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PETITION FOR PROBATE AND LETTERS TESTAMENTARY.

ATLANTIC COUNTY SURROGATE'S COURT.

In the matter of the estate of ALBERT ALLEN, deceased, who died testate.	Petition for Probate and Letters Testamentary.

To Albert C. Abbott, Esquire, Surrogate of the County of Atlantic, in the State of New Jersey:

The petition of Lillie Ida Seltzer Ruelens, of the City and County of Philadelphia, State of Pennsylvania, respectfully shows that she is the executrix named in the last will and testament of Albert Allen, late of Pleasantville, N. J., under will dated the twenty-fifth day of October, nineteen hundred and nineteen; that said Albert Allen departed this life in the State of Virginia, en route to Washington, D. C., on the 22nd day of October, nineteen hundred and twenty-eight, at the hour of , leaving him surviving as his heirs at law and next of kin, the following named persons, to wit:

Name	Kin	P. O. Address
Tom Allen	Brother	Philadelphia, Penna.
Mrs. Sallie Allen Regar	Sister	Philadelphia, Penna.

Children of a deceased brother, names and addresses not known.

That the testator was passesesd of personal property of the value of $50,000.00 and up.

That the testator was seized of real estate of the value of $50,000.00 and up.

Your petitioner therefore respectfully applies for probate of the said last will and testament and for letters testamentary thereon.

Dated October 29th, A. D. 1928.

LILLIE IDA SELTZER RUELENS.

State of New Jersey, } ss.
County of Atlantic, }

LILLIE IDA SELTZER REGAR, named in the above application, being duly sworn according to law, did depose and say that the matters and things set forth in the foregoing application are true to the best of her knowledge and belief.

Sworn and subscribed before me this 29th day of October, 1928.

Surrogate.

PETITION FOR PROBATE AND LETTERS TESTAMENTARY.

ATLANTIC COUNTY SURROGATE'S COURT.

In the matter of the estate of ALBERT ALLEN, deceased, who died testate. } Petition for Probate and Letters Testamentary.

To Albert C. Abbott, Esquire, Surrogate of the County of Atlantic, in the State of New Jersey:

The petition of Kathryn Ailes, of No. 730 North Main Street, Pleasantville, N. J., respectfully shows that she is the executrix named in the last will and testament of Albert Allen, late of Pleasantville, N. J., will dated the seventh day of September, nineteen hundred and twenty-eight; that said Albert Allen departed this life at Winchester, in the County of and State of Virginia, on the twenty-second day of October, nineteen hundred and twenty-eight, at the hour of 2.15 P. M., more than ten days before the date of this petition, leaving him surviving as his heirs at law and next of kin, the following named persons, to wit:

Name	Kin	P. O. Address
Thomas Allen	Brother	243 Hansberry Street, Germantown, Philadelphia, Pa.
Sarah Reger	Sister	16 E. Walnut Lane, Philadelphia, Pa.
William M. Allen	Nephew	407 South 22nd Street, Philadelphia, Pa.

That the testator was possessed of personal property of the value of $100,000.00 and upwards.

That the testator was seized of real estate of the value of $200.00.

Your petitioner therefore respectfully applies for probate of the said last will and testament and for letters testamentary thereon.

Dated November 3rd, A. D. 1928.

KATHRYN AILES.

State of New Jersey, }
County of Atlantic, } ss.

KATHRYN AILES, executrix named in the above application, being duly sworn according to law, did depose and say that the matters and things set forth in the foregoing application are true to the best of her knowledge and belief.

KATHRYN AILES.

Sworn and subscribed before me this third day of November, 1928.

MARY C. MURPHY,
Deputy Surrogate.

DEPOSITION OF SUBSCRIBING WITNESS.

ATLANTIC COUNTY SURROGATE'S COURT.

In the matter of the probate of the alleged will of ALBERT ALLEN, deceased.	On Petition for Probate. Deposition of Subscribing Witness.

State of New Jersey, } ss.
County of Atlantic, }

MAUDE C. HAINES, one of the witnesses to the annexed writing, dated September 7th, 1928, purporting to be the last will and testament of Albert Allen, deceased, being duly sworn according to law, upon her oath deposes and says that she saw Albert Allen, the said testator, sign and seal the said annexed writing and heard him publish, pronounce and declare the same to be his last will and testament.

Deponent further says that at the time of the doing thereof the said testator was over the age of twenty-one years, of sound and disposing mind,

memory and understanding, and not under any restraint, so far as deponent knows and as she verily believes; and that Augustus F. Daix, Jr., and John A. Boger, M. D., the other subscribing witnesses to the said will, were present at the same time with deponent when the said will was signed by the said testator and by him published and declared as and for his last will and testament, as aforesaid, and that the said Augustus F. Daix, Jr., and John A. Boger, M. D., and deponent, subscribed their names to said will as witnesses at the request of and in the presence of the said testator and in the presence of each other.

MAUDE C. HAINES.

Subscribed and sworn to this third day of November, 1928, at Atlantic City, N. J., before me.

MARY C. MURPHY,
Deputy Surrogate.

DEPOSITION OF SUBSCRIBING WITNESS.

ATLANTIC COUNTY SURROGATE'S COURT.

In the matter of the probate of the alleged will of ALBERT ALLEN, deceased.	On Petition for Probate. Deposition of Subscribing Witness.

State of New Jersey, }
County of Atlantic, } ss.

JOHN A. BOGER, M. D., one of the witnesses to the annexed writing, dated September 7th, 1928, purporting to be the last will and testament of Albert Allen, deceased, being duly sworn according to law, upon his oath deposes and says that he saw Albert Allen, the said testator, sign and seal the said annexed writing and heard him publish, pronounce and declare the same to be his last will and testament.

Deponent further says that at the time of the doing thereof the said testator was over the age of twenty-one years, of sound and disposing mind, memory and understanding, and not under any restraint, so far as deponent knows and as he verily believes; and that Maude C. Haines and Augustus F. Daix, Jr., the other subscribing witnesses to the

said will, were present at the same time with deponent when the said will was signed by the said testator and by him published and declared as and for his last will and testament, as aforesaid, and that the said Maude C. Haines and Augustus F. Daix, Jr., and deponent, subscribed their names to said will as witnesses at the request of and in the presence of the said testator and in the presence of each other.

JOHN A. BOGER, M. D.

Subscribed and sworn to this third day of November, 1928, at Atlantic City, N. J., before me.

MARY C. MURPHY,
Deputy Surrogate.

DEPOSITION OF SUBSCRIBING WITNESS.

ATLANTIC COUNTY SURROGATE'S COURT.

In the matter of the probate of the alleged will of ALBERT ALLEN, deceased.	On Petition for Probate. Deposition of Subscribing Witness.

State of New Jersey, }
County of Atlantic, } ss.

AUGUSTUS F. DAIX, JR., one of the witnesses to the annexed writing, dated September 7th, 1928, purporting to be the last will and testament of Albert Allen, deceased, being duly sworn according to law, upon his oath deposes and says that he saw Albert Allen, the said testator, sign and seal the said annexed writing and heard him publish, pronounce and declare the same to be his last will and testament.

Deponent further says that at the time of the doing thereof the said testator was over the age of twenty-one years, of sound and disposing mind, memory and understanding, and not under any restraint, so far as deponent knows and as he verily believes; and that Maude C. Haines and John A. Boger, M. D., the other subscribing witnesses to the

said will, were present at the same time with deponent when the said will was signed by the said testator and by him published and declared as and for his last will and testament, as aforesaid, and that the said Maude C. Haines and John A. Boger, M. D., and deponent, subscribed their names to said will as witnesses at the request of and in the presence of the said testator and in the presence of each other.

AUGUSTUS F. DAIX, JR.

Subscribed and sworn to this third day of November, 1928, at Atlantic City, N. J., before me.

MARY C. MURPHY,
Deputy Surrogate.

OATH.

ATLANTIC COUNTY SURROGATE'S COURT.

In the matter of the estate of ALBERT ALLEN, deceased.	On Petition for Probate. Oath.

State of New Jersey, County of Atlantic, } ss.

KATHRYN AILES, executrix of the within-named Albert Allen, deceased, being duly sworn according

to law, did depose and say, that the within writing contains the true last will and testament of Albert Allen, therein named, deceased, so far as she knows and as she verily believes; that she will well and truly perform the same by paying first the debts of the said deceased and then the legacies in the said testament specified, so far as the goods, chattels and credits of the said deceased can thereunto extend, and that she will make and exhibit in the Surrogate's office of the County of Atlantic, at or before the expiration of three calendar months, a true and perfect inventory of all and singular the goods and chattels, rights and credits of the said decedent, that have or shall come to her knowledge or possession, or to the possession of any other person or persons for her use; and render a just and true account when thereunto lawfully required; and also diligently and faithfully regard and well and truly comply with the provisions of the Act relating to collateral inheritances.

KATHRYN AILES.

Sworn and subscribed at Atlantic City, county and State aforesaid, the third day of November, A. D. 1928, before me.

MARY C. MURPHY,
Deputy Surrogate.

APPOINTMENT OF APPRAISERS.

ATLANTIC COUNTY SURROGATE'S COURT.

In the matter of the estate of ALBERT ALLEN, deceased, who died testate.	Appointment of Appraisers.

Kathryn Ailes, executrix of the estate of Albert Allen, deceased, late of the City of Pleasantville, in the County of Atlantic and State of New Jersey, hereby appoints Ralph Graham, of Philadelphia, Pa., and Augustus F. Daix, 3rd, of Philadelphia, Pa., two discreet and impartial persons, to make a just appraisement of the goods, chattels, rights, credits and effects of the said Albert Allen, deceased.

Dated November 3rd, 1928.

KATHRYN AILES.

The appointment of the above-named appraisers is hereby approved this day of , 19

Surrogate.

APPLICATION FOR ORDER TO LIMIT CREDITORS.

ATLANTIC COUNTY SURROGATE'S COURT.

In the matter of the estate of ALBERT ALLEN, deceased, who died testate.	Application for Order to Limit Creditors.

To the Surrogate of the County of Atlantic:

Application is hereby made by Kathryn Ailes, executrix of Albert Allen, deceased, late of the City of Pleasantville, in the County of Atlantic and State of New Jersey, to limit and appoint a time within which the creditors of the said decedent shall exhibit to the said executrix their several claims and demands under oath or affirmation to be made, or to be forever barred of or from any action therefor against the said executrix.

Dated November 3rd, 1928.

KATHRYN AILES.

CAVEAT AGAINST PROBATE OF WILL.

ATLANTIC COUNTY SURROGATE'S COURT.

In the matter of the probate of the alleged will of ALBERT ALLEN, deceased.	Caveat Against Probate of Will.

To Albert C. Abbott, Surrogate of the County of Atlantic:

I, LILLIE IDA SELTZER RUELENS, stepdaughter and beneficiary under will dated October 25th, 1919, of Albert Allen, late of Pleasantville, Atlantic County, New Jersey, who died on the twenty-second day of October, 1928, do hereby caveat and protest against admitting to probate any paper purporting to be the last will and testament of the said Albert Allen, until examination and decree thereon by the Orphans' Court of said County of Atlantic.

Dated, October 26th, 1928.

.....

PETITION.

ATLANTIC COUNTY ORPHANS' COURT.

In the matter of the estate of ALBERT ALLEN, deceased.	Petition.

The petition of Lillie Ida Seltzer Ruelens respectfully shows unto your Honor:

That she is the caveator in the above-entitled matter, and that Gustav Shreiver, Thomas Allen, Sarah Reger and William M. Allen are necessary parties in a proceeding for the probate of a paper purporting to be the last will and testament of Albert Allen, deceased, but that said parties reside out of the State of New Jersey.

Petitioner therefore prays that an order may be made directing the method of service to be made upon said parties.

.....

Proctors for Petitioner,
Union National Bank Building,
Atlantic City, New Jersey.

State of New Jersey, }
County of Atlantic, } ss.

ALLEN B. ENDICOTT, JR., of full age, being duly sworn according to law, upon his oath deposes and says:

I am the surviving member of the firm of Endicott and Endicott, proctors for the caveator, in the above-entitled matter.

I am familiar with the contents of the within petition, and believe the same to be true.

ALLEN B. ENDICOTT, JR.

Sworn and subscribed to before me this eighth day of January, 1929.

REGINA BARKAN,
Notary Public of New Jersey.

OPINION.

ATLANTIC COUNTY ORPHANS' COURT.

In the matter of the probate of paper purporting to be the last will and testament of ALBERT ALLEN, deceased. } Opinion.

H. W. LEWIS, LEWIS STARR, JAMES W. LEWIS and AUGUST DAIX, JR., for the proponent.

ALLEN B. ENDICOTT, JR., HARRY J. ALKER, DIMNER BEEBER, WILLIAM Y. C. ANDERSON and ELMER BROWN, for the contestants.

SMATHERS, Judge:

A paper writing purporting to be the last will and testament of Albert Allen, deceased, is presented for probate. The execution of the paper with the solemnity required by our statute is duly proven. By the terms of the will, Katherine Ailes becomes the sole beneficiary and executrix.

The testator died October 22, 1928, at the age of seventy-seven, leaving no children, no wife, no relatives, other than some aged brothers and sisters,

who appear to be well supplied with the necessities of life in their own right.

It appears that the testator, back in November, 1919, met Katherine Ailes and began to live with the Ailes family, considering himself as a member of the family, and being regarded by the Ailes family, as one of the family. The testator contributed materially, by gift and otherwise, to the maintenance of the entire household. This relation continued for a period of eight or ten years, and until the time of his death.

The will offered for probate was executed by the testator September 7, 1928, about six weeks prior to his death. The contestants claim that the will should be denied probate, alleging, first, that the testator lacked testamentary capacity, and secondly, that the will is the product of undue influence and fraud exerted upon the testator by the proponent.

The first allegation viz., lack of testamentary capacity, was not supported by the testimony, and need not be considered by the Court.

The remaining question for the Court to determine, which is a very close one, is, was the will of the testator, leaving his entire estate to Katherine Ailes, his own free act and desire, or was its execution the result of undue influence, practiced upon him by the beneficiary, Katherine Ailes?

If the testator, at the time of his death, had children, a wife or next of kin dependents, the Court would not hesitate to deny the probate of his will, upon the ground that it was unreasonable in its provisions, and inconsistent with the duties of the testator, with reference to his property and his family. On the other hand, a man, well advanced in age,

having no wife, no children or next of kin dependents, should be permitted without interference from the courts to dispose of the fruits of a life's labor as he sees fit.

In the case before the Court, it was not, in the opinion of the Court, an unnatural act on the part of the testator, under the circumstances, to reward the beneficiary for the care and kindness extended by her to the testator, in taking him into her family, and treating him as a member of the family, for a period of eight or ten years. On the contrary, his act was quite natural, and appears from the testimony to be the one remaining and dominant desire of the testator, to reward the beneficiary in the manner in which he did. Nothing seems to be left for an old man, without wife or children, as important to him as the sacred privilege of disposing of the fruits of his labor as he sees fit.

In the absence of convincing testimony of fraud or unsoundness of mind, Courts should not restrict, interfere with, or deny the testator the right and privilege to dispose of his property as he may desire. If Courts, on slight pretext, destroy a man's right to dispose of his property as he sees fit, then it must follow that they destroy his initiative, his thrift, his desire to earn and accumulate property.

The Court is convinced, from a careful consideration of the testimony, that the act of Albert Allen, deceased, in executing the will in question, was his voluntary act, consummating a desire which had possessed him for a period of a number of years, to reward the beneficiary for her act in opening her home to him, and caring for him as one of her family for a long period of years. The careful and

painstaking manner in which he went about the execution of his will, convinces the Court, that he regarded, in his declining years, as the most important act yet remaining to be performed by him, the execution of a will that could not, and would not be disturbed by the Courts.

My conclusion, therefore, is that the paper writing, dated September 7, 1928, purporting to be the last will and testament of Albert Allen, deceased, should be admitted to probate.

Counsel may be heard as to the form of the order, and allowance of counsel fees.

ORDER GRANTING PROBATE.

ATLANTIC COUNTY ORPHANS' COURT.

In re The probate of a paper purporting to be the last will and testament of ALBERT ALLEN, deceased.	On Petition for Probate. Order Granting Probate.

This matter being opened to the Court by H. W. Lewis, Esquire, proctor for Kathryn Ailes, the proponent, and it appearing that the said proponent named as executor of the last will and testament of Albert Allen, late of the County of Atlantic, de-

ceased, duly presented the said paper to the surrogate of the County of Atlantic for probate, and it appearing that a caveat against the probate of said will had been filed with said surrogate, and all persons in interest having appeared, and the matter coming on to be heard, and the Court having taken testimony and examined into the matter, and being of the opinion that the said paper writing was duly executed by the said Albert Allen as and for his last will and testament in manner and form prescribed by the statute in such case made and provided; that said Albert Allen at the time of the making of said will was of sound and disposing mind, memory and understanding, and that the same was not the product of undue influence:

It is thereupon on this 14th day of January, A. D. 1930, ordered, adjudged and decreed that the aforesaid paper writing, the same being of date September 7th, A. D. 1928, be and the same is hereby established as the last will and testament of the said Albert Allen, deceased; and that the same be admitted to probate; and it is further ordered that letters testamentary thereon be issued to the said Kathryn Ailes, the executor in said will named, upon her duly qualifying as such.

And it is further ordered that a counsel fee of $10,000.00 be allowed to H. W. Lewis and Lewis Starr, Esquires, proctors for the proponent, together with their costs and expenses, being $826.05.

And the Court being satisfied that the caveator had reasonable cause for testing the validity of the said will, it is further ordered that a counsel fee of $10,000.00 be allowed to Allen B. Endicott, Jr.,

Esquire, proctor for the caveator together with his costs and expenses, being $1105.67.

And Thomas Allen, Sarah A. Reger, William M. Allen, Anna M. Grimm, Bessie Lincoln, Thomas J. Allen, Herbert A. Landell, Mary A. Fairley, Sarah Cobb Allen, Edythe A. Savin, and Mae Tarr, who were cited as legatees under a former will of or as next of kin of said Albert Allen, deceased, having appeared in response to citations or having voluntarily appeared and participated in said proceedings, and the Court being satisfied that said parties had a substantial interest in the result of said proceedings and that their interest was entitled to be represented by counsel, it is further ordered that a counsel fee of $3,000.00 be allowed William Elmer Brown, Esquire, their proctor, together with his costs and expenses amounting to $473.50, to be paid out of the estate of said testator.

WM. H. SMATHERS,
Judge.

NOTICE OF APPEAL.

ATLANTIC COUNTY ORPHANS' COURT.

In re The probate of a paper purporting to be the last will and testament of ALBERT ALLEN, deceased.	On Petition of Appeal. Notice of Appeal.

Lillian Seltzer Reulens, legatee and devisee referred to in the will and codicil of Albert Allen made on October 25th, 1919, hereby appeals to the Prerogative Court from the decree entered herein on the 14th day of January, A. D. 1930, which said order adjudged and decreed that a certain paper writing offered for probate by Kathryn Ailes as the last will and testament of Albert Allen, deceased, be and the same is hereby established as the last will and testament of the said Albert Allen, deceased, and that the same be admitted to probate and that letters testamentary thereon be issued to the said Kathryn Ailes, the executor in said will named upon her duly qualifying as such.

ENDICOTT & ENDICOTT,
Proctors for Lillian Seltzer Reulens.

Dated, Atlantic City, N. J.
January 22nd, 1930.

PETITION.

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal from the decree of the Orphans' Court of the County of Atlantic, dated January 14, 1930, probating the paper writing of September 7, 1928, as the last will and testament of Albert Allen, deceased, and directing the issuing of letters testamentary thereon to Kathryn Ailes.	On Petition of Appeal. Petition.

To the Ordinary of the State of New Jersey:

The petition of Lillian Seltzer Reulens, of Philadelphia, Pennsylvania, respectfully shows that:

1. Petitioner is the legatee and devisee referred to in the codicil of Albert Allen, made on October 25th, 1919.

2. On the 14th day of January, A. D. 1930, the Orphans' Court of the County of Atlantic made its order and decree that a certain paper writing offered for probate by Kathryn Ailes as the last will and testament of Albert Allen, deceased, be and the

same is hereby established as the last will and testament of Albert Allen, deceased, and the same be admitted to probate, and that letters testamentary thereon be issued to the said Kathryn Ailes, the executor in said will named, upon her duly qualifying as such.

3. Your petitioner complains and alleges that the whole and every part of said decree is erroneous, improper and illegal, and your petitioner is aggrieved thereby.

4. Petitioner alleges that the said paper writings purporting to be the last will and testament and codicil of the said Albert Allen, deceased, on October 25th, 1919, were in fact and in law the last will and codicil of the said deceased and the said Orphans' Court should have denied probate to the will offered by Kathryn Ailes, and adjudged that the said last will and codicil of Albert Allen, made on October 25th, 1919, were in law and in fact the last will and codicil of Albert Allen, and the Court's order should have adjudged that letters testamentary should have issued thereon to Lillian Seltzer Reulens, the executrix therein named.

Your petitioner therefore prays that the said order and decree of the Orphans' Court and every part thereof be reversed by this Court.

ENDICOTT & ENDICOTT,
Proctors for the said Lillian Seltzer Reulens, Legatee and Devisee.

Dated Atlantic City, N. J.
February 6th, 1930.

[ENDORSED]

Due and legal service of a certified copy of the within petition acknowledged this 10th day of February, 1930.

H. W. Lewis,
Proctor for Proponent,
Kathryn Ailes.

ANSWER OF KATHRYN AILES, PROPONENT.

(Filed Feb. 17, 1930.)

NEW JERSEY PREROGATIVE COURT.

10

In the matter of the appeal from the decree of the Orphans' Court of the County of Atlantic dated January 14, 1930, probating the paper writing of September 7, 1928, as the last will and testament of ALBERT ALLEN, deceased, and directing the issuing of letters testamentary thereon to KATHRYN AILES.	On Petition of Appeal. Answer of Kathryn Ailes, Proponent.

The answer of Kathryn Ailes, the proponent and respondent to the petition of the above-stated cause filed in behalf of Lillian Seltzer Reulens, the appellant:

1. This respondent answering, admits the allegations as contained in the first paragraph of the appellant's petition of appeal filed herein.

2. This respondent admits the allegations as contained in paragraph two of said petition of appeal.

3. This respondent is advised, believes, and submits that the portions of said decree complained of by the appellant are just and lawful, and this respondent denies that such portions of said decree as complained of, or any parts thereof, are improper, illegal, or erroneous, and alleges that the same are legal, proper and correct.

This respondent therefore prays that the said petition of appeal may be dismissed with costs.

4. This respondent further answering, says that that that portion of the decree of the Orphans' Court of the County of Atlantic referred to in paragraph two of the appellant's petition in so far as it ordered an allowance of a counsel fee of $10,000.00 and costs and expenses amounting to $1,105.67 to Allen B. Endicott, Jr., proctor for Lillian Seltzer Reulens, the caveator and appellant hereof; and a counsel fee of $3,000.00 and costs and expenses amounting to $473.50 to William Elmer Brown, Esquire, proctor for Thomas Allen, Sarah A. Reger, William M. Allen, Anna M. Grimm, Bessie Lincoln, Thomas J. Allen, Herbert A. Landell, Mary A. Fairley, Sarah Cobb Allen, Edythe A. Savin, and Mae Tarr, who were cited as legatees under a former will of or as next of kin of said Albert Allen, deceased, or having voluntarily appeared and participated in the proceedings respecting the probate of the will as provided in said decree, is grossly excessive, erroneous, illegal, and improper; and that this respondent is aggrieved thereby.

She therefore prays that the aforesaid portion of the said decree of the Orphans' Court of Atlantic may be reversed by this Court.

H. W. LEWIS,
Proctor for and of Counsel with Kathryn Ailes, the Respondent.

A true copy.
JOSEPH F. S. FITZPATRICK,
Register.

[ENDORSED]

Within answer acknowledged February 21st, 1930.

NOTICE OF APPEAL.

ATLANTIC COUNTY ORPHANS' COURT.

In re The probate of a paper purporting to be the last will and testament of Albert Allen, deceased.	On Petition of Appeal. Notice of Appeal.

Thomas Allen, Sarah A. Reger, Wm. M. Allen, Anna M. Grimm, Bessie Lincoln, Thomas J. Allen, Herbert S. Landell, Mary A. Fairley, Sarah Cobb Allen, Edythe A. Savin and Mae Tarr, legatees under a former will, or as next of kin of said Albert Allen, deceased, made on October 25, 1919, hereby appeals to the Prerogative Court from the decree entered herein on the 14th day of January, A. D. 1930, which said order adjudged and decreed that a certain paper writing offered for probate by Kathryn Ailes as the last will and testament of Albert Allen, deceased, be and the same was thereby established as the last will and testament of the said Albert Allen, deceased, and that the same be admitted to probate and that letters testamentary thereon be

issued to the said Kathryn Ailes, the executrix in said will named upon her duly qualifying as such.

WM. ELMER BROWN, JR.,
Proctor for Thomas Allen, Sarah A. Reger, Wm. M. Allen, Anna M. Grimm, Bessie Lincoln, Thomas J. Allen, Herbert S. Landell, Mary A. Fairley, Sarah Cobb Allen, Edythe A. Savin and Mae Tarr.

Dated, Atlantic City, N. J.,
February 7th, 1930.

[ENDORSED]

Service acknowledged Feb. 11, 1930.

PETITION.

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal from the decree of the Orphans' Court of the County of Atlantic, dated January 14, 1930, admitting to probate a certain paper writing dated September 7, 1928, as the last will and testament of ALBERT ALLEN, deceased, and directing the issuing of letters testamentary thereon to Kathryn Ailes.	On Petition of Appeal. Petition.

To the Ordinary of the State of New Jersey:

The petition of Thomas Allen, Sarah A. Reger, Wm. M. Allen, Anna M. Grimm, Bessie Lincoln, Thomas J. Allen, Herbert S. Landell, Mary A. Fairley, Sarah Cobb Allen, Edythe A. Savin and Mae Tarr, respectfully shows that:

1. Petitioners are legatees under a former will of

Albert Allen, deceased, dated October 25, 1919, and/or next of kin of said Albert Allen, deceased.

2. On January 14, 1930, the Orphans' Court of the County of Atlantic made its order admitting to probate a certain paper writing purporting to be the last will and testament of the said Albert Allen, deceased, and granting letters testamentary thereon to one Kathryn Ailes, the executrix in said will named.

3. Your petitioners complain and allege that so much of said decree as provides that said paper writing, dated September 7, 1928, be and the same was thereby established as the last will and testament of the said Albert Allen, deceased, and that the same be admitted to probate, and that letters testamentary thereon be issued to the said Kathryn Ailes, the executrix in said will named, upon her duly qualifying as such, is erroneous, improper and illegal and that your petitioners are aggrieved thereby.

Your petitioners therefore pray that the aforesaid portions of said order of the said Orphans' Court be reversed by this Court.

WM. ELMER BROWN, JR.,
Proctor for and of Counsel with Appellants.

Dated Atlantic City, N. J.,
February 25th, 1930.

[ENDORSED]

Service of a copy of the within petition is hereby acknowledged this twenty-fifth day of February, 1930.

.....

Proctor for Kathryn Ailes.

.....

Proctor for Lillian Seltzer Reulens.

ANSWER.

(Filed Mar. 5, 1930.)

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal from the decree of the Orphans' Court of the County of Atlantic, dated January 14, 1930, admitting to probate a certain paper writing dated September 7, 1928, as the last will and testament of ALBERT ALLEN, deceased, and directing the issuing of letters testamentary thereon to KATHRYN AILES.	On Petition of Appeal. Answer.

The answer of Kathryn Ailes, a respondent to the petition of the above-stated cause filed in behalf of Thomas Allen, Sarah A. Reger, William M. Allen, Anna M. Grimm, Bessie Lincoln, Thomas J. Allen, Herbert S. Landell, Mary A. Fairley, Sarah Cobb Allen, Edythe A. Savin and Mae Tarr:

1. This respondent answering, admits the allegation as contained in the first paragraph of the appellants' petition of appeal filed herein.

2. This respondent admits the allegations as contained in paragraph two of said petition of appeal.

3. This respondent is advised, believes and submits that the portions of said decree complained of by the appellants are just and lawful, and this respondent denies that such portions of said decree complained of, or any parts thereof, are improper, illegal, or erroneous, and alleges that the same are legal, proper and correct.

This respondent therefore prays that the said petition of appeal may be dismissed with costs.

4. This respondent further answering, says that that portion of the decree of the Orphans' Court of the County of Atlantic referred to in paragraph two of the appellants' petition in so far as it is ordered an allowance of a counsel fee of $10,000.00 and costs and expenses amounting to $1,105.67 to Allen B. Endicott, Jr., proctor for Lillian Seltzer Reulens, the caveator; and a counsel fee of $3,000.00 and costs and expenses amounting to $473.50 to William Elmer Brown, Esquire, proctor for the aforesaid appellants, is grossly excessive, erroneous, illegal and improper.

She therefore prays that the aforesaid portion of said decree be reversed by this Court.

H. W. Lewis,
Proctor for and of Counsel with Kathryn Ailes, a Respondent.

A true copy.
JOSEPH F. S. FITZPATRICK,
Register.

NOTICE OF APPEAL.

ATLANTIC COUNTY ORPHANS' COURT.

In re The probate of a paper purporting to be the last will and testament of ALBERT ALLEN, deceased.	On Petition of Appeal. Notice of Appeal.

Kathryn Ailes, legatee and devisee in the last will and testament of Albert Allen, made on September 7th, A. D. 1928, hereby appeals to the Prerogative Court from that part of the decree of the Orphans' Court of Atlantic County made on January 14th, A. D. 1930, wherein a counsel fee of $10,000.00 and costs and expenses of $1105.67 were ordered allowed to Allen B. Endicott, Jr., proctor of Lillian Stetzer Reulens, the caveator, as well as the order allowing a counsel fee of $3000.00 and costs and expenses of $473.50 to William Elmer Brown, proctor of Thomas Allen, Sarah A. Reger, William M. Allen, Anna M.

Grimm, Bessie Lincoln, Thomas J. Allen, Herbert A. Landell, Mary A. Fairley, Sarah Cobb Allen, Edythe A. Savin and Mae Tarr, who were cited as legatees under a former will of, or as next of kin of said Albert Allen, deceased.

H. W. LEWIS,
Proctor of Kathryn Ailes.

Dated January 25th, 1930.

STATE OF NEW JERSEY.

ATLANTIC COUNTY SURROGATE'S COURT.

I, Albert C. Abbott, Surrogate of the County of Atlantic, and ex-officio clerk of the Orphans' Court of said county, do certify the foregoing to be a true copy of the notice of appeal, in the matter of the estate of ALBERT ALLEN, late of the County of Atlantic, deceased, as the same remains on file and of record in this office.

Witness my hand and seal of office, this twenty-fifth day of January, in the year of our Lord one thousand nine hundred and thirty.

ALBERT C. ABBOTT,
(Seal) *Surrogate and Ex-officio Clerk.*

PETITION.

(Filed Feb. 11, 1930.)

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal from the decree of the Atlantic County Orphans' Court admitting to probate, &c., a certain paper writing as the last will and testament of ALBERT ALLEN, deceased.	On Petition of Appeal. Petition.

To the Ordinary of the State of New Jersey:

The petition of Kathryn Ailes of the City of Pleasantville, County of Atlantic and State of New Jersey, respectfully shows that:

1. Petitioner is the sole legatee and devisee mentioned in a certain paper writing of date September 7th, A. D. 1928, purporting to be the last will and testament of Albert Allen, deceased, late of the City of Pleasantville aforesaid.

2. On January 14th, A. D. 1930, the Atlantic

County Orphans' Court made an order admitting to probate said paper writing as and for the last will and testament of said Albert Allen, deceased; as well as did further order therein the allowance of a counsel fee of $10,000.00 and costs with expenses amounting to $1,105.67 to Allen B. Endicott, Jr., proctor for Lillian Stetzer Reulens, the caveator; and a counsel fee of $3,000.00 and costs and expenses amounting to $473.50 to William Elmer Brown, Esquire, proctor for Thomas Allen, Sarah A. Reger, William M. Allen, Anna M. Grimm, Bessie Lincoln, Thomas J. Allen, Herbert A. Landell, Mary A. Fairley, Sarah Cobb Allen, Edythe A. Savin and Mae Tarr, who were cited as legatees under a former will of or as next kin of said Albert Allen, deceased, or having voluntarily appeared and participated in the proceedings respecting the probate of the will as provided in said order.

3. Your petitioner complains and alleges that so much of the decree aforesaid is erroneous, improper, and illegal whereby a counsel fee of $10,000.00 is ordered allowed to Allen B. Endicott, Jr., proctor of Lillian Stetzer Reulens, the caveator, together with his costs and expenses amounting to $1,105.67, as well as a counsel fee of $3,000.00 together with his costs and expenses amounting to $473.50 is allowed to William Elmer Brown, Esquire, proctor for Thomas Allen, Sarah A. Reger, William M. Allen, Anna M. Grimm, Bessie Lincoln, Thomas J. Allen, Herbert A. Landell, Mary A. Fairley, Sarah Cobb Allen, Edythe A. Savin, and Mae Tarr, who were cited as legatees under a former will of or as next of kin of said Albert Allen, deceased, or having

voluntarily appeared and participated in the proceedings respecting the probate of the will as provided in said order; upon the further grounds that the said allowances were and are grossly excessive.

Your petitioner, therefore, prays that so much of the decree as aforesaid be reversed by this Court.

Dated February 10th, A. D. 1930.

H. W. LEWIS,
Proctor for and of Counsel with Kathryn Ailes, Appellant.

A true copy.

JOSEPH F. S. FITZPATRICK,
Register.

ANSWER OF LILLIAN SELTZER RUELENS.

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal from the decree of the Atlantic County Orphans' Court admitting to probate, &c., a certain paper writing as the last will and testament of Albert Allen, deceased.	On Petition of Appeal. Answer of Lillian Seltzer Ruelens.

The answer of Lillian Seltzer Ruelens to the petition of appeal filed in the above entitled cause to the petition of Kathryn Ailes says:

1. Allegations of paragraph one of said petition of appeal are admitted.

2. Allegations of paragraph two of said petition of appeal are admitted.

3. It is denied that said decree is erroneous, improper and illegal wherein a counsel fee of $10,000.00 is ordered allowed to Allen B. Endicott, Jr., proctor of Lillian Seltzer Ruelens together with his costs and expenses amounting to $1,105.67 but this

answering respondent avers that the said portion of said order was entirely proper.

This respondent prays that said part of said decree referred to and quoted in last preceding paragraph may be affirmed with costs to this respondent.

ENDICOTT & ENDICOTT,
Proctor for and of Counsel with Lillian Seltzer Ruelens, Respondent.

ANSWER.

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal from the decree of the Atlantic County Orphans' Court admitting to probate, &c., a certain paper writing as the last will and testament of ALBERT ALLEN, deceased.	On Petition of Appeal. Answer.

The answer of Thomas Allen, Sarah A. Reger, Wm. M. Allen, Anna M. Grimm, Bessie Lincoln, Thomas J. Allen, Herbert S. Landell, Mary A. Fairley, Sarah Cobb Allen, Edythe A. Savin and Mae

Tarr, respondents, to the petition of appeal of Kathryn Ailes, appellant.

1. These respondents answering say that they admit the allegations contained in paragraphs 1 and 2 of the said petition of appeal.

2. These respondents deny the allegations contained in paragraph 3 of said petition of appeal.

They, therefore, pray that so much of said decree as is complained of in said petition may be affirmed with costs to these respondents.

WM. ELMER BROWN, JR.,
Proctor for and of Counsel with said Respondents.

[ENDORSED]

Service of a copy of the within answer is hereby acknowledged this twenty-fifth day of February, 1930.

.....
Proctor for Kathryn Ailes.

.....
Proctor for Lillian Seltzer Reulens.

ORDER OF REFERENCE.

(Filed March 14, 1930.)

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal from the decree of the Orphans' Court of the County of Atlantic, dated January 14, 1930, probating the paper writing of September 7, 1928, as the last will and testament of ALBERT ALLEN, deceased, and directing the issuing of letters testamentary thereon to Kathryn Ailes.	On Petition of Appeal. Order of Reference.

Counsel consenting:

It is, on this fourteenth day of March, 1930, on motion of Allen B. Endicott, Jr., Proctor of the appellant, ordered that the above cause be and the same is hereby referred to HON. R. H. INGERSOLL, one of the Vice-Ordinaries, to hear the same for the

Ordinary and advise what order or decree should be made thereon.

E. R. WALKER,
Ordinary.

We consent.

ENDICOTT & ENDICOTT,
Proctors for Lillian I. Seltzer Reulens.

H. W. LEWIS,
Proctor for Kathryn Ailes.

WM. ELMER BROWN, JR.,
Proctor for Thomas Allen, Sarah A. Reiger, William M. Allen, Thomas J. Allen, Anna M. Gris, Bessie Lincoln and Herbert S. Landell. Mary A. Fairley, Sarah Cobb Allen, Edythe A. Savin & Mae Tarr.

A true copy.
JOSEPH F. S. FITZPATRICK,
Register.

CONCLUSIONS.

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal from Atlantic County Orphans' Court admitting to probate a certain paper writing of the last will and testament of ALBERT ALLEN, deceased.	On Bill, &c. Conclusions.

MESSRS. ENDICOTT & ENDICOTT, Proctors for Lillian Seltzer Reulens, Caveator-Appellant.

MR. WM. ELMER BROWN, JR., Proctor for Thomas Allen, *et als.*

MR. H. W. LEWIS (MR. LEWIS W. STARR of counsel), Proctor for Kathryn Ailes, Proponent-Appellee.

INGERSOLL, V. O.:

1. Evidence examined and order admitting the will to probate affirmed.

2. In re Wendell, 92 N. J. Eq. 195, followed and allowances made by the Orphans' Court of counsel fees reduced.

Albert Allen, late of the City of Pleasantville, County of Atlantic and State of New Jersey, died on the 22nd day of October, A. D. 1928. A paper writing purporting to be his last will and testament, bearing date the 7th day of September, 1928, was presented to the Orphans' Court for probate by Kathryn Ailes, therein named as executrix, on the 3rd day of November, 1928.

A caveat having been filed, an administrator *pendente lite* was named and the matter of the probate was brought on for hearing. A vast amount of testimony was taken, with the result that on the 14th day of January, 1930, the said paper writing was admitted to probate and letters testamentary thereon were issued to the said Kathryn Ailes, executrix therein named.

In said order, counsel fees were ordered and allowed as follows: To H. W. Lewis and Lewis Starr, Esquires, proctors for proponent, $10,000, together with their costs and expenses amounting to $826.05; to Allen B. Endicott, Esquire, proctor for the caveator, $10,000, together with his costs and expenses amounting to $1,105.67; to William Elmer Brown, Jr., Esquire, proctor for Thomas Allen, *et als.*, "who were cited as legatees under a former will of or as next of kin of said Albert Allen, deceased," $3,000, together with his costs and expenses amounting to $473.50.

From this order Lillian Seltzer Reulens appealed. Kathryn Ailes, legatee, appeals from that part of the decree wherein counsel fees are allowed.

The opinion of the Judge of the Orphans' Court succinctly states the facts of the case, except he errs in stating that the testator left no relatives other than some aged brothers and sisters, while the facts are that in addition thereto there were certain nephews and nieces.

I am not prepared to agree with the clause in the opinion of the Orphans' Court Judge where he says: "If the testator, at the time of his death, had children, a wife or next of kin dependents, the Court would not hesitate to deny probate of his will, upon the ground that it was unreasonable in its provisions, and inconsistent with the duties of the testator, with reference to his property and his family." It was unnecessary to decide that question.

I will advise a decree affirming that portion of the order directing the probate of the will for the reasons stated in the opinion of the learned Judge of the Orphans' Court.

While it is true that a considerable number of lawyers were engaged in this litigation, the estate cannot be surcharged by reason thereof. It is also true that a great volume of testimony was taken and much time consumed in the hearing of the cause. It was stated that the total amount of the estate, both in New Jersey and in Pennsylvania, was about $165,000. I cannot help but be convinced that fees and costs amounting to approximately 16% of the total estate are excessive when the result obtained is simply the determination of the question of probate.

Chancellor Walker, as Ordinary, in re Wendell, 92 N. J. Eq. 195, held:

> "An allowance made by the Orphans' Court of counsel fees on a contest over the probate

of a will ought not to be overthrown by this Court on appeal, unless it quite conclusively appears that the allowance was excessive (in which case it should be reduced), or that the contest below developed no reasonable ground for further litigation, and where the decision of the Orphans' Court that the unavailing contest was reasonable in that tribunal, can be upheld, it should be; and where the Judge of the Orphans' Court, who tried the cause and saw and heard the witnesses, concludes there was reasonable ground of contest there, he should be upheld, if he may be, without doing violence to the case as it appears upon the record."

"One provision of the statute is that the contesting party shall pay the costs and expenses of the litigation unless he offers no evidence other than that of the subscribing witnesses. Therefore, a party who would inherit in case of intestacy may, in any event, examine the subscribing witnesses without peril of costs being visited upon him; but, where he goes on with an affirmative contest; he shall not have costs out of the estate (unless the trial Court concludes that there was reasonable ground therefor); and, although the contest may be reasonable in the Orphans' Court, yet, if the losing party is not satisfied with its judgment and appeals to this Court, as is his right, this Court will determine whether or not the contest here was reasonable, quite irrespective of the decision in the court below as to the reasonableness of the contest there."

I will accept the conclusion of the Orphans' Court that there was reasonable ground of contest, but am constrained to advise that the fees allowed to the proctors of the proponent be reduced to the sum of $7,500, together with their costs and expenses; the proctor for the caveator to a like sum of $7,500, together with his costs and expenses, and to the proctor of Allen and others, legatees under a former will, to the sum of $2,500, together with his costs and expenses.

FINAL DECREE.

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal from the decree of the Orphans' Court of the County of Atlantic dated January 14, 1930, probating a paper writing dated September 7, 1928, as the last will and testament of ALBERT ALLEN, deceased, and directing letters testamentary thereon to Kathryn Ailes.	On Petition of Appeal. Final Decree.

This matter coming on to be heard, on the petition of appeal of Lillian Seltzer Reulens, for the purpose of reviewing that portion of the decree of the Orphans' Court of the County of Atlantic, dated the 14th day of January, 1930, which adjudged and decreed that a paper writing dated September 7, 1928, be established as the last will and testament of Albert Allen, deceased, and that letters testamentary thereon be issued to Kathryn Ailes, the executrix named therein, in the presence of Allen

B. Endicott, Jr., proctor for said Lillian Seltzer Reulens; W. Elmer Brown, Jr., proctor for Thomas Allen and others, next of kin of said Albert Allen, and Henry W. Lewis and Lewis Starr, proctors for said Kathryn Ailes, and it appearing that the said Kathryn Ailes filed a petition of appeal for the review of that portion of the said decree of the said Orphans' Court dated January 14, 1930, which ordered that a counsel fee of ten thousand dollars ($10,000.00) be allowed to the said Allen B. Endicott, Jr., proctor of the caveator, Lillian Seltzer Reulens; and a fee of three thousand dollars ($3,000.00) be allowed to W. Elmer Brown, Jr., proctor of Thomas Allen, and others, next of kin, as aforesaid, and that the said counsel fees should be paid out of the estate of the testator;

And it further appearing that the Court having inspected the transcript of the record sent up from the Orphans' Court of the County of Atlantic, together with the testimony and exhibits presented at the hearing in said Orphans' Court, and also having considered same, and the argument of respective counsel made thereon, being of the opinion that such portion of the said decree of the Orphans' Court of Atlantic County, dated the 14th day of January, 1930, admitting the said paper writing to probate as the last will and testament of Albert Allen, deceased, and directing the issue of letters testamentary thereon, to the said Kathryn Ailes, the executrix named therein, should be, in all things, affirmed, and that portion of such decree fixing the allowances, as aforesaid, should be modified to the extent that instead of the sum thus fixed, as above set forth, there should be allowed to the said Allen B.

Endicott, Jr., the sum of seventy-five hundred dollars ($7,500), and to the said W. Elmer Brown, Jr., the sum of twenty-five hundred dollars ($2,500), together with their various costs, as set forth in said order, all to be paid out of the estate of the testator; and it further appearing that the Court, being of the opinion that the counsel fee of ten thousand dollars ($10,000), allowed to Henry W. Lewis and Lewis Starr should likewise be reduced from said sum of seventy-five hundred dollars ($7,500), and no objection being interposed to such reduction;

It is, thereupon, on this 17th day of November, 1930, ordered, adjudged and decreed that said decree of the Orphans' Court of the County of Atlantic, dated the 14th day of January, 1930, insofar as the same establishes the paper writing, referred to therein, as the last will and testament of Albert Allen, deceased, and that the same be admitted to probate, and that letters testamentary be issued thereon to Kathryn Ailes, the executrix therein named, be and the same is hereby affirmed and sustained in all things.

It is further ordered, adjudged and decreed that that portion of said decree of the Orphans' Court of the County of Atlantic, which provides for the payment of a counsel fee of ten thousand dollars ($10,000), to Allen B. Endicott, Jr., proctor for the caveator, and three thousand dollars ($3,000) to W. Elmer Brown, proctor of Thomas Allen and others, next of kin, be modified so as to require the payment to the said Allen B. Endicott, Jr., of the sum of seventy-five hundred dollars ($7,500) together with the costs and expenses, as set forth in said decree, and to the said W. Elmer Brown the sum of

twenty-five hundred dollars ($2,500) together with costs and expenses, and all such sums to be paid out of the said estate of the testator.

And it is further ordered, adjudged and decreed that the provisions of said decree of the Orphans' Court of the County of Atlantic, for the payment to the said Henry W. Lewis and Lewis Starr, proctors of the said Kathryn Ailes, of ten thousand dollars ($10,000) be modified and that the sum of seventy-five hundred dollars ($7,500) be paid as a counsel fee in substitution therefor, and that the same with the costs and expenses, designated in said decree, be paid out of said estate.

Respectfully advised,

R. H. Ingersoll,
Vice-Ordinary.

NOTICE OF APPEAL.

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal, etc.	On Petition of Appeal. Notice of Appeal.

Lillian Seltzer Reulens hereby appeals from the final decree made in the above entitled cause on November 17th, 1930, and from the whole and every part thereof to the Court of Errors and Appeals as the last resort in all causes.

ENDICOTT & ENDICOTT,
Proctor for and of Counsel with Lillian Seltzer Reulens.

Dated May 29th, 1931.

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

ALLEN B. ENDICOTT, JR.,
Of Counsel with Lillian Seltzer Reulens.

County of Atlantic, }
State of New Jersey, }

M. Milton Singer, of full age and being duly sworn according to law upon his oath deposes and says:

I am associated with the firm of Endicott & Endicott, proctors for Lillian Seltzer Reulens and on June first, 1931, at one-thirty o'clock, daylight saving time, in the forenoon, I served personally upon Henry W. Lewis, proctor for Kathryn Ailes, the within notice of appeal by handing to him a true copy thereof at his offices at 1315 Atlantic Avenue, Atlantic City, N. J.

M. Milton Singer.

Sworn and subscribed to before me this second day of June, A. D. 1931.

Jennie Y. Schmidt,
Notary Public of N. J.

[Endorsed]

Service of the within notice of appeal and copy thereof acknowledged this 1st day of June, A. D. 1931.

Wm. Elmer Brown, Jr.,
Proctor for Thomas Allen, et als.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

In the matter of the appeal of Lillian Seltzer Reulens from the decree of the New Jersey Prerogative Court, dated November 17, 1930, probating a paper writing dated September 7, 1928, as the last will and testament of ALBERT ALLEN, deceased.	On Appeal from the New Jersey Prerogative Court. Petition of Appeal.

To the Honorable the Court of Errors and Appeals in the last resort in all cases:

The petition of Lillian Seltzer Reulens, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds herself aggrieved by a final decree made in the New Jersey Prerogative Court by his Honor Edwin Robert Walker, Ordinary of

the State of New Jersey, bearing date November 17th, 1930, in a certain cause in said New Jersey Prerogative Court entitled "In the Matter of the Appeal from the Decree of the Orphans' Court of the County of Atlantic, dated January 14th, 1930, probating a paper writing dated September 7th, 1928, as the last will and testament of Albert Allen, deceased, and directing the issuing of letters testamentary thereon to Kathryn Ailes," in this respect, to wit, that the said decree adjudges that:

> "said decree of the Orphans' Court of the County of Atlantic, dated the fourteenth day of January, 1930, insofar as the same establishes the paper writing referred to therein as the last will and testament of Albert Allen, deceased, and that the same be admitted to probate and that letters testamentary be issued thereon to Kathryn Ailes, the executrix named therein, be and the same is hereby affirmed and sustained in all things."

And because it adjudges:

> "that that portion of said decree of the Orphans' Court of the County of Atlantic provides for the payment of ten thousand ($10,000) dollars to Allen B. Endicott, Jr., proctor for the caveator * * * be modified so as to require the payment to the said Allen B. Endicott, Jr., of the sum of seventy-five hundred ($7,500.00) dollars, together with the costs and expenses as set forth in said decree."

2. And petitioner appeals from the decree of the

Ordinary which decrees as aforesaid, upon the ground that the same is erroneous in that:

(a) At the time of the making and supposed execution of said paper writing, and for a long time prior thereto, the said Albert Allen was unduly, illegally and fraudulently influenced by the said Kathryn Ailes in respect to the making and supposed execution of the said paper writing, and the said Albert Allen at the time of the making and execution of said alleged bill was not capable of making a will.

(b) At the time of the making and supposed execution of said paper writing, and for a long time prior thereto, the said Albert Allen was mentally incapable of executing a will or any other paper of lawful import and was of unsound mind and memory and incapable of making disposition of this property.

(c) Because the said decree should have denied probate of the said paper writing, dated September 7th, 1928, and should have admitted to probate the will and codicil made by Albert Allen on October 25th, 1919, and should have adjudged that letters testamentary issue thereon to Lillian Seltzer Reulens, the executrix therein named.

(d) That the award of ten thousand ($10,000.00) dollars to Allen B. Endicott, Jr., for professional services rendered the Atlantic County Orphans' Court as allowed by the Atlantic County Orphans'

Court was a just and reasonable compensation for the services there rendered and should not have been reduced by the New Jersey Prerogative Court.

Petitioner, therefore, prays that said decree of the Ordinary may be in the particulars aforesaid reversed; that the will and codicil of Albert Allen made on October 25th, 1919, be adjudged to be the last will and codicil of Albert Allen and that letters testamentary issue thereon to Lillian Seltzer Reulens, the executrix named, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

ENDICOTT & ENDICOTT,
Solicitors for and of Counsel with Petitioner, Lillian Seltzer Reulens.

NOTICE OF APPEAL.

(Filed July 31, 1931.)

NEW JERSEY PREROGATIVE COURT.

10

In the matter of the appeal from the decree of the Orphans' Court of the County of Atlantic, dated January 14, 1930, probating a paper writing dated September 7, 1928, as the last will and testament of ALBERT ALLEN, deceased, and directing letters testamentary thereon to Kathryn Ailes.	Notice of Appeal.

Kathryn Ailes, the executrix of the last will and testament of Albert Allen, deceased, hereby appeals from so much of the final decree made in this Court in the above entitled cause, dated the 17th day of November, 1930, by the Ordinary upon the advice of Robert H. Ingersoll, Vice-Ordinary, as provides for the payment to Allen B. Endicott, Jr., Proctor of the caveator, Lillian Seltzer Reulens, of seventy-five

hundred dollars, together with costs and expenses, and to W. Elmer Brown, Jr., Proctor of Thomas Allen and others, next of kin, of twenty-five hundred dollars, together with costs and expenses; said sums to be paid out of the estate of said testator, to the Court of Errors and Appeals in the last resort in all causes.

HENRY W. LEWIS,
Proctor for Kathryn Ailes.
LEWIS STARR,
Of Counsel.

Dated July 30, 1931.

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

LEWIS STARR,
Of Counsel with Kathryn Ailes, Appellant.

A true copy.
THOMAS A. MATHIS,
Register.

PETITION OF APPEAL, &c.

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal from the Prerogative Court modifying the allowance of counsel fees to ALLEN B. ENDICOTT, Proctor of LILLIAN SELTZER REULENS, the Caveatrix, WM. ELMER BROWN, Proctor of THOMAS ALLEN, *et als.*, next of kin of ALBERT ALLEN, deceased.	Petition of Appeal, etc.

To the Honorable Judges of the New Jersey Court of Errors and Appeals:

The petition of Kathryn Ailes of the City of Pleasantville, New Jersey, respectfully shows that:

1. She is the sole legatee and devisee mentioned in a certain paper writing of date September 7th, 1928, purporting to be the last will and testament of Albert Allen, deceased, late of the City of Pleasantville aforesaid.

2. On January 14th, 1930, the Atlantic County Orphans' Court made an order admitting to probate said paper writing; as well as did further order therein a counsel fee of $10,000.00 and costs and expenses amounting to $1,105.67 to Allen B. Endicott, Jr., proctor for Lillian Seltzer Reulens, the caveatrix, and a counsel fee of $3,000.00 and costs and expenses amounting to $473.50 to William Elmer Brown, Jr., Esquire, proctor for Thomas Allen, *et als.*, who were cited as next of kin or as legatee of said Albert Allen, deceased, the same having voluntarily appeared and participated in the proceedings respecting the probate of the will as provided in said order.

3. The said decree having been appealed from, by decree of the New Jersey Prerogative Court of date November 27, 1930, the same was modified by the allowance of $7,500 to said Allen B. Endicott, Jr., and costs as aforesaid; as well as to Wm. Elmer Brown, Jr., and his costs as aforesaid.

4. Your petitioner as aforesaid complains and alleges that so much of the decree as aforesaid is grossly excessive, erroneous, improper and illegal. And your petitioner complains that she is grossly aggrieved by so much of the decree as aforesaid, and, therefore, prays that so much thereof be reversed by this Court.

Dated August 18, 1931.

H. W. Lewis,
Lewis Starr,
Proctors for Kathryn Ailes, Appellant.

TESTIMONY.

In the Matter of the Estate of Albert Allen, deceased.

Before Hon. William H. Smathers, J., in Guarantee Trust Building, Atlantic City, New Jersey on Thursday, February 28, 1929, at 10 o'clock A. M.

Appearances:

Albert C. Abbott, Surrogate of Atlantic County, H. W. Lewis, Esq., and A. F. Daix, Esq., and James W. Laws, Esq., for the Will.

Endicott and Endicott, Esqs., and Wm. Y. C. Anderson, Esq., H. J. Alker, Jr., Esq., Hon. Dimner Beeber, Esq., and W. Elmer Brown, Jr., Esq., representing the heirs-at-law.

Mr. Lewis: Preliminary to going into the hearing of this matter I would like to introduce the files of the Surrogates's office. Mr. Surrogate, have you the files?

The Surrogate: Yes.

Mr. Lewis: If I recall there was first lodged on October 18, 1928, a paper writing purporting to be signed by Albert Allen, witnessed by two witnesses without the attestation clause. On November 3, a formal will was introduced with petition in favor of the proponent, Mrs. Katherine Ailes, and the testimony of the subscribing witnesses taken, to that will, and later on a caveat was filed in behalf of the proponent, of the paper writing, Mrs. Reulens.

There has been no offer as appears of record, no proof, of this paper writing. As your Honor is familiar, that not having the attestation clause, therefore, all the requirements of the statute must be strictly complied with in order to prove it.

Our contention is that the caveator has no standing to contest the probation of this will. Nothing has been done. She is not an heir-at-law of Albert Allen, deceased; so that she has no relationship to him whatsoever. The only thing done, is the production of the paper writing of ten years ago, about 1919, witnessed, with no attestation clause, and purported to have been executed by Albert Allen. If she had any standing at all it would be, of course, under that paper writing. That paper writing is not proved. It does not bear an attestation clause according to the statute and there is no evidence, there has been no evidence, even introduced to show that the statute has been complied with insofar as this paper writing is concerned.

Therefore, it is respectfully urged upon the Court that this contesting caveator has no standing, not

being a relative of next of kin in order that she might benefit, except under the paper writing.

I have a brief here and I think that it is a very important point, going to the issue of this case, and I respectfully submit that to your Honor—a copy of it. It cites the cases that we rely upon; and before they can have any standing at all they have to show some interest along that line of cases.

Mr. Endicott: The presentation or urgement of the will, under which this caveatrix appears of record, gives her standing in court, and the subsequent filing of her caveat enters her appearance in court and clothes her with the right to appear and contest the right of the proponent to this will.

We now appear before the Court and are prepared to offer proof of the witnesses to the will, which will formally qualifies her as a person in interest.

The Court: Is it a matter of agreement that the party filing the caveat is the party mentioned in one of the previous wills as beneficiary?

Mr. Lewis: I don't know. The only thing is, there is a previous will, a paper writing alleged, without any attestation clause, and the caveat was filed.

Our contention is that this party has absolutely no standing in this court to file a caveat, having made no formal proof and done anything, nor has anything been done to show that this is the will of Albert Allen.

We do not admit that it is his will, nor that the paper writing was ever executed by Albert Allen.

The Court: The motion is denied. The caveator may proceed.

(Exception allowed.)

Mr. Endicott: May there be entered upon the record the appearance of the next of kin by counsel in this proceeding.

Mr. Lewis: Objected to. It seems to me that anybody who has an entrance should have come in formally and filed an appearance, but it is now too late.

Mr. Endicott: These proceedings have been begun and these persons have been cited to appear in this case, and, having been cited, they are entitled to be heard and represented by counsel.

Mr. Lewis: In doing so it seems to me if they would set up the validity of the will, that the proponents offered, that they should have filed a formal caveat to that effect; and to do so at this time, is now too late.

The Court: I will permit it and allow an exception to Mr. Lewis.

(Exception allowed.)

Mr. Endicott: (Addressing Mr. Anderson.) Will

you please state the names and interests of your clients.

Mr. Anderson: I represent Thomas Allen, a brother of the decedent; Sarah A. Rieger, a sister of the decedent, and William M. Allen, a nephew of the decedent.

Mr. Endicott: Are you going to proceed?

Mr. Lewis: I do not think we have to proceed until you establish your rights, under proof, and prove the paper writing.

The Court: Has the will been proven.

Mr. Lewis: The will has been proven before the Surrogate, but the so-called paper writing, on which this caveat is filed, is not proved.

The Court: It is up to you to proceed and prove the due execution of the will before entering into the contest of it.

Mr. Lewis: We take this viewpoint; that the caveator, if she has any standing, is that given to her under the paper writing. If Mrs. Reulens is to be heard at all, she is to establish that paper writing as a former will.

The Court: Then, in an appeal taken to the Orphans' Court, that places upon you the necessity of proving the due execution of your will that is now before the Court. It does not go back of the Sur-

rogate. You have to prove your will in this court as well as in the Surrogate's court.

Mr. Lewis: What standing has Mrs. Reulens to attack, to even cross-examine our witnesses until she has established a status? Has she any rights at all until she has established a status under that paper writing?

Mr. Endicott: She entered an appearance, and, therefore, becomes a party.

Mr. Lewis: Any stranger might do the same thing, but they have to produce something substantial to do that.

Mr. Endicott: That will come in due course.

The Court: I think you have to proceed with proof of your will.

Mr. Lewis: Will the Court allow us an exception, and we will prove the will.

(Exception allowed.)

PROPONENT'S TESTIMONY.

AUGUSTUS F. DAIX, JR., sworn.

Direct examination.

By Mr. Laws:

Q. Where do you live?
A. Philadelphia, 1613 North 33rd Street.
Q. Where is your downtown office?
A. 918 Land Title Building.
Q. Where is your uptown office?
A. 2318 Columbia Avenue.
Q. You are a member of the Philadelphia Bar?
A. Yes, for thirty or forty years.
Q. Did you know a man by the name of Albert Allen?
A. I did.
Q. Where did he live when you knew him?
A. First on Susquehanna Avenue west of Broad Street; then he moved a couple of times afterward.
Q. Do you remember the time that he lived at 1411 Allegheny Avenue?
A. I am aware of the fact that he lived there.
Q. Where did he live when he died?
A. Pleasantville, New Jersey.
Q. How long had you represented Albert Allen as his counsel?

Mr. Endicott: Objected to as leading.

Q. Who was Albert Allen's counsel?

Mr. Endicott: Objected to. There is no time stated. I ask the Court's ruling on that.

Q. Who represented Albert Allen, to your knowledge?

Mr. Endicott: Objected to. No time is stated.

Q. Who represented Albert Allen on September 7, 1928?

A. I represented him.

Q. How long prior to that time did you represent him?

A. Off and on for about a number of years.

Q. When did you become acquainted with the family of Albert Allen, his brothers and sisters—did you know them?

A. Very, very well. I represented Sarah Allen as long as she lived.

Q. What about his brothers?

A. I am executor and trustee at the present time for the estate of William Allen, and I represented him for many, many years.

Q. How about William Albert Allen?

A. I have attended to the business for Mr. William Allen.

Q. He is one of the defendants in this case?

A. Yes.

Q. What relation is he to Albert Allen?

A. A nephew.

Q. Did you say where Albert Allen lived at the time of his death?

A. I couldn't tell you, but I believe his residence was Pleasantville, New Jersey.

Q. I hand you a paper signed Albert Allen and ask you to tell me whose signature that is? (Paper shown witness.)

A. Albert Allen.

Q. The decedent in this case?

A. Yes.

Q. Who drew this paper? (Paper shown to witness.)

A. I did.

Q. By whose instructions?

A. At the request of Albert Allen.

Q. Where was this paper signed? I will leave it in your possession.

A. In the office of Dr. Boger, on Broad Street above Susquehanna Avenue—2200 and something North Broad Street.

Q. Who was present when it was signed?

A. Dr. Boger.

Q. What is his full name?

A. Dr. John A. Boger, Mattie C. Haines, Augustus F. Diax, Jr., and Albert Allen—because he signed it.

Q. Were they all present when that paper was executed?

A. Yes.

Q. Is that all who were present when it was executed?

A. Yes.

Q. In what particular room was it signed in Dr. Boger's office?

A. Dr. Boger's private room, adjoining his waiting room, on the outside.

Q. I notice that the paper is dated September 7,

1928. What day was the paper signed (the paper I hand you), what date was it signed—give me the day?

A. I do not recall the day.

Q. Was it signed on that date?

A. On that date, but the day, like Monday, Tuesday or Wednesday—I don't recall.

Q. Did you accompany Albert Allen to Dr. Boger's office on that day?

A. I did not.

Q. I mean did you come with him to Dr. Boger's office on that day?

A. I think I met him there.

Q. You met him there?

A. Yes.

Q. When you were assembled in Dr. Boger's office, what opportunity did you give Albert Allen to know the contents of this paper?

A. Are you speaking of his private office?

Q. Yes.

A. I handed the paper to Mr. Allen. I asked him to read it over. He read it over. He read it out loud.

Q. He read it out loud?

A. Yes, he read it out loud, kind of this way, and I said, "Albert, is that perfectly satisfactory?" And he said, "Yes." I said, "Do you want to leave anything else to anybody else, any small bequests, or anything of the kind," and he said, "No."

Q. Who was present and heard him read that out loud, that you speak of?

A. The parties I just named.

Q. Who are they?

A. Dr. John A. Boger ——

Mr. Endicott: May the witness be cautioned to testify from his memory rather than from the paper that he has before him.

The Court: He may testify from his memory.

The Witness: There is the paper on the desk.
10 (Witness laying the paper on the desk before him.)

Q. Who heard Albert Allen read that will?

A. Dr. Boger, Miss Haines, Mr. Daix, Mr. Albert Allen was reading it himself.

Q. Did you ask Mr. Allen any questions as to what this paper was or what he wanted to execute?

Mr. Endicott: That is objected to as leading. It seems to me the proper method is to ask him to
20 describe what happened.

Q. Describe what happened, what you said and what Mr. Allen said.

A. I said, "Allen, is this perfectly satisfactory to you, this will?" And he said, "Yes." I said, "Do you want to sign it?" And he said, "Yes." I said to him, "Would you like us to witness it?" Indicating Dr. Boger here, and his stenographer and clerk, and he said, "Yes."

30 Q. What did Mr. Allen do?

A. He sat down at the table that he was sitting down at, and in a few minutes he signed his name to the will.

Q. Who saw him sign his name to that will—of these witnesses?

A. Dr. John A. Boger, Miss Mattie C. Haines, we

were all present at the same time and witnessed him signing his name.

Q. After he signed his name, when did you sign?

A. I signed it immediately after he did.

Q. Who followed you?

A. Miss Haines.

Mr. Endicott: That is objected to.

The Witness: And Dr. John A. Boger.

Q. After this paper was signed and witnessed, as you have described, what was done with it?

A. I handed it to Mr. Albert Allen, in the automobile, when we went outside. I said to him, "Put this away in the box."

Q. Since that time, when did you first see this document?

A. Upon the death of Mr. Allen.

Q. Where did you see it?

A. At my office, my uptown office, at 2318 Columbia Avenue.

Cross-examination.

By Mr. Endicott:

Q. Did you prepare the paper writing which has just been identified by you as the will of Albert Allen?

A. I did.

Q. Where did you prepare it?

A. In my office uptown.

Q. When did you prepare it?

A. Just previous to the seventh of September.

Q. How long previous?

A. I suppose a day or so, within a day or so.

Q. Under whose instructions did you prepare it?

A. Albert Allen's.

Q. Where were these instructions given?

A. In my office.

Q. When?

A. About two or three days previous to the date of September 7th.

Q. What day of the week did September 7 come on?

A. I couldn't tell you.

Q. Was it a Friday?

A. I couldn't tell you.

Q. If I said that the calendar showed that it was a Friday, would that refresh your recollection in any way?

A. I don't quite get you.

Q. If I said that the calendar showed that it was a Friday would that refresh your recollection in any way?

A. No, sir.

Q. I show you a calendar for the year 1928 and ask you to identify the day of the week, for off-hand information?

A. Friday.

Q. Who was present with Mr. Allen when you discussed the will?

A. Mrs. Ailes came in with him, but he was in the back office with me.

Q. When you say, Mrs. Ailes, you refer to Mrs. Katherine Ailes who was the chief beneficiary under the will which you prepared?

A. I do.

Q. How old was Mr. Allen, the decedent?

A. He was a man around seventy odd years of age.

Q. Was he more than seventy?

A. I couldn't tell you.

Q. Do you think he was 76?

A. I said I couldn't tell you.

Q. Will you repeat the conversation that took place between you, Mr. Allen and Mrs. Ailes, when they first came to your office?

A. If you allow me to tell you how they came over to my office.

Q. Will you answer my question?

A. They came in my back office and sat down at the table and I got out a piece of paper and asked him what he wanted done with reference to his will, who he wanted to leave it to, and what he wanted to do.

Q. Was Mrs. Ailes present at that time?

A. She was not.

Q. I asked you what was the conversation that took place when he first came to your office, when they were present?

A. He said, "How do you do, Senator. I am very glad to see you. I came over to see you about that matter that I spoke to you about, five minutes ago."

Q. Is that all that took place?

A. That is all that I can recall.

Q. What was the condition of health of Mr. Allen?

A. Excellent.

Q. Do you know why Mrs. Ailes was with him?

A. She was with him, generally looking after the business for him.

Q. Was the will prepared on the day, on the Friday that they called upon you?

A. I didn't say it was Friday that they called upon me; that was the day when it was signed.

Q. That was the day the will was signed?

A. Yes.

Q. Can you tell us what day they called upon you?

A. The day of the week I cannot recall it. I would be guessing.

Q. Was the will prepared on the day that they called?

A. It was not.

Q. When was it prepared?

A. About a day afterward.

Q. What was the relation of that day to September 7?

A. About a day or so ahead.

Q. By what arrangement did you meet Mr. Allen for the signing of the will?

A. I asked him who he wanted as witnesses to the will. He named as one, Dr. John A. Boger. I said, "All right, I will call him on the phone and make an engagement when we can see him." And I called Dr. Boger on the phone and had a conversation with him.

Q. And as a result of that conversation what did you do or what happened?

A. Went down to his office at the time that I mentioned.

Q. You are sure that you did not suggest Dr. Boger to Mr. Allen as a witness?

A. I did not. I never met Dr. Boger until I went

down to his office with Mr. Allen. I didn't know the gentleman.

Q. Did you suggest that it would be wise to have a physician to act as a witness?

A. I did not.

Q. Why was the execution of this will delayed?

A. I didn't know that there was any delay.

Q. You drew a will which should not have taken more than one page and you could easily have prepared it by the time that the witnesses were with you, with the force that you had in your office?

A. That is true, but I had other business besides this, though.

Q. Why was it that Dr. Boger was selected as a witness, instead of your office force?

A. Because Mr. Allen suggested Dr. Boger.

Q. Did anybody suggest to you that you have Dr. Boger?

A. No, only Mr. Allen, that I know of.

Q. Was Mrs. Ailes present when the will was executed?

A. She was not.

Q. Was she outside in the automobile?

A. She was outside, in the office.

Q. Was she present with Mr. Allen when you delivered the will to him?

A. She was in the automobile with him.

Q. Did you see what happened to that will after you gave it to Mr. Allen?

A. I did not.

By the Court:

Q. What relationship did the beneficiary under the will, bear to the testator?

A. None.

By Mr. Endicott:

Q. Was there any suggestion on your part that witnesses outside of your office be used in the execution of this will?

A. No; in fact I might say that I took one of my clerks down to the office, to be one of the witnesses, but on account of Dr. Boger being detained for over an hour I had to send my clerk back.

Q. I do not quite understand why you went to Dr. Boger's office to execute this will; it seems so unusual that it should have been executed there rather than at a lawyer's office?

A. By way of explanation, may I—when I asked Mr. Allen whom he desired to witness it, he gave the name of about three or four doctors that he knew personally, and suggested that he preferred Dr. Boger.

Q. Three or four doctors?

A. Yes. He had been ill and confined in a hospital and I believe that he suggested Dr. Boger.

Q. Mr. Allen never talked to you before this time about the preparation of a will?

A. Yes, about a half dozen times he mentioned to me, in the Northwest Trust Company, he mentioned it to me. He said, "Mr. Daix, I am going to make a will and I want to come over to see you. That is

why I asked you before, so that you would know why I was coming over."

Q. Did you ever discuss the terms of the will before?

A. Never.

Q. You knew who the members of his family were?

A. I know them all intimately.

Q. Do you know Mrs. Ailes?

A. I never met Mrs. Ailes in my life before. She was in my office, during my illness, when my son foreclosed a mortgage, that Mr. Lewis sent her over to my office to see about, to have the mortgage foreclosed. I had never met her.

Q. Your office had been attorney for her?

A. For who?

Q. Mrs. Ailes.

A. No.

Q. She had been a messenger to your office for Mr. Allen?

A. She never came with a message to my office from Mr. Allen, never once.

Q. I do not understand what your former business relation was with her.

A. None. But one time I was ill—I want to give you this information—and I understood from my son that she was sent to my office by Mr. Lewis to foreclose a mortgage, but I did not meet the woman.

Q. Did your son foreclose the mortgage for her?

A. He did, fortunately.

Q. Had you ever transacted any business for Mr. Allen prior to the execution of this will?

A. Mr. Albert Allen?

Q. Yes.

A. Yes, I obtained mortgages for him and foreclosed mortgages.

Q. Who brought the will to your office?

A. Who brought what will?

Q. The will which is before us, which is the subject of this inquiry?

A. How do you mean—brought to my office? I don't catch your question.

Q. Strike the question. You testified in your direct examination that you did not see the will until after it was brought there to your office, after it had been delivered to Mr. Allen.

A. I understand you better now.

Q. Who brought it to you on that occasion?

A. Mrs. Ailes.

Q. How soon after the death of the decedent?

A. After the funeral.

Q. How soon after?

A. I couldn't really tell you.

Q. How soon did you hear from Mrs. Ailes after the death of Mr. Albert Allen?

A. I heard from her husband first, informing me of the death of Albert Allen; I should judge almost immediately.

Q. The same day?

A. I wouldn't want to say that.

Q. Where was Mr. Ailes when you got a communication from him?

A. I received first a telephone message.

Q. Where was he?

A. I couldn't tell where he was.

Q. What was the subject of the telephone message?

A. He said, "Albert Allen is dead, Senator, I want to inform you of the death of Mr. Allen."

Q. Did he say where?

A. While taking a trip south. He did mention the name of the place, but I can't remember.

Q. Was it in Virginia?

A. Yes, I think that you are correct—in a hospital in Virginia, I think.

Q. Did he tell you when he had died?

A. I judge from the purport of the conversation that he died just recently, that is, within a very short period of time.

Q. Was that the same day?

A. I wouldn't want to say that. I said before, I believe.

Q. Do you know where the telephone conversation came from?

A. I don't know.

Q. Was it a long distance call?

A. I don't know. I would say, no.

Q. Was anything said about Mr. Allen while in that telephone conversation?

A. No.

Q. What was the purpose of notifying you so promptly?

A. Because I suppose I was his friend and I attended to matters for him.

Mr. Lewis: You cannot expect Mr. Daix to know some other person's purpose in notifying him.

Q. What was the purpose of notifying you so promptly of his sudden death, if you know?

A. You would have to ask him that.

Q. You say that very shortly you received a telephone message that Mr. Allen had died?

A. Yes, I also received a message, a little bit later, from Mrs. Ailes informing me of the death of Mr. Allen.

Q. The same day?

A. I wouldn't want to say so, but I think so.

Q. When did you next hear about the will?

A. About the will?

Q. Yes.

A. When it was brought to my office sometime later. That same morning, hearing of the death, I met Mr. Rieger in the trust company, and he likewise informed me of the death of Mr. Allen.

Q. Did you hear from Mrs. Ailes or her husband, and have any conversation with them about the will prior to it being brought to you?

A. No, sir.

Q. But the will actually was brought to you shortly after the funeral?

A. Yes.

Q. The same day?

A. No, sir.

Q. Why was the will brought to you, if you know?

A. The same as a will is brought to any attorney.

Q. The decedent died in Atlantic County?

A. What county?

Q. Atlantic County.

A. No, sir, I thought he died down in Virginia, in a hospital.

Q. He was a resident of Atlantic County?

A. He was a resident of Pleasantville, Atlantic County, undoubtedly.

Q. The will would have to be probated in Atlantic County?

A. Naturally.

Q. Why was it brought to you?

A. I can't tell you why the will was brought to me; I suppose because I drew it.

Q. What was the conversation between you and Mrs. Ailes when the will was brought to you?

A. The exact words I cannot recall, but she brought to me the will of Mr. Albert Allen.

Q. Did she tell you where the will had been from the time that it was executed, up until that time?

A. She did not.

Q. Did you ask her?

A. I did not.

Q. Did you know?

A. I judged it had been in Mr. Albert Allen's box, where I requested him to place it.

Q. What made you think that?

A. Because I requested him to place it there, when I handed it to him.

Q. How could she have gotten it out of his box at that stage of the proceedings?

A. I don't know.

Q. His box was at the Northwestern Trust Company in Philadelphia?

A. Yes.

Q. You have some connection with that trust company?

A. I am the solicitor.

Q. Do you know what their practice is as to admitting people to decedent's boxes?

A. I know what the practice is, if they have charge of the box.

Q. Under these circumstances would she have been entitled to go to his box and get his will?

A. Yes.

Q. She would?

A. Yes.

Mr. Endicott: They don't do that that way here.

Q. What are the rules of the Northwestern Trust Company where a person has a private box, that is, as to going to it, in the case of a decedent?

A. When they present, an administrator or an executor, wants access to it, they are required to produce a short certificate, in the presence of one of our employes, of the bank, when the box is opened, and the contents noted.

Q. There was no short certificate in this case, was there?

A. There was not.

Q. Why was Mrs. Ailes entitled to get the will in this case?

A. Because this is not one of our private boxes that we have under lock and key, but was the box of Mr. Albert Allen, himself. You must remember that I did not say it was in the box, but that I requested Mr. Allen to place it in the box.

Q. I want to find out your rules there, concerning the box of the decedent, of a private person, a private box, would there have to be a power of attorney?

A. That would not affect it, because it was not in one of our lock boxes that are in the vault.

Q. Do you know whether or not Mrs. Ailes had a power of attorney from Mr. Albert Allen?

A. I do not. I never drew one.

Q. From your connection with the Northwestern Trust Company, do you know whether or not there was any such power of attorney?

A. I would not know it without it was submitted to me.

Q. Have you since learned that she had a power of attorney?

A. Indirectly I heard it.

Q. Through her or the bank?

A. I heard nothing through the bank. I heard through her, I think.

Q. What kind of box did Mr. Allen have at the Northwestern Trust Company?

A. An ordinary tin box, about that size, about the size of this blotter—about this size.

Q. Was it in the vault of the bank?

A. It was placed up on the side of a shelf, that we have in the vault.

Q. Does the bank have a custodian of these boxes?

A. Yes.

Q. What are the rules that entitle a person to go to their box?

A. I presume that Mrs. Ailes would have the right to go.

Q. I will repeat the question: What are the rules that entitle a person to go to their box?

A. If it is their own private boxes, they have the right to take it out whenever they please, and take it away.

Q. Is that under the supervision of a custodian?

A. No, not if it is one of the bank boxes; if it is a lock box, that is entirely different.

Q. If they are, may anybody remove the box be-

fore their authority is established by the proper persons?

A. No, sir.

Q. Do you know whether or not Mr. Allen's box was examined or touched by any person prior to or at any time after Mr. Allen's death?

A. To the best of my knowledge, no.

Q. Do you know whether or not anybody has examined that box between the time of the making of the will and the time of the death, other than Mr. Albert Allen, himself?

A. To the best of my knowledge, no.

(Witness excused.)

Dr. John A. Boger, sworn.

Direct examination.

By Mr. Laws:

Q. Where is your office?

A. 2213 North Broad Street, Philadelphia.

Q. Did you know Mr. Albert Allen?

A. Yes, very well. I have known Mr. Allen for forty or forty-five years, as a physician and as an intimate friend, and in a business way, as well as in a personal way, and, in fact, every way.

Q. I show you a paper signed, "Albert Allen" and ask you to tell me whose signature that is. (Witness shown paper.)

A. That is Albert Allen's signature, and that is

my signature, and that is the signature of my secretary.

Q. Whose is the other signature on there?

A. That is the signature of Mr. Daix.

Q. That paper is dated September 7, 1928. When did Mr. Albert Allen sign that paper?

A. I don't know the exact date, but it was about that date.

Q. It must have been that date when it is dated.

Mr. Endicott: Objected to.

Q. Who dated that paper?

A. That paper, that was dated the day that we signed it.

Q. Who was present when that paper was signed?

A. Mr. Allen, of course, and Senator Daix, and my secretary and myself.

Q. Where was it signed?

A. In my office.

Q. How many offices have you?

A. I have three offices. This was in my rear office, my consulting office.

Q. Were they the only people present when that paper was executed?

A. Yes.

Q. Will you state what was done before that paper was executed and given to Mr. Allen, and to give Mr. Allen an opportunity to know what it contained.

A. Senator Daix read the paper, and Mr. Allen.

Q. What did Mr. Allen do?

A. And asked Mr. Allen if he wanted to make any changes and if it was satisfactory, and Mr. Allen

carefully read the paper, in my presence, and, in fact, in the presence of all of us, and he said it was entirely satisfactory, that he had no changes to make.

Q. Then what did Mr. Allen do?

A. He signed it, the paper. I saw him sign it.

Q. At whose request did you witness it?

Mr. Endicott: Objected to. The witness should be allowed to tell what happened, describe it, without leading question from counsel.

Q. What made you witness the paper?

A. Because I was asked to do so.

Q. By whom?

A. Mr. Allen.

Q. Who did you see sign that paper as a witness?

Mr. Endicott: Objected to.

(Objection sustained.)

Q. State what you saw done by anybody with reference to that paper?

A. What I saw?

Q. Yes.

A. My back office is quite a large office. I sat just where like the Judge is sitting, at the center of a large table, and Mr. Allen sat right in front of me; and Senator Daix was to his right, the same as I. My secretary, she was working around the room, doing stenographic work and so forth; and then he signed, and I signed.

Q. When you say you signed, who was the first witness on that paper?

Mr. Endicott: Objected to.

Q. Who signed first?

Mr. Endicott: Objected to.

Q. Well, then, in what order did you sign?

Mr. Endicott: Objected to. The objection is, that the questions are leading. This witness should be required to state what happened without guidance from counsel. These are technical questions and we are entitled to have the benefit of the witness' recollection without any aid.

Mr. Lewis: I insist on my question.

Q. In what order did the witnesses sign that paper?

Mr. Endicott: Objected to.

(Objection overruled.)

A. My recollection is, that I signed first.
Q. Who else signed it?
A. And my secretary, and my recollection is that Senator Daix signed.

Mr. Endicott: I object to the witness looking at the paper before him, and ask that he be required

to testify from his recollection. May the paper be removed from the witness?

(The paper is removed.)

By Mr. Laws:

A. I remember the incidents very, very clearly.
Q. Who saw Albert Allen sign that will?

Mr. Endicott: Objected to as leading.

The Court: It is permitted.

A. We all saw it. We were there. There was nothing peculiar about it, that I could see.
Q. You say "we all" saw him sign the will.
A. Yes.
Q. Did I ask you who requested you to witness it?
A. He did, himself—Mr. Allen.
Q. After it was signed, dated and witnessed, what was done with the paper?
A. I don't know if Mr. Allen took it, or Senator Daix; I was there, but sitting there, at the table.
Q. How long were you in the room with Mr. Albert Allen on this occasion?
A. I should say at least a half hour. We were talking about old friends and the banks that we were interested in, we were interested in banking together; and our old days and so forth, about his prior operation in 1923, at the Jefferson Hospital, and so forth.
Q. You stated that you were a physician. How long have you been a physician?

A. I graduated from the University of Pennsylvania in 1889.

Q. How long had you been a physician for Albert Allen prior to his death?

A. Ever since I was a physician. I knew Albert Allen when I went to the high school, long before I entered the University of Pennsylvania.

Q. What opportunity did you have of observing his state of health on that day when you had a half hour conversation with him?

A. What opportunity?

Q. Yes.

A. There was nothing the matter with him. He was mentally normal.

Q. What state of health was he in?

A. Excellent health.

Q. What state of mind did he appear to be in?

A. Normal; nothing wrong with Mr. Allen then.

Cross-examination.

By Mr. Endicott:

Q. When had you seen Mr. Allen previously to the date on which the will was signed?

A. I think in the summer sometime.

Q. Where did you see him?

A. He came up to see me.

Q. For what purpose?

A. Socially, friendly.

Q. Did you talk to him on that occasion?

A. Yes.

Q. Had you talked to him between that date in

the summer time and the day on which the will was executed?

A. I don't think so.

Q. Do you have any recollection of the day of the week on which the will was executed?

A. I didn't pay any attention to it.

Q. Can you tell us what time of the day it was?

A. I think it was around the noon hour. I am not sure.

Q. It may have been noon?

A. I have only hours in the morning, office hours, and some days I get through at twelve o'clock, and other days not until one or two o'clock.

Q. How did the will come to be executed in your office?

A. Senator Daix, whom I never met before, until he made his appearance with Mr. Allen at my office, never saw the gentleman, called me on the phone and said that Mr. Allen was in his office and was executing a will and that he wanted me to witness the will, would I do so, and I said that I would be pleased to do so; I said, "Send Mr. Allen up," and he sent Mr. Allen up, and I signed the will.

Q. How soon after that telephone conversation did they come in?

A. I was delayed. I had an emergency call at the hospital, and I apologized when I came in and found they were waiting for me.

Q. They did come in shortly after your telephone conversation?

A. I don't know when they came, but they had been waiting there.

Q. How long a time elapsed between the telephone conversation and your visit?

A. I don't know, it was not so long. I didn't keep a memorandum of it.

Q. Would you say it was two hours?

A. I didn't keep a memorandum of it. Maybe it was an hour or two or something like that. I know that I apologized for being called away. I didn't pay any attention to details, because I didn't expect anything like this.

Q. When had you treated Mr. Allen, professionally, prior to the execution of the will?

A. I think the last time was in 1923, I think it was. I was called to West Walnut Street. He had bladder trouble and I sent him to the Jefferson Hospital and we had him there for several months, for prostatechtomy, for a partial removal of the prostate gland.

Q. At whose house was that you called?

A. Mrs. Ailes, 243 West Walnut Street.

Q. Whose house was that?

A. Mr. Ailes. I found him then in bed; he couldn't pass his urine; there was an obstruction, and I made a hurried examination, and then I sent him to the Jefferson Hospital, where Dr. Laurence operated on him for this prostate condition. They had him there for several months and he made a complete recovery and was in better health then than he had been for a long while.

Q. Do you know Mr. Allen's age at the time of his death?

A. He was older than I was. He was a man when I was a boy, around the neighborhood.

Q. How old are you?

A. I am 62; a graduate of the University of Penn-

sylvania 40 years ago, and I knew him when I went to high school.

Q. Did you take any history which would show his age?

A. No.

Q. Have you any records, any of your records here today?

A. No, I have nothing like that.

Q. Was anything said to you about why you were desired as a witness in connection with the execution of this will?

A. Simply as being one of his close and warm friends, how he and I used to work together in financial matters, and in investments; and, as I said we were directors of the bank together.

Q. What bank?

A. The Broad Street National Bank.

Q. How long ago? Are you still a director there?

A. No, on account of my being busy otherwise, I resigned.

Q. When were you co-directors there?

A. We were organizers, Mr. Allen and I, and some other men, we organized the Broad Street National Bank; it still stands at Broad and Diamond Streets; then we were directors together for many years, and he was always interested in financial enterprises and banks and so forth.

Q. You testified that Mr. Allen was in excellent health at the time of the execution of the will. Were you surprised to learn of his death shortly afterward?

A. Yes, I understood it was an accident or something of the kind; because he was in very good health.

Q. Do you know the cause of his death?

A. No.

Q. Do you know that it was assigned as uremia?

A. No, I don't know that.

Q. Would you expect a uremic condition, of what you know of Mr. Allen, at the time of the signing of the will?

A. That is beyond me, beyond my province. I wouldn't say as to that.

Q. Did you make any examination of Mr. Allen in connection with the execution of the will, either mentally or physically?

A. No, that was not necessary. He was just as normal as you are, sitting in that chair.

Q. I said, did you make such examination?

A. That is my explanation.

Q. Answer the question. Did you or not?

A. No, who would? I don't think that I would, as a doctor, go into a man's office, to witness his will. I wouldn't stand up, in that instance, to examine him.

Q. I didn't ask you whether or not you did.

A. I am explaining it to you, as an attorney.

Q. Have you ever treated any of the Ailes, professionally?

A. Yes, I operated on Mr. Ailes' two daughters.

Q. How long have you know the Ailes?

A. A number of years.

Q. Did you treat them professionally between 1920 and 1929?

A. Oh, yes, after 1920.

Q. On how many occasions?

A. I think I had two operations on the daughters. I forget which.

Q. When?

A. Within that time.

Q. Can you tell us briefly when?

A. No, I couldn't tell you.

Q. Did you treat Mr. and Mrs. Ailes or any member of the family after they removed to Plaesantville?

A. They would come up once in a while, Mrs. Ailes.

Q. They did call on you, professionally, after they moved from Pleasantville?

A. Yes; I think that is my recollection.

Q. Have you seen Mrs. Ailes or any member of the family since Mr. Allen's death?

A. I don't recall.

Q. You would recall if they had called on you?

A. I don't think so.

Q. Wasn't it a frequent thing for you to see them?

A. No.

Q. Do you know whether or not there was some discussion about the making of a will at the Jefferson Hospital when Mr. Allen was there, in connection with his operation?

A. I don't know anything about wills. I am a doctor.

Q. I asked you if you knew anything about the making of a will at that time?

A. I don't know anything about it. Maybe you do, but I don't. I wasn't paying any attention to this matter. He came to my office in a direct way and asked me to witness it, and I did it.

Q. Can you give the names of the nurses in attendance on Mr. Allen in the hospital?

A. No, you would have to get the records of the

hospital for that. He had numerous nurses. I think he had two or three private nurses. Nurses come and go on a case.

Q. Was this prostate condition that he was operated on for, one of the signs of advancing age?

A. No, not necessarily, no.

Q. It is sometimes evidence of that?

A. Some people have an enlarged prostate, but they do not have to be up in years to have it.

Q. Don't you, or wouldn't you, most generally find it among older people?

A. Among older people. Lots don't have it. Only 10 per cent of men have a large prostate, ten out of a hundred.

By Mr. Laws:

Q. Mattie C. Haines, the other witness on that will, I understood you to say that she was your secretary—is she present today?

A. No, she is sick, as I told you, or rather, as I told Senator Daix this morning.

Q. Are you able to produce her today?

A. No, she is sick; she phoned me from her house to my office, today, as I was about to make a train, that she would not be able to be here today.

Mr. Lewis: We make formal proof of the introduction of the will.

(It is offered in evidence.)

The Court: It is admitted.

(Will offered in evidence and admitted.)

Mr. Endicott: One minute. We want to make some objections to its admission.

We formally objected to the will upon the grounds: (First) That it has not been formally proved by all of the witnesses to it. (Second.) That it has not been published in accordance with the statute, in that there is no attestation clause, that all of the witnesses signed it at the request of the testator, and that they signed it in the presence of the testator. (Third.) That there was no testimony, or rather that there was insufficient testimony, or that there was not sufficient testimony, as to the competency of the testator, or the declaration, and the publication that it was the decedent's will.

I assume that your Honor will not formally admit the will at this time, anyway.

The Court: Not for probation. It is simply admitted in evidence as having been proved.

Mr. Endicott: Will your Honor note an exception?

The Court: The will is admitted and an exception will be noted on the record.

(Exception noted.)

Mr. Endicott: The caveator will endeavor to show in this proceeding, that the will which is now offered, was the product of undue influence exercised upon

the decedent by Katherine Ailes, the beneficiary under the will.

That she occupied a confidential relationship and was in a position to force her will upon the acts of the decedent. And that the mind of the decedent was not competent to make a will. And that, therefore, the paper writing which is offered is not the will of Albert Allen.

(Witness excused.)

PROPONENTS REST.

CAVEATOR'S TESTIMONY.

(Mrs.) Anna Shumway, sworn.

Mr. Lewis: I raise the question again, that before permitting that offer, that a ruling upon a former will should be had, and that there should be strict proof of the former will, before the caveator can have any standing in this court. An outsider cannot come in and file a caveat.

The Court: No.

Mr. Lewis: What we shall require them to do is to strictly prove that will according to the statute.

Mr. Endicott: We withdraw Mrs. Shumway.

(Witness excused.)

HARRY BLACKSTONE, sworn.

Direct examination.

By Mr. Endicott:

Q. Where do you live?
A. 880 North 20th Street, Philadelphia, 20th and Poplar.
Q. Did you know Albert Allen in his lifetime?
A. Yes, since I was a little boy.
Q. Where did you know him?
A. From Mrs. Seltzer's house.
Q. Do you live in Mrs. Seltzer's house?
A. No.
Q. You knew him when he was there?
A. Yes.
Q. Did you know him in 1919?
A. Yes.
Q. Did you see him often then?
A. Yes.
Q. Where did you usually see him?
A. In Mrs. Seltzer's.
Q. I call your attention to October 25, 1919.

Mr. Lewis: Don't answer that question until we get a chance to object.

Q. I asked you if you saw Mr. Allen on that day; I ask you now if you saw Mr. Allen on that day.

Mr. Laws: Objected to.

Mr. Endicott: What is the objection?

Mr. Laws: It is objected to.

The Court: It is admitted.

A. Yes.
Q. Where did you see him?
A. In Mrs. Seltzer's house.
Q. What was done on that day by Mr. Allen, that you can recall?
A. He made the will on that day.
Q. What will?
A. Why, the will that is now in effect.
Q. Is the paper that is before you the will that you refer to?

Mr. Lewis: What will is that? I haven't seen any will.

Mr. Endicott: This is my witness, my examination.

Mr. Lewis: I have a right to see the will. I ask the production of the will. We don't know what you are talking about.

Mr. Endicott: Surely.

(Paper is produced by Mr. Endicott.)

Mr. Laws: This witness stated, "The will that is now in effect," in his answer. We ask that that be stricken out.

Mr. Endicott: We have no objections to it being stricken.

The Court: Strike it out.

Mr. Endicott: We ask that the offer be marked for identification, the paper that is headed "Philadelphia, October 25, 1919," which is marked C1. Also ask that the second paper be marked, being identified, or rather being marked for identification, "Codicil to will, October 25, 1919," and marked C2 for identification.

Q. I show you paper marked for identification, C1, and ask you if you have ever seen that paper before?

(Paper shown witness.)

A. Yes, I have.

Q. When did you first see it?

A. October 25, 1919.

Q. What were the circumstances connected with your seeing that paper?

A. Well, it happens this way, that Mr. Allen and I used to go marketing, when he stopped at Mrs. Seltzer's, we wanted to go marketing on this day, and before we went up,—we were going to take a trip to Atlantic City with Mrs. Shumway and her husband, and he wanted to make a will because sometimes Mrs. Shumway had been in accidents; so we went to the store and he said first, to Mrs. Seltzer, that she should make a will out and that when he came back he would look it over and see if it was

o. k. So we went to the store and went and got the marketing, and brought it back, and in the meantime when we got back Mr. Gallagher was at the house. We sat down for the will. Then, after a while, we all sat at the table, Mr. Gallagher, Mr. Allen, Mrs. Seltzer and myself; and we talked over the will, and he said, "You are leaving some money to your relatives,"—that is, to his relatives, "and relations." He said, "I don't want them to have anything." He said, "I want you to have everything." She said, "I can't be stingy like that. I want them to have some of the money." He said, "All right, it is up to you." So he signed the will and then I signed it and then Mr. Gallagher signed.

Q. Did anything else take place?

A. No, that is all that I remember.

Q. How did you come to sign the will?

A. I happened to be there and he asked me to sign it.

Q. Did anybody else sign it?

A. Just Mr. Gallagher and Mr. Allen.

Q. Did you see Mr. Gallagher sign it?

(Objected to as leading.)

A. Yes.

(Objection withdrawn.)

Mr. Laws: I ask that the answer be stricken out.

The Court: Strike it.

Q. Who was present when Mr. Allen asked you to be a witness?

Mr. Laws: Objected to. He didn't say Mr. Allen asked him to be a witness.

Mr. Lewis: I don't think he did.

Mr. Endicott: I think he did.

Mr. Laws: Let us refer to the notes, to the record.

The Court: Ask him if he did say that.

By the Court:

Q. Did you say that?

A. Did I say what?

By Mr. Endicott:

Q. That Mr. Allen asked you to witness the will?

A. Yes, I did say that.

Q. Who was present when he asked you to witness the will?

A. Mrs. Seltzer and Mr. Gallagher.

Q. Do you remember his language?

A. No, I don't recall it.

Q. Did he direct his inquiry, his request, to anyone other than you,—that is, his request?

A. No.

Q. Do you understand my question?

A. No.

Mr. Endicott: Strike the question. I will ask it again, reframe it.

Mr. Laws: Don't strike it. Let the answer in.

Mr. Endicott: I withdraw it.

By Mr. Endicott:

Q. You have related what happened. As I recall it, you said you returned from some walk or from the market, that the will was examined and that there was some discussion about the terms of it, and that then Mr. Allen asked you to witness it?

A. Yes.

Q. Did you see him sign the will?

A. Yes.

Q. Did you sign it?

A. Yes.

Q. Who was present when you signed it?

A. Mrs. Seltzer, Mr. Gallagher, myself and Mr. Allen.

Q. Did you see anybody else sign the paper?

A. I saw Mr. Gallagher and Mr. Allen sign.

Q. Who was present when Mr. Gallagher signed it?

A. Mrs. Seltzer, myself and Mr. Allen.

Q. Did you hear Mr. Gallagher asked to be a witness?

Mr. Laws: Objected to.

Mr. Endicott: I withdraw the question.

Q. After the paper, which is shown to you, and marked C1, was signed, was any other paper signed that day?

A. I don't recall.

Q. I show you paper marked C2 for identification, and ask you if you ever saw that paper?

(Paper shown witness.)

A. Yes, I seen this.

Q. When was that signed?

A. The same day.

Q. Will you tell us the circumstances surrounding the execution of that paper?

A. I don't know what you mean.

Q. Tell us what happened when that paper was signed.

A. Nothing happened; we just signed it.

Q. Did you see Mr. Allen sign that paper?

A. Yes.

Q. Did you see anybody else sign it?

A. Mr. Gallagher and myself.

Q. Was anything said by Mr. Gallagher when he signed that?

A. No, there was nothing said. All that was said was, all that he said was, that everything is o. k.

Q. Do you know whether or not he had read the paper before he signed it?

A. Yes, he read it.

Q. Did he tell you what it was?

A. Yes.

Q. Did you see Mr. Gallagher sign this paper?

A. Yes.

Q. Who was present?

A. Mr. Gallagher, Mrs. Seltzer, Mr. Allen and myself.

Q. Was Mr. Allen present when you signed it?

A. Yes.

Q. Was Mr. Gallagher present when you signed it?

A. Yes.

By the Court:

Q. Were you present when each one of them signed?

A. I was there when everybody signed that paper. I was there all the time.

By Mr. Endicott:

Q. All three signed in each other's presence?

A. Yes.

Mr. Endicott: We would like to examine this witness later on as to other elements of the case; but we want to close the proofs of the will at this time, reserving the right for further examination.

Cross-examination.

By Mr. Lewis:

Q. When did you say this will was signed?

A. October 25, 1919.

Q. How old were you at that time?

A. 14 years old.

Q. Do you have a very distinct recollection of this day?

A. I don't know what you mean.

Q. Do you have a very distinct recollection of events that occurred on October 25, 1919?

A. Yes.

Q. Can you recall some other events that happened on that date other than the execution of this will?

A. All that I can say is what I told to this here man.

Q. What time of day was this?

A. It was noon time.

Q. Who is this Mrs. Seltzer you are speaking about?

A. It is his stepdaughter.

Q. Mrs. Reulens mentioned in the will?

A. Yes.

Q. Why do you call her Mrs. Seltzer?

A. She was under that name, she went under that name, because she is in business under the name of Bowers-Seltzer-Mead.

Q. What is that?

A. She is under the name that permits her to use that name, Bowers-Seltzer-Mead,—it is a drink.

Q. She goes under two names?

A. She goes under Mrs. Seltzer, and Mrs. Seltzer was all that I knew her by.

Q. You didn't know that she went by the name of Mrs. Reulens?

A. You mean Mrs. Reulens?

Q. Yes.

A. Yes, I did.

Q. Which is her correct name?

Mr. Endicott: Objected to. There is no indication that this gentleman knows her correct name.

Mr. Lewis: I think that is entirely proper. The will seems to be for the benefit of Mrs. Reulens. We have the right to know whether or not these two names are the one and the same person.

The Court: He said they are the one and the same.

By Mr. Lewis:

Q. How is she generally known, by Mrs. Seltzer or Mrs. Reulens?
A. Mrs. Seltzer.
Q. Did you know that she went by the name of Mrs. Reulens at the time of the execution of this will—her name, her proper name was Mrs. Reulens?
A. Yes.
Q. You knew it at that time?
A. Yes.
Q. What name does she go under,—you know her now?
A. Yes.
Q. When did you see her last?
A. I saw her yesterday.
Q. You know what name she goes under now?
A. Yes.
Q. What name?
A. Lillian Ida Seltzer Reulens.
Q. She goes under that name now?
A. Yes.

Q. At the time of the execution of this will she went under the name of Seltzer.

A. Yes.

Q. You were a boy then of fourteen years of age?

A. Yes.

Q. You say that this happened at noon?

A. Yes.

Q. Where did this other so-called witness, Mr. Gallagher,—was he at the house when you and Mr. Allen returned?

A. Yes.

Q. What was he doing at the house?

A. I don't know what he was doing there. He came there, I understand, to talk some business with Mr. Allen.

Q. Were you well acquainted with him?

A. With who?

Q. With Mr. Gallagher?

A. No, I was not.

Q. You didn't know who he was?

A. No, sir.

Q. Did you ever meet him before that occasion?

A. No, sir.

Q. That was the only occasion that you ever met him?

A. Yes.

Q. He was Mr. Gallagher, and you only knew him by what was told you?

A. Yes.

Q. How long was Mr. Gallagher there?

A. I don't know how long he was there before I got there.

Q. You stated Mr. Gallagher was there in response to some business with Mr. Allen?

A. Yes.

Q. You had never seen him before this occasion?

A. No, sir.

Q. Are you sure he didn't go there to see Mrs. Reulens or Mrs. Seltzer?

Mr. Endicott: Objected to as being a conclusion as to the actions of another person.

Mr. Lewis: This is cross-examination. I think I am entitled to some latitude.

Mr. Endicott: It is objected to.

Q. How long have you known Mrs. Seltzer or Mrs. Reulens?

A. Ever since I was eight years of age.

Q. You were employed there by her?

A. Yes.

Q. You were generally around the house?

A. Yes.

Q. This man Gallagher you say you never saw him before this occasion?

A. No, sir.

Q. Where was Mr. Allen living at the time?

A. I think he was living at his Allegheny Avenue home.

Q. How came he to be present at this place that day, do you know?

A. I don't know.

Q. Was Mrs. Seltzer-Reulens in the room when the will was executed?

A. Yes.

Q. Who read the will?

A. Mrs. Seltzer—by permission, Mr. Allen asked her to write it.

Q. Mrs. Seltzer wrote the will, you say?

A. Yes.

Q. Did you see her write it?

A. No, sir, I did not.

Q. How do you know she wrote it?

A. He told her to write it, in my presence.

Q. He told her?

A. Yes.

Q. Whether or not she wrote it, you do not know?

A. No, I don't know.

Q. When did he tell her to write it?

A. When we were going to marketing.

Q. Was that on the same day that this paper was supposed to be signed?

A. Yes.

Q. How long before your return from the market?

A. We went about ten o'clock and returned at noon.

Q. When you got back this paper was written?

A. Yes.

Q. Where was Mr. Gallagher at the time, did he come in, or did he come in later, or was he there already?

A. He was already there when we returned.

Q. He was there when you returned?

A. Yes.

Q. Do you know where Mr. Gallagher lived?

A. I think he lived on Broad Street; I think I heard Mr. Seltzer say.

Q. Was he a frequenter of Mrs. Seltzer's house at one time previous to this, at any time?

A. I don't know.

Q. As I understood you to say, this is the first time that you ever saw him?

A. Yes.

Q. If he had been a frequenter of the house you would have been likely to have seen him?

A. What is that?

Q. If Mr. Gallagher had been a frequenter of Mrs. Seltzer-Reulens home, you would have been apt to have known it, would you not?

A. Yes.

Q. Living there with her you knew who frequented there or came into her home?

A. I didn't live there. I only worked there.

Q. Were you there a greater part of the day or not?

A. I was there from morning until night, when I went home.

Q. From morning until night?

A. Until seven o'clock at night.

Q. How often did Mr. Allen visit Mrs. Seltzer-Reulens?

A. Quite often.

Q. At her home?

A. Quite often.

Q. What do you mean by quite often?

A. He used to come two or three times a week.

Q. Two or three times a week?

A. Yes, sir.

Q. Did you hear this paper read?

A. Do you mean the will?

Q. Yes, before you signed it?

A. Yes.

Q. Who read it?

A. Mr. Allen.

Q. Did he read it out loud?

A. Yes.

Q. Did he make any changes?

A. No, sir.

Q. Made no changes?

A. No, sir.

Q. He said it was satisfactory?

A. Yes; he just said he wanted her to have everything because she put the relatives in and the nieces in it. He wanted that out, but she didn't approve of it. He wanted her to have everything herself.

Q. He did?

A. Yes.

Q. So that Mrs. Seltzer did not approve that?

A. No, she wanted the relatives and nieces to have something.

Q. Did she say what she wanted them to have?

A. Yes, I believe she did, but I forgot what she said.

Q. Did she mention anybody else that she thought should have anything?

A. No, sir.

Q. She had a sister?

A. Yes, sir.

Q. Mrs. Seltzer had a sister?

A. Yes.

Q. What was her name?

A. Mrs. Shumway.

Q. That was her sister?

A. Yes.

Q. Was anything said about Mrs. Shumway having anything under the will?

A. Mr. Allen said that she had plenty and that she didn't need any. He said, "You need it all."

Q. Did Mrs. Seltzer-Reulens insist that his relatives or his sister be remembered or given a legacy under the will?

A. I said that he said that she wanted the nephews and relations of him, to have some money and that he didn't want them to have anything.

Q. He didn't want them to have anything?

A. No, he wanted her to have everything.

Q. When it came to the sister you say that her name was mentioned?

A. Well, Mrs. Seltzer,—I don't know how it happened, but he just said that she had plenty and that he wanted her to have everything, because on that next day I think it was, we were to go and take a trip to Atlantic City.

Q. Have you seen this will or a copy of it since this time?

A. No, I don't believe I have.

Q. Have you ever talked it over with anybody?

A. No.

Q. Talked about this will, what you are to testify to?

A. Only to Mrs. Seltzer.

Q. Have you talked with any counsel relative to it, any of the lawyers?

A. Yes.

Q. Whom?

A. To Mr. Alker.

Q. When you talked to Mr. Alker with reference to that, when was that?

A. Last summer, I believe.

Q. Were you shown a copy of it at that time?

A. No, sir.

Q. When did you see the original of this so-called paper writing?

A. Right after Mr. Allen died.

Q. Right after Mr. Allen died?

A. Yes.

Q. Didn't you say awhile ago that from the time you signed it you hadn't seen it?

A. You didn't ask me that.

Q. I asked you that.

A. I didn't understand you.

Q. I asked you the question, if you had seen it, when you had seen it, and you said that you hadn't seen it since that time. Who showed it to you?

A. Mrs. Seltzer.

Q. Where?

A. In her home.

Q. What was said, what conversation did you have with Mrs. Seltzer with reference to it, why did she show it to you?

A. Because I am a witness on the will.

Q. Just state what was said to you by her on this occasion when she showed you this paper.

A. I don't remember.

Q. Now, when she first showed that to you, do you have any recollection, or did you have any recollection, until you were reminded, of any of the facts, the circumstances relating to the signing of it?

A. I don't remember.

Q. Did you discuss with her any of the facts and circumstances of the signing of this paper at that time?

A. I don't remember.

Q. In other words, is the Court to understand that

she merely showed you that will and that nothing else happened?

A. She said she is going to put it in; she said there is no other claim, no other will but hers.

Q. Can you give or relate any fact or anything else that you did on that day except to witness that will?

A. What day?

Q. On October 25, 1919?

A. Well, if you mean what I did, I came there and worked and I went to marketing and signed the will and after the will was signed I went on with my work, what I always did.

Q. And on the next day what did you do?

A. I did the same as always.

Q. Have you any recollection of what you did the day before?

A. The day before? No, I can't remember that.

Q. Would you have any recollection of this event if you had not been reminded of it or talked it over with somebody?

Mr. Endicott: Objected to. That calls for a state of mind.

The Court: It is permitted.

A. I don't know.

By Mr. Lewis:

Q. You don't know?

A. No.

Q. Before you talked this over with Mrs. Seltzer, or Mrs. Reulens—which is the right name,——

Mr. Endicott: They are both right.

Mr. Alker: She is married twice.

Mr. Lewis: He says Reulens.

The Witness: Mrs. Seltzer is the name of her first husband and Mr. Reulens is her second husband. She goes under the name of Seltzer because she is in the business of Bowers-Seltzer-Mead.

By Mr. Lewis:

Q. Had you given this thing any thought until you had this conversation with Mrs. Seltzer?

A. No, I have not.

Q. As a matter of fact you had forgotten about it?

A. No, I hadn't forgotten about it.

Q. Unless you had gone over this matter particularly, do you suppose that you could recall the details that you attempted to testify to?

A. Yes, I could.

Q. And yet, you say as to the day before and the day after, and other days, that you cannot remember?

A. I remember everything that happened on October 25, 1919.

Q. You do?

A. Yes.

Q. And yet you say you cannot remember what occurred the day before?

A. All that I can tell you now is, I don't understand what you say; when I went there every day, I filled up the extract of mead and delivered the

mead to drug stores and things like that—if that is what you want to know.

Q. That was mere routine work, was it not? Did anything else occur,—was there anything else other than mere routine work that you have any recollection of?

A. No, sir.

Q. In other words, other than mere routine work, that you were employed to do by her, you have no recollection of anything else that occurred at that time?

A. No, sir.

Q. And yet you are here attempting to testify to the full particulars as to the execution of this so-called paper?

The Court: He had better understand that.

A. Yes.

Mr. Endicott: That is objected to as argumentative.

By Mr. Lewis:

Q. How about Mr. Allen? Detail what he said to you before you signed that.

A. Mr. Allen came in from marketing and he sat down and he said, "Lillie, have you got the will made?" And Mrs. Seltzer said, "Yes." Of course, we all sat down at the table and he picked up the paper and read it over and over and over again. He says, "Are you sure you want them to have that money?" And she says, "Yes."

Q. Did Mr. Allen repeat to you that this was his last will and testament?

A. Yes, he did, his last and only will, he said, that he would ever make.

Q. To whom did he repeat that?

A. He repeated that to Mr. Gallagher, Mrs. Seltzer and myself.

Q. What was said in reference to,—who signed it first?

A. Mr. Allen signed, then I signed, and then Mr. Gallagher.

Q. Where was Mr. Gallagher when you came back?

A. He was in the dining room.

Q. Where was this will executed?

A. In the dining room.

Q. Did anybody call him in?

A. No, nobody called him in. He was already in the dining room.

Q. He was already there?

A. Yes.

Q. Mr. Gallagher you had never seen before?

A. No, but I had heard of him.

Mr. Endicott: This is being hashed and rehashed, but I do not want to object, but that same question has been asked at least three times.

Mr. Lewis: That was preliminary to another question I wanted to ask. I guess that is all.

(Witness excused.)

JOHN J. GALLAGHER, sworn.

Direct examination.

By Mr. Endicott:

Q. Where do you live?

A. At the present time I am living at 1421 Indiana Avenue.

Q. What city?

A. Philadelphia.

Q. Did you know Albert Allen in his lifetime?

A. Yes, I knew him very well. I associated with him.

Q. How long had you known him?

A. I knew him from 1917 up to the time that I signed that will. Then I knew him afterwards. Then he got a housekeeper and then he disappeared. I didn't see him afterward. I want to state,——

Q. Just a minute, please.

The Witness: All right, go ahead.

Q. In 1919 did you have any business transaction with Mr. Allen?

A. No, it was all social. I used to take visits with him to his real estate man and also to take packages down to Mrs. Seltzer after his wife died.

Q. Did you see him in October of that year?

A. October of that year? Yes, 1919.

Q. Do you recall the occasion when the papers were signed?

A. Yes, I was there when he came in and when I signed that will.

Q. Do you recall an occasion when Mrs. Reulens and Mr. Allen and you and Mr. Blackstone were present?

A. No, my only dealings with him and Mrs. Reulens,—I beg your pardon, are you speaking about his sister? I get mixed up. I am speaking of Mrs. Seltzer. Please use "Mrs. Seltzer."

(Question withdrawn.)

Q. In October of 1919 did you know anything about the paper that Mr. Allen signed?

A. Yes.

Q. Do you know the date?

A. Yes, the 25th.

Q. October 25?

A. Yes, 1919.

Q. I show you a paper marked for identification, C1, and ask you if that is the paper to which you have thus referred? (Paper shown witness.)

A. Where is that other paper? There is a codicil to this, isn't there?

Q. We are talking about the first paper, first.

A. This is the first, October 25; that is my signature there.

Mr. Endicott: The witness examines Exhibit C1.

By Mr. Endicott:

Q. Does your signature appear on that paper? Is that your signature?

A. Yes, that is my signature.

Q. Will you tell us how your signature comes to be on that paper, that is to say, all the events that happened on that day in connection with your being there and your signature?

A. On this paper?

Q. Yes.

A. Well, Mr. Allen and I associated together and we used to take some clothes and one thing and another down to Mrs. Seltzer's house. On this occasion we went down there with two packages, the night before, and we couldn't get in, so I says to Mr. Allen, "I will return these packages and,—I will return with these packages, and I will bring them down tomorrow, about noon." I wasn't working then. I am kind of retired. My business, as a rule, is in New York. However, I will keep to the subject. The result was, I went down there at noon the next day and while I was there Mr. Blackstone and Mr. Allen, —I asked for the boys and she says, "They are out to market." So after a while they came in and this will was brought up, and he read it over carefully. He read it a couple of times, and he said, "That is all right." I was sitting on that side of the table and Mr. Blackstone,—Mr. Allen was here and Mr. Blackstone was there. So he says, "All right, will you sign? Will you sign?" And I said, "Why, yes." So he handed the pen to the boy first. He knew what he was doing, so he signed first and Mr. Allen signed. Then I turned the pen over to this young fellow. Then I was on the opposite side of the table and there was pens over there and pens here and a couple of bottles of ink and I just picked up the pen and signed it at Mr. Allen's request. That explains,——

Q. Just a minute. Did Mr. Allen make any statement about what the paper was?

A. Oh, yes, that it was his will.

Q. What did he say, if you recall?

A. He said, the will; we all knew it was a will.

Mr. Lewis: We object to that part of the question where he says "We all knew it was a will."

Q. What did he say?

A. They read it over and he says, "All right. That is all right," we all signed. Outside of that, whatever transpired, I don't know, but he asked us to sign. He asked this boy and me to sign, and we signed. That is all.

Q. Who was present when you signed?

A. Mrs. Seltzer. There was only three of us; Mr. Allen, Mrs. Seltzer and the boy.

Q. Four of you?

A. Three of us.

Q. Three of you?

A. Myself, Mr. Allen and Mrs. Seltzer and the boy, four of us. My memory got a little, is not so good. I am pretty well up.

Q. Did all of you sign at the same time?

Mr. Lewis: Objected to and ask the question be stricken.

Q. Was there anybody there when you signed?

A. Yes, there was four of us, Mr. Allen, Mrs. Seltzer, and Harry Blackstone and myself.

Q. Were you there when anybody else signed?

A. Only four of us, we all signed. The witnesses

signed, and everybody signed, that closed the affair. There was nothing more said from that time to me, until I heard about this contest. Of course, I don't know anything about the case. It is only a supposition,——

Q. Did you see anybody else sign this paper?

(Objected to as leading.)

Mr. Laws: I asked that question and you had it ruled out.

(Objection sustained.)

By Mr. Endicott:

Q. Did Mr. Allen tell you what that paper was?

(Objected to.)

Mr. Endicott: I asked him that several times.

Mr. Laws: The form of the question is objected to.

A. What is the question? You better come here so that I can hear. I am no spring chicken any more, I am sorry to say; my hearing is going.

By Mr. Endicott: Can we have a ruling on that?

The Court: I sustain the objection.

Mr. Endicott:

Q. Do you know whether or not Mr. Allen knew what that paper was?

(Objected to.)

A. Sure, he knew what it was, or he wouldn't have signed it.

Mr. Laws: The question is objected to, and the witness must state how he knew it.

Mr. Endicott: That is for me to develop.

The Court: He said that the decedent knew what it was.

By Mr. Endicott:

Q. You said he knew what the paper was?
A. Yes.
Q. How do you know he knew it?
A. After he read it.
Q. What did he do that made you know that he knew what it was?
A. What did I do?
Q. No, what did he do that made you know that he knew what it was?
A. We were all sitting there and the subject of the will was brought up, and it was brought out. Mrs. Seltzer brought it out and put it on the table and he signed it after him reading it.

Q. How do you know that he knew it was his will?
A. Because he requested it, to have one made.

Mr. Endicott: We want to reserve the right to have the further testimony of this witness.

Mr. Lewis: Not in this connection?

Mr. Endicott: Not in this connection.

Q. Was there a second paper signed on this same day?
A. A which?
Q. A second paper signed the same day?
A. They were signed together. There was signed two sheets.
Q. Two sheets?
A. Yes.
Q. The paper I now show you, marked C2 for identification, was that one of the papers that was signed that day? (Paper shown witness.)
A. Yes, there was two sheets.
Q. The answer is "Yes"?

Mr. Lewis: The witness says "two sheets."

The Witness: What I meant, there was two. I guess you would call that a codicil. That was written, that was written and we all signed.

Q. Did you sign this paper? (Paper shown witness.)
A. Yes, I signed it.
Q. Is that your signature?

A. Yes, I can swear to it. That is my signature.

Q. Did you see anybody else sign that paper?

A. I saw Mr. Allen and the boy, the young fellow, Blackstone.

Q. Did Mr. Allen make any statement about what the paper was?

A. Yes, he said, well, he didn't make a statement to say what it was, but he knew it was his will, without making a statement.

Q. Did he make any statement about what the paper was?

A. He didn't have to make any statement. He knew what it was.

Q. Did he say anything to you about signing the paper?

A. Yes, after he read it over he asked us to sign it. He didn't use the singular, he used the plural.

Q. Who was the plural directed to?

A. To Blackstone and myself.

Q. What was it he directed about?

A. He put his name, and signed, and asked us to sign. Now that is all there is to it. There is no collusion. I will swear to it, because I don't have to have any collusion with anybody.

Mr. Endicott: There is no question pending.

Cross-examination.

By Mr. Lewis:

Q. How old are you?

A. I will be 75 next April the 14th, the day after

Abraham Lincoln was assassinated. I am only putting that in for a side remark.

Q. Do you recall anything that occurred on October 24, 1919?

A. The 24th?

Q. Yes.

A. Yes, the night before, Mr. Allen and I were taking goods down to Mrs. Seltzer's house.

Q. You related that.

A. Yes; it was her mother's clothes and one thing and another. So this night we went down and he said, "By the way, I have something to go down to Lillie,"—he called her Lillie,—and I said, "All right." So we went down there but couldn't get in. That was on the 24th.

Q. What happened on the 26th, that you remember?

A. What?

Q. The 26th?

A. I didn't see him on the 26th.

Q. What event happened in your life, on the 26th of October, 1919, that you recollect?

A. On the 26th?

Q. Yes, the 26th? The day after this paper was signed. Do you remember anything on the day of the 26th, that happened?

A. The next day after this was signed?

Q. Yes.

A. I lived around the corner from him and I may have gone around to have a little chat with him.

Q. Do you remember anything that occurred on the 26th of October, 1919?

A. I can't remember unless it is brought to my

memory. I can't remember my business between him and me.

Q. Who brought these papers to your memory, before you testified today?

A. I never saw them until I saw them in her house.

Q. In her house,—do you mean Mrs. Seltzer's house?

A. Mrs. Seltzer's.

Q. When did you next see them after you say you signed it?

A. When did I see them afterwards?

Q. Yes, since Mr. Allen's death?

A. Not that year, until this case came up.

Q. Did you see them only after Mr. Allen's death?

A. What is that?

Q. Did you see them after Mr. Allen's death?

A. Not at that time. I forget whether I did or not.

Q. When did you see these papers last? What day did you see these papers first after Mr. Allen's death?

A. I saw them first when they were brought out, when they were signed. Outside of that day I didn't see them before or after, to my knowledge.

Q. When did you see them next?

A. Next?

Q. Yes.

A. I saw them—I was called as a witness in this case. That was all.

Q. Who called you as a witness?

A. I saw them at the lawyer's office. We were consulting with the lawyer and they were brought out, and the originals were brought out.

Q. After Mr. Allen's death?

A. I am speaking now of these things, now. I

am speaking that they were brought out in this controversy. I am not speaking of 1919.

Q. These papers were shown to you in the lawyer's office in Mrs. Seltzer's presence?

A. Who?

Q. Was Mrs. Seltzer present?

A. When these papers were shown,—in what office?

Q. You just spoke about a lawyer's office.

A. No, we didn't have a lawyer at that time.

Q. I mean recently. How recently have you seen these papers before they were produced in this courtroom?

A. We didn't consult with any lawyer, to my knowledge, at that time; I don't think so. What are you trying to do,—to drive?

Q. That is what you want to dodge, is it?

A. Yes. You are trying to make me believe that I done something that I didn't do.

Q. No, I am not. These two papers; you see them?

A. Yes.

Q. They are marked Exhibits Number 1 and 2 by your attorney?

A. Yes.

Q. How recently have you seen them before you came to this courtroom?

A. Before now,—today?

Q. Yes.

A. When this one,—when I was first notified that there would be a contest. I was in the habit of visiting Mrs. Seltzer at all times because I used to do business with her.

Q. Just wait a minute, please.

A. I was asked, and I came on from New York, the

last time; my business calls me in New York, and I was asked to come down to be a witness in this case, and the papers were brought out.

Q. Where did that take place?

A. I forget now.

Q. Where was it?

A. At Mrs. Seltzer's house.

Q. At 1917 W. Dauphin St.?

A. On Susquehanna Avenue, down in Mrs. Seltzer's house, brought out lately.

Q. When you were first shown the papers, did you have any recollection of them?

A. When?

Q. When she showed them to you?

A. Lately?

Q. Yes.

A. Yes, I recognized them, right away, on my memory coming good on the subject. It was ten years ago that this happened. I want to say that Mr. Allen was in the best of health, a good citizen of Philadelphia, and a member of church.

(Recess until 2 o'clock P. M.)

(After recess, 2 P. M.)

Mr. Endicott: We now offer in evidence will and codicil of October 25, 1919.

Mr. Lewis: That is objected to, on the ground that it has no attestation clause, and that it has not been proved according to the Statute in such case made and provided.

We notice that the will has no attestation clause to

it and that there is not sufficient proof as contemplated by statute.

We submit that they have to prove affirmatively every detail relative to a due execution of the so-called instrument.

The Court: What particular is lacking?

Mr. Lewis: In the first place they have to prove, by both witnesses, affirmatively, that he stated "This is my last will and testament," and that he asked them or requested them to subscribe as a witness or witnesses to such instrument.

Also, that the last witness, if I recall the testimony correctly, says that it is all o. k., without saying what.

The Court: I think that the testimony is sufficient to entitle it to be admitted.

Mr. Lewis: I would like to have an exception.

(Exception noted.)

THOMAS ALLEN, sworn.

By Mr. Endicott:

Q. Where do you live?
A. 243 Hansberry Street.
Q. Philadelphia?
A. Germantown, Philadelphia.

Q. What was your relation to Albert Allen, deceased?

A. A brother.

Q. What is your age?

A. 83.

Q. How old was your brother at the time of his death?

A. 77.

Q. Did you see him during the last year of his life?

A. I hadn't seen him since last July.

Q. July of 1928?

A. Yes.

Q. He died in September, and you refer to the July previous,—July, 1928?

A. Yes.

Q. Where did you see him?

A. Down at the house.

Q. Where?

A. In Pleasantville.

Q. Pleasantville, New Jersey?

A. Yes, sir.

Q. Who all were present there?

A. Mrs. Ailes and Mr. Ailes. We were in the automobile over at Pleasantville.

Q. How did you come to be there?

A. I was down there for a day or two, visiting him, and Mrs. Weiss came down a couple of days afterward, and Mr. and Mrs. Ailes went over to the depot and met him; and we all had gone to Atlantic City together.

Q. Were your relations with your brother friendly?

A. Indeed, we were, yes.

Q. Did you have any conversation with your brother in July, 1928, about the making of a will?

A. No, he didn't say anything about that. He wasn't feeling as well as he ought to have been. I think he was feeling a little poorly.

Q. Did you have any conversation with Mrs. Ailes about your brother's will, your brother Albert Allen's will?

A. No, sir.

Q. Did Mrs. Ailes talk to you about the making of your brother's will?

A. She said to me that all she wanted was all that he got in New Jersey.

Q. When did that conversation take place?

A. This same day, over there in the automobile.

Q. What did she say?

A. She said she wanted all he had; she wanted him to give her all he had in Jersey, and if he didn't put it over to her she would have him make a will and she would get it. She said, "I want you to understand that Katherine Ailes is no fool."

Q. Where were you when that conversation took place?

A. In Pleasantville.

Q. Who was there?

A. Mr. Aile and Mrs. Aile.

Q. Was your brother there?

A. Yes, he was there. He was walking up and down the platform.

Q. Did he overhear this conversation?

A. No, sir.

Q. He wasn't actually present with you?

A. No, sir.

Q. What is the platform you referred to?

A. The railroad platform. We were waiting for the train.

Q. To go away?

A. To come to Philadelphia, yes.

Q. You had been there for a couple of days?

A. Yes.

Q. And she said that she would have him make a will, and if he didn't make it over,——

A. —if he didn't make it over to her, make over all he had, in Jersey, she would get him to make a will. Then she would get it.

Q. Did you ever talk to Mrs. Ailes before that time about the will?

A. No, sir.

Q. What was your brother's state of health when you saw him in July?

A. I don't think it was as good as it had been before.

Q. What was his state of mind?

Mr. Lewis: Objected to.

The Court: What is your objection?

Mr. Lewis: That should be predicated upon certain facts, or acts, so that a conclusion could be drawn. He is called upon for a conclusion without basing it on facts or acts of the party.

Mr. Endicott: I think that is probably true. I will reframe the question.

Q. You were with your brother for a few days in July of 1928?

A. Yes.

Q. You talked to him during that time, did you?

A. Yes, sir.

Q. Were you able to form any opinion, in your conversation with him, as to his mental condition?

A. No, not altogether; but he says to me, he says, "Tom, how much stock did you get from your brother Will?" I says, "I didn't get any." He says, "That is funny." He said, "I thought you did,"—that is the Northwestern Trust Company stock. He says, "I got a lot and I will see you get that."

Q. Did he know whether or not you had gotten any stock from your brother?

A. No, he asked me if I did.

Q. Hadn't he known that?

A. No.

Q. When did that conversation take place?

A. Over there,—no, that was in his house.

Q. In Pleasantville?

A. In Pleasantville, in his house.

Q. In Pleasantville?

A. Yes.

Q. Last July?

A. Yes.

Q. Did he say how you would get it?

A. No, he just said, "I will see that you get my stock," he says.

Q. Did you have any conversation or talk with your brother about his business affairs?

A. No, sir.

Q. Do you know who was looking after his affairs?

A. Only what she told me herself. She said she was.

Q. Who did?

A. Mrs. Ailes.

Q. She told you she was looking after Mr. Allen's affairs?

A. Yes.

Q. What language did she use?

A. She said, "I am attending to Ailes' business. He is not able to attend to his business any more." She says, "For the last year I have attended to it, and the last mortgage he got he wasn't able to attend to it and I had to attend to it all."

Q. Did she tell you when that happened?

A. No, sir.

Q. The last mortgage?

A. Yes, sir.

Q. When did she tell you that?

A. That was spoken over there.

Q. At the platform or at the house?

A. She was sitting in the automobile.

Q. Waiting by the platform?

A. Yes, and Mrs. Weiss was in there at the time in the automobile.

Q. How did that topic of conversation come up? Were you talking about your brother's health?

A. No, we weren't talking about that. I know he hadn't felt so good and he just mentioned that, that was all in the regular conversation.

Q. Did you see any acts on the part of your brother which made any impression upon your mind as to his mental condition?

A. No, only I know that he wasn't as well as he had been.

Q. Did you know what was the matter with him?

A. No, sir.

Q. How did you know that he wasn't as well as he had been?

A. By his looks.

Q. What were the relations between your brother and Mrs. Ailes, if you know?

A. Well, I couldn't tell you that.

Q. What was Mr. Ailes' office in your brother's house?

A. I met her,—the first time I met Mrs. Ailes, I was going up in a 13th Street car. I was sitting in a seat and I suppose she was sitting back of me. I didn't know her at the time, and she tapped me on the shoulders and she says, "This is Mr. Allen's brother?" and I said, "Yes." She said, "I am Mrs. Ailes. I am keeping house for him. I am going up there now." She got out at Allegheny Avenue, and that was where he was living at that time.

Q. That is the first time you knew she was keeping house for Mr. Allen?

A. Yes.

Q. From that time on did you know she was keeping house for him?

A. I know she was there all the time.

Q. Did her husband stay in the house?

A. Yes, he was there?

Q. Were there any other people in the house?

A. No, only her daughters would come in once in a while; Frank's brother was there once when I was there, that is, Mr. Ailes' brother.

Cross-examination.

By Mr. Lewis:

Q. You say she was keeping house for him. Do you know whether or not Mrs. Ailes was keeping house or that she was living there with Mr. Ailes, making their home there?

A. Only what she said herself. She said she was keeping house for him.

Q. How long had they been living there with him, do you know?

A. No.

Q. At Pleasantville?

A. At Pleasantville?

Q. Yes.

A. I don't know how long they lived there.

Q. You know it to be some years?

A. Yes.

Q. Ever since the Ailes came to live in Pleasantville, your brother came to live with them?

A. Yes; he went down and got that property, fixed it up, and from that time on, lived there.

Q. They lived there together up until the time of Mr. Allen's death?

A. As far as I know, they were away when he died.

Q. You would go down there from time to time and visit him?

A. I was down there just about three or four times. I used always to 'phone down and see if he was home, and always went on Saturday and stayed until Monday.

Q. You say you had some conversation with Mrs. Ailes relative to the disposition of your brother's

property she saying she wanted what your brother had in Jersey. Do you know of any property he had in New Jersey?

A. He didn't own any, only where he lived.

Q. Where was that,—where the Ailes lived?

A. Yes.

Q. Whose was that,—his or Ailes'?

A. His; he bought that.

Q. How do you know that?

A. Only by him saying so.

Q. You had no personal knowledge?

A. Mrs. Ailes told me afterwards that he had deeded it over to her; to her, yes.

Q. This conversation took place in July of last summer?

A. Yes; not last summer, the summer before.

Q. The summer before?

A. The summer of 1928.

Q. That was last summer?

A. That is so.

Q. When did Mrs. Ailes tell you that he had deeded it over to her?

A. One day when I was down there. I think it was the same day I was down at Pleasantville. The way it was, Mrs. Weiss was talking to her and said something about "That property," and Mrs. Ailes says, "That property? That is mine, long ago. That is all fixed over to me."

Q. You don't know as a matter of fact that Mrs. Ailes bought that property herself, or not, whether she bought it or not?

A. No, I do not.

Q. Did you ever hear Mr. Allen say that he had bought that property?

A. Yes, that he had bought it and fixed it up, fixed it all up. It was an old place.

Q. Who bought it, do you know?

A. I couldn't say; only taking his word for it.

Q. You don't know whether it was bought by the Ailes or your brother, or not?

A. Only what he said; and what Mrs. Ailes said, that it was deeded over to her long ago.

Q. Did she say by whom it was deeded?

A. She didn't say. It wasn't asked.

Q. You don't know whether or not it was deeded by the original grantor?

A. No, I know my brother owned it when he first went there.

Q. How do you know he owned it?

A. He told me. He said, "Tom, come down and see what a nice property I have. It is an old one but I am going to fix it up," which he did. He said, "I am going to buy the property across the street, and do the same way."

Q. Who fixed it up—your brother or Mrs. Ailes?

A. I can't answer that question.

Q. You are not prepared to say?

A. No.

Q. On the occasion of your visiting there, Mrs. and Mr. Ailes and their daughters were usually there?

A. They were present, but not always—the daughters. The daughters lived within a few squares.

Q. The daughters lived within the same vicinity?

A. Yes; they were not at the house all the time. Sometimes they wouldn't be for a day or two, when I was there.

Q. They were always at the house when you were there?

A. Well, they always came to the house when I was there. They thought something of me, and used to call to see me.

Q. During these visits to your brother, your relations with Ailes were very pleasant?

A. Yes.

Q. You refer to your brother not looking so well on this occasion.

A. Yes. That is, when I seen him that time.

Q. Do you remember in 1919 the condition of your brother's health?

A. I don't know anything at all about it.

Q. You don't know what his condition of health was 10 years ago?

A. No.

Q. You are not prepared to say what condition his health was in at the time this alleged will to Mrs. Reulens was made?

A. This last will?

Q. No, the will to Mrs. Reulens, in 1919?

A. I didn't know it until this happened to come out. I didn't know there was another will.

The Court: At this point I would like to ask Senator Daix a question or two.

AUGUSTUS F. DAIX, JR., recalled.

By the Court:

Q. At the time you say your office foreclosed a mortgage for Mrs. Ailes, were you and your son associated together in the practice of law?

A. No, sir, he was not a lawyer.

Q. He was not?

A. No, sir.

Q. Was he working in your office?

A. Yes, in my office.

Q. For you?

A. Yes; but out of the foreclosure of the mortgage I received no benefit whatever, if that is what you mean. I wasn't active in the office practice at that time, for I was ill and not expected to live and my son took this matter to a lawyer by the name of Schwartz, I think, and he looked after it and I didn't bother much about it.

THOMAS ALLEN, resumed.

By Mr. Endicott:

Q. There has been some cross-examination dealing with the transfer of some property in Pleasantville, to Mrs. Ailes. You were acquainted with your brother's business affairs for some years?

A. Yes.
Q. Was he a good business man?
A. At times he was. But not toward the last.
Q. Was he careful about his money?
A. Yes, very careful.
Q. He watched the pennies, did he?
A. Yes, he did.
Q. Was he in the habit of making gifts to people?
A. Not as I know of.
Q. Did you ever know him to make any gifts to anybody prior to the last 5 years of his life?
A. Only that he told me the last time I was down there that he bought ——
Q. Prior to the last 5 years of his life; I don't mean ordinary Christmas gifts, but gifts other than that?
A. No, sir.
Q. He didn't give his money away?
A. No, sir.
Q. Did Mrs. Ailes tell you whether or not he had given her the house?
A. The only thing I heard her say, she said, "It was deeded to me long ago."
Q. She didn't tell you she bought it from him?
A. No, sir.
Q. Did she say she had paid him anything for it?
A. No, sir, she didn't say.
Q. Who owned the house on Allegheny Avenue?
A. My brother.

By Mr. Lewis:

Q. The house on Allegheny Avenue, did your brother own that at the time he died?

A. No, he had sold it. He sold it just before he moved from there. I was up there when he was selling out, that is, getting rid of his stuff, and he said, "Tom, I have sold the house."

Q. Who lived in that house, do you know?

A. No.

Q. Was that sold before he came to Pleasantville?

A. Yes.

Q. Therefore I understand he did not own it at the time he died?

A. What did you say?

Q. I understand he didn't own it at the time of his death?

A. No, sir.

Q. That was some years before his death?

A. Yes, sir.

HARRY GINSBURG, sworn.

By Mr. Endicott:

Q. Where do you live?

A. I live on the southwest corner of 20th and Dauphin Streets, Philadelphia.

Q. Are you engaged in business there?

A. Yes.

Q. In what business?

A. Real estate and finance business.

Q. Did you know Albert Allen in his lifetime?

A. I have known Mr. Allen for the past 5 years.

Q. How did you first come to know him?

A. He used to come to visit, as I understand, his stepdaughter. She lives on Belfield Avenue between Nineteenth and Twentieth; I don't know the exact number. He used to come in my store. I have a cigar store on the corner. I am in the tobacco business. He used to tell me, "Do you want a nice deal?" He belonged to the Northwestern Trust Company and talked about investment and things like that. That is how I know him.

Q. Did you see him during the last year of his life?

A. I used to see him off and on, and I ain't saw him very frequently, say about three or four times a month before he died.

Q. That was in the summer and the fall of last year?

A. Of last year, yes; that is right.

Q. How did you come to see him then?

A. He came into my place and asked me whether or not I knew a good roofer to put on a new roof on the premises where this stepdaughter resides, and fixing heaters, and so forth. He says he wants to fix the place up. He didn't feel very good; everything is all balled up. He said he wants to fix everything up because everything is upset.

Q. Did he say what he meant by the word "upset"?

A. He was always talking very sensibly. He was a very lovely person to talk to. At the last time he didn't talk good sense, at all. He looked very bad to me. He had aged quite a lot.

Q. Can you fix the date of the last time that you talked to him?

A. No, I don't know the date, at all. I know he came into the store then, about a week or ten days after the roof was put on. And when I heard he died, of course it was not a surprise to me because he looked very bad.

Q. Was this conversation shortly before he died?

A. Yes, about ten days before he died.

Q. Did he tell you about any of the troubles that he referred to? Did he give you any of the details?

A. We were talking in an offhand way. He said he had a lot of trouble. He told me that he had troubles with women, or something like that; in fact, a couple of women, he mentioned. He said he is tied up; that he has to do the way they want, and not the way that he wants, and that he is going to pull out of it, that he is going to have things fixed up. What he meant by that I don't know. I didn't ask the question because I was not much interested in the matter.

Q. Did he tell you where the women lived?

A. One woman, as I understand it, is a Philadelphia woman; I heard later, I didn't hear from him, though, that he bought her a 400 dollar coat, I understand.

Mr. Laws: I ask that that be stricken out.

The Court: Strike it out.

By Mr. Endicott:

Q. Did he tell you he bought this, or somebody else?

A. Well, I tell you: about three weeks ago ——
Q. What is that?
A. Three days ago a man came into my store ——
Q. You are not allowed to tell what somebody told you, only the statements told to you by Mr. Allen himself.

The Witness: He said that he had trouble with women.

Q. He didn't say anything about the coat, did he?
A. No, I heard about the coat business, but I don't know whether it is true or not.
Q. Did he tell you where the other woman lived?
A. He said that he was living with these people, in Pleasantville, as I understand.

The Court: That last will was made in September, 1928, was it?

Mr. Endicott: September 7, 1928.

The Court: The decedent died when?

Mr. Laws: October 22, 1928.

Mr. Endicott: The following month.

By Mr. Endicott:

Q. Did he tell you anything further about the people that he was living with in Pleasantville?
A. Not particularly, just in an off-hand way. He

said that he was so balled up and he looked very much depressed and "washed" out. He said that he had a lot of trouble and doing things that he didn't want to do. Of course, I didn't go into the question I didn't ask him anything about it.

Cross-examination.

By Mr. Lewis:

Q. You say that he came to you first, in reference to having a roof repaired?

A. No, I knew the man five years ago.

Q. I mean, in his last conversation with you?

A. In his last conversation with me he came to my place and asked me, he said, "Ginsburg, do you know a good roofer?" and I said, "Yes, I know." I said, "I know a good man."

Q. Did he say the property that he wanted to have the roof repaired on?

A. Yes.

Q. Where?

A. On Dauphin Street, between 19th and 20th.

Q. Who was it that occupied that property?

A. His daughter-in-law.

Q. His daughter-in-law?

A. His stepdaughter, as I understand it.

Q. Mrs. Reulens?

A. A Mrs. Seltzer.

Q. Or Mrs. Reulens?

A. No, I know her as Mrs. Seltzer.

Q. You know her as Mrs. Seltzer?

A. That is all I know.

Q. Did he tell you that he was going to have a roof repaired for her?

A. He says he is going to fix up everything, fix up the house for her, fix every thing in good shape so that she will be in good shape, so that she will be all right. He says, "Things is balled up."

Q. He said, "I want a good roofer"?

A. Yes, he said he wanted a good roofer. He didn't ask the name. He just asked for a good roofer.

Q. Do you know whether or not he did have that roof repaired?

A. I understand the roof was put on. The man was engaged.

Q. What was the name of the roofer who did the work?

A. I have a lot of people working for me and I looked up the bills and I gave him several names, and he said that he would communicate with them and see which one would give him the best bid to fix up the roof, so he put the roof on. He lived about a half a square away from me.

Q. Do you know who did it?

A. No, but the roof was put on.

Q. This was a house that ——

A. Mrs. Seltzer lived in it. That is right.

Q. When did that occur, that conversation? When did that conversation take place?

A. That conversation took place, I will say, in an offhand way, maybe six weeks, maybe two months; I didn't keep track of it. I know the work was done for I live a half square away and seen the men put the roof on.

Q. What do you mean by two months?

A. Maybe three months.

Q. Three months when?

A. When the roof was put on.

Q. What do you mean—I mean what do you indicate, when you say three months? How do you figure three months? You say it was done three months.

A. I will say, three months ago.

Q. Three months ago?

A. Well, February, January, I will say in December, probably.

Q. In December?

A. Probably; I never kept track of these things. They didn't concern me.

Q. This conversation took place in December?

A. Something like that. I am not clear and I wouldn't want to give any statement.

Q. You said it was in the summer months?

A. That is right.

Mr. Lewis: We object to counsel making any suggestion.

The Witness: I never kept track of this. It didn't concern me a bit.

Q. As far as you know it may have taken place last December.

A. I think it was in the summer months. I am clear now. I think it was the summer months when the roof was put on. I think it was the summer months.

Q. This summer?

A. This summer, in the summer months.

Q. What month in the summer?

A. That I couldn't tell, but the roof was put on. I am positive of that, but I never kept track of these things. They are nothing to me.

The Court: Has not the witness testified that this conversation took place about ten days before he heard of the death of the decedent, which would fix the time as being the latter part of October or the forepart of November.

Mr. Lewis: I understand that he testified it took place three months ago; then on prompting that it took place last summer.

Mr. Endicott: He said the roof was put on last summer.

By Mr. Lewis:

Q. When was the roof repaired?

A. Three or four months ago. I couldn't give you the exact date.

Q. I mean the conversation that we are talking about.

A. The conversation took place about ten days before the roof was put on.

Q. The roof was put on in December.

A. I don't remember the month. I know it was this summer. I don't recollect the month or the date, but I am living right there and saw the roof

was placed. I never kept track of that when it was placed.

Q. In other words, you don't know when this conversation took place?

A. The conversation that I had? No. When I talked to the man, about what date of the month it was I couldn't tell you. I never kept track of it.

Q. Who is in that house now where that roof was put on?

A. Mrs. Seltzer is still living in that house.

Q. Who owns the house?

A. I don't know who owns the house. I know that she is living in it, but I couldn't tell you anything about it.

(Witness excused.)

RUSSELL C. DEACON, sworn.

Direct examination.

By Mr. Endicott:

Q. Where do you live?

A. 7161 Quickford Road, Upper Darby Township, Delaware County.

Q. What is your business?

A. Real estate salesman.

Q. With whom are you engaged?

A. With the firm of McWilliams and Meloney, in Upper Marion, Pennsylvania.

Q. Do you know or did you know Albert Allen in his lifetime?

A. I did.

Q. When was the first time you met him?

A. In the early part of September.

Q. Of what year?

A. 1928.

Q. Upon what occasion did you meet him?

A. With reference to the sale of real estate.

Q. Did he seek you out or did you seek him out?

A. I first met Mr. Allen at the home of Mrs. Seltzer, 1719 West Dauphin Street, Philadelphia.

Q. Did I understand you to say that he was interested in real estate?

A. Would you care for me to give you the information as to how I met him?

Q. I want to know how you came together.

A. Exactly. I received a telephone call on a morning early in September, from Mrs. Seltzer, asking if I——

Mr. Laws: Never mind that.

Q. As a result of that you did what?

A. As a result of that call to her house—as a result of that call I called to her residence. At that time Mr. Allen was not home, but after fifteen minutes of waiting he arrived. He was in town. We drove out to the operation.

Q. That is, you and he went to the operation?

A. Mr. Allen, Mrs. Seltzer and myself.

Q. Where was the operation?

A. On the way out to the operation——

Q. Where was the operation?

A. At Overbrook Hills, Merion and Penllyn.

Q. Proceed.

A. We stopped for Mrs. Shumway on the way to the operation. She was living nearby.

Q. Did you converse with Mr. Allen?

A. I did.

Q. Did he tell you what he was looking for?

A. He did.

Q. What did he tell you?

A. He was looking for a home for his stepdaughter, Mrs. Seltzer.

Q. Did you show him a property?

A. I did.

Q. Did you show him more than one property?

A. I did.

Q. Did you see him on another occasion?

A. I did.

Q. When?

A. About ten days following the first meeting.

Q. What happened on that occasion?

A. On that occasion—it was a Sunday afternoon, Sunday around twelve or one o'clock. I received a telephone call from Mr. Allen asking me to call at the Fine Arts Building, Broad and Cherry Street, Philadelphia, that he would like to see again some of the property that I had shown him on his prior visit; with him were two ladies and a child and a man.

Q. Do you know their names?

A. I don't recall. My reason for not recalling their names is that there was an incident that hap-

pened that I did not think a great deal of the proposition of selling Mr. Allen a piece of property.

Q. What was that incident?

A. Well, he entered a sample house that we had at Penllyn, at $14,300, and he asked what it would cost furnished. I told him, around $20,000. He said to me, "Do you furnish a chicken with this house?" I said, "What do you mean?" Well, pardon that expression—I didn't say that; I said, "Pardon me. What is that you said?" I didn't get quite clear what he meant, that he meant a housekeeper to go with the house. I said, "No, Mr. Allen, we don't," and we passed it over. After that, being a salesman, when remarks were passed like that I did not take a great deal of stock in my purchaser.

Q. Did you know who he was then looking at a house for?

A. Yes.

Q. Did he tell you?

A. Yes.

Q. Who did he tell you that he was looking at the house for?

A. His stepdaughter, Mrs. Seltzer.

Q. Did you see Mr. Allen after that occasion?

A. I did.

Q. How did that come about, and when was it?

A. There was a telephone call. He called me on the phone from the Fine Arts Building at Broad and Cherry Streets, and he told me over the telephone, he asked me to call for him at two o'clock as he had some others with him and he would like to go with me again to the houses that I showed him

in Delaware County, as he was thinking of buying two homes at that time.

Q. Did you meet him again?

A. I called at the Fine Arts Building, as I say, and he and these friends were with him. I have forgotten their names. He introduced them. And we drove the four of them with the little child.

Q. Was Mrs. Seltzer in that party?

A. No.

Q. Did you drive to the operation?

A. No, I drove them to a salesman for Mr. John H. McClatchey and turned them over to him, as this particular operation is not concerned with the McWilliam and Meloney operation, or myself, but it was around the price at home that he wanted; and furthermore around the house that Mrs. Seltzer required to see.

Q. This was the third time?

A. No, the second time. I only saw him twice.

Q. Did he state to you on the second occasion that he was interested in the purchase of a house for any particular person, who did he say that he was interested in the purchase of a house for?

A. He did.

Q. Tell us who it was he said he was interested in.

A. That he intended to purchase these two homes the conversation, in getting into the machine was, that he would like to see the particular houses on Avon Road, explicitly; that these friends of his were wanting a home.

Q. Did he say who the friends were?

A. The friends he introduced me to at that time.

Q. And these friends were not—Mrs. Seltzer was not one of them?

A. No, the friends were completely strange to me. I never saw them since or prior to that time.

Q. Do you recall their names?

A. No, sir.

Q. Do you see them here in court today?

A. No, sir, I do not.

Q. Was Halloway the name of one of them?

A. I wouldn't swear to that, because my recollection is not certain on that point. The gentleman's name—I did recall, but I won't swear to it.

Q. Do you recall any other incidents that you observed when you were in the company of Mr. Allen, that led you to form any opinion as to his mental condition?

A. In the statement that he made, in the original home, the sample home, that I showed him, with reference to asking if I furnished a chicken with the house; and that was the point that he raised, and which I thought was entirely outside of the ethics of real estate selling.

Q. Did you have any other conversation with him in the automobile?

A. I turned to him at the time and he made mention of that fact, and I said, "Mr. Allen, you must be in your second childhood."

Q. What did he say to that?

A. Well, he smiled and we didn't say any more.

Q. Did this second interview result in any sales?

A. No, sir.

Q. Did you form any opinion with your inter-

views with Mr. Allen, as to whether or not he was in the full possession of his mental faculties?

A. Well, I didn't form ——

Mr. Lewis: Objected to. I object to his stating any opinion.

Mr. Endicott: I asked if he had any opinion.

The Witness: Yes.

Mr. Lewis: That is objected to.

By Mr. Endicott:

Q. What is your opinion as to his mental capacity?

Mr. Lewis: Objected to.

The Court: What is the objection?

Mr. Lewis: My objection is this: that the man merely asked the question of the witness if he furnished any chicken with the house, and we contend that that is not sufficient to base any opinion upon as to his mental capacity.

Mr. Endicott: This man was with the witness on two or three occasions and had ample opportunity to form an opinion of this man's conduct.

Mr. Lewis: Granting that it may be immoral, it

has no relevancy, and it is not relevant to show whether or not he has testamentary capacity.

Will your Honor allow me an exception?

(Exception allowed.)

By Mr. Endicott:

Q. What is your opinion as to his mental capacity?

A. My opinion of Mr. Allen's mental capacity is that he was absolutely undecided in his mind as to whether or not what he was going to do next. He didn't know what he was going to do next, from one minute to the next. During my course of business relations with him, one moment he was buying a house and the next moment he was not. Then, when I received the second telephone call it was a total surprise to me, as I never expected to hear again from Mr. Allen.

Cross-examination.

By Mr. Lewis:

Q. You say that you went there to meet Mr. Allen in response to a telephone call?

A. No, at the Fine Arts Building, Broad and Cherry.

Q. As a result of that—by the way, what office was it?

A. What is that?

Q. What office was that in the Fine Arts Building?

A. There was no office in that building. I met him at the foot of the steps. I didn't say it was the Fine Arts Building. It was some building there at Broad and Cherry Street and I was at the bottom of the steps. He said he would be there to meet me at the Academy of Fine Arts.

Q. You didn't meet him in the building?

A. No, I met him at the curb, met him in my machine. He recognized me and I recognized him.

Q. How did you recognize him, not seeing him before?

A. I did see him before.

Q. When did you see him before?

A. When I took him with his stepdaughter, Mrs. Seltzer, to Overbrook Hills.

Q. Wheu was the first time?

A. The first time was, the first time that I had him and Mrs. Seltzer to Overbrook Hills and Merion.

Q. In reference to this conversation as to furnishing a chicken, was Mrs. Seltzer present?

A. She was present.

Q. And heard the conversation?

A. She did.

Q. Did you have any inference who might be the chicken that he was referring to?

A. Absolutely no.

(Objected to.)

Mr. Endicott: That is objected to as a unfair intimation.

Mr. Lewis: I understand that this witness testified he was going to buy a house for this lady and that Mr. Allen asked him if he could get a chicken with the house.

Mr. Endicott: That is objected to. There is no inference of that kind connected with the direct examination.

By Mr. Lewis:

Q. That conversation took place in the presence of Mrs. Seltzer or Mrs. Reulens?

A. Mrs. Seltzer and Mrs. Shumway.

Q. Who is Mrs. Shumway?

A. Mrs. Shumway, my understanding is, is another stepdaughter of Mr. Allen.

Q. Mr. Allen was in quite a jocular mood at the time?

A. No, he was not.

Q. Didn't you know that he was a man given to joking a great deal?

A. I did not.

Q. During this interval did he crack any jokes or pass any wise cracks or anything of that kind?

A. Not that I can recall, no.

Q. That is the only thing that you can recall?

A. That was the statement that he made in the house, which in my opinion, well—you don't want my opinion.

Q. Having formed that opinion of Mr. Allen—

A. Yes.

Q. —— which you stated; why did you respond to a second call?

A. For this reason: in the real estate business we never know who a buyer is. After the first call at the sample house with Mrs. Seltzer and Mrs. Shumway—Mrs. Seltzer's statement was that the property that I was showing them was entirely too high in price and that she would like me to show her a property around seven thousand dollars.

Q. Was Mr. Allen present at that time?

A. Yes, he was present. Furthermore, that house proposition was too far out from conveniences for her. Then—shall I continue?

Q. Yes, go on.

A. He desired to locate in the city. I told her, being a salesman for the firm that I was with, that I was not allowed to sell property in West Philadelphia, that we have operations that we are supposed to sell. Now, then, I will give you the story as we go along. I got in touch with the salesman for the McClatchey firm and I asked him to take care of the deal as I had nothing more to do with it. Now, when Mr. Allen called me the second time, came back with reference to the house, he didn't say what he wanted to see, and we never know, today, where a sale is coming from. I made one follow-up call after the first time that I had Mr. Allen, Mrs. Seltzer and Mrs. Shumway, out. There was one telephone call to Mrs. Seltzer.

Q. As a result of this first interview you say that you came to a conclusion that Mr. Allen was an immoral man and you say that you didn't care to do business with him?

A. No, I said no such thing.

Q. Isn't that the conclusion you formed from the interview you had with Mr. Allen?

A. I did not conclude my opinion of Mr. Allen as being of immoral character; no, I did not.

Q. What inference did you put on that remark then, if it was not that, if it was not the fact that he wanted a woman for immoral purposes? Why was it that you seemed to form a very indignant opinion?

A. I didn't form an indignant opinion, but I had to handle my client with kid gloves, in other words. I couldn't say, "Come out." I said, "Mr. Allen, you must be in your second childhood." I couldn't understand why a man would make such a statement when he was out looking for a piece of real estate. I am not used to meeting that kind of mentality.

Q. Both of these so-called stepdaughters were present at the time?

A. Yes.

Q. And you, indignant as you were, from the remark that he made, you responded to the second call and had him shown other property?

A. I did, sir, and I gave you my reason for that.

Q. In other words, you varied your indignation, for business purposes, did you?

A. Absolutely.

Q. Apart from the remark with reference to the so-called chicken allegation, was that the only inference that you had to base an opinion upon as to Mr. Allen's mentality?

A. Well, no, the second—on the second call I

could not understand why Mr. Allen was interested in buying two other properties for the so-called friends of his. There was none introduced as a relation; they were introduced as friends.

Q. You did not know who they were?

A. I did not.

Q. On this second occasion was Mrs. Shumway and Mrs. Reulens—they were not present, were they?

A. No.

Q. As on the first occasion?

A. They were present on the first occasion; on the second occasion they were not.

Q. On the second occasion did he make any such wise cracks as to tell you what he wanted the house for?

A. Any wise cracks? On the second occasion? To me?

Q. Yes.

A. He did not. I was not in his presence for a period of more than forty minutes.

Q. Then the only thing that you have any inference from was this remark that he made on the first occasion when you were present with him, with Mrs. Reulens and Mrs. Shumway.

A. Mrs. Seltzer and Mrs. Shumway.

Q. You did not know Mrs. Reulens?

A. I don't know any Mrs. Reulens.

Q. You understood them to be his daughters by a former wife?

A. I presumed so, and he addressed me, made mention of the fact, that fact, and also Mrs. Seltzer, that he wanted to buy a home for his stepdaughter,

Mrs. Seltzer, and I therefore assumed that Mrs. Seltzer was his stepdaughter.

Q. Was any mention made of Mrs. Reulens?

A. Never heard of it.

Q. Was she present at the time?

A. Who?

Q. Was Mrs. Reulens present at the time?

A. I don't know anything about Mrs. Reulens, only what has come out in court here.

Q. Did I understand you to say that the women who were present on the first occasion were Mrs. Reulens, and ——

A. Mrs. Shumway and Mrs. Seltzer.

Q. Mrs. Seltzer and Mrs. Reulens are the one and the same person?

A. I don't know Mrs. Reulens, I know Mrs. Seltzer.

Q. You knew her by the name of Mrs. Seltzer and not by the name of Mrs. Reulens?

A. I did not.

Re-direct examination.

By Mr. Endicott:

Q. Did you also form your opinion from the fact that he was interested in buying properties for ladies? Did that influence your decision?

A. That influenced my decision on the second call. One of the attorneys questioned me as to why I called the second time, when Mr. Allen called me on the phone, why I took the trouble to go out and

meet him. I was under the impression that I was to ——

Q. Do I understand you to say that your opinion was at that time, that he was not responsible, but ety, forbearing your natural indignation, you went anyway, in the hope of making a deal?

A. Exactly.

Q. What was your opinion as the result of your second meeting with him? Were you firm in your opinion, or were you disillusioned?

A. As I said, my second meeting was for forty minutes. I took Mr. Allen, two ladies, a child and a gentleman, to the house, on request.

By the Court:

Q. Counsel wants to know whether on your second meeting with him your opinion was that his mind was sound or unsound?

A. My opinion was that it was unsound.

Mr. Laws: That is objected to.

By Mr. Lewis:

Q. You base your opinion on that remark that he made as to whether or not you furnished him a chicken with the house?

A. That, on top of the reason that he desired to buy houses for these friends of his.

Q. Would you consider a man unsound who wanted to buy a home for a friend?

A. No, I wouldn't consider that only, the only particular incident, no.

Q. Is it unusual, or, if a man well-to-do, wants to buy a home for a friend, would you presume that he was insane in that effort, because of his attitude?

A. On that one particular point, no.

Q. Suppose a man would want to buy a half dozen homes for different people, friends like that; would you consider that an evidence, an assumption of insanity, or an evidence of mental incompetency or of his mental incapability?

A. Not—in the real estate, with real estate conditions as they are. I refuse to answer that question.

Q. As a matter of fact, you did not make these sales, did you?

A. No.

Q. They all fell down?

A. Yes.

Q. And you were somewhat disgruntled, having taken him out, and having shown him these properties, and the fact that you did not make a sale—you were not in the very best mood, were you?

A. No, I wouldn't say that; I would not, no, sir.

Q. He had put you to considerable trouble in having you take him out and show him these properties, which resulted in no sale.

A. Yes.

Q. As a result of that you did not feel any too well disposed toward him?

A. I wouldn't say that, no, I would not.

Q. You did not make a sale?

A. That was no reason why I should feel ill-disposed toward someone.

Q. As a matter of fact, he did not buy any house for any of his friends.

The Court: That has all been covered.

(Witness excused.)

HARRY BLACKSTONE, recalled.

Direct examination.

By Mr. Endicott:

Q. Did you see Mr. Allen from time to time after you witnessed the paper in 1919 up until last year?

A. No, I did not.

Q. Did you see him last year?

A. Yes, I did.

Q. Where?

A. At Mrs. Seltzer's house.

Q. About what time of the year did you see him?

A. September and October.

Q. You saw him on more than one occasion ——

A. On more than one occasion, sometimes twice a week, sometimes more.

Q. Did you notice any change in his physical appearance?

A. Yes, I did.

Q. What change did you notice?

A. Why, very feeble-minded.

Mr. Lewis: That is objected to and ask that it be stricken out.

The Court: Strike it out.

By Mr. Endicott:

Q. I refer to his physical appearance, as to his bodily appearance, as to his health.

A. Yes.

Q. What did you notice, what change did you notice?

A. He was very, very shaky, and very nervous, and was always complaining.

Q. Did you talk with him?

A. Yes, I did.

Q. Did you hear him talk about other people?

A. Yes, I did.

Q. Did you form any opinion as to his mental condition?

A. I did.

Q. What was your opinion?

Mr. Lewis: Objected to.

By Mr. Endicott:

Q. What did you see him do or say which influenced your opinion as to his mental condition?

A. It was in September, I think, that we were sitting on the step, me and Mr. Allen, and a man on the other side passsed by and he had a wooden leg, and he said, "Oh, wouldn't it be funny if Lillie

had a leg like that; she could go around and make some money," then he sat down and laughed and cried on the doorstep.

Q. What time was this?

A. About four o'clock.

By the Court:

Q. What did he say?

A. We were sitting on the step, Mr. Allen and I, and a man with the wooden leg passed by on the other side of the street, "Wouldn't it be wonderful if Lillie had a wooden leg like that, she could go around and make money," then he laughed and cried.

By Mr. Endicott:

Q. Did you see him do anything else that influenced your opinion of him?

A. He walked in front of the cars and automobiles, when he was out with Mrs. Seltzer a couple of times.

Q. Do you mean that he was careless about walking in the street?

A. Yes.

Q. Is there anything else?

A. No, there isn't anything else.

Q. How about his memory?

A. He was very forgetful.

Q. Did you see him laugh or cry on any other occasion?

A. He always did that during September and October.

Q. Always did what?

A. Cried and laughed at different things.

Q. He would make remarks and then cry and laugh at them?

A. Yes.

Q. What was your opinion as to his mental condition in August or September of 1928?

Mr. Lewis: That is objected to.

The Court: It is permitted.

(Exception allowed.)

By Mr. Endicott:

Q. In September or August of 1928?

A. In September and October, do you mean?

Q. Yes.

A. He seemed very, very forgetful and very nervous over something; I don't know what seemed, I didn't know what seemed to be the matter with him.

Q. What was your opinion as to his mental condition or to the soundness or unsoundness of his mentality?

A. He didn't seem to be all there.

Cross-examination.

By Mr. Lewis:

Q. You said he was very forgetful during September and October?

A. Yes.

Q. What time did you see him in September and October?

A. I don't just recall.

Q. Where did you see him?

A. At Mrs. Seltzer's.

Q. What time in September did you see him?

A. I was there the whole month of September and October, whenever he came there, and whenever he came I was there.

Q. How many times did he come up there?

A. Sometimes twice a week, sometimes more.

Q. Were you there every time he came?

A. Not every time he came, no.

Q. You say that he had a very forgetful memory?

A. Yes.

Q. How do you base that test of memory?

A. He would say things one minute and then the next minute he would say something else.

Q. Tell me something he said in which he contradicted himself.

A. I just don't know all he said. I can't remember what he did say.

Q. You don't remember?

A. No.

Q. You have no recollection?

A. No.

Q. And from that you infer then that he was mentally unbalanced?

A. Well, in ways like this: he would say that he bought watches for fifteen or twenty-five cents, and then the next minute he would say they were more and things like that; and I think that anybody that says any such things like that is not mentally right; and he said he bought stockings for five cents apiece.

Q. Is that unusual?

A. Certainly, he never talked that way before to me.

Q. You say you based your opinion from these remarks, that he was not all there?

A. Yes.

Q. In regard to this one-legged man affair, what was that remark, can you repeat that again?

A. About when we were sitting on the doorstep?

Q. Yes.

A. We, that is, Mr. Allen and I, were sitting on the doorstep, when a man with a wooden leg, passed by on the other side of the street, and he said, "Wouldn't it be funny if Lillie had a wooden leg like that that she could go around with and make money," and then he laughed and cried.

Q. "Go around making money," what did he mean by that? Was this a man a beggar?

Mr. Endicott: That is objected to. There is nothing in the case to indicate what he meant.

Mr. Lewis: He said he formed an opinion.

Mr. Endicott: You cannot indicate in your cross-examination, or bring out something in your cross-examination that was not in the direct examination. You cannot ask this witness as to what the decedent thought.

Mr. Lewis: We are trying to get the impression made on the mind of the witness.

The Court: I think the question should be reframed. You may ask him if he knows what the decedent meant by the remark.

By Mr. Lewis:

Q. Have you any idea what he meant by that remark?

A. No, I have not.

Q. You have no idea?

A. No, I haven't.

Q. And yet, from that you infer that his mentality was not all there?

A. Yes.

Q. Although you had no idea what it meant?

A. Yes.

(Witness excused.)

(Mrs.) Mary Manus, sworn.

Direct examination.

By Mr. Endicott:

Q. Where do you live?
A. 2335 North 20th Street.
Q. Philadelphia?
A. Yes.
Q. Do you know Lillie Seltzer Reulens?
A. Yes, I do.
Q. Do you know Mrs. Shumway?
A. I do.
Q. Did you know Mr. Allen in his lifetime?
A. I did.
Q. When did you first know Mr. Allen?
A. About five years ago.
Q. Did you meet him from time to time from the time that you first knew him until he died?
A. When I was in Mrs. Seltzer's house.
Q. You were a tenant in Mrs. Seltzer's house?
A. Yes.
Q. When?
A. Five years ago until now.
Q. Are you still a tenant now?
A. Yes; I don't live in Mrs. Seltzer's house, I am visiting there.
Q. Did you have any conversation with Mr. Allen in September or August of 1928?
A. I did.
Q. On how many occasions?

A. I guess about three occasions; within three months, three or four occasions; I will say four.

Q. Beginning about when?

A. About the middle, I will say, from September 10 on.

Q. Did you see any acts or hear any statements made by Mr. Allen on those occasions from September 10?

A. I did, that is, up to the time of his death, that led you to form an opinion as to his mental condition?

A. Well ——

Q. Answer yes or no.

A. Yes.

Q. What did you see that influenced your opinion as to his mental condition?

A. Of course, I was in the house, and my daughters were in there also, and he asked my 17-year-old daughter to marry him.

Mr. Lewis: Objected to.

Q. Were you present at the time?

A. I was present.

Q. It was said in your presence?

A. In my presence. Then he would tell me different things. Then the next time I would see him he would tell me something absolutely different from that of the time before that we talked on; and then he asked me if I knew somebody to fix a roof, and of course, I referred him to Mr. Angle, that lives four doors from our house, above our house.

Q. Mr. Angle?
A. Yes.

By Mr. Endicott:

Q. Can you tell us anything further than that?
A. He went to hire a man to fix the house; and on the next occasion that I was there I asked him why he was fixing the house when he insisted on buying her a new one, and he said that he wanted to buy Mrs. Seltzer a new house so that he could come and live with her, but he said that she insisted on fixing up this one until they had purchased a house.
Q. Was there anything else?
A. Yes. Then in October about, well, I will say the second week in October, I came in again; I had sewing to do for her and I brought in a dress. I was talking to him when there was some lady moved out of there and he passed five dollars to this lady and he said, "You take this, I can well afford to do it." He then went on and talked about the house and the roofing, and different things, and he said he didn't know why she wanted him to fix up the old house, as he wanted to buy her a new one.
Q. As a result of these meetings did you form any opinion of the mental condition of Mr. Allen in the fall and summer of 1928?
A. Yes, I had a couple of occasions to.

Mr. Lewis: That is objected to.

Q. What was your opinion?

Mr. Lewis: That is objected to.

The Court: It is permitted.

(Question allowed.)

A. During this he told me that he would like to get married.

Q. No, what was your opinion?

A. For one thing, he didn't look well, and another thing my opinion was: he told different stories. He would tell me one thing and then apparently tell me a different story from that, and it was my opinion that he was not as sound as he should be.

Q. Did you have any conversation with Mr. Allen in which he discussed his removal from Pleasantville to Philadelphia?

A. In October I did.

Q. Recite the conversation as near as you can.

A. It was up about the house again. I was in there. He was always talking about he didn't know what Lillie, Mrs. Seltzer, wanted him to fix the old house up for, when he wanted a new one for her. He said that he would like to live with her for the rest of his days, but that he was so tied up into something that he—he didn't express himself like he should, he said he was tied up out in Pleasantville, with Mrs. Ailes, and he didn't think that he would have a chance to get out of there and to come to Philadelphia to live.

Cross-examination.

By Mr. Lewis:

Q. You say that one of your bases for forming your opinion was that he would say one thing one time and that at another time he would say something else, contradict himself?

A. Contradict his own self.

Q. Did you form an opinion that he was simply a good-natured liar or what, from that?

A. Well, I can't just say I did think he was crazy, but he acted that way. I wouldn't like to commit myself on that.

Q. The fact is, that if somebody tells you one thing one time, and on another occasion tells you a different story, you put them down as either being crazy or a liar?

A. Most of the time crazy, when they are in that age.

Q. In other words, you think a man who is a liar is crazy?

A. I don't think he would have his right senses if he wilfully told lies.

Q. In your opinion a man who tells lies is crazy?

A. So many of them, yes.

Q. So that you got that inference from the fact that he would tell one story on one occasion and on another occasion he would tell another story?

A. Yes, tell two or three different stories.

Q. What was your opinion, that he was simply a liar or that he was crazy?

A. I thought he was crazy.

Q. Now, applying that to the everyday experience in life of a person, one who tells you one thing one time and another thing at another time, you put him down as a liar ——

A. If they do it too many times.

Q. —— or that he is crazy?

A. Crazy, if they do it too many times.

Q. Then, according to your idea, a liar or a crazy person are synonymous, that is, one and the same thing, are they?

A. No, not necesssarily.

Q. Mr. Allen joked a great deal?

A. I never heard him joking.

Q. He was quite a buffoon, quite a joker?

A. Not in my presence, he didn't talk much, but he seemed very serious in his talks that I had with him.

Q. Relative to this conversation, where he asked your 17-year-old daughter to marry him—was he joking?

A. No, I don't think he was, because he did ask Mrs. Seltzer on occasions, where she was, how old she was, and different questions about her and said that he liked her.

Q. Where did this daughter reside?

A. She lives with me.

Q. You reside at Mrs. Seltzer's house?

A. No, I reside at my own home.

Q. How far from Mrs. Seltzer's?

A. About a block and a half.

Q. What were you doing at Mrs. Seltzer's house on these occasions?

A. I sew dresses and do different things for Mrs. Seltzer.

Q. How did you meet him?

A. He was in the house with me at the time. They visit the house, through me, knowing her.

Q. Is your daughter here?

A. No, she is home; one daughter is home.

Q. This daughter you refer to?

A. She is at home.

Q. Why didn't you bring her?

A. She was not so well today. She did stay home to come down, but she wasn't so well.

Q. Was this conversation with you or the girl?

A. With the girl, he asked her.

Q. Where were you?

A. Sitting around the table, but I had passed it off at the time; and another time she came home and told me that he said the same thing to her.

Q. You passed it off as a joke?

A. I didn't know the meaning then. I thought he was joking, to have something to say, but she came home again and told me the same incident had happened, that he said he would like to marry her, and my girl passed it off, because she didn't think that he meant it seriously. She didn't take it seriously.

Q. She passed it off as a joke?

A. Of course, she didn't take anything like that seriously.

Q. On this occasion you passed it off as a joke?

A. On the second occasion I spoke to Mrs. Seltzer about it.

Q. Then Mrs. Seltzer talked to your daughter and she passed it off as a joke?

A. Well, she said there must be something wrong with him, as old as he is, to say that, and I said, of course, he can't mean it, and she said, "I don't think he could mean such a thing."

Q. Do you think that a man is crazy to ask a young lady, a good-looking young girl, to marry him?

A. At that age I do.

Q. How about these old millionaires that marry young wives—do you put them down as crazy?

A. I don't think they should do it.

Q. Those two events are the only things that you have to base your opinion upon that Mr. Allen did not possess his full mentality?

A. No, it is not. May I tell you? The third time that I spoke to Mr. Allen was in October, about the second week, he was still talking about the house and he said he wished that he could find a nice young chicken to marry because his mind was not good any more, to take care of his books and figures; and he said that he didn't mind, he wouldn't mind having a young woman to do all that, as his mind was not strong enough to do that any more, that his health would not permit it.

Q. And you thought that from that that he was pretty promiscuous?

A. I thought he was not substantial any more when he talked like that.

Q. You knew that he lived with the Ailes in Pleasantville?

A. He said he did.

Q. You knew that he came up to visit his stepdaughters?

A. And repaired the house every summer for Mrs. Seltzer.

Q. And then, in addition to that, he wanted some other woman, did he not, to console him?

A. He appeared to want all that he could get.

Q. Does that form a basis for your opinion that when a man arrives at that stage that he wants different women, that he is unfit for business or that he does not know what he does?

A. (No answer.)

Q. Do you base your opinion because of the fact that a man is immoral and desires different women, that he is necessarily crazy and incompetent to attend to his business affairs?

Mr. Endicott: Objected to. There is no evidence that Mr. Allen was immoral.

Mr. Lewis: It seems that that is the ordinary inference to be derived from the testimony.

M. Endicott: That may be your inference, but it is not a fact in this case. My objection is as to the terms used in this question.

Mr. Lewis: I will change the form of the question and ask:

Q. Do you consider the fact that a man who wants to marry a woman for a helpmate, a younger woman, is that a sign—that is, an older man wants to marry a young woman, as you say he wanted to marry your daughter—that that is a sign of insanity or mental deficiency?

A. No, I don't necessarily think that it is insanity there, but other things that he said to me, give me that impression.

Q. The other things are that he told different stories to you on different occasions?

A. Yes.

Q. In other words, you based more on the fact that he contradicted himself; in other words, that he lied to you, so to speak?

A. He told me that his mind was getting feeble and he would like to get married to someone younger, to some young woman, who would keep his books and keep his business for him. He told me that.

Q. And from that you arrived at the conclusion that he was mentally incapable?

A. Yes, I did.

Q. And you based it on those facts alone?

A. Yes, from what he told me.

(Witness excused.)

Miss Ethel Manus, sworn.

Direct examination.

By Mr. Endicott:

Q. You are a daughter of the lady just on the stand?

A. I am.

Q. How old are you?

A. Fourteen.
Q. You have a sister seventeen?
A. Seventeen.
Q. What is her name?
A. Elsie.
Q. Do you live with your mother?
A. I do.
Q. Did you know Mr. Allen in his lifetime?
A. I did.
Q. Did you see him often in 1928?
A. Yes.
Q. On several occasions?
A. I did.
Q. Did you see him do or say anything which helped you to form an opinion as to his mental condition?
A. I did.
Q. What did you see?
A. One day when he was passing our house, I waved to him and he came in; and there was a young lady at our house, my aunt, and he was saying that he wanted to buy her a home and then, the next minute, he was afraid of her husband.
Q. Had he seen this woman before, that you know of?
A. Yes.
Q. Do you know how long he had known this woman?
A. Not long.
Q. Did he buy her a house?
A. No, he was going to do so, though.
Q. Do you know whether or not he bought her anything?
A. He did.

Q. What did he buy her?

A. A fur coat and shoes.

Q. Did you see anything else that you did that influenced your opinion as to his mentality?

A. Well, he was around Mrs. Seltzer's house and he said that he was going to buy her a home and all; then after a while he wanted to buy, he wanted to fix up a home for Mrs. Seltzer instead of buying her a new home.

Q. As a result of your meeting with Mr. Allen in 1928, did you form an opinion as to what his mentality was?

A. Yes.

Q. What was your opinion as to his soundness or unsoundness of mind in 1928?

Mr. Lewis: Objected to.

By the Court:

Q. What was it that you said that he bought her, a fur coat and some shoes?

A. Yes, and he paid a deposit down on a hat for her, and bought her stockings, too.

Q. Who was she?

A. My aunt.

By Mr. Endicott:

Q. Was she any relation to Mr. Allen?

A. No.

Q. What was your opinion as to his mental condition?

Mr. Lewis: Objected to.

The Court: Change the question to read, "What was your opinion as to his mental condition in 1928?"

Mr. Lewis: I renew my objection.

By Mr. Endicott:

Q. Sound or unsound?

The Court: The question is permitted.

(Exception allowed.)

A. I thought he was unsound.

Cross-examination.

By Mr. Lewis:

Q. To whom was it that he gave this fur coat?
A. Mrs. Holloway.
Q. Mrs. Hallowell?
A. Mrs. Halloway.
Q. Is she a relative of yours?
A. By marriage.
Q. How is she related?
A. She married my uncle.
Q. Mrs. Halloway?
A. Yes.
Q. Is Mrs. Halloway here today?
A. No.

Q. What aged woman is she?

A. 31.

Q. Where does she live?

A. Crisfield, Maryland.

Q. Where did she live at this time, on the occasion of the presentation of the coat?

A. On Spring Garden Street.

Q. Where on Spring Garden Street?

A. Between 21st and 22nd.

Q. Did this Mrs. Halloway ever live with your mother?

A. No, she stayed over night, I think one night, but she never lived with us.

Q. You say she visited your mother?

A. Yes.

Q. Where was it that Mr. Allen met her, do you know?

A. At Mrs. Seltzer's.

Q. At Mrs. Seltzer's?

A. Yes.

Q. Did this Mrs. Halloway visit Mrs. Seltzer?

A. She lived there, with my uncle.

Q. Lived with your uncle?

A. Yes.

Q. At Mrs. Seltzer's?

A. Yes.

Q. It was there that Mr. Allen met her and formed her acquaintanceship?

A. Yes.

Q. Where did you get this information that Mr. Allen bought her a fur coat?

A. She told me.

Q. Was Mr. Allen present when she told you that?

A. No, he was away.
Q. He was away?
A. Yes.

Mr. Lewis: I ask that the testimony of the witness be stricken out, it being purely hearsay.

Mr. Endicott: She is not entitled to relate the conversations which were hearsay, yet, having knowledge of that fact, it is an important and material element in assisting her to form an opinion as to the mental capacity of the decedent, in connection with other things that came under her observation.

I do not think it should be stricken until we have the right to go into it.

If it is to be stricken I think we should have the right to have a re-examination on the subject.

By the Court:

Q. All the knowledge that you have, respecting the buying of this coat and other wearing apparel, was what this girl told you?
A. Yes, she told me that he bought it.
Q. That is all the knowledge that you have, you never talked with Mr. Allen about it?
A. No, sir.

The Court: I think that her testimony should be stricken. What other fact does she rely upon, which she can base her opinion upon as to his mentality?

Mr. Endicott: She says that he came to the house when this woman was there and that he offered to buy her a house.

By Mr. Endicott:

Q. Was that your statement?

A. Yes.

Q. On that occasion was any reference made to shoes or a coat or dress?

A. No, they were going down to look at a house, I think.

Q. Were you present on any occasion when Mr. Allen made any reference to Mrs. Halloway, presents and things that he had given her?

A. He went away right after that.

The Court: We will strike her testimony, with reference to the clothing purchases for Mrs. Halloway, and permit it to stand as to the other testimony.

(Witness excused.)

(Mrs.) Anna Shumway, sworn.

Direct examination.

By Mr. Endicott:

Q. Where do you live?

A. 712 N. 63rd Street, Philadelphia.

Q. Did you know Mr. Allen in his lifetime?

A. I have known Mr. Allen since 1912, about.

Q. Did he marry any member of your family?

A. He married my mother in 1913.

Q. Did your mother die?

A. My mother passed off in six years, in 1919, September 7, 1919.

Q. September 7, 1919?

A. Yes.

Q. Mrs. Seltzer is a sister of yours?

A. Mrs. Seltzer is my sister.

Q. Did your sister marry a Mr. Reulens?

A. My sister married Mr. Reulens; that was her second husband.

Q. When reference is made in this case to Mrs. Seltzer, that is your sister, Lillian Seltzer Reulens?

A. Yes, because it was a love match and she recognized her second husband.

Q. Do you know Mrs. Ailes?

A. I knew Katherine Ailes when a girl. She went to school at 12th and Fairmount Avenue, and I knew her as a child; we went to the same school together when we were children.

Q. Did you introduce Mrs. Ailes to Mr. Allen?

A. I introduced my father, my stepdaughter, to Mrs. Ailes.

Q. When?

A. I introduced my stepfather to Mrs. Ailes about the first part of 1920.

Q. How did you come to introduce her?

A. I was accidentally in Snellenburg's one day, and she was standing at the counter and I spied her and she walked up to me and she introduced herself, and I said, "My goodness;" her name was

Kate Flutt at that time, when I knew her. Then she told me about—I met her in Snellenburg's in 1920, at the first part. I was in, writing.

Q. You were about to tell us how you came to introduce her to your stepfather.

A. Shall I go on?

Q. Yes.

A. We chatted and went back to reminiscences of childhood associations and then she said she had married a very nice man by the name of Frank Ailes, and she said that she had—I asked her how many daughters she had, and she said she had two daughters, that one daughter was about 17 and that the other two daughters were married. Then she said—she told me that she was in mediocre circumstances, of course, and that they were living at 4613 Trinity Place, Philadelphia. She said that her husband was sickly and she seemed to be sort of sad like, and I said, naturally, "Come up and see me sometime and bring your husband up with you. I would like him to meet my husband." Then she said she would. Then the next time she came up to the house and we discussed about my mother, that she had passed on. My mother had passed on in 1919, and we chatted awhile; and my stepfather, when my mother passed on, he was just like a ship without a rudder——he was alone.

Q. Confine your testimony now to the meeting. When did you introduce these parties?

A. She came up to the house and father happened to be there, and I introduced her.

Q. After that did Mrs. Ailes become his housekeeper?

A. Mrs. Ailes became his housekeeper about the

latter part of 1920; in the meantime, before that, she had clandestine meetings with my stepfather.

Mr. Laws: We object to that last part as to clandestine meetings, and ask that it be stricken.

Mr. Endicott: That is pertaining to the issue, how they came together.

The Court: I think that last remark about clandestine meetings should be stricken.

(Witness excused.)

(Hearing adjourned to March 20, 1929, at ten o'clock in the forenoon.)

Before Honorable William J. Smathers, Judge, in the Guarantee Trust Building, Atlantic City, New Jersey, Wednesday, March 20, 1929, 10 o'clock in the forenoon.

Appearances:

H. W. Lewis, Esq.; A. F. Daix, Jr., Esq.; James W. Laws, Esq., and Lewis Starr, Esq., for proponents.

Endicott & Endicott, Esqs.; Wm. Y. C. Anderson; Daniel W. Simkins, Esq.; H. J. Alker, Jr.; Esq.; Hon. Dimner Beeber, Esq., and W. Elmer Brown, Jr., Esq., representing the heirs-at-law.

Mr. Endicott: We desire to enter appearances for some of the heirs.

Mr. Starr: I have been taken into this matter with Mr. Lewis and Mr. Laws as representing the proponents of the will.

In examining the record, and also the petition for probate, I found apparently that some of the persons who are interested in this litigation have not been brought into court by petition. I spoke to Mr. Endicott about it this morning and it may be that we can get the matter straightened out by entering appearances on the record; but the record shows that these gentlemen who appear against the

will represent only Thomas Allen, a brother; Sarah Rieger, a sister, and William M. Allen, a nephew.

There is nothing on the record to show that there are any other persons represented in this litigation, and that probably arose from a mistake in the probate petition which set forth only those names mentioned as parties in interest.

It now appears that there are at least possibly 10 more persons who are interested in this estate one way or another and who were not named or mentioned, and who, so far as the record shows, are not represented by counsel.

It may be that these gentlemen can straighten the matter out by entering appearances.

It seems to me, if we are to have a decree which is to be a finality in this proceeding, we will have to have the proper persons before the Court, and, in the absence of any proper appearances of record, the Court would not have jurisdiction to try the cause unless the persons were summoned by citation, and the only persons I am informed were mentioned in the citation were Thomas Allen, Sarah Rieger, and William M. Allen.

In addition to that, there are the issue of George W. Allen, a deceased brother, and the issue of a deceased sister.

Then there are a number of persons mentioned as legatees in a prior will, such as nephews, nieces of legatees in the will and who are not in the record, and, so far as the record goes, are not represented by counsel.

It seems to me that the only way that that can be straightened out is to have a waiver in writing, in these proceedings, and to have someone repre-

senting them here, waiving the entering of an appearance in person, in order that the Court may assume jurisdiction.

Mr. Endicott: Before proceeding farther, I would like to introduce to the Court Daniel W. Simkin, W. Simkins, Esq., of the Philadelphia Bar, who is associated with Wm. Y. C. Anderson, Esq., also of the Philadelphia Bar, and one of counsel of record in these proceedings, and myself, representing certain parties in interest on the record. Mr. Simkins, Mr. Anderson and myself represent also a number of parties in interest not of record.

I would like to enter appearances for them at this time.

The Court: Are you prepared to enter appearances for all the parties you represent?

Mr. Endicott: Yes, all those who are opposed to the will, I believe, covering all possible interests.

I believe Mr. Brown's appearance will go to the extent that the testimony heretofore taken shall be admitted and that any objections thereto be waived.

Is that correct, Mr. Brown, as to the people who now enter appearance, that any objections to the testimony heretofore taken be waived?

Mr. Starr: I do not believe that an appearance of counsel after the Court assumes jurisdiction, is sufficient. I think that there should be a waiver signed by the persons or parties, and having representation here by counsel.

Mr. Brown: I do not think that there is any necessity to issue a citation or service on these parties if there is a voluntary appearance in the case, the same as in any other suit coming into court and where an appearance is entered. I am representing with Mr. Simkins and Mr. Anderson, of the Philadelphia Bar, who represent these parties in interest, and they say that they have authority to represent all the parties not now entered of record in this suit and are ready to enter an appearance. It seems to me that there should be no objection to the voluntary entering of an appearance.

The Court: At the outset of the case, no; but coming into the middle of the case with an appearance to bind the party so that he may not go back of the record and say that he was not personally present at the outset of the case and did not take part in all the litigation or conduct of the case, is, I believe, the point at issue at this time.

Mr. Brown: As far as that is concerned, Mr. Simkins and Mr. Anderson have represented these persons all the way through these proceedings and their appearance has not been entered of record because of the fact that the record did not disclose all of the names; but they have in point of fact been representing them because Mr. Anderson has been sitting here throughout these entire proceedings.

Mr. Anderson: On behalf of the parties who have not heretofore been entered of record in this proceeding I now consent to the regularity of the pro-

ceeding had and ask leave to come in, nunc pro tunc, if you have such practice in this court, to represent them.

The Court: With a proper stipulation on the record.

Mr. Starr: I have no objection to Mr. Brown making a stipulation, but I do not believe that foreign counsel has a right to bind these parties in the absence of the parties themselves. If Mr. Brown will stipulate on the record that he represents all of these people interested, who are not present, all right.

The Court: Waiving service of citation?

Mr. Starr: Yes, waiver of citation, a signed waiver, bringing them within the jurisdiction of this Court and offering no objection to the testimony heretofore taken, I think that may straighten out the matter.

Mr. Brown: That seems to me to be an effort on the part of Mr. Starr to place me in the position of stipulating on this record that which I have not been in direct contact with. These parties have been represented by Philadelphia counsel who have engaged me as local counsel with them and by consent and courtesy of counsel and the Court that have been permitted to practice in this court in this particular matter, and which is perfectly correct and proper; and, I believe, in conformity with our practice.

It seems to me that they, having been in direct contact with the parties, they are in position to enter that appearance on the record, and, as associate and local counsel, sitting in with them and for them, I am satisfied that they should be so permitted; but for me to say that I have direct authority from these people, I cannot stipulate that, because I have not come in direct contact with them.

The Court: Your desire is to stipulate that yourself, and Philadelphia counsel, who represent all of these heirs not present, are quite willing that an appearance be entered by yourself and the Philadelphia counsel for them, and that you waive failure of citation on them and that you be permitted to proceed with the case. Is that correct?

Mr. Brown: That is the situation, and I will so stipulate.

Mr. Endicott: State the names of your people here now.

Mr. Brown: I will ask Mr. Anderson.

Mr. Starr: We are confronted with this situation: Suppose some of these people have a decree and say, "We didn't know what was going on. We are not bound by this decree." The only situation here, it seems to me, is to have the parties themselves sign a written waiver in order that the Court may assume jurisdiction. The statute provides that the Orphans' Court shall have jurisdiction and in a petition in a will case the parties must be served.

Where the question of jurisdiction is involved the parties should take some affirmative action so that they are bound by it in the future.

The Court: They can do it by stipulation. The Court has the right to admit a party to the record.

Mr. Starr: Some of these people are not here. They do not know what is going on.

The situation is, we want the record straight, so that when this Court decides this case it will be at an end and we will not then be confronted by someone coming in and saying they did not know what was going on.

The Court: Let us hear the stipulation.

Mr. Brown: That appearance may be entered upon the record for Thomas Allen, a brother; Sarah A. Rieger, a sister; William M. Allen, a nephew; Anna M. Grim, Bessie Lincoln, Thomas J. Allen, children of the deceased brother, George W. Allen —nephews and nieces of the deceased; Herbert S. Landell, a son of Jane Landell, deceased, who was the sister of Albert Allen, the deceased; Mary A. Fairley, Sarah Cobb Allen and Edith A. Sabin, nieces of Albert Allen, deceased, and children of Thomas Allen; Mae Tarr, niece of Albert Allen, deceased, and daughter of Sarah A. Rieger, sister of Albert Allen, deceased.

And it may be stipulated on the record that the parties for whom the appearances have just been entered waive any objections that they may have

to the proceedings so far as they have progressed to date.

The Court: Is it stated who is entering the appearance for them?

Mr. Brown: All of the parties whose appearances have just been entered, are represented by Daniel W. Simkins, Esq.; William Y. C. Anderson, Esq., both of the Philadelphia Bar, and Elmer J. Brown, Jr., Esq., of the New Jersey Bar.

The Court: And in entering appearance for these heirs that you have named, you waive any and all objections that may be made for failure of citation or notice being served upon them.

Mr. Brown: I am instructed so to stipulate, yes.

Mr. Endicott: Shall we proceed?

Mr. Starr: The record does not show for whom Mr. Endicott appears. If it is in the record I have been unable to find it.

Mr. Brown: It appears in the record that Mr. Endicott represents the heirs-at-law, the will of 1919.

Mr. Starr: It says that Mr. Endicott and these gentlemen represent the heirs-at-law. There is nothing to show who represents these people we are speaking of.

Mr. Endicott: Let it appear in the record: For the proponent of the will of 1919, Lillian Seltzer Reulens, A. B. Endicott, Jr., Esq., of the local Bar; Hon. J. Dimner Beeber, Esq., and H. J. Alker, Jr., Esq., of the Philadelphia Bar.

TESTIMONY IN BEHALF OF PROPONENTS OF WILL OF 1919.

MRS. ANNA D. SHUMWAY, already sworn, resumed.

By Mr. Endicott:

Q. When you were last on the stand you had brought your testimony to the point where you introduced Mr. Allen, your former stepfather, to Mrs. Ailes.

A. Yes.

Q. And you testified that that occurred in 1920?

A. About that, to my knowledge.

Q. And that subsequent to that time Mrs. Ailes became the housekeeper for Mr. Allen?

A. Yes.

Q. Do you know where they first kept house?

A. Yes.

Q. Where?

A. 1411 West Allegheny Avenue.

Q. Philadelphia, Pa.?

A. Yes.

Q. Do you know how long they remained there?

A. I think my stepfather's housekeeper was there a little over a year.

Mr. Starr: Apparently this witness is not testifying as of her own personal knowledge. I think that that ought to be ascertained as to what knowledge she had of the facts to which she is testifying. I think the foundation ought to be laid first to the fact as to when she came in contact with these parties and to testify as to her own personal knowledge.

Mr. Endicott: If the witness knows, she is entitled to answer.

The Court: Strike as to what she says she thinks, because it is evident she has no positive knowledge as to that.

By Mr. Endicott:

Q. How often did you see your stepfather during the time you speak of?

A. When the housekeeper was there?

Q. Yes.

A. I visited my stepfather's home but twice.

Q. Did you see him at other times and at other places?

A. I saw him when he came to me.

Q. Answer the question.

A. Yes.

Q. Do you know where he was living from the time Mrs. Ailes became his housekeeper up to the time of his death?

A. He lived at 1411 West Allegheny Avenue; not up until the time of his death, for he was living in Pleasantville, New Jersey.

Q. Do you know where he was living from the time Mrs. Ailes became his housekeeper up to the time of his death?

A. Yes.

Q. Do you know how long he lived in the Allegheny Avenue house?

A. To my knowledge, a little over a year, to my knowledge.

Q. Did Mrs. Ailes cease to be his housekeeper after a time?

Mr. Starr: Objected to. That may be based on either personal knowledge or hearsay. The only way it seems to me is to lay the foundation for this witness' knowledge of knowing these things, these facts.

Mr. Endicott: It seems to me if the testimony appears to be objectionable Judge Starr may move to strike it. But it appears to me that that is a perfectly proper question.

Q. Did Mrs. Ailes cease to be a housekeeper for Mr. Allen, for a time?

Mr. Starr: Objected to. That may be based on personal knowledge or hearsay. We ought to have something to show affirmatively.

(Objection overruled.)

(Exception allowed.)

By Mr. Endicott:

Q. Do you understand my question?
A. Yes, thoroughly.
Q. Will you answer it?
A. After, when she ceased to be his housekeeper?
Q. Did Mrs. Ailes cease to be his housekeeper after a time?
A. After a time, yes.
Q. Did she afterwards resume her relations with him as housekeeper?

(Objected to.)

(Objection overruled.)

(Exception allowed.)

Witness: Can I go ahead?

By Mr. Endicott:

Q. Go ahead. Answer yes or no.
A. If she ceased? It was something deeper—I can't ——
Q. Did she resume her relations with him as housekeeper after they were interrupted for a time?
A. As his housekeeper? It was for something worse.

Mr. Starr: I move that be stricken.

The Court: It may be stricken.

By Mr. Endicott:

Q. You say that she became his housekeeper in 1919, or was it in 1920?

A. 1920.

Q. Wait a minute. And that they lived at the Allegheny Avenue house for a year?

A. Little over a year. I just can't say.

Q. Then she continued as his housekeeper?

A. Papa again came to me—I don't know, but Papa came to me and said, told me everything.

Q. Did Mrs. Ailes again become his housekeeper?

A. Worse than that.

Mr. Starr: I move that be stricken.

The Court: It may be stricken.

Q. Answer yes or no. Did she resume as his housekeeper?

A. Yes.

Q. You refer to statements made to you by Mr. Allen. What was the date of the statements you refer to?

A. The first time I went over to Papa's house

Mr. Starr: I move to strike that answer as not being responsive.

The Court: It may be stricken.

(Last question read by the stenographer to the witness: "Q. You refer to statements made to you

by Mr. Allen. What was the date of the statements you refer to?")

A. Two occurrences in 1411 West Allegheny Avenue house.

Q. That was in 1920 or 1921?

A. That was about in 1921.

Q. What were those statements?

A. I was invited over to a little dinner affair for a little game of cards, by Mrs. Kate Ailes. I said to Mr. Shumway, "I don't care to go," but I went.

Mr. Starr: I ask that be stricken.

The Court: It may be stricken. We do not want any conversations you had with Mr. Shumway.

The Witness: I went over to his house and we were sitting at the table and Papa came in, my stepfather, and I turned to my stepfather, and I said, "What are you doing here?" they were all asking, and he said, "Papa has got to be here." I thought that was strange, and we were sitting around the table when Kate Ailes was in the kitchen and Papa turned around back to me, hurried back into the kitchen, and I heard Katherine Ailes say to my father, "Take this in, dear."

Q. What was the next statement?

A. One evening I went over to see my father, my stepfather, and my stepfather was out and Mr. and Mrs. Ailes were at home and they were in a very uproarious state.

Mr. Starr: I move that be stricken.

The Court: It may be stricken.

Mr. Endicott: You are not to relate conditions that existed at the time this statement was made.

The Court: That is a conclusion. She may state their actions.

Mr. Starr: Unless it was shown Mr. Allen was there.

By Mr. Endicott:

Q. Confine yourself to the statements made. If you want to state any conditions that existed at the time, state what the conditions were.

A. From what I understand ——

Mr. Starr: Objected to.

The Witness: —— Papa ——

Q. What do you know?

A. Papa kissed Katherine, the 17-year-old daughter of hers, and Mr. Ailes said to me, "Anna, do you think it is right for Papa to kiss Anna?" and I said, "I certainly don't. I don't think it is right that Papa do that." I didn't stay long because Papa didn't come home and I went home.

Q. Your stepfather moved to Pleasantville in 1923?

A. No, sir. My stepfather moved and was living at 4311 Walnut Street, in 1923.

Q. In whose house was that?

A. Well, I judge it was her house.

Mr. Starr: I move that be stricken.

A. I don't know, to tell you the truth. I don't know.

Q. Who lived in the house there on Walnut Street?

A. Mr. and Mrs. Ailes.

Q. And Mr. Allen?

A. My stepfather, yes.

Q. How long did they live in that house, do you know?

A. Well, while they lived there my stepfather took suddenly ill, and when they took him to Jefferson Hospital I don't know.

Q. Were you there?

A. I was almost a daily visitor during my stepfather's illness.

Q. Do you remember what his ailment was?

A. A very bad ailment.

Mr. Starr: Objected to. It is perfectly apparent that this witness has no personal knowledge of this situation.

Mr. Endicott: She says she was there every day.

Mr. Starr: And, it seems to me, further, that it is of no material value to the Court or the record, merely showing what her conclusion is, and not based on her personal knowledge.

By Mr. Endicott:

Q. Do you know what the cause of the ailment was?

A. I heard it was for prostate glands. I heard it said so. Of course, I don't know. Only just what I was told.

Q. Who did you see at the hospital on your visits there during this illness?

A. Mrs. Katherine Ailes was always with my stepfather. I seen the nurses over there, rarely.

Q. Did you see anybody else there on your visits, who was with your stepfather, if anybody?

A. Nobody ever went there but just my sister and I, and his brother. But we had a hard time getting in.

Q. Did you meet Mr. Schreiber there?

A. Mr. Schreiber—my stepfather never missed Mr. Schreiber.

Mr. Starr: I move that be stricken out.

The Court: Strike it out.

Q. Answer yes or no, was he there?

A. No, I didn't meet him.

Q. Did you have any conversation with Mrs. Katherine Ailes about the making of your stepfather's will when he was in the hospital on the occasions you refer to?

A. One time when my stepfather was there, very ill, Katherine Ailes said to me, "Anna, call up Mr. Schreiber and see if you can get him down. Papa is very sick and he might make a will."

Q. Did you call Mr. Schreiber?
A. I called up Mr. Schreiber, and I said ——

Mr. Starr: Objected to.

Mr. Endicott: She can relate what she intended to do.

Mr. Starr: I do not think the conversation is pertinent.

Mr. Endicott: It is pertinent to show what was the situation with reference to an attempt to make this previous will.

By the Court:

Q. Was the call for Mr. Schreiber made in the presence of your stepfather, Mr. Allen?
A. No, sir; I went down to the office.

Mr. Starr: Objection renewed.

The Court: Sustained.

Mr. Endicott: I withdraw the question.

By Mr. Endicott:

Q. Did you arrange for Mr. Schreiber to come to the hospital to see your stepfather?

Mr. Starr: Objected to.

A. I asked—I didn't arrange. I didn't use the word "arrange." I asked him to come and see Papa because he was very sick.

Mr. Starr: I ask that be stricken, on the ground it is not responsive.

The Court: Overruled.

(Exception allowed.)

By Mr. Endicott:

Q. Do you know whether or not Mr. Schreiber came to the hospital?

A. Mr. Schreiber, the next morning—he was partly blind—his wife brought him the next morning to see my stepfather.

Mr. Starr: Objected to unless she has personal knowledge of the facts; it doesn't appear she has.

Q. How do you know Mr. Schreiber came to the hospital with his wife?

A. Because he couldn't see but very little.

Q. Were you there?

A. I was there when he came, yes.

Q. Did he see Mr. Allen?

A. Yes, he went up to see my stepfather.

Q. Were you present?

A. I was not present.

Q. Did Mr. Schreiber make any statement to you after he had seen Mr. Allen with respect to making a will?

Mr. Starr: Objected to.

(Objection sustained.)

Mr. Endicott: The theory in this case is, that Katherine Ailes, due to her influence, brought about the making of a will, which is not the will of the decedent, and any conduct on her part which precedes the making of the will in contest, has a bearing on the subject, because it shows a course of conduct and joint action alike, leading to the ultimate result accomplished.

The Court: What was said by some third person to this witness certainly cannot be binding.

Mr. Endicott: This witness testified that Mrs. Ailes asked her to telephone Mr. Schreiber to come to the hospital, that Mr. Allen was very sick and that he might make a will.

We want to show a chain of events dealing with the conduct of Katherine Ailes, in this transaction, and we think it is pertinent.

Mr. Starr: The testimony which they desire to produce is relevant, but the method that they attempt to get it by is irregular and irrelevant.

A statement made by Mr. Schreiber as related would not be binding.

(Objection sustained.)

(Exception allowed.)

By Mr. Endicott:

Q. Is Mr. Schreiber living now?

A. Mr. Schreiber has passed on.

Q. Was Katherine Ailes present when you interviewed Mr. Schreiber after he had seen Mr. Allen at the hospital?

A. I don't know.

Q. Was she present when the statement ——

(Question withdrawn.)

Q. Was Katherine Ailes present at any conversation you had with Mr. Schreiber, immediately after his call on Mr. Allen on Mr. Allen in 1923?

A. No.

Q. Did Katherine Ailes make any statement to you during the stay of your late stepfather at the hospital in 1923, with respect to the making of a will?

A. She did say she didn't think Papa would last as long as he did.

Mr. Starr: I move that that be stricken.

(Motion allowed.)

Q. Did she make any statement to you during his stay at the hospital respecting the making of a will?

A. That one occasion when I called up Mr. Schreiber.

Q. Was there any other conversation between you and Katherine Ailes, or did she make any statement to you?

A. No.

Q. Did Katherine Ailes make any statement to you at any time about what happened at the hospital when Mr. Schreiber called upon your stepfather in 1923?

A. No.

Q. Your stepfather was in the hospital about how long?

A. Four months; nearly four months.

Q. After that occasion, or after his recovery, did he then move to Pleasantville?

A. He went back to 4311 Walnut.

Q. But eventually he did move to Pleasantville?

A. Yes.

Q. About what year?

A. That I can't just say, how long.

Q. Did you visit him in Pleasantville?

A. Only at the door in the car, in my husband's car, and when I called him up. I never visited him at his house in Pleasantville.

Q. You were at his house in Pleasantville but you only saw him at the door?

A. At the door.

Q. You stopped in your automobile, in front of his house?

A. Yes.

Q. Did you stop with Mr. Allen on these occasions?

A. My stepfather came out to the car on one occasion.

Q. Did you see him when he came to the door of the house?

A. I came there in the car and when I came to him he always came to the door.

Q. How many times did you see him after he went to Pleasantville, from 1923 up to the time of his death?

A. I didn't see him, but I was in touch with him during those six years.

Mr. Starr: I ask that that be stricken.

The Court: Strike it.

Q. Do you remember how many times you saw him?

A. I didn't see him but three or four times; I guess four or five times.

Q. Did you ever talk to him on the telephone?

A. He couldn't talk on the phone. Mrs. Ailes did the talking.

Q. Did you talk to Mrs. Ailes on the telephone?

A. Yes.

Q. How many times did you talk with her on the telephone, about Mr. Allen?

A. Well, about two or three times, I guess.

Q. How did it happen that you did not enter the house when you stopped at his place in Pleasantville?

A. I couldn't do it.

Q. You say you couldn't do it. Why couldn't you do it?

Mr. Starr: Objected to. He must give us the facts. Why she was prevented, if she was.

Mr. Endicott: That is what we want to find out.

Mr. Starr: Otherwise it is incompetent.

The Court: It is permitted.

(Exception allowed.)

(Last question read to witness by the stenographer: "Q. You say you couldn't do it. Why couldn't you do it?")

A. Because she abused my stepfather.

Mr. Starr: I move that that be stricken.

Mr. Endicott: Why? If she has knowledge she can state it.

Mr. Starr: There is nothing to show that she has the knowledge, unless she was present when it was done.

Mr. Endicott: She has stated a fact. It is for you to tear it down on cross-examination. That is proper testimony.

The Court: I will permit it.

(Exception allowed.)

By Mr. Endicott:

Q. During the year of 1928 did you talk with Katherine Ailes about your stepfather's physical condition?

A. I talked to Katherine Ailes twice in 1928.

Q. What time of the year did this conversation take place?

A. It was before the month of September and then after October the 22nd, when my stepfather was dead.

Q. In the conversation before September of 1928, you mean during the month of August, do you?

Mr. Starr: Objected to as leading.

Mr. Endicott: I am not particular about that.

(Question withdrawn.)

Q. Can you fix the date of the conversation which you say took place prior to September of 1928?

A. Papa was at my house October 8th ——

Q. Proceed.

A. September—well, I don't know whether it was September or not that I talked to her, but it was after my father left and went home, after October 8th, when he was at my house, and I asked her if Papa got home safe.

Q. Did you have a conversation with Katherine Ailes during the summer of 1928?

A. Not from Philadelphia, no, sir.

Q. From anywhere?

A. I may have called up to inquire about Papa, because I was in Atlantic City and I always call up then.

Q. Did you talk with Mrs. Ailes personally?

A. Yes, because Papa got back.

Q. When?

A. That may have been in July, because I was down every week during the summer months.

Q. You stopped at the Pleasantville property?

A. I always inquired about my stepfather.

Q. Did you call at the door while in your automobile, during the summer of 1928, did you call at the door of Mr. Allen's place, his Pleasantville home?

A. We stopped August 18th.

Q. What year?

A. 1928, around three o'clock.

Q. Who was present?

A. My husband brought me there to see my stepfather.

Q. Who did you see?

A. We pulled up at the door, and Papa must have been in, because ——

Mr. Starr: Objected to. I ask that that be stricken out.

The Court: Strike it out.

By the Court:

Q. Who did you see?

A. My stepfather came out to the door.

By Mr. Endicott:

Q. Did you talk to your stepfather on that occasion?

A. Yes.

Q. Did you see Mrs. Ailes on that occasion?

A. Her mother and Mrs. Ailes were standing at the door and I turned to my husband. I got out then.

Q. Did you have any talk with Mrs. Katherine Ailes that day?

A. Yes.

Q. In the presence of Mr. Allen?

A. Mr. Allen was with my husband, at the car.

Mr. Starr: Are there two Katherine Ailes? A mother and a daughter?

Mr. Endicott: We only know one, Katherine Ailes, the beneficiary under the last will.

Mr. Starr: Are you referring to her in this instance?

Mr. Endicott: Yes.

Mr. Starr: The witness said something about her mother.

Mr. Endicott: She said her mother was there.

Mr. Starr: There is a daughter?

The Witness: The mother was visiting the daughter.

Mr. Starr: Now I understand.

By Mr. Endicott:

Q. Where were you at that time?

A. I was sitting in the car and got out.

Q. And did what?

A. And walked up and said, "How do you do?"

Q. Who was within the presence of you and within sound of your voice when you spoke to Mrs. Ailes and her mother?

A. The folks were at the car, in front, nobody but the mother and daughter together.

Q. And you?

A. And myself, yes.

Q. What was said in the conversation?

A. I said, "How do you do?" to the folks. Then she said, "Oh, my, Anna, Papa was in Atlantic City the other day and he got sick and he came home and his clothes were all dirty, and he walked into the hallway and the carpet was all dirty, oh, so much trouble I have with him; I have more trouble." And she turned around to her mother and she says, "You know, I don't know how I am fixed," she says, "he is an awful trouble. I don't know how I am fixed." So I turned to her and I said, "Haven't you got him to make a will yet?" and she says, "Oh, Anna, every time I say something to Papa about making his will he looks up to the heavens and he says, 'A beautiful day out,' and then he commences to laugh."

Q. When you speak of his being dirty, unclean, what do you mean?

A. He had dysentery. He was very sick in Atlantic City, while there.

Q. Did you see your late stepfather after that in Philadelphia, after that occasion?

A. Yes.

Q. Where?

A. He was to my house.

Q. On what date?

A. On October 8th.

Q. 1928?

A. Yes, for lunch.

Q. How was he dressed on that occasion?

A. Pretty cold loking; pretty shabby and neglected.

Q. Did you furnish him any clothes?

A. Nearly all the time I knew him I gave him things and watched over him.

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

Mr. Endicott: Let it be stricken.

Q. At the time of your meeting him in October, 1928, did you furnish him with any clothes?

A. A coat.

Q. An overcoat?

A. Yes.

Q. He didn't have any with him?

A. No, sir.

Q. Did he have proper underclothes?

A. That I don't know. I didn't examine.

Q. Did you hear anything about him?

A. My sister can speak for that. I don't know.

Q. Did you have any conversation with your late stepfather about his place of residence upon the occasion of his visit in October, 1928?

A. I only saw him once, in October, 1928.

Q. Did he talk to you about where he intended to live thereafter?

A. Not at that time.

Q. Did he ever talk with you about moving from Pleasantville to Philadelphia?

A. Once.

Q. When?

A. That was when—the time he gave up; he was giving up his home; that Mrs. Ailes had left his home.

Mr. Starr: I move that that be stricken out. The witness was asked as to the time.

Mr. Endicott: She is identifying another occasion.

Mr. Starr: Do you consent to its being stricken?

Mr. Endicott: Yes.

Q. Did you have a talk with your late stepfather about moving from Pleasantville?

A. Not from Pleasantville, no.

Q. What was the mental condition of your late stepfather when you saw him in October of 1928?

Mr. Starr: Objected to. We are entitled to have what happened.

Mr. Endicott: I will reframe the question.

Q. What did you observe, if anything, about the conduct of your late stepfather, in October, 1928, which led you to form any opinion as to his mental condition?

A. The wrong he done and that he was made to do, caused his mentality to go.

Mr. Starr: I ask that that be stricken.

The Court: It may be stricken.

Q. My question is directed to what acts he did which helped you to form an opinion?

A. He cried or he laughed; he told the most unbearable lies above all humanity.

Mr. Starr: I ask that that be stricken.

Mr. Endicott: Why?

Witness: He forgot.

Mr. Starr: We are entitled to have what he said.

Mr. Endicott: If she knew he told a lie, that is within her knowledge. It may be stricken.

The Court: They are all conclusions as to whether or not he lied; that is a question which may be decided by one person one way and another person another way.

Mr. Endicott: We have consented that that be stricken.

The Court: Let the witness give acts or incidents where the decedent had forgotten or had made certain statements not true.

Mr. Endicott: She testifies that he laughed or cried. They are facts of common knowledge. She testified that he forgot. That is certainly a matter anybody can form an opinion on, without being required to form an opinion.

The Court: The witness ought to be required to give us details as to what he did with relation to forgetting things.

By Mr. Endicott:

Q. What did you observe about his acts or speech that led you to the opinion that he forgot?

A. He did very funny things. He didn't know half the time what he was doing; he couldn't think any more.

Mr. Starr: I ask that that be stricken.

By the Court:

Q. Tell us what the funny things were?

A. If he came to one's house he would run out like a wild man; he would wipe his mouth and he would fly out without saying anything to anyone; he would run out of the house, and the last time he was at the house he was at the table and before we knew it he ran out of the house and said, "Good-

bye,'' and I guess he would have been running still if he could, for he acted weird, he acted funny.

Q. What do you mean by ''weird?''

Mr. Starr: I ask that be stricken.

Mr. Endicott: You don't mean the whole sentence should be stricken?

Mr. Starr: The witness ought to be cautioned.

The Court: I don't think it would do any good. I have tried to do that but I don't seem to be able to impress her with the fact. If she would answer yes or no and give us details instead of conclusions we would get along faster.

By Mr. Endicott:

Q. From the acts that you saw on the part of your stepfather, in the summer and fall of 1928, did you form any opinion as to his mental condition?

(Objected to.)

A. Yes.

Mr. Starr: She has testified with reference to a visit in October. This question includes the summer and fall of that year. It seems to me if she has an opinion it ought to be supplemented by other facts.

The Court: I think she ought to relate more if she can. She has related but one incident, and that is where he jumped up and ran out of the house.

By Mr. Endicott:

Q. Can you tell us why he laughed or happened to laugh or cry, or under what circumstances that happened?

A. General conversation; he would laugh and then cry. When I spoke about Mamma he would cry. Then when something else would come in his way he would laugh, for no reason to laugh.

Q. Was his conduct on the occasions when he laughed or cried, different from his conduct on other occasions, during the years through which you had known him?

A. Yes.

Q. On how many occasions in September did you see him, September and October of 1928?

A. Once in October—in September, let me see; he was at my house October 8th, he was at my house.

Q. Did you see him on any other occasions?

A. In October?

Q. Yes.

A. No.

Q. Did you see him in September, in Philadelphia?

A. In September?

Q. Yes.

A. Yes. Papa took my sister and I to look for a house.

Q. Did you see anything in his conduct on that

occasion when you say he took you to look for a house, that appeared to be out of the ordinary?

(Objected to.)

A. Yes.

Mr. Starr: We are entitled to have what was said and heard and done.

The Court: She may answer yes or no.

Witness: Yes.

By Mr. Endicott:

Q. Relate what you saw on that occasion that was out of the ordinary?

A. When the gentleman came to take my sister and I over to the house to look for a home for sister, Papa walked through the house and he acted peculiarly.

Mr. Starr: I move that that be stricken.

By the Court:

Q. How did he act? Do not form a conclusion.

A. He walked through the house in a daze.

Mr. Starr: I ask that that be stricken.

The Court: Strike it out.

By Mr. Endicott:

Q. What do you mean by "daze?"

Mr. Starr: Objected to. Let her state what happened.

Mr. Endicott: That question is framed to bring out facts that she observed, happenings, in order to form an opinion.

Mr. Starr: She has stated, testified to a state of mind. What happened, is the question.

The Court: I think the objection well taken. I will sustain the objection.

By the Court:

Q. Can you tell us how he acted without telling us your conclusions about it?

A. He didn't know what he was doing. He walked through the place, looked through the rooms, came up and sort of laughed and then sort of looked around like this (indicating), and he acted peculiar and funny; he did not act like himself.

Mr. Starr: I ask that that portion of it be stricken out as to her conclusion as to what happened.

The Court: We will let remain that portion as to his looking through the rooms.

The Witness: And he was talking kind of to himself and laughing to himself, and acting funny. I was looking at him all the time; I didn't know what was the matter with him.

Mr. Starr: Objected to. I ask that that be stricken out.

Mr. Endicott: She said she saw him laughing to himself and talking to himself and walking around the rooms in a daze.

Anyone walking in a dazed condition, in a daze, is in a condition that is a matter of common knowledge. The word "daze" describes a state of being and any person is competent to testify if a person is walking in a dazed manner; and it seems to me that it is perfectly proper testimony.

The Court: I think it ought to be stricken. She may be wrong in her conclusion, that he was dazed. It may be stricken.

(Exception allowed.)

By Mr. Endicott:

Q. Did you ever talk with your late stepfather at any time after he first met Mrs. Katherine Ailes, about discontinuing his employment of her as his housekeeper?

A. Yes.

Q. When did that conversation take place, the date of it, as near as you can recall?

A. When he was breaking up the home; when they had left his house.

Q. That was about when?

A. He was there living in his house a little over a year.

Q. That was about 1928, then?

A. Yes, about that, as near as I know.

Q. Relate the conversation that took place?

A. Papa came over to my house.

Q. What was done by him on that occasion?

A. He made a confession.

Mr. Starr: Objected to.

Q. Tell us what he said.

A. At 8 o'clock he came over. Nobody was home. My husband was in the country. My maid was away. He sat down in the chair. I said, "I am glad you are here, Papa." He said, "Papa is in trouble." I said, "What about?" He said, "What about?" He said, "Everything." He said, "Kate left me." I said, "What did they leave you for?" He said, "They had a terrible fight the other night." I said, "What was it about, Papa?" He said, "About me; about Papa." I said, "What did you do, Papa, that they should fight about you?" Just then he was stricken with a pain and ran unstairs to the bath room and he was gone about 15 minutes and I was standing at the stairs and when he came down he tottered and then he sat down in the chair and I noticed his trousers were wet and I said, "Papa, what is the matter with your trousers, they are wet?" He said, "I am ashamed to tell you, Anna." I said, "You oughtn't to be ashamed to tell me about

it. You are in trouble. God is with us, and mother." And just then he burst out crying and he said, "Anna, I am bleeding." I said, "What is the matter, that you are bleeding?" He said, "Oh, Papa sinned, and Katherine Ailes has been bad to Papa. She has done unnatural things to Papa." I said, "I can't believe that Katherine Ailes would act that way. Now, don't tell a story. God is above, listening." He said, "Yes, Anna, I am telling the truth. I have nobody to go to and I am coming to you because I know you will listen to bad Papa. I am going to kill myself. I have nothing to live for anymore." I said, "You go to bed and when you go to bed say your prayers." He said, "No, something is wrong here; Papa has no mind any more. I have no friends and she has chased my friends away. My brother I don't see and my sisters don't respect me any more; and Mrs. Ailes, she forced me; and she said, 'You got to give me all your money or I will never let you go loose from me.' "

Mr. Endicott: That answers my question.

By Mr. Endicott:

Q. Were you alone with your late stepfather in the hospital in Philadelphia, in 1923, when you had a conversation with him relating to his relations with Mrs. Ailes?

A. Yes, one afternoon.

Q. Relate the conversation.

A. It was about one o'clock when I got there. I was sitting with Papa when Katherine Ailes came in with her hat and coat on and she says, "Papa, I

am going out for a juicy steak." And she went over to Papa's bed-side, to the left side, and she put her arms around Father and drew him up like this, in her embrace, and kissed him and his face got as red and he went backward, and she didn't say a word and walked out and said, "Good-bye, I will see you later." I said, "Oh, Papa, this is terrible." He says, "I know, Anna. It is terrible. I can't get loose from her. She's got me. I can't get loose."

Q. In July, 1928, were you in Atlantic City with your late stepfather?

A. Yes.

Q. Where?

A. I stopped at the Pleasantville house about the last week in July and I waited for him and they asked me to come in.

Q. Did you take him to Atlantic City?

A. Yes, she took him in her car.

Q. Were you on the Boardwalk with him?

A. We went on the Boardwalk.

Q. Were you alone with him on that occasion?

A. We sat on a bench near the Steel Pier.

Q. Where did the conversation take place at that time?

A. Papa says, "Oh, Anna, it is terrible, what you and I have gone through. I help you and you help Papa, you have got to help Papa. Don't go back on Papa. You got to stick up for Papa; his reputation is gone, his friends have forsaken him. I can't help it. My brain is gone, my body is gone and my soul is gone. I am only a living image of your Papa. Forgive me and take his part. If anything ever happens to Papa remember his memory," and I said, "Yes, Papa, I have prayed all the time but

you have found that the Ailes have been in your life," and he said, "I prayed," and I said, "I thought maybe God would help me to help you but I couldn't do it, Papa," and he said, "I know, because Katherine Ailes was such a bad woman to me. She never put any good into Papa. She was always hollering, 'Mortgages, mortgages, money, money. I am going to get everything and you must get rid of your people.' He said, "Lillie and you were not to have anything." He told me she said, "I am to get all, and my family." These were Papa's words, in God's presence, with me.

Cross-examination.

By Mr. Starr:

Q. May I ask you your age?

A. I am past 50. I don't just quite know, but I am over 50.

Q. You don't know your age?

A. Well, I don't know. We never pay attention much, to age. We are a little sensitive in that way.

Q. Do you kuow how old you are?

A. I am about 54, I think, if I told you the truth, if I must tell you I will, with no discourtesy to you.

Q. What was the date of your mother's death?

A. Mother died September 7th. She was buried September 10th, 1919.

Q. September 7, 1919?

A. Yes.

Q. At that time where was Mr. Allen living?

A. Do you mean when my mother died?

Q. Yes.

A. After that he was over at my sister's.

Q. Was he there at the time of your mother's death?

A. With my mother, yes, 1411 West Allegheny Avenue, at their home.

Q. Where were you living at that time?

A. 712 North 63rd Street, West Philadelphia.

Q. 712 N. 63rd Street?

A. Yes. 712 North 63rd Street.

Q. Your sister was living where?

A. 1917 West Dauphin Street, Philadelphia.

Q. Who comprised your family at that time?

A. My husband and myself.

Q. You were living alone at the North 63rd Street house in Philadelphia?

A. Yes, 712 North 63rd Street.

Q. Who comprised the household of your sister?

A. My sister was living alone. She had a gentleman living with her at that time, but he passed on.

Q. She was living alone at the time of his death?

A. Yes, in Papa's house at 1917 West Dauphin Street.

Q. You speak of it as "Papa's house." What do you mean?

A. She lived in my stepfather's home. He had it as long as he lived and after that it went back to his first wife's people.

Q. He wasn't living there at the West Allegheny Avenue house?

A. When my mother passed on my Papa was with my sister, thought a great deal of him and he almost made his home there. He took care of her.

Q. You said something about Mrs. Ailes coming

to the West Allegheny Avenue house. When was that?

A. When Papa engaged her as housekeeper.

Q. I asked you when it was, what date?

A. I can't just tell you.

Q. What year was it?

A. 1920.

Q. What time of the year?

A. To be accurate, about the last part. I can't just tell you that.

Q. You can't give us the month?

A. I know it was after March 20th.

Q. He retained the West Allegheny Avenue house until Mrs. Ailes came there to live, is that right, after your mother's death?

A. He had the house there but didn't live there. He lived with my sister, took care of my sister who was alone.

Q. Was the Allegheny Avenue house occupied at all?

A. I shouldn't think so. It was neglected. He may have gone there once in a while. We looked it over so it didn't get too dirty; it wasn't the home after mother passed on.

Q. Did he sleep there at all?

A. I judge so, maybe once or twice. That I can't say. But I know he was with us a lot, a great deal.

Q. How long did you continue to live at the 63rd Street house after your mother's death?

A. I am living there still, from 1911. I am still there. It is our home.

Q. What about the West Dauphin Street house. How long did your sister continue to live there after your mother's death?

A. She is living there now.

Q. When was the last time you saw your stepfather before he died?

A. October 8th.

Q. What?

A. October 8th.

Q. That is the incident you have already testified about?

A. Yes.

Q. When next before that did you see him to have any conversation with him?

A. I was talking to him October 6th, my birthday. He was over at my sister's and he asked me to come over, that he wanted to take me out. He had been ill.

Q. Did you see him October 6th?

A. No.

Q. My question was, when was it you saw him next before that? Wait a minute. You say you saw him October 8th, 1928. When next before that did you see him?

A. I guess it was every week because he was up at Lillie's every week and if I came there one week or the next week I guess I would see him.

Q. Can you tell how often you saw him?

A. I guess on an average of once a week or once in two weeks. I can't just say that.

Q. You are unable to tell us definitely the time?

A. I was in touch with him.

Q. You can't tell us definitely how many times you saw him?

A. I would say weekly.

Q. Weekly?

A. Yes.

Q. He came then to the West Dauphin Street

house to see your sister and you say you saw him weekly?

A. Yes.

Q. How long did those weekly visits continue, prior to October 8th, 1928?

A. How often?

Q. How often did they continue? For how long?

A. All the time.

Q. Every week?

A. Every week that I know he was in the city I was over there.

Q. I am asking you how often it was. Can't you give us an idea?

A. Weekly.

Q. Those weekly visits continued how long prior to October 8th?

A. How long prior?

Q. Yes.

A. Do you mean afterwards, or before?

Q. I mean before.

A. I would say every week.

Q. You saw him every week in the month of October?

A. I guess I did.

Q. Are you sure?

A. I can't just remember but I seen him a great many times during the time he came to the city weekly.

Q. Did you see him in September, 1928? Every week in September?

A. Well, I don't know; yes, of course, I did, because I seen him a lot of times during the time he came to the city.

Q. Did you see him every week in July of 1928?

A. No, not every week in July; once in July.
Q. How often did you see him in July?
A. Once, the last of July.
Q. What date was that?
A. About the last week in July.
Q. Where?
A. In Atlantic City. I took him from Pleasantville. We went from Pleasantville to Atlantic City.
Q. How many times did you see him in June of 1928?
A. In June?
Q. Yes.
A. I didn't see him in June. I think I called him up on the phone in Pleasantville. I didn't see him.
Q. My question is, how many times did you see him in July, 1928 or rather, June, 1928. Can you answer that without going into full explanations?
A. I didn't see him in June, 1928, but I think I called him up on the phone at the house at Pleasantville; but I didn't see him.

Mr. Starr: I ask that that latter part be stricken out.

The Court: Strike it out.

Q. In the month of May how many times did you see him?
A. I don't know. I can't tell you.
Q. Prior to 1928 how many times did you see him?
A. I seen him but I can't just state when.
Q. Take the year 1927. How many times did you see him to hold conversations with him?

A. Every time he was at my sister's, Lillie's, I was there every week with him.

Q. How often was that?

A. Once a week I guess; once a week.

Q. You saw him to talk to once a week during the year 1927?

A. When I was there I seen him.

Q. During 1927?

A. To the best of my knowledge I seen him when he came to the city.

Q. And that same condition existed in 1926?

A. 1926? That is going pretty far back. That takes a very wonderful memory.

Q. That is what you seem to display.

A. When he was at Lillie's, he came every week. He was always there to take care of her. He was always coming there and when I knew he was there and I was able, I came to see him, came there to see him. I can't just remember correctly so far back, to 1926, but I remember about 1923, very vividly, when he was at the hospital.

Q. How many times did you see him at the hospital?

A. I was visiting, I guess, every day.

Q. How many times were you there when Mrs. Ailes was there?

A. When I was there?

Q. Yes. Was she always there on the occasions of your visits?

A. The nurses were there but they weren't there very much. She was there all the time.

Q. Then your answer to my question is, "Yes?"

A. Yes.

Q. Every time you visited your father—is that right?

A. Yes, I guess it was.

Q. You say you "guess?"

A. Yes, she was.

Q. This testimony you are giving, is ——

A. I will say yes, she was.

Q. The testimony you are giving us is positive and not a mere guess on your part?

A. Well, I have so many things, so many of the real things to think about that it is a little hard for me to remember everything.

Q. Can't you answer the question?

A. Yes.

Q. You are not guessing at your testimony?

A. No. I said, "Yes."

Q. When did Mr. Allen go to Pleasantville to live?

A. When the house was sold.

Q. What year was it?

A. That I can't tell you. They moved—the house at 4311 Walnut, after Papa came out of the hospital, he was discharged from the hospital in 1923 and he went back to 4311 Walnut Street and from there, until they sold the house, then she grabbed hold of him and took him to Pleasantville.

Mr. Starr: I move that the last part of that answer be stricken out.

The Court: I think it ought to be stricken.

Mr. Endicott: You brought it out.

By Mr. Starr:

Q. What year was it that Mr. Allen went to Pleasantville?

A. I can't tell you.

Q. You don't know the year?

A. Don't know the year, no, sir.

Q. After he went to Pleasantville to live, how many times did you visit the house in which he was living, after he started to live there?

A. After he moved to Pleasantville?

Q. Yes.

A. I never visited him at that house—if you call it a visit.

Q. Did you ever go into the house?

A. I went into the house, I think, to see Papa and then I would go out.

Q. How many times did you do that after he started to live there, until he died?

A. If you will allow me to think for a minute, about 3 times.

Q. And that covered a period—if you went there in 1923 it covers a period of about 5 years, and you visited him three times in 5 years, is that right?

A. I visited him. I stopped to see him, and I called on the phone.

Q. You stopped to see him 3 times in these 5 years?

A. In July.

A. The last week in July.

Q. When were these visits, what month of the year?

Q. What year?

A. In 1928; I stopped at Pleasantville and we went into Atlantic City.

Q. That is once. When were the other two occasions?

A. August 8th, a Saturday afternoon.

Q. What year?

A. 1928. Mr. Shumway and I—he brought us over from Wildwood into Atlantic City. We were in Wildwood Friday and Saturday afternoon, 3 o'clock, September 8th, was the occasion.

Q. That makes two occasions. When was the 3rd occasion?

A. There was no 3rd occasion in Pleasantville; and on October 8th he was at my house, in 1928, at my house in Philadelphia.

Q. Then the two occasions were in July and August?

A. July and August.

Q. These were the only occasions when you visited the Pleasantville house?

A. Oh, I stopped two or three times in the month before.

Q. That is what I am trying to find out—how many times?

A. I can't answer that.

Q. How many times did you stop there?

A. About 3 times. I would see him in the sun parlor and would call him out.

Q. On the occasion in July, 1928, did you have any conversation with Mr. Allen?

A. In July?

Q. Yes.

A. Last summer, in July, we were sitting on the Boardwalk.

Q. Did you have any conversation with him at the Pleasantville house?

A. No, because I wasn't there long enough only to say a few words and walk out.

Q. Then you did have a conversation with him?

A. Quite a little bit.

Q. What did you talk about?

A. Little bits of subjects.

Q. Do you remember what they were?

A. I don't know. I said, "I came to see you, Papa. How do you do?"

Q. What reply did he make to that?

A. He seemed to be glad.

Q. What did he say?

A. Well, he didn't say very much.

Q. Did he say anything?

A. Yes.

Q. What did he say?

A. Well, he said, "That is nice, Anna, I am glad to see you." We talked on general topics.

Q. What did he talk about?

A. He never did talk very much.

Mr. Starr: I ask that that be stricken out.

The Court: It may be stricken out.

Witness: He said, "How do you do? What are you doing?"

Mr. Endicott: There is no question pending.

By Mr. Starr:

Q. Then you got into the automobile and went over to Atlantic City, is that right?
A. Mrs. Ailes took me over.
Q. She took you over in her car?
A. In the car that Papa bought her.

Mr. Starr: I move that be stricken.

The Court: All right.

Mr. Endicott: If she knows that that is the fact; she identified the fact in that way. You wanted to know whose car it was. She was identifying the car for you.

The Court: I think it ought to be stricken.

By Mr. Starr:

Q. Then you went to the Boardwalk in Atlantic City and you had this conversation?
A. We sat on the bench.
Q. You detailed that in your conversation?
A. Yes.
Q. Was there anything else besides that took place in your conversation that you haven't told?
A. He was disturbed, yes.
Q. What did he say?
A. He said he didn't like New Jersey, that he didn't like Katherine Ailes or Frank Ailes or anybody that belonged to them; that they ruined him, that they were always hollering for money, money,

money. He was sick. I said, "Why don't you come home where you belong?" He said, "I can't get away from them. They threaten me. They are ruining me and I have to stop. The yare going to get my money, and that is all there is to it."

Q. Is that all he said?

A. That is enough. I didn't want to hear much more.

Q. I will repeat the question: "Is that all he said?"

A. Well, he said a lot more that he repeated.

Q. What was it?

A. He repeated it. He said that this badness, this immorality and she doing things to him that cowered him and made him an evil creature, made him so that he didn't know what he was doing any more. He says, "Here I go to church on Sunday and pay my dollar bill so that everybody sees me," and I says, "You are not right." And he says, "No, Anna, I am not right, and if you went through what I do you wouldn't be right either." He says, "The minister wants my money, everybody wants my money." He says, "In Ailes' family they got the money. I can't move. They have taken everybody from me. I haven't anybody any more. I have lost my friends. The only one that respects me is yourself and your sister. I can't do anything more. I am getting crazy." He said, "I even had badness that got into my body and it affects me that I am so nervous."

Q. I am not asking you that. I am asking you about this occasion when you were in Atlantic City with Mr. Allen? Is there anything else that he said then?

A. That is enough. I guess that is all. He couldn't say more. He was quite bad. His mind was gone and he only had a shell of a brain.

Q. Did he say that?

A. Yes.

Q. What else did he say?

A. He said, "Anna, it is hard on me. I can't think. Won't you help me, Anna?" He wasn't insane and if he was I would have put him in a sanitarium. But he wasn't. And he was not a drinking man, he was a good living man, but he was mentally gone.

Q. Have you finished your answer relative to the conversation?

A. Sir?

Q. Have you finished your answer relative to your conversation with him?

A. To the best of my knowledge, yes.

Q. That is ended?

A. That is ended. It is a sad ending.

Q. Did you—what did you say during all this time?

A. I sat there, like I should.

Q. Did you say anything?

A. I said, "Well, I would like to help you. I prayed for you, but the devil got you or someone got you, Papa. I have prayed for you for the past years but I put Mrs. Ailes in your house, I gave her a home, and I was the means of giving her a home."

Q. Did you tell him that?

A. Yes.

Q. Go on.

A. Well, you asked me. I didn't want to stop.

Q. I am asking you to go on.

A. I said, "Is that a nice way, to come to this condition?" I said, "There I was, putting Katherine Ailes in your home. They hadn't a home before. I didn't think they were even in moderate circumstances."

Q. What did he say to that?

A. I was talking to him all that afternoon. We were talking.

Q. Did you say that Mr. Allen had gone in July to the Boardwalk and that you talked to him about Ailes having been in medium circumstances and that he knew it? Or that he said he knew it?

A. I said they were in poor circumstances and that I was the means of giving him, giving them, a home.

Q. You told him that?

A. Yes.

Q. What else?

A. And I said, "Isn't that a nice way to get yourself in, to ruin yourself?" I said, "I tried to keep you right and I put you there that they would put the right thought in your brain. If you didn't want to be ruined why didn't you get out, run away, or step out? But you didn't do that." He didn't do it. He was afraid.

Q. Is there anything else?

A. I told him so much.

Q. Do you remember anything else?

A. Let me see. I told him so much; and we tottered along together and I shook, and he shook, and people were going along looking at us, and we were both shaking through sorrow.

Q. Was there a great crowd around?

A. No, but the people turned around and they wondered who it was.

Q. Where was Mrs. Ailes during all this conversation?

A. She wasn't around.

Q. Where was she?

A. I guess she was at her house. We left her there; no, she was not. She brought us to Atlantic City and we got to Atlantic Avenue, at the corner, and she took the car and went off somewhere on her own business.

Q. And you went with Mr. Allen to the Boardwalk?

A. Sir?

Q. You went with Mr. Allen to the Boardwalk?

A. We got out and went into a lady's house and talked a few minutes and then went to the Boardwalk.

Q. Who was the lady?

A. Mrs. Beiler.

Q. Where was she living then?

A. She lived on Presbyterian Avenue, at Fairmount.

Q. Was she a friend of yours or Mr. Allen's?

A. I just know her casually. She was no friend of Papa's.

Q. How did you come to stop there?

A. Because I knew her.

Q. Was it at your suggestion that you stopped there?

A. Surely; we just stopped there. I stopped because I was awfully dirty and I was sick. We stopped in, went in there and Mrs. Beiler gave me a cup of coffee and I said, "Mrs. Beiler, I will in-

troduce you to my stepfather," so she wanted to make a big lunch and I said, "No, we are going to the Boardwalk," and we left and went to the Boardwalk.

Q. What was the number of the house on Presbyterian Avenue?

A. It was 619 Presbyterian Avenue. I think that is the address.

Q. I am a stranger in Atlantic City.

Witness: So am I.

Q. What part of Atlantic City is that?

A. That is up—it is up this side of Virginia Avenue, a street that runs between Virginia Avenue and the next street.

Q. Did you have any conversation at all with Mr. Allen at all at Beiler's?

A. Well, my stepfather says to Mrs. Beiler, he says, what all of the women he has gotten introduced to he has bought houses for, and he says, "I guess I will have to buy you one"—he never met her before, and I looked at Papa and I said, "That was a funny thing for you to say to Mrs. Beiler." But you see, Papa didn't know what he was saying. He says, "I bought a house for the Ailes family and I thought I will buy one for you"—he said that to Mrs. Ailes. He said to Mrs. Ailes, "I will get you a house," and I scolded him all the way down to the Boardwalk.

Q. What was said by Mrs. Beiler or your father that induced him to make the statement about buying the house?

A. He was money mad.

Q. I didn't ask you that.

A. That induced him to buy a house? He was crazy over houses.

Q. What was said either by Mrs. Beiler or your father on that occasion that induced him to make the statement about buying Mrs. Beiler a house?

A. He was talking about money. That was all his brain had—money and mortgages.

Q. What did he say?

A. He said he had a mortgage for every day in the year, but he got to blowing and he was so money mad he got to mortgages, and he said, "I will buy you a house. I will give you a mortgage. I buy all the other women houses."

Q. Did he say that to Mrs. Beiler?

A. He said ——

Q. Did he say that to Mrs. Beiler?

A. Yes, yes; not to anybody else.

Q. How long were you down to the Boardwalk on that occasion?

A. Until about—I took the bus around, I think ——

Q. Can't you answer the question? How long were you on the boardwalk on that occasion?

A. I think I took the 5 o'clock bus home.

By the Court:

Q. How long were you there, is the question?

A. I suppose we left about 3 o'clock; we left about 3 o'clock; we were together about a couple of hours.

By Mr. Starr:

Q. Two hours?

A. About two hours. I just can't say. I didn't look at my watch, but I just stayed there. I don't know how long.

Q. What became of Mr. Allen?

A. What became of Mr. Allen?

Q. Yes.

A. I said to Papa, "What are you going to do?" and he said ——

Q. I didn't ask you that. I asked you what became of him?

A. I don't know.

Q. Did you leave him there?

A. I left him there.

Q. On the Boardwalk?

A. Do you want to know what was said? I said, "Good-bye," when I asked him a question before I left.

Q. Did he say anything more than what you related?

A. I asked him what he was going to do, to go back to Pleasantville, and he said, no, he was going to walk on the Boardwalk until 9 o'clock. I said, "Why don't you go back to your car?" He said, "I don't want to go back there. He has the whole family there." I said, "You want to be careful on the Boardwalk; you will be lonely."

Q. You left him and took the bus?

A. Yes.

Q. Was there anything else you or he said?

A. He kissed me good-bye, said, "Good-bye,

Anna." And I said, "Be careful of yourself, Papa." That was the last thing.

Q. You left him there in the condition you describe?

A. I left him there because I didn't know what else to do. I had to get home to my husband; I couldn't leave my husband to suffer.

Q. On the other occasion in 1928, you say sometime in August, was it, you have detailed the incident I believe, in July; now, it is August that you saw him again?

A. August 8, yes.

Q. Where was that, at Pleasantville?

A. When we stopped in Pleasantville. That was when I was in the car.

Q. Who was with you on that occasion?

A. Wait now; no, wait a minute. I am telling you a story. I may have gotten matters mixed up. It was August 18 when we were in the car and Mr. Shumway and I were coming home.

Q. I understood you to say you visited the Pleasantville house on two occasions in 1928. Is that right, or not?

A. The one occasion was July, the last week in July.

Q. You told us that.

A. Then the other was in August, when we stopped.

Q. Did you get out of the car?

A. I got out of the car.

Q. Then where did you go?

A. Walked up to the pier.

Q. Did you go in the pier?

A. No.

Q. You stood at the pier?

A. Yes.

Q. How much time did you spend there?

A. Long enough to hear what he had to say.

Q. How long did you stay there? 10 or 15 minutes, or how long?

A. I judge about 5 minutes.

Q. 5 minutes?

A. Yes.

Q. You talked to him during those 5 minutes?

A. I spoke to her mother first then to Katherine Ailes.

Q. Was Mr. Allen down there all the time?

A. He was down at the car and talking to Mr. Shumway, my husband.

Q. Did you talk to him at all that day?

A. To who?

Q. Mr. Allen.

A. With my stepfather?

Q. Yes.

A. When I went down to the car I talked to him. When we got in the car we were talking a little bit.

Q. When you say "we," who do you mean?

A. He was down at the car with my husband, Mr. Allen was.

Q. What conversation occurred at the car?

A. When I said, "Good-bye" to the folks, I got in the car and they were talking, when the mail man came along with a letter and as he opened it, I saw "Mrs. Allen" inside, and I said, "Papa, is that 'Mrs. Allen,'" and he said, "That is what they call her. They don't know who she is the wife of, Frank or me."

Q. Who was present when that took place?

A. Mr. Shumway was sitting beside me.

Q. Who else was present?

A. Mr. Allen, my stepfather, and I was right there.

Q. No one beside you three?

A. No one.

Q. Was anything else said on that occasion?

A. No, they talked. I can't remember what was said. I remember that then we went away. I will tell you while I think of it; at the door, Kate was saying ——

Mr. Endicott: Don't volunteer anything.

By Mr. Starr:

Q. Did you have any conversation with Mrs. Ailes on that occasion in August when you say you visited them?

A. I can't hear you.

Q. Did you have any conversation with Mrs. Ailes upon that occasion when you visited the Pleasantville house?

A. Why, I was standing at the door talking to them both.

Q. What was said?

A. I told you before. I said, "How do you do," to them, and they started to talk to me.

Q. What did she say?

A. She says that Papa was in Atlantic City a few days ago and he got sick and he came home with his clothes all soiled, and he soiled the carpet, and she saps, "Oh, such a dirt, Anna, it was terrible;" and she turned to her mother and she says, "Mamma, I

don't know how I am fixed. I don't know how it is going to be." And I turned to her and I said, "Haven't you made a will yet?" and she says, "No, every time I talk to Papa about a will be looks up to the heavens and says, 'It is a beautiful day out.' "

Q. Was that the entire conversation?

A. And then after that she started to tell me that she fixed his room, put a carpet in his room and that it was so thick that when he walked over the floor he sunk into the floor; and that she put in new furniture in the room and I then looked at her and I said, "That is very nice." And after I got talking to him I said, "Papa, Kate Ailes said she fixed your room up with carpet that when you walk on it your feet sink right into it ,and that she bought you furniture, beautiful furniture. That is nice to have that." And he said, "Yes," he said, "Papa paid for it all."

Q. Have you given us all the conversations?

A. That is all I can recall, truthfully.

Q. Wait until I finish the question. Have you given us all the conversations you had that day both with Mr. and Mrs. Ailes?

A. On that day? Yes, to my knowledge.

Q. You have nothing to add to it?

A. I don't think so.

Q. Did you have any conversation with Mr. Allen in 1928 except upon the two instances you referred to when in Atlantic City, on the Boardwalk; and the other at Pleasantville?

A. On October 6th I called up and my sister said, "Papa is here." So Papa came to the phone and he

said, "Anna, come over tonight. I want to take you to the movie."

Q. That was in October?

A. October 6th. (Sixth.)

Q. That was not at Pleasantville?

A. Not at Pleasantville, no, sir.

Q. Did you go over to your sister's house, your sister's, Mrs. Seltzer's home?

A. At what time?

Q. On October 6th.

A. Not on October 6th. But I went over there all the time.

Q. When did you see your stepfather?

A. October 8th.

Q. Where was that?

A. That was at my home, in the morning.

Q. Did you have a conversation with him?

A. He had a conversation with me, talked at the table with me and had dinner with me.

Q. What was the topic of conversation?

A. He talked about mother, and then started to cry; then he said he was going to buy my husband and I a bungalow, and he says that I was always so good to him; I was sickly and I was in pretty bad shape and he thought that I deserved it—to get away, and he said I needed it and I said, "That is awfully kind of you, Papa." I said, "I will be satisfied with a little two-roomed place, if it could be that I could come with you and we could go out together," for I was in very bad shape, in bad health at that time; and he started to cry again. He was eating, I got him some fried oysters and his mouth got full of catsup and he didn't seem to be able to swallow, he was so weak, so I walked

over and wiped off his mouth, and he was shaking and then began to cry.

Q. Is there anything else that you recall?

A. And all of a sudden he said, "I got to go. I got an appointment at two o'clock. I got to get," and he started to run out of the house and he kept on running and I looked out of the house and he was away down the street.

Q. He was there for how long?

A. He got there at 11 o'clock.

Q. He was there how long with you?

A. I was there—the minute they called me out, at 11 o'clock, I left. I went to the house at 12 o'clock and had to travel to West Dauphin Street. His appointment was for two o'clock. He stayed long enough to eat his lunch and all of a sudden he jumped up and it must have been, I judge, around, well, it wasn't two o'clock yet when he left.

Q. Who were there at that time?

A. The gentleman he made his home with, a Mr. Williams, a scientist.

Q. He was there at that time eating a meal with you?

A. Yes.

Q. You didn't see him again before he died?

A. Sir?

Q. You didn't see your stepfather again before he died?

A. I didn't see him until I looked on his face; he was a corpse.

Q. He died October 22nd?

A. A postal card came; shall I tell you?

Q. I asked you when?

A. I got a postal card from Kate Ailes saying, "Dear Anna. Papa passed on today."

Q. Did you know he was taking a trip and had gone south with some friends?

A. No, sir.

Q. You didn't know that?

A. No, sir.

Q. You say your stepfather was always expressing great affection toward you? Is that right?

A. He should have.

Q. Did he?

A. Very much so.

Q. Always?

A. Always, as much as he could for being a miser. I didn't get nothing from him. I didn't want it, but I know he was very fond of me, and my sister, too.

Q. When did you know he made a will in which you were disinherited?

A. I didn't know it.

Q. When did you know it?

A. When Papa died and I got a postal card.

Q. Can't you tell me the time? I don't want details.

A. After his death. When I got the postal card I called up my sister.

Mr. Endicott: After his death. Answer the question.

A. After his death? Let me see if I can answer that; right after his death.

Mr. Starr: I think it is highly improper to make any suggestions.

By Mr. Starr:

Q. Can you tell us when you first knew that you were disinherited?

A. I didn't know I was disinherited. I wouldn't put it that way.

Q. Assuming, say, that you are to get some interest in this case.

A. I don't know anything about it.

Q. Do you mean to say that you are to get some interest in this case if a former will is upheld?

A. No.

Q. Haven't you an arrangement with your to receive that?

A. No, sir.

Q. You haven't talked with your sister with relation to it?

A. I have nothing to say. What my Papa did, I didn't question.

Q. Have you had any conversation whatever with your sister?

A. No.

Q. With relation to a division of the estate in case the former will is sustained?

A. No, sir.

Q. Have you ever talked with her about it?

A. No, sir, I haven't anything to say.

Q. What?

A. I haven't anything to say.

Q. Did she ever talk with you about it?

A. We talked things over and things like that but I haven't anything to say.

Q. Is there any arrangement by which you are to receive any interest in this case, in this estate?

A. No.

Q. Has the estate been subject of conversation with you?

A. No, sir.

Q. In no way, shape or form?

A. No, sir.

Q. Did your sister ever tell you she had this will of 1919?

A. She has told me, "I have a will."

Q. When did she tell you that?

A. When I heard of Papa's death.

Q. She never mentioned the fact of an existing one —— Just a minute. Did she ever mention the fact to you, at any time prior to Mr. Allen's death, that she had this will of 1919?

A. No, sir.

Q. Did you ever talk with your sister about the disposition of your stepfather's property, from 1919 up to the time of his death?

A. No, sir, we never talked will.

Q. Never talked anything about the disposition of his property?

A. No, sir, we didn't think of a will or property.

Q. You didn't want any part of his estate?

A. If he thought I should get it he would give it to me.

Q. You didn't want it?

A. I wouldn't say I don't want it. I won't say I don't want it.

Q. You spoke of an occasion in 1921 or 1922 in which you were in the house where your stepfather was living and that Mrs. Ailes and he were out in the kitchen and you heard a statement made by her to him, something like this: "Take it in, dear."

A. What is that?

Q. "Take it in, dear."

A. That is when she was housekeeping and he gave a party.

Q. When was that?

A. That was, well, I don't know. That was when they were in the house. They were having a card party.

Q. Can you remember when that was?

A. No, it is too far back.

Q. What did he have to say?

A. He took the plate automatically just like a figure.

By the Court:

Q. Did he make any reply?

A. No, sir, he just took the plate.

By Mr. Starr:

Q. Did you see into the kitchen?

A. I saw that she was standing there.

Q. Where were you?

A. She was in the kitchen and the table was like here. (Indicating.)

Q. Were you in the dining room?

A. I saw from the dining room into the kitchen.

Q. On one occasion you say you saw Mr. Allen kiss Katherine Ailes' daughter?

A. I didn't say that. Mr. Ailes said to me, "Do you think it is right, Anna, for Papa to kiss Katherine," and I said, "I certainly don't."

Q. Who was Katherine?

A. His daughter.

Q. Are there two Ailes, Katherine Ailes?

A. There are 3 daughters.

Q. Is there a mother named Katherine?

A. Mrs. Katherine Ailes is the mother and, I think, the young daughter is Katherine. She is a very young girl.

Q. What was the age of Katherine, the daughter?

A. I don't know; she was about 17. I didn't ask her age.

Q. Who were present when that occurred?

A. Mr. and Mrs. Ailes were in the front room.

Q. And the daughter?

A. The daughter wasn't there.

Q. Didn't you say you saw it?

A. I didn't say I saw it. Mr. Ailes told me. Papa was out that evening. Papa wasn't there when they told me.

Q. Mr. and Mrs. Ailes were there?

A. Yes, I came to call on my stepfather.

Q. There was nobody around?

A. Not to my knowledge, no, sir.

Q. You also said in your direct examination that upon the occasions when you visited the Pleasantville house, that you were not able to enter the house, I think your language was, "I couldn't enter the house." What did you mean by that?

A. Well, the conditions.

Q. What did you mean by that?

A. I couldn't do it.

Q. Did anybody appear to keep you out of the house?

A. Something within me; I couldn't go in, that

was all. I was injured. Papa and I was injured, that was all.

Q. Did anybody tell you to keep out?

A. Only myself. My feelings.

Q. You say your father had some difficulty talking over the phone.

A. Papa was deaf; he couldn't hear good.

Q. Did you talk with him over the phone at times?

A. Once in a while.

Q. How often did you talk with him over the phone?

A. Well, not very often. I couldn't tell you that. I couldn't answer. He couldn't talk, he couldn't hear, he was very deaf, Papa was.

Q. When Mr. Allen was living at 4311 Walnut Street, did you ever visit him there?

A. Let me think a minute.

Q. You were never in that house?

A. Let me think a minute. I have to think. I think, once.

Q. Once?

A. I think, once.

Q. You are sure about that or are you guessing about it?

A. I think, once. I went up into the bath room. I recall I was up in the bath room.

Q. How long did he live in the Walnut Street house?

A. I don't know.

Q. Mostly during what years?

A. I couldn't tell you.

Q. Why not?

A. I couldn't tell you. I never went there.

Q. You have no knowledge of it at all?

A. No, sir. I could guess, but I can't tell you.

Q. We don't want any more guessing.

A. You don't want guessing.

Q. Was there an occasion between 1925 and 1928 that you lived in Pleasantville in the summer time?

A. I lived in Pleasantville? I was there at Risley's cottage.

Q. How long were you there, what year was it?

A. I think I was there 3 months, about 3 months.

Q. During what year was it?

A. 1927—you see I haven't—let me see. It was in 19—let me see; I guess it was in 1926 and 1927.

Q. Regardless of the year, did you visit your stepfather while you were there?

A. No, sir.

Q. You were never in the house, were you?

A. I never was. I met him on the street, never in the house.

Q. In 1923 when your stepfather was in the Jefferson Hospital, did you try to get him to sign a will, while he was committed to the hospital?

A. No, sir.

Q. No incident of that kind ever happened?

A. No, sir.

Q. The fact is that you were excluded from the sick room because you made an effort to have a will executed?

A. I wasn't in the sick room, at all. When Mr. Schreiber came ——

Q. Answer the question.

A. I wasn't in the sick room.

Q. I didn't ask you that. I asked you if you were excluded from the sick room upon an occasion where

it was attempted to get the late Mr. Allen to sign a will?

A. I wasn't asked to be excluded.

Q. Answer the question.

A. I wasn't there, no.

Q. On this occasion in July, 1928, when you went to Atlantic City in a car driven by Mrs. Ailes, who suggested going to Atlantic City upon that occasion?

A. I stopped at Pleasantville to see Papa, and I stopped in and I said to Papa, "I want to go in and spend the day with him in Atlantic City."

Q. Who suggested the idea of going in the car?

A. She came downstairs and said, "I will take you to Atlantic City, Mrs. Shumway."

Q. You didn't object to going?

A. No; my Papa went along and he got in the car and I went along.

Q. You didn't object to going in the car with Mrs. Ailes?

A. No, I just got in.

Q. And yet you felt on occasions before that you were unable to go into the house?

A. Yes.

Q. Explain that.

A. I can't explain it, except that we were going together. I came down to see my Papa and I wanted to go in the trolley but Papa was too sick to go in the trolley and we thought we would go in the car, and he got in and I followed him.

Q. On occasions when you went to Pleasantville to see your stepfather, she would be in the house, would you go in?

A. I just went in and stopped long enough to say two or three words.

Q. You said that you were kept out of the house by your feelings in your own mind?

A. Absolutely.

Q. That feeling in your mind didn't make you object to your having an automobile ride?

A. It wasn't an automobile ride. We just went into Philadelphia—I mean into Atlantic City.

(Recess to 2 P. M.)

AFTER RECESS, 2 P. M.

GEORGE R. MANNING, sworn.

By Mr. Endicott:

Q. Where do you live?

A. Pleasantville.

Q. What is your occupation?

A. Banker.

Q. Have you with you the records of the Pleasantville Trust Company relative to the account of Albert Allen?

A. I have.

Q. Will you produce them?

(Records produced.)

(Witness produces signature card, Pleasantville Trust Company, Pleasantville, N. J., signed "Albert Allen." Date 7-17-22.)

Q. Are these in chronological order?

A. Yes.

Q. Witness produces 8 yellow ledger sheets, showing the account of Albert Allen, beginning October 6, 1925, and ending November 21, 1928.

(Witness produces ledger sheets of Pleasantville Trust Company.)

Witness: They are the savings sheets.

(Witness produces savings sheets.)

A. They are two separate accounts, yes. One is before his death; the other is subsequent to his death.

Q. One is marked "Allen"—pardon me, 10-22-28.

A. No, that is "deceased."

Q. Marked "deceased," 10-22-28, showing the account beginning October 22, 1926, and ending January ——

A. January 1st. That is an interest entry. It really ended October 25th.

Q. And subsequent interest entries; Balance on hand, as disclosed by savings account, is the sum of $4370.77.

Mr. Endicott: Do you have any objections to this being offered?

Mr. Starr: Not the slightest. That last one he referred to is, I believe, the transaction since the death.

Witness: I might state, to get you clear, that this

signature record covers both these savings accounts and the commercial account. I have no signature card on this.

Q. Have you a power of attorney from anyone over the account of Albert Allen?

A. No, sir.

Q. Have you the account of Katherine Ailes?

A. Yes, I do.

Q. Will you produce that?

(Paper produced.)

A. That is Katherine and Frank Ailes.

Mr. Endicott: Let these papers be marked.

(Papers marked C3a to C3g, inclusive, and admitted in evidence. Also account marked C2 admitted.)

Mr. Endicott: Witness produces signature card, Pleasantville Trust Company, showing signature of Katherine Ailes, and Frank Ailes, 703 N. Main Street, 11-10-28. Marked C4.

Witness produces signature card marked Frank Ailes or Catherine Ailes, showing account beginning October 25, 1928, with deposit of $2800; sundry withdrawals and deposits, account ending March 14, 1929, with balance of $131.29. Marked C5.

Witness produces ledger sheet, Pleasantville Trust Company, marked Frank P. Ailes, or Catherine Ailes, opened November 10, 1928, with a credit of $1800.

Witness: That is the saving account sheet.

Mr. Endicott: Showing balance on deposit as of January 18, 1929, of $4258.90.

Q. Do you have any other accounts or records relating to the accounts of the late Albert Allen, or of Catherine Ailes?

A. Our other records, do you mean, checks, notes or the like?

Q. Checks, notes, or anything of the kind.

A. There is the last savings checks.

(Marked C6.)

Witness: Do you want Mrs. Ailes' figures, too?

Mr. Endicott: We will take one at a time.

Witness produces check dated January 18, 1928, payable to South Jersey Title & Finance Company, $2000, signed Albert Allen. Marked C7.

Witness produces check March 8, 1928, drawn transferred, to check account, signed Albert Allen, $500. Marked C8.

Witness produces check dated March 17, 1928, endorsed, deposit, commercial account, $500, Albert Allen, C9.

Witness produces check 5-11-28, drawn transfer check account, Albert Allen, $500, marked C10.

Check produced, August 7, 1928, drawn to the order of To Commercial Account, $300, signed Albert Allen, C11.

Witness produces check, dated September 20,

1928, to order cash, signed Albert Allen, $1500, not endorsed. C12.

Q. Under the practice in your bank, would the fact that you have cancelled a check without endorsement, indicate anything?

A. Yes.

Q. What does that indicate?

A. One of two things; it was either deposited in his commercial account, or cashed.

Witness produces check dated October 17, 1928, commercial account, Albert Allen, $3000. Marked C13.

Witness produces check dated October 22, 1928, to the order of cash, $800, signed Albert Allen. Endorsed Catherine Ailes. Marked C14.

Witness produces check dated October 22, 1928, drawn to the order of Catherine Ailes, $2000, signed Albert Allen. Marked C15.

The Witness: Here is your stamp, right here. (Indicating.)

Mr. Endicott: Endorsed, "Deposit to the credit of Payee, Pleasantville Trust Company, marked C16.

By Mr. Endicott:

Q. Does it come upon your department to pass upon the signatures upon which checks are paid?

A. Yes.

Q. I show you check, marked C16, dated October 16, 1928, and ask you if you have any trouble reading the signature attached to that check? (Check shown witness.)

A. None at all.

Q. Do you notice a discrepancy in the signature there, in comparison with the other checks that I have just introduced in evidence? (Check shown witness.) Do you understand the question?

(Question read to witness by the stenographer, as follows: "Q. Do you notice a discrepancy in the signature there, in comparison with the other checks that I have just introduced in evidence?")

A. Yes.

Q. Did you make any effort to ascertain whether or not that was signed by Albert Allen?

A. I did.

Q. What steps did you take?

A. The Judge has it, right here.

Q. Witness produces a certificate dated October 25, 1928, which reads as follows:

"Winchester Memorial Hospital
Winchester, Virginia.
October 25, 1928

I hereby certify that I nursed Mr. Albert Allen of Pleasantville, N. J. during his illness in the Winchester Memorial Hospital from Octo. 21st to Oct. 22 1928 at which time he died. I also hereby certify that I saw him sign two or three checks in my presence the amount of which I am not aware. These checks were presented to him for his signature by Mrs. Frank Ailes a lady who accompanied him to the hospital.

Signed Katherine Booth R. N.
Winchester Virginia.

State of Virginia
County of Frederick, to wit:

Personally appeared before me, in my office and State aforesaid, Katherine Booth, R. N. who says the foregoing statements are true and correct.

My commission expires June 22, 1931.

GIVEN under my hand and seal this 28th day of October, 1928.

Maud J. Brown N. O.
Winchester Memorial Hospital
Winchester, Virginia

Mr. Geo. R. Manning
Pleasantville, N. J.
Dear Mr. Manning,

I am herewith enclosing affidavit of nurse as requested in this case, I talked to the Surgeon who had charge of the case and while he did not see these checks signed he knew that they were to be signed by Mr. Allen. The nurse tells me that when the signature was made Mr. Allen was quite sick and Mrs. Ailes remarked about the poor signature. With the exception of the amount I believe everything is alright.

Very Truly Yours
J. E. Harris M. D. Bus. Mgr.
Winchester Memorial Hospital."

Mr. Endicott: Do you wish that to go in?

Mr. Starr: That is up to you, as it is in evidence. It is in the record, now, anyhow.

Mr. Endicott: We have no objections to it.

Mr. Starr: We adopt the same course and make it unanimous.

(Marked C17.)

Witness: This pertains to the same thing.

Mr. Endicott: Witness presents check dated October 16, 1928, Atlantic City Electric Light Company, $9.02, signed Albert Allen. Marked C18.

Witness presents check October 15, 1928, at to Atlantic Water Company, $12.06, signed Albert Allen. Marked C19.

Check October 16, 1928, to order of F. L. Fenton, $6.96, signed Albert Allen. Marked C20.

Check, dated October 16, 1928, to order of Clark Adams, $8.15, signed Albert Allen. Marked C21.

Check, dated October 17, 1928, South Jersey Title Finance Company, $3000, signed Albert Allen. Marked C22.

Check, dated October 18, 1928, to order of cash, $125, signed Albert Allen. Marked C23.

Check, dated October 22, 1928, to order of Mrs. L. M. Wolfe, $40.00, signed Albert Allen. Marked C24.

Check, dated October 22, 1928, to order of Dr. Montgomery, $15, signed Albert Allen. Marked C25.

Q. How did the certificate, marked C17, come into your possession?

A. Let me see it. (Paper handed witness.)

Witness: I wrote for it. I wrote to the hospital for it.

Q. Had you paid the checks before you received that certificate?

A. I did.

Q. When were the checks paid?

A. October 25th.

Q. Is it your practice to pay checks drawn on signatures of deceased persons?

A. It is; pardon me, do you want a fuller answer on that? I might state further, that within 10 days of notification of death we pay checks; not forever, only after 10 days of notice of the death of the customer.

Q. How did it come about that you obtained that certificate? Did you request it?

A. I did.

Q. Did you instantly request it?

A. I did.

Q. After you paid the checks?

A. I sent for that, I believe, two days before I paid the checks.

Q. I notice the instrument is dated October 25. You said you paid October 25th?

A. That is what I said.

Q. Had you received it when you paid it?

A. I had not.

Q. Had they been presented to you before that time?

A. They were presented to me on the 24th for payment, if I remember rightly, on the morning of the 24th. I will correct matters again. I was presented with these checks on the 23rd and it was on

the morning of the 24th that I wrote to this hospital in Virginia.

Q. Who presented the checks to you?

A. Mrs. Ailes.

Q. You didn't pay them at the time, but on that day you wrote to the hospital in Virginia?

A. That is right.

Q. How did you know about the hospital in Virginia?

A. Mrs. Ailes told me.

Q. Did you have any information on the subject other than what you gained from Mrs. Ailes?

A. Do you mean that he died in Virginia, or pertaining to these checks?

Q. Yes.

A. I only have what Mrs. Ailes told me.

Q. After having sent for the certificate, why did you pay the checks prior to the receipt of the certificate?

A. I was satisfied they were his signatures.

Q. What happened in the meanwhile that caused you to reach that conclusion?

A. I can't say.

Q. You were not satisfied, when the checks were presented, but you sent to Virginia to get some information. What happened in the meanwhile which made you change your decision as to whether or not the checks should be paid?

A. If you will just let me answer that in general; I can straighten out what you want to know. Mrs. Ailes acted entirely on my advice in this matter, and I was a little uncertain the first day about paying the check, but the more I thought about it I concluded she was within her rights. I was satisfied

he signed the checks and I am telling you truthfully she didn't want to use the checks, but she used them on my advice; so naturally I put them in her account the next day. I felt sure of it after I thought it over, and I wrote to the hospital. I was satisfied when Mrs. Ailes said he signed the check, that that was enough. I always found her very honorable and I didn't doubt her worth in the least, but I thought that when I have something in writing I would feel more sure about it, and that is why I wrote to Virginia and she deposited these checks entirely on my advice.

Q. Did you see Mrs. Ailes between the time she presented these checks and when you cashed them? Was there any other occasion you saw Mrs. Ailes?

A. I can't say that. Mrs. Ailes came to see me the morning of each day, if I remember rightly.

Q. You live nearby Mrs. Ailes?

A. When Mrs. Ailes first came to Pleasantville. I lived in the rear and she lived on the corner and in 1925 I built my own home on Stenton Place, only two blocks away.

Q. I show you paper marked C18 and ask you if you know whose handwriting appears in the body of that check, that is, the handwriting outside of the signature.

A. I won't say that.

Q. You don't know?

A. No, I don't.

Q. I ask you the same question with respect to C20.

A. No.

Q. I ask you the same question with respect to C19.

A. No.

Q. Do you know that that is not the signature or handwriting of Mr. Allen?

A. I do.

Q. I show you check marked C21 and ask you whether or not if you know whose handwriting the body of the check is in, the handwriting therein is written in, whose handwriting, if you know?

A. I don't know.

Q. Do you know the handwriting in check, C23, above the signature?

A. I won't swear to it.

Q. Do you have an opinion about it?

A. Well, I imagine Mrs. Ailes wrote this one, but that is only a supposition.

Q. Do you have any checks here in which you can identify the writing of Albert Allen, in the body of the check?

A. I have not.

Cross-examination.

Mr. Starr: Are these the ledger sheets? Are they to be left here?

Mr. Endicott: I understand they want to take them back.

Witness: How long did you want them?

Mr. Starr: I think we will put the entries on the record, with your Honor's permission.

The Court: All right.

By Mr. Starr:

Q. I call your attention to C2, which is apparently the savings account of Albert Allen, beginning October 2, 1926. The last entry, January 1, 1928. Is it a fact that that account was opened on October 22, 1926, with an account of $3,000?

A. Yes.

Q. Please read into the record the deposits as shown on that sheet, and the withdrawals on each, giving the balance. Then you can take your sheet back.

A. You have the first entry, October 1st, 1926, deposit of $3,000; balance, $3,000.

November 15, 1926, deposit of $1,000; balance, $4,000.

Mr. Endicott: May the witness confine himself to the deposits? He is reading balances.

Mr. Starr: I want the balances.

Witness: January 1, 1927, interest, $24.78. Balance, $4,024.78.

March 19th, deposit, $6,170; balance, $10,194.78.

July 1st, 1927, interest, $108.20. Balance, $10,302.98.

July 16, 1927, check, $500, leaving balance $9,802.98.

September 3, 1927, check, $500, leaving balance of $9,302.98.

November 17, 1927, deposit, $3,040.62 making a balance of $12,243.64.

January 1, 1928, interest, $196.13; balance, $12,539.73.

January 12, 1928, check, $1,000; balance, $11,539.31.

January 20, 1928, check, $2,000; balance, $9,539.77.

February, 17, 1928, deposit, $585.84; balance, $10,123.61.

February 18, 1928, deposit, $40; balance, $10,163.61.

February 20, 1928, deposit, $36; balance, $10,199.61.

March 5, 1928, deposit, $177.75; balance, $10,377.36.

March 8, 1928, check, $500; balance, $9,877.36.

March 17, 1928, check, $500; balance, $9,377.36.

May 11, 1928, check, $500; balance, $8,877.36.

May 13, 1928, deposit, $1,150; balance, $10,027.36.

July 1, 1928, interest, $189.12; balance, $10,216.48.

July 16, 1928, deposit, $612.76; balance, $10,829.24.

August 7, check, $300; balance, $10,529.24.

September 20, 1928, check, $1,500; balance, $9,029.24.

September 29, 1928, deposit, $1,000; balance, $10,029.24.

October 17, 1928, check, $3,000; balance, $7,029.24.

October 25, 1928, 2 checks, amounting to $2,800; balance, $4,229.24.

January 1, 1929, interest, $141.53; balance, $4,370.77.

By Mr. Starr:

Q. You have produced some paid checks on the savings account. I notice that there are none back

of the year 1928. Is there any reason why you did not produce the checks of 1927 and 1926?

A. If you will observe this sheet I will explain it. I make an entry each time the book is balanced.

Q. Then you have no further cancelled checks?

A. I have no further cancelled checks, no.

Q. With respect to the two checks of $2,800, drawn October 22, 1928, which you have examined, what eventually became of the $2,800 represented by these checks?

A. I placed that to Mrs. Ailes' account.

Q. In the checking or the savings account?

A. In the checking account.

Q. Was there any change made in that?

A. In her checking account?

Q. Yes.

A. I believe there was.

Q. What disposition was made of that?

A. You got the sheet here somewheres. It has been checked out here, somewheres.

Q. Is this the one? (Indicating.)

A. I believe that is it. (Marked C3.)

Witness: Of course, she made deposits to this account and checked out to it?

Q. By examination of that record, can you tell us what became of that $2,800?

A. No, any more than I can tell it was checked out. Do you mean what disposition she made of it?

Q. Yes.

A. No. Any more than she paid out the sums as they are there. I believe $1,800 was transferred to savings account.

Q. Was any part of the $2,800 transferred to savings account?

A. I believe the first check of $1,800 was transferred to savings account.

Q. Can you tell us that?

A. I can prove that by the savings account on the same date, the sheet,——

Q. November 10?

A. Here it is, identical,—November 10th.

Q. November 10 it was transferred to savings account?

A. Yes.

Q. You have produced ledger sheets of two commercial accounts?

A. One of Mrs. Ailes and one of Mr. Allen's.

Q. I am speaking of Mr. Allen's. Did he have two?

A. No, only one. They are the same account. They date from October '25, as per subpoena; here, my subpoena calls for from January 1, 1926, but in order to show January 1st, 1925, I had to bring that previous.

Q. Which sheets show deposits and withdrawals from the active account of Mr. Allen, in 1928?

A. You will find that I have this right in order. This balance is carried over here. That is the last one, this is the next to the last one. Let me give the fraction balance here. Here is where it starts in, January 1, 1928.

Mr. Starr: I don't see how we can avoid having read into the record, the items for that year.

Witness: Can't I call them off?

Mr. Starr: Will you furnish me a copy?

Witness: I will furnish a duplicate.

Mr. Starr: What I want is a duplicate of deposits and withdrawals from January 1, 1928, until the account is closed. Will you furnish an account of that, a copy?

Witness: I will furnish you that.

Mr. Starr: You can avoid trouble and expense if you will pay the expense of a photostat of these three sheets.

Witness: I will tell you what I will do. I have my last statement sheet here. If I get this back at the end of recess, lunch time, I will let you have them if you can see that I get them back.

Mr. Starr: It will save time by having them photo-stated.

Witness: I will take my check book. It will take some minutes to make them out.

By Mr. Starr:

Q. You have also produced a few checks on the active account. They are only in the month of October, 1928. Was there any particular reason why the checks were limited to that date and not those which were drawn prior to that time?

A. He received his last statement on or about

October 17, balanced out as of October 15th. He was in the bank, I believe, just before he took this trip, a day or two before, I guess, and the reason he got his statement was because I gave it to him. This is our customers' statement sheet. Every time this sheet becomes full of accounting we make a statement up and turn it over to the customer.

Q. Then in October, about the 17th, this active account is balanced?

A. As of October 15th.

Q. And the checks were returned to Mr. Allen?

A. Yes.

Q. Did you personally see that these checks got back to Mr. Allen?

A. I did.

Q. Was he personally furnished by you with a copy of this statement?

A. He had a copy previous to this. The statement is wrapped around the checks.

Q. How often did he have the bank book settled, the active account, in 1928, say? Can you tell us that?

A. Well, I can do it by referring to my ledger sheets here.

Q. In a general way, how often did he come there?

A. Our statement sheet is the same size, and of course, only on one size. This is a ledger sheet where the account appears on both sides. I don't believe Mr. Allen ever asked me for a statement,—I always rendered a statement when the page was full—as many of our customers do.

Q. How often in 1928 was that done?

A. One, two, three, four,—five times.

Q. 5 times?

A. Yes.

Q. Each time he was furnished with the cancelled checks and a copy of the statement?

A. Yes.

Q. Did you personally come in contact with him?

A. Albert Allen?

Q. Yes.

A. Yes.

Q. You personally handed the papers to him?

A. Yes. You didn't want these checks, did you, after the Judge is through with them?

Mr. Endicott: We may have occasion in the future to use them.

Mr. Starr: I was going to suggest that if the witness didn't have any objection to it, these checks ought to be left here as exhibits.

Witness: I can't return them to anyone until the case is settled.

Mr. Endicott: I will leave them (C7) in his charge and responsibility.

WILLIAM OAKES, sworn.

By Mr. Endicott:

Q. Where do you live?

A. 710 North 63rd Street, Philadelphia, six

months in the year; and the other six months of the year, in Wildwood.

Q. Did you ever meet Mr. Albert Allen in his lifetime?

A. I did.

Q. When did you first know him?

A. About the 8th of October. Mr. Shumway brought him into the house.

Q. Did you ever see him before that?

A. Not until Mr. Shumway brought him in there, to show him an oil burner I have.

By the Court:

Q. October of what year?

A. 1926.

By Mr. Endicott:

Q. Last October?

A. Yes. And I showed Mr. Allen the oil burner.

Q. That was the first time you met him?

A. Yes.

Q. Did you ever meet him after that?

A. Never met him afterwards.

Q. Who else was present?

A. Mr. Shumway.

Q. Anyone else?

A. That is all.

Q. They came in and said they wanted to see the oil burner?

A. That is right.

Q. Relate the conversation from there on.

A. I explained the workings of the oil burner to

Mr. Allen and while I was explaining it he turned around and said, "Well, I will have to buy an oil burner for some chicken." I looked at him and I thought, what is the matter; I thought he must be going bughouse.

Mr. Starr: That is objected to.

Witness: Excuse me.

By Mr. Endicott:

Q. Just tell what happened. Was there anything else said on that occasion?
A. That was all.
Q. Then he left?
A. Then he left.
Q. Did you see anything in his actions which influenced your opinion of him in any way?
A. I did. I thought he was a kind of dippy old man.

By the Court:

Q. What kind of oil burner was it?
A. A Tabor oil burner.

Cross-examination.

By Mr. Starr:

Q. There was nothing else that attracted your attention except that he said he would have to buy one for a chicken?

A. A chicken.
Q. Was there anything else occurred?
A. That was all.
Q. That was all?
A. That was all.
Q. You noticed nothing strange about his manner?
A. I thought he was kind of, you know, kind of dippy.
Q. In view of what you observed, was there anything else about his conduct, what he said or did, except that he said he was going to buy one for a chicken?
A. That is it.
Q. Is there anything else you wish to add to it?
A. No, sir.

Miss Elsie Manus, sworn.

By Mr. Endicott:

Q. Where do you live?
A. 2335 N. 20th Street.
Q. Philadelphia?
A. Yes.
Q. Did you know Mr. Albert Allen in his lifetime?
A. I have known him 5 years, about 5 years.
Q. Did you see him in October of last year?
A. Yes.
Q. Where?
A. At Mrs. Ailes' house.
Q. Did you see him on more than one occasion?
A. Yes.

Q. How often?
A. I can't just say; quite a few times.
Q. Did you talk with him?
A. I did.
Q. Did you notice any change in Mr. Allen's physical or mental condition in the year 1929 from what it had been before?

Mr. Starr: Objected to.

A. I did.

Mr. Starr: There is no testimony so far that she had opportunity to observe his condition prior to that time.

Mr. Endicott: The witness said she knew him for 5 years.

Mr. Starr: That is not coming in contact with him. It is not laying ground for a comparison. She must show the opportunity she had to observe.

The Court: It is preliminary.

(Exception allowed.)

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

The Court: The witness said yes.

By Mr. Endicott:

Q. Did you observe in his conduct or in his speech anything that indicated a change in his physical or mental condition?

Mr. Starr: Objected to.

(Overruled.)

(Exception allowed.)

Q. Last question read by stenographer to witness, as follows: "Did you observe in his conduct or in his speech anything that indicated a change in his physical or mental condition?"

A. I did.

Q. What did you observe?

A. When he would say anything he would cry and then he would laugh, and then he would always say something funny and laugh at it.

Q. Did you see anything to laugh about at the remarks he made and that he laughed at?

Mr. Starr: Objected to.

(Sustained.)

Mr. Endicott: That goes to the question of whether the laugh was a proper laugh, a proper act; whether he laughed at the proper time.

The Court: You will have to have her tell or relate what he said and laughed at.

By Mr. Endicott:

Q. Do you remember any of the things he said and laughed at?

A. Not quite.

Q. What were the relations between you and Mr. Allen, was he friendly?

A. We was just friends.

Q. Just friends?

A. Yes.

Q. Did he ever talk to you?

A. Yes.

Q. About a change in your relations?

A. He did.

Q. What did he say?

A. He wanted me to marry him.

Q. When did that happen?

A. I think it was in September.

Q. How old are you?

A. I am 17.

Q. You are now 17? Or when were you 17?

A. In July.

Q. Of 1928?

A. 1928.

Q. Who was present when he asked you to marry him?

A. My mother and my sister.

Q. What did he say?

A. He asked me how old I was and I told him 17; then he asked me how I would like to marry an old, rich man like him, and would I be his wife.

Q. What did you say?

A. I just let it pass.

Cross-examination.

By Mr. Starr:

Q. You thought it was a joke?
A. Yes, I did.
Q. You say that that occurred in September, 1928?
A. Yes.
Q. Where did the conversation happen?
A. In Mrs. Seltzer-Reulens' house.
Q. Your mother was there?
A. On one occasion.
Q. I am speaking about this time in September, when he said, "Do you want to marry a rich man" like him? Was that in September, 1928?
A. It was.
Q. Who all were present?
A. My mother and my sister.
Q. Anybody else?
A. And Mrs. Seltzer.
Q. They were all there?
A. Yes.
Q. They took it as a joke?
A. The first time we took it as a joke.
Q. I am speaking of the first time.
A. Yes.
Q. Did you see him after that?

Mr. Endicott: May she be permitted to finish her answer to the question? She was shut off.

The Court: She answered, a complete question to Judge Starr.

By Mr. Starr:

Q. Did you see him at any other time after that?
A. I did.
Q. How often did you see him?
A. I just can't say that.

By Mr. Endicott:

Q. In one of your answers to Mr. Starr's questions you said you thought it was a joke, when Mr. Allen asked you the first time to marry him. Was there a second occasion?
A. On the second occasion I asked Mrs. Seltzer what was the matter with him.
Q. Do you mean that he asked you a second time?
A. Yes.
Q. When did he ask you to marry him, on the second occasion?
A. About,—the next time we were at Mrs. Seltzer's house.
Q. You saw him then?
A. Yes.
Q. What did he say on that occasion?
A. He asked me again and I says I didn't know if I would like to marry because I am not old enough.
Q. Did you understand from what he said to you, at that time, and the way he acted, that he seriously intended an offer of marriage?
A. Yes.

Mr. Starr: Objected to.

Mr. Endicott: She may testify as to the impression she received from his words and conduct.

(Objection overruled.)

(Exception allowed.)

The Court: I will let it stand.

By Mr. Starr:

Q. Upon the second occasion—you say the first time was September, 1928—when was the second time he spoke about marriage?

A. The next time that he was at Seltzer's, Mrs. Seltzer's house.

Q. How long after the September incident was it?

A. I just can't say. I don't remember the date.

Q. Do you remember what month it was in?

A. About,—no, I can't say.

Q. You don't know the month?

A. No.

Q. Who were present on that occasion?

A. There was only myself and my sister.

Q. You say that at that time he said to you, "Will you marry an old, rich man like me"?

A. Yes.

Q. He used practically the same words on both occasions?

A. He used a little different, but I can't remember.

Q. Let us know what change there was, if there was any change?

A. He asked me if I would like to go live with him, if he would marry me, and where I would like to live.

Q. Tell us how the conversation came about, what he said to you, first, and what reply you made.

A. He asked me to marry him and I says,——

Q. What did he say?

A. I beg your pardon?

Q. What words did he use or say when he asked you to marry him?

A. I didn't say yes.

Q. Give the words he used when you say he asked you to marry him?

A. He said,—he asked me to marry him, and if I would like to go look after his interests.

Q. Is that all that was said?

A. Yes.

By the Court:

Q. There were two occasions in which he asked you to marry him?

A. Yes.

Albert Reger, sworn.

By Mr. Endicott:

Q. Where do you live?

A. 16 E. Walnut Lane, Germantown, Philadelphia.

Q. Did you know Albert Allen in his lifetime?

A. Yes.

Q. What relation, if any, was he to you?

A. I married his sister.

Q. Is she living?

A. Yes.

Q. When did you last see Albert Allen alive?

A. I think it was in October, last year.

Q. Where?

A. I met him at the Northwestern Trust Company.

Q. How often had you seen him previous to that?

A. Very seldom.

Q. Did you ever visit him at Pleasantville?

A. Once only.

Q. When was that you saw him in Pleasantville.

A. I couldn't tell you whether it was 1927 or 1926. I couldn't tell you for I don't know, positive. It was in June, I know, for I went down to see my captain about getting a boat.

Q. How often had you seen him in 1928, previous to the meeting of October, 1928?

A. 1928?

Q. Yes.

A. Possibly I should run across him once in two or three months.

Q. Where did you usually see him? Was there any particular place you had gone to see him?

A. Up at the Northwestern Trust Company.

Q. Did you talk with Mr. Allen when you met him in October, 1928?

A. Yes, for a short time. He came into the Northwestern Trust Company and he wanted to get $25 he told me. I said, "Haven't you an account here?" He said, "No, I closed my account. We have an account at Pleasantville." I said, "Come around and see Mr. Hibberd, the vice-president." So he came around and he filled out a check for $25.00—he drew it out, and it was $25, so I suppose that was the $25 he wanted and I supposed that that was what he got.

Q. Did you ever meet him in Mr. Schreiber's real estate office?

A. Yes, I met him there, oftener there than any other place, for Schreiber had a place in the city that he wanted to sell him.

Q. Where was Schreiber's office?

A. On Diamond Street east of Broad Street; at least, Schreiber had charge of his papers during the last year or toward the last; he told me that.

Q. Did your wife visit her brother, Mr. Allen, any more frequently than you did?

A. No; the only time she visited him was when he was in the hospital. My wife wasn't in very good health.

Q. Were you and she welcome in his house?

Mr. Starr: Objected to.

Mr. Endicott: He ought to know whether or not he is welcome.

Mr. Starr: I don't know of any foundation laid for any such fact.

Mr. Endicott: He said he went there and I asked him if he was welcome. I want to know if he was welcome or not.

The Court: Objection sustained.

Q. Did you meet Mrs. Catherine Ailes?

A. I met her a few times.

Q. Was there any change in the frequency of meeting between you and Mr. Allen after Mrs. Ailes became housekeeper for your brother-in-law?

A. Any change in what?

Q. In the frequency of your meetings?

A. Well, I never went there very often.

Q. You mean you never went there very often before she became his housekeeper?

A. I went there more frequently previous to Mrs. Ailes' going there as his housekeeper.

Q. Did the fact that Mrs. Ailes was his housekeeper, have any bearing upon the frequency of your visits or your wife's visits, to Mr. Allen's?

Mr. Starr: Objected to.

A. They had had too many rumors.

The Court: Objection sustained.

The Court: Ask him why.

Q. Why didn't you go as frequently after Mrs. Ailes became housekeeper for Mr. Allen as you had before?

Mr. Starr: Objected to. It is a question of a state of mind.

(Objection overruled.)

(Exception allowed.)

Q. (Last question repeated to witness by stenographer, as follows: Why didn't you go as frequently after Mrs. Ailes became housekeeper as you had before?)

Mr. Starr: Objected to.

A. Well, rumors, I heard.
Q. What rumors did you hear?

Mr. Starr: Objected to.

(Objection sustained.)

Q. From what you saw, in action and speech, or heard in speech, with respect to Albert Allen, during the last 5 years before his death, did you form any opinion as to his physical or mental condition in 1928?

(Objected to.)

Mr. Starr: He said he saw him once only, in Philadelphia, in a bank, where he was getting $25. There is nothing at all in the record, so far as this was concerned, to show what occurred or as to what observations he had prior to that time.

Mr. Endicott: He has testified that prior to the advent of Mrs. Ailes, they were frequent visitors, that they met frequently; that on sundry occasions he met him in Schreiber's real estate office in Philadelphia, and that he called once in Pleasantville. Certainly we have laid a foundation for him, as to showing whether or not he had an opinion.

Mr. Starr: These instances were years before the time specified in the question.

The Court: He has related only one occasion in which he saw him and talked to him, and that was in the trust company and there was nothing he related in connection with that meeting upon which he could base any opinion.

Mr. Endicott: He may have seen actions at that time that may have influenced his opinion.

The Court: He hasn't described them.

Mr. Endicott: It isn't necessary to describe them if he says he saw things from which he could form an opinion, and we are entitled to an opinion; it may not be an expert opinion but we are entitled to it for whatever weight it has.

The Court: I understand that he must relate either action or conduct upon which the Court may determine whether his opinion is a qualified one or not.

By Mr. Endicott:

Q. Did you observe any change in the physical appearance of Albert Allen during the last 5 years of his life?

A. I saw more of him in 1925. After that I saw him very seldom.

Q. When you saw him in 1928 did he look the same as he did in 1925?

A. I was only with him during the few minutes of time that I met him at the Trust Company.

Q. When did you first learn of the death of Albert Allen?

A. A postal card or telegram, I think, was sent to them all, and they notified my wife.

Q. Did you talk to Senator Daix about it?

A. Yes.

Mr. Starr: The question was, when?

Witness: When?

Mr. Starr: Yes.

Witness: It must have been about a day after his death; or the same thing, I guess Mrs. Ailes telegraphed to Tom—that is Tom Allen—and he notified my wife of his death.

Q. Did you talk to Senator Daix about it?

A. About what?

Q. About the death of Mr. Allen.

A. I went to the trust company and I heard from one of the employes at the trust company that Mr. Allen had made a will. I went out there and I think it was Mr. Robinson, the vice-president, and asked him if he made a will for Mr. Allen, and he said no, but——

Mr. Starr: Objected to. I assume this testimony is given in contradiction of some evidence given by Senator Daix, as I recall the record; and no foundation has been laid for this line of evidence.

Mr. Endicott: He is our witness. On direct ex-

amination we are certainly entitled to inquire into all circumstances that happened at the time of the death.

Mr. Starr: The testimony of a third party that is not a party to the record.

The Court: There is nothing pending for the Court to rule upon.

Mr. Starr: I thought there was a question that I objected to.

Mr. Endicott: And the question was answered.

The Court: The witness was about to relate some hearsay testimony but I didn't hear any objection to it.

Mr. Starr: I thought I had been doing that. My purpose in getting up was to interpose an objection to any testimony in contradiction of Senator Daix's testimony.

The Court: Let us see if an objection was interposed.

Mr. Starr: The question was, did he have any conversation with Senator Daix. And the witness went on to relate conversations with somebody else. I do not think it is relevant.

The Court: I do not think it is relevant. Do you want it stricken?

Mr. Endicott: We have no objection.

The Court: Then strike it.

By Mr. Endicott:

Q. Did you talk to Mr. Daix about the death of Mr. Allen?

Mr. Starr: Objected to. There is a way to contradict Senator Daix, and that is, to lay the foundation for it. If testimony is offered for the purpose of showing contradiction.

(Objection overruled.)

(Exception allowed.)

By the Court:

Q. Can you answer the question, yes or no, whether or not you talked to Senator Daix?
A. I did.

By Mr. Endicott:

Q. Had he known of your brother's death at the time you talked to him?

Mr. Starr: Same objection; same ground.

(Objection sustained.)

Q. Did you have any part in the funeral arrangements for Mr. Allen?

(Objected to.)

A. No, the family had none, at all.

The Court: I do not see any reason for this line of testimony.

Mr. Starr: It seems to me it is irrelevant and should not be permitted . I object to it.

The Court: Objection sustained.

(Exception allowed.)

By Mr. Endicott:

Q. Did you call upon the undertaker after the death of Mr. Allen, for the purpose of discussing the funeral arrangements?

Mr. Starr: Objected to.

A. I did.

Mr. Starr: Objected to as immaterial and irrelevant.

Mr. Endicott: It seems to me, and my argument is this that it applies to to the former question, that any acts done by those who either made the will in

question or profited by the will in question, are properly subjects of inquiry at this time.

The Court: Up until the time of the death of the decedent, I suppose.

Mr. Endicott: Those circumstances which surrounded, apparently, the testator, are pertinent. We are inquiring to find out what these people who were making a benefit under the will, were doing to this decedent's body, about his burial, and whether they were excluding the family from access to the proceedings and whether they notified them in.

We desire to pursue this line of investigation upon that theory, that it is part of the circumstances surrounding the making of the will, and the conduct of Senator Daix thereafter and the conduct of Katherine Ailes thereafter.

Mr. Starr: I do not think that is competent.

The Court: I do not think it is competent, either. If you have any authority on that I will be glad to see it. But it seems to me that no matter what was done after the death of the testator, how can it really be taken or considered in the light of what was done prior to the death?

Mr. Endicott: Because it may be in explanation of what was done at that time. The whole circumstances must be read together.

Mr. Starr: No questions.

MARY MANUS, recalled.

By Mr. Endicott:

Q. Did you have any conversation with Albert Allen, about October, 1928?

A. I did.

Q. With respect to his removal from Pleasantville to his Germantown, Philadelphia, residence?

A. I did.

Q. What was said? Relate the conversation.

A. I was in Mrs. Seltzer's house that evening, October 12th, Friday evening, and he was talking to me and I said, "Why don't you come to live with Mrs. Seltzer?" and he said his health was bad, that he was getting feeble and he said he was too deep down in Pleasantville to come to Philadelphia to live and I said "In what way?" and he said owing to Mr. Ailes coming into the room one day and he was in the room with Mrs. Ailes, and he said he didn't think he would be ever able to come to Philadelphia from Pleasantville, to live here, right away.

Cross-examination.

By Mr. Starr:

Q. Have you given us the entire conversation?

A. Yes.

Q. That was all that was said on that occasion?

A. Yes.

Mrs. Hettie Weiss, sworn.

By Mr. Endicott:

Q. Where do you live?
A. 206 President Avenue, Rutledge, Penna.
Q. Do you know Katherine Ailes?
A. Yes.
Q. I show you a letter on the stationery, headed Mrs. Frank Ailes, Pleasantville, New Jersey, postmarked Pleasantville, October 26, 1928, and ask you if you received that letter in the ordinary course of post or mail?

(Paper shown witness.)

A. Yes.
Q. Are you acquainted with the handwriting in which it is written?
A. Yes.
Q. Whose handwriting is it, can you tell?
A. Mrs. Ailes'.
Q. It is from Mrs. Katherine Ailes?
A. Yes.

Mr. Endicott: We offer this letter in evidence.

Mr. Starr: I haven't any objection. We desire to have it established when it was received. There is no date on the letter. The postmark on the envelope is October something; I can't tell what it is.

Mr. Endicott: 1928.

By Mr. Endicott:

Q. Do you remember when you received that letter?

A. I think it was after the death.

Q. After the death of Albert Allen?

A. I think so. Wasn't there two letters?

Mr. Endicott: I don't know of any but this one.

Q. Did you receive another letter?

A. I think there was two.

Q. So far as you remember, this letter—will you look at that letter and refresh your memory as to its contents?

(Letter shown witness.)

A. Yes, that is the letter.

Q. You received that shortly after the death of Mr. Albert Allen?

A. Yes.

(Letter marked C26 and envelope marked C26a; read in evidence by Mr. Endicott as follows):

"Dear Hattie:

I want to thank you for your loving thought in sending Popie flowers—I know in spirit he appreciates every kindly thought—Well Hettie I have lost a sincere friend & while at times—it seemed a tax—I miss him in every detail—for he was associated in the very bosom of our home for many years—since 1919—But I feel I carried out the last wish to the end—& with the exception of a headstone—I have

done everything & I will take care of that in due time—for it was me that ordered the stone for his second wife—in fact there was nothing in the last years—that he attempted without me—we traveled together on business & pleasure—only last week—he took a mortgage but I had to arrange to take him & watch up the papers—But its over—& I feel the loss more than anyone shall ever know for he was cheerful and lively & paid me the highest tribute—always interested in my welfare—as well as my family—& he looked with pleasure upon this last trip—We had even planned to close up the house part of the winter & stay in Washington. He loved Washington & then he was fond of my daughter who lived there——

I am coming to Phila—later in the week & will try to call you up—How is tom? He looked good at the funeral—My house is full just now—& I am a wreck but hope after a little rest I will be all right again——

But everything here is a reminder—the pipe he left behind—the napkin he used before we left——

Write to me—Hope you keep well—dont work too hard—perhaps after I get myself together you could come down——

Lovingly, Katie——

I wish we could take lunch together in Phila sometime."

By Mr. Endicott:

Q. How long have you known Mr. Albert Allen?
A. I had known him about seven years.

Q. Had you known Katherine Ailes that length of time?

A. Yes, I met them both together.

Q. Did you call at the Pleasantville house sometimes?

A. What is that?

Q. Did you call at the Pleasantville house sometimes?

A. Yes.

Q. How many times had you been there?

A. Twice to the Pleasantville house.

Q. Were you there in 1927?

A. I was there in 1927, the summer of 1927.

Q. When were you there, again?

A. I was there before, one day, after they first went down there. Mr. Allen and Mrs. Ailes came over to Atlantic City and took us over to see Mr. Allen's place; Mr. Allen wanted us to see the place that he bought and fixed up, and that was before 1927.

Q. Then, in 1927 you were there?

A. Yes.

Q. How long were you at the house?

A. I came down, got down about somewheres around 12 o'clock and we were,—I was to go to Atlantic City for lunch, and Mrs. Ailes said, "Come to our house for lunch and I will drive you over to Atlantic City." So after lunch she drove us over, and we didn't stay long on account of the big fire that was over there.

Q. On the occasion in 1927 while you were with Mrs. Ailes, did a gentleman call about having some papers signed?

A. After we came home from Atlantic City, Mr.

Ailes got out at home and we drove over to the station and we were talking in the car and Mr. Allen and his brother was on the platform and Mrs. Ailes was talking about Mr. Allen and she asked me how long I thought he would live, and I said I guess he would live to be a hundred. I said, "They all lived a good long while." Then I said to her, "I guess when he dies he will leave you that property?" and she says, "That property is in my name now and I expect to get everything I can in my name." She says, "I am going to have him make a will and leave it to me." "I am no fool," she says "and" she says, "I am going to have every cent." I said, "Well, he has a brother, you know," and she says, "Well, he will be dead by that time." Then she says, "I am no fool. I am going to have it all." So at that time there was a man came to the automobile and said, "I want you to bring Mr. Allen over tomorrow to sign papers," and she says, "All right." And that was the end of the conversation.

Cross-examination.

By Mr. Starr:

Q. Who was the man that came there?

A. I don't hear you.

Q. Who was the man that came up to the automobile?

A. You will have to come over here. I can't answer the question. I don't hear well. My hearing is getting worse every day.

Q. Who was the gentleman who came up to the automobile?

A. I don't know. I understood he was, she said a real estate man, or something.

Q. You don't have any idea of what his name was?

A. No, I don't.

Q. Do you know where he lived?

A. No, I do not.

Q. The only thing was, the only conversation was he asked about some papers, to have some papers signed?

A. Yes, he said to bring Mr. Allen over, that he wanted some papers signed.

Q. When was that?

A. In the summer of 1927, when the big fire was, in Atlantic City. I remember it on account of the fire, but I don't remember the date.

Q. You had a conversation with Mrs. Ailes about the house at Pleasantville?

A. Yes.

Q. And that conversation arose by your asking the question about the house at Pleasantville?

A. Yes.

Q. That is all.

A. Is that all? Now do I leave?

Mr. Endicott: Yes.

(Recess to Monday, April 2, 1929, 10 A. M.)

Before Honorable William H. Smathers, Judge, in the Guarantee Trust Building, Atlantic City, New Jersey, Monday, April 22, 1929, at 10 o'clock in the forenoon.

Appearances:

H. W. Lewis, Esq., A. F. Daix, Jr., Esq., James W. Laws, Esq., and Lewis Starr, Esq., for proponents.

Endicott & Endicott, Esqs., Wm. Y. C. Anderson, Daniel W. Simkins, Esq., H. J. Alker, Jr., Esq., Hon. Dimner Beeber, Esq., and W. Elmer Brown, Esq., representing the Heirs at Law.

TESTIMONY ON BEHALF OF CAVEATORS.

(Mrs.) Lillie Ida Seltzer Reulens, sworn.

By Mr. Endicott:

Q. Will you give us your full name?
A. Lillie Ida Seltzer Reulens.
Q. Where do you live?
A. 1917 Dauphin Street.
Q. Philadelphia?
A. Philadelphia.
Q. How long have you lived there?
A. 14 years.

Q. Did you know Albert Allen in his lifetime?

A. I did.

Q. Did he marry any relation of yours?

A. He was my stepfather.

Q. Did he marry any relation of yours?

A. My mother.

Q. Do you know when they were married? Do you recall the date of their marriage?

A. No, sir, I don't recall.

Q. Did your mother die?

A. My mother died.

Q. When?

A. In 1919.

Q. 1919?

A. Yes. I am not at all familiar with dates.

Q. Did you see Mr. Allen from time to time after your mother's death?

A. Very frequently. He was living at my house, going up to his house, to air it and look after it in a sanitary way.

Q. Where was his house?

A. 1411 Allegheny Avenue, Philadelphia.

Q. In the fall of that year and after your mother's death, did Mr. Allen execute a will?

A. On the 25th of October, 1919, he made a will to me.

Q. And others?

A. To nieces and nephews, one fourth.

Mr. Starr: That is objected to. The witness should be allowed to testify without being led. The paper speaks for itself, if there is such a paper.

Q. How long did Mr. Allen stay in your household after that time?

A. It seems about some months, six months, to and fro, and perhaps less. It went toward the fall of the year.

Q. Do you know Mrs. Kate Ailes?

A. I know her through this affair. I was never in any way friendly with her, nor unfriendly, either.

Q. Do you know when she and Mr. Allen first met?

A. Yes, I have a letter showing about when they met.

Q. When was it, about?

A. It was before she went to the house. I am not up on dates. I didn't study them. I am too upset.

Q. Did Mrs. Ailes subsequently become housekeeper for Mr. Allen?

Mr. Starr: Objected to as a conclusion. There has not been sufficient ground laid for the witness to show knowledge of these facts.

Mr. Endicott: You are speaking first of a conclusion then of a fact.

Mr. Starr: It has relation to a fact, and there is nothing to show that this witness has any knowledge to justify her assuming something that is a conclusion in relation to a fact. It is inadmissible.

(Question withdrawn.)

Q. Do you know whether or not Mrs. Ailes became housekeeper for Mr. Allen?

Mr. Starr: Objected to. This witness has not shown that she has such knowledge, to justify her testifying as to exactly what the relation of Mrs. Ailes to Mr. Allen, was. She cannot testify to that fact. It is only her opinion.

Mr. Endicott: It is a question of fact. If he wants to cross-examine the witness as to the sufficiency of that knowledge, all right. It may be shown that as matter of common knowledge one person is housekeeper for another.

(Objection overruled.)

(Exception allowed to proponents.)

Q. (Last question repeated to the witness by the stenographer: Do you know whether or not Mrs. Ailes became housekeeper for Mr. Allen?

A. Certainly; she was his housekeeper.

Q. Answer yes or no. Do you know when she became his housekeeper?

A. I tell you. You have the letter; she was not up there yet. It was before 1920, in the fall of the year sometime, because I went up there and found her there.

Q. Was it shortly after the making of the will in your favor?

A. Yes; not shortly. What do you mean by "shortly"? That she was there, and went up there?

Q. Was it after the making of the will in your favor that she became his housekeeper?

A. Yes.

Q. Did you visit in the household while she was housekeeper for him?

A. No, I did not—I went up there and found it so unpleasant——

Mr. Starr: Objected to. May that be stricken?

The Court: Yes.

By Mr. Endicott:

Q. You visited his household; that is to say, you called at the house?

A. I called at the house,—without saying anybody was in there.

Q. You found Mrs. Ailes installed there?

A. Yes, he was living with me at the time, too, but he disappeared for about three days.

Q. Do you know how long he lived in Philadelhia, after the time you made this call at this house, not weeks or days, but generally?

A. Up to the time of his operation. Then shortly after they left there, you have the date of his operation, in 1922 I think, somewheres around there.

Q. Then where did he go after recovery from his operation?

A. The next I heard he was living in Pleasantville. We had been going down there lots of times to Pleasantville, looking after things, and finally I found he had bought a home down there for Mrs. Ailes.

Mr. Starr: Objected to as being a conclusion, and ask that it be stricken.

Witness: I want to show that at that time he bought it.

The Court: It may be stricken as to his home and what she found out.

Mr. Endicott: I have no objection.

By Mr. Endicott:

Q. You say you found he was living in Pleasantville?

A. Yes.

Q. Do you know whether or not he lived there up to the time of his death?

A. Yes.

Q. In about 1923, or thereafter, when he moved to Pleasantville, did you see him in Philadelphia after that?

A. Very frequently. He came frequently. He came to see me. He was my guardian and trustee.

Mr. Starr: I ask that the last part of the answer be stricken. This witness is volunteering testimony not covered by the question.

Mr. Endicott: It explains why they met, and is certainly relevant, and material.

Mr. Starr: It is not covered by the question.

The Court: I do not think it has sufficient significance to strike it. If it is stricken you may put that portion of it back after a while.

Mr. Starr: Mr. Endicott asks a specific question and we are entitled to a specific answer. This witness' answer is not covered by the question.

The Court: The witness is requested to give a responsive answer.

By Mr. Endicott:

Q. Did you receive money from Mr. Allen as trustee for you?

A. I did, yes.

Q. How often did you receive money from him in that way?

A. As interest, coming in quarters—quarterly.

Q. Every three months, 4 times a year?

A. Yes.

Q. He was trustee for you under what arrangement?

A. Under the Court, in the Orphans Court. He looked after all my interests, and felt the responsibility in every way for me. That was understood.

Q. Who created the trust?

A. Through a will.

Q. By whom?

A. Edward Snyder, a relative by marriage. I have the will.

Mr. Starr: If the contents of this will are material we ought to have the will here. The recollection of this witness is not the best evidence.

Mr. Endicott: We want to show the relation of this nephew to the decedent, not introduce any

will, and to show any business affairs they had prior to the making of the will and we say that it is pertinent.

The Court: Do you want the will produced?

Mr. Starr: If the contents of this are significant we are entitled to have it produced. She has testified as to her relations with Mr. Allen by reason of a trusteeship. If it is significant we are entitled to have the terms of the will.

The Court: The witness says she has the will and can produce it.

By Mr. Endicott:

Q. Have you it with you?
A. I have.
Q. Let me have it?
A. I will have to get my brief over there.

(Paper produced by witness.)

Q. I show the witness what purports to be a copy of a will of Edwin C. Snyder, and ask her if that is the will to which she referred, under which a trust was created, with Mr. Allen as trustee.

Mr. Starr: May I see the paper? This is not a will but a copy of a will.

Mr. Alker: Mr. Laws examined the record and passed as to the facts.

Mr. Laws: I am not testifying.

Mr. Starr: It seems to me that if the fact of the relation existing between Mr. Allen and this witness is important in this case, we are entitled to have the best evidence of what that relation is. Apparently—I have just glanced through it—the trusteeship was not created by the testator himself, but it is a paper creating him a trustee under a former will. The relationship I do not object to, but the significance of this I don't know.

Mr. Endicott: The only purport of it is to show there was an official relationship in this case. We are not going into it over the objection of Mr. Starr but only because of the fact that he brought it out. Of course, if he objects, we withdraw the offer.

Q. I show you letter dated "Tuesday afternoon," signed "Katie," and ask you if you saw that letter before?

A. I did.

Q. Do you recognize the handwriting?

A. I do.

Q. Whose handwriting is it?

A. Mrs. Ailes'.

Q. Katie Ailes'?

A. Katie Ailes'.

Q. Was this letter ever in your possession?

A. I found it in Father's pocket when I was cleaning the clothes.

Q. I show you an envelope marked, postmarked, "Philadelphia, March 23rd."

Mr. Starr: What year?

A. You see here, it is dated. It is dated there at the head of the letter, here, at the address of the letter.

Mr. Endicott: That is only "Tuesday afternoon."

Q. And I ask you if that is the envelope in which that letter was found?

(Envelope shown witness.)

A. Yes, it was sent by registry, no, not registry, by special delivery.

Q. 1920 is the year indicated there?

A. That is correct.

Mr. Endicott: Is there any objection to the offer?

Mr. Starr: I didn't read the letter. I better do that before I consent to it.

(Paper shown Mr. Starr.)

Mr. Starr: There are some notations, apparently not in the handwriting of the same person who wrote the letter. That ought to be explained.

Mr. Endicott: That notation was made by me in the preparation of this case. The notation is "3-23-20," meaning 1920. (Marked DX1 and admitted.)

(Mr. Endicott reads this letter, which as is follows:

"Tuesday afternoon.

Poppie Dear—

I want you to meet me Wednesday at 1 o'clock, under the Eagle—and take me to lunch—I want to get my shoes and a waist—please do not disappoint me, for I do not feel very well——

Try and get me a bottle of Brandy, the doctor says egg and milk with a few teaspoonful of brandy will strengthen me——

I waited for a 'phone call all day—but suppose you were working hard on the house—I did a lot today too—and am quite tired. I expect Mother for dinner tonight—am going to have chicken—how I wish you were here too—then I would call it

'The end of a perfect day.'

Now don't overdo yourself—you must not get sick for I am looking forward to us having a very pleasant summer——

I do wish Poppie, we could get this house problem settled, I know I would feel lots better, if that was off my mind—and then I could shape things and perhaps get it rented for the summer——

If you say so, I'll try to rent yours for you for the summer, too, and then we can go away in peace. I'll look for you promptly at 1-o'clock (one o'clock) and I will be hungry too—so fix up and look your bestest—Wednesday——

Tenderly

—Katie,")

(Envelope portmarked "Phila. Pa., Mar 23, 5

p. m. Kingsessing Sta." Also, "Philadelphia. 8 p. m. * * * 1920." Addressed: "Mr. Albert Allen
1411 W. Allegheny Ave.,
Phila. Pa.
(Sender's address: "4818 Trinity Place")

Q. After Mr. Allen moved to Pleasantville did you visit in his home?

A. I did not, until some years later,—once.

Q. Tell us why.

Mr. Starr: Objected to.

A. She was his housekeeper.

Mr. Starr: Objected to. The testimony to be elicited may or may not be relevant, and the objection was interposed before the witness made answer.

Mr. Endicott: We want to know why she did not go there. I know of no reason we should not ask her why.

The Court: How can it affect the issue here regardless of why some condition or reason existed in her mind; that could not affect the issue in this case.

Mr. Endicott: It seems to me it goes to the meat of the whole question.

Our contention is that Kate Ailes, the beneficiary under the will, took charge of the body and mind of this man, up until the day of his death and if she excluded or did separate and exclude, his family,

friends and relatives, then that is the very meat of our contention.

The Court: I think so too, but I do not think your question reaches it. The question deals with the state of this woman's mind.

Mr. Endicott: I realize that objectionable feature of it, but I will try and get at it in some other way.

By Mr. Endicott:

Q. Did conditions change in Mr. Allen's household after this woman became his housekeeper in Pleasantville?

Mr. Starr: Objected to. The way to get at this is to ask, was she, this witness, present when she heard conversations between Mr. Allen and Katie Ailes. Then we know with what we are dealing.

(Objection sustained.)

Mr. Endicott: The reason we can't do it that way is, our witness was not in the household and she knew conditions there would not be agreeable for her.

Mr. Starr: If she wasn't there it is purely hearsay. She is competent to testify in instances where she was present with Mrs. Ailes and Mr. Allen in the household. She can testify to what she observed, saw and heard, but she can't characterize matters that are simply conclusions.

The Court: She may testify as to the conduct of either the deceased or the beneficiary under the will.

By Mr. Endicott:

Q. After Mrs. Ailes became a member of the Allen household did you observe any change in the conduct of Mr. Allen toward you?

Mr. Starr: That question is coming close to it but it seems to me he has not yet arrived at the crux of this situation. The witness must testify as to the conduct and let your Honor determine whether or not that conduct was the cause of any change between—any change in the conduct of Mr. Allen toward the witness, or in the relationship between them. Did she observe what he said to Mrs. Ailes and what Mr. Allen said to her, that is, Mrs. Ailes?

The Court: I believe the question is merely preliminary. Let the witness answer yes or no, then we will get the details.

Mr. Starr: You are permitting her to say there was a change, without indicating what that change was.

By Mr. Endicott:

(Last question read to the witness by the stenographer: "Q. After Mrs. Ailes became a member of

the Allen household, did you observe any change in the conduct of Mr. Allen toward you?")

A. With regard to the dates of his change toward me?

Q. Toward you?

A. His relations toward me were just the same, and stronger than ever with regard to his interest toward me, but he wasn't allowed to go.

Mr. Starr: Objected to. I ask that that be stricken out; and also the other answer, because there is nothing to indicate the facts. She says the relations were just the same. That would not be sufficient on which to base a determination of this case.

Mr. Endicott: I was getting at the question as to what their relations were and she says they were just the same.

The Court: I will let it stand.

(Exception allowed to proponents.)

Q. Did you ever talk to Mr. Allen about visiting at his home in Pleasantville?

A. I sent him a letter that I was coming.

Mr. Starr: Objected to.

Witness: I want to tell about my visit there.

Mr. Starr: Objected to.

Witness: I say I had sent him a letter.

Q. Answer yes or no.

A. Yes.

Q. Did you talk to him about coming to see him in Pleasantville?

A. Many times; but this day I went ——

Q. I am not asking you that. I asked you if you ever talked with him and you said yes.

A. Yes, I did.

Q. When did you talk to him about visiting him in Pleasantville?

A. When he came to see me, always.

Q. Did you go?

A. I went that once when I told him I was coming.

Q. When was that?

A. Four or five years ago, about four, a very hot summer day.

Q. Was that shortly after he went to Pleasantville, moved to Pleasantville?

A. No, he had been living there.

Q. For how long?

A. I can't tell you any of these kinds of things.

Q. It was four or five years ago you visited there?

A. Just about.

Q. Were you made welcome in the home?

Mr. Starr: Objected to.

(Objection sustained.)

The Court: She may describe what happened.

A. As far as welcome goes ——

Mr. Endicott: There is no question pending.

Witness: Pardon me.

By Mr. Endicott:

Q. What happened on your visit to Mr. Allen?

A. I went there. We went into the summer parlor. It was very hot, and I think Mrs. Ailes came to the door. Mrs. Ailes and I were never at all unfriendly. That was all hidden.

Mr. Starr: I ask that that be stricken, as to her observation of friendliness with Mrs. Ailes.

Witness: I wasn't unpleasant toward her.

Mr. Starr: I ask that that be stricken. We wish this cause tried properly.

Witness: We sat down there and we talked, and she came in in a short while and announced a gentleman. She said, "Papa, there is a real estate man here." As soon as anyone came there, there was a real estate man.

Mr. Starr: I ask that that be stricken.

Mr. Endicott: Don't tell such a long story.

Witness: Here it is, now. So he came in.

Mr. Starr: Objected to.

Witness: I want to talk fast and get done with it.

(Last question read to witness by stenographer: "Q. What happened on your visit to Mr. Allen?")

A. Mr. Real Estate Man came in.

Mr. Starr: Objected to. My motion was that this witness' testimony as to her observations be stricken out.

Mr. Endicott: We will consent to that.

Q. Tell us the facts, what happened?

A. This is fact—not observation. The man was in the real estate business, he was in the room and it was interfering with our confiedential talk. She says, "Papa, there is a real estate man there." She says, "I don't know him. Don't you want to see him?" She went out and she says, "He is always bothering me when friends come, with real estate, bothering me with this stuff." So she comes in again. She says, "He wants to see you about this house on the bay." I said, "Papa, go ahead. I don't want to interfere with your business." He said, "Will you go along?" I said, "Certainly." He had his car there. It was down on the bay in Pleasantville, and when we got out he got out first, and he introduced me to the real estate man and he said, "This is my baby." He said, "How is that?" He says, "I understood the other lady is your

baby." He said, "No, she is not my baby. Did she tell you that?" "Yes, she told me that." He said, "She is not my baby. This is my baby. This is my daughter." So with that we went up into the Spanish villa. I said, "Is this the kind of stuff she shows you?" I said, "How much, Papa, is this?" He said, "$15,000." I said, "This is only a flash. This will be thrown over by the waves the first storm." He says, "This is the kind of stuff I am up against all the time."

Q. How long did you stay with him on that visit?

A. I went down there not purposely to see him. I was glad to see him, but I made it business at the same time; but they took me to the station.

Q. The same day, was this?

A. The same day; and when I was in this car we were going home and I said, "It is getting toward evening. It is beautiful with this big lovely light to go to bed," and she said, "We don't go to bed so early; we don't go to bed with the chickens. We do our dirty work in the daytime." I said, "What do you mean?"

Q. Did you lend your father-in-law, or your stepfather, a diamond?

A. Yes ——

Q. Answer yes or no.

A. I gave him a diamond pin.

Q. Did you ask him for it again?

A. I asked him for it again, because I saw it was on her finger made into a ring. My husband wore it on his tie and I dug it up and gave it to Papa for a Christmas present. She had it on her finger. I said, "What have you done with the family por-

traits?'' and she said, ''I threw it in the cellar and I guess it is now in the junk.''

Q. Did you ask Mr. Allen then about the ring?

A. No, not then; I wasn't going to start a fuss.

Q. Did you speak to him afterwards about it?

A. He came up afterward, and ——

By the Court:

Q. Tell us what he said when he came up.

A. Then I thought I would approach him sometime later on the subject. I said, ''Papa, she has your diamond ring. How did she make it into a ring?'' and he said he took it out of the drawer and had it made into a ring and started wearing it. Then I said, ''You ought to give it to me. That was the compact, if you don't want to wear it, for it was to go back to me.''

Q. Will you try to remember just the question I ask you and not answer anything more? Just answer yes or no if you can. Did you ask Mr. Allen to get the stone back for you?

A. I didn't command him, no; I simply said I would like to have it back.

Q. What did he say?

A. He said he couldn't get it at all ——

Q. That is your answer?

A. —— because she wouldn't give it to him.

Q. During the last summer, the summer of 1928, did Mr. Allen visit your home any?

A. More than ever, in 1928.

Q. How many times did he visit there?

A. After September 7th he was there; he didn't want to go back at all, any more.

Q. How many times was he there in the summer time before September 7th?

A. He had missed a long time then. There was a great deal of sickness at my house at the time and through that I remember he hadn't been there much at all. He had neglected my interests in everything.

Mr. Starr: I move that that be stricken.

The Court: It may be stricken.

By Mr. Endicott:

Q. Had you been getting your income regularly prior to September, 1928?

A. No, he was getting very careless; nobody was attending to him at all.

Q. How long prior to September was it that you received your income?

A. It was always behind time, yet the mortgagors tell me they had sent it in advance.

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

Q. In September and October, 1928, prior, shortly prior to Mr. Allen's death, did you find any change in his physical condition and mental condition?

A. He had just become ——

Mr. Starr: Objected to. The question requires quires an answer yes or no.

Mr. Endicott: That is what I want.

Witness: Yes, very much so.

Q. What did you observe that indicated to you a change in the physical or mental condition of Mr. Allen in September or October of 1928?

A. At night he was hollering, "Kate, oh, Kate. Kate, oh, Kate." I would go to him in his room and he would be on his elbows and knees, hollering, "Kate, oh, Kate. Kate, oh, Kate," and he was feverish and I would give him water and I would ask him what was the matter and he would say that somebody was after him all the time. That was one occasion.

Q. Can you fix the time?

A. That was right up to the first week, no, toward the second week, in September. He was frightened and he said I should stay around him. He was afraid.

Q. Did you observe similar conduct on his part on any other occasion?

A. Yes, when he was at home at night. He was with me at the house, fussing around. He said he wasn't able to figure out things and that I should look after things for him, that he wasn't able to connect up things.

Q. Had you gotten your income at that time?

A. It was very far behind at that time and she wrote us a breezy letter.

Mr. Starr: I move to strike that out. There is a yes or no answer to that question.

(Last question read to the witness by the stenog-

rapher, as follows: "Q. Had you gotten your income at that time?")

A. In September?
Q. Yes.
A. It wasn't due at that time, but previous to that it was two months late.

Mr. Starr: I move that that be stricken, that it was two months late.

The Court: It may be stricken.

By Mr. Endicott:

Q. After the visit in September, when you say he was in the condition he was in, did he come to see you again?
A. He was with me all the time in September and October, going home only to change his clothes, and so forth. What did you ask me? It goes back—I must connect it. Ask me the question; what is connected to it?

Mr. Starr: May I have this stricken from the record?

The Court: Yes.

Witness: He was away ——

Q. Answer yes or no.
A. Yes.
Q. How many times did he come to see you?

A. He was there ——

Q. He wasn't there all the time, was he?

A. He would only go home sometimes and when he got home she would find fault; he said she was afraid of losing him and he said she was faking it and that he couldn't stand it any more.

Q. Did you ever talk with Mr. Allen, have a conversation with him in which he suggested a desire to move from Pleasantville? I now refer to the year 1928.

A. I certainly did. That is what he came up for, to prepare for that.

Q. Relate the conversation you may have had with him in that subject?

A. He had the conversation with me.

Q. What did he say?

A. He said he was going to try to get away from there; and then he would cry and he would laugh and then I would have to wait a while until he would get over that; and then as the days went on he would say couldn't I go down and make some arrangements to let him come with me; that he preferred to end his days with me; that he only had a short while to live, he had a great premonition as to that. And she wanted him to go to Washington on another trip and he said she was so ungrateful, that he had given her so much and fixed her so well, and the more he fixed her the more she wanted and he said the girls are now getting very interested in the bungalows and he said, "The property, I thought, was going to be my home."

Cross-examination.

By Mr. Starr:

Q. Tell us what you were going to tell Mr. Endicott when he stopped you. Give us all the conversation.

A. That is right. Now I am disconnected again.

Q. Can't you tell us what else he said? -

A. I am trying to connect that. Then he said that now this was going toward the end, toward the last day that I would ever see him. He said there was preparation made to go to Washington and that if he went on that trip he would never come back alive; that he felt it. He said she had a new "sweety," and now that he would probably come up for a while and try not to go, and if he could get out of it that that would be the last time, that would be the finish; that if he didn't go to Washington he wouldn't go back again. That was the day of the funeral here in town and that was the last day that I saw Papa.

Mr. Endicott: She is not relating conversation.

Mr. Starr: I asked her to detail the balance of the conversation where you stopped her. Are you not relating what he said?

Mr. Endicott: Limit the occasion to a specific time.

By Mr. Starr:

Q. Tell us what he said.

Mr. Endicott: Objected to. What did he say, is too general.

Mr. Starr: My question is about what she was testifying to just before he went to Washington, the balance of the conversation that passed between the witness and Mr. Allen upon that occasion. Tell us that.

A. Remember this. He was crying all the time. This was not nice, normal conversation, he was what you call almost frantic, told in almost great emotion. I had to quiet him down to keep him from this state of things.

Q. Just tell us what he said without giving such a long explanation.

A. Then he said he would come back if he could get back and make that arrangement; and at the same he was crying and going on. Now then, we were to go to that funeral.

Q. Just wait a minute.

A. This is the way it happened. He was going to go to this funeral. He stood on the doorstep and I wanted to go with him; and he was to take me, too, to the show, and when I got there, on the doorstep where he was, he was gone. I never saw Papa again after that.

Q. When was that?

A. I think Saturday, the 13th or 14th of October.

Monday would be the 15th, when he was to come back; that must have been the 13th.

Q. This was the 13th of October, last year?

A. That Saturday, the week before he died.

Q. You never saw him again?

A. Never laid eyes on him again. He had told me he would never come back, alive.

Q. Have you given us all the conversation that occurred on that day, October 13th, 1928, everything that he said to you and that you said to him?

A. I haven't told you his condition.

Q. I didn't ask you about his condition. I asked you about the conversation.

A. Yes, as far as I can remember.

Q. You have given us all the conversation? Nothing else happened?

A. I never saw him again. That is what happened. He was dead when I heard about him again.

Q. Was there anything else that happened on that day?

A. No.

Q. You say you saw him on September 7, 1928?

A. I couldn't say I saw him on the 7th of September. In that week of the 7th, it started in on the 7th of September when he came to my house.

Q. I am asking you whether or not he came to your house on the 7th of September?

A. I don't say he came on that day.

Mr. Endicott: If there is any issue on that we will refer to the testimony. My recollection is she said it was after September 7th.

Mr. Starr: We are now inquiring as to September 1st, 1928.

Q. When after that did you first see him?

A. In that week of the 7th to the 14th.

Q. You don't know what day?

A. No, sir.

Q. Was it more than once that week?

A. Yes.

Q. How many days was he there?

A. He was there all the time except when he changed his clothes, if the weather changed.

Q. Where was he then?

A. He was with me.

Q. Where was his home?

A. Pleasantville.

Q. Did he come very often to see you?

A. When he came up he remained up.

Q. I am trying to find out how many visits he made to you in your home in Philadelphia in the first or second week of September, 1928?

A. I told you he stayed until the week-ends, then he would go away Sunday to church, go to church, and then remain probably until Wednesday.

Q. Was he there continuously during all that time?

A. Yes, he was trying to live with me, trying to get away from Pleasantville, and told me to help him to do it.

Mr. Starr: I ask that that be stricken out.

Mr. Endicott: He brought that out himself.

Mr. Starr: I refer to that portion of the answer where the witness said he was trying to get away from Pleasantville.

The Court: I will permit it to remain, and allow you an exception.

By Mr. Starr:

Q. Did he sleep at your house?

A. Certainly.

Q. From September 1st to October 15th, what portion of that time was he living at your house? I mean by that, when he stayed there at nights.

A. He would come up Wednesday and remain until Saturday and go home Saturday, sometimes; and sometimes he would come Wednesday and remain until later in the week and go to church Sunday and then perhaps go away the following Tuesday, come back the following Thursday or something like that, but he was there all the time. He said there were terrible conditions down there and that he had all kinds of trouble; that he was paying bills for work done there and that Mr. Ailes had an old horse out on pasture—now, I am not talking this, this is Papa.

By the Court:

Q. Just tell us what he said.

By Mr. Starr:

Q. What did he say to you?

A. Remember, while he was saying this he was crying. He didn't talk it all at once, it took two months. I had to take care of him and treat him

like a child; but I didn't bring him there to talk: he had enough talk where he came from.

Q. He didn't tell you that, did he?

A. No, he didn't tell me that.

Q. That is your guess about it?

A. No, but from realities of his condition; he wasn't in any good condition at all.

Q. Tell us what he said to you during the period of three weeks that he was there?

A. He told me to start a lawsuit for my money, in order to simply get away from there. That was discussed. He said for me to try and do something to get him away from there, that he couldn't stand things any longer and that his money was being taken away from him right and left.

Q. What else?

A. There is so much. One thing leads on to another. Isn't it enough? Isn't it enough?

Q. I am not on the witness stand.

Witness: And then he was ——

Mr. Endicott: There is no question pending. Confine yourself to answering Judge Starr's questions.

By Mr. Starr:

Q. Do you remember anything else that he told you that you have not related?

A. He said he didn't eat there any more because he had such peculiar pains. He said the eating didn't suit him and he ate wherever he could please his own appetite. When he came up to me he said he didn't want anything to eat, that he ate down-

town. Then he would come home and say he would have an abnormal appetite; then I would put everything before him and he would say it was too much, and you wouldn't know whether you would give him too much or whether you gave him too little; he was never consistent. He was at the table and would say, "Bring me in a big pitcher of water." I would always have company around, and neighbors, and have lots of water, and they would say how crazy he was about water.

Q. When before September 1st did he come to your house, in August?

A. When?

Q. Yes. How many times in August, 1928?

A. I couldn't tell you, but he was up there.

Q. Can you tell us how many times he was there earlier in the year in 1928, prior to September?

A. A year ago, the 30th of March, before that he wasn't there for a long time, but after that he came, after March 26th, 1928, he did start to come frequently, real often; and then after the second week in September and October. Those are the times he made a break from there; that is the time he was with me.

Q. But before September, 1928, when was he there?

A. He had been up about the interest-paying months then.

Q. Confine yourself to the number of times.

A. He was up a number of times.

Q. Can you tell us how many times?

A. No, sir, I couldn't tell you.

Q. I show you a paper marked DX1, and ask you where you found that paper, that letter?

A. I found that in Papa's overcoat when he was living with me.

Q. When was that, what year?

A. It was in the year before she was up there; she wasn't up there yet.

Q. What year was it?

A. It was in 1919; no, she got there in 1920.

Q. Was that letter dated 1919?

A. There is an envelope, the envelope and everything.

Q. When did you find that letter?

A. I found that letter when I found the envelope with the letter.

Q. What year was it?

A. 1920.

Q. What month of the year?

A. I don't know. Look on the envelope. I didn't memorize the letter. I gave it to the Court. That was the end of it. I am not here to memorize. I have no memory. Take me just as I am. I have plenty of her letters here to prove her writing.

Mr. Endicott: Just answer the letter. Don't argue.

Witness: Do you doubt this?

Mr. Endicott: Just answer yes or no.

Witness: It is her letter, yes.

By Mr. Starr:

Q. I repeat the question: In what month in 1920 did you first see this letter?

A. I didn't look on the date of the letter.
Q. You can't give us the month?
A. That is her letter.
Q. Where did you find it?
A. In Papa's overcoat.
Q. What did you do with it after you found it?
A. I kept it; didn't talk about it at all.
Q. You didn't talk about it?
A. Why should I bother him?

Mr. Endicott: Just answer the question.

Q. You retained this letter from 1920 up to the present time?
A. I certainly did.

The Court: Just give a yes or no answer.

Q. Was Mr. Allen then living with you?
A. Yes.
Q. Was the letter in the envelope when you found it?
A. Yes. Papa even spoke about it.

Mr. Endicott: Just answer yes or no.

Q. Was the letter opened when you found it?
A. Wait. Certainly, it was open.
Q. You are sure about that?
A. Why, of course, it was opened. How could it be in Papa's overcoat?
Q. I asked you whether or not the letter was in the envelope when you found it?
A. Yes, and it was opened.

Q. You never said anything to him about it?

A. No, he spoke to me about it but I didn't say I had it.

Q. Did you conceal from him the fact that you had the letter?

A. I didn't know it was concealing. I just put it away somewhere and kept it. I didn't like the conditions it read about, so I kept it.

Q. What did you say to him when he asked about the letter?

A. He didn't ask about the letter.

Q. What did he say about it?

A. Some time later he says, "She sends me special delivery letters, I don't pay any attention to them."

Q. I am asking you with reference to this particular letter.

A. No, he didn't specify anything. He just said it in the course of conversation.

Q. Then you never had any particular conversation with him about this particular letter?

A. No.

Q. Where did you keep this letter from 1920 up to the present time?

A. Where did I keep the will?

Mr. Endicott: Just answer the question.

Witness: I kept the letter where I kept anything that pertained to Papa's affairs.

Q. Where did you keep it?

A. Where did I keep it? There are so many

places in housekeeping. I don't know where I kept it—among a lot of letters and things.

Q. When did you find it and produce it as an exhibit?

A. In a box I had it in, where I had a lot of other private papers.

Q. Where did you find it?

A. I got it when he died.

Q. Did you start looking for it after he died?

A. I didn't have any place. I looked. I had a little time to find it.

Q. At no time, from 1920 until Mr. Allen died, did you say anything about—to Mr. Allen—your having this particular letter?

A. No, certainly not. I didn't annoy him.

Q. From the time that Mr. Allen went to live in Pleasantville, up until the time of his death, upon how many occasions did you visit his home or the home of Mrs. Ailes in Pleasantville?

A. Just once.

Q. When was that?

A. That was, I told you, about, before—I don't know; it must have been in 1920—well, two or three or four years ago.

Q. Three years ago would be 1926. Was it in 1926?

A. No, it was more than that.

Q. Can't you give us some idea of the time?

A. I will say not more than 3½ years ago, something like that.

Q. That would be in the early part of 1926?

A. Yes. You see, you can't—it was my first visit.

Q. Your first and only visit?

A. Yes, in a hot month.

Q. What month?

A. In August. It was very hot, the depth of summer.

Q. You went with whom?

A. Myself.

Q. On the electric train, or did you go down in an automobile?

A. No.

Q. How did you go down there?

A. In the train.

Q. Did you get off at Pleasantville?

A. Yes.

Q. Who met you at the station?

A. Nobody.

Q. Did you walk to the house?

A. Took a taxi and went there.

Q. When you got there who was the first person you saw?

A. I am not sure that it was Mrs. Ailes came to the door.

Q. Didn't you know her?

A. Yes, but I am not sure whether it was Papa or her, my father or her, Mrs. Ailes.

Q. How long did you remain there that day?

A. I got there about noon time; then I remained there until sunset.

Q. A matter of four or five hours?

A. Yes.

Q. During all that time were you in the house or did you go out, down to the meadows?

A. We went to the bay to see the house.

Q. To the bay?

A. Yes. It seemed all afternoon. I remained there until dinner. I don't know whether or not

it was supper or lunch, or what. It was for one meal.

Q. Was it in the middle of the day?

A. No, not the middle, because it was late.

Q. Did you have any conversation with Mr. Allen during that time?

A. All the time, sitting there. Then Mrs. Ailes came in, sitting there, and she had a way of never talking at all, but looking at him all the time.

Q. Did she say anything to you all the time you were there?

A. We were not in the sun parlor there. We were in another part of the house. Then I started asking her and asking Papa about the pictures and different things and she commenced to feel these things and I commenced to get angry.

Q. Pardon me. Did she talk to you?

A. I directed my attention to Papa, then he would answer and he would ask her.

Q. What did she say?

A. She would say, "I guess I threw it in the junk pile." Everything was thrown. Nothing was sent back to me, or whether or not he wanted it, or anything.

Q. Did she say anything else?

A. She talked very little; just looked at him, all the time.

Q. Is there anything else she said while you were in the house that afternoon, or in the sun parlor?

A. There wasn't much said.

Q. Was that all of it?

A. Yes.

Q. That was all that was said?

A. Yes.

Q. Did you say anything to her, or hold any conversation with her?

A. I would look from him to her; no, I didn't talk anything personal except about my things.

Q. Did you direct any question to her?

A. I did not.

Q. What did Mr. Allen say to you in the presence of Mrs. Ailes, while you were in the house that day?

A. He didn't talk at all before her.

Q. He didn't say anything?

A. No, he just evaded.

Q. He didn't say a word to you in her presence?

A. He was talking, but he wasn't personal.

Q. What did he say to you in her presence?

A. He said, "Have a drink?" I have a drink that I am putting on the market. We talked business. That is all.

Q. He talked business?

A. Just business.

Q. Just business?

A. Yes; about my drink.

Q. That is all that happened that afternoon?

A. Yes.

Q. That is the whole extent of the conversation?

A. Yes.

Q. You said something about going in an automobile to the meadow or the bay. When did that happen?

A. Early in the afternoon.

Q. Who went to the bay?

A. Mrs. Ailes and this gentleman, and Papa went, and I, too.

Q. Did you walk down there?

A. No, we went in his car; he asked us.

Q. The four of you went in the car?

A. Yes, the four of us.

Q. What happened when you went down to the bay?

A. As I said before, we got out; she was in advance, and when I got out he said, "This is my daughter, my baby."

Q. Who said that?

A. My father said, "This is my baby."

Q. To whom?

A. This real estate gentleman.

Q. Did you know him?

A. I would know him if I saw him.

Q. Do you know his name?

A. No; although I had met him in a convention years ago, I didn't know him.

Q. You don't know his name?

A. No, I paid no attention to names.

Q. What happened?

A. So he said this to him, he said, "I understood this lady is your daughter"—the lady in advance, and he said, "No, she is not my daughter."

Q. In the presence of Mrs. Ailes?

A. Yes.

Q. Could she have heard it?

A. Yes, she could have heard it.

Q. Was she close enough?

A. She was standing still.

Q. How far from Mr. Allen was she when that happened?

A. She was about as far away as the gentleman in the first seat, near to the steps. She may not

have heard it. That is for her to say, whether she heard it or not.

Mr. Starr: I ask that that be stricken out.

The Court: It may be stricken out.

Q. Tell us what happened.

A. So then I said, "Is this some of the stuff she pulls over on you?" She wanted this house, too.

Q. Give us the words.

A. I don't talk the same words. It is all the same idea but I don't talk the same words.

Q. Give it to us as near as you can tell.

A. He says, "This is some of the stuffs she pulls over on me."

Q. Was that said in the presence of Mrs. Ailes?

A. No, they were walking through the place.

Q. How far away?

A. Evidently they were in another room. They could have heard me. I wasn't whispering.

Q. They could have heard you?

A. Yes; I said, "This is not worth $15,000. I thought she was such a smart business woman. Are these the kinds of things she pulls off?"

Q. To whom did you say that?

A. To Papa.

Q. In the presence of Mrs. Ailes?

A. She could have heard it if she had listened. He said, "Yes, this is the kind of stuff I have to go through." I said, "It isn't worth it."

Q. Is that all that happened?

A. We talked over it and went out again.

Q. Is that all that happened?

A. That is all that happened.

Q. You have given us all the conversations that happened down there?

A. We talked of business.

Q. Talked about your business, that is everything that happened?

A. No, I think he said to the gentleman, "This is my daughter that has 'Bowers' Meade drink." He always drinks that.

Q. Are you through?

A. I couldn't say.

Q. Well, you then came back to the house?

A. Yes.

Q. What happened after that?

A. I forgot my umbrella, that is how I went back; it was train time.

Q. Did you go back to the house?

A. Yes.

Q. Did you go in the house?

A. No, just went for my umbrella.

Q. Then you left?

A. They took me to the station and I left on the train.

Q. Was anything else said between you and Mrs. Ailes after that?

A. No, but when I said, "It is time to go driving, it is a beautiful moonlight, it is beautiful down here, I wish we had these moonlights, too," she said, "Oh, no, we don't drive at night; we go to bed with the chickens; we get up early but we go to bed with the chickens; we go to bed early," or something like that. Maybe I have that reversed now. She said, "I do my dirty work in the daytime." I didn't know what she meant.

Q. What had been said before, by anybody, in any way, that would call for a remark of that kind?

A. I don't know.

Q. Had anything been said?

A. No.

Q. It was just purely a voluntary statement out of a clear sky?

A. Yes.

Q. Did you make any inquiry as to what she meant by that?

A. No, not personally, like that. I have my own inferences.

Q. How soon after that did you leave, that is, to return to Philadelphia, after she made that statement?

A. We were coming back for the umbrella, and

Q. Was that statement made before you got back to the house, or while you were walking down from the station for the umbrella?

A. During the drive, because I referred to the sunset, and that they could go driving, now.

Q. This was said in the automobile?

A. Yes.

Q. In the presence of Mr. Allen?

A. Yes.

Q. And this real estate agent?

A. Yes.

Q. And Mrs. Ailes and yourself?

A. Yes.

Q. Did anybody make any inquiry to know what Mrs. Ailes meant?

A. No.

Q. Did it impress itself on your mind as a joke or as being said in earnest?

A. No, she used my father for an easy mark for everything that she wanted to do and she passed herself off as his daughter and Mrs. Allen, and whatever she could do to get this real estate man to pull off a deal. It was flagrant.

Q. Do you mean that there was anything said of that kind?

A. I couldn't talk to anybody and I had no family I could go home to and talk to about these things.

Q. In the automobile were you seated in the rear seat with Mrs. Ailes?

A. That is what I have been wondering.

Q. That is what I am asking you.

A. I have been trying to think, myself. I must have been sitting beside her, because she was talking to me.

Q. You and she were sitting in the rear seat?

A. No, this was her car. How was this? This gentleman had left, this real estate man. Then we must have had to go back because I was in Kate Ailes' car, going to the station, so she did bring us home. So I had to get in her car; then we started to come back for my umbrella, then she said about the dirty work.

Q. The dirty work?

A. Yes.

Q. Were you in Mrs. Ailes' car then?

A. Yes, in her car.

Q. Who was driving?

A. She was driving.

Q. Where was Mr. Ailes?

A. He was sitting in back; he must have.

Q. Is this a mere guess that you are relating or have you any independent recollection of really what happened?

A. I know exactly. I was in her car, sitting alongside of her when she told me that.

Q. Then you were sitting beside her and heard what she said?

A. Yes.

Q. Where was Mr. Allen?

A. In the back; I was sitting beside her.

Q. Were you whispering to each other?

A. Oh, no; talked loud.

Q. Mr. Allen then could have heard what was said?

A. Yes; he wasn't considered anything. He could hear what he pleased; that didn't matter; he had to take what he got; he had to listen to one person.

Mr. Endicott: There is no question pending.

Q. Did he make any observation when Mrs. Ailes said, "That is when I do my dirty work?"

A. I never ——

Q. Did he or not make any reply?

A. No, nothing at all.

Q. Are you a sister of Mrs. Shumway?

A. I am a half-sister.

Mr. Endicott: We served notice on Mr. Lewis some days ago, that we would like to cross-examine Mr. A. F. Daix, Jr., further. Will the Court permit it?

Mr. Starr: Surely, you are entitled to do that.

A. F. Daix, Jr., recalled for further cross-examination.

By Mr. Endicott:

Q. Who paid you for drawing a will for Mr. Albert Allen, if anyone?

A. Nobody.

Q. Have you rendered a bill?

A. I have not.

Q. Have you made any charge on your books for services rendered in that capacity?

A. I have.

Q. Have you your books here?

A. I have not.

Q. Were not you advised that we would serve notice on you and ask you to produce the records?

A. The records are not the books.

Q. Our notice provided, and you were requested to produce for further examination, at the adjourned hearing in this case, the records of A. F. Daix, Jr., showing the account against Albert Allen, deceased, and Kate Ailes, from January 1st, 1926, to date.

Mr. Starr: I never knew that such notice was served.

Mr. Lewis: I understood it was Mr. Daix the 3rd.

Mr. Endicott: A. F. Daix, Jr.

Witness: I am A. F. Daix, Jr.; my son is A. F.

Daix the 3rd. That notice you just read was never presented to me. I just heard incidentally from Mr. Laws that you desired the records in the matter brought down.

Q. Have you the records here?

A. I have not.

Q Is there any reason for not producing them?

A. Yes.

Q. May we have the reason?

A. Mr. Laws thought I had them, and, probably unknown to you, he buries his sister tomorrow and he is a little bit mixed; he says, "I gave it to you," and I believe that I gave it to him. I think he will find them at his office when he goes back, but we didn't bring them down.

Mr. Laws: We will produce the records. Your notice says as to a mortgage concerning Mrs. Ailes.

Mr. Endicott: The notice went out as to two matters.

Mr. Starr: We will produce anything you want.

Mr. Endicott: We asked for both.

Mr. Endicott (addressing Mr. Daix, Jr.): Did you produce the file in the proceeding in which your son acted for Mrs. Ailes?

Mr. Daix: They were the papers Mr. Laws handed me.

Q. They are the papers now missing?
A. No, I say they are at Mr. Laws' office.
Q. They are not present with us now?
A. No, sir.

Mr. Endicott: Will you produce at the next hearing your charges against Mr. Allen?

Mr. Daix: I certainly will.

Mr. Endicott: We would like to defer this examination until Senator Daix produces the records which we have asked him to produce.

Mr. Daix: Is that all?

Mr. Endicott: That is all. We have two witnesses, one of whom we hoped to have here today; and another witness, we will have to take interrogatories or have a commission for, in Philadelphia.

(Mr. Starr: May I ask the names of the witnesses?

Mr. Endicott: Alfred Siegrist.

Mr. Starr: Is that one of the depositions to be taken in Philadelphia?

Mr. Endicott: No, he lives in Cape May County. He is very ill and we cannot expect him to be here today. The other witness is E. M. Shoumaker, of Philadelphia. I am not sure about the address. We have two or three addresses.

Mr. Starr: Are they all the depositions you desire to take de bene esse?

Mr. Endicott: Unless Mr. Siegrist can come here to the next hearing we will have to take his testimony de bene esse.

There may be some testimony we will want to develop, in Winchester. We wish to reserve the right to do so, to interrogate these witnesses either in person or by commission. With that, we now rest.

Mr. Starr: I do not see any objection to that course, although ordinarily the caveators are required to finish their testimony before going on further with the case. We have quite a number of witnesses from Pleasantville, 12 or 15 of them, and I believe it will take up the rest of the day, and, with the understanding that we will go on with our case, and that the caveators' case is to be held open for the two witnesses that are not here and the testimony of any witnesses they want to take de bene esse, with the exception of those matters, I understand the caveators' case is closed.

Mr. Endicott: With the exception of further cross-examination of Senator Daix.

Mr. Starr: We will then consume the rest of the time.

CAVEATORS REST.

TESTIMONY ON BEHALF OF PROPONENTS.

GEORGE R. MANNING, previously sworn.

By Mr. Starr:

Q. You have already testified in this case with reference to the banking of Mr. Allen. I now ask you how long you knew Mr. Allen?

A. As near as I can recall, from about the spring of 1922.

Q. At that time were you connected with the Pleasantville Trust Company?

A. Yes, I was.

Q. Did you come in contact with him from time to time when he was attending to the banking business he had with the company?

A. Yes, I handled that.

Q. And that continued up until what time?

A. About Friday before his death.

Q. How frequently would he come into the bank?

A. That is a very hard thing for me to say. If you will notice by his records, there were times when his account was not as active as it was in later years, it may have been once a week or once in two weeks; at any rate, there was action on it every month, but towards the last, two or three times a week.

Q. Did he come to talk to you other than times when he was transacting banking business?

A. He never came to my house. On my way to and from the bank I had to pass by his house and

I frequently stopped there. We didn't always talk business.

Q. How long did that continue?

A. During all the time he lived there.

Q. During the entire time he lived there?

A. Yes.

Q. He died October 22, 1922?

Q. He died October 23, 1928?

A. Yes.

Q. Did you see him in October, 1929?

A. I did.

Q. How many times during that month did you come in contact with him?

A. I can't state definitely the number of times.

Q. Approximately?

A. Approximately I would say five or six times.

Q. In September, also?

A. 15 or 20 times.

Q. Were these occasions at the bank, at his house, or both?

A. At the bank, at his house and on the street.

Q. Was he able to attend to any of these matters up to the last time you saw him and were his conversations rational?

A. Absolutely.

Q. From your observation of him at any time up to the day of his death when you saw him, was he unable to transact business?

A. Not to my knowledge.

Q. Do you remember an occasion in August, 1928, when, as you passed the house, he was on the porch?

A. I remember a number of occasions.

Q. A particular occasion when there was some conversation about trust company stock?

A. Yes.

Q. When was that?

A. The day that the question of trust company stock was brought up, was on a Thursday, which I believe falls on August 9th. That evening I stopped purposely there.

Q. What was the reason you stopped there purposely; something that you spoken to him about before?

A. Yes.

Q. What had he asked you about?

A. I had sold him some stocks, five shares of stock in our trust company, and I hadn't received a check from him for it, for stock in the bank.

Mr. Endicott: Have we the date of this?

Mr. Starr: I understood him to say it was August.

Witness: That is right, August, 1928. August 9th was the day I was on the porch, but the day before was the day I received the check for the stock. I stopped Thursday night. I was unable Wednesday to deliver the certificate due to the absence of our president, Mr. Willis, and during the day is the only time we are sure he will be there. Naturally, I had Mr. Willis sign it and I told Mr. Allen, I stopped there and told him his certificate was ready, as it is necessary before delivery of the certificate to have him come to the bank to sign the receipt to the stub. The only reason I went was for that, to tell him to come to the bank to get his certificate.

Q. Did he come the next day?

A. Saturday.

Q. How many days off was that?

A. Two—August 11th.

Q. August 11th he came and gave you the check?

A. I got the check on the 8th and he signed the receipt on the 11th, August 11th.

Q. And you handed the certificate to him?

A. I did, yes.

Q. Upon any of the other occasions in August when you saw him did you have any conversation with him about making a will?

A. On this evening of August 9th, the occasion when I stopped there, was the occasion I talked to him about his will.

Q. What was the conversation between you and Mr. Allen about the making of a will?

A. I would rather give you the conversation in general, that I had. It would be easier for me.

Q. Between you and Mr. Allen?

A. The first part of the conversation was, I brought up about his coming down for his certificate, that it was ready. Then I suggested a safe deposit box. He told me he had a safe deposit box, his safe deposit box, in Philadelphia, in the Northwestern Trust Company, I believe it was; owing to the fact that he was down here all the time he thought he ought to have it down here entirely.

Mr. Endicott: The witness is not relating conversation but relating his thoughts on the subject.

Witness: I will change that.

Mr. Endicott: I object. There is no question pending.

Mr. Starr: I have asked him to give conversation.

Mr. Endicott: I move that the witness' comment as to safe deposit boxes be stricken out.

The Court: It may be stricken out.

Witness: At any rate, I asked him if he wouldn't bring his box down to our bank. He asked me the price of them and I told him they ran from $2 to $5. Our largest box is $5 and I recommended that, owing to the fact that I understood that he had a number of papers ——

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

The Court: Yes. It may be stricken as to understanding he had a number of papers.

Witness: —— he said he would do that at some future date, that it is good practice to keep your will, your certificates, your mortgages, your insurance papers and things like that, together. He said, "I have many of them in my box in Philadelphia, and have some of them in the house." I said, "It is more convenient to you down here, why not bring them here?" and he said he would. I told him to stop down and I would show him the boxes, which I did a few days later. He asked me at that time about his will. He asked me if a will, written on a,

just a letter sheet, would stand, in New Jersey. I told him, under contest, no. He said, "What do you advise me to do to make a good will?" I said, "Go to a good lawyer." I said, "There is a lawyer, Mr. Lewis"—I said, "Maybe in your case you better have Judge Cole in Atlantic City; you get a better lawyer and you get a better will for those you want taken care of." He said, "I want to see Kate and Frank better taken care of." I says, "In that case, if you expect trouble, you better see a good lawyer." He said, "I will see my lawyer in Philadelphia, Senator Daix;" he said, "he is the best lawyer in Philadelphia." I didn't know Senator Daix and I thought if he was the best lawyer in Philadelphia

Mr. Endicott: I move that that be stricken.

The Court: Yes, it may be.

Witness: I said, "If he is the best lawyer in Philadelphia, he is the man to go to." So evidently he had ——

Mr. Endicott: I ask that that be stricken.

The Court: It may be stricken.

By Mr. Starr:

Q. Was there any further conversation upon that occasion?

A. No, sir.

Q. Did he say why he was desirous of having Mrs. Ailes taken care of?

A. He said they had been very good to him.

Q. Was that statement made on this occasion?

A. This occasion, yes.

Q. Was there anything else said about Mrs. Ailes on this occasion?

A. Nothing about Mr. and Mrs. Ailes on this occasion, no.

Q. Did you notice any impairment of Mr. Allen's mental faculties during the year 1928, at all?

A. I did not.

Q. What about his physical condition; what did you observe with respect to that?

A. For a man of his age I would say it was good.

Q. When Mr. Allen visited you at the bank or when you met him at his house, or generally, what was the subject of conversation between you and him, say, during the last two years of his life?

A. If I remember it rightly, he invested in a number of mortgages toward the last. On one occasion he asked me about the reputation of a certain real estate man in Pleasantville; on another occasion he asked me the advisibility of another mortgage, and that is the last mortgage he took.

Q. Do you remember when that was?

A. That was about the middle of October the mortgage was placed.

Q. 1928?

A. Yes; the mortgage was placed, if I remember right, about the 17th of October. And on other occasions he talked about church, his home, and he was very interested in real estate, and he asked me at times about a good many properties in Pleasantville, and in general he was interested in our

bank. He asked me a lot about our bank and I told him all I could with reference to these things.

Q. Upon any of these occasions did he say or do anything that would indicate he was unable to transact business?

A. No, sir.

Q. When he made deposits in your bank who made out the deposit slips?

A. Usually he did; on one or two occasions Mr. Le Compte, treasurer of the bank, made them.

Q. Do you recall upon any occasion—go ahead, pardon me.

A. Well, I made one or two out myself.

Q. Do you remember any occasion that Mr. Allen transferred funds from his checking account to his savings account, or vice versa?

A. It was usually transferred from the savings account to his check account.

Q. How often did that happen during the last couple years?

A. I should judge that happened five or six times.

Q. Was that the result of a conversation between you and Mr. Allen?

A. Yes.

Q. What was said. What did he say and what did you say?

A. We didn't permit people to check from their savings account and he never kept a very close record; that is, within a few hundred dollars, the balance that would be on his check account, and if he had, if I saw he had a balance large enough I never said anything.

Q. What was the last time you saw him prior to his death?

A. On Friday.

Q. What day of the month was that, do you recall?

A. About October 19th.

Q. 1928?

A. Yes.

Q. Have you any deposit slips here?

A. Yes.

Q. In the handwriting of Mr. Allen?

A. Yes; that is, in his check account. I didn't bring his savings fund account.

Q. You are acquainted with the handwriting of Mr. Allen?

A. Yes.

Q. Will you please look over these and tell us which of them are in the handwriting of Mr. Allen? (Papers shown witness.) Give us the date and the amount and that will identify those in his handwriting.

A. January 20, 1928, $15.00. These things have been moved backward. I will have to assort them.

Mr. Endicott: Why not have the witness go through the list and indicate those that are in Mr. Allen's handwriting?

Mr. Starr: That is what I am asking him to do. I want a list, on the record, of those that are in Mr. Allen's handwriting.

Witness: I got to go backwards. I have started wrong. I will start back:

October 16, 1928	$50.00
September 6	18.75

Mr. Starr: Are these all in 1928?

Witness: Yes, all in 1928. That is all you asked me for.

Mr. Starr: I didn't know whether that was the fact or not.

Witness: Yes.

August 23rd	$36.00
August 21	60.00
August 13	30.00
August 10	242.29
July 28	45.00
July 23	90.00
July 21	60.00
July 16	85.00
July 2nd	108.00
June 19	500.00
June 16	42.75
June 13	40.00

Here is one, just the month of June, no date on it, $45.00.

May 4,	$90.00
April 23	60.00
April 21	132.00
April 15	85.35
March 27	48.00
March 9	75.00
February 23	94.41

Now, see, he didn't write his name on that. He didn't write that, either.

January 10,	$150.00
January 20	1,566.67

By Mr. Starr:

Q. Are these the ones in Mr. Allen's handwriting?

A. Yes.

Mr. Starr: I offer in evidence these checks. Is there any objection?

Mr. Endicott: We have no objection to their being admitted, but we object to their admission as being the handwriting of Albert Allen, subject to further cross-examination and proof on that question.

Mr. Starr: You better cross-examine him now, then, before they are marked.

By Mr. Endicott:

Q. You have produced only those deposit slips with reference to his checking account?

A. Yes.

Mr. Endicott: Have you concluded your examination of him on just this point?

Mr. Starr: All the examination. Then after you finish your cross-examination of him on the handwriting I will offer in evidence the deposit slips.

Cross-examination.

By Mr. Endicott:

Q. Have you made any study of handwriting?

A. The handwriting I study most is signatures. I have of my own accord; I never went to any professional handwriting man or to any person to study handwriting, but of my own accord I have observed handwriting.

Q. Did you see Mr. Allen sign these several deposit slips?

A. I can't say I did.

Q. So that your identification as to his signature thereon, is your conclusion from an examination of the writing?

A. No, on many of these occasions he was in the bank, alone. I have seen him out at the desk, and writing. I do not know for what other purpose he could be there for, but that.

Q. Do you know whose handwriting that is?

(Paper handed witness.)

A. No, I do not.

Q. Does it look like Albert Allen's handwriting?

A. I wouldn't say that.

Q. Does it look like the handwriting of Albert Allen on any of these deposit slips? How about that one?

(Paper shown witness.)

A. Yes, the last name is almost identical, but the

first is not. In the number of years his handwriting changed. You will find on his checks invariably that he used to swerve down, with two little marks on it; that is, of late years. On his deposit slips he never done that but on many checks I am able to produce it had that little swerve mark on it. There is one that will come close to it.

(Witness identifies deposit slip, August 10, 1928.)

Mr. Endicott: May I have marked for identification at this time, this paper on which I have just examined the witness?

(Paper marked CD2 for identification.)

Q. Do you find any other slips that appear to be like this signature?

A. I can't say that.

Q. Will you say there are none that do resemble it?

A. No, sir, I will not.

Q. I show you signature or the words Albert Albert, and ask you whether or not you are able to identify that handwriting?

A. No, I am not.

Q. Is that the handwriting of Albert Allen?

(Paper shown witness.)

A. I wouldn't say it was.

Q. Will you say it is not?

A. I will not.

Q. I show you further a signature purporting to

be that of Albert Allen, and ask you whether or not you identify that handwriting?

A. That is Mr. Allen's signature, yes.

(Marked for identifiation CD4.)

Q. Was Mr. Allen accompanied by any other person when he had occasion to visit your bank?

A. Ordinarily not.

Q. Was he on some occasions?

A. He was.

Q. Who customarily accompanied him on such occasions?

A. Well, there would be different ones come in with him, sometimes a real estate man. I believe only on one or two occasions did Mrs. Ailes come in with him.

Q. Did you ever sell him any mortgages?

A. I did not.

Q. Did you ever give him an opinion on the value of land upon which he purchased mortgages?

A. I have.

Q. Did you ever sit in at any time, settlements, where he was the purchaser of a mortgage?

A. I did not.

Q. Did you ever make a commission by virtue of any mortgage which he took?

A. I did not.

Q. Did Mrs. Ailes keep a bank account with your institution?

A. She did, after he died.

Q. But not before?

A. Not before.

Q. That was the bank account which we discussed when you were on the stand on your first examination?

A. Yes.

Q. Can you recall the first occasion in September, 1928, when you saw Mr. Allen?

A. I can not.

Q. Can you recall to us the second occasion you saw him in that month?

A. I can not.

Q. Can you give us the specific day and hour and place during that month at any time when you saw him?

A. Of September?

Q. Yes.

A. I can not.

By Mr. Starr:

Q. How did you become acquainted with the handwriting of Mr. Allen?

A. Through the continual writing of his signature; I observed his signature a good many times.

Q. Did you ever see him write?

A. Yes.

Q. Have you paid checks with his signature, at the bank?

A. Yes, many times.

Q. I ask you whether or not in your opinion these bank deposit slips you have identified as being in the handwriting of Mr. Allen are in his handwriting?

A. They are, yes.

Mr. Starr: We offer in evidence these bank deposit slips.

Mr. Endicott: My previous objection still stands, as to these also.

Q. Are these his?

A. No, these are mine.

Mr. Endicott: Witness is asked to count the number of deposit slips which are now in his hand and which purport to be deposit slips of Albert Allen prepared by persons other than Albert Allen.

(Shown witness.)

Witness: Eighteen.

Q. 18 in number and covering what period of time?

A. From January, 1928, to October, 1928.

Q. You say in your testimony that on two occasions you had made out slips for Mr. Allen and that Mr. Le Compte had made out one.

A. There are a number that I made; more than two.

Q. More than two?

A. Yes, there are more than one that Mr. LeCompte made there, too.

Q. Do you recognize the writing on any of these not made by you or Mr. LeCompte, for instance, the one of October 13th, $3000. Do you knkow whose handwriting that is?

A. That is my handwriting.

Q. I suppose that is Mr. LeCompte's?

A. No, sir.

Q. Do you know whose it is (referring to slip dated October 3, 1928)?

A. No, sir.

Q. Here is one, September 29, 1928. Whose handwriting is that, do you know?

A. Part mine and part somebody else's.

Q. Part yours and part somebody else's?

A. Yes, this one; the one of $1000 is mine.

Q. The witness identifies the last line of writing on the deposit slip as his handwriting. Is that correct?

A. Yes.

Q. Do you know anything of the rest of the deposit slip?

A. That is Mrs. Allen's.

Q. Mrs. who?

A. Mrs. Ailes; pardon me.

Q. Do you refer to Katie Ailes when you say "Mrs. Allen"?

A. Yes.

Q. Was she known as Mrs. Allen?

A. No, sir.

Q. Why did you call her Mrs. Allen?

A. I don't know.

Q. Witness is interrogated on deposit slip September 20, 1928, and I ask you if you know whose handwriting that is?

A. My own.

Q. Then there were several more than two deposit slips which you prepared for him?

A. Yes.

Mr. Endicott: May this group be marked for identification?

(Group of 18 deposit slips marked C4 for identification.)

Mr. Endicott: Where are those slips that were admitted in evidence (Proponents' Exhibit No. 1; 24 deposit slips)?

(Produced.)

The Court: The witness wants to know what becomes of these slips and also what becomes of the checks produced at the last hearing.

Mr. Endicott: I have the checks.

Mr. Starr: You sent me a copy of the ledger balances.

Witness: I didn't know where they went after the last hearing.

Mr. Endicott: They are in safe hands.

Witness: I am responsible for those, yet.

Mr. Starr: They are in possession of the Court.

Mr. Endicott: That is all.

Mr. Starr: One question I forgot:

Q. Upon this occasion in August, 1928, when you say you talked with Mr. Allen about a will, who were present?

A. Who?

Q. Yes; who were present?

A. Who were present?

Q. Yes.

A. Nobody but Mr. Allen and myself.

Q. Nobody else during the entire time?

A. We were there the entire conversation.

GEORGE H. ADAMS, sworn.

By Mr. Starr:

Q. You live in Pleasantville?

A. Yes.

Q. Have you any official connection with the First National Bank?

A. I am cashier there.

Q. How long have you been connected with the institution?

A. Since 1902; that is when it was organized and I have been there ever since.

Q. Have you continuously occupied that position?

A. Yes.

Q. Did you know Mr. Albert Allen in his lifetime?

A. I did.

Q. How long had you known him before his death?

A. I can't just give exact dates, but I think in the summer of 1928 I met him—1928.

Q. When did you meet him and what was the occasion of the meeting?

A. I went over to the restaurant to get lunch and happened to sit at the same table with Mr. Allen and Mrs. Ailes. That is when I met him.

Q. Did you have any conversation with him then?

A. Yes, in a general way. I told him I was the cashier of the First National Bank and gave him an invitation to open an account, if he had occasion to, and he said he was connected with the Northwestern Trust Company.

Q. From that time on up to the time of the death of Mr. Allen did you come in contact with him?

A. I did.

Q. Frequently, or otherwise?

A. During the last two or three years probably, in the summer time, I would meet him almost every morning, would see him.

Q. And these occasions lasted how long?

A. I just took a walk by his house sometimes and said, "Good morning," and sometimes I would have a little conversation.

Q. Do you remember the last time you saw him before his death?

A. I remember him; I can't give you the date.

He was sitting in a swing when I went by and he said, "I am taking my exercise, too."

Q. How long before his death, October 22, 1928, was that?

A. I think it was sometime in the month of October. I can't fix the date.

Q. What time of day was it?

A. In the morning, around 8 o'clock.

Q. Do you recall an occasion when you had any business transaction with him with reference to selling him some bonds?

A. I remember the time I spoke to him about buying some bonds.

Q. When was that?

A. Probably two years ago. I don't just remember the date or the time, but I asked him if he wanted to buy some bonds, that the church was issuing some, told him the nature of the bonds and he said he would let me know. He didn't let me know, so I took it for granted he didn't want to buy the bonds.

Q. What was the conversation between you and Mr. Allen about the bonds; what did you say to him and what his reply to you, what reply did he make?

A. I think I have stated that. I stated that the church was issuing a first mortgage of 6 per cent. bonds, and asked him if he would like to buy some.

Q. Do you remember seeing him about six months before his death and having a business transaction with him? That would be the early part of 1928.

A. I met Mr. Allen in the presence of Mr. Manning, one morning, and he asked me to try and get

him some First National Bank stock and I told him I didn't know where it could be bought.

Q. Mr. Allen asked you that?

A. Yes, that is the only two times I ever had any business transaction to talk with him.

Q. The last time was about when?

A. I can't fix the date; I think it was in the summer, sometime in July, or August, of 1928.

Q. Where did that conversation occur?

A. Right in front of his home, where he stopped, Mrs. Ailes' home.

Q. Were you visiting him or did you have a conversation with him just as you were passing by?

A. I passed by his house, nearly every morning, to take a walk.

Q. These various times you came in contact with Mr. Allen, say a couple of years before his death, particularly in 1928, did you observe anything in connection with his conduct that would indicate an impaired mental capacity?

A. I did not.

Q. Upon any of these occasions did he do or say anything that showed that he was unable to transact business?

A. No, sir, he did not.

Q. What was the character of his mind, so far as business was concerned?

Mr. Endicott: Objected to unless he is qualified as an expert.

Mr. Starr: A lay witness can express an opinion as to a person's conduct in a business transaction.

Mr. Endicott: The question is, What was the character of his mind?

Mr. Starr: I will reframe the question.

Q. What did you observe with reference to his capacity to transact business?

A. He always seemed shrewd enough, rational enough, to me.

Q. Did he ever say anything irrational to you, at all?

A. No, nor in my presence.

Q. As to his physical condition what did you observe?

A. I should think it was good for a man of his age, the way he kept doing, and things like that.

Cross-examination.

By Mr. Endicott:

Q. How old was Mr. Allen?

A. I don't know.

Q. Did he give you the appearance of being a liberal man?

A. Yes.

Q. You never consummated any business with him?

A. No.

Q. Your two business meetings with him were along the line of endeavor to sell him some church bonds, the second one being the occasion when you knew he was interested in buying bank stock?

Q. Did you see him during the first two weeks of September, 1928?

A. I can't fix any dates. I presume I did see him; I saw him most every morning during the summer season.

(Recess to 2 P. M.)

(After recess, 2 P. M.)

Mr. Starr: Mr. Manning stated to me that he wanted to correct a date in his testimony.

The Court: All right.

Mr. Starr: All right, Mr. Manning.

Witness GEORGE R. MANNING, resumed.

I told you that the last time I saw Mr. Allen was on Friday ——

Mr. Starr: I can't hear you.

Witness: The last time I saw Mr. Allen was on Friday, October 19th. I was wrong. It was Wednesday, the day he made his $3000 transfer from his savings to his check account. I think it you verify this date, these dates, you will find they are correct.

Q. Wednesday instead of Friday?
A. Yes.
Q. But the date of the month was the 19th?
A. No. Wednesday would be the 17th, wouldn't it? It was on the sheet of the last deposit made.

Mr. Anderson: One of these slips, these deposit slips, would show that.

Witness: Here is the slip, right there.

Mr. Starr: I took the date from the other.

Witness: The 17th, it is.

Mr. Starr: I didn't want the witness discredited on his dates.

SAMUEL C. LIPPINCOTT, sworn.

By Mr. Starr:

Q. Where do you reside?
A. Pleasantville.
Q. What is your age?
A. I am 78; in my 79th year.
Q. Did you know Mr. Albert Allen in his lifetime?
A. Yes.
Q. How long did you know him?
A. I started in business myself, in 1878—since about 1880.

Q. Where were you and he living at that time?

A. In Philadelphia.

Q. He was living also in Philadelphia?

A. Yes.

Q. Did you continue your acquaintanceship with him down to the time of his death?

A. No, I missed about 15 years. Until he came to Pleasantville, if my memory serves me, and before that, I didn't see him. I had been to his store, but when I came to Pleasantville I lost sight of him.

Q. Did you renew your friendship with him after he came to Pleasantville?

A. Yes, about 1821.

Q. Do you mean 1921?

A. Yes, the last five or six years I met him here.

Q. How often did you see him at Pleasantville the last five or six years?

A. Occasionally on the street.

Q. How late before his death did you see him or have conversation with him?

A. Yes, I saw him, met him on the street. I was talking about his health and I says, "Allen, you're looking well," and he says, "I am feeling well." I think that was Wednesday or the day previous to the day he went away.

Q. That was what month?

A. October, as near as I can remember.

Q. 1928?

A. Yes.

Q. When next before that had you seen him, if you can recall?

A. I can't recollect the date of the month, but the day before that he was talking about some mortgages.

Q. What was the conversation about the mortgages?

A. He didn't take them, because they wanted too much on them, too much on the properties, more than what it was worth.

Q. What did you say to him or he to you?

A. I said to him, "You know, Allen, you can't have the cake and the penny too, if you want a good mortgage." That is what I told him. I sent him to look at some mortgages of some real estate man, but he didn't take any of them, I found out.

Q. What did he say to you before you made the remark that you have just testified to?

A. He said, "I don't know where to put my money down here," and he spoke about seeing a man who was one of the original stockholders and trustees of the Northwestern Trust Company, at 23rd and Ridge Avenue. I used to make settlements there.

Q. Was there any other occasion during 1928 when you talked to Mr. Allen?

A. The last time I have told you.

Q. Were there any other occasions?

A. I don't recall, just recall when they were, but I would meet him and I would say, "How do you do, Mr. Allen," and he would say, "How do you do?"

Q. Did you have any conversation with him about business affairs, other than what you have related?

A. Yes, he often asked me. He was a very conservative kind of man.

Mr. Endicott: I move that be stricken out.

The Court: Strike it out.

By Mr. Starr:

Q. Just give the conversation.

A. He was always very sane and particular.

Mr. Endicott: I move that be stricken out.

Mr. Starr: I suppose that is not competent.

Q. What I want is, the conversation, what you talked about.

A. About our real estate investments; those two things is all we talked about.

Q. Upon those occasions in 1928 did he talk to you rationally or otherwise?

A. Very rationally. Just as I say, it seems to me that during the 48 or 50 years that I have known him he always seemed the same, always a good talker.

Q. What do you mean by that?

A. He always had a good head; he had no lack of real estate knowledge and good in business.

Q. Do you know when he was relieved of business cares?

A. No, sir, I lost sight of him for 15 years.

Q. Did you ever hear him say anything that would indicate to you that he was unable to transact business?

A. No, sir, he was just the same, to my mind, as he ever was. The last time I saw him I said, "Allen, you are good for 15 years," and he said, "I guess

you are, too," and just passed along after passing the remark.

Q. What about his physical condition during the time you have known him?

A. I never knew much about his physical troubles. He went to the hospital once. I heard about the operation. I never knew anything about it, but the last time I met him I said, "You're good for 10 years yet, Allen."

Q. Was there any indication to you that he was failing mentally or physically when you saw him in 1928?

A. Not particularly; nothing more than age does with all of us; no special indication of anything.

Q. Could he converse intelligently with you?

A. Yes, he always did. He always seemed so to me, for 48 or 50 years.

Q. Did you visit him at Ailes' home?

A. Yes.

Q. How often were you there?

A. Probably three or four times in the time he was down here in the five or six years. When I met him down here he came for dinner to my house on a Sunday. He came down and I insisted on his staying.

Q. When was that?

A. Five or six years ago when he first came down here.

Q. How lately did you visit the Ailes' home while Mr. Allen was living there, how late prior to his death?

A. I couldn't recollect that.

Q. Was it in 1928?

A. Yes, one time in 1928 when I went there about two mortgages.

Q. That was in the house?

A. Yes.

Q. Who was present when you were there?

A. Mrs. Ailes.

Q. Mr. Allen and yourself?

A. Yes.

Q. Did Mr. Allen ever express himself to you about how he was treated by Mr. and Mrs. Ailes?

A. Mr. Allen?

Q. Yes, Mr. Allen.

A. He always said he had a happy home and when he spoke about leaving his money I spoke to him about leaving some to our church. He said, "I will think it over." I said, "You have nobody but yourself, who are you going to leave it to?" and he said, "I will fix it. I will fix the folks at home," because he was always so well taken care of.

Mr. Endicott: Objected to as to what he intended to do, unless that is what Mr. Allen said.

Q. Will you repeat the answer?

A. "I was always so well taken care of," was his remark. That is what he called "home."

Mr. Endicott: I ask that that be stricken out.

Mr. Starr: It had to do with a statement made by Mr. Allen.

The Court: I do not know whether it is clear on

the record that the man inferred that was his home or that he called it his home.

By Mr. Starr:

Q. What did Mr. Allen say to you or tell you about what he was going to do with his money?

A. He didn't tell me; he didn't come to any definite conclusion.

Q. What did he say, whether definite or otherwise?

A. He used to talk about his bank stock going up in price. He said, "I made a good bit of money in the Northwestern Bank"—that was his way of expressing it. He said, "We are going to leave today. I don't know, I will see you later." I said, "Take care of yourself and the folks." I visited him say for the last four or five years.

Q. What did he say to that?

A. He said, "I will attend to that." He didn't say definitely that he would attend to it.

Q. What did you observe with reference to the home life of Mr. Allen where Mr. Allen was living?

A. At Ailes'?

Q. Yes.

Mr. Endicott: Objected to on the ground of lack of certainty as to time.

A. I couldn't tell you the different dates.

Mr. Endicott: There is no question pending.

Mr. Starr: I am speaking of the time after he

came to Pleasantville to live, while you knew him in Pleasnatville. That is the time my question is directed to.

Mr. Endicott: Objected to. That covers a span of six years. I do not think it should be allowed to cover as long a period of time as that.

Mr. Starr: It seems to me the period of time is within the issue.

The Court: I think it is permissible, and that he can relate different times and occasions.

Witness: I met him only three or four days previous to——

Mr. Endicott: There is no question pending.

By Mr. Starr:

Q. The question is: What did you observe as to the home life of Mr. Allen, in the family, during that period of time?

A. During the four or five or six years?

Q. Yes, in Pleasantville, that you knew him.

Mr. Endicott: I understand the Court has ruled that he shall limit his evidence as to these occasions when he visited them, giving a specification of the time.

Mr. Starr: The question is, What he observed.

Mr. Endicott: And I object to it and I understand the Court ruled to that effect.

Witness: He was always happy, contented and in a good humor when I met him.

Mr. Endicott: I ask that that be stricken out.

The Court: It may be stricken out.

Witness: He always seemed to me as any other sane man, when I met him.

Mr. Endicott: I ask that that be stricken out.

The Court: It may be.

By Mr. Starr:

Q. At the times you visited the household, when you were there where Mr. Allen was living from the time that he came to Pleasantville until he died, what did you observe on these occasions with reference to his home life?

A. He had a very pleasant home.

Mr. Endicott: Objected to. That is a conclusion.

By Mr. Starr:

Q. You say he told you something; what did he say to you about his home life?

A. His actions and his words; and he always spoke to me as if he had a very pleasant home.

Mr. Endicott: That is objected to as not responsive and I move that it be stricken out.

The Court: It may be.

Q. What did he say to you not what you made up in your mind?

A. I couldn't tell you the conversation, but when you meet an old friend you go in and say, "How do you do." You know what to say to an old friend. We met there the same as we did in Philadelphia 35 or 40 years ago.

Q. Did he say anything to you about his home life?

A. I told you he said he had a very pleasant home and was going to take care of his folks at home, when he talked about money matters.

Q. On how many occasions did that occur?

A. Two or three times, I guess, in the last four or five years. I was wondering whether, who he was going to leave his money to, knowing him as I did.

Cross-examination.

By Mr. Endicott:

Q. You are sure he told you that two or three times?

A. Yes, different times he expressed it.

Q. When?

A. The first occasion was about two or three years ago, as near as I can remember.

Q. Where was that?

A. I met him on the street.

Q. In Pleasantville?

A. In Pleasantville. Once I met him in the trust company, but that was a good while afterwards.

Q. Did you ask him if he had made his will?

A. No, sir, not then.

Q. How did the question come up?

A. When he came to my house for dinner the women were asking him to leave some of his money to the church. We were going to put out bonds, and they said they would like him to take a thousand dollars of bonds. If I remember correctly, he said, "Well, I don't know what I am going to do yet." He always evaded that question. He was pretty close in his money dealings.

Q. He didn't tell you then what he was going to do with it?

A. Not positively.

Q. Did he ever tell you what he was going to do with his money?

A. Not definitely; no, sir.

Q. What was your interest in persuading him to take mortgages?

A. I belonged to the church and we were raising money to build a new church, three or four years ago—five years ago, now. This was long afterwards. He got to talking about his money matters, and the women asked him if he wouldn't like to take one of our bonds.

Mr. Endicott: That is all.

WILLIAM L. ANDERSON, sworn.

By Mr. Starr:

Q. Where do you live?
A. Pleasantville.
Q. What is your occupation?
A. Real estate.
Q. How long have you been in business?
A. 19 years.
Q. Your place of business is located where?
A. 49 East Washington Avenue.
Q. Pleasantville?
A. Yes, sir.
Q. Did you know Mr. Allen in his lifetime?
A. I did.
Q. How long did you know him before his death?
A. I think I first met him in 1920 or 1921.
Q. Did you have any business transactions with him at any time?
A. No, not at that time. I had one property, once, that I showed him, for a mortgage, but he didn't think it was good enough.
Q. Where was that?
A. Pleasantville.
Q. When?
A. Two or three years ago.
Q. Two years ago would be 1927—is that right?
A. Yes.
Q. Do you know what time of year it was?
A. I think it was in the summer time.
Q. Of 1927?

A. Yes.

Q. What was the conversation between yourself and Mr. Allen about these transactions?

A. I showed him some property but he didn't think it was quite good enough for the money I was asking for it.

Q. The business transaction ended then?

A. Ended then.

Q. How many times during the last four or five years did you hold conversation with Mr. Allen? That is, about business or anything else?

A. Very little conversation; I would meet him on the street and speak to him. That was all.

Q. Whn did you last seee him?

A. Two or three days before he left to go on a trip. He was in my office at the time and anticipated a good time in his travels.

Q. What was the conversation?

A. I asked him where he was going and he said, "Luray Cavern," Virginia. I said that was a nice trip, and told him about my experience there and that ended that subject.

Q. Was there any other topic of conversation between you?

A. No.

Q. He came to your office?

A. He came with Mrs. Ailes. She was getting her license transferred—of an automobile—I think.

Q. Did Mr. Allen come down after Mrs. Ailes, down to your office?

A. They came at the same time.

Q. They came together?

A. At the same time.

Q. Have you ever noticed Mr. Allen and Mrs. Ailes being together before that time?

A. No, except they stopped in my office when they first came here. She owned the house up there that they called "home." I used to rent it for her and collect the rents. That was in 1920 or 1921.

Q. You knew Mrs. Ailes before you knew Mr. Allen?

A. Yes.

Q. When you saw him in October when he told you he was going to Luray Cavern. did he talk rationally or otherwise?

A. Just as rational as ever.

Q. Was there anything in his conduct or conversation that led you to believe that he was not able to transact business of any kind?

A. Nothing at all.

Q. Could he carry on a connected conversation?

A. He certainly could.

Mr. Endicott: I move that the answer be stricken out. He has testified that his conversation with Mr. Allen was limited with him to the subject of the condition of his health and that he contemplated a trip and did not involve the subject of business, at all. Therefore he is not competent to express an opinion on his ability to transact business.

Mr. Starr: The question is, Could he carry on a connected conversation?

Mr. Endicott: I didn't so understand it.

Witness: That is the way I understood it.

Q. (Last question read to the witness by the stenographer): Could he carry on a connected conversation?

Mr. Endicott: My objection is withdrawn.

By Mr. Starr:

Q. Upon any of the occasions that you saw him either on business or otherwise, did he ever indicate to you by his conduct or conversation that he was unable to carry on business?
A. Not to me, in the least.
Q. Or that he had impaired mentality?
A. Impaired?
Q. Impaired mentality?
A. Not in my judgment.

Mr. Endicott: No cross-examination.

Raymond P. Thompson, sworn.

By Mr. Starr:

Q. Where do you reside?
A. Pleasantville.
Q. What is your occupation?
A. Real estate, insurance and civil engineering.
Q. How long have you lived in Pleasantville?
A. 20 years.
Q. What is your occupation?

A. Real estate and insurance, and civil engineering.

Q. Do you occupy any official position in the city government?

A. City engineer.

Q. How long have you been city engineer?

A. Six years.

Q. Did you know Albert Allen in his lifetime?

A. I did.

Q. How long did you know him?

A. Since about 1920 or 1921.

Q. How often did you see him up to the time of his death?

A. I saw him occasionally. I have no way of telling how often, but he often came into my place of business and I often met him on the street.

Q. What was the occasion of his coming to your place of business?

A. Several times he came to see about fire insurance policies, and other times he asked me about the value of properties around Pleasantville. The last time he was in inquiring about the placing of some money he had. He wanted to know if I had any applications for mortgages, good mortgages.

Q. Do you know when that was?

A. That was sometime about the latter part of August, 1928, or September 1st.

Q. What was the conversation between you and him upon that occasion?

A. As near as I can remember he asked me if I had any good mortgages, that he had some surplus money, and I think I told him or I had told him, where the properties were. The rest of the con-

versation was just general conversation. I don't remember exactly what it was.

Q. Did he take the loan?

A. No. The last time I saw him—I didn't see him after that.

Q. Did you have any other business transactions with him before that?

A. Yes, very many.

Q. Covering what years?

A. From the time he came there, along in 1921, up to the time of the conversation I speak about, at various times.

Q. Did you have other conversations with him in 1928 and the one you have indicated in August?

A. I am pretty sure I saw him at different times in 1928. I am sure he was there two or three times on insurance policies matters, connected with his mortgages, but as to the dates I can't state.

Q. When you saw him in 1928 and had these talks with him, could he or not carry on a connected conversation?

A. He could. I saw no difference in his conversations then than it had been before. I had no indication that there was anything wrong with him.

Q. Was there anything that he said or did that showed he was unable to transact business?

A. Nothing.

Q. Did you have any talk with him about real estate values in Pleasantville?

A. Yes, often.

Q. How late?

A. The last conversation I had with him when he was inquiring about the mortgages.

Q. What did you see as to his physical condition upon that occasion?

A. I saw nothing to indicate that he was in any way incapacitated, at all. I don't think I asked him particularly about his health.

Q. There was nothing to indicate to you that he was impaired physically or mentally?

A. Not a thing.

Q. What about his spirits? What did you observe as to his spirits?

A. They were very good, very good. He seemed to be in good spirits and in the best of health as far as I could see, or tell.

Cross-examination.

By Mr. Endicott:

Q. Was Mr. Allen ever accompanied by Mrs. Ailes when he came to your office?

A. Sometimes.

Q. Did she take any part in the conversation?

A. Not concerning business; only as to passing the time of day.

Q. Did you ever sell him any mortgages?

A. No.

CLARKE ADAMS, sworn.

By Mr. Starr:

Q. You reside where?
A. 927 North Main Street, Pleasantville, New Jersey.
Q. How long have you lived there?
A. 40 years.
Q. Have you held any official position in connection with the city government?
A. I am county freeholder.
Q. At the present time?
A. Yes.
Q. You have been a member of city council?
A. Yes, I was.
Q. When?
A. 1914.
Q. Have you any business you conduct at the present time?
A. I have.
Q. What is it?
A. Electric construction and equipment.
Q. Did you know Mr. Albert Allen in his lifetime?
A. I did.
Q. When did you first become acquainted with him?
A. Along in 1921 or '23, somewhere along there.
Q. Do you remember how you became acquainted with him?
A. Yes.

Q. How?

A. We did some electrical work in a house in which he was interested.

Q. It was a business transaction?

A. Yes.

Q. Did you continue your friendship with him up to the time of his death?

A. I did.

Q. How often would you meet him?

A. I couldn't say that.

Q. Approximately?

A. Once or twice a week, I would say.

Q. Did he ever come to your place of business?

A. Yes.

Q. How often?

A. He would drop in there maybe once a week, something like that.

Q. Did you ever visit him where he was living?

A. Yes.

Q. How often?

A. Maybe two or three times.

Q. Did you ever have any conversations with him with relation to business matters during that period?

A. Yes.

Q. What were the conversations? What was the talk?

A. In one instance, I asked him about placing a mortgage on a property, and I asked him to look at it to see what he thought about it. He did it but would place the mortgage. The last time I talked with him was just a general conversation relative to business conditions, and so forth.

Q. Do you remember what the conversation was?

A. Yes, he talked about—it was just prior to the election and the reason I stopped there, he made the remark that Mrs. Carter had moved away, and I thought they were still entitled to vote; they moved to Washington. I stopped there to see whether she would be back to exercise the right of franchise and Mr. Allen was there, and I talked to him about general business conditions and how the stock market was coming along, and so forth.

Q. Who was Mrs. Carter?

A. Who was she?

Q. Yes.

A. Mrs. Carter is Mrs. Ailes' daughter.

Q. She had formerly lived there and had moved to Washington?

A. Yes.

Q. Did you have any conversation with Mr. Allen about that fact, about her going away, and the right to vote or anything of the kind?

A. I couldn't say that.

Q. That was the last occasion and that you say was in the fall of 1928?

A. It was on a Sunday, and it was, I believe, in September, but what date I couldn't tell you.

Q. It was in 1928?

A. Yes.

Q. Was he able at that time to carry on a connected conversation?

A. Yes.

Q. Did he speak rationally or otherwise?

A. Rationally.

Q. Did he understand what you said to him and did you understand what he said to you?

A. Absolutely.

Q. What did you observe with relation to his physical condition on that occasion?

A. No different from any other time that I had ever saw him.

Q. As to his mental condition what did you observe?

A. I beg your pardon?

Q. Was his mental condition just the same?

A. Just the same; I didn't observe any change in him.

Q. Did you ever have any conversation with him relative to real estate values in Pleasantville?

A. Yes.

Q. What was the talk between you and Mr. Allen, if you can remember what he said to you and you to him?

Mr. Endicott: Object to. On what occasion was this? Have you fixed the date?

Mr. Starr: Any time during the 5 years that you knew him.

A. The only-time I ever recall talking to him about values was one morning when I saw him in the bank, and the way it came about was on the subject of loans on Main Street. He said it was too high, that valuations were above what they should be, that they were above what could be gotten for the properties, from a business standpoint.

Q. Do you remember when that was?
A. No, sir.
Q. Do you remember what year it was?
A. I should judge it was in the spring of 1928. I couldn't tell you along when, that it was.
Q. But you are sure that it was in 1928? It was somewhere between February and June.
Q. Did you ever visit Mr. Allen at his home?
A. Him directly?
Q. Yes.
A. No, sir.
Q. Did you visit Ailes' house?
A. I have.
Q. I think you said you were there three or four times?
A. Yes.
Q. Did you observe what the home life was in the family?
A. No, sir.
Q. On these occasions when you saw Mr. Allen, was he in good spirits or otherwise?
A. In good spirits, always.

Cross-examination.

By Mr. Endicott:

Q. Where was it you did the work for Mr. Allen; was it at the Ailes' home?
A. I believe it was.
Q. Mr. Allen paid you for the work?
A. I couldn't say about that.
Q. Did you ever consummate any real estate

transactions or mortgage transactions with Mr. Allen?

A. I never did.

Q. When you visited Mr. Allen's home did you visit Mr. Allen or some of the Ailes?

A. I visited Mr. Ailes.

JOHN P. GIBERSON, sworn.

Q. Where do you reside?

A. Pleasantville.

Q. How long have you lived there?

A. 7 years.

Q. Have you any occupation?

A. Life insurance salesman.

Q. Did you know Mr. Allen in his lifetime?

A. Very well.

Q. Were you his neighbor?

A. Yes.

Q. How close were your houses to each other?

A. I could sit on my porch and look over at him and see him.

Q. You lived on opposite sides of the street?

A. On opposite sides of the street. I am on one side of the street and he is on the other.

Q. On the same street?

A. No, I am in Ridge Avenue and he is on Main Street. I could look across at his house.

Q. Could you see him from where you lived?

A. Yes, I could see him swinging many an hour.

Q. What is that?

A. He sat in a big swing. He sat there in the swing right along in warm weather.

Q. Did he do that often or otherwise?

A. Most every day he sat there an hour or so to cool off.

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

A. No, didn't have no business; just social; just neighbors.

Q. In what way did you come in contact with him, was it at your house or at his house?

A. He stopped going by and we had a conversation. I used to see him pretty often down at Pleasantville or on the street. He walked around and had a good time; he was a man to walk around, walked around and had a good time.

Q. Did you have any business matters with him or hear him discuss business matters, or did he talk with you on business matters?

A. Just about property, real estate there, advances and mortgages.

Q. How late did you have any talk with him about mortgage matters?

A. The last year when property had a slump in it, and we had a talk then about it.

Q. What do you mean by "the last year"?

A. The last year when property had a slump in it, in 1928.

Q. How many times did you talk with him about business matters? It was generally all the time. He was a real estate man and had money.

Q. What would be the conversation between you and him?

A. Well, he said the bottom fell out and that it

would take sometime to come up again, and that a man should be careful about placing loans; not to place too much. He said he never had to foreclose a mortgage.

Q. How often in the last year, say 1928, did you talk with him?

A. About once or twice a week.

Q. Upon those occasions was he able to carry on a connected and rational conversation?

A. Yes, he was shrewd, he was.

Q. Could you understand what he said?

A. Yes, I guess I could as well as I could you.

Q. Could he understand what you said to him?

A. Yes, I guess he could. He was bright.

Q. What was his physical condition in 1928?

A. On the Sunday night before he went away on this trip I met him at our church there. I wasn't very well and he asked me how I was and I told him, and he said, "Just look at me." He said, "I am older than you and I am in good health, and I am going on a trip now and am going to spend a lot of money."

Q. That was the Sunday night before he left?

A. Yes, and I never seen him afterwards.

Q. In 1928 when you had these talks with him was there anything in his speech or talk that indicated he was failing, mentally?

A. No, there was not.

Q. Did you ever have any conversation with him as to his appetite, and if so, when was it?

A. Yes, he had a good appetite.

Mr. Endicott: I ask that the answer be stricken.

The Court: It may be stricken.

Mr. Starr: I suppose it should be unless he has personal knowledge of it.

Q. What was said by him about his appetite?
A. He said he could eat 5 times a day.
Q. What is that?
A. He said he could eat 5 times a day.
Q. When was the last time he talked with you about that?
A. Last summer at Pitman Grove Camp Meeting.
Q. In the summer of 1928?
A. Yes.
Q. Did you ever go there with him?
A. No, I was up there the same time he was, at Pitman Grove.
Q. Do you know what he was doing up there?
A. Yes, he was up to camp for a good time.
Q. Who did he go with, do you know?
A. Mr. Garrison.
Q. You saw him up there?
A. Yes, I saw him.
Q. When that happened was he able to carry on a connected conversation?
A. He was all right, always.
Q. What did he say about his spirits during the last two years of his life; was he down-hearted, or did he seem to be in good spirits?
A. No, sir, he was all right; he was happy and always in church. When I was there he was there.
Q. He would go to church?
A. Yes, he would go on a church picnic or where there was anything doing; he was right there.

Q. How long did that continue?

A. Clean up to the time of his death. The last time I saw him, he was in church that night.

Cross-examination.

By Mr. Endicott:

Q. How old are you?

A. How old?

Q. Yes.

A. I will be 75, if I live until the 6th of this July.

Q. Who was Mr. Garrison you mentioned?

A. Benjamin W. Garrison. He is here.

Q. How long have you known the Ailes family?

A. Since I have moved over to Pleasantville, 7 years ago.

Q. Have you both lived in the same houses ever since?

A. Both lived in the same houses; never moved away from there.

Q. Ailes have lived in their house and you have lived in your house?

A. Yes.

Q. You speak of it as being Mr. Allen's house. Did you understand it was his house or Mrs. Ailes' house?

A. It was his in the beginning, until he gave it to her, I believe.

HERBERT W. DOWNIE, sworn.

By Mr. Starr:

Q. Where do you live?
A. Pleasantville.
Q. How long have you lived there?
A. About two years and a half; about 3 years and a half.
Q. How long did you know Mr| Albert Allen in his lifetime?
A. I have known him all that time.

Mr. Endicott: 3 years from August, 1928?

Mr. Starr: That is about 3 years and a half.

Q. What is your employment?
A. Settlement clerk at the South Jersey Title Company.
Q. How long have you been in that employment?
A. 3 years and a half.
Q. Did you ever come in contact with Mr. Allen in settlements at the title company?
A. Yes.
Q. How many times have you come in contact with him at settlements?
A. I would say about 6 or 7 times.
Q. When was the last time?
A. October 17th.
Q. Of what year?
A. 1928.

Q. When next before October 17th, 1928, did you come in contact with him in settlements?

A. It was quite some time, I imagine, in the spring of 1928.

Q. Were there more than these two occasions in 1928?

A. No, there was another one, earlier in the year.

Q. There were 3, altogether, in 1928?

A. Yes.

Q. What happened at these settlements. Take the last one in 1928. Who elsewas present at the settlement and what part did Mr. Allen take in the settlement?

A. The settlement was a mortgage settlement. A Mr. Fretsch was making a mortgage.

Q. To whom?

A. Stanley Mitchell, and Mr. Allen purchased the mortgage from Mr. Mitchell.

Q. What part did Mr. Allen take in it?

A. He was finally—he was the final assignee and we insured him.

Q. What did he do at the settlement?

A. He put up the money at the settlement.

Q. Did he take part in any conversation at that time?

A. Yes. He was in there for quite some time. I don't remember what the conversation was, now, because I was busy.

Q. Who made the calculations in the settlement?

A. I did.

Q. Was anyone else present beside Mr. Allen and yourself?

A. Stanley Mitchell was there and Mrs. Ailes, and

Mr. and Mrs. Fretsch. I don't remember whether there was any one else around.

Q. Did Mr. Allen at that time go over any of the calculations or ask any questions about the calculations or the figures involved in the settlement?

Mr. Starr: Objected to as leading.

(Objection sustained.)

(Exception to proponents.)

Q. Did Mr. Allen take any part in the settlement, and if so, what part?

A. He put up the money for the mortgage.

Q. Whose check was it, do you recall?

A. I believe it was Mr. Allen's check.

Q. At that time could Mr. Allen conduct a connected conversation?

A. Yes.

Q. Was his talk on that occasion rational or otherwise?

A. Rational, I would say.

Q. Was there anything that happened upon that occasion that would indicate to your mind that he was unable to transact business?

A. No, sir.

Q. The next occasion before that which you say you think was in the earlier part of the summer, what was that settlement?

A. That was—I don't just remember what that was. I believe it was with a party by the name of Simmons.

Q. How was Mr. Allen involved in that settlement?

A. I believe at that time he took a mortgage in that case.

Q. He was there?

A. Yes.

Q. Who else was present at the settlement?

A. I can't tell you that.

Q. Did you have occasion to observe his conduct on that occasion?

A. Yes, he was in there for quite some time.

Q. Could he carry on a connected conversation?

Mr. Endicott: Objected to. The witness testifies he doesn't remember even who were present at that time. I do not think his recollection of events is sufficient to permit him to testify, and he should not be permitted to answer the question.

The Court: The question, "Could he," &c., is not proper.

Q. Did he carry on a connected conversation upon that occasion?

Mr. Endicott: Will you fix the date?

Mr. Starr: He said the early part of the summer of 1928.

Q. Can you tell us what mortgage it was?

A. I said it was Simmons'. I am not positive.

Q. There was a mortgage settlement?

A. Yes, early in the spring.

Q. Was there anything on that occasion, from the conversation of Mr. Allen, that would show that Mr. Allen was unable to transact business?

A. No, not as far as I know.

Q. Did you transact the business with him?

A. I made the settlement.

Q. Of which he was a part?

A. He was there, yes.

Q. You speak about another settlement in the early part of 1928. Do you remember what that was?

A. No. I couldn't tell you.

Q. Was Mr. Allen present?

A. Yes, he was present. I know I had two of them almost together, with him. There was just a short time between them.

Q. Can you remember anything that happened?

A. No, sir.

Q. Was there any conversation between you and him on this occasion?

A. I always talked to him when he came in.

Q. But you don't remember the conversation?

A. I don't remember, no.

Q. Did you ever visit Mr. Allen at his home in Pleasantville?

A. I have talked to him several times, out in the yard.

Q. How late in 1928 did you talk with him?

A. I saw him during the summer.

Q. Of 1928?

A. Yes.

Q. What was he doing when you saw him?

A. Usually when I saw him he was working around the yard.

Q. Doing what?

A. Working around the flowers, cutting grass, or something like that.

Q. Did you have a conversation with him?

A. Yes, I always talked to the old gentleman every time I saw him.

Q. Upon these occasions did he carry on a connected conversation?

A. Yes.

Q. Did you ever see anything in 1928 that would indicate to you that Mr. Allen was of impaired mentality?

A. No, sir.

Q. Do you remember the amount of the mortgages that Mr. Allen took in October, 1928?

A. No, sir, I do not.

Cross-examination.

By Mr. Endicott:

Q. Was Mrs. Ailes with Mr. Allen on any occasion other than the last one, at which settlement was made before you?

A. She has been over there before, yes.

Q. Was she generally there?

A. As a rule, yes.

Q. Do you recall any occasion when she was not there?

A. No, I do not.

Q. You say that the part that Mr. Allen took in the settlement, of October 17, was that of issuing the check. Do you recall that?

A. Yes, he was taking the mortgage, putting up the check, the cash.

Q. He was buying a mortgage that somebody was creating?

A. Yes.

Q. Was that a "straw" transaction, was he the real buyer in the transaction?

A. Yes.

Q. Or had it been created before that time. It was all one transaction, was it?

A. Yes.

Q. What did Mr. Allen say to you on that occasion? Can you recall any conversation you had with him?

A. No, I couldn't tell you about that.

Q. Can you recall anything that he did on that day, except to sit in at the settlement and sign the check?

A. He sat there, talking to the people, for quite some time.

Q. Did he do anything at that settlement except sign the check?

A. I couldn't say.

Q. Did Mrs. Ailes take any part in that settlement?

A. She was there; I don't just recall.

Q. I read you a letter signed by Mrs. Kate Ailes, marked C36, in which she says: "Only last week he took a mortgage and I had to arrange to take him and watch up the papers." Did you see anything at that time, at the last settlement, that would indicate to you that she was the real party who was carrying on the business?

A. No, nothing that called my attention to that.

Q. Was there any reason for her to be there at that settlement, except in his interest?

A. I don't know anything about that.

Q. There wasn't any doubt in your mind that there wasn't any other reason for her being there?

A. No, not as far as I know.

The Court: What is the date of that letter?

Mr. Endicott: It is postmarked October 28, 1928. It was written a day or two after Mr. Allen's death.

HOLSTEIN ROBERTS, sworn.

By Mr. Starr:

Q. You live at Absecon?

A. At Ventnor.

Q. You used to live at Absecon?

A. I did.

Q. You are employed by the Atlantic Title Company?

A. I am.

Q. In what capacity?

A. Settlement clerk.

Q. How long have you been there?

A. Six or seven years.

Q. Did you know Mr. Allen in his lifetime?

A. I did.

Q. How long did you know him before his death?

A. The first time I ever met him was on September 10, 1928.

Q. That was the first and only time you ever met him?

A. I have met him before. That was the only time I ever remember, distinctly.

Q. What was the occasion of that?

A. He had a settlement in our office.

Q. At the title company?

A. Yes.

Q. When you met him before were they on occasions when business was transacted, or socially?

A. Business.

Q. Before that time?

A. He had been there on one or two occasions previously, and I didn't remember him from these other times.

Q. What happened at the occasion of the September 10 settlement?

A. He took a small mortgage on a property of Mr. Carlen's.

Q. What was the amount of it?

A. $600.

Q. Who were present?

A. He was there, personally; Mr. and Mrs. Ailes were there, personally, and Mr. Lewis, the attorney.

By Mr. Endicott:

Q. Mr. Harry Lewis?

A. Yes.

By Mr. Starr:

Q. Who took the mortgage?

A. Mr. Allen took one mortgage and Mrs. Ailes took another mortgage.

Q. They were first and second mortgages?

A. No, different properties.

Q. On different properties?

A. Yes, but the same settlement.

Q. What part did Mr. Allen take in making settlement or at the settlement?

A. He was the mortgagee. Of course, he came there, put up the money and he stayed there for some two hours. It was an unusually long settlement, and he just looked over his own settlement and took care of his interests as mortgagee.

Q. He looked over the settlement?

A. Yes.

Q. Was there a settlement sheet prepared by you?

A. Yes.

Q. What did he do with reference to that?

A. He looked over it; went over the figures and expressed his approval of the figures.

Q. You say he advanced the money. Was that money advanced in cash or check?

A. Check.

Q. Whose check?

A. I believe, I couldn't say, but I think it was his own, but I couldn't say.

Mr. Endicott: I move that the witness's opinion be stricken out.

Mr. Starr: He says he thinks it was Mr. Allen's own check.

Witness: I didn't look it up definitely.

Q. Have you any definite recollection?

A. I would say it was his check.

Q. Did he conduct a connected conversation with you on that occasion?

A. Yes, with myself and everybody else there.

Q. Was there anything done or said by him that would indicate that he was irrational and unable to transact business?

A. No, I didn't see anything.

Q. You say they were there a couple of hours. What was the reason for the delay? What was the occasion for the delay?

A. The papers had been drawn wrong for some reason or other; I forget, but Mr. Lewis had to take them back to his office and re-draw the mortgages and the deeds. It took an hour and a half while we were there waiting for the papers to be drawn.

Q. What was going on during that time between the parties?

A. Just general conversation.

Q. Just general conversation. Did Mr. Allen join in that conversation?

A. Yes, very much.

Q. Do you remember what they were talking about?

A. It was just an ordinary conversation. I remember he was very jocular and seemed to think it was funny, with so much legal advice, that a settlement should take so long. Two hours we were sitting there, about.

Q. Do you recall anything else he said?

A. Not particularly.

By the Court:

Q. I understand you remained there for a period of two hours with them and didn't do anything else?

A. I let them talk; I was making up figures and disbursements. It was about an hour, over an hour, that we sat and waited for Mr. Lewis to prepare new papers and bring them back. We couldn't do anything.

Q. Didn't you conduct any other business for the title company during those two hours?

A. There was no other business to be transacted during that time.

By Mr. Starr:

Q. Were there any other occasions you recall, and if so, what was the occasion of your getting together?

A. I don't remember the other occasions.

Q. Were they settlements?

A. Settlement of some matter of a long time before.

Cross-examination.

By Mr. Endicott:

Q. Was there a separate file for Mrs. Kate Ailes' mortgage?

A. No, all one and the same file.

Q. All one and the same application?

A. Yes.

Q. Do you know how it happened to be, that the

two mortgages were drawn separately, when the application was in one name?

A. The other mortgage, if I remember rightly, was on other property, and had nothing to do with this property at all, and was not insured by our company under the title insurance.

Q. How do you happen to know there was no title insurance?

A. We recorded it there.

Q. Settlement was not made in your office under the other mortgage settlement?

A. Yes, but it was not insured.

Q. I see you have charged two mortgages to Mr. Allen. What was the extra mortgage—the Ailes' mortgage?

A. Yes, one of them was.

Q. Had the papers been prepared before settlement?

A. Yes.

Q. That applied to the Ailes' papers?

A. That is right.

Q. Were they executed in your presence?

A. Yes, they were.

Q. Did you learn anything from the conversation that took place to why the Ailes' mortgage was a separate transaction?

A. If I remember rightly, it was on different property, entirely.

Q. I see by your receipt, you note two cancelled mortgages: Russell Carter to Albert Allen, and one to Kate Ailes, Book 365, page 2. Can you explain that post record, and what it means?

A. Cancelled? I think I can if I see the rest of the files.

(Paper shown witness.)

Witness: Yes, they cancelled these two old mortgages and took two new ones, two new mortgages in place of them. There is a new mortgage to Mr. Allen and a new mortgage to Mrs. Ailes; two old ones replaced by two new ones.

Q. Is there anything to indicate that the Ailes' mortgage was on the same property as that, or on adjoining property?

A. There is nothing there to show what property it was on; but it was not on our property or it would show on the certificate.

Q. Is there anything you heard at that time which would explain to you why Russell Carter made both mortgages?

A. Only that we cancelled the two old ones; two old ones were cancelled, and we had to make two new ones to take their place.

Q. How do you know that?

A. By the fact that they were in the settlement; there were two old ones cancelled to the same parties and two new ones recorded to them.

Q. The Ailes mortgage was executed on the day of this settlement?

A. Yes.

Q. Before you?

A. Yes.

Q. Did any consideration pass through your hands?

A. No.

Q. Did you see any consideration pass at all?

A. I did not.

Q. Do you know whether or not any consideration passed?

A. The checks passed direct, at the settlement; if I can remember rightly it didn't come through the title company's papers.

Q. Did they pass in your presence?

A. That is my recollection of it.

Q. That they did pass in your presence?

A. Yes.

Q. Was there any real estate agent in this transaction?

A. No, sir.

Q. Did Mr. Sapp represent himself?

A. Yes.

Q. Who was Mr. Lewis attorney for?

A. He was representing the two mortgagees, Mr. Allen and Mrs. Ailes.

Q. He represented them?

A. He acted for them.

Q. Did he approve of the settlement figures?

A. Yes.

Q. Did Mrs. Ailes take any part in the settlement?

A. Only to go over the figures and representing herself as one of the mortgagees.

Q. Whose figures did Mrs. Ailes go over?

A. The figures I made up.

Q. Then she went over the figures for Mr. Allen?

A. They were all in one sheet. Her figures were on the same sheet.

Q. You are sure? You better look at the file.

A. There were no figures excepting the recording charges, in the settlement.

Q. When you say she went over the figures, you

are referring to the figures that you prepared for Mr. Allen's settlement?

A. That is right.

Q. Because they were the only figures prepared that day?

A. They were the only figures.

HENRY E. CONOVER, sworn.

By Mr. Starr:

Q. Where do you live?

A. Pleasantville.

Q. How long have you lived there?

A. 17 years.

Q. What is your occupation?

A. Carpenter.

Q. Did you know Mr. Allen in his lifetime?

A. I am hard of hearing.

Q. Did you know Mr. Allen in his lifetime?

A. Not all his lifetime.

Q. Did you know him while he was living?

A. I knowed him while he was living.

Q. When did you first become acquainted with him?

A. About 1923.

Q. About 1923?

A. Yes.

Q. How did you come to get acquainted with him?

A. Through the church. He came to the church, the church I attended.

By Mr. Endicott:

Q. What is the name of that church, if you know, and if I may interject?
A. Mt. Pleasant.

By Mr. Starr:

Q. Did you do any work for him in 1928?
A. Yes.
Q. During what months?
A. Sometime in July; I done a job the latter part of July. I don't just know the date, but the latter part of July.
Q. What was the work?
A. Building a bay window in his bedroom.
Q. Who made the bargain with you?
A. He made part of it. They made it between themselves; of course, he paid me for it.
Q. What part of the bargain did Mr. Allen make with you?
A. He told me he wanted a bedroom window made on his own home over there, he would see about it. They consulted together about it, of course.
Q. Who first spoke to you about it?
A. I don't just recollect.
Q. During the negotiations did you have any conversation with Mr. Allen?
A. Yes.
Q. What did he say to you?
A. What about?
Q. About the work being done?
A. He said he wanted it done; that he wanted his

bedroom fixed up, that with the things he had in his home he wanted it fixed up nice.

Q. How long were you there doing the work?

A. I think about two weeks, around there somewhere; as near as I can remember, about two weeks.

Q. Who paid you for it?

A. He did.

Q. By cash or check?

A. He did, by check.

Q. How much was it, do you remember?

A. Somewheres around $100—I don't remember —more or less. I didn't keep account of it.

Q. After the work was done did you have any talk with Mr. Allen about the work?

A. Well, after I done the bay window he wanted a screen done. I was out making screens. He came by and wanted to know what I was doing, and I said, "Making some screens," for his window. I wanted to keep the flies off, I didn't want to see them on it and he said, "That is good." He said, "I have a nice bedroom"—in his home, and he said, "I think very much of it." He said other things that he talked about there. He said what he thought about the people he lived with there.

Q. What did he say about them?

A. He said, "Kate Ailes was a nice woman; and her husband, too." And he said that he was going to fix things so that she wouldn't want any more while she lives.

Q. Did you have any talk with him about his age?

A. Yes, I didn't ask him; he told me.

Q. Did he tell you how old he was?

A. Seventy-five.

Q. While you were doing work on the bay window, did he help you in any way?

A. Yes, he carried away dirt and cleaned up after me.

Q. Did he do anything else?

A. That is all he could do.

Q. Did he say anything to you about any other business affairs that he had?

A. Well, yes.

Q. What did he say?

A. He says—this was the last time I saw him, Sunday night before he went away. He said he was going and wanted me to go with him. He had some work there he wanted me to do, and I told him I couldn't go. I told him I didn't want to go away from here. He said, "I would like for you to go." He talked to me about building two 2-story houses and a store somewheres; I didn't ask him where. He told me about that twice, but this was the last time I saw him, Sunday night, at the church.

Q. What Sunday night was that?

A. I couldn't tell you.

Q. What month was it?

A. I couldn't say.

Q. You don't know the month?

A. No.

Q. What year was it?

A. 1928.

Q. How soon after that did he go away, go South?

A. I think he went the next Friday, sometime. I don't know whether he went day or night time. I wouldn't be sure.

Q. When was it you had a talk with Mr. Allen

about Mrs. Ailes; was it the last occasion or the occasion before when you were putting up the bay window?

A. When I was putting in the bay window.

Q. In these two conversations you had with him could he talk connectedly, carry on a connected conversation?

A. Oh, yes, very sensibly.

Q. Did you observe anything different in his mental attitude upon that from the other occasions or times when you had talked to him before?

A. No, sir.

Q. What about his physical condition?

A. He seemed to be all right, except he said his back hurt him a little; he complained of his back.

Q. Did he talk rationally to you, or otherwise?

A. He talked to me as rationally as he always did.

Q. Had you had any other business transactions with him before these two occasions?

A. I had a little job, a four or five dollar job, or something like that.

Q. I didn't catch that.

A. I had one, two, three, four or five dollar jobs.

Q. When were these jobs performed?

A. In 1928.

Cross-examination.

By Mr. Endicott:

Q. Do you do contracting, build houses?

A. Yes.

Q. Did you understand that he intended to build some houses somewhere?

Mr. Starr: Objected to. It is understood what he said.

(Question withdrawn.)

Q. Did Mr. Allen say to you that he was going to build some houses?

A. He told me he was going to build. He talked of building two 2-story houses and a store, but he didn't tell me where nor when.

Q. Did you talk to him about them?

A. No, I didn't say anything to him. He was in charge. I didn't care about talking about the thing; church was about to start and we didn't have time to talk about it.

Q. He talked to you about it once before?

A. Yes, talked about building a store.

Q. Where did he intend to build it? Did you ask him?

A. No.

Q. Weren't you interested in getting the job?

A. Yes, but I thought he wouldn't make up his mind until he was ready to do it.

Q. Where was the other conversation about the two 2-story houses?

A. That was the time I was building the bay window, the last of July. I don't know the exact date.

Q. He didn't tell you where he intended to build them?

A. No.

Q. Was it in Philadelphia, do you know?

A. No, not in Philadelphia; here somewheres.

Q. Somewhere in Pleasantville?

A. Yes.

Q. What did he say to you on this occasion, on Sunday night, just before he went away? What were the words he used?

A. He said he was going away; that he had some work to do and he wanted me to go with him, and I told him I didn't want to go away from home to work. He said he had some work to be done and he wanted me to go, and I said, no, I guess I wouldn't go.

Q. Where did he want you to go?

A. To Philadelphia; I don't know exactly where.

Q. Did he say when?

A. He said, "Next week." He didn't say what day.

Q. He told you he wanted to go away the next week to Philadelphia to do some work for him?

A. Yes.

Q. For him, or with him?

A. Go with him and do it for him.

Q. Go with him and do it for him?

A. Yes.

Q. Did you know he had planned going on a trip to Washington the following week?

A. No.

Q. When did you learn that?

A. I didn't learn it at all. I learned he was dead.

Q. What kind of work did he want you to do in Philadelphia?

A. He said he wanted a fence put up. He said he wanted some repairs on some houses.

Q. Did he say how long it would take you?

A. No, he didn't say how long.

BENJAMIN F. GARRISON, sworn.

By Mr. Starr:

Q. Where do you live?
A. 6 West Reading Avenue, Pleasantville, New Jersey.
Q. How long have you lived there?
A. 17 year, outside of about two year I worked for the Government in 1917 and 1918.
Q. What is your occupation?
A. Real estate and insurance.
Q. How long have you been in that business?
A. Ever since 1912, with the exception of the two years I was working for the Government.
Q. Did you know Mr. Allen in his lifetime?
A. Yes.
Q. When did you become acquainted with him?
A. In about 1920; he came into the office one day.
Q. From that time up to the time of his death, did you have any business transactions with him?
A. Yes.
Q. How frequently?
A. In 1920 I placed two mortgages for him.

By Mr. Endicott:

Q. When?
A. In 1922, I mean.

By Mr. Starr:

Q. In 1928 you placed two mortgages for him?

A. Yes.

Q. Do you remember the month?

A. The last one was in August.

Q. What about the first one?

A. I think it was 3 or 4 months before. They were both in 1928.

Q. Tell us in your own way what your negotiations were with Mr. Allen with reference to the placing of these loans.

A. Well, one of the men came to me and wanted some money.

Q. Tell us about this particular instance.

A. I went over to see Mr. Allen if he would loan a certain amount of money, and he said yes, if it suited. I told him what I wanted and he said he would go and look at them. Mr. Allen was a man who never took anybody's word.

The Court: That last part can be stricken out.

Witness: Mr. Allen went to look at the properties, before he would lend anybody money for mortgages. He said then, after he saw the properties, "Yes, I will take the mortgages."

Q. Then what happened?

A. I drew the bonds and mortgages and made settlement right in his home, and he gave me a check for the mortgages. These were first mortgages and he didn't have to have any title policies.

Q. That was in August, 1928?

A. Yes, that was the last one.

Q. When was the one before that?

A. I don't know, but it wasn't over three or four weeks.

Q. What happened then?

A. The same conditions.

Q. Did he go look at the property?

A. Yes.

Q. After he came back what did he say?

A. He said he would take it.

Q. Where was settlement made?

A. Right in his home.

Q. Did he attend personally to the making of the settlement?

A. He sure did.

Q. In 1928 or upon any other occasion did you come in contact with him except upon the two occasions that you have testified to?

A. The last Thursday of March, knowing that he was a man that liked church, I went over one evening and I said, "Mr. Allen, tomorrow morning I am going to Ocean Grove." Mr. Giberson said, "Pitman Grove," but it was a mistake, it was "Ocean Grove." I said, "Billy Sunday has charge up there, preaching." I said, "I would like to take a trip up there and you can stay with me to Labor Day." He said, "I will go." And Mrs. Ailes spoke up and said, "Mr. Allen—'or Papa'—why can't we all go. I would like to hear Billy Sunday preach." He said, "That would be fine." So he made arrangements Friday morning and we went together, got the same hotel.

Q. Who were in the party?

A. Mr. Ailes and his wife, Mrs. Ailes, and Mr. Allen. They went in their car and me and my wife

went in our car; and Mr. Giberson and his wife went in his car.

Q. There were 3 automobile parties of you?

A. Yes.

Q. And that was for over Labor Day?

A. That was Friday before. We left Friday before Labor Day, 1928.

Q. You stopped at Asbury Park?

A. No, I don't think Mr. Giberson did. I think he stopped some other place.

Q. Do you remember any other occasion when you came in contact with Mr. Allen?

A. Mr. Allen lived right across from me, about 250 feet away. He was a man who admired beauty. He liked lawn and he liked roses and I liked roses, and when I would be working on my lawn he would be walking across there with his hands behind him and talk to me, very often, on up to the time of his last trip.

Q. On any of these occasions in 1928 was Mr. Allen able to carry on a connected conversation?

A. He was always able. He was a shrewd man.

Q. Did he talk rationally upon these occasions?

A. Yes, sir, no other way.

Q. During all the time you say you have known him, these several years, since 1922, did you notice any difference in his behavior in 1928 either mentally, or in his physical condition, from that which you had observed before?

A. No, sir, perfectly normal, and a good eater, too.

Q. What is that?

A. He was a big eater, too.

Q. How do you know that?

A. He said at camp meeting, he said, "Garrison, I am getting the best of you. I am eating 5 times a day, 5 meals a day." And it was a fact.

Q. Did you ever observe him in his porch swing?

A. Yes, and pushing his lawn mower, too.

Q. How late in life did he continue to push his lawn mower?

A. Just a little before he went to camp meeting. He was always working around that lawn, trimming flowers and cutting out dandelions.

Q. Was Mr. Allen a moody man or was he always in good spirits?

A. Always in good spiritual first class.

Q. Did you ever talk with Mr. Allen or he with you, about Mr. and Mrs. Ailes?

A. Yes, I have heard him say he had a good home and he appreciated and that they used him kindly.

Q. Did he say anything else that you recall?

A. No; but I was often in the home; everything was fine. He visited me and I visited him. We were neighbors.

Q. Did Mr. Allen ever make any comparison between Mrs. Ailes and the child that Mr. Allen had?

A. Never did to me.

Q. From what you observed in the year 1928, was Mr. Allen able to transact business?

A. Yes.

Q. Was there anything happened upon any occasion when you came in contact with him that indicated that he was unable to transact business?

A. No, sir, he was just as able to transact business in 1928 as he was in 1922.

Cross-examination.

By Mr. Endicott:

Q. Where was Mr. Allen living when you met him in 1920?

A. I presume he was living in Philadelphia. He came down to our office to buy property.

Q. Do you know when he came to live in Pleasantville?

A. Well, I think it was somewheres in 1923. I am not sure of the date.

Q. How did it come about that you did not bother about title insurance when you sold him the second mortgages?

A. They were new properties and had just had new mortgages on them by the Hammonton Building and Loan, and the mortgages were O. K. He took my word for it.

Q. He took your word?

A. He took my word, yes, after seeing the properties himself.

Q. Who were the owners of the properties?

A. A man by the name of Enoch Berry and Louis Boyle.

Q. How much were the mortgages for?

A. $500 each, 2 second mortgages.

Q. $500 on each mortgage. Was that loan made at one time or on two different occasions?

A. One loan was made on each occasion, on two different houses.

Q. You spoke of Mr. Allen working about the place. Did Mr. Ailes work about the place, too?

A. Yes.

Q. You have been friends of the Ailes as well as of Mr. Allen?

A. Yes, always.

Q. Do you know who owned the property?

A. No, sir.

Q. Did you ever hear either of the Ailes or Mr. Allen speak of the ownership of it?

A. No, sir.

Q. Did you ever hear either of them refer to it as his or her property?

A. No, sir.

Q. Did you have any opinion as to whose property it was?

A. No, sir; I didn't care.

Q. Who was present when you made the first settlement with Mr. Allen on the mortgage?

A. Mr. and Mrs. Ailes.

Q. And Mr. Allen?

A. And Mr. Allen, of course.

Q. How did he pay you for the mortgage?

A. By check.

Q. Did you deliver the mortgage at that time?

A. He didn't pay me. He drew the check to the mortgagor.

Q. He drew what?

A. He drew the check to the mortgagor, not to me.

Q. How much was the check for?

A. $500, I presume. I can't just recollect, now.

Q. You were the agent who negotiated the deal?

A. Yes.

Q. Did you make a commission out of it?

A. I presume I did, a small one; not by Mr. Allen giving it to me.

Q. By Mr. Allen buying the mortgage you got a commission?

A. I got a commission from the man that I placed the loan for.

Q. How much was it?

A. $25 for the first time, the first one.

Q. 5%?

A. 5%.

Q. How much was it the second occasion?

A. $10. That wasn't too much, was it?

Q. Who was present at the second settlement?

A. The same people.

Q. Did you ever transact any business with Mr. Allen when Mrs. Ailes was not present?

A. When I first went to see Mr. Allen about getting this first loan, Mrs. Ailes was not present at the settlement.

Mr. Starr: There is a situation here arising about which I would like to speak to your Honor.

There is a box, I do not know whether it is a safe deposit box or merely a tin box, in possession of the Northwestern Trust Company, Philadelphia, belonging to Mr. Allen. I am told that the rules of the bank will not permit that box to be opened except by an order of this Court.

I do not know whether there is anything in that box that will be of benefit to this litigation or not, but I believe both sides should have an opportunity of having that box opened, and, if necessary, have an order of this Court made, permitting it to be opened, and learn whether or not there would be anything there that would be of advantage to either side in this cause.

The Court: Has there been an administrator pendente lite appointed?

Mr. Endicott: We thought we would have the appointment made. It may be a considerable time before this matter is concluded, and I consider there should be an application made.

Mr. Starr: It is entirely within your Honor's discretion. I see no need for it, however.

Mr. Endicott: There was an incident that led me to that opinion. A check came to the order of Mr. Allen as trustee, and it was deposited to his personal account.

Mr. Starr: He is obliged to account for it as trustee.

Mr. Endicott: I am foreclosing a first mortgage on a property on which there is a second mortgage held by this estate that must necessarily be involved in this foreclosure.

Mr. Starr: Might I have an order made by this Court permitting the box to be opened in the presence of the parties in interest on both sides? It is merely a matter of evidence. I do not think it is absolutely necessary. We could have a commissioner appointed and have testimony taken in Philadelphia to produce the box if we can agree on it. There is also another question, of a fund which came in from the Snyder Estate, and which was to be turned over to Mr. Alker, substitute trustee un-

der the Snyder will. Mr. Alker tells me they have discovered some codicils which describe the trusteeship under that will.

The Court: When do you want another day to finish this case?

Mr. Starr: I do not think Mrs. Ailes should be obliged to testify until the caveators have finished their testimony.

The Court: There is no doubt about that.

Mr. Starr: I think her testimony should be deferred until these gentlemen determine whether or not they are going to take testimony of the parties in Winchester, Philadelphia and Cape May.

The Court: Let it go over to a later day, to an indeterminate day.

Mr. Starr: Until they fix the date. Can you state whether or not you are going to take testimony?

Mr. Endicott: We are going to take testimony of the Cape May and Philadelphia parties. The man in Winchester is the only man I have any doubt about.

Mr. Starr: Do you want to take the testimony of the Cape May man? We will agree to any time you say, to go down and take his testimony, and also will agree, if you want it done, to take the testimony of the Philadelphia party.

Mr. Alker: We would have had the Cape May man here today, but it depends on the weather being clear. He is ill.

Mr. Endicott: I think we better stipulate to take his testimony at Cape May.

Mr. Starr: Is there any objection to having an order made to have the box opened in Philadelphia?

Mr. Endicott: I don't know enough about the situation to answer that question, but Mr. Lewis told me sometime ago that he would furnish the stipulation.

Mr. Lewis: It was furnished to Mr. Alker in Philadelphia two or three weeks ago.

The Court: I think these gentlemen ought first to determine whether or not they are going to make application for an administrator pendente lite.

Mr. Endicott: We now do make this application.

Mr. Starr: I do not think it is necessary.

The Court: The law provides that in order to conserve the interests of the estate it may be done. The theory is to protect the estate from being squandered if possible.

You can make your application in the form of a petition asking that an order be made; then we can make an order directing that a representative from each side may open this box, together.

Mr. Starr: I think the appointment should be someone absolutely impartial.

The Court: You may be heard on that.

Mr. Starr: All right.

(Adjourned sine die.)

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Volume II

ATLANTIC COUNTY, N. J.
ORPHANS' COURT.

In the Matter of the Estate of Albert Allen, Deceased.

DEPOSITION

of Albert L. Siegrist, taken Saturday, May 4, 1929, 12 o'clock noon, at the residence of the deponent, Albert L. Siegrist, 233 Perry Street, Cape May, New Jersey, pursuant to stipulation signed by counsel of the respective parties, before George O. Calvert, stenographer, also notary public in and for the State of New Jersey.

Signature waived by agreement.

Any objections to be put on record to be disposed of by the Court when depositions are read.

Present of Counsel:

H. W. Lewis, Esq., and Lewis Starr, Esq., representing proponents.

Allen B. Endicott, Jr., Esq., representing caveators.

ALBERT L. SIEGRIST, sworn.

By Mr. Endicott:

Q. You now live at this property, 233 Perry Street, city of Cape May, State of New Jersey?

A. I do.

Q. Did you know Albert Allen in his lifetime?

A. I met him in the latter 1912 or early 1913.

Q. Where was he living then?

A. Over his paint store.

Q. In Philadelphia?

A. In Philadelphia.

Q. Did you live in Philadelphia at that time?

A. I came to Philadelphia at that time.

Q. What year did you say that was?

A. I think it was late 1912 or early 1913, but I am not so sure about that.

Q. Was Mr. Allen married at the time you first met him?

A. He was not.

Q. Did he subsequently marry?

A. He married, I think, about six months after I met him.

Q. What was his wife's name, if you know?

A. I don't know.

Q. Did your acquaintance continue after his marriage?

A. It did.

Q. And lasted up to the time of his death?

A. I didn't see Mr. Allen for 3 years previous to his death.

Q. You mean that you didn't see him during the last 3 years of his life?

A. The last 3 years.

Q. What was Mr. Allen's general disposition with regard to money matters?

A. Very close: the closest man, I think, I ever met in my life.

Q. Did that condition continue during all the time you knew him?

A. All the time. He never made an investment unless he asked a half dozen men before he made it.

Q. Where was Mr. Allen living when you met him?

A. On Susquehanna Avenue, over the paint store.

Q. Did he stay at any time with Mrs. Reulens?

A. I don't think he ever lived with Mrs. Reulens.

Q. He afterwards bought a house on Allegheny Avenue?

A. He did.

Q. And lived there?

A. He did.

Q. Did you visit him there?

A. I was instrumental in him buying that house.

Q. Did he discuss his business affairs with you?

A. He did.

Q. Did you advise him on business matters?

A. I did, occasionally.

Q. Do you recall that his wife died?

A. I do.

Q. Do you know about when?

A. I couldn't give you the year, but I think they were married—well, I ain't going to try to give you that. I don't know.

Q. Was there a Mr. Schreiber that you and he were well acquainted with?

A. There was.

Q. What was his business?

A. Real estate.

Q. Where was his office?

A. On Diamond and Broad Street, over the Broad Street bank, or next to the Broad Street bank.

Q. Did you sometimes meet him in that office, meet Mr. Allen there, or go there with him?

A. Quite often.

Q. Do you remember when Mrs. Kate Ailes became his housekeeper?

Mr. Starr: Objected to on the ground previously stated before Judge Smathers, that that is based on an assumption or conclusion as to the fact that she was his housekeeper.

Q. Do you recall how long that was after his wife's death?

A. It was a year or maybe a little bit more.

Q. After Mrs. Ailes became his housekeeper or she became a resident in his home, whatever it may have been, were your relations with Mr. Allen disturbed or discontinued?

Mr. Starr: Objected to as indefinite and uncertain, and calls for a conclusion.

A. It was disturbed.

Q. Did you continue as friendly with him, the same as before?

Mr. Starr: Objected to as immaterial, irrelevant and incompetent.

A. No, I did not.
Q. Tell us why?

Mr. Starr: The same objection, irrelevant, incompetent and immaterial.

A. Because he never could talk about anybody but Kate Ailes; and every time we talked about business he would bring her in. You know that no man wants to have a woman brought into business affairs all the time.

Mr. Starr: I ask that that be stricken out on the grounds previously stated.

Q. Did you visit him at Pleasantville at one time?
A. Only once; that was in 1926.
Q. How did you come to go there?
A. I went down to settle up a mortgage with him.
Q. You owed him money?
A. I owed him a little mortgage.
Q. Did you pay him?
A. I paid him.
Q. What happened while you were there?
A. Well, not very much happened. He seemed to be—well, I don't know; he wasn't like himself.
Q. Did he talk to you about buying a property down there?
A. This was before I went there. This was before he moved to Pleasantville? You are now asking me that? That was before.

Q. Did you visit Pleasantville with him prior to the time he moved there in 1926?

A. He took me down there and he said he was going to buy a house or some property. He asked me to come down and look at it with him. I went down; I think I was there over night. I had my wife with me. He looked at some properties with me.

Q. Did he buy any property?

A. No, he said he wouldn't pay any such prices as that. He said Mrs. Ailes must be crazy to ask him to pay $20,000 for a house, for houses, for her.

Q. Did he talk to you as to whether or not he wanted to move to Pleasantville to live, or not?

A. He didn't seem to be very anxious.

Mr. Starr: I move to strike that out as immaterial, irrelevant and incompetent.

Q. Did he talk to you about going into the garage business with him?

A. Yes, prior to that time, too.

Q. Was Mrs. Ailes present when you had the conversation?

A. She was.

Q. What did she say?

A. She said, why couldn't her relatives or her husband help him?

Q. When he was breaking up his home in Philadelphia, did you ask him for a piece of bric-a-brac?

Mr. Starr: Objected to as leading, and on the further ground that it is immaterial, incompetent and irrelevant; and also that no time is fixed.

A. I did.

Q. Tell us the conversation you had with him on that subject.

A. He told me I could have it. Then he consulted Mrs. Ailes and I didn't get it. I either offered to buy it, or if he wanted to give it to me. I wanted it as a remembrance of his wife.

Q. Did you call on Mr. Allen at the Jefferson Hospital?

A. I did.

Q. Do you remember about when that was?

A. I could not give you the date, but I did.

Q. Do you know whether or not he had been operated upon?

A. He had not.

Q. Was he to be operated upon?

A. He was to be.

Q. Did you see Mr. Schreiber there?

A. I did.

Q. Did you have any talk with Mr. Allen on that day?

A. I did.

Q. Tell us what you recall of it.

A. Mr. Schreiber said that he had been, that he was called in to make a will for Mr. Allen.

Mr. Starr: Objected to.

Q. Did you have any conversation with Mr. Allen on the subject of a will?

A. Yes, I did.

Q. You cannot tell what your conversation was with Mr. Schreiber?

A. I got a little mixed up there, I guess.

Q. Tell us what your conversation with Mr. Allen was?

A. He said he was called in—or ——

Mr. Starr: We want the conversation with Mr. Allen, not with Mr. Schreiber.

Witness: Mr. Allen said that he had called Mr. Schreiber in to make a will. He said his will was already made and that Mrs. Ailes had gotten all she was going to get.

Q. Did he say to you whether or not he was going to make the will or not?

A. He said he would not make a will.

Q. Did you see him after that time on occasions in Philadelphia or in Pleasantville?

A. I don't think I saw him after that unless it was in Pleasantville.

Q. Had you noticed any change in his physical condition at that time?

Mr. Starr: Objected to on the ground that the time is not stated. The question is entirely too indefinite and uncertain.

A. Yes, he was not the man he was before.

Mr. Starr: I ask that that be stricken out as incompetent and irrelevant, and immaterial.

Q. At the time you saw him in Pleasantville in 1926, had Mr. Schreiber then died?

A. He had.

Q. Did you have any conversation with Mr. Allen about his will and Mr. Schreiber's connection with it?

A. Not any more than that Mr. Allen mentioned that his friend, Mr. Schreiber, had passed away and that he had him named in his will, and Mrs. Ailes spoke up and said, "Now, Mr. Siegrist, you know better than that. You wouldn't leave a will stand that long after a man passed away!" What was meant by that was she didn't want Mr. Schreiber to have that money. He mentioned it; he was mentioned in the will.

Cross-examination.

By Mr. Starr:

Q. May I ask you your age?

A. 48 years of age.

Q. The last time you saw Mr. Allen was in Pleasantville in 1926?

A. It was.

Q. Do you remember the month or the year?

A. I think it was about this time, either April or May.

Q. Where were you living at the time?

A. Collingdale, Pennsylvania.

Q. You went there to see him for the purpose of paying off a mortgage?

A. To get him to cancel a mortgage. I had sold the property.

Q. Had the mortgage been paid prior to that time?

A. No, it wasn't to be paid until the property was sold.

Q. Did you take the money down with you?

A. No, I didn't have anything to do with that.

Q. Was the mortgage against your property?

A. Against my property.

Q. Explain what you mean when you say you went there to have the mortgage cancelled?

A. To get him to agree to cancel it. It had not expired.

Q. What was the amount of the mortgage?

A. $700.

Q. How long had it been on your property?

A. Not over three years; maybe four.

Q. Did you talk with Mr. Allen?

A. I did.

Q. Did you make a proposition to him that he agree to accept the money?

A. I had to.

Q. Did you?

A. I did.

Q. Did he agree to accept the money?

A. He did.

Q. Your conversation with him was perfectly rational, he understood what you said to him, and you understood what he said to you?

A. He signed it, a paper I had with me.

Q. (Last question read to witness by the stenographer: "Your conversation with him was perfectly rational, he understood what you said to him and you understood what he said to you?"

A. Yes.

Q. You got him to sign a paper agreeing to cancel the mortgage?

A. Yes.

Q. How long were you there on that occasion?

A. About five or six hours.

Q. What else did you talk about with Mr. Allen?

A. We talked about everything in general.

Q. Did you talk about business affairs?

A. No, not any more than he talked to me about where he was building some houses. He said he was building some houses for the Ailes girls, the newly-weds.

Q. Was he able to walk out there?

A. Yes, he was.

Q. What other matters did you talk about that day?

A. Well, I don't reall now.

Q. Did he talk to you about any investments he had made or contemplated making?

A. He did not.

Q. Did you talk to him about his business affairs?

A. I did not.

Q. Did he say anything to you about his business affairs?

A. No, sir.

Q. Who else was at the Ailes house at that time?

A. I don't think there was anyone.

Q. No one but yourself and Mr. Allen?

A. Mrs. Ailes was there and Mr. Ailes was there.

Q. Did you have any conversation with Mr. Allen, in the presence of Mr. and Mrs. Ailes?

A. I did, yes.

Q. What did you talk about when they were present?

A. The will matter was one thing he brought up.

Q. Is there anything else you can recall?

A. I don't think anything of importance.

Q. What was actually said about the will matter?

Who first spoke on that subject and what was said and what reply did Mr. Allen make?

A. Mr. Schreiber's—we were talking about Mr. Schreiber's death and Mr. Allen says, "My friend has passed away." He says, "I have got him named in my will," which I knew he had. And Mrs. Ailes spoke up and said, "Now you know you wouldn't let a will stand that long after a man's death, if you didn't want him to have the money."

Q. What is that?

A. "If you didn't want him to have the money," or something to that effect.

Q. How long had Mr. Schreiber been dead before that conversation took place?

A. I think Mr. Schreiber died in the wintertime.

Q. The winter before?

A. The winter before; I am not sure.

Q. You have given us all you can recollect as to what happened on that occasion when you visited Mr. Allen in Pleasantville in 1926, have you?

A. Well, I don't recall anything of importance.

Q. When next before that time had you seen Mr. Allen to have any conversation with him?

A. I think it was in the Jefferson Hospital. I might have met him on the street after that, but I am not sure.

Q. When you saw him in the hospital, when he was there for an operation, how did you come to go there?

A. I was asked to come there.

Q. By whom?

A. Mrs. Reulens; he wanted to see me.

Q. What conversation did you have with him in the hospital?

A. Well, Mr. Schreiber was there and Mr. Schreiber stepped out of the room and Mr. Allen says, "They have called Mr. Schreiber in to make a will." He says, "My will has already been made and Mrs. Ailes has got all she is going to get." He talked about his operation. He said he didn't know whether he would get well or not.

Q. Can you remember anything else that happened?

A. Nothing of importance, any more than just general talk. He didn't talk to me any more about his business affairs.

Q. What is that?

A. He didn't talk to me any more about his business affairs; he used to, but he quit that.

Q. Apparently that operation was performed in 1923. When next before 1923 did you have any conversation with him?

A. I think it was at Mrs. Ailes' house, but I don't know what the date is. I paid him the interest on the mortgage.

Q. Was this at Mr. Allen's in Philadelphia or in Pleasantville?

A. In Philadelphia, on Walnut Street.

Q. You don't know when it was?

A. I imagine it was a year before that; I couldn't say. I could get the dates, I guess, if I had to.

Q. You had discussed with him various business transactions?

A. I knew pretty near all of them he made.

Q. He was a very shrewd trader?

A. He was shrewd by asking other men and taking their advice. I wouldn't call that a real shrewd man, because he worked on other people. He knew

how to handle his money and knew how to keep it close, too.

Q. He knew how to keep it?

A. Couldn't get it out of him.

Q. That continued all the time that you knew him?

A. All the time up to the time that Mrs. Ailes moved into the house on Allegheny Avenue.

Q. How often were you in the house where Mrs. Ailes lived, on Allegheny Avenue?

A. Not more than a couple of times while she was there.

Q. During the whole time she was there?

A. During the whole time she was there.

Q. You never saw him in Pleasantville but once, is that correct?

A. No, twice. I went down there with him, one time.

Q. What year was that?

A. Now I couldn't give you the year. It was shortly after he built that house in Pleasantville.

Q. Before or after he had the operation?

A. I think it was before, that is, the house that he lived in at present; in fact, that house was only a lot and a barn at the time. Who owned it prior to the time I was down there I am not sure.

Q. In Pleasantville, you were there on two occasions; one when you went with him and the other occasion when you went down to see about paying off a mortgage?

A. Yes, that is all that I recall.

Q. When was it you had a conversation with him about his going into the garage business with you?

A. It started when he sold out his paint store on Susquehanna Avenue.

Q. What year was that?

A. In 1913 or 1914. Mr. Allen had always been in the oil business and he sold out his paint store and building and commented on what he was to do.

Q. Do you know what year he sold out his paint store?

Mr. Endicott: I think he said that, in a general way.

A. I think before he bought the Allegheny Avenue property.

Q. Can you give us the year?

A. I can't recall the year. It may have been 1915.

Q. You haven't any idea what year it was?

A. He had been married about, I should judge, two years.

Q. Was his wife then living?

A. They were then living on Allegheny Avenue.

Q. Then it was that you had the talk about the garage business?

A. That is right.

Q. His wife was then living?

A. Yes. He said he didn't know what to do, that he would be lonesome. He wanted to know if he bought a garage would I go with him, and I says, "I might." He kept at it and kept at it, and I says, "All right. You buy the garage." I had sold my business on Broad Street.

Q. Was that the only time you spoke to him about going into the garage business?

A. No, he always talked about it every time I met him. We traveled all over Philadelphia looking for a place.

Q. I am speaking about the time you referred to a moment ago when you say you had a conversation with him about a garage business. When was that?

A. The first time?

Q. Yes.

A. When he sold the paint store.

Mr. Endicott: I would like to clear one matter, one point. I understood you to say that the conversation about going into the garage business when Mrs. Ailes was present, was not the first time you had discussed going into the garage business with him?

Mr. Starr: Objected to as leading, incompetent, immaterial and improper.

A. No, he went around, traveled around looking for garages.

Mr. Starr: I ask that that be stricken out.

Witness: And he had real estate men looking for a place for him.

Q. In what year was it you had a talk with him about a garage at a time when Mrs. Ailes was present?

A. It was that time I was in Pleasantville, but I can't give you the year. That was the last time; it was the last time I saw him.

Q. The conversation was in Pleasantville, the last time?

A. No. the first time, that I saw him, in Pleasantville, not the last time.

Q. The last time you had any talk with him about the garage was your first time in Pleasantville?

A. The first time in Pleasantville. That is what he asked me to come down there for, to look at the garage he had down there.

Q. Did you look at the garage?

A. No, we didn't look at it.

Q. Do you mean that he had a garage there at that time?

A. He had two or three in view.

Q. I didn't ask you that. Did he have a garage at that time?

A. No.

APPEARANCES:

H. W. LEWIS, ESQ., A. F. DAIX, ESQ., JAMES W. LAWS, ESQ., and LEWIS STARR, ESQ., for proponents.

ENDICOTT & ENDICOTT, ESQS., WM. Y. G. ANDERSON, ESQ., H. J. ALKER, JR., ESQ., HON. DIMNER BEEBER, ESQ., W. ELMER BROWN, ESQ., representing the heirs at law.

The above entitled case was heard before HONORABLE WILLIAM H. SMATHERS, Judge, on Monday, July 8, 1929, in the court room, Guarantee Trust Building, Atlantic City, New Jersey.

Mr. Endicott: Perhaps we had better start with the reading of the depositions.

"Depositions of Albert L. Siegrist, taken Saturday, May 4, 1929, twelve o'clock noon, at the residence of the deponent, Albert L. Siegrist, 233 Perry Street, Cape May, New Jersey, pursuant to stipulation signed by counsel of the respective parties, before George O. Calvert, stenographer, also Notary Public in and for the State of New Jersey.

Signature waived by agreement.

Any objections to be put on record to be disposed of by the court when depositions are read.

PRESENT OF COUNSEL:

H. W. LEWIS, ESQ., and LEWIS STARR, ESQ., representing proponents.

ALLEN B. ENDICOTT, JR., ESQ., representing caveators.

ALBERT L. SIEGRIST, sworn.

By Mr. Endicott:

Q. You now live at this property, 233 Perry Street, City of Cape May, State of New Jersey?

A. I do.

Q. Did you know Albert Allen in his lifetime?

A. I met him in the later 1912 or early 1913.

Q. Where was he living then?

A. Over his paint store.

Q. In Philadelphia?

A. In Philadelphia.

Q. Did you live in Philadelphia at that time?

A. I came to Philadelphia at that time.

Q. What year did you say that was?

A. I think it was late 1912 or early 1913, but I am not so sure about that.

Q. Was Mr. Allen married at the time that you first met him?

A. He was not.

Q. Did he subsequently marry?

A. He married, I think, about six months after I met him.

Q. What was his wife's name, if you know?

A. I don't know.

Q. Did your acquaintance continue after his marriage?

A. It did.

Q. And lasted up to the time of his death?

A. I didn't see Mr. Allen for three years previous to his death.

Q. You mean that you didn't see him during the last three years of his life?

A. The last three years.

Q. What was Mr. Allen's general disposition with regard to money matters?

A. Very close; the closest man I ever met, I think, in my life.

Q. Did that condition continue during all the time that you knew him?

A. All the time. He never made an investment unless he asked a half dozen men before he made it.

Q. Where was Mr. Allen living when you met him?

A. On Susquehanna Avenue, over the paint store.

Q. Did he stay at any time with Mrs. Reulens?

A. I don't think he ever lived with Mrs. Reulens.

Q. He afterwards bought a house on Allegheny Avenue?

A. He did.

Q. And lived there?

A. He did.

Q. Did you visit him there?

A. I was instrumental in him buying that house.

Q. Did he discuss his business affairs with you?

A. He did.

Q. Did you advise him on business matters?

A. I did, occasionally.

Q. Do you recall that his wife died?

A. I do.

Q. Do you know about when?

A. I couldn't give you the year but I think they were married—well I ain't going to try to give you that. I don't know.

Q. Was there a Mr. Schreiber that you and he were well acquainted with?

A. There was.

Q. What was his business?

A. Real estate.

Q. Where was his office?

A. On Diamond and Broad Street, over the Broad Street Bank, or next to the Broad Street Bank.

Q. Did you sometimes meet him in that office, meet Mr. Allen there, or go down with him?

A. Quite often.

Q. Do you remember when Mrs. Kate Ailes became his housekeeper?

Mr. Starr: Objected to on the ground previously stated before Judge Smathers, that that is based on an assumption or conclusion as to the fact that she was his housekeeper.

Q. Do you recall how long that was after his wife's death?

A. It was a year or maybe a little bit more.

Q. After Mrs. Ailes became his housekeeper or she became a resident in his home, whatever it may have been, were your relations with Mr. Allen disturbed or discontinued?

Mr. Starr: Objected to as indefinite and uncertain and calls for a conclusion."

Mr. Endicott: This presents in a general way, a condition. The question is directed to the relations between the parties after Mrs. Ailes and Mr. Allen came to live together. Whatever the relationship was, whether she was his housekeeper, or whatever the relation was, the question is general enough to bring out the fact that they had come together. I then asked the witness whether his relations with Mr. Allen were disturbed or discontinued after that event, and it seems to me that that is perfectly pertinent to our case. That is the theory of our case, that Mrs. Ailes, through her influence, deprived Mr. Allen of his natural associations and therefore exercised undue influence over him. If it is shown, in the case, that after he came into her power that his family, friends and associates were discontinued, that then will support our case.

Mr. Starr: We want a ruling on that.

The Court: I think it is a question that calls for a statement from the witness. That whether there was a disturbance, is an improper question. The witness ought to be asked to state what happened, so that the Court may determine whether there was a disturbance or discontinuance of the relation. Is that simply preliminary?

Mr. Endicott: There is another question.

The Court: I sustain the objection.

Mr. Endicott: The next question is objected to by Mr. Starr.

Mr. Starr: That is the same question over again. The way to establish that is to ascertain what happened, what the facts were and not to let this witness define it.

The Court: Your objection is based on what ground?

Mr. Starr: It is based on the ground that it is irrelevant, immaterial and incompetent. I think that governs, or rather covers our objection.

Mr. Endicott: It seems to me that where Judge Starr's objection was limited to its immateriality and irrelevancy, that he is limited to this ground.

Mr. Starr: And as to its being incompetent, also.

Mr. Endicott: Incompetent means everything.

The Court: I will permit the last question.

Mr. Starr: Will you allow me an exception.

The Court: Exception is allowed.

Mr. Endicott: The next question is, "Tell us why." That also is objected to as irrelevant, incompetent and immaterial.

Mr. Starr: That of course, permits the witness to make up his mind without your Honor having the benefit of what was said or what was done. Let

the witness determine whether or not they were as friendly as they were before.

The Court: Tell us what happened. That is the question.

Mr. Starr: That is the same question, "Did you continue as friendly with him as before?" He says, "I did not." Then the next question is, "Tell us why?"

The Court: The question is permitted.

(Exception allowed to proponents.)

Mr. Endicott: The next question is: "Q. Because he never could talk about anybody but Kate Ailes; and every time we talked about business he would bring her in. You know that no man wants to have a woman brought into business affairs all the time."

Mr. Endicott: Mr. Starr asked that that be stricken out on the grounds previously stated.

Mr. Starr: The same objection.

Mr. Endicott: The next question is, "Q. Did you visit him at Pleasantville at one time?"

Mr. Starr: I want an exception to both rulings.

The Court: Yes.

Mr. Endicott: "Q. Did you visit him at Pleasantville at one time?

A. Only once, that was in 1926.

Q. How did you come to go there?

A. I went down to settle up a mortgage with him.

Q. You owed him money?

A. I owed him a little mortgage.

Q. Did you pay him?

A. I paid him.

Q. What happened while you were there?

A. Well, not so very much happened. He seemed to be,—well, I don't know; he wasn't like himself.

Q. Did he talk to you about buying a property down there?

A. This was before I went there. This was before he moved to Pleasantville? You are now asking me that? That was before.

Q. Did you visit Pleasantville with him prior to the time that he moved there in 1926?

A. He took me down there and he said he was going to buy a house or some property. He asked me to come down and look at it with him. I went down; I think I was there over night. I had my wife with me. He looked at some property with me.

Q. Did he buy any property?

A. No, he said he wouldn't pay any such prices as that. He said Mrs. Ailes must be crazy to ask him to pay $20,000 for a house, for houses, for her.

Q. Did he talk to you as to whether or not he wanted to move to Pleasantville to live or not?

A. He didn't seem to be very anxious."

Mr. Endicott: A motion to strike was made by

Mr. Starr, on the ground that it was immaterial, irrelevant and incompetent.

Mr. Starr: That is surely a conclusion, whether he was anxious or not.

The Court: The last question was moved to be stricken?

Mr. Endicott: Yes.

The Court: What was the question?

Mr. Endicott: "Q. Did he talk to you as to whether or not he wanted to move to Pleasantville to live, or not?" And the answer was, "A. He didn't seem to be very anxious."

The Court: I do not think that that amounts to anything.

Mr. Endicott: "Q. Did he talk to you about going into the garage business with him?

A. Yes, prior to that time, too.

Q. Was Mrs. Ailes present when you had the conversation?

A. She was.

Q. What did she say?

A. She said, why couldn't her relatives or her husband help him.

Q. When he was breaking up his home in Philadelphia, did you ask him for a piece of bric-a-brac?"

Mr. Endicott: This is objected to by Mr. Starr, as leading, and on the further ground that it is immaterial, incompetent and irrelevant; and also that no time is fixed.

Mr. Starr: I think that the question is objectionable.

The Court: It is permitted.

Mr. Endicott: The answer was, "I did."

Mr. Endicott: The next question is: "Q. Tell us the conversation you had with him on that subject.

A. He told he I could have it. Then he consulted Mrs. Ailes and I didn't get it. I either offered to buy it, or if he wanted to give it to me, I wanted it as a remembrance of his wife.

Q. Did you call on Mr. Allen at the Jefferson Hospital?

A. I did.

Q. Do you remember about when that was?

A. I could not give you the date, but I did.

Q. Do you know whether or not he had been operated upon?

A. He had not.

Q. Was he to be operated upon?

A. He was to be.

Q. Did you see Mr. Schreiber there?

A. I did.

Q. Did you have any talk with Mr. Allen on that day?

A. I did.

Q. Tell us what you recall of it?

A. Mr. Schreiber said that he had been, that he was called in to make a will for Mr. Allen."

Mr. Endicott: That was objected to by Mr. Starr.

Mr. Starr: That answer was a statement made by Mr. Schreiber, and not by this testator, and is objected to on that ground.

Mr. Endicott: It is clearly objectionable on that ground.

Mr. Endicott: Now the next question is: "Q. Did you have any conversation with Mr. Allen on the subject of a will?

A. Yes, I did.

Q. You cannot tell what your conversation was with Dr. Schreiber.

A. I got a little mixed up there, I guess.

Q. Tell us what your conversation with Mr. Allen was.

A. He said he was called in—or ——"

Mr. Endicott: It was at this point stated by Mr. Starr: "We want the conversation with Mr. Allen, not with Mr. Schreiber."

The witness then answered: "Mr. Allen said that he had called Mr. Schreiber in to make a will. He said his will was already made and that Mrs. Ailes had gotten all she was going to get."

Mr. Endicott: The next question is: "Q. Did he

say to whether or not he was going to make the will or not?

A. He said he would not make a will.

Q. Did you see him after that time on occasions in Philadelphia or in Pleasantville?

A. I don't think I saw him after that unless it was in Pleasantville.

Q. Had you noticed any change in his physical condition at that time?''

Mr. Endicott: At this point Mr. Starr objected on the ground that the time is not stated and that the question is entirely too indefinite and uncertain.

Mr. Starr: The question and answer are indefinite and for that reason I do not think that the answer should have been in the testimony.

Mr. Endicott: The next time he said he saw him was only in Pleasantville. That fixes the time.

The next question is: ''Q. Had you noticed any change in his physical condition at that time?''

We believe that that is perfectly competent, and as answered.

The Court: It is permitted.

Mr. Endicott: The answer to that was: ''Yes, he was not the man he was before.''

To this Mr. Starr objected and asked that it be stricken out as incompetent, irrelevant and immaterial.

Mr. Starr: Your Honor will have to determine what the witness says.

The Court: It does not mean anything at all.

Mr. Endicott: The next question is: "Q. At the time you saw him in Pleasantville in 1926 had Mr. Schreiber then died?

A. He had.

Q. Did you have any conversation with Mr. Allen about his will and Mr. Schreiber's connection with it?

A. Not any more than that Mr. Allen mentioned that his friend Mr. Schreiber had passed away and that he had him named in his will, and Mrs. Ailes spoke up and said, 'now, Mr. Seigrist, you know better than that. You wouldn't leave a will stand that long after a man passed away.' What was meant by that was she didn't want Mr. Schreiber to have that money, he mentioned it; he was mentioned in the will.

Cross-examination.

By Mr. Starr:

Q. May I ask your age?

A. Forty-eight years of age.

Q. Now the last time you saw Mr. Allen was in Pleasantville in 1926?

A. It was.

Q. Do you remember the month or the year?

A. I think it was about this time, either April or May.

Q. Where were you living at the time?

A. Collingdale, Pennsylvania.

Q. You went there to see him for the purpose of paying off the mortgage?

A. To get him to cancel the mortgage. I had sold the property.

Q. Had the mortgage been paid prior to that time?

A. No, it wasn't to be paid until the property was sold.

Q. Did you take the money down with you?

A. No, I didn't have anything to do with that.

Q. Was the mortgage against your property?

A. Against my property.

Q. Explain what you mean when you say you went there to have the mortgage cancelled.

A. To get him to agree to cancel it. It had not expired.

Q. What was the amount of the mortgage?

A. $700.

Q. How long had it been on your property?

A. Not over three years; maybe four.

Q. Did you talk with Mr. Allen?

A. I did.

Q. Did you make a proposition to him that he agree to accept the money?

A. I had to.

Q. Did you?

A. I did.

Q. Did he agree to accept the money?

A. He did.

Q. Your conversation with him was perfectly ra-

tional, he understood what you said to him and you understood what he said to you?

A. He signed it, a paper I had with me.

Q. (Last question read to the witness by the stenographer: 'Your conversation with him was perfectly rational, he understood what you said to him, and you understood what he said to you?')

A. Yes.

Q. You got him to sign a paper agreeing to cancel the mortgage?

A. Yes.

Q. How long were you there on that occasion?

A. About five or six hours.

Q. What else did you talk about with Mr. Allen?

A. We talked about everything in general.

Q. Did you talk about business affairs?

A. No, not any more than he talked to me about where he was building some houses. He said he was building some houses for the Ailes girls, the newlyweds.

Q. Was he able to walk out there?

A. Yes, he was.

Q. What other matters did you talk about that day?

A. Well, I don't recall now.

Q. Did he talk to you about any investments he had made or contemplated making?

A. He did not.

Q. Did you talk to him about his business affairs?

A. I did not.

Q. Did he say anything to you about his business affairs?

A. No, sir.

Q. Who else was at the Ailes house at that time?

A. I don't think there was anyone.

Q. No one but yourself and Mr. Allen?

A. Mrs. Ailes was there and Mr. Ailes was there.

Q. Did you have any conversation with Mr. Allen in the presence of Mr. and Mrs. Ailes?

A. I did, yes.

Q. What did you talk about when they were present?

A. The will matter was one thing he brought up.

Q. Is there anything else you can recall?

A. I don't think anything of importance.

Q. What was actually said about the will matter. Who first spoke on that subject and what was said and what reply did Mr. Allen make?

A. Mr. Schreiber's—we were talking about Mr. Schreiber's death and Mr. Allen says, ' My friend has passed away.' He says, 'I have got him named in my will,' which I knew he had. And Mrs. Ailes spoke up and said, 'Now you know you wouldn't let a will stand that long after a man's death, if you didn't want him to have the money.' What is that? 'If you didn't want him to have the money,' or something to that effect.

Q. How long had Mr. Schreiber been dead before that conversation took place?

A. I think Mr. Schreiber died in the winter time.

Q. The winter before?

A. The winter before; I am not sure.

Q. You have given us all you can recollect as to what happened on that occasion when you visited Mr. Allen in Pleasantville in 1926, have you?

A. Well, I don't recall anything of importance.

Q. When next before that time had you seen Mr. Allen to have any conversation with him?

A. I think it was in the Jefferson Hospital. I might have met him on the street after that but I am not sure.

Q. When you saw him in the hospital, when he was there for an operation, how did you come to go there?

A. I was asked to come there.

Q. By whom?

A. Mrs. Reulens; he wanted to see me.

Q. What conversation did you have with him in the hospital?

A. Well, Mr. Schreiber was there and Mr. Schreiber stepped out of the room and Mr. Allen says, 'They have called Mr. Schreiber in to make a will.' He says, 'My will has already been made and Mrs. Ailes has got all she is going to get.' He talked about his operation. He said he didn't know whether he would get well or not.

Q. Can you remember anything else that happened?

A. Nothing of importance any more than just general talk. He didn't talk to me any more about his business affairs.

Q. What is that?

A. He didn't talk to me any more about his business affairs; he used to, but he quit that.

Q. Apparently that operation was performed in 1923. What next before 1923 did you have any conversation with him?

A. I think it was at Mrs. Ailes house, but I don't know what the date is. I paid him the interest on the mortgage.

Q. Was this at Mr. Allen's house in Philadelphia or in Pleasantville?

A. In Philadelphia, on Walnut Street.

Q. You don't know when it was?

A. I imagine it was a year before that; I couldn't say. I could get the dates, I guess, if I had to.

Q. You had discussed with him various business transactions?

A. I knew pretty near all of them he made.

Q. He was a very shrewd trader?

A. He was shrewd by asking other men and taking their advice. I wouldn't call that a real shrewd man, because he worked on other people. He knew how to handle his money and knew how to keep it close, too.

Q. He knew how to keep it?

A. Couldn't get it out of him.

Q. That continued all the time that you knew him?

A. All the time up to the time that Mrs. Ailes moved into the house on Allegheny Avenue.

Q. How often were you in the house when Mrs. Ailes lived on Allegheny Avenue?

A. Not more than a couple of times while she was there.

Q. During the whole time she was there?

A. During the whole time she was there.

Q. You never saw him in Pleasantville but once, is that correct?

A. No, twice. I went down there with him, one time.

Q. What year was that?

A. Now, I couldn't give you the year. It was shortly after he built that house in Pleasantville.

Q. Before or after he had the operation?

A. I think it was before, that is, the house that he lived in at present; in fact that house was only a

lot and a barn at the time. Who owned it prior to the time I was down there I am not sure.

Q. In Pleasantville, you were there on two occasions; one when you went with him and the other occasion when you went down to see about paying off a mortgage.

A. Yes, that is all that I recall.

Q. When was it you had a conversation with him about his going into the garage business with you?

A. It started when he sold out his paint store on Susquehanna Avenue.

Q. What year was that?

A. In 1913 or 1914. Mr. Allen had always been in the oil business and he sold out his paint store and building and commented on what he was to do.

Q. Do you know what year he sold out his paint store?

Mr. Endicott: I think he said that, in a general way.

A. I think before he bought the Allegheny Avenue property.

Q. Can you give us the year?

A. I can't recall the year. It may have been 1915.

Q. You haven't any idea what year it was?

A. He had been married about, I should judge, two years.

Q. Was his wife then living?

A. They were then living on Allegheny Avenue.

Q. Then it was that you had the talk about the garage business?

A. That is right.

Q. His wife was then living?

A. Yes. He said he didn't know what to do, that he would be lonesome. He wanted to know if he bought a garage would I go in with him and I says, 'I might.' He kept at it, and kept at it and I says, 'All right. You buy the garage.' I had sold my business on Broad Street.

Q. Was that the only time you spoke to him about going into the garage business?

A. No, he always talked about it every time I met him. We traveled all over Philadelphia looking for a place.

Q. I am speaking about the time you referred to a moment ago when you say you had a conversation with him about a garage business. When was that?

A. The first time?

Q. Yes.

A. When he sold the paint store.

Q. I would like to clear one matter, one point. I understood you to say that the conversation about going into the garage business when Mrs. Ailes was present, was not the first time you had discussed going in the garage business with him?"

Mr. Endicott: That was objected to by Mr. Starr as leading, incompetent, immaterial and improper.

Mr. Starr: The question is leading, beyond a doubt.

The Court: It is permitted.

Mr. Endicott: The answer was: "A. No, he went around, traveled around looking for garages."

Mr. Endicott: A motion was made by Mr. Starr that that be stricken out.

Mr. Starr: I asked that that be stricken out, and I suppose the same ruling applies.

The Court: Yes.

Mr. Endicott: The witness answered: "A. And he had real estate men looking for a place for him.

Q. In what year was it you had a talk with him about a garage at a time when Mrs. Ailes was present?

A. It was that time I was in Pleasantville, but I can't give you the year. That was the last time; it was the last time I saw him.

Q. The conversation was in Pleasantville, the last time?

A. No, the first time, when I saw him, in Pleasantville, not the last time.

Q. The last time you had any talk with him about the garage was your first time in Pleasantville?

A. The first time in Pleasantville. That is what he asked me to come down there for, to look at the garage he had down there.

Q. Did you look at the garage?

A. No, we didn't look at it.

Q. Do you mean that he had a garage there at that time?

A. He had two or three in view.

Q. I didn't ask you that. Did he have a garage at that time?

A. No."

Mr. Endicott: I will now read the deposition of Miss Catherine Booth, Winchester, Virginia:

"Atlantic County Orphans' Court.
In the matter of Albert J. Allen, deceased.

Depositions taken pursuant to stipulation between counsel for all parties in interest before Hilda B. Dean, a notary public for the County of Frederick, State of Virginia, at the office of R. Gray Williams, 38 Rouss Avenue, Winchester, Virginia, on the 27th day of June, 1929, in the forenoon.

PRESENT:

ALLEN B. ENDICOTT, JR., for caveatrix, Lillian Seltzer-Reulens, and

LEWIS STARR, for Katie Ailies, proponent.

(It is stipulated that the testimony taken shall be taken stenographically, transcribed in writing and returned under the signature of Hilda B. Dean, notary public, and that the signature of the witness is waived.)

Question by Mr. Endicott:

MISS CATHERINE BOOTH, a witness of lawful age, being sworn, deposes and says:

Q. Where do you live, Miss Booth?
A. 320 West Clifford Street, Winchester, Va.

Q. What is your occupation?

A. Graduate, or registered nurse.

Q. Were you a registered nurse on October 21st, 1928?

A. Yes.

Q. When did you graduate as a nurse?

A. In the year 1924.

Q. Were you called to attend Mr. Albert Allen about the 21st day of October, 1928?

A. I was called, but I don't remember the date.

Q. Was it about that time?

A. I couldn't say. I have no idea of the date.

Q. Was it within the past year?

A. Yes.

Q. And where were you called?

A. I was called to come to the hospital from my home, No. 320 W. Clifford Street.

Q. To what hospital do you refer?

A. The Winchester Memorial Hospital at Winchester, Va.

Q. And did you respond to the call?

A. I did.

Q. Did you nurse Mr. Allen?

A. I did.

Q. What age person did he appear to be?

A. Between seventy and eighty. I could not say exactly.

Q. Was he in a room at the hospital?

A. He was.

Q. In bed?

A. Yes, in bed.

Q. Did you take charge of his case as a registered nurse?

A. Yes, I did.

Q. Who was with him?

A. At the time that I went there no one was with him, but Mrs. Ailes and her husband and a friend and her husband came during the day.

Q. Do you remember what day of the week that was?

A. On Sunday.

Q. Do you know what condition Mr. Ailes was in in the hospital for?

A. No, I do not. I did not hear the diagnosis.

Q. What evidence, if any, did you see of any illness or ailment?

A. It could be very plainly seen that he was very ill, apparently suffering from acute indigestion. He had those symptoms at the time of his admission, but that is just my statement. I did not get a diagnosis from the doctor.

Q. How long did he live after you first came on the case?

A. I could not say positively, but I think he lived from Sunday until about two o'clock on Monday. I came there between eleven and twelve on Sunday.

Q. You mean 2 P. M. on Sunday?

A. Yes.

Q. So that it was only one day or slightly over twenty-four hours?

A. Slightly over twenty-four hours, I should say.

Q. On Monday, the day of his death, if it was on Monday, at any rate on the day of his death, did any transaction take place between Mr. Allen and Mrs. Ailes with respect to the signing of a check or checks?

A. It did.

Q. Will you state what happened within your sight?

A. Mrs. Ailes asked Mr. Allen to sign some checks so that she would have some money to defray any expenses that happened to come up during her stay. The checks were in blank.

Q. Was there more than one check?

A. Two checks, I don't know if there were any more or not.

Q. And you say Mr. Allen signed these checks?

A. Yes.

Q. Did Mr. Allen sit up to sign them?

A. He did.

Q. Did you see him sign them?

A. I did.

Q. Was it easy for him to write?

A. No, he was rather nervous.

Q. What happened to the checks after they were signed?

A. So far as I know Mrs. Ailes put them in her purse.

Q. What time in the day did that happen?

A. Around eleven in the morning on Monday.

Q. Were you with him from the time of the signing of the checks until his death?

A. I was with him except for going out for the different things I needed in my work.

Q. Did you hear any subsequent conversation between Mr. Allen and Mrs. Ailes when you were present with respect to the checks?

A. No, I did not.

Q. What happened at the time of his death or immediately before his death?

A. He raised up and asked for a drink of water.

I tried to give it to him, but he fell over and in less than ten minutes he was dead. There was no one with him when he died.

Q. Was the doctor called in before his death?

A. He was.

Q. Was he there when he died?

A. He died just before the doctor arrived. He had to come from his office, but he died immediately.

Q. Do you know what the cause of his death was?

A. I do not, I have heard ——

Q. Was there any interruption of the natural functions of the body in the Allen case that you observed?

A. I have no recollection.

Q. Was it necessary to use any artificial means in taking his urine?

A. I don't remember.

Q. Do you know Mr. Allen's age at the time of his death?

A. I do not.

Q. If you were told that he was 76 years of age at that time, would his physical condition seem to be that of a person of that age or an older or younger man?''

Mr. Endicott: That was objected to by Mr. Starr on the ground that the witness did not have sufficient opportunity by observation to answer the question intelligently. The answer is immaterial, so why not pass it?

Mr. Starr: I think the record ought to be straightened out.

The Court: The question is not pursued.

Mr. Starr: When the witness answered: "It would be hard to say when you had only known the man for such a short space of time," that shows that the witness appreciated that, too. So I suppose the effect of the answer is obviated, absolutely.

The Court: The point is not pursued.

Mr. Starr: Not after that.

The Court: I think we will let it stand.

Mr. Starr: I have no particular objection to it, but when I made the objection I didn't know what the answer would be.

Mr. Endicott: The answer to that is, "It would be hard to say when you had only known the man for such a short space of time."

The next question is: "Q. Was there any evidence before you in your treatment of Mr. Allen that he had been affected by any external cause?

A. No.

Q. Weren't the symptoms which you observed and which you nursed him for those of advanced age?

A. I could not tell.

Q. What was Mr. Allen's general physical condition?

A. That is rather hard to tell.

Q. Couldn't you see whether he was weak or strong?

A. He was rather weak due to the nausea he had before entering the hospital.

Q. What was his mental condition?

A. So far as I could tell it was normal.

Q. You mean normal for a person of advanced years?

A. His age, yes.

Q. Did you see any evidence of childishness on his part during the time you were with him?

A. I would call it spoiled more than childish.

Q. Can you relate any evidence that you saw that made you think he was spoiled?

A. No.

Q. I mean any incident that occurred during the time that you saw him?

A. No.

Q. While you were on this case did you talk with Mrs. Ailes about her relation to Mr. Allen?

A. Yes, I did.

Q. Will you tell us what you know or what you recall of such conversation.

A. She didn't tell me what relation she was to Mr. Allen, but she said she was like an adopted daughter to Mr. Allen and that he had lived with her for a long time, I couldn't say the length of time, but she said he was devoted to her and she to him.

Q. Did she say anything to you about Mr. Allen consulting her on business matters?

A. She said that he did.

Q. Do you remember the language that she used?

A. No, I do not.

Q. Do you remember that she said to you that

he did not make any business deals without her approval?

A. She said he consulted her on business or on deals that he had.

Q. When the checks were signed did Mr. Allen raise any question about signing them?

A. None at all.

Q. Can you recall the conversation that took place?

A. No.

Cross-examination.

By Mr. Starr:

Q. Do you remember the names of the friends who visited Mr. Allen at the hospital other than Mr. and Mrs. Ailes?

A. No, I do not.

Q. You spoke of two friends being there, didn't you?

A. Yes.

Q. Do you remember their names?

A. I do not.

Q. Was it Holzenstark?

A. I couldn't say.

Q. You came on the case between eleven and twelve o'clock on Sunday and Mr. Allen died about two o'clock on Monday. Is that correct?

A. I would not be positive in that.

Q. Did you hold any conversation with him while he was in the hospital?

A. Oh, we talked on different subjects.

Q. You did carry on conversation with him?

A. I talked to him a number of times.

Q. And these conversations occurred at times when no one else was present but you and Mr. Allen?

A. I did talk to him at different times, yes.

Q. What was the first thing that happened, according to your recollection, with reference to these checks?

A. I think Mrs. Ailes asked him if he would sign some checks so that he would have some money to defray expenses while in Winchester.

Q. What reply did Mr. Allen make to that request?

A. I don't remember.

Q. Were the checks signed immediately upon the request made by Mrs. Ailes?

A. Yes.

Q. Do you remember who was present when Mrs. Ailes requested the checks to be signed?

A. No.

Q. Was Mr. Allen unconscious any considerable length of time prior to his death?

A. No.

Q. Can you give me any idea how long before his death he lapsed into unconsciousness?

A. A matter of about five minutes, not over ten.

Q. And up to that time he was perfectly rational and was able to converse with you in a rational way. Is that right?

A. Yes.

Q. And was he able to converse with these people who visited his other than yourself?

A. Yes.

Q. The Ailes and the two friends you speak of—did he carry on a general conversation with them?

A. Yes.

Q. Was he confined to his bed the entire time that you were on the case until he died?

A. Yes.

Further deponent saith not.

Signature waive.

STATE OF VIRGINIA,
COUNTY OF FREDERICK, } *To wit*:

I, HILDA B. DEAN, a notary public in and for the county and State aforesaid, hereby certify that the aforesaid deposition of Miss Catharine Booth was taken before me on the 27th day of June, 1929, at the office of R. Gray Williams, 38 Rouss Avenue, Winchester, Va., and was by me reduced to writing and I furthermore certify that the same is a true transcript of the said testimony taken before me at the time and place mentioned.

My commission expires September 9th, 1929.

Given under my hand and seal this 27th day of June, 1929.

HILDA B. DEAN,
Notary Public."

ROBERT M. BOYLE, sworn.

By Mr. Endicott:

Q. Where do you live?
A. Philadelphia.
Q. What is your profession?
A. Lawyer.
Q. Do you hold any official position with respect to the estate of Albert Allen, deceased?
A. Administrator pendente lite.
Q. Appointed by the Orphans' Court of Philadelphia?
A. By the Register of Wills, as a probate court, in Philadelphia.
Q. In your official position as such administrator have you examined the effects of Albert Allen, as they were found in the Northwest Trust Company in Philadelphia?
A. I went to the Northwest Trust Company on June 28th with counsel representing all parties in interest and there opened the box, the deposit box of the testator, went over the contents of the box with counsel for the parties in interest and a representative of the company, and I have those papers or part of those papers as selected by counsel for the parties in interest, to be brought to the court today.
Q. Have you certain checks signed by Albert Allen, or drawn against the account of Albert Allen in his lifetime?
A. I think there are.
Q. Will you produce them?

A. A number of these checks here I have and I would ask you to have counsel select the particular ones you desire from these checks.

(Papers handed to Mr. Endicott.)

Mr. Endicott: I think it would be advisable to defer the offering in evidence of these checks and papers until after recess although I suppose we better finish with this witness first.

By Mr. Endicott:

Q. Did you find among the papers a receipt for a check for a mortgage, signed by Kate Ailes?

A. I think there is a paper in the nature of a receipt purporting to bear the signature of Mrs. Kathryn Ailes.

Q. Is that among the papers you have just handed me?

A. I think it must be, sir; yes, it is among the papers.

Q. Did you find among the papers what purported to be a mortgage, affecting premises in Pleasantville or on Allegheny Avenue, Philadelphia?

A. That mortgage, I think is with the papers that I handed to you, in the large envelope.

Mr. Endicott: I think we better defer the examination of the witness until we have had a chance to go over the papers.

Witness: I might say there is also a book having the stubs of the checks which you may desire.

(Papers handed Mr. Endicott.)

Mr. Starr: What was your suggestion?

Mr. Endicott: I thought we might save considerable time if we had time to look over these checks.

Mr. Starr: I understood that an offer was made last Friday to have the checks arranged in chronological order, tabulated, but that Mr. Alker declined.

Mr. Endicott: He has made a tabulation on his own record but I would like to glance over them before we proceed further.

Mr. Starr: I think that ought to be done, to save the Court's time and I wanted to know when and how it was to be done.

The Court: Excuse the present witness and we will call another. The present witness may resume after lunch.

Mr. Endicott: I see no reason for detaining Mr. Boyle here, except as to these papers. His duties have been purely ministerial.

Witness: Yes, except that we might agree on the custodianship of the papers, if I am to leave them with the Court.

Mr. Endicott: Why not leave them with the Court?

Mr. Starr: If Mr. Boyle is satisfied, we are.

Mr. Endicott: The Deputy Surrogate is here and, if agreeable to counsel, I suggest that they be left with the clerk.

Witness: If all the parties in interest agree to that, that they be left with the clerk, then the administrator pendente lite is relieved of that responsibility. However, I should be very glad to remain.

Mr. Starr: We are perfectly satisfied, if you are.

The Court: Leave them with the Surrogate and you can get them the next time you are down this way.

Mr. Starr: If Mr. Boyle is obliged to file an inventory in Philadelphia, as Mr. Laws informs me he is, before he does that if he wants to examine the account book which is in the custody of the administrator pendente lite in New Jersey, he may do so. Is there any objection?

Mr. Endicott: None at all.

Mr. Starr: You can see Mr. Seyfert, downstairs, in the trust company and you have the consent of everybody to examine that book.

Witness: All right, sir.

A. F. Daix, Jr., Esq., sworn.

By Mr. Endicott:

Q. When you were last upon the stand you said you did not have with you the records that we had asked you to produce. Do you now have those records?

A. I do.

Q. Will you produce them?

A. Certainly.

(Papers produced.)

(Witness produces exemplified copy of docket entries of Common Pleas Court No. 3, Philadelphia County, Pennsylvania, relating to a proceeding therein entered between Frank P. Ailes and Catherine Ailes, his wife, against Peter A. Cortsen and Hilda Cortsen, and certain correspondence and incidental data, all of which we offer in evidence, or at least ——)

Mr. Starr: Are you going to offer the whole record?

Mr. Endicott: No, the exemplification first.

Mr. Endicott: The exemplification has been offered in evidence, showing the docket entries in Common Pleas Court No. 3, Philadelphia County.

(Admitted and marked Caveators' Exhibit 42.)

By Mr. Endicott:

Q. I show you receipt for check on the stationery of A. F. Daix & Son, above recited, check being for $10,440, and being principal and interest to June 4, 1928, on mortgage secured upon premises 4711 Walnut Street, Philadelphia, Pa., signed Kathryn Ailes and Frank P. Ailes, and ask you if that was the receipt taken by you in the course of your professional work?

A. It was not.

Q. Do you know how it came into your possession?

A. I would have to presume that. It was among the files and I brought it along.

Q. You found this receipt in the files?

A. In the safe in my outside office.

Q. Who is the firm of A. F. Daix & Son?

A. Myself and my son, who is present in court.

Q. Do I understand that you and your son constitute the firm?

A. Yes, and my father before me and my son afterward.

Q. The present members of the firm are you and your son?

A. Yes.

Q. What is your son's name?

A. A. F. Daix, 3rd.

Q. Do you practice as partners?

A. At the present time, yes.

Q. When did the partnership begin?

A. After he was admitted to the bar.

Q. When was that?

A. About six or seven months ago, maybe a little longer.

Q. So that at the time mentioned in this receipt, June 4th, to June 4th, 1928, your son hadn't then been admitted to practice law in the State of Pennsylvania?

A. No, sir.

Q. Was he in your office at that time?

A. He has been with me since he has been 16 years of age; he is now 30.

Q. Did he assist you in your office work?

A. All of it, along with the other help.

Mr. Endicott: We offer in evidence, this receipt for whatever value it may have.

I also show the witness an unopened envelope containing post office registry numerals 307331, bearing card in the upper left-hand corner, "Augustus F. Daix, Jr., attorney and counsellor at law, 2318 Columbia Avenue, Philadelphia," and ask you if this letter was among the papers you produced as the file which you were asked to produce.

(Envelope and letter handed witness.)

A. It was.

Q. Will you open that letter and disclose its contents?

(Papers handed witness.)

Mr. Starr: What is the date?

Mr. Endicott: April 16, 1928.

Mr. Starr: State to whom the letter is addressed.

Witness: To "Mr. Peter A. Cortsen, 4311 Walnut Street, Philadelphia, Pa."

(Witness continuing):

"April 16, 1928.

Mr. Peter A. Cortsen,
4311 Walnut Street,
Philadelphia, Penna.

Dear Sir:

I represent Frank P. Ailes and Kathryn Ailes who hold a Bond and Mortgage in the principal sum of $10,000 secured on the premises 4311 Walnut Street, Philadelphia. This bond and mortgage is in default in that there has been a failure to pay balance of interest due January 15, 1928.

I beg to advise you that under date of April 14, 1928, judgment was entered on the Bond and Mortgage, which judgment was entered in the Court of Common Pleas No. 3, Philadelphia County, as of the March Term, 1928, No. 9838, and it is my intention to proceed forthwith and issue execution against the said premises.

Very truly yours,

AFD/C. Augustus F. Daix, Jr."

That letter came from your office?

A. Yes. It is on my letter-head.

Q. Did you sign it?

A. I did not.

Q. Did you authorize anybody to use your signature?

A. I was taken sick at the time and my son had the power to sign for me; I was at that time sick and wasn't expected to live.

Q. Was this done under the power of attorney you gave your son to act for you?

A. Absolutely, under all matters of checks.

By the Court:

Q. Then you did represent her in this matter through your son?

A. Yes; I said the only time I did represent her was in this foreclosure of mortgage which was brought and I entered up the bond or my son did, for me. I said that in my direct examination.

The Court: I understood you to say in your direct examination that you never represented her in any way in drawing this will.

A. I did that through my son.

By Mr. Endicott:

Q. From an exemplified copy of the record in Court of Common Pleas No. 3, of Philadelphia County, I note an appearance of Augustus F. Daix, Jr., July 11, 1928, and ask you if that indicates, according to the practice of the Philadelphia Courts, that you appeared of record as attorney for Mrs. Catherine Ailes in that cause?

A. No, sir, my clerk or my son would have a perfect right to enter up my appearance in our courts.

Q. (Last question read to witness by the stenog-

rapher: "From an exemplified copy of the record in Court of Common Pleas No. 3, of Philadelphia County, I note an appearance of Augustus F. Daix, Jr., July 11, 1928, and ask you if that indicates, according to the practice of the Philadelphia Courts, that you appeared of record as attorney for Mrs. Catherine Ailes in that cause?")

A. It wouldn't mean that I was there and entered my appearance, no.

Q. I asked you if you appeared of record for Mr. and Mrs. Ailes?

A. The record has my name. I didn't sign it and didn't enter my appearance on the record.

Q. Do you now deny that you were attorney for Mrs. Ailes in these proceedings?

A. My son was as a member of the firm.

Q. He couldn't have been a member of the bar at that time—was he?

A. He has a perfect right to be in my office and enter my appearance for me, any clerk has.

By the Court:

Q. What your son did, when he was not a member of the bar, in your name was done by you—is that right?

A. The same thing as if I had done it. I was sick. I was laid up and not expected to live.

Q. Did the records show how much the charge was that was made for these services, and who received the fee?

A. No, that wouldn't show it, but I can answer the question.

By Mr. Endicott:

Q. Was there a fee paid in this matter?
A. There was, so I am told.
Q. Do you know how much it was?
A. I am informed by my son that there was $150 paid; personally, I don't know.
Q. Do you assume responsibility for what your son did in this matter?
A. Yes, I think I would. I think I owe that to him.
Q. Did you derive any benefit from it?
A. I could not tell you that. I was laid up, sick.
Q. From your present review of the circumstances, can you answer that question, which is: Did you derive any benefit from the employment?
A. My son informs me I did.
Q. I show you copy of letter dated June 4, 1928, directed to Mr. Michael A. Maloney, Esq., Philadelphia, which I found in the bundle of papers which you handed me as being in the file in question.
A. Yes.
Q. I call your attention to the itemized, 6th, item, $150.00, for attorney's fee.
A. Yes, sir.
Q. I ask you if you authorized your son to make the charge in your name?
A. I was too sick at that time to authorize anybody to do anything.
Q. Did your son under his general authority have the right to do it?
A. A perfect right.
Q. What he did in your name was authorized by you and subsequently ratified by you?

A. There was made no objection by me.

Q. Have you brought your books of account with you, showing the records for 1928? I mean for your professional work in 1928.

A. I have.

Q. Will you produce them?

A. Yes, sir.

(Papers produced.)

Q. What is the book you have in your hand?

A. Ledger.

Q. Ledger showing whose accounts?

A. People that owed me money and people I paid out money to.

Q. When you speak in the personal do you mean alone or was it a partnership account shown there during the year 1928.

A. This is my individual account.

Q. Do you have any account there against Catherine or Frank Ailes, in that book?

A. I do not.

Q. Do you have any account against Albert Allen in that book?

A. I have his name entered here, an account entered, Albert Allen.

Q. Will you read the items that appear on page 49 of this ledger?

(Witness reads from page 49 of ledger.)

A. This is the personal ledger of A. F. Daix, Jr., page 49, entitled, headed, "Estate of Albert Allen, deceased; 1928, November 10, received from Cath-

erine Ailes, for expenses, November 10, $300; Noverber 13th, the 12th or 13th, I don't know which, paid Henry W. Lewis $150, leaving balance of $150.00; 1929, May 20, in pencil, paid Victory, stenographer, $130, leaving a balance of $20; to drawing will, $5.00.

Q. Who made the entries you have just shown or read?

A. I made all these.

Q. When were they made?

A. November 10 there was made at the time; November 20th was made at the time; drawing will, was made sometime between January 1st and March 15th, when I went over my books.

Q. What year was that?

A. All of this year.

Q. All of the items?

A. One moment; except November 10th and 12th when I paid Mr. Lewis his. These two were in 1928. When I paid Victory, that was in 1929; drawing will was in 1929.

Q. All the entries you have shown were made after the death of Albert Allen?

A. They were, because I charged it up to his estate.

Mr. Endicott: I desire to offer in evidence this book account.

(Admitted in evidence.)

Witness: Can I have the book back?

Mr. Endicott: Yes.

Q. Had this will contest started when you made that $5.00 charge for drawing the will?

A. It had.

Q. It had?

A. Yes.

Q. Why did you make it?

A. I think I made it between the first of the year, and ——

Q. No, why did you make it?

A. So as to show that he was indebted to me, the same as other entries that are in the book.

Q. Had you agreed on the cost of drawing the will?

A. I had not.

Q. Had you discussed either with Mr. Allen or with Mrs. Ailes the cost of drawing it, drawing the will?

Q. She was out in the car when you took him over to the doctor's?

A. She was not.

By the Court:

Q. Is this the will you drew, which went across town and when you waited about an hour or so?

A. For the doctor, yes.

Q. Would you consider $5.00 a little too small charge for service of that kind?

A. I was dealing with a man who was extremely close in money matters.

Q. He was dead when you made this entry?

A. That is what he would have thought was about right. That is the light I put it in, the same as if he was living.

Cross-examination.

By Mr. Endicott:

Q. I understood you to say you never talked with Mrs. Ailes about the drawing of this will?

A. I think you are correct.

Q. I then asked you was Mrs. Ailes out in the car, if she went out in the car when the will was signed.

A. She was not. She was in my outside office, as far as I know; she may have walked out of the car and walked into the office but she was not in the back office.

Q. Did not you testify that when you took the will to Dr. Boger's office you went there to have it signed?

A. I did.

Q. That arrangement for its execution was pursuant to an arrangement that had been made by you?

A. Made by me, with Mr. Allen sitting alongside of me when I called Dr. Boger's office on the 'phone to make the engagement.

Q. I refer to your testimony taken in your direct examination, page 17, when I asked you the question: "Will you repeat the conversation that took place between you and Mr. Allen and Mrs. Ailes when they first came to your office." Do you hear me all right?

A. I catch you.

Q. And your answer was: "If you would allow me to tell you how they came to my office. Q. Will you answer the question?" Your answer was:

"A. They came into my back office, sat down at

the table and I got out a piece of paper and I asked him what he wanted done in connection with the will, who he wanted to leave it to or what he wanted to do."

"Q. Was Mrs. Ailes present then?

A. She was not."

Q. I asked you what the conversation was when they first came to your office, when they were present.

On page 20, of the same transcript of testimony, I asked you:

"Q. Was Mrs. Ailes present when the will was executed?

A. She was not.

Q. Was she outside in the automobile?

A. She was in the outside office.

Q. Was she present when you delivered the will to him?

A. She was in the automobile with him."

Witness: That is correct.

Q. Then you did talk to her about the will, at some time?

A. I did not.

Mr. Starr: I would like to have the exhibits shown Senator Daix. Have you the letter of June 6th?

By the Court:

Q. When was this will drawn?

A. September 7, 1928.

Q. When did the deceased die?

A. October 22nd, 1928, I am informed.

Q. Was that in the same month the will was drawn?

A. No; I beg your pardon, the will was drawn September 7th, 1928, and he died October 22, 1928.

Q. A little over a month later?

A. Yes, a little over a month later.

Mr. Endicott: I am trying to find the letter you asked for. I haven't found it as yet. Here it is.

(Letter produced.)

Mr. Starr: Is it marked?

Mr. Endicott: It is dated June 4, 1928.

Q. May I ask your age?

A. 62.

Q. You have been practicing law for how long?

A. About 35 or 40 years.

Q. Did you come in contact with Mrs. Ailes concerning any matter concerning a foreclosure of mortgage?

A. I did not.

Q. Were you attending to business at that time?

A. No, sir, I was seriously ill.

Q. You were taken ill when?

A. The latter part of December, and was in bed.

Q. What year?

A. 1927.

Q. When did you get back to your office to attend to business matters?

A. I guess it was about June or July. I couldn't tell you which month. Then I only came in for a half day or so and went out again.

Q. You were confined to your bed?

A. During the entire period I was, except when I took a trip to the Bahama Islands, and when I came back I was worse.

Q. During what period were you confined to your bed?

A. Off and on from January 1st. If you want the truth—up to the present time. In fact, I have been in bed recently for two weeks, here lately.

Q. Your office was then run by your son?

A. Yes.

Q. When did you first know that your son had undertaken to collect this mortgage?

A. He came in one day, I couldn't tell you the month, and he sat alongside of my bed and told me what he had done and I said, "Why don't you go get Herman Schwartz. I told you that while I was sick to get some young attorney," and he said, "I could attend to it, Dad."

Q. Could you tell when that was?

A. Only as I have said.

Q. When did you first come in contact with Mrs. Ailes? Mr. and Mrs. Ailes?

A. When she came into my office that day with Mr. Allen, about the will, and he came in.

Q. That was when?

A. About two days ahead of September 7th.

Q. 1928?

A. 1928.

Q. That was the first time that you ever saw her?

A. No, sir, but the first time I ever met her.

Q. Where did you see her first?

A. She walked into the bank with Mr. Allen, came up the steps and walked in.

Q. On the same day?

A. No, I would say I saw her months before with him; she came in the bank. I wasn't introduced or didn't meet her.

Q. When was that?

A. A short time ahead of that.

Q. Did you ever have any business transactions with her at all, personally I mean?

A. None whatever.

Q. I show you Exhibit No. 40, Caveators' Exhibit, dated April 16, 1928, addressed to Peter A. Cortsen, purporting to be signed by Augustus F. Daix, Jr. ——

A. Yes.

Q. And ask you, did you have anything to do, personally, with respect to the sending of that letter?

A. I never knew it was sent.

Q. When did you have any knowledge of the fact that it was sent?

Q. I suppose that that is the letter that was in the Register's envelope, unopened?

A. Yes.

Q. You didn't know anything about it until it was opened here, today?

A. Not a thing. I opened it before Mr. Endicott.

Q. I show you Caveators' Exhibit No. 41, which purports to be a carbon copy letter of June 4, 1928, and ask you did you have anything to do with the sending of that letter, personally?

A. I did not.

Q. Did you know anything about when it was sent?

A. No, sir, I do not.

Q. When did you have any personal knowledge of the existence of that letter, personally, that copy?

A. I looked up the files after Mr. Endicott had served notice of what he wanted me to bring here and I found it.

Q. That was after notice was served?

A. Yes, just recently.

Q. I call your attention to the receipt, marked Exhibit No. 43, and ask you when did you first have any knowledge of the existence of that document?

A. When the files were handed to me out of the safe, which was about a month or two ago—no, just shortly after our last hearing which was in April, when Mr. Laws handed me the notice that Mr. Endicott served upon him.

Q. Did you have anything to do, personally, with the preparation of that receipt?

A. I didn't know that it was in existence up until the time I mentioned.

A. I notice in Caveator's Exhibit No. 41, a charge of attorney's fee for $150. That attorney's fee was paid by the defendants in the judgment?

A. I presume so. I was not present.

Q. That is the practice?

A. Yes.

Q. So far as your books show, no charge was ever made against Mrs. Ailes in connection with services in that foreclosure?

A. None that I know of, in my books.

Q. So far as you know, was any fee paid by either

Mr. or Mrs. Ailes for services, in your office, in the foreclosure of that mortgage?

Mr. Endicott: Objected to. The witness has testified that there was a fee of $150 paid, from which he received benefit.

Mr. Laws: He doesn't say from whom.

The Court: So far as he knows, he says it was not.

The Witness: No.

By Mr. Starr:

Q. We were speaking of this transaction, as a foreclosure of mortgage. It was not a foreclosure?

A. It didn't go that far.

Q. It merely went to entering judgment upon the bond with the mortgage?

A. Which accompanied the mortgage.

Q. And subsequently the mortgage was paid after judgment was entered?

A. According to files, such is the case.

Q. The attorney fee was included in the amount paid by the obligor on the bond?

A. Yes.

Q. Who was also defendant in the judgment?

A. Yes.

Q. Do you and your son conduct a real estate business in addition to operating a law office?

A. I have conducted a real estate business for forty years.

Q. Do you refer to your son, also?

A. Yes, he has been with me since he was sixteen years old.

Q. In answer to a question put by Mr. Endicott you said that Mrs. Ailes was not present in your office with Mr. Allen, when you were discussing the preparation of this will. Is that a fact?

A. That is correct.

Q. And the discussion with Mr. Allen was in which one of your offices?

A. My private office in the back; three offices, one, two, three. The back office.

Q. Who was present?

A. When we were discussing the will?

Q. Yes.

A. Nobody but Mr. Allen and myself.

Q. From whom did you get directions as to the contents of the will?

Mr. Endicott: That is objected to. He is your witness.

Mr. Starr: No, he is not.

The Court: That has been gone over in direct examination. The question here is as to whether or not there had been any previous relations with this witness and Mrs. Ailes.

Mr. Starr: Do I understand that the witness is called for cross-examination?

The Court: On the question whether or not he

ever represented Mrs. Ailes prior to the time of drawing this will.

Mr. Starr: I didn't understand that that was the question.

The Court: That is the question that we are concerned with.

Mr. Endicott: We served notice to produce him for further cross-examination, also to produce his records.

Mr. Starr: It seems to me in view of the fact that these questions were put by Mr. Endicott today, that we have the opportunity to explain them.

The Court: That is true.

Mr. Starr: An objection was interposed by Mr. Endicott on the ground that we have no right to cross-examine this witness because he was our witness originally.

(Last question read to witness as follows by the stenographer. "Q. From whom did you get directions as to the contents of the will?")

Mr. Endicott: That is going into the original case.

The Court: It is not re-direct. He asked was she present and she said no. That is as far as he went.

Mr. Starr: Even then I do not think that we are precluded. The order of proof is not proper. We have the right to produce this same witness in support of our contention.

The Court: I think we will lose more time arguing about it.

By Mr. Starr:

Q. Did you have any conversation whatever with Mrs. Ailes prior to the time that you received instructions from Mr. Allen as to the preparation of the will, about the will itself?

A. No, sir.

Q. In answer to a question put this morning by Mr. Endicott I think you said that Mrs. Ailes was in your outer office at the time the will was executed. Did you mean your office or the doctor's office?

A. At the time the will was executed it was down at Dr. Boger's office. I understood Mr. Endicott to mean at the time she came into the office with Mr. Allen about giving me data to draw the will. She was then in the outside office.

Q. That is your outside office?

A. My outside office, 2318 Columbia Avenue.

Q. When the will was executed in Dr. Boger's office she was there?

A. She was not in the office where we were. She was in the outside office.

Q. The outside office?

A. Dr. Boger's outside office, I presume. She was not in the office where we executed the will.

By the Court:

Q. Did she go with you and the deceased over to the doctor's office?

A. She did not. I met her there.

Q. What do you mean when you say you met her there?

A. At the time fixed. I went over to Dr. Boger's office with one of my stenographers, to be one of the witnesses, and when I got there the doctor was out and I waited.

Q. After you had the necessary information to draw the will?

A. Yes.

Q. An engagement was made to go over to Dr. Boger's office?

A. Yes, fixed the time to go over, according to the time set by Dr. Boger.

By Mr. Starr:

Q. You did not accompany Mrs. Ailes to Dr. Boger's office?

A. No, nobody; simply my stenographer went with me.

Q. In your direct examination, when you were being asked about the preparation of the will and the giving of the details, as appears on page 17 of the transcript, you said: "A. They came into my back office, and sat down at the table."

The Witness: That is correct.

"A. And I got out a piece of paper and asked him what he wanted done with reference to the will."

The Witness: That is correct.

"A. And who he wanted to leave it to, and what he wanted to do."

The Witness: That is correct.

Q. Does that agree with the testimony you just gave, that Mrs. Ailes was never present when details of the will were settled?

Mr. Starr: That is objected to as not being proper cross-examination.

The Court: What is the matter with it?

Mr. Starr: Let this witness say which testimony is correct and whether it agrees with what he now gives.

The Court: I will permit it.

(Exception is allowed to the proponent.)

Q. (Last question read to the witness by the stenographer as follows: "Does that agree with the testimony you just gave, that Mrs. Ailes was never present when details of the will were settled?")

A. It does.

By Mr. Endicott:

Q. Explain how it does.

A. Because Mrs. Ailes left the room before I got the paper out, the memorandum. I wasn't asked, before, if she was present.

Q. But you said they came in to "my back office, and sat down at the table, and I got out a piece of paper and asked him what he wanted done."

A. That is correct, but she had left my office when I got out the piece of paper; she had gone into the front office.

By the Court:

Q. What is your practice in making charges on your books? Suppose John Smith comes in and asks you to draw a will for him. When do you make the entry for that in your books or on your ledger, a charge?

A. I make the entry first, on a slip of paper and I put everything down on it.

Q. The same day?

A. Yes; in other words I keep a diary of that—as long as you have asked me—and everybody who comes in, I show what they want to see me about, and so forth.

Q. Is there any memoranda of this service rendered to Mr. Allen, on the day that this will was drawn?

A. Yes.

Q. Where is that?

A. That was torn up because that was a memorandum of old matters which came in from the first

of the year, sometime between the first of the year and the first of March, when we started our income tax work, and I showed who owed me money and to whom I paid money, and on these slips was one of Mr. Allen, and I copied it off of memorandums between January the first and March the fifteenth.

By Mr. Endicott:

Q. Have you finished?

Mr. Starr: It is up to you. It is re-direct or re-cross. I am waiting for you to finish.

Q. Tell us again how the arrangements were made for the signing of the will.

A. For the signing of the will: I called the doctor up on the phone after Mr. Allen had given me the facts, how he wanted the will drawn, and asked him if it would be satisfactory for Mr. Allen to come to his office, and for me to come, that I was drawing a will for Mr. Allen and that I would like him as one of the witnesses, his name having been given to me first by Mr. Allen.

Q. Then what happened?

A. On the day mentioned I went down to the doctor's office.

Q. When was that?

A. September 7th.

Q. What period of time elapsed between the telephone conversation and your call at the doctor's office?

A. A couple of days, I suppose.

Q. You are sure about that?

A. I think I am correct, a couple of days.

Q. How many days interposed between the original discussion between you and Mr. Allen and Mr. and Mrs. Ailes, if she was there, and the actual signing of the will?

A. A couple of days, I should judge.

Q. A couple of days?

A. I should judge.

Q. So that the telephone conversations with the doctor must have occurred upon the same day as Mr. Allen's visit.

A. I called up and he did come in.

Q. Dr. Boger, in his testimony, on page 38, says: "Senator Daix, whom I never met before, until he made his appearance with Mr. Allen at my office, I never saw the gentleman, called me on the phone, and said that Mr. Allen was in his office and was executing a will and that he wanted me to witness the will, and would I do so. I said I would be pleased to do so. I said, 'Send Mr. Allen up,' and he sent Mr. Allen up and I signed the will." Does that refresh your recollection as to the lapse of time between the telephone conversation and the signing of the will?

A. I still think it was only a couple of days.

Q. Do you understand that Dr. Boger testified that it was on the same day?

Mr. Starr: Objected to.

A. I don't catch that at all—the same day?

Mr. Starr: That is objected to.

The Court: That is admitted.

(Exception allowed to proponents.)

By Mr. Endicott:

Q. I will read to you some more of Dr. Boger's testimony: "Q. How soon after the telephone conversation did they come in? A. I was tired. I had an emergency call at the hospital and I apologized when I came in, because they were waiting for me. Q. They did come in shortly after your telephone conversation? A. I don't know when they came in, but they had been waiting there. Q. How long a time elapsed between the telephone conversation and your visit? A. I don't know. It was not so long. I did not keep a memorandum of it."

The Witness: That is correct.

Q. Do you still say that it was two days?

A. About a couple of days.

Q. A short time ago you testified that Mrs. Ailes or Mr. Ailes paid you $150 attorney fee. Do you remember that?

A. Yes.

Q. Under the bond which you entered, the judgment bond, there was an attorney fee provided?

A. My son entered the bond.

Q. It was done in your name?

A. That may be, too, but I didn't do it.

Q. In the bond in question there was an attorney's fee?

A. Correct.

Q. Of the same amount?
A. $150.
Q. $150. Was that due Mrs. Ailes or due to the obligee under the bond, or due to the attorney?

Mr. Starr: That is objected to. It is based upon the contents of a paper which is not here. How can your Honor determine that without having the paper before you. It calls for a conclusion.

The Court: You opened it up by asking him if the defendant in the foreclosure paid the money.

Mr. Starr: But that does not determine the legal liability.

The Court: It is admitted.

(Exception to proponent.)

Q. (The last question read to the witness: "$150. Was that due Mrs. Ailes or due to the obligee under the bond, or due to the attorney?")
A. Paid to the attorney.
Q. Under the terms of the bond it was due to the clients?

Mr. Starr: Objected to on the same ground. It is asking this witness to interpret the contents of a document which is not here, and also imposing upon the witness its legal construction.

Mr. Endicott: The question is withdrawn.

By Mr. Endicott:

Q. The fee of $150 was collected when you collected the mortgage?

A. So I am informed.

Q. And you or your son deducted from the amount that was to go to Mrs. Ailes, $150, as an attorney fee?

A. I am so informed.

By Mr. Starr:

Q. How long had you personally been representing Mr. Allen prior to his death?

Mr. Endicott: Objected to. That is not cross-examination.

Mr. Starr: That was brought out on cross-examination and I ought to have the right to explain it.

Mr. Endicott: Objection withdrawn.

The Witness: A way back, previous to 1908, a way back beyond that.

Q. Beyond 1908?

A. Yes.

(Recess to 1:30 o'clock P. M.)

AFTER RECESS, 1:30 O'CLOCK P. M.

Mr. Starr: I suppose you have now offered the exhibits?

Mr. Endicott: Yes.

Mr. Starr: Mr. Laws has been over these papers which are to be introduced in evidence, and I prefer to have the offer deferred until he arrives. He will be here in a moment.

Mr. Endicott: We have here the record produced by Mr. Boyle, consisting of a large number of checks and mortgages, and other data, which were found in the box of the decedent. I would like to offer them in bulk.

Mr. Starr: I do not want to do anything that is going to delay the trial of this case, but when it comes to the offering in evidence of a record, it seems to me that it does not seem fair to the proponent to have a lot of records brought in here, offered in evidence, without having our attention directed, in the slightest degree, to the relevancy of the papers, and the purposes for which they are offered, and then at the argument to have it said that these were in evidence at the time of the trial.

It seems to me that if these papers are of sufficient importance to have them go in evidence, that these gentlemen should go to the trouble to pick out the papers that they rely on so that we will know where

we are. I have never heard of taking a bundle of papers like that and making such use of them.

The Court: Unless you consent.

Mr. Starr: I will not consent. I do not think that it is fair to consent to that method.

Mr. Endicott: I think that it will take us a day to get them in evidence.

Mr. Starr: That is entirely up to the Court. If you want to put them in evidence, indicate in some way those upon which you rely, so that we may have an opportunity to make such explanation as can be made. I do not care to agree unless the proper course is pursued. I do not like the course that takes on an omnibus method.

Mr. Endicott: It seems to me that we may simplify the matter by suggesting that the whole file be left in the Surrogates Court, as it now is, and that we will not rely on any document, contained in this file, unless it is the subject of some examination or cross-examination of some witness.

Mr. Starr: That is all right.

Mr. Endicott: Then we offer in evidence these papers and agree that they be lodged with the Surrogate for further examination.

Mr. Starr: That is satisfactory to us. I think those papers should be specifically identified and

given a number among the exhibits, and that any paper will not be considered as being in evidence unless it takes the course suggested by Mr. Endicott.

Mr. Endicott: That is perfectly satisfactory.

Mr. Starr: Have you finished your testimony?

Mr. Endicott: Yes.

CAVEATORS REST.

PROPONENTS' TESTIMONY.

Miss Ella M. Shoemaker, sworn.

Direct examination.

By Mr. Starr:

Q. Where do you reside?
A. In Philadelphia.
Q. What is your occupation?
A. Graduate, trained nurse; registered nurse.
Q. You graduated when?
A. When?
Q. Yes.
A. In 1915.
Q. In 1923 with what hospital were you connected?
A. 1923?
Q. Yes.
A. Jefferson Hospital.

Q. Are you connected with that institution at the present time?

A. I am doing private nursing at that institution.

Q. How long have you been connected in any way as a nurse, at the hospital, or doing private nursing there?

A. Off and on ever since I graduated, at different times.

Q. Did you know Mr. Allen in his lifetime?

A. Only while he was a patient in the hospital. I was taking care of him.

Q. Do you remember when he was there?

A. I remember when he was there, but the dates I do not remember.

Q. Was he operated on?

A. He was.

Q. Was—what surgeon performed the operation?

A. Dr. Loux.

Q. The family physician was whom?

A. Mr. Allen's family physician?

Q. Yes.

A. Dr. Boger.

Q. What was the character of the operation?

A. It was a major operation.

Q. That doesn't tell us what it was.

A. It was—may I use medical terms?

Q. Yes.

A. It was a super-pubic operation, to drain the bladder, to prepare him for further operation.

Q. How long was he in the hospital?

A. I don't know how long he was there for I kept no record of my cases.

Q. Did you become acquainted with Mrs. Ailes at that time?

A. At that time, yes.

Q. Did she visit Mr. Allen at the hospital from time to time?

A. Yes.

Q. You saw her there?

A. Yes.

Q. Did you know Mrs. Ailes before you became acquainted with her while she was in charge of Mr. Allen?

A. Never met her before I met her in the sick room.

Q. Did you meet Mrs. Shumway during that time?

A. Yes.

Q. Did you meet Mrs. Reulens?

A. I have no recollection of her.

Q. Do you remember upon one occasion while Mr. Allen was in the hospital that Mrs. Shumway came there and you overheard a conversation between her and Mr. Allen?

A. Well, now, may I ask you what you are referring to?

Mr. Endicott: That is objected to.

By Mr. Starr:

Q. When the subject of the conversation was to make another will?

Mr. Endicott: Objected to.

A. Yes.

Mr. Endicott: I ask that the question be stricken and that the answer also be stricken.

Mr. Starr: I have the right to direct the question to the witness.

Mr. Endicott: The witness is interrogated in a manner, that it seems to me to be entirely irregular.

The Court: I think we better start over again. Strike the question and allow an exception.

By Mr. Starr:

Q. Did Mrs. Shumway come there seldom or frequently?

A. She came a number of times.

Q. Can you recall what happened between her and Mr. Allen upon any occasion when she was there?

A. No occasion except the time that she wanted Mr. Allen to make a will.

Q. What happened then?

A. She brought a Mr. Schreiber there to draw a will up for Mr. Allen.

Q. What happened?

Mr. Endicott: I move that the answer of the witness be stricken. She testified to the actions of other persons or the conclusions of other persons; that is, that she brought Mr. Schreiber there for a purpose.

The Court: I will permit it to stand.

(Exception to caveators.)

By Mr. Starr:

Q. Go ahead. Give us your recollection of what happened on that occasion.

A. It was one afternoon that Mrs. Shumway brought Mr. Schreiber to see Mr. Allen. She said that she wanted Mr. Allen to make a will. I was requested to leave the room, which I did, and when I went back into the room I found the man in a very excited state of mind and I asked him what was the trouble and he said he was a sick man, and couldn't stand all the excitement. I said, "What was the trouble," and he said he couldn't stand all of that; that he wanted everybody to leave the room but Mrs. Ailes.

Q. Had he been in that excited condition before Mrs. Shumway came there?

A. No, sir, he had not.

Q. When Mrs. Shumway came into the room with Mr. Schreiber, who else was there, if you recall?

A. My recollection is that Mrs. Ailes was there at that time.

Q. What happened after Mr. Allen requested everybody to leave the room?

A. After he had seen Mr. Schreiber, then, of course, he didn't make the will, didn't draw up any will at that time; then the people were requested to leave the room.

Q. What did Mrs. Shumway say to Mr. Allen in your presence on that occasion?

A. When Mr. Schreiber came into the room, she said to Mr. Allen, "Here is Mr. Schreiber to draw up the will," as he wanted it; and to me she said, "This is my papa's best friend, Mr. Schreiber."

Q. Can you give us the conversation that occurred after that?

A. No, I can't, because I don't know.

Q. After that occasion, on another day, did you have any talk with Mr. Allen about Mrs. Shumway?

A. Yes, a day or two afterward, he said to me, "You will have to keep her out of the room."

Q. Speaking of whom?

A. Mrs. Shumway.

Q. Did he say why?

A. No, he said he was too sick to be disturbed and he could not have all that commotion.

Q. Did you hear any commotion, or was it only from what Mr. Allen told you after you came back, that you knew that?

A. My evidence that there had been was the condition in which I found the man when I went into the room.

Q. What was his condition?

A. He was very nervous, excited, and his face quite flushed.

Q. After that did Mrs. Shumway endeavor to get into the room where Mr. Allen was?

A. After Mr. Allen was in better condition, better condition surgically, that he could see people, yes.

Q. Was she permitted to see him?

A. She was.

Q. Did he ever object to having Mrs. Ailes in the room with him?

A. Never, in my presence.

Q. Did you hold conversations with Mr. Allen from time to time while he was in the hospital?

A. Yes.

Q. Did you talk with him?

A. Yes.
Q. Did he talk rationally or otherwise?
A. Quite rationally.

The Court: What is the date of this?

Mr. Starr: 1923.

Cross-examination.

By Mr. Endicott:

Q. Are you under subpoena?
A. I am not.
Q. Were you asked by Judge Beeber and Mr. Alker to come here and give this testimony or similar testimony?
A. No, sir.
Q. Did you have a consultation with these gentlemen here?
A. I saw those two gentlemen in the Jefferson Hospital.
Q. Did they ask you to come here and testify?
A. No, sir.
Q. Did they ask you about incidents connected with the attempt to make a will at the Jefferson Hospital?
A. They asked me was there any attempt to make a will and I said that there had been. They said, "By whom?" I also said, "By whom?"
Q. What is your best recollection of the length of time that Mr. Allen was under your care?
A. I couldn't tell you because I didn't keep, I

don't keep any record of cases, the length of time that I have them.

Q. Have you seen Mrs. Ailes since Mr. Allen was discharged from your care?

A. Once or twice, perhaps, yes.

Q. On what occasions?

A. On very friendly occasions, just friendly visits.

Q. Where did those visits occur?

A. She came to see me while I was on duty in the hospital.

Q. How long ago?

A. I couldn't tell you how long ago, I don't remember.

Q. What year?

A. I don't know.

Q. More than a year?

A. I don't know.

Q. Can you tell us what length of time intervened from your discharge from the case and your next meeting with Mrs. Ailes?

A. Indeed I could not.

Q. Was it after Mr. Allen's death?

A. No, I know there was one time I had seen her between the time I had taken care of him and his death, but I don't know when it was.

Q. Where was that meeting?

A. At the hospital.

Q. Have you seen her several times since?

A. Yes, I have seen her once since.

Q. Where was that?

A. At the hospital.

Q. Did she go over this case with you?

A. No.

Q. Did she talk with you about the attempt, the attempted making of the will?

A. No, she did not.

Q. Has not that been discussed between you and Mrs. Ailes?

A. Absolutely not.

Q. Have you discussed it with anybody else?

A. Absolutely not.

Q. How did you know what you were to testify to when you came here today?

A. I had been interviewed by Mr. Laws.

Q. You did discuss it with somebody, then?

A. Yes.

Q. You talked this matter over with Mr. Laws?

A. Yes.

Q. How long ago was that?

A. I believe that was in February.

Q. Will you recall as best you can all of the events that you remember in connection with Mr. Schreiber's visit, starting when you first knew that he was to be there, and how you knew it?

A. Mrs. Shumway brought the man there in the afternoon.

Q. That was the first knowledge that you had that he was coming?

A. Yes.

Q. Who was present in the sick room when they arrived?

A. My recollection is Mrs. Ailes and I were the only two in the sick room.

Q. Was Mrs. Ailes regularly with Mr. Allen?

A. She was there frequently, whenever she could come to the hospital.

Q. We do not know how often she could come,

but tell us whether or not she was there every day or night?

A. I don't know whether or not she was there every day. She was there frequently.

Q. What part of the day would she remain?

A. Such time as she could spend there.

Q. You don't know how much time she had. Tell us whether or not she was there the best part of the day, or half a day or half hour or what?

A. At times half a day; then at different times she would come at nine o'clock in the morning and leave in the early evening.

Q. She spent more than half the daytime there?

A. At times.

Q. You say when Mrs. Shumway and Mr. Schreiber came to the sick room that you and Mrs. Ailes were present with Mr. Allen?

A. Yes.

Q. Relate the conversation that took place.

A. Mrs. Shumway said she was bringing Mr. Schreiber to make this will as Mr. Allen wished it to be done.

Q. To make this will?

A. That she wanted to have this will drawn up as Mr. Allen would wish it. I was requested to leave the room.

Q. By whom?

A. Mrs. Shumway. Then she talked to Mr. Allen.

Q. Did you leave?

A. I did.

Q. Did you hear any conversation other than what you have related?

A. No.

Q. Who remained in the room when you left?

A. Mrs. Shumway.

Q. Who else?

A. No one, to my knowledge.

Q. Mr. Schreiber was there, wasn't he?

A. Not at that time. He came into the room later.

Q. I started to question you as to the events that happened about the making of the will. I understood you to say now that first Mrs. Shumway came to the room when you and Mrs. Ailes were present?

A. Yes.

Q. Mr. Schreiber was not with her at that time?

A. Not in the room.

Q. Did Mrs. Ailes leave the room?

A. I have no recollection whether or not she did.

Q. So that so far as you know Mrs. Ailes remained in the room, or at least you have no positive recollection?

A. I have no recollection whether she did or not.

Q. How long were you away from the room?

A. No longer than ten or fifteen minutes.

Q. Did you see Mr. Schreiber outside of the room?

A. No, I did not see Mr. Schreiber outside of the room.

Q. Where did you go when you left?

A. Out into the corridor, into the other room, on the hall.

Q. How were you recalled to the room?

A. I was not recalled to the room by anyone, but I went back to see how my patient was.

Q. You went back of your own accord?

A. I did.

Q. Whom did you find in the room then?

A. Mrs. Shumway was in the room then.

Q. Who else?

A. My recollection there was not anyone else.

Q. What happened to Mrs. Ailes in this interim that she was there, when Mrs. Shumway came?

A. My recollection is quite vague in that.

Q. When did Mr. Schreiber appear to you?

A. When, did you say?

Q. Yes.

A. Very shortly after I went into the room.

Q. That was after your return?

A. After my return to the room.

Q. Did he come by himself?

A. He came in the room by himself, yes.

Q. Where had he been? Had you seen him outside the room?

A. I did not. He may have been in the room next, which was a sun room, a rest room.

Q. After you returned to the room you found, at least Mrs. Shumway there and you have no recollection whether or not Mrs. Ailes was present?

A. No.

Q. And without any introduction Mr. Schreiber walked in?

A. I have no recollection of that, as to how Mr. Schreiber was presented to the room.

Q. What conversation took place after Mr. Schreiber arrived?

A. Mrs. Shumway said to Mr. Allen, "Papa, here is Mr. Schreiber, to make a will for you." She turned to me to say, "This is Mr. Schreiber, my papa's best friend."

Q. Then what happened?

A. It was talked to make a will there.

Q. There was talk about making a will?

A. Yes, but Mr. Allen at that point was very highly nervous and excited, and turned his back toward the people in the room and said he was too sick, that he couldn't be bothered with that.

Q. Who were the people in the room that he turned his back on?

A. Mrs. Shumway, Mr. Schreiber and myself.

Q. Where was Mrs. Ailes?

A. That I don't know.

Q. Are you willing to say that she was not present during any of these meetings?

A. I am not willing to say anything, for my recollection does not serve me, in that light.

Q. Do you remember any discussion as to the terms of the will?

A. No, I knew nothing at all about any of that.

Q. There was no will drawn that day?

A. No.

Q. Nor any other day while Mr. Allen was in your charge?

A. No.

Q. Did he make any statement in your presence as to whether he intended or did not intend to make a will?

A. No, sir.

Q. Do you recall Albert L. Siegrist visiting your place at the Jefferson Hospital?

A. No, I do not.

By Mr. Starr:

Q. Have you any recollection at all with respect to Mr. and Mrs. Ailes, in connection with the Schreiber visit, whether she was present at the time that

Mr. Schreiber was present in the room, or whether she was present when you were requested to leave the room?

A. I have no recollection.

Q. Are you sure in your own mind that Mrs. Ailes was present on that occasion ——

Mr. Endicott: Objected to. That is not rebuttal.

The Court: I think it is proper for him to ask her whether or not she left an inference. He is simply trying to make it a fact.

Mr. Starr: I am trying to find out what her recollection is in connection with Mrs. Ailes' connection.

The Court: I will permit it.

(Exception to caveators.)

By the Court:

Q. Are you prepared to say whether or not she was there on this day, or not?

A. No, I am not.

By Mr. Endicott:

Q. In your first examination you definitely said that Mrs. Ailes was present when Mrs. Shumway first called. Do I understand you now to have some doubt about it?

A. No, I have no doubt about it. She was in the room.

Q. She was in the room when the proceedings were started?

A. Yes.

(Witness excused.)

MILDRED AILES FLEMING, sworn.

Direct examination.

By Mr. Starr:

Q. What is your age?

A. Twenty-nine.

Q. You are a daughter of Mrs. Ailes?

A. Of Catherine and Frank Ailes.

Q. You were married when?

A. In 1923, in June.

Q. You were living where at that time?

A. 4311 Walnut Street.

Q. Philadelphia?

A. Yes.

Q. You are living where at the present time?

A. In Wyomissing, Pennsylvania, a suburb of Reading.

Q. Near Reading?

A. Yes.

Q. Do you remember Mr. Allen in his lifetime?

A. Yes, sir.

Q. When was the first you became acquainted with him?

A. I think it was the year 1919.

Q. You were living when then?

A. On Trinity Place, West Philadelphia.

Q. You were living there with your father and mother?

A. Yes.

Q. Your family consisted of whom at that time?

A. My younger sister, my mother and father.

Q. That is, your father and mother and you two young ladies?

A. My sister, who was not married. Of course, my other two sisters were married but not living with the family at that time.

Q. There are four children?

A. Yes.

Q. And you and your sister lived with your father and mother at Trinity Place?

A. Yes.

Q. Where was the other girl living?

A. I think the other was living in Walnut Street, they were living together in a house on Walnut Street.

Q. When did Mr. Allen become an inmate of your father's and mother's house?

A. Well, I would say shortly after the death of his wife.

Q. What year was that?

A. It was in 1919, as I recall, in the fall.

Q. You were then living where?

A. In Trinity Place, Philadelphia, when he came to the house.

Q. How long were you there?

A. He didn't come to live with us then. He was only a caller at the house at that time. He didn't live at Trinity Place at all.

Q. Where were you living at the time that he came to live with your father and mother?

A. At 4311 Walnut Street.

Q. Do you remember when that was?

A. That was before Christmas of that year, because I remember Christmas in the home.

Q. Then it was the latter part of 1919?

A. Probably November.

By Mr. Endicott:

Q. You were living where then?

A. 4311 Walnut—no, 1411 Allegheny Avenue.

By Mr. Starr:

Q. When was that?

A. In November. Presumably, November or the latter part of October, 1919, as I recall.

Q. How long did he continue living with you at the Allegheny Avenue house?

A. Until, I would say, the early summer, possibly or late spring of the following year.

Q. 1920?

A. Yes.

Q. Then where did you go to live?

A. Back to Trinity Place because his house was supposed to be sold; he had his house sold; he had a deposit on it and the deal was to go through, but it didn't.

Q. Did he come back to live with you at Trinity Place?

A. No, my sister and I didn't go back to Trinity Place, but my mother did. We stayed with Mr.

Allen on Allegheny Avenue for possibly two or three months. My sister and I were doing some sewing and it was more convenient for us to do it there than to do it at our home.

Q. Then you and your sister remained at Allegheny Avenue?

A. After my mother took over the house at Trinity Place.

Q. And Mr. Allen remained there with you?

A. Yes.

Q. The family consisted of you three young ladies and Mr. Allen?

A. It was hardly fair to say that. We didn't live at the house. We were there. We were doing some sewing. Secondly, it seemed advisable for us to be there.

Q. Where did you get your meals?

A. Out, most of the time, or we went to mother's to eat. We frequently went over there.

Q. He was with you?

A. Yes, frequently.

Q. You were employed at the time?

A. Yes, I was employed at the time.

Q. Did you ever live at the Walnut Street house?

A. Yes.

Q. After Mr. Allen came to be a member of the family?

A. Yes.

Q. How long did you remain there?

A. I was married in June, 1923. We were living there at the time. We had come to Pleasantville for our summer home, then.

Q. Did Mr. Allen come with you?

A. Yes.

Q. Did he also live with the family at the Walnut Street address?

A. Yes, at 4311 Walnut Street.

Q. After your marriage in June, 1923, where did you go to live?

A. Reading.

Q. Did you visit your parents?

A. Practically every week-end the first year that I was married.

Q. Altogether, about how long did you live at home, at the various places when Mr. Allen was a member of the family?

A. From 1919 to 1923.

Q. How often after 1923 did you visit your family when Mr. Allen was a member of the family?

A. I came down—let me see, I was married in June and I came down to spend a great deal of the time that summer, with my parents, I had no children then, at the time; my first child was born and then I used to spend the week-ends with them.

Q. From the time that Mr. Allen became a member of the family until he died, how did he treat you children?

A. Well, he just simply seemed like one of us, that is all. We were all very fond of him, and there was lots of fun to have around. There was really no one to do for him and there was nothing too much that he could do for us.

Mr. Endicott: I ask that that be stricken as not responsive.

The Court: Strike out the latter part.

By Mr. Starr:

Q. What did he do for you?

A. If we wanted to go out for dinner he was always willing to go and take us along and it seemed to give him a great deal of pleasure.

Mr. Endicott: I ask that that be stricken out.

The Court: Yes.

By Mr. Starr:

Q. State what occurred, what was done?

A. Shall I state the facts on particular occasions?

Q. Yes, that you recall.

A. We went to dinner at numerous times and he took us out over along the Boardwalk. He frequently bought us presents, including clothes and jewelry, not expensive jewelry, but French jewelry, so to speak; it seemed to give him a great deal of pleasure.

Mr. Endicott: I move that that be stricken, that it seemed to give him a great deal of pleasure.

The Court: Yes.

By Mr. Starr:

Q. What else did he do besides giving you clothing and jewelry?

A. He never missed a birthday or a Christmas to

give us all very lovely presents, which was a natural thing for him to do.

Mr. Endicott: I ask that be stricken.

The Court: Yes, that part where the witness says it was the natural thing for him to do, may be stricken.

By Mr. Starr:

Q. What else do you recall that he did for you?

A. He spent a great deal of time in Reading, at my home, and was very wonderful to my children when they were born, both of my children, he bought them their baby coaches and a number of baby clothes and spent time with me at my own home.

Q. When was he there the last time before his death in October, 1928?

A. He was there in the fall. It was September, possibly August; however, it was during the summer of 1928.

Q. Do you know how he happened to be there?

A. Mother and "papa" as we called him, were driving up and they stayed all night at our house, and went over to Galen Hall, or one of the mountain resorts, and came back to our house. I don't know whether he stayed at our house more than over night, or not, but it seems like that.

Q. How often did he visit you?

A. In Reading?

Q. Yes.

A. At least five times, possibly more.

Q. Did he ever take you on trips?

A. No, I have children. I couldn't do that

Q. Before you were married, before you had children, did he ever take you on trips that you recall, anywhere?

A. No, I do not.

Q. Do you know whether or not he gave your mother presents?

A. He gave mother any number of presents.

Q. During all this time, from 1919 up until the time of his death, did you carry on conversations with Mr. Allen?

A. Yes, indeed.

Q. Were these conversations rational or irrational?

A. Entirely rational.

Q. During all that period did you ever see him do anything or say anything to indicate that he was of impaired mentality?

A. I think not.

Q. Do you remember the year that he was in the Jefferson Hospital?

A. Yes, I do.

Q. What year was it?

A. He was in there shortly before my marriage, in 1923.

Q. What about Christmas presents. Did he give Christmas presents?

A. We always had big Christmas celebrations when he gave us all very lovely presents.

Q. Did he give you any birthday presents?

A. Birthday presents always; he never missed a birthday and never missed my children's birthdays.

Cross-examination.

By Mr. Endicott:

Q. When did you first know Mr. Allen?
A. In 1919.
Q. Where did you first meet him?
A. At our home.
Q. Do you know how he came to be there?
A. I think he just came to call on my mother, as I recollect.
Q. How old were you at that time?
A. Nineteen.
Q. How long an interval of time elapsed before Mr. Allen became a member of your parents' family?
A. I think it was quite a short time.
Q. A month?
A. Possibly more.
Q. Do you know the terms or the arrangements under which he became a member of the family?
A. I do not.
Q. Did Mr. Allen ever give you any money?
A. Frequently.
Q. I show you check dated February 24, 1923, to the order of cash, signed "Catherine Ailes, power of attorney," and endorsed "Mildred E. Ailes," and ask you if you recall receiving the proceeds of that check—seventeen dollars? (Check shown witness.)
A. It is only natural that I would receive the proceeds. I wouldn't have endorsed it if I hadn't.
Q. Did you receive it?
A. Apparently so. I have no recollection at all of the incident. They were too numerous.

Mr. Endicott: We want to get this now marked so that anything that is marked is to get in evidence.

Mr. Starr: Have it specially marked. These checks which are called to the attention of the witness may be especially marked so that they may be identified.

Mr. Endicott: I think they ought to be marked definitely, in evidence, now.

Mr. Starr: I have no objection.

By Mr. Endicott:

Q. I show you check dated March 1, 1923, on the Northwest Trust Company, drawn to the order of Mildred Ailes, for fifty dollars, made by Mrs. Kathryn Ailes, power of attorney, and ask you if you recall the check in question? (Check shown witness.)

A. Yes, that particular check I do recall.

Q. Do you recall that it was your endorsement?

A. It has.

Q. Do you know what that check was given to you for?

A. Yes.

Q. Tell us.

A. Surely. It was prior to my marriage. Mr. Allen had asked my mother to see that I had everything I wanted when I was married, and that particular check was in payment of a suit of clothes that I bought.

Q. I notice the check is signed, "Mrs. Kathryn

Ailes, power of attorney." Do you know whether or not that was drawn against Mr. Allen's funds?

A. It naturally would be. My mother wouldn't have the power of attorney if it wasn't.

Q. I asked you did you know?

A. I do know.

Q. You knew that this check was given to you to withdraw funds belonging to Mr. Allen, in the Northwestern Trust Company?

A. That is evident.

Mr. Endicott: It is not evident to me, on the face of it.

Q. I show you check dated May 5, 1923, on the Northwest Trust Company, drawn to the order of Rosser B. Fleming. Do you know who Rosser B. Fleming is?

A. He is my husband.

Q. That check is in the sum of $28.97, and is signed "Mrs. Kathryn Ailes; P. of Atty.," and endorsed "Rosser B. Fleming; R. B. Fleming, M. E. Ailes," and I ask you if you received the proceeds of this check. (Check shown witness.)

A. I did.

Q. Do you recall the purpose for which it was given to you?

A. I do.

Q. Tell us what that was?

A. Yes, I will be glad to. I was engaged to Mr. Fleming at the time he gave me that check and he asked me to buy some things; I was saving for my home.

By the Court:

Q. He gave you the proceeds of the check?

A. Yes.

Q. That was given to him by your mother?

A. Yes; she had given that in payment of some tires. Mr. Fleming asked me to buy some lamps for our home. He had given up some theatre engagements ——

Q. I show you check dated February 28th, 1920, on the Broad Street Bank (marked Exhibit C48), drawn to the order of Mrs. K. Ailes, for $178.00, signed "Albert Allen," endorsed "Mrs. K. Ailes," and "M. E. Ailes," and ask you if you received the proceeds of that check?

A. I did not.

Q. Is that your signature? (Paper, check shown witness.)

A. That is my signature but that check was deposited in the Commercial Trust Company to my account and the money given to mother.

Q. You did receive, in your account, credit for the proceeds of that check?

A. It is possible I did. I see on here, "Commercial Trust Company," and "Federal Reserve Bank of Philadelphia." That would naturally have to have my signature on it to go through the Commercial Trust Company because I was depositing with the company at that time but I couldn't tell you what the proceeds of the check were for.

Q. You didn't get the benefit of it?

A. I did not.

Q. I show you check dated July 21, 1921, to the

order of Mildred E. Fleming, for $15.00 and signed "Albert Allen" (Exhibit C49).

A. That is dated wrong. I am sorry. It is 1924 —it should be. You can see by the perforation here.

Q. It is dated July 21, 1921, but the perforation shows payment on July 26, 1924. I ask you if you received the proceeds of that check?

A. "For deposit only;" yes, of course. I am sorry, but it is only natural that I should receive the proceeds of the check that I have endorsed.

Q. You did then, receive the proceeds of that check?

A. I did, for my husband signed, endorsed it for me. It was probably put in his own account.

Q. Do you recall why that was given to you?

A. I do not. (Exhibit C49.)

(Exhibits C48, check for $178, admitted. C49, check for $15.00, admitted.)

Q. Where do you live?

A. Wyomissing, Pennsylvania.

Q. Do you own your property there?

A. I do.

Q. When did you buy it?

A. Very nearly 3 years ago.

Q. Nearly 3 years ago?

A. Yes.

Q. That would be back in 1926?

A. I believe so. What is this—1929?

Q. The early part of the year?

A. In December.

Q. What kind of house is it?

A. You will have to be more specific; I am sorry, I can't answer that question.

Q. Is it a cottage, a dwelling, detached, or otherwise?

A. A semi-detached home.

Q. Semi-detached?

A. Yes.

Q. Did Mr. Allen contribute in any way to the cost of its purchase?

A. No, sir.

Q. Where did the purchase price come from?

(Objected to.)

A. That is so silly I won't even answer it.

Mr. Starr: Objected to. I object to the question. It is not proper cross-examination.

Mr. Endicott: There is in the testimony somewhere a statement that Mr. Allen bought Mrs. Ailes' daughters a home. I don't recall just where it is but I noticed it in going over the testimony and it seems to me that in view of that fact and in view of the close relation of this lady to the testator, as part of the household, that we should be permitted to inquire into that matter.

Mr. Starr: You have asked her that question and she has already denied it.

The Court: I will permit it.

(Exception to proponents.)

By Mr. Endicott:

Q. Where did the purchase price of that property come from?

A. Am I to answer it? Naturally, it came from my husband.

By the Court:

Q. Is the title in your husband's name?

A. In our joint names.

By Mr. Starr:

Q. There is one question I omitted to ask you. Did Mr. Allen give you any wedding present before your marriage?

A. He gave me a bedroom suite of furniture and a secretary.

Q. Furniture for your house?

A. Yes, a bedroom suite for my house, a second bedroom suite, and secretary.

(Checks marked Exhibits 45 to 49, handed to Mr. Starr.)

By Mr. Starr:

Q. I call your attention to check marked C49, and ask you if you have any recollection at all with respect to the circumstances under which that check was given? (Check shown witness.)

A. I can only presume.

Q. I don't want any guess about it.

A. I am sorry. I can't be positive, about that check.

Q. I call your attention to C45, check—when I handed you a check before I made a mistake, I handed you the wrong check—and call your attention to Exhibit C45 being a check for $17.00 and ask you, can you tell us what that check is for?

A. No; I simply endorsed that check for my mother.

Q. You don't know whether you ever got the money or not?

A. No, I doubt very much whether I did.

Q. You explained about the check marked C46?

A. Yes.

Q. You have also explained about the check marked C47?

A. Yes.

Q. And check marked C48, for $178.00, you have no recollection of that check or the circumstances under which it was given?

A. I believe I told you; merely that that was cashed for mother. I guess it was cashed. Yes, that was cashed for mother.

Q. The check was drawn to the order of your mother by Mr. Allen and then endorsed by you underneath her name?

A. Yes, but it would be at the bank where I cashed it.

Q. Take check marked C49, for $15.00 and ask you whether or not you have any recollection of the circumstances under which that check was given to you?

A. I am quite sure about it, yet I am not absolutely certain.

Q. What is your best recollection?

A. I believe that that was for a tire for the car, in all probability.

By Mr. Endicott:

Q. You say it was for a tire for the car. That is, whose car? Whose car do you refer to?

A. I refer to mother's car.

By Mr. Starr:

Q. That raises another question. Did Mr. Allen have a car, an automobile, or did he use your mother's car?

A. He used mother's.

Q. He never owned one himself?

A. He gave the cars to mother; several cars.

Q. Was he taken out on automobile rides with the rest of the family?

A. Yes, of course.

Mr. Endicott: That is certainly a leading question.

Mr. Starr: I suppose that can be answered yes, or no. That is all.

(Rev.) Stephen F. Sliker, sworn.

By Mr. Starr:

Q. Where do you reside?

A. Pleasantville.

Q. How long have you lived there?

A. I came there in the middle of October, 1927; about the 19th, I imagine.

Q. You are a minister of the gospel?

A. Yes.

Q. Of what denomination?

A. Methodist Protestant.

Q. Is there a Methodist Protestant church in Pleasantville?

A. Two of them.

Q. You are connected with which one?

A. The one at the corner of Ridge and Main Street, the Mount Pleasant Church.

Q. Did you know Mr. Allen in his lifetime?

A. I met him the first day I arrived in Pleasantville at a reception at the church hall.

Q. That was in 1927?

A. About the middle of October.

Q. Did you see much of him from that time up to the time of his death?

A. Quite often I came in contact with him.

Q. Did he attend your church?

A. Sunday morning services; and quite frequently at night services.

Q. Was he a regular attendant there?

A. Yes, during the special meetings in the spring

of 1928 he was faithful in the special services; came nearly every night.

Q. During the time you knew him, from your observation of him, what would you say as to his physical condition?

A. He looked to me to be very fit, physically.

Q. Did you hold any conversations with him from time to time?

A. Yes.

Q. Generally upon what topics?

A. Well, usually, about my yard and garden. He came over frequently around the garden and conversed with me.

Q. About what were the topics of conversation?

A. Well, general. I wouldn't say I had any particular thought in mind concerning the conversation.

Q. Did he talk intelligently or otherwise?

A. Very intelligently, I thought, rationally.

Q. From anything you observed with respect to Mr. Allen from time to time, from the time you first knew him, up to the time of his death, what did he say or what did he do, if anything, that would lead you to believe that he was of impaired mental condition?

A. Nothing whatever.

Q. How late before his death did you come in contact with him?

A. I don't recollect exactly, but I think about a week before he took the trip to Virginia.

Q. When did you see him then?

A. If I remember, I don't think he was at the church since before he went away, about the Sunday before that; I think it was about a week that I saw him, at the corner. Quite frequently he would

come over, and I would see him at different times in my yard, in my home.

Q. Was he able to walk around?

A. Yes, he was quite active for his age.

Q. Did you ever talk with him about business affairs?

A. Not in particular. In general, we talked about church work. He was pretty shrewd in the way of doing business.

Q. How did his shrewdness manifest itself?

A. I don't know that I have any particular case in mind. I know he spoke to me one time about the condition of the church, and he thought a vestibule would improve the appearance of the church there, some; and he told me at the time that he thought it undoubtedly needed a new addition on the side and the grounds repaired generally.

Q. Did he ever talk to you about investments?

A. No, I don't recall any time.

Q. Did he ever talk about his contributions to this church, did he make contributions from time to time?

A. I don't know personally about that, because I haven't anything to do with the finances at all.

Q. Did he or not attend church entertainments and suppers and the like?

A. Yes, indeed.

Q. Was Mrs. Ailes also a member of your church?

A. No, and Mr. Ailes was not a member, either, but he was just attending there. He was contemplating joining and told me that, but he never did join.

Q. He never joined?

A. He never did.

Q. Did Mrs. Ailes attend your church?

A. Oh, yes, does still.

Q. Did you ever visit Ailes' household?

A. Once, I believe.

Q. When was it, do you remember?

A. I couldn't say exactly, but it was—I have been there several times, and but once while Mr. Allen was living. I think I have there once since. Once I performed a marriage ceremony for one of the daughters, that is when Mr. Allen was there. It was in the evening.

Q. Do you remember when it was?

A. I have my record home, not here.

Q. From your observation of Mr. Allen, from the time that you knew him, up to the time of his death, was he competent to transact business?

A. I would judge him to be, yes.

Cross-examination.

Q. Are you still pastor of the church, the Mt. Pleasant Church?

A. Yes.

Q. Do you know who makes contributions other than that which comes in on the plate on Sundays?

A. Do I know? Well, I don't suppose I would know unless I heard it through the transaction of business, in an official way. I never otherwise hear anything of those matters, particularly.

Q. Did you ever hear of Mr. Allen making any gifts to the church other than those which he gives in on the collection plate?

A. No; I wonder if I would be permitted to make an explanation to clear up the testimony in this

case given by Mr. Lippincott, when he gave his testimony? Would I be permitted to do that?

The Court: You cannot change his testimony. He will have to come here to do that.

Q. (Last question read to the witness: "Did you ever hear of Mr. Allen making any gifts to the church other than those which he gives in on the collection plate?")

A. No, I did not.

Q. Did you observe any change in the physical condition of Mr. Allen from the time you first knew him up until the time you last saw him?

A. No, I did not.

Q. When he talked to you about improvements to the church, which he thought would be bettered by it, did you talk to him about the method of making the improvements and the financing of the improvements?

A. No, we were not ready then.

Q. Did you ever ask him for a donation to the church?

A. Never.

Q. Or any of your parishioners detailed for that purpose by you?

A. Never.

(Witness excused.)

WINFIELD ADAMS, sworn.

Direct examination.

By Mr. Starr:

Q. Where do you reside?
A. Pleasantville, New Jersey.
Q. How long have you lived there?
A. Seventy-two years.
Q. What is your occupation?
A. I have had several in my time. I learned the carpenter trade; nowadays I am following the raising and moving of houses.
Q. You are still in that occupation?
A. Yes.
Q. Did you know Mr. Allen in his lifetime?
A. I met him, yes.
Q. When was it that you met him, do you recall?
A. I don't recall the exact year, but I met him somewheres between eight or nine years ago, moving a house for him. I moved a house for him.
Q. Did you know him before that time?
A. No, sir.
Q. What work did you do for him?
A. Moving a house.
Q. What house was it you moved?
A. What house?
Q. Yes.
A. I don't know that it had any particular name. I don't know the number of it. I moved the house for him. Mr. Ailes lives in it now.
Q. That is the Ailes residence at the present time?

A. Yes.

Q. That is the house that you moved in?

A. Yes.

Q. Where did you move it from?

A. Just about 100 feet.

Q. Who made the bargain for the moving of the house?

A. Who made the bargain?

Q. Yes.

A. I guess Mr. Allen made the most of it.

Q. Tell us what happened.

A. They was strangers to me. I was a little queer. I said, "Who pays the bill?" He said, "I pay the bills, but I expect to give it to this lady and gentleman and more of it." So I didn't say any more. I didn't care anything about it. I got my pay.

Q. He said he expected to give it to them and more with it?

A. More with it. I don't know what the "more" was. I moved it and got my pay.

Q. Did you come in contact with Mr. Allen from that date up until the time of his death?

A. Yes.

Q. How frequently?

A. Within a week, within a week or two or a month; sometimes every other day, I saw him on the road.

Q. Did you hold conversations with him?

A. Yes. I used to have some property where he took a mortgage on it and paid me off, where I held the property.

Q. Is that the only transaction that you had with him?

A. That was in the business part, the money part, yes.

Q. When was that?

A. I couldn't tell exactly, but a couple years ago, I guess.

Q. What year?

A. About two years ago.

Q. If it was two years ago, that would be 1927. Was it that year?

A. I couldn't tell you for certain what year it was.

Q. What were the business dealings you had?

A. I had property and he loaned money on the property to the man that paid me off.

Q. You owned the property and sold it to somebody else.

A. Yes.

Q. He made the loan?

A. Yes.

Q. And a part of the money came to you?

A. I got the money.

Q. He paid you the money?

A. Yes.

Q. Personally, I mean?

A. Yes, paid it to the office of the real estate company, he was there.

Q. At the settlement?

A. Yes.

Q. Did his check pay the bill, or don't you know?

A. No, I didn't get that check because the insurance company got it.

Q. Do you mean the title company?

A. Yes, the title company gave me the check.

Q. On these various occasions when you came in

contact with Mr. Allen, did he talk with you in a rational way?

A. Yes.

Q. In a sensible way?

A. Yes, sensible way.

Q. What way?

A. He wanted to hire me money to build houses.

Q. How late in his lifetime did he make that kind of proposition to you?

A. I didn't want the money.

Q. When did this conversation take place?

A. About two years ago.

Q. The proposition was to loan you money so that you could build houses?

A. Yes.

Q. Did you see or hear him do anything that led you to believe that he was of failing mentality?

A. Not a particle.

Q. Did he have a keen mind or otherwise?

A. Keen.

Q. Did you ever talk to him about his health?

A. No.

Q. About his physical condition?

A. No.

Q. Did you ever talk to him or did he talk to you about Mrs. Ailes?

A. No.

Q. From your observation from the time that you came in contact with him, in your opinion, was he a man who was able to conduct his business affairs generally?

A. I should say so, yes.

Q. Was he able to conduct his business intelligently?

A. Yes.

Q. Did you visit the Ailes household when Mr. Allen lived there?

A. I have been in it, was in it two or three times, that is all, stopped by and said, "How do you do?"

Q. With whom did you have a conversation at that time?

A. With him and Mrs. Ailes.

Q. Did she talk intelligently upon these occasions?

A. Always.

Cross-examination.

By Mr. Endicott:

Q. Is your name Wynfield Scott Adams?

A. No; no "Scott" to it.

Q. Just Wynfield Adams?

A. Just Wynfield Adams.

Q. Who was present when you negotiated with or for the moving of the house which Mrs. Ailes now occupies?

A. Mrs. Ailes and her husband.

Q. Did Mrs. Ailes take any part in the conversation?

A. No.

Q. Will you repeat the conversation as you recall it?

A. Would I repeat it?

Q. Yes.

A. I haven't much to repeat other than in a business way, doing business.

Q. Do you remember what was said by Mr. Allen when you met him on this occasion?

A. Do I remember what he said?
Q. Yes.
A. He said he wanted the house moved.
Q. Where did the conversation take place?
A. On my porch, my house.
Q. On your porch?
A. Yes, sir.
Q. Who was present besides Mr. and Mrs. Ailes?
A. My wife.
Q. Is it your business to move houses?
A. Has been for 30 years.
Q. You said in your direct examination that you did not care who the deal was with as long as he was going to pay the bill. Do I understand that you said that?
A. Yes, so that I got my money for it, whether she paid it or Mr. Allen paid it, or who did, or who paid it.
Q. What raised the question in your mind as to who should pay the bill?
A. Because I wanted to know. I moved several of them and never got my money. You would do that, too. That is why I asked.
Q. If you were dealing with Mr. Allen, wouldn't you suppose he was going to pay the bill?
A. No, I didn't know. He was talking, of course. Mr. Allen was talking and the others were talking, and my wife was in there and they was talking amongst themselves.
Q. Did you get your money?
A. Yes, without any waiting for it.
Q. Who paid you?
A. Mr. Allen.
Q. How?

A. He gave it to me in a check.

Q. What bank was it on?

A. I don't remember. I deposited it. I didn't care.

Q. You had a further interview with Mr. Allen in connection with a mortgage matter, didn't you? You sold the property, and in order to make the deal the buyer had to raise money and he got the money from Mr. Allen?

A. He got the money. I didn't know where he got it. The title company furnished it.

Q. Did you understand my question?

A. No, I didn't.

Q. (Last question read to the witness by the stenographer: "You had a further interview with Mr. Allen in connection with the mortgage matter, didn't you? You sold a property, and in order to make the deal the buyer had to raise the money, and he got the money from Mr. Allen?")

A. Yes, that was it.

Q. That was the way it was?

A. Yes.

Q. Did you make arrangements for the money?

A. No, I didn't make arrangements for the money at all.

Q. Do you know who did?

A. No.

Q. Did you talk to Mr. Allen about the transaction before the time of settlement?

A. No, he called me at the title company in Atlantic City, and he was there.

Q. Who else was there?

A. I didn't know at the time; didn't know who they were.

Q. Was Mrs. Ailes there?
A. No.
Q. How long ago was it?
A. A couple of years ago, I think.
Q. How much was the amount of the mortgage or loan?
A. I don't know that.
Q. Where was the settlement? Could you give us the name of the company?
A. A title company in Atlantic City.
Q. A title company?
A. Yes.
Q. Don't you know the name of it?
A. No.
Q. Do you know the building it was in?
A. I couldn't call it to mind now.

(Witness excused.)

MRS. FLORENCE W. LEWIS, sworn.

Direct examination.

By Mr. Starr:

Q. What is your husband's name?
A. Carlton E. Lewis.
Q. What is his business?
A. Auto financing and insurance.
Q. You live where?
A. Pleasantville.
Q. How long have you lived there?

A. Since December 31, 1926.

Q. Did you know Mr. Allen in his lifetime?

A. Yes.

Q. Do you know when you first became acquainted?

A. The first week of May, 1927.

Q. How did you become acquainted?

A. He came to the office next to my husband's place, Mr. Mitchell's office, frequently on business; our doors were open between, communicating, and that is how I met him, through the introduction of Mr. Mitchell.

Q. Mr. Mitchell introduced him?

A. Yes.

Q. That was in May, 1927?

A. The first week in May.

Q. Did you ever know him before that?

A. No, sir.

Q. How frequently did he talk to you after that time?

A. Frequently, every day, for I was working in my husband's office, except Saturdays and Sundays, two or three hours a day.

Q. He came in there and talked?

A. Not to me; he came in the office to see Mr. Mitchell. Mr. Mitchell was very rarely in and he would have to wait and he talked to me.

Q. Did he ever say anything to you about his stepdaughters?

A. Which one?

A. Well, we talked about his life from early boyhood, at times, like elderly men do, and he spoke of his two marriages and his stepdaughters, but I don't remember any particular thing except about one he

said that she was married to a Count, or No-Account, and called her "Lil."

Q. He called her what?

A. "Lil."

Q. Do you remember the name he gave her?

A. He never called her by any other name. That is the only way he mentioned her to me.

Q. Do you remember when he made this statement to you?

A. Not the exact date. We had several conversations along that line and different things would come up, and I suppose it would bring these things back to his mind.

Q. In what year did this occur?

A. From May, 1927, until the last of June, 1928. I talked to him frequently during those times.

Q. June, 1928?

A. That was the last time that I had talked to him. I seen him that day.

Q. What did he say about his stepdaughters?

A. He never said anything about his first wife's daughters except in a favorable way, but his second marriage was an unhappy marriage.

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

By Mr. Starr:

Q. You can repeat only what he said. Did he tell that to you?

A. Yes.

Q. He told that to you?

A. Yes.

Q. Go ahead.

A. I asked him why he didn't live with some of his stepdaughters, and he said they all had homes of their own. I said, "That one you have living in one of your homes, why don't you live with her?" And he said, "I could never live with her." I asked him why, and he said, "Well, she is not a woman like you or Mrs. Ailes."

Q. Was there anything else he said about her?

A. Well, I just wouldn't like to say everything.

Q. Did you know Mrs. Ailes at that time?

A. No.

Q. When did you become acquainted with Mrs. Ailes?

A. I didn't meet her until April, 1928, then only to say, "How do you do," as an introduction.

Q. You had no conversations with her at all?

A. No.

Q. When did you first have any talk or conversation with Mrs. Ailes?

A. After I read in the paper where this will had been contested, and I realized the wrongness of it and called her up and offered her what help I could give her.

Mr. Endicott: I ask that that be stricken.

The Court: Yes.

By Mr. Starr:

Q. Your thoughts, as to what you thought in this matter, you say that you saw a notice of the will contest in the papers?

A. Yes.

Q. Then you called Mrs. Ailes up on the phone?

A. Yes.

Q. Did you go to see her or she to see you?

A. She came to see me.

Q. During the times that you saw Mr. Allen, did he ever talk to you about Mrs. Ailes?

A. Quite frequently.

Q. What did he say about her?

A. I don't hardly know how to answer that. There are so many things.

Q. What are some of the things that he said to you about her?

A. It would be at times, after—at times when she was sick; he always seemed so concerned. Two or three times he said, "I don't know what I would do if anything happens to Katie." That is the only time that I knew him to be unhappy, when he was worried over the condition of her.

Q. What else did he say about her?

A. I asked him—so many people thought that she was his daughter, and I asked him about it and he said, "I let people go under that impression. I like it. I have no family and I like to think that she is my daughter and that her children are my grandchildren.

Q. Go ahead.

A. He had repeatedly said that he was going to leave her his money. That is how we came to talk about wills. It was through my instigation that he had his will made.

Q. What did he say to you and you to him?

A. There was a young man came into Mr. Mitchell's office one day, he was only in his 20's,

and he was making his will, and I asked him if he had his will made.

Q. Do you mean Mr. Allen?

A. Yes; and he said, "No." I said, "There is a young boy just starting out on the threshold of life, and he is going to make his will. And here you are, you have one foot in your grave, you make yours. Are you going to give it to your brothers?" And he said, "No, they have plenty." I said, "They are the ones who would get it, if you make no will." That is the only thing I said then. Then, later on, he asked me what I would do if I was going to have a will made, and I said that I would go to a lawyer, a personal friend, that in case of death, that if he didn't have a good will it could be contested, being that he was going to leave it to someone outside of the family.

Q. How did you know that?

A. He told me.

Q. What did he tell you?

A. He told me he was going to leave Mrs. Ailes his money.

Q. What did he say?

A. "Because," he said, "she was the only one that had been good" to him; that she had made a home for him.

Q. Do you remember when that conversation occurred?

A. The last most serious conversation on that line was the latter part of May, 1928. That was when Mrs. Ailes was beginning to get well and also after he had bought her a new Essex car.

Q. The conversation occurred then?

A. Yes.

Q. And what, if you can recall, did he say upon that occasion, that last occasion?

A. He told me that he had been talking to a Mr. Manning. He said, "It seems strange that Mr. Manning has the same opinion you have about having a will made, and to go get a lawyer, one that is a friend of yours." I said, "I certainly think that is the thing to do because there is always ways and means of breaking a will when it is not left to relatives."

Q. When did you have the last conversation with him before his death?

A. In the middle of August. He was sitting in his swing on the lawn, and we went passed and stopped and talked about five minutes, Mr. Lewis and I.

Q. How far did he live from your home in Pleasantville?

A. I should judge about ten blocks.

Q. Did you frequently pass by where he lived?

A. Oh, yes, it is on our way to Atlantic City.

Q. In these conversations that you had with him, did he talk intelligently or otherwise?

A. Oh, very intelligently.

Q. Was his conversation rational or otherwise?

A. Rational.

Q. Did you talk about these matters with him?

A. Well, of course, it was just as the case came up. He and I have a habit of judging people by their eyes.

Mr. Endicott: I move to strike it out.

The Court: Yes.

By Mr. Starr:

Q. If there was any conversation between you and Mr. Allen in which that conversation—in which that question was the subject of conversation, it seems to me that you can testify as to that. Tell us what you said to him and what he said to you, about eyes.

A. Well, we judged people's dispositions by their eyes.

Mr. Endicott: I ask it be stricken out.

By Mr. Starr:

Q. Never mind that. What did Mr. Allen say about it, if you recall?

A. If anyone would come to talk business in Mr. Mitchell's office, when he was through talking, he would tell me "that that man"——

Mr. Endicott: I move to strike it out.

The Court: I suppose you were amusing yourselves, seeing if you could guess people's dispositions?

A. Yes.

The Court: That has nothing to do with this case.

The Witness: He thought that was a shrewd thing, judging people's dispositions.

By Mr. Starr:

Q. Was he serious or joking with you at those times?

A. Well, mostly full of fun, and joking.

Q. Was he a man of jovial disposition or otherwise?

A. Very much so.

Q. In any of these conversations that you had with him during the time of your acquaintance with him, did he ever say or do anything that would indicate to you that he was lacking in mentality?

A. No.

Q. That he was losing his mind or that he was unable to transact business?

A. Never.

Q. What have you to say about his physical condition, if you observed it?

A. He was always barking about that; when he would walk up two flights of stairs to our office he would not be very much out of breath, and he would say that that was because he was a young man. He would say, "That is because I am a young man." And he would speak of different people that were ailing and he would say how well he was.

Cross-examination.

By Mr. Endicott:

Q. Did you see any signs of failing health on his part?

A. No, sir.

Q. One of the first things you said was, in your

testimony today, that he talked as elderly men do. What did you mean by that?

A. Well, I have a mother-in-law and a father-in-law, and they like to recall former days, and he did, too.

Q. It is a sign of old age, isn't it?

A. Yes, I think they like their former thoughts. If they didn't they wouldn't have much to live for.

Q. I suppose he was keener for events of the past than for current events?

A. Not in a business line, with him.

Q. He talked to you about his stepdaughter, or "Lil," as he called her?

A. I was married, and ——

Q. Just answer the question.

A. No, sir.

Q. You said he seemed unhappy when Mrs. Ailes was sick, and that that was the only time he seemed to be that way. What did you mean by that?

A. He said he couldn't sleep; that he didn't know what to do if anything happened to Kate; that it made him nervous and he didn't rest until she went to a specialist.

Q. It was upon these occasions that you had some doubt about his mental ability?

A. No.

Q. You said that—quoting your conversation with him—"you have one foot in the grave." What did you mean by that remark to him?

A. I meant his age of 75 years; when you are past 70, you do.

Q. Did you say that to him?

A. It was just a remark I made on account of that

young man being only 20 years of age and making his will.

Q. Did you say that to him?

A. Yes, I said, "This young man is just on the threshold of life, and here you are, at your age, you might say, with one foot in the grave."

Q. Did you see any change in his physical make-up from the first time you saw him up to the last time you saw him?

A. No.

Q. Did he show his age?

A. In appearance, yes, but not in ways or actions.

Q. How many times did you see him?

A. Too numerous to mention; 100's of times.

Q. Did he call on you?

A. Not at our home. My husband and I had taken dinner at Hackney's a couple of times with him, but not at our home, he didn't.

Q. Did he call at your place of business?

A. Came to Mr. Mitchell's office, our doors were communicating, open, and if Mr. Mitchell wasn't there he would come in and talk with Mr. Lewis, and lots of times when Mr. Lewis was out he would wait for Mr. Mitchell, until Mr. Mitchell came in.

Q. Did he ever wait to call on you at the office?

A. No, sir.

By Mr. Starr:

Q. I show you photograph containing 4 figures, four persons, and ask you whether or not you recognize any of these persons to be Mr. Allen?

A. This is Mr. Allen, yes.

Q. The one on the right side of the picture, looking at the photograph, with his hat in his hand?
A. Yes.
Q. Do you recognize any of the other four figures in the picture?
A. This is Mrs. Ailes and Mr. Ailes.
Q. That is, the gentleman on the left-hand side of the photograph is Mr. Ailes?
A. Yes.
Q. And the lady next to him is Mrs. Ailes?
A. Yes.
Q. And you do not identify the 3rd man?
A. No, I never seen him.

Mr. Endicott: This is objected to unless the date can be connected up with it.

Mr. Starr: We will connect it up as to time.

Mrs. Priscilla Fluck, sworn.

By Mr. Starr:

Q. Where do you live at the present time?
A. 2404 West Thompson Street.
Q. Philadelphia?
A. Yes.
Q. Are you a widow?
A. Yes.
Q. What is your age?
A. Past 70.
Q. You are the mother of Mrs. Ailes?

A. Mrs. Ailes, yes.

Q. Mrs. Ailes is your only child?

A. Yes.

Q. Did you know Mr. Allen in his lifetime?

A. Yes.

Q. Do you remember when you became acquainted with him?

A. About the length of time I do not.

Q. What did you say?

A. About the length of time of my daughter, that she knew him. I knew him a great many years; some years, from about 1920, or somewheres around there.

Q. Where did you first meet him?

A. Where? Let me see. I can't recall that just now.

Q. What is that?

A. I can't recall that just now.

Q. Did you see him at times when he was living with Mr. and Mrs. Ailes?

A. Yes, frequently.

Q. At what places in Philadelphia did you see him while he was living with them?

A. Well, I saw him at the Allegheny Avenue place and the Trinity Place, and on, I think, Arch Street—no, Walnut Street; I mean Walnut Street. That is it.

Q. Did you also see him at Pleasantville?

A. Yes.

Q. How was Mr. Allen treated at these places, from your observation?

A. Very fine, I am sure.

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

The Court: Yes.

Mr. Starr: All right.

By Mr. Starr:

Q. Was he treated as one of the family, or otherwise?

A. Yes, as one of the family.

Q. Did he eat with the family?

A. Yes.

Q. Did you observe how he treated the children?

A. Yes.

Q. Your grandchildren?

A. Yes.

Q. How did he treat his grandchildren?

A. Just like a grandfather would.

Q. Did that continue all the time while he was a member of the family?

A. Yes.

Mr. Endicott: This appears leading to me.

Mr. Starr: All right.

Q. Do you know whether or not Mr. Allen gave presents to the children?

A. Yes, I know he did. Yes, he did.

Q. When were these presents usually given?

A. At the birthdays and Christmas time, gifts; and many times that he would give them gifts, in different ways.

Q. How often would you visit your daughter when they lived in Philadelphia?

A. Every week several times; two or three times.

Q. Did Mr. Allen ever invite you to go out with the other members of the family?

A. Yes, frequently.

Q. Where have you gone with them as his guest?

A. As his guest? We would take dinner together frequently.

Q. What is that?

A. We would take dinner frequently. We would go to dinners, then perhaps to Willow Grove and different places; and to Ocean Grove, to the camp-meeting.

Q. Did you go with him?

A. Yes.

Q. And with the other members of the family with him, or not?

A. Yes, and my daughter, Mrs. Ailes, and Mr. Ailes.

Q. Did you have any particular day for visiting the Ailes' family?

A. No, not particularly, not particular days. I couldn't say that.

Q. Did you go on Sundays, or otherwise?

A. Yes, Sundays and sometimes during the week.

Q. What have you observed as to what was done in the family, on Sundays, when you visited them?

A. We would go to church; yes, it was church, on Sunday morning, especially so in the evening, too, for that matter.

Q. Did or did not Mr. Allen go to church with you?

A. Yes.

Q. Did you ever attend any Christmas dinners?

A. Yes.

Q. What portions of the various houses which were occupied by the Ailes family, while Mr. Ailes lived with him, did he occupy?

A. Where do you mean?

Q. Any of the houses, say, for instance, the Walnut Street house?

A. Walnut Street? He occupied the 2nd-story front room.

Q. The house on Allegheny Avenue, which room did he occupy there?

A. Which room? Let me see. I think that was as far as I can recall, the 2nd-story front room.

Q. When did your husband die?

A. My husband died nearly 15 years ago.

Q. 15 years ago?

A. Yes.

Q. Did you ever hear Mr. Allen say anything about making a will?

A. Frequently.

Q. And as to the disposition of his property?

A. Yes.

Q. What have you heard him say?

A. Well, he said he would like to make a will out, to make a will for my daughter, that "She was so kind to me, and all the family," Mr. and Mrs. Ailes, and that they were such a kind family to him and they were deserving of everything that he had.

Q. Did you ever hear him say anything about his relations, about his stepdaughters?

A. Yes, sir, frequently.

Q. What did you hear him say?

A. He wouldn't speak very kindly of them. We came into conversation with each other frequently and he would say ——

Mr. Endicott: Objected to. That is too general a recital of conditions.

The Court: That part of the answer of the witness which indicates a conclusion may be stricken out, that he did not speak kindly of them.

By Mr. Starr:

Q. What did he say?
A. He said, "They pester me so;" that they were pestering him so.

Mr. Endicott: I ask that that be stricken.

The Court: It may be stricken.

Q. Did he say that?
A. Yes, I am just saying what he said.

Mr. Starr: I think that that is competent.

Witness: That they would always pester him about a will.

Mr. Endicott: I ask that that be stricken.

The Court: Yes.

Mr. Endicott: I also ask that the witness be instructed not to answer after objection until a ruling.

The Court: Either tell us what he said or give us

an idea of his conduct so that we may form a conclusion.

Mr. Starr: The question is, what did he say, not your inference of the effect of it.

Q. Give us the words he used. What did he say, according to your recollection? Go on and tell us.

A. Just that way, exactly.

Q. Repeat it.

A. That they were pestering him.

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

By Mr. Starr:

Q. Did he say that

A. Yes, surely; one about the will and the other about fixing up the house, constantly, and that he didn't like to be near him.

Mr. Endicott: I move that that be stricken out as being not responsive nor intelligent and as inconsistent with the previous testimony.

The Court: It may be stricken.

Mr. Starr: The witness has been cautioned to state only what Mr. Allen said to her, and her answer now is responsive to that question. It seems to me there is no possible ground for striking.

Mr. Endicott: I think she should be asked another question.

Mr. Starr: I will accept your suggestion. What question should I ask?

Mr. Endicott: That is entirely up to you.

The Court: I think that the answer as it now stands is in response to the question as to what he said, and that she is attempting to repeat what he said. So I will permit it to stand.

(Exception to caveators.)

By Mr. Starr:

Q. In the fall of 1928 did you hear Mr. Allen say anything with respect to the making of a will?

A. Yes.

Q. What did he say?

A. He said—at one time I said this, that I—we were talking, and that was in August, and I said I didn't think that Katherine, that is my daughter, looked very good and he said, "No, she is not." And I said, "If she passed away I didn't care to live any more," and he said, "No, nor do I, Mama, I don't either, Mama," he said. He said, "I hope she will get well again, indeed," he said, "I want to make her comfortable." "Make them comfortable, I want to leave everything I got, to make them comfortable. They are so deserving. She has been so kind to me." They were different occasions when he would say these things.

Q. In all these conversations you had with Mr. Allen did he talk rationally, intelligently, or otherwise?

A. Very, very rational; yes, indeed, intelligently, always.

Q. In your opinion from what you observed of his conduct and what he said to you, was he competent on these occasions to transact business?

A. Yes.

Cross-examination.

By Mr. Endicott:

Q. Where do you live?

A. 2404 West Thompson Street.

Q. Do you own that property?

A. No, sir.

Q. Do you board there?

A. I have an apartment there.

Q. Are you employed?

A. No, sir.

Q. Do you live by yourself?

A. Yes.

Q. Do I understand from your testimony as to the many gifts which Mr. Allen gave to your daughter and her family, that he was of a generous disposition?

A. Yes.

Q. Did you see any other example of his generosity during your acquaintance with him other than gifts to your daughter and her family?

A. Well, no, I can't say that I just noticed that.

Q. Was he a man who seemed to know the value of money?

A. Yes, he did seem that way.

Q. Was he careful about his personal pocket expenses?

A. Yes.

Q. Did he dress well?

A. Well, there was a time he didn't, but as the years came about he dressed better.

Q. What time or period was it he didn't dress well?

A. In the beginning, when I first learned to know him, he didn't dress well. He was a little careless in his dress, but he became more particular as the years came along.

Q. Was that improving gradually during your entire acquaintance with him, or was it marked at any particular time?

A. No, sir, it wasn't marked at any particular time.

Q. Do you know anything about the arrangements under which he stayed in the Ailes home?

A. No, sir, I do not.

Q. Did Mr. Allen ever tell you that he had a will?

A. No, he didn't say, only this: As I went home last year, last September, then he was saying in the car, he says, "Mama, have you made your will?" He said, "I am going to have my will today, and this is Katie's lucky day, for I am going to make a will for her."

Q. What day was that?

A. That was, I really couldn't tell the day; that was in September last.

Q. Where did that conversation take place?

A. In the machine; in the automobile going to Philadelphia.

Q. Going to where?

A. To Philadelphia, from Pleasantville to Philadelphia.

Q. Who was present?

A. Why, there was Mr. Allen, and myself and Mrs. Ailes, and I think now, Mr. Ailes.

Q. What time did you leave Pleasantville?

A. Did you say what time? I think it was in the forenoon sometime.

Q. What time did you reach Philadelphia?

A. That I couldn't tell you what time we reached there.

Q. What happened when you reached Philadelphia?

A. Of course, I got off the machine.

Q. You what?

A. They left me off.

Q. Where did they leave you off?

A. In town somewhere.

Q. In the center of the city?

A. Yes, in the center of the city.

Q. Do you know what time you left the machine?

A. Well, I should judge, I can't remember, can't say the exact time, but I should judge around noontime, perhaps, but I wouldn't say positively the exact time.

Q. Does Mrs. Ailes support you?

A. No, sir.

Q. Has she contributed to your support?

A. No, sir.

Q. Do you know what Mr. Ailes' occupation was in 1919?

A. 1919? He was with a firm, the Berwind-White Coal Company.

By Mr. Starr:

Q. The Berwind-White Coal Company?
A. Yes.

By Mr. Endicott:

Q. Do you know the nature of his employment there?
A. No, sir.
Q. Do you know whether or not he has been with them up until this present time?
A. Yes, I do.
Q. Is he still employed with them?
A. No, sir.
Q. Do you know how long he remained with them after 1919 ?
A. No, sir.
Q. Do you know of any other employment he had?
A. No, sir.
Q. Do you know whether or not he is employed now?
A. I don't think he is, just now.
Q. Do you know how long it has been since he has not been employed?
A. No, sir.

By Mr. Starr:

Q. On this day in September a year ago, you say

you went in an automobile from Pleasantville to Philadelphia?

A. Yes, sir.

Q. Do you know for what purpose they were going to Philadelphia—answer yes or no.

Mr. Endicott: Objected to.

A. Yes, I do.

Q. Who told you?

A. Mr. Allen. He told me they were on their way to—that he wanted to make this will, yes.

Q. Do you know his words—as near as you can recall?

A. He said this: "I am going to have you make your will." Rather to me he says: "I am going to make my will. This is Katie's lucky day. I am going to give her everything I have, will her everything I have. She is deserving of it. She is deserving." Those were the words.

Q. That was in the automobile on the way to Philadelphia?

A. Yes.

Q. When you reached Philadelphia do you recall where the machine went, where the automobile went?

A. Well, I don't exactly recall that. I really don't. I told them I wanted to get off in the center of the city, that I had a little business to attend to; I knew at what street it was, but anymore I don't recall that.

Q. Do you recall where they let you out of the machine?

A. No. I don't just recall that exactly, where I got out of the machine.

Q. When you left the machine who was left in it?

A. Mr. Allen and my daughter and Mr. Ailes.

Q. You say Mrs. Ailes and Mr. Allen?

A. Yes.

Q. What about Mr. Ailes? Do you know whether or not he was there?

A. Yes, I am most sure. I am not positive, but I am most sure he was.

Q. That was in September, 1928?

A. Yes.

Q. Had you been visiting Pleasantville before that?

A. Yes, frequently.

Q. How long had you been there on that particular visit before going back to Philadelphia?

A. About two months.

Q. Two months?

A. Yes.

Q. Did you ever receive any presents from Mr. Allen?

A. Yes.

Q. He was generous with you?

A. Yes.

Q. Do you know of anybody he was generous to, besides you and your daughter and your daughter's children?

A. Do you mean to somebody else he was generous with?

Q. Do you know anybody to whom Mr. Allen was generous other than you, your daughter and your daughter's children and their children?

A. No, I do not.

(Adjourned to Monday, July 22, 1929, 10 o'clock in the forenoon.)

ORPHANS' COURT.
ATLANTIC COUNTY, N. J.

RE ESTATE OF ALBERT ALLEN, DECEASED.

Before WILLIAM J. SMATHERS, Judge.

Atlantic City, N. J., Monday, July 22, 1929.

PROPONENTS' TESTIMONY.

MRS. LILLIE IDA REULENS, recalled.

By Mr. Starr:

Q. I show you a letter which is headed, "Philadelphia, Wednesday. Dear Poppy," and ask you if that letter is in your handwriting?

(Paper shown witness.)

A. Yes.
Q. It is signed "Lillie."
A. Yes.

Q. You sent that letter to Mr. Allen?
A. That is my letter.
Q. Did you send that letter to Mr. Allen?
A. To nobody else.

Mr. Starr: I ask that that be marked for identification.

Witness: Doesn't it say, "Dear Poppy?"

Mr. Starr: Yes.

Witness: Sometimes I said different.

(Proponent's Exhibit No. 51 marked for identification.)

Q. I show you another sheet of paper, which begins, "continued Thursday P. M.," and signed "Lillie." Is that in your handwriting and did you send that to Mr. Allen?
A. Yes.

(Paper marked for identification, Proponent's Exhibit No. 52.)

Q. I show you another paper which is headed with the date, May 14, 1928, and addressed "My dear Mrs. Ailes," and ask you if that is in your handwriting?

(Paper shown witness.)

A. Yes.

(Paper marked for identification, Proponent's Exhibit No. 52.)

There are two sheets to this last letter.

Q. I show you these two sheets and ask you if that is in your handwriting?

A. Yes.

(Proponent's Exhibit No. 53 marked for identification.)

Witness: What was that date?

Mr. Starr: May 14, 1928.

A. F. Daix, Jr., already sworn, recalled.

By Mr. Starr:

Q. I show you the original will offered in evidence, dated September 7, 1928, on which your name appears as witness. It apparently is not marked as an exhibit, and I ask you, if at the time that will was signed, did Mr. Allen say or do anything that indicated to you that he was of failing mentally or failing mentality?

A. No, sir.

Q. I show you a paper. In your opinion, at the time that the will was executed was he competent to make a will?

A. Yes.

Q. The day he visited you in your office, as a re-

sult of which visit you prepared that document, that will, who gave you the instructions from which you prepared the will?

A. Albert Allen.

Q. At that time was his conversation coherent or otherwise?

A. Coherent.

Q. Did he say or do anything on that occasion to indicate he was of failing mentality?

A. He expressed himself very plainly and talked correctly.

Q. In your opinion from what you observed upon the occasion of receiving the instructions, from which you prepared the will, was he competent to transact business, to make a will?

A. Yes.

Q. Having that paper in your hand, I wish you would state to the Court what portion of that paper did Albert Allen read, out loud, when the will was executed?

A. He read entire paper.

Q. What do you mean by that?

A. "I, Albert Allen, now residing at 728 North Main Street, Pleasantville," and etc., on down to the end.

Q. How about the attestation clause, did he read that?

A. He read that, yes.

Q. Did that reading precede or follow the execution of the will by him?

A. Preceded it.

Q. Who were present when he read the will?

A. Myself and Dr. John A. Boger and Maud C. Haines.

Q. Were they all in the same room?
A. Yes.
Q. They were all there at one time?
A. Yes.

Cross-examination.

By Mr. Endicott:

Q. Will you relate the incidents of the visit of Mr. Allen to you, upon which you made notes, from which the will was ultimately drawn?
A. Starting from the beginning?
Q. Yes.
A. Coming out of the Northwestern Trust Company I met Mr. Allen, sitting in the outside office and he said, "I will be over to see you, Senator, in about five or ten minutes." Afterwards he came over to the office with Mrs. Ailes, and he came into my back room—I have three offices—came into my private office, the back room, and we came in and sat down, and a few words passed in conversation when Mrs. Ailes left the room and he said he wanted to see me on private business, so she left the room and he gave me the facts, the data, from which I drew the will.
Q. What facts did he give you?
A. That he wanted to leave everything to Katherine Ailes.
Q. What were the words he used?
A. That is as near as I can come to it, "I want to leave everything to Mrs. Ailes."
Q. Was there anything further?

A. Not in reference to the will, no, sir, that I recall.

Q. How long was he with you that day in your office?

A. From the time he entered until he left, I suppose between twenty minutes and a half hour.

Q. Were any arrangements made for any further meeting?

A. Yes.

Q. What were they?

A. I called up and asked him who he wanted as a witness, and he mentioned Dr. Boger and the names of some other doctors, but he said he preferred Dr. Boger, who was the family physician, that he knew him since he was a boy and was a personal friend of his, so I called up Dr. Boger, in his presence, while he was in my office, and made a meeting for Dr. Boger's office.

Q. When was that to be?

A. September 7th, in the morning.

Q. Upon what days of the month, which you have related, did this take place?

A. I don't recall the month.

Q. Was it the same day?

A. That I called Dr. Boger on the phone, do you mean?

Q. Yes.

A. Yes.

Q. Did you make an engagement for Dr. Boger's office for the same day upon which the conversation took place with Mr. Allen?

A. No, sir, the conversation, when he came in to prepare his will, was three or four days ahead of that.

Q. What was your engagement with Dr. Boger?

A. As to when it would be convenient to see him. I had Mr. Allen sitting alongside of me, and he wanted to have him as one of the witnesses to his will.

Q. What were the terms, and what was the hour of the engagement?

A. As I recall, quite early in the morning, either half-past nine or ten o'clock I couldn't say which.

Q. Do you know why September 7th was selected for signing the will?

A. No, sir.

Q. Did you keep the engagement you had made with Dr. Boger and Mr. Allen?

A. I did.

Q. Did you have any further conversation with Dr. Boger after the making of the engagement and prior to the meeting at his office?

A. On the morning that he was to go down to sign the will, either myself or somebody must have called him on the phone to inquire whether or not he was in—that was all.

Q. Was he in?

A. No, we went down and had to wait nearly two hours.

Q. Was Mrs. Ailes with Mr. Allen at the bank when you saw him first that day?

A. She was.

Q. Was she with him all the time that you came in contact with him, from the time you entered the room until she was sent out of the room, while you were signing the will?

A. She was in up until that time, yes.

Q. You have testified to the engagement with Dr.

Boger at nine-thirty to ten o'clock of September 7, was that correct?

A. Yes, as near as I can recall.

Q. When did you see Mr. Allen on that day?

A. The day I phoned to the doctor?

Q. On the day the will bears date?

A. When I went down to Dr. Boger's office I met him down there.

Q. Had you been in communication with him previous to that morning?

A. Not until he left my office, when he gave me the data.

Q. At what time was he to be in Dr. Boger's office?

A. At the time that Dr. Boger made the engagement there, half-past nine or ten o'clock.

Q. Were you there at that time?

A. I was there pretty near that time, yes.

Q. How long did you wait?

A. I think about two hours.

Q. Did Mr. Allen wait there at the same time?

A. Yes.

Q. Did Mrs. Ailes wait with him?

A. Yes.

Q. Was anybody else waiting with Mrs. Ailes?

A. No, sir.

Q. Mr. Ailes was not present, was he?

A. No, sir.

By the Court:

Q. How far was the doctor's office from your office?

A. From Broad Street, which is the same as

Fourteenth, to Thirty-third Street, and about two squares north.

Q. How much is that in distance?

A. Broad Street is the same as Fourteenth Street, and to Thirty-third Street would be eighteen squares, nineteen, I suppose, and up to Susquehanna Avenue, all together about two miles, allowing about ten squares to a mile.

Q. Did you go in a taxi?

A. No, went down in a Columbia Avenue car.

Q. A street car?

A. A Columbia Avenue street car from Broad Street, and then walked up.

Q. The thing that bothers me about your testimony respecting the drawing of this will, or for whom it was drawn, is your testimony that you had this conference with the deceased, you drew the will, went two miles, stayed two hours and came back two miles to your office, and only made a charge of $5.00 for it.

A. Do you mean on account of the charge being so small, the reason of it is that Mr. Allen was dead at the time and I made a very close charge the same as if he was living as I knew he would want it to be. I made the entry in my book in November and he died October 22. If he was living that would have been a fair price, and he would have considered it a fair price for that work.

Q. Do you consider it fair, do you think it is fair to give four hours of your time for $5.00?

A. I think that dealing with a man like him, yes, because he had other business with me. I think if he was living he would have thought probably that

$10.00, for instance, would be an extravagant charge.

By Mr. Endicott:

Q. What other business did you have with Mr. Allen at that time?

A. None at that time.

Q. How long had it been since you had had any other business with him?

A. Two or three years.

Q. What other business did you have with him in the two or three years that you speak of?

A. Either foreclosing of mortgages or investing money.

Q. On what property?

A. I don't recall.

Q. Do your books show a charge within the last four years prior to his death?

A. From 1908 on up to the present time I have been doing business with him off and on.

Q. Have you that book here?

A. No, sir.

By the Court:

Q. Can you recall any other client that you ever had of Mr. Allen's standing in which you drew a will and charged a fee of $5.00?

A. Not off-hand, no, sir.

By Mr. Starr:

Q. Your uptown office is located where?

A. Twenty-three eighteen Columbia Avenue.

Q. Doctor Boger's office was where?

A. Twenty-two hundred and something North Broad Street?

Q. Columbia Avenue is at what number north on Broad Street?

A. I think Columbia Avenue, I know Columbia Avenue is seventeen hundred north.

Q. And Dr. Boger's office is twenty-three hundred north?

A. No, twenty-two hundred, just above Susquehanna.

Q. And the distance was from Broad and Columbia Avenue to twenty-three hundred north?

A. Yes.

Q. Then that would be five blocks north of Broad Street?

A. Yes.

Q. In answer to a question put to you by Mr. Endicott, you said that Mrs. Ailes was present up until the time of the making of the will. That was your answer to the question. You answered that. Did you understand that to refer to the date that the instructions were given, or the day that the will was actually executed?

A. She was not present at all when the will was executed. She came in with him when the data was given; I meant up until the time the data was given.

Q. That is what you referred to when you speak about making the will?

A. I did.

Q. That was the day the instructions were given?

A. Yes.

Q. On the day the will was executed you say you went to Dr. Boger's office?

A. Yes.

Q. And found Mr. Allen and Mrs. Ailes there?

A. Yes.

Q. Was that right?

A. Yes.

Q. Was Mrs. Ailes present at the time of the execution of the will in Dr. Boger's office?

A. She was not present.

Q. When you said that Mr. Allen read the will in the presence of three subscribing witnesses, did he read the will intelligently or otherwise?

A. He read it intelligently.

Q. Did he have difficulty reading the will?

A. None whatever.

Q. He could understand what it said?

A. Yes.

By Mr. Endicott:

Q. Did you read the will to Mr. Allen?

A. I handed it to him and I said, "Read this over;" you will find that in my testimony. I said, "Read it over and tell me whether the will is perfectly satisfactory to you." I said, "Do you want to leave anything else to anybody before I change it, do you want to leave any small bequests, or do you want to change it?" and he said, "No." I said, "The will is perfectly satisfactory to you, this will?" He said, "Yes."

Q. Just answer the question. Did you read the will to Mr. Allen?

A. Did I read it?

Q. Yes.

A. No, I placed it down in front of him and he read it.

By the Court:

Q. Did he read it out loud or to himself?

A. He read it, like this: "I, Albert Allen"—just like that, not out loud, but just to himself. He read it through. And I think, then, that when I laid it down, I followed it on down with my finger as he read it, so that he would understand it, and I think he followed it down that way.

By Mr. Endicott:

Q. Did Mr. Allen make any statement to you as to why Mrs. Ailes was with him on the occasion that you met him, both when you got the memoranda and when the will was executed?

A. At no time, no.

Q. Do you know why she was present?

A. No, sir.

Q. Did you make any inquiries?

A. I did not. I found her with him first in the bank before he came over to my office. That was the first time.

Q. You knew Mrs. Ailes for a long time?

A. I never met her before, in my life, before that day that she came in with him.

Q. Do you know whether or not Dr. Boger knew Mrs. Ailes?

A. I know nothing about that, about the doctor and Mrs. Ailes.

Q. Did you watch the greeting they made that day when the will was executed?

A. I don't recall their greeting.

Q. You heard Dr. Boger testify the other day

that he had known Mrs. Ailes for a number of years and had treated the family on a number of occasions?

A. Now that you bring it to my mind, I recall.

Q. Does that recall to your mind the manner of their greeting?

A. No, I paid no attention to their greeting.

Q. You have no information at all as to why Mrs. Ailes was with Mr. Allen on the occasion when you took the memoranda?

A. None that I recall.

Q. Now, did she come to leave the room at the time you said she did when you took notes?

A. I presume I must have requested her.

Q. You have no recollection of it?

A. Not definitely, but I never have any person in the room when I am preparing a will for somebody else.

Q. And particularly you would not have the chief beneficiary around where the man was aged and of failing mentality?

A. I don't think he was aged or of failing mentality. He was of the mentality, I would say, of any ordinary citizen.

Q. You are familiar with the doctrine of confidential relations, as it exists in Pennsylvania?

A. I do.

Q. What do you understand that doctrine to be?

A. To treat every client's business confidential and keep it to yourself.

Q. I am speaking of the confidential relations of the testator to the chief beneficiary, the enunciation of the law, upon that subject?

A. As I said before, I simply think it means to

attend to the business for the testator and keep it to yourself, whatever he desire to bequeath.

Q. Did Mr. Allen make you conversant with the fact that he resided with Mrs. Ailes?

A. He did not.

Q. Did you know that to be the fact?

A. I did not know that to be a fact. I never was at their home.

Q. Were you acquainted with the fact that she held a power of attorney from him to transact his business?

A. I was not.

Q. Did you make any inquiries?

A. I did not.

By Mr. Starr:

Q. You indicated in your response to a question from the Court as to how Mr. Allen read the will, on the day of its execution?

A. Yes.

Q. Of course, that does not appear on the record, the tone of his voice, and I now ask you whether or not his reading of that will, on that occasion, was loud enough for the witnesses there present to know what was going on?

A. I would presume so, yes.

Q. I am not asking you whether or not you presumed? What was the fact, as to whether or not it was loud enough for you and the witnesses to hear what he said?

A. I could hear what he said, I was standing alongside of him.

Q. How close were the others, the same distance, or a little farther away?

A. No further away from him than I was. I was up alongside of the desk, there at the chair.

By the Court:

Q. I understood you to say that he read it to himself?

A. Yes, read it over to himself, carefully in a low voice.

Q. Reading to one's self is not reading out loud, is it?

A. In a low voice, I said. It wasn't out loud, it wasn't loud.

By Mr. Starr:

Q. Did he read all of the will?

A. Yes, he read all the will, yes.

Q. As he went along did he or not enunciate the will itself or did he read it out, saying nothing?

A. No, he enunciated it. You could hear him as he went along.

Q. In the bank on the day you received these instructions did you have any conversation with Mrs. Ailes?

A. None.

Q. And the talk that you had with Mr. Allen, was that in her presence or apart from her?

A. When do you mean, when he was in the bank?

Q. In the bank, about to come over?

A. She was in the chair alongside of him.

Q. You say that the two were sitting there as you went out of the bank?

A. Yes, in what we call the outside room.

By Mr. Endicott:

Q. How far from the bank is your office?

A. Across the street.

Q. Did they walk back with you?

A. They did not. He came over in about five minutes, he and she.

Q. Are you sure that you did not read the will to Mr. Allen but that he read it himself?

A. I am sure of two things, that he read it to himself. I stood up alongside of him and ran my finger down this way along the lines, so that there would be no mistake that he could read the whole will.

Q. You did not read it to him?

A. Only in tracing it with my fingers at the time he read it, like this, "I, Albert Allen, being of sound mind," and etc. I may have done that.

Q. Do you remember what you did on that occasion?

A. I think that was all I did on that occasion.

Q. You think it?

A. No, I don't think it. I know that is what I did.

Q. I am asking you, did you read the will to Mr. Allen or did you not?

A. I did—if you want to put it that way.

The Court: No, you know the purport of that question?

The Witness: I did.

By Mr. Endicott:

Q. So that you now wish to change your testimony from that which you gave a few minutes ago in which you said you did not read the will to him?

A. I do not want to change my testimony. I want to say, in answer to the Judge, that I read it to him when I stood up alongside of him and held my fingers and followed it on down with him.

Q. You have given us two answers. First you said you said you did not read it to him and then a moment ago you said you did read it to him; now which do you want?

A. Both are correct.

Mr. Endicott: Perhaps Judge Starr can bring that out.

By Mr. Starr:

Q. What do you mean when you say both are correct?

A. I said in my testimony, I said it at another time in the beginning of my testimony, that I put my finger in front of him and read it line for line by pointing my finger and asking him if the will was correct and if that was the way that he wanted it, and then I picked it up this way for himself to read it.

Q. When he read the paper himself, did he make any sounds that would indicate what the paper was,

or did he read it to himself, without letting anybody know it was a will?

A. You used the word "enunciated." I could hear Mr. Allen as he read.

Q. When you refer to the paper itself, what did you call it?

A. The will. I said, "Is it perfectly satisfactory to you, this will?"

Q. Was that in the presence of you two and the three witnesses?

A. Yes, in my presence, and in the presence of Dr. John A. Boger and Maud C. Haines. Mr. Allen and myself were in the room only.

Q. Was that conversation preceding the signing of the will by Mr. Allen?

A. Which conversation?

Q. That you related there.

A. Preceding the will?

Q. Preceding the execution of the will?

A. Preceding the execution and signing of the will.

Mr. Starr: I notice that the original will is not marked as an exhibit and I think it ought to be marked in some way. It was introduced, I believe, the first day, and apparently has no marking on it. I ask that it now be marked as an exhibit.

Mr. Endicott: It was admitted for exhibit purposes but not for probate.

(Will marked Proponent's Exhibit 1½ and admitted in evidence.)

A. F. DAIX, 3RD, sworn.

By Mr. Starr:

Q. You are a member of the Philadelphia Bar?
A. Yes.
Q. When were you admitted?
A. In February.
Q. This year?
A. 1929.
Q. Do you know Mrs. Ailes?
A. I do.
Q. When did you meet her?
A. Sometime in April or May of 1928.
Q. Under what circumstances?
A. Mr. Allen brought her in and asked for my father and I said that my father was seriously ill and could I attend to the business in his place? He said that Mrs. Ailes had a letter stating that, "She was coming to see your father and I told her I would come with her; that I had known her to be Mrs. Ailes and that I would introduce her."
Q. That was in May, 1928?
A. Yes.
Q. Did you undertake the transaction of any business for her?
A. I did.
Q. What was it?
A. There had been a default in the payment of interest on Mrs. Ailes' property that she held, in Walnut Street, West Philadelphia, and she wanted the mortgage foreclosed and she asked me for a receipt and I gave her a receipt for the papers.

Q. At that time was your father attending to his business?

A. He was not, no.

Q. How long had he been away from the office?

A. My father had pneumonia at the end of January; rather, he left the United States for the Bahama Islands at the end of January and he came back the second or third week in March and in three or four days had a severe heart attack, and the day that I met Mrs. Ailes he was not expected to live.

Q. He was actually where?

A. 1613 North 33rd Street, Philadelphia.

Q. That is his address?

A. Yes.

Q. How long was he confined to his home at that time?

A. For a long time. In fact, it wasn't until this winter that he came back at all. He came back to the office for maybe one or two days a week, in that neighborhood.

Q. When you were collecting the money for Mrs. Ailes, to your knowledge, did your father come in contact with Mrs. Ailes?

A. No. He couldn't come in contact with her.

Q. Then they could not come in contact with each other for that particular piece of business?

A. No, sir.

Q. I understand the record shows that the money was collected on the mortgage and turned over to Mrs. Ailes?

A. Mrs. Ailes and her husband.

Q. Who actually attended to that business?

A. I did.

Cross-examination.

By Mr. Endicott:

Q. You are not a member of the bar?

A. Yes.

Q. But you were not when you met Mrs. Ailes in May of 1928?

A. No, sir.

Q. And the proceedings were, because of this, instituted in your father's name?

A. Yes.

Q. You entered appearance of record for him?

A. I did, yes.

Q. Did Mrs. Ailes have a letter of introduction from anybody to your father?

A. No, Mrs. Ailes, originally—I had received a letter from Mrs. Ailes, addressed to my father, saying that he had been recommended to her and that she had a mortgage to be foreclosed.

Q. Did she say from whom the letter was?

A. Yes, Mr. Lewis, of counsel, sitting over there. I wrote to Mrs. Ailes, I think, in my father's name, and as I hadn't seen these papers for a long while, I told her if she would bring the papers that I would attend to it for her, signed with my name, as the copies show, and then Mrs. Ailes came with Mr. Lewis on the date of the receipt.

Q. Your office had done business with Mr. Lewis before?

A. Yes.

Q. Did you share with Mr. Lewis, in a division of fees in the matter, according to the usual custom?

A. I don't know anything about the usual custom, I made the custom myself.

Q. How long have you been in your father's office?

A. I graduated from high school in 1917. I was with my father for a year or two and then I was appointed a State bank examiner for the Commonwealth of Pennsylvania, and I served there as bank examiner for three years when I resigned it. It was maybe two or three months after that that I came back with my father. I was also in business with another person in the Land Title Building, for a while, while I was also with my father.

Q. Had you met Mr. Allen previous to his calling with Mrs. Ailes?

A. Yes.

Q. When?

A. That is hard to say. I had seen him a number of times.

Q. When had you seen him previous to this occasion?

A. The last time previous? It may have been a year or two, I don't recall.

Q. Where did you see him?

A. In the bank.

Q. Had you ever had any business relations with him prior to the occasion of his calling with Mrs. Ailes?

A. I never had, no.

Q. Had you observed any business going through your office with him?

A. Yes, the Allen name—in fact, our office has represented the Allens for some time. I had heard of William Allen and Thomas Allen, too.

Q. That is not my question. I asked you if you had observed your office conducting any business with Mr. Allen?

A. I think so.

Q. I mean previous to this period when you foreclosed the mortgage for Mrs. Ailes?

A. I think six or seven years ago, I think it was in regards to a mortgage.

Q. Do you have no recollection of any business that was transacted by your office for Mr. Allen?

A. The Allens?

Q. I am not talking about "The Allens," I am talking about Mr. Albert Allen.

A. I wouldn't have any means of knowing that.

Q. Then you do not recall any business that your office did with Mr. Allen during your business connections there?

A. That is not my answer. It is not my office. It is my father's office.

MRS. LEWIS, recalled.

By Mr. Endicott:

Q. You testified a day or two ago about having met Mr. Allen when he called upon Mr. Mitchell?

A. Yes.

Q. Do you or your husband engage in the automobile finance business?

A. Yes.

Q. Has your agency written any automobile insurance for Mrs. Ailes or for her car?

A. No.

Q. Have you ever written any insurance for them?

A. I haven't been in the office for more than a year or so and I don't—in June, 1928, last year, I was in the office, that was the last I was in the office, so I don't know anything about it since then. Previous to that we had not.

Q. Do you know whether or not your husband's agency has financed the purchase of Mrs. Ailes' automobile?

A. They never did. They did not.

Q. They did not?

A. No.

Q. Did you, within the last week, make a statement to any person that you or your husband had financed the Ailes' automobile?

A. No.

Mr. Starr: Objected to. It is objected to unless the time and the person to whom the alleged statement was made, is given, so that we will have the benefit of the information.

The Court: You are entitled to have it.

Mr. Endicott: All right.

Q. Did you, on July 11th, 1929, state to Florence Wachter, in your home at Pleasantville, or in your office at Pleasantville, that you or your husband had financed the Ailes' car?

A. I don't know the party you are speaking about. I never heard that name before. There was a lady came to our house who represented herself

as an editorial writer on the Atlantic City Press, the Press-Union, but I was suspicious of her when she first came in, but there was nothing said about the car being financed; nothing said, in fact, about it. I know, in fact, that it was a cash deal.

Q. Did your husband ever finance any car for Mrs. Ailes or Mr. Allen?

A. No, never.

Q. Did you or your husband ever receive any business from Mrs. Ailes or Mr. Allen?

A. No.

Q. Did you state to Florence Wachter on July 11th, 1929, "Mrs. Ailes throws quite a bit of business our way?"

A. Never did. If anyone said I did that, it is a lie.

By Mr. Starr:

Q. Will you tell me the name of the woman you refer to—Florence Wachter? (Addressing Mr. Endicott.)

Mr. Endicott: Florence Wachter, that is right.

By Mr. Starr:

Q. Do you know such person?

A. No; but the day he speaks of this lady came here representing herself as an editorial writer for the Press-Union and she wanted me to give information for an editorial that might favor Mrs. Ailes, but on the day that she came I was suspicious of

her right away and I said, "You will have to go to Mrs. Ailes for information."

Q. You gave her no information?

A. None whatever, only she seemed to know about my testimony here and referred to it.

Q. What did she say her occupation was?

A. Editorial writer for the Press-Union. She was not a writer at all. She was not an educated woman.

Q. Were you acquainted with the woman?

A. I never saw her before.

Q. What day was it?

A. It was on the eleventh.

Q. What day was the last time of the hearing here?

A. It was two or three days after that.

JOSEPH W. HABERSTADT, sworn.

By Mr. Starr:

Q. What is your occupation?

A. I have retired from active service, in connection with the firm of S. Kind & Sons. I am still associated with them, but not actively so.

Q. What kind of business is that firm of S. Kind & Sons in?

A. Wholesale jewelry business.

Q. When did you retire from that firm?

A. About two or three years ago.

Q. That concern transacted business where?

A. All over the United States, but my territory

was eastern Pennsylvania and this section of South Jersey, and Delaware.

Q. Were you a salesman?

A. A salesman.

Q. How long had you been a salesman in that jewelry business before you resigned?

A. Forty-two years.

Q. And during that time you lived where?

A. In Philadelphia.

Q. What is your age at the present time?

A. I was 60 years of age on June 30th.

Q. Are you acquainted with Mr. and Mrs. Frank Ailes?

A. I have known Mrs. Ailes since the year 1890, the summer of 1890, thirty-nine years.

Q. How long have you known her husband?

A. I met her husband, probably, in the following year.

Q. Were they married at that time?

A. They became married in 1892.

Q. When did you first become acquainted, if you know, with Albert Allen?

A. I first met Mr. Allen at a card party given by Mrs. Shumway, on October 6, 1919.

Q. Where was that?

A. At Mrs. Shumway's house.

Q. Subsequently to that time did you come in contact with Mr. Allen?

A. Yes, that particular night I heard that Mr. Allen was looking for somebody to take care of his house and that Mrs. Ailes was seriously ——

Mr. Endicott: That is objected to and ask that

the latter part of the answer be stricken out, that part of the answer which is hearsay.

Mr. Starr: I have no objection.

Mr. Endicott: All right.

(Last question read to witness as follows: "Subsequent to that time did you come in contact with Mr. Allen?")

A. I did.

Q. How frequently?

A. For the next three or four years, probably not more than two or three times a year.

Q. Subsequently to that time how often did you come in contact with him?

A. During the last four or five years, quite frequently.

Q. After October, 1919, did Mr. and Mrs. Ailes take up their residence on Allegheny Avenue?

A. They moved their home there on November 15, 1919.

Q. Is that Mr. Allen's house?

A. That is Mr. Allen's house.

Q. The Ailes family consisted of whom at that time?

A. Mr. and Mrs. Ailes and their two single daughters, Mildred and Catherine—pardon me, do you mean after they moved into the house?

Q. No, after they moved into the Allegheny Avenue house?

A. That is correct.

Q. And the family consisted of whom?

A. Frank and Catherine Ailes and their two single daughters, Mildred and Catherine.

Q. Did Mr. Allen live there?

A. Yes, he resided there.

Q. Did you visit them there at the Allegheny Avenue house?

A. Mrs. Haberstadt and I visited them the Sunday following—that is, November 15th was Saturday and we visited them on November 23.

Q. November 23, 1919?

A. Yes.

Q. While you were there on that occasion did you hear any conversation between the Ailes and Mr. Allen?

A. Neither Mr. Allen nor Mr. Ailes were in the house at the time when Mrs. Ailes was there.

Q. You had a conversation with her?

A. Yes.

Q. But not in presence of Mr. Allen?

A. No.

Q. How long did the Ailes continue at the Allegheny Avenue house?

A. Until about the following March. I understood that Mr. and Mrs. Ailes were going to leave that house about March 15th and I heard afterwards that they did.

Q. Where did they go?

A. They went back to their home at Trinity Place.

Q. Did Mr. Allen go with them?

A. Not to my knowledge. I think—I would like to tell why they moved away from there and moved into—away from the Allegheny Avenue house.

Q. Do you know?

A. Yes. Conditions at that time, the house conditions, was a very difficult problem, and Mrs. Ailes told me ——

Mr. Endicott: That is objected to unless it was in the presence of Mr. Allen.

A. No, it was not in his presence.

Q. Do you know of your own knowledge why they left? What is it, generally, without going into details?

A. They were crowded. Mr. and Mrs. Ailes and their two single daughters, her son-in-law and his wife and the baby, lived in this Trinity Place house. They were crowded there and the Simpsons, the married son-in-law, who married the daughter, had been looking for a place for a month when this opportunity presented itself; and the Ailes family moved there and took charge of Mr. Allen's house, leaving her furniture and everything with Mr. Simpson. Then, later on ——

Mr. Endicott: There is no question pending.

By Mr. Starr:

Q. After they were in the Trinity Place house, how long did they continue there?

A. To the best of my knowledge, about six months.

Q. Then where did they go?

A. Back again to the Allegheny Avenue house, at Mr. Allen's solicitation.

Mr. Endicott: I move that that last remark about solicitation be stricken from the record, unless he has personal knowledge.

By Mr. Starr:

Q. Unless you have personal knowledge of Mr. Allen's solicitation, do not state it. What do you know, as far as your contract with Mr. Allen is concerned, about that?

A. I beg your pardon.

Q. What do you know about that, as far as Mr. Allen is concerned, your contact with him?

A. I only know what Frank Ailes ——

Mr. Endicott: I move that the testimony, the last remark of the witness, be stricken.

The Court: It may be.

Q. The family consisted of whom, when they returned to the Allegheny Avenue house?

A. Mr. and Mrs. Frank Ailes and their two single daughters.

Q. There at Mr. Allen's?

A. Mr. Allen's.

Q. How long did they continue there?

A. I think until the next spring.

Q. Then where did they go?

A. To the best of my knowledge they had purchased that house on Walnut Street and they couldn't get possession—I mean a lease—they couldn't get possession immediately and Mr. Allen had not ——

Mr. Endicott: I move that that be stricken as not being responsive.

The Witness: They went back to the Walnut Street house.

By Mr. Starr:

Q. They went to the Walnut Street house?

A. Yes.

Q. And their family consisted of whom at the Walnut Street house?

A. Of the same five people.

Q. And Mr. Allen?

A. Mr. Allen.

Q. How long did they continue there?

A. Until the property was sold, which was probably in 1922.

Q. Then where did they go to?

A. Down to Pleasantville.

Q. When they came to Pleasantville, do you remember what year that was?

A. Their removal to Pleasantville was gradual. They used this place for a time as a sort of summer home and as a permanent home, I guess it was in 1925.

Q. The family then consisted of whom?

A. Mr. and Mrs. Ailes, Catherine, and the other daughter had married a Mr. Simpson—and Mr. Allen.

Q. Did you visit them in Pleasantville?

A. We visited, Mrs. Haberstadt and I, and when we visited we stayed two or three days at a time.

Q. Did you visit them at the Walnut Street house?

A. Yes.

Q. While Mr. Allen was there?

A. Yes.

Q. After they began living at Pleasantville, did you continue your visits up to the time of Mr. Allen's death?

A. Up to the time of Mr. Allen's death.

Q. I understand that you were in Winchester, Virginia, with the Ailes, at the time of Mr. Allen's death?

A. Mr. and Mrs. Ailes and Mrs. Haberstadt and I were with them.

Q. Had you taken trips with the Ailes and Mr. Allen before that time?

A. Yes, I guess we have taken probably a half dozen; not trips of any great length, but automobile trips up here along the coast, down to Cape May, and up to Warnersville, probably a half dozen trips.

Q. Mr. Allen always accompanied you?

A. Whenever we used Mrs. Ailes' car, yes.

Q. How many trips did you suppose, in 1925, and up to the time of Mr. Allen's death, do you suppose you took with Mr. and Mrs. Ailes when Mr. Allen accompanied you?

A. Probably five; surely four. I can recall a trip up along the Jersey coast as far as Long Branch, made the trip there and went down to Cape May.

Q. Did you hold conversation with Mr. Allen from time to time when you were making these trips or visiting the Ailes?

A. Yes.

Q. Did you come in contact with him and talk to him?

A. Yes, I learned to know him; while I met him in 1919 I didn't really get to know him until about 1925.

Q. What do you mean by that?

A. I mean that I had just met the man, but in 1925 he started to be more and more conversant with us and I could glean the thoughts that he had.

Q. From that time up to the time of his death did he ever say or do anything to indicate that he was of failing mentality?

A. Never.

Q. Were his conversations with you intelligent and rational?

A. Absolutely so, clear up till the last. I saw him four hours before he died.

Q. Generally, what did he talk about?

A. Well, mortgages, business. He was a man, while not a great reader, he had a great philosophy, brought about through his own experiences, and one of his remarks was, he told me one day in my home, "I had a nice home, but," he said, "Joe, when your wife dies you will lose this home." He says, "I don't care how much money you got. You can never buy another home." He says, "You might buy a house, but a home you have to wait for until somebody gives it to you." I answered, "You got no kick coming. Mrs. Ailes has given you a good home." He says, "Well, I should say so. There is nobody like Mrs. Ailes."

Q. Do you remember when that conversation occurred?

A. That was in the spring of 1925.

Q. Can you recall some other incident of the conversations with Mr. Allen?

A. Yes, I know of a conversation we had one time that would explain very clearly his—well, some have said he was stingy, others that he was very generous, but these conversations made very clear to me his character.

Q. What was it?

A. It was on the return trip from up the coast. He said, "I haven't any use for anybody that wants money for nothing. I had to work hard for what I got, and when I come across somebody that wants to get any of my money I don't give such a person a nickel."

Q. Do you recall any other conversations that you had with him?

A. I had many conversations; but pertaining to this will, he never spoke to me about making out a will, that I recall, but he led me to believe ——

Mr. Endicott: That's objected to.

Q. What did he say?

A. What did he say?

Q. Yes.

A. In August, 1927, he was speaking of Mrs. Ailes' business ability and I told him that Mrs. Ailes had never worked in a commercial way like her daughters had; that when I became acquainted with her she was living at the time with her mother, helping her mother to keep house; that she had no commercial training, and he said, "Well, she has a wonderful business head for a woman that has

had no commercial training." He said, "Now that Mr. Schreiber is dead, or gone," he said, "I wanted Katie to look after my business." He said, "She has got to do when I am gone, and now is the time for her to learn it. I want her to learn how to place the value on a property, collect the interest when it is due, and see that the value is kept up, and also the fire policies, and learn how to satisfy mortgages, and etc."

Q. That conversation occurred when?

A. That conversation occurred on our return trip, in August, 1927.

Q. You had been where?

A. We had taken a ride up as far as Long Branch and Red Bank, and stopped at Beach Haven ——

Q. Isn't that the place up above these islands?

A. That is where we stopped, and that is where the conversation took place.

Q. Did you ever have any talk with him about his age?

A. Yes. On my 59th birthday, the 29th of June, 1928, he asked me how old I was, he knew that he was older, and I told him how old I was, and he said, "I beat you by sixteen years. I will be 75 years old on this first of August," and he said, "It would be positively awful ——"

Mr. Endicott: I ask that that be stricken.

The Court: Yes.

Q. That was what year?

A. June 30, 1928. He said it this way.

Mr. Endicott: There is no question pending.

Q. What did he say?

Mr. Endicott: When was it? Fix the date.

Mr. Starr: The date has already been given as June 30th, 1928.

Q. What did he say, what else did he say?

A. He was lying on the couch and he said, "I will be 75 years of age on the first of August and I don't expect to live that long.

Q. Did he say anything else?

A. And I was shocked because I hadn't noticed any failing in health or anything of that sort; then he smiled, and he said that he didn't feel bad or morose or moody, but he said, "If I do live, we are going to have a good party here on the lawn." The party never materialized.

Q. How did you happen to go to Winchester, do you recall?

A. Yes. Mrs. Haberstadt and I had been down early in the spring and we had spoken about arranging for a trip at apple blossom time and Mrs. Ailes said she would like to go down there.

Q. What talk did you have with Mr. Allen about this trip?

A. About this trip?

Q. Yes.

A. Just prior to the trip do you mean?

Q. Yes.

A. First of all I told the Ailes that I would let them know when it suited me, so the week preceding

our departure I wrote Frank to be prepared to go Wednesday, to go on to Winchester. We received a written reply to come on. When we got down there Mrs. Ailes said, "Joe, we can't go tomorrow."

Q. Was that in the presence of Mr. Allen?

A. Yes, in presence of Mr. Allen. She said, "We can't go tomorrow we will have to push it up to Friday. Mr. Allen has to go to the City tomorrow." So after Mr. Allen left the room—I wasn't very keen about having Mr. Allen going with us, but I had no objection.

Mr. Endicott: I ask that that be stricken out.

Mr. Starr: Yes.

Q. What else occurred, if anything, when Mr. Allen was present, that you recall?

A. The next morning he went to Philadelphia and we waited until he came back. And he came back.

Q. Did he go to Philadelphia alone?

A. He went to Philadelphia alone, yes. I had said to him, "Mr. Allen,"—I always called him "Poppy" and he called himself "Poppy"; I said, "'Poppy', if you don't come back, if you are not ready tomorrow morning by daybreak we are going without you." He said, "I will be ready. I will be back," and he got back that night about nine o'clock and after he came back we were just about to retire. We were going to retire early because we were to get up early the next morning, so we walked upstairs and he said, "Joe, have you seen my room since I have put in a bay window that I have; Katie has bought me a new rug for the room.

Just think of it." When he said that Katie bought him a new rug he didn't mean that Katie had paid for it.

Mr. Endicott: I ask that that be stricken.

Q. Tell us what he said?

A. I went into the room and I said, "Isn't this a dandy room?" He said, "It is the best room in the house. I wanted Katie to have it but she likes the front of the house better." I complimented him on the room and we retired. The next morning I was awake and I heard him singing. He had a good voice and the song that he was singing. "Won't that be Glory for Me?" Not like a crazy man would sing,—

Mr. Endicott: I ask that that be stricken.

The Witness: I wanted you to know that that was the impression he gave me.

Q. Was it normal or otherwise?

A. It was with a religious fervor. Then I came down to the breakfast table, and he was the first one down-stairs. He really urged us to get off—told us that we were all sleepy heads so we got off without any delay and got in Mrs. Ailes' car.

Q. All five of you?

A. All five of us.

Q. What day was that?

A. That was on Friday. I will have to look up the date, it was the 19th of October I think.

Q. 1928?

A. 1928. We reached Belair, Maryland, about noon.

Q. Where did you stop the first night?

A. At Frederick. At Belair, Mr. Allen wanted oysters for lunch and he took his lunch in a restaurant while we went to the hotel. He came around to the hotel and lounged around the hotel for an hour or so and then we drove on as far as Frederick and we reached Frederick at 5 o'clock.

Q. Did you stop there?

A. We stopped at the Francis Scott Keyes Hotel at Frederick.

By the Court:

Q. Where did you say you had your lunch?

A. Belair, Maryland.

By Mr. Starr:

Q. You stopped all night at Frederick?

A. Frederick.

Q. What time did you get started the next day?

A. The next morning shortly after 8 o'clock because we were at Harper's Ferry at 9 o'clock. There is a hotel there at Harper's Ferry, at the top of the hill, and we went to the top of the hill and Mr. Allen walked around with us. He was delighted with the place.

Q. What did he say, if anything?

A. He went to the hotel clerk and wanted to know what the rates were. He said that he, Katie and Frank were going to come down there and spend a week there because he liked it so well.

Q. Then where did you go?

A. We got on a car and stopped to see friends at Frederickstown, friends of Mrs. Haberstadt's and myself but they were not home. Mr. Allen got out of the car and was in the same usual health then. That was about ten o'clock. We reached Winchester about noon, shortly before noon, and in order to be with Mr. Allen we all decided that we would go to the restaurant, to go there and eat, as he always wanted oysters ——

Mr. Endicott: I ask that the last remark be stricken from the record.

Mr. Starr: What was that?

Mr. Endicott: He said that Mr. Allen always wanted oysters and I asked that that be stricken from the records.

Mr. Starr: Go ahead.

Q. Continue your statement?

A. Then he was seized with a pain. I was there, sitting at the same table, but I noticed there was something wrong and he got up. After lunch he went out and he said, "Let us get into the car." So we got in the car and drove on for a mile or two and he had a severe vomiting attack. He was sitting on the other side of the car and I thought to myself ——

Q. Never mind what you thought. Tell what happened.

A. Well, he seemed to be, at least I thought he

was better. We drove on. We had gone altogether, eight miles, and he said, "I am feeling sick. You will have to stop." So we stopped right then and there, and it happened out in front of one of these tourists' cottages, and we immediately, Mrs. Ailes immediately got in touch with this woman, who had been a nurse, and she got in touch with a doctor, a Doctor Montgomery, who lived not far away, and he came over and gave Mr. Allen medical attention.

Q. Eventually he went to the hospital in Winchester?

A. The next morning they took him to the hospital.

Q. How late before his death did you have any conversation with him?

A. I think the night before. I said a little while ago, four hours before. That was wrong, it was the night before.

Q. Do you remember the topic of conversation?

A. Yes.

Q. What was it?

A. There was a rather stout, pleasant nurse there at his bedside, and I went in and he said, "They always wish fat nurses on me." He says, "Here is one that can take care of you and Frank, both, and me too." That was the only noticeable thing. He may have said something else.

Q. On that trip from the time that you left Pleasantville until you reached Winchester, was his conversation with you rational and intelligent?

A. Absolutely.

Q. Did he discuss matters intelligently?

A. Understand, I was sitting in the seat with Mrs. Ailes.

Q. I mean when you came in contact with him?

A. When I spoke to im he was intelligent.

Q. You understood what he said to you and he understood what you said to him?

A. Yes.

Q. Did he ever say anything to you about the way he was being cared for by Mrs. Ailes?

A. He said there was not anybody in the world who could keep house like Mrs. Ailes. I said, "How about Clara." He said, "Oh, she is all right." And many times he would say how wonderful treatment he got from her and that nobody could give him better treatment than they had.

Q. At Pleasantville?

A. At Pleasantville.

Q. Was that a matter of seldom occurrence or frenquently?

A. Whenever the occasion warranted it, I couldn't say how frequently or how seldom.

Q. Do you remember whether or not you came in contact with Mr. Allen on or about September 8, 1928?

A. I did not.

Q. Do you remember how close to that date you saw him?

A. Yes on the 27th of September he was at our house.

Q. In Philadelphia?

A. I lived at Oak Lane, Philadelphia.

Q. When next, before September 27th, did you come in contact with him?

A. On the 10th, 11th and 12th of July, I think it was; it may have been the 8th, 9th and 10th, but

three days in July when we took the trip to Wernersville, Pennsylvania.

Q. On those three occasions on July and September, did you talk with Mr. Allen?

A. I did.

Q. Was there anything in his talk that indicated that he was failing mentally?

A. Nothing at all.

Q. From what you observed, was he competent on these occasions to make a will?

A. Certainly; absolutely so. On the 27th day of September, I heard it testified here, that she was making it her home with him. I heard something else that was absolutely contradicted.

Q. What was that?

A. Mrs. Ailes had stopped with us on the 26th of September and she said to Mrs. Haberstadt, "I want to get in touch with Mr. Allen. I want to buy a radio. It was something they were going to buy the next day and they wanted to get in touch with him. They said, "I can't find Mrs. Ailes' name in the book." Finally we found it, that it was in the name of the Bowers Meade and she called her up on the phone and made an engagement with Mr. Allen the next day, in one of the department stores. The following evening, on the night of the 27th, Mr. Allen came to our home.

Q. What night was that?

A. September of 1928.

Q. And the day?

A. The 27th day of September of 1928, and he said he was sick of that job he was doing down at the house; that he can never satisfy that woman; that now she wanted a new heater, that it was

wanted, and as long as he was sent for, he was going home the next day. Mrs. Ailes said, "You are not finished with that job?" He said, "I am not going back today or tomorrow. I am going home. That job is to get along without me." I said, "The first thing you know you will be leaving your happy home to go live out there." He said, "Not on your life. I could never live with that woman."

Q. Did he give any other reason for reaching that conclusion?

A. No, the subject was not a pleasant one and it was dropped.

Q. How did members of the Ailes family treat Mr. Allen when he was living in Pleasantville?

A. The Ailes family consisted of ——

Mr. Endicott: I asked that that be stricken out.

Witness: With the greatest affection ——

Mr. Endicott: There is no question pending. I waited to see what is answer was, but he started to state a conclusion.

The Court: I think that is so.

Q. What did you observe? Tell us what you observed and not your conclusions.

A. That Mr. Allen had the position of a grandfather to the children.

Mr. Endicott: I ask that that be stricken out.

Witness: That is what I observe.

Q. How did he treat them or they treat him.

A. One day, for instance, the five-year-old boy came in and he said, "Poppy, I still have that nickel," and Poppy took the little kid up on his knee and kissed him, and he said, "There is nothing in Germantown like that that I know of." He said, "Every time I go up there it is a case of wanting something." There was the greatest affection in that household.

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

The Court: Yes.

Q. Up to the time of the trip to Winchester during which Mr. Allen was stricken, had you noticed any change in his physical condition?

A. I did not.

Q. From the time that you became acquainted with him in 1925, when you became well acquainted with him as you say?

A. Certainly not for the worse. He dressed better, looked better and looked healthier.

Q. Was he able to walk about?

A. Certainly.

Cross-examination.

By Mr. Endicott:

Q. You have been a very close friend of the Ailes since your acquaintance 39 years ago?

A. I claim to be, yes.

Q. You did not know Mr. Allen until he came under the Ailes' influence in 1929 — I mean 1919?

A. I first met him ——

Q. You did not become closely acquainted with Mr. Allen until 1925 as I understand?

A. That is right. I was a busy man in these days and seldom saw him.

Q. Do you drive a motor car?

A. I do.

Q. Do you own a motor car?

A. I do.

Q. Did you ever take a trip with Mrs. Ailes in your motor car?

A. I think we did, at the time that we went to Reading. They drove their car to our house and then we took my car and drove to Reading.

Q. Did you go in your car or their car?

A. I went in their car. Mrs. Ailes liked her car.

Q. So that for five trips you went in the Ailes' car and one trip you went in your car?

A. I think that would tell the story exactly.

Q. When did these trips first begin?

A. Probably three or four years ago.

Q. When did Mrs. Ailes first have a car?

A. She had a car, it seems to me, while they were living in Walnut Street, but we didn't drive any, perhaps, until after they came down here to Pleasantville.

Q. When did you first acquire a car?

A. In 1915. Previous to that, I drove a horse and carriage in business.

Q. What was your arrangement for the sharing of expenses on the various trips that you made?

A. We quote "dutched" it, as they say; each paid our own expenses.

Q. Who acted as treasurer?

A. Each paid our own expenses. There was no treasurer.

Q. You had no common fund?

A. No. The trips were not long enough for anything like that.

Q. Who engaged the board when you stopped at the hotel?

A. Sometimes Mrs. Ailes did. We usually allowed the ladies to do it because they wanted to see what kind of rooms they were going to get.

Q. You paid the bills in the morning and if so, who?

A. Sometimes Mrs. Ailes, and I would pay my share, I think as a rule she did that part of it.

Q. Mrs. Ailes was a sort of business manager on the expedition?

A. No, she managed nothing as far as the finances were concerned. She paid her bill and I paid my share. She financed nothing.

Q. Was not she treasurer for the occasion, to pay the bills?

A. No, I wouldn't call her treasurer. She would come down sometimes and maybe I would pay it, I don't know; it was a minor thing and there was no arrangements made for a treasurership of anything.

Q. Mr. Allen was of strong mentality? What part did he take in this?

A. Mr. Allen allowed Mrs. Ailes to attend to most things of that kind.

Q. She was competent to do it, was she?

A. I thought so. I don't think she ever swindled me out of any money.

Q. You were of the opinion that she had excellent business ability, were you not?

A. What is that?

Q. You were of the opinion that she had excellent business ability, were you not?

A. I never said so.

Q. Did you suggest that fact to Mr. Allen?

A. No.

Q. In your conversations with him?

A. He said it to me.

Q. In your conversations with him in which Mrs. Ailes' ability as a business woman was discussed, did you not say to him that she was a competent business manager?

A. I don't think I said so.

Q. What did you say?

A. He said that to me. I said that she had had no commercial training, so far as I knew but that her daughters had had. Her daughters were employed in a bank, and Mrs. Ailes, when she was a young girl, remained at home and helped her mother.

Q. What else was there said in the conversation?

A. The conversation would be of the truth of what I know. I said she had no commercial training, but ——

Q. But what?

A. I make no "buts."

Q. Did you or not say to Mr. Allen that she was a competent business woman?

A. No, he said that to me. He said, "She is won-

derful considering she has had no commercial training."

Q. How is it that you recall so vividly the various dates upon which the Ailes' family moved from place to place?

A. In the first place October 6th was one month of Mrs. Shumway's mother's death. Her mother died on September 5, and this was within one month.

Q. Did you know Mrs. Shumway previously to that time?

A. I knew Mrs. Shumway when she was sixteen years of age. She was a pretty young girl then. That was in the summer of 1890. I didn't see her again until the night of this party.

Q. How did you have occasion to know when Mrs. Shumway died.

A. Mrs. Haberstadt told me.

Q. How did she know?

A. She was at the funeral She was at the house. I don't know whether or not she was at the funeral but she was there.

Q. Mrs. Haberstadt kept in touch with the family but you did not?

A. No, she met Mrs. Shumway just before.

Q. Just before what?

A. Just before this party was given.

Q. You say that your wife went to the funeral?

A. She was also at the funeral to the best of my knowledge.

Q. How long had they met previous to the funeral?

A. You will have to ask her. I can only tell you what she told me.

Q. You tell me that on November 15th, 1919, the Ailes moved to the Allegheny Avenue house. What refreshes your mind as to that date?

A. Because Mr. Ailes and I looked that thing up. I consulted the memorandums that I had and he finally found a bill for the cost of removing his trunk that Saturday, so he recalled it was Saturday. It was positively fixed.

Q. So that it was fixed when you were preparing your testimony for today?

A. Yes, I am positive the date is correct.

Q. What about the date of the 23rd?

A. I have an entry in my diary as to that effect and we recalled the circumstances vividly.

Q. Have you the diary with you?

A. I have not.

Q. Where is it?

A. Home.

Q. Have you any other dates about the moving of the Ailes family from October, 1919, to 1925?

A. I don't think so, not the Ailes family. I have only my own.

Q. You have recalled exactly the time of moving of the Ailes family from one house to another during a matter of a period of several years? Would you say that you did not come in contact, close contact with Mr. Allen during that period?

A. I did not.

Q. He was a close intimate of that family?

A. I presume he was but I didn't come in contact with Mr. Allen.

Q. How can you tell with such correct detail, the moving of the Ailes family from one house to another with the dates?

A. From my knowledge and what I had heard.

Q. From your knowledge and what you had heard?

A. Both.

Q. What part is based on your personal knowledge?

A. I know positively that they were in the house on the 23rd of November because I was there.

Q. How often were you there in their household during that period?

A. I don't know as to the Allegheny Avenue house, I was there November 23. Shortly after the first of the year, Mr. and Mrs. Ailes visited us and I asked him how he liked his new home. I suppose I ought not to tell this. It is somewhat talkative. They told me they didn't like it, that they expected to go back to their own home and that they expected to go back as soon as the weather moderated. They went back because they didn't like it.

Q. Did Mr. Ailes tell you that?

A. Later on, I knew they had gone back.

Q. Mr. Ailes told you he didn't like it in that house?

A. Mr. and Mrs. Ailes.

Q. You said Mr. Ailes?

A. One made the speech, but in the presence of both of them.

Q. Who made the speech?

A. Mr. Ailes in the presence of Mrs. Ailes.

Q. In your contact with Mr. Allen, did you find him to be a person who was of economicable habits or did you find him a lavish giver?

A. With me, personally, I found he was just like other men. He was economicable with himself in

his personal expenses but he was always liberal when it came to pay for something in which he participated. If we had a dinner, he would want to go to the best hotel and he would often want to pay the entire bill.

Q. Did he often do it?

A. He did it the night before he took sick. I offered to pay it but he said to the girl, "Don't you take that money. You look around the table and say who you think looks like the millionaire." And when he said it, he looked around and threw his chest out and the girl said, "You look like the millionaire."

Q. Did he then pay the bill or did he often pay the bill?

A. Frequently; and yet inasmuch as we only had five trips, it couldn't be very often.

Q. In your personal contact with Mr. Allen, both on these trips and when you visited, did you see any evidence of generosity on his part to any persons other than the Ailes family?

A. Yes, he was generous with children as far as I could see.

Q. What children was he generous with?

A. Our children. We have three boys.

Q. What did he do to exhibit his generosity there?

A. He didn't give any valuable presents or anything like that, but if we happened to be together, he would pay the bill.

Q. If the Ailes were together?

A. If we were all together, he would be that way.

Q. Did you ever know him to pay any bills except when Mrs. Ailes was about?

A. No, but he told me that he lost the income of that house which Mrs. Shumway occupied, which was for several years, and he told me that he left her live there, rent free. I think that was very generous.

Q. Answer the question.

(The last question read to the witness as follows: "Did you ever know him to pay any bills except when Mrs. Ailes was about?")

A. I was never with him except when Mrs. Ailes was around, never was alone with him.

Q. Did you ever see any evidence of childishness on the part of Mr. Allen during the last two years of his life?

A. I did not.

Q. Was his exhibition that you have just related, as to his swelling up and throwing out his chest and saying that he was the millionaire — was that an evidence of childishness?

A. I don't think so.

Q. Was that typical of his conduct?

A. That was typical of the man. He would pass jokes often, especially on the subject of marrying young girls. It was a humor with him.

Q. Did he have humor of that sort?

A. That was his own sense of humor. He thought he was pleasing the girls and yet I don't know what he thought. I just say that. At one time he was over here at the restaurant and he said to the waitress, "I am looking for a third wife. Do you know where I can find one?" She said, "If you spend sixty-five cents, I will tell you where you can get

one." And he said, "Where?" And she said, "Take sixty-five cents and put an ad in the Press-Union."

Q. Was he susceptible to the influence of women?

A. No, he was of a clean mind and clean of speech always.

By the Court:

Q. Did you ever see a man that was not susceptible to the influence of women?

A. No, I don't mean it in that respect, I meant, not unduly susceptible. He liked pretty girls. He was a better judge of dresses than I was. He was a judge of pretty dresses.

By Mr. Endicott:

Q. He observed things of that sort?

A. Yes. I didn't mean for an instant that he was susceptible to the power of women, but I meant unduly so.

Q. Do you know anything about his buying houses for the girls in Philadelphia?

A. He never ——

Q. Just a minute — In September or October of 1928?

A. I know he did not.

Q. Do you know that he talked about it?

A. When Mr. Allen placed the mortgage on a house ——

Q. Do you know that he talked about it?

A. No, he did not.

Q. You mean that he did not to you?

A. He did not talk about buying houses. He told me about taking mortgages on properties bought by the daughters.

Q. You left Atlantic City, Friday, October 19, 1928? Where did you stop for lunch?

A. At Belair, Maryland.

Q. Who paid the check on that occasion?

A. I think I did. I really couldn't say positively. Do you mean for lunch or dinner?

Q. For dinner at Belair.

A. Mr. Allen had his lunch at the restaurant. He didn't eat at the hotel. We went to the hotel.

Q. You went to the hotel?

A. I think I paid the bill and I think Mrs. Ailes gave me her half.

Q. Why did Mr. Allen remain part from the rest of you?

A. Mr. Allen loved oysters. He wanted oysters and I didn't care for them and we wanted to go to the hotel; so Mrs. Ailes escorted him over to the restaurant and told him that after he had his lunch to come over to the hotel and sit on the porch. While we were at lunch ——

Q. One minute please. How far was the restaurant from where you were?

A. About a block.

Q. What occasion was there for Mrs. Ailes to escort Mr. Allen?

A. To find a restaurant.

Q. Why was there any need for her to escort him?

A. Somebody had to escort him.

Q. Why?

A. To find a restaurant.

Q. What reasons should there be for anybody to assist him?

A. I don't think it was necessary.

Q. You said it was necessary for somebody to escort him, to assist him?

A. I didn't say that. I said Mrs. Ailes escorted him to the restaurant. There was no necessity as far as I could see. It was a matter of courtesy.

Q. You say she told him to come back to the hotel and to wait on the porch? Is that correct?

A. That was our meeting place before we started off. The car was at the hotel.

Q. Was she in the habit of directing his movements?

A. No, she merely named that as trysting place.

Q. Do you know of any other occasion when she told him what to do?

A. No, it was not told in the form that she told him what to do. It was not a command. It was a suggestion that he meet us there after lunch.

Q. But you characterized it in your examination as being instructions to him?

A. No, I didn't intend that.

Q. Do you wish to change that impression?

A. If you took that impression, you got it, you took it yourself, I didn't give it.

Q. How long were you at lunch that day?

A. We took our time. I guess we were three quarters of an hour.

Q. When did you next see Mr. Allen?

A. He was sitting in the lobby of the hotel, reclining in an easy chair and he said that it was very nice there and he was chatting with the clerk.

Q. Then you went on that night to Frederick?

A. After lunch; not in the evening.

Q. When did you arrive at Frederick?

A. Before five o'clock.

Q. Who made arrangements for spending the night there?

A. Who made arrangements? We went into the hotel. I suggested that that was a very nice hotel, I said, "Let us go there." We had originally planned that we would go as far as Harper's Ferry.

Q. I want to know who arranged for the rooms?

A. I arranged to stop at the hotel and Mrs. Ailes and Mrs. Haberstadt went upstairs to find out what kind of rooms we were going to get.

Q. How many rooms were engaged?

A. Three rooms.

Q. What did you do that evening?

A. There was a County Fair down there and Mr. Allen wanted to go to the County Fair. It started to rain, and I was glad that personally, because I did not want to go to the County Fair, so I think that I suggested that we go to the movies instead, and we went to the movies.

Q. You all went together?

A. All five of us went together.

Q. What time did you leave the next day?

A. The next day I think we left probably at eight o'clock.

Q. Who settled the hotel bills that morning?

A. I don't know whether it was I or Mrs. Ailes. I think I went down with Mrs. Ailes and I paid my share.

Q. Did you or she receive any contributions from Mr. Allen?

A. I don't remember.

Q. Upon any occasion did you see him give her his share?

A. I did not see. I couldn't say positively. I may have seen it.

Q. You have no recollection of having seen Mr. Allen give Mrs. Ailes his share?

A. I have no recollection either way.

Q. Do you recall being at the hospital in Winchester while Mr. Allen was there?

A. I do.

Q. On how many occasions?

A. On one occasion, the night before he died.

Q. How long were you there?

A. About five minutes.

Q. After Mr. Allen died, what did you do?

A. What do you mean?

Q. I want to know your movements after Mr. Allen's death.

A. We were at lunch between one and two o'clock and we started to go over to the hospital which was adjoining the building next door. As we reached the sidewalk, which I should judge was about 40 feet along there, one of the girls there from the dining room called out that there was a telephone message and to go over to the hospital at once. When we got there, I didn't go into the dining room. Mrs. Ailes went into the room and when she came out, she said, "Mr. Allen has passed away."

Q. What did you do after that? How long did you stay in Winchester?

A. I stayed in Winchester until Mrs. Ailes and Mr. Ailes went to make arrangements for the removal of the body and we finally decided that to be

the best policy to pursue after Mr. Ailes had sent word.

Q. Where did you go?

A. We followed out our decision. I remained in the hotel at this place, on Washington Avenue, until the next morning. We then went over to view the body before we left town.

Q. How long did you stay there?

A. Until about seven o'clock the next morning.

Q. Then you left town?

A. We left Winchester.

Q. And went where?

A. To Baltimore.

Q. Did you then return to Philadelphia or Pleasantville?

A. I returned to Pleasantville that same day. We went to Baltimore for the purpose,——

Mr. Endicott: No question pending.

Q. Who paid the bill at Winchester?

A. Do you mean the hospital bill?

Q. The hotel bill.

A. We all paid our shares.

Q. Who paid the bill to the hotel?

A. I couldn't tell you whether I paid it or Mrs. Ailes paid it.

Q. Do you remember anything about the paying of the bill?

A. I don't recall. I can give you a vague idea of what it cost, as that is about all. The bill was not large. It was a few dollars, because we were there only a few days and the rates were $2.25 a day.

Q. You were very intimate with the Ailes family

and you knew generally their business enterprises and arrangements?

A. We were friends. I never knew for instance, just how much money Mr. Ailes made but he never knew how much I made but we were friends.

Q. Do you know what Mr. Ailes' occupation has been for the last ten years?

A. Mr. Ailes has always worked, and for the last fourteen years, he has been employed, I think it is fourteen years, with the Berwind White Coal Co.

Q. In what capacity has he been employed there?

A. Something like purchasing agent or assistant purchasing agent, I don't know which.

Q. Since he has lived in Pleasantville, how often has he gone to work?

A. Until a few years ago. I think he went every day or as far as he was able.

Q. Was there anything the matter with his health?

A. He had a breakdown.

Q. What was it?

A. I understand he had a breakdown and was given a leave of absence with pay.

Q. When did that occur?

A. That has been about two years. I may be mistaken about that.

Q. Do you know anything about Mr. Allen buying an automobile for Mrs. Ailes?

A. I remember one time Mr. Allen said, "These girls ought to have an automobile." I thought to myself he wanted one himself. He bought the automobile.

Q. How do you know about that?

A. I know it as far as I was able to know. I didn't see him buy it.

Q. Who told you?

A. I don't know. Perhaps Mrs. Ailes told me or perhaps the girls told me. I know it.

Q. Do you know anything about the execution of the checks by Mr. Allen in the Winchester Hospital?

A. When Mr. Allen took sick, I suggested to Mr. Ailes that he may be probably sick for quite a little while and that it would be well for him to draw a check to cover the probable expenses, because I didn't have enough money with us to provide for an extended stay, and he suggested it to Mrs. Ailes and she said, "He is too sick. I can't bother him with anything like that now." When the subject was broached to him, I don't know, but it was not on Saturday. It was probably at the hospital after they said they would have to have some money. Do you want to know just what I know about that check?

Mr. Starr: Continue. You are answering the question.

By Mr. Endicott:

Q. Tell us what was the occasion when you next knew of any checks being executed?

A. I presume that immediately after they were executed, it was, because Mrs. Ailes came out of the hospital, or rather Mr. Ailes, I should say, with these two checks in his hand, and he said, "Here are these checks. Here are the checks." I looked at the checks and I was amazed at the amount,

$2,000.00 on one of them, and $800.00 for the other. The $800.00 was sufficient but I learned afterwards what these checks were made out to use for.

Q. You saw the checks?

A. Yes.

Q. They were then in whose hands?

A. Mr. Ailes'.

Q. And the amounts were what?

A. I may be mistaken but I think one was for $800.00 and the other was for $2,000.00, but it may have been $800.00 and $1,200.00; I don't know.

Q. Would you recognize them if you saw them again?

A. I would recognize Mr. Allen's signature, I think, because one was much poorer than the other.

Q. How many checks were drawn that day?

A. To my knowledge only these two.

Q. Do you remember the date?

A. The day he died? No, let us see. Yes, on the 21st or 22nd. Let me think it out.

Q. It was on the day he died?

A. Yes.

Q. That was October 22, 1928?

A. Yes.

Q. I show you a check being marked Exhibit C24, and ask you if that is one of the checks you saw that day?

(Check shown witness.)

A. No, sir. I never saw that check.

Q. I show you Exhibit C25, and ask you if that is one of the checks you saw that day?

A. I never saw that.

Q. I show you Exhibit C16, and ask you if that is one of the checks you saw that day.

(Check shown witness.)

A. I believe that is the check. That was the check.

Q. That is the check?

A. That is one of the checks.

Q. This $2,000.00 check that you have referred to?

A. Yes.

Q. I show you check C14, and ask you if you recall that as one of the checks you saw that day?

(Check shown witness.)

A. Yes.

Q. And this is the $800.00 check you have referred to?

(Check shown witness.)

A. Yes.

Q. Where were you when you saw these checks?

A. On the street, on the sidewalk.

Q. They were in possession of Mr. Ailes?

A. Mr. Ailes.

Q. Do you know how long they had been signed at that time?

A. I don't know. I presume they had just been signed.

Q. Was there any statement made to you by Mr. Ailes as to the amount filled in on the checks?

A. No, he said, "Joe, how would you go about

this thing?" and I said, "Frank, I think I would have them sent to Mr. Manning at the bank, and have them certify them and use them here as they are given in Winchester.

Q. Did that take place before the death of Mr. Allen? As to sending these checks on to the bank?

A. No, after death. We had no idea of this happening right away.

Q. How long were these taken before his death?

A. Three or four hours.

Q. What was said to you about the amount of the checks?

A. Do you mean the reason why they were drawn for that amount?

Q. Yes.

A. One of the reasons given was that Mr. Allen had said that he did not want me to spend one cent of money on that trip, that he had sponsored the trip and wanted to pay the entire expense, of course, that was out of the question. Another reason was that for the larger check he had contracted a bill for an oil burner in the house at Pleasantville and he had promised to pay that bill and I think the oil burner was being put in at that time while we were away. He wanted Mrs. Ailes to pay that bill.

Q. How much would that cost?

A. I don't know but I think $1,100.00.

Q. Then, if you don't know you are merely guessing?

A. I am not positive that is the reason I say I am not positive.

Q. You say that it was not contemplated that Mr. Allen was going to die.

A. Of course not.

Q. What was the occasion for these large amounts of money being drawn?

A. The occasion being, that one check was for the reason that he may have to stay there for several weeks, and I didn't expect to see any large sum. I knew that something ought to be done and Mrs. Ailes told me afterwards that Mr. Allen suggested the amounts himself. She can tell you more about that than I can. I can only give you hearsay evidence.

Q. Did she tell you whether or not, I mean Mrs. Ailes,—rather Mr. Allen, did she tell you what he said the checks were to be made out for?

A. Yes.

Q. What did she say?

A. She said that she had said to him, "Poppy, we are not going to move tomorrow, we are going to stay here until you get well." He says, "It is going to cost some money if we stay here. You better draw some money. I have $800.00 in the regular check account." "But," he said, "That won't be enough to pay for that length of time, and also for the oil burner, and I want to pay for that. I don't want to let that go. So you can write to the cashier or somebody at the bank and transfer $2,000.00 from my savings account to the checking account."

Q. Is that all?

A. Which they did. I was not present when the checks were signed, that he made out, or anything of that sort, but I was particularly in touch,——

Mr. Endicott: There is no question pending.

Q. Did Mr. Allen give you a check for $35.00 on July 27th, 1923?

A. That is so far back that I don't know. Will you show me the check?

Q. Did Mr. Allen give you a check on June 25th for $10.20?

Mr. Starr: This witness is entitled to see the checks if they have them.

The Witness: If he gave me a check he owed me the money, but I don't know anything about it.

Mr. Starr: If they have the checks he is entitled to be permitted to inspect the checks.

Mr. Endicott: He appears to remember all other dates and I thought he would remember these.

The Witness: I will probably remember that vividly when I see the checks but I got to refresh my mind as to when it was.

By Mr. Endicott: Do you know anything about the arrangements in the Ailes household as to Mr. Allen's status there?

A. Only from hearsay.

Q. Who did you hear it from?

A. Mrs. Ailes, the day we visited them on November 23, at the very beginning.

(Recess to 2 o'clock, P. M.)

(After recess, 2 o'clock P. M.)

MR. HABERSTADT, resumed.

By Mr. Starr:

Q. I understand that you desire to make a correction in your testimony with respect to the name of one of the parties involved?

A. Yes, when I was asked a question, did I know of Mr. Allen being generous with anybody else, I said he told me that he had permitted Mrs. Shumway to live in the house in which he had a life interest, for many years. I should have said Mrs. Reulens.

Q. That is the correction you desire to make?

A. Yes.

By Mr. Endicott:

Q. How did Mr. Allen describe the lady you refer to?

A. His stepdaughter, Mrs. Reulens.

Q. What name did he call her by?

A. I think he called her "Lillie."

Q. What were the words he used when he told you that?

A. He told me that he has been good to her; that she resided in a house in which he has a life interest; that he had a life interest in, that he was

paying all the taxes and fixing it up, fixing up the house, and doing everything.

MRS. CATHERINE JEFFERSON, sworn.

Mr. Starr: Will you let me have the letter that you introduced in evidence and which Mrs. Reulens said she found? I don't remember the exhibit number. I don't know the date of it. I think it was in 1922. It was an envelope and a letter.

Mr. Endicott: I do not seem to find it among my exhibit memorandums. Here are some of them. I think this was in 1922. That letter was read into the record but I am not sure that it was offered in evidence. I understood that it was written by Mrs. Ailes.

Mr. Starr: It was a letter introduced, written to Mrs. Ailes by Mr. Allen. It had to do with something about the purchase of a bottle of brandy.

Mr. Endicott: I don't see it here.

Mr. Starr: It must be here.

Mr. Endicott: We will try to locate it. I keep my exhibits in one separate place. I don't seem to have it.

Mr. Starr: I wanted to show the witness the letter so that she would know what we are talking

about. I have the record and maybe I can identify it by that. I believe it is in the record here.

By Mr. Starr:

Q. Are you one of the daughters of Mrs. Ailes?
A. I am.
Q. What is your age?
A. 27.
Q. Where do you reside at the present time?
A. Pleasantville.
Q. With whom are you living there?
A. I have an apartment.
Q. You and your husband live there?
A. Yes.
Q. When were you married?
A. 1926.
Q. What month?
A. July.
Q. Have you lived in Pleasantville ever since?
A. Yes.
Q. Do you remember on one occasion talking with Mr. Allen in relation to a letter which your mother had written him? I show you what purports to be a copy and ask you to read that record on page 11 of the testimony taken on April 22, 1929, and ask you whether or not your recollection is refreshed by the reading of that, a copy of which is written in the record.

(Paper shown witness.)

A. Yes, I remember it.

Q. Do you remember the incident of that occasion?

A. Yes.

Q. Where were you living at that time?

A. I think with "Poppy," Mr. Allen.

Q. Where?

A. On Allegheny Avenue.

Q. Who composed the household?

A. My sister and myself and Mr. Allen.

Q. Where were your father and mother living at that time?

A. They had gone back to Trinity Place.

Q. Do you remember what year it was?

A. No. I don't remember that.

Q. How long had you been living at the Allegheny Avenue house with Mr. Allen?

A. Alone?

Q. You and your sister?

A. I don't know how long it would have been that mother and father were gone.

Q. Your father and mother formerly lived there?

A. Yes.

Q. And they left?

A. Yes.

Q. And you and your sister remained for a time with Mr. Allen?

A. Yes, we were doing some sewing.

Q. What happened between you and Mr. Allen when he received that letter?

A. I was sewing when Mr. Allen came into the room and said that he had received a letter from mother and we sat down and read it together and in that letter mother had arranged to meet "Poppy" for lunch and also asked me to get her a bottle of

brandy, she was not well and the doctor had asked her to get it and inviting him to go to lunch with them, which he did and during the lunch "Poppy" had told mother that he was not able to get the brandy.

Q. Had your mother been ill before that?

A. Yes, she hadn't been feeling well.

Q. Where did you go to for lunch? Who went?

A. Mother, "Poppy" and I.

Q. When you speak of "Poppy" you mean Mr. Allen?

A. Yes.

Q. Do you remember anything else he said with respect to that incident?

A. No, not regarding that letter.

Q. How long had you known Mr. Allen?

A. I knew him when Mother first knew him.

Q. How long had he been an inmate of the same house in which you lived from the time you knew him up until the time of his death?

A. Well, he lived with us from 1919, I believe it was, when we met him, up until the time of his death. That was nine years.

Q. He was a member of the household?

A. I would not call him an inmate, because he wouldn't be there as an inmate. It sounds as though we kept him there.

Q. Perhaps that was innate word to use, but he lived there, didn't he?

A. He lived with us, yes.

Q. During all that time did you talk with him from time to time?

A. Yes, of course.

Q. Do you remember any of the topics of conversation between you and him?

A. Just like you would talk to any member of your family, about all the trifling things, the same as you would talk to a member of your family. I cannot tell of anything particularly that we discussed.

Q. Do you know whether or not he made any presents from time to time to you girls?

A. Yes, he gave me many presents.

Q. What were some of them?

A. He gave me jewelry, clothes and furniture for my home, tapestries and gave me some baby's things, even before she was born and a coach, after she was born, and quite a number of things that I can't think of now.

Q. Were they given directly by him to you?

A. Yes, and he gave me, also money, and I think one of the last sums was $25.00; and when he felt that I needed it he would give me more.

Q. Were you able to carry on an intelligent and connected conversation with him?

A. Yes, indeed.

Q. Was he childish upon any occasion in his conversations with you?

A. Not at all.

Q. Was there any indication, so far as you were able to observe, of the lack of mental capacity?

A. No, indeed.

Q. During the entire time that you knew him up until the time of his death, did he show any indication of failing mentality?

A. No.

Cross-examination.

By Mr. Endicott:

Q. When did you first meet Mr. Allen?
A. When my father and mother met him in 1919, I believe it was.
Q. Do you remember what time of year it was?
A. No, I don't remember that.
Q. Was it hot or cold weather?
A. I don't remember.
Q. Where did you first see Mr. Allen?
A. In our home.
Q. Where was your home?
A. Trinity Place.
Q. What was the occasion of your first seeing him there?
A. He came to see us.
Q. How long was that before Mr. Allen became a member of your household?
A. Perhaps a month or two months.
Q. You then went to the Allegheny Avenue house?
A. Yes.
Q. You had been living with your father and mother in the Trinity Place house?
A. Yes.
Q. Your father and mother and young sister went to Mr. Allen's house on Allegheny Avenue?
A. Yes, and my married sister and her husband were living with us on Trinity Place.
Q. The four of you went to the Allegheny Avenue house and then lived in Mr. Allen's house?
A. Yes.
Q. You remember what time of year that was?

A. I said I didn't know.

Q. How long did you remain in the Allegheny Avenue house?

A. I believe it was in the spring that he had a sale for it and my sister and I stayed there for a couple of time and that would have brought it up to probably early summer.

Q. How long were you in the house all together?

A. I don't know that. I don't know just how many months.

Q. Were you there a year?

A. No, not the first time, it must have been the fall of that year we went there.

Q. How long were your father and mother away from the Allegheny Avenue house before you left it?

A. I should say a couple of months.

Q. Then where did you go to live?

A. Back with father and mother.

Q. In Trinity Place?

A. Yes.

Q. How long did you remain there before you became a member of Mr. Allen's household again?

A. Until the fall.

Q. Where did you go to lunch with Mr. Allen and your mother?

A. Strawbridge's.

Q. Where did you meet that day?

A. Under the Eagle in Wanamakers.

Q. What is the Eagle in Wanamakers?

A. It is an Eagle in the center court.

Q. How long were you together that day?

A. I don't know just how long we were together. Do you mean for lunch?

Q. How long were your mother and Mr. Allen together that day?

A. At lunch? On that day I believe I had some shopping to do if I recall correctly, and then "Poppy" and I went out to mother's home for dinner that night.

Q. Under what arrangements did you remain in Mr. Allen's home after your father and mother left?

A. Because he wanted us to and we wanted to stay.

Q. Did you pay any board?

A. No.

Q. Did you perform any service in the house?

A. No. He wanted us there.

Q. Did you perform any service in the house?

A. What kind of service do you mean?

Q. Did you assist with the preparation of the meals?

A. We didn't have our meals there.

Q. Did you do anything in the way of house cleaning or making of the beds or things of that sort?

A. No, we made our beds, yes, but we didn't do any house cleaning.

Q. Who did the house cleaning?

A. I don't remember. I guess somebody came in who did it. I wasn't there all times of the day.

Q. Was there a servant in the house?

A. Not permanently, no. I was only 17 at the time, within one or two weeks that Mrs. Ailes did, run, in detail, like that.

By Mr. Starr:

Q. What was the name of your other sister?

A. Mrs. Fleming.

Q. The one that remained at the Allegheny Avenue house?

A. Mrs. Fleming.

Q. Mrs. Fleming?

A. Yes.

Mrs. Clara Haberstadt, sworn.

By Mr. Starr:

Q. Are you the wife of Mr. Haberstadt who testified this morning?

A. I am.

Q. Where do you live now?

A. In Oak Lane, Philadelphia.

Q. How long had you been acquainted with Mr. Allen prior to his death?

A. I met him at the same time, about the same time, within one or two weeks that Mrs. Ailes did: I will say about ten years ago.

Q. Do you remember the year?

A. I guess it was 1919.

Q. Where did you meet him?

A. At Mrs. Shumway's home.

Q. Who were there, do you recall?

A. She had some other friends there. It was a sort of little party. My husband was not there; just Mrs. Ailes and myself. That was the first time.

Q. How often had you seen him to talk to him since that time up to the date of his death?

A. After he moved into the Allegheny Avenue house I saw him on the average of once a week, be-

cause I am intimately associated with Mrs. Ailes and naturally that was her home then and we saw each other once a week.

Q. From then on just give us generally the extent of your meetings?

A. Every Friday I would see Mr. Allen at Mrs. Ailes home, because we had our shopping, our marketing together.

Q. From that time on?

A. During all the time that he lived there, for four months, or however long it was.

Q. From then on up until the time of his death?

A. Well, after they moved to Trinity Place, maybe I didn't see Mrs. Ailes but once a week possibly, we didn't do our shopping together quite every week, maybe possibly every two weeks. It wasn't as a convenient as it was in Allegheny Avenue because we lived nearer to Oak Lane.

Q. Did you see Mr. Allen on these occasions?

A. Not always.

Q. From that time up until the day of his death?

A. I couldn't pick the time because sometimes he visited in our home. On the next occasion, or in between I may have seen him at his house in one or two weeks, just as you would casually meet like that.

Q. When did you last come in contact with Mr. Allen?

A. Up to the time of his death.

Q. You were on the trip to Winchester?

A. I was on the trip.

Q. Did you visit him at Pleasantville?

A. Oh, my, yes. We drove down from Philadelphia on a Wednesday and I think on Friday we started off on the trip.

Q. Before that time, prior to that time and up to the time of the last trip did you come to Pleasantville to visit the Ailes from time to time?

A. Most assuredly.

Q. How often?

A. I will say once a month and they would come up in between and at the last we saw each other once in every three and four weeks.

Q. You have continued your friendship with Mrs. Ailes ever since you met Mr. Allen?

A. Certainly.

Q. By the way, do you remember about when it was that the Ailes moved to Pleasantville?

A. I can't fix the year because I am not very good on dates and they didn't live there permanently at first.

Q. From the time they lived there permanently can you give us the year?

A. No, I can't say I do, that I can, because I might contradict myself and I wouldn't want to state anything like that.

Q. During all the occasions that you saw Mr. Allen during that time and talked with him have you ever observed any indication of failing mentality?

A. None in the least, at no time, with any remark whatever.

Q. Did he ever in your presence carry on in a childish manner?

A. No, never.

Q. Was he rational and intelligent in his conversation?

A. At all times, always.

Q. And that continued up to the time of his death?

A. What is that?

Q. Did that continue up to the time of his death?

A. What is that?

Q. Did that continue up to the time of his death?

A. Until the day he died I saw him.

Q. Did you ever have any talk with Mr. Allen with relation with the distribution of his properties, to make the distribution of his property by will or otherwise?

A. Other than he would say to me, "After I am gone in order that Katie and Frank will never want for anything, never. They will be well taken care of."

Q. How many times has he said anything like that to you?

A. At all times when he referred to them.

Q. Did he ever refer to what they had done for him during the latter years of his life?

A. He made some remark to me and to Mr. Haberstadt in my presence. He said, "That is something that we cannot buy a home. You can't buy it."

Q. Do you remember exactly what he said?

A. He said, "That is something you can't buy, Clara. You can't buy a home. You may buy a house but you can't buy a home and I have a home for Frank and Katie to live. I have a real home."

Q. Did he ever talk about any of the other members of his family to you?

A. Well, do I have to say this? Do you want me to answer it?

Q. What did he tell you?

A. He said, "I want Katie and Frank to have everything I have." He said, "My folks don't

need it." He said, "They are aged." And he said, "Clara, every dollar I have, I got it with hard work. Look at my hands. Every dollar I have I have earned it myself and by brother inherited a good fortune, got it easy. I earned my money and I want it to go where I want it to go, to Frank and Katie."

Q. Do you know where and when he said that?

A. On the day we took the trip up and down the Jersey coast. He said, "Look at my hands. I have earned my money."

Q. Where did you go to at that time?

A. Asbury Park.

Q. Who were in the party?

A. Just Mrs. Ailes, "Poppy" and myself.

Q. Was your husband along?

A. Most assuredly.

Q. How was Mr. Allen addressed in the Ailes household?

A. He was "Poppy" to all of us. He liked it. I called him "Poppy." My husband called him "Poppy." We all liked it and he liked it and he felt nearer to us, made him feel like one of the family.

Q. Did he ever say or do anything in your presence to indicate he was unable to transact business.

A. No indeed.

Q. Do you know, of your own knowledge, of any particular instances where he contracted business?

A. He was always fully capable; fully.

Q. How was he treated in the home from what you observed?

A. As one of the family.

Q. Did he eat with the other members of the family?

A. Certainly.

Q. What about the rooms he used when he lived in the Ailes' household?

A. The rooms? The whole house was his.

Q. Where did he have his bedroom?

A. At the present time?

Q. Yes.

A. In the house at the head of the stairs.

Q. At the head of the stairs?

A. In this house at the head of the stairs.

Q. Do you remember the occasion of going to Winchester?

A. I most certainly do.

Q. When did you last have a conversation with Mr. Allen on that trip?

A. The last conversation?

Q. Yes.

A. Yes, the day he died.

Q. What was the conversation?

A. I wouldn't call it a real conversation. I went in to inquire about his health, naturally. We were there. We were not in there but a few minutes, Mrs. Ailes and myself and the doctor came in the room and went like this.

Q. Who did?

A. The doctor. I thought, naturally out of courtesy that I better get out, that he didn't want me, he wanted Mrs. Ailes, to tell her of Mr. Allen's condition.

Mr. Endicott: That is objected to unless this witness can tell what statements, if any, were made at

that time. She is apparently relating a conclusion that she reached.

Q. What was said, if anything?

A. I simply inquired about his health, so the doctor came in and he demanded for us to leave the room, I thought, and I left with Mrs. Ailes, and then the doctor talked with Mrs. Ailes in the corridor, so out of courtesy I left. I went in the corridor and I picked up a magazine and I read while they talked over Mr. Allen, naturally, I got interested in the article I was reading and when I looked up they were gone. Then I looked around and I turned out into this side place, and offset in the corridor which went into Mr. Allen's room and the nurse and Mrs. Ailes was there and the doctor was gone and Mrs. Ailes was standing at the bureau, filling in a check, writing a check, where she had brought them and took them over to "Poppy" and said, "You can put your signature to this." At any rate he was in bed. The bed was here and I sat alongside of the bed like this and he said, "Oh, I can get out." We had to plead with him not to get out and he said, "I can get up." I said, "No, you take my chair. I will put my chair there and I will get like this." So he put his feet on the chair like this and he put his signature to the checks.

Q. Do you know whether or not the checks were filled in before he signed them or not?

A. I saw Mrs. Ailes fill them in at the bureau.

Q. How long before his death did that happen?

A. That was in the morning, on Monday morning, and we left, we were there for a little while, we left because the nurse wanted to attend to her room and

her patient. That was 10 o'clock. We wanted to go to lunch and took a walk and went to lunch, and that was when we got this message from the house.

Q. On the trip from Pleasantville to Winchester did you ride in the same automobile with Mr. Allen?

A. Yes, one car. We left our car at Ailes' house.

Q. How were the people seated in that automobile during that trip?

A. Mr. and Mrs. Ailes were up front and "Poppy" and Mr. Haberstadt—no, Mr. Haberstadt sometimes sat up front. Then we changed things about. Mr. Haberstadt was not. Mr. and Mrs. Ailes were in front, I believe.

Q. Who drove the car?

A. Mrs. Ailes.

Q. You rode in the rear seat most of the time?

A. Most always.

Q. And Mr. Allen?

A. He was with me all of the time, all of the trip, never rode in front.

Q. During that time were certain conversations held with you?

A. We were all laughing and talking, in a party like that, surely.

Q. Was there any indication that Mr. Allen was failing mentally on that trip?

A. No.

Q. Did he talk intelligently or otherwise on that trip?

A. Intelligently and he enjoyed it immensely. He enjoyed seeing the different places of interest and things like that.

Q. Do you remember anything particularly that

happened on that occasion so far as Mr. Allen was concerned, anything he said or did?

A. He enjoyed Harper's Ferry, and looking over, like that, he said he would like to come back there and said he would like to stay a while and he wanted to know what their terms were. He was interested enough for that. He didn't want to go away.

Q. Do you know of your own knowledge about the terms?

A. Yes, we were in the lobby and went in the lobby and we talked of it turning over at the hilltop.

Q. What was the character of the hotel at the hilltop?

A. On the hilltop at Harper's Ferry.

Q. What about the stopovers at Belair and also at Frederick? What did he say about those places?

A. Well, we just arrived at Belair. We had been there before. He said, "I don't want to go there. I want to go to a restaurant and get some oysters." So we said we would all go down there and we took a walk with Mr. and Mrs. Ailes and myself, that we would like to go down there. Mr. Haberstadt had stayed at the hotel. He made the reservations at the hotel for the three of us because Mr. Allen wanted to go to the restaurant and we three walked with him to the restaurant—— In Belair do you mean?

Q. Yes.

A. That is in Belair.

Q. Did anything else happen?

A. We left him there and we came back to where we had our car to go to Frederick.

Q. You stopped at Frederick overnight?

A. We stopped there first for lunch — no — yes,

that is right. We got at Frederick at half past four in the afternoon.

Q. Did you stop at a hotel there?

A. Yes, at the Francis Scott Keyes Hotel.

Q. At the Francis Scott Keyes Hotel?

A. Yes.

Q. Did Mr. Allen display any interest in what was going on there?

A. He loved that lobby. He thought it was just grand and enjoyed it immensely.

Cross-examination.

By Mr. Endicott:

Q. How many checks did you see signed?

A. Two.

Q. Did you see the writing on them before they were signed?

A. Do you mean what was filled in? What amount?

Q. Yes.

A. I couldn't tell you the amount. I saw them fill it in and saw Mrs. Ailes write it. I have a little respect for people's affairs so I didn't peer in, to find out.

Q. How far away was you?

A. Well, I walked into the room. I walked over to Katie. She was at the bureau and I walked out. I didn't know what she was doing, and when I saw she was busy I walked away.

Q. Did you see her writing?

A. Yes, I saw her writing.

Q. Did you see the writing itself?

A. I saw the writing.

Q. Did you read it?

A. I did not read the amount. I saw the writing.

Q. Did you see the amount?

A. No.

Q. Did you see any names on the checks?

A. What Mr. Allen signed? With Mr. Allen's signature?

Q. No, before Mr. Allen signed it?

A. Certainly, I saw she had it filled in and saw the writing.

Q. You saw it filled in?

A. I saw her writing the check. I saw the places where it was filled in on the check.

Q. What did you see?

A. I saw it was filled in, only I couldn't tell the amount of the money. I saw it afterwards.

Q. Did you see the name to whom the checks were drawn?

A. No, I can't say I did. I didn't do that personally, I wouldn't do that personally, but I saw her standing at the desk and I know she was filling out these checks.

Q. Do you know how many checks were filled out that day?

A. Two to my knowledge.

Q. That was October 22?

A. That was the day he died.

Q. I show you Exhibit C24 and ask you if that is one of the checks that you saw that day?

(Check shown witness.)

A. That is not — I cannot tell you. I only know

that Mr. Allen signed down there like that. That is all I would know.

Q. I show you exhibit C25 and ask you if you saw that check on that day?

(Check shown witness.)

A. That was not — I don't think that was the check. I couldn't tell you, other than that I saw him write his name. I saw these two places filled in on two checks. Other than that I don't know anything about this check.

Q. You don't know how they were filled in?

A. But there were two checks, two big checks.

Q. Two checks?

A. Yes.

Q. How do you know that?

A. I knew that afterwards. I didn't know it at the time. I didn't look at it.

Q. Did you notice at the time that they were big checks?

A. No, I couldn't tell the amount. I certainly didn't know the amount.

Q. You know about it now?

A. Certainly. It has been out for a year. I know it.

Q. Did you know anything about it before you left Winchester?

A. Yes, my husband knew it; we both knew it.

Q. Who was Doctor Montgomery?

A. He was the doctor we first saw.

Q. Do you know anything about the checks to him?

A. Certainly, we wanted him to be paid.

Q. Do you know anything about the checks drawn to him?

A. I know that checks were presented to the nurse and the doctor but I didn't see them being filled out like I did in the hospital.

Q. How do you know that?

A. I saw them presented to the nurse and she thanked for them.

Q. That was when?

A. Before we left for home.

Q. Were these checks signed by Mr. Allen?

A. I didn't see him sign those.

Q. When were the checks presented to the nurse?

A. That Sunday morning, I think, when we were leaving.

Q. On Sunday morning?

A. I think it was. I think it was the morning he was taken to the hospital.

Q. You saw a nurse get a check?

A. Yes, the lady where we stopped in her home.

Q. At the same time when Mr. Allen was taken into the hospital?

A. Yes, everything had been paid off. I don't know whether they were made out the night before, but they were made out.

Q. Did you hear the testimony of the nurse read here at the last meeting?

A. With reference to what?

Q. With reference to the making out of these checks.

A. Do you mean the nurse from Winchester?

Q. Yes.

A. I don't know what you have reference to.

Q. Were you here at the last meeting?

A. Yes, I certainly was.

Q. Did you hear the testimony of Miss Booth read?

A. Well, if you tell me I might recall some of it.

Q. Do you recall any testimony that was read of Miss Booth, where she said that the checks were signed by Mr. Allen in blank?

A. I can't — I am testifying for myself and she will have to testify for herself.

Q. Do you recall that that was in her testimony as it was read?

A. I believe it was.

Q. Does that change your opinion as to the fact to which you have just testified?

A. Certainly not.

Q. You heard your husband testify this morning that Mr. Allen had to be escorted, that somebody had to go with him.

A. Well ——

Q. Wait a minute. Don't answer before I am through with the question. Do you believe that he had to be escorted?

A. No, I don't think my husband meant that. That was just his way of expressing it; no, he didn't have to be escorted.

Q. But you did escort him?

A. No. We did not. We wanted to see that little town and we walked around. No, Mr. and Mrs. Ailes and Mr. Haberstadt made reservations for the hotel and he wanted to go to the restaurant.

Q. Mr. and Mrs. Ailes took you to the hotel? And you took him to the restaurant?

A. No, we didn't take him to the restaurant. We walked around the town. He was not feeble.

Q. He went to the restaurant?

A. Yes, he wanted oysters, that was his object.

Q. Did you ever see Mr. Allen transact any business?

A. No, I can't say I did.

Q. Who looked after the business affairs when he and Mrs. Ailes were present?

A. I never was around when they had business affairs, to my knowledge.

Q. Who customarily paid the bills when you went on trips?

A. I know we paid our own expenses, that was all. I speak for myself. We always paid them.

Q. Did you ever see Mr. Allen give Mrs. Ailes money with which to pay hotel bills?

A. No, they might have had checks between them, or something of that sort, but I never saw a bunch of men like that.

Q. Who usually happened to pay the bills?

A. I think Mrs. Ailes did and we all did, and the men.

Q. When you stopped for gas, who paid for the gas?

A. The men, or either of them, or some of them; any of them.

Q. Did Mr. Allen ever buy gas?

A. Not very often.

Q. He was just a passenger?

A. No, he was a part of our party. We didn't take passengers. That was an automobile trip.

Q. How many trips were you on with Mr. Allen?

A. Four or five.

Q. Four or five automobile trips?

A. Yes.

Q. Did you ever take any trips other than automobile trips?

A. Yes.

Q. What were they?

A. Do you mean outside of automobile trips? We would go in town to have lunches together.

Q. Did you ever take any longer trips than into town?

A. Yes.

Q. Where to?

A. I was to California, if that is what you have reference to, with my husband.

Q. Were you on any trip where you went with Mr. Allen?

A. I don't get "With Mr. Allen." I don't get your question. I went with my husband.

Q. Was Mr. Allen in the party?

A. Yes.

Q. Who else was in the party?

A. Mrs. Ailes.

Q. The four of you?

A. The four of us.

Q. Mr. Ailes did not go on that trip?

A. Mr. Ailes did not go.

Q. When was that trip?

A. 1924.

Q. 1924?

A. Or in 1923.

Q. How long were you gone?

Mr. Endicott: Don't refer now to the people in back of the room.

The Witness: Then I won't give you figures. I

am not good on dates of that kind, and I don't want to commit myself.

Q. How long were you gone?

A. About two months.

Q. Where did you go?

A. We were on a Raymond Whitcomb tour.

Q. That takes in all the coast cities?

A. We went to the Caverns and we were to Los Angeles, San Francisco and to Denver.

Q. Who made arrangements for that trip?

A. My husband made our reservations and Mrs. Ailes made hers.

Q. Who made Mr. Allen's?

A. I think he did himself. They were all there together.

Q. Did you ever go south?

A. On this trip do you mean? That is the only one we had with him.

Q. Did you ever go to Florida? When Mr. Allen was in the party?

A. No, sir.

By Mr. Starr:

Q. Do you remember on that trip to Winchester on how many occasions Mr. Allen ate oysters?

A. In Winchester?

Q. On the trip to Winchester.

A. He was taken sick there through eating these oysters and he said, "Clara you like oysters," and he left one there on his plate and I ate it.

Q. How many times did he eat oysters?

A. He ate them in Belair, if that is what you mean.

Q. Yes.

A. On the trip that we took to Winchester, once a day.

Q. And on two occasions he was taken sick on the following day?

A. He was taken sick while he was eating oysters.

WILLIAM H. SIMPSON, sworn.

By Mr. Starr:

Q. Where do you live?

A. Absecon, New Jersey.

Q. Are you the son-in-law of Mr. and Mrs. Ailes?

A. Yes.

Q. What is the name of your wife?

A. Roewana.

Q. When were you married?

A. 16 years ago, July 2nd.

Q. Since that time where have you lived?

A. Several places. We lived in this house for a time, about — we lived in Philadelphia with the exception of two months down here.

Q. When did you move to Absecon?

A. Two years ago.

Q. What year would that be?

A. About 1926.

Q. Immediately prior to that where did you live?

A. On Walnut Street, Philadelphia.

Q. At any time were you a member of your father-

in-law and your mother-in-law while Mr. Allen lived there?

A. Yes, for about two months; and when they first met Mr. Allen we were living in Trinity Place for about two months; we also lived in the Walnut Street house for about a year.

Q. While Mr. Allen was living there?

A. Yes. When I mentioned the Walnut Street house just now that was another Walnut Street address where we had an apartment at 48th and Walnut and I also lived in the Walnut Street about a year.

Q. When did you first meet Mr. Allen?

A. At the Allegheny Avenue house.

Q. When was that?

A. About 9 or 10 years ago.

Q. How much have you seen him since that time, how frequently?

A. When we lived in the Walnut Street house I saw him almost every day; and while we have lived down here the last two years I have seen him almost every week. The other times we used to see him every once and a while.

Q. When he was living with Mr. and Mrs. Ailes in Philadelphia did you visit the Ailes family from time to time?

A. Yes.

Q. What is your age?

A. 41.

Q. Did you ever have any conversations with Mr. Allen during the time you knew him in relation to business affairs?

A. Well, pretty near every time I saw the man that was what he used to talk to me about.

Q. What would be your general topic of conversation?

A. We used to talk about investments on houses; or principally stocks. He owned some of the stocks in some of the same companies that I did and we would talk about them, and he also had some Northwestern Trust Company stock, that I wanted to buy and I made him an offer several times for that stock but he would not sell it. He said he was leaving that to Mr. and Mrs. Ailes — "Frank and Katie," he called them.

Q. What is your line of business now?

A. Wall-paper business.

Q. How long have you been in that business?

A. Ever since I started to work.

Q. How many years ago?

A. About 20 years.

Q. When was it that you tried to buy some of his Northwestern Trust Company stock?

A. That was about a year before he died.

Q. What was the conversation between Mr. Allen and yourself if you can recall, with relation to that?

A. He informed me that he had 100 shares of Northwestern Trust Company stock.

Q. What did he say about it?

A. He was always talking about his Northwestern Trust Company stock; he always talked about it and I think that the bank stock at that time, and I thought at that time that they were generally going up and I thought probably it was going to go up and that he would want to sell and that I would buy some of it; so I tried to buy part of his stock but

he wouldn't sell. I went back to him at different times and tried to get him to sell but he wouldn't.

Q. What other stocks did you try to buy from him?

A. That is all.

Q. What other stocks did you talk about?

A. He and I had some United Gas Improvement Company stock and Philadelphia Electric stock.

Q. Generally what was the conversations between you and Mr. Allen about these stocks?

A. About a year or so ago I found that people were accumulating that stock and it looked as if the stock was going to rise, which it did and I wanted to go to Philadelphia and I did go to Philadelphia from time to time to get information on it and then I would come back and tell him about it.

Q. When was that?

A. He thought it would be advisable to sell after it went so high and the information I received was to hold on, so it kept on going up and I would talk about it.

Q. When was that?

A. Saturday before he died, before the time of his death.

Q. Did these conversations you had with him with reference to the United Gas Improvement stock and also the Northwestern Trust Company stock were they rational conversations?

A. Yes, he was very keen.

Q. Would he talk intelligently about them?

A. Yes.

Q. Did he say or do anything to indicate to you

that he did not appreciate what was going on when he had these conversations with you?

A. No, sir.

Q. Did he give any reason to you why he did not want to sell his Northwestern Trust Company stock?

A. When I would bring the subject up he would say, "No, I am not going to sell that stock. That is for Katie and Frank."

Q. What else did he say, if anything, to you about what he intended to do for Katie and Frank?

A. He always said he was going to give him everything.

Q. Do you remember any particular occasion when he said that?

A. Well, that is sort of all the conversation. Whenever it would come up he would say that. Just like Mrs. Ailes and myself we owned a property in Absecon and we were talking about selling it and he said, "Don't sell that. That will advance in value."

Q. How late did that conversation occur?

A. That was within the last four years, up to the time of his death.

Q. Did he ever say anything about the members of his family in connection with his property?

A. He said that his family was well taken care of and when the will business would come up he would say that he was going to leave his money to Mr. and Mrs. Ailes, that they were well taken care of.

Q. That who was well taken care of?

A. His family; principally he talked, I think, about his brothers.

Q. Did he ever say anything about Mrs. Reulens, or "Lillie?"

A. He used to talk about them from time to time.

Q. Do you know anything that he said about them?

A. Just he said he didn't care for them, that they were always wanting him to do something, that he had a property that one of his stepdaughters were living in and that he would go up there once in a while to do some repair jobs, repair work.

Q. What did he say about that, if anything?

A. Just before he died, it was on a Monday and I was in the living room and Mr. Allen came in, he was all excited and upset and he said that he had just come back from Philadelphia where he was doing some repair work on this house, where "Lillie," as he called her, was living; that he had an awful fuss and he couldn't stand it any more and he had to come home.

Q. Did he say with whom the fuss was?

A. With "Lillie."

Q. Did he say anything to indicate about what the fuss was about?

A. About the repair work that he was doing up there.

Q. Did you ever hear him say anything about a will?

A. Yes.

Q. What did he say with respect to that?

A. He said that lots of times. He always said that he was going to leave everything to Katie and Frank before he died, and in that summer he used

to talk about going up to make out a will. He would say ——.

Mr. Endicott: That is objected to. I have allowed the witness all the latitude that he is entitled to. The objection is in committing the witness to make general observation as to what was the custom, of the decedent. I move that the response be stricken from the record. My argument is that we are entitled to have the benefit of the time and the place of the conversation and what the conversation was.

By Mr. Starr:

Q. You already said that that was the summer before he died. Where did the conversation occur?

A. At the Pleasantville house.

Q. Give us his word as near as you can recall.

A. I would come down to the Pleasantville house and would talk about ——

Mr. Endicott: I object to generalizations. He said, "I would come down." He is generalizing. I move the response be stricken out.

Q. Did you come down to the Pleasantville house?

A. Yes.

Q. You came down to the Pleasantville house later?

A. Yes.

Q. And now state what the conversation was with Mr. Allen about the will?

A. He said he was going up to Philadelphia to make out his will, and he wanted to go; and maybe the next day I would come down and I would say, "Did you go to Philadelphia, Poppy?" and he would say, "I will have to go up there today or tomorrow."

Q. Did he say where he was going?

A. He was going to Lawyer Daix, he would say.

Mr. Endicott: I move that the answer be stricken as not being responsive.

Mr. Starr: It seems responsive to me.

Mr. Endicott: And he said, "He would say." He is generalizing.

Q. This testimony that you are giving now did he say these things that you have given us?

A. Yes, he said he was going up to Lawyer Daix.

Q. Do you remember when it was, about, when he said he was going to Philadelphia to Lawyer Daix?

A. Those conversations took place, I would say, in July and August, in the summer months. I would go down there almost every day.

Q. What year was that?

A. That was in 1928.

Q. When was the last time you saw him before his death?

A. I think the last time I saw him was on Monday, before they took the trip, the automobile trip down to Winchester.

Q. You said a moment ago that on one occasion

Mr. Allen came back from Philadelphia where he had been superintending some repairs, in a terrible nervous condition. What did you mean by that? What did he say or do?

A. I was sitting there, reading a paper, when he came in, at 3:30, about that, in the afternoon. He was all excited and I said, "What is the matter Poppy?" and he said, "I just came back from Philadelphia. I had an awful time up there." He said he had been up to "Lillie's" where he had been doing some repair work and that they were fussing about the amount of work done, that she wanted more work done than he wanted done and ——

Mr. Endicott: I ask that that part of the answer be stricken.

The Court: Yes.

By Mr. Starr:

Q. What I want for you to testify to is, what did he say? Did he say anything? Did he say that?

A. That is what he said.

Q. Did he say that she wanted more work done than he was willing to do?

A. Yes.

Q. He said that to you?

A. Yes. He said that she wanted more work done than he wanted to have done there and that he could not leave the job because as soon as he would go away that she would have the man do something that he didn't want done.

Q. Do you remember about when that was?

A. That was on Monday just before they took the automobile trip to Winchester. I believe they went on a Thursday or Friday.

Q. Did Mr. Allen say who was paying for the repairs?

A. I don't — he was paying for them. He told me that, but I don't think ——

Mr. Endicott: I ask that that be stricken.

The Court: Yes.

By Mr. Starr:

Q. On any of the occasions that you talked with him or saw him prior to his death, from the time that you knew him, in your judgment was he competent to transact business?

A. Yes.

Q. Was he competent to make a will or a testamentary disposition of his property?

A. Yes.

Q. Did he ever say or do anything that indicated to you that he was of failing mentality?

A. No, sir.

Q. Can you recall anything else that he said about Frank and Katie, other than what you already have testified to, as to how he was treated there and the facts that it was his home?

A. He said that that was a fine home and that he hoped he would not die before Katie died. He said he hoped that he would be the first one to pass out.

A. No, only that he enjoyed the home around there.

Cross-examination.

By Mr. Endicott:

Q. Do you own any United Gas Improvement stock now?

A. Yes.

Q. How much?

A. A hundred and 22 shares.

Q. How much stock did Mr. Allen have?

A. 50 shares.

Q. Do you know how long he had it?

A. No, he had it all the time that I knew him.

Q. How many times did he ask you to go, or send you to Philadelphia to find out about it?

A. He didn't send me there. I went of my own accord.

Q. Do you know — did you go at his request or instance?

A. No, sir.

Q. How many times did you go to find out about the stock?

A. Several times.

Q. Are you active in business at this time?

A. Yes.

Q. Where?

A. In the East; I represent a wall-paper concern from Cleveland, in the East here.

Q. What is the name of the company?

A. The Dill Wall-paper Company, Cleveland, Ohio.

Q. Do you travel for them now?

A. Yes.

Q. What territory do you cover?

A. Anywhere in the East that I care to go to, principally Philadelphia, Baltimore, Washington and New York.

Q. Were you working for them in 1928?

A. Yes.

Q. What part of the time were you on the road for them?

A. I do not go on the road so much.

Q. How do you do your work?

A. We send out sample books and I call on the trade and they most always send me the order.

Q. Were you calling on the trade in July and August of 1928?

A. No, sir.

Q. What were you doing then?

A. Our business starts principally in September, October and November. That is our busy season.

Q. Will you relate the conversation of Monday, or the meeting which you had with Mr. Allen on Monday, previous to his departure for Winchester and tell me what you saw that indicated that Mr. Allen was in a nervous condition?

A. He seemed to be excited. He walked around the room. He said he had an awful time. So then I said, "What is the matter?"

Q. What were the evidences of the excitement, the nervous excitement?

A. He just looked excited. I could see he was excited when he came in.

Q. Had you ever seen him in that condition before?

A. No, sir.

Q. Did you ever see Mr. Allen transact business on his own account?

A. He took several mortgages for several properties that I owned. He was there.

Q. Several mortgages for properties that you owned?

A. Yes.

Q. What were the amounts?

A. One property was for $5000 and another one for $3000.

Q. Where was the $5000 property?

A. That is on Shore Road in Absecon.

Q. Is that where you live?

A. No; and the other one was on the home that I live in on Eighth Avenue, Absecon.

Q. That is the $3000 mortgage?

A. $3000 and $5000; the $5000 one I have an interest in that.

Q. What is the address of your home?

A. 623 Eighth Avenue, and the other one I don't know the number of the other one.

Q. Are there three of them?

A. Two.

Q. Who owns the other half interest in the $5000 mortgaged property?

A. Mrs. Ailes.

Q. What kind of property is it that you and Mrs. Ailes own together?

A. A dwelling house.

Q. Do you rent it?

A. Yes.

Q. How much income does it produce?

A. $55.00 a month.

Q. When was that placed?

A. That was placed about 5 years ago.

Q. In 1924?

A. Yes, about 1924; maybe 1923.

Q. Had you lived in Absecon before that?

A. No, sir.

Q. When did you make your first investment in Absecon?

A. That was the first investment I made. I came down here one year on a visit and bought it.

Q. That was when the boom was on in this county?

A. Yes.

Q. Is the property worth as much today as then?

A. Yes, we got it at a very low figure just before the boom. Yes, it is worth just as much.

Q. Who collected the interest on the mortgages?

A. I always give my check to Mr. Allen.

Q. What proportion of the interest did you give your check for?

A. On the Shore Road?

Q. Or either.

A. I give them—just as the interest came due I paid it on the $2500.

Q. On the $5000 mortgage you gave your check for half the interest?

A. $2500 at 6%.

Q. What about the other half?

A. Mrs. Ailes paid that. I don't know anything about it.

Q. Did you know it was paid?

A. It must have been paid.

Q. Did you know it was paid?

A. Papa never said anything to me that it was not. I paid myself.

Q. Did you ever ask him if the other part was paid up?

A. I never had occasion to ask him.

Q. Who paid the taxes on the Shore Road property?

A. Mrs. Ailes paid one-half and I paid the other half.

Q. Did you ever show Mr. Allen the tax receipts?

A. No.

Q. Where were they? Where the tax receipts kept?

A. Mrs. Ailes has them.

Q. Did you pay interest on your home property?

A. Yes.

Q. To whom did you pay it?

A. Mr. Allen.

Q. When did you last pay it?

A. I last paid it, let me see, I think that came due in September.

Q. Where did you pay it?

A. I gave it to "Poppy."

Q. Where?

A. At the Pleasantville home.

Q. What did you do with the check?

A. I gave it to him in cash. The reason now that I remember that, it was just before he took the trip, when it came due; $90.00 it was.

Q. Did you take a receipt for it?

A. Yes, I took a receipt. That must have been

in October because that is when he went on the trip; one is due in September and one is due in October. It is twice in the year that I pay.

Q. Did you ever pay him by check?

A. Yes.

Q. Do you always get a receipt?

A. No, just the check. I never got a receipt except this last time; then I paid it in cash.

Q. Who wrote the receipt?

A. I believe Mrs. Ailes.

Q. Who signed it?

A. I couldn't say. I would have to look it up.

Q. Can you recall to us any particular time when Mr. Allen discussed with you his intention to make a will?

A. Well, in the summer time he used to talk about it quite frequently.

Q. Not what he used to do. Was there any particular time that you can recall a conversation?

A. No, I can't put it down to any date. It was in July or August.

Q. Can you recall any conversation, or any circumstance that would fix a date?

A. When we would just be talking he would say, "I am going to Philadelphia to make out a will." I didn't pay much attention to it.

Q. You cannot recall any particular circumstance or any conversation that you had with him?

A. No, just a general conversation.

Q. So that all your testimony is just a general recollection of what was said on one or more occasions?

A. Yes.

Q. You testified that he told you that he was going to see Lawyer Daix. Is that correct?

A. Yes.

Q. When did that conversation take place?

A. That took place at the same time.

Q. What time?

A. July and August.

Q. Give us the particular time that he set it and tell us the conversation that took place?

A. He would say that he was going ——

Q. Tell us what he said.

A. That is as far as I know. He said he was going to Philadelphia to make out a will and that he was going to see Lawyer Daix. He was all the time talking about it. He said it several times.

Q. Can you give us any particular circumstance of the occasion that he told you?

A. No, sir.

Q. Where did it happen?

A. That happened always at the Pleasantville house because I would go down there. It was not at our house.

Q. Do you know what time of day it took place? When he said he was going to see Mr. Daix?

A. I went down there about noontime in the afternoon.

Q. Did he tell you anything about Mr. Daix?

A. Only that he was his lawyer,—his family lawyer.

Q. Do you know Mr. Daix?

A. No, sir.

Q. What did he say about Mr. Daix?

A. He said he was going to go up to Philadelphia to have a will made at Mr. Daix's office.

Q. What were his words? What language did he use?

A. I can't tell you that. I didn't pay a whole lot of attention to it.

By Mr. Starr:

Q. You spoke about a couple mortgages that Mr. Allen had against your properties or on the properties in which you were interested, one of $3000 and one of $5000?

A. Yes.

Q. Referring first to the $3000 mortgage that covered your home ——

A. Yes.

Q. —when was that mortgage created?

A. That was taken about, well, it is about, it is 3 years I think this October. Three years this October, either September or October 2 years and a half.

Q. That would be about when?

A. 1926.

Q. 1926?

A. Yes.

Q. And the amount of the mortgage was $3000?

A. Yes.

Q. With whom did you deal, with respect to the borrowing of that money?

A. Mr. Allen.

Q. Himself?

A. Yes.

Q. Who prepared the papers?

A. Mr. Lewis.

Q. Mr. Lewis prepared the papers?

A. Yes.

Q. The name of the mortgagee or the person who held the mortgage, what was his name, was that Mr. Allen?

A. Mr. Allen.

Q. When you paid the interest did you pay the interest to him?

A. Yes.

Q. Can you recall what conversation you had with him when you borrowed $3000?

A. I was not well at that time, I remember. I came down here. I had bought that Shore Road house and my wife would not live in it. It was too big. Then I was taken sick.

Q. That was the other property?

A. That was the first property. Then I came down here one day on a visit, and I said that our place on Walnut Street was too noisy but I couldn't stand it for the busses that they put on and Mrs. Ailes said, "Why don't you move down here to my place and use it in the summer-time?" I said I didn't want to put the money in it now and "Poppy" spoke up and said, "I will take the mortgage if you build the house." I said, "All right." We had a builder come in and go over the plan and that day it was all settled.

Q. Was it a new house built by you?

A. Yes.

Q. And your talk on that matter was with whom?

A. About the mortgage?

Q. Yes.

A. All of us were talking there, my wife and Mr. Allen and Mrs. Ailes and myself.

Q. Who made the suggestion that you build the house and as to who would take the mortgage?

A. Mrs. Ailes made the suggestion that we move down here and when I said about not wanting to put in the money into it at that time "Poppy" said he would take the mortgage and we started it.

Q. The mortgage was drawn by Mr. Lewis?

A. Yes.

Q. Have you paid the interest on that mortgage promptly?

A. Yes.

Q. And you paid to whom the interest?

A. Mr. Allen.

Q. The $5000 mortgage covers what?

A. The Shore Road property.

Q. When did you buy that?

A. That was about 5 or 6 years ago.

Q. Did you buy it in conjunction with Mrs. Ailes?

A. No, I came down and I looked at it and I liked it and went in and paid a deposit on it.

The Court: These details do not help me any.

The Witness: My wife would not live in it. I was going to give it up.

Mr. Starr: I went to show Mr. Allen's mental capacity, that he was competent to handle all these details and that it was a party transaction.

The Court: All right.

Q. What conversation did you have with Mr. Allen about it?

A. Then we all talked about it and thought it would be a good investment.

Q. Who did you mean by "we?"

A. Mrs. Ailes and myself.

Q. Who else?

A. I said I didn't want to put the money in it and my wife wouldn't live in it and Mrs. Ailes said she would take a half interest in it, so "Poppy," that was his business—mortgages—so he said he would take the mortgage on it and he took a $5000 mortgage on it.

Q. The papers were prepared by whom?

A. Mr. Lewis.

Q. Who put up the money?

A. The mortgage money?

Q. Yes.

A. Mr. Allen.

Q. Has the interest been paid promptly on that mortgage?

A. Yes.

FRANK P. AILES, sworn.

By Mr. Starr:

Q. You are the husband of Mrs. Catherine Ailes?

A. Yes.

Q. When were you married?

A. I can't recall the year, I count it by years or about 36 years ago.

Q. Since that time what has been your occupation?

A. Well, railroading. I started with the Berwind

Company about 18 years ago and continued active with them up until September, 1926.

Q. The Berwind White Coal Mining Company?

A. Yes, and associated companies, in the capacity of assistant purchasing agent and continued active until 1926, when I laid off on account of a break in my health, on part salary, which still continues. I have—it would be a rather continued leave of absence.

Q. That is your status now?

A. Yes.

Q. You were taken ill when?

A. In September. I had been pretty well knocked out before September, but I laid by until September, 1926.

Q. Your family consisting of whom?

A. My wife and four daughters.

Q. At the present time are the four daughters living with you?

A. No, none of them live with us now. Catherine has an apartment.

Q. Are all four daughters married now?

A. Yes.

Q. When did you become acquainted with Mr. Allen?

A. I should say along in September 1919.

Q. How did you come to meet him?

A. If I may say, the wife met Mrs. Shumway accidently.

Mr. Endicott: That is objected to.

Q. Confine your testimony to your knowledge.

A. I was going to say they had some talk about

buying the Trinity Place house, and Mrs. Shumway said that that was stepfather's business.

Mr. Endicott: I ask that that be stricken.

The Witness: Anyhow, he came to our place with the idea of placing a mortgage on Trinity Place house, which we wanted to buy.

Q. When was that?
A. In September, 1919.
Q. That is the first time you ever saw him?
A. Yes.
Q. The business then which you had with him was the loaning of money to you to buy the Trinity Place house?
A. Yes.
Q. Where is Trinity Place?
A. The first street north of Baltimore Avenue, and from 48th to 49th Street. I should say north of Chester Avenue.
Q. You were living then with what members of your family?
A. Well, the younger girls and Mr. and Mrs. Simpson were with us at that time because there was a great scarcity of houses in Philadelphia.
Q. When was it that Mr. Allen became a member of your household?
A. We went to the Allegheny Avenue house in November, 1919.
Q. Do you know of your own knowledge what arrangements were made with Mr. Allen with respect to his becoming a member of your household?
A. Yes.

Q. State what the conversation was there with him in the presence of Mrs. Ailes?

A. The first time Mr. Allen and I discussed it was the date of a little party at Mrs. Shumway's. We showed how attractive it would be and what opportunity it would give me to save money and he knew that Henry and Rowena were at our house and that it would give them a chance to get a little ahead of the game, but I didn't think well of it.

Q. Who made the suggestion?

A. Mr. Allen.

Q. What did he say to you?

A. He said, "Frank, you better come on up there, it is a nice place. You will have a chance to save money." I didn't think well of it and I remember that Mrs. Shumway said I better consider it. I said that it was naturally up to Mrs. Ailes and that if it suited her it would suit me.

Q. Then what was done?

A. I think we went up to Philadelphia on Sunday. I had never seen the house. We went through the house and it was an attractive place and appealed to the women folks and that is how we came to go.

Q. What were the arrangements made with Mr. Allen?

A. Only except that we were to live there, rent free, on his offer, and we were to provide a servant and furnish the table.

Q. You were not to pay any rent?

A. No, sir.

Q. Was he to pay any board?

A. No, sir.

Q. The family then consisted of your wife and two children?

A. Yes, Catherine and Mildred.

Q. How long did you stay at the Trinity Place house?

A. Stayed there until the following March.

Q. March of what year?

A. 1920.

Q. Then what happened?

A. As I recall it Mr. Allen got a deposit of $500 on the sale of the house, and we had ——

Q. On what house?

A. On the the sale of the Allegheny Avenue house. We thought it was going through so naturally we went back to our own home.

Q. Who went back?

A. Mrs. Ailes and myself; and the girls remained up there on account of being convenient and they had lots of sewing and such things as that to do.

Q. How long did they remain there?

A. I would say a month or six weeks. Of course, understand, they came home with Mr. Allen frequently in the evening but went up there to sleep.

Q. Then you came back to the Trinity Street house and how long did you remain there?

A. Remained at Trinity Place until I think October of the same year.

Q. 1920?

A. 1920.

Q. Then what happened?

A. We went to Allegheny Avenue then.

Q. How long did you remain there?

A. I think until June or July of the following year.

Q. June or July of 1921?

A. Yes, I guess it was July, because I think we started negotiations for the purchase of the Walnut Street house in July.

Q. And your family consisted of the same persons?

A. Yes.

Q. At Allegheny Avenue?

A. Yes.

Q. Were there any other arrangements made, any other financial arrangements made between you and Mr. Allen?

A. No, sir.

Q. Other than what was talked about at first?

A. No, sir, there was nothing said to be about any financial arrangements other than what was originally said, understood.

Q. How long did you remain in the Allegheny Avenue house before you left?

A. As I say, until the following July.

Q. 1921?

A. 1921.

Q. Then where did you go?

A. To the Walnut Street house.

Q. Owned by whom?

A. The Walnut Street house at that time was owned, was in the Black Estate, had been in the hands of the Black Estate for 9 years and I applied to Mr. Cox, at the Commonwealth Company. I used to go down there to pay rent for my daughters.

Q. You finally bought it?

A. Yes.

Q. The title was in whose name?

A. In my name, a joint title.

Q. Mr. Allen continued to make it his home when you were at the Walnut Street house?

A. Yes; at first we had no accommodations for Mr. Allen, as I recall it and I think for a time he slept on the divan in the parlor; because that was a large house, much larger than we could use and we had used the first floor for renting an apartment and when we rented there we had to wait until that was vacated, to make quarters for Mr. Allen. He slept downstairs then.

Q. You made quarters for him?

A. Yes.

Q. And he continued to remain there?

A. Yes.

Q. Was there any change made in the financial arrangement?

A. No. Then I left all financial arrangements to the wife.

Q. Did you continue in the Walnut Street house, and if so for how long?

A. We continued in the Walnut Street house, while we came down to Pleasantville in the intervening summers, from that time on up until 1925, practically all summer. We lived there in the winter and came to Pleasantville permanently in 1925.

Q. The Pleasantville house was owned by whom?

A. The Pleasantville house for generations belonged to relatives of mine. It was a tumbled-down-shack and we bought it from them for the sum of $800. I did some fixing and Mr. Allen had some fixing done and we were a couple or three years getting it in respectable shape.

Q. Did Mr. Allen contribute some money from time to time to put it in shape?

A. Yes.

Q. In the summer-time when you lived at Walnut Street, did Mr. Allen come to Pleasantville with you?

A. Yes.

Q. When the Pleasantville house was finished did he make that his home?

A. Yes, and has been there ever since.

Q. He continued there up until the time of his death?

A. Yes.

Q. So far as your knowledge goes, was there any other arrangement made with respect to financial conditions, except what you have already testified to, with respect to the Allegheny Avenue house?

A. Not at all, because I knew Mr. Allen was generous to the wife and children; and I was not out to collect. He took good care of them and that was satisfactory to me.

Q. Did you at any time, while Mr. Allen was a member of your household, make any suggestion directly or indirectly, that he should dispose of his property by will to your wife?

A. No, sir, not in any way shape or form. That subject was always a distasteful one to me and I didn't even like to hear them talking about it. I used to hear them, used to hear him and used to hear her talk it over frequently.

Q. Did you ever suggest to him about the fact that his property should go to your wife?

A. No, sir.

Q. Did you ever ask him that?

A. No, sir.

Q. Did you ever influence him or attempt to in-

fluence him to make a will in your wife's favor?

A. No, sir; I treated Mr. Allen the same as I treated any other sincere friend. I never imposed on him personally and never borrowed a 5¢ piece from him.

Q. Did you ever talk with him respecting the disposition of his property?

A. No, sir; I have heard him mention it himself.

Q. What did he say about it?

Mr. Endicott: That is objected to. May we have the time? Will you fix the time?

A. I beg your pardon. Well, the last time I heard Mr. Allen say anything about the disposition of his property was at the time of Mr. Thomas Allen's last visit. They had been talking in the sun parlor.

Q. What year was that?

A. It is in the record. I think it was, it must have been 1927.

Q. According to your best recollection when was it?

A. 1928, I guess it was, 1928. I think it was the spring of the same year.

Q. When Thomas Allen came to visit Mr. Allen at your Pleasantville home?

A. Yes. Tom used to come to Pleasantville to stay there.

Q. What did he say to him?

A. After he was gone he said, "The main object of his visit seemed to be to find out what he intended to do with his property, and I discussed it no farther with him."

Q. Who was he talking about?

A. Tom Allen.

Q. Tom's visit?

A. Yes.

Q. That was all there was between you? That was the conversation between you?

A. Yes.

Q. Did he ever say what he proposed to do with his property?

A. I can't say that he came out and said, "Frank I am going to leave this all to you and Kate." But that was all so often said and so generally understood that I could not name any definite time or occasion.

Mr. Endicott: I move that the answer be stricken as to what the general understanding was.

The Court: Yes, it may be stricken out.

The Witness: That is the best that I can say.

By Mr. Starr:

Q. Can you name any specific instance, if not the time, when such statement was made by him?

A. Well, I recall distinctly Mr. Allen saying, "Henry is crazy after that northwestern stock and I told him I was not going to sell it, that it was going to be Katie's."

Q. Who is Henry?

A. That is Henry Simpson.

Q. You heard him say that, did you?

A. Yes.

Q. What else did you hear him say with respect to the disposition of his property?

A. I heard him say, instructing Mrs. Ailes on business transactions, maybe she would be too busy, and he would say, "Katie you must learn to do it now. You will have to do it some day for yourself."

Q. Did he ever give to you any reason why he was going to leave the property to your wife or to you?

A. No, except ——

Q. What did he say?

A. He constantly expressed most ——

Mr. Endicott: I ask that that be stricken.

The Witness: That is what he said.

Q. What did he say?

The Court: It may be stricken out, "He constantly expressed."

By Mr. Starr:

Q. I want to know what he said?

Mr. Endicott: It is objected to unless the question itself is limited to some definite time and place.

By the Court:

Q. Give the time or place, if you can recall, as to the statement of the deceased.

Mr. Endicott: I think the witness ought to locate in his testimony, ought to give some time or place and the circumstance upon which the conversation can be identified.

The Witness: Well, it has been said, numerous times ——

Mr. Endicott: Just a minute.

By Mr Starr:

Q. His Honor has stated that you can testify to statements, actual statements that were made by Mr. Allen.

A. The only time that I have been nailed down to an actual statement of that condition, was when we went up to see Mr. Adams about moving the house. He said to Mr. and Mrs. Adams that everything was to be Katie's but he didn't say why.

Q. Do you recall whether or not he ever did say why he proposed to make that disposition of the property?

A. No, sir, I can't say that he said it, because she was good, bad or indifferent, is that what you mean?

Q. Yes.

A. No, I cannot.

Q. How was Mr. Allen treated in your household?

A. As near as I can describe it, just the same, maybe a little better, being a stranger, than my own father would be. He was a kindly old fellow and easy to get along with.

Q. Did he take meals with you?

A. Oh, yes.

Q. What was his attitude toward the children?

A. Just about the same as wife's own father would have been. He was very fond of the children, and grandchildren. This last little girl, before he died, he would wheel her up and down Shore Road, in her coach. No man could have been kindlier to children than he was.

Q. Did you ever discuss any business problems with him?

A. No, I always rather carefully avoided that. The only business I did have with him and in which I entered, was the taking of mortgages by him from myself and the wife.

Q. How many mortgages did he take?

A. He had a mortgage on Ethel's house. We took that over. He had that Walnut Street mortgage and he had that part mortgage on the Shore Road property.

Q. Did he have a mortgage on the Walnut Street house?

A. Yes.

Q. He loaned the money on that?

A. Yes.

Q. How much did he loan to you?

A. Mr. Laws has the settlement statement. I think we bought that house for $6500.

Q. During the entire time you knew him up until the time of his death was he able to carry on a conversation coherently and rationally?

A. Yes, he was just as shrewd the day he died as he was the first day that I knew him. You could no more fool him than you could have fooled him the first day that I knew him.

Q. Was there any signs by word or act, of failing mentality during the time that you knew him?

A. None at all.

Q. Was he a man easily influenced or not?

A. No, he was rather the contrary, he was difficult to influence.

(Adjourned to Thursday, July 25th, 1929, at 10 o'clock in the forenoon.)

July 25, 1929.

(Hearing resumed pursuant to adjournment. Appearances as before.)

FRANK P. AILES, recalled.

Direct examination (resumed.)

By Mr. Starr:

Q. I show you photograph which has been marked Exhibit 27, and ask you if you are in that photograph?

A. Yes, sir.

Q. Which is the picture of yourself?

A. The man to the left.

Q. And can you tell me when that photograph was taken?

A. In the spring of 1928.

Q. Do you know what month?

A. I should say March or April.

Q. And it was taken where?

A. On the boardwalk in Atlantic City.

Q. I asked you the other day about the property at Pleasantville which you are now occupying. Were there any repairs made to that property?

A. Yes, sir.

Q. When was that work done?

A. Well, the work was started, I think, in 1920, just a little bit at a time, and we had a man come

there by the day for quite some time; but the repairs were not fully completed until 1925, I think, when we came down to remain permanently.

Q. In whom is the title to that property at the present time?

A. In the name of my wife.

Q. When did she acquire title, do you know?

A. Yes, sir. I think, in 1920.

Q. Did Mr. Allen contribute any money toward the repairs and improvements to that property?

A. Yes, sir.

Q. Did anybody else contribute any money?

A. Yes, sir, I paid some of the bills and he paid some.

Q. Now, referring to various trips that were taken by you and Mrs. Ailes in conjunction with Mr. Allen, do you recall how many trips there were all together from the time you knew or became acquainted with Mr. Allen until the time of his death?

A. The only extended trip that I was along with him was the trip we made to Florida. At other times we made annual trips to the Moravian ceremonies at Bethlehem, I think for three successive years, and we would frequently go up to Greenville to a little church up there, and things like that.

Mr. Endicott: Where is Greenville?

The Witness: Greenville, Pennsylvania.

Q. Referring to the Florida trip, when was that?

A. In 1927.

Q. And who comprised the party taking that trip?

A. Myself—pardon me—Mr. Allen, Mrs. Depazza of New York, my wife and myself.

Q. How long were you away?

A. I should think twenty-one or twenty-three days.

Q. And who paid the expenses of that trip?

A. I paid my own. Mr. Allen paid for himself and Mrs. Ailes and Mrs. Depazza paid her own.

Q. And you were with them all the time?

A. Yes, sir.

Q. You made the trip to Winchester, did you not?

A. Oh, yes, sir; yes, sir; I was along to Winchester.

Q. Who paid the expenses of that trip?

A. Judge, they were so trifling that nobody kept any account of them; because all we did was to buy gas and a couple of meals; and at the place where we remained overnight I think Mr. Allen paid that expense, but where we remained after he was taken sick, of course, we paid our own expenses.

Q. Haberstadt was with you on that occasion?

A. Yes, sir.

Q. Did Mr. Allen pay their expenses or did they pay their own?

A. They paid all their own—all their own.

Q. Now, I understand that Mr. Allen also went to California?

A. Yes, sir.

Q. With the Haberstadts?

A. Yes, sir.

Q. When was that, if you know?

A. 1924, I think. Mr. Laws has the published list of the people comprising that Raymond-Whitcomb party; I think it was in 1924.

Q. You didn't accompany them on that trip?

A. No. Mr. Allen asked me to get a leave of absence and insisted on my going at his expense, but I couldn't get a leave of absence.

Q. Is this the published itinerary of the Raymond-Whitcomb tour?

A. That is the names of the whole parties comprising the tour.

Q. I notice it is dated the season of 1925?

A. Well, it must have been 1925. I didn't take any particular ——

Q. Do you know what month it was?

A. January or February—January, I should say.

Q. I notice Mrs. Depazza was on that trip also?

A. Yes, she was along; in fact, that is where they became acquainted with Mrs. Depazza.

Q. Who is she? Is she related in any way at all to Mr. Allen or to your family?

A. No, sir.

Mr. Endicott: Are you offering that?

Mr. Starr: No, I don't think it is necessary. Do you want it to go in?

The Witness: I may say I accompanied Mr. Allen and Mrs. Ailes to make arrangements for that trip, if you will permit me to say that, hoping that I would be able to go myself, but I couldn't make it.

Q. Where did they start from?

A. Philadelphia; North Philadelphia.

Q. Did you see them start?

A. Oh, yes, sir.

Q. Did you go to Philadelphia to see them go?

A. The whole family was there upon that occasion. It was quite an occasion.

Q. Who suggested that?

A. Mr. and Mrs. Haberstadt had previously arranged to go themselves, and they called at our place and it was discussed, and Mr. Allen was right at once for going along with them. He really wasn't asked. He just asked them if he might go along with them.

Q. Did he give any reason for making the trip and taking Mrs. Ailes along and asking you to go?

A. Well, I remember him distinctly saying he didn't feel so good after his operation, he said it would do him a whole lot of good to get away.

Q. Do you know anything about the making of the checks at Winchester? Were you present when those checks were signed?

A. No, sir, I was not present but I handled them after they were made. Judge, I said I didn't know anything about the making of the checks at Winchester. I mean the two checks that were made in the hospital. I do know about the checks that were given to Mrs. Wolf who kept the Wayside Inn and Dr. Montgomery.

Q. Tell us what you know about those.

A. I saw Mrs. Ailes write them and give them to Mrs. Wolf, and I remember particularly Mrs. Wolf's because it included a little remuneration for her extra trouble.

Q. And they were signed by whom?

A. They were signed by Mr. Allen.

Q. Are you acquainted with the handwriting of Mr. Allen?

A. Yes, sir.

Q. I show you a piece of paper in lead pencil on a deposit slip of the Pleasantville Trust Company, apparently undated, the first line of which is "See Robinson." Will you say whether or not that is in the handwriting of Mr. Allen?

A. Yes, sir.

Q. What do you know about that paper?

A. I found that paper on Mr. Allen's stand in his room along with some other various memorandums folded up just so.

Q. When did you find it?

A. After Mr. Allen's death.

Q. How long after his death?

A. Oh, I couldn't say; probably a month.

Q. You say it was on the stand?

A. Yes, sir.

Q. In whose bedroom was it?

A. In Mr. Allen's.

Q. What became of the other papers, do you know?

A. Threw them away. They didn't amount to anything. I remember there was a movie program and such things as that, that didn't amount to anything at all.

Q. You know that slip is in his handwriting; do you?

A. Yes, sir.

Mr. Starr: I offer it in evidence.

(The paper offered is received in evidence and marked as an exhibit for the proponents, P1A.)

Mr. Starr: If your Honor please, this memorandum is in lead pencil. The first line is "See Robinson." The second line, "Go to bank." Third line, "Get mortgage of Carter's and pay off." Fourth line, "See Ruth at 1917 Dolphin Street." Fifth line, "See Daix." Sixth line, "See about lot southeast corner—" I don't know the next work; and following that is "781 Ludlum or Ludlow Avenue," and "Pleasure Avenue, Sea Isle City, New Jersey." Next line, "Take five shares of Pleasantville Trust Company and put in my box in the Northwestern Trust Company, Northwestern Trust Company envelop; get shave."

Q. Do you know when Mr. Allen acquired the five shares of stock of the Pleasantville Trust Company?

A. Yes, sir; in August, in August of 1928.

Q. And do you know how long those shares of stock were at Pleasantville before they were taken somewhere else?

A. No, sir, I couldn't say that.

Q. Did you see the certificates there at Pleasantville?

A. Yes, sir, I saw the certificates.

Q. Did you have some conversation with Mr. Allen about the purchase of those certificates?

A. Oh, yes, sir, before he bought them he told me he was going to buy them. Mr. Manning had told him that ——

Mr. Endicott: I object and move to strike it.

Q. Don't tell what Mr. Manning said. But if you remember—you remember your conversation with Mr. Allen—now, did he say anything about Mr. Manning?

A. Yes, sir. He said Mr. Manning was going to get him some shares in the Pleasantville Trust Company.

Q. When was that?

A. Oh, I guess it was in July. It was not so very long before he got them.

Q. And you saw them at the Pleasantville—in what month, in 1928?

A. Yes, sir—in August, 1928; yes, sir.

Q. In August?

A. Yes, sir, as late as August, but I saw them before that.

Q. When did you become acquainted with Senator Daix?

A. After Mr. Allen's death was the first time I saw him.

Q. Never saw him before then?

A. No, sir; never.

Q. Did you go to Senator Daix's office with reference to the foreclosure of the mortgage that you and your wife held on Philadelphia property?

A. No, sir.

Q. Your wife attended to that?

A. My wife attended to it; yes, sir; going to his office.

Q. I show you a check drawn by Daix & Sons, Northwestern Trust Company, dated June 12, 1928, to the order of yourself and Kathryn Ailes for $10,440. What was that check for?

A. That was the proceeds of the foreclosure on the Walnut Street property—4311 Walnut Street.

The Court: Who is the maker of the check?

Mr. Starr: Well, it is A. F. Daix & Sons. I offer that check in evidence.

Mr. Endicott: No objection.

(The paper offered is received in evidence and marked as an exhibit for the proponents, P2A.)

Q. In the purchase of the Walnut Street property, was the title taken in the name of both yourself and Mrs. Ailes?

A. To my best recollection it was, Judge. We always did that.

Q. Was there any profit as the result of that sale?

A. Yes, sir; some eleven or twelve thousand dollars.

Q. That is, you received more than you paid for the property by eleven or twelve thousand dollars?

A. Yes, sir.

Q. Did you pay to Senator Daix's office any fee for the collection of the mortgage represented by the check marked P2A?

A. No, sir; no, sir. That check was gotten by myself and the wife in the Recorder of Deeds' office, from young Mr. Daix. I remember asking him what his charge was and he said he had gotten that from the other side.

Q. Did this check represent the full amount or

principal due on the mortgage without any reduction for fee?

A. Yes, sir.

Mr. Starr: I think that is all. Cross-examine.

Cross-examination.

By Mr. Endicott:

Q. How old are you, Mr. Ailes?
A. Sixty.
Q. How old is your wife?
A. Fifty-four or fifty-five.
Q. Which is it, fifty-four or fifty-five?
A. Fifty-five, I guess.
Q. Where were you living in 1919?
A. At Trinity Street in Philadelphia.
Q. When did you go to Trinity Street?
A. I think two years previous to that, Mr. Endicott. We had previous to that time lived on Hazel Avenue between ——
Q. (Interrupting.) Who owned the property?
A. It was a rented property.
Q. I say who owned it?
A. You mean the one on Trinity Street?
Q. Yes, sir, where you lived in 1919?
A. It belongs to Dr. Inglis.
Q. Did you acquire the title to that property in that year?
A. No, sir.
Q. Did your wife acquire the title?
A. No, sir.
Q. Did you ever acquire the title to it?

A. No, sir.

Q. Did you ever buy a property on Trinity Street?

A. No, sir.

Q. Wasn't there something in your testimony that indicated that Mr. Allen took a mortgage on Trinity Place?

A. It may have been understood so. Mr. Allen came there with the idea of taking a mortgage, but when he looked it over he decided it was a very bad buy and advised us against it. However, he did ——

Q. Were you contemplating the purchase of the property?

A. Yes, sir.

Q. And were expecting him to assist you by taking a mortgage?

A. Yes, sir.

Q. But that deal didn't go through?

A. No, sir.

Q. What time of the year was that?

A. Well, in September.

Q. In September of 1919?

A. In September of 1919; yes, sir.

Q. How much rent did you pay for the property?

A. I think $65.

Q. How large a house was it?

A. Oh, about eight or nine rooms; had two ——

Q. Who lived there?

A. Lived there with us, you mean, of course?

Q. Yes, who lived in the house when you were living there?

A. Myself and wife, Kathryn, Mildred, and Mr. and Mrs. Simpson and their children.

Q. How many bedrooms were there in the house?

A. Four; two baths.

Q. Four bedrooms and two baths. And there were how many people all together? Six people occupying them?

A. Six people occupying them. In addition to that, Mr. Endicott, there was a little room up in the third story back that I frequently used. I didn't count that.

Q. Where were you employed?

A. With the Berwinds.

Q. And what was your salary?

A. Well, between—approximately three thousand dollars a year.

Q. How were you paid? On what basis were you paid?

A. Regular monthly salary.

Q. What was the monthly salary?

A. Well, do I have to give the exact figures? You see, that is a business transaction. Permit me to say that the Berwinds wouldn't like me to—I would like to know ——

Q. I have asked you the question.

Mrs. Ailes: Don't answer.

The Court: Madam, what is the matter with you? What have you to do with this witness?

Mrs. Ailes: That is my husband, your Honor, Judge Smathers.

The Court: That makes no difference. He is on the witness stand. He is subject to the rules of the court here.

Mrs. Ailes: It is a personal matter, Judge Smathers.

The Witness: Well, Mr. Endicott, if you want to know it, it was $150 a month.

Q. A hundred and what?

A. A hundred and fifty a month.

Q. A hundred and fifty a month?

A. No, it was not, either. That would not make three thousand dollars. I am confused there.

Q. Well, you have no recollection of what your monthly salary was?

A. Sure, I have, but I didn't make note of those things. It was a hundred and eighty some odd dollars, or $166 a month. I can't answer—it was enough to divide three thousand by twelve.

Q. Do you recall any monthly check that you ever received from the Berwind Coal Company?

A. Monthly checks? I am receiving monthly checks; yes, sir.

Q. Do you remember the amount of your monthly checks in 1919?

A. No, sir.

Q. What work did you do for the Berwind Coal Company?

A. Assisting purchasing agent.

Q. And what were the duties that you performed as assisting purchasing agent?

A. Purchasing on requisition from the operations.

Q. Where was your place of business?

A. In the Commercial Trust Company Building in Philadelphia.

Q. How many other men were there in the same position you were in?

A. Well, there was only one that you might say was in exactly or nearly the same position. We had stenographers.

Q. How long had you been with the Berwind Coal Company in 1919?

A. I couldn't say, Mr. Endicott; because I have lost track of just what year I did go there; but, however, we can get that if it is necessary.

Q. How long have you been with them all together?

A. As near as I can figure it out, without knowing the exact year I went there, it is about eighteen years since I did commence work with them.

Q. You have been with them, then, about eight years?

A. About eighteen years.

Q. You mean it is eighteen years now since you were there?

A. Yes, sir.

Q. (Repeated by the stenographer.) You mean it is eighteen years now since you were there?

A. No. I started with them about eighteen years ago.

Q. And where did you first meet Mr. Allen, Albert Allen?

A. In 1919, in the Trinity Street house.

Q. Had you known Mrs. Shumway before that?

A. Yes, sir; I knew Mrs. Shumway when the wife was a little girl, but I had not seen her before the time that she came to our house, I guess, for thirty or thirty-five years.

Q. Was it through Mrs. Shumway that you became acquainted with Mr. Allen?

A. Yes, sir.

Q. Do you know when Mrs. Shumway's mother died?

A. No, sir; I have no recollection except that I know it was shortly before the time that we visited Mrs. Shumway's home. I think that was in September of the same year.

Q. You met Mr. Allen in September?

A. Yes, sir.

Q. How did you come to meet him?

A. He came to Trinity Street to look the house over.

Q. Who came with him?

A. Mrs. Shumway was there, and I think Mr. Shumway.

Q. Do you know how he became interested in the Trinity Avenue house?

A. Yes, Mrs. Ailes told Mrs. Shumway about our idea of buying that house, and she said that was Mr. Allen's business; that she would bring him around to look it over.

Q. Shortly after this meeting, you say in September, 1919—is that the time you place it?

A. Yes, sir.

Q. —you went to Mr. Allen's house to live?

A. Yes, sir; we went there in October.

Q. And remained until the following spring?

A. Yes, sir.

Q. And you left and your children remained with Mr. Allen?

A. Yes, sir. They stayed up there ——

Q. Any friction between you and Mr. Allen at that time?

A. Not at all.

Q. Any reason why you and your wife should have left and left your children there?

A. Well, Mr. Allen had a buyer for that place, and he got a deposit of five hundred dollars, and believing that the place was to be sold we went back to our own home.

Q. Why didn't the children join you?

A. Well, there was no reason except that they liked it up there and they had some ——

Q. Didn't you like it up there?

Mr. Starr: Let him answer the question, please.

A. (Continuing.) They had some work to do on their clothes that they said they could do more conveniently there than they could do at Trinity Street.

Q. Did you like it there?

A. Very much.

Q. But not as much as the children?

A. Not as much as the children, probably. It was a fine house, but that didn't make much of an appeal to me. I mean to say, Mr. Endicott, when I say that I liked it there—I really mean I had no objections to being there. I liked my own place better.

Q. Now, you stayed in the Trinity Avenue place how long after you returned?

A. I think until October.

Q. During the time that you were with Mr. Allen, one of your married children remained in the Trinity Avenue place?

A. Yes, sir.

Q. Who paid the rent?

A. They paid the rent for the Trinity Street place.

Q. And after you returned, who paid the rent?

A. I did.

Q. Now, your next business transaction with Mr. Allen involved the purchase of a property in which he assisted in the financing?

A. Yes, sir.

Q. What property was that?

A. Walnut Street.

Q. How much did you pay for the property?

A. $6500.

Q. And how long did you own that property?

A. I cannot tell you, Mr. Endicott, just when it was bought. Mr. Laws had the settlement papers, but I think it was sold in 1921 or 1922. I am not certainly unless I look it up.

Q. How much mortgage did Mr. Allen take on it?

A. I think $3000.

Q. And you eventually sold that at a profit?

A. Yes, sir. We eventually sold it for $18,000.

Q. How much of your cash did you put into that property?

A. I couldn't tell you. I remember the initial payment was—that is what you call the purchase money was $200. I think Mr. Laws has the cancelled check for it. He may have the cancelled check there for whatever cash I put in.

Q. How much more did you put in it?

A. I cannot tell you unless I see the papers.

Q. Any recollection at all?

A. Well, I suppose naturally we put in ——

Q. I want to know what your recollection is. I don't want you to guess at it.

A. I don't recall it. I don't recall it, simply because I didn't charge my memory with it.

Q. Did you finance it through any mortgages other than Mr. Allen?

A. No, sir.

Q. Did you put into the property the difference between the Allen mortgage and the purchase price?

A. Yes, sir; yes, sir, I did. I had in mind there might have been —that might have been plus some costs or other.

Q. That is approximately $3500, then?

A. Yes, sir.

Q. Where did you get the money?

A. From my savings, insurance—I had an insurance policy that expired not so long before that, that I carried for a great number of years.

Q. Did you own any other property at that time?

A. No, sir.

Q. Did you have any stocks, bonds or securities of any kind besides the money that you put into this house?

A. Not at that time. I had a mortgage on a house at Haddon Heights, but I think we had closed that out then.

Q. And your net worth at that time, then, was approximately $3500?

A. I wouldn't say that. I had some money in a savings fund—bank.

Q. All right. How much was that?

A. Well, possibly three or four thousand dollars.

Q. Besides what you put into this house?

A. As I recall it, yes, sir.

Q. What institutions was that money deposited in?

A. I think we had some money in the Western, and the Philadelphia.

Q. How much did you have in each one?

A. I couldn't tell you, Mr. Endicott, because I let the wife look after that.

Q. Did your wife generally look after your business affairs?

A. Yes, pretty much; that is, my home business affairs.

Q. You testified to a trip that you and Mr. Allen and Mrs. Depazza and your wife made to Florida?

A. Yes, sir.

Q. What year was that?

A. 1927.

Q. 1927?

A. Yes, sir.

Q. And what month did you leave in?

A. In January.

Q. Where did you go?

A. Well, that was—the tour I think first stopped at St. Petersburg.

Q. How did you go, by rail or boat?

A. By rail.

Q. What other places did you visit?

A. We visited Miami, Daytona, St. Augustine, Jacksonville.

Q. And were gone twenty-one or twenty-three days?

A. I think that was the time; yes, sir.

Q. You said that you paid your expenses and Mr. Allen paid Mrs. Ailes's and his own, and Mrs. Depazza paid hers?

A. Yes, sir.

Q. Why did Mr. Allen pay your wife's expenses?

A. Well, just as a gift, I suppose.

Q. As a gift?

A. He was not asked to do it. It was at his idea that we made the trip.

Q. Did your wife render any service to Mr. Allen which warranted his gift, or was an inducement to the gift?

A. No, sir.

Q. What?

A. No, sir, except she made a home for all of us.

Q. Your wife went to California with Mr. Allen, did she not?

A. Yes, sir.

Q. How long was she gone on that trip?

A. I think six weeks.

Q. And you have identified a schedule of the members of the tour ——

Mr. Endicott: Is that in evidence, Judge?

Mr. Starr: No. Do you want it in evidence?

Mr. Endicott: Yes, let's have it marked.

(Paper referred to is received in evidence and marked as an exhibit for the proponents, P3A.)

Q. I refer to P3A. Did she stay with the tour the entire time they were gone?

A. Yes, sir.

Q. Did the Haberstadts stay with the tour the entire time?

A. No. I believe they stopped off en route somewhere.

Q. Who paid for that tour?

A. You mean for Mrs. Ailes?

Q. I mean for Mrs. Ailes.

A. Mr. Allen.

Q. Do you know what it cost?

A. No, sir, I don't. I don't know what that cost.

Q. Do you know how long the Haberstadts were away from Philadelphia?

A. I think they remained over in Hollywood two weeks longer than the six weeks. They took the next tour back.

The Court: Your wife and Mr. Allen, I understand, continued the trip alone or in the company of this Mrs. ——

The Witness: Mrs. Depazza.

The Court: This other lady?

The Witness: Yes, sir; that is, under the charge of the director.

Q. Did you approve of your wife making the trip?

A. Yes, sir, indeed I did. I hoped to go myself.

The Court: When was that?

The Witness: That was in 1924, Judge.

The Court: 1924?

The Witness: Yes.

Mr. Starr: If your Honor please, it was in January, 1925, the itinerary shows—February, 1925.

Q. Was there any difficulty between you and your wife as the result of this California trip?

A. No, sir.

Q. Have you and your wife ever been separated in the last ten years?

A. No, sir.

Q. Have your relations between you ever been strained during the last ten years?

A. Absolutely not.

Q. Did you ever tell anybody that your relations had been strained?

A. No, sir.

Mr. Starr: I object to that. I think he is entitled to have the time, place and the name and the circumstances.

Mr. Endicott: We will withdraw the question.

Q. Do you recognize that photograph?

A. Yes, sir.

Q. Who is it?

A. Mr. Allen, and it is a horrible looking photograph. That was taken on one of those 25-cent machines on the boardwalk. I was photographed at the same time.

Q. Was that photograph taken the same day as the photograph you have just identified?

A. No, sir. It was not taken at that time at

all, because Mr. "Tom" Allen wasn't here when that was taken. We have a whole lot of those at home—on that same trip—but some very good pictures of Mr. Allen.

(The photograph referred to is marked for identification for the caveators, C4A.)

Q. You were on the Winchester trip with Mr. and Mrs. Haberstadt and Mr. Allen and your wife?

A. Yes, sir.

Q. Will you relate the incidents that happened after your arrival in Belair, Maryland?

A. In Belair, yes, sir. That was the first stop. Well, we pulled the machine in there, I think it is the Kenwood, Kenwood Hotel there, just where you turn off to continue to Baltimore; and we intended to take lunch there. Mr. Allen walked in with us and looked it over, and I think he asked one of the bell men if they had oysters there. He said no, they had no oysters. That was lunch and he wanted oysters, so we all walked up the street with him and found an oyster place where he had oysters; and after he had his lunch he came back and sat on the porch at the Kenwood so we could all rest up and go on. That was all there was there.

Q. Did Mr. Allen often eat by himself?

A. Well, no, no. He never did, Mr. Endicott, except in an instance like that where they didn't have what he wanted, where we were going, and he might go to a neighboring place. No, when we went out we always ate together except ——

Q. Why didn't you go, then, to the place where he wanted to eat?

A. Well, Mr. Haberstadt had previously stopped at this Kenwood and said they had a very excellent lunch.

Q. Was Mr. Allen displeased about the hotel accommodations?

A. Not at all, not at all except that he wanted oysters.

Q. Didn't a similiar instance happen in Winchester when Mr. Allen ate differently from the rest of the party?

A. Almost exactly. We went to the American Hotel, the Haberstadts and the two women folks, and Mr. Allen, intending to take lunch there, and the same thing happened. They had no oysters. There was a little place within half a block of the hotel where they did have oysters, and the women walked up there with Mr. Allen. We sat in the lobby of the hotel and they came back and asked if we would not rather take lunch with them, and so Mr. Haberstadt and I went up to the little restaurant.

Q. Now, you related in your direct examination the making out of certain checks for Mrs. Wolf.

A. Yes, sir.

Q. Will you tell us what you saw about the making out of those checks?

A. Yes. I saw the wife write them. I didn't see Mr. Allen sign them, but I saw the wife give the check to Mrs. Wolf.

Q. When did that happen?

A. Sunday morning.

Q. That was the morning of the day upon which Mr. Allen died?

A. No, sir; that was the morning of the day that

we left that place and went to the Winchester Hospital.

Mr. Endicott: May the people in the back of the room be cautioned not to prompt the witness?

The Witness: No, sir, Mr. Endicott, I can't see the least prompting. I am looking at you.

Mr. Endicott: Well, somebody answered the question for you before you did.

The Witness: Well, they could stand on their heads back there and I wouldn't see them.

Q. You fix that as Saturday or Sunday?

A. Sunday. We had some little difficulty in getting the ambulance down there. I don't know just why, but he was a little bit earlier than we expected he would be.

Q. You left Atlantic City on Friday?

A. Friday—Pleasantville.

Q. And he was taken sick on Saturday. Friday night you were in Frederick?

A. Yes, sir. Saturday night he was taken sick.

Q. Saturday afternoon?

A. After he had lunch, yes, sir.

Q. You had left Winchester and started down the road and got a few miles when he was taken very sick and you stopped at a wayside house?

A. Yes, he commenced to complain of feeling sick while he was still in that restaurant.

Q. That happened on Saturday?

A. That happened on Saturday; yes, sir.

Q. When was he taken to the hospital?

A. Sunday morning.

Q. Where did you see Mrs. Wolf receive the check?

A. In her dining room.

Q. Before you had left ——

A. Before I had left; yes, sir.

Q. —her place. I notice that the checks C24 and C25—C24 being the check to Mrs. L. Wolf for $40—are dated October 2, 1928. Wasn't that the day of Mr. Allen's death?

A. Yes, sir—now, wait a minute—yes, sir.

Q. And yet you have just said that that check was given to Mrs. Wolf on the day before?

A. Yes, sir.

Q. I show you a check drawn to the order of Dr. Montgomery, C25, and ask you the circumstances under which that check was issued and delivered, if you know?

A. I saw Dr. Montgomery get that as we were leaving; yes, sir.

Q. Leaving where?

A. Leaving Mrs. Wolf's place. He came out and stood by while we were all there. Mr. Endicott, the reason those checks were dated the 22nd was because they were written on Sunday, and the wife had an idea that they would not be good if they were dated Sunday.

Q. She was well skilled in legal matters, was she?

Mr. Starr: I object to that. It is not a proper comment.

Mr. Endicott: It is cross-examination of your witness.

Mr. Starr: I object to it because it is improper.

The Court: I think it is proper.

Mr. Starr: Exception.

The Court: All right.

Q. I show you C24 ——

A. Do you want me to answer that, that she was well skilled in legal matters?

Q. Yes, if you wish.

A. I should say not.

Q. All right. I show you C24 and ask you in whose handwriting the name Mrs. L. M. Wolf appears?

A. Mrs. Ailes'.

Q. I show you C25, and ask you in whose handwriting the words "Dr. Montgomery" appear?

A. Mrs. Ailes.

Q. Which is the usual style of handwriting employed by your wife, that on C25 or that on C24?

A. It varies a little, Mr. Endicott. That is her usual style.

Mr. Endicott: Witness identifies C25 check payable to Dr. Montgomery.

The Witness: I think it is only a difference in the pen, Mr. Endicott. I am not sure. That is her handwriting.

Mr. Endicott. Does the Court desire to observe the exhibits?

(Handing C24 and C25 to the Court.)

The Witness: The one to Dr. Montgomery, Judge, is certainly hers.

Q. I show you a letter entitled "The New Willard, Washington, D. C.," and ask you if you recognize that handwriting? Just look at the front?

A. Yes, sir.

Q. Whose is it?

A. Mrs. Ailes'.

Mr. Endicott: Let it be marked for identification.

(The paper referred to and the accompanying envelope are marked as exhibits for identification for the caveators, C5A and C6A.)

Q. This is the handwriting which we find on the exhibit ——

Mr. Starr: I object to that. Your Honor is just as capable of determining that question as this witness is, who does not pretend to be an expert.

Mr. Endicott: Let me finish my question, Judge, please.

Mr. Starr: I thought you finished it.

Q. —C24.

Mr. Starr: I renew my objection. This is a matter which is not a proper cross-examination. Your Honor can determine that. Your Honor can determine that by comparison just as well as the witness.

The Court: I think it is entirely proper. The witness has testified that he can recognize and identify handwriting, and it is cross-examination as to whether he can or not.

Mr. Starr: That is not the purpose, if your Honor please.

The Court: That is what I understand the purpose to be.

Mr. Starr: The purpose of the examination is to have this witness compare two sorts of handwriting of the same person. Your Honor can do that just as well as he can.

Q. (Repeated by the stenographer.) This is the handwriting which we find on the Exhibit C24.

Mr. Endicott: Is it not?

The Court: C24 is the handwriting he has identified as Mrs. Ailes'?

Mr. Endicott: As one of those of Mrs. Ailes.

The Court: I will permit it.

Mr. Starr: Exception.

Q. (Repeated by the stenographer.) This is the handwriting which we find on the Exhibit C24; is it not?

A. Yes, sir.

Q. I show you letter on the stationery of the Alamac Hotel entitled "Dear Lil," and ask you if you recognize that handwriting?

A. Yes, sir.

Q. Whose is it?

A. Mrs. Ailes', I believe.

Q. That follows the handwriting as in the Montgomery check, C25?

A. Yes, I should say so.

(The paper referred to is marked for identification for the caveators, C7A.)

Q. Was it the practice for your wife to write letters for Mr. Allen?

A. I can't answer that, Mr. Endicott. I never knew that it was, except she might write a short business note for him; but he himself never wrote that I can remember.

Mr. Endicott: Mark that envelope.

(The envelope referred to is marked for identification for the caveators, C8A.)

Q. I show you post card headed, "St. Petersburg, January 28, 1928," and ask you if you know the handwriting that appears on that post card?

A. Yes, sir; I think that is Mrs. Ailes'.

Q. That is Mrs. Ailes'?

A. You see, that day they bought a whole bunch of those post cards and sent them out to everybody they could think of. They would go to the hotel desk and Mr. Allen stand over Mrs. Ailes' shoulder and say, "Don't forget so and so." They would send out a raft of them.

(The post card referred to is marked for identification for the caveators, C9A.)

Q. It was, then, the practice of your wife to write for and in Mr. Allen's name from time to time?

A. On occasions like that, I guess, Mr. Endicott, you might say; when they went away like that.

Q. You have stated in your direct examination that the proceeds of the foreclosure which came to you through Senator Daix was the full amount of the mortgage?

A. Yes, sir.

Q. How do you understand that Senator Daix was paid for his services in that behalf?

A. I guess collected against the bond and warrant, wouldn't it be?

Q. Well, I don't know. I want to know your understanding of how he was paid.

A. By the other side, by the woman in whom we got the money.

Q. You didn't understand that he was working for you for nothing; did you?

A. Certainly not, no. Of course, not. As I said, I asked him how much we owed him.

Q. When did you ask Senator Daix how much you owed him?

A. I didn't ask Senator Daix. I asked young Mr. Daix.

Q. And what answer did you get?

A. That he had gotten the money from the other side.

Q. Now, I show you a letter on the stationery of the Hotel Strand, addressed, "Dear Lillian," and ask you if you understand the handwriting in which that letter appears?

A. Yes, sir; Mrs. Ailes' handwriting. That was the time that we were at the Hotel Strand.

(The paper referred to is marked for identification for the caveators, C10A.)

The Witness: I was there at that time, Mr. Endicott.

Q. Do you know when this was?

A. I think in 1920, because that was the only time I stayed at the Strand, and that was the early days of our taking Pleasantville.

(Envelope marked as an exhibit for identification for the caveators, C11A.)

Q. I show you the envelope, Hotel Strand, bears the postmark December, 1921. Does that refresh your mind?

A. Yes, sir. That was the only time I was there, and we came down that time to superintend some work in Pleasantville.

Q. Who paid the bill on that occasion?

A. Mr. Allen, to my best recollection. My wife al-

ways had money with which she might have paid it. I don't know. I didn't check up on it.

Q. Do you know when Mr. Allen purchased the shares of the Pleasantville bank?

A. No, sir, I don't know exactly but I know they were delivered to him in August.

Mr. Starr: Of what year?

The Witness: 1928.

Q. Who owns the title to the Pleasantville property in which you now live?

A. You mean in whose name is the title? Mrs. Ailes'.

Q. How did she acquire the title?

A. From relatives of mine who bought the place.

Q. When?

A. 1920, I think.

Q. 1920?

A. Yes, sir.

Q. And what was on the property when she bought it?

A. You mean buildings?

Q. Yes.

A. Well, there was one of those four and a half Shore Road houses, I think four or five or six rooms.

Q. How much did you pay for it?

A. Some $800, I think, to be exactly, $850.

Q. $850?

A. Yes, sir.

Q. And improvements were put upon it?

A. Yes, sir.

Q. How much did you pay on account of those improvements?

A. That I have no track of, Mr. Endicott, because first we had the carpenter and a helper and now and then a cement man to do this, that and the other, and I paid some and Mr. Allen paid some.

Q. What was your arrangement with Mr. Allen for the payment of the improvements to the house?

A. None whatever.

Q. Do you know of any arrangement that your wife had with him?

A. No, sir. I might say, if you will permit me, that was Mr. Allen's idea to improve that place. The wife and I had just figured on it being plenty good enough to come down in the summer-time. I had no prospects of my coming down permanently.

Q. You were still holding your job in Philadelphia at that time?

A. Yes, sir.

Q. Did you stay up through the week?

A. Oh, no, I went up and down every day.

Q. Do you know how much was spent on the improvement of the house all together?

A. No, I don't know, but I suppose all in all to put in its present condition it amounted to maybe $3500 or $4000, part of which I paid, however.

Q. Any mortgage on the house?

A. No, sir.

Q. And there was no arrangement between you and Mr. Allen as to his contribution of a part of the expense?

A. No, sir. Whatever he concluded that he wanted done he arranged to have done.

Q. What were the arrangements for the operation of the household?

A. You mean the expense of the household?

Q. Yes, sir.

A. None.

Q. Who paid the household bills?

A. Well, I would give the wife all the money that I earned, practically all I earned, and she disposed of it as she saw fit. So far as I knew I was paying it, but of course, I did know that Mr. Allen contributed many times to the expenses of the house.

Q. When did you say that you retired?

A. I think it was in September — I didn't retire — September, 1926 — 1926, yes, sir. I have the tail end of my commutation ticket.

Q. And what was your monthly salary at the time you retired?

A. Approximately the same. I had some little—

Q. I haven't learned what it was yet.

A. Well, monthly salary — I was — you see, I used to get part of my income from one department and part from another. I assisted, in addition to being Assistant Purchasing Agent — I assisted as consulting engineer, so that I got some little ——

Q. And do you know what you received from other sources at the time of your retirement?

A. Yes, sir. It ran around — the holding company ran around three thousand dollars.

Q. What is the pension which you now receive?

The Witness: How is that pertinent, Judge?

Mr. Starr: If your Honor please, I don't think it is really competent or material. Mr. Ailes objects

and I will make an objection. The question is what his pension is at the present time.

The Witness: Judge, may I ask that they requested me not to divulge that?

The Court: I think it is entirely proper to show the relations in this house, whether or not the relations had any influence in the making of the will.

Mr. Endicott: Judge Starr had him testify that he was living under a pension. Now I want to find out the details of that.

Mr. Starr: If your Honor feels it is perfectly competent I withdraw the objection.

A. It amounts to $600 a year.

Q. How is it paid to you?

A. Monthly. I say six hundred dollars a year, but I am frequently given other little cash presents.

Q. You mean cash presents from the company?

A. Cash presents rather from the individuals. No, it is not a company affair.

Q. Does your pension come from the company?

A. Yes, sir.

Q. Is that pension predicated upon an ill health or is it a retirement pension?

A. No, sir; it is understood that it is in the nature of an indefinite leave of absence.

Q. Well, are you to enjoy it for the rest of your life?

A. Nothing was ever said about that, Mr. Endi-

cott. When I laid off they gave me that voluntarily just to help me out.

Q. Did your wife ever have a power of attorney for Mr. Allen?

A. Judge, is it all right for me to talk? This is my first court experience.

Mr. Starr: Let him know whether or not she had a power of attorney?

A. Oh, beg your pardon. I was going to ask you something else. Yes, sir.

Q. Did she attend to banking for him?

A. While Mr. Allen was in the hospital, yes, sir.

Q. And yet you say that she had no legal experience?

A. Well, I would not think that required any legal experience.

Q. Does she have business experience?

A. No, sir, only what would go with a housewife's experience and saving my income.

Q. What do you know about the checks for $2800 which were signed by Mr. Allen on the day of his death?

A. They were given to me to mail to Pleasantville. Of course, after Mr. Allen signed them. I was not in the room when they were signed.

Q. When did they come to your hands?

A. Some time in the morning, Mr. Endicott. I should think maybe nine or ten o'clock.

Q. Before or after Mr. Allen's death?

A. Before.

Q. Were they filled out when you saw them?

A. Yes, sir.

Q. Do you know anything about their being signed prior to the time they actually came to your hand?

A. They were signed when I got them.

Q. Did you know that they had been signed before they came to you?

A. Sure, because they never went to anybody else after I got them.

Q. Did you know that they were to be signed by Mr. Allen before they were signed?

A. No, sir. Oh, no, sir. I didn't know anything about that. Mr. Haberstadt had said something about if we remained over he was going home, and I thought it would be necessary to get some money, but I never discussed it with anyone.

Q. What do you mean it would be necessary to get some money?

A. If we were going to remain there.

Q. Well, was Mr. Allen the only source of money that you could rely upon?

A. Oh, no, sir.

Q. Well, what do you mean that it was necessary to get some money?

A. Have a check cashed of our own. Dr. Stewart volunteered to introduce us to the bank.

Q. Did Dr. Stewart know you?

A. No, sir. He knew some people I knew in Pittsburgh.

Q. Were you with your wife and Mr. Allen in Washington in November, 1921?

A. No, sir.

Q. Were you with your wife and Mr. Allen at the Hotel Alamac in 1922?

A. Mr. Endicott, they were not at the Hotel Ala-

mac. That was simply written on their stationery. They had dinner there with my two girls.

Q. Were you with them?

A. No, sir; I was not there.

Q. But you were on the Strand trip?

A. Yes, sir.

Q. I show you a letter addressed "Dear Mrs. Seltzer," dated May 15, 1928, and ask you if that is in your wife's handwriting?

A. Yes, sir.

Q. And isn't that her customary handwriting?

A. Yes, sir; sure it is. It is her customary — it is the only handwriting she has, but it does vary a great deal, and I think they are all close enough alike to be identified.

Q. I don't think you developed what you started to say about your action with the checks which were received on the date of Mr. Allen's death.

A. Yes, sir.

Q. You said that they came to your hand to mail to the bank. What did you do with them?

A. I took them down to the post office and sent them over special delivery or registered mail, I don't know which. I think registered mail.

Q. They were to your wife's account?

A. Yes, sir, but they were made ——

Q. You sent them to the bank to deposit to your account?

A. No, sir; they were sent there to be certified and returned for deposit in Winchester, and the note accompanied the checks to that effect, transferring one of the amounts from the saving to the ——

Q. What time did you mail the checks?

A. I should say about nine or ten o'clock in the morning.

Q. And how long before that had they been signed?

A. I don't know, Mr. Endicott.

Q. Are you sure about your time when you mailed them?

A. Well, I made no particular note of it, but I am reasonably certain that was the time.

Q. What did you observe in your acquaintance with Mr. Allen as to his habits with respect to the use of money? Was he economical or was he generous?

A. Extremely economical with himself, but he was generous to the family.

Q. Generous to your family?

A. Yes, sir.

Q. Did you know him to be generous to any other person beside your family?

A. I cannot exactly say that. He paid all the taxes and for repairs, and forfeited the income on the house Mrs. Seltzer lived in.

Q. Do you know any other illustrations or incidents illustrating his character with respect to money?

A. He was a close man with money. He contributed to the church a little.

Q. How much?

A. Oh, twenty-five, ten dollars now and then.

(Ten-minute recess.)

By Mr. Starr:

Q. One question I omitted to ask on direct examination. Do you drive an automobile?

A. No, sir.

Q. Have you ever driven one?

A. No, sir.

Q. Something has been said about a visit to the Hotel Strand, Atlantic City?

A. Yes, sir.

Q. What was the occasion of staying there?

A. We came down and stayed overnight. I think only one night. We may have been two, while we were having some repairs made at Pleasantville. We couldn't live at Pleasantville at that time.

Q. Where were you living actually?

A. On Walnut Street — wait — I guess that might have been Trinity Street there. We were living in Philadelphia, anyhow.

Q. You were living in Philadelphia, but you don't remember the place?

A. Yes, sir.

Q. I asked you on direct examination with reference to the Walnut Street house. You didn't tell me whether or not the mortgage which was given by Mr. Allen for three thousand dollars was a first or second lien on the property.

A. That was a second. I told Mr. Endicott we only had the one mortgage. That was wrong. We had two. The Commonwealth took one and Mr. Allen took the other.

Q. Now, I show you what purports to be a settlement certificate, or settlement sheet, for the purchase of the Walnut Street property on the 30th of

December, 1920, and ask you whether or not that is a statement of the settlement made for that property?

A. Yes, sir; yes, sir; that's right.

Q. Then Mr. Allen had a second mortgage of three thousand dollars and the Commonwealth had a first mortgage; is that right?

A. Yes, sir; that's right. All I had in it was $500.

Q. Now I show you the settlement sheet with respect to the sale of the property and ask you whether or not the two mortgages held by Mr. Allen and the Commonwealth Company were paid off at that settlement?

A. Yes, sir.

Q. And that is where you got the $10,000 mortgage?

A. That is where I got the $10,000 mortgage; yes, sir.

Q. Now, in answer to a question put by Mr. Endicott, you said that your compensation by way of pension or whatever you call it, was $50 a month. Have you any other income?

A. Judge, I might say here, I don't want to say anything about it, but the Judge has ruled that I may — that is more for legally connecting me with the outfit and keeping up my life insurance rather than for me to live on. Outside of that I have an income from invested savings sufficient for our needs. We don't need a whole lot.

Q. And your funds are invested in what character of securities?

A. We have a couple of mortgages. I have a new U. G. I., Philadelphia Electric.

Q. Do you own any real estate outside of the Pleasantville house?

A. Yes, sir; we have an apartment over the garage that brings us $35 a month, and we have a little bungalow that we get $45 for. We did get fifty.

Q. Then as I understand it, you don't depend on your $50 a month from the Berwind Company for living expenses?

A. By no means.

Q. And I think it was said by Mr. Simpson yesterday that you and your wife were interested in Shore Road property?

A. Yes, sir.

Q. Do you get any income from that?

A. We have a half interest in that, yes, sir; we get half the rental for that.

Q. What does that amount to?

A. $27.50 a month is our share.

Mr. Starr: That is all.

Re-cross-examination.

By Mr. Endicott:

Q. When I asked you if you had $3500 in this Walnut Street property, you said yes.

A. Yes, sir; I did say that.

Q. And now you say that you only had $500 in it?

A. Yes, sir; because it slipped my recollection, Mr. Endicott. Of course, I ——

Q. You also said in your cross-examination that you had not seen or talked to anybody about the

making of the remaining Allen checks until they were handed to you by your wife?

A. Not to the best of my recollection; no, sir.

Q. Now, do you remember the testimony — did you hear Mr. Haberstadt's testimony the other day?

A. Yes, sure.

Q. I read it on page 66 of the testimony taken on Monday the 22nd of July:

"Q. Do you know anything about the execution of the check of Mr. Allen in the Winchester hospital?

"A. When Mr. Allen took sick I suggested to Mr. Ailes that he may be probably sick for quite a while and that it would be well for him to draw a check to cover the probable expenses, because I didn't have money enough with us to provide for an extended stay and he suggested it to Mrs. Ailes and she said, 'He is too sick, I can't bother him with anything like that.' When the subject was broached to him I don't know, but it was not on Saturday." Now, do you recall that testimony?

A. Well, Mr. Endicott, I do not believe that I intended to say that the money was to come from Mr. Allen. He may have said we needed money, and we had sufficient money on deposit in Pleasantville to see us through that emergency. We didn't have to depend on Mr. Allen. Besides, he was a sick man.

Q. Well, he was talking about its being suggested to Mr. Allen; wasn't he?

A. Well, I am not quite clear on that now. He may have said that, but I am quite certain that is not what he meant.

Q. All right. Well, you did see those checks before they were handed to you for mailing?

A. The checks I mailed to Pleasantville Trust Company?

Q. Yes.

A. Absolutely not.

Q. Didn't you suggest to Mrs. Ailes that she get the checks from Mr. Allen?

A. No, sir; didn't even know they were contemplated.

Q. When Haberstadt said that you suggested it to Mrs. Ailes, he was mistaken?

Mr. Starr: I object to that. This witness certainly is not permitted to make a characterization of that sort with reference to the testimony of another witness.

Mr. Endicott: But I have presented to him the testimony of another witness which he has heard.

Mr. Starr: That stands. The testimony of this witness stands, and also the testimony of the other witness. It is utterly incompetent to have this witness make a comparison between what he said and what some other witness said. That is something that must be determined by your Honor.

Mr. Endicott: I am asking whether what this other witness said about his conduct was true or not.

Mr. Starr: That is what I object to.

Q. (Repeated by the stenographer.) When Haberstadt said that you suggested it to Mrs. Ailes, he was mistaken?

The Court: I think the objection is well taken. I will sustain the objection.

Q. You have testified that you had some money in saving account and banks at the time you met Mr. Allen and at the time you made the investment in the Walnut Street property — three or four thousand dollars, I think you said; and at that time, you told me, that you had three or four thousand dollars in the property. Now the real fact is ——

A. That was a mistake.

Q. The real fact is that your worth was at that time what you had in the savings bank and what you put in the property, which was about five thousand dollars?

A. No. I wanted to sling this thing without disturbing the savings.

Q. Did you so sling it?

A. Yes, sir.

Q. Well, what was your real worth, your net worth, at the time you made the investment in the Walnut Street house in 1919?

A. My income from salary and what we had saved from what I had earned.

Q. And what was that?

A. Well, as I say, to the best of my recollection, it may have been $3500 or $4000.

Q. Mr. Allen loaned you $3000 on second mortgage?

A. Yes, sir.

Q. You have testified that you have an income from investments. If you only had $3500 or $4000 in 1919, will you trace the source of the capital

which you invested and from which you now derive an income?

A. Well, that is ten years ago. Mr. Allen's presence in the house enabled us to make quite a considerable saving. We didn't spend any money. We saved it all along. I got $10,000 from this Walnut Street place, and the girls, if I remember correctly, they voluntarily gave their mother $10 a week apiece until they were married. That amounted to $20 a week or $80 a month.

Q. How much U. G. I. have you now?

A. I think twenty-three or twenty-four shares.

Q. How much Philadelphia Electric?

A. That is not Philadelphia Electric. It is that Power that we got — the way we got that, Mr. Endicott, the U. G. I. came from the Philadelphia Electric split-up along with the Power shares; I think twenty-two — it is an odd lot.

Mr. Endicott: All right; that is all.

(Witness excused.)

KATHRYN AILES, called as a witness on behalf of the proponents, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Starr:

Q. Now, Mrs. Ailes, when were you married?

A. In 1892.

Q. What month?

A. In October.

Q. As the result of your marriage how many children have you had?

A. We have four daughters and six grandchildren.

Q. Are they living now?

A. Yes; the four daughters are married and have their families.

Q. And what is your age?

A. My age is fifty-five—I say fifty-five.

Q. When did you first meet Albert Allen?

A. In September of 1919.

Q. Where did you meet him?

A. We were contemplating buying the Trinity Street house that we were living in and I had met Mrs. Shumway after many years; she was a little girl at school; I had met her in town one time and she incidentally mentioned that her mother had married a Mr. Allen, a well-to-do man, and that his business was placing mortgages; and so when we contemplated buying this house she said that Mr. Allen would be glad to take a mortgage on it, and

in that way we brought him to the house to look at the property to see if it would be worth his while.

Q. Had Mr. Allen's wife then died or did she die subsequently?

A. No, Mrs. Allen had died and we attended the funeral, mother, Mrs. Haberstadt and myself, on December 7, I think, in 1919. We heard of her death and Mrs. Shumway had called me up and told us and we attended the funeral.

Q. You met Mr. Allen at the funeral?

A. No, I didn't meet Mr. Allen at the funeral, but I met his brother Tom. He was introduced to me by ——

Q. Now, as a result of his visit to you in 1919, did you and your husband take purchase of the Trinity Avenue house?

A. No. Mr. Allen discouraged it. He said it was not good value, and he should know that; but I argued that I liked it as a home. He said it was not the thing to do; he could show me better properties to invest in.

The Court: Will you raise your voice just a little bit? I am afraid they are all going to have difficulty in hearing you.

Q. When was it first suggested that Mr. Allen should make his home with you and your family?

A. Well, after Mr. Allen discouraged the purchase of that property, he showed me other places that he said would be a better investment. Then he learned that we were rather crowded at the time. It was shortly after the war. My daughter and her son and her husband, my son-in-law, and their

little girl, were with us, and we were a family of four all occupying—it was not a very large house and they were accustomed to larger quarters, and Mr. Allen then said that he had that large house up there and he had nobody to take care of him and he didn't just feel like selling it at the time, and he made a very—what I thought was a very good proposition to us.

Q. What did he say to you?

A. Well, he said if we would come up there and furnish his meals, why, he would give us the rent free; but it panned out that I was not able to do the work of that large house and it necessitated the getting of a rather expensive maid. At that time we had—it was not such a wonderfully paying proposition, but he felt that.

Q. He what?

A. He felt it was not as much of a paying proposition when he found I couldn't take care of the place; that I would have to have some one to do that.

Q. What was the final arrangement between you and him with reference to his making his home in your family?

A. Just that arrangement, precisely—that the rent should go free in return for his meals and the care of his home—the care of his home.

Q. Was it arranged that he should pay any board?

A. No; there never was an arrangement of that kind.

Q. As a matter of fact, from the time that occurred until his death, did he he ever pay anything in the way of board?

A. Not any board at all.

Q. Was there any charge made in respect to his living as one of your family from the time of the initial arrangement until he died?

A. No; because he felt that it was not sufficient, and he contributed ——

Mr. Endicott: I object.

Q. What did he say as to his feelings?

A. Well, he said that he didn't think it was a paying proposition for us and he would not be a boarder; he couldn't be; but he would like to arrange it so that when he wished to contribute anything at all to the support of the family, any gifts for my daughters and myself, in that way he could show his appreciation.

Q. And did he do that from time to time until the time of his death?

A. Indeed yes, up to the time of his death, generously.

The Court: How old was he when he came there?

The Witness: He was sixty-five years old—yes, sixty-five years old.

The Court: You were forty-five?

The Witness: And I was forty-five.

The Court: And he was sixty-five?

The Witness: He was sixty-five, yes.

Q. Now, in a general way, Mrs. Ailes, recite the different places where your family lived and Mr. Allen was a member of the family, from the time you were at the "Allegheny" house until he died.

A. Well, we went up in 1919, April 15, 1919, into the Allegheny Avenue property, and then we left it in March of 1920, and our lease expired in the Trinity Street house in September of 1920, and Mr. Allen's deal for his property didn't go through, and in the meantime he was very anxious that we should come back again, and we did. We went back again in October, the first of October, I think, of 1920, and we remained there again until he was really able to sell the property. That was in 1921, I think—we stayed until 1921, yes.

Q. Go ahead from then on.

A. Well, 1921. Then in the meantime we had purchased the property on Walnut Street and we had gone in there and he came with us, and then we stayed in the Walnut Street property, and in the meantime we had picked up this little place down at Pleasantville, with the idea of coming and spending our summers here, just staying for a few months, and our daughters were going to business and had to contribute. It was an expensive proposition for my husband and two daughters. It ran about $75 a month. So we didn't stay very long; it was just a couple of months; had no thought of ever building it up and making it a real home. Mr. Allen took a fancy to it. It was a hobby. It was really a ——

Mr. Endicott: I object and move that it be stricken.

The Court: Yes, that last may be stricken.

Q. I want to caution you that what we want from you is statements made by Allen, not your interpretation of what he intended or thought, but what he said to you. Now, with that in view, I wish you would continue. What did he say about his liking for the Pleasantville house?

A. Well, he said that he wanted to make Pleasantville more livable because he found it did a lot for his health. He wasn't so well.

Mr. Endicott: I move the last remark be stricken unless it is conversation.

The Witness: Well, he said he was not well.

Q. You understand the limitations of the rules with reference to the testimony?

A. Yes.

Q. I wish you would adhere to that. Go ahead.

A. He said that he wanted to enlarge Pleasantville and wanted to make it livable, which Mr. Allen did. Is that all right?

Q. That is all right. When did you come down to live permanently?

A. Not until 1925.

Q. Did you live there continuously from 1925, to the time of his death?

A. Yes; because the Walnut Street property was sold in 1925, and that left us without a home. So we came down here permanently.

Q. Did Mr. Allen have anything to do by way of

advice to you with respect to the purchase of the Walnut Street house?

A. No, no; he didn't.

Q. Was that done independently of Mr. Allen?

A. Independently. My daughter had lived in there before and we were interested in the property for her sake.

Q. Well, who suggested the giving of the mortgage to Mr. Allen?

A. Mr. Allen asked me how we were swinging the deal—he called it—and I made it plain to him. He said, "A second mortgage is difficult to get, but," he said, "I never take a second mortgage but I know my people and I will be glad to loan it to you on second mortgage." I said, "That is mighty kind because that makes it possible to swing the deal."

Q. And so far as the improvement on the Pleasantville property was concerned, who financed those improvements?

A. Well, mostly Mr. Allen, and a great many times we would pay some of the little things. We had a man working by the day and when the salary was due Mr. Allen would say, "No, I will pay that," and I would say, "Mr. Allen—Frank insists on paying that." "Well," he said, "I know that; but you have Walnut Street. This is my hobby. Let me pay for this." He would pay right along. We just had this man by the day. It was not a big proposition.

Q. Now, when you purchased the Pleasantville property, who financed that purchase?

A. Well, we did together, Mr. Allen and I together. It was really that we were the interested parties in the place. But Mr. Allen said he would like to get

away in the summer time. He said he suffered with the heat tremendously.

Q. The deed was made in whose name?

A. The deed was made in my name.

Q. Mrs. Ailes, when did you become acquainted or have any interest whatever with Senator Daix personally?

A. With Senator Daix personally? Personally was when we went in for Mr. Allen to make plans for his will. That was the first time I had ever seen Senator Daix with the exception of him passing through the bank, probably ten or fifteen minutes. And Mr. Allen pointed him out to me. I had long heard of Mr. Daix.

Q. But you had never seen him before?

A. Never seen him before, no, indeed.

Q. And the first time you had conversation with him was when?

A. When we went in there. He introduced me to him in his office when Mr. Allen went up prior to his signing the will, and that was several days before. We went up there together. And I might explain right here, too, for the benefit of the Judge, that the reason I went on all these occasions, Mr. Allen was getting to be an older man and I ran the car, and it made it more pleasant than going in the train for him. He was able of going himself, but that was the reason—I drove the car.

Q. How long did you have a car?

A. Since 1922, when we first came down to Pleasantville.

Q. Who financed the purchase of that?

A. Mr. Allen. He wanted it for himself and it

was a pleasure for the children and himself; but he gave it to me.

Q. He bought the car?

A. He bought the car and paid for it.

Q. Did he operate the car?

A. No; he couldn't, drive a car.

Q. Did any other member of your family operate a car?

A. Well, all our daughters had, yes, all of them; but they were going to business.

Q. Now, with respect to the will which is here under contest, did you ever directly or indirectly counsel or advise with or attempt to influence in any way Mr. Allen in making that will?

A. No, Judge Starr—no.

Q. Did you ever directly or indirectly attempt to influence him in the disposition—testamentary disposition of property?

A. No.

Q. Do you know of the occasion when you and he went to Philadelphia to see Senator Daix— the object of the visit?

A. Oh, yes, yes. He said that he was going to make his will. Yes, he said that. He said probably a few weeks before he started to talk about that—before we really went, because it was a very hot time, and he said, "Have you anything to do in Philadelphia right now? Are you going to drive up?" I said, "It is pretty hot. I have several things, but it is pretty hot." "Well," he said, "I would like to get up to make my will. I had a talk with Manning"—Mr. Manning, who had the bank. I said, "Why go to Philadelphia when it is so hot? Isn't there anyone else to make your will? There

is Mr. Lewis. You have lots of confidence in him." He said, "No, when it comes to making a will," he said, "You know, Daix is the old—my Allen family lawyer, and he had transacted my brother Sam's business." "Oh, well," I said, "We will go just as soon as the weather is a little cooler." So day by day we waited. That was probably early in August, and we had visitors with us and it was just a little inconvenient for me to get up. But finally we tried to pick out a cool day and it was the later part of August. So he spoke about the will.

Q. Now, on that day where did you go first when you landed in Philadelphia?

A. We left mother—no, we had gone before—no, that day we went directly to the Northwestern Trust Company. He had some papers he wanted to take up there to his box. He had a tin box up there.

Q. I show you Exhibit P1A, and ask you if you recognize the handwriting on that paper?

A. Yes, sir; I do.

Q. Whose handwriting is that?

A. That is Mr. Allen's.

Q. When did you first see that paper?

A. Well, it was laying on his ——

Q. When did you first see it?

A. Well, now, let me see. Oh, I see. I don't know; after his funeral; after he had passed away. I presume it was in October, probably.

Q. Where was it when you first saw it?

A. Well, it was crumpled together with a lot of —huh! programs of moving pictures and so on; crumpled all up in there.

Q. On that day you and Mr. Allen went to the offices of the Northwestern Trust Company?

A. Yes, sir.

Q. And what happened there?

A. Well, he placed some papers in his tin box that he had there. Then he went over across the street to Senator Daix's office.

Q. Did you go with him?

A. Yes, I went over with him. Yes, I went over with him and met Senator Daix; was introduced to him.

Q. That was the first time?

A. Yes, that was the first time I ever met Senator Daix, and he introduced us and we went back.

Q. What did you say?

A. We went back into Senator Daix's office.

Q. What happened back there?

A. Well, he said that he wanted to make a will, talked over the thing. Senator Daix asked me to please step out, which I would have graciously done anyway; but he did, and I stepped out into the outer office.

Q. How long was Mr. Allen there?

A. Oh, probably half an hour or twenty minutes; probably fifteen minutes, I should say; not so long.

Q. And what happened?

A. Then we had lunch in town; did a little shopping and came home.

Q. When did you go to Philadelphia again in reference to the execution of the will?

A. On the 9th of September.

Q. And who went with you that day?

A. Mr. Allen, and mother was through with her vacation and she went up with us, and my husband went with us, too.

Q. And where did you go?

A. Well, we went directly—why, we went directly to Dr. Bowker's house.

Q. Did your mother go?

A. No. Mother stayed in town. We left her in town.

Q. What became of Mr. Ailes?

A. Mr. Ailes had some business appointment and he left us down-stairs where mother did. I think it was at Vine Street and Eighth or Ninth. We turned up Ridge—I don't know; they got off at Vine Street or Market Street. I cannot tell just exactly.

Q. Then you and Mr. Allen went to Dr. Bowker's office.

A. Yes, Mr. Allen and I went up to Dr. Bowker's office.

Q. What happened there?

A. Dr. Bowker wasn't in at the time we got there and we were there in the waiting room and Senator Daix came in with a young woman, who I afterwards learned was his—came there to sign the will, I think—stenographer or some one.

Q. Then what happened?

A. Well, then Dr. Bowker was away and we had to wait quite a little while for him and when he came we were invited to come into his back office away from the waiting room. He has a lot of people in the waiting room. The place was crowded with people, and we went in the back part, but I didn't go in it all the way, but part of the back office. I knew Mr. Allen's errand and I felt delicate about it. And we went back to the office. First is a waiting room, then private office, and they went back to an office I never seen. I just dropped out of line. I followed them in but I dropped out of line.

Q. How long was Mr. Allen in the rear office?

A. I imagine they were in there about fifteen or twenty minutes because I heard them talking about old times, laughing and joking.

Q. What happened after that?

A. After that we went on our way. We went down town to lunch. We were going to meet Mr. Ailes again at Strawbridge and Clothier for lunch.

Q. Did Mr. Allen bring you in the will that had been executed that day?

A. Yes, sir.

Q. To whom did he give it?

A. He handed that to me.

Q. What did you do with it?

A. He asked me—he said, "I am going to go over to the house at 1917 Dolphin Street to look at the roof. That needs repair. And fearing that it may fall out of my pocket, you might take charge of it and put it down in the tin box."

Mr. Endicott: I move the last response be stricken. She is not reciting a statement of Mr. Allen.

Q. What did he say about the paper dropping out of his pocket?

A. He said, "It is apt to fall out of my pocket and I wish you would take it down into the little tin box of yours down home; because I am making arrangements for a box at Pleasantville, and we will just keep it there until that goes through," which I did.

Q. Then you had possession of the will?

A. I had the possession of that will all the time; but he had a key to that box.

Q. And you put it where?

A. Just in our home there, not in no bank; not in a bank.

Q. Was there a tin box at your home?

A. Little tin box I have for such papers as that.

Q. Did Mr. Allen have access to the will?

A. To the box that held the will, the mortgages when he wanted to have me save them for him until he could take them up to this box in the Northwestern Trust—that same box would hold those things.

Q. And that is the box in which the will was kept?

A. Yes, in our home.

Q. How many keys were there?

A. There were two keys.

Q. Who had the other key?

A. Mr. Allen had one key, I had the other.

Q. Was that will subsequently put in a safe deposit box in Pleasantville?

A. No. Mr. Allen didn't ever think enough to get that box.

Q. After Mr. Allen's death did you find the will?

A. Just where I had put it.

Q. Had not been disturbed?

A. No, had not been disturbed.

Q. What did you do with it?

A. After Mr. Allen's death—well, after his death we took it up to Senator Daix, my husband and I.

Q. When when, if at all, did Mr. Allen talk with you about what disposition he proposed to make with respect to his property?

A. After we came back ——

Q. When? When did he first talk about it?

A. I would say in 1923.

Q. What did he say to you then with reference to the disposition of his property?

A. He said, "You and your family have endeared yourselves to me."

Q. Go ahead.

A. "I have no one as near and close to me as you are," and he said, "I am leaving it all to you, all that I have in the world, and that is not enough to repay you for the kindness that you have shown towards me."

Q. Did he at any time make some statements?

A. Yes, many statements through the years that he had been with us.

Q. Did he make any gifts to you?

A. Yes.

Q. Beginning when?

A. It seems to me from the beginning.

Q. How about gifts to the children?

A. Yes, he certainly did.

Q. At any of these times when he was telling you what he proposed to do with his property after his death, did you attempt to influence, coax, or persuade him in any way tothe disposition to you?

A. No, Judge Starr. I didn't have to. Mr. Allen's disposition was always—he always showed me his appreciation, said he was going to do it. I had no need to do it.

Q. Did you influence him in any way?

A. No, indeed. He was kind to us while he lived. That in itself was quite a recompense.

Q. Do you know how "he" paid for the Pleasant-

ville property or the title to which was in your name?

A. I think eight hundred dollars, Judge Starr.

Q. Did Mr. Allen loan you and your husband any money on mortgages covering any property the title to which was either in yours or your husband's name?

A. Yes, the Absecon property and the Walnut Street property. The Absecon property a five thousand dollar mortgage between my son-in-law and myself.

Q. And Mr. Allen hold that mortgage?

A. Yes, Mr. Allen held that mortgage, yes.

Q. Who paid the interest on that mortgage?

A. Who paid the interest? Some by myself.

Q. Paid to whom?

A. To Mr. Allen.

Q. Always?

A. Yes, always, always.

Q. And the interest on the Walnut Street property was paid to whom?

A. To Mr. Allen.

Q. Did either you or your husband own any real estate when you became acquainted with Mr. Allen?

A. We had just sold a property a few years prior to that, our home.

Q. Property located where?

A. At Haddon Heights. That is where we had our home there.

Q. Were there any other mortgages made either by you or your husband to Mr. Allen than the two you have referred to, one on the Walnut Street house and one on the Shore property?

A. I think not, Judge Starr, no, there was not.

Q. Did he ever loan you any money outside of the mortgages?

A. Outside of the mortgages?

Q. Yes.

A. Yes. Yes, he did; yes, Mr. Allen did.

Q. Tell us about those circumstances, please.

A. Well, he was in that business and he sold mortgages, and at the time he said, "I think that would be a nice little investment for you." I said, "Yes, but our money is so that I can't get it right away—" and I believe his people wanted it—"Well," he said, "I will loan you the money." I said, "Well, if you can loan it to me for—" I don't know how many days—"I would appreciate it a lot. I will be able to take it, then." And in that way he made it possible for me to take that mortgage at the time, and I think I got the money in twenty-four days.

Q. And you returned it to him?

A. Yes; I returned the money to him.

Q. Do you remember how much the amount was?

A. Was it three thousand dollars? I think it was three thousand or two thousand. I had some money of my own and I had just to borrow enough.

Q. Were there any other occasions of that character than the one to which you have just testified, or was that the only one?

A. There was another time, too, that I borrowed probably five hundred dollars.

Q. Were those moneys repaid to Mr. Allen?

A. Oh, yes; those moneys were repaid after the length of time that I borrowed it from him, and a little bit sooner, I think.

Q. I show you a check dated March 24, 1928, drawn by Albert Allen to your order for $500. Is

that one of the checks that represented a transaction of the character described?

A. Yes, sir; yes, sir; that was one of them.

Q. I show you a check for $500 drawn by you to the order of Albert Allen, June 18, 1928. Was that check to settle the transaction?

A. No—yes, that was; that was for a thousand dollars. I remember that. That was a little mortgage I took, yes. The check is $500, yes.

Q. Check from Allen to you is $500.

A. Well, that is the corresponding—it was how long? It was a few months after until I could get the money, say March, April, May, June—three months; yes, sir.

Q. I am asking you.

A. Yes; that is in payment for the money I borrowed from him.

(The checks referred to are received in evidence and marked as exhibits for the proponent, P14A P13A.)

Q. Now, I show you a check dated September 10, 1928, by Albert Allen to your order for $2000.

A. Yes.

Q. What was that transaction?

A. That was a mortgage for thirty days, I put on here—thirty days loan. I borrowed that to be able to take a mortgage and then I returned it.

Q. Is that the check by which it was returned?

A. Yes, that is the check.

Q. Dated December 29, 1928?

A. Yes, sir.

Q. And those two checks closed that transaction?
A. Those two checks closed that transaction.

Mr. Starr: I offer those in evidence.

(The checks referred to are received in evidence and marked as exhibits for the proponent, P14A and P15A.)

Q. Check dated September 10, 1928, to the order of Allen for $1,484, signed by yourself. Do you know what that transaction was?
A. Yes; that was a mortgage that he held on a daughter of mine who sold this property, and when the people bought this property this was cleared up. I assumed the first mortgage and that cleared up Mr. Allen, and that paid him all he had put on, $1400, and the $84 was the interest.
Q. Paid him up in full?
A. Paid him up in full.

Mr. Starr: I offer that.

(The check offered is received in evidence and marked as an exhibit for the proponent, P16A.)

Mr. Starr: This check of $1,484 is drawn on the First National Bank of Pleasantville; the $500 check from Kathryn Ailes to Albert Allen is on the First National Bank of Pleasantville; the $500 check from Allen to Kathryn Ailes on the Pleasantville Trust Company; and the Ailes check of $2000 on the First National Bank of Pleasantville; and the Allen check

to Ailes for $2000 is on the Pleasantville Trust Company.

Mr. Endicott: Judge, we would like to have these endorsements shown, too, please.

Mr. Starr: Well, I guess you can show them when you cross-examine.

Mr. Endicott: All right.

By Mr. Starr: (Continuing.)

Q. Mrs. Ailes, there is one question I omitted to ask with respect to the will; did you have the will in your possession at the time you had lunch together after it was executed?

A. Yes, I had .

Q. And who had luncheon together that day?

A. Mr. Ailes and Mr. Allen and myself; just the three of us.

Q. Was there anything said about the will or was it exhibited to anybody at luncheon?

A. Yes. Mr. Allen told Mr. Ailes, he said, "I have made my will," at luncheon.

Q. What did he say?

A. He just said, " I made my will."

Q. Did he say how he disposed of the property?

A. Yes; he said, "I have left it all to Katie."

Q. Whose furniture was used to furnish the Pleasantville house?

A. Well, there were a few of his things, after the sale of his furniture up on Allegheny Avenue, some

of them he brought with him and kept it in our place there until such time as this place was ready.

Q. Kept it where?

A. At Walnut Street; and some of them were brought down with what we purchased new, and some things of our own.

Q. As I understand it, the furniture in the Pleasantville house was composed of furniture belonging to Mr. Allen?

A. Well, it was not Mr. Allen's. He had given it to me. What he couldn't sell over there he had given to me, and he sent a piano to Mrs. Shumway to keep until such time as he might want it again.

Q. Was some of the furniture in the Allegheny house?

A. Yes, some of the furniture was in the Allegheny house, and he told me to take it; he couldn't sell it, and I might as well take it to Walnut Street; it was a little inconvenient at the time because ——

Q. Well, now, did he buy for you an electric refrigerator in Pleasantville?

A. Oh, yes.

Q. How did he come to do that?

A. That was a birthday gift. That was an electric refrigerator, bought some time around my birthday.

Q. Of what year?

A. I was born in April.

Q. What?

A. I was born in April.

Q. I know, but what year?

A. 1928.

Q. 1928?

A. Yes, 1928.

Q. Did you have any talk with Mr. Allen about the purchase of that?

A. No. He did—he objected very much to the shortage of ice. The ice man didn't come promptly and it was just about getting so that it didn't retain the ice. He was an extreme ice eater—I mean ice water, and plenty of it—and he said, "We will just cut that out. You might as well have this refrigerator now."

Q. And he bought one for your birthday?

A. He bought one for my birthday; but it worked a double purpose, for him, too.

Q. Did he make any alterations in the Pleasantville house in his own apartment?

A. Yes; he made an alteration July and August of 1928; just before the July he went away, he enlarged his bedroom, put a bay window in it—that was August, August, 1928.

Q. And from time to time did he make any presents, gifts in clothing or money to your children?

A. To our daughters, yes, to all of them, and to the grandchildren as well.

Q. Was Mr. Allen in the Jefferson Hospital at one time?

A. Yes; he was in there in 1923.

Q. And where was he living before he went to the hospital?

A. With us on Walnut Street.

Q. Walnut Street?

A. Yes.

Q. And he was the hospital how long?

A. Well, I would say probably fifteen weeks, as near as I can remember.

Q. And after he was discharged from the hospital where did he come to live?

A. To 4311 Walnut Street, until we came to Pleasantville.

Q. How long was he ailing as the result of the operation at the hospital?

A. How long?

Q. How long after he was discharged from the hospital was he ailing?

A. Well, it took a little while, probably six or eight months, until he got himself together really.

Q. Who took care of him during that time?

A. Well, I did. I did.

Q. And how long was it ——

Mr. Starr: Cross that out.

Q. Do you remember the exact time that he was operated on?

A. The exact time? No, I couldn't say that.

Q. Do you remember the month?

A. Well, it might be February.

Q. February, 1923?

A. 1923.

Q. And how long was it before he absolutely recovered from that operation?

A. Well, it might have been a year until he really got himself.

Q. Now, you had a power of attorney, did you not, for him?

A. Yes, sir, I did.

Q. When was that given?

A. That was given the day I think that he went to the hospital.

Q. Do you know what became of that power of attorney?

A. You mean the letter that was written?

Q. Your letter?

A. Yes. Why, Mr. Allen brought that over to Walnut Street with him. Yes, he brought it with some papers to Walnut Street.

Q. After he came to the hospital?

A. No, after he had—well, he went up to have it revoked right after he came out of the hospital.

Q. Do you know what became of the paper itself?

A. Why, I had it. He brought it home with him and it was there; just had it there.

Q. By the way, I notice this Exhibit P1A, the first line is, "See Robinson." Who is Robinson?

A. Well, I presume, I don't know. I presume Mr. Robinson at the bank.

Mr. Endicott: I object to the presumption.

The Court: Yes.

Q. Is there a Robinson connected with the Northwestern Trust Company?

A. Yes, sir.

Q. Officially of that bank?

A. I think he is the treasurer.

Q. While Mr. Allen was in the hospital, did you visit him there?

A. Yes, sir, I did.

Q. How often were you there?

A. I presume I was there five days out of every week.

Q. You were there five days out of every week?

A. I presume I was.

Q. Did you have access to the room occupied by him?

A. Yes, sir.

Q. Did you hold conversations with Mr. Allen?

A. Yes.

Q. Was he able to talk with you intelligently?

A. Yes, indeed, yes, indeed.

Q. From the time Mr. Allen became a member of your household, did his two stepdaughters visit him?

A. I would say Mrs. Shumway came to Pleasantville on probably three or four occasions, five occasions. I would not like to say. It might have been more than that. Yes, she came there. Mrs. Ruelens, she came and stayed for dinner one time in 1926 or 1927.

Q. And before you came to Pleasantville—before?

A. No, they never visited him on Walnut Street with the exception of one visit that I think Mrs. Ruelens made there when he was taken sick. I think she did step in there one time to see him.

Q. After the operation, 1923, did Mr. Allen have any other illness until the time of his death?

A. Any illness? Not any, only a weakness—what I mean to say is it took a little while until he built up from the operation. He never was ill after that. He never had a doctor.

Q. After he recovered from the operation did he ever have a doctor until he died at Winchester?

A. Not until he went to Winchester; that was all.

Q. Who was the attending physician of Mr. Allen at the time of the operation?

A. At the time of the operation, Dr. Boger was

first called in. It was not thought of him being very ill, you know; but we called in Dr. Loux in consultation.

Q. Who performed the operation?

A. Dr. Loux performed the operation, yes—L-o-u-x, I believe it is.

The Court: He was not operated on in Virginia, was he?

The Witness: Oh, no; he was not operated on there.

Q. Now, Mrs. Ailes, with respect to these trips that have been spoken of, when did the first trip occur in which you—either you or your husband and Mr. Allen were parties?

A. You mean to California?

Q. I am asking you which was the first one.

A. The first trip will date back to the time our daughter moved to Baltimore. That was in 1921, I think.

Q. Well, explain what that was.

A. Well, we went to Baltimore and there our daughter joined us and we went down to Washington.

Q. Who was in the party?

A. My daughter and Mr. Ailes went along as far as Baltimore. Then he had to return to business and that was a day's outing. We went down to Washington and took our daughter with us. She was living in Baltimore and had just removed from the Walnut Street property in 1921.

Q. As I understand it, when you left Philadelphia you and your husband and daughter were along?

A. No, not the daughter.

Q. You and your husband?

A. Just Mr. Ailes, Mr. Allen and myself.

Q. And Mr. Ailes came back?

A. In a couple of days.

Q. And you picked up your other daughter and went to Washington?

A. The one who lived in Baltimore.

Q. How long were you away on that occasion?

A. Just over night, over night; went sight-seeing in Washington.

Q. How about—how were the expenses shared?

A. Mr. Allen assumed all the expenses for my daughter and myself and himself.

Q. How about Mr. Ailes?

A. There was no expense. He paid his own carfare because Mr. Ailes was staying with us to our daughter's home in Baltimore.

Q. Mr. Ailes paid his carfare?

A. Yes, his fare.

Q. And Mr. Allen paid for the others?

A. Yes.

Q. Was there any reason for that trip?

A. It was a pleasure. Mr. Allen wanted to go. He said he wanted to go and visit with Ethel and for that reason it was a party, he wanted to pay my expenses?

Q. What is the name of the daughter Ethel?

A. Mrs. Carter.

Q. That is the daughter who has not been present at the trial?

A. She was here one day expecting to be called,

but she was not able to stay any longer. She has some little kiddies of her own.

Q. You say that was what year?

A. 1921.

Q. What was the next one?

A. Oh! my! I can't tell that. I don't know. Well, we went to Bethlehem.

Q. Yes.

A. We would go to Bethlehem. We went to Bethlehem. My husband went with us.

Q. I didn't catch the last. Was your husband along?

A. Yes.

Q. How did you go, by train or automobile?

A. Well, that was in 1922. We had the automobile. We went by automobile, yes. But other times we went by train before that, yes, and in 1921 we went up there. We went to my father's grave, and he would accompany us there.

Q. I didn't catch you. You went to whose grave?

A. My own father's grave.

Q. Mr. Allen went with you?

A. Yes.

Q. Who paid the expenses of that trip?

A. Mr. Allen did.

Q. Well, what was the occasion of your going?

A. And we took mother with us, and he paid mother's expenses, yes, not one time, but I presume a dozen times; probably two dozen times in the nine years Mr. Allen stayed with us.

Q. He went to Bethlehem with you?

A. Yes, and to Reading with us, because then in 1923, we had a daughter who married and moved to Reading, the daughter who was on the stand here.

Q. Did he pay the expenses of that trip?

A. I would say that he paid pretty nearly all the expenses when he would accompany us there.

Q. How did he come to pay the expenses?

A. Because he said it was a privilege to him to go on trips; he would be left alone and it was a privilege to him, just a privilege that we would have him accompany us.

Q. Well, was the payment by him the result of any suggestion on your part or the part of your husband?

A. Oh, no, no, no; not Mr. Ailes.

Q. What was the next long trip?

A. Next long trip?

Q. Yes.

A. There were no "long" trips with the exception of Florida.

Q. Wasn't there a California trip?

A. Oh, there was a California trip.

Q. What was the California trip?

A. That was the early part of 1925.

Q. And what was the reason for taking that trip?

A. Well, Mr. Allen felt as if he wanted to see something. He said he did. He said he had never been anywhere and had worked long years and had never been anywhere and he felt it would be a mighty fine thing after the Haberstadts suggested it. It was not a suggestion of his own, but he fell in with it, and thought it was an opportunity of a lifetime to go, and he wanted my husband and myself to accompany him.

Q. Was that the Raymond-Whitcomb trip?

A. That was the Raymond-Whitcomb trip, yes.

Q. And who actually participated in that trip?

A. Who actually participated in that trip?

Q. Yes.

A. Mrs.—well, Mr. Allen and myself, Mr. Ailes couldn't go toward the last. It was impossible to make up arrangements with the office.

Q. And Haberstadt?

A. Mr. and Mrs. Haberstadt went.

Q. Was there a lady from New York?

A. That lady we met en route. She was a very delightful person to associate with and she sort of annexed herself with us and we were glad to have her.

Q. And the expenses of that trip were paid by whom?

A. Mr. Allen.

Q. How about the Haberstadts?

A. Mr. Haberstadt paid his own.

Q. Had you been ill after you came to Pleasantville?

A. I have a slight unruly heart at turns.

Q. Had you been ill?

A. Yes.

Q. Did you ever take a trip after you had one of those spells?

A. I can't recall just now, Judge Starr.

Q. What about the Florida trip? Who financed that and who accompanied you?

A. Well, Mr. Ailes financed his own. Mr. Allen insisted upon it, but it is not so easy for Mr. Ailes to take that sort of thing. With me I felt it was all right because Mr. Allen never hesitated to tell me I had done so many nice things for him—made him boiled apple dumplings when he wanted them at any time of the day, and those were things he

said he couldn't buy anywhere; and Philadelphia pepper pot was a particular dish with him, and if he wanted that three times a week he got it, and he said that was something he couldn't pay for anywhere; money couldn't buy just that kind of way of doing it.

Q. How long were you in Florida?

A. Three weeks, I think it was, Judge Starr.

Q. Who was along?

A. Mrs. Depazza from New York joined us. She is now in Scotland. She plans on these trips constantly. She is a traveling woman. And she was planning it and wrote to us and asked us to join her. Mr. Allen said, "By all means. My time is getting short. I have never had anything, and let us arrange to go."

Q. What was the year of the Florida trip?

A. The year was 1928. 1928, the same year that Mr. Allen passed away.

Q. Was there any other trip than the Florida trip?

A. In between we went up the coast and down the coast to Reading. We didn't take many little trips like that; but they are the only large trips.

Q. Did Mr. Allen accompany the family when you went up the coast by machine?

A. Oh, yes.

Q. Mr. Ailes came along?

A. Yes.

Q. Tell us about the Winchester trip. Who suggested that?

A. That was a suggestion—I know that I wanted that trip for a long time—apple blossom time—we missed the apple blossom time and we got into the

fall, and Mr. Haberstadt had been there a number of times and said he would only be too glad some time to have us go and have the experience of driving the car over the hills, and the arrangement was made that we finally did, and Mr. Allen—it seems like a holiday with him. He was delighted with it. The ride was such he wanted to be a party to it and we started off on Friday.

Q. And you and Mr. Ailes ——

A. And Mr. and Mrs. Haberstadt ——

Q. And Mr. Ailes ——

A. And Mr. Allen and myself went.

Q. Now, what do you know about the preparation of the two checks that were obtained from Mr. Allen on the day of his death, the one I think for $2,000 and the other for $800?

A. Well, Mr. Allen was sick and the doctor had not made a diagnosis until Monday morning. He just went in the hospital on Sunday morning. We had stopped at the Wayside Inn first where he was taken ill.

Q. What talk did you have with Mr. Allen about those checks?

A. The doctor said he was ill. I went in to him and said, "We will have to stay over here for probably an indefinite time. You are not so well." And he said, "You haven't any money with you; have you?" I said, "Not very much." He said—I said, "We are going to stay indefinitely. It probably will be a month. It will be a nice vacation here. You can get well." "Well," he said, "I want you to have some money to be comfortable," and he said, "While you are away you might as well have the oil burner put in." He said, "You take my check book.

Have you got it?'' I said, ''Yes, I have it in my bag.'' He said—''Well,'' he said, ''I only have eight hundred dollars in my checking account. Well,'' he said, ''You make out a check for $800 and you make out a check for $2,000 and,'' he said, ''You write to the bank,'' and he told them to transfer the—''from my savings fund account into the checking account,'' he said, ''to meet this obligation.'' And then he said, ''You tell them to certify the check.'' He was very prompt about certified checks. Well, I carried out his wishes. I had a number of little cards and I wrote out the ''card'' as he directed me to and after I had filled them in, why, I gave them to him to sign, over at the bed.

Q. What is your recollection as to whether those checks were filled in with the name of the payee and the amount before they were signed by Mr. Allen?

A. Well, you know, Judge Starr, he directed me to do it right there in the room there before he signed the checks.

Q. I didn't ask you that. I asked you what your recollection was as to whether or not they were filled in before he affixed his signature.

A. Most assuredly.

Q. What did you say?

A. Most assuredly.

Q. Do you remember who was actually present when the checks were signed?

A. Yes, Miss Booth.

Q. That is the nurse?

A. The nurse, and Mrs. Haberstadt.

Q. And what did you do with the checks after they were signed by him?

A. Well, after that I went out and we found Mr. and Mrs—we found Mr. Haberstadt and Mr. Ailes together—let me see—no, Mr. Ailes was in the hospital. He was waiting in the hospital. And Mr. Haberstadt had taken a walk, and I gave them to Mr. Ailes and asked him to mail them, for I had not any envelope.

Q. There were two other checks given somewhere at Winchester?

A. One to a Dr. Montgomery.

Q. And one to somebody else?

A. Mrs. Wolf.

Q. Mrs. Wolf?

A. Mrs. Wolf.

Q. Tell us about the signing of those checks.

A. Mrs. Wolf's was where he was taken ill, and Dr. Montgomery was next door; and we got there Saturday afternoon, and Sunday morning when we decided it was better to go to the hospital; we paid Mrs. Wolf and Dr. Montgomery. That was on the Sabbath Day.

Q. Who drew those checks?

A. I drew them.

Q. Both of them?

A. Both of them.

Q. They were signed by whom?

A. Mr. Allen.

Q. I notice there is some suggestion that they are not dated on the Sunday that they were given. What have you to say with respect to that?

A. Mr. Allen said when he told me to make out the checks for our obligation there that it was Sunday, and I had better date them Monday.

Q. And that was the reason?

A. That was the reason.
Q. For the change in the date?
A. Yes; that was it.

(Recess to 3 o'clock P. M.)

(After recess, 3 o'clock P. M.)

KATHRYN AILES, resumed the stand.

Direct examination: (Continued.)

By Mr. Starr:

Q. Mrs. Ailes, I show you photograph which is Exhibit 27, X27, and ask you when that picture was taken, if you can give us the exact date.

A. I couldn't give the exact date, though I think it was taken in the month of April of 1928. May have been a litle earlier; may have been March. That is as near as I can tell you.

Q. But was it in the year, 1928?

A. Yes, it was in the year 1928.

Q. During the time that you knew Mr. Allen, what did you observe with respect to his mental condition?

A. Always alert, I thought.

Mr. Endicott: I move the answer be stricken, as a characterization; not in the province of the witness.

The Court: It may be stricken.

Mr. Starr: If your Honor will allow an exception. I think the witness has a right to characterize.

The Court: All right; you may have an exception.

Q. Yes. Supplementing that question, from your observation while he was a member of your family was there any indication of the failure—of any failing mental condition?

A. No, Judge Starr; not any.

Q. Was there any difference in your observation in his mental condition from the time you first knew him until he died?

A. No; not any.

Q. Did he have any illnesses except the time he was in the hospital in Philadelphia in 1923, and his last illness?

A. Not any.

Q. During the time you knew him did he carry on rational conversations?

A. Yes, indeed.

Q. Did he act childish in any way?

A. No, not childish.

Q. Did you understand what he said to you and did he understand what you said to him?

A. Yes, sir.

Q. What?

A. Thoroughly, Judge Starr.

Q. Do you remember an occasion in the month of November, 1919, when Mrs. Shumway visited the Indiana Avenue house?

A. I couldn't say particularly. She was there on different occasions, Judge Starr.

Q. Did you have any conversation with Mr. Allen about the time of one of these visits with reference to some keys?

A. Keys?

Q. Keys to closets of your doors in the house?

A. Yes, I do recall, I believe. Now, let me see.

Q. What was that conversation?

A. Now, let me see. He gave me keys to bureau drawers in the house and said that if his stepdaughters were to come in at any time, for me not to allow them to go through those drawers because he had given them the privilege of taking everything that belonged to their mother after her passing away. And these were just a few little things that were left there, a few sheets and a few tablecloths, and for me not to give the keys to either one of those girls if they came in. I agreed to do it.

Q. Mrs. Ailes, Thomas Allen testified on page 92 and 93 of the record that in the conversation with you, you said, referring to Mr. Allen, that "he wanted all he had"—you wanted him to give you all he had in New Jersey, and, "if he didn't put it over to her she would have him make a will and she would get it," adding, "I want you to understand that Katheryn Ailes is no fool."

Q. Did that conversation occur?

A. Never. Never.

Q. Did you say that to Thomas Allen or anything like it?

A. Nothing like it. Never.

Q. On page 95, some witness said, repeating a conversation alleged to be with you, that you said, "I am attending to Allen's business. He isn't able to attend to his business any more. For the last year I have attended to it, and the last mortgage he got, he was not able to attend to it, and I had to attend to it all." Did that conversation occur, or anything like it?

A. When was that, Judge Starr?

Q. The witness says it was in Pleasantville in the month of July. I don't know what year it was. But at any time did a conversation of that kind happen?

A. No, indeed.

Q. Was Mr. Allen able to take care of his business?

A. Yes, Mr. Allen was able to take care of his business ——

Q. And did he take ——

A. —but he didn't always take care of it. He would insist many times when I was hardly able to do it that I should do it because he said I would have to do it some day and I might as well get the experience under his instructions.

Q. Did you ever see anything that he did or said to indicate he was unable to transact business?

A. No, indeed. He was fully able to take care of it himself.

Q. On page 97 Mr. Thomas Allen, repeating a conversation alleged to have been had with you said

that you made the statement that you were keeping house for Mr. Allen. Is that the fact or not?

A. Not for Mr. Allen. For my husband and my family.

Q. Did you ever say to Mr. Thomas Allen that you were keeping house for Albert Allen?

A. No, never.

Q. Did you ever tell Mrs. Shumway that you were keeping house for Mr. Allen?

A. No, never.

Q. While Mr. Allen was in the Jefferson Hospital did you do or say anything to prevent either Mrs. Shumway or Mrs. Ruelens visiting their stepfather?

A. No, indeed.

Q. Mrs. Shumway on page 18 of one of the days testified that while—that upon one occasion while Mr. Allen was in the hospital you asked her to call up Mr. Schreiber to see if you could get him to come down, stating that Mr. Allen was very sick and he might make a will.

Mr. Endicott: What page is that?

Mr. Starr: Page 18.

Q. Did that conversation occur?

A. No, sir.

Q. Did you ever call up Mr. Schreiber while Mr. Allen was in the hospital?

A. No. It was Mrs. Shumway that wanted him to make a will; not me.

Q. And what was that instance?

A. Mrs. Shumway came there and asked him to make a will. She asked me to leave the room and

I was about to leave the room and Mr. Allen said, "Where are you going?" I said, "Anna wishes to speak to you by yourself," and he said, "Well, don't go out because there is nothing that she can say to me that you can't hear," and I stayed in the room and she turned around, "Well," she says, "Well, I want papa to make a will." And she said, " I have asked Mr. Shreiber to come down to draw it up."

Q. Did anything else happen upon that occasion?

A. Well, Mr. Shreiber did come in and Mr. Shreiber said to me, "Do you think that he will make a will?" I said, "I don't know. I don't know." Mr. Allen protested. He said, "I am too ill; I am too ill to talk about a will, but," he said, "besides I can't make a will. Your husband owes me $1800 for buying that automobile and," he said, "not until I would get that anyway would I make a will, but I am too sick to talk will." She said, "Papa, you will get the $1800."

Q. To whom was Mr. Allen then talking when he made that statement?

A. To Mrs. Shumway, who was in the room there.

Q. Do you recall anything else that happened upon that occasion?

A. Not anything more than that Mr. Allen was—he got very feverish. He was quite upset.

Q. Mrs. Shumway also stated that you abused Mr. Allen; is that a fact or not? Did you ever abuse Mr. Allen?

A. No. He wouldn't have stayed with me all those years; hardly.

Q. And Mrs. Shumway also stated on page 28 that she turned to you and said to you, "Haven't you got him to make a will yet?" And that you replied,

"Oh, Anna, every time I say something to papa about making his will, he looks up to the heavens and says, 'A beautiful day out,' and then he commences to laugh."

Q. Did that incident happen?

A. No, there is no such conversation took place.

Q. Page 37, Mrs. Shumway testified you said to Mr. Allen, "You got to give me all your money or I will never let you get loose from me" Did you make you make a statement of that kind?

A. Never.

Q. Or anything like it?

A. Nothing. Never.

Q. Did you ever say to Mr. Allen in the presence of Mrs. Shumway or otherwise that you were going to get all of his property for the benefit of yourself and your family?

A. No, never.

Q. Page 52, Mrs. Shumway testified that you threatened Mr. Allen and he said that you were ruining him and that you were going to get all of his money. Did you ever make a statement of that kind?

A. Never.

Q. To anybody?

A. No.

Q. Do you remember the occasion when you went to Atlantic City with Mr. Allen and Mrs. Shumway?

A. Yes. Mrs. Shumway came in very early in the morning to our home, and I asked her if she had had breakfast, and asked her to join us, to have a cup of coffee, and she took her breakfast with us.

Q. What say?

A. Mrs. Shumway came to our home the morning

that she described and stayed and had a cup of coffee with us and breakfast, and she tarried there up until noon and said she did want to have her father to go with her on the boardwalk. And Mr. Allen protested and wanted me to go with them. I had my home duties to attend to and I said I couldn't but I would be glad to take them over in the automobile and save them from going in the trolley, exchanging cars and all that sort of thing, and I took them over to Virginia and Atlantic Avenue. They said they wanted to go that far. Mr. Allen wanted me to take lunch with them over there. As I said, I had my household duties and I didn't care to tarry.

Q. You came back, you say?

A. Yes, I came back.

Q. And you left them there?

A. Yes, I left them there.

Q. Do you remember any conversation while you were at Mrs. Beeler's?

A. I beg pardon?

Q. Do you remember any conversation which occurred while you were at Mrs. Beeler's?

A. Mrs. Beeler's?

Q. I understood that was the name. The day you went to Atlantic City, did you stop anywhere?

A. I didn't get out of the automobile, Judge Starr. They got out and went on. I don't know where they went.

Q. All right. What was eventually done with the two checks that were obtained at Winchester, one for $2,000 and one for $800?

A. They were mailed back to the Pleasantville Trust Company from Winchester, with the expecta-

tion that they would be certified and returned there so that we could open an account there while we tarried there. We expected to stay probably a month or so.

Q. What actually happened with reference to the checks?

A. What actually happened then?

Q. Yes.

A. Why, they were retained there until we returned from—not from the funeral, but in between —we left Winchester—he died on, let me see, on a Monday, and we stayed over until Tuesday, and we didn't get home—we went right directly to Philadelphia to make arrangements for the funeral, and we didn't get back until Wednesday. I went down to the bank and informed them if they hadn't already sent out those checks ——

Mr. Endicott: I move it be stricken.

Q. What actually came about?

A. They remained in the Pleasantville Trust Company. They never did come down to Winchester. We were gone.

Q. And were they—were the moneys taken out of the Albert Allen accounts?

A. Yes, they were, I believe.

Q. What became of that money?

A. That money was put into my account then.

Q. And what disposition, if any, did you make of that money?

A. What disposition?

Q. Yes.

A. I have it. I paid a thousand dollars for the oil

burner that Mr. Allen had ordered. The balance is there, and more added to it.

Q. On page 120 Mrs. Weiss testified that she had a conversation with you which was something like this: She said to you, "I guess when he dies he will leave you that property." And you replied, "That property is in my name now, and I expect to get everything I can in my name." And that you said, "I am going to have him make a will and leave it to me." Also that you said, "I am no fool, and I am going to have every cent. I am going to have it all." What have you to say as to that conversation?

A. No. There was no such conversation. Mr. Allen never left the automobile when we took those folks down to the train.

Q. Mr. Allen ——

A. Mr. Allen never left the automobile.

Q. Was Mrs. Weiss there at the house?

A. Mrs. Weiss, yes. She had taken lunch with us and then we drove them over to Atlantic City and we had just arrived there when there was a big fire, in 1926, and she became greatly agitated about it, and said while she was expected to leave from the railroad station at Atlantic City she positively couldn't stay there because she was timid then to wait for the train from Atlantic City, and if we would be good enough we could drive her back and she would take the train from Pleasantville.

Q. And she did that?

A. And we did that, yes.

Q. Now, Mr. Allen didn't get out of the automobile at all?

A. No.

Q. Did a conversation of that kind or anything like it occur?

A. No, indeed.

Q. And Mrs. Weiss also said that she asked you how long Mr.—how long you thought Mr. Allen would live, and you said, "I guess he will live to be a hundred." Was there any conversation like that?

A. No, there was no such conversation.

Mr. Starr: Mr. Endicott, did you find that letter?

Mr. Endicott: Yes, I did.

Mr. Starr: About which I asked the other day. Will you let me have it, please?

Mr. Endicott: The stenographer had it. What is that number?

Mr. Starr: It is marked DX1A.

Q. Now, Mrs. Ailes, I show you a letter which has been marked DX1A, and ask you whether or not you wrote that letter to Mr. Allen?

A. Yes, sir, I wrote that letter.

Q. Where were you living at that time?

A. At that time I—we were living on Trinity Place.

The Court: What is it?

The Witness: Trinity Place.

Q. And Mr. Allen was living where?

A. He was at 1411 Allegheny Avenue.

Q. That was his property?

A. That was his home.

Q. And who was with him there?

A. At that particular time our two married daughters were staying there, stopped there. They ate with us, but they would go up there.

Q. What object had you in writing this letter to him?

A. What object?

Q. Yes.

A. Rather a kindly object. I signed myself "Tenderly" and I meant it, because he was very, very good and kind to myself and my daughters too.

Q. You speak about a bottle of brandy.

A. I speak about a bottle of brandy. Mr. Allen had had some one who owed him money for a long while, and he had at one time said he could get brandy at any time we needed it. Well, we didn't need it, but I was ill at that time perhaps for a little while, and evidently—I don't just recall the exact circumstances—I must have asked him then if he could get it for me.

Mr. Endicott: I move the last part of the answer be stricken.

The Court: Yes.

Mr. Starr: Now, just a minute.

Mr. Endicott: Said she couldn't remember, but she presumes.

Mr. Starr: Well, I think she has a right to give her best recollection.

The Court: No; I will strike it.

Mr. Starr: Allow me an exception.

The Court: All right.

Q. Had you been ill?

A. Yes, I had been ill.

Q. And had brandy been prescribed for you or not?

A. It had been prescribed for me, yes. The doctor had prescribed it, and I thought Mr. Allen would be able to get it for me.

Q. Had you any brandy in the house at all?

A. No, I didn't have any at all, and he didn't get it for me; he couldn't get it.

Q. As the result of this letter, did Mr. Allen and one of your daughters meet you at the Eagle?

A. Yes, he brought Kathryn down with him, our youngest daughter.

Q. And did you lunch together?

A. Yes, we lunched together at Strawbridge & Clothier's.

Mr. Endicott: May I see the date on that, Judge?

The Court: Do I understand the doctor prescribed brandy without giving you a prescription for it?

The Witness: Yes, the doctor did.

The Court: How did he expect you to get it?

The Witness: He said it would be well if I would take it. It was not absolutely as a medicine, but he said it would be well if I would take it as a nourishment. I was a little under nourished at the time and he said it would be well to take some in my milk, if I couldn't take the milk, if I would put a little brandy in it.

The Court: I am wondering how he expected you to get it unless he gave you a prescription for it.

The Witness: Well, he didn't give me the prescription, Judge Smathers.

Mr. Starr: If what they say is true about the date of the letter, prohibition was not in effect at that time. I don't know.

Mr. Alker: July 1st, 1920; four months after.

Q. Mrs. Ailes, do you remember an occasion when Mrs. Ruelens came down to Pleasantville at which there was some discussion, according to her testimony, about a real estate deal or a proposition from Mr. Allen to buy some real estate?

A. No, I remember the time, Mr. Allen wasn't interested in buying any real estate.

Q. Well, now, when was it that Mrs. Ruelens was down there?

A. Probably 1926, I guess, 1926, in the summer. It was a very hot day.

Q. Mrs. Ruelens on that occasion testified, on page

of the record, she said to you, "It is getting toward evening, it is a beautiful—it is beautiful with this big lovely light to go to bed." And you said, "We don't go to bed so early. We don't go to bed with the chickens. We do our dirty work in the daytime." Did any conversation of that kind ever occur between you and Mrs. Ruelens?

A. No, sir.

Q. Do you remember any talk upon that occasion about some family portraits?

A. I wasn't with them very much, Judge Starr, together. I don't remember any such conversation.

Q. Do you remember any conversation about a diamond ring upon that occasion?

A. No.

Q. Mrs. Ruelens says that you were talking about some family portraits and you said, "I threw them into the cellar; I guess they are now in the junk." Was a statement of that kind made by you?

A. No; no, indeed.

Q. What do you know about the Allen family portraits, if anything?

A. The Allen family portraits?

Q. Yes.

A. Mr. Allen has a large portrait of him and he has a large portrait of his first wife.

Q. And where are they now?

A. They are in his bedroom.

Q. At Pleasantville?

A. At Pleasantville.

Q. They always been there since he lived at Pleasantville?

A. Always.

Q. Do you know about any other Allen portraits?

A. Not any. There was—there is one small one of Mrs. Shumway.

Q. Where is that?

A. At his—well, it is in a drawer there, that he has in Pleasantville.

Q. In Pleasantville?

A. Yes, in Pleasantville, and I wouldn't like to be certain, I might add that Mr. Shumway's picture is there, but that I am not quite certain about. It has been a long while since I have really noticed it. It may have been on Walnut Street.

Q. When the letter that the Judge is now reading was written, was it decided between you and Mrs. —you and Mr. Allen that he was to return after he sold the Allegheny Avenue property?

A. Yes, that he was to come with us. Yes. Oh, yes.

Q. And when the letter was written he was not actually residing with you?

A. No, not then. He would come there in the evening with our daughters for his meals, very often.

Q. Mr. Siegrist testified on page 12 on one occasion he had a conversation with Mr. Allen at which you were present and that Mr. Allen said, speaking to Mr. Shreiber, "My friend has passed away, I have got him named in my will," and that you spoke up and said, "Now you know you would not let a little stand that long after a man is dead, if you didn't want him to have the money." Do you recall any conversation of that kind?

A. Don't recall that conversation.

Q. What say?

A. I don't recall such a conversation.

Mr. Endicott: What page was that, Judge?

Mr. Starr: Page 12. In Seacrist's testimony. Cross-examine.

Cross-examination.

By Mr. Endicott:

Q. Mrs. Ailes, did I understand you to say that during all of your association and living together in the same household with Mr. Allen, that there was never any arrangement about how the expenses of the house should be paid?

A. Precisely.

Q. And you said there was never any arrangement for him to pay board?

A. Never.

Q. I show you a memorandum which reads, "Received of Albert Allen amount in full to date for board," signed Kathryn Ailes, August 27, 1924, and ask you if you wrote that memorandum?

A. Yes, sir, Mr. Endicott, I did.

Mr. Starr: What is the date of that?

Mr. Endicott: August 27, 1924.

The Court: What did it read?

Mr. Endicott: "Received of Albert Allen amount in full to date for board."

May we have that marked for identification?

(Paper marked C-A17 for identification.)

Q. Having read that memorandum do you now desire to re-affirm the statement that there was never any arrangement between you and Mr. Allen for board?

A. Yes, I do, Mr. Endicott; I certainly do. That —should I explain it?

Mr. Endicott: There is no question pending.

Mr. Starr: What is that?

Mr. Endicott: I said there is no question pending. That is your job.

Mr. Starr: We will assume it.

Q. Now, will you tell us when you first became acquainted with Mrs. Shumway?

A. Pardon me; is that to go unanswered, about the board?

Mr. Starr: Oh, you will have an opportunity to explain it.

The Witness: I didn't want to be left like that. I beg your pardon, Mr. Endicott?

Mr. Endicott: Will you read the question?

(Question was read by the stenographer as follows: "Q. Now will you tell us when you first became acquainted with Mrs. Shumway?")

A. Back in school days, when we were about fourteen years old.

Q. And how often did you see her from that time to the present?

A. I didn't see—until the present time?

Q. Yes.

A. I couldn't say that, but I can say that I hadn't seen her in all those years up until 1919.

Q. And at what time in 1919 did you see her?

A. It must have been—well, I couldn't say definitely; it was in town one time probably a few months or so before she brough her stepfather over to our home.

Q. She testified, as I recall it, that she met you down town in Strawbridge's or one of the department stores.

A. One of the department stores, yes.

Q. That was the first time you had seen her in many, many years?

A. In many years.

Q. Can you fix the date of it?

A. No, I couldn't do that.

Q. Well, you moved into Mr. Allen's home on November 15, of that year?

A. I did.

Q. How long prior to that was it?

A. Well, you might say six months.

Q. Six moths prior to that?

A. Not any longer.

Q. Well, after you met her—where was it, in Snellenburg's?

A. I believe it was.

Q. When did you next see her?

A. After that meeting—I think Mrs. Shumway

called me up and made an appointment with me to come up to her home.

Q. How long a time expired?

A. Well, that might have been—I can't tell—probably a month or two after I had seen her.

Q. And did you go?

A. Yes, I did go.

Q. And whom did you meet when you went there?

A. Mrs. Shumway is all that I can recall meeting. My friend, Mrs. Haberstadt was with me at the time she called up and she accompanied me up there.

Q. Did you meet Mr. Allen on that occasion?

A. No, I never met Mr. Allen there.

Q. Where did you meet Mr. Allen?

A. Mr. Allen was brought to us in September of 1919, after Mrs. Shumway's mother had passed away.

Q. Was your meeting with Mrs. Shumway prior to Mrs. Allen's death?

A. Oh, yes, indeed.

Q. Did you meet Mrs. Allen dur[illegible]

A. I knew Mrs. Allen when Mrs. Shumway was a little girl, when I would call for her at school.

Q. Did you know her while she was Mrs. Allen?

A. No, I didn't.

Q. Did you ever see her while she was Mrs. Allen?

A. No, I never saw her until her death. I went to see her when she was laid out, in respect to her and her mother.

Q. What was her name when you first knew her?

A. Mrs. Allen, you mean?

Q. What was her first name when you first knew her? What was her name when you knew her?

A. You mean Mrs. Allen's first name?

Mr. Starr: The maiden name.

The Witness: Her name was Sally Dewall when I knew her.

Q. And that was when Mrs. Shumway was a small girl?

A. Yes.

Q. Now you testified that the arrangement that you made with Mr. Allen was that you were to be put in charge and have the house rent free, for which you were to furnish Mr. Allen his meals; is that true?

A. We were to have the house rent free for his meals, yes, and the care of that home.

Q. And when did he become a boarder?

A. A boarder?

Mr. Starr: I object to that. There is no testimony at all which shows he ever was a boarder and I don't think that counsel has a right to inject that into a question unless there is some foundation.

Mr. Endicott: We have a memorandum in her own handwriting, receipt for board.

Mr. Starr: You wouldn't let her explain it.

The Court: I will permit the question.

Mr. Starr: Exception.

The Court: All right.

(The question was read by the stenographer as follows: "Q. And when did he become a boarder?")

A. He never was a boarder.

Q. After you knew Mr. Allen you made an investment in the house on Walnut Street, you and your husband, did you not?

A. Yes, we did.

Q. And did you say that your daughter had lived in that house prior to the time you purchased it?

A. Yes.

Q. How long before the time of your purchase?

A. Mostly can set our dates by our grandchildren. I presume I can tell you definitely if I count back. In 1918 I think she went there, as near as I can recall.

Q. Was the house occupied at the time you purchased it?

A. She was in it.

Q. She was living there?

A. She was living in it.

Q. What was it? What was the house used for at that time?

A. Apartments.

Q. You said that you and Mr. Allen purchased the Pleasantville property together. He paid for it, I understand?

A. Paid part of it.

Q. What part did he pay?

A. He paid—he probably gave the whole check, if I remember, and I gave him four $100 liberty bonds.

Q. And the title was taken in your separate names?

A. In my name.

Q. Did he give you any evidence of—by way of a receipt for the Liberty Bonds?

A. No. I insisted upon him taking it, and afterwards he returned those as gifts to me. I insisted that he would take those to make me feel more independent myself in the purchase of that home.

Q. Well, was the purchase of that property as a gift to you or were you to hold it for Mr. Allen's half use?

A. No. That was entirely mine.

Q. Then when you say that "we purchased together," you merely mean he purchased it for you?

A. Yes, that is what I mean.

Q. Did you ever talk to Mr. Allen about making a will prior to the time when the arrangements were made to go to Philadelphia shortly before September 7, 1928?

A. Mr. Endicott, I never talked about a will, at no time.

Mr. Endicott: Please repeat my question.

(The question was read by the stenographer as follows: "Q. Did you ever talk to Mr. Allen about making a will prior to the time when the arrangements were made to go to Philadelphia shortly before September 7, 1928?")

A. No.

Q. You did talk to Mr. Allen about the—going to Philadelphia shortly prior to September 7, 1928?

A. He asked me when it would be agreeable for me to take him up there because it was warm weather and I would drive the car to take him up.

Q. Did Mr. Allen ever go to Philadelphia except when you took him?

A. On a few occasions, yes, he did.

Q. Did he go about that time by himself?

A. Now he went after that, on several occasions.

Q. Did he go before that?

A. He may have, but I wouldn't want to say. He may have. But I couldn't tell you the time, if he did.

Q. You said when Judge Starr was examining you along that line, that "Mr. Allen was always with me because he was getting old." You mean that there was a change in his physical condition about that time?

A. Not particularly at that time. As years grow on all of us it is bound to show. Mr. Allen was nearing seventy-five years old.

Q. And was his age showing on him?

A. I wouldn't say particularly any more than nature would show it.

Q. Well ——

A. No. I wouldn't say that. No. I would consider his years.

Q. During the ten years that you knew him did you see any evidence of his increasing age?

A. No, I couldn't say particularly, but we do know naturally seventy-five years isn't sixty-five years.

Q. Well, now, I want to know whether during the ten years from the time he was sixty-five until the time he died when he was seventy-five or seventy-six, whether there was any change in his physical appearance?

A. No, I couldn't say there was.

Q. Was there any change in his mental condition during that time?

A. Not any. Not any, Mr. Endicott.

Q. And what, then, do you mean, that you were always with him because he was getting old? Have you any answer?

A. Well, I don't know what to say.

The Court: Let us stop, Mr. Endicott.

Mr. Endicott: All right.

(Whereupon an adjournment was taken to Monday, August 12, 1929, at 10 o'clock A. M.)

SURROGATE'S COURT.

ATLANTIC COUNTY.

In the matter of the estate of ALBERT ALLEN, deceased.

Atlantic City N. J., November 20, 1929. 10 A. M.

Before HON. WILLIAM H. SMATHERS, J.

APPEARANCES:

H. W. LEWIS, ESQ., JAMES W. LAWS, ESQ., and LEWIS STARR, ESQ., for the proponents.

ALLEN R. ENDICOTT, JR., ESQ., HARRY J. ALKER, ESQ., DIMNER BEEBER, ESQ., WILLIAM Y. C. ANDERSON, ESQ., and ELMER BROWN, ESQ., for the caveators.

Mr. Starr: If your Honor please, since the last hearing Mr. Endicott has requested us to make a search for certain checks, cancelled checks and turn them over to the administrator pendente lite. We

found some and I think they were turned over on Monday or Tuesday; maybe it was Friday of last week.

Mr. Endicott: I received notice yesterday they were with the administrator.

Mr. Starr: I told Mrs. Ailes to continue her search, and she found some more, and I turned those over to Mr. Endicott this morning. They found various places, and he has had an opportunity since only about the last half hour to identify them.

Mr. Endicott: Judge Starr's statement is entirely correct, except we have been asking for those checks since the beginning of this trial. I never received them until this morning. I think Mrs. Ailes was on the stand.

Mr. Starr: Yes; under cross-examination.

MRS. KATHRYN AILES, recalled.

Cross-examination. (Continued.)

By Mr. Endicott:

Q. Mrs. Ailes, I show you a group of ninety checks and request that you select from that list of checks those checks which have been drawn in your handwriting outside of the signature.

(Witness selects checks.)

Q. Of the parcel of checks that you hand me, are those checks which have been filled in as to the body by you?

A. These were filled in by Mr. Allen (Indicating). Most of them were by Mr. Allen. There may be a few here filled in by some one else, but I think they are all his.

Mr. Endicott: I move the answer be stricken as not responsive.

Mr. Starr: Answer the question.

The Witness: Mr. Allen, then, but there is a few here not his handwriting.

Mr. Endicott: Repeat the question.

(The question was repeated by the stenographer as follows:

"Q. Of the parcel of checks that you hand me, are those checks which have been filled in as to the body by you?")

A. No.

Q. I am referring to the group of checks which I now hand you, and ask you in whose handwriting is the body of the check made out?

A. They are in my handwriting.

Q. In your handwriting. And will you count these for us so that we can get the record straight? I think it is eighty.

Mr. Starr: They ought to be identified in some way.

Mr. Endicott: I want to avoid offering them as exhibits; simply show the numerical quantity.

Mr. Laws: Sixty-four, I count.

Mr. Endicott: Don't agree with my count. Should be eighty some there.

The Court: I will count them while you go ahead.

Mr. Endicott: I want to get in the record right there the numerical number.

Q. What part of the ninety checks which I have handed you are comprised of the checks which the body appears in your handwriting?

Now the answer is what the Judge gets.

The Court: Seventy-four.

Mr. Endicott: Seventy-four.

Q. Will you please refer to the other group of checks which you selected from the pile that I handed you and tell me in whose handwriting those checks appear?

A. In Mr. Allen's.

Q. And will you examine those checks and tell me if you find any of that group which are made to the order of any person other than Albert Allen except A. L. Confer?

A. They are all made to Albert Allen.

Q. They are all made to Albert Allen. And will you tell me the year in which those checks were drawn?

A. The year is not in a good many of these checks. Mr. Endicott asked me what year.

Mr. Starr: Those that are dated, can't you tell us?

Q. Will you please refer to the cancellation and let it be determined that way. I note from the same group of checks three checks drawn to the order of A. L. Confer, all of which bear date in 1928. Will you tell us who Mr. Confer was, if you know?

A. The gasoline station.

Q. Gasoline station.

Mr. Starr: Mrs. Ailes, won't you please raise your voice when you testify? I can't hear a word you say.

The Witness: All right.

Q. Was it your practice to write most of Mr. Allen's checks in the year 1928?

A. A great many, Mr. Endicott.

Q. Have you any checks in your possession or which have been delivered by you to the Court or to your attorneys, other than the checks which were drawn either to the personal order of Albert Allen or to Mr. Confer, the checks which are now before you?

A. Well, we gave all of them up, wherever they are, to the attorneys. Why, we haven't any.

Q. Just answer the question.

Mr. Endicott: Repeat the question.

(The question was read by the stenographer as follows: "Q. Have you any checks in your possession or which have been delivered by you to the Court or to your attorneys, other than the checks which were drawn either to the personal order of Albert Allen or to Mr. Confer, the checks which are now before you?")

Mr. Starr: That is not a fair question; because I indicated here this morning and to your Honor the checks that were turned over to the administrator. I think the checks themselves should be exhibited to her so that she would have an opportunity to determine.

The Court: Let me hear the question again, please.

(The question was read by the stenographer as follows: "Q. Have you any checks in your possession or which have been delivered by you to the Court or to your attorneys, other than the checks which were drawn either to the personal order of Albert Allen or to Mr. Confer, the checks which are now before you?")

The Court: I think it is proper. I will permit it.

Mr. Starr: Exception.

Q. Now, do you understand the question?

A. Well, I don't quite get it as clearly, Mr. Endicott. We have surrendered all the checks, if that is what you mean.

The Court: Repeat the question again.

(The question was again read by the stenographer as follows: "Q. Have you any checks in your possession or which have been delivered by you to the Court or to your attorneys, other than the checks which were drawn either to the personal order of Albert Allen or to Mr. Confer, the checks which are now before you?")

A. No, I haven't.

Q. During the year 1928, then, you paid all the trades bills and household bills and business bills by drawing the check therefor and then obtaining Mr. Allen's signature?

A. Well, according to what the checks say. There may be some there among them that I have forgotten that he wrote out for household bills, but the checks have been out of my possession for a little while.

Q. But it was your general custom to attend to all of his writings, was it not?

A. Oh, not entirely; no; not entirely.

Q. Not entirely. But I say, was it not generally so?

A. Well, I might say generally that I made out the checks for him, but he made out a great many himself.

Q. Did he make any out for business accounts or tradesmen's bills?

A. Yes, he did; there is ——

Q. Will you please present any such check?

A. They must be in with the lot that I have given.

Mr. Laws: There are two lots, Mr. Endicott. Be fair to the witness.

Mr. Endicott: I want you to understand that we have not had a chance to digest the checks.

Mr. Laws: Those checks have been in your possession. They have had five days.

The Court: The question is fair. Counsel has asked the witness to produce the checks.

The Witness: Other than what I filled is; isn't that the question?

The Court: Repeat the question.

Mr. Endicott: My question is limited to the year 1928.

The Witness: Will you please look here? That may be '28, but the year wasn't put in. That is made to the Electric Company.

Q. I want you to produce any check in 1928 which Mr. Allen drew other than those to Confer or to himself.

A. Only '28. This is '27, see.

Q. Only '28. My question is limited to 1928.

A. These are all '27, those; then it is no use to go through these.

Q. Then you have no checks in the year 1928?

A. Here are some.

Q. That were written as a whole by Mr. Allen, other than those checks to himself or to Confer?

A. There is some '28. Here is one, Mr. Endicott.

Mr. Endicott: Witness produces check dated August 7, 1928, on the Pleasantville Trust Company, drawn to the order of George R. Manning, in the sum of $1125, and signed Albert Allen, with a notation endorsed thereon, "Trust Company Stock."

Q. Do you know who filled in the body of that check?

A. No, I do not.

Q. Do you know whether it is Mr. Allen's handwriting or not?

A. I couldn't tell that. I don't know.

Q. Do you have any opinion?

A. Not in the least.

Q. Would you have the Court believe that was Mr. Allen's handwriting?

A. No; I say it is not. It is not Mr. Allen's. You asked me to produce checks that Mr. Allen had not filled in that went to other people than himself.

Q. No; I asked you to produce checks which were wholly made out by Mr. Allen during the year 1928.

A. There is one.

Q. You say that was wholly made out by Mr. Allen?

A. Well, it is not made out by me. I know that is not Mr. Allen's handwriting; no, it is not.

Q. No.

A. Well, then, I haven't any.

The Court: What is your answere? There are no checks?

The Witness: There are no checks that I know unless we have not gone over them all.

Mr. Endicott: This is the original group of ninety.

Mr. Starr: Keep those separate.

Mr. Endicott: Here are some more of that same group.

Mr. Starr: Which group?

Mr. Endicott: The group which were in your possession.

Mr. Laws: They have mixed them up already.

Q. Was it a fact or was it not that you took entire charge of Mr. Allen's records relating to his investments during the year 1928?

A. Oh, no; I didn't take entire ——

Q. Who else took part in keeping his records during that period?

A. Just he himself.

Q. And where did he keep his records?

A. In the house there.

Q. What was his method of keeping records?

A. Well, he just had a little day book or a little—he didn't—it was just a little—where he kept his—oh, dear, I am getting awfully—just a little book that he kept his mortgages in, that was all.

Q. And did he keep that in his own handwriting?

A. Yes, some; and some I would do for him. When he requested me to do it I would do it. The others he did.

Q. I show you a calf-bound book—which I will ask to have marked for identification, ——

(Same marked Exhibit C1 of this date, for identification.)

Q. —and ask you if that is the day book or record book which you have just referred to as being Mr. Allen's record of his investments?

A. No, Mr. Endicott, it is not. This is a copy of it, because this was given over to the Guarantee Trust Company, and I still retained the record to be given to the pendente lite in Pennsylvania, to give a record of all his holdings, so this is a copy of that —everything has been entered in here in my handwriting. Mr. Allen's handwriting—he had passed away.

Q. Where is the original record?

A. I have it.

Q. You have it here today?

A. No, I haven't it here today. I can go to Pleasantville and get it.

Q. When was this made?

A. When they requested it to be handed over to

the Guarantee Trust Company, a record of all his holdings.

Q. Weren't you requested to turn over his original papers?

A. I know I wasn't requested to do that; but I have the book at home. You are very welcome to have it.

Mr. Endicott: Certainly is a matter of the utmost importance because we have operated upon the theory this was the original record.

Mr. Starr: You are entitled to it.

The Court: Can you phone and have it brought over?

The Witness: Yes, indeed, I can. My husband can go right over for it now as soon as he comes.

Q. In your direct examination at page 119 of the record, you were asked these questions, and answered as follows:

"Q. Did you ever talk to Mr. Allen about making a will prior to the time when the arrangements were made to go to Philadelphia shortly before September 7, 1928?

"A. Mr. Endicott, I have never talked about a will at no time.

"Mr. Endicott: Please repeat my question.

"The question was read by the stenographer as follows:

" 'Q. Did you ever talk to Mr. Allen about making a will prior to the time when the arrangements

were made to go to Philadelphia shortly before September 7, 1928?' " And the answer was, "No."

Now, is that your present recollection of the fact?

A. That I ever talked to him? I never talked to him about a will because Mr. Allen himself talked about it, and I never talked or had no need to make ——

Q. Did you ever know anything about the will, other than the will that is now offered by you as the last will of the decedent?

A. Yes.

Q. Will you tell us what you know about any other will made by Albert Allen?

A. Yes, in 1923, before he went to the hospital, he said to me what I had said before in the testimony, that our family had endeared themselves to him and that nobody stood as close and near to him as we did, and all that he had he would want to leave to us.

Q. Pardon me. I didn't understand what date you placed that conversation at.

A. That was 1923, before he went to the hospital.

Q. All right. Pardon me for interrupting you. Proceed.

A. And so he said that he had in mind—he had framed up in his mind a will and would I take my pen and paper and sit right down there on the davenport and write out what he dictated to me; which I did. And I had a—one of these little wooden lap boards with a clamp, and it was on a—just on an ordinary writing sheet of paper, and he started out with saying, "When I am cold and stiff," and I said to him, "Poppy, that is rather gruesome." He said, "Take it as I tell you." He said, "Write it

down. That is my way of talking; it may not be yours." I took the letter in silence, or the will, as he called it, and wrote it down word for word.

Q. And what happened to it?

A. What happened to the will?

Q. Yes.

A. Well, he left it there when he went to the hospital. He left it there at the house. He put in his drawer of the table, in his room.

Q. Where is the paper now?

A. Where is it?

Mr. Laws: I have the paper.

Mr. Starr: Do you want it?

Mr. Endicott: I would like to have the witness testify. Repeat the question, please.

(The question was read by the stenographer as follows: "Q. Where is the paper now?")

A. Mr. Laws has it.

Mr. Endicott: Do you wish to produce it, Mr. Laws?

Mr. Laws: Yes; here it is.

Q. Then your testimony on the original hearing and just now is not true when you said you had never talked to Mr. Allen about a will prior to the events of the last will?

A. It couldn't be my intention to do that. I didn't

talk to him, as I said before. I didn't talk to him. Mr. Allen talked to me about a will. That is the impression I got, and I gave the answer accordingly, that I had not talked to him about it. It was at his dictation, and he did the talking about the will.

The Court: Let me hear that question again, Mr. Endicott, that question you read to her. Will you let me hear that again?

Mr. Endicott: Do you want the stenographer to read it to you?

The Court: I thought you had it on the record. I want to see the significance of it.

Mr. Endicott: "Did you ever talk to Mr. Allen about making a will prior to the time when the arrangements were made to go to Philadelphia shortly before September 7, 1928?

"A. Mr. Endicott, I never talked about a will at no time."

I repeated the question: "Did you ever talk to Mr. Allen about making a will prior to the time when the arrangements were made to go to Philadelphia shortly before September 7, 1928?

A. No"

The Witness: Well, that is what I meant to say, that I had never talked to him about it. It is he that had talked to me in 1923, as well as the latter one.

Q. And you mean you did not have any part of the

conversation when the will of January 17, 1923, was discussed?

A. No, sir.

The Court: When he said to you, "When I am cold and stiff," and when you said to him, "That is very gruesome", weren't you talking about a will?

The Witness: Well, I got the impression, Judge Smathers, that they meant if I made suggestions for a will. Yes, there was a conversation went on about that much, as well as the last will, too.

Q. What further conversation, if any, was there?

A. There wasn't any further conversation.

Q. Will you repeat again what you told me a few moments ago as to what he said to you as his reason for making out the will?

A. Well, he said to me, before he asked me to write out the will, he said, "You and your family," he said, "have endeared yourselves to me." And he said, "There is no one in the world that is as near to me and as close to me as you are." And he says, "If I give you all that I have in the world, I cannot repay you for your kindness." He had been ill three or four weeks then at home, and I had taken care of him before he went into the hospital, and I rather took it from that, that is what he meant—his appreciation.

Q. That was substantially the same statement that he made to you when the will of 1928 was made, was it not?

A. No, he didn't make any statement like that.

Q. What was his statement at that time?

A. Well, principally that Mr. Manning had said something about him making out a will. I don't remember any particular conversation except that he wanted to go to Philadelphia, asked me if I were going to Philadelphia any time soon, and I said that it was rather hot weather, was there any reason why he wanted to go? And he said, why, yes, he wanted to go up to make his will, he had had a talk with Mr. Manning some time before that, and he wanted to go to Philadelphia to make his will, and I said it was rather hot, couldn't he make—have his will drawn up or made down here, there was Mr. Lewis, he had a great deal of confidence in, and he said, "No," he said, "when it comes to making a will," he said, "you know, Senator Daix is the Allen family lawyer and," he said, "for anything like that I would rather he would do it."

Q. Well, now, did he say anything to you about his reasons for making you his sole beneficiary?

A. Yes, he said that he had thought his own family had a-plenty; that Mrs. Reger, his sister, had really as much—she had got to be an older woman, and she had just as much as she could care for, which would be a burden to her, and that Tom, his brother, was well taken care of, that he had a life annuity, I believe, and he could never spend his principal and that would go back to his children, and he said that was all he had in the world, and they were well taken care of, and he thought this family had been good and kind to him and were deserving of it.

Q. Did he at that time say, "You have endeared yourself to me?"

A. No, he did not.

Q. He did not?

A. No, he did not, that I remember.

Q. What else happened about this will of 1923, after it was dictated to you by Mr. Allen? What was done with it immediately after it was written?

A. Well, he put it in his drawer before he went to the hospital.

Q. Well, anybody sign it besides him?

A. Oh, yes. Yes; Dr. John Boger came in; he was his physician and he came in just as he was dictating the letter—just as he finished, in fact.

Q. Dr. John Boger is the same gentleman who was a witness on the last will?

A. Yes, he was Dr.—he was Mr. Allen's physician.

Q. All right. What happened after Dr. Boger came in?

A. He said to him, "John," he said, "I made out my will, and I would like you to be a witness on it."

Q. Then what was done?

A. And Mr.—I think Mr. Boger said—Dr. Boger said, "Well, you will have to have another witness; it requires two witnesses." And I went down and had Mrs. Eichelberger, who lived in our house at the time—I had her come up, called her and asked her to come up into Mr. Allen's room. And she did.

Q. Did you tell her what she was wanted for?

A. I don't think I did. I think I only asked her to come up in the room, that Mr. Allen wanted to see her.

Q. What happened when she arrived?

A. When she came in Mr. Allen said something, I don't know just exactly—he said, "I have made my will," I think he said, "and I want you to be a witness. I think I am going away and I may never come

back." I think something like that, he said. I was going in and out. I didn't remain in the room. I had a lot to do, and we were getting him ready to go to the hospital. I was busying myself, I didn't

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Q. Tell us just what you saw and heard.

A. Well, so Dr. Boger said to Mr. Allen, he said, "Al, do you mind me reading this out loud to you?" And he took it over to the window and he read it word for word to Mr. Allen. He says, "Al," he says, "is that how you want things?" Mr. Allen was lying in the bed, or sitting up in the bed, and "Yes," he says, "John, that is what I want." And so Mr. Allen signed it there on a little stand by his bed. And then there was a table not quite as large as this, where Mr. Allen always had pens and a bottle of ink, or an inkstand, his blotter and things, and Dr. Boger took it over there and signed it, and Mrs. Eichelberger.

Q. Were you present during all these happenings?

A. No, I was in and out, but the door was open. There was a bath attached to Mr. Allen's room, and I could hear.

Q. What did you hear?

A. Just what I have related.

Q. And what was done with that will on that occasion?

A. Well, Mr. Allen must have put it in the drawer of his table, for that is where it was and that is where it remained.

Q. For how long?

A. Until Mr. Allen came back from the hospital.

Q. Then what was done with it?

A. Then I don't know what was done with it up

until the time that we came down here to Pleasantville and he bought or got a little tin box for papers of mine, he had a box up in the Northwestern Trust, but he brought that down, and he put that in this box that I used as well as he used it.

Q. Did you and he ever discuss this will of January 17, 1923, after it was executed?

A. No. No, not a ——

Q. Ever mention it at all?

A. No, we never talked about it.

Q. How do you know it got in the tin box in Pleasantville?

A. Because it was there with my other papers. I have other papers in it. He thought I was rather careless with papers, and he thought I ought to have a box, and he put it in there.

Q. And you and he never mentioned the will?

A. No.

Q. Was there any reference made to it when the will was drawn by Senator Daix?

A. Not in my presence; if there was, it wasn't in my presence, for I wasn't in the room.

Q. I am asking you if he ever mentioned to you at the time you took him to Philadelphia to have Senator Daix draw the will?

A. No, sir.

Q. And was it still in the box when the last will which you now offer was put there?

A. Yes.

Q. And remained up until this time?

A. Yes, sir.

Q. And you didn't present to the administrator this paper when we were asking you to produce the the other original papers of Mr. Allen, did you?

A. I don't know. Did I, Mr. Laws? Do you recall whether I gave it to you or not?

Q. Just answer my question.

A. I don't know.

Q. You can't talk to your counsel at this time.

A. Well, I don't remember.

Q. You didn't remember it?

A. What do you mean, I didn't remember this paper?

Q. Yes.

A. Well, I didn't give it to them, I don't think. No, I didn't take it up to Senator Daix when I took up the other will. No, I didn't.

Q. I am asking you why you didn't give it to the administrator pendente lite when you were called upon to produce the original papers you found in Mr. Allen's effects.

A. Well, I think I had given it before that time to my attorneys. Yes, I did that. I had given it to my attorneys before that time, before I was requested to give the papers.

Q. And have you any explanation of why you did not disclose this incident when you were interrogated on the question of wills previous to this last will?

A. No.

Q. Did you ever talk to Dr. Boger about this will after the time it was executed?

A. No.

Q. Ever call on him and discuss it?

A. No.

Q. Ever talk to the other witness about it?

A. No, never.

Q. Never seen the other witness since?

A. Never seen Mrs. Eichelberger?

Q. Yes.

A. She was our tenant. I saw her every day.

Q. Have you talked to her since this case began?

A. Oh, yes; certainly I have.

Q. How many times have you seen her since this case began?

A. Probably, oh, three or four times I have seen her.

Q. How did you come to meet her?

A. Went down to see her.

Q. For what purpose?

A. Regarding this will.

Q. Then this earlier will did have some place in your thoughts while this case has been proceeding?

A. Yes; I should think it would have.

Q. And you weren't quite frank in your testimony of—on your direct examination when you said there had been no former discussions about a will?

A. With Mr. Allen, I never talked about a will with Mr. Allen.

Q. Mr. Allen talked to you?

A. Yes, that is it. That is the impression, as I understand it.

Q. What business experience have you had, Mrs. Ailes?

A. I have had none.

Q. Never had any?

A. I have not.

Q. How many times have you been at the Northwestern Trust Company?

A. Well, I might say, oh, well, when Mr. Allen was ill I went there probably as many times as checks came in, but I can't tell you that.

Q. Hundred times?

A. I wouldn't like to say that. No; Mr. Allen was in the hospital fifteen weeks. I didn't get a check every day. I used to deposit the checks there.

Q. After he recovered how many times did you go there?

A. Probably a half a dozen times. I wouldn't like to say for sure.

Q. You were well known there?

A. No, I can't say that I was well known.

Q. Know Mr. Robinson?

A. Yes, I did meet him, Mr. Allen introduced me to Mr. Robinson.

Q. They charged checks drawn by you in your name against Mr. Allen's account at the Northwestern Trust Company, did they not?

A. They did what, Mr. Endicott?

Mr. Endicott: Repeat the question.

(The question was read by the stenographer as follows: "Q. They charged checks drawn by you in your name against Mr. Allen's account at the Northwestern Trust Company, did they not?")

A. When I had power of attorney. Is that what you mean?

Q. I am asking you.

A. Well, I don't know—I don't get quite what you mean. I know when I had power of attorney I made out the checks for Mr. Allen.

Q. Made them out in your own name, didn't you?

A. I had power of attorney and signed them Kathryn Ailes; sometimes Albert Allen, Kathryn Ailes, power of attorney.

Q. And sometimes you didn't sign "power of attorney?"

A. Well ——

Q. You never had any account in that bank, did you?

A. I never had any account in that bank, at no time.

Q. Now you detailed in your direct examination an account of your visit to the Northwestern Trust Company in August of 1928. Do you recall that visit?

A. August, 1928. Oh, yes, that was—that was the —that was the time we went up when he made arrangements about his will, I guess.

Q. Had you been to the Trust Company——

A. Yes, he ——

Q. —a month prior to that time?

A. A month prior to August?

Q. During that month, prior to that day?

A. Well, I don't know just now. I know he went up to take some papers and to get some papers, because there was a settlement going to take place.

Q. Do you know what day of the month it was?

A. I can't tell exactly, Mr. Endicott.

Q. Towards the latter part of August?

A. Yes, the latter part of August, because the last day or two in August we went up to Ocean Grove to the camp meeting, so it must have been just prior to that. Maybe the twenty-eight or twenty ——

Q. Who went to Philadelphia with you on that day?

A. Just Mr. Allen and myself.

Q. Just you two alone?

A. Just alone.

Q. By auto?

A. Yes.

Q. And did you drive?

A. Yes.

Q. And what time did you arrive at the Trust Company?

A. Well, it was before lunch.

Q. And on that day did you go to Senator Daix's office?

A. Yes. Yes, we went to Senator Daix's office.

Q. Had you met Senator Daix in the Trust Company?

A. Yes, I saw him passing through. Mr. Allen pointed him out to me. I had heard a lot about Senator Daix, but never met him.

Q. Did you talk to him at the Trust Company?

A. No, not at the Trust Company.

Q. Mr. Allen talk to him at the Trust Company?

A. I don't know. Yes, he did. Yes, he did.

Q. Where were you when that conversation took place?

A. Why, in a little inner office where Mr. Allen had his box brought so that he could put and get his papers. I remained in there, but he saw him outside passing through.

Q. You and Mr. Allen did visit Senator Daix?

A. Yes; he has his office across the street, and we went around.

Q. Will you relate what happened when you called there?

A. We went in there in his office, and the Senator invited us in the back to an inner office, and he said he had come there to make a will, to have it drawn up. And Senator Daix asked me to step out of the room.

So of course I was going to do that anyway, but I went out and waited there until they came out.

Q. Senator Daix, as I recall his testimony, said you did not enter the back office; is that true?

A. Yes ——

Mr. Starr: I object to that. This witness cannot characterize the testimony of another witness.

The Court: I sustain the objection.

Mr. Starr: I withdraw it.

Q. How long was Mr. Allen with Senator Daix?

A. I don't think very long. Probably fifteen minutes or so. Not very long.

Q. And who was with Mr. Allen when you saw him after they were closeted in the back room?

A. Just who was in the room with Mr. Allen, you mean—did you say? I didn't hear that question.

Mr. Endicott: Repeat my question.

(The question was read by the stenographer as follows: "Q. And who was with Mr. Allen when you saw him after they were closeted in the back room?")

A. Just Senator Daix and Mr. Allen.

Q. Senator Daix and Mr. Allen came out of the room together?

A. Yes.

Q. And what was said on that occasion?

A. Not anything.

Q. When did you and Mr. Allen next talk about the will?

A. Why, Senator Daix did say for him to come back, that he would draw it up and it would be ready for him to sign in a couple of days; for him to come back.

Q. Did Senator Daix say anything else?

A. I think that was all; as much as I remember, Mr. Endicott.

Q. Well, now, did you and Mr. Allen talk about the will after that day before it was signed?

A. I don't think we mentioned will until it came time for us to go up and sign it again.

Q. And what was said then?

A. Well, we were picking out our day. It was pretty warm, and we went to Ocean Grove in the meantime. Took mother. And some of our neighbors went up to Ocean Grove, and we went in our own car. And then we didn't get up to Philadelphia until after we came back from there. Tried to pick out as cool a day ——

Q. You did go on September 7th?

A. Yes, we did go on September 7th.

Q. Now detail the conversations between you and Mr. Allen in which you arranged for the trip.

A. Well, only that he wanted to go. It was warm and we were waiting for a cool day.

Q. No; I want the conversation between you and Mr. Allen when you arranged to go on that trip.

A. I don't know there was a special conversation.

Q. When did you decide?

Mr. Starr: Please speak out. I can't hear a word you say. Please.

The Witness: I will. I will try.

Q. When did you decide to go on September 7th?

A. Well, during that week, after we came back from Ocean Grove.

Q. What was the conversation between you and Mr. Allen when that decision was made?

A. Well, mother wanted to go up on the 7th, I believe, and we decided we would go on that day, on the 7th. No; now let me see—that day was set. I can't remember—that day was set, I believe. It was the 7th day. That arrangement had been made, I believe—he told Dr. or Mr.—Senator Daix had set that day, arranged for, to go to Dr. Boger's house. That was it. I had forgotten. Yes, that was it. Senator Daix said when he came out to come up on the 7th of September, and to go to Dr. Boger's house. That was it.

Q. What conversation did you have with Mr. Allen when the arrangements were made to actually go on the 7th?

A. There was no particular conversation. Mother was going to go up—mother did go on the 7th—her pension had ended—at our home.

Q. And you didn't talk to Mr. Allen about going from the time you were in Philadelphia until you went on the 7th?

A. No, because we both knew he was to go the 7th. I was going to take mother up, so we made it one.

Q. Well, you did go on the 7th?

A. Yes, we did go on the 7th; yes.

Q. And had you had any communication with Senator Daix in the meanwhile?

A. Oh, no, sir.

Q. Well, now, how did you know where to go on the 7th?

A. As I say, Senator Daix had told us that when he came out of the office with Mr. Allen.

Q. Then you did not relate the whole conversation?

A. Well, now, it just slipped my mind, that is all.

Q. Well, now, will you please relate to us now the entire conversation that took place after Mr. Allen and Senator Daix came from the back room?

A. Yes; he just said, "Al, you come up," he says, "and go to Dr. Boger's. I will se you at Dr. Boger's on September 7th, at ten o'clock"—ten-thirty or ten o'clock.

Q. Was there any discussion about the date between Mr. Allen and Senator Daix and you?

A. No, sir.

Q. Do you know why it was postponed for such a long time?

A. No, indeed, I do not.

Q. Do you know why September 7th was selected?

A. No, I do not. I wasn't in the room, Mr. Endicott.

Q. And there was no communication by telephone or letter or in any other manner between you and Senator Daix respecting the actual day of execution?

A. Oh, no. No, indeed.

Q. Did you know where Dr. Boger lived?

A. Yes, indeed.

Q. Dr. Boger had been your family physician for some time, had he not?

A. Never had him for a family physician. He was

Mr. Allen's physician. We had our family physician —Dr. David Bebbin.

Q. He had operated on your two daughters?

A. After I had met him after Mr. Allen had had him; not before that.

Q. And you had been to see him on several occasions for your own health?

A. Well, I think while Mr. Allen was ill, I think I did. I wasn't so well. Went to him just I think once.

Q. He was an old friend, wasn't he?

A. An old friend of mine?

Q. Yes.

A. Now, Mr. Endicott: I didn't know Dr. John Boger until the day Mr. Allen was taken ill in 1923. He was no friend of mine.

Q. At that time he had been a friend of five years' standing, hadn't he?

A. When I went to him as a patient I had only known him a few weeks. No, I didn't continue to go there, either. I had my own doctor. But he was taken ill and then I went to Dr. John Boger a few times only. No, I didn't know Dr. John Boger at all.

Q. You have not told us what time you were to be at Dr. Boger's office. How did you learn that fact?

A. I said around ten o'clock, as far as I remember—ten-thirty. It may have been ten or ten-thirty. Senator Daix had set the time for us. That was the only way we knew.

Q. Well, you didn't recall that in your direct examination?

A. Well, I—I didn't—I didn't know.

Q. And you did go at what time?

A. We were up there—we left our house to be up there ten o'clock or ten-thirty, as I say.

Q. Referring to your visit in August to Senator Daix's office, did Mr. Allen tell you prior to your visit in August of his intentions with respect to the will that was to be made?

A. Yes; yes, he had for two weeks before, I guess, Mr. Endicott.

Q. Will you tell us what he said to you?

A. Well, he said he wanted to go up and make his will, and did I have anything that would take me up to Philadelphia.

Q. That all he said?

A. And I said, "Yes, I have a few things, but," I said, "it is pretty hot," because I knew Mr. Allen couldn't stand the heat very well, so I said, "We will wait until it is a cool day." And I said, "What do you want to go for?" He said, "I want to go and make my will," and I said to him, "Why don't you go to Mr. Lewis," I said, "you have confidence in Mr. Lewis." And then is when he said that Senator Daix had been the Allen family lawyer and he was his brother Sam's adviser in all his undertakings, and he felt when it came to making a will he would rather have Senator Daix. I said, "Well, we will go the first cool day." Which we did. We tried to pick out as cool a day in August as we could.

Q. Now, Mrs. Ailes, you said there was no discussion about a will between you and Mr. Allen except that which immediately preceded the making of the will of 1928, and you have subsequently said he talked to you about the will which you wrote. I call your attention to your testimony on page 70 of the record. My question: "When if at all did Mr.

Allen talk with you about what disposition he proposed to make with respect to his property?''

''A. After we came back.''

''Q. When did he first talk about it?''

''A. I would say in 1923.''

''Q. What did he say to you then with reference to the disposition of his property?''

''A. He said, 'You and your family have endeared yourselves to me.' ''

''Q. Go ahead.''

''A. 'I have no one as near and close to me as you are , and,' he said, 'I am leaving it all to you, all that I have in the world, and that is not enough to repay you for the kindness that you have shown towards me.' ''

''Q. Did he at any time make some statements?''

''A. Yes, many statements through the years that he had been with us.''

Now you still say he never talked about will with you except in 1928?

A. If he would see any account in the paper, he would refer—not to sit down and talk about a will. He would comment probably on the articles that were in the paper, and he would say, ''My! making a big fight there. That is something that will never happen when I pass away, because,'' he said, ''my people are well to do and never would put up a fight.'' Now, conversations like that, but I never had any need to discuss it. I listened to Mr. Allen, what he had to say. Wasn't much for me to say.

Q. Well, you do now say he talked to you frequently about making a will in which you would be beneficiary?

A. Just in that way, yes. Yes, many times.

Q. Did Mr. Allen ever go to the Northwestern Trust Company on any occasion when he was in Philadelphia by himself during the year 1928?

A. Yes, he did. He must have because when he came home, if I wasn't with him I wouldn't know other than he brought papers for a settlement or something.

Q. Did he ever tell you he had been there?

A. Oh, yes, he would say he had been there. Oh, yes.

Q. Do you know why he didn't ever take up the question of his will when he was there by himself?

A. No, I don't.

Q. Mrs. Ailes, when did you go to Mr. Allen's home first?

A. To live?

Q. Yes.

A. November 15, 1919.

Q. And remained there how long?

A. We remained there six months; six months.

Q. And how long did you then remain away?

A. Seven months. We went back the first of October.

Q. Can you fix the date when you returned?

A. Can I fix it?

Q. Yes.

A. Well, around the first of October.

Q. Of what year?

A. Of 1920. 1920, yes.

Q. What arrangements were made between you and Mr. Allen about your living together at that time?

A. That he would give us the house free in exchange for his board.

Q. Was that the same arrangement under which you had gone with him in 1919?

A. The beginning, 1919, that was when we first went, that was the arrangement. You mean 1920?

Q. I am asking about the arrangements when you resumed living together in 1920. What was the arrangement then?

A. The same arrangement.

Q. Why had you discontinued the arrangement?

A. We didn't discontinue the arrangement. It was thought Mr. Allen had sold his property.

Q. Now I understand you went to the Allegheny house on November 15, 1929, and stayed there six months?

A. Yes.

Q. Why did you discontinue staying there?

A. Because Mr. Allen had a prospect for selling, had gotten a $500 deposit on selling the property, and of course then we were going back to our own home. We had reopened our own home.

Q. When you returned to live in his home you returned to the same house?

A. Yes; that deal didn't go through.

Q. During the meanwhile did your children remain in Mr. Allen's home?

A. Why, they came back with us first. They did stay up there and then were coming back, and both Mr. Allen and they sort of agreed that it was agreeable for them both if they would stay there until the other folks came in. He was by himself, and they found it very agreeable to be up there with him.

Q. How long did they stay?

A. Well, I guess they stayed probably three months, two months.

Q. You said in your direct examination that they took their meals at your house and slept at his house; is that true?

A. Off and on, Mr. Endicott, yes, they took meals sometimes and sometimes they went out with him to dinner up near in the neighborhood there—that he would take them out with him to dinner.

Q. How far apart were the houses?

A. Oh, quite a distance. We were down—if you are acquainted in Philadelphia—it is quite a distance.

Q. How many blocks?

A. Allegheny Avenue is 3300 north, and we were probably ten blocks south. We were at 48th Street, and this was at Broad Street. So that was the distance. It is quite a long distance; necessitated taking two cars.

Q. Well, you did not mean, then, that it was their regular custom to sleep there and eat at your house?

A. They didn't eat their dinner at our house, no —they did probably three times a week, and bring Mr. Allen with them.

Q. How old were your children at that time?

A. Well, now, that was 1919, and this is '29. It is ten years ago, and Mildred is thirty-three or thirty-two. Mildred was twenty-three. And our little Kathryn was then—she is twenty-seven now—that is the young Mrs. Jefferson that was on the stand, and she is twenty-seven, and that made her seventeen.

Q. You and Mr. Allen took number of lengthy trips together, did you not?

A. Do you mean Mr. Allen and myself personally alone?

Q. I didn't say that.

A. No.

Mr. Endicott: Repeat my question.

(The question was read by the stenographer as follows: "Q. You and Mr. Allen took a number of lengthy trips together, did you not?")

A. No, not lengthy. Not many. Two. Not many lengthy trips.

Q. Well, now, one of the first trips you took was to Atlantic City, was it not?

A. To Atlantic City. Yes, I guess probably it was.

Q. And you stayed where?

A. The first time?

Q. Yes.

A. Stayed nowheres. Went back home in the evening.

Q. Did you stay at the Hotel Strand on one occasion?

A. Yes, we did.

Q. Who was in the party?

A. Mr. Allen and my husband and myself.

Q. Did you write letters for Mr. Allen at that time?

A. Yes. Yes, on that stationery of the Strand. Wherever we went, in fact.

Q. Why was that?

A. He liked to do that sort of thing. That was sort of just a thing he liked to do, and he would get me to do it; buy a number of post cards and send them to everybody he knew; urged me on to send

them when I really didn't want to do it. But he liked to do it; but he didn't like to write.

Q. Did he have you write for him?

A. Many times. Many times; letters and cards.

Q. I show you what has been marked P10 for identification, and ask you if that is a letter written by you from the Hotel Strand?

A. Yes.

Q. And you signed his name, "Pop," there?

A. Yes. Yes.

Q. Was that letter written at his dictation?

A. Yes, indeed.

Q. At that time he did do some writing of his own, did he not?

A. Oh, some, yes. He could write but he didn't like to do it.

Q. Is this letter written in his handwriting?

(Showing paper to witness.)

A. It doesn't look like it to me, Mr. Endicott.

Q. Do you know whose it is?

A. No, I don't. Well, now, it does look a little bit like his writing, after all, Mr. Endicott, it certainly does a little; it looks like his.

Q. It was his handwriting, wasn't it?

A. Yes, it looks like it.

Q. Addressed to Mrs. Seltzer?

A. Yes, it is his signature.

Q. His signature, undoubtedly?

A. Yes.

Mr. Endicott: Let it be marked, with the envelope, for identification.

(Same marked Exhibit C2 for identification, of Nov, 20, 1929.)

Q. Mrs. Ailes, this letter was undoubtedly written in Mr. Allen's handwriting?

A. It looks like it.

Q. Did you have any doubt about it when I first showed it to you?

A. I did for a minute.

Q. But your doubts were resolved when you had read the contents?

A. Yes, it looks like it, though I am not a handwriting expert. It looks like it to me.

Q. What other trips did you take with Mr. Allen?

A. Well, he usually accompanied us on trips. Wasn't any particular—going down to visit our daughter in Baltimore, he went with us, and going to Reading after the other daughter was married. He would go with us up there. And then we went up to Bethlehem, to the Moravian services there on Easter, and we went to Wernersville.

Q. And you went to California?

A. And we went to California.

Q. And you went to Florida?

A. And we went to Florida. But I—those were the major trips, long trips.

Q. I show you a letter marked P5 for identification, in an envelope marked P6 for identification, November 7, 1929 postmarked. I ask you if you wrote that letter.

A. Yes, I wrote that letter. That is my handwriting.

Q. And you signed Mr. Allen's name?

A. "Pop," yes. That was the way he was known to those people I wrote to for him.

Q. That was written on one of your trips to Baltimore?

A. That was written on the trip to Baltimore, but that letter came from Washington.

Q. When was the California trip?

A. That was in the first of the year in 1925.

Q. How long were you gone?

A. Five weeks.

Q. And Mr. and Mrs. Halberstadt were in that party for a while; how long were they on the trip?

A. I think they stayed two weeks longer at Hollywood.

Q. How long were you and Mr. Allen alone?

A. We weren't alone; we were in a party. It was a conducted tour, Mr. Crowson was the conductor of the Whitcomb—Raymond Whitcomb——

Q. How long were you on that tour when Mr. and Mrs. Halberstadt were not in the party?

A. They left us at Hollywood. I don't know how long it took to get there, to Pasadena. Coming back it may have taken a week.

Q. Did you come back with the party?

A. Yes, we came back on the same party that we started out.

Q. There was a conductor with that party?

A. The same conductor.

Q. He come all the way home?

A. All the way back home. I might say, too, after Mr. and Mrs. Halberstadt left us, there was a woman there, a Mrs. Depasser, and she became very friendly; made it very pleasant for me to be associated with.

Judge Starr, can you hear me now when I talk?

Mr. Starr: Can now. Couldn't before; you dropped your voice.

Q. Who made the arrangements to take the California trip, you or Mr. Allen?

A. No, the Halberstadts had first arranged the trip and talked to us about it.

Q. As to your going I want to know who made the arrangements.

A. Well, we met Mr. Halberstadt, we all went together, Mr. Ailes and Mr. Halberstadt and Mr. Allen and myself.

We all bought our tickets down there together.

Q. Mr. Allen paid all the expenses?

A. Yes.

Q. For you?

A. Yes.

The Court: What was the relation or in what capacity did you stand in relation to him on this trip? Were you his companion or nurse?

The Witness: No, sir.

The Court: What?

The Witness: I was Mrs. Ailes and he was Mr. Allen, just the same as Mrs. Depasser or Mrs. Halberstadt.

Q. Mrs. Ailes ——

The Court: Was his health good? Did he require any nurse on the trip?

The Witness: No, he didn't require any nurse on the trip, though he wasn't so well after the operation. It took a little while and he felt as if this trip would do him a lot of good.

Q. That was two years after the operation?

A. Yes, I know that, but there were times he felt it. He said this trip would mean a lot to him.

Q. In 1923, did you call the Harris Shumway loan for Mr. Allen?

A. Did I call it?

Q. Yes.

A. Why, I had no authority to do that, Mr. Endicott; no, sir.

Q. What do you recall about the Harris Shumway loan?

A. I remember that the Harris Shumway loan came about in the hospital, when Mrs. Shumway wanted Mr. Allen to make a will, and I remember Mr. Allen said then, "I can't make a will until your husband pays me back that $1800 that he borrowed."

Q. What did you do about it?

A. Well, I didn't do anything particular about it. I couldn't do anything about it.

Q. Do you know that the loan was called?

A. Yes, because — Mrs. Shumway said, by the way, she says, "I will see you get it. I will see that you get it." And she brought down a check for it the next day, and I did deposit it for Mr. Allen. He was in bed ill in the Jefferson Hospital, and I took

it up to the Northwestern Trust Company; Mr. Allen insisted I would take it then, that evening, and it happened to be a night that the bank was open. I recall that much of it.

By the Court:

Q. Why did he want to deposit it the same day?
A. Well, I don't know.
Q. I say why?
A. I don't know why.

By Mr. Endicott:

Q. I show you the check drawn on the West Philadelphia Title and Trust Company, February 5, 1923, to the order of Albert Allen, $1800, Harris L. Shumway, and ask you if that is the check to which you have just referred?

A. Well, it must be. I guess so. Yes, because I have endorsed it there, power of attorney.

Q. That was endorsed to the — by you and deposited by you to the account of Albert Allen?

A. Yes; yes.

Mr. Starr: May I see that check a moment?

Mr. Endicott: May I have it marked for identification?

(Check referred to marked Exhibit C-3 for identification, of November 20, 1929.)

Q. There was some discussion between you and

Mr. Allen and Mrs. Shumway respecting the making of a will in 1923, was there not?

A. Not with me. Mrs. Shumway came in the hospital and wanted this will made, and asked me to leave the room.

Q. And when was that done?

A. While he was in the hospital.

Q. Do you remember what day?

A. No, I couldn't remember the date.

Q. Do you know how long he had been there?

A. No, I really couldn't remember.

Q. Do you know whether he had been operated upon?

A. I believe that he was, but I wouldn't even like to say that for certain. But I believe he was. They kept him in the hospital a couple of days or a week or so before they would operate. I don't know.

Q. When did he go to the hospital?

A. Well, he went the latter part of January; latter part of January.

Q. Did you talk to Mrs. Shumway that day about making a will?

A. No, I did not; no, indeed.

Q. She talk to you about it?

A. No, she just — after Mr. Allen — she asked me to go out of the room, to leave the room, and Mr. Allen saw me going and he said "Where are you going?" And I said, "Well, Anna wishes to speak to you privately." And he said, "Well, there is nothing that Anna can say that you can't hear. Don't leave the room." And Anna turned around to me, and she said, "I would like Pop to make a will, and I have asked Mr. Schreiber to come down here to draw it up."

The Court: Was that the day following the time you got this check and deposited it?

The Witness: Yes. I presume it must have been the next day, or day or two afterwards. I can't tell exactly, Judge.

Q. And did you tell Mrs. Shumway then that he had already made a will?

A. No, I did not.

Q. You never told her?

A. No, I never told her.

Q. This was a secret between you and Mr. Allen, was it?

A. Well, it wasn't anything for me to discuss with anybody. I didn't see any necessity to discuss it with Mrs. Shumway.

Q. You never told any of Mr. Allen's family that this will had been made out when they called on you from time to time during your stay at Pleasantville?

A. The only one that called was Mr. Tom Allen. That was all of his relatives. Mr. Reger came once as far as the door. I don't think he came in.

Q. Mr. Tom Allen came and spent several days with you?

A. Yes.

Q. Did you tell him this will had been made in your favor?

A. No; never discussed it.

Q. Did you discuss with him Mr. Allen's affairs?

A. No.

Q. Now, as a result of the discussions about the will, the Shumway loan was paid off by that check?

A. Mrs. Shumway said to him that — he said he couldn't make a will until they paid him that $1800, and he was sick, anyway. So the next — whenever that check was brought down was when it was paid; couple of days afterwards. I can't just tell exactly whether at that time or the next day. May have been the next evening, so far as I know.

Q. Did Mr. Allen tell Mrs. Shumway he had already made his will?

A. No, he kept saying, "I am too sick to talk will."

The Court: He must have let her believe, though, that if she paid this loan off he would make a will in her favor.

The Witness: Well, he didn't say it in my presence. If he did I wasn't in the room. But Mr. Schreiber did come down that very day to draw up the will. Mr. Allen said he was too sick, he couldn't talk will now.

Q. You have said, I think, that throughout 1928, you generally acted for Mr. Allen in his writing matters.

A. I did a good bit.

Q. I show you a letter dated May 15, 1928, addressed to Mrs. Seltzer, and ask you if you wrote that letter?

A. Yes, sir.

Q. And that was a business matter for Mr. Allen which you were transacting?

A. Well, that was an answer to a direct letter to

me. Mrs. Seltzer wrote a letter to me, and I answered her.

Q. Well, it related to a money matter, did it not?

A. Yes, but it was not in answer to a letter to Mr. Allen, but a letter to me that she wrote.

Q. What does the phrase, "Pop received the check O. K., but forgot to mail it" — what does that mean?

A. Well, I guess he had it in his pocket at the time and had forgotten to mail it, and I had reminded him of it.

Q. Mr. Allen was a trustee of some sort for Mrs. Seltzer?

A. Yes.

Q. And he received part of her income?

A. Yes, sir.

Q. And paid it over to her?

A. Yes, sir.

Q. I notice in this letter a reference to having forgotten to mail the check. Do you observe that phrase?

A. Yes; well, I might have asked him when that letter came what he had done.

Q. Does that refresh your mind as to his mental condition at that time?

A. Oh, my! We are all apt to forget. His mental condition was all right.

Q. It was all right on this occasion?

A. Yes, it was all right until the last.

Q. But you were handling business matters for him at this time and writing his business letters?

A. Yes, some.

Mr. Endicott: May this be marked for identification?

(Letter referred to marked Exhibit C4 for identification, of November 20, 1929.)

The Court: This will in question was drawn and executed in the fall of '28 or '27?

Mr. Starr: '28. September 7th.

Q. I show you a letter or memorandum and ask you if that is in your handwriting?
A. Yes, that is my handwriting.
Q. Was that a business transaction for Mr. Allen?
A. Yes.
Q. And was dated November 17, 1927. Do you know to whom that communication was addressed?
A. If I consulted the book, I can tell you. I cannot tell you from memory.

Mr. Endicott: Witness is referred to Caveator Exhibit D2.

Mr. Starr: I ask, Mr. Endicott, if it is your purpose to introduce in evidence these papers that have been marked for identification?

Mr. Endicott: Yes.

Mr. Starr: Wouldn't it simplify matters if you do that now, because I am not ready to cross-examine until they are in evidence, and it would necessitate recalling her.

Mr. Endicott: That last instrument is already in evidence apparently, and I will introduce them in the future.

Mr. Starr: I think that would be better, if you are going to introduce them.

The Court: You may put on the record, then, as I understand it, that all exhibits offered and marked for identification may be admitted in evidence.

Mr. Endicott: Yes, that will be very satisfactory, to so stipulate.

Mr. Starr: Well, will you keep those together so that I can look them over when I resume the examination of Mrs. Ailes?

Mr. Endicott: Yes, I have them all together.

Q. Did I understand that in response to your — to the inquiry which the Court directed to you, you said that the California trip was taken because of Mr. Allen's health?

A. Oh, no, not on account of his health. He had never seen anything and never had much out of the years of his labor.

Q. He was in good health, then, at the time you took the California trip?

A. He said he thought it would do him a world of good; it would make him feel better.

Q. Please answer my question?

The Court: Yes; repeat the question.

(The question was read by the stenographer as follows: "Q. He was in good health, then, at the time you took the California trip?")

A. Yes.

Q. He didn't need any nurse on that California trip?

A. No, sir.

Q. And was competent to look after his own affairs at that time?

A. Yes, sir.

Mr. Endicott: Now do we have the ledger book?

Mr. Starr: Hand it to her and see if she identifies it.

Mr. Starr: Speak up.

The Witness: This, Mr. Endicott ——

The Witness: This is Mr. Allen's book, mortgage book. Now these, of course, are little personal verses; it was a book of my daughter's originally, so that was why I gave this ——

Mr. Endicott: Witness refers to book now marked in evidence by consent.

(Marked Exhibit C5, of November 20, 1929.)

The Witness: And this is just what was transferred into here years ago.

Mr. Endicott: And a second book now marked in evidence.

(Same marked Exhibit C6, of November 20, 1929.)

Mr. Endicott: I wonder if we might have a five-minute recess to examine these?

The Court: Yes.

Mr. Starr: I haven't any objection.

The Court: All right.

(Short recess.)

Mr. Endicott: Will you mark this paper? We offer in evidence the will of January 17, 1923.

(Paper offered received in evidence and marked Exhibit C7 of November 20, 1929.)

Q. I show you C5 of November 20, 1929, and ask you if this is the record book kept showing the investments and the returns on the investments for Albert Allen?

A. Yes, sir.

Q. And will you indicate in that book what parts of that record were kept personally by Mr. Allen?

A. One time I would, and one time he would. There was no special record that I kept or that he kept.

Q. Please answer my question.

The Court: Repeat the question.

(The question was read by the stenographer as follows: "Q. And will you indicate in that book what parts of that record were kept personally by Mr. Allen?")

A. Go all over the book, shall I?
Q. Yes, if necessary.
A. This is his entry here.

Mr. Starr: Indicate the page.

Mr. Endicott: Witness refers to ——

The Witness: Better start here, then.

Mr. Endicott: — index page "p."

Mr. Starr: Commence at the beginning and indicate if the pages are numbered. Indicate what is written by him and what written by you.

Mr. Endicott: I think if we start at the numerical numbers instead of the index, it would be better.

Q. I would suggest that you start at page 1 and tell us in whose handwriting you find the entries there made.
A. The entry on page 1 was made by Mr. Schreiber.
Q. Does any of Albert Allen's handwriting appear there?
A. Yes, sir; 1925.

Q. 1925; that shows a receipt of interest.

A. 1927.

Q. Whose handwriting does the entry 1926, August 17 ——

A. That is mine.

Q. And whose handwriting is the entry of February 17, 1927?

A. That is mine.

Q. And Albert Allen made the entry of August 17, 1927?

A. Yes, sir.

Q. And who made the remaining entries?

A. I did.

Q. Will you refer to page 2 of the record and tell us in whose handwriting you find the entry there made?

A. Mr. Schreiber.

The Court: How many days — did the attorneys keep account of the days we have been in trial of this case?

Mr. Endicott: I was looking over the testimony in this case. I think there is five days of testimony, but I thought we had more days than that. Will you repeat for Judge Starr's information the last question and answer?

(The question and answer were read by the stenographer as follows: "Q. Will you refer to page 2 of the record and tell us in whose handwriting you find the entry there made? A. Mr. Schreiber.")

A. Mr. Schreiber, and the next entry is mine.

Q. We won't take time to go into all of those details now, Mrs. Ailes.

Mr. Starr: Well, pardon me. It seems to me as long as you start that investigation, you will have to continue as you began.

The Court: Oh, no, counsel has a right to conduct his own examination. You may go into it on cross-examination if you like. Counsel has a right to pursue the examination to suit himself, I should think.

Mr. Endicott: I think you are borrowing trouble, Judge. I was only trying to save time. There are a lot of entries.

Q. Will you tell us in whose handwriting the heading on page three was written?

A. Mr. Schreiber. Mr. Schreiber made all of them.

Q. Made all of the headings in this book?

A. Made all of the headings in this book. Yes, every one in this book. He transferred it from the other book, that old book that you had.

Q. Does the handwriting at the top of page 24 appear to be in Mr. Schreiber's handwriting?

A. No, because that was Philadelphia Electric, from the U. G. I., that was later.

Q. Who made that entry?

A. I did.

Q. Who made the entry at the head of page 25?

A. There was a lot he made later on, from the time Mr. Schreiber first entered it in 1925.

The Court: Who made the entry?

The Witness: I did.

Q. Who made the entry at the top of page 27?
A. I did.
Q. Will you look through the balance of the book and see if all of the remaining entries were made in your handwriting at the head of the page?
A. 32, Mr. Allen made.

Mr. Starr: Look at each one. The question is, examining the remaining entries. Look at each one and tell us.

The Witness: Mr. Allen, page 32; and 33 I made. 35 I made. 36 I made. 37 I made, and 38, and 39, and 41.

Q. How about 40?
A. That was transferred.
Q. Whose handwriting?
A. 40 I did. This is the same thing.
Q. And 41?
A. 41. 42 I did.
Q. 43 you did?
A. Yes.
Q. And 44 you did?
A. Yes.
Q. And 45?
A. Yes.
Q. So that all of the handwriting at the top of each page in this book, from 27 on, except page 32, were made in your handwriting?

A. From 27 ——

Q. And except 32.

A. Except 32.

Q. And that means includes pages 27 to 46, inclusive?

A. Yes.

Q. Can you show me any stub entry in the years 1928 or 1929 acknowledging or recording the receipt of interest or dividend that were made by Mr. Allen in his own handwriting? Strike out '29; 1928.

A. You mean go through with the whole book again? '28, on page 2.

Q. On page 2 an entry was made when?

A. March 28, and September 29, in 1928.

Q. And that is made in the handwriting of Mr. Allen?

A. Yes. In page 13, July 27, 1928.

Q. An entry was made by Mr. Allen?

A. Mr. Allen, yes. And I made this, but Mr. Allen put down the amount $45. In page 14, May 26, 1928. I had already marked it.

Q. You wrote the date?

A. I wrote the date.

Q. And Mr. Allen wrote "Paid $45"?

A. Yes. And on page 15, I had written the date, and he put in his amount of money when he got it, May 6, Paid $90. 1928, that is. That looks like my figures.

Q. Just a minute before we leave that. I refer you to the entry May 6, 1929, Paid $90, and ask you if that is not in the same handwriting as the item of May 6, 1928, that you identified as Mr. Allen's?

A. Well, no. He has got his "Paid" there, and

that is his "90." That is his "Paid." I had already written that in advance, you know.

Q. Isn't that handwriting identical with the item of 1929 after his death?

A. No, that is his "Paid, 90." That is his little "9." That is not mine.

Mr. Endicott: I call the Court's attention to two items (showing book to Court).

Q. Will you point out any other items that appear in the book which were written by Mr. Allen in 1928?

A. On page 22, the rent for 3149 North 15th Street, that was in 1928, there is some markings, I don't know what he has got in there.

Mr. Starr: I can't hear what you say.

The Witness: There is some marking in there that he made. I don't know what he wrote afterward. He has got something written there.

Q. You can't understand his writing?

A. No, not there I don't. No, but he wrote something on March 3, 1928, in front of the rent $42.75, and April, 1928, paid, and that says commission $2.25, and that is $35.35 in his handwriting. And then on page 23 the 28th, February and August. The entire page with the exception of one item, two items that I wrote. The rest he wrote. Five ——

Q. Your attention is directed to the entries of 1928.

A. Well, February 9 and August 9.

Q. Continue.

A. And on page 24, Philadelphia Electric, 1928, July 14 and October 15.

Q. Now after having gone over this account and refreshed your mind from the entries that have there been made, are you prepared to say whether he depended upon you in large measure for the keeping of his records relating to his investments?

A. No, he didn't depend on me.

Q. Why, then, did you attend to his business?

A. Because he would ask me to do it.

Q. But he had to depend upon somebody, did he not?

A. No, no.

Q. You wrote Mrs. Weiss that he was dependent upon you, didn't you?

A. Well, probably not in the sense that she may have taken it. He was not depending on me; no, indeed. He was quite capable. He attended to quite a few mortgages himself that I didn't know anything about. In January of 1928 I think there was several.

Q. And you say that up to the day of his death he required no assistance in the care of his business matters?

A. No, he didn't need it.

Q. I call your attention then again to C-26, and read from that communication: "Only last week he took a mortgage, but I had to arrange to take him and watch up the papers."

A. What date was that, Mr. Endicott? Did I mention the date?

Q. I can't fix it, but perhaps you can by reference

to the exhibit. Perhaps the envelope will give you the date.

A. That was written after Mr. Allen's death. Well ——

Mr. Endicott: Will you repeat the question?

(The question was read by the stenographer as follows: "Q. I call you attention then again to C-26, and read from that communication: 'Only last week he took a mortgage, but I had to arrange to take him and watch up the papers.' ")

Mr. Starr: Let me see that, please.

A. Well, that particular day he did ask me to take entire charge of things. That was on the 17th day of October. He came back from Philadelphia on the 15th of October, from working or looking up the work that was being done in 1917 Dalton Street, and that day he came in and he said to me, "I have had an awful time." I said, "You did?" He said, "Yes, I had an awful fight." I said, "Yes?" He said, "After all my repairing work up there at 1917 Dalton Street, Mrs. — Lill," he called her — he said, "wanted me to put in a whole new hot water system, and I said no, I can't do it."

Q. Now, pardon me, Mrs. Ailes, but is this responsive to my question?

A. This is responsive to your question.

Q. Proceed.

A. And he said, " 'I will not do another thing,' " and he says, " 'you can get the hell out of here if you don't like it.' "And with that," he says, "she

kicked me, and," he said, "she kicked me in the groin." He held himself in his abdomen and he said, "She kicked me in my groin."

Q. Do you have anything further to say in response to my question?

A. Mr. Allen had this mortgage, wanted to take this mortgage on the 17th — that was the 15th that he came home — and the 16th he had a message that the papers were ready for him to take this last mortgage, and he said that he thought I had better attend to it, he felt pretty nearly all in. And then the 17th, the morning of the 17th ——

Q. Did he attribute that to the kick that he got from Mrs. Seltzer?

A. Yes.

Q. What did he say?

A. He said, "I don't feel good," he says, "I am all upset with my experience up there," he said, "I feel upset."

Q. Anything else?

A. I didn't want to bring that in.

Mr. Starr: What was that?

The Court: She didn't want to bring that in .

The Witness: I didn't want to bring that in, but Mr. Endicott ——

The Court: Let us repeat the question to the witness. I don't think it has been answered yet.

(The testimony was read by the stenographer as follows:

"Q. And you say that up to the day of his death he required no assistance in the care of his business matters?

A. No, he didn't need it.

Q. I call your attention then again to C-26, and read from that communication: 'Only last week he took a mortgage, but I had to arrange to take him and watch up the papers.' ")

The Court: Did he have to depend upon you on the 17th day when he came to take this mortgage?

The Witness: No; when it came time to go, he felt better.

The Court: And he did go?

The Witness: Yes, indeed.

The Court: And attended to the settlement himself?

The Witness: Yes, indeed. I went with him.

Q. Did you ever receive any jewelry from Mr. Allen?

A. Jewelry? Well, there was reference made to a little ring that he had.

The Court: No, no; yes or no.

The Witness: Yes, a ring.

The Court: Mrs. Ailes, I wish you would please try to answer your questions responsively.

The Witness: A ring.

Q. Was that Mrs. Seltzer's mother's ring?
A. I don't know.
Q. Did you ever hear that it was claimed to be?
A. I heard it was claimed to be Mrs. Seltzer's — Mrs. Seltzer's. Could I say something about it? It was a necktie pin, Mr. Endicott.
Q. There is no question pending. Mr. Starr will take care of your interests.
A. Well, I acknowledged it as a ring.
Q. Do you know whether Mr. Allen while you were in charge of the household where he resided over received any Christmas presents from Mrs. Seltzer or Mrs. Shumway?
A. I think he did.
Q. How often?
A. I don't know.
Q. I show you a letter which I will now offer in evidence, dated New Years Day, 1927 ——

(Letter offered is received in evidence and marked Exhibit C-8 of November 20, 1929.)

Q. — and ask you ——

Mr. Starr: Pardon me, I don't know — I haven't seen the letter. I don't know whether it is competent or not. I don't want to have it marked until I have an opportunity to look at it. You don't even

indicate by whom it was written or to whom it was sent.

(Mr. Endicott shows letter to Mr. Starr.)

Mr. Starr: All right.

Q. — and ask you if you wrote that letter?

A. Yes, I wrote that letter.

Q. And does this letter refer to the receipt of a Christmas gift by Mr. Allen from Mrs. Seltzer?

A. I presume it did.

Mr. Starr: Let her read it.

Q. Look at it (shows paper to witness).

A. Yes, sir.

Q. Do you know what education Albert Allen had had in his life time?

A. No, sir.

Q. What was his manner of speech? Was it polished or was it uncouth?

A. No, it was not uncouth.

Q. Was it polished?

A. I wouldn't call it a man that was highly educated; but a man that was not profane in any way.

Q. Was he poetic?

A. Yes, he loved poetry.

Q. Did he ever speak poetry?

A. He read it.

Q. I asked you if he ever spoke poetry.

A. Spoke it? Not that I know of.

Q. What was his manner of dress? Was he tidy or was he untidy?

A. He was more tidy toward the last years of his life.

Q. Was he tidy during the — at the time that he came into your household?

A. I don't think so.

Q. What was the answer?

A. I don't think so.

Q. But he became more tidy after he was in your household?

A. Yes, sir.

Mr. Endicott: I think we have substantially finished, subject to the permission to look into these checks a little more carefully, which I did not have an opportunity to see until today. If any question arises by reason of those checks I would like to reserve an opportunity to look into that.

Mr. Starr: May I ask Mr. Endicott a question? Will you please let me have those papers which were exhibited to this witness, all of them originally marked for identification, and now marked in evidence, so that I will have an opportunity to look them over during the noon recess, and it may simplify the cross-examination materially.

Mr. Endicott: All right, sir.

The Court: We will adjourn until one-thirty.

(Recess to 1:30 o'clock P. M.)

(After recess. 1:30 P. M.)

Mr. Starr: Mr. Endicott, I want to put on a witness from Philadelphia out of the usual order.

Mr. Endicott: Perfectly all right.

Mrs. Mary Eichelberger, called as a witness on behalf of the proponents, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Starr:

Q. Mrs. Eichelberger, where do you reside at the present time?

A. 3422 Sansom Street.

Q. Are you married?

A. I am married; yes, sir.

Q. You have been down here how many times to testify in this case?

Mr. Endicott: I object. Objection. Immaterial.

Mr. Starr: I think it is pertinent, if your Honor please.

The Court: I sustain the objection.

Mr. Starr: Allow me an exception.

The Court: All right, sir.

Q. Where did you live in January, 1923?
A. I lived at 4311 Walnut.
Q. Speak up louder, please.
A. I will try to.
Q. In what city?
A. Philadelphia.
Q. And did you know Mrs. Kathryn Ailes?
A. Yes, sir.
Q. At that time?
A. Yes, sir.
Q. Where did she live?
A. 4311 Walnut, Philadelphia.
Q. What say?
A. 4311 Walnut Street, Philadelphia.
Q. How far from where you were living?
A. I lived in the basement and she had the rest of the house.
Q. You lived in the basement?
A. Yes, sir.
Q. Did you know Albert Allen in his lifetime?
A. Yes, sir.
Q. And when did you become acquainted with him?
A. Well, Judge, I will have to have time — you know, I am not very good on dates.
Q. About how long?
A. I met Mr. Allen shortly after his wife died, whatever year that was.
Q. Now, Mrs. Eichelberger, I show you a paper which has been marked C-7, and ask you whether or not you recognize the words "Mary Eichelberger" on that paper?

A. Yes, sir; that is my writing.

Q. Is that your signature?

A. Yes, sir.

Q. Do you recognize the words "Albert Allen" above the signature?

A. Yes, sir.

Q. Did you see Mr. Allen sign that paper?

Mr. Endicott: I object to the question as leading. This is a vital question which he is asking the witness. I think he ought to be required to ask her to relate what happened.

Mr. Starr: That doesn't call for an answer yes or no — or either yes or no — it could be answered either one way or the other.

The Court: This question — this will isn't vital, it is?

Mr. Starr: No.

Mr. Endicott: It may be vital.

The Court: Well, not at this time. I will permit it.

(The question was read by the stenographer as follows: "Q. Did you see Mr. Allen sign that paper?")

A. The writing was done at a small table and was finished when I entered the room.

The Court: No, no. Did you see Mr. Allen sign that paper? You can say "yes" or you can say "no."

The Witness: Yes, I saw him sign it.

Q. And when he signed the paper who else was present?

A. Dr. Boger, Mrs. Ailes and myself.

Q. And did Dr. Boger — did or did not Dr. Boger sign his name to the paper after Mr. Allen signed his?

A. Yes, sir.

Q. And were you present — were you or were you not present when Dr. Boger signed his name to the paper?

A. I was present.

Q. And this paper was signed where?

A. In Mr. Allen's bedroom.

Q. Was he in bed or around the room?

A. Mr. Allen was laying in bed.

Q. And where did Mr. Allen sign the paper? Did he get out of bed; or tell us about that?

A. There was a small table by the side of his bed, and he done the writing on that table.

Q. Yes; and where did you sign your name?

A. At a large table near the window.

Q. In the same room or otherwise?

A. In the same room.

Q. Where did Dr. Boger sign his name?

A. At the same table where I wrote my name.

Mr. Starr: Cross-examine.

Cross-examination.

By Mr. Endicott:

Q. One moment. What was said when you entered the room just prior to the signing of the paper by anybody?

A. As near as I can remember, Mr. Allen made reference to the will that I was to sign.

Q. And when you first started to answer Judge Starr's question, you said that the paper was written when you entered the room. What writing did you refer to?

A. Well, he was finished, I suppose, signing his name. All the writing that was done on the paper outside of the two signatures were complete before I took and put my signature to it.

Q. You mean that Mr. Allen had signed the paper before you entered the room?

A. Well, it was over at his bedside, and he was writing, you see.

Q. Did he mention the — what he was doing before he completed writing?

A. Just said, if I remember rightly, "Mary, I want you to sign my will."

Q. And had he signed when he made that statement to you?

A. Well, the paper was taken from his table and then put down to me to sign.

Q. Yes, but had he completed the signing when he made that statement?

A. I believe so.

Q. And who took the paper over to you?

A. Mrs. Ailes.

Q. And had Dr. Boger signed the paper at that time?

A. Dr. Boger signed while I was in the room, but I am not sure whether it was before or after me.

Mr. Starr: I didn't get the last.

(The answer was read by the stenographer, as follows: "A. Dr. Boger signed while I was in the room, but I am not sure whether it was before or after me.")

The Court: Call your next.

Mr. Starr: There is one question I want to ask. There is some little confusion.

Re-direct examination.

By Mr. Starr:

Q. Will you say whether or not Mr. Allen signed his name to the paper before or after you came into the room? In other words, did you see him place his signature to the paper?

A. Well, there was writing done by Mr. Allen before the paper was brought to me at the table where I signed my name. That is all that I can say.

Q. And that in your presence, was that writing done by him while you were in the room?

A. I was in the room.

Mr. Starr: That is all.

Mr. Endicott: Just one moment, now.

Re-cross examination.

By Mr. Endicott:

Q. Mrs. Eichelberger, did you say to Mr. Harry J. Alker that Mrs. Ailes came to you and asked you to come to Mr. Allen's bedroom to witness a will, and that when you got there all of the writing had been finished before you entered the room?

Mr. Starr: I think that question, if it was put for the purpose of contradicting, the time and place should be included in the question.

Mr. Endicott: I am referring now to the paper which is marked C-7, and I refer to the events of January 17, 1923.

Mr. Starr: If this is laid for the foundation for contradiction ——

The Court: Counsel's objection is you must fix the time that she said to Mr. Alker in her conversation with him.

Mr. Endicott: Is that your objection?

Mr. Starr: That is my objection.

Q. At any time since the beginning of this case?

Mr. Starr: I don't think that cures it. That is entirely too indefinite.

Mr. Endicott: That is as definite as I can give it to you right now. I can fix it more definitely if you want to take the time to do it.

Mr. Starr: I will let it go at that. I will withdraw the objection.

Mr. Endicott: Repeat the question.

(The question was read by the stenographer as follows: "Q. Mrs. Eichelberger, did you say to Mr. Harry J. Alker at any time since the beginning of this case that Mrs. Ailes came to you and asked you to come to Mr. Allen's bedroom to witness a will, and that when you got there all of the writing had been finished before you entered the room?")

A. Mr. Alker had asked me if the will was written while I was in the room. I told him no, that the writing was completed outside of the—perhaps Mr. Allen's signature, because I was only in the room a few minutes or say two minutes when it was brought from the table over to me to sign.

Q. Who asked you to sign the will as a witness?

A. Mrs. Ailes asked me to come upstairs to sign it and Mr. Allen, when I reached the room, said "Mary, there is a will of mine to be signed."

Q. Was Mrs. Ailes actually in the room during the time that you were there?

A. Mrs. Ailes and Dr. Boger.

Q. And Mrs. Ailes remained in the room the entire time?

A. Yes, sir.

Q. Well, now, are you certain or can you recall

certainly whether the request which Mr. Allen made to you was made before or after he signed?

A. Well, the writing completed with—when I come into the room, say about two minutes I was there, when the paper was taken from his table and put down for me to sign.

Q. And you didn't see him do any writing, then?

A. Yes, I saw him finish up.

The Court: Finish up what?

The Witness: The writing on that paper.

The Court: But what was he finishing?

The Witness: His signature.

Q. Was he doing that as you entered the room?

A. Yes, sir.

Q. Did he make any statement before he signed the paper?

A. No, he just told me what I was there for.

Q. Did he make that statement before he signed it?

A. While he was finishing on this paper.

Mr. Endicott: That is all.

Mr. Starr: That is all. Now Mrs. Ailes, please.

MRS. KATHRYN AILES, recalled.

Mr. Endicott: I had not quite finished.

Mr. Starr: I beg your pardon. I thought you had.

Mr. Endicott: I said except for such questions as would arise from those checks.

Mr. Starr: Go ahead.

Cross-examination (continued.)

By Mr. Endicott:

Q. Mrs. Ailes, did Thomas Allen visit Albert Allen during the summer of 1928?
A. I don't know.

Mr. Starr: Please, Mrs. Ailes.

The Witness: I don't know.

Mr. Starr: I can't hear a word.

The Witness: I beg your pardon, Judge Starr.

Q. When was the last time that Thomas Allen visited Albert Allen at Pleasantville?
A. In the spring, I know, of 1928.
Q. And do you recall his testimony where he said that he talked with you at the railroad station about Albert Allen's estate?

A. I don't remember all of it, no. I was here when he gave that testimony.

Q. Was there such a conversation?

A. Not according to what I remember of it; no, sir.

Q. What conversation did take place between you and Thomas Allen with respect to Albert Allen's property and estate?

A. I don't know that we ever discussed it at all between us; never.

Q. I am talking now about the conversation that took place at the railroad station on the eve of his departure from Pleasantville, in 1928.

A. No, well, we didn't go with him to the station in 1928.

Q. You didn't go with him to the station?

A. No.

Q. And if he says that you did, it was not true?

Mr. Starr: I beg your pardon, I object to that if your Honor please. That is not the proper way of contradicting the witness.

What do you do—withdraw the question?

Mr. Endicott: I don't know whether it was answered.

Mr. Starr: I objected as quickly as I could. I object to it.

The Court: All right; I sustain the objection.

Mr. Endicott: We have made a tabulation of the checks which were identified by Mrs. Ailes this morn-

ing from the group which I handed her. The checks which were written by Kathryn Ailes and signed by Albert Allen total the sum of $2,098.50; and the checks which were wholly written and signed by Albert Allen total $184.20. I wish that would go into the record as a stipulation.

Mr. Starr: I have no record—subject to an explanation of these various documents, to see whether the figures are all right. I have no doubt they are.

Mr. Endicott: It is stipulated subject to your right to contradict it?

Mr. Starr: Yes. Now, Mr. Endicott, I will ask you a question. I show you package of cancelled checks and ask you whether these checks were handed to you this morning by Mr. Laws, so that I can have them identified and introduced in evidence.

Mr. Endicott: The checks which I now have in my hand and which I identified as the seventy-four checks counted by the Court, and which Kathryn Ailes said were filled in as to the body in her handwriting, came to me this morning from Mr. Laws.

Mr. Starr: I offer that group of checks in evidence.

The Court: All right.

(Checks received in evidence and marked Exhibit P1 of Nov. 20, 1929.)

Mr. Endicott: The present group of checks constitute the checks totaling $184.20, and were handed to me this morning by Mr. Laws.

Mr. Starr: I offer that group in evidence.

(Checks received in evidence and marked Exhibit P2 of Nov. 20, 1929.)

Mr. Endicott: The group of checks which I now have in hand were not referred to in my examination.

Mr. Starr: Well, I want to know whether you got them from Mr. Laws.

Mr. Endicott: Yes, I got them from Mr. Laws.

Mr. Laws: You didn't get them from us.

Mr. Starr: Did these come from the Guarantee Trust Company or Mr. Laws?

Mr. Endicott: My recollection is they came from Mr. Laws.

Mr. Starr: Have you the checks that came from the Guarantee Trust Company here?

The Court: Those are the checks with the exception of these that you picked out.

Mr. Endicott: That the Court may be clear, I have seen none of these checks until this morning. Those checks which were delivered to the Guarantee

Trust Company, the administrator, were produced in court this morning by the Assistant Trust Officer of the Guarantee Trust Company. Other checks were handed to me about the same time by Mr. Laws. Now I can't be positive in my identification because ——

The Court: Well, it doesn't make any difference.

Mr. Starr: Well, then, I will offer all of these checks.

(Checks offered are received in evidence and marked Exhibit P3 of Nov. 20, 1929.)

Re-direct examination.

By Mr. Starr:

Q. Now, Mrs. Ailes, at or about the time that Mr. Allen signed C7, which you have identified, did he sign another paper the contents of which he had dictated to you?

A. Yes, sir.

Q. Now I show you a paper which is headed "Friend Robinson," and ask you whether or not that paper was the paper which was signed by him?

A. Yes, sir.

Q. In whose handwriting is that paper?

A. It is in my handwriting, signed by Mr. Albert Allen.

Q. And was it signed in your presence?

A. Oh, yes.

Q. How did you come to prepare this paper?

A. At Mr. Allen's dictation.
Q. What did he say about it?
A. He wanted me to give that to Mr. Robinson.
Q. And where was it written?
A. Right in his bedroom.
Q. In his presence?
A. Oh, yes.
Q. And did you place on this paper exactly what he said to you?
A. Just exactly.
Q. And after it was prepared—written by you, did he or did he not sign it?
A. Oh, yes, he signed it.

Mr. Starr: Now both of these papers—I offer this paper in evidence.

Mr. Endicott: Did you fix the date of it?

Mr. Starr: I will. It was not dated.

(Paper offered is received in evidence and marked Exhibit P4 of Nov. 20, 1929.)

Q. On what date was the letter addressed "Friend Robinson" signed by Mr. Allen?
A. On the same day that the will—that he dictated the will; same time.
Q. After Mr. Allen's death, where did you find these two papers, C7 and P4?
A. In an envelope in the box, in the tin box, at our home.
Q. How soon after his death did you find them, if you can recall?

A. Probably a few days.

Q. And is that the box in which he kept his papers and you also kept your papers?

A. Yes, sir.

Q. Was there a key to that box?

A. There were two keys.

Q. And who had the keys?

A. I had one and he had the other.

Q. Yes. Prior to the time of his death did you ever see these two papers in that box?

A. Yes. Yes. Yes, I did.

Q. Do you know how the paper addressed "Friend Robinson" happened to be placed in the box?

A. Well, it was—how it was placed in the box?

Q. Yes; how it happened to be placed there?

A. No, I don't. No, I don't.

Q. Now, Mrs. Ailes, referring to Exhibit C5 of this date, you were requested by Mr. Endicott to indicate the places in the various accounts which were in the handwriting of Mr. Allen, in the year 1928.

A. Yes, sir.

Q. Now, will you look over those items and tell us whether there were any entries made in the years prior to 1928, say from 1923 to 1928?

Mr. Endicott: I object, as not cross-examination. I limited my examination to the events of 1928.

Mr. Starr: This is re-direct, if your Honor please. It is not cross-examination at all.

Mr. Endicott: It is new matter, if it is on re-direct.

The Court: I will permit it.

The Witness: Shall I go on?

Q. In the years prior to 1928, indicating the page in the record.

A. Yes, sir. Well, on page 1.

Q. Covering what years?

A. This is 1925, that is—this is Mr. Allen's ——

Q. In his handwriting?

A. In his handwriting; of 1925.

Q. You need not give the contents.

A. I see. In 1927.

Q. Go to the next.

A. Page 2, 1927; and another 1927. That is for March and for September.

On page 3, 1925. Another 1925. That is April and October of 1925.

On page 4, 1926. Another 1926. January and July of 1926.

And January and July of 1927.

And page 5. July, 1925. And 1927, January and July, 1927.

And page 7, 1925. July, and January, 1926. And July, 1926. And July—or January I guess that is, 1927.

And page 9, 1925, June. 1927, January. 1927, July.

And page 10, in 1925, July. 1927, January. 1927, July.

The Court: Now, Judge Starr, what is the purpose of going into this at length?

The Witness: Here is another.

Mr. Starr: Well, the testimony of the plaintiff—of the caveator seems to be that for several years prior to the death of this testator he was unable to transact business, incapable of transacting business.

The Court: I think it was developed in 1928 she did it all. You have shown on years previous she did it. So what is the use of taking ——

Mr. Starr: That he did prior to that time.

The Court: Yes.

Mr. Starr: I want to show there is absolutely no substance in their claim that for years prior to the death this man was unable to transact business. If that—if Mr. Endicott will concede that is the situation, I won't go into the situation.

Mr. Endicott: We don't pretend he didn't have certain powers to transact business. He had diminishing ability. The fact he had ceased to operate his own affairs was indicative of that diminishing condition.

Mr. Starr: I think it is important to have the testimony in.

The Court: Testimony of what? During the years 1925 ——

Mr. Starr: 1925 on to 1928, and what he did in

1928 was substantially the same as he did in the other years.

The Witness: Page 13, 1925, July; 1925, December. July, 1926, and December, 1926. July, 1927, and July, 1928.

Q. You have already testified with reference to 1928. Leave that out in your evidence now being given.

A. In ——

Q. What page?

The Court: She has reached 1928 now.

Mr. Starr: No, she is talking—on that one particular account, one page. You see these investments have a separate page.

A. Page 16, 1925, July. 1926, July.

The Court: What is she reading? Entries of hers or entries of his?

Mr. Starr: His. I am speaking about his handwriting.

The Witness: Page 17, June, 1926.

Page 19. 1925, September.

Page 21. 1925, May; and June, 1926. May, 1925, on page 21, and June, 1926. And that was the end of that.

On page 22, here are rents in 1925, August, September, October, November, December, that he

entered. And in 1926, November, December, January—no; February, March, April. 1926, May, June, July. That is all.

Now, page 23. 1926, August. 1927, February. 1927, August. 1928, February. Oh, I did give 1928 before, I guess.

Page 24. September, 1925. December 1925. '26, March and June. '27, March and June, of '27.

Page 25. 1925, August.

On page 32. How would I read that, Mr. Endicott?

Mr. Endicott: Better ask Judge Starr.

Q. What is that question?

A. On page 32, Judge Starr, can—which shall I read that he did, he wrote?

Q. Whatever is there in his handwriting.

A. Well, he wrote "Joseph P. Dillon, 7th and Oakland Avenue, Pleasantville, to be paid every three months, $1,094, at six per cent. Expiration May the 3rd, 1930."

Q. What is the date?

A. 1927.

Q. What month?

A. August.

Q. Is that all of them now?

A. I don't know.

Q. Or are there any others?

A. I will see. I think that is all.

Mr. Starr: Now, Mr. Endicott, have you that exhibit that you introduced, a receipt for board?

Mr. Endicott: I am sure we have it here somewheres.

The Court: What?

Mr. Starr: There was an exhibit to this witness on direct examination, a paper which was signed by her, and she started to make an explanation and Mr. Endicott interrupted her.

Mr. Endicott: And you said you would assume the burden of proving it.

Mr. Starr: No; I said I would assume the burden of explaining it. You would not permit it to be done. That is what I want to do now.

Mr. Endicott: It is in the notes.

Mr. Starr: I want the original exhibit. You produced it.

Mr. Endicott: It must be in that sent down here.

The Court: Nothing in here except an old exhibit.

Mr. Endicott: Well, it was several days ago.

The Court: You mean at the last hearing?

Mr. Endicott: Yes.

The Court: You didn't have it this morning.

Mr. Starr: No. Last hearing.

Mr. Endicott: It was in some kind of an envelope, wasn't it?

Mr. Starr: Mr. Alker, what is the page for that?

Mr. Alker: I think it is page 57.

Mr. Endicott: Here we are. (Produces exhibit.)

By Mr. Starr:

Q. Now, Mrs. Ailes, I show you Exhibit C17, July 25, 1929; it is marked for identification.

Mr. Starr: I suppose you want that marked in evidence? Better have it marked now in evidence.

Mr. Endicott: I understand all of our exhibits which have been marked for identification are now received as in evidence. That was the effect of the stipulation.

Mr. Starr: I won't object to that. Maybe when the argument comes we may have to object to the materiality of some of them.

(The question was read by the stenographer as follows: "Q. Now, Mrs. Ailes, I show you Exhibit C17 July 25, 1929; it is marked for identification——")

Q. And ask you whether or not you remember the circumstances under which that receipt was given.

A. Yes, I remember the circumstances.

Q. And you are privileged now to make any explanation that you tried to make when you were interrupted by Mr. Endicott.

A. Well, I was sick at the time, and Mr. Allen came in my room and he said, "You were very ill last night." He said, "I was wondering if there is anything I can do for you." I said, "No." He said, "Well, do you feel that I have always paid my way?" And I said, "Why, yes, what makes you ask that?" He said, "Well, last night when you were so sick I got thinking and I was wondering if you had passed away just how Frank and your children would feel about it because I have never given Frank Ailes one red cent since I have been in this home." "Well," I said, "to make you comfortable, I will give you a receipt in full to date." Which he appreciated a whole lot.

Q. And that is what you gave him?

A. That is what I gave him that day.

Q. Well, now, as a matter of fact, did he ever pay you any board?

A. No, Judge Starr; never.

Q. And this paper is dated the 27th of August, 1924?

A. Yes, sir.

Q. Was that the time when it was ——

A. That was the day—the day after I was taken so ill at night.

Q. Do you know what became of the paper after it was signed by you?

A. I never saw it after that.

Q. You don't know what he did with it?
A. I never knew what he did with it.

Mr. Starr: I think it appears from the record of the testimony of Mr. Boyle that was one of the papers found in the box by him at the Northwestern Trust Company.

Mr. Endicott: That is my recollection. What was the number of that exhibit?

Mr. Starr: C17 of July 25, 1929.

Q. Does that complete your explanation with reference to this receipt?
A. Yes.
Q. You were asked this morning in relation to a piece of jewelry by Mr. Endicott, and you were not permitted to make such explanation as you desired. In view of the fact that he would not permit you to do it this morning, what have you to say?
A. It was a little pin.
Q. What?
A. It was just a little pin that Mr. Allen had and he said it was constantly getting lost and he said, "I will have it made up in a little ring." Well, he gave it to me.
Q. Was it——
A. It was a little stick pin he had. He said he didn't care for stick pins and would never wear it, and he said, "I will have it made into a little ring, if you want it."
Q. He gave you the ring?
A. He gave me the ring.

Q. What sort of a stone?

A. There are two tiny, wee, little diamonds in it.

Q. Do you know where the stick pin originally came from?

A. He said Mrs. Seltzer gave it to him.

Mr. Starr: That is all.

Mr. Endicott: That is all you have?

Re-cross examination.

By Mr. Endicott:

Q. What was done with the Exhibit P4 of today, after it was signed by Mr. Allen?

Mr. Starr: You had better identify P4.

Mr. Endicott: That is the letter which accompanied the will.

Mr. Starr: You mean the Robinson letter?

Mr. Endicott: Yes.

Q. (Shows P4 to witness.)

A. Where did I get it from, did you say?

Mr. Endicott: Read the question.

(The question was read by the stenographer as follows: "Q. What was done with the Exhibit P4 of today, after it was signed by Mr. Allen?")

A. I took it up to Mr. Robinson.

Q. And did that constitute the power of attorney under which you operated Mr. Allen's funds?

A. That was all that I knew anything about.

Q. Was any other paper in the nature of a power of attorney signed?

A. Not that I know of. Not that I——

Q. And it was by virtue of that paper that you drew checks against Mr. Allen's account?

A. Yes, sir.

Q. Did Mr. Allen ever revoke that power?

A. Yes, he did. Two days after he came out of the hospital.

Q. How did that come about?

A. I don't know. I didn't go with him.

Q. How did you know that it had been revoked?

A. Why, he told me.

Q. And you never drew any checks in his name after that date?

A. Oh, no.

Mr. Endicott: That is all.

Mr. Starr: One question I forgot to ask you—That is all, Mrs. Ailes.

Now, I offer in evidence an original deed for Pleasantville property made by Rene Letzkus and others to Kathryn Ailes, dated July 1st, 1920, recorded in the Clerk's Office at Atlantic County, at Mays Landing, Book 639, page 62.

Mr. Endicott: No objection.

(Same received in evidence and marked Exhibit P5 of Nov. 20, 1929.)

Mr. Starr: I also offer in evidence a certified copy of a tax deed of the City of Pleasantville to Kathryn Ailes for other property at Pleasantville, which is dated the 18th day of March, 1921, together with the proceedings for the foreclosure of the tax title, which was recorded in Deed Book 648, page 363.

(Same received in evidence and marked Exhibit P8 of Nov. 20, 1929.)

Mr. Starr: Mr. Endicott, there are a couple of settlement certificates here with reference to the property in Philadelphia at the time it was purchased and when it was sold. It has been mislaid. I don't know whether it is in that package or not. But we want to introduce those in evidence, to show what was paid for the property by the Ailes and what it was sold for.

Mr. Endicott: I am inclined to think they are in our files.

Mr. Starr: They are somewhere. We can't find them.

Mr. Endicott: I think they are here.

Mr. Starr: Are they marked?

Mr. Laws: Identified by Mr. Ailes on the stand.

Mr. Starr: We will offer them in evidence, if your Honor please.

(Three sheets of paper offered are received in evidence and marked Exhibit P7 of Nov. 20, 1929.)

Mr. Starr: We rest.

Mr. Endicott: Will your Honor give us a recess for about two minutes while we have a conference?

The Court: Yes.

(Short recess.)

Hettie Weiss, recalled on behalf of the caveators, testified as follows:

Direct examination.

By Mr. Endicott:

Q. Mrs. Weiss, did you visit the Ailes-Allen home in Pleasantville in 1927 or 1928?
A. It was 1927. I think it was July ——

Mr. Starr: Madam, you have answered the question. Don't volunteer, please.

Mr. Brown: She didn't volunteer.

Q. On the occasion of that visit, did Katie Ailes

say anything to you about Mr. Allen's receiving visits from his family?

Mr. Starr: I object to that, if your Honor please. As I recall this witness, she was interrogated as to what happened on that visit, and apparently exhausted her knowledge with reference to that situation, and it is not rebuttal and not new testimony of anything to be introduced. It is a repetition of what occurred at the former hearing.

Mr. Endicott: It is rebuttal to Mrs. Ailes' testimony that she welcomed and did not put any interference in the way of the Allens visiting Albert Allen.

Mr. Starr: Was she asked about that in the direct examination?

Mr. Endicott: I don't think so.

Mr. Starr: She was called to detail what happened at that conversation. It seems to me she is not permitted to add to that in any way.

Mr. Endicott: She was in the house for some time and we did not attempt to exhaust everything that was done and said.

The Court: Permitted.

Mr. Starr: Exception.

Q. Yes, I told Mrs. Ailes that Mr. Tom Allen en-

joyed being with his brother very much and they seemed to be so happy together.

Mr. Starr: I object; that is not in response to the question. The question is whether Mrs. Ailes said something; not what this witness said.

Mr. Endicott: Will you repeat the question? 10

(The question was read by the stenographer as follows: "Q. On the occasion of that visit, did Katie Ailes say anything to you about Mr. Allen's receiving visits from his family?")

Mr. Starr: Yes or no.

A. She told me ——

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Mr. Starr: I object.

Mr. Endicott: You may have "Yes" or "No" if you want it. Answer it just yes or no.

The Witness: What was the question?

(The question was read by the stenographer as follows: "Q. On the occasion of that visit, did Katie Ailes say anything to you about Mr. Allen's receiving visits from his family?") 30

A. Yes, she said that she was——

Mr. Starr: One moment.

A. She said she didn't want any of them ——

Mr. Starr: One moment. Wait.

Mr. Endicott: It may be stricken, if you wish.

Q. Mrs. Weiss, will you answer it yes or no?
A. Yes.
Q. What did she say?
A. She said she didn't want any of his family down there.

Mr. Endicott: Cross-examine.

Mr. Starr: No questions.

Mr. Endicott: Thomas Allen.

THOMAS ALLEN, recalled on behalf of the caveators, testified as follows:

Direct examination.

By Mr. Endicott:

Q. Did you attempt to have your brother, Albert Allen, make a will in your favor?
A. No, sir.

Mr. Starr: I object. That is not, if your Honor please—that is not rebuttal of anything that has occurred in the case. It is entirely new matter which

ought to have been brought out on direct examination, in the direct testimony.

Mr. Endicott: It is rebuttal, and I am trying to find the part of the case where it is.

Mr. Starr: I would like to see it.

Mr. Endicott: On the 23rd of July Mr. Anderson wrote me a letter saying that that statement was in the case, and to make a note to rebut it.

Mr. Starr: Can you find it?

Mr. Endicott: We are looking for it now.

The Court: I don't think it is important enough to spend time to look for it. I will permit you to put it in, that he has not.

Mr. Starr: Exception.

The Court: Yes.

Mr. Endicott: and he answered the question "No."

Mr. Brown: That is on the record.

Mr. Starr: No questions.

Mr. Endicott: That is all, Mr. Allen. We rest.

(Discussion off the record.)

Mr. Endicott: If we attempted to identify every item of evidence that has been referred to, we would go into thousands of items, there are so many checks and bank deposit slips.

The Court: It is all admitted in evidence by agreement of counsel, all items that have been marked for identification.

Mr. Starr: Of course, there is a stipulation, if your Honor please, with reference to these matters that came from Mr. Boyle. The offer was made by Mr. Endicott that they be admitted en masse. The understanding was that would be so, but they were not to be used except those particularly brought to the attention of Mrs. Ailes. That is the fact, isn't it?

Mr. Endicott: Yes.

Mr. Starr: I guess that is the end of it.

Mr. Endicott: When will your Honor hear argument?

The Court: How long does counsel want to argue?

Mr. Endicott: I should think you ought to set apart some definite time for it. I should say an hour and a half a side.

Mr. Starr: Well, it will take at least that. It would be wise to set aside a special day, if you have the time.

The Court: I am trying to find out whether it will take a half a day or a whole day. How many are going to argue?

Mr. Starr: As far as I know, I am the only one to argue on our side. I don't know about these other gentlemen.

Mr. Endicott: I think I will handle the argument unless Mr. Brown wants to.

Mr. Brown: I am entirely satisfied to center the argument on the side of the caveators in Mr. Endicott.

The Court: It can't take more than an hour apiece; so some morning or some afternoon will be sufficient, I should think.

Mr. Endicott: I should—I really think so, too, but I didn't want to foreclose Judge Starr of any rights that he might have.

Mr. Starr: Rights to do what?

Mr. Endicott: Talk.

(Adjourned for argument to December 16, 1929, at 2 o'clock P. M.)

EXHIBIT C40.

A. F. Daix & Son,
Law, Real Estate & Conveyancing
2318 Columbia Avenue
Philadelphia
April 16, 1928

Mr. Peter A. Cortsen
4311 Walnut Street
Philadelphia, Penna.

Dear Sir:

I represent Frank P. Ailes and Kathryn Ailes who hold a Bond and Mortgage in the principal sum of $10,000. secured on the premises 4311 Walnut Street Philadelphia. This bond and mortgage is in default in that there has been a failure to pay balance of interest due January 15, 1928.

I beg to advise you that under date of April 14, 1928 judgment was entered on the Bond and Mortgage, which judgment was entered in the Court of Common Pleas No. 3, Philadelphia County, as of the March Term 1928, No. 9838 and it is my intention to proceed forthwith and issue execution against the said premises.

Very truly yours
Augustus F. Daix, Jr.,"

AFD/C

Envelope accompanying foregoing letter postmarked Registered 307331.

EXHIBIT C41.

"June 4, 1928.

Michael A. Maloney, Esq.,
1021 So. 60th Street
Philadelphia, Penna.

Dear Sir:

Below is amount necessary to satisfy mortgage and Judgment on the bond, premises 4311 Walnut Street.

Principal,	$10,000.00
Balance of Interest due January 13, 1928,	200.00
Interest from January 13 1928 to June 6, 1928	240.00
Attorney's fee,	150.00
Costs,	14.00
Total,	10,604.00

Very truly yours,
Augustus F. Daix, Jr.

AFD/C

CAVEATORS' EXHIBIT 42.

EXEMPLIFICATION.

Philadelphia County } Sct.
State of Pennsylvania }

Among the records and proceedings of the Court of Common Pleas No. 3 for the County of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of Record, at No. 9838, March Term, to wit:

DOCKET ENTRIES.

Frank P. Ailes and
A F Daix, Jr. Kathryn Ailes his wife
7-11-28 v.
9838 Peter A. Cortsen and
Hilma C. Cortsen

By order of Plaintiff's Attorney filed, this Judgment is satisfied.
Paid $1.00 7-11-28
Trefz Pro. Prothy.
Judgment on B & W of atty dated 7/15/25 for $20,000 within 1 year from date on installments with int. costs 3% coll waiving inq and exempt.
April 14, 1928—Judgment.
Certified from the record this 7th day of June A. D. 1929

J. A. Ryan
(Seal) Pro Prothy

EXHIBIT C43.

"A F Daix & Son
Law, Real estate, Conveyancing,
Insurance
2318 Columbia Avenue
Philadelphia 192

Received of Augustus F. Daix, Jr. Check for Ten thousand dollars Four hundred forty dollars being principal, interest to June 4, 1928 on mortgage secured upon premises 4311 Walnut Street, Philadelphia, Penna.

Kathryn Ailes
Frank P. Ailes."

EXHIBIT C44.

Being entries on page 49 of Ledger.

EXHIBIT C45.

"Philadelphia, Feb. 24, 1923

Northwestern Trust Company
Pay to the order of Cash, Seventeen Dollars
$17.00/100

Mrs. Kathryn Ailes
P. of Atty.

(Endorsed)
Mildred E. Ailes
Received payment through the Federal Reserve Bank
Previous Endorsements Guaranteed
Feb 27 1923
Collected through Philadelphia Clearing House."

EXHIBIT C46.

No. 4 "Philadelphia, Mar 1, 1923
Northwestern Trust Company
Pay to the order of Mildred Ailes Fifty Dollars.
Suit &c.
$50.00
Mrs. Kathryn Ailes
P of Atty.
(Endorsed)
Mildred Ailes
"Received payment
The Franklin National Bank Mar 14 1923
Collected through the Philadelphia Clearing House
Endorsements guaranteed.
For Deposit in the Franklin National Bank
Prior Endorsement Guaranteed
Mar 13 1923 3-6;
Fidelity Trust Company."

EXHIBIT C47.

"No. 65 Philadelphia, May 5, 1923
Northwestern Trust Company
Pay to the order of Rosser B. Flemming Twenty-eight 97/100 Dollars
For two cord tires
$28.97

Mrs. Kathryn Ailes, P of Atty.
Endorsed:
Rosser B. Flemming
R. B. Flemming
M E Ailes.
Paid."

EXHIBIT C48.

"Philadelphia, Pa., Feb. 28 1920
3-136 Broad Street Bank Pay to the order of Mrs. K. Ailes, One Hundred Seventy Eight $178.00 Dollars

Albert Allen.
Endorsed:
Mrs. K. Ailes.
M. E. Ailes.
Pay to the order of Federal Reserve Bank of Philadelphia. Prior endorsements guaranteed.
Paid."

EXHIBIT C49.

Pleasantville N. J. July 21, 1921 No. 10
Pleasantville Trust Company, of Pleasantville N. J.
Pay to the order of Mildred E. Fleming $15.
Fifteen Dollars. Albert Allen.
Endorsed: Mildred E. Fleming.
Pay to the order of Any Bank or Trust Company
July 24 1924
The Pennsylvania Trust Company Reading Pa.
J W Richards Treasurer.
Pay to the order of Federal Reserve Bank of Philadelphia Prior Endorsements Guaranteed
July 25 Franklin National Bank, Philadelphia, Pa."

EXHIBIT C1.

Phila. Oct. 25—1919

I, ALBERT ALLEN, of 1411 West Allegheny Ave. being of sound mind desire that Lillie Ida Seltzer Ruelens, my set-step daughter shall have the house and all within it at 1411 West Allegheny Ave. everything and three-fourths of the remaining of all I posses in bonds and mortgages and stock to go to Lillie Ida Seltzer Ruelens and any outstanding debts or notes to be collected and given to the same Lillie Ida Seltzer Ruelens. I appoint her as the executor of the estate and Mr. Gustav Shreiver my

personal friend, as Trustee, and if he should die, the same Lillie Ida Seltzer Ruelens to be Trustee over the estate as Trustee to revert and become Trustee for herself without bond, and a Trust Co. shall be selected by the same named. Gustav Shreiver Real Estate on Diamond below Broad to be amicable to both parties when chosen, Lillie Ida Seltzer Ruelens and my dear friend Gustav Shreiver.

I desire that the same Gustav Shreiver shall have given to him of my remaining balance of my Estate the sum of Five Thousand $5000.00 Dollars for his kindness and the warm friendship between us.

After the death of Mrs. Lillie Ida Selzt Seltzer Ruelens she can will what I have left to her to whom she pleases.

Witness this as my last will and testament this day in the presence of Master Harry Blackstone. burne Blackburne

Seal—

Witness

The Balance of my Estate which leaves ¼ of the whole, having bequeathed the other ¾ to Lillie Ida Seltzer Ruelens, I leave to my remaining nieces and nephews.

ALBERT ALLEN

Witness—Harry Blackburne.
John J. Gallagher

Codicilt to Will of Oct. 25, 1919.

Oct. 1919

If I should meet with an accident, fatal or transient, I Mr. Albert Allen being of sound and body,

should meet with accident and not able to be about, I appse appoint Gustav Shreiver my dear friend, Real Estate Business on Diamond Street to give to my respected step-daughter, Lillie Ida Seltzer Ruelens the sum of $200.00 two hundred per month until my recovery and to look after her interest and mine until I am able to go about and anything that she should need for her support or needs, that same sum of money stated herein $200.00 monthly shall be at the her disposal, and if I should die I have signed my name to the will of Oct. 1919 which is my wish to have fully fulfilled and that Lillie Ida Seltzer Ruelens shall have given to her from out of an all my personal and real estate, stocks, bonds, mortgages as per Will of Oct. 1919 the full three-fourths of the whole and full of my possessions.

Albert Allen Seal

Witness
Harry Blackburne.
John J. Gallagher

EXHIBIT C2.

Ledger sheets of Pleasantville Trust Co. showing account of Katherine and Frank Ailes. (Omitted.)

EXHIBITS C3a to C3g.

8 yellow ledger sheets of the Pleasantville Trust Co., showing the account of Albert Allen, beginning

October 6, 1925, and ending November 31, 1928. (Omitted.)

EXHIBIT C4.

Signature card, Pleasantville Trust Co., showing signature of Katherine Ailes and Frank Ailes, 703 N. Main Stret, 11-10-28. (Omitted.)

EXHIBIT C5.

Signature card, Pleasantville Trust Co., marked Frank Ailes or Catherine Ailes, showing account beginning October 25, 1928, with deposit of $2800; sundry withdrawals and deposits, account ending March 14, 1929, with balance of $131.29. (Omitted.)

EXHIBIT C6.

Ledger sheet, Pleasantville Trust Co., marked Frank P. Ailes or Catherine Ailes, opened November 10, 1928, with a credit of $1800.00; and showing balance on deposit as of January 18, 1929, of $4255.90; also sundry savings checks. (Omitted.)

EXHIBIT C7.

Check—Albert Allen to South Jersey Title & Finance Co., dated January 18th, 1928, for $2,000.00; drawn on Pleasantville Trust Company—Time Account.

EXHIBIT C8.

Check—Albert Allen to Trans. to check acct., dated 3/8/28 for $500.00; drawn on Pleasantville Trust Company Time Account.

EXHIBIT C9.

Check—Albert Allen to Dep. in Com. a/c, dated 3/17/28 for $500.00; drawn on Pleasantville Trust Company Time Account.

EXHIBIT C10.

Check—Albert Allen to Trans. to Check Acct., dated 5/11/28 for $500.00; drawn on Pleasantville Trust Company Time Account.

EXHIBIT C11.

Check—Albert Allen to Com. a/c, dated 8/7/28 for $300.00; drawn on Pleasantville Trust Company Time Account.

10

EXHIBIT C12.

Check—Albert Allen to Cash, dated Sept. 20, 1928, for $1500.00 drawn on Pleasantville Trust Company time Account.

20

EXHIBIT C13.

Check—Albert Allen to Com a/c, dated 10/17/28 for $3,000.00 drawn on Pleasantville Trust Company time Account.

30

EXHIBIT C14.

Check—Albert Allen to Cash, dated Oct. 22, 1928, for $800.00 drawn on Pleasantville Trust Company, Time Account.

EXHIBIT C15.

Check on Pleasantville Trust Company from Albert Allen to Kathryn Ailes for $2,000.00 dated October 22, 1928.

EXHIBIT C16.

Endorsement on same—marked "Deposit to the credit of Payee, Pleasantville Trust Company."

EXHIBIT C17.

Certificate of Katherine Booth.

October 25, 19281

I hereby certify that I nursed Mr. Albert Allen of Pleasantville, N. J. during his illness in the Winchester Memorial Hospital from Octo. 21st to Oct. 22 1928 at which time he died. I also hereby certify that I saw him sign two or three checks in my presence the amount of which I am not aware. These checks were presented to him for his signature by Mrs. Frank Ailes a lady who accompanied him to the hospital.

Signed Katherine Booth, R. N.
Winchester Virginia.

State of Virginia
County of Frederick, to-wit:

Personally appeared before me, in my office and State aforesaid, Katherine Booth, R. N. who says the foregoing statements are true and correct.

My commission expires June 22, 1931.

GIVEN under my hand and seal this 26th day of October 1928.

Maud J. Brown, N. P.
Winchester Memorial Hospital
Winchester, Virginia

Mr. Geo. R. Manning
Pleasantville, N. J.
Dear Mr. Manning,

I am herewith enclosing affidavit of nurse as requested in this case, I talked to the Surgeon who had charge of the case and while he did not see these checks signed he knew that they were to be signed by Mr. Allen. The nurse tells me that when the signature was made Mr. Allen was quite sick and Mrs. Ailes remarked about the poor signature. With the exception of the amount I believe everything is alright.

Very truly yours
J. E. Harris M. D. Bus. Mgr.
Winchester Memorial Hospital."

EXHIBIT C18.

Check, Albert Allen to Atlantic City Electric Co., dated October 16, 1928, for $9.00, drawn on Pleasantville Trust Company.

EXHIBIT C19.

Check, Albert Allen to Atlantic County Water Co., dated Oct. 15, 1928, for $12.05, drawn on Pleasantville Trust Company.

10

EXHIBIT C20.

Check, Albert Allen to F. L. Fenton, dated Oct. 16, 1928, for $6.96, drawn on Pleasantville Trust Company.

20

EXHIBIT C21.

Check, Albert Allen to Clark Adams, dated Oct. 16, 1928, for $8.15 drawn on Pleasantville Trust Company.

EXHIBIT C22.

30

Check, Albert Allen to South Jersey Title & Finance Company, dated Oct. 17, 1928, for $3,000.00 1st mortgage on Lyons Avenue property (Mr. Fritsch).

EXHIBIT C23.

Check, Albert Allen to Cash, dated Oct. 18, 1928, for $125.00 on Pleasantville Trust Company.

———

EXHIBIT C24.

Check, Albert Allen to Mrs. L. M. Wolfe, dated Oct. 22, 1928, for $40.00 on Pleasantville Trust Company.

———

EXHIBIT C25.

Check, Albert Allen to Dr. Montgomery, dated Oct. 22, 1928, for $15.00 on Pleasantville Trust Company.

———

EXHIBIT C26a.

Envelope containing the following letter, addressed to

Mrs. Hettie Weiss
President Ave.
Rutledge, Pa.

Postmarked:
Pleasantville, N. J.
October 28, 5 P. M. 1928

EXHIBIT C26.

Mrs. Frank Ailes
Reading Ave. and Shore Road.
Pleasantville, N. J.

Dear Hettie—

I want to thank you for your loving thought in sending Papie flowers—I know in spirit he appreciates every kindly thought. Well Hettie, I have lost a sincere friend and while at times—it seemed a tax—I miss him in every detail—for he was associated in the very bosom of our home for many years. Since 1919—But I feel I carried out the last wish to the end—and with the exception of a headstone I have done everything and I will take care of that in due time—for it was me that ordered the stone for his second wife—in fact there was nothing in the last years that he attempted without me we traveled together on business and pleasure—only last week he took a mortgage but I had to arrange to take him and watch up the papers. But its over and I feel the loss more than anyone shall ever knew for he was cheerful and lively and paid me the highest tribute—always interested in my welfare as well as my family and he looked with pleasure upon this last trip. We had even planned to close up the house part of the winter and stay in Washington. He loved Washington and then he was fond of my daughter who lived there.

I am coming to Phila later in the week and will try to call you up.

How is Tom? He looked good at the funeral. My

house is full just now and I am a wreck but hope after a little rest I will be all right again. But everything here is a reminder. The pipe he left behind, the napkin he used before we left.

Write to me. Hope you keep well—don't work too hard—Perhaps after I get myself together you could come down.

Lovingly,
Katie

I wish we could take lunch together in Phila. sometime.

EXHIBIT C40.

A. F. Daix & Son,
Law, Real Estate & Conveyancing
2318 Columbia Avenue
Philadelphia

April 16, 1928

Mr. Peter A. Cortsen
4311 Walnut Street
Philadelphia, Penna.
Dear Sir:

I represent Frank P. Ailes and Kathryn Ailes who hold a Bond and Mortgage in the principal sum of $10,000. secured on the premises 4311 Walnut Street Philadelphia. This bond and mortgage is in default in that there has been a failure to pay balance of interest due January 15, 1928.

I beg to advise you that under date of April 14, 1928 judgment was entered on the Bond and Mortgage, which judgment was entered in the Court of

Common Pleas No. 3, Philadelphia County, as of the March Term 1928, No. 9838 and it is my intention to proceed forthwith and issue execution against the said premises.

Very truly yours

AFD/C Augustus F. Daix, Jr.,"

Envelope accompanying foregoing letter postmarked Registered 307331.

EXHIBIT C41.

June 4, 1928.

Michael A. Maloney, Esq.,
1021 So. 60th Street
Philadelphia, Penna.

Dear Sir:

Below is amount necessary to satisfy mortgage and judgment on the bond, premises 4311 Walnut Street.

Principal,	$10,000.00
Balance of interest due January 13, 1928,	200.00
Interest from January 13 1928 to June 6, 1928	240.00
Attorney's fee,	150.00
Costs,	14.00
Total,	10,604.00

Very truly yours,

AFD/C Augustus F. Daix, Jr.

EXHIBIT C42.

EXEMPLIFICATION.

Philadelphia County
State of Pennsylvania Sct.

Among the records and proceedings of the Court of Common Pleas No. 3 for the County of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of Record, at No. 9838, March Term, 1928, to wit:

DOCKET ENTRIES.

Frank P. Ailes and
Kathryn Ailes his wife
vs.
Peter A. Cortsen and
Hilma C. Cortsen

A F Daix, Jr.
7-11-28
9838
By order of Plaintiff's Attorney
filed, this Judgment is
satisfied.
Paid $1.00 7-11-28
Trefz Pro. Prothy.
Judgment on B & W of atty dated 7/15/26 for $20,000 within 1 year from date on installments with int. costs 3% coll waiving inq and exempt.
April 14, 1928—Judgment.
Certified from the record this 7th day of June A. D. 1929

(Seal)

J. A. Ryan
Pro Prothy

EXHIBIT C43.

A F Daix & Son
Law, Real estate, Conveyancing,
Insurance
2318 Columbia Avenue
Philadelphia 192

Received of Augustus F. Daix, Jr. Check for Ten thousand Four hundred forty dollars being principal, interest to June 4, 1928 on mortgage secured upon premises 4311 Walnut Street, Philadelphia, Penna.

Kathryn Ailes
Frank P. Ailes.

EXHIBIT C44.

Entries from page 49 of personal ledger of A. F. Daix, Jr., entitled, "Estate of Albert Allen, deceased.

EXHIBIT C45.

Check, drawn on Northwestern Trust Company, Mrs. Kathryn Ailes, P. of Atty. to Cash, $17.00, dated Feb. 24, 1923, at Philadelphia, Pa.

EXHIBIT C46.

Check, drawn on Northwestern Trust Company, Mrs. Kathryn Ailes, P. of Atty. to Mildred Ailes, $50.00, dated Mar. 1, 1923, at Philadelphia, Pa.

10

EXHIBIT C47.

Check, drawn on Northwestern Trust Company, Mrs. Kathryn Ailes, P. of Atty. to Rosser B. Fleming $28.97, for two cord tires, dated May 5, 1923, at Philadelphia, Pa.

20

EXHIBIT C48.

Check, drawn on Broad Street Bank, Albert Allen to Mrs. K. Ailes, $178.00, dated Feb. 28, 1920, at Philadelphia, Pa.

EXHIBIT C49.

30

Check, drawn on Pleasantville Trust Company of Pleasantville, N. J. Albert Allen to Mildred E. Fleming, $15.00, dated July 21, 1921, at Pleasantville, N. J.

EXHIBIT C4a.

Small photograph of Albert Allen. (Printed on page 1004.)

EXHIBIT C5a.

The New Willard,
Washington, D. C.

Capitol Hotel Company,
Frank S. Hight, Manager.

Dear Lil—

Well here I am in this great beautiful city of Washington and I never struck a place I like as well—great opportunity for money making—like it well enough to place all my interests here and if I can shape up my things may make this my home. Stopped over in Baltimore and I did a little business there and going back there after I leave here.

I wish your business would boom up so you could get around and live better again. You are in a rut —it is better sometimes to pull up stakes and try luck somewhere else. This is a great place everything pretty, even the *chickens*. All I can do to keep from stealing one.

With the right start you could make things hum —many opportunities.

Pop

EXHIBIT C6a.

Envelope.

The New Willard
Washington, D. D.

Mrs. Lillie Seltzer
1917 Dauphin St.
Phila. Pa.

Post mark:
Washington, D. C.
Nov 7
1 P. M.
1921

EXHIBIT C7a.

Alamac Hotel
Mack Latz Co.
Atlantic City, N. J.

Dear Lil:

Hunt as I may can't find any Bower's Mead—better get a hustle or you'll be lost in shuffle.

Will be up early next week and have some one look at the pavement as soon as I get things settled here. Am planning to go to Miami barrels of money to be made there—just bought a new car and having the time of my life.

Enclosed see circular of my interests there.

Yours,

Pop

EXHIBIT C8a.

Envelope

Alamac Hotel
Mack Latz Co.
Atlantic City, N. J.

Mrs. L. Seltzer
1917 W. Dauphin
Phila. Pa.

Postmark:
Atlantic City
May 6
10 PM
1922
N. J.

EXHIBIT C9a.

Postcard.

To: Mrs. Lillie Seltzer
1917 W. Dauphin St.
Philadelphia, Pa.

St. Petersburg:

Came down and spend part of the winter here—Can't stand the cold weather but this hotel life and comforts suits me now as the years come upon me but I feel like a boy at heart.

Pop Allen

Postmark
St. Petersburg
Jan 28
9:30 A. M.
1928
Fla.

EXHIBIT C10a.

Hotel Strand,
Atlantic City.

Dear Lillie:

My expenses are eating up my income Hot salt Baths—doctors, etc—make me short so cannot help you out on the $50.00. It is quite likely Anna or Harris can help you out. Munty is young and can hustle like I did and foot your expenses.

Yours truly

Pop

EXHIBIT C11a.

Envelope.

Hotel Strand,
Atlantic City.

Mrs. Lillie Seltzer
1917 Dauphin
Phila, Pa.

Postmark:

Atlantic City
Dec. 6
1 PM
1921
N. J.

EXHIBIT C1 of 11/20/29.

Calf bound day book of Albert Allen.

EXHIBIT C2 of 11/20/29.

Hotel Strand, Atlantic City.

Dear Lillie

I have been verry sick and had to come down here for my health I am little better and do not know when I will come home I eat my dinner with my friend at your friend place about a week ago but did not see any of your sign at Mr. Swoyer Place. As soon as I can I will make Atlantic my home the weather is so fine and I take a hot salt water bath every day and they do me so much good My lawyer is down here and I am going to make my will as I have two witness Hopeing you are well and the mead is doing fine

I remain yours truly,

ALBERT ALLEN

EXHIBIT C2 of 11/20/29.

Envelope.

Hotel Strand
Atlantic City

Mrs. Lillie Seltzer
1917 Dauphen St.
Phila.

Postmark
Atlantic City,
December 8
10 M
1921
N. J.

———

EXHIBIT C3 of 11/20/29.

Check on West Philadelphia Title and Trust Company, February 5, 1923, to the order of Albert Allen, $1800.00, signed, Harris L. Shumway.

———

EXHIBIT C4 of 11/20/29.

Dear Mrs. Seltzer:—

The correct address of our home is 730 N. Main

St. or S. E. Cor. Reading and N. Main St. Pop received the check O. K. but forgot to mail it.

Yours truly,

Kathryn Ailes

May 15/28

EXHIBIT C5 of 11/20/29.

Ledger of Albert Allen

EXHIBIT C6 of 11/20/29.

Second Ledger of Albert Allen.

EXHIBIT C7.

Nov. 20/29 M.

Jan 17, 1923

When I am stiff and dead I will leave Katie Ailes wife of Frank Ailes all my clothes—all furniture also all lots on Leeds Ave. Pleasantville, N. J. clear of any encumbrance also will give her my Northwestern Stock which she is never to part with as that will keep her very fine—also will cancel mortgage on her property 4311 Walnut St.—also will leave her $50,000 in first class securities. And at my death she shall take charge of my remains also has full access to my safe—combination 3 times to

30—reverse to 70 again to 70—also all my Phila. Electric stock.

Albert Allen

Witnesses:
John A. Boger, M. D.
Mary Eichellenger

EXHIBIT C8 of 11/20/29.

New Year's Day 1927

Dear Mrs. Seltzer:—

Your Xmas box arrived safely and I want to thank you for your kindly thought. The gloves were lovely and fit perfectly.

You have probably seen "Pop" and he has told you that both your's and Anna's gifts were lovely and fitted splendidly. He went to town yesterday but was uncertain as to his plans so you may or may not see him, however I wanted you to know the gifts were received, and that I appreciated mine.

New Year's Greetings—and may 1927 bring joy and happiness—is the

Sincere Wish of

Kathryn Ailes

EXHIBIT C17.
July 25/29.

Received of Albert Allen am't in full to date for board.

Kathryn Ailes

Aug. 27/24

EXHIBIT P1.

24 Deposit Slips of Albert Allen
in
Pleasantville Trust Company
of Pleasantville,
N. J.

July 16, 1928	$85.00
July 21, 1928	60.00
July 23, 192	90.00
July 28	45.00
Aug 13, 1928	30.00
Aug 21, 1928	60.00
Aug 23, 1928	36.00
Aug 10th 1928	242.29
July 2, 1928	108.00
June 19, 1928	500.00
June 16, 1928	42.75
June 13, 1928	40.00
June 1928	45.00
May 4	90.00
April 23, 1928	60.00

April 21, 192	132.00
April 15, 1928	85.35
March 27, 192	48.00
March 9, 1928	75.00
Feb. 23, 1928	94.41
Jan. 10, 1928	150.00
Jan. 20, 1928	1566.67
Sep. 6, 1928	75.00
Oct. 16, 1928	50.00

EXHIBIT P1½.

I, Albert Allen, now residing at 730 North Main Street, Pleasantville, New Jersey. Being of sound and disposing mind, memory, and understanding, do make and publish this as my last Will and Testament hereby revoking all other Wills by me made at any time heretofore.

First: I direct that all my just debts and funeral expenses shall be paid by my executrix hereinafter named as soon as the same conveniently can be after my decease.

Second: All my Estate, real, personal or of whatsoever kind, and wheresoever situate, I give, devise and bequeath absolutely unto my friend, Kathryn Ailes, her heirs and assigns forever.

Lastly: I nominate, constitute and appoint my said friend, Kathryn Ailes, to be the sole executrix of this my last Will and Testament.

IN WITNESS WHEREOF I, the said Albert Allen, have hereunto set my hand and seal this Seventh day of September A. D. 1928.

Albert Allen (SEAL)

Signed, sealed, published and declared by the above named Testator, as and for his last Will and Testament in our presence, who, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

Augustus F. Daix Jr
Maude C Haines
John A. Boger, M. D.

ATLANTIC COUNTY SURROGATE'S COURT

In the matter of the
Estate of
ALBERT ALLEN,
Deceased.

Copy of
ALLEGED WILL.

EXHIBIT P50.
7/22/29

Card No.....

NAME Albert Allen
Address City

3-CE

Old Balance	Date		Checks	Date	Deposits	Date	New Balance
			Am't Brought Forward				
473.21	Dec	27 '27	10.00—	Dec 27	142.00	Dec 27 '27	473.21*
615.21	Dec	29 '27	7.64—			Dec 29 '27	615.21*
607.57	Jan	3 '28	49.50—	Jan 3 '28		Jan 3 '28	558.07*
558.07	Jan	4 '28	5.00—	Jan 4 '28		Jan 4 '28	553.07*
553.07	Jan	6 '28	3.00—	Jan 6 '28		Jan 6 '28	550.07*
550.07	Jan	9 '28	30.91—	Jan 9 '28		Jan 9 '28	519.16*
519.16	Jan	10 '28	4.50—	Jan 10 '28		Jan 10 '28	514.66*
514.66				Jan 10 '28	150.00	Jan 10 '28	664.66*

664.66	Jan	11 '28	5.00—			Jan	11 '28		Jan	11 '28	659.66*
659.66						Jan	12 '28	1,000.00	Jan	12 '28	1,659.66*
1,659.66	Jan	12 '28	980.00—			Jan	12 '28		Jan	12 '28	679.66*
679.66	Jan	13 '28	150.00—			Jan	13 '28		Jan	13 '28	529.66*
529.66	Jan	14 '28	5.00—			Jan	14 '28		Jan	14 '28	524.66*
524.66	Jan	18 '28	20.75—	40.75—	33.95—	Jan	18 '28		Jan	18 '28	429.21*
429.21	Jan	20 '28	5.00—			Jan	20 '28	1,566.67	Jan	20 .28	1,990.88*
1,990.88	Jan	20 '28	6.38—			Jan	20 '28		Jan	20 '28	1,984.50*
1,984.50	Jan	21 '28	5.42—			Jan	21 '28		Jan	21 '28	1,979.08*
1,979.08	Jan	21 '28	5.92—			Jan	21 '28		Jan	21 '28	1,973.16*
1,973.16						Jan	23 '28	108.00	Jan	23 '28	2,081.16*
2,081.16	Jan	23 '28	285.00—			Jan	23 '28		Jan	23 '28	1,796.16*
1,796.16	Jan	24 '28	443.00—	2.75		Jan	24 '28		Jan	24 '28	1,350.41*
1,350.41	Jan	24 '28	500.00—			Jan	24 '28		Jan	24 '28	850.41*
850.41	Feb	20 '28	59.50—			Feb	20 '28		Feb	20 '28	790.91*
790.91	Feb	21 '28	15.00—			Feb	21 '28		Feb	21 '28	775.91*
775.91	Feb	23 '28	5.00—			Feb	23 '28	94.41	Feb	23 '28	865.32*
865.32	Feb	24 '28	845.00—			Feb	24 '28		Feb	24 '28	20.32*
20.32	Feb	28 '28	500.00—						Feb	28 '28	479.68*

479.68	Mar 5 '28	5.00—		Mar 5 '28		Mar 5 '28	484.680D
484.68				Mar 8 '28	500.00	Mar 8 '28	15.32*
15.32				Mar 9 '28	75.00	Mar 12 '28	90.32*
90.32	Mar 12 '28	5.00—		Mar 12 '28		Mar 12 '28	85.32*
85.32	Mar 13 '28	24.03—		Mar 13 '28		Mar 13 '28	61.29*
61.29	Mar 14 '28	5.00—		Mar 14 '28		Mar 14 '28	56.29*
56.29	Mar 15 '28	290.62—		Mar 15 '28		Mar 15 '28	234.330D
234.33	Mar 16 '28	2.37—		Mar 16 '28		Mar 16 '28	236.700D
236.70	Mar 17 '28	5.00—		Mar 17 '28		Mar 17 '28	241.700D
241.70				Mar 17 '28	500.00	Mar 17 '28	258.30*
258.30	Mar 19 '28	2.20—				Mar 19 '28	256.10*

Card No.....

Name Albert Allen
Address City

Old Balance	Date	Checks	Date	Deposits	Date	New Balance
		Amount Brought Forward				
			Mar 20 '28	1,025.00	Mar 20 '28	1,281.10*
256.10						
1,281.10	Mar 21 '28	5.32—	Mar 21 '28		Mar 21 '28	1,275.78*
1,275.78	Mar 23 '28	10.00—	Mar 23 '28		Mar 23 '28	1,265.78*

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		30		20		10	
1,265.78	Mar 26 '28	35.50—	500.00	Mar 26 '28		Mar 26 '28	730.28*
730.28	Mar 29 '28	33.25—		Mar 29 '28		Mar 29 '28	697.03*
697.03	Mar 30 '28	5.00—		Mar 30 '28	48.00	Mar 30 '28	740.03*
740.03	Apr 4 '28	10.00—		Apr 4 '28		Apr 4 '28	730.03*
730.03	Apr 7 '28	42.50—		Apr 7 '28		Apr 7 '28	687.53*
687.53	Apr 9 '28	458.50—		Apr 9 '28		Apr 9 '28	229.03*
229.03	Apr 9 '28	10.00—		Apr 9 '28		Apr 9 '28	219.03*
219.03	Apr 11 '28	4.76—		Apr 11 '28		Apr 11 '28	214.27*
214.27	Apr 11 '28	12.32—		Apr 11 '28		Apr 11 '28	201.95*
201.95	Apr 12 '28	10.00—		Apr 12 '28		Apr 12 '28	191.95*
191.95				Apr 16 '28	85.35	Apr 16 '28	277.30*
277.30	Apr 17 '28	10.00—		Apr 17 '28		Apr 17 '28	267.30*
267.30	Apr 21 '28	4.33—		Apr 21 '28	132.00	Apr 21 '28	394.97*
394.97	Apr 23 '28	10.00—		Apr 23 '28	60.00	Apr 23 '28	444.97*
444.97	Apr 26 '28	26.55—				Apr 26 '28	418.42*
418.42	Apr 27 '28	475.00—		Apr 27 '28		Apr 27 '28	56.580D
56.58	Apr 30 '28	5.00—				Apr 30 '28	61.580D
61.58	May 1 '28	10.00—				May 1 '28	71.580D
71.58	May 2 '28	1.60—		May 2 '28		May 2 '28	73.180D

73.18				May 4 '28	90.00	May 4 '28	16.82*
16.82	May 5 '28	3.85—		May 5 '28		May 5 '28	12.97*
12.97	May 5 '28	10.00—		May 5 '28		May 5 '28	2.97*
2.97	May 8 '28	5.00—		May 8 '28		May 8 '28	2.030D
2.03	May 9 '28	12.91—				May 9 '28	14.840D
14.84	May 9 '28	10.00—	3.40	May 9 '28		May 9 '28	28.240D
28.24				May 11 '28	500.00	May 11 '28	471.76*
471.76	May 12 '28	3.50—		May 12 '28		May 12 '28	468.26*
468.26	May 14 '28	5.00—		May 14 '28		May 14 '28	463.26*
463.26	May 15 '28	310.00—		May 15 '28		May 15 '28	153.26*
153.26	May 15 '28	5.00—		May 15 '28		May 15 '28	148.26*

Card No..... Name Albert Allen
Address City

3-C-F

Old Balance	Date	Checks		Date	Deposits	Date	New Balance
		Amount Brought Forward					
148.26	May 18 '28	2.60—		May 18 '28		May 18 '28	156.66*
145.66	May 19 '28	4.51—	4.04	May 19 '28		May 19 '28	137.11*

		30		20		10	
137.11	May 21 '28	8.90—		May 21 '28		May 21 '28	128.21*
128.21	May 24 '28	5.00—		May 24 '28		May 24 '28	123.21*
123.21	May 25 '28	5.00—		May 25 '28		May 25 '28	118.21*
118.21	May 26 '28	5.10—		May 26 '28		May 26 '28	113.11*
113.11	May 28 '28	10.00—		May 28 '28		May 28 '28	103.11*
103.11	May 29 '28	4.75—		May 29 '28		May 29 '28	98.36*
98.36	May 31 '28	60.00—		May 31 '28		May 31 '28	38.36*
38.36	Jun 2 '28	5.00—		Jun 2 '28		Jun 2 '28	33.36*
33.36	Jun 4 '28	5.00—		Jun 4 '28		Jun 4 '28	28.36*
28.36	Jun 6 '28	5.00—		Jun 6 '28		Jun 6 '28	23.36*
23.36	Jun 8 '28	6.99—		Jun 8 '28		Jun 8 '28	16.37*
16.37	Jun 9 '28	25.00—		Jun 9 '28		Jun 9 '28	8.630D
8.63	Jun 11 '28	2.50—	5.00	Jun 11 '28	50.00	Jun 11 '28	33.87*
33.87	Jun 12 '28	5.00—		Jun 12 '28	45.00	Jun 12 '28	73.87*
73.87				Jun 13 '28	40.00	Jun 13 '28	113.87*
113.87	Jun 16 '28	4.95—	4.95	Jun 16 '28	42.75	Jun 16 '28	146.72*
146.72	Jun 19 '28	10.00—		Jun 19 '28	500.00	Jun 19 '28	636.72*
636.72				Jun 21 '28	600.00	Jun 21 '28	1,236.72*
1,236.72	Jun 27 '28	50.00—		Jun 27 '28		Jun 27 '28	1,186.72*

1,186.72	Jun	28 '28	5.39—			Jun	28 '28		Jun	28 '28	1,181.33*
1,181.33	Jun	29 '28	3.31—			Jun	29 '28	115.00	Jun	29 '28	1,293.02*
1,293.02	Jul	2 '28	2.14—			Jul	2 '28	108.00	Jul	2 '28	1,398.88*
1,398.88	Jul	3 '28	63.79—	194.46—	5.48—	Jul	3 '28		Jul	3 '28	1,135.15*
1,135.15	Jul	6 '28	6.22—	8.50—		Jul	6 '28		Jul	6 '28	1,120.43*
1,120.43	Jul	9 '28	2.50—	25.00—	100.00—	Jul	9 '28		Jul	9 '28	992.93*
992.93	Jul	12 '28	81.00—			Jul	12 '28		Jul	12 '28	911.93*
911.93	Jul	16 '28	7.50—	2.05—		Jul	16 '28	85.00	Jul	16 '28	987.38*
987.38	Jul	19 '28	5.00—			Jul	19 '28		Jul	19 '28	982.38*
982.38	Jul	20 '28	3.00—	7.04—		Jul	20 '28		Jul	20 '28	972.34*
972.34	Jul	20 '28	2.92—			Jul	20 '28		Jul	20 '28	969.42*
969.42	Jul					Jul	21 '28	60.00	Jul	21 '28	1,029.42*
1,029.42						Jul	23 '28	90.00	Jul	23 '28	1,119.42*
1,119.42	Jul	26 '28	5.00—			Jul	26 '28		Jul	26 '28	1,114.42*
1,114.42	Jul	27 '28	2.79—			Jul	27 '28		Jul	27 '28	1,111.63*
1,111.63						Jul	28 '28	45.00	Jul	28 '28	1,156.63*
1,156.63	Aug	3 '28	113.40—	175.00—	4.60—	Aug	3 '28		Aug	3 '28	863.63*
863.63	Aug	4 '28	17.00—			Aug	4 '28		Aug	4 '28	846.63*
846.63	Aug	6 '28	4.80—			Aug	6 '28		Aug	6 '28	841.83*

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841.83	Aug 7 '28	15.21—	3.05—	5.00—	Aug 7 '28	325.00	Aug 7 '28	1,143.57*
1,143.57	Aug 8 '28	1,125.00—			Aug 8 '28		Aug 8 '28	18.57*

Card No.....

Name Albert Allen
Address City

3-C-F

Old Balance	Date	Checks	Date	Deposits	Date	New Balance
		Amount Brought Forward				
18.57	Aug 10 '28	21.58—	Aug 10 '28		Aug 10 '28	3.010D
3.01	Aug 10 '28	23.25—	Aug 10 '28		Aug 10 '28	26.260D
26.26	Aug 11 '28	5.20—	Aug 11 '28		Aug 11 '28	31.460D
31.46	Aug 11 '28	21.00—	Aug 11 '28		Aug 11 '28	52.460D
52.46	Aug 11 '28	10.00—	Aug 11 '28		Aug 11 '28	62.460D
62.46	Aug 11 '28		Aug 11 '28	242.29	Aug 11 '28	179.83*
179.83	Aug 13 '28	3.65—	Aug 13 '28		Aug 13 '28	176.18*
176.18			Aug 13 '28	30.00	Aug 13 '28	206.18*
206.18	Aug 13 '28	20.00—	Aug 13 '28		Aug 13 '28	186.18*
186.18	Aug 17 '28	2.45—	Aug 17 '28		Aug 17 '28	183.73*
183.73	Aug 17 '28		Aug 17 '28	47.50	Aug 17 '28	231.23*

231.23	Aug 18 '28	8.36—			Aug 18 '28		Aug 18 '28	222.87*
222.87	Aug 18 '28	2.60—			Aug 18 '28		Aug 18 '28	220.27*
220.27	Aug 18 '28	2.50—			Aug 18 '28		Aug 18 '28	217.77*
217.77	Aug 21 '28	10.00—			Aug 21 '28		Aug 21 '28	207.77*
207.77					Aug 21 '28	60.00	Aug 21 '28	267.77*
267.77					Aug 23 '28	36.00	Aug 23 '28	303.77*
303.77	Aug 25 '28	8.60—			Aug 25 '28		Aug 25 '28	295.17*
295.17	Aug 25 '28	20.00—	50.00—		Aug 25 '28	78.00	Aug 25 '28	303.17*
303.17	Aug 27 '28	4.28—			Aug 27 '28		Aug 27 '28	298.89*
298.89	Aug 29 '28	16.50—	36.00—		Aug 29 '28		Aug 29 '28	246.39*
246.39	Aug 31 '28	18.60—	23.50—460.	—	Aug 31 '28		Aug 31 '28	255.71*
255.71	Sep 1 '28	2.30—			Sep 1 '28		Sep 1 '28	258.01*
258.01	Sep 5 '28	5.67—			Sep 5 '28		Sep 5 '28	263.680D
263.68	Sep 6 '28				Sep 6 '28	75.00	Sep 6 '28	188.680D
188.68	Sep 10 '28				Sep 10 '28	33.00	Sep 10 '28	155.680D

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Card No..... NAME Albert Allen
Address City

Old Balance	Date			Checks		Date	Deposits	Date	New Balance
				Amount Brought Forward					
155.68	Sep	11 '28	2,000.00—			Sep 11 '28		Sep 11 '28	2,155.680D
2,155.68—						Sep 11 '28	1,484.00	Sep 11 '28	671.680D
676.68	Sep	12 '28	25.00—			Sep 12 '28		Sep 12 '28	696.680D
696.68	Sep	14 '28	600.00—			Sep 14 '28		Sep 14 '28	1,296.680D
1,296.68	Sep	18 '28	2.20—			Sep 18 '28		Sep 18 '28	1,298.880D
1,298.88	Sep	19 '28	21.00—			Sep 19 '28		Sep 19 '28	1,319.880D
1,319.88						Sep 20 '28	1,500.00	Sep 20 '28	180.12*
180.12	Sep	24 '28	8.47—			Sep 24 '28		Sep 24 '28	171.65*
171.65	Sep	25 '28	3.48—			Sep 25 '28		Sep 25 '28	168.17*
168.17	Sep	28 '28	4.50—			Sep 28 '28		Sep 28 '28	163.67*
163.67	Sep	29 '28	160.50—			Sep 29 '28		Sep 29 '28	3.17*
3.17						Sep 29 '28	1,000.00	Sep 29 '28	1,003.17*
1,003.17	Oct	1 '28	128.50—	14.40—	3.78				
	Oct	1 '28	79.00—			Oct 1 '28		Oct 1 '28	777.49*

777.49	Oct	2 '28	15.00—			Oct	2 '28		Oct	2 '28	762.49*
762.49						Oct	3 '28	75.00	Oct	3 '28	837.49*
837.49	Oct	4 '28	8.00—			Oct	4 '28		Oct	4 '28	829.49*
829.49	Oct	9 '28	4.60—	15.00—		Oct	9 '28		Oct	9 '28	809.89*
809.89	Oct	10 '28	7.98—			Oct	10 '28		Oct	10 '28	801.91*
801.91	Oct	11 '28	25.00—			Oct	11 '28		Oct	11 '28	776.91*
776.91	Oct	15 '28	50.00—	111.00—		Oct	15 '28		Oct	15 '28	615.91*
615.91	Oct	15 '28	6.00—			Oct	15 '28		Oct	15 '28	609.91*
609.91	Oct	15 '28	50.00—			Oct	15 '28		Oct	15 '28	559.91*
559.91	Oct	16 '28	15.50—			Oct	16 '28		Oct	16 '28	544.41*
544.41	Oct	16 '28				Oct	16 '28	50.00	Oct	16 '28	594.41*
594.41	Oct	16 '28	189.00—	3.99—		Oct	16 '28		Oct	16 '28	401.42*
401.42						Oct	17 '28	3,000.00	Oct	17 '28	3,401.42*
3,401.42	Oct	18 '28	9.02—			Oct	18 '28		Oct	18 '28	3,392.40*
3,392.40	Oct	19 '28	125.00—	3,000.00—	12.05—	Oct	19 '28		Oct	19 '28	255.35*
255.35	Oct	22 '28	6.96—	8.15—		Oct	22 '28		Oct	22 '28	240.24*
240.24	Oct	26 '28	40.00—			Oct	26 '28		Oct	26 '28	200.24*
200.24	Nov	3 '28	15.00—			Nov	3 '28		Nov	3 '28	185.24*

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EXHIBIT P51.

Letter from Mrs. Lillie Ida Ruelens to Albert Allen, headed "Philadelphia, Wednesday."

EXHIBIT P52.

Sheet of paper marked "continued Thursday, P. M.," and signed, "Lillie."

EXHIBIT P53.

Paper addressed "My dear Mrs. Ailes" and dated May 14, 1928.

EXHIBIT P1A.

See Robinson
Go to Bank
Get mortgage of Carters to pay off
See Roof at 1917 Dauphen St.
See Daix
See about Lot
S. E. cor Lot 781 Ludlam Ave.
& Pleasure Ave. Sea Isle City, N. J.
Take 5 shares of Pleasantville Trust Company

and put in my Box in the
Northwestern Trust Company envelope
get shave

EXHIBIT P2A.

Check on Northwestern Trust Co. by Daix and Sons to Frank & Kathryn Ailes for $10,440.00 dated June 12, 1928.

EXHIBIT P3A.

S E A S O N O F 1925
A TRIP TO CALIFORNIA
Souvenir List of Members of California
Tour Number Twelve, February
Fourth Nineteen Twenty
Five
via GRAND CANYON
R A Y M O N D & W H I T C O M B C O.
165 Tremont Street.....Boston, Mass.
225 Fifth Avenue)
)..... New York, N. Y.
606 Fifth Avenue)
1338 Walnut Street.....Philadelphia, Pa.
72 East Jackson Blvd.....Chicago, Ill.

In Charge
Mr. FRED F. CROWSON
AILES, MRS. KATHRYN
ALLEN, MR. ALBERT
BAILEY, MR. W. H.
BAILEY, MRS. W. H.
BESSE, MRS. CARRIE
BOYCE, MRS. JOHN H.
BOYCE, MISS DOROTHY
CHAFFEE, MR. FRED K.
CHAFFEE, MRS. FRED K.
DE PAZZI, MRS. FLORENCE A.
GRIFFIN, MR. EDWARD S.
GRIFFIN, MRS. EDWARD S.
HALBERSTADT, MR. JOSEPH W.
HALBERSTADT, MRS. JOSEPH W.
LYLE, MRS. SIMPSON A.
MITCHELL, MRS. MARION
MITCHELL, MASTER WILLARD
ROMAINE, MISS AGNES B.
SCHMIDT, MR. CARL P.
SCHMIDT, MRS. CARL P.
SMITH, MRS. BENJAMIN A.
THOMPSON, Mrs. R. H.

R A Y M O N D & W H I T C O M B C O.

Executive Offices
Raymond Building
Beacon and Park Streets
Boston, Mass.

CALIFORNIA OFFICES

Los Angeles
458 So. Spring Street (Room 515)
Mr. James Robinson

SAN FRANCISCO

657 Market Street
Mr. Lincoln S. Wilson.

EXHIBIT P12A.

Check, Albert Allen to Kathryn Ailes, $500.00— March 24, 1928, Pleasantville Trust Company.

EXHIBIT P13A.

Check Kathryn Ailes to Albert Allen $500.00—June 18, 1928. First National Bank of Pleasantville.

EXHIBIT P14A.

Check, Albert Allen to Kathryn Ailes $2000.00 dated Sept. 10, 1928. Pleasantville, Trust Co.

EXHIBIT P15A.

Check, Kathryn Ailes to Albert Allen ($2000.00?) Sept. 10, 1928. Pleasantville Trust Co.

EXHIBIT P16A.

Check, Kathryn Ailes to Albert Allen, $1484.00 dated September 10, 1928. First National Bank of Pleasantville.

EXHIBIT P1.
Nov 20/29-M.

All checks drawn on Pleasantville Trust Company of Pleasantville, N. J.

1/ 4/28	Albert Allen to Kathryn Ailes	$33.95
1/11/28	Albert Allen to Frank Tourist Company	150.00
1/19/28	Albert Allen to Frank Tourist Company	443.00
1/17/28	Albert Allen to Atlantic Gas Co.	5.92
1/17/28	Albert Allen to Atlantic City Electric Co.	6.38
2/21/28	Albert Allen to Cash	15.00

3/ 9/28	Albert Allen to Wm. L. Anderson	24.03
3/15/28	Albert Allen to R. Way Laundray	2.20
3/17/28	Albert Allen to Atlantic City Gas Co.	5.32
3/29/28	Albert Allen to Bogatin Bro.	33.25
4/ 9/28	Albert Allen to Atlantic Co. Water Co.	4.76
4/23/28	Albert Allen to W. B. Etris	26.55
5/ 3/28	Albert Allen to Turner & Adams	3.85
5/ 3/28	Albert Allen to Charles Theilacker	3.40
5/ 4/28	Albert Allen to Cash	10.00
5/ 5/28	Albert Allen to M. E. Blatt & Co.	12.81
5/ 8/28	Albert Allen to Cash	5.00
5/12/28	Albert Allen to Eastern Hardware & Supply Co.	310.00
5/17/28	Albert Allen to F. S. Fenton	8.90
5/17/28	Albert Allen to Atlantic City Electric Co.	4.51
5/17/28	Albert Allen to Atlantic City Gas Co.	4.04
5/25/28	Albert Allen to Cash	4.75
5/25/28	Albert Allen to A. L. Confer	5.10
6/ 2/28	Albert Allen to Kathryn Ailes	5.00
6/ 6/28	Albert Allen to Park Furniture Co.	6.99
6/ 9/28	Albert Allen to Roser Bro.	25.00
6/ 9/28	Albert Allen to A. L. Confer	2.50
6/13/28	Albert Allen to M. E. Blatt & Co.	4.95
6/13/28	Albert Allen to M. E. Blatt & Co.	4.95
6/13/28	Albert Allen to Atlantic City Gas Co.	3.31
6/23/28	Albert Allen to Atlantic City Electric Co.	5.39

6/27/28	Albert Allen to Marvin R. Martin, Collector of Taxes	5.48
7/ 5/28	Albert Allen to Atlantic County Water Co.	6.22
7/ 5/28	Albert Allen to Bogatin	8.50
7/ 6/28	Albert Allen to Bogatin	2.50
7/10/28	Albert Allen to Strawbridge & Clothier	81.00
7/13/28	Albert Allen to John Wanamaker	7.50
7/13/28	Albert Allen to Strawbridge & Clothier	2.05
7/19/28	Albert Allen to Atlantic City Electric Co.	7.04
7/19/28	Albert Allen to Atlantic City Gas Co.	2.92
7/19/28	Albert Allen to R. Way Laundry	3.00
7/20/28	Albert Allen to James Soehle	4.80
7/24/28	Albert Allen to Strawbridge & Clothier	2.79
7/31/28	Albert Allen to M. E. Blatt Co.	175.00
8/ 1/28	Albert Allen to Henry D. Conover	113.40
8/ 2/28	Albert Allen to Confer	4.60
8/ 2/28	Albert Allen to D. Lang	17.00
8/ 3/28	Albert Allen to Lit Bro.	15.21
8/ 5/28	Albert Allen to Marvin R. Martin	3.65
8/ 6/28	Albert Allen to J. C. Brown	3.05
8/ 7/28	Albert Allen to M. E. Blatt Co.	21.58
8/ 7/28	Albert Allen to F. S. Fenton	5.20
8/ 8/28	Albert Allen to W. B. Etris & Co.	23.25
8/13/28	Albert Allen to Jans	20.00
8/14/28	Albert Allen to R. Way Laundry	2.45
8/17/28	Albert Allen to Mrs. Sarah Matthews	2.20

8/17/28	Albert Allen to Atlantic City Electric Company	8.36
8/17/28	Albert Allen to Atlantic City Gas Co.	2.60
8/24/28	Albert Allen to Cash	50.00
8/29/28	Albert Allen to Strawbridge & Clothier	23.50
8/29/28	Albert Allen to Strawbridge & Clothier	18.60
8/30/28	Albert Allen to R Way Laundry	2.30
9/ 4/28	Albert Allen to A. L. Confer	5.67
9/22/28	Albert Allen to Atlantic City Electric Co.	8.47
9/22/28	Albert Allen to Atlantic City Gas Co.	3.48
9/24/28	Albert Allen to A. L. Confer	4.50
9/24/28	Albert Allen to Kathryn Ailes	15.00
9/27/28	Albert Allen to Strawbridge & Clothier	79.00
9/28/28	Albert Allen to Strawbridge & Clothier	14.40
10/ 3/28	Albert Allen to Chas. Jans	8.00
10/11/28	Albert Allen to L. R. Kampes	15.50
10/15/28	Albert Allen to Jane Stewart Ewan	6.00
6/11/28	Albert Allen to Chas. Jans	62.00
6/11/28	Albert Allen to Cash	50.00

EXHIBIT P2.
Nov 20/29-M.

All checks drawn on Pleasantville Trust Company, Pleasantville, N. J.

10	10/15/28	Albert Allen to Cash	$50.00
	4/28/28	Albert Allen to A. L. Confer	5.00
	5/ 1/28	Albert Allen to A. L. Confer	1.60
	5/15/28	Albert Allen to A. L. Confer	2.60
	3/ 5/	Albert Allen to A. Allen	5.00
	1/16/28	Albert Allen to Albert Allen	5.00
	3/12/	Albert Allen to Albert Allen	5.00
	3/14	Albert Allen to Albert Allen	5.00
	3/17	Albert Allen to A. Allen	5.00
	3/30	Albert Allen to A. Allen	5.00
20	4/ 1	Albert Allen to Albert Allen	10.00
	4/ 4	Albert Allen to Albert Allen	10.00
	7/19	Albert Allen to Albert Allen	5.00
	8/11/28	Albert Allen to Albert Allen	10.00
	9/12	Albert Allen to Albert Allen	25.00
	10/ 8/28	Albert Allen to Albert Allen	15.00
	8/21/28	Albert Allen to A. Allen	10.00

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30 EXHIBIT P3.
Nov 20/29-M.

All checks drawn on Pleasantville Trust Company, of Pleasantville, N. J.

11/ 2/25 Albert Allen to Lillian Seltzer Rhulens (Int. 2121 N. 11th St.

	due Oct 21/25, Albert Allen, Trustee)	$60.00
8/ 7/26	Albert Allen to Lillie Seltzer (Int. on Pierce's mortgage, $1200. as Trustee)	36.00
12/11/26	Albert Allen to Lillian Seltzer (Int. on mortgage—2507 N. 18th St. Albert Allen Trustee)	45.00
2/11/27	Albert Allen to Lillie Seltzer (Int. on Mortgage of Pierce Property, Albert Allen, Trustee)	36.00
5/18/27	Albert Allen to Lillie Seltzer (Int. on Mortgage 2121 N. 11th St. Albert Allen, Trustee)	60.00
6/ 7/27	Albert Allen to Mrs. Lillie Seltzer Raulins (Interest on 2539 North 18th St.)	45.00
7/25/27	Albert Allen to Lillie Seltzer (Int. 6 mo. on 2223 N. Bouvier St. Albert Allen Trustee)	36.00
11/17/27	Albert Allen to Lillie Seltzer (Six months int. on 2121 No. 11th St. due Oct. 21/27)	60.00
12/ 6/27	Albert Allen to Lillian Seltzer (Albert Allen Trustee, 6 mo. int. on mortgage 2539 N. 18th St. Phila, Pa.	45.00
5/15/28	Albert Allen to Lillian Seltzer (6 mo. Int. on Dockel Property, Albert Allen, Trustee)	60.00
6/20/28	Albert Allen to Lillian Seltzer (Int. on Schrives Property and for Plastering)	50.00

8/17/28 Albert Allen to Lillie Seltzer
(6 mo. Int. on Mortgage 2223 N.
Bouvier St. Phila, Pa.) 36.00

EXHIBIT P4.
Nov 20/29-M.

Friend Robinson —

I am going to the hospital and may undergo an operation am miserable just now, and its very indefinite when I shall be out again. Mrs. Kathryn Ailes has transacted and looked after most of my business since my wife passed away. I therefore authorize Mrs. Ailes to have all my cancelled checks also my bank book and check book—and please accept checks that she may have to sign for me against my account Also transfer necessary necessary funds from my savings Fund to the checking account.

Albert Allen
Albert Allen

EXHIBIT P5.
Nov 20/29 M.

THIS INDENTURE, MADE THE First day of July in the year of our Lord one thousand nine hundred and Twenty (1920) BETWEEN R E N E L E T Z K U S A N D W I L L I A M G. L E T Z K U S her Husband and J E N N I E

P R A U L (WIDOW) All of the City of Philadelphia. of the first part, and K A T H R Y N A I L E S wife of F R A N K A I L E S of the same City. of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Dollar and other valuable consideration lawful money of the United States of America well and truly paid by the said party of the second part to the said party of the first part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, her heirs and assigns, ALL THAT CERTAIN LOT or parcel of land and premises hereinafter particularly described, Situate, lying and being in the Borough of Pleasantville in the County of Atlantic and State of New Jersey, and is bounded and described as follows:

BEGINNING at the eighth corner as mentioned in a quit claim Deed from Mahala Gardner to Ellis J. Adams bearing date the Eighth day of March A. D. 1910. and duly recorded, said beginning point being in the Southeast line of the Shore Road and from thence extending; (1) Southeastwardly along a line deflecting Seven degrees Twenty-four Minutes and Thirty Seconds Eastwardly from a line at right Angles to the Shore Road. One Hundred and Fifty feet; (2) Northeastwardly parallel with the Shore Road, Fifty seven and Ninety-seven one-hundredths feet; (3) Northwestwardly parallel with the First

course hereof, One Hundred and Fifty feet to the Southeast line of the Shore Road; (4) Southwestwardly along said line of the Shore Road, Fifty-seven and Ninety-seven one-hundredths feet to the place of beginning.

BEING (inter alia) the same premises which Gertrude Smedley et ux., et al, by Indenture bearing date the Eighth day of March A. D. 1910. and duly recorded granted and conveyed unto Mahala Gardner. And the said Mahala Gardner Died seized of the parties to these presents being the only Heirs at law of said Mahala Gardner.

ALSO the same premises which Ellis J. Adams et ux, by Indenture bearing date the Eighteenth day of June and intended to be herewith recorded, granted and conveyed unto Rene Letzkus in fee.

TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and the profits thereof, and of every part and parcel thereof:

AND ALSO, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances:

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever.

AND the said Grantors, themselves, their heirs, executors and administrators, DO by these presents covenant, grant and agree to and with the said party of the second part, her heirs and assigns, that they the said Grantors, their heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, her heirs and assigns, against them the said Grantors, their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof,
SHALL and WILL WARRANT
and forever DEFEND.
IN WITNESS WHEREOF, the said parties of the first part to these presents do hereunto set their hands and seals dated the day and year first above written.

Rent Letzkus (SEAL)
Wm. G. Letzkus (SEAL)
WILLIAM G. LETZKUS
Jennie Praul (SEAL)

Signed, sealed and delivered in the presence of
Harvey J. Aungst
G. Glenfield Maurer

STATE OF Pennsylvania } ss.
Philadelphia COUNTY, }

BE IT REMEMBERED, that on this Thirteenth day of July in the year of our Lord one thousand

nine hundred and twenty before me, Harvey J. Aungst, a Foreign Commissioner of Deeds for the State of New Jersey, residing in the City of Philadelphia, State of Pennsylvania personally appeared Rent Letzkus, William G. Letzkus and Jennie Praul, widow, who, I am satisfied are the grantors mentioned in the above deed or conveyance and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. ALL of which is hereby certified.

Harvey J. Aungst,
A Foreign Commissioner
of Deeds for New Jersey

In compliance with the
statute I have presented an
abstract of the within to the
assessor of the taxing dis-
trict therein mentioned.
EDWIN A. PARKER,
Clerk.

DEED
R E N E L E T Z K U S
et ux, et al
to
K A T H R Y N A I L E S
DATED.....19
Received in the Clerk's office of the

County of Atlantic on the 31st day of July A. D. 1920 at 8 o'clock in the forenoon, and recorded in Book 639 of DEEDS for said County, on pages 62 &c

Edwin A. Parker, Clerk
F. V. K.

EXHIBIT P6.
Nov. 20, 29.

COLLECTOR'S CERTIFICATE OF SALE

I, WEBSTER PRICE, Collector of Taxes of the City of Pleasantville, in the County of Atlantic and State of New Jersey, DO HEREBY CERTIFY that at a public sale of lands, tenements, hereditaments and real estate held at the City Hall in said City on the Tenth day of December, A. D. nineteen hundred and seventeen, for the purpose of making certain taxes which were assessed upon and against said lands, tenements, hereditaments and real estate for the year 1916, all that certain lot of lands and premises assessed to Gertrude Smedley est.
and known and designated as follows, to wit: Block 189, lot 19, size of lot 65 v 150 feet, as shown on the official maps and duplicates as used by the assessors of said City, was struck off and sold by me to city of Pleasantville, N. J. IN FEE, no one bidding thereon for a shorter term.

AND I DO FURTHER CERTIFY that the consideration of said sale is the sum of Twenty two

and 06/100 dollars, receipt whereof is hereby acknowledged, which amount is made up of the taxes on said lands and premises and the interest and costs as follows:

Taxes of 1916	$18.00
Interest from Dec. 20, 1916 to date	1.41
Preparing and publishing notice of sale	.25
Selling parcel	.25
Certificate of sale	.50
Acknowledgment of same	.50
Printing and advertising	.90
Postage, affidavits, etc	.08
Making return to County Clerk	.02
County Clerk for recording	.05
City Clerk for Recording report	.10
Total	$22,06

AND I DO FURTHER CERTIFY that the said taxes were unpaid at the time of the sale aforesaid, that notice of the assessment of said taxes and demand for the payment thereof, together with notice of the time and place of appeal were given by me within the time and as required by law; that on or before the first Tuesday of February, 1917, I filed with the Clerk of Atlantic County a statement of the delinquent taxes aforesaid, stating the name of the owner and describing the lands assessed aforesaid, as required by law; that the lands and premises above described were duly advertised for sale and notice of the time and place of such sale was duly given; and I do further certify that all other things and acts required to be done or performed

as touching the assessment and sale of said lands and premises for said taxes and perfecting the same have been duly done and performed as required by law.

AND I DO FURTHER CERTIFY that the right of the owner or owners, mortgagee, occupant, or other person or persons having either a legal or equitable interest in the lands or premises to redeem the same will expire at the end of two years from the date of said sale, provided the proper notice or notices to redeem are served more than sixty days after the service of said notice or notices, if served later, at any time within twenty years from the date of sale.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 12th day of Dec. nineteen hundred and seventeen.

WEBSTER PRICE (L. S.)
Collector of Taxes

Signed, sealed and delivered
in the presence of
Clinton B. Price

STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, } ss.

BE IT REMEMBERED, That on this Twelfth day of December nineteen hundred and seventeen, before me, a Notary Public of New Jersey, personally appeared Webster Price, Collector of Taxes of

the City of Pleasantville, in the County of Atlantic, who, I am satisfied, is the grantor described in and who executed the above Certificate of Sale; and I having first made known to him the contents thereof, he thereupon acknowledged to me that he signed, sealed and delivered the same as voluntary act and deed, for the uses and purposes therein expressed.

Clinton B. Price (Seal)
Notary Public

Know all men by these presents, that the city of Pleasantville, a municipal corporation of New Jersey, in the County of Atlantic, for and in consideration of One Hundred, Six Dollars and Sixty Cents ($106.60), lawful money of the United States of America, to it in hand paid by Kathryn Ailes of the City of Philadelphia, Philadelphia County, Pennsylvania, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto the said Kathryn Ailes, one certain indenture of Tax Sale(covering Lot 19, Block 189, Pleasantville City Tax Map), bearing date the tenth day of December in the year of our Lord one thousand nine hundred and seventeen, made and executed by Webster Price, Collector of Taxes of the City of Pleasantville, and recorded in the Clerk's Office of Atlantic County, in Book No. 179 of Mortgages, page 195 &c., together with the lands in and by the Tax Sale particularly described and the covenants and stipulations therein contained.

To have and to hold the same unto the said Kath-

ryn Ailes, her successors and assigns to it and their proper use, benefit and behoof forever, subject neverless to the equity of redemption of all persons having right to redeem said premises or their heirs or assigns.

And the City of Pleasantville does hereby make, constitute and appoint the said party of the second part its true and lawful attorney, irrevocable, in its name otherwise, but at their own proper cost and charges to have, to use and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully as it might or could be if these presents were not made.

I, Webster Price, Collector of Taxes for the city of Pleasantville, county of Atlantic and State of New Jersey, do hereby certify that the land and premises assessed to the Estate of Gertrude Smedley and known and designated as follows, to wit: Block 189, lot 19. size of lot — 65 x 150 feet as shown on the official tax maps of said city, and sold by me under a certificate of tax sale of date December 10, 1917, for the purpose of making the taxes thereon assessed for the year 1916, have not been redeemed.

And I do further certfiy that having made official search therefor, I find and report that all subsequent municipal liens on said land and premises have been paid and satisfied.

In witness whereof I hereunto set my hand and affix my seal this 28th day of March, A. D. 1921.

Webster Price
Collector of taxes for
the City of Pleasantville,
County of Atlantic and
State of New Jersey.

State of New Jersey }
Atlantic County. } SS.

Kathryn Ailes of full age, being duly sworn, on her oath deposes and says —

1. I am the holder of the tax title to the land and premises mentioned and described in the foregoing notice attached hereto.

2. The persons interested in said land and premises and entitled to redeem the same, to wit — Walter Smedley, Frances Smedley and Gladys Smedley are non resident of the city of Pleasantville, county of Atlantic and State of New Jersey, the same being the municipality wherein said land and premises are situate.

3. The residence and post office address of said parties of interest in said land and premises are unknown and cannot be ascertained, altho deponent has caused careful and dilligent inquiry to be made therefor.

4. On June 19th, 1920, deponent caused to be published in the Press, a newspaper printed at Pleasantville, New Jersey, wherein the municipal ordinances thereof may be published, a notice whereof the hereto attached is a true copy.

5. Deponent did at the same time, to wit — June 19th, 1920, post on the land and premises therein described a copy of said notice.

6. The tax sale for the land and premises described in said notice has not been redeemed al*to* more than six months have elapsed since the publishing and posting of the notice as aforesaid.

Kathryn Ailes

Sworn and subscribed before me)
March 28th, 1921,)
H. W. Lewis)
M. C. C. of N. J.)

LEGAL NOTICE.

To Walter Smedley, Frances Smedley and Gladys Smedley, heirs at law of Gertrude Smedley, deceased:

Take notice that on December 10th, 1917, the Collector of Taxes for the city of Pleasantville, county of Atlantic and State of New Jersey, did expose for sale at public vendue certain land and real estate

assessed to Gertrude Smedley Estate for taxes due said city of Pleasantville for the year 1916, and particularly described as follows: Lot No. 19 of Block 189, size of lot 65 x 150 feet, as shown on the official map of said city. And at the said sale the real estate aforesaid was struck off and sold to the said city of Pleasantville for $22.06 unpaid taxes and costs, and the certificate thereof assigned by the said city of Pleasantville to me, the undersigned.

And further, you are required to redeem the same within six months of the date of the service hereof upon you; and that unless you so redeem the same within said six months, your right to such redemption will be barred.

Dated June 19, 1920.

KATHRYN AILES, Owner.

H. W. Lewis, Atty.

STATE OF NEW JERSEY

County of Atlantic.

I, EDWIN A. PARKER, Clerk of the County of Atlantic, and also Clerk of the Common Pleas Court, holden therein, said court being a court of record having a common seal, DO HEREBY CERTIFY, That the foregoing is a true copy of a certain deed City of Pleasantville to Kathryn Ailes, as same is recorded and filed in my said office, in deed book No. 648, page 363 &c.

IN TESTIMONY WHEREOF, I have
SEAL hereunto set my hand and affixed my Official Seal at Mays Landing, N. J., this 9th day of May A. D. 1921.

EDWIN A. PARKER
Clerk
By ANTHONY SIRACUSA, JR.,
Deputy Clerk

CERTIFIED COPY
of
Tax Deed
City of Pleasantville
to
Kathryn Ailes.
Deed Book #648 page 363 &c.

EXHIBIT P7.
Of Nov. 20, 1929.

3 settlement certificates (omitted).

EXHIBIT D-X-1A.

Tuesday Afternoon.

Poppie Dear——

I want you to meet me Wednesday at 1 o'clock under the Eagle—and take me to lunch. I want to

get my shoes and a waist. Please do not disappoint me, for I do not feel very well.

Try and get me a bottle of Brandy, the doctor says egg and milk with a few teaspoonsful of brandy will strengthen me.

I waited for a 'phone call all day—but suppose you were working hard on the house—I did a lot today too, and am quite tired. I expect Mother for dinner tonight—am going to have chicken—how I wish you were here too, then I would call it "The End of a Perfect Day."

Now don't overdo yourself—you must not get sick —for I am looking forward to us having a very pleasant summer.

I do wish Poppie, we could get this house problem settled, I know I would feel lots better, if that was off my mind—and then I could shape things and perhaps get it rented for the summer—Iff you say so, I'll try to rent yours for you for the summer too, and then we can go away in peace. I'll look for you promptly at 1 o'clock (one o'clock) and I will be hungry too—so fix up and look your bestest —Wednesday.

Tenderly
Katie.

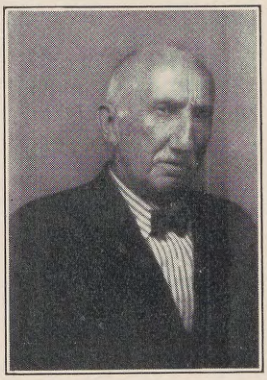
EXHIBIT D-X-1.

Mr. Albert Allen
1411 W. Allegheny Ave.,
Phila. Pa.
Philadelphia, Kingsassing Station,
Mar. 23, 1920. Special Delivery.
Unclaimed by Office
at First Address,
From 4816 Trinity Place, Phila.

EXHIBIT P27.



EXHIBIT C4a.



NEW JERSEY COURT OF ERRORS AND APPEALS.

In the matter of the
Estate of ALBERT ALLEN, Deceased.

On Appeal from the Final Decree of the New Jersey Prerogative Court, Admitting to Probate a Paper Writing Dated September 7, 1928, as the Last Will and Testament of Albert Allen, Deceased, and Directing Letters Testamentary Thereon to Kathryn Ailes, and Modifying Allowance of Counsel Fees.

BRIEF FOR KATHRYN AILES, EXECUTRIX-RESPONDENT.

STATEMENT OF THE CASE.

Albert Allen, the testator, died October 22, 1928, at a hospital in Winchester, Virginia, of acute indigestion, while on an automobile trip to Luray Caverns with Frank P. Ailes and Kathryn Ailes, his wife, and Joseph W. Halberstadt and Clara Halberstadt, his wife.

Mr. Allen became seventy-five (75) years old on August 1st, 1928.

He made and published his last will and testament dated September 7th, 1928. This will was executed by the testator in the presence of three witnesses on the day of its date in the office of Dr. John A. Boger, No. 2213 North Broad Street, Philadelphia, Pa., who was the family physician and life-long friend of the testator. These witnesses were Dr. John A. Boger, Augustus F. Daix, Jr., the testator's personal counsel and the family lawyer of the Allen family, and Maude C. Haines, the secretary of Dr. Boger. These were the only persons present when the will was read to the testator and then read by him and signed by him, then witnessesd, in rotation, by the witnesses, at his request, as being his last will and testament and the way in which he wanted to dispose of his property.

This will was drawn under instructions given by Albert Allen to his personal counsel, Mr. Daix, when no one else was present, some days prior to September 7th, 1928.

Mr. Allen saw Mr. Daix in the office of the Northwestern Trust Company while on a visit there to place some of his valuable papers in a tin box which he kept there on deposit. He stated that he would be over in a few minutes to see Mr. Daix at his office across the street from the trust company, with Mrs. Kathryn Ailes.

He came over and made known his intentions to make a will. Mrs. Ailes, at the request of Mr. Daix, stayed in the outer one of his three offices, and Mr. Allen and Mr. Daix were in the rear private office where the instructions were given privately.

At that time Mr. Allen requested that his personal physician, Dr. John A. Boger, act as a witness on the will, and made another suggestion about Dr. Loux, who had performed an operation on him at the Jefferson Hospital, to act as a witness also. Mr. Daix telephoned Dr. Boger, whom he had never met, and arranged the day of September 7th, 1928, when Mr. Allen was to call with Mr. Daix and a clerk in Mr. Daix's office to execute the will and have it witnessed. Up to this time Mr. Daix had never met Kathryn Ailes. He was introduced to her by Mr. Allen and when he learned what Mr. Allen's errand was, he requested Mrs. Ailes to take a seat in the front office, while conferring with Mr. Allen alone.

Mr. Allen's instructions to Mr. Daix were that he wanted to leave everything to Mrs. Ailes.

These instructions were carried out by Mr. Daix, who, on the day appointed went to Dr. Boger's office with a young clerk from his office to witness the will. Dr. Boger had been detained at the Emergency Hospital unexpectedly and they were obliged to wait more than an hour before he came in and Mr. Daix sent his clerk back to the office.

After the will was executed it was taken possession of by Mr. Daix, and Mr. Allen, Mrs. Ailes and Mr. Daix got into the automobile, which was driven by Mrs. Ailes, and Mr. Daix was driven back to his office at 2318 Columbia Avenue. He handed the executed will to Mr. Allen in an envelope and advised him to put it away immediately in his deposit box at the Northwestern Trust Company. This was the last that Mr. Daix saw of the will until it was produced by Mrs. Ailes, after Mr. Allen's death.

Mr. Daix never talked with Mrs. Ailes about the drawing of this will (Vol. II, C., p. 515, l. 5).

Mr. Daix never met and did not have any conversation whatever with Mrs. Ailes prior to the time that he received instructions from Mr. Allen as to the preparation of the will, about the will itself (Vol. II, C., p. 518, l. 28).

On September 7, 1928, the date when Mr. Allen signed his last will he was in excellent health and normal. "There was nothing the matter with him. He was mentally normal" (Vol. I, C., p. 95, l. 14). "He was just as normal as you are sitting in that chair" (Vol. I, C., p. 99, l. 14).

This will was offered for probate before the Surrogate of Atlantic County, at Mays Landing, New Jersey, on the 3rd day of November, A. D. 1928, and the proof of the will by Dr. John A. Boger and Augustus F. Daix, Jr., two of the witnesses thereto, were taken, but the will was not admitted to probate because of a caveat filed by one Lillian Seltzer Reulens, who was not a blood relative of the testator, but a daughter of Mr. Allen's second wife, then deceased, but who claimed to be a beneficiary under two paper writings dated the 25th day of October, A. D. 1919, and the 25th day of October, A. D. 1919, purporting to be executed by the testator.

The sole grounds of objection, in the Orphans' Court, to probate were:

1. Undue influence.

2. Confidential relation.

3. Want of mental capacity on the part of Albert Allen.

The testimony of the witnesses produced by caveators utterly failed to support any of the caveators' contentions.

Mr. Allen lived in Pleasantville in the summer from about 1922 to 1925, and lived there permanently since the spring of 1925, until the fall of 1928, when he died, and was well known there by bankers, real estate men, city officials and neighbors.

Not a single witness in Pleasantville or in that immediate neighborhood was called by the contestant to show that he lacked mental capacity.

Not a single witness was called to show undue influence exercised on Albert Allen by Mrs. Ailes in procuring the making of the will of September 7, 1928.

The proponent, Kathryn Ailes, called twenty-five witnesses, including her own testimony, consisting of bankers, real estate men, builders, business men, city officials, settlement clerks, clergymen, neighbors, personal friends and members of her own family, who knew Mr. Allen from a few months to a long series of years, who did business with him, joined in his social and religious activities, accompanied him on long and short trips, and otherwise came into close and frequent contact with him. These witnesses overwhelmingly showed him to have been a man of shrewd business sense and keen mentality, entertaining the highest regard for all the members

of the Ailes family, happy in his home relations with them and determined to make Mrs. Ailes comfortable after his death, by leaving her his property.

The Orphans' Court Judge admitted the will to probate, based upon a written opinion (see Vol. I, C., p. 17) in which the following language was used:

> "The Court is convinced, from a careful consideration of the testimony, that the act of "Albert Allen, deceased, in executing the will in "question, was his voluntary act, consummating "a desire which had possessed him for a period "of a number of years, to reward the beneficiary for her act in opening her home to him, "and caring for him as one of her family for "a long period of years. The careful and painstaking manner in which he went about the execution of his will, convinces the Court, that "he regarded, in his declining years, as the most "important act yet remaining to be performed "by him, the execution of a will that could not, "and would not be disturbed by the Courts."

The caveator appealed to the Prerogative Court, and Vice-Ordinary Ingersoll affirmed the adjudication by the Orphans' Court, except upon the question of counsel fees, which were reduced (see Vol. I, C., p. 47).

From the decree of the Prerogative Court sustaining the probate of the will and reduction of counsel fees, an appeal has been taken to this Court (see Vol. I, C., p. 58).

The proponent has also appealed from the allowance of fees, as ultimately fixed by the Vice-Ordinary (Vol. I, C., p. 62).

FACTS.

The gist of all the testimony so far as it explains why Albert Allen left his property to Mrs. Kathryn Ailes will be treated under the following heads:

1. ATTITUDE TOWARD AND TREATMENT OF ALBERT ALLEN BY HIS TWO STEPDAUGHTERS; BY HIS BROTHER, THOMAS ALLEN; BY HIS BROTHER-IN-LAW, ALBERT F. REGER; BY HIS SISTER, SARAH REGER; BY HIS NEPHEW, WILLIAM M. ALLEN, AND THE OTHER NEPHEWS AND NIECES SINCE THE DEATH OF ALBERT ALLEN'S SECOND WIFE ON SEPTEMBER 9, 1919, AND HIS ATTITUDE TOWARDS THEM.

(a) Lillian Seltzer Reulens, a stepdaughter and caveator, lived at 1917 W. Dauphin Street in Phila., Pa., in which Albert Allen had a life estate, on which he paid all expenses, without her paying him one cent of rent. She made continual demands on him for extravagant repairs and finally concluded with a violent quarrel with him in October of 1928, shortly

before his death, when he said she had kicked him in the groin (Vol. II, C., p. 894, l. 16).

She visited him at 1411 W. Allegheny Avenue in the same city, on one or two occasions after her own mother's death. She never visited him at 4311 Walnut Street. She visited him on one occasion only, at his home, 730 N. Main Street, Pleasantville, New Jersey, but did not go there for the purpose of seeing him specially but for other business.

There is no evidence that she visited him while undergoing the serious operation in the Jefferson Hospital in 1923, or if she did that she paid him any attention whatever.

At no time from 1919 to 1928, a period of nine years, did she display any unselfish interest in his welfare but only tried to get out of him as much as she could in the way of free occupancy of his house at 1917 W. Dauphin Street and the upkeep of its repairs, taxes, etc.

She removed letters, written him by Mrs. Ailes, secretly from his coat pockets when he was visiting her and kept these letters and produced them at the trial of this case.

His attitude towards Mrs. Reulens is shown by the testimony of Mrs. Florence W. Lewis, at the meeting held July 8, 1929, where she testified (Vol. II, C., p. 581, l. 1) as follows:

> "A. I asked him why he didn't live with some "of his stepdaughters, and he said they all had "homes of their own. I said, 'That one you "have living in one of your homes, why don't "you live with her?' And he said, 'I could "never live with her.' I asked him why, and he

"said, 'Well, she is not a woman like you or "Mrs. Ailes.'

"Q. Was there anything else he said about "her?

"A. Well, I just wouldn't like to say every-"thing.

"Q. Did you know Mrs. Ailes at that time?

"A. No."

His attitude towards Mrs. Reulens is also shown in the testimony of Joseph W. Halberstadt, at the meeting held July 22, 1929, who testified (Vol. II, C., p. 647, l. 33), as follows:

"A. The 27th day of September, 1928, and "he said he was sick of that job he was doing "down at the house; that he can never satisfy "that woman; that now she wanted a new "heater, that it was wanted, and as long as he "was sent for, he was going home the next day. "Mrs. Ailes said, 'You are not finished with that "job?' He said, 'I am not going back today or "tomorrow. I am going home. That job is to "get along without me.' I said, 'The first thing "you know you will be leaving your happy home "to go live out there.' He said, 'Not on your "life. I could never live with that woman.' "

Mrs. Reulens attempted to prove that Albert Allen signed two papers in October, 1919, under which she was chief beneficiary. She concealed the existence of these two papers from her sister, Anna D. Shumway (who was not a beneficiary under them), until after the death of Albert Allen.

These two papers, if genuine, and duly proved as

a will or codicil, were, in effect, revoked by a later will dated in 1923, signed by Albert Allen, the day before he went to the Jefferson Hospital, to undergo a major operation, from the effects of which he feared that he might die.

The execution of this paper of 1923 was duly proved by one of the subscribing witnesses.

All three of these papers were revoked by the will dated September 7, 1928, which is the subject of this contest.

(b) Anna D. Shumway, his other stepdaughter, visited Albert Allen at 1411 W. Allegheny Avenue several times. She never visited him at 4311 Walnut Street. She visited him several times at Pleasantville, N. J., and on each occasion made demands on him which caused him great agitation and distress. She lived one whole season in Pleasantville but never entertained him or took any interest in him.

While he was ill in the Jefferson Hospital and neither mentally nor physically in condition to attend to business, much less make a will, she endeavored to force him to make a will and actually called his old, personal friend, Mr. Schrieber, down to the hospital to accomplish this purpose.

She and her husband paid off a loan of $1,800 which Mr. Allen had made to the husband, apparently for the purpose of breaking down his resistance and inducing him to make a will, assumedly in her favor but failed to induce him to do so.

(c) Sarah Reger, his sister, never visited him from 1919 to the date of his death, at 1411 W. Alle-

gheny Avenue, 4311 Walnut Street or 730 N. Main Street, Pleasantville, N. J. She did visit him once while he was in the Jefferson Hospital in Philadelphia.

Her husband, Albert F. Reger, visited him once only at his Pleasantville home.

(d) William M. Allen, a nephew, never visited him at 1411 W. Allegheny Avenue, 4311 Walnut Street, but did see him at Pleasantville where he made his home with Frank P. Ailes and Kathryn Ailes, but merely went to the door and inquired about him on one or two occasions.

(e) Thomas Allen, his brother, never visited him at 1411 W. Allegheny Avenue or 4311 Walnut Street, but did visit him several times at his Pleasantville home, where he was treated kindly as a guest and where his friend, Mrs. Hettie Weiss, came to see Thomas Allen on several occasions and was hospitably entertained by Mr. and Mrs. Ailes.

(f) None of the other nephews or nieces of Albert Allen were shown to have ever visited him at 1411 W. Allegheny Avenue, 4311 Walnut Street or 730 N. Main Street, Pleasantville, N. J., or paid him the slightest attention from 1919 to the date of his death on October 22, 1928.

With the exception of Mrs. Lillian Seltzer Reulens and Mrs. Anna D. Shumway, the two stepdaughters of Albert Allen, the foregoing persons are the heirs-at-law and next of kin who would inherit Albert Allen's estate if all his wills were set aside and he be held to have died intestate.

The nephews and nieces are beneficiaries under the two paper writings dated October 25, 1919, produced by Lillian Seltzer Reulens, if they are held to be Albert Allen's last will and codicil.

It is submitted that these two stepdaughters and these heirs-at-law and next of kin had no call on Albert Allen's bounty and no right to expect any portion of his estate as they had shown him no attention, except selfish ones, during the last nine years of his life.

2. ATTITUDE TOWARD AND TREATMENT OF ALBERT ALLEN BY FRANK P. AILES, KATHRYN AILES, THEIR FOUR DAUGHTERS, MRS. MILDRED A. FLEMING, MRS. ETHEL CARTER, MRS. ROWENA SIMPSON, MRS. CATHERINE JEFFERSON, AND MRS. PRISCILLA FLUCK, MOTHER OF KATHRYN AILES, AND HIS ATTITUDE TOWARDS THEM.

Mr. and Mrs. Frank P. Ailes, with two unmarried daughters, went to live with Albert Allen at his home 1411 Allegheny Avenue, Philadelphia, Pa., November 15th, 1919, rent free.

They were to supply the table, and servant and use the home with Mr. Allen, who had been living there alone since his second wife's death on September 9, 1919.

Mr. Ailes had entered into the arrangement reluctantly but was urged to do so by both Mrs. Shumway and Mr. Allen. They were strangers to him.

After living together in this way the Ailes family left on account of the impending sale of the Allegheny Avenue house and returned to their own home in Trinity Place, with no thought but that the arrangement between them was ended.

When the sale fell through, it was Mr. Allen who came and urged them to return, which they did in the fall of 1920.

Mr. Ailes and his family were refined people; members of church and constant in their attendance on church functions such as were held at Ocean Grove Revivals, the Bach Festivals at Bethlehem and other religious gatherings. To all of these functions Mr. Allen was invited and accompanied them, while he was a member of their family.

When the Allegheny Avenue house was finally sold the Ailes family left Mr. Allen and went back, first to Trinity Place, and then took over 4311 Walnut Street which had been occupied by their daughter, Mrs. William H. Simpson.

The Ailes remodeled this house into apartments.

Then Mr. Allen requested them to take him in as one of their family and not as a boarder, which they agreed to. At first he slept downstairs. As soon as they could get possession of the second floor front apartment Albert Allen occupied it and lived there with Mr. and Mrs. Ailes, as one of the family, and paid no board. He did contribute towards the expenses of the home but only what he felt like doing.

Out of the experience he had as a real estate man and mortgage buyer he advised them what to do and what not to do. He advised them *not* to buy 4816 Trinity Place. He advised them to buy 4311 Wal-

nut Street for $6,500 and loaned $3,000 on a second mortgage, and as a result the Ailes resold the property for $18,000 and made a profit of $11,500.

He ate at the table with the family and was admitted, as a father would be, into the family circle and treated with kindness, affection and respect.

He became ill in the latter part of 1922 and early part of 1923, and was nursed and taken care of by the family, the heavy burden of nursing falling on Mrs. Ailes, as her husband and daughters were employed during the day.

His condition grew worse and his own life-long friend and physician was called in to attend him, Dr. John A. Boger. On his advice he went to the Jefferson Hospital for a very serious prostate gland operation.

The very day that Mr. Allen went to the hospital he called Mrs. Ailes and dictated to her, sitting alongside of his bed, a paper, dated January 17, 1923, which he called his will. This paper was read over to him by Dr. Boger, approved and signed by Mr. Allen and at his request witnessed by Dr. Boger and Mary Eichelberger (Vol. II C., p. 962, l. 28).

This, Mr. Allen did with the fear of impending death before his eyes, voluntarily and of his own initiative.

He also dictated a letter to his friend, Robinson, of the Northwestern Trust Company, directing him to pay checks signed by Kathryn Ailes, and saying, "I am going to the hospital and may undergo an operation am miserable just now, and it's very indefinite when I shall be out again," and that she was to take charge of his affairs while he was in the hospital (Vol. II C., p. 988, l. 12).

These papers indicate, as far back as 1923, that Mr. Allen revoked the papers alleged to have been signed by him in October, 1919, in the possession of Mrs. Reulens, his stepdaughter, if they are genuine. Also that he reposed confidence in Mrs. Ailes and at that time, with what he supposed might be his impending death before him, intended that Mrs. Ailes should receive a large part of his estate.

This paper was placed in his own table drawer and removed and placed by him in a deposit box kept subsequently at the new home in Pleasantville, New Jersey, which he bought and to which he had a key, where it remained until his death. It had been revoked by the will of September 7, 1928, drawn by Mr. Daix.

While Mr. Allen was in the Jefferson Hospital, Mrs. Ailes stayed with him, at his request, during the daytime as often and as long as she could.

There is no evidence that either Mrs. Reulens or Mrs. Shumway or his brother, Thomas, or any other relative did anything for Mr. Allen's comfort while in the hospital, but on the contrary the evidence shows that Mrs. Shumway tried to force him to make a will, and excited him so much that she was excluded from his room by Miss Shoemaker, the nurse, by the doctor's orders.

When Mr. Allen was discharged from the hospital he returned to the Ailes home on Walnut Street where he was further nursed and cared for by Mrs. Ailes and her family until his complete recovery was assured in about one year.

In 1920 Mr. and Mrs. Ailes purchased, for $800 a lot on North Main Street, Pleasantville, New Jersey, which had belonged to a member of Mr. Ailes'

family, for the purpose of making an inexpensive summer home for themselves and four daughters and their husbands and children.

Mr. Allen insisted on having a share in the purchase and gave $400 in cash and Mrs. Ailes gave four $100 Liberty Bonds. There was a dilapidated house and an old barn on the lot. Title was taken by Kathryn Ailes. A lot alongside was purchased for a nominal sum at a tax sale and title taken by Mrs. Ailes.

At first this place was used only as a summer home. It agreed with Mr. Allen so well he urged that they live there permanently. When 4311 Walnut Street was sold the Ailes family, with Mr. Allen, in the spring of 1925, moved down to Pleasantville as their permanent home, as the house had been remodeled and the barn remodeled into a garage and small apartment, which was occupied and rented by Mrs. Ailes' married daughter, Mrs. Fleming. Mr. Allen continued to live there until his death, October 22, 1928.

He had the run of the whole house and occupied the best bedroom of the house which was in the rear facing the sea and enlarged it, of his own accord and at his own expense, during the summer of 1928, by the addition of a bay window.

Mr. Allen's regard for Mr. and Mrs. Ailes, and their daughters and their daughters' families increased as the years wore on.

He gave Mrs. Ailes, at first a Ford automobile, and when that wore out, an Essex car, but he could not drive it, and he always went out with them in it whenever he wanted to go out on business or pleasure.

He gave Mrs. Ailes a pin which was altered into a ring, numerous articles of furniture for the house, small sums of money at various times, usually with which to buy definite things that he wanted to give her for use in the home.

He gave her daughters money, inexpensive jewelry, Christmas presents, birthday presents, wedding presents and various sums of money as his fancy dictated. Also baby coaches and baby clothes for their children.

The Ailes family took frequent short automobile trips on which Mr. Allen always accompanied them and paid a part of the expenses.

He went on a Raymond & Whitcomb Conducted Tour in 1924, to California and return, in company with Mr. and Mrs. Halberstadt, friends of the Ailes, a Mrs. Depazzi and Mrs. Ailes, and paid his own and Mrs. Ailes' expenses.

He went because he felt the change would do him good after his operation and help him to recover from his operation. He paid Mrs. Ailes' expenses to recompense her for the nursing and care that she gave him, before, during and after his operation.

Mr. Frank P. Ailes was to accompany them but could not get off at the last moment, but he and their daughters saw the party off at North Philadelphia station.

A number of other railroad trips were taken by Mr. and Mrs. Ailes, accompanied by various friends, on all of which Mr. Allen accompanied them. He went as one of the family and contributed towards the expenses but always at his own accord.

He told various witnesses that he had a home with the Ailes family, not a house. That you could buy a

house but a home had to be made for him, and that they (the Ailes family), made him a home. Mr. Allen paid considerable money towards the remodeling of the Pleasantville home and bought much of its furniture which he gave to Mrs. Ailes, and paid money towards running the home, but never paid any money as board, and never lived there as a boarder. He stated to various witnesses that he had a good home with them.

He was always in good spirits and happy.

He ate with the family, had full run of the house, entertained his brother Thomas there and his brother's friend, Mrs. Weiss, and held the relation of that of a father in the family, and was pleased to have people think that Mrs. Ailes was his daughter.

He had a close friend, Mr. Gustave Schreiber, a real estate man who attended to his business and the collection of interest on his mortgages, collection of rents, &c., who died in 1926. Mr. Schreiber transferred from an old account book these mortgage securities into a new account book with a black cover and a number of these earlier collections are entered in Mr. Schreiber's handwriting. A large number of the entries after Mr. Schreiber's death in 1926 are made in Albert Allen's own handwriting. Since 1926 a large number of these entries are in the handwriting of Mrs. Ailes.

Mr. Allen was a poor penman and used to have other people do his writing for him. He was not an uneducated man. He was a very keen, able business man, especially in real estate and mortgage matters.

Mr. Allen expressed admiration for Mrs. Ailes' business ability. She had been a domestic woman who had, when a girl, stayed home and kept house

for her mother; then for her husband and her own four daughters.

Joseph W. Halberstadt, testified (Vol. II, Case, p. 638, l. 29):

> "A. In August, 1927, he (referring to Albert "Allen), was speaking of Mrs. Ailes' business "ability and I told him that Mrs. Ailes had "never worked in a commercial way like her "daughters had; that when I became acquainted "with her she was living at the time with her "mother, helping her mother to keep house; that "she had no commercial training, and he said, " 'Well, she has a wonderful business head for "a woman that has had no commercial train- "ing.' He said, 'Now that Mr. Schreiber is "dead or gone,' he said, 'I wanted Katie to "look after my business.' He said, 'She has "got to do when I am gone and now is the time "for her to learn it. I want her to learn how "to place the value on a property, collect the "interest when it is due, and see that the value "is kept up, and also the fire policies, and learn "how to satisfy mortgages, and etc.' "

When Mr. Schreiber died in 1926, Mr. Allen called on Mrs. Ailes to do a large part of his writing for him, such as letters, sending out bills, filling up checks to pay various accounts and making up deposit slips for bank and entering collections received in his account book prepared by Mr. Schreiber.

He consulted her about investments and had her drive him to make real estate and mortgage settlements because he could not drive a car, and remain and see how it was done.

The last will of September 7, 1928, he made at the suggestion of Mrs. Florence W. Lewis and Mr. George R. Manning, who urged him to do so. He declined suggestions from Mr. Manning and Mrs. Ailes that he employ Henry W. Lewis, Esquire, or Judge Cole, of the Atlantic City Bar, but chose his own personal attorney, who was also the attorney for the Allen family.

Mr. Allen, although he was urged by Mr. Manning in August, 1928, and Mrs. Lewis in May, 1928, to go to a good lawyer and make his will if he intended to leave his property outside of the family, did not hurry to do so, but on account of the hot weather waited until the latter part of August or the early part of September to go to Philadelphia to see Mr. Daix for that purpose.

Mr. Allen left the pencil memorandum found after his death, containing, among other things, the note, "See Daix."

This memorandum is as follows, as read into the testimony (Vol. II, C., p. 978, l. 27). The first line is, "See Robinson." The second line, "Go to bank." Third line, "Get mortgage of Carter's and pay off." Fourth line, "See roof at 1917 Dauphen Street." Fifth line, "See Daix." Sixth line, "See about lot southeast corner——" the next word is illegible, and following that is, "781 Ludlum or Ludlow Avenue," and. "Pleasure Avenue, Sea Isle City, New Jersey." Next line, "Take five shares of Pleasantville Trust Company and put in my box in the Northwestern Trust Company, Northwestern Trust Company envelope; get shave."

Mr. Allen did see Mr. Daix, and gave him in-

structions to draw the will of September 7, 1928, when no one else was present.

Mr. Daix had never met Mrs. Ailes until that day.

He arranged that day with Mr. Daix, when he was to come up to Dr. Boger's office and sign the will, on September 7, 1928. Mr. Allen came up, with Mr. Ailes, Mrs. Ailes and her mother, Mrs. Fluck.

Mr. Allen and Mrs. Ailes only went to Dr. Boger's office and met Mr. Daix and a young woman from his office. As Dr. Boger was detained they had to wait a long time and the young woman was sent away.

On Dr. Boger's arrival, Mr. Allen and Mr. Daix left Mrs. Ailes in the outer office and went into the private office behind closed doors, the will was read to and read by Mr. Allen, signed by him, and at his request signed by the three subscribing witnesses in his presence and in the presence of each other. Then it was handed to Mr. Daix and placed in an envelope and handed by him to Albert Allen, when they all got into the automobile outside. Mr. Daix advised him to put it in his deposit box in the Northwestern Trust Company.

In the spring of 1928 Henry W. Lewis, Esquire, sent Mrs. Ailes to Mr. Daix, Sr., to have a bond and mortgage collected on 4311 Walnut Street. She was brought to Mr. Daix's office, 2318 Columbia Avenue, by Albert Allen for the first time and introduced to Mr. Daix's son, who alone attended to the business. The senior Mr. Daix was very ill at the time and never saw Mrs. Ailes while this matter was being attended to.

It was developed at the last day of the hearing in the Orphans' Court, that out of ninety checks pro-

duced by Mrs. Ailes, sixteen checks which were to Albert Allen's order or for cash were entirely filled in in the handwriting of Albert Allen.

That the remaining seventy-four checks were filled in for payment of settlements, bills, etc., by Mrs. Ailes or someone else.

This indicated that Mr. Allen did not allow anyone but himself to make out checks when his money was to be withdrawn in cash, and continued this up to a very few days before his death on October 22, 1928.

This plainly shows that he exercised usual good sense and judgment in keeping personal control of any withdrawals of cash from his bank account.

He depended on Mrs. Ailes to make out checks for payment of bills, mortgage settlements, etc., but he signed all of them. He would not have done so if the bill had not been approved by him.

This incident is one of the strongest pieces of evidence in this whole case, to indicate that Albert Allen was exercising the most complete personal control over his own money, and was not subject to the influence of Mrs. Ailes or anyone else.

There is no direct evidence that Mrs. Ailes made any attempt to exercise any undue influence on Albert Allen to make his will of 1923 or his will of September 7, 1928, or to make any will in her favor.

It was proven that Mrs. Ailes, at Mr. Allen's dictation, wrote the will of January 17, 1923. Also, that she commented on the reference in it, "When I am stiff and cold, etc.," as gruesome, but not a scintilla of evidence that Mrs. Ailes either suggested the terms of this will in her favor, or exercised any influence over Mr. Allen to make and sign it.

Mrs. Ailes, on cross-examination (Vol. II, C., p.

848, l. 25), did testify that she did not talk to Albert Allen about making a will prior to the time when arrangements were made to go to Philadelphia shortly before September 7, 1928. By the question asked her she got the impression that they meant if she made suggestions for a will (Vol. II, C., p. 852, l. 19).

She fully disclosed all the circumstances surrounding the will of 1923, and what was done with it after it was signed. This will was proved before the Orphans' Court and offered in evidence as well as the informal power of attorney that went with it.

This will and power of attorney in themselves show that Mr. Allen, in 1923, reposed confidence in Mrs. Ailes to handle his bank account and business if he survived the impending operation, and intended to favor her in the disposition of his estate, if he died under the operation. He wrote in the letter to "Friend Robinson," "It is very indefinite when I shall be out again." It is to be noted that this will did not dispose of his entire estate but only part of it.

The advice that he asked of Mr. Manning about the validity of this will, in 1928, showed that he still maintained the same intention in 1928, to favor Mrs. Ailes.

The conversation that he had later with Mrs. Lewis showed that he still maintained the same intention and told her that Mr. Manning agreed with her about making a new will. At the same time he told Mrs. Lewis how much he thought of Mrs. Ailes and her family and what a good home the Ailes family had made for him and that he intended to leave everything to her.

The evidence showed that Mr. Allen, after living as one of the family of Mr. and Mrs. Ailes for nine years, and having been neglected and ignored by his own relatives, and having been imposed upon and worried by the treatment he received from his two step-daughters, gradually but surely turned to the Ailes family for his home, his comfort, and his interest in life as he grew older.

He had no children.

Mrs. Ailes stood in the relation of a daughter to him and he was treated as a father, and he told people that he liked to have them think that she was his daughter.

Her children stood in the relation of grandchildren to him and their children as his great grandchildren.

He had his home with an ideal family, who lived an ideal family life, who looked up to him and showed him love, respect and consideration, who took him with them in all their trips, journeys, religious observances, social relations and home life.

Small wonder, is it then, when his only brother, Thomas, a much older man, was well-off and provided for life, and his only sister, Mrs. Reger, well-off in her own right, and his nephew, Wm. M. Allen, a legatee for a large amount under the will of a deceased brother, William Allen, and other nephews and nieces provided for that Albert Allen should turn to the one who had nursed him before, during and after his serious operation and made a home for him in the bosom of her family, helped him in his business and treated him as his own daughter might have done for nine years, or from November 15, 1919, to October 22, 1928, that he rewarded her by

leaving her his estate and appointing her his executrix.

3. STATEMENTS AND DECLARATIONS MADE BY ALBERT ALLEN IN SUPPORT OF THE FOREGOING AND SHOWING HIS INTENTIONS AS TO THE DISPOSITION HE EXPECTED TO MAKE OF HIS PROPERTY AND WHICH REFUTE ANY THOUGHT THAT HE WAS INFLUENCED IN ANY WAY BY KATHRYN AILES.

Mr. Allen told the following witnesses of his intention either to leave his property to Mrs. Ailes or to make the Ailes family comfortable, or words to that effect, as follows:

George R. Manning, testified (Vol. I, C., p. 372, l. 10):

He (Albert Allen), said, "I want to see Kate and Frank better taken care of" (this was in connection with the making of his will of 1928).

"Q. Did he say why he was desirous of having Mrs. Ailes taken care of?

"A. He said they had been very good to "him."

Samuel C. Lippincott (Vol. I, C., p. 396, l. 15), testified:

"Q. Did Mr. Allen ever express himself to

"you about how he was treated by Mr. and "Mrs. Ailes?

"A. He always said he had a happy home "and when he spoke about leaving his money, I "spoke to him about leaving some to our "church. He said, 'I will think it over.' I said, " 'You have nobody but yourself, who are you "going to leave it to?' And he said, 'I will fix "it. I will fix the folks at home,' because he "was always so well taken care of."

(Vol. I, C., p. 400):

"Q. Did he say anything to you about his "home life?

"A. I told you he said he had a very pleasant "home and was going to take care of his folks "at home, when he talked about money mat- "ters."

Henry E. Conover (Vol. I, C., p. 436, l. 28), testified:

He said what he thought about the people he was living with while Conover was putting in the bay window.

"Q. What did he say about them?

"A. He said, 'Kate Ailes was a nice woman; "and her husband, too.' And he said that he "was going to fix things so that she wouldn't "want any more while she lives."

Florence W. Lewis (Vol. II, C., p. 582, l. 13), testified:

"Q. What are some of the things that he "said to you about her? (Meaning Mrs. Ailes.)

"A. It would be at times, after—at times "when she was sick; he always seemed so con- "cerned. Two or three times he said, 'I don't "know what I would do if anything happens "to Katie.' That is the only time that I knew "him to be unhappy, when he was worried over "the condition of her.

"Q. What else did he say about her?

"A. I asked him—so many people thought "that she was his daughter, and I asked him "about it and he said, 'I let people go under "that impression. I like it. I have no family "and I like to think that she is my daughter "and that her children are my grandchildren.

"Q. Go ahead.

"A. He had repeatedly said that he was go- "ing to leave her his money. That is how we "came to talk about wills. It was through my "instigation that he had his will made.

"Q. What did he say to you and you to him?

"A. There was a young man came into Mr. "Mitchell's office one day, he was only in his "20's, and he was making his will, and I asked "him if he (meaning Mr. Allen), had his will "made.

"He said, 'No.' I said, 'There is a young "boy just starting out on the threshold of life, "and he is going to make his will. And here "you are, you have one foot in your grave, you "make yours. Are you going to give it to your "brothers?' And he said, 'No, they have "plenty.' I said, 'They are the ones who would

"get it, if you make no will.' That is the only "thing I said then (C., p. 583). Then, later on "he asked me what I would do if I was going "to have a will made, and I said that I would "go to a lawyer, a personal friend, that in "case of death, that if he didn't have a good "will it could be contested, being that he was "going to leave it to someone outside of the "family.

"Q. What did he tell you?

"A. He told me he was going to leave Mrs. "Ailes his money.

"Q. What did he say?

"A. 'Because,' he said, 'she was the only one "that had been good to him; that she had made "a home for him.' "

Priscilla Fluck (Vol. II, C., p. 593, l. 19), testified:

"Q. Did you ever hear Mr. Allen say any- "thing about making a will?

"A. Frequently.

"Q. And as to the disposition of his prop- "erty?

"A. Yes.

"Q. What have you heard him say?

"A. Well, he said he would like to make a "will out, to make a will for my daughter, that, " 'she was so kind to me, and all the family,' "Mr. and Mrs. Ailes, and that they were such "a kind family to him and they were deserving "of everything that he had."

Under cross-examination (Vol. II, C., p. 598, l. 26):

"Q. Did Mr. Allen ever tell you that he had "a will?

"A. No, he didn't say, only this: As I went "home last year, last September, then he was "saying in the car, he says, 'Mama, have you "made your will?' He said, 'I am going to "have my will today, and this is Katie's lucky "day, for I am going to make a will for her.' "

(Vol II, C., p. 601, l. 14):

"Q. Do you know his words,—as near as you "can recall?

"A. He said this, 'I am going to have you "make your will.' Rather to me he says, 'I am "going to make my will. This is Katie's lucky "day. I am going to give her everything I have, "will her everything I have. She is deserving of "it. She is deserving.' Those were the words."

Augustus F. Daix, Jr. (Vol. II, C., p. 607, l. 29), under cross-examination, testified:

"Q. What facts did he give you?

"A. That he wanted to leave everything to "Katherine Ailes.

"Q. What were the words he used?

"A. That is as near as I can come to it, 'I "want to leave everything to Mrs. Ailes.' "

Joseph W. Halberstadt (Vol. II, C., p. 637, l. 21), testified:

"Q. Generally, what did he talk about?

"A. Well, mortgages, business. He was a

"man, while not a great reader, he had a great "philosophy, brought about through his own "experiences, and one of his remarks was, he "told me one day in my home, 'I had a nice "home but,' he said, 'Joe, when your wife dies "you will lose this home.' He said, 'I don't "care how much money you got. You can never "buy a home.' He said, 'You might buy a "house, but a home you have to wait for until "somebody gives it to you.' I answered, 'You "got no kick coming. Mrs. Ailes has given you "a good home.' He said, 'Well, I should say "so. There is nobody like Mrs. Ailes.' "

Clara Halberstadt (Vol. II, C., p. 683, l. 8), testified:

"Q. Did you ever have any talk with Mr. "Allen with relation with the distribution of his "properties, to make the distribution of his "property by will or otherwise?

"A. Other than he would say to me, 'After "I am gone in order that Katie and Frank will "never want for anything; never. They will "be well taken care of.'

"Q. How many times has he said anything "like that to you?

"A. At all times when he referred to them.

"Q. Did he ever refer to what they had done "for him during the latter years of his life?

"A. He made some remark to me and to Mr. "Halberstadt in my presence. He said, 'That "is something that we cannot buy, a home. You "can't buy it.'

"Q. Do you remember exactly what he said?
"A. He said, 'That is something you can't "buy, Clara. You can't buy a home. You may "buy a house but you can't buy a home and I "have a home for Frank and Katie to live. I "have a real home.' "

(Vol. II, C., p. 683, l. 30):

"Q. Did he ever talk about any of the mem- "bers of his family to you?
"A. Well, do I have to say this? Do you want "me to answer it?
"Q. What did he tell you?
"A. He said, 'I want Katie and Frank to "have everything I have.' He said, 'My folks "don't need it.' He said, 'They are aged.' And "he said, "Clara, every dollar I have, I got it "with hard work. Look at my hands. Every "dollar I have I have earned it myself and my "brother inherited a good fortune, got it easy. "I earned my money and I want it to go where "I want it to go, to Frank and Katie.' "

William H. Simpson (Vol. II, C., p. 699, l. 1), testified:

"Q. What would be your general topic of "conversation?
"A. We used to talk about investments on "houses; or principally stocks. He owned some "of the stocks in some of the same companies "that I did and we would talk about them, and "he also had some Northwestern Trust Com- "pany stock, that I wanted to buy and I made

"him an offer several times for that stock but "he would not sell it. He said he was leaving "that to Mr. and Mrs. Ailes,—'Frank and "Katie,' he called them."

(Vol. II, C., p. 701, l. 4):

"Q. Did he give any reason to you why he "did not want to sell his Northwestern Trust "Company stock?

"A. When I would bring the subject up he "would say, 'No, I am not going to sell that "stock. That is for Katie and Frank.'

"Q. What else did he say, if anything, to "you about what he intended to do for Katie "and Frank?

"A. He always said he was going to give "them everything."

(Vol. II, C., p. 701, l. 28):

"Q. Did he ever say anything about the mem- "bers of his family in connection with his prop- "erty?

"A. He said that his family was well taken "care of and when the will business would come "up he would say that he was going to leave his "money to Mr. and Mrs. Ailes, that they were "well taken care of.

"Q. That who was well taken care of?

"A. His family; principally he talked, I think, "about his brothers.

"Q. Did he ever say anything about Mrs. "Reulens, or 'Lillie?'

"A. He used to talk about them from time "to time.

"Q. Do you know anything that he said about "them?

"A. Just he said he didn't care for them, "that they were always wanting him to do "something; that he had a property that one "of his stepdaughters were living in and that "he would go up there once in a while to do "some repair jobs, repair work."

(Vol. II, C., p. 702, l. 13):

"Q. What did he say about that, if anything?

"A. Just before he died, it was on a Monday "and I was in the living room and Mr. Allen "came in, he was all excited and upset and he "said that he had just come back from Phila- "delphia, where he was doing some repair work "on this house, where 'Lillie,' as he called her, "was living; that he had an awful fuss and he "couldn't stand it any more and he had to come "home.

"Q. Did he say with whom the fuss was?

"A. With 'Lillie.'

"Q. Did he say anything to indicate about "what the fuss was about?

"A. About the repair work that he was doing "up there.

"Q. Did you ever hear him say anything "about his will?

"A. Yes.

"Q. What did he say with respect to that?

"A. He said that lots of times. He always "said that he was going to leave everything to "Katie and Frank before he died, and in that

"summer he used to talk about going up to make "out a will."

See also the testimony of Frank P. Ailes on the above subject taken at the hearing held July 22, 1929 (Vol. II, C., p. 727, l. 1).

See testimony of Kathryn Ailes on the above subject taken at the hearing held July 25, 1929 (Vol. II, C., pp. 791 and 797), and at the hearing held November 20, 1929 (Vol. II, C., pp. 852-853, 867).

Mrs. Kathryn Ailes, under cross-examination (Vol. II, C., p. 853, l. 21), testified as follows:

"Q. Well, now, did he say anything to you "about his reasons for making you his sole bene- "ficiary?

"A. Yes, he said that he had thought his own "family had aplenty; that Mrs. Reger, his sis- "ter, had really as much—she had got to be an "older woman, and she had just as much as "she could care for, which would be a burden "to her, and that Tom, his brother, was well "taken care of, that he had a life annuity, I "believe, and that he could spend his principal "and that would go back to his children and "he said that was all he had in the world, and "they were well taken care of, and he thought "this family (meaning Ailes family) had been "good and kind to him and were deserving of "it."

* * * * * * *

"Q. Now, you still say he never talked about "will with you except in 1928?

"A. If he would see any account in the "paper, he would refer—not to sit down and "talk about a will. He would comment prob- "ably on the articles that were in the paper, "and he would say, 'My! making a big fight "there. That is something that will never hap- "when when I pass away, because,' he said, 'my "people are well to do and never would put up "a fight.' Now, conversations like that, but I "never had any need to discuss it. I listened "to Mr. Allen, what he had to say. Wasn't "much for me to say.

"Q. Well, you do now say he talked to you "frequently about making a will in which you "would be beneficiary?

"A. Just in that way, yes. Yes, many times" (Vol. II, C., p. 868, l. 21).

4. MENTALITY OF TESTATOR FROM 1919 TO DATE OF HIS DEATH, AS SHOWN BY HIS ABILITY IN BUSINESS, KNOWLEDGE OF REAL ESTATE, SETTLEMENTS WITH TITLE COMPANIES, BANKING OPERATIONS, SYSTEMATIC BOOK ACCOUNTS, AND THE INNUMERABLE CHECKS THAT HE MADE OUT AND SIGNED OR DIRECTED TO BE MADE OUT AND SIGNED, AND HIS SOCIAL AND RELIGIOUS CONTACTS.

On September 7th, 1919, Albert Allen, the testator, lived at 1411 W. Allegheny Avenue, Phila.,

Pa., in a large, well-furnished home. His second wife, Sallie Allen, died on that date, leaving him living alone in the house. His marriage had been an unhappy one. He had, some years before that time, sold out his paint and oil business on Susquehanna Avenue and had retired from business, except to loan on mortgages to persons who wished to buy properties.

At that time he did not know Kathryn Ailes or Frank P. Ailes, her husband.

His wife, Sallie Allen, had two married daughters by a former husband; Mrs. Lillian Ida Seltzer Reulens, the caveator, and Mrs. Anna D. Shumway, neither of whom had lived with Albert Allen, nor been raised by him.

Mrs. Reulens lived at 1917 W. Dauphin Street in the house belonging to the estate of Ellen C. Allen, deceased, the first wife of Albert Allen, in which property he had a life estate.

Mr. Allen paid the taxes, water rent, and all repairs on this property and Mrs. Reulens lived there, rent free, up until long after Mr. Allen's death on October 22, 1928.

Mrs. Anna D. Shumway, his other stepdaughter, knew Kathryn Ailes as a school girl, and having met her in one of the stores in Philadelphia, and being informed that they intended to buy a property at No. 4816 Trinity Place, suggested that her stepfather loaned people money on mortgages and that she would bring him out to examine the property for that purpose. He came with Mrs. Shumway and, after examining the property, advised Mr. and Mrs. Ailes not to buy it.

As Mr. Allen was living alone, Mrs. Shumway sug-

gested and Mr. Allen suggested that Mr. Frank P. Ailes and his wife, Kathryn Ailes, and their two daughters come and live with him at 1411 Allegheny Avenue, rent free, they to supply the table. This was at the period of great house shortage in Philadelphia. A daughter of Mr. and Mrs. Ailes had married one William H. Simpson and, as they wanted to find a place to live, it was arranged for them to take the Trinity Place house furnished by Mr. and Mrs. Ailes while the family went to live with Albert Allen. They moved to 1411 Allegheny Avenue on November 15th, 1919, and lived there about seven months, until the following spring. Mr. Allen then having a sale of the house in view, it was necessary for them to leave and they went back to 4816 Trinity Place to live, as their daughter and son-in-law had found quarters elsewhere at 4311 Walnut Street.

The sale of the Allegheny Avenue house having fallen through, Mr. Allen requested them to come back and live with him again, which they did in the fall of 1920, and lived there about ten months, when Mr. Allen, having made an actual sale of the Allegheny Avenue house, the Ailes family moved to 4311 Walnut Street about July, 1921. Mr. Allen came to live with them there, occupying the second-story front apartment, which had been rented to strangers at $70 a month, and which he took over.

Subsequently, on the 30th day of December, A. D. 1920, Frank P. Ailes and Kathryn Ailes purchased 4311 Walnut Street for $6500 on the advice of Albert Allen. The Commonwealth Title Insurance & Trust Company took a first mortgage of $3,000 and Mr. Allen took a second mortgage of $3,000 and the

Ailes raised $500 in cash to purchase the property. Mr. Allen lived there with them permanently until 1925.

In the year 1920 Mrs. Ailes purchased a property on North Main Street, Pleasantville, New Jersey, which had formerly belonged to some member of Mr. Frank P. Ailes' family, consisting of a lot of ground with a dilapidated dwelling and barn on it, for the purpose of providing herself and her family with an inexpensive summer home. The deed was taken in the name of Kathryn Ailes, and from the date of the purchase Albert Allen took great interest in remodeling the building and remodeling the barn into a garage and small apartment over it.

On the 15th day of July, 1925, Mr. and Mrs. Ailes sold 4311 Walnut Street, which they had bought for $6500, for $18,000 and paid off the second mortgage of $3,000 held by Mr. Allen.

The family, in 1925, moved permanently to the Pleasantville home, where Mr. and Mrs. Ailes and one of their daughters lived until she was married, and part of the time one daughter and her husband lived in the small apartment over the garage and continued to live there until Mr. Allen's death on October 22, 1928. Mrs. Simpson and Mrs. Carter, two other daughters, lived in the immediate neighborhood at Pleasantville.

During these years Mr. Allen had bank accounts at the Northwestern Trust Company and Broad Street National Bank, in Philadelphia, and finally at the Pleasantville Trust Company. He continued to do business of loaning money on mortgages, examining real estate offered as security, buying real

estate, making settlements, etc., had business with a large number of banking men, real estate men, contractors, builders, settlement clerks of title companies, and neighbors, and drew numerous checks for a great variety of accounts, nearly all checks payable to bearer being in his own handwriting. Out of one lot produced at one hearing (Vol. II, C., p. 840, l. 26), certain checks were made out in Albert Allen's own handwriting, in 1928, all to his order or for cash, and exhibited down to the time of his death unusual business keenness and ability and shrewdness in all his business dealings with those with whom he came into contact.

In 1923 Albert Allen was taken seriously ill and was attended in that illness by his lifelong friend and physician, Dr. John A. Boger. On the 17th day of January, 1923, in the presence of Dr. Boger and Kathryn Ailes, he dictated a paper which he called his will and signed the same as his will and requested Dr. Boger to witness it and a Mary Eichelberger, who was a domestic in the family of Mr. and Mrs. Ailes, to witness it, which they did. At the same time he dictated a letter to Mrs. Ailes addressed to his friend, Mr. Robinson, Vice-President of the Northwestern Trust Company, in effect a general power of attorney to Mrs. Ailes directing him to honor checks signed for Albert Allen by Mrs. Ailes. This power of attorney was revoked by Mr. Allen upon his recovery in 1923.

The will was proved at the hearing before the Orphans' Court at the hearing held November 20, 1929, by Mary Eichelberger, one of the subscribing witnesses, and the letter in the form of a power of

attorney to sign checks was proved by Mrs. Ailes, and both papers offered in evidence and identified.

These two papers were signed because Mr. Allen expected that day to go to the Jefferson Hospital for a most major operation and might not get out for a long time. He did go to this hospital and was there eleven weeks, where he was attended by Dr. John A. Boger, his physician, and was operated on by Dr. Loux for prostate gland trouble. From this operation he made a one hundred per cent recovery, although he felt the effects for about a year thereafter, but subsequently was in perfect health and never had occasion to consult a doctor from the date of his discharge from the hospital until he was taken ill near Winchester, Virginia, on the automobile trip, which proved to be his last illness, as he died in the Winchester Hospital on the following day, viz., October 22, 1928.

A large number of witnesses stated that during all their acquaintance with him he talked rationally and showed no signs of impaired mentality up to the time of his death.

That he was a shrewd, keen business man and knew how to make and keep his money.

He did a great deal of business with Pleasantville Trust Co., where he kept accounts in the saving fund and checking account, transferred large sums of money and signed hundreds of checks for payment of taxes, bills, mortgage settlements with various title companies, drew checks to his own order, which he cashed, and actively attended to large business matters up to within three days of his death.

That he boasted of his good health many times

and of his ability to run upstairs, without losing his breath, and how many meals he could eat. He showed a keen enjoyment in everything, displayed sound judgment in refusing mortgages that he was asked to take, because the properties were not worth the loans, up to a few weeks before his death.

5. TESTIMONY OF WITNESSES AS TO THE MENTALITY OF ALBERT ALLEN AND HIS ABILITY TO MAKE A WILL AND ATTEND TO BUSINESS, WHICH AMPLY SUPPORT THE ARGUMENTS LASTLY HEREIN MADE.

George R. Manning (Vol. I, C., p. 273) testified that Albert Allen kept an account in the Pleasantville Trust Company from October 6, 1925, to October 22, 1928, in the Saving Fund Department.

He drew seventeen checks in 1928, thirteen from August 7 to October 22, on this account. The account showed a balance of over four thousand dollars.

He also kept a checking account. This showed a great number of deposits and withdrawals (see Exhibit P50, Vol. II, C., p. 967, *et seq.*).

Seventeen checks being drawn in October and deposits were made by him during September and October in excess of seven thousand dollars.

Witness stated that it is the practice of the Pleasantville Trust Company to pay checks on the sig-

natures of deceased persons within ten days of notification of death.

The checks for $800 and $2,000, dated October 22, 1928, were paid by the Pleasantville Trust Company and Mrs. Ailes acted entirely on the advice of Mr. Manning in paying these checks and concluded that she was within her rights in collecting them. Mr. Manning was satisfied that Mr. Allen signed the checks. Mrs. Ailes did not want to use the checks, but she used them on the advice of Mr. Manning, and naturally he put them in her account the next day. He wrote to the hospital in Virginia and got a certificate, offered in evidence (Vol. I, C., p. 278, l. 15), before he paid the checks and Mrs. Ailes deposited these checks entirely on Mr. Manning's advice.

Mr. Manning also testified from the records of the Pleasantville Trust Company that deposits and withdrawals in the savings account of Albert Allen, beginning October 2, 1926, closing January 1, 1929, were as stated (Vol. I, C., p. 285, l. 3):

That Albert Allen received his cancelled checks prior to October, 1928, when the last statement was balanced. He received this personally when he was in the bank on October 19th, just before his trip to Virginia, and that was the reason he got his statement. Witness gave it to him.

Checks were returned to Mr. Allen personally. The account was balanced in 1928 about five times (Vol. II, C., p. 290, l. 34), and each time Mr. Allen was furnished with the cancelled checks and a copy of the statement personally by Mr. Manning.

Mr. George R. Manning (Vol. I, C., p. 367, l. 11) also said that he knew Albert Allen from the spring

of 1922 and came into contact with him from time to time when he was down to the bank attending to the banking business of the Pleasantville Trust Company and continued this contact until the Wednesday before his death, which was October 17, 1928. Mr. Allen came into the bank once a week or once in two weeks and towards the last two or three times a week (Vol. I, C., p. 367, l. 30). Mr. Manning stopped on his way to and from the bank and passed Mr. Allen's home and talked business and other things, and this continued during all the time that Mr. Allen lived there.

The witness saw Mr. Allen five or six times in October, 1928, and in September of 1928 he saw him fifteen or twenty times, at the bank, at his home and on the street.

Mr. Allen was able to attend to his matters up to the last time witness saw him and his conversation was absolutely rational (Vol. I, C., p. 368, l. 24).

At no time up to the date of his death, when witness saw him, was he unable to transact business. Witness remembered an occasion in August of 1928 at Mr. Allen's home, when he was on the porch and had a conversation about the Pleasantville Trust Company stock. This was on Thursday, about August 9th. Witness stopped there personally to see him about this stock. Witness had sold him five shares of stock of the Pleasantville Trust Company and had not yet received the check for it. The witness received the check the day before and was unable to deliver the certificate on Wednesday and notified Mr. Allen that before making delivery he would have to come and sign a receipt. Mr. Allen came to the bank on Saturday, August 11th, 1928,

to get his certificate. He signed the receipt and received the certificate of stock on that day.

Witness also stated that on the same night of August 9th, 1928, he talked to Mr. Allen about making a will.

> "Witness: I asked him if he wouldn't bring "his box down to our bank. He asked me the "price and I told him they ran from $2 to $5. "Our largest boxes are $5. He said he would "do that at some future date, that it was a good "practice to keep your will, your certificates, "your mortgages, your insurance papers and "things like that together. He said he had "many of them in his box in Philadelphia and "some of them in the house. I said that it was "more convenient to him down here and why "not bring them here? He said he would. I "told him to stop down and I would show him "the box; which I did a few days later. He "asked me that time about his will. He asked "me if a will, written on just a letter sheet, "would stand in New Jersey. I told him, under "contest, no. He said, 'What do you advise me "to do to make a good will?' I said, 'Go to a "good lawyer.' I said, 'There is a lawyer, Mr. "Lewis'—I said, 'Maybe in your case you bet-"ter have Judge Cole in Atlantic City; you "got a better lawyer and you get a better will "for those you want taken care of.' He said, " 'I want to see Kate and Frank better taken "care of.' I says, 'In that case, if you expect "trouble, you better see a good lawyer.' He "said, 'I will see my lawyer in Philadelphia,

"Senator Daix;' he said, 'He is the best lawyer "in Philadelphia.'

"Q. Did he say why he was desirous of hav- "ing Mrs. Ailes taken care of?

"A. He said they had been very good to "him."

(Vol. I, C., p. 373, l. 1):

"Q. Was that statement made on this occa- "sion?

"A. This occasion, yes.

"Q. Did you notice any impairment of Mr. "Allen's mental faculties during the year 1928, "at all?

"A. I did not.

"Q. What about his physical condition; what "did you observe with respect to that?

"A. For a man of his age I would say it was "good.

"Q. When Mr. Allen visited you at the bank "or when you met him at his house or generally, "what was the subject of conversation between "you and him, say, during the last two years "of his life?

"A. If I remember it rightly, he invested in "a number of mortgages toward the last. On "one occasion he asked me about the reputa- "tion of a certain real estate man in Pleasant- "ville; on another occasion he asked me the "advisibility of another mortgage, and that is "the last mortgage he took.

"Q. Do you remember when that was?

"A. That was about the middle of October "the mortgage was placed (1928)."

(Vol. I, C., p. 3733, l. 27):

"And on other occasions he talked about "church, his home, and he was very interested "in real estate; and he asked me at times about "a good many properties in Pleasantville, and "in general he was interested in our bank. He "asked me a lot about our bank and I told him "all I could with reference to these things.

"Q. Upon any of these occasions did he say "or do anything that would indicate he was un- "able to transact business?

"A. No, sir.

"Q. When he made deposits in your bank, "who made out the deposit slips?

"A. Usually he did; on one or two occasions "Mr. Le Compte, treasurer of the bank, made "them, and I made out one or two myself."

Witness stated that (Vol. I, C., p. 374, l. 16) he transferred funds from his savings fund account five or six times during the last couple of years.

Witness also identified deposit slips made out in the handwriting of Albert Allen (Vol. I, C., p. 376, l. 10):

(Vol. I, C., p. 380, l. 16): Witness stated that in Mr. Allen's visits to the Pleasantville Trust Company he was accompanied sometimes by different people, sometimes a real estate man. Only on one or two occasions did Mrs. Ailes go with him.

(Vol. I, C., p. 380, l. 32): Mrs. Ailes kept no bank account prior to Mr. Allen's death, with the Pleasantville Trust Company.

Mr. Manning's testimony is corroborated by the pencil memorandum in the handwriting of Albert

Allen found on his stand in his room about a month after his death, which reads as follows:

See Robinson
Go to Bank
Get mortgage of Carters to Pay Off
See Roof at 1917 Dauphin St.
See Daix
See about Lot
S. E. cor Lot 781 Ludlum Av
& Pleasure Av Sea Isle City N. J.
Take 5 shares of Pleasantville Trust
company and Put in my Box in The Northwestern
Trust Company envelope
Get Shave

(which paper was marked P1a) (Vol. II, C., p. 978, l. 28).

This paper fixes the fact that Mr. Allen acted under the suggestion of Mr. Manning that a will written on two sheets of note paper would not hold in New Jersey if contested and that a will ought to be drawn by a good lawyer, and that Mr. Allen expressed his intention of seeing his own lawyer and not Mr. Lewis or Judge Cole of Atlantic City, because the paper says, "See Daix." The paper must have been written as a memorandum of things to be done between August 11th, 1928, the date when Mr. Allen received the five shares of Pleasantville Trust Company stock from Mr. Manning, and September 7th, 1928, the date of the last will.

The matter is further corroborated by the testimony of Mrs. Ailes that she urged Mr. Allen not to be in a hurry to go to Philadelphia in August,

as it was entirely too hot and that he felt the heat very much.

The five shares of stock were found in the deposit box at the Northwestern Trust Company and Mrs. Ailes testified that she was in the bank with Mr. Allen when he put these shares in the box.

Mr. Daix testified that it was some days prior to September 7th, 1928, that they were in and that Mr. Allen gave him instructions as to drawing his will, in private, without Mrs. Ailes being present.

These facts indicate that Mr. Allen was acting entirely on his own initiative, selecting his own lawyer and his own time for giving instructions in drawing his will and that nothing was done in the presence of Mrs. Ailes so far as the instructions of the will were concerned or the execution of it.

Testimony of George H. Adams, Cashier of the First National Bank of Pleasantville, N. J. (Vol. I, C., p. 385).

This witness stated that he knew Mr. Allen since 1922. During the last two or three years he met him nearly every morning in the summer time and sometimes had conversations with him. The last time he saw him was in October, 1928. Had transactions with him in reference to selling him some bonds about two years prior to his death, which the church was issuing. About six months before his death (Vol. I, C., p. 387, l. 35), witness met Mr. Allen in the presence of Mr. Manning and Mr. Allen asked him to try and get him some First National Bank stock. This was sometime in July or August of 1928. At these various times when witness came

into contact with Mr. Allen during the last two years of his life, witness did not observe anything which would indicate impaired mental capacity. Upon none of these occasions did he do or say anything that showed he was unable to transact business (Vol. I, C., p. 388, l. 5):

"Q. What did you observe with reference to "his capacity to transact business?

"A. He always seemed shrewd enough, "rational enough to me.

"Q. Did he ever say anything irrational to "you, at all?

"A. No, nor in my presence.

"Q. As to his physical condition what did "you observe?

"A. I should think it was good for a man of "his age, the way he kept doing, and things like "that" (Vol. I, C., p. 389, l. 17).

On cross-examination:

"Q. Did he give you the appearance of being "a liberal man?

"A. Yes."

Testimony of Samuel C. Lippincott (Vol. I, C., p. 391):

Samuel C. Lippincott knew Albert Allen in his lifetime, since 1880. He knew him in Pleasantville since 1921.

"Q. How late before his death did you see "him or have conversation with him?

"A. Yes, I saw him, met him on the street. I "was talking about his health and I says, 'Allen,

"you're looking well,' and he says, 'I am feeling "well.' I think that was Wednesday or the day "previous to the day he went away."

Witness stated that he had seen him the day before and he was talking about some mortgages. *He did not take them because they wanted too much on the properties; more than they were worth.*

Witness sent Mr. Allen to look at some mortgages of some real estate but he did not take any of them witness found out.

"Q. What did he say to you before you made "the remark that you have just testified to?

"A. He said, 'I don't know where to put my "money down here,' and he spoke about seeing "a man who was one of the original stockhold- "ers and trustees of the Northwestern Trust "Company, at 23rd and Ridge Avenue. I used "to make settlements there."

"Q. Did you have any conversation with him "about business affairs, other than what you "have related?

"A. Yes, he often asked me.

"Q. What I want is the conversation, what "you talked about.

"A. About our real estate investments; those "two things is all we talked about.

"Q. Upon those occasions in 1928 did he talk "to you rationally or otherwise?

"A. Very rationally. Just as I say. It seems "to me that during the 48 or 50 years that I "have known him he always seemed the same, "always a good talker.

"Q. What do you mean by that?

"A. He always had a good head; he had no "lack of real estate knowledge and good in "business.

"Q. Did you ever hear him say anything that "would indicate to you that he was unable to "transact business?

"A. No, sir, he was just the same, to my "mind, as he ever was. The last time I saw him "I said, 'Allen, you are good for 15 years,' and "he said, 'I guess you are, too,' and just passed "along after passing the remark.

"Q. What about his physical condition dur- "ing the time you have known him?

"A. I never knew much about his physical "troubles. He went to the hospital once. I "heard about the operation. I never knew any- "thing about it but the last time I met him I "said, 'You're good for 10 years yet, Allen.

"Q. Was there any indication to you that he "was failing mentally or physically when you "saw him in 1928?

"A. Not particularly; nothing more than age "does with all of us; no special indication of "anything.

"Q. Could he converse intelligently with you?

"A. Yes, he always did. He always seemed "so to me, for 48 or 50 years."

(Vol. I, C., p. 396, l. 11):

"Q. Did Mr. Allen ever express himself to "you about how he was treated by Mr. and Mrs. "Ailes?

"A. He always said he had a happy home and "when he spoke about leaving his money I spoke

"to him about leaving some to our church. He "said, 'I will think it over.' I said, 'You have "nobody but yourself, who are you going to "leave it to?' and he said, 'I will fix it. I will "fix the folks at home,' because he was always "so well taken care of."

(Vol. I, C., p. 400, l. 6):

"Q. Did he say anything to you about his "home life?

"A. I told you he said he had a very pleasant "home and was going to take care of his folks "at home, when he talked about money matters.

"Q. On how many occasions did that occur?

"A. Two or three times, I guess, in the last "four or five years. I was wondering whether "who he was going to leave his money to, know- "ing him as I did."

William L. Anderson (Vol. I, C., p. 402, l. 21), met Mr. Allen in 1920 or '21. He had business transactions with him in reference to a mortgage in 1927. *Showed him some property but he did not think it was quite good enough for the money witness was asking for it.* Saw him two or three days before he left on his last trip. Was in office of witness and told witness he anticipated a good time on his travels. He said he was going to Luray Cavern, Virginia. He talked just as rational then as he ever did.

"Q. Was there anything in his conduct or "conversation that led you to believe that he "was not able to transact business of any kind?

"A. Nothing at all.

"Q. Could he carry on a connected conver-
"sation?

"A. He certainly could.

"Q. Upon any of the occasions that you saw
"him either on business or otherwise, did he
"ever indicate to you by his conduct or conver-
"sation that he was unable to carry on busi-
"ness?

"A. Not to me, in the least.

"Q. Or that he had impaired mentality?

"A. Impaired?

"Q. Impaired mentality?

"A. Not in my judgment."

Raymond P. Thompson (Vol. I, C., p. 406, l. 13), City Engineer at Pleasantville, knew Mr. Allen since 1920 or 1921. He saw him occasionally. He came into office of witness and witness met him on the street. Several times he came in to see about fire insurance policies. At other times he asked about the value of properties around Pleasantville, and the last time witness met him he was inquiring about placing some money he had. He wanted to know if witness had any applications for good mortgages. This was sometime about the latter part of August, 1928, or September 1st. He told witness he had some surplus money and wanted to get some good mortgages and witness told him where some properties were, *but he did not make any loan.*

"Q. Did you have any other business trans-
"actions with him before that?

"A. Yes, very many. Covering from the

"time he came there, along in 1921, up to the "time of the conversation I speak about, at "various times.

"Q. Did you have other conversations with "him in 1928 and the one you have indicated in "August?

"A. I am pretty sure I saw him at different "times in 1928. I am sure he was there two or "three times on insurance policy matters, con- "nected with his mortgages, but as to the dates "I can't state.

"Q. When you saw him in 1928 and had these "talks with him, could he or not carry on a con- "nected conversation?

"A. He could. I saw no difference in his "conversation then than it had been before. I "had no indication that there was anything "wrong with him.

"Q. Was there anything that he said or did "that showed he was unable to transact busi- "ness?

"A. Nothing.

"Q. Did you have any talk with him about "real estate values in Pleasantville?

"A. Yes, often.

"Q. How late?

"A. The last conversation I had with him "when he was inquiring about the mortgages.

"Q. What did you see as to his physical con- "dition upon that occasion?

"A. I saw nothing to indicate that he was in "any way incapacitated, at all. I don't think I "asked him particularly about his health.

"Q. There was nothing to indicate to you "that he was impaired physically or mentally?

"Not a thing.

"Q. What about his spirits? What did you "observe as to his spirits?

"A. They were very good, very good. He "seemed to be in good spirits and in the best of "health as far as I could see, or tell."

Clarke Adams (Vol. I, C., p. 409, l. 32), county freeholder, became acquainted with Mr. Allen along in 1921 or 1923. Did some electrical work in a house in which he was interested. Continued friendship with him up to the time of death. Met him once or twice a week. He would drop in witness' place of business maybe once a week.

"Q. Did you ever visit him where he was "living?

"A. Yes.

"Q. How often?

"A. Maybe two or three times.

"Q. Did you ever have any conversations "with him with relation to business matters "during that period?

"A. Yes.

"Q. What were the conversations? What "was the talk?

"A. In one instance I asked him about plac- "ing a mortgage on a property and I asked him "to look at it to see what he thought about it. "He did it but would (not) place the mortgage. "The last time I talked with him was just a

"general conversation relative to business con-
"ditions, and so forth.

"Q. Do you remember what the conversation
"was?

"A. Yes, he talked about—it was just prior
"to the election and the reason I stopped there,
"he made the remark that Mrs. Carter had
"moved away and I thought they were still
"entitled to vote; they moved to Washington.
"I stopped there to see whether she would be
"back to exercise the right of franchise and Mr.
"Allen was there and I talked to him about
"general business conditions and how the stock
"market was coming along and so forth."

Mrs. Carter is a daughter of Mrs. Ailes, who formerly lived in Pleasantville.

"Q. That was the last occasion and that, you
"say, was in the fall of 1928?

"A. It was on a Sunday, and it was, I believe,
"in September, but what date I couldn't tell
"you.

"Q. Was he able at that time to carry on a
"connected conversation?

"A. Yes.

"Q. Did he speak rationally or otherwise?

"A. Rationally.

"Q. Did he understand what you said to him
"and did you understand what he said to you?

"A. Absolutely.

"Q. What did you observe with relation to
"his physical condition on that occasion?

"A. No different from any other time that
"I had ever saw him.

"Q. Was his mental condition just the same?

"A. Just the same; I didn't observe any "change in him.

"Q. Did you ever have any conversation with "him relative to real estate values in Pleasant-"ville?

"A. Yes.

"Q. What was the talk between you and Mr. "Allen * * * Any time during the 5 years that "you knew him?

"A. The only time I ever recall talking to "him about values was one morning when I "saw him in the bank, and the way it came about "(C., p. 412, l. 29), was on the subject of loans "on Main Street. He said it was too high, that "valuations were above what they should be, "that they were above what could be gotten for "the properties, from a business standpoint."

Witness said this took place some time in the spring of 1928 (Vol. I, C., p. 413, l. 22):

"Q. On these occasions when you saw Mr. "Allen, was he in good spirits or otherwise?

"A. In good spirits, always."

John P. Giberson (Vol. I, C., p. 414, l. 20), life insurance salesman, knew Mr. Allen in his lifetime very well. Was his neighbor. Could sit on his porch and look over at him and see him. Lived on the opposite side of the street. Never had any business transactions with him. Just social. Met him often down at Pleasantville or on the street. Just talked

to him about real estate and mortgages when talking about business.

"Q. How late did you have any talk with him "about mortgage matters?

"A. The last year when property had a "slump in it, and we had a talk then about it.

"Q. What do you mean by, 'the last year?'

"A. The last year when property had a slump "in it, in 1928.

"Q. How many times did you talk with him "about business matters?

"A. It was generally all the time. He was "a real estate man and had money.

"Q. What would be the conversation between "you and him?

"A. Well, he said the bottom fell out and "that it would take (Vol. I, C., p. 415), some "time to come up again, and that a man should "be careful about placing loans; not to place "too much. He said he never had to foreclose "a mortgage.

"Q. How often in the last year, say 1928, did "you talk with him? (Vol. I, C., p. 416, l. 5.)

"A. About once or twice a week.

"Q. Upon those occasions was he able to "carry on a connected and rational conversa-"tion?

"A. Yes, he was shrewd, he was.

"Q. Could you understand what he said?

"A. Yes, I guess I could as well as I could "you.

"Q. Could he understand what you said to "him?

"A. Yes, I guess he could. He was bright.

"Q. What was his physical condition in 1928?

"A. On the Sunday night before he went "away on this trip I met him at our church "there. I wasn't very well and he asked me "how I was and I told him, and he said, 'Just "look at me.' He said, 'I am older than you "and I am in good health and I am going on a "trip now and am going to spend a lot of "money.'

"Q. In 1928, when you had these talks with "him, was there anything in his speech or talk "that indicated he was failing, mentally?

"A. No, there was not.

"Q. What was said by him about his appe- "tite?

"A. He said he could eat 5 times a day.

"Q. When was the last time he talked with "you about that?

"A. Last summer at Pitman Grove camp "meeting.

"Q. In the summer of 1928?

"A. Yes.

"Q. Did you ever go there with him?

"A. No, I was up there the same time he was, "at Pitman Grove.

"Q. Do you know what he was doing up "there?

"A. Yes, he was up to camp for a good time.

"Q. Who did he go with, do you know?

"A. Mr. Garrison.

"Q. You saw him up there?

"A. Yes, I saw him.

"Q. When that happened was he able to carry "on a connected conversation?

"A. He was all right, always.

"Q. What did he say about his spirits during "the last two years of his life; was he down-"hearted, or did he seem to be in good spirits?

"A. No, sir, he was all right, he was happy "and always in church. When I was there he "was there.

"Q. He would go to church?

"A. Yes, he would go on a church picnic or "where there was anything doing; he was right "there.

"Q. How long did that continue?

"A. Clean up to the time of his death. The "last time I saw him, he was in church that "night."

Holstein Roberts (Vol. I, C., p. 426, l. 32), knew Mr. Allen in his lifetime. Settlement clerk at Atlantic Title Company. Met Mr. Allen first on September 10, 1928. Had met him before but did not remember him distinctly. He had a settlement on September 10th, 1928, at the Atlantic Title Company.

"Q. What happened at the occasion of the "September 10 settlement?

"A. He took a small mortgage on a property "of Mr. Carlen's of $600.

"Q. Who were present?

"A. He was there, personally; Mr. and Mrs. "Ailes were there, personally, and Mr. Lewis, "the attorney.

"Q. What part did Mr. Allen take in making "settlement or at the settlement?

"A. He was the mortgagee. Of course, he "came there, put up the money and he stayed "there for some two hours. It was an unusually "long settlement and he just looked over his "own settlement and took care of his interests "as mortgagee.

"Q. He looked over the settlement?

"A. Yes.

"Q. Was there a settlement sheet prepared "by you?

"A. Yes."

(Vol. I, C., p. 428, l. 20):

"Q. What did he do with reference to that?

"A. He looked over it; went over the figures "and expressed his approval of the figures.

"Q. You say he advanced the money. Was "that money advanced in cash or check?

"A. Check.

"Q. Whose check?

"A. I believe, I couldn't say, but I think it "was his own, but I couldn't say.

"Q. Did he conduct a connected conversation "with you on that occasion?

"A. Yes, with myself and everybody else "there.

"Q. Was there anything done or said by him "that would indicate that he was irrational and "unable to transact business?

"A. No, I didn't see anything.

"Q. You saw they were there a couple of "hours. What was the reason for the delay? "What was the occasion for the delay?

"A. The papers had been drawn wrong for

"some reason or other; I forget, but Mr. Lewis "had to take them back to his office and re- "draw the mortgages and the deeds. It took "an hour and a half while (Vol. I, C., p. 429, l. "14), we were there waiting for the papers to "be drawn.

"Q. What was going on during that time be- "tween the parties?

"A. Just general conversation.

"Q. Just general conversation. Did Mr. "Allen join in that conversation?

"A. Yes, very much.

"Q. Do you remember what they were talk- "ing about?

"A. It was just an ordinary conversation:. I "remember he was very jocular and seemed to "think it was funny, with so much legal advice, "that a settlement should take so long. Two "hours we were sitting there, about."

Henry E. Conover (Vol. I, C., p. 434, l. 19), carpenter, resided at Pleasantville for 17 years. Became acquainted with Albert Allen in 1923. He attended the Mt. Pleasant Church which witness attended.

"Q. Did you do any work for him in 1928?

"A. Yes.

"Q. During what months?

"A. Sometime in July; I done a job the latter "part of July. I don't just know the date, but "the latter part of July.

"Q. What was the work?

"A. Building a bay window in his bedroom.

"Q. Who made the bargain with you?

"A. He made part of it. They made it be-
"tween themselves; of course, he paid me for
"it.

"Q. What part of the bargain did Mr. Allen
"make with you?

"A. He told me he wanted a bedroom window
"made on his own home over there, he would
"see about it. They consulted together about
"it, of course.

"Q. During the negotiations did you have any
"conversation with Mr. Allen?

"A. Yes. He said he wanted it done; that
"he wanted his bedroom fixed up, that with the
"things he had in his home he wanted it fixed
"up nice" (Vol. I, C., p. 435, l. 36).

"Mr. Allen paid for this work by check, some-
"where around $100.

"Q. After the work was done did you have
"any talk with Mr. Allen about the work?

"A. Well, after I done the bay window he
"wanted a screen done. I was out making
"screens. He came up and wanted to know
"what I was doing and I said, 'Making some
"screens,' for his window. I wanted to keep
"the flies off, I didn't want to see them on it,
"and he said, 'That is good.' He said, 'I have
"a nice bedroom'—in his home, and he said, 'I
"think very much of it.' He said other things
"that he talked about there. He said what he
"thought about the people he lived with there.

"Q. What did he say about them?

"A. He said Kate Ailes was a nice woman,
"and her husband, too. And he said that he

"was going to fix things so that she wouldn't "want any more while she lives.

"Q. While you were doing work on the bay "window, did he help you in any way?

"A. Yes, he carried away dirt and cleaned "up after me.

"Q. Did he say anything to you about any "other business affairs that he had?

"A. Well, yes. He says—this was the last "time I saw him, Sunday night before he went "away. He said he was going and wanted me "to go with him. He had some work there he "wanted me to do and I told him I couldn't "go. I told him I didn't want to go away from "home. He said, 'I would like for you to go.' "He talked to me about building two 2-story "houses and a store somewheres; I didn't ask "him where. He told me about that twice, but "this was the last time I saw him, Sunday night, "at the church.

"Q. When was it you had a talk with Mr. "Allen about Mrs. Ailes; was it the last occa- "sion or the occasion before when you were "putting up the bay window?

"A. When I was putting in the bay window.

"Q. In those two conversations you had with "him could he talk connectedly, carry on a con- "nected conversation?

"A. Oh, yes, very sensibly.

"Q. Did you observe anything different in his "mental attitude upon that from the other oc- "casions or times when you had talked to him "before?

"A. No, sir.

"Q. What about his physical condition?

"A. He seemed to be all right, except he said "his back hurt him a little; he complained of "his back.

"Q. Did he talk rationally to you, or other- "wise?

"A. He talked to me as rationally as he al- "ways did.

"Q. Had you had any other business trans- "actions with him before these two occasions?

"A. I had a little job, a four or five-dollar "job, or something like that."

Benjamin F. Garrison (Vol. I, C., p. 441, l. 15), real estate and insurance business since 1912. Became acquainted with Albert Allen about 1920, when he came into office of witness. Witness placed two mortgages for Albert Allen in 1928, one in August and the other three or four months before.

"Q. Tell us in your own way what your ne- "gotiations were with Mr. Allen with reference "to the placing of these loans.

"A. Well, one of the men came to me and "wanted some money. I went over to see Mr. "Allen if he would loan a certain amount of "money and he said yes, if it suited. I told him "what I wanted and he said he would go and "look at them. Mr. Allen went to look at the "properties before he would lend anybody "money for mortgages. He said then, after he "saw the properties, 'Yes, I will take the mort- "gages.' I drew the bonds and mortgages and "made settlement right in his home, and he gave

"me a check for the mortgages. These were "2nd mortgages and he didn't have to have any "title policies.

"The previous mortgage matter was carried "out in the same manner.

"Q. In 1928 or upon any other occasion did "you come in contact with him except upon the "two occasions that you have testified to?

"A. The last Thursday of March, knowing "that he was a man that liked church, I went "over one evening and I said, 'Mr. Allen, to-"morrow morning I am going to Ocean Grove.' "Mr. Giberson said 'Pitman Grove,' but it was "a mistake, it was Ocean Grove. I said, 'Billy "Sunday has charge up there preaching.' I "said, 'I would like to take a trip up there and "you can stay with me to Labor Day.' He said, "'I will go.' And Mrs. Ailes spoke up and said, "'Mr. Allen—or Papa—why can't we all go? "I would like to hear Billy Sunday preach.' He "said, 'That would be fine.' So he made ar-"rangements Friday morning and went to-"gether, got the same hotel.

"Q. Who were in the party?

"A. Mr. Ailes and his wife, Mrs. Ailes, and "Mr. Allen. They went in their car and me "and my wife went in our car; and Mr. Giber-"son and his wife went in his car.

"Q. There were 3 automobile parties of you?

"A. Yes.

"Q. And that was for over Labor Day?

"A. That was Friday before. We left Fri-"day before Labor Day, 1928.

"Q. You stopped at Asbury Park?

"A. No, I don't think Mr. Giberson did. I "think he stopped some other place.

"Q. Do you remember any other occasion "when you came in contact with Mr. Allen?

"A. Mr. Allen lived right across from me, "about 250 feet away. He was a man who ad- "mired beauty. He liked lawn and he liked "roses and I liked roses, and when I would be "working on my lawn he would be walking "across there with his hands behind him and "talk to me, very often, on up to the times of "his last trip.

"Q. On any of these occasions in 1928 was "Mr. Allen able to carry on a connected conver- "sation?

"A. He was always able. He was a shrewd "man.

"Q. Did he talk rationally upon these occa- "sions?

"A. Yes, sir, no other way.

"Q. During all the time you say you have "known him, these several years, since 1922, did "you notice any difference in his behaviour in "1928 either mentally, or in his physical condi- "tion, from that which you had observed be- "fore?

"A. No, sir, perfectly normal, and a good "eater, too.

"Q. What is that?

"A. He was a big eater, too.

"Q. How do you know that?

"A. He said at camp meeting, he said, 'Gar- "rison, I am getting the best of you. I am eat-

"ing 5 times a day, 5 meals a day.' And it was "a fact.

"Q. Did you ever observe him in his porch "swing?

"A. Yes, and pushing his lawn mower, too.

"Q. How late in life did he continue to push "his lawn mower?

"A. Just a little before he went to camp meet- "ing. He was always working around that "lawn, trimming flowers and cutting out dande- "lions.

"Q. Was Mr. Allen a moody man or was he "always in good spirits?

"A. Always in good spirits, first-class.

"Q. Did you ever talk with Mr. Allen or he "with you, about Mr. and Mrs. Ailes?

"A. Yes, I have heard him say he had a good "home and appreciated and that they used him "kindly.

"Q. Did he say anything else that you recall?

"A. No; but I was often in the home; every- "thing was fine. He visited me and I visited "him. We were neighbors.

"Q. Did Mr. Allen ever make any compari- "son between Mrs. Ailes and the child that Mr. "Allen had?

"A. Never did to me.

"Q. From what you observed in the year "1928, was Mr. Allen able to transact business?

"A. Yes.

"Q. Was there anything happened upon any "occasion when you came in contact with him "that indicated that he was unable to transact "business?

"A. No, sir, he was just as able to transact "business in 1928 as he was in 1922."

Ella M. Shoemaker (Vol. II, C., p. 535, l. 27), graduate trained nurse who attended Mr. Allen in the Jefferson Hospital in 1923 while he was there as a patient. Physicians Dr. Loux and Dr. Boger.

(Vol. II, C., p. 538, l. 16):

"Q. Did Mrs. Shumway come there seldom "or frequently?

"A. She came a number of times.

"Q. Can you recall what happened between "her and Mr. Allen upon any occasion when she "was there?

"A. No occasion except the time that she "wanted Mr. Allen to make a will.

"Q. What happened then?

"A. She brought a Mr. Schreiber there to "draw a will for Mr. Allen."

(Vol. II, C., p. 539, l. 31):

"Q. What did Mrs. Shumway say to Mr. "Allen in your presence on that occasion?

"A. When Mr. Schreiber came into the room, "she said to Mr. Allen, 'Here is Mr. Schreiber "to draw up the will,' as he wanted; and to me "she said, 'This is my papa's best friend, Mr. "Schreiber.'

"Q. After that occasion, on another day, did "you have any talk with Mr. Allen about Mrs. "Shumway?

"A. Yes, a day or two afterward, he said to

"me, 'You will have to keep her out of the "room.' "

Mildred Ailes Fleming (Vol. II, C., p. 549, l. 22), the daughter of Mrs. Ailes, married in June, 1923, then living at 4311 Walnut Street, Philadelphia, became acquainted with Albert Allen in 1919, while the Ailes family were living on Trinity Place, consisting of mother, father, younger sister, and the witness. The Ailes family lived at 1411 Allegheny Avenue when Mr. Allen lived with them; they remained there until the spring of 1920. The Ailes family moved back to Trinity Place because the Allen house was supposed to have been sold; he had a deposit on it and the deal was to go through, but it didn't.

Witness states that she and her sister stayed with Mr. Allen for two or three months, taking their meals out and sometimes went to their mother's to eat frequently; Mr. Allen went with them frequently. Witness was employed.

She lived with her parents from 1919 until June, 1923, when she was married. She spent a great deal of the summer of 1923 at Pleasantville, the home of her parents.

(Vol. II, C., p. 553, l. 23):

"Q. From the time that Mr. Allen became "a member of the family until he died, how did "he treat you children?

"A. Well, he just simply seemed like one of "us, that is all. We were all very fond of him, "and there was lots of fun to have around. We

"went to dinner at numerous times and he took "us out over along the Boardwalk. He fre- "quently bought us presents, including clothes "and jewelry, not expensive jewelry, but French "jewelry, so to speak.

"He never missed a birthday or a Christmas "to give us all very lovely presents."

(Vol. II, C., p. 555, l. 15):

"He spent a great deal of time in Reading, "at my home, and was very wonderful to my "children when they were born, both of my chil- "dren, he bought them their baby coaches and "a number of baby clothes and spent time with "me at my own home.

"He was there in the fall until September, "possibly August; however, it was during the "summer of 1928.

"He visited witness five times, possibly more, "in Reading."

(Vol. II, C., p. 556, l. 11):

"Q. During all this time, from 1919 up until "the time of his death, did you carry on conver- "sations with Mr. Allen?

"A. Yes, indeed.

"Q. Were these conversations rational or ir- "rational?

"A. Entirely rational.

"Q. During all that period did you ever see "him do anything or say anything to indicate "that he was of impaired mentality?

"A. I think not.

"Q. What about Christmas presents? Did he "give Christmas presents?

"A. We always had big Christmas celebra- "tions when he gave us all very lovely presents.

"Q. Did he give you any birthday presents?

"A. Birthday presents always; he never "missed a birthday and never missed my chil- "dren's birthdays."

(Vol. II, C., p. 556, l. 33):

"Q. Did Mr. Allen give you any wedding "present before your marriage?

"A. He gave me a bedroom suite of furni- "ture and a secretary.

"Q. Furniture for your house?

"A. Yes, a bedroom suite for my house, a "second bedroom suite, and secretary."

(Rev.) Stephen F. Sliker (Vol. II, C., p. 566, l. 8), a resident of Pleasantville, pastor of the Methodist Protestant Church in Pleasantville, met Mr. Albert Allen the first day he arrived in Pleasantville, about the middle of October, 1927, at a reception at the church hall.

"Q. Did you see much of him from that time "up to the time of his death?

"A. Quite often I came in contact with him."

(Vol. II, C., p. 566, l. 31):

"Q. Did he attend your church?

"A. Sunday morning services and quite fre- "quently at night services.

"Q. Was he a regular attendant there?

"A. Yes, during the special meeting in the "spring of 1928 he was faithful in the special "services; came nearly every night.

"Q. During the time you knew him, from "your observation of him, what would you say "as to his physical condition?

"A. He looked to be very fit, physically.

"Q. Did he talk intelligently or otherwise?

"A. Very intelligently, I thought, rationally.

"Q. From anything you observed with re- "spect to Mr. Allen from time to time, from the "time you first knew him, up to the time of "his death, what did he say or what did he do, "if anything, that would lead you to believe "that he was if impaired mental condition?

"A. Nothing whatever."

Witness saw Mr. Allen about a week before he took the trip to Virginia.

"Q. Was he able to walk around?

"A. Yes, he was quite active for his age.

"Q. Did you ever talk with him about bus- "iness affairs?

"A. Not in particular. In general, we talked "about church work. He was pretty shrewd in "the way of doing business."

(Vol. II, C., p. 569, l. 16):

"Q. From your observation of Mr. Allen, "from the time that you knew him, up to the "time of his death, was he competent to trans- "act business?

"A. I would judge him to be, yes."

Winfield Adams (Vol. II, C., p. 571, l. 10), residing at Pleasantville, New Jersey, carpenter, following trade of raising and moving houses; still in the business.

Moved the house that Mr. Ailes lives in now. Saw Mr. Allen frequently; had frequent business transactions with him."

(Vol. II, C., p. 573, l. 35):

"Q. On these various occasions when you "came in contact with Mr. Allen did he talk "with you in a rational way?

"A. Yes.

"Q. In a sensible way?

"A. Yes, sensible way.

"Q. Did you see or hear him do anything "that led you to believe that he was of failing "mentality?

"A. Not a particle.

"Q. Did he have a keen mind or otherwise?

"A. Keen."

(Vol. II, C., p. 574, l. 30):

"Q. From your observation from the time "that you came in contact with him, in your "opinion, was he a man who was able to con- "duct his business affairs generally?

"A. I should say so, yes.

"Q. Was he able to conduct his business in- "telligently?

"A. Yes."

Mrs. Florence W. Lewis (Vol. II, C., p. 578, l. 30), wife of Carlton E. Lewis in the business of auto financing and insurance and lived in Pleasantville since December 31st, 1926, and met Mr. Allen in the first week of May, 1927, when he came to the office next to her husband's place to see Mr. Mitchell, and was introduced by Mr. Mitchell. Never knew Mr. Allen before that time; talked with him frequently every day. Talked with him frequently until June, 1928. Mr. Allen told witness his second marriage was an unhappy marriage.

(Vol. II, C., p. 581, l. 12):

"Q. Did you know Mrs. Ailes at that time?

"A. No.

"Q. When did you become acquainted with "Mrs. Ailes?

"A. I didn't meet her until April, 1928, then "only to say, 'How do you do,' as an introduc- "tion.

"Q. You had no conversations with her at "all?

"A. No.

"Q. During the times that you saw Mr. Allen, "did he ever talk to you about Mrs. Ailes?

"A. Quite frequently.

"Q. What did he say about her?

"A. I don't hardly know how to answer that. "There are so many things.

"Q. What are some of the things that he said "to you about her?

"A. It would be at times, after—at times "when she was sick; he always seemed so con- "cerned. Two or three times he said, 'I don't

"know what I would do if anything happens "to Katie.' That is the only time that I knew "him to be unhappy, when he was worried over "the condition of her.

"Q. What else did he say about her?

"A. I asked him—so many people thought "that she was his daughter, and I asked him "about it and he said, 'I let people go under "that impression. I like it. I have no family "and I like to think that she is my daughter "and that her children are my grandchildren.'

"Q. Go ahead.

"A. He had repeatedly said that he was "going to leave her his money. That is how "we came to talk about wills. It was through "my instigation that he had his will made.

"Q. What did he say to you and you to him?

"A. There was a young man came into Mr. "Mitchell's office one day, he was only in his "20's, and he was making his will, and I asked "him if he had his will made.

"Q. Do you mean Mr. Allen?

"A. Yes; and he said, 'No;' I said, 'There "is a young boy just starting out on the "threshold of life, and he is going to make his "will. And here you are, you have one foot "in your grave, you make yours. Are you going "to give it to your brothers?' And he said, "'No, they have plenty.' I said, 'They are "the ones who would get it, if you make no "will.' That is the only thing I said then. "Then later on, he asked me what I would do "if I was going to have a will made, and I said "that I would go to a lawyer, a personal friend,

"that in case of death, that if he didn't have "a good will it would be contested, being that "he was going to leave it to someone outside "of the family.

"Q. How did you know that?

"A. He told me.

"Q. What did he tell you?

"A. He told me he was going to leave Mrs. "Ailes his money.

"Q. What did he say?

"A. 'Because,' he said, 'she was the only one "that had been good to him, that she had made "a home for him.'

"Q. Do you remember when that conversa- "tion occurred?

"A. The last most serious conversation on "that line was the latter part of May, 1928. "That was when Mrs. Ailes was beginning to "get well and also after he had bought her a "new Essex car."

(Vol. II, C., p. 584, l. 1):

"Q. And what, if you can recall, did he say "on that occasion, that last occasion?

"A. He told me that he had been talking to "a Mr. Manning. He said, 'It seems strange "that Mr. Manning has the same opinion you "have about having a will made, and to go get "a lawyer, one that is a friend of yours.' I "said, 'I certainly think that is the thing to do "because there is always ways and means of "breaking a will when it is not left to rela- "tives.'

"Q. When did you have the last conversation "with him before his death?

"A. In the middle of August.

"Q. In these conversations that you had with "him, did he talk intelligently or otherwise?

"A. Oh, very intelligently.

"Q. Was his conversation rational or other- "wise?

"A. Rational.

"Q. Did you talk about these matters with "him?

"A. Well, of course, it was just as the case "came up."

(Vol. II, C., p. 586, l. 3):

"Q. Was he serious or joking with you at "those times?

"A. Well, mostly full of fun, and joking.

"Q. Was he a man of jovial disposition or "otherwise?

"A. Very much so.

"Q. In any of these conversations that you "had with him during the time of your acquain- "tance with him, did he ever say or do any- "thing that would indicate to you that he was "lacking in mentality?

"A. No.

"Q. That he was losing his mind or unable "to transact business?

"A. Never.

"Q. What have you to say about his physical "condition, if you observed it?

"A. He was always barking about that; when "he would walk up two flights of stairs to your

"office he would not be very much out of breath
"and he would say that that was because he
"was a young man. He would say, 'That is
"because I am a young man.' And he would
"speak of different people that were ailing and
"he would say how well he was."

Mrs. Priscilla Fluck (Vol. II, C., p. 589, l. 29), residing at 2404 W. Thompson Street, Philadelphia, Pa., the mother of Kathryn Ailes, knew Mr. Allen in his lifetime as long as his daughter knew him. Knew Mr. Allen in his lifetime from about 1920.

She saw him while he was living with Mr. and Mrs. Ailes frequently, at the Allegheny Avenue place and the Trinity Place and the Walnut Street place, Philadelphia.

(Vol. II, C., p. 591, l. 9):

"Q. Was he treated as one of the family,
"or otherwise?
"A. Yes, as one of the family.
"Q. Did he eat with the family?
"A. Yes.
"Q. Did you observe how he treated the chil-
"dren?
"A. Yes.
"Q. Your grandchildren?
"A. Yes.
"Q. How did he treat his grandchildren?
"A. Just like a grandfather would.
"Q. Did that continue all the time while he
"was a member of the family?
"A. Yes.

"Q. Do you know whether or not Mr. Allen "gave presents to the children?

"A. Yes, I know he did. Yes, he did.

"Q. When were these presents usually given?

"A. At the birthdays and Christmas time, "gifts; and many times that he would give them "gifts in different ways."

(Vol. II, C., p. 593, l. 19):

"Q. Did you ever hear Mr. Allen say any- "thing about making a will?

"A. Frequently.

"Q. And as to the disposition of his prop- "erty?

"A. Yes.

"Q. What have you heard him say?

"A. Well, he said he would like to make a "will out, to make a will for my daughter, that " 'she was so kind to me, and all the family,' "Mr. and Mrs. Ailes, and that they were such "a kind family to him and they were deserving "of everything that he had."

(Vol. II, C., p. 596, l. 20):

"Q. In the fall of 1928 did you hear Mr. "Allen say anything with respect to the making "of a will?

"A. Yes.

"Q. What did he say?

"A. He said—at one time I said this, that I "—we were talking, and that was in August, "and I said I didn't think that Katherine, that "is my daughter, looked very good, and he "said, 'No, she is not,' and I said, 'If she passed

"away I didn't care to live any more,' and he "said, 'No, nor do I, Mama, I don't either, "Mama,' he said. He said, 'I hope she will "get well again, indeed,' he said, 'I want to "make her comfortable,' 'make them comfort- "able, I want to leave everything I got, to make "them comfortable. They are so deserving. She "has been so kind to me.' They were different "occasions when he would say these things.

"Q. In all these conversations that you had "with Mr. Allen did he talk rationally, intelli- "gently, or otherwise?

"A. Very, very rational, yes indeed, intelli- "gently always.

"Q. In your opinion, from what you observed "of his conduct and what he said to you, was "he competent on these occasions to transact "business?

"A. Yes."

Under cross-examination:

"Q. Did Mr. Allen ever tell you that he had "a will?

"A. No, he didn't say, only this: As I went "home last year, last September, then he was "saying in the car, he says, 'Mama, have you "made your will?' He said, 'I am going to "have my will today, and this is Katie's lucky "day, for I am going to make a will for her.' "

(Vol. II, C., p. 601, l. 4):

"Q. Do you know for what purpose they were "going to Philadelphia—answer yes or no.

"A. Yes, I do.

"Q. Who told you?

"A. Mr. Allen. He told me they were on "their way to—that he wanted to make this "will, yes.

"Q. Do you know his words—as near as you "can recall?

"A. He said this: 'I am going to have you "make your will.' Rather, to me he says: 'I "am going to make my will. This is Katie's "lucky day. I am going to give her everything "I have, will her everything I have. She is "deserving of it. She is deserving.' Those "were the words.

"Q. That was in the automobile on the way "to Philadelphia?

"A. Yes."

(Vol. II, C., p. 602, l. 20):

"Q. Did you ever receive any presents from "Mr. Allen?

"A. Yes.

"Q. He was generous with you?

"A. Yes.

"Q. Do you know of anybody he was generous "to, besides you and your daughter and your "daughter's children?

"A. Do you mean to somebody else he was "generous with?

"Q. Do you know anybody to whom Mr. "Allen was generous other than you, your "daughter and your daughter's children and "their children?

"A. No, I do not."

Joseph W. Halberstadt (Vol. II, C., p. 630, l. 16) knew Mr. and Mrs. Ailes since 1890. Met Albert Allen October 6th, 1919, at a card party at Mrs. Shumway's home. Came into contact with Mr. Allen frequently after that for the next three or four years; two or three times a year; during the last four or five years, quite frequently. Mr. and Mrs. Ailes and family moved to Mr. Allen's home at 1411 Allegheny Avenue in 1919. The family consisted of Mr. and Mrs. Ailes and the two single daughters, Mildred and Catherine. Mr. and Mrs. Halberstadt visited them on the Sunday following; November 15th or November 22nd, 1919. The Ailes continued in the Allegheny Avenue house until about the following March and then went back to their home at Trinity Place; where they continued about six months and then went back to the Allegheny Avenue house. They continued there until the next spring and then they purchased a house on Walnut Street and went to live there until the property was sold. They then removed to Pleasantville. Their removal to Pleasantville was gradual. They used this place for a time as a sort of summer home and as a permanent house in 1925. Mr. and Mrs. Halberstadt visited them there and stayed two or three days at a time. They also visited them at the Walnut Street house while Mr. Allen was there and continued to visit them at Pleasantville up to the time of Mr. Allen's death and were with them in Winchester, Virginia, at the time of Mr. Allen's death. They made a half dozen trips, not of great length, by automobile along the coast down to Cape May, up to Wernersville, Pa., Mr. Allen always ac-

companied them whenever they used Mrs. Ailes' car.

(Vol. II, C., p. 637, l. 13):

"Q. From that time up to the time of his "death did he ever say or do anything to indi- "cate that he was of failing mentality?

"A. Never.

"Q. Were his conversations with you intelli- "gent and rational?

"A. Absolutely so, clear up till the last. I "saw him four hours before he died.

"Q. Generally, what did he talk about?

"A. Well, mortgages, business. He was a "man, while not a great reader, he had a great "philosophy, brought about through his own ex- "periences, and one of his remarks was, he "told me one day in my home, 'I had a nice "home but,' he said, 'Joe, when your wife dies "you will lose this home,' he says, 'I don't care "how much money you got. You can never buy "another home.' He says, 'You might buy a "house, but a home you have to wait for until "somebody gives it to you.' I answered, 'You "got no kick coming. Mrs. Ailes has given you "a good home.' He says, 'Well, I should say "so. There is nobody like Mrs. Ailes.'

"Q. Do you remember when that conversa- "tion occurred?

"A. That was in the spring of 1925.

"Q. Can you recall some other incident of the "conversations with Mr. Allen?

"A. Yes, I know of a conversation we had "one time that would explain very clearly his

"—well, some have said he was stingy, others "that he was very generous, but these conversa- "tions made very clear to me his character.

"Q. What was it?

"A. It was on the return trip from up the "coast. He said, 'I haven't any use for any- "body that wants money for nothing. I had to "work hard for what I got and when I come "across somebody that wants to get any of "money I don't give such a person a nickel.'

"Q. Do you recall any other conversations "that you had with him?

"A. I had many conversations; but pertain- "ing to this will, he never spoke to me about "making out a will, that I recall, but he led me "to believe ——

"Mr. Endicott: That's objected to.

"Q. What did he say?

"A. What did he say?

"Q. Yes.

"A. In August, 1927, he was speaking of "Mrs. Ailes' business ability and I told him that "Mrs. Ailes had never worked in a commercial "way like her daughters had; that when I be- "came acquainted with her she was living at the "time with her mother, helping her mother to "keep house; that she had no commercial train- "ing, and he said, 'Well, she has a wonderful "business head for a woman that has had no "commercial training.' He said, 'Now that "Mr. Schrieber is dead, or gone,' he said, 'I "wanted Katie to look after my business.' He "said, 'She has got to do when I am gone and "now is the time for her to learn it. I want

"her to learn how to place the value on a prop-
"erty, collect the interest when it is due, and
"see that the value is kept up, and also the fire
"policies, and learn how to satisfy mortgages,
"and etc.'

"Q. That conversation occurred when?

"A. That conversation occurred on our re-
"turn trip in August, 1927.

"Q. You had been where?

"A. We had taken a ride up as far as Long
"Branch, and Red Bank and stopped at Beach
"Haven.

"Q. Isn't that the place up above these
"islands?

"A. That is where we stopped and that is
"where the conversation took place.

"Q. Did you ever have any talk with him
"about his age?

"A. Yes, on my 59th birthday, the 29th of
"June, 1928, he asked me how old I was, he
"knew that he was older, and I told him how
"old I was and he said, 'I beat you by sixteen
"years. I will be 75 years old on the first of
"August,' and he said, 'It would be positively
"awful ——

"Mr. Endicott I ask that be stricken.

"The Court: Yes.

"Q. That was what year?

"A. June 30, 1928. He said it this way.

"Mr. Endicott: There is no question pend-
"ing.

"Q. What did he say?

"Mr. Endicott: When was it? Fix the date.

"Mr. Starr: The date has already been given "as June 30th, 1928.

"Q. What did he say, what else did he say?

"A. He was lying on the couch and he said, " 'I will be 75 years of age on the first of Au- "gust and I don't expect to live that long.'

"Q. Did he say anything else?

"A. And I was shocked because I hadn't no- "ticed any failing in health or anything of that "sort; then he smiled, and he said that he didn't "feel bad or morose or moody, but he said, 'If "I do live, we are going to have a good party "here on the lawn.' The party never material- "ized.

"Q. How did you happen to go to Winches- "ter, do you recall?

"A. Yes, Mrs. Halberstadt and I had been "down early in the spring and we had spoken "about arranging for a trip at apple blossom "time and Mrs. Ailes said she would like to "go down there.

"Q. What talk did you have with Mr. Allen "about this trip?

"A. About this trip?

"Q. Yes.

"A. Just prior to the trip, do you mean?

"Q. Yes.

"A. First of all I told the Ailes that I would "let them know when it suited me, so the week "preceding our departure I wrote Frank to be "prepared to go Wednesday, to go on to Win- "chester. We received a written reply to come "on. When we got down there Mrs. Ailes said, " 'Joe, we can't go tomorrow.'

"Q. Was that in the presence of Mr. Allen?

"A. Yes, in presence of Mr. Allen. She said, "'We can't go tomorrow we will have to push "it up to Friday. Mr. Allen has to go to the "city tomorrow.' The next morning he went to "Philadelphia and we waited until he came back. "And he came back.

"Q. Did he go to Philadelphia alone?

"A. He went to Philadelphia alone, yes. I "had said to him, 'Mr. Allen'—I always called "him 'Poppy' and he called himself 'Poppy,' I "said, 'Poppy, if you don't come back, if you "are not ready tomorrow morning by daybreak "we are going without you.' He said, 'I will be "ready. I will be back,' and he got back that "night about nine o'clock and after he came "back we were just about to retire. We were "going to retire early because we were to get "up early the next morning, so we walked up-"stairs and he said, 'Joe, have you seen my "room since I have put in a bay window that "I have; Katie has bought me a new rug for "the room. Just think of it.' When he said "that Katie bought him a new rug he didn't "mean that Katie has paid for it.

"Mr. Endicott: I ask that be stricken.

"Q. Tell us what he said?

"A. I went into the room and I said, 'Isn't "this a dandy room?' He said, 'It is the best "room in the house. I wanted Katie to have it "but she likes the front of the house better.' I "complimented him on the room and we retired. "The next morning I was awake and I heard "him singing. He had a good voice and the

"song that he was singing, 'Won't That Be "Glory for Me?' Not like a crazy man would "sing.

"Mr. Endicott: I ask that that be stricken.

"The Witness: I wanted you to know that "that was the impression he gave me.

"Q. Was it normal or otherwise?

"A. It was with a religious fervor. Then I "came down to the breakfast table, and he was "the first one downstairs. He really urged us "to get off—told us that we were all sleepy "heads so we got off without any delay and got "in Mrs. Ailes' car.

"Q. All five of you?

"A. All five of us.

"Q. What day was that?

"A. That was on Friday. I will have to look "up the date, it was the 19th of October, I think.

"Q. 1928?

"A. 1928. We reached Belair, Maryland, "about noon.

"Q. Where did you stop the first night?

"A. At Frederick. At Belair, Mr. Allen "wanted oysters for lunch and he took his lunch "in a restaurant while we went to a hotel. He "came around to the hotel and lounged around "the hotel for an hour or so and then we drove "on as far as Frederick and we reached Fred-"erick at 5 o'clock.

"Q. Did you stop there?

"A. We stopped at the Francis Scott Keyes "Hotel at Frederick.

"By the Court:

"Q. Where did you say you had your lunch?

"A. At Belair, Maryland.

"By Mr. Starr:

"Q. You stopped all night at Frederick?

"A. Frederick.

"Q. What time did you get started the next "day?

"A. The next morning shortly after 8 o'clock "because we were at Harper's Ferry at 9 "o'clock. There is a hotel there at Harper's "Ferry at the top of the hill, and we went to "the top of the hill and Mr. Allen walked around "with us. He was delighted with the place.

"Q. What did he say, if anything?

"A. He went to the hotel clerk and wanted "to know what the rates were. He said that "he, Katie and Frank were going to come down "there and spend a week there because he liked "it so well.

"Q. Then where did you go?

"A. We got on a car and stopped to see "friends at Frederickstown, friends of Mrs. "Halberstadt's and myself but they were not at "home. Mr. Allen got out of the car and was in "the same usual health then. That was about "ten o'clock. We reached Winchester about "noon, shortly before noon, and in order to be "with Mr. Allen we all decided that we would "go to the restaurant, together and eat, as he "always wanted oysters ——

"Mr. Endicott: I ask that the last remark "be stricken from the record.

"Mr. Starr: What was that?

"Mr. Endicott: He said that Mr. Allen al-

"ways wanted oysters and I asked that that be "stricken from the records.

"Mr. Starr: Go ahead.

"Q. Continue your statement?

"A. Then he was seized with a pain. I was "there sitting at the same table, but I notice "there was something wrong and he got up. "After lunch he went out and he said, 'Let us "get into the car.' So we got in the car and "drove on for a mile or two and he had a severe "vomiting attack. He was sitting on the other "side of the car and I thought to myself ——

"Q. Never mind what you thought. Tell what "happened.

"A. Well, he seemed to be, at least I thought "he was better. We drove on. We had gone "altogether eight miles, and he said, 'I am "feeling sick. You will have to stop.' So we "stopped then and there, and it happened out in "front of one of these tourists' cottages, and "we immediately, Mrs. Ailes immediately got "in touch with this woman, who had been a "nurse, and she got in touch with a doctor, a "Doctor Montgomery, who lived not far away, "and he came over and gave Mr. Allen medical "attention.

"Q. Eventually he went to the hospital in "Winchester?

"A. The next morning they took him to the "hospital.

"Q. How late before his death did you have "any conversation with him?

"A. I think the night before. I said a little

"while ago, four hours before. That was wrong,
"it was the night before.

"Q. Do you remember the topic of conversa-
"tion?

"A. Yes.

"Q. What was it?

"A. There was a rather stout, pleasant nurse
"there at his bedside, and I went in and he said,
" 'They always wish fat nurses on me.' He
"says, 'Here is one that can take care of you
"and Frank both, and me, too.' That was the
"only noticeable thing. He may have said some-
"thing else.

"Q. On that trip from the time that you left
"Pleasantville until you reached Winchester,
"was his conversation with you rational and
"intelligent?

"A. Absolutely.

"Q. Did he discuss matters intelligently?

"A. Understand, I was sitting in the seat
"with Mrs. Ailes.

"Q. I mean when you came in contact with
"him?

"A. When I spoke to him he was intelligent.

"Q. You understood what he said to you and
"he understood what you said to him?

"A. Yes.

"Q. Did he ever say anything to you about
"the way he was being cared for by Mrs. Ailes?

"A. He said there was not anybody in the
"world who could keep house like Mrs. Ailes.
"I said, 'How about Clara?' He said, 'Oh, she
"is all right.' And many times he would say
"how wonderful treatment he got from her and

"that nobody could give him better treatment "than they had.

"Q. At Pleasantville?

"A. At Pleasantville.

"Q. Was that a matter of seldom occurrence "or frequently?

"A. Whenever the occasion warranted it, I "couldn't say how frequently or how seldom.

"Q. Do you remember whether or not you "came in contact with Mr. Allen on or about "September 8, 1928?

"A. I did not.

"Q. Do you remember how close to that date "you saw him?

"A. Yes, on the 27th of September he was "at our house.

"Q. In Philadelphia?

"A. I lived at Oak Lane, Philadelphia.

"Q. When next, before September 27th, did "you come in contact with him?

"A. On the 10th, 11th and 12th of July, I "think it was; it may have been the 8th, 9th and "10th, but three days in July when we took the "trip to Wernersville, Pennsylvania.

"Q. On those three occasions on July and "September, did you talk with Mr. Allen?

"A. I did.

"Q. Was there anything in his talk that indi- "cated that he was failing mentally?

"A. Nothing at all.

"Q. From what you observed, was he compe- "tent on these occasions to make a will?

"A. Certainly; absolutely so. On the 27th "day of September, I heard it testified here,

"that she was making it her home with him.
"I heard something else that was absolutely
"contradicted.

"Q. What was that?

"A. Mrs. Ailes had stopped with us on the
"26th of September and she said to Mrs. Hal-
"berstadt, 'I want to get in touch with Mr.
"Allen. I want to buy a radio.' It was some-
"thing they were going to buy the next day and
'they wanted to get in touch with him. They
"said, 'I can't find Mrs. Ailes' name in the
"book.' Finally we found it, that it was in the
"name of the Bowers Meade and she called her
"up on the phone and made an engagement with
"Mr. Allen the next day, in one of the depart-
"ment stores. The following evening, on the
"night of the 27th, Mr. Allen came to our home.

"Q. What night was that?

"A. September of 1928.

"Q. And the day?

"A. The 27th of September of 1928, and he
"said he was sick of that job he was doing down
"at the house; that he can never satisfy that
"woman; that now she wanted a new heater,
"that it was wanted, and as long as he was sent
"for, he was going home the next day. Mrs.
"Ailes said, 'You are not finished with that
"job?' He said, 'I am not going back today or
"tomorrow. I am going home. That job is to
"get along without me.' I said, 'The first thing
"you know you will be leaving your happy home
"to go live out there.' He said, 'Not on your
"life. I could never live with that woman.'

"Q. Did he give you any other reason for "reaching that conclusion?

"A. No, the subject was not a pleasant one "and it was dropped.

"Q. How did members of the Ailes family "treat Mr. Allen when he was living in Plea- "santville?

"A. The Ailes family consisted of ——

"Mr. Endicott: I asked that that be stricken "out.

"Witness: With the greatest affection ——

"Mr. Endicott: There is no question pend- "ing. I waited to see what his answer was, "but he started to state a conclusion.

"The Court: I think that is so.

"Q. What did you observe? Tell us what you "observed and not your conclusions?

"A. That Mr. Allen had the position of a "grandfather to the children.

"Mr. Endicott: I ask that that be stricken "out.

"Witness: That is what I observe.

"Q. How did he treat them or they treat him?

"A. One day, for instance, the five-year-old "boy came in and he said, 'Poppy, I still have "that nickel,' and Poppy took the little kid up "on his knee and kissed him, and he said, 'There "is nothing in Germantown like that that I know "of.' He said, 'Everytime I go up there it is "a case of wanting something.' There was the "greatest affection in that household.

"Mr. Endicott: I move that that be stricken "out.

"The Court: Yes.

"Q. Up to the time of the trip to Winchester "during which Mr. Allen was stricken, had you "noticed any change in his physical condition?

"A. I did not.

"Q. From the time that you became ac- "quainted with him in 1925, when you became "well acquainted with him as you say?

"A. Certainly not for the worse. He dressed "better, looked better and looked healthier.

"Q. Was he able to walk about?

"A. Certainly."

Joseph W. Halberstadt (cross-examination, Vol. II, C., p. 665, l. 8):

"Q. Do you know anything about the execu- "tion of the checks by Mr. Allen in the Win- "chester Hospital?

"A. When Mr. Allen took sick, I suggested to "Mr. Ailes that he may be probably sick for "quite a little while and that it would be well "for him to draw a check to cover the probable "expenses, because I didn't have enough money "with us to provide for an extended stay, and "he suggested it to Mrs. Ailes and she said, " 'He is too sick. I can't bother him with any- "thing like that now.' When the subject was "broached to him, I don't know, but it was not "on Saturday. It was probably at the hospital "after they said they would have to have some "money. Do you want to know just what I "know about that check?

"Mr. Starr: Continue. You are answering "the question.

"By Mr. Endicott:

"Q. Tell us what was the occasion when you "next knew of any checks being executed.

"A. I presume that immediately after they "were executed, it was, because Mrs. Ailes came "out of the hospital, or rather Mr. Ailes, I "should say, with these two checks in his hand, "and he said, 'Here are these checks. Here are "the checks.' I looked at the checks and I was "amazed at the amount, $2000 on one of them "and $800 for the other. The $800 was suf- "ficient but I learned afterwards what these "checks were made out to use for.

"Q. You saw the checks?

"A. Yes.

"Q. They were then in whose hands?

"A. Mr. Ailes'.

"Q. And the amounts were what?

"A. I may be mistaken but I think one was "for $800 and the other was for $2000, but it "may have been $800 and $1200, I don't know.

"Q. Would you recognize them if you saw "them again?

"A. I would recognize Mr. Allen's signature, "I think, because one was much poorer than the "other.

"Q. How many checks were drawn that day?

"A. To my knowledge, only those two.

"Q. Do you remember the date?

"A. The day he died. No, let us see. Yes, "on the 21st and 22nd. Let me think it out.

"Q. It was on the day he died?

"A. Yes.

"Q. That was October 22, 1928?

"A. Yes.

"Q. I show you a check being marked Exhibit "C24, and ask you if that is one of the checks "you saw that day?

"(Check shown witness.)

"A. No, sir, I never saw that check.

"Q. I show you Exhibit C25, and ask you if "that is one of the checks you saw that day?

"A. I never saw that.

"Q. I show you Exhibit C16 and ask you if "that is one of the checks you saw that day?

"(Check shown witness.)

"A. I believe that is the check. That was "the check.

"Q. This $2000 check that you have referred "to?

"A. Yes.

"Q. I show you check C14 and ask you if you "recall that as one of the checks you saw that "day?

"(Check shown witness.)

"A. Yes.

"Q. And this is the $800 check you have re-"ferred to?

"A. Yes.

"Q. Where were you when you saw these "checks?

"A. On the street, on the sidewalk.

"Q. They were in possession of Mr. Ailes?

"A. Mr. Ailes.

"Q. Do you know how long they had been "signed at that time?

"A. I don't know. I presume they had just "been signed.

"Q. Was there any statement made to you by

"Mr. Ailes as to the amount filled in on the "checks?

"A. No, he said, 'Joe, how would you go "about this thing,' and I said, 'Frank, I think "I would have them sent to Mr. Manning at the "bank, and have them certify them and use "them here as they are given in Winchester.'

"Q. Did that take place before the death of "Mr. Allen, as to sending these checks on to the "bank?

"A. No, after death. We had no idea of this "happening right away.

"Q. How long were these taken before his "death?

"A. Three or four hours.

"Q. What was said to you about the amount "of the checks?

"A. Do you mean the reason why they were "drawn for that amount?

"Q. Yes.

"A. One of the reasons given was that Mr. "Allen had said that he did not want me to "spend one cent of money on that trip, that he "had sponsored the trip and wanted to pay the "entire expense, of course, that was out of the "question. Another reason was that for the "larger check he had contracted a bill for an "oil burner in the house at Pleasantville and "he had promised to pay that bill and I think "the oil burner was being put in at that time "while we were away. He wanted Mrs. Ailes "to pay that bill.

"Q. How much would that cost?

"A. I don't know but I think $1100.

"Q. Then if you don't know you are merely "guessing.

"A. I am not positive that is the reason I "say I am not positive.

"Q. You say that it was not contemplated "that Mr. Allen was going to die.

"A. Of course not.

"Q. What was the occasion for these large "amounts of money being drawn?

"A. The occasion being, that one check was "for the reason that he may have to stay there "for several weeks, and I didn't expect to see "any large sum. I knew that something ought "to be done and Mrs. Ailes told me afterwards "that Mr. Allen suggested the amounts himself. "She can tell you more about that than I can. "I can only give you hearsay evidence.

"Q. Did she tell you whether or not, I mean "Mrs. Ailes—rather Mr. Allen, did she tell you "what he said the checks were to be made out "for?

"A. Yes.

"Q. What did she say?

"A. She said that she had said to him, " 'Poppy we are not going to move tomorrow, "we are going to stay here until you get well.' "He says, 'It is going to cost some money if we "stay here. You better draw some money. I "have $800 in the regular check account, but' he "said, 'that won't be enough to pay for that "length of time, and also for the oil burner, "and I want to pay for that. I don't want to "let that go. So you can write to the cashier "or somebody at the bank and transfer $2000

"from my savings account to the checking "account.'

"By Mr. Starr:

"Q. I understand that you desire to make a "correction in your testimony with respect to "the name of one of the parties involved?

"A. Yes, when I was asked a question, did I "know of Mr. Allen being generous with any- "body else, I said he told me that he had per- "mitted Mrs. Shumway to live in the house in "which he had a life interest, for many years. "I should have said Mrs. Reulens.

"Q. That is the correction you desire to "make?

"A. Yes.

"By Mr. Endicott:

"Q. How did Mr. Allen describe the lady you "refer to.

"A. His stepdaughter, Mrs. Reulens.

"Q. What name did he call her by.

"A. I think he called her 'Lillie.'

"Q. What were the words he used when he "told you that?

"A. He told me that he has been good to her; "that she resided in a house in which he had a "life interest, that he had a life interest in, that "he was paying all the taxes and fixing it up, "fixing up the house, and doing everything."

Mrs. Catherine Jefferson (Vol. II, C., p. 673, l. 17), one of the daughters of Mrs. Ailes, married in July, 1926, and lives in Pleasantville, N. J. Knew

Mr. Allen from 1919 to the time of his death. Mr. Allen gave witness many presents, jewelry, clothes and furniture for her home, tapestries, some baby things, a coach and also money; the last sum being $25.

(Vol. II, C., p. 676, l. 23):

"Q. Were you able to carry on an intelli-
"gent and connected conversation with him?
"A. Yes, indeed.
"Q. Was he childish upon any occasion in his
"conversations with you?
"A. Not at all.
"Q. Was there any indication, so far as you
"were able to observe, of the lack of mental ca-
"pacity?
"A. No, indeed.
"Q. During the entire time that you knew
"him up until the time of his death, did he show
"any indication of failing mentality?
"A. No."

Mrs. Clara Halberstadt (Vol. II, C., p. 680, l. 15), wife of Joseph W. Halberstadt. Lives in Oak Lane, Phila., Pa. Knew Mr. Allen since 1919. Met him at Mrs. Shumway's home. Saw him frequently at Mrs. Ailes' house. Saw Mr. Allen every Friday as she went with Mrs. Ailes to shop. Mr. Allen sometimes visited home of witness. Came into contact with Mr. Allen up to the time of his death and was on the trip to Winchester. Visited the Ailes at the Pleasantville home once a month and they would

come up and visit witness in between, and at the last saw each other every three or four weeks.

(Vol. II, C., p. 682, l. 24):

"Q. During all the occasions that you saw Mr. "Allen during that time and talked with him "have you ever observed any indication of fail- "ing mentality?

"A. None in the least, at no time, with any "remark whatever.

"Q. Did he ever in your presence carry on "in a childish manner?

"A. No, never.

"Q. Was he rational and intelligent in his "conversation?

"A. At all times, always.

"Q. And that continued up to the time of his "death?

"A. Until the day he died I saw him.

"Q. Did you ever have any talk with Mr. "Allen with relation with the distribution of his "properties, to make the distribution of his "property by will or otherwise?

"A. Other than he would say to me, 'After "I am gone in order that Katie and Frank will "never want for anything, never. They will be "well taken care of.'

"Q. How many times has he said anything "like that to you?

"A. At all times when he referred to them.

"Q. Did he ever refer to what they had done "for him during the latter years of his life?

"A. He made some remark to me and to Mr. "Halberstadt in my presence. He said, 'That

"is something that we cannot buy a home. You "can't buy it.'

"Q. Do you remember exactly what he said?

"A. He said, 'That is something you can't "buy, Clara. You can't buy a home. You may "buy a house but you can't buy a home and I "have a home for Frank and Katie to live. I "have a real home.'

"Q. Did he ever talk about any of the other "members of his family to you?

"A. Well, do I have to say this? Do you "want me to answer it?

"Q. What did he tell you?

"A. He said, 'I want Katie and Frank to have "everything I have.' He said, 'My folks don't "need it.' He said, 'They are aged.' And he "said, 'Clara, every dollar I have, I got it with "hard work. Look at my hands. Every dollar "I have I have earned it myself and my brother "inherited a good fortune, got it easy. I earned "my money and I want it to go where I want "it to go, to Frank and Katie.'

"Q. Do you know where and when he said "that?

"A. On the day we took the trip up and down "the Jersey coast. He said, 'Look at my hands. "I have earned my money.'

"Q. Where did you go to at that time?

"A. Asbury Park.

"Q. Who were in the party?

"A. Just Mrs. Ailes, 'Poppy' and myself.

"Q. Was your husband along?

"A. Most assuredly.

"Q. How was Mr. Allen addressed in the "Ailes household?

"A. He was 'Poppy' to all of us. He liked it. "I called him 'Poppy.' My husband called him " 'Poppy.' We all liked it and he liked it and he "felt nearer to us, made him feel like one of "the family.

"Q. Did he ever say or do anything in your "presence to indicate he was unable to trans- "act business.

"A. No, indeed.

"Q. Do you know, of your own knowledge, of "any particular instances where he contracted "business?

"A. He was always fully capable; fully.

"Q. How was he treated in the home from "what you observed?

"A. As one of the family.

"Q. Did he eat with the other members of the "family?

"A. Certainly.

"Q. What about the rooms he used when he "lived in the Ailes household?

"A. The rooms? The whole house was his.

"Q. Where did he have his bedroom?

"A. In the house at the head of the stairs.

"Q. Do you remember the occasion of going "to Winchester?

"A. I most certainly do.

"Q. When did you last have a conversation "with Mr. Allen on that trip?"

* * * * * * * *

"A. Yes, the day he died."

* * * * * * * *

"Q. What was said, if anything?

"A. I simply inquired about his health, so the "doctor came in and he demanded for us to "leave the room, I thought, and I left with Mrs. "Ailes, and then the doctor talked with Mrs. "Ailes in the corridor, so out of courtesy, I left. "I went in the corridor and I picked up a mag- "azine and I read while they talked over Mr. "Allen, naturally, I got interested in the article "I was reading and when I looked up they were "gone. Then I looked around and turned out "into this side place, and offset in the corridor "which went into Mr. Allen's room and the "nurse and Mrs. Ailes were there and the doctor "was gone and Mrs. Ailes was standing at the "bureau, filling in a check, writing a check, "where she had brought them and took them "over to 'Poppy' and said, 'You can put your "signature to this.' At any rate he was in bed. "The bed was here and I sat alongside of the "bed like this and he said, 'Oh, I can get out.' "We had to plead with him not to get out and "he said, 'I can get up.' I said, 'No, you take "my chair, I will put my chair there and I will "get like this.' So he put his feet on the chair "like this and he put his signature to the "checks.

"Q. Do you know whether or not the checks "were filled in before he signed them or not?

"A. I saw Mrs. Ailes fill them in at the "bureau.

"Q. How long before his death did that hap- "pen?

"A. That was in the morning, on Monday "morning, and we left, we were there for a little "while, we left because the nurse wanted to at- "tend to her room and her patient. That was "10 o'clock. We wanted to go to lunch and took "a walk and went to lunch, and that was when "we got this message from the house.

"Q. On the trip from Pleasantville to Win- "chester did you ride in the same automobile "with Mr. Allen?

"A. Yes, one car. We left our car at Ailes' "house.

"Q. How were the people seated in that auto- "mobile during that trip?

"A. Mr. and Mrs. Ailes were up front " 'Poppy' and Mr. Halberstadt—no, Mr. Hal- "berstadt sometimes sat up front. Then we "changed things about. Mr. Halberstadt was "not. Mr. and Mrs. Ailes, were in front, I be- "lieve.

"Q. Who drove the car?

"A. Mrs. Ailes.

"Q. You rode in the rear seat most of the "time?

"A. Most always.

"Q. And Mr. Allen?

"A. He was with me all of the time, all of "the trip, never rode in front.

"Q. During that time were certain conver- "sations held with you?

"A. We were all laughing and talking, in a "party like that, surely.

"Q. Was there any indication that Mr. Allen "was failing mentally on that trip?

"A. No.

"Q. Did he talk intelligently or otherwise on "that trip?

"A. Intelligently and he enjoyed it im- "mensely. He enjoyed seeing the different "places of interest and things like that."

William H. Simpson (Vol. II, C., p. 697, l. 18), resides at Absecon, New Jersey, and is a son-in-law of Mr. and Mrs. Ailes. Married their daughter, Rowena, sixteen years ago on July 2nd. Moved to Absecon in 1926. Met Albert Allen when they were living at the Trinity Place house about two months. Witness and his wife lived at the Walnut Street house for about a year while Mr. Allen was living there. First met Mr. Allen at the Allegheny Avenue house about nine years ago. Saw him almost every day while living at the Walnut Street house and while living at Absecon saw him almost every week.

(Vol. II, C., p. 698, l. 32):

"Q. Did you ever have any conversations "with Mr. Allen during the time you knew him "in relation to business affairs?

"A. Well, pretty near every time I saw the "man that was what he used to talk to me about.

"Q. What would be your general topic of "conversation?

"A. We used to talk about investments on "houses; or principally stocks. He owned some "of the stocks in some of the same companies "that I did and we would talk about these, and "he also had some Northwestern Trust Com- "pany stock that I wanted to buy and I made "him an offer several times for that stock but "he would not sell it. He said he was leaving "that to Mr. and Mrs. Ailes—'Frank and Katie' "he called them.

"Q. What is your line of business now?

"A. Wallpaper business.

"Q. How long have you been in that busi- "ness?

"A. Ever since I started to work.

"Q. How many years ago?

"A. About 20 years.

"Q. When was it that you tried to buy some "of his Northwestern Trust Company stock?

"A. That was about a year before he died.

"Q. What was the conversation between Mr. "Allen and yourself, if you can recall, with re- "lation to that?

"A. He informed me that he had 100 shares "of Northwestern Trust Company stock.

"Q. What did he say about it?

"A. He was always talking about his North- "western Trust Company stock; he always "talked about it and I think that the bank stock "at that time, and I thought at that time that "they were generally going up and I thought "probably it was going to go up and that he "would want to sell and that I would buy some "of it; so I tried to buy part of his stock but

"he wouldn't sell. I went back to him at dif-
"ferent times and tried to get him to sell but
"he wouldn't.

"Q. What other stocks did you try to buy
"from him?

"A. That is all.

"Q. What other stocks did you talk about?

"A. He and I had some United Gas Improve-
"ment Company stock and Philadelphia Electric
"stock.

"Q. Generally what was the conversations
"between you and Mr. Allen about these stocks?

"A. About a year or so ago I found that peo-
"ple were accumulating that stock and it looked
"as if the stock was going to rise, which it did
"and I wanted to go to Philadelphia and I did
"go to Philadelphia from time to time to get in-
"formation on it and then I would come back
"and tell him about it.

"Q. When was that?

"A. He thought it would be advisable to sell
"after it went so high and the information I
"received was to hold on, so it kept on going
"up and I would talk about it.

"Q. When was that?

"A. Saturday before he died, before the time
"of his death.

"Q. Did these conversations you had with
"him with reference to the United Gas Improve-
"ment stock and also the Northwestern Trust
"Company stock, were they rational conversa-
"tions?

"A. Yes, he was very keen.

"Q. Would he talk intelligently about them?

"A. Yes.

"Q. Did he say or do anything to indicate to "you that he did not appreciate what was going "on when he had these conversations with you.

"A. No, sir.

"Q. Did he give any reason to you why he "did not want to sell his Northwestern Trust "Company stock?

"A. When I would bring the subject up he "would say, 'No, I am not going to sell that "stock. That is for Katie and Frank.'

"Q. What else did he say, if anything, to you "about what he intended to do for Katie and "Frank?

"A. He always said he was going to give him "everything.

"Q. Do you remember any particular occa- "sion when he said that?

"A. Well, that is sort of all the conversation. "Whenever it would come up he would say that. "Just like Mrs. Ailes and myself, we owned a "property in Absecon and we were talking "about selling it and he said, 'Don't sell that. "That will advance in value.'

"Q. How late did that conversation occur?

"A. That was within the last four years, up "to the time of his death.

"Q. Did he ever say anything about the mem- "bers of his family in connection with his prop- "erty?

"A. He said that his family was well taken "care of and when the will business would come "up he would say that he was going to leave

"his money to Mr. and Mrs. Ailes, that they "were well taken care of.

"Q. That who was well taken care of?

"A. His family; principally he talked, I think, "about his brothers.

"Q. Did he ever say anything about Mrs. "Reulens, or 'Lillie.'

"A. He used to talk about them from time to "time.

"Q. Do you know anything that he said about "them?

"A. Just he said he didn't care for them, "that they were always wanting him to do some- "thing; that he had a property that one of his "stepdaughters were living in and that he would "go up there once in a while to do some repair "jobs, repair work.

"Q. What did he say about that, if anything?

"A. Just before he died, it was on a Monday "and I was in the living room and Mr. Allen "came in, he was all excited and upset and he "said that he had just come back from Phila- "delphia where he was doing some repair work "on this house, where 'Lillie,' as he called her, "was living; that he had an awful fuss and he "couldn't stand it any more and he had to come "home.

"Q. Did he say with whom the fuss was?

"A. With 'Lillie.'

"Q. Did he say anything to indicate what "the fuss was about?

"A. About the repair work that he was doing "up there.

"Q. Did you ever hear him say anything "about a will?

"A. Yes.

"Q. What did he say with respect to that?

"A. He said that lots of times. He always "said that he was going to leave everything to "Katie and Frank before he died, and in that "summer he used to talk about going up to "make out a will. He would say ——

"Mr. Endicott: That is objected to. I have "allowed the witness all the latitude that he is "entitled to.

"The objection is in committing the witness "to make general observation as to what was "the custom, of the decedent.

"I move that the response be stricken from "the record. My argument is that we are en- "titled to have the benefit of the time and the "place of the conversation and what the con- "versation was.

"By Mr. Starr:

"Q. You already said that that was the sum- "mer before he died. Where did the conversa- "tion occur?

"A. At the Pleasantville house.

"Q. Give us his word as near as you can re- "call.

"A. I would come down to the Pleasantville "house and would talk about ——

"Mr. Endicott: I object to generalizations. "He said, 'I would come down.' He is general- "izing. I move the response be stricken out.

"Q. Did you come down to the Pleasantville "house?

"A. Yes.

"Q. You came down to the Pleasantville "house later?

"A. Yes.

"Q. And now state what the conversation was "with Mr. Allen about the will.

"A. He said he was going up to Philadelphia "to make out his will, and he wanted to go; and "maybe the next day I would come down and "I say, 'Did you go to Philadelphia, Poppy?' "and he would say, 'I will have to go up there "today or tomorrow.' "

(Vol. II, C., p. 704, l. 9):

"Q. Did he say where he was going?

"A. He was going to Lawyer Daix, he would "say.

"Mr. Endicott: I move that the answer be "stricken as not being responsive.

"Mr. Starr: It seems responsive to me.

"Mr. Endicott: And he said, 'He would say.' "He is generalizing.

"Q. This testimony that you are giving now, "did he say these things that you have given "us?

"A. Yes, he said he was going up to Lawyer "Daix.

"Q. Do you remember when it was, about, "when he said he was going to Philadelphia to "Lawyer Daix?

"A. Those conversations took place, I would "say, in July and August, in the summer "months. I would go down there almost every "day.

"Q. What year was that?

"A. That was in 1928.

"Q. When was the last time you saw him be-
"fore his death?

"A. I think the last time I saw him was on
"Monday, before they took the trip, the auto-
"mobile trip down to Winchester.

"Q. You said a moment ago that on one occa-
"sion Mr. Allen came back from Philadelphia
"where he had been superintending some re-
"pairs, in a terrible nervous condition. What
"did you mean by that? What did he say or
"do?

"A. I was sitting there, reading a paper,
"when he came in, at 3:30, about that, in the
"afternoon. He was all excited and I said,
" 'What is the matter, Poppy?' and he said, 'I
"just came back from Philadelphia. I had an
"awful time up there.'

"Q. What I want for you to testify to is,
"what did he say? Did he say anything? Did
"he say that?

"A. That is what he said.

"Q. Did he say that she wanted more work
"done than he was willing to do?

"A. Yes.

"Q. He said that to you?

"A. Yes. He said that she wanted more work
"done than he wanted to have done there and
"that he could not leave the job because as soon
"as he would go away that she would have the
"man do something that he didn't want done.

"Q. Do you remember about when that was?

"A. That was on Monday just before they

"took the automobile trip to Winchester. I "believe they went on a Thursday or Friday."

(Vol. II, C., p. 706, l. 18):

"Q. On any of the occasions that you talked "with him or saw him prior to his death, from "the time that you knew him, in your judgment, "was he competent to transact business?

"A. Yes.

"Q. Was he competent to make a will or a "testamentary disposition of his property?

"A. Yes.

"Q. Did he ever say or do anything that in- "dicated to you that he was of failing men- "tality?

"A. No, sir.

"Q. Can you recall anything else that he said "about Frank and Katie, other than what you "already have testified to, as to how he was "treated there and the facts that it was his "home?

"A. He said that that was a fine home and "that he hoped he would not die before Katie "died. He said he hoped that he would be the "first one to pass out.

"Q. Did he say why?

"A. No, only that he enjoyed the home "around there."

(Vol. II, C., p. 713, l. 13):

"Q. Tell us what he said.

"A. That is as far as I know. He said he "was going to Philadelphia to make out a will "and that he was going up to see Lawyer Daix.

"He was all the time talking about it. He said "it several times.

"Q. Can you give us any particular circum- "stance of the occasion that he told you?

"A. No, sir.

"Q. Where did it happen?

"A. That happened always at the Pleasant- "ville house because I would go down there. "It was not at our house.

"Q. Do you know what time of day it took "place? When he said he was going to see Mr. "Daix?

"A. I went down there about noon time in "the afternoon.

"Q. Did he tell you anything about Mr. Daix?

"A. Only that he was his lawyer—his family "lawyer.

"Q. Do you know Mr. Daix?

"A. No, sir.

"Q. What did he say about Mr. Daix?

"A. He said he was going to go up to Phila- "delphia to have a will made at Mr. Daix's of- "fice."

Frank P. Ailes (Vol. II, C., p. 717, l. 29), husband of Mrs. Kathryn Ailes. Occupation—railroading. Worked with the Berwind White Coal Mining Company for 18 years as assistant purchasing agent until September, 1926. Family consists of wife and four daughters, all of whom are married. Became acquainted with Albert Allen in September, 1919. Came to witness' home with idea of placing mortgage on Trinity Place house which witness wanted

to buy in September, 1919. At that time the two younger girls and Mr. and Mrs. Simpson were living with witness because there was a great scarcity of houses in Philadelphia. Went with his family to the Allegheny Avenue house in November, 1919, to live with Mr. Allen.

(Vol. II, C., p. 719, l. 33):

"Q. Do you know of your own knowledge "what arrangements were made with Mr. Allen "with respect to his becoming a member of your "household?

"A. Yes.

"Q. State what the conversation was there "with him in the presence of Mrs. Ailes?

"A. The first time Mr. Allen and I discussed "it was the date of a little party at Mrs. Shum- "way's. He showed how attractive it would be "and what opportunity it would give me to save "money and he knew that Henry and Rowena "were at our house and that it would give us "a chance to get a little ahead of the game, but "I didn't think well of it.

"Q. Who made the suggestion?

"A. Mr. Allen.

"Q. What did he say to you?

"A. He said, 'Frank, you better come on up "there, it is a nice place. You will have a "chance to save money.' I didn't think well of "it and I remember that Mrs. Shumway said I "better consider it. I said that it was naturally "up to Mrs. Ailes and that if it suited her it "would suit me.

"Q. Then what was done?

"A. I think we went up on Sunday. I had "never seen the house. We went through the "house and it was an attractive place and ap- "pealed to the women folks and that is how we "came to go.

"Q. What were the arrangements made with "Mr. Allen?

"A. Only except that we were to live there, "rent free, on his offer, and we were to provide "a servant and furnish the table.

"Q. You were not to pay any rent?

"A. No, sir."

(Vol. II, C., p. 720, l. 34):

"Q. Was he to pay any board?

"A. No, sir."

* * * * * * *

(Vol. II, C., p. 723, l. 28):

"Q. The Pleasantville house was owned by "whom?

"A. The Pleasantville house for generations "belonged to relatives of mine. It was a tum- "bled-down-shack and we bought it from them "for the sum of $800. I did some fixing and Mr. "Allen had some fixing done and were a couple "or three years getting it in respectable shape.

"Q. Did Mr. Allen contribute some money "from time to time to put it in shape?

"A. Yes.

"Q. In the summer time when you lived at "Walnut Street did Mr. Allen come to Pleas- "antville with you?

"A. Yes.

"Q. When the Pleasantville house was fin-
"ished, did he make that his home?

"A. Yes, and has been there ever since.

"Q. He continued there up until the time of
"his death?

"A. Yes.

"Q. So far as your knowledge goes, was there
"any other arrangement made with respect to
"financial conditions, except what you have al-
"ready testified to, with respect to the Alle-
"gheny Avenue house?

"A. Not at all, because I knew Mr. Allen was
"generous to the wife and children; and I was
"not out to collect. He took good care of them
"and that was satisfactory to me.

"Q. Did you at any time while Mr. Allen was
"a member of your household, make any sug-
"gestion directly or indirectly, that he should
"dispose of his property by will to your wife?

"A. No, sir, not in any way, shape or form.
"That subject was always a distasteful one to
"me and I didn't even like to hear them talking
"about it. I used to hear them, used to hear
"him and used to hear her talk it over fre-
"quently.

"Q. Did you ever suggest to him about the
"fact that his property should go to your wife?

"A. No, sir.

"Q. Did you ever ask him that?

"A. No, sir.

"Q. Did you ever influence him or attempt to
"influence him to make a will in your wife's
"favor?

"A. No, sir; I treated Mr. Allen the same as

"I treated any other sincere friend. I never im-
"posed on him personally and never borrowed
"a 5¢ piece from him.

"Q. Did you ever talk with him respecting the
"disposition of his property?

"A. No, sir; I have heard him mention it him-
"self.

"Q. What did he say about it?

"Mr. Endicott: That is objected to. May
"we have the time? Will you fix the time?

"A. I beg your pardon. Well, the last time
"I heard Mr. Allen say anything about the dis-
"position of his property was at the time of
"Mr. Thomas Allen's last visit. They had been
"talking in the sun parlor.

"Q. What year was that?

"A. It is in the record. I think it was, it
"must have been 1927.

"Q. According to your best recollection when
"was it?

"A. 1928, I guess it was, 1928. I think it was
"the spring of the same year.

"Q. When Thomas Allen came to visit Mr.
"Allen at your Pleasantville home?

"A. Yes, Tom used to come to Pleasantville
"to stay there.

"Q. What did he say to him?

"A. After he was gone he said, 'The main
"object of his visit seemed to be to find out
"what he intended to do with his property, and
"I discussed it no farther with him.'

"Q. Who was he talking about?

"A. Tom Allen.

"Q. Tom's visit?

"A. Yes.

"Q. That was all there was between you? "That was the conversation between you?

"A. Yes."

* * * * * * * *

"Q. Can you name any specific instance, if "not the time, when such statement was made by "him?

"A. Well, I recall distinctly Mr. Allen saying, "'Henry is crazy after that Northwestern "stock and I told him I was not going to sell it, "that it was going to be Katie's.'

"Q. Who is Henry?

"A. That is Henry Simpson.

"Q. You heard him say that, did you?

"A. Yes.

"Q. What else did you hear him say with re- "spect to the disposition of his property?

"A. I heard him say, instructing Mrs. Ailes "on business transactions, maybe, she would be "too busy, and he would say, 'Katie, you must "learn to do it now. You will have to do it some "day for yourself.' "

(Vol. II, C., p. 728, l. 15):

"Q. His Honor has stated that you can tes- "tify to statements, actual statements that were "made by Mr. Allen.

"A. The only time that I have been nailed "down to an actual statement of that condition, "was when we went up to see Mr. Adams about "moving the house. He said to Mr. and Mrs.

"Adams that everything was to be Katie's but "he didn't say why.

"Q. Do you recall whether or not he ever did "say why he proposed to make that disposition "of the property?

"A. No, sir, I can't say that he said it, be- "cause she was good, bad or indifferent, is that "what you mean?

"Q. Yes.

"A. No, I cannot.

"Q. How was Mr. Allen treated in your "household?

"A. As near as I can describe it, just the "same, maybe a little better, being a stranger, "than my own father would be. He was a kindly "old fellow and easy to get along with.

"Q. Did he take meals with you?

"A. Oh, yes.

"Q. What was his attitude toward the chil- "dren?

"A. Just about the same as wife's own father "would have been. He was very fond of the "children, and grandchildren. This last little "girl, before he died, he would wheel her up and "down Shore Road, in her coach. No man could "have been kindlier to children than he was.

"Q. Did you ever discuss any business prob- "lems with him?

"A. No, I always rather carefully avoided "that. The only business I did have with him "and in which I entered, was the taking of mort- "gages by him from myself and the wife.

"Q. How many mortgages did he take?

"A. He had a mortgage on Ethel's house.

"We took that over. He had that Walnut Street "mortgage and he had that part mortgage on "the Shore Road property.

"Q. Did he have a mortgage on the Walnut "Street house?

"A. Yes.

"Q. He loaned the money on that?

"A. Yes.

"Q. How much did he loan to you?

"A. Mr. Laws has the settlement statement. "I think we bought that house for $6,500.

"Q. During the entire time you knew him up "until the time of his death was he able to "carry on a conversation coherently and ration- "ally?

"A. Yes, he was just as shrewd the day he "died as he was the first day that I knew him. "You could no more fool him than you could "have fooled him the first day that I knew him.

"Q. Was there any signs by word or act, of "failing mentality during the time that you "knew him?

"A. None at all.

"Q. Was he a man easily influenced or not?

"A. No, he was rather the contrary, he was "difficult to influence."

See entire testimony of Mrs. Kathryn Ailes taken at the hearings of July 25, 1929, and November 20, 1929, for further evidence of the mentality of Albert Allen and his ability to make a will and attend to business (Vol. II, C., p. 778, *et seq.,* Vol. II, C., p. 909, *et seq.*).

The only ground seriously urged against the probate of the will is that of undue influence.

There is not the slightest ground for holding that the testator lacked testamentary capacity.

There have been many authorities decided in all of the Courts of New Jersey upon this question but the best definition of undue influence we have been able to find is that contained in the opinion of the Court of Errors in the case of *Loveridge v. Brown,* 98 Eq. 381, in which the Court adopted the language of Judge Flanagan, the Orphans' Court Judge in Essex County, as follows:

> "The influence which the law denominates, "'undue,' must be such as to destroy the free "agency of the testator and amount to moral "or physical coercion. It must be proved, "moreover, that the act done was the result of "such coercion. There must be a control ex- "ercised over the mind of the testator or an "importunity practiced which he could not "resist. Clifton v. Clifton, *supra;* In re Tun- "son's Will, 83 N. J. Eq. 277."

And

> "While the existence of confidential relations "between the testator and the favorite bene- "ficiary, standing alone, does not, necessarily, "constitute undue influence, yet when such rela- "tions are supplemented by other indicia of "undue influence, such as the exclusion from "testator of the natural objects of his bounty, "clandestinity in the execution of the will, or "the active participation of the favorite legatee "in procuring its execution, a presumption of

"undue influence may arise. Spark's Case, 63 "N. J. Eq. 242.

"In the case under consideration there cer- "tainly was no exclusion from the testatrix of "the natural objects of her bounty. With the "exception of the one or two of her numerous "nephews and nieces, she either visited, or was "visited, constantly by all of them. Clandes- "tinity in the execution of the will was not "shown."

In re Barrett, 2 Miscellaneous 135, the Court said:

"It has been said that in order to shift the "burden of proof to a proponent of a will, on "an issue of undue influence, there must be some "other elements added to proof that testator's "mind was enfeebled so that it was difficult to "resist improper influence and the establish- "ment of intimate confidential relationships. It "is said that slight circumstances are sufficient "to be added. Among the elements which may "be thus added which have been mentioned are "these: (1) The initiation of proceedings for "the preparation of the instrument, (2) par- "ticipation in such preparation, (3) presence at "the execution of the will, (4) efforts to exclude "the natural objects of testator's bounty from "his society, (5) the concealing of the making "of the will, and (6) taking possession of the "will."

It seems unnecessary to refer to any additional authorities of law which are so firmly embedded in our jurisprudence.

The question of undue influence must, of necessity, be settled upon the facts of each particular case but the general rule is that the influence which is characterized as, "undue, must be such as to destroy the free agency of the testator and amount to moral or physical coercion." In other words, it must be established that the act done was the result of such coercion and the control was so potent that the control exercised over the mind of the testator was such as he could not resist.

The influence of kind offices, unconnected with fraud on the part of the beneficiary, is not undue.

Byrnes v. Gibson, 73 E 617;
In re Brengle's Will, 85 E 487.

The existence of a confidential relationship between the testator and chief benficiary of a will, standing alone, does not necessarily constitute undue influence, as the testator may have been prompted by gratitude and affection to benefit those with whom he resided.

In re Eatley's Will, 82 N. J. E. 591.

The fact that the sole beneficiary of a will was a companion and business adviser of the testator for several years preceding his demise does not throw the burden upon such benficiary to prove the absence of undue influence.

Wheeler v. Whipple, 44 N. J. E. 141.

The right of a testator when competent to make a will to have any one he may desire to put his testamentary wishes in legal form—even though he may

select the person who is to be the chief beneficiary—is in this respect absolute.

Bennett v. Bennett, 50 N. J. E. 440.

In *Dumont v. Schurchhardt,* 62 Eq. 710, the will was admitted to probate. Chancellor Magee reversed the decree of the Orphans' Court and found that there was no undue influence. The following excerpts from his opinion, found on page 715, are particularly illuminating as to the effect to be given the proofs when it is claimed that a testamentary disposition is subject to the charge of undue influence.

> "It is not sufficient to present facts from "which the exertion of undue influence may "possibly be inferred. The existence of inter- "est and the fact of opportunity to exert it will "not suffice to establish undue influence. Turn- "ure v. Turnure, 8 Stew. Eq. 437; affirmed, 10 "Stew. Eq. 629. If, from all the facts and cir- "cumstances existing when the will was made, "an inference can be drawn that its provisions "are such as he intended them to be, and such "as he would have made if no influence had been "exerted upon him, the latter inference is at "least as probable as the former, and the bur- "den of proof in the attack upon the will is not "sustained.
>
> "The inference that undue influence prevailed "over testator's intent and induced him to do "what he would not otherwise have done, must "stand upon preponderating proof, excluding "other reasonable inference.
>
> "If the character of testator and the circum-

"stances existing at the execution of the will "naturally and reasonably explain its provi- "sions so that it may be fairly inferred that it "was such a will as he would have made, the in- "ference that it was the produce of influence "will not be justified."

In *Wheeler v. Whipple,* 44 Eq. 141, affirmed, 18 Stew. 367, the following is the syllabus reported in such case:

"The mere fact that the sole beneficiary "under a will was the confidential companion "and business adviser of the testatrix for sev- "eral years prior to her death, does not throw "the burden of proof upon such beneficiary to "show that the will was the spontaneous act of "the decedent, where there is no evidence what- "ever that such beneficiary took advantage of "her position and relation to influence the tes- "tatrix, in her own interest beforehand, or that "she participated either in the preparation or "execution of the will, or even knew of its exist- "ence and contents until some time after it had "been made."

In *Eatley's Will,* 82 E 591, the Court made the following observation upon this subject:

"Influence upon a testatrix, arising from "kindness, love and affectionate devotion, do "not constitute undue influence, nor are they "evidence of undue influence, or even of sus- "picious circumstance, in the absence of posi- "tive proof."

In Merkel's Will, 4 Misc. 656, the will was admitted to probate. The following is one of the syllabi:

> "One asserting undue influence must not only "establish its existence, but that it produced "a testamentary disposition which would not "otherwise have been made."

FINALLY:

While there is an entire failure of any proof produced by the contestants to show any undue influence exercised by Kathryn Ailes, to induce Albert Allen to make his will in her favor, there is abundant and overwhelming proof by proponent of the reasons why he did so.

He had no children.

His only brother was a man older than he and had an annuity which went to his children at his decease.

His only sister was also aged and had more than she could attend to.

His nephews and nieces were provided for and had plenty.

Mrs. Shumway, he never considered in any will that he made and he was not on good terms with her.

Mrs. Reulens occupied his house, rent free and he had to shoulder all the expenses. Their relations ended in a violent quarrel in October, 1928, just before he died.

His brother, sister, nephews, nieces and two stepdaughters neglected him or imposed on him for nine years before his death.

For the last nine years of his life he was a welcome, honored, respected member of the family of

Frank P. Ailes and Kathryn Ailes, his wife, and their children.

He was nursed back to life in his critical illness in 1923, and shared their home as if he was the father and they his children and grandchildren.

On Christmas and holidays he joined in their festivities. He attended church with them regularly and other religious celebrations, suppers, excursions and revivals.

He went with them on trips and journeys both far and near. He advised them on business deals out of which they made thousands of dollars.

He leaned on them for attention and help in the details of his bookkeeping and payment of accounts by checks and the collection and deposit of his income and investments.

He tried to educate them into his way of doing business and make them learn all about his affairs as he intended that they should receive all he had.

He was sane, shrewd, keen and knew his own mind up to the very last and made mortgage settlements up to within a few days before his death.

It would have been a most unnatural and ungrateful thing for him if he had ignored those who had rendered his declining years happy and made him a good home, and remembered his relatives and two stepdaughters who had estranged themselves from him for nine years.

Furthermore, the so-called will of Jany. 17, 1923 (Vol. II, C., p. 962, l. 26), shows the purpose of Allen many years before his death to make Mrs. Ailes his sole beneficiary, and this attitude was not changed, in any way, up until he made his will in 1928.

COMMENT ON WITNESSES PRODUCED BY CAVEATORS AS TO MENTAL CAPACITY OF TESTATOR.

The testimony produced by the caveators appertaining to the mental qualifications of the testator to make a proper testamentary disposition of his property, and as incidental to his faculties, at the time of the making of the disputed will, was extremely meagre, indefinite and unreliable.

The first witness produced was Thomas Allen, testator's brother. This witness was 83 years of age. He saw the testator in Pleasantville in July, 1928. This witness testified that from what was done and said, he was unable to form any opinion as to his brother's mental condition (Vol. I, C., p. 141, l. 4). He had no talk with his brother about his business affairs. He also said that he did not see any acts on the part of his brother, which made any impression on the witness' mind, as to the testator's mental condition (Vol. I, C., p. 142, l. 30).

The next witness produced, by the caveators, was Harry Ginsburg. He lived in Philadelphia and was in the real estate and finance business and had known the testator for five years before his death. About a month before the testator died, he visited the witness and asked whether or not the latter knew of a good roofer to put a new roof on the premises occupied by one of his stepdaughters. He said he was in trouble with a couple of women and was tied up and had to do what they said and was going to have things fixed up (Vol. I, C., p. 152, l. 17). Evidently he was referring to the two stepdaughters.

Russell C. Deacon was in the real estate business and lived in Upper Darby Township, Delaware County. In early September, 1928, witness received a message from Mrs. Reulens in which she requested the witness to come to her house. Allen said that he was looking for a home for his stepdaughter, Mrs. Reulens, and witness showed him one property. About ten days later, he received a telephone message from Mr. Allen asking him to call at the Fine Arts Building, Broad & Cherry Streets, Philadelphia, Pa. He met Mr. Allen and two ladies. After inspecting the house at Pennllyn, Allen said, "Do you furnish a chicken with this home." Allen said that he was looking at the house for Mrs. Reulens. Later he said that he intended to purchase two houses. When the witness told Allen that he must be in his second childhood, the latter smiled and did not say anything more. This witness based his opinion, as to Allen's mental capacity, on the ground that the latter was absolutely undecided in his mind as to whether or not he was going to buy a house (Vol. I, C., p. 165, l. 13).

It is perfectly manifest that the remark made to the witness about a chicken was in the nature of a joke. That Allen was in the habit of being jocular, was established by the many witnesses produced for the proponent. Evidently Mrs. Reulens and Mrs. Shumway were endeavoring to get Allen to buy houses for them and the latter was jollying them along to keep peace in the family.

Henry Blackstone, who was one of the witnesses to the will alleged to have been executed in 1919 by Mr. Allen, overheard a statement made by Mr. Allen in September, 1928, induced by the passing along the

street of a man with a wooden leg. The testator said, "Oh, wouldn't it be funny if Lillie had a leg like that. She could go around and make some money." Based upon this incident, the witness came to the conclusion that the testator was not all there (Vol. I, C., p. 175, l. 30).

Mary Manus met Mr. Allen at Mrs. Reulens' house about five years before she testified. She also saw him at the same place in September or August, 1928, upon three or four occasions. Upon one occasion, Allen asked her seventeen-year-old daughter to marry him. This occurred in the presence of the witness and others. Testator also asked for the name of a mechanic to fix a roof (Vol. I, C., p. 182, l. 29). The witness thought that Mr. Allen was joking. The young lady to whom the proffer of marriage was made, also considered the proposition as a joke (Vol. I, C., 187, l. 22). Upon another occasion, Mr. Allen said that he was going to find a nice young chicken to marry, because his mind was not good any more and he wanted somebody to take care of his books and figures (Vol. I, C., p. 188, l. 20). It was upon these incidents that the witness thought the testator was crazy. A mighty violent assumption.

Ethel Manus, fourteen years old when she testified, said that in 1928, upon one occasion, Mr. Allen was passing the witness' house and she waved to him and he came in. There was a young lady present and he said that he wanted to buy her a home and in the next minute said that he was afraid of her husband. It was based upon these instances that the witness thought that the testator was of unsound mind. Evidently another one of Allen's jokes (Vol. I, C., p. 191, l. 21).

William Oakes testified that on the 8th day of October, 1928, Mrs. Shumway brought Mr. Allen to the witness' house to see an oil burner. While Mrs. Shumway, Allen and the witness were examining the oil burner, the testator said: "Well, I will have to buy an oil burner for some chicken," and because of this remark witness testified that he thought the testator was kind of dippy (Vol. I, C., p. 293, l. 1). The testator must always have his little joke.

Elsie Manus who was about seventeen years of age, saw testator in the summer of 1928, and testified that when the testator said anything, he would cry and then he would laugh. He was always saying something funny and laugh at it. Testator said that the witness wanted to marry her. This was said in the presence of the mother and sister of the witness. The exact language was: He asked me how old I was and I told him 17. Then he asked me if I would like to marry an old rich man like him (Vol. I, C., p. 297, l. 31). Witness on cross-examination said that she considered the remark as a joke. Mrs. Reulens was present when the remark was made. Later he repeated the same remark in Mrs. Reulens' house, still joking.

Albert Reger was a brother-in-law of Mr. Allen and saw him in the month of June of the year 1927 or 1926, in the office of the Northwestern Trust Company. Allen said that he came around to see Mr. Hibbert, the vice-president, and Allen pulled out a check for $25 and had it cashed.

The deposition of Albert L. Siegrist was taken in Cape May. This witness had numerous business dealings with the testator beginning in 1912 or 1913 and continued for a number of years thereafter. In

1926 the witness visited the testator in Pleasantville and paid off the balance due on mortgage (Vol. II, C., p. 457, l. 24). On cross-examination this witness stated (Vol. II, C., p. 462, l. 28), that in the conversations between the witness and the testator, the latter was perfectly rational, that testator understood what was said to him and the witness understood what was said by testator. This witness did not testify to any incident occurring during the many years that the witness and the testator had business dealings together or that showed that the latter was of impaired intellect.

Both Mrs. Reulens and Mrs. Shumway, stepchildren of the testator, were extremely extravagant in their testimony respecting the conduct and mental condition of the testator and the same is absolutely at variance with all of the evidence elicited from the friends, neighbors and business associates of the testator covering the latter years of his life. When these two witnesses attempted to answer any question, it was utterly impossible to confine them to responsive replies. If their testimony is to be believed, we cannot escape the conclusion that the testator was an imbecile, a man without any intellect whatever and utterly unable to care either for himself or his property. The extravagance of the testimony given by these two witnesses is sufficient to characterize the same as utterly unreliable and not entitled to any credence whatever.

Of course, Mrs. Reulens was vitally interested in the result of the suit, because if the 1928 will, offered for probate, be rejected, then she would claim to be entitled to a very substantial portion of the estate under the will of 1919, and Mrs. Shumway would be-

come concerned therein. Not only is this the situation, but it is perfectly manifest that the evidence of these two women was largely colored by their animosity toward Mrs. Ailes. They believed that the fact of the testator becoming a member of the Ailes family, by their suggestion, had resulted in their disinheritance. The vicious allegations made against Mrs. Ailes, by these two witnesses are absolutely unsupported by any other witness in the case and the falsity of the same was amply established by every other fact introduced. The vindictiveness of Mrs. Shumway and Mrs. Reulens and their hatred of Mrs. Ailes induced them to make all sorts of vicious statements against the morality, of not only the testator, but of Mrs. Ailes. If this record be denuded of testimony given by these two witnesses, there is absolutely nothing to establish other than the fact that Mr. Allen, after he recovered from the serious operation in 1923, was a perfectly normal, healthy and robust individual, with full and complete mental equipment, not only to take care of his property, but to make proper testamentary disposition thereof.

It is only necessary to advert to a few of the alleged incidents mentioned in the testimony of these two women to establish the falsity and unreliability of all of the evidence given by them. The situation became so pronounced, when Mrs. Shumway was giving her testimony, that counsel for the proponents suggested that the witness should be cautioned to merely answer the questions. In desperation the Court replied:

"I do not think it would do any good. I have
"tried to do that but I have not been able to

"impress her with the fact. If she would an-
"swer yes or no and give us details instead of
"conclusions, we would get along faster" (Vol. I, C., p. 232, l. 14).

Particular attention is directed to the incident referred to by Mrs. Shumway (Vol. I, C., p. 237, l. 18), when she attempted to detail the conversation she had with Mr. Allen; also to the incident alleged to have occurred in Atlantic City in July, 1928 (Vol. I, C., p. 239, l. 27). After the answer last referred to was given, evidently counsel for the caveators became so disgusted with the spectacle being made by his witness, that he refused to ask any further questions.

The cross-examination of Mrs. Shumway amply exemplifies the utter unreliability of her testimony. The facts elicited were so highly colored and improbable that no reliance could ever be placed in any statement of these witnesses. Her explanation as to the incident on the Boardwalk in Atlantic City, above referred to, is an exemplification of the incoherent and improbable statements made by Mrs. Shumway (Vol. I, C., p. 252, l. 15).

There is very little difference between the evidence given by Mrs. Reulens and that which was obtained from her sister. One incident in Pleasantville was described by the witness as follows:

"The same day and when I was in this car,
"we were going home and I said, 'It is getting
"toward evening. It is beautiful with this big
"lovely light to go to bed,' and she said, 'We
"don't go to bed so early; we don't go to bed

"with the chickens. We do our dirty work in "the daytime.' "

An utterly improbable statement. The entire cross-examination of Mrs. Reulens, beginning on (Vol. I, C., pp. 319-343) of the testimony, so demonstrates the unreliability of her testimony that it seems unnecessary to further comment on any particular feature of it. A reading of the entire record establishes the fact of her being so incensed and prejudiced against Mrs. Ailes, that she lost all sense of propriety in describing the circumstances of her meetings with both Mr. Allen and Mrs. Ailes.

A comparison of the evidence of Mrs. Reulens with that given by Mrs. Ailes shows the latter to be a very conscientious and refined lady.

COMMENT ON THE STATEMENTS CONTAINED IN BRIEF FILED ON BEHALF OF CAVEATORS.

Counsel for the contestants lay considerable stress upon the fact that the Orphans' Court Judge suggested that he might be justified in withholding the probate of the will on the ground that it was unreasonable, in its provisions, and inconsistent with the duty of the testator, with reference to his property and his family, if there were dependent next of kin involved. Apparently this argument had no effect whatever upon the Vice Ordinary and when analyzed, it should not be given any weight as a reason for the denial of probate in the absence of undue

influence and lack of mental capacity to make a valid disposition of his property.

There is not the slightest evidence of any improper relations between Mr. Allen and Mrs. Ailes, except that which emanated from the testimony of two stepdaughters based upon alleged declarations made by Allen. None of the numerous witnesses, which were called by the proponent, testified to the existence of any acts or conduct on the part of either Mrs. Ailes or Mr. Allen, except those which were the result of the latter being a member of the former's household, consisting of her husband and daughters. The affection of Mr. Allen toward Mrs. Ailes was genuine, more in the nature of a father toward his daughter, and induced by the kindly manner in which he had been received and treated by her and the members of her family.

No testimony was produced to support the statement, in brief of caveator, that Mrs. Ailes claimed that she acted only as housekeeper for Mr. Allen.

Counsel also comments upon what is characterized as a false explanation by Mrs. Ailes with respect to certain checks of the testator which were handed to her just before the latter's death in Winchester, Virginia. It so happens that Mr. Halberstadt was present when these checks were signed and he was fully examined as to what occurred, and such explanation does not in any way discredit the testimony given by Mrs. Ailes (Vol. II, C., p. 686).

Counsel also states that the death of the testator forty-five days after the making of the will was the result of a general breakdown of his faculties and characterizing the same "a typical case of death from old age." This conclusion is not justified by

the proofs. The nurse, Miss Booth, stated that Mr. Allen died from acute indigestion (Vol. I, C., p. 493, l. 16). Evidently it was the result of abnormal eating of oysters.

One cannot help coming to the conclusion, from a careful reading of the proofs presented in this case, that other than the fact that the testator was an old man, there was no general breakdown of faculties, and this condition continued up to the time of his sudden death.

The statements contained on page 31 of the brief of contestants, respecting the checks offered in evidence, have been fully and satisfactorily answered in another portion of our brief.

The letter dated in March, 1920, referred to on page 44 of the contestants' brief, was just the kind of a communication which would be sent by a daughter to a father. There is no possible ground upon which such letter could in any way affect the validity of a will made eight years thereafter.

Counsel for the contestants is in error with respect to the possession of the will. The undisputed testimony is that Senator Daix gave the will to the testator, who in turn handed it to Mrs. Ailes to be placed in a safe deposit box containing the papers of both the testator and Mrs. Ailes, each of whom had a key thereto.

Counsel for the caveators also take the position that because of the business dealings which were carried on between Mrs. Ailes and the testator, a situation of confidential relation came into existence which would shift the burden of proof, and impose on her the obligation to show that the will of 1928

was not the product of undue influence exercised by her or on her behalf.

What she did for Mr. Allen in a business way is shown by her evidence taken July 25, 1929, and the cross-examination taken November 20, 1929. She operated the automobile and took the testator to Philadelphia and other places (Vol. II, C., p. 778, *et seq.*, Vol. II, C., p. 909, *et seq.*).

There were some financial dealings between Mr. Allen and the Ailes family. Mr. Allen held a mortgage on some property owned by Mrs. Ailes and her husband, who paid the interest up to the time of the former's death. Certain other loans were made. These loans are described by Mrs. Ailes (Vol. II, C., p. 792, l. 35). Mrs. Ailes had a power of attorney to sign checks while Mr. Allen was in the hospital in 1923, but this power of attorney was revoked long before his death (Vol. II, C., p. 801, l. 11). Mrs. Ailes drew checks, signatures to which were placed thereon by Mr. Allen (Vol. II, C., p. 811, l. 17). In 1924, Mrs. Ailes paid trade bills and business bills of Mr. Allen by drawing checks for him and his signature was attached (Vol. II, C., p. 843, l. 21). This did not occur in every instance.

Mr. Allen had a book in which he kept a list of his investments and the amount of income and dates collected thereon. The entries in this book were, in some instances, made by the testator, and in others by Mrs. Ailes (Vol. II, C., p. 846, l. 28). Mrs. Ailes had no business experience (Vol. II, C., p. 858, l. 26).

Checks drawn by Mrs. Ailes while Allen was in the hospital were charged against the latter's account in the Northwestern Trust Company.

The various trips that were taken by Mrs. Ailes and Mr. Allen, in the company of other persons, are not evidence of confidential relations.

The account book offered in evidence as C7 on November 20, 1929, was examined by Mrs. Ailes, while a witness, and the parts which were entered in her handwriting and those entered in the handwriting of Mr. Allen were explained.

It is submitted that these facts, together with the other testimony in the case which is not disputed, do not show that such confidential relations existed between Mrs. Ailes and Mr. Allen as to raise a presumption that the will was the result of undue influence. Neither is there anything to support the claim that the burden was shifted from the caveators to establish undue influence, and imposed on Mrs. Ailes.

See

Sparks Case, 63 L. J. Eq. 242;
Re Barrett, 2 Misc. 135;
Wheeler v. Whipple, 44 Eq. 141; affirmed 18 Stew. 367;
Merkel's Will, 4 Misc. 656.

There is no proof whatever to show that anything that Mr. Allen did for Mrs. Ailes or her family was induced by fear or duress on his part.

The only incidents relied upon by counsel for the caveators to show any fear of Mr. Allen, were declarations alleged to have been made by the testator, either to Mrs. Reulens or Mrs. Shumway. It has been demonstrated that their testimony is not to be relied upon. The evidence of the innumerable witnesses produced by the proponent, who were per-

sonal and business friends or associates of the testator, show that he had ample mentality to resist any influence or fear which might have been attempted by Mrs. Ailes. What he did was in accordance with his wishes and desires.

It is manifest, also, that in the declaration made by the testator to Mr. Ginsburg, the former was referring to Mrs. Shumway and Mrs. Reulens, as demonstrated by the statements made by Allen to Mrs. Ailes as to his relations with his two stepdaughters.

A careful examination of the opinion of the Court in the *Ulrich will case,* 98 E 621, which was mainly relied upon by counsel for caveators in the court below, will show that such case is not at all parallel with the situation with which we are concerned here.

The following is a fair and impartial recital of the facts upon which the Court refused to probate the testator's will in the case last cited:

1. That the testator's mental faculties deteriorated to such a marked degree so that he was reduced practically to a state of senility.

2. The son-in-law, in whose favor the will was made, made misrepresentations to the testator as to the conduct of the testator's son.

3. The proponent pursued a course of underhand dealings intended to poison the mind of the testator against his son and the will was made immediately after one of these occasions.

4. Proponent declared to the other members of the family that he had no knowledge of the will.

5. Testimony was produced to show that the former will was destroyed in the office of the attorney who drew the second will.

6. It was shown that the prior will was produced at the trial by counsel for the caveator, it having been turned over to them by proponent's wife, who obtained it from her husband's pocket after the testator's death.

7. The son of the testator, who was active managing head of the testator's business, was displaced by the proponent as such manager.

8. The will offered for probate made substantial changes in the bequests to those contained in the former will.

9. It was shown by medical testimony that the mental faculties of the testator were at a low ebb for a number of years prior to the time he made the will, and the doctors testified that the testator was not in physical condition to transact important business.

10. The attorney who drew the will had not been the testator's general counsel prior to the time of its execution.

11. The Court found that the testator never re-

membered the making of the last will and forgot as soon as it was made.

It is manifest that the elements which resulted in the refusal of the probate of the Ulrich will are not present in this controversy. Furthermore, it cannot be seriously contended that Mr. Allen did not possess sufficient mentality to make the original will in 1928, or that the said will was the subject of any influence whatever on the part of Mrs. Ailes.

The main argument of counsel of the caveators is based upon an enfeebled mentality on the part of the testator, which is not supported by any believable evidence.

Furthermore, Mrs. Ailes had nothing whatever to do with the making of the will, except that she drove the automobile by which Allen was conveyed to Philadelphia, in the first instance, when Allen gave instructions to Senator Daix, and the next time when he executed the will in Dr. Boger's office.

There is nothing in the case to show that Mrs. Ailes deprived Mr. Allen of associating with the natural objects of his bounty. It is not a fact that she moved him to Pleasantville, and there treated his former friends and relatives in such a manner that there was small likelihood of a visit being repeated. He went to Philadelphia frequently to see his stepdaughters and there was no interference on the part of Mrs. Ailes with the visits of other members of his family. In fact, he had no children, and neither Mrs. Shumway nor Mrs. Reulens had any substantial claim upon his bounty or generosity.

One of the stepdaughters of Allen was responsible in having the latter become a party of the Ailes

household. This is shown by the testimony of Mrs. Shumway, respecting a conversation with her stepfather (Vol. I, C., p. 254, l. 1):

> "Q. Did you say anything?
>
> "A. I said, 'Well, I would like to help you. "I prayed for you, but the devil got you or "someone got you, Papa. I have prayed for "you for the past years but I put Mrs. Ailes "in your house, I gave her a home, and I was "the means of giving her a home.'
>
> "Q. Did you tell him that?
>
> "A. Yes. I said, 'Is that a nice way to come "to this condition?' I said, 'There I was, put-"ting Katherine Ailes in your home. They "hadn't a home before. I didn't think they "were even in moderate circumstances." * * *
>
> "A. I said they were in poor circumstances "and that I was the means of giving him, giv-"ing them, a home."

The testimony does not show that a burden was imposed upon Mrs. Ailes to rebut a presumption that the will was the product of undue influence, because of any confidential relations of trust and confidence. The evidence does not show that any such relation existed.

In the next place, the normal mentality of Allen shows conclusively that he was not susceptible of being influenced against his will. What he did in 1928, by means of the disputed will, was what he intended and attempted to do in 1923. There was absolutely nothing in the case to show that he had any other wish, desire or purpose, in the disposi-

tion of his property, than to make Mrs. Ailes his sole beneficiary.

Counsel for the caveator attempts to argue that because of some alleged minor inconsistencies in the testimony of herself, Senator Daix and Dr. Boger, none of them are to be believed. It is true that Senator Daix had no connection with the employment, by Mrs. Ailes, to foreclose her mortgage on the Philadelphia property. Daix was ill and knew nothing about the business until the same was concluded and the money collected by his son.

The incident with reference to the receipt for board is amply explained by Mrs. Ailes (Vol. II, C., p. 922, l. 9). This explanation is a perfectly reasonable and logical one and does not in any way discredit her testimony nor detract from being given full credence.

As to the alleged inconsistencies in her statement as to talking to Allen about a will and subsequently admitting that she knew of the 1923 will and, in fact, was present when it was dictated by Allen. Unquestionably, Mrs. Ailes did not understand the original question, when she was asked if she had talked with Mr. Allen about making the will, and it appeared from the testimony that the 1923 will was not talked about at all, but Mr. Allen told her to get a table, that he desired to have something written and then proceeded to dictate the will, which she then wrote (Vol. II, C., p. 849, l. 27).

The trip to Philadelphia, respecting the will, was induced by a conversation with Manning (Vol. II, C., p. 853, l. 2), in which Mrs. Ailes had no part whatever.

There may be some slight inaccuracies in the tes-

timony of the various witnesses as to whether or not Dr. Boger was requested to witness the will on the same day it was executed, or before. There is nothing to show that there was any preparation in advance of the day that Mr. Allen was taken in the automobile by Mrs. Ailes to see Senator Daix. Barring the natural variances, the testimony is perfectly natural and reasonable and should be given full force and effect when taking into consideration the fact that the three witnesses, while testifying to the same incident, would naturally vary somewhat as to details. This added weight to the truth of the main points.

The allegation of counsel for the caveators that Senator Daix and the other witnesses deliberately perjured themselves, is without any foundation or support whatever.

We submit, therefore, that the decree of the Prerogative Court, affirming the action of the Orphans' Court in admitting the will of the testator to probate, should be affirmed with costs.

There is pending in this court an appeal taken by Mrs. Ailes, the executrix, from the allowance of counsel fees as designated in the final decree in the Prerogative Court. This appeal may or may not be argued at the same time the foregoing appeal is heard, depending upon agreement of counsel.

Respectfully submitted,

HENRY W. LEWIS,
Proctor of Kathryn Ailes.
LEWIS STARR,
Of Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS.

In the Matter of the Estate of Albert Allen, Deceased.

On Petition for Probate.

On Appeal from the Final Decree of the New Jersey Prerogative Court, Admitting to Probate a Paper Writing Dated September 7, 1928, as the Last Will and Testament of Albert Allen, Deceased, and Directing Letters Testamentary Thereon to Kathryn Ailes, and Modifying Allowance of Counsel Fees.

BRIEF FOR LILLIAN SELTZER REULENS, CAVEATRIX-APPELLANT.

FACTS.

Albert Allen, the testator, a resident of the city of Pleasantville, County of Atlantic and State of

New Jersey, died suddenly on October 22, 1928, at a hospital in Winchester, Virginia, while on an automobile trip with Frank P. Ailes and Kathryn Ailes, his wife, and two others.

At the time of his death, decedent was between seventy-five and seventy-seven years of age and left a considerable estate which was in excess of $150,000.00.

At the time of his death, Mr. Allen left him surviving as his next of kin the following persons, who were in the following degree of consanguinity:

Lilliam Seltzer Reulens	Stepdaughter
Anna Shumway	Stepdaughter
Thomas Allen	Brother
Sarah A. Reger	Sister
Thomas J. Allen	Nephew
Herbert S. Landell	Nephew
William M. Allen	Nephew
Mary A. Fairley	Niece
Edythe A. Savin	Niece
Anna M. Griss	Niece
Bessie Lincoln	Niece
Sarah Cobb Allen	Niece
Mae Tarr	Niece

After his death, one Kathryn Ailes offered for probate a paper writing purporting to be the last will and testament of Albert Allen, dated September 7th, 1928. By the provisions of this paper writing, Kathryn Ailes was made the sole and absolute beneficiary of Mr. Allen's entire estate and thereunder she was also appointed sole executrix.

It was undisputed that Kathryn Ailes was not related either by blood or marriage to the decedent.

Kathryn Ailes, by her testimony, claimed that she acted merely as housekeeper for the decedent for a number of years immediately prior to his death.

It was undisputed that the paper writing dated September 7th, 1928, was executed in Philadelphia, before a lawyer of that city, one Augustus F. Daix, Jr., and that Mrs. Ailes drove Mr. Allen in her automobile, which had been paid for by Mr. Allen, from Pleasantville to Mr. Daix's offices in Philadelphia for the purpose of having this will executed.

The right to probate of this paper writing is denied by Lillian Seltzer Reulens, caveatrix-appellant, and by all the next of kin of Mr. Allen, who are all beneficiaries under a will and codicil thereto, made by Albert Allen on October 25th, 1919. The caveatrix-appellant was the principal beneficiary under that will and codicil.

The caveat was filed upon the ground that the paper writing dated September 7th, 1928, was:

1. The product of undue influence exercised upon the decedent by Kathryn Ailes, the beneficiary under the will.

2. That Kathryn Ailes occupied a confidential relationship with the decedent and that she was in a position to force her will upon the acts of the decedent, and

3. That on September 7th, 1928, (the date of the paper writing) the decedent was not mentally competent to make a will.

This cause first came on to be heard before Hon. William H. Smathers, Judge of the Atlantic County

Orphans' Court. At the close of the case, Judge Smathers, in delivering his opinion admitting to probate the paper writing dated September 7th, 1928, in part said:

> "The remaining question for the Court to determine, *which is a very close one,* is, was the will of the testator, leaving his entire estate to Katherine Ailes, his own free act and desire, or was its execution the result of undue influence, practiced upon him by the beneficiary, Katherine Ailes?
>
> If the testator, at the time of his death, had children, a wife or next of kin dependents, the Court would not hesitate to deny the probate of his will upon the ground that it was unreasonable in its provisions, and inconsistent with the duties of the testator, with reference to his property and his family" (Book I, Case, p. 18, beginning line 24, italics ours).

Appeal thereafter was taken by the caveatrix and other next of kin to the New Jersey Prerogative Court. Vice-Ordinary Ingersoll, while affirming the opinion of Judge Smathers, reduced the counsel fees from $10,000.00 award to proctors for the proponents and proctor to the caveatrix, respectively, to $7,500.00 to each, and reduced the award of $3,000.00 to the proctor for the next of kin to $2,500.00.

This appeal brings up for review the conclusions of the Prerogative Court, sustaining the said paper writing.

COMMENT.

It will be noted that the learned Orphans' Court pointed out in his opinion that the case "is a very close one;" this, in itself, indicates that the testimony offered by the contestants of the will in question made considerable impression upon the mind of the Court.

Since the Orphans' Court is the only Court that has the opportunity of hearing the testimony and of observing the witnesses as they render it and of noting the actions of the witnesses while upon the stand, the opportunity of the trial Court to judge the truth or falsity of the testimony as presented is necessarily greater and more efficient than would be the study of ponderous testimony transposed into a State of the Case. It is for that reason that we particularly stress the opinion rendered by the Orphans' Court.

The Orphans' Court, however, seemed to be swayed in his opinion by misunderstanding concerning the relationship of the various parties to the deceased; for, in the earlier part of his opinion, he says that the testator died "leaving no children, no wife, no relatives other than some aged brothers and sisters who appeared to be well supplied with the interests of life in their own right."

In fact, there was only one brother and one sister, and there does not appear in the testimony any evidence which would indicate the extent of their wealth.

Apparently from the statement of the Court, it

had overlooked the fact that there were a number of nieces and nephews who were vitally interested in this matter as blood relations, both by reason of the provision that had been made in the will of 1919 and by law.

This apparent impression of the Court is further evidenced by the statement in his opinion that,

> "if the testator, at the time of his death, had children, a wife or next of kin dependents, the Court would not hesitate to deny the probate of his will, upon the ground that it was unreasonable in its provisions and inconsistent with the duties of the testator with reference to his property and his family."

It is difficult to understand how the interests of the brother, the sister and the nieces and nephews could be denied in preference to the interest of Katie Ailes, who had no relation with the defendant other than as a friend, merely because the brother, the sister and the nieces and nephews did not bear a closer blood relation to the deceased.

Since the element of unreasonableness of the provisions of a will are a factor in determining whether or not a will is the product of undue influence, we respectfully submit that the Orphans' Court, by its opinion, has clearly indicated that the writing of September 7th, 1928, was the product of undue influence exerted upon the testator by his housekeeper, Kathryn Ailes, and the fact that those in interest bore no closer relationship than that of brother and sister, nephews and nieces, should make no difference in the result.

STATEMENT OF FACTS RELATING TO ALBERT ALLEN'S LIFE.

Albert Allen died at the age of seventy-six (76) at Winchester, Virginia, on October 22, 1928.

Allen had been a resident of Philadelphia until the last six years of his life, when he moved to Pleasantville, New Jersey.

He was married twice but no issue were born of either marriage.

Mr. Allen's nearest of kin were Thomas Allen, a brother; Sarah A. Reger, a sister; and Thomas J. Allen, Herbert S. Landell, William M. Allen, Mary A. Fairley, Edythe A. Savin, Anna M. Griss, Bessie Lincoln, Sarah Cobb Allen and Mae Tarr, all being nephews and nieces of decedent and children of his deceased brother and sister.

In 1913 he married Sallie Dewall, his second wife, who had two daughters, Mrs. Anna Shumway and Mrs. Lillian Seltzer Reulens. The second wife died September 7, 1919, and for some time thereafter he spent much of his time with his stepdaughter, Mrs. Reulens, who lived at 1917 Dauphin Street, and for whom he acted as trustee of some small property.

Mrs. Reulens testified:

> "Q. Did you see Mr. Allen from time to time after your mother's death?
>
> A. Very frequently. He was living at my house, going up to his house to air it and look after it in a sanitary way" (Book I, Case, p. 320, line 18).

Decedent's relations with Mrs. Reulens and Mrs. Shumway were most cordial. This is clearly established by the fact that on October 25th, 1919, the will and codicil under which Lillian Seltzer Reulens claims were executed. By the terms of that will, after a bequest to one Gustav Shreiver (now dead), three-fourths of the remaining estate was given to Mrs. Reulens for life, with power of testamentary disposition, and the other one-fourth was given to his remaining nephews and nieces. Under this will Mrs. Reulens was also appointed executrix of the estate (Exhibit C1, Book II, Case, p. 940).

At the time that the will of 1919 was executed by Mr. Allen, Kathryn Ailes was a complete stranger to him, and it is significant to note that until Mrs. Ailes entered into his life his relationship with Mrs. Reulens and his nephews and nieces was so cordial and happy that his will of that date bestowed all of his estate, with the exception of some bequests, to these relatives.

Shortly after the death of his wife Mr. Allen was introduced by Mrs. Shumway to Mrs. Ailes, who was then living in a small house on Trinity Place, West Philadelphia, with her husband, Frank P. Ailes, two unmarried daughters, Mildred, age 19, and Catherine, age 17, and a married daughter, Mrs. Simpson, with her husband and children. Mrs. Ailes testified that she wished to buy this house and endeavored to get Mr. Allen to take a mortgage on it, but he discouraged the idea and made her a proposition to take charge of his house (Book II, Case, pp. 778-79, beginning line 28).

On or about November 15, 1919, Mrs. Ailes and her husband and two unmarried daughters moved to

Mr. Allen's house on Allegheny Avenue. Mrs. Ailes testified that she was then 45 years of age and Mr. Allen was 65 and that he had said he had a large house and nobody to take care of him.

> "Q. What was the final arrangement between you and him with reference to his making his home in your family?
>
> A. Just that arrangement precisely—that the rent should go free in return for his meals and the care of his home—the care of his house.
>
> Q. Was it arranged that he should pay any board?
>
> A. No; there never was an arrangement of that kind" (Book II, Case, p. 780, line 24).

Notwithstanding this testimony a receipt signed by Mrs. Ailes in full for board up to August 27, 1924, was found among Mr. Allen's effects in his box at the Northwestern Trust Company.

The Ailes family continued to live in Mr. Allen's home for six months, after which Mr. and Mrs. Ailes returned to their Trinity Street house, leaving their unmarried daughters with Mr. Allen. The reason for this removal is not clear—Mr. Ailes denied that there had been any friction between him and Mr. Allen (Book II, Case, p. 746, line 1), but Mrs. Shumway testified to the following explanation given her by Mr. Allen:

> "He said, 'Papa is in trouble.' I said, 'What about?' He said, 'What about?' He said, 'Everything.' He said, 'Katie left me.' I said, 'What did they leave you for?' He said, 'They had a terrible fight the other night.' I said,

'What was it about, Papa?' He said, 'About me; about Papa.' ''

The above is followed by other details of his confession as to improper relations with Mrs. Ailes (Book I, Case, pp. 237-8, beginning line 18).

Notwithstanding the removal of Mr. and Mrs. Ailes from Mr. Allen's house about March 15, 1920, she soon communicated with him by special delivery letter, postmarked March 23, 1920, addressed to "Poppie Dear," signed "Tenderly, Katie," requesting a meeting for lunch and a bottle of brandy and containing other expressions of interest and intimacy not usually shown by a housekeeper of six months' acquaintance (Book I, Case, p. 329, line 5).

Six months later the Ailes lease on the Trinity Street house expired and they returned to Mr. Allen's home on Allegheny Avenue for another six months' period, at the end of which Mr. Allen sold his house and went to live with the Ailes at 4311 Walnut Street, which they had purchased during the summer of 1921 for $6500.00, Mr. Allen assisting in the financing of this property by taking a second mortgage for $3000.00, and afterwards living there with the Ailes family for four years.

In February, 1923, Mr. Allen was taken to the Jefferson Hospital for a serious operation and remained there for about 15 weeks, during which time he was visited daily by Mrs. Ailes.

In 1925 they moved into a house at Pleasantville, New Jersey, originally purchased in 1921 for a summer home and subsequently enlarged and rebuilt. The purchase money and cost of alterations was paid by Mr. Allen, though title was taken in the name

of Mrs. Ailes (Book II, Case, p. 763, line 14; pages 784-5, beginning line 31).

This Pleasantville house was largely furnished by Mr. Allen (Book II, Case, pp. 797-98, beginning line 32), and he contributed to the household expenses (Book II, Case, p. 765, line 6).

Mrs. Ailes further testified that Mr. Allen contributed generously to the support of her family from 1919 to the date of his death in 1928 (Book II, Case, p. 781, line 2):

"Q. Did he make any gifts to you?

A. Yes.

Q. Beginning when?

A. It seems to me from the beginning.

Q. How about gifts to the children?

A. Yes, he certainly did" (Book II, Case, p. 792, line 18).

"Q. How long did you have a car?

A. Since 1922 when we first came down to Pleasantville.

Q. Who financed the purchase of that?

A. Mr. Allen. He wanted it for himself, and it was a pleasure for the children and himself; but he gave it to me" (Book II, Case, p. 785, line 31).

"Q. Well, now, did he buy for you an electric refrigerator in Pleasantville?

A. Oh, yes.

Q. How did he come to do that?

A. That was a birthday gift" (Book II, Case, p. 798, line 22).

Checks drawn on the Allen account during the year 1928 and offered in evidence throw further light on the nature and extent of his contributions.

Beginning in 1921 and extending down to the time of his death, Mr. Allen took various trips with Mrs. Ailes and various members of her family, always paying her expenses. In 1925 he took her to California for five weeks on a Raymond-Whitcomb tour.

> "Q. And who actually participated in that trip?
>
> A. Who actually participated in that trip?
>
> Q. Yes.
>
> A. Mrs.—well, Mr. Allen and myself. Mr. Ailes couldn't go toward the last. It was impossible to make up arrangements with the office.
>
> Q. And the expenses of that trip were paid by whom?
>
> A. Mr. Allen" (Book II, Case, pp. 806-7, beginning line 36).

In the early part of 1928 they took a three weeks' trip to Florida, accompanied by Mr. Ailes, who paid his own expenses, but Mr. Allen paid the expenses of Mrs. Ailes.

> "Q. Why did Mr. Allen pay your wife's expenses?
>
> A. Well, just as a gift, I suppose.
>
> Q. Did your wife render any service to Mr. Allen which warranted his gift or was an inducement to the gift?
>
> A. No, sir" (Book II, Case, p. 750, line 2).

On October 22, 1928, Mr. Allen, while on an automobile trip to Virginia with Mr. and Mrs. Ailes and

two of their friends, died in the hospital at Winchester, Va., after a sudden and acute illness of less than two days. A few hours before his death he signed two checks, which the attending nurse testified were signed under the following circumstances:

> "Q. Will you state what happened within your sight?
>
> A. Mrs. Ailes asked Mr. Allen to sign some checks so that she would have some money to defray any expenses that happened to come up during her stay. The checks were signed in blank.
>
> Q. Was there more than one check?
>
> A. Two checks, I don't know if there were any more or not" (Book II, Case, p. 494, line 1).

After Mr. Allen's death these checks were presented to his bank for payment, one of them being for $800.00 and the other for $2,000.00.

Mrs. Ailes' explanation of the reason for these checks and the circumstances under which they were signed, conflicts with the testimony of the nurse and, if true, is a clear indication of the manner in which she mulcted Mr. Allen. In explaining why a man on his death bed executed to her order and delivered to her two checks totalling the sum of $2800, she said that Mr. Allen intended the check in the sum of $800.00 to be used to defray the expenses of the party while they remained at Winchester and that he executed the check in the sum of $2,000.00 for the purpose of having an oil burner installed in Mrs. Ailes' home during his illness (Book II, Case, pp. 809-10, beginning line 15).

Such an explanation is inherently improbable. In the first place at the time of Mr. Allen's attack his illness seemed of a temporary nature which would require but a short stay in the hospital and the party undoubtedly had ample funds to provide for the expense of an additional stay of short duration. In the second place a much lesser sum than $800.00 would have seemed ample to cover the expenses incurred during the then contemplated illness of Mr. Allen. And in the third place it would have been more logical and consistent with the circumstances to have first determined what the additional expenses would be before any checks would be executed to pay them.

The testimony of George R. Manning clearly establishes the falsity of the explanation given by Mrs. Ailes. Mr. Manning, who is associated with the Pleasantville Trust Company where both Mr. Allen and Mrs. Ailes maintained bank accounts, testified that the two checks above mentioned were deposited to Mrs. Ailes' account and that $1800.00 thereof was transferred by Mrs. Ailes to her savings account (Book I, Case, p. 288, line 1).

What became of the other $1,000.00 is not known but we do know that $1800.00 of the amount obtained by Mrs. Ailes from Mr. Allen while on his death bed, was calmly and safely deposited in her savings account.

CAVEATRIX'S POINTS.

The will of September 7, 1928, should not be admitted to probate because it was the product of an undue influence exerted upon the mind of testator by Katie Ailes, the sole beneficiary thereunder.

A. At the time of the execution of the will of September 7, 1928, testator's mental and physical powers had been so reduced that he was unable to resist the domination and influence of Katie Ailes.

B. Kathryn Ailes occupied a confidential relation to the decedent.

C. At the time of the execution of said will and for a long time prior thereto, Katie Ailes had exercised a domination over the will of decedent by wiles and by causing him to fear.

D. At the time of execution of said will and for a long time prior thereto, Katie Ailes had exercised an undue influence and domination over the will of decedent by excluding his family, relatives and friends from their normal contacts with him and as a part of a comprehensive scheme to get Allen s estate.

E. The burden is cast upon the proponent, Katie Ailes, of rebutting the presumption of undue influence raised by the facts in this case.

A. THE STATE OF ALBERT ALLEN'S MENTAL AND PHYSICAL HEALTH IN SEPTEMBER, 1928.

Albert Allen was seventy-six (76) years of age. He died on October 22, 1928, forty-five (45) days after the date of his will, from a general breakdown of his faculties; a typical case of death from old age. Common knowledge makes known to us all, as a person advances in years his mental and physical faculties diminish. There are many evidences of this failing condition in the case of Albert Allen.

His brother, Thomas Allen, called on decedent in July, 1928, and said he found his brother in poor health (see Thomas Allen's testimony):

> "A. No, he didn't say anything about that. He wasn't feeling as well as he ought to have been. I think he was feeling a little poorly."

* * * * * * * *

> "Q. What was your brother's state of health when you saw him in July?
>
> A. I don't think it was as good as it had been before.
>
> Q. What was his state of mind?
>
> Mr. Lewis: Objected to.
>
> The Court: What is your objection?
>
> Mr. Lewis: That should be predicated upon certain facts, or acts, so that a conclusion could be drawn. He is called upon for a conclusion without basing it on facts or acts of the party.

Mr. Endicott: I think that is probably true. I will reframe the question.

Q. You were with your brother for a few days in July of 1928?

A. Yes.

Q. You talked to him during that time, did you?

A. Yes, sir.

Q. Were you able to form any opinion, in your conversation with him, as to his mental condition?

A. No, not altogether; but he says to me, he says, 'Tom, how much stock did you get from your brother's will?' I says, 'I didn't get any.' He says, 'That is funny.' He said, 'I thought you did'—that is the Northwestern Trust Company stock. He says, 'I got a lot and I will see you get that.'

Q. Did he know whether or not you had gotten any stock from your brother?

A. No, he asked me if I did.

Q. Hadn't he known that?

A. No.

Q. When did that conversation take place?

A. Over there—no, that was in his house.

Q. In Pleasantville?

A. In Pleasantville, in his house.

Q. In Pleasantville?

A. Yes.

Q. Last July?

A. Yes.

Q. Did he say how you would get it?

A. No, he just said, 'I will see that you get my stock,' he says.

Q. Did you have any conversation or talk with your brother about his business affairs?

A. No, sir.

Q. Do you know who was looking after his affairs?

A. Only what she told me herself. She said she was.

Q. Who did?

A. Mrs. Ailes.

Q. She told you she was looking after Mr. Allen's affairs?

A. Yes.

Q. What language did she use?

A. She said, 'I am attending to Allen's business. He is not able to attend to his business any more.' She says, 'For the last year I have attended to it, and the last mortgage he got he wasn't able to attend to it and I had to attend to it all.' ''

* * * * * * * *

''Q. Did you see any acts on the part of your brother which made any impression upon your mind as to his mental condition?

A. No, only I know that he wasn't as well as he had been.

Q. Did you know what was the matter with him?

A. No, sir.

Q. How did you know that he wasn't as well as he had been?

A. By his looks'' (Book I, Case, p. 139, line

3; pp. 140, 141, 142, beginning line 17; p. 142, line 30).

Harry Ginsburg (see Harry Ginsburg testimony):

"* * * At the last time he didn't talk good sense, at all. He looked very bad to me. He had aged quite a lot.

Q. Can you fix the date of the last time that you talked to him?

A. No, I don't know the date, at all. I know he came into the store the, about a week or ten days after the roof was put on. And when I heard he died, of course, it was not a surprise to me because he looked very bad.

Q. Was this conversation shortly before he died?

A. Yes, about ten days before he died" (Book I, Case, pp. 151-52, beginning line 33).

Russell C. Deacon, real estate agent, took decedent, on two occasions, to see properties he was said to be buying for friends:

"A. My opinion of Mr. Allen's mental capacity is that he was absolutely undecided in his mind as to whether or not what he was going to do next. He didn't know what he was going to do next, from one minute to the next. During my course of business relations with him, one moment he was buying a house and the next moment he was not.

By the Court:

Q. Counsel wants to know, whether on your

second meeting him, your opinion was that his mind was sound or unsound?

A. My opinion was that it was unsound'' (Book I, Case, p. 165, line 14; p. 172, line 19).

Harry Blackstone knew decedent well; saw him in September and October, 1928, and said that he was in a nervous, very shaky physical condition:

''By Mr. Endicott:

Q. What did you see him do or say which influenced your opinion as to his mental condition?

A. It was in September, I think, that we were sitting on the step, me and Mr. Allen, and a man on the other side passed by and he had a wooden leg, and he said, 'Oh, wouldn't it be funny if Lillie had a leg like that; she could go around and make some money,' then he sat down and laughed and cried on the door step.

Q. What time was this?

A. About four o'clock.

By the Court:

Q. What did he say?

A. We were sitting on the step, Mr. Allen and I, and a man with the wooden leg passed by on the other side of the street, 'Wouldn't it be wonderful if Lillie had a wooden leg like that, she could go around and make money,' then he laughed and cried.

By Mr. Endicott:

Q. Did you see him do anything else that influenced your opinion of him?

A. He walked in front of the cars and auto-

mobiles, when he was out with Mrs. Seltzer a couple of times.

Q. Do you mean that he was careless about walking in the street?

A. Yes.

Q. And from that you infer then that he was mentally unbalanced?

A. Well, in ways like this: he would say that he bought watches for fifteen or twenty-five cents, and then the next minute he would say they were more and things like that. And I think that anybody that says any such things like that is not mentally right; and he said he bought stockings for five cents apiece.

Q. Is that unusual?

A. Certainly, he never talked that way before to me" (Book I, Case, pp. 175-76, beginning line 30; p. 179, line 1).

Mary Manus knew Allen for the last five years of his life; saw him on four occasions between September and his death. Decedent asked her seventeen-year-old-daughter to marry him. Did not tell same story twice and in her opinion he was of unsound mind:

"Q. No, what was your opinion?

A. For one thing, he didn't look well, and another thing my opinion was: He told different stories. He would tell me one thing and then apparently tell me a different story from that and it was my opinion that he was not as sound as should be.

Q. Those two events are the only things that

you have to base your opinion upon that Mr. Allen did not possess his full mentality?

A. No, it is not. May I tell you? The third time that I spoke to Mr. Allen was in October, about the second week. He was still talking about the house and he said he wished that he could find a nice young chicken to marry because his mind was not good any more, to take care of his books and figures; and he said that he didn't mind. He wouldn't mind having a young woman to do all that, as his mind was not strong enough to do that any more, that his health would not permit it'' (Book I, Case, p. 184, line 9; p. 188, line 14).

Ethel Manus testified that in her opinion Allen was of unsound mind:

''Q. What was your opinion as to his mental condition?

Mr. Lewis: Objected to.

The Court: Change the question to read, 'What was your opinion as to his mental condition in 1928?'

Mr. Lewis: I renew my objection.

By Mr. Endicott:

Q. Sound or unsound?

The Court: The question is permitted.

(Exception allowed.)

A. I thought he was unsound'' (Book I, Case, pp. 192-93, beginning line 34).

Anne Shumway, quoting Katie Ailes:

''Q. What was said in the conversation?

A. I said, 'How do you do?' to the folks.

Then she said, 'Oh, my, Anna, Papa was in Atlantic City the other day and he got sick and he came home and his clothes were all dirty, and he walked into the hallway and the carpet was all dirty, oh, so much trouble I have with him; I have more trouble.' As she turned around to her mother and she says, 'You know, I don't know how I am fixed,' she says, 'He is an awful trouble. I don't know how I am fixed.' So I turned to her and I said, 'Haven't you got him to make a will yet?' and she says, 'Oh, Anna, every time I say something to Papa about making his will he looks up to the heavens and says, "A beautiful day out," and then he commences to laugh.'

Q. When you speak of his being dirty, unclean, what do you mean?

A. He had dysentery. He was very sick in Atlantic City, while there."

* * * * * * * *

"By the Court:

Q. Tell us what the funny things were?

A. If he came to one's house he would run out like a wild man; he would wipe his mouth and he would fly out without saying anything to anyone; he would run out of the house, and the last time he was at the house he was at the table and before we knew it he ran out of the house and said, 'Good-bye,' and I guess he would have been running still if he could, for he acted weird, he acted funny."

* * * * * * * *

"By Mr. Endicott:

Q. Can you tell us why he laughed or happened to laugh or cry, or under what circumstances that happened?

A. General conversation; he would laugh and then cry. When I spoke about Mama he would cry. Then when something else would come in his way he would laugh, for no reason to laugh.

Q. Was his conduct, on the occasions when he laughed or cried, different from his conduct on other occasions, during the years through which you had known him?

A. Yes" (Book I, Case, p. 227, line 16; pp. 231-32, beginning line 29; p. 233, line 9).

William Oakes:

"Q. Did you see anything in his actions which influenced your opinion of him in any way?

A. I did. I thought he was a kind of dippy old man" (Book I, Case, p. 293, line 20).

ELSIE MANUS.

"Q. Last question read by stenographer to witness, as follows: 'Did you observe in his conduct or in his speech anything that indicated a change in his physical or mental condition?'

A. I did" (Book I, Case, p. 296, line 15).

"Q. What did he say on that occasion?

A. He asked me again and I says I didn't

know if I would like to marry because I am not old enough.

Q. Did you understand from what he said to you at that time, and the way he acted, that he seriously intended an offer of marriage?

A. Yes'' (Book I, Case, p. 299, line 27).

Mary Manus, upon being recalled:

''A. I was in Mrs. Seltzer's house that evening, October 12th, Friday evening, and he was talking to me and I said, 'Why don't you come to live with Mrs. Seltzer?' and he said his health was bad, that he was getting feeble and he said he was too deep down in Pleasantville to come to Philadelphia to live and I said, 'In what way?' and he said owing to Mr. Ailes coming into the room one day and he was in the room with Mrs. Ailes, and he said he didn't think he would be ever able to come to Philadelphia from Pleasantville, to live here, right away'' (Book I, Case, p. 312, line 15).

See letter, Exhibit C26, written by Katherine Ailes shortly after the death of Albert Allen, which reads in part:

''* * * in fact, there was nothing in the last years—that he attempted without me—we traveled together on business & pleasure—only last week—he took a mortgage but I had to arrange to take him & watch up the papers ——'' (Book I, Case, p. 315, line 3).

Mrs. Lillian Seltzer Reulens' testimony:

''Q. What did you observe that indicated to

you a change in the physical or mental condition of Mr. Allen in September or October of 1928?

A. At night he was bellering, 'Kate, Oh, Kate.' 'Kate, Oh, Kate.' I would go to him in his room and he would be on his elbows and knees, bellering 'Kate, Oh, Kate. Kate, Oh, Kate,' and he was feverish, and I would give him water and I would ask him what was the matter and he would say that somebody was after him all the time. That was one occasion.

Q. Can you fix the time?

A. That was right up to the first week, no, toward the second week, in September. He was frightened and he said I should stay around him. He was afraid.

Q. Did you observe similar conduct on his part on any other occasion?

A. Yes, when he was at home at night. He was with me at the house, fussing around. He said he wasn't able to figure out things and that I should look after things for him, that he wasn't able to connect up things'' (Book I, Case, p. 340, line 3).

We have seen from the foregoing testimony that Albert Allen's health, both physical and mental, was seriously impaired at the time of the making of the testamentary writing on September 7th, 1928. This is not only proved by the testimony of the witnesses who testified as to instances from which the stated conclusion may be drawn or who express an opinion after having ample opportunity to observe the actions and hear the conversations of the decedent;

the same conclusion as to the decedent's impairment, both mentally and physically, is necessarily deduced from the fact that he gradually surrendered charge of his business affairs to Katie Ailes (See her testimony):

"Q. During the year 1928, then, you paid all the trades bills and household bills and business bills by drawing the check therefor and then obtaining Mr. Allen's signature?

A. Well, according to what the checks say. There may be some there among them that I have forgotten that he wrote out for household bills, but the checks have been out of my possession for a little while.

Q. But it was your general custom to attend to all of his writings, was it not?

A. Oh, not entirely; no, not entirely.

Q. Not entirely. But I say was it not generally so?

A. Well, I might say generally that I made out the checks for him, but he made out a great many himself.

Q. Did he make any out for business accounts or tradesmen's bills?

A. Yes, he did; there is ——

Q. Will you please present any such check?

A. They must be in with the lot that I have given.

Mr. Laws: There are two lots, Mr. Endicott. Be fair to the witness.

Mr. Endicott: I want you to understand that we have not had a chance to digest the checks.

Mr. Laws: Those checks have been in your possession. They have had five days.

The Court: The question is fair. Counsel has asked the witness to produce the checks.

The Witness: Other than what I filled in; isn't that the question?

The Court: Repeat the question.

Mr. Endicott: My question is limited to the year 1928.

The Witness: Will you please look here? That may be '28, but the year wasn't put in. That is made to the electric company.

Q. I want you to produce any check in 1928 which Mr. Allen drew other than those to Confer or to himself.

A. Only '28. This is '27, see.

Q. Only '28. My question is limited to 1928.

A. These are all '27, those, then it is no use to go through these.

Q. Then you have no checks in the year 1928?

A. Here are some.

Q. That were written as a whole by Mr. Allen, other than those checks to himself or to Confer?

A. There is some '28. Here is one, Mr. Endicott.

Mr. Endicott: Witness produces check dated August 7, 1928, on the Pleasantville Trust Company, drawn to the order of George R. Manning, in the sum of $1,125, and signed Albert Allen, with a notation endorsed thereon, 'Trust Company stock.'

Q. Do you know who filled in the body of that check?

A. No, I do not.

Q. Do you know whether it is Mr. Allen's handwriting or not?

A. I couldn't tell that. I don't know.

Q. Do you have any opinion?

A. Not in the least.

Q. Would you have the Court believe that was Mr. Allen's handwriting?

A. No; I say it is not. It is not Mr. Allen's. You asked me to produce checks that Mr. Allen had not filled in that went to other people than himself.

Q. No; I asked you to produce checks which were wholly made out by Mr. Allen during the year 1928.

A. There is one.

Q. You say that was wholly made out by Mr. Allen?

A. Well, it is not made out by me. I know that is not Mr. Allen's handwriting; no, it is not.

Q. No.

A. Well, then, I haven't any.

The Court: What is your answer? There are no checks?

The Witness: There are no checks that I know unless we have not gone over them all" (Book II, Case, pp. 843-46, beginning line 21).

The record of decedent's investments was kept in a journal. Katie Ailes, on cross-examination, identified decedent's record book, and was interrogated in detail as to who kept the record. From pages 27 to 46, inclusive, the records are all entered in the handwriting of Mrs. Ailes, as she admitted in her testimony.

A reading of Mrs. Ailes' testimony on the subject

clearly indicates that she was in actual charge of all of his business affairs, although he did from time to time draw checks for trifling amounts to himself or to a Mr. Confer, the keeper of a neighboring gas station.

During the year 1928, out of ninety checks found among Allen's papers, seventy-four thereof were drawn by Katie Ailes, in amounts aggregating $2,098.50, and the sixteen checks drawn by Allen totalled $184.20.

> "Mr. Endicott: We have made a tabulation of the checks which were identified by Mrs. Ailes this morning from the group which I handed her. The checks which were written by Kathryn Ailes and signed by Albert Allen total the sum of $2,098.50; and the checks which were wholly written and signed by Albert Allen total $184.20. I wish that would go into the record as a stipulation."

B. KATIE AILES OCCUPIED A CONFIDENTIAL RELATIONSHIP TO THE DECEDENT.

Mrs. Ailes had gradually worked herself into all the decedent's business matter. She made herself very useful, wrote letters in which she imitated his handwriting, made out checks for him, drove him in the auto, attended his mortgage settlements, attended to his banking for him, and, in short, became his confidential agent. During the year 1928, out of ninety checks found among Allen's papers, the amount of the seventy-four checks drawn by Kath-

ryn Ailes was $2,098.50 and the amount of the checks drawn by Allen was $184.20 (Book II, Case, p. 843, line 21).

Also note Mrs. Ailes' testimony on the question:

"Q. But it was your general custom to attend to all of his writings, was it not?

A. No, not entirely; no, not entirely.

Q. Not entirely. But I say was it not generally so?

A. Well, I might say generally that I made out checks for him" (Book II, Case, p. 843, line 29).

Mr. Thomas Allen, 83 years of age, a brother of Albert Allen, testified to a visit at Pleasantville in July, 1928, which was the last time he saw his brother alive.

"Q. Did you have any conversation or talk with your brother about his business affairs?

A. No, sir.

Q. Do you know who was looking after his affairs?

A. Only what she told me herself. She said she was.

Q. Who did?

A. Mrs. Ailes.

Q. She told you she was looking after Mr. Allen's affairs?

A. Yes.

Q. What language did she use?

A. She said, 'I am attending to Albert's business. He is not able to attend to his business any more.' She says, 'For the last year I have attended to it, and the last mortgage he got he

wasn't able to attend to it and I had to attend to it all' " (Book I, Case, pp. 141-2, beginning line 31).

Mr. Allen's income from mortgage investments was recorded in a ledger. Of more than thirty accounts, all but the first half dozen were headed in Mrs. Ailes' handwriting and the great bulk of the entire showing cash receipts were in Mrs. Ailes' hand.

The degree of his confidence is shown by the admission of Mrs. Ailes that the purchase money and the cost of alteration of the home in Pleasantville, New Jersey, into which the decedent and Mrs. Ailes moved in 1925, was paid for by Mr. Allen, although title was taken in the name of Mrs. Ailes (Book II, Case, p. 763, line 14; p. 784, beginning line 31); by the admission that the Pleasantville house was largely furnished by Mr. Allen (Book II, Case, pp. 797 to 798, beginning line 32); and that he contributed to the household expenses (Book II, Case, p. 765, line 6); and by her further admission that he generously contributed to the support of her family from 1919 to the date of death in 1928, purchasing such gifts for Mrs. Ailes as a Ford automobile, and then an Essex automobile and an electric refrigerator (Book II, Case, p. 785, line 31; p. 798, line 22).

There can be no doubt that Mrs. Ailes enjoyed the full confidence and trust of the testator, and that fiduciary relation to him that casts upon her the burden of proving that the proponent's alleged will was not the product of undue influence.

C. AT THE TIME OF THE EXECUTION OF SAID WILL AND FOR A LONG TIME PRIOR THERETO, KATIE AILES HAD EXERCISED A DOMINATION OVER THE WILL OF DECEDENT BY WILES AND BY CAUSING HIM TO FEAR.

At the time of the execution of said will, and for a long time prior thereto, Katie Ailes had exercised a domination over the will of decedent by wiles and by causing him to fear.

We believe that the testimony clearly establishes a constant and ever increasing purpose on the part of Kathryn Ailes, beginning in November of 1919 and consummated in September and October of 1928, to obtain the estate of Albert Allen.

We charge that the means used to accomplish this purpose were a combination of duress and cajolery.

At the time of their meeting in 1919, she was in very moderate circumstances. Her husband fixed a maximum income of $3,000.00 a year, but testified that his monthly checks were $150.00, which would make his income $1800.00. (Mrs. Ailes tried to shut off his testimony on this topic and Mr. Ailes was very evasive.) (Book II, Case, pp. 742-43, beginning line 13.)

Mr. Allen was introduced as a wealthy widower. The plan for Allen's capture was under way at once.

Mrs. Allen died in September. On November 15th, Mrs. Ailes was installed in Allen's house. After a few months there was an interruption in their household relations, explained by Mr. Allen's confession to Mrs. Shumway. But Mrs. Ailes found other ways

of keeping in touch with him and accomplished her purposes.

On March 20, 1920, she writes that affectionate letter signed, "tenderly—Katie." The pursuit was on.

The letter opens, "I want you to meet me on Wednesday at 1 o'clock under the 'Eagle' * * *"

> "How I wish you were here too—then I would call it—The End of a perfect day."
>
> "I am looking forward to us having a very pleasant summer."

Cajolery—The Standard Dictionary defines the word—to coax or deceive by flattery—to wheedle.

And Allen fell for it. She was a beautiful woman of 45. He was twenty years her senior. What chance had he?

Can anyone imagine such a letter from such a woman to such a man unless there was an ulterior motive?

We know the motive—Allen's money, an immediate ease and ultimate wealth.

The means were in her grasp. This letter is an illuminating example of her methods.

She returned to Allen's house in October of 1920, and all went well with her plans.

She conceived the thought that there was less danger of Allen's eluding her if she separated him from his family and former associates and she induces him to purchase and furnish the Pleasantville house, first as a summer and later as a permanent home, title thereto being taken in her name.

We have said that the influence was exercised not only by cajolery but by duress.

There is ample testimony upon which the Court may find that Allen was driven along the course that so completely changed his life not only by the wiles of Mrs. Ailes but by *fear.*

Fear undoubtedly arising as a result of his relations with Mrs. Ailes.

We have the direct testimony exhibiting the fact. Allen's confession to Mrs. Shumway of unnatural relations in 1920 (page 36 of testimony on March 20, 1929). (Book I, Case, pp. 237-8, beginning line 18.)

His statement in the hospital in 1923:

> "I can't get loose from her (Katherine Ailes). She's got me" (Book I, Case, p. 239, line 10).

His statement while on the boardwalk at Atlantic City, in 1928:

> "I can't get away from them. They threaten me. I can't move" (Book I, Case, p. 252, line 2).

And again, the testimony of Harry Ginsburg as to a conversation with Mr. Allen about ten days before his death:

> "A. We were talking in an offhand way. He said he had a lot of trouble. He told me that he had troubles with women, or something like that; in fact a couple of women he mentioned. He said he is tied up; that he has to do the way they want, and that he is going to pull out of it, and that he is going to have things fixed up" (Book I, Case, p. 152, line 14).

> "Q. Did he tell you anything further about the people he was living with in Pleasantville?

A. Not particularly. Just in an offhand way. He said that he was so balled up and he looked very much depressed and washed out. He said that he had a lot of trouble and doing things he didn't want to do'' (Book I, Case, pp. 153-4, beginning line 33).

And again Mrs. Reulens' testimony to a conversation with her stepfather on the day she last saw him in October, 1928:

"Q. What did he say?

A. He said he was going to try to get away from there; and then he would cry and he would laugh and then I would have to wait a while until he would get over that; and then as the days went on he would say couldn't I go down and make some arrangements to let him come with me; that he preferred to end his days with me; that he only had a short time to live, he had a great premonition as to that. And she wanted him to go to Washington on another trip and he said she was so ungrateful, that he had given her so much and fixed her so well and the more he fixed her the more she wanted, and he said the girls are now getting very interested in the bungalows and then he said, 'The property, I thought, was going to be my home' '' (Book I, Case, p. 342, line 19).

And as to a further statement made to her by Mr. Allen during the first three weeks of September, 1928:

"Q. Tell us what he said to you during the period of three weeks that he was there.

A. He told me to start a lawsuit for my money in order to simply get away from there. That was discussed. He said for me to try and do something to get him away from there, that he couldn't stand things any longer and that his money was being taken away from him right and left" (Book I, Case, p. 348, line 10).

Mrs. Mary Manus testified:

"Q. Did you have any conversation with Mr. Allen in which he discussed his removal from Pleasantville to Philadelphia?

A. In October I did.

Q. Recite the conversation as near as you can.

A. It was up about the house again. I was in there. He was always talking about he didn't know what Lillie, Mrs. Seltzer, wanted him to fix the old house up for, when he wanted a new one for her. He said that he would like to live with her for the rest of his days, but that he was so tied up into something that he—he didn't express himself like he should, he said he was tied up out in Pleasantville, with Mrs. Ailes, and he didn't think that he would have a chance to get out of there and to come to Philadelphia to live" (Book I, Case, p. 184, line 16).

What he feared he did not say, but there is ample evidence that he was constrained in some manner. Nor do we need to rely solely on the testimony of the caveators' witnesses to establish this fact. The complete change in his attitude towards money matters, *i. e.*, his gifts to Mrs. Ailes and ultimately the

chief support of the Ailes family, can only be explained by the fact that both Mr. and Mrs. Ailes possessed and exerted some powerful influence over him that amounted to duress.

Shortly after their permanent departure for the home in Pleasantville, Frank Ailes ceased work. Ailes attempted to explain his action by the fact that he received a pension from the company for which he worked, The Berwind White Coal Mining Company. He discontinued his employment in September, 1926 (page 708, line 1).

The evasion on the part of Mr. and Mrs. Ailes on the disclosure of Frank Ailes' financial status is noteworthy:

> "Q. And what was your salary?
>
> A. Well, between—approximately three thousand dollars a year.
>
> Q. What was the monthly salary?
>
> A. Well, do I have to give the exact figures? You see, that is a business transaction. Permit me to say that the Berwinds wouldn't like me to—I would like to know ——
>
> Q. I have asked you the question.
>
> Mrs. Ailes: Don't answer.
>
> The Court: Madam, what is the matter with you? What have you to do with this witness?
>
> Mrs. Ailes: That is my husband, your Honor, Judge Smathers.
>
> The Court: That makes no difference. He is on the witness stand. He is subject to the rules of the Court here.
>
> Mrs. Ailes: It is a personal matter, Judge Smathers.

The Witness: Well, Mr. Endicott, if you want to know it, it was $150 a month.

Q. A hundred and what?

A. A hundred and fifty a month.

Q. A hundred and fifty a month?

A. No, it was not, either. That would not make three thousand dollars. I am confused there.

Q. Well, you have no recollection of what your monthly salary was?

A. Sure, I have, but I didn't make note of those things. It was a hundred and eighty some odd dollars, or $166 a month. I can't answer—it was enough to divide three thousand by twelve.

Q. Do you recall any monthly check that you ever received from the Berwind Coal Company?

A. Monthly checks? I am receiving monthly checks; yes, sir.

Q. Do you remember the amount of your monthly checks in 1919?

A. No, sir'' (Book II, Case, pp. 742-43, beginning line 13).

And again:

"Q. Who paid the household bills?

A. Well, I would give the wife all the money that I earned, practically all I earned, and she disposed of it as she saw fit. So far as I know I was paying it, but of course I did know that Mr. Allen contributed many times to the expenses of the house.

Q. When did you say that you retired?

A. I think it was in September—I didn't re-

tire—September, 1926—1926, yes, sir. I have the tail end of my commutation ticket.

Q. And what was your monthly salary at the time you retired?

A. Approximately the same. I had some little ——

Q. I haven't learned what it was yet.

A. Well, monthly salary—I was—you see, I used to get part of my income from one department and part from another. I assisted, in addition to being Assistant Purchasing Agent—I assisted as consulting engineer, so that I got some little ——

Q. And do you know what you received from other sources at the time of your retirement?

A. Yes, sir. It ran around—the holding company ran around three thousand dollars.

Q. What is the pension which you now receive?

The Witness: How is that pertinent, Judge?

Mr. Starr: If your Honor please, I don't think it is really competent or material. Mr. Ailes objects and I will make an objection. The question is what his pension is at the present time.

The Witness: Judge, may I ask that they requested me not to divulge that?

The Court: I think it is entirely proper to show the relations in this house, whether or not the relations had any influence in the making of the will.

Mr. Endicott: Judge Starr had him testify that he was living under a pension. Now I want to find out the details of that.

Mr. Starr: If your Honor feels it is perfectly competent I withdraw the objection.

A. It amounts to $600.00 a year'' (Book II, Case, pp. 765-66, beginning line 8).

It is quite apparent that an income of $600.00 a year would far fall short of supporting a family consisting of a husband and wife and two daughters and we believe that it is quite apparent that the reason Mr. Ailes decided to retire on a pension of $600.00 a year while he was still a comparatively young man and in full vigorous possession of his physical and mental faculties, can be explained only by the fact that the domination over the decedent had reached such a point and their control over his monies was so secure that it was no longer necessary for Ailes to provide a living for his family.

So long as Allen complacently provided for the Ailes, all was serene. He had not the courage to break away. He was mentally dominated by his surroundings.

A striking illustration that this apparent generosity on the part of Albert Allen was foreign to his real nature, and was not voluntary, is found in his conduct on the Winchester trip. On two successive days, while on that trip, Allen did not go to the expensive hotel selected by the Ailes and Haberstadts, but went away by himself to a small street restaurant.

(Joseph Haberstadt's testimony, page 629.)

D. AT THE TIME OF THE EXECUTION OF SAID WILL AND FOR A LONG TIME PRIOR THERETO, KATIE AILES HAD EXERCISED AN UNDUE INFLUENCE AND DOMINATION OVER THE WILL OF DECEDENT BY EXCLUDING HIS FAMILY, RELATIVES AND FRIENDS FROM THEIR NORMAL CONTACTS WITH HIM, AND AS A PART OF A COMPREHENSIVE SCHEME TO GET ALLEN'S ESTATE.

In November, 1919, Mrs. Ailes was installed in the Allen home. After a few months there was some dissatisfaction over the arrangement and they separated. In October of 1920, Mrs. Ailes was back in the Allen home. From then on, Allen's whole manner of life was changed. His associates of many years were cold-shouldered out of the picture and he was surrounded by the Ailes family and the Ailes friends. The migration to Pleasantville was undoubtedly part of this scheme of segregation. From 1925 or 6, he was completely in the Ailes' power.

Siegrist, formerly his constant companion, he saw but once. His brother, Thomas Allen, he saw but occasionally, Mrs. Shumway and Mrs. Reulens each saw him but once in Pleasantville. His sister, Mrs. Reger, was never in his Pleasantville home. Mr. Reger, her husband, came only as far as the door of Allen's home in Pleasantville.

A part of their scheme for separating and secluding Allen from his family and friends was the taking of long trips, both by motor car and train.

They were trips to Atlantic City, to Baltimore, to Washington, frequent trips to the Pennsylvania cities, one extended trip to California, an extended trip to Florida, and finally, on the last trip when decedent died at Winchester, Virginia. The trips in question were organized by the Ailes family, and all Allen had to do with them was to go along and pay the bills, not only for himself but for the Ailes family.

It is quite apparent that Mrs. Ailes never allowed Allen out of her sight and control when she could avoid it, and she was generally successful in her purpose.

As early as 1923, at the time Allen was taken to the Jefferson Hospital for an operation, Mrs. Ailes was in complete control over his surroundings. She regulated the time and manner in which friends could call upon him. Mrs. Shumway testified that Mr. Allen had requested her to send for Gustave Schreiber, an old-time friend, for the purpose of making a will.

> "Q. Do you know whether or not Mr. Schreiber came to the hospital?
>
> A. Mr. Schreiber the next morning—he was partly blind—his wife brought him the next morning to see my stepfather.
>
> Mr. Starr: Objected to unless she has personal knowledge of the facts; it doesn't appear she has.
>
> Q. How do you know Mr. Schreiber came to the hospital with his wife?
>
> A. Because he couldn't see but very little.
>
> Q. Were you there?
>
> A. I was there when he came, yes.

Q. Did he see Mr. Allen?

A. Yes, he went up to see my stepfather.

Q. Were you present?

A. I was not present'' (Book I, Case, p. 218, line 16).

When Schreiber appeared, Mrs. Ailes was present, and remained in the sick room, when a commotion ensued and no will was made.

Allen's wife died in September, 1919. On November 15th, 1919, Mrs. Ailes was installed in Allen's house. After a few months, there was an interruption in their relations. Mr. Ailes was not satisfied with conditions. They were separated for a period of six months. During that time, on March 20th, 1920, Mrs. Ailes writes:

''Tuesday afternoon.

Poppie Dear—

I want you to meet me Wednesday at 1 o'clock, under the Eagle—and take me to lunch —I want to get my shoes and waist—please do not disappoint me, for I do not feel very well—

Try and get me a bottle of Brandy, the doctor says egg and milk with a few teaspoonful of Brandy will strengthen me—

I waited for a 'phone call all day—but suppose you were working hard on the house—I did a lot today too—and am quite tired. I expect Mother for dinner tonight—am going to have chicken—how I wish you were here too—then I would call it

'The end of a perfect day.'

Now don't overdo yourself—you must not get

sick for I am looking forward to us having a very pleasant summer—

I do wish Poppie, you could get *this house* problem settled, I know I would feel lots better, if that was off my mind—and then I could shape things and perhaps get it rented for the summer—

If you say so, I'll try to rent yours for you for the summer, too, and then we can go away in peace. I'll look for you promptly at 1-o'clock (one o'clock) and I will be hungry too—so fix up and look your *bestest*— *Wednesday*—

Tenderly

—Katie."

(Book I, Case, p. 329, line 3).

As a result of Mrs. Ailes' plans and activities, she succeeded in once more gaining a foothold in the Allen household. She returned in October of 1920 and continued in charge from that time down to the date of Allen's death.

In 1923, on the eve of Allen's departure to the Jefferson Hospital to be operated upon, Mrs. Ailes writes what *she intended* to be his will for him. It should be noted that the only times that Mrs. Ailes succeeded in having Allen make a will were when he was in a depleted physical and mental condition, first on the eve of his departure for the hospital, and secondly, within less than two months before his breakdown from old age, resulting in death.

In 1925, Allen had recovered from his operation and was apparently in good health, and Mrs. Ailes completed her domination over him by removing him entirely from his former contacts and established

him in a home which he had gotten in her name in Pleasantville.

Further testimony, to disclose the apparent purpose of Mrs. Ailes; Thomas Allen, a brother of the deceased, testified as follows:

> "Q. Did Mrs. Ailes talk to you about the making of your brother's will?
>
> A. She said to me that all she wanted was all that he got in New Jersey.
>
> Q. When did that conversation take place?
>
> A. This same day, over there in the automobile.
>
> Q. What did she say?
>
> A. She said she wanted all he had; she wanted him to give her all he had in Jersey, and if he didn't put it over to her she would have him make a will and she would get it. She said, 'I want you to understand that Katherine Ailes is no fool' " (Book I, Case, p. 139, line 12).

And again, Mrs. Shumway's testimony, Book I, Case, p. 240, line 8, quoting her conversation with decedent:

> * * * "She was always hollering, 'Mortgages, Mortgages, Money, Money. I am going to get everything and you must get rid of your people.' He said, 'Lillie and you were not to have anything.' He told me she said, 'I am to get all, and my family.' Those were Papa's words, in God's presence, with me."

Note also the testimony of Mrs. Hettie Weiss, who related a conversation with Katie Ailes at the Pleasantville station in 1927, as follows:

"Q. After we came home from Atlantic City, Mr. Ailes got out at home and we drove over to the station and we were talking in the car and Mr. Allen and his brother was on the platform and Mrs. Ailes was talking about Mr. Allen and she asked me how long I thought he would live, and I said that I guess he would live to be a hundred. I said, 'They all lived a good long while.' Then I said to her, 'I guess when he dies he will leave you that property?' and she says, 'That property is in my name now and I expect to get everything I can in my name.' She says, 'I am going to have him make a will and leave it to me.' 'I am no fool,' she says, 'and,' she says, 'I am going to have every cent.' I said, 'Well, he has a brother, you know,' and she says, 'Well, he will be dead by that time.' Then she says, 'I am no fool. I am going to have it all.' So, at that time there was a man came to the automobile and said, 'I want you to bring Mr. Allen over tomorrow to sign papers,' and she says, 'All right.' And that was the end of the conversation" (Book I, Case, pp. 316-17, beginning line 36).

Apparently Allen was conscious of Mrs. Ailes' purpose and was constantly fighting against it. Mr. Siegrist, in his testimony on page 464, testifies as follows:

"Q. What conversation did you have with him in the hospital?

A. Well, Mr. Schreiber was there and Mr. Schreiber stepped out of the room and Mr. Allen says, 'They have called Mr. Schreiber in

to make a will.' He says, 'My will has already been made and Mrs. Ailes has got all she is going to get.' He talked about his operation. He said he didn't know whether he would get well or not'' (Book II, Case, pp. 464-65, beginning line 35).

Ginsburg, in his testimony, on page 152, hereinbefore stated, said:

''He told me that he had troubles with women * * * is tied up; that he is going to pull out of it, that he is going to have things fixed up.''

And again, Mary Manus' testimony:

''* * * he didn't express himself like he should, he said he was tied up out in Pleasantville, with Mrs. Ailes, and he didn't think that he would have a chance to get out of there and to come to Philadelphia to live'' (Book I, Case, p. 184, line 27).

And again, the testimony of Anna Shumway:

''I said, 'Oh, Papa, this is terrible.' He says, 'I know, Anna. It is terrible. I can't get loose from her. She's got me. I can't get loose' '' (Book I, Case, p. 239, line 9).

And again, in Anna Shumway's testimony:

''* * * He says, 'In Ailes' family they get the money. I can't move. They have taken everybody from me. I haven't anybody any more. I have lost my friends'' (Book I, Case, p. 252, line 25).

See also testimony of Mary Manus, page 281, quoted above:

> "He said he was too deep down in Pleasantville to come to Philadelphia."

See Mrs. Reulens' testimony, page 313:

> "He (Allen), said he was going to try to get away from there."

And on page 319, in discussing Allen:

> "He said for me to try to do something to get him away from there, that he couldn't stand things any longer and that his money was being taken away from him right and left."

From all of which it will appear, as has been suggested, that Allen was fighting against the control of Mrs. Ailes, was anxious to be free from it, but lacked the courage to make the step.

We believe that no greater proof can be given to the Court of the undue influence exercised by Mrs. Ailes upon the decedent than by the undisputed facts that throughout the period from 1919 to the time of decedent's death in 1928 there was not the least change in the cordial relationship that existed between the decedent and his next of kin. Throughout that period the next of kin did nothing that would in any way engender their relationship with the decedent or that would tend to loosen the blood bond that had existed throughout the years. As we have pointed out that bond in 1919 and immediately prior to his becoming acquainted with his future housekeeper was so close that his will and codicil executed in that year bequeathed and devised all of

his estate, with the exception of the bequest to a personal friend, to the caveatrix and to the next of kin. But despite that fact and despite the fact that his relationship to the caveatrix and to the next of kin was just as close at the time of his death as it was in 1919, his purported will gave all of his substantial estate, which at that time amounted to $150,000.00, to Kathryn Ailes, his housekeeper, without bequeathing even one cent to his brother, sister, the caveatrix, or any of the next of kin; and the naive explanation given by the proponents for such a phenomena is that his housekeeper, whose services were most generously paid for, had, by her devotion and attendance to decedent, established such feelings as to cause him to disregard and cut off without one cent his own kin and blood relatives to whom he had by his previous act bestowed the major portion of his estate.

E. THE BURDEN IS CAST UPON THE PROPONENT, KATIE AILES, OF REBUTTING THE PRESUMPTION OF UNDUE INFLUENCE RAISED BY THE FACTS IN THIS CASE.

We have charged that the proponent's writing was the product of undue influence exerted by Katie Ailes.

A simple definition of undue influence is found *In re Grotty's Estate,* 134 Atl. 622:

> "Undue influence, is such influence as dominates will of testator, and produces a testa-

mentary disposition which would not otherwise have been made."

There are many cases in our books dealing with the situation where the chief beneficiary under testator's will has enjoyed a confidential relation to testator.

It was said in the Spark's case:

"While the existence of confidential relations between the testator and the favorite beneficiary, standing alone, does not, necessarily, constitute undue influence, yet when such relations are supplemented by other *indicia* of undue influence, such as the exclusion from testator of the natural objects of his bounty, clandestinity in the execution of the will, or the active participation of the favorite legatee in procuring its execution, a presumption of undue influence may arise" (*Spark's Case,* 63 N. J. Eq. 242).

Such slight circumstances are discussed at length in, *In re Cooper's Will,* 75 N. J. Eq. 177, where it was held that the beneficiary's action in arranging the preparation and execution of the will constituted such slight circumstances.

A very recent case on the subect—*In re Barrett,* 2 N. J. Misc. 135—the Court, discussing such slight circumstances, cited as elements:

1. Participating in the preparation of the will.

2. Presence at the execution.

3. Efforts to exclude the natural objects of testator's bounty from his society.

4. Taking possession of the will.

In re Ulrich, 98 N. J. Eq. 621, is a leading case on the subject of undue influence:

> "1. When a gift by deed or otherwise than by will made to one who stands in a fiduciary relation to the donor, that gift is presumed to have been obtained by undue influence, and while the principle is not strictly applicable to wills, still the fact of a fiduciary relationship of trust and confidence, coupled with other circumstances, indicating a bias or feeling hostile to the natural object of one's bounty, usually more readily makes a case of undue influence than without the fiduciary or trust relation.
>
> "2. The active agency of the beneficiary of a will in procuring it to be drawn in his favor, especially in the absence of those who have, at least, an equal claim upon the justice of the testator, and where the testator is enfeebled by old age and disease, is a circumstance strongly indicative of undue influence."

Where the confidential relation on the part of the chief or sole beneficiary to a testator old or enfeebled plus the slight circumstances adverted to in the foregoing case exist, then a presumption of undue influence is raised, and the burden shifts to proponent.

Such presumption unless rebutted by satisfactory evidence, controls as a conclusion of fact.

In re Cooper's Will, 75 N. J. Eq. 177;
In re Solomon, 95 N. J. Eq. 711.

We assert that Albert Allen was of such weakened mentality during the last few months before his death, that he was unable to resist the undue influence exercised upon him by Katherine Ailes.

Harry Blackstone, who had known Mr. Allen for many years, testified that he saw him frequently during the months of September and October, 1928:

"Q. How about his memory?

A. He was very forgetful.

Q. Did you see him laugh or cry on any other occasion?

A. He always did that during September and October.

Q. Always did what?

A. Cried and laughed at different things.

Q. He would make remarks and then cry and laugh at them?

A. Yes.

Q. What was your opinion as to his mental condition in August or September of 1928?

Mr. Lewis: That is objected to.

The Court: It is permitted.

(Exception allowed.)

By Mr. Endicott:

Q. In September or August of 1928?

A. In September and October, do you mean?

Q. Yes.

A. He seemed very, very forgetful and very nervous over something; I don't know what

seemed, I didn't know what seemed to be the matter with him.

Q. What was your opinion as to his mental condition or to the soundness or unsoundness of his mentality?

A. He didn't seem to be all there" (Book I, Case, pp. 176-7, beginning line 32).

Allen was seventy-six years of age.

He had exhibited many evidences of his decreasing mentality, viz: His sudden liberality, his susceptibility to feminine influence, his proposals of marriage to a seventeen-year-old child, his increasing dependence upon Kathryn Ailes as shown in his business affairs, his writing, his business records. (It is of interest in this connection that of the bunch of ninety-four checks, the only ones written by Allen were $5.00 and $10.00 checks to cash for his own use and some very small ones to a near-by gas station.)

And note also Senator Daix's testimony:

"Q. Do you know why Mrs. Ailes was with him?

A. She was with him generally looking after the business for him" (Book I, Case, pp. 79-80, beginning line 35).

The evidence that he rambled in his conversation and of outstanding significances the statement of Kathryn Ailes in her letter written shortly after his death (Exhibit C26).

"Only last week he took a mortgage but I had to arrange to take him and watch up the papers."

This is in accordance with Thomas Allen's testimony of a conversation he had with Mrs. Ailes in July, 1928:

> "Q. She told you she was looking after Mr. Allen's affairs?
>
> A. Yes.
>
> Q. What language did she use?
>
> A. She said: 'I am attending to Albert's business. He is not able to attend to his business any more.' She says, 'For the last year I have attended to it and the last mortgage he got he wasn't able to attend to it and I had to attend to it all' " (Book I, Case, p. 142, line 3).

There has been testimony in the case that Albert Allen carried on conversation in a rational manner and to the witness seemed normal for a man of his years, but the question here is not whether he was capable of making a will, but whether he was capable of resisting the desires of proponent. We charge that Kathryn Ailes occupied a portion of trust and confidence to the testator.

This is proved by her own letter (Ex. C26), by his dependence upon her for writing his letters, drawing his checks and keeping his business records.

The additional slight circumstances required by the cases are here present.

The Making of the Will.

Mrs. Ailes was in the background at all times. She took Allen to Philadelphia. She took him to

Senator Daix. She took him to Dr. Boger. She was in the ante-room when the will was signed.

Possession of the Will.

She took possession of the will immediately upon its being executed and retained it until it was offered for probate.

She deprived Allen of the opportunity to associate with the natural objects of his bounty.

She moved him to Pleasantville and there treated his former friends and relatives in such a manner that there was small likelihood of a visit being repeated.

Thus we have present in a clear and convincing manner all the elements necessary in an issue of undue influence to raise the presumption and shift the burden of proof.

We then come to the question—has Kathryn Ailes carried the burden?

We say emphatically "No."

The proponent must by testimony clear, convincing and impeccable demonstrate that the will of September, 1928, was the actual will of Albert Allen, and was not the product of her unlawful influence.

She has not borne this burden.

The undisputed facts inevitably lead us to the conclusion that the will was the result of a deep laid and long established plan on her part.

The principal aids in her scheme were Senator Daix and Dr. Boger.

Her contacts with them were carefully made.

Dr. Boger over several years is consulted and called upon to operate on her daughters.

Senator Daix is enlisted by employing him in a mortgage foreclosure.

The testimony of both Daix and Kathryn Ailes as to the circumstances attending the execution of the will, is not entitled to credence. They have wilfully perjured themselves in the effort to make a better case and therefore, being false in one particular, is false in all, and certainly is not entitled to credence by this Court.

Let us analyze the testimony of Senator Daix and Mrs. Ailes:

First, there was the question of the receipt for board.

Mrs. Ailes swore on direct and cross-examination that there had never been any arrangement for the payment of board.

But on being confronted with her receipt ——

> "Received of Albert Allen amount in full to date for board. Signed Katherine Ailes. Dated August 27, 1924."

she became much confused.

Secondly, she falsely swore that she had never talked to Allen about making a will. She first so testified on July 25, 1929, and then on November 20th.

> "I again asked her the same question and still the same answer."

It was not until the Court questioned her that she finally admitted there had been any conversations about a will (Book II, Case, pp. 848 to 852).

Mrs. Shumway testified to a conversation with Mrs. Ailes at Pleasantville on August 18, 1928:

> "So I turned to her and I said 'Haven't you got him to make a will yet?' and she says, 'Oh, Anna, every time I say something to Papa about making his will he looks up to the heavens and he says, "A beautiful day out" and then he commences to laugh' " (Book I, Case, p. 227, line 26).

And if the testimony of Frank Ailes and of other witnesses hereinbefore quoted is to be believed, the subject of making a will was frequently discussed by Mrs. Ailes.

But the outstanding false swearing in the case deals with the preparation of the will.

It will be remembered that it was pretended (doubtless to bolster up the suggestion that the will was a deliberate act consummated over a period of time) that the details of the will were settled on one day and that subsequently Allen went to Philadelphia to sign.

Senator Daix's, Mrs. Ailes', and Dr. Boger's testimony demonstrate that such was not the case, but that the whole action transpired on one day.

In the first place, the will was of the simplest nature and could be dictated and written in fifteen minutes.

Daix testified:

> "Q. Did you prepare the paper writing which

has just been identified by you as the will of Albert Allen?

A. I did.

Q. Where did you prepare it?

A. In my uptown office.

Q. When did you prepare it?

A. Just previous to the seventh of September.

Q. How long previous?

A. I suppose a day or so, within a day or so.

Q. Under whose directions did you prepare it?

A. Albert Allen's.

Q. Where were these instructions given?

A. In my office.

Q. When?

A. About two or three days previous to the date of September 7th'' (Book I, Case, pp. 77-78, beginning line 30),

And again:

''Q. By what arrangement did you meet Mr. Allen for the signing of the will?

A. I asked him who he wanted as witnesses to the will. He named as one, Dr. John A. Boger. I said, 'All right, I will call him on the phone and make an engagement when we can see him.' And I called Dr. Boger on the phone and had a conversation with him.

Q. As a result of that conversation, what did you do or what happened?

A. Went down to his office at the time that I mentioned'' (Book I, Case, p. 80, line 22).

Now, Mrs. Ailes' testimony as to the date of the first visit to the office of Mr. Daix:

"Q. Do you know what day of the month it was?

A. I can't tell exactly, Mr. Endicott.

Q. Towards the latter part of August?

A. Yes, the latter part of August, because the last day or two in August we went up to Ocean Grove to the camp meeting so it must have been just prior to that. Maybe the twenty-eighth or twenty ——" (Book II, Case, p. 860, line 25).

"Q. When did you and Mr. Allen next talk about the will?

A. Why, Senator Daix did say for him to come back, that he would draw it up and it would be ready for him to sign, in a couple of days; for him to come back.

Q. Did Senator Daix say anything else?

A. I think that was all; as much as I remember, Mr. Endicott.

Q. Well, now, did you and Mr. Allen talk about the will after that day before it was signed?

A. I don't think we mentioned will until it came time for us to go up and sign it again.

Q. And what was said then?

A. Well, we were picking out our day. It was pretty warm, and we went to Ocean Grove in the meantime. Took Mother. And some of our neighbors went up to Ocean Grove, and we went in our own car. And then we didn't get

up to Philadelphia until after we came back from there. Tried to pick out as cool a day ——

Q. You did go on September 7th?

A. Yes, we did go on September 7th.

Q. Now, detail the conversations between you and Mr. Allen in which you arranged for the trip.

A. Well, only that he wanted to go. It was warm and we were waiting for a cool day.

Q. No; I want the conversation between you and Mr. Allen when you arranged to go on that trip.

A. I don't know there was a special conversation.

Q. When did you decide?

Mr. Starr: Please speak out. I can't hear a word you say. Please.

The Witness: I will. I will try.

Q. When did you decide to go on September 7th?

A. Well, during that week, after we came back from Ocean Grove'' (Book II, Case, pp. 863-64, beginning first line).

Observe that she first testifies that they were to return in a couple of days and then wanders on the return, clearly indicating that she was not prepared to answer a question on the subject of the future engagement.

Later she gave an entirely different story which cannot be reconciled either with her previous testimony or with that of Mr. Daix and Dr. Boger.

''Q. Well, you did go on the 7th?

A. Yes, we did go on the 7th; yes.

Q. And had you had any communication with Senator Daix in the meanwhile?

A. Oh, no, sir.

Q. Well, now, how did you know where to go on the 7th?

A. As I say, Senator Daix had told us that when he came out of the office with Mr. Allen.

Q. Then you did not relate the whole conversation?

A. Well, now, it just slipped my mind, that is all.

Q. Well, now, will you please relate to us now the entire conversation that took place after Mr. Allen and Senator Daix came from the back room?

A. Yes; he just said, 'Al, you come up,' he says, 'and go to Dr. Boger's. I will see you at Dr. Boger's on September 7th, at ten o'clock'—ten-thirty or ten o'clock.

Q. Was there any discussion about the date between Mr. Allen and Senator Daix and you?

A. No, sir.

Q. Do you know why it was postponed for such a long time?

A. No, indeed, I do not.

Q. Do you know why September 7th was selected?

A. No, I do not. I wasn't in the room, Mr. Endicott.

Q. And there was no communication by telephone or letter or in any other manner between you and Senator Daix respecting the actual day of execution?

A. Oh, no. No, indeed'' (Book II, Case, pp. 864-65, beginning line 33).

And then read Dr. Boger's testimony on the same subject:

''Q. How did the will come to be executed in your office?

A. Senator Daix, whom I never met before, until he made his appearance with Mr. Allen at my office, never saw the gentleman, called me on the phone and said that Mr. Allen was in his office and was executing a will and that he wanted me to witness the will, would I do so, and I said that I would be pleased to do so; I said, 'Send Mr. Allen up,' and he sent Mr. Allen up, and I signed the will.

Q. How soon after that telephone conversation did they come in?

A. I was delayed. I had an emergency call at the hospital, and I apologized when I came in and found they were waiting for me.

Q. They did come in shortly after your telephone conversation?

A. I don't know when they come, but they had been waiting there.

Q. How long a time elapsed between the telephone conversation and your visit?

A. I don't know, it was not so long. I didn't keep a memorandum of it.

Q. Would you say it was two hours?

A. I didn't keep a memorandum of it. Maybe it was an hour or two or something like that'' (Book I, Case, pp. 96-97, beginning line 16).

Thus we have three conflicting stories from three separate witnesses and Dr. Boger certainly is the one entitled to greatest credence.

Senator Daix says that he phoned and made an appointment three days later.

Mrs. Ailes at first could not remember any appointment and fixed an indefinite interval of time.

Dr. Boger says that an interval of about two hours elapsed between the phone call and the execution of the will.

If Senator Daix has perjured himself to make a stronger case for Mrs. Ailes, and we so charge, then none of his testimony can be received. Certainly, Senator Daix's conduct in the cause does not evidence that frank and convincing quality that the proponent is required to produce.

He first endeavors to hide his previous employment by Mrs. Ailes by saying that the foreclosure was turned over to a Mr. Schwartz. When we produced the Court record, he admitted that the Court proceedings were taken in his name and that he got the benefit of the $150.00 fee.

Secondly, he pretends that the will resulted from acts of Allen on two separate days, when, in fact, the entire action happened in one morning.

Thirdly, he details no inquiries put to Allen about remembrance of his brother, sister or nephew and nieces, all of whom were well known to him.

Fourthly, he collects no fee and makes no charge for his services against Allen. A most significant circumstance.

Fifthly, some four months later, when the will was being contested, he makes a charge of $5.00 against Allen's estate, a most ridiculous amount consider-

ing the time and trouble he was put to if his story be true.

In addition to the connivance shown by Daix with Mrs. Ailes in her plan to capture the Allen estate, we submit that the testimony and the acts of the parties disclose the fact that the decedent did not have the benefit of true independent advice or judgment at the time the purported will of September 7th, 1928, was executed, and we submit that the following undisputed facts support our contention:

First, it was undisputed that Mrs. Ailes, prior to the will, had engaged the legal services of Senator Daix or at any rate Senator Daix's office.

Second, Mrs. Ailes had driven and accompanied the decedent to Senator Daix's office for the purpose of having the will made.

Third, no charge was made by Senator Daix for his services in drawing and preparing the will, a matter which occupied him most of the morning, until some four months later when he submitted a bill in the sum of $5.00 to the estate for his services.

Fourth, despite the fact that Senator Daix, on the witness stand, asserted that he had acted as counsel for the decedent in matters prior to the making of this will, the fact remains that the will of 1919 was *not* prepared by Senator Daix, although during that period Senator Daix claimed to have been counsel for the decedent; and

Fifth, upon the very day that the decedent died both Mr. Ailes and Mrs. Ailes immediately communicated independently with Daix advising him of the occurrence.

The will was not in Daix's possession nor by its terms did he have any further interest in the estate.

What occasion could there have been for these communications if, as he contends, he acted as counsel for the decedent and not for the Ailes? (Book I, Case, p. 84, line 22; p. 86, line 1).

CONCLUSIONS.

We assert, and it is respectfully submitted that, while the evidence taken as a whole may be insufficient to prove the lack of testamentary capacity of the testator on September 7, 1928, the undenied facts and the evidence adduced in this case overwhelmingly establish the following points:

1. Kathryn Ailes occupied a confidential relationship to decedent.

2. At the time of the execution of the will of September 7, 1928, testator's mental and physical powers had been so reduced that he was unable to resist the domination and influence of Katie Ailes.

3. At the time of the execution of the said will and for a long time prior thereto, Katie Ailes exercised a domination over the will of decedent by wiles and by causing him to fear.

4. At the time of the execution of said will and for a long time prior thereto, Katie Ailes excluded his family, relatives and friends from their normal contacts with him by removing him from Philadelphia to Pleasantville, by taking him upon long automo-

bile trips, by discouraging the calling upon the decedent of his family, relatives and friends as part of the comprehensive scheme to get Allen's estate.

5. The burden is cast upon the proponent, Katie Ailes, of rebutting the presumption of undue influence raised by the undisputed facts and by the testimony in this case.

6. Katie Ailes and Senator Daix are discredited witnesses and the testimony of Katie Ailes clearly failed to attain that degree of veracity necessary to rebut the presumption of undue influence. Certainly her testimony was not clear, convincing and impeccable, but on the other hand, was pregnant with perjury.

It is respectfully submitted that the will of September 7, 1928, was the product of undue influence continuously exerted upon the mind of a physically and mentally failing old man by Katie Ailes, the sole beneficiary thereunder, and that the decree of the Prerogative Court, admitting to probate the paper writing dated September 7, 1928, should be reversed with costs.

ENDICOTT & ENDICOTT,
Proctors for Lillian Seltzer Reulens, Caveatrix-Appellant.

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