

## WILL OF RUTH W. BUZBY, DECEASED.

I, Ruth W. Buzby, of the city and county of Salem, State of New Jersey, being of sound mind, memory and understanding, do make, declare and publish this, my last will and testament, in the following manner, to-wit :

FIRST.—I order and direct that all my just debts and funeral expenses be duly paid and satisfied as soon as can be conveniently done after my decease. 10

ITEM.—I give and bequeath unto my daughter, Beulah A. Gaskill, my bed and bedstead, two blankets, one comfortable and one quilt, one brown cane-seat rocking chair, one slat-back rush-bottom rocking chair, one small round dining-room table, one large silver soup spoon and fifteen hundred dollars.

ITEM.—I give and bequeath unto my grandson, Nathan 20 B. Gaskill, one hundred dollars.

ITEM.—I give and bequeath unto my granddaughter, Anna R. Gaskill, my silver sugar tongs and one hundred dollars.

ITEM.—I give and bequeath unto my granddaughter, Isabella P. Gaskill, my small silver clasp and one hundred dollars.

ITEM.—I give and bequeath unto my great-grandson, Asher B. Waddington, my silver cream cup and six hundred dollars.

ITEM.—I give and bequeath unto my adopted daughter, Martha B. Hancock, two beds, one-half of all my house- 30

hold goods that is not aforesaid or hereafter mentioned or specified in this will, and six hundred dollars in cash in lieu of any charge for services or otherwise she may make against my estate.

ITEM.—I give and bequeath unto my granddaughter, Mary B. Waddington, the bed and bedstead formerly occupied by her aunt, Mary W. Buzby, also the remainder of all my  
10 silver, of every description, and also all the balance and residue of my estate of every description.

ITEM.—My grandson, Nathan W. Buzby, heired a legacy of one thousand dollars by the will of his grandfather, Asher Buzby. By the failure of my co-executor, George M. Ward, I have been compelled to pay the greater part of said legacy out of my own resources, and this is the reason my said grandson, Nathan W. Buzby, is not mentioned as a legatee in this instrument.

20 Lastly I nominate and appoint my grandson, George G. Waddington, executor of this, my last will and testament, authorizing him to fulfill the several particulars herein mentioned, and hereby revoking all other wills ever made by me.

In testimony whereof I have set my hand and seal this twentieth day of April, one thousand eight hundred and eighty-two.

RUTH W. BUZBY.

30 Signed, sealed, published and declared }  
by the said Ruth W. Buzby to be her }  
last will and testament, in our pres- }  
ence; and we, at her request, have }  
signed the same as witnesses. }  
RICHARD HILES,  
ELIJAH WARE.

Filed September 17, 1885, in Salem County Surrogate's Office.

To GEORGE R. MORRISON, Surrogate of the County of Salem.

I, Nathan W. Buzby, one of the grandchildren and heirs of Ruth W. Buzby, late of the city of Salem, in the county of Salem, and State of New Jersey, deceased, do hereby caveat and protest against admitting to probate any papers purporting to be the last will and testament of the said Ruth W. Buzby, until examination and decree therein by the Orphans' Court of said county of Salem. 10

Witness my hand this eleventh day of September, A. D. eighteen hundred and eighty-six.

NATHAN W. BUZBY.

Filed September 11, 1886.

GEO. R. MORRISON, Surrogate.

## SALEM ORPHANS' COURT.

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| 10 | GEORGE G. WADDINGTON,<br><br>Proponent,<br><br>vs.<br><br>NATHAN W. BUZBY,<br><br>Caveator. | } | In the matter of<br><br>the alleged will<br><br>of<br><br>RUTH W. BUZBY, Deceased,<br><br>Decree. |
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20 Depositions having been taken in this matter before the Orphans' Court, and the Court having considered the proofs, and counsel having been heard on behalf of the proponent and the caveator, it is on this Fifth day of February, A. D. eighteen hundred and eighty-seven, on motion of Clement H. Sinnickson, counsel for the caveator, ordered, adjudged and decreed that at the time of the execution of the instrument in writing, purporting to be the last will and testament of Ruth W. Buzby, deceased, and offered for probate by the proponent, she, the said Ruth W. Buzby, was not competent to execute the same, and that the execution of the said instrument, by the said Ruth W. Buzby, was procured while she was under restraint and undue influence, and that the said instrument is null and void as the last will and testament of the said Ruth W. Buzby, deceased, and probate thereof is hereby denied.

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ALFRED REED, P. J.

## SALEM ORPHANS' COURT.

In the matter of the probate of  
 the alleged last will of  
 RUTH W. BUZBY, Deceased. } Appeal.

George G. Waddington, Executor, named in and propo-  
 nent of the last will of Ruth W. Buzby, deceased, hereby 10  
 appeals from the decree of the above Court, entered herein  
 on the Fifth day of February, A. D. 1887, and from each  
 and every part thereof, to the prerogative court.

Dated February 9, 1887.

W. T. HILLIARD,

Proctor and of Counsel with Appellant.

Filed February 9, 1887.

GEO. R. MORRISON, Surrogate.

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STATE OF NEW JERSEY,  
 SALEM COUNTY, ss.

I, George R. Morrison, Surrogate of the county of Salem,  
 do hereby certify the foregoing writings to be true copies  
 of the order of court, caveat and appeal, in the matter of  
 the alleged will of Ruth W. Buzby, deceased, as now of 30  
 record and on file in Salem county Surrogate's office.

In testimony whereof I have  
 hereto set my hand and the  
 seal of my office, this ninth  
 day of February, A. D. eighteen  
 hundred and eighty-seven.

{ SEAL }

GEORGE R. MORRISON,  
 Surrogate.

TO HIS HONOR, THEODORE RUNYON, ORDINARY AND SURROGATE GENERAL OF THE STATE OF NEW JERSEY :

The petition of appeal of George G. Waddington shows that he is the executor named in the last will of Ruth W. Buzby, late of the city of Salem, county of Salem, and State of New Jersey, deceased.

10 That said Ruth W. Buzby died at said city of Salem, on the sixth day of September, eighteen hundred and eighty-six, seized and possessed of personal estate amounting to more than five thousand dollars, leaving a last will and testament, executed in due form of law, in and by which said will your petitioner was appointed executor thereof.

That your petitioner offered said will for probate in the office of the Surrogate of the county of Salem, and was informed that Nathan W. Buzby, a grandson of the testatrix, had filed a caveat against the probate of said will.

20 That your petitioner thereupon caused citations to be served upon all persons interested in the estate of said testatrix, notifying them that said will would be offered for probate at the October term, 1886, of the Orphans' Court of the county of Salem, that at said October term, 1886, your petitioner so offered said will for probate, and said Court, after hearing the testimony of witnesses on both sides, and the arguments of counsel, did, on the fifth day of February, eighteen hundred and eighty-seven, make a decree refusing probate of said will.

30 And your petitioner complains and alleges that the whole and every part of the said decree is erroneous, improper and illegal, and that your petitioner is aggrieved thereby, and he prays that the said decree of the said Orphans' Court may be reversed, and said last will admitted to probate.

Because he says that said last will was executed in due form of law, by said testatrix, and no sufficient evidence

has been produced to show that she was mentally incapable of doing such testamentary act, or that the making of said will was procured by the undue influence of any person or persons.

And your petitioner further shows that the persons who claim to be interested in the said proceedings before the Orphans' Court, and under said will are as follows: Beulah A. Gaskill, Nathan W. Buzby, Anna R. Gaskill, Isabella P. Lane, Nathan B. Gaskill.

10

And your petitioner prays that the persons above named, and every of them, may appear in this Court pursuant to the rules and practice thereof, and that a day and place may be appointed for the hearing of the parties hereto upon said appeal, and that your petitioner may have such further or other relief in the premises as may be just.

GEORGE G. WADDINGTON,  
W. T. HILLIARD,

Proctor and of Counsel.

STATE OF NEW JERSEY,  
SALEM COUNTY, ss.

George G. Waddington, alleging himself conscientiously scrupulous of taking an oath, being duly affirmed, on his affirmation saith, that the matters and things set forth in the foregoing petition, so far as they relate to his own acts, are true, and so far as they relate to the acts of others, he  
10 believes them to be true.

GEORGE G. WADDINGTON,

Affirmed and subscribed before  
me, this eleventh day of February,  
A. D. 1887.

GEORGE R. MORRISON,  
Surrogate.

Service of within petition acknowledged this 17th day of  
February, A. D. 1887.

C. H. SINNICKSON,  
Proctor of Respondents,

## NEW JERSEY PREROGATIVE COURT.

In the matter of the probate }  
of the alleged last will of }  
Ruth W. Buzby, deceased. }      On appeal

Order to Answer.

Upon reading the petition of appeal, and transcript of proceedings, filed in this Court, and, on motion of William T. Hilliard, Proctor and of Counsel with the Appellant, it is on this 15th day of February, eighteen hundred and eighty-seven, ordered that the Respondents named in the petition of appeal, answer the same within twenty days after service of a copy of the petition of appeal and notice of this order, or that the Appellant be heard ex parte.

THEODORE RUNYON, C.

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## NEW JERSEY PREROGATIVE COURT.

I, Henry C. Kelsey, Register of the Prerogative Court of the State of New Jersey, do hereby certify that the foregoing is a true copy of an order made on the fifteenth day of February, A. D. eighteen hundred and eighty-seven, in the above stated cause, as the same is taken from and compared with the original, now remaining on file and of record in my office.

Witness my hand and the seal of the Prerogative Court, at Trenton, this sixteenth day of February, A. D. 1887.

HENRY C. KELSEY,  
Register.

Service of within order acknowledged this 17th day of February, A. D. 1887.

C. H. SINNICKSON,  
Proctor of Respondents.

## NEW JERSEY PREROGATIVE COURT.

THE ANSWER OF NATHAN W. BUZBY, RESPONDENT TO THE  
PETITION OF APPEAL OF GEORGE G. WADDINGTON, AP-  
PELLANT :

10 This Respondent, not acknowledging all or any of the  
matters, which in the said Appellant's petition of appeal are  
claimed to be true, for answer thereto, says and admits  
that a decree was on the fifth day of February, eighteen  
hundred and eighty-seven, made and entered by the Or-  
phans' Court of the County of Salem, in the matter for that  
purpose mentioned in said petition, in substance as is  
therein stated, but as to both the substance and form of  
said decree this Respondent prays to refer thereto when the  
same shall be produced.

20 And this Respondent further says and admits that  
sundry proceedings were had and proofs taken, on which  
the said decree is founded, and which are in and by said  
petition of appeal mentioned and referred to, as to all of  
which this Respondent prays leave to refer, when the same  
shall be produced. And this Respondent says that the said  
decree is not erroneous, improper or illegal, but is in all  
respects just and equitable.

He therefore prays that the said decree may be affirmed  
with costs of appeal to be adjudged to this Respondent.

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C. H. SINICKSON,

Proctor and of Counsel with Respondent.

Filed February 21, 1887.

## SALEM ORPHANS' COURT.

In the matter of the probate of the }  
 alleged last will and testament of }     Testimony.     10  
 Ruth W. Buzby, deceased.     }

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SALEM, OCTOBER 22d, 1886.

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### A P P E A R A N C E S .

W. T. HILLIARD, ESQ.,

For Proponents.

C. H. SINNICKSON, ESQ.,

For Caveators.

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ELIJAH WARE, affirmed and examined.

BY MR. HILLIARD :

Q. Where do you live ?

A. Northeast Broadway, in the city of Salem.

Q. (Handing witness a paper.) Did you ever see that  
 paper before ?

A. That is my signature.

30

Q. What is the paper ?

A. I have lost all memory of the matter ; it seems to have gone away from me. When I heard of the will, I did not remember of having signed it. It is not the first time I have forgotten signing papers ; but that is my signature ; there is no doubt about it at all.

10 Q. Do you remember any of the circumstances attending the execution of the will ?

A. I cannot, of a special manner at all ; not to make any account of it.

Q. Do you remember the fact that you signed that will as a witness ?

A. I have no doubt of it, at all ; that is my signature.

Q. Are you acquainted with this signature (indicating?)

A. I cannot say that I am.

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No cross-examination.

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RICHARD HILES, affirmed and examined.

30 BY MR. HILLIARD :

Q. Where do you live ?

A. 267 East Broadway.

Q. Who is your father ?

A. Richard Hiles.

Q. Is he deceased ?

A. Yes, sir.

Q. Do you know his signature ?

A. Yes, sir.

Q. (Handing witness a paper.) Look at that signature and see if you recognize that as the signature of your father ?

A. Yes ; I do.

Cross-examined.

BY MR. SINNICKSON :

Q. You only know it because of the similarity to other signatures ? 10

A. Yes.

MR. HILLIARD : But you are confident that is his signature ?

A. Yes.

PROPONENTS REST.

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CONTESTANTS' EVIDENCE.

AARON FOGG, affirmed and examined.

BY MR. SINNICKSON :

Q. Where do live ?

30

A. No. 317 East Broadway.

Q. Did you know Ruth Buzby in her lifetime ?

A. I knew her when I was but ten years old ; I knew her then.

Q. You have known her ever since you were ten years old ?

A. Yes.

Q. Where did you live in 1882, in the spring of 1882 ?

A. 317 East Broadway, where I now live.

Q. Did Ruth Buzby live anywhere near there in 1882 ?

A. She moved in the spring of 1882 ; she lived in Mrs. Mason's house, on the East side of Broadway ; I do not remember the number.

Q. How far from you ?

10 A. Perhaps forty rods.

Q. Near you ?

A. Yes ; maybe a little more or a little less.

Q. Did you know her daughter, Mary Buzby, now dead ?

A. Yes ; I went to school with her many a day.

Q. Do you remember when she died ?

A. In March, 1882, shortly after she moved to where her mother died.

Q. The latter part of March ?

20 A. Yes.

Q. Do you remember the transaction with regard to the will of Ruth Buzby and George Waddington, on the night before she died ?

THE WITNESS : The codicil ?

MR. SINNICKSON : Yes.

THE WITNESS : Yes.

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Q. What took place ?

A. I had been out in the country the afternoon before, and when I came home and put up my horse and went into the house, they told me that George Waddington had been to my house, and wanted to see me. I went in, but before I got cleaned up and got down to the table, the door bell rang and George Waddington came there. Somebody answered the bell ; they came out and told me George Waddington was there to see me. I went to the door, and we

went into the parlor. He said he had brought a will of Ruth Buzby, and there was a clause in it that seemed to be a little objectionable; but what that clause was, I cannot tell; but he showed it to me and wanted to know if I would not write a codicil for him to that will. We talked the matter over for some time, and I think I told him that I would. I told him that I had not cleaned up; and there was a time specified for him to come up.

Q. Did he have any paper with him, or did he dictate the codicil, or have any minutes? 10

A. He brought the will, but there was no paper—no memorandum.

Q. Did he tell you what to put into the codicil?

A. Yes, sir; he told me what he wanted done.

Q. What did you do?

A. As I said before, I told him—

Q. (Interrupting.) Did you write the codicil as he dictated it? 20

A. Yes.

Q. What did you do then?

A. After we got through—when he came back, after we got through with this codicil, he wanted to know of me why my daughter could not witness this codicil. I told him I did not know why she could not. I went out into the sitting room. She was lying there asleep on the settee. I asked her, and she said she would.

Q. That is your daughter? 30

A. Yes.

Q. Did you go down to his house?

A. We came out into the entry, and she says, "I want to put my things on here."

THE COURT: There is no use of going into that (to witness). You went down?

A. Yes.

BY MR. SINNICKSON :

Q. What time was it ?

A. In the evening, after dark.

Q. What time ; give us some idea ?

A. About nine o'clock, I should say.

19 Q. Go on ?

A. When we went down there she was a little behind us—

Q. (Interrupting.) Your daughter ?

A. Yes, sir.

Q. When you say us, do you mean George and you ?

A. Yes. He stepped aside and opened the gate. He said, "We will go in this way ; mother is up in the room ; we do not want her to know it."

20 Q. Who was mother ?

A. Beulah Gaskill.

Q. You understood by "Mother," he meant Beulah Gaskill, his mother-in-law ?

A. Yes, sir.

Q. Did he say mother, or mother-in-law ?

A. My impression is he said mother.

Q. Well, go on ?

30 A. I stepped on ; he waited and shut the gate after my daughter. I stepped on to the door that goes into the side, and he came there and we went into the house ; and when we went into the house they had a kind of a square table between the two windows, and there sat Ruth Buzby at one end of the table with pen and ink prepared. I stepped up there and passed my hand across the table to her, and shook hands with her, and asked her how she was ; but I do not remember whether she made me any reply or not.

Q. Well ?

A. I told her that George had come up for me to put a codicil to the will.

Q. What did she say?

A. She did not say anything that I have any recollection of. I read it to her.

Q. Well?

A. And told her if it was satisfactory, she might put her name to it. I laid the paper down and she took and signed it, after a good deal of difficulty. She was feeble, and could not read much. I told her it was not necessary if she knew what it meant. 10

Q. What was her manner during the execution and during this whole interview?

A. She did not seem to interest herself in anything; she was in a feeble way; she had been sick a good while, and was quite feeble.

Q. Did she seem to understand when you read the will to her what it was about?

A. I do not think she made any reply about it. 20

Q. Didn't say whether it was satisfactory or not?

A. I do not think she made any reply then; she sat there in a sort of a child-like study, you might say.

Q. What was the impression produced upon your mind at that time, of her capacity to make that will?

Objected to. Objection overruled.

Q. Did she say or do anything the whole time that you were present to indicate that she understood what she was about? 30

A. I do not know that she made any reply.

THE COURT: Did she make any reply, or did she speak at all when you were there?

A. Nothing more than to say yes, when we said if she acknowledged the signature to be her signature.

BY MR. SINNICKSON :

Q. You have known her for some time ?

A. Ever since I was ten years old.

Q. Did you consider her incapable of making a will at that time ?

Objected to. Objection sustained.

Q. Do you know whether she was a person easily dominated over by others ?

A. She was yielding.

Q. Do you know whether she would yield to George or not ?

A. I do not know ; it might be.

Q. Have you ever seen any facts to indicate that ?

A. No ; only he came up there when the codicil to the will was made.

Q. Was that codicil for the exclusive benefit of George Waddington's wife ?

A. Yes, sir ; I suppose so.

Q. When you read this will to the old lady, describe what her manner was ?

A. She just simply sat there ; I do not think she uttered a word.

Q. Did she seem to understand what was going on ?

A. I cannot say that she said anything ; she was in a child-like study ; everything seemed to be a mechanical performance ; that is my view of it.

\* Cross-examined.

BY MR. HILLIARD :

Q. Did she act in any way different from what you supposed she would have acted if this will had been settled and arranged before hand by her, and with her consent ?

A. I do not know anything about that.

Q. You say she made no remark ?

A. I do not think she did.

Q. You say she acted in a mechanical manner ?

A. She sat there, as I said before, in a chair at the table, with the writing instruments before her, and did not seem to take any interest.

Q. I asked you whether her actions were anything different from what they would have been, if she had settled this will before hand, and was only waiting to sign it ? 10

A. I do not know.

Q. Was there anything to be said about the will if it suited her ?

A. I read it to her, and I asked her if it was satisfactory ; but I do not think she made any remark.

Q. When you asked her if it was her will, did she make any remark when you came to the testatory clause ?

A. Yes.

Q. She said that it was ? 20

A. She said yes ; in a low manner.

Q. Who was in the room at the time ?

A. George, and I think Martha Hancock, and my daughter ; that is all.

Q. Did anybody else come through the room while you were there ?

A. Beulah Gaskill.

Q. She came through the room while you were executing the paper, or when you were trying to keep it from her ? 30

A. She came right through there and went into the shed for a glass of water ; she did not say anything.

Q. There was no objection made to her coming and going ?

A. No, sir ; I did not hear anything.

Q. The doors were not closed against her ?

A. No, sir.

Q. Now, did you not write that will, to which this codicil was appended ?

A. I copied it from a former will.

Q. Who made the former will ?

A. Owen L. Jones.

Q. From whom did you get your instructions in making the former will ?

A. From Mary Buzby and Ruth.

10 Q. You consulted with them both ?

A. They asked me to make the will.

Q. How long ago was this ?

A. I do not know ; it was eight or nine years.

Q. You wrote the will for her ?

A. I copied the one that Jones had written.

Q. Had you any difficulty in your mind at that time ?

A. She did not take much interest ; her daughter took more interest than she.

Q. You took your instructions from both of them ?

20 A. They were both in there ; they told me all they wanted to do was to copy and change the executor.

Q. Then it was in fact a copy of the former will ?

A. Yes, it was a copy, with the change of the executor.

Q. That was eight or nine years before the execution of the will ?

A. It was eight or nine years ago.

Q. From now ?

A. Yes.

30 Q. Several years before the codicil ?

A. Yes.

Q. At that time had you any suspicion in your mind about her inability to make a will ?

A. She seemed to be going down hill all the time since she had that fall down cellar.

Q. Now, Mr. Fogg, if you had any serious suspicion in your mind that this lady was not fit to make a will, would

you have been willing to act as scrivener to make such a will, and make such an execution ?

A. We had come up there, and I did not think anything about it ; but when he came to say to me—to open the gate, and pass through, that, “We will go through this way; we don’t want mother to know anything about it ;” that is the first I began to think about it.

Q. You had no suspicion when Mary assisted her mother in making the former will ?

10

A. No.

Q. Would you, if you had serious suspicions, have objected as to her making the will ?

A. I would not like to have done it right there, and to make a disturbance, when she died the next day.

Q. You would have made a will for a lunatic then ?

A. No, sir.

Q. Was George Waddington married to Ruth Buzby’s granddaughter at the time you wrote the first will ?

20

A. Yes, sir.

Q. He had nothing to do with that ?

A. I think not ; I think he said when he came up there, that that was the first time he had ever seen it, and they wanted it done before Mary died.

Q. This will was made very soon after Mary Buzby’s death ?

A. Yes, sir.

Q. Do you know when Mary Buzby died ?

30

A. Yes ; she died the latter part of March, 1882.

Q. This will was made on the 20th of April, 1882. Your codicil was made about the date of this other will ?

A. She died, I think, the last part of March.

Q. Did you understand that the will, or do you think now, that the codicil that you drew was in accordance with the directions of Mary Buzby ?

A. I know he came up there, and said she wanted it done before she died.

Q. He didn't say Mary wanted it done?

A. Wanted it done before Mary died.

Q. What were the provisions of this codicil, in regard to George Waddington's wife?

A. I cannot tell you what they were; it appears to me—about the first of September, or the first of October, I should have said, it was shown me.

10 Q. Ruth Buzby, at the execution of this will, did not in any manner dissent from it?

A. She did not.

Re-direct examination.

BY MR. SINNICKSON :

20 Q. At that time, when you copied that first will, who had most to do with the matter, the daughter Mary, or the mother, Ruth?

A. I could not say; we were there in the room together, all of us. I wrote it—I copied it.

Q. Who spoke to you about it when you first came in?

A. I do not remember that; I just remember of copying.

Q. Mary was there?

A. Yes; I—

30 Q. (Interrupting.) Did she have anything to say about it.

A. Yes; I copied it, and we read it all together. I asked when I got done, who was to be the executor of this will; and Mary Buzby said George Waddington; I recollect that very distinctly.

Q. Now, from your knowledge of Ruth W. Buzby, on the 20th day of April, 1882, do you believe she had a sound and disposing mind to make—

MR. HILLIARD: (Interrupting.) We object; that is a conclusion to be derived from facts to be stated by the witnesses. Objection sustained.

Q. Do you know, from your knowledge of her, that since she had that fall, her mind became enfeebled? 10

A. She became enfeebled.

Q. Did it affect her mind as well as her body?

A. She could not speak for sometime afterwards; I am speaking of that fall she had on the farm.

Q. Before this will was made had her mind become enfeebled?

A. She never recovered from that fall, in my opinion.

Q. Do you know what was the condition of her sight?

A. Her sight was bad; I think she became entirely 20 blind for a few months before she died.

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ANNA FOGG, affirmed and examined.

BY MR. SINNICKSON:

30

Q. Do you remember witnessing a codicil to the will of Ruth Buzby, in the spring of 1882?

A. I do.

Q. State what took place when you went down there and went into the house; did you hear what George Waddington said to your father?

A. I did not.

Q. What took place when you went into the house ?  
Who was in the house ?

A. Mrs. Buzby, Miss Hancock, Mr. Waddington, my father and myself were in the room.

Q. What was Mrs. Buzby's condition that night ? Describe how she executed that will ?

10 A. She sat quietly on a chair ; I don't remember of her saying anything. I was not in the room when the will was read ; I was in the kitchen. After she signed it, and my father signed it, I came into the room, and my father asked her if this was her acknowledgment, and I was asked to sign my name.

Q. Did she seem to know what was going on ?

A. She just sat quietly—in a quiet sort of manner.

Q. Did she do just what she was told ?

A. It seemed so to me.

20 Q. Did she seem to you to be understanding what was going on ?

A. She seemed in a very absent-minded condition ; that seemed to me her condition for several months previous to her daughter's death, and she was in a weak mental and physical condition.

Cross-examined.

30 BY MR. HILLIARD :

Q. Was Beulah Gaskill in the room during the execution of the papers ?

A. She opened the sitting-room door, and passed through to the kitchen, and returned.

Q. While the will was being read ?

A. It was almost immediately after we entered the room.

Q. It was after the will was read that she passed through ?

A. Before the will was read.

Q. There was no attempt made to prevent her from hearing or remaining, had she chosen, so far as you know ?

A. She just passed through the room and back again.

Q. There was no attempt, as far as you know, to prevent her being there if she chose.

A. No.

10

Re-direct examination.

BY MR. SINNICKSON :

Q. Where was the will when she passed through the room ?

A. I do not know ; I am inclined to think it was in my father's pocket ; I do not think it was out.

20

Q. When she passed through the room, to the best of your recollection, you people were just simply sitting around there ?

A. That was all.

---

AARON FOGG, Re-called.

30

BY MR. SINNICKSON :

Q. When Beulah passed through the room, had the will been taken out of your pocket ?

A. I do not know ; it was soon after we came in, but it had not been read at that time ; I do not remember whether I had it in my hand or pocket.

Q. Did you notice anything peculiar in George's manner when Beulah came in ?

A. No ; I did not.

Q. How long was she in the room do you suppose ?

A. The same as if she came in at that door there (indicating), and passed through here (indicating); she was not out but a very short time, and passed right back.

Q. How soon did she come back after she passed through ?

10 A. I do not know ; she passed right back there, it might not have been more than three minutes.

---

MRS. BEULAH GASKILL, affirmed and examined.

BY MR. SINNICKSON :

20

Q. Are you the daughter of Ruth Buzby, the testatrix ?

A. I am.

---

AARON FOGG, Re-called.

30

BY MR. SINNICKSON :

Q. Do you know whether there was any provision in the former will in favor of Mary Buzby ?

A. I do not know.

Q. Who was the executor of the former will ?

A. Owen Jones wrote the will, and he was the executor.

Q. I understand you to say you copied the will Jones wrote ?

A. Yes.

Q. Do you know the executor of it ?

A. Owen Jones.

---

MRS. BEULAH GASKILL, Re-called.

10

BY MR. SINNICKSON :

Q. Mrs. Gaskill, how many children did your mother have ?

A. Four.

Q. What were there names ?

A. Milton, Nathan, myself and Mary.

20

Q. When did Milton die ?

A. I do not remember.

Q. A long time ago ?

A. He died when he was eighteen months old.

Q. When did Nathan die ?

A. I cannot tell the year.

Q. How long, I mean ?

A. About '52.

Q. After he had grown up and married ?

30

A. Yes, sir.

Q. What issue did Nathan leave ?

A. A son.

Q. Nathan Buzby ?

A. Yes.

Q. Then your mother and father had two sons ; one died a baby ; the other lived to grow to manhood, and died,

leaving one son ; and then there were left two daughters, you were one, and who was the other ?

A. Mary Buzby.

Q. She never married ?

A. No.

Q. When did she die ?

A. The Third month of 1882.

Q. What time in the month ?

A. The last of the month.

10 Q. Do you know whether your mother was especially fond of her son, Nathan ?

A. Yes ; he was a favorite son.

Q. Do you know whether, after your brother Nathan's death, she became very fond of his son ?

A. Yes ; she was always very fond of him.

Q. Do you know whether that condition of affairs continued up to the time of her death ?

A. It always seemed to me to be so.

20 Q. Do you remember anything about the execution of this will—or first, anything about his picture ?

A. Yes ; his mother had the picture with her; my mother wished to have it ; she said she wanted it as long as she lived, and after that she could have it.

Q. Did you ever know, or see anything on the part of your mother, to make you believe that she meant to cut him off in the will ?

A. No, I never did.

30 Q. Do you know whether she was one of the executors of your father's estate ?

Q. George M. Ward was the other ?

A. Yes, sir.

Q. Do you know the fact that she had, as sole executor, paid between eight and nine hundred dollars to Nathan ? And do you know whether she exhibited any feeling about that ; or, did she say she thought it was right ?

A. I do not know ; as far as I have any knowledge.

Q. Do you know that she always manifested affection for him ?

A. Yes ; in my presence.

Q. Do you know anything about your mother having a fall several years ago ?

A. Yes.

Q. Was it a bad fall ?

A. Yes.

Q. Do you know whether, from that day, there was any change in the mental condition, after that fall ? 10

A. The way I have always thought of it, there was ; she never seemed to recover from it.

Q. Do you know whether her mind—what was her mental condition from that time to the time of her death ?

Objected to.

THE COURT : State the facts. State whether she was 20 forgetful of facts, and matters of that sort.

BY MR. SINNICKSON :

Q. Would she forget facts ?

A. Yes ; mother's memory went back ; she could remember some of the past better than the present.

Q. Would you state things to her and she forget them in a short time ?

A. Yes, sir. 30

Q. Would she tell things different ways at different times ?

A. Yes ; she did.

Q. Was she a woman of weak will, that was easily changed by others ?

Objected to.

BY MR. SINNICKSON :

Q. Has your mother shown any failing or falling off of her mental strength since that fall ?

A. Yes, she certainly had.

Q. Will you state to the Court what she did to indicate that ?

10 A. She submitted to other people's will ; whatever was said to her in regard to anything, she submitted to it ; in regard to her household affairs she gave them up to some one else.

Q. How about her money matters ?

A. She did not attend to that herself.

Q. Did you know your mother would do whatever your sister Mary told her, in almost every instance ?

A. Yes, sir ; I did.

20 Q. Do you know, after your sister Mary died, whether George Waddington acquired the influence over her, and managed her affairs as your sister Mary did ?

A. George Waddington did.

Q. Did he take it upon himself ?

A. I never heard her say so.

Q. He did ?

A. Yes.

Q. He came to the house and assumed control of things generally ?

30 A. I cannot tell that.

Q. What did he do ?

A. He came and attended to matters of business—all her money matters ; took her money and deposited it.

Q. What was your mother's manner when he came in, in regard to him ? Did you notice any change in her manner when he came into the room ?

A. I do not think that I did, particularly.

Q. Have you observed anything in your mother's manner when George would come different in any way or manner?

A. I cannot say I have.

Q. Where were you on the 20th of April, 1882?

A. In Elsinborough, at the house of George Waddington.

Q. How did you come to go there?

A. I went with him to spend the week.

Q. Did they invite you?

A. Yes.

10

Q. At the time this will was executed it was executed on that day you went away?

A. Yes.

Q. Did you know anything about it at all?

A. No.

BY THE COURT:

Q. How far did you live from the Waddingtons?

A. About two miles and a half.

20

Q. Who lived with your mother beside yourself?

A. Martha Hancock, myself and my mother lived there together.

Q. Who is Martha Hancock?

A. Lewis Hancock's daughter.

Q. What relation to your mother or father?

A. None.

Q. How long has she lived with your mother and father?

A. They took her when she was three months old.

30

Q. Have you noticed any peculiarity between Martha Hancock and George Waddington, about or since your mother's death?

A. They have had a good deal of private conversation; I do not know what it is all about.

Q. Did you notice it when your mother's will was made?

A. There was a change after that will was made.

Q. In what way ?

A. Well, I do not know ; there was a change ; I do not know anything about my mother's business.

Q. Did you know anything about that codicil being made ?

A. No.

Q. Do you remember passing through that room that night ?

10 A. I remember of passing through.

Q. Did you see anything going on ?

A. I do not know what was going on.

Q. Did you see any paper ?

A. I did not see any paper. George was standing up in the room as I passed through. I do not remember of saying anything to any one.

Q. Where did you go ?

A. I passed through into the kitchen.

20 Q. Your sister was very ill that night ?

A. Yes, sir.

Q. Did your mother or any one tell you that they executed a will that night, or were going to execute a will that night ?

A. No, sir.

Q. When George asked you to go out home, did he tell you that they were going to make a will, or anything of that sort ?

30 A. No.

Q. That was kept from you ?

A. Yes.

Q. Did George ever tell you that will was in his handwriting ?

A. I heard him say so the day the will was read.

## Cross-examined.

BY MR. HILLIARD :

Q. How long have you lived with your mother, previous to her death ?

A. Four years and six months.

Q. You lived with her, and had been living with her for some little time previous to your sister's death ? 10

A. Yes.

Q. From the time of your sister's death up to the time of your mother's death, you resided continuously with your mother ?

A. Yes, sir ; that was my home ; my mother requested me to stay with her.

Q. During that time you were supported by your mother ?

A. I had my board there. 20

Q. You paid her your board ?

A. No.

Q. Nor did Martha Hancock ?

A. No ; we did the work and took care of mother.

Q. In Martha Hancock's absence who took charge of the house ?

A. I did.

Q. Was Martha occasionally absent ?

A. Yes, sir. 20

Q. She made visits the same as you did ?

A. Yes, sir.

Q. Did you ever inquire of your mother as to her money affairs, and the disposition of her property ?

A. I have said to mother I thought we could attend to her money affairs without any assistance from George.

A. She said she thought we could too.

Q. Do you know whether George ever requested to have the management of her money affairs ?

A. No.

Q. Did he assume the control without her consent ?

A. No ; but she never asked him. I asked her if she ever asked him to take control, and she said, "No, you could take care of it, if you want to."

Q. She didn't take any steps to take the control of her money from George ?

10

A. Mother was perfectly passive on the subject.

Q. The money was all invested in one place ?

A. Yes.

Q. Was there not a change made in that investment shortly after you came to the house ?

A. Yes.

Q. What was the change ?

A. From Joseph Waddington's farm to Samuel Springer's.

Q. What was the cause of that change ?

20

A. I do not know.

Q. Were you aware of where Ruth Buzby kept her papers ?

A. I never saw my mother's private papers.

Q. Do you know where they were kept ?

A. No, not personally ; I have no personal knowledge ; no, I do not know.

30

Q. You never asked any questions about where they were kept ?

A. No.

Q. Is George Waddington's wife your daughter ? Did you bring her up ?

A. Only until they took her.

Q. At what age did she leave you ? The husband of Ruth Buzby and Ruth Buzby, did they provide for her education and maintenance ?

A. Yes, sir.

Q. And pay all her bills without charging them to you and your husband?

A. Yes.

Q. She lived with them as a daughter, up to the time of her marriage?

A. Yes.

Q. Was she not regarded by your mother as her dearly beloved daughter?

A. I have never heard her express herself that way.

Q. In Martha Hancock's absence, you say the conduct of the house affairs was put in your hands by Ruth Buzby?

A. Yes.

Q. You bought the marketing for the house?

A. Yes.

Q. Who furnished the money?

A. Mother.

Q. Did she ever show any anxiety to have the bills paid?

A. Not to me.

Q. Did she ever express any preference as to what she wanted in the house?

A. She just left all in our hands. When Martha came home I had nothing to do with it. When I came back—I was away a while—and when I came back, I was told I had no right there.

Q. Who told you that?

A. Martha.

Q. How long were you away from home?

A. I do not remember just how many years I was away from home.

Q. Do you know when Martha Hancock came to live with your mother?

A. When she was three years and six months old.

Q. How old is she now?

A. Fifty-two years old.

Q. All the time, since she came into the family, she helped to take care of your mother ?

A. Yes.

Q. Your mother allowed you to go ahead ?

A. She did not tell me that I must not go ahead.

Q. Nor that you must ?

A. No.

Q. Did you ?

A. No.

10 Q. Was Joseph Waddington in the habit of paying his interest money to Ruth Buzby, at any time ?

A. I do not know ; I was not there then.

Q. You never saw him pay any interest ?

A. No.

Q. Did you ever see Samuel Springer pay any interest ?

A. No.

Q. Did you ever see any papers, at that time ?

A. I have seen them bring them in and lay them on the table.

20 Q. George Waddington's connection with the business of Ruth Buzby was that of managing her money affairs ?

A. Yes.

Q. Collecting her interest for her ?

A. Yes.

Q. And attended, at one time, to the change in this investment ?

A. Yes.

30 Q. He never interfered in household matters, did he, as far as you know ? Do you remember any instance in which he interfered with the family affairs of the household ?

A. Yes, he has.

Q. In what instance ? I am speaking now of this time, four years ago, when the will was made ?

A. I thought you meant now.

Q. It is claimed that, at the time this will was made, he interfered with her and had undue control over her. Now, I wanted to know if he had interfered in any of her household affairs at that time?

A. No answer.

MR. HILLIARD: Well, I will drop that. Do you remember anything being said by Ruth Buzby about her having had to pay the legacy which Nathan Buzby should have received from George M. Ward? 10

A. Not that I remember.

Q. Not in your hearing?

A. No; I have heard it talked about.

Q. When was that legacy paid by her to Nathan Buzby?

A. I could not tell; I was not there.

Q. She never showed any resentment to it in any way?

A. Not to me, that I know of.

Q. Nor to your knowledge?

A. No. 20

Q. You said in the direct examination, that since her accident—in what year was the accident—in 1870, was it not?

A. I do not remember the date.

Q. (Continuing.) That since this accident, she had been in the habit of submitting to other people's will?

A. She seemed to be in a passive state, and didn't seem to take an interest in anything. 30

Re-direct examination.

BY MR. SINICKSON:

Q. Had you any reason to believe that your mother was more fond of Mary Waddington than she was of any other daughters?

A. Her being there, and that is the only way.

Q. Did she seem to be more fond of her than of Anna ?

A. Well, I do not know as she was any more than of Anna ; Anna has always been a favorite.

Q. At the time this will was made, you were left without means, were you not ? excepting what your sister Mary left you ?

A. Yes.

10 Q. How much was that ?

A. Fifteen hundred dollars ; I have not had anything of that, though.

Q. Did that go absolutely to you after her death ?

A. Yes.

Q. Did you ever have any conversation with your mother about your wanting to do work ?

20 A. Yes ; I said to my mother, I thought I ought to be doing something for myself, at the time of the death of my sister. My mother asked me to stay with her until her death, and she said I would be well provided for after she was gone ; I would not be dependent after she was gone.

Q. It was a hobby of your mother's not to be dependent on children ?

A. Yes.

Q. And when you wanted to take in sewing, she said you would be well provided for after her death ?

A. Yes.

30 Q. Do you remember anything about George Waddington's interference at the time of the death of your sister Mary, the guests going to the hotel, or anything of that kind ?

A. No, I do not.

Q. Did you ever notice George Waddington's attempting to prejudice your mother against Nathan ?

A. I have heard him make remarks about the way they

lived—the manner and style of living, and he said that he could not afford to do as the boys did.

Q. Did you know what estate your mother left ?

A. Yes.

Q. How much ?

A. Five thousand and two hundred dollars.

Q. Is your daughter Anna married ?

A. No.

Q. Does she support herself ?

A. Yes, sir ; she is in a store on Chestnut street.

10

MR. HILLIARD : You speak of your mother's speaking about providing for you amply ; did she ever mention any sum ?

A. No.

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ELIZABETH PETTIT, affirmed and examined.

20

BY MR. SINNICKSON :

Q. Did you know, in her lifetime, the testatrix, Ruth Buzby ?

A. I have always known her.

Q. Did you know her at the time of the death of Mary Buzby ?

A. Yes, sir.

Q. Did you know that she was, in the lifetime of her daughter Mary, controlled by her daughter Mary ?

30

Objected to. Objection sustained.

BY MR. SINNICKSON :

Q. Were you frequently there ?

A. Yes, for the last ten years.

Q. Were you there before the time of the death of Mary?

A. Yes, I was there the 26th of March, and she died the 29th, I think.

Q. Did you ever see anything, and if so, what, that induced you to think that she was afraid of Mary?

A. I do not know that she was afraid of Mary, but she did not seem to have any will of her own in anything of the housekeeping affairs, or anything else; Mary was particularly kind to her, but she was treated like a child?

Q. Did you know whether her mental condition had become enfeebled after that fall?

Objected to.

Q. What was her mental condition after her fall as compared with what it was before?

A. She seemed not to have any will.

20 Q. What was the condition of Mrs. Buzby's eyesight at the time of her daughter Mary's death?

A. I should think it was very nearly gone; she could not read writing for several years before that; she was at my house some four years before her death, and I gave her some writing to read, and she says, "Oh no, I cannot read writing."

Q. At the time of the death of her daughter Mary she was nearly blind?

A. I should think so.

30 Q. State what was her mental condition at the time of her death as compared with that before the time of her fall?

A. She seemed considerably poorer after that.

Q. How long after?

A. Several weeks.

Q. I ask you what was her mental condition at the time

of her death as compared with her mental condition before she got the fall ?

A. She seemed to have no control of her affairs ?

Q. I mean her mind ?

A. I do not know as I could say, before her fall ; I was not with her as much ; she was out in the country. After she came in town I was with her every few days.

10

Cross-examined.

BY MR. HILLIARD :

Q. You say you do not know what her mental condition was before her fall ?

A. Not much.

Q. I understood you to say that she did not appear to be afraid of her daughter Mary ? 20

A. I do not know that she was afraid of her, but Mary had constant control of her.

Q. Was there not a good deal of affection between them ?

A. They seemed that way.

Q. Was not the influence Mary had over her that of love and affection ?

A. Yes, sir.

Q. Was her mother in any way dependent upon her in a pecuniary point of view ? 30

A. Not that I know of.

MR. SINNICKSON : Did she have any more affection for the daughter Mary than the daughter Beulah, that you know of ?

A. Not that I know of.

ANNA GASKILL, affirmed and examined.

BY MR. SINNICKSON :

Q. Are you the daughter of Mrs. Beulah Gaskill ?

A. Yes, sir.

Q. Were you in the habit of going to your grandmother's house in 1882, and since that time ?

10 A. I did not go before as often as I did since.

Q. Were you there at the death of her sister Mary ?

A. I was there.

Q. Were you there before ?

A. Yes.

Q. Do you know anything, or did you ever see anything in your grandmother, about the time of her daughter's death, or at the time of the making of this will, to indicate that her mind had become weakened ?

A. Yes, sir.

20 Q. State what it was ?

A. I have told her things and go upstairs and I would come down and tell her the same thing, what we was doing, and the next morning she would ask me a question and I would tell her the very thing I told her the night before and it was new to her.

Q. Was there anything else that you have observed to show the weakening of her mental powers ? Do you know whether she could read or not at that time ?

30 A. No, sir ; she could not read ; her eyesight was such that she could not read.

Q. Did you ever observe anything about her manner when George Waddington came into the room ?

A. She never seemed as free when he was in the room as when he was out.

Q. When did you observe that ?

A. After Aunty's death, and I think before.

Q. Did you ever hear George Waddington say anything to your grandmother against Nathan Buzby ?

A. I have heard him tell her that he didn't see how he did to live so extravagantly ; he could not live so.

Q. Did you ever observe any want of affection on the part of your grandmother towards Nathan Buzby ?

A. No, sir.

Q. Did you ever observe whether she manifested affection for him or not ? 10

A. Yes ; she always did.

Q. Did you ever observe any feeling on her part about his picture ?

A. She took the picture down there, and she said she would like to have that picture, to have it in her possession as long as she lived, and after that it could go back to her ; and she kept it in her bureau drawer.

Q. Did you ever see anything to indicate that Nathan was her favorite ? 20

A. It always looked as though he was her favorite grandchild.

Q. He was the only son of her only son ?

A. The only child.

Q. Do you know anything about ever seeing any circumstances before your aunt Mary's death, to indicate that she controlled your grandmother during her lifetime ; if so state it ?

A. I know grandma would never do anything without consulting aunt Mary. 30

Q. More than any of the rest of the family ?

A. Aunt Mary was the only one she would consult.

Q. Did you ever notice anything peculiar between George Waddington and Martha Hancock ?

A. They have had talks together ; when I have been there, he would go up to the barn, and Martha would follow him up there, and they would have a talk ; or he would go up stairs and she would follow him up there.

Cross-examined.

BY MR. HILLIARD :

Q. Was not George Waddington attending to your grandmother's money affairs at that time ?

A. Yes, sir.

10 Q. Who was her housekeeper ?

A. Mother and Martha.

Q. Who was it that took charge of the household, prior to your mother's coming there ?

A. Aunt Mary.

Q. Was Martha Hancock living with them ?

A. Yes.

Q. And had been for many years ?

A. Yes, sir.

Q. After your aunt Mary's death who was the house-  
20 keeper ?

A. I always considered that my mother was.

Q. You did not know what your grandmother thought about it ?

A. That was her impression too.

Q. Did your grandmother, at any time, show any forgetfulness of her children ; that is, did she fail to recall their names ?

30 A. No ; I never heard her forget the names of her own children ; I have heard her call her grandchildren by their wrong names.

Q. You said that you would tell her things and she would forget them very soon and you would have to tell her over again ? I ask now, in that connection, whether she would ever forget the names of her children and grandchildren ?

A. She would not know Nathan Gaskill's from Nathan Buzby's children.

Q. But her own children, and grandchildren, she knew all about them ?

A. Yes, sir.

Q. Was she on good terms with them all ?

A. Yes, sir.

Q. You have said that your grandmother seemed to be somewhat constrained in her action, or in some way when George Waddington came into the room : how long ago did you notice that ?

A. Ever since aunt Mary's death. 10

Q. Immediately after the funeral ?

A. Yes, sir.

Q. What was the occasion that you noticed it, and what indicated it ?

A. She would not talk as free.

Q. Did she seem to have a dislike for him ?

A. I would not say it was a dislike.

Q. What would you say it was ?

A. More like fear, to me. 20

Q. Had he any control over her income, or property, in any way ?

A. He had the whole control of it.

Q. Was it invested in his name ?

A. I do not know about that.

Q. Was his control the same as Owen Jones had previously ?

A. I do not know what Owen Jones had done.

Q. Do you know that George Waddington had any greater and further control over her than any other collectors of her income ? 30

A. Yes.

Q. In what way ?

A. I know that he kept the money in the bank in his name ; the other collectors had had a book, and had had it in her name.

Q. You are positive about that ?

A. Yes, sir.

Q. Have you seen the bank book ?

A. No, sir.

Q. When was it that he put the money in the bank in his name ?

A. I do not know when it was.

Q. Who told you ?

10 A. I do not know ; but last winter I heard it, and I saw it.

Q. When ?

A. Last winter I heard him tell that he put the interest money in the bank in his name.

Q. Was she then keeping a bank account of her own ?

A. No, sir ; not that I know of.

Q. Did she ever have any difficulty in getting her income from George Waddington ?

A. Not that I know of.

20 Q. Did he ever indulge in threats to her in any way, as far as you know ?

A. No.

Q. Has he ever sought to control her actions in anything not relating to her business, her household affairs ?

A. I have heard him say that things were extravagant—things were extravagant, so and so, and he would not have them.

Q. Was he consulted about it ?

30 A. I do not know.

Q. Will you mention some instance in which he objected to some expenditure in her family ?

A. I do not remember of any just at this time.

Q. Did you ever have, of your own knowledge, any understanding on the subject, or has this merely been told you ?

A. It is just what I have heard myself.

Q. You never heard him, did you?

A. I have heard him say he did not think it was right to have so much company; it was too extravagant.

Q. What was that based on? That her income was small?

A. Yes.

Q. That was given as one person to another, not as one having control? He didn't pretend to have control over her expenditures, did he?

A. I think he did.

10

Q. Did he always give her money when she asked for it?

A. I do not know anything about that.

Q. You do not think he cut off her income in any way to make her more economical in her expenditures in the family?

A. I do not know of anything of the kind.

20

ANNA FOGG, Re-called.

BY MR. SINNICKSON:

Q. I understood you to say that you did not hear George Waddington tell your father to close the gate carefully, that he didn't want mother to hear it?

A. I thought that father said that George told him; I did not hear him make any remark to father at all. I believe that father said that George said—

Q. (Interrupting.) Was there anything said to you?

A. I heard George say not to make a noise with the gate.

Q. Was there any reason given for not making a noise with the gate?

A. Because "I do not want mother to know that you are here."

Q. He did not say it was because Mary Buzby was sick in the house ?

A. No, sir ; I thought I was called to sign Mary Buzby's will.

10

MARY SMITH, affirmed and examined,

BY MR. SINNICKSON :

Q. Where do you live ?

A. At 77 East Broadway.

Q. Did you know, in her lifetime, Ruth W. Buzby ?

A. Yes.

20 Q. How long have you known her ?

A. I have known her all my life.

Q. Do you remember the circumstances of her having received a fall some years ago ?

A. I do not know anything about that.

Q. Do you know—did you ever see George Waddington and Martha Hancock conversing together ?

A. Yes, sir ; I have.

Q. Under what circumstances ?

30 A. I can't say.

Q. Frequently apart by themselves ?

A. Yes, I have.

Q. Where would you see them ?

A. At the gate and on the walk when he was going home.

Q. Were they long conversing together ?

A. Yes.

Q. Do you know any fact with regard to the mental condition of Ruth Buzby at the time of her daughter Mary's death?

A. She was very feeble, both in body and mind.

Q. How long did that continue?

A. She never recovered from it at all.

Q. Was her eyesight very poor at that time?

A. Very poor.

Q. Do you think she could read writing?

10

A. I know she could not.

Q. Was she a person easily influenced?

A. Very. She could not read writing at the time of Morris Robinson's death.

Cross-examined.

BY MR. HILLIARD :

20

Q. In 1882, were you often in and about the house?

A. Yes.

Q. Where did they live then?

A. The next door to me.

Q. How long had they lived there?

A. Four years.

Q. In 1882.

A. Only a short time.

30

Q. Before that time where did they live?

A. Across the street.

Q. Were you in there before they moved across the street?

A. Yes.

Q. What made you think that Ruth Buzby could not read at the time of her daughter's death?

A. I did not say she could not read at her daughter's death, that was a year afterward.

Q. How do you know that she could not read writing?

A. Because I gave her a piece of writing, and she said she could not read it, and handed it back.

Q. You have no personal knowledge that she could not read writing at the time of her daughter's death?

A. No.

10 Q. What made you think that she was feeble in mind at the time of her daughter's death?

A. Because she was old; her years.

Q. It was because you knew she was so old?

A. Yes.

Q. All people of eighty are that way, are they not?

A. Yes; her memory was poor; things years ago, she remembered, but others she did not.

Q. She had been an intelligent woman, had she not?

A. Very, in her day.

20

Re-direct examination.

BY MR. SINNICKSON:

Q. Did you know, from conversation with her, that she was feeble minded?

A. Yes.

30 Q. From her manner of replying to you?

A. Yes, sir.

Q. Did she show a lack of intelligence when you were talking to her?

A. Sometimes she would, and sometimes she would not?

Q. Was she particularly prostrated at the time of her daughter's death?

A. She was.

Q. Do you know how long that continued ?

A. I do not know.

Q. For a long time after Mary's death she was sick, was she not ?

A. Yes.

---

MRS. LIZZIE ROBINSON, affirmed and examined. 10

BY MR. SINNICKSON :

Q. Did you know Ruth Buzby in her lifetime ?

A. Yes ; for some years ; about seven years before her death.

Q. Did you know her daughter, Mary Buzby ?

A. Yes.

Q. Do you remember the time of her death. 20

A. Yes, sir.

Q. Did you know Ruth Buzby at that time ?

A. Yes, sir.

Q. Were you there frequently ?

A. The night they moved there I was in and several times after.

Q. What was the condition of her eyes at that time ?

A. I was in knitting, and she said my eyes were young ; if the knitting was set for her, she could knit. 30

Q. A blind person could knit if it was set ?

A. Yes.

Q. Had she been in the habit of knitting ?

A. Yes ; she knitted a great deal, particularly stockings for her grandchildren.

Cross-examined.

BY MR. HILLIARD :

Q. This was about the time of Mary's death ?

A. Yes, just before Mary's death ; just after they moved.

10 Q. Did you ever know, of your own knowledge, that she could not read writing ?

A. No. Soon after Mary's death I went in to see her, and I walked in alongside of her, and she did not seem to see me. Miss Hancock came in and said, "Mother, here is Lizzie," and she put out her hand and called for me.

Q. She was prostrated over her daughter's death ?

A. Yes.

Q. Did she go about the house ?

A. I do not know that she could get up.

20 Q. Of your own personal knowledge, you do not know that she could not read writing at that time ?

A. Only what she told me ; that is all.

---

JOSEPH FOGG, affirmed and examined.

30 BY MR. SINNICKSON :

Q. Did you know Mrs. Buzby in her lifetime ?

A. I did.

Q. Did you know her before she had a fall, some fifteen years ago ?

A. Yes ; I have known her a long time, but I did not live in the neighborhood at the time she had the fall.

Q. You knew her before that ?

A. Yes, sir.

Q. What was her condition—you knew her condition after that ?

A. Yes, sir.

Q. What was her condition after the fall as compared with what it was before she had the fall ?

A. I do not know as I could answer that question clearly ; she was a weak woman, and a nervous woman, on the decline ; and a woman that did not undertake to do her own business. She lived in the house I moved out of about two weeks before Mary died. We moved out the 15th of March ; they moved in the same day. She sat in the house very quietly, and did not hold a great deal of conversation with anybody. 10

Q. Mary managed her affairs ?

A. Yes ; we used to go there, and Mary seemed to do all the talking.

Q. Did you have any conversation with the old woman ? 20

A. She was the very person I used often to go over to see.

Q. In your talk with her how would she talk ?

A. She did not talk a great deal ; she was a quiet woman.

Q. In her talk did she disclose any want of capacity ?

A. I do not know that she did.

Q. You do not know much about it any way ?

A. Not much about it.

30

Cross-examined.

BY MR. HILLIARD :

Q. Did you ever hear her, in these conversations, make foolish or silly remarks ?

A. I do not know that I did ; she was a woman well advanced in years.

Q. Pretty well preserved for one of her years, was she not ?

A. Not very ; she was physically and mentally weak.

10

NATHAN BUZBY, affirmed and examined.

BY MR. SINNICKSON :

Q. Are you the grandson of Ruth Buzby, the testatrix in this case ?

A. I am.

Q. What was your father's name ?

20 A. Nathan W. Buzby.

Q. Are you the only son ?

A. I am.

Q. He died before you were born ?

A. Yes, sir.

Q. Were you left any estate from him ?

A. No, sir.

Q. What did you get from your grandfather ?

A. One thousand dollars were left to me.

30

Q. Is that all that was left ?

A. Provided I should not live to be twenty-one.

Q. Then where was it to go ?

A. To Mary B. Gaskill.

Q. Was that all left to you ?

A. Yes, sir.

Q. Who were the executors of your father's will ?

A. George M. Ward and Ruth W. Buzby.

Q. Did you get anything from George ?

A. I got part from George and my grandmother paid the balance.

Q. You were a lad when your grandfather died, were you not ?

A. I believe fifteen or sixteen.

Q. After George's failure your grandmother made up the balance to you ? State what happened when you went to get the money ?

A. Well, I came to you ; in the first place I consulted you about it. 10

Q. When you went to see your grandmother ?

A. And Martha, and George and Will Carpenter were there ; the money was paid over to me.

Q. Did you say anything to her, that if it would inconvenience her you would not take it ?

A. Aunt Mary, I think, said that was all they had in the house but ten dollars, and I said if it was going to dis- 20  
tress her I would not take it.

Q. What did she say.

A. She said it belonged to me, for me to take it.

Q. Did she give it to you freely ?

A. Yes, sir.

Q. Did you see any difference in the manner of your grandmother after that ?

A. No, sir ; not that I could see.

Q. Did you go down to see her there ?

A. Frequently. 30

Q. Did she ever intimate that she was going to cut you off in her will ?

A. We never talked about that ; it was a rather delicate matter.

Q. Did you ever see anything in her manner to indicate that your Aunt Mary controlled her ?

A. As far as I could see, Aunt Mary always controlled her. Before I was twenty-one, I used to be up there occasionally, and she would say, "Here Nathan, here is fifty cents or a quarter," or what ever she could give me, and she would say, "Put it in your pocket and don't let your Aunt Mary see it." I do not know why she did not want me to let her see it.

10 Q. Had you any reason to believe that your Aunt Mary was jealous of you?

A. No, sir; not that I know of.

Q. Did you ever see anything in your Aunt Mary's conduct, after this money was paid to show—

A. (Interrupting.) Aunt Mary did not seem to like it because I took it.

Q. You had nothing?

A. No, sir.

Q. And you just became of age then?

A. Yes.

20 Q. Have you ever observed anything between George Waddington and your grandmother to indicate that he had any influence or control over her?

A. No, I was not there enough to notice anything like that.

Cross-examined.

30 BY MR. HILLIARD:

Q. Did you not employ an attorney to institute proceedings to compel your grandmother to pay you this deficiency in the legacy?

A. No, sir; I asked an attorney's advice.

Q. You paid his fees?

A. Yes, it was paid ; there really was not any employment of an attorney.

Q. Did you employ him ?

A. I could not tell you ; I went to see him before—I do not know whether I went there to see her before I saw him or not.

Q. Did she not, to your knowledge, know that you were going to compel her by legal proceedings to pay that one thousand dollars ?

A. I do not know whether she did or not ; she may have heard it from somebody. 10

THE COURT : When was this paid, in fact ?

A. Shortly after I was twenty-one.

BY MR. HILLIARD :

Q. (Handing witness a paper.) Is that the receipt you signed for it ?

20

A. Yes, sir.

Q. That bears date of June 19th, 1875. You say you thought George Waddington was present at that time ?

A. I think he was.

THE COURT : How much did she pay ?

A. Nine hundred and thirty-eight dollars and forty cents.

(Receipt offered in evidence and marked "Exhibit A.") 30

BY MR. HILLIARD :

Q. You say no conversation passed between you subsequent to that time, in relation to her giving you any portion of her estate ?

A. No, sir.

Q. You consulted a lawyer to know whether you could get the money by legal proceedings ?

A. Yes, sir.

Q. No steps were taken ?

A. No, sir.

10 WILLIAM B. CARPENTER, affirmed and examined.

BY MR. SINNICKSON :

Q. Were you present at the time this money was paid Mr. Buzby by Mrs. Buzby ?

A. Nathan was at my house, and he asked me if I would go up there with him and get that money, and I went up there with him ?

20 Q. Was anything said by Ruth or Mary, or any one ?

A. I do not know that Ruth said anything, but Mary said, "Nat, you have got all the money there is in the house but ten dollars;" but Ruth said, "Take it Nat, it belongs to you."

(Cross-examined.)

30

BY MR. HILLIARD :

Q. Did you not advise Nathan Buzby to institute legal proceedings for this money ?

A. I do not remember of saying anything about it.

Q. Do you say you did not ?

A. I say I did not ; it has been a good while ago.

Q. Did you advise him to consult counsel about it ?

A. I cannot say that I did ?

Q. Did you advise him to take that money from his grandmother ?

A. That was my advice ; yes.

Q. Did you advise Nathan Buzby to demand interest ?

A. I did not do that.

Q. Was Ruth Buzby, to the best of your knowledge and belief, willing to pay that money to Nathan without compulsion ? 10

A. I believe she was.

Q. Do you think that her daughter Mary was willing ?

A. I cannot tell you ; I was not in the habit of visiting them.

Q. You think that Ruth Buzby paid that money willingly in opposition to Mary's wishes ?

A. I cannot say about that.

Q. You say Ruth was willing to pay it ?

A. Yes. 20

Q. Now you say you do not know whether Mary was willing to have her pay it or not ?

A. No, sir ; only her manner was entirely different from that of her mother's.

---

ERNST WADDINGTON, sworn and examined. 30

BY MR. SINICKSON :

Q. Do you know George Waddington, the executor named in this will ?

A. Yes, sir.

Q. Do you remember of having a conversation with him—did you have any conversation with him along four or five years ago, about some money that Joseph Waddington had of Ruth Buzby's ?

A. Yes, sir.

Q. State what Mr. George Waddington said to you ?

10 A. He told me he went to her home one morning, he said, generally, that Joseph had been in there, and thought he could get her money at five per cent.; and he talked to grandmother, and said he would like to see her privately, and he went in there and took some papers and read them to her, where they could borrow money on loans at four per cent.

Q. That is George Waddington told you Joseph had told him that ?

A. Yes ; and he told her that, if she didn't let him have it at five per cent. he would go elsewhere ; but she told him she would not do it until she could see George about it.

20 Q. What did George tell her ?

A. He told her to tell him to get it, and he would find a place for it.

Q. Did you hear George say anything about Nathan not getting anything more ?

A. He said that Nathan would not get anything more on account of the way he acted towards his grandmother.

30 Q. How long ago was that ?

A. Sometime.

Q. How long ?

A. I do not remember.

Q. After Mary's death ?

A. I think it was before—the spring. He got a place for the money, and it was not cut for any length of time.

Q. Was it in 1882 ?

A. No; it was not in 1882. I do not know; it has been from four to five years I suppose; it was right after—

Q. (Interrupting.) Right after Joseph Waddington paid him the money?

A. It was right before he gave it to Samuel Springer.

Q. You do not know when it was put out; it was from four to five years ago?

A. Yes, sir; I could not say whether it was four or five; it has been several years ago; it was the same spring he put the money out. I know he made a remark to me, that the money had not been idle any length of time. 10

Q. He told you Nat would not get any more?

A. Yes, sir.

Cross-examined.

BY MR. HILLIARD :

20

Q. Was that before or after Mary's death?

A. I do not remember.

Q. You do not remember whether this was the same spring?

A. It was the spring he made the remark that the money had not been idle long.

Q. Did he say who he put it out to?

A. He told me but I do not remember now.

Q. Did he not say to you that his wife's grandmother refused to let Joseph Waddington have it at a lower rate per cent. 30

A. Yes, sir; he said that she wanted to consult other parties.

Re-direct examination.

BY MR. SINNICKSON :

Q. Did George not tell you that he thought Joseph was mean to take an old lady off in that way ?

A. When I said, "George, do you blame him for wanting to get it at a lower rate per cent.," he says, "No, but he ought not to have taken an old woman off like that."

---

NATHAN GASKILL, affirmed and examined.

BY MR. SINNICKSON :

20 Q. You are the grandson of this testatrix ?

A. Yes, sir.

Q. And son of Beulah Gaskill ?

A. Yes.

Q. Do you know when that money was paid in and the mortgage was cancelled by Joseph Waddington ?

A. Sometime in 1882.

Q. Were you in the habit of visiting your grandmother during her lifetime and seeing her frequently ?

30 A. Yes, sir.

Q. Before your Aunt Mary's death ?

A. Yes, sir.

Q. And after ?

A. Yes, sir.

Q. What was her conduct toward to your cousin, Nathan Buzby ?

A. She always liked him as well as the rest of them ?

Q. Did you ever see any want of affection for him on her part?

A. No.

Q. Did you ever observe anything to indicate that she intended to cut him off?

A. No, sir.

Q. Did you ever see anything to indicate that she cared more for him than the others?

A. If she made any distinction, it was in favor of him; 10  
that would be my judgment.

Q. Do you know anything about whether George Waddington had any influence over her or not?

A. Well, I do not know that I could say that he had any particular influence over her, only that he conducted her affairs, and she was influenced by whatever he said.

Q. She was a woman easily influenced—easily dominated by the will of others?

A. Ever since I knew her, Aunt Mary always had every-  
thing the way she wanted it; and, after her death, she 20  
was controlled by George, and he had everything he  
wanted.

Cross-examined.

BY MR. HILLIARD:

Q. You speak in reference to her money affairs? 30

A. In reference to her money affairs; yes.

Q. He was handling her money for her, and paying her her income as she required it?

A. Yes; I believe so.

## Re-direct examination.

BY MR. SINICKSON :

Q. Did he influence her in any other way but in her money affairs ?

A. There is nothing I can tell of particularly.

Q. You live in Philadelphia ?

10 A. Yes.

Q. And was living there at that time ?

A. Yes, sir ; but I was down here frequently—that is, every month or two.

---

ELIAS BUZBY, affirmed and examined.

20

BY MR. SINICKSON :

Q. Did you know Ruth Buzby in her lifetime ?

A. I did.

Q. How long have you known her ?

A. Fifty years.

Q. Did you know her before she got the fall ?

A. I did.

30 Q. Did you know her afterwards ?

A. Yes, sir.

Q. Did you know her at the time of Mary Buzby's death ?

A. Yes, sir.

Q. What was her mental condition at that time, as compared with her mental condition before she got the fall ?

A. At the time of Mary's death, and along there, I frequently saw her, and it appeared to me there was a considerable change in her.

Q. In what way?

A. She seemed to be failing in her mind, as I thought.

Q. Before she got the fall, she was an intelligent woman, was she not?

A. I think so.

10

Cross-examined.

BY MR. HILLIARD :

Q. Were you personally acquainted with her, and in the habit of visiting at her house at the time she had that fall shortly before they left the farm.

A. Yes.

Q. Frequently?

20

A. Yes, about every two weeks.

Q. In what way did this change show itself?

A. It seemed to show itself in her mind.

Q. What did she do? Did she talk foolishly?

A. I thought I could perceive that her mind was not as strong as it was before.

Q. Did she make foolish speeches and act as a person who had no control of her mind—a lunatic? She did not act violently?

30

A. No.

Q. She was quiet?

A. Yes.

Q. Always had been?

A. Yes, as far as I ever noticed.

Q. Did you notice the loss of her recollection?

A. I did, somewhat; particularly along about the time of

Mary's death.

Q. She seemed to forget things of recent occurrence ?

A. Yes.

Q. Is not that a thing of frequent occurrence with old people ?

A. Yes.

Q. She was an old lady ?

A. They told me she was eighty-two.

10

---

ANNA GASKILL, re-examined.

BY MR. SINNICKSON :

Q. Was there anything you remember about a book ?

A. Yes.

20

Q. When was that ?

A. New Year's.

Q. The last New Year's ?

A. Yes. The book was given to Milton for a New Year's present. I was there, and I had the book and was reading it ; but the book was put in the closet so George could not see it. They said that they did not want George to know that she had given him that book.

Cross-examined.

BY MR. HILLIARD :

Q. They did not seem afraid to take the risk of concealment?

A. No, sir.

Q. Did George ever find it out?

10

A. Not that I know of.

Q. What would he have done if he had?

A. I do not know.

COTESTANTS REST.

## TESTIMONY IN REBUTTAL ON BEHALF OF PROPONENTS.

JONATHAN BUTCHER, affirmed and examined.

BY MR. HILLIARD :

- 10 Q. Where do you live ?  
 A. In Bridgeton.  
 Q. Were you acquainted with Ruth Buzby in her lifetime ?  
 A. I was.  
 Q. How long had you known her ?  
 A. I have been in the habit of visiting her house for ten years.  
 Q. Did you ever see anything about her to indicate that she was of unsound mind ?  
 20 A. I did not.  
 Q. She was an old woman ?  
 A. Yes.  
 Q. An intelligent woman ?  
 A. Yes.  
 Q. Did you converse with her on the occasions of your visits ?  
 A. Yes.  
 30 Q. What was the nature of her conversation ?  
 A. She talked on the topics of the day, and seemed to understand everything as much as any other lady would ; seemed to have perfect knowledge of everything, as far as any person would have, in my mind.  
 Q. You saw no difference between her and other people with whom you are acquainted ?  
 A. I did not.

Q. Did you ever have any business transactions with her ?

A. I never have.

Q. Did you visit her frequently ?

A. Yes, sir.

Cross-examined.

BY MR. SINNICKSON :

10

Q. When did you see her last ?

A. I think the last time—I do not think I have seen her during 1886.

Q. In 1885 ?

A. Yes, sir.

Q. When ?

A. I could not swear to any dates in 1885, but I saw her in 1885.

20

Q. You cannot tell anything about when you saw her in 1885 ?

A. I could not say.

Q. Can you swear you saw her in January, 1885 ?

A. I could not give the date.

Q. Could you swear that you saw her at all in 1885 ?

A. Yes.

Q. How ?

A. Because I went there that year.

30

Q. When you went there in 1885, were you there in the month of February ?

A. I cannot give dates.

Q. How do you know you were there at all in 1885 ?

A. I am certain I was there in 1885.

Q. Why are you certain, if you cannot tell the month or the occasion of your going there, how can you do that ?

A. I cannot swear to any dates.

Q. Why can you swear that you were there, if you have no recollection of the time you were there—how can you sit here and swear that you were there?

A. No answer.

Q. Can you recall any conversation that you had with her in the year of 1885?

A. (No answer.)

10 Q. Can you recall any time or fact that you visited her in 1884?

A. No answer.

Q. Can you recall any time or fact of any visit you had with her in 1883?

A. I cannot swear to any date in 1883.

Q. Can you swear to any fact, or any particular visit that you had occasion to go there in 1883.

A. No, sir.

20 Q. Can you recall any occasion or fact that you had occasion to go there in 1882?

A. I can.

Q. What?

A. I was there at Mary Buzby's funeral.

Q. What time in the day did you go there?

A. I went there in the morning.

Q. What time was the funeral?

A. It was during the morning.

Q. Then you came down to the funeral?

30 A. Yes, sir.

Q. Had the funeral assembly gathered there when you got there?

A. They were gathering.

Q. Where was the old lady?

A. The old lady, I think, was upstairs when I came.

Q. Did you go upstairs and see her?

A. I was called up with the family.

Q. Did you go into the same room with her ?

A. Yes, sir.

Q. The funeral was then gathering ?

A. Yes.

Q. At the time this funeral was gathering—the funeral of this old lady's daughter—did you have any conversation with her ?

A. We had.

Q. When ?

10

A. After the funeral.

Q. Who else was there ?

A. My wife was there.

Q. How long did you stay there ?

A. I may have stayed there not over fifteen minutes.

Q. During that time what did you say to this old lady ?

A. I do not remember of saying anything particularly to her ; I remember of talking to her.

Q. You were not there over fifteen minutes ?

20

A. I remember her saying to some friends—these were not relatives but friends of her's.

Q. Do you remember of her saying anything ?

A. No.

Q. When before that did you last see her ?

A. Christmas Day, 1881.

Q. On what occasion did you see her then ?

A. I dined there.

Q. Who else was there at that dinner ?

30

A. I could not tell you ; I do not know.

Q. How long were you there that day ?

A. I should not think I was over twenty minutes in the house that day. I dropped in there, and they asked me to sit down to dinner.

Q. Who else was there at that dinner ?

A. I do not know.

Q. Where did you sit when you stopped in and they asked you to sit down to dinner ?

A. I think that—

Q. Where did you sit and who did you sit next to ?

A. I do not know.

Q. Did you have any conversation with the old lady at that time ?

A. I remember of seeing and talking to her.

10 Q. Do you remember anything she said to you ?

A. No, sir.

Q. When did you see her next before that Christmas Day ?

A. I do not know, sir.

Q. Do you remember of seeing her within a month before that time ?

A. No ; I do not think I did.

20 Q. Do you remember of seeing her within six months before that time ? You lived at Bridgeton then, did you not ?

A. Yes.

Q. Do you remember of seeing her within six months before that time ?

A. I do not remember any certain length of time or dates.

30 Q. Do you remember any conversation with her before that at all ? All the particular conversations you can remember was at Christmas, 1881, and after the funeral of her daughter, Mary ?

A. I remember of being there on that Christmas Day, and that time at the funeral.

Q. Do you remember any time in the year 1881, except Christmas ?

A. I remember of being there several times.

Q. Can you tell any one time ?

A. I cannot tell the dates, but I remember being there at meals before 1881.

Q. What month was that—can you remember that ?

A. No, I cannot.

Q. Can you remember any particular meal that you were there at before Christmas, 1881 ?

A. I cannot remember the date.

Q. Can you remember the circumstances of any particular meal ?

A. I can remember of being there at a dinner before that, sometime. 10

Q. Do you know what time of the year that was ?

A. No, sir ; I do not.

Q. What month, or day, or year ?

A. No.

Q. Can you swear it was 1881 ?

A. I cannot swear it was in 1881.

Q. Have you any recollection of being there at any particular time in 1881 ?

A. No, sir ; I cannot. 20

\* Re-direct examination.

BY MR. HILLIARD :

Q. You testify that within the last ten years you were there frequently until the present time ? 30

A. Yes, sir ; until 1886.

Q. You were there and conversed with Ruth Buzby ?

A. Yes, sir.

Q. Do you remember of any occasion that you were there in 1882, after the 20th of April ?

A. In 1882 I was there at Mary's funeral.

Q. Do you remember of any subsequent time in 1882 that you were there ?

A. Yes.

Q. When ?

A. In June, on a Sunday, after one o'clock—between one and three o'clock in the day.

Q. Did you see Ruth Buzby on that occasion ?

A. Yes, sir.

10 Q. Have any conversation with her ?

A. I did ; I was there in June of the same year that Mary died—1882, on a Sunday, early in June ; but I cannot swear to the date exactly ; but I was there in June after that, and I think the 22d day of June ; I cannot swear exactly as to the date.

Q. You were there twice in June, 1882 ?

A. Yes, sir.

Q. On both occasions did you see Ruth Buzby ?

A. Yes, sir.

20 Q. And converse with her on both occasions ?

A. Yes, sir.

Re-cross-examination.

BY MR. SINNICKSON :

Q. What time in the day were you there in June, 1882 ?

A. Between one and three.

30 Q. How long did you stay ?

A. I think I stayed about twenty minutes.

Q. Was anybody else there but the old lady ?

A. Yes.

Q. Who else ?

A. I think there was a Mrs. Gaskill there.

Q. Anybody else ?

A. A gentleman was there, but I do not remember his name.

Q. What did you talk to the old lady about ?

A. I do not now remember that.

Q. How long were you in there ?

A. Fifteen minutes.

Q. Talking to the old lady ?

A. Yes, sir.

Q. Do you remember anything she said ?

10

A. No, sir.

Q. That you said ?

A. No.

Q. At the second visit in June, do you remember any thing you said ?

A. I was there and I remember of talking to her ; but I do not remember anything either of us said.

Q. How long were you there the second time ?

A. Not over ten minutes.

Q. Was anybody else there then ?

20

A. I do not remember of anybody except the family ; I do not remember who was there ; I remember of seeing her there.

Q. You do not remember what you said when you were there ?

A. No, sir. I was in the habit, when I was in Salem, of stopping and seeing her ; I was in the habit of coming here three or four times a year. She and Miss Hancock and Mary drove down to our house, and she said, " Whenever you are in Salem come in, if it is only for four or five minutes." 30

Q. And you never saw anything in her conduct or actions to indicate that she had a weak mind ?

A. I never did.

CHARLES S. LAWSON, sworn and examined.

BY MR. HILLIARD :

Q. Where do you live ?

A. In Salem.

10 Q. Were you acquainted with Ruth Buzby in her lifetime ?

A. Yes, sir.

Q. How long have you known her ?

A. I suppose for twenty years.

Q. Did you ever have any business transactions with her ; and, if so, please state what they were ?

A. No, sir ; no business transactions ; nothing further than the death of this Mary.

Q. State what happened in that case ?

20 A. As usual on such occasions after—on such occasions it is usual for us to assemble the family, and ascertain what they would like in regard to the funeral.

Q. What occurred on this occasion ?

A. On this occasion the family assembled in the sitting room.

Q. Who were present ?

A. Mrs. Gaskill was present, and her mother came up ; and I asked what was wanted to be done ; and I think Mrs. Gaskill gave me her opinion as to what she would  
30 like, and Mrs. Buzby was referred to, and she assented.

Q. Her directions were taken in the matter with regard to the funeral ?

A. Yes.

Q. Did George Waddington, at that time, dictate the arrangements in any way ?

A. I do not think he did ; Mrs. Gaskill told me what she would like, and the mother assented.

Q. She seemed to understand what was said ?

A. Yes ; I was there fifteen minutes in her company.

Q. Do you know that she had perfect knowledge of what arrangements were to be made ?

A. As far as I know.

Cross-examined.

BY MR. SINNICKSON : 10

Q. Mrs. Gaskill gave the general direction ?

A. She gave the general directions, and referred the matter to her mother.

Q. You got your directions from Mrs. Gaskill ?

A. Through Mrs. Gaskill, assented to by her mother : I think the matter was referred to the mother.

Q. How was it referred ?

A. "Mother, would you like that," and so on. 20

Q. What would she say ?

A. She would just nod her head and say yes.

Q. Did she say anything except yes and no during that interview ?

A. No, sir.

Q. Just confined herself to yes and no ?

A. Yes ; merely assented to what was said to her.

Q. She said yes to everything ?

A. Yes. 30

Q. And Mrs. Gaskill did everything ?

A. She did everything, as far as I was concerned.

## Re-direct examination.

BY MR. HILLIARD :

Q. Was any arrangement made in that funeral without Ruth Buzby's consent ?

A. They were generally made at that time, and we acted upon them.

10 A. Was any suggestion or direction of any kind made by Mrs. Buzby ?

A. Not to my knowledge ; not to me direct.

---

ROBERT STRETCH, sworn and examined,

20 BY MR. HILLIARD :

Q. Where do you live ?

A. In Salem.

Q. Were you acquainted with Ruth Buzby in her life-time ?

A. At times I was.

Q. Do you remember any occasion on which you saw her and conversed with her ?

30 A. It was at the time of Morris Robinson's death ; we were invited over there.

Q. When was that ?

A. That was in 1883 ; he died, I think, on the 15th of March ; the funeral was a few days after.

Q. Did you, on that occasion, see Ruth W. Buzby ?

A. Yes, sir ; I was talking with her and to her while they were going to the funeral.

Q. You say you had a conversation with her ?

A. Yes ; we had with her and the family.

Q. Did you talk with her personally ?

A. Some.

Q. Did she show any desire for conversation ?

A. Yes, but I did not attend to what she said ; I cannot say just what was said or anything about that. We had met several times, along before.

Q. Conversation was rational, was it not ?

10

A. Yes.

Q. You had no suspicion that she was of unsound mind ?

A. No, sir ; I did not see anything of that kind ; she was not very strong—a weakish woman.

Q. Physically ?

A. Yes ; I think she said she was eighty-four at that time.

20

Cross-examined.

BY MR. SINNICKSON :

Q. Who were with you there ?

A. Ingham and Elijah Ware.

Q. Were there any other friends ?

A. Yes ; but I would not be right certain.

Q. Did you sit next to Ruth Buzby ?

30

A. Yes, sir.

Q. How close ?

A. As close as you are.

Q. Who sat on the other side ?

A. I do not know ; I think she sat next to the side of the room.

Q. Was anybody else close by ?

A. I think Elijah was.

Q. Was Mrs. Gaskill there ?

A. I think she was.

Q. How much of the time did you talk to Mrs. Buzby ?

A. Most of the time.

Q. Did you hear anything said at that time by her ?

A. She was talking about her own life, and the health of the neighborhood, and anything and everything that came up.

10 Q. How often had you seen her before that time ?

A. I had not seen her for sometime before that.

Q. That was the only occasion you had seen her for a number of years ?

A. That would have any connection with this.

Q. Did you talk with anybody else ?

A. The principal talk was with her.

Q. How much of the time do you think you talked with Mr. Ingham ?

20 A. Well, just as it happened to come in.

Q. You do not remember anything of that conversation, or anything that was said by her to you to indicate her mental capacity ?

A. No, sir.

Q. Did you know her when she lived in the country ?

A. Yes, sir.

Q. Did you notice whether, on this occasion that you speak of, there was any difference as to her mental condi-

30 tion than when she lived in the country ?

A. I did not notice any difference at all.

Q. She was more feeble in health ?

A. Yes.

ROBERT DARE, sworn and examined.

BY MR. HILLIARD :

Q. Where do you live ?

A. In Bridgeton.

Q. Were you acquainted with Ruth Buzby in her lifetime ?

A. Yes, sir. 10

Q. How long have you known her ?

A. Twenty-five years or more.

Q. Have you been a visitor in her house in the last ten years ?

A. I was there in August of 1885 ; I could not tell the date ; I just dropped in.

Q. Were you in the habit, and have you been for years, of visiting her occasionally ?

A. Yes ; as I happened to be in Salem, if I had the time to spare, I would come in and see her. 20

Q. Did you converse with her on the last occasion that you met her ?

A. Just for a little time I was there.

Q. Did you see any difference in her mental condition at that time from what it had been when she was living on the farm ?

A. No ; only that I noticed she was a little more feeble in bodily health.

Q. Lately you could see no difference ? 30

A. I could see no difference.

Q. Do you remember the topics which engaged your conversation ?

A. She was always in the habit of inquiring after the relatives in Bridgeton and around our place.

Q. Did her memory seem good ?

A. No ; her memory was poor.

Q. Was there any other topic upon which you conversed ?

A. Nothing at all, I believe.

Q. When did you see her before that ?

A. I could not say whether it was at the funeral of Mary or not, but I think it was.

Q. Did you have any other conversation with her at that  
10 time ?

A. No, I did not.

Q. Did the failure of memory extend to recent events or did it extend to older events ?

A. In telling her anything she would seem to forget it.

Q. How was it in reference to things which happened in times of the past ?

A. She would forget it until she reminded of it.

Q. As to things which happened in her own day ?

20 A. I could not say about that.

Q. Were you at the house where Ruth Buzby died ?

A. Yes, sir.

No cross-examination.

30 EDWARD BUZBY, affirmed and examined.

BY MR. HILLIARD :

Q. Where do you live ?

A. Upper Pittsgrove.

Q. Were you acquainted with Ruth Buzby in her lifetime?

A. Yes.

Q. How long were you acquainted with her?

A. All my life.

Q. Did you know her when she lived in the country?

A. I did.

Q. When was the last occasion upon which you conversed with her?

A. I conversed with her, I think it has been two years ago. 10

Q. Within the last ten years how often have you seen her—frequently?

A. Yes, I have.

Q. And engaged in conversation with her?

A. Yes, more or less conversation.

Q. What was the nature of her mental faculties as compared with what they were before she left the farm—better or worse?

A. They were worse. 20

Q. Was there much difference?

A. I did not see such a great deal of difference; of course she could not remember as well as she did when she was on the farm.

Q. Did you have conversation with her most every time you met her?

A. Yes; most generally had a conversation with her when I met her, shook hands with her, and had conversation on the topics of the day. 30

Q. Was there anything in this conversation that indicated that her mind was unsound?

A. I had very little conversation with her except on few occasions.

Q. Did you see her on or about the time Mary, her daughter, died?

A. I saw her on the day of the funeral.

Q. Are you a relative of her husband ?

A. Yes, sir ; he was an uncle of mine.

Cross-examined.

10 BY MR. SINNICKSON :

Q. Did you not write to Mrs. Gaskill and advise her to caveat this will ?

A. Yes, sir ; I did write to her.

Q. And advise her to caveat the will ?

A. I told her if she wanted to do anything of that kind how to proceed.

Q. She wrote to you ?

A. I wrote to her first.

Q. And you told her about how to caveat the will ?

20 A. I did ; I thought if she was ignorant I would advise her.

Q. You did not advise her to do anything of the kind ?

A. No, sir.

Q. Did you not tell her in that letter to Mrs. Gaskill, to stop the will, or words to that effect ?

A. I told Mrs. Gaskill in that letter—I told her she would have to go to the Surrogate's office and object to the probate of that will.

HANNAH BUZBY, affirmed and examined.

BY MR. HILLIARD :

Q. Where do you live ?

A. At Pittsgrove.

Q. Were you acquainted with Ruth Buzby in her lifetime ?

A. I was. 10

Q. How long have you known her ?

A. The most of my life.

Q. Her husband was a relative of your husband ?

A. He was.

Q. Have you been in the habit of seeing Mrs. Buzby ?

A. I was. I had not been there for about three years, until the day of her death.

Q. Did you know her when she lived on the farm ?

A. I did. 20

Q. Have you seen her since Mary Buzby's death ?

A. I have ; it was over a year ago.

Q. What was her mental condition as compared to what it was before she left the farm ?

A. I could see a change, but I think she always talked rationally.

Q. You live at a distance and saw her occasionally ?

A. Whenever I came to Salem, we always called there.

Q. There was a friendship between the family ?

A. Yes, sir.

JOSEPH MULFORD, sworn and examined.

BY MR. HILLIARD :

Q. Where do you live ?

A. At Quaker Neck.

Q. Were you acquainted with Ruth Buzby ?

A. I was.

10 Q. How long had you known her ?

A. From my boyhood up.

Q. Had you seen her in recent years and talked to her ?

A. Not much.

Q. When did you see her last ?

A. Two years, or more than that, ago.

Q. Did you have a conversation with her at that time ?

A. No, sir.

Q. When was the last time you had a conversation with  
20 her ?

A. I do not know that I can tell that ; I have been in the house twice since her daughter was married.

Q. On either of these occasions did you have a conversation with her ?

A. No.

Q. Did you see her at any time after she left the farm to have a conversation with her ?

A. She was at our house one time.

30 Q. How long after she left the farm ?

A. The day she left.

Q. Was that shortly after the accident ?

A. Yes, sir.

Q. Did you see anything to indicate whether her mind was affected by it ?

A. I thought it had been.

Q. What were the symptoms you noticed ?

A. By her talk and manner.

Q. Could she speak plain ?

A. No.

Q. Do you think it had affected her mind ?

A. I do not think so.

Q. Do you remember of having any conversation with her after that time ?

A. No, sir.

10

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EBENEZER MULFORD, sworn and examined.

BY MR. HILLIARD :

Q. Where do you live ?

A. In Mannington.

Q. Were you acquainted with Ruth Buzby in her life-  
time ? 20

A. Yes, sir.

Q. How long did you know her ?

A. All my life.

Q. You knew her when she lived on the farm ?

A. Yes, sir.

Q. When was the last time you conversed with her ?

A. Last spring, I think ; I do not remember just exactly  
what month. 30

Q. Do you remember that you had a conversation with her within the last two or three years ?

A. I do.

Q. More than once ?

A. I have.

Q. Have you been in the habit of visiting at her house ?

A. Calling there occasionally.

Q. Did you see her to talk with her ?

A. Yes, sir.

Q. Did you see her when she lived on the farm ?

A. Yes, sir.

Q. When you last conversed with Mrs. Buzby what was her mental condition as compared with what it was when she lived on the farm ?

10 A. I do not think there was anything different.

Q. As far as you know there was nothing in her conversation to indicate that she was of unsound mind ?

A. No, sir.

Cross-examined.

BY MR. SINNICKSON :

20 Q. How often have you seen her in the last three or four years ?

A. Once a year.

Q. How long do you think you would talk to her when you called there ?

A. Half an hour.

Q. With her all that while ?

A. Well, with the family generally.

Q. How much of that conversation would be addressed  
30 to her ; more than five minutes ?

A. I do not know that it would be ; it was addressed to the family.

Q. Did she talk much ?

A. She would talk some.

Q. She was a quiet woman and would sit silent unless she was spoken to ?

A. Yes, sir.

MR. HILLIARD : Was not that her character from her early childhood ?

A. Yes.

---

ANN DUBOIS, affirmed and examined.

10

BY MR. HILLIARD :

Q. Where do you live ?

A. At Quaker Neck.

Q. Were you acquainted with Ruth Buzby ?

A. Yes, sir.

Q. How long had you known her ?

A. A number of years.

20

Q. You knew her when she lived on the farm ?

A. Yes, sir.

Q. Have you seen her and talked to her since she lived in Salem ?

A. Yes.

Q. More than once ?

A. Yes.

Q. Frequently ?

A. Yes.

30

Q. When was the last time that you conversed with her, to your recollection ?

A. This summer ; I think it was in August.

Q. Did you have much conversation with her ?

A. Not very much ?

Q. Has she ever been a talkative woman ?

A. I do not think she was.

Q. Did you notice any change in her mental condition at your last interview from what it had been when she was last on the farm ?

A. I noticed that there was a change in her ; she was weaker in body—more feeble.

Q. Did you notice any symptoms which would indicate that her mind was not strong ?

A. I do not know that I did particularly.

10 Q. In her youth she was an intelligent woman ?

A. Yes, sir ; I did not know her in her youth.

Q. I mean in your early recollection of her, she was an intelligent woman, and at the time you last saw her ?

A. No ; she did not talk like she did before ; she did not talk very much anyhow.

Q. Did you have much conversation with her ?

A. Not very much.

Q. Did you help at the time that Mrs. Buzby removed from the farm to Salem ?

20 A. No, sir.

Q. When they moved across the street ?

A. Yes, sir.

Q. Was that shortly before the death of Mary Buzby ?

A. Yes.

Q. How long were you there helping ?

A. One day.

Q. Was Mrs. Buzby able to get about at that time ?

A. Yes ; but she was very feeble.

30 Q. Was she consulted in regard to the disposition of anything ?

A. I do not know.

Q. You do not know whether she was appealed to by her daughter in relation to the matters going on ?

A. No, sir.

## Cross-examined.

BY MR. SINNICKSON :

Q. You know that she got a fall a few years before ?

A. I do.

Q. Do you think she was the same woman ?

A. I never thought she was.

10

Q. Was she a changed woman ?

A. Yes, sir.

BY MR. HILLIARD :

Q. Was she changed in her mind ?

A. I thought so.

Q. Did she do anything to indicate that her mind was changed by the fall ?

A. Yes, sir ; but I do not know that I could tell you.

Q. More quiet ?

20

A. Yes, sir.

Q. But she did nothing to indicate that she had not a sound mind after that ?

A. I do not know that she did.

---

 WILLIAM A. CASPER, sworn and examined.

30

BY MR. HILLIARD :

Q. Where do you live ?

A. Quinton township.

Q. Did you know Ruth Buzby in her lifetime ?

A. I did.

Q. Did you ever do any business with or for her ?

A. Well, I was consulted in regard to business.

Q. What was the nature of the business ?

A. Money matters.

Q. When was this ?

A. It was the year before her daughter died.

Q. She consulted you in reference to making some investment ?

10 A. Well, it was through her daughter.

Q. What daughter, Mary ?

A. Yes ; both of them.

Q. What was the nature of the business ?

A. She asked me in regard to the loaning of money ; whether there was any being loaned at a reduced rate of interest, I think it was five per cent.

BY THE COURT :

Q. Did she ask you ?

20 A. Her daughter did first.

Q. Did she afterwards ask you in relation to her own money—the testatrix ?

A. I think—yes, she did ; she told me how they were situated, and had been likely to have money paid in. The party who owed it had requested them to take a less amount of interest, and said he could get the money at a lower rate of interest, and they didn't want to take a lower rate of interest.

Q. You say she ; do you mean the testatrix ?

30 A. Both of them.

Q. You say the daughter asked you first about her's, and the mother later about her's ?

A. Yes, sir.

Q. You advised them, did you ?

A. I told them I thought there was money loaned at that rate. They thought—

MR. SINNICKSON : That is too indefinite.

THE WITNESS : Their conversation was both of one thing.

THE COURT : We want to know what part the old lady took in the conversation.

A. She did not take as great a part as the daughter ; the daughter appeared to be asking the questions. The old lady knew all that was going on, and what was said, and 10 she, every once in a while, would take a turn.

BY MR. HILLIARD :

Q. This was in the year before her daughter died ?

A. I think this was the year before she died.

Q. Did she make any suggestions to you as to where she thought this party could get his money at a lower rate of interest ; I am speaking of Ruth, now ?

A. Yes, she understood—the question arose between the daughter and me as to whether money was put out at five per cent. interest ? I told the daughter I thought it was ; they asked me who was loaning it out at that ; I do not know as I told them ; but I told them I thought there was money put out at five per cent. 20

Q. Do you know, of your own knowledge, whether Ruth Buzby allowed her money to go at a lower rate per cent. ?

A. I do not know. 30

Q. Did you know Ruth Buzby before they left the farm ?

A. I had seen her, but I do not know her very well.

Q. Did she take an intelligent part in this conversation about the money ?

A. She did ; she made some very sensible remarks. The question arose as to where this man could get money

at a lower rate. Mrs. Buzby spoke up and said she thought his son-in-law would lend him money.

Cross-examined.

BY MR. SINNICKSON :

10 Q. Did not the daughter Mary do the greater part of the talking on that occasion ?

A. Most of it.

Q. Did she not do three-fourths of it ?

A. She might.

Q. Do you remember what was said when you first went in ?

A. She regretted—

Q. Who regretted ?

A. The old lady ; she regretted the prospect of having  
20 the money paid in.

Q. Do you remember what she said—the words ?

A. I do not remember the words.

Q. Did she speak first, or did Mary, when you went in ?

A. They were both talking, but she was not a very talkative woman.

Q. Who opened the subject ?

A. The daughter.

Q. Did she open the subject about her mother's money  
30 as well as her own ?

A. Well, I do not remember now whether she did or not, but they spoke about it.

Q. Did Mary, before her mother spoke at all, open the subject about her mother's money as well as her own ?

A. I cannot tell that.

Q. Do you remember the first thing the old lady said ?

A. I cannot, the first word.

Q. Do you remember anything except that this man could get the money of his son-in-law ?

A. Oh, there was something else said.

Q. Do you remember anything more, except that she regretted that the money was to be paid in, and that the son-in-law might give it to him.

A. Not particularly.

Re-direct examination.

10

BY MR. HILLIARD :

Q. Was there any other interview you had with her ?

A. Yes, sir.

Q. What was the occasion of that ?

A. I was sent for again.

Q. By whom ?

A. Miss Hancock : she said that Mary wanted to see me.

Q. Who did you see ?

A. The daughter and old lady.

Q. What was the conversation that took place, as far as Ruth Buzby was concerned ?

A. I think she said she had received money and wanted me to loan it out.

Q. Who ?

A. The daughter.

Q. What other conversation took place ?

A. She regretted it very much ; I told them I would try to get it placed for them.

Q. You did try to get a place for it ?

A. I did.

Q. Did you find a place for it ?

A. I placed a thousand dollars of it.

30

Q. Was it the old lady's money or Mary's ?

A. It was Mary's money.

Q. Had the old lady's money been paid in at that time ?

A. I do not think it had.

MR. SINNICKSON : Did the old lady join in the talk about Mary's money ?

A. Yes.

10

DR. THEOPHILUS PATTERSON, sworn and examined,

BY MR. HILLIARD :

Q. Where do you live ?

20 A. In Salem.

Q. Are you a practicing physician ?

A. I am.

Q. How long ?

A. Thirty-five years.

Q. Were you acquainted with Ruth W. Buzby ?

A. I was.

Q. How long have you known her ?

A. Since 1870 ?

30 Q. Did you attend her in 1870 ?

A. I did.

Q. What was the trouble ?

A. She had fallen down cellar.

Q. Do you remember anything about the case, as to the severity of her injuries ?

A. I do not.

Q. Did she recover from that fall ?

A. She did.

Q. Under your care ?

A. Yes, sir.

Q. Were her mental capacities injured by that fall ?

THE WITNESS : Permanently ?

MR. HILLIARD : Yes.

10

A. No, sir.

Q. Have you attended in her family since that time ?

A. I have attended her.

Q. On what occasion ?

A. (Referring to a memoranda book.) February 12th, 1877.

Q. What was the trouble then ?

A. A cough ; I prescribed for a cough in both instances ; in one instance I gave her medicine to take inwardly, and the other an inhaling fluid.

20

Q. Were there any indications of an unsound mind ?

A. No, sir.

Q. Have you attended the family since that time ?

A. Yes, sir.

Q. What date ?

A. Summer of 1882.

Q. What was the occasion of visiting her that time ?

A. I attended a grandchild of her's.

Q. What was the time of your last speaking with her ?

30

A. Not since 1877. I am impressed with seeing her in 1882, but I cannot remember anything about it.

Q. Did you attend her daughter Mary during her last sickness ?

A. Yes.

Q. While you were attending her, did you have any conversation with her mother ?

A. I did, yes ; but I cannot remember the conversation.

Q. Was there anything at that time wrong with her mental condition ?

A. It did not strike me so.

Q. Was she in the sick room most of the time ?

A. Yes, most of the time.

Q. Was she engaged in conversation with her daughter  
10 and with you ?

A. She did with me, and seemed to be much affected at her suffering.

Q. Was there anything at that time in her mental condition to show that she was in any way of unsound mind ?

A. No, sir.

Q. Was she at that time, to the best of your knowledge and belief, of sound mind ?

MR. SINNICKSON : We object to that ; he was not attending her in any way. Objection sustained.  
20

MR. HILLIARD : You saw nothing to indicate that she was insane at that time ?

A. No, sir.

THE COURT : I do not understand that the defence is insanity.

MR. SINNICKSON : No, only enfeebled mind.

30

Cross-examined.

BY MR. SINNICKSON :

Q. In 1877 did you go to the house ?

A. Yes, sir.

Q. And prescribe for a cough ?

A. Yes, sir.

Q. Have you any definite recollection of it now, or just by refreshing your memory ?

A. I do not think I have any present recollection of her condition at that time.

Q. You only recollect the fact that you attended her from the fact of this memorandum ?

A. Yes, sir.

10

Q. You only recollect from it, the fact you had a conversation with her when you were attending her daughter ?

A. Yes, sir ; I have a present recollection of that.

Q. When was that ?

A. That was before she moved over across the street, in 1882. She was peculiar in talking a great deal about Mrs. Amelia Patterson.

Q. You talked with her about her ?

A. She talked with me more than I talked with her.

20

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ANNA WARE, affirmed and examined.

BY MR. HILLIARD :

Q. Where do you live ?

30

A. Lower Alloways township.

Q. Were you acquainted with Ruth Buzby ?

A. I was.

Q. How many years ?

A. Sixteen or seventeen.

Q. Did you know her before she left the farm ?

A. No, sir ; I did not.

Q. Have you had conversation with her within the last eight or ten years ?

A. Yes ; we had been quite intimate for about fourteen years.

Q. Ever since your brother married into the family ?

A. Yes.

Q. You have seen and conversed with her then since that time ?

10 A. A number of times.

Q. About how often were you there ?

A. I could not tell that.

Q. Once a month ?

A. Not as often as that.

Q. Two or three times a year ?

A. Yes ; sometimes more often, and sometimes not so often.

Q. Did you ever engage in conversation with Ruth Buzby ?

20 A. Yes ; never in any business conversation.

Q. Was she an intelligent woman ?

A. I never saw anything to the contrary.

Q. Was her conversation on general topics ?

A. Yes.

Q. Did you ever see anything about her conversation to lead you to suppose she was of unsound mind ?

A. I never did.

Q. Were you at Ruth Buzby's house on the day of her daughter's funeral ?

30 A. I was.

Q. You assisted there on that occasion ?

A. Yes ; I was there until towards night.

Q. Were Mrs. Buzby's wishes consulted in regard to the arrangements, or were they not ?

A. I do not know ; I went in to assist, and I had no occasion to ask anything about it.

MARTHA HANCOCK, affirmed and examined.

BY MR. HILLIARD :

Q. Previous to the death of Ruth Buzby where was your home ?

A. In Salem.

Q. With whom ?

A. With my aunt, Ruth W. Buzby. 10

Q. How long had you lived in her family ?

A. I went there when I was three months old.

Q. And had been there all the time after that ?

A. Yes, all the time.

Q. What were the relations between you and Ruth Buzby ?

A. Not any.

Q. Did she treat you as a daughter ?

A. She did. 20

Q. After her husband's death, what position did you occupy in her family ?

A. I mostly went with Mary ; she was the housekeeper.

Q. And you helped her ?

A. Yes.

Q. You are acquainted with George Waddington's wife ?

A. Yes, sir.

Q. What was her maiden name ? 30

A. Mary B. Gaskill.

Q. Do you know Beulah Gaskill ?

A. Yes, sir.

Q. Where was Mary B. Gaskill's home in her early life, and up to the time of her marriage ?

A. At her grandmother's.

Q. The same house as yourself ?

A. Yes.

Q. How was she treated and considered in that family ?

A. They thought a great deal of her, and treated her as a daughter.

Q. Was she married from there ?

A. Yes, sir.

Q. To her present husband, George Waddington ?

A. Yes, sir.

Q. Where did that marriage take place, and when ?

10 A. February 28th, 1872.

Q. She then went to reside with her husband, in Elsinborough ?

A. Yes.

Q. At that time, in 1872, who was transacting Ruth Buzby's business for her, collecting her interest, &c., after the marriage ?

A. She hadn't any one at that time.

Q. She collected her income herself, did she ?

20 A. Yes, sir.

Q. How long did she continue doing that ?

A. Until after Aunt Mary's death.

Q. Do you remember the occasion on which this will, now in dispute, was executed ?

THE WITNESS : The time ?

BY MR. HILLIARD : The time Ruth Buzby signed it ?

30

A. Yes, sir.

Q. When ; what year was it ?

A. In 1882.

Q. The same year that Mary died ?

A. Yes.

Q. Do you remember who was present at the execution of that will ?

A. Elijah Ware, Richard Hiles, George Waddington and myself.

Q. What was done with that will after it was executed ?

A. Aunty took it upstairs.

Q. You mean Ruth W. Buzby ?

A. Yes, sir.

Q. What was done with it ?

A. She put it in a box.

Q. What was that box used for ?

10

A. Putting her papers in.

Q. Did she keep her bond and mortgage there ?

A. Yes, sir.

Q. Where was that box ?

A. In a drawer in the room where she slept.

Q. How long did it remain there ?

A. Until it was taken out after her death.

Q. Did you ever see that will ?

A. No, sir.

Q. Except the time you saw it signed ?

20

A. Yes, sir.

Q. Were you informed of the contents of it by any one ?

A. She told me a short time afterwards.

Q. Ruth Buzby informed you ?

A. Yes, sir.

Q. How soon after it was executed ?

A. A short time.

Q. Did you ask her ?

30

A. I did not.

Q. Did Beulah Gaskill and other members of the family have free access to that bed room as you had yourself ?

A. They did.

Q. Was the drawer locked ?

A. Yes, sir.

Q. Who kept the key ?

A. The key was in a box in the next drawer.

Q. From whom, after Mary Buzby's death, did you receive money to carry on the household with ?

A. From Aunty.

Q. Did she in any way take the direction of what should be done in the house ?

A. Yes.

Q. How ? Tell what was her custom in regard to the  
10 daily routine of the house ?

A. She would tell what she would want, and it was got for the house ; I got it for her.

Q. Who paid the bill ?

A. I did.

Q. Who gave you the money ?

A. She did.

Q. Did she ever show any curiosity as to whether the bills were paid or not ?

20 A. She always wanted the bills paid, always asked if they had been paid.

Q. Was there any one, at any time, who interfered in the family arrangements of Ruth Buzby's house ?

A. Not that I know of.

Q. They were carried on according to her wishes, were they ?

A. Yes, sir.

Q. How long after Mary Buzby's death did Beulah Gas-  
30 kill come to live there, or did she come before ?

A. She came before Mary's death.

Q. And has been there ever since ?

A. Has been there ever since.

Q. She had free access to all parts of the house ?

A. Yes ; just the same as I did.

Q. Did you, in any way, attempt to influence the mind

of Ruth Buzby as to the disposition of her property, as shown in that will ?

A. Not in the least.

Q. Did you know before hand what the contents of that will were to be ?

A. I did not.

Q. Did you know until you heard them read that night what they were to be ?

A. I did not.

10

Q. Was any agreement, or contract of any kind, entered into between you and George Waddington or any other person, to control the making of that will in any way ?

A. Not in the least.

Q. Did George Waddington ever ask your assistance in any such control over the testatrix ?

A. No.

Q. Had George Waddington, to the best of your knowledge and belief, any control over the affairs of that house, beyond the control over the collection and payment of her income to her ?

20

A. No, he had not.

THE COURT: Who first spoke to you about the making of that will—about the fact that such a will was to be made ?

A. There was not any one.

Q. When did you first know that such a will was to be made ?

30

A. I have no recollection at all about it.

Q. You knew about it; you were there when it was made. What intelligence had you that such a will was to be executed ?

A. I do not know where I was when it was made.

Q. You were there when it was executed ?

A. Yes.

Q. How did you come to know there was to be a will signed there that night ?

A. I heard them speaking about it.

Q. Who ?

A. Aunty.

Q. Who else ?

A. George.

Q. When ?

10 A. When it was signed—there that morning.

BY MR. HILLIARD :

Q. You say the morning of the day it was signed you heard them talking about the will being signed there that day ?

A. Yes, sir.

Q. You had no knowledge of it before ?

A. No.

20 Q. What time of day was it signed ?

A. In the morning, about eight or nine o'clock ; somewhere along there.

Q. Then you had no knowledge of it until that same morning ?

A. No .

Q. Do you remember the time when Joseph Waddington attempted to get Ruth Buzby to reduce the interest on his mortgage which she held ?

30 A. He brought a paper there and read it to her and said he could get the money for four per cent.?

Q. Who was present ?

A: Mary was with him then.

Q. Did he ask her to take any less per cent. than what she was taking ?

A. Yes, sir.

Q. What was the per cent. he asked her to take ?

A. Five per cent.

Q. Was the legal rate then six ?

A. Yes.

Q. Did she agree to do it, or not ?

A. She did not.

Q. Did he try to persuade her to do it in your presence?

A. Yes, sir.

Q. Did he ask her to see her alone about it ?

A. He did.

10

Q. Did he see her alone ?

A. He did not.

Q. Who was present at that interview ?

A. Mary.

Q. Any one else ?

A. No.

Q. Were you present ?

A. I was not in the room.

Q. Who told you about it ?

A. Mary.

20

Q. Did you ever hear Ruth Buzby say anything about it ?

A. Yes, sir.

Q. What did she say ?

A. She said she did not want to take that for her money.

Cross-examined.

30

BY MR. SINNICKSON :

A. You say you were present when this will was executed ?

A. Yes, sir.

Q. Did you not tell Ruth Waddington, in the presence of Beulah Gaskill and Emeline Garwood, that you were not present when the will was executed?

A. I did not.

Q. You positively deny that, do you?

A. Yes, sir.

Q. Do you remember having a conversation with these ladies? Did you tell anybody that you were not present  
10 when the will was executed?

A. No, sir; I never told anybody, because I was there.

Q. Did you have any conversation with Beulah Gaskill and Ruth Waddington and Emeline about this matter?

A. No, sir; I never had any talk about this matter.

Q. Were they ever there at the house where you were?

A. Yes, sir; they were there.

Q. You never had any talk with them in which you said you were not there when the will was executed?

A. I had with Beulah Gaskill, but not with Ruth Wad-  
20 dington.

Q. You do not know whether Ruth Waddington was present at that time or not, do you?

A. No answer.

Q. Then you positively deny any such conversation?

A. No, sir.

Q. Did you not tell either of these parties that you were not present when this will was executed?

A. No, sir.

Q. Do you say you were not present, and when Ruth  
30 said, "That will make it worse for George," you said, "No; I was not present," or words of that effect?

A. No, sir.

Q. Did you ever deny that you were not present when that will was executed?

A. I never did.

Q. What was the first thing you saw—when did you first see that will ?

A. When they executed it.

Q. Do you know when that was ?

A. In 1882.

Q. What month ?

A. April.

Q. What time of the day ?

A. Between seven and eight, or between eight and nine. 10

Q. In what room ?

A. In the dining room.

Q. You say you were present, George Waddington was present and Elijah Ware was present.

A. And my Aunty.

Q. Did George take the will out of his pocket ?

A. I do not know.

Q. When did you first see the will ?

A. On the table. 20

Q. Where did you first see George that morning ?

A. When he came into the dining room.

Q. When and where did you first see it after her death ?

A. In a box.

Q. Did you go to the box ?

A. Yes.

Q. Who was present when you went to the box ?

A. George Waddington. 30

Q. Was anybody else present ?

A. Beulah Gaskill.

Q. Was she present when you opened the box ?

A. Yes.

Q. Was anybody else ?

A. Emma Casselby.

Q. Was she in the room ?

A. In the hall.

Q. She was not present when the box was opened, was she ?

A. I do not know as she was right there ; she was there in the hall.

THE COURT : You were present the evening when the will was executed, in March, by Mr. Fogg ?

A. I went in and out of the room.

10 Q. From that time until the time this will was executed, in April, did you ever hear Ruth speak of making another will ? From the time that codicil was executed, when Mr. Fogg was there, at the time Mary was dying, until this will was executed in April, did you ever hear Ruth speak of making another will ?

A. I did not.

Q. She never spoke to you ?

A. No.

20 Q. You never heard her speak to George ?

A. No.

Re-direct examination.

BY MR. HILLIARD :

30 Q. When that will was in the house that morning it was executed, did you hear it read to Ruth Buzby ?

A. I heard George reading something to Aunty in the sitting room.

Q. Was that before the men came in ?

A. Yes.

Q. Do you know where the will was while George was out after these men ?

A. My Aunty had it.

Q. Was she able to read at that time ?

A. She was.

Q. Writing ?

A. Yes.

Q. How do you know ?

A. Because I have seen her read writing.

Q. Whose writing was it ?

A. She got a letter from Bridgeton.

Q. How long before this ?

A. A short time ; I cannot remember how long. 10

Q. Did she read the letter ?

A. Yes, she did.

Q. Did you ever know her to read anything in books ?

A. Yes, I have seen her reading in books.

Q. Since Mary's death ?

A. Yes, sir.

Re-cross-examined.

20

BY MR. SINNICKSON :

Q. You say your Aunty had the will while George was out getting the witnesses ?

A. Yes.

Q. Do you mean that the first time you saw the will it was lying on the table after George came back with the 30 witnesses ?

A. No answer.

Q. When you first saw the will lying on the table, had your Aunty signed it ?

A. No.

Q. Had either of the witnesses signed it ?

A. No ; not then.

Q. Was anything said at that time after the will was lying on the table before your Aunty signed it ?

A. I do not remember.

Q. Was anything said before your Aunty signed it by your Aunty, by George or by the two witnesses : did your Aunty say anything ?

A. I do not remember what she did say ; she was talking with the men.

10 Q. Did you know the will was being executed at that time ?

A. Yes, sir.

Q. And yet you did not pay any heed to what any of them said ?

A. No.

Q. Are you certain your Aunty said anything ?

A. Yes ; I heard her talking.

Q. And you cannot remember what she said ?

A. I cannot remember what she said.

20 Q. Did you see her sign it ?

A. Yes.

Q. After she signed it did she say anything ?

A. I do not remember.

Q. Do you remember whether she did or did not say anything ?

A. I do not remember what was said ; she was talking.

Q. Do you know what the men did after they signed—Mr. Ware and Mr. Hiles ?

30 A. I do not remember what the conversation was.

Q. Did they go out right away ?

A. No ; they were talking.

Q. Did your Aunty talk with them ?

A. Yes, sir.

Q. After they went out did you have any talk with George ?

A. I do not remember.

Q. What did your Aunty do after they went out ?

A. I do not remember.

Q. Did she go out of the room ?

A. Not until George went away.

Q. After George left what did she do ?

A. Took the paper and went up stairs.

Q. Where did you go when she went up stairs ?

A. I do not remember where I went.

Q. Did you go up stairs with her ? 10

A. Not right away ; she called me.

Q. How long had she been up stairs before she called you ?

A. About thirty minutes, I guess.

Q. When she called you what did you do ?

A. I went up to see what she wanted.

Q. What did she want ?

A. Wanted me to tie up the box as it had been tied up.

Q. How do you know that will was in the box ?

A. She told me so. 20

Q. When ?

A. Right away.

Q. Did you ever see that will after that ?

A. No.

Q. When was the first time you saw the will after that day ?

A. After her death.

Q. Was that the time the will was acknowledged ?

A. Yes, sir. 30

Q. Was there anybody present when you first saw George ?

A. Aunty was there.

Q. What happened then ? Did George take it—the will, and show it to her ?

A. No.

Q. Did George go and get any witnesses ?

A. Yes.

Q. Before you spoke to your Aunty ?

A. Yes.

Q. When George came back were you in the room with him ?

A. Yes, sir.

Q. Who came with him ?

A. Richard Hiles came with him.

10 Q. What was the first thing George did when he came back into the room ?

A. I do not remember.

Q. Did he sit down ?

A. I do not know.

Q. The will was not on the table while he had gone out, was it ?

A. I do not know.

Q. Where was the table—in what part of the room ?

A. Between the two windows.

Q. Where were you ?

20 A. I was in and out.

Q. When did you first see the will on the table ; after the two men came in ?

A. Yes, sir.

Q. How long after they had come in did you first see the will on the table ?

A. Right away.

Q. Did you see George take it out of his pocket ?

A. No.

Q. Did George say anything when they were present ?

30 A. I could not remember.

Q. You cannot remember that any of them said anything ?

A. They were talking about their ages.

Q. The first you saw of that will there, it was lying on the table and you don't think it was there when George

had gone out to get these witnesses? Had it been there would you not have been likely to have seen it lying there?

A. I do not know that it was there; I was not paying attention to their affairs.

Q. When did you first learn that the will was executed?

A. When the men came in.

Q. Had anything been said about it before they came in? 10

A. Not to my knowledge.

Q. Did George say anything about it?

A. I do not know.

Q. Did any of the others say anything about it?

A. No.

Q. Did you go out after they came in?

A. No, I was there.

Q. Continuously from the time they came in until the will was executed?

A. I was in and out; I did not sit down there. 20

Q. Are you sure George came in there before they executed the will?

A. While I was there.

Q. Did you go out of the room after George came in with the two witnesses?

A. I do not remember; I saw a paper in her hand.

Q. When did you first see her have a paper in her hand?

A. When the men came in. 30

Q. What did she do with that paper?

A. Put it on the table.

Q. Then the first time you saw her have a paper in her hand was when the men came in?

A. Yes.

Q. Where was she?

A. Sitting in the chair.

Q. What did she do with the paper ?

A. She laid it on the table.

BY THE COURT :

Q. Did you see Ruth reading the will ?

A. No ; I did not see her reading the will.

Q. Then you do not know whether she read the will or  
10 not ?

A. I do not.

Q. You heard George reading something ?

A. Yes.

Q. What did George do ; did you hear him when he  
quit reading ?

A. I do not remember ; I did not stay in the room ; I  
only heard him reading something.

Q. Were you in the room while he was reading ?

A. I was in the dining room.

Q. Could you see him from where you were ?  
20

A. I did not see him.

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GEORGE WADDINGTON, affirmed and examined.

BY MR. HILLIARD :

Q. Where do you live ?  
30

A. At Elsinborough.

Q. How long have you known Ruth Buzby ?

A. I think seventeen years.

Q. You did not know her before she came to Salem ?

A. I think not.

Q. Are you the husband of her granddaughter ?

A. Yes, sir.

Q. Mary?

A. Yes, sir.

Q. And the son-in-law of Beulah Gaskill, who has testified in this case?

A. Yes, sir.

Q. What business transactions did you ever have with Ruth Buzby? When was the first business transaction you had with her?

A. I think I borrowed one hundred dollars of her the first summer after I was married. 10

Q. With whom did you make the bargain?

A. With Ruth Buzby.

Q. You did not make it with Mary?

A. I did not.

Q. What did you give her to show you owed her the money?

A. I gave her my note.

Q. Did she hold it? 20

A. As far as I know.

Q. That note has been paid in?

A. I think that note was paid in the afternoon she paid Nat Buzby the \$935.40.

Q. To whom did you pay the money?

A. To Ruth Buzby.

Q. Was Ruth in the habit of superintending and seeing about her own affairs?

A. Yes, sir. 30

Q. When did you have any other business transaction with her?

A. I collected the bond and mortgage for her of Joseph Waddington.

Q. What were the circumstances in connection with that?

A. Joseph Waddington wished her to make it at a lower

rate of interest. She asked my advice on it, whether to take five per cent. for it or not. I told her I thought she had better take her money than to take five per cent., because I thought she was sure of five per cent. most anywhere, and probably she could get more.

Q. Did she take your advice?

A. She took the money herself.

Q. What became of it?

10 A. She said he had been there talking with her, and trying to get her to take five per cent.; but I think she told him if she took a lower rate of interest she was afraid it would not keep her, and she would have to break into her principal; and he told her she was getting along in years, and it didn't make much difference if she did break into her principal. And she told me to tell him that she wished he would talk to me; she did not like what he said to her about it, and she did not want him to come there and talk to her about the money.

20 Q. Did you get the check?

A. Yes, sir; July, 1883.

Q. Who took that money when it was loaned?

A. I took Ruth Buzby's certified check for \$5200, if my recollection serves me right, to Pennsgrove, at the time I loaned the money to Samuel Springer.

Q. Loaned their money?

A. Yes, sir.

Q. At what interest?

30 A. Five and a half per cent.

Q. Did you consult her about making that loan?

A. I did.

Q. What was her instruction?

A. She asked me what Samuel Springer gave for his farm?

A. I told her about thirteen thousand dollars, and a little over. She told me she thought it would be safe

there on a first mortgage. I received the money about February 27th, 1882; that is the date the mortgage was acknowledged in the Clerk's office here.

Q. Was that the first time that you ever acted as agent for her in any money transaction?

A. I think it was—anything of any amount; I may have paid some little bills for her.

Q. Had you ever collected her income for her previous to that time?

A. I do not recollect. 10

Q. Did she receive her income previous to that?

A. I think she did.

Q. Since that time how has her income been received—by whom?

A. Generally by me, in her presence, except once I think Sammy Springer gave me his check at John Thompson's, at Vineland, and I gave him my receipt as Ruth Buzby's agent.

Q. Have you had any control over her expenditures of money? 20

A. None whatever.

Q. Have you ever had any?

A. Not any further than when she would ask me my advice.

Q. Did she always display an intelligent knowledge of her affairs?

A. I always thought she did.

Q. Did you write the will in this case? 30

A. I did.

Q. How did you first get an intimation that she desired to make a will?

A. From Ruth Buzby. She said that now Mary was dead—she was in the other will—and now she wanted to make another one.

Q. Did you make any suggestion to her?

A. I did not.

Q. What did you do then ?

A. I told her to get Aaron Fogg to write another. She said Aaron Fogg had made a mistake in the former one, and she did not want him to write another. She asked me to write the will, and I told her I was afraid to trust myself, but probably I could if I had the other will to write it by. She insisted on it and I did it.

Q. How did you get your instructions for it ?

10 A. She gave me the items on Saturday afternoon, the 15th of April.

Q. Did you put them down on paper ?

A. I did.

Q. What did you do then ?

A. I took them home with me and put the will in form at home.

Q. When did you next bring it to her ?

A. I brought it to her on the 20th day of April.

20 Q. What did you do with it ?

A. I read it to her, and asked her if she understood it, and she says, "Yes." I said, does thee want me to read it over again, and she says, "Thee may, if thee likes ;" and I read it over again slow and distinctly.

Q. What then ?

A. I gave it to her, and I went out in the other room.

Q. What next ?

30 A. I was out there for some time talking with Martha, talking about—I do not recollect what I was talking about, but I went out into the other room ; and when I came in again, she said she wanted some witnesses. I asked her who she would have. I think she spoke of Elijah Ware and Richard Hiles and Aaron Fogg. I said, "Mother, if that will suits thee, I will do it ; and I went after the witnesses. When the witnesses came she came out in the dining room. Maybe I am too fast ; I do not recollect her

coming out in the dining room at that time, but—well, the will was signed in the dining room, close by the window. I said to her, when she was going to sign the will, “Grandmother, is thee fully aware of the contents of that will?” She says, “Yes.” I says, “Does thee wish these witnesses to sign it;” and she says, “Yes;” and she signed the will, and then these witnesses signed it.

Q. Did you in any way suggest to Ruth Buzby as to what disposition she should make of her property? 10

A. I did not.

Q. Did she ask you to do so.

A. She did not.

Q. Did you in any way attempt to influence her disposition of her property as shown by that will?

A. I did not.

Q. Did you have any previous knowledge of what the contents of that will were to be until she dictated the items to you on the Saturday preceding its execution? 20

A. I think she spoke to me when she was talking about making a new will. She wanted to leave the girls something, and from the way she spoke, I thought she meant Anna and Beulah.

Q. When she came to give you the names for the will their names were included?

A. They were.

Q. Did she give you any reasons why she left Nathan Buzby nothing? 30

A. I do not know as she did at that time.

Q. Was that clause in the will among the original instructions given to you?

A. She gave me her preceding will, and told me to copy that clause out of it into this will.

Q. Do you know what her feelings toward Nathan Buzby were at, or after the time she paid his money to him?

A. I have heard her say she never intended for him to have a dollar of her money.

Q. When was that?

A. After she had paid Nathan Buzby this money.

Q. Did you exercise, or attempt to exercise, any control over Mrs. Buzby's household affairs?

A. Not at any time about that time—

Q. (Interrupting.) I mean at or about the time of the  
10 execution of that will.

A. No.

Q. What control have you ever exercised over her household affairs?

A. I asked her once to remove a boarder she had a year or two ago.

Q. Within the last year?

A. Yes, sir.

Q. You requested her to do that?

A. Yes, sir.

Q. What were your reasons?  
20

A. I thought he did not treat me as he ought to treat me in regard to a personal matter.

Q. Did she consent to your request?

A. She did not.

Q. Is that the only time that you ever have attempted to exercise an influence over her household affairs?

A. I do not recollect any other.

Cross-examined.

30

BY MR. SINNICKSON:

Q. What did you do with the preceding will after she gave it to you?

A. I took it home to copy that clause out of it.

Q. What did you do with it after that ?

A. I brought it back and gave it to Ruth Buzby.

Q. Did you read it ?

A. I did.

Q. Do you remember the contents of it ?

A. Not all of them.

Q. Did you remember the contents of it after your grandmother's death ?

A. I think, if I remember right, she did not leave Beulah Gaskill but \$1200 in that will. 10

Q. Do you remember what that first will contained ?

A. No, not all of it.

Q. Did you go to Aaron Fogg and tell him you did not know what that will contained, and asked him if he could tell you what the contents in that will were ?

A. I asked him something in front of the drug store. I asked him if he knew how grandmother made that will that he copied. 20

Q. Then you took this will home, and copied this will ?

A. I said I took it home and copied that clause out of the preceding will.

Q. What kind of a memorandum did you take ?

A. I wrote it down.

Q. What form did you take ?

A. I took the form principally from the form of a will that George Morrison wrote.

Q. And not the form of the other will ?

A. I do not recollect the form of the other will. 30

Q. Who was present when you got this data, or memoranda from which you drew the will ?

A. Ruth Buzby and myself.

Q. Where was Beulah Gaskill at that time ?

A. I think she was in Salem.

Q. Was she not at your house ?

A. I think she was in Salem, shopping with my wife.

Q. What day of the month was it?

A. Saturday, the 15th of April.

Q. You do not know that she was out at your house at that time?

A. I am almost positive, as near as my memory can serve me, she was in Salem, shopping with my wife.

Q. Did you ask her to go out to your house at that time?

A. I do not recollect that I did.

Q. Either at the time you got the memoranda, or the time the will was executed?

A. I do not remember.

Q. Did you say anything to Beulah Gaskill about the will while she was at your house?

A. I have no recollection of it.

Q. Did you tell her you had made your mother's will?

A. I did not.

20 Q. Did you never, at any time, mention it to her while she was at your house that time—she was at your house about that time?

A. I could not answer positively.

Q. You are confident that you do not recollect ever mentioning to her the fact of your having made the will?

A. No, sir.

Q. Did she read the will—your grandmother?

A. I cannot say that she did.

30 Q. Have you not said since her death, that she did read the will?

A. Not to my recollection.

Q. Did you say to Beulah Gaskill, or in the presence of Beulah Gaskill, or in the presence of Anna Gaskill, that you read the will to her, and she also read the will?

A. I said I read the will and she took it and looked at it.

Q. Not that she read it ?

A. I do not recollect of saying she had read it.

Re-direct examination.

BY MR. HILLIARD :

Q. Could she have read that will, had she chosen ?

A. I have no reason to think she could not.

10

Q. Did you ever see Ruth Buzby reading ?

A. Yes ; both print and writing.

Q. How long ago ?

A. Not a great many years ago.

Q. Could she, at that time, and for some time afterwards, read writing ?

A. I think she could ; I do not know of anything to the contrary.

Q. Do you recollect any of the provisions of that former will to which that codicil was made by Aaron Fogg ?

20

A. I think she left Beulah Gaskill twelve hundred dollars in that will, but I do not remember of her leaving the girls anything, without it was Anna her silver sugar tongs ; and I think she left Nathan one hundred dollars in that will.

Q. Was that will in favor of your wife—more or less favorable ?

A. I do not remember about that.

30

Q. You heard the testimony of Aaron Fogg and Anna Fogg, about what you said to them—that you said to them not to make any noise, for it was not your intention that Beulah Gaskill should know they were there ?

A. I do not recollect that ; I know of no reason why she should not know of it ; I didn't care whether she did or did not.

Q. Was there any reason why she shou'd not know of this last will ?

A. I think that Ruth said, " I wish that Beulah should not know about it."

Q. Did she give any reason for that ?

A. She said that she didn't care to have the whole Gaskill family in Philadelphia, know all about it, and if Beulah knew it they would.

10 Q. Was that the only reason ?

A. Yes ; I considered that it was grandmother's place to tell her about the will.

Q. Wherein did she say that Mr. Fogg had made a mistake in the previous will ?

A. There was a balance in the previous will that, as near as I can recollect, was not willed to anybody, and she asked me where that would go if it was not willed ; I told her that it would go to Nathan Buzby and Beulah Gaskill ;  
20 and she told me that she did not want any of it to go to Nathan Buzby.

Q. Was there any clause in the will as to where the residue was to go ; after she had disposed of her property, left legacies to people, the rest of her property was to go ?

A. I cannot say positively ; but, as near as I can recollect, I think she left the residue to Mary Buzby.

30

---

MARY B. WADDINGTON, affirmed and examined,

BY MR. HILLIARD :

Q. Are you the wife of George Waddington ?

A. Yes, sir.

Q. And whose daughter ?

A. Beulah Gaskill's.

Q. And granddaughter of Ruth Buzby ?

A. Yes, sir.

Q. Who brought you up ?

A. Mother, until I was three months old.

Q. And since that time ?

A. I have lived with my grandparents.

10

Q. Have they been all the parents you have ever known ?

A. They have been so to me.

Q. You lived there until you were married ?

A. Yes, sir.

Q. Were your relations with your grandmother of an affectionate and friendly character ?

A. Always.

Q. Do you remember of the time when she was injured by a fall ?

20

A. Yes, sir.

Q. Describe the effects of that injury upon her, as far as you know ?

A. She could not talk plain.

Q. For how long ?

A. For about a month or so.

Q. Did she entirely recover from that ?

A. I did not see but what she did.

Q. At the time that she was injured, she could not talk plain. Was she able to make known what she wanted ?

30

A. She could not the first two or three days, but after that she could.

Q. Did this affliction greatly affect her ?

A. Yes.

Q. And greatly affected her, until she finally recovered ?

A. Yes, sir.

Q. What was her mental condition after as compared with before the fall?

A. I do not know; I think it was as good.

Q. What do you know about her eyesight before her death?

A. I have seen her have papers in her hands and reading them.

Q. You have seen her reading newspapers?

10 A. Yes, sir.

No cross-examination.

---

RUTH WADDINGTON, affirmed and examined.

20 BY MR. SINNICKSON:

Q. Were you present at the house lately kept by Ruth Buzby after the funeral of Mrs. Buzby?

A. I was.

Q. Who was present there at the same time with you?

A. We called a few days after the funeral, and in the room were Beulah Gaskill, Martha Hancock, Emeline Garwood and Anna Gaskill.

30 Q. Was there any conversation had there with Martha Hancock in regard to this will?

A. We conversed, among ourselves, about it, and the subject of the will being caveated was named. I expressed surprise and regret that there should be a check to interrupt family harmony. I think I asked Martha Hancock if she was present, and asked her if Beulah was present. She said she was present, but Beulah was not present, and

I marvelled at the fact that Beulah, the daughter, was absent; and also expressed surprise, I think, and regret on George Waddington's account; and, after a few minutes reflection, and in talking about it, she said, I think, that she was not present.

Q. She denied being present?

A. She first said she was, but afterwards said she was not, and afterwards said she was informed of its contents. 10

Q. In speaking of the will she said she was not present?

A. Yes; she said she was not present.

Q. You are sure that she insisted that she was not present when the will was executed?

A. I am.

No cross-examination.

20

BEULAH GASKILL, Re-called.

BY MR. SINNICKSON:

Q. Were you present at the conversation just spoken of?

A. I was. 30

Q. Just state what occurred then?

A. We were talking about this caveat being brought up, and Martha made the remark that she was present.

Q. How did she say that?

A. Some one, I could not tell—I do not know which one mentioned it; I think it was Ruth asked her if she was present, and she said she was.

Q. What did she say after that ?

A. After Ruth made the remark that she was sorry it was the case on account of George making the will, she said that she was not present.

Q. Did she deny being present ?

A. Yes.

Q. Has she denied more than once to you that she was present ?

10 A. She has never said she was present.

Q. Is to-day the first time you ever knew that she was present at that time ?

A. Yes, sir.

Q. Did you ever hear her say, in the presence of any one, that she was not present ?

A. No, sir.

Q. How long before this will was made did you go down to Elsinborough to your son-in-law's house ?

20 A. I do not remember, but I think that I went out home with them the night the will was executed.

Q. You were out there when the will was executed ?

A. Yes, sir.

Cross-examined.

BY MR. HILLIARD :

Q. Do you know what day of the week the will was signed ?

30 A. I have no personal knowledge, at all.

Q. What day did you understand it was signed ?

A. On the 5th day of the week.

Q. When you were talking about this will, were you talking about the time the items were given to George, or about the time the will was signed ? When Ruth Wad-

dington, and those who were there, were talking, were they talking about it as to whether Martha was present when the will was signed, or when the items were given ?

A. There was nothing said about that.

Q. Might not Martha have been speaking about one thing when you were speaking about another ?

A. I don't know.

Q. Is not Martha Hancock's character for truth and veracity beyond question ? 10

A. I cannot say.

---

ANNA GASKILL, re-called.

BY MR. SINNICKSON :

Q. Were you present at this conversation ? 20

A. I was.

Q. Describe that conversation as near as you can ?

A. Ruth called, and was talking to us about it, and said she was sorry it happened, and tried to speak kindly to us all about it and said that she was sorry that there was anything like this to interrupt the family harmony, and then we were talking about who were present when it was signed, and Martha spoke up and said I was present when they signed Amty's will, and Ruth said that it is a very 30 bad thing for George, and then after a few minutes she spoke up and said that she was not there.

Cross-examined.

BY MR. HILLIARD :

Q. You are positive that she said she was there when it was written as well as when it was executed ?

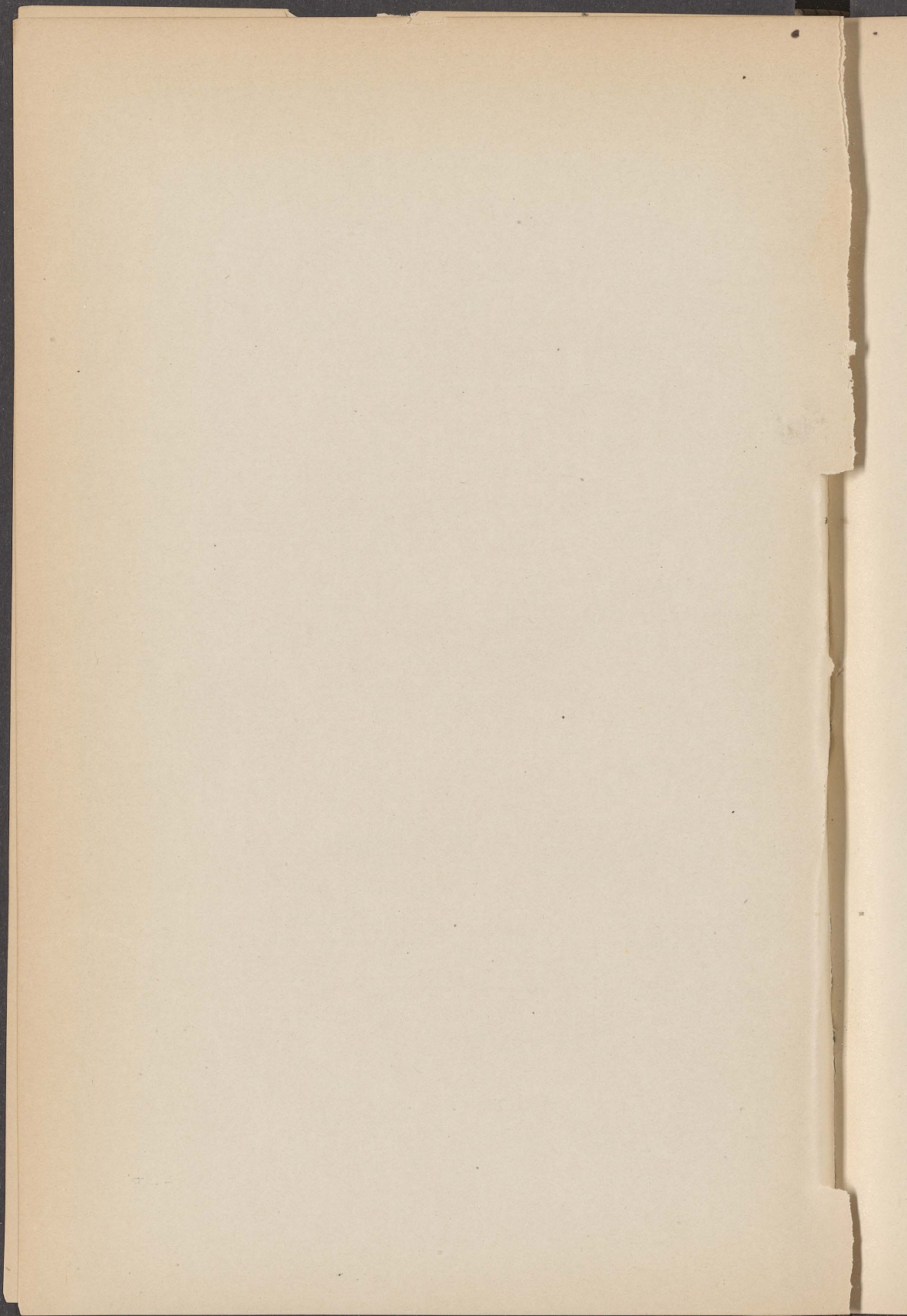
A. The whole thing.

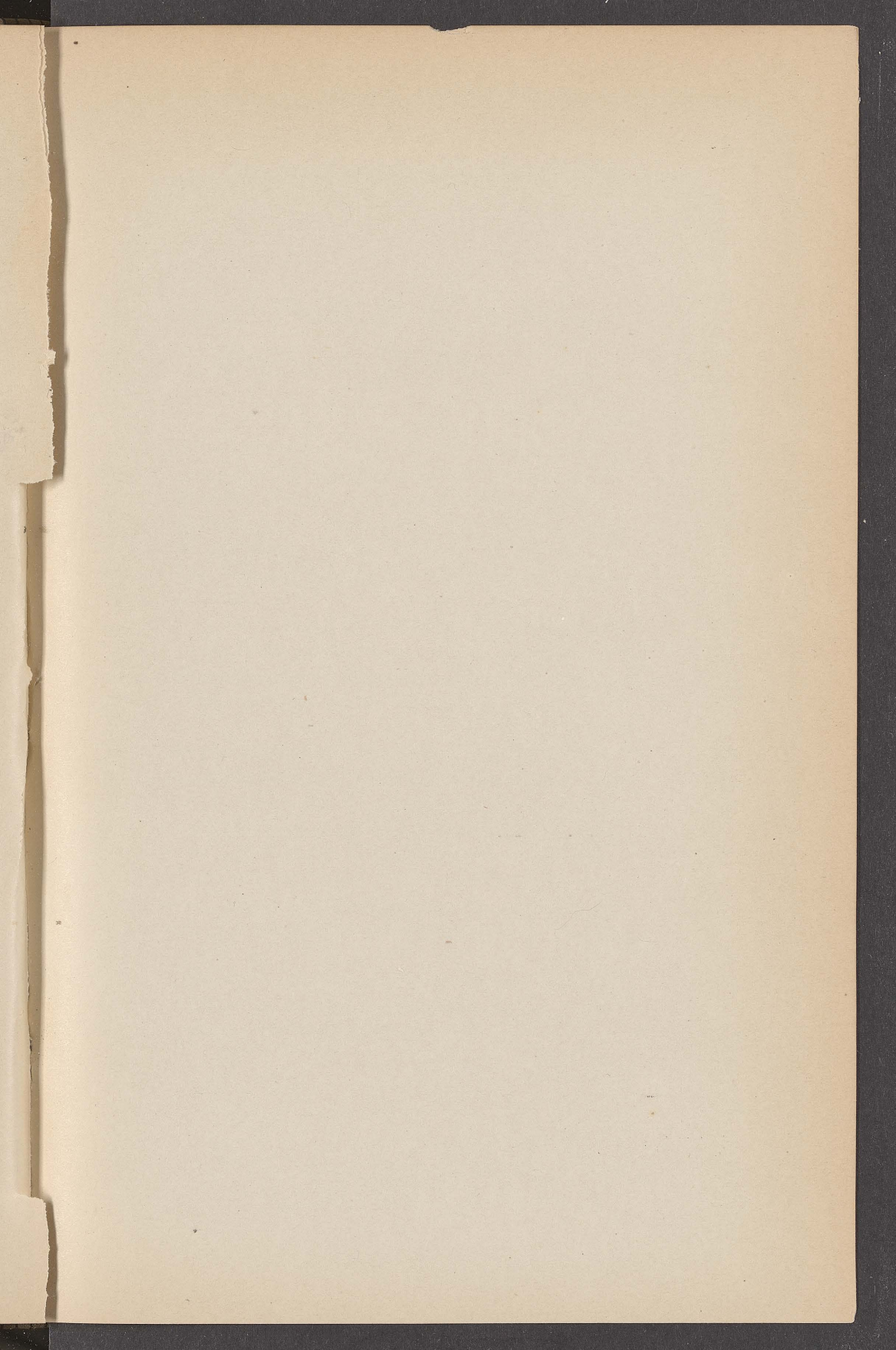
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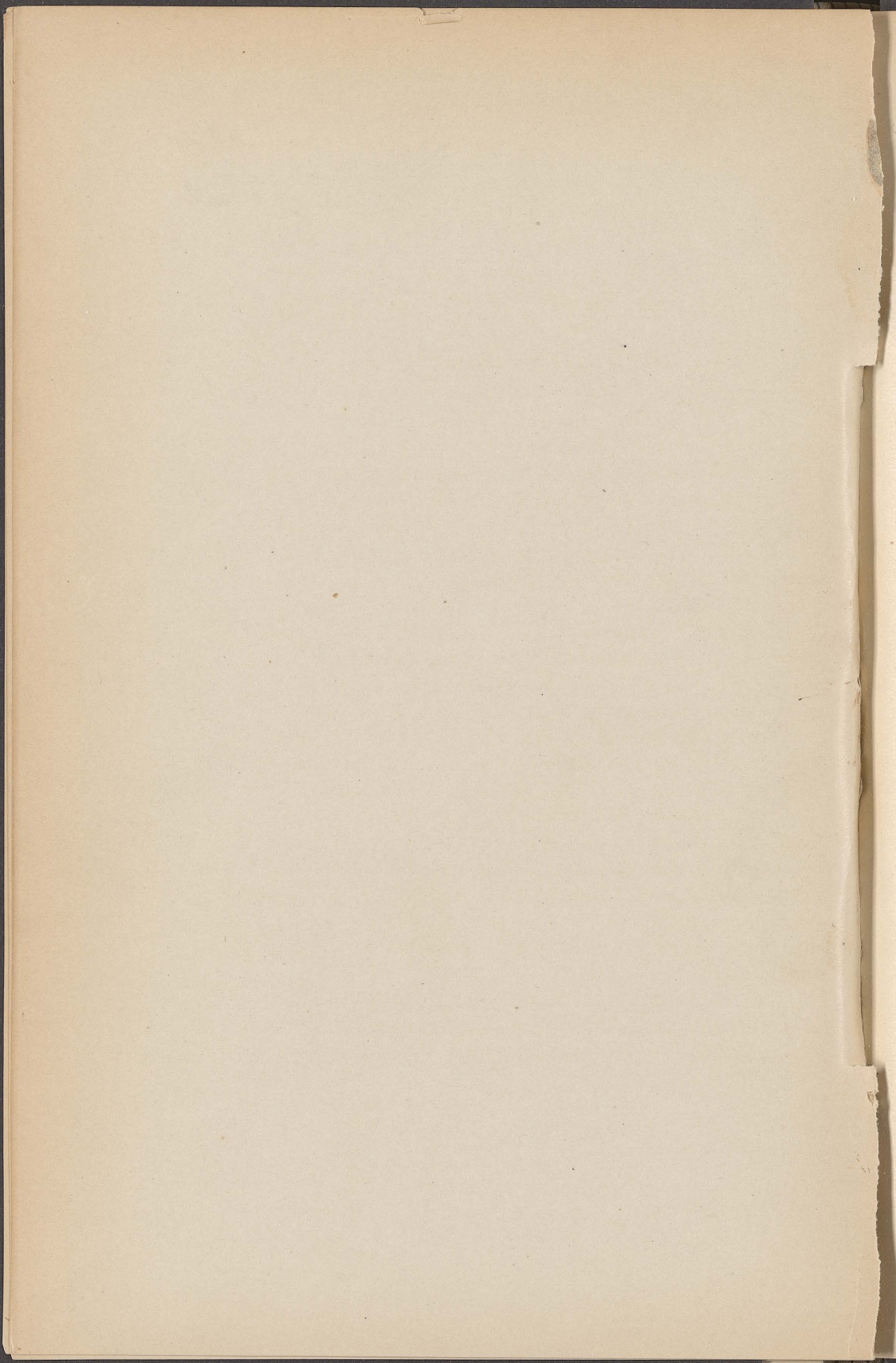
EVIDENCE CLOSED.

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## Opinion of Reed, P. J., in Salem Orphan's Court.

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We are of the opinion that this will should not be admitted to probate. The testatrix we find to have been at the time of its execution old, nearly blind, mentally sluggish and easily led in any direction by those about her.

The will was drawn by the husband of her granddaughter, the latter being the chief legatee under its provisions.

One of the witnesses of its execution is dead and the other has no recollection of the fact or of any circumstance attending its execution. That the instrument was formally executed according to the statute, however, is proved. 10

But that it was executed as the will of the testatrix, without the exertion of undue influence, we do not believe.

The mental and physical condition of the testatrix, as we find them, coupled with the position which the draftsman of the will occupied towards her, leads naturally to a desire to know how the wish to have the will made arose in the mind of Ruth Buzby, and the steps which she took towards its execution. We have nothing but the story of the draftsman, corroborated in some particulars by that of Martha Hancock. 20

The testimony of the latter witness did not impress us as very reliable, aside from the fact that she has an interest in supporting the validity of the will.

While there is little or nothing outside of the testimony of these witnesses as to what occurred at the signing of the present instrument, there is testimony of other witnesses as to the circumstances attending the execution of another similar instrument three or four weeks previously. And the account given by the witnesses to the last instrument is such as to lead us to believe that it was the product of the mind of Mr. Waddington and not of Ruth Buzby.

10 This account is given by Mr. Aaron Fogg, who drew the codicil then signed by Ruth Buzby, and his daughter, who, with her father, witnessed it. The whole account has impressed us unfavorably towards the validity of that transaction. The secrecy which attended the business, the urgency of the act done while a daughter lay dying, the account given by the witnesses of the demeanor of the testatrix during the interview, her silence and her passive assent to what was obviously expected of her, the active agency of George Waddington in given directions in regard  
20 to the contents of the codicil, and in bringing the witnesses to the house where it was executed, his injunction of silence, while entering the house by the side door, have altogether led us to the conclusion that the will then signed was not that of Ruth Buzby. And this circumstance has strongly affected our judgment in regard to the present will. We think it unlikely that this instrument, drawn by Waddington himself, was, in its execution attended by any more favorable incidents than the former codicil. It appears that Beulah, the mother-in-law of  
30 Waddington, and Ruth lived together, and Beulah was induced by Waddington to leave home on a visit to Mr. Waddington's at the time of the execution of the last will.

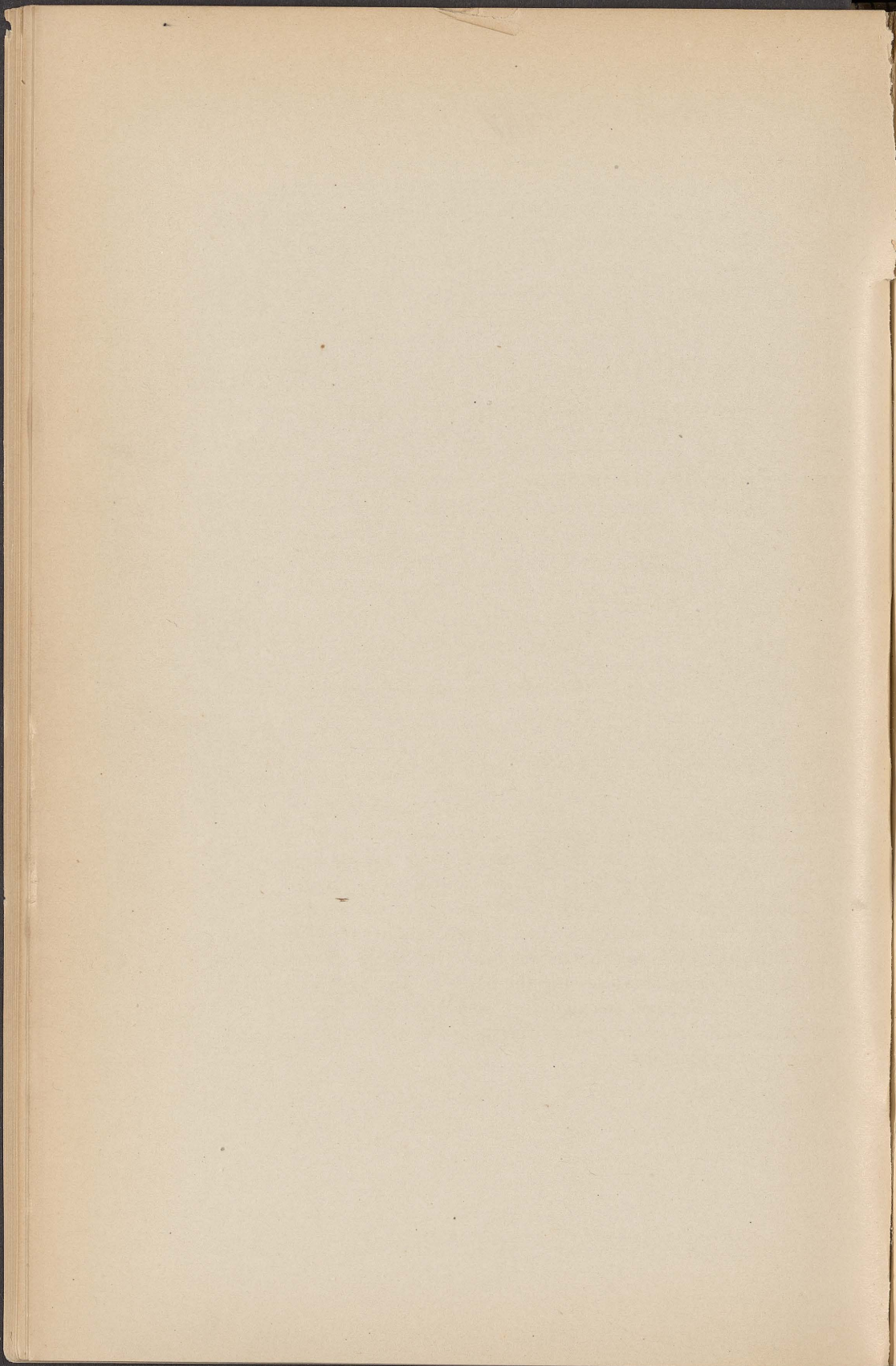
Martha Hancock says that she was present. We do not believe that the absence of Beulah was because of the

wish of Ruth for secrecy, but we do believe that it was because Mr. Waddington did not wish the presence of any one whose influence upon the mind of the testatrix would be likely to run counter to his own.

Probate is refused.

A true copy of the opinion on file in Salem Surrogate's office.

GEORGE R. MORRISON, Surrogate.



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## New Jersey Court of Errors and Appeals.

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GEORGE G. WADDINGTON,

*Appellant,*

*and*

NATHAN W. BUZBY,

*Respondent.*

*On Appeal  
from  
Decree  
of  
Prerogative  
Court.*

Brief of C. H. SINNICKSON, for Respondent.

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### STATEMENT.

The appellant offered for probate, at the October Term, 1886, of the Salem Orphans' Court, a paper purporting to be the last will of Ruth Buzby, deceased, a caveat against proving the same having been first duly filed. The alleged will bears date April 20, 1882. The testatrix was at that date about 83 years old; she died in the summer of 1886. One of the witnesses to the will was dead; the other witness had no recollection of witnessing the paper or anything connected with it, but said the signature was his. The attestation clause fails to set forth that the witnesses signed in the presence of the testatrix.

The testatrix left a daughter, Beulah Gaskill, and a grandson, the respondent, the son of her only son, her true and only heirs. She had had another daughter, Mary Buzby, who died without issue, 23 days before the date of the will. Beulah Gaskill has one son and three daughters, Isabella, Anna, and Mary the wife of the appellant. The appellant is a well-to-do farmer, living about  $2\frac{1}{2}$  miles from Salem. The will was drawn by the appellant, who is the executor thereof. The testatrix resided at Salem, N. J., at the time of the  
 10 alleged execution of the will, and the same took place at her house. The testatrix left \$5200 in money and household goods, and silverware worth perhaps several hundred dollars.

The will gives to the daughter, Beulah, \$1500 in money, 1 bed, bedstead, 2 blankets, 1 comfortable, 1 quilt, 1 cane-seat chair, 1 rush bottom chair, 1 small dining table and 1 silver soup spoon.

The son of Beulah and her daughters, Anna and Isabella, each receive by the will \$100, Anna gets a pair of silver sugar tongs, and Isabella gets a small silver clasp. Martha  
 20 Hancock, a servant in the family, receives one-half of the remaining household goods and six hundred dollars in money. Asher B. Waddington, the son of the appellant, receives \$600 in money and a silver cream cup. All the residue of the estate is given to Mary, the wife of the appellant. Nathan Buzby, the other heir, receives nothing.

At the time of the making of said will Beulah was without any means of her own, but by the will of her sister Mary she was to receive \$1500 at her mother's death. Her children, except the wife of appellant, were compelled to support  
 30 themselves.

After a careful investigation and the hearing of many witnesses the Orphans' Court decided that the will was not the free will of Ruth Buzby and decreed accordingly.

The opinion of Judge Reed, who presided at said court, appears in the state of the case.

From this decree the proponent appealed to the Prerogative Court, and after a full hearing, that court affirmed the decree of the Orphans Court. The opinion of the ordinary appears in the state of the case. From the last decree the proponent appeals to this court.

The respondent claims that at the time of the execution of the alleged will the testatrix was very old, nearly blind, feeble in mind and body, weak of will, prostrated 10 mentally and physically by the recent death of her daughter Mary, who had lived with her and controlled her affairs for years, and was not at the time and under the circumstances competent to make said will, and that the execution thereof was procured by the appellant and Martha Hancock, or one them, by undue influence, and that the said instrument does not contain the free, spontaneous will of the said Ruth Buzy.

The testatrix was 83 years old at the time of the execution of said will. 20

See testimony of Robert Stretch, p 79 of evidence.

She had a fall some years before date of will that injured her mentally and physically, and from which she never recovered and was very feeble in mind, body and will at date of will.

See testimony of Aaron Fogg, p 20—23 of evidence; Anna Fogg p 24; Beulah Gaskill p 29; Elizabeth Pettit p 40; Anna Gaskill p 42; Mary Smith p 48; Joseph Fogg p 65. Also witnesses for appellant: Edward Buzby p 83; Hannah Buzby p 85; Joseph Mulford p 86; Ann Dubois p 90. 30

She was nearly blind at that time.

See testimony of Aaron Fogg, p 17—23; Elizabeth Pettit, p 40; Mary Smith, p 49; Lizzie Robinson, p 52.

She was weak of will and during the lifetime of her daughter Mary controlled by her.

See testimony of Aaron Fogg, p 20—22; Beulah Gaskill, p 30; Elizabeth Pettit, p 40—41; Anna Gaskill, p 43; Nathan Buzby, p 56 ; Nathan Gaskill, 63.

After Mary Buzby's death the appellant assumed control of the testatrix's affairs and seemed to dominate her. In his presence she appeared constrained.

See testimony of Beulah Gaskill, p 30—33—34; Anna  
10 Gaskill, p 42—45 ; Nathan Gaskill, p 63.

Some years before Mary Buzby's death the testatrix made another will which was evidently largely influenced by said Mary.

See testimony of Aaron Fogg, p 20.

In this will Mary Buzby was the residuary legatee and Beulah took \$1200.

See testimony of appellant, p 126—123.

The night before Mary Buzby's death the appellant took  
20 this former will to one Aaron Fogg and asked him to write a codicil to it for him. He brought no notes or memoranda, but told said Fogg what to put into the codicil. When the codicil was written he requested Fogg and his daughter to go with him to the house of testatrix. This was about 9 o'clock at night in the month of March.

When the party got to the gate, appellant said we will go in this way, mother is up in the room, we don't want her to know it. (By mother he meant Beulah Gaskill.)

Aaron Fogg, p 16.

Appellant told witnesses not to make a noise with the  
30 gate because he did not want mother to know they were there.

Anna Fogg, p 47—48.

When witness went in he found Ruth Buzby there; he told her that George had come for him to put a codicil to her will; she made no reply; he then read the codicil to

her and asked her if it was satisfactory; she made no reply; she did not seem to interest herself in anything; she was in a feeble way; she signed the will after a great deal of difficulty; she sat there in a sort of child-like study; she said nothing except yes, when witness asked if she acknowledged her signature.

Aaron Fogg, p 17-19.

Appellant and Martha Hancock were present. Beulah passed through the room before the codicil was read, but knew nothing of what was going on; the whole matter was kept from her. 10

Beulah Gaskill, p 32.

During the whole time the testatrix seemed in a very absent-minded condition. She seemed to do just what she was told to do.

Anna Fogg, p 24.

Appellant said when he came to get the codicil written "they wanted it done before Mary died."

Aaron Fogg, p 21.

Mary died March 29, 1882. The codicil was made the night before she died. The new will was made April 20, 1882. 20

The codicil was for the exclusive benefit of appellant's wife.

Aaron Fogg, p 18.

When the new will was executed the appellant and Martha Hancock alone, of all the family, were present or knew anything about it.

Beulah was invited out to appellant's house, and taken there the day the will was executed, and was there when the will was executed. 30

Beulah Gaskill, p 31—130.

This is not denied by appellant.

Neither Beulah nor any of the family was ever told anything about the will till after the death of testatrix.

After the execution of the will it was put in a box, and Martha tied up the box the way it had been tied before.

Martha Hancock, p 113.

After death of testatrix Martha was the one to go to the box and get the will.

Martha Hancock, p 109.

At the time of Mary's death Beulah, who was a widow entirely without means, told the testatrix that she, Beulah, ought to do something for herself, and the testatrix asked  
10 her to stay with her until after the death of her, the testatrix, and said that she, Beulah, would be well provided for after she, the testatrix, was gone, that she, Beulah, would not be dependent after testatrix was gone.

Beulah Gaskill, p 38.

Beulah then made her home with testatrix; Martha Hancock also continued to live there; Martha told Beulah that she, Beulah, had no right there.

Beulah Gaskill, p 35.

Appellant knew nothing about drawing a will, and admits  
20 that he distrusted his ability to draw this one.

Appellant, p 130.

The respondent insists that the evidence in this case discloses the facts surrounding the execution of this paper to be as follows:

That the testatrix was, at the time of its alleged execution, 83 years old; that she was very feeble mentally, physically and in will power, nearly blind, especially prostrated by the death of her daughter Mary, upon whom she had depended, and to whom she had implicitly yielded for years; that after  
30 Mary's death, the appellant, the husband of Mary's favorite niece, her namesake, and companion from the childhood of said niece, stepped in and took Mary's place, assumed control of the affairs of the testatrix, and dominated her as Mary had done in her lifetime; that in this he had the co-operation

of Martha Hancock, who had lived with testatrix for many years, and who was frequently seen in secret consultation with appellant; that the appellant, under these circumstances, prepared the will, of which he makes himself the executor, and under which his wife and son receive \$2800 out of an estate of \$5200, besides a large part of the household goods and silver; and Martha Hancock, of no kin to the testatrix, and the coadjutor of the appellant in this scheme, receives \$600 and nearly half of the household goods, while the daughter, one of the two natural heirs of the testatrix, a poor 10  
dependent widow, advanced in years, receives only \$1500, and the grandson, the only son of the only son of the testatrix, and the other natural heir, receives nothing.

These being the facts of the case the burden of proof is thrown upon the appellant to show that the will is the free will of the testatrix, and was executed without the exercise of undue influence upon her.

1. Because the will is unreasonable, inconsistent with the duties of the testatrix to her property and family, and contrary to natural affection. 20

“When a will is unreasonable in its provisions, and inconsistent with the duties of the testator with reference to his property and family, this will, of itself, impose upon those claiming under the instrument the necessity of giving some reasonable explanation of the unnatural character of the will.”

Lynch vs. Clements, 9, C. E. G., 435.

Clark vs. Fisher, 1 Paige 171.

1 Redfield on Wills, 318.

“Anything in the character of this will which renders it 30  
contrary to natural affection, or what the civil law denominates an undutiful testament, as where children or others entitled to an estate in case of intestacy are wholly disinherited or receive such unequal portions as to indicate that it is done

without any just cause, and wholly dependent upon caprice or over-persuasion or deception, must always excite apprehension of undue influence."

1 Redfield, 521.

No explanation whatever is offered by appellant or anyone why the daughter, Beulah Gaskill, receives so small a portion of the estate.

10 Just before the will is made the testatrix asks her to live with her, discourages her from taking measures to support herself, and promises that she shall be well provided for after testatrix is gone.

No explanation is given why the wife and son of appellant, who have a husband and father to take care of them, receive the bulk of the estate, while the grand-daughter, Anna, who is compelled to support herself as a clerk in a store, receives only \$100. If the testatrix had any preference it was for Anna.

Beulah Gaskill, p 38.

20 Nor why they should be preferred before Isabella and Nathan Gaskill.

It is claimed, on the part of appellant, that the respondent was cut off because the testatrix, in 1875, paid him \$938, which she, as one of the executors of his grandfather's will, owed him; this payment was made voluntarily; it was all that the respondent received from his grandfather's estate, and was all he had in this world; his father had died long before, leaving nothing; it was due to him, and there is no evidence to show that the testatrix had not received it, or a part of it, from the estate of his grandfather.

30 Nobody but the appellant claims that the testatrix ever had or expressed any feeling against the respondent because of this payment; none of his family ever heard or saw anything of the kind.

Beulah Gaskill, 28.

Nathan Buzby, 55.

William Carpenter, 58.

Nathan Gaskill, 63.

Anna Gaskill, 43.

After the payment the testatrix always manifested the strongest affection for respondent, insisted upon keeping his picture, and seemed to the others to be her favorite grandchild, as his father had been her favorite before.

Beulah Gaskill, 28.

10

Anna Gaskill, 43.

Nathan Gaskill, 63.

2. The burden of proof is so thrown upon appellant because he stands in the place of a favored legatee, and he drew the will himself, and, without the knowledge of any of the family, procured it to be executed.

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

20

Dale vs. Dale, 11 Stew., 274.

“If it appears that testator was of weak mind, and a bequest is made to a person who stood in a position which would have enabled the beneficiary to influence the act, the burden is shifted, and probate will not be granted unless the Court is satisfied by additional evidence that the paper presented does really express the will of the testator.”

Haydock vs. Haydock, 7 Stew., 574.

30

Taylor on Evidence, Sec. 160.

“When the party to be benefited by the will has a controlling agency in procuring its formal execution, it is universally regarded as a very suspicious circumstance, and one requiring the fullest explanation.”

Lynch vs. Clements, 9, C. E. G., 435.

“While the fact that a will was drawn by one of the favored legatees does not of itself invalidate a will, it certainly is a matter which excites the judicial mind to suspicious scrutiny.”

Rusling vs. Rusling, 9, Stew., 609.

1 Redfield, 515.

Duffield vs. Robinson, 2 Harrington, 384.

10 “When the testator was very infirm and the will executed in the articles of death, it has been rightly held that the preparation of the will by the principal legatee was conclusive against its validity.”

Trumbul vs. Gibbons, 2 Zab., 137.

Will of person of sufficient capacity, but of weak mind, made in favor of agent of testator, set aside on ground of improper influence.

Ingram vs. Wyatt, 1 Hagg, 94.

Marsh vs. Tyrell, 2 Hagg, 84.

1 Williams on Ex., 44.

20 The only evidence the appellant offers to rebut the charge of undue influence, is his own and Martha Hancock's sworn denial. They are both interested, and both are contradicted by facts and testimony. Martha's manner upon the stand was very bad. She impressed the Orphans' Court as unreliable. (See opinion of Judge Reed.) She first declared that she was present when the will was executed, and when told that was a bad thing for George, said she was not present, and on the stand denied the whole thing. She is flatly contradicted by three witnesses.

30 Martha Hancock, 108; Ruth Waddington, 128; Beulah Gaskill, 130; Anna Gaskill, 131.

Martha's contradictory statements, her evident anxiety to help George, her secret conversations with him, the large legacy she receives, and the fact that she and George, alone of

the family and friends of the decedent, were present at the execution of the will, all serve to increase the suspicion of undue influence, and render utterly worthless any evidence she has given to support the appellant's denial.

The appellant's own testimony has in no way shifted or unloaded the burden of proof put upon him by the proven facts of the case.

The testimony of the two Foggs, who are absolutely disinterested, show that 23 days before the execution of this will the appellant procured the execution of a codicil to a former will of decedent in favor of his wife, under circumstances that point conclusively to undue influence. The appellant makes no denial of, or attempt to explain, these facts. 10

The appellant makes no denial of or attempt to explain the fact that he procured the absence of Beulah Gaskill, the natural protector of the decedent, while he caused the will to be executed; nor does he attempt to explain why, he, a farmer, drew the will himself, and did not have it drawn and its execution attended to by some competent disinterested person.

Appellant's statements as to why decedent wished him to draw the will are contradictory. 20

Appellant, p 120—126.

Not only has the appellant failed to prove that the will in question was the free sponaneous will of the decedent, but all the facts of the case, fairly interpreted, show to the contrary, and lead to the conclusion that the decedent was not a free agent in the matter.

It is rarely possible to exhibit the perpetrator in the act of exercising the coercion that procures the execution of a will by undue influence; especially when he prepares the will and procures its execution himself; the fact must be gathered from the surrounding circumstances, and the degree and force of the influence necessary to invalidate the will, vary with the circumstances. 30

“What constitutes undue influence can never be precisely defined; it must depend in each case upon the means of influence possessed by one party over the other; upon the power, authority, control of the one; the age, the sex, the temper, the mental and physical condition, and the dependence of the other.

“Whatever destroys the free agency of the testator constitutes undue influence.”

Moore's exrs. vs. Blauvelt 2, McCarter 368.

10 Myness vs. Robinson 2, Hag 169.

Small vs. Small 4, Green 223.

Davis & Calvert 5, Gill & Johns 302.

“The question must depend upon the special facts and surroundings which each case presents.”

Lynch vs. Clements 9, C. E. G. 434.

“The influence which would subdue and control a mind naturally weak, or which has been impaired by disease, age, or any other cause might have no effect to overcome or mislead a mind naturally strong and unimpaired.”

20 1, Jarmon on Wills 36.

“When undue influence is set up, the ground of invalidity to be established is, that the conduct of others has so operated upon the testator's mind as to constrain him to execute an instrument to which, of his free will, he would not have assented.”

Rusling vs. Rusling 9; Stew. 607.

Earle vs. Norfolk vs. N. B. Hosiery Co., 9 Stew. 192.

“The testator should enjoy full liberty and freedom in the making of his will, and possess the power to withstand all contradiction and control, it must be his voluntary free act.”

30 Alexander Will 126, C. E. G. 472.

Calvert vs. Davis 5, Gill & Johns 302.

“No matter how little the influence if the free agency is destroyed it vitiates the will.”

Turner vs. Cheesman 2, McCar 265.

Haydock vs. Haydock 6, Stew. 494.

The age, mental and physical weakness and partial blindness of decedent, and her condition and manner at time of execution of the codicil, create great doubts as to whether she understood this will.

“In all cases where there are special grounds for apprehending undue influence, greater watchfulness should be exercised by the court, as when the testator was of advanced age, hearing slightly affected, sight seriously impaired, any trace of imposition or artifice should be carefully examined.” 10

1 Red. on Wills 528.

“While the courts of this State have ever guarded with exacting jealousy the right of testamentary disposition, the burden has always been cast upon the proponent of establishing a strict compliance with every essential to the validity of a will.”

Harris vs. Vandervere 6, C. E. G. 362.

20

“It will not be presumed from the fact that the testator had testamentary capacity, that he would not have executed the will without understanding its contents.”—*Id.*

In this case decedent was nearly blind and somewhat deaf, and although it was proved that will was read to testator, yet the court was not satisfied that he understood, and refused probate.

In the will in question here, although the appellant says he read it to her, yet the facts raise great doubts as to whether she understood it.

30

“It behooves a tribunal of justice while maintaining upon the one hand the right of the testator to that unlimited dominion which the law gives him over his property, to resist

upon the other, with watchful jealousy, all attempts to interfere with the free and untrammelled exercise of that dominion, and to see that in the testator's hour of weakness and infirmity, the will of another be not substituted for his own."

Moore's exrs. vs. Blauvelt 2, McCarty 368.

Also see 1 Redfield, p 510 sec 3.

Patterson vs. Patterson, 6, S. & R. 56, Dietrich.

2 Dietrich 5 S. vs. 207, Nursear & Arnold.

5 S and R. 523; Feardon's Case 5 Ves. 633.

10 Clark vs. Fisher 1, Page 171

"Evidence tending to show the previous purpose of the testator in regard to the disposition of his property, is admissable, upon the question of the capacity to comprehend the will, and how far it was the result of free will.

1 Redfield 537.

5 Strobb 167.

20 "When the sanity of the testator is in question, and when undue influence is sought to be established, it is competent to give in evidence the declarations of the decedent to show that the disposition of his property by the will, which is proposed for probate, is in opposition to his intentions, as manifested by his declarations."

Turner vs. Cheesman 2, McCart. 265.

It is doubtful whether the legal formalities required by the statute, have been complied with in the execution of this paper. The attestation clause does not set forth that witnesses signed in the presence of the testator; therefore, affirmative proof that they so signed must be made before the will can be proved.

30 Revision p 1247.

Allaire vs. Allaire 812, 312; S. C. 10 & 113.

Mandiville vs. Patters 4, Stew. 248.

Ludlow vs. Ludlow 9, Stew. 600.

The only attempt to prove this is the evidence of the appellant p 120—121, where he says: She signed the will, and then the witnesses signed it; but he does not say where decedent was when witnesses signed, whether she had gone back to the sitting-room from whence she had come, or where she was.

The court has the right to pass upon this matter.

“The proceedings in matter of probate of will in the Orphans’ Court, are renewed by appeal to the Prerogative Court, and from thence to the Court of Errors and Appeals. 10 On such appeal the question for decision remains the same as it was before the statute, viz: not the propriety of the decree below, but the right to probate the will.

Rusling vs. Rusling 9, Stew. 606.

Allaire vs. Allaire 8 Vr. 320.

*The Court has the right to require the appellants - to pay costs - see*

*Revised Statutes h 791 Sec. 177  
 iii h. 220, Sec. 38-  
 id h. 400 Sec. 2  
 iii h. 124 Sec. 108-*

*It is a general principle of law that the prevailing party in suits - is entitled to costs - Hann v. McCormick 1 South 112  
 Allen v. Shurtz 2 Har. 120  
 Revere ad. app- 2 h. 141  
 Button & Blake 7 h. 444*

Learn n. which cuts men  
order to be done by appellants.

Leominster r. July 2<sup>d</sup> ch. 625-

Leominster r. Grant - vi 629

San Havelon, Vers. & P. n. 668, 4. 353.

Blackwell r. Blackwell 2<sup>d</sup> stem 574

Peru r. Applegate 1<sup>st</sup> stem 534

# Prerogative Court.

MAY Term, 1887.

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GEORGE G. WADDINGTON,  
Appellant,

and

NATHAN W. BUZBY,  
Respondent.

} On Appeal from the Salem  
County Orphans' Court.

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W. T. HILLIARD and W. E. POTTER,  
For the Appellant.

C. H. SINNICKSON,  
For Respondent.

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## THE ORDINARY.

This is a controversy touching the validity of the alleged last will of Ruth W. Buzby, deceased, which was propounded for probate by George G. Waddington, who is named in it as its executor, before the Surrogate of Salem County, and rejected by the Orphans' Court of that county. 30  
It was insisted upon the part of the caveator below, that the execution of the paper was procured by the appellant

and Martha Hancock by undue influence. The proofs show that at the time the paper was signed, Mrs. Buzby was about eighty-three years old and subject to many of the infirmities of old age. She was feeble in body, memory and will, nearly blind, absent minded, listless and indifferent to her surroundings, probably in the incipient stages of senile dementia.

The proponent was her man of business, to whom she entrusted the investment of her moneys, and the collection  
10 of her income. In 1872 he had married her granddaughter, Mary B. Gaskill, who had been reared from infancy in her grandmother's household.

The testatrix had four children, Milton, who died in infancy; Mary, who never married and died on March 29, 1882; Bulah, who married one Gaskill, and now survives, and is the mother of the proponent's wife; and Nathan, who died in 1852, leaving one son, who is the respondent in this suit, and the caveator below.

Mrs. Buzby, her daughter Mary, and Martha Hancock,  
20 a servant who had been brought up from childhood by Mrs. Buzby, lived together until the death of Mary in 1882.

During Mary's last illness, Bulah Gaskill came to her mother and undertook the management of the household in her sister's stead, and thereafter remained with her mother throughout the rest of the mother's life.

Some eight or nine years before Mrs. Buzby died she executed a will that had been copied for her by one Aaron Fogg from a will that had been previously drawn for her by one Owen L. Jones. The recopy was made for the  
30 purpose of substituting the proponent, Waddington, as executor in the place of Owen Jones. Mr. Fogg says that he thinks Mrs. Buzby's daughter Mary was much more interested in this change than her mother was.

The testimony is meagre and unsatisfactory as to the disposition that this will made of Mrs. Buzby's property.

Such information as can be gathered is to be found in the testimony of the proponent. It seems that by it a legacy of twelve hundred dollars was bequeathed to Mrs. Gaskill; Nathan Buzby was to receive one hundred dollars; Mrs. Gaskill's daughters were not to receive anything except trifling specific legacies; Mary Buzby was to have the residue of the estate, and the proponent, George Waddington, was to be the sole executor.

By the paper now offered for probate, Mrs. Gaskill is to have fifteen hundred dollars and articles of furniture, 10 and three of her children are to have one hundred dollars each, and some articles of little value; Martha Hancock is to have six hundred dollars and some household furniture, which she is to take in lieu of any charges she may make for services; Nathan Buzby, the respondent in this appeal, is not to have anything; George Waddington, the proponent, is to be the sole executor, his son is to have six hundred dollars and a silver cup, and his wife is to have the residue of the estate.

Outside of the household furniture, silverware, etc., 20 the estate is valued \$5,200, consequently the wife and child of the executor will together receive \$2,800, in addition to a share of the household effects.

The will refers to Nathan Buzby in the following language: "My grandson, Nathan W. Buzby, heired a legacy of one thousand dollars by the will of his grandfather, Asher Buzby. By failure of my co-executor, George M. Ward, I have been compelled to pay the greater part of said legacy out of my own resources, and this is the reason my said grandson, Nathan W. Buzby, is not mentioned as 30 a legatee of this instrument."

It appears that Asher Buzby bequeathed one thousand dollars, to be paid to his grandson Nathan, when he should reach the age of twenty-one years, and if he did not live to reach that age, the legacy was to be paid to his cousin,

Mary B. Gaskill, who is now the wife of the proponent, Waddington. George M. Ward and Ruth W. Buzby were appointed executor and executrix of this will. Nathan did not become of age for five or six years after his grandfather's death, and then George M. Ward had failed in business, and with his failure a large part of the legacy was lost. Nathan advised with counsel, and as a result of the advice he received, required his grandmother to make good the legacy to him by paying him more than nine hundred dollars. When the payment was made, his aunt, Mary Buzby, was greatly annoyed, and said, "Nat, you have got all the money in the house but ten dollars," but the grandmother, recognizing his legal right, said, "Take it, Nat; it belongs to you."

Many of the witnesses say that the grandmother did not cherish ill feeling to Nathan because of this enforcement of his rights, but, that, on the contrary, she always expressed the most sincere affection for him. The proponent, on the contrary, says that he heard her declare that Nathan should never have a dollar of her property, and further, that when Mrs. Buzby requested him to prepare a new will for her, she asked where the residue of her estate would go, now that her daughter Mary was dead, and, upon his informing her that it would go to Mrs. Gaskill and Nathan Buzby, she said that she did not wish Nathan to have any of it, and then gave the proponent her preceding will and told him to copy from it in the new will, the clause in reference to Nathan, which is above set forth at length. Later in his testimony, however, in speaking of the provisions of the preceding will, he says that he thinks that by it one hundred dollars was bequeathed to Nathan. Waddington admits that the preceding will was in his hands, but excuses the non-production of it by saying that he gave it back to Mrs. Buzby. It does not appear

in the case, and there is no evidence as to its contents save the testimony which the proponent gives.

If we rely upon this testimony, the important changes from it were the recognition of Martha Hancock by a legacy of six hundred dollars and some of the household effects, the legacy to Waddington's son, and the substitution of his wife as a residuary legatee in place of deceased daughter, Mary.

The testimony does not disclose that either of these persons was a beneficiary under this preceding will. 10

The only persons connected with the family, who took part in or knew anything about the execution of the paper offered for probate, were Martha Hancock and Waddington, the executor, and the husband of the residuary legatee. The paper is in the handwriting of this husband, and he and Martha Hancock alone account for its execution, for one subscribing witness is dead, and the other fails to remember the transaction.

Waddington says that he received instructions for the preparation of the paper on the fifteenth of April, while Mrs. Gaskill was in Salem with his wife, and it appears that when the paper was signed, on April twentieth, Mrs. Gaskill was visiting at Waddington's house by a special invitation from him or his wife. 20

The proponent and Martha Hancock come to the witness stand affected in credit by their interest in the establishment of the paper as the will, one, because of a considerable legacy to her, and the other, because of the bequest of more than one-half of the entire estate to his wife and son. Upon the rejection of this paper neither of these beneficiaries will take a dollar from the estate. Some of the witnesses speak of having seen Martha Hancock and the proponent frequently together in apparently secret conversation at and about the time of the death of Mary Buzby and the making of this paper, and it is insisted that 30

this circumstance is significant when taken in connection with the fact that these two are the only members of the family who were present at the signing of the paper, and also at the clandestine signing of a codicil to the will prepared by Fogg on the night preceding Mary Buzby's death.

It is in proof that the night before Mary Buzby died, at about nine o'clock, George Waddington called upon Aaron Fogg and requested him to prepare a codicil to Mrs. Buzby's will. The proposed codicil in effect made Waddington's wife residuary legatee in place of her Aunt Mary. After the paper was drawn Waddington asked Fogg and his daughter to come to Mrs. Buzby's house and witness its execution. When they reached the house Waddington opened the gate and led them to a side entrance, saying: "We will go this way, mother," meaning Mrs. Gaskill, "is up in the room. We do not want her to know it." Mr. Fogg says that upon entering the dining-room, "they had a kind of a square table between the two windows, and there sat Ruth Buzby at one end of the table with pen and ink prepared. I stepped up there and passed my hand across the table to her, and shook hands with her, and asked her how she was, but I do not remember whether she made me any reply or not. I told her that George had come up for me to put a codicil to a will. She did not say anything that I have any recollection of. I read it to her and told her if it were satisfactory she might put her name to it. I laid the paper down and she took and signed it after a good deal of difficulty." When the witness was asked what Mrs. Buzby's manner was during this interview, he replied that she was feeble and could not read much; that he told her that it was not necessary for her to read the codicil if she understood it; that she sat "in a sort of childlike study," and that "everything seemed to be a mechanical performance," and that she made no answer to this observation on his part. The witness says

that he does not know that she understood what she was doing ; all that she said at the interview was "yes" when she was asked if she acknowledged the signature to be hers. Anna Fogg says that she was in the kitchen when the codicil was read to Mrs. Buzby and when Mrs. Buzby and Aaron Fogg signed, and after their signing she came into the room, and Mrs. Buzby was then asked if it was her acknowledgment, and that then she, Anna, was asked to sign her name. She says also that Mrs. Buzby seemed to be "in a very absent-minded condition." 10

It appears that Mrs. Gaskill was in the house that night in attendance upon her dying sister, and that she passed through the dining-room to the kitchen at some stage of the proceedings. She did not notice what was going on, and she was not consulted about it.

Both Waddington and Martha Hancock are silent in their testimony as to this transaction, except that Waddington says that he does not remember making the remark he is said to have made to Fogg and his daughter as they entered the gate. 20

Twenty-three days later, Waddington and Hancock again, alone of all the family, were present at the signing of the paper now offered for probate. According to their account the execution of it took place at about nine o'clock in the morning of April 20, 1882, in the dining-room of Mrs. Buzby's house. Mrs. Gaskill, by invitation, was at Waddington's house two and one-half miles away. Waddington says that he had prepared the paper at his own house, and brought it to Mrs. Buzby ; that he read it to her and asked her if she understood it, and upon her re- 30  
plying in the affirmative, read it over again to her slowly, and gave it to her, and then went out in another room, and there talked with Martha Hancock for some time ; that he then returned to Mrs. Buzby, who told him that she wanted witnesses ; that she named Elijah Ware, Richard Hiles

and Aaron Fogg; that he went out and got Ware and Hiles; that after he returned as she was going to sign the paper he said, "Grandmother, is thee fully aware of the contents of that will?" to which she answered, "yes," and he then said, "Does thee wish these witnesses to sign it?" and she said, "yes," and that then she signed the paper, and the witnesses also signed.

10 Martha Hancock says that after the execution, Mrs. Buzby took the paper up stairs, and in about a half hour called her to come and tie up the box in which it had been put in the way in which the box had been tied before. Both the proponent and Martha deny that they made any attempt to influence Mrs. Buzby to make a will, and deny that they conspired together to procure the execution of the paper offered for probate. Waddington says that his subsequent secrecy as to the existence of the will was at the request of Mrs. Buzby, and that every step in the execution of it was taken in obedience to previous suggestions by her.

20 The testimony of Martha Hancock is inconsistent and contradictory. It is proven in the case that after she declared that she was present at the execution of the paper, it was said by some one that that circumstance would be bad for Waddington, and she thereupon declared that she had not been present at the execution of the paper. When questioned at her examination as to this contradiction, she denied it, and in the rebutting evidence she was contradicted in this denial by three credible witnesses. The Orphans' Court rejected her testimony as unworthy of  
30 belief.

The making and execution of this paper was surrounded by indicia of undue influence.

The testatrix was an old woman, enfeebled in mind and body, nearly blind, and scarcely realizing her surroundings, whose daughter, her natural and recognized

protector, and by law entitled to a large share of the residue of her estate, is called away from her side by a man who has prepared a will for her to execute. This man is her business agent and adviser, in whom she places confidence, and as well is the husband of one of her granddaughters.

He presented to her, for execution, a will, prepared by his own hand, in which he has written for his son a substantial legacy, for himself the executorship, and for his wife more than one-half of the estate. 10

As concomitants to this we have one acting with him who also takes a considerable portion under the same instrument, and also the admitted facts that this man alone reads the paper to the testatrix, calls the witnesses to attest to its execution, is the spokesman at the execution, puts questions that call for categorical answers only, and personally superintends every stage of the proceeding; also the facts that the woman who attends the execution ties the will up in the box in which the old lady's private papers were kept in the same manner in which the box 20 before then had been tied; and also, that about twenty-three days before, these very two persons were secretly and at night engaged in a similar transaction, in which substantially the same direction was sought to be given to the greater part of the estate, and that the old lady went through that transaction absent mindedly, mechanically, and apparently oblivious to her surroundings.

The establishment of these circumstances, if not conclusive against the validity of the paper offered for probate, at least throw the onus of showing the free agency of Mrs. 30 Buzby in making it upon the proponent.

In *Rusling vs. Rusling*, 9 Stewart, 607, Justice Dixon, who delivered the opinion of the Court of Errors and Appeals, in speaking of the matters in proof which might influence the testator's testamentary purposes, says: "The

first is the fact that the will in question was drawn by one of the favored legatees. While this circumstance does not of itself invalidate a will, it certainly is a matter which excites the judicial mind to suspicious scrutiny." In *Den vs. Gibbons*, 2 Zab., 137, Chief Justice Green is reported to have said that where the testator was very infirm and the will executed in the article of death, it had been rightly held that the preparation of the will by the principal legatee was conclusive evidence against its validity. So other  
 10 concomitants might readily be suggested which would give to the fact that the favored party had drafted the instrument almost irresistible force as evidence that the alleged testament was not the will of the deceased.

In *Park vs. Ollat*, 2 Phill., 324, Sir John Mitchell says: "By the Roman law, *qui se scripsit haeredem* could take no benefit under the will. By the law of England this is not the case, but the law of England requires in all instances of the sort that the proofs should be clear and decisive; the balance must not be left in equilibrio; the  
 20 proof must go not merely to the signing, but to the knowledge of the contents of the paper. The presumption and onus probandi are against the instrument, \* \* and the onus of proof may be increased by circumstances such as the unbounded confidence of the drawer of the will, extreme debility in the testator, clandestinity and other circumstances which may increase the presumption even so much as to be conclusive against the instrument." *Billinghurst vs. Vickers*, 1 Phill., 187; *Ingram vs. Wyatt*, 1 Hagg, 384; *Tyrell vs. Harding*, 2 Hagg, 84; *Berry vs. Butlin*, 1 Curteis, 614; *Dale vs. Dale*, 11 Stewart, 274; *Delafield vs. Parish*, 25 N. Y., 35; *Tyler vs. Gardner*, 35  
 30 N. Y., 559, 592.

The proponent's testimony alone is insufficient to satisfy me that the instrument he offers for probate contains the free, spontaneous will of Mrs. Buzby; he is not

assisted by the testimony of Martha Hancock ; her contradictions of herself, and the falsehoods to which she resorted when she thought it to be to the proponent's benefit, justify the Orphans' Court in refusing to believe her, and make her a wretched adjunct to one who comes into court with the burden above spoken of upon him.

If these circumstances, which bear so heavily upon him, are susceptible of explanation, it behooved him to see to it when he engaged in his undertaking that he had the necessary witnesses at hand to maintain the validity of the paper as a will. His unsupported testimony will not justify the admission of the paper to probate as the will of Ruth W. Buzby. 10

The decree of the Orphans' Court will be affirmed with costs.

#### NEW JERSEY PREROGATIVE COURT.

I, Henry C. Kelsey, Register of the Prerogative Court of the State of New Jersey, do hereby certify that the foregoing is a true copy of an opinion read by the Ordinary in the above stated cause, May Term, 1887, as the same is taken from and compared with the original ( filed October 18, 1887 ), now remaining on file in my office. 20

Witness my hand and the Seal of the Prerogative Court at Trenton, this twentieth day of October, A. D. 1887.

SEAL.

HENRY C. KELSEY,

Register. 30

## NEW JERSEY PREROGATIVE COURT.

GEORGE G. WADDINGTON,

Appellant,

and

NATHAN W. BUZBY,

Respondent.

In the matter of the probate of the alleged will of Ruth W. Buzby, dec.  
 Appeal from the decree of the Salem County Orphans' Court.

10

This cause having been brought to a hearing on an appeal from the Orphans' Court, of the County of Salem, at the last term of the Court, and William T. Hilliard and William E. Potter, of counsel with the appellant, and Clement H. Sinnickson, of counsel with the respondent, having been heard, and the questions brought up by said appeal having been duly considered, it is on this twenty-fifth day of October, A. D. eighteen hundred and eighty-seven, ordered adjudged and decreed, that the decree of the Orphans' Court, of the County of Salem, made on the

20 fifth day of February, A. D. eighteen hundred and eighty-seven, which is appealed from by the appellant, be and the same is hereby in all things affirmed, with the costs of this appeal, including the costs of said respondent in this court to be paid by the appellant, and that the proceedings and decree of this court be remitted to the Orphans' Court of the County of Salem.

And it is further ordered that a counsel fee of one hundred and fifty dollars be allowed to the counsel of the said respondent to be paid out of the estate of Ruth W.

30 Buzby, dec.

ALEX. T. MCGILL, JR., O.

## NEW JERSEY PREROGATIVE COURT.

I, Henry C. Kelsey, Register of the Prerogative Court, of the State of New Jersey, do hereby certify that the foregoing is a true copy of a decree made by the Ordinary, or Surrogate General of the State of New Jersey, on the twenty-fifth day of October, A. D. eighteen hundred and eighty-seven, in the above stated cause as the same is taken from and compared with the original now remaining on file and of record in my office.

Witness my hand and the Seal of the  
Prerogative Court, at Trenton, this twenty-  
fifth day of April, A. D. 1888.

SEAL.

HENRY C. KELSEY,  
Register.

## NEW JERSEY PREROGATIVE COURT.

GEORGE G. WADDINGTON,

vs.

NATHAN W. BUZBY.

20

} Notice of Appeal.

The appellant in the above cause, George G. Waddington, hereby appeals from the order and decree made in the above entitled cause, bearing date the twenty-fifth day of October, eighteen hundred and eighty-seven, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

Dated the seventeenth day of January, 1888.

30

W. T. HILLIARD,  
Solicitor and of Counsel with Appellant.

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

W. T. HILLIARD,  
Of Counsel with Appellant.

A true copy from the original filed in the office of the Register of the Prerogative Court, January 28, 1888.

HENRY C. KELSEY,  
Register.

10 I acknowledge service of within notice this 17th day  
January, 1888.

C. H. SINNICKSON,  
Proctor.

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

The petition of George G. Waddington, appellant, shows that your petitioner finds himself aggrieved by a decree made by the Ordinary in the Prerogative Court, dated the twenty-fifth day of October, one thousand eight  
20 hundred and eighty-seven, in the matter of George G. Waddington, appellant, and Nathan W. Buzby, respondent, on appeal from the decree of the Orphans' Court, of Salem County, refusing probate to the alleged will of Ruth W. Buzby, deceased, in that said decree adjudges that the decree of the Orphans' Court, of the County of Salem, in said cause be affirmed, and in that it adjudges that said appellant should pay costs.

And this petitioner appeals from the said decree upon the ground that the same is erroneous, and for that it adjudges that said appellant should pay costs.

30 He, therefore, prays that the said decree may be reversed, set aside, and for nothing holden, and that he may have such relief as may be just.

W. T. HILLIARD,  
Solicitor and of Counsel with Appellant.

STATE OF NEW JERSEY,  
SALEM COUNTY, ss.

George G. Waddington, alleging himself conscientiously scrupulous of taking an oath and being duly affirmed, on his solemn affirmation, saith that the foregoing appeal is not intended for the purpose of delay, but that he verily believes he has a just and legal cause for appeal on the merits of the case.

GEO. G. WADDINGTON.

Affirmed and subscribed before  
me this 25th day of February,  
A. D. 1887.

10

GEO. R. MORRISON,  
Master Court of Chancery.

A true copy from the original filed February 28, 1888.

HENRY C. KELSEY,  
Secretary of State.

20

COURT OF ERRORS AND APPEALS.

GEORGE G. WADDINGTON,

Appellant,

vs.

NATHAN W. BUZBY,

Respondent.

An Appeal from Decree of  
of Prerogative Court.

Affidavit of Service of  
Copy of Petition of  
Appeal.

NEW JERSEY, ss.

30

William T. Hilliard, alleging himself conscientiously scrupulous of taking an oath, and being duly affirmed on his affirmation, saith that on the third day of March, instant, he served a certified copy of the petition of appeal,

filed in this cause, on Clement H. Sinnickson, the proctor of the respondent, Nathan W. Buzby, by giving the same to him personally, and informing him of the contents thereof.

W. T. HILLIARD.

Affirmed and subscribed before me this March 22, 1888.

M. H. STRATTON,  
Master Court of Chancery.

10

A true copy from the original filed March 22, 1888.

HENRY C. KELSEY,  
Secretary of State.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

20 GEORGE G. WADDINGTON,

Appellant,

and

NATHAN W. BUZBY,

Respondent.

} On Appeal from Decree of  
Perogative Court.

The answer of the above named respondent to the petition of appeal of the above named appellant.

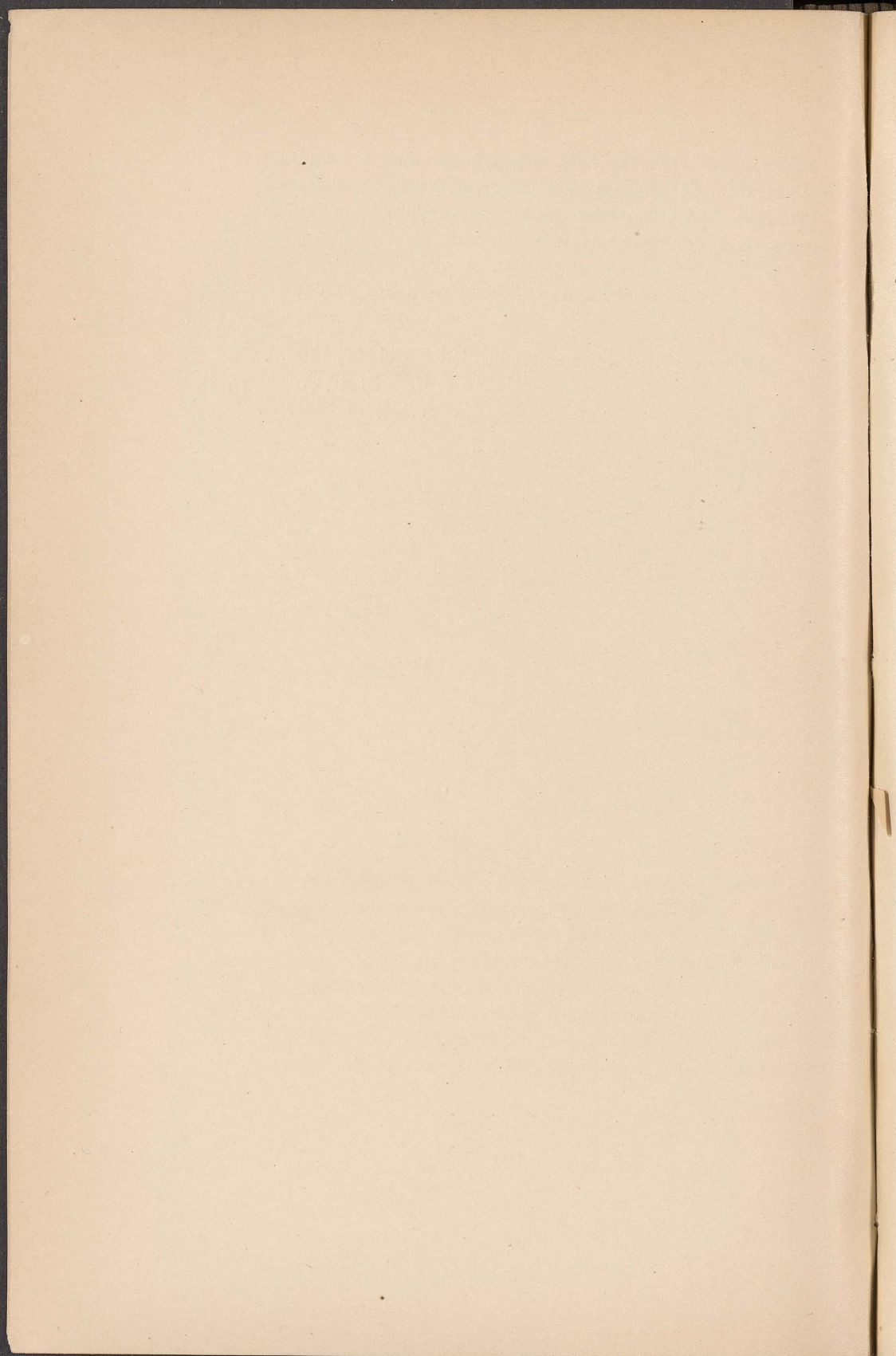
30 This respondent, not acknowledging all or any of the matters, which in the said petition of appeal are contained, to be true, for answer thereto, says and admits that a decree was made and entered in the Prerogative Court on the date and of the purport mentioned in said petition, but as to the substance and form thereof this respondent prays to

refer thereto when the same shall be produced. And he is advised and believes that the said decree is just and equitable, and prays that the same may be affirmed, with costs, to be adjudged to this respondent.

C. H. SINNICKSON,  
Solicitor for and of Counsel with Respondent.

A true copy from the original filed March 17, 1888.

HENRY C. KELSEY,  
Secretary of State.



# New Jersey Errors and Appeals.

Between

GEORGE G. WADDINGTON,

Appellant,

and

NATHAN W. BUZBY,

Respondent. )

} On appeal from decree of  
Ordinary. Points of  
Appellant's counsel.

10

1. The mere fact that the witnesses to the will fail to remember anything about its execution ought not to change the burden of proof to the proponent, when the witnesses testify that their signatures affixed to said will are genuine.

2. The demeanor of proponent at the time of the execution of ANOTHER WILL, made by same testatrix, ought not, especially when denied by him, to change the burden of proof as to the will offered for probate.

20

3. There is no proof, that at the time of the execution of the will offered for probate, the proponent stood in any confidential relation to the testatrix.

4. The fact that the will remained in the possession of testatrix for over four years, and until her death, coupled

with her admitted testamentary capacity, is full proof that she was satisfied with its provisions.

5. The fact that the will drawn by Owen Jones contained the clause in regard to Nathan Buzby just as it is in the will now under consideration, shows conclusively that Ruth Buzby had long ago formed the intention carried out in her last will.

The decree appealed from adjudges that the execution of the alleged will was procured while testatrix was under restraint and undue influence.

The attestation clause of this will is perfect and shows on its face that all statutory requirements have been complied with, and is, therefore, presumptive evidence of the facts therein recited.

Mundy vs. Mundy, 2 McCart., 290 ; Allaire vs. Allaire, 8 Vv. 312.

The signature of the witness, Elijah Ware, is by him admitted to be genuine ; that of the witness, Richard Hiles, who is deceased, is fully proven. 10

This attestation clause certifies that the testatrix signed, sealed, published and declared the paper to be her will and testament, and requested the witnesses to sign it. These statements must, therefore, be accepted as facts until AFFIRMATIVE evidence is introduced by the caveator to disprove them.

Has such evidence been introduced ?

The testatrix was a widow, aged 87, at the time of her death, or ~~88~~ when the will was made. 20 She lived in Salem, N. J., and kept house, assisted by Martha Hancock and Beulah Gaskill. George G. Waddington, the proponent, was the husband of her granddaughter, Mary B. Gaskill, daughter of Beulah, and lived in Elsinboro, two and a half miles from Salem.

The defence in this case, on the application for probate, was expressly stated by counsel to be, not insanity, but enfeebled mind. (Evidence, p. 98, line 26).

The contention of caveator was that such a state of mind had been shown by the evidence, but no instance of the proponent's exercising any undue influence was shown, nor that any one else then living had exercised such influence. In questions of testamentary capacity, the abstract 30

opinion of any witness is of no value. The opinion of the witness must be brought to the test of facts.

Stackhouse vs. Horton, 2 McCart., 201.

There is not a witness for the caveator who details or mentions a single FACT that tends to show enfeebled condition of testatrix's mind, except the infirmity common to all old persons, the loss of recollection of recent events, the evidence is only OPINIONS—on the contrary unusual power of mind is shown.

10

BEULAH GASKILL tried to get testatrix to refuse assistance from proponent in money affairs. Testatrix apparently consented, but made no change. P. 33, line 35.

EVIDENCE OF WILLIAM A. CASPER in relation to change of loan the year before will was made. P. 93, line 15, &c. ; also p. 61, line 33; also p. 107.

TESTATRIX WAS consulted in arrangements for Mary's funeral. P. 76, &c.

20 GAVE MILTON BUZBY a book in opposition to wish of proponent. P. 66, line 25, &c. And refused to remove him at proponent's request. P. 122.

THE FACT THAT she kept the custody of the will from its execution to the time of her death, over four years. P. 103, line 3 &al. The fact that she paid out money for housekeeping, and asked always if bills had been paid. P. 104.

THAT SHE ATTENDED to her own money affairs. P. 117, line 27.

30 HER INQUIRIES about the Springer security. P. 118, line 34.

THAT HER INCOME was received in her presence. P. 119, line 15.

SHE HAD A HOBBY not to be dependent on children. Page 38, line 23.

SHE PERSUADED Beulah to stay after Mary's death. P. 38, line 20.

As to the testamentary character of the testator, and the VOLUNTARY nature of the will, the presumption is in favor of BOTH, and the burden of showing the contrary is on the contestants of the will.

Wait's Actions and Def., vol. 6, p. 385, and cases cited.

Den, Trumbull, et al. vs. Gibbons, 2 Zab. 117; which holds that if testatrix is shown to be of weak mind, and in a position to be influenced, the burthen of proof shifts to proponent. But burthen of showing weak mind and exposure to influence is still on CAVEATOR. 10

No witness testifies to any act done by proponent, indicating that he exercised undue influence over testatrix, and he positively denies using any influence. P. 121, line 10.

The undue influence must be exercised in relation to the will itself, or in relation to some important transaction at or near the time when the will was executed. Wms. on Exec. \* 51.

And the undue influence must amount to coercion or fraud, destroying free agency. Ib. \* 50.

A will may be obtained by influence, and still be valid, 20 as if obtained by honest intercession or persuasion, either in behalf of himself, or of another. Ib. \* 46.

Provided such persuasion be not used when testator is on his death bed. Ib. \* 47.

Influence acquired over a testator by kind offices, or persuasion, unconnected with fraud, is not such undue influence as would invalidate a will procured by it.

Den. Trumbull et al. vs. Gibbons, 2 Zab., 117.

There is no rule of law requiring the intervention of a third party between the testator and the devisee in the preparation of a will. Wms. on Exec. \* 48, note X, Ed. of 1877.

The relation of attorney and client did not subsist between proponent and testatrix, nor did any specially confidential relation exist between them when the will was drawn. Neither was she in any way dependent on him, nor did she live with him. Ib.

First business done by proponent for testatrix was February, 1882. P. 119. About two months before execution of will in question.

10 Proponent had never seen former will of testatrix until the execution of the codicil. P. 21, line 22.

What relation did proponent sustain to testatrix?

He was the husband of her granddaughter. P. 116, line 36.

He lived in Elsinboro, two and one-half miles from testatrix. P. 31, lines 5 and 20.

20 He attended to her money matters, took her money and deposited it. P. 30, line 32.

He drew her will. P. 119, line 30.

He advised an investment of her funds, and with her consent consummated it. P. 118.

Certainly there is nothing in these relations, if such they may be called, to warrant an inference of undue influence so strong as to shift the burden of proof, and require the proponent to show affirmatively, by other evidence than his own, that testatrix made a will to suit herself and not by his influence.

30 The circumstances are radically different from those in *Haydock vs. Haydock*, where a young wife was the party who exerted the alleged undue influence.

As to the execution of the codicil prior to the making of the will in question, it is contended that this was an important transaction, occurring near to the time of the exe-

cution of the will and that the circumstances attending the signing of the codicil show that testatrix was then under undue influence of proponent.

In order to set aside a will of a person of sound mind, it is not sufficient to show that the circumstances attending its execution are CONSISTENT with the hypothesis of its having been obtained by undue influence, it must be shown 10 that they are INCONSISTENT WITH A CONTRARY HYPOTHESIS. Wms. on Executors \* 50.

Could this will be the result of the free and uncontrolled action of the testatrix ?

1. The principal beneficiary was Mary B. Waddington, whom she had brought up as her own child, who was married from her house, who was named after her own daughter Mary, for whom she had always felt extraordinary affection and respect. 20

2. She gives \$1,500, or nearly one-third of her estate, to Beulah, her daughter, which, with the \$1500 already given by Mary's will, she might well esteem sufficient provision for the wants of one who had for years been dependent on the bounty of others.

3. The legacy of \$600 to Martha Hancock seems no more than a fair compensation to one who had served her faithfully for so many years, and whom she expected to be with her to the last.

4. The legacy to Asher B. Waddington of \$600 is 30 certainly not unnatural when we consider that he was her grandson, any more than are the legacies to the three children of Beulah.

5. And the exclusion of Nathan can not be considered as unprovoked, if indeed it is not warranted by the circum-

stances detailed by Nathan himself in his testimony in this case, and it also appears that the same disinheriting clause was in a former will drawn by Owen L. Jones. P. 121, line 34. The strong affection felt by Ruth W. Buzby and her husband for Mary B. Waddington, then Gaskill, also appears by the fact that the \$1,000 left to Nathan by his grandfather, was to go to her if Nathan did not live to be 21.

10       The Ordinary, in his opinion, concludes by saying: "If these circumstances, which bear so heavily upon him, are susceptible of explanation, it behooved him to see to it when he engaged in his undertaking that he had the necessary witnesses at hand to maintain the validity of the paper as a will."

In Dale vs. Dale, 11 Stew., p. 278, cited by the Ordinary, Reed, J., who delivered the opinion of the court, says: "Again it is true that for about four weeks preceding the date of the execution of the will, the testa-  
20       trix was not under the roof of Nelson, the proponent. But this fact does not, upon consideration, have as much force as it did upon first impression. In the first place I think that it would occur to Nelson that the fact of the execution of an instrument like this, while the testatrix was under the roof of the chief beneficiary would lead to the gravest inferences that improper influences had been exercised over the mind of testatrix. The dictates of common prudence would lead to the postponement of such an act until this condition of  
30       affairs was changed, &c. Probate refused. So we see that both the man who, in full confidence of his honesty of purpose, and careless of appearances, neglects to prepare testimony beforehand, and he who skillfully arranges all things, so that even appearances may be right and proper, are both taken in the same net. All that appellant asks is

that he be given credit for ordinary honesty until the evidence, not suspicion, shall show something incompatible therewith.      Respectfully submitted,

W. T. HILLIARD,  
Of Counsel with Appellant.

