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Notice of Appeal.

New Jersey Prerogative Court

In the Matter

of

The Probate of the Last Will and Testament of Elizabeth Loveridge Lees, deceased.

The appellant, Arthur R. Loveridge, hereby appeals from the decree of affirmance entered in this court in the above stated cause on the 22nd day of December, 1924, and from the whole and every part thereof to the New Jersey Court of Errors and Appeals in the last resort of all causes.

Dated, December 22nd, 1924.

KENT & KENT,
Proctors for and Counsel with Appellant.

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

NATHANIEL KENT,
Of Counsel with Appellant.

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

ARTHUR R. LOVERIDGE,
Appellant,

and

ALFRED S. BROWN, ROBERT H. HOUGH and JAMES HARVIE, as Executors of a Paper Writing purporting to be the Last Will and Testament of Elizabeth Loveridge Lees, Deceased,
Respondents.

To the Honorable, The Court of Errors and Appeals in the Last Resort in all Causes:

The petition of Arthur R. Loveridge, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by the final decree made in the New Jersey Prerogative Court by his Honor, Edwin Robert Walker, Ordinary of New Jersey, bearing date the 22nd day of December, 1924, wherein the said Arthur R. Loveridge was appellant and the said Alfred S. Brown, Robert H. Hough and James Harvie, as executors, were respondents in this respect, to wit: That the said decree affirms the decree of the Essex County Orphans Court admitting to probate a certain paper writing as the Last Will and Testament of Elizabeth Loveridge Lees, deceased.

And your petitioner humbly appeals from the

whole and every part of the decree of the Ordinary, which decrees as aforesaid, upon the ground that the same is erroneous in that this supposed paper writing purporting to be the Last Will and Testament of Elizabeth Loveridge Lees, deceased, was not her Last Will and Testament, and was not legally executed as such, and it should have been so adjudged and that the said Elizabeth Lees died intestate.

And your petitioner, therefore, prays that the said decree of the said Ordinary may be in the particulars aforesaid, reversed, set aside and for nothing holden. And your petitioner may have such relief in the premises as to this Honorable Court shall deem meet.

KENT & KENT,
Of Counsel with the Petitioner.

Answer to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

ARTHUR R. LOVERIDGE,
Appellant,

and

ALFRED S. BROWN, ROBERT H. HOUGH and JAMES HARVIE, as Executors of a Paper Writing purporting to be the Last Will and Testament of Elizabeth Loveridge Lees, Deceased,
Respondents.

The answer of Alfred S. Brown, Robert H. Hough and James Harvie, Executors of the Last Will and Testament of Elizabeth Loveridge Lees, deceased, the above named appellees to the petition of appeal of Arthur R. Loveridge, the above named appellant.

These appellees not admitting the truth of all or any of the matters in said petition of appeal contained, for answer thereto, nevertheless, admit that a decree was on the twenty-second day of December, 1924, made and entered in the Prerogative Court of New Jersey in the above entitled cause, for the purpose in said petition mentioned, and as therein set forth, but as to the substance and form of said decree these appellees beg leave to refer thereto when the same shall be produced. These Appellees are advised and believe that the said decree is agreeable to equity, and in accordance with law, and they pray that the same may be affirmed with costs to be taxed in favor of these appellees.

EDWARD S. ATWATER, Jr.,
Solicitor for and of Counsel with the Appellees.

Conclusions.

NEW JERSEY PREROGATIVE COURT.

In the Matter of The Appeal from the decree of the Orphans Court of the County of Essex, admitting to probate a certain paper writing as the last will and testament of ELIZABETH LOVERIDGE LEES, Deceased.	On Appeal, &c.

Messrs. KENT & KENT, for appellant.
EDWARD S. ATWATER, JR., Esq., for the executors-respondents.
EARL A. MERRILL, Esq., for Maranda Hough Lee, et al., respondents and cross-appellants.

FIELDER, V. O.:

This is an appeal from a decree of the Essex County Orphans Court, admitting to probate the last will and testament of Elizabeth Loveridge Lees, dated March 16, 1921. The grounds of appeal urged by the appellant are mental incapacity of the testatrix, undue influence exerted by certain beneficiaries under the will and a conspiracy alleged against said beneficiaries to induce the testatrix to make such will.

I have read the state of case and I have considered the additional testimony taken before me. I have also read the briefs filed by the parties and I am of the opinion that the decree admitting the will to probate, should be affirmed for the reasons stated in the conclusions filed by the judge in the court below.

A cross-appeal was filed by certain beneficiaries under the will, from so much of said decree as allows a counsel fee to the appellant. It might be noted that this cross-appeal does not appear in the state of case.

The Orphans Court had authority under Section 167 of the Orphans Court Act, to allow a counsel fee to the unsuccessful contestant, if it appeared to the court that the contestant had reasonable cause for contesting the validity of the will. After having seen and heard the witnesses, the Orphans Court concluded and adjudged that such reasonable cause existed and allowed a counsel fee. That finding and allowance should not be set aside, unless the record conclusively shows no reasonable ground for the contest (In re Wandell, 92 N. J. Eq., 195). My examination of the record fails to convince me that the Orphans Court erred in making the finding and allowance and I shall therefore dismiss the cross-appeal.

Decree.

NEW JERSEY PREROGATIVE COURT.

In the Matter of The Appeal from the decree of the Orphans Court of the County of Essex, admitting to probate a certain paper writing as the last will and testament of ELIZABETH LOVERIDGE LEES, Deceased.	On Appeal, &c.

This cause having been brought to a hearing on an appeal from the Orphans Court of the County of Essex, and the court having heard Kent & Kent, proctor for and of counsel with the executors-re- Proctors for and of Counsel with the Appellant, Arthur R. Loveridge, and Edward S. Atwater, Jr., spondents, and Earle A. Merrill, proctor for and of counsel for Maranda L. French, formerly Maranda Hough Lees, respondent and cross-appellant, and having duly considered the questions brought up on this appeal:

IT IS ON THIS twenty-second day of December, nineteen hundred and twenty-four, on motions of Edward S. Atwater, Jr., of counsel with the executors-respondents, and of Earle A. Merrill, of counsel for Maranda L. French, respondent, and Maranda L. French and others, cross-appellants,

ORDERED, ADJUDGED and DECREED that the decree of the Orphans' Court of the County of Essex made on the twelfth day of December, nineteen hundred and twenty-three, from which the appellants appealed, be in all things affirmed, and that a counsel fee of fifteen hundred dollars be allowed to Edward S. Atwater, Jr., of counsel with

the executors-respondents, on this appeal, and a further counsel fee of one thousand dollars, be allowed to Earle A. Merrill, of counsel for Maranda L. French and others, respondents and cross-appellants, to be paid from the estate of the said Elizabeth Loveridge Lees, together with costs on this appeal, to be taxed: said costs to be paid out of the estate of the deceased.

Respectfully advised,

E. R. WALKER,
Ordinary.

JAMES F. FIELDER,
V. C.

Endorsed:
"Filed Dec. 22, 1924,
THOMAS F. MARTIN,
Register."

Decree Confirming Order of Surrogate.

ESSEX COUNTY ORPHANS' COURT.

In the Matter of The Estate of ELIZABETH LOVERIDGE LEES, Deceased.	On Appeal from Probate of Will by Surrogate.

Arthur R. Loveridge, one of the next of kin of Elizabeth Loveridge Lees, late of the County of Essex, deceased, having presented his petition of appeal from the order of the Surrogate of the County of Essex, made on the twenty-eighth day of September, Nineteen hundred and Twenty-two admitting to probate a certain paper writing pur-

porting to be the Last Will and Testament of the said Elizabeth Loveridge Lees, and granting Letters Testamentary thereon to Alfred S. Brown, Robert E. Hough and James Harvie, the Executors therein named, and it appearing that citations were thereupon duly issued by the Surrogate of the County of Essex, to all persons concerned, to appear before this court on the fifteenth day of December, Nineteen hundred and Twenty-two, at ten o'clock in the forenoon on the hearing of said appeal, and that said citations have been returned duly served upon the persons to whom they were respectively directed, and the court having taken testimony and heard the allegations of the partiees herein, and being satisfied that the said paper writing was duly executed by the said Elizabeth Loveridge Lees, as her last Will and Testament, in the manner and form prescribed by the Statute in such case made and provided; and that the said Elizabeth Loveridge Lees at the time of making said will was of sound and disposing mind, memory and understanding, and that the said will was not the product of undue influence.

IT IS THEREUPON on this twelfth day of December Nineteen hundred and Twenty-three, ORDERED, ADJUDGED and DECREED that the aforesaid Decree of the Surrogate of the County of Essex admitting to probate the said paper writing, as and for the Last Will and Testament of Elizabeth Loveridge Lees, deceased, and directing that Letters Testamentary thereon issue to Alfred S. Brown, Robert H. Hough and James Harvie, the executors therein named, be, and the same is hereby in all things ratified and confirmed, and that the said paper writing is the Last Will and Testament of the said Elizabeth Loveridge Lees, deceased.

AND IT IS FURTHER ORDERED that the fees of the Official Stenographer, Alan G. Kennish, amounting to the sum of Nine hundred and eighty-eight dollars and twenty cents ($988.20) be paid by the said Alfred S. Brown, Robert H. Hough and James Harvie, executors named in said will, out of the Estate of the said Testatrix, and that a counsel fee of Five thousand Dollars be allowed to Edward S. Atwater, Jr., proctor for the proponents, to be paid by the said Alfred S. Brown, Robert H. Hough and James Harvie, the executors named in the said will, out of the estate of said Testatrix, and that a counsel fee of Two thousand five hundred Dollars be allowed to Kent and Kent, proctors for the appellants, and that a counsel fee of Seven hundred and fifty Dollars be allowed to Earl A. Merrill, proctor for Maranda H. Lees to be paid by said executors.

DALLAS FLANAGAN,
J.

Opinion.

ESSEX COUNTY ORPHANS' COURT.

In the Matter of the Estate of ELIZABETH L. LEES, Deceased.	On Appeal from Order of Surrogate Admitting Will to Probate.

KENT & KENT (by Nathaniel Kent and Milton Siegel), Proctors for Appellants.

ALFRED S. BROWN (of the New York Bar), Proctor for Proponents; E. S. Atwater, Jr., of counsel.
CLARENCE A. HOORRIBEEK, Proctor for Edward B. Taylor and Nellie Taylor.
EARL H. MERRILL, Proctor for M. H. Lees.

FLANNAGAN, J.:

This is an appeal from an order of the Surrogate of Essex County, made on the 28th day of September, 1922, admitting to probate a certain paper writing made on the 16th day of March, 1921, as the last will and testament of Elizabeth L. Lees, who died a resident of Essex County on September 5, 1922, leaving her surviving as her nearest of kin, a sister, Harriet Loveridge, and numerous nephews and nieces.

In 1910 Mrs. Lees was residing with her husband at the Hotel Beresford in New York City. Her husband was ill and one Miranda Hough was engaged as his nurse and continued in that capacity until April, 1912, when Mr. Lees died. Miss Hough remained with Mrs. Lees until some time in the fall and then took other work and was away for about a year and a half.

Early in 1914, at the request of Mrs. Lees, Miss Hough returned to live with her and continued to live with her until her death. Miss Hough owned a cottage in East Orange, and during the years 1917, 1918 and 1919 Mrs. Lees and herself occupied that house as a summer residence. Early in 1920, Mrs. Lees becoming dissatisfied with her residence at the Hotel Beresford, arranged with Miss Hough to break up their home there and to occupy the latter's cottage in East Orange. Shortly thereafter they decided to build, as a joint enterprise, a home more suited to Mrs. Lees' financial circumstances. Miss Hough thereupon purchased a lot at 19 Whit-

man Avenue, to which she took title in her name, whereon the dwelling which they called Rainbow Cottage was built. Into this property Miss Hough put a total amount of $12,000 and Mrs. Lees $18,000. They continued to live at this residence until Mrs. Lees' death.

At the time when Miss Hough went to live with Mrs. Lees in 1914 at New York the arrangements between them were that she was to receive $18 per week, which was later increased to $125 per month, and so continued until 1920, Miss Hough did all of the household work, with the exception of engaging an assistant occasionally, and attended to Mrs. Lees, did her dressmaking, acted as her nurse, performed in course of her duties as such a somewhat unpleasant duty made necessary by Mrs. Lees' ailments, and, in general, acted as her companion, nurse and housekeeper.

On July 2nd, 1920, Mrs. Harvie, one of Mrs. Lees' nieces, went to Dr. Swift, a New York physician, who had been attending Mrs. Lees while she resided in New York, and obtained from him a certificate stating that he had formed the opinion that Mrs. Lees was suffering from senile changes which had affected her mentality and rendered her incapable of sound judgment or discretion. In the latter part of 1920 Mrs. Lees learned of the existence of this certificate, or, rather, that somebody had suggested the appointment of a guardian for her, and was very much concerned about it. She went to her counsel, Mr. Alfred S. Brown, to ascertain if Miss Hough could be appointed. Upon learning that she could not appoint a guardian for herself, Mrs. Lees suggested that she adopt Miss Hough, and Mr. Brown informed her that for this she must go to a New Jersey lawyer.

Later Mrs. Lees, accompanied by Miss Hough,

called upon Thomas A. Davis, Esq., a member of the bar of Essex County, who informed her that the statute provided for the adoption of minors only, and an agreement was then prepared, reciting that it was Mrs. Lees' intention to regard Miss Hough in all things as her daughter. Mr. Davis testified that Mrs. Lees conducted the conversation and appeared entirely rational. Later proceedings were brought in the Essex County Circuit Court whereby Miss Hough, with Mrs. Lees' consent, had her name changed to Miranda Hough Lees.

The appellants grounds for appeal are:

(1) that the will was not executed according to law;

(2) that Mrs. Lees lacked testamentary capacity; and

(3) that the will was the product of undue influence exercised upon Mrs. Lees by Alfred S. Brown, Robert S. Hough, James Harvie and Miranda Hough, Benjamin Epstein and Edward B. Taylor.

The testimony of the witnesses to the will made it so clear that the will was executed in the manner and form prescribed by law that this ground of appeal was not pressed.

Appellants, however, strenuously insist that Mrs. Lees was mentally incompetent to make a will, that she was an old woman, broken in health and mind, and unable to conduct a conversation intelligently. Voluminous testimony was introduced concerning Mrs. Lees' mental and physical condition, to the effect that at the time of the execution of the will she was a woman about eighty years old; that she had difficulty in walking and was unable to carry on extended conversations, or, in fact, any con-

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versation; that she would frequently doze off and had to be aroused. Much stress was also laid upon the fact that Dr. Swift had in 1920, as already seen, issued a certificate to the effect that she was incompetent to care for herself and her affairs; that at the time when her new home, known as Rainbow Cottage, was constructed, Mrs. Lees had erected therein a memorial window to her husband which was not alone dedicated to him but to Miranda Hough Lees, as well, and it was insisted that the construction of such a window in her home dedicated in such manner and rather than in a church, was evidence tending to show incompetency. There was also evidence concerning the construction of an unusually heavy wire fence, set in a concrete base, around a chicken coop in the rear of her dwelling. There was also testimony that she suffered from chronic Bright's disease, inability to control her organs, colds, heart trouble, high blood pressure, rheumatism, swelling of the hands and limbs, and inability to walk except by dragging or shuffling her feet along the floor.

Many witnesses testified that in their opinion Mrs. Lees was not competent, and, as has already been said, much stress was laid upon the certificate of Dr. Swift. The deposition of Dr. Swift was taken and is in evidence. He states that he is a practicing physician in the State of New York; that the last time he saw Mrs. Lees was on April 22, 1920, or between two and three months before he gave the certificate as to her incompetency, and about a year before the execution of the will; that he had been treating her from November 29, 1916, and that he is not an alienist or specialist in mental diseases; that during the year prior to July, 1920, the date of the certificate, he had seen her eight times, and that he never made any special examina-

tion of Mrs. Lees for the purpose of making the certificate. The depositions give no facts upon which the doctor based his opinion.

It is well settled that the abstract opinion of any witness, medical or of any other profession, upon the question of the testamentary capacity of a testator, is of no importance, and that no judicial tribunal would be justified in deciding against the capacity of a testator upon the mere opinion of witnesses, however numerous or respectable. The opinion of a witness must be brought to the test of facts, that the court may judge to what weight the opinion is entitled. *Stackhouse* v. *Horton,* 15 *N. J. Eq.,* 202, 208; *Waddington* v. *Buzby,* 45 *N. J. Eq.,* 173, and cases cited at *page* 174; *Clifton* v. *Clifton,* 47 *N. J. Eq.,* 227.

The opinion of Dr. Swift is, therefore, entitled to no weight, it being supported by no facts whatever. So far as the opinions of the various witnesses as to testatrix's mental capacity is concerned, these opinions are founded upon facts so trifling that they are entitled to little weight. They merely presented a picture common among the aged and familiar to all who have come in contact with them.

On the part of the proponents it was shown that Mrs. Lees' impediment in walking came about by reason of a fall which she had some years previous and that for a while she had to walk with a cane, and that she never recovered the complete use of her foot, but that it dragged when she walked. That she was able to get about without much difficulty, however, is evidenced by the undisputed fact that up to within a month or so of the date of her death she attended services at a church in New York every Sunday except in the summer months when the church was closed, and that then she

attended a local church, and this irrespective of the character of the weather. It is also undisputed that she made many trips to New York in connection with her business affairs; that she always went to her safe deposit box in the company of either Mrs. Harvie or Miss Hough for the purpose of cutting coupons on her bonds when they became due; that on these occasions she herself prepared the envelopes for depositing the coupons, although the coupons themselves were actually cut off by her attendant and handed to her and she placed them in the envelopes, and that this continued until a month or so prior to her death and for a year after the executing of the will. It is also undisputed that she had numerous afternoon teas at her home, to which many of her friends were invited. This continued at least until the spring after the execution of her will. Mr. Lees was a voluminous letter-writer, and an inspection of her correspondence, a great mass of which was introduced in evidence, indicates that she was an intelligent, cultured woman.

Where it is shown that a testator was able to transact business with sagacity and decision, his testamentary capacity will be established. *Whitenack* v. *Stryker,* 2 *N. J. Eq.,* 8; *Hunt* v. *Hunt,* 13 *N. J. Eq.,* 161; *Yauger* v. *Skinner,* 14 *N. J. Eq.,* 389. As late as March 3, 1922, a year after the execution of the will, testatrix addressed a letter to John Augustus Lees, a brother of her husband and manager of the Lees Manufacturing Company, which her husband had founded and in which she had a large interest, complaining of the fact that she had received no dividends from the business for some time; that her income had been seriously diminished and that she felt that she must sell her interest in the business and invest the money re-

ceived from the stock in an annuity. She goes on in her letter to explain that this is a great sorrow to her, because she knew she would have to sell at a sacrifice; that she did not wish the stock to go outside of the family and was, therefore, willing to let him have it at a low figure, in order to keep it in the family; that she was sure her husband would have liked her to do that. It is also in evidence that she made frequent business calls at the business office of the Lees Manufacturing Company in New York and had consultations there with one Benjamin Epstein, whom she had frequently consulted in regard to her business affairs and who testified that he prepared statements of the business for her, which she examined carefully and complained bitterly because of the fact that the business was paying her no dividends. It is also in evidence that she consulted certain brokers from time to time in regard to her investments.

"The standard of testamentary capacity has been fixed at a very low point in the scale of intelligence. The right of a testator, however feeble his powers of mind or body, to the control of his property by testamentary disposition, so long as he has intelligence to exert it, has been, by the courts of this state, at least, inflexibly maintained." *In re Shimer's will,* 103 *Atl.,* 383, and cases therein cited. Measured by the standard laid down in this case there can be no doubt that Mrs. Lees was possessed of testamentary capacity. It is also contended by appellants that the will is the product of influence exercised by or the result of a conspiracy entered into between Alfred S. Brown, Robert S. Hough, James Harvie, Miranda Hough, Benjamin Epstein and Edward B. Taylor. In support of this contention it is urged that about 1920 Miranda Hough took complete charge of the house and also of Mrs.

Lees' finances; that she sold a large number of bonds and deposited the proceeds in her name, and from that time on completely dominated the household and that it was during this complete domination period that the various papers were executed and the will was drawn and signed; that she accompanied Mrs. Lees to the office of Mr. Brown and remained in the room during the entire period, so that nothing could escape her.

First, in regard to the sale of the bonds, the testimony is that, in order to raise the money with which to construct Rainbow Cottage, Mrs. Lees directed Miss Hough to sell certain of her Liberty Bonds, which she did. Miss Hough frankly states that she placed the proceeds in the bank, in her own name, and used it for the purpose designated, which testimony stands unimpeached. Miss Hough says that from the time of the so-called adoption agreement they lived together as mother and daughter; that she, at Mrs. Lees' request, addressed her as "Mother." There is also in evidence letters from Mrs. Lees to several of her friends, announcing the fact of the so-called adoption and requesting them to accord Miss Hough the greatest consideration. There is also in evidence a formal engraved card announcing the supposed adoption and that Miss Hough would thereafter take the name of Miranda Hough Lees, which was mailed to their friends.

That confidential relations existed between Miss Hough and Mrs. Lees cannot be doubted, but it would seem that these relations were more similar to those existing between mother and daughter. Mrs. Lees was alone in the world and for some six or seven years Miss Hough had been her only companion and, according to the universal testimony, had served her well and faithfully and it

was but natural that an affection should spring up between them.

The existence of confidential relations between the testator and the favored beneficiary, standing alone, does not necessarily constitute undue influence. It is but natural that a person when disposing of his property in anticipation of his decease, should give it to those who show him kindness and manifest love and devotion toward him. In re *Eatley's Will,* 82 *N. J. Eq.,* 591. And the mere fact that the sole beneficiary of the will was the confidential companion and business adviser of the testator for several years prior to his death is not of itself evidence of undue influence. *Wheeler* v. *Whittle,* 44 *N. J. Eq.,* 141. And in this connection it must be remembered that Miss Hough, or Lees, as she should be called, is not the sole beneficiary under the will of Mrs. Lees. Estimates of the proportion of the estate which she will receive under this will vary from fourteen per cent. on the part of proponents to thirty per cent. on the part of appellants, the difference being accounted for by different valuations of the securities of the estate and other questions which need not be entered into here.

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 exercised over the mind of the testator or an importunity practiced which he could not resist, *Clifton* v. *Clifton, supra;* in re *Tunson's Will,* 83 *N. J. Eq.,* 277. The will now under attack was executed under the following circumstances. Testatrix had executed several wills theretofore and on February 14, 1921, wrote to her attorney, Mr. Brown, in her own hand, to the following effect:

"Circumstances have arisen involving Mr. Philip Haffner, which makes it imperative for me to change my will so decidedly that I have decided to make a new one, and I am writing to ask you to notify me of some day next week that promises to give you sufficient leisure to accord me an interview with you for that purpose."

Later on Mrs. Lees sent to her attorney, Mr. Brown, written instructions, in her own handwriting, in regard to the changes she desired in the will. These instructions referred to a previous will, which he had prepared for her, and she had executed, and which instructions could be identified by the paragraph in that will which he had in his possession. The written instructions above referred to were received in evidence and were as follows:

1st. F. Philip Haffner to be excluded from my will for reasons I will inform Mr. Brown orally. In his place as executor with Mr. Brown I want Dr. Robert H. Hough, 3136 Broadway, New York, to take his place.

8. Miranda Hough Lees, now my adopted daughter instead of F. Philip Haffner.

11. Mrs. Philip Haffner to receive direct $10,000 and to do exactly as directed to do. Incorporate in this will what my codicil directs in connection with Mrs. Haffner's two boys.

12. I give and bequeath to Miranda Hough Lees, my adopted daughter, what I have designated, in paragraph 12.

17. Omit.

18. Omit.

19. Omit.

20. Omit.

(21) (*Not to be omitted.*)
22. Omit.
23. Omit.
24. Omit.
25. Omit.

On March 8, 1921, Mr. Brown received the following letter from Mrs. Lees, in her handwriting, which was received in evidence:

> "Tuesday, at 19 Whitman Ave., East Orange, N. J. Dear Mr. Brown: In accordance with dear Mrs. Harvie's wish I have decided to ask you to add Mr. Harvie's name in connection with yours and Dr. Hough's, concerning which I would be very pleased to have you write him, also Dr. Hough, if you have not already done so. I also trust it will be perfectly convenient to you to have me sign my will before next week is in the past."

Mr. Brown testified that at the execution of the will on March 16, 1921, Mrs. Lees, accompanied by Miss Lees, called at his office, on which occasion Mrs. Lees talked about the reasons for making the changes which she did make. She talked about certain difficulties that had arisen between her niece Marion, who had married Mr. Haffner, and Mr. Haffner. She said that there had been a disagreement between them and they had separated and she spoke very decidedly about Mr. Haffner's conduct towards her niece Marion, and she said she wanted to eliminate him from her will both as executor and as trustee for Marion, and also as a legatee, those provisions Mr. Haffner enjoyed in the previous will. The will, which was in exact accord with Mrs. Lees' written instructions, was thereupon duly executed

under the superintendence of Mr. Brown, the witnesses being Joseph Frankenthal, Franklin S. Morrell and Homer H. Pennock.

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. *Sparks' case,* 63 *N. J. Eq.,* 242.

In the case under consideration there certainly was no exclusion from the testatrix of the natural objects of her bounty. With the exception of one or two of her numerous nephews and nieces she either visited or was visited constantly by all of them. Clandestinity in the execution of the will was not shown. In fact, Mrs. Lees wrote to Mrs. Harvie an exact account of what disposition she had made in her favor. The presence of Miss Lees at the execution of the will is not an active participation in procuring the will such as is spoken of in the cases. As a matter of fact, she participated in no way in the execution of the will. As has been shown, the direction as to the changes in the will were received by Mr. Brown in the testator's handwriting, and in this connection it is significant that the instructions for preparation of the will did not change the provisions for Miss Lees from those in the previous will of August, 1920.

The burden of proving undue influence is upon he who asserts it. It has, however, been held that where confidential relations are shown and any of the indicia of undue influence before mentioned or

other slight circumstances exist that the burden of proof is shifted. It does not appear that even the slight circumstances above mentioned as sufficient to shift the burden of proof exist. But, assuming that they do exist and the burden of proof has shifted and that it is the duty of Miss Lees to prove affirmatively that she did not influence the testatrix, we are met with her frank testimony that she did not influence or attempt to influence Mrs. Lees in the execution of her will and that she took no interest in what disposition Mrs. Lees made of her property beyond such as was necessary to secure to her the money which she had tied up in the Rainbow Cottage, which represented all she had in the world. Where the burden is cast upon the proponents of a will to show that undue influence has not been exerted, such burden will, as a general rule, be sustained by a general denial of undue influence if otherwise credible and not challenged by other facts. *In re Eatley's Will, supra.*

In the case under consideration we have that general denial and the denial is entirely credible. The testimony does not establish a single incident where Miss Lees attempted to impose her will upon the testatrix in the management of her business affairs. As to the charges of conspiracy they are entirely without foundation of fact.

The will should be admitted to probate.

Dated, November 2, 1923.

Appeal From Order of Surrogate Admitting Will to Probate.

ESSEX COUNTY ORPHANS' COURT.

Before—Hon. DALLAS FLANNAGAN, Judge.

In the Matter

of

ELIZABETH L. LEES, Deceased.

Wednesday, March 21, 1923.

Messrs. KENT & KENT (by Nathaniel Kent and Milton Siegel), Proctors for Appellants.
ALFRED S. BROWN (of the New York Bar), Proctor for Proponents; E. S. Atwater, Jr., of counsel.
CLARENCE A. HOORNBEEK, Proctor for Edward B. Taylor and Nellie Taylor.
EARL A. MERRILL, Proctor for M. H. Lees.

Mr. Atwater: This is an appeal, if your Honor please, from the probate of the last will and testament of Elizabeth L. Lees. As I understand the proceeding it is a trial *de novo*. Therefore, with your permission, we will put the attesting witnesses on the stand and prove the will.

JOSEPH FRANKENTHAL, sworn.

Direct Examination by Mr. Atwater:

Q. Mr. Frankenthal, what is your occupation?
A. Law clerk.

Q. With whom? A. Alfred S. Brown, one Liberty Street, New York.

Q. How long have you been employed by him in that capacity? A. Over thirty-five years.

Q. I show you a paper writing purporting to be the last will and testament of Elizabeth L. Lees, and ask you if you signed that as subscribing witness? A. Yes.

Q. That is your signature? A. Yes, sir.

Q. Did you see this testator, Elizabeth L. Lees, sign that paper? A. Yes, sir.

Q. How long have you known Mrs. Lees? A. About 25 years.

Q. Was she upwards of the age of twenty-one years? A. Yes, sir.

Q. To the best of your knowledge and belief she was of sound mind and memory, and understanding, at the time this was executed? A. Yes, sir.

Q. Did you see the other witnesses sign this will? A. Yes.

Q. Who were they? A. Mr. H. H. Pennock and Mr. F. W Morrell

Q. Were they all present ? A. Yes, sir.

Mr. Kent: Please do not lead the witness. Ask him what happened.

Q. Will you tell the court what happened there, please? A. Mr. Brown asked me—he was in his room with Mrs. Lees.

Q. Please speak up. A. Mr. Brown was in his room with Mrs. Lees and Mr. Pennock—I am in the next room to him. He came out and asked Mr. Morrell to come in to witness Mrs. Lees' will. We went in. Mr. Brown filled in the date in his handwriting. Mrs. Lees then signed it. Mr. Brown then said, "Mrs. Lees, what is this instrument?" Mrs. Lees, she said, "This is my will." He said,

"You declare these three gentlemen to sign as witnesses?" She said, "Yes, sir; I do."

Q. (By the Court) "Declare"? A. He said, "Do you request these gentlemen to sign as witnesses?" She said, "I do." We were all there together. Before she signed Mr. Brown read over the attestation clause in the will and we signed. When we got through Mrs. Lees said, "I am very much obliged to you, gentlemen," and we left the room.

Q. (By Mr. Atwater) She requested you to sign as a witness? A. Yes, sir.

Q. (By the Court) The witnesses and the testator were together at the time and through the entire transaction? A. Yes, sir.

Cross Examination by Mr. Kent:

Q. How old was Mrs. Lees at that time? A. I should think she was a woman between seventy-nine, eighty or eighty-one, somewhere around there, according to the way she looked to me.

Q. Where was this, at the office of Mr. Brown? A. Yes, sir.

Q. Who drew this will? A. You mean the physical writing of that will?

Q. Yes. A. I did.

Q. By that you mean you typed it? A. I typed it, yes, sir.

Q. And you got information from Mr. Brown? A. Yes, sir.

Q. None of these facts were given to you by Mrs. Lees? A. No, sir.

Q. And after you typed it did you fasten it together? A. Certainly.

Q. And put this blue ribbon on it? A. Blue ribbon, yes, sir.

Q. Is blue the color scheme of your office? A. No; I have got some red.

Q. Now, after you drew this will and it was typed, you fastened it with this ribbon? A. Yes, sir.

Q. Was that done on the same day? A. The same day that I drew it, or the same day that it was executed you mean?

Q. The same day that it was executed. A. I don't know. I can refresh my recollection, if you wish, as to that, from a memorandum that I have got here, as to when I drew it and when it was executed.

Q. What is your best recollection now, without referring to anything? A. That it was on the same day or a day or two or three previous; I don't know without refreshing my recollection.

Q. Did you have any recollection whether you drew it the same day or not? A. No, sir.

Q. But you recollected the other things with great particularity, did you not? (No response.)

Q. Did you have any rehearsal about your testimony in this case? A. Not one.

Q. No discussion at all? A. No, sir; this is not the first will I have been a witness on.

Q. I know that; but I am asking you, did you have any discussion about it? A. No; I said no, I didn't.

Q. You recollect the various facts about the signature and what occurred there with great particularity? A. Yes, sir.

Q. Was that because of custom or because of what actually occurred? A. Because of what actually occurred. It is not very long ago, you see.

Q. 1921 is quite some time ago? A. Yes, a couple of years.

Q. Why don't you recollect whether you typed this the same day?

Mr. Atwater: I did not want to object here before—

The Court: He may answer it.

A. Why, I don't recollect it?

Q. Yes. A. Because I cannot recollect it, that is all.

Q. Because you don't? A. Because often I will draw a will on the same day it is signed, and often I will have it written out before. I cannot say, offhand, what the fact was with this particular will.

Q. You recollect what occurred with great particularity on the execution of the will? A. Yes.

Q. But you don't recollect anything else that preceded it with reference to this will? A. I said I didn't recollect whether I happened to type it that same day or the day before, that is what I said.

Q. When she came there, then, about the will, was it finished? A. Yes, sir.

Q. With the blue ribbon? A. Yes, sir.

Q. And all she had to do, when she got there, was to sign up? A. That is all she had to do after I got in the room there.

Q. To sign it, is that correct? A. To execute it.

Q. How long had she been in the room? A. Before the signing?

Q. Yes. A. I should say fifteen or twenty minutes.

Q. (By the Court) You state, then, that the will was all finished, with the blue ribbon, before she came there, is that correct? A. Yes, sir.

Q. That day? A. That day, yes, sir.

Q. (By Mr. Kent) Was Mrs. Lees in good health at that time? A. Yes, sir; apparently in good health.

Q. What do you say? A. Apparently in good health.

Q. What makes you say "apparently"? A. Because I had seen her before.

Mr. Atwater: I do not want to object, but it seems to me that is going too far.

The Court: That is all right.

Mr. Kent: I have got an intelligent witness here who uses words advisedly. I know exactly what he means.

Q. Now, tell us. A. Because I had known Mrs. Lees a number of years. I had seen her when she was a great deal more agile than she was at that time. I had known her some twenty-five years. That is what I mean.

Q. Had her health been failing, apparently? A. She had been getting older, she was not as agile as she was when I saw her first.

Q. Mentally or otherwise? A. I should say that she was not as agile. She did not speak as much as she did when I first met her.

Q. You mean woman-like? A. I don't know what "woman-like" means.

Q. Was she mentally as agile? Let me put that to you. A. I will say this, that Mrs. Lees, in order to get to Mr. Brown's office, had to walk through my room.

Q. Please answer my question. We are talking, now, about mentally. A. What was the question?

Q. Mentally as agile as she was previously? A. To my mind, yes, although she was slower in speaking.

Q. You say Mr. Brown called you in? A. Yes, sir.

Q. Were you in first? A. No; he asked me to get Mr. Morrell and come in with him. Mr. Pennock was in there.

Q. Was the will signed when you got there? A. No, sir.

Q. When you went in that room what happened? A. When I went in with Mr. Morrell, Mr. Brown filled in the date there, in his own ink—in his handwriting, and then he said, "Now, Mrs. Lees, if you will sign." Mrs. Lees signed her name. Then Mr. Brown asked her, "What is this instrument that you are signing, Mrs. Lees?" She said, "This is my will." He said, "You request these three gentlemen to sign as witnesses?" She said, "Yes, I do." Then Mr. Brown read over the attestation clause, and then we signed, and then Mrs. Lees said she was much obliged, and then we went out.

Q. How long did that take? A. The execution of the will?

Q. Yes. A. Oh, five minutes, I guess.

Q. Nothing else was said? No conversation of any kind? A. Not while I was in there, no. She had been in there some fifteen or twenty minutes before I was called in.

Q. You are still in the employ of Mr. Brown? A. Yes, sir.

Re-direct Examination by Mr. Atwater:

Q. Mr. Frankenthal, did you make an effort to have Mr. Pennock here to-day, the other subscribing witness? A. We communicated with his office. We were informed that he was in Florida; that on reaching Florida he had sent word home that he expected to be back early in April.

The Court: The other subscribing witness is not here?

Mr. Atwater: The other subscribing witness. This is the second subscribing witness.

FRANKLIN W. MORRELL, sworn.

Direct Examination by Mr. Atwater:

Q. Mr. Morrell, what is your occupation? A. I am a lawyer.

Q. Admitted to the bar in what state? A. New York.

Q. I show you a paper writing purporting to be the last will and testament of Elizabeth L. Lees, and ask you if that is your signature? A. Yes, that is my signature.

Q. Will you please tell the court the circumstances under which you came to subscribe your name as witness? A. Mr. Frankenthal came in to me, one day, and said, Mr. Brown wanted me to go in with him and witness a will with Mrs. Lees. I went in. There were present, Mrs. Lees, Mr. Pennock, Mr. Brown. Mrs. Lees and Mr. Pennock were in his room and Mr. Frankenthal and I came in. The paper here was on the table. Mr. Brown filled in the date. Mrs. Lees sat down and signed, and Mr. Brown asked her what she declared the instrument to be. She said it was her will. He said, "Do you request Mr. Pennock, Mr. Frankenthal and Mr. Morrell to sign as witnesses?" She said, "I do." Then we signed the will. I think Mr. Brown read over the attestation clause before she signed the will. Then she thanked us, then she shook hands with me, and I went out.

Q. You are in the office of Mr. Brown? A. Yes.

Q. You are associated with him? A. Yes.

Q. And have been for how long? A. Oh, three years.

Q. How long had you known Mrs. Lees? A. Why, I guess I had seen her, off and on, during that period, maybe three or four times in the office.

I had not known her, strictly speaking; I had met her in there.

Cross Examination by Mr. Kent:

Q. There was no examination of the will while you were in there by anybody? A. Not that I know of, no.

Q. You know nothing about the testatrix except from seeing her? A. Oh, no; I have just seen her once or twice; that is, Mr. Brown introduced me to her.

Q. She appeared to be a very old lady? A. Yes; I should say seventy or seventy-five, possibly; quite an old lady.

Q. Was anybody else with her outside of herself? A. Mr. Pennock?

Q. Any member of her family? A. Not that I remember.

Q. Is your recollection strong about that? A. I think Mr. Pennock was present. He is not a member of her family, though. I don't know whether that is anything.

Q. You don't know whether she came to the office alone or not? A. I don't know; I don't remember seeing her come in; perhaps. All I remember is that Mr. Frankenthal came in. My room is off to the side. They come through the outer office where Mr. Frankenthal and Mr. Brown are. Whether there was anyone with her or not I don't know.

Q. In fact you know very little about her? A. I know hardly anything about her; I have seen her once or twice, that is all.

Q. Did anybody ask her whether she understood the contents of what she was signing, in your presence? A. No, I don't think so.

Re-direct Examination by Mr. Atwater:

Q. As far as you know, she was of sound and disposing mind, memory and understanding? A. Apparently she was.

Q. And of full age? A. Yes.

Re-cross Examination by Mr. Kent:

Q. What do you term "apparently"? Is that a stock phrase in your office? Why do you use that term? A. No. If anybody should ask me if you were of sound mind, I would say "apparently" yes. I have nothing else to base anything else on.

Q. That is, as one attorney to another? A. Yes; any person, either. A person might be insane, and might talk to me, and I wouldn't know.

Q. You wouldn't know, as a practicing New York attorney? You want to make that statement here? A. I say yes. I might be talking to a man who was insane, and he might be talking to me, and I might not know it, yes.

Q. Why do you make a statement of that kind under oath? A. What is that statement?

Q. (By the Court) He is referring to the statement that you made about talking to a man who was insane, and not knowing, apparently. A. I think that is a perfectly fair statement.

Q. (By Mr. Kent) Have you had such experiences in your career? A. No; I never have.

Q. Tell me why you came to use the term "apparently" again. Because it has been used frequently in your office? A. Will you repeat your question? Maybe I can answer it in a different way that will suit you better.

Q. I don't want to be suited. The court wants to be enlightened.

Q. (By the Court) He simply asks why you use

the word "apparently." A. I do not remember the reason one term was used rather than another.

Q. (By Mr. Kent) Because that is a technical term used by cultured people—this wording—that carries along cultivation with it? You are not using it in a secondary sense? A. What do you mean by "a secondary sense"?

Q. Exactly what I say. Was this woman sane or wasn't she? A. How should I know? In my opinion she was sane.

By Mr. Atwater:

Q. To the best of your knowledge and belief she was sane? A. She was, yes.

Mr. Kent: I object. I ask that that be stricken out. He said he did not know.

The Court: He did not finish. He said, "How should he know," and then he stated something else.

By the Court:

Q. Did she appear to you to be rational or irrational in her actions? A. Appeared to be rational.

Mr. Atwater: I understand that the matter is adjourned peremptorily for the 15th, that is it must go on on the 15th of May or else the appeal will be dismissed.

The Court: I so understand it. We will go on on the 15th of May.

Adjourned to Tuesday, May 14, 1923, at ten o'clock A. M.

SECOND DAY

ESSEX COUNTY ORPHANS' COURT.

Tuesday, May 15, 1923.

Before—Hon. DALLAS FLANNAGAN, Judge.

In the Matter
of
The Estate of ELIZABETH L. LEES, Deceased.

Messrs. KENT & KENT (by Mr. Nathaniel Kent), Proctors for Appellants.
Mr. E. S. ATWATER, JR., Proctor for Proponents.
Mr. CLARENCE A. HOORNBEEK appears for Edward B. Taylor and Nellie Taylor, his wife.

HOMER H. PENNOCK, sworn in behalf of proponent.

Direct Examination by Mr. Atwater:

Q. Mr. Pennock, what is your business? A. Insurance.

Q. With whom are you connected? A. Equitable Life.

Q. And where is your office? A. 120 Broadway.

Q. Were you acquainted with Elizabeth L. Lees? A. I was.

Q. How long had you known Mrs. Lees? A.

About ten years, to the best of my knowledge; nine or ten years.

Q. Did you see Mrs. Elizabeth L. Lees on the 16th of March, 1921? A. I would not be able to say it was on that day in March; it was in March, I think, 1921.

Q. Where did you see Mrs. Lees at that time? A. At the office of Mr. Brown.

Q. How did you come to be at Mr. Brown's office? A. I was requested to go there by Mrs. Lees.

Q. How did she request you to go there? A. Well, I have forgotten—she used to call at the office very frequently and by telephone.

Q. You had business transactions with Mrs. Lees? A. I did.

Q. I show you a paper writing and ask you if that is your signature? A. It is.

Q. Will you read what you have attested there? A. In witness whereof, I have hereunto set my hand and seal—

Q. No, the clause where you have signed your name. A. Signed, sealed, published and declared by the above named Elizabeth Lees to be her last will and testament in the presence of each of us, who, at her request and in her presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Q. Did you sign this paper at her request? A. I did.

Q. Is this Mrs. Lees' signature? A. Yes.

Q. Did you see her sign it? A. I did.

Q. Did you see the other two witnesses who signed their names sign? A. Why, there are two witnesses; I don't remember Mr. Frankenthal; there were two witnesses there.

Q. You saw them sign? A. I did.

Q. And they signed in the presence of the testator? A. Yes.

Q. (By the Court) You say two witnesses; you mean two witnesses besides yourself? A. Yes.

Q. And in your presence and in the presence of each other? A. Yes.

Q. And you heard Mrs. Lees publish and declare this to be her last will and testament and she requested you to act as a witness? A. Yes.

Q. Was Mrs. Lees of sound mind at the time she executed that will? A. Very much so.

Mr. Atwater: I would now like to offer the will in evidence.

Cross Examination by Mr. Kent:

Q. What time of the day did you go there at the office of Mr. Brown? A. I do not remember what time of day.

Q. When you came to the office you were immediately ushered into the room where Mrs. Lees was? A. I think I sent in my card or name to Mr. Brown and I do not remember any delay at all.

Q. Who was in the room besides Mrs. Lees and the witnesses that you mentioned? A. Miss Lees.

Q. You mean Miss Hough? A. Miss Hough.

Q. Was she there all the time? A. Yes.

Q. Positive about that? A. Quite.

The Court: Who is Miss Hough?

Mr. Kent: One of the chief legatees in this will.

Q. Did you hear the other witness testify that Mrs. Lees was the only one in the room outside of yourself and the witnesses? A. I just arrived.

Q. Has that ever been brought to your attention?

A. Not at all. Nobody has talked to me on the case.

Q. Did Miss Lees or Hough, as you call her, have any conversation with you? A. You mean at that time?

Q. Yes. A. I think she said, "How do you do, Mr. Pennock."

Q. You knew Miss Hough? A. Yes, I had met her at Mrs. Lees' house—home, rather.

Q. Did Mrs. Lees say she had read the will? A. Yes, she did; she did say so.

Q. To you? A. I do not know specifically to me. I understood the question was put to her. I do not remember much about that, but I am rather under the impression that she said she had read the will. Whether the question was asked or not I don't remember.

Q. How long were you there altogether? A. I think about a half an hour altogether.

Q. Did you remain after the will was executed? A. I, as usual, accompanied Mrs. Lees walking out with her and Miss Hough as far as Nassau Street, when I bid them good-bye, when they took the train across here to New Jersey; in other words, I didn't go all the way to the station. They said it was not necessary.

Q. You signed the will first, did you not, as a witness? A. I believe so, yes. Yes, I think I did.

Q. After the other witnesses signed it they immediately went out of the room, or did they all remain? A. I think they both went out of the room. I do not remember really—absolutely on that matter, but I think they both went out of the room.

Q. Did you have a conversation with Miss Hough after the execution of the will?

Q. (By the Court) Let us get this straight. You

say they both went out of the room? A. I think they were just called in.

Q. (By the Court) What I am getting at is did all three sign the will before anybody left the room, or did they leave the room before the other witnesses signed? Did you sign first? A. Yes.

Q. (By the Court) And then they signed? A. They signed.

Q. (By the Court) And was it after they signed they left the room? A. Yes.

Q. (By the Court) But they didn't sign until after you did? A. No, sir.

Q. Did you have a conversation with Miss Hough after the will was executed? A. No conversation with her, no. I probably said good-bye to her, and that is about all.

Q. You say you remained about a half an hour? A. I said the whole transaction was about a half an hour.

Q. And you say you walked with them to the Hudson Tubes? A. No, sir. I walked with them to Nassau and Liberty and said good-bye and saw them across the street, and they said it was not necessary for me to go to the station with them.

Q. Where is Mr. Brown's office? A. Liberty Street or William, or very near that; I don't know the number.

Q. Didn't you have any conversation with Miss Hough during that entire period? A. If I did it was on general matters, how are you, how are you enjoying yourself, how do you people like where you are living, just in general; I didn't say anything about the will, if that is what you mean.

Q. You said something in your direct examination about having business relations with the testator. A. Yes.

Q. And how long have you had business relations with her? A. I think nine or ten years.

Q. What did that consist of? A. She purchased annuities in my company through me.

Q. Were any of your transactions with Miss Hough or Miss Lees? A. No, not whatever.

Q. When prior to the execution of the will did you have a business transaction with her? A. As my memory serves me, I think the last annuity I sold her was, I think, about three years, but I have been to see her a number of times. My mother also called on her. I was very fond of Mrs. Lees.

Q. About three years before the execution of the will? A. I think about that.

Q. At that time was Miss Lees in charge of her household? A. I don't recollect.

Q. At any time when you went there was Mrs. Lees in charge of the household?

Mr. Atwater: I object to that question unless it is defined as to what that term means.

The Court: Well, cannot he state if she was in charge?

Mr. Atwater: I don't know what contention is made by the appellant as to her possession.

Q. (By the Court) Do you know what Miss Hough's position was? A. Yes.

Q. (By the Court) Well, what was her position? A. Companion.

Q. Do you know what her duties were? A. The ordinary duties of a companion to go out with her. Mrs. Lees had been lonely, had told me that she was lonely at times and Miss Hough came there to act as her companion, and I suppose nurse her in a—if needed.

Re-direct Examination by Mr. Atwater:

Q. Mr. Pennock, who else was present, if you remember, in Mr. Brown's besides the other sub-

scribing witnesses and Miss Lees? A. I think there was somebody at the desk at her left hand side, but I couldn't say who that was.

Q. Was Mr. Brown, Alfred S. Brown, present? A. Oh, yes.

Q. He was there during the whole time? A. Yes.

Q. And did you hear Mrs. Lees request the other two witnesses to subscribe their names to her will? A. I did.

Examined by the Court:

Q. You called on Mrs. Lees? A. Yes, I frequently did on annuities.

Q. And you say your mother called? A. Yes.

Q. Did you call with your mother or without your mother? A. I called not once but a good many years with my mother.

Q. How late did your calls include, up to the time of the will; that is, how soon before the execution of the will was the last call? A. Well, after Mrs. Lees left New York—my mother is old and she never went over there, but I went over there once or possibly twice, drove over in the car just to say how do you do to her and she called at my office several times, on various things, and asked my advice.

Q. How soon was that before she executed the will? A. Well, I think the last time my mother—

Q. No, you. A. It would be pure guess work on my part, because she used to come there once in a while unexpectedly within, I should say, six months.

Q. Within six months? A. Yes, she called at my office.

Q. And did you talk to her? A. Yes.

Q. What did you say when she called? A. I think it was concerning—sometimes trifling things, the

purchase of an automobile, or something of that kind, as to whether it was safe and what kind of an automobile and I remember that—some small things.

Q Well, did she come to see you for the purpose of discussing that? A. Among other things, but the other things were rather general; she was over in New York, to stop in and say how do you do to me, as I had done with her.

Q. And she discussed this automobile in the course of those conversations? A. That is but one of the talks.

Q. Now, can you remember the last talk had at your office? A. I think it had something to do, your Honor, with the house that they had bought—that she had bought, rather, over in New Jersey; I think she had rented it first and was going to buy it; that is my recollection; they come in to me with so many trifling things.

Q. Well, was it frequently that she consulted you outside of the will? A. Yes.

Q. In other words, she did not confine herself to purchasing annuities? A. No, I had sold her all she could buy.

Q. Oh, I see, she was all bought up at that time? A. Yes.

Q. Well, at all of these conversations with this lady did she appear rational or irrational to you? A. Rational; always rational.

The Court: I will mark the will in evidence, but wait until the conclusion of the case before admitting it to probate.

Paper marked Exhibit P-1.

Mr. Kent: I only want to raise this one suggestion: This witness is, I believe, the only witness who has more or less testified

as to the mental capacity of the decedent. One witness has theorically raised a question of the mental capacity of the testator. Under those circumstances I think the burden of going forward is for them to affirmatively establish to this court that this will is entitled to be probated and that it is not upon us at this time, at this stage of the hearing, to proceed with proof showing that she did not have either the mental capacity or that she was subject to undue influence that we claim she was.

The Court: Well, I did not get that impression.

ARTHUR R. LOVERIDGE, sworn in behalf of appellants.

Direct Examination by Mr. Kent:

Q. Where do you reside? A. Greenwich, Connecticut.

Q. And what relationship do you bear to the testator, Elizabeth Loveridge Lees? A. She was my aunt, my father's sister.

Q. How many brothers or sisters did your aunt, Mrs. Lees, the testator, have? A. Originally two brothers and one sister.

Q. And you are one of the descendants of the children of her brother, James R. Loveridge? A. James W.

Q. Besides yourself how many other brothers or sisters are there as descendants of your father living? A. My sister, Isabel H. Harden, my brother, Edgar H. Loveridge.

Q. Are they any descendants of a deceased brother of yours living? A. Yes.

Q. Will you please name him? A. My brother Charles, his son Lee.

Q. And did he also leave a widow surviving him? A. A widow, Agnes B. Loveridge.

Q. An aunt of yours, who is a sister of the testator, is also living? A. Harriet Loveridge.

Mr. Kent: With the court's permission, I have had a chart drawn. I think it would be much easier to have the witness follow the chart, because it was made by Mr. Loveridge and states the other legal heirs and descendants of the testator.

The Court: He may use that to refresh his recollection.

Q. Will you please tell us who are the descendants, or the heirs of Henry Loveridge, who is a brother of the testator? A. His wife, Marietta, deceased; one other Marion Patton Haffner, deceased; Helen Patton, left from the second marriage; Ludlow Patton Haffner and Loveridge Haffner, both alive. Her married name is Helen Porter.

Q. Now, Mr. Loveridge, will you—

Paper marked Ex. A-1 for identification.

Q. When did you last see the testator prior to her death? A. In about the year 1920.

Q. And where did you see her? A. At the home of my sister, Mrs. Harvey, in Rutherford.

Q. Will you please explain to the court just what your relations were with your aunt, Mrs. Lees, from that time and prior thereto? A. Well, by force of circumstances, my living in Greenwich, and she living in East Orange, or the environments of New Jersey, we did not see very much of each other, and due in part to the fact that she was an invalid.

Q. Were your relations with her cordial? A. They were distinctly cordial.

Q. And prior to her living in East Orange do you know where she lived? A. She lived at the Hotel Beresford, 81st Street and Central Park West.

Q. Did you have occasion to visit her there? A. I did.

Q. And were your relations with her pleasant or unpleasant at that time? A. Always cordial.

Q. Did you know or come to know during any part of the time you visited your aunt at the Beresford or when you saw her in New Jersey one Miranda Hough? A. I did.

Q. How long have you known her? A. Why, I have known her for a great many years, in this way, Mrs. Lees' husband, James Lees, died an invalid. He died, I think, in 1914, and for the last year or more prior to his death Miranda Hough was acting in the capacity of a trained attendant for him. I got acquainted with her at that time, met her on one of my visits at their home while my uncle was still alive. After my uncle died Miss Hough left the employ of the Lees. About a year later she came back as a companion to my aunt Lizzie. She was alone, without children, living by herself in the Beresford.

Q. And in what capacity did she remain with the Lees? A. It was stated to me by Mrs. Lees that she was engaged as a companion.

Q. At a salary? A. At a salary.

Q. Do you know what her salary was? A. I don't know.

Q. Do you know whether she continued from that time on? A. I have no knowledge of anything to lead me to believe otherwise.

Q. When you visited the Beresford she was there

at all times? A. Well, she was not always there at the Beresford when I visited, because she might have been out on business.

Q. But you knew she was in the employ— A. She was in the employ of Mrs. Lees during the time that Mrs. Lees lived at the Beresford.

Q. Do you know of any occasion where you went to the Beresford and inquired for your aunt and there met Miss Hough? A. I do.

Q. Will you please explain and state to the Court what your conversation was with her at those times? A. In the spring of 1918 and prior to that time Mrs. Harvey, my sister, had represented to me in conversation that Mrs. Lees was failing rapidly in health.

Mr. Atwater: I object to that.

The Court: Well, all right. I will sustain the objection.

A. I went to the Beresford.

The Court: Go ahead. Your objection is sustained.

A. (Continuing) I went to the Beresford to visit my aunt, and, as was customary, sent up my name. Miss Hough came down to the desk and stated to me that Mrs. Lees—

Mr. Atwater: Now, if the court please, I object to this on the same ground.

The Court: No, Miss Hough, I suppose, is supposed to have exercised the undue influence and this testimony is to show that she prevented the relative—

A. (Continuing) Miss Hough came down to the desk of the Hotel Beresford and stated to me substantially this, Mrs. Lees' physical condition is such that the excitement, which would be provoked by a visit except by those in constant attendance upon her might prove very serious to herself, and she asserted to me most definitely, notwithstanding my urging to see my aunt, that she would not permit me to do so.

Q. In what year was that? A. That was in the spring of 1918.

Q. (By the Court) What did she say? A. She said that the effect of the visit by one who was not in constant attendance upon my aunt might prove very serious to my aunt.

Q. And after that visit in the spring of 1918 did you attempt to visit your aunt at the Beresford? A. I did not.

Q. Did you attempt to go there at all after the year 1918? A. I did not, because I had knowledge of the fact that they had moved to Jersey.

Q. Did you see Miss Hough at any time after that episode of 1918? A. I do not recall having seen Miss Hough after that time.

Q. Prior to the spring of 1918 when did you see your aunt, Mrs. Lees? A. Occasionally when we were invited there—when I was invited there.

Q. How long prior to the spring of 1918 did you last see her at the Beresford? A. Why, it was sometime—probably two or three years.

Q. And what was her physical condition at that time, if you know? A. Her physical condition was that of a woman who was ageing very rapidly.

Q. You said that you saw her some time at the Harveys in Rutherford? A. I did.

Q. And what year was that? A. To the best of my recollection that was in the summer of 1920, either the early summer or the early fall.

Q. (By the Court) Where was this? A. At Rutherford.

Mr. Kent: Rutherford, New Jersey.

Q. Who was present at that time besides yourself and Mrs. Lees? A. Mrs. Harvey.

Q. And will you please state to the court what was Mrs. Lees' physical and mental condition at that time? A. Her mental condition was one of inertia, her physical condition was one of disability; she was an old woman, broken in health and mind, unable to conduct a conversation with me intelligently.

Q. Do you know what she was suffering from? A. I don't know what she was suffering from; I have ideas.

Q. Did you at that time have any conversation with Mrs. Harvey, your sister? A. I did.

Q. In reference to Mrs. Lees? A. Not in reference to Mrs. Lees. I called on my sister at that time. I do not know just why, but it was not unusual for me to call upon my sister. At this particular time Mrs. Lees was there and she was sitting on the porch and I endeavored to have a converation with her and found it quite impossible, and I left Mrs. Harvey's home, from that point I had no conversation with Mrs. Harvey aside at that particular time, made no comment about Mrs. Lees, nor did she make any comment to me.

Q. Now, you say you attempted to carry on a conversation with Mrs. Lees? A. I did.

Q. Now, have you any recollection of what conversation you attempted to carry on with her, or what was her response, if any? A. I endeavored to carry on a conversation with her regarding the then topics of the day. I had had intimations, di-

rect statements from my sister, Mrs. Harvey, relating—

Mr. Atwater: I object to that.

The Court: All right. You better not tell that.

A. (Continuing) I endeavored to converse with her on the then topics of the day, but I found her entirely unresponsive.

Q. What else did you say to her, if anything? A. Why, I don't recall what else I said to her.

Q. (By the Court) Did you ask anything about any of her relatives? A. I don't think I discussed any of her relatives at that time.

Q. (By the Court) Did you ask anything about her property? A. I discussed nothing about her property.

Q. Now, how old was Mrs. Lees at the time you saw her in Rutherford? A. She must have been about eighty years old.

Q. Did any members of your family, or Mrs. Lees' family, ever come to you with certain information concerning her physical and mental status? A. They did.

Q. Which one? A. Mrs. Harvey.

Q. Is she one of the legatees named in the will? A. She is.

Q. And what did Mrs. Harvey say to you concerning the physical and mental condition of Mrs. Lees?

Mr. Atwater: I object to that.

The Court: I sustain the objection.

Mr. Kent: Part of our case is that undue influence was exercised, among other persons Mrs. Harvey and that Mrs. Harvey had knowledge of this old lady's condition and

that she brought this condition home to Mr. Loveridge. Among other things we will attempt to show that she brought to him a doctor's certificate of the family physician showing that she was incapable of sound judgment and discretion from a first rate reputable physician and that was long prior to the execution of the will.

The Court: Do you want to show the knowledge of this lady, that the mental attitude relating as to the condition of the testator, had bearing upon the probability, or possibility of her having exercised undue influence over her mind?

Mr. Kent: Absolutely, with the statement that she had made and what she was attempting to do and what Miranda Hough was attempting to do.

The Court: The evidence, as I understand it, is not offered to show the actual mental condition of the deceased, but merely to show the attitude of this particular legatee you mention, being that if the legatee knew that the deceased was mentally weak the probabilities of attempting to influence her might be greater than if she did not know anything about that.

Mr. Kent: And the probability of success so much greater.

The Court: I will allow you to show it for that limited purpose.

A. On various occasions from 1918 on, from the time that I saw Mrs. Lees at my sister's house in Rutherford, my sister, in conversation with me, had stated to me that she was convinced that Mrs. Lees was failing mentally and physically. She was also

convinced, she stated to me—I am repeating conversations now as nearly as I can recollect them—that Mrs. Lees was subject to the domination of one Miranda Hough and she expressed great apprehension. She came to me in October, 1920, specifically by appointment, and asked me if I would undertake to institute proceedings to have a guardian appointed to administer the affairs of Elizabeth Lees. I said, "Well, what is the idea?" she said, "I have been to Mr. Brown, who has told that that is the only way in which Mrs. Lees' estate can be preserved against the foils and ambitions of one Miranda Hough." "Well," I said, "Mr. Brown has given you a large order." I said, "It is very well for me or anybody to start proceedings to have a guardian appointed for Mrs. Lees, but to have that guardianship concluded successfully will involve a great deal or more than I want to undertake, because," I said, "personally I am not interested in Mrs. Lees' estate. If she is being abused, that is one thing, but if she has placed herself in the hands of Miss Hough or anybody else, that is not my concern." I said, "What have you to substantiate this contention of yours?" She said, "I have a certificate from a doctor, wihch states she is incapable of attending to her own affairs." I said, "If you will send that to me I will look it over and take it under advisement," and she subsequently sent me such a certificate.

Q. (By the Court) Who signed that certificate A. Dr. Edward P. Swift.

Q. Of 170 West 88th Street, New York. Now, I show you a letter, with certificate attached, and I ask you if that is the letter you received from your sister? A. That is.

Mr. Kent: I wish to offer both the certificate and the letter in evidence.

The Witness: The first paragraph and the P. S. on the front page are the only matters that relate to this case. The other is all extraneous to this case.

Mr. Kent: Since the letter does not refer to anything I think it better to simply offer the certificate in evidence.

Mr. Atwater: I would rather have it offered.

Paper and letter marked Exhibit A-2.

The Witness: Some few days after this luncheon engagement I had with my sister and the conversation I just referred to, I received this letter from her enclosing this certificate from Dr. Swift, and in her letter accompanying it she admonished me to burn the letter up and to make a copy of the certificate and return it to her promptly.

Mr. Atwater: I object to this. The letter speaks for itself.

Q. What, if anything, did you do after that? A. I subsequently and promptly advised my sister that I did not desire to have any participation in having a guardian appointed for Mrs. Lees' estate, but in view of the fact of what she had related to me and what I had observed on my last visit with Mrs. Lees at her home I was convinced that this certificate of the doctor might be very valuable at some particular time and I would preserve it carefully until that day arrived.

Q. Did you have any subsequent conversations with Mrs. Harvey? A. Yes, innumerable conversations with Mrs. Harvey.

Q. With reference to Miranda Hough and Mrs. Lees? A. She had informed me from time to time subsequent to that day.

Mr. Atwater: I object to this.

The Court: Well, the only element or purpose of this testimony is to show that Mrs. Harvey regarded the testator as susceptible to influence. That is all.

Witness: She stated to me that she was visiting on Lizzie one day and Miranda came in and it was announced that Mrs. Lees had adopted Miranda. My sister stated to me that she expressed great surprise at any such procedure and when Miranda temporarily left the room she said why did you do it. Mrs. Lees said if I had not done it I could not have kept her. Mrs. Lees thereupon took from her finger two diamond rings and placed them on my sister's hand and then Miranda came back with an envelope which Mrs. Lees handed to my sister which contained a check to her order for one thousand dollars, and she came to ask me whether she could afford to spend it or not, whether she would get into trouble if she spent the money.

Mr. Atwater: I move that be stricken out.

The Court: Well, that part—well, I don't know. I cannot strike all that out. I might possibly strike out a part. Your motion is addressed to all?

Mr. Atwater: My motion is addressed to all.

The Court: Is not this competent to show she received a check for one thousand dollars?

Mr. Atwater: It might be proper after Mrs. Harvey's examination, but it certainly is not at this time.

The Court: Well, if it turns out later to

be entirely improper you can move to strike it out then, but it may have some bearing on Mrs. Harvey, that after she received this thousand dollars her attitude changed.

Witness: On all of the occasions since 1920 that I have had any conversation with my sister the chief topic of conversation has been the dominating influence of Miranda over Elizabeth Lees and the fear that such domination would result in depriving Mrs. Harvey, as she expressed it, what she worked so hard to get, having reference to her interest under this will.

The Court: Well, did these conversations continue after the conversation in which she received a thousand dollar check?

Witness: Yes, sir.

Q. You said something about your sister asking you whether she should cash that check and that she was afraid she would have to return it. A. She did.

Q. What conversation preceded that? A. The conversation just referred to, in which she explained how she got this check. She asked me what she better do, and whether it was safe to use the money. I told her if I was in her place I would put it in a safe deposit box and place it in the estate after the old lady died.

Q. Was her fear based upon the fact that Mrs. Lees did not have mental capacity at that time?

Mr. Atwater: I object.

The Court: No, that is going too far.

Mr. Kent: I will withdraw that.

Q. Did she tell you why she was afraid to cash that?

Mr. Atwater: I object to that.
The Court: That may be a little leading.

A. She told me she was fearful of possible criticism. On another occasion, in my conversation with Mrs. Harvey, she stated to me—

Mr. Atwater: I would like to have these conversations fixed as to time.
The Court: Yes.

A. We will fix this conversation, if the court please, on or about the middle of October, 1920. As a result of which she sent me this letter, in which she stated that Robert Hough and Miranda Hough were the finest bunch of crooks she had ever found in her life.

Q. You say that that conversation was in the latter part of 1920? A. It was in October, 1920.

Q. Do you know what conversation of your sister preceded the remark you last made? A. Why, it was sort of a climax to a general discussion of the ambitions of Miranda Hough.

Q. Was there any conversation in reference to any will? A. There was.

Q. Will you please tell us what that conversation was? A. That Aunt Lizzie was about to make a new will and the apprehension was expressed as to how she might be taken care of in that will, and that she went to Aunt Lizzie, or that she found that Robert Hough was to be made an executor of this estate and stated to Aunt Lizzie, "Why do you select an outsider, have you no relatives that you wish to administer your estate when you are gone?" and Aunt Lizzie said, "Well, I might appoint James," being her husband, and she said, "James might not care to serve, but James took it under advisement, apparently, and is serving.

Q. Did you have any conversation with Mrs. Harvey about the so-called adoption of Miss Hoff? A. I did. Mrs. Harvey stated to me that aunt Lizzie had adopted Mrs. Hough, or Miss Hough, I said, "How do you know?" She said, "She told me so." I said, "Was that a legal adoption?" She said, "Aunt Lizzie and Miss Hoff went to see Mr. Brown. Mr. Brown was their personal counsel, and discussed the matter with Mr. Brown and Mr. Brown stated that he was not permitted to practice in the State of New Jersey and could not institute such proceedings if he wanted to. He referred them to their minister and he in turn referred them to a local justice of the peace, who expressed the opinion that while the Jersey law stated that one over twenty-one could not be adopted it did not say that he could not, but it did not say you could not—it did not say you could or words to that effect, and he gave it as his opinion if Mrs. Lees was desirous of adopting Miranda Hough all she had to do was to say so and she got out announcements that she had adopted Miranda Hough who was pleased to assume the name Miranda Hough Lees.

Q. When was that? A. I do not know when that was consummated.

Q. Was that after you received the certificate of the doctor? A. I am not sure whether that was before or after the time I received the certificate from my sister.

Q. But it was around or about that time? A. As I recall it it was around about that time.

Cross Examination by Mr. Brown:

Q. You are not on very good terms with your sister, Mrs. Harvey? A. I am on the best of terms possible.

Q. You feel a great deal of affection for her? A. I have no feeling against her except pity.

Q. For what? A. Her foolishness.

Q. In what respect? A. In all respects.

Q. Specify them? A. In taking the position she did with me.

Q. What position was that? A. Of umbrage.

Q. Did she show umbrage? A. She has.

Q. To whom expressed, you? A. Yes.

Q. For what? A. For my position in this case.

Q. Well, prior to the death of Mrs. Lees how did you feel toward her? A. I have never felt anyway but the one way for her.

Q. In what respect? A. Brotherly love and affection.

Q. Would you like to see her get the provision provided for her in this will? A. I have no ambition to take anything away from anybody that is entitled to a part of this estate.

Q. You would like to see Mrs. Harvey get this provision? A. She is entitled to what she is entitled to legally and I will help her.

Q. Well, would you help her get this provision in Mrs. Lees will? A. I think I am demonstrating—

The Court: The court will take care of that.

Q. When did you last call upon Mrs. Harvey? A. I think the last time that I saw Mrs. Harvey was a couple of weeks after Mrs. Lees was buried.

Q. Did you attend Mrs. Lees funeral? A. I did not. I got notice of it the night before and the funeral service was at nine o'clock, and had I wished to it would be almost impossible for me to get there.

Q. You knew of her death? A. I was called up by Mrs. Harvey, who told me about it.

Q. When did she tell you? A. She invited me out there the night before to spend the night.

Q. And you didn't go? A. I didn't take advantage of her invitation.

Q. Were you acquainted with Mr. Lees, James E. Lees, Mrs. Lees' husband? A. Yes.

Q. How long had you known him? A. From my infancy until he died.

Q. Did you have any business transactions with him? A. Never.

Q. You never requested him to loan you any money, did you? A. I did not.

Q. You spoke of the local justice of the peace that attended to the adoption proceedings for Mrs. Lees. A. That was the information my sister gave me.

Q. Do you know who the justice of the peace was? A. Judge something—

Q. Judge Davis? A. I believe it was.

Q. Judge Thomas A. Davis? A. Yes.

Q. Are you acquainted with him at all? A. I don't know him.

Q. Do you know when Mr. Lees died? A. My recollection is that he died in 1914; I may be in error.

Q. Were you in the habit of calling upon Mr. and Mrs. Lees during the lifetime of Mr. Lees? A. I had. They called on us and we called on them.

Q. And after Mr. Lees' death how frequently did you call on Mrs. Lees? A. Why, occasionally.

Q. How often would that be ? A. Possibly a year apart.

Q. And she was living at the Beresford? A. Yes.

Q. In New York City, and where were you living? A. Cranford, New Jersey, Scarsdale, New York, Greenwich, Connecticut.

HARRIET LOVERIDGE, sworn in behalf of appellant.

Direct Examination by Mr. Kent:

Q. Miss Loveridge, you are a sister of the testator? A. I am.

Q. And where do you reside? A. In Rutherford, New Jersey.

Q. You have been living in Rutherford for a considerable period, have you not? A. Only for about eight years, eight or nine years.

Q. Did you, in the year 1918, have occasion to see your sister? A. I did.

Q. And have occasion to converse with her and observe her? A. Yes.

Q. What part of the year 1918 did you see her? A. It was on the 1st day of October.

Q. And where did you see her? A. In my home.

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

Q. Now, just tell us what her mental and physical condition at the time was, if you know? A. Well, as to the conversation I would hardly call it, sir, a conversation. She was not what I would say equal to a conversation, which implies talking on both sides. She was conscious of questions that were put to her and her reply, but there was no enlargement upon the conversation nor any offering on her part of any other subjects.

Q. Did that condition, which you observed in the year 1918, continue afterwards, or did it get better or worse? A. It continued to increase, the incapacity for speech. I mean for a continued speech.

Mr. Atwater: I would like to have the time fixed a little more definitely.

The Court: Yes. The first conversation was 1918?

Witness: 1918, yes, sir.

The Court: And the second conversation, will you please say when that was?

Witness: Well, the second occurrence when I saw my sister was the following year.

The Court: That would be in—

Witness: 1919. In the summer or early fall.

Q. And where did you see her? A. Both in Mrs. Harvey's home and in my own.

Q. And you observed her condition in 1919? A. She was less able, I think, at that time, than when I saw her in 1918 and there were additional peculiarities about her.

Q. What were they? A. Well, during—I had invited them to lunch, to spend the day, and while we were all talking together, that is, Mrs. Harvey and myself and my sister joining in with a yes or no, she sank back in the chair and was unconscious. Mrs. Harvey and I looked at each other and made no remark and went on with our own conversation and when my sister recovered herself she made no reference to this lapse on her part.

Q. (By the Court) What was that, she was asleep? A. Well, I presume asleep or drowsiness.

Q. (By the Court) She didn't alarm you at all? A. No, not at all. It was simply unconsciousness of what was going on.

Q. Well, what else did you notice at that time? A. Well, more inactivity on her part, that is, she did not like being disturbed; it was very difficult to arouse her, to move her from one place to another; she was very inert, both in words and in body.

Q. Go on. A. Well, I don't know if there is any more to go on. She took no part in the conversations. My companion and I brought out our fancy work and called her attention to it. She would say yes, very nice. "Don't you knit any, Libby?" I said, that was her home name. "Oh, Miss Hough does all that." She did not seem interested in anything.

Q. After 1919 did you see her? A. I saw her each following year.

Q. Where? A. Up to the time of her death. I saw her once or twice each following year either in Mrs. Harvey's home or mine and in her own home.

Q. What did you observe her condition to be in the year 1920 when you saw her? A. Well, it was this same condition, only enlarged, I should say, increased.

Q. Was she able in 1920 to carry on a conversation? A. Not to my mind. She did not carry on any conversation in my presence and there was an additional peculiarity which I observed. She had lost her general courteous behavior. As soon as she sat down in my parlor she said to my niece, Mrs. Harvey, "Belle, straighten that picture," referring to a small picture that hung over the piano. I said, "Why, Libby, I don't think Belle can fix that picture." "Oh, yes, she can; Belle straighten that picture." It was very abrupt, her manner. I said, "Here, Ida will be in here tomorrow dusting, she will attend to it then, she will have the step ladder," and she said, "Did you hear me, straighten that picture," and she was not satisfied until Mrs. Harvey took something and moved the picture.

Q. Did that straighten the picture? A. It did not, because the wire had not been altered, but it satisfied her, and then after lunch we had some

music, Mrs. Harvey was very kind and nice; she played at her request. My sister would say, "Now, play mother," and she would respond with what was supposed to be my mother's favorite tune, and then when that was finished she would say, "Now, play salvation. Now, play mine, and now play little songs, "and Mrs. Harvey said, "I don't think I have that memorized, and she said, "Yes, you can," and Mrs. Harvey responded with another selection, but I don't think it was memorized, but it seemed to satisfy my sister and she continued to play songs my sister commanded the execution of each.

Q. Did you see her in 1921? A. Yes.

Q. Did her condition improve or not? A. It was not improved. I think this same spirit of discourtesy was prominent.

Mr. Atwater. I would like to know what time in 1921.

Q. Could you fix the period? A. In the summer, I think. It was the time she was in the habit of making a visit to Mrs. Harvey. Since her husband's death she was in the habit of staying with Mrs. Harvey and during that time I visited her and invited them to my home.

Q. (By the Court) Who is Mrs. Harvey? A. She is my niece.

Q. (By the Court) Whose daughter is she? A. She is the daughter of my oldest brother, James.

Q. Mrs. Harvey is the sister of Mr. Loveridge who was on the stand? A. She is a sister of Arthur. Well, in 1921 I called upon her as usual, as I always did when I knew she was there, and during my stay I asked Elizabeth Harvey, the daughter, if she would favor me with a selection on the piano.

Elizabeth responded very pleasantly, and before she had barely gotten into her selection my sister said, "Belle, I want you and Elizabeth to play that what you played last night." I said, "Why, Libby, Elizabeth is playing." "Belle, get that music; I want you and Elizabeth to play what you played last night, Belle get that music," and Mrs. Harvey responded and got the music and Elizabeth was interrupted, and Mrs. Harvey and her daughter played this selection which seemed to satisfy her at the time. Now, before leaving I invited them to have lunch with me. By that I mean Mrs. Harvey, Elizabeth and my sister. They chose a day which was convenient to them and on the morning of that day when I was expecting them I was called to the 'phone by Mrs. Harvey who said, "Aunt Hattie, I don't think we will be able to come today." "Why not," said I. "Well, Aunt Lizzie has been coughing through the night and I think I shall call in the doctor." "Well," I said, "I shall like to know what his opinion is." "I will keep you informed," Mrs. Harvey said. So after waiting until ten o'clock, or after, I went to the 'phone and called Mrs. Harvey. I said, "What is the doctor's opinion of my sister?—of aunt Libby, as we called her." "Oh, she has gone home." "What," said I. "Yes." "How did she go?" "Miranda came with the automobile and took her home." I said, "Did she leave no message for me?" "No." I left the telephone—I said boodbye and left the telephone.

Q. Did you see her after? A. I did.

Q. Will you please tell us what her condition was then? A. I did.

Q. When after that did you see her? A. I saw her on the 8th of September, 1922. Miss Hough brought her to my home. Miss Hough came previous on the same day and I saw her for the first

time. I had never met Miss Hough before. She came to tell me she was going to bring my sister to see me. She had left her at Mrs. Harvey's in the meantime. I said to Miss Hough, "I am glad to meet you, Miss Hough. "At least, I didn't address her as Miss Hough. I said, "How shall I address you?" because I had heard of this so-called adoption. "Oh, call me Miranda,' 'she said, "and I will be very glad if I can call you aunt Hattie." I did not respond to that, so she continued to call me Miss Loveridge, which was to my liking. I said, "Miranda, I am very glad to meet you." I said, "I often would have liked to be informed as to my sister's condition." I said, "How do you think she is?" she said, "I think she is comfortable." I said, "Don't you think she has degeneration of the kidneys?" "Oh, I don't know, it may be possible." "Have you a physician who looks her over occasionally?" "Why, I don't think that is necessary," she said. "If he came one day she would want him the next." I said, "Well, at least I hope you have someone on whom you could call in case of an emergency." She said, "Oh, yes, I have that." I told her I appreciated the care she had taken of my sister, because her appearance indicated that she was very well taken care of. I give her credit for that. But I said, "I think, Miranda, I think you should have some additional help in the house. I think the care of my sister is all that you should attend to, and as I understand you are also doing all the housework. I think it must necessitate that my sister is often alone, which I think is not good for her mental condition." "Oh," said she, "Mother is never alone." Those were her words, though I could not understand at the time how that could be. However, she assured me that she was never alone and then she went on to say, "I am going to bring

her here today." "Today?" said I. She said, "Yes." She said, "Mrs. Harvey and I are going to the florist to order some shrubs and on my return I shall bring your sister to see you." "I shall be very happy to see her," I said. It was about—I think it must have been three or four o'clock before she returned with my sister. She brought her in and my sister did not know me. She called me Bessie. Would have it that I was Bessie. That was my brother's wife who had long since been dead. Miranda put her hand on me and said, "This is Hattie, mother, this is Hattie," and notwithstanding that I was Bessie to my sister. Of course, there was no conversation at that time between my sister, between me and my sister; that is, no continued conversation. I asked how she was. I do not remember that she replied, though she had called me Bessie. They stayed, I think, for an hour or more. I had a little refreshment brought in and what was handed to my sister she kept in her hand, she did not attempt to partake of it, and Miranda said, "Aren't you going to drink the lemonade?" She said, "I guess so," but she did not drink it, nor did she eat the cake. She simply sat and looked vacant. That is the best description I can give her, and when she was about to go she did say—I think it was at that time—yes, it was then—"I want you to come Friday and have lunch with me and bring Ida with you." Ida is my companion and housekeeper. I said, "Yes, I thank you, I will with pleasure."

Q. (By the Court) Who asked you to do that? A. My sister said that on leaving. It was her habit. My sister had given her life largely to entertainment and on leaving she would generally say, "I want you to have lunch with me on Friday." That was her favorite day.

Q. You had never gone to luncheon at her house?
A. What, sir?
Q. You had never gone to luncheon at her house?
A. Not up to that time.
Q. (By the Court) Did you go at that time?
A. Both this Miss Ida Brown and I were ready on that Friday and the telephone called me—Miss Hough or Miranda, as I call her, was at the telephone. "Is this Miss Loveridge?" "Yes." "Well, Miss Loveridge, were you counting on coming today?" "Why, certainly, both Ida and I were ready." "Well, would it discommode you very much if it is postponed?" "Well, not if it is more convenient for you." "Well," she said, "It is much more convenient for me. I have had my work rolling upon me and I have a large wash to do and if it would be just as agreeable I would like to postpone it." "Very well," I said, "at your pleasure."
Q. That is the last you saw of your sister? A. No, sir; it was not.
Q. When did you see her again? A. I think it was this Friday we wore to have gone on the 11th, and the week following, a day or two before that, Miranda called up on the 'phone and said, "Now, I want you and Ida to come on Friday and have lunch at the Rainbow Cottage," and I said, "I shall be glad to come." I said, "Does my sister know that we are invited?" "Oh, yes," "Mr. Smith will be there and Mrs. Smith and Harvey," and she mentioned a number of names. I said, "Is my sister aware that we are all coming?" And she said, "Oh, yes." I said, "Shall I ask Will?" That was Mr. Smith, and Hattie, that was myself, and Harvey, and she said, "Yes," and so she went on through the list of names, which indicated that she made the selection and my sister gave her assent and I said we would be pleased to come, and she said,

"I will send Mr. Totten over for you in the automobile, and Bill and Agnes were also coming and he will bring you all over. We went and I think we sat down eleven at the table and Ida was the twelfth. She waited on the table. My sister sat at the head and I heard her say nothing during the entire meal. All that I heard her say during that entire visit was a welcome as we came in, "How do you do." "I am glad to see you," and "I am glad to hear from everyone," and when we were about to depart he had that same invitation, "Now, I want you all to come next Friday for lunch." Of course, no one there went to lunch next Friday. They all knew that it was her habit of inviting people to come to lunch next Friday. Well, we had conversation among ourselves, in which my sister did not participate at all, as I told you, and that remark she made when we entered and I heard her say, "I won't" to Miss Hough, who wished to take her from one room to another. "I won't; I don't want to go; I won't go," and to Mr. Smith, who said, "Now, Lillie, you are going to sing for me, aren't you?" "No, I won't." "Why, Lizzie, is that a nice way to speak to me?" "Now, aren't you going to sing for me?" "I guess so" and her goodbye. Then, there was one incident that happened in between. I sat at her side and put my hand down on her and I said, "Libby, don't you think you and I could sing one of mother's little songs?" and she said, "I guess so."

Q. Never mind that. A. Well, I included that to show that that was the entire amount that she said.

Q. In the year 1918 was your sister mentally capable of attending to her affairs and her business affairs, if you know? A. I never had any conversation with my sister on her business affairs.

Q. Well, from what you observed of her during the year 1918? A. I would not have liked her to have attended to mine.

Q. During the year '19? A. Incompetent. Can I tell you what I had heard?

Q. No, not yet. A. That did not concern me in my judgment, however.

Q. From what you observed of her in 1918 and 1919 she was not competent to manage her affairs? A. Not at all.

Q. And in 1920 did it become more pronounced? A. As the years went by, each succeeding year it was.

Q. Did you at any time in the year 1919, or thereabouts, have a conversation with Mrs. Harvey with reference to Mrs. Lees' mental condition? A. There were frequent talks between Mrs. Harvey and myself on my sister's condition.

Q. And when did the talks first start about her mental condition? A. Where?

Q. When, what year? A. Well, in all those years, sir.

Q. From 1918 on, you mean? A. Yes, from 1918 on.

Q. And what did Mrs. Harvey say to you in 1918? A. Well, from 1918 I heard—

Mr. Atwater: I object to this.

A. (Continuing) From 1918—no, I wouldn't say heard—Mrs. Harvey said—well, practically said, I don't know that she said it in these words, that Miss Hough was gaining ascendancy over my sister, so much so that it had been noticed in the Hotel Beresford and someone there—I don't know whether a resident or not, but someone had asked if she could not do something to get her aunt out of the clutches of that woman.

Q. You say that was about 1918? A. Thereabouts.

Q. What other conversation did you have? A. Mrs. Harvey has told me, or had told me during those years, that my sister was incompetent to manage her bank account or check book, that she made no entries on the stubs, that she complained that she had accompanied her to the trust company where she kept her account and had complained to one of the officials of the bank that her balance sheet was not correct. She had taken with her a very few of the vouchers, and the bank official said, "Well, Mrs. Lees, I cannot do anything with so few vouchers, but if you will come again some time and bring all of your vouchers I will look it over for you." Mrs. Harvey has also told me that she was in the habit of accompanying my sister in those years, I think it was up to 1921; at all events, to the bank and the safe deposit box and that my sister had, I think she said, $10,000 in Liberty bonds in the bottom of her box, of which she had no cognizance. Now, up to that time, as I say, she had been in the habit of accompanying my sister—

Mr. Atwater: I would like to have that time fixed.

The Court: Fix the time.

A. Well, say 1920. Mrs. Harvey had been in the habit of accompanying my sister to the bank and safe deposit box and she had occasion to go there by herself to deposit something for my sister and she took occasion to make a list of the securities. She also learned about that time—I think it was on this same occasion she had asked if Mrs. Lees had been to the safe deposit box. She was told yes by one of the officials.

Mr. Atwater: I object to this. It is going pretty far.

Mr. Kent: I will not continue along this line. I will stop here.

Q. In what year did any member of the family come to you in reference to having a guardian appointed for your sister? A. Well, Mrs. Harvey had been to me on two occasions. On one occasion she herself told me that my sister was in need of a guardian.

Q. What year was that? A. I think it was in 1920.

Q. Will you please give us the entire conversation? A. I can give you the meaning of it.

Q. If you please. A. Well, she had related these incidents that I have spoken of and had told me also of a note or a statement that she had had from Dr. Swift, which asserted that my sister was incompetent—mentally incompetent—and she added, "And you being her nearest kin are the proper one to apply for this guardianship." I said, "I will never have anything to do with my sister's financial affairs, but, if I should ever know that she was not well taken care of I would have something to say." Then the other time when it was referred to she had repeated that a Mr. Brown, my sister's lawyer, had said the only thing that could be done was to have a guardian appointed. I made the same reply, that I would have nothing to do with it, and I added at that time, "Do you know what that implies?" I think she said no. I said it would mean that my sister would have to be produced in court and examined and adjudged to be imbecile. "Oh, then, I would not have it done." I would not subject her to that. "Well," I said, "that is what it would mean." I said, "I

will have nothing to do with her money matters."

Q. Did you have any conversation with her in reference to her relations with Miranda Hough?
A. With whom?

Q. Miss Hough, about that time?

Mr. Atwater: I object to this.

The Court: A conversation with Miranda Hough?

Mr. Kent: Mrs. Harvey.

A. Excuse me, I don't quite understand.

The Court: Well, the witness does not understand the question, so maybe you better ask it over.

Q. Did Mrs. Harvey tell you anything about her relations with Miranda Hough in reference to the conduct and management of the estate and the assets of the estate?

Mr. Atwater: Whose relations?

Mr. Kent: The two of them?

A. Yes, there were one or two items, one was—well, I don't know; it was in reference to Miss Hough, but I do not know that it was with Miss Hough.

The Court: No. He did not ask you for conversations. He is asking you for a conversation relating to Mrs. Harvey and Miss Hough's relations in general with reference to this estate, or with reference to this lady who is now dead, Mrs. Lees.

A. Well, she had remarked—she had said, "I don't think I will ever see a dollar of it."

Mr. Atwater: Who?

Witness: Mrs. Harvey had said more than once to me, after referring to Miss Hough.

Q. Had she at any time spoken to you about a man by the name of Benjamin Epstein? A. Yes, sir. I was going to speak of that, but I didn't know whether at the time it would relate to your question.

Q. Well, will you please tell us that incident? A. Yes. Mrs. Harvey told me that Mr. Benjamin Epstein had informed her that Miss Hough had offered to sell him 100 shares, or her 100 shares, of the Lees Manufacturing stock, on condition that any benefit or dividend accruing thereon should be paid to Mrs. Lees during her life. This 100 shares of stock were not in Miss Hough's possession. It was the 100 shares of which she was legatee under the will.

Q. And that was before the death of your sister? A. Certainly, sir, certainly.

Q. Did you ever have a conversation with Miss Hough in reference to what Mr. Brown, the attorney for Mrs. Lees had said to her about Miranda Hough and her brother? A. Yes.

Mr. Atwater: I do not understand that question.

Witness: Mrs. Harvey had told me that Mr. Brown had said that Miss Hough and her brother were two of the boldest thieves she had ever encountered. Now, I will say, if I have not selected the exact words—

The Court: Let me get that. Mrs. Harvey said that Mr. Brown said—

Witness: Yes, that Miss Hough and her brother were two of the boldest thieves—I

am sure the word thieves was used—that he had ever encountered.

Q. Now, Miss Loveridge, did you at any time have a conversation with Miss Hough in reference to the so-called adoption proceedings? A. Yes, I did.

Q. Will you please relate that conversation? A. On this first call of hers—it was the first time I had ever seen her and she had asked me to call her Miranda—I said, "Miranda, you will excuse me, as Mrs. Lees sister, for asking you, why you chose to have your name changed." She said it was to prevent interference, "and may I ask why that so-called adoption was ever taken?" "Yes, it was to prevent having a guardian appointed." "Had you any fear of such a thing?" "Yes, it had been spoken of." I said, "But you must have known that the law of New Jersey does not allow the adoption of an adult." "Well," she said, "We went to Mr. Brown who said he could not act, as he was only entitled to act in New York. Then we went to Mr. Hunt of East Orange—he is a Unitarian minister there—and he advised us to go to Justice Davis. Justice Davis gave it as his opinion that while the law of New Jersey did not make provision for the adoption of an adult it did not forbid it and he though if both parties were agreeable it would pass.

Q. Now, she said she had her name changed or so-called adoption gone through to stop interference? A. Yes.

Q. Whose interference did she mean? A. Well, now, that I didn't ask. You see, I didn't know that these proceedings were coming up.

Mr. Atwater: Now, if the court please—
The Court: She said she didn't ask.

Q. Did she say whose interference? A. No, sir; I did not ask; I should have, but I did not.

Q. Now, she said the question of guardianship had been talked of? A. Talked of.

Q. Now, did she say who had talked of the question of guardianship? A. No, she did not, nor did I ask.

Q. Was there any conversation at all with Miss Hough with reference to her being brought into the family? A. Yes.

Q. What was that? A. The second occasion of her bringing my sister to my home—

Q. (By the Court) That would be about when? A. That was in August; it was four days previous to my sister's death—it was on the 5th of September—it was not August; I beg your pardon. She died on the 9th; it was on the 5th of September.

Q. (By Mr. Atwater) What year? A. 1922.

Q. (By the Court She died on the 9th? A. On the 9th of September, 1922.

Q. Yes. Will you please give us that conversation? A. Yes. I took occasion to ask Miss Hough if she would like to see the house, as it differed from hers; she said she would. We went upstairs and through the rooms and I said, "Miss Hough—Miranda; did you think that so-called adoption of yours made you my niece?" She said, "Yes, I though that I should have been kindly received into the family." "Why," I said, "that could hardly be. That is not the way relationships are made. They come through consanguinty." "Oh, then, you believe in blood." "Oh," I said, "it is not what I believe in; it is a law of nature." "Well, then," said she, "I suppose your niece Marion, for instane, if she had gone off and married someone whom you did not care for and there should be children of that marriage, would they

be your relations?" "They certainly would," I said. "Oh, never again," said she, "will I eat at your table." "As you please," said I. That was the end of that conversation. I said, "I think it is time we should go down and look at my sister, who was left in Miss Brown's care. Now, during my absence my sister had asked if there had been any children in my family.

Q. You say your sister had asked whether there were any children in your family? A. Yes.

Mr. Atwater: I object to that. She states in her absence her sister had asked.

Witness: Asked Ida Brown, my assistant.

Q. (By the Court) Were you present?

Mr. Atwater: No.

A. Then this conversation continued after Miss Hough and I returned. She had asked Ida about my children, and I heard Ida, "Why, no, your sister is not married." "Her name is Harriet Loveridge." Then my sister said, "Yes, I know her name is Loveridge. She married my oldest brother. You see, I was still Bessie to her. Bessie was the wife of my oldest brother, who had long been dead.

Q. Did you have any conversation—

The Court: Let me get this straight. Did Mrs. Lees ask Ida where you heard it?

A. She asked that during my absence and I came in the room when she was answering and I was present when she said, "I know her name is Loveridge, she married my oldest brother."

Q. (By the Court) Oh, you heard that part of the conversation? A. Yes.

Q. Did you ever have any conversation with Mrs. Harvey with reference to the jewelry or other valuables of your sister? A. Well, in reference to valuables that my sister had given her.

Q. And what was that conversation? A. Mrs. Harvey told me that on one occasion when she and my sister and Miss Hough were together Miss Hough had compelled my sister, or had told my sister to tell Mrs. Harvey what you have done. My sister said, "What have I done?" "Why, you know what you have done, tell her what you have done."

Mr. Atwater: If the court please, I would like to have the witness fix the date.

The Court: Yes. Will you fix the date, as nearly as you can, please?

A. Well, it followed the adoption, if you have the date of the so-called adoption. It followed that, because it was the announcement of the adoption.

Q. When would you say that was? A. Well, late in 1920, or early in 1921, I think, to the best of my recollection.

Q. A printed notice was sent out?

Mr. Atwater: I can give you that date, January 6, 1921.

A. Yes, it was about that time. "What have I done"? "Why, you know, mother." "You have adopted—I have adopted Miranda," and sister said, "I have adopted Miranda." Miranda left the room. So I was there and Mrs. Harvey said, "Why, Aunt Lizzie," how could you have done such a thing?"

She said, "I had to or she would have left me." At that same meeting my sister had given Mrs. Harvey two diamond rings and a check for one thousand dollars, Mrs. Harvey had told me, and Mrs. Harvey had said, "Why, what are these for?" "What have I done to deserve these?" And I think my sister said, "Well, I think you will know what to do with them."

Q. Now, did you ever have a conversation with Mrs. Harvey in reference to the instructions she had given Miss Hough as to the Jewelry and so forth? A. Yes, I remember very well.

Q. Now, please tell us that. A. That was when they were still living in the Beresford, when my sister's mind was first visibly affected. Mrs. Harvey had cautioned Miss Hough, Mrs. Harvey told me that she had told Miss Hough that in case her aunt gave her—Miss Hough—any money or valuable that Miss Hough could put them in a safe deposit box and return them to the estate, as her aunt was not in a condition to give away her property. They were living in the Beresford at that time.

Q. Do you know of any conversation you have had with Mrs. Harvey in reference to some property that Miranda was trying to dispose of to a Mr. Elliott? A. Oh, she was not trying to dispose of it that I know of. She told Mrs. Harvey she thought it would be an excellent idea—

Mr. Atwater: If the court please, I object to this.

A. It was not at the time she gave her the rings, however.

Mr. Atwater: I object to this, on the

ground it is not a question of Mrs. Lees' property that it affects and not Mrs. Harvey's.

The Court: This is a conversation with Mrs. Harvey.

Witness: Yes.

The Court: She is supposed to be reciting what Mrs. Harvey said about Miss Hough and about this transaction. Now, this is not evidence of anything that occurred actually between Mrs. Lees. It is only evidence to show Mrs. Harvey's attitude, to show her knowledge of the situation and her declaration, because, as I understand it, the contention here is that Mrs. Harvey and Miss Hough conspired together, or worked together, to accomplish the making of this will, and the only purpose, I think, is to show declarations by Mrs. Harvey as to the susceptibility and the mental condition or attitude of this testator, bearing on the question of the probability of her undertaking to accomplish an undue will, if she was convinced that the testatrix was in a suitable attitude where it could be readily accomplished. I am not admitting it but for very little.

Mr. Atwater: If the court please, I have here the case of in re estate of Davis. It brings up a proposition made the testatrix that they were not admissible as evidence from which facts of undue influence will be inferred. My objection is along this line, that this testimony showing alleged declarations of Mrs. Harvey and Miss Hoff and the testatrix, that I should like to have it come before your Honor's mind that the alleged

declarations of the testatrix are not admissible for the purpose of showing undue influence.

The Court: I do not admit it for the purpose of showing undue influence. I admit it for one purpose, to show the attitude of Mrs. Harvey as possibly indicating on her part a knowledge or belief that the testatrix was susceptible—where such a conspiracy could be made successfully. Now, that does not mean much. It does not go very far, because the proof so far has not established some of these things. You can go ahead with that limitation.

(Question read.)

A. She told Miranda—told Mrs. Harvey she thought it would be an excellent idea to have Mr. Elliott, who was a neighbor and friend of the Harveys, to have Mr. Elliott look over Mrs. Lees' securities to see if there were any that could advantageously be exchanged for those bearing larger dividends, and Mrs. Harvey replied—Mrs. Harvey told me that she replied Mr. Elliott is a gentleman who would not think of attempting such a thing, he would have nothing to do with such a thing.

The Court: That does not seem to have much bearing.

Mr. Kent: No.

Q. Did you have any conversation with Mrs. Harvey after the death of Marion Haffner? Will you please fix that time? A. Yes, it was March 4, 1922, Marion died.

Mr. Atwater: That Mrs. Haffner died.

Witness: Yes. We called her Marion. Mrs. Haffner, yes.

Q. What statement, if any, was made by her to you? A. Mrs. Harvey told me that Mr. Brown had informed her that Miranda had brought Mrs. Lees to his office and asked that the share of Marion should be transferred to the residuary estate, as Marion was then deceased, and Mr. Brown had replied, "This will has been changed enough; there will be no more changes; it will stand as it is."

Q. Now, you said something before about your nieces going to the safe deposit box and checking up the securities? A. Yes.

Q. Now, do you know whether all those securities were in the safe deposit box after the death of Mrs. Lees? A. I know nothing of it.

Q. Did Mrs. Harvey tell you whether they were all there or not? A. I don't thing she has; I don't think I have inquired.

Cross Examination by Mr. Brown.

Q. Did you see your sister, Mrs. Lees, in 1918? A. Yes.

Q. Where did you see her? A. At my home.

Q. Did she call there? A. Yes.

Q. In 1918? A. 1918.

Q. How many times did she call there? A. Once.

Q. Did you see her in 1917? A. No ,sir. I had not seen her for a number of years previous. I had not seen her—well, I had made an effort to see her in 1913, an unsuccessful effort.

Q. What was the reason why you could not see her in 1913? A. 1915?

Q. You said 1913? A. Yes.

Q. I am asking you why in 1913 you were unable to see her? A. I had then a serious infection of my eyes, which made it very bad for me to travel.

Q. Did she call upon you? A. No, she did not. I told you I had not seen her for a number of years.

Q. A number of years? A. Yes.

Q. You had not called upon her during that number of years you speak of? A. Not to call on her, but I told you I had made an unsuccessful effort to have an interview with her in 1913.

Q. Why couldn't you have an interview in 1913? A. It was then I was informed of the death of her husband. I went at once to the telephone and asked to be connected with the apartment of Mrs. Lees. A woman's voice answered and asked me, "Who is this, please?" "It is Mrs. Lees' sister," I said, "who would like to speak to her." "Hold the wire." I heard conversation during the absence of this party, but I could not hear the words, and on her return she said, "Mrs. Lees is not able to come to the 'phone'.' "Oh", I said, "I am sorry. Is she so ill?" "Mrs. Lees is not able to come to the 'phone." I said, "Is she ill at all?" "Mrs. Lees is not able to come to the 'phone." "Well", said I, "will you please give this message to her from her sister? I am very sorry to hear of the death of her husband. I am here to offer my services, if I can be of any service, I shall be glad to do it." "My residence is so and so."

Q. What was the residence? A. I was living in West 177th Street, in the Bronx.

Q. And Mrs. Lees at that time was at the Beresford at 81st Street? A. 81st, that is right, and my telephone number is so and so. I said any reply you can send to Eva, or through Eva.

Q. Was there any reply? A. There was no reply.

Q. Then you did not see her during 1913? A. I did not.

Q. Did you see her in 1914? A. I did not see her previous to 1918, I told you, for a number of years.

Q. What was the reason that you did not see her? A. Why, because she did not call.

Q. She did not call upon you? A. No.

Q. Did you call upon her? A. No. I told you I had a serious infection of my eyes, which made traveling injurious.

Q. You did not travel at all during that period? A. Yes, I went to Brooklyn a year for treatment.

Q. Did you stop on your way to call on Mrs. Lees'? A. No, it was not on my way.

Q. Now, wasn't there an estrangement between you and Mrs. Lees? A. There was no estrangement, because in my opinion estrangement indicates a little trait of enmity. There was never on my part any enmity toward my sister and I do not believe there were much enmity on her part toward me, but there was a circumstance which tended to separate us, which grew into indifference and indifference possibly into neglect.

Q. And how long did that indifference and neglect continue? A. Until 1918, when she called on me.

Q. Then what was the cause of this estrangement? A. Well, I will tell you. Her husband had accused me of dealing unfairly with my sister in a little business transaction that we had prior to her marriage to him. This transaction had relation to the settlement of her estate upon herself previous to her marriage. We held in common, in shares,

the home, the house in which we lived, in which my father and mother had a moral life interest. This house had originally been left—at least, the testatrix, in the dictation of her will, had left it to my father and mother, stating on their death it was to go to my sister and me. My father suggested it is to go to the girls, meaning my sister and me, why not leave it to them at once which the testatrix did, because she said, "I know that as long as the girls have the home you and little mother will have the home." Now, when my sister was to be married—that was some years after—my father thought it wise that she should have her property settled on herself before marriage. The house, for that reason, had to be in some way divided. I perhaps thought she should take the upper part and we would take the lower, or the reverse, she could have the lower and we would live in the upper, but I thought that we should live independently. She objected to that, because she said she did not intend to keep house. Well, what was to be done? The house could not be sold at that time, because father and mother were still living. Then it was decided my father and she talked it over that one of us should take a mortgage for the then half value of that property and the other should keep the house and be responsible for the care of father and mother. She had the first opportunity—the first choice. We should take the house? No. She did not intend to keep house. We should take the mortgage? Yes. She took the mortgage. This whole transaction was straightened out with her own lawyer, Mr. Henry Whaley, whose wife was an intimate friend of my sister. He drew up the mortgage and agreement. We went to his house and both signed. My father was the witness. There was not the least hesitation on my sister's

part in signing, nor any objection to the arrangement. But seven years after her marriage—after my father had died and it was found prudent for us to sell the house, as the neighborhood was so changing, the property had risen in the meantime, just as it is doing now and the value increased. I sold it at a figure much larger than the appraised value at the time of the mortgage, and, as I said, it was seven years after my sister's marriage that Mr. Lees, her husband accused me of having acted unfairly with my sister in giving that mortgage and I taking the house. I had had considerable hard work in that house. I had transferred it from a single house into one of three apartments. I put a dumb waiter in it, at my expense, from top to bottom, changed the apartments and had it occupied by desirable tenants, so that when the time came for sale I found a ready purchaser from a gentleman who had business in the neighborhood. Our apartment suited his needs. He was glad to have the tenants as a source of income and the property was sold for $20,000, but that included many fixtures and the entire floor covering of our apartment, which consisted of two floors, and a room in the attic—a room on the third floor.

Q. And you got the $20,000? A. I did not get the $20,000. My sister was paid $6,500.

Q. That was the amount of the mortgage? A. That was the amount of the mortgage.

Q. And you had the balance? A. I had the balance, which I immediately put in a home for my mother and myself and added to it. The house I put it in cost $17,500.

The Court: I think we are going too far.

Witness: I thought I would make it plain.

The Court: Yes. You have made it very plain.

Q. Now, when was it— A. My sister never accused me, sir. I want that understood. My sister never accused me, nor had any objection to any of these actions, but it was her husband that did it, which, of course, did not tend to make me love him any the more.

Q. And you resented it? A. I did not resent it, but it made an impression on me. I treated him politely, I told you afterwards, but that was all.

The Court: It is all perfectly plain now.

The Witness: I am perfectly willing to tell all I know.

The Court: I know, but we have not the time. Do you want to ask her any more questions?

Mr. Brown: I wanted to ask her how often she met her sister?

The Court: Yes, that is correct. How often did you meet your sister after Mr. Lees had made this accusation?

A. I think she called every few weeks. My mother was living then, too, and she called on me after mother's death.

Q. When did your mother die? A. In 1899.

Q. And between 1899, after your mother died, and 1914, how often did Mrs. Lees call? A. Several times, until my house was sold.

Q. When was your house sold? A. I think it was 1903. I am not positive. 1903 or 1904.

Q. After 1903 how often did you see Mrs. Lees? A. Not often. I did not see her after that.

Q. Didn't see her at all after that? A. No. I moved then to the Bronx.

Q. And you did not see her from 1903 up to what year? A. Until 1918, when she called.

Q. From 1903 you did not see Mrs. Lees at all? A. No, I didn't.

Q. And Mrs. Lees during most of that period, or a great deal of that period, was living at the Beresford in New York? A. Not all of that period, a portion of that time.

Q. Do you know for how long she was living there? A. No, I could not tell you; for a number of years.

Q. And you were living in Bronx? A. Yes.

Q. But you did not see her at all? A. I did not.

Q. Until 1918? A. No.

The Court: Was that 1903 or 1913? From the time you sold your house was the time you did not see your sister?

The Witness: Yes.

Q. How far away from the Beresford a good deal of this time was your residence in the Bronx? A. I was living in 177th Street.

Q. And she was in 81st Street? A. Yes.

Q. Well, you subsequently moved to East Orange, New Jersey, did you not? A. Never.

Q. Rutherford? A. I moved directly to Rutherford.

Q. And when did you move there? A. Let us see! About nine years ago.

Q. And Mrs. Lees subsequently moved to East Orange, New Jersey, did she not? A. Mrs. Lees moved to East Orange about 1920, about that time.

Q. Well, didn't she live in East Orange prior to 1920? A. I think they occupied a small house—oh, they didn't move into this present house until 1921. They had a smaller house for a year or two.

Q. You don't know when they began to occupy that smaller house? A. I think it was about in 1919. They went there for the summer and returned to the Beresford in the winter. In 1920 I think they were there for the entire year.

Q. But several years prior to 1920 they were living in this house in East Orange? A. No, sir; they went there for the summer in 1919.

Q. Not prior to that time? A. I don't think so; not to my knowledge; not that I remember; I wouldn't be certain about those dates, but I say about that time.

JOHN DANG, sworn in behalf of appellant.

Direct Examination by Mr. Kent:

Q. Where do you reside? A. 103 North 18th Street, East Orange.

Q. What is your business, Mr. Lang? A. Contractor for heating installations, plumbing and metal work and so forth.

Q. And you are in business in East Orange? A. Yes.

Q. Did you during the year 1919 or thereabouts become acquainted with Mrs. Lees and Miss Miranda Hough? A. In 1920, yes.

Q. And where did you first see them in 1920? A. The architect that had charge of the construction of a new home on Whitman Avenue, East Orange, introduced Miss Hough to me at my office about the 1st of September, 1920. Then about two weeks later I met Mrs. Lees at their home on North 22nd Street, East Orange.

Q. Did you have the contract for the building of

the—or the plumbing work for the new house? A. Why, the plumbing and heating installation only.

Q. Will you please describe to us the character of the house, just what it contained?

Mr. Atwater: Well, now, is that material?

The Court: Well, I do not know the purpose of it.

Mr. Kent: I think it is material. There are some things about that house that are rather striking.

A. It is about a twelve-room house and containing three bathrooms and there is also a garage on the building—on the premises, and chicken house, and a chicken run constructed of concrete. The house was hollow tile and stuccoed.

Q. What sort of fence surrounded the chicken run, if you know? A. That is not in my line, but I naturally observed that they had a very expensive galvanized iron fence upon about a two-foot concrete foundation.

Q. How thick were the galvanized wires? A. The support, I would say, about an inch and a half in diameter, with heavy ornamental tops, placed about four feet apart, and with extremely heavy wire-mesh between the posts.

Q. That was to enclose the chickens? A. I assume so. I had nothing to do with that part of the work. I naturally noticed it.

Q. Now, was there a striking window in that house, if you know? A. As you entered the front hall on the left there was an enormous leaded glass window and at the bottom was Miss Hough's name, and, if I remember correctly, there was a sunset worked in the upper part of the sash, the sash, I should judge, was four feet wide and five feet high.

Q. It had three inscriptions on that leaded glass window? A. I am not absolutely sure about that.

Q. Do you know whether the last line was to their faithful nurse Miranda Florence Hough? A. I remember something about the nurse and the name Miss Lees on the glass and Miss Hough; I do not recall the wording.

Q. Did it have the appearance of sort of a memorial window? A. That was my impression. That part of the construction was not in my contract.

Q. Do you know how much was the cost of the installing of the window?

The Court: He says he does not know.

Q. How big was that window altogether? A. Approximately four feet wide, and about five feet high and it may have been a little larger than that. I never measured it. It was a little smaller than that middle panel on the left. That is about five feet wide, and I should judge nine feet high and it was a little smaller than that.

Q. (By the court) Your actual estimate of the panel in evidence was four by five? A. Yes, and then it had a frame on it similar to the frame of this panel. Possibly the outside measurements a foot wider and a foot higher than the four by five.

Q. Did you have a conversation with Mrs. Lees the first time you saw her or did she attempt to talk to you? A. Soon after I signed the contract she telephoned and asked me to call at her home.

Q. Who did? A. Miss Hough. And while there she introduced Mrs. Lees to me. They were both in the living room at the time in the house on North 22nd Street. They always called that the old house and I called there a few occasions with reference

to our contract in connection with the new house which had not been started at that time. If I referred to my notes I could give you correct dates. I think it was about September.

The Court: Go ahead.

A. (Continuing) I signed the contract September 3, 1920, and when I made this call it was about a week later, in response to her call over the telephone, and when she introduced Mrs. Lees she simply bowed her head and sat in the chair and then Miss Hough and I went on talking about the arrangements for the new house which had not been started at that time and we were talking about the arrangements for the two bathrooms on the second floor and then Mrs. Lees mumbled something—I could not get it—I could not understand it—then Miss Hough took her out of the room and led her out of the room and then when Miss Hough returned she said—

Mr. Atwater: If the court please, I would like to know what memorandum—I understood the witness is refreshing his recollection of dates.

The Court: Well, as I understood it the witness wanted to refresh his recollection as the contract.

The Witness: I can explain it. We have a card system and we have one card for every building.

Mr. Atwater: My only objection was that it appeared that he was reading his answer.

The Court: Well, you were not reading from those?

The Witness: No, I was not. I referred to it once to get the date correctly.

Q. Now, tell us what Miss Hough said to you?

The Court: There is nothing on that memorandum about this conversation?

Witness: No, sir; nothing but dates and the charges against the property. And then after leading Mrs. Lees out of the room Miss Hough returned and said you must not pay any attention to her because her mind is affected, and then she went on to talk about the various matters with reference to my contract, which was approximately $4,000 for the plumbing and heating installation. I lived at 18th Street and I used to stop about once a week to go over the various matters, and do you wish me to continue?

The Court: Yes.

A. (Continuing) And then on another occasion Mrs. Lees was there but never said anything to me, and on the second occasion Miss Hough said, "Don't bother her, because she is not responsible for what she says. I am taking care of the entire work and I am to be the one that is to be consulted," and then she said that this house is going to be erected for Mrs. Lees, but it is going to be put in my name, Mrs. Lees is furnishing most of the money, but she is going to hold a mortgage on the property. This was the second visit. Mrs. Lees was in the room at the time, but did not pass any remark, and then on the third occasion, which was about a week later, Miss Hough said that this house is going to be all mine. "Now, there is going to be no mortgage and the account, of course,

is to be in my name," and I said, "All right, I thoroughly understand it," and each and every time she made changes and alterations we charged the various accounts to her. I did not see Mrs. Lees after that at the old home, but the following April, when they moved into the new house, I saw Mrs. Lees on several occasions, but she never spoke to me other than to say good morning or good afternoon, because Miss Hough told me to never pay attention to her and I complied with that request.

Q. Go on. A. She said she was very old and feeble and that she is not to be bothered and, of course, I paid very little attention to her.

Q. Whose check did you receive in payment of the work you did? A. The checks were always signed by Miranda Hough.

Q. And no one else? A. No, no one else.

Q. During the year 1921 did you get checks from any other source except from Miss Hough? A. No, Miss Hough paid all the bills.

Q. And was her signature on all the checks that you received? A. Well, the checks were signed Miranda Hough—

Mr. Atwater: I object to this line.

Mr. Kent: I will withdraw that. From what you observed of Mrs. Lees in the year 1920 and thereafter did she appear to be a person who was capable of attending to her affairs and of sound mind or not?

Mr. Atwater: I object to that, because there is nothing to show that this witness has ever talked to her.

The Court: No, he said he did not have any talk with her.

Mr. Kent: Oh, yes, he said he heard her mumble something and then he observed her.

The Court: Well, I will allow him to testify whether her actions, in his opinion, were rational or irrational, but on the other hand he does not seem to have had any intercourse with her at all. He says he simply saw her there.

Mr. Kent: Well, after the first time.

Q. You did attempt to carry on a conversation the first time at one time? A. The first time I met Mrs. Lees I naturally told her I was pleased to make her acquaintance, or something to that effect, and I started to talk to her and she made no reply, as if she were ill or something wrong with her, and, of course, they were new customers at the time and I did not think it was my business to inquire what was the matter with her.

Q. Well, going back to the second episode, where Miss Hough led her out and returned, she tried to carry on a conversation with you before Miss Hough led her out?

Mr. Atwater: He has testified one way and now counsel is trying to lead the witness.

Q. Will you please tell us what occurred prior to the episode of Miss Hough leading her out? Please tell us what occurred? A. Miss Hough and I were talking about the arrangements in the new house, placing the fixtures and so forth, and then Mrs. Lees mumbled something; I couldn't understand what she said; it may have been in reference to this house, but I am not sure, but she was an old lady and feeble and on different occasions I would hear

her mumble and I could not understand her, so I paid no attention to her.

The Court: He says on different occasions he heard her mumble and didn't understand her. Now, you might find out how many occasions those were.

Witness: Twice in the old house and as near as I can remember seven or eight in the new house. It may have been more than that. Sometimes when I called at the new house Miss Hough would say she was in bed and sometimes she would be around the house holding herself near the wall and she could never lift her feet, you could hear her feet slide as she would go along, instead of walking, and she would hold herself against the wall, and I would hear her mumble, but I never understood what she said. I don't know whether she was in pain or whether she was talking to herself.

Q. Then from your observation during these various times, at least two at the old house and eight or nine more in the new house, did you form an opinion as to her mental capabilities?

Mr. Atwater: I object.

The Court: There does not seem to be anything to base it on.

Cross Examination waived.

Recess.

After recess.

Mr. Kent: I would like to read into the record now the depositions taken of Dr. Edward P. Swift.

"Q. Doctor, you are a practicing physician of the State of New York? A. Yes.

Q. For how many years? A. 42.

Q. Where is your office? A. 170 West 88th Street.

Q. Prior to the death of Elizabeth Loveridge Lees, did you have occasion to see her and treat her professionally? A. Yes.

Q. Did you have occasion during the years 1916 to 1921 to see her and treat her? A. Yes.

Q. Will you please tell us when you last saw her professionally? A. Well, I last prescribed for her on November 26th, 1920. I am not certain that I saw her on that day, because I sometimes sent medicine to her by mail. The last time that I can be certain that I saw her was April 22nd, 1920.

Q. At whose request or instance did you treat her last, if you know? A. Why, I presume Miss Hough telephoned for me, probably. I am not certain of that.

Q. Did you see her or treat her on or about the 2nd day of July, 1920? A. Not according to my record.

Q. Will you please look at this letter of yours Doctor, and see if that refreshes your recollection whether you saw her on or about the 2nd day of July, 1920? A. No, it does not.

Q. At whose request did you attend her during the year 1920? A. I think at Miss Hough's request. And indirectly, I presume, at Mrs. Lees' request.

Q. When did you first treat her, Doctor? A. According to my record, November 29th, 1916.

Q. In the year 1920, Doctor, what was her physical condition? A. Her physical condition was fairly good.

Q. What was her mental condition on or about the month of July, 1920, Doctor? A. I can't answer that because I did not see her after April 22nd.

Q. Doctor, on or about the 2nd day of July, 1920, you issued this certificate? A. Yes."

Mr. Kent: I now offer that into evidence, it has been offered in evidence.

The Court: Do you want it just for the purpose of showing that the doctor issued such a certificate?

Mr. Kent: I have offered it as a part of his testimony. I have already offered it as part of Mr. Loveridge's testimony.

The Court: It cannot be taken into evidence as showing the evidence is true. It can only be taken into evidence showing that he issued such a certificate.

"Q. In that certificate, Doctor, you stated that she was suffering from senile changes which affected her mentality and rendered her incapable of sound judgment and discretion. That is correct? A. Yes.

Q. Did you state that fact to the members of her family? A. I stated it in this letter which I gave to her—I don't know what her relative's name is.

Q. Mrs. Harvie? A. Her niece, I might say her niece.

Q. Mrs. Belle Harvie of Rutherford? A. I can't be sure of her name.

Q. But you gave it to a niece? A. Yes.

Q. Was this niece of the same opinion that you were?

Mr. Atwater: I object to that.

A. I should say she was.

Q. Did this niece that you mention come to see you about her aunt's condition? A. Did you say "Did she come?"

Q. Yes. A. Yes.

Q. And did she explain to you what Mrs. Lees' condition was at that time? A. Not that I remember.

Q. She asked you, however, Doctor, to certify as to Mrs. Lees' mental condition at that time? A. Yes.

Q. Did she say anything about what Mrs. Lees' condition was at the time? A. I can't recall.

Q. Can you recall, Doctor, just what her request was of you? A. She asked me to make a statement as to her mental condition.

Q. Did she give you any explanation for her making that request?

Mr. Atwater: I object to that.

A. I think she did.

Q. Will you please tell us what that was?

Mr. Atwater: I object to that.

A. That she was possibly subjected to undue influence in the matter of disposing of her property.

Q. Did she state whose undue influence.

Mr. Atwater: I object to that question.

A. Yes.

Q. Will you please tell us whose, Doctor? A. Miss Hough.

Q. Did the niece, Mrs. Harvie, tell you just what that undue influence consisted of?

Mr. Atwater: I object to that question.

A. Not that I remember.

Q. But she did tell you that Miss Hough was exercising undue influence?

Mr. Atwater: I object to that question.

A. I don't recall that she did. I think she had a suspicion of her.

Cross Examination by Mr. Atwater:

Q. Dr. Swift, are you an alienist or a specialist in mental diseases? A. No, sir.

Q. When did you last see Mrs. Elizabeth Lees? A. According to my record on April 22nd, 1920.

Q. Prior to that time had you attended her frequently in person? A. I can give you the dates if you wish.

Q. Yes, I would like to have those. A. November 29, 1916, November 30th, December 1st, December 2nd, December 7th and 30th, January 4, 1919—

Q. Those former dates were in 1916? A. Yes. Oh, just a moment. January 4th, 1917 and January 9th, 1917. I read 1919 for 17 because I had the number indistinctly on my record. January 9th and 20th, 1917, February 12th, May 14th, October 29th, 1918, November 6th, 1918, April 8th, 1919, April 17th, April 30th, October 6th, November 7th, 8th, 9th, 13th and 14th, and January 20th, 1920, April 22nd, 1920. I also prescribed for her on November 26th, 1920.

Q. The last time you saw Mrs. Lees was April 22nd, 1920? A. I think so. I am not quite certain whether I saw her in November or not.

Q. In November, 1920? A. Yes.

Q. But you know that you did not see her after November, 1920? A. I have no record of it.

Q. Did you make any examination of Mrs. Lees as to her mentality at any time? A. No.

Q. You made no special examination for the purpose of the letter which you gave to Mrs. Harvie? A. No. It was merly as I said in my letter, I had formed that opinion from my conversations with her during several years.

Q. When did you first form the opinion of Mrs. Lees' mental condition which you refer to in your letter of July 2nd, 1920? A. I can't answer that question.

Q. Had you held that opinion for some time prior to that date? A. I had the opinion that her mentality was deteriorating, yes, for some time prior to that date.

Q. For how long, if you know? A. Well, possibly for one or two years.

Q. Do you know when Mrs. Lees left the Beresford? A. I am unable to give the date.

Q. You never attended her anywhere else but at the Beresford? A. No, except by mail.

Q. By prescriptions? A. Yes. And at my office."

Mr. Atwater: There was another deposition taken.

Mr. Kent: I do not think that is of any moment or importance now, unless you would like to have it in.

Mr. Atwater: I would like to have all the depositions in.

The Court: If they are in I better hear them.

Mr. Kent: Deposition of Robert H. Hough, who is a brother of Miranda Hough.

The Court: I thought you meant another deposition of Dr. Swift?

Mr. Kent: No, sir. I do not want to offer that deposition at this time.

The Court: Then you do not have to.

Mr. Kent: If you want to offer it as part of your case, all right.

Mr. Atwater: No.

Mr. Kent: I do not want to offer the deposition of Robert H. Hough at the present time.

Mr. Atwater: One of the witnesses for the proponents of this will is Mr. Clark, and Mr. Kent has kindly consented to put Mr. Clark on at this time.

The Court: All right.

JAMES O. CLARK, sworn in behalf of proponents.

Direct Examination by Mr. Atwater:

Q. Mr. Clark, where do you live? A. Westfield, New Jersey, Union County.

Q. And have lived there— A. Since 1872.

Q. Were you acquainted with the testatrix, Elizabeth L. Lees? A. I was.

Q. How long had you known her? A. About sixty years.

Q. And you are a member of the bar of the state of New Jersey? A. I am.

Q. And a practicing attorney? A. I am.

Q. And have been for how many years? A. Since the June term, 1876.

Q. When did you last see Mrs. Elizabeth L. Lees, and will you state to the court under what circumstances you saw her? A. I think she called at our house in Westfield sometime during the year 1921—possibly it may have been the latter part of 1920, but she was there, I am quite sure, during the year 1921.

Q. Did you have any conversation with Mrs. Lees at that time? A. Yes.

Q. How did Mrs. Lees' mental condition impress you at that time?

Mr. Kent: I object to that, because Mr. Atwater, when I put a question at that time, you seriously objected. I think he ought to lay a foundation for it.

The Court: Yes.

Mr. Atwater: I asked him if he had conversations with the testatrix.

The Court: Yes, well, all right You can ask him if in those examinationssflsAw ask him if in those conversations she appeared to know what she said.

Q. In those conversations did Mrs. Lees appear to you to understand what was said and make intelligent answers to questions? A. Perfectly.

Q. Do you remember subjects that were discussed at all? A. I asked her about her life and about her new house, how she liked it, and she gave me intelligent answers.

Mr. Kent: I ask that that be stricken out. That is purely a conclusion.

The Court: Well, the answers appeared to you to be responsive?

The Witness: Yes, they impressed me as perfectly intelligent.

Q. Did she talk about members of her family at that time? A. Yes, I think so.

Mr. Kent: I ask that that be stricken out.

The Court: Is that the best of your recollection?

The Witness: What?

The Court: That she did refer to the members of her family?

The Witness: Yes, sir.

Q. Was that the last occasion that you saw Mrs. Lees? A. I am not sure about that, but I was over at her house in Orange, either a few months after she called to our house or few months prior thereto.

Q. At which house in Orange did you go to see her at? A. At her new house.

Q. Who accompanied you on that occasion? A. My sister, Annie M. Clark, and our chauffeur, Miss Ida M. Waltman.

Q. Did you have a conversation with Mrs. Lees on that occasion? A. I did.

Q. Did she carry on a conversation with you? A. Yes.

Q. From the conversation which you had did her answers appear to be intelligent to the questions? A. They impressed me as intelligent.

Q. And from your conversation with her what impression did you form as to her mentality? A. In what respect do you mean?

The Court: Rational or irrational.

Q. Well, was she rational or irrational? A. Rational.

Q. You had known Mrs. Lees for many years? A. Upwards of sixty years.

Q. Was Mrs. Lees a woman of more or less culture than the average? A. I should say above the average.

Q. Was she more or less intelligent? A. Very intelligent woman.

Q. Was she of more or less strong-mindedness than the average woman? A. Exceedingly so.

The Court: Exceedingly what?
Witness: Strong-minded and positive.

Q. What had been, if you know, her occupation as a young woman or younger woman? A. I think she had taught in one of the schools in New York City.

Q. How frequently did you see her from the year 1915 on, if you remember? A. Not so frequently prior to 1920, when she moved to Orange, when she was at the Beresford I think I only saw her once or twice; possibly three times.

Q. After she moved to Orange how many times did you see her, if you remember? A. Twice at my home in Westfield and once or twice at her house in Orange.

Q. Do you know what subjects of conversations were discussed between you and Mrs. Lees? A. At my house?

Q. At your house? A. Mainly in regard to the change of the old homestead which I occupied. It formerly was close to Clark Street or what years ago was called Jerusalem Road, and about three years ago, or a little more, I turned the house around so as to face Clark Street or Jerusalem Road, so it faced two large Chestnut trees and I discussed and talked with her about the change.

Q. Did she discuss her new home with you? A. Yes, she spoke about it.

Q. Did she describe it to you at all? A. Not minutely, except in a general way, and wished me to come over and see it.

Q. And as a result of that you did go over and see it? A. Yes, we went over.

Q. Did you ever dine with Mrs. Lees or take a meal over at her home? A. In Orange?

Q. Yes. A. No.

Q. Did she ever stay at a meal in your home in Westfield? A. Well, Mrs. Clark gave her a cup of tea and crackers and cake.

Q. How long did she stay at your home on these occasions? A. At Westfield?

Q. Yes. A. Oh, she stayed from half to three-quarters of an hour or an hour.

Q. How long did you stay at her home on your visits there? A. About a half an hour.

Q. On these various occasions did you ever see anything to lead you to believe as to whether or not Mrs. Lees was rational or irrational? A. I thought —the impression she created on my mind was that she was perfectly rational.

Cross Examination by Mr. Kent:

Q. Were you invited at the Friday afternoon visit? A. At my house?

Q. No, at the Rainbow Cottage? A. No, I didn't say I was invited there.

Q. When you left her house did she invite you there Friday afternoon? A. She invited us to come over and see her house.

Q. On Friday afternoon? A. No particular date, but the general invitation to come over and see her at her cottage.

Q. Now, Miranda Hough accompanied her on all her visits? A. To our house?

Q. Yes. A. Yes.

Q. And Miranda Hough was present at every visit you were there at the house? A. Yes.

Q. And she was present at every part of that conversation? A. No, she was not.

Q. But she was around there? A. She was in the house, but not present.

Q. Well, was she in the same room or not? A. No, not in the same room.

Q. Had you heard of any contemplated proceeding wherein Mrs. Lees was concerned in 1918, 1919 or 1920? A. No, I knew nothing about that.

Q. Do you know Mrs. Harvie? A. No, except I met her a few moments ago outside of the court room.

Q. Did you know of the adoption when you went there in 1921? A. I don't think I did.

Q. Wasn't that brought to your attention? A. I don't think I—I don't think so.

Q. When Miss Hough came to your house did she tell you of the so-called adoption? A. Then she referred to it.

Q. Who did? A. I think both Mrs. Lees and Miss Hough.

Q. Did you ever receive a formal notice of the adoption? A. None whatever.

Q. Did you know that a formal printed notice had been sent out by Miss Hough? A. I know nothing whatever about it.

Q. When you were informed of the adoption of a woman of the age of Miss Hough did you comment on it?

Mr. Atwater: I object.

Mr. Kent: In their presence?

The Court: Well, this is another way of asking if anything was said on that subject.

Mr. Atwater: Well, I think it goes fur-

ther than that. Did he comment on it and to whom?

The Court: Well, was anything said about the adoption?

Witness: No.

Q. (By the Court) Can you tell us what was said about the adoption? A. Well, Mrs. Lees and Miss Hough both mentioned the fact that she had been adopted.

Q. (By the Court) Did you say anything? A. No, I don't think I did.

Q. Did you express surprise? A. I don't think so; I have no recollection of it.

Q. How old is Miss Hough, according to your judgment? A. Well, I should say she was perhaps forty; possibly forty-five; I don't know if I am a fair judge.

Q. Did you know whether Mrs. Lees was suffering from Bright's disease, or something similar to that? A. I did not.

Q. Did you observe whether she was physically well or not during that year 1920 or 1921? A. No, except that I knew her fifty or sixty years ago and I noticed the change of being older and infirm at about eighty years of age.

Q. When they first came to your house in Westfield Miss Hough was with her; that is correct? A. Yes.

Q. And you say they were there approximately a half an hour or thereabouts? A. Yes, possibly three quarters of an hour.

Q. And did Miss Hough remain in the room with Mrs. Lees? A. Most of the time, not all the time.

Q. And did Miss Hough partake in the conversation? A. Yes.

Q. And did she do most of the talking or did

you do most of the talking? A. That is a difficult question to answer.

Q. Well, did you have a chance to say anything? A. Oh, yes, I spoke; I talked with Mrs. Lees.

Q. You talked of Mrs. Lees? A. I talked with Mrs. Lees principally.

Q. And who would respond to that, Miss Hough mainly? A. No, Mrs. Lees answered my questions.

Q. Did she say yes or no or what? A. Sometimes yes, sometimes no, and would give me what impressed me as an intelligent answer to my question.

Q. Did you notice the inscription in the house, Mr. Clark? A. Well, I am not clear on that question. I only remember that it was a memorial to Mr. Lees.

Q. Was it also a memorial to Miss Hough? A. I have no recollection.

Q. Wasn't there an inscription on the bottom line, "To our faithful nurse, Miss Hough"? A. There may have been, but I have no recollection as to that, but Mrs. Lees referred to the window as a memorial to Mr. Lees.

Q. Did you read the inscription? A. Possibly I did, but I do not recall now.

Q. Did you see the fence or wiring around that house? A. Yes.

Q. And how did that impress you? A. As a precaution against the peculiar neighborhood that was in back of the premises, which seemed to me a very suitable protection.

Q. What was the peculiar neighborhood back of the premises? A. I think there was a lumber yard and a vacant ground and the railroad not very away.

Q. And that fence appeared to you as if it was built to keep intruders out, is that it? A. Yes.

Q. And it was made so strong that it was more than an ordinary precaution? A. I don't know that it was.

Q. But it gave you that impression? A. It gave me the impression that it was a substantial fence and I did not give any further attention.

Q. To keep somebody inside from wandering out and to keep somebody from the outside from wandering in? A. That fact did not enter my mind.

Q. (By the Court) Well, was the fence surrounding the entire premises? A. No, not in front, only on part of the side and the rear there was a garage in the rear.

Q. (By the Court) But in front there was no fence? A. No fence.

Q. But that strong wire fence was inclosing the entire rear only? A. I think from the chicken yard around part of the side.

Q. (By the Court) If it did not go all the way around the side how would it protect people from coming in from the railroad? A. Well, it may have come around on the side, but I do not recall that fact. I only recall the fact that there was a fence there. I did not pay any particular attention.

Q. (By the Court) As you described it it seemed to give the impression that it was really surrounding or protecting the chicken yard rather than the whole premises, is that it? A. Yes, sir.

Q. Did you ever see a chicken fence like that? A. I don't think I did.

Q. (By the Court) Mr. Clark, you did not discuss anything about Mrs. Lees' relatives, did you, with her? A. Yes, I think I did upon one occasion.

Q. (By the Court) How late was that occasion? A. Well, I think it was upon one of the occasions when she came to our house.

Q. And can you recall what she said about her

relatives at that time? A. Well, I think she referred to her sister.

Q. (By the Court) Which one? A. Miss Harriet Loveridge.

Q. (By the Court) And what did she say? A. That she had not seen her for some time.

Q. (By the Court) Now, did she refer to any other relatives? A. I don't think so.

Q. (By the Court) Did she refer to her property at all? A. No, I had no discussion with her whatever respecting the property.

Q. (By the Court) Well, now, did you know the whole family or was it just this one member? A. I knew the father and mother and her sister and her two brothers, James and Henry.

Q. (By the Court) You did not go further and inquire in your conversation with her to know whether or not she could have in her mind a knowledge of all her relatives? A. No, I didn't discuss all the relatives with her.

Q. (By the Court) You did not go far enough with her to get any idea as to whether she could really tell you or have it in her mind a present conception of what property she really had? A. No, except the impression she created upon my mind respecting her rational condition.

Q. (By the Court) Yes, but you did not seem to discuss anything with her except just the ordinary topics of the house anybody could answer by yes or no; you talked with her about the change you had made in your own place and she talked to you about the facts about her house? A. Yes.

Q. (By the Court) But as far as you stated there was nothing said about anything that required mental concentration? A. Except the answers she gave. She spoke about the changes in the house.

Q. (By the Court) Just give me anything you can recall that conveyed to your mind she had the

power of mental concentration more than it was a nice day and they were going to have a delightful home; you say you got the impression she was entirely rational; now, did you get that from anything more than just these ordinary small questions that a child of tender age could really imagine? A. I don't think I did.

Q. (By the Court) Was there anything this lady said to you that would require any more mentality than you would find in a small child? A. Yes, because she recollected the condition of the old house and referred to it and made reference to it and the changes in the present house, how it appeared to her.

Q. (By the Court) In other words, she recalled and recited to you just how your old home used to be just before you started to make the change? A. Yes.

Q. (By the Court) And she had a clear conception of that? A. Yes.

Q. (By the Court) And did she describe it in a way that she understood it? A. Yes, that she understood clearly the condition of the old house and the changes we had made and remarked about it.

Q. You said she commented or spoke to you about her new cottage? A. Yes.

Q. She did not tell you that that cottage was the property of Miranda Hough? A. I think not.

Q. She gave you the impression that it was her house, didn't she, at all times? A. Yes.

Q. Would you be surprised now to learn that it was not Mrs. Lees' house? A. I think that Miss Hough in Mrs. Lees' presence said that she had an interest in the house; she said that either at my house—possibly she said it there, but I am sure she said it when we visited the cottage in Orange.

Q. Would it surprise you now to learn that Mrs. Lees had no interest in that house? A. Yes, I think so.

Mr. Atwater: I object to that question. We intend to put before the court everything we have. There is an agreement in reference to that house.

The Court: You are assuming that there was apparently an agreement on record?

Mr. Atwater: There is an agreement on record in Essex County and I have a copy of it.

Mr. Kent: I now refer him to the testimony of that witness—

Q. When she said she came up to see you you took her around the house or showed her the grounds and the changes you had made? A. Yes, I think so.

Q. You explained to her first that you had made certain changes and changed the layout of the grounds and these chestnut trees? A. She saw the chestnut trees.

Q. But you showed her? A. I showed her the house.

Q. And showed her how it had been moved? A. Yes.

Q. And where it had been moved from? A. Yes.

Q. You showed her all that? A. Yes.

Re-direct Examination by Mr. Atwater:

Q. You had known the Lees family for years— A. Yes.

Q. —various members. Did you know of your own knowledge the relations that existed between

Mrs. Lees and her sister, Miss Loveridge, that they had been estranged for some time?

Mr. Kent: That is leading and asking the witness for a conclusion.

The Court: What difference does it make if she did not refer to them?

Mr. Atwater: Well, she did not on these occasions, but he had known these people for sixty years.

The Court: Well, what difference would that make? If that knowledge came to him through other sources—

Mr. Atwater: It would account for the provisions of the will.

The Court: The fact that there was a strained relation might account for the provision of the will, but the fact that he heard of such strained relation would neither prove that such relation existed, because the fact that he heard it from some outside source—

Mr. Atwater: We have proved it.

Mr. Kent: The proof from 1918 on is that their relations were very close.

The Court: Yes, that is right. There is a period they did not see each other.

Q. (By the Court) Did you notice anything about this lady other than what you would normally expect in a person eighty years of age? A. No, she was more or less feeble and infirm, because she was eighty—about eighty years of age.

Q. (By the Court) Would you say that she was feeble mentally or only physically? A. Mentally and physically.

Q. (By the Court) But somewhat mentally? A. Very little.

Q. When you say very little mentally you mean the ordinary condition of a person her age? A. Yes.

Mr. Kent: Well, that is certainly leading.
Witness: Slow in her answers.
The Court: Well, I think it is leading, but let it go for what it is worth.

MRS. ANNIE L. JAMES, sworn in behalf of appellant.

Direct Examination by Mr. Siegel:

Q. Mrs. James, where do you live? A. Baltimore.

Q. What is your occupation? A. Nurse, nurse and companion.

Q. When did you first meet Mrs. Elizabeth Lees? A. Well, about eight years ago.

Q. And under what circumstances did you meet her? A. Well, I went to Rainbow Cottage to live —Miss Hough wrote me to come there and I was there as an assistant to help Miss Hough take care of her.

Q. Do you know how Miss Hough come to request you to come to Rainbow Cottage? A. I do not.

Q. Had you met Miss Hough before? A. Yes, I had been to the Beresford for luncheon when I was visiting her sister-in-law, Bessie Loveridge.

Q. Do you remember the date that you first came to Rainbow Cottage? A. Yes, it was in 1921, in July; I do not remember just the date.

Q. (By the Court) July, 1921? A. Yes.

Q. Who did you make your arrangements with

for your stay at the Rainbow Cottage? A. Miss Hough wrote to me. I was away on a vacation in Pennsylvania and she wrote to me would I like to come to Rainbow Cottage and assist her there and I wrote right back I could come the next week, and I got a special delivery letter to come right away.

Q. What were your duties? A. Why, just help Miss Hough when she was away, I was to be companion to Mrs. Lees.

Q. During the course of your duties did you have occasion to come in contact with Mrs. Lees? A. I did.

Q. And did you personally attend to Mrs. Lees' wants during that period? A. Sometimes when Miss Hough was away.

Q. Did you notice anything peculiar about the physical condition of Mrs. Lees? A. Physical condition?

Q. Yes. A. I think she was an invalid.

Q. And during the time you were in attendance on Mrs. Lees, how did she conduct herself? A. Well, she was drowsy and inert and not herself; you know, I looked upon her as an invalid; she did not take notice; she did not talk to me.

Q. (By the Court) She never talked to you? A. No, she would like to be amused.

Q. Did you ever attempt to carry on any conversations with her? A. Yes, and she never talked; it was just yes or no.

Q. Did she appear to give intelligent answers to your questions? A. Yes, I think she did, yes.

Q. What was her condition during most of the day, just how did she spend her time? A. Well, she was writing a great deal; she didn't have breakfast until late and she would write a while.

Q. (By the Court) What kind of writing? A. Well, she was writing letters to her friends.

Q. Did she receive much mail? A. Yes, she did; she wrote quite nice letters.

Q. (By the Court) Well, did you read them? A. Yes, she wrote to me, some of them; I had some letters from her.

Q. Now, do you remember any special incident that took place during the time you were with Mrs. Lees tending to bear upon her mental condition? A. Well, yes.

Q. Will you kindly explain that to the court? A. Well, one time Miss Hough took us out in the automobile for an hour and when we come back Mrs. Lees did not want to leave the automobile and Miss Hough told me to stay there with her and I stayed there about a half an hour and she was drowsy and inert and afterwards I told her we would have to go in, it was supper time, and she did not heed it, and then finally Miranda came out and got her in the house out of the auto.

Q. Do you remember the time that this took place? A. It was when I was there in 1921. I went there in July until October, and it was, I think, about August; we used to take a drive in the afternoon.

Q. During the time that you say you attended Mrs. Lees you stated that she was inactive and inert and so forth; did you ever discuss the topics of the day with her? A. No, I did not.

Q. Did she ever ask you to? A. No, never did.

Q. Did she ever attempt to carry on any conversation on any topic with you? A. No, she did not.

Q. Did she ever ask you to read the newspapers to her? A. No, but she liked to be entertained by the victrola; I would entertain her that way.

Q. How long did you stay at the Rainbow Cottage? A. Well, I went there in July; it was after

the 4th; I don't know just the date, until the 15th of October.

Q. Now, during your stay at the Rainbow Cottage, how did Miranda Hough spend her time? A. Well, she was busy in the house helping work, and then she had business and went out to Newark.

Q. Did she ever tell you what kind of business she had in Newark? A. No, she did not.

Q. During the times you were in this place who paid your salary? A. Miss Hough.

Q. How was it paid, by check or by money? A. By money.

Q. Did Miss Hough always give you it? A. Miss Hough always.

Q. You don't know whether or not she obtained the money from Mrs. Lees to transmit to you? A. I don't know.

Q. During these times what were the relationship between Miss Hough and Mrs. Lees; did Mrs. Lees seem to dominate Miss Hough, or vice versa? A. No, it was the other way, Miss Hough was very dictatorial and I think she dominated Mrs. Lees.

Q. And Mrs. Lees would do what Miss Hough wished her to do?

Mr. Atwater: I object to that.

The Court: That is objectionable.

Mr. Atwater: I ask that that be stricken out.

The Court: Strike it out.

Mr. Kent: We consent to that.

Q. (By the Court) Did you read any books to her? A. No.

Q. (By the Court) Did anyone read any books to her? A. No, no one read to her.

Q. (By the Court) And what did her amusement

consist of? A. Of music and going out in the auto; she liked to be out in the auto and out in the open.

Q. (By the Court) Going out in the automobile and the music? A. Yes, and she went to church to New York.

Q. (By the Court) What church did she go to? A. Unitarian; I have been there several times with them, but I do not remember when it was.

Q. (By the Court) Well, didn't you have any newspapers there? A. Oh, yes.

Q. And were not they ever read to Mrs. Lees? A. No, sir.

Q. (By the Court) Didn't she ever ask you to read them? A. No.

Q. (By the Court) Well, now, whenever you talked to her—now, there were frequent periods, were there not, when you were neither in the automobile or playing the victrola? A. Well, she was always drowsy, or not herself, kind of asleep.

Q. (By the Court) Now, during these periods when she was not playing the victrola and she was not out in the automobile, was she ever aroused to her condition of mental activity so that she observed what was going on around her? A. I never noticed it.

Q. (By the Court) As far as you recall she remained in this drowsy condition at all times except when she was in the automobile or when she was listening to the victrola? A. Yes, she would ask for pieces to be played, pieces she liked.

Q. (By the Court) Did she ever show any affection for Miss Hough? A. I never saw any; I never saw any.

Q. (By the Court) Did not she speak at any time of Miss Hough when Miss Hough was away? A. No, she did not. She never did. She never told me anything about the business, or anything what Miss Hough did.

Q. During the time you were with Mrs. Lees did she show any affection to you? A. I think Mrs. Lees liked me, yes, I think she did; she said good night and good morning, she seemed lovable.

Q. Did she call you by any pet names, or indicate by any specific actions that she cared for you? A. No, she told me to call her Aunt Lizzie and I did.

Q. During this period did she ever refer to Miranda as her adopted daughter? A. Never talked about it.

Q. Do you remember a certain occasion of a block party in Orange? A. Yes.

Q. Will you kindly tell the court? A. Yes. They wanted us to go.

Q. When was it. A. In August.

Q. What year, please? A. 1921. And we went to the block dance, a neighbor took us.

Q. By we you mean who? A. Aunt Lizzie, Mrs. Lees, and I and Mr. Huffman took us in his auto with his wife, and we went to the block dance and we had a very nice time and before we went Miranda told me to come at nine o'clock and Mrs. Lees was enjoying it so and we did not get home, and ten o'clock came she sent her little nephew and when we came home she spoke angrily to both of us.

Q. Who was that? A. Miranda. She said I knew better, because Aunt Lizzie would have to go to church the next day, and I told her she was enjoying it so much and laughed heartily and enjoyed it. I remember the neighbor, Mr. Huffman, said, "Look, here, don't scold her too much," and she kept on muttering, and she went on in and I took Aunt Lizzie's hat and coat off.

Q. Did Aunt Lizzie make any remark? A. No, but I did. I said she is an old devil, or something like that.

Q. Now, when did you leave Rainbow Cottage? A. In October, the 15th of October.

Q. And what was the occasion for your leaving? A. I was going home for a vacation and to get my winter clothes.

Q. How long before you went away did you have any conversation with either Miss Hough or Mrs. Lees regarding your vacation? A. I don't know; maybe a couple of weeks.

Q. And who was this conversation with? A. With Miranda, Miss Hough.

Q. What took place at that conversation? A. She said it would be nice for me to go home on a vacation for a month and I expected to come back, and I said, "No, I won't stay that long, I will stay about two weeks and be back."

Q. And where did you go? A. To Baltimore.

Q. And during the time you were in Baltimore did you get any communication from Mrs. Lees? A. Yes, I have a very nice letter from Mrs. Lees.

Q. (By the Court) Have you that letter? A. No, I have not. I destroyed it last winter.

Q. Do you remember the contents of that letter? A. No, I do not.

Q. How many letters did you get from Mrs. Lees during this period? A. I only had that one letter.

Q. Did anything else occur while you were on your vacation? (No response.)

Q. (By the Court) What do you mean by a nice letter? A. Well, I think it was a very nice affectionate letter, very coherent letter, love, through the letter I could see that she cared for me.

Q. How was the wording of the letter, was it coherent; did it carry any particular thought or message? A. No, all the way through she expected me to come back.

Q. Do you remember how the salutation of this

letter started off? A. Precious one, dear one; I don't know whether it was precious or dear one.

Q. And during the time you were away did you get any message from Miss Hough? A. I did.

Q. What was that message? A. I got a letter that she would send my trunk to me, that she didn't want me to come back.

Q. And did she give you any reason in that letter? A. Yes, they were going to have the gardener's wife come in and help.

Q. And that is why she asked you not to come back. Did you reply to that letter? A. I did. In that letter she said she would send my trunk and I told her I would come after my trunk and I came out to Orange and got my trunk.

Q. And did she reply to your letter in which you said that you would personally come after your trunk? A. Yes, sent me a card.

Mr. Atwater: I don't know what this is—

The Court: Well, have you got the letter?

Q. Mrs. James, I show you this message, dated Thursday, October 13, signed Miranda H. Lees, and ask you if that is the card you received from Miranda in reply to your letter? A. Yes.

Paper marked Exhibit A-3.

The Court: You say that Miss Hough dominated Mrs. Lees. Now, tell the stenographer so he can take it down and tell me and him some of the instances that you say occurred which would illustrate the fact that Miss Hough dominated Mrs. Lees?

A. Well, I cannot remember any circumstances, but I just knew that she was head of the house; I cannot remember any little instances.

Q. (By the Court) Cannot you recall any single instance? A. I cannot. I am trying to think.

Mr. Siegel: If the Court please, this letter has been offered. I would like to have it read.

The Court: You have no objection to it?

(Letter read.)

Q. Did you later come back for your belongings, Mrs. James? A. I did.

Q. And about when was that? A. Well, as far as I can remember I was home a few weeks—maybe over the two weeks when she wrote me that I shouldn't hurry back—maybe three weeks. I got back, I know, before November.

Q. And when you came in did you have any conversation with Miranda Hough? A. I did not. They were at luncheon and they were very cordial and nice and I had lunch with them.

Q. Was Mrs. Lees at the table with you? A. Yes.

Q. Did she partake in any of the conversation? A. She did not.

Q. Did she seem to realize you were going away? A. No, I don't think she did.

Q. Did she ever make any reference during that meal to your going? A. She did not.

Q. She did not ask you if you had another position? A. No.

Q. Did she seem to take into consideration your departure at all? A. No, she did not.

Cross Examination by Mr. Atwater:

Q. Mrs. James, you have stated what Mrs. Lees occupied herself with. You have said playing the

phonograph, automobiling and letter writing, I believe? A. Yes.

Q. She was quite a prolific letter writer? A. Yes, she wrote a good many letters.

Q. She spent a good deal of her time writing letters? A. Yes.

Q. (By the Court) Have you any idea to whom these letters were written? A. To her friends.

Q. (By the Court) But you don't know who they were? A. No.

Q. And she received considerable mail from her friends? A. Yes.

Q. Did she show any of those letters to you? A. No.

Q. (By the Court) How many letters would you say she wrote a day? A. I don't know how many; probably two or three a day to mail for her.

Q. (By the Court) Two or three a day? A. I should say two or three.

Re-direct Examination by Mr. Siegel:

Q. You say that she was writing continuously during most of the morning; didn't you say that on direct? A. She wrote in the morning and in the afternoon, too, whenever she felt like it.

Q. About how many hours a day did she write? A. I don't know.

Q. Do you know whether she was writing letters or just merely writing? A. I think she was writing letters, just little short notes.

Q. Did you see envelopes present during these writings? A. Sure; they were addressed in envelopes.

Q. Did you see her address those envelopes? A. No, I didn't see her address them.

Q. Did you mail some of the letters? A. Yes,

I mailed some, all the letters I mailed was Mrs. Lees' writing.

Q. (By the Court) How many letters did she receive a day? A. I couldn't tell you that, because I never carried the mail up.

Q. (By the Court) You said you knew that she received letters; how did you know it? A. Well, I would see them up there, and Miranda would come out and say they were all for aunt Lizzie. They may have been business letters; I don't know.

Q. Now, would you say there were two or three of these a day? A. I could not just say.

Q. Well, somewheres around it? A. Well, say two or three.

Q. From your opportunity to observe Mrs. Lees and her actions and conduct during the day would you say that her acts were rational or irrational? A. Irrational; they were not rational.

Q. They were not rational? A. No, not rational.

Q. During the time that you were an occupant of this house you had occasion to notice the peculiarities of this house? A. I didn't notice anything only that rainbow window.

Q. Do you recall the inscription on that particular window? A. No, I cannot just say, "In memory of James E. Lees, and his adopted daughter, Miranda Hough Lees," something similar to that.

Q. And I understand no reference was ever made to you by Mrs. Lees relative to the adoption of Miss Hough? A. No.

Q. (By the Court) Now, you say her acts were irrational. Can you specify any particular thing or number of things that she said or did during the whole time that you were there that indicated to your mind that she was irrational? A. No, I could not, I do not remember.

Q. (By the Court) Now, you say you are a nurse. A. Convalescing nurse, more of a companion than nurse. A. I have a position now in Baltimore and they left me off a week.

Q. Now, Mrs. James, was there a specific instance on Mrs. Lees' part, or omissions on her part, that caused you to make the answer to the last question as to her being irrational?

Mr. Atwater: I object.

The Court: You can elaborate on that. I asked her and she said she cannot recall any.

A. I cannot recall any.

Q. I asked you was it the things she did do or didn't do that caused you to form this opinion? A. Well, the things she didn't do. She seemed to be invalid, like asleep. She did not take any part in the world and she simply wanted to be entertained and her mind was affected by her disease.

Re-cross Examination by Mr. Atwater:

Q. You say that on the occasion of this block party when you came home late as Miss Lees claimed, and after Miss Lees reprimanded you, you made that remark? A. Yes, I made that remark; I was kind of hurt, too.

Q. You said that Mrs. Lees noticed that right away and as you expressed it put her fingers to her lips not to say anything more? A. I think she did not want Miranda to be any more crosser.

Q. She did not want any more trouble? A. She did not want any more trouble.

MRS. AGNES LOVERIDGE, sworn in behalf of appellant.

Direct Examination by Mr. Kent:

Witness: I am a witness by the order of the court.

Mr. Kent: I want to put it on record that Mrs. Loveridge is a hostile witness. She comes under a subpoena that was served on her.

Q. And you want to give the impression that you are here by compulsion? A. Yes.

Q. Have you been sworn, Mrs. Loveridge? A. Yes.

Q. Where do you reside, Mrs. Loveridge? A. Rutherford, New Jersey.

Q. And how long have you known the decedent, Mrs. Lees? A. Ever since 1892, I came in the family.

Q. Did you observe Mrs. Lees in the years 1918 and 1920 and so on to her death? A. Whenever I saw her.

Q. And how often would you say? A. Well, I saw her a couple of times at Mrs. Harvie's. I went to call on her and she came to call on me.

Q. Were you there at any time that she called on Miss Loveridge? A. When she called on Miss Loveridge? No.

Q. Were you there at any time that she called on Mrs. Harvie? A. I called on Mrs. Lees' at Mrs. Harvie's when she was there.

Q. Did you at any time call upon Mrs. Lees when she asked you to give regards to your husband? A. Yes.

Q. How long ago was that? A. That was in 1922-1922.

Q. What was the conversation you had with her? A. We were there for luncheon and there was quite a party—

Mr. Kent: What time in 1922?

Q. What time in 1922? A. In August, I think; I have it here down.

Q. And you were there— A. August 18.

Q. —you say she asked about your husband? A. Yes. May I tell it? There was a luncheon there and we all had luncheon and after luncheon they separated, some went in the kitchen and some went out on the lawn, out in the yard and I found myself in the parlor alone with aunt Lizzie, and I sat down alongside of her and I said, "Well, how are you, all right?" She did not advance any conversation at all and I said, "It is warm in here, isn't it?" and all of a sudden she said, "How is your husband?" Well, I was kind of flabbergasted. I said, "Why, he is all right, he is safe," and she said, "Give my love to him when you go back home."

Q. How long had your husband been dead? A. My husband was dead eight years in October.

Q. Did she attend the funeral? A. No, she did not attend, but she sent flowers.

Q. Had the question of Mrs. Lees' mental incapacity come to your knowledge during the year 1918 through conversing with other members of the family?

Mr. Atwater: I object to that.

Mr. Kent: I will reframe the question.

Q. (By the Court) After the rest of the family came back they went out and left you in the parlar alone? A. Yes.

Q. (By the Court) After the rest of the family came back did you mention the fact she asked how your family was? A. No, but I think I mentioned going home to an aunt, and I think I mentioned it to Mrs. Harvie. She came back with us.

Q. You mentioned that fact to Miss Harriet Loveridge since? A. Yes.

Q. And that is how we come to know about it? A. Yes. I told her about it.

Q. About 1918 or thereabouts did you have a conversation with Mrs. Harvie with reference to Mrs. Lees' mental condition? A. No, I don't think I did, because I could see that myself when I went to Mrs. Harvie's. Why, this afternoon I went to Mrs. Harvie's Mrs. Lees did not speak to me hardly at all and I think Mrs. Harvie—Mrs. Lees laid on the couch and I sat alongside of her, but she never spoke to me and they were going out to make a call and when Mrs. Harvie was through—

Mr. Atwater: Has the time been fixed?

Q. When was that? A. I cannot tell you, but when I called on Mrs. Lees at Mrs. Harvie's.

Q. What year? A. It was one of her visits there.

Q. What year, 1918, 1919, 1920, which? A. I cannot tell you.

Q. How long ago from the present time? A. Well, it was before 1921.

Q. It was before 1921? A. Yes, because I know I didn't go to Rainbow Cottage until 1921.

Q. And that was before they went to Rainbow Cottage? A. Well, no, I can't say that. I know it was when she was making her visit to Mrs. Harvie she came to call on me one afternoon; Mrs. Harvie brought her over.

Q. When did you first have a conversation, or

when did Mrs. Harvie first tell you about her? A. I don't think she did. I think I saw that myself both times I was there.

Q. Well, did Mrs. Harvie ever mention to you that the guardian ought to be appointed? A. Yes, she mentioned that.

Q. When did she first mention that? A. Well, I cannot tell you that; it was in my home.

Q. In what year? A. I am not very strong on dates. It was one day she was over there and we stayed there in the living room and there was an aunt there and I remember distinctly her saying about the guardian and I said something and she said would you take her; and I said, no, I couldn't take her; I said I cannot take her; she said if there is a guardian appointed Miranda would say, "Well, take her."

Q. Well, what conversation, if anything, did you have in reference to Miranda Hough with her? A. I don't know as I had any. I only know that when Mrs. James came I thought Miranda was jealous of Mrs. James and aunt Lizzie was getting fond of Mrs. James and Miranda put her out.

Q. Did Mrs. Harvie say anything to you about the assets of the estate and what Miss Hough was doing with reference to them? A. No, I don't think she did. No, I think after aunt Elizabeth's death Mrs. Harvie was over to my home—

Mr. Atwater: I object to this.

The Court: What is the purpose of this?

Mr. Kent: These were two people scheming to—

The Court: Oh, the same thing?

Mr. Kent: The same thing, only I think it will be much more effective if we get it from a hostile source. I think this witness

is telling the truth. I have not any doubts she is telling the facts as she recalls them.

The Court: All right. Go ahead.

A. I haven't anything more to say.

Q. Now, did Mrs. Harvie ever discuss with you or make a statement to you concerning Miranda Hough and what Miranda Hough was trying to do to the estate? A. No, only she said that Miranda—

Mr. Atwater: I object.

Mr. Kent: Well, I will withdraw it.

Q. Now, did you go over to that house, Rainbow Cottage? A. I did.

Q. Who ran that house? A. I was invited by Miranda over the 'phone.

Q. And who ran that house if you know? A. Well, of course, Miss Hough ran it, because Mrs. Lees could not.

Q. And do you know who had charge of the financial and other affairs of that house? A. I do not.

Q. Do you know who paid the bills? A. I do not.

Q. Do you know who owned that house? A. I do.

Q. Did Mrs. Lees ever say to you that it was her house? A. She has never talked to me.

Q. Never talked to you? A. No, she was very quiet except that one day at the luncheon. I was there to another luncheon before that and we had luncheon and Mrs. James was there and I went into the kitchen after luncheon and helped and I had an aunt with me and she went out and talked with Mrs. Lees on the porch, and going home she said, "Agnes—"

Mr. Atwater: If the court please—

Mr. Kent: No, that is all. You cannot tell us what somebody had spoken to Mrs. Lees.

A. Well, I was right there; I went out on the porch and stayed.

The Court: Well, that is different. You were telling us what occurred in the afternoon going home.

A. Yes.

The Court: I do not want that. I would be glad to hear anything you heard when Mrs. Lees was present.

A. No, she just sat there and she talked to my aunt.

Q. And you say you could not make out the conversation? A. She did not talk, she just sat there.

Q. Would not respond and answer the conversation at all? A. No, Mrs. James and this aunt and myself talked and she sat there with us.

Q. From what you observed of Mrs. Lees would you say whether her mind was rational or not that time? A. It certainly was not active. Is that different?

The Court: He did not ask you that. He asked from what you saw would you say at that time was she mentally rational or irrational?

Mr. Atwater: What time is referred to?

Q. (By the Court) What time was this? A. That I was there?

Q. (By the Court) Yes. A. It was in 1891, September—

Q. 1921? A. Yes, 1921.

Mr. Atwater: September, 1921.

Witness: I think the 26th of September.

Q. (By the Court) Now, did she seem to you rational or irrational? A. Excuse me, August.

The Court: Well, did she seem to you rational or irrational?

A. Well, I cannot answer that question, because she was not there.

Q. (By the Court) What do you mean by that? A. Well, she did not seem to take anything in; she just sat there.

Q. By not there you mean she was not mentally there, is that right? A. Yes, she did not engage in that conversation; she did not know what was said.

Mr. Atwater: I object to that. How does this witness know?

The Court: You mean she gave no indication of her understanding of what was said?

A. No.

Q. And how long did that condition of hers that you have described exist as far as you know? How many years prior to that?

Mr. Atwater: Well, there is no foundation laid for this at all. I recall nothing in this witness's testimony as to any conversation.

The Court: He is asking this witness for how long a period she seemed to fail to take anything in.

Mr. Atwater: There is no basis for it.

The Court: Why, cannot he show that this mental condition was progressive or continuous? That is what he is trying to show.

Mr. Kent: Yes.

Q. How long had this condition existed that you noticed in August, 1921? How long before had you noticed that same condition?

Mr. Atwater: I would like to have my objection to that question noted.

A. Well, I think when I called on Mrs. Lees' at Mrs. Harvie's she had nothing to say to me and I just cannot tell you when that date was.

Q. How long before that visit in August was that, a year or two? A. Well, she generally went to Mrs. Harvie's in the summer, and then I didn't see her again until I went to Rainbow Cottage in 1921, and there was a very great change in her. As I told you, she certainly was not all there. She was quiet. She never spoke to me. She just said how do you do and goodbye and that was all.

Q. Now, that previous visit, her condition was almost the same at the previous visit?

A. She did not talk to me.

Mr. Atwater: What visit?

Mr. Kent: The visit to the Harvies', prior to her visit at Rainbow Cottage.

Mr. Atwater: The Rainbow Cottage visit in August, 1921?

Mr. Kent: Yes.

Q. (By the Court) How long ago before was this visit? A. About a year before that, because she called on me and I called on her.

Q. (By the Court) It was a year before that you say you noticed this marked change in her condition, a year before, and this 26th day of August, 1921, you saw her again? A. Yes.

Q. Well, at that time at the Harvies you could not carry on a conversation with her? A. No, I couldn't.

Mr. Atwater: When was that?

Mr. Kent: The year before.

The Court: The year before.

Mr. Kent: 1920. Sometime in 1921 when she visited at the Harvies. That time you say she laid on the couch.

A. That afternoon when I was there.

Q. Did you try to carry on a conversation with her? A. Yes, because Mrs. Harvie was busy and I sat alongside of her and I asked questions and she didn't answer and I just sat there until Mrs. Harvie got through and then we made a call.

Q. She would not respond to your questions? A. No, I thought maybe she was drowsy and wanted to go to sleep.

Q. How long were you with her that time? A. Not very long.

Q. Was that during the day? A. Yes, during the afternoon.

Q. And would you say that she appeared to you at that time not to be there mentally? A. She laid on the couch all the time.

The Court: Answer the question. He asked you at that time did she appear to be all there?

A. No.

Cross Examination by Mr. Atwater:

Q. What relation are you to the contestant? A. I am her nephew's widow.

Q. And you have a son? A. Yes.

Q. You and your son are mentioned in this will? A. Yes.

Q. A gift is made to you and your son? A. Yes.

Q. And have you seen the will? A. No, sir.

Q. Have you been informed as to the contents; have you seen a copy of it? A. Yes.

Q. Have you been informed as to the contents? A. I have.

Q. And you have heard that there is a provision in the will that anyone contesting it shall not receive their share? A. Yes.

Q. And that is the reason you did not want to go on the stand except by order of the court? A. Yes.

Adjourned until tomorrow, Wednesday, May 16, 1923.

THIRD DAY

Wednesday, May 16, 1923.

In the Matter
of
The Estate of ELIZABETH L. LEES, deceased.

(Appearances as before stated.)

THOMAS A. DAVIS, sworn in behalf of proponents.

Direct Examination by Mr. Atwater:

Q. Judge Davis, what is your occupation? A. Practicing lawyer.

Q. How long have you been practicing? A. Since 1895.

Q. As a member of the New Jersey Bar? A. Yes.

Q. And what does your firm consist of? A. The firm consists of William Mead Howe, myself and Edward L. Davis, and we are partners as Howe & Davis.

Q. Did you or did you not act professionally for Mrs. Elizabeth L. Lees and Miss Miranda Lees during the years 1920 and 1921? A. I do not know the latter name of Miranda Lees, unless this is the lady, who was formerly Miss Hough.

Q. That is the party referred to. A. Yes.

Q. Can you fix the date when you acted for them professionally? A. This is the first time I saw either of the ladies, on December 31, 1920. I think it is 1920. If I might be permitted to look at my charge slip. December 31, 1920.

Q. Will you state what they consulted you about at that time? A. I had never seen either of these ladies before, but they came to my office and both came into my room together. Mrs. Lees was very much older than Miss Hough, and Mrs. Lees also led the conversation and the object of her visit was to take proceedings for the purpose of adopting Miss Hough as her daughter, and she also talked about making a will—I never drew a will for her—but she talked on the two subjects of adopting Miss Hough as her daughter and about mak-

ing her will. I advised her that I could find no statutory authority for adopting anyone but a person under the age of twenty-one years, according to the laws of New Jersey, and then she talked of wanting it put in the shape of some document the fact that she wanted to consider Miss Hough as her daughter, and I advised her—I told her there was no objection to drawing any paper that she desired, but it would not, in my opinion, have the force and effect of anything excepting her expression of feeling toward Miss Hough, and I think that was all that was done that day. She came, I think, two or three times later and I drew for her, and I think she and Miss Hough signed a paper that was nothing more or less than an expression of her feeling toward Miss Hough, and the office inaugurated proceedings to change the name of Miss Hough to Miss Lees. My nephew, who is also my partner, Edward L. Davis, conducted those proceedings. I did not.

Q. I show you a paper writing and ask you if that is your signature? A. Yes.

Q. And if that is the paper you referred to as the socalled adoption agreement? A. Yes, this is the paper.

Paper marked Exhibit P-2.

Q. Did Mrs. Lees and Miss Hough also consult you with reference to the change of name of Miss Hough? A. I cannot be positive that Miss Lees consulted me on that subject. To the best of my recollection, it was one of the things talked of between the three of us, Mrs. Lees and Miss Hough and myself, but I would not want to be positive that Miss Lees was present at the time it was talked of, but my best recollection is that she was.

Q. Did Mrs. Lees, if you remember, ever say

anything to you about her desire or otherwise that Miss Hough change her name to that of Lees? A. My best recollection is that she did, but, as I say, I would not want to be as positive on that as I am on what I have testified to already.

Q. As the result of your business with Mrs. Lees did you form an opinion as to whether she was rational or irrational? A. Well, I have now. I did not feel called upon to form any opinion up to this time, but in looking back over it I would say at the time that she was dealing with me that she was, in my opinion, perfectly rational.

Q. Did she appear to be or not to be positive in her convictions? A. Why, I do not recall anything unusually positive about her. She conducted herself toward me as the average client does. She stated to me what she wanted and why she wanted it, and there was nothing at all unusual in either what she said or how she said it, except that the request to adopt a person of Miss Hough's age was rather unusual. That is all.

Q. What reasons did she give you, if any, for here desire to adopt Miss Hough? A. Why, she said that Miss Hough was actually taking the place of a daughter with her and had been for some time and that she expected that Miss Hough and she would be together during the remainder of her life and that she wanted to make her actually in law her daughter, as far as she could. Those were the reasons she gave me.

Q. You saw nothing in Mrs. Lees' conduct to lead you to believe that she was irrational? A. Not at that time. I saw her three or four times and she always talked on the subject that she came to see me about.

Q. And on none of those occasions did she appear irrational? A. No, sir.

Cross Examination by Mr. Kent:

Q. Judge Davis, every time she came to your office she was accompanied by Miss Hough? A. I think so.

Q. And Miss Hough was with her while she was conversing or attempting to converse with you? A. To the best of my recollection they were both in my room or they came in my room together.

Q. What period of time was consumed in the first visit? A. Well, I think the first visit was the longest visit, because they both talked and they both went over the same ground—I mean both went over the whole ground and it was all new to me. I should say their first visit must have taken pretty close to an hour.

Q. And you say they both went over the ground? A. They both talked. Mrs. Lees was the one that told me what she wished and, of course, I questioned both of them.

Q. And Miss Hough told you what she desired done, too? A. Miss Hough expressed her willingness to be adopted.

Q. Did she explain why, Judge? A. I don't think she went into that so much as Mrs. Lees. I think that Mrs. Lees in Miss Hough's presence and in mine stated to me just why she wanted the adoption put through. I do not think that Miss Hough was the one that stated the reasons.

Q. How old did Mrs. Lees appear to you? A. Well, she appeared to me to be—I do not want to do any injustice to a lady, but I think probably she was in the seventies.

Q. You did not know at that time she was in the eighties? A. No, I don't think she appeared so or acted in the eighties.

Q. Did she appear to you physically infirm? A.

I wouldn't call her infirm. I suppose she came to my office in a taxi or some conveyance, but the office is on the second floor. I do not recall her walking with any difficulty into my office or from my office. I think, as I recall, when she came in and went out she acted like a woman probably in the seventies to me. I think she had plenty of flesh on her bones. I do not think she was emaciated or thin, or anything of that sort, but I think she walked in and walked out about as a person of that age would.

Q. She did not appear to you to be physically affected? A. No. As I remember her she did not. Of course, she appeared to be old. Of course, she was sitting down most of the time. I do not recollect her being what you call feeble.

Q. And as far as you noticed her mentality was in no way impaired at that time or any other time, Judge, as far as you noticed? A. Well, of course, I wouldn't want to say whether her mentality was in no way impaired. I do not know what she was before that. I can only give you, as I have given you, my impression as she appeared to me.

Q. Did they state at that time that the family for some years before had considered the appointment of a guardian for her? A. No, sir.

Q. Was the statement made that the family physician in 1920 and before had stated that she was incapable of sound judgment and discretion? A. No. I knew nothing of her family history at all, nor was it stated by her or Miss Hough. I did understand that Miss Hough was there in the capacity of sort of a nurse or attendant taking care of Mrs. Lees, and that she needed someone to take care of her.

Q. And it became apparent to you that she was leaning on Miss Hough? A. I think it was made

plain to me by her that Miss Hough was taking care of her and she was either the sole one taking care of her or the principal one that was taking care of her.

Q. And was it explained to you that Miss Hough had charge of her finances and other matters? A. No, I don't think so.

Q. Nothing of that kind was explained to you? A. I do not think so. I do not remember anything of that sort being said.

Q. All they did was both of them came in and they both gave you an explanation that one wanted to adopt someone else and the other was willing and when you explained the law to them that under the statute of New Jersey that only an infant under twenty-one could be adopted, then they wanted something to show their understanding; that is correct? A. The only change I would make in your statement was that instead of "they" I would say "she," Mrs. Lees; she was the one that talked along these desires to that effect.

Q. You say that, "The purpose of this instrument is fully expressed herein. Should it not be sufficient in law for the purposes intended, it shall stand as an expression of the relations which exist between the parties hereto." Now, whose thought was that, Miss Hough's? A. No, I think probably that was mine, because I did not think that I wanted to have a paper go out which they might want to understand as accomplishing a certain purpose, and that was in line with my expression to them of what the effect of such a paper might be.

Q. In other words, the thought that was uppermost in their minds was a possible contest and that was to more or less safeguard someone else's interest in a possible contest? A. No. I did not want them to go out after I had explained the

legal status with the impression that the paper which I had drawn and which they had signed had accomplished entirely what they had desired, and I therefore put on that qualifying clause, which I read and explained to them, that the paper would not accomplish what they thought it would accomplish, but it would, at least, be an expression of what they wanted to do.

Q. I assume that is about the first paper of this kind you have ever drawn? A. Well, it was rather unusual and I do not remember ever having drawn an exactly similar document before. I do not think in my practice I ever had a request made to adopt a person of Miss Hough's age before.

Q. Now, when they came in to see you, Judge, you had no knowledge of their family history or their relationship? A. None at all. It was the first time I had, I think, ever seen either of them.

Q. And you did not pry into their family history in any way? A. No.

Q. Or to the qualifications of Mrs. Lees? A. No.

Q. You assumed that? A. Only I merely took Mrs. Lees as I found her and I talked with her.

Q. And when she came in to see you several times afterwards, as stated, why, you simply proceeded along the same general line? A. I think that the talk that I had with Mrs. Lees on every occasion when she came in, which I think was in all—the number was in all probability three or four—was along the same general line, and while we talked about her will, I never drew her will and I do not now remember just along what lines we talked concerning her will, but the memorandum of charges which I dictated at the time indicates that I did talk about her will with her.

Q. Who paid your bill, if I may ask? A. I am not certain about that.

Q. Was it Miss Hough? A. The charge slip shows that on March 26—it says by cash from Mrs. Lees, services regarding will and agreement, $50, and then on the same date by cash from Miss M. Hough Lees, regarding adoption, which included services and disbursements, $152.50. The whole bill was $152.50, and apparently from the charge slip Mrs. Lees paid $50 and Miss Hough paid $102.50. It was regarding the will and agreement and the Hough payment was regarding adoption. In that $102.50 there was quite a considerable amount of disbursements.

Q. Did not Miss Hough ever come to see you alone? A. I think she came to the office alone, but I do not know that she came to see me. Will you let me answer that?

Q. Yes. A. I do not believe that Miss Hough came to see me alone unless it was in connection with the change of name, and I think all the work after the matter was decided upon—all the actual work in that matter was done by Mr. Edward L. Davis, who is here now.

Q. Do you know why the charges were split up? A. I do not know, unless it was—I usually dictate the bills for the things that I do and I presume in sending out those bills I considered the matter of the so-called adoption and will talk was Mrs. Lees and Miss Hough, who was the petitioner in the change of name should be charged with the change of name.

Q. Wasn't that part of the same transaction? When you found out you could not adopt an adult of the age of Miss Hough you then drew this declaration, so-called, and then in order to effectuate or help the situation you had her name changed, which was part of the same operation? A. The suggestion as to the change of name I know did not

come from me. Do you mind telling me the date of that agreement?

Q. I think it is January 6, 1921. A. Well, according to the charge slips the first talk that was had regarding the change of name appears to have been January 11. Now, that is the first charge that the change of name appears in. Of course, it is entirely possible that the change of name may have been talked about in the first interview of December 31, but the first date the change of name appears in the charges is January 11, 1921.

Q. Did you advise why it was advisable to have her name change by a court order? A. I advised her that a court order was advisable in a change of name.

Q. In other words, it is necessary to have a court order in a change of name? A. I would not want to say off-hand that it is necessary, but the customary thing in New Jersey is to apply to the court for a change of name.

Q. Do you know who referred Mrs. Lees and Miss Hough to you? A. I cannot recall now. I do not know that they stated that they were referred to me by somebody.

Q. (By the Court) Can you recall any talk in connection with the proposed will with Mrs. Lees about the property? I wish I could recall more about the will than I can, because in the very first interview we had according to the charges I personally dictated, there was a talk about a will, but apparently it was not followed up at all, and I cannot remember what the circumstances of that talk was at all.

Q. (By the Court) And you do not know whether she discussed who her relatives were and how she wanted to dispose of her property? A. I am sorry to say I cannot.

EDWARD L. DAVIS, sworn in behalf of the proponents.

Direct Examination by Mr. Atwater:

Q. Mr. Davis, what is your occupation? A. Lawyer.

Q. What is the name of your firm? A. Howe & Davis.

Q. And your office is— A. 282 Main Street, Orange.

Q. Did you, in connection with your office, act professionally for Mrs. Elizabeth L. Lees and Miss Miranda Hough Lees during the years of 1920 and 1921? A. I am not quite sure about the date, but we did act for her professionally. My recollection is about two years ago.

Q. Will you state to the court what services you performed as a member of that firm for Mrs. Elizabeth L. Lees and Miss Hough? A. My first connection with the matter was to look up some law and see if there was any way of finding out whether an adult could be adopted. Then later on I think I had to do with the preparation of the papers connected with the change of name for Miss Hough and I attended at the Circuit Court when the matter came up for hearing and when the court made the order directing that the name be changed.

Q. Before what judge of the Circuit Court was that hearing? A. It was before Judge Dungan.

Q. And do you remember who was present with you? A. Miss Hough and Mrs. Lees and the Judge and myself. I do not remember what others were there.

Q. Was Mrs. Lees a witness at that time before Judge Dungan? A. She was.

Q. I show you a paper and ask you if you know

what it is. A. It seems to be a copy of the petition of Miss Hough for leave to assume the name of Miranda Hough Lees.

Q. And is that the petition you refer to? A. Yes, it is a carbon copy of the original petition.

Q. Has that been certified? A. Yes, but it seems to lack some signatures.

Q. I show you another paper and ask you if you know what that paper is. A. This is a certified copy of the order, signed by Judge Dungan, directing that the name be changed.

Q. And I show you another paper and ask you if you know what that is? A. This is the legal advertisement put in the paper in accordance with the statute to be pursued in changing the name.

Q. Did you cause that advertisement to be published? A. Yes, I did.

Q. (By the Court) Did you say that Mrs. Lees testified before Judge Dungan? A. She did.

Petition for leave to change name marked Exhibit P-3.

Order for change of name marked Exhibit P-4.

Newspaper advertisement marked Exhibit P-5.

Mr. Atwater: The age at the time was fifty-four years of Miss Hough.

Q. Do you recall whether or not you talked to Mrs. Lees in reference to this application for change of name prior to your appearing before Judge Dungan? A. I do not think I did. I think all her interviews were with Judge Davis.

Q. But you appeared personally before Judge Dungan? A. Yes.

Q. And did you examine Mrs. Lees on the stand as a witness? A. I did.

Q. Do you remember what the nature of her testimony was?

Mr. Kent: I object to that, what the nature of her testimony was before Judge Dungan. I think we ought to have the transcript of the record as the best evidence.

Q. Do you recollect the nature of the testimony given by Mrs. Lees? A. Yes. I am not sure whether it was Judge Dungan or myself who questioned her, but she was very clear and explicit—

Mr. Kent: I ask that that be stricken out, she was very clear and explicit.

The Court: Yes.

A. (Continuing) She said that Miss Hough had been with her for a number of years; that she had grown to have a strong affection for her; that she wanted—that she had grown to feel toward her as she would toward a daughter and that she had desired to adopt her, but that she consulted Judge Davis and found that it probably would not be possible to adopt her and that she wanted to do all that she possibly could to accomplish the effect of an adoption by giving Miss Hough her name and, with that in mind, that she was perfectly willing and I think she said glad to do what she could to have Miss Lees—Miss Hough take her name.

Q. (By the Court) Miss Hough, you mean? A. Miss Hough, yes, sir.

Q. Did or did not Judge Dungan question the witness? A. I am sure he asked some questions. Whether he did all the examining I am not positive.

Q. As a result of that proceeding the order offered in evidence was made? A. It was.

Q. In your observation of Mrs. Lees during the

time that you acted for her professionally in your opinion was Mrs. Lees rational or irrational? A. In my opinion she was rational.

Q. Did she appear to you to be a woman of more or less than average intelligence? A. Considering her years I thought she was a little more than of average intelligence. She seemed very bright and keen to me.

Q. Would you consider her a woman of more or less than the average culture? A. Well, I did not have much of an opportunity to judge her general knowledge of subjects.

Q. Did she appear to you to be strong-minded and positive in her desires?

Mr. Kent: Of course, there is a limit, for leading questions.

Mr. Atwater: I will withdraw the question.

Cross Examination by Mr. Kent:

Q. The only time, Mr. Davis, that you had a real opportunity to observe her was in this court proceeding? A. Oh, no. I had seen her in Judge Davis' office, although I was not conducting the interviews at that time, and I have been in the room when she has been there.

Q. And you do not know anything of the family history? A. No, nothing.

Q. You had no knowledge, or no knowledge was brought to you, that the family physician almost a year before you saw her had certified that she was not of sound judgment or discretion; you had no knowledge of that? A. No.

Q. You did not know that according to the family physician that that condition had existed for some years prior to that? A. No.

Q. And neither to your knowledge or to anyone else's in your office was it brought home the fact that guardianship proceedings had been talked of and contemplated by the members of the family? A. No.

Q. Did you draw these papers? A. In connection with the change of name I am quite positive.

Q. Now, from whom did you get the information to draw these papers, from Miss Hough? A. No, Judge Davis.

Q. There is included in this petition the words: "Elizabeth L. Lees has given and granted to petitioner and petitioner has accepted from said Elizabeth L. Lees all of the rights and privileges of a child, including the right of inheritance"? A. Is that the paper in connection with change of name?

Q. Yes. A. Yes.

Q. And the right of inheritance or the right to succeed to the property of Mrs. Lees was the paramount thought in this proceeding, was it not, because unless Mr. Davis—let me suggest further, that unless this thought had occurred to you or to her or to somebody there was no necessity for this proceeding. A. I think that is the case.

Q. The right of inheritance, that was the case. A. Well, I am not so sure as to that; the right of inheritance was not necessarily involved in these proceedings.

Q. But if something happened to that will and the will was set aside she would get the entire estate if she were the only child? A. If she were the only child.

Q. Then she would get the entire estate? A. Yes.

Q. You knew that? A. I knew that.

Q. And they knew that? A. I think they had it explained to them; I am not positive of that.

Q. Let me ask you, did you procure these certified copies? A. I believe I did.

Q. Why wasn't the petition and the other papers completed? A. Because the original papers were left here on file at the time of the court proceedings and I took it for granted that the clerk would see that they were certified copies. I never investigated as to whether they were complete.

Q. (By the Court) Well, then, that certified copy is not a correct copy? A. No, it is not. It lacks signatures.

Q. It lacks signatures and other omissions from the body and verification. All it really certifies is the Clerk's signature.

The Court: Well, that is of no value at all.

Mr. Atwater: These papers were turned over to me and I am frank to say I have not had an opportunity to examine them. I would like to have an opportunity to procure correctly certified copies.

The Court. All right. I wish you would.

Q. Did you at that hearing come to Newark alone, Mr. Davis? A. I am not sure whether I came with the ladies or not. I know that I went home in a taxi with them; that is, I went from Newark to Orange and I think they took me down in a taxi. I am not certain of that.

Q. You said something about her being exceptionally keen? A. Yes.

Q. And strong-minded? A. She seemed so to me.

Q. Do you want to qualify that statement now in view of what you have now learned about her family physician certifying that? A. No. I disagree with the family physician.

Q. You think your guess is the better one?

The Court: Well, he doesn't have to answer that.

Q. You only saw her in the limited way you did and observed her this one time in court, not knowing anything of her family history or family relationship or what was going on.

Mr. Atwater: I object to that question. The testimony is not that he only saw her in court, but he saw her in the office of Howe & Davis.

The Court: I understand that, but Mr. Davis is able to take care of himself.

Q. (Question read) A. I only saw her on perhaps three or four different occasions and without knowing anything about her family affairs.

Q. In this court proceeding you asked the questions, did you not? A. I think I started the examination and that Judge Dungan asked some questions on his own account.

Q. And you asked the usual questions whether she would consent to the proceedings and wanted the person named as her daughter and she would answer yes. A. Oh, no. She did quite a little talking. I remember there being a little amusement in court about the manner in which she expressed herself.

Q. There was some amusement in court? A. Perhaps amusement is not the correct word. She expressed herself with such clearness and meaning that I noticed that the Judge smiled and I did, too.

Q. Then you say that, Mr. Davis, because she expressed herself with such clearness it created

amusement? A. Well, it is a little bit difficult to explain, but she was an old lady and you would hardly have suspected that she was able to express to the Judge exactly what she had in mind with such detail as she did express it.

Miss IDA BROWN, sworn in behalf of appellant.

Direct Examination by Mr. Siegel:

Q. Miss Brown, what is your occupation? A. I am a housekeeper for Miss Harriet Loveridge.

Q. And in that capacity as housekeeper and companion for Miss Harriet Loveridge you had occasion to observe Mrs. Lees in or about the summer of 1922? A. I had.

Q. And on what occasion was that? A. It was when she called to see her sister at her home and Miss Loveridge and Miss Hough had left the room and left me in charge of her sister, and while she was in the room she was kind of drowsy and she did not seem to take any notice of anything, and all of a sudden she said, "Who is that there?" We had a little photograph on the table. I said, "Well, that is a friend of Miss Loveridge's." "Why," she said, "are they children?" I said, "There are no children in the house" and she said, "Why, I know her name is Loveridge and she married my oldest brother," and I said, "No, she is your maiden sister," and with that Miss Loveridge came in the room, and that is all the conversation I had with her.

Q. How long have you been in the employ of Miss Harriet Loveridge as a companion and house-

keeper? A. I have been in the employ as companion and housekeeper for thirty years.

Q. And in this capacity you occasionally had opportunity to observe Mrs. Lees? A. I certainly did.

Q. And did you have the opportunity to observe her in 1918? A. Well, that I cannot say.

Q. How long in the last five years have you had the opportunity to observe her? A. The most I seen of Mrs. Lees was when she called at her sister's in September.

Mr. Atwater: Of what year?

Witness: 1922, I think it was.

Q. And on how many occasions in September, 1922, did you see her? A. That I do not remember.

Q. Approximately? A. That I cannot say.

Q. Two, three, four or a half dozen times? A. That I cannot say.

Q. On these occasions that you did have opportunity to observe her how did Mrs. Lees conduct herself? A. Well, as I said before, she was drowsy and sleepy and she did not seem right.

Q. Did you have any other conversation with her beside— A. No, I didn't.

Q. —the one mentioned? A. No, I didn't.

Q. From your opportunity of observation of Mrs. Lees would you say that she was rational or irrational?

Mr. Atwater: I object to that question.

Witness: Well, I say she was not right.

Mr. Atwater: She has only testified to one conversation.

The Court: No. She said she saw her three or four times.

Mr. Kent: Exactly.

Witness: I have seen her three or four times. I have seen her when I accompanied Miss Loveridge to her sister's.

Q. And from these opportunities to observe her would you say that she was rational or irrational? A. Irrational. She did not seem to know me or did not seem to know her sister.

Cross Examination by Mr. Atwater:

Q. Miss Brown, did you see Mrs. Lees at the home of Miss Loveridge prior to the summer of 1922? A. I don't think so.

Q. Did you ever call at Mrs. Lees' home with Miss Loveridge prior to the summer of 1922? A. The only time I called at Mrs. Lees' home with Miss Loveridge was the day we were invited to lunch.

Q. When was that? A. August, 1922.

Q. So that you only saw Mrs. Lees on that occasion in August, 1922, and on the occasion in September, 1922? A. That is right.

Q. Those two occasions were the only times that you saw her? A. That is right.

Q. Do you know when Mrs. Lees died? A. Mrs. Lees died the 9th of September .

Q. 1922? A. Yes.

Q. How long before she died did you see her? A. I saw her at the time I saw her in her sister's home and the time I saw her in her own home afterwards.

Q. You testified that you saw her in your home in September, 1922. Now, how long before her death was it that you saw her in her home? A. I think it was on a Tuesday afternoon and Mrs. Lees died on the 9th of September.

Q. And you saw her the previous Tuesday? A.

I saw her that Tuesday and she died on the 9th.

Q. The Tuesday before the 9th?

The Court: Well, was that the last Tuesday before the 9th?

A. We were at her home on Tuesday and she died on the 9th of September.

Mr. Kent: September 9th was on a Saturday and Tuesday would be the 2nd.

Mr. Atwater: No.

The Court: September 2nd would be Saturday and the 9th would be Saturday.

Mr. Atwater: And Tuesday would be the 5th.

The Court: Yes.

Mr. Atwater: So she saw her on the 5th of September.

Re-direct Examination by Mr. Siegel:

Q. Did you ever see Mrs. Lees at the home of the Harvies? A. I have

Q. And when was that? A. Well, I don't know that I can recall that, but I accompanied Miss Loveridge when she called to see her sister, but I cannot recall the day or the time.

Q. Do you recall how long it was before this last visit of Miss Loveridge to your home? A. That I cannot tell.

Q. Was it the same year? A. I do not remember and I cannot say.

Q. Can you recollect on how many occasions you saw Mrs. Lees at the home of the Harvies? A. That I cannot say.

Q. Well, approximately, did you see her a few times? A. Well, I might have seen her twice.

Q. But you saw her more than once? A. I saw her more than once, but I saw her twice at Mrs. Harvie's house.

Q. On how many occasions have you seen Mrs. Lees altogether? A. I can hardly recollect that answer.

Q. Was it a half a dozen times, would you say? A. Well, I think three or four times, I will say.

Q. And over what period of time did these three or four occasions extend? A. I cannot remember.

Q. Was it over a year? A. That I don't know.

Q. And your answers to the question as to her mental capacity is based on all of those visits? A. She did not know me and she did not know her sister.

Mrs. BELLE HARVIE, sworn in behalf of appellants.

Direct Examination by Mr. Kent:

Q. Where do you reside, Mrs. Harvie? A. In Rutherford, New Jersey.

Q. Did you, in the month of July, 1920, visit the office of Dr. Edward P. Swift? A. I did.

Q. And was that visit in reference to an inquiry into whether he would certify as to the lack of mentel capacity of Mrs. Lees? A. It was.

Q. And you went there for the purpose of having him so certify? A. I did, and I told him why I went there.

Q. And you told him at that time that Miss Hough was exercising undue influence?

Mr. Atwater: I object to that.

A. I don't think I did.

The Court: Well, I don't think that you can ask her that.

Mr. Kent: Well, here is a witness that is absolutely hostile to us. We had not talked to her in any shape, form or manner.

The Court: Well, you might ask her what she said, if you want to.

Mr. Atwater: If the court please, I object to that. That is not a proper question.

The Court: Why?

Mr. Atwater: Why, on the ground that it is an attempt to show by statements of Mrs. Harvie what she said about someone else.

(Argument. Question withdrawn.)

Q. You got this certificate, did you not, from Dr. Swift? A. did.

Q. Did you agree with the doctor's conclusion? A. My aunt had been very ill a short while before this and she was in a very weak condition and I felt that she might be influenced.

Q. And you were very much afraid of that, were you not? A. I was not—well, I didn't want her to be influenced by a certain person.

Q. Well, who was that certain person that you were afraid of? A. I don't think I mentioned it to him.

Q. The doctor says you did. A. I wouldn't be sure whether I did or not.

Q. You were present in court yesterday when I read the deposition of Dr. Swift? A. I don't have any recollection of my having mentioned any name in that deposition.

Q. Well, if I tell you that Dr. Swift stated that you mentioned Miss Hough's name would that refresh your recollection?

The Court: Did not she say it was some certain person?

Mr. Kent: Yes, sir.

Q. Now, who was that person that you had in mind? A. It was Miss Hough.

Q. Miranda Hough? A. Miranda Hough.

Q. Upon what acts of Miranda Hough did you base that idea of yours? A. Well, my aunt's dependence on her and I thought she was taking advantage of my aunt.

Q. In what way? A. I do not recall any special way.

Q. Was it the way she dominated her and made her do her bidding, was that it? A. My aunt was a person who was very dependent on her help. She never thought very much for herself except along her own business lines and she never did anything she could get a servant to do, and she relied on Miss Hough for her dressmaking, housekeeping and everything in her life. My aunt never charged herself with any duties of that kind if she could avoid it.

Q. You just mentioned that your aunt thought much of herself? A. I said except along her business lines. Then she was very decided and whatever she wanted for herself that she wanted and that she would have, but you could not allude to any of her business affairs. She attended strictly and entirely to her business affairs.

Q. (By the Court) She did that herself? A. Yes, always.

Q. (By the Court) This influence that you anticipated on the part of Miss Hough was exclusively in regard to her business affairs? A. Well, I was afraid she was going to take advantage of her weakness now she was ill there to try to get

control of some of her business affairs. I did not know that she had except in one instance.

Q. What was that? A. Well, I had always accompanied my aunt to the safe deposit box where she attended to her banking and to the Guarantee Trust and finally Miss Hough persuaded my aunt to take her instead of me, and my aunt always said she never would do that, but she took her without my knowledge and I did not go any more, and I did not like that.

Q. What year was that? A. 1920.

Q. And you felt at that time that Miss Hough was getting control of both the mind and the property and assets of Mrs. Lees'? A .Not at all, but I thought that she was making an effort to do so, but I did not consider she was doing it to any great extent so far.

Q. But you thought at that time that she had started a certain plan of action and unless you stopped it or circumvented it she would fulfil that plan? A. Well, that was my intuition.

Q. Your intuition was what you thought you saw her attempt to do? A. I did not like my aunt to take her down. I had always for years taken her down when she could attend to her business. While I did not know so much of her business I always went with her.

Q. So when you realized in the summer of 1920 that your aunt was in a very weakened condition and seriously ill— A. Did I say that?

Q. Yes. A. I thought I said that at the time I asked Dr. Swift for this paper she had been very ill with heart trouble.

Q. You say she was suffering with heart trouble? A. At that time she had an acute attack, from which she recovered.

Q. From what other things was she suffering beside heart trouble? A. I don't know.

Mr. Atwater: I object.
The Court: She does not know.
Witness: I do not know positively.

Q. Was she suffering from Bright's Disease? A. I don't know. I have no reliable knowledge from any source as to what ailed my aunt.

Q. But you knew she was ailing? A. Well, she was naturally not as strong as when she was sixteen.

Q. Then after you got this letter or certificate from Dr. Swift you went to see your brother Arthur Loveridge, did you not? A. I did.

Q. And you asked your brother Arthur Loveridge to institute proceedings to have a guardian appointed for her? A. I did not. I asked his advice about it. I told him—now, let me see! I had asked Miss Loveridge about it and she told me to have a guardian appointed would involve an examination before a jury of my aunt and she said, "Belle, there is no jury would ever be able to convince the Judge that she was incapable of taking care of her own affairs."

Q. Well, let me read to you part of the letter you wrote to him on October 21, 1920. You start off: "Dear Arthur: Enclosed is statement of Dr. Swift concerning Aunt Lizzie. I think her mind is failing more in some respects, as she contradicts herself continually. No wonder, though, when she leads the life she has for the past few months. She is a sad problem." That was true then? A. If I wrote it it was true.

Q. Well, will you please look at it? A. Yes, I wrote it.

Q. And that was true then? A. Yes, she was not as well at times as others.

Q. No, I mean this statement of yours. Was it true then? A. Yes.

Q. Will you please explain to me your postscript whereby you asked your brother to make a copy of Dr. Swift's statement and return the original?

Mr. Atwater: I would prefer to have the whole letter read.

The Court: It is in evidence.

A. Well, Aunt Lizzie was very lonesome and she was very restricted in her pleasures at that time. She did not get about as much as usual.

Q. I mean, look at the postscript on the card. A. Oh, "Please make a copy of Dr. Swift's statement and return the original." My husband did not know that I had showed that to Mr. Loveridge. He did not have the confidence that I had. He was my brother and I naturally trusted him and I asked his advice on certain things and wrote to Mr. Loveridge several times—

Q. You forgot to read the end of that postscript: "Burn this up." A. Well, I began to realize my foolishness in letting him have that paper. I said to him—he was my brother and I thought he was honorable and meant what he said. I asked him soon after that and he said, "I sent you that paper."

Q. Now, will you please answer my question. A. I am answering it.

Q. You wanted him to destroy that letter of yours? A. It was a foolish request, probably.

Q. Did you or did you not want him to destroy that letter? A. I said so.

Q. Now, you asked him, did you not, to institute proceedings for the appointment of a guardian, which he declined to do? A. I asked his advice about it. I have no recollection that I asked him to conduct any proceedings.

Q. And didn't you also go to Miss Harriet Lover-

idge, a sister of Mrs. Lees, and ask her to institute proceedings? A. No, I asked her advice about it.

Q. You mean you asked her whether proceedings should be instituted? A. Yes.

Q. And in your opinion proceedings should have been instituted then? A. Except when I found she would have to go before a jury and be proven incapable, and I would not submit to that. I felt they could not prove it.

Q. You would not subject her to going before a jury. A. I thought too much of my aunt to subject her to such an indignity.

Q. But if your aunt did not have to go before a jury and it could be done on a doctor's certificate only you would be thoroughly satisfied, wouldn't you? A. I don't understand.

Examined by the Court:

Q. Well, was your objection to going before a jury? A. Well, I did not want to expose her to the indignity.

Q. How did you expect to have the guardian appointed? A. I didn't know. I was ignorant and I was asking for information, and I did not realize it would involve that.

Q. You didn't think you could get a guardian appointed without the authority of the courts? A. I didn't know. I never had any experience on the subject. That was what I was asking for, information.

Q. Were you perfectly willing to have a guardian appointed for your aunt if it could be done without going before the court? A. I just wanted somebody to be behind me. I had to protect her interests.

Q. Well, did you want a guardian appointed for her or not? A. I never started—

Q. Will you not answer that question? A. Yes, I thought it would be advisable at one time.

Q. Now, if you thought it would be advisable to have a guardian appointed for her did you think she was mentally competent or not? A. Oh, I thought she was mentally competent of taking care of her affairs and she was competent to take care of her affairs.

Q. Notwithstanding the fact that she was competent to take care of her affairs, you wanted a guardian appointed. A. Yes. I did not realize all that was involved. I was afraid there would be influence about the will.

Q. (By Mr. Kent) Now, did you read this certificate of Dr. Swift where he said that she was suffering from senile changes which have affected her mentality and rendered her incapable of sound judgment and discretion? A. Yes, and afterwards Dr. Swift said to me that he had no business to make that statement.

Mr. Kent: I ask that that be stricken out.

Q. How did he happen to make it? A. I went to see him and I told him that my object in having that paper was to prevent a new will being made.

Q. And was it at that time that he told you— A. No, this was previous.

Q. Was it at that time that he told you that he should not make the statement? A. No, that was afterwards.

Q. When? A. About two months ago. I went to see him.

Q. Oh, about two months ago he made that statement. A. Yes. I told him that Mrs. Leeds had

made a will, which was a very fair will and that I did not want to have a new will that would deprive those relatives of having their share, and that is what I wanted to prevent. I went and told him.

Q. Now, how did he happen to make this statement which you say he should not have made? A. Well, I went up several months—in July. I think my aunt was ill in February and March, when I first met Dr. Swift, and I went up in July. He was in a great hurry to go away in the country—the house was all closed up and he was just going to have his lunch and go and he wrote it down.

Q. Did you take it? A. Yes.

Q. Did you read it? A. Yes.

Q. What did you say to the doctor? A. I said, "Thank you."

Q. It was satisfactory to you? A. Yes.

Q. That is what you wanted him to say? A. Yes.

Direct Examination (Continued) by Mr. Kent:

Q. Did you know of the adoption proceedings that were contemplated? A. I received a notice, but I never recognized it.

Q. You never recognized it? A. No.

Q. Did you ever talk to Mrs. Lees in reference to the adoption? A. Yes.

Q. Do you remember the incident where you got two diamond rings and the check for $1,000. A. That was a misstatement. I got two diamond rings at different times under different circumstances and the check another, and different set of circumstances.

Q. Did you get a check for $1,000 when you were informed of the so-called adoption? A. Certainly not.

New Jersey State Library

Q. Did you state to your brother and to Miss Harriet Loveridge that you had gotten a check at that time? A. I don't know what time I stated it. They thought I had a check.

Q. Will you say that you did not make that statement both to your brother and to Miss Loveridge? A. I don't know. I said that I got a check at that time, because I didn't get a check at the time of the adoption.

Q. Did you tell your brother and did you tell Miss Loveridge that when you discovered the fact of the adoption that you said to Aunt Lizzie, "How could you do it?" and that she said to you, "I had to do it." A. I never made any remark whatever when my aunt told me. Miss Hough told her to tell me what she was doing and I was very careful to make no criticism or any remark whatever. I made no statement at the time. I stood and said absolutely nothing.

Q. Didn't you tell your brother Arthur Loveridge just what I said to you? A. What was that? Repeat it.

Q. "Aunt Lizzie, how could you do such a thing? A. I have no recollection.

Q. Would you say that you didn't say it? A. Yes.

Q. And would you say that you did not say that to Miss Loveridge? A. To the best of my knowledge I never said those words.

Q. And didn't Aunt Lizzie say to you that, "I had to do it"? A. Yes, after Miss Hough left the room.

Q. Yes. A. That was the first word that was spoken except by Miss Hough. Miss Hough went out of the room and Mrs. Lees said, "Belle, it is the only thing I can do to keep her."

Q. It was the only thing she could do to keep

her? A. Yes, and there was no criticism made by me.

Q. By you? A. I did not make any criticism.

Q. Didn't you say, "How could you do such a thing? A. I have not the slightest recollection of having said any such thing. I was particularly anxious to keep quiet.

Q. Why were you trying to act at that moment? A. I don't understand the question.

Q. Why, you were non-plussed at that situation; it came as a great shock to you? A. Well, I don't know whether I knew of her adoption before or afterwards.

Q. Well, you were greatly surprised, weren't you? Why can't you answer that? A. I am trying to be truthful.

Q. Well, you can answer yes or no without any great mental labor or effort? A. Can I take my time, Judge?

The Court: Yes, certainly.

Q. Were you surprised when you learned of the adoption? A. Yes and no.

Q. Had your Aunt Lizzie stated to you before that time that she was going to adopt her? A. I do not recollect her having done so.

Q. Then until you learned of the adoption from Miss Hough— A. Yes.

Q. She was the first one to tell you of the adoption? A. No. Excuse me. My aunt. Miss Hough told her to tell me what she had been doing and my aunt told me.

Q. I see, your aunt told Miss Hough to tell you. A. To tell me.

Q. And when Miss Hough told you that was the first knowledge or information that you had of

the proceedings, is that right? A. I think the first official announcement.

Q. I beg your pardon! A. That was the first official announcement, the first time my aunt had told me.

Q. When was that? A. Well, it was just before the announcements were sent out. I do not remember the exact date. Shortly after I received the notice.

Q. Was that in 1921? A. I think—is that the date the announcements were sent out?

Q. I don't know. Did you get an official announcement? A. Yes, but I forget the date.

Q. Have you a copy of the official announcement, if I may ask you?

Mr. Atwater: Here is one.

Witness: Is that notice from the paper? Is it the legal notice there?

Q. Is that the official announcement that you got? A. That is what came to me.

Paper marked Exhibit A-5.

Q. Can you approximate the month it was sent to you and the year? A. I think the envelope will tell. Isn't that addressed to me?

Q. Yes. A. September 27.

Q. What year? A. I don't know.

Q. 1921? A. I have no memory. Oh, there it is. 1921.

Q. September 27, 1921? A. Yes.

Q. Is that the first knowledge you had of the adoption? A. That is the first official—no, Mrs. Leeds had told me of it before.

Q. When? A. I don't know.

Mr. Atwater: I do not want to interrupt the examination, but I am not at all sure that that can be the envelope—I don't want to give that impression that that was the envelope that contained that announcement.

Mr. Kent: It is marked, "Adoption announcement," and it is dated September 27, 1921.

Q. And the time before you are referring to is when Miss Hough at the request of Mrs. Lees told you of the adoption, is that right? A. Yes.

Q. How long before September 27, 1921— A. I cannot say.

Q. —did that take place? A. I don't know.

Q. A week? A. I don't know.

Q. Two weeks? A. I can't say.

Q. Three weeks? A. When I say I can't say I can't say.

Q. A month, two months? A. I have no recollection.

Q. Three months? A. I don't know.

Q. Would it be a year before? A. I answered that I do not know.

Q. Well, let me see if I get you correctly. The first time you ever learned of the adoption is when Miranda Hough told you of it? A. No, Mrs. Lees told me of it.

Q. Then Mrs. Lees told you—rather, told Miranda to tell you, didn't she? A. No.

Q. (By the Court) The other way around? A. No, Miranda told Mrs. Lees to tell me.

Q. Miranda told Mrs. Lees to tell you, is that correct? A. That is correct.

Q. And you then learned for the first time of the so-called adoption, that is correct? A. That is officially. I do not know whether I had any intimation before or not. I do not think so.

Q. That created a distinct impression upon you, did it not? A. Naturally.

Q. Why is it that you cannot recollect when that was? A. I have a very poor memory for dates or times or the lapse of time.

Q. Or the recollection of evidence? A. Not at all.

Q. But you have a good memory for the recollection of evidence? A. Yes, I think so.

Q. Well, did anything occur that was striking at that episode? A. I do not remember anything else in connection with it.

Q. Well, it didn't render you unconscious, did it, that affair? A. Not at all.

Q. Did you have any talk with Miss Hough after that with reference to the fact that she was an adopted daughter? A. I don't think I ever had any conversation with Miss Hough about it. I didn't discuss very many things with Miss Hough.

Q. Well, you started to say that Miranda Hough left the room afterwards? A. She said she was busy downstairs.

Q. And you remained with Mrs. Lees. Did you have any conversation with her at all with reference to the proceedings? A. Not anything of any account.

Q. Please give us what conversation you did have. A. I do not recollect any conversation. I did not like to discuss Miranda with Mrs. Lees and I never discussed Mrs. Lees with Miranda.

Q. You do not recollect any part of that conversation now? A. No, I do not.

Q. Didn't you tell us just one or two minutes ago that Mrs. Lees told you that is the only way she could keep her was because of these proceedings for the adoption? A. Well, I told you that there was a further conversation. You asked me did I

have a further conversation. Mrs. Lees was my aunt. I was Mrs. Lees' niece. Miss Hough was her helper and her nurse and her seamstress and it was not for me to discuss Mrs. Lees with her housekeeper, and I do not consider it was my business to discuss the housekeeper with Mrs. Lees. I was there as Mrs. Lees' guest.

Q. What prompted her to make the statement that you said she did about having to adopt Miss Hough? A. I don't know. Say that again.

Q. (Question read) A. I think maybe she thought I might be sore; I don't know.

Q. Did she give anything or deliver anything to you on this occasion? A. No, no, she did not.

Q. Did Miranda Hough give anything to you on this occasion? A. No, they gave me my lunch.

Q. Did you receive the rings or the check around that time? A. No. I had the dates here of the times I received the rings. I received those on three separate occasions. Mrs. Lees gave me a diamond and ruby ring and some Venetian beads. She was distributing her jewelry and different things at that time among her relatives that she wanted to have them and, among other things, she gave me these rings and these beads. The other ring was given to me in July, 1920, at the cottage, the first cottage.

Q. Yes. When was the second? A. She had always told me for years that she wanted me to have that ring and this time she put it on my finger, and the check was given to me later in my own home and not by Miranda Hough, who was out of the room at the time.

Q. What was the date of the check? A. June 30, 1920.

Q. The check was June 30, 1920? A. I don't

know the date of the check, but that is when it was given to me.

Q. May I see that memorandum you are reading from? A. No, I do not care to show that. There is some more data there that has nothing to do with it.

Mr. Kent: I ask your Honor to direct the witness to let me read that memorandum.

The Court: No, I will not direct her to do anything more than what she read.

Mr. Kent: I think under the law of this state when the witness used a book or memorandum in reference to any transaction that the attorney has a perfect right to go into any part of that book. I had that identical situation before Judge Spear once where they insisted in keeping me to the pages the witness was using and it became very evident there were other transactions in the book that either marked or colored that and Judge Spear directed or stated in that case that I had a right to go through every part and parcel of that book.

The Court: You will have to show me the authorities. The work was simply used by the witness to refresh her recollection as to certain dates. That is as far as it has gone. The book is not in evidence and apparently there is no reason why it should go in. There may be memoranda in that book pertaining to an entirely different subject. If you have any authority on the contrary I shall be glad to read it.

Mr. Kent: Then may I ask you to direct her to let me see the memorandum that she was referring to?

The Court: Is there any objection to him seeing the part that you referred to?

Witness: Not at all.

Q. When was this book written by you? A. I don't know.

Q. Just recently? A. Not very recently.

Q. Was it made for the purpose of testifying in this case? A. Yes.

Q. Have you any memorandum in this book relating to this case? A. It might and it might not.

Q. Will you please turn to any part of this book that contains memoranda relating to this case?

Mr. Atwater: I object. This book is not in evidence.

Witness: I have already stated—

The Court: Just a moment. You want her to turn to any other memorandum in that book referring to this case and she said it is a memorandum made preparatory to testifying. Then those memoranda were not made at the time of the transactions referred to?

Witness: No, sir.

The Court: They were made since that time?

Witness: Yes, sir.

The Court: No, I will not direct it.

Mr. Kent: May I have an objection to that?

The Court: Yes.

Q. Where did you get this information as to dates and so forth? A. Out of another book—out of a diary that I keep.

Q. Where is that diary? A. It is home.

Q. And that diary shows the various facts in

reference to this case? A. No, it is a line a day diary that I put down for the day something important that happens.

Q. And did you mark down in that diary the day when you first learned of the adoption and what your Aunt Lizzie said to you? A. The day of the adoption is marked down. There isn't room for a very elaborate—

Q. And you had that diary in front of you when you made these notes? A. Yes.

Q. But you did know what day you first learned of the adoption? A. The first time I learned it from my aunt.

Q. And did you mark down in your diary the day she went to see Dr. Swift and the comment upon it? A. I don't remember.

Q. Where is your diary now, if I may ask you? A. It is in my desk.

Q. And can you produce it if necessary? A. I can.

Q. Will you produce it at any adjourned day of this hearing?

Mr. Atwater: I object to it.

The Court: If she wants to produce it why should you object?

Q. Do you want to produce it?

Mr. Atwater: I object to that question.

A. I do not think it is essential.

Q. What is that? A. I do not think it is essential.

Q. Will you produce it if we request you to do it? Will you produce it upon our request? A. If my lawyers direct me to, I will.

Q. You mean Mr. Atwater? A. Yes.

Mr. Kent: Mr. Atwater, will you direct the witness to produce her diary?

Mr. Atwater: If the court please—

The Court: You are not bound to answer that question unless you want to.

Mr. Atwater: I will not answer it.

Q. Have you in your diary the date of that check? A. I should have; I am not sure.

Q. Why did you omit to put down the date of the check when you had the two days that you claimed to have received those rings?

Mr. Atwater: That is not what the memorandum shows of what the witness testifies to.

The Court: I think she was unable to say the exact date from the memorandum. She said she got it at her home.

Q. You have not the date of that check? A. I do not know what is the date of the check, but I have here check for $1,000 on June 30, 1920.

Q. After you got that check for $1,000 from you aunt you went on July 2nd to see Dr. Swift? A. Somewhere in that neighborhood, I suppose; I do not remember the date when I went to see Dr. Swift.

Q. What was this check for $1,000 given to you for? A. I asked my aunt that question and she said, "It is for you, for you to do as you like." She knew I was under some very expenses at that time and she gave me this check to help me out.

Q. Did you think that showed an unusual characteristic in the mind of your aunt at that time?

The Court: No.

Mr. Kent: I will withdraw it.

Q. This check was given to you and volunteered by your aunt? A. By my aunt.

Q. And within two days after that you went to Dr. Swift and asked him to certify to the fact that your aunt had not the mental capacity to act and was incapable of sound judgment, is that right? A. Does the doctor's certificate say the date?

Q. Yes, July 2, 1920. A. Yes.

Q. And immediately after that you communicated with your brother in reference to this and also communicated with your aunt, Miss Loveridge, as to the advisability of instituting proceedings? A. I do not consider that I had any serious intention of instituting proceeding when I realized what it involved, but I asked her advice.

Q. Isn't it a fact that Miss Loveridge declined and said she would not undertake any such proceeding? A. Yes, and she told me why.

Q. Will you tell us what she said to you?

The Court: Now, wait a minute. Are not we going too far?

Mr. Kent: Well, if your Honor thinks we are going too far I will stop at that point. Had you at any time made an investigation or inventory of the assets of your aunt Lizzie?

A. Yes.

Q. And you had gone to the vault and made a list of all her securities and other things? A. She had—I knew that she kept a list of her securities in her box and one in her home.

Q. When did you make that visit? A. Just previous, some time in May.

Q. What year? A. 1920.

Q. May, 1920? A. Yes. I was there on other visits.

Q. And you checked up your list with hers, did you not? A. Yes.

Q. And you found that there was bonds that were not listed in her list, did you not? A. No. I made this list from her own list.

Q. And then checked it up? A. I didn't check it up. I accepted her list. I knew she was a very methodical business woman.

Q. Didn't you go to the vault and examine her securities? A. No.

Q. Didn't you find that there were $10,000, or thereabouts, of bonds that were not on her list? A. No, there was a $1,000 bond that she did not really know anything about, she said. She kept her bonds altogether very methodically, the Liberty bonds altogether and the railroad bonds.

Q. Well, after that time in 1920 Miranda Hough took charge of the financial affairs? A. She went downtown with her when she conducted the business. I do not know what she did.

Q. Who signed the checks, Miranda Hough, for the household and made the payments? A. At one time. I don't know when she began that.

Q. But she did begin taking full charge? A. Yes.

Q. When Miranda Hough first came into the family she was paid a certain salary? A. Well, I really never discussed those business matters with my aunt.

Q. But you knew it? A. I suppose she was.

Q. And did she continue under a salary, as far as you know? A. Yes.

Q. And then you say in 1920 she took charge of and attended to her business matters also? A. She went downtown with her. I don't know what she did. Personally I never discussed those affairs.

Q. Did you know that she frequently went to Newark on business matters also? A. Not of my own knowledge.

Q. But you knew of that? A. My aunt would speak of it in letters.

Q. She would attend to business in Newark and other places? A. Yes.

Q. That commenced in 1920? A. Yes, but there was no intimation it was my aunt's business.

Q. Did you know of Miss Hough having any business of her own? A. I don't know anything about Miss Hough's business. I may have surmised. I don't know.

Q. Whose cottage was Rainbow Cottage, as far as you know? A. Well, my aunt told me on several occasions that she had given it to Miranda.

Q. When did she tell you that? A. Several times.

Q. In what year? A. 1921 and 1922—1922.

Q. In 1922 she told you that she had given it to Miranda? A. Yes.

Q. Did she tell you before 1922 that she had given the cottage to Miranda? A. I wouldn't be sure. I wouldn't be sure.

Q. You know that they moved into that cottage in the early part of 1921? A. Yes.

Q. At that time whose cottage, as far as you know, was it? A. It was Miranda's; it was to be for Miranda.

Q. Who told you that? A. My aunt.

Q. Your aunt told you that? Did you see the inscription on the memorial window in that house? A. Yes.

Q. And what did that inscription contain? A. Well, to the best of my recollection, "Dedicated to the memory of Mr. James E. Lees by his wife, Elizabeth L. Lees," and I am not quite sure about

this, but I think it said, "And presented to my adopted daughter, Miranda Hough Lees."

Q. You are sure about that? A. Well, that was the gist of it.

Q. Did your aunt Lizzie at any time ask you back for any of the rings she gave you? A. One day toward the end of her life she asked me if I would give her back that other ring—one of the rings, and I said no, you told me never to let it go out of your possession. It was only a passing whim. She had seen a friend of mine who was visiting, taking lunch there, and had some very beautiful diamonds on and it reminded her, I suppose; she could not wear rings, her fingers were so swollen her rings had to be cut off.

Q. When was that? A. I think in 1920 or 1921.

Q. You say in 1920 or 1921 the fingers were so swollen she had to have the rings cut off? A. The joints, rheumatic.

Q. You said she had a rheumatic trouble? A. Yes, the joints.

Q. So in addition to the heart trouble she had rheumatics also? A. This heart trouble was better, though.

The Court: Well, have not we gone far enough?

Mr. Kent: Only as to the physical condition. We are getting it by piece meals.

The Court: Yes, but haven't you the doctors?

Mr. Atwater: I went to the doctor's home yesterday and I understand he will not return home until Thursday.

Mr. Kent: It appears no doctor was treating her during this entire period. So far as we can understand the woman was suffer-

ing from these various diseases and the doctor testified he mailed in the prescriptions and until the last illness there was no physician in attendance upon her.

Mr. Atwater: That is not the testimony. The testimony of Dr. Swift is that he did not attend this woman after the Beresford —

The Court: I understand some of the doctors treated her during the last period of her life.

Mr. Atwater: Dr. Wakeley.

The Court: Now, we simply have some evidence that she had some large joints. Do you think you can get anything else?

Mr. Kent: That is all. One moment, please. I just want to ask one or two more questions.

Q. Did you take this certificate of the doctor and show it to Mr. Brown, the attorney for Mrs. Lees? A. Yes.

Q. You did? A. Yes.

Q. And did you consult with him in reference to it? A. No, he simply put it in his safe.

Q. In his safe? A. Yes.

Q. And did you tell Mr. Brown that you thought her condition was as stated in the certificate? A. I do not think we had much conversation.

Q. Did you have any conversation with Mr. Brown with reference to Miranda Hough and to her her brother? A. I do not remember exactly.

Q. Did you ever report back to your brother, Mr. Arthur Loveridge, and also your aunt, Miss Harriet Loveridge, that you had a conversation with Mr. Brown and that Mr. Brown had said that Miranda and her brother were a pair of thieves, or something of that kind? A. Yes, and I have to apologize. I misunderstood.

Q. That is all. The explanation will be forthcoming in due time. You made that statement to your brother and also to Miss— A. I did.

Q. As having been said by Mr. Brown? A. I did.

Q. And you agreed with that, didn't you? A. No.

Q. But you made that statement? A. I made the statement, but I didn't make that statement.

Q. You say Mr. Brown made all statement? A. I said at the time he did.

Q. (By the Court) Well, did he, as a matter of fact? A. At that time understood him to say that.

Q. (By the Court) You understood him to say that? A. I understood him to say that.

Cross Examination by Mr. Brown:

Q. I understood you to say that your reason for calling upon Dr. Swift for this certificate, Mrs. Harvie, was that you had an intuition that Miss Hough was trying to get control of your aunt's property? A. That is right.

Q. Did that intuition turn out to be correct? A. No, it did not.

Q. And your fears and suspicions were not realized? A. No, absolutely.

Q. What was your feeling toward Miss Hough at the time when she, as you say, prevailed upon your aunt to take her to the safe deposit box instead of taking you; what was your exact feeling toward her at that time? A. Well, I was very sorry that my aunt took her.

Q. You felt hurt? A. I felt hurt, yes.

Q. And you were fearful of what might happen? A. Yes.

Q. And that is the reason why you went to Dr. Swift and obtained this certificate from him? A. Yes.

Q. What were your relations with Miss Hough during the time of her attendance upon your aunt? A. No relations, excepting that she was my aunt's companion and housekeeper; very friendly relations, that is, we never discussed anything.

Q. Well, how did you feel with reference to her caring for your aunt? A. I felt she took good care of my aunt.

Q. You were satisfied with that? A. Yes.

Q. Did you think that was the extent of her province? A. I considered that she was a nurse and housekeeper.

Q. And did you think she did or did not perform her duty well? A. I considered she did it well, from all I could see.

Q. Did you feel that she was entitled to be compensated for that care? A. Certainly.

Q. Did you feel after you read the will, after it had been offered for probate, that she was unduly compensated by that will for the care that she had given to your aunt?

The Court: Well, what difference does that make?

Mr. Brown: Because she said she obtained that certificate from Dr. Swift in order to anticipate any possible trouble there might be.

The Court: I know, but now you are coming to a condition after the will was offered for probate and asking this witness wether the amount left was considerably large or small. Now, we are not interested in that. What do we care whether she thought it was too much or too little?

Mr. Brown: I understand, your Honor, to say that in regard to matters that were not

brought out on cross examination I call this witness?

The Court: Yes, what I suggest is get through with the cross examination and then if you want to call this witness you can. I did not want any confusion as to any questions which were cross and which were yours. If you have concluded your cross examination and now want to make her your own witness, go ahead.

Q. In that letter which was shown you, which you wrote, you stated, I think, that your aunt was a sad problem, did you not? A. Yes.

Q. What did you mean by that? A. Well, she was getting older and she was often very lonely. I went to see her as often as I could. She was an old lady, with no children, nobody near her, and I was afraid that she might be left inactive in the future. I knew she was getting older.

Q. You mean that the problem of taking care of her in her old age was a sad problem? A. It was a great problem.

Mr. Kent: I think that letter speaks for itself, instead of counsel and witness trying to characterize it.

The Court: Now, you want to question her as your own witness?

Mr. Brown: Yes, sir.

Direct Examination by Mr. Brown:

Q. Are you familiar with the handwriting of your aunt? Have you often seen her write? A. Many times.

Q. I show you a letter here, which purports to

be a letter, and ask you if that is in your aunt's handwriting? A. Yes.

Q. And to whom is that addressed? A. To John, my son.

Q. And the envelope is in two different handwritings. Will you please testify as to those handwritings? A. The Mr. John Harvie is my aunt's handwriting and the address is in mine. She did not know John's address. He was at Brown University and she asked me to forward this, which I did.

Q. Was it sealed up at the time she asked you to forward it? A. Yes, she has her seal on the back of it.

Q. It has her seal on the back of it? A. Yes.

Mr. Kent: Of course, these letters are written in handwriting that is not easy to read.

Recess.

Letter marked Exhibit P-6a; envelope marked Exhibit P-6b.

Envelope: "Rutherford, N. J., June, 1919, 7 A. M. Mr. John Harvie, 26 Caswell Hall, Brown University, Providence, R. I."

Letter: "102 N. 22 St., East Orange, N. J., May 29, 1919. My dear John—My heart has not yet ceased to thank you for the welcome letter you sent me not long since—and I shall always feel grateful to you for it. You probably know I have been visiting your dearly loved mother lately—and I wish you could also know in some way the comfort and help that becomes mine thru such an experience— Now that dear Uncle James has passed into Eternal Life—she is the nearest

and dearest left me in this earthly existence —and all who are dear to her are dear to me also—and I need not assure you you are of that number—for you have cause to fully realize that—While I was with her she received a letter from you and my! how much the happier she was for it—and I can safely say your dear father was blessed likewise— How fortunate you are John—in having such dear parents—as are they in having a son who is striving to be a blessing to them— A recent letter from your dear mother rejoices your plan to be home in season to mark her and your father's wedding anniversary—June 171th—and when I have closed these lines to you I shall write to her and ask as a special favor that she—your father—you and Elizabeth take six o'clock supper here and spend the evening—so please consider you are already invited—And I will live in hopes I may have the happiness of welcoming you on that date—Perhaps you are not aware this cottage home now shelters The Music Box so many years in your home—It is proving a great comfort to me—thru its close association with dear Uncle James—and it is to help celebrate the 17th by pealing forth "Ring the Bells of Heaven"—when you are all within hearing distance of that joyful music—Of course you know of the arrival in your home of a musical Baby—I am so glad for your dear mother—and on as early a day as possible Miss Hough and I are going over to see and hear it—Max called while I was at your home and I wish you might have seen the expression of delight

that illumined his face as he said "It is fully reciprocated"—when I told him—"John is very fond of you"—I could see a marked gain in Elizabeth's playing on the piano. She seems to be realizing that remarkable gift of your dear mother in playing with so much feeling—When you are home again ask "Beth" to play the Beautiful Ohio—I have taken steps to secure a record of it for my Victrola at the Beresford—and also a Marimba Waltz which Elizabeth has heard and thinks beautiful—The writing paper seems to say it is time for me to say "good bye"—which I do with lots of love from Your loving Aunt Lizzie."

Q. I show you another letter, Mrs. Harvie, which purports to be signed Aunt Lizzie, and ask you whether that is in Mrs. Lees' handwriting? A. Yes, it is.

Mr. Kent: I am not going over these letters, because I have not the time.

The Court: My suggestion is that Mr. Brown, as he gets through each letter, call my attention briefly for what purpose it is offered.

Mr. Kent: And I might reserve my objection to such time as I have an opportunity to study the letters. I have not seen the letters. I do not know what they relate to; in other words, I do not want to go on record saying I have no objection, simply reserving it, if I might.

The Court: Very well, you may reserve your objection.

Mr. Brown: This is for the purpose of

showing Mrs. Lees' affection for Mrs. Harvie.

Mr. Kent: I do not think we would have any purpose in objecting to that.

Mr. Brown: I will state further, for the purpose of showing her mental capacity.

The Court: The second one is for the purpose of showing her mental capacity?

Mr. Brown: They are all offered for that purpose.

Letter Marked Exhibi P-7.

Letter: "102 N. 22nd St., East Orange, N. J., June 8, 1920. PRECIOUS One. We reached home last evening at five minutes to seven—and were thankful when mid way on our homeward trip that we did not yield to our desire to return to your "home sweet home" to secure Miss Hough's satchel which she carelessly left behind—I think if things progress without her getting all and up before next Monday—(our meeting day)—she will auto to Rutherford again—as she feels thru letters from Leash & Co. refer to the Liberty Bonds that Company still owe me—I shall not urge her to do so for she has not the vitality to spare—and you can bring them with you Monday—She and George have been working hard and unceasingly today. Sometimes I fear Miss Hough will over work herself—and pay her penalty by spending several days in bed—for she seems bent on not saving herself in the least—Yesterday the silver knife and fork placed at my plate *had not been touched*—so naturally I gathered them up and returned them to the drawer where the silver is kept—but what did she do but go to the said drawer—remove all the silver there to the pan to be washed—Foolish—Last evening we were both in bed

by nine o'clock—the entire house was dark —and George was upstairs in his attic room and in bed—At 9:15 the front door bell began to ring—and in spite of the all I said she went down to see who was there and what they wanted—She was gone for a full hour—and the two men were connected in some way with the work for the new home—but I would have left it for them to come at a more reasonable hour—It was some time before she dropped off to sleep—which I do not think pays—, This morning I received a VERY nicely expressed and written letter from dear Elizabeth regarding the birthday gift from her loving Aunt Lizzie. The enclosed check is to defray the expense of mending the chair we brought home yesterday which I am now sitting on in the little room adjoining my bed room—and the two yet to be brought home—which makes three at $1.50 each—I received this morning also such a dear note from dear Bennie—I have written him in return and urged him to hear *dear* Dr. Sullivan next Sunday—, They are making elaborate preparations for an interment in the cemetery which we can see from our back windows—I cannot conceive how any one could choose a resting place there for the remains of any loved one—for the evidence of wide spread and marked neglect are so general—but it is not a part of my problem—thank the Lord—Now I must stop which I do in expressing sincere—tender—and deep love for you and those near and dear to you—from Your ever loving Aunt Lizzie—."

Q. To whom is this letter of June 8, 1920, that you have just examined, addressed? A. That is written to me.

Q. Written to you? A. Yes.

Q. I show you another letter, which purports to be signed Mrs. James Lees, Aunt Lizzie, and ask you whether that is in Mrs. Lees' handwriting? A. Yes.

Q. And to whom is it addessed? A. Addressed to me.

Q. And the envelope bears date August 22, 1920. That is the stamp on the envelope. Is that the date about when you received it, August 22, 1920? Will you look at the envelope and see? A. Yes, yes.

Letter marked Exhibit P-8.

Envelope: "East Orange, August 22, 1920, 11:30 P. M., N. J."

Letter: "Precious One—We spnt most of yesterday morning at Mr. Brown's office—and are to be there again next Tuesday to sign my will to which dear Mr. Pennock is to be a witness—I wish it were possible for you to spend one of the other days of that week her as I want to tell you confidentially several things in connection with that paper—I thought you would be interested in the enclosed cutting from two recent letters from Mrs. Haffner—which I would like you to be *sure* to return intact—Mr. and Mrs. H. and the two boys have been at Asbury Park the past week—Have heard twice from them—and should say they have had a gala time—especially the children. We are to see them to-morrow at church—where we sit in their pew. All the seats are free. We have been having a heart breaking time with

George and have been obliged to dismiss him but we are hoping soon to welcome Miss Hough's brother's oldest child—Robert by name—whom we have reason to believe will be a valuable helper. Our auto at present is all out of order—(thru George's carelessness)—and there is no immediate prospect of a change for the better—Mr. Hodgdon is proving a great comfort—Just now he is building a shelter for twenty-five *tiny* chicks George invited in—Miss Hough has been sorely tried with him—and I feel sure had he remained another week Miss Hough would have had a serious break down—I have had to have help from a doctor—and it looks as tho I shall have to secure still further attention—It is a vexatious and trying condition, but Miss Hough never wavers in the attention I so frequently need—Well I hope you will be able to be with us next but whether or no you and yours have the ever constant love of Your ever loving (Mrs. James E.) Aunt Lizzie."

Mr. Brown: August 21, at 102 North 22nd Street, East Orange, "Precious One. We spent most of yesterday morning at Mr. Brown's office and are to be there again next Tuesday to sign my will, which dear Mr. Pennock is to be a witness. I wish it were possible for you to spend one of the other days of that week here, and I want to tell you confidentially several things in connection with that paper."

Q. I show you another letter which purports to be signed Aunt Lizzie, and ask you, whether that is in Mrs. Lees' handwriting? A. Yes.

Q. Is that addressed to you? A. Addressed to me.

Q. And the date is August 29th? Now, the envelope is marked August 29, 1920. Is that the time when you received it? A. Yes.

Paper marked Exhibit P-9.

Envelope: "East Orange, N. J., August 29, 1920, 11:30 P. M. Mrs. James Harvie, 102 Passaic Ave., Rutherford, New Jersey."

Letter: "August 29 at 102 N. 22nd St. East Orange, N. J. Precious One. Your letter received last week is brimful of glad tidings—and I have been rejoicing with you —especially that John and Elizabeth are so soon to be again in their "home sweet home" — You are indeed blessed in them and dear James—and I am glad my will gives you and them combined the largest share in what dear James left me—and I am sure he is happy in that fact— You are to receive $25,000—James $5,000—Elizabeth $3,000—John $2,000, making in all $35,000. I feel sure you will not encourage any one in trying to break it—for those who do—receive nothing—and I do not want you to be of that number— It would not surprise me if Hattie took such a step—but I have told Mr. Brown the why and wherefor of my leaving her but $5, which was all I received of the $12,500 which was legally mine upon selling the Charlton St. house for $25,000. I think I told you once—but will write it here too— When I am again with you. I will *not* accept *any* invitation to take a meal in her home. I am glad dear Mrs. James was pleased with my remembrance of her

birthday anniversary. I should love to call to see you and her—but at present there is no hope of doing so— Miss Hough has had the auto away for a week hoping it would be put in perfect order (that George injured it in some way) but this morning when Miss Hough tried to take it from the garage it would not budge. We needed it to take us to church—so there was nothing left for us to do but to 'phone to dear Mr. Hodgdon who responded at once. He took us to church and was there at 12 o'clock to take us home. He realizes the serious lack in the auto— and on the way home we stopped at a place Mr. Hodgdon felt were men who were competent to banish the trouble—so we are hoping— I wish you could attend that morning service at the C. S. church. It is remarkable fine and uplifting— They have a lady on the pulpit platform who leads the congregational singing—and during the service sings a solo *perfectly*—so that it is a delight to hear her— This morning it was "Open the Gates of the Temple"—which is one of my favorite victrola records and it could not have been sung *more perfectly*— Wish you could have heard it— Mr. and Mrs. Haffner were attending C. S. service at Asbury Park —but their two boys, Ned and Love, were with us—and we took dear Robert with us— and on the way out a lady stopped us and said "she wanted to shake hands with the happy family" so the shakes were given and returned— I must write a few lines to Mrs. Haffner this afternoon—so close now with dear love from Miss Hough, little Robert

and Your ever truly loving Aunt Lizzie."

Mr. Brown: I would like to call your Honor's attention to part of this letter, August 29. "Precious One—"(reading entire letter).

Mr. Kent: May I ask whether that refers to this will?

Mr. Brown: No, it does not.

Mr. Kent: It refers to an earlier will?

Mr. Brown: An earlier will, but this same provision is contained in the last will. We will show that.

Q. You received that letter about August 29, 1920, the date of the post mark to you, Mrs. Harvie? A. Yes.

Q. Did you make any inquiry as to whether the statements contained in that letter were correct in respect to the amounts which were given to you and your family by Mrs. Lees' will? A. Yes.

The Court: I do not want to have her statement of what is in writing.

Mr. Brown: Well, I will withdraw the question. I show you another letter, which bears date October 9, 1920, and purports to be signed Aunt Lizzie, and ask you whether that is in Mrs. Lees' handwriting?

A. Yes.

Q. And to whom is that addressed? A. To myself.

Letter marked Exhibit P-10.

Envelope: "East Orange, N. J., Oct. 9, 1920, 10:30 P. M. Mrs. James Harvie, 102 Passaic Ave., Rutherford, N. J."

Letter: "102 N. 22 St. East Orange, Oct. 9, 1920. Precious One— After you left me yesterday I was called upon to look over some memorandum in connection with my will and to my great regret found I had made a sad mistake thru giving you that pin yesterday—as it is assigned to someone else—Dear Mr. Brown was markedly pleased at my resolve to distribute the various articles before I "passed on"—but I cannot forget his earnest warning to keep close to the distribution as recorded in my will—as anything to the contrary would be bound to cause trouble—thru the possible setting aside of the will—which would be a sad mishap to you and yours for you as a family would be minus the $35,000 assigned to you, James and the dear children, so I propose that the next time we meet, you return the pin, and I will give you a necklace in return which I think will be acceptable— I will hope so at all events— I have already told Miss Hough I wanted to wear in my coffin while it was above ground the dear and lovely round etonscian pin—dear mother wore thru, or very nearly through her married life it being a gift from *dear* father when they were married, and which *dear* mother gave to me to wear when I was married and to keep ever after— I have told Miss Hough I wanted it removed before the casket was closed—and given to your dear Elizabeth—which I feel quite sure she will gladly do and that dear Elizabeth will have no doubt of my deep love for her—and that you also will feel my love for you is tender —deep and sincere—for such is truly the

case with the heart of Ever Lovingly yours Aunt Lizzie."

Mr. Brown: I would like to call your Honor's attention to one paragraph here (reading entire letter).

Q. I show you another letter, bearing date November 6, 1920, and purporting to be signed Aunt Lizzie. Will you look at that letter and see whether it is in Mrs. Lees' handwriting? A. Yes.

Q. And to whom is it addressed? A. Myself.

Q. And did you receive it through the mail? A. Yes.

Letter marked Exhibit P-11.

Letter: "102 N. 22nd St., Nov. 6, 1920, East Orange, N. J. Precious one—O! how I am longing to see you and if our auto was to be depended on Miss Hough to-day would be guiding it to Rutherford—for she knows my heart is just yearning to see you—Since that man George was dismissed the trouble with the auto and the poultry has been increasing—and with the auto it has been exasperating—for in these days when there is ever a bill of some kind to be met in connection with Rainbow Cottage it is somewhat trying to one's temper to have to hire an auto—which we have been doing to be at the right time at the station for our church train—and to meet us on the return trip—We spent yesterday in N. Y. There was an important meeting at church at 11 A. M., N. Y. League of Unitarian Women and a most interesting it proved to be—Dr. and Mrs. Sullivan each spoke and their words were inspiring—It was over at one o'clock—

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and those who brought their box luncheons as urged were supplied with tea, coffee or cocoa as preferred. We were not of that number—so went out and by the aid of a 5th Ave. stage made a 'bee line' for Landays at 427 5th Ave. (39th St.) when I gave into the care of my friend Mr. Wood a record I had been fortunate in securing 'Still Still With Thee'—which he was to send to Mrs. Church—a sister of Mrs. Wm. Smith—to whom I had promised six months to send one—The delay was caused by the makers of such no longer making one—Miss Hough very unexpectedly came across this one in Newark. She tried to get more but the same tale was told her. Well, we then walked to B'way—taking our luncheon on the way—and then a car to 320 Broadway, Room 805, where Bennie gave us a hearty welcome—Augustus had left for Westpoint. Bennie was very well—and he reported all his family being likewise. He inquired very earnestly for you and yours. And asked that his love be sent to you—The next thing in order was to reach the ferry—which we did after a fashion which landed us in Hoboken just in time to miss the train we decided to take and to secure seats in another in which we had to wait a full half hour before it started—We did not reach home until after 7:30 and were so tired we partook of a very simple supper and were soon thereafter in bed and asleep—Miss Hough started out early this morning for Newark—where she had to attend to several important matters in connection with 'Rainbow Cottage'—As yet we are not certain of

any entering day—but we just have to 'Grin and bear it'—The architect was here last Thursday evening—and what he told us of what he had gone through—was going through—and expected to. It was enough to make any sensible man refrain from taking any building proposition—Well *dear* me—may Good markedly bless you and yours—and ever spare you as a comfort to Your ever deeply loving (Mrs. James E.) Aunt Lizzie."

The Court: Now, is there anything in particular about that?

Mr. Brown: Nothing in that.

Q. I show you another letter, dated February 7, and ask you whether that is in Mrs. Lees' handwriting? A. 1921 is the pencil date on the corner, but there is no date on the letter. Yes, she wrote it to me.

Q. What year was that written? A. So far as—I must have tried to verify it. February 7, 1921.

Q. (By the Court) Do you know when you received that letter? A. Well, I cannot tell you the date.

Q. (By the Court) You cannot say. Well, that memorandum you see in the corner, is that in your handwriting? A. Yes, sir.

Q. (By the Court) Where did you get that date that you put in the corner in pencil? A. I don't know.

Mr. Brown: Perhaps we can tell by my reading the letter. I would like to read it. "February 7, at 102 North 22nd Street, East Orange, New Jersey. Precious One: Yesterday was full of sore disappointments to me,

for I had strongly determined to write to you, but one thing after another proved such decided hindrances that the heart comfort of talking to you was not mine, but I am more hopeful today, hence happier. I think I will first tell you the enclosed six dollars I want you to give to your dear James with my love and ask him"—

Q. (By the Court) Now, do you remember what year that was that she sent you that six dollars? A. No.

Mr. Brown: —"and ask him to exchange it for six reserved seats in the orchestra seats at the Hippodrome. The paper states they have matinee daily $3, good orchestra seats at $1. They are on the main floor, so there is no mounting of stairs. The parties I want to use the tickets are your dear James, his father and mother, your dear self and dear Elizabeth and John. Should John be from home, do not delay the going, but have dear James invite one of his sisters. I hope nothing will prevent this little plan from being carried out and thoroughly enjoyed. Dear Marion is having a very trying time, but thus far she has shown good common sense and if continued I feel she will gain a good standing and Mr. Haffner will come forth the loser for his outrageous conduct. Tomorrow morning, if not stormy, we move into Rainbow Cottage, 19 Whitman Avenue"—

Q. (By the Court) Do you remember what year she moved into Rainbow Cottage? A. 1921.

Mr. Brown:—"19 Whitman Avenue East Orange, New Jersey. That will be our permanent address—instead of this— A few days ago Miss Hough succeeded in selling this house for $8,000 which I feel to be a fortunate transaction. She will probably put the whole of that money in the new home. The cost of the work is a constant surprise to me, and I count myself most fortunate that Miss Hough is so truly interested in helping me meet the unexpected expenses. I hope and expect to see Mr. Brown this week and have a new will made that will not contain *Mr.* Haffner's name. There will be no other alteration. I have received two *beautiful* calendars this morning one from dear Mr. Magee and another from some young nephew of Miss Hough. We spent last Friday evening in a call on Mr. and Mrs. Magee. The latter is in a terrible and pitable condition and I fear ever will be. There is no blessing equal to health. Do be careful not to *overdo.* It does not pay and costs more in the end. Miss Hough wants her love sent to you and you and yours have ample reason for being sure you ever have and will have an abundance of the true love of Your ever loving (Mrs. James E.) Aunt Lizzie."

Letter marked Exhibit P-12.

Mr. Kent: Will you please try to fix what month that is in in 1921?

Mr. Brown: It says February.

The Court: How many more have you? I suggest that you hand them to the witness and ask her if she received those letters and they are in the handwriting of her aunt, and

then offer them in evidence, reading anything subsequently that you think you would like to read.

Q. I show you five letters and postal card and ask you if they are in the handwriting of your aunt, Mrs. Lees? A. Yes.

Letter marked Exhibit P-13.

Envelope: "East Orange, N. J., Nov. 15, 1921, 4:30 P. M., Mrs. James Harvie, 102 Passaic Ave., Rutherford, New Jersey."

Letter: "Nov. 14th, at 19 Whitman Ave., East Orange, New Jersey. Precious and deeply dear Beele. I have just closed a few lines to Mr. Brown and Mr. Fernald asking them to let me know as early as possible if they will take seven o'clock dinner with us next Thursday or Friday. Like you they were not with us last evening which proved to be a *markedly happy one.* As soon as I hear from them I will let you know and I want you at once to prepare to spend the whole of that selected day with me. It will be none too long for you to see and hear the *much* I have to show and tell you. And have your dear James come and partake of the seven o'clock dinner with us. Learn the time his train will arrive at Ampere. Your ever dearly loving, Aunt Lizzie.

O! Precious Belle. I want to see and talk with you so badly. I am sure some of the things I have to show you and what I have to tell you will show you very clearly why I want you within sight and sound. I want you to know at once. Now that my dear James has flown to Heaven *you* are

the dearest one on this plane, and I love you with my *whole* heart, far more than I love any other human being. I have written to Mr. Brown and Mr. Fernald to come over Thursday or Friday of this week to take a seven o'clock dinner here and spend the evening. As soon as I hear from them I will let you know and I will want you to come and spend that day with me and have your dear James arrive in time for the 7 o'clock dinner and spend the evening. Your *deeply* loving Aunt Lizzie. Your and James' birthday greeting reached me this morning. I value it and thank you both for it."

Letter marked Exhibit P-14.

Letter: "April 4th at 'Rainbow Cottage', 19 Whitman Ave., East Orange, N. J. Precious One: Yes 'Rainbow Cottage' is to us quite ideal. It is worth all these months of delay and all the money that has been put in it. I trust *dear* Maranda will not suffer from the over tax it has been on her. Even 'Rainbow Cottage' would be void of all comfort without her, for I have neither the strength, ability or *money* to do as she has done. Miss Taggert left her considerable money and the sale of 102 N. 22 St., gave her still more and it has all gone to meet expenses here. She *deserved* indeed to be considered my daughter for no daughter could have done more and very few would have done as much, and the care and consideration she constantly shows me is beyond my ability to express, but I *fully* appreciate it and shall try to reward her for it. For life would be full of torture

without it. This Wednesday we go to New York to attend a business meeting of All Souls Alumane of which we are members, and from 4 to 6:30 to enjoy a Reception to *dear* Dr. Sullivan. All the members and attendants of the church are urged to be there and I think they will. When there I expect the Dr. and Mrs. Sullivan will tell me of the day they have selected in the following week for coming here to take six o'clock dinner with us and spend the evening. As soon as I know I will write you to do the self same thing for you, James, John, Elizabeth and Mrs. James to come to six o'clock dinner and spend the evening. I am going to take the liberty to send your and James' names to Mr. Louis J. Cornu, who will ask you to buy tickets for a concert to be given at Aeolian Hall on Sunday afternoon, May 1, at three o'clock. I shall write for two tickets and ask that the seats next to yours may be sent to me, in case you write for two. O! that will be joyful, *joyfull,* JOYFUL. Please do not select the date the Sullivans may decide on for Maranda will have her hands brim full, but you may make the time as near that as you choose. Now I will close with dear love for you *all* from Your ever loving (Mrs. James E.) Aunt Lizzie."

Letter marked Exhibit P-15.

Envelope: "East Orange, Ampere Sta., N. J., May 7, 8 A. M., Mrs. James Harvie, 102 Passaic Ave., Rutherford, New Jersey."

Letter: "May 5th at 19 Whitman Ave., East Orange, N. J. Precious One. I would be so thankful if we were face to face for

I want to tell you several important facts which it would be far more satisfactory to tell you than to write of. But first I will ask you and yours to call Miss Hough Maranda Lees. She has earned it *fully* in more ways than one and I feel sure her loving devotion will never lessen but continue to meet my many needs as long as we live together. I should have to give up this house long before this had she not been here and more than willing to meet and settle the many vexing conditions. And the money she has spent in meeting the many very trying conditions is close to being unbelievable but are facts just the same. Miss Taggert, one of my 18th St. school scholars whom Maranda nursed and who "passed on" before Maranda came to us, left her no small sum of money. Then the house 102 N. 22 St., when sold gave her $8,500, but both sums she has used in meeting expenses on this house and yesterday and today she has spent in New York to raise still more money for the same helpful purpose. By my will you are to receive $25,000, James $5,000, John $2,000, Elizabeth $3,000. In case you "passed on" before I did James is to receive $15,000, John $5,000 and Elizabeth $5,000. If it were possible to give these amounts before I left you I would gladly do so but I am sorry I see no possible prospect of being able to do so but sometimes the experiences we least look for come to pass, so we will live in hopes. Dear Annie Clark and family are to be here some day in the third week in May. I plan to give her then the miniatures of James and me. Now be good

to your dear self and in that way make supremely happy, Your ever loving, Aunt Lizzie."

Dear Marion in great distress begged me to loan, no, give her, $10 per week but I could not consent to do so. You have often remarked you felt you would ever be indebted to Mrs. James for her loving care of your dear Mother, and I have every reason to believe you were honest in what you said, if so how readily you can realize my feeling toward dear Miranda, now my daughter. Her devotion to dear James was enough to make me do all in my power for her, but added to that devotion is her love and care for me that no money can ever repay. Only my love and all I can do for her will recompense. Think now, Precious One, how would you feel if I took no notice of your marriage with dear James. Would that not be the same as your taking no notice no notice of my new relation with daughter Miranda—so you can realize how you make me feel when I have chosen a daughter, and you ignore my choice, saying nothing as to how dear Miranda must feel.

Now good-bye—"God be with you till we meet again," and I hope we will meet soon. It cannot be too soon for Your ever dearly loving, Aunt Lizzie.

Mr. Brown: "May 5. 19 Whitman Avenue. "Precious One." I wish to call your Honor's attention to this: "By my will you are to receive $25,000, James, $5,000; John, $2,000; Elizabeth, $3,000. In case you "passed on" before I did James is to receive $15,000, John, $5,000 and Elizabeth $5,000.

If it were possible to give these amounts before I left you, I would gladly do so, but I am sorry I see no possible prospects of being able to do so, but sometimes the experiences we look for come to pass, so we will live in hopes."

Mr. Kent: That is 1921?

Mr. Brown: 1921.

Mr. Kent: Or 1920?

Mr. Brown: No, 1921. Here is the envelope. Postal card marked Exhibit P-16.

"East Orange, February 10, 1921, 10:30 P. M., N. J., Mrs. James Harvie, 102 Passaic Ave., Rutherford, New Jersey. Our phone number now is 4222 Party J. Your Aunt Lizzie felt it was best for you to know it. Please do not publish it."

Letter marked Exhibit P-17.

Envelope: East Orange, N. J., April 20, 1921, 10:30 P. M., Mrs. James Harvie, 102 Passaic Ave., Rutherford, New Jersey."

Letter: "April 20th at 19 Whitman Ave., East Orange, N. J. Precious One O! I am so thankful our seats at the Cornu Orchestra Concert are so near. You write yours are G5 and 7— Ours are G1 & 3. The date is May 1st and I hope then you will be able to tell us of another date for you all to take dinner here. Try and make it an early date of the next week, so that dear Mrs. James may come also. The date you selected for this week has for some time been promised to several friends who we feel will not add to your enjoyment, hence we ask you to change the date. We feel sure you will not regret doing so and any day in the week after will be all right so far as we are con-

cerned except the 28th. Yesterday in re-setting my desk I came across the lines Hattie sent me in February. I hope you clearly understand in case I make you a visit I *will not* accept any invitation she may extend to her home, for I am far happier not to go there. Her attitude toward me has been disgraceful. Dear mother and father both said "her conduct was the greatest sorrow of their lives," and I do not wonder, and the more any one tried to make her see the error of her ways the worse she became. Finally dear father told me "he was going to give up trying to change her conduct," and advised us "to do likewise." With dear love for you all, and happier than I have been for some time because of the prospect of welcoming you here. Your ever loving Aunt Lizzie."

Mr. Brown: This has reference to April 20, 1921. It says: "Yesterday in re-settling my desk I came across the lines Hattie sent me in February. I hope you clearly understand in case I make you a visit I will not accept any invitation she may extend to her home, for I am far happier not to go there. Her attitude toward me has been disgraceful. Dear mother and father both said 'her conduct was the greatest sorrow of their lives' and I do not wonder. And the more anyone tried to make her see the error of her ways the worse she became. Finally dear father told me 'he was going to give up trying to change her conduct,' and advised me to do likewise. With dear love to you all" and so forth.

Q. Do you know to whom that name Hattie refers? A. Yes.

Q. To whom? A. Miss Loveridge.

Q. A sister of Mrs. Lees'? A. Yes.

Q. Who testified yesterday? A. Yes.

Q. September 7, 1921. "Precious Belle. Far more precious than pen and ink can tell, but I hope as time goes on I may be left to do some things that will convince you you are indeed unspeakably precious to me. Dear James was very happy in realizing you were *very* dear to me, for as he said 'It made amends for the utter lack of affection in Hattie,' and dear mother and father have voiced the same fact, and I know it was a marked comfort to them, and I was and am the happier because they had that fact to comfort them. Mother dear came to me very quietly one day and said 'she and dear father were determined to show dear James and me more loving attention in hopes it would show Hattie she was wrong in her attitude toward both of us.' We were thankful to hear it, but were not very hopeful as to the result. In two days dear mother came and said, 'She and father fully realized the ill effect of their attitude toward me so they were going to drop their mask and live in hopes Hattie would do what was right,' but she never has, and I doubt if she ever will. This morning brought me your lovely postal card from Minnewaska, N. Y." Is this Hattie spoken of in this letter the same Hattie you have referred to in your testimony? A. Yes.

Q. The same Hattie, Mrs. Harvie, that was on the witness stand yesterday? A. Yes.

Q. Other than the contents of these letters, Mrs. Harvie, had you any knowledge of the contents of Mrs. Lees' will, or any of them? A. Yes.

Q. What knowledge had you? A. Two bequests.

Q. Well, that you learned after—

The Court: No, when did you learn of those bequests?

Witness: My aunt had spoken of it for several years.

Q. Had you anything to do with the making of those wills, or any of them? A. No.

Q. Were you consulted in any way by Mrs. Lees' about the making of them? A. No.

Cross Examination by Mr. Kent:

Q. Had you received larger amounts in prior wills than the amount you are now receiving? A. No.

Q. Had you learned of any larger bequest to you in prior wills? A. Except some personal property, no more money.

Q. Didn't you tell some members of your family that in some wills you had received $75,000 for your share? A. No.

Q. Did you make any other statement as to the amount you thought you had gotten in other wills prior to Miranda Hough being adopted? A. I was made a residuary legatee in a will in 1913.

Q. And that would have meant a large part of the estate wouldn't it? A. I don't know how much it would.

Q. How much did the estate amount to in 1913? A. I don't know.

Q. Have you any idea? A. No.

Q. $200,000 or $300,000 more the value of it? A. No.

Q. You took care of aunt Lizzie's business and helped her with her securities and so forth in those days? A. I took her down to the office.

Q. You saw her list of securities and other things; you checked up on her list? A. Once.

Q. How much did that list amount to? A. About, I think, $110,000.

Q. That is, securities? A. Yes.

Q. That is outside of stock in the Lees' Manufacturing Company and other things? A. Yes.

Q. And the Lees' Manufacturing business was a considerable and profitable business, wasn't it? A. I didn't know much about it.

Q. Didn't your aunt Lizzie derive the major portion of her income from the Lees' Manufacturing Company? A. I don't know.

Q. Sure about that? A. Yes.

Q. So if you were in the will that you said mentioned you as residuary legatee you would receive a large and substantial portion of that estate?

The Court: She might have left everything in specific legacies.

Q. Well, didn't you state to some members of your family that interest of yours would amount to over $75,000? A. No.

Q. Are the letters that you brought here today the only letters you have ever received from your aunt? A. No.

Q. Why did you pick out these letters? A. I thought they were good evidence.

Q. You mean you picked out what you thought was the best of the letters to help you?

The Court: Well, presumably, yes.

Mr. Kent: All right, I will withdraw that.

Q. Where are the other letters that you received from your aunt? A. Some are home and some are destroyed. I received a great many letters.

Q. You say you destroyed some and some are

home. Why did you keep some and destroy some? A. One cannot keep all her letters.

Q. When did you destroy those letters? A. From time to time.

Q. Did you destroy any letters this year? A. No.

Q. Did you destroy any letters last year? A. I don't know.

Q. You wouldn't say you didn't? A. I don't know.

Q. Will you say that you didn't?

Mr. Atwater: The witness has answered she does not know.

Q. Will you say that you did not destroy any letters in 1921? A. I don't remember.

Q. Did you destroy any letters in 1922? A. That is last year?

Q. Yes. A. I may have.

Q. You got one letter in February which is in evidence?

Mr. Atwater: February, what year?

Mr. Kent: 1921. That letter refers to Miss Hough doesn't it?

A. I do not remember the letter.

Q. This letter of February 7, which you marked 1921? A. Yes.

Q. You know from the evidence in this case that on January 6, 1921, they had already entered into an agreement whereby she became a daughter, so-called; you know that now? A. I cannot be sure of dates.

Q. When these letters were written to you in 1920 you at that time were visiting members of

your family about getting a guardian appointed, is that correct? A. I asked their opinion.

Q. And you had these letters and others at that time? A. Yes.

Q. And although you had these letters and others you were of the opinion that a guardian ought to be appointed, that is correct? A. I had it under consideration.

Q. Did you show any letters at any time to Dr. Swift? A. No.

Q. Dr. Swift explained to you that he had seen her sometime prior to your calling upon him— A. Yes.

Q. And he had formed or based his conclusions upon what he observed months before prior to your call? A. Yes.

Q. And then you explained to him, I presume, conditions that have occurred or existed since that time? A. No.

Q. You did not suggest anything to him, did you? A. No.

Q. You wanted his unbiased and honest opinion? A. Yes.

Q. And that is what you got from him? A. Yes.

Q. And you agreed with the doctor in his opinion, did you not?

The Court: Well, she said that once.

Q. And during all this period you had the major portion of these letters, that is correct? A. From 1920 on.

Q. Yes. Now, you want to say that these letters proved that she had mental capacity?

The Court: We do not care what she thought.

Mr. Kent: I will withdraw that.

Q. You say you never saw any will? A. No, I didn't say that.

Q. Oh, you did see a will? A. Yes.

Q. Which one? A. The one in 1913.

Q. The one wherein you were left the residuary estate? A. Yes.

Q. Who was the executor of that will? A. I don't remember.

Q. Isn't your husband the executor of that will? A. No.

The Court: If you want to prove the contents of those wills you will have to do it with the best evidence.

Mr. Kent: I will not press it now.

Q. Did you have any conversation with Mrs. Lees in reference to who should or should not be executors under the last will that she drew? A. Yes.

Q. And whom did you suggest? A. I made no suggestions.

Q. Did you suggest that your husband be made an executor? A. No.

Q. Who made that suggestion? A. She made it.

Q. And why did she make that suggestion, if you know? A. Because she had the utmost confidence in him.

Q. And who made the suggestion about Mr. Hough being made an executor? A. I don't know.

Q. Isn't it a fact that she told you that she was going to appoint Mr. Hough executor? A. Yes.

Q. And you asked her, "Haven't you got some member of your own family or flesh and blood can act?" and didn't she then say that to please you, or some similar words, she would appoint your husband? A. No.

Q. What did she say when that happened?

Mr. Awater: When what happened?

Mr. Kent: The incident that I am narrating upon.

Mr. Atwater: Well, she denies that the incident happened.

Q. She told you that she was appointing Mr. Hough, didn't she? A. Yes.

Q. What did you say? A. I said if there is—don't you think it would be better to have three executors and have no relatives to represent you except Miss Hough's relatives; have you no relaives or friends that you would like to serve along with Mr. Hough? I made no suggestions.

Q. And what did Mrs. Lees then say to that? A. I think that is a good idea and I will attend to it.

Q. Did she say how she would attend to it? A. She said she would ask Mr. Harvie to serve, and I said, "Perhaps Mr. Harvie would not want to serve"; I did not want to suggest Mr. Harvie as executor, only some member of her family.

Q. Do you know how Mr. Hough came to be named as executor? A. No.

Q. Had he had any charge of her affairs? A. No.

Q. All you know is that he was a brother of Miss Hough's? A. Yes.

Q. There is some mention in the letters about her sister Harriet, that is correct? A. Yes.

Q. Did you know, as a matter of fact, the parents of Mrs. Lees have been dead since 1903? A. Yes.

Q. And you know, as a matter of fact, at the time these letters were written that in 1920 or 1921

Mrs. Lees was visiting Harriet and Harriet was there to your house visiting her? A. Yes.

Re-direct Examination by Mr. Brown:

Q. How much was Mrs. Lees visiting her sister Harriet at that time? A. Well, she had gone twice under protestations, once or twice afterwards.

Re-cross Examination by Mr. Kent:

Q. Mrs. Harvie, did you ever have any conversation with Miss Hough wherein you told her if aunt Lizzie should give you anything of value or money of any kind you should put it in a safe deposit box, because she is not in a position to give such gifts, and after her death it should be returned to the estate? A. I cannot remember that.

Q. Will you say that you did not? A. I do not remember.

Q. (By the Court) Well, you don't remember whether you did or not? A. No.

Q. (By the Court) You wouldn't say you did or you wouldn't say you didn't? A. No.

Q. Didn't you have some such conversation with her when they were at the Beresford? A. Not that I remember.

The Court: Let us see: That conversation was that she told Miss Hough that if her aunt gave her anything of value, she could put it away and it would go to the estate at the time of her death?

Mr. Kent: Yes, sir.

Q. (By the Court) Do you mean to say to me that you could have had such conversation with Miss Hough and not remember it? A. I might have said it, but I do not recall it.

Q. Now, see if I cannot refresh your mind a little bit and say that conversation was had with her while they were living at the Beresford in New York and before they came to East Orange, which would bring it about 1918 or 1919, or thereabouts. Try to think, please, Mrs. Harvie? A. I cannot recall it distinctly, but it is barely possible.

Appellant Rests.

Mr. Atwater: I would like to make a motion that the will be admitted to probate and the appeal be dismissed on the appellant's case.

The Court: No, you have already presented witnesses.

Mr. Atwater: Yes, but my motion is on the appellant's case.

The Court: No, I will deny that.

(Objection noted.)

ELLEN TAYLOR, sworn in behalf of proponent.

Direct Examination by Mr. Brown:

Q. Where do you reside? A. Netlock, Ulster County, New York.

Q. And are you the wife of Mr. Edward Taylor? A. Yes.

Q. Are you and Mr. Taylor, your husband, related to Mrs. Lees? A. Yes, my husband is a nephew of Mr. Lees.

Q. Your husband is not a blood relative of Mrs. Lees? A. No.

Q. You have no relationship excepting through your husband? A. Absolutly not.

Q. Are you and your husband named as legatees in the will of Mrs. Lees? A. Yes.

Q. When was the last time you saw Mrs. Lees? A. 1920, January 17, at the Beresford.

Q. Did you have any conversation with her there? A. Yes, had a very pleasant afternoon.

Q. And what was the nature of that conversation; can you tell what it was? A. Well, my husband changed positions and he had gone from Southampton, Long Island, and we were going to Massachusetts, and he asked me on my way to go and see aunt Lizzie, which I did, because I had corresponded a number of times with her.

Q. You had corresponded with her? A. Oh, positively so. So when I got to New York I made my reservation on the midnight train and I called up the Beresford and asked if I could go and see aunt Lizzie and Miss Hough answered the 'phone and said, "Come right up," and I took a taxi and did that and we had a very pleasant evening.

Q. What did you talk about? A. My daughter and my husband's position and her life and mine and different other happenings with my sisters, and so forth.

Q. Was there any special instance regarding a book? A. Yes. While there Miss Hough entertained my daughter. Mrs. Lees asked my—she said to Miss Hough, "Now, you go to my desk and in a certain drawer you will find a book I wish Beatrice to have," and so Miss Hough did so.

Q. Did she find the book? A. Yes.

Q. What was done with it? A. Beatrice has it.

Q. Did Mrs. Lees deliver it? A. Yes, Miss Hough handed it to aunt Lizzie and Mrs. Lees in turn to Beatrice.

Q. And Beatrice took it away with her? A. Yes.

Q. Are you familiar with Mrs. Lees' handwriting? A. Yes.

Q. Have you ever seen her write? A. I certainly have.

Q. Can you tell me whether that letter is in her handwriting? A. Yes. I know it is.

Q. To whom is it addressed? A. My husband.

Q. Was it received by him? A. Yes.

The Court: What is the date?

Mr. Brown: December 11th, and it is marked in pencil, 1917.

Q. Can you tell the year when that was received? A. In 1917, because my husband was in the hospital at the time with blood poisoning and this letter was written to the hospital.

Letter marked Exhibit P-18.

Letter: "December 11th at The Beresford. My dear Edward. I hope you will forgive me for being so tardy in returning Clarence's letter you so kindly loaned me to read. There is one good thing in connection with the delay—and that is that yesterday Augustus, Margaret, Ruth and Lulu enjoyed it thoroughly, and they did yours also. I went to Westport to attend a Directors' meeting and took them with me feeling they would be enjoyed, which certainly proved to be the case. They all wished me to send their love to you, Nellie and Beatrice. They all said they were well, but I could see a marked change in Lulu, but I am inclined to think her staying at Westport this winter, so close to those nearest and dearest to her, will do her a world of good. They had good news to tell of Gussie whom they placed some months ago in a school from home. It is a military school. Besides the regular

military daily drill, the boys have lots of exercise in playing foot ball, base ball, and basket ball, which active exercise has caused him to grow to almost the height of his father. I can readily believe them when they say it has improved his appearance wonderfully. He is attentive to his studies, and his reports sent regularly to his parents are excellent. I had to get up at 5.30 in order to dress, eat my breakfast, which I had sent to my apartment, and take the 8.11 train, so today finds me somewhat drowsy and needing to take some horizontal refreshments. They knew about Elsie working as your letter told of. I think they see very little of her. She is entirely out of my life. I have not seen her since the day dear Uncle James' Mortal remains were consigned to Mother Earth. Now I must take a nap, but before I forget myself I shall ask our dear Father in Heaven to bless you all for you are all very dear to your Loving Aunt Lizzie."

BENJAMIN B. EPSTEIN, sworn in behalf of proponent.

Direct Examination by Mr. Brown:

Q. Where do you reside? A. 14 Jerome Street, Brooklyn.

Q. What is your business? A. I am manager of the New York office of the Lees Manufacturing Company.

Q. How long have you been in that employment? A. Approximately fifteen and a half years; about

fifteen years offhand, I should say, without looking it up.

Q. And have you ever seen Mrs. Lees at that office? A. Oh, yes, on numerous occasions; in fact, it all depends, in some years she was there more than others. During the early part of my employment she used to come every Saturday. They used to have an opera seat every Saturday and she used to meet her husband in the office.

Q. How often subsequent to that? A. Well, it all depends on what years.

Q. Take the year 1919. A. 1919. Well, that was during the time she lived at the Beresford, I believe. It was customary for Mrs. Lees to invite me to church or to invite me up there once every two or three weeks. She invited me—

Q. That was along in 1919? A. Along those years; in fact, we did it for several years.

Q. Can you remember any special time in 1919 when you spent time with her at the Beresford? A. Well, I remember very distinctly several instances where we would sit down and talk for a half hour or hour at a time after lunch.

Q. What would she talk about? A. Well, the first thing I was asked by her the general standing of the company's business. Around 1919 she came down to the office and I told her while I thought we were making money I thought there were big profits and because we thought we would lose money at the end of the year she should not be surprised if there was no dividends paid on the stock.

Q. (By the Court) What was the nature of that concern? A. Cotton cordage; they make yarns, threads and stuff like that.

Q. They own a mill? A. At Westport, Connecticut.

Q. Was Mr. James E. Lees interested in that

business in his lifetime? A. Yes, when I came with the company Mr. Lees was treasurer and remained in that position until he died.

Q. Was he interested in the stock of the company? A. Yes. I had occasion to be interested in all the Lees affairs because I handled all his correspondence and personal letters, because he was pretty near-sighted. I think at the time out of 1500 shares of stock Mr. John E. Lees owned 100 shares and the two older brothers each controlled about fifty per cent. of the rest, about 650 shares each, and with this other hundred Mr. John E. Lees had either one could control the company.

Q. And after Mr. Lees death what became of his interest? A. As I understood it, Mr. Lees' stock and practically everything he had stood in the name of James E. Lees or Elizabeth Loveridge Lees.

Q. That was during Mr. Lees' lifetime? A. Yes.

Q. After his death Mrs. Lees? A. Was the natural holder of the stock.

Q. And did she occupy any official position in the company? A. She was a director of the company, not an officer. By official position I don't know whether you mean director or officer, but she was a director of the corporation on account of the stock she held.

Q. For how long a period was she a director? A. I do not recall the exact year she was made a director, but it was not long after Mr. Lees died. I do not know whether it was a year or two years, and she resigned, I think it was at our annual meeting we had in May, in 1920. She wrote her resignation before that, but it was made effective in 1920.

Q. When did Mr. Lees die? A. Mr. Lees—he and his brother died about a year apart and I think Mr. James Lees died in 1913, or about that—I

have the two dates in my mind, within a few months of that—one died in March, and the other, I think, in October.

Q. And did Mrs. Lees attend meetings of directors of that corporation? A. Yes, she used to go to Westport. She did not attend all of them. After she moved to New Jersey—it was before that, for a couple of years at the Beresford she did not attend the meetings, because I remember distinctly she used to write a proxy and tell Mr. Gustave Lees what she thought he ought to do at the meetings. That was two years before she resigned.

Q. In 1918 or 1919 you think she did not attend the directors' meetings? A. I wouldn't say positively. Of course, the minutes of the company would show that. I am rather sure she did not in 1919, because I remember her saying that she found it too much of a ride.

Q. The meetings were held in Westport? A. Westport, Connecticut, at the office of the company.

Q. Up to the death of James E. Lees, up to about that time he attended the meetings ? A. Yes. I want to state this, I would not be sure that 1919 is the correct date. Of course, the minutes would show that, but I don't know whether it is 1918 or 1919, but approximately that time.

Q. During that time did she do anything in connection with the business of the company, was she active at all? A. Well, she was as far as a woman could be. Of course, a director could only vote at the meetings and ask for the balance sheet.

Mr. Kent: I think I ought to make an objection that the records themselves will be the best evidence.

Q. Did she discuss the affairs of the corporation?

A. Why, yes, to this extent—perhaps more than that, but this I remember very distinctly, because it created a little bit of antagonism. After she attended some of those meetings during the times I went to the Beresford, after we had lunch, she said, "Bennie, have you ever attended any directors' meetings?" I said, "No, I was never a director." She said, "I am never permitted to make any motions." She said, "I think I ought to make some of the motions," and she seemed a little bit pent up about the fact that she was not having enough to say in the company. Of course, as a director she had a right to make motions. She had a little feeling and she came down and told me that. Of course, I was in a peculiar position in the employ of the company and I said all I could do was to tell Mr. Lees.

Q. Did she discuss with you the business of the company after she retired from the directorship? A. Well, in fact, more so. It became more embarrassing for me as time went on in my position, because she would insist on asking me whether we were doing as much business as we did before, and how the earnings were running, and I told her while the earnings were satisfactory we had suffered a depreciation in 1920, after the war condition, and we had to run on borrowed money, and I said I thought Mr. Lees was right in withholding dividends.

Q. Did she express any opinion about that? A. Yes. She was very indignant about it. One reason for that was before Mr. Robert Lees died he did not put her on as director. He said he thought she was always dictatorial and he thought she managed James Lees and he did not want any petticoat government.

Q. Were these discussions which you had with her with reference to the business conditions of the company frequent or not? A. I should say it was a general topic. Sometimes I had to decline the invitation because my folks were going out and I could not go up for dinner, and she always felt badly if I did not go.

Q. What did you talk to her about? A. On one particular occasion we talked for about three hours.

Q. Fix that. A. That was—part of the talk was about moving to New Jersey, so I should judge it was perhaps six months or so before they moved there permanently.

Q. When was that? A .Why, offhand, I should say about the latter part of 1919; I believe somewhere about that time.

Q. Go on and state it. A. She asked me whether I was ever going to bring my girl over that I was going to marry, and I told her I had no girl and I was not quite sure that marriage was the best thing unless you were positive of what you were deciding upon.

The Court: What was it you asked him?

Mr. Brown: I asked him what the subject of discussion was.

Witness: You mean did we talk about any business?

Mr. Brown: Yes.

A. Yes, business was generally our first topic, because if we did not have time we just got through with that.

Q. Did you talk on that occasion? A. Yes, we went on that time especially about the question of our depreciation in the year 1919, which was

a very trying one, because we had written off—we saw in July we were running behind and we lost about $45,000 that year and it was a very serious matter with us, and I was in the habit of being very frank with Mrs. Lees, because she confided in me, and regardless whether she got all the information from the Westport office or not I gave it to her.

Q. You gave it to her? A. Yes, I gave her everything she wanted.

Q. Was she satisfied? A. She was not satisfied in view of the fact she was not going to get dividends, but otherwise she seemed to have confidence that everybody was running the business as best we could.

Q. Did she keep track of the business of the company after she resigned as director? A. Yes, it was at that time she was more particular about seeing the balance sheet.

Q. Did you have any discussion with her about that? A. Yes, she generally looked at the two balance sheets, and we had a way of showing the net profits on one, and she could easily tell what the profits were. She was not very well satisfied, because she trusted everybody, but she began worrying about the fact that the dividends were not forthcoming.

Q. Did she ask you the reason? A. Yes, I explained to her it took some years to recuperate from an actual net running loss of $45,000 when a firm is worth altogether about $225,000 and she didn't like it.

Q. Did she express any opinion about it? A. Well, she simply said that if no dividends were forthcoming she didn't like the prospect of it.

Q. Did the Lees Manufacturing Company have an office in New York? A. 320 Broadway.

Q. Did she ever come there? A. Yes, she stopped in my office on certain occasions, I should say. Well, from New Jersey she did not come quite often. When she was at the Beresford she never hesitated to drop in, once in six weeks or eight weeks; whenever she was downtown to see about her things or taxes.

Q. Did she talk about business at that time? A. Well, as a general rule she never did but about fifteen minutes. If Mr. Lees was there I went on my business.

Q. Did you discuss business at that time? A. When Mr. Lees was not there?

Q. During what years were those? A. Why, they ran right along—in fact, she came to my office as long as she was at the Beresford and a few times after she was in New Jersey; perhaps once in eight weeks, I don't know exactly.

Q. Was she there during the years 1920 or 1921? A. Oh, Yes, she was at the office then.

Q. 1920 and 1921? A. Yes, not as often in 1921.

Q. How often would you say in 1920? A. Why, I should say possibly between three and five times.

Q. In 1920? A. Yes.

Q. How often during 1921? A. 1921, I don't think she was down quite as often, because she found it a little more difficult to get out. She never liked the idea of getting in taxis.

Q. During that time was she alone or did anyone accompany her? A. Well, as I can recall I know she came down in 1920 without anybody, but in 1920 I believe on some occasions Miranda came in with her. She found it a little hard walking and I told her the last few times she came down alone I didn't think she ought to do it, because I thought she might get run over by an automobile, and I went downstairs and called a taxi for her.

Q. That was what year? A. 1920. 1921 I would not say whether she come down once without Miranda or once or twice with her, but I know she was down.

Q. Did you meet her at any place in the spring of 1921, receiving engagement party, or anything? A. In 1921, my brother Henry, who just got through college, was engaged, and she had met him and I considered her so close a friend and Henry did that he sent her an invitation to attend his receiving at Mr. Stuart's home, I think 55 West 8th Street.

Q. What Stuart? A. Max E. Stuart.

Q. A lawyer? A. Yes.

Q. What took place? A. They had a very customary formal receiving, perhaps 150 people coming and going.

Q. Did she take part? A. Mrs. Lees was introduced by me to perhaps fifteen or twenty people that I knew best and she spent most of the time with my folks and Henry.

Q. How did she conduct herself that time? A. Well, she was free with her discussion and very much at home.

Q. Was she introduced to people? A. Oh, yes, she was introduced to Mr. Stuart and I should say about twenty or twenty-five people there. I lost sight of her, because she went around and visited most of the time.

Q. Did she enter into discussions with them? A. Oh, yes, in a general way, about Henry and his wonderful girl.

Q. Did she come alone? A. No, she was invited and Miranda was invited.

Q. Miranda came with her? A. Yes.

Q. How long was she there? A. Why, let's see! I guess she stayed about three-quarters of an hour and then I escorted her out.

Q. Did Mrs. Lees ever say anything to you of her adopting Miss Hough? A. Why, I am quite sure that she intimated it. I don't know whether she said it in so many words, but she had often in private conversation said she did not know what she would do without Miranda and said that she felt she meant so much to her and she felt she always wanted to do something that she would remain with her and she would be taken care of in some way and she kept speaking to me about it right along. I do not know whether she put it in the form of adoption, but she said something she wanted Miranda to be with her all her life.

Q. Did she say anything about the house? A. She did not discuss that with me until they were out in New Jersey. I visited them there about six or seven times. That was the small house.

Q. That was before the new house? A. Yes.

Q. What year was that? A. I should say it was 1921, I believe; yes, I think it was 1921.

Q. How often did you visit there at that time? A. Why, Mrs. Lees generally invited me—I went over there I should say about six times in a year, perhaps seven or eight.

Q. Did you see on all those occasions Mrs. Lees? A. Oh, yes, I only came over when Mrs. Lees would be there.

Q. And did you talk with her? A. Yes.

Q. And do you remember any special case in 1921 about hanging a picture? A. Yes, that was rather a peculiar incident and I think anybody else would interpret it as being peculiar. Mrs. Lees insisted that she wanted me to go upstairs and hang the picture, and I think that even Miranda felt that she wanted me to go and hang the picture, and she insisted upon it so strong that Miranda finally consented to let her go up the stairs with me. Well,

when we got up she gave me a seat and said to sit down alongside of her at her desk, and I asked her where the picture was and she said she would give it to me afterwards, and then we began to talk in a general way about myself and how my family was, and after that she brought up the question in some way—I do not remember exactly—about an antagonism existing—I wouldn't say she said antagonism, but made me think there was some unfriendly feeling between Miranda and Mrs. Harvie. That was the impression I got.

Q. What did she say? A. She said, "Bennie, there may be some things I want to do and if I do anything kindly against Mrs. Harvie it seems to draw the feeling against Miranda and if I do anything kindly for Miranda it seems to draw the feeling from Mrs. Harvie."

Q. How long was this? A. About fifteen or twenty minutes, and when we were through with that she patted me on the hand and said "Well Bennie, don't you worry about it. I know what I am doing," and that is the first inkling that I really had of any antagonism or feeling that there was.

Q. (By the Court) Well, did you hang the picture? A. I never hung the picture. I don't know what picture it was, even.

Q. What was your idea about her? A. Well, I knew afterwards that she wanted to speak to me when Miranda was not there.

Mr. Kent: I ask that that be stricken out.

The Court: Yes, strike it out.

Q. Did you have any conversation with Mrs. Lees in regard to her niece, Marion? A. On one occasion in particular Mrs. Lees—

Q. Fix the time, please. A. I believe—I cannot be positive about this—I think it was the latter part of 1901; that is, I am approximating that; I am not sure of the exact time.

Q. Will you go right on? A. Why, Mrs. Lees at that time mentioned in some way—I don't know how she brought it up—the question of a Mr. Haffner. She said, "Bennie, do you know Marion?" and I said, "I am not positive whether I met her." "Well," she said, "Mrs. Haffner, or Marion, was a true friend of mine and Mr. Haffner, her second husband, was a man I had a great deal of confidence in, but there is something that has led me to believe that he does not deserve that confidence," and then she went on to tell me something about Mr. Haffner trying to get away all the money Marion had, or having it tied up in such condition that Marion was in severe difficulties, and she felt she ought to do something to help her.

Q. What relation did Mrs. Haffner bear to Mrs. Lees? A. I really don't know. I think I only met Mrs. Haffner once, possibly twice.

Q. Did Mrs. Lees at any time when you were out there direct the playing of the victrola? A. Yes. Mrs. Lees was very fond of the victrola, and I better answer that by speaking of one particular time than rambling about. She had a peculiar way of taking certain records, perhaps ten or twelve, and naming each record after another—well, that is, Dr. Sullivan's record, this is Mrs. Harvie's record, this dear Uncle James' record, and your record—it happened to be mine; I gave it to her, and she would say, "Bennie, I would like you to play some music," and she would say, "Play In the Valley of Heaven—in the Silent Valley of Heaven, Dr. Sullivan's record," and I would play that, and she would say play so and so's record, and I would pick them

out and then she would say, "There, your record," and then I knew, and then after we got through everything else she would get me to play a couple of records and then she would say, "God be with you 'till we meet again," and I knew that she was getting tired, and was ready for me to go home.

Q. Did you have any difficulty in understanding her in her interviews? A. No, I should say not. I do not think there was anything. I knew Mrs. Lees to the time she died. There was not the slightest doubt about that.

Q. Was there anything any time that you knew of her mumbling? A. No, I never had any difficulty.

Q. Well, about her physical condition during that period, will you please describe it? A. Well, I knew that in the last three or four years—perhaps two or three years before Mrs. Lees died—that she did not walk as firmly as she used to walk. She was a very heavy woman and I knew when I went down the church stairs I always took her hand and when she sat down at the pew I always walked up with her. She did not walk as firmly as she used to.

Q. Was there any difficulty about her walking? A. No, she would walk. She had a slight sort of limp. I would not call it a limp, but a little difficulty.

Q. Now, in all your conversations what was your opinion as to her being rational or irrational? A. Well, I never had but one opinion and that was that she was rational.

Q. Something has been said here regarding the offering of some stock of the Lees Manufacturing Company for you to purchase. A. Stock was offered to me?

Q. Yes, to purchase. A. The only stock I can

recall ever offered to me was four shares of stock by one—I forget the name of the stockowner.

Q. No, I mean the Lees Manufacturing Company. A. That was four shares of the Lees Manufacturing Company.

Q. Had Mrs. Lees any interest in that four shares? A. No, I don't think so.

Q. Was any stock owned by Mrs. Lees or the estate of Mr. Lees ever offered to you for sale? A. Never by anyone.

Cross Examination by Mr. Kent:

Q. How much are you getting out of this estate? A. Why, I understand that the will has 100 shares of the Lees Manufacturing Company for me. What I am getting out of it, I don't know.

Q. You are keenly interested in seeing that this will stands?

The Court: Let us assume that he is.

Q. What is the capitalization of the company? A. The organized capitalization of stock issued is $150,000.

Q. (By the Court) In other words, what proportion of the actual stock is 100 shares? A. One-fifteenth. There was $150,000.

Q. In other words, there are 1500 shares issued? A. Exactly.

Q. Issued and outstanding? A. Exactly.

Q. And Mrs. Lees had how much? A. I am not sure. I think it was about $49,000 worth. The reason I arrive at that she had Mr. Lees at one time sell either a hundred or two hundred shares and that left her something like $49,000.

Q. In other words, about 490 shares? A. Something like that.

Q. And that was standing in Mrs. Lees name at the time of her death? A. Yes, surely, it is yet.

Q. What did the 1919 balance sheet show as to the net worth of the concern? A. I cannot say that exactly.

Q. Your best guess. A. It is approximately—

10 when you say 1919 balance sheet you mean January 1, 1919, or December 31st?

Q. It does not make any difference. A. Well, there was a big loss that year. I should say either $215,000 or $200,000.

Q. (By the Court) What do you mean by that, the net worth of the company? A. No.

Q. Will you please state to us the actual net worth? A. That is impossible for anyone to state a direct answer to that. I can tell you what the

20 book value of the company is as we show it.

Q. What is the book value? A. The book value of the company at that time was approximately two to two hundred and ten thousand dollars, which may have been two hundred and twenty; I have not the figures, but that may be verified.

Q. And what was the book value in 1920? A. We lost forty some thousand dollars; I have not the exactly figures.

Q. What was the book value January 31st, 1923?

30 A. I think Mr. Lees just has pencil figures on it. I have not seen the final sheet. It is either two— the total amount involved is about $240,000. I mean, including our estimate of water power and everything.

Q. In other words, the company shows a substantial surplus over and above its capitalization at this time? A. If you state that as to real estate and insurance, that amount that cannot be counted in, water power and so forth.

40 Q. You know, as a matter of fact, for the purpose

of taxation the book value is always lower than its actual value? A. I certainly know that.

Q. (By the Court) I understood you to say you did not consider the company actually worth what the book value says. A. No, if I were going to buy stock I would not base it on that value.

Q. (By the Court) As I understood you to say it was that the book value—that the actual value would not equal the book value in 1923. A. Exactly.

Q. When you visited Mrs. Lees you did most of the talking? A. I didn't do most of the talking. I should say we did proportionately as much. A lady of her age and a man of my age, and the subject come up—if it were something concerning her she did most of the talking; if it were something concerning the business I had to do most of the talking in reply to the questions.

Q. And you say she was mentally keen up to the date of her death? A. I would not say that as a positive statement, because it was possibly two or three months before her death I saw her.

Q. Well, at the time you saw her she was mentally keen? A. It depends on what do you mean.

Q. What do you mean? A. I would say she was capable of understanding anything regarding her business.

Q. There had not been any deterioration of her mental powers? A. Not that I could see, mentally.

Q. All during that period up to the summer of 1922, or even later, there had been no perceptible diminution of her mental powers? A. Do you want me to answer that yes or no, because that is impossible. My conception of her mental power at that time was proportionate to her feebleness in so far as in the evenings when we talked it was customary for her to fall asleep when it reached about four o'clock in the afternoon.

Q. Would you ever make her sleepy? A. I hope not.

Q. Well, then, it was due to her physical condition? A. I understood that she generally had slept in the afternoon.

Q. Well, would you talk to her while she was sleeping? A. Hardly. Miranda would generally say that she was tired and needed a rest and I would be told that she didn't have her afternoon rest because I was coming over and it was time for her to stop talking.

Q. Well, you did notice that she would get very sleepy in the afternoon; when did you first notice that? A. Why, that I first noticed from the first time I got over there in Jersey in the early afternoons, which would mean Saturdays, because the rest of the time I used to go over there in the evening for supper, and that was just simply the first time I came over; after we talked in the afternoon about four o'clock she got sort of sleepy and Miranda said Mrs. Lees did not have her afternoon nap and I would have to stop talking to her.

Q. Was that 1920? A. It was somewhere around the early part of 1920.

Q. Did you know that she was suffering from heart trouble at that time? A. No.

Q. Did you know she was suffering from rheumatic trouble at that time? A. No.

Q. Did you know whether she was suffering from Bright's disease at that time? A. No.

Q. You never knew anything about that? A. No, I didn't know anything about that.

Q. She appeared to you healthy? A. Yes, except when she coughed and got a cold.

Q. You didn't know of any serious illness of hers? A. No.

Q. You never knew of any feebleness? A. Except as I have stated.

Q. But you knew of no serious trouble with her? A. No.

Q. And you saw her every few weeks? A. Sometimes a few weeks and sometimes six or eight weeks apart.

Q. If she did have trouble you would know of it? A. Yes.

Q. In what year did these lapse of periods occur of serious illness? A. These colds which held her in bed, as I remember, there was one, I believe, about the latter part of 1919. She wrote me that she could not invite me up because the doctor had kept her in bed, because she was only able to sit up and she wrote me afterwards she was able to go out. The letters are among those letters.

Q. You said something in your direct examination that she explained to you that she adopted Miranda in order to have Miranda stay? A. I never said that she adopted Miranda. I would rather you refer to the notes. I am not going to restate that question.

Q. I am going to ask you to restate it. Will you please state to me what Mrs. Lees said in regard to the adoption of Miranda? A. She intimated to me several times and said that she felt Miranda meant so much to her for her physical comfort and she wanted to do something that would assure Miranda being with her the rest of her life.

Q. Do you know whether Miranda threatened to leave her? A. I know she did go away at intervals.

Q. Do you know whether Miranda threatened to leave her? A. Not that I know of.

Q. Why did she then say to you that she had to do something in regard to having Miranda stay?

Mr. Atwater: I object to that.

The Court: Do you think he would know why?

Q. Did she say to you why she would have to do something in order to have Miranda stay? A. She never told me she would have to do something.

Q. She simply gave you that as a statement? A. Yes, on several instances.

Q. She said she would have to do something? A. She never said she would have to do something.

Q. In order to have Miranda stay? A. Well, state your full sentence before I commit myself.

The Court: What is that?

(Answer read: "Well, state your full sentence before I commit myself.")

Q. Now, you stated something about Mrs. Lees telling you of the fact of the jealousy that was existing between Mrs. Harvie and Miss Hough? A. On one instance she did.

Q. And what did she say to you with reference to that? A. Who, Mrs. Lees?

Q. Yes. A. She told me that there was some little things when she wanted to do certain little kindnesses for Mrs. Harvie it grew to bring up some little antagonism for Miranda and when she wanted to do certain little kindnesses for Miss Hough it grew to bring up some little antagonism for Mrs. Harvie. I tried to shun that question as much as I could.

Q. Did she tell you why Miss Hough should have any antagonism to Mrs. Lees giving something to Mrs. Harvie? A. No, never told me anything. I intentionally tried to lead her off that.

Q. Did she tell you what interest Miss Hough had in order to keep Mrs. Harvie from getting something? A. No, in fact, I think she felt Mrs. Harvie

had no reason any more than Miss Hough had.

Q. Did she tell you why Miranda was trying or objecting to Mrs. Lees giving anything to Mrs. Harvie? A. She did not say she objected to her giving anything. She said there were certain kindnesses which she wanted to do and those were objected to by either one. She did not say she was giving anything.

Q. Did she say to you what the objections of Miss Hough were? A. She didn't know; in fact, we were in there that time about fifteen minutes, when I told her we ought to go downstairs.

Q. Did you ever talk to Mrs. Harvie? A. Oh, I have seen Mrs. Harvie. She was over to my house once in about five years, and I saw Mr. Harvie often in his business place. I visited Mrs. Harvie once in four or five years.

Q. Didn't you at one time state to Mrs. Harvie that Miranda had made you an offer that if you would purchase her 100 shares of the stock of the Lees Manufacturing Company which was given to her in the will—that was prior to the death of Mrs. Lees, you could have their respective shares for the same assigned to you on condition that you guarantee and hand over to Mrs. Lees for life any dividends or profits that might accrue? A. I will have to ask you to restate that question.

Q. Did you have any talk with Miranda in reference to purchasing from her 100 shares of stock that she was to get in a certain will of Mrs. Lees? A. I never at any time discussed with Miranda or talked about her—

Q. Did you at any time?

The Court: Let him finish.

Q. Are you finished? A. Not quite, no.

Q. I beg your pardon? A. I never at any time was offered or offered to buy or had any talk about my purchasing any stock or anything of the Lees Manufacturing Company or any other company from Miranda belonging to her or anyone else.

Q. That is positive? A. Positive.

Q. Did you have a conversation with Mrs. Harvie in reference to that? A. About Miranda offering me stock?

Q. Yes. A. Never at any time with Mrs. Harvie or anyone.

Q. Did you ever state to Mrs. Harvie that Miranda offered you 100 shares of stock? A. I never said to anyone that Miranda ever offered me any stock.

Q. Now, when you saw Mrs. Lees in 1920 or 1921 she was physically active? A. Yes.

Q. Around and active as you used to know her in years gone by? A. Well, not quite as physically active as in the years gone by; I would not say that, because I have known her for about fifteen years.

Q. But she was active in 1921? A. Oh, yes.

Q. Nothing the matter with her so far as you could see? A. No.

Q. You did not know of any illness of hers in 1921? A. I didn't except these colds she wrote me about.

Q. You didn't observe anything? A. Nothing.

Q. Did any talk ever come to you through Mrs. Harvie or any other person about proceedings to appoint a guardian for her? A. I heard of that—I cannot say the exact time—let's see, now! I will try to recollect when it came to me.

The Court: Will you not please indicate what you are pursuing in this examination?

Mr. Kent: I just wanted to ask him if he heard of it and when.

The Court: Well, suppose he had heard of it, do you think it would make the slightest difference? He did not institute any proceedings.

Mr. Kent: All right.

Q. Did you know the doctor who was attending her in the Beresford, Dr. Swift? A. No, I only met one doctor and he was the one that attended to Mr. Lees while he was alive. I don't know any of the other doctors.

Q. Did Mrs. Harvie ever show you a certificate she had gotten from Dr. Swift in 1920 stating that she was incapable of exercising sound judgment and discretion? A. No, the first I knew of that was when I saw it offered in court and I was stunned.

Q. You were stunned? A. I was stunned to think that was offered.

Q. What was the reason for your frequent visits to both the house and to New York? A. To Mrs. Lees?

Q. Yes. A. Why, I can tell you better if you give me about two minutes. Ever since Mr. Lees was alive I was closely connected with the Lees Manufacturing Company. When Mr. Lees died Mrs. Lees depended upon me for all her verifications of the exact statements of the company's business and everything, and I was a very close friend of Mr. Lees and the first thing that Mrs. Lees did was to give me his watch as a token or remembrance, and she wanted me to know Mr. Lees said she could trust me with anything she had if she wanted good advice or suggestions, and after that time we saw each other and we went to church together and

to the synagogue together, and we were close friends and in time she asked if I objected if she considered me as her child.

Q. Did you start any adoption proceedings, too? A. You mean for myself?

Q. Yes. A. No, I didn't even want her to think of my addressing her as Aunt Lizzie. It could not be done. I have a father and mother and very close family ties. Nobody could adopt me but myself.

Q. Now, then, I gather from your statements that you were there in the company mainly looking out for Mrs. Lees interests? A. No, I was there as a very close friend, an extremely close friend.

Q. Well, were you giving her confidential information? A. No, sir.

Q. But after 1918 or 1920 she resigned? A. She resigned.

Q. And who took her place? A. She resigned and wrote letters to the Lees Manufacturing Company to Mr. Lees.

Q. Who took her place? A. I was made a director of the company. It does not mean taking her place, only with one other person who is general manager of that company.

Q. Then you really remained there as her representative? A. No, I never even had a proxy to vote. I never asked for one.

Q. When did you become a director? A. I became a director in May, 1920, when her resignation was accepted.

Q. (By the Court) Will you look at those letters and tell us in whose handwriting they are? A. Yes.

Q. (By the Court) In whose handwriting are they? A. They are Mrs. James E. Lees.

Q. (By the Court) How do you know that? A.

They came to me in the regular mail from time to time.

Q. (By the Court) Now, have you any other letters? A. These are two letters, one addressed to John Augustus Lees and one to Robert T. Lees. I know the handwriting.

Q. (By the Court) Whose handwriting are they? A. They are Mrs. James Lees handwriting.

Q. (By the Court) Have you any others? A. Yes, a letter written by Mr. Lees to Mrs. Haffner, a sort of invitation.

Adjourned until tomorrow, Thursday, May 17, 1923, at ten-thirty o'clock A. M., and to be continued before Charles F. Kocher, Advisory Master.

Letter marked Exhibit P-19.

Envelope: "New York, N. Y., Dec. 25, 11 P. M. 1018. Sta. W. Mr. Benjamin B. Epstein, 14 Jerome St., Brooklyn, New York."

Letter: "Christmas at The Beresford, Benny dear: The sweetness and beauty your dear thought has added to my home, deserves and has my heartfelt thanks, and that same heart also wishes you were here to see and partake of your goodness to me. With the *lovely* blossoms there was some holly, which Miss Hough has bunched tied with the red ribbon that encompassed the box of tempting candy, and suspended it below one of the side gas fixtures between the two large rooms where it will doubtless remain to greet you on January 5th in returning from church after hearing *dear* Dr. Sullivan. I hope dear Mr. Lees is conscious of my increase in happiness through your kindness to me. I hope

the day is passing happily to you and your dear ones, to whom I would be glad, indeed, to be most kindly remembered. I shall count the days between now and the one on which I am to welcome you at church and to my home and rejoice more and more as they become beautifully less. Thanking you more than I can possibly express, Lovingly (Mrs. James E.), Elizabeth L. Lees."

Letter marked Exhibit P-20. 102 N. 22 St. East Orange, N. J. June 24, 1919. Benny dear: The doctor's consent has at last been gained to my sitting up for an hour this afternoon, and its first moment is to be used in helping my pen to thank you for the dear lines which did me such good this morning, and to assure you I am living in hopes before the summer is much more spent, to feel strong enough to encourage you and your dear brothers to take a six o'clock supper with us, after receiving a welcome straight from a sincere and loving heart. It grieved me last week in being compelled to have Miss Hough ask Mr. Augustus to postpone coming to us, but there seemed nothing else to do, as it would have been impossible for me to have seen them. I had already been in bed for three consecutive days, a visit from the doctor each of those days, and every thing being done to prevent a threatened attack of pneumonia from being realized. I feel they will not misunderstand, after they receive a few lines from me, which I hope to write this afternoon, tho just now I am a little undecided as to where I had better mail it. I am a little inclined to feel it will be to your office in your care. If so you can

place it in another envelope and re-direct as seems best, but be sure it reaches Mrs. Augustus. Miss Hough is usually busy and successful but she looks at times very tired, and feels so, but I cannot change certain conditions. Now I must pen a few lines to dear Mrs. Augustus, but not without first sending you love in abundance to share with your dear mother, brothers and your precious self. Precious you certainly are to Affectionately Elizabeth L. Lees.

Letters marked Exhibit P-21 and Exhibit P-22.

Envelope: "New York Nov. 3, 10 P. M. 1919 N. Y. Mr. Benjamin B. Epstein, 14 Jerome St., Brooklyn, New York."

Letter P-21 (1919). "Nov. 3rd at The Beresford. Bennie dear. The pamphlet and the sermons your welcome note of last Thursday told you had secured and intended sending me, have not yet arrived, and I find myself hoping the delay is because you have not yet mailed them, and not because thru any postal delay or miscarriage, for which I should be sorry indeed, I am now going to ask you to do me the favor of sending me a large ball of white twine, rather fine, but very strong. Awhile ago thru your kindness in making one mine, I gave it to dear Mrs. Sullivan, and it found such a help to her in various ways, that now it is used up, she craves another ball, and she was so earnest in her asking yesterday, that I assured her I would do my best to secure another, hence I am writing you. We have a *remarkable* service yester-

day morning. I did so wish you had been seated beside me to have heard it, the subject of the sermon was 'The Heroic Tradition,' and dear Dr. Sullivan was certainly inspired in his sermon. It was wonderful and so inspiring and uplifting. I think ex-President Taft is going to occupy the pulpit in the evening of a week from next Sunday. I will send you word when I am absolutely certain regarding it. Now a word by way of asking you when you and your mother dear can be here. Do you think she would enjoy hearing *dear* Dr. Sullivan some Sunday morning and then come home to luncheon with us. I do so long to welcome her here. Please let me know as soon as you can, there's a dear. Last Saturday Mrs. Harvie brought mother Harvie, May Harvie's mother, here and we had a very happy time, and I am sure we would have such with your precious mother & you so when do you say it may come to pass? Last Thursday Augustus & Margaret were here to dinner, after which they donned their evening clothes and went to a wedding anniversary in the neighborhood of 83rd St. and Riverside drive. They both looked fine and seemed very happy. Now for an earnest little prayer before closing, these lines which take dear love to you and yours.

"God be with you till me meet again,
By His counsel, guide, uphold you,
With His sheep securely fold you,
God be with you till we meet again.'

Lovingly (Mrs. James E.) Elizabeth L. Lees."

Letter Exhibit P-22. Nov. 24 at The

Beresford. Benny dear. It will be many and many a day (if ever) that my heart will cease to thank you and your mother dear, for giving me the rare happiness of welcoming you both here, and the marked good it did me physically. It was indeed a *benediction* in the purest sense of the word. I hope you and your mother dear felt none the worse for the long trip, and the unusual one for your mother dear. Dear Mrs. Harvie was here to-day, and she was just brimfull of thanks to you for giving her the unusual and delightful experience of that auto ride to the tube she wanted to take. Now I am about to ask a decided favor of you, to which I want you to feel perfectly free to answer yes or no. Could you have your office girl make three typewritten copies of 'I'm forever blowing bubbles,' and 'In my hour of trial.' I like to give the words to friends when they are listeners of the music, and the typewritten copies are so *much* easier to follow than the pen written ones. Now what do you say Bennie dear. Whether your answer be yes, or no, I shall love you just the same, so be frank. Lovingly (Mrs. J. E. Lees) Elizabeth L. Lees."

Letters marked Exhibit P-23 and Exhibit P-24.

Envelope: "New York, N. Y., Nov. 10, 12:30 A. M., 1919. Mr. Benjamin B. Epstein, 14 Jerome St., Brooklyn, New York."

Letter Exhibit P-23. "Nov. 9th at The Beresford. Bennie dear. Thanks for the twine, which arrived in fine condition, I am sure dear Mrs. Sullivan will rejoice greatly when she receives it, which she will as soon

as I am able to be face to face with her which I am *hoping* will be next Wednesday. I hoped I should do so to-day, but the doctor *commanded* me not to leave the house, so I had to give up hearing *dear* Dr. Sullivan which always does me such good. The doctor said if I did not obey him I would certainly come down with pneumonia or some other trying illness and that he should accept my doing contrary to his wishes as his dismissal. Miss Hough, as my nurse, felt I ought to obey him, so home I stayed. It has been many a day since I have been as ill as the past five days. Bennie Dear, I should feel relieved to hear you had received dear Rabbi Wise's sermons, and that you and your dear mother were going to reserve Sat. Nov. 22 to take one o'clock luncheon here and spend the afternoon. With love for you & yours, lovingly, Elizabeth L. Lees."

Letter Exhibit P-24. "Nov. 17th at The Beresford. Bennie dear. I wish you could have witnessed the delight that spread over *dear* Dr. Sullivan's face when I asked him yesterday if he had received a birthday greeting from you and he responded earnestly 'Indeed I *did,*' and added 'Oh, Mrs. Lees, it made me so happy.' I disobeyed the doctor yesterday (he was just *furious* when I told him of my intention to attend the two services)—but I am sure they did me good and no harm. I took a coupe to each of them. The church was crowed. Camp chairs wherever one could be placed, and the pulpit steps and edge of the platform were used. The speakers were all good but I think ex-Presiden Taft was the best. Saturday even-

ing there was a reception at the Parish House. The place was filled to its utmost. The President of the Board of Trustees made a happy speech of welcome, and in it told not only was the church celebrating its 100th anniversary, but also *dear* Dr. Sullivan's birthday anniversary, which created quite an excitement, for which I was glad. I am looking forward to the 22nd with a heart full of happy anticipations, and hope and pray it may prove a time of happy memories to you and your mother dear. Somehow I am taking for granted you will come in the auto. If so could you not come rain or shine? I hope so, just phone or write me what you think of it. I have not been to the dining room for close upon two weeks, but I am going to mark the 22nd by my return to it, and would be so glad to have you and your mother dear on either side of me in that experience. Oh, that would be joyful! joyful! joyful! Now for my 'by-by,' with love for you & yours from your loving friend (Mrs. James E.) Elizabeth L. Lees."

Letter marked Exhibit P-25.

Envelope: "New York, N. Y., November 27, 1919, 11 P. M., 1919. Mr. Benjamin B. Epstein, 14 Jerome St., Brooklyn, New York."

Letter: "Nov. 27th at the Beresford. Bennie dear. I cannot find words with which to thank you *amply* for the exquisite greeting in the form of beautiful roses which have blessed us to-day, and I do not know where to look to make such mine, so *please* take my desire for the deed. We had an unusually fine service this morning, due to

dear Dr. Sullivan having recovered sufficiently from illness to take charge but alas! when I went to greet him at close of service, he told me the engagement from him & his wife to dine with us this evening could not be kept as Mrs. Sullivan was very ill in bed, which is no *little* disappointment to me. I took a coupe to church & back for tho I am better I am not sufficiently so not to take every precaution. Aug. & Margaret sent me a large box of flowers yesterday, all sorts of chryanthenums, so our front room looks quite festive. Wish you might happen in, so I could send some to your mother dear. Well I can send her my love, which I do straight from my heart, and such also to your brothers, father, sisters and *you* who are so dear to Lovingly Elizabeth L. Lees."

Letter marked Exhibit P-26.

Envelope: "New York, Dec. 17, 1919, 10 M. N. Y. Mr. Benjamin B. Epstein, 14 Jerome St., Brooklyn, New York."

Letter: "Dec. 17th at The Beresford. Bennie dear. Many more thanks than my pen can express are yours, for your thought and kindness in providing me with those typewritten copies of 'In my hour of trial,' which I am sure will help to give added pleasure to friends who may listen to that record on the victrola. I have not forgotten my intention to secure for you two tickets for one of the oratorios to be given at the 7th Regiment Armory, tho why such a place has been decided on in preference to Carnegie Hall, is more than I can imagine, so I am hoping you will be able to solve that question after attending the oratorio. Last Friday I

had a friend, Mr. Howard Pratt, who is now President of the A. S. Barnes Book Publishing Co. whom I had not seen since he was a tiny boy whose heart I used to delight in making paper kites for him. I do not know how he found out my abiding place, but I am glad he did, for we had a delightful evening, and I feel there is many another in store for me thru his having a dear wife and four attractive looking children. He brought photos of them. He has been married twenty-two years. I am daily gaining in strength, but have not yet been out without the aid of a coupe. As soon as I can take an outing, I shall secure those tickets. I received the notice of the business meeting of the Lees Mfg. Co. to be held Dec. 30th but I wrote Augustus I would not be able to be present, and also that I felt it to be my duty to resign my position as Director, which I did 'in favor of Bennie or Margaret.' I feel *you* ought to hold that position. I appreciate the kind wishes and love sent from your home to Your loving Aunt Lizzie (over) P. S. I am supremely happy in having you as an adopted nephew."

Letter marked Exhibit P-27.

Envelope: "New York, N. Y., Dec. 23, 9:30 P. M., 1919. Mr. Benjamin B. Epstein, 14 Jerome St., Brooklyn, New York."

Letter: "Dec. 21st at The Beresford. My dear—*very* dear Mrs. Epstein. Words refuse to come with which I can fully express to you my thanks and appreciation of your gift to me, but believe me I do fully appreciate it, and my heart is full of earnest thanks. I shall only dispense the cake to dearest friends who I am sure will be in-

terested in what I shall tell them of the loved giver. And now for a Christmas and New Years wish for you and your dear ones. May the end of a *perfect* day be yours when the evening stars appear, and may every day be a perfect day to the end of a perfect year, is the prayer of Lovingly yours, Elizabeth L. Lees."

Letter marked Exhibit P-28.

Envelope: "New York, N. Y., Dec. 25, 1919, 12 P. M. Mr. Benjamin B. Epstein, 14 Jerome St., Brooklyn, New York."

Letter: "Christmas at The Beresford. Bennie dear. I do not recall ever receiving any gift that filled my heart with more heartfelt thanks than that which revealed its rare beauty and fragrance when the box was opened this morning directed to me, and besides the exquisite blossoms your dear card—I wish you were here to see the beautiful effect since dear Miss Hough has arranged them in a tall glass vase which goes in so nicely in the large jardinier on one side of the mantel. If we were to be home this afternoon, and to dinner, I should phone for you, Max, Henry and Anna to come and take six o'clock dinner with me, when I could have thanked Max, Henry & Anna verbally and earnestly for the lovely Christmas card greetings received from them this morning. The reason for my not phoning is that we are going to accept the invitation from dear mother Harvie to join her family gathering this afternoon. It will be my second outing on foot since I was taken ill, but I think we will be able to cover the distance nicely by the aid of an auto when we arrive in Jersey City, to take us to No. 10 Jones

St. Mr. and Mrs. Harvie and their two children will be there, and I have no doubt a nice Christmas time has been planned, I shall try to express my thanks in black and white today to your dear brother, but think I will wait and phone you to-morrow, so as to have your aid in placing Anna correctly. Oh, Bennie I am over joyed as it were, in knowing Augustus has placed you in a position so *well deserved* in the Lees Mfg. Co. It is where you should have been *years ago* & if dear James had been spared I am sure you would have been accorded that place years ago. So long as you have it, I am more than glad I resigned. By this time you doubtless have received my lines regarding the oratorio tickets. I am very sorry there is a needful postponement in securing them, but as those oratorios are not to be given until *April,* you will be able to give your *'best girl'* a timely invitation. Again thanking you, and sending my love to your dear people, Lovingly, Aunt Lizzie. Tell your dear mother my Christmas cake is second to none. It is simply perfect, and I continue to thank her."

Letter marked Exhibit P-29.

Envelope: "New York, N. Y., Dec. 29, 1919, 11:30 P. M. Mr. Benjamin B. Epstein, 14 Jerome St., Brooklyn, New York."

Letter: "Dec. 29 at The Beresford. Benny dear. You are by no means alone in being 'all happy' because you are to be included in the Board of Directors of the Lees Mfg. for I am equally so, and ever will be whenever any extra good becomes yours, for you are *deserving* of such, & I think

the Lees Mfg. Co. has more reason to rejoice over the situation than you have, for it cannot fail to profit by your presence there, & I hope you will have ample cause for feeling your trip there is worth while. Do not worry about the oratorio, tho I am free to confess I shall feel relieved at heart when I am notified they have the tickets for sale. Mrs. Harvie, Miss Hough & I expect to hear The Messiah to-morrow evening at Carnegie Hall, and why they changed to Fifth Regiment Armory, is past my comprehension, the expense of fitting it up with seats, stage, sounding boards means the expenditure of no little money, but I thank the Lord it is not a part of my life's problems. I have quite enough to meet. Love to you & yours from your loving, Aunt Lizzie."

Letter marked Exhibit P-30.

Envelope: "New York, N. Y., Mar. 17, 1920, 4 P. M. Mr. Benjamin B. Epstein, 14 Jerome St., Brooklyn, New York."

Letter: "St. Patrick's Day in the morning, 7 A. M. at The Beresford. Bennie dear. I hope these lines will make you as extra happy as they do me to express them, for they are to tell you the tickets for the oratorio are in my possession (Miss Hough went for them yesterday), and that I want you to appoint some time for me to transfer them to you I do not want to mail them, for somehow or other, I feel it will not be safe and I do so want you and your best girl to be sure of being at the oratorio. I would suggest coming to church next Sunday morning and after the service to come home with us and spend the afternoon, but our

pew will be filled with already invited guests, and we have already accepted an invitation that will take us from home that afternoon. How would Saturday afternoon suit your plans? Just phone to me after receiving this as to when we may be face to face, and so make very happy Your loving Aunt Lizzie. Please give my love to your dear parents. Do not select Friday of this week."

Letter marked Exhibit P-31.

Envelope: "New York, N. Y., April 5, 1920, 1 A. M. Mr. Benjamin B. Epstein, 14 Jerome St., Brooklyn, New York."

Letter: "April 4th at The Beresford. Bennie dear. If I remember right the oratorio for which you have tickets will be given on the 10th which will be next Saturday, and I hope you will write me 'yes' to this invitation to sit with me in my pew next Sunday morning (11 o'clock), come home with us for luncheon, when you can tell me whether you and 'your best girl' enjoyed the oratorio, and I can thank you audibly, as I now do with pen and ink *and my heart,* for the *lovely* blossoms you *blessed* me with yesterday. O! they are *beautiful*, and *you more than kind* to make such mine. I wish I may some day do something for you that will bless you as much as I *know* I am blessed by your marked kindness to me. Please write me as early as you can regarding next Sunday, and do try to say 'yes'. I shall have a coupe to take us three home comfortably, rain or shine, but hope it will shine, With heart love for you, your dear parents, and those of your family I am blessed in

knowing, I am happy in signing myself, Your loving Aunt Lizzie."

Letter marked Exhibit P-32.

Envelope: "East Orange, N. J., June 8, 1920, 12 P. M., Mr. Benjamin B. Epstein, 14 Jerome St., Brooklyn, New York."

Letter: "102 N. 22 St., East Orange, N. J., June 7th, 1920. Benny dear. Yes, more than that, *very* dear. I have not been usually well or you would have received far earlier than this my *expressed* thanks for your welcome lines telling of the anticipated trip of six of you to go by auto to Monticello to attend a wedding on May 30th and then still later ones on such a pretty postal of Kramisha Lake telling of your beautiful five hours' drive and your intended return Monday night. I hope the decided change of air and scene did the 'six of us a market good,' and that the wedding was an enjoyable occasion to all concerned, and will prove among the truly happy unions on earth, as I am sure *dear* Mr. Lees and mine proved to be. O! how I wish I were with him in the Spirit Land, but I suppose I must bide my time, as all other mortals have to, but it cannot arrive too soon for my happiness, and I hope dear James is fully conscious of my desire. My! what a delight it would have been to have met you the day you were at the Safe Deposit Co. Dear Mrs. Harvie was with me and it would have done her a marked good also, for you are very dear to her. We came from Rutherford and returned there, and the next day I had to keep my bed and receive a call from her excellent doctor, which I had to do for about a week. But his excellent remedies saved me from a dangerous condi-

tion. My cough continues to be very troublesome, which interferes with my night's rest, but it is lessening, so I feel encouraged. We are permanently away from the Beresford and I am thankful in being able to realize the termination was secured and very friendly feelings in spite of predictions to the contrary. I will tell you the particulars when I see you which I hope will be very soon. I fixed for posting to you this morning, last Sunday's calendar of All Souls which gives the subjects of *dear* Dr. Sullivan's remarkable sermons recently given, and the one for next Sunday which is to be the last until fall. I am *earnestly* hoping you will hear it sitting by my side in my pew. It would do me lots of good & I am sure you would not regret hearing the sermon, so I say with emphasis, *do come*. I am more than sorry I cannot as earnestly write you to return with us and spend the rest of the day, but as we are situated just now, we feel it will be best to wait until we are settled in 'Rainbow Cottage' before inviting friends to a meal, and I am sure you would feel so too, could you see how we are at present situated. As yet not a spade of earth has been turned for the new home, as the architect has been unable to secure estimates for the plumbing and carpentering, but we are expecting the architect to call this afternoon and we have several good reasons for believing he has favorable news to impart. We had trying times last Sunday & the previous one in getting to church. On the earlier Sunday a sudden strike on

the ferry boats prevented their running, and last Sunday the train we planned to take was taken off, but such trials are not going to influence us against going next Sunday. When I hope to be blest by your presence near. Miss Hough has been fortunate in engaging a very good man for outside work and some inside. A part of the farmer is the caring for eleven hens, which have commenced to lay very acceptably. I ordered them of Mr. Lees nephew, Ed. Taylor who has charge of a poultry farm in South Hampton, Mass., and where at present he has 1000 new little checks. Those he sent came from Boston, and two died on the way. I will use the rest of the space in sending to you, your dear mother, father, sisters and brothers, love from your ever loving Aunt Lizzie."

Letter marked Exhibit P-33.

Letter: "May 4th at 19 Whitman Ave., East Orange, N. J., Bennie *dear*. But just how dear. I do not expect ever to have the gift to tell you. I have just completed lines of congratulation to your dear brother Henry and also to Mr. and Mrs. Max D. Stener, and daughter, on the betrothal of said daughter to Henry, and hope to express such orally on the coming Saturday afternoon at 35 West 88th St., N. Y. City, I picture you as being there, therefore am counting on having a very enjoyable time. Dear Miranda *Lees* will be with me, and I am earnestly hoping, the day is close at hand, when with all my heart I may write you congratulations. I feel you are blessed with certain heart qualities as to insure a truly

happy married life, and are blessed with such good sense and taste, as to choose the right mentality to share life with you. I shall depend upon you to introduce me to the several parties. Should you need to phone call up 'East Orange 6598 Party J.' I take for granted the reception of Sat. afternoon from 3 to six o'clock is to be at 55 E. 88th St., N. Y. City. Good bye, God bless you, Lovingly, (Mrs. James E.) Aunt Lizzie Lees."

Letter marked Exhibit P-34.

June 10th at 19 Whitman Ave., East Orange, N. J., Bennie dear. If Sunday prove a pleasant day, my loving thought will be full of you and those near and dear to you, as you go spinning on your way to Westport, Conn. where I hope a hearty welcome awaits you and yours. The last I heard from Mrs. Augustus was that the doctor had ordered her to Jewett, as the care of her invalid mother, had told upon her health. So your dear brother Henry is to mark the 29th by his marriage. I hope it will prove as true a one as dear Mr. Lees and mine was. I hope their honeymoon will be a markedly happy one. With my love give them my hearty congratulations, and my love to your precious self amost goes without saying. Your truly loving Aunt Lizzie."

Letter marked Exhibit P-35.

Letter: "Rainbow Cottage, 19 Whitman Avenue, East Orange, New Jersey, July 14th, 1921. Bennie dear. Your lines of last Tuesday have made us happy through and through, and we shall become more so as the days, hours, minutes and seconds become

beautifully less between the now and the time of welcoming you and yours July 21st. Do not fail to write me as to the train you will all take for Ampere, where dear Maranda will meet you with our auto, and bring you all speedily and comfortably to Rainbow Cottage, where I shall be to give you all a cordial and loving welcome. When you write to your dear parents give our love to them, and tell them when they return we shall want to welcome them here soon thereafter. We are very happy in that 'Max and his Fannie' are to be with us on the 21st. Do not *you* fail to be of the number, if you want to make happy Your loving aunt Lizzie."

Letter marked Exhibit P-36.

Letter: "Rainbow Cottage, 19 Whitman Avenue, East Orange, New Jersey. Aug. 17th, 1921. Bennie *dear*. A note this morning from dear Mrs. Harvie tells me that Tuesday, the 23rd will be the day on which her dear self and no less dear Mr. Harvie can and will be here to take 6 o'clock dinner with us and we want *you to be here also.* I will enclose a time table and postage stamps so you may be able to tell me without delay the time you will arrive at Ampere so dear Maranda may meet you there with auto. After your arrival here I should be extra happy if you would tell me when your dear mother, father, brother Henry and bride could and would be here for 6 o'clock dinner. *You* also must be here on that occasion. Very lovingly, Aunt Lizzie."

Letter marked Exhibit P-37.

Enevlope: "East Orange, N. J., Oct. 11, 1921, 11 P. M. Mr. Benjamin Epstein, 14 Jerome St., Brooklyn, New York."

Letter: "Oct. 11th at 19 Whitman Avenue, East Orange, N. J. Precious Bennie. I wish I could be sure of making you as deeply happy as your recent lines of Sunday have made me. I am so glad your dear father wants to be here, when you and your dear mother are to bless us by receiving a welcome here. I think in one of your letters you said your dear father could not partake of meats, or soups made from meat, but I find myself believing vegetables and fruits would be welcome to him and and do him no harm. Please write plainly as to that, and also write as early as you can, as to the special day, and do not fail to tell the time your train will be due at Ampere so dear Maranda may have the pleasure of bringing you all speedily to Rainbow Cottage, where I shall thank God for the privilege of heartily welcoming all of your dear ones, who decide to be face to face with us. Be *sure* that *you* will be one of that number, and so make especially glad Your ever dearly loving Aunt Lizzie: We have an engagement for the 19th."

Letter marked Exhibit P-38.

Letter: "Dec. 23rd at The Beresford. Bennie dear. I took my first outing *on foot* today since my recent illness, and the sole object I had in view was to secure the two oratorio tickets promised you and which I am very desirous should be in your hands. I had decidedly unexpected difficulty in finding the office where such were dispensed, but when that was finally discovered and reached, I was *amazed* to have them tell me they had no tickets. You will remember I told you

they were to be given in the Armory of the 5th Regiment, where seats, sounding board and a large platform were being prepared for the audience and usually large choir. They are to be given in April, and as yet the seats were not placed so that they might be assigned. They took my name and address, and promised to notify me on the earliest possible day when seats would be assigned, and you may rest assured there will be no delay on my part to secure them *at once.* I shall have to send them by mail, but shall do so in a registered letter, so as to avoid all risk of their not reaching you. I am *more than sorry* about this delay, but we will hope for the best which must include that the oratorio will be so finely rendered that we will quickly forget all discord in connection with securing the tickets. I trust you and your loved ones are blessed with perfect health and that the *dear* mother has not over worked herself in making delicious dainties for her friends. Give my love to her and to all your dear people who have won a sure place in the heart of Your loving Aunt Lizzie."

Letter marked Exhibit P-39.

Envelope: "East Orange, N. J., March 4, 1922, 12:30 A. M. Mr. John Augustus Lees, Lees Manufacturing Co. Westport, Conn."

Letter: "March 3rd, 1922, at 19 Whitman Ave., East Orange, N. J. Augustus dear. I am facing a sad fact, and it is this, I realize I can no longer do without some return from my Lees Mfg. Stock. That the more than $2,000 I have received as dividends have been of great service to me, but since I have received nothing from it for some time my in-

come has been seriously diminished until I now realize I *must* sell and invest the money received for the stock in an annuity. This is a great sorrow to me because I know I will have to sell at a sacrifice, and it may result in taking the stock out of the family since in my will I have left it to you, Bennie and dear Maranda (Bennie and Maranda being to me the same as the family). Before seeking an outsider to buy, I want to offer it to you and will be willing to let you have it at a low figure in order to keep it in the family, as I am sure dear James would like to have done, but I am just as sure he would not wish to see me suffer, because of a marked lack in my income. Hoping what I have written you tho it may be disturbing *will not be displeasing,* for it helps me out of my trying position. It will make me very much the happier if you personally or the company can take the stock. With true love and an abundance of it for you and your dear ones, Margaret, Ruth A. Gussie & Lulie, Very lovingly, Aunt Lizzie."

Letter marked Exhibit P-40.

Envelope: "East Orange, N. J., 27, 1920, 10:30. Mrs. Robert T. Lees, Westport, Conn."

Letter: "Nov. 27th at 102 N. 22nd St., East Orange, N. J. Lulie dear. Your letter was a truly welcome one, for you are in my truly loving thought constantly, but I was and am sorry it needed to tell of your loss of your dear little bird, which I have been hoping has shown its good sense and returned to you by this time. We are still uncertain as to when we shall occupy the

new home. It seems as tho every day something occurred to delay that move, and there is no little vexation as a result, but I have resorted to my victrola for comfort by having it daily play the record 'Pack up your troubles in your old kit bag, and smile, smile, smile,' and found it really helpful for which I am truy thankful, for worry does not improve one's health or general appearance. Miss Hough is more of a help and comfort than ever in these vexatious days. I have been thinking seriously of sending you, Margaret and Ruth the gifts of jewelry my will assigns to you three dear ones, and I think I can say I have made up my mind to do so, and I now ask you to send me word as soon as they reach their destination safely. You are to have a breast pin about an inch wide which has a large diamond in the center surrounded by twelve pearls, Margaret a ring with three diamonds and Ruth a fine cameo breast pin.' Dear Augustus will have to wait until my will is filed, as my gift to him will be 349 shares of the Lees Mfg. stock which I need to keep so as to have the use of the dividends, for these are days when money is constantly needed. I really have 549 shares, but 100 of that goes to Bennie, and another hundred to a nephew of mine by marriage, Mr. Philip Haffner, who is a great help and comfort to me. Thanksgiving Day had a *great* disappointment for us, for neither love nor money could secure a taxi to take us to a train by which we could reach our church before the people were leaving because the service was ended. Dr. Sullivan is so dear to me, and his preaching is always a tonic that *always* does me a marked and

needed good. Several weeks ago we had to sell our auto, which we did to dear Mr. Hodgdon, who is ever ready to take us where we want to go, but he was not within call as on Saturday he took his family to Philadelphia. I wrote to Dr. Sullivan telling him why we were absent which he will appreciate, as he has not been slow in showing his love for our faithful attendance in spite of the miles between All Souls and here. We have arranged to-day for a service to-morrow morning and evening, and for attending a Christian Science lecture on Thursday evening, so I hope we will make up for lost time. The sermon subject for the morning is Christ's 'Gift of Liberty.' The enclosed card tells the evening subjects. Anyone who has once heard *dear* Dr. Sullivan is *sure* any sermon by him will do them a marked good. At least, such has ever been our blessed experience, and ever will be. Now *dear* one, I must close which I do with *lots* of warm love for you and all your dear ones from Your ever sincerely loving (Mrs. James E.) Lizzie Lees."

FOURTH DAY

Thursday, May 17, 1923.

In the Matter
of
The Estate of ELIZABETH L. LEES, Deceased.

Depositions taken before Charles F. Kocher, an Advisory Master, by consent of counsel.

(Appearances as before stated.)

Mr. Atwater: The copies of the petition and order for the change of name from Miranda Hough to Miranda Hough Lees, which was offered in evidence purporting to be certified copies, I am now informed are not correct and I would like an opportunity to have the Clerk correct the copies and again offer them in evidence.

Mr. Kent: I have no objection to that, except that I would like to have the copy that was offered remain in evidence.

The Advisory Master: There is no difficulty about that.

Mr. Kent: Your statement that it is not a correct copy is sufficient for me.

JULIA P. ELLIOTT, sworn in behalf of proponent.

Direct Examination by Mr. Brown:

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

Q. And what is your occupation? Have you any? A. No, I haven't any.

Q. Did you know Mrs. Elizabeth Loveridge Lees during her lifetime? A. Yes.

Q. For how long a time were you acquainted with her? A. Well, I should say about fifteen years.

Q. And will you give the years during which you were acquainted with her? A. Well, I met her quite a while before her husband passed on and then I saw her at intervals. I do not know just when Mr. Lees passed on. I know I met her before, because I met Mr. Lees also.

Q. Did you meet her quite frequently during those fifteen years? A. No, perhaps twice a year.

Q. Under what circumstances would you meet her? A. Well, I would generally call on her when she visited Mrs. Harvie, who is my next door neighbor, and she would call on me.

Q. How long did you live in that present place? A. I have lived as a next door neighbor to Mrs. Harvie nineteen years this coming September.

Q. What was the last you saw Mrs. Lees? A. Last July.

Q. Last July? A. Yes.

Q. Do you know when she died? A. In September. I was a guest at her house last July for luncheon, at Mrs. Lees house.

Q. Where was that? A. Over in East Orange, where she died, in Ampere, is it?

Q. Is that the new house? A. Yes.

Q. Were you there very long? A. Several hours.

Q. Did you talk to her during that time? A. Yes.

Q. And for how long a time did you converse with her? A. Well, just off and on; we talked

generally; we were together from one o'clock until five, I think.

Q. What was the subject of conversation? A. Well, she asked about my husband and my children and what they were doing, and she was interested in hearing the new Ampico play.

Q. Did she talk about the music? A. Yes, and she was very much interested in having Mrs. Harvie play some pieces, and then the Ampico was there and she selected the pieces she wished played.

Q. Mrs. Harvie was there at that time? A. She was.

Q. Was Mrs. Lees' response to questions you asked her intelligent? A. Absolutely.

Q. What impression did you form of her at that interview in regard to her mentality? A. Well, I thought anything she was interested in she was most intelligent in; if she was not interested she did not pay much attention.

Q. What was her physical condition? A. Well, she looked well, but she appeared rather feeble.

Q. Had there been any change in her since you had seen her previously? A. No, not much.

Q. How long previously had you seen her? A. Several months. I cannot tell. I would try to see her when she would drive over to Rutherford, if I was home I would go out and speak to her.

Q. What conclusion did you come to in regard to her mentality? A. Well, anything she was interested in she was most intelligent; she was a most intelligent woman.

Q. Did you know anything of her history? A. No.

Q. Did she say anything about her business affairs to you? A. No, never.

Q. Never did? A. No, in no personal way whatever.

Q. Well, from the conversation you had with her during that time and the conversations you had had with her previously did you regard her as rational or irrational? A. Rational, of course.

Q. Did you see her in 1921? A. I think so, yes. I remember very distinctly Mrs. Lees coming over; I cannot remember whether it was in 1921 or 1920, this one particular instance, and she was very anxious to hear some victrola records and I had a victrola and invited her to come over and have tea with me and she did and we played the records and had tea and she enjoyed it very much indeed, and for some reasons Mrs. Harvie was called at home—I don't know whether it was a telephone call, but as Mrs. Harvie went out of the house Mrs. Lees turned to me and said, "Belle has been a very devoted niece, she has been very good to me always," and I said, "She is very fond of you," and she said, "Some time she will know how much I appreciate it and how fond I am of her."

Q. Was this 1920 or 1921? A. I think 1920 or 1921; it was the last time she had tea with me.

Q. Do you know how many times you saw her either in 1920 or 1921? A. No, I couldn't say.

Q. Did you see her more than once? A. Oh, probably. I was very fond of her and admired her very much and when she would be with Mrs. Harvie I would like to go over and see her.

Q. (By the Advisory Master) Now, of course, when you went to see her the last time you had luncheon, I think you said, with her? A. Yes.

Q. You could not have anticipated—you probably did not anticipate the fact you might be called upon to testify as to her mental condition at that time. Did you form in your mind at that time any thought as to her mental condition at

all? Was there anything about her mental condition that attracted your attention? A. Well, I could see that she was failing, of course; I could see—

Q. (By the Advisory Master) I speak of her mental condition. A. I don't know that I could see anything in particular about it. She called my name and knew my son was in college.

Q. (By the Advisory Master) Did her condition form a sufficient impression upon your mind to cause you to mentally think, "Well, now, her mind is failing," or anything of that character? A. I do not know. I am sure I do not know as it made any grave impression upon me.

Cross Examination by Mr. Kent:

Q. But you could see that her mind was failing? A. Not necessarily. In the conversations I had with her she was mentally all right.

Q. But it was evident generally that she was failing mentally? A. Well, I would not say that I thought she was. I thought she was failing physically.

Q. And likewise you thought mentally? Why do you hesitate? A. I have answered your question.

Q. Yes. Answer that again. I said and likewise mentally. A. Well, she was—anything she was interested in she was not failing mentally in. People when they reach that age are apt to be not quite as bright as they were when they were younger, and Mrs. Lees was not well. I know that.

Q. What was she suffering from? A. I have no idea.

Q. Did you know she had heart trouble? A. No.

Q. Did you know she had rheumatism? A. No.

Q. Did you know that she was suffering from Bright's disease? A. No.

Q. You are a very close personal friend of the Harvies, are you not? A. Well, I have lived as neighbors for nineteen years. We have been very good friends.

Q. Have you been subpoenaed in this case? A. No.

Q. In other words, you volunteered to come here? A. Yes. I thought if I could be of any value I would like to do it.

Q. To help Mrs. Harvie? A. Certainly.

Q. Have you talked this matter over with anybody? A. No.

Q. And what you are saying now is brand new, as far as anybody is concerned? A. Well, I told Mr. Harvie when I asked him if he would like to have me come, I told him of a conversation I had with Mrs. Lees. I do not know whether it would be of any value, but he could find out.

Q. Did you tell him what it was? A. I certainly did tell him what it was.

Q. Did you know her family physician? A. No.

Q. Did you know that in the year 1920, at Mrs. Harvie's request, her family physician had certified that she was incompetent and unable to manage her affairs?

Mr. Atwater: If the Court please—

Mr. Kenn: I will withdraw that question. I will use the exact language of the doctor.

Mr. Atwater: I want to make this statement. This doctor's certificate, which is in evidence, was made by the doctor. Your Honor has not heard his testimony. His testimony is that he had not treated the

testatrix except by prescription mailed some time in 1920, early 1920, or 1919.

Mr. Kent: You have the facts all wrong.

The Advisory Master: Well, there will be no harm in the witness answering the question, if she knows.

A. Well, I am not acquainted with their personal business.

Q. Did you know, at the request of Mrs. Harvie, Dr. Swift, on July 2, 1920, stated that she is suffering from senile changes, which have affected her mentality and rendered her incapable of sound judgment or discretion; did you know that? A. No. I knew some doctor had written some kind of paper, but I don't know what was in it.

Q. Did you know that Mrs. Harvie, in 1920, had attempted to get various members of her family to start guardianship proceedings for Mrs. Lees? A. No. We did not discuss personal business. I didn't know anything about those affairs.

Q. Do you know Miss Harriett Loveridge? A. I have met her.

Q. Did Mrs. Harvie tell you that she had gone to Miss Harriett Loveridge, who was a sister of the deceased, and had asked her as the one nearest to her to institute proceedings? A. You mean at that time?

Q. Yes. A. No, I didn't.

Q. Who was present with you at that luncheon in East Orange? A. Mrs. Harvie and Miss Hough was there at the luncheon, but she was busy most of the time we were there preparing the lunch, so I saw very little of her.

Q. Did you know that in 1920 Mrs. Harvie, your friend, had written to Mr. Arthur Loveridge in these words, "I think her mind is failing in some respects, as she contradicts herself continually.

No wonder, though, when she lives the life she has for the last few months. She is a sad problem." A. No. I do not know about Mrs. Harvie's correspondence with her brother.

Q. Then you do not agree with Mrs. Harvie as to her condition at that time? A. Well, I really don't know anything about it.

ALFRED S. BROWN, sworn in behalf of proponent:

Direct Examination by Mr. Atwater:

Q. What is your occupation? A. Lawyer.

Q. Admitted to practice in what state? A. New York state.

Q. How long have you been admitted to practice in New York state? A. Since 1877.

Q. Were you acquainted with Mrs. Elizabeth L. Lees, the testatrix, in this matter? A. I was.

Q. How long had you known her? A. Over twenty-five years.

Q. Did you know her husband? A. I did.

Q. How long had you done business professionally for Mr. and Mrs. Lees? A. Well, I think probably about that period of time, about from twenty to twenty-five years.

Q. You settled the estate of Mr. Lees, did you not? A. I attended to some matters in connection with the settlement of the estate. I do not think I appeared in court in connection with it.

Q. Did you prepare Mr. Lees' will? A. Yes.

Q. I show you a will of March 16, 1921, which has been offered for probate in this matter, and ask you if you attended to and superintended the preparation and execution of this paper? A. I did.

Q. Will you state to the court the circumstances under which this paper was prepared and the data from which it was prepared and the method which you followed in preparing the will? A. I received a letter from Mrs. Lees, dated February 14, and postmarked on the envelope February 14, 1921, and I will read this letter, if you like.

Mr. Atwater: I would like to make a suggestion to your Honor. Judge Flannagan directed in the matter of offering letters that the letters be offered in *toto* and be copied in the minutes, and the witness only comment on such part of the letters as he desired put in, and if your Honor wishes to do it we will do it.

Mr. Kent: With the reservation our objection is taken.

The Advisory Master: Oh, yes, in these matters the Court observes in his own mind the objection.

Witness: I would like to read the portion of it which refers to this particular question.

Mr. Atwater: I would like to offer in this matter the proof of the handwriting.

The Advisory Master: Well, if there is no question—

Mr. Kent: If Mr. Brown will state they are her letters—

Witness: Yes, in her handwriting and—

Q. And received by you? A. Yes.

Letter marked Exhibit P-1, 517-23.

"February 14 at 19 Whitman Ave., East Orange, N. J. Dear Mr. Brown: Circumstances have arisen involving Mr. Philip Haffner which makes it imperative for me

to change my will so decidedly that I have decided to make a new one, and I am writing to ask you to notify me of some day next week that promises to give you sufficient leisure to accord me an interview with you for that purpose. Oh, how I wished you had been one of *dear* Dr. Sullivan's congregation yesterday morning. His sermon was so remarkable. The subject was 'The Qualities that have made America—a sermon for the two February Anniversaries—Washington and Lincoln.' It was indeed a rare sermon —worth while hearing—Hoping to hear from you soon——Your friend of many years —(Mrs. James E.) Elizabeth L. Lees."

Witness: "February 14 at 19 Whitman avenue. Dear Mr. Brown: Circumstances have arisen involving Mr. Philip Haffner, which makes it imperative for me to change my will so decidedly that I have decided to make a new one, and I am writing to ask you to notify me of some day next week that promises to give you sufficient leisure to accord me an interview with you for that purpose." That is the only portion which relates to the execution.

Q. As a result of that letter, what did you do? A. I think I wrote to her telling her I would be glad if she would come to my office.

Q. Will you state to the court then what occurred? A. Subsequently I received another letter from her. On February 21, 1921, I received another letter from her, that is to say, the letter is postmarked February 21, 1921, and it says (reading letter).

Letter marked Exhibit P-2, 5-17-23.

"Monday at 'Rainbow Cottage.' Dear Mr. Brown: Unless I hear from you to the contrary Miss Hough and I will be at your office Thursday morning to have a little talk with you in connection with your making a new will for. Your friend sincere (Mrs. James E.). Elizabeth L. Lees."

A. (Continuing) Then on March 8, the next letter from her, dated Tuesday, 19 Whitman Avenue, and postmarked March 8, 1921 (reading entire letter), and about that time—I do not know whether it was before or after—I received these written instructions from her in regard to the changes in her will.

Letter marked Ex. P-3, 5-17-23.

"Tuesday at 19 Whitman Ave.,
East Orange, N. J.

Dear Mr. Brown: In accordance with dear Mrs. Harvie's wish I have decided to ask you to add Mr. Harvie's name in connection with yours and Dr. Hough's, concerning which I would be very pleased to have you write him, also Dr. Hough, if you have not already done so. I also trust it will be perfectly convenient to you to have me sign my will before next week is in the past. Assuring you of my appreciation of your many kindnesses to me. Yours friend sincere (Mrs. James E.) Elizabeth L. Lees. (over) Dr. Robert H. Hough, 6074 Upland St., West Philadelphia, Penn. Mr. James Harvie, 102 Passaic Ave., Rutherford, New Jersey."

Q. And these written instructions are in her

handwriting? A. Yes. Now, I am not sure whether I received those written instructions through the mail or whether she delivered them to me personally, but they were the instructions in her handwriting which followed in the preparation of the previous will.

Q. Will you kindly read those written instructions? A. "First. Ask Philip Haffner to be excluded from my will for reasons I will inform Mr. Brown orally. In his place as executor with Mr. Brown I want Dr. Robert H. Hough, 3136 Broadway, New York City, to take his place." That is the first clause of the previous will.

Q. These instructions refer to a previous will that you had prepared for her and she executed? A. Yes. They can be identified by the paragraph in the previous will. The next is, "Eight. Miranda Hough Lees, now my adopted daughter, instead of F. Philip Haffner. Eleventh, Mrs. Philip Haffner to receive direct $10,000 and to do exactly as directed to do. Incorporate in this will what my codicil directs in connection with Mrs. Haffner's two boys. Twelfth. I give and bequeath to Miranda Hough Lees, my adopted daughter, what I have designated in paragraph twelve. Seventeenth. Omit. Eighteenth. Omit. Nineteenth. Omit. Twentieth. Omit. Twenty-one. Not to be omitted. Twenty-two. Omit. Twenty-three. Omit. Twenty-four. Omit. Twenty-five. Omit." Those are all. Now, those numbers refer to paragraphs in the previous will.

Paper of instructions marked Exhibit P-4, 5-17-23.

"1st. F. Philip Haffner to be excluded from my will for reasons I will inform Mr. Brown orally. In his place as executor with Mr.

Brown I want Dr. Robert H. Hough, 3136 Broadway, N. Y. City to take his place.

8. Miranda Hough Lee, now my adopted daughter instead of F. Philip Haffner.

11. *Mrs.* Philip Haffner to receive direct $10,000, and to do exactly as directed to do. Incorporate in this will why my codicil directs in connection with Mrs. Haffner's two boys.

12. I give and bequeath to Miranda Hough Lees, my adopted daughter, what I have designated in paragraph 12. 17—Omit. 18—Omit. 19—Omit. 20—Omit. (21)—(*Not to be omitted.*) 22—Omit. 23—Omit. 24—Omit. 25—Omit."

A. (Continuing. The previous will I have in my possession and also codicil to that will. The will is dated August 24, 1920, and the codicil is dated the 3rd day of November, 1920, and these are the originals which I have here.

Will marked Exhibit P-5, 5-17-23.

Codicil marked Exhibit P-6, 5-17-23.

Mr. Atwater: I would like to know should I, at this time, have the provisions of the will read into evidence.

The Advisory Master. I do not see any necessity for incorporating that entire document if the will is in evidence.

Q. Now, Mr. Brown, as a result of these letters you prepared what did you do next? A. I prepared that will of March 16, 1921, which is the last will, and I wrote to her telling her that I would endeavor to have her will ready for execution by Wednesday of next week, the 16th inst.; this is,

March 16, and I received a letter from her, dated March 11, 19 Whitman Avenue (reading entire letter), postmarked March 12, 1921.

Letter marked Exhibit P-7, 5-17-23.

"March 11th at 19 Whitman Ave.,
East Orange, N. J.

Dear Mr. Brown: Yours of March 9th is received, and I shall be happy in doing my very best in being at your office next Wednesday (16 inst.) morning. Hoping to find you very well.

Sincerely yours, (Mrs. James E.) Elizabeth L. Lees."

Q. Did you receive any other letters with reference to the execution of this will at that time? A. From Mrs. Lees?

Q. Yes. A. Not with reference to the execution of the will. No. I think not. She appeared at the office on March 16th, and the will was executed.

Q. Will you state what took place, the circumstances surrounding the execution of the will? A. Yes. She came into the office and I had the will ready for execution by her, and I do not remember whether I read it over to her or whether she read it. It was either one or the other. I either read it over to her or she read it herself, and she said she was satisfied with it, and I had previously requested Mr. H. Hardcastle Pennock to be present at the execution of the will, as he had attended to the execution of several wills, and Mr. Frankenthal was also in my office and Mr. Morrell, who were both connected with my office, came into the inner office and I asked Mrs. Lees if she wanted to execute the will and she said she did and I asked her if that was her last will and testament; she said it was, and I asked her if she requested these witnesses to

sign it as subscribing witnesses and she said she did and she sat down and signed the will, and after she had signed it I read over the attestation clause and then the witnesses signed it at her request and in her presence and in the presence of each other. We were all there at the time.

Q. Did you discuss with her that day any of the provisions in the will, that you remember? A. Why, I discussed with her—yes, I talked with her generally; she talked about the reasons for making the changes which she did make. She talked about the difficulties that had arisen between her niece, Marion, who had married Mr. Haffner, and Mr. Haffner, and Mr. Haffner. She said that there had been a disagreement between them and they had separated, and she spoke very decidedly about Mr. Haffner's conduct toward her niece, Marion, and she said she wanted to eliminate from her will both as executor and as trustee for Marion, and also as a legatee, these provisions be enjoyed in the previous will.

Q. Did you talk with her at that time about the value of her property? A. I don't think I did.

Q. You had at other times discussed with her the value of her property, had you not? A. Yes.

Q. There is a clause in that will that provides for the abatement of legacies; at whose suggestion was that clause put in? A. That was her suggestion.

Q. That clause appeared in previous wills, as well? A. Yes, I think it did.

Q. What was the reason she gave you for that clause being put in? A. Because she was afraid her property would not be sufficient to answer all the demands made upon it in the provisions of the will.

Q. Did she discuss with you on the occasion of

March 16, 1921, any other members of her family, that is, legatees under the will, except the Haffners? A. I don't think she did.

Q. The provision for Mrs. Haffner provides in case of her death her share shall go to her sons, does it not? A. Yes.

Q. Do you know whether Mrs. Haffner is living now or not? A. No, Mrs. Haffner died, I think it was March 4, 1922.

Q. About a year after the execution of this will? A. Yes.

Q. Do you know where Mr. Haffner is now? A. I don't know anything about him.

Q. Will you tell the court previous communications and business transactions that you have had? A. Well, I drew that will of August 24, 1920, and the codicil of November 3, 1920, which has been offered in evidence here.

Q. How did those wills come to be prepared by you? A. She wrote me a letter on July 9, 1920. The letter is dated July 9, 1920 (reading entire letter). That is postmarked July 9, 1920.

Q. What next occurred? A. I wrote to her and told her I would be at my office on that date.

Letter marked Exhibit P-8, 5-17-23.

"102 N. 22nd St. East Orange, N. J., July 9th, 1920. Dear Mr. Brown: I am earnestly hoping you will find it perfectly convenient to be at your office throughout the coming Wednesday, July 14th, as I plan to call to see you on that day so as to make sure you thoroughly understood all my jottings down in connection with the items for a new will which I want you to draw up for me. Hoping you have every reason to be well and happy, Your friend sincere (Mrs. James E.) Elizabeth L. Lee."

A. (Continuing) On July 21st I received another letter from her. It is dated July 21st, 1920 (reading entire letter). Also, the envelope was postmarked July 22, 1920. The letter is dated July 21.

Letter marked Exhibit P-9, 5-17-23.

"102 N. 22nd St. East Orange, N. J., July 21st, 1920. Dear Mr. Brown: When you send me the outline of my will to look over before bringing to your office for execution, will you kindly send with it the two papers with several jottings down in connection with it. Hoping you are keeping thoroughly well and that I may soon have the pleasure of seeing your dear, kind face, Your friend sincere (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) I was moving my office at the time and delayed in responding to her communications, and I wrote to her on July 23, apologizing for it, and I received a letter from her dated July 29, and postmarked July 31, 1920 (reading entire letter).

Letter marked Exhibit P-10, 5-17-23.

"July 29th at 102 N. 22nd St. East Orange, N. J. Dear Mr. Brown: I am about to ask a decided favor of you, which I would not dare to do but for the fact that you possess a heart vastly kinder than one generally meets with. Well, here it is: Will you kindly have two copies of my will for me to execute. One for me to keep under lock and key in my Safe Deposit box and the other in a locked trunk at home. In the past I have found such conditions would at cer-

tain times have proven very satisfactory, so thought I would try it. Your friend sincere, (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) August 4th I received another letter from her and postmarked August 4, 1920 (reading entire letter).

Letter marked Exhibit P-11, 5-17-23.

"August 4th at 102 N. 22nd St., East Orange, N. J. Dear Mr. Brown: I hope this will reach you in ample time to prevent any pronounced extra work thru inserting in my will a clause to protect Mrs. Haffner's portion in every possible way. Mr. Haffner has asked me to write you regarding having Mrs. H's. legacy shall not be liable for any obligations or debt, contracted by her anterior to my "passing on"—and to make her husband her Trustee. I am sure you will do this marked kindness, if it be among the possibilities, so I thank you at once for your kindness to Your friend sincere (Mrs. James E.) Elizabeht L. Lees."

Q. Did Mrs. Lees ever explain to you what she meant by that reference to the Haffner legacy, the reason for it? A. Yes. She told me that Mrs. Haffner was involved in a good deal of trouble by reason of debts and obligations that she had incurred and for that reason she wanted her protected—her legacy protected against her creditors. I wrote to her on August 4 that in going over a memorandum there were some things I could not quite understand and I asked her to call.

Q. Just a moment. When you say memorandum, what memorandum do you refer to? A. Memoranda

that she had given me in regard to the execution of her will—

Q. The will of what date? A. The will of August 24, 1920.—what she called jottings down, and I was not quite clear of their meaning and I asked her to call at the office, and she responded to that by letter dated August 5. The envelope is postmarked August 5, 1920. (reading letter).

Letter marked Exhibit P-12, 5-17-23.

"August 5th at 102 N. 22nd St., East Orange, N. J. Dear Mr. Brown: Your lines of yesterday are just received, and I hasten to assure you I will be at your office Saturday morning between 10 and 11 o'clock. Hoping that may prove a perfectly convenient appointment for you Your friend sincere (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) I wrote to her and told her I could not be there Saturday, because that was my day off, and I received another letter from her dated August 7, 1920, and postmarked August 9, 1920. (Reading letter).

Letter marked Exhibit P-13, 5-17-23.

"102 N. 22 St. East Orange, N. J., August 7, 1920. Dear Mr. Brown: I hope when you receive this you will be feeling markedly better for your vacation from office work to-day, and that we will be face to face with you next Wednesday, August 11th. The extra time to-day gave me the opportunity of making a careful and full examination of my effects in my Safe Deposit Box with the result of finding myself able to leave in my will to dear Mrs. Haffner $10,000 instead

of $1,000, and to my nephew Edward Taylor also $10,000. Hoping you will be able to make these changes by next Wednesday Your friend sincere (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) On August 16th I wrote to her that I hoped to be able to complete the draft of the will within a few days and send it to her.

Mr. Kent: May I ask at this point where are your replying letters to her?

Witness: Well, I have not the originals.

Witness: I have letter-press copies in my letter-press book. These memoranda were taken from those letter-press copies in order to enable me to testify. I did not bring them.

Mr. Kent: I would like to examine them.

Witness: You are perfectly at liberty to do it, of course.

Mr. Kent: In reply to all these letters?

Witness: Yes.

Mr. Kent: Will you send us copies of those?

Witness: Yes.

A. (Continuing) On August 17, 1920, I wrote to her and enclosed a copy of the proposed will, and on August 19—rather on August 18, 1920—August 12, 1920, this letter is dated, written by her, and it is quite a long letter and she says in it, "Which reminds me to tell you in case there should be any surplus in the settling of my will I would like it divided equally between Miss Hough, Mr. Benjamin B. Epstein, 14 Jerome Street, Brooklyn, and Mr. Edward B. Taylor, Frick Poultry Farm, South Hamilton, Mass., Box 30, Miss Hough is

already shouldering a debt of $7,000 through securing a loan on the to-be home, and has advanced other money beside that, for which I think she should be protected. My wish is that it prove a permanent home for her as long as she may need it after I have joined dear Mr. Lees and I am sure he desires it also, so please secure it to her. There is no one who deserves it as much as Miss Hough. Enclosed you will also find the card showing Mr. Haffner's full name, which it may be best to use. Miss Hough was a ministering angel to dear Mr. Lees and he fully realized that blessing as clearly as I do her ability and perfect devotion to me. I do not know what I should do or be without it, save that I should be full of misery. You spoke of desiring Mr. Pennock for a witness. It would please me greatly. I plan to write him on closing this but shall leave the securing him for a witness to your dear, kind self, to whom I now write a good bye," and she gives me at the foot of it Mr. Pennock's address.

Letter marked Exhibit P-14, 5-17-23.

"102 N. 22 St. East Orange, N. J., August 12th, 1920. Dear Mr. Brown: The enclosed is for you. *Please* do not return it but give my heart the comfort that possibly I have given you a helping hand to achieve something that may add to your comfort or happiness. I am *sure* Mr. Lees is approving of this act, for shortly before his last word he expressed himself as being so happily thankful he knew I had such a kind and capable helper in certain business matters as you, and added "Lizzie dear, be sure in every case to give or send him some tangible proof of your gratitude to him, and Thank-

fulness that you have such a to be trusted friend as Mr. Brown, that fact banishes a great deal of unhappiness I should otherwise have in leaving you for I realize how alone you are, except in dear Miss Hough in having dear ones truly interested in your welfare. So be good and generous to dear Miss Hough, for she deserves and needs all you may be able to do for her," which reminds me to tell you in case there should be any surplus in the settling of my will, I would like it divided equally between Miss Hough, Mr. Benjamin B. Epstein, 14 Jerome Street, Brooklyn, and Mr. Edward B. Taylor, Frick Poultry Farm, South Hamilton, Mass., Box 80. Miss Hough is already shouldering a debt of $7,000 thru securing a loan on the to be home, and has advanced other money besides that, for which I think she should be protected. My wish is that it prove a permanent home for her as long as she may need it after I have joined dear Mr. Lees and I am *sure* he desires it also, so please secure it to her. There is no one who *deserves* as much as Miss Hough. Enclosed you will also find the card showing Mr. Haffner's full name, which it may be best to use. Miss Hough was a ministering angel to dear Mr. Lees, and he fully realized that blessing as clearly as I do her ability and perfect devotion to me. I do not know what I should do or be without it, save that I should be full of misery. You spoke of desiring Mr. Pennock for a witness. It would please me greatly. I plan to write him on closing this, but shall leave the securing him for a witness to your dear, kind self to

whom I now write a good bye from Your friend sincere (Mrs. James E.) Elizabeth L. Lees. Mr. Hardcastle H. Pennock, Equitable Life Assurance, 120 Broadway, Room 1122."

A. (Continuing) And then enclosed with that is a post script. (Reading post cript).

Post script marked Exhibit P-15, 5-17-23.

"P. S. To my letter of August 12th, 1920. I hope you fully understand my wishes regarding the residue of my estate. I do not wish it to go to Mrs. Harvie as expressed in my former will, as I feel the $25,000 left to her is all I can give her and be just to others. If you refer to my memorandum you will see it is to be divided between Benajmin B. Epstein and Miss Hough. Now I wish to add Edward Taylor and feel in so doing I am carrying out *dear* Mr. Lees' heart's desire as well as my own. Please send me a copy of my will before deciding on the date for its execution. (over) If there be any word or act of mine which would make dear Mr. Lees' and my heart's desire to secure the to-be-home (Rainbow Cottage) wholly to dear Miss Hough (she has already put considerable money in it) *please* make it known to me. It is to be dedicated to Mr. Lees on November 12th, my 81st birthday anniversary by *dear* Dr. Sullivan, and after the dedication presented by me to Miss Hough in the presence of friends who may be gathered there two of whom we earnestly hope may be your dear self and Mr. Fernald to six o'clock dinner. It seems to me one safe step to take would be to have it incor-

porated in my will, so please see that it is done, that is, all my interest in said house I bequeath to Miss Hough and her estate, and under no consideration is it to be sold in the settlement of my estate or is Miss Hough to be deprived of it. Sincerely yours, Elizabeth L. Lees."

Q. The Mr. Edward Taylor referred to is the Mr. Edward Taylor who is a legatee under the will? A. Yes.

Q. And he was what relation to the testatrix? A. He was a nephew of the deceased husband. He was no blood relative to Mrs. Lees, as I understood it. I have also here in her handwriting the instructions which she either gave me personally or enclosed in one of her letters. I do not remember exactly which, but from those instructions the will was drawn and also another sheet in her handwriting giving the names and addresses of her relatives.

Paper marked Exhibit P-16 5-17-23.
Paper marked Exhibit P-17 5-17-23.
Paper marked Exhibit P-18 5-17-23.
Paper marked Exhibit P-19 5-17-23.

A. (Continuing) On August 18, 1920, about that date I received a letter from her, dated August 18, 1920, and postmarked August 18, 1920, on the envelope, reading: "Dear Mr. Brown: I am this morning in receipt of a draft of my will accompanied by your kind note and am writing to thank you for the same and also to tell you we will be at your office as early as possible next Friday morning (August 20th) as there are two or three insertions I feel it will be best for me to tell you of audibly. Hoping you are well," and so forth.

Letter marked Exhibit P-20 5-17-23.

"102 N. 22 Street, East Orange, N. J., August 18, 1920. Dear Mr. Brown: I am this morning in receipt of the draft of my will accompanied by your kind note, and am writing to thank you for the same and also to tell you we will be at your office as early as possible next Friday morning (Aug. 20) as there are two or three insertions I feel it will be best for me to tell you of audibly. Hoping you are well and you were under comfortable shelter during the hard and prolonged storm of last evening. Sincerely yours (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) Then the next letter I received from her is dated August 22 and is post marked August 22. There does not seem to be any year on it. (Reading entire letter).

Letter marked Exhibit P-21 5-17-23.

"August 22nd, 102 N. 22nd Street, East Orange, N. J. Dear Mr. Brown: Miss Hough has secured the item you desired her to send you which I have reason to believe she will mail with this, and I am hoping and praying it will serve to make my gift to her all the more secure for if she were deprived of it, I would not be happy, *no, not even in Heaven,* so strongly do I feel she is *deserving* of it. I have every confidence that when we arrive at your office Tuesday morning, you will have special documents for us to sign that will entitle me to a life interest in Rainbow Cottage, and at my death it will become hers beyond dispute, as will also any money I may have advanced for the con-

struction of the same, no more than that, the money is hers, the moment I pay it, for I cannot do too much for her efficient and faithful care of *dear* Mr. Lees and Sincerely yours (Mrs. James E.) Elizabeth L. Lees."

Q. At this point will you explain to the court the reference to the construction of Rainbow Cottage and what was done by you?

Mr. Kent: Is this to be a statement of counsel?

Mr. Atwater: At Mrs. Lees' request Mr. Brown did it.

A. I prepared—

Q. I show you a paper and ask you if you prepared that paper and what it is. A. Yes, I prepared that.

Q. Will you state what that paper purports to be?

Mr. Kent: Doesn't that speak for itself?

Witness: Yes.

Mr. Atwater: I should like to offer that in evidence.

Mr. Kent: There is no objection to that.

Q. This paper bears date what date? A. It bears the 24th day of August, in the year 1920, and it was executed on the same day by her as the execution of the will of August 24, 1920

Q. Did you cause that paper to be recorded in the Register's office of Essex County? A. Well, I am not sure whether I did or not. It was recorded. I do not know whether I had it recorded or whether she had it. That will of August 24, 1920, that has been offered in evidence, was prepared by me, and

her instructions to me for the preparation referred to a previous will, and that previous will was dated December 21, 1917. I have a copy of that will here.

The Advisory Master: Is there a will previous to this?

Witness: Yes, sir. That previous will of December 21, 1917, was prepared pursuant to instructions received from her.

Q. By you from her? A. Yes: that is to say I received this letter from her, which is dated December 8, 1917, and it is post marked—I cannot make out the post mark. "Dear Mr. Brown"—This was written from the Beresford, West 81st Street (reading letter).

Letter marked Exhibit P-22 5-17-23.

"The Beresford, 1 W. 81 Street, N. Y., Dec. 8, 1917. Dear Mr. Brown: Since last seeing you, I have had reason to feel most acutely the wisdom of having the name of Mr. Paul M. Crandell eliminated from my will. You will doubtless recall he was to be executor in case you for any reason were unable to act. In place of his name I want that of Mr. James Harvie. You probably would like the will to look over, so that the change may be made to a certainty. I feel it may be best not to have the name of Paul Crandell appear in my will—which may necessitate the re-writing of that document, but we can decide about that when I call on you which I will be happy to do at your convenience. I have engagements for the afternoon of Tuesday, the 11th, and the morning of the 12th. I will keep the balance

of the week free for you to choose from. Sincerely yours, Elizabeth L. Lees."

A. (Continuing) December 13, 1917, is the date of the next letter which I received from her, in which she says (reading letter). That is dated December 13, 1917, and post marked the same day at the Beresford.

Letter marked Exhibit P-23 5-17-23.

"The Beresford Dec. 13, 1917. Dear Mr. Brown: I omitted to ask you this morning to omit the names of Mrs. Crandell and Miss Cassidy, in case they were in the list of those selected in my will between whom the residue (if any) is to be divided. Hoping I have expressed my desire clearly. Sincerely yours, Elizabeth L. Lees."

Q. The next letter from her?

Mr. Kent: I do not think the record ought to be littered with letters of 1917.

The Advisory Master: I cannot see that her condition in 1917 is very relevant.

Mr. Atwater: Except in this way, each will was prepared on the previous will from the written memorandum of the testatrix.

The Advisory Master: Why not introduce the will itself and let it go at that? I think counsel will stipulate that the various wills were drawn by instructions given by her. There is no question, I take it, but each will was prepared pursuant to her instructions and represented her state of mind at that time.

Mr. Kent: We are not claiming in 1913

or thereabouts, that she did not have the mental capacity to make a will.

Mr. Atwater: On the cross examination of Mrs. Harvie, one of the legatees under this will, Mr. Kent in cross examining her yesterday referred repeatedly to the will of 1913, in which she would have taken very much more, and he concocted—that is she took under this will, showing her state of mind and attitude. She was a witness called by the appellant. Judge Flannagan then asked where this will of 1913 was, if that wasn't the best evidence of what Mrs. Harvie thought she knew about the will of 1913, and he asked whether there was any reference to that will in existence. I stated we would go as far back as we were permitted by the court.

The Advisory Master: Well, why don't you just present the will? I do not see that this correspondence is of any value at all. The wills may be produced and Mr. Brown may testify that they were executed in accordance with her instructions.

Mr. Atwater: Well, this will is being attacked on testamentary capacity and undue influence.

The Advisory Master: Well, up to this point I can see the value of these letters, but now you are going back to 1917, which is a pretty remote date.

Mr. Atwater: Well, the court permitted the appellant on his case to go back over a long period of years. There was no limitation on counsel.

The Advisory Master: My point is this: I am not seeking to put any limitation on counsel, except as to these trifling details.

Mr. Atwater: The only answer I have is that these letters tend to show the mental attitude of the testatrix toward the various beneficiaries under her will, against whom undue influence is alleged.

The Advisory Master: Well, it is a great waste o ftime and I cannot see that it is of any particular value, but the court has always allowed counsel to put in the evidence they desired. If you want to put them in proceed, but I confess I cannot see the advantage of the details of the letters.

Mr. Atwater: If your Honor please, if it is agreeable that we offer in evidence the copies of the wills and the written instructions on which the wills were based—

The Advisory Master: I think that you covered it.

Mr. Atwater: Have you those there, Mr. Brown?

Witness: December 21, 1917.

Paper marked Exhibit P-24 5-17-23.

Q. (By the Advisory Master) Was this will prepared pursuant to written instructions? A. This last will?

Q. (By the Advisory Master) This will of 1917? A. Yes.

Q. By the Advisory Master) Have you those instructions with you? A. I have not the written instructions excepting as contained in her letters written to me from time to time. I think the instructions in regard to that will of 1917 were principably orally. I do not think I have any other than the oral instructions and also the letters which I received from her.

Q. (By the Advisory Master) But the will does reflect her wishes at that time? A. Oh, yes.

Q. And those instructions were received from Mrs. Lees? A. Yes.

Q. Either personally or by letter? A. Yes.

Q. Now— A. Here is a will March 20, 1917, and the instructions in regard to that will she prepared from memoranda in her handwriting.

Paper marked Exhibit P-25, 5-17-23.

A. (Continuing) Will of November 21, 1916, prepared from memoranda in her handwriting, and the instructions in regard to that will.

Paper marked Exhibit P-26, 5-17-23.

A. (Continuing) Will of March 7, 1916, prepared from memoranda in her handwriting, and the instructions in regard to that will.

Paper marked Exhibit P-27, 5-17-23.

A. (Continuing) Will of October 26, 1915, prepared from memoranda in her handwriting, and the instructions in regard to that will.

Paper Marked Exhibit P-28, 5-17-23.

A. (Continuing) Will of March 5, 1915, prepared from memorandum in her handwriting, and the instructions in regard to that will.

Paper marked Exhibit P-29, 5-17-23.

A. (Continuing) Will of November 5, 1913. I do not seem to have any written memorandum from her in connection with that will.

Paper marked Exhibit P-30, 5-17-23.

A. (Continuing) I also prepared two codicils to her will of December 21, 1917, one dated December 18, 1918, and one January 15, 1919, and copies of those codicils are among those papers there—no, I guess they are here. These copies of the two codicils.

Codicils marked Exhibit P-31 and Exhibit P-32, 5-17-23.

A. (Continuing) After the execution of the will on August 24, 1920, I received this letter from Mrs. Lees, dated September 1st, and postmarked,—I think it is September 1—about that time—it is indistinct (reading letter).

Q. And that paper refers to the paper that has been offered in evidence in reference to Rainbow Cottage? A. What is the date of that?

The Court: August 24, 1920.

A. No, because this letter is dated September 1, 1920.

Letter marked Exhibit P-33, 5-17-23.

"Sept. 1st at 102 N. 22nd St. E. O. Dear Mr. Brown: You doubtless remember that I told you of my plan to have the Memorial Window in Rainbow Cottage dedicated to dear Mr. Lees and that dear Dr. Sullivan had accepted the invitation to speak the words before the friends we hope to welcome to six o'clock dinner on November 12th—(my 81st birthday anniversary) two of whom we trust will be your dear self and dear Mr. Fernald. It is also my heart's desire that at the conclusion of Dr. Sullivan's words of the dedication, that he reads a paper to the

friends assembled in which the window and all my interest in the cottage are presented by me to dear Miss Hough, who richly deserves that token of tribute from dear Mr. Lees and my self. I am also writing to ask you to favor me with such a document without delay for it will be a great comfort to me to have such a paper, or document prepared by you. I should be glad to have you enclose your bill with the hoped for document. You, doubtless, remember I gave you with other memorandum my former will. Please return the same that I may destroy it.

Sincerely & gratefully yours, Elizabeth L. Lees. (Mrs. James E.)"

(Slip of paper containing description of land of Miranda F. Hough in city of East Orange, New Jersey, enclosed in envelope with letter.)

A. (Continuing) I was very busy at that time and I did not prepare the document and I received a letter from her dated September 11, 1920 (reading letter).

Letter marked Exhibit P-34, 5-17-23.

"102 N. 22nd St., East Orange, N. J., Sept. 11th, 1920. Dear Mr. Brown. At the risk of being considered impatient, I am writing to ask you to send me without further delay the document I recently asked you to draw up for me, or if you have decided it is best for you not to do so, just write me plainly to that effect. Assuring you of my appreciation of your many kind favors already received from your clear mind and skillful hands.

Gratefully yours (Mrs. James E.) Elizabeth L. Lees. If convenient please send my *previous* will."

A. (Continuing) The next letter I received September 16, 1920 (reading letter).

Letter marked Exhibit P-35, 5-17-23.

"102 N. 22 St., East Orange, N. J., September 16, 1920. Dear Mr. Brown: I thank you more than words can convey for your kind lines of the 13th inst. and I hope those I am now writing will cause you to clearly understand my wishes in regard to the paper I am anxious to have you draw up. That is in the presence of the friends gathered Nov. 12th—*dear* Dr. Sullivan may legally present to *dear* Miss Hough the memorial window and all my interest in "Rainbow Cottage." If you can do so Miss Hough and I will be glad if you incorporate that I shall be entitled to a home with her in "Rainbow Cottage" as long as I live. This I desire regardless of our former agreement. I would be *very* glad in bestowing more for the *great* comfort she was to *dear* Mr. Lees in his last illness—and what she has ever been to me since *words can never fully tell.* I trust you will be able to give this your immediate attention and in so doing that other matters entrusted to your kind attention will not be delayed in consequence of your prompt attention as desired by ever. Gratefully yours (Mrs. James E.), Elizabeth L. Lees. I received my former will, and it is now reduced to ashes.

A. (Continuing) I am coming now to the execu-

tion of the codicil. On September 20, 1920, she wrote me (reading letter).

Letter marked Exhibit P-36, 5-17-23.

"102 N. 22nd St., East Orange, N. J., September 20th, 1920. Dear Mr. Brown: I was and am the happier for the arrival Saturday of the longed for document and your kind note, for which please accept my heartful of sincere thanks. I shall sign the document this evening before a Notary Public, and the minister of the Unitarian Church in East Orange which we have been attending by name Dr. Walter Reid Hunt. They will sign as witnesses. I think it wise to tell you Miss Hough has contributed $14,000, $7,000 in the form of a mortgage and $5,000 secured by one on our present home, and $2,000 cash for the land. She is pretty sure of a purcaser of the home we are in who will be ready to pay $9,000. The extra $2,000 she is going to invest in an Electric Motor, as the man George Elliott we had for a while to look after our Ford auto, the poultry and a few other things, proved so incapable he had to be discharged, since which time we have tried, we have left no stone unturned to have our auto put in running order but have not succeeded but we have been more successful with the poultry, for which we are very thankful. We have had to face another disappointment, and that one is in connection with the building of the new home, and it is so marked that our happy plans for Nov. 12th, have had to be laid aside, which we regret. I have not yet spoken or written to Mr. Fernald regarding those plans, but

when we are thoroughly settled in "Rainbow Cottage" you and he will receive lines asking you to select some day, and train time for taking six o'clock dinner with us and spending a happy evening. Hoping it may prove to be in the near future, and that "God will be with you till we meet again," and that I will receive your bill for your kind and efficient services to. Your sincere & grateful friend (Mrs. James E.), Elizabeth L. Lees."

Q. The paper referred to there, is that the paper which I show you? A. Yes.

Q. Did you prepare that? A. I did.

Q. What did you do with it? A. I mailed that out to her. I am quite sure I mailed that out to her.

Q. And that is subsequent to the date of this previous agreement as to Railbow Cottage and which has been offered and marked Exhibit P-33? A. This is dated September 20 in her handwriting, I am pretty sure.

Q. And that is her signature? A. That is her signature. Now, the next letter I received from her was dated October 3, and post marked October 3, 1920 (reading letter).

Letter marked Exhibit P-37, 5-17-23.

"Oct. 3rd at 102 N. 22nd St., East Orange, N. J., Dear Mr. Brown: I have decided to have a codicil to my will so as to make the two very dear boys of Mr. and Mrs. Philip Haffner share in my estate by giving to Ludlow Patton Haffner Three Thousand Dollars, and to his brother Loveridge Haffner the same amount. Said amounts to be placed in a

safe bank, and not to be drawn upon until the owner has reached twenty-one years. Those boys are very dear to me and I am sure I am doing right to leave them some evidence of my sincere affection. I realize you will need my will, and if you write me you can and will attend to it without delay, I will mail it at once, and begin to thank you heartily for your marked kindness to. Your friend sincere (Mrs. James E.), Elizabeth L. Lees."

A. (Continuing) The next letter I received from her was dated October 17, 1920 (reading letter).

Letter marked Exhibit P-38, 5-17-23.

"102 N. 22 Street, East Orange, N. J., Oct. 17th, 1920. Dear Mr. Brown: In responce to your kind lines of the 14th inst. I would say the names of the two boys are Loveridge Haffner, Ludlow Patton Haffner, and that they both reside with their dear mother and her present husband

Mr. F. Philip Haffner, at
287 Central Ave., Orange N. J.

I would like each of the boys to be assigned the amount I stated in my previous lines to you, which I think was $3,000 each, but neither was to be touched until reaching the age of twenty-one, the amounts to be placed in a good bank, which will for some time, as I think the older boy is but twelve years old. Trusting you are well and with kind regards, Sincerely yours, (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) The original of that codicil is in evidence. It is the codicil to the will. The next

letter I received was dated October 19, 1920, in which she says October 21, 1920, but post marked October 19—evidently there was a mistake in the date of that letter. (Reading letter).

Letter marked Exhibit P-39 5-17-23.

"102 N. 22nd Street, East Orange, N. J., Oct, 21, 1920. Dear Mr. Brown: Will you kindly omit the 26th inst. as the day for the witnessing of the codicil to my will, as I have been oblidged to make an important engagement for that date, rain or shine. Thanking you in advance, and hoping the granting of this favor will not interfere in the least with other business, Sincerely yours, (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) The next letter I received from her is dated October 21, 1920. (Reading letter).

Letter marked Exhibit P-40 5-17-23.

"102 N. 22nd Street, East Orange, N. J., Oct. 21, 1920. Dear Mr. Brown: I am in receipt of what is to become a codicil to my will, and feel it is all satisfactory. I have selected Tuesday, Nov. 2nd for completing it provided it is not one of drenching rain, if it prove to be so, then the first pleasant one thereafter. I have to spend a day in New York in the early days of each month, so as to keep my money affairs in order. I would be glad if you would ask Mr. H. H. Pennock, of the Equitable Life Assurance, 120 Broadway, (Room 1122—Phone 10000 Rector) to be a witness. Thanking you for your speedy attention and kind note. Sin-

cerely yours, (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) The next letter I received from her is dated October 23, and post marked October 24, 1920. (Reading letter.)

Letter marked Exhibit P-41 5-17-23.

"Oct. 23 at 102 N. 22 St. Dear Mr. Brown: I am sorry I was so stupid as to suggest Election Day as one for us to meet on—to tell the truth I am so ignorant in election matters, I did not realize Nov. 2nd was Election Day. Well, I will now suggest the 3rd or 4th, but should they not harmonize with your engagements just select for yourself any day but the 5th, and we will gladly make our plans accordingly. Your patience and kind consideration are keenly appreciated by Your friend sincere (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) On November 3, 1920, that codicil was executed in my office and the original is already in evidence. November 5, 1920, is the next letter I received from her. She says November 5. The letter is dated and postmarked November 5. The year does not appear. (Reading letter).

Letter marked Exhibit P-42 5-17-23.

"Nov. 5th at 102 N. 22 St., East Orange, N. J. Dear Mr. Brown: I was in receipt yesterday of the papers you felt had some connection with the codicile to my will, which I am happy in assuring you, I deposited with my will in my safe deposit box,

as soon as I could reach it after its execution at your office last Wednesday. Thanking you for your very careful attention to my affairs. Gratefully yours (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) The next letter I received from her is dated December 3, and postmarked December 6, 1920. (Reading letter). I wrote to her in response to that I was not a member of the New Jersey Bar and could not attend to it for her.

Letter marked Exhibit P-43 5-17-23.

"Dec. 3rd at 102 N. 22nd St., East Orange, N. J. Dear Mr. Brown: Not a day has passed since I had the happiness of being face to face with you, but what I have felt more strongly the wisdom of carrying out the step I spoke to you of viz. having dear Miss Hough legally adopted as my daughter, and if you do such for me, I should ever feel grateful to you. I am *sure* if dear Mr. Lees were visibly here he would be as earnest as I am to take that step, as something of a reward for her faithful and efficient services which has been such a blessing to me these many years, and there are other good and sufficient reasons. Now dear friend, if you feel for any reason you cannot take this step for me please write me to that effect *at once,* so that I may without delay avail myself of the kind offer of a friend to do it for me. It will not lessen my friendship or regard for you, for I am now and ever will be Your sincere & grateful friend, (Mrs. James E.) Elizabeth L. Lees.

"We are to be in New York Wednesday

of this week, and will gladly call to see you then, if you wish it, or on any day you may suggest."

A. (Continuing) January 21, 1921, is the next letter I received. It is dated January 19, and post-
10 marked January 21, 1921. (Reading letter).

Letter marked Exhibit P-44 5-17-23.

"Jan. 19th at 102 N. 22 St., East Orange, N. J. Dear Mr. Brown: I am in receipt of your recent lines, and in return will say, we will be at your office next Tuesday morning, but should that time not suit you perfectly just write a line as to a more convenient time and we will gladly act in accordance
20 with it. O! you have ever been such a comfort to me, and I am and ever will be Your friend sincere, (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) Then followed the letters I have already introduced in evidence relating to the execution of the will of March 16, 1921, which was the last will.

Q. Mr. Brown, that concludes the letters you had
30 during that period? A. Yes.

Q. (By the Advisory Master) Did you receive any letters from her subsequent to the execution of the will? A. Yes, I am sure I did. Here is a letter October 19, 1921. It is dated October 19. I am not sure whether the postmark is October 14 or 19, 1921. (Reading letter).

Letter marked Exhibit P-45 5-17-23.

"Oct. 19 at 19 Whitman Ave., East Orange, N. J. Dear Mr. Brown: I have
40 just closed a few lines to dear Mr. Fernald

which I received this morning in which he states he cannot be with us on a Tuesday, nor as early as 6.30, as he does not leave Tiffanys until 5.30. So I have written him the day need not be a Tuesday and that the dining hour may be 7.30. Hoping these changes will not interfere in the least with your plans, Cordially yours, (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) I do not think there is any other here at all after that time. I think that was the last. There is a letter January 30, 1920. It is dated January 30, and postmarked January 30, 1920. (Reading letter).

Letter marked Exhibit P-46 5-17-23.

"Jan. 30th at the Beresford, 1 W. 81 St., N. Y. City. Dear Mr. Brown: I have been forced to keep close to home for many weeks, else you would have seen me at your office, for there is a legal matter it is best for me to know "the ins and outs" of, and as seemingly there is no prospect of my being able to go to your office soon. I am taking the liberty of asking you to come here some afternoon (say about five o'clock) when we could have a little enlightening talk before the six o'clock dinner, and have a pleasant evening. I am *very* desirous Mr. Fernald should be here the same evening, so if you kindly 'phone to him that you may select a day that would be free for him to respond 'Yes' to the invitation I will write him upon receiving word as to when it would be convenient for you to come. You would greatly increase my happiness, for you and he are firmly associated with the pleasant years in

17th St. and I want to renew those happy memories from time to time, and I am *sure* if dear Mr. Lees were visible here, he would rejoice greatly in an opportunity to welcome you and Mr. Fernald, for you were both favorites of his, hence favorites of mine. Hoping I have not taken too great a liberty and that you will soon be able to grant me the favor asked for, Your friend sincere, (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) A letter of February 25. It is dated and postmarked February 26, 1920. (Reading letter.)

Letter marked Exhibit P-47 5-17-23.

"Feb. 25th at The Beresford. Dear Mr. Brown: I thank you *heartily* and sincerely for your marked kindness to Miss Hough yesterday. It lifted such a mental weight from her, that it has more than repaid me for anything I have done in the matter. Were you situated so as to know the conditions here, I am sure you would feel it was a wise step to try to locate elsewhere. Prices are raised in all things, and in some cases more than doubled, and the general service very decidedly crippled. Now, I am about to ask another favor of you, viz. to send your bill to me at an early day. You know the old saying "Short reckoning make and keep firm friends," and I value your friendship too highly to do or omit doing my full duty. It is barely possible I may call Monday with Mrs. Harvie. If that good fortune be mine, please make no reference to Miss Hough's call. Your friend sincere, (Mrs. J. E. Lees) Elizabeth L. Lees."

A. (Continuing) Here is a letter of April 7th, 1921, and postmarked April 7, 1921. (Reading letter).

Letter marked Exhibit P-48 5-1-723.

"April 7th at "Rainbow Cottage" 19 Whitman Ave., East Orange, New Jersey. Dear Mr. Brown: I am in receipt of your kind lines of the 5th inst. and in reply would say, I plan to call at your office next Tuesday, the 12th inst. Dear Mrs. Haffner told me of her intention to call to see you, and also what she intended to ask you to do for her, but I do not feel it is wise or safe for me to commit myself in any such way, and I feel such decision will be in perfect keeping with your advice to Your friend sincere (Mrs. James E.) Elizabeth L. Lees."

A. (Continuing) Letter dated April 13, 1921, and postmarked April 14, 1921. (Reading letter).

Letter marked Exhibit P-49 5-17-23.

"April 13 at 19 Whitman Ave., East Orange, N. J. Dear Mr. Brown: Enclosed you will find a time table for you and Mr. Fernald to consult as soon as you have decided on the date for coming here. We went to Tiffany's yesterday afternoon, where I had a short talk with dear Mr. Fernald, as to what you in all probability would soon talk with him about. He did not look, talk or act as tho he would rather not give us the heart happiness to welcome him here, so please settle the matter as soon as possible. Trusting it may be what my heart is longing for Your friend sincere Elizabeth L. Lees, Mrs. James E. Lees."

A. (Continuing) I have a postal card dated February 5, 1920. It is simply an invitation to dine.

Q. Mr. Brown, that ends your testimony as to the documents and letters? A. I think so.

Q. Mr. Brown, you were appointed an executor under this will of March 16, 1921? A. Yes.

Q. As such executor did you take any steps after the probate of the will toward settling the estate? A. I took steps to find out the condition of her estate, that is, to find out what property she owned at the time of her death.

Q. And what others did you take? A. I made an appointment with the representative of the tax transfer of New York to meet us at the vault of the Singer Manufacturing Company, where her box was located.

Mr. Kent: Why is that pertinent?

The Advisory Master: What did you find the value of the estate to be?

A. I think about—why, including the household furniture, which was valued at $1,650 the total value, as we figured it out, $79,379.29.

Q. That does not include the value of shares of the Lees Manufacturing Company, which is specifically bequeathed, that total? A. No, it does not include any specific bequest.

Q. You do not know yet the value of that stock? A. No.

Q. Have you put any estimate on the value of that stock? A. No, I have not.

Q. It has been stated by a witness that Mrs. Harvie stated to the witness that you made a statement to Mrs. Harvie that Miranda Hough and her brother Robert Hough were two of the boldest

thieves you had ever known. Another witness stated that Mrs. Harvie had stated to her that you had said to Mrs. Harvie that Miranda Hough and Robert Hough were two of the finest crooks you had ever seen. Have you ever made any such statement to Mrs. Harvie or anyone else?

Mr. Kent: I object to that, because Mrs. Harvie herself said Mr. Brown had made that statement to her.

The Advisory Master: The record will speak for itself.

Mr. Kent: Mrs. Harvie testified yesterday that she understood Mr. Brown, as she tried to term it, that Miss Hough and her brother were the finest pair of crooks she had ever seen, or words to that effect.

The Advisory Master: Well, Mr. Brown, answer the question.

A. I never made any such statement.

Q. Did you ever make any such statement to anyone? A. Never to anyone.

Q. Now, Mr. Brown, from your long acquaintance, both socially and in a business way with Mrs. Lees, did you form any opinion as to Mrs. Lees' mentality? A. I did.

Q. Did you consider her rational or irrational at the time she executed the will of March 16, 1921? A. Entirely rational.

Q. From your observation of Mrs. Lees did she appear to you to be a woman of more or less intelligence than the average woman? A. She was.

Q. (By the Advisory Master) Which? A. She was more intelligent than the average woman.

Q. Did she appear to you to be more or less educated than the average woman?

Mr. Kent: That is absolutely leading. I am willing to concede the eminent mental fitness of the woman.

A. She was a woman of education; there is no question about that.

Mr. Kent: I ask that that be stricken out, the witness's conclusion, "There is no question about that."

The Advisory Master: He can testify as to what opinion he formed from his contacts with the deceased.

A. Judging by my conversation with her, from interviews with her and my correspondence with her, I formed the opinion that she was a woman of intelligence and refinement and education.

Q. Was she a woman who was positive or not positive? A. Very positive in her views; very hard to change; very hard to influence.

Q. (By the Advisory Master) You had a dinner engagement after the execution of the will? A. Yes.

Q. What did you observe as to her mental condition at that time? A. I observed she was growing old. She was then a little over eighty years and there was some slowness of comprehension in her voice; she was not as quick in her mental operations as she had formerly been. She was somewhat dull and had to be aroused, but when aroused she would show the same mental activity that she formerly did, but frequently become dull and dosed off, but whenever she was aroused she would respond intelligently and there could not be the slightest doubt that she understood what she was talking about, there was that feeling—I suppose due to the infirmities of age—that she was not as active as she form-

erly had been. Formerly she had been an active and strong woman, but as time went on she became somewhat feeble physically and mentally she was as active as before.

Q. (By the Advisory Master) The will was executed in your office? A. Yes.

Q. (By the Advisory Master) Were any business transactions discussed that evening at the dinner engagement? A. No, it was a social engagement. Mr. Fernald was present and we talked of no business whatever.

Mr. Kent: I will try to go as far as I can with the cross examination at this time, because we have not had an opportunity to read the letters or the will, because they were offered in bulk.

The Advisory Master: Proceed.

Cross Examination by Mr. Kent:

Q. You knew Mrs. Harvie quite well? A. Well, I have known Mrs. Harvie for perhaps three or four years, something like that, I think; not quite well; she has been to my office several times.

Q. Was it at your suggestion that she went to see Dr. Swift in 1920? A. No.

Q. But you were aware of her visit to Dr. Swift? A. She told me of it afterwards.

Q. Shortly afterwards? A. I am not sure how shortly. She brought me Dr. Swift's certificate.

Q. And that certificate is in evidence? A. Yes.

Q. And you read it? A. I read it.

Q. Did you advise her to start proceedings for guardianship as she wanted? A. I did not.

Q. Did she explain to you at that time her aunt's condition? A. Why, I think she talked generally about her aunt's condition.

Q. About her deplorable condition? A. No, she did not use the word deplorable and I do not think she emphasised it in that way, but she talked about her aunt's condition.

Q. (By the Advisory Master) Did you make any comment in her conversation? A. In her presence?

Q. (By the Advisory Master) To her? A. Why, I think probably I did. I talked with her generally about her aunt's condition—yes, I am quite sure I did.

Q. (By the Advisory Master) Did you agree with her conclusions? A. No, I did not.

Q. Mrs. Harvie was of the opinion that her aunt should have a guardian? A. She seemed to think that she ought to have a guardian, because she was was very—that was the thought which she expressed to me, that Miss Hough might get control of her property.

Q. And did she tell you of any instance regarding Miss Hough? A. Well, I do not remember that she did. She may at first. I cannot recall the whole conversation. Possibly she did.

Q. Did you and did you and she discuss Miss Hough or her brother at that time? A. Very likely we did.

Q. And was it from your talk at that time that she got the impression that you had stated— A. I don't know.

Q.—that you had stated that Miss Hough and her brother were the finest pair of crooks that you had ever seen?

The Advisory Master: I will overrule that question on the grounds which Judge Adams overruled a similar one that I asked. His words were these—I remember his words: "I am in the habit of overruling

questions as to the mental operation of one person uncommunicated to another."

Q. You discussed the status of Miss Hough and her brother as far as Mrs. Lees was concerned? A. My recollection of it was that she came in and she expressed these views to me and I did not very much one way or the other to her. I did not agree with her and I did not want to talk very much. I will give you the reason, because the matter that concerned Mrs. Lees—Mrs. Lees was my client; Mrs. Harvie was not my client, and Miss Hough was not my client, and I did not think it proper to discuss with Mrs. Harvie Mr. Lees' affairs.

Q. Did she characterize the Houghs in that manner? A. I am not sure about that. She spoke pretty decidedly. Possibly she did. I am not sure about that.

Q. Then you think she called it then? A. No, I don't think. I don't know that she did or not. She spoke very emphatically about them. Precisely the language she used I cannot remember.

Q. Give us the gist of that conversation, if you can, your best recollection. A. Now, let us see. That was in when?

Q. 1920. A. Well, the general impression that I have in my mind is that she came in and she began to talk about Miss Hough's conduct with her aunt. I think she mentioned the fact that Miss Hough had sort of superceded her in the matter of going to the box, the safe deposit box, that she formerly had been in the habit of going there, and Miss Hough had now taken her place in that respect, and her aunt no longer asked her to go, and she expressed feeling about that. That is the general purport of the conversation.

Q. Did you in any way communicate with Dr. Swift after this letter? A. I did not.

Q. You did not set in operation any independent inquiry of it? A. I thought a very great deal about the situation, reflected about it a great deal. I was anxious about it, but I did not communicate with Dr. Swift, because I formed my own opinion of Mrs. Lees. I thought I was able to do that.

Q. In other words, you disagreed with Dr. Swift, who had attended to her? A. I did, yes.

Q. And you did not have any other physician examine her? A. I did not.

Q. Nor did any other member of the family get any other physician to examine her? A. Not that I know of.

Q. You knew, however, that Dr. Swift was her family physician and attended her for years? A. I never heard of Dr. Swift until that certificate was brought to me.

Q. But you know now that he had attended her from 1916? A. That is what she told me.

Q. You knew Dr. Swift is a reputable physician? A. I do not know anything about him. I assume he is. I do not know anything about him at all.

Q. So although this matter was brought to your attention directly since this certificate was issued, you or Miss Hough or any other person that was interested in Mrs. Lees took no steps to challenge those statements? A. I did not.

Q. Did Miss Hough take any steps? A. I do not know whether she did or not. I do not know of any steps that she took.

Q. Did you know about that time whether Mrs. Lees was suffering from any ailment? A. I do not know what specific ailment she was suffering from. It was sort of intimated to me that she had some ailment, but precisely what they were I never inquired.

Q. Do you know whether she had heart trouble?

A. Well, I think I had heard that she had. I do no know but what she had mentioned that in her letters.

Q. Do you know whether she was suffering from Bright's disease? A. I never heard that.

Q. Do you know whether she was suffering from rheumatic conditions? A. I never did.

Q. But you heard it in this trial? A. Yes, I did. I meant I never heard of it previous to this trial.

Q. Did you ever receive any letters from her that had parts of them cut out? A. No, I never did.

Q. Have you heard of any persons receiving letters from her with parts cut out? A. No.

Q. That would show that the letters had been edited and supervised? A. I never seen that at all or heard of it.

Q. Coming back again to your knowledge of this statement of Dr. Swift's in July 2, 1920, shortly after that you drew a will for her. The will is dated August 24, 1920? A. Yes.

Q. And you drew that will without making any independent investigations or without trying to verify the positive statements of Dr. Swift? A. I drew that will in pursuance of Mrs. Lees instructions.

Q. Without in any way making any investigation of your own or having any member of the family make any investigations? A. The investigation I made was from examination of her conduct in my presence, and the letters which she wrote to me, and I thought a great deal of the situation presented.

Q. Then on November 3rd you drew a codicil? A. Yes.

Q. Without making any investigation other than your own personal one? A. November 3, 1920.

Q. Yes. A. Yes.

Q. Then you drew a series of papers, one of which purports to be a bargain and sale deed with a life's interest provision? A. Yes.

Q. And another one which purports to be some sort of an agreement in reference to a memorial window, which is part and parcel of that house? A. Yes.

Q. Without making any independent investigation? A. Yes. The only investigation I made was my own examination.

Q. And then in view of her growing feebleness and also evident mental feebleness you drew the will of 1921 without any independent investigation outside of your own impression from her visits to you and these so-called letters of hers? A. I made no independent investigation excepting the investigation that I myself was able to make of her appearance and talk and the letters and so forth.

Q. Were these various successive acts on your part due to any apprehension on your part that if an independent investigation would be made these facts would become evident to others? A. What facts.

Q. Stated by Dr. Swift. A. Due to any fear on my part?

Q. Yes. A. None whatever.

Q. Don't you think it would have been wise and prudent to have had an independent investigation—

Mr. Atwater: I object.

The Advisory Master: Objection sustained.

Q. Have you ever before drawn a will for any person whose mental capacity had been directly placed in issue?

Mr. Atwater: I object to that.

The Advisory Master: Objection sustained.

(Exception noted by appellant's counsel.)

Q. Did you desist from making an independent investigation at anybody's request? A. No.

Q. You knew that in the year 1920, or thereabouts, Miranda Hough took complete charge of the household and affairs of Mrs. Lees? A. 1920? Why, I knew that she was the attendant upon Mrs. Lees, but how far her complete taking charge of taking care of Mrs. Lees affairs was concerned I do not know that I knew how complete it was.

Q. You knew that she was the only one in the house outside of Mrs. Lees? A. In what house?

Q. The Rainbow Cottage? A. I think she was—no, I don't know that she was; I think there were others present.

Q. That is, living in the house? A. Wasn't the testimony that Mrs. James was there?

Q. Part of the time when her condition became such she had to have another companion? A. Yes.

Q. That was July, 1920? A. If you will allow me, I didn't know about the arrangements in the house. I paid no attention to that at all. How they conducted the affairs of the household I knew nothing, whether they had a servant or anybody; I didn't know anything about those things.

Q. You went there for dinner at one time, did you not? A. Yes.

Q. And outside of Mrs. Lees and Miss Hough there were no other persons in the house? A. There was one young boy there, I think, at that time.

Q. Who was just visiting? A. I am not sure.

Q. Was that a nephew of Miss Hough's? A. Yes, I think he was.

Recess.

Q. Did you have any conversation with Mrs. Lees in reference to Miranda Hough's duties? A. When?

Q. In 1920 or 1921? A. I do not remember any specific conversation.

Q. Did Mrs. Lees tell you that she had to adopt Miranda Hough in order to keep her? A. No.

Q. Did she tell you that Miranda Hough expected to leave her unless she were adopted? A. No.

Q. Or substantial provision made for her? A. No.

Q. You heard Mrs. Harvie make those statements? A. On the witness stand I think she said that.

Q. You saw the affidavit that was prepared by Miranda Hough for change of name? A. I did not.

Q. Did you see the so-called certified copy which was offered in evidence yesterday? A. I saw it, but I do not think I examined its contents at all.

Q. Did you in that affidavit note that it was her intention and Mrs. Lees that she should have the right of inheritance? A. I did not, because I did not examine the contents of the paper at all.

Q. Did Miss Hough tell you at any time that she wanted to be adopted so she could have the right of inheritance? A. She did not.

Q. Did Mrs. Lees ever make any such statement to you? A. No.

Q. You stated this morning that you received a letter some time in 1920 in reference to the proposed adoption? A. Yes.

Q. And that they asked you to institute proceedings? A. Yes.

Q. And you replied you could not undertake those proceedings? A. Yes.

Q. The reason that prompted you to reply in that manner was the fact that Miranda was presuming too much? A. No, the reason why was she was a resident of the State of New Jersey and I was not practicing in the State of New Jersey.

Q. But you have practiced with attorneys in other states? A. I do that, yes.

Q. And if you have a matter in another state you refer it to an attorney in that state? A. That depends upon what the matter is.

Q. But you could have referred to it an attorney of your chosing? A. I could have had Mrs. Lees consented.

Q. You declined to have anything to do with that? A. Yes.

Q. And at that time Mr. Atwater was a New Jersey attorney? A. Yes.

Q. And you were referring New Jersey matters to him? A. Yes.

Q. Is that the only statement you wish to make, Mr. Brown, that you simply declined to have anything to do with the proceedings? A. Yes.

Q. Had the attempt of Miss Hough at that time become evident to you? A. Attempt at what?

Q. To get in the embraces and to participate more largely in the estate of Mrs. Lees? A. Why, no. As I understood the situation Mrs. Lees was dependent upon Miss Hough. She was caring for her and that was the extent of her duties, to take care of Mrs. Lees. What Mrs. Lees wanted to do with reference to Miss Hough was her matter. I had nothing to do with that.

Q. You knew that as companion she was being paid for it? A. I suppose she was paid. I do not know what her compensation was.

Q. She was not in the house as a gratitous companion? A. Oh, no.

Q. She was there as a paid and hired servant? A. That is what I understood.

Q. And you noticed that in the successive wills that were being drawn her share became perceptibly larger? A. I did.

Q. And that occurred when Mrs. Lees' physical and mental condition was deteriorating? A. Well, is occurred. How far her mental and physical condition was deteriorating, of course, is another question.

Q. Had it occurred twice during the period when you saw her, her physical condition was becoming more feeble? A. Well, it occurred from 1919 or perhaps from the time of Mrs. Lees' death, perhaps 1918; I am not quite sure of the year.

Q. And during these years Miss Hough's interest in the estate kept on getting larger and larger?

Mr. Atwater: The wills will speak for themselves.

The Advisory Master: That is argument.

Q. During that period you became aware of the fact that Miss Hough had been borrowing considerable money from Mrs. Lees? A. Why, with reference to the erection of this house, that is the only borrowing there was; I understood that was all.

Q. And Miss Hough has got into her possession a considerable sum of money? A. I don't know that; no, I don't know that. I had nothing to do with the payment over by Mrs. Lees of borrowing or anything of that kind that I remember, no. I did not attend to those financial transactions at all.

Q. You heard Mrs. Harvie testify yesterday that when she made an inventory of the securities either 1920 or thereabouts it was in excess of $110,000? A. I think she testified to something of that kind.

Q. In your estimate of the securities and personal property it amounted to only about $79,000? A. Yes.

Q. So it is evident that within a few years a considerable amount of securities and other assets had disappeared?

The Advisory Master: I do not think that is a fair question. The shrinkage of the market value might account for that.

Mr. Kent: 1910?

The Advisory Master: Yes.

Mr. Kent: The market has increased preceptibly from 1919.

Q. According to your own investigations, it is evident that considerable of her securities that she had in 1920 or 1921 were not among her assets at the time that you took charge?

Mr. Atwater: I object to that question.

The Advisory Master: Sustained.

(Objection noted by appellant's counsel.)

Q. Did you know how much she had in 1920 and 1921 as far as securities were concerned? A. I did not.

Q. Did Mrs. Harvie tell you that? A. No, I don't think so. I do not remember Mrs. Harvie ever telling me that at all. I am quite sure she never did.

Q. Did Mrs. Harvie ever complain to you the loss of $30,000 worth of Liberty bonds? A. No.

Q. Liberty bonds are not amongst the assets of the estate now? A. The list there you saw. I do not think they are.

Mr. Atwater: There is the list.

A. (Continuing) No, no Liberty bonds there.

Q. Have you made any effort since your appointment as executor to check up the various bonds and securities which she had or may have had?

Mr. Atwater: If the court please, I want to make this statement. As I understand the rule of law when an appeal from probate is filed the right of the executors to do anything with the estate ceases.

The Advisory Master. The question is proper. It is proper up to the time of the appeal and it is proper prior to that time.

A. The only steps we took was we managed to have the transfer tax appraiser at the safe deposit box for the purpose of listing securities. How long that took I do not remember, but after that time my recollection is that the appeal from probate soon followed and we suspended operations.

Q. Mr. Harvie, the husband of Mrs. Harvie, is one of the executors? A. Yes.

Q. And Mr. Harvie, of course, could get the information and the memoranda that Mrs. Harvie had in reference to the assets of the estate? A. Well, I don't know whether he could or not.

Q. You never had a conference yourself with reference to that prior to the appeal? A. No, we have not.

Q. Nor have you had any since? A. No.

Q. And is it your intention to make such an investigation? A. Well, if we can find any assets I shall certainly endeavor to do it, but I don't know what assets we can get, but we shall make every effort to get the assets.

Q. But from the information you have you have no knowledge as to the assets she had in 1291? A. No, I have no knowledge at all.

Q. You said somewhere that Mrs. Lees was a woman of determined mind? A. Yes.

Q. And it was very hard to change her? A. Yes.

Q. And when she made up her mind I assume her will was almost inflexible? A. Pretty much so.

Q. Still, however, she kept on changing her wills very frequently? A. That was her own idea.

Q. That is an evidence of inflexible mind to you? A. Inflexible so far as the influence of others upon her is concerned, but she changed her mind with reference to the will very frequently.

Q. And the main changes in her will were Miranda Hough? A. No, I don't think that. The wills will show for themselves, but I think you will find that is not so.

Q. But the substantial changes in the will were Miranda Hough?

Mr. Atwater: I object.

The Advisory Master: Objection sustained.

Q. After the last will was drawn in 1921 did Miss Hough come to you and request another change of the will? A. No.

Q. Did she come to you after the death of a certain legatee? A. Did she come to me after the death of a certain legatee? Why, she may have been in my office; I don't remember now. What legatee do you refer to?

Q. Did she ask you that the bequest of that legatee be changed to her? A. No.

Q. Or that it should be put in the residuary estate to her? A. No.

Q. What did she come to see you after that for? A. Why, to fix a time—I perhaps can tell you. I do not know exactly what legatees you refer to.

Q. After the death of Marion Haffner? A. She died March 4, 1922.

Q. Did she come to see you in reference to the bequest of Marion Haffner? A. She did not say she did.

Q. What did she come and ask you?

Mr. Atwater: "She" relates to—

Mr. Kent: The witness on the stand does not need your assistance.

A. I do not know what the particular matter was.

Q. (By the Advisory Master) Did you have any correspondence with her regarding Mrs. Lees' will or did she come to see you about Mrs. Lees' will? A. No, I do not remember receiving any letter from her at all or any correspondence.

Q. (By the Advisory Master) Any conversations? A. No, not with her. No conversation about Mrs. Lees' will with Miss Hough.

Q. Didn't she come and ask you to have the will changed so that the bequest would go to her and you told her there would be no more changes in the will? A. I did not.

Q. Didn't you make a statement to her after that will was executed that there would be no more changes in the will? A. I did not.

Q. Didn't Miss Hough take Mrs. Lees to your office after the death of Marion Haffner? A. I think Mrs. Lees was at my office after the death of Marion Haffner.

Q. In company with Miranda? A. I think so, yes.

Q. And didn't Mrs. Lees or Miranda, or both of them, say to you that they wished you to transfer the amount of Marion's legacy to Miranda? A. No,

I don't think either one of them ever said anything at all to me.

Q. And didn't you say to them that this will is not going to be changed any more, the amount will go to the two boys? A. No.

Q. You haven't any recollection of that? A. No.

Q. Will you say that such a conversation never occurred? A. Yes.

Q. Did you ever tell that to Mrs. Harvie? A. No.

Q. Would you be positive of that statement? A. Yes.

Q. You will positively state, then, Mr. Brown, that neither Mrs. Lees nor Miss Hough ever asked you or requested you to change the bequest or the provisions in reference to Marion Haffner after her death? A. In what respects?

Q. In any respect. A. Mrs. Lees may possibly in some respects. I do not remember about that. She may possibly have said something about changing the bequest which had been previously made in favor of Marion Haffner.

Q. That change was to be to Miss Hough? A. No, I don't think so.

Q. You don't think so? A. I don't think so.

Q. You did not desire the will to be changed any more after the last one? A. I had no discussion about it.

Q. But you didn't think it was advisable? A. Well, that depended upon whether Mrs. Lees was in a condition to have a change made.

Q. What do you mean by that? A. I mean by that that if Mrs. Lees wanted that change made and was insistent upon it and she understood what she was doing, I would make the change if she directed me to do it.

Q. Why did you say if she understood what she

was doing? A. Well, if she came to me and wanted that change made and I was satisfied that she knew what the change meant I would make the change.

Q. Was there then in your mind some doubt about her mental condition? A. No.

Q. You were still of the opinion that you were—

10 A. Yes.

Q. —in 1920 and 1921? A. Yes. If you will allow me to explain that—

Q. No, please answer my question. At that point you had not made any independent investigation of her mental condition? A. I had not.

Q. Or physical condition? A. I had not.

Q. You represented Mrs. Lees generally, as I understand it? A. Why, she came to me about her business affairs. Ever since I became ac-

20 quainted with her and Mr. Lees. I acted as their legal advisor, both of them, and after Mr. Lees' death she continued to come to me, but whether she consulted me about all her affairs, I am not sure.

Q. Did you any way caution her about her transfer of her property or house to Miranda Hough in 1920 or 1921? A. Caution her about it?

Q. Yes. A. You mean advise against it?

Q. No, what I mean, that you explained to her both sides of the situation, that she was passing the

30 title and so forth? A. My understanding of the situation was that Miss Hough owned the lots, the ground, and Mrs. Lees simply advanced money for the erection of the house. That was my understanding of the situation and I did not understand that it was necessary that there should be any transfer.

Q. Do you know in whose name the house in East Orange was prior? A. No, I don't know. My impression is it was in Miss Hough's name, but I don't

40 know. I never made an examination to find out.

Q. After your knowledge of this statement of Dr. Swift's did you acquaint Mrs. Lees with the fact? A. With Dr. Swift's certificate? No, I didn't.

Q. You assumed it advisable to keep the fact from her? A. Well, I didn't think it advisable to inform her of it.

Q. Did you inform Miss Hough about it? A. No.

Q. Didn't deem it advisable also? A. I didn't deem it advisable to say anything about it to either one of them.

Q. Why was this to be kept a dark secret from both of them? A. I didn't understand it was a dark secret.

Q. Well, did everybody know about it? A. I don't know whether everybody did know about it. I know Mrs. Harvie gave me that certificate, and that is all I know about it.

Q. In view of the fact that you had knowledge of a real estate transaction, didn't you think it was your duty to inform both of the interested parties of the possible legal objection that may enter— A. No.

Q. Had Miss Hough at that time stated anything to you about Mrs. Lees mental qualifications? A. No.

Q. Did she state to you at that time or any other time that her mind was not right? A. No.

Q. You know now that she had stated that to other persons before they moved into Rainbow Cottage? A. I do not.

Q. You heard Mr. Lang testify? A. He did not testify to that. Something of the kind—I do not recollect his testimony. May I ask you to look at that testimony and see whether he did testify to that?

Mr. Atwater: On page 88.

Q. Page 87, where he said, "Then after leading Mrs. Lees out of the room Miss Hough returned and said, 'You must not pay any attention to her, because her mind was affected'"? You heard that? A. Yes, I heard that witness.

Q. That was prior to their moving to Rainbow Cottage? A. I don't know.

Q. Now, did she tell you on or about that time that Mrs. Lees' mind was affected? A. She never told me.

Q. Never? A. Never.

Q. At any time? A. At any time.

Q. Did she ever come to see you alone? A. Miss Hough?

Q. Yes. A. I think she did.

Q. When? A. You mean before Mrs. Lees' death?

Q. Yes. A. Oh, I cannot fix the time.

Q. But she did come? A. I think she did come.

Q. And that was in reference to Mrs. Lees' affairs? A. Yes, it must have been, because I had nothing whatever to do with her affairs.

Q. How many times did she come before Mrs. Lees' death with reference to Mrs. Lees' affairs? A. Alone?

Q. Yes. A. Oh, I don't think—it is mere guess work, but I don't think more than two or three times. I wouldn't be able to state. I made no memorandum of it. I did not charge my mind with it.

Q. But it must have been important enough to warrant her coming there to see you? A. Well, I don't know whether it was or not in her judgment; it was not in mine.

Q. You say you have not any idea what her visits were? A. No, I don't think it was of any significance, otherwise I would have charged my mind

with it. I think she did come once or twice; perhaps two or three times, but I made no memorandum of it and thought no further of it.

Q. Was it around the times the wills were being drawn? A. No—let us see—yes, I am sure it was after the last will was drawn; I am very sure it was.

Q. Had you up to that time met Robert Hough? A. I met Robert—I think I met Robert Hough twice before Mrs. Lees' death and once was probably at the time of the execution of that last will, March 16, 1921, and afterwards I do not think I saw him again until the funeral. That is my recollection of it.

Q. Do you know how he came to be appointed executor with you? A. I do not know how. I received a letter from Mrs. Lees stating that she wished him named in the will as executor. That is all I know about it.

Q. Did you make an inquiry why he was being appointed executor? A. I did not.

Q. Didn't it strike you as being peculiar that a brother of Mrs. Lees' attendant should be named executor in her will? A. No, it didn't. I understood he was a man of education and I understand he was connected in some way with the University of Pennsylvania; somebody had told me that. I made no special inquiry.

Q. You know he is not now? A. I think he is not now, but I understood that he was at that time, or prior to that time that he had been.

Q. Do you know now that he is working as watchmaker with a store on 42nd Street? A. I heard him testify to that.

Q. And you know that he boards in a house uptown in New York? A. No.

Mr. Atwater: I do not want to object to

the testimony, but I think it has gone too far.

The Advisory Master: I do not see that it has anything to do with it. It occurred after the death.

Q. Now, you received a letter from Mrs. Lees asking you not to mention to Mrs. Harvie the fact that Miranda Hough was in the office about certain matters? A. Yes.

Q. Did Mrs. Lees tell you why she wanted you to keep that from Mrs. Harvie? A. No, I don't think she did. I don't think anything further was said about it. I didn't pay any attention to it, I didn't care.

Q. You did not care? A. I did not care.

Q. You took the same attitude about that as you did about the other matters? A. What other matters?

Q. The appoinment of the executors? A. I left that entirely to Mrs. Lees.

Q. And about the letter of Dr. Swift was a matter of indifference to you? A. No, it was not. I did not testify to that. I said I took a great deal of care about that. It did concern me and I thought a great deal over it and I wanted her to thoroughly understand what she was doing in any business transactions she had with her.

Q. Although you thought a great deal about it and it gave you a great deal of concern you actually did nothing except to satisfy your own mind? A. Satisfy my own mind by her correspondence and by my conversations with her.

Mr. Atwater: That has been asked four or five different times.

Q. Did you ever inquire of Mrs. Lees why she

made that strange request to you? A. No, I didn't. I regarded it as rather a delicate matter.

Q. Did Miss Hough ever ask you not to tell Mrs. Harvie about it? A. No, she didn't.

Q. All these requests came from Mrs. Lees? A. Well, all the requests I have mentioned, as coming from Mrs. Lees came from Mrs. Lees.

Q. (By the Advisory Master) Was there any other bequest changed by Mrs. Lees to exclude somebody from knowledge of any facts except this one mentioned in this letter? A. That is the only one I remember of that kind, that bequest mentioned in that letter.

MIRANDA HOUGH LEES, sworn in behalf of Proponent.

Direct Examination by Mr. Brown:

Q. Where do you reside? A. 19 Whitman Avenue.

Q. East Orange? A. East Orange, New Jersey.

Q. And how long have you resided there? A. With the exception of the last of this winter since February, 1920.

Q. Did you know Mrs. Elizabeth Loveridge Lees during her lifetime? A. Yes.

Q. And for how long a period? A. Since—now, I can't remember dates. May I refer—I have the dates down. I just had what dates I thought you might call for.

Q. Oh, yes. A. To save my life, I don't remember; I don't know whether I have got that or not. Let us see. Mr. Lees passed on in 1912. It was 1910.

Q. 1910? A. Yes.

Q. Did you know her husband, Mr. James E. Lees? A. I did.

Q. And when did he die? A. He died in 1912—April, 1912, if I remember correctly.

Q. And what position did you occupy with reference to Mr. and Mrs. Lees during that period? A. I came as a nurse for Mr. Lees.

Q. How did you happen to come there? A. Mrs. Lees wrote to me in Philadelphia asking me to come and help her two weeks, which I did, as a friend.

Q. Then you had known her prior to that time? A. I knew her prior to that time through a mutual friend.

Q. What was your occupation prior to that time? A. A nurse.

Q. That has been your occupation since that time, has it? A. The short time I was away from Mrs. Lees I nursed.

Q. Then you came to Mr. and Mrs. Lees in 1910 and Mr. Lees died in 1912. Did you attend Mr. Lees as a nurse during his last illness? A. I did.

Q. And after his death did you continue with Mrs. Lees? A. Until the following fall.

Q. In what capacity? A. Well, more just to be with her.

Q. Were you acting as nurse for her at that time? A. Well, she really didn't need the services of a nurse at that time.

Q. She was physically well? A. So I thought.

Q. Was there any occasion for your services as a nurse to her at that time? A. Not as a nurse, but she was alone and she kept me with her.

Q. Where was this? A. In the Beresford, and we went in the summer to the Berkshires, but it did not agree with her up there. The altitude seemed to be too high and she came down to her friends in Montclair, New Jersey, Mrs. Whaley.

Q. Where is the Beresford? A. 81st Street.

Q. New York City? A. Yes.

Q. That was her home for a long period of time? A. It was.

Q. Give the years they resided there? A. Well, they were there when I come to Mr. Lees.

Q. In 1910? A. Yes, they were there and had been there for some time and she remained there until 1920, as I believe.

Q. Then where did she go? A. Well, then, to East Orange; my cottage on North 22nd Street.

Q. You had a cottage on North 22nd Street? A. Yes.

Q. Was the title to that cottage in your name? A. It was my cottage.

Q. And what was the number of that cottage? A. 102 North 22nd Street.

Q. East Orange? A. East Orange.

Q. And she went to your cottage? A. Yes, we had been going previously in the summers also, the summers of 1917 and 1918 and then 1919 up until we went into Rainbow Cottage.

Q. Now, when did you acquire the title to that property on North 22nd Street, East Orange? A. Well, I think I bought that piece of property in 1915. I think it was in 1915. We did not occupy it the first summer, I know; it was rented.

Q. Did Mrs. Lees assist you in any way in the purchase of that cottage? A. Not at the time I bought it.

Q. What were your duties? Will you describe them with reference to Mrs. Lees from the death of Mr. Lees down to the time of her death? A. You mean the death of Mrs. Lees?

Q. From the death of Mr. Lees down to the death of Mrs. Lees. A. Well, as I say, after Mr. Lees passed on, Mrs. Lees felt the need of somebody with

her. We were congenial and I stayed on with her. In the fall I felt that I could take other work.

Q. The fall of what? A. The following fall.

Q. 1912? A. Yes. Mr. Lees passed on in April and in the fall I felt she had sufficiently overcome her grief and I took other work and I was away from her over a year and a half, something like that. Then I returned to her at her request.

Q. And during that year and a half what were you doing? A. Well, I was nursing. It was general chronic work that I took.

Q. What kind? A. Long cases. I had several cases during the interval.

Q. Then Mrs. Lees, you say, requested you to come back a year and a half after you left her? A. About that time. We exchanged letters; not often, but off and on, and she finally asked me to come back.

Q. And you did go back? A. I did go back.

Q. Were you with her continually from the time you went back until her death? A. At intervals I went over to members of my family in Philadelphia, when Mrs. Lees would have Mrs. Harvie come and stay with her or she would go to Mrs. Harvie's.

Q. During that period of time did she have any other nurse or companion? A. No, I think not. She had Miss Caffrey, who was her dressmaker.

Q. Did Mrs. Lees live alone? A. Yes.

Q. At the Beresford? A. Yes.

Q. And subsequently at your house in East Orange? A. Yes, first only for the summer and after she made up her mind to leave the Beresford and while the Rainbow Cottage was under construction she restored the furniture to North 22nd Street and we lived there that winter.

Q. Subsequently you moved from this cottage of yours to 19 Whitman Avenue? A. Yes.

Q. Now, describe how you came to get that property, 19 Whitman Avenue? A. Well, it came about in this way, Mrs. Lees was not well in the Beresford in the winter time; she was continually subject to the grippe and to my mind and to Dr. Swift's mind it was because of the Beresford, because in a place like that the germs are naturally there and she was susceptible to them, and then the changes in the Beresford—just about that time it changed hands and many of the old families had gone out and Mrs. Lees did not want to remain in the Beresford. On the other hand, I had purchased this little cottage in East Orange, and while it was not sufficient to keep Mrs. Lees and her furnishings consequently we decided to build together. I was to sell my house and put in that money, and I had a little money and I purchased some land and on that we agreed to build together, she putting in—advancing money. Of course, I didn't have the money to build. I had this house, which I intended to put in, and I also intended to secure a construction loan. That was the way the house was agreed upon to be built.

Q. That is the house 19 Whitman Avenue? A. 19 Whitman Avenue. The house was to be built in my name, because the house was supposed to be mine. I could not afford to put my limit in it and not have it . That was understood.

Q. Did you purchase the lot 19 Whitman Avenue? A. I did.

Q. And you took title in your name? A. Yes.

Q. And the house was erected on that lot? A. Yes.

Q. Did you sign the contract for the building of the house 19 Whitman Avenue? A. I signed the contracts with Mrs. Lees' consent and the architect was recommended to us by a friend of Mrs. Lees'.

Q. Well, you went on and that house was erected pursuant to the contract? A. Yes.

Q. When did you move into that house? A. In February, 1920.

Q. Well, now, how much money did you put into the erection of that house and the purchase of the lot, do you remember? A. Altogether, probably $12,000.

Q. Of your own money? A. Yes. That is what I have reckoned it to be, since this has all come up.

Q. Of your own money? A. Of my own money.

Q. And how much did Mrs. Lees put into the erection of that house? A. Some $18,000.

Q. And that was her money? A. That was her money, but I signed all the contracts and the money was given to me and I did all the building work.

Q. The money was given to you by Mrs. Lees? A. The money was given to me by Mrs. Lees. It was put in my bank with the Fidelity Trust Company and paid over to the contractors.

Q. And you moved into that house in February, you say, 1921? A. 1920.

Q. 1920? A. Yes.

Q. And how long did you live in the house with Mrs. Lees? A. From February, 1920, until September, and Mrs. Lees passed on—

Q. Until the death of Mrs. Lees, September 9, 1922? A. Yes.

Q. Did you have any servants in that house? A. I had day workers mostly. Mrs. James assisted me for a time. We had experience with a man at one time—well, I think he was over on North 22nd Street

Mr. Kent: I object.

Q. All I want to know is how you ran the household. Just tell us what you did there. A. At first

Mrs. Lees made an allowance and I ran the house on this allowance. I ran it completely. Everything was done through me. That was done on a straight allowance. Later, after the agreement of the adoption, why, we lived as mother and daughter. I still managed the house.

Q. What service did you render to Mrs. Lees personally during that time? A. Whatever seemed necessary for her comfort or her health.

Q. Now, what things were necessary for her comfort and her health? Just describe her condition during that time. A. Very well. She had a weakness—

Q. What was that weakness? A. Well, it was a kidney weakness that caused some washing and some attention in that way. She was unable to hold her urine and there was some work in that line. It was more of an inconvenience. In other words, it did not—

Mr. Kent: Will you fix that time?

Q. Fix that time. A. Well, we might fix it from 1919, I presume.

Q. 1919? A. Yes, we might fix it along that time.

Q. Up to the time of her death? A. Yes, up to the time of her death.

Q. Now, go on and tell what you did for her. A. Well, I saw that she had as much diversion as I could possibly give her. We would go over to church at New York. I had as many friends see her as I possibly could have and attend to the household duties. I don't know whether I read. We played cribbage and we had a Ford sedan and I drove her around some and especially in the mornings I would take her out to the park and take

her to do the shopping, the groceries for the day—well, we just lived naturally.

Q. What was her method of passing her time? A. Well, at first mother wrote a great deal. She wrote a great deal. Later she did not write so much and very often she would—of course, she was awake through the night owing to this weakness and she would become drowsy through the day; consequently, when she was at her desk after being around the park when she would attempt to write she would go to sleep and it would take her most of the day to accomplish one letter, unless it was a business letter, which naturally woke her up and made her all right.

Q. When she woke up would she pay attention to what she was doing? A. If she was awake, yes; if she was drowsy she would be like anybody else that was drowsy.

Q. Did she have any difficulty in doing the things she set upon to do? A. If she wanted to do things she generally did it.

Q. Was she capable of doing the things she set out to do? A. Yes.

Q. Was she fond of music? A. Very fond of music.

Q. Did she select music that she wanted to have? A. She selected the music she wanted to have. She had a victrola. She bought her records. We had a player piano and she selected those records. She did not like the one player piano she bought and I got her another, the kind that went by electricity, and that she enjoyed very much.

Q. Did she direct the things that were done or did you? A. She would express a wish when it came to those things and I would carry her wish out.

Q. Was there any difficulty in understanding

what she wanted to have done? A. No, not if you knew Mrs. Lees.

Q. That is to say, was she positive or not? A. She always knew what she wanted done.

Q. Did she express that positively? A. She did express that positively.

Mr. Kent: I do not think you ought to lead the witness. You have been doing it quite frequently.

Q. Well, had you any difficulty in understanding her wishes? A. Not at all.

Q. Well, from your observation of her during all the time you were with her, what is your judgment in regard to her mentality? A. Well, of course, that subject has been brought up and in my judgment what mother wanted she knew and she was positive about it and I was satisfied.

Q. Was that condition of mind changed during any of the time you were with her? Was there any change? A. There was a change.

Q. Now, describe that change. A. Well, chiefly in her memory and chiefly when she would be drowsy and awakened it would seem as if she awakened out of a dream.

Mr. Kent: Please fix that date.

A. Well, that is during the last two years of her life. She would seem as if she was not conscious until she got fully awake and then, of course, she would waken up and know just exactly what she wanted and just exactly what she wanted to do. Well, it just occurred to me normally—of course, I had the physician examine her from time to time to see that I was doing everything neces-

sary for her health, to save her any possible suffering that might be brought on by this kidney trouble.

Q. What physician? A. Well, we had a Dr. Gantz that mother wanted at one time, but she did not care so much for Dr. Gantz.

Q. Where was Dr. Gantz located? A. Well, Dr. Gantz was in East Orange. Of course, we left the Beresford. Up to the time we left the Beresford we had Dr. Swift, and then we had Dr. Gantz—and she is a lady physician, but I wanted Dr. Wakely from the beginning, because Dr. Wakely I knew to be one of the best physicians in East Orange and the best I could call on. The best was always called for mother. I had Dr. Wakely come and examine her from time to time.

Q. Beginning when? A. Well, Dr. Wakely came when we were over at 19 Whitman Avenue. None of these dates I cannot be certain about.

Q. Was Dr. Wakely in attendance on her? A. You cannot say attendance, because it was only from time to time that I would become anxious myself and have her urine examined to see that there was nothing could be done.

Q. And that attendance continued on Mrs. Lees until her death? A. By Dr. Wakely.

Q. That is, by Dr. Wakely, yes. A. Yes.

Q. When did you first notice any changes in Mrs. Lees' condition, mentally or physically? A. Well, I did notice a change during my absence.

Q. Which absence? A. It was after Mr. Lees died. I was away from her during that year and a half. It was noticeable that Mrs. Lees at that time had aged to some extent, and while she seemed a perfectly—a woman that was equal to caring for the apartment and taking charge, she showed then that she really did need someone with her—

not so much for her health as to take ahold and help, that is, to live in a sanitary way. Now, I might say that—she was not accustomed to it and you can imagine, of course, I, being a nurse, and the maids in the hotel did not work like I did and when I come back and found she really needed me, and since she needed me I was willing to come.

Q. Now, that came— A. Well, that seemed to take place when I was away.

Q. Did you notice any other change in her condition? Describe it from that time until the time of her death? A. Well, while I was away her ankle was hurt.

Q. During that time? A. Yes, and she complained of this ankle, and when I came back I think she walked with a cane and she had been walking with crutches, so she never seemed to lift that foot afterwards, it seemed to drag, it gave her a kind of heavy walk. Of course, she was a heavy woman and—

Q. She was a heavy woman? A. Yes, and it made a little drag and that drag seemed to increase, that is, she did not lift her foot. I had to be careful about the rugs on the floors. I always put two rugs right close together, so that she did not trip; she did not lift her feet. I had to watch those things.

Q. And that continued to the end of her life? A. Yes, and seemed to increase, and her memory became less—we would have to recall instances by other instances to make her remember, or something on that order; she was, with her age, her memory was going.

Mr. Kent: Fix that date, also?

Witness: Well, within the last two years. It all pertains to the last two years.

Q. Well, when her attention was called to these things to direct her, was she able to remember? A. Yes, yes.

Q. How was her conversation during this whole period, was it intelligent or otherwise? A. Oh, intelligent. She would read for a while and get tired and I would take the book and read.

Q. (By the Advisory Master) What character of book? A. Well, the last book we were reading was Woodrow Wilson, and such books was the books she liked.

Q. And when was that last reading? A. The last reading was just about two weeks before mother passed on. I was ironing and she was reading to me.

Q. In that particular book? A. In that particular book.

Q. (By the Advisory Master) Tell us some more books she read. A. Well, now, let me see! We had—isn't that strange! Now, wait—

Q. (By the Advisory Master) Well, anyone, not near that time. A. Well, she was very fond of Correlli's writings. We used to get them from the library in New York, and we were reading—and we were reading some—she had a book of Longfellow's poems, she was reading that, and mother was interested in Christian Science and we were reading their text book, Science and Health.

Q. (By the Advisory Master) What character of music was she fond of? A. Well, she was fond of the quick tunes and the two-step and the walzes on the victrola, toward the last, and some hymns she was very fond of, and she had a very fine selection of records on the victrola; she has the violin records, which I think she has a very fine selection of records, but towards the last she liked the quick music; she seemed to get more out of it and she would dance around, or try to.

Q. Did she attend church? A. Always.

Q. Every Sunday? A. Every Sunday we attended church.

Q. What church? A. All Soul's Church, New York.

Q. Who is the pastor? A. Dr. Sullivan.

Q. Did she express any opinion of Dr. Sullivan? A. Well, she was very fond of Dr. Sullivan and she enjoyed hearing Dr. Sullivan very much.

Q. Did she comment at all upon his sermons? A. She would always comment on that and always speak favorably of them; of course, he was a very forcible man.

Q. When was the last time she attended church? A. Well, the last visit they had, that was like in—let me see. They closed in June, I think, the middle of June, I think they closed and she died in September; then in the summertime we would either go to the Unitarian Church while it was open in Orange or the Christian Science Church on Cleveland Street.

Q. Was that every Sunday or not? A. Well, if it was a stormy day I could coax her out of it, but whether it was stormy or not I could not coax her out of going to New York.

Q. She was insistent? A. About going to New York.

Q. Did she attend to any business transactions while you were in this cottage, 19 Whitman Avenue? A. Chiefly after we got into 19 Whitman Avenue I attended to all the business, because it was just after we got there the agreement of the adoption took place and the change of name, and after that we made a complete change.

Q. Did she attend to any business then after your moving into 19 Whitman Avenue? A. Scarcely any. She would have to give out—well, I guess that does not apply.

Mr. Kent: Please answer that.

A. Very well, she wanted me to do it.

Q. Now prior to moving into Whitman Avenue did she attend to business? A. She attended to her own business.

Q. What was that business? A. Well, she would give me an allowance for the house and my salary. She wrote those checks and gave them over to me. She put—of course, mother went to the safe deposit box and cut her own coupons up to the very last she went to New York.

Q. What do you mean the very last? A. Well, even that summer before she died, maybe not in August.

Q. She cut her own coupons? A. Well, she was at my side while I did it.

Q. She went to New York with you? A. She went to New York with me.

Q. And cut the coupons? A. Cut the coupons and deposited them and went to the bank, to the Guarantee Trust, and went to the safe deposit box. While I really cut the coupons she had the envelopes all prepared—even in East Orange—had them all ready to slip them right in.

Q. In whose handwriting were those envelopes? A. I think all were put in with the exception of one or two in mother's handwriting.

Q. In Mrs. Lees' handwriting? A. Yes. I do not think more than twice did I arrange the envelopes.

Q. You mean the envelopes for deposit? A. Yes.

Q. Who made out the slips for the income tax statement, ownership statement? A. After we moved to East Orange—previous to going to East Orange Mrs. Harvie would go downtown; after we went to East Orange the change was made and I went with her.

Q. You went with her? A. Yes. Now, the first income tax, that was made in East Orange—

Mr. Kent: Please continue.

Witness: The first income tax that was made after we went to East Orange I gathered the data and took it to the Guarantee Trust Company and they instructed me and the income tax was made and I think I made one after that, just following out the same instructions.

Q. Did Mrs. Lees ever go to the office of the Lees' Manufacturing Company, do you know? A. Yes.

Q. What was her object in going there?

Mr. Kent: Well, that is subject to the same objection that your Honor made.

The Advisory Master: Ask her if she knows.

Q. What did she do when she went there? A. Well, I went with her. Of course, toward the last I would go with her. I accompanied mother every where. We went to see Mr. Augustus and just stopped in for a social call. That is all I could say.

Q. Did she transact any business there? A. There was some talk of something about the business, but there was no regular business transacted. There was no transaction made, no business transaction made, only talking about the business she was interested in.

Q. There was a conversation about the business? A. A large part of the conversation would be concerning the business.

Q. Of what? A. Of the Lees' Manufacturing Company.

Q. In which she was interested? A. She certainly was interested in it.

Q. Well, when did you first begin to go with her to the office of the Lees' Manufacturing Company? A. I began to go with mother after I went to East Orange with mother in 1919 to her business, on her business trips. Up to that time I do not remember going only occasionally when there was nobody else to go with her.

Q. How did she go then? A. Well, she did go by herself sometimes, but, as a rule, Mrs. Harvie or I would go with her, and mostly Mrs. Harvie, when she was in New York.

Q. And beginning when? A. Beginning when?

Q. Yes, about what time? A. Well, really—

Q. What I am trying to fix is when did she stop going alone and when did she begin going with somebody with her. A. After we went to East Orange.

Q. Prior to that time? A. She would go alone to any place she wanted to go alone.

Q. Do you remember her going to Westport, Connecticut? A. Yes.

Q. When was that? A. I don't know that I can say when that was.

Q. Well, if you don't know— A. She did go, though. Of course, she went until she resigned as a—well, I don't think it is the trustee. What is the name?

Q. (By the Advisory Master) Was she a member of the board of directors? A. A director. That is what I wanted to say.

Q. (By the Advisory Master) When did she resign? A. I think it was in 1918.

Q. Do you remember a Mr. Lang having any-

thing to do with the construction of Rainbow Cottage? A. Mr. Francis Lang and Company was the plumbers.

Q. Plumbers? A. Yes.

Q. And do you remember Mr. Lang being there? A. Mr. Lang being there?

Q. You say during the time of the construction of the cottage. A. Yes, Mr. Francis was.

Q. Now, he testified this—

Mr. Kent: What page are you reading from?

Mr. Brown: Page 87.

Q. (Continuing) Mr. Lang testifies to this: "Witness: No, sir; nothing but dates and the charges against the property. And then after leading Mrs. Lees out of the room Miss Hough returned and said you must not pay any attention to her because her mind is affected, and then she went on to talk about the various matters with reference to my contract, which was approximately $4,000 for the plumbing and heating installation." Do I remember that? A. Do I remember saying that?

Q. Yes. A. I positively remember that I never said it.

Q. Did you ever say at any time that Mrs. Lees' mind was affected? A. I never did.

Q. It has been stated on the record here that you and Mrs. Harvie conspired to exercise undue influence over Mrs. Lees to induce her to make this will that has been offered for probate here. Did you ever attempt in any way to exercise undue influence over Mrs. Lees with reference to the making of the will? A. I did not.

Q. Any influence whatever? A. None whatever.

Q. Did you ever suggest to her the making of any provision of this will? A. I discussed with Mrs. Lees, or, rather, with mother, because it was not until after the agreement points of her will.

Q. That is, after the agreement of adoption? A. After the agreement of adoption I discussed with mother her will.

Q. What was the discussion? Just state exactly what it was. A. Well, I do not know that I can tell you exactly. The points were concerning Mrs. Haffner. There was the point of putting my brother in as an executor with you and Mr. Harvie. There was Mr. Taylor. There was the residue. There were different points we spoke about. I did—probably I did express my opinion. I don't know, but I always told her to go to you and to you I always brought her. To you I always brought her and I always tried to make sure that I did not influence mother regarding the will. Regarding the house it was a different thing. I put my money in it. It was all that I had and the house had to be mine.

ANNIE L. JAMES, recalled in behalf of appellant in rebuttal.

Direct Examination by Mr. Kent:

Q. Do you remember Mr. Benjamin Epstein visiting at Rainbow Cottage while you were there? A. Yes.

Q. You only saw him, I believe, once? A. One evening.

Q. And while he was there did Mrs. Lees carry on any conversation with him? A. No, she did not.

Q. While you were there did anybody read to Mrs. Lees? A. I never heard anybody.

Q. How long were you there? A. I think about four months.

Cross Examination waived.

Adjourned until Monday, May 21, 1923, at ten o'clock A. M.

FIFTH DAY.

Monday, May 21, 1923.

In the Matter
of
The Estate of Elizabeth L. Lees, deceased.

Depositions taken before Charles F. Kocher, an Advisory Master, by consent of counsel.

DOCTOR WILLIAM A. WAKELEY, sworn in behalf of Proponent.

Direct Examination by Mr. Atwater:

Q. Dr. Wakeley, what is your profession? A. Physician and surgeon.

Q. How long have you been admitted to the practice of medicine? A. Since 1888.

Q. And your principal office is where? A. 120 Main Street, Orange.

Q. Did you attend Mrs. Lees in her lifetime? A. Yes.

Q. During what period—or when did you first attend Mrs. Lees, if you know? A. I recall it, about six years ago.

Q. Did you make an examination of her at that time? A. Yes.

Q. From your examination what opinion as to her physical and mental condition did you form?

Mr. Kent: What time was that?

Mr. Atwater: Six years ago, he says.

A. Well, at that time there was some physical ailment; nothing in her mental condition that was abnormal in any way.

Q. When, if you remember, did you next see her? A. Well, I attended her regularly for some time; I think for an interval of perhaps three or four years.

Q. During that interval did you from your examination consider that Mrs. Lees was rational or irrational?

Mr. Kent: I object to that at this time.

The Avisory Master: Objection overruled.

(Objection noted by appellant's counsel.)

A. Rational. Perhaps I should say in that interim I sent medicine to her; I did not see her; I prescribed for her.

The Advisory Master: Bring it down to the time of the making of the will.

Q. Did you attend Mrs. Lees during 1920?

The Advisory Master: During her last illness.

Mr. Atwater: If the court please, this will was executed more than a year before her death.

A. In 1921 I think; it is very possible it is 1920. I have the record of that.

Q. Have you the record with you? A. No.

Q. Can you fix the time during 1920 or 1921 that you attended Mrs. Lees? A. Some time in the early summer; I should say June or May.

Q. What year? A. 1921, and again in 1922.

Q. How frequently did you attend her in the summer of 1921 and 1922? A. Perhaps two or three times in 1921 and four or five times in 1922.

Q. Did you make an examination on any of those occasions of Mr. Lees' condition? A. Yes.

Q. What did you find her condition to be? A. Somewhat depleted; somewhat anaemic. She had a distinct chronic Bright's disease and consequent loss of weight and pretty high blood pressure, abnormally so on each occasion.

Q. How was her mental condition? A. Normal.

Q. You never noticed any irrational condition? A. None whatever.

Q. (By the Advisory Master) Not even during her last illness? A. No, sir.

Q. Do you remember when you last attended Mrs. Lees? A. I think it was in June.

Q. June, 1922? A. Yes.

Q. You were not present when Mrs. Lees died, were you? A. No, I was out of town and my son attended her.

Q. On your vacation? A. Yes.

Q. And had been for some little time previously? A. Yes.

Q. Can you recall how near March 16, 1921, you attended Mrs. Lees? A. To the best of my recollection May or June of that year.

Q. How long prior to March 16, 1921, had you last seen Mrs. Lees? A. I think for an interval of about three years; I am not sure. In the meantime I had been in touch with her.

Q. (By the Advisory Master) During all your attendance on Mrs. Lees, doctor, was there ever a time when her mental condition was such as to cause you inquiry? A. No, sir.

Q. (By the Advisory Master) You never observed anything abnormal at any time? A. No, never.

Cross Examination by Mr. Kent:

Q. You were called in, doctor, to see her by Miss Hough, I assume, or Miss Lees? A. Miss Lees.

Q. As you knew her? A. Yes.

Q. By that I mean Miranda Hough or Miranda Lees? A. Yes.

Q. Did you get from her when you treated Mrs. Lees in 1921 or 1922 any earlier history of the case? A. Did I what?

Q. Any earlier history of her case? A. Did I have any earlier?

Q. Yes, from Miss Hough or Miss Lees? A. Oh, no; perhaps I made inquires how she had been for several months or a year.

Q. Did she tell you in 1921 or 1922 that Dr. Swift, the family physician, had pronounced her mentally incompetent? A. No.

Q. She never made any such statement to you? A. No.

Q. Did she tell you at any time during these two years you were treating her that her memory and mind were failing? A. Not that I recall.

Q. Not that you recall? A. No.

Q. Did she ever tell you that her mind was gone? A. Mrs. Lees herself?

Q. No, that is, did Miss Hough tell you? A. No.

Q. During the years that you saw her Mrs. Lees was a very sick woman? A. At times, yes.

Q. She was suffering from chronic Bright's disease, wasn't she? A. Yes.

Q. And that, I assume, doctor, was attacking all the vital organs and weakening her resistance? A. Naturally.

Q. Is Bright's disease, doctor, a germ disease? A. No.

Q. Well, what do you call Bright's disease? A. Two forms, acute and chronic, parenchymatous nephritis.

Q. Well, a parenchymatous condition of the kidneys eventually attacks all the other organs in the body? A. It would affect them, but it would not attack them.

Q. But it would not infect them? A. It is a localized condition.

Q. How long had she been suffering from chronic Bright's disease? A. I couldn't say.

Q. Did she have chronic Bright's disease when you saw her six years ago? A. I couldn't say that. As I recall it there was some kidney irritation when I made the diagnosis.

Q. Did you make the usual blood test or urine test in that case? A. Both.

Q. And both of them verified your diagnosis? A. Yes.

Q. Was the heart affected, doctor? A. Secondary, to some extent.

Q. You say at the time you saw her she had an obnormal blood pressure? A. Yes.

Q. That made physical action, so far as she

was concerned, dangerous? A. No, it was not as serious as that. For her age I thought she was a remarkably well preserved, old lady.

Q. How long were your visits to her? A. You mean the period of time?

Q. Yes, how long did you stay there when you went there? A. Half an hour, an hour perhaps; it depended on her condition.

Q. Making a thorough examination of her body? A. Yes.

Q. Was Miss Hough there all the time with you, or Miss Lees? A. I think so.

Q. I assume you would ask her where it pained her and she would answer. What else did you ask her, doctor? A. In the way of direct questioning. Most professional men rely upon their own physical examination. Naturally, the history of the case would have a decided bearing on it. Probably asked her how she had been and if this condition affected her at all.

Q. She would answer yes or no? A. Yes.

Q. Well, she would make such answers to the questions you put that any little child could make; if you asked, for instance, that don't pain, couldn't a child make the same answer? A. Well, hardly. A child we do not feel they are competent to answer. We depend upon our examination.

Q. Well, assume a child five or six. A. No, you don't get much.

Q. Suppose a child of seven or eight— A. Oh, yes.

Q. —would give answers that were perfectly intelligible to you as to history and pain and so forth, all the answers that she would give you would be no more than a child of that age? A. No, I would say there was more detail. She yielded to treatment very quickly, responded to treatment.

Q. Did you notice any drowsy condition on her part? A. I do not recall. Once or twice, I think, she was asleep when I called and was wakened up.

Q. Did Miss Hough, or Lees, tell you that she was ever drowsy? A. I do not recall that she did.

Q. Did she tell you that she was forgetful? A. That I do not recall.

Q. Then, as far as you know, doctor, the situation that you saw her in 1921 and 1922 continued up to the time of her death without any change? A. As far as I know, yes.

Q. Did anybody tell you about that time that she had failed to recognize her sister Harriet and called her Bessie? A. I didn't know she had a sister.

Q. None of those facts were ever brought home to you? A. No.

Q. What would be your conversation with Miss Hough or Lees at that time? A. As I recall simply the condition of the patient and the instructions that I gave her in the care of the patient, and the diet, care and hygiene; nothing further that I know of.

Q. And wouldn't she tell you just exactly what had happened in the time prior to your vist? A. You mean Miss Lees?

Q. Yes. A. Yes.

Q. Tell us what she would say to you? A. On different occasions, of course, there would be a different history.

Q. What is that history? A. In regard to her physical condition, nervous condition, sometimes insomnia, the question of the diet and stomach and intestional sluggishness, active toxemia from the intestines several times and in the main I felt the history was very clear.

Q. From Miss Lees, I am now asking? A. Yes.

Q. Please give us the conversation, not your conclusion. A. I am afraid I cannot; it is some time ago.

Q. (By the Advisory Master) What you just testified to is the gist she told you? A. You mean on each visit?

Q. (By the Advisory Master) Yes. A. Yes, at various times; the orders I would have to leave for the patient, whether they had been followed out or not, usually they were.

Q. Were you present at any time while a Mrs. James was in attendance upon the patient? A. I do not recall, no.

Q. Mrs. James was there over four months during the year 1922. Were you there at any time during that period? A. I do not recall any such person.

Q. Or 1921. A. I do not recall.

Q. Then, as I understand you, doctor, your visits were scattered and far apart? A. Oh, surely, yes.

Q. Did you make any memorandum of your visits and your treatment? A. Oh, at the time, yes.

Q. Where is the memorandum, doctor? A. In the office, on file.

Q. You did not bring it with you? A. Oh, no.

Q. Did you look it up before coming here, doctor? A. No.

Q. Did she ever say anything to you about her business affairs, Mrs. Lees? A. I think she told me about building or purchasing the house where I last saw her, but I cannot recall anything else.

Q. Did she tell you that she was building a house? A. No, I cannot recall that. My impression is now that the house was bought as it was. I could not tell you. The last time I saw her she was in the house.

Q. Did you see her in the house on Whitman Avenue? A. Yes.

Q. So-called Rainbow Cottage? A. Yes.

Q. Did she tell you anything about that house? A. That is what I referred to. I cannot tell you whether she bought it or built it herself.

Q. But she gave you the impression that it was her house? A. Yes.

Q. Did you know at that time that it was not her house but the house of Miss Lees or Miss Hough? A. No.

The Advisory Master: This is not cross examination. If you want to make the witness yours you may do it.

Q. But, as I understand it, from the conversation you had at that time she conveyed the impression to you that that was her house?

Mr. Atwater: I object to that.

The Advisory Master: Do not answer the question. If you want to call him as your witness you may.

Mr. Kent: I am talking about the conversation he had with Mrs. Lees.

The Advisory Master: There was nothing about that; as to her health, that was the only thing.

Mr. Kent: I think that is proper cross examination as to his entire conversation with the testatrix to show how he got his impression because my—

The Advisory Master: I have ruled on the question. You may call him as your witness if you wish.

Mr. Kent: May I have an objection noted?

The Advisory Master: I do not think it is necessary.

Q. Did you at any time during your visit discuss anything else except her health and her pains?

The Advisory Master: Not cross examination. There was not a word of that sort. Brought out on direct.

Mr. Atwater: I object to that.

The Advisory Master: On reflection I will admit that.

Q. (Question read.) A. Not as I recall.

Q. And when you would discuss her ailments with her, doctor, you would ask her whether this pained her or that pained her? A. She complained of no pains.

Q. You would ask her about her diet? A. Yes.

Q. And she would respond to that? A. Yes.

Q. And you would ask her about how her various organs were functioning? A. Yes.

Q. And she would respond to that? A. Yes.

Q. And you would ask her whether she slept well or not and she would respond to that? A. Yes.

Q. What else would you ask her?

Mr. Atwater: I object to that.

The Advisory Master: That is a proper question.

A. I do not recall—weather conditions, where she would go for an automobile ride; it was all part of the advice and suggestion. I was anxious to have her get outdoors as much as she could, and I think she did drive a good deal. That is only a surmise; I have no knowledge of it.

Q. (By the Advisory Master) You say your son attended her during her last illness? A. Yes, he called two or three times.

Q. (By the Advisory Master) Then your son

must have attended her from June, 1922 until her death? A. I think not. I think he was called in just at the end.

Q. Is your son still with you, doctor? A. Yes.

Q. And available? A Oh, yes.

Q. (By the Advisory Master) How many times, approximately, did you visit Mrs. Lees, doctor? A. I don't know if I have a record of that.

Q. (By the Advisory Master) Well, approximately? A. Well, I should say eight, ten or twelve times.

Q. (By the Advisory Master) Now, tell us this, what is the effect upon mental processes of the blood pressure of the character that Mrs. Lees suffered from, if any? A. Well, she had a distinct sclerosis, but the blood pressure would be reduced by treatment. Two or three times it was reduced to a normal point for a woman of her age.

Q. (By the Advisory Master) The question was what effect upon mental process has blood pressure of that type she had, if any. A. Why, if any it would be hardening of the arteries of the brain.

Q. (By the Advisory Master) Perhaps I did not make my question clear. What effect upon her mind, mental activities, would such blood pressure have? A. None whatever, I don't think.

Q. (By the Advisory Master) Now, take a typical case of chronic Bright's disease, or a case of the character that she had, during what period of time does it usually continue? A. Variable, for twenty years.

Q. (By the Advisory Master) And the minimum of what? A. Two years, four years.

Q. (By the Advisory Master) It might run from two to twenty years? A. Oh, yes.

Q. (By the Advisory Master) What, if any, effect upon the functioning of the mind has Bright's

disease? A. It is dependent entirely, in my judgment, upon the severity of the attack of the disease.

Q. (By the Advisory Master) Take the type Mrs. Lees was suffering from, what effect, if any, would that have? A. It would have none, as I could see.

Q. (By the Advisory Master) Did Mrs. Lees ever fail to recognize you when you came in? A. Oh, no.

Q. (By the Advisory Master) Did you engage in any general conversation with her? A. Just as testified and entirely regarding her condition.

Q. (By the Advisory Master) And you found her answers intelligent? A. Yes.

Q. Now, doctor, ever since you had known her she had been suffering from chronic Bright's disease? A. No, I can't say in the beginning there was any evidence of it, six years ago.

Q. Did you write a letter on September 23, 1922, to Miss Loveridge? I show you this letter and ask you if that is your letter. A. Yes.

Letter offered in evidence and marked A-1 5-21-23.

Q. In that letter, doctor, you state ever since I have know her, over five years, she was suffering from chronic Bright's disease and arterio sclerosis, that is correct? A. Yes.

Q. That differs from your statement that you have just made that she was at that time not suffering from chronic Bright's disease. Does that refresh your recollection now, doctor? A. That was probably gotten from my records.

Q. Is that the statement you now want to make, that you took this from your records? A. Yes.

Q. And what you are testifying to today is from your so-called memory? A. Yes.

Q. And your memory is in error? A. Evidently, from that.

Q. Now, do you want to change anything else you testified to today? A. You ask me if she had this when I first attended her. My recollection is she did not. Of course, the records will show anything on file.

Q. Is there anything else you testified to today that you now want to qualify? A. Not that I recall.

Q. You still want to let everything go what your memory recalls now? A. Yes.

The Advisory Master: We will have to proceed now with the cross examination of Miss Lees.

Mr. Kent: I am not prepared to go on with that today. I cannot go on. I have not made the slightest preparation.

The Advisory Master: You have made the same preparation as you would do in the course of trial. Miss Hough, take the stand.

Mr. Atwater: I would like to introduce Mr. Earle A. Merrill who appears for Miss Hough.

Mr. Kent: I am not prepared to make the slightest examination.

Adjourned until Monday, May 28, 1923, at ten o'clock A. M.

SIXTH DAY

Monday, May 28, 1923.

In the Matter
of
The Estate of Elizabeth L. Lees, deceased.

DEPOSITIONS taken before Charles F. Kocher, an Advisory Master, by consent of counsel.

(Appearances as before stated.)

Certified copy of the petition in the matter of application of Miranda F. Hough for leave to assume the name of Miranda Hough Lees, marked Ex. P-1, 5-28-23.

MIRANDA H. LEES recalled for Cross Examination by Mr. Kent:

Q. When did you first go with Mrs. Lees? A. In 1910.

Q. I am now referring to the time you came back, after the death of her husband, with Mrs. Lees. A. I came in 1914, in the fall of 1914.

Q. And under what arrangement as to salary? A. The same as I had been receiving.

Q. What was that? A. $18 a week.

Q. And your board, is that right? A. My board was not included in the salary; rather, we never made any such arrangement.

Q. You were paid $18 a week? A. Yes.

Q. And how long did that $18 a week arrangement continue? A. I could not say; I could not remember.

Q. When was it changed? A. I could not say; I do not remember.

Q. Until what year were you on a salary basis? A. Until 1921.

Q. You were paid $18 a week until 1921? A. I was paid $18 a week.

Q. Until 1921? A. Yes, and more.

Q. And more? A. Yes.

Q. How much more? A. In 1921 I was paid $125 a month.

Q. And how long did that continue? A. I could not say.

Q. (By the Advisory Master) Well, approximately, one year, two years, three years? A. Well, sometime during the war, when the salaries went up.

Q. How was that paid to you by check or cash? A. Both.

Q. Then in 1921 you say that arrangement was terminated? A. Yes.

Q. You are now referring to the so-called adoption period? A. Yes.

Q. Then I understand you to say that from the year 1914 on until 1921 you were paid either $18 a week or at the rate of $125 a month? A. Practically.

Q. And you were satisfied with that arrangement up to 1921? A. Yes.

Q. Who paid for your food and meals? A. Mrs. Lees.

Q. That is in addition to what you were getting? A. Yes.

Q. Were you at any time dissatisfied with that arrangement? A. I was never dissatisfied.

New Jersey State Library

Q. You were thoroughly contented with it? A. Yes.

Q. Was that a sufficient salary, in your judgment, to compensate you for the work you were doing? A. Yes.

Q. And if you did not think that was sufficient you would have asked for an increase in salary, wouldn't you? A. No.

Q. You would not? A. No, I would have made a change.

Q. You would have made a change? A. Yes.

Q. And the fact that you did not make a change shows you were thoroughly satisfied with your arrangement and the amount of money you were getting? A. Yes.

Q. Then in 1921 came this question of adoption? A. Yes.

Q. And you tried to have yourself adopted as a daughter of Mrs. Lees? A. I did not.

Q. You did not? A. No.

Q. Did you go to see any attorneys in reference to this so-called adoption? A. I did not.

Q. Did you go to see Mr. Brown in reference to this adoption? A. I did not.

Q. You did not? A. I did not.

Q. Did you go to see Judge Davis in reference to this adoption? A. On one occasion, after it happened.

Q. Will you speak up? I couldn't hear you. A. After it had been agreed upon that the adoption agreement should be drawn up I went to see Judge Davis.

Q. But until an agreement was made you did not see anyone? A. I saw them, but I did not go to see them.

Q. Please explain that. A. Mrs. Lees went and I accompanied her.

Q. In reference to adoption proceedings? A. Yes.

Q. Well, at the time that Mrs. Lees went and you accompanied her, did you discuss the adoption proceedings with Mr. Brown? A. No; I think not; I do not remember.

Q. You do not remember? A. I do not remember discussing adoption proceedings with Mr. Brown.

Q. Would you or you didn't? A. I can't say I didn't, because I don't remember.

Q. Do you want us to believe now that you do not remember discussing the adoption proceedings with Mr. Brown?

Mr. Atwater: I object to that question.

The Advisory Master: The question is very objectionable.

Q. Would you say that you had no conversation with Mr. Brown in reference to the adoption proceedings?

Mr. Atwater: If the Court please, I object to that question. The witness has answered it.

The Court: It is repetition. Answer it.

Q. What is the answer? A. I do not remember.

Q. You said something about making an agreement with Mrs. Lees in reference to adoption? A. What was it I said?

Q. You said after the agreement. What do you mean by the agreement? A. The agreement of the adoption.

Q. (By the Advisory Master) Suppose you just tell us all about the history of this adoption, who proposed it and what was actually done. A. Just

as I remember it it was when the guardianship was rumored; that was brought to Mrs. Lees; Mrs. Lees went to Mr. Brown and asked him if she could have me appointed as her guardian. Mr. Brown informed Mrs. Lees——

Q. (By the Advisory Master) No. You cannot state that conversation.

Mr. Kent: I am willing that it go in.

Witness: Well, Mrs. Lees learned that she could not appoint her own guardian. She then suggested to adopt me.

Q. (By the Advisory Master) Suggested it to whom? A. To Mr. Brown, and learned that Mr. Brown could not act as a New Jersey lawyer and referred her to a Jersey—she learned she must go to a Jersey lawyer. Then she called Rev. Walter Hunt to recommend to her a suitable lawyer to undertake such a proceeding.

Mr. Kent: I think she ought to be stopped at this point. That is not the agreement.

The Advisory Master: Well, this is very valuable testimony.

A. (Continuing) And he suggested Judge Davis. Mrs. Lees went to Judge Davis and told him what she wanted and she learned from him that an adoption—the New Jersey laws did not provide for the adoption of an adult, but also learned that she might enter into an agreement whereby she might express her wishes, which she did.

Q. (By the Advisory Master) Is this agreement in writing?

Mr. Atwater: It is in evidence.

A. That agreement is in evidence.

Q. (By the Advisory Master.) When did Mrs. Lees first speak to you about the adoption? A. At this particular time I don't know—after she had consulted Mr. Brown.

Q. (By the Advisory Master) She went to Mr. Brown with the idea of adopting you without consulting you as to whether you were willing to be adopted? A. She went to Mr. Brown with the idea of having me appointed as a guardian for her and learned that could not be and then and there was the first that I heard of the adoption.

Q. You say now that Mrs. Lees went to Mr. Brown with the idea of having you appointed her guardian? A. Yes.

Q. You are positive about that? A. If I remember correctly, yes.

Q. But at least that you remember? A. That is my understanding. That is what I remember.

Q. Yes? A. Yes, that is what I remember.

Q. And the reason she wanted you appointed her guardian was because of the fact that other members of the family had discussed the necessity of a guardian for her? A. Not necessarily.

Mr. Atwater: I object to that.

The Court: That is proper. She has answered it already. It is repetition, but she made that statement before.

Mr. Atwater: She simply said the reason was—she did not express the reason.

The Advisory Master: Oh, that is highly improper. You cannot testify as to mental processes. Until Mrs. Lees told you—you may ask that question.

Q. Did you have any conversation with Mrs.

Lees in reference to the appointment of a guardian? A. Yes.

Q. And in what year was that? A. If I remember it was in 1921.

Q. Well, the adoption proceedings or agreement was drawn in the beginning of 1921? A. I think so, yes.

Mr. Atwater: That agreement is in evidence.

The Advisory Master: That speaks for itself.

Mr. Atwater: It speaks for itself.

Q. That agreement is dated January 6, 1921, is that right? A. I don't know.

Mr. Atwater: January 6, 1921.

Q. Now, you went to see Mr. Brown with Mrs. Lees prior to January 6, 1921? A. Yes.

Q. How long prior? A. I could not say.

Q. You do not remember that? A. I do not remember.

Q. Was it a month or two? A. I could not say.

Q. When had the discussion arisen in your home as to the advisability of appointing a guardian? A. Around the time of the agreement for the adoption.

Q. And with whom did you have that discussion? A. With Mrs. Lees.

Q. Who brought it to the attention of Mrs. Lees? A. If I remember correctly it was Mr. Haffner, Philip P. Haffner.

Q. Were you present at the conversation she had with Mr. Haffner? A. No.

Q. What did Mrs. Lees then tell you? A. I cannot remember the conversation. I only remember

it was in regard to the appointment of a guardian.

Q. Give us your best recollection. A. That a lawyer had been—my best recollection is that a lawyer had been to see Mr. Haffner in that regard.

Q. In reference to instituting proceedings to have a guardian appointed for her? A. Yes.

Q. Who had sent that lawyer? A. I don't know.

Q. So soon as Mrs. Lees learned that some one desired to institute proceedings to have a guardian appointed for her she went to Mr. Brown to have you appointed her guardian? A. About that time.

Q. And you thought that was perfectly proper for her to do? Why do you hesitate? A. Because I don't know just what I thought. It was Mrs. Lees' case.

Q. But you were willing at that time to be appointed her guardian? A. I do not think the question came up.

Q. Were you willing at that time to be appointed her guardian? A. I couldn't say.

Q. (By the Advisory Master) Now, you know whether you were willing to act as her guardian or not? A. I think the question in my mind was that it could not be done.

Q. (By the Advisory Master) *You are evading the question.* Do you know whether in your own mind when this question of guardianship came up you would accept it or refuse it? A. I know now that I would not have refused it. I do not think I made up my mind then.

Mr. Kent: I think your Honor ought to direct the witness to answer in a responsive manner.

Mr. Atwater: I think that answer is responsive.

The Advisory Master: The witness is becoming evasive. You will have to answer questions directly, madam.

Q. (By the Advisory Master) Now, at the time when this guardianship was discussed you must have stopped and considered whether or not you you would act if requested. What were your thoughts on the subject? A. Well, as I say, my impression was then that it could not be done.

Q. (By the Advisory Master) That is not answering the question. A. Well, if it was to be done I would have accepted. I know I would have accepted it.

Q. And the reason you wanted yourself adopted——

The Advisory Master: No, that question is not fair.

Mr. Kent: I will withdraw the whole thing.

Q. At that time you desired or wanted to be adopted as a daughter? A. At what time?

Q. At that time. A. When we were in Mr. Brown's office?

Q. No, around that time when the question of guardianship was discussed. A. When it came up I was willing.

Q. (By the Advisory Master) Who first suggested the adoption? A. Mrs. Lees.

Q. And the adoption came as the result of a thought in your mind that it would prevent outside interference?

Mr. Atwater: If the Court please——

The Advisory Master: That is not fair.

Mr. Kent: I will withdraw that.

Q. You stated on your direct examination that you desired to be adopted in order to stop outside interference, did you not?

The Advisory Master: Well, ask her if she made such a statement.

Mr. Kent: One of the witnesses testified that she made that statement. I will connect that later on.

The Advisory Maser: Change that to "did you state;" did you make such a statement?

A. No, not to my recollection.

Q. Did you ever make that statement to Miss Harriet Loveridge? A. No, I didn't.

Q. Are you positive about that? A. To the best of my recollection I did not.

Q. Would you say now that you did not say so?

Mr. Atwater: If the Court please——

The Advisory Master: She has answered that question.

Mr. Kent: I will withdraw it.

Q. As I understand you now the question of adoption did not come up until after the talk of a guardianship? A. No, unless you go away back to Mrs. Lees.

Q. When did the question of adoption first come up with Mrs. Lees? A. About the time of the rumor of the appointing of the guardianship.

Q. And until that rumor came up Mrs. Lees had not discussed with you the advisability of adoption? A. No.

Q. So I now understand you to say that the rumor of guardianship came first and adoption second? A. Yes.

Q. You are positive about that? A. I am positive about that.

Q. From whom did you first get the rumor of a guardianship? A. Mrs. Lees.

Q. And you say she got that from Mr. Haffner? A. That is what she told me.

Q. Had you discussed it with Mr. Haffner? A. No.

Q. Was he in the house at any time after that information had been brought to you? A. I could not say.

Q. You do not remember that either? A. No.

Q. Did you go to see Mr. Haffner? A. I have accompanied Mrs. Lees to Mr. Haffner's home.

Q. And was that question then discussed? A. Not as I remember.

Q. Did you ask Mr. Haffner at that time? A. I did not.

Mr. Atwater: What time is referred to?

Q. After you got from Mrs. Lees the rumor did you accompany Mrs. Lees to the Haffner home? A. I may have.

Q. Did you see Mr. Haffner there? A. Possibly.

Q. Did you discuss with him the rumor? A. I did not.

Q. Why? A. I thought it best not.

Q. What were you afraid of?

Mr. Atwater: I object to that.

The Advisory Master: Objection sustained.

(Objection noted by appellant's counsel.)

Q. Why did you think it was best not to discuss it with him?

Mr. Atwater: I object to that.

The Advisory Master: No, that is proper.

A. I thought the least it was discussed the better it was.

Q. For whom? A. For all concerned.

Q. Does that include you? A. Yes, I should say it included myself, particularly Mrs. Lees.

Q. Did you bring the knowledge of that rumor home to Mrs. Harvie?

Mr. Atwater: I object to that.

The Advisory Master: The difficulty is, not having heard the previous testimony, I do not know what the significance of it would be, but it is my attitude in references of this kind to be very liberal in the matter of taking testimony. The only harm it does is to cumber the record.

Q. (Question read) A. Not that I recall.

Q. Did you know that Mrs. Harvie had gone to your family physician and asked him to certify as to Mrs. Lees' mental condition in 1920? A. I did not.

Q. Did you in 1920 see the family physician? A. I think so.

Q. Who was the family physician in that year? A. Dr. Swift.

Q. And Dr. Swift has been treating her since 1916? A. Well, I couldn't just say when Dr. Swift was called at first.

Q. But he had been treating her at least for several years prior to 1920? A. Yes.

Q. When that rumor came up as to the guardianship did you take it up with Dr. Swift? A. No.

Q. Did you take it up with anybody? A. No.

Q. Can you give us any explanation for your not taking it up?

Mr. Atwater: I object to that.

The Advisory Master: I think the question is proper.

A. I thought the proper thing to do was to let Mrs. Lees act as she proposed to do in going to Mr. Brown.

Q. You knew then that she went to Mr. Brown for advice on the guardianship? A. Yes.

Q. And you knew that she had stated to Mr. Brown facts concerning the so-called guardianship? A. She conversed with Mr. Brown. She went there for that purpose and I accompanied her.

Q. Do you know whether you took the question up with Mr. Brown in reference to having a doctor examine her? A. No, I didn't.

Q. Do you know whether Mrs. Lees took up that question with Mr. Brown? A. Not to my knowledge.

Q. After the knowledge of the rumor came to you did you see Dr. Swift? A. No.

Q. Did you see any other doctor in reference to Mrs. Lees? A. Yes.

Q. Which one? A. There was a Dr. Gantz for a short period.

Q. And did Dr. Gantz discuss the situation with you? A. Of her illness at the time?

Q. No, as to the guardianship? A. No.

Q. Did you mention anything to Dr. Gantz with reference to contemplated guardianship proceedings? A. Not that I know of.

Q. Did you have a Dr. Wakely? A. Yes.

Q. Did you tell Dr. Wakely about some proposed guardianship proceedings? A. No.

Q. Or that someone was trying to have a guardian appointed for Mrs. Lees? A. No.

Q. And Dr. Wakely treated her after you got that information? A. Yes.

Q. Will you tell us why you didn't acquaint Dr. Wakely with the fact?

Mr. Atwater: What facts?

Mr. Kent: The guardianship.

A. I am not in the habit of telling a physician; a physician tells me. That is all.

Q. Did you ask him to particularly watch her mental processes? A. No.

Q. Did you ask him at that time to certify as to whether she was mentally right or not? A. No.

Q. All you called him in for was this chronic Bright's disease? A. I called him in from time to time to see that there was nothing omitted that should be done.

Q. In reference to her chronic Bright's disease? A. In reference to her general health.

Q. You mean her bodily health? A. Well, all of that might include all the information that he might give me, all that he was supposed to look after.

Q. Did you give him at any time a history of her case? A. If he asked questions I answered them.

Q. Did you never volunteer anything? A. Not to my knowledge.

Q. Did you have any other doctor beside Dr. Wakely and Dr. Gantz in New Jersey? A. Well, there were practitioners, Christian Science practitioners.

Q. Well, did you acquaint anyone of them as to the guardianship? A. No.

Q. You have had considerable experience in chronic cases? A. That is my work.

Q. And you knew that it is necessary for a physician to get a complete history of the case in order to properly treat a patient?

Mr. Atwater: I object to that.

A. They do. They ask questions and they get it. That was my experience.

Q. By that you mean if they had asked you if guardianship proceedings were contemplated you would have answered that?

Mr. Atwater: I object to that.

A. I don't know that I would have answered that.

Q. Well, would you have kept that a secret from the doctor?

Mr. Atwater: I object to that.

The Advisory Master: You are going too far.

A. No, I made no secret of it. It just did not come up.

Q. Did you have any discussion with Mrs. Harvie at any time with reference to Mrs. Lees' mental condition? A. No.

Q. Did you ever have any discussion with Mrs. Harvie in reference to Mrs. Lees' financial affairs? A. I don't know; I cannot say I did.

Q. Did Mrs. Harvie, while you were still at the Beresford, tell you to hold or keep all gifts and money that Mrs. Lees may give you and return them to the estate after her death?

Mr. Atwater: If the Court please, is this cross examination?

The Advisory Master: Yes, I think it is. I think so. Cross examination in a case of this character goes very much further than it would in ordinary cases, because the issue is really the mental attitude of the testatrix, for illustration, conversations with the testatrix were formerly not admissible at all, nor are they admissible now to show undue influence, but they are admissible to show the state of mind, under the Ready case.

Q. (Question read) A. There was something of that kind touched upon, but when it was I could not say, but it did not involve as much as that statement might involve.

Q. (By the Advisory Master) Well, what did it involve? A. Well, it involved this, that any considerable—would have to be accounted for. I guess that is what it involved.

Q. (By the Advisory Master) When was this conversation? A. Well, as I recollect, it must have been after the commencement of the new house.

Q. (By the Advisory Master) When was it with reference to the adoption proceedings? A. I don't think it was in relation to the adoption.

Q. (By the Advisory Master) No, when was it? A. Well, around about the time, the building of the house, the guardianship, the adoption—all that took place about the same time and it was around that time I remember something in connection with a statement that involved you would have to be answerable for what was done. That is as near as I can give you.

Q. Wasn't this at the Beresford? A. I think not. I am quite certain it was not.

Q. How did Mrs. Haffner bring up that matter? A. That I don't remember.

Q. You mean to say that you do not remember how that matter came up? A. Just how that came up, we must have been building the house; that is all I can say. I think it was in connection with the building of 19 Whitman avenue, the new house. Now, that is as far as I can say.

Q. Did you ask her why she made that statement or took that attitude with you? A. No. I generally—if anything like that come up I would generally say I would have to keep a clear consience.

Q. Did you tell her that you would have to keep a clear conscience? A. I may have; I couldn't say.

Q. How many times did that question come up then? A. Once.

Q. Why did you say that whenever that question came up you would say I would have to keep a clear conscience? A. Just as I would say to you now that I am testifying on oath.

Q. You say that question came up only once with Mrs. Harvie? A. In connection with this statement about being responsible.

Q. Did you state to Mrs. Harvie that you would account to the estate? A. No.

Q. (By the Advisory Master) What did you say? A. Well, as far as I can remember I merely said that I would keep a clear conscience, to that effect; I do not know that I even used those words, but that was my attitude, I was doing the best I could and I was trying not to take advantage of Mrs. Lees in any way.

Q. Did Mrs. Harvie state to you that you were taking advantage? A. No.

Q. Did Mrs. Harvie at any time ask you as to the whereabouts of the large number of Liberty Bonds? A. No.

Q. Did you have at any time any other conver-

sations with Mrs. Harvie with reference to the control of the estate or the assets? A. Not that I recall.

Q. Do you know a Mrs. Taylor? A. Yes.

Q. Do you recollect whether she ever visited your home in East Orange? A. There are two Mrs. Taylors. There is Mrs. Edward Taylor and then there is a Mrs. Haffner's daughter. Which Mrs. Taylor do you refer to?

Q. I mean the lady in court. A. Why, yes, Mrs. Taylor has visited.

Q. Did you ever have any discussion with her in reference to Mrs. Lees' mentality? A. No, not that I remember.

Q. Would you say you did not? A. I say I do not remember.

Q. During what years did she visit you? A. I think only in 1922—yes, 1922.

Q. Didn't she also visit you in 1921? A. I do not recall any visit in 1921. It was just toward the last.

Q. Did she have a conversation with you in 1922? A. Yes.

Q. What was that conversation? A. I could not recall it.

Q. You cannot recall it? A. No.

Mr. Atwater: The testimony is there were several times she visited there, and then he asked what is the conversation. The Advisory Master: Well, I have not discovered any conversation yet.

A. Well, it was just on general subjects. If she was there for a meal and probably afterwards; I do not recall.

Q. Do you remember the first visit of her to your home? A. I do not.

Q. Do you remember the second visit of her's to your home? A. I do not.

Q. Do you remember any visit of her's to your home? A. I remember she called many times; I could not say; not often.

Q. Did she ever come to you in reference to a change in Mrs. Lees' will? A. No, I do not recall that she did.

Q. Would you say that she did not have such a conversation with you? A. I say I do not recall it.

Q. And did you say at that time that you could not consent to any change in the will now because it would not hold?

Mr. Atwater: I object to that. She says she does not recall any such conversation.

The Advisory Master: Then her answer would be no.

A. No. That is my answer.

Q. Do you say you did not have such a conversation with her? A. The will was talked about after Mrs. Lees' death; none before Mrs. Lees' death, so, consequently, no, not to that question.

Q. You say now that prior to Mrs. Lees' death Mrs. Taylor had no conversation of the kind I have indicated with you? A. Not to my knowledge.

Q. Didn't she comment to you on prior visits about Mrs. Lees' mental condition? A. Not to my knowledge.

Q. Do you realize that you are under oath? A. Yes, I do.

Q. Did you at any time have any discussion with

Mrs. Lees in reference to Mrs. Harvie? A. Well, we often spoke of Mrs. Harvie.

Q. But in reference to what Mrs. Lees was doing for Mrs. Harvie? A. I knew what Mrs. Lees had put in the will for Mrs. Harvie.

Q. Or what she was doing for Mrs. Harvie?

The Advisory Master: Just what do you mean by that?

Mr. Kent: In a financial way.

The Advisory Master: Ask the witness if she was doing it.

Q. Was Mrs. Lees doing anything in a financial way for Mrs. Harvie? A. She did help, or give to Mrs. Harvie financially, yes.

Q. Did you at any time protest to Mrs. Lees about what she was doing for Mrs. Harvie? A. I didn't.

Q. That is positive? A. That is positive.

Q. You remember that? A. I remember that.

Q. Do you know Mr. Benjamin Epstein, who testified in this case? A. Yes.

Q. You have heard Mr. Epstein testify that on one occasion while he was at the house Mrs. Lees took him upstairs and complained of the fact to him that you were complaining to her about things she did for Mrs. Harvie.

Mr. Atwater: I object to that.

The Advisory Master: If it is in the testimony. Well, after all is said and done if it is there it is proper and if it is not there it is improper.

Q. Please refer to page 256 of the testimony. Did you hear this question put to Mr. Epstein and

this answer: "What did she say? A. She said, 'Bennie, there may be something I want to do and if I do anything kindly for Mrs. Harvie it seems to draw the feeling against Miranda, and if I do anything kindly for Miranda it seems to draw the feeling against Mrs. Harvie.'" A. Yes, I heard him say that.

Q. But you say you never protested in any way? A. I did not.

Q. So that statement of Mrs. Lees was incorrect, if she made it?

Mr. Atwater: If the court please—

The Advisory Master: No, I will overrule that question. You may ask if the statement of the witness is correct.

Q. As far as Mrs. Lees was concerned you never said anything concerning what she was doing for Mrs. Harvie? A. I never objected.

Q. Do you know why she complained to Mr. Epstein? A. I don't know.

Q. Will you say, then, that the statement of Mr. Epstein is incorrect? A. I cannot say that. I was not there.

Q. Then if Mrs. Lees made such a statement it was not based upon any foundation in fact?

Mr. Atwater: If the court please—

The Advisory Master: I will permit the answer.

A. Not to my knowledge. I was not conscious of any existing reason to cause Mrs. Lees to make that statement.

Q. (By the Advisory Master) How old was Mrs. Lees? A. I think she was eighty-three.

Q. (By the Advisory Master) At the time of her death? A. At the time of her death.

Q. Now, while you were at the Beresford the question of moving to New Jersey came up? A. Yes.

Q. And did Mrs. Lees at any time desire to go to the Harvie home at Rutherford to live with them? A. Not to my knowledge.

Q. Did she ever say anything to you with reference to going to the Harvie home to live? A. No.

Q. Didn't you, after some such discussion, suggest that you had a lot in East Orange, or a home in East Orange, where you could live? A. No.

Q. Did Mrs. Harvie at any time say to you or to Mrs. Lees in your presence that she wanted her to come up to her house to live? A. No.

Q. Or to both of you? A. No.

Q. You are sure about that? A. I never heard anything in that connection, to my knowledge.

Q. Now, you both bought this Rainbow Cottage, did you not? A. Yes.

Q. How much money did Mrs. Lees give you in reference to the cottage? A. As I recount it, about $18,000.

Q. Now, how did she advance this money to you? A. She would give me a check and I would deposit it.

Q. Was it suggested in the beginning she was to have a mortgage for whatever advances she made to you? A. It was not.

Q. Didn't you tell Mr. Lang that? A. I did not.

Q. What was the understanding in reference to the advances?

The Advisory Master: Isn't that the subject matter of this agreement?

Q. The agreement that you made with Mrs. Lees is dated the 24th day of August, 1920, is that cor-

rect? A. Well, if it is there. I do become very mixed on dates.

Q. And was the question of guardianship brought up before the date of this agreement? A. I think not, if that was 1920.

Q. Yes. A. I think not.

Q. You say now that the question of guardianship came up after this agreement?

The Advisory Master: She has answered that question once.

Q. Have you a record of the various payments that were made to you by Mrs. Lees under this agreement? A. No.

Q. By that you mean you have not it with you? A. I mean I have not.

Q. Haven't it anywhere at all? A. I never made any.

Q. You said on your direct examination that Mrs. Lees had been failing for some years.

The Advisory Master: Ask her if she said it.

Q. Did you state on your direct examination that from 1919 on Mrs. Lees was failing in health? A. I could not tell you what I said. I can tell you what I know. I think I stated on direct examination that during the last two years Mrs. Lees failed, during the last two years of her life, I replied.

Q. Then is it a fact that for about two years prior to her death she was failing physically? A. Yes, she was failing.

Q. And she was failing mentally also during the two years prior to her death? A. She was failing—her memory was not retentive, her memory,

Q. Was she failing mentally?

The Advisory Master: The witness answered the question.

Q. You say her memory was failing? A. I say her memory was not retentive.

Q. And you would have to recall her attention to certain facts? A. If she failed to remember a thing we could easily call her attention to it.

Q. And whatever you called her attention to she agreed with? A. No.

Q. When did you first notice that her memory was going? A. Her memory was not so retentive within the last two years of her life, as nearly as I can tell you, principally toward the last.

Q. And upon whom would she depend during that period for the necessary information? A. I do not think that it was ever necessary—I do not think she depended on anyone; anyone that happened to be present, if she failed to remember an incident.

Q. Were you present at any time when she failed to recognize her sister, Miss Harriet Loveridge? A. I was present when she called her by another name. To my mind, she was more confused in the name than in the person. I was sure she knew who her sister was.

Q. But she did not know her name?

Mr. Atwater: Will you fix the time?

Q. What year was that? A. 1922.

Mr. Atwater: What time in the year?
Witness: August.

Q. (By the Advisory Master) And the will was dated when? A. March, 1921.

Q. Did you know that at that time that she called her sister Harriet Bessie? A. Yes.

Q. And Bessie was not the name of Mrs. Lees' sister? A. No.

Q. It was the name of the wife of her brother? A. Yes.

Q. Now, in the last two years of Mrs. Lees' life you took complete charge of everything, as you stated? A. No, not in the last two years.

The Advisory Master: I do not think she made any such statement, Mr. Kent. My recollection is that up to within two or three months within the time of Mrs. Lees' death that Mrs. Lees herself took care of things.

Mr. Kent: No.

The Advisory Master: I wish you would be careful as to what is stated in the record.

Mr. Atwater: Page 374, about the middle of the page.

The Advisory Master: I find my recollection is correct.

Mr. Kent: What page is that?

The Advisory Master: Page 374. I wish you would refer to the testimony every time.

Q. I am referring to page 373; 19 Whitman Avenue is Rainbow Cottage? A. Yes.

Q. You stated on your direct examination that "chiefly after we got into 19 Whitman Avenue I attended to all the business, because it was just after we got there the agreement of the adoption took place and the change of name, and after that we made a complete change." That is correct? A. To an extent.

Q. And when did you move in the Rainbow Cottage? A. In 1921, and may I say here I think I

gave it before as 1920, but I do get confused on the dates.

Q. You moved into Rainbow Cottage prior to the making of the last will, did you not? A. Yes.

Q. (By the Advisory Master) Now, on 374 of your testimony you say in speaking of deposits that Mrs. Lees made out the envelope. What envelope do you speak of? A. The envelope that enclosed the little coupons before they were taken to the bank.

Q. (By the Advisory Master) Do you mean those little envelopes that require a statement as to whether the coupons were taxable or not? A. No, not whether they were taxable, but the envelope we always accompanied the coupons with to the bank, and the statement that went with them showing what the coupons were, containing the Pennsylvania Railroad coupons and how much they amounted to and so forth. I think I only did that once or twice. I think only once or twice did I ever make out the slips or the envelopes. Mrs. Lees did that at her leisure.

Q. When did you first go to the safe deposit vault with Mrs. Lees? A. The first time I could not say, but to go regularly with her was after we went to East Orange. I possibly had gone once or twice before; I do not know.

Q. Did you make a list of the securities in that safe deposit vault? A. No.

Q. You yourself never had access to the vault alone? A. Yes.

Q. You had access to it? A. Yes.

Q. When did you first get authority for that purpose? A. I think that was in 1920. I am quite certain that was in 1920.

Q. When did you first receive that authority to

make a list of the assets and securities in the vault? A. No.

Q. Did you see Liberty bonds in that vault? A. Yes.

Q. How much? A. I couldn't say.

Q. About $30,000? A. No.

Q. How much? A. At that time I could not say. I could not state how many Liberty bonds—yes, I can by what was in the vault then because I know what was in it afterwards. There was, to my knowledge, $11,000 of Liberty bonds there, but as I say I did not check them up at that time.

Q. What happened to the Liberty bonds? A. They were sold.

Q. By whom? A. By Mrs.—well, at Mrs. Lees' instructions I sold them.

Q. You say you sold those Liberty bonds? A. At Mrs. Lees' instructions I sold those Liberty bonds.

Q. When? A. In 1921.

Q. What month? A. I could not say what month.

Q. Through whom? A. Through the Fidelity Trust Company.

Q. In Newark? A. Of Newark, New Jersey.

Q. And to whose account were the proceeds of those bonds credited to? A. To mine.

Q. (By the Advisory Master) What disposition did you make of the funds? A. I have intended to secure a constructive loan on 19 Whitman Avenue. Mrs. Lees refused to have that done and sold the Liberty bonds, put the money in the bank

Q. What other securities did you sell? A. Five Fort Worth and Denver bonds, the proceeds of which also went into 19 Whitman Avenue.

Q. And what other bonds? A. None.

Q. Then outside of the $11,000 Liberty bonds

and $5,000 of the Fort Worth Railroad Company you touched no other bonds from that vault? A. To sell them, no.

Q. And all the bonds that were there at the time Mrs. Harvie went there remained intact?

Mr. Atwater: I object to that question. Why, how does this witness know whether those bonds remained intact? There was no testimony as to what Liberty bonds there were.

The Advisory Master: Reframe the question. Ask her if she removed from that box any other securities.

Q. Did you remove from that box any other securities than you have mentioned? A. I did not. I did not remove the ones I sold. Mrs. Lees took them herself.

Q. Did any other securities come into your possession outside the two securities you mentioned? A. No.

Q. (By the Advisory Master) To your knowledge, did Mrs. Lees take any other securities? A. No, not to my knowledge.

Q. May I ask you whether the statement of Mrs. Harvie that there were about $110,000 of securities in the vault at the time she was going there occurred or not? A. I could not say.

Q. Didn't you ever check up that list? A. I did not check it up.

Q. At any time? A. No, I did not check it up.

Mr. Kent: May I have the list that you prepared?

Q. Do you know how much in bonds there was in the vault at the time of Mrs. Lees' death, or securities? A. No, I don't know.

Q. Wasn't there approximately $75,000? A. I think so. I do not know how much, though; I could not say; I just presume it was.

Q. And you say Mrs. Lees directed you to sell $11,000 of that $16,000 of bonds? A. Yes.

Q. Which would make the amount a little over $90,000, or thereabouts, altogether, $75,000 plus? A. Yes.

Q. Do you know in any way what happened to the securities above that amount which Mrs. Harvie said she checked up?

Mr. Atwater: I object.

The Advisory Master: Objection sustained.

Q. Do you know whether Mrs. Lees sold approximately $20,000 of bonds and other securities during the time you were going to the vault? A. Not to my knowledge, she didn't.

Mr. Atwater: If the court please, I would like to be shown anywhere in this testimony as to what there was in that box as of an earlier date.

The Advisory Master: It is immaterial.

Mr. Atwater: There is no proof there was any other amount other than what was testified to.

Q. Now, Miss Hough, did you at any time go over the letters of Mrs. Lees prior to their being sent out? A. Mrs. Lees read a great many of her letters to me.

Q. Did you at any time edit the letters? A. What do you mean just exactly?

Q. Correct them? A. Correct them, no. Well,

I will take that back, in case of company or something—that I mean, but if they were corrected, if there was anything that interfered with her health or anything like that, why, they were corrected; they were corrected and were not sent out, and if they happened to go out it was simply corrected over the phone, if it were something that couldn't come about; she did not always know what I had to do; she did not know about the household arrangements; her mind was not on that.

Q. And did you ever cut out any part of letters that she had written? A. Not to my recollection, no.

Q. Would you say that you did not do any such thing? A. I was with Mrs. Lees; I couldn't say, but as far as I know I never did, and if I did I had authority to do it. I will say that.

Q. To cut out parts of letters? A. If I did it; I do not say I did it.

Q. But if you did you had authority? A. Yes.

Q. And that authority came from Mrs. Lees? A. Certainly, the only authority I could get.

Q. And her authority to you was if the letters were not proper to cut out such parts as were not proper? A. No.

Q. Do you know whether any letters were received by anybody showing parts of them cut out? A. I don't know.

Q. Now, you had a Mrs. James with you a part of the time? A. Yes.

Q. And Mrs. James took a vacation during the summer of 1921 and 1922? A. 1921.

Q. Yes. A. Yes.

Q. And you wrote to Mrs. James telling her not to come back?

Mr. Atwater: I do not want to object, but the testimony of Mrs. James is not that year.

Mr. Kent: I am letting her fix it.

A. Well, Mrs. James was with me a few months and I think it was in the year 1921. I cannot be positive on dates.

Q. And at whose request did you notify Mrs. James that she was not wanted? A. I employed Mrs. James. That came under my authority, or came under the household care, and I also talked to Mrs. James about it and decided that it was best for Mrs. James not to return. She was only going to return for a short time and it was more congenial for me to make the change then.

Q. Did you know that Mrs. Lees had written to her during her vacation and started with the words, "Precious One"? A. No, I didn't know it —yes, I think I mailed letters to Mrs. James, but how it started off I don't know.

Q. Don't you know, as a matter of fact, that Mrs. Lees looked forward with anticipation to the return of Mrs. James? A. No.

Q. Don't you know, as a matter of fact, that Mrs. James was at the house and that she did not know she had been fired? A. I don't understand you there.

Q. Don't you know, as a matter of fact, that when Mrs. James visited Mrs. Lees after you had written her not to return, that Mrs. Lees did not know she was not to come back? A. Did I know that Mrs. Lees did not know?

Q. Yes. A. I know that she did know.

Q. Isn't it a fact that Mrs Lees had become very much attached to Mrs. James and that you did not desire her for that reason in the house? A. How is that?

Q. Please read the question. (Question read.)
A. For the first part I do know that Mrs. Lees

was attached to Mrs. James; for the second part, I did not ask Mrs. James not to return because of that, because of Mrs. Lees' attachment to her.

Q. Did you read to Mrs. Lees during the period that Mrs. James was in the house? A. I made a practice of reading to Mrs. Lees and I possibly did it when Mrs. James was there.

Q. Did you say you possibly did it? A. I probably did, not possibly; I most likely did it.

Q. Did you read Woodrow Wilson to Mrs. Lees at the time Mrs. James was there? A. No, that was in 1922 that we were reading Woodrow Wilson.

Q. Do you know what book you were reading around the time Mrs. James was there? A. I think we had the Romance of Two Worlds by Correlli. I do not know that the book was read then. We took the New York Times. Mrs. Lees read as well as myself. She would glance over the papers generally while we were preparing her breakfast. We took the Literary Digest. We do not read many books.

Q. Now, at whose request was your brother named executor in the will? A. At my suggestion, not request.

Q. Did you know a Miss Taggart? A. Yes, I did.

Q. You attended Miss Taggart during her last illness, did you not? A. Yes.

Q. You got into some litigation over the estate?

Mr. Atwater: If your Honor please—

The Advisory Master: That has nothing to do with this case, unless you can show how you are going to connect it up.

Mr. Kent: Excepting by several letters, to show that she has gotten considerable money from the Taggart estate.

The Advisory Master: For what purpose?

Mr. Kent: To indicate that this witness knew her ground and knew what she was doing.

The Advisory Master: No, not at all.

Mr. Kent: May I ask another question?

Q. Did you get all the assets of the Taggart estate?

Mr. Atwater: I object to that question.

The Advisory Master: Overruled.

(Objection noted by appellant's counsel.)

Q. Did you litigate the question of the assets of the Taggart estate after Miss Taggart's death?

Mr. Atwater: I object.

The Advisory Master: Objection sustained.

(Objection noted by appellant's counsel.)

Q. You attended a Miss Taggart during her last illness, did you not?

Mr. Atwater: I object to that question.

The Advisory Master: You have asked that question already.

Mr. Kent: Well, I will withdraw that.

Q. And as a result of your treatment of Miss Taggart during her last illness you procured her to turn over all her assets and property to you? A. No, I didn't.

Mr. Atwater: I object.

The Advisory Master: Objection sustained.

Q. Did you put some of the money from the Taggart estate into the house?

The Advisory Master: Now, I am going to overrule all questions with regard to the Taggart estate unless you can connect them up. If you examine on letters and that has any bearing on the case then you can ask the questions.

Q. Did you turn any of the assets that you got from the Taggart estate into the building of the house?

Mr. Atwater: I object.

The Advisory Master: Objection sustained.

Q. Did you tell Mrs. Lees that you were using the money of that estate in the building of the cottage?

The Advisory Master: I will overrule all questions until you show some letters. What difference does it make where Miss Hough got the money that she put into the Rainbow Cottage?

Mr. Kent: It will show materially the state of mind or condition.

The Advisory Master: What difference does it make?

Mr. Kent: The question is whether she stated so to Mrs. Lees.

The Advisory Master: What difference does it make?

Mr. Kent: Then if Mrs. Lees did not have any such information then it would show some status of her mind where she was getting certain facts that she was writing about.

The Advisory Master: I cannot see where it is material.

Mr. Kent: I think it is material.

The Advisory Master: I am certain it is not. If you want to cross examine on the letters you may. I thought this adjournment was taken for the purpose of an examination of the letters. Now, if you take the letters and cross examine on them, that is a different proposition, but you must direct your question to some specific point.

Q. Page 223 of the testimony, Exhibit P-14, did you tell Mrs. Lees—

The Advisory Master: No, let us hear what the letter says first.

Q. The letter of Mrs. Lees, dated April 14, to Mrs. Harvie, Mrs. Lees said this: "Miss Taggart left her considerable money and then the sale of 102 North 22nd Street gave her still more and it has all gone to meet expenses here," is that correct? A. That money went into Rainbow Cottage, 19 Whitman avenue.

Q. How much of the Taggart money went into the Rainbow Cottage?

Mr. Atwater: I object to that.

The Advisory Master: I do not see that is material one way or the other. I cannot see that it will have any effect at all, except to this extent, as proving the truth of her testimony, that she did put so much money in that cottage.

Mr. Kent: No, I hold that similar acts in other estates on her part show a tendency and knowledge and it is competent to prove

her state of mind. Our contention is that we are dealing with a witness here who has had considerable experience in estate litigation and has gone through the whole situation before.

The Advisory Master: Objection sustained.

(Objection noted by appellant's counsel.)

Q. Now, that house of your on Whitman Avenue, that contains a memorial window? A. Yes.

Q. And what is the inscription on that memorial window? A. Presented by Elizabeth Loveridge Lees in loving memory to her beloved husband, James Edwin Lees; to her adopted daughter, Miranda Hough Lees.

Q. And what was the cost of that window, if you know? A. Around $2,000.

Q. And is that a permanent part of the house? A. No. If I part with the house the window comes with me.

Q. You expect to take the window with you if you sell the house? A. I expect it. If I ever part with the house I expect to take the window with me.

Q. Whose suggestion was that? A. Mrs. Lees.

Q. She wanted this memorial window built in this house? A. Yes. Her remark on the subject was that she would rather put it in the home than in a church.

Q. Although she was attending at that time church services continually in New York and other places? A. Yes.

Q. And she preferred that the memorial window should be in the house than in the church? A. That was her remark.

Q. And you did not consider that odd, or pecu-

liar, did you? A. No, because I think I would like the same thing; if I was going to do anything I think I would rather put it in a home.

Q. At whose suggestion was your name added to the memorial? A. Mrs. Lees waited until the adoption was secured before she had the inscription put on.

Q. But you were still living there? A. It was presented to me in loving memory of her husband. I had nursed Mr. Lees. It was a tribute to me in memory of him.

Q. Now, isn't it a fact that when you went to secure contracts for that window that the matter was questioned and your authority was asked how you came to order a memorial of that type and magnitude for a house?

Mr. Atwater: I object to that.

The Advisory Master: How is that material?

Mr. Kent: Well, if you do not think it is material, except the state of mind of everybody—

The Advisory Master: The only state of mind we are inquiring about is the testatrix.

Mr. Kent: All right. I will withdraw that.

Q. Who lived in the house beside Mrs. Lees and yourself?

Mr. Atwater: Which house and when?

Mr. Kent: This house.

Mr. Atwater: Well, at what time?

Mr. Kent: Are you cross examining me?

The Advisory Master: The theory is correct, because the testimony has been that

there were various persons living there at various times.

Q. After you had moved into Rainbow Cottage who besides Mrs. Lees and yourself was there? A. I had at one time a colored maid and my nephew was with me at one time and then Mrs. James—

Q. What is the name of that colored lady?

The Advisory Master: Let her finish.

A. (Continuing) The colored maid, my nephew and Mrs. James, I think, were the only parties I employed—well, I did not employ my nephew.

Q. What was the name of your nephew? A. Robert H. Hough, Jr.

Q. How old is he? A. Thirteen—thirteen or fourteen.

Q. And what was the name of your colored maid? A. Leulla Cooke.

Q. And where did she live? A. Somewhere in Newark.

Q. Do you know where in Newark? A. Not now. I think I have her address.

Q. Did you get her through an agency? A. No, neighbor.

Q. Through what neighbor? A. Our next door neighbor on 22nd Street.

Q. The name, please? A. Mrs. Thompson.

Q. Her first name? A. Alexander.

Q. And how long was this colored maid with you?

The Advisory Master: When was she with you?

Witness: When?

The Advisory Master: Yes.

A. In 1921, four or five months.

Q. The beginning of 1921? A. Yes. We moved in in February; just after we got there.

Q. That would be prior to the execution of the will? A. In 1921—during the execution of the will.

Q. She was there? A. Yes.

Q. Did you at any time make an attempt to get an attorney to board with you or live with you?

Mr. Atwater: Oh, if the court please, I object to this.

The Advisory Master: What do you expect to show by that question?

Mr. Kent: Knowledge on the part of the witness as to the situation that was then developing. All right. I will withdraw it if you object to it.

Mr. Atwater: I certainly do object to it.

Q. Now, do you know the time when Mrs. Lees gave Mrs. Harvie a check for $1,000? A. I know of it.

Q. About when was that check given, do you know? A. Well, I couldn't say just when. I would say sometime in 1920.

Q. Wasn't it at the time of the adoption? A. No, I do not think so. I am quite certain it was not.

Q. Do you know why Mrs. Lees gave her that check?

Mr. Atwater: Oh, if the court please, I object to that.

The Advisory Master: Well, I will allow the question.

A. I do not know. I could not say. I do not know, no, I do not know.

Q. Wasn't it at your suggestion that this check of a thousand dollars was given? A. It was not, and I made no objection to it. I had nothing to do with it.

Q. Now, the doctor that last attended Mrs. Lees was Wakeley? A. The senior doctor's son, Dr. Wakeley, Jr.

Q. (By the Advisory Master) How many times did Dr. Wakeley, Jr., attend Mrs. Lees? A. Mrs. Lees was taken sick on Thursday evening and I 'phoned to him.

Mr. Atwater: Thursday when?

The Witness: Thursday evening.

Mr. Atwater: Before she died?

Witness: Yes, Thursday evening before she died I 'phoned Dr. Wakeley, Sr. and he was away. Mrs. Lees did not want Dr. Wakeley, Jr., to come that evening.

The Advisory Master: Well, the only question is the number of times.

Witness: Well, altogether I guess he was there five or six times, but it was within two days, because she died suddenly.

Q. Do you know where the senior Dr. Wakeley was at that time when you called him?

(Objected to.)

The Advisory Master: What has that to do with it?

Mr. Kent: I am going to lead to it.

A. No, I don't know.

Q. Do you know whether Dr. Wakeley was in a sanitarium at that time? A. I don't know.

Q. Had you heard about it? A. I had not heard about it.

Q. Now, I am referring to the senior Dr. Wakeley. A. So was I.

The Advisory Master: Didn't the doctor testify to where he was?

Mr. Atwater: He testified on his vacation.

The Advisory Master: My impression was he was abroad.

Mr. Atwater: Yes, he was abroad.

Q. At any time, coming back from New York to Orange, did Mrs. Lees decline to leave a train and hold up the train until she was taken out? A. She was slow in getting off and the train started and the conductor stopped it and came and helped us out.

Q. (By the Advisory Master) When was that? A. That was in 1922. That was just during the last year, and I started taking her by auto after that.

Q. You were with her at the time, weren't you? A. Sure.

Q. And you knew that you were coming to Orange and you made preparations to get out? A. Surely, and she was slow getting out.

Q. You stated in your direct examination—

The Advisory Master: Kindly refer to it, please.

Mr. Kent: I have not the page before me. I will withdraw that.

Q. You were always careful, were you not, not to suggest anything to Mrs. Lees? A. Why, no, I was not careful not to suggest anything to her.

Q. Especially so as not—

The Advisory Master: I cannot allow that tricky cross examination, when the testimony

is offered by her that she did even suggest in regard to the will. Now, that is not fair cross examination and I will not permit it.

Mr. Kent: I ask an exception to your remark, because it was unwarranted and the characterization is improper and unwarranted.

The Advisory Master: Well, it is. The facts are as I stated, because I read the testimony this morning.

Mr. Kent: I still want to take an exception as to the characterization.

Q. I am referring to page 378 of the record. You were asked whether any influence whatever was used by you and you answered there was none whatever used by you. A. In regard to what?

Q. Undue influence.

The Advisory Master: In regard to the influence of Mrs. Lees in the making of her will.

A. No, I did not influence her in the making of her will.

Q. And that you did not discuss with Mrs. Lees the will until after the adoption, or the points of the will? A. I never did.

Q. So prior to the adoption you never discussed anything at all with her with reference to the will? A. I think not.

Q. And prior to that time you in no way tried to influence her as to what she was doing with the various members of her own family? A. I never did.

Q. You never did either before or after the adoption proceedings? A. Not influence her, no.

Q. I was referring to that when I asked the question—

The Advisory Master: Well, now, what do you mean by making a distinction? You said not influence her, what did you do, if anything?

Witness: What is the question?

The Advisory Master: The question was did you before or after the making of the adoption attempt to influence Mrs. Lees in regard to dealing with her family? Is not that your idea?

Mr. Kent: Yes, exactly.

A. No, I didn't.

Q. And you were very careful not to—

The Advisory Master: She has answered the question.

Q. And whatever Mrs. Lees wanted to do was perfectly agreeable to you? A. I do not know that I looked at it in that way. It was her right to do it.

Q. Did you ever comment upon it in any way? A. Possibly. I do not remember that I did or I didn't.

Q. Did you express your disapproval after the so-called adoption proceedings?

Mr. Atwater: To whom?

Mr. Kent: Mrs. Lees.

A. Not to my knowledge, no.

Q. You are positive about that? A. I never influenced Mrs. Lees toward the members of her family. I am positive about that.

Q. And whenever she wanted to give anything to Mrs. Harvie you never expressed any opposition to it? A. I never did.

Q. Or the Haffners or anyone in that family? A. I never made any opposition.

Q. Did you sign a petition for a change of name in this county?

Mr. Atwater: That is all of record and offered in evidence, and Judge Davis has testified to it. There is a petition and corrected certified copy.

Mr. Kent: I want the copy of the petition you produced in Court.

Mr. Atwater: That was an office copy, but it was never the petition presented, and the explanation before the court is in reference to that.

Mr. Kent: I want that petition.

Mr. Atwater: It is here.

Q. Did you sign or seal a petition similar to this one, if you please? A. I signed one similar to that, and I may have signed that one. Is my name on it?

Q. And at whose suggestion were the words "the right of inheritance" put into the petition? A. Judge Davis put them in. I do not know whether it was in the petition or not. That was not in the petition. That was in the agreement of the adoption.

Q. I show you the petition. A. I know I went downstairs and looked it up. I was dumb-founded when it was read. I had those words removed and Judge Dungan can testify. When I heard that I went directly to the record to read it myself and I was dumb-founded to know it had gotten in the petition.

Q. Your thought in procuring the order for the change of name, was, if possible, to safeguard your right of inheritance? A. It was not.

Q. (By the Advisory Master) Why did you strike the words out? A. Because it was not the intention of the adoption.

Q. (By the Advisory Master) We are talking about the change of name. A. Because the Judge asked me if that included the right to inheritance and I said, no, that Mrs. Lees wished her will to remain as it was and I wished mine to remain as it was. As nearly as I can remember, that was the conversation between Judge Dungan and myself.

Q. (By the Advisory Master) You mean Judge Davis? A. No.

Q. (By the Advisory Master) This was while you were testifying? A. This was while I was changing my name and Judge Davis had the clause "right of inheritance," and I had that clause removed. Before that was signed—before we signed it at all he drew up another instrument and we signed the one with the clause out, because I did not want it in.

Re-direct Examination by Mr. Merrill:

Mr. Merrill: I would like to ask a few questions of Miss Lees as a witness for myself.

Q. Did Mrs. Lees have any children? A. No.

Q. To your knowledge did Mrs. Lees ever own or have possession of Liberty bonds to the value of $30,000? A. Not to my knowledge.

Q. To whom, if you know, did Mrs. Lees go for advice as to her investments? A. A Mr. Melvin Barrett, connected with Leach and Company.

Q. Were you present at the office of Leach and Company when Mrs. Lees was discussing her investments? A. I have been there on occasions.

Q. Did Mrs. Lees respect their wishes with respect to the change of investments? A. Yes.

Q. And in what form, if you know, were her investments, were they in stock or bonds or what? A. Bonds.

Q. It has been testified that Mrs. Lees had an income. Did she live within that income? A. Yes.

Q. Do you know whether Mrs. Lees ever denied herself things she desired because to purchase them would encroach on her principal? A. Yes.

Q. Yes, what? A. Yes, I know that she denied herself; that is, she did wait until she would have the money.

Q. To your knowledge did Mrs. Lees ever spend any one month the income anticipated in the succeeding month? A. No.

Q. Were you here on Wednesday, March 21, when Arthur H. Loveridge gave his testimony? A. No. I did not hear Mr. Loveridge's testimony.

Q. At page 28 Mr. Loveridge was asked if he knew you and he replied, "I did." He was then asked, "How long have you know her?" and his reply was, "Why, I have known her for a great many years." When, if at all, did you first meet Mr. Arthur H. Loveridge? A. Why, I have never met Mr. Loveridge, to my knowledge, with the exception when I learned who the gentleman was here.

Q. At page 29 Mr. Loveridge was also asked, "When you visited the Beresford she"—referring to you—"was there at all times?" and his reply was, "Well, she was not always there at the Beresford when I visited." Did you ever see or meet Mr. Loveridge at the Beresford? A. Not to my knowledge; not to my recollection.

Q. At page 30 Mr. Loveridge further testified that in the spring of 1918 he called at the Beresford after learning that his wife was ill—Mrs. Lees was ill, and he sent up his name. His testimony is as

follows: "Miss Hough came down to the desk of the Hotel Beresford and stated to me substantially this, Mrs. Lees' physical condition is such that the excitement which would be provoked by a visit except by those in constant attendance upon her might prove very serious to herself and she asserted to me most definitely, notwithstanding my urging to see my aunt, that she would not permit me to do so." Did you have any such conversation with Mr. Loveridge? A. Not to my recollection; not to my knowledge.

Q. Can you explain how Mr. Loveridge might have been mistaken? A. The only way is that one time I was sick at the same time that Mrs. Lees was sick and we had a nurse. Now, possibly the nurse was mistaken for me. It might have been that way, but to my recollection I never did.

Q. Did you hear the testimony of Miss Harriet Loveridge? A. No.

Q. In the testimony of Arthur Loveridge, at page 32, and in the testimony of Harriet Loveridge, at page 47, there is reference to the unresponsiveness of Mrs. Lees in conversation. Miss Loveridge testified there was no enlargement upon the conversation, nor any offering upon her part of any other subjects. In your observation of Mrs. Lees did you find her unresponsive in that way in conversation with her?

The Advisory Master: You better fix the time.

Mr. Merrill: Up to the time of the making of this will?

A. No, I did not.

Q. In her testimony, at page 52, Miss Loveridge states that she first met you September 8, 1922; is that the correct date? A. I think it is August, 1922.

Q. On that occasion Miss Loveridge testified Mrs. Lees invited her to a luncheon on Friday. At page 55 Miss Loveridge testifies, "My sister said that on leaving. It was her habit. My sister had given her life largely to entertainment and on leaving she would generally say I want you to have lunch with me on Friday," and again on page 57 she again testifies that Mrs. Lees said, "Now, I want you all to come next Friday for lunch." That is Mrs. Lees' invitation. Then Miss Loveridge's comment is, "Of course, no one there went to lunch next Friday. They all knew that it was her habit of inviting people to come to lunch next Friday." What are the facts with respect to invitations for Friday? A. Well, we generally made that our visiting day. We could only have one visiting day a week and that was the day that I had set apart to entertain Mrs. Lees' friends.

Q. Did or not the investment you made in the Whitman Avenue property represent substantially all you had? A. It did.

Q. And it was about what amount? A. $12,000.

Q. (By the Advisory Master) In the course of the last examination, when you were asked in regard to your acquaintance with Mr. Loveridge, you used the expression, "As far as I can recollect" and other similar expressions. Now, if you had been acquainted with him during that period would you have been sure or not? A. I think I would.

Q. (By the Advisory Master) Are you or are you not sure? A. He might have incidentally called at the Beresford and I have forgotten, but to my knowledge I did not meet him as I did the other members of the family.

Q. (By the Advisory Master) You mean to convey, then, that he might have been there from time to time without having been introduced to you by name? What is the thought back of the expres-

sion? A. The thought is if Mr. Loveridge called, as far as I can remember, I know nothing about it. That is the situation.

Q. (By the Advisory Master) When did you first become acquainted with him? A. With Mr. Loveridge?

Q. (By the Advisory Master) Yes. A. To my knowledge I never saw Mr. Loveridge until I came to court here.

Q. (By the Advisory Master) Well, when you came to court here and saw him did you recognize him as a person who had been to the house from time to time? A. No, I did not.

Cross Examination (Continued) by Mr. Kent:

Q. Now, this house on 22nd Street— A. Yes.

Q. —that was bought with your own money, was it not? A. It was bought with my own—the purchase was made in my name with a deposit.

Q. You did not borrow any money from Mrs. Lees on that house? A. I did not borrow money on that house when I bought the house.

Q. And you did not owe any money to Mrs. Lees at the time you commenced building the Rainbow Cottage? A. No.

Q. That is a fact, isn't it? A. That is a fact.

Q. And you had not borrowed any money from Mrs. Lees prior to the time you were building the Rainbow Cottage? A. Oh, yes, I had borrowed money from Mrs. Lees; for instance, Mrs. Lees had a mortgage later on the 22nd Street house.

Q. How much? A. About Three thousand dollars.

Q. (By the Advisory Master) What was the value of that property? A. It was sold for $8,500.

Q. And did that include the $3,000 that was Mrs.

Lees? A. Yes, that included that, but it had been cancelled.

Q. (By the Advisory Master) It had been cancelled prior to the sale? A. It was cancelled in this way, in view of the fact that we occupied the house during the summers Mrs. Lees cancelled the mortgage before—well, I guess that was in 1919. I do not know just when, in 1918 or 1919, when we used to go there in the summer.

Q. (By the Advisory Master) How many summers did you go there? A. The house was bought in 1916, 1917, 1918, 1919, 1920 and up to the time we moved.

Q. (By the Advisory Master) Who provided in it during the time you were living there together? A. Mrs. Lees.

Q. So she cancelled this $3,000 mortgage, and which represents $12,000 that went into the house? A. Yes.

Q. When did she loan you this $3,000? A. I could not say that, just when she took it over. I had a building and loan.

Q. When was that? A. I could not say that. I cannot say. That was later.

Q. How long after you went to that house did she give you the $3,000? You were only there three summers. Was it the first, or second or third summer? A. Well, she gave it to me in the Beresford. I do not remember.

Q. Was it prior to 1917? A. No, I don't think so, no.

Q. In other words, she loaned you $3,000 after the year 1917? A. Yes, I think she took the mortgage over after 1917.

Q. Well, did you borrow any money from her prior to 1917? A. I may have, for a small sum; I cannot say.

Q. (By the Advisory Master) Did you give back a mortgage at the same time that the loan of $3,000 was made? A. Did I give it to her?

Q. (By the Advisory Master) Yes. A. Yes, she had the mortgage.

Q. (By the Advisory Master) In other words, was there any period which elapsed between the receipt by you of the money and the execution of the mortgage? A. Oh, no, she took over the mortgage from the building and loan. The building and loan had the mortgage and it was at that time reduced to between two and three thousand dollars.

Q. Did you borrow any money from her in 1916? A. I could not be positive. It would not have been very much, if I did.

Q. Now, I read to you paragraph 14th of the will dated the 20th day of March, 1917, Exhibit P-25. Paragraph 14 says: "I give and bequeath to Miranda F. Hough, who is now living with me, the sum of $6,000. And in addition to said bequest I do hereby release and absolutely discharge the said Miranda F. Hough of and from all debts and sums of money which may be due and owing by her to me at the time of my death; and I direct my executor to deliver and surrender to her any evidences of such indebtedness, and to cancel and discharge the same." What did that refer to in 1917—and there is the same provision in the will of 1916, and in all other subsequent wills. Now, to what did they refer? A. I remember distinctly borrowing $200 from Mrs. Lees at one time. When it was I cannot recall. I was taking a mortgage on my sister's house.

Q. Did you ever pay that back? A. Yes, I paid that back.

Q. When? A. I could not say when. That was paid back.

Q. Was that paid back during the course of those wills? A. That was paid back. I could not say when. I remember that.

Q. This is Mr. Arthur Loveridge sitting here. A. I assume so.

Q. I ask you again whether at the time you were in the Beresford you had the conversation which was read by your attorney with Mr. Loveridge, who is sitting here? A. I never had it to my recollection; as far as I can remember I did not have it.

Q. Is it possible that you could have had it and you do not remember now? A. Not unless I mistook him for someone else; in fact, I do not remember ever coming down and telling anyone that Mrs. Lees was too ill to—that is, that it would be—of course, there would be times when the physician did not let her have visitors, but I never remember going down and meeting a person and giving those explicit instructions.

Q. In what year did the physician give you instructions not to allow any visitors? A. I could not say.

Q. While you were at the Beresford? A. I could not say.

Q. You say there were times when the physician instructed you not to permit visitors. Now, when was that? A. I couldn't say.

Q. That is a fact, isn't it? A. That is a fact.

Q. (By the Advisory Master) Have you ever seen Mr. Loveridge, this gentleman here, at Mrs. Lees' home at any time? A. Not to my knowledge.

Q. (By the Advisory Master) Why do you answer not to your knowledge? A. Because I have been there thirteen years and I might have seen somebody and I do not remember. I would not like to tell a man he did not remember it himself. I do not remember it. Now, so far as my memory goes, I did not, and that is all I can say.

HELEN P. TAYLOR, sworn in behalf of Appellant.

Direct Examination by Mr. Kent:

Q. Where do you reside? A. 76 Lincoln Avenue, Orange.

Q. You are a daughter of— A. Daughter of Mrs. Haffner.

Q. Mrs. Haffner was a daughter of which member of the family? A. Henry Loveridge.

Q. Do you recollect going with your mother to the Rainbow Cottage of Mrs. Lees? A. Yes, I have been there with my mother.

Q. How many times? A. Not more than twice, once or twice.

Q. Can you say when you went there first and what year? A. Well, my mother died in March, 1922, and it was late in the fall or the early winter; either late 1921 or early 1922.

Q. Did you see Mrs. Lees there at the time and also Miss Hough? A. Oh, yes.

Q. Did you have any conversation—did you attempt to carry on a conversation with Mrs. Lees? A. General conversation; we all joined in.

Q. Was Mrs. Lees able at that time to carry on a conversation with you? A. No, Mrs. Lees did not do much conversing; she was very placid.

Q. Did you call to the attention of Miss Hough Mrs. Lees' condition? A. I do not know whether it was dwelt on; it may have been mentioned.

Q. And did she say anything to you at all? A. Well, she said either then or at a future time when I saw her, I have heard her say that mother, as she called her, was failing and forgetful and not herself.

Q. Did you see her at any time after the death of your mother?

Mr. Atwater: See who?
Mr. Kent: Miss Hough.

A. Yes, I saw her once or twice.

Q. And will you please tell us what was your purpose in going to the house and what conversation you had? A. I do not know that I had any purpose. I think I was invited to supper one night with the boys—my half brothers, and as I recall it one did not go; I think only one boy went.

Q. Did you have a conversation with Miss Hough at that time? A. Yes, after supper, when we were upstairs, I spoke to her about my mother's will, because according to aunt Lizzie's will the two boys were remembered and I was not—

Q. (By the Advisory Master) Who is aunt Lizzie? A. Mrs. Lees. —and through my mother's will the two boys and I shared equally in my mother's estate, and I brought up the question that if my mother had outlived Mrs. Lees undoubtedly I would have come in for a share of what Mrs. Lees left my mother, on account of her own money being left equal, and, while I did not question the boys receiving something and my not receiving anything, because I did not see much of her, I questioned whether my mother's share could not be divided equally between the three of us, and Miss Hough said no, that she couldn't, that she did not think that mother, as she called her, was in position at that time, or in the state of mind to make a new will that would hold, and I said could she add a codicil or could it be fixed up in some way and she said, "No, Helen, I could not have that will tampered with now; it has got to stand the way it is," and that ended it.

Q. (By the Advisory Master) Can you fix the date of that conversation? A. It was in April,

1922. My mother died the 4th of March, 1922, and within a month or so after that date.

Q. Did you see Mrs. Lees at that visit? A. Oh, yes, she was there, at supper and I think I was there once after that.

Q. Did her condition change any at all, either for the better or for the worse? A. No, I would say she was practically the same the times I saw her. She was unresponsive and did not care whether she was there or where she was. That is what I would say. All her faculties were not registering. That is the only way I could express it.

Cross Examination Waived.

Examined by the Advisory Master:

Q. What do you mean by the expression that her faculities were not registering? A. Well, I suppose that is not a very clear way of putting it: well, I mean that she did take in everything that went on around her.

Q. If you asked her a direct question, directed to her personally, would you get an intelligent reply? A. I don't know.

Q. Did you ever hear such a question asked? A. No, I never heard her questioned a great deal on any subject.

Q. Perhaps you misunderstand me. Suppose somebody had asked her, "How are you feeling today, Mrs. Lees." A. She would say she was feeling well.

Q. Well, now, I mean any other questions directed to her of the same character; what kind of answers would you receive, or what kind of answers have you observed her give? A. Well, I never heard her answer many questions. As I say, she sat there and people would say something and

she would respond in a vague way; she was very forgetful; she would ask about relatives who had passed on and she would say where is this person and where is that person.

Q. What I am trying to get at is was her responsiveness to direct questions; did you in the two or three times that you saw her—was she brought into the general conversation or— A. No.

Q. She was not brought in? A. No.

Q. In other words— A. She was there just because she was there. That is about all I can say. I imagine from what I saw that the general feeling was that she was not in any condition to enter into the conversation.

Q. Have you had much experience with old people? A. Have I?

Q. Yes. A. No.

Recess.

ALFRED S. BROWN, recalled.

Cross Examination by Mr. Kent:

Q. It was your custom prior to send a draft of the will to her? A. Yes, that was customary.

Q. But the last will that you drew did not send her a draft? A. I do not think I did, Mr. Kent.

Q. Do you recollect Mrs. Lees coming to you in the year 1920 in reference to the appointment of a guardian for her? A. Yes.

Q. And did you have a conversation with her as to the advisability of the appointment of a guardian? A. If you will allow me I will state exactly—

Q. No, you will please state yes or no. A. No, I cannot say as to the advisability. I would not use that expression, that word.

Q. Did she come to you in reference to having a guardian appointed for her? A. She did.

Q. Did she tell you from whom she had gotten the information about the appointment of a guardian? A. No, she did not.

Q. Did you ask her? A. No, I don't think I did.

Q. But she had gotten that information from a source outside of yours? A. Oh, yes.

Q. At that time you knew of this letter of Dr. Swift's stating that she did not have mental capacity? A. Let me compare those dates.

Q. The letter of Dr. Swift was dated July 2nd, 1920. A. Will you tell me when the adoption proceedings—the date of the adoption?

Mr. Atwater: The adoption agreement was January 6th, 1921.

A. Well, I think it was after Dr. Swift's certificate. I am not sure. It was after Dr. Swift's certificate came to my knowledge, but it was after the date of Dr. Swift's certificate.

Q. Well, at that time she came to see you with reference to a guardianship you knew of this letter of Dr. Swift's? A. I am not sure about that.

Q. Well, hadn't Mrs. Harvie spoken to you shortly after she got the letter of Dr. Swift's? A. I cannot remember when Mrs. Harvie brought that certificate to me. I know she brought it to me.

Q. See if that refreshes your recollection. The letter enclosing it is dated October 21, 1920. A. Does she say she submitted it to me?

Q. No, but the letter enclosing that certificate is dated October 21, 1920. A. I cannot tell from

that, because no mention of having submitted the certificate to me is there. I cannot tell exactly when she brought that certificate to me.

Q. You had that certificate prior to its getting out of your possession in your safe for some time? A. I had it in my safe.

Q. Yes, and you had it prior to its getting out of your possession? A. What do you mean?

Q. Well, if she sent it to Arthur Loveridge in 1920 you must have had it before that time. A. Well, I cannot tell about that.

Q. Why can't you? A. Well, if Arthur Loveridge retained it and did not send it back to her, she would have no opportunity to give it to me.

Q. That is exactly what I am asking you. If Mr. Arthur Loveridge has had it since October 21, 1920, you must have had it prior to that time. A. That is true.

Q. And how long a time prior to that time did you keep it? A. Oh, I cannot tell you. It was in my safe. I cannot tell you how long.

Q. So when Mrs. Lees came to see you in the fall of 1920 you already knew of this letter of Dr. Swift's? A. Well, I cannot tell whether I did or not. It is fair to assume that I did.

Q. Then when she came to you stating that she wanted—

The Advisory Master: One moment.

Mr. Kent: I will withdraw that.

Q. Now, what did she tell you when she came to you with reference to the guardianship? A. She came in and seemed very much disturbed and said somebody was talking about having a guardian appointed for her and wanted to know what to do about it, and I told her that I did not believe any-

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thing of that kind was contemplated, that I never heard of it, and I added if it was so and I said if anyone undertakes to do a thing of that kind. let me know.

Q. Did you say to her, as you have now stated, that you never heard of anybody contemplating it?
10 A. Yes.

Q. Did you have this letter that Mrs. Harvie had delivered to you? A. Dr. Swift's?

Q. Yes. A. Well, that does not state that anyone was contemplating having a guardian appointed.

Q. Did she state why she had gotten that letter? A. Who?

Q. Mrs. Harvie. No.

Q. I understand you now to say that Mrs. Harvie
20 delivered this letter to you without any comment of any kind. A. Oh, she probably made some comment, but she didn't say anything about having a guardian appointed. Precisely what comment she made or what she said I do not know now. She brought that certificate in and delivered it to me, but what she said I cannot remember.

Q. You cannot remember that? A. No.

Q. Well, that letter made a very distinct and vivid impression upon your mind? A. Yes, it did.

30 Q. And that is the explanation you want to give now, Mr. Brown? A. Yes.

Q. And after she read this letter you put it away in the safe? A. I did.

Q. And then Mrs. Lees came in much perturbed about hearing from some other source about a proposed guardianship? A. You say then, but as I say, I am not clear in my recollection the order of those events, but Mrs. Lees came in and spoke to me at some time about somebody having a guardian

40

appointed, but when that was I cannot give you the date.

Q. Was it after July 2, 1920? A. Well, I don't know.

Q. Would you say it was or it wasn't? A. No, I can't say it was or it wasn't.

Q. How long prior to the so-called adoption proceedings? A. Oh, I can't tell you that.

Q. Haven't you any record as to that? A. No, I haven't.

Q. You would not say now whether it was before or after the date of this letter? A. Oh, I think it was after the date of that letter, yes.

Q. Did you tell her that you had a letter from Dr. Swift certifying as to her lack of mental capacity? A. I did not.

Q. After she discussed with you the advisability or the attempt of somebody to have a guardian appointed, did you acquaint her with the fact that you had this letter? A. I did not.

Q. Did you acquaint Miss Hough with the fact that you had this letter? A. I did not.

Q. Was that done for a deliberate purpose? A. What done for a deliberate purpose?

Q. The fact that you kept that information from both of them. A. Why, no, I had no purpose in it. I certainly did not want to say to Mrs. Lees that someone certified that she was not competent.

Q. But she came to you and said that somebody had been trying to start proceedings? A. No, she said somebody was contemplating having a guardian appointed over her.

Q. Who was that somebody? A. She did not state.

Q. Didn't you think it was your business, as her personal attorney, to ask who it was? A. No.

Q. Didn't you care enough to pry into her affairs

for that purpose? A. When the time came I would have done so, if any proceedings of that kind were taken to let me know.

Q. But didn't you ask who was talking about these proceedings? A. No.

Q. Or what the facts were? A. No.

Q. Didn't interest yourself enough to get that information? A. No, my effort was to quiet her fears. She seemed to be very much disturbed and I tried to sooth her, but if it was done to let me know.

Q. You did not suggest that she go to some high grade doctor to have her examined? A. No.

Q. You did not ask her to go to some institution for the purpose of setting her fears at ease? A. No.

Q. She was very frightened about it? A. She was disturbed about it.

Q. And Miss Hough was very much disturbed about it? A. I didn't pay very much attention whether Miss Hough was disturbed.

Q. Did you ask Miss Hough who contemplated proceedings of that kind? A. No.

Q. And although you knew of this letter and the knowledge brought to you by Mrs. Lees that somebody was contemplating proceedings against her you made no effort of any kind to have the facts verified one way or the other? A. No.

Q. And after that you drew a series of wills and agreements for her without in any way verifying the fact? A. Well, I drew a will—

Q. You drew a will in 1920. A. Let me give you the correct date.

Q. Answer my question. You drew a will in the latter part of 1920? A. I drew a will which was dated August 24, 1920, and executed on that date.

Q. Why was it, Mr. Brown, that you did not

give us the information on your examination as to Mrs. Lees coming in and discussing the situation with you? A. I do not think I was asked the question.

Q. Is that your only explanation? A. Yes.

Q. Did Mr. Atwater know of that fact? A. I don't know.

Mr. Atwater: I object to that.

Mr. Kent: I have a right to press my questions.

A. I really do not know, Mr. Kent, whether he did or not.

BELLE HARVIE, recalled.

Re-direct Examination by Mr. Kent:

Q. You have been subpoenaed here to bring your diary and letters and records? A. Yes.

Q. Have you produced them?

Mr. Atwater: A subpoena *duces tecum* has been served upon Mrs. Belle Harvie for her to produce all letters which she has received from Mrs. Lees, the testatrix, in her possession, and also the personal diary of this witness. We are perfectly willing to produce all the letters, but I object most strenuously to the introduction of any personal diary, first, on the broad general ground that no witness should be compelled to produce a record made by the witness in regard to her thoughts and feelings with regard to various individuals throughout a

period of years. That is the first broad, general ground, that no court should compel the production of such a private, personal memorandum. My second objection is on the ground that the well settled principals and particularly the rule laid down in *Jones on evidence* that a subpoena *duces tecum* is only to be employed to secure the production of books and papers that are to be introduced in evidence in the trial of an action; it is not to be used to secure papers to refresh the memory of a witness. Now, in the case of *Lindenthal* v. *Hatch,* 61 *N. J. Law, page* 29, the rule is laid down in this case that a diary is not evidence or admissible in evidence, and, therefore, could not be produced under a subpoena *duces tecum.*

The Advisory Master: It is perfectly lawful for the witness to refer to diaries for the purpose of refreshing her memory, of course, properly identified by her. Mr. Atwater's point is that it was not lawful or that the diary was not evidence, and, consequently, did not come within the class of papers which may be compelled to be produced by a subpoena *duces tecum.* Have you the diary?

Mr. Atwater: I have it handy, but not in court.

The Advisory Master: The offer of the diary in evidence will be denied. Nor will the refusal to produce the diary be held to be contempt. I think it would be an excellent thing if there is anything in the diary that the witness may refresh her memory from that she use it for that purpose, but it cannot be admitted in evidence.

Mr. Atwater: And counsel has no right to inspect the diary.

The Advisory Master: No, it not being in evidence.

Mr. Atwater: The only question on that is this, that as I understand the rule if the diary is in court and is used by the witness counsel might have the right to examine the book and I do not want to put myself in that position.

The Advisory Master: No.

Mr. Atwater: Counsel will advise the witness not to produce it.

The Advisory Master: Unless she desires to use it.

Mr. Kent: The witness has referred to various dates and that is what I want to verify.

Mr. Atwater: The witness testified from a little book here which she had made up and which I am perfectly willing to offer. The only diary which she has commenced in the year 1921. These dates that the witness testified to, occurrences, as having fixed the time, were all in 1920. Her explanation is that she refreshed her memory by a corresponding period before the diary, with the exception of one event, which did happen in 1921, which she testified to.

The Advisory Master: It amounts to this, Judge Flannagan said if you want to produce it you might.

Q. But you obtained the memorandum you have in that book from the diary? A. Yes.

Q. And your diary is your book of original

entry; you made that up at the time these various things happened? A. Yes.

Q. Now, where is that diary now? A. I don't know.

Q. What is that? A. My counsel has it.

Mr. Kent: I ask that the diary be produced, since we subpoenaed it.

The Advisory Master: Under the case I just examined the rule is laid down that diaries are not admissible in evidence, and any papers not admissible in evidence cannot be required to be produced under a subpoena *duces tecum.*

Q. Does your diary contain the date when you went to see Mr. Brown with reference to the certificate of Dr. Swift?

Mr. Atwater: I object to that.

The Advisory Master: Ask her if she knows.

Mr. Kent: I asked her if it contained it.

The Advisory Master: Oh, well, she can answer it.

A. I really don't know.

Mr. Atwater: I do not want to interrupt counsel, but I am willing to make this statement, this diary begins January 1, 1921, and before Dr. Swift's certificate. I am saying that for the purpose of saving time.

Q. (By the Advisory Master) Is the diary in Mr. Atwater's possession the only diary you have? A. The only one.

Q. Have you got in your diary the information concerning certain rings that you got? A. I do not know; I cannot remember.

Q. Didn't you get a certain date that you got a check in 1920 out of that diary? A. That diary is in 1921.

Q. Did you tell us that you got all the information in this book from your diary? A. Yes. I went approximately by my diary and the—

Q. Isn't there a statement that you got an emerald ring in 1919? A. No, I didn't get any emerald ring ever.

Q. "Gave me ruby ring spring of 1920." A. Yes.

Q. You got that from your diary? A. Yes. I told you approximately I consulted my diary and I fixed certain things that I knew happened. That helped me to locate these other things.

Q. Where is your diary for 1920? That is what I want. A. I never had one; never kept one.

> The Advisory Master: Cannot you understand? I understand this witness perfectly. When you are trying to locate the date and if you find another date and know it is an approximate date six months or a year, that you can fix the later events from the earlier dates. That is common experience.

Q. I asked you on your examination about a check that was dated June 30, 1920. Where did you get that information from? It is right here? A. Yes, I know.

Q. Where did you get that from? A. I must have gotten it from my bank book.

Q. Haven't you got that date in your diary? A. I never had a diary in 1920.

Q. Do you remember my asking this question—

I am referring to page 188: "Where did you get this information?" and your answer was, "Out of another book, out of the diary that I keep." Was that correct when you last testified? A. I had a little book similar to this with these same dates in it—

Q. Where is that book? A. —and I cannot find it, but it had nothing more than is right in here.

Q. Oh, you had another one? A. Yes, and I copied it in this book, but I had nothing more in it.

Q. What happened to that other book? A. I do not know. It got astray.

Q. Did it go astray last week? A. No.

Q. How long ago did it go astray? A. I do not know; a long time ago.

Q. If you copied it in this book for the purpose of testifying in this case, how long ago did it go astray? A. Perhaps a month ago or two months ago.

Q. That book went astray? A. Yes.

Q. Did you destroy it? A. No, I didn't.

Q. Who did? A. No one. It may have fallen in my waste basket.

Q. Accidently dropped in your waste basket and carried away; is that the explanation you want to give to us?

Mr. Atwater: I object to that.

The Advisory Master: The witness testified she lost the book and she does not know how.

Q. When did you bring this letter marked Exhibit A-2 to Mr. Brown, this letter of Dr. Swift's? A. The day before he left.

Q. How long after July 2nd, 1920? A. Oh, I don't know.

Q. You mailed this letter to your brother on October 25, 1920, didn't you? A. Yes.

Q. And he has had it ever since? A. And I asked him several times—

Q. I am asking you has he had it ever since? A. So far as I know. He told me he mailed it three times but I never received it.

Q. Mr. Brown had it before you sent it to your brother, didn't he? A. Yes.

Q. And how long did he have it before you sent it to your brother? A. I cannot just say.

Q. He had it for some time, didn't he? A. I do not remember how long he had it.

Q. You do not remember. 'Til now? A. No.

Q. Now, did you have a conversation with Mr. Brown as to your purpose in getting this letter? A. Yes.

Q. And did you tell him that you contemplated the appointment of a guardian? A. No, I did not. I told him what I wanted that letter for.

Q. And what did you tell him you wanted that letter for? A. I told him I wanted that letter because I had an idea Miss Hough was going to induce Mrs. Lees to make another will. I never mentioned the word guardian in connection with that letter.

Q. But you sent that letter to your brother for the purpose of having him start guardianship proceedings? A. I do not remember if that was the reason. He asked me—my brother, Mr. Loveridge, rather, asked me if he could see that letter. He wanted to show it to his lawyer and see if it was all right, if it was worth anything, and he told me afterwards the lawyer said it was not worth the

paper it was written on, and I said, "I would like to have you return it," three or four times he said that and finally he said, "I do not intend to return that letter, I am going to keep it, it is valuable to me."

Q. Prior to 1921 you did not keep a diary except the book you lost? A. That is all.

Q. Why did you start to keep a diary in 1921? A. Well, my daughter went to college and she wanted to keep a diary of her days in college and said, "Mother, why don't you keep one, too?" and I did it more to keep a record of all the concerts I attended, and that was the principal reason I kept the diary.

Q. And did you keep in your diary the various acts of Miranda Hough? A. No.

Q. Is there any reference to Miranda Hough—

Mr. Atwater: I object to that.

The Advisory Master: Objection sustained.

(Objection noted by appellant's counsel.)

Q. Have you any reference in your diary to any act of any person tending to show undue influence?

Mr. Atwater: I object to that.

The Advisory Master: The contents of the diary cannot be explored into. It is not in evidence, and the diary not being in evidence its contents cannot be inquired into.

(Exception noted by appellant's counsel.)

The Advisory Master: The rule of law is this, and it is laid down by that case that a witness may, if she chooses, use papers and documents to refresh her memory, but she is not obliged or compelled to produce those documents.

Mr. Kent: Then you want to hold we cannot refresh her memory by papers in her possession?

The Advisory Master: If she makes a statement of fact that is erroneous, that she could have refreshed her mind about, she does that at her peril.

Mr. Kent: For the purpose of refreshing her recollection as to the statements she made—

The Advisory Master: The diary is not here. You can put it in the record that the diary is under her control at the present time and the witness declines to use it.

Mr. Kent: I understand Mr. Atwater will decline to produce the diary.

Mr. Atwater: I do.

The Advisory Master. I also suggested as a solution of the problem that if counsel would refrain from an examination of the diary that might be the solution of it.

Mr. Atwater: On the ground that after it was once produced counsel would have the right to use it.

The Advisory Master: If you will waive your right to examine the document in question, that might be a solution of the difficulty, that being the only reason why it is not produced.

Mr. Kent: We would have to reserve the right to cross examine her afterwards.

Q. Now, Mrs. Harvie, did you ever get a letter from Mrs. Lees with parts of it cut out? A. Yes.

Mr. Kent: I ask you to produce it. Will you please show us the one that is cut out.

Mr. Atwater: Here it is.

Q. (By the Advisory Master) Whose handwriting is that letter in? A. Mrs. Lees.

Q. (By the Advisory Master) And the date? A. March 3, 1922.

Q. Is that the only letter you received with parts cut out? A. The only one.

Q. Did you talk to your aunt about the part of the letter that was cut out? A. I think I told her that I had received a letter that had a part of it cut out.

Q. Do you know what it contained? A. I have not the remotest idea; possibly an invitation for supper, which was not convenient to the housekeeper.

Q. That is your best explanation of it? A. Yes.

Letter marked Exhibit A-1, 5-28-23.

"March 3rd, 1922, at 19 Whitman Ave., East Orange, N. J. My dearly loved Belle—Far more precious than I can express—O, I have so longed to see you since you were last here that I have found myself earnestly wishing our homes are within walking distance, were that possible. Just as soon as the roads are better fitted for auto travel than at present, our auto is to be taken from the garage it will be put in good travelling condition, and I will be over to spend a day with you. Meanwhile if you can be here for a day *COME* and do not fail to do so—*Dear* Marion continues *very* ill in spite of having two nurses and Helen and an *excellent* physician to care for her. I think she could escape a *great deal* if she "passed on." She would be with so many who so truly love her. Her own dear parents and mine, Mr. and Mrs. Patton and a score of others, with-

out the least danger of having to see or meet that Haffner. Our dear Robert has just returned from Marions, but with no better news. If she "passes on," dear Maranda proposed that Lud and Lou come to us for a while, to which I do not object, tho I think Helen will eventually claim them, which will be all right. Do try in earnest to be soon face to face with Your truly and deeply loving Aunt Lizzie. I read my letter to dear Maranda and the part cut out, and might have caused a serious misunderstanding."

Q. Did you also bring a list of the securities? A. No, I did not.

Q. Is that list of the securities in your possession now? A. Yes, that is simply a list that I copied from a book in Mrs. Lees writing that was in the box. I did not check up the securities.

Q. Did you examine the Liberty bonds in the box?

Mr. Atwater: When?

Mr. Kent: At the last time that she went there.

Mr. Atwater: When was that?

A. The last time I went there I think was in May.

Mr. Atwater: What year? (No response.)

A. (Continuing) I never examined the securities that were in the box. I simply cut the coupons and handed them to Mrs. Lees and put them in their proper envelope.

Q. Did you know how much of Liberty bonds there were there? A. The last time I was there there were fifteen Liberty bonds.

Q. Were they thousand dollar ones? A. Yes.

Mr. Atwater: The witness has not fixed the time.

Witness: That was in May, I think it was 1922.

Q. There were $15,000 in Liberty bonds? A. $15,000 in Liberty bonds.

Q. Do you know what became of those $15,000 of Liberty bonds? A. I know nothing further about Mrs. Lees' affairs since that time. I never went—I know nothing about that, any more than you do.

Q. What other large amount of bonds were there, if you know? A. I do not know. I simply cut the coupons and did not pay much attention. There were a good many of them were in groups of fives; I don't know any more than that.

Q. (By the Advisory Master) How is it there was $15,000 Liberty bonds and you do not know how many other ones? A. Because she had about fifteen and she put them together and she said count them up; those are the only bonds she alluded to when I was helping her, and that is how I happened to know.

Q. What other bonds did you notice there that are not on this list? A. Are all the bonds on here?

Q. Yes. A. I don't know; I can't tell you from this; I never paid much attention to the bonds, to tell you the truth.

Q. But you know you counted fifteen Liberty bonds? A. I know, because I went with her when she received the new Liberty bonds which she bought; she put them with the others and counted them and she wanted to know how many there were there.

Q. Did you have a conversation with Mr. Benjamin Epstein in reference to 100 shares of stock

of the Lees Manufacturing Company? A. Not that I remember; I do not think anything special.

Q. Did Mr. Epstein ever tell you that Miss Hough had offered to sell him 100 shares of stock? A. No.

Q. He didn't? A. No, he didn't.

Q. Did you ever tell that to your brother? A. I don't know whether I did or not.

Q. Do you mean to say that you don't know whether you ever told your brother or not about Mr. Epstein telling you that Miranda Hough had offered to sell him 100 shares of stock of the Lees Manufacturing Company if he would pay her the income or Mrs. Lees the income? A. Yes, now I remember it.

Q. You had such a conversation? A. I had such a conversation, yes, and Mr. Epstein did tell me.

Q. Now, give us again in full the conversation you had with Bennie Epstein. A. Oh, I can't.

Mr. Atwater: Why?

Mr. Kent: I don't care why she had it.

Q. When did you talk to Bennie Epstein? A. I can't remember when it was; I have no idea of the date.

Q. Was it 1921 or 1922? A. I have not the remotest idea, but he told me one day that he had had—that Miranda had offered him 100 shares of the Lees Manufacturing Company stock.

Q. Was that prior to the death of Mrs. Lees? A. Yes.

Q. That Miranda Hough had offered him 100 shares of stock? A. That is what I gathered from what he said.

Q. What else did he say to you? A. I don't

remember anything in particular, except that he did not take it.

Q. And didn't she make as part of that proposition that he should pay her the income? A. I do not remember that part of it.

Q. Did you tell that to Mrs. Lees? A. No, I never discussed in any way Mrs. Lees business affairs with her or anybody else.

Q. Did you not think it was your duty to go to Mrs. Lees and tell her that Miranda Hough was offering 100 shares of stock which did not belong to her? A. No, because I knew if she was I felt it was with Mrs. Lees' consent, because she had Mrs. Lees' absolute confidence. I never discussed the business side of our relationship.

Q. You knew at that time that Miss Hough did not have 100 shares of stock? A. No, I didn't know what Miss Hough had.

Q. You didn't know? A. I didn't discuss those things with Mrs. Lees.

Q. Where was this conversation had with Bennie Epstein? A. I met him one day on 34th Street.

Q. New York City? A. Yes.

Q. How long prior to the death of Mrs. Lees was that? A. I can't tell you; I do not remember.

Q. Was it after the making of the last will? A. I do not remember; I can't fix it.

Q. Will your diary show that?

Mr. Atwater: I object to that question.

The Advisory Master: Objection sustained.

(Objection noted by appellant's counsel.)

Q. Did you mark down in your diary the date when you met Bennie Epstein and had that conversation with him?

Mr. Atwater: I object to that.

The Advisory Master: Sustained.

(Objection noted by appellant's counsel.)

The Advisory Master: You may have a general exception to any question you ask about the diary.

Q. Did you make any record of that conversation with Benjamin Epstein with reference to the sale of 100 shares of stock?

Mr. Atwater: I object.

The Advisory Master: That question is proper.

A. I cannot be sure; I don't know; I don't believe I did, because I did not keep the diary for those things.

Examination continued by Mr. Siegel:

Q. Mrs. Harvie, did Mrs. Lees ever complain to you as to the condition of her feet? A. Well, one time she slipped on the stair and hurt one foot quite badly and was lame for a long time. She fell down the stair in this first cottage she lived in; I do not remember any other time. It gave her a lot of trouble for a long time. She strained the tendon in her heel.

Q. And did she tell you she was using any specific remedy for the treatment of her foot?

Mr. Atwater: I object to that question.

Mr. Siegel: I offer letter of July 11, 1917, signed by "Aunt Lizzie" and addressed to Mrs. Harvie.

The Advisory Master: A letter of 1917 would not be very relevant as to the mental capacity of a person in 1921.

Q. "I heard from Dr. Swift as to the doctor he would like me to employ in East Orange, but find he is away for the summer. However, my feet are less swollen today and if they continue to improve I may decide the Poland water which I am drinking very freely of is the needed remedy."

Mr. Atwater: Anybody would understand that. You need not answer that.

Letter marked Exhibit A-2, 5-28-23.

"236 N. 22 St. E. O. July 11, 1917. Dear One. Your dear letter written at Asbury has brought sunshine that the fact *pouring* rain cannot drench for I am so glad you are there all ready for the good weather that *must* come and which will bless you. Just now it is rather difficult to agree with the man who said, 'There is no *bad* weather, only different kinds of good weather." I expect you have received today my letter of yesterday sent to Asbury, and are ready to say after reading it and her enclosed letter, with added emphasis, 'What is Marion thinking of!' I am sure I do not know, and see no use in caring so shall just 'Pack up' all thought in that direction 'in my old kit bag and smile, smile, smile.' You need not fear she will tangle up in the least way, for I am very determined on that point. She will find it out if needs be. I heard from Dr. Swift yesterday as to the doctor he would like me to employ in East Orange but find he is away for the summer. However, my feet are less swollen today, and if they continue to improve I may decide the Polant Water, which I am drinking very freely of, is the needed remedy, tho I may see a doctor yet. Miss

Verge and Miss Hough continue working from early to late, and I think this week will see things in general completed. I am so anxious for you to see the little home, and to have your presence here among my precious memories of the place. Did you ever know such weather and temperature for July. We have the coal range in full blast and we are taking our meals in the kitchen so as to be near the heat. How nice that Elizabeth friend Martha is near you. I am glad for both of them. We see the Hodgson's frequently and they certainly are kind friends. I have visited Mr. and Mrs. Verge Magee and Miss Cassidy, if she be with them, to six o'clock tea next Sunday. How glad we will be when you and your dear ones are to be with us some Sunday even, but first you and Mrs. Elliott must be here and Elizabeth too if she can come. Miss Verge and Miss Hough send their love and you may be *sure* of such for you & Elizabeth—from your loving—Aunt Lizzie."

Q. Mrs. Harvie, I understand you and your children were frequent visitors at the home Rainbow Cottage and at the cottage at 22nd Street, is that correct? A. Yes.

Q. Both you and your son were very well thought of by Mrs. Lees, is that also correct? A. That is also correct. They were away in college the last two years and my son the last four years, so they were not home very much.

Q. Did your son ever complain of the peculiarities that he noticed in Mrs. Lees?

Mr. Atwater: I object to that.

The Advisory Master: Objection sustained. You cannot prove the testator's mental attitude by what somebody told somebody else.

Q. Mrs. Harvie, did you ever instruct members of your family or request them to visit Mrs. Lees at her cottage? A. Not that I know of, except at her invitation.

Q. At the time you would receive these invitations and members of your family would they protest that—

Mr. Atwater: I object to that.

Direct Examination by Mr. Brown:

Q. You testified it was in 1921 that you went to the box of Mrs. Lees and saw the Government bonds, is that date correct? A. Oh, you have me when you ask me dates; I do not remember.

Q. I may say, in your direct examination, page 171, you were asked a question and you say, "Well, I had always accompanied my aunt to the safe deposit box where she attended to her banking and to the Guarantee Trust and finally Miss Hough persuaded my aunt to take her instead of me, but she took her without my knowledge, and I did not go any more, and I did not like that. Question: What year was that? Answer: 1920." A. To the best of my recollection that is when it was.

Q. 1920? A. Now, when did I see those bonds?

Q. Yes. A. A few months previous when I was there.

Q. When was the last time, was it 1920 or 1921? A. I think it was 1920.

Q. I want to clear that up as to whether it was

1920 or 1921. A. I saw those bonds two or three months before the last time I was there.

Q. Now, fix the last time when you were there. A. It was in May, but I don't know whether it was 1920 or 1921.

Q. You said in your direct examination in 1920? A. That is the best of my knowledge.

Q. (By the Advisory Master) Isn't there any other happening that you can recall it by, with any other event? A. Well, they had gone to East Orange to live.

Q. (By the Advisory Master) Where were they living at that time? A. They were living in East Orange.

Q. (By the Advisory Master) Where in East Orange? A. North 22nd Street.

Q. (By Mr. Atwater) Before they had moved to Rainbow Cottage? A. Yes, I believe it was.

Q. (By the Advisory Master) Where were you living at that time? A. I was living in Rutherford.

Cross Examination by Mr. Merrill:

Q. You said, I believe, that you made a list of securities by copying a list you found in the box and not by checking the actual securities? A. No, I knew my aunt had a habit of leaving the securities in her box and another copy in her desk, and I knew they were accurate copies.

Q. (By the Advisory Master) Which one did you check it from? A. The box. I never went to her desk.

Q. Do you know whether Mrs. Lees exchanged one security and bought another? A. I know of her buying two or three Liberty bonds during the

war and I think she spoke about going down to see Mr. Barrett about some bond that had matured.

Q. Is it or is it not possible that the list from which you copied may have been a list of all the securities she ever owned? A. That might be, but it was the list that I found in the box. She was very methodical and she always kept a list in her box and a list in her desk.

Direct Examination (continued) by Mr. Siegel:

Q. Was this list dated? A. No.

Q. I understand you to say she was in the habit of making such lists? A. No, she always kept one there.

Q. And during the time you accompanied her there did you notice whether it was the same list or a different list? A. I never saw it except the time I went to copy it.

Q. That is the first time you saw the list? A. No, I knew the list was there, but I never looked at the list unless it was to get her coupons.

Q. You had seen a list in the box? A. It was a little book for that purpose.

Q. But you do not know whether the list you copied from was the list that had been there all the time? A. I could not swear it was.

Q. You did not check up the contents of the box? A. No. It was on top of the box. I never did anything with those securities except to cut the coupons. Find which coupons were due and hand them to Mrs. Lees. I did not even put them in the envelope.

Q. What was your object in making this list? A. I just thought it might be a good idea to have a list of them.

Q. Did you want to keep a check on Miss Hough,

knowing she was to take charge of your aunt's finances? A. I thought it would not do any harm. Certainly, if a person is honest it does not make any difference.

Q. Did you feel there was any possibility of your aunt not being able to take care of her own affairs and that you wanted to keep a check on them? A. Oh, I couldn't say that she could not take care of her affairs for a long time; she was a wonderful business woman.

Q. Did you ever have access to the vault without Mrs. Lees? A. Yes, but I never went there but the once when she sent me; we were at Mr. Barrett's office where she had just received the bond that she had purchased, a Liberty bond, and Mr. Barrett suggested that instead of Mrs. Lees going away over to the Singer building to let her sit and rest and talk with him, and I went over and put the bond in. That was the only time I was ever at the box alone.

Q. Did you ever complain to anybody of the fact that Miranda Hough was endeavoring to dispose of some of Mrs. Lees securities through a certain broker by the name of Elliott? A. Never.

Q. Did you tell anything of that kind to Mr. Loveridge, your brother? A. No.

Q. Sure about that? A. He asked me if she called me up one day. Mr. Elliott is my neighbor.

Q. Who called you? A. Miss Hough, for Mrs. Lees, and she asked me if Mr. Elliott would be willing to advise Mrs. Lees about the sale of some bonds, thinking that she could increase her income, and I said that I did not think Mr. Elliott would have anything to do with it. He was a bond buyer.

Q. Were not you very indignant over the fact that Miss Hough was taking an active part in the

sale of these bonds? A. I do not think I was heat up about it.

Q. Didn't you express your disapproval to several persons? A. I do not think I did, but I said—she asked me if he would do that for my aunt, whom he knew; he knew my aunt; they were my neighbors and we were friends.

ARTHUR LOVERIDGE, recalled in behalf of appellants.

Direct Examination by Mr. Siegel:

Q. You heard the testimony of Miss Hough to the effect that she did not recall your visit at the Beresford? A. Yes.

Q. You have seen Miss Hough today? A. Yes.

Q. Was she the same woman with whom you had that conversation at the Beresford? A. She is.

Testimony Closed.

ESSEX COUNTY CIRCUIT COURT.

Monday, February 11, 1921.

Before—Hon. NELSON Y. DUNGAN, J.

In the Matter
of
The Change of Name of MIRANDA HOUGH.

MIRANDA HOUGH, sworn.

Direct Examination by Mr. Davis:

Q. Where do you live? A. I now live at 19 Whitman Avenue. When this application was made at 102 North 22nd Street, East Orange, New Jersey.

Q. With whom do you live? A. Mrs. James E. Lees.

Q. You desire to change your name, Miss Hough? A. I do.

Q. To what name? A. Miranda Hough Lees.

Q. Why do you wish to change your name? A. Because I have been with Mrs. Lees some twelve years and it is her desire and my desire that she adopt me as her child, that our relations may be as parent and child to simplify our relations and my care of her and our home relations, since the law of New Jersey does not allow or provide for the adoption of anyone above age. We have entered into an agreement that our relations shall be as a parent and child for the purpose of simplifying our

relationship and the care of Mrs. Lees; therefore, I wish to take her name since it is her desire.

Q. Were you ever married? A. No.

Q. Are you in business at all? A. I have always been a nurse and I came to Mrs. Lees as a nurse and I have been with her for twelve years; I came with her as nurse for her husband, and I was away a short time and Mrs. Lees wanted me and I went back to her.

Q. Do you owe any debts? A. I do not, only gas bills have not been paid, such as electrician and matters of that kind; monthly bills come in and I have not written checks for them.

Q. Your bills? A. Yes, I have charge of the household expenses; they come in to me; it is my home; Mrs. Lees is with me now; Mrs. Lees has given up her home some ten months ago; of course, it is our home together now and I take charge of it.

Q. It was formerly your home? A. Well, it was this way, Mrs. Lees lived in an apartment in New York and the apartment changed hands. She had been coming to my home for the summer; then the apartment changed management and she came to live with me entirely, moving all her furniture. Then we built; then I put in some money and Mrs. Lees put in some money and we built together; Mrs. Lees put in more money than I did; we were to put in half and half, but as the building went up my money was all gone and she put in the rest and she took measures to adopt me, but as the law of New Jersey did not provide for my adoption the only thing we could do was to enter an agreement between ourselves, she being a widow and I having no parents living. That is our relations today, as parent and child, thought it might simplify our relationship.

Q. Is this for the purpose of inheritance? A.

Not entirely. In our agreement it gave me the right of inheritance, but we took that out, as Mrs. Lees wished her will to remain as it was, and I wished my will to remain as it was, we struck that part out, as now it was not Mrs. Lees' wish that I should be her sole heir.

Q. No judgments against you? A. How do you mean?

Q. No judgment as record of suits at law? A. No, I have had no suits, no.

Q. I mean, anybody ever brought suit against you? A. No.

Q. You say Mrs. Lees is willing you should take her name? A. It is Mrs. Lees' desire.

Q. Is she here? A. Yes, she is here.

ELIZABETH L. LEES, sworn.

By Mr. Davis:

Q. You know Miss Hough? A. Yes.

Q. Where do you live? A. 19 Whitman Avenue, East Orange.

Q. How long have you lived there? A. Only about since last Tuesday.

Q. Where did you live before that time? A. 102 North 22nd Street, East Orange.

Q. Where before that? A. New York.

Q. How long have you lived altogether in East Orange to your best recollection, years or months? A. Years.

Q. In East Orange? A. Yes.

Q. How long have you known Miss Hough? A. Thirteen years.

Q. What have been your associations in that time? A. She has been with me as—when she came

to me my husband was very ill and she took care of him perfectly and to such an extent that my husband thought he was worse and had a very serious talk with me and asked me to promise him always to have Miss Hough.

Q. And your husband didn't survive his illness? A. No, he didn't.

Q. And Miss Hough has been with you ever since? A. Ever since.

Q. You are willing that Miss Hough should take your name? A. I am more than willing, I am very glad in that way to show my appreciation of her faithful services.

Exhibit P-1.

I, ELIZABETH LOVERIDGE LEES, do hereby, make publish and declare this instrument to be my last will and testament hereby revoking all former and other wills and testaments at any time heretofore by me made.

First.—I nominate, constitute and appoint ALFRED S. BROWN of the City of New York, Dr. ROBERT H. HOUGH, of West Philadelphia, Pennsylvania, and JAMES HARVIE of Rutherford, New Jersey, to be the executors of this my last will and testament, without bonds or other security for the faithful discharge of the trust hereby reposed in them.

Second.—I direct the payment by my executors from and out of my estate of all my just debts and funeral and testamentary expenses as soon as practicable after my decease.

THIRD.—I give and bequeath to my niece MRS. BELLE HARVIE, wife of James Harvie of Rutherford, New Jersey, the sum of Twenty-five thousand dollars; and to her husband James Harvie the sum of Five thousand dollars; and to her son John Harvie the sum of Two thousand dollars; and to her daughter Elizabeth Harvie the sum of Three thousand dollars. In case of the death of the said Belle Harvie prior to my death then I do give and bequeath to her husband James Harvie the further sum of Fifteen thousand dollars, to her son John Harvie the further sum of Five thousand dollars and to her daughter Elizabeth Harvie the further sum of Five thousand dollars.

FOURTH.—I give and bequeath to my nephew EDGAR H. LOVERIDGE a certain promissory note bearing date May 9, 1912 made by Teaneck Park Land and Improvement Company and payable to my order, for Three hundred dollars and interest from May 22, 1906. And in addition to the foregoing bequest I do hereby release and absolutely dischage the said EDGAR H. LOVERIDGE of and from the payment of a certain promissory note bearing date May 9, 1912 made by him payable to my order, for Fifteen hundred dollars with interest from May 22, 1906 and also of and from the payment of the balance of interest now due to me from him at six per cent on the sum of Six thousand dollars from April 30, 1907 to October 1, 1913 (Three hundred and seventy-five dollars having been paid on account thereof). And I direct my executors to deliver and surrender said two promissory notes to him, and to cancel and discharge said indebtedness for interest. I also give and bequeath to his wife ALICE LOVERIDGE the sum of Two thousand dollars.

FIFTH.—I give and bequeath to my nephew ARTHUR R. LOVERIDGE the sum of Five dollars.

SIXTH.—I give and bequeath to the Willow Brook Cemetery Association of Westport, Connecticut, the sum of Two thousand dollars, to have and to hold the same to the said Willow Brook Cemetery Association, and its successors, upon trust however, to keep the same invested, and to apply the income thus arising therefrom, under the direction of the Board of Directors, to the repair, preservation or renewal of any tomb, monument or gravestone, railing or other erection or for planting and cultivating trees, shrubs, or flowers or plants, upon, in or around the four lots numbered 25, 26, 27 and 28 of Section 1, in the grounds of said cemetery included in the plot in which my husband's father and others of his family are buried. And my wish is that the whole of said income accruing in any one year shall be applied during that year to the purposes above set forth, and that said income shall not be accumulated or carried over from year to year. And I direct that no bond or other security shall be required of said Association for the faithful discharge of said trust. And I do further give and devise to the Willow Brook Cemetery Association two of the lots above mentioned which are known by the numbers 27 and 28 of Section 1 in the grounds of said cemetery association, to have and to hold the said two lots of land to the said William Brook Cemetery Association, and its successors, and I hereby designate and prescribe that my remains be interred in said lots of land in addition to the remains of my deceased husband James E. Lees and his deceased wife Cesarine S. Lees, which are already interred

there, and that interments in said lots be restricted to the persons so designated, and that said two lots of land be hereafter inalienable.

SEVENTH.—I give and bequeath to Willow Brook Cemetery Association, of Westport, Connecticut, all the capital stock of said Association which I may own or in which I may have any interest at the time of my decease, the said capital stock to be cancelled by said Association and not re-issued. And I hereby express the wish that my example in giving my capital stock to the said association may be followed by other stockholders thereof in order that the said association may eventually own all of its capital stock.

EIGHTH.—I give and bequeath to my adopted daughter MARANDA HOUGH LEES, one hundred shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

NINTH.—I give and bequeath to Benjamin Epstein now residing at No. 283 Vermont Street, Brooklyn, New York, one hundred shares of the capital stock of the Lees Manufacturing Company a corporation organized under the laws of the State of Connecticut now owned by me.

TENTH.—I give and bequeath to my sister Harriet Loveridge the sum of Five dollars.

ELEVENTH.—I give and bequeath to my niece Marion L. P. Haffner wife of F. Philip Haffner, the sum of Ten thousand dollars, in trust, nevertheless, and for the following uses and purposes, that is to say: To invest the same and keep the same invested

and to apply the income arising therefrom to her support and maintenance during her life. In case said income shall not be sufficient for that purpose then to apply such portion of the principal at any time and from time to time as to her may seem necessary or proper to that purpose. And upon the death of the said Marion L. P. Haffner I do give and bequeath said principal sum of Ten thousand dollars, or such portion thereof as may then remain unto her two sons Ludlow and Loveridge, to be divided between them equally share and share alike, for their own use and benefit absolutely and forever.

TWELFTH.—I give and bequeath to my adopted daughter Maranda Hough Lees, the sum of Six thousand dollars. And in addition to said bequest I do hereby release and absolutely discharge the said Maranda Hough Lees, and her estate, of and from all debts and sums of money which may be due or owing by her to me at the time of my death; and I direct my executors to deliver up and surrender to her any evidences of such indebtedness and to cancel and discharge the same. I also give, devise and bequeath to her any and all interest lien or claim whatsoever which I may or can have in to or upon the piece or parcel of land in East Orange, New Jersey, upon which she is about to erect a dwelling house to be known as "Rainbow Cottage" and in to or upon said dwelling house when the same is erected. I also give and bequeath to her my automobile and victrola, and also all my household furniture, carpets, beds, linen, books, pictures, paintings, vases, wearing apparel, housekeeping articles and utensils of every kind and description both useful and ornamental and all my table silverware my lorgnette with chain, and my

aqua-marine necklace. In case of her death before my death, then I give and bequeath the said lorgnette with chain to my niece Mrs. Belle Harvie above named, and the said aqua-marine necklace to my niece Mrs. Marion L. P. Haffner above named and all the rest, residue and remainder of the personal property given and bequeathed in this twelfth clause of my will (except the legacy of Six thousand dollars) I do give and bequeath to the said Mrs. Belle Harvie and Mrs. Marion L. P. Haffner, to be divided between them equally share and share alike.

THIRTEENTH.—I give and bequeath to my grandnephew Leigh Loveridge the sum of One hundred dollars and to his mother Agnes Loveridge the sum of Two thousand dollars.

FOURTEENTH.—I give and bequeath to J. Augustus Lees of Westport, Connecticut, three hundred and forty-nine shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut now owned by me.

FIFTEENTH.—I give and bequeath to my grandnephew Edgar H. Loveridge, Jr., the sum of One hundred dollars.

SIXTEENTH.—I give and bequeath to my nephew Edward B. Taylor of the Colt Farm, Bristol, Rhode Island, the sum of Ten thousand dollars, also the miniatures of my husband James E. Lees and myself; but if he be not living at the time of my decease then I do give said sum and said miniatures to his wife Nellie Taylor.

SEVENTEENTH.—I give and bequeath to Elizabeth

Harvie above named my circular Etruscan gold breast-pin and my dresser silverware.

EIGHTEENTH.—I give to Loveridge Haffner, son of my niece Marion L. P. Haffner, the sum of Three thousand dollars. In case he should be under the age of twenty-one years at the time of my decease, then I direct that said sum be deposited and kept on deposit in some good Savings Bank or Banks, and the interest arising therefrom applied to his use until he shall attain the age of twenty-one years and upon his attaining the age of twenty-one years said sum of Three thousand dollars be paid over to him.

NINETEENTH.—I give to Ludlow Patton Haffner, son of my niece Marion L. P. Haffner, the sum of Three thousand dollars. In case he should be under the age of twenty-one years at the time of my decease, then I direct that said sum be deposited and kept on deposit in some good Savings Bank or Banks, and the interest arising therefrom applied to his use until he shall attain the age of twenty-one years and upon his attaining the age of twenty-one years said sum of Three thousand dollars be paid over to him.

TWENTIETH.—All the rest, residue and remainder of my estate both real and personal, of every nature and description and wheresoever situated, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I do give, devise and bequeath to my adopted daughter Maranda Hough Lees, Benjamin Epstein, and Edward B. Taylor all above named, to be divided among them equally share and share alike, for their own use and benefit absolutely and forever.

TWENTY-FIRST.—In the event that my estate shall be insufficient to pay all the pecuniary legacies and bequests mentioned in this my will, I direct that the legacy of Two thousand dollars given to the Willow Brook Cemetery Association by paragraph Sixth of this my will shall be paid in full, and that the other legacies mentioned in my said will shall abate in proportion to their respective amounts to a sufficient extent to provide for such payment.

TWENTY-SECOND.—I do hereby authorize and empower my said executors, or such of them as shall qualify, and the survivors and survivor of them, to grant, bargain, sell and convey all or any portion of any and all real estate and personal property owned by me, or to which I may be entitled or in which I may have any interest at the time of my decease, either at public or private sale, and upon such terms and conditions as to them may seem proper and to apply the proceeds of such sales in conformity to the provisions of this my last will and testament.

Lastly for the purpose of making this my will final, effectual and conclusive upon all my heirs, next of kin, devisees and legatees, I do hereby declare that if any heir, next of kin, devisee or legatee, named or not named in this my will shall directly or indirectly institute or become an acting party to any proceeding to oppose, interfere with, set aside or make null this my will or any of the provisions thereof, such act or proceeding shall operate and be effectual as a release of and bar to all claim on the part of such heir, next of kin, devisee, or legatee, to any part of my property or estate, and any provisions of this my will in favor of such person I do hereby abrogate, annul and make void. And to the same end, I do further de-

clare that my heirs, and next of kin, devisees and legatees, shall under no circumstances be entitled to any other or greater interest in or claim upon or against my estate than as given in and by this my will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this sixteenth day of March in the year nineteen hundred and twenty-one.

ELIZABETH L. LEES (L.S.)

Signed, sealed, published and declared by the above named Elizabeth Loveridge Lees to be her last will and testament in the presence of each of us, who, at her request and in her presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

H. HARDCASTLE PENNOCK,
22 E. 8th St., N. Y. City.

JOS. FRANKENTHAL,
31 Elinor Place, Yonkers, N. Y.

FRANKLIN W. MORRELL,
335 South Broad Street, Elizabeth, N. J.

Exhibit A-2.

EDWARD P. SWIFT, M. D.
170 West 88th Street, New York.

July 2, 1920.

I wish to certify that I have attended Mrs. Elizabeth L. Lees at various times since November 1916, that from my conversations with her I have formed the opinion that she is suffering from senile

changes which have affected her mentality, and rendered her incapable of sound judgment or discretion.

EDWARD P. SWIFT.

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102 Passaic Ave.,
Rutherford, N. J.,
Oct. 21, 1920.

Dear Arthur.

Enclosed is the statement of Dr. Swift concerning Aunt Lizzie. I think her mind is failing more in some respects as she contradicts herself continually. No wonder, though, when she leads the life she has for the past few months. She is a sad problem.

Now about the other matter. If you will send me the amount I will give you the money as I do not want to write a check for it for obvious reasons. I wish you would write to Agnes and ask how much you owe her so as to have it down in her own writing. She is a very curious mentality. I am going to see her tomorrow and tell her that she owes that money to James that he advanced—and that it is about up to her to do something to try and get it paid. I know she will be furious—because she says it is up to you—but something must be done to settle up this matter and have peace and harmony in the family if it takes all the money I have been able to save in two years. I feel very strongly lately that I have not many more years in which to enjoy my family—and I am often very lonely—so that I must try and have my own people as my best friends. Ed is gone—it is probable that he will never come East again. Mother and Father and Charlie are gone—and

Estelle is failing. You and I are the last and only ones left and we should keep the family ties and draw them closer. Don't wait until I am gone before we are really brother and sister in deed as well as in word. I wish you understood James better. He is peculiar in some ways—but he is good and true and honorable to a degree. I can never forget how good he was to Mother—and he has been good to all my family at times—helping them out whenever he was able. He has never had any help and it has been a pretty hard pull for us many times—harder than any of you ever knew. We have five years more before we can feel that our children will be educated and fitted as well as we are able to fit them—to go out in the world. We are neither of us as young as we were. I am a year older than James—fifty-six my last birthday—and while the spirit is more than willing the flesh is weaker than ten years ago. At my age the love and fellowship of my own people—my husband and children and my brothers and family—and a few others who are like relatives—and James' family—bring a deep and lasting happiness that nothing else can give—and I want our children to know their relatives and to have a family pride and affection. We must make them feel that in spite of Ed's behavior that it means something fine to be a Loveridge and that they must make good in every way.

This is a very poor letter but I cannot help it now. Excuse it and just remember that I am your sister and that I love you and that I am trying to do what Father and Mother would have me do.

Your loving sister,

BELLE.

P. S. Please make a copy of Dr. Swift's statement and return the original as soon as you can as I think James may ask for it before long.

Burn this up.

Exhibit A-3.

My Dear Mrs. James.

It is a hasty note I must write you for Robert to mail with Mother's letters. I am sorry you feel as you do about returning to be with us for I can not bring myself to feel that it would be either best for you or us and I feel I should use my own judgment. Since you feel you would like to come to attend to your trunk I in turn feel I should pay your traveling fare next Monday 17th and Wednesday 19 and possibly Thursday or Friday we will be away from home so perhaps you had better wait to hear from me again before deciding on the exact date to come. I want to add though my decision is as it is, there is no ill feeling.

Very truly,

MARANDA H. LEES.

Thursday Oct. 13, 1921.

Exhibit P-2.

THIS AGREEMENT made January 6th, 1921 between Elizabeth L. Lees, Widow of James E. Lees, of the City of East Orange, County of Essex and State of New Jersey, of the first part and Maranda F. Hough, a single woman, of the said City, County and State, of the second part,

Witnesseth:

Whereas the party of the first part is desirous of adopting the party of the second part, but is advised that the laws of New Jersey provide only for the adoption of minors and could not be applied

to the party of the second part, who is past full age:

And whereas the parties hereto desire to record the fact that the relations existing and to be continued between them shall be the same as those of parent and child.

Now, therefore, it is mutually agreed between the parties of the first and second part as follows:

1. The party of the first part is desirous of adopting the party of the second part and if the laws of the state of New Jersey permitted it, would undertake adoption proceedings to effectuate that result.

2. The party of the second part is willing and desirous to be adopted by the party of the first part and would consent to the same to the fullest extent.

3. The rights, duties, privileges and relations between the parties of the first and second part are and shall henceforth be those of parent and child, and the party of the first part does hereby give and grant to the party of the second part, all of the rights, and privileges of a child; and the party of the second part does give and grant to the party of the first part all the rights, privileges and relations of a parent.

4. The purpose of this instrument is fully expressed herein. Should it not be sufficient in law for the purposes intended, it shall stand as an expression of the relations which exist between the parties hereto.

Witness the execution hereof in duplicate, the day and year first above written.

ELIZABETH L. LEES L. S.
MARANDA F. HOUGH L. S.

Witness.
THOMAS A. DAVIS.

Exhibit P-3.

ESSEX COUNTY SURROGATE COURT,

In the Matter of An Application of MARANDA F. HOUGH for leave to assume the name of MARANDA HOUGH LEES.	Petition.

The petition of Maranda F. Hough of the City of East Orange, in the County of Essex and State of New Jersey respectfully represents and shows:

1. That your petitioner resides in East Orange in the County of Essex, and is years of age.

2. That she is desirous that this court should make an order to authorize her to assume another name in accordance with the provisions of an act entitled "An Act to Authorize Persons to Change their Names," approved February 24, 1876, and the amendment thereof approved April 27, 1911.

3. That the name which your petitioner desires to assume is Maranda Hough Lees.

4. That the grounds of your petitioner's application are as follows:

That for many years past petitioner has resided with Elizabeth L. Lees, the widow of James E. Lees, and has always been treated and regarded by said Elizabeth L. Lees as her daughter. That the said Elizabeth L. Lees is desirous of adopting petitioner, and petitioner is desirous of being adopted by said Elizabeth L. Lees, but that she is informed

that there is no procedure permitted by the laws of the State of New Jersey by which said adoption can be legally effectuated; that by an agreement already entered into, the said Elizabeth L. Lees and petitioner have agreed that the said Elizabeth L. Lees has given and granted to petitioner and petitioner has accepted from said Elizabeth L. Lees all of the rights and privileges of a child, including the right of inheritance and that the relations between said Elizabeth L. Lees and petitioner should be that of parent and child and that in accordance with said desire and agreement on the part of said Elizabeth L. Lees and petitioner, petitioner desires to assume the name of Maranda Hough Lees.

Wherefore your petitioner prays that this court may make an order authorizing her to assume the name of Maranda Hough Lees.

And your petitioner will ever pray, etc.

MARANDA F. HOUGH.

Dated: January , 1921.

Exhibit P-4.

ESSEX COUNTY CIRCUIT COURT.

In the Matter of An Application of MARANDA F. HOUGH for leave to assume the name of MARANDA HOUGH LEES.	Order for Change of Name.

Maranda F. Hough, having on this 11th day of February, 1921, applied to this court by petition

setting forth the grounds of the application for an order to assume another name, to wit: Maranda Hough Lees; which application is verified by the affidavit of said applicant annexed to said petition; and it appearing by said petition and affidavit that said Maranda F. Hough resides at East Orange, N. J., and that she is more than twenty-one years of age; and it further appearing to the court that notice of such application has been published at least once in each week for four weeks successively in the Orange Advertiser, a newspaper of said county; and the court being satisfied by said petition so verified that there are reasonable grounds for the proposed change and that there is no reasonable objection that the petitioner should assume the name of Maranda Hough Lees:

It is on this 11th day of February, 1921, ordered that Maranda F. Hough be and she hereby is authorized to assume the name of Maranda Hough Lees from and after the 15th day of March next and that within ten days from this date the said petitioner do cause a copy of this order to be published in the Orange Advertiser, a public newspaper printed in said County of Essex, and thereafter file and record the petition, affidavit, order and affidavit of publication with the County Clerk of Essex County and a certified copy thereof with the Secretary of State of New Jersey, according to the provisions of the statute in such case made and provided.

NELSON Y. DUNGAN,
Circuit Court Judge.

On motion of

.....

Exhibit A-1.

(5-28-23)

ESSEX COUNTY CIRCUIT COURT.

In the Matter of An Application of MARANDA F. HOUGH for leave to assume the the name of MARANDA HOUGH LEES.	Petition.

The petition of Maranda F. Hough of the City of East Orange, in the County of Essex and State of New Jersey, respectfully represents and shows:

1. That your petitioner resides in East Orange in the County of Essex and is—years of age.

2. That she is desirous that this court should make an order to authorize her to assume another name in accordance with the provisions of an act entitled "An act to Authorize Persons to Change Their Names," approved February 24, 1876 and the amendment thereof approved April 27, 1911.

3. That the name which your petitioner desires to assume is Maranda Hough Lees.

4. That the grounds of your petitioner's application are as follows:

That for many years past petitioner has resided with Elizabeth L. Lees the widow of James E. Lees, and has always been treated and regarded by said Elizabeth L. Lees as her daughter. That the said Elizabeth L. Lees is desirous of adopting petitioner, and petitioner is desirous of being adopted

by said Elizabeth L. Lees, but that she is informed that there is no procedure permitted by the laws of the State of New Jersey by which said adoption can be legally effectuated: that by an agreement already entered into, the said Elizabeth L. Lees, and petitioner have agreed that the said Elizabeth L. Lees, has given and granted to petitioner and petitioner has accepted from said Elizabeth L. Lees all of the rights and privileges of a child and that the relations between said Elizabeth L. Lees and petitioner should be that of parent and child and that in accordance with said desire and agreement on the part of said Elizabeth L. Lees and petitioner, petitioner desires to assume the name of Maranda Hough Lees.

Wherefore your petitioner prays, that this Court may make an order authorizing her to assume the name of Maranda Hough Lees.

And your petitioner will ever pray, etc.

MARANDA F. HOUGH.

Dated January—1921.

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

Maranda F. Hough being sworn according to law, on her oath, says that she is the petitioner above named that the facts set forth in the foregoing petitioner are true.

MARANDA F. HOUGH.

Subscribed and sworn to before me,
this 11th day of January, 1921.

RICHARD J. FITZMAURICE,
Notary Public of N. J.

Filed February 15, 1923.

John H. Scott, Clerk.

ESSEX COUNTY CLERK'S OFFICE.

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

I, John H. Scott, Clerk of the Circuit Court, in and for the County of Essex in the State of New Jersey, do hereby certify that the foregoing is a true and correct copy of the record of Petition of Change of Name of Maranda F. Hough, to Maranda Hough Lees, recorded in Book 2 of Change of Names page 415, and the same is taken from and compared with original petition of change of name proceedings and as the same now remains on the files of said Office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of said Court and County at Newark, N. J., this Twenty first day of May, A. D., 1923.

JOHN H. SCOTT,
Clerk.

Exhibit A-5.

Mrs. James E. Lees
is happy in announcing the adoption of
Maranda F. Hough
who is pleased to take the name of
Maranda Hough Lees

Exhibit P-6.

(5-17-23)

I, ELIZABETH LOVERIDGE LEES, do hereby make, publish and declare this instrument to be my last will and testament, hereby revoking all former and other wills and testaments at any time heretofore by me made.

FIRST.—I nominate, constitute and appoint ALFRED S. BROWN, of the City of New York, and F. PHILIP HAFFNER, of Orange, New Jersey, to be the executors of this my last will and testament, without bonds or other security for the faithful discharge of the trust hereby reposed in them.

SECOND.—I direct the payment by my executors from and out of my estate of all my just debts and funeral and testamentary expenses as soon as practicable after my decease.

THIRD.—I give and bequeath to my niece MRS. BELLE HARVIE, wife of James Harvie, of Rutherford, New Jersey, the sum of Twenty five thousand dollars, and to her husband, James Harvie, the sum of Five thousand dollars, and to her son, John Harvie, the sum of Two thousand dollars and to her daughter, Elizabeth Harvie, the sum of Three thousand dollars. In case of the death of the said Belle Harvie prior to my death then I do give and bequeath to her husband James Harvie the further sum of Fifteen thousand dollars, to her son John Harvie the further sum of Five thousand dollars, and to her daughter Elizabeth Harvie the further sum of Five thousand dollars.

FOURTH.—I give and bequeath to my nephew EDGAR H. LOVERIDGE, a certain promissory

note bearing date May 9, 1912, made by Teaneck Park Land and Improvement Company and payable to my order, for Three hundred dollars and interest from May 22, 1906. And in addition to the foregoing bequest I do hereby release and absolutely discharge the said Edgar H. Loveridge of and from the payment of a certain promissory note bearing date May 9, 1912, made by him payable to my order, for Fifteen hundred dollars with interest from May 22, 1906, and also of and from the payment of the balance of interest now due to me from him at six per cent. on the sum of Six thousand dollars from April 30, 1907, to October 1, 1913, (Three hundred and seventy five dollars having been paid on account thereof.) And I direct my executors to deliver and surrender said two promissory notes to him, and to cancel and discharge said indebtedness for interest. I also give and bequeath to his wife Alice Loveridge the sum of Two thousand dollars.

FIFTH.—I give and bequeath to my nephew ARTHUR R. LOVERIDGE, the sum of Five dollars.

SIXTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, the sum of Two thousand dollars, to have and to hold the same to the said Willow Brook Cemetery Association, and its successors, upon trust, however, to keep the same invested, and to apply the income thus arising therefrom, under the direction of the Board of Directors, to the repair, preservation or renewal of any tomb, monument or gravestone, railing or other erection, or for planting and cultivating trees, shrubs, or flowers or plants, upon, in or around the four lots numbered 25, 26, 27, and 28, of Section 1 in the

grounds of said cemetery included in the plot in which my husband's father and others of his family are buried. And my wish is that the whole of said income accruing in any one year shall be applied during that year to the purposes above set forth, and that said income shall not be accumulated or carried over from year to year. And I direct that no bond or other security shall be required of said Association for the faithful discharge of said trust.

And I do further give and devise to the WILLOW BROOK CEMETERY ASSOCIATION, two of the lots above mentioned which are known by the numbers 27 and 28 of Section 1 in the grounds of said cemetery association, to have and to hold the said two lots of land to the said Willow Brook Cemetery Association, and its successors, and I hereby designate and prescribe that my remains be interred in said lots of land in addition to the remains of my deceased husband James E. Lees and his deceased wife Cesarine S. Lees, which are already interred there, and that interments in said lots be restricted to the persons so designated, and that said two lots of land be hereafter inalienable.

SEVENTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, all the capital stock of said association which I may own or in which I may have any interest at the time of my decease, the said capital stock to be cancelled by said association and not re-issued. And I hereby express the wish that my example in giving my capital stock to the said association may be followed by other stockholders thereof in order that the said association may eventually own all of its capital stock.

EIGHTH.—I give and bequeath to F. PHILIP HAFFNER, of Orange, New Jersey, one hundred

shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

NINTH.—I give and bequeath to BENJAMIN EPSTEIN, now residing at No. 283 Vermont Street, Brooklyn, New York, one hundred shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

TENTH.—I give and bequeath to my sister HARRIET LOVERIDGE, the sum of Five dollars.

ELEVENTH.—I give and bequeath to F. Philip Haffner above named the sum of Ten thousand dollars, in trust, nevertheless, and for the following uses and purposes, that is to say: To invest the same and keep the same invested, and to pay the income arising therefrom to his wife (my niece) MRS. MARION L. P. HAFFNER, during her life, for her support and maintenance. In case said income shall not be sufficient for that purpose then to apply such portion of the principal at any time and from time to time as to him may seem necessary or proper to that purpose. And upon the death of the said Marion L. P. Haffner to pay over the principal, or such portion thereof as may then remain, unto her two sons Ludlow and Loveridge, to be divided between them equally, share and share alike, for their own use and benefit absolutely and forever.

TWELFTH.—I give and bequeath to MARANDA F. HOUGH, who is now living with me, the sum of Six thousand dollars. And in addition to said bequest I do hereby release and absolutely discharge the said Maranda F. Hough, and her estate,

of and from all debts and sums of money which may be due or owing by her to me at the time of my death; and I direct my executors to deliver up and surrender to her any evidences of such indebtedness, and to cancel and discharge the same. I also give, devise and bequeath to her any and all interest, lien or claim whatsoever which I may or can have in, to or upon the piece or parcel of land in East Orange, New Jersey, upon which she is about to erect a dwelling house to be known as "Rainbow Cottage", and in, to or upon said dwelling house when the same is erected. I also give and bequeath to her my automobile and victrola, and also all my household furniture, carpets, beds, linen, books, pictures, paintings, vases, wearing apparel housekeeping articles and utensils of every kind and description, both useful and ornamental, and all my table silverware, my lorgnette with chain, and my aqua-marine necklace. In case of her death before my death, then I give and bequeath the said lorgnette with chain to my niece Mrs. Belle Harvie above named, and the said aqua-marine necklace to my niece Mrs. Marion L. P. Haffner above named, and all the rest, residue and remainder of the personal property given and bequeathed in this twelfth clause of my will (except the legacy of Six thousand dollars) I do give and bequeath to the said Mrs. Belle Harvie and Mrs. Marion L. P. Haffner, to be divided between them equally, share and share alike.

THIRTEENTH.—I give and bequeath to my grand-nephew LEIGH LOVERIDGE, the sum of One hundred dollars and to his mother Agnes Loveridge the sum of Two thousand dollars.

FOURTEENTH.—I give and bequeath to J. AUGUSTUS LEES, of Westport, Connecticut, three

hundred and forty nine shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

FIFTEENTH.—I give and bequeath to my grandnephew EDGAR H. LOVERIDGE, JR., the sum of One hundred dollars.

SIXTEENTH.—I give and bequeath to my nephew EDWARD B. TAYLOR, of The Colt Farm, Bristol, Rhode Island, the sum of Ten thousand dollars; also the miniatures of my husband James E. Lees and myself; but if he be not living at the time of my decease then I do give said sum and said miniatures to his wife Nellie Taylor.

SEVENTEENTH.—I give and bequeath to said Nellie Taylor my gold watch, and to her daughter Beatrice Taylor my turquoise necklace.

EIGHTEENTH.—I give and bequeath to MRS. ROBERT LEES, of Westport, in the State of Connecticut, my breast-pin of one large diamond surmounted with pearls.

NINETEENTH.—I give and bequeath to MRS. J. AUGUSTUS LEES, of Westport aforesaid, my ring with three large diamonds.

TWENTIETH.—I give and bequeath to RUTH A. LEES, of Westport aforesaid, my cameo lavalliere.

TWENTY-FIRST.—I give and bequeath to ELIZABETH HARVIE, above named, my circular Etruscan gold breast-pin, and my dresser silverware.

TWENTY-SECOND.—I give and bequeath to MISS

ELLEN E. PARKER now residing at No. 30 Broadway, Lynn, Massachusetts, my five leaves pearl clover pin with small diamond center.

TWENTY-THIRD.—I give and bequeath to MRS. EDWARD JORDAN, of Honolulu, Hawaii, Sandwich Islands, my lavalliere of moon stone, rubies and diamonds.

TWENTY-FOURTH.—I give and bequeath to MRS. MELVIN BAHRET, now residing at No. 570 Park Avenue, East Orange, New Jersey, my lavalliere of white sapphire and azurelite.

TWENTY-FIFTH.—I give and bequeath to MISS KATHARINE BAHRET now residing at No. 570 Park Avenue, East Orange, New Jersey, my crystal bead necklace.

TWENTY-SIXTH.—All the rest, residue and remainder of my estate, both real and personal, of every nature and description, and wheresoever situated, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I do give, devise and bequeath to MARANDA F. HOUGH, BENJAMIN EPSTEIN, and EDWARD B. TAYLOR, all above named, to be divided among them equally, share and share alike, for their own use and benefit absolutely and forever.

TWENTY-SEVENTH.—In the event that my estate shall be insufficient to pay all the pecuniary legacies and bequests mentioned in this my will, I direct that the legacy of Two thousand dollars given to the Willow Brook Cemetery Association by paragraph Sixth of this my will shall be paid in full, and that the other legacies mentioned in

my said will shall abate in proportion to their respective amounts to a sufficient extent to provide for such payment.

TWENTY-EIGHTH.—I do hereby authorize and empower my said executors, or that one of them who may qualify, and the survivor of them, to grant, bargain, sell and convey all or any portion of any and all real estate and personal property owned by me, or to which I may be entitled, or in which I may have any interest, at the time of my decease, either at public or private sale, and upon such terms and conditions as to them may seem proper, and to apply the proceeds of such sales in conformity to the provisions of this my last will and testament.

LASTLY: For the purpose of making this my will final, effectual and conclusive upon all my heirs, next of kin, devisees and legatees, I do hereby declare that if any heir, next of kin, devisee or legatee, named or not named in this my will, shall directly or indirectly institute or become an acting party to any proceeding to oppose, interfere with, set aside, or make null this my will, or any of the provisions thereof, such act or proceeding shall operate and be effectual as a release of and bar to all claim on the part of such heir, next of kin, devisee, or legatee, to any part of my property or estate, and any provisions of this my will in favor of such person I do hereby abrogate, annul and make void. And to the same end I do further declare that my heirs and next of kin, devisees and legatees, shall under no circumstances be entitled to any other or greater interest in or claim upon or against my estate than as given in and by this my will.

IN WITNESS WHEREOF, I have hereunto set

my hand and seal this 24th day of August in the year nineteen hundred and twenty.

(Sd) ELIZABETH LOVERIDGE LEES (L. S.)

Signed, sealed, published and declared by the above named Elizabeth Loveridge Lees to be her last will and testament in the presence of each of us, who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

(Sd) H. HARDCASTLE PENNOCK,
22 East 8th St., N. Y. City.

(Sd) JOS. FRANKENTHAL,
31 Elinor Place, Yonkers, N. Y.

(Sd) FRANKLIN W. MORRELL,
335 So. Broad St., Elizabeth, N. J.

Exhibit P-5.

(5-17-23)

"I, ELIZABETH LOVERIDGE LEES, having heretofore made my last will and testament bearing date the twenty-fourth day of August, nineteen hundred and twenty, do hereby make, publish and declare this instrument to be a codicil thereto, and direct that it shall be taken to be a part of the same.

FIRST.—I give to Loveridge Haffner, son of my niece Marion L. P. Haffner, the sum of Three thousand dollars. In case he should be under the age of twenty one years at the time of my decease, then I direct that said sum be deposited and kept on deposit in some good Savings Bank or Banks, and the interest arising therefrom applied to his

use until he shall attain the age of twenty one years, and upon his attaining the age of twenty one years said sum of Three thousand dollars be paid over to him.

SECOND.—I give to Ludlow Patton Haffner, son of my niece Marion L. P. Haffner, the sum of Three thousand dollars. In case he should be under the age of twenty-one years at the time of my decease, then I direct that said sum be deposited and kept on deposit in some good Savings Bank or Banks, and the interest arising therefrom applied to his use until he shall attain the age of twenty one years, and upon his attaining the age of twenty one years said sum of Three thousand dollars be paid over to him.

THIRD.—Except as modified by this codicil I do hereby ratify and confirm my said last will and testament in all respects.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 3rd day of November, in the year nineteen hundred and twenty.

ELIZABETH L. LEES (Seal)

Signed, sealed, published and declared by the above named Elizabeth Loveridge Lees to be a codicil to her last will and testament in the presence of each of us, who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.—

H. HARDCASTLE PENNOCK,
22 E. 8th St. N. Y. City.

FRANKLIN W. MORRELL,
335 South Broad St., Elizabeth, N. J.

ALFRED S. BROWN,
70 Irving Place, N. Y. City.

Exhibit P-16.

(5-17-23)

Mrs. James Harvie, 102 Passaic Ave., Rutherford, New Jersey.
Mr. James Harvie, 102 Passaic Ave., Rutherford, New Jersey.
Mr. John Harvie, 102 Passaic Ave., Rutherford, New Jersey.
Miss Elizabeth Harvie, 102 Passaic Ave., Rutherford, New Jersey.
Mr. Benjamin Epstein, 14 Jerome St., Brooklyn, N. Y.
Mrs. William L. Sullivan, 419 W. 119 St.
Miss Annie M. Clark, 304 Clark St., Westfield, N. J.
Mrs. Melven C. Bahnet, 664 Park Ave., East Orange, New Jersey.
Miss Katherine Bahnet, 664 Park Ave., East Orange, New Jersey.
Edgar H. Loveridge, Unknown.
Harriet Loveridge, 200 Hollister Ave., Rutherford, New Jersey.
Leigh Loveridge, 73 Addison Ave., Rutherford, New Jersey.
Mrs. Robert T. Lees, Westport, Conn.
Mrs. J. Augustus Lees, Westport, Conn.
Ruth A. Lees, Westport, Conn.
Miss Ellen E. Parker, 30 Broadway, Lynn, Mass.
Mrs. Frank King Nash, 7 Colchester St., Brookline, Mass.
Mrs. Edward W. Nash, 333 Commonwealth Ave., Boston, Mass.
Mrs. Philip Haffner, 287 Central Ave., Orange, New Jersey.
Mr. Edward B. Taylor, Frick Poultry Farm, South Hamilton, Mass., Box 80.
Mrs. Edward B. Taylor, Frick Poultry Farm, South Hamilton, Mass., Box 80.

Miss Beatrice Taylor, Frick Poultry Farm, South Hamilton, Mass., Box 80.
Mr. Alfred S. Brown, 1 Liberty St., New York.
Miss Maranda F. Hough, East Orange, N. J.
Mr. & Mrs. William C. Smith, 71 Perry St. New New York City, N. Y.

Exhibit P-17.

(5-17-23)

3rd. Omit all but $25,000 to Mrs. James Harvie.
4th. Omit $1,000.
9th. Omit $6,000.
16th. Add to E. Taylor miniatures of my husband and self. If he be not living then said miniatures to his wife, also gold watch. Their daughter Beatrice Turquoise necklace.
18th. In case of Mrs. Harvie's death—$15,000 to her husband Mr. James Harvie $5,000 to her son John. $5,000 to her daughter Elizabeth.
12th. Maranda F. Hough $6,000—my auto and victrola—household furniture—carpets—beds—linen—books—pictures—paintings—wearing apparel—housekeeping articles & utensils—lorgnette with chain—aqua marine necklace—vases and ornaments for home—table silverware—In case of her death household effects & ornaments to be divided between Mrs. James Harvie & Mrs. Philip Haffner—The lorgnette to Mrs. Harvie, aqua marine necklace to Mrs. Haffner, Miss Hough's relations are not to be responsible for any of her debts and sums of money which may be due or owing to me.
Elizabeth Harvie—Circular etruscan gold breast pin—three chain gold necklace & dresser silverware.

John Harvie The three pictures—Rent Day—Aurora—and Christ in the Temple.

Mrs. Robert T. Lees—One large diamond pin surrounded with 12 pearls.

Mrs. J. Augustus Lees Ring with three large diamonds.

Ruth A. Lees Cameo Lavalliere.

Miss Ellen E. Parker 5 leafed pearl clover pin with small diamond in center.

Mrs. Edward Nash narrowest band gold bracelet.

Mrs. Frank K. Nash widest band gold bracelet.

Mrs. Edward Jordan Lavalier of moonstone rubies & diamonds.

Mrs. Bahnet Lavalier of white sapphire and azurlite.

Katherine Bahnet Pink coral necklace.

Mrs. Wm. L. Sullivan Onyx cross pin with pearl spray.

Residue to Miss Maranda F. Hough & Mr. Benjamin Epstein.

Miss Annie M. Clark Gold pin and purse pin (as in former will).

Mr. Alfred S. Brown 100 shares of the capital stock of the Lees Mfg. Co. (as in former will).

Willow Brook Cemetery Association—Same as in will of December 21, 1917.

Mr. & Mrs. Wm. C. Smith Stella Music box (over).

Mr. Benjamin Epstein 100 shares of the capital stock of the Lees Mfg. Co.

Edgar Loveridge's indebtedness to me discharged as in former will.

Arthur Loveridge $5.

Mrs. Marion L. R. Scott now Mrs. Philip Haffner $1,000.

Leigh Loveridge $100.

J. Augustus Lees 349 shares of Lees Mfg. Co. stock as in former will.

Edgar H. Loveridge Jr. $100.
Harriet Loveridge $5.
Mrs. Calvin C. Hill, Mrs. Julia H. Drummond, Mrs. Kasson Church Gibson, Mrs. Frank L. Hubbard mentioned in former will—but not to be in my new will.

Exhibit P-18.

(5-17-23)

Mr. F. Philip Haffner, 287 Central Ave., Orange, New Jersey.

Exhibit P-19.

(5-17-23)

Envelope addressed as follows:
Mr. Alfred S. Brown, 1 Liberty Street, New York City, New York.

Written in upper corner:
Mrs. J. E. Lees, 102 N. 22 St., East Orange, N. J.
Envelope stamped: Registered No. 1867.
Written on it: Please return receipt.
Stamped: Return receipt demanded 18928.
Stamped with one ten cent stamp and one two cent stamp U. S. postage.

Exhibit P-22.

(5-17-23)

AGREEMENT, made the twenty-fourth day of August, in the year nineteen hundred and twenty, between MARANDA F. HOUGH (unmarried),

party of the first part, and ELIZABETH LOVERIDGE LEES (widow), party of the second part,

WITNESSETH:

WHEREAS, the party of the first part is the owner of a plot of land in the City of East Orange, County of Essex, and State of New Jersey, hereinafter particularly described, on which she is about to erect a dwelling house to be known as "Rainbow Cottage"; and

WHEREAS, the party of the second part has made and is about to make advances of money to the party of the first part to pay for the erection of said dwelling house.

NOW THEREFORE, in consideration of the premises, and of the sum of one dollar to her in paid paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part has granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, convey and confirm, unto the said party of the second part,

ALL that certain tract or parcel of land situate, lying and being in the City of East Orange, in the County of Essex, and State of New Jersey. BEGINNING at a point on the northerly line of Whitman Avenue distant one hundred and forty one and forty-eight one hundredths feet easterly from the northeasterly corner of Whitman Avenue and North Grove Street, running thence north forty four degrees two minutes east one hundred feet, thence south forty five degrees fifty eight minutes east sixty five feet, thence south forty four

degrees two minutes west one hundred feet to the northerly line of Whitman Avenue, and thence along the northerly line of Whitman Avenue north forty five degrees fifty eight minutes west sixty five feet to the point or place of beginning.

TOGETHER with all and singular the tenements, hereditaments and appurtenances to the same belonging or in anywise appertaining. ALSO all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in or to the above described premises, and to every part and parcel thereof, with the appurtenances. TO HAVE AND TO HOLD all and singular the above described premises, with the appurtenances, unto the said party of the second part, for and during the term of her natural life.

And in consideration of the premises, and of the sum of one dollar to her in hand paid by the party of the first part, the receipt whereof is hereby acknowledged, the said party of the second part, for herself, her executors, and administrators, does hereby release and forever discharge the said party of the first part, her heirs, executors and administrators, of and from all claim, demand and liability whatsoever, for or by reason of any moneys advanced or which may be advanced by the party of the second part for the purpose of constructing said dwelling house above mentioned.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written.

MARANDA F. HOUGH, L. S.,
ELIZABETH LOVERIDGE LEES, L. S.

Sealed and delivered
in the presence of

JOS. FRANKENTHAL.

State of New York,
County of New York, } ss.:

BE IT REMEMBERED, that on this 24th day of August, in the year nineteen hundred and twenty, before me, a Notary Public of the State of New York, personally came Maranda F. Hough and Elizabeth Loveridge Lees, to me known, who I am satisfied are the same persons described in and who executed the foregoing instrument; and I having first made known to them the contents thereof they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

JOS. FRANKENTHAL,
Notary Public,
Westchester County.
Certificate filed in New York County No. 50.

Exhibit P-24.

(5-17-23)

I, ELIZABETH LOVERIDGE LEES, do hereby make, publish and declare this instrument to be my last will and testament, hereby revoking all former and other wills and testaments at any time heretofore by me made.

FIRST.—I do nominate, constitute and appoint ALFRED S. BROWN, of the City of New York, to be the executor of this my last will and testament, without bonds or other security for the faithful discharge of the trust hereby reposed in him. In case of his death prior to my death or prior to

completing the administration of my estate, I do nominate, constitute and appoint JAMES HARVIE, of Rutherford, New Jersey, to be the executor of my said will, without bonds or other security for the faithful discharge of the trust hereby reposed in him.

SECOND.—I direct the payment by my executors from and out of my estate of all my just debts and funeral and testamentary expenses as soon as practicable after my decease.

THIRD.—I give and bequeath to my niece MRS. BELLE HARVIE, wife of James Harvie, of Rutherford, New Jersey, the sum of Twenty-five thousand dollars, and also all my household furniture, carpets, beds, bedding, linen, books, paintings, pictures, including the miniatures of my husband James E. Lees and myself and all my wearing apparel, housekeeping articles and utensils, both useful and ornamental, of every kind and description, and all my silverware, jewelry and personal ornaments.

FOURTH.—I give and bequeath to my nephew EDGAR H. LOVERIDGE (the sum of One thousand dollars; also) a certain promissory note bearing date May 9, 1912, made by Teaneck Park Land and Improvement Company and payable to my order, for Three hundred dollars and interest from May 22, 1906. And in addition to the foregoing bequests I do hereby release and absolutely discharge the said Edgar H. Loveridge of and from the payment of a certain promissory note bearing date May 9, 1912, made by him payable to my order, for Fifteen hundred dollars with interest from May 22, 1906, and also of and from the payment of

the balance of interest now due to me from him at six per cent. on the sum of Six thousand dollars from April 30, 1907, to October 1, 1913, (Three hundred and seventy-five dollars having been paid on account thereof.) And I direct my executor to deliver and surrender said two promissory notes to him, and to cancel and discharge said indebtedness for interest.

FIFTH.—I give and bequeath to my nephew ARTHUR R. LOVERIDGE the sum of Five dollars.

SIXTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, the sum of Two thousand dollars, to have and to hold the same to the said Willow Brook Cemetery Association, and its successors, upon trust, however, to keep the same invested, and to apply the income thus arising therefrom, under the direction of the Board of Directors, to the repair, preservation or renewal of any tomb, monument or gravestone, railing or other erection, or for planting and cultivating trees, shrubs, or flowers or plants, upon, in or around the four lots numbered 25, 26, 27, and 28, of Section 1 in the grounds of said cemetery included in the plot in which my husband's father and others of his family are buried. And my wish is that the whole of said income accruing in any one year shall be applied during that year to the purposes above set forth, and that said income shall not be accumulated or carried over from year to year. And I direct that no bond or other security shall be required of said Association for the faithful discharge of said trust.

And I do further give and devise to the WILLOW BROOK CEMETERY ASSOCIATION, two of the lots above mentioned which are known by

the numbers 27 and 28 of Section 1 in the grounds of said cemetery association, to have and to hold the said two lots of land to the said Willow Brook Cemetery Association, and its successors, and I hereby designate and prescribe that my remains be interred in said lots of land in addition to the remains of my deceased husband James E. Lees and his deceased wife Cesarine S. Lees, which are already interred there, and that interments in said lots be restricted to the persons so designated, and that said two lots of land be hereafter inalienable.

SEVENTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, all the capital stock of said association which I may own or in which I may have any interest at the time of my decease, the said capital stock to be cancelled by said association and not reissued. And I hereby express the wish that my example in giving my capital stock to the said association may be followed by other stockholders thereof in order that the said association may eventually own all of its capital stock.

EIGHTH.—I give and bequeath to ALFRED S. BROWN, of the City of New York, one hundred shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

NINTH.—I give and bequeath to BENJAMIN EPSTEIN, now residing at No. 283 Vermont Street, Brooklyn, New York, the sum of Six thousand dollars, and also one hundred shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

TENTH.—I give and bequeath to my sister HARRIET LOVERIDGE, the sum of Five dollars.

ELEVENTH.—I give and bequeath to my niece MRS. MARION L. P. SCOTT, now residing in Newark, New Jersey, the sum of One thousand dollars.

TWELFTH.—I give and bequeath to MARANDA F. HOUGH, who is now living with me, the sum of Six thousand dollars. And in addition to said bequest I do hereby release and absolutely discharge the said Maranda F. Hough of and from all debts and sums of money which may be due or owing by her to me at the time of my death; and I direct my executor to deliver and surrender to her any evidences of such indebtedness, and to cancel and discharge the same.

THIRTEENTH.—I give and bequeath to my grandnephew LEIGH LOVERIDGE the sum of One hundred dollars.

FOURTEENTH.—I give and bequeath to J. AUGUSTUS LEES, of Westport, Connecticut, three hundred and forty-nine shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

FIFTEENTH.—I give and bequeath to my grandnephew EDGAR H. LOVERIDGE, JR., the sum of One hundred dollars.

SIXTEENTH.—I give and bequeath to my nephew EDWARD B. TAYLOR, of The Colt Farm, Bristol, Rhode Island, the sum of Five thousand dollars; but if he be not living at the time of my

decease then I do give said sum to his wife Nellie Taylor.

SEVENTEENTH.—I give and bequeath to MISS ANNIE M. CLARK, of Westfield, New Jersey, my gold purse and my purse pin.

EIGHTEENTH.—All the rest, residue and remainder of my estate, both real and personal, of every nature and description, and wheresoever situated, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I do give, devise and bequeath to MRS. BELLE HARVIE, above named, if she shall survive me, for her own use and benefit absolutely and forever. And in case the said Belle Harvie shall not survive me, then I do give the said rest, residue and remainder of my estate as follows:

To JAMES HARVIE, of Rutherford, New Jersey, the sum of Five thousand dollars, and also the rugs, draperies and furniture contained in my sitting room and in my large bedroom, except the bedsteads and bedding.

To JOHN HARVIE, son of the said James Harvie, the sum of Five thousand dollars, and also all my paintings and pictures.

To ELIZABETH HARVIE, daughter of the said James Harvie, the sum of Five thousand dollars, and also all my silverware and bric-a-brac.

To my nephew EDWARD B. TAYLOR, hereinabove named, the miniatures of my husband James E. Lees and myself, but if he be not living at the time of my decease then I do give said miniatures to his wife Nellie Taylor.

To MISS MARANDA F. HOUGH, hereinabove named, all my wearing apparel, housekeeping articles and utensils both useful and ornamental of

every kind and description, all my bedsteads and mattresses and bedding, linens, towels, books, except such as are hereinbefore specifically bequeathed, and all the furniture contained in my small bedroom; also my lorgnette and chain, my ring of three small diamonds and two emeralds, and my aqua marine necklace.

To NELLIE TAYLOR, the wife of Edward B. Taylor hereinabove named, my gold watch and turquoise necklace.

To BEATRICE TAYLOR, the daughter of the said Edward B. and Nellie Taylor, my Venetian bead necklaces, red coral beads, amber beads, and cut crystal bead necklace.

To MRS. ROBERT LEES, of Westport, in the State of Connecticut, my breast-pin of one large diamond surmounted with pearls.

To MRS. J. AUGUSTUS LEES, of Westport aforesaid, my ring with three large diamonds.

To RUTH A. LEES, of Westport aforesaid, my cameo lavalliere.

To MRS. JULIA H. DRUMMOND, now residing at No. 115 West 77th Street, in the City of New York, my narrowest band gold bracelet.

To ELIZABETH HARVIE, now residing at No. 102 Passaic Avenue, Rutherford, New Jersey, my circular Etruscan gold breast-pin and my three chain necklace.

To MISS ELLEN E. PARKER, now residing at No. 30 Broadway, Lynn, Massachusetts, my five leaves pearl clover pin with small diamond center.

To MRS. EDWARD NASH, now residing at The Empire, No. 333 Commonwealth Avenue, Boston, Massachusetts, my ring with two diamonds and one ruby.

To MRS. FRANK K. NASH, now residing at No. 7 Colchester Street, Brookline, Massachusetts, my ring with two large diamonds and one emerald.

To MRS. CALVIN C. HILL, now residing at No. 6 Radcliff Road, Allston, Massachusetts, my ring with three small diamonds.

To MRS. EDWARD JORDAN, of Honolulu, Hawaii, Sandwich Islands, my lavalliere of moon stone, rubies and diamonds.

To MRS. MELVIN BAHRET, now residing at No. 570 Park Avenue, East Orange, New Jersey, my lavalliere of white sapphire and azurelite.

To MISS KATHARINE BAHRET, now residing at No. 570 Park Avenue, East Orange, New Jersey, my pink coral necklace.

To MRS. FRANK L. HUBBARD, now residing at No. 57 Bay 31st Street, Brooklyn, New York, my lapiz lazuli necklace.

To MRS. KASSON CHURCH GIBSON, now residing at No. 115 West 77th Street, New York City, my widest band gold bracelet.

And all that may then remain of said rest, residue and remainder, I do give, devise and bequeath to the following persons who are hereinbefore named as legatees, to be divided among them pro rata in proportion to the amounts of their respective pecuniary legacies, viz.: Benjamin Epstein and Maranda F. Hough.

In the event that my estate shall be insufficient to pay all the pecuniary legacies and bequests mentioned in this my will, I direct that the legacy of Two thousand dollars given to the Willow Brook Cemetery Association by paragraph Sixth of this my will shall be paid in full, and that the other legacies mentioned in my said will shall abate in proportion to their respective amounts to a sufficient extent to provide for such payment.

NINETEENTH.—I do hereby authorize and empower my said executor to grant, bargain, sell and convey all or any portion of any and all real estate

and personal property owned by me, or to which I may be entitled, or in which I may have any interest, at the time of my decease, either at public or private sale, and upon such terms and conditions as to him may seem proper, and to apply the proceeds of such sales in conformity to the provisions of this my last will and testament.

LASTLY.—For the purpose of making this my will final, effectual and conclusive upon all my heirs, next of kin, devisees and legatees, I do hereby declare that if any heir, next of kin, devisee or legatee, named or not named in this my will, shall directly or indirectly institute or become an acting party to any proceeding to oppose, interfere with, set aside, or make null this my will, or any of the provisions thereof, such act or proceeding shall operate and be effectual as a release of and bar to all claim on the part of such heir, next of kin, devisee, or legatee, to any part of my property or estate, and any provision of this my will in favor of such person I do hereby abrogate, annul and make void. And to the same end I do further declare that my heirs and next of kin, devisees and legatees, shall under no circumstances be entitled to any other or greater interest in or claim upon or against my estate than as given in and by this my will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 21st day of December, in the year nineteen hundred and Seventeen.

(Sd) ELIZABETH L. LEES (L. S.)

Signed, sealed, published and declared by the above named Elizabeth Loveridge Lees to be her Last Will and Testament in the presence of each

of us, who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

(Sd) H. HARDCASTLE PENNOCK,
22 East 8th St., N. Y. City.

(Sd) HENRY A. HIMMELMANN,
45 Pine St., N. Y. City.

(Sd) JOS. FRANKENTHAL,
31 Elinor Place, Yonkers, N. Y.

— —

Exhibit P-25.

(5-17-23)

I, ELIZABETH LOVERIDGE LEES, do hereby make, publish and declare this instrument to be my last will and testament, hereby revoking all former and other wills and testaments at any time heretofore by me made.

FIRST.—I do nominate, constitute and appoint ALFRED S. BROWN, of the City of New York, to be the executor of this my last will and testament, without bonds or other security for the faithful discharge of the trust hereby reposed in him. In case of his death prior to my death or prior to completing the administration of my estate, I do nominate, constitute and appoint PAUL M. CRANDELL, of the City of New York, to be the executor of my said will, without bonds or other security for the faithful discharge of the trust hereby reposed in him.

SECOND.—I direct the payment by my executor from and out of my estate of all my just debts and

funeral and testamentary expenses as soon as practicable after my decease.

THIRD.—I give and bequeath to MISS ANNIE T. CASSIDY, now living at No. 377 East 135th Street, New York City, the sum of Five thousand dollars.

FOURTH.—I give and bequeath to my niece MRS. BELLE HARVIE, wife of James Harvie, of Rutherford, New Jersey, the sum of Twenty-five thousand dollars, and also all my household furniture, carpets, beds, bedding, linen, books, paintings, pictures, including the miniatures of my husband James E. Lees and myself, and all my wearing apparel, housekeeping articles and utensils, both useful and ornamental, of every kind and description, and all my silverware, jewelry and personal ornaments.

FIFTH.—I give and bequeath to my nephew EDGAR H. LOVERIDGE the sum of Two thousand dollars; also a certain promissory note bearing date May 9, 1912, made by Teaneck Park Land and Improvement Company and payable to my order, for Three hundred dollars and interest from May 22, 1906. And in addition to the foregoing bequests I do hereby release and absolutely discharge the said Edgar H. Loveridge of and from the payment of a certain promissory note bearing date May 9, 1912, made by him payable to my order, for Fifteen hundred dollars with interest from May 22, 1906, and also of and from the payment of the balance of interest now due to me from him at six per cent. on the sum of Six thousand dollars from April 30, 1907, to October 1, 1913, (Three hundred and seventy five dollars having been paid on account thereof). And I direct my executor to

deliver and surrender said two promissory notes to him, and to cancel and discharge said indebtedness for interest.

SIXTH.—I give and bequeath to my nephew ARTHUR R. LOVERIDGE the sum of Five dollars.

SEVENTH.—I give and bequeath to MRS. JOSEPHINE CRANDELL, widow of John A. Crandell, now residing at No. 47 West 126th Street, in the City of New York, the sum of Five thousand dollars.

EIGHTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, the sum of Two thousand dollars, to have and to hold the same to the said Willow Brook Cemetery Association, and its successors, upon trust, however, to keep the same invested, and to apply the income thus arising therefrom, under the direction of the Board of Directors, to the repair, preservation or renewal of any tomb, monument or gravestone, railing or other erection, or for planting and cultivating trees, shrubs or flowers or plants, upon, in or around the four lots numbered 25, 26, 27, and 28, of Section 1 in the grounds of said cemetery included in the plot in which my husband's father and others of his family are buried. And my wish is that the whole of said income accruing in any one year shall be applied during that year to the purposes above set forth, and that said income shall not be accumulated or carried over from year to year. And I direct that no bond or other security shall be required of said Association for the faithful discharge of said trust.

I do further give and devise to the WILLOW BROOK CEMETERY ASSOCIATION two of the lots above mentioned which are known by the numbers 27 and 28 of Section 1 in the grounds of said cemetery association, to have and to hold the said two lots of land to the said Willow Brook Cemetery Association, and its successors; and I hereby designate and prescribe that my remains be interred in said lots of land in addition to the remains of my deceased husband James E. Lees and his deceased wife Cesarine S. Lees, which are already interred there, and that interments in said lots be restricted to the persons so designated, and that said two lots of land be hereafter inalienable.

NINTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, all the capital stock of said association which I may own or in which I may have any interest at the time of my decease, the said capital stock to be cancelled by said association and not reissued. And I hereby express the wish that my example in giving my capital stock to the said association may be followed by other stockholders thereof in order that the said association may eventually own all of its capital stock.

TENTH.—I give and bequeath to ALFRED S. BROWN, of the City of New York, one hundred shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

ELEVENTH.—I give and bequeath to BENJAMIN EPSTEIN, now residing at No. 283 Vermont Street, Brooklyn, New York, the sum of Six thou-

sand dollars, and also one hundred shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

TWELFTH.—I give and bequeath to my sister HARRIET LOVERIDGE, the sum of Five dollars.

THIRTEENTH.—I give and bequeath to my niece MRS. MARION L. P. SCOTT, now residing in Newark, New Jersey, the sum of Two thousand dollars.

FOURTEENTH.—I give and bequeath to MARANDA F. HOUGH, who is now living with me, the sum of Six thousand dollars. And in addition to said bequest I do hereby release and absolutely discharge the said Maranda F. Hough of and from all debts and sums of money which may be due or owing by her to me at the time of my death; and I direct my executor to deliver and surrender to her any evidences of such indebtedness, and to cancel and discharge the same.

FIFTEENTH.—I give and bequeath to my grandnephew LEIGH LOVERIDGE the sum of One hundred dollars.

SIXTEENTH.—I give and bequeath to J. AUGUSTUS LEES, of Westport, Connecticut, three hundred and forty-nine shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

SEVENTEENTH.—I give and bequeath to my grandnephew EDGAR H. LOVERIDGE JR., the sum of One hundred dollars.

EIGHTEENTH.—I give and bequeath to my nephew EDWARD B. TAYLOR, of The Colt Farm, Bristol, Rhode Island, the sum of Five thousand dollars; but if he be not living at the time of my decease then I do give said sum to his wife Nellie Taylor.

NINETEENTH.—I give and bequeath to MISS ANNIE M. CLARK, of Westfield, New Jersey, my gold purse and my purse pin.

TWENTIETH.—All the rest, residue and remainder of my estate, both real and personal, of every nature and description, and wheresoever situated, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I do give, devise and bequeath to MRS. BELLE HARVIE, above named, if she shall survive me, for her own use and benefit absolutely and forever. And in case the said Belle Harvie shall not survive me, then I do give the said rest, residue and remainder of my estate as follows:

To JAMES HARVIE, of Rutherford, New Jersey, the sum of Five thousand dollars, and also the rugs, draperies and furniture contained in my sitting room and in my large bedroom, except the bedsteads and bedding.

To JOHN HARVIE, son of the said James Harvie, the sum of Five thousand dollars, and also all my paintings and pictures.

To ELIZABETH HARVIE, daughter of the said James Harvie, the sum of Five thousand dollars, and also all my silverware and bric-a-brac.

To my nephew EDWARD B. TAYLOR, hereinabove named, the miniatures of my husband James E. Lees and myself, but if he be not living at the time of my decease then I do give said miniatures to his wife Nellie Taylor.

To MISS ANNIE T. CASSIDY, hereinabove named, all my laces.

To MISS MARANDA F. HOUGH, hereinabove named, all my wearing apparel, housekeeping articles and utensils both useful and ornamental of every kind and description, all my bedsteads and mattresses and bedding, linens, towels, books, except such as are hereinbefore specifically bequeathed, and all the furniture contained in my small bedroom; also my lorgnette and chain, my ring of three small diamonds and two emeralds, and my aqua marine necklace.

To NELLIE TAYLOR, the wife of Edward B. Taylor hereinabove named, my gold watch and turquoise necklace.

To BEATRICE TAYLOR, the daughter of the said Edward B. and Nellie Taylor, my Venetian bead necklaces, red coral beads, amber beads, and cut crystal bead necklace.

To MRS. JOSEPHINE CRANDELL, hereinabove named, my onyx cross and lavalliere.

To MRS. ROBERT LEES, of Westport, in the State of Connecticut, my breast-pin of one large diamond surmounted with pearls.

To MRS. J. AUGUSTUS LEES, of Westport aforesaid, my ring with three large diamonds.

To RUTH A. LEES, of Westport aforesaid, my cameo lavalliere.

To MRS. JULIA H. DRUMMOND, now residing at No. 115 West 77th Street, in the City of New York, my narrowest band gold bracelet.

To ELIZABETH HARVIE, now residing at No. 102 Passaic Avenue, Rutherford, New Jersey, my circular Etruscan gold breast-pin and my three chain necklace.

To MISS ELLEN E. PARKER, now residing at No. 30 Broadway, Lynn, Massachusetts, my five leaves pearl clover pin with small diamond center.

To MRS. EDWARD NASH, now residing at The Empire, No. 333 Commonwealth Avenue, Boston, Massachusetts, my ring with two diamonds and one ruby.

To MRS. FRANK K. NASH, now residing at No. 7 Colchester Street, Brookline, Massachusetts, my ring with two large diamonds and one emerald.

To MRS. CALVIN C. HILL, now residing at No. 6 Radcliff Road, Allston, Massachusetts, my ring with three small diamonds.

To MRS. EDWARD JORDAN, of Honolulu, Hawaii, Sandwich Islands, my lavalliere of moon stone, rubies and diamonds.

To MRS. MELVIN BAHRET, now residing at No. 570 Park Avenue, East Orange, New Jersey, my lavaliere of white sapphire and azurelite.

To MISS KATHARINE BAHRET, now residing at No. 570 Park Avenue, East Orange, New Jersey, my pink coral necklace.

To MRS. FRANK L. HUBBARD, now residing at No. 57 Bay 31st Street, Brooklyn, New York, my lapiz lazuli necklace.

To MRS. KASSON CHURCH GIBSON, now residing at No. 115 West 77th Street, New York City, my widest band gold bracelet.

And all that may then remain of said rest, residue and remainder, I do give, devise and bequeath to the following persons who are hereinbefore named as legatees, to be divided among them pro rata in proportion to the amounts of their respective pecuniary legacies, viz: Miss Annie T. Cassidy, Mrs. Josephine Crandell, Benjamin Epstein, and Maranda F. Hough.

In the event that my estate shall be insufficient to pay all the pecuniary legacies and bequests mentioned in this my will, I direct that the legacy of Two thousand dollars given to the Willow Brook

Cemetery Association by paragraph Eighth of this my will shall be paid in full, and that the other legacies mentioned in my said will shall abate in proportion to their respective amounts to a sufficient extent to provide for such payment.

TWENTY-FIRST.—I do hereby authorize and empower my said executor to grant, bargain, sell and convey all or any portion of any and all real estate and personal property owned by me, or to which I may be entitled, or in which I may have any interest, at the time of my decease, either at public or private sale, and upon such terms and conditions as to him may seem proper, and to apply the proceeds of such sales in conformity to the provisions of this my last will and testament.

LASTLY: For the purpose of making this my will final, effectual and conclusive upon all my heirs, next of kin, devisees and legatees, I do hereby declare that if any heir, next of kin, devisee or legatee, named or not named in this my will, shall directly or indirectly institute or become an acting party to any proceeding to oppose, interfere with, set aside, or make null this my will, or any of the provisions thereof, such act or proceeding shall operate and be effectual as a release of and bar to all claim on the part of such heir, next of kin, devisee, or legatee, to any part of my property or estate, and any provision of this my will in favor of such person I do hereby abrogate, annul and make void. And to the same end I do further declare that my heirs and next of kin, devisees and legatees, shall under no circumstances be entitled to any other or greater interest in or claim upon or against my estate than as given in and by this my will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of March in the year nineteen hundred and seventeen.

Signed, sealed, published and declared by the above named Elizabeth Loveridge Lees to be her Last Will and Testament in the presence of each of us, who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Exhibit P-26.

(5-17-23)

I, ELIZABETH LOVERIDGE LEES, do hereby make, publish and declare this instrument to be my last will and testament, hereby revoking all former and other wills and testaments at any time heretofore by me made.

FIRST.—I do nominate, constitute and appoint ALFRED S. BROWN, of the City of New York, to be the executor of this my last will and testament, without bonds or other security for the faithful discharge of the trust hereby reposed in him. In case of his death prior to my death or prior to completing the administration of my estate, I do nominate, constitute and appoint PAUL M. CRANDELL, of the City of New York, to be the executor of my said will, without bonds or other security for the faithful discharge of the trust hereby reposed in him.

SECOND.—I direct the payment by my executor from and out of my estate of all my just debts and funeral and testamentary expenses as soon as practicable after my decease.

THIRD.—I give and bequeath to MISS ANNIE T. CASSIDY, now living at No. 377 East 135th Street, New York City, the sum of Five thousand dollars.

FOURTH.—I give and bequeath to my niece MRS. BELLE HARVIE, wife of James Harvie, of Rutherford, New Jersey, the sum of Twenty-five thousand dollars, and also all my household furniture, carpets, beds, bedding, linen, books, paintings, pictures, including the miniatures of my husband James E. Lees and myself, and all my wearing apparel, housekeeping articles and utensils, both useful and ornamental, of every kind and description, and all my silverware, jewelry and personal ornaments.

FIFTH.—I give and bequeath to my nephew EDGAR H. LOVERIDGE the sum of Two thousand dollars; also a certain promissory note bearing date May 9, 1912, made by Teaneck Park Land and Improvement Company and payable to my order, for Three hundred dollars and interest from May 22, 1906. And in addition to the foregoing bequests I do hereby release and absolutely discharge the said Edgar H. Loveridge of and from the payment of a certain promissory note bearing date May 9, 1912, made by him payable to my order, for Fifteen hundred dollars with interest from May 22, 1906, and also of and from the payment of the balance of interest now due to me from him at six per cent. on the sum of Six thousand dollars from April 30, 1907, to October 1, 1913 (Three hundred and seventy-five dollars having been paid on account thereof). And I direct my executor to deliver and surrender said two promissory notes to him, and to cancel and discharge said indebtedness for interest.

SIXTH.—I give and bequeath to my nephew ARTHUR R. LOVERIDGE the sum of Five dollars.

SEVENTH.—I give and bequeath to MRS. JOSEPHINE CRANDELL, widow of John A. Crandell, now residing at No. 47 West 126th Street, in the City of New York, the sum of Five thousand dollars.

EIGHTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, the sum of Two thousand dollars, to have and to hold the same to the said Willow Brook Cemetery Association, and its successors, upon trust, however, to keep the same invested, and to apply the income thus arising therefrom, under the direction of the Board of Directors, to the repair, preservation or renewal of any tomb, monument or gravestone, railing or other erection, or for planting and cultivating trees, shrubs, or flowers or plants, upon, in or around the four lots numbered 25, 26, 27 and 28 of Section 1 in the grounds of said cemetery included in the plot in which my husband's father and others of his family are buried. And my wish is that the whole of said income accruing in any one year shall be applied during that year to the purposes above set forth, and that said income shall not be accumulated or carried over from year to year. And I direct that no bond or other security shall be required of said Association for the faithful discharge of said trust.

I do further give and devise to the WILLOW BROOK CEMETERY ASSOCIATION two of the lots above mentioned which are known by the numbers 27 and 28 of Section 1 in the grounds of said cemetery association, to have and to hold the

said two lots of land to the said Willow Brook Cemetery Association, and its successors; and I hereby designate and prescribe that my remains be interred in said lots of land in addition to the remains of my deceased husband James E. Lees and his deceased wife of Cesarine S. Lees, which are already interred there, and that interments in said lots be restricted to the persons so designated, and that said two lots of land be hereafter inalienable.

NINTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, all the capital stock of said association which I may own or in which I may have any interest at the time of my decease, the said capital stock to be cancelled by said association and not reissued. And I hereby express the wish that my example in giving my capital stock to the said association may be followed by other stockholders thereof in order that the said association may eventually own all of its capital stock.

TENTH.—I give and bequeath to ALFRED S. BROWN, of the City of New York, one hundred shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

ELEVENTH.—I give and bequeath to BENJAMIN EPSTEIN, now residing at No. 283 Vermont Street, Brooklyn, New York, the sum of Six thousand dollars, and also one hundred shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

TWELFTH.—I give and bequeath to my sister HARRIET LOVERIDGE, the sum of Five dollars.

THIRTEENTH.—I give and bequeath to my niece MRS. MARION L. P. SCOTT, now residing in Newark, New Jersey, the sum of Ten thousand dollars.

FOURTEENTH.—I give and bequeath to MARANDA F. HOUGH, who is now living with me, the sum of Six thousand dollars. And in addition to said bequest I do hereby release and absolutely discharge the said Maranda F. Hough of and from all debts and sums of money which may be due or owing by her to me at the time of my death; and I direct my executor to deliver and surrender to her any evidences of such indebtedness, and to cancel and discharge the same.

FIFTEENTH.—I give and bequeath to my grand-nephew LEIGH LOVERIDGE the sum of one hundred dollars.

SIXTEENTH.—I give and bequeath to J. AUGUSTUS LEES, of Westport, Connecticut, three hundred and forty-nine shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

SEVENTEENTH.—I give and bequeath to my grand-nephew EDGAR H. LOVERIDGE, JR., the sum of One hundred dollars.

EIGHTEENTH.—I give and bequeath to my nephew EDWARD B. TAYLOR, of Hyde Park on Hudson, New York, the sum of Two thousand dollars.

NINETEENTH.—All the rest, residue and remainder of my estate, both real and personal, of

every nature and description, and wheresoever situated, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I do give, devise and bequeath to MRS. BELLE HARVIE, above named, if she shall survive me, for her own use and benefit absolutely and forever. And in case the said Belle Harvie shall not survive me, then I do give the said rest, residue and remainder of my estate as follows:

To JAMES HARVIE, of Rutherford, New Jersey, the sum of Five thousand dollars, and also the rugs, draperies and furniture contained in my sitting room and in my large bedroom, except the bedsteads and bedding.

To JOHN HARVIE, son of the said James Harvie, the sum of five thousand dollars, and also all my paintings and pictures.

To ELIZABETH HARVIE, daughter of the said James Harvie, the sum of Five thousand dollars, and also all my silverware and bric-a-brac.

To my niece MRS. MARION L. P. SCOTT, hereinabove named, the miniatures of my husband James E. Lees and myself, and also all my jewelry and personal ornaments.

To MISS ANNIE T. CASSIDY, hereinabove named, all my laces.

To MISS MARANDA F. HOUGH, hereinabove named, all my wearing apparel, housekeeping articles and utensils both useful and ornamental of every kind and description, all my bedsteads and mattresses and bedding, linens, towels, books, except such as are hereinbefore specifically bequeathed, and all the furniture contained in my small bedroom.

And all that may then remain of said rest, residue and remainder, I do give, devise and be-

queath to the following persons who are hereinbefore named as legatees, to be divided among them pro rata in proportion to the amounts of their respective pecuniary legacies, viz: Miss Annie T. Cassidy, Mrs. Josephine Crandell, Benjamin Epstein, Mrs. Marion L. P. Scott, and Maranda F. Hough.

In the event that my estate shall be insufficient to pay all the pecuniary legacies and bequests mentioned in this my will, I direct that the legacy of Two thousand dollars given to the Willow Brook Cemetery Association by paragraph Eighth of this my will shall be paid in full, and that the other legacies mentioned in my said will shall abate in proportion to their respective amounts to a sufficient extent to provide for such payment.

TWENTIETH.—I do hereby authorize and empower my said executor to grant, bargain, sell and convey all or any portion of any and all real estate and personal property owned by me, or to which I may be entitled, or in which I may have any interest, at the time of my decease, either at public or private sale, and upon such terms and conditions as to him may seem proper, and to apply the proceeds of such sales in conformity to the provisions of this my last will and testament.

LASTLY: For the purpose of making this my will final, effectual and conclusive upon all my heirs, next of kin, devisees and legatees, I do hereby declare that if any heir, next of kin, devisee or legatee, named or not named in this my will, shall directly or indirectly institute or become an acting party to any proceeding to oppose, interfere with, set aside, or make null this my will, or any of the provisions thereof, such act or proceeding shall

operate and be effectual as a release of and bar to all claim on the part of such heir, next of kin, devisee, or legatee, to any part of my property or estate, and any provisions of this my will in favor of such person I do hereby abrogate, annul and make void. And to the same end I do further declare that my heirs and next of kin, devisees and legatees, shall under no circumstances be entitled to any other or greater interest in or claim upon or against my estate than as given in and by this my will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this Twenty first day of November in the year nineteen hundred and sixteen.

Signed, sealed, published and declared by the above named Elizabeth Loveridge Lees to be her last will and testament in the presence of each of us, who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Exhibit P-27.

I, ELIZABETH LOVERIDGE LEES, do hereby make, publish and declare this Instrument to be my last will and testament, hereby revoking all former and other wills and testaments at any time heretofore by me made.

FIRST.—I do nominate, constitute and appoint ALFRED S. BROWN, of the City of New York, to be the executor of this my last will and testament, without bonds or other security for the faithful discharge of the trust hereby reposed in him.

In case of his death prior to my death or prior to completing the administration of my estate, I do nominate, constitute and appoint PAUL M. CRANDELL, of the City of New York, to be the executor of my said will, without bonds or other security for the faithful discharge of the trust hereby reposed in him.

SECOND.—I direct the payment by my executor from and out of my estate of all my just debts and funeral and testamentary expenses as soon as practicable after my decease.

THIRD.—I give and bequeath to MISS ANNIE T. CASSIDY, now living at No. 377 East 135th Street, New York City, the sum of Five thousand dollars.

FOURTH.—I give and bequeath to MRS. ALICE SHERWOOD, widow of Henry E. Sherwood, of Westport, Connecticut, the sum of Two thousand dollars.

FIFTH.—I give and bequeath to my niece MRS. BELLE HARVIE, wife of James Harvie, of Rutherford, New Jersey, the sum of Twenty five thousand dollars, and also all my household furniture, carpets, beds, bedding, linen, books, paintings, pictures, including the miniatures of my husband James E. Lees and myself, and all my wearing apparel, housekeeping articles and utensils, both useful and ornamental, of every kind and description, and all my silverware, jewelry and personal ornaments.

SIXTH.—I give and bequeath to my nephew EDGAR H. LOVERIDGE, the sum of Five thousand dollars, but in case he shall not have paid to me

the balance of interest now due to me at six per cent. on the sum of Six thousand dollars, said interest to be computed from April 30th, 1907, to October 1st, 1913, (Three hundred and seventy five dollars having been paid on account thereof), and in case also he shall not have paid the amount due on his two promissory notes now held by me, each bearing date May 9th, 1912, one for Fifteen hundred dollars and the other for Three hundred dollars, then the amount of such unpaid interest and the amount due on said two notes shall be deducted from said sum of Five thousand dollars.

SEVENTH.—I give and bequeath to my nephew ARTHUR R. LOVERIDGE, the sum of Five dollars.

EIGHTH.—I give and bequeath to MRS. JOSEPHINE CRANDELL, widow of John A. Crandell, now residing at No. 47 West 126th Street, in the City of New York, the sum of Five thousand dollars.

NINTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, the sum of Two thousand dollars, to have and to hold the same to the said Willow Brook Cemetery Association, and its successors, upon trust, however, to keep the same invested, and to apply the income thus arising therefrom, under the direction of the Board of Directors, to the repair, preservation or renewal of any tomb, monument or gravestone, railing or other erection, or for planting and cultivating trees, shrubs, or flowers or plants, upon, in or around the four lots numbered 25, 26, 27 and 28 of Section 1 in the grounds of said cemetery included in the plot in which my husband's father and others of

his family are buried. And my wish is that the whole of said income accruing in any one year shall be applied during that year to the purposes above set forth, and that said income shall not be accumulated or carried over from year to year. And I direct that no bond or other security shall be required of said Association for the faithful discharge of said trust.

I do further give and devise to the WILLOW BROOK CEMETERY ASSOCIATION two of the lots above mentioned which are known by the numbers 27 and 28 of Section 1 in the grounds of said cemetery association, to have and to hold the said two lots of land to the said Willow Brook Cemetery Association, and its successors; and I hereby designate and prescribe that my remains be interred in said lots of land in addition to the remains of my deceased husband James E, Lees and his deceased wife Cesarine S. Lees, which are already interred there, and that interments in said lots be restricted to the persons so designated, and that said two lots of land be hereafter inalienable.

TENTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, all the capital stock of said association which I may own or in which I may have any interest at the time of my decease, the said capital stock to be cancelled by said association and not reissued. And I hereby express the wish that my example in giving my capital stock to the said association may be followed by other stockholders thereof in order that the said association may eventually own all of its capital stock.

ELEVENTH.—I give and bequeath to ALFRED S. BROWN, of the City of New York, one hundred shares of the capital stock of the Lees Manufactur-

ing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

TWELFTH.—I give and bequeath to BENJAMIN EPSTEIN, now residing at No. 157 Wyona Street, Brooklyn, New York, the sum of Six thousand dollars, and also one hundred shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

THIRTEENTH.—I give and bequeath to my sister HARRIET LOVERIDGE, the sum of Five dollars.

FOURTEENTH.—I give and bequeath to my niece MRS. MARION L. P. SCOTT, now residing in Newark, New Jersey, the sum of Ten thousand dollars.

FIFTEENTH.—I give and bequeath to MARANDA F. HOUGH, who is now living with me, the sum of Six thousand dollars.

SIXTEENTH.—I give and bequeath to my grandnephew LEIGH LOVERIDGE, the sum of one thousand dollars.

SEVENTEENTH.—I give and bequeath to J. AUGUSTUS LEES, of Westport, Connecticut, three hundred and forty nine shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

EIGHTEENTH.—I give and bequeath to my grandnephew EDGAR H. LOVERIDGE, JR., the sum of One thousand dollars.

NINETEENTH.—All the rest, residue and remainder of my estate, both real and personal, of every nature and description, and wheresoever situated, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I do give, devise and bequeath to MRS. BELLE HARVIE, above named, if she shall survive me, for her own use and benefit absolutely and forever. And in case the said Belle Harvie shall not survive me, then I do give the said rest, residue and remainder of my estate as follows:

To JAMES HARVIE, of Rutherford, New Jersey, the sum of Five thousand dollars, and also the rugs, draperies and furniture contained in my sitting room and in my large bedroom, except the bedsteads and bedding.

To JOHN HARVIE, son of the said James Harvie, the sum of Five thousand dollars, and also all my paintings and pictures.

To ELIZABETH HARVIE, daughter of the said James Harvie, the sum of Five thousand dollars, and also all my silverware and bric-a-brac.

To my niece MRS. MARION L. P. SCOTT, hereinabove named, the miniatures of my husband James E. Lees and myself, and also all my jewelry and personal ornaments.

To MISS ANNIE T. CASSIDY, hereinabove named, all my laces.

To MISS MARANDA F. HOUGH, hereinabove named, all my wearing apparel, housekeeping articles and utensils both useful and ornamental of every kind and description, all my bedsteads and mattresses and bedding, linens, towels, books, except such as are hereinbefore specifically bequeathed, and all the furniture contained in my small bedroom.

And all that may then remain of said rest, residue and remainder I do give, devise and bequeath to the following persons who are hereinbefore named as legatees, to be divided among them pro rata in proportion to the amounts of their respective pecuniary legacies, viz: Miss Annie T. Cassidy, Mrs. Alice Sherwood, Mrs. Josephine Crandell, Benjamin Epstein, Mrs. Marion L. P. Scott, and Maranda F. Hough.

In the event that my estate shall be insufficient to pay all the pecuniary legacies and bequests mentioned in this my will, I direct that the legacy of Two thousand dollars given to the Willow Brook Cemetery Association by paragraph Ninth of this my will shall be paid in full, and that the other legacies mentioned in my said will shall abate in proportion to their respective amounts to a sufficient extent to provide for such payment.

TWENTIETH.—I hereby authorize and empower my said executor to grant, bargain, sell and convey all or any portion of any and all real estate and personal property owned by me, or to which I may be entitled, or in which I may have any interest, at the time of my decease, either at public or private sale, and upon such terms and conditions as to him may seem proper, and to apply the proceeds of such sales in conformity to the provisions of this my last will and testament.

LASTLY.—For the purpose of making this my will final, effectual and conclusive upon all my heirs, next of kin, devisees and legatees, I do hereby declare that if any heir, next of kin, devisee or legatee, named or not named in this my will, shall directly or indirectly institute or become an acting party to any proceeding to oppose, interfere with, set aside, or make null this my will, or any of the provisions

thereof, such act or proceedings shall operate and be effectual as a release of and bar to all claim on the part of such heir, next of kin, devisee, or legatee, to any part of my property or estate, and any provisions of this my will in favor of such person I do hereby abrogate, annul and make void. And to the same end I do further declare that my heirs and next of kin, devisees and legatees, shall under no circumstances be entitled to any other or greater interest in or claim upon or against my estate than as given in and by this my will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this seventh day of March, in the year nineteen hundred and sixteen.

Signed, sealed, published and declared by the above named Elizabeth Loveridge Lees to be her last will and testament in the presence of each of us, who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Exhibit P-28.

(5-17-23)

I, ELIZABETH LOVERIDGE LEES, do hereby make, publish and declare this instrument to be my last will and testament, hereby revoking all former and other wills and testaments at any time heretofore by me made.

FIRST.—I do nominate, constitute and appoint ALFRED S. BROWN, of the City of New York, to be the executor of this my last will and testament,

without bonds or other security for the faithful discharge of the trust hereby reposed in him. In case of his death prior to my death or prior to completing the administration of my estate, I do nominate, constitute and appoint PAUL M. CRANDELL, of the City of New York, to be the executor of my said will, without bonds or other security for the faithful discharge of the trust hereby reposed in him.

SECOND.—I direct the payment by my executor from and out of my estate of all my just debts and funeral and testamentary expenses as soon as practicable after my decease.

THIRD.—I give and bequeath to MISS ANNIE T. CASSIDY, now living at No. 377 East 135th Street, New York City, the sum of Five thousand dollars.

FOURTH.—I give and bequeath to MRS. ALICE SHERWOOD, widow of Henry E. Sherwood, of Westport, Connecticut, the sum of Two thousand dollars.

FIFTH.—I give and bequeath to my niece MRS. BELLE HARVIE, wife of James Harvie, of Rutherford, New Jersey, the sum of Twenty-five thousand dollars, and also all my household furniture, carpets, beds, bedding, linen, books, paintings, pictures, including the miniatures of my husband James E. Lees and myself, and all my wearing apparel, housekeeping articles and utensils, both useful and ornamental, of every kind and description, and all my silverware, jewelry and personal ornaments, also two hundred and twenty-five shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

SIXTH.—I give and bequeath to my nephew EDGAR H. LOVERIDGE, the sum of Ten thousand dollars; but in case he shall not have paid to me the interest now due me at six per cent. on the sum of Six thousand dollars, said interest to be computed from April 30th, 1907, to October 1st, 1913, then the amount of such unpaid interest shall be deducted from the said sum of Ten thousand dollars. I also give and bequeath to the said Edgar H. Loveridge two hundred and twenty-four shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

SEVENTH.—I give and bequeath to my nephew ARTHUR R. LOVERIDGE, the sum of Five dollars.

EIGHTH.—I give and bequeath to MRS. JOSEPHINE CRANDELL, widow of John A. Crandell, now residing at No. 47 West 126th Street, in the City of New York, the sum of Five thousand dollars.

NINTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, the sum of Two thousand dollars, to have and to hold the same to the said Willow Brook Cemetery Association, and its successors, upon trust, however, to keep the same invested, and to apply the income thus arising therefrom, under the direction of the Board of Directors, to the repair, preservation or renewal of any tomb, monument or gravestone, railing or other erection, or for planting and cultivating trees, shrubs, or flowers or plants upon in or around the four lots numbered 25, 26, 27 and 28 of Section 1 in the

grounds of said cemetery included in the plot in which my husband's father and others of his family are buried. And my wish is that the whole of said income accruing in any one year shall be applied during that year to the purposes above set forth, and that said income shall not be accumulated or carried over from year to year. And I direct that no bond or other security shall be required of said Association for the faithful discharge of said trust.

I do further give and devise to the WILLOW BROOK CEMETERY ASSOCIATION two of the lots above mentioned which are known by the numbers 27 and 28 of Section 1 in the grounds of said cemetery association, to have and to hold the said two lots of land to the said Willow Brook Cemetery Association, and its successors; and I hereby designate and prescribe that my remains be interred in said lots of land in addition to the remains of my deceased husband James E. Lees and his deceased wife Cesarine S. Lees, which are already interred there, and that interments in said lots be restricted to the persons so designated, and that said two lots of land be hereafter inalienable.

TENTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, all the capital stock of said association which I may own or in which I may have any interest at the time of my decease, the said capital stock to be cancelled by said association and not reissued. And I hereby express the wish that my example in giving my capital stock to the said association may be followed by other stockholders thereof in order that the said association may eventually own all of its capital stock.

ELEVENTH.—I give and bequeath to ALFRED S. BROWN, of the City of New York, one hundred

shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

TWELFTH.—I give and bequeath to BENJAMIN EPSTEIN, now residing at No. 157 Wyona Street, Brooklyn, New York, the sum of Six thousand dollars.

THIRTEENTH.—I give and bequeath to my sister HARRIET LOVERIDGE, the sum of Five dollars.

FOURTEENTH.—I give and bequeath to my niece MRS. MARION L. P. SCOTT, now residing in Newark, New Jersey, the sum of Ten thousand dollars.

FIFTEENTH.—I give and bequeath to MARANDA F. HOUGH, provided she be in my employ at the time of my decease, the sum of Five thousand dollars.

SIXTEENTH.—I give and bequeath to my grandnephew LEIGH LOVERIDGE, the sum of One thousand dollars.

SEVENTEENTH.—All the rest, residue and remainder of my estate, both real and personal, of every nature and description, and wheresoever situated, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I do give, devise and bequeath to MRS. BELLE HARVIE, above named, if she shall survive me, for her own use and benefit absolutely and forever. And in case the said Belle Harvie shall not survive me, then I do give the said rest, residue and remainder of my estate as follows:

To JAMES HARVIE, of Rutherford, New Jersey, the sum of Five thousand dollars, and also two hundred and twenty five shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the law of the State of Connecticut, now owned by me.

To JOHN HARVIE, son of the said James Harvie, the sum of Five thousand dollars, and also all my paintings and pictures.

To ELIZABETH HARVIE, daughter of the said James Harvie, the sum of Five thousand dollars, and also all my silverware and bric-a-brac.

To my niece MRS. MARION L. P. SCOTT, hereinabove named, the miniatures of my husband James E. Lees and myself, and also all my jewelry and personal ornaments.

To my nephew EDGAR H. LOVERIDGE, of Teaneck Road, New Jersey, the rugs, draperies and furniture contained in my sitting room and in my large bedroom, except the bedsteads and bedding.

To MISS ANNIE T. CASSIDY, hereinabove named, all my laces.

To MISS MARANDA F. HOUGH, hereinabove named, all my wearing apparel, housekeeping articles and utensils both useful and ornamental of every kind and description, all my bedsteads and mattresses and bedding, linens, towels, books, except such as are hereinbefore specifically bequeathed, and all the furniture contained in my small bedroom.

And all that may remain of said rest, residue and remainder I do give, devise and bequeath to the following persons who are hereinbefore named as legatees to be divided among them pro rata in proportion to the amounts of their respective

pecuniary legacies, viz: Miss Annie T. Cassidy, Mrs. Alice Sherwood, Edgar H. Loveridge, Mrs. Josephine Crandell, Benjamin Epstein, Mrs. Marion L. P. Scott, Maranda F. Hough, and Leigh Loveridge.

In the event that my estate shall be insufficient to pay all the pecuniary legacies and bequests mentioned in this my will, I direct that the legacy of Two thousand dollars given to the Willow Brook Cemetery Association by Paragraph Ninth of this my will shall be paid in full, and that the other legacies mentioned in my said will shall abate in proportion to their respective amounts to a sufficient extent to provide for such payment.

EIGHTEENTH.—I hereby authorize and empower my said executor to grant, bargain, sell and convey all or any portion of any and all real estate and personal property owned by me, or to which I may be entitled, or in which I may have any interest, at the time of my decease, either at public or private sale, and upon such terms and conditions as to him may seem proper, and to apply the proceeds of such sales in conformity to the provisions of this my last will and testament.

LASTLY: For the purpose of making this my will final, effectual and conclusive upon all my heirs, next of kin, devisees and legatees, I do hereby declare that if any heir, next of kin, devisee or legatee, named or not named in this my will, shall directly or indirectly institute or become an acting party to any proceeding to oppose, interfere with, set aside, or make null this my will, or any of the provisions thereof, such act or proceeding shall operate and be effectual as a release of and bar to all claim on the part of such heir, next of

kin, devisee or legatee, to any part of my property or estate, and any provisions of this will in favor of such person I do hereby abrogate, annul and make void. And to the same end I do further declare that my heirs and next of kin, devisees and legatees, shall under no circumstances be entitled to any other or greater interest in or claim upon or against my estate than as given in and by this my will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 26th day of October, in the year nineteen hundred and fifteen.

(Sd.) ELIZABETH L. LEES (L. S.)

Signed, sealed, published and declared by the above named Elizabeth Loveridge Lees to be her last will and testament in the presence of each of us, who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Exhibit P-29.

I, ELIZABETH LOVERIDGE LEES, do hereby make, publish and declare this instrument to be my last will and testament, hereby revoking all former and other wills and testaments at any time heretofore by me made.

First.—I do nominate, constitute and appoint ALFRED S. BROWN, of the City of New York, to be the executor of this my last will and testament, without bonds or other security for the faith-

ful discharge of the trust hereby reposed in him. In case of his death prior to my death or prior to completing the administration of my estate, I do nominate, constitute and appoint PAUL M. CRANDELL, of the City of New York, to be the executor of my said will, without bonds or other security for the faithful discharge of the trust hereby reposed in him.

SECOND.—I direct the payment by my executor from out of my estate of all my just debts and funeral and testamentary expenses as soon as practicable after my decease.

THIRD.—I give and bequeath to MISS KATHARINE F. DAVIS, of Dorchester, Massachusetts, the sum of Two thousand dollars.

FOURTH.—I give and bequeath to MISS ANNIE T. CASSIDY, now living at No. 377 East 135th Street, New York City, the sum of Five thousand dollars.

FIFTH.—I give and bequeath to MRS. ALICE SHERWOOD, widow of Henry E. Sherwood, of Westport, Connecticut, the sum of Two thousand dollars.

SIXTH.—I give and bequeath to MRS. BELLE HARVIE, wife of James Harvie, of Rutherford, New Jersey, the sum of Twenty five thousand dollars, and also all my household furniture, carpets, beds, bedding, linen, books, paintings, pictures, including the miniatures of my husband James E. Lees and myself and all my wearing apparel, housekeeping articles and utensils, both useful and ornamental, of every kind and descrip-

tion, and all my silverware, jewelry and personal ornaments, also two hundred and twenty five shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

SEVENTH.—I give and bequeath to CHARLES S. LOVERIDGE, of Rutherford, New Jersey, the sum of Ten thousand dollars.

EIGHTH.—I give and bequeath to my nephew EDGAR H. LOVERIDGE, the sum of Ten thousand dollars; but in case he shall not have paid to me the interest now due me at six per cent. on the sum of Six thousand dollars, said interest to be computed from April 30th, 1907, to October 1st, 1913, then the amount of such unpaid interest shall be deducted from the said sum of Ten thousand dollars. I also give and bequeath to the said Edgar H. Loveridge two hundred and twenty four shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

NINTH.—I give and bequeath to my nephew ARTHUR R. LOVERIDGE, the sum of Five dollars.

TENTH.—I give and bequeath to MRS. JOSEPHINE CRANDELL, widow of John A. Crandell, now residing at No. 47 West 126th Street, in the City of New York, the sum of Five thousand dollars.

ELEVENTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of

Westport, Connecticut, the sum of Two thousand dollars, to have and to hold the same to the said Willow Brook Cemetery Association, and its successors, upon trust, however, to keep the same invested, and to apply the income thus arising therefrom, under the direction of the Board of Directors, to the repair, preservation or renewal of any tomb, monument or gravestone, railing or other erection, or for planting and cultivating trees, shrubs, or flowers or plants upon in or around the four lots numbered 25, 26, 27 and 28 of Section 1 in the grounds of said cemetery included in the plot in which my husband's father and others of his family are buried. And my wish is that the whole of said income accruing in any one year shall be applied during that year to the purposes above set forth, and that said income shall not be accumulated or carried over from year to year. And I direct that no bond or other security shall be required of said Association for the faithful discharge of said trust.

I do further give and devise to the WILLOW BROOK CEMETERY ASSOCIATION two of the lots above mentioned which are known by the numbers 27 and 28 of Section 1 in the grounds of said cemetery association, to have and to hold the said two lots of land to the said Willow Brook Cemetery Association, and its successors; and I hereby designate and prescribe that my remains be interred in said lots of land in addition to the remains of my deceased husband, James E. Lees and his deceased wife Cesarine S. Lees, which are already interred there, and that interments in said lots be restricted to the persons so designated, and that said two lots of land be hereafter inalienable.

TWELFTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of

Westport, Connecticut, all the capital stock of said association which I may own or in which I may have any interest at the time of my decease, the said capital stock to be cancelled by said association and not reissued. And I hereby express the wish that my example in giving my capital stock to the said association may be followed by other stockholders thereof in order that the said association may eventually own all of its capital stock.

THIRTEENTH.—I give and bequeath to ALFRED S. BROWN, of the City of New York, one hundred shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the Laws of the State of Connecticut, now owned by me.

FOURTEENTH.—I give and bequeath to BENJAMIN EPSTEIN, now residing at No. 157 Wyona Street, Brooklyn, New York, the sum of Six thousand dollars.

FIFTEENTH.—I give and bequeath to my sister, HARRIET LOVERIDGE, the sum of Five dollars.

SIXTEENTH.—I give and bequeath to MRS. MARION L. P. SCOTT, now residing in Newark, New Jersey, the sum of Five thousand dollars.

SEVENTEENTH.—I give and bequeath to MARANDA F. HOUGH, provided she be in my employ at the time of my decease, the sum of Five thousand dollars.

EIGHTEENTH.—All the rest, residue and remainder of my estate, both real and personal, of every nature and description, and wheresoever situated,

of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I do give, devise and bequeath to MRS. BELLE HARVIE, above named, for her own use and benefit absolutely and forever.

In the event that my estate shall be insufficient to pay all the pecuniary legacies and bequests mentioned in this my will, I direct that the legacy of Two thousand dollars given to the Willow Brook Cemetery Association by paragraph Eleventh of this my will shall be paid in full, and that the other legacies mentioned in my said will shall abate in proportion to their respective amounts to a sufficient extent to provide for such payment.

NINETEENTH.—I hereby authorize and empower my said executor to grant, bargain, sell and convey all or any portion of any and all real estate and personal property owned by me, or to which I may be entitled, or in which I may have any interest, at the time of my decease, either at public or private sale, and upon such terms and conditions as to him may seem proper, and to apply the proceeds of such sales in conformity to the provisions of this my last will and testament.

LASTLY: For the purpose of making this my will final, effectual and conclusive upon all my heirs, next of kin, devisees and legatees, I do hereby declare that if any heir, next of kin, devisee or legatee, named or not named in this my will, shall directly or indirectly institute or become an acting party to any proceeding to oppose, interfere with, set aside, or make null this my will, or any of the provisions thereof, such act or proceeding shall operate and be effectual as a release of and bar to all claim on the part of such heir, next of kin, devisee or legatee, to any part of my property or estate,

and any provisions of this my will in favor of such person I do hereby abrogate, annul and make void. And to the same end I do further declare that my heirs and next of kin, devisees and legatees, shall under no circumstances be entitled to any other or greater interest in or claim upon or against my estate than as given in and by this my will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fifth day of March, in the year nineteen hundred and fifteen.

(Sd.) ELIZABETH L. LEES (L. S.)

Signed, sealed, published and declared by the above named Elizabeth Loveridge Lees to be her last will and testament in the presence of each of us, who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

(Sd.) JACOB MANNE,
231 Park Place,
Brooklyn, N. Y.

" CHARLES A. EGAN,
608 Oak Tree Place,
Bronx.

" JOS. FRANKENTHAL,
31 Elinor Place,
Yonkers, N. Y.

Exhibit P-30.

(5-17-23).

I, ELIZABETH LOVERIDGE LEES, do hereby make, publish and declare this instrument to be my last will and testament, hereby revoking all former and other wills and testaments at any time heretofore by me made.

FIRST.—I do nominate, constitute and appoint ALFRED S. BROWN and PAUL M. CRANDELL, both of the City of New York, to be the executors of this my last will and testament without bonds or other security for the faithful performance of the trust hereby reposed in them.

SECOND.—I direct the payment by my executors from and out of my estate of all my just debts and funeral and testamentary expenses as soon as practicable after my decease.

THIRD.—I direct that there shall be placed at my grave a headstone similar in stone and design to the headstones marking the graves of my husband James E. Lees and Cesarine S. Lees in the plot in the Willow Brook Cemetery Association hereinafter mentioned; the expense of such headstone to be paid by my executors out of my estate.

FOURTH.—I give and bequeath to MISS KATHARINE F. DAVIS, of Dorchester, Massachusetts, the sum of Two thousand dollars.

FIFTH.—I give and bequeath to MISS JENNIE TOMPKINS, of Jersey City, New Jersey, the sum of One thousand dollars.

SIXTH.—I give and bequeath to MISS ANNIE T. CASSIDY, of New York City, the sum of Five thousand dollars.

SEVENTH.—I give and bequeath to MRS. ALICE SHERWOOD, widow of Henry E. Sherwood, of Westport, Connecticut, the sum of Two thousand dollars.

EIGHTH.—I give and bequeath to MRS. BELLE

HARVIE, wife of James Harvie, of Rutherford, New Jersey, the sum of Twenty five thousand Dollars, and also all my household furniture, carpets, beds, bedding, linen, books, paintings, pictures, including the miniatures of my husband James E. Lees and myself, and all my wearing apparel, housekeeping articles and utensils, both useful and ornamental, of every kind and description, and all my silverware, jewelry and personal ornaments, also two hundred and twenty five shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

NINTH.—I give and bequeath to CHARLES S. LOVERIDGE, of Rutherford, New Jersey, the sum of Ten thousand dollars.

TENTH.—I give and bequeath to EDGAR H. LOVERIDGE, of Morsemere Park, New Jersey, the sum of Ten thousand dollars, and also two hundred and twenty four shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

ELEVENTH.—I give and bequeath to ARTHUR R. LOVERIDGE, of Cranford, New Jersey, the sum of Fifty dollars.

TWELFTH.—I give and bequeath to MRS. JOSEPHINE CRANDELL, widow of John A. Crandell, now residing at No. 47 West 126th Street, in the City of New York, the sum of Two thousand dollars.

THIRTEENTH.—I give and bequeath to MRS. MARY ELEANOR SMITH, wife of William C. Smith, the sum of One thousand dollars.

FOURTEENTH.—I give and bequeath to MRS. JULIA B. PUTNAM, widow of John B. Putnam, now residing at No. 44 West 22d Street, in the City of New York, the sum of One thousand dollars.

FIFTEENTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, the sum of Two thousand dollars, to have and to hold the same to the said Willow Brook Cemetery Association, and its successors, upon trust, however, to keep the same invested, and to apply the income thus arising therefrom, under the direction of the Board of Directors, to the repair, preservation or renewal of any tomb, monument or gravestone, railing or other erection, or for planting and cultivating trees, shrubs or flowers or plants upon in or around the four lots numbered 25, 26, 27 and 28 of Section 1 in the grounds of said cemetery included in the plot in which my husband's father and others of his family are buried. And my wish is that the whole of said income accruing in any one year shall be applied during that year to the purposes above set forth, and that said income shall not be accumulated or carried over from year to year.

I do further give and devise to the WILLOW BROOK CEMETERY ASSOCIATION two of the lots above mentioned which are known by the numbers 27 and 28 of Section 1 in the grounds of said cemetery association, to have and to hold the said two lots of land to the said Willow Brook Cemetery Association, and its successors; and I hereby designate and prescribe that my remains be interred in said lots of land in addition to the remains of my deceased husband James E. Lees and his deceased wife Cesarine S. Lees, which are already in-

terred there, and that interments in said lots be restricted to the persons so designated, and that said two lots of land be hereafter inalienable.

SIXTEENTH.—I give and bequeath to the WILLOW BROOK CEMETERY ASSOCIATION, of Westport, Connecticut, all the capital stock of said association which I may own or in which I may have any interest at the time of my decease, the said capital stock to be cancelled by said association and not reissued. And I hereby express the wish that my example in giving my capital stock to the said association may be followed by other stockholders thereof in order that the said association may eventually own all of its capital stock.

SEVENTEENTH.—I give and bequeath to ALFRED S. BROWN, of the City of New York, one hundred shares of the capital stock of the Lees Manufacturing Company, a corporation organized under the laws of the State of Connecticut, now owned by me.

EIGHTEENTH.—I give and bequeath to BENJAMIN EPSTEIN, now residing at No. 2135 Pitkin Avenue, Brooklyn, New York, the sum of Five thousand dollars.

NINETEENTH.—I give and bequeath to HARRIET LOVERIDGE, now residing at No. 43 West 177th Street, in the City of New York, the sum of Fifty dollars.

TWENTIETH.—All the rest, residue and remainder of my estate, both real and personal, of every nature and description, and wheresoever situated, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I do

give, devise and bequeath to MRS. BELLE HARVIE, above named, for her own use and benefit absolutely and forever.

In the event that my estate shall be insufficient to pay all the pecuniary legacies and bequests mentioned in this my will, I direct that the cost and expense of placing a headstone at my grave as mentioned in paragraph Third of this my will, and also the legacy of Two thousand dollars given to the Willow Brook Cemetery Association by paragraph Fifteenth of this my will, shall be paid in full, and that the other legacies mentioned in my said will shall abate in proportion to their respective amounts to a sufficient extent to provide for such payment.

TWENTY-FIRST.—I hereby authorize and empower my said executors, or that one of them who may qualify and act as executor, and the survivor of them, to grant, bargain, sell and convey all or any portion of any and all real estate and personal property owned by me, or to which I may be entitled, or in which I may have any interest, at the time of my decease, either at public or private sale, and upon such terms and conditions as to them or him may seem proper, and to apply the proceeds of such sales in conformity to the provisions of this my last will and testament.

LASTLY.—For the purpose of making this my will final, effectual and conclusive upon all my heirs, next of kin, devisees and legatees, I do hereby declare that if any heir, next of kin, devisee or legatee, named or not named in this my will, shall directly or indirectly institute or become an acting party to any proceeding to oppose, interfere with, set aside, or make null this my will, or any of the

provisions thereof, such act or proceeding shall operate and be effectual as a release of, and bar to, all claim on the part of such heir, next of kin, devisee or legatee, to any part of my property or estate; and any provisions of this my will in favor of such person I do hereby abrogate, annul and make void. And to the same end I do further declare that my heirs and next of kin, devisees and legatees, shall under no circumstances be entitled to any other or greater interest in or claim upon or against my estate than as given in and by this my will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 5th day of November, in the year nineteen hundred and thirteen.

Signed, sealed, published and declared by the above named Elizabeth Loveridge Lees to be her last will and testament in the presence of each of us, who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Exhibit P-31.

(5-17-23)

I, ELIZABETH LOVERIDGE LEES, having heretofore made my last will and testament bearing date the twenty-first day of December, nineteen hundred and seventeen, do hereby make, publish and declare this instrument to be a codicil thereto, and direct that it shall be taken to be a part of the same.

I give and bequeath to MARANDA F. HOUGH, who is now living with me, all the contents of the

bed-room nearest to the hall or entrance door of my apartment at No. 1 West 81st Street, New York City, and also all personal property belonging to me which at the time of my death may be contained in her home No. 102 North 22nd Street, East Orange, New Jersey.

And except as hereby modified I do hereby ratify and confirm my said last will and testament.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of December, in the year nineteen hundred and eighteen.

(Sd) ELIZABETH L. LEES (LS)

Signed, sealed, published and declared by the above named Elizabeth Loveridge Lees to be a codicil to her last will and testament in the presence of each of us, who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

(Sd) HENRY A. HIMMELMANN,
(Sd) JOSEPH FRANKENTHAL,
(Sd) JACOB MANNE.

Exhibit P-32.

(5-17-23)

I, ELIZABETH LOVERIDGE LEES, having heretofore made my last will and testament bearing date the twenty-first day of December, nineteen hundred and seventeen, do hereby make, publish and declare this instrument to be a codicil thereto, and direct that it shall be taken to be a part of the same.

I give and bequeath to MARANDA F. HOUGH, who is now living with me, all the household furniture and housekeeping articles and utensils contained in the bed-room nearest to the hall or entrance door of my apartment at No. 1 West 81st Street, New York City, and also all the household furniture and housekeeping articles and utensils belonging to me which at the time of my death may be contained in her home No. 102 North 22nd Street, East Orange, New Jersey.

And except as hereby modified I do hereby ratify and confirm my said last will and testament.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of January, in the year nineteen hundred and nineteen.

(Sd) ELIZABETH L. LEES (LS)

Signed, sealed, published and declared by the above named Elizabeth Loveridge Lees to be a codicil to her last will and testament in the presence of each of us, who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

(Sd) HENRY A. HIMMELMANN,
(Sd) WM. L. GREENFOGEL,
(Sd) JOS. FRANKENTHAL.

Exhibit P-36.

(5-17-23)

KNOW ALL MEN BY THESE PRESENTS, that I, ELIZABETH LOVERIDGE LEES, the widow of James E. Lees, deceased, for and in consideration of the sum of one dollar to me in hand

paid, by MARANDA F. HOUGH, and of other good and valuable considerations to me moving, have given and granted, and by these presents do convey and confirm unto the said Maranda F. Hough, her heirs and assigns forever, the memorial window in the cottage known as "Rainbow Cottage" in the City of East Orange, County of Essex, and State of New Jersey, and all my right, title and interest, claim and demand whatsoever, in, to or upon said Cottage. TO HAVE AND TO HOLD to the said Maranda F. Hough, her heirs, executors, administrators and assigns forever. Reserving however to myself the right to reside in and occupy such cottage during the term of my natural life.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of September, in the year nineteen hundred and twenty.

ELIZABETH LOVERIDGE LEES (Seal)

Sealed and delivered
in the presence of:

Witness:
WALTER REID HUNT.

To whom it may concern:

This is to certify that Elizabeth Loveridge Lees appeared before me this day and date above mentioned and took her oath as the law requires.

FREDERICK D. CASTLE,
(Seal of F. D. Castle,
Commissioner of Deeds,
Essex County, N. J.)

Exhibit A-1.

(5-28-23)

LEVAUNA-ON-CAYUGA
New York

Sept. 23rd, 1922.

My dear Miss Loveridge:

Your letter was forwarded to me here. In my absence, my son (Dr. W. E. Wakeley) attended Mrs. Lees and the immediate cause of her death was uraemia. Ever since I have known her, over five years, she was suffering from chronic Brights disease and arterio schlerosis.

Very truly yours,

W. A. WAKELEY.

NEW JERSEY PREROGATIVE COURT.

In the Matter of The Probate of the Last Will and Testament of Elizabeth Loveridge Lees, deceased.	On Appeal.

Transcript of shorthand notes of testimony taken on hearing in above matter at Chancery Chambers, Jersey City, October 15, 1924, before His Honor James F. Fielder, Vice Ordinary.

APPEARANCES:

Messrs. KENT & KENT (Mr. Nathaniel Kent), for Appellants.

E. A. MERRILL, Esq., for Maranda L. French, Benjamin A. Epstein, J. Augustus Lees and Belle Harvie, Appellees.

EDWARD S. ATWATER, Jr., Esq., for the Executors, Appellees.

The Court: I understand that some testimony is to be taken today.

Mr. Kent: Yes, sir. With your Honor's permission, I would like to take the testimony of several witnesses from whom we have ascertained facts, which we think we should have an opportunity to present to the court. These witnesses were not available or known to us at the time of the hearing before Judge Flannagan in the Orphans' Court of Essex County.

Mr. Atwater: I object to the taking of further testimony.

The Court: For what reason?

Mr. Atwater: On the ground that when this case was before the Orphans' Court, Judge Flannagan gave the appellants the widest opportunity, the widest latitude, to go into all kinds of testimony.

The Court: I will hear the testimony. Let me say this to counsel: I do not even know what the case is about. I am going to ask counsel to state what the situation is. I have not read any of the testimony; I am not familiar with it. I do not want to hear any testimony from any witness who was sworn before Judge Flannagan, in the nature of repetition of that testimony. I do not want you to go over the same ground that was covered before Judge Flannagan, by the witnesses before him. I mean to say I do not want to bar counsel from any cumulative testimony by other witnesses. Please do not have any repetition by any witness previously sworn, of the testimony given by that witness.

Mr. Kent: These witnesses were not sworn in the case. We did not know of their availability at the time.

ELSIE WHEELER, sworn as a witness on the part of the appellants, testifies as follows:

Direct Examination by Mr. Kent:

Q. Where do you reside? A. Saugarties, Connecticut.

Q. Did you know the deceased, Elizabeth Loveridge Lees, in her life time? A. I did.

Q. What relationship did her husband, James Lees, bear to you? A. My brother.

Q. Did you, in the years shortly preceding her death, receive a communication from Mrs. Lees? A. I did.

Q. Have you the letter with you? A. I have not.

Q. What did you do with that letter? A. I destroyed it. I always destroy my correspondence.

Q. Do you know in what year you received that letter? A. It must have been in 1921.

Q. Can you tell us with reasonable certainty what that letter contained?

Mr. Atwater: I object. The witness states that she received a letter. She thinks it must have been in 1921 and she destroyed the letter. I object to her stating what was in the letter.

The Court: On what ground?

Mr. Atwater: Well, on the ground that it is not offering a copy of the letter.

The Court: She can give us her best recollection as to what the letter contained. The fact that the letter is not produced and the witness attempts to state from memory what was in the letter, makes her estimony not nearly so valuable as the production of the letter itself, but it is entitled to some consideration.

By the Court:

Q. Before you attempt to state the contents of the letter, can you state more definitely about what time in 1921 you received the letter? A. I was visiting in Worcester and I received this letter.

Q. I want to know about what time you received it. A. I think it must have been in the early fall of 1921.

Q. Would you say about the month of September? A. The last of July or the first of September.

The Court: The question now is: What did the letter contain? What were the contents of the letter?

By Mr. Kent:

Q. Have you a recollection of what the letter contained? A. Mrs. Lees asked me to come and visit her, in this letter. She signed herself, "Your cousin, Louise Lees."

Q. Anything else in that letter? A. It was a most incoherent—

By the Court:

Q. What else was in the letter? A. She said that she loved me and that she was anxious to see me again. Please cannot I say anything?

Q. You surely can. You may answer the question. A. Can I not say anything else?

By Mr. Kent:

Q. What else was contained in that letter that made its peculiar appeal to you?

The Court: She has not said that it made any peculiar appeal to her.

Q. That is, what made you think that it was an incoherent letter?

The Court: There is nothing in the record that it was an incoherent letter.

Q. Please state the other facts in the letter. A.

She spoke in the letter about expecting a visit from a Mrs. Taylor, and I was very upset to know who Mrs. Taylor was.

The Court: Strike out, "And I was very upset to know who Mrs. Taylor was."

Q. What other facts or statements were in that letter? A. There was very little else in the letter, aside from her desire to see me and her expressing great affection for me.

Q. How long was it before that, that you had seen her? A. I had not seen her since my brother died.

Q. And when was that? A. I cannot tell you what year it was that Mr. Lees died. You have it.

Q. Well, did you reply to that letter? A. I replied to that letter.

Q. And did you then have occasion to go to see her at her residence in New Jersey? A. In my reply—

By the Court:

Q. Did you go see her? A. I did.

By Mr. Kent:

Q. And can you tell us the month and year that you went to see her? A. It must have been September, 1921.

Q. And where did you go to see her? A. I went to see her at East Orange, Rainbow Cottage.

Q. Now, tell us what conversation you had with her and what you observed when you saw her at that time at Rainbow Cottage?

Mr. Atwater: I object. The will was

drawn in March and I cannot see what bearing a conversation in September can have.

The Court: Objection overruled.

A. I told her—I carried on most of the conversation—I told her about myself and my children and things that I supposed she would be interested in. I had not seen her in such a long time I supposed, having expressed a desire to see me, that she would be interested in what I had had been doing.

Q. Was she interested in what you were saying to her? A. Well, she went asleep several times while I was talking to her.

Q. What time of the day was it that you got there? A. I got there about eleven o'clock, just before lunch time. When I was talking to her about myself she would turn to me and say: "Where is Elsie?" "What about Elsie?" There I was.

Q. How many times would you say, during your conversation with her, did she ask: "Where is Elsie?" A. About four times.

Q. Your first name is Elsie? A. Certainly.

Q. Are you the only Elsie Wheeler in the family? A. I am the only Elsie Wheeler in the family.

Q. Was she or was she not able to carry on conversation with you at that time? A. No; not an animated conversation. She did not start any conversation herself.

Q. What would be her answers usually? A. "Yes," "No."

Q. What else occurred while you were there at that visit, if you can recall, Mrs. Wheeler? A. Do you want me to tell you from the time I arrived there until the time I left, what happened?

Q. Yes; if you can. A. I arrived there about eleven o'clock. Manda went out in the kitchen to

prepare the lunch. Mrs. Lees and I sat there talking, as I have told you, I doing the talking.

By the Court:

Q. Who is Manda? A. Manda Hough or Miranda or whatever her name is. I don't know. She is the nurse.

By Mr. Kent:

Q. Please go on, Mrs. Wheeler. A. While I was talking with Mrs. Lees, as I told you, she would fall asleep, just doze off for a minute and then come to again, and then several times she asked me where I was, where Elsie was. Then Miss Hough came in and announced that lunch was ready. We went out to lunch, and at the table Miss Hough conducted most of the conversation, Miss Hough and myself, and Mrs. Lees would reply in monosyllables. After lunch Miss Hough took me around through the house, from the cellar up to the attic or third story. After that Maranda or Manda announced that it was nearly train time and called a taxi and I left.

By the Court:

Q. What time did you leave? A. I was not there after lunch more than three-quarters of an hour.

Q. I asked you what time you left. A. Well, I arrived at eleven o'clock; we probably had lunch at twelve o'clock, and I probably left pretty near after one o'clock, perhaps earlier.

By Mr. Kent:

Q. You say Miss Hough said to you that your train was about due? A. She did.

Q. How did you go from the house to the train? A. She called a taxi.

Q. And when you got to the train? A. When I got to the train I found I had to wait nearly half an hour for a train.

Q. Did you form an opinion while you were there whether Mrs. Lees at that time was rational or irrational? A. I never should consider that a person in Mrs. Lee's condition was mentally fit to transact any business whatever. She was a poor, sick woman.

Q. Did you notice at the time you were there whether she was able to move around? A. She could not get out of her chair herself, and she had to—well, they would count, "One, two, three," and then she would make an effort, and the nurse would pull her up.

Q. Did anything occur between her and Miranda during the period that you were there? A. Well, once Miranda wanted her to do something that she didn't choose to do, and she struck at her.

By the Court:

Q. Who struck at whom? A. Mrs. Lees struck at Miranda, just as a child would strike.

By Mr. Kent:

Q. Coming back again to the question whether she was rational or irrational at that time, what would your answer be to that? A. Why, I should say she was very far from being herself, very far. I was shocked when I saw her.

Cross Examination by Mr. Atwater:

Q. Mrs. Wheeler, you were the sister of James Lees? A. I am a sister of James Lees, his only living sister.

Q. He died in 1910, did he not? A. You say 1910.

By the Court:

Q. He asks you. A. I said before that I did not remember the date. You have it.

By Mr. Atwater:

Q. You did not see Mrs. Lees from the time of her husband's death until September, 1921? I did not.

Q. Did you see her subsequent to September, 1921? A. I did not.

By the Court:

Q. You never saw her again while she was alive? A. I never saw her again, except that one time.

By Mr. Atwater:

Q. You testified that you received a letter from Mrs. Lees, in which she stated that a Mrs. Taylor was about to visit her, and that you were surprised by such a statement? A. I did.

Q. Didn't you know of a Mrs. Taylor? A. I know the Mrs. Taylor she refers to now, but at the time I received the letter I could not place her.

Q. You know that she had a friend, Mrs. Ellen Taylor, who was a connection of hers that sometimes visited her, don't you? A. No.

Q. You know there is a Mrs. Ellen Taylor, who is a witness in this case? A. The only Mrs. Taylor I know is Mrs. Edward Taylor, and Mrs. Edward Taylor's husband is my sister's son.

Q. Is her name Ellen Taylor? A. I don't know what her first name is.

By Mr. Kent:

Q. Is there anything in your conversation with Mrs. Lees on your observation of her, that you have observed of her, which I have not asked you and which you think we ought to know about? If so, please tell us.

Mr. Atwater: Objected to.
The Court: Objection sustained.

Q. Did any other occurrences happen at the house while you were there, outside of the one that you have stated to us?

Mr. Atwater: Objected to. The witness has been asked that question and has stated just what happened from the time she got there until she left.
The Court: Objection overruled.

A. Yes.
Q. Please tell us what that was. A. (No answer.)
Q. Is it something that you don't like to say? A. Yes; it is something that I would rather not say.
Q. Was that in reference to— A. Her physical condition.

Mr. Kent: I know what the witness has reference to. It is in the case. I do not think it necessary to go in to it with this witness.

ALICE M. LOVERIDGE, sworn as a witness on the part of the appellants, testifies as follows:

Direct Examination by Mr. Kent:

Q. Where do you reside? A. Jersey City; 130 Griffith street.

Q. You are the widow of Edgar Loveridge? A. Yes.

Q. In the year 1923 or thereabouts, where were you residing? A. I was residing at Prescott, Arizona, in 1923.

Q. What relationship did your husband bear to the decedent Mrs. Lees? A. He was Mrs. Lees' nephew.

Q. When did you last see Mrs. Lees prior to her death? A. In 1918.

Q. Do you know what part of the year 1918? A. It was in the summer of 1918.

Q. Where did you see her? A. At Mrs. Harvie's.

Q. In Rutherford? A. Yes.

Q. Do you know what Mrs. Lees' condition at that time was, in 1918? A. She was changing even then. She was inactive. She had been a very talkative woman but she said nothing, practically nothing, to me while I was there, and she was very much more feeble than she had been when I had seen her before.

Q. Did you have occasion, after the year 1918, to visit and talk to Mrs. Harvie? A. Yes.

Q. How frequently would you see Mrs. Harvie from 1918 on? A. Three or four times a year probably.

Q. What was the occasion of your visiting Mrs. Harvie? A. Well, my sister lives in Rutherford where Mrs. Harvie lives and when I would visit my sister, I would always go and see Mrs. Harvie.

Q. Now, do you remember visiting Mrs. Harvie in the year 1919? A. Yes.

Q. Did you have any conversation with Mrs. Harvie in reference to Mrs. Lees? A. Yes.

Q. Will you please state to His Honor the conversation that you had with her at that time?

Mr. Atwater: I object to this.

Mr. Kent: We claim that Mrs. Harvie is one of the active and moving spirits in the attempt to probate this will. We want to show by this witness that during that period, 1918 and 1919, Mrs. Harvie made statements which are perfectly at variance with her attempts at proof in this case, especially in reference to certain letters that she got from Mrs. Lees.

The Court: Objection overruled.

Mr. Merrill: May I ask that this be limited to the question of conspiracy and not go to the question of competence?

The Court: I cannot tell anything about it until I hear the answer, and you may move to strike it out if it is not proper.

A. Whenever I saw Mrs. Harvie she always told me that Mrs. Lees was failing mentally and unable to manage her affairs and under the complete domination of Miss Hough.

Q. You say that was in 1919? A. Yes; that was from 1919 until 1922. From 1919 until 1922, every time I went to see Mrs. Harvie she told me that Mrs. Lees was getting worse all the time and less able to manage her affairs; that Miss Hough controlled her completely.

Q. Did you, at your first visit, have any conversation with her in reference to letters that she re-

ceived from Mrs. Lees? A. Not so early as that. Later on.

Q. When was the first conversation that you had with her in reference to correspondence that she had received from Mrs. Lees? A. I think in 1920 she first told me she had received letters from Mrs. Lees, from which parts had been cut out; that Miss Hough had cut the parts out so that she could not see what Mrs. Lees wanted to say to her.

Q. And after the year 1920, did you have occasion to talk to her again in reference to other letters? A. Every time I saw her she spoke of letters that had been received and from which parts had been cut.

Q. What did she say, if anything, to you, in reference to those letter? A. That they were not rational and that the most irrational parts had evidently been cut out by Miss Hough.

Q. Did she say anything to you whether she was keeping those letters? A. No; she didn't tell me.

By the Court:

Q. Did she show you any of them? A. No.

By Mr. Kent:

Q. During some of those conversations, was her husband present? A. In 1922 at a conversation I had there, he was present.

The Court: Are you speaking of Mr. Harvie?

Mr. Kent: Mr. Harvie.

Q. What was the conversation in 1922 between you and Mrs. Harvie and also Mr. Harvie? A. Mr. Harvie didn't join in the conversation at all, but Mrs. Harvie sent me a message that she would

like to see me, that she wanted to tell me everything. I was about to leave for the West and she wanted me to tell Mr. Loveridge everything that she knew. She said at that time—Mrs. Leeds had died; she died in September and I saw her the latter part of September, 1922. She said she did not know what disposition Mrs. Lees had made of her estate, because she had been incapable of handling her affairs for a long time and that she was under the complete domination of Miss Hough that whenever she went to see Mrs. Lees, she was not permitted to see her alone, but that on one occasion, after the so-called adoption of Miss Hough, Miss Hough had left the room for a few moments and Mrs. Lees had told her that she did not want to adopt Miss Hough but that Miss Hough had threatened to leave her if she did not and in order to keep her, she was compelled to adopt her that every time she went to see Mrs. Lees during the latter part of her life, she seemed to be under the influence of a drug given her by Miss Hough, to keep her quiet so that she would be no trouble; and that Mr. Brown had told her that Miss Hough and her brother were two of the cleverest crooks that he had ever known.

Q. Have you seen Mrs. Harvie since that period? A. No; I left for the West then and I have only just returned. I have never seen her since.

Cross Examination by Mr. Atwater:

Q. Did Mrs. Harvie state to you that she had received more than one letter from which parts had been cut out? A. She said "letters." She said she had been receiving "letters."

Q. Letters from which parts had been cut? A. Letters from which parts had been cut.

Q. Did she show you any of those letters? A. No; she didn't show them to me.

Mr. Kent: I want to make it clear on the record that Mrs. Loveridge is brought here by us under subpoena. I will now call Mr. Harvie, who is one of the executors, and he is here under subpoena issued by me.

JAMES HARVIE, sworn as a witness on the part of the appellants, testifies as follows:

Direct Examination by Mr. Kent:

Q. You have been subpoenaed by me to come here? A. I have.

Q. You are represented here by Mr. Merrill, your attorney, and by Mr. Atwater as attorney for the estate? A. Yes, sir.

Q. You were present during the entire hearing at the Orphans Court? A. No, sir; I was not. I was there most of the time, but I was not present all the time.

Q. You were there most of the time? A. Yes. I was not there all the last day. Part of the last day I was not there.

Q. You did not testify in that proceeding? A. I did not testify.

Q. You have qualified and are acting as executor? A. Yes, sir.

Mr. Atwater: He has qualified, but of course, the taking of this appeal has suspended his right to act.

The Court: He is one of the executors under the will?

Mr. Atwater: He is one of the executors.

Q. Your wife's name is Belle Harvie? A. My

wife's name is Isabelle. She is usually called "Belle."

Q. And she testified in the proceedings before Judge Flannagan? A. She did, and she testified, I believe, before the Referee, but I was not there.

Q. Do you know Mr. Arthur Loveridge? A. I am sorry to say I do.

The Court: Strike out "I am sorry to say I do."

Q. He is a brother of your wife? A. He is.

Q. Do you remember you and your wife coming to his home to spend a week-end around the year 1920? A. I cannot tell you the time. The only time I was ever in his house, I was invited there and went. I could not place the time absolutely. I was never there but once, so that whatever time that was, that is the time.

Q. The only time you were there? A. The only time.

Q. For a week-end? A. I was there for a week-end; yes ,sir.

Q. You and your wife brought with you at that time a certificate of Dr. Swift, which certified as to Mrs. Lees' mental capacity? A. I know there was such a thing.

Q. Your wife had it with her? A. I could not say that even. I do not know whether she had it with her then or not.

By the Court:

Q. Did you see it then there? A. I have no recollection of seeing it there.

Q. Do you remember whether you saw it? A. I saw it but not there. I saw it in my own house.

By Mr. Kent:

Q. You say now you don't know. A. I don't recollect whether she had it there or not. I absolutely don't know.

Q. The certificate of Dr. Swift certifying as to Mrs. Lees' lack of mental capacity was dated July 2, 1920? A. I could not tell you that either.

Mr. Atwater: The certificate is in evidence and speaks for itself.

Mr. Kent: I want to get the date.

The Court: Who offered it in evidence?

Mr. Kent: I did.

The Court: You ought to have it.

Mr. Kent: I think all the originals were left with the clerk.

Q. When was that certificate procured by your wife? A. I cannot tell you that either. I don't know.

Q. But you do recall going to see Mr. Arthur Loveridge? A. I do.

Q. And staying there for a week-end? A. I do.

Q. Were you present during the conversations that Mrs. Harvie had with her brother in reference to that certificate? A. I recall some general conversations that were carried on in the living room when we stayed there. What they were all about I cannot tell you, except they were very often about Mrs. Lees and her affairs.

Q. Did not both you and your wife both request Mr. Arthur Loveridge at that time to institute proceedings to have a guardian appointed for Mrs. Lees? A. Not I. I cannot tell you what my wife did, but I never did.

Q. Were you not present there? A. Yes; but I was not with her all the time, nor was I in con-

versation all the time. I cannot recollect. For instance, when they went out for a drive or something of that kind, I was not along.

Q. Did not you yourself request Mr. Arthur Loveridge to take proceedings to have a guardian appointed for Mrs. Lees? A. I did not.

Q. Were you opposed to that proceeding on the part of your wife?

The Court: The witness has not testified that his wife suggested any such thing.

Q. Did your wife, to your knowledge, request Mr. Arthur Loveridge to institute proceedings to have a guardian appointed for Mrs. Lees? A. During the testimony I recall a letter that was introduced, which said "Please burn this letter," about which I knew nothing apparently—something to that effect.

By the Court:

Q. You did not know about that letter until it was produced on the trial? A. No, sir; not until it was produced on the trial.

Q. Did you know that your wife has suggested—did you learn your wife had suggested, at any time prior to Mrs. Lees' death, that a guardian should be appinted for her? A. Yes; I heard her worry about it several times.

Q. When were those occasions? Fix the time, if you can. A. It is rather a difficult thing for me to do.

Q. The best you can. A. I would say 1920, or around about there. About 1920. It is rather difficult for me to fix it exactly.

By Mr. Kent:

Q. But you say it would be about 1920? A. I think that is correct.

Q. That would be approximately two years before Mrs. Lees' death? A. She died in 1922 I believe.

Q. Didn't you accompany your wife to the office of Dr. Swift when she procured that certificate? A. I did not. In fact I did not know she was going.

Q. When did you first find out that she had gone to Dr. Swift? A. When she brought it home; when she brought the certificate home.

Q. Was not that in July, 1920? A. I could not tell you. I don't recollect.

Q. How long after that occasion when you say she brought the certificate home, did you go to see Mr. Arthur Loveridge? A. I don't know. We got an invitation to go out there. I cannot tell you what the time was. It is the only time I was ever in Mr. Arthur Loveridge's house; so the time might be fixed.

By the Court:

Q. Was the occasion when you visited Mr. Arthur Loveridge's house, after your wife had procured the certificate? A. I cannot even tell you that.

By Mr. Kent:

Q. During your visit there, did you ever request Mr. Arthur Loveridge to institute proceedings? A. No, sir.

Q. Are you positive about that? A. Yes, sir. To the best of my recollection, I have no recollection of anything of the kind ever happening.

Q. Would it have been possible for such a request to have come from you and you have forgotten it now? A. I doubt it.

Q. Would you say that you did not make any such request? A. I would not be as positive as that. Something may have slipped out; I have no recollection of anything of the kind, and it is not at all like me to do a thing like that, and I do not think I did it.

Q. Didn't you make a statement to Mr. Loveridge that the proper person to make that application was Aunt Hattie? A. I could not say. I have no recollection of anything of the kind.

Q. By "Aunt Hattie" I am referring to Miss Harriet Loveridge? A. I understand whom you mean.

Q. You have no recollection of that? A. I have no recollection whatever.

By the Court:

Q. Is your best recollection you did or did not? A. My best recollection is I did not.

By Mr. Kent:

Q. Where was this visit to Mr. Loveridge? A. At Greenwich, Connecticut.

Q. At his home? A. Yes, sir.

Q. You and your wife had never been there? A. We were invited there.

The Court: He said he was there only once.

Q. You do not know the circumstances that prompted you and your wife to go there? A. No circumstances on my part, except that I went to

please my wife. She was anxious to go. Her brother invited her and she was anxious to go. I would not go unless I went with her. I recollect that very well, and she thanked me for going with her.

Q. Do you know why she was anxious to go? A. I don't know, except I had never visited them. In fact, I don't think she had ever visited, but she had gone—

Q. Mr. Loveridge had visited her? A. He had stopped in his automobile. He had been there for one meal in twenty years as I recall.

Q. Didn't this appeal to you as an extraordinary occasion when you went there for a week-end? A. It did not. Week-ends are not extraordinary.

Q. As far as going to the home of Mr. Arthur Loveridge? A. I know I went rather against my will. I recall that part of it.

Q. Did you learn your wife there requested that Miss Hattie Loveridge be asked to institute proceedings? A. I have no recollection of any such thing.

Q. Miss Hattie Loveridge lives near you in Rutherford? A. Yes, sir.

Q. And in the year 1920 you were friendly with Miss Hattie Loveridge? A. Yes.

Q. You visited there? A. Occasionally I went around there. I would not like to call it a visit, but I went to see her once in a while.

Q. Did you request her to institute proceedings? A. No, sir, not I.

Q. Do you know whether your wife requested her to institute proceedings? A. I don't know.

Q. You don't know? A. I don't know.

Q. You were present at any of the visits when Mrs. Loveridge, who testified before you. was there? A. I remember her being in my house. I

must have been present at some of them, but I cannot recall how many.

Q. Were yo uthere when your wife was complaining to her about the letters she had been receiving, parts of which had been cut out? A. I don't recall, but I know she received one letter that parts had been cut out of. That is the only one I know anything about. That letter she kept and it went in the testimony and I believe is one of the exhibits. That is the only letter I know anything about, with any parts cut out. If there were more, I don't know anything about them.

Q. If there are any more, you don't know anything about them? A. I don't know anything about them.

By the Court:

Q. Did you see any letters from Mrs. Lees to your wife? A. Yes, sir.

Q. How many besides the one offered in evidence? A. A good many. I think they were all subpoenaed, and I think they were all put in evidence.

Mr. Atwater: I would say for your Honor's information that there are a great number of letters during the last two years of Mrs. Lees' life, to Mrs. Harvie, offered in evidence by us.

By Mr. Kent:

Q. Didn't you hear your wife testify that she destroyed some letters of Mrs. Lees? A. I don't recall that. I know that she did destroy some letters of no importance.

Mr. Kent: I ask that that be stricken out—"Letters of no importance."

The Court: Strike it out.

Q. And the letters that were destroyed were mainly from 1920 on? A. No; I could not tell you that.

Q. You could not tell when? A. No, sir; I could not.

Q. Did you at any time go with your wife to Mr. Brown, the attorney for Mrs. Lees? A. No, sir; never with my wife.

Q. Do you know of your wife receiving a check for $1,000 in June, 1920? A. Yes, sir.

Q. Did she consult with you about that check? A. She asked me what to do with it.

Q. What did you advise her to do? A. Keep it.

Q. Do you know that she had gone to other members of the family and asked what she should do with that check? A. I do not know of my own knowledge.

Q. Don't you know that she had gone to Arthur Loveridge and asked his opinion on what she ought to do with that check? A. She evidently went to Arthur at times when she did not consult me, because it is in evidence on that letter that I did not know anything about. She probably did the same thing with the check.

Q. Didn't she explain to you that he had advised her not to cash that check? A. No; I cannot say that she did. My advice to her was to cash it.

Q. Mr. Harvie, during the years 1920, from then on, your wife kept a diary, did she not? A. I could not tell you that. She had some kind of a memorandum book that she put dates and stuff down, memorandum that she kept. What was in it I haven't the slightest idea. Not having looked inside of it, I don't know.

Q. Do you know what has happened to that diary? A. No, sir.

Q. Except that you have not got it now? A. I turned it over to the lawyer. I haven't got it now. I do—

Q. Has your wife got it? A. I don't know whether she has it or not. I have not.

No Cross Examination.

Mr. Kent: May I ask that that diary which the witness says was turned over to the attorneys, be produced.

The Court: If it is and you take it, you offer it in evidence.

Mr. Atwater: There was a subpoena duces tecum to Mrs. Harris to produce this so-called diary in court, after she had referred to it indirectly as having been used to refresh her memory on previous testimony. Mrs. Harvey, with my advice, was unwilling to produce that so-called diary or memorandum book because it contained many matters of very personal thoughts and feelings on her part in reference to various members of the family, persons who were close to her, and she was very unwilling to have it made public. I objected and the court heard argument on whether or not the subpoena duces tecum could be used to produce the diary in court and I presented cases on the subject, and Mr. Kocher, who was advisory master, ruled that a person could not be compelled, under the law, to produce a personal diary under a subpoena duces tecum, and the argument and so on is in the record, if your Honor would glance at it.

The Court: The record now shows the request by Mr. Kent for the production of the diary, and you are obecting to the production of it.

Mr. Atwater: Yes, sir.

The Court: I will sustain the objection.

Mr. Kent: Of course, we would very much like to get that book. We subpoenaed it. They declined to produce it and the advisory master held with them. Now, I cannot quite follow how else we can get a record or statement of a person who kept a diary of the various events as they went along. The only purpose of that, of course, would be to impeach the credibility of that witness by showing that at previous times that witness had made notations and notes directly at variance with the statements she was then making on the stand, and I think we have a perfect right to go into that to show what the history of that person's activities was in her own statements; and I thought at this time we ought to be permitted to have that diary. We are dealing with a person who is hostile; we are going directly into their own camp for testimony.

The Court: I have already ruled.

Mr. Kent: May I ask, with your Honor's permission, to recall Mr. Arthur Loveridge, only in rebuttal of the testimony offered by Mr. Harvie:

The Court: Are you going to contradict your own witness?

Mr. Kent: He is a hostile witness.

The Court: I cannot rule until you ask the question. Recall Mr. Loveridge and ask your question.

ARTHUR R. LOVERIDGE, called as a witness on the part of the appellants, testifies as follows:

Direct Examination by Mr. Kent:

Q. Where do you reside? A. Greenwich, Connecticut.

Q. What relation does Mrs. Harvie bear to you? A. She is my sister.

Mr. Atwater: That is all in the testimony.

Q. Did Mr. and Mrs. Harvie come to see you at any time during the year 1920?

Mr. Atwater: I object to that.

The Court: Objection overruled.

A. They did.

Q. Did they have any conversation of any kind with Mrs. James Harvie in reference to Mrs. Lees?

The Court: State the purpose of this question.

Mr. Kent: The purpose of this question is to show what actually occurred at the visit of Mr. and Mrs. Harvie at the home of Mr. Loveridge.

The Court: You expect this testimony will be in contradiction of what Mr. Harvie testified to.

Mr. Kent: I do.

Mr. Atwater: I object.

The Court: Objection sustained.

Mr. Kent: May I offer this statement on the record, that it appears from the testimony of the witness Jame Harvie that he is hostile, that he stated his hostility to Mr.

Loveridge in that part of his testimony which your Honor struck out. It is evident from his testimony that he is deliberately misstating the facts. Since we are surprised by that phase of the situation, we again ask to be permitted to show by this witness what actually occurred at that visit.

The Court: I am not going to rule again. I have already ruled.

Mr. Kent: That is all we have to offer at this time.

Mr. Atwater: As far as we are concerned, the case is closed.

New Jersey Court of Errors and Appeals

Between ARTHUR R. LOVERIDGE, Appellant, and ALFRED S. BROWN, ROBERT H. HOUGH and JAMES HARVIE, as Executors of a Paper Writing purporting to be the Last Will and Testament of Elizabeth Loveridge Lees, deceased, Respondents.	On Appeal from Prerogative Court.

BRIEF ON BEHALF OF APPELLANT.

Statement.

This is a contest over the will of a woman eighty-three years of age.

The alleged testatrix died at East Orange, New Jersey on the 9th day of September, 1922. Her last will and testament was executed on the 16th day of March, 1921. The deceased left her surviving a sister, HARRIET LOVERIDGE, and numerous descendants of several brothers. It is our claim that the testatrix did not have the mental capacity to make a will; that it was the product of undue influence exercised by Maranda Hough,

Belle Harvie, Benjamin Epstein and others, and that it is being put into effect and is being sustained as the result of a conspiracy existing between the persons named.

A resumé of her life shows that she was a woman of more than the average culture, exceedingly strong minded, competent to take care of her affairs, and well able to manage her estate. That is to say, until 1918. Her husband died in 1912 or 1913. She at that time was living at the Hotel Beresford, on West 81st Street, New York City, where she continued to reside until the early part of 1920, when she moved to East Orange, New Jersey. In February, 1921, she moved to "Rainbow Cottage." Maranda Hough came with her about the year 1914, first at a salary of $18.00 a week, and later $125.00 a month. That arrangement continued until the so-called adoption. About 1918, the health of Mrs. Lees became seriously undermined. She suffered from chronic Bright's Disease, inability to control her organs, colds, heart trouble, high blood pressure, rheumatism, swelling of the hands and limbs, and inability to walk, except by dragging or shuffling her feet along the floor. These various ailments resulted in great personal discomfort and lack of control of her person, so that constant attendance and attention was necessary. Her condition at times became so alarming that while at the Beresford (prior to 1920) the doctor would forbid anyone seeing her. From 1916 on, the family physician was Dr. Edward P. Swift, who treated or prescribed for her until November, 1920. After they moved to East Orange, she was treated by Doctors Gantz and Wakely. About 1918, her mental and physical condition became so pronounced as to be evident to every member of her family. Her mental incapacity continued to increase. In June, 1920,

she made a gift of $1,000.00 to Mrs. Harvie. She (Mrs. Harvie) went to the members of her family, asking what to do with the check. They all advised her not to cash it. However, she did. Two days afterwards she went to Dr. Swift, the family physician, a reputable and high-grade practioner, and consulted him concerning Mrs. Lees' mental capacity, and he on July 2nd, 1920, certified that she was suffering from senile changes, which affected her mentality and rendered her incapable of sound judgment or discretion. Mrs. Harvie went with the certificate of Dr. Swift to Mrs. Lees' lawyer, Alfred S. Brown, who placed the certificate in his safe and kept it there for some time. Mr. Brown says that the letter gave him a great deal of concern, but he, however, did nothing concerning it, did not consult with Dr. Swift about it, or with any other physician or individual concerning the same. Then Mrs. Harvie went to decedent's sister, Miss Harriet Loveridge, requesting her to institute proceedings for the appointment of a guardian. She declined to do so as long as her sister was physically well taken care of, and that she did not want to stigmatize her and have her decreed to be an imbecile. Then Mrs. Harvie went to her brother, Arthur Loveridge, and asked him to start proceedings for the appointment of a guardian, and he declined to do so for practically the same reason given by Miss Harriet Loveridge, the sister.

During the course of the trial, Maranda Hough on cross examination let slip the fact, to our total surprise, that the Haffner branch of the family had contemplated bringing proceedings for the appointment of a guardian and that that fact was known to both the decedent, Mrs. Lees, and Maranda Hough. That in the year 1920, both of them had gone to see Mr. Brown concerning it. Brown says

New Jersey State Library

that he did not inquire even who contemplated starting the proceedings and he told Mrs. Lees that he did not believe anything of that kind was contemplated, and that he never heard of it, although at that time he had or did have in his possession the certificate of Dr. Swift certifying as to her lack of mental capacity. This all happened during the summer of 1920. It seems to have been the opinion of everyone in her household that in 1920 Mrs. Lees was mentally incompetent to handle her business affairs, and that a guardian should be appointed. It is significant that long prior to this she had resigned as a director of the Lees Manufacturing Company. When all this became evident, Maranda Hough started building this queer house with a stockade around it, in a poor section of Ampere, at a cost of more than $30,000.00, practically all of this contributed by Mrs. Lees. She then makes a frantic effort to have herself adopted so as to forestall interference from the other members of the family, and with the view in mind that if the guardianship came, she as a daughter would, of course, be the first entitled to the estate. She herself definitely puts the discussion and attempt of the various members of the family to institute guardianship proceedings as coming first and the attempted adoption coming afterwards, so as to forestall it. Then follow an avalanche of legal papers and agreements. First a will is drawn, then a codicil, then an agreement as to the so-called adoption status of Maranda Hough, then an agreement as to the statute of Rainbow Cottage and the memorial window, and finally, another will—the will in question. All this occurred after the family doctor had certified that she was mentally incompetent and two members of the family had made attempts to set in operation guardianship proceedings, and all these facts were

within the personal knowledge of her family lawyer, Brown. During this entire period she was attended by three doctors, from whom all mention of these facts was withheld, and, as is evident from the testimony of Maranda Hough, purposely and deliberately. No one was asked to examine her as to her mentality, nor was the slightest effort made to contradict by a competent medical authority the statement made by Doctor Swift, and the opinion of the various members of the family.

Mr. Brown continued to represent Mrs. Lees until her death and is now one of the executors and attorneys for the estate. During all this period not an attempt was made by him either directly or indirectly, to have Mrs. Lees' mental condition observed by either a physician or any other individual. The only thought that could have been in his mind was that an honest and independent investigation would have resulted in a finding that Mrs. Lees was mentally incapable. That being the conclusion of everyone vitally interested in the estate, all they did was to try to hush the matter up. However, during the period Maranda Hough in unguarded moments conceded the facts. This is evidenced by her statements to Mr. John Lang, a reputable contractor in East Orange, to whom she stated during the building of the house, that Mrs. Lees was not responsible for what she says, and that her mind is affected, and by the statements she made to Mrs. Taylor, who came to request a change in the will of Mrs. Lees, to whom she stated that Mrs. Lees was not in the state of mind to make a new will. Of course, Miss Hough now denies these statements, but these denials are only perfunctory and emphasize the importance of that testimony by the fact in addition that these two witnesses were not even cross examined.

About 1920, Maranda Hough took complete

charge of the house and also the finances. She sold a large number of bonds and deposited the proceeds in her name, and from that time on completely dominated the household. It was during this complete domination period that the various papers were executed and the will was drawn and signed. Maranda Hough accompanied Mrs. Lees to the office of Mr. Brown and remained in the room during the entire period, so that nothing could escape her. Practically all the witnesses for the defense were vitally interested in the result of the trial, while seriously contradicting each other and apologizing for their various lapses.

It was claimed by the various witnesses that Mrs. Lees went everywhere, entertained extensively and had a great number of friends, but not one of them who saw her from 1920 on was brought into court to testify; not one of the numerous legatees, not a servant or neighbor was brought in to state the facts or give his or her opinion as to Mrs. Lees' mental condition.

Mr. Harvie, one of the executors, who was present in court, did not testify about her mental condition. Mr. Hough, a brother of Maranda Hough, another executor, did not testify. The question naturally arises with all this testimony available of people who came into constant and close contact with the decedent, who knew all the facts, why was not their testimony taken, instead of the testimony of the witnesses who saw her casually and from whom all of the facts were carefully and deliberately withheld. On the other hand, nearly all of our witnesses are absolutely disinterested, several of them are legatees under the will, and who testified and who stated that they were testifying under compulsion. The testimony of our interested witnesses are more than amply corroborated by the statements and admissions of the witnesses for the other side.

Here follows a chronological summary of the evidence taken with the testimony of the witnesses indexed thereto.

On Behalf of the Appellant:

ARTHUR LOVERIDGE (p. 39) testified that Mrs. Lees was his aunt, he being a son of James W. Loveridge (p. 39); that he saw the decedent for the last time in the year 1920 at the home of Mrs. Harvie in Rutherford (p. 40); that his relations with Mrs. Harvie were always cordial (p. 41); that in the spring of 1918 Mrs. Harvie had stated to him that Mrs. Lees was failing rapidly in health (p. 42); that he then went to the Beresford and sent up his card, that Miss Hough came down to the desk and stated to him that Mrs. Lees' physical condition was such that she would not permit him to see her. That was in the spring of 1918 (pp. 42-43). That at the time he saw her in Rutherford (1920) her mental condition was one of inertia and her physical condition was one of complete disability; she was an old woman, broken in health and mind, and unable to conduct a conversation intelligently (p. 44); that on various occasions from 1918 on, Mrs. Harvie had been complaining to him that Mrs. Lees was failing mentally and physically, and that she was subject to the domination of Maranda Hough; that in October, 1920, Mrs. Harvie asked him to institute proceedings to have a guardian appointed (pp. 46-47); that she then mailed him the certificate of Dr. Swift (p. 47); that she later told him that in conversation with Mrs. Lees she expressed great surprise at the adoption proceedings, and when Maranda left the room Mrs. Lees said to Mrs. Harvie that if she had not done it she could not have kept Maranda, and that she thereupon took

two of her diamond rings and placed them on Mrs. Harvie's hand (p. 49); that Mrs. Harvie also received a check for $1,000.00 and that she came to him for advice as to whether she would get in trouble if she spent it (p. 49); that she, however, afterwards did cash the check (p. 50); that about October, 1920, she stated that Robert Hough and Maranda Hough were the finest bunch of crooks she had ever found in her life (p. 51).

On cross-examination, Mr. Loveridge testified that he was in the habit of calling upon Mrs. Lees during Mr. Lees' lifetime, and that they in turn called on him; that thereafter he called, possibly a year apart, when she was living at the Beresford (p. 54).

HARRIET LOVERIDGE (p. 55) testified that she is the sister of the decedent; that she saw her in 1918 at her home; that at that time she was not equal to a conversation (p. 55); that her condition after 1918 became worse (p. 55); that there was more inactivity on her part, she did not like being disturbed and it was very difficult to arouse her and to move her from one place to another (p. 56); that this condition continued to increase in 1920 (p. 57); that she would ask for a certain selection to be played and when, instead, a different one was played, it would satisfy her (p. 58); that on one occasion Mrs. Lees called her "Bessie," and although Maranda put her hand on her mouth and said, "This is Hattie, mother," Mrs. Lees continued to call her Bessie (p. 61); that she visited at the home of Mrs. Lees at luncheon, and although there were twelve at the table, Mrs. Lees said nothing during the entire meal (p. 63); that during the years 1918 and 1919, Mrs. Lees was not competent to manage her affairs (pp. 63, 64); that Mrs. Harvie had told her that Mrs. Lees was incompetent to manage her bank account or check book and

that she made no entries on the stubs (p. 65), and that she had Ten thousand dollars in Liberty Bonds at the bottom of her safe deposit box, of which she had no cognizance (p. 65); that in 1920 Mrs. Harvie had stated that Mrs. Lees was in need of a guardian and that she had the note of Doctor Swift, who stated that Mrs. Lees was mentally incompetent, and that she was the one to apply for this guardianship (p. 66); that Mrs. Harvie said that Benjamin Epstein had informed her that Miss Hough had offered to sell him her 100 shares of the Lees Manufacturing Company stock which she was to get under the law; that all this was prior to the death of Mrs. Lees (p. 68); that she, Harriet Loveridge, asked Miss Hough why she changed her name, to which Miss Hough replied that *it was to prevent interference and also to prevent having a guardian appointed* (p. 69); that on one visit to Mrs. Lees to Miss Loveridge she asked if there had been children in her family, and that Ida, Miss Loveridge's companion, had stated, "Why, no, your sister is not married," to which Mrs. Lees replied, "Yes, I know her name is Loveridge. She married my oldest brother" (p. 71); that it was apparent Mrs. Lees was referring to Bessie Loveridge, the wife of her oldest brother, who had long been dead; that Mrs. Harvie stated to her while Mrs. Lees was living at the Beresford, that she told Miss Hough that in case her aunt gave her any money or valuables, she, Miss Hough, should put them in a safe deposit box and return them to the estate, as her aunt was not in a condition to give away her property (p. 73).

On cross examination, she testified that she had not seen Mrs. Lees for a number of years prior to 1918 (p. 76). She explained the transaction as to the house held in common (pp. 78-80).

JOHN LANG (p. 83) testified that in Septem-

ber, 1920, he was introduced to Mrs. Lees, who simply bowed her head, and sat in the chair; that he and Miss Hough talked about the arrangements for the house; that Mrs. Lees mumbled something, but he could not understand it; that Miss Hough then led her out of the room (p. 86), and upon returning stated that he must not pay any attention to Mrs. Lees because her mind is affected (p. 87); that on another occasion, Miss Hough said: "Don't bother her" (Mrs. Lees), "because she is not responsible for what she says. I am taking care of the entire work and I am the one that is to be consulted. Mrs. Lees is *furnishing most of the money, but she is going to hold the mortgage on the property";* that a week later Miss Hough said, *"This house is going to be all mine and there is going to be no mortgage,"* and that as Mrs. Lees was very old and feeble she was not to be bothered (pp. 87-88); that at times Mrs. Lees would be around the house holding herself near the wall and she could never lift her feet; that she would slide along instead of walking (p. 90).

There was no cross examination of Mr. Lang.

DOCTOR EDWARD P. SWIFT (p. 91) testified that he is a practicing physician in the State of New York for 42 years, with an office at 170 West 88th Street, that he treated Mrs. Lees during the years 1916 to 1921; that in the certificate that he issued he stated that she was suffering from senile changes, which affected her mentality and rendered her incapable of sound judgment (p. 92); that Mrs. Harvie stated to him that Mrs. Lees was possibly subject to undue influence by Miss Hough (p. 93).

On cross examination, he gave a history of the various treatments and visits (p. 94), and that he had formed his opinion as to Mrs. Lees' mentality from his conversation with her during several years,

and that he had held this opinion for some time prior to July 2nd, 1920 (p. 95).

MRS. ANNIE L. JAMES (p. 109) testified that she is by occupation a nurse and companion; that she came to Rainbow Cottage in July, 1921 (p. 109); that Mrs. Lees' condition at that time was that of an invalid, and that she was drowsy and inert and not herself (p. 110); that on one occasion while out in the automobile, Mrs. Lees did not want to leave it; that finally Maranda Hough came out and got her into the house out of the automobile (p. 111); that during her entire stay she never discussed with her the topics of the day or attempted to carry on any such conversation (p. 111); that Miss Hough was very dictatorial and dominated Mrs. Lees (p. 112); that no one read to Mrs. Lees, that she was always drowsy, not herself and kind of sleepy, *that she never showed any affection for Miss Hough* (p. 113), and *that during the entire period she never referred to Maranda as her adopted daughter* (p. 114); that at the time Miss Hough discharged her, she received a letter from Mrs. Lees addressed her as "precious one," conveying the impression that she expected her back (p. 116); that afterwards she came back for her trunk and had luncheon, but Mrs. Lees did not partake in any of the conversation (p. 117); that Mrs. Lees did not seem to realize that she was going away (p. 117).

On cross examination she testified that Mrs. Lees wrote many letters (p. 118), that her conduct was irrational (p. 119); that it was the things Mrs. Lees did not do that made her form the opinion that she was irrational; that she did not take any part in things she simply wanted to be entertained and her mind was affected by her disease (p. 120).

Mrs. James testified in rebuttal, that she remembers Mr. Benjamin Epstein visiting Rainbow Cot-

tage while she was there; that she saw him only once; that while he was there Mrs. Lees did not carry on any conversation with him; that during the entire period of four months while at Rainbow Cottage she never heard any one read to Mrs. Lees (pp. 342-343).

MRS. AGNES LOVERIDGE (p. 121) testified that she was a witness by order of the court and that she was testifying by compulsion; that she has known Mrs. Lees since 1892 when she came into the family (p. 121); that in 1922 she called on Mrs. Lees at luncheon, and thereafter found herself in the parlor alone with her. She did not advance any conversation when all of a sudden Mrs. Lees asked "How is your husband?" She answered, "Why, he is all right. He is safe." Mrs. Lees then said, "Give my love to him when you go back home." (Mrs. Loveridge's husband had been dead for eight years, and Mrs. Lees had sent flowers to his funeral) (p. 122). About the year 1918, she went to Mrs. Harvie's and found Mrs. Lees there lying on the couch, and sat alongside of her, but Mrs. Lees never spoke (p. 123); that Mrs. Harvie had told her that a guardian ought to be appointed, and she was asked whether she could take her, but stated she could not (p. 124); that in answer to the question whether Mrs. Lees was rational or irrational, her answer was that "she was not there," that she did not seem to take anything in, and by that was meant that she was not mentally there, and that she did not engage in conversation and did not know what was said (p. 127); that this condition that she noticed on the 26th day of August, 1921, had existed a year before that; that at that time she could not carry on a conversation with her (p. 128) and that at that time she was not mentally there (p. 129).

On cross examination she testified (p. 130) that she was Mrs. Lees' nephew's widow; that she and her son are mentioned in the will, and that the reason she did not desire to testify was because of the provisions of the will.

MISS IDA BROWN (p. 147) testified that she is housekeeper for Miss Harriet Loveridge; that she observed Mrs. Lees in the summer of 1922 at the home of Miss Loveridge, and while in the room she was drowsy, but did not take any notice of anything, when all of a sudden she said, "Who is that there?" pointing to a photograph on the table; that when she answered, "This is a friend of Miss Loveridge's," Mrs. Lees replied, "Where are the children?" to which she replied, "There are no children in the house." Mrs. Lees said, "Why, I know her name is Loveridge, and she married my oldest brother"; that Miss Brown replied, "No, she is your maiden sister" (p. 147); that she had observed her on other occasions and she was always drowsy and did not seem right, and in her opinion was irrational (p. 148); that she did not seem to know her or Miss Loveridge (p. 149).

MRS. BELLE HARVIE (p. 151) testified that in July, 1920, she visited the office of Doctor Edward P. Swift for the purpose of procuring a certificate as to the lack of Mrs. Lees' mental capacity (p. 151); that she procured the certificate which was offered in evidence; that her aunt was in a very weak condition, and she felt that she might be influenced by Miss Hough (p. 152); she based her impression on Maranda Hough's influence upon Mrs. Lees' dependence upon her and of the fact that Maranda was taking advantage of her (p. 153); that her aunt was a person who was very dependent on her help. In answer to a question by the court, Mrs. Harvie said that she was afraid Ma-

randa Hough was going to take advantage of her weakness now that she was ill and try to get control of some of her business affairs; that Miss Hough persuaded Mrs. Lees to take her (Maranda) instead of Mrs. Harvie to the Guaranty Trust Company, which was done without her knowledge and that she did not like that; she thought that Miss Hough was making an effort to get control of both the mind and property and assets of Mrs. Lees; that she was under the impression that Miss Hough had started a certain plan of action, and that unless she stopped it or circumvent it she would fulfill that plan, and that that was her intuition (pp. 153-154), that in the summer of 1920 Mrs. Lees had been very ill with heart trouble (p. 154); that she had asked Miss Loveridge to have a guardian appointed; when she had declined, she had gone to her brother, Arthur Loveridge; on October 21st, 1920, she wrote to her brother enclosing the statement of Doctor Swift; among other things she wrote, "I think her mind is failing more in some respects, as she contradicts herself continually; no wonder, when she leads the life she has for the past few months; she is a sad problem" (p. 155); she then stated that it was very foolish of her to have sent that letter and statement of Doctor Swift (p. 156). In answer to question by the court as to her objection to going before a jury, she stated that she did not want to expose her to the indignity (p. 157); that she wanted somebody to get behind her; that she had to protect Mrs. Lees' interests; that she thought it advisable at one time to have a guardian appointed (p. 157); she said to Dr. Swift that her object in going to him and getting the certificate was *in order to prevent a new will being made* (p. 158); *that when she received the certificate it was satisfactory to her, and it was what she wanted him to say* (p. 159). In

reference to the adoption, she stated that Mrs. Lees said to her after Miss Hough left the room she had to do it (p. 160); and further, that Mrs. Lees said, *"Belle, it is the only thing I can do to keep her"* (p. 160); that she was first told of the adoption when Maranda Hough told Mrs. Lees to tell her (p. 161); that she received a check for $1,000.00 on June 30th, 1920, and that on July 2nd, almost immediately thereafter, she went to Dr. Swift and procured from him the certificate (p. 169); that in 1920 Mrs. Lees' fingers were so swollen that her rings had to be cut off (p. 173); that she had rheumatic trouble (p. 173); that she (Mrs. Harvie) stated to her brother, Arthur Loveridge, and to her aunt, Harriet Loveridge, that she had a conversation with Mrs. Brown who told her that Maranda and her brother were a pair of thieves (p. 174); in reply to a question of the court, she stated that she understood Mr. Brown to say that (p. 175).

On cross examination, Mrs. Harvie testified (p. 175), that her reason for calling upon Dr. Swift was that she had an intuition that Miss Hough was trying to get control of Mrs. Lees' property; that this intuition did not turn out to be correct (p. 175), and that Miss Hough had prevailed upon her aunt to take her to the safe deposit box, and she felt hurt (p. 175).

HELEN P. TAYLOR (p. 408) testified that she is the daughter of Mrs. Haffner, and called on Mrs. Lees late in 1921 or early in 1922; that Mrs. Lees was not able to carry on a conversation; that Miss Hough then told her that Mrs. Lees was failing and forgetful and not herself (p. 408); that at another time she spoke to Miss Hough about Mrs. Lees' will, and asked her whether the share that would have gone to her mother, Mrs. Haffner, would not be equally divided between the three children; that Miss Hough said no, that she could not, and

that she did not think "mother" (Mrs. Lees) was in a position at that time or in the state of mind to make a new will (p. 409); that this conversation was in April, 1922; that at that time Mrs. Lees was in practically the same condition she was in at a prior visit; that she was unresponsive and did not care whether she was there or where she was; that all her faculties were not registering (p. 410).

Cross examination was waived.

When asked by the Advisory Master if she heard Mrs. Lees answer many questions, she replied that Mrs. Lees would respond in a vague way; that she was very forgetful and would ask about relatives who had passed on, and was never brought into the general conversation (pp. 410-411); that from her observation *the general feeling was that she was not in any condition to enter into the conversation* (p. 411).

ELSIE WHEELER (p. 534) testified she is a sister of decedent's husband. Receiver a letter which she characterized as incoherent (p. 536). Visited the decedent in September, 1921 (p. 537). Got to the house about 11 o'clock before lunch. Mrs. Lees fell asleep several times while she was talking to her. During the conversation she would turn to her and say, "Where is Elsie? What about Elsie?" although she was talking to her (p. 538). That Mrs. Lees was not mentally fit to transact any business. She was a poor sick woman. She could not get out of her chair herself. They had to count one, two, three and then she would make an effort and Maranda would pull her up. Once Mrs. Lees struck at Maranda, just as a child would strike. She was shocked at her appearance (p. 540).

There was no cross examination.

ALICE M. LOVERIDGE (p. 543) testified she is the widow of Edgar Loveridge, who was a nephew of Mrs. Lees. Saw Mrs. Lees for the last time in the summer of 1918. Saw she was changing, she was inactive, said practically nothing, although she had been a very talkative woman, and was much more feeble than she was when she had seen her before (p. 543). Visited Mrs. Harvie in 1919, who told her that Mrs. Lees was failing mentally and unable to manage her affairs and under the complete domination of Miss Hough (p. 544). From 1919 until 1922, every time she went to see Mrs. Harvie she was told that Mrs. Lees was getting worse all the time, and less able to manage her affairs; that Miss Hough controlled her completely (p. 544). In 1920, Mrs. Harvie told her that she received letters from Mrs. Lees from which parts had been cut out. After 1920, every time she saw her she spoke of letters that had been received and from which parts had been cut out. That the letters were not rational and that the most irrational parts had evidently been cut out by Miss Hough (p. 545); that at one of these conferences Mr. Harvie was present (p. 545). That on one occasion Mrs. Harvie stated Mrs. Lees had told her that she did not want to adopt Miss Hough, but that Miss Hough had threatened to leave her if she did not and in order to keep her she was compelled to adopt her. That every time she went to see Mrs. Lees during the latter part of her life, she seemed to be under the influence of a drug given to her by Miss Hough to keep her quiet, so that she would be no trouble, and that Mr. Brown had told her that Miss Hough and her brother were two of the cleverest crooks he had ever known (p. 546).

On cross examination she stated that Mrs. Harvie referred to letters (p. 546).

JAMES HARVIE (p. 547), testified; has

qualified and is acting as executor; husband of Belle Harvie (p. 547); had heard his wife worry about the appointment of a guardian for Mrs. Lees about the year 1920 (p. 550); had no recollection of requesting Mr. Arthur Loveridge to institute proceedings. This question was asked him:

> "Q. Would you say that you did not make any such request? A. I would not be positive as that. Something might have slipped out. I have no recollection of anything of the kind, and it is not at all like me to do a thing like that, and I do not think I did it" (p. 552).

He didn't know whether his wife requested Miss Harriet Loveridge to institute proceedings (p. 553). His testimony showed the evident desire to suppress the facts by the convenient "I don't remember" or "I don't recollect" and is an illuminating exhibit of the respondent's attitude of this entire proceeding.

The following testimony was adduced on behalf of the proponents:

JOSEPH FRANKENTHAL (p. 20) testified that he is a law clerk with Alfred S. Brown and one of the attesting witnesses to the will; that the entire conversation at that time was the question by Mr. Brown, "What is this instrument?" and her answer, "This is my will" (p. 21).

On cross examination he testified that he had typed the will and got his information from Mr. Brown, and that the will was fastened and put together when Mrs. Lees got to the office (p. 24).

FRANKLIN W. MORRELL (p. 27) testified that he was a witness to the will.

On cross examination he testified that there was no examination of the will by anyone while he was

there; that he did not remember any of her family being with her (p. 28); that no one asked her whether she understood the contents of what she was signing and that she was apparently of sound mind (p. 28). Asked whether this woman was or was not sane, he answered, *"How do I know?* In my opinion she was sane" (p. 30).

HOMER H. PENNOCK (p. 31) testified that he was one of the witnesses to the will; that Mrs. Lees was of sound mind (p. 33).

On cross examination he testified that Miss Hough was in the room during the entire period (p. 33); that Mrs. Lees would come over to see him occasionally to consult about trifling things (p. 37); that the last time she consulted him was about the house she bought over in New Jersey, but he thought she rented it first and was going to buy it; she came in about so many trifling things (p. 38); that she appeared rational.

JAMES O. CLARK (p. 96) testified that he is a member of the New Jersey bar and has known Mrs. Lees for about sixty years; that decedent called at his house in Westfield some time during the year 1921, possibly in the latter part of 1920 (pp. 96-97); that her conversation impressed him as intelligent and that she was rational (p. 98); that she was a very intelligent woman; that she was exceedingly strong minded and positive; that he did not see her very frequently prior to 1920 (p. 99).

On cross examination he testified that Miss Hough accompanied Mrs. Lees on her visits, and she was present at every visit of his to her house (p. 100); that he did not know of the adoption; that he did not observe whether she was physically well during the years 1920 to 1921 (pp. 101-102); that the general conversation was answered by a

"yes" or by a "no" by Mrs. Lees; that gave him the impression that it was an intelligent answer (p. 103); that the fence or wiring around the house impressed him as a precaution against a peculiar neighborhood that was in the back of the premises; it appeared as if it was built to keep intruders out (p. 103); never had any discussion with her respecting her property (p. 105).

The court asked him the following questions:

> "Q. Yes, but you did not seem to discuss anything with her except just the ordinary topics of the house anybody could answer by 'yes' or 'no'. You talked with her about the changes you had made in your own place and she talked to you about the facts about her house? A. Yes.
>
> Q. Just give me anything you can recall that conveys to your mind that she had the power of mental concentration, more than it was a nice day and they were going to have a delightful home. You say you got the impression that she was entirely rational; now, did you get that from anything more than just these ordinary small questions that a child of tender age could really imagine? A. I don't think I did" (pp. 105-106).

The witness further testified that she gave him the impression that the new house was her house (p. 106).

THOMAS A. DAVIS (p. 131) testified that he is a practicing lawyer and a member of the firm of Howe & Davis; that he first saw the decedent and Maranda Hough on December 31st, 1920; that Mrs. Lees had said her object was to undertake the proceedings for the purpose of adopting Miss Hough as her daughter and to make a will (p.

131) ; that he drew a paper for her that was nothing more or less than an expression of her feelings toward Miss Hough; that at that time he did not feel he was called upon to form any opinion as to whether she was rational or irrational, but that now his opinion was that she was perfectly rational (pp. 132-133) ; that he did not recall anything unusually positive about her except that the request to adopt a person of Miss Hough's age was rather unusual (p. 133).

On cross examination he testified that every time she came to the office she was accompanied by Miss Hough, who was present during all the conversations, but that they both talked (p. 134) ; that he would not call her infirm, and does not recall whether she walked with any difficulty (p. 135) ; that he does not recall her being feeble; would not state whether her mentality was in no way impaired; that they did not state to him that the family for some years before had considered the appointment of a guardian for her, nor the fact that the family physician in 1920 and before, had stated that she was incapable of sound judgment or discretion (p. 135) ; that the instrument drawn by him was a rather unusual one; that he could not say whether she discussed who her relatives were and how she wanted to dispose of her property; that he has no recollection at all of any talk about the proposed will (p. 139).

EDWARD L. DAVIS (p. 140) testified that he is a lawyer and a member of the firm of Howe & Davis. That he attended to the proceedings for the change of name for Miss Hough; that Mrs. Lees testified before Judge Dungan; that he examined her as a witness (p. 140) ; that in his opinion she was rational (p. 143).

On cross examination he testified that he did

not know anything of her family history or of the facts certified by the family physician, or that guardianship proceedings had been talked of and contemplated by the members of the family (pp. 143-144); that it was explained to Mrs. Lees that if something happened to the will and Miss Hough was the only child, she would get the entire estate (p. 144); that he started the examination before Judge Dungan and that the judge asked some questions on his own account (p. 146); that she did quite a little talking and he remembers there being a little amusement in court about the manner in which she expressed herself; that he would hardly expect that she was able to express to the judge exactly what she had in mind with such detail (pp. 146-147); that in the proceedings before Judge Dungan for change of name Miss Hough had testified that she had been with Mrs. Lees some twelve years, and that it was her desire and Mrs. Lees' desire that Mrs. Lees "adopt me as her child, that our relations may be as parent and child, to simplify our relations and my care of her and our home relations * * *; that she has charge of the household expenses; it is her home and she takes care of it." This question was asked her: "Q. Is this for the purpose of inheritance? A. Not entirely. In our agreement, it gave me the right of inheritance, but we took that out as Mrs. Lees' wishes her will to remain as it was, and I wished my will to remain as it was; we struck that part out *as now it was not Mrs. Lees' wish that I should be her sole heir*" (pp. 439-440-441). Mrs. Lees testified in the same proceeding, in answer to a question whether she had been living in East Orange for years or months, that it was years; as to how long she had known Miss Hough, she answered thirteen years; that Miss Hough had been with her ever since (a misstatement); that she was

willing to have Miss Hough take her name in order to show her appreciation of her faithful service.

(The entire examination covers just one typewritten page) (pp. 441-442).

BELLE HARVIE (p. 177) testified as follows: She identified a series of letters written to her during the years 1919 and 1920, marked Exhibits P-6 to P-17. In the Exhibit P-10 she speaks of the possible setting aside of the will. That letter is dated October 9th, 1920 (p. 188).

On cross examination she testified that she had received other letters than those in evidence; that she picked out what she thought were good evidence (p. 203); *that she had some letters which she destroyed from time to time; that she destroyed letters received in 1922* (pp. 203-204); that during the time she was receiving those letters which had been offered in evidence, she had under consideration the appointment of a guardian (p. 205); that when she went to visit Dr. Swift she wanted from him *his unbiased and honest opinion* and what she got from the doctor was *his honest and unbiased opinion* (p. 205); that at the time these letters were written in reference to Miss Harriet Loveridge, *Mrs. Lees was visiting Harriet and Harriet was visiting Mrs. Lees* (pp. 207-208). In answer to a question as to whether she ever had any conversation with Miss Hough wherein she told her that if Mrs. Lees gave her anything of value or money, that Miss Hough should put it in a safe deposit box because Mrs. Lees was not in a position to give such gifts, and that after her death they should be returned to the estate, she first answered that she could not remember that; after urging by the court to answer the question and the court asking the following: "Q. Do you mean to say to me that you could have had such conversation with

Miss Hough and not remember it?" Her answer was, "I might have said it, but I do not recall." The court then asked, "Now, see if I cannot refresh your mind a little bit and say that conversation was had with her while they were living at the Beresford in New York and before they came to East Orange, which would bring it about 1918 or 1919, or thereabouts. Try to think, please, Mrs. Harvie." The answer was, "I cannot recall it distinctly, but it is barely possible" (pp. 208-209).

Mrs. Harvie, recalled for direct examination, stated she had been subpoenaed to bring her diary and letters and records; Mr. Atwater stated that the diary was handy but not in court, and declined to produce it (p. 417); he stated that she never had a diary for 1920, that she had a small book with some dates in it, that that book went astray about a month or two ago; her explanation was it may have fallen into the waste basket (p. 422); that she had a conversation with Mr. Epstein who told her that Maranda Hough had offered to sell to him 100 shares of the stock of the Lees Manufacturing Company (p. 429). (This she only recalled after a great deal of coaxing.)

ELLEN TAYLOR (p. 209) testified that she is the wife of Edward Taylor; that she and her husband are both named as legatees in the will of Mrs. Lees; that she saw Mrs. Lees for the last time on January 17th, 1920, at the Beresford; that she had a conversation with her (p. 210). A letter, dated December 11th, 1917, marked Exhibit 18, was offered in evidence, and gives a fair example of Mrs. Lees' writing (p. 211).

BENJAMIN EPSTEIN (p. 212) testified that he is manager of the New York office of the Lees Manufacturing Company (p. 212); that he remem-

bers during the year 1919 and for several years, that he would talk to Mrs. Lees for one-half an hour at a time after lunch, and the talk would be about the general standing of the company's business (pp. 213); after she resigned as a director, she discussed business matters more so with him (p. 216); that on one particular occasion he talked to her for more than three hours (p. 217); that during the year 1920 she came to the office alone (p. 219); that he visited in New Jersey about seven or eight times a year (p. 221); that on one occasion in 1921, Mrs. Lees insisted that she wanted him to go upstairs and hang a picture; upon her insisting, he went upstairs with her; when he got up he sat alongside of her at her desk and asked her where the picture was, and she said she would give it to him afterwards; that then a discussion followed in a general way about himself, how his family was, and after that she brought up the question in some way of an antagonism and unfriendly feeling between Maranda and Mrs. Harvie, and she then said, "Benny, there may be some things I want to do, and if I do anything kindly for Mrs. Harvie it seems to draw the feelings against Maranda; if I do anything kindly for Maranda it seems to draw the feeling from Mrs. Harvie" (pp. 221-222); that he had no difficulty in understanding Mrs. Lees; that he never knew of her mumbling (p. 224); that she had no difficulty in walking; that she had a slight sort of limp; that no stock of the Lees Manufacturing Company was ever offered to him by anyone (p. 224).

On cross examination he testified that under the will he was to receive 100 shares of the Lees Manufacturing Company; that the company had a capitalization of $150,000.00 (p. 225), but that the book value of the stock at the present time was about $240,000.00 (p. 226); that there had been

no deterioration of Mrs. Lees' mental powers (p. 227); that around the early part of 1920 he found she would get very sleepy in the afternoon; that he did not know that she was suffering from heart trouble, rheumatic trouble, Bright's Disease, and to him she appeared healthy, except when she coughed and got a cold; that he did not know of any serious illness of Mrs. Lees or of any serious trouble; that he saw her every few weeks (pp. 228-229); that he never had any talk with Maranda in reference to purchasing from her 100 shares of stock that she was to get; that he never spoke to Mrs. Harvie in reference to that stock (p. 231); that Mrs. Lees asked him if he objected when she considered him as her child (p. 234); there was offered in evidence various letters marked Exhibits P-19 to P-40.

JULIA P. ELLIOTT (p. 258) testified that she is a neighbor of the Harvie's in Rutherford; that she knew Mrs. Lees about fifteen years; that she met her perhaps twice a year when she visited at Harvie's (p. 259); that she thought anything Mrs. Lees was interested in she was most intelligent in (p. 260); that she appeared rather feeble; that she never discussed her business affairs with her; that she considered her rational (pp. 260-261); that she cannot recall whether she saw Mrs. Lees either in 1920 or 1921 (p. 261); that the last time she saw her she could see that she was failing physically and mentally (p. 262); that she did not know that Mrs. Lees had a physical trouble of any kind, but she would like to help Mrs. Harvie (p. 263); *that she knew that Dr. Swift had written some kind of a paper, but did not know what was in it* (p. 264); she finally wound up her examination with the statement that she really did not know anything about Mrs. Lees' condition (p. 265).

ALFRED S. BROWN (p. 265) testified that he was acquainted with Mrs. Lees for over twenty-five years; that he prepared Mrs. Lees' will; that he attended to the preparation and execution of the will offered for probate, dated March 16th, 1921; that he received a letter from Mrs. Lees dated February 14th, which letter is set out on page 266; that again on March 8th she wrote another letter set out on page 268, which letter stated that in accordance with Mrs. Harvie's wish she desired to have Mr. Harvie's name added as an executor, and that he also received the written instructions which are in her handwriting (p. 269); that she appeared at the office on March 16th, when the will was executed (p. 271); that he does not remember whether he read the will to her or whether she read it, and that she was satisfied with it (p. 271); *that he did not discuss with her at the time the value of her property* (p. 272), *and that she did not discuss with him any other members of the family except the Haffners* (p. 273); that he prepared a paper which bears date the 24th day of August, 1920, and was executed the same day as the will of August 24th, 1920; the paper was recorded in the Essex County Register's office (Exhibit, at p. 474); that in the letter, Exhibit P-36 (p. 292) it is stated that Miss Hough has contributed the sum of $14,000.00 towards the house; that in his opinion Mrs. Lees was more intelligent than the average woman (p. 303); that she was very positive in her views; that she was very hard to change, very hard to influence; that he had observed she was growing old; that she was not as quick in her mental operations as she had formerly been; that she frequently became dull and dozed off (p. 304), and that as time went on she became somewhat feeble physically (p. 305).

On cross examination he testified that he knows

Mrs. Harvie; that she brought him Dr. Swift's certificate, and she talked to him at that time generally about her aunt's condition; that Mrs. Harvie was of the opinion that Mrs. Lees ought to have a guardian and that she thought that Miss Hough might get control of her property (pp. 305-306); that he and Mrs. Harvie discussed Miss Hough at that time (p. 306); that Mrs. Harvie strongly characterized the Houghs as the finest pair of crooks she had ever seen (p. 307); however, he could not recollect the precise language she used; that he did not communicate with Dr. Swift about the letter; that he thought a good deal about the situation, and was anxious about it; that he disagreed with Dr. Swift (p. 308); he assumed that Dr. Swift is a reputable physician (p. 308); that he took no steps to challenge the statements of Dr. Swift (p. 308); that he had never heard that Mrs. Lees was suffering from Bright's Disease and from rheumatic conditions; that he drew the Will dated August 24th, 1920, without making any independent investigation or without trying to verify the positive statements of Dr. Swift (p. 309); that on November 3, 1920, he drew the codicil without making any other investigations; that he drew a series of papers, one of which purports to be a bargain and sale deed with a life interest provision, and another, an agreement in reference to the memorial window, without making any independent investigation, and then in view of her growing feebleness and also evident mental feebleness he drew the will of 1921, without any independent investigation outside of his own impressions (p. 309-310); that Mrs. Lees asked him to undertake the adoption proceedings (p. 312); that he declined to have anything to do with that; that at that time Mr. Atwater was a New Jersey attorney and that he was referring New Jersey matters to him (p. 313); *his explanation was that he simply declined to have*

anything to do with the proceedings (p. 313); *that he noticed that in the successive wills Miss Hough's share became perceptibly larger* (p. 314); that during this same period Miss Hough had been borrowing considerable sums of money from Mrs. Lees for the house (p. 314); that after his knowledge of Dr. Swift's statement he did not deem it advisable to inform Mrs. Lees; that he did not inform Miss Hough about it; that although he had knowledge of a real estate transaction, he did not think it was his duty to inform both of the interested parties of the possible legal objections that may enter into the transaction (p. 321); that he received a letter from Mrs. Lees *asking him not to mention to Mrs. Harvie the fact that Maranda was in the office about certain matters* (p. 324).

On further cross examination, he testified that Mrs. Lees came to him in reference to having a guardian appointed; that he did not ask her from whom she got the information (p. 413); that at the time she came in, she seemed very much disturbed and said that somebody was talking about having a guardian appointed for her; that at that time he had the letter of Dr. Swift's certifying as to her incapacity (p. 414); that he did not tell Mrs. Lees that he had a letter from Dr. Swift certifying as to her lack of mental capacity; that although Mrs. Lees was very much disturbed he did not suggest to her that she go to some high-grade doctor to be examined (p. 416); when asked why he did not give this information as to Mrs. Lees' coming in and discussing the situation with him, he answered that he did not think he was asked the question (p. 417).

MARANDA HOUGH LEES (p. 325) testified that she came as a nurse for Mr. Lees (p. 325); that she lived with Mrs. Lees at the Beresford until 1920, when they went to East Orange (p. 327);

Mrs. Lees was not well in the Beresford and deemed it advisable to move to East Orange (p. 329); that she put in altogether $12,000.00 in the construction and purchase of the house; that Mrs. Lees put in the sum of $18,000.00 (p. 330); that after the agreement of adoption, they lived as mother and daughter and she managed the house (p. 331); that from the year 1919 Mrs. Lees had kidney weakness which continued up to the time of her death (p. 331); that at first Mrs. Lees wrote a good deal, *but that later it would take her most of the day to accomplish one letter* (p. 332); that if she wanted to do things, *she generally did it;* when she wanted anything done she would express the wish.

The following questions were asked:

> "Q. Was there any difficulty in understanding what she wanted to have done? A. *No, not if you knew Mrs. Lees.* She stated she had no difficulty in understanding her wishes.
>
> Q. Well, from your observation of her during all the time you were with her, what is your judgment in regard to her mentality? A. Well, of course, that subject has been brought up, and in my judgment what mother wanted she knew and she was positive about it and I was satisfied."

She stated that her condition of mind changed during the time Mrs. Lees was with her.

This question was asked her:

> "Q. Now describe that change? A. Well, chiefly in her memory and chiefly when she would be drowsy and awakened, it would seem as if she awakened out of a dream."

She fixes that period during the last two years of her life (pp. 332-333); that her dragging of the

feet seemed to increase; *she could not lift her feet; that she, Maranda, had to be careful about the rugs on the floor; that she always put two rugs right close together so that she, Mrs. Lees, did not trip,* and that seemed to increase; that her memory became less and that "we would have to recall instances by other instances to make her remember or something on that order"; that she was with her age; *that her memory was going;* that that was within the last two years (p. 335); that after they got into 19 Whitman Avenue, *she attended to all business and made a complete change; that Mrs. Lees wanted her to attend to all of it* (p. 337); that she positively did not make any statement to Mr. Lang that Mrs. Lees' mind was affected; denied exercising an undue influence over Mrs. Lees in reference to the making of her will (p. 341); that *she always tried to make sure that she did not influence "mother" regarding the will; "regarding the house it was a different thing; I put my money into it; it was all that I had, and the house had to be mine"* (p. 342).

On cross examination she testified that she came back to Mrs. Lees in 1914, and was to receive a salary of $18.00 a week (p. 356); that in 1921 she was paid $125.00 a month; that she was satisfied with this arrangement; that at no time during her stay was she dissatisfied, and that it was a sufficient salary in her judgment to compensate her for the work she was doing; that if she was dissatisfied, she would not have asked for an increase, but would have made a change (pp. 357-358); that there was a rumor of guardianship proceedings that were to be brought, and that Mrs. Lees went to Mr. Brown and asked him if she could have Miss Hough appointed as her guardian; that then Mrs. Lees learned that she could not appoint her own guardian, and that she then suggested that she adopt Miss Hough (p. 360); that Mrs. Lees made this

suggestion to Mr. Brown and Mr. Brown could not act as a New Jersey lawyer (p. 360); that Mrs. Lees went to Mr. Brown with the idea of having her (Maranda) appointed as guardian for her and learned that could not be, and that that was the first time she heard of the adoption (p. 361); that she had a conversation with Mrs. Lees in reference to the appointment of a guardian in the year 1921; that the discussion had ariscen in the home as to the advisability of appointing a guardian around the time of the agreement for the adoption; that this had been brought to the attention of Mrs. Lees by Philip Haffner (p. 362), according to her best recollection; that a lawyer had been to see Mr. Haffner in reference to instituting proceedings to have a guardian appointed; that she does not know who sent the lawyer. The question was asked whether she was willing at that time to be appointed guardian. The answer was, "I could not say."

The following questions were asked by the Advisory Master:

> "Q. Now you know whether you were willing to act as guardian or not? A. I think the question in my mind was that it could not be done.
>
> Q. *You are evading the question;* do you know whether in your own mind, when this question of guardianship came up, you would accept it or refuse it? A. I know that I would not have refused it.
>
> By the Advisory Master: *The witness is becoming evasive*" (pp. 363-364).

Miss Hough further stated that until the rumor of the appointment of a guardian came up, Mrs. Lees had not discussed with her the advisability of adoption; that she is positive that the rumor of

guardianship came first and the adoption second (p. 365); *that she saw Mr. Haffner after Mrs. Lees had told her that he contemplated the appointment of a guardian, but that she did not discuss it with him; that she thought it best not to; that the least it was discussed the better* (pp. 366-367); that she did not mention that fact to Mrs. Harvie; that Dr. Swift was the family physician and had been treating Mrs. Lees for at least several years prior to 1920 (p. 367); that when the rumor as to the guardianship came up she did not take it up with Dr. Swift or with anyone else; that she thought the proper thing to do was to let Mrs. Lees go to Mr. Brown and ask for advice on the guardianship (pp. 367-368); that she saw other doctors with reference to Mrs. Lees, a Doctor Gantz and a Doctor Wakeley, and never mentioned anything to them about the proposed guardianship, or that someone was trying to have a guardian appointed; that when asked why she did not acquaint Doctor Wakely with the facts, she answered, "I am not in the habit of telling a physician; a physician tells me, that is all" (pp. 368-369); but that she did not ask him to particularly watch her mental processes or to certify whether Mrs. Lees was mentally right or not (p. 369); that if Dr. Wakeley asked any questions she answered them, but that she never volunteered anything (p. 369).

The following questions were asked:

> "Q. By that you mean that if he had asked you if guardianship proceedings were contemplated you would have answered that? A. *I do not know that I would have answered that*" (p. 370).
>
> Q. Did Mrs. Harvie while you were at the Beresford tell you to hold or keep all gifts and money that Mrs. Lees may give you and return

them to the estate after her death? A. There was something of that kind touched upon, but when it was I could not say, but it did not involve as much as that statement might involve. By the Advisory Master:

Q. Well, what did it involve? A. Well, it involved this, that any considerable—would have to be accounted for. I guess that is what it involved" (pp. 370-371).

In answer to the questions as to what she stated to Mrs. Harvie, she merely said that she would keep a clear conscience (p. 372); in reference to the visit to Mrs. Taylor and her conversations as to the change of will and as to Mrs. Lees' condition, her answers were all "not to my knowledge" or "I do not recall" (pp. 373-374); she testified with positiveness that she never protested to Mrs. Lees about what she was doing for Mrs. Harvie (p. 375); that she was present when Mrs. Lees failed to recognize her sister, Miss Harriet Loveridge (p. 379); that Mrs. Lees read a great many of her letters to her; that when asked whether she corrected them, her answer was, "Correct them? No. Well, I will take that back. In case of company or something —that I mean, but if they were corrected, if there was anything that interfered with her health or anything like that, why they were corrected; they were corrected and were not sent out, and if they happened to go out, it was simply corrected over the phone, if it were something that couldn't come about; she did not always know what I had to do; she did not know about the household arrangements; her mind was not on that" (pp. 384-385); has no recollection of cutting out any parts of letters; *that she had authority to cut out parts of letters* (p. 385); that she did not put in the petition for change of name—the words "right of in-

heritance"; that she was dumbfounded when she read it (p. 399).

On re-direct examination she testified that she had never met Mr. Arthur Loveridge, nor had she ever had any conversation with him (p. 401); *that it was a fact that there were times when the physician instructed her not to permit visitors* (p. 407).

DOCTOR WILLIAM A. WAKELEY (p. 343) testified that he is a physician and surgeon; that he attended Mrs. Lees; that he found her condition to be somewhat depleted, somewhat anemic; that she had distinct chronic Bright's Disease and consequent loss of weight and pretty high blood pressure, abnormally so on each occasion (p. 345); that he never noticed any irrational condition (p. 345); that Miss Hough never mentioned to him the fact that Dr. Swift had pronounced her mentally incompetent; that she never told him at any time during the time he was treating Mrs. Lees that Mrs. Lees' mind and memory were failing; that during those years Mrs. Lees at times was a very sick woman; that the disease was attacking all her vital organs and weakening her resistance (pp. 346-347); that he could not state how long she had been suffering from Bright's Disease; that a child of seven or eight could have answered all the questions he put to her, intelligently; that he never noticed any drowsy condition on her part (p. 348); that during the entire period he was treating her there was no change in her condition (p. 349); that his visits were scattered and far apart; that he made memoranda of his visits and treatments, but that he did not bring them with him to court (p. 350); that he did not look them up before coming to court (p. 350); that at no time during his visits did he discuss with Mrs. Lees anything except her health and her pains (p. 352);

that when asked whether there was any evidence of chronic Bright's Disease in the beginning, about six years ago, he replied that he could not say. When confronted with a letter of his written to Miss Loveridge, marked A-1, wherein he stated that Mrs. Lees was suffering at that time from chronic Bright's Disease and arterio sclerosis (p. 354), he stated that that statement refreshed his recollection, that he was testifying on the day of the trial from his memory only, *and that his memory was in error in reference to her condition* six years ago (pp. 354-355).

ARGUMENT.

I.

As to the mental capacity of the deceased.

The evidence concerning this phase of the case is supported by the following witnesses on behalf of the proponents: MARANDA HOUGH, BELLE HARVIE, ALFRED S. BROWN, JAMES O. CLARK, THOMAS A. DAVIS, EDWARD L. DAVIS, ELLEN TAYLOR, BENJAMIN EPSTEIN, JULIA P. ELLIOTT, DR. WAKELEY, and the three witnesses to the will; and is controverted by the following witnesses: ARTHUR LOVERIDGE, HARRIET LOVERIDGE, JOHN LANG, DR. EDWARD P. SWIFT, ANNIE L. JAMES, AGNES LOVERIDGE, IDA BROWN, HELEN P. TAYLOR, ELSIE WHEELER and ALICE M. LOVERIDGE.

The facts readily marshal themselves. Prior to 1920 everyone in the family recognized and admitted that Mrs. Lees was not competent to take care of herself and her property, and that a guar-

dian should be appointed for her and her affairs. That was the consensus of opinion among those that knew her and saw her during that period of transition. They were not strangers from whom the facts were carefully kept and the real condition concealed. We have the Haffners and then the Harvies trying to set in operation guardianship proceedings and the facts brought squarely home to Mrs. Lees. She goes in great distress and fear to her lawyer Brown, who does not even inquire as to the facts, or as to the name of the person contemplating the proceedings, and who does nothing himself and tells her not to do anything. Then Mrs. Harvie procures the certificate from Dr. Swift, who is characterized by all as a competent physician of the highest standing. Mrs. Harvie states that she asked him for his honest and unbiased opinion and that she got it. It must be borne in mind that Dr. Swift was the family physician for a great many years, that he knew and observed Mrs. Lees when she was in possession of all her mental and physical faculties, and had treated and observed her during the days when they were waning, and finally when they were gone. He knew the facts.

Arthur Loveridge says that in 1920 she was an old woman, broken in health and mind and unable to conduct a conversation intelligently.

Harriet Loveridge, her sister, says that in 1918 she was not eqaul to conversation (wherein she agrees with Dr. Swift, who places the commencement of the disability two years before the date of the certificate, about 1918), and greater inactivity as time went on, finally winding up with the inability to recognize her or call her by name.

John Lang, the contractor, found he could not understand Mrs. Lees. To him Maranda Hough said, "Do not pay any attention to her; her mind is affected."

Agnes Loveridge, an unwilling witness, who had known the decedent since 1892, says that Mrs. Lees could not, in the year 1918, carry on any intelligent conversation and at times would blurt out something, generally in reference to something or someone who did not exist or who had passed on many years hence. "Mrs. Lees was not mentally there," as she aptly put it.

Mrs. Harvie also agreed and accepted the situation, as is evident by her letters, her visit to Dr. Swift, her attempts to get Miss Loveridge to institute proceedings and then her brother Arthur Loveridge to do the same thing, and finally, her frantic attempts to duck from under. A pitiful exhibition.

Maranda Hough also agrees with that situation, as is evident even from a slight inspection of her testimony, from the suppression by her of all the facts from everyone concerned, and from her unguarded admissions to Mr. Lang and Mrs. Taylor, and also from her conduct during the trial, and her admission that she would have taken the guardianship.

Mrs. Taylor testified that the decedent could not carry on a conversation and that her faculties were not registering, that Miss Hough told her about Mrs. Lees' mental condition, and that she was not in condition to make a new Will or Codicil. She was not even cross examined.

Mrs. Annie James attended Mrs. Lees for about four months during the summer of 1921. She says that Mrs. Lees was an invalid and not herself during that entire period. She states that she never discussed with her the topics of the day, nor did she carry on any such conversation. She further states that no one read to Mrs. Lees during that entire period, wherein she flatly contradicts Maranda Hough; that during that entire period

Benjamin Epstein visited once and that at that visit Mrs. Lees did not carry on any conversation with him, although he testified to a spirited and animated talk. She testified that Mrs. Lees' conduct during the entire period was not rational.

Ida Brown testified as to the irrational conduct of Mrs. Lees, her questions regarding the children of her maiden sister, that she called Miss Loveridge "Bessie," and insisted that she was the wife of her deceased brother.

Mrs. Wheeler testified that she received, what she considered, an incoherent letter from the deceased, and that while she was talking to her would ask "Where is Elsie?" and "What about Elsie?" That she was shocked at her appearance; that her conduct was childish in that they had to count one, two, three, in order to get her up and that she struck Maranda Hough.

Mrs. Alice M. Loveridge testified that she saw the deceased for the last time in 1918; she was then changing. She saw Mrs. Harvie from 1919 on, who continually kept telling her that Mrs. Lees was failing mentally and unable to manage her affairs; that she continually received letters from Mrs. Lees, from which parts had been cut out; that some of the letters were not rational and that the most irrational parts had evidently been cut out by Miss Hough.

That in part is the appellants' proof, which is amply corroborated by the witnesses for the other side in all essential details.

The case for the proponent rests mainly on four witnesses, Maranda Hough, Belle Harvie, Benjamin Epstein and Alfred S. Brown, all vitally interested, and the active participants in the campaign of suppression.

Maranda Hough talked more or less freely on the first day of the trial, but on the second day,

her present attorney appeared for her, and then her memory lapses became quite acute, so that the comment by the Advisory Master that the witness is evading the question, or that she is evasive, became frequent. Her financial interest in this proceeding is, of course, great. According to her, Mrs. Lees put in over $18,000.00 in the new house without any accounting, waived a $3,000.00 mortgage which she had on the other house, making a total investment of over $21,000.00, besides the possible discrepancies in the securities of Mrs. Lees during Miss Hough's control. Mrs. Harvie testified that there was $110,000.00 in securities when she last saw the list, and about $79,000.00 at the time of Mrs. Lees' death. Maranda Hough says that the question of Mrs. Lees' mentality had been brought up early, but that nothing had been done about it, that Mrs. Lees' memory had been going for at least two years and was forced to admit that she would have taken the guardianship in 1920. She also brazenly stated that if the doctors during that period had questioned her about contemplated guardianship proceedings, she would not have answered them. While they were at the Beresford (prior to 1920), Mrs. Harvie told her to keep all gifts and moneys of Mrs. Lees and return them to the estate after her death. Her only reply was that she would keep her conscience clear. Not once did she intimate that Mrs. Lees was capable of taking care of her own affairs or knew exactly what she was doing. Any normal, natural person would have said that. Her answer was an acknowledgment of guilt.

She scrutinized and corrected Mrs. Lees' letters and had authority to cut out parts. The incompetence and disability of Mrs. Lees stands out clearly throughout Miss Hough's entire testimony. Miss Hough conceded it and so did everyone else. The keeping of the facts from the doctors and from all

other persons who saw her only emphasize that blazing fact. In an unguarded moment she told the truth to Arthur Loveridge, John Lang and Mrs. Taylor. She denied making the various statements to all of them. These denials sweep away from her testimony the last vestige of truth, and absolutely discredit her.

The most peculiar testimony in the case is that of the attorney, Alfred S. Brown. In 1920, Mrs. Lees came to him with the information that someone was contemplating proceedings. This fact was carefully kept from the record, both on his direct and cross examination. It was only through the evident slip of Maranda Hough that we were able later on to get the facts from him, which were that he had made no suggestion of any kind, no investigation, nor did he even take the trouble to inquire as to who contemplated the proceedings and what they intended doing. Maranda Hough, however, says that Mrs. Lees suggested her appointment as Guardian, and then her adoption. He, however, is entirely silent about it all. Then there is the matter of Belle Harvie coming to his office shortly after the receipt by her of the certificate of Dr. Swift certifying as to Mrs. Lees' lack of mental capacity, her evident desire to have a Guardian appointed for Mrs. Lees, and the resulting discussion wherein Mrs. Harvie says he characterized the Houghs as the finest pair of crooks. He, of course, denies that statement, stating as his impression that Mrs. Harvie had so characterized them. Counsel, however, is not desirous of characterizing the situation, permitting the facts to speak eloquently for themselves. Mr. Brown says the matter gave him great concern. It should have. He knew that Dr. Swift was a reputable physician in good standing. Instead of doing the prudent and obvious thing, he deliberately permitted the situa-

tion to drift and did nothing. How vastly different is his conduct from the conduct of Mr. McAdams, as reported in the opinion of Vice Chancellor Backes, *In re Morrisey's Will,* 91 N. J. Eq., 480, at page 484 is the following quotation:

> "Mr. McAdams, a reputable member of the Bar, who drew the will and supervised the legal formalities of the execution, although satisfied from his own observation and intercourse with Mrs. Morrisey that she was not lacking in testamentary capacity, resisted her importunities to draw the will until fortified by the scientific determination of Dr. Prout that she was fit. His circumspection and precaution were not born of doubt as insinuated, but were the promptings of a careful lawyer conscientiously serving his client, in whom and in whose estate he had no interest other than as counsel. Such safeguarding inspires confidence, not distrust, in the integrity of wills."

Mr. Brown then proceeded to prepare a will dated August 24th, 1920, then he drew the paper writing which was recorded in the Essex County Register's Office, and then came the so-called adoption period at the end of the year 1920. He says he declined to have anything to do with it, although at that time Mr. Atwater, counsel in this case, was his New Jersey representative to whom he was forwarding New Jersey matters. Through some other channel they were directed to Howe & Davis, an excellent firm, from whom all of the facts were kept. About the same time Mr. Brown drew a Codicil to the will and other papers, and finally in 1921, the will which is offered for probate. His explanation is that he was content to rely upon his own observations and the correspondence, al-

though he professed to know nothing of the situation or condition at Mrs. Lees' home or her ailments or anything else; that during this period Miss Hough's interest in the estate became perceptibly larger, and he knew that she was getting large sums of money from Mrs. Lees. This amazing situation was permitted to continue, although he himself says that it was evident that she was physically and mentally becoming more feeble. He himself says that at the time he drew the last will he did not discuss with her her property or relatives or anything else, simply relying upon her so-called memoranda.

Mr. Brown's testimony must be judged from the viewpoint of common legal experience. The only interest that any reputable lawyer can have in a client's affairs is the safeguarding of it. We know that if that situation had presented itself to us, that our first thought and duty would have been to ascertain the facts and not to ignore them. Mr. Brown knew that his course of conduct deliberately invited a contest. Judged by any professional standard his entire testimony must be disregarded. The natural and logical thing for him to do was to call in one or more disinterested and competent observers or physicians, state all the facts to them and let them verify his own conclusions. The only inference that can be drawn from his testimony is that the facts are as we state them. Mr. Brown did not dare to verify the facts, because he knew in advance that any honest finding would be against him. That they thought they would be better off by surrounding the case with a maze of indifference, suppress all the facts they can and rely solely on the written memoranda, the writing of which was inspired and directed by Maranda Hough, edited by her, cut out and mutilated by her when the occasion required.

Belle Harvie who is now of the opinion that Mrs.

Lees was competent, thought differently from 1919 on. About that time, Mrs. Lees was visiting her at Rutherford. She was seen there by her sister, Miss Harriet Loveridge, her niece, Mrs. Agnes Loveridge, and by her nephew, Arthur Loveridge. She agreed with all of them at that time that Mrs. Lees was incompetent, and that situation, which became evident in 1918, continued and progressed. Some time in June, 1920, for no reason at all, Mrs. Lees gave Mrs. Harvie a check for $1,000.00. The situation seemingly overwhelms Mrs. Harvie, for she goes to her brother, Arthur Loveridge, and asks him what she ought to do with that check. He advises her not to cash it, but to return it. The call of the money, however, proved too strong for Mrs. Harvie, for she cashed it. Prior to that time, while Mrs. Lees was at the Beresford, Mrs. Harvie cautioned Maranda Hough not to take anything from Mrs. Lees, and warned her to return it to the estate. This fact had to be wrung from her. Within two days after procuring this check, and probably after satisfying herself that the going was easy, she visited the office of Dr. Swift for the purpose of procuring his honest and unbiased opinion as to the mental condition of Mrs. Lees. This the physician gave her. She then took this certificate and went to Miss Harriet Loveridge, Mrs. Lees' only sister, and asked her to institute proceedings for the appointment of a guardian for Mrs. Lees. This Miss Loveridge declined to do, because, as she explained, it would mean having Mrs. Lees adjudged an imbecile by the court, and stating that she would only take steps when she found that her sister was not being cared for physically. Although Mrs. Harvie had this fact that in order to have a guardian appointed for Mrs. Lees, Mrs. Lees would have to be declared an imbecile, she then took the matter up with her brother, Arthur Loveridge; called on him for a week end visit and

then sent him the certificate and letter in evidence, asking him to undertake the proceedings. He also declined to undertake this, giving practically the same reason as Miss Loveridge did. She tried to explain away the force of these attempts by stating on the trial that she was simply inquiring for information. This "dumb" attitude of hers, in view of her evident intelligence, social position and family history, is not very edifying.

The great reliance in this case on the part of the proponents is on the so-called letters of Mrs. Lees. A great many of them were introduced by Mrs. Harvie. All of these letters were written during the period when she was making an attempt to have Mr. Lees adjudged an incompetent. She herself says that she destroyed some letters, and that she picked out what she considered the best. If she and the other members of the family thought at that time, and before, with these letters in their possession, that Mrs. Lees was incompetent and should have a guardian appointed, how can they in good reason and otherwise, foist upon this court the thought that these letters now prove her competence? This change of front simply emphasizes the grasping nature of the parties, but leaves the facts unaltered,—her desire to escape from the facts and to rely upon her fading memory, which could not recall anything. She testified that she got certain facts from her diary, that she had a diary in her possession, and that she could produce it. On one of the adjourned dates a subpoena duces tecum was served upon her for the production of the diary. She not only declined to produce it, but stated that some of the facts had been gotten from another book; that that book had been lost in some unexplained manner, although at page 168 of her testimony she testified that she kept a line a day diary where she put down for the day the important

happening and that her diary was in her desk. This is simply additional proof of the wilfull and deliberate suppression of the facts.

Benjamin Epstein, whose manner and attitude in testifying conveyed the impression that he would show up the New Jersey provincials, was "dumbfounded," as he put it, to learn of Dr. Swift's certificate, stating that he had not heard of it until the day of the trial. He states that Mrs. Lees also wanted to adopt him, and that she went with him to the synagogue. Her gushing, garrulous letters to "Dear Bennie" seem to emphasize the fact that the waning intellect had disappeared and that all that was left was the shell of the body functioning still because of its early momentum. He says he visited Mrs. Lees very frequently and knew everything concerning her, although he knew nothing of her heart trouble, her chronic Bright's Disease, her rheumatism or any other physical ailments. He denied that he had ever discussed with anyone, including Maranda Hough and Mrs. Harvie, any transaction in connection with 100 shares of the Lees Manufacturing Company stock. Mrs. Harvie herself testified to the contrary. Mrs. James contradicts him as to his conversations. His interest is so apparent that whatever force his testimony may have, becomes practically nil, and the contradictions of his testimony show conclusively that he is mis-stating the facts.

James O. Clark testifies that he had known Mrs. Lees for about sixty years, that Mrs. Lees called at his home in Westfield some time in 1921 or possibly in 1920, that he saw her again at another time at her house. He states he never had any discussion with her concerning her property, and her answers were generally "yes" or "no" in reference to conversation suggested by him. As the court summarized it, he got this impression from the ordinary

small questions that a child of tender age could answer. She appeared to him to be feeble, both physically and mentally. Although this witness was called out of turn, he continued appearing in court during the rest of the trial, for reasons that are not apparent to counsel.

Judge Davis testified that he first saw the decedent on December 31st, 1920, when she came to him for the purpose of adopting Maranda Hough as her daughter and to make a will. He has no recollection, however, about any data or discussion about the Will. The Judge did not recall whether she walked with any difficulty or whether she was feeble and he could not say whether he discussed with her her property or relatives. The facts concerning the guardianship talk and Dr. Swift's certificate, and Mrs. Lees' illness, were all kept from him.

Edward L. Davis testified that he was associated with Judge Davis and that he attended to the proceedings for change of name. He stated that he started the examination before Judge Dungan, and that the Judge asked some questions on his own account, and that Mrs. Lees did quite a little talking and he remembers there being a little amusement in court about the manner in which she ex-expressed herself.

There is no question in this case but that both Judge Davis and Mr. Davis attempted to state the facts exactly as they recollected them, but the danger of a busy man or lawyer relying upon his recollection are quite evident from his testimony. The records show that Judge Dungan did no questioning of any kind. She answered practically every question in the language used by Mr. Davis. For instance, these questions:

> "Q. How long have you lived altogether in East Orange, to your best recollection? Years or months? A. Yes.

Q. In East Orange? A. Yes.

Q. And Miss Hough has been with you ever since? A. Ever since."

That is a palpable mis-statement, as Miss Hough testified she came back about a year and a half after his death (Mr. Lees). This question and answer does not appear quite lucid. Further,

"Q. What have been your associations in that time? A. She has been with me—when she came to me my husband was very ill and she took care of him perfectly and to such an extent that my husband thought he was worse and had a very serious talk with me and asked me to promise him always to have Miss Hough."

That is practically the sum total of her testimony before Judge Dungan. Mr. Davis testified that he would hardly expect that she was able to express to the judge exactly what she had in her mind, and with such detail. The only inference to be drawn from the testimony is diametrically opposed to his conclusion, and it is exceedingly regretted that the transcript of the testimony was not before us at that time, so that he could be cross examined.

Ellen Taylor testified as to only one visit on January 16th, 1920, at the Beresford, and as to conversation with Mrs. Lees.

Mrs. Julia P. Elliott testified that she was a neighbor of the Harvie's and had met Mrs. Lees about twice a year when she visited at the Harvie's, and that she appeared rather feeble and that she never discussed with her her business affairs. She, however, could not recall ever seeing her in 1920 or 1921, so her testimony if of any value at all, relates to conditions prior to the year 1920. She also states that the last time she saw Mrs. Lees, she

could see that she was failing. She further stated that she knew that Dr. Swift had written some kind of a paper concerning Mrs. Lees, although she professed not to know what was in it. A curious explanation, in view of women's proverbial curiosity. The upshot of the whole testimony was this comment of hers that she really did not know anything about Mrs. Lees' condition.

Dr. Wakely first saw Mrs. Lees about six years ago, when he stated there was some physical ailment, without characterizing it. He states that he did not see her for an interval of three or four years, but that he prescribed for her; that he did not have his records with him; that he never noticed any irrational condition, and that even during her last illness he never received from Miss Hough an early history of the case, and that he does not recall that Mrs. Lees' mind and memory were failing at any time during the treatment, although during the years that he saw her she was at times a very sick woman, and that the Bright's Disease was attacking all the vital organs and weakening her resistance; that the questions would be directed as to whether it pained her, and her answer would be "yes" or "no"; that a child of seven or eight could give those same answers; that he never noticed any drowsy condition; that his entire conversation with Miss Hough or Mrs. Lees was simply in reference to the condition of the patient, and the diet, care and hygiene; that his visits were scattered and far apart; that he did not look up his memoranda before coming to court, and that Mrs. Lees told him at one time that the house was bought as it was (referring to Rainbow Cottage); that his visits during the six years amounted to eight, ten or twelve times. Whatever force his testimony may have was seriously weakened by his statement that he was testifying from so-called memory, and that he ad-

mitted that his memory was in error in reference to her condition over five years ago, when he certified that Mrs. Lees was suffering from chronic Bright's Disease and arterio sclerosis. His impression on the stand was of a professional man, deliberately keeping away from his records, deliberately declining to go over them before coming up to testify, and seeking to rely on what is evidently a very faulty memory.

The remaining three witnesses, Joseph Frankenthal, Franklin W. Morrell and Homer H. Pennock, were the witnesses to the Will. Mr. Frankenthal is a clerk in the office of Mr. Brown. He testified that he typed the Will, and that it was all fastened together with ribbon when Mrs. Lees got there; that Mrs. Lees had been in the room about fifteen minutes before it was signed. He did not testify as to the reading or understanding of the Will by Mrs. Lees.

Franklin Morrell, the other witness, a lawyer, associated with Mr. Brown testified that there was no examination of the Will by anybody while he was there, and that no one asked her whether she understood the contents of the Will or what she was signing.

Mr. Pennock, the remaining witness, did not testify about the reading of the Will, and then walked out with Mrs. Lees and Miss Hough. He testified further that Mrs. Lees came to see him about very trifling things, and as he put it, so many trifling things." This completed the case for the proponents.

The evidence may be summarized that every member of the family who saw her frequently and had an opportunity to observe her in the home and away from it, and in reference to her details, was of the opinion that she was mentally incompetent. That opinion was confirmed by the family physi-

cian. The only persons who seemingly controvert this fact are those who seldom saw her, or but once or twice; persons from whom everything was kept and who saw her only when she was accompanied by Maranda Hough. That testimony can certainly be of but little aid in determining her condition and from experience must be disregarded. There is not a shred of testimony of any value in this case that anyone around the time of the drawing of the Will discussed with her her property, her relatives or to whom or how it was to go. It is strange that the only reliance of the proponent should be on the so-called memoranda or writings of Mrs. Lees, when even Miss Hough states that she would observe and go over her memoranda and had authority to cut out parts and Belle Harvie complaining of the fact that she was receiving letters that were irrational and with parts cut out. We charge that these letters and memoranda were deliberately conceived and gotten out for the sole purpose of the contest they knew that was coming, and which they knew they could not oppose by the direct and positive testimony of medical experts and disinterested persons to whom all the facts would be stated. Not only is Mrs. Lees' incompetency apparent from these facts, but also from the fact that Miss Hough took complete charge of the finances, the selling of the bonds and other securities and then depositing the proceeds to her own account. Taking the most kindly viewpoint of Mrs. Lees' mental condition, the sound and disposing mind and memory the law says she must have, she was not capable of recollecting the property she was about to dispose of, of understanding the manner of distributing it as set forth in the Will, or of knowing the objects of her bounty, or the nature of the business in which she was engaged.

II.

As to the undue influence and conspiracy.

The early family history of Mrs. Lees shows that she was a woman of more than ordinary culture and intelligence, determined and set in her ways, not subject to change. Everyone of the proponent's witnesses make statements to that effect. Benjamin Epstein goes so far as to say that she completely dominated Mr. Lees during his lifetime, and that Robert Lees thought she was always dictatorial and that he did not want any of her petticoat government (p. 216). Just contrast that dominating personality with the actual picture presented by her from the year 1918 on. Afraid of Miss Hough, not daring to say a word against her in her presence and cautioning silence, writing to Mr. Brown not to tell Mrs. Harvie that Maranda Hough had been down to see him on some business, taking Benjamin Epstein upstairs in order to tell him of the conflict that waged between the two women, Maranda Hough and Belle Harvie, over the spoils, and the final upshot of the situation when she told Mrs. Harvie that she was compelled to adopt Maranda Hough in order to keep her. This is their own proof. Of course, they all deny the statements and the inference to be drawn therefrom as far as they concern themselves individually. They point the accusing finger at the other. Their mere statements that they were careful not to do anything and not to exercise undue influence particularly show that the decedent was amenable to such influence and that the witnesses are deliberately suppressing the facts. It must be borne in mind that Maranda Hough was not an inexperienced person in Estate matters. The let-

ters of Mrs. Lees state that Maranda Hough had gotten a great deal of money from a certain Miss Taggert, and that there had been some litigation concerning that estate. The Advisory Master however, declined to permit us to go into the facts, after strenuous objection had been raised by her attorneys.

Her grasping nature is further evidenced by the testimony of Mr. Lang, to whom Maranda stated one week that Mrs. Lees was going to hold a mortgage on the house and by a statement the following week, the house was to be all hers with no mortgage.

The evidence here is abundant that the relations between Mrs. Lees and Maranda Hough, Belle Harvie and Benjamin Epstein were confidential, that she relied almost entirely on all of them. Prior to 1920, Belle Harvie had charge of the financial matters and other affairs of Mrs. Lees. After that Maranda Hough took complete charge of the household, the finances and everything else, selling large numbers of bonds, turning over the proceeds to her own fund without any accounting of any kind. Benjamin Epstein was her confidential advisor and representative in the Lees Manufacturing Co., where she owned over 35% of the stock in a company worth about a quarter of a million dollars or more. It clearly appears that she was a susceptible, pliant and fruitful subject for exploitation, enfeebled in mind and body, and that ample opportunity presented itself. From their own evidence, they were treating the estate as their own long prior to the death of Mrs. Lees, as is evident from the statement of Mrs. Harvie that Benjamin Epstein told her that Maranda Hough offered him 100 shares of stock of the Lees Manufacturing Company that was to go to her prior to the death of Mrs. Lees. The evidence and the situation cast

upon them the burden of neutralizing, by believable evidence, the presumption of undue influence which arises in this case. They have elected to merely give general denials to the entire situation, contradicting each other on every important point. The creditable evidence in the case conclusively shows that undue influence was exercised and that the conspiracy is still functioning in order to probate the Will.

We respectfully submit that the language used by the Vice Ordinary Re Morrisey's Will, 91 N. J. Eq., at pages 486-487, is particularly applicable:

> "There is no direct evidence of undue influence. After the Flemmings were installed they took complete charge of Mrs. Morrisey's household, her person, and her property. Blind in one eye and nearly sightless in the other, hard of hearing, and enfeebled by age and sickness, she was unable to give her estate the attention it required, and they managed it for her; and so with the household. Personally, Mrs. Morrisey was ever under the watchful eye and constant supervision of Mrs. Flemming. Comprehensively speaking, the Flemmings were in control; * * *. There was abundance of opportunity and a susceptible and pliant and fruitful subject for exploitation, but that advantage was taken rests in surmise. * * * While the history of the case does not warrant a finding of actual imposition, the confidential relation of Mrs. Fleming to the testatrix, and the circumstances that have been related and the culpable incident to be adverted to presently, raise the presumption that undue influence had been exerted by her, which, unless countervailed by satisfactory evidence, controls as a conclusion of

> fact. *Sparks' Case,* 63 N. J. Eq., 242; *Cooper's Will,* 75 N. J. Eq., 177; affirmed 76 N. J. Eq., 614. The presumption may be overcome by the denial of those implicated (*Sparks' Case,* supra; In re *Anastasia Davis,* 73 N. J. Eq., 617; *Craft's Estate,* 85 N. J. Eq., 125), *but to have that weight the testimony must be impeccable and convincing.* * * * The burden cast upon the proponents of neutralizing the presumption of undue influence by believable evidence has not been met, and probate must therefore be denied."

The facts in our case are immeasurably stronger than those in the Morrisey case.

It is respectfully submitted that the will should be set aside.

KENT & KENT,
Proctors for Appellant.

NATHANIEL KENT,
of Counsel.

New Jersey Court of Errors and Appeals.

Between

ARTHUR R. LOVERIDGE,
Appellant,

and

ALFRED S. BROWN, ROBERT H. HOUGH and JAMES HARVIE as Executors of a Paper Writing purporting to be the Last Will and Testament of ELIZABETH LOVERIDGE LEES, Deceased,
Respondents.

On Appeal from Decree of the New Jersey Prerogative Court.

BRIEF FOR RESPONDENTS.

Statement of the Case.

This is an appeal from a final decree made in the New Jersey Prerogative Court, by his Honor Edwin Robert Walker, Ordinary of New Jersey, bearing date the 22nd day of December, 1924, affirming a decree of the Orphans' Court of the County of Essex admitting to probate the Last Will and Testament of Elizabeth Loveridge Lees, deceased, who died at No. 19 Whitman Avenue, East Orange, New Jersey, on September 9th, 1922.

The Will (Exhibit P-1, page 442 of Case) bears date March 16th, 1921. The testatrix was the widow of James E. Lees who died in the year 1912 and she died without issue leaving her surviving the following heirs at law and next of kin viz:

1. Harriet Loveridge, sister, residing at 200 Hollister Ave., Rutherford, New Jersey.
2. The issue of a deceased brother, James W. Loveridge, viz:
   (1) Isabel H. (Belle) Harvie, residing at 102 Passaic Ave., Rutherford, New Jersey.
   (2) Edgar H. Loveridge, residing in Prescott, Arizona.
   (3) Arthur R. Loveridge, residing in Greenwich, Conn.
   (4) Charles Leigh Loveridge, son of Charles S. Loveridge, a deceased son of James W. Loveridge, deceased, residing at 73 Addison Ave., Rutherford, New Jersey.

3. The issue of a deceased brother, Henry Loveridge, viz:

(1) Henry Loveridge, residing at 2 Montague Terrace, Brooklyn, New York.

(2) Florence Loveridge Chapman, residing in Hammond, Illinois.

(3) Helen P. Taylor, daughter of Marion L. P. Haffner, a deceased daughter of Henry Loveridge, deceased, residing at 76 Lincoln Ave., Orange, New Jersey.

(4) Ludlow Patton Haffner, son of Marion L. P. Haffner, residing at 76 Lincoln Ave., Orange, New Jersey.

(5) Loveridge Haffner, another son of said Marion L. P. Haffner, residing at 76 Lincoln Ave., Orange, New Jersey.

The said Marion L. P. Haffner died on March 4th, 1922, after the execution of the will now offered for probate but before the death of testatrix.

The provisions of the said will are, in substance, as follows:

FIRST: Appoints Alfred S. Brown, Dr. Robert H. Hough and James Harvie, executors.

SECOND: Directs payment of debts and funeral and testamentary expenses.

THIRD: Gives to her niece, Mrs. Belle Harvie, $25,000 and to her husband, James Harvie, $5,000 and to her son John Harvie, $2,000 and to her daughter, Elizabeth Harvie, $3,000. In case of the death of the said Belle Harvie, prior to the death of testatrix, then gives to the said James Harvie further sum of $15,000, to the said John Harvie the further sum of $5,000 and to the said Elizabeth Harvie the further sum of $5,000.

FOURTH: Gives to her nephew Edgar H. Loveridge, a certain promissory note bearing date May 9, 1912, made by the Teaneck Park Land and Improvement Company to her order for $300 and interest from May 22, 1906, and releases him from the payment of a certain promissory note bearing date May 9, 1912, made by him to her order for $1,500 with interest from May 22, 1906, and also from the payment of the balance of interest due her from him at six per cent on the sum of $6,000 from April 30, 1907, to October 1, 1913 ($375 having been paid on account thereof). Also gives to his wife Alice Loveridge the sum of $2,000.

FIFTH: Gives to her nephew Arthur R. Loveridge the sum of $5.

SIXTH: Gives to the Willow Brook Cemetery Association of Westport, Connecticut, the sum of $2,000 in trust to apply the income thereof to the care of the burial plot in which her husband's father and others of his family are buried; also gives to said Cemetery Association two of the lots in said plot and directs that her remains be interred there in addition to the remains of her deceased husband James E. Lees and his

deceased wife, Cesarine S. Lees, which are already interred there and that interments in said lots be restricted to the persons so designated and that said two lots be thereafter inalienable.

SEVENTH: Gives said Willow Brook Cemetery Association all the capital stock of said association which she may own or have any interest in at the time of her decease, such stock to be cancelled and not reissued.

EIGHTH: Gives her adopted daughter, Maranda Hough Lees, one hundred shares of the capital stock of the Lees Manufacturing Company.

NINTH: Gives Benjamin Epstein one hundred shares of the capital stock of the Lees Manufacturing Company.

TENTH: Gives her sister Harriet Loveridge $5.

ELEVENTH: Gives her niece, Marion L. P. Haffner, wife of Philip Haffner, $10,000, in trust to apply the income thereof and such portion of the principal as might be necessary or proper to her support and maintenance during her life and upon her death the principal to her two sons Ludlow and Loveridge.

TWELFTH: Gives her adopted daughter, Maranda Hough Lees, $6,000 and releases her from all debts and sums of money due or owing from her to testatrix; also gives her any and all interest, lien or claim of the testatrix in, to or upon the piece or parcel of land in East Orange, New Jersey, upon which she is about to erect a dwelling house to be known as Rainbow Cottage and in, to or upon said dwelling house when the same is erected, also her automobile and victrola and all household furniture, lorgnette with chain and aqua marine necklace. In case of her death before testatrix, then gives said lorgnette with chain to niece Mrs. Belle Harvie, and said qua marine necklace to niece, Mrs. Marion L. P. Haffner, and all the rest of the personal property mentioned in this twelfth clause of the will except the legacy of $6,000 to Mrs. Belle Harvie and Mrs. Harion L. P. Haffner, to be divided equally between them.

THIRTEENTH: Gives to her grand nephew Leigh Loveridge $2,000.

FOURTEENTH: Gives to J. Augustus Lees 349 shares of the capital stock of the Lees Manufacturing Co.

FIFTEENTH: Gives to her grand nephew Edgar H. Loveridge, Jr., $100.

SIXTEENTH: Gives to her nephew Edward B. Taylor $10,000; also miniature of her husband James E. Lees and herself; but if he be not living at the time of her decease then said sum and miniatures to his wife Nellie Taylor.

SEVENTEENTH: Gives to Elizabeth Harvie, above named, her Etruscan gold breast pin and her dresser silverware.

EIGHTEENTH: Gives to Loveridge Haffner, son of her niece, Marion L. P. Haffner, $3,000 and in case he should be under the age of twenty one years at the time of her decease, said sum to be deposited in some good savings bank or banks and the interest applied to his use until he is twenty one and then said sum to be paid over to him.

NINETEENTH: Gives to Ludlow Patton Haffner, son of her niece, Marion L. P. Haffner $3,000 with the same provision as in the eighteenth clause above mentioned in case he is under twenty one.

TWENTIETH: Gives residue of her estate to her adopted daughter, Maranda Hough Lees, Benjamin Epstein and Edward B. Taylor above named to be distributed among them equally.

TWENTY-FIRST: In the event that her estate shall be insufficient to pay all the pecuniary legacies, directs that legacy of $2,000 to the Willow Brook Cemetery Association in paragraph 6 of the will be paid in full and that the other legacies abate proportionately to provide for such payment.

TWENTY-SECOND: Authorizes her executors to sell her real and personal property.

LASTLY: Provides that if any heir, next of kin, devisee or legatee should contest her will, he shall lose his legacy. The will bore the signature of the testatrix which was followed by the regular attestation clause, subscribed to by three subscribing witnesses, H Hardcastle Pennock, Jos. Frankenthal and Franklin W. Morrell.

It thus appears that the will contains the names of all the heirs and next of kin of the testatrix who were living at the time of her decease except a nephew Henry Loveridge and a niece Florence Loveridge Chapman who did not appear in this proceeding and who are not mentioned in the testimony. The petition on appeal from the probate of said will was filed by Arthur R. Loveridge, above named, a nephew of the deceased to whom by the fifth clause of her will she gives the sum of $5.

The petition to the Orphans' Court alleges as grounds of appeal:

(*a*) Unsoundness of mind and hence incapacity on the part of the testatrix to dispose of her estate by will.

(*b*) Undue influence on the part of Alfred S. Brown, Robert Hough and James Harvie who are named as executors in said will.

(*c*) Insufficiency of execution of said will.

The petition further alleges that Maranda Hough, who now claims to be known as Maranda Hough Lees, is not an adopted daughter of said

Elizabeth Loveridge Lees, deceased, and that no valid adoption proceedings were ever instituted or perfected. The petition then sets forth the names of all the persons who it alleges are concerned in the proceeding and prays that they be cited to appear and that the order of the Surrogate and the proceedings thereon be reversed and set aside and the Letters Testamentary be revoked.

The hearing on the petition of appeal was brought on for trial before the Orphans' Court and thereupon the three subscribing witnesses to the will were produced and testified to the due execution of the will and that all the formalities prescribed by law for the execution of wills had been duly observed.

Joseph Frankenthal, one of the subscribing witnesses, testified (p. 20 of Case) that he was a law clerk in the office of Alfred S. Brown of No. 1 Liberty Street, New York City, the attorney who drew the will and had been so employed for over thirty five years; that he had known the testatrix, Elizabeth L. Lees, about twenty five years; that to the best of his knowledge and belief she was of sound mind, memory and understanding at the time the will was executed; that she signed it and declared it to be her Last Will and Testament in his presence and in the presence of the other subscribing witnesses and that they at her request and in her presence and in the presence of each other subscribed their names to it as witnesses.

Franklin W. Morrell, another of the subscribing witnesses, testified (p. 27 of Case) that he was a lawyer, admitted to the Bar of New York and associated with Mr. Brown who drew the will; that he had known Mrs. Lees the testatrix three years and had seen her during that period three or four times in the office. He gave substantially the same testimony as to the execution of the will as Mr. Frankenthal.

Mr. Pennock, the third subscribing witness, testified (p. 31 of Case) that he was in the insurance business, connected with the Equitable Life Assurance Society with his office at No. 120 Broadway; that he had known Mrs. Lees the testatrix nine or ten years. He then testified to the execution of the will by the testatrix substantially as Mr. Frankenthal had and that she was of sound mind at the time of such execution. The testimony of these subscribing witnesses to the execution of the will was sustained by the testimony of Alfred S. Brown, the lawyer who drew the will and supervised its execution and he also testified to the manner in which the will was prepared and the circumstances surrounding its preparation. He testified (p. 265 of the Case) that he had been admitted to the practice of the law in New York State since 1877; that he had known Elizabeth L. Lees, the testatrix, over twenty five years; that he had known her husband and done business for him professionally for about twenty to twenty five years; that he attended to and superintended the preparation and execution of the will offered for probate; that he received a letter from Mrs. Lees dated February 14th, and postmarked on the envelope February 14th, 1921. This letter was admitted in evidence as

Exhibit P-1 and is printed at page 266 of the Case. It reads in part as follows:

> "February 14, at 19 Whitman Ave. East Orange N. J. Dear Mr. Brown: Circumstances have arisen involving Mr. Philip Haffner which makes it imperative for me to change my will so decidedly that I have decided to make a new one, and I am writing to ask you to notify me of some day next week that promises to give you sufficient leisure to accord me an interview with you for that purpose."

The witness further testified that subsequently he received another letter from her, post-marked February 21, 1921, which was received in evidence as Exhibit P-2 (p. 268 of Case) and reads as follows:

> "Monday at Rainbow Cottage. Dear Mr. Brown: Unless I hear from you to the contrary, Miss Hough and I will be at your office, Thursday morning, to have a little talk with you in connection with your making a new will."

Then he received another letter from her, post-marked March 8, 1921 (Ex. P-3, p. 268 of Case), reading as follows:

> "Tuesday at 19 Whitman Ave. East Orange N. J. Dear Mr. Brown: In accordance with dear Mrs. Harvie's wish I have decided to ask you to add Mr. Harvie's name in connection with yours and Dr. Hough's concerning which I would be very pleased to have you write him, also Dr. Hough, if you have not already done so. I also trust it will be perfectly convenient to you to have me sign my will before next week is in the past."

On another page of this letter appears the following in her handwriting: "Dr. Robert H. Hough, 6074 Upland St. West Philadelphia, Penn. Mr. James Harvie, 102 Passaic Ave. Rutherford N. J."

The witness further testified that at about that time he received from her, either through the mail or delivery by her to him personally, written instructions in her handwriting in regard to the changes in her will (pp. 269 of Case); that these written instructions refer to a previous will which he had prepared for her and she had executed and could be identified by the paragraphs in that will; that he had in his possession this previous will which was dated August 24, 1920, and also the codicil to it, dated November 3, 1920. The written instructions above referred to were received in evidence as Exhibit P-4 (p. 269) and the will as Exhibit P-6 (p. 461) and codicil P-5 (p. 469). By reading these written instructions in connection with this previous will and codicil and with the will now offered for probate, it is easy to see exactly what changes the testatrix wished to have made and what changes were actually made.

Paragraph 1st of the previous will appoints Alfred S. Brown and F. Philip Haffner, executors.

Paragraph 1st of the instructions directs that F. Philip Haffner be excluded from her proposed new will and "in his place as executor with Mr. Brown I want Dr. Robert H. Hough", etc.

Paragraph 1st of the will offered for probate appoints Alfred S. Brown, Dr. Robert H. Hough and James Harvie executors, the name of James Harvie being added in compliance with her letter of March 8, 1921, above quoted (Ex. P-3). The written instructions do not mention paragraphs 2, 3, 4, 5, 6, and 7 of the previous will of August 24, 1920, and those paragraphs are therefore precisely the same in the will now offered for probate as in the will of August 24, 1920.

As to paragraph 8 of the previous will of August 24, 1920, the instructions read "8. Maranda Hough Lees now my adopted daughter instead of F. Philip Haffner." and the eighth paragraph of the will now offered for probate reads to that effect instead of as in paragraph 8 of the previous will of August 24, 1920.

Paragraphs 9 and 10 of the will of August 24, 1920, are not mentioned in the written instructions and they are therefore precisely the same in the will now offered for probate as in the previous will.

In respect to paragraph 11 of the previous will of August 24, 1920, the written instructions read:

> "11. Mrs. Philip Haffner to receive direct $10,000 and to do exactly as directed to do. Incorporate in this will what my codicil directs in connection with Mrs. Haffner's two boys."

Paragraph 11 of the will now offered for probate therefore substitutes the name of Marion L. P. Haffner as trustee in the place of F. Philip Haffner and in other respects is the same as paragraph 11 of the will of August 24, 1920. In respect to the clause in paragraph No. 11 of the instructions which reads "Incorporate in this will what my codicil directs in connection with Mrs. Haffner's two boys", this is accomplished in paragraphs eighteenth and nineteenth of the will now offered for probate which are the same in effect as the provisions of the codicil of November 3, 1920.

Paragraph No. 12 of the instructions reads, "12. I give and bequeath to Maranda Hough Lees, my adopted daughter, what I have designated in paragraph 12."

Paragraph 12 of the will now offered for probate is therefore precisely the same as paragraph 12 of the will of August 24, 1920, except that it describes the beneficiary as "my adopted daughter, Maranda Hough Lees" instead of "Maranda F. Hough who is now living with me" as in the will of August 24, 1920.

Paragraphs 13, 14, 15 and 16 of the will of August 24, 1920, are not mentioned in the written instructions and are therefore copied *verbatim* in the will offered for probate.

Paragraphs 17, 18, 19 and 20 of the will of August 24, 1920, are directed by the instructions to be omitted, and they are accordingly omitted in the will offered for probate.

Paragraph No. 21st of the will of August 24, 1920, is directed by the written instructions not to be omitted and it therefore appears word for word in the will offered for probate as paragraph "Seventeenth".

Paragraphs Nos. 22, 23, 24 and 25 of the will of August 24, 1920, are

directed by the written instructions to be omitted and they accordingly are omitted from the will offered for probate. The remainder of the will offered for probate, viz., Paragraphs 20th, 21st and 22nd and "Lastly" are the same as the remainder of the will of August 24, 1920, viz., Paragraphs 26th, 27th, 28th and "Lastly", no changes in them being required by the written instructions.

The result is that the will now offered for probate is the same in substance as the will of August 24, 1920, with its codicil of November 3rd, 1920, except that F. Philip Haffner is eliminated as an executor and as a trustee and as a legatee and certain bequests of jewelry to several different people are omitted.

The reason why she omitted these bequests of jewelry evidently was that she had made distribution of the articles between the date of the previous will of August 24, 1920, and the date of the will now offered for probate March 16, 1921. This appears in her letter to her niece Mrs. Harvie, dated October 9, 1920 (Ex. P-10, p. 187) which reads as follows:

> "102 N. 22 St. East Orange Oct. 9, 1920. Precious One: After you left me yesterday I was called upon to look over some memorandum in connection with my will and to my great regret found I had made a sad mistake thru giving you that pin yesterday—as it is assigned to someone else. Dear Mr. Brown was markedly pleased at my resolve to distribute the various articles before I 'passed on' but I cannot forget his earnest warning to keep close to the distribution as recorded in my will—as anything to the contrary would be bound to cause trouble—thru the possible setting aside of the will—which would be a sad mishap to you and yours for you as a family would be minus the $35,000. assigned to you, James and the dear Children."

In respect to the elimination of Mr. F. Philip Haffner as an executor and trustee and legatee, paragraph 1 of her instructions (Ex. P-4, p. 269) contains this statement:

> "F. Philip Haffner to be excluded from my will for reasons I will inform Mr. Brown orally."

Mr. Brown testified (p. 272) that on the day of the execution of the will "she talked about the reasons for making the changes which she did make. She talked about the difficulties that had arisen between her niece, Marion, who had married Mr. Haffner and Mr. Haffner. She said that there had been a disagreement between them and they had separated and she spoke very decidedly about Mr. Haffner's conduct toward her niece, Marion, and she said she wanted to eliminate him from her will both as executor and as trustee for Marion and also as legatee, those provisions he enjoyed in the previous will."

This testimony is confirmed by a letter written by the testatrix to her niece, Mrs. Harvie, dated February 7 (1921) (Ex. P-12, pp. 191-193) in which she says (p. 192):

> "Dear Marion is having a very trying time but thus far she has shown good common sense and if continued I feel she will gain

> a good standing and Mr. Haffner will come forth the loser for his outrageous conduct * * * (p. 192). I hope and expect to see Mr. Brown this week and have a new will made that will not contain Mr. Haffner's name. There will be no other alteration."

The date of this letter is February 7, the year not being stated but Mrs. Harvie was enabled to fix the year as 1921 from the statement in the letter at the foot of page 192 of the record which reads,

> "To-morrow morning, if not stormy, we move into Rainbow Cottage, 19 Whitman Avenue."

Mrs. Harvie testified (p. 192) that the testatrix moved into Rainbow Cottage in 1921 and this is confirmed by the letters of the testatrix which are in evidence. Up to about February, 1921, they are all dated from No. 102 N. 22nd Street, East Orange, N. J., and after that date from No. 19 Whitman Ave.

In regard to the execution of the will now offered for probate, Mr. Brown testied (p. 271) that Mrs. Lees, the testatrix, appeared at his office on March 16th, 1921, and the will was executed; that "she came into the office and I had the will ready for execution by her and I do not remember whether I read it over to her or whether she read it. It was either one or the other. I either read it over to her or she read it herself, and she said she was satisfied with it, and I had previously requested Mr. H. Hardcastle Pennock to be present at the execution of the will, as he had attended to the execution of several wills and Mr. Frankenthal was also in my office and Mr. Morrell who were both connected with my office, came into the inner office and I asked Mrs. Lees if she wanted to execute the will and she said she did and I asked her if that was her last will and testament; she said it was and I asked her if she requested these witnesses to sign it as subscribing witnesses and she said she did and she sat down and signed the will, and after she had signed it I read over the attestation clause and then the witnesses signed it at her request and in her presence and in the presence of each other." After the execution of this will and on May 5th, 1921, the testatrix wrote to her niece, Mrs. Harvie, a letter which reads in part as follows (p. 197) :

> "By my will you are to receive $25,000, James $5,000, John $2,000 and Elizabeth $3,000. In case you passed on before I did, James is to receive $15,000, John $5,000 and Elizabeth $5,000. If it were possible to give these amounts before I left you I would gladly do so but I am sorry I see no possible prospect of being able to do so but sometimes the experiences we least look for come to pass, so we will live in hopes."

This letter is dated May 5th, the year being omitted, but the year must have been 1921 because it is dated at 19 Whitman Ave., and as we have seen it was in February of that year that the testatrix moved into that house.

By referring to the will now offered for probate, it will be seen that this letter states correctly the provisions contained in the will for the benefit of Mrs. Harvie and her family.

As to the previous will of August 24, 1920, and its codicil of November 3, 1920, Mr. Brown testified that he drew them (foot of p. 273), that he received a letter from the testatrix dated and post-marked July 9th, 1920, which reads in part as follows (Ex. P-8, p. 273) :

> "Dear Mr Brown: I am earnestly hoping you will find it perfectly convenient to be at your office throughout the coming Wednesday, July 14th, as I plan to call to see you on that day so as to make sure you thoroughly understand all my jottings down in connection with the items for a new will which I want you to draw up for me."

Subsequently, he received another letter from her, dated July 21st, 1920, and post-marked July 22, 1920, which reads in part as follows (Ex. P-9, p. 274) :

> "Dear Mr. Brown: When you send me the outline of my will to look over before bringing to your office for execution, will you kindly send with it the two papers with several jottings down in connection with it."

Then he received another letter from her, dated July 29th, and post-marked July 31st, 1920, which reads in part as follows (Ex. P-10, p. 274) :

> "Will you kindly have two copies of my will for me to execute. One for me to keep under lock and key in my safe deposit box and the other in a locked trunk at home. In the past I have found such conditions would at certain times have proven very satisfactory so I thought I would try it."

Another letter from her, dated August 4th and post-marked August 4, 1920, reads as follows (Ex. P-11, p. 275) :

> "Dear Mr. Brown: I hope this will reach you in ample time to prevent any pronounced extra work thru inserting in my will a clause to protect Mrs. Haffner's portion in every possible way. Mr. Haffner has asked me to write you regarding having Mrs. H's legacy shall not be liable for any obligations or debt, contracted by her anterior to my 'passing on' and to make her husband her trustee. I am sure you will do this marked kindness, if it be among the possibilities, so I thank you at once for your kindness."

The witness further testified that the testatrix explained to him what she meant by the reference to the Haffner legacy in the above letter, that she told him that Mrs. Haffner was involved in a good deal of trouble by reason of debts and obligations that she had incurred and for that reason she wanted her protected—her legacy protected against her creditors. He further testified (pp. 275-76) that he wrote her on August 4th that in going over her memorandum there were some things he could not quite understand and he asked her to call and she responded by letter, dated August 5th and post-marked August 5th, 1920, which reads as follows (Ex. P-12, p. 276) :

> "Dear Mr. Brown: Your lines of yesterday are just received and I hasten to assure you I Will be at your office Saturday morning between 10 and 11 o'clock. Hoping that may prove a perfectly convenient appointment for you." &c.

The witness testified (p. 276) that he wrote her that he could not be there Saturday because that was his day off and he received another letter from her dated August 7, 1920, and post-marked August 9, 1920 (Ex. P-13, p. 276), which reads as follows:

> "Dear Mr. Brown: I hope when you receive this you will be feeling markedly better for your vacation from office work to-day and that we will be face to face with you next Wednesday August 11th. The extra time to-day gave me the opportunity of making a careful and full examination of my effects in my safe deposit box with the result of finding myself able to leave in my will to dear Mrs. Haffner $10,000 instead of $1,000 and to my nephew Edward Taylor also $10,000. Hoping you will be able to make these changes by next Wednesday," &c.

The witness further testified that on August 17, 1920, he wrote her enclosing a copy of her proposed new will and received a letter from her dated August 12, 1920, in which she says (p. 279):

> "Which reminds me to tell you in case there should be any surplus in the settling of my will I would like it divided equally between Miss Hough, Mr. Benjamin B. Epstein, 14 Jerome Street, Brooklyn, and Mr. Edward B. Taylor, Frick Poultry Farm, South Hamilton, Mass. Box 80. Miss Hough is already shouldering a debt of $7,000. through securing a loan on the to-be home and has advanced other money beside that, for which I think she should be protected. My wish is that it prove a permanent home for her as long as she may need it after I have joined dear Mr. Lees and I am sure he desires it also, so please secure it to her. There is no one who deserves it as much as Miss Hough. Enclosed you will also find the card showing Mr. Haffner's full name, which it may be best to use. Miss Hough was a ministering angel to dear Mr. Lees and he fully realized that blessing as clearly as I do her ability and perfect devotion to me. I do not know what I should do or be without it, save that I should be full of misery. You spoke of desiring Mr. Pennock for a witness. It would please me greatly. I plan to write him on closing this, but shall leave the securing him for a witness to your dear, kind self, to whom I now write a good bye."

The letter was admitted in evidence and marked Exhibit P-14 and is printed in full at page 278, &c., of the record. It gives Mr. Pennock's address at the foot. The witness further testified (p. 280) that enclosed with the letter was a postscript which was admitted in evidence as Exhibit P-15 (p. 280) and which reads as follows:

> "P. S. To my letter of August 12th, 1920. I hope you fully understand my wishes regarding the residue of my estate. I do not wish it to go to Mrs. Harvie as expressed in my former will, as I feel the $25,000 left to her is all I can give her and be just to others. If you refer to my memorandum you will see it is to be divided between Benjamin B. Epstein and Miss Hough. Now I wish to add Edward Taylor and feel in so doing I am carrying out dear Mr. Lees' heart's desire as well as my own. Please send me a copy of my will before deciding on the date for its execution (over). If there be any word or act of mine which would make

dear Mr. Lees' and my heart's desire to secure the to-be-home (Rainbow Cottage) wholly to dear Miss Hough (she has already put considerable money in it) please make it known to me. It is to be dedicated to Mr. Lees on November 12th my 81st birthday anniversary by dear Dr. Sullivan and after the dedication presented by me to Miss Hough in the presence of friends who may be gathered there, two of whom we earnestly hope may be your dear self and Mr. Fernald at six o'clock dinner. It seems to me one safe step to take would be to have it incorporated in my will, so please see that it is done, that is, all my interest in said house I bequeath to Miss Hough and her estate and under no consideration is it to be sold in settlement of my estate or is Miss Hough to be deprived of it. Sincerely yours Elizabeth L. Lees."

The witness further testified that the Mr. Edward Taylor referred to was a legatee under the will and was a nephew of the deceased husband of the testatrix and not a blood relative of hers. He also testified that he had there in her handwriting the instructions which she either gave him personally or enclosed in one of her letters and from these instructions the will was drawn; also another sheet in her handwriting giving the names and addresses of her relatives. These were produced by the witness and marked in evidence as Exhibits P-16, P-17, P-18 and P-19 (p. 281). Continuing the witness testified that he also received a letter from the testatrix dated August 18, 1920, and post-marked the same day (Ex. P-20, p. 281) reading,

"Dear Mr. Brown: I am this morning in receipt of a draft of my will accompanied by your kind note and am writing to thank you for the same and also to tell you we will be at your office as early as possible next Friday morning (Aug. 20.) as there are two or three insertions I feel it will be best for me to tell you of audibly."

The witness further testified that the next letter he received from her was dated and post-marked August 22nd, reading as follows (Ex. P-21, p. 282).

"Dear Mr. Brown: Miss Hough has secured the item you desired her to send you which I have reason to believe she will mail with this, and I am hoping and praying it will serve to make my gift to her all the more secure for if she were deprived of it, I would not be happy, no, not even in Heaven, so strongly do I feel she is deserving of it. I have every confidence that when we arrive at your office Tuesday morning you will have special documents for us to sign that will entitle me to a life interest in Rainbow Cottage, and at my death it will become hers beyond dispute, as will also any money I may have advanced for the construction of the same, no more than that, the money is hers, the moment I pay it, for I cannot do too much for her efficient and faithful care of dear Mr. Lees and Sincerely yours (Mrs. James E) Elizabeth L. Lees."

The witness further testified that he prepared the paper referred to in the letter (Ex. P-22, p. 284); that it bore date the 24th day of August,

1920, and it was executed by the testatrix on the same day as the execution of the will of that date. He also testified (p. 283) that the will of August 24th, 1920, which had been offered in evidence was prepared by him; that her instructions to him for such preparation referred to a previous will which was dated December 21, 1917, a copy of which he had with him; that it was prepared pursuant to instructions received by him from her; that he received a letter from her dated December 8, 1917 (Ex. P-22, p. 284) reading as follows:

> "The Beresford, 1 W. 81 St. N. Y. Dec. 8, 1917. Dear Mr. Brown: Since last seeing you, I have had reason to feel most acutely the wisdom of having the name of Mr. Paul M. Crandell eliminated from my will. You will doubtless recall he was to be executor in case you for any reason were unable to act. In place of his name I want that of Mr. James Harvie. You probably would like the will to look over, so that the change may be made to a certainty. I feel it may be best not to have the name of Paul Crandell appear in my will—which may necessitate the rewriting of that document, but we can decide about that when I call on you which I will be happy to do at your convenience. I have engagements for the afternoon of Tuesday the 11th and the morning of the 12th. I will keep the balance of the week free for you to choose from."

Continuing, the witness testified that December 13th, 1917, was the date of the next letter received by him from her reading as follows (Ex. P-23, p. 285):

> "The Beresford, Dec. 13, 1917, Dear Mr. Brown: I omitted to ask you this morning to omit the names of Mrs. Crandell and Miss Cassidy, in case they were in the list of those selected in my will between whom the residue (if any) is to be divided. Hoping I have expressed my desire clearly. Sincerely yours Elizabeth L. Lees."

The copy of the will of December 21, 1917, referred to by the witness was then received in evidence and marked Exhibit P-24 (p. 477).

The witness then produced a copy of a will dated March 20, 1917, and the instructions in respect to it in her handwriting which were thereupon marked in evidence as Exhibit P-25 (p. 486).

Also will of November 21, 1916, prepared from memoranda in her handwriting and the instructions in regard to it. These were marked in evidence as Exhibit P-26 (p. 495). Also will of March 7, 1916, prepared from memoranda in her handwriting and the instructions in regard to that will, which were received in evidence as Exhibit P-27 (p. 502). Also will of October 26, 1915, prepared from memoranda in her handwriting and the instructions in regard to that will (Exhibit P-28, p. 509). Also will of March 5, 1915 prepared from memoranda in her handwriting and the instructions in regard to that will (Exhibit P-29, p. 516). Also will of November 5, 1913, as to which he testified that he did not seem to have any written memoranda from her (Exhibit P-30, p. 522). He further testified that he also prepared two codicils

to her will of December 21, 1917, one dated December 18, 1918, and one January 15, 1919. Copies of which he produced and they were marked in evidence as Exhibits P-31 and P-32 (pp. 528-9).

The witness further testified (p. 289) that after the execution of the will of August 24, 1920, he received a letter from the testatrix dated September 1st, post-mark indistinct, reading as follows (Exhibit P-33, p. 289):

> "Sept. 1st at 102 N. 22nd St. E. O. Dear Mr. Brown: You doubtless remember that I told you of my plan to have the Memorial Window in Rainbow Cottage dedicated to dear Mr. Lees and that dear Dr. Sullivan had accepted the invitation to speak the words before the friends we hope to welcome to six o'clock dinner on November 12th—(my 81st birthday anniversary)—two of whom we trust will be your dear self and dear Mr. Fernald. It is also my heart's desire that at the conclusion of Dr. Sullivan's words of the dedication that he reads a paper to the friends assembled in which the window and all my interest in the cottage are presented by me to dear Miss Hough, who richly deserves that token of tribute from dear Mr. Lees and myself. I am also writing to ask you to favor me with such a document without delay for it will be a great comfort to me to have such a paper or document prepared by you. I should be glad to have you enclose your bill with the hoped for document. You doubtless remember I gave you with other memoranda my former will. Please return the same that I may destroy it."

He testified that he was very busy at that time and did not prepare the document and received a letter from her dated September 11, 1920, reading as follows (Exhibit P-34, p. 290):

> "102 N. 22nd St. East Orange N. J. Sept. 11th 1920. Dear Mr. Brown: At the risk of being considered impatient, I am writing to ask you to send me without further delay the document I recently asked you to draw up for me, or, if you have decided it is best for you not to do so, just write me plainly to that effect. Assuring you of my appreciation of your many kind favors already received from your clear mind and skillful hands. Gratefully yours (Mrs James E.) Elizabeth L. Lees. If convenient please send me my previous will."

Continuing, the witness testified that the next letter he received from her was dated September 16, 1920, and read as follows (Exhibit P-35, p. 291):

> "102 N. 22 St East Orange N. J. September 16 1920. Dear Mr. Brown: I thank you more than words can convey for your kind lines of the 13th inst. and I hope those I am now writing will cause you to clearly understand my wishes in regard to the paper I am anxious to have you draw up. That is in the presence of the friends gathered Nov. 12th—dear Dr Sullivan may legally present to dear Miss Hough the memorial window and all my interest in 'Rainbow Cottage'. If you can do so Miss Hough and I will be glad if you incorporate that I shall be entitled to a home with her in 'Rainbow Cottage' as long as I live. This I desire regardless

of our former agreement. I would be very glad in bestowing more for the great comfort she was to dear Mr Lees in his last illness—and what she has ever been to me since words can never fully tell. I trust you will be able to give this your immediate attention and in so doing that other matters entrusted to your kind attention will not be delayed in consequence of your prompt attention as desired by ever gratefully Yours (Mrs. James E.) Elizabeth L. Lees. I have received my former will and it is now reduced to ashes."

The witness further testified that he received a letter from her dated September 20th, 1920, reading as follows (Exhibit P-36, p. 292):

"102 N. 22nd St. East Orange N. J. Sept. 20th 1920. Dear Mr. Brown: I was and am the happier for the arrival Saturday of the longed for document and your kind note for which please accept my heartful sincere thanks. I shall sign the document this evening before a Notary Public and the minister of the Unitarian Church in East Orange which we have been attending by name Dr. Walter Reid Hunt. They will sign as witnesses, I think it wise to tell you Miss Hough has contributed $14,000, $7,000 in the form of a mortgage and $5,000 secured by one on our present home, and $2,000 cash for the land. She is pretty sure of a purchaser of the home we are in who will be ready to pay $9,000. The extra $2,000 she is going to invest in an electric motor, as the man George Elliott we had for a while to look after our Ford auto, the poultry and a few other things proved so incapable he had to be discharged, since which time, we have tried—we have left no stone unturned to have our auto put in running order but have not succeeded but we have been more successful with the poultry for which we are very thankful. We have had to face another disappointment, and that one in connection with the building of the new home, and it is so marked that our happy plans for November 12th have had to be laid aside which we regret. I have not yet spoken or written to Mr. Fernald regarding those plans but when we are thoroughly settled in 'Rainbow Cottage' you and he will receive lines asking you to select some day, and train time for taking six o'clock dinner with us and spending a happy evening. Hoping it may prove to be in the near future and that 'God will be with you till we meet again' and that I will receive your bill for your kind and efficient services to Your sincere & grateful friend, (Mrs. James E.) Elizabeth L. Lees."

The paper referred to in this letter was then shown the witness and he identified it as the one prepared by him and said that he was quite sure he mailed it out to her, that it was dated September 20, in her handwriting he was quite sure and that the signature to it was her signature. The witness further testified (p. 293) that the next letter he received from her was dated October 3rd and post-marked October 3, 1920, and read as follows (Exhibit P-37, p. 293):

"Oct. 3rd at 102 N. 22nd St East Orange N. J. Dear Mr. Brown: I have decided to have a codicil to my will so as to make the two very dear boys of Mr and Mrs Philip Haffner share in my estate by giving to Ludlow Patton Haffner three thousand dol-

lars and to his brother Loveridge Haffner the same amount. Said amounts to be placed in a safe bank, and not to be drawn upon until the owner has reached twenty-one years. These boys are very dear to me and I am sure I am doing right to leave them some evidence of my sincere affection. I realize you will need my will, and if you write me you can and will attend to it without delay I will mail it at once and begin to thank you heartily for your marked kindness."

He further testified that the next letter he received from her was dated Oct. 17, 1920, and read as follows (Exhibit P-38, pp. 294):

"102 N. 22 St. East Orange N. J. Oct. 17, 1920. Dear Mr. Brown: In response to your kind lines of the 14th inst. I would say the names of the two boys are Loveridge Haffner—Ludlow Patton Haffner—and that they both reside with their dear mother and her present husband,

Mr. F. Philip Haffner at 287 Central Ave East Orange N. J., I would like each of the boys to be assigned the amount I stated in my previous lines to you which I think was $3,000 each, but neither was to be touched until reaching the age of twenty-one, the amounts to be placed in a good bank, which will be for some time, as I think the older boy is but twelve years old."

Continuing, the witness said "The original of that codicil is in evidence." The next letter he received from her was dated October 21st, 1920, evidently an error, as it was post-marked October 19, 1920, and read as follows (Exhibit P-39, p. 295):

"102 N. 22nd St. East Orange N. J. Oct. 21, 1920 Dear Mr Brown: Will you kindly omit the 26th inst. as the day for the witnessing of the codicil to my will, as I have been obliged to make an important engagement for that date, rain or shine. Thanking you in advance and hoping the granting of this favor will not interfere in the least with other business."

The next letter he received from her (Exhibit P-40, p. 295) reads as follows:

"102 N. 22nd St. East Orange N. J. Oct. 21 1920 Dear Mr Brown:—I am in receipt of what is to become a codicil to my will, and feel it is all satisfactory. I have selected Tuesday November 2nd for completing it provided it is not one of drenching rain, if it prove to be so, then the first pleasant one thereafter. I have to spend a day in New York in the early days of each month, so as to keep my money matters in order. I would be glad if you would ask Mr H. H. Pennock of the Equitable Life Assurance, 120 Broadway (Room 1122—phone 10,000 Rector) to be a witness. Thanking you for your speedy attention and kind note."

Continuing, the witness said that the next letter he received from her was dated October 23, and post-marked October 24, 1920, reading as follows (Exhibit P-41, p. 296):

"I am sorry I was so stupid as to suggest Election Day as one for us to meet on—to tell the truth I am so ignorant in election

> matters, I did not realize Nov. 2nd was Election Day. Well, I will now suggest the 3rd or 4th but should they not harmonize with your engagements just select for yourself any day but the 5th and we will gladly make our plans accordingly."

Continuing, the witness testified, "on November 3, 1920, the codicil was executed in my office and is already in evidence."

The cause was submitted to the Orphans' Court. Upon the evidence adduced by the respective parties and oral argument having been had and briefs submitted, that court entered an order bearing date December 12th, 1923, wherein after reciting that "it was satisfied that the said paper writing was duly executed by the said Elizabeth Loveridge Lees as her last will and testament in the manner and form prescribed by the statute in such case made and provided; and that the said Elizabeth Loveridge Lees at the time of making said will was of sound and disposing mind, memory and understanding and that the said will was not the product of undue influence 'it was ordered, adjudged and decreed that the decree of the Surrogate of Essex County admitting said paper writing to probate as the last will and testament of Elizabeth Loveridge Lees, deceased, and directing that Letters Testamentary thereon issue, be and the same was thereby in all things ratified and confirmed' and that the said paper writing is the Last Will and Testament of the said Elizabeth Loveridge Lees, deceased."

The reasons for this decree are set forth in a very full and carefully considered opinion of Flanagan, *J.* (State of Case, p. 6) in which he reviews the testimony and cites authorities for his conclusions.

The petitioner, Arthur R. Loveridge, thereupon appealed to the Prerogative court from the above mentioned order of the Orphans' Court admitting the will to probate. The cause was heard in the Prerogative Court by Vice Chancellor Fielder and after some additional testimony had been taken before him, he states, among other things as his conclusions (p. 4*a*, State of Case):

> "I have read the state of case and I have considered the additional testimony taken before me I have also read the briefs filed by the parties and I am of the opinion that the decree admitting the will to probate should be affirmed for the reasons stated in the conclusions filed by the judge in the court below".

A decree of the Prerogative Court was thereupon entered affirming the decree of the Orphans' Court admitting the will to probate.

From this decree of the Prerogative Court the said Arthur R. Loveridge now appeals to this court.

ARGUMENT.

I.

The testatrix had the mental capacity to make the will of March 16, 1921, now offered for probate.

This is shown,

First, by the instructions which she gave in her own handwriting for the drawing of this will and by the letters she wrote in connection therewith and referring thereto.

The object of this will was the elimination of Mr. F. Philip Haffner as an executor and as trustee for his wife Marion, a niece of the testatrix, and as a legatee in his own right, positions which he occupied in the previous will of testatrix dated August 24, 1920. This appears in a letter to her attorney, Mr. Brown, dated February 14, and post-marked February 14, 1921 (Ex. P-1, p. 266) in which she says:

> "Circumstances have arisen involving Mr. Philip Haffner which makes it imperative for me to change my will so decidedly that I have decided to make a new one, and I am writing to ask you to notify me of some day next week that promises to give you sufficient leisure to accord me an interview with you for that purpose."

The circumstances that had arisen involving Mr. F. Philip Haffner are stated in a letter of testatrix to her niece, Mrs. Harvie, dated February 7, 1921 (Ex. P-12, p. 191) in which she says (p. 192):

> "Dear Marion is having a very trying time but thus far she has shown good common sense and if continued I feel she will gain a good standing and Mr. Haffner will come forth the loser for his outrageous conduct. * * * (p. 193) I hope and expect to see Mr. Brown this week and have a new will made that will not contain Mr. Haffner's name. There will be no other alteration."

The testatrix acted with sound judgment and discretion in making this new will in order to eliminate Mr. Haffner. She had no interest in him except that he was the husband of her niece, and when the two separated it was natural and proper for her to drop his name from her will. To have left him there as an executor and as trustee for her niece would have been embarassing to her niece and likely to cause difficulty in the administration of the estate. As to the legacy she had given him, there was good reason for cancelling it in view of her statement in her letter to Mrs. Harvie that his conduct had been outrageous.

Before drawing this will Mr. Brown received from the testatrix written instructions, in her own handwriting, stating specifically what she wished the will to contain, and also a letter from her dated Tuesday

and postmarked March 8, 1921 (Ex. P-3, p. 268) in which she asked to add Mr. Harvie's name as executor in connection with Dr. Hough and Mr. Brown, giving full name and address of Dr. Hough and Mr. Harvie. She adds (p. 268):

> "I also trust it will be perfectly convenient to you to have me sign my will before next week is in the past."

These written instructions refer to her previous will which was dated August 24, 1920, and a codicil to it dated November 3, 1920, both of which are in evidence (Ex. P-5 and P-6, pp. 461, 69). The instructions refer to paragraphs of the previous will by number, stating which of them she wanted to retain in her new will and which of them she wanted to omit (p. 269, &c.). In respect to the codicil the instructions read (p. 269), "Incorporate in the will what my codicil directs in connection with Mrs. Haffner's two boys." This refers to the codicil of November 3, 1920, in which she gave to the two Haffner boys $3000 each. The instructions are clear and definite, and from them the will now offered for probate was drawn. A comparison of these instructions with the will shows that the instructions were followed implicitly, and that the will now offered for probate states her wishes exactly as set forth by the testatrix in her own handwriting.

After the execution of this will, and on May 5th, 1921, testatrix wrote a letter to her niece, Mrs. Harvie, stating exactly what the will contained with respect to Mrs. Harvie and her family. The letter reads as follows (p. 196):

> "By my will you are to receive $25000, James $5000, John $2000, Elizabeth $3000. In case you passed on before I did, James is to receive $15000, John $5000 and Elizabeth $5000. If it were possible to give these amounts before I left you I would gladly do so. But I am sorry I see no possible prospect of being able to do so, but sometimes the experiences we least look for come to pass, so we will live in hopes."

This letter is dated May 5th, the year being omitted, but the year must have been 1921 because it is dated at 19 Whitman Ave. and it was in February of that year that testatrix moved into that house.

Second, the testamentary capacity of the testatrix is further shown by the series of wills and codicils which she made and executed beginning with the year 1913, and ending with the will now offered for probate and bearing date March 16, 1921. Of these wills there was one in 1913, two in 1915, two in 1916, two in 1917, a codicil in 1918, a codicil in 1919, a will in 1920, a codicil in the same year, and finally the will of March 16, 1921, now offered for probate.

These successive wills show a clear, definite and consistent purpose and design on the part of the testatrix with respect to the distribution of her property among her next of kin and other persons whom she wished to remember. They also show that the will now offered for probate was not the result of a passing emotion or of a hastily formed

design; but was the deliberate expression of feelings and convictions originating in the mind of testatrix as far back as the year 1913, and continuously entertained and repeatedly expressed by her in succeeding years down to the year 1921 when the will now offered for probate was made and executed.

With respect to her relatives, her niece Mrs. Harvie evidently occupied first place in her affections, as appears by the letters which have been introduced in evidence, and her name accordingly appears in all these wills as one of the principal beneficiaries.

Edgar H. Loveridge, a nephew of the testatrix, and Marion L. P. Scott (afterwards Haffner) her niece, are beneficiaries in varying degrees in almost all of the wills. J. Augustus Lees and Edward B. Taylor, nephews of her deceased husband James E. Lees, and Benjamin Epstein, who was in the employ of the Lees Manufacturing Company, are all remembered with substantial legacies in nearly all the wills.

Maranda F. Hough is a beneficiary in varying degrees in all the wills except that of 1913. The testatrix explains fully and repeatedly in many of her letters her reasons for making these provisions for Miss Hough. Among other letters see the letter to Mr. Brown dated August 12, 1920 (Ex. P-14, p. 278); also the postscript to that letter (Ex. P-15, p. 280); also her letter of August 22, 1920 (Ex. P-21, p. 282); also her letter of December 3, 1920 (Ex. P-43, p. 297); and many others. These letters state in effect that the provisions are made in recognition of the efficient and faithful services of Miss Hough to the testatrix and to her deceased husband, James E. Lees, and as a reward therefor.

As to Arthur R. Loveridge, a nephew of testatrix, and the petitioner on this appeal from probate, the will of 1913, gives him $50 and all the other wills $5. None of the letters of the testatrix which have been introduced in evidence refer to him and he evidently did not enter into her life.

As to her sister, Harriet Loveridge, who was a witness on behalf of the appellant, the will of 1913 gives her also $50 and all the other wills $5. In a letter to her niece, Mrs. Harvie, dated August 29 and postmarked August 29, 1920 (Ex. P-9, p. 185), which is more fully referred to hereafter, the testatrix explains that the reason she leaves her sister but five dollars, is that this was all she received of the $12,500 which was legally hers upon selling the Charlton Street house for $25,000. She evidently felt aggrieved by that transaction and was influenced by it when she made her various wills. The date of this letter is five days after the date of the will of August 24, 1920, which is in evidence, and the letter refers to that will. The successive wills mention by name all the heirs at law and next of kin of the testatrix then living except Henry Loveridge and Florence Loveridge Chapman, two of the issue of Henry Loveridge, deceased brother of the testatrix. Their names are not mentioned in any of the wills, nor in any of the letters of the testatrix which have been introduced in evidence. She probably had no interest in them, nor they in her.

Helen P. Taylor, the daughter of Marion L. P. Haffner, who is now one of the heirs at law and next of kin of the testatrix, is not mentioned

in any of the wills, but she was not an heir at law or next of kin at the times that these wills were executed for the reason that her mother Marion L. P. Haffner was then living, having died on March 4, 1922, after the execution of the will now offered for probate.

Third, the testamentary capacity of the testatrix is further shown by the letter above mentioned which she wrote to her niece, Mrs. Harvie, dated August 29, 1920 (Ex. P-9, p. 185). This letter is important because it was written shortly after Dr. Swift had given out his certificate of July 2, 1920 (Ex. A-2, p. 450), hereinafter more fully referred to in which he stated that testatrix was suffering from senile changes which affected her mentality and rendered her incapable of sound judgment and discretion.

The letter to Mrs. Harvie above mentioned first congratulates her on the fact that John and Elizabeth, Mrs. Harvie's two children, are so soon to be in their home and continues,

> "You are indeed blessed in them and dear James (Mrs. Harvie's husband) and I am glad my will gives you and them the largest share of what dear James (the husband of testatrix) left me. * * * You are to receive $25000, James $5000, Elizabeth $3000 and John $2000 making in all $35000. I feel sure you will not encourage any one in trying to break it—for those who do will receive nothing—and I do not want you to be of that number. It would not surprise me if Hattie took such a step, but I have told Mr. Brown the why and wherefore of my leaving her but $5 which was all I received of the $12500 which was legally mine upon selling the Charlton Street house for $25000. I think I told you once—but will write it here too—when I am again with you—I will not accept any invitation to take a meal in her home."

This letter shows that testatrix possessed all the qualifications of mind required by law for the making of a valid will, which are stated in the case of

Westcott vs. *Sheppard,* 51 N. J. Equity 315 (318),

in effect to be, comprehension on the part of the testatrix of her property, and of the natural objects of her bounty, the meaning of the business in which she is engaged, the relation of each of these factors to the other, and the disposition which her will makes. The letter shows a knowledge on the part of the testatrix of the contents of her will so far at least as they affected Mrs. Harvie and her family and her sister Miss Harriet Loveridge; also a knowledge that it contained a provision whereby any one who contested it would lose what was given, and a clear understanding of the meaning and effect of that provision. The letter also contains a correct forecast of what her sister was likely to do when her will came up for probate, and a statement to the effect that she had fortified her estate against a possible attack from that source by informing her lawyer of her reasons for making the nominal gift to her sister which the will contained. It also shows that she had the power to recall the transaction of the Charlton Street house which was the cause of the estrangement between her and her sister, although that transaction occurred many

years before, and it contains a protest against what she evidently regarded as unjust treatment on the part of her sister.

Other letters which show that testatrix possessed all the qualifications which the law demands for the execution of a valid will are the following, viz:

The letter of August 7, 1920, in which she writes to Mr. Brown (Ex. P-13, p. 276):

> "The extra time to-day gave me the opportunity of making a careful and full examination of my effects in my safe deposit box with the result of finding myself able to leave in my will to dear Mrs Haffner $10,000 instead of $1,000 and to my nephew Edward Taylor $10,000."

Also the postscript to her letter of August 12, 1920 (Ex. P-15, p. 280), in which she writes to Mr. Brown,

> "I hope you fully understand my wishes regarding the residue of my estate. I do not wish it to go to Mrs Harvie as expressed in my former will, as I feel that $25,000 left to her is all I can give and be just to others. If you refer to my memorandum you will see it is to be divided between Benjamin Epstein and Miss Hough. Now I wish to add Edward Taylor," (a nephew of her deceased husband) "and feel in so doing I am carrying out dear Mr. Lees' heart's desire as well as my own."

These letters and others written by the testatrix which are in evidence, taken in conjunction with the wills executed by her from time to time, and the instructions she gave in her own handwriting for the drawing of those wills, show beyond question that at the time testatrix executed the will now offered for probate she knew what her property consisted of, and who were the natural objects of her bounty, the nature of the business in which she was engaged, the relation of each of these factors to the other, and the disposition which her will made. Testatrix had therefore the mental capacity to make the will now offered for probate.

Westcott vs. *Sheppard* (*supra*).

II.

As to the evidence adduced by the appellants to show a lack of testamentary capacity on the part of the testatrix.

The appellant introduced in evidence a certificate of Dr. Edward P. Swift, a practising physician of the State of New York, who attended the testatrix professionally during the years 1916 to 1921. The certificate bears date July 2, 1920, and is in evidence as Exhibit A-2, page 450. It states that Mrs. Lees, the testatrix was suffering from senile changes which affected her mentality and rendered her incapable of sound judgment and discretion. Dr. Swift testified (p. 93) that he gave this certifi-

cate to Mrs. Harvie, niece of testatrix, who asked him to certify as to the mental condition of testatrix, giving as a reason for the request that testatrix was possibly subjected to undue influence on the part of Miss Hough in the matter of disposing of her property. He also testified (p. 94) that he was not an alienist or a specialist in mental diseases, and made no special examination of the testatrix for the purpose of this certificate, and never made any examination of the testatrix as to her mentality; that he had the opinion that her mentality was deteriorating for some time prior to the date of the certificate, possibly one or two years.

In regard to this testimony of Dr. Swift, the remarks of the Court in the case of

Stackhouse vs. *Horton,* 15 N. J. Equity, p. 202

are relevant. The Court says (p. 208):

> "It may be well to say a word here as to the weight to be attached to the opinions of witnesses on the subject of mental capacity. The abstract opinion of any witness, medical or of any other profession, is not of any importance. No judicial tribunal would be justified in deciding against the capacity of a testator upon the mere opinion of witnesses, however numerous or respectable. A man may be of unsound mind and his whole neighborhood may declare him so. But whether that unsoundness amounts to judicial incapacity for the discharge of the important duty of making a final disposal of his property, is a question which the Court must determine upon its own responsibility. * * * The opinion of a witness must be brought to the test of facts, that the Court may judge what estimate the opinion is entitled to. It is proper and legal to ask a witness his opinion as to the mental capacity of the individual to discharge the duty in question. He must state the facts upon which his opinion is based. The Court will judge of the intelligence of the witness upon the subject to which he testifies, and the proper weight to be given to his opinion from the facts and circumstances upon which he founds his opinion."

Further in support of the allegations of the petition, as to the lack of testamentary capacity on the part of the testatrix, Arthur R. Loveridge, the appellant, testified (p. 40) that he saw the testatrix in the early summer or early fall of 1920; that her mental condition at that time was one of inertia, and her physical condition was one of disability; that she was an old woman, broken in health and mind, unable to conduct a conversation with him intelligently; that he endeavored to converse with her on the then topics of the day, but found her entirely unresponsive.

Harriet Loveridge, sister of the testatrix, testified (p. 55) that she saw her in 1918, and it was very difficult to arouse her, to move her from one place to another; she was very inert both in words and in body; she took no part in the conversation. That she observed her condition in the year 1920 to be the same, only increased; that she was not to her mind able to carry on a conversation. She saw her in 1921, in the summer she

thought, and her condition was not improved. That she saw her on the 8th of September, 1922 (the testatrix died September 9, 1922), and that her sister did not know her; called her Bessie which was the name of her brother's wife who had long since been dead. It appeared on cross-examination of this witness (pp. 82, 83) that she did not see the testatrix from 1903 to 1918 owing to an estrangement between them growing out of a disagreement with respect to the division of some family property. Witness stated her side of this controversy in her testimony on cross-examination beginning at the foot of page 80. The testatrix has set forth her side of the controversy in her letters to her niece, Mrs. Harvie, as hereinbefore mentioned.

Miss Ida Brown, housekeeper for Miss Harriet Loveridge testified (p. 147) to substantially the same effect as Miss Loveridge with respect to conversations with testatrix.

Mrs. Annie L. James, sworn in behalf of the appellant, testified (p. 109) that she acted as nurse and companion to the testatrix in July, 1921, to help Miss Hough; that during the time of attendance the testatrix was drowsy and inert and not herself; she did not take notice, did not talk to witness, and liked to be amused. Witness attempted to carry on a conversation with her, and she never talked; it was yes or no. The witness was asked whether testatrix appeared to give intelligent answers to her questions and she answered yes (p. 110); asked as to her condition during most of the day, and how she spent her time, witness said, "Well, she was writing a great deal; she didn't have breakfast until late, and she would write a while; she was writing letters to her friends. * * * She wrote quite nice letters. * * * She wrote to me some of them. I had some letters from her." That the witness never discussed the topics of the day with her, she never asked her to, and never attempted to carry on any conversation on any topic with witness and never asked her to read the newspapers to her, but she liked to be entertained by the victrola, and witness would entertain her that way; witness went to her after the 4th of July and stayed until the 15th of October; that the amusement of testatrix consisted in music and going out in the auto and she went to church in New York, the Unitarian Church; that she was always drowsy and not herself, kind of asleep.

Agnes Loveridge testified (p. 121) that she called on testatrix on August 18, 1922 (testatrix died September 9, 1922); that she had a conversation with testatrix in which testatrix asked how her husband was; her husband had been dead eight years, and testatrix had sent flowers to his funeral; that she saw her in August, 1921, but she did not seem to take anything in, she just sat there; she did not engage in conversation; that she generally went to Mrs. Harvie in the summer, and then witness did not see her again until witness went to Rainbow Cottage in 1921, and there was a very great change in her; she certainly was not all there; "she was quiet, she never spoke to me, she just said 'How do you do' and 'Good Bye' and that was all."

Other testimony was introduced by the appellant to the same general effect.

On the other hand, several witnesses called on behalf of proponent, testified to exactly opposite conditions.

Dr. William A. Wakeley, a physician and surgeon of Orange, New Jersey, testified (p. 343) that he attended testatrix first about six years ago, regularly for some time—for an interval of perhaps three or four years; that he attended her two or three times in 1921, and four or five times in 1922; that he attended her in May or June, 1921; that her mental condition was normal, that he never noticed any irrational condition whatever, not even during her last illness.

Judge Thomas A. Davis, a member of the New Jersey Bar, of the law firm of Howe & Davis, testified (p. 131) that he acted professionally for the testatrix on December 31, 1920, when she came to his office with Miss Hough; that (p. 132) testatrix led the conversation and the object of her visit was to take proceedings for the purpose of adopting Miss Hough as her daughter, and she also talked about making a will. "She came, I think, two or three times later, and I drew for her, and I think she and Miss Hough signed a paper that was nothing more or less than an expression of her feeling toward Miss Hough, and the office inaugurated proceedings to change the name of Miss Hough to Miss Lees."

Judge Davis further testified (p. 133) that at the time she was dealing with him she was in his opinion perfectly rational. "She conducted herself toward me as the average client does. She stated to me what she wanted, and why she wanted it, and there was nothing at all unusual in either what she said or how she said it, except that the request to adopt a person of Miss Hough's age was rather unusual. That is all. * * * She said that Miss Hough was actually taking the place of a daughter with her, and had been for some time, and that she expected that Miss Hough and she would be together during the remainder of her life, and that she wanted to make her actually in law her daughter, as far as she could. Those were the reasons she gave me."

Edward L. Davis, a nephew of Judge Davis and another member of the law firm of Howe & Davis, testified (p. 140) that he had to do with the preparation of the papers connected with the change of name of Miss Hough, and attended the Circuit Court when the matter came up for hearing, and when the Court made the order directing that the name be changed. It was before Judge Dungan. Mrs. Lees, the testatrix, was a witness. She testified that Miss Hough had been with her for many years; that she had grown to have a strong affection for her, to feel toward her as she would toward a daughter, and that she had desired to adopt her, but that she consulted Judge Davis and found that it would probably not be possible to adopt her, and that she wanted to do all that she possibly could to accomplish the effect of an adoption by giving Miss Hough her name. As a result of that proceding the order was made. The order was introduced in evidence as Exhibit P-4 (p. 456)

and bears date February 11th, 1921. (The will now offered for probate bears date March 16, 1921). The witness testified (p. 143) that during the time he acted for her professionally she was rational in his opinion, and considering her years he thought she was a little more than of average intelligence. "She seemed very bright and keen to me."

On cross-examination the witness was asked (pp. 144, 145) whether he wished to qualify his statement that she was exceptionally bright and keen in view of the certificate of her family physician (referring to the certificate of Dr. Swift that she was suffering from senile changes which affected her mentality, etc.) and he answered "No, I disagree with the family physician."

Mr. James O. Clark, a member of the New Jersey Bar, testified that he had known testatrix about sixty years (p. 97); saw her at his house in Westfield sometime during the year 1921, possibly the latter part of 1920, and that he was over at her house in Orange either a few months after or before her call at his house (p. 98). She carried on a conversation with him and her answers appeared to him to be intelligent (p. 98); she was a very intelligent woman, strong minded and positive; "I think she had taught in one of the schools in New York City" (p. 99) the impression created on his mind was that she was perfectly rational.

Benjamin B. Epstein, a witness on behalf of the proponents, testified (p. 212) that he was manager at the New York office of the Lees Manufacturing Company, manufacturers of yarns, thread etc., with a mill at Westport, Conn., and had been in that employment about fifteen years. Mr. James E. Lees the husband of testatrix was treasurer of the Company and remained in that position until he died. He had about 650 shares of stock, of which after his death Mrs. Lees became the holder. She was a director of the company, becoming such a year or two after Mr. Lees died, which occurred in 1912 and resigning at the annual meeting held in May 1920. She attended meetings at Westport, but not all of them. She discussed the affairs of the corporation with the witness, generally that was the first topic. Witness describes in detail many interviews and conversations he had with her and produced many letters written by her to him during the years 1919 to 1922 which are in evidence as Exhibits P-19 to P-40, pp. 235 to 257, &c.

Witness further testified (p. 224) that he never had but one opinion, and that was that she was rational.

Julia P. Elliott testified (p. 259) that she had known testatrix about fifteen years; saw her perhaps twice a year; was a guest at her house last July for luncheon; she was there several hours, from one o'clock to five. "She asked about my husband and children, what they were doing, and she was interested in hearing the new Ampico played. She was very much interested in having Mrs. Harvie play some pieces, and then the Ampico was there, and she selected the pieces she wished played. 'Her response to questions the witness asked her was absolutely intelligent.' I thought anything she was interested in, she was most intelligent in. If she was not interested she did not pay much attention."

The remark of this witness last above quoted is a good explanation of why, to the witnesses for the appellant, the testatrix was dull and unresponsive, and to the witnesses for the proponent she was rational and, to some of them bright and keen. In the former case she was probably not interested, while in the latter case her faculties were aroused because the subject was one in which she felt an interest. It is apparent that when the subject matter in hand concerned her property, or the disposition of it, there was no lack of attention on her part. Mrs. Harvie testified (p. 437), that "She was a wonderful business woman." Her letters relating to business matters, and her written instructions with respect to the disposition of her property by will, are models of clearness and precision. These letters and instructions, in her own handwriting completely overwhelm the theory of mental unsoundness based upon the testimony of witnesses to the effect that she was dull and unresponsive, or lacking in sound judgment and discretion.

III.

As to the undue influence alleged in the petition of appeal, there is not a particle of evidence in the case to sustain it.

On the contrary, the documentary evidence in the case shows conclusively that the will now offered for probate originated in the testatrix's own mind, and was the product of her own thought, uninfluenced and unaided except in two unimportant particulars,—one where she adopted Mr. Haffner's suggestion of inserting in her will of August 24, 1920, a clause to protect Mrs. Haffner's legacy against creditors, which is explained in her letter to Mr. Brown dated August 4, and postmarked August 4, 1920 (Ex. P-11, p. 275), and the other where she adopted Mrs. Harvie's suggestion of adding Mr. Harvie's name as an executor of her will now offered for probate in connection with Mr. Brown's and Dr. Hough's (See her letter marked Ex. P-3, p. 268).

But these two instances of the mere adoption of suggestions are very far from establishing undue influence. It is well settled that the term "undue influence" means influence which was exerted and operated to dominate the testatrix and coerce her to make a disposition of her property which she would not otherwise have made.

Schuchhardt v. *Schuchhardt,* 62 N. J. Eq. 710.

No such influence has been shown in this case. The appellant attempted to claim that there had been some such influence on the part of Mrs. Harvie and Miss Maranda Hough Lees, but they both denied it, and the evidence in the case wholly sustains their denial.

IV.

Counsel for the Executors desire to call to the attention of the Court the following mis-statements of the testimony appearing in the brief filed in behalf of the appellant.

On page 3 of appellant's brief the following statement is made "During the course of the trial, Maranda Hough on cross-examination, let slip the fact, to our total surprise, that the Haffner branch of the family had contemplated bringing proceedings for the appointment of a guardian and that that fact was known to both the decedent, Mrs. Lees and Maranda Hough. That in the year 1920, both of them had gone to see Mr. Brown concerning it. Brown says that he did not inquire even who contemplated starting the proceedings and he told Mrs. Lees that he did not believe anything of that kind was contemplated, and that he never heard of it, although at that time he had or did have in his possession the certificate of Dr. Swift certifying as to her lack of mental capacity. This all happened during the summer of 1920. It seems to have been the opinion of everyone in her household that in 1920 Mrs. Lees was mentally incompetent to handle her business affairs, and that a Guardian should be appointed."

Great stress is laid on this by the Appellants. This is a gross misstatement of the testimony. On page 362 of the testimony Maranda Hough Lees testified that the proposed proceeding for the appointment of a Guardian of Mrs. Lees was brought to the attention of Mrs. Lees by F. Philip Haffner, if she remembered correctly, and that a lawyer had been to see Mr. Haffner in that regard. There is not a scintilla of evidence anywhere to show that the Haffners considered instituting proceedings of such a character and the inference to be formed from the testimony is that they did not, for certainly if such had been their intention Mr. Haffner would not have come to Mrs. Lees and apprised her of the fact.

On page 4 of appellant's brief it is stated: "Maranda Hough started building this queer house with a stockade around it." This is not the testimony. John Lang, a witness for the appellant, describes it (p. 84 of the Case) as "a very expensive galvanized iron fence upon a two foot concrete foundation." Mr. James O. Clarke, a witness for the proponents testified (p. 104 of the Case) that it gave him the impression that it was a substantial fence and he did not give it any further attention.

Further down on page 4, the statement is made that the so-called Rainbow Cottage was built at a cost of more than $30,000 practically all of which money belonged to Mrs. Lees. This is contradicted by a letter from Mrs. Lees herself (Exhibit P-36, p. 292) in which she states that Miss Hough had contributed $14,000 toward the construction of this home.

At the foot of page 4 the statement is made that Maranda "then makes a frantic effort to have herself adopted so as to forestall interference from the other members of the family." This is not the testimony. As will appear from the testimony of Mr. Brown, Miss Hough and Judge Davis, it was Mrs. Lees who brought up the question of the adoption. On page 4 of the appellant's brief, this statement is made: "All this occurred after the family doctor had certified that she was mentally incompetent, and two members of the family had made attempts to set in operation Guardianship proceedings." The Doctor's certificate does not state that she was mentally incompetent and there is no evidence that anyone other than Mrs. Harvie contemplated Guardianship proceedings.

On page 5, the following statement is made: "About 1920 Maranda Hough took complete charge of the house and also the finances. She sold a large number of bonds and deposited the proceeds in her name, and from that time on completely dominated the household." The evidence does not justify any such statement. Further down on page 6, the following statement is made: "Practically all of the witnesses for the defence were vitally interested in the result of the trial, while seriously contradicting each other and apologizing for their own various lapses." Of the witnesses called by the proponents, three of them are subscribing witnesses of the will, who, of course have no financial interest whatever in the matter. In addition are James O. Clarke an attorney at law of the state of New Jersey, Judge Thomas A. Davis, his partner Edward L. Davis, Julia P. Elliott and Dr. Edmund A. Wakeley all of whom have no financial interest of any kind in the will. On the other hand the only witnesses called by the Appellants who have not a direct financial interest in breaking this will, are the following: Ida Brown, John Lang, Dr. Edward P. Swift, Mrs. Annie L. James and Mrs. Agnes Loveridge, and of these Ida Brown is the companion of Miss Hattie Loveridge, sister of the testatrix and Agnes Loveridge is the mother of children who would take a substantial share in this estate were the will set aside. The testimony of these five witnesses was of little value.

Commenting on the summary of the evidence of the witnesses as set out in Appellant's brief (p. 7) attention is called to the following:

As to the testimony of Arthur R. Loveridge (p. 7 of Appellant's brief) it appears from his cross-examination (p. 54 of Case) that after Mr. Lees' death in 1914, he only called on Mrs. Lees occasionally, possibly a year apart, although she was living at the Beresford in New York City and he was living at Cranford, New Jersey, Scarsdale, New York and Greenwich, Connecticut. From his direct examination (p. 43 of the Case) it further appears that he made no effort to call on her from 1918 down to the date of her death on September 9, 1922, from which it would appear that there was not much affection between testatrix and Mr. Loveridge.

As to the testimony of Harriet Loveridge at page 8 of said brief: An effort was made to show, in reference to the relations existing between her and the testatrix, that a reconciliation was effected between them

after 1918. This is not borne out by the letters of Mrs. Lees and Miss Loveridge herself admitted (pp. 59 and 60 of Case) that she had never seen Miss Hough prior to September, 1922, although it was claimed by the witnesses for the Appellant and his counsel insists that Miss Hough always accompanied Mrs. Lees wherever she went, as she was unable to take care of herself. It would appear therefore that either Miss Loveridge saw Mrs. Lees very infrequently after 1918—although she attempted to show that she saw her on many occasions—or that the other witnesses were mistaken when they testified that Mrs. Lees was always accompanied by Miss Hough.

As to the testimony of John Lang at page 9 of said brief: As stated by the Court below on the trial (p. 90 of the Case, foot of page) there did not seem to be anything in it upon which an opinion as to the mental capacity of the testatrix could be based.

As to the testimony of Dr. Edward P. Swift at page 10 of said brief: The brief states in reference to him "That he treated Mrs. Lees during the years 1916 to 1921." This is not his testimony. He stated (pp. 94 and 95 of the Case) that he did not recall seeing Mrs. Lees after April, 1920, but that he prescribed for her by mail in November, 1920, and that that was the last date on which he performed any professional services for her. He further testified that he had never made any examination as to her mentality, that he was not an alienist and had merely based his opinion on conversations with her and treatments in his ordinary medical practice.

As to the testimony of Mrs. Annie L. James at page 11 of said brief: The brief fails to state that she testified (p. 115 of Case) that Mrs. Lees, during the summer of 1922 wrote her a very coherent letter showing her much affection and that she also testified (p. 116 of Case) that she could not remember any instances of domination by Miss Hough over Mrs. Lees; during her testimony, the Court asked her the following question (p. 119 of Case):

> "Q. Now you say her acts were irrational. Can you specify any particular thing, or number of things that she said or did, during the whole time that you were there that indicated to your mind that she was irrational?"

Her answer was:

> "No, I could not. I do not remember."

As to the testimony of Mrs. Agnes Loveridge at page 12 of said brief: Attention has already been called to her interest through her children in having this will set aside. Appellant's brief emphasizes this fact "that she was a witness by order of the Court and that she was testifying by compulsion." She admitted, on cross-examination, that she knew of the provision in the will depriving any legatee contesting it of his or her legacy and that she was a legatee under it.

As to the testimony of Miss Ida Brown at page 13 of said brief: The attention of the Court is called to the fact that the witness is the companion of Miss Harriet Loveridge and that her testimony related to

her observations of testatrix made some three or four days before her death in September, 1922, which was fifteen months after the execution of her last will and testament.

As to the testimony of Mrs. Belle Harvie at page 13 of brief: The brief states that she testified that

> "She (Mrs. Harvie) based her impression of Maranda Hough's influence upon Mrs. Lees' dependence upon her, and on the fact that Maranda was taking advantage of her (p. 153)."

What Mrs. Harvie actually did state was:

> "Well I was afraid she (Maranda) was going to take advantage of her weakness now she was ill there to try to get control of some of her business affairs. I did not know that she had except in one instance."

On page 14 the brief states that:

> "In answer to a question by the Court as to her objections to going before a jury, she (Mrs. Harvie) stated that she did not want to expose her to the indignity."

What Mrs. Harvie said (p. 157 of Case) was:

> "I thought too much of my Aunt to subject her to such an indignity.",

and she also stated (p. 157 of Case):

> "I felt they could not prove it",

and (p. 158 of Case),

> "I thought she (Mrs. Lees) was competent to take care of her affairs."

As to the testimony of Helen P. Taylor at page 15 of said brief: Her testimony related to alleged conversations with testatrix long after the making of the will in March 1921, as appears by her testimony printed on pages 408 to 411 of the Case.

As to the testimony of Joseph Frankenthal at page 18 of the brief: The statement is there made that:

> "He is a law clerk with Alfred S. Brown, and one of the attesting witnesses to the will, that the entire conversation at that time was the question by Mr. Brown 'What is this instrument?' and her answer 'This is my will.' ".

This is an incorrect statement of his testimony as will be seen by reading it on pages 20, etc., of the Case.

As to the testimony of Homer H. Pennock at page 19 of said brief: The witness also testified that he walked with Mrs. Lees and Miss Hough

from Mr. Brown's office on the corner of Liberty and William Street as far as Nassau Street after the execution of the will where he bade goodbye, which would seem to indicate that Mrs. Lees was well able to walk.

As to the testimony of James O. Clarke on pages 19 and 20 of said brief: The statement is made that he testified "that he did not know of the adoption". As a matter of fact, he testified (pp. 101 and 102 of Case) that Mrs. Lees and Miss Hough both mentioned it to him.

It is further stated on page 19 of the brief that the witness further testified that he did not observe whether Mrs. Lees was physically well during the years 1920 and 1921. This is not his testimony as will be seen by reading it at page 102 of the Case.

On page 108 of the Case, this witness appears to testify in answer to a question by the Court as to whether Mrs. Lees was feeble, mentally or only physically,

> "mentally and physically"

This is obviously an error. By reading the testimony, it is apparent that the stenographer made a mistake in transcribing it, and that his answer was,

> "Not mentally but physically" instead of "Mentally and physically."

This is shown by the next question asked by the Court which is as follows:

> "Q. But somewhat mentally?
> A. Very little."

At page 28 of the brief, it is stated that Mr. Brown testified that:

> "Mrs. Harvie strongly characterized the Houghs as the finest pair of crooks she had ever seen (p. 307)."

Mr. Brown did not so testify, as will be seen by reading his testimony on page 307 of the Case. On page 43 of the brief, it is stated:

> "He, himself (Mr. Brown), says that at the time he drew the last will he did not discuss with her, her property or relatives or anything else, simply relying upon her so-called memoranda."

This is untrue. See his testimony on page 272 of the case.

At page 35 of the brief, it is stated that Dr. Wakeley testified that:

> "A child of seven or eight could have answered all the questions he put to her intelligently."

This statement is repeated in substance at page 49. The question was asked him by Appellant's counsel on cross-examination (p. 348 of Case) and his answer was:

> "No, I would say there was more detail."

On page 52 of the brief, it is said:

> "Benjamin Epstein goes so far as to say that she completely dominated Mr. Lees during his life time (p. 216)."

The witness did not so testify. He testified (p. 216 of the Case) that testatrix was very indignant at the withholding of dividends by the Lees Manufacturing Co. and also because Mr. Robert Lees, before he died, did not make her a director of the Company. Mr. Epstein testified that "He (Robert Lees) said he thought she was always dictatorial and he thought she managed James Lees and he did not want any petticoat government."

The appeal should be dismissed and the Decree of the Prerogative Court, affirming the order of the Essex County Orphans' Court admitting the will to probate, should be affirmed.

Respectfully submitted,

EDWARD S. ATWATER, Jr.,
Proctor for Respondents.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

ARTHUR R. LOVERIDGE,
Appellant,

and

ALFRED S. BROWN, ROBERT H. HOUGH and JAMES HARVIE, as Executors of a Paper Writing purporting to be the Last Will and Testament of Elizabeth Loveridge Lees, deceased,
Respondents.

On Appeal from the Prerogative Court.

BRIEF IN SUPPORT OF THE DECREE OF THE PREROGATIVE COURT, ON BEHALF OF LEGATEES MARANDA HOUGH LEES, BENJAMIN B. EPSTEIN AND BELLE HARVIE.

Statement.

The appellant grounds his appeal upon an allegation of incompetence in the testatrix (Point I of appellant's brief), and upon a charge of undue influence and conspiracy (Point II of appellant's brief) on the part of three of the beneficiaries under the will—Maranda Hough (referred to in the will as Maranda Hough Lees), Benjamin B. Epstein and Belle Harvie. This brief is in support of the decree of the Prerogative Court sustaining the will, and is on behalf of the three legatees mentioned.

Elizabeth L. Lees died in East Orange, Essex County, on September 9, 1922, in her 82nd year. Her will, dated and duly executed March 16, 1921, was admitted to probate on September 28, 1922, by the Surrogate of Essex County, and the three executors appointed in the will, Alfred S. Brown, Robert H. Hough and James Harvie, qualified as such.

On October 11, 1922, Arthur R. Loveridge, a nephew of the testatrix and a beneficiary under the will, appealed, on the grounds of incompetency and undue influence, from the order of the Surrogate admitting the will to probate.

The testatrix was a widow, her husband having died in 1912 (Case, p. 326, l. 4), and childless (Case, p. 41, l. 29; p. 400, l. 30).

With the exception of Harriet Loveridge, a sister, and Maranda Hough Lees, regarded as an adopted daughter (referred to in appellant's brief as Maranda Hough), and Benjamin B. Epstein, long identified with the Lees Manufacturing Co., the personal legatees are nephews and nieces or further removed.

Maranda Hough Lees came into the family of the testatrix in 1910 as a nurse for the husband of the testatrix (Case, p. 325, l. 39), under the name of Maranda Hough. In April, 1912, Mr. Lees died and Miss Hough remained with Mrs. Lees until some time in the fall when she took other work and was away for about a year and a half (Case, p. 328, l. 6).

About the first of 1914 Miss Hough returned at the request of the testatrix, and remained with her until her death (Case, p. 328, l. 22). That the relationship between the testatrix and Miss Hough was close and affectionate appears in numerous letters written by the testatrix to

relatives and friends, examples of which are in evidence. This affection was no late, sudden or transitory impulse, but began during the illness of her husband and was shared by him. In a letter to Mr. Brown (Case, p. 279, l. 10) the testatrix writes that her husband had said to her: "Be good and generous to dear Miss Hough, for she deserves and needs all that you may be able to do for her." In another letter to Mr. Brown (Case, p. 278, l. 14) the testatrix writes: "Miss Hough was a ministering angel to dear Mr. Lees, and he fully realized that blessing as clearly as I do her ability and perfect devotion to me. I do not know what I should do or be without it, save that I should be full of misery." And again (Case, p. 291, l. 30): "What she (Miss Hough) has ever been to me since Mr. Lees' death words can never fully tell." In a letter to Mrs. Harvie (Case, p. 184, l. 21) she writes: "Miss Hough never wavers in the attention I so frequently need." And again to Mrs. Harvie (Case, p. 195, l. 33): "She (Miss Hough) deserved indeed to be considered as my daughter for no daughter could have done more and few would have done so much * * * I fully appreciate it and shall try to reward her for it." Mr. Epstein testified (Case, p. 221, l. 8) that the testatrix had frequently said to him that, "she did not know what she would do without Maranda," and that "she wanted to do something that would assure Maranda being with her the rest of her life" (Case, p. 229, l. 32). Mrs. Harvie testified (Case, p. 153, l. 22) that the testatrix "relied on Miss Hough for her dressmaking, housekeeping, and everything in her life." Miss Loveridge testified (Case, p. 60, l. 33) that she understood that Miss Hough not only had the care of Mrs. Lees but was also "doing all the housework."

In the latter part of 1920 the testatrix learned that one of her relatives (Case, p. 155, l. 14, *et seq.;* p. 306, l. 10, *et seq.*) had suggested the appointment of a guardian and she went to her counsel, Mr. Alfred S. Brown, one of the executors, to ascertain if Miss Hough could be appointed (Case, p. 360, l. 5; p. 411, l. 35, *et seq.*). Upon learning that she could not appoint a guardian for herself the testatrix suggested the adoption of Miss Hough and Mr. Brown informed her that for this she must go to a New Jersey lawyer (Case, p. 360, l. 18). Thereupon Mrs. Lees asked Reverend W. R. Hunt of Orange to recommend a suitable lawyer and he suggested Judge Thomas A. Davis (Case, p. 360, l. 30).

How strongly the testatrix felt about the matter, and that she gave it considerable thought, is shown by the remark in her letter of December 3, 1920 (Case, p. 297, l. 17) to Mr. Brown, that "not a day has passed since I had the happiness of being face to face with you, but what I have felt more and more strongly the wisdom of carrying out the step I spoke of to you, viz: having dear Miss Hough legally adopted as my daughter."

The outcome of the consultation with Judge Davis was an agreement of adoption entered into by the testatrix and Miss Hough (Case, p. 131, l. 30, *et seq.*), accompanied by a formal change of name, from Maranda Hough to Maranda Hough Lees, in the Circuit Court before Judge Nelson Y. Dungan (Case, p. 140, l. 20, *et seq.*).

Thereafter Maranda Hough was known as Maranda Hough Lees, the adopted daughter of the testatrix; she is referred to in the will as "my adopted daughter" (Case, p. 445, l. 20),

and was referred to in the instructions sent Mr. Brown as "now my adopted daughter" (Case, p. 270, l. 6). To Mrs. Harvie Mrs. Lees wrote (Case, p. 197, l. 6): First of all I will ask you and yours to call Miss Hough Maranda Lees. She has earned it fully in more ways than one and I feel sure her loving devotion will never lessen but continue to meet my many needs as long as we live together."

That the agreement of adoption and the change of name were at the request, and upon the initiative of the testatrix appears not only from the testimony of Mr. Brown, but also from the testimony of Judge Davis (Case, p. 131, l. 35; p. 134, l. 27; p. 136, l. 21), Edward L. Davis (Case, p. 142, l. 20, *et seq.*) and Miss Lees (Case, p. 364, l. 33).

Benjamin B. Epstein is the manager of the New York office of the Lees Manufacturing Co., in which concern the husband of the testatrix was largely interested during his lifetime.

Belle Harvie is a niece of the testatrix.

Subsequent to the probate of Mrs. Lees' will its validity was attacked in the Essex County Orphans' Court by Arthur R. Loveridge, a nephew of the testatrix who was given a bequest of but $5.

The probate of the will was sustained, and a further appeal was prosecuted by Loveridge in the Prerogative Court, where the decree of the Orphans' Court was sustained.

New Jersey State Library

POINT I.

The Testatrix Had Testamentary Capacity.

There is a presumption of sanity, and the burden of establishing the incompetence of the testatrix is upon the contestant. This burden has not been met. In the meagre testimony offered by the appellant there is not a scintilla of evidence which rises to the dignity of proof that the testatrix was of unsound mind when she executed the will in question, or that any mental infirmity entered into the will or influenced its execution.

On the contrary, that the testatrix was mentally active, keen and alert to the very day of her death, eighteen months after the execution of the will, is abundantly proved by the unimpeachable evidence found in the numerous personal letters written by her to various friends and relatives over a considerable period of years, by the consistent character of the seven wills drafted by her counsel, Mr. Brown, in the years 1915-1921, upon instructions from her, and by the testimony of those who knew her most intimately.

For the documentary evidence the Court is referred to the letters and wills themselves.

The question of competency need not rest upon the testimony of those interested in sustaining the will. There is absolute unanimity in the opinions of the witnesses to the will, and of the several Judges and attorneys who had occasion to question the testatrix upon various matters, that the testatrix was rational and mentally keen and intelligent at the time of the execution of the will.

(a) Of the three witnesses one was a law clerk (Case, p. 20, l. 40) and one was an attorney

(Case, p. 27, l. 8)—both of them undoubtedly knew that as incompetency would invalidate the will an obligation rested upon them to refuse to act as witnesses if they thought the testatrix incompetent. The third witness had transacted business with Mrs. Lees for nine or ten years (Case, p. 35, l. 40) and was of the opinion that, at the time the will was executed, Mrs. Lees was "very much" of a sound mind (Case, p. 33, l. 14; p. 38, l. 32).

(b) It is inconceivable that Alfred S. Brown, a member of the Bar of New York for forty-seven years, who had been the personal counsel of the testatrix and of her husband for about twenty-five years (Case, p. 265, l. 28) would have permitted the execution of the will, or would have consented to act as executor, had he considered the testatrix incompetent. His testimony that the testatrix was rational and intelligent when she executed the will is direct and unqualified (Case, p. 303, l. 27, *et seq.*).

(c) James O. Clark, of both the New Jersey and the New York Bar, had known the testatrix for about sixty years (Case, p. 96, l. 35), and had seen her only a few months before her death (Case, p. 97, l. 5). He would very naturally have noted any evidences of a failing mind, but discerned none. He considered the testatrix rational (Case, p. 98, l. 37).

(d) Judge Thomas A. Davis never would have consented to be a party to a proceeding for adoption by one mentally unbalanced, especially where the arrangement was intended to carry a right of inheritance, as was the case as the agreement of adoption was first drafted by him (Case, p. 399, l. 24). At the time Mrs. Lees consulted Judge Davis, just a few months before the mak-

ing of the will, he regarded her as "perfectly rational" (Case, p. 131, l. 11).

(e) Edward L. Davis, of Howe & Davis, conducted the proceeding for the change of Miss Hough's name and questioned Mrs. Lees when she was on the witness stand before Judge Dungan (Case, p. 141, l. 40). From his observation of Mrs. Lees he formed the opinion that "she was rational," and "very bright and keen" (Case, p. 143, ll. 16 and 10).

(f) Judge Nelson Y. Dungan observed the testatrix on the stand when she was questioned relative to the change of Miss Hough's name. Notwithstanding the implications arising from the nature of this appeal no one has been so rash as to openly assert that Judge Dungan allowed the proceedings for the change of name and its necessary consequences to go through without protest or objection although cognizant that the party most vitally affected was of unsound mind (Case, p. 441, l. 25, *et seq.*). Mr. Davis testified (Case, p. 146, l. 36) that upon her examination before Judge Dungan the testatrix "expressed herself with such clearness and meaning that the Judge smiled."

Had the testatrix been so mentally deficient as to be incompetent to make a will she could not have successfully run the gauntlet of scrutiny by these six experienced lawyers acting independently, upon different occasions, and with different purposes.

Dr. Wakeley, Mrs. Lees' physician over a period of several years, within which time the will was executed, testified (Case, p. 344, l. 32) that he considered the testatrix to be "rational," and that he never, at any time, observed anything irrational in her mental condition (Case, p. 345, l. 27).

There is also the significant testimony of Mrs. Harvie that Miss Loveridge, a sister who was estranged from the testatrix (Case, p. 78, l. 21, *et seq.*), when the subject of a guardian for Mrs. Lees was suggested replied: "Belle, there is no jury would ever be able to convince the Judge that she was incapable of taking care of her own affairs" (Case, p. 155, l. 24).

Mr. Epstein, who is manager of the New York office of the Lees Mfg. Co. (Case, p. 212, l. 36) in which Mrs. Lees was a large stockholder (Case, p. 214, l. 7, *et seq.;* p. 256, l. 30), frequently discussed business matters with her (Case, p. 215, l. 41, *et seq.*). He testified that he "never had but one opinion" concerning the testatrix and that was "that she was rational" (Case, p. 224, l. 32).

Mrs. James, a nurse who was in attendance upon Mrs. Lees and who was produced on behalf of the appellant, in answer to the question of the Court: "Can you specify any particular thing or number of things that she said or did during the whole time that you were there that indicated to your mind that she was irrational" replied: "No, I could not, I do not remember" (Case, p. 119, l. 36).

The attention of the Court is directed to the fact that of the witnesses referred to four observed Mrs. Lees at the time the will was executed, five observed her both before and after the will was executed, and three observed her just a few weeks before the will was executed and under circumstances which must have caused them to give particular attention to her personalty. Their concurring testimony that the testatrix was "rational," "alert," "intelligent," and "bright" is extremely strong evidence of the

testamentary capacity of the testatrix at the time the will was executed. So far as appears everybody who came in contact with the testatrix dealt with her without hesitation, and as if she were entirely competent to manage her own affairs.

The attention of the Court is also directed to the fact that the opinions of many of the witnesses for the proponents of the will are based upon observations of fact not in any way touching the making and execution of the will, but bearing directly upon the question as to the competence of the testatrix.

Attention is further directed to the following incidents as evidence of competence:

(a) It is not a trivial matter that Mrs. Lees had so lively a sense of humor that, when worried, she played on her victrola the record of "Pack up your trouble in your old kit bag and Smile, Smile, Smile" (Case, p. 256, l. 8). Humor and mental competence go hand in hand.

(b) That Mrs. Lees, having possession and control of her property, deliberately chose to deny herself things she desired in order that she might not only live within her income generally, but might live within her income from month to month (Case, p. 401, l. 6, *et seq.*) is evidence of competence.

(c) That Mrs. Lees was able, unaided, to regularly and correctly prepare the envelopes in which coupons are placed for collection, such preparation requiring a detailed knowledge of the character of the security (Case, p. 338, l. 26, *et seq.;* p. 381, l. 14, *et seq.*), is evidence of competence.

(d) That Mrs. Lees consulted and followed the advice of a reputable bond house in making her investments (Case, p. 400, l. 34, *et seq.*) is evidence of competence.

(e) That Mrs. Lees kept such track of her income and her expenditures that she realized when income tended to fall below expenditures and understood the causes thereof and the steps necessary to be taken to avoid that result (Case, p. 254, l. 34, *et seq.;* p. 256, l. 25) is evidence of competence.

It seems almost a work of supererogation to argue the testamentary capacity of the testatrix after reading her letters, her several wills, and her instructions to her counsel pertaining to her will, and comparing the capacity therein abundantly proved with the moderate capacity required in this State.

In *Clifton* v. *Clifton,* 47 N. J. Eq. 227-241, the Ordinary states that "it has repeatedly been held by the Courts of this State, that the memory of a testator may be imperfect, also greatly impaired by age or disease; that he may not be able to recollect the names, the persons, or the families of those with whom he has been intimately acquainted, or that he may at times do childish things, speak disjointedly, flying abruptly from one subject to another, or ask idle questions, and repeat those which have before been asked and answered, and yet may possess capacity to make a will."

In *Lee's case,* 46 N. J. Eq. 193-201, the Ordinary says that "it may be stated as the established rule in this State, that the capacity requisite for a testamentary act is that the testator can comprehend the property he is about to

dispose of, the material or other objects of his bounty, the meaning of the business in which he is engaged, the relation of each of these factors to the others, and the distribution that is made by the will."

In the leading case of *Waddington* v. *Buzby,* 45 N. J. Eq. 173-174, the Court of Errors and Appeals ordered the will admitted to probate where, upon the date the will was executed in 1882 the testatrix "Ruth W. Buzby, was about eighty-three years old, and she died in 1886. She was feeble and forgetful to the extent that persons ordinarily are at such an advanced age, and she was nearly blind, so that she could not read, or did so with difficulty. But she could at that time go about the house, knew the members of the family, talked about her business affairs, remembered the amount of her property and where it was invested, objected to the reduction of the percentage of interest, took a part in the routine of the house and the payment of bills, and conversed with visitors whom she knew. She had been an intelligent woman, but not of a very strong will, rather reticent than talkative, and became more silent and absent-minded as she grew old. She was injured by a fall, and failed in physical and mental strength from that time gradually until her death. The opinions of witnesses as to her mental capacity are of no weight, unless sustained by facts on which such opinions are founded; and those who saw her seldom, or but once, and say she was silent and appeared absent-minded, gave little aid in determining this question."

And if a citation of a more recent authority is desired it will be found in the opinion of this Court in *Ward* v. *Harrison, Executor,* III Adv.

Reports 470, issue of February 28, 1925, affirming the decree of the Prerogative Court, which affirmed the decree of the Essex County Orphans' Court, admitting to probate the will of Eliza C. Bishop.

Indeed, many of the attending circumstances of that case are so similar to the circumstances of this case that the opinion of this Court might be taken almost bodily as the brief of the proponents of Mrs. Lees' will upon this appeal.

POINT II.

The Making of the Will Was Not Procured by Undue Influence.

An allegation of undue influence implies competence to make a will because a mind sufficiently strong to require for its control such influence as is deemed undue is sufficiently strong to make a will. In *Wescott* v. *Sheppard,* 51 N. J. Eq. 315-320, the Court of Errors and Appeals held that "the influence which is said by the law to be undue, and therefore to vitiate a Will or a document executed under it, must amount to moral or physical coercion which destroys free agency and constrains its subject to do that which but for it he would not have done." And in *Johnson's case,* 80 N. J. Eq. 525-538, the Court of Errors and Appeals adopted the language of the Ordinary in *Schuchhardt* v. *Schuchhardt,* 62 N. J. Eq. 710-713, holding that "it must be made to appear, either expressly or by justifiable and fair inference from circumstances proved, that such (undue) influence was, in fact, exerted as to dominate and control the will of the testator and coerce him to make a testamentary disposition of his property which he would not otherwise

have made." A comparison of the provisions of the several wills from 1913 to 1921, and the cogent reasons given her counsel by the testatrix for the changes made, will effectually dispose of the allegation of undue influence.

Primarily the burden is upon the contestant to prove undue influence. The proof must be clear and convincing, and must be such as is inconsistent with a contrary hypothesis. "There is no *prima facie* presumption of undue influence merely because the beneficiary stood in a confidential attitude toward the testatrix." *Spark's case,* 63 N. J. Eq. 242-248. "The inference of dominating influence will not be drawn alone from proof of opportunity to exert it, nor will influence be deemed to be dominating which may reasonably be inferred to have been produced by kind attentions and services rendered by a beneficiary." *In re Anastasia Davis,* 73 N. J. Eq. 617.

"Influence acquired over a testator by kind offices, unconnected with fraud or contrivance, is lawful and proper." *In the Matter of the Estate of Patrick Mannion, Dec'd,* 86 N. J. Eq. 232-239 (E. & A.).

There was nothing in the quality or condition of the testatrix's mind, as disclosed by her acts, by her correspondence, or by the testimony, to indicate a susceptibility to undue influence. When Mrs. James, a witness for the appellant, was asked by the Court to point out instances to sustain the charge of undue influence she replied (Case, p. 116, l. 32; p. 117, l. 4; p. 120, l. 8, *et seq.*): "I cannot remember any little instances"; and to the further inquiry: "cannot you recall any single instance," she replied: "I cannot."

When Mrs. Harvie was asked (Case, p. 153, l. 15): "in what way," Miss Lees was taking advantage of the testatrix she replied: "I do not recall any special way."

There was nothing in the circumstances attending the preparation and execution of the will to show either power or disposition in anyone to bring an undue influence to bear upon the mind of the testatrix.

There was no lack of opportunity for independent advice, and the will was drawn neither in secrecy nor under the direction of a beneficiary. On the contrary the testatrix, in a letter to Mr. Brown (Case, p. 266, l. 38) stated the reason to be because "circumstances have arisen involving Mr. Philip Haffner which make it imperative for me to change my Will so decidedly that I have decided to make a new one." This was followed by further correspondence and finally by specific and detailed instructions concerning the changes to be made (Case, p. 269, l. 10, *et seq.*). One reading these letters and directions cannot fail to be impressed with the grasp the testatrix had upon her affairs, her clear recollection of past events, her decided purpose, and her understanding of the relationship between persons and events.

POINT III.

The Will Shows a Most Unusual Thoughtfulness Towards Relatives.

The character of the will is not unreasonable, unjust, capricious or unnatural, having in view the relations between the testatrix and the several beneficiaries. Quite the contrary. The successive wills show a clear and rational purpose

running through them all, and the various changes made are equally clear, rational and purposeful. There are twenty-two specific bequests, of which six contain alternatives. With the exception of two children of a deceased brother, who are mentioned neither in the correspondence of the testatrix nor by the witnesses and who apparently did not come into Mrs. Lees' life, all of the heirs and next of kin living at the time the will was executed are mentioned, and the correspondence clearly discloses the reasons for the differences in the sums bequeathed.

POINT IV.

Numerous Allegations in the Appellant's Brief Are Not Supported by the Testimony.

The appellant's brief contains many misstatements of the testimony. This is evident from a comparison of the brief with the testimony itself, and counsel, therefore, will merely refer a few of the examples affecting Miss Lees.

At page 2, line 25, and emphasized on page 31, line 1, *et seq.*, it is flatly stated that Mrs. Lees "suffered from * * * inability to walk except by dragging or shuffling her feet along the floor," and the inference evidently intended to be drawn is that this was because "the health of Mrs. Lees became seriously undermined," and that her condition was "alarming." Mrs. Harvie testified that Mrs. Lees "one time slipped on the stair and hurt one foot quite badly and was lame for a long time. * * * She strained the tendon in her heel" (Case, p. 431, l. 24). Miss Lees testified that "while I was away (referring to her absence in 1912 and 1913), her (Mrs. Lees) ankle was hurt. * * * When I came back

she walked with a cane and she had been walking with crutches, so she never seemed to lift that foot afterwards, it seemed to drag, it gave her a kind of heavy walk. * * * She was a heavy woman'' (Case, p. 335, l. 15). Mr. Epstein testified that ''She (Mrs. Lees) had a slight sort of limp. I would not call it a limp, but a little difficulty'' (Case, p. 224, l. 20, *et seq.*). Judge Davis testified: ''I do not recall her (Mrs. Lees) walking with any difficulty into my office or from my office * * * I think she walked in and walked out about as a person of that age would'' (Case, p. 135, l. 4). The accident did not prevent Mrs. Lees from going downtown from the Beresford frequently, and, less frequently, coming in to New York from Orange (Case, p. 219, l. 17, *et seq.*). As late as 1920 she went downtown alone (Case, p. 219, l. 33). She also went to church and made calls long after her will was executed, and practically up to the date of her death (Case, p. 337, l. 18; p. 122, l. 10, *et seq.*). Of course, the trouble with the ankle had nothing to do with Mrs. Lees' mentality and attention is called to the matter only because of the unconcealed intent on the part of the appellant to have the trouble attributed to a general physical and mental breakdown.

At page 3, line 33, of the appellant's brief it is stated that Miss Lees ''let slip the fact, to our total surprise, that the Haffner branch of the family had contemplated bringing proceedings for the appointment of a guardian.'' No reference to the transcript is given and no such testimony will be found. Nor is there any testimony to support the assertion, at page 5, line 21, that the mental incompetence of Mrs. Lees was ''the conclusion of everyone vitally interested in the estate.''

On page 4, line 16, the statement is made that "Maranda Hough started building this queer house with a stockade around it." There is no testimony that the house was in anywise "queer," and the so-called "stockade" was merely a "substantial fence" (Case, p. 104, l. 8) "surrounding or protecting the chicken yard rather than the whole premises" (Case, p. 104, l. 28).

At page 4, line 21, the statement is made that Miss Hough made "a frantic effort to have herself adopted"; but all the testimony is that this suggestion came from and was urged by Mrs. Lees. Miss Hough testified to that effect most positively (Case, p. 358, l. 21), and she is corroborated by Judge Davis (Case, p. 131, l. 34).

At page 8, line 30, the statement is attributed to Miss Loveridge "that on one occasion Mrs. Lees called her 'Bessie,' and although Maranda put her hand on her *mouth* and said 'this is Hattie,' mother, Mrs. Lees continued to call her Bessie." The testimony was: "Maranda put her hand on *me* and said 'this is Hattie' " (Case, p. 61, l. 14). Miss Lees testified: "to my mind she (Mrs. Lees) was more confused in the name than in the person. I was sure she knew who her sister was" (Case, p. 379, l. 28). As a matter of fact testimony concerning this occurrence was wholly irrelevant as it happened on August 8, 1922, nearly 17 months after the execution of the will in question, and only about a month before the death of the testatrix.

At page 40, line 14, the statement is made that "Mrs. Harvie testified that there was $110,000 in securities when she last saw the list, and about $79,000 at the time of Mrs. Lees' death." Mrs.

Harvie testified to no such thing. She testified that she had copied a list which was kept in Mrs. Lees' safe deposit box (Case, p. 171, l. 4, *et seq.;* p. 202, l. 40, *et seq.*), but that she "never examined the securities that were in the box" (Case, p. 427, ll. 21 and 33), and that the list might have been a list of all the securities that Mrs. Lees ever owned (Case, p. 436, l. 5, *et seq.*). It was Mr. Brown who testified that the value of the securities as listed by the tax transfer representatives was about $79,000 (Case, p. 302, l. 25). The purpose of the appellant in introducing this irrelevant testimony, in thus unfairly commenting upon it, and in suggesting possible discrepancies in the securities, is evidently to raise a suspicion as to Miss Lees' honesty, and is resented.

At page 36, line 38, Miss Lees is represented as testifying that "she had authority to cut out parts of letters," and at page 42, line 36, in his argument, counsel asserts that Miss Lees "had authority to cut out parts" of letters. There is no ground for any such assertion. What Miss Lees said was this: "so far as I know I never did (cut parts out of letters) and *if* I did I had authority to do it" (Case, p. 385, l. 15, *et seq.*). The charge of counsel is apparently based on a single letter, written a year after the execution of the will in question, from which a portion had been cut, and to which Mrs. Lees had added this post-script: "I read my letter to dear Maranda and the part cut out, and might have caused a serious misunderstanding" (Case, p. 427, l. 13). It nowhere appears that Mrs. Lees did not, herself, do the cutting; but if Miss Lees did the cutting it affords no ground for the innuendo that she was in the habit, generally, of cutting out portions of Mrs. Lees' letters when she deemed

it to be to her own advantage so to do. Mrs. Harvie testified that the letter in question was the only letter received from Mrs. Lees with parts cut out (Case, p. 426, l. 8). The testimony on the subject attributed to Alice H. Loveridge (p. 17 of appellant's brief) was hearsay, and is contradicted by the above testimony of Mrs. Harvie herself.

At page 52, line 39, the statement is made that "Maranda Hough was not an inexperienced person in estate matters, the letters of Mrs. Lees state that Maranda Hough had gotten a great deal of money from a certain Miss Taggart, and that there had been some litigation concerning that estate."

The innuendo is clear. And so is the actual testimony, as the following references show.

As to her investment in the house Miss Lees said (Case, p. 342, l. 23): "I put my money in it (the house). *It was all that I had* and the house had to be mine."

As to the amount of the investment, Miss Lees said (Case, p. 330, l. 10) that it amounted "altogether, probably $12,000."

As to the source of this investment Mrs. Lees wrote (Case, p. 195, l. 30): "Miss Taggart left her considerable money and the sale of 102 N. 22 St. gave her still more and it has all gone to meet expenses here."

Mrs. Lees wrote in a previous letter (Case, p. 193, l. 6) that "a few days ago Miss Hough succeeded in selling this house (the 22nd street house) for $8,000 which I feel to be a fortunate transaction. She will probably put the whole of that money in the new home."

By deducting $8,000 from $12,000 we find that the amount received from Miss Taggart was probably not more than $4,000, and may have been less.

These criticisms might be continued further, but sufficient examples have been cited to demonstrate how far the testimony is from supporting the allegations of appellant's counsel.

The larger part of appellant's "argument" is given over to "opinion" evidence, but, as was pointed out in *Stackhouse* v. *Horton,* 15 N. J. Eq. 202-208, "The abstract opinion of any witness, medical or any other profession, is not of any importance. No judicial tribunal would be justified in deciding against the capacity of a testator upon the mere opinions of witnesses, however numerous or respectable." An "opinion" that Mrs. Lees "was unable to conduct a conversation intelligently," or that "she was not equal to conversation," or that she could not "carry on any intelligent conversation," or that "she could not carry on a conversation," or that her "conduct was not rational," without more, is of no value, and from such testimony no judicial opinion can be drawn.

Arthur Loveridge testified that Mrs. Lees was "unable to conduct a conversation with me intelligently" (Case, p. 44, l. 16); but Arthur Loveridge had been *persona non grata* for many years and his testimony amounts only to this—he says: "I endeavored to converse with her on the then topics of the day, *but I found her entirely unresponsive*" (Case, p. 45, l. 11).

Harriet Loveridge, also *persona non grata* for reasons appearing in the testimony, says "she (Mrs. Lees) was not what I would say equal to a

conversation, which implies talking on both sides'' (Case, p. 55, l. 27). And then she naively adds: ''She was conscious of questions that were put to her and her reply, but there was no enlargement upon the conversation nor any offering on her part of any other subjects'' (Case, p. 55, l. 30). And this disinclination to ''enlarge upon the conversation'' is offered as evidence of the mental incompetence of a woman who had written of the witness: ''*I will not* accept any invitation she may extend to her home, for I am far happier not to go there. Her attitude toward me has been disgraceful'' (Case, p. 200, l. 8).

Apparently those only found Mrs. Lees incapable of conversation with whom Mrs. Lees did not care to converse; but since when was reticence the hall-mark of imbecility?

The main reliance of the appellant, as indicated in the argument of counsel, appears to be upon Mrs. Lees' unwillingness to converse, intelligently or otherwise, with those whom she strongly disliked, or in whom she took no interest, and there is little reference to her letters, which furnish the strongest corroboration of the testimony of those who found her to be ''intelligent,'' ''alert,'' ''bright,'' ''responsive,'' and ''rational.'' These letters are declarations of the testatrix and, as such, are entitled to the greatest weight. As stated in *Throckmorton* v. *Holt,* 180 U. S. 552-574: ''It is quite apparent, therefore, that declarations of the deceased are properly received upon the question of his state of mind, whether mentally strong and capable or weak and incapable, and that from all the testimony, including his declarations, his mental capacity can probably be determined with considerable accuracy.''

Appellant, at page 51, line 21, of his brief, "charges" that "letters and memoranda were deliberately conceived and gotten out for the sole purpose of the contest they knew was coming." This unfounded "charge" is sufficiently disproved by reference to the letters themselves. No one, reading the letters written in 1917, when Mrs. Lees was admittedly competent, and comparing them with letters written in the succeeding years, can doubt but that all the letters were written by the same person and were expressive of her personal sentiments.

The argument upon the issue of undue influence is equally unsatisfactory and inconclusive. Reliance seems to be placed upon the allegation (p. 53, l. 15, of brief) that "the relations between Mrs. Lees and Maranda Hough, Belle Harvie and Benjamin Epstein were confidential." But what of it? Mrs. Lees had a right to have confidential relations with her intimates, and there is no evidence that this confidence was abused. In the late case of *Brotherhood of Ry. Trainmen* v. *Van Etten,* 90 N. J. Eq. 612, Vice-Chancellor Lewis held that no presumption of undue influence arises from a confidential relationship in the case of a testamentary gift, and his opinion was affirmed by the Court of Errors and Appeals, *per curiam.* There is, therefore, no burden upon the proponents of the will of "neutralizing, by believable evidence, the presumption of undue influence which arises in this case." The only other ground of presumption urged seems to be that "from their own evidence (referring to Mrs. Harvie, Miss Lees and Mr. Epstein) they were treating the estate as their own long prior to the death of Mrs. Lees, as is evident from the statement of Mrs. Harvie that

Benjamin Epstein told her that Maranda Hough offered him 100 shares of stock of the Lees Manufacturing Company that was to go to her prior to the death of Mrs. Lees'' (p. 53, l. 33, of appellant's brief). And this far-fetched argument is in the face of the positive denial of Mr. Epstein that anyone had ever offered him stock owned by Mrs. Lees or by the estate of Mr. Lees (Case, p. 254, l. 36, *et seq.*).

The two rules laid down by Chief Justice Washington in *Stevens* v. *VanCleve,* 23 Fed. Cas. 35-38 Fed. Cas. No. 13412, are still sound, and are applicable to this case.

''1. The only point of time to be looked at by the jury, at which the capacity of the testator is to be tested, is that when the Will is executed. He may have been incapable to make a Will at any time before or after that period; and the law permits evidence of such prior and subsequent incapacity to be given. But unless it bears upon that period, and is of such a nature as to show incompetency when the Will was executed, it amounts to nothing.''

Tested by this rule every vestige of the appellant's evidence is swept away.

''2. The evidence of the attesting witnesses; and next to them, of those who were present at the execution—all other things being equal—is most to be relied on.''

Tested by this rule we have the competence of the testatrix supported by four witnesses, of whom two were lawyers who understood and appreciated the legal requirements, and with two of whom the testatrix had business relations both long before and after the execution of the will.

Perhaps it would be ungracious to leave appellant's brief without a word of approval or commendation; attention is directed, therefore, to the statement on p. 51, l. 10, of that brief that "there is not a shred of testimony of any value in this case that anyone around the time of drawing of the Will discussed with her (Mrs. Lees) her property, her relatives or to whom or how it was to go." Quite true. And in view of Mrs. Lees' specific instructions concerning the changes to be made in her will (Case, pp. 268, 269, 270) the obvious deduction seems to be that the testatrix was quite competent to determine the distribution of her property unaided, and that such distribution was not procured by the undue influence of the beneficiaries, or any of them.

In the opinion of the Orphans' Court it is said, as to testamentary capacity (Case, p. 13, l. 31): "Measured by the standard laid down in this case (*In re Shimer's Will,* 103 Atl. 383) there can be no doubt that Mrs. Lees was possessed of testamentary capacity." And as to undue influence (Case, p. 19, l. 24): "In the case under consideration we have that general denial (of undue influence) and the denial is entirely credible. The testimony does not establish a single incident where Miss Lees attempted to impose her Will upon the testatrix in the management of her business affairs."

The Prerogative Court affirmed the decree of the Orphans' Court on the opinion filed therein (Case, p. 6, *et seq.*).

The appeal should be dismissed, and the order of the Surrogate, the decree of the Orphans' Court and the decree of the Prerogative Court, admitting the will to probate, should be affirmed.

Respectfully submitted,

E. A. MERRILL,
Proctor of Maranda Hough Lees, Benjamin B. Epstein and Belle Harvie.

41 MAR.T.1925

Filed after the Oral Argument by leave of Court.

NEW JERSEY COURT OF ERRORS AND APPEALS.

- - - - - - - - - - - - - - - - - -

Between

ARTHUR R. LOVERIDGE,
Appellant,

and

ALFRED S. BROWN, ROBERT H. HOUGH and JAMES HARVIE, as Executors of a Paper Writing purporting to be the Last Will and Testament of Elizabeth Loveridge Lees, deceased,
Respondents.

- - - - - - - - - - - - - - - - - -

COPY OF LETTER ADDRESSED TO JUDGE FLANNAGAN.

- - - - - - - - - - - - - - - - - -

Under the Will Miss Hough received the following:

Cash	$ 6,000.00
100 shares Lees Mfg. Co. stock, valued at	16,000.00
Interest in Rainbow Cottage	21,000.00
Furniture valued at	1,650.00
Automobile, value not stated	
And in addition she should be charged with the securities as above stated	16,000.00
Total -	$60,650.00

She has received, therefore, approximately Thirty per cent of the Estate.

Very respectfully yours,

NK/B

(Sgd.) Nathaniel Kent."

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between :

ARTHUR R. LOVERIDGE, :
Appellant,

and :

ALFRED S. BROWN, ROBERT H. HOUGH and JAMES HARVIE, as Executors of a Paper Writing purporting to be the Last Will and Testament of Elizabeth Loveridge Lees, deceased, :
Respondents. :

Copy of letter addressed to Judge Flannagan.

-

"Sept. 5th, 1923.

Re Elizabeth L. Lees, deceased.

Hon. Dallas Flannagan,
Court House,
Newark, N. J.

Dear Judge:-

The list of the assets of the above estate submitted to me by Mr. Brown and a resume of the testimony show the following:

Securities, furniture and cash	$79,397.29
549 shares of the Lees Mfg. Co.(Estimated value @ $160 per share)	87,840.00
Amount advanced by Mrs. Lees for the construction of the new house, including a $3,000.00 mortgage waived on the old house, at least	21,000.00
Discrepancy between the list of the assets seen by Mrs.Harvie and the list submitted	16,000.00
Estimated total estate	$204,237.29.

In reference to the last item of $16,000.00, Your Honor will recollect Mrs. Harvie testified that the last time she was to the vault there was a list in the box showing securities of $110,000.00. Miss Hough testified that she sold securities aggregating $15,000.00 and deposited the proceeds to her own account. Deducting the $15,000.00 from $110,000.00, there should have been at the time of her death securities aggregating $95,000.00. Instead we have securities for $79,000.00, making a shortage of $16,000.00 unaccounted for. Since Miss Hough had full and complete charge of the situation, without any explanation of the whereabouts of the said securities, she must be held accountable for them. She has given no explanation of any kind.

Edward S. Atwater, Jr.
Counsellor at Law
208 Broad Street
Elizabeth, N.J.

Tel. 714 J.

Elizabeth, N. J., March 24, 1925.

BETWEEN
ARTHUR R. LOVERIDGE, :
Appellant

-vs- :

Case No. 41
ALFRED S. BROWN, et al. March Term 1925
Executors.
Respondent. :

Court of Errors and Appeals,
Trenton, N. J.

Gentlemen:

In accordance with your request, at the close of the Argument in the above case, I am sending you copy of the letter to Hon. Dallas J. Flannagan, Judge of the Essex County Orphans' Court, dated September 5th, 1923, and the schedules and computations prepared by us, which accompanied this letter.

I would call your attention to the fact that page 327 of the testimony (referred to in said letter) is page 315 of the State of Case, and pages 250, 251 &c. of the testimony, are pages 225, 226 and 227 of the State of Case.

Respectfully,

(Signed) Edward S. Atwater, Jr.

Edward S. Atwater, Jr.
Counsellor at Law
208 Broad Street
Elizabeth, N.J.

Tel. 714 J.

Elizabeth, N. J., September 5, 1923.

Hon. Dallas J. Flannagan,
Judge Essex County Court of Common Pleas,
Newark, N. J.

Dear Sir:

In re Will of Elizabeth L. Lees.

In accordance with your Honor's instructions, I have, as Proctor for the Executors in the above matter, attempted to make a calculation showing approximately the proportionate share of the Estate of Elizabeth L. Lees, passing to Miranda Hough Lees, under the will of the said Elizabeth L. Lees.

It is a difficult matter to approximate this share, for the reason that by virtue of the Appeal from Probate taken in this matter, the powers of the Executors were suspended, and they were prevented from making a proper Inventory and Appraisal of the Estate.

I am enclosing a copy of "List of Assets of the Estate of Elizabeth L. Lees, deceased" marked "Schedule A" and hereafter so referred to, which was prepared by the Executors at the time of the opening of the Safe Deposit Box in New York City, in presence of the Tax representative. The values placed on the securities &c. thus listed are taken from the Financial Chronicle as of September 9th, 1922, the date of Mrs. Lees' death.

This list includes the Household furniture and totals $79,397.29, but it does not include the value of the Lees Manufacturing Company stock, of which Mrs. Lees had 549 shares, of the par value of $100 each, all of which was specifically bequeathed to different persons, or any of the other property specifically bequeathed, other than the household furniture. See testimony of Alfred S. Brown, page 327.

In reference to the value of the stock of the Lees Manufacturing Company, your Honor will recall that the testimony of Benjamin Epstein, pages 250, 251 &c. of the testimony, in reference to this value, was unsatisfactory. I have therefore had balance sheets of the Company for the years 1920, 1921, 1922 and 1923 prepared, which I am enclosing, marked "Schedule B", and also dividend record of the Company, for the past ten years, marked "Schedule C".

An analysis of the annexed Balance sheets (Schedule B) of the Lees Manufacturing Company, shows that the Book Value of a share of stock in the Company on-

Jan. 1, 1920	was approximately	$ 145.00
Jan. 1, 1921	" "	112.00
Jan. 1, 1922	" "	118.00
Jan. 1, 1923	" "	122.00

The Dividend record (schedule C) also annexed shows that while a dividend of 4% was paid on the stock during the seven year period, 1914-1920, no dividend has been paid during the last three years 1921-1923.

Edward S. Atwater, Jr.
Counsellor at Law
208 Broad Street
Elizabeth, N.J.

Tel. 714 J.

This would indicate that the fair market value of the stock during the last three years was considerably less than the book value. I believe from these figures, your Honor will agree with me that the stock of this Company is not worth more than $100 per share, and should be valued at this sum for the purpose of making this calculation.

For the purpose of this calculation, I do not consider that any possible interest of Mrs. Lees Estate in the so-called Rainbow Cottage should be included, as this house was built as a joint enterprise by the Testatrix and Miranda Hough Lees, on lands owned by Miranda Hough Lees, and Testatrix was granted a life interest in the same by deed duly recorded. I have, however, included this in Calculation No. 1.

It appears from the testimony of Miranda Hough Lees and letters of Mrs. Lees, offered in evidence, that Mrs. Lees had advanced approximately $16,000 or $18,000 for this joint enterprise. This sum should, of course, be subject to deduction for Mrs. Lees' life interest, but I am not attempting to make any deduction for this life interest in Calculation No. 1, which I am enclosing, and am taking the maximum sum of $18,000 for the purpose of this calculation.

I am also enclosing Calculation No. 2, omitting any reference to any interest in Rainbow Cottage, which in my opinion is the fairest method of calculating Miranda Hough Lees interest under the will of Mrs. Lees.

Under the will Miranda Hough Lees, gets a pecuniary legacy of $6,000 in cash, 100 shares of the Lees Manufacturing Company stock, any claims on account of Rainbow Cottage, certain specific articles, the value of which is unknown, and is omitted from the calculation, personal property valued at $1650., and one third of the residue of the estate.

The pecuniary legacies under the will total $73210. and as Schedule A, amounts to only $79397.29, there will be no residuary estate, when taxes and commissions are paid, and I have therefore left out the question of any share in the residue in making Calculations Nos. 1 and 2.

Trusting that I have made this matter clear to you, I am

Respectfully yours,

(Signed) Edward S. Atwater, Jr.

Schedule "A"

List of Assets

Estate of Elizabeth L. Lees, deceased.

5 - $1000 N.Y., Gas & Electric Light, Heat & Power Co. 1st Mtge 5% Gold Coupon bonds Due 1948	$4,987.50
5 - $1000 The Pacific Coast Co. 1st Mtge. 5% 50 year Gold bonds Due 1946.	4,150.00
5 - $1000 Park & Tilford 6% Gold Sinking Fund debenture bonds Due 1936	3,350.00
5 - $1000 The Pennsylvania Railroad Co. Cons. 4 1/2% Mtge bonds issue of 1915 Due 1960.	5,050.00
5 - $1000 The Long Island Railroad Co. 1st Cons. 5% Gold bonds Due 1931.	5,000.00
5 - $1000 The Brooklyn Union Gas Co. 1st Cons. Mtge 50 year 5% Gold bonds Due 1945.	4,900.00
5 - $1000 New York Telephone Co. 1st General Mtge 4 1/2% Gold Sinking Fund Due 1939.	4,800.00
5 - $1000 Chesapeake & Ohio Railway Co. 1st Cons. Mtge. 5%, 50 year Gold bond due 1939.	5,150.00
5 - $1000 United States Steel Corporation 10-60 year 5% Sinking fund Gold coupon bonds Due 1963.	5,150.00
5 - $1000 The Third Avenue Railroad Co. 1st Mtge 5% 50 year Gold bond Due 1937.	4,850.00
3 - $1000 State of New York Loan for Canal Improvement. Erie Oswego & Champlain exempt from taxation, 4 1/4% Due 1965.	3,120.00
5 - $1000 Southern Railway Co. 1st Cons. Mtge. Gold bond 5% Due July 1, 1994.	5,000.00
5 - $1000 The Pacific Telephone & Telegraph Co. 1st Mtge & Collateral Trust 5% Sinking Fund 30 year Gold bond Due Jan. 2, 1937.	4,900.00
5 - $1000 The Lake Erie & Western Railroad Co. 1st Mtge 50 year 5% Gold bond Due 1937	4,850.00
5 - $1000 Corporate Stock of the City of New York to provide for the supply of water (Issue of May 20th, 1913) Int. 4 1/2%	5,400.00
2 - $1000 State of N.Y. Loan for Highway Improvement Coupon bond 4 1/4% Due 1965	2,080.00
4 - $1000 Corporate Stock of the City of N.Y. for the construction of Rapid Transit Ry.	4,040.00
Household furniture	1,650.00
Cash on deposit Guaranty Trust Co. N.Y.	969.79
	$79,397.29

Schedule "A"

List of Assets

Estate of Elizabeth E. Lees, deceased.

5 - $1000 N.Y., Gas & Electric Light, Heat & Power Co. 1st Mtge 5% Gold Coupon bonds Due 1948	$4,987.50
5 - $1000 The Pacific Coast Co. 1st Mtge. 5% 50 year Gold bonds Due 1946.	4,150.00
5 - $1000 Park & Tilford 6% Gold Sinking Fund debenture bonds Due 1936	3,350.00
5 - $1000 The Pennsylvania Railroad Co. Cons. 4 1/2% Mtge bonds issue of 1915 Due 1960.	5,050.00
5 - $1000 The Long Island Railroad Co. 1st Cons. 5% Gold bonds Due 1931.	5,000.00
5 - $1000 The Brooklyn Union Gas Co. 1st Cons. Mtge 50 year 5% Gold bonds Due 1945.	4,900.00
5 - $1000 New York Telephone Co. 1st General Mtge 4 1/2% Gold Sinking Fund Due 1939.	4,800.00
5 - $1000 Chesapeake & Ohio Railway Co. 1st Cons. Mtge. 5%, 50 year Gold bond due 1939.	5,150.00
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5 - $1000 The Third Avenue Railroad Co. 1st Mtge 5% 50 year Gold bond Due 1937.	4,850.00
3 - $1000 State of New York Loan for Canal Improvement. Erie Oswego & Champlain exempt from taxation, 4 1/4% Due 1965.	3,120.00
5 - $1000 Southern Railway Co. 1st Cons. Mtge. Gold bond 5% Due July 1, 1994.	5,000.00
5 - $1000 The Pacific Telephone & Telegraph Co. 1st Mtge & Collateral Trust 5% Sinking Fund 30 year Gold bond Due Jan. 2, 1937.	4,900.00
5 - $1000 The Lake Erie & Western Railroad Co. 1st Mtge 50 year 5% Gold bond Due 1937	4,850.00
5 - $1000 Corporate Stock of the City of New York to provide for the supply of water (Issue of May 20th, 1913) Int. 4 1/2%	5,400.00
2 - $1000 State of N.Y. Loan for Highway Improvement Coupon bond 4 1/4% Due 1965	2,080.00
4 - $1000 Corporate Stock of the City of N.Y. for the construction of Rapid Transit Ry.	4,040.00
Household furniture	1,650.00
Cash on deposit Guaranty Trust Co. N.Y.	969.79
	$79,397.29

Decedent owned in addition to the above securities

119 1/2 shares of the common capital stock of New Mexico-Colorado Coal & Mining Co. par value $100 which are of no value.

159 shares of the capital stock of Teaneck Park Land & Improvement Co. par value $100 which are of no value.

A note of Edgar H. Loveridge dated May 9th 1912 for $1500 and a note of Teaneck Park Land & Imp. Co., E.H. Loveridge, Asst. Treas. dated May 9th 1912. She left the $300 note and discharged him the payment of the $1500 note by her will.

549 shares of the stock of the Lees Mfg. Co. par value $100. She bequeaths these shares of stock as follows:

J. Augustus Lees	349 Shs.
Maranda Hough	100 "
Benjamin Epstein	100 "

Schedule "B"

THE LEES MANUFACTURING CO.
Manufacturers of
Twines, Wicks, Cords and Yarns
Westport, Conn.

New York Office
320 Broadway

January 1, 1920.

BALANCE SHEET NO. 39

LIABILITIES		X	ASSETS	
Capital Stock	$150,000.00	X	Real Estate	$ 59,059.47
Accounts Payable	26,664.97	X	Stock on Hand	116,810.08
Notes Payable	25,000.00	X	Accts. Receivable	40,760.30
Labor Acct.	1,338.75	X	Cash on Hand	11,354.55
Sinking Fund	5,000.00	X	Other Investments	800.00
Difference between Assets & Liabilities -	68,100.32	X	Insurance	200.00
		X	Mach. & Fixtures	47,119.64
	$ 276,104.04	X		$ 276,104.04

STATE OF NEW YORK
COUNTY OF NEW YORK SS:

I hereby certify that the above is a true copy of the balance sheet of the Lees Manufacturing Co. as of the above date.

(Signed) Benj. B. Epstein

Sworn to before me this
4th day of September 1923.

(Signed) Jos. Frankenthal
Notary Public N. Y. County

(Seal)

Schedule "B"

THE LEES MANUFACTURING CO.
Manufacturers of
Twines, Wicks, Cords and Yarns
Westport, Conn.

New York Office
320 Broadway

January 1, 1921.

BALANCE SHEET NO. 40

LIABILITIES		X	ASSETS	
Capital Stock	$150,000.00	X	Real Estate	$ 59,059.47
Accts Payable	16,814.56	X	Stock on Hand	64,693.62
Notes Payable	18,000.00	X	Accts. Receivable	20,636.58
Labor Acct.	420.50	X	Cash on Hand	4,682.98
Sinking Fund	5,000.00	X	Insurance	200.00
		X	Mach. & Fixtures	59,951.83
Difference between Assets & Liab.		X		
------	18,989.42	X		
		X		
	$ 209,224.48	X		$ 209,224.48

STATE OF NEW YORK
COUNTY OF NEW YORK SS:

I hereby certify that the above is a true copy of the balance sheet of the Lees Manufacturing Co. as of the above date.

(Signed) Benj. B. Epstein

Sworn to before me this
4th day of September 1923.

(Signed) Jos. Frankenthal
Notary Public N. Y. County

(Seal)

Exhibit "B"

Schedule "B"

THE LEES MANUFACTURING CO.
Manufacturers of
Twines, Wicks, Cords and Yarns
320 Broadway

New York
January 1, 1922.

BALANCE SHEET #41

Capital Stock	$150,000.00	*	Real Estate	$ 59,059.47
Accts. Payable	21,554.75	*	Stock on Hand	56,510.75
Notes Payable	13,000.00	*	Acct. Rec.	17,428.29
Labor Acct.	1,034.05	*	Cash on Hand and in Banks	22,195.75
Sinking Fund	5,000.00	*	in Fire Insurance	200.00
Difference between Assets & Liabilities	27,043.64	*	Life Ins.Cash Value	2,706.70
		*	Machinery&Fixtures	59,531.48
	$ 217,632.44	*		$ 217,632.44

STATE OF NEW YORK
COUNTY OF NEW YORK SS:

I hereby certify that the above is a true copy of the balance sheet of the Lees Manufacturing Co. as of the above date.

(Signed) Benj. B. Epstein

Sworn to before me the
4th day of September 1923.

(Signed) Jos. Frankenthal
Notary Public N. Y. County

(Seal)

Schedule "B"

THE LEES MANUFACTURING CO.
Manufacturers of
Twines, Wicks, Cords and Yarns
320 Broadway

New York
January 1, 1923.

BALANCE SHEET #42

LIABILITIES			*	ASSETS	
Capital Stock		$150,000.00	*	Real Estate	$ 59,059.47
Accts. Payable		20,439.66	*	Equity (Cash Investment)	
Notes Payable		10,000.00	*	(Norwalk Plant)	20,000.00
Labor Acct.		1,251.00	*	Stock on Hand	70,562.48
From Machinery Sinking Fund	5,000.		*	Accts. Receivable	29,564.73
Bldg. Depreciation & Replacement Reserve	15,000.		*	Cash on Hand and in banks	2,903.36
Water Power Construction Replacement Reserve	15,000.		*	Fire Insurance	200.00
	35,000.	35,000.00	*	Live Ins.Cash Value	3,140.87
Balance-Difference		33,473.45	*	Machinery&Fixtures	64,733.20
		$250,164.11	*		$250,164.11

STATE OF NEW YORK
COUNTY OF NEW YORK SS:

I hereby certify that the above is a true copy of the balance sheet of the Lees Manufacturing Co. as of the above date.

(Signed) Benj. B. Epstein

Sworn to before me this
4th day of September 1923.

(Signed) Jos. Frankenthal
Notary Public N. Y. County

(Seal)

Schedule "C"

THE LEES MANUFACTURING CO.

Manufacturers of

TWINES

Telephone: Franklin 2620 Factories-Westport, Conn.

320 Broadway

New York,
August 31, 1923.

Mr. Alfred S. Brown
1 Liberty St.
New York City.

Dear Sir:

Per your request, we give you a memo. for the dividends declared by the Lees Manufacturing Co., during the past ten years as follows. All these dividends were paid quarterly at the rate of 1% for three months dividends as follows:

1923 none
1922 none
1921 none
1920 - 4% per annum
1919 - 4% " "
1918 - 4% " "
1917 - 4% " "
1916 - 4% " "
1915 - 4% " "
1914 - 4% " "

Yours truly,

THE LEES MANUFACTURING CO.
(Signed) B. B. Epstein

STATE OF NEW YORK
COUNTY OF NEW YORK SS:

I hereby certify that the above is a true statement of the dividends declared by the Lees Manufacturing Co. from 1924 to 1923.

(Signed) Benj. B. Epstein

Sworn to before me this
4th day September 1923.

(Signed) Jos. Frankenthal
Notary Public N. Y. County

(Seal)

IN RE: ELIZABETH L. LEES.

Calculation No. 1.

Assets as per Schedule "A"		$ 79,397.29
Fair market value of 549 shares of Lees Manufacturing Company stock @ $100		54,900.00
Moneys invested by Mrs. Lees in Rainbow Cottage, for which she was granted a life interest,		18,000.00
Total		$152,297.29
Miranda H. Lees, receives pecuniary legacy of,	$ 6,000.00	
100 shares Lees Manufacturing Company stock valued at,	10,000.00	
Moneys invested in Rainbow Cottage,	18,000.00	
Household furniture,	1,650.00	
	35,650.00	
Total Estate		$152,297.29

Proportionate share of Miranda Hough Lees in Estate based on Calculation No. 1, therefore equals about 23 2/5% of the entire estate.

IN RE: MIRANDA T. LEWIS.

Calculation No. 1.

Assets as per Schedule "A" $ 78,327.29

Fair market value of 640 shares of Lees Manufacturing Company stock @ $100 64,000.00

Money invested by Mrs. Lees in Rainbow Cottage, for which she was granted a life interest, 18,000.00

Total $160,327.29

Miranda H. Lees, taxable pecuniary legacy of, $ 6,000.00

100 shares Lees Manufacturing Company stock valued at, 10,000.00

Money invested in Rainbow Cottage, 18,000.00

Household furniture, 1,800.00

35,800.00

Total Estate $156,527.29

Proportionate share of Miranda Hough Lees in Estate based on Calculation No. 1, therefore equals about 22.2/3% of the entire estate.

IN RE: ELIZABETH L. LEES.

Calculation No. 2.

Assets as per Schedule "A"		$ 79,397.29
Fair market value of 549 shares of Lees Manufacturing Company stock @ $100		54,900.00
Total		$134,297.29
Miranda Hough Lees, receives pecuniary legacy of,	$ 6,000.00	
Household furniture,	1,650.00	
100 shares Lees Manufacturing Company stock, at 100,	10,000.00	
	$17,650.00	
Total Estate		$134,297.29

Proportionate share of Miranda Hough Lees based on Calculation No. 2, therefore equals about 13.14% of the entire estate.

41 MAR.T.1925

Filed after the Oral Argument
by leave of Court.