavy.

(Objected to as immaterial and irrelevant. Objection<sup>10</sup> overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. How about his strength and health? What have you to say about that?

Ans. The last time I was there, that was in 1896, I<sup>20</sup> thought he was getting very feeble, for all he done was to lay around the house.

Ques. Did you see him drink many times?

Ans. Oh, yes; I saw him drink many times.

Ques. What was there about his appearance that indicated that he was drinking?

Ans. Well, I thought his face looked red and bloated to me.

Ques. Did you ever notice anything about Mrs. Myers' treatment of her husband when he was under the influ-<sup>30</sup>ence of liquor?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. What?

Ans. She was very loving to him then.

Ques. How would she manifest it?

Ans. Get around him and kiss him and hug him, and it was poppy this and poppy that.

Ques. That was when he was under the influence?

Ans. When he was under the influence of liquor, yes.

Ques. Did she do that when he was not under the in-  
10 fluence of liquor?

Ans. Not very often.

Ques. Do you remember an occasion in the bedroom when Mrs. De Roche was present and something happened?

Ans. Yes, sir.

Ques. State what that was?

Ans. Well, the night before she said to me, she says to me, "Ida, I want you to go down into the office with me," she says, "and write a letter to Mary."

20 Ques. When was this? Let me stop you.

Ans. This was in March—no, February, I think it was, or March—I just forget.

By Mr. Carrow:

Ques. What year?

Ans. After grandfather died in 1897.

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill  
30 of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

By Mr. Wescott:

Ques. What did she say? What happened?

Ans. She says, "Ida, come down to the office, I want you to write to Mary," she says. "She has filed a caveat against the will, and now I want you to write and tell her,"

she says, "to come over and see me right away. I want her to withdraw the caveat and I will break the will myself, for," she says, "all the people were drunk that signed it." And, of course, Mary came over the next day and her and I were in the bedroom and she came in the room. Mary sat down on the bed and grandmom got down on her knees to her and she says, "Mary, you withdraw the caveat and I will break the will, for," she says, "you know they were all drunk, and I will fix everything for you," she says, "and we won't fight." 10

Ques. Do you remember about her sleeping with you or wanting to sleep with you?

(Objected to as irrelevant and immaterial.)

The Court: Fix the time.

Ques. When was it?

Ans. That was after grandfather died.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. How long?

Ans. Right away. We went down on Saturday with her after he was buried.

Ques. Was it in her house?

Ans. In the house; yes, sir.

Ques. What did she say? 30

Ans. Well, she says, "Ida, you sleep with me, for," she says, "I am afraid to sleep alone, for," she says, "I always imagine I hear grandfather's ghost or something or another."

Ques. Did she give you any reason, any other reason?

Ans. Well, she told me that they had had a fight in the bathroom, that is all I know, and she was always afraid to go to the bathroom.

Ques. Did she tell you that?

Ans. Yes, sir; she did.

Ques. She said that they had had a fight in the bath-room?

Ans. Yes, sir; she said that they had had a fight after he had come from Sea Isle City.

Ques. Do you remember the circumstance of a hypodermic injection being given to Mrs. Myers?

Ans. Yes, sir.

10 Ques. Where was it?

Ans. At her home.

Ques. When was it?

Ans. That was in January, I guess.

Ques. After the death?

Ans. After the death of grandfather.

(Objected to as immaterial and irrelevant.)

The Court: Well, I don't see how it is competent.  
20 Counsel may show.

Mr. Wescott: Very well.

Ques. On that occasion did she say anything about what she was going to do to these two girls?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accord-  
30 ingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. About giving them hell, or anything of that sort?

Ans. Yes, sir.

Ques. What did she say about that?

Ans. Well, she says—I can't remember—I don't remember her exact language. She said something, but I just forget what it was now.

Ques. Well, on that or any other occasion did you hear her say anything expressive of her joy that her husband was dead?

Ans. Yes, sir.

Ques. What was that?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.) 10

ALLEN B. ENDICOTT, J. (Seal)

Ans. She said she was damned glad that he was dead.

Mr. Carrow: I ask that her previous answer be stricken out as being immaterial and irrelevant.

(Motion overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.) 20

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did she say anything on that occasion about her now having her own way?

Ans. Yes, sir.

Ques. What was it?

Ans. She said that she was glad that he was gone; now she could have her own way.

Ques. Did she say anything to you about Mary's being in the family-way before she was married? 30

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir; she told me that she was in the family-way several times. She said that Dr. Abbott performed an abortion on her.

Ques. Did she tell you that in her own house?

Ans. Yes, sir; she did.

Ques. Do you remember the Sunday after your grandfather's death when Mrs. Johnson and your Aunt Jennie were present, of something occurring?

Ans. Yes, sir.

10 Ques. What was it?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. That was the day when the safe was opened, and Mrs. Johnson and myself and Jennie and my sister-in-law  
20 were out in the sitting room and Mr. Wagner and Uncle Jim and Mrs. Myers went in the room where the safe was and she came out and she says——

Mr. Carrow: I object to anything that she said at this time as being irrelevant and immaterial.

(Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

30

Ans. She says, "They can't open the safe," she says, "there has been somebody monkeying with it." She said they would have to get a man to open the safe.

Ques. Did she say anything about hating to see the safe opened then?

Ans. She said she hated to see the safe opened.

Ques. Did she say why?

Ans. No; she didn't say why.

Ques. Only said she hated to see the safe opened?

Ans. Yes, sir.

Ques. Did she say anything about there being trouble when the safe was opened and the will read?

(Objected to as being irrelevant and immaterial.)

The Court: I think it is rather suggestive.

Mr. Wescott: Suggestive of the answer, but it is sometimes necessary to call the witness' attention to what is 10 wanted.

The Court: I will allow it.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What did she say?

Ans. She said there would be hell when it was opened. 20

Ques. Do you remember her telling you how much Mary was to get under the will?

Ans. Yes; she told me that coming down on the car.

Ques. How much did she say she was to get?

Ans. \$50.

Ques. Was that before the safe was opened and the will read?

Ans. Yes; before the safe was opened.

Ques. What day was the will read, did you say?

Ans. The Sunday after grandfather was buried. 30

Ques. And her statement of what was in the will occurred when?

Ans. That was on Saturday.

Ques. Saturday preceding?

Ans. Saturday; yes, sir.

Ques. You were present when the will was read, were you?

Ans. No, sir; I was not.

Ques. You have stated who was in the room; who were they?

Ans. Mrs. Johnson and my sister-in-law and Jennie and myself.

Ques. And you were in the next room?

Ans. We were in the next room; yes, sir.

Ques. Do you recall Mrs. Myers saying anything on that occasion about why she was afraid to go in the bath room?

10 Mr. Carrow: When was this?

Mr. Wescott: Why, it was when the will was read.

Ans. No; I don't remember.

Ques. Don't remember?

Ans. No, sir.

Ques. Did she make any statements to you about other wills?

(Objected to as immaterial and irrelevant. Objection overruled.)

20 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. When was this, Mrs. Epeheimer?

Ans. Why, I think it was the day that we were going down on the train. She said there was three, but she tore two up, but she didn't say when.

Ques. Did she say whether there were three wills at a time in the safe?

30 Ans. No; she didn't tell me then. She didn't say when nor where they were or nothing about them.

Ques. She didn't say there were three wills in the safe at once?

Ans. No; she didn't say that.

Ques. Do you remember her saying anything about the paternity of your Uncle Jim?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Why, she said that he was a bastard; that he didn't belong to grandpop.

Ques. Did you continue your intimacy with Mrs. Myers for some time after your grandfather's death?

Ans. Yes, sir; for about three months it was. I was 10 with her there the whole time till some time in March, I think it was, I left.

Ques. Are you able to say whether or not her habit of drinking grew upon her in that time?

(Objected to as immaterial and irrelevant.)

The Court: After his death?

Mr. Wescott: Yes.

The Court: It seems immaterial to me.

Ques. Did you have a fight with her yourself; a quarrel of some sort? 20

(Objected to as immaterial and irrelevant. Objection overruled.)

Ques. Did you hear her say anything about your family as a tribe?

(Objected to as immaterial and irrelevant.)

The Court: When was this?

Mr. Wescott: Well, I don't know when it was. I want 30 to see if she remembers the circumstance first.

The Witness: What was it?

Ques. Did you hear her say anything about your family as a tribe?

Ans. Oh, yes, sir.

Ques. When was that?

Ans. That was when I left.

Ques. When you left there?

Ans. Yes, sir.

Ques. After your grandfather's death?

Ans. Yes, sir.

Ques. What did she say?

(Objected to as immaterial and irrelevant. Objection overruled.)

10 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, she came after me one evening and in a way that I didn't like, so when I got home her and I had words and I said that I would go home and she told me that she was very damned glad of it, for she said she was damned tired of the whole tribe of us; said she had enough of us all.

20 Ques. Did she say anything then about anybody's getting any money?

Ans. No, sir; she didn't say anything then.

By Mr. Carrow:

Ques. You said that was after the old gentleman's death?

Ans. Yes, sir.

The Court: Now, I will strike out this evidence. It seems to have been the result of some trouble between this  
30 witness and Mrs. Myers.

#### CROSS-EXAMINATION.

By Mr. Boyle:

Ques. You were with her for three months after your grandfather's death, did you say?

Ans. Yes, sir.

Ques. Then owing to some trouble you went away?

Ans. Yes.

Ques. Did you ever return to see her after that?

Ans. Once I did.

Ques. Once?

Ans. Through the request of her sending to Mrs. Johnson.

Ques. Were you present when the will was read? **I**  
mean in the house present.

Ans. Yes, sir; I was in the house.

Ques. Who read the will, do you know?

Ans. I couldn't tell you.

10

Ques. Was James there at the time?

Ans. Yes, sir; James was there.

Ques. Did he come to the house in the morning?

Ans. He came down Sunday morning; yes, sir.

Ques. What day was the will read?

Ans. The Sunday after grandpop was buried, but I don't  
know the date.

Ques. Was it the Sunday that James came down?

Ans. Yes, sir; that Sunday.

20

Ques. Do you know where the will was?

Ans. No, sir; I did not. I expected it to be in the safe.

Ques. You spoke of its being in the safe?

Ans. That is what she said.

Ques. Were you present when the safe was opened?

Ans. I was present, but I was in the next room.

Ques. Do you know who opened the safe?

Ans. No, sir; I do not.

30

Ques. Was Mary DeRoche there?

Ans. No, sir; she was not.

Ques. Who was present?

Ans. There was Mrs. Johnson, my sister-in-law, Mrs.  
Hamscher and myself and Jennie were in the next room.

Ques. That is Jennie Wilson now?

Ans. Yes, sir; Jennie Wilson.

Ques. Now when did you repeat, when did you first repeat any of the matters to anybody that occurred during these three months that you were with Mrs. Myers? When did you first tell anybody about what she said, what occurred, and so on?

Ans. I never told it till the case came out.

Ques. Here two years ago?

Ans. Four years ago it is.

Ques. Four years ago?

10 Ans. Yes, sir.

Ques. Those matters happened in 1897, didn't they?

Ans. 1896.

Ques. 1896?

Ans. Oh, no; 1897, it was.

Ques. 1897?

Ans. Yes; when I was there the three months.

Ques. Did you make a note of them at the time?

Ans. No, sir; I didn't.

Ques. No memorandum?

20 Ans. No, sir; I didn't.

Ques. Simply carried it in your memory for these seven years?

Ans. Yes, sir.

Ques. You say that Mrs. Myers said that she was going to break the will?

Ans. That is what she said. I heard her say it.

Ques. Was she dissatisfied with the provisions as to her? She said she intended to break the will?

Ans. Yes, sir; that it what she said.

30 Redirect examination by Mr. Wescott:

Ques. Do you know whether anybody was sent for to open this safe?

Ans. Yes, sir; she said the safe couldn't be opened; that they would have to send for a man.

Mr. Carrow: I move that that answer be stricken out as not responsive.

Ques. Do you know as a matter of fact whether anybody was sent for?

Ans. Yes, sir.

Ques. Somebody was sent for?

Ans. Yes, sir.

By Mr. Boyle:

Ques. Do you know who it was?

Ans. I don't know.

Ques. Was it a locksmith?

Ans. I couldn't tell you.

10

JOHN BROWER, sworn for the plaintiff.

Direct examination by Mr. Wescott:

Ques. Where do you live, Mr. Brower?

Ans. Ocean City.

Ques. You knew Mr. Myers in his lifetime?

Ans. Senior; yes, sir.

20

Ques. What was his business?

Ans. I don't know that he had any when I knew him.

Ques. Was he a Magistrate or Justice of the Peace?

Ans. He had been, yes sir; he was at one time Justice of the Peace at Ocean City, I remember.

Ques. Were you familiar with his house in Ocean City?

Ans. Yes, sir; very, I thought.

Ques. Did you draw a small diagram of the ground floor of the house?

30

Ans. I did; yes, sir.

Ques. Look at that paper and see if that is the diagram.

(Paper shown witness.)

Ans. It looks very much like my writing, although the work looks better than I thought I was capable of doing.

Ques. Well, that is what you did at the last trial, before the last trial.

Ans. I think so.

Ques. It was used in the other case, don't you remember?

Ans. I knew that I had done so; yes, sir.

Ques. Does the room with the table in it there indicate the room where the will was signed?

Ans. What we would call a dining table; yes, sir.

Ques. The room there with the table?

Ans. The room with the dining table, what was called the kitchen or dining room; it was used for either one or the other or both.

10 Ques. Were those rooms partitioned off with walls?

Ans. Certainly. There was partitions in the room.

Ques. Extending from the floor to the ceiling?

Ans. Excepting in the case of doorways and windows.

Ques. Except the doorways, they were solid walls all around the room?

Ans. Yes, sir; except in the case of doors and windows.

Ques. Does that diagram correctly locate the doors and the respective rooms?

20 Ans. Let me see. Two doors on the porch, one into the parlor, one into the 'Squire's private room and one into the dining room or kitchen. Yes, sir; I would say so.

Ques. How wide a door, about, is the one entering into the dining room?

30 Ans. Well, I didn't measure it, but I presume it was ordinary, just similar, except it is a little heavier, I suppose; because what we call the furniture, the trimming, is a little heavier than an ordinary house. Of course it is a well-built house; ordinary size, I presume. I don't know what the doors are. The contractor or builder will tell you that better than I.

Ques. Did 'Squire Myers own a good deal of property there?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Mr. Carrow: I also object because this witness is not competent to speak on the question.

(Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, I understood that he owned some lots at 10 Tenth and Asbury Avenue.

The Court: Well, if you don't know—

Ans. Well, I have reason to know that; yes, sir. I think I can prove it by later facts that he owned lots at Tenth and Asbury avenue, if that is the exact location; also owned one at Eighth and Wesley Avenue. I think Mr. Rush also bought one off of him.

Ques. Did he have a large estate outside of that? 20

(Objected to as immaterial and irrelevant.)

Ques. If you know.

The Court: The amount of the estate I think is always allowed to be shown in cases of this kind. Whether this witness knows enough about it to testify I am not certain. It may be shown by some other witness who knows more about it, if counsel desires.

Ques. Do you know whether he had a large estate? 30

Ans. I do not; no, sir.

Ques. Do you remember being at Mr. Myers' house on the evening of—what day was it in April—the 19th of April, 1895?

Ans. I do not, sir. There is no use of your mentioning dates, for I don't know.

Ques. Well, do you remember signing some paper there?

Ans. I did sign papers there; yes, sir.

(Will shown witness.)

Ans. I think I can recognize my own signature. That is mine.

Ques. Do you remember Mr. Myers calling you in the room, in the dining room, for the purpose of signing a paper?

(Objected to as irrelevant. Objection overruled.)

Ans. I was; yes, sir, called into the dining room one evening to sign a paper.

Ques. Is that the paper you signed then?

Ans. That is my signature.

Ques. Was there anybody there when you signed, outside of Mr. Myers?

(Objected to as irrelevant and immaterial.)

The Court: Do you object to what occurred at the execution of the will?

Mr. Carrow: I am objecting to what occurred at the executing of the will. That is exactly what I am objecting to.

The Court: Won't you state your reason? I don't understand what objection there can be to this.

Mr. Carrow: Because it is irrelevant and immaterial where the witnesses were.

The Court: You mean the inquiry as to the execution of the will?

Mr. Carrow: Yes.

30 (Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

(Question repeated.)

Ans. Not that I remember of; no, sir.

Ques. Do you know a woman by the name of Mary Davidson?

Ans. Mr. Myers had a young woman there as help whom I understood to be named Mary Davidson.

Ques. Was she there in the room when you signed?

Ans. I don't think she was, but I don't remember now.

Ques. Mr. Brower, there is one question. Do you know that the latter years of the 'Squire's life he had a habit of getting intoxicated frequently?

Ans. Well, yes, sir; I do.

10

Ques. Well, did he or didn't he have?

Ans. He did, unfortunately, for himself.

Ques. Do you know whether his physical and mental powers were on the decline in the last year or two of his life there in Ocean City?

(Objected to as leading, immaterial and irrelevant. Objection sustained.)

Ques. What did you notice about his physical and mental condition the last year or two of his life?

20

Ans. Well, that is a nice question. So far as some business was concerned, the 'Squire seemed as bright as any man that I knew; in others, I thought he was away off. Now, how am I going to determine?

Ques. How about his health? How did his health seem?

Ans. Well, after he had been on a—well, after a debauch—he didn't go on them—but after drinking heavily for two or three days he would be taken sick.

Ques. Do you remember a circumstance of Mary and Jennie crying in the house?

30

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, yes, sir; I do happen to remember a circumstance of that sort.

Ques. When did that occur?

Ans. I couldn't tell you, sir.

Ques. Was it before Mr. Myers died?

Ans. Oh, previous; yes, sir, sometime; but I don't know how long.

Ques. Will you state the circumstance, please, what the incident was?

- 10 Ans. Well, it appears like this: I was in the habit of dropping in whenever I saw fit, because the 'Squire was always glad to see me and I was always glad to see him; and it appeared on this evening when I dropped in the two girls were in the sitting room and they were crying. Well, I didn't know what to make of it, and finally, to relieve the embarrassment, I asked the trouble, and they had trouble with the madam; and I finally advised them; I says, "Now, look here——"

Mr. Carrow: I object to any conversation.

- 20 The Court: The conversation between this witness and the two daughters is not competent.

Mr. Carrow: I ask that everything may be stricken out.

#### CROSS-EXAMINATION.

By Mr. Boyle:

- Ques. Mr. Brower, you testified in this matter before the Orphans' Court here in this Court House?

- 30 Ans. Yes, sir.

Ques. About the 8th of June, 1897, did you not?

Ans. I don't know any dates, sir. It is up to you.

Ques. Well, after the father died you were one of the witnesses that came here to Court to prove the will?

Ans. Yes; right in this room, or this one here (indicating back room).

Ques. There was a hearing here at that time?

Ans. Yes, sir.

Ques. You also testified four years ago, did you not?

Ans. I wouldn't swear to that.

Ques. About that time? I don't want to pin you down closely.

Ans. About that time. I was here some time ago; yes.

Ques. Now, at this hearing here about four years ago did you answer to the question: "Ques. What condition of mind was he in at the time? Ans. Why, as ordinarily." Did you so testify at the last trial?

Ans. I really don't know what I said then, but ask me 10 what I remember now.

Ques. Well, what frame of mind was Mr. Brower in the night that the will was executed, so far as his capacity to do business was concerned?

Ans. Normal, so far as I know.

Ques. Normal condition?

Ans. Yes, sir.

Ques. Was he under the influence of liquor to such an extent as would incapacitate him from doing business at that time? 20

Ans. I think not; no, sir.

Ques. Did he play cards that night?

Ans. He did.

Ques. Who won, do you remember?

Ans. That is too far back.

Ques. How long did you play cards together?

Ans. Oh, well, I don't know; maybe an hour and a half or two hours; I don't remember.

Ques. Is it true that Mr. and Mrs. Rush and Mary Davidson were drunk that night? 30

Ans. Who said so?

Ques. Well, one of the witnesses said that Mrs. Myers claimed, that Mrs. Myers said everybody was drunk that night.

Ans. Well, she is dead; I can't tell her she lies. I would be glad to.

Ques. Well, what do you say to that?

(Former question repeated.)

Mr. Wescott: Oh, I don't want to widen this inquiry. This gentleman was asked about the execution of this will and about the health and habits of Mr. Myers, not about whether he was drunk that night or whether he had mental capacity. He was simply asked whether he was alone in the room with 'Squire Myers when this will was signed. Now, that is the scope of the examination in chief and I object to going outside of it.

(Question allowed.)

10 Ques. I call your attention, Mr. Brower, for the purpose of refreshing your memory, I want to call your attention to this testimony as to whether a caveat had been filed by Mary DeRoche against the probate of the will?

Ans. You will have to explain what a caveat means. I am not a scholar.

Ques. Did you know that Mary DeRoche had been fighting the will shortly before that?

Ans. I heard of it.

20 Ques. And when you were first examined here, that there were attorneys representing those contesting the will present?

Ans. I presume there were. I don't know now; it is so long ago.

Ques. After being examined at that time you were also cross-examined, were you not, by another attorney before Judge Douglass?

Mr. Carrow: On the hearing.

30 Ans. Well, I can't remember the fact, it is so far gone, but I presume that I did. I presume that is the attorney's affairs. I presume she had an attorney, but I don't know.

Ques. You were examined at length that day, were you not?

Ans. I couldn't answer that now.

Ques. Now I will ask you if upon the occasion of the hearing before Judge Douglass in that room, as indicated by you—

Ans. Yes; I was here.

Ques. —You gave the answers to the questions—I am going to read the question and the answer. Now, I am calling your attention to the time that you testified when the will was up for probate before Judge Douglass?

Ans. I was here; yes, sir.

Ques. You understand that, do you?

Ans. I understood that I was here; yes, sir.

Ques. Did you give these answers and were the questions as read submitted to you?

Ans. Well, let us hear them:

10

Ques. “Ques. Mr. Brower, where do you reside?”

“Ans. At Ocean City.

“Ques. How long have you lived there?”

“Ans. I couldn’t inform you; I suppose twelve years or more.”

Did you make that answer?

Ans. I couldn’t tell you. That is likely to be true.

Ques. “Ques. Were you acquainted with Charles Myers during his lifetime?”

20

“Ans. Yes, sir. I knew him very well.”

Did you make that answer?

Ans. That may be true, too.

Ques. “Ques. How many years had you known him?”

“Ans. Well, I presume within a few months after his arrival there. How long ago that was I don’t know.”

Did you make that answer?

Ans. I presume that is true; yes, sir.

Ques. “Ques. Can you give us some idea about how long ago it was?”

30

“Ans. Several years.”

Do you remember that answer?

Ans. I presume that is so.

Ques. “Ques. In 1895, in April, do you remember receiving any message from Mr. Myers? If so, state what it was?”

“Ans. I don’t remember any dates, whatever, sir.

Ques. "Ques. Do you remember seeing this paper ever before. (Paper shown witness purporting to be will.)

"Ans. No, sir; I do not, as far as I have seen it.

Ques. "Ques. Do you recognize your name?

"Ans. I do, sir. I wrote that name."

Was that answer and question submitted?

Ans. Well, I haven't seen the paper. If I seen the paper I could answer it.

10 Ques. There were the questions. Were these questions submitted?

"Ques. You wrote that name?

"Ans. Yes, sir."

Was that question and answer submitted?

Ans. I presume it is true.

Ques. "Ques. You remember when you wrote that name?

"Ans. I do not. I didn't pay any attention."

Was that answer given by you?

Ans. It sounds like my testimony.

20 Ques. "Ques. At the time that you wrote that name was Mr. Myers present, the late Mr. Myers?

"Ans. He was."

Is that answer true? Was that question answered by you?

Ans. If that is the paper to which I put my signature there, which I swore to, it was.

Ques. "Ques. Was J. S. Rush present?

"Ans. Yes, sir."

Was that answer and question submitted to you at that time? Did you make that answer?

30 Ans. I don't know.

Ques. I am only asking you whether that was your testimony at that time?

Ans. Well, if it is there, I presume it was.

Ques. "Ques. And M. T. Rush?

"Ans. Yes, sir; they were present, there in the house. I don't know what their first names are."

Was that your testimony at that time?

Ans. It sounds very like it.

"Ques. And Mary Davidson?"

"Ans. I won't be so positive about her."

Was that your answer at that time?

Ans. Yes, sir.

Ques. "Ques. Did Mr. Myers request you to witness this will when you wrote it?"

"Ans. Yes, sir."

Was that your answer at that time?

Ans. Yes, sir.

Ques. "Ques. Did Mr. Myers declare that to be his last will and testament?" 10

"Ans. I don't know that he used that word, but he declared that was his will."

Was that your testimony upon the previous occasion?

Ans. If you declare on your honor that this was my testimony, I admit it all.

Ques. I will have to leave that to Mr. Kelly; he is the one who gave me this.

Ans. I will admit that all. Now, the Judge, of course, he is on the other side. 20

Ques. Was that your testimony on the previous occasion?

Ans. I believe it was.

Ques. "Ques. And that was his signature to it?"

"Ans. That was his signature to it.

"Ques. Did you see him sign his name?"

"Ans. I did not.

"Ques. Why didn't you?"

"A. Because he didn't sign it before me."

Was that your testimony on the previous occasion? 30

Ans. I believe those remarks were made; yes, sir.

Ques. "Ques. But he did produce this paper before you—"

"Ans. I will tell you. I will explain it in my own language. When I was asked to sign that paper I says, 'I don't know what I am signing. I may be signing away all my right and title,' I says, laughing. He says, 'That is my will; that is my signature.'"

Was that your testimony on the other occasion?

Ans. I said those words when I signed the paper.

Ques. Well, was that your testimony?

Ans. Yes, sir.

Ques. "Ques. These others were present when you signed?

"Ans. They were in the house. I won't say that.

"Ques. Weren't they in the room?

"Ans. I won't say that.

10

"Ques. You don't know whether they were in the room or not?

"Ans. No, sir; I won't say that positively.

"Ques. Will you say they were not in the room?

"Ans. I will not; no, sir.

"Ques. You didn't know the contents of this will?

"Ans. Why, I have heard parts of it.

"Ques. I mean at the time?

"Ans. No, sir; I knew nothing more about it; only I witnessed that paper and he told me that was his will and testament."

20 Was that your testimony as just read?

Ans. I did hear that; yes, sir.

Ques. Was that your testimony on the trial before Judge Douglass?

Ans. I presume it was.

Ques. "Ques. You signed your name, you say, if I recall it rightly, in the presence of Mr. Myers, while he was there?

"Ans. He was; yes, sir.

30

"Ques. And at his request?

"Ans. And at his request.

"Ques. But you are a little uncertain as to whether the others were present?

"Ans. I think rather that Mr. Jerome Rush was, but I wouldn't like to swear to that. He and the madam were in the house, I think, but I won't say positively. I can see the scene yet."

Was that your testimony before?

Ans. I believe it was; yes, sir.

Ques. "Ques. Did you see Mr. Jerome Rush sigh?"

"Ans. I can't say about that.

"Ques. You are not sure about that?"

"Ans. No, sir; I won't say positively.

"Ques. Where did Mr. Rush live?"

"Ans. He lived at that time on the corner of Eighth and Wesley Avenue. The northwest corner, I believe.

"Ques. Where did you live?"

"Ans. I lived on the southeast corner of Third 10 and Central Avenue.

"Ques. How long had you known him?"

"Ans. Well, for several years.

"Ques. You lived neighbors?"

"Ans. Well, as near as Third Street and Central might be from Eighth and Wesley."

Was that your testimony as just read before him on the occasion in which Judge Douglass—

Ans. Very like it; yes.

Ques. "Ques. Where did you sign this paper? 20

"Ans. In what might be called their kitchen or dining room. They used it as a dining room.

"Ques. Of his residence?"

"Ans. Yes, sir; at Eighth and Wesley Avenue."

Was that your testimony on that occasion?

Ans. Yes, sir.

Ques. "Ques. How did you come to go there?"

"Ans. I had been in the habit in the winter months of playing a game of cards, of pinochle, with the 'Squire, four or five nights out of the seven. I 30 am a bachelor and like company and like such amusements, and he was a man in that respect, and I went there for company."

Ques. Was that your testimony?"

Ans. Sounds very much like it.

Ques. "Ques. You were there to have this game of cards?"

"Ans. Yes, sir, as a social——"

That was your testimony?

Ans. Yes, sir.

Ques. "Ques. And while there he produced this paper?"

"Ans. Yes, sir.

"Ques. Was it already signed when he produced it to you?"

"Ans. Yes, sir; it was.

"Ques. You didn't see him sign it?"

"Ans. No, sir.

10

"Ques. Of the witnesses who signed that paper, who signed first?"

"Ans. That I don't remember.

"Ques. Do you remember whether at the time you signed it, it had already been signed by others?"

"Ans. No, sir; I do not. From what I can see now, I presume I do; but I don't know."

Did you so testify before Judge Douglass?

Ans. It sounds very like what I said; yes, sir.

20 Ques. "Ques. What time in the evening was it?"

"Ans. Well, I presume I called there shortly after the mail, and the mail closes at 7.30, as a rule, and I presume it was in the neighborhood between—anyhow between seven and eight o'clock in the evening."

Was that your testimony before Judge Douglass?

Ans. I think so; yes, sir.

Ques. "Ques. Had he been drinking that day?"

30

"Ans. Well, that is hard to tell.

"Ques. Was he a man that drank a good deal?"

"Ans. Well, I believe the 'Squire was addicted to the use of liquor.

"Ques. How large a room was this that this paper was signed in?"

"Ans. Well, now, let me see. That is a question. I don't know that I ever measured it, but I would say 12 by 16, possibly not quite so much."

Was that your testimony on the occasion here before Judge Douglass?

Ans. I would be apt to say the same thing now ; yes, sir.

Ques. "Ques. Was the table on which it was signed in the middle of the room?

"Ans. Why, on the dining room or kitchen table, whichever you might call it.

"Ques. And in the middle of the room?

"Ans. Yes, sir ; in the middle of the room.

"Ques. If anybody else was present you would have had ample opportunity to see them? <sup>10</sup>

"Ans. Yes, sir ; why, I should think so."

Was that your testimony?

Ans. Yes, sir.

Ques. "Ques. And you, with every opportunity, are not able to say that there was anybody else in the room?

"Ans. No, sir. I may believe certain things, but I won't swear to it. I believe certain things, but <sup>20</sup> won't swear to it.

"Ques. It didn't make any impression on your mind, the fact that you were signing a will?

"Ans. No, not very much. I knew it was a thing that ought to be done, and I was in hopes he would have a good many years, and he was a pretty hearty man, and I thought he would"

Was that your testimony before Judge Douglass on the hearing?

Ans. Well, I presume it was. That is all I can give you. <sup>30</sup>

Ques. "Ques. Did you know who the other witnesses were?

"Ans. Yes, sir ; as my memory serves me, Mr. Rush and the madam and I think another by the name of Mary Davidson.

Was that your testimony before Judge Douglass?

Ans. I presume so ; yes, sir.

Ques. "Ques. How did you understand that? Who told you?"

"Ans. I don't know, unless I was talking to Mr. and Mrs. Rush. I may have been talking with Jerome. I gained the impression from somebody."

"Ques. You got it from them?"

"Ans. I didn't say so. I may have gained it from somebody else that they were witnesses. I knew Mr. and Mrs. Rush, and Mary Davidson I am not so sure about."

10

Was that your testimony upon that occasion?

Ans. It strikes me it was.

Ques. "Ques. You don't know whether they were in this room or not?"

"Ans. I think and believe that Jerome and Mrs. Rush were."

Was that your testimony upon that occasion?

Ans. Well, I presume it was. I don't know.

20 Ques. Your answer there was, "I think and believe that Jerome and Mrs. Rush were." Did you so testify before Judge Douglass?

Ans. I don't quite catch it.

Ques. Now, this is the question: "You don't know whether they were in this room or not? Ans. I think and believe that Jerome and Mrs. Rush were." Did you so testify before Judge Douglass?

Ans. I presume I did, but I don't know now. It is too far back.

30 Ques. "Ques. Never mind what you believe; do you swear to it?"

"Ans. I believe it to be, but, as you say, I won't swear to it."

"Ques. How long did you remain after signing the will?"

"Ans. Well, it was customary to retire about, anywhere from 10 to 10.30. Once in a while we remained after that, and sometimes went away earlier. I should say it was from 10 to 10.15."

That was your testimony at that time?

Ans. I presume so; I don't know.

Ques. "Ques. After witnessing it you had a game of cards?"

"Ans. Yes, sir; a game of pinochle.

"Ques. Did he discuss the will with you, the contents of it?"

"Ans. No, sir; not a word.

"Ques. Who else was present when you signed this will?"

10

"Ans. In the house?"

"Ques. Yes; in this room?"

"Ans. Well, that I cannot say. Mrs. Myers was in the house, but I won't say she was in the room. She might have been, but I didn't pay any attention to it.

"Ques. Had you any conversation with him about it?"

"Ans. No, sir; it was a surprise to me."

Did you so testify before Judge Douglass at the hearing? 20

Ans. Most probably; yes, sir.

Ques. Now, Mr. Brower, aren't you a little uncertain, usually, about these matters concerning the execution of this will after all these years?

Ans. Ask me some specific fact.

Ques. Will you say positively that Mr. Rush and Mrs. Rush were not in the room when you signed the will?

Ans. No, sir; I will not, for I don't know.

Ques. Will you say they were not in there?

Ans. I will not; no sir.

30

Ques. Have you any distinct recollection of how that will was executed?

Ans. I know nothing about it, except simply that I seen it, and that is all. I didn't know that it was a will until he made that statement.

Ques. But you do remember now that he did call your attention to it as a will?

Ans. After I made that remark that you just read.

Ques. You don't charge your mind that Mrs. Rush or Mr. Rush or anybody else were present and witnessed it at that time?

Ans. I know they were staying at the time in the house.

Ques. But you didn't at that time charge your mind whether they were present when you signed them or saw you sign?

Ans. No; I didn't care. It was only a matter of fact; that was all.

10 Ques. Are you acquainted with the handwriting, or were you acquainted with the handwriting of Charles Myers, deceased?

Ans. Well, there was a time when I was. I don't know about now.

Ques. Well, did you ever do any business with him?

Ans. Yes, sir.

Ques. You were doing business with him in 1896, were you not?

Ans. Well, it looked like a hen scratch.

20 Ques. The signature to a check dated March 23, 1896, signed "C. Myers," made to John Brower. Was that check given to you in your regular course of business?

Ans. I couldn't answer that.

Ques. Well, look at the indorsement and see?

(Witness examined indorsements.)

Ans. Well, I should presume—

Ques. Well, do you know your handwriting on the face of it?

Ans. Give us that will.

30 (Will produced and examined by witness.)

Ans. Well, I believe that is mine; yes, sir; and this looks like the 'Squire's.

Ques. Well, did you ever get any money from him in that time? Did you ever get any checks in the course of business dealings?

Ans. Did I get checks from the 'Squire? I presume I did. I had been doing a lot of business with him and I may have got checks.

Ques. Were you doing business with him in 1896?

Ans. Well, you have got me on dates.

Ques. Well, you were doing business with him every year?

Ans. Yes, sir; years; a good friend of mine.

Ques. Did you ever receive as much as that from him at one time?

Ans. Oh, yes; several times that much.

Ques. Well, is that the 'Squire's signature?

Ans. I believe it is.

Ques. Can you say in whose handwriting that will is?

10

Ans. No; I don't know. That I don't know, sir. This is too fine. Let's see. Where is the signature?

Ques. I mean the body of the will, whose handwriting it is?

Ans. I don't know. I don't know, sir. As I said, the 'Squire's, you know, is like hen's scratches. He was near-sighted.

(Paper marked Exhibit A for Identification.)

20

#### REDIRECT EXAMINATION.

By Mr. Wescott:

Ques. Did you notice anything about this paper when you put your signature to it? Did you notice whether there was an attestation clause to it?

Ans. Now you have got me. You will have to explain that, please.

Ques. You have been asked to examine and compare writings here; and assuming that you are competent to pass judgment on such things, I ask you to look carefully at that little bunch of fine writing there, called the attestation clause, and compare it with the writing in the body of the will.

30

Ans. Will you please let me have the other paper?

Ques. No; compare it with this and say whether the attestation clause was not written in a different ink and at another time?

Mr. Boyle: That is objected to because it is not cross-examination, and it certainly is not such testimony as this witness is in a position to testify. He is not an expert upon those lines. I simply asked him from his familiarity with dealings with Mr. Myers, whether that was Mr. Myer's handwriting.

Mr. Wescott: They qualified him without objection on our part as an expert in handwriting; they used him for that purpose. Now, as an expert in handwriting, he is perfectly competent to take the writing and what is the alleged writing of Mr. Myers and say whether Mr. Myers wrote part of it at one time and part of it at another.

(Objection sustained.)

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MRS. MARY DEUEL, sworn for plaintiff.

Direct examination by Mr. Wescott:

Ques. Where do you live, Mrs. Deuel?

20 Ans. 1410 North Eighteenth Street, Philadelphia.

Ques. Did you know Charles Myers and his wife?

Ans. Yes, sir.

Ques. You knew them for how many years?

Ans. Well, I knew Mrs. Myers a number of years.

Ques. And Mr. Myers for how long a time?

Ans. I knew Mr. Myers after Mrs. Myers married him.

Ques. Were you on visiting terms with the family?

Ans. Yes, sir.

30 Ques. Did Mrs. Myers say anything to you about the pregnancy of her daughter Jennie?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. What did she say?

Ans. She came to my house, my mother's house, one Sunday afternoon and said that Jennie was pregnant; and I said, "Why, how can that be? She said she had her ovaries removed." She said, "Well, I don't know; that is what she is."

Ques. Did she at the same time say anything to you about her having diseases?

Mr. Carrow: I also object to any statements of Mrs. Myers made regarding the character and conduct of Jennie 10 or any children of Charles Myers.

The Court: The testimony will be allowed. Note an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes; she said she had a venereal disease.

Ques. Did you ever have occasion during your acquaint- 20  
ance with these people to observe Mr. Myers' relations toward his children?

Ans. He always seemed very fond of them, of the two younger girls. The others I didn't know very well.

Ques. What leads you to say that he seemed to be very fond of them?

Ans. Well, always seemed to be pleased when they were promoted in their studies up at the school, and when Jennie graduated he was showing her paintings all around and would buy things and would ask me to take them out to 30 them when he was not able to go.

Ques. Did that treatment of the children—was it a general thing, so far as your observation went?

Ans. As far as I knew; yes, sir.

Ques. What did you notice about the attitude of Mrs. Myers toward these girls?

Ans. Well, it struck me that she always was—  
(Objected to.)

Ques. Well, they get frightened as soon as you say struck you or anything.

Ans. Well, she was jealous of his affection for his children.

Mr. Carrow: I ask that that be stricken out. It is her opinion.

The Court: Well, if she will state facts which will lead to that conclusion I will allow it to stand.

10 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. How did she treat these girls? What did she say about them?

Ans. Well, she was continually talking against them to Mr. Myers.

Ques. In your presence?

20 Ans. Yes; always.

Ques. Did you take occasion to remonstrate with her about that matter any time?

(Objected to as irrelevant, incompetent and immaterial)

The Court: That would only be competent as it develops what Mrs. Myers said.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

30

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did you say anything to her about the way she was treating the children?

Ans. Yes, sir.

Ques. What did you say to her?

Ans. I told her that she should not talk about the children to Mr. Myers; I said she would get him down on them; get Mr. Myers down on the children. She said she didn't care whether she did or not.

Ques. Did she use any other language in that connection?

Ans. Yes, sir; it was pretty strong.

Ques. Did she say in that connection or at that time that she knew what she was doing?

Ans. Yes, sir; she did. She said that she knew what she was about.

Mr. Boyle: It is certainly distasteful to be objecting all the time, but that certainly is a leading question; that last one. 10

The Court: Well, leading questions are very often allowed. Sometimes it is hard to call the attention of the witness to testimony that you want to develop without leading, and so long as it is not abused I shall allow it.

Ques. Do you remember an occasion of your being with some of these people out at the Baltimore & Ohio Railroad Station in Philadelphia?

Ans. Yes, sir.

Ques. Have you an idea when that was? 20

Ans. That was the time that Mr. Hagel and Mr. Myers took a trip to California.

Ques. Do you remember about what year it was?

Ans. It was a long time ago, eighty something—six or seven.

Ques. Did you hear Mrs. Myers state at any time the method she adopted or used to get along or get around her husband in his home?

(Objected to as irrelevant and immaterial. Objection 30 overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. I never heard her state, but I have seen her jolly him along, as it were, and then get him full.

Ques. Jolly him along after he got full?

Ans. Yes; before and after.

Ques. Do you remember a conversation by Mrs. Myers, or between Mrs. Myers and you, with reference to going up to the city, Mrs. Myers wanting to go up to the city?

Ans. Yes, sir.

Ques. What was that conversation?

Ans. She wanted to go up and Mr. Myers seemed to think that she should not go; that she had been up there often enough; and they had a quarrel about it, and Mr. Myers said that he was sick and tired of the whole business.

Ques. Do you remember saying, "Sallie, how much money do you suppose the Squire has?" or something to that effect?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. It was this time of the quarrel, that Mr. Myers didn't want her to go up to town. I says, "Sallie, how much money do you suppose the Squire has?" She says, "I don't know, but whatever he has, he isn't going to do me out of it; he isn't going to do me."

Ques. Did you hear her say ever to Mr. Myers that either of his daughters, Jennie or Mary, had gone out to Sea Isle City to meet men, or anything to that effect?

Ans. Yes, sir.

Ques. How often did you hear her say that, more than once?

Ans. Well, not so often about Sea Isle City, as it was the boardwalk.

Ques. Did you more than once hear her say that with reference to the boardwalk?

Ans. Yes, sir.

Ques. Do you remember a circumstance about a bill of sale being put on the house?

Ans. Yes, sir.

Ques. Just explain what you recollect about that?

(Objected to as immaterial and irrelevant.)

The Court: Well, I don't know what this is, what it leads to. I cannot rule unless you give me an indication of what is coming.

Mr. Wescott: Well, it indicated the relationship between Mr. Myers and Mrs. Myers, their feelings toward each other.

The Court: Bill of sale from whom to whom?

Mr. Wescott: Between Mr. Myers and Mrs. Myers.

The Court: A bill of sale was between these two?

Mr. Wescott: Yes.

The Court: I will take the testimony.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Do you remember a circumstance of that sort?

Ans. Yes, sir.

Ques. Where did it occur? Where did it arise?

Ans. It occurred in Mr. Myers' house when he spoke of putting a bill of sale on the house.

Ques. Do you remember how long that was before his death? 30

Ans. Well, it was some time.

Ques. Some time before his death?

Ans. Oh, yes.

Ques. Well, what was the circumstance? Detail it as nearly as you can recollect it?

Ans. Mr. Myers had been on a trip to Chattanooga. Mrs. Myers and I had been to Sea Isle City, and when we got on the train at the junction Mr. Myers was on the

train. Mr. Hickey told us Mr. Myers was on the train; and Mrs. Myers, being under the influence of liquor, sat back in the car, while the Squire sat further up. She was talking to Mrs. Mahan, and so I went up to talk to the Squire, and sat down with him. He asked where she was and I said she was talking to Mrs. Mahan, and would come up after she got through. She didn't come and it made him angry. When she got off the train he made some remark to her and she answered, I don't know  
 10 what, and she stumbled as she went down. I walked down the street to the house with Mr. Myers. When we got in he went upstairs and wouldn't eat any supper; seemed angry over the occurrence. So that night Sallie, she didn't sleep downstairs in their room, she went up into a room where Jennie and a colored boy used to sleep and she stayed until about two or three o'clock in the morning, I judge, and she came downstairs with either a candle or a lamp—it was a light of some sort—and went into Mr. Myers' room; and it seemed to frighten him, and  
 20 I imagine he was asleep, and she—

By Mr. Carrow:

Ques. Were you in the room?

Ans. No, sir; I was in the next room.

Mr. Carrow: I ask that the testimony be stricken out.

Ans. But the transom was open and you could hear and see; that is, you could see the light and hear the talking.

30 The Court: Answer what you heard and saw.

Ans. Yes, that was it. So the next morning we finally got her quieted down. She carried on and we got her upstairs. The next morning Mr. Myers and I were in the sitting room, the living room, as they call it; and he said he was going to put a bill of sale on the house. I says, "What is going to become of Sallie?" and he says, "I don't care what becomes of her. She has worried me to death." Just then Sallie burst in; she evidently had been

listening at the door. She said if she heard any more she would wash her hands in his blood and dance on his dead body.

Ques. Was anything further said then?

Ans. No, sir; not then.

Ques. Did you ever hear her make any threats against Mr. Myers outside of that one that you just stated?

(Objected to as immaterial and irrelevant. Objection overruled.)

10

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. No, sir; except that she would be even with him.

Ques. You heard her say that she would be even with him?

Ans. Oh, yes; she said that lots of times, many times. 20

Ques. Do you remember an occasion when Mrs. Hamscher was down there?

Ans. Yes, sir.

Ques. Were you present?

Ans. Yes, sir.

Ques. How many children did she have with her?

Ans. She had, I think, two; I am pretty sure she had two.

Ques. She is the lady that testified here?

Ans. Yes, sir; Mrs. Hamscher, the elder one. 30

Ques. What occurred then that you recall?

Ans. Mrs. Myers was very angry at her coming down. She said she didn't want to be bothered with her. Mr. Myers and his daughter Mrs. Hamscher were sitting out on the porch. She called me and said, "Mary, go out and sit with pop. I don't want Annie to put the devil in him."

Ques. Did you notice whether the habit of drinking grew on the Squire as he approached his end?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. I didn't see Mr. Myers in his home.

10 Ques. No, did you notice it?

Ans. No, of course I hadn't seen him, except in Philadelphia on the street, and I didn't see him long enough to know.

Ques. Did you notice anything about his general physical expression, his health, shortly before his death?

Ans. Well, he just seemed to be going down hill, as a man of his age would.

Ques. And what was the evidence about him, about his habit of drinking, that you noticed?

20 Ans. Well, Mr. Myers always drank while I knew him; sometimes moderately and other times excessively.

Ques. You didn't know him until after his marriage to Sallie Myers?

Ans. No, sir.

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Recess to 1.30 P. M.

30

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Trial of cause resumed at 1.30 P. M.

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MARY DEUEL, resumed.

## CROSS-EXAMINATION.

By Mr. Boyle:

Ques. You were on very kindly and friendly terms with Mrs. Myers up to the time she died, were you not?

Ans. No, sir.

Ques. Not on friendly terms with her?

Ans. No, sir; not up until twelve years of her death.

Ques. You were unfriendly to her then?

Ans. Yes, sir.

Ques. Why was it?

10

Ans. Not enough to hurt her.

Ques. But you had nothing but the easiest and kindest feelings towards her?

Ans. Pardon me.

Ques. You had nothing but the kindest feelings for her?

Ans. I don't know about that.

Ques. Did you in this previous case testify that you had not the best feelings towards her?

Ans. I said that she had maligned my family, and naturally I felt unkindly towards her. (Remainder of answer ordered stricken out.)

20

WILLIAM HAGEL, sworn for plaintiff.

## DIRECT EXAMINATION.

By Mr. Jefferson:

Ques. Where do you live, Mr. Hagel?

Ans. I am now living at 1627 West avenue, Ocean City. 30

Ques. What is your business?

Ans. Well, I am not in any business just at present.

Ques. That is, you are retired?

Ans. Yes, sir.

Ques. Did you know Charles Myers in his lifetime?

Ans. Yes, sir; known him a long time ago.

Ques. Can you tell us how long?

Ans. Well, perhaps between thirty and forty years.

Ques. Can you tell the Court and jury how you became acquainted with him?

(Objected to as irrelevant and immaterial.)

The Court: I think you may pass that, unless there is some special reason for developing that.

Mr. Jefferson: I think the answer will show, if your Honor please, it is leading up to others.

10 The Court: Well, you had better bring him right down to the essential part of his testimony.

Ques. Did he do any business for you?

Ans. Yes, sir.

Ques. What was it?

Ans. Well, collecting and different things in the real estate line.

Ques. Well, what was Mr. Myers' business in Philadelphia?

20 Ans. Well, formerly he was an alderman, and then into the real estate, collecting and so forth, loaning money.

Ques. Were you very intimately acquainted with him or not?

Ans. Yes, sir.

Ques. Did you ever take any trips with him?

Ans. Yes, sir.

Ques. What trips did you take with him?

(Objected to as irrelevant and immaterial.)

30 The Court: Well, I suppose that is to call his attention to some fact.

Mr. Jefferson: Yes, sir.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, we had a trip to California.

Ques. During that trip did he tell you anything about what he was going to do for his children?

Ans. Yes, sir.

The Court: When was this trip to California?

Mr. Boyle: Away in the eighties, if your Honor please.

Ans. Well, that was back in the eighties.

Mr. Carrow: I object as immaterial and irrelevant.

By the Court:

10

Ques. Can you say the earlier or later eighties?

Ans. No, sir; at the end of the eighties.

Mr. Jefferson: He died in 1895.

The Court: I will take the testimony.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal) 20

Ques. What did he say, Mr. Hagel, about his children then?

Ans. Well, there was a place out there that was to be sold where we were stopping in Sacramento. I think he had made an offer either of \$18 or \$20 an acre for, I guess, about two thousand acres of land, and he was going to put his sons, James and John, on it; but for some reason or other there was somebody else stepped in and made the purchase.

30

Ques. Did he say why he wanted to buy that at the time?

(Objected to as irrelevant and immaterial.)

Ans. Yes, wanted to put his two boys on it.

The Court: I will allow it to stand.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Ques. Did you ever visit Mr. Myers at his Ocean City home?

Ans. Yes, sir.

Ques. When?

Ans. Oh, different times.

Ques. While you were down there did you hear him make any remarks about his children?

(Objected to as immaterial and irrelevant.)

The Court: Answer whether he did or not.

10 Ans. Yes, sir.

(Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Well, what were those remarks you heard him make?

20 Ans. Well, he always spoke well of his children, and when they were coming down, and the different ones that were coming at times to spend a few days, and he would hame them—

Ques. Did he appear to be pleased with them?

Ans. Yes, sir; and always glad to see them to come or know they were coming.

Ques. Did he ever make any remark to you about marrying this woman? Yes or no.

(Objected to as leading.)

30 Ans. No.

The Court: He says no.

Ques. Did you ever know of their disputing while you were there? Did you hear them?

Ans. Well, I don't know just exactly about any disputes, but I called in there one time, and they were not in, and I asked some of the children that were there where Mr. Myers was, and they said he was upstairs—

The Court: Don't tell what the children said.

Ques. No, just what you heard him or her say?

Ans. Well, anyway, he came in from some part of the house—I don't know what part of the house it was from—in one of the doors from the hall, and he made a remark there that I suppose it was intended for her.

Ques. What was that?

Ans. That he didn't know why he ever married such a woman.

Ques. Where was she then? 10

Ans. Well, she was in the other part of the house, or upstairs, I don't know where. I didn't get any further than the dining room.

Ques. Did you see her that day?

Ans. Yes, then after awhile she came in.

Ques. Where did she come from?

Ans. Well, she came through as if it was from the hall.

Ques. Did you notice anything in the latter part of Mr. Myers' life about his drinking?

(Objected to as immaterial and irrelevant. Objection 20  
overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, he was always a heavy drinker.

Ques. Was it any different in the latter part of his life 30  
than what it was when you first knew him?

Ans. Well, I can't say that, but I have seen him when he was so full lots of times that he couldn't help himself.

Ques. Did you ever hear him say anything about buying a farm for John or not?

(Objected to as immaterial and irrelevant. Objection  
overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. What did he say, Mr. Hagel?

Ans. Well, he said that John was getting old now, and he had a big family, and he was going to buy a farm. He was telling his pop when they came. They met at the  
10 office and I was just there at the time.

Ques. When was this?

Ans. Well, I can't give you the year, but it was at the holidays, it was Christmas Eve—Christmas Eve before he died.

Ques. Christmas Eve before he died?

Ans. Yes.

Ques. Now tell us what he said there that night about John.

20 Ans. Well, when John came in we were sitting in the office there. They greeted each other and was glad to see each other; and then he told his father that he knowed a farm that would be sold in the spring, and it was a good place, and he told him to look after it and see that he got it. And then after John had gone in to get his supper he spoke about John getting old and his big family, and he was going to fix him on a farm.

Ques. That was just before he died?

Ans. Just before he died.

30 Ques. Did you notice whether or not Mr. Myers' health failed during the latter part of his life, the last few years?

Ans. Well, I think when I used to see him the latter part of his years that he was on the decline. Now, whether it was from hard drinking or whether it was of natural causes or not I don't know; but he didn't seem to be so jolly any longer. Whenever you would meet him on the street he was always ready to break a joke with you, and always had something funny to say. The last few years he was just the other way.

Ques. Did he ever tell you why he was that way?

Ans. No, sir; I never asked him.

#### CROSS-EXAMINATION.

By Mr. Boyle:

Ques. Were you on good terms with Mr. Myers previous to his death?

Ans. I was on good terms with Mr. Myers all the time. 10

Ques. Did you visit his house the last few years of his life?

Ans. No, sir; I didn't go to his house.

Ques. How long? Hadn't you been away from his house about ten years before his death?

Ans. No, sir; not that long.

Ques. How long?

Ans. It was less than that. I don't know just exactly 20  
how long. A good deal less than that, I think.

Ques. Well, were you as intimate toward the latter end of his life with him as you had previously been?

Ans. Always spoke to him, only I didn't visit the house.

Ques. Didn't visit the house?

Ans. No, sir.

Ques. Just spoke to him?

Ans. Never seen him but what I bid him the time of day.

Ques. Was that the usual interchange that you had with 30  
him, bidding him the time of day, towards the latter end of his life?

Ans. Well, whenever I met him I didn't want to get in any conversation with him, because I didn't make any calls there—

Ques. You didn't care particularly on that account to talk too much to him at that time?

Ans. No, sir; I made it kind of quiet.

## RE-DIRECT EXAMINATION.

By Mr. Jefferson :

Ques. Where were you accustomed to see Mr. Myers after you quit going to his house?

Ans. Oh, meeting him in Ocean City and meeting him in Philadelphia, and just wherever we happened to go together.

Ques. Did you go out fishing with him?

10 Ans. No, sir ; I didn't go fishing with him. I used to go fishing, but I quit it.

By Mr. Carrow :

Ques. Fishing declined, didn't it, down there?

Ans. Well, kind of on the bum.

Mr. Carrow : We have a witness, if the Court please, who can't get here to-morrow very conveniently, and Judge Wescott has kindly consented that we may call him now.

ALONZO BELL, sworn for defendant.

20

## DIRECT EXAMINATION.

By Mr. Boyle :

Ques. Where do you live, Mr. Bell?

Ans. 5431 Arch street.

Ques. What city?

Ans. Philadelphia.

Ques. What is your business?

Ans. Spring making, mattresses and general upholstery.

30 Ques. How long have you been in that business?

Ans. Since 1867.

Ques. Did you know Charles Myers in his lifetime?

Ans. Yes, sir.

Ques. From what time?

Ans. From 1886.

Ques. Until what time?

Ans. Until he died.

Ques. What was the nature of your relationship or ac-

quaintance with him?

Ans. Why, we was like father and son together during my time with him.

Ques. How often, about, would you see him?

Ans. About once a month, on an average; sometimes oftener.

Ques. Did you ever visit the family?

Ans. Yes, sir.

Ques. Did you know Mrs. Myers?

Ans. Yes, sir.

Ques. How often, about, did you visit them? 10

Ans. I was there during the summer probably four or five times a year.

Ques. Well, did you and the Squire ever talk together?

Ans. Yes, sir; often. He would visit my house and stay sometimes a week at times.

Ques. Did he ever talk to you about how he was going to dispose of his property, or about Charlie, his son?

Ans. He did; in 1890 he said he was going to leave the bulk of his estate to Charles Myers, the sickly son. 20

Ques. Which Charles Myers?

Ans. Little Charlie Myers.

Ques. Did he give you any reason for it at that time?

Ans. Not at that time he didn't.

Ques. What did he say about Charles' health at that time?

Ans. He did, too, give a reason. He said Charlie was sick, and he didn't think he would live long enough to give Charlie an education the same as he did the other children. 30

Ques. Did he tell you what trouble Charlie had at that time?

Ans. No; I knew the trouble, because he had him up to my house, and being treated there.

Q. Who brought him there?

Ans. Mrs. Myers and him.

Ques. Did you know he was under treatment at the time?

Ans. I did.

Ques. What was Charles' condition at that time?

Ans. At the time he couldn't walk without assistance.

Ques. What was the nature of the affection that he had?

Ans. Well, nervous affection, the doctor called it—St. Vitus' dance, I believe it is commonly called.

Ques. Well, were there any braces used?

Ans. Yes, sir.

Ques. Just tell the jury about it.

Ans. Dr. E. H. Bell, a brother of mine, who was treating  
10 him at that time, put braces on his limbs, both of his limbs.

Ques. Did he ever speak about the other children?

Ans. Oh, have general conversation about my family and his together, private conversation, such matters as you can't always explain in a place of this kind.

Ques. Did he ever say anything about a farm that he had bought for some of the boys?

Ans. He bought a farm some years previous for two of them, and they made a failure of it, and it cost him \$50,000.

Ques. Did he ever speak of how much he had done for  
20 the other children in comparison with what he had done or could do for Charlie?

Ans. He told me he had done as much as a father could do for a child, and he was going to provide for Charlie, as he didn't think Charlie would ever be capable of working.

Ques. When you first met the Squire what was his habit as regards drink?

Ans. No more than any other man, that I could see.

Ques. How often had you seen him in the last two years,  
say?

30 Ans. Every month, up to the time he died.

Ques. Do you remember during the year 1895 having seen him any time?

Ans. I saw him in the city just previous to Christmas, in December was the last time I saw him.

Ques. Well, what would be his habit or custom as to drinking when you would call at his house?

Ans. Nothing more than we would take a sociable glass of beer or probably liquor together, for company. That is what he did at my house, too.

Ques. What would be his condition in regard to drink?

Ans. No more than any other man. You couldn't tell he drank anything.

Ques. Well, would he drink to excess any time?

Ans. No; not in my estimation he didn't.

Ques. Was he ever under the influence of liquor?

Ans. Not that I know of.

Ques. Some witnesses say he drank to excess, and he was in a weakened, rum-dumb condition. What do you say about that?

Ans. Well, when I saw him in December, just previous to his death, he was transacting some business for me, and if he had lived until January he would have come out on a big deal on some property that I had in Bucks County that I asked him about. 10

Ques. Was his mind affected in any way by drink that you noticed?

Ans. No, sir; his mind was very active the time I saw him in Second street.

Ques. What kind of a man was he in will power, as a general thing? 20

Ans. Well, if he set his mind to a thing nobody could turn him, no matter who it was.

Ques. What sort of a man was he in regard to intelligence?

Ans. I never met any finer.

Ques. Do you remember about what time it was he was speaking to you about what he had done for the other children?

Ans. That was in 1890 when he first spoke of the subject; and during that time, about 1894 or 1895, I don't know which, he was in my office, and he said he was determined to make a will for the benefit of Charles, for the benefit of his estate. 30

Ques. Was he seeking your advice?

Ans. No; it came up about personal matters, and I said to him, "I have made a will," and I was asking some personal questions, and he said he intended to do the same thing for the benefit of Charlie.

Ques. Is that how the matter came up?

Ans. Yes, by my approaching him about it.

Ques. Did he ever speak of the money that he had expended upon his children?

Ans. Yes; he told me what his children had cost. It was in my earlier days, and I was asking him some questions about what it would cost to raise a child, and he said \$10,000, and I found that to be a fact.

Ques. Did you hear that he was a justice of the peace in Ocean City?

10 Ans. I didn't know it, but I heard that at his death, that he acted as justice of the peace during his last years.

Ques. How recently was it before his death that you met him and had a talk with him?

Ans. December, about a week before Christmas, in the tax office in Philadelphia; and he died the following January.

Ques. Was he in a rum-dumb condition all the time?

Ans. Just as normal as I am.

20 Ques. Were you playing cards?

Ans. No; not this day, because he was going home, and I went down Second street with him, going down to the train in the afternoon he was going down.

Ques. Did he ever say anything about how he came to be a Catholic?

Ans. Well, he was born a Catholic. I had a Catholic wife, and we were talking over the matter about christening the children; and he said he was born a Catholic and his father and mother were Catholics, and I think he said 30 he was altar boy at Sixth and Spruce, which his father and mother attended.

Ques. Did you ever observe any threats by his wife against him?

Ans. No, sir; nothing but peace and happiness there, to my recollection.

Ques. Did you ever see any quarrels or domestic difficulties?

Ans. Never.

Ques. Did you ever observe Mrs. Myers' conduct in any way towards the other children?

Ans. No; nothing more than what is becoming to a mother to her children; always treated them very well in my presence; never said anything against them.

Ques. Did you see them very often?

Ans. Yes, quite often, and they were at my house quite often, both Mary and Jennie.

#### CROSS-EXAMINATION.

10

By Mr. Wescott:

Ques. You live in Philadelphia, I believe?

Ans. Yes.

Ques. What is your business?

Ans. Why, general upholsterer and mattress and spring maker.

Ques. Where is your place of business?

Ans. 5831 Arch street, Philadelphia, at present. It was at that time 247 South Second street.

Ques. Do you carry this business on yourself?

20

Ans. I do.

Ques. In your own name?

Ans. Yes, sir.

Ques. Do you employ anybody?

Ans. I do.

Ques. How many?

Ans. Sometimes four, and sometimes five, sometimes none, according to how the season works. At present I am employing three hands.

Ques. You know Charlie?

30

Ans. I have known Charlie since a child.

Ques. Do you keep up your terms of intimacy with him?

Ans. Yes, sir; certainly.

Ques. Does he visit you often?

Ans. Not often. He has visited me once in a year, I guess, or twice in a year, here lately. I haven't been in Philadelphia a great deal this last year; I have been away. I am back again now.

Ques. How do you account for the fact that he doesn't visit you any more than once a year?

Ans. Well, he couldn't, because I wasn't home to be visited this last year.

Ques. This last year you were not there? How about the other years?

Ans. Well, I didn't keep a record when he visited me. He visited me often, the same as always, when I am in town.

10 Ques. You testified before in this case?

Ans. Yes.

Ques. Did you say anything about the farm business in your other testimony?

Ans. Which farm business?

Ques. That you testified before.

Ans. Which farm is that, please?

Ques. What you stated about.

Ans. About John and them?

Ques. Yes.

20 Ans. Yes; I think I did. I am not positive what I said the last time.

Ques. Do you say you did?

Ans. I think I did, yes; I think I spoke of the farm. I wouldn't want to say positive.

Ques. Of his having spent \$50,000 on it?

Ans. He told me it cost \$50,000 to get the farm back or get them out of the trouble they were in.

Ques. Which sons were they?

Ans. That I couldn't say. He said two of the boys.

30 Ques. Didn't name them?

Ans. He might have named them, but I didn't know who it was at that time.

Ques. Hadn't you interest enough to know which of these two sons it was that cost him \$50,000?

Ans. Well, probably I did at that time, but I don't know now.

Ques. Did you mention that before, in the other trial?

Ans. I think I did; I won't say positive.

Ques. Do you say that you did say that in the other trial, in your evidence?

Ans. I say I thought I did.

Ques. Well, will you say that you did?

Ans. No; I won't say I did; I say I thought I did. I won't say positive now under oath. I am not sure whether I did or not. I don't remember what I said the last time.

Ques. Well, would you be surprised to know that you did not say anything about it in your former testimony?

Ans. No, I wouldn't be surprised if I didn't.

10

Ques. What?

Ans. I don't know as I would.

Ques. Well, why didn't you say something about it before?

Ans. Well, I tried to answer all questions that were asked me.

Ques. You didn't say anything about it because you were not asked?

Ans. Probably it was the cause.

Ques. You knew about it then, did you?

20

Ans. Yes.

Ques. Where was this farm that cost so much money?

Ans. Up in Pennsylvania somewheres. I don't know where.

Ques. Whereabouts in Pennsylvania?

Ans. I don't know.

Ques. When was it Mr. Myers had to spend \$50,000 for his sons?

Ans. I don't know what year it was. He told me that in 1890.

30

Ques. Where were you when he told you that in 1890?

Ans. At his house; we were talking about it there.

Ques. In Ocean City?

Ans. In Ocean City; yes, sir.

Ques. Who was present?

Ans. That I couldn't say now. I think my wife was present.

Ques. Is she here, your wife?

Ans. No, sir; she is in the ground now. She died last year, unfortunately for me.

Ques. How came Mr. Myers to tell you about that?

Ans. Well, the general subject brought it up, personal matters between him and I.

Ques. What was it brought up the subject of his sons costing him \$50,000 for the farm?

Ans. Well, some personal matters. We were talking  
10 about our family.

Ques. What was it?

Ans. Well, I asked him to answer that about my own personal matters.

Ques. Well, tell us what it was that brought up this \$50,000 question.

Ans. Well, we were talking about the expense of the children, and my personal matters no doubt brought it up.

Ques. Did he tell you what the other children cost him?

Ans. He told me it would cost \$10,000 apiece to educate  
20 them, and I found it was true. That is what my boys cost me, \$20,000.

Ques. Do you think your boys cost you that much?

Ans. They have cost me that much.

Ques. Where did you send them to school?

Ans. Sent them to the public school, and one of them graduated from the Philadelphia Medical College and the other the College of Pharmacy.

Ques. How long were they there?

Ans. Until they left school.  
30

Ques. How many years in Jefferson College?

Ans. Four years.

Ques. How many in the other college?

Ans. I think four years.

Ques. How many thousand dollars did it cost them to go to the public school?

Ans. Well, you must remember their living. That is what I base my cost on, their education.

Ques. Did he tell you how many thousand dollars it cost to send them to public school?

Ans. No; he didn't tell me that.

Ques. Can you tell me how many thousand dollars it cost you?

Ans. I am telling what it cost to educate them. I can't tell you each item individually, or any other man.

Ques. Can you tell me how many thousand dollars it cost to send them to the public school?

Ans. No; I can't tell you. I didn't keep any record of 10 the items; I told you that.

Ques. Do you know what it cost to send each one of your children to college?

Ans. Independent from school? No, sir; I couldn't give you that. Now I have it in black and white elsewhere, but I haven't got it with me.

Ques. And he told you that he was going to leave the bulk of his fortune to Charlie because he was sick?

Ans. Yes, sir.

Ques. Is this the young man? (Indicating defendant.) 20

Ans. That is the young man; yes, sir.

Ques. Well, did he get well pretty fast after the will was made?

Ans. No, sir; Charlie has been ailing, and is ailing somewhat now, I think, because he is nervous yet.

Ques. Are you a physician?

Ans. No, sir; but I have a brother that is a physician, and a son.

Ques. And a son?

Ans. Yes, sir. 30

Ques. You ought to know.

Ans. I don't profess to know. I am not a medical man myself.

Ques. Charlie went on crutches, did he, or braces?

Ans. Had braces on both of his limbs; yes, sir.

Ques. Down to the time the will was made?

Ans. No; I don't know when the will was made, not the dates of it, only what I heard this morning.

Ques. Did Charlie travel with braces down to the time his father died?

Ans. No; the braces were taken off of him. I know Dr. Bell treated him quite a while.

Ques. Tell us the year when he first began to wear them.

Ans. Well, I couldn't recall the year myself, but I guess Dr. Bell could give you an item of that if you wish to call on him, because he was treating him and he ordered the irons.

10 Ques. Who?

Ans. Dr. E. H. Bell, Philadelphia.

Ques. He is your brother?

Ans. Yes, sir; he ordered the irons for this boy.

Ques. How many years ago is that?

Ans. About 1890, I think, the early portion of 1890. I wouldn't be positive, because I have no record of the dates. Either the latter part of 1889 or the first of 1890.

Ques. How many years did he wear these braces?

Ans. That I don't know.

20 Ques. A good many?

Ans. That I couldn't say.

Ques. But you were very intimate, going back and forth?

Ans. Yes; but a person don't always notice those things, how long he wears irons.

Ques. Did he wear them a good while?

Ans. I couldn't say how long he wore them.

Ques. Did he wear them as much as a month?

Ans. Yes; he wore them longer than that in my house.

30 He was in my house four months.

Ques. Then he wore them four months?

Ans. He wore them all the time he was with me, yes, and after he went away; how much longer I don't know.

Ques. Did he wear them after that?

Ans. I couldn't say whether he did or didn't. I don't know how long he wore them afterwards.

Ques. Did you ever go down to Ocean City?

Ans. Yes, sir.

Ques. Did you see the children there?

Ans. Yes, sir.

Ques. You saw Charlie playing around with the other children, didn't you?

Ans. Well, he played with my children, when I went down. That is the only boys I knew him to play with.

Ques. What did he do with his irons when he was out playing?

Ans. Well, that was in later years. He was better, probably. I don't know how long he wore those irons. We were down there, on an average—well, in fact, my children were down there all summer with them. 10

Ques. Well, Charlie got a good deal better, did he?

Ans. Charlie got better after being treated, yes.

Ques. Did Mr. Myers tell you then that his occasion for giving the fortune to Charlie had gone?

Ans. He told me in 1894 or 1895 that he was going to leave the bulk of his fortune to Charlie.

Ques. Was Charlie wearing irons then in 1894 or 1895?

Ans. No, sir; I don't know that he did; not to my knowledge. 20

Ques. You saw the other children, didn't you?

Ans. Oh, yes; saw them once in a while.

Ques. Were they remarkably robust and healthy?

Ans. Always healthy to my knowledge.

Ques. Jennie and Mary were vigorous, robust girls?

Ans. They were healthy girls; yes.

Ques. A good deal stronger and healthier than Charlie?

Ans. Oh, yes.

Ques. Oh, yes, you said? 30

Ans. Decidedly so.

Ques. Decidedly so?

Ans. Yes.

Ques. You noticed that, did you?

Ans. Yes.

Ques. What occasion had you for noticing that?

Ans. Wouldn't you notice any one that you were with them?

Ques. And you noticed the kindness and affection of Mrs. Myers towards these children?

Ans. Yes, always did. She always treated them well while I was visiting.

Ques. Remarkably kindly and affectionate towards them, wasn't she; so much so that she attracted your attention?

Ans. No more than any other woman would, I answered you. You asked me how she treated them, and I answered it as a mother would a child.

10 Ques. Her treatment of these two girls was so affectionate and kindly that it attracted your attention?

Ans. No more than any other family would.

Ques. Well, it attracted your attention, or you wouldn't have known it?

Ans. She treated them always as a mother would a child.

Ques. Treated them with kindness and affection?

Ans. She certainly did.

Ques. And you noticed it?

20 Ans. Yes.

Ques. And a very kindly and affectionate family, wasn't it, all around?

Ans. Whenever I was there I never saw anything out of the way.

Ques. They were all kindly and affectionate toward each other, weren't they?

Ans. The family was, what was home there; yes, sir.

Ques. In the later years of Mr. Myers' life you visited the family just as frequently, didn't you?

30 Ans. Yes; down there every summer.

Ques. And you noticed that he didn't drink any more than anybody ordinarily would?

Ans. Oh, Mr. Myers would take a drink, the same as I would myself.

Ques. And that was all?

Ans. Well, I never saw him drunk.

Ques. And he had no evidences of being a drunkard?

Ans. No, sir; not in my estimation.

## RE-DIRECT EXAMINATION.

By Mr. Boyle:

Ques. Were you familiar with the handwriting of Mr. Myers?

Ans. I received a great many letters from him. I think I can tell his handwriting.

Ques. How long had you correspondence with him? What period did it cover, how many years?

The Court: Is the signature challenged to this will? 10

Mr. Wescott: No, sir; we don't dispute it.

Mr. Boyle: No; we want to show it is his handwriting in the body of the will.

Ans. Ever since 1886.

Ques. Have you ever seen this document before to-day?

(Will shown witness.)

Ans. No, sir; not till it was here in Court.

Ques. Well, look at it. Look at the body of it. Can 20 you say in whose handwriting the body of that will is?

Ans. Yes, sir.

Ques. In whose handwriting is it?

Ans. Charles Myers'.

By Mr. Wescott:

Ques. You never saw that will before?

Ans. Not till to-day; no, sir.

Ques. Weren't you at the other trial?

Ans. I was here at the other trial, but didn't see the will. 30

MRS. MARY T. RUSH, sworn for plaintiff.

## DIRECT EXAMINATION.

By Mr. Wescott:

Ques. Where do you live, please?

Ans. Ocean City.

Ques. How long have you lived there?

Ans. Since 1890.

Ques. And what is your business, Mrs. Rush?

Ans. Why, we are in the advertising business, newspaper work and magazine work.

Ques. Did you know Charles Myers and Mrs. Myers?

Ans. Yes, sir.

Ques. How long did you know them?

Ans. Well, a short time after me moved there. We were there a few months to a year or two. I can't designate the time exactly.

10 Ques. When did you move there?

Ans. In 1890.

Ques. Were you a visitor at the house?

Ans. Yes, sir.

Ques. Do you remember a circumstance about a secret drawer, some circumstances about a secret drawer?

Ans. Yes, sir.

Ques. Can you tell about when that arose in point of time?

20 Ans. It was a short time after the Squire's death. Mrs. Myers came down—

Mr. Boyle: Well, there is no question pending.

Ques. State what it was.

Mr. Boyle: We want to object to that, on the ground that it is incompetent, irrelevant and immaterial.

The Court: The question will be allowed. Note an exception.

30 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. She came down one morning and she says, "I am terribly worried. I had a dream last night, and there is a secret drawer in the Squire's safe, and I think you know about it, and I wish you would come up with me to open it," or "to look for it"—I don't remember her words exactly now—and she says, "There is a paper there that I want."

Ques. Is that the whole conversation as you recall it? Did she tell you what the paper was?

Ans. No; she didn't say what the paper was.

Ques. After the Squire's death did you hear Mrs. Myers express any love or hatred for her husband?

Ans. Yes.

Ques. What was it?

Ans. She said she hated him; that she was glad she was free.

Ques. Did she say anything with reference to his coming 10 to her room at night?

Ans. Yes, she said she was afraid that if that strain continued on she would go out of her mind, and she was afraid to go to the bathroom at night. She spoke of the bathroom several times.

Ques. Did she say what she was afraid of?

Ans. Yes; she said she was afraid of his ghost.

Mr. Boyle: I object. Do we understand that our objection applies to this line of testimony?

The Court: No; you have been objecting to each ques-<sup>20</sup> tion all day. The Court suggested that course if you saw fit, but you did not seem to see fit to accept it.

Mr. Boyle: We object to that question on the ground that it is incompetent.

The Court: There is no question pending now.

Ques. Did she say anything about having had any trouble with the Squire, or a fight or anything?

Mr. Carrow: We object to anything that Mrs. Myers <sup>30</sup> said in regard to her husband or in regard to her husband's children, on the ground of immateriality.

(Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Was this prior to his death?

Ans. May I have your last question, please?

Ques. I asked you if you heard her say anything about having had a fight or trouble with the Squire.

Ans. Well, just prior to his death, less than a year.

Ques. What did she state?

Ans. Well, she said she came down one morning and she said she had thrashed the old man at last. "Well," I says, "Mrs. Myers, I think that is pretty hard." "Well,"  
 10 she says, "he has got to come under me. If he don't I will wash my hands in his blood and dance on his dead body."

Ques. Did you make any response to that?

Ans. I did not. It was too horrible.

Ques. Did you go to their place with considerable frequency?

Ans. Yes, I went there quite a good deal. My husband and Squire Myers played pinochle a good deal, and I went there in the evening with my husband.

Ques. Was the Squire a wealthy man?

20 Ans. I only know from hearsay. I purchased a small property from him.

Ques. Did you have occasion to observe Mrs. Myers' treatment of the two daughters that were living at home?

Ans. Yes, sir.

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accord-  
 30 ingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What did you observe about that matter?

Ans. Well, she talked about them very unkindly, and when they were talking or were engaged in conversation with any one else she sneered at that a great deal to the party to whom they were talking—myself, for instance.

Ques. Did she characterize them in any way, their conduct?

Ans. Yes.

Ques. What did she say?

Ans. She said they were lazy, good for nothing, deceitful to their father, and were bad morally.

Ques. Did you notice the effect that such characterizations had upon Mr. Myers?

Ans. Yes, sir.

Ques. Tell us about that.

Ans. Well, at first it seemed to annoy him very much; it seemed to grieve him. He would say, "It can't be true, it can't be so," or "Mom, it is not so;" and finally he would seem to yield by being quiet or by leaving the room, or something of that kind. I don't remember just what way.

Ques. Do you know whether the Squire was a hard drinking man the latter years of his life?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. He had that appearance.

Ques. What were the evidences that lead you to say?

Ans. Well, his face was red and bloated, his talk was silly, and he seemed to decline generally.

Ques. Have you seen him under the influence of liquor?

Ans. Well, only when I thought he was under the influence of liquor, not from seeing him drink.

Ques. You judged it from his conduct?

Ans. Yes; I never saw him drink.

Ques. Was it frequent or infrequent?

Ans. It was quite frequently.

Ques. Did you hear Mrs. Myers say anything about the Squire's making wills?

(Objected to as leading, immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

10 Ans. I did not.

Ques. Did you have occasion to observe how the Squire behaved towards his children while you were acquainted with them?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

20

ALLEN B. ENDICOTT, J. (Seal)

Ques. What was his conduct?

Ans. Yes, sir; he was very affectionate toward his children until the last couple of years. He was very proud of them. In speaking of them it was always "My Jennie" and "My John" and "My Mary"—always characterized them in that way.

30 Ques. Did he exhibit any of their handiwork?

Ans. Yes, he was very proud of their painting, music, letters—particularly letters that he got from them while they were at school at a convent at Chestnut Hill.

Ques. Did you ever hear Mrs. Myers say anything to her husband with reference to the object of his children in the treatment of their father so kindly?

Ans. Yes.

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What?

Ans. She said they were just trying to jolly him; it was for what they could get out of him and for what they would get out of him in the future. <sup>10</sup>

Ques. About how long before his death did you hear any such remarks made? Have you any idea?

Ans. I can't place that exactly, because I heard her talk about these children a good many times; but as near as I can remember it was from a year to two years.

Ques. Did you hear her say anything about the genuineness of the affection of Mary and Jennie for their father?

Ans. Yes, she said it was all put on, and they would talk about him just as soon as his back was turned, or as soon as he was out of hearing. <sup>20</sup>

Ques. Did this occur in Mr. Myers' presence sometimes?

Ans. This talk?

Ques. Yes.

Ans. Yes, sir.

Ques. Can you recall any special time or circumstance when that subject came up?

Ans. Yes, sir; I went up there one day and Mary was crying; and she went up to her father and put her arms around his neck and she says, "Pop, I am willing to do anything in the world if you will only care for me, if you won't treat me in this way;" and then she turned and went upstairs. She spent a great deal of time upstairs anyhow, not with the rest of the family. And after she had gone upstairs she says, "Now, pop, that is all put on." <sup>30</sup>

By Mr. Carrow :

Ques. Were you there?

Ans. I was present.

The Court: Proceed.

Ans. "That was all put on." And she says, "The children don't care anything about you." There was more than that, but I can't recall it now. It has been some time, of course.

10 By Mr. Wescott:

Ques. That was about how long before his death?

Ans. That was about two years before his death.

Ques. Did you ever hear Mrs. Myers say anything to her husband about diseases which the daughters had?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill  
20 of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. If so, state what it was.

Ans. She said both Jennie and Mary had venereal diseases.

Ques. You heard her tell the Squire that?

30 Ans. I did.

Ques. Did you hear any reply that he made on any occasion?

Ans. Yes, he was very indignant; and she says, "I can show you. Their clothing is not fit to put in the wash."

Ques. Did you ever hear her say anything to their father about either one of these daughters suffering a miscarriage?

Ans. Yes, sir.

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What did you hear on that point?

Ans. She said that Mary had a miscarriage at the time <sup>10</sup> that she had typhoid fever.

Ques. Did you hear her say anything with reference to Professor Thomas?

Ans. Yes, sir.

Ques. What was that?

Ans. She said that Professor Thomas kept an assignation house for Jennie to meet her husband now—he was not her husband then—that they had a room there.

Ques. How long was that before the old gentleman's death, if you can tell?

Ans. Well, that was quite a while. It was just before <sup>20</sup> Jennie was married, and she was married in 1894.

Ques. When?

Ans. 1894?

By the Court:

Ques. Did Mrs. Myers say this to you or to her husband?

Ans. She said this to me.

Mr. Carrow: I object to it then upon the ground that <sup>30</sup> it is hearsay evidence.

The Court: The testimony may remain, under your exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

By Mr. Wescott:

Ques. Did you ever hear Mrs. Myers accuse Mary of illicit relations with men?

Ans. I did.

Ques. To her husband, Mr. Myers?

Ans. I did.

Ques. Did you hear that more than once?

Ans. Yes, sir. I never heard her speak of one party more than once, but I heard her telling of several parties,  
10 several men.

Ques. Did she name the men?

Ans. Yes, sir.

Ques. Did you ever hear her talk to her husband about secret vices practiced by these daughters?

Ans. Yes, sir.

(Objected to as leading, irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill  
20 of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What did you hear her say on that subject?

Ans. She said that Mary was addicted to a secret vice.

Ques. Did you hear Mrs. Myers say anything to her husband about an improper intimacy between Jennie and Mary and some physician in the town?

Ans. I did not.

Ques. Do you remember a circumstance of Mary asking  
30 her father to get her some shoes?

Ans. Yes, sir.

Ques. Tell us your recollection of that, please.

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill  
of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. She said that she needed a pair of shoes.

Ques. Who did she make this remark to?

Ans. She said this to her father in my presence and in the presence of her stepmother. She said that she needed a pair of shoes, that her feet were on the ground. He said "All right," just as if he intended to get them, and she went upstairs, and she told him as soon as she was gone that he ought to make those girls earn their own clothes and their own shoes, like other girls did, and that she would not get shoes for them if she was him.

10

Ques. Can you recall an incident along about that time of Mrs. Myers characterizing all the children of Mr. Myers?

Ans. Yes, sir.

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal) 20

Ques. What was that?

Ans. She said they were a nest of vipers.

Ques. That was the expression she used?

Ans. Yes, sir.

Ques. Did you hear her make that characterization of them more than once?

Ans. Yes, sir.

Ques. Can you recall any special thing with reference to the birth of Mary's child on the 2d of April, 1901?

Ans. No, sir.

(Objected to as immaterial and irrelevant.)

Ques. Did you ever hear Mrs. Myers on any occasion speak well or laudatory of the children of Mr. Myers?

Ans. No, sir; never except his son William, who was deceased when I became acquainted with the family.

Ques. Did you ever during your intimacy or visits, the period of your visits to the family, ever hear her make any threat about Mary, what she was going to do with her or would do with her?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

10

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, she said she would make Mary come to her for money.

Ques. How long was that before the Squire's death, have you any idea?

Ans. Well, I heard her say it two or three times, and it was within two months of his death, and possibly two years before his death. It extended over quite a length of time.

20

Ques. Now I call your attention to some time about the month of September, 1900, and ask you if you can recall anything in relation to a quarrel between Mrs. Myers and her son Charlie, and any statement that she made at that time.

(Objected to as immaterial and irrelevant.)

Mr. Wescott: Well, never mind. We will pass on.

Ques. Did you have occasion to notice the attitude of Jennie and Mary toward their father while you were visiting the house?

30

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. What was it?

Ans. It was always very kindly, very kindly attitude.

Ques. Were they girls of cultivation and refinement?

Ans. They were.

Ques. Educated girls?

Ans. Yes, sir.

Ques. Do you remember one evening a gentleman calling  
to see the girls? 10

Ans. Yes, sir.

Ques. State what that circumstance was.

(Objected to as immaterial and irrelevant.)

The Court: When was this?

Ques. When was it, about, Mrs. Rush?

Ans. Well, it was just a short time before Jennie's marriage, and Jennie was married in 1894. 20

The Court: You may tell it.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, Jr. (Seal)

Ans. There was a young man called there one evening, and she said, "Now, pop, you go in the room;" she says, "you know what those girls are, and you go in the room, 30 and it is your place to go there, and if you don't go I will." That is the substance of it. I may not have given the adjectives and adverbs just the same.

Ques. Did you have occasion during those years to notice the conduct of young Charlie Myers toward his father?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes.

Ques. What was it?

Ans. Well, he was affectionate toward his father, but it was usual that he was prompted by his mother.

10 Ques. How about Mr. Myers' affection for Charlie? What did you notice about that?

Ans. Well, he seemed to think of Charlie as he did of his other children. I never saw any difference, except that he was more kindly toward Charlie toward the last than he was to his other children.

Ques. Did you hear any time approximately to the execution of this will anything said by Mrs. Myers about its contents or about what Mr. Myers had done to his children?

20 (Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. I heard her speak of it after the will was signed.

Ques. What did you hear her say?

30 Ans. Well, she says one time, "I wonder what is in that will, and I am going to find out." She says, "I wonder if he cut the children off, as he said he would." Another time she said, "He ought to have left Charlie more than the others, because he is afflicted." Another time she said, "I have read the will," or "I have seen the will, and it is just as I thought it would be." She remarked after that that the children had no one to blame but themselves.

Ques. Do you recall an occasion when Mary asked Mrs. Myers for money under the terms of the will?

Ans. I remember when Mrs. Myers told me that Mary had asked her for money.

Ques. And what did she say?

Ans. She said that she would not let her have it; she was not going to have the estate bled that way; she was not going to let her have any more. I think Mary had received \$25 once, and whether more than that I don't know; but Mrs. Myers said she would not allow her to have any more, 10 for she wouldn't have the estate bled that way, and according to the provisions of the will it had to have her consent.

Ques. Did these girls do any work about the house, according to your observation?

Ans. Yes, sir.

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accord- 20 ingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What kind of work?

Ans. Made beds, sewed, cooked—Jennie was an excellent cook—embroidered—all kinds of housework.

Ques. In the course of your visits to the Squire did you and he often talk together?

Ans. Yes, sir; we did, quite frequently.

Ques. In any of these visits did you hear him speak of 30 the hardness of his life or anything of that sort—what he proposed to do for his children?

Ans. Yes; he said he had had a very hard life of it, but his children would not have it as hard as—

By Mr. Carrow:

Ques. When was this?

Ans. He said this several times; over two years prior to his death.

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. He said that he had had a very hard life of it, and that he didn't intend—and that his children would not have  
10 it near as hard as he did, because he intended they should have a start.

By Mr. Wescott :

Ques. Did you hear him say that more than once ?

Ans. Yes, sir ; I heard him say that in substance.

Ques. Did you hear him say anything about purchasing a farm for his son ?

Ans. Yes ; my husband was in the real estate business at that time, and he was negotiating for a farm for him.

20 Ques. Which one ?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

30 Ans. Well, it was within three or four weeks of his death, and he was talking about a farm that belonged, I think, to Senator Butcher, or Bucher, or some such name as that—I can't remember now ; and also one not very far from Ocean City, on the shore road, that belonged to a man by the name of Parker.

Ques. And that was how long before his death ?

Ans. Three or four weeks before his death.

Ques. Did you notice any change in respect to Mr. Myers' habits of drinking as he approached the end of his life?

Ans. Well, he seemed to degenerate both physically and mentally.

Ques. Did you notice his propensity to shed tears toward the close of his life when his children's names were mentioned?

Ans. Yes, sir.

Ques. What did you notice about that?

10

Ans. Well, he used to come to our house occasionally, and he was always very—seemed anxious to talk about his children. But during the latter part of his life, or possibly two years or so before his death, he didn't talk about them near so much; and sometimes I would start to talk about the children and he would fill up right away. He seemed to avoid the subject.

Ques. Did you see these daughters show any special affection toward him?

Ans. Yes.

20

Ques. In what way?

Ans. I have seen Mary go up and put her arms around his neck, and at first that would please him, when they first came home from school; seemed to please him very much. But toward the last he seemed to resist them, seemed to resist Jennie. Mary was not there. I can't say that he resisted her in a very particular way, but he just kept away from her.

Ques. Did you hear Mrs. Myers give any explanation of the cause of her husband's sickness, or the mark on his 30 face, or anything of that sort?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. What did you hear her state about that?

Ans. Why, she said that he fell off of a settee at Sea Isle City; that he fell out in the yard at his own home; that he fell in the bath room of the house, his own residence. She told me five or six ways; those three I recall.

By Mr. Carrow:

Ques. This was after his death?

10 Ans. That was during his sickness.

By Mr. Wescott:

Ques. Did you hear him speak about making provision for all of his children at any time?

(Objected to as immaterial and irrelevant. Objection overruled.)

Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

20

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. Can you recall what he said on that point?

Ans. Yes, sir. It was the Sunday before he died, and he sent for me to come up. I don't remember who brought the message down, but I think it was my husband, who was there in the morning, and he said he wanted to see me; and I went up and I waited at the foot of the steps. I don't know whether I was ushered into the room or whether  
30 I waited at the foot of the steps until I heard voices and went up. And Mrs. Myers was there, and she was scolding about performing some little office of the sick room, getting him water or shaking the pillows or something of the kind, and that she was tired almost out, and that she was going to lie down while I was there to stay with the 'Squire, and rest. So she went out of the room. After she was gone he waited a few minutes and he asked me to give him a glass of milk that was standing on a chair by the bed; I

think it was milk punch; it had brandy in it. And his lips and throat were swollen somewhat and it seemed to relieve him very much to take this liquid, and I handed it to him and he says—he asked me to close the door through which she had retired; and I said, “No, 'Squire, I had rather not do that; it is too warm in here now.” And he said, “Then will you close this one here at the head of the bed?” and I got up and closed that one. Then he waited a while and set the milk down. He asked me again for it, and I got up and gave it to him, and he took the glass of milk in his hand and raised it with his arm this way (illustrating), holding the glass of milk, and he reached out and took hold of my hand with the other hand. He says, “Mrs. Rush, you have a wonderful gift of strong moral courage,” and he says, “you have a good influence over my wife. You see the condition that she is in now; and I want you to promise me that if anything happens that you will look after her after I am gone; keep her straight”—something, I don't remember just the words there. And I said, “Yes, 'Squire, but I hope it will be a good many years before a fulfillment of that promise is required.” And he says, “You know I love my children;” and with that he turned over and murmured a Catholic prayer. I remember the words, “Holy Mary, Mother of God.” He said that over several times, then he turned around again to me and he says, “You know I love my children.” I said, “Yes, 'Squire, I am sure of that.” He says, “If I live to get well I am going to see that they are all provided for; that they won't hate their father after he is dead.” And I said, “Well, 'Squire, I hope you will live to do what is right toward them, if you haven't done it.” And he says, “I will see that they are comfortably fixed.” He says, “I wish that damnable piece of work was with the devil, where it belongs, and that she was with it.” I said, “'Squire, what piece of work do you mean?” He says, “I don't have to tell you. Your name is on it.” And with that he kind of raised up in bed again and reached out his hands toward me, and then he stopped and laid back and commenced to tell me a joke about

Charlie; and I could not understand why he had stopped so suddenly; and just then she rushed into the room. He had heard her footsteps and I had not.

Ques. Is that the end of that conversation?

Ans. Yes, sir; that was the end of it, as nearly as I can remember.

Ques. Did Mrs. Myers say anything to you about what happened there?

Ans. Yes, sir.

10 (Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What did she say?

Ans. She said she hoped I wouldn't say anything about  
20 what pop had said to me. I didn't tell her what had been said, but she seemed to understand that something had been said.

Ques. Did you ever see him after that alive?

Ans. No, sir.

Ques. Going back a little farther, Mrs. Rush, in point of time, can you recall any conversation with the 'Squire in which he said anything to you about his wife's hatred of his children and his inability to understand it, or anything of that kind?

30 (Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. What did you hear about that?

Ans. Will you repeat that question again? I lost the thread of it.

(Question repeated.)

Ans. Yes, sir.

Ques. State it.

Ans. One time I remember particularly, we were up on the front porch and Mary was crying again; went into the house crying; and he turned to me and he said, "How is 10 it she hates my children so?" He filled up with tears then while he was talking.

Ques. Now let me ask you what your observation was of the relations between Mr. and Mrs. Myers during your acquaintance with them. How did they act toward each other?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill 20 of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, they were together a good deal. She didn't allow him out of her sight any more than she could help. When she went out to make her calls around the neighborhood it was when he was out of the house. But there didn't seem to be any affection between them particularly. 30

Ques. Did you ever hear them quarrel?

Ans. No, sir; I couldn't say that I did. I have heard them have pretty heated arguments, but I couldn't say that it was a quarrel.

Ques. Within a short time before the 'Squire's death did you hear him express any desire for a change?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. What was that, Mrs. Rush, please?

Ans. Why, he said that he wished that John was fixed so that John lived near-by, so that he could go live with him or spend some time with him. John was then living quite a long distance from Ocean City.

10

Ques. Just before her husband's death did you hear Mrs. Myers speak of any desire for a change?

Ans. Yes, sir.

Ques. Tell us what that was.

Ans. She said she was tired out and she would like to have a change. I asked her why she didn't go, and go away with Charlie for a week or so and take a rest. Well, she said she wouldn't leave father there with Mary and Jennie, because they could just wind him around their fingers.

20

Ques. Did you have any knowledge of the gift to Mary or Jennie of some furniture?

Ans. Yes, sir.

Ques. Tell us what you know about that, please.

Ans. Just after Jennie's marriage the 'Squire furnished a bedroom very nicely and told Mary that it was hers; told her in my presence, and also told me that the furniture was for Mary.

30 Ques. This conversation, this deathbed conversation that you have spoken of, how did you happen to go there on that occasion? Were you sent for?

Ans. The 'Squire sent for me to go.

Ques. I think you stated that, however.

Ans. Yes, sir.

Ques. Did he ever send for you before when he was sick?

Ans. Yes, sir; once before, when he thought he was—that his illness was very serious, he said he wanted to talk to me.

Ques. Did Mrs. Myers say anything to you about Mary coming to her with reference to breaking the will?

(Objected to as immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. What did she state about that point? 10

Ans. She said that if Mary had come to her that she would have helped her to break the will.

Ques. Do you remember Mrs. Myers telling you something about Mary's declining to go walking with her father once?

Ans. Yes, sir.

Ques. Please narrate that circumstance.

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.) 20

ALLEN B. ENDICOTT, J. (Seal)

Ans. They were out on the front porch, and the 'Squire asked Mary to take a walk with him.

Ques. That is what Mrs. Myers told you?

Ans. Yes, sir; and she said, "Why, no, pop; young people don't want to go walking with old people;" and it hurt the 'Squire's feelings very much, and she went out on the porch and found him crying, and she felt so bad over it that it almost broke her heart, the way his children treated him. 30

Ques. Did she on that occasion say anything about the 'Squire's loving his children, how he felt toward his children, that you recall?

Ans. Yes, she said he used to love his children, but he didn't any more, because he knew how they treated him.

Ques. Do you recall any remark she made to you about the suspension of her income in case of an attack on the will, or anything of that sort?

Ans. Yes.

(Objected to as immaterial and irrelevant.)

The Court: Well, I don't know that that is competent.

Ques. Did Mrs. Myers ever take you into a room to see Jennie's baby?

10 Ans. Yes, sir.

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

20 Ques. What did she say?

Ans. She said it resembled a man there in the place very closely.

Ques. Did she want you to come and notice the resemblance?

Ans. Yes, sir.

#### CROSS-EXAMINATION.

By Mr. Boyle:

30 Ques. You are in the newspaper business, do you say, Mrs. Rush?

Ans. To some extent; yes, sir.

Ques. Literary business, writing and so on?

Ans. Yes, sir.

Ques. You say that the 'Squire in that conversation with you referred to the fact that your name was on the paper?

Ans. Yes, sir.

Ques. He meant the will, did he?

Ans. Yes, sir.

Ques. Is this the signature that you refer to? (Will shown witness.)

Ans. Well, he said, "Your name is on it," and there never was any other paper that my name was on.

Ques. Is this your signature, "M. T. Rush," on the will?

Ans. Yes, sir.

Ques. Your husband signed when you signed at that time, did he not?

(Objected to. Objection sustained.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.) 10

ALLEN B. ENDICOTT, J. (Seal)

Ques. You spoke of the 'Squire's drinking habits. Was he in that condition usually when you saw him?

Ans. No, sir; not always.

Ques. You were in his house on the 9th day of April, 1895, were you not? 20

Ans. I don't know.

Ques. Well, you were in his house the night this will was drawn, that you signed your name to it, were you not?

Ans. I was.

Ques. Mr. Brower was there that night?

(Objected to.)

The Court: The objection is sustained. This is not cross-examination.

Mr. Boyle: Well, your Honor, they have asked questions 30 as to whether this man was under the influence of liquor different times, and the condition of his mind.

The Court: You cannot develop your case on cross-examination.

Mr. Boyle: Well, I certainly have a right to rebut her testimony as to certain dates, ask her about certain periods. I will ask her this question then:

Mr. Carrow: I would like to say a word, if your Honor please. The position, it seems to me, is this: This lady has been put on the stand and she has gone over with great detail her knowledge obtained by observation and intercourse with the Myers', and she has attributed certain conduct to Mr. Myers which may tend to create the impression that Mr. Myers was a man given to periods of intoxication. Now, my colleague here certainly has the right to cross-examine upon that particular branch of her testimony.

10 The Court: It is hardly worth while to discuss such an elementary proposition, Judge.

Mr. Wescott: That is right. Nobody objects to that.

Mr. Carrow: Well, he is proceeding now to find out upon what occasions he was drunk and what occasions he was sober, and whether he was sober or drunk the night the will was made.

The Court: We both agree on the principles. Now ask your questions and see whether they are competent.

20 Ques. On the night that the will was drawn and you witnessed it, was Mr. Myers under the influence of liquor to such an extent as to incapacitate him from business?

Mr. Wescott: That is objected to, for the reason that I have not asked Mrs. Rush anything about that at all, nothing at all about his capacity to make a will.

(Objection sustained.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accord-  
30 ingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. You were a witness before Judge Douglass, were you not, when the will was offered for probate?

(Objected to. Objection overruled.)

Ans. Yes, sir.

Ques. You gave testimony at that time, did you not, Mrs. Rush?

Ans. Yes, sir.

Ques. And it was upon that testimony, was it not, that the will was admitted to probate?

(Objected to. Objection sustained.)

Ques. Now, as to these statements which you have just related, were you in possession of those facts at the time that you testified before the Orphans' Court?

Ans. I must have been or I would not have testified.

Ques. Did you tell Mrs. DeRoche at that time that you knew those facts? 10

Ans. No, sir.

Ques. Do you remember me calling upon you previous to the hearing of this last ejectment case?

Ans. I do.

Ques. Did you at that time tell me anything about those statements?

Ans. I did not.

Ques. Did you know at that time that I was there for the purpose of securing all the information possible? 20

Ans. I did.

Ques. Did you purposely evade giving me any such knowledge at the time?

Ans. I was under my own vine and fig tree. I did not have to tell you.

The Court: I think she has answered it.

Ques. You simply then withheld that information from our side; is that true?

Ans. I did.

Ques. But you did give it to Judge Wescott a day or two afterward? 30

Ans. I did.

Ques. You were more friendly then to the other side than you were to our side?

Ans. I was not.

Ques. You were very friendly with Mrs. Myers then, were you, up to the time she died?

Ans. Yes, sir.

Ques. Quite friendly?

Ans. Not intimately.

Ques. Not intimately?

Ans. No, sir.

Ques. Did you call upon her frequently?

Ans. Yes, sir; not so very frequently.

Ques. And of course you were very friendly with Charlie?

Ans. Now?

10 Ques. Now, yes.

Ans. No; he has not spoken to me since the last trial.

Ques. Didn't you say at the last trial that Charlie was not in your judgment capable of much affection?

Ans. I did.

Ques. You still say so?

Ans. I think so.

Ques. And that is your attitude toward Charlie; that he is not one of much affection?

Ans. Well, it is not my attitude; it is simply an opinion  
20—an impression, rather; an impression; not an opinion.

Ques. At the time I called upon you I asked you quite fully, didn't I, upon quite a number of matters concerning the will?

Ans. Yes, sir.

Ques. You did not tell me at the time that you had any reason for withholding that information from me, did you?

Ans. No, sir.

Ques. You did not at that time tell me that you were in your own house and would not answer any questions?

30 Ans. No, sir; I did not.

Ques. Did you intimate to me in any way that that it was not your desire for me to ask you any such questions?

Ans. No, sir. May I give you my reason?

Ques. Well, I would rather you would answer the question. You did not refuse to answer any questions on the ground that it was your own vine and fig tree, did you?

Ans. No, sir; I hope I was as ladylike to you as I could be.

Ques. I hope I did not offend in the other respect.

Ans. You did not. You were very gentlemanly.

Ques. Now you had considerable dealings with 'Squire Myers, did you not, Mrs. Rush?

Ans. Well, in what way?

Ques. Well, business dealings?

Ans. Well, not so much in business. I had a publication.

Ques. And you and he had matters in common of a literary nature?

Ans. Yes, sir.

10

Ques. He was quite interested in a magazine that you were also interested in?

Ans. Yes; he read proof for me; made me valuable suggestions.

Ques. Well, did you consider 'Squire Myers to be in any sort of mental condition toward the end of his career?

Ans. We didn't do any of that work toward the end of his career.

Ques. No literary matters of any character?

Ans. No; nothing of the kind. We had business transac- 20  
tions.

Ques. Did you consider him at that time a man capable of transacting business?

Ans. Well, the business was of so slight a nature that it didn't take long to do it. I bought a property of him and it was not clear and I went there and paid my interest to him.

Ques. You paid your interest to him from time to time?

Ans. Yes; that was all the business transactions we had.

Ques. I show you a check, Mrs. Rush, signed "C. Myers, 30  
M. T. Rush," and ask you if you received that check in the course of business. It is dated March 10, 1896, on the Commonwealth Title Insurance and Trust Company. Did you receive that check from Mr. Myers?

Ans. March 10th, 1896? Now, I received—I purchased a property of 'Squire Myers and he took a mortgage on it and gave me \$200 on it; took a mortgage and gave me \$200 cash for it. The mortgage covered the whole amount and

I am under the impression that these checks were paid in this way. He did not pay me the \$200 all at once. I have no knowledge of any other checks.

Ques. Well, does that check bear your indorsement?

Ans. Yes, sir.

Mr. Wescott: What is the purpose of this?

The Court: Do you object?

Mr. Wescott: Yes.

10 The Court: It is overruled. It is not cross-examination.

Mr. Boyle: Do I understand that your Honor excludes us from any consideration of testimony on the day the will was drawn or any time around there?

The Court: Oh, no; I have not done that.

Ques. Now, what was the condition of Mr. Myers as far as drink was concerned, the night the will was drawn?

20 Mr. Wescott: That is objected to, for the reason that I have not asked it.

Ques. The night that the will was executed, I mean?

(Objected to. Objection sustained.)

The Court: My reason is that you cannot cross-examine upon something that she was not examined about in her chief examination. You may call her as your witness later and have her testimony fully upon this subject if you desire.

30 Ques. Did you ever make a note, Mrs. Rush, of any of these matters that you are testifying to concerning statements of Mr. Myers or Mr. and Mrs. Myers?

Ans. Yes, sir.

Ques. Why did you make a note of those matters; did you expect there would be a will contest?

Ans. No, sir; I did not expect there would be a will contest, but it was a very interesting matter, and there seemed to be a great deal of mystery surrounding the birth or descent of Mrs. Myers, her family, and I expected in time to make literary use of it.

Ques. And that is why you made a note of it?

Ans. That is one reason; yes, sir.

Ques. As a matter of fact, you never told that to Mr. Howell, the attorney of Mary DeRoche, at the time of the will contest, did you?

Ans. I do not think Mr. Howell ever asked me a question.

Ques. Did you ever tell Mary DeRoche about it?

Ans. I don't remember that I ever did.

Ques. You and she have been particularly friendly, haven't you, for some years? 10

Ans. No, sir; I very seldom see Mrs. DeRoche.

Ques. You saw her about 1897, did you not?

Ans. I don't remember.

Ques. At the time of her father's death?

Ans. I expect I did.

Ques. You testified on the other trial that you and Mrs. DeRoche were friendly?

Ans. Oh, yes; we were friendly.

Ques. You knew those facts in your own judgment would be of some value to her, didn't you? 20

Ans. Yes; but I was not going to reveal it to anybody.

Ques. How did Judge Wescott come to find out that you knew these matters?

Ans. Because the time was ripe for me to tell it.

Ques. Oh, that is it?

Ans. Yes, sir.

JOHN MYERS, sworn for plaintiff. 30

Direct examination by Mr. Jefferson:

Ques. Mr. Myers, where do you live?

Ans. Near Phoenixville, Chester County, Pennsylvania.

Ques. What relation was Charles Myers to you, Charles Myers, deceased?

Ans. My father.

Ques. How old are you, John?

Ans. I was fifty-two the 11th of last August.

Ques. Did you or did you not see much of your father from your childhood up?

Ans. With the exception of about the last fifteen years I had saw him then from that on just occasionally.

Ques. Well, you did see him during that time?

Ans. Yes; but not only just on occasion.

Ques. What was his manner toward you when you saw him at those times?

10 Ans. Very friendly.

Ques. Did he ever appear to be against you; hostile to you?

Ans. No, sir; not at all.

Ques. Did your father ever send anything up to you?

Ans. Oh, yes.

Ques. To Phoenixville?

Ans. Yes, sir.

Ques. What did he send?

20 Ans. Well, he would send dishes and provisions and clothing for the children; various things that I could not just mention particularly, but quite a number of things.

Ques. How recently before his death did he send those to you?

Ans. The October or about the first of November prior to his death he sent me quite a large load of stuff.

Ques. Are you married?

Ans. Yes, sir.

Ques. Any family?

Ans. Yes, sir.

30 Ques. How many children?

Ans. Seven.

Ques. Did you ever work for your father?

Ans. Yes, sir.

Ques. When?

Ans. When I was a boy about ten years old, nine or ten.

Ques. What did you do?

Ans. Dug sand and stone and helped dig cellars around the buildings in general.

Ques. Do you remember his coming up to your home in Phoenixville shortly before he died?

Ans. I do.

Ques. Do you know what he came there for?

Ans. He came to see me.

Ques. Any particular thing that he came to see you for at that time?

Ans. Well, his errand was that he came up for the purpose to buy me a farm.

Mr. Carrow: When was this? 10

Mr. Jefferson. He said about two years before he died.

Ans. He came several times. Twice he came for that purpose. In October, the year before he died, and on July 3d or July 1st before he died.

Mr. Carrow: I object to any testimony of anything that the testator did in regard to buying this gentleman a farm after the execution of the will, which was January, 1895, on the ground of immateriality. 20

The Court: The objection is not sustained. Note an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did he bring anybody with him when he came this time just before he died?

Ans. Yes; he brought his son Charlie. 30

Ques. Well, now, John, tell us what he said to you on the subject of getting you fixed at this time?

Ans. Well, we were looking at a place right adjoining where I resided and I told him that property was for sale, and he says, "We will go up and see it."

Ques. Well, did you go?

Ans. We did; and before we saw the gentlemen—it was Mr. John Simpson, the owner at the time of the property—

we consulted with one another. He asked me what I thought of it, and after we got through he says, "I think, Johnnie," he says, "that place will suit you." And I says, "I think so, too, pop."

Ques. Do you remember an incident of your riding along about a leased farm, anything about a leased farm, leasing a farm?

Ans. Yes, sir; I do. That was going from Phoenixville. We went to Phoenixville. Charlie was along with us. I got  
10 a horse of Mr. Simpson and went to Phoenixville, and on the road coming back, just before I got home, we were speaking about these various farms, and I says, "Pop, there is a place over there I thought of leasing." "Well," he says, "why don't you do it?" "Well," I says, "if I had had three or four thousand dollars more," I says, "I might have done it." And by that he turned around and he put his hand on my knee, like that (illustrating), and he says, "Johnnie, never you let three or four or five thousand dol-  
lars," he says, "stop you from doing anything to help you  
20 along."

Ques. Well, do you remember anything about his going to buy a farm for you down in South Jersey here?

Ans. Yes, sir.

Ques. When was that?

Ans. I received a letter on the 12th of December prior to his death and I went down on the 14th, I think it was, a day or so afterward, or two afterward, and James went along with me.

30 Ques. Well, what did you do down there?

Ans. Well, then we got ready and the gentleman, he was a stranger to me, he took us on over, and the road I couldn't tell exactly—they call it off shore—went across the bay, and it was on the road, I believe, leading to Cape May. We walked around the place and we looked at it. Well, then we came home, and after we came home he called me aside in his room, the room where he had been sitting, and he had one of these large sitting back chairs, and he told me to draw my chair up close to him, and he asked me

what I thought about it; and he wanted to know if that wouldn't suit me. "Now," he said, "I intend," he says, "to buy this property for you and fix it all up complete and put on a thousand hens." And I says to him, I says, "Pop," I says—I thanked him very kindly—"but," I says, "I can't see how I could get along down here." He turned around to me and these was the remarks that he made. He said, "Damn it, Johnnie," he says, "won't I be to your back?" "Well," I says, "I know, pop, you will. I am well aware of those facts; but," I says, "really if I could," and I told <sup>10</sup> him then that I didn't hardly think my wife—"Now," he says, "you go and see her and let me know."

Ques. This was in December before he died in January?

Ans. Yes; this was in December before he died, on the 14th of December prior to his death, at his house in Ocean City.

Ques. Do you remember seeing him up at Philadelphia on Christmas eve before he died?

Ans. Yes, sir.

20

Ques. Tell us in your own words now what happened that evening about a farm. Who were there?

Ans. Mr. Hagel was there, an old gentleman now that is dead; Mr. Deegan, brother Jim, Mr. McEwan and, I think, there was another gentleman, too. But there was several in there that I couldn't just now bring to recollection; but I know Mr. Hagel and Mr. Deegan and brother James, they were all there when I went in. Father was there at the time in James' office.

30

Ques. Well, what did he say? What did your father say to you at that time, if anything?

Ans. Well, I went up to him and spoke to him, and of course we shook hands and he asked me what time I got down, and he says, "Now you go in and get your supper and come out and I want to talk to you." So I went in and took supper to the house into brother James'.

Ques. When you came out what did he say to you, if anything?

Ans. Well, then we were talking there, he was talking to Mr. Deegan at the time, and at the same time he called my brother James.

Ques. Well, did he tell anybody to go and see about a farm for you?

Ans. Yes; that was his conversational talk at that present time; and the understanding was that Mr. Deegan and  
10 also my brother James was to go and look after a farm, and whatever farm I would select upon that he would buy it, between \$15,000 and \$20,000, and he would settle for it. And then he turned around and said to me, he says, "Johnnie, that is a present that I have got in store for you." He says, "You have always been a good boy; you have worked hard."

Ques. How did your father treat your children?

Ans. Always very friendly with them; very kind.

Ques. Did you ever know him to find any fault with his  
20 children before he came down to Ocean City?

Ans. No; never did.

Ques. Did you notice any change in him after he went to Ocean City in respect to his treatment of the children?

Ans. When I went there I did.

Ques. When you were at Ocean City?

Ans. I was down in 1888; and I won't say positive 1888. It was the year my brother died, that fall, my brother William died. I think it was 1889.

Ques. And you went down there from time to time after  
30 that until he died?

Ans. Well, on several occasions I went down.

Ques. Did you see him any other place?

Ans. Yes, sir; I would see him quite frequently when he would come up to Philadelphia. If I would hear he was up in Philadelphia I would go down and see him, and he would come out several times to the farm.

Ques. At different places you saw him with his other children?

Ans. Yes, sir.

Ques. How did he seem to treat them then?

Ans. Always very kindly to me, but I didn't see any more than his usual way, kind, very affectionate way with them.

Ques. Did you ever hear Mrs. Myers say anything about Mary and Georgie?

Ans. I did.

Ques. What?

Ans. Well, she talked to father; she called him there one time in Philadelphia and got to telling some things about 10 what Georgianna was, and started on aunt Carrie, and I heard him say, "Tut, tut, tut," to her, you know.

Ques. Did she make any favorable comments about them?

Ans. No; she didn't. She was talking about them. And then they walked off and they went into the room.

Ques. Did you or did you not ever hear Mrs. Myers run down your brothers and sisters or his children to him? Did you ever hear her?

Ans. Yes, sir; I heard her on another occasion. 20

(Objected to on the same grounds as before. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What did she say, Mr. Myers, about the girls Mary and Jennie? 30

Ans. Oh, now the time I was alluding to, another time when she was talking about the girls.

Ques. What about them?

Ans. They lived in Philadelphia; and I heard her tell about William; said he was rotten; that he run with whores, and telling father about this; and father hardly believed it. And then when she was away I says, "Pop, that story can't be so."

Ques. Did she say anything about Jennie and Mary?

Ans. She did at Ocean City.

Ques. What did she say?

Ans. Well, she said they were onery; all they cared for was to run out with men.

Ques. Did you or did you not hear her say anything about their having any disease or bad disorder?

(Objected to on the same ground. Objection overruled.)

10 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. No; I don't remember hearing her say that; she might, but I don't just remember.

Ques. You don't recall it now?

Ans. No; I don't just recall it now.

Ques. Did you ever hear her make similar remarks about your aunt Carrie?

20 Ans. That I couldn't say; I can't recollect that.

Ques. Did you ever hear Mrs. Myers say anything about the fitness of your sisters to associate with her?

Ans. Yes, sir.

Ques. What did she say on that subject?

(Objected to. Objection overruled.)

30 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. She said they were ignorant and dumb; they were not fit to be associated with.

Ques. Did she speak anything about their running around?

Ans. No; not as I recollect. She was always very careful what she said to me.

Ques. Did you ever hear Mrs. Myers make any remark about fixing the children, any of them, meaning your brothers and sisters?

Ans. In 1882 she says to father, in the presence of me—  
(Objected to as being too remote.)

Ques. Well, comè down to later than that.

Ans. Well, now, I couldn't, because I was away from home. This time was the time that she swore to father that she would see that I wouldn't get one damned cent more than the law would allow me to have. 10

Ques. This was in 1882?

Ans. Yes, sir.

Ques. While you were visiting your father and Mrs. Myers, did you hear them dispute or quarrel any?

Ans. Well, I did.

Ques. Can you recall one time when your father was under the influence of liquor and he came home, and something that was said to him by her?

Ans. Not just now I can't.

Ques. About who would run the place or not? 20

Ans. No; I can't just recollect it at the present time.

Ques. I call your attention to a time in August before your father's death at Ocean City, at the dinner table, and ask you if you recall Mrs. Myers saying anything about your sister Mary, whether or not she was sent away?

Ans. I do.

Ques. What was it?

(Objected to as incompetent and irrelevant. Objection overruled.) 30

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. While we were at the dinner table Mary was going out, and she went around and she says, "Pop, now there goes than onery hussy out again." She says. "Go out and make her come back."

Ques. Well, did he go and make her come back?

Ans. Yes; he did. He went out after her.

Ques. Do you know what he said to her?

Ans. No; I couldn't hear, of course, what he said to her away.

Ques. Oh, you didn't?

Ans. No; they were away.

Ques. Well, did she go or come back?

10 Ans. She came back.

Ques. Well, in the month of October before he died did your father send you anything?

Ans. Yes.

Ques. What?

Ans. A load of provisions.

Ques. Did he come up and see you after that?

Ans. No; he didn't come up after that.

Ques. Were you expecting him?

20 Ans. I was expecting him and Mr. Koons were coming up to spend a week or ten days with me.

Ques. You had arranged with him, had you?

Ans. Well, they had made that arrangements with me, which he knowed was always ready and friendly. He was coming up to spend a week or ten days with me.

Ques. Did you learn why he didn't come at this time?

Ans. Yes; he wrote me a letter afterward, and it appeared that he was taken sick. I think I gave you the letter.

30 Ques. Do you remember when he was talking about buying Simpson's place for you up at Chester Valley?

Ans. I do.

Ques. Well, what did he say about that?

Ans. Well, he says, "Johnnie," he says, "I think this place will suit us," he says, "suit you." He says, "I want," he says, "one room for myself," and he says, "I am coming up," he says, "and I intend to make my living with you and end the rest of my days."

Ques. Well, did you ask him anything about the matter then?

Ans. Well, then I says to him, "Why then," I says, "Pop," I says, "What about mother?" "Well," he says, "I don't care whether she comes or not," he says. He says, "I am getting tired the way things are going," he says, "living the way I have been tormented," he says; "I want to end the rest of my days in peace."

Ques. Did he say what he was getting tired of?

Ans. No; not just particularly, but he said he was tired 10 of living the way he had been, and intended to end the rest of his days in peace; he wanted to come live with me, and that is why he wanted one room.

Ques. When was this, John?

Ans. It was on July 3d prior to his death. I suppose it was 1896; I guess it must have been.

Ques. That was the summer before he died?

Ans. The summer before he died.

Ques. Well, what did he say to you about a place to end his days in? You just a moment ago said he wanted a place 20 to end his days in. What did he say about that?

Ans. Well, I understood from what he meant that he wanted to make his home with me.

Ques. Not what you understood, but what he said.

Ans. That is the way I took from his conversation and talk, that when he bought this property the understanding was that he wanted to have one room or so and just come and live with me.

Ques. That he wanted to end his days with you?

Ans. Wanted to end his days with me. That is what he 30 told me; that he fully intended to make his home with me.

Ques. Did he say anything about Mary at that time?

Ans. Yes, sir. He said he fully intended, he says, as soon as Mary got married, he was going to make a radical change.

Ques. Well, did he say anything about taking care of Mary; what he was going to do for her?

Ans. Why, he said he was going to get Mary fixed.

Ques. In what way did he say that he was going to fix her?

Ans. Well, I presume that he was going to get her a home. I don't know just——

Ques. Did he say?

Ans. Well, I can't say the manner that he said it, but I understood at the time that he fully intended to fix Mary. That is what he said to me, to say that she would be provided for.

10 Ques. Do you recollect anything about an incident occurring in Ocean City about three years before his death, in which he showed you letters and writings of your sister Mary?

Ans. I do.

Ques. What did he on that occasion say about Mary?

Ans. Why, after he showed me the writings he says, "She is a fine and affectionate, a very affectionate girl." And he says, "I fully intend," he says, "to see that she gets along," he says. "When I leave this world," he says, "she will live  
20 like the Queen of England or the Queen of Spain."

Ques. That was how long before he died?

Ans. That was about three years, I guess it was, before he died, something like that, in the summertime.

Ques. Did your father ever carry anything to your home on his back?

Ans. He did.

Ques. What?

Ans. A ham.

30 Ques. And other things?

Ans. Yes, sir; he would get provisions at the store; and while he was up there paying me visits he would go to the store and get these things and bring them to the house.

Ques. These provisions?

Ans. Yes, sir.

Ques. Things for your table?

Ans. Things for the table likewise.

Ques. Now, after this caveat was filed did you have any conversation with Mrs. Myers? Did you ever see her?

Ans. I did.

Ques. What was the conversation. What did she say to you?

(Objected to as incompetent and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Well, now, I just don't understand.

(Question repeated.)

Ans. Why, she said to me—this was in Ocean City, New Jersey; it was about the first week in March after father's death. I was sent down there by attorney McElree. And after I was there she came to me and says, "John," she says, "look here," she says. "I don't want you," she says "to go into this contest."

Ques. Go on.

Ans. And she says, "If you will keep out of this contest and keep away from Jennie and Mary," she says, "I will see that you get your farm that your father—it was father's request—and also I will see that you get \$5000, if you will keep out of this contest."

Ques. Do you know anything about a man by the name of Smith representing Mrs. Myers?

Ans. I do.

Ques. Did you receive a letter from him?

Ans. I did.

Ques. Do you know where that letter is?

Ans. Mr. District Attorney McElree, at the present time, Chester County, Pennsylvania. I gave him that letter, along with another attorney by the name of Howell, and also a copy of the will.

Ques. Who is Mr. McElree?

Ans. Mr. McElree is now District Attorney of Chester County.

Ques. What relation did he have to this case?

Ans. He was the attorney that went down here that I gave this paper to, these two letters and copy of the will.

Ques. Whom did he represent?

(Objected to as irrelevant and immaterial.)

10 The Court: I don't see how it is competent.

Mr. Jefferson: Very well, we will leave that out.

Ques. Well, did you get your \$5000, John?

Ans. No, sir.

(Objected to as immaterial and irrelevant.)

Ques. Did you try to get it?

Ans. I did.

Ques. How did you try to get it?

20 Ans. Well, I went to see Mr. McElree quite a number of times. That was understood between him and Mrs. Myers—

The Court: That is overruled.

Ques. Don't say what you understood. We want facts. Did you write any letters to anybody?

(Objected to as irrelevant.)

The Court: It seems to me very remote.

30 Ques. Did you withdraw from the contest of the will, and if so, why?

(Objected to as immaterial and irrelevant.)

The Court: He has not shown that he was in the contest of the will, as I understand it; he never filed a caveat. He certainly could not withdraw if he never entered one. The question is overruled.

Mr. Wescott: Pardon me, if your Honor please. You see it is already in the case that this gentleman was with Mary DeRoche in the contest, backing her.

The Court: Let the question be asked in another form then. It does not appear that he was connected with it.

Ques. Did you withdraw from the contest?

(Question overruled.)

Mr. Carrow: I object to any testimony in regard to the contest on the caveat, because the evidence would be immaterial and irrelevant. That is our position.

The Court: Let a proper question be asked and I will rule upon it. There is nothing pending now.

Ques. As a consequence of Mrs. Myers' promise to you,<sup>10</sup> what did you do.

Ans. Withdrew.

Mr. Carrow: We object to the testimony on the ground of irrelevancy.

The Court: This question may be answered. Note an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)<sup>20</sup>

ALLEN B. ENDICOTT, J. (Seal)

Ques. In conversation with Mrs. Myers on the subject of withdrawing it, did she or did she not request you to keep away from Mary and Jennie?

The Court: He has already said that she did. It is overruled.

Ques. Well, in her conversation with you about giving you the \$5000 did she make any remark about that being<sup>30</sup> the express purpose or desire of your father?

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. It was not the \$5000, it was the farm that father—that she said was father's request. The \$5000 she agreed also to give.

(Objected to as immaterial and irrelevant.)

The Court: The testimony may stand.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

10

ALLEN B. ENDICOTT, J. (Seal)

Ques. Did Mrs. Myers ever recognize you or speak to you after you obtained this caveat?

(Objected to as immaterial and irrelevant. Objection sustained.)

Ques. I call your attention to the night of the funeral. What was the performance there then? Was there any wake, or anything of that sort?

20

(Objected to as immaterial and irrelevant.)

The Court: Well, you may ask what occurred the night of the funeral.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. What occurred the night of the funeral, John?

30 Ans. This was the night before he was buried, on Thursday evening. When I went into the room there was my brother and Mr. Deegan, Mr. Hagel, brother James, Mr. McEwan and Mrs. Myers there.

Ques. What did Mrs. Myers say to you?

Mr. Carrow: I object to anything she said or did on that occasion as being irrelevant.

The Court: There is nothing to indicate what this testimony is to be. You had better disclose what it is to be.

Mr. Wescott: In her response on this occasion, or her statement on this occasion, rather, she publishes on the one hand her knowledge of what had been done, and on the other hand her purpose to——

The Court: You mean her knowledge as to the will?

Mr. Wescott: Yes.

The Court: Then I will take it.

Mr. Carrow: We object on the ground that the evidence 10  
will be immaterial and irrelevant.

The Court: It is allowed.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. She said, "Poor John," she says, "he didn't get his farm." She says, "I will see," she says, "Jim and I," she 20  
says, "will see that you get your farm."

Ques. Anything else besides the farm you would get?

Ans. Yes; also she says, "I will see that you get \$5000."

Ques. When was this, John?

Ans. The night before he was buried, on Thursday night.

Ques. And where?

Ans. At James' house, Philadelphia, 2356, I think it is, North Eighth Street.

Ques. Did you ever see any other will signed by your father except this one here? 30

(Objected to as immaterial and irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. I did.

Ques. Where did you see them, John?

Ans. Brother James' real estate office.

Ques. When?

Ans. About the last week, it was, in February. I couldn't just give you the exact date. I can give you the day of the week. It was on Saturday. At James' office in Philadelphia.

By the Court:

10 Ques. What year?

Ans. Right after father's death. And that would be 1897. I couldn't just say the exact date. I don't just recollect the date.

Mr. Wescott: We call upon the other side, not by writing, but orally, to produce those wills.

Mr. Moon: We have nothing to do with them. They were in James' possession. We have nothing in the world to do with James. We do not represent James. He is practically adverse to us. He is represented by these people, if at all.

Mr. Wescott: Your answer is that you haven't them?

Mr. Moon: No; they are in the possession of James, if there are any. He is living.

By Mr. Jefferson.

Ques. How many wills were there?

(Objected to.)

30 Ans. Three.

Ques. Did you read these wills or portions of them?

Ans. Portions of them I did.

(Objected to as irrelevant. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ques. Do you know what your father's business was, John?

Ans. Yes, sir.

Ques. What was he in early life?

Ans. A printer by trade.

Ques. Then what did he take up?

Ans. Then he went into the real estate and law business, contracting and building, speculating.

Ques. Did he hold any public office?

Ans. He did.

10

Ques. Did he acquire any estate, any fortune?

Ans. Yes, sir.

Ques. Do you know how much it was?

Ans. Well, not exactly.

Ques. Was it a big fortune or a small fortune?

Ans. Large.

Ques. Do you know anything of your father having spent \$50,000 on farms for two of his boys?

(Objected to as incompetent, irrelevant and immaterial.)

Ques. Did he ever spend any on farms for you and the other boys, as far as you know?

20

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. No; I do not.

30

#### CROSS-EXAMINATION.

By Mr. Boyle:

Ques. You never had a farm of your own, did you, Mr. Myers?

Ans. No, sir.

Ques. Your father was looking around to buy you a farm, though, toward the latter part of his life, was he not?

Ans. Yes, sir.

Ques. Did your father ever start you in farming?

Ans. No, sir.

Ques. He was trying to buy you a farm over here, wasn't he, and you wanted to see whether your wife would like it? Just answer the question?

10 Ans. Yes; in Jersey; that is right.

---

Mr. Wescott: We have some more witnesses to the same effect, but after consultation we have concluded that we will save valuable time by resting at this point.

20

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PLAINTIFF RESTS.

Adjourned till October 4, 1906, at 10.30 A. M.

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CAPE MAY COURT HOUSE, N. J., October 4, 1906.

Trial of cause resumed at 10.30 A. M.

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Mr. Wescott: If your Honor please, before the other side proceed to put a witness on the stand, I would like permission to reopen the case on our part for just a moment or two to recall a witness from whom we acquired incidentally last evening a very important bit of information.

The Court: You may do so.

20

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JEROME S. RUSH, sworn for plaintiff.

Direct examination by Mr. Wescott:

Ques. Where do you live, Mr. Rush?

Ans. Ocean City, N. J.

Ques. What is your business?

Ans. Well, they call me a Pooh-bah, Judge. I am a<sup>30</sup> Justice of the Peace, Overseer of the Poor, Chief of the Fire Department, Commissioner for the State of Pennsylvania and several other offices.

Ques. And outside of those, what do you do; what is your trade?

Ans. Well, I am a painter by trade.

Ques. And you have lived there how long?

Ans. I have lived there since 1890.

Ques. Did you know Charles Myers in his lifetime very well?

Ans. Yes; very intimate with the 'Squire.

Ques. Do you recall being to Bridgeton, New Jersey, with him?

Ans. Yes, sir.

Ques. Some time, a comparatively short time before his death?

Ans. Yes, sir.

10 Ques. Have you any means of fixing the date exactly?

Ans. Well, the only way that I could fix the date of that trip to Bridgeton is by a transfer of property on the corner of Eleventh and Asbury Avenue.

Ques. In Ocean City?

Ans. Yes, sir; which was sold to Simmons & Weatherby, of Millville.

Ques. The record of it is here in the County Court?

Ans. The record of it would be here in the County Court; yes, sir.

20 Ques. Well, did you and the Squire sleep together at Bridgeton that night?

Ans. Yes, sir.

Ques. Will you please detail the conversation you had with him?

Mr. Carrow: That is objected to as incompetent and irrelevant, and upon the further ground that statements by the testator are inadmissible for the purpose of showing undue influence.

30

The Court: I did not observe what was said about the time this occurred.

Ques. About how long before his death, was this, Mr. Rush, according to your best judgment?

Ans. About 1896, when this occurred.

Ques. Now, will you proceed and state the conversation you had with him?

The Court: The testimony is allowed.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. The conversation which I had with the 'Squire in Bridgeton, New Jersey, to begin the story, we went to Millville, and our object in going to Millville— 10

Ques. Suppose you omit that, please, and come down to the actual facts?

Ans. Come down to the actual facts?

Ques. Yes.

Ans. The actual facts of the case was, we stopped in Bridgeton over night, and at 12.30 o'clock I went into the bed room. We were to sleep together. The 'Squire was tossing about from one side of the bed to the other and I said to the 'Squire, "For God's sake don't occupy the whole bed. Give me a chance. I would like to get a chance in there." Says I, "You have got the whole bed mussed up now." He says, "Where have you been?" I says, "I have been out around the town," and told him where I had been and the different people that I had called on, and says I, "Why don't you go to sleep?" "Well," he says, "I have got lots of trouble at home and," he says, "I don't get much sleep." I says, "Why, 'Squire, what is the difficulty?" "Oh," he says, "I have a hell of a time with that woman I have got." I began to laugh and I made the statement, 20  
"Squire," says I, "a man with your experience ought not to have got a woman of that kind." Says I, "As I understand, you have had three doses of it." 30

Mr. Carrow: I object to this testimony as being incompetent, irrelevant, and inadmissible upon the additional ground that the testator could not make any statements tending to show undue influence in the execution of the will.

The Court: I don't suppose it is offered on that ground exclusively. I think it is competent to show the state of mind.

Mr. Carrow: And for the additional reason that the witness is undertaking to describe a condition of mind in the testator long after the execution of this will.

The Court: The testimony will be allowed, subject to your objection, and an exception will be allowed.

10 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. After making that remark to him, "Well," he says, "I will tell you," Or I made the remark then after. "Well," he says, "that is so, Rush." Then I made the remark to him, "With your experience you should have done a good  
20 bit better, Squire, than you did do." "Well," he says, "I will tell you how it was." He says, "This woman came into my house as a housekeeper. My son Bill and I, I suppose, were intimate with her."

Mr. Carrow: I object to this testimony because it is incompetent and irrelevant. How can the marriage of this man or what occurred before the marriage be competent?

The Court: Well, that may be distant and somewhat irrelevant, but it is a part of a conversation, I take it, which is competent, and I am not willing to exclude part of it.  
30 You may proceed and note an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. The Squire then went on to state that he and the son he supposed were both intimate with the woman; the woman got into trouble, the son was a married man with a

family, and the Squire was compelled, to cover the difficulty up, to marry the woman.

Ques. He stated that to you?

Ans. He stated that to me; yes, sir.

#### CROSS-EXAMINATION.

By Mr. Boyle:

Ques. What were you doing in Bridgeton at that time?

Ans. We went to Millville to make a settlement. We<sup>10</sup> went to Bridgeton to stay over night, as the Squire wanted to see Bridgeton and wanted to look around Bridgeton, and we came back—

Ques. What year was this?

Ans. 1896, about.

Ques. About?

Ans. Yes, sir.

Ques. What was there in Bridgeton that attracted your attention that night?

Ans. Nothing whatever, only we just went over in<sup>20</sup> Bridgeton to pass the time away.

Ques. Where was the property that you were to take him to see about?

Ans. We didn't go to see about any property.

Ques. What settlement did you go to see about?

Ans. For two lots on the corner of Eleventh and Asbury avenue; and Simmons and Weatherby lived in Millville, and we went to Millville to have the settlement. When we got into Millville the bank was closed. The Squire wouldn't take anybody's check, no matter whose it was; he had to<sup>30</sup> have the cold cash, and we couldn't get the cash until the Stokes Bank opened in Millville.

Ques. Did anybody offer him the cash on that day?

Ans. No, sir; offered him a check, and he refused to take it.

Ques. Did he refuse to do business because the banking hours were over that day?

Ans. Refuse to do business?

Ques. Yes.

Ans. Certainly he refused to do business, because he refused to take a check, and a check was no good to the Squire. It was the cold cash he wanted.

Ques. Did he say that to you; did he tell you that?

Ans. I know it was right. Of course it is.

Ques. I ask you if he said that to you?

Ans. Certainly he said it to me. I saw Stokes Weatherby.

10 Ques. How do you know they didn't have the cash?

Ans. Certainly; we seen them.

Ques. Did Stokes say anything about it?

Ans. I didn't see Stokes.

Ques. Did Weatherby offer a check?

Ans. Yes, sir.

Ques. Was the settlement made? Did you go over the items of the settlement?

Ans. No items about it. He had his deed in his pocket. He would turn his deed over.

20 Ques. Had he executed the deed then?

Ans. Yes, sir.

Ques. Where did he execute the deed?

Ans. Ocean City, New Jersey.

Ques. Did he have it in his pocket?

Ans. He had it in his pocket.

Ques. Were you alone?

Ans. I acted as agent.

Ques. Did you sell the property?

Ans. No, sir.

30 Ques. Who did?

Ans. Harry Brown sold the property. He and I went halves in the commission.

Ques. Oh, you and he, you got a commission from the Squire?

Ans. We certainly did, we sold the property for the Squire.

Ques. Did the Squire see these people the next day?

Ans. Yes, sir; we saw them the next day.

Ques. Now, that occurred ten years ago, did it, Mr. Rush?

Ans. About ten years ago; yes, sir.

Ques. Did you ever tell anybody that before, what you have just narrated there?

Ans. Mr. Boyle, I—

Ques. Just answer the question?

Ans. I would just like to make a remark before I answer the question.

Ques. You are a Squire. You know that in your Court 10 you make witnesses answer questions?

The Court: Answer the question and your counsel will give you a chance to explain.

(Question repeated.)

Ans. No, sir.

Ques. You were here at the last trial, were you not, Mr. Rush?

Ans. I was; yes, sir.

Ques. You were also a witness before the Orphans' Court 20 before Judge Douglass?

Ans. Yes, sir.

Ques. And you were leaving town last night, weren't you, without going on the stand?

Ans. You bet I was leaving town.

Ques. And up until that time you hadn't told anybody about it?

Ans. No, sir.

Ques. You were here the last three or four days?

Ans. No, sir. 30

Ques. Well, two days, rather?

Ans. No, sir; I wasn't here two days.

Ques. Well, the day before yesterday you were here?

Ans. No, sir; I came here night before last.

Ques. Night before last?

Ans. Yes, sir. I wasn't here two days. I was here the night before last.

Ques. You hadn't said anything between the night before last and the close of yesterday's session, had you, to anybody?

Ans. Said anything?

Ques. I mean you hadn't repeated it to anybody?

Ans. Why, no; certainly I hadn't repeated it.

Ques. Didn't you say last night at the hotel that now that they had subpoenaed you you were going to tell them something, or words to that effect?

10 Ans. No, sir; I didn't make any remarks to that effect. I said—if you want to know what I said I can tell you.

Ques. Go ahead?

Ans. Now, if you want me to explain what I said, I will go into it, with the permission of the Court.

Ques. I only ask you whether you made that statement?

Ans. Well, I can tell you just the statement that I made.

Let me make the statement, Judge.

The Court: Your counsel will give you a chance to explain anything he thinks necessary.

20

#### RE-DIRECT EXAMINATION.

By Mr. Wescott:

Ques. Why were you trying to get away?

Ans. I had a trip on hand to go to Galveston, Texas.

Mr. Boyle: I don't think that is relevant.

Mr. Wescott: You asked him if he was trying to get away.

The Court: You introduced the subject. He may have  
30 a right to explain.

Ans. On Friday morning I was to leave Ocean City for Dallas, Texas. I was going to the International Fire Chief's Association, of which I am a member. If I could have got home last night I should have had all my arrangements made to-day. My arrangements are easy made, but my wife's arrangements—

Ques. Let me ask you right there a question. Why didn't you go?

(Objected to as irrelevant and immaterial. Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Why didn't I go?

Ques. Yes; why didn't you get away?

Ans. They had all the constables in the county, to my 10 knowledge, trying to catch me. I never was chased in that position before by a police officer nor a constable.

Ques. Did they serve a subpoena upon you?

(Objected to as immaterial.)

Ques. Did the other side serve a subpoena upon you?

Ans. They served a paper on me, but I haven't got the fifty cents yet.

Ques. Did they serve a paper on your wife at the same time?

20

Mr. Carrow: That is objected to as irrelevant, immaterial and incompetent, from every standpoint.

The Court: I think he has explained now why he was trying to get away.

(Exception noted for plaintiff.)

By Mr. Boyle:

Ques. You were offered a subpoena fee last night, were you?

30

Ans. When I got the subpoena, no.

Ques. I mean last night the constable offered you a subpoena fee?

Ans. I was here. Why didn't he give me the subpoena fee at that time, and not when I came back of my own volition?

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PLAINTIFF RESTS.

## DEFENDANT'S TESTIMONY.

(The following letters were offered in evidence and read by Mr. Boyle:)

## EXHIBIT D 1.

"Central House, Sea Isle City, N. J.

10 "Dear Mamma:

"I should have written you sooner and thanked you for the very useful articles you sent me, but the bearer of them (I forget her name) said you went to the city, and that you would write when you came home. However, I am going to write first and thank you for the box, the contents of which I was more than delighted with. Florence looks sweet in those little dresses; they save me many a penny  
20 and labor of making them. I would like to return your kindness and interest, but you will have to accept the will for the deed until better paid. I would often go over to Ocean City and bring you something in a package, but every 40 cts. counts. I suppose you found it extremely warm in the city and are glad to get home. Baby requires a great deal of care these warm days—her teeth bother her. You said come over soon and bring the baby. I  
30 might run over for a day, but could not bring her; and when the other one comes, dear knows when I will get the chance to come at all. Do you know anything definite about the matter I asked you about? I hope you and Charlie are well and that I will hear from you soon.

"Love to yourself and Charlie. From

"Very sincerely,

"July 21, 1898.

MARY."

## EXHIBIT D 2.

"Central House, Sea Isle City, N. J.

"Dear Mamma :

"I received your note all right, and wish to thank you for it. Would have done so before, but baby had another sick spell. It is her teeth, and she worries me so. I am giving her condensed milk now, and she is doing better on it—it is easier to keep during this hot weather and a great deal cheaper. I heard from Jennie lately. She has a cot-<sup>10</sup> tage at Asbury Park. She seems to get along comfortably. I read Jim was down to O. C. for a short stay. Have you heard from Mr. Dudley yet regarding the \$25? I do not like to impose on your good heartedness, but while Harry is building the house we have to live; and then I would like to get a stove for the winter. The other things for the house I can do without as long as I have a barrel of flour and coal and wood, but no doubt some kind of work will turn up for him.

"He is working on the house every day, and it will soon<sup>20</sup> be up, I hope.

"Would like to run over, but the house is full of boarders, and baby would be heavy for me to carry. I can during the winter, perhaps, better.

"Hoping you and Charlie are well, accept love from

"Aug. 20th, '98.

MARY DE. R."

## EXHIBIT D 4.

30

"Sea Isle City, January 6th, 1899.

"Dear Brother Charlie :

"Did you not receive my letter giving you Jennie's address? It is 2094 Washington avenue, Tremont, N. Y.

"Wishing you and mamma a happy new year, I remain with love to both. From

"Your sister,

"M. DE R."

## EXHIBIT D 5.

“Know all men by these presents, that whereas Charles Myers, late of Ocean City, in the county of Cape May and State of New Jersey, deceased, in and by his last will and testament, in writing, dated the ninth day of April, in the year of our Lord one thousand eight hundred and ninety-five, duly proved before the Orphans’ Court of the said county of Cape May, did give and bequeath to his daughter, Mary F. De Roche, the sum of fifty dollars, and in and by  
10 his said last will and testament did nominate and appoint The Commonwealth Title, Insurance and Trust Company, of the City of Philadelphia, and his son, James Myers, the executors thereof; and whereas the said The Commonwealth Title, Insurance and Trust Company, one of the executors named in said will, has renounced the said executorship.

“Now, therefore, I, the said Mary F. De Roche, of Sea Isle City, in the county of Cape May and State of New Jersey, do hereby acknowledge to have received from the  
20 said James Myers, the other executor of the said last will and testament of the said Charles Myers, deceased, the sum of fifty dollars, in full, for the legacy and interest due me as aforesaid under the said will, and thereof and therefrom, by these presents, I do fully, clearly and absolutely acquit, release and forever discharge the said James Myers, executor as aforesaid, his heirs, executors, and administrators, and also the estate of said Charles Myers, deceased.

30 “In witness whereof, I have hereunto set my hand and seal this fifteenth day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

“MARY F. DE ROCHE. (Seal)

“Signed, sealed and delivered in the presence of

“WILLIAM D. LIPPINCOTT.

"State of New Jersey,  
County of Camden, ss.

"Be it remembered that on this fifteenth day of June, in the year of our Lord one thousand eight hundred and ninety-eight, before me, a Master in Chancery of New Jersey, personally appeared Mary F. De Roche, who, I am satisfied, is the grantor named in and who executed the foregoing release, and I having first made known to her the contents thereof, she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. <sup>10</sup>

"All of which is hereby certified.

"WILLIAM D. LIPPINCOTT,

"Master in Chancery of N. J."

EXHIBIT D 6.

"Received Sept. 24, '98, of Jas. Myers, Trustee under the will of Chas. Myers, deceased, the sum of twenty-five <sup>20</sup> dollars, as suggested by my mother, S. R. G. Myers, for my relief in distress, according to the provisions of said will.

"MARY DE ROCHE."

EXHIBIT D 7.

"Received Dec. 14th, '98, of James Myers, Trustee under the will of Chas. Myers, deceased, the sum of twenty-five dollars, as suggested by my mother, S. R. G. Myers, for my relief in distress, according to the provisions of said <sup>30</sup> will.

"MARY DE ROCHE."

JEROME S. RUSH, recalled for defendant.

DIRECT EXAMINATION.

By Mr. Boyle:

Ques. Mr. Rush, I call your attention to a signature in the will, and I ask you whose signature is the second signature, the witness?

Ans. That is mine.

Ques. You were present in the house that night shortly  
10 before the will was executed, were you not?

Mr. Wescott: What night?

Mr. Boyle: The night of the execution of the will.

Mr. Wescott: Is that the 9th day of April?

Mr. Boyle: I think the date of the will states 1895

Mr. Wescott: Let the witness look at the date.

Mr. Boyle: The 9th day of April, 1895.

Ques. You were in the house that night, were you not?

Ans. No, sir.

Ques. Myers' house?  
20

Ans. No, sir.

Ques. Did you not sign the will on that night?

Ans. No, sir; I did not. Was that will written on the  
9th day of April?

Mr. Carrow: I ask that this witness be confined, if the Court please, to answering the question, and not asking counsel any question.

Ques. You signed that will, however, did you?

The Court: What is the date of the will?  
30

Mr. Boyle: The 9th of April, 1895.

Ques. You signed that will? That is your signature to that will as a witness?

Ans. That is my signature, but not on the 9th day of April, 1895.

Ques. Is that your wife's signature to that will?

Ans. I don't know. She knows her signature better than I do.

Ques. Was your wife with you the night you signed that will?

Ans. Yes, sir.

Ques. Now, was Mr. Brower there the night you signed the will?

Ans. He was there; yes, sir.

Ques. You testified before Judge Douglass in this case when the will was offered for probate, did you not?

Ans. Yes, sir.

Ques. Was your memory fresh as to what occurred when 10 you testified before Judge Douglass?

Ans. No, sir. That is, I understand, I say my memory is not fresh, on that subject.

Ques. Was it fresh at the time that you testified before Judge Douglass?

Ans. My memory was bright at that time; yes, sir.

Q. Have you a recollection of the facts occurring on the night of the execution of the will at the present time?

Ans. Yes; I don't know but what I have. I am positive 20 I have.

Ques. Did you testify before Judge Douglass to this effect, when the will was up for probate:—

(Objected to.)

The Court: He is called as your witness now.

Mr. Wescott: I object to cross-examining the witness, and I object to his being asked if he testified and said certain things, because the witness has already said that he remembers what occurred. 30

Ques. Now, did you play pinochle with the Squire on the evening of the execution of the will?

Ans. I did.

Ques. Did Mr. Brower play?

Ans. He did.

Ques. Mrs. Rush was there at the time?

Ans. Mrs. Rush didn't play pinochle.

Ques. No; I mean she was there when you folks were playing pinochle?

Ans. She doesn't drink rum.

Ques. I understand that.

Ans. And she don't play pinochle. The Squire was there, Brower was there, Dave Hickey was there, and I was there.

Ques. Dave Hickey was there?

Ans. Yes, sir. I answered those questions.

10 Ques. Now, Mrs. Rush, of course, doesn't drink at all?

Ans. No, sir.

Ques. How long were you playing pinochle?

Ans. Probably an hour and a half, two hours.

Ques. Now what was the condition of the Squire's mind as to capability of transacting business that night?

Ans. All right.

Ques. Was he in such a condition as to allow him to make a will that night?

Ans. Make a will that night?

20 Ques. Yes?

Ans. Oh, yes; I suppose he could have made a will that night.

Ques. As to mental capacity I mean?

Ans. Oh, yes; nobody doubts his mental capacity.

Ques. Were you and Mrs. Rush in the room when you signed your names to the will?

Ans. I think we were; yes. That I wouldn't say positive, but I feel positive that we were there.

30 Ques. Well, was Mr. Myers there when you and Mrs. Rush signed your names to the will?

Ans. Yes, sir.

Ques. Did he declare it to be his last will?

Ans. He didn't say anything until he was asked by Brower what it was.

Ques. But Brower did ask him what it was, did he?

Ans. Yes; Brower said he didn't want to be hung nor he didn't want to sign away his right and title, and he said, "That is my name and that is my will."

Ques. The Squire did?

Ans. Yes; the Squire said that.

Ques. Was Brower there when he said it?

Ans. I think Brower was there.

Ques. Were you there when he said that?

Ans. I sure was or I wouldn't tell you.

Ques. I understand, I am not trying to confuse you, Mr. Rush?

Ans. I understand, but the point is simply this; I am here on my oath and trying to tell the truth. 10

Ques. Was Mrs. Rush there when this statement was made when Brower asked what it was?

Ans. I think she was; yes.

#### CROSS-EXAMINATION.

By Mr. Wescott:

Ques. Mr. Rush, you have said that you did not sign this paper on the 9th of April, 1895? Did I understand you to say that?

Ans. That is correct; I did not sign the paper on the 20<sup>th</sup> 9th day of April, 1895.

Ques. Were you in the Squire's house at all during the month of April?

Ans. No, sir; I was not.

Ques. When you signed a paper which you say was his will, what time of the year was it?

Ans. In the winter time; I should judge between the 1st and the 15th day of January.

Ques. Are you sure of that?

Ans. Positive, by the weather conditions. 30

Ques. Will you take this sheet of paper, if you recollect distinctly and accurately about it, and tell me first whether the paper that you signed was a legal cap paper of that size?

Ans. The paper I signed was a legal cap paper of that size; yes, sir.

Ques. Tell me how it was folded, if it was folded, when you signed it?

Ans. In that shape. (Illustrating.)

Ques. Was there any writing on that paper when you signed it?

Mr. Carrow: I object. This witness has not been asked any questions by the defense in regard to the writing on the paper or any of the contents of the paper; simply asked as to the physical fact of signing his name and his wife's name and Brower's name at the time of the execution.

(Objection overruled.)

10 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Ans. Yes, sir.

Ques. What?

Ans. Charles Myers.

Ques. Was there any other writing on it?

Ans. John Brower.

20 Ques. Any other?

Ans. Myself.

Ques. Any other?

Ans. That is all I seen.

Ques. Was that all the writing there was on that paper when you signed it?

Ans. That is all the writing there was on that paper; yes.

Ques. And you signed it in the winter time?

Ans. I signed it in the winter time.

30 Ques. Now, what circumstances enable you to state that it was in the winter time, Mr. Rush?

Ans. When we started for home it was raining and sleet-ing, and it was slippery. Mrs. Myers lent my wife a plaid blanket shawl. What I call a blanket shawl is a great big heavy double shawl. On the road home, instead of going to Central avenue and my home at Eleventh street, we went on Asbury avenue, and at the corner of Ninth and Asbury avenue I slipped on the ice and fell down.

## RE-DIRECT EXAMINATION.

By Mr. Boyle:

Ques. Did you testify on the ejectment case that Mary De Roche brought, tried here about four years ago?

Ans. Yes, sir.

Ques. Did you then say anything about the fact that the will had not been signed on April 9, 1895?

Mr. Wescott: I object on the ground that it is cross-examination of their own witness. I have simply exploited the circumstances which they brought out, and it is not proper to cross-examine their own witness in this case. 10

The Court: I will allow the testimony.

Ans. No, sir.

Ques. Did you then say anything about whether the paper was on a sheet as you have just explained?

Ans. No, sir.

Ques. Did you say anything about either of those matters before Judge Douglass when the will was first offered for probate? 20

Ans. No, sir.

Ques. Wasn't the will shown you at that time?

Ans. When it was probated?

Ques. Yes.

Ans. I don't know that it was; no, sir.

Ques. Wasn't the will shown to you on the last trial?

Ans. Yes, sir; I think it was.

Ques. You think it was? You didn't say anything about those matters at that time?

Ans. No, sir. 30

Ques. Would you call this a piece of legal cap? (Will shown witness.)

Ans. That is a legal cap paper; yes, sir.

Ques. Is this legal cap paper?

Ans. That is legal cap paper, as I understand the term legal cap paper.

Ques. There is your signature, about that situation?

Ans. That is my signature.

Ques. You heard Mr. Myers say in answer to Brower's question that it was his will and that you were to sign it?

(Objected to as repetition.)

Ques. Now, before Judge Douglass, when the will was offered for probate, did you not make the answers as indicated to the following questions: "Ques. Did you ever see this paper before? Ans. Nothing only this part of it from here down. (Indicating.) Ques. Who showed you that? Ans. It was laid on the table when I signed it in that manner. (Folding paper.) Ques. By whom? Ans. Charles Myers. Ques. What did he state when he put it down that way to you? Ans. He said that that was his will, and he asked me to sign it, which I did."

10

Mr. Wescott: I don't object to that.

Ans. I answered that same question a while ago. I said yes. It is there.

Ques. The paper was shown you then at that time, was it not? The will before Judge Douglass was shown to you at that time?

20

Ans. I can't say positive that I saw the will.

Ques. Well, you have just heard the testimony that I read there, have you not?

Ans. Yes; I heard that testimony.

Ques. Now do you say that that testimony, indicating that you were looking at the paper, folding a paper, do you say that that testimony is not so that you delivered before Judge Douglass?

30

Ans. I don't say it is so, and at the same time I will not swear that I saw that paper.

Ques. Well, did you not so swear before Judge Douglass, as indicated by what I have just read to you?

Ans. Is that the evidence?

Ques. That is the evidence; yes.

Ans. Well, if that is the evidence what more do you want?

## RE-DIRECT EXAMINATION.

By Mr. Wescott:

Ques. Now, why won't you swear that that is the paper that you signed that night?

Ans. Why won't I swear?

Ques. Yes.

Ans. Because the paper I signed was in January, between the 1st and 15th day of January.

Ques. And was in blank, with only these names on it? 10

(Objected to.)

Ans. Was in blank.

The Court: He has stated that, I think, already.

Ques. Well, those are the reasons why you won't swear that that is the paper you signed?

Ans. That is the reason I won't swear to it.

By Mr. Boyle:

Ques. Well, didn't you write that signature?

Ans. I wrote that signature. 20

Mr. Wescott: I offer this piece of paper. I want to get it in evidence.

Mr. Moon: What is that?

Mr. Wescott: This sheet of paper. (Indicating paper folded by witness.)

Mr. Boyle: Upon what theory?

Mr. Wescott: Well, I simply offer it. I am not stating 30 the theory.

Mr. Carrow. It is objected to as not being relevant for any purpose.

The Court: I suppose it may be admitted to illustrate the testimony as to size and kind. Of course, it is only to be used for illustration. I will admit it.

(Paper marked Exhibit P 1.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

By the Court:

Ques. Mr. Rush, what do you mean by saying that the paper that you signed on the occasion that you speak of was in blank? I think you said it was in blank. What was on the paper that you signed, as you saw it?

10 Ans. When I signed that paper, Judge, there was nothing on that paper but that name there. (Indicating.)

By Mr. Boyle:

Ques. What name is that that you refer to?

Ans. Myers. Then came Brower's name. That was on and I signed next. There was no attestation clause to it nor no other writing, to the best of my knowledge and belief—a blank piece of paper with the exception of those two names.

20 Ques. Mr. Rush, I was asking you a few questions about this matter a few days ago, was I not?

Ans. Yesterday.

Ques. Yesterday?

Ans. Yesterday; yes.

Ques. Didn't you tell me that you honestly didn't recollect anything about the matter?

Ans. Mr. Boyle, with the Judge's permission, I will make an explanation why I did not recollect.

30 Mr. Carrow: I ask that that be stricken out as not responsive to the question.

The Court: The witness may answer the question, and then you will be allowed to make an explanation afterwards. At present you will have to answer his question.

Ques. Did you not say in answer to my question, in asking about this matter, didn't you say, "Mr. Boyle, honestly I have no recollection about the matter, about the execution of the will?"

Ans. The words that I stated to you yesterday, Mr. Boyle, was that I was Justice of the Peace, Chief of the Fire Department, Overseer of the Poor, and I had too much on my mind to think about this matter. That is as near as I can remember the words yesterday.

Ques. Now, at the former trial did you not say in answer to this question as follows: "Ques. Do you recollect the circumstances under which the will was signed and executed? Ans. Not positively; no, sir." Was that your testimony at the last trial? 10

Ans. The same as yesterday; yes, sir; exactly, yes, sir; meaning the same thing as yesterday; yes, sir.

Ques. Well, was that your testimony?

Ans. That was my testimony; yes, sir.

Ques. Wasn't the testimony read over to you by Mr. Moon and myself, this testimony before the last trial, at the Bellevue Hotel, and didn't you tell Mr. Moon and myself that you hadn't any recollection about what the facts were as to the execution of the will, or words to that effect. 20

Ans. That is why I want to make an explanation, and you refused to let me do it, until these questions are asked and answered.

Ques. Well, you can answer that question?

Mr. Carrow: I ask that that be stricken out.

Ques. Well, you can answer whether that is so or not?

Mr. Wescott: Recollect that they are cross-examining their own witness. I don't think it ought to be allowed to go on. 30

The Court: The witness should answer the question directly and then afterwards you will have an opportunity to make any explanation you desire about your testimony.

(Question repeated.)

Ans. The question, to the best of my knowledge, was not read over to me, but it was talked over with me, whether I did or did not remember that stuff.

Ques. Well, and upon that occasion did you tell us that you had no distinct recollection of that fact?

Ans. No distinct recollection.

Mr. Boyle: The question is as to whether he told us that. He says no distinct recollection. I don't know that that is an answer. If he means that he did tell us that he had no distinct recollection, I don't think it is a full answer. I asked him whether he stated it.

10 (Question repeated.)

Ans. Yes, sir.

By Mr. Wescott:

Ques. Why did you tell them that?

Ans. So as I could get on the witness stand and go home.

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EDWARD SUTTON, sworn for defendant.

-20

#### DIRECT EXAMINATION.

By Mr. Boyle:

Ques. Where do you live, Mr. Sutton?

Ans. Ocean City.

Ques. Where do you live?

Ans. In Ocean City.

Ques. Yes.

Ans. Where do I now live?

30 Ques. Where do you now live; yes?

Ans. 812 Wesley avenue.

Ques. Did you know Charles Myers in his lifetime?

Ans. Yes, sir.

Ques. How near did you live to him?

Ans. I have lived next door to him in a double house.

Ques. When did you live next door to him, what years, about?

Ans. 1885, I think, and 1886 and 1887.

Ques. 1885?

Ans. I think so.

Ques. Did you know him between the years 1890 and 1895?

Ans. Yes, sir.

Ques. Did you know him up till the time of his death?

Ans. Yes.

Ques. How close did you live to him?

Ans. Why, less than half a square from him. We lived in one of his houses.

Ques. Well, did you ever have any conversations with him during the last few years of his life? 10

Ans. Yes, sir.

Ques. How often, about?

Ans. Oh, I would meet him on the street in a casual way, and then I have assisted in doing work for him.

Ques. Oh, you have had business dealings with him?

Ans. No; I never had any, only working. I tried to get some business.

Ques. In what way did you try to get business? 20

Ans. I tried to get some painting from him.

Ques. Did you have talks with him about the business?

Ans. Asked him for the work, but I didn't get it.

Ques. What was his condition during the last few years?

Ans. I don't know anything about that. I never saw the man drunk in my life. I don't know anything about his condition.

Ques. Did you ever see him under the influence of liquor to such an extent as to incapacitate him from doing business? 30

Ans. No, sir.

Ques. Did you know Charles in his infancy and early boyhood?

Ans. Yes, sir.

Ques. What was his condition?

Ans. Well, he was sickly and very nervous, and they said he had St. Vitus dance.

Ques. Did you notice anything about him that would indicate he was weak?

Ans. Well, he couldn't keep his head still and legs still; shaking his hands and head all the time.

Ques. Did he wear any supports of any character?

Ans. Yes; he used to wear iron braces on his legs.

Ques. Do you remember whether or not the Squire held the office of Justice of the Peace?

Ans. Yes, sir.

10 Ques. For how long?

Ans. I couldn't tell you how long.

Ques. Did he hold it up till the time of his death?

Ans. Now, I am not clear as to that. I couldn't say positive. I think he did, but I am not sure as to that.

Ques. Have you any knowledge as to whether he ever tried any cases during the last few years of his life?

Ans. No; I have not.

#### CROSS-EXAMINATION.

20 By Mr. Wescott:

Ques. He was a man of a good deal of business experience, wasn't he?

Ans. Yes, sir.

Ques. A man that had a good deal to do with legal documents?

Ans. Well, I couldn't say as to that.

Ques. Made wills, didn't he, for people?

30 Ans. I couldn't tell that. I never had any business with him making wills, no.

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PROFESSOR LEONARD R. THOMAS, sworn for defendant.

#### DIRECT EXAMINATION.

By Mr. Boyle.

Ques. Did you know Charles Myers in his lifetime?

Ans. Yes, sir.

Ques. What is your business, Mr. Thomas?

Ans. I am the business manager of the Ocean City Ledger.

Ques. How long have you been in that business?

Ans. Since 1903.

Ques. How intimately did you know Mr. Myers?

Ans. Well, I lived across the street from him, on Wesley avenue.

Ques. During what years?

Ans. From 1890, July, 1890, to his death.

Ques. Did you see him very often?

10

Ans. Yes; I must have seen him nearly every day, casually.

Ques. Did you ever have any business dealings with him of any character?

Ans. A little. I was treasurer of the Methodist Church, and it was my business to pay him his interest on a mortgage he held against the church.

Ques. Did you have any conversations with him during those periods?

Ans. Sometimes we talked over local matters, politics occasionally, local politics.

20

Ques. What character of man was Mr. Myers as to mind?

Ans. I thought him intelligent.

Ques. Well, up till the time of his death did you notice whether he could transact business?

Ans. He always could, all the business I had to do with him.

Ques. Well, what was the character of his will power, so far as you knew, if you did know?

30

Ans. I didn't have occasion to know much about that. I took him to be a man that would like to have his way when he could get it.

Ques. How recently before his death had you seen him for any business matter?

Ans. I am not sure that I paid him his interest in December. It was due in December. I think I made him a payment in December of 1896.

Ques. And did you say that you lived neighbors to him and had seen him daily?

Ans. Yes, sir.

Ques. Had you ever seen him under the influence of liquor to such an extent as would incapacitate him for business?

Ans. I never did.

#### CROSS-EXAMINATION.

10 By Mr. Wescott:

Ques. Was he a drinking man?

Ans. I couldn't say that, sir. I never saw him drunk.

Ques. Did he look like a drinking man?

Ans. Well, I couldn't tell you that, sir.

Ques. He had a red face, hadn't he?

Ans. Well, now that is a good while ago. I can't remember that he had a particularly red face.

Ques. Well, he had generally?

Ans. I couldn't say.

20 Ques. Did you ever see any man with any degree of intelligence that didn't want to have his own way?

Ans. Well, I don't know. My experience is not wide enough for that.

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CARLOS CORSON, sworn for defendant.

#### DIRECT EXAMINATION.

30 By Mr. Boyle:

Ques. Where did you live in the year 1894 and 1895?

Ans. Ocean City.

Ques. How long have you lived there?

Ans. Lived there since 1891.

Ques. Did you know Charles Myers in his lifetime?

Ans. Yes, sir.

Ques. How long have you known him, Mr. Corson?

Ans. About fifteen years since I first knew him.

Ques. How intimately did you know him during the last five years of his life?

Ans. Well, the same as anybody else around town.

Ques. Do you know whether he was Justice of the Peace.

Ans. Yes, sir.

Ques. Do you know whether the last few years of his life he had performed any of the duties of his office in trying cases?

Ans. I couldn't say when he was Justice of the Peace. I know he was at one time, but I wouldn't say what time he was. But since I have lived in Ocean City he was Justice of the Peace. I couldn't say how long he was Justice of the Peace. 10

Ques. Ocean City is a prohibition town, is it?

Ans. Yes, sir; supposed to be.

Ques. Was during his lifetime?

Ans. Well, supposed to be a little on that order.

By Mr. Wescott:

Ques. Wasn't possible to get a drink anywhere, I suppose? 20

Ans. Well, I am not able to answer that question.

By Mr. Boyle:

Ques. What business dealings did you have with him, if any?

Ans. Well, he used to come to my store a good deal.

Ques. What sort of business did you carry on?

Ans. Meat business, provisions.

Ques. How often, about, during the last few years of his life, would he come in contact with you in business matters? 30

Ans. Well, sometimes he would be in three or four times a week, sometimes he would be in every day, sometimes not be in for four or five days, just the same as any other customer that come to the store to deal.

Ques. Did you have an opportunity to observe the condition of his mind during any of these visits?

Ans. Yes, sir; I think so.

Ques. Did you ever see him on those occasions so under the influence of liquor as to incapacitate him from business?

Ans. No, sir.

Ques. What sort of will power had the man, if you know?

Ans. I couldn't say about that. He seemed to be a smart, shrewd man.

10

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NO CROSS-EXAMINATION.

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JOSEPH CHAMPION, sworn for defendant.

DIRECT EXAMINATION.

20 By Mr. Boyle:

Ques. Where do you presently live, Mr. Champion?

Ans. Ocean City.

Ques. Do you hold any office there?

Ans. I am present Mayor of Ocean City.

Ques. How long have you been Mayor?

Ans. Five years.

Ques. Did you know Charles Myers in his lifetime?

Ans. I only had a speaking acquaintance with him; was not very well acquainted with him.

30 Ques. Well, had you ever seen him around town?

Ans. Oh, yes.

Ques. How often, about?

Ans. Quite frequently.

Ques. Do you know whether he was Justice of the Peace?

Ans. He was; yes, sir.

Ques. Do you know what duties he performed as Justice of the Peace during the last years of his life?

Ans. I do not, no, sir.

Ques. Had you any opportunity to observe his condition as to mind?

Ans. Well, my judgment of him was that he was a reasonably bright-minded man.

Ques. Did you ever see him under the influence of liquor so much as to incapacitate him from business?

Ans. No, sir.

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NO CROSS-EXAMINATION.

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10

RICHARD TOWNSEND, sworn for defendant.

DIRECT EXAMINATION.

By Mr. Boyle:

Ques. Where do you live?

Ans. Palermo.

Ques. Did you know Charles Myers in his lifetime?

20

Ans. Yes, sir.

Ques. How long had you known him?

Ans. In 1885 I became acquainted with him.

Ques. Well, how long was your acquaintance?

Ans. Well, I have been acquainted with him ever since.

Ques. Did you see him much during the last five years of his life?

Ans. No, sir; not very much.

Ques. Did you see him at all during the last years of his life?

30

Ans. Yes, sir.

Ques. Did you ever have any business with him?

Ans. No, sir; nothing more than he came to the store when I was there at Ocean City and bought meat.

Ques. What year were you in Ocean City?

Ans. 1885.

Ques. Twenty years ago?

Ans. Yes, sir.

Ques. Well, had you seen him towards the latter days?

Ans. Yes, sir.

Ans. When I was at Ocean City. I was in the store business for three years, about, about six or seven years ago I was keeping store at Ocean City for three years.

Ques. Well, you had seen him during the years 1895 to 1897 in Ocean City?

Ans. Yes, sir; I saw him, often saw him, but not to have any conversation with him of any account.

Ques. Did you ever have any opportunity to observe  
10 his condition.

Ans. Yes, sir.

Ques. Did you ever see him so drunk that he didn't know what he was doing?

Ans. I never saw him take a drink of liquor, nor never saw him drunk.

20

### NO CROSS-EXAMINATION.

NACHMAN DIAMENT, sworn for defendant.

### DIRECT EXAMINATION.

By Mr. Boyle:

Ques. Did you know Mr. Myers in his lifetime?

30 Ans. Yes, sir.

Ques. Did you know him between the years 1895 and 1897?

Ans. I don't know exactly the years, but about a year and a half before he died.

Ques. You knew him then, did you?

Ans. Yes, sir.

Ques. Did you meet him often?

Ans. Yes, sir.

Ques. Did you ever have any business with him?

Ans. Yes, sir.

Ques. What kind of business?

Ans. I leased some lots from him where I have a lumber yard there.

Ques. Where?

Ans. Ocean City. I had a lumber yard on his place, and he bought some lumber.

Ques. Well, how often about would you see him during those years? 10

Ans. Very often?

Ques. Did you ever have an opportunity to observe his condition?

Ans. Yes, sir.

Ques. Was he a drunkard?

Ans. I couldn't say that.

Ques. Did you ever see him so much under the influence of liquor he could not do business?

Ans. Well, I can't say that.

Ques. Well, did you ever see him, I say? 20

Ans. Whenever I seen him he was always bright and sober.

Ques. He was what?

Ans. He was always bright when I done business with him.

Ques. Was he a man of intelligence?

Ans. Yes, sir.

#### CROSS-EXAMINATION.

By Mr. Wescott: 30

Ques. Did you know him down to the time of his death?

Ans. Yes, sir; two days before he died.

Ques. Did you frequently see him? I believe you stated you did?

Ans. The last day I seen him was Friday.

Ques. How?

Ans. What I can remember to my knowledge, that I saw him Friday before he died.

Ques. You frequently saw him for a year or so before he died?

Ans. Yes, sir.

Ques. Down to the time of his death?

Ans. Yes, sir.

Ques. Didn't you?

Ans. Yes, sir.

Ques. And was he a man in good health?

Ans. Up to his old age he was a—

10 Ques. No; down to the time of his death was he a man of good health?

Ans. Well, I couldn't say. I never examined his physical condition. I don't know whether he was very healthy.

Ques. You can tell by looking at me whether I am in good health, can't you?

Ans. Yes.

Ques. Well, you saw the man. He was a man in first rate health, wasn't he?

Ans. I guess so.

20 Ques. Down to the very time of his death?

Ans. To the last time; yes.

Ques. To the last time you saw him?

Ans. The last time I saw him, Friday before he died.

Ques. Friday before he died?

Ans. Yes, sir.

Ques. He was a man in good health down to that time?

Ans. Yes, sir.

Ques. Sure of that, are you?

Ans. Well, I don't know what he may be in the house.

30

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MARY T. RUSH, recalled for defendant.

DIRECT EXAMINATION.

By Mr. Boyle:

Ques. Mrs. Rush, did you place that signature M. T. Rush? (Will shown witness.)

Ans. That is my name; yes, sir.

Ques. To that will?

Ans. I did.

Mr. Wescott: When you say to that will what do you mean by that? You mean that paper, don't you?

The Court: Well, Mr. Boyle is not through.

Ques. Did you see your husband sign that night, Mrs. Rush?

Ans. Yes, sir; I think I did; but it has been ten years ago. 10

Ques. Well, have you a recollection now of the facts that occurred at the time that that will was signed?

Ans. Yes, sir; to some extent. I don't know that I recollect all of them, because I didn't charge my mind particularly with them.

Ques. Did you have an opportunity to observe the condition, as far as the mind, on that evening?

Ans. Yes, sir; I think he was all right.

Ques. Would you say he was in a condition to execute a will? 20

Ans. So far as I could judge.

Ques. You stayed there a part of the evening, did you not?

Ans. Yes, sir.

Ques. After the will had been executed?

Ans. Well, I don't say that I was there the 9th of April, because the paper to which I signed my name, I signed it in the winter time, as I testified in the evidence which I gave before Judge Douglass. 30

Ques. Now, you did give evidence, then, before Judge Douglass, did you not?

Ans. Oh, yes; I had to attend when they had the will probated. I was one of the witnesses.

Ques. You were one of the witnesses before Judge Douglass?

Ans. Yes, sir.

Ques. Before Judge Douglass at the time were the following answers made to the following questions indicated:

“Ques. Mrs. Rush, did you have any business transactions with the Squire outside of this one regular business with him?”

“Ans. At what time?”

“Ques. At any time?”

“Ans. Yes, sir.”

“Ques. Were you acquainted with his handwriting?”

10 “Ans. Yes, sir; I have quite a good deal of his manuscript.

“Ques. Will you look over that paper and see whose handwriting that is in? (Exhibit 1 shown witness.)

“Ans. That is his handwriting.

“Ques. All of it, the whole paper, excepting the signatures, I mean?”

“Ans. Yes, sir.”

Was that your testimony at the time, Mrs. Rush?

Ans. I am under the impression that it was, but I don't  
20 know. I have not committed that testimony to memory, nor have I held it in my mind, remembered every word just as it was said there.

Ques. Well, the testimony that was just read indicates that the will was shown to you and that you identified the signing. You remember that occurrence before Judge Douglass?

Ans. I think I did, but I would be willing to identify the handwriting now, if you wanted me to do it, so far as I could.

30 Ques. Well, did you not identify the handwriting, according to that testimony, before Judge Douglass when the will was shown to you by Mr. Howell?

Ans. I presume I did, but, Mr. Boyle, that evidence was accepted, and I don't understand quite why I have to verify it.

Ques. Now you see this paper, now can't you remember that that paper was shown to you by Mr. Dudley at the time of the hearing before Judge Douglass?

Ans. I think it was.

Ques. Well, I will give you a little time to refresh your memory. The testimony indicates that Mr. Dudley showed you that paper and asked you to identify it, and that you did?

Ans. I think so.

Ques. Well, are you acquainted or were you acquainted with Mr. Myers' handwriting during his lifetime?

Ans. Yes, sir.

Ques. Would you say the body of that will was in the handwriting of Mr. Myers? 10

Ans. It looks like his handwriting. I think it was.

Ques. Did you not testify before Judge Douglass that all except the signatures was in the handwriting of Mr. Myers?

Ans. I don't remember, because I cannot remember my testimony word for word; but I am under the impression that I did.

Ques. Well, do you say now that all excepting the signature is in the handwriting of Mr. Myers?

Ans. I think that is his handwriting, but I have not seen his handwriting for years. 20

Ques. You and Mr. Myers used to have in common some literary matters, did you not?

Ans. Yes, and I have his manuscript in my possession, but I have not looked at that manuscript for years.

Ques. You will not now say that you did not identify positively before Judge, will you, Mrs. Rush?

Ans. Pardon me. Will you read that again.

Ques. You will not now say that you did not identify that will as the handwriting of Mr. Myers before Judge Douglass? 30

Ans. No, sir; I can't say that I did not identify it, but I will say that I cannot remember my testimony word for word as you read it off of that paper.

Ques. Did you say at the time before Judge Douglass that you were not at Mr. Myers' house on the 9th of April, 1895?

Ans. I don't remember. I know I said in that testimony I was there in the winter time, and that when I signed that

paper, when I witnessed that will, that it was in the winter time.

Ques. Now, did you give the answers indicated to the following questions on the hearing before Judge Douglass:

“Ques. What did he state to you on the occasion  
“he signed this?

“Ans. That that was his will.

“Ques. Did he say it was his signature?

“Ans. Yes, sir.

10 “Ques. Declared that to be his signature?

“Ans. Yes, sir.

“Ques. Did he make any request to you to act as  
“witness?

“Ans. Yes, sir, he did.

“Ques. Who else were present?

“Ans. John Brower and my husband and Squire

“Myers. Those are all that I remember.

“Ques. All that you remember?

“Ans. Yes, sir.

20 “Ques. Do you remember about the date of that?

“Ans. It is two years ago, but I can't tell you  
“closer.”

Did you so testify before Judge Douglass in the hearing before the Orphans' Court?

Ans. I cannot answer that I testified that word for word, because I have not committed it to memory.

Ques. Just follow this up. This adds right on:

“Ques. Two years ago?

30 “Ans. Yes, in the winter time; I don't remember  
“the date.

Did you give those answers?

Ans. I am under the impression that I did.

Ques. “Ques. Do you recall where it occurred?

“Ans. Yes, sir.

“Ques. And the circumstances attending it?

“Ans. Yes, sir.

"Ques. What were they?"

"Ans. We went there to spend the evening, for my husband to play pinochle with Mr. Brower and the Squire. We entered the house into the sitting room, and then were called out into the dining room, where on an extension table the will was placed, and he requested us to sign, and we did.

"Ques. Did he request you to sign?"

"Ans. Yes.

"Ques. Who did he say that to?"

10

"Ans. All that were present.

"Ques. Who were they?"

"Ans. John Brower, my husband and myself."

Did you so testify before Judge Douglass, Mrs. Rush?

Ans. I can't answer that word for word. I am under the impression that that was my testimony, but you might read testimony to me that would vary some words that I would still think that perhaps it was mine. I don't remember it.

Ques. Now, before Judge Douglass did you also give this testimony: 20

"Ques. When you signed this paper here as a witness, what signatures were on as witnesses before?"

"Ans. John Brower signed first and Jerome signed and I signed.

"Ques. When John Brower signed who were present in the room?"

"Ans. All of us that I spoke of before, the Squire and all the rest, except Mary Davidson.

"Ques. When Jerome S. Rush, your husband, signed who was present in the room? 30

"Ans. All except Mary Davidson of the witnesses and Squire Myers.

"Ques. Who were present when you signed?"

"Ans. All except Mary Davidson, the witnesses and Squire Myers."

Did you so testify before Judge Douglass?

Ans. I can't say positively. The time is too remote.

Ques. I again call your attention to the fact that at the time before Judge Douglass you did not state in Court that you were not present at the time stated as the date of the will?

Ans. Well, I said that I could not remember the date; it was about two years ago, and that it was in the winter time.

#### CROSS-EXAMINATION.

10 By Mr. Wescott:

Ques. You told them then that the paper that you signed, whatever it was, you signed in the winter time?

Ans. Yes, sir.

Ques. And you did tell them that Mary Davidson was not there?

Ans. Well, I didn't see Mary Davidson. I don't remember anything about her.

20 Ques. Now, Mrs. Rush, when you speak of this will, do you thoroughly appreciate the language that you are using? Don't you mean rather that your name is on that paper—

Mr. Boyle: If your Honor please, I think that is a legal question. Both of us are permitted to say, one a will and the other a paper writing, and I don't think that that is a matter that the witness should testify to one way or the other. Therefore I object to it.

The Court: I suppose that that is the inquiry that we are trying to solve, the problem we are trying to solve now.

30 Mr. Wescott: I know. But the questions have been put to the witness in that shape, "This will," and she would say, "yes, yes."

The Court: I will allow the question.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal).

Ques. When you answered those questions did you have distinctly in your mind this paper as a will or a legal instrument, or a paper that bore your signature?

Ans. I was endeavoring to answer Mr. Boyle's question directly, was that my signature on that paper, and he said it was a will. I didn't say it was a will.

Ques. You didn't know what it was?

Ans. No, sir; not—I can't say now what it is, only just as I look at it, of course.

Ques. And did you know at the time that you signed the paper at Mr. Myers' house in the winter that it was a will, except as Mr. Myers said that it was his will? 10

Ans. That was all; yes, sir; he said it was his will.

Ques. When you speak of your being there together in the room have you distinctly in mind the separation of one room from another, or that you were there in the house together socially?

Ans. Well, we were in the two rooms. We were always talking back and forth. The gentlemen played cards in one room and we sat in the other. 20

Ques. You knew Mrs. Myers? You have already testified to that?

Ans. Yes, sir.

Ques. When you put your name to the paper in that house in the winter was Mrs. Myers likewise in the room at that time, or in either room?

Ans. Yes, sir; she was present, but I don't know which room she was in. I remember she went in and out, but I don't know where she was just when I put my name on the paper. I may have known at the time, but I cannot recall 30 it now.

Ques. You have been led to say by counsel on the other side that the whole of that paper is in Mr. Charles Myers' handwriting?

Mr. Boyle: That is objected to, if your Honor please, as an improper sort of a question. It is improperly framed.

The Court: You might strike out the word "led"—

"You have stated."

Ques. Very well; you have stated. Now did you examine every word in that paper to see whether it was in Charles Myers' handwriting?

Ans. Oh, no.

Ques. You were just looking at it?

Ans. Yes, sir.

Ques. Just giving it a general glance?

Ans. Yes, sir.

10 Ques. Because it looked like his handwriting you were led to say it was his handwriting?

Mr. Boyle: I object to the word "led."

The Court: Let her answer.

Ans. Yes, sir; it looks like his handwriting to me.

Ques. Now, I call your attention particularly to the word "April" in the end of that will; I want you to look at it. Look at it carefully and compare it with other surrounding words, and tell me whether from your knowledge of  
20 'Squire Myers' handwriting and what you see there with your own eyes now, that that word "April" was written by him?

Ans. I cannot identify that as his handwriting.

Ques. How are you able to state that the paper that you signed, which he said was his will, you signed in his house in the winter? What enables you to state that?

Ans. Well, it was a very cold, stormy night, and as we were going home and going around the corner, it was icy,  
30 and my husband fell down; and I said, "Why, the will has had a bad effect on you." He was very sure-footed and, I must confess, perhaps reluctantly, that I was a little amused when he fell, because I am the faller.

Ques. You thought he was in danger of your falling on him, maybe?

Ans. Possibly.

Ques. Was there ice on the pavement, on the ground?

Ans. Yes; that was why he fell. He slipped and fell.

Ques. Do you remember how you were dressed when you left the house that night?

Ans. Well, Mrs. Myers loaned me a shawl to wrap around me, and I remember the night as being—it was one of those sleety, stinging nights when the sleet pierces you like needles; and I wrapped up my face with my shawl and took hold of my husband's arm and was going home without seeing very much, to protect my face and eyes from the storm.

Ques. And I understand that you stated before Judge 10 Douglass years ago when you were called upon to identify your handwriting there, that the paper that you were testifying about was written in the winter?

Ans. I don't know when it was written.

Ques. Well, but you stated then that you put your signature on it in the winter?

Ans. Yes, sir; I did.

Ques. Do you recall the appearance or shape or form of the paper that you put your signature to?

Ans. Oh, no, sir; only that it was folded down once. 20

Ques. Showing you the paper marked Exhibit P 1, folded, I ask you if it was similar to that; if it was folded similar to that?

Ans. Yes; but it was not near as deep a fold as that. The fold was not near as deep. It was folded in that manner (illustrating.)

Ques. Folded once?

Ans. Folded once, yes; and the reason I noticed it was because I suppose there was handwriting under that, although I didn't know at the time, and he was doing it as he 30 naturally would, so that the witness would not know anything that was there.

Ques. What was on that paper when you signed it?

Ans. There was nothing on this part of it.

Ques. No attestation clause?

Mr. Carrow: I object.

Mr. Boyle: It is a leading question.

The Court: Yes.

Mr. Wescott: She is under cross-examination.

The Court: Well, I think you had better avoid possibly objections as to form.

Ques. What was there on the paper, any writing, when you signed it?

Ans. Well, there was the 'Squire's name, C. Myers, as he always wrote it, and then quite a space down the paper, and John Brower had signed, and then my husband had signed and then I signed, and I don't remember that there was anything else on the paper.

10 Ques. Do you remember whether his name was written out Charles, or whether it was C. Myers?

Ans. No; it was C. Myers.

Ques. You thing it was, eh?

Ans. Yes, sir; I think it was C. Myers. I am sure it was C. Myers.

Ques. Were you in the house in the month of April at  
20 all?

Ans. I don't remember. I may have been there, but I have nothing to associate that particular month in my mind, that I called there.

#### REDIRECT EXAMINATION.

By Mr. Boyle:

Ques. Did you call attention to the fact at the other hearing that there was nothing on the paper when you  
30 signed it?

(Objected to as not cross-examination. Objection overruled.)

Ans. The question was not asked me and I could not volunteer the evidence.

Ques. That is your only reason for saying that you did not say anything about it?

Ans. I suppose that was my only reason. I was afraid of my life the first time I went into Court.

Ques. Mr. Dudley had examined you before, hadn't he, on the stand?

Ans. Yes, sir.

Ques. Hadn't he spoken to you about the matter before you went on the stand?

Ans. Before I went on the stand?

Ques. Yes.

Ans. I never laid eyes on Mr. Dudley.

Ques. You saw him in Court, though?

Ans. Only the day I went there. I didn't know who he 10 was until he came to examine me.

Ques. And you knew at the time that you were signing a will, didn't you, in 'Squire Myers' office?

Ans. I supposed it was, from what 'Squire Myers said.

Ques. From what he said?

Ans. Yes, sir.

Ques. You didn't give any particular attention to that paper, did you, Mrs. Rush?

Ans. Well, yes; we were kind of amused by signing it because we said the 'Squire was not going to let us know 20 what was in his will; he had it folded so we couldn't see the writing, if there was any, which was perfectly right and proper.

Ques. Will you say that this is not the paper that you signed?

Ans. Well, if that paper was executed on the 9th of April—

Ques. Well, you know your signature?

Mr. Wescott: Well, let her answer the question. 30

(Question repeated.)

Ans. No; I will not say that.

Ques. Do you mean that when the paper was signed it was folded just that way (illustrating)?

Ans. No, sir; it was not folded that way.

Ques. Isn't this a sheet of legal paper, legal cap paper?

Ans. I guess so.

Ques. The 'Squire showed you his signature, did he not?

Ans. May I show you how it was folded?

Ques. Yes.

(Witness illustrates.)

Ans. And there was his name and down here we signed.

Ques. And that is how he signed his name?

Ans. Yes, sir.

#### RE-CROSS EXAMINATION.

10 By Mr. Wescott:

Ques. And there was no writing on the paper except those signatures?

Mr. Carrow: That is objected to, because it has been asked several times.

The Court: I think she has answered that.

Ques. Now, Mrs. Rush, you were going to say something when Mr. Boyle interrupted you, that if that is the  
20 paper that was executed on the 9th of April it was not the paper. You were going to say something; was that so?

Ans. I was going to say that if that paper was executed on the 9th of April I didn't see how my signature could be on it, because my name was written on there in the winter time.

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JAMES K. MOREY, sworn for defendant.

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#### DIRECT EXAMINATION.

By Mr. Carrow:

Ques. Where do you live, Mr. Morey?

Ans. Ocean City, N. J.

Ques. What is your age?

Ans. My age is fifty-nine years old.

Ques. How long have you resided in Ocean City?

Ans. Twenty-three years last April.

Ques. What is your business or occupation?

Ans. I am a carpenter by trade.

Ques. Have you carried on that business in Ocean City during the time that you have lived there?

Ans. Not on my own responsibility. I have generally worked as a journeyman for someone else.

Ques. Did you know Charles Myers?

Ans. I did.

Ques. How long were you acquainted with him?

Ans. I think about, probably, sixteen or eighteen years; 10 I don't know exactly. I was a tenant in his house eighteen years.

Ques. How near did you live to him? How near was your house to his home?

Ans. Just across the street.

Ques. How often did you see Mr. Myers?

Ans. I saw Mr. Myers very often.

Ques. And did you have dealings with him, did you?

Ans. I transacted business from paying him my rent and sometimes I done some jobbing for him. 20

Ques. Well, now, independent of the business transactions, did you meet him socially? Did you talk to him in a social way as a neighbor?

Ans. Yes, sir.

Ques. What type of man was he with regard to his mentality, his brain?

Ans. Well, I always found him, as far as I had any experience with him, a sound business man.

Ques. Down to the time of his death? 30

Ans. Yes, sir.

Ques. Now, with regard to his habits, was he a sober man, or was he a drinking man?

Ans. I judged he was a sober man. I never saw him drunk.

Ques. You never saw him drunk?

Ans. No, sir: always capable of doing business whenever I met him.

Ques. Was he a man of feeble will power or strong will power?

Ans. No, sir; I contend he was a strong will-powered man.

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NO CROSS-EXAMINATION.

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10

WILLIAM BRIDGEWATER, sworn for defendant.

DIRECT EXAMINATION.

By Mr. Carrow:

Ques. Where do you reside?

Ans. Ocean City, sir.

20 Ques. And what is your age?

Ans. Seventy-six next birthday.

Ques. How long have you resided in Ocean City?

Ans. I have been a resident of Ocean City about twelve years, fully, living there all the time.

Ques. Did you live there part of the time before that?

Ans. I was there from 1880.

Ques. How much of the time did you live?

Ans. About half the time, backwards and forwards.

Ques. About half the time since 1880?

30 Ans. Yes, sir.

Ques. And what is your business?

Ans. I am in the real estate business.

Ques. Did you know Charles Myers?

Ans. I knowed him very well. I knowed him very intimately.

Ques. How many years did you know him?

Ans. From the time he came to Ocean City first, about 1883 or 1882.

Ques. Did you have dealings with him?

Ans. Well, I tried to have dealings with him sometimes in the real estate, but we never could agree. He was too smart for me.

Ques. Now, did you see him in a social way frequently?

Ans. Yes, sir.

Ques. How often?

Ans. He was in my office frequently.

Ques. How often would you say?

Ans. Sometimes every day.

10

Ques. Down to the time of his death?

Ans. Down to the time of his death; I seen him very regularly.

Ques. What type of a man was Mr. Myers in regard to mentality?

Ans. He was a very strong-minded man, and you couldn't turn him if he took a notion with him; he would have his own way.

Ques. Now, with regard to his habits, was he a sober man or was he a drunken man?

20

Ans. I have never seen that man drunk in my life in the twenty-five years I went there.

Ques. He was not rum-dumb as some of the witnesses say?

Ans. No, sir; he was as smart as I am to-day.

Ques. Did you ever see him rum-dumb, as some of his children have tried to say?

Ans. No, sir; never seen him anything of the kind. He was a shrewd business man.

30

#### CROSS-EXAMINATION.

By Mr. Jefferson:

Ques. Did you ever call at Mr. Myers' house, socially?

Ans. Many a time.

Ques. Did you ever have a drink with him?

Ans. Not in his house I never did. I am not no drunkard.

Ques. Did you go to Sea Isle with him?

Ans. Never.

Ques. You didn't see him when he was on his trip to Sea Isle?

Ans. No; I don't go to Sea Isle. It is not a place for any decent man to go, I think.

Ques. Do you say that he had a strong will?

Ans. Yes, sir.

Ques. How strong was it?

10 Ans. He was that strong-willed that you could not do any business unless he would have his own way.

Ques. Whether it was reasonable or unreasonable?

Ans. Well, I don't know about unreasonable, but he wanted a good bargain if he had anything to do with you.

Ques. Well, he was a good smart business man then?

Ans. He was.

Ques. Able to take care of himself?

Ans. Yes, sir.

20

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HENRY Y. CLOUTING, sworn for defendant.

DIRECT EXAMINATION.

By Mr. Carrow:

Ques. Where do you reside, Mr. Clouting?

Ans. Beasley's Point, N. J.

30 Ques. What is your age?

Ans. Thirty-nine.

Ques. How long have you resided at Beasley's Point?

Ans. Twenty years.

Ques. Did you ever live in Ocean City?

Ans. No, sir.

Ques. Did you know Charles Myers?

Ans. Yes, sir.

Ques. How long did you know him?

Ans. I knew Charles Myers about fifteen years, I judge.

Ques. How often did you see him?

Ans. Well, sometimes I saw him three times a week. That was during the summer. I was a farmer and I sold him produce.

Ques. Did you take the produce to his house?

Ans. Yes, sir.

Ques. And how often did you see him?

Ans. Well, I would see him very nearly every time, as he would be the man that would pay me.

Ques. Was he the man that did the business?

Ans. Yes.

10

Ques. Did the buying?

Ans. If they wanted anything he was the man that paid the bill.

Ques. Now, what kind of a man was he as regards his mentality?

Ans. Why, I was impressed very much with him as being a bright man. I met him several times, not only that way, but at other places—met him on the train.

Ques. He was a bright, intelligent man, was he?

Ans. Yes; I met him at Mr. Hickey's.

20

Ques. Was he a strong-minded man or a weak-minded man?

Ans. Very strong, I should judge.

Ques. And that down to his death? Did that condition of mind continue down to his death?

Ans. Why, the last time I saw him I didn't see any, I didn't see any difference in him.

Ques. Now, in regard to his habits, Mr. Clouting, was he ever rum-dumb, as some of his children have said here, 30 or was he a sober, respectable and responsible citizen?

Ans. I think he was a very respectable citizen. That is my judgment of him.

Ques. Well, was he rum-dumb?

Ans. No, sir.

Ques. Did you ever see him rum-dumb?

Ans. No, sir. I think I took a glass of beer with Mr. Myers once, with Mr. Hickey; but that is not necessary that a man should be rum-dumb if he takes a glass of beer.

Ques. Did you see him under the influence of liquor?

Ans. No, sir.

Ques. You heard some of the children say that he was rum-dumb?

Ans. I heard it; yes.

Ques. You say that is true?

The Court: No. You need not answer that.

Ans. No, sir; I am not going to say that. I am going  
 10 to say that I never saw him in a drunken condition or in  
 any way incapacitated from doing business from drinking,  
 in my judgment.

#### CROSS-EXAMINATION.

By Mr. Jefferson:

Ques. What is your business, Mr. Clouting?

Ans. Well, I am a farmer.

20 Ques. And you went over to Ocean City to sell your  
 produce?

Ans. Why, yes.

Ques. What time of the day did you usually go?

Ans. Well, any time I felt like it.

Ques. Well, what was your usual time to go?

Ans. Sometimes I went in the afternoon.

Ques. Didn't you generally go in the morning?

Ans. No, sir; not necessarily.

30 Ques. And when you would be selling to your customers  
 wouldn't it be in the morning, as a rule?

Ans. Sometimes.

Ques. And when you saw Mr. Myers it was in the  
 morning?

Ans. No; I didn't say so.

Ques. Well, did you or did you not see him in the morn-  
 ing?

Ans. Whenever I happened to get around to his house.

Ques. What did you go there for?

Ans. To sell produce.

Ques. Anything else?

Ans. No, sir; not at that time, when I was selling produce.

Ques. If you would get thirsty over in Ocean City would you go to see him?

Ans. Oh, no; not necessarily.

Ques. You did sometimes?

Ans. No, sir.

10

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JOSEPH SCULL, sworn for defendant.

DIRECT EXAMINATION.

By Mr. Carrow:

Ques. Where do you reside, Mr. Scull?

Ans. Ocean City.

Ques. How long have you been a resident of Ocean City? 20

Ans. I have been a resident of Ocean City since 1896.

Ques. And where did you reside before 1896?

Ans. Sea Isle City.

Ques. How long were you there?

Ans. I was there about six or seven years.

Ques. Did you know Charles Myers?

Ans. I did.

Ques. How long did you know him?

Ans. Well, I knew him about 1894, I think—1893 or 1894—down to the time he died. 30

Ques. Did you ever have any business with him?

Ans. I have.

Ques. Did you see him often or seldom?

Ans. Well, I saw him quite often.

Ques. About how often?

Ans. Well, after I moved to Ocean City I saw him pretty near every day.

Ques. What type of man was Mr. Myers with regard to mentality?

Ans. In my business relations with him I always thought he was capable of doing business.

Ques. Would you say he was a strong-minded, sensible man?

Ans. Yes, sir.

Ques. Or a weak-minded, foolish man?

Ans. I thought he understood his business all right.

10 Ques. Now, with regard to his habits, was he a rum-dumb man or was he a sober, respectable citizen?

Ans. I never saw him drunk.

Ques. Did you ever see him under the influence of liquor?

Ans. Never did; no.

#### CROSS-EXAMINATION.

By Mr. Wescott:

Ques. How did he look the last year of his life? Just describe his complexion?

20 Ans. I most forget about that.

Ques. A red face?

Ans. Not particularly.

Ques. A red nose?

Ans. No; I don't think he had a rum nose.

Ques. Bloated eyes?

Ans. Well, I forget about that; couldn't say.

Ques. Of course he had a strong, vigorous step right down to the day of his death?

30 Ans. Well, I don't know so much about that; I couldn't say. I forget about that.

Ques. Wasn't he a man of tremendous physical energy down to the time of his death?

Ans. Oh, he was around; he was around all the time.

Ques. Moving around like a strong, healthy man, wasn't he?

Ans. I think so.

Ques. Do you know how old he was?

Ans. No, sir.

Ques. A man of good business capacity, wasn't he?

Ans. He was quite anxious to sell property.

Ques. Oh, that is not it. You had enough experience with him to determine whether he was a man of good business capacity?

Ans. Yes, sir; I think so.

Ques. And retained his faculties down to the day of his death?

Ans. I think so. 10

Ques. Now, what makes you think so?

Ans. Well, I was there and had business dealings with him.

Ques. When did he die?

Ans. I don't remember the date.

Ques. What was the last business dealings you had with him; how long before he died?

Ans. Well, I used to pay him interest on some mortgages. I bought property of him, and I think in December, <sup>20</sup> and I think he died shortly after that.

Ques. Where did you pay him the money?

Ans. I really don't know.

Ques. Did he come after it or you go take it to him?

Ans. I really don't remember whether I mailed a check to him or whether I took it to the house. I couldn't tell.

Ques. You took it to him sometimes, didn't you?

Ans. Yes, sir. 30

Ques. You remember taking it to him at the house?

Ans. Yes, sir.

Ques. Where was he when you found him at the house?

Ans. I was in his house. He had an office there.

Ques. Where was he in his house?

Ans. That, I don't remember, about that.

Ques. Was he lying down or sitting?

Ans. I don't remember.

Ques. You don't remember how he looked anyhow or how he acted; whether he was feeble or broken down?

Ans. I couldn't tell.

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Recess to 1.30 P. M.

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10 Trial of the cause resumed at 1.30 P. M.

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LEWIS M. CRESSE, sworn for defendant.

DIRECT EXAMINATION.

By Mr. Carrow:

Ques. Where do you reside, Senator?

20 Ans. Ocean City, N. J.

Ques. Are you the present State Senator from this county?

Ans. Present State Senator; yes, sir.

Ques. How long have you lived in Ocean City?

Ans. About ten years.

Ques. Where did you live before that?

Ans. Atlantic City.

30 Ques. What is your business?

Ans. What is my business now?

Ques. Yes; what was your business ten years ago?

Ans. I was agent of the Central Trust Company's branch in Ocean City.

Ques. You were cashier of the bank there at that time, were you?

Ans. Well, substantially that. The correct title was agent. My duties were more as cashier.

Ques. Are you connected with any banking institution now?

Ans. President of the First National Bank of Ocean City.

Ques. How long have you been president of that institution?

Ans. Since its organization; about four years.

Ques. What aged man are you, Senator?

Ans. Thirty-nine.

10

Ques. Did you know Charles Myers?

Ans. I did.

Ques. How long were you acquainted with him?

Ans. From 1896 about to the time of his death. I don't know just when he died—four years, I think.

Ques. You didn't know him before 1896?

Ans. I knew him slightly. I was not intimately acquainted with him.

Ques. How long have you been acquainted with him prior to 1896?

Ans. A very slight acquaintance, I should say, had existed between us for four or five years prior to that.

Ques. Well, did you see him in that time, that four or five years?

Ans. Yes, sir.

Ques. Did you see him frequently?

Ans. Not frequently; no.

Ques. Or only occasionally?

Ans. Occasionally.

30

Ques. Did you have any business dealings with him?

Ans. No; not prior to 1896.

Ques. Did you see him frequently in 1896?

Ans. Yes, sir.

Ques. How often do you suppose you saw him?

Ans. I should say it would average once a day, perhaps.

Ques. Did you have business dealings with him?

Ans. After 1896; yes.

Ques. What was the nature of the business—I don't mean the particulars, but in a general way what was the nature of the business?

Ans. Why, the only business relations we had were those existing between an officer of a bank and a depositor. He was a depositor in the bank that I was agent of.

Ques. Now, Senator, with regard to Mr. Myers' mentality, what did you observe?

Ans. Why, I didn't observe anything out of the usual. He seemed to be a man of ordinary faculties, perhaps a little more than ordinary business ability. He seemed to be a thorough business man, so far as I could observe through his transactions in the bank.

Ques. Did he appear to be a strong-minded man or a feeble-minded man?

Ans. Seemed to be ordinarily strong-minded, at least.

Ques. Now, with regard to his habits, was he a sober man or a drunken man?

Ans. I never saw him when he was drunk.

20 Ques. He was a sober man, was he?

Ans. So far as I observed; yes.

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#### NO CROSS-EXAMINATION.

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RICHARD B. STITES, sworn for defendant.

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#### DIRECT EXAMINATION.

By Mr. Carrow:

Ques. Where do you reside, Mr. Stites?

Ans. Ocean City.

Ques. How long have you resided there?

Ans. Since the fall of 1880.

Ques. What is your age?

Ans. Fifty-one.

Ques. What is your business?

Ans. I have no business at present. I sold my business.

Ques. What was your business?

Ans. Lumber.

Ques. Where did you carry on business?

Ans. Ocean City.

Ques. Did you carry on business for yourself?

Ans. Yes, sir.

Ques. What was the name of the concern?

Ans. R. B. Stites & Company.

10

Ques. Did you know Charles Myers?

Ans. Yes, sir.

Ques. How long did you know him?

Ans. Well, I got acquainted with him a short time after he moved to Ocean City, which I don't know just when that was, up to the time of his death.

Ques. Did you ever have any business dealings with him?

Ans. Yes, sir.

Ques. Considerable or only small business dealings?

Ans. Well, I don't just know the amount, but I think 20 some few hundred dollars.

Ques. Did you see him often?

Ans. Yes, sir; very frequently.

Ques. About how often?

Ans. Well, just as you would meet any one in a town like Ocean City, casually on the street, probably two or three times; some days probably once a day; sometimes two or three days wouldn't see him, probably.

Ques. With regard to his mentality, what type of man was he, Mr. Stites?

30

Ans. Well, I would call him a sharp, shrewd, business man, as far as my knowledge goes with him.

Ques. Did his mind continue in health down to the time of his death?

Ans. As far as I know.

Ques. Was he a strong-minded man or was he a feeble-minded man?

Ans. Strong-minded.

Ques. With regard to his habits, was he a sober man or was he a man given to intoxication, drunkenness?

Ans. I never saw him under the influence of liquor to my knowledge.

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NO CROSS-EXAMINATION.

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10

FRANK CHAMPION, sworn for defendant.

DIRECT EXAMINATION.

By Mr. Carrow:

Ques. Where do you reside, Mr. Champion?

Ans. Ocean City.

Ques. What is your business?

20 Ans. I am at present in the postal card and photographic supplies.

Ques. What was your business before that?

Ans. I was in the coal and wood business, ice business and milk business.

Ques. For yourself?

Ans. Yes, sir.

Ques. How long have you resided in Ocean City?

Ans. Since 1880.

Ques. What aged man are you?

30 Ans. Forty-eight.

Ques. Did you know Charles Myers?

Ans. Yes, sir.

Ques. How long did you know him?

Ans. I knew him from the time he moved there first. I don't know what date that was. I sold him the first quart of milk he ever bought in Ocean City.

Ques. Did you have dealings with him?

Ans. Yes, sir.

Ques. Considerable dealings or only small?

Ans. Well, I sold him whatever I handled in my line. He always dealt with me in milk, coal, ice and wood.

Ques. Did that continue down to the time of his death?

Ans. Well, no sir; because I went out, sold out the business before his death.

Ques. Did you see him frequently or only occasionally down to the time of his death?

Ans. Well, I saw him frequently, I suppose you would call it. I saw him sometimes two or three times a day and some days wouldn't see him but once; some days wouldn't see him at all, naturally.

Ques. What type of man was he with regard to his mentality?

Ans. Well, I always considered him one of the shrewdest business men in Ocean City, in all the dealings I ever had with him.

Ques. What was his business?

Ans. Well, he didn't seem to have any particular business there.

Ques. He was a Justice of the Peace, was he not?

Ans. Well, yes.

Ques. In the real estate business, too?

Ans. Well, yes; he handled quite a little real estate in Ocean City and had some properties that he rented.

Ques. Was he a Justice of the Peace at the time of his death?

Ans. Yes, sir.

Ques. And had been for some time?

Ans. Yes, sir.

Ques. Now, with regards to his habits, Mr. Champion, can you say whether he was a rum-dumb drinking man, or whether he was a sober man?

Ans. I never saw him under the influence of liquor, to the best of my knowledge.

## NO CROSS-EXAMINATION.

LINNAEUS TOWNSEND, sworn for defendant.

## DIRECT EXAMINATION.

By Mr. Carrow :

10 Ques. Where do you reside, Mr. Townsend?

Ans. Palermo, N. J.

Ques. How far is that from Ocean City?

Ans. About seven and a quarter miles, I guess.

Ques. How long have you resided there?

Ans. About four years, I guess, the last time; between four and five years, I think.

Ques. What aged man are you?

Ans. Thirty-eight.

Ques. What business are you in?

20 Ans. Raising poultry and farming.

Ques. Did you know Charles Myers?

Ans. Yes, sir.

Ques. How long were you acquainted with him?

Ans. Since 1885.

Ques. How often did you see him?

Ans. Well, some days I seen him two or three times; sometimes wouldn't see him for a week or a month.

Ques. Did you have dealings with him?

Ans. Yes, sir.

30 Ques. What kind?

Ans. Sold him vegetables and meat, and so on; poultry.

Ques. Did he do the buying for the house?

Ans. Most always. I guess all the time; in fact, I have sold his wife some few things, but that was a rare thing. He was most always there and done the buying himself.

Ques. Did he pay you for the things?

Ans. Paid me.

Ques. Did that continue down to the time of his death?

Ans. Well, last December I didn't sell anything, I don't think. I might. I don't just remember about that.

Ques. What kind of a man was he so far as his mind was concerned?

Ans. Well, a strong-minded man, I suppose, as there was about, as far as I could say about him.

Ques. Was he an intelligent man or a man of dull mind?

Ans. Yes, sir; intelligent as far as I could see.

Ques. With regards to his habits, was he a sober man or a drinking man? 10

Ans. I never seen him drunk in my life or any ways out of the way.

Ques. What is that?

Ans. I never seen him drunk any way out of the way, as far as drunkenness or anything of that kind; never seen him take a drink.

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NO CROSS-EXAMINATION.

20

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BOTH SIDES REST.

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Mr. Wescott: I want to offer in evidence this diagram that we had here the other day. I had forgotten it until Mr. Jefferson called my attention to it. 30

(Paper admitted in evidence and marked Exhibit P 3.)

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MOTION FOR NON-SUIT.

Mr. Carrow: I desire to move now that the plaintiff be non-suited, upon the ground that there is no evidence to justify the submission of any question of fact to the jury.

The proof has utterly failed to make out even a prima facie case of undue influence, of testamentary incapacity or of irregularity in the execution of the will. Our position is that now at the close of all the evidence, there is no proof in the case to justify the submission of any fact to the jury. It is unnecessary to say to your Honor, who was an Orphans' Court Judge for a number of years in an adjoining county, where you probably had quite a number  
10 of will contests, and as an experienced practitioner at the bar for so many years before you became an Orphans' Court Judge, that when a will has been admitted to probate by decree of the Orphans' Court and there has been no appeal from the probate, no interference with the due and solemn probate of that will in the Orphans' Court, which Court has full and almost exclusive, indeed, exclusive jurisdiction of the proof of wills, that as a matter of law that  
20 condition of things carries such a strong presumption in regard to the validity of the will and with regard to its due and statutory execution, that that proof cannot be overcome, that judicial record cannot be overcome by parol testimony, unless the parol testimony amounts to a demonstration tending to impeach the validity of the will. I am using the term "will" now in its most general signification. All of our cases in this State and in this country hold that the proof when it is made on an attack upon a will that has  
30 been admitted to probate—the cases, I say, hold that the proof, before it will be received in an action trying to unsettle title in ejectment proceedings, the proof must amount to a demonstration of either testamentary incapacity, undue influence or of irregularity in the execution of the instrument.

Now, is there any proof here at all before your Honor upon the first proposition? We are looking at it now

from a judicial standpoint. Is there any proof in this case tending to create the impression that the testator was of such feeble mind as to be incapable of making a will at the time this paper was executed? There is no such proof. The proof, upon the contrary, that was submitted by the plaintiff in this case, I think from the witness Rush himself, from the witness Brower, who were the attesting witnesses to the will, is that he was sober, he was intelligent, and there was no question, one witness said, about Mr. 10 Myers' ability to make a will. Indeed, the very evening that the subscribing witnesses were at his house they sat down and played pinochle together. That is the proof as we have it from the witnesses of the plaintiff. I say all that proof tends to exclude the hypothesis that there was any incapacity upon the part of this testator which would create the impression in law that he was unable to make a will.

Now, as to the regularity of the execution of the instrument. We have here a will drawn by the testator himself—<sup>20</sup>an unusual circumstance—a very skilfully prepared instrument, drawn with as much care evidently, with as much knowledge of the requirements in the preparation of such an instrument, as you could possibly imagine. We find an attestation clause in that will in the handwriting also of the testator who wrote the main body of the instrument. We find also four subscribing witnesses to the will. We have <sup>30</sup>also the very remarkable fact that this will within a short time, within a few months after the testator's death, was admitted to probate in the Orphans' Court of this county; and I desire now to read to your Honor the decree of probate. (Reads.)

Now, there is a decree of a Court adjudging that this will was executed according to the statutes of this State. I

respectfully submit there is no proof in this case tending to impeach the regularity of the execution of this instrument, no proof whatever. So far as an attempt was made by one of the witnesses to show where the parties were at the time the will was executed, but upon cross-examination I asked this witness if she had not stated in the Orphans' Court when this will was up for probate that all the persons, the witnesses, were in the presence of each other and the pres-  
10 ence of the testator, and all the things that she testified to there, and she said she did so testify and she said that was the truth. Nothing has been said by the Rush witnesses to in any wise impeach the proof as to regularity of this instrument, as to the execution of this instrument.

Now, with regard to the last proposition, undue influence. What is and what is not undue influence has been defined by a great many Judges in a great many States. But the undue influence, as your Honor well knows, under the law  
21 of New Jersey, must have been so strong as to have caused, been the moving cause for the making of the will that is in question. Now, is there any proof in this case at all tending to show undue influence upon the part of anybody, undue influence exerted upon this testator by anybody? Now, let us see. Certainly nobody has said that there was any undue influence upon the part of this legatee, so that is eliminated. But it is claimed that there was undue in-  
30 fluence upon the part of the testator's wife, the stepmother of children by former marriages. Now, let us see whether or not there was the slightest undue influence. They submitted proof here by Mary DeRoche and by other witnesses that this stepmother was hostile to Mary and to Jennie; but the proof is absolutely silent as to any hostility upon the part of the widow, upon the part of the wife of the testator, toward John Myers, the plaintiff in this case. Not

a witness has said, not a circumstance has been developed which can by any judicial construction be construed into establishing that Sallie G. Myers, the wife of the testator, ever expressed any hostility, by word or act, against this plaintiff. There is only one plaintiff in this case, and that plaintiff is John Myers. Mary DeRoche is not the plaintiff, Jennie Wilson is not the plaintiff, James is not the plaintiff. The only plaintiff here is John Myers. Now then, there is no proof in the case, I again assert, tending <sup>10</sup> to show that the widow ever uttered a single word in her lifetime against John Myers. Suppose she had been absolutely hostile against every other child of the testator by any previous marriage; can it therefore, in the absence of proof, be assumed that she was also hostile to John? Their own proof, if your Honor please, shows that there was no hostility on the part of Sallie G. Myers toward John; and if there had been, their own proof shows that it never had <sup>20</sup> any influence upon the father. Upon the very contrary, their proof shows that the very year before the father died John was at his home as a visitor, as a son, on terms of affection and interest, and that the father then spoke to John about what he intended, what his desire was to do for John and what he intended to do for him. Now, does that show that there was any hostility, so far as the wife was concerned, against John? If there had been any evidence of hostility on her part toward John, does it appear <sup>30</sup> to have made any impression upon the mind of the testator? None whatever; none whatever. Not an expression of opposition upon the part of the widow to John; not an indication upon the part of the testator himself of any lack of interest for John. Upon the contrary, the plaintiff proved himself in this very case wherein it is asserted that undue influence was exerted so as to exclude John from

the estate; that John was on the warmest kind of terms with his father; so warm that a short time before he died, I think the year before he died, he intended or expected to do something for John. I do not doubt but what that is the truth; I think it was absolutely true. John did not say that the widow ever said anything against him; John did not say that the widow ever acted as though she was against him; John did not say that anybody ever made any  
10 impression upon the mind of his father; that anybody had set his father against him.

Now, let us go a step further. If the Court please, it makes no difference if Sallie G. Myers had said things against John, had tried to set the testator against John, unless Sallie G. Myers had something to do with the making of that will—that is the thing—with the making of that will. For it might have been the ordinary talk that  
20 members of families sometimes have against one another. It must have had something to do with the preparation and execution of the will. Now is there anything in the case, is there a scintilla of evidence in this case tending to show that Sallie G. Myers knew anything about the contents of the will before it was executed, that she had anything to do with bringing about the preparation and execution of the will? There is no such proof in this case. But what is the proof? Mrs. Rush, a favorable witness to the  
30 other side, said in her testimony yesterday afternoon—and I took particular note, too, of what she said—she said, “The old man has made his will and I am bound to find out what is in it.” That is their proof, that after the will was made by the testator and carefully placed away, that Mrs. Myers did not know what was in the will. That is their proof. What does that show? Why, that shows that she was not a party to the making of the will; she had

nothing to do with it; she did not know its contents; and yet without any knowledge as to the contents of the instrument, this jury is asked to say that Sallie G. Myers influenced the preparation and execution of that instrument, an instrument of the contents of which she had no knowledge. They not only have to prove undue influence, but they have to prove that the will was the will of the person exerting that influence. We have the remarkable situation of Mrs. Rush saying she was bound to find out what was <sup>10</sup> in it. If we had not that piece of testimony in the case, where is there any proof now which will enable this jury to say that Sallie Myers knew what was in the will? There is no such proof.

Now then, Sallie Myers, according to their proof, when she discovered the contents of the will, was dissatisfied with its provisions and made remarks indicating a dissatisfaction with it. Now, all of this proof that is in here with regard to what Sallie Myers did or what she said after <sup>20</sup> the execution of this instrument—because the whole thing is limited right down to whose will was that; was that the will of Charles Myers? If it was there is no power on earth to disturb it unless there is an absolute miscarriage of justice. If it was not Charles Myers' will, in order for the plaintiff to succeed in this case it must have been the will of Sallie G. Myers; and Sallie G. Myers must be connected directly with the preparation of that instrument. Now, in <sup>30</sup> most cases that I have examined on the subject—I had occasion in recent years to examine this question; I examined every will case that there was in this State upon the subject of undue influence, and in my brief in this case I have the cases. I do not know that I shall take the time to go over them. Of course, this reasoning was directed to the Orphans' Court or the Prerogative Court or Court of

Errors and Appeals; but that doesn't make any difference; law is law, and the law of wills is just the same here as this action of ejectment. The Courts in this State have uniformly sustained the will. I find in all the will cases but one or two cases where any will has been disturbed upon the ground of undue influence. I will not read those cases to your Honor, because they seem to apply more to the merits. My motion is that the plaintiff be non-suited.

<sup>10</sup> The Court: The motion will be refused.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

Mr. Carrow: I would like now to move that your Honor direct a verdict for the defendant for the same reasons that  
<sup>20</sup> I have just advanced on my motion to non-suit.

The Court: The motion is refused, and you may note an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

## CHARGE OF THE COURT.

Charles Myers, gentlemen, died at Ocean City on the 5th day of January, 1897, leaving his widow, Sallie R. G. Myers, since deceased, and several children, of whom John Myers, the plaintiff in this suit, is one. At the time of his death he was seized of certain real estate in this county. One of the lots owned by him at the time of his death is described in the declaration and is the subject matter of this suit. In the absence of a will disposing of this lot of land, the plaintiff, as one of the children and heirs-at-law of Charles Myers, would be entitled to the undivided one-eighth part thereof. It is admitted that the defendant, Charles Griffin Myers, is in possession of this land. The plaintiff and the defendant are both sons of Charles Myers, deceased, but Charles Griffin Myers, the defendant, is a son by his last wife, the only child by that marriage.

By this ejectment suit John Myers seeks to establish his right and title to a portion of the land described in this declaration. This claim of John's is resisted by Charles Griffin Myers, who claims title to the whole of this land under the provisions of a certain paper offered in evidence purporting to be the last will and testament of Charles Myers, deceased. This paper bears date April 9, 1895, and has been admitted to probate in this county by a decree of the Orphans' Court. If you find this paper to be the will of Charles Myers, deceased, that is, that it was duly executed while he was of sound and disposing mind, memory and understanding, and free from undue influence, it establishes his title to the land in question.

Under the law of this State a man has a right to do what he pleases with his property. In selecting the objects of his bounty he may ignore his own flesh and blood; he may, if he desires, leave all of his property to one child

and cut off all of the others. The provisions of his will may seem cruel and unjust, but if it is his will, duly executed, it will be sustained by the Courts.

Is the paper offered in evidence the will of Charles Myers? The plaintiff claims that it is not the will of Charles Myers. He says, first, that it was not duly executed. Now, under our statute, a will must be signed by the maker, and if not signed in the presence of witnesses, his  
10 signature must be acknowledged by the testator and the paper declared to be his will in the presence of at least two witnesses, and these witnesses must sign their names to the paper in the presence of the maker of the will. The attestation clause to this paper declares all of these formalities to have been observed. If you are satisfied from the testimony that this attestation correctly states what was done at the execution of the will, it is a valid will so far  
20 as the execution of the paper is concerned. The presumption of law is that the writing was executed as stated in the attestation clause. If, however, there was no attestation clause when the will was witnessed, as indicated by the testimony of Mrs. Rush, no such presumption would arise.

The plaintiff further contends that this will is the product of undue influence exerted upon the mind of Charles Myers by his wife, Sallie R. G. Myers. Now,  
30 undue influence consists in the destruction of free agency. Whatever constrains a person to do what is against his will and what he would not do if left to himself, is undue influence, no matter by what means the control is exercised. It is immaterial whether that object be effected by physical force or mental coercion, by threats which occasion fear, or by importunity which the testator is too weak to resist, or which extorts compliance in the hope of peace.

In these cases the test is, was the influence, whether powerful or slight, sufficient to destroy free agency, so as to make the act brought in question the act of another rather than the expression of the mind and heart of the actor. Undue influence exercised by any one, whether that person or another gains by its exercise, renders the will thus procured invalid. But every influence is not undue. Suggestion and ever persuasion may be safely used with a testator, if they do not destroy free agency and amount to coercion. 10

Did Mrs. Myers, as claimed by plaintiff, by continued and persistent detraction of the children of Charles Myers by a former marriage, so poison and prejudice his mind against them that he gave them only a few legacies, and devised the bulk of his estate to her son, and did she by the same means secure an annuity for herself? This is the question which you must decide from the testimony which you have heard. 20

Many witnesses have testified in this case. You must consider and weigh carefully all the evidence, keeping in mind that it is only undue influence, as thus explained by the Court, that the law deprecates. The burden of proof in this case is upon the plaintiff, and he must by a preponderance of proof—that is, by the greater weight of testimony—convince you that the will is invalid and ought not to stand. 30

If you find that Charles Myers did make this will in the manner required by law, and was not unduly influenced in making it, you will find the defendant not guilty, which is the form of the verdict prescribed by our statute in actions of ejectment. But if you find that the will was not legally executed, or that he was led by undue influence as above explained in the making of it, then you will find a verdict of guilty.

I have twenty-four requests here from the defendant to charge. I charge you No. 12:

12. There is no evidence warranting the jury to find that testator was mentally incapacitated at the time of making the will.

13. The declarations of testator are not competent to prove undue influence.

16. The presumption of law is in favor of the validity  
10 of the will and the burden is upon the plaintiff to prove by clear and convincing testimony that its execution was obtained by undue influence exercised at the time of making the will, and must be of such nature as to amount to physical and moral coercion, and to deprive the testator of mental freedom in making the same.

That I charge you with this explanation; that the undue influence, while it must exist at the time of the execution  
20 of the will, may have begun and been exercised for a long while before.

17. The attestation clause sating perfectly all the requirements of the statute, is prima facie evidence of its contents, and the jury are not warranted in rejecting the instrument because the witnesses fail to remember the mode of its execution.

That I refuse to charge except as already charged.

18. The burden of disproving the contents of the attesta-  
30 tion clause is upon the plaintiff.

19. If the subscribing witnesses were so situated that they could and did naturally see and hear the signing and publishing, it is sufficient.

21. The testimony of witnesses as to oral declarations belongs to a class of proofs which should be received with great caution, and only after critical and suspicious examination.

That I charge you, with this additional statement: That the law is that undue influence over the testator must be satisfactorily established by other evidence than his declarations, although they are admissible to show the extent and effect of such influence.

22. A will may be valid without a date; it is therefore immaterial whether the paper writing in question was executed on the 9th day of April, 1895, or not.

That I charge you, so far as the mere matter of date is 10 concerned. There are other questions which enter here as to when it was executed, and whether this is the paper which was witnessed, about which I do not pretend to charge you in this request.

The essential quality is whether it was made and executed during the lifetime of the testator, is the rest of that request, which is charged.

23. This controversy is limited to the specific poverty 20 described in the writ and declaration in this case, and you therefore have no right to consider any other property.

No. 24 has already been spoken to by counsel, as to the number of wills. I have said all I have to say about that.

Requests Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15 and 20 are refused.

## DEFENDANT'S EXCEPTIONS.

1. The defendant excepts to that part of the charge of the Court wherein the Court defines the statutory requirement in regard to the execution of a will.

(Which exception is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

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2. The defendant also excepts to that part of the charge in which the Court said: "Did Mrs. Myers, as claimed by plaintiff, by continued and persistent detraction of the children of Charles Myers by a previous marriage, so poison and prejudice his mind against them that he gave them only a few small legacies, and devised the bulk of his estate to her son, and did she by the same means secure an annuity for herself?"

20

(Which exception is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

3. The defendant also excepts to that part of the charge in which the Court defines undue influence as follows: "Undue influence consists in the destruction of free agency.

30 Whatever constrains a person to do what is against his will, and what he would not do if left to himself, is undue influence, no matter by what means the control is exercised;" and also in that connection, and to all of the charge in regard to undue influence.

(Which exception is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

4. The defendant also excepts to what the Court said in charging request No. 22, as follows: "That I charge you, so far as the mere matter of date is concerned. There are other questions which enter here as to when it was executed, and whether this is the paper which was witnessed, about which I do not pretend to charge you in this request."

(Which exception is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal) 10

5. The defendant also excepts to the refusal of the Court to charge all the requests in their language, and also because the Court refused to charge specifically request No. 17, as requested.

(Which exception is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, J. (Seal)

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(After the stating of the exceptions to the charge by counsel for the defendant, the jury was recalled and further charged by the Court as follows:)

Gentlemen, in speaking to you about the request to charge No. 22, my attention was called to the fact that I used language which might lead you to think that there was some question about the will being the paper which was signed by Mr. Myers and witnessed by the persons whose names appear to it. I did not mean to raise doubt<sup>30</sup> about that. I think the witnesses sufficiently identified that paper. There was some question about when the date was put there, and whether the attestation clause was there or not. That is what I had in mind when I commenced to speak, and what I intended to refer to; but as to the identity of the paper, I did not mean to raise any doubt about that at all. That is what I wanted to correct.

The defendant's requests to charge which were refused by the Court were as follows:

1. The jury is directed to find a verdict of not guilty.
2. The plaintiff having failed to make out a case against the validity of the paper purporting to be the last will and testament of Charles Myers, deceased, it is your duty to find a verdict of not guilty.
3. There being no proof that the paper purporting to be  
10 the last will and testament of Charles Myers, deceased, was the product of undue influence, or that it was not executed according to law, or that Charles Myers did not possess testamentary capacity, it is the duty of the jury to return a verdict of not guilty.
4. The plaintiff having failed to make out his case by a preponderance of proof, and the weight of the evidence being in favor of the defendant, it is your duty to find a  
20 verdict of not guilty.
5. There is no evidence in the case to show that the paper purporting to be the last will and testament of Charles Myers, deceased, was the product of undue influence, and your verdict must be not guilty.
6. There is no evidence that the paper purporting to be the last will and testament of Charles Myers, deceased, was not executed according to law, and your verdict must be for the defendant.
- 30 7. There was no evidence that Charles Myers did not possess the requisite mental capacity to make this paper purporting to be his last will and testament, and your verdict must be for the defendant.
8. The testimony adduced by plaintiff has not been sufficient to overcome the presumption of the law in favor of the decree admitting the will to probate, and therefore the jury should find for the defendant.

9. The presumption of the law being in favor of the validity of the will, and the evidence of the plaintiff not being sufficient to overcome such presumption, the jury should find a verdict for defendant.

10. If the jury believe that Charles Myers, the testator, knowing the provisions of his will respecting the legacy to his son John, the plaintiff in this case, intended to provide for him otherwise by the purchase of a farm, and was prevented from doing so by death, this amounts to a confirmation of the will, and your verdict should be for defendant. <sup>10</sup>

11. Even if the jury should believe that Sallie G. Myers or any other person made misrepresentations to the testator respecting Mary DeRoche and Jennie Wilson, and thereby improperly prejudiced the mind of the testator against these two daughters, that does not in any way affect the plaintiff in this case; and there being no evidence of any attempt by Mrs. Myers or any other person to influence the mind of the testator against the plaintiff, upon the allegation of undue influence in this issue your verdict must be for the defendant. <sup>20</sup>

14. There is no evidence in the case warranting the jury finding that testator was unduly influenced at the time of making the will.

15. The plaintiff has failed to affirmatively show that testator was incapacitated from drink at the time of the execution of the will, and therefore the jury is not warranted in finding that said testator was so incapacitated at the time of the execution of the will. <sup>30</sup>

20. Unless a will carries upon its face clear marks of being the product of an unsound mind or undue influence, neither its injustice or its unreasonableness ought to be the foundation of a verdict against it.

## EXHIBIT 1 FOR PLAINTIFF.

I, Charles Myers, late of the City of Philadelphia, but now of Ocean City, Cape May County, New Jersey, being of sound mind, memory and understanding, do make and publish this, my last will and testament, hereby revoking  
10 and making void all former wills by me at any time heretofore made, and as to my worldly estate and all the property, real, personal and mixed, of which I shall die and possessed or die possessed or to which I shall be entitled at the time of my decease; I devise, bequeath and dispose thereof, in manner following, to wit:

Item. I give, devise and bequeath to my daughter, Jennie, the sum of one hundred dollars.

20 Item. I give, devise and bequeath to my daughter, Mary, the sum of fifty dollars.

Item. I give, devise and bequeath to my daughter, Anne, the sum of twenty-five dollars.

Item. I give, devise and bequeath to my son, John, the sum of one hundred dollars, and to each of the children of my said son, John, living at the time of my decease, the sum of twenty-five dollars.

30 Item. I give, devise and bequeath to my son, James, the sum of two thousand dollars and also any interest I may have in the fixtures or office furniture of the Real Estate office at Eighth and Germantown avenue, Philadelphia.

Item. I give, devise and bequeath to Mamie, the daughter of my daughter, Annie, the sum of fifty dollars.

Item. I give, devise and bequeath to my niece, Sallie, the daughter of my deceased sister, Catherine, the sum of one hundred dollars.

Item. I give, devise and bequeath to my sister, Rober-  
tina, wife of Charles G. Long, the sum of one hundred  
dollars.

Item. I give, devise and bequeath to Harry Myers, son  
of my deceased brother, Philip, the sum of one hundred  
dollars, if living at the time of my decease.

Item. I give, devise and bequeath to the Roman Catholic  
Church, of Ocean City, New Jersey, the sum of one hun-  
dred dollars. 10

The foregoing legacies to be paid to the respective lega-  
tees as soon as conveniently may be after my decease.

Item. I order and direct that my executors hereinafter  
named purchase one or more Burial Lots in such Cemetery  
as my wife, Sallie R. G., shall designate as a Burial Lot for  
myself and family, and have such of my deceased family  
as she may, as she, my wife, Sallie R. G., may see fit to  
be buried therein, and if possible have all the bodies in my 20  
Lot in odd Fellows Cemetery buried therein, and that my  
executors, after such removal, dispose of said Lot in the  
Odd Fellows Cemetery, and for the purpose of purchasing  
a new Family Burial Lot, I authorize them to expend the  
sum of six hundred dollars.

Item. All of my household Furniture I give and bequeath  
to my wife, Sallie R. G., absolutely, and I further direct  
that if my said wife shall desire to maintain a home for  
herself and any of my children, that she shall the use free 30  
of charge of any house of which I may be possessed.

Item. I give and bequeath to my son, Charles Griffin  
Myers, all of my clothings, watches, Jewelry and Books.

Item. I give and devise to my wife, Sallie R. G., the  
sum of one thousand (\$1,000) per annum, to be paid her  
in equal quarterly instalments in lieu of dower for the sup-  
port of herself and my son, Charles Griffin Myers, and

should the said sum of one thousand dollars not be sufficient to properly my said wife and clothe and educate my said son, then I order and direct that my executors hereinafter named increase said sum to such extent as my son James shall deem necessary.

Item. I give, devise and bequeath to each of the children of son William the sum of fifty dollars, to be invested in some good securities until they shall respectively arrive at the age of twenty-one years, when said principal sum of <sup>10</sup> fifty dollars, with the accrued interest, shall be paid them as they shall respectively arrive at the age of twenty-one years; but should any of said children die before arriving at the age of twenty-one years, then said sum of fifty dollars and accrued interest devised to such decedent shall be equally apportioned between the survivor or survivors of him or her that is invested to their credit until their arrival <sup>20</sup> at the age of twenty-one years, respectively.

Item. I order and direct that my said wife, Sallie R. G., shall at any time find any of my children in distress, that she may suggest to my executors hereinafter named their present relief if by them deemed worthy to an amount not exceeding at any one time more than twenty-five (\$25).

I hereby nominate, constitute and appoint my son James the Guardian of my son, Charles Griffin Myers.

<sup>30</sup> All the rest, residue and remainder of my estate, real, personal and mixed, of whatsoever nature or kind, or to which I may be entitled at the time of my decease, I give, devise and bequeath to my executors hereinafter named **In Trust** to apply the net income of my estate, after the payment of the before mentioned Legacies to the support of my wife, Sallie R. G., and my son, Charles Griffin, as hereinbefore provided, and when my said son, Charles Griffin, shall arrive at the age of twenty-one years, I direct

that my entire residuary estate shall be made over to him absolutely by my Executors hereinafter named, provided that my said wife, Sallie R. G., is then deceased, but if my said wife be then living, then it shall be made over to him subject to the bequest of my said wife, Sallie R. G., as hereinbefore provided.

I further order and direct that should any Legatee under this, my last will and Testament, or any other person, undertake to set aside the evident intent of this Instrument, or any part thereof, they shall be utterly barred from receiving any bequest to them herein made or any participation in my residuary estate. <sup>10</sup>

Item. In the event of my said wife, Sallie R. G., dieing before my son, Charles Griffin, shall arrive at the age of twenty-one years, and my son also dieing before arriving at the age of twenty-one years, then I order and direct that my residuary estate shall be divided, as follows: One-half thereof to be divided among my children then living, share and share alike. Three-fifths of the remainder among my grandchildren then living, and the remaining two-fifths among my Great grandchildren then living, share and share alike. <sup>20</sup>

I hereby authorize my executors hereinafter named to sell at public or private sale any of my Real Estate or personal property, and make good and sufficient deed or deeds therefor, if they in their Judgment shall deem it for the best interest of my estate, and securely invest the proceeds thereof. <sup>30</sup>

And lastly, I nominate, constitute and appoint The Commonwealth Title Insurance and Trust Company of the City of Philadelphia and my son James to be the executors of this, my last will and testament.

In witness whereof, I, Charles Myers, the testator, have to this, my last will and testament, written on one sheet of paper, set my hand and seal this ninth day of April, eighteen hundred and ninety-five (1895).

C. MYERS. (L. S.)

Signed, sealed and published, and declared, by the above  
 10 named Charles Myers as and for his last will and testa-  
 ment, in the presence of us, who have hereunto subscribed  
 our names, at his request as witnesses thereto, in the pres-  
 ence of the testator, and of each other.

JOHN BROWER,

J. S. RUSH,

M. T. RUSH,

MARY DAVIDSON.

20

30

## EXHIBIT 2.

## CAPE MAY COUNTY ORPHANS' COURT.

In the Matter of the Probate of the Last  
Will and Testament of Charles Myers.  
Deceased.

10

## Decree Admitting Will to Probate.

A paper writing purporting to be the last will and testament of Charles Myers, deceased, dated the ninth day of April, eighteen hundred and ninety-five, having been presented to the Surrogate of the County of Cape May for probate by James Myers, one of the executors therein named, and Mary D. Roche, one of the daughters and 20 heirs at law of said Charles Myers, deceased, having filed a caveat against the probate of the said will with the Surrogate, on the third day of February, eighteen hundred and ninety-seven; and all the parties in interest having been duly cited by said Surrogate to appear before the Orphans' Court of Cape May County, on the eighth day of June, eighteen hundred and ninety-seven, and the matter of the probate of the will of the said Charles Myers, deceased, coming on to be heard before the said Court upon the day 30 last aforesaid, in the presence of Edward Dudley, proctor of the proponent, and Albert A. Howell, proctor of the Caveator, and the Court having heard the proofs of witnesses as to the execution of the said paper writing, purporting to be the last will and testament of the said Charles Myers, deceased, and having considered of the said proofs, and the said caveat having been withdrawn by the said

Caveator, Mary D. Roche, and the Court being of the opinion that the said paper writing offered for probate by the said James Myers as the last will and testament of the said Charles Myers, deceased, was and is his last will and testament and was duly executed according to law, and ought to be admitted to probate as such, and the Commonwealth Title Insurance and Trust Company, the other executor named in the said will, having filed its renuncia-  
10 tion as executor in the State of New Jersey with the said Surrogate, bearing date the twenty-first day of June, eighteen hundred and ninety-seven, it is thereupon, on this third day of July, in the year of our Lord, one thousand eight hundred and ninety-seven, by the said Orphans' Court of the County of Cape May, ordered, adjudged and decreed that the paper writing, dated the ninth day of  
20 April, eighteen hundred and ninety-five, offered by the said James Myers for probate as the last will and testament of Charles Myers, deceased, be and the same is hereby admitted to probate and declared, adjudged and decreed to be the last will and testament of the said Charles Myers, deceased, and that letters testamentary be issued thereon by the Surrogate of the said County of Cape May to James Myers, one of the executors therein named, upon his giving bond as required by law, and that the costs be paid out of the estate.

30

HARRY S. DOUGLASS, Judge.

## ASSIGNMENT OF ERRORS.

NEW JERSEY COURT OF ERRORS AND APPEALS.

John Myers, Plaintiff and Deft., in Error

vs.

10

Charles G. Myers, Deft. and Pltff. in Error.

Writ of Error, Assignments of Error.

Afterwards, in the above-stated Court, comes the said Charles G. Myers, by William T. Boyle and Howard Carrow, his attorneys, and says that in the record and proceedings aforesaid, and also in the matters raised and contained in the bills of exception, and also in giving the verdict and judgment aforesaid, there is manifest error, in this, to wit: 20

FIRST: That the declaration aforesaid and the evidence given in the case are not sufficient in law to support the action against the defendant, and judgment should have been entered against the plaintiff, and in favor of the defendant.

SECOND: That the Trial Judge erred in refusing to non-suit or call the plaintiff, after the plaintiff first rested his case. 30

THIRD: That the Trial Judge erred in refusing to admit in evidence the proofs upon which the decree admitting the will of the testator to probate was made.

FOURTH: That the Trial Judge, over the objection of counsel for the defendant received and admitted, illegal, irrelevant and incompetent evidence on the part of the plaintiff.

FIFTH: That the Trial Judge erred in refusing to receive and admit legal, relevant and competent evidence offered on the part of the defendant.

SIXTH: That the Trial Judge, although requested so to do by counsel for the defendant, refused to direct the jury to find a verdict for the defendant.

SEVENTH: That the Trial Judge, although requested so to do by counsel for the defendant, refused to non-suit  
10 or call the plaintiff at the conclusion of the whole case.

EIGHTH: That the Trial Judge refused to charge or instruct the jury in the language of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh, fourteenth, fifteenth and twentieth requests submitted by counsel for the defendant.

NINTH: That the Trial Judge erred in refusing to charge the seventeenth request submitted by counsel for  
20 the defendant, to wit, "the attestation clause stating perfectly all the requirements of the statute is prima facie evidence of its contents, and the jury are not warranted in rejecting the instrument because the witnesses failed to remember the mode of its execution."

TENTH: That the Trial Judge erred in submitting this question to the jury and charging them as follows: "Did Mrs. Myers, as claimed by the plaintiff, by continued and  
30 persistent detraction of the children of Charles Myers, by a previous marriage, so poison and prejudice his mind against them that he gave them only a few legacies and devised the bulk of his estate to her son, and did she by the same means secure an annuity for herself?"

ELEVENTH: That the Trial Judge erred in charging the jury that "undue influence consists in the destruction of free agency. Whatever constrains a person to do what

is against his will, and what he would not do if left to himself, is undue influence, no matter by what means the control is exercised."

TWELFTH: That the Trial Judge erred, after charging the twenty-second request of the defendant, in charging the jury "that I charge you, so far as the mere matter of the date is concerned. There are other questions that enter here as to when it was executed, and whether this is the paper that was witnessed, about which I do not pretend to charge you in this request." 10

THIRTEENTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, illegal, irrelevant and incompetent evidence of the religion, movements and conduct of Mary De Roche, and Jennie Wilson, before and after the will was executed.

FOURTEENTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, evidence as to the religion, habits, conduct and statements of Sallie R. Myers, both before and after the execution of the will. 20

FOURTEENTH (A): That the Trial Judge erred in receiving testimony of admissions and declarations upon the part of Sallie R. G. Myers, a legatee under the will of the testator, tending to impeach said will.

FIFTEENTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, evidence to show that Sallie R. Myers got drunk at various times in the lifetime of the testator and after his death. 30

SIXTEENTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, evidence to show that Sallie R. Myers made statements derogatory to Mary De Roche and Jennie Wilson to the testator and to other persons not in his presence.

SEVENTEENTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, testimony concerning the relations and attitude of Sallie R. Myers toward Mary De Roche and Jennie Wilson.

EIGHTEENTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, testimony showing quarrels and disputes between Sallie R. Myers and testator not in any way connected with or re-  
10 lated to the execution of the will.

NINETEENTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, testimony to show that testator at the time of his death had marks on his face.

TWENTIETH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, testimony to show that Sallie R. Myers had made statements  
20 as to the manner in which the deceased testator had received the marks on his face.

TWENTY-FIRST: That the Trial Judge erred, referring to an incident happening about a week prior to the death of the testator and relating to conduct and statements of Sallie R. Myers, in permitting Mary De Roche, over the objection of counsel for the defendant, to answer the following question: "Ques. Well, just tell the circumstance. What was it?"

30 TWENTY-SECOND: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, testimony to show that shortly before the death of the testator, Sallie R. Myers had sent Mary De Roche for laudanum and castor oil to give to said testator.

TWENTY-THIRD: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, testimony showing conduct and statements of Sallie R.

Myers after the death of the testator in no way related to, connected with, or bearing upon, the will in dispute.

TWENTY-FOURTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, testimony showing statements and conversations of Sallie R. Myers regarding the original contest of the will and the withdrawal of the caveat by Mary De Roche.

TWENTY-FIFTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant,<sup>10</sup> testimony showing that Sallie R. Myers had made statements derogatory to Mary De Roche after the death of the testator.

TWENTY-SIXTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, statements of Mrs. Myers made after the death of the testator that she would give John \$5000 and a farm.

TWENTY-SEVENTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant,<sup>20</sup> statements of the testator before and after the execution of the will.

TWENTY-EIGHTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, evidence of the habits of the testator after the execution of the will.

TWENTY-NINTH: That the Trial Judge erred in admitting, over the objection of counsel for the defendant,<sup>30</sup> statements of testator made after the execution of the will as to his intention to buy a farm for John and make other provisions for his children.

THIRTIETH: That the Trial Judge erred in permitting plaintiff, over the objection of counsel for the defendant, to show conduct of testator toward his children after the execution of the will.

THIRTY-FIRST: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, statements of Mrs. Myers, not made in the presence of the testator, questioning the paternity of James Myers.

THIRTY-SECOND: That the Trial Judge erred in admitting, over the objection of counsel for the defendant, evidence of the conduct of Charles Myers toward his father.

<sup>10</sup> THIRTY-THIRD: That the Trial Judge erred in permitting Mrs. Rush, over the objection of counsel for the defendant, to express her opinion as to the sincerity of Charlie's affection for his father.

WILLIAM T. BOYLE.

HOWARD CARROW,

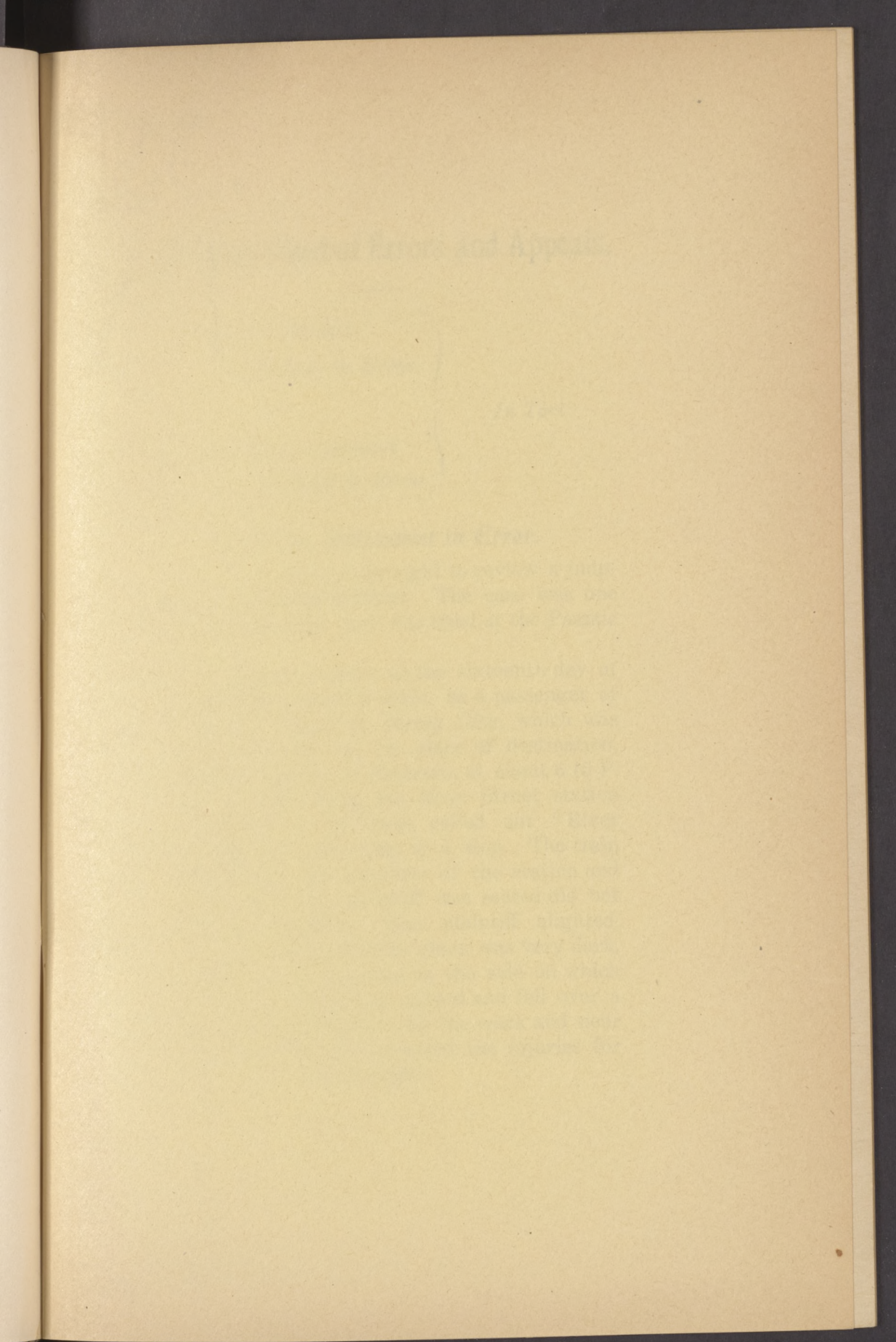
Attorneys for Defendant and  
Plaintiff in Error.

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Joinder in error in common form.

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WILLIAM B. HOWE  
HOWARD CARROLL

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