

WILL OF ANNA HARRIS.

In the name of God, amen: I, Anna Harris, of the borough of Elmer, county of Salem and State of New Jersey, being of sound mind, memory and understanding (for which blessing I thank God), do make and publish this my last will and testament, in the manner following, that is to say: 10

First. It is my will and I do order, that all my just debts and funeral expenses be duly paid and satisfied, as soon as conveniently can be after my decease.

Item. I give and bequeath unto William Fox and Maggie Fox, his wife, all that house and lot of land where I now reside, situate on the southeast side of Broad street, adjoining Henrietta Brooks' residence on the northeast, and Ida Ladd on the southwest, containing about one-quarter of an acre, be the same more or less, to them and their heirs and assigns forever. 20

Item. I give and bequeath unto William Fox and Maggie Fox, his wife, all my household goods and furniture, of every kind and description.

Item. I give and devise and bequeath unto my daughter, Phebe Dare, one hundred and fifty dollars, in cash.

Item. I give and devise and bequeath unto Emaline Rowand one hundred and fifty dollars, in cash.

Item. I give, devise and bequeath unto my sister, Elizabeth Farnsworth, one hundred and fifty dollars, in cash. 30

Item. I give and bequeath and devise unto Anna Dunham, wife of Wesley C., one hundred and fifty dollars, in cash.

Item. I give and devise unto Lizzie Nixon, one hundred and fifty dollars, in cash.

Item. I give, devise and bequeath unto my granddaughter, Ida A. Scott, wife of Samuel, one hundred and fifty dollars, in cash.

Item. I give, devise and bequeath unto my granddaughter, Ada Dare, daughter of Samuel, one hundred and fifty dollars, in cash.

Item. I give, devise and bequeath unto Willard I. Dare, one hundred dollars, in cash.

Item. I give, devise and bequeath unto Frank Dare, one hundred dollars, in cash.

Item. Whatever *balance*, if any there should be, after paying out all heretofore devised, I give, devise and bequeath the *balance* unto William Fox and his wife, Maggie Fox.

Item. I do order my executor, hereinafter named, to sell all my real estate that I may die possessed of, at public or private sale, and make good deeds *therefore*, in fee simple, to the purchaser, excepting what devised and bequeathed to William Fox and Maggie Fox.

And I do hereby constitute Robert M. Hitchner executor of this my last will and testament.

In witness whereof, I have hereunto set my hand and seal this twenty-seventh day of February, A. D. nineteen hundred (1900).

ANNA HARRIS.

Signed, published and declared to be her last will and testament, in the presence of us, who were present at the same time, and subscribed our names as witnesses in her presence.

EMERSON SHERWOOD,
ADIN BECKETT,

30 Filed July 9, 1901.

To Loren P. Plummer, Surrogate of Salem County:

I, Anna Dare, the only living child of Anna Harris, deceased, late of the borough of Elmer, Salem county,

New Jersey, do hereby caveat and protest against admitting to probate any paper purporting to be the last will and testament of Anna Harris, until examination and decree thereon by the Orphans' Court of said county of Salem.

Witness my hand this twenty-eighth day of June, A. D. 1901.

ANNA DARE.

Witness:

LOREN P. PLUMMER.

Filed June 28, 1901.

10

SALEM COUNTY ORPHANS' COURT.

MAY TERM, July 27, 1901.

IN THE MATTER OF THE CAVEAT
AGAINST PROVING THE WILL
OF ANNA HARRIS, DECEASED.

20

On motion of J. W. Acton, Esq., proctor of the proponent, Friday, the seventeenth day of September next, was fixed as the time for considering said caveat, &c.

SALEM COUNTY, ss.

30

The State of New Jersey to Maggie Fox.

[L. s.] You are cited and warned to appear before the Judge of the Orphans' Court, to be held at Salem, in and for the county of Salem, on Friday, the twentieth day of September next, to answer unto the caveat of Anna Dare against admitting to probate (or show cause, if any you have, against admitting to probate) a paper purporting to be the last will and testa-

ment of Anna Harris, deceased, and to abide the judgment and decree of the said Court in the premises.

Witness, Hon. Clement H. Sinnickson, Judge of said Court, at Salem, this fourteenth day of August, 1901.

LOREN P. PLUMMER,
Clerk.

Duly served, August 22d, 1901.

10 ROBERT N. VANNEMAN,
Sheriff.

SALEM COUNTY, ss.

The State of New Jersey to William Fox.

[L. s.] You are cited and warned to appear before the Judge of the Orphans' Court, to be held at Salem, in and for the county of Salem, on Friday, the twentieth day of September next, to answer unto the caveat of Anna Dare against admitting to probate (or
20 show cause, if any you have, against admitting to probate) a paper purporting to be the last will and testament of Anna Harris, deceased, and to abide the judgment and decree of the said Court in the premises.

Witness, Hon. Clement H. Sinnickson, Judge of said Court, at Salem, this fourteenth day of August, 1901.

LOREN P. PLUMMER,
Clerk.

Duly served, August 22d, 1901.

30 ROBERT N. VANNEMAN,
Sheriff.

SALEM COUNTY, ss.

The State of New Jersey to Anna Dare.

[L. s.] You are cited and warned to appear before the Judge of the Orphans' Court, to be held at Salem, in and for the county of Salem, on Friday, the twentieth day of September next, to answer unto the

caveat of Anna Dare against admitting to probate (or show cause, if any you have, against admitting to probate) a paper purporting to be the last will and testament of Anna Harris deceased, and to abide the judgment and decree of the said Court in the premises.

Witness, Hon. Clement H. Sinnickson, Judge of said Court, at Salem, this fourteenth day of August, 1901.

LOREN P. PLUMMER,

Clerk. 10

Duly served, August 22d, 1901.

ROBERT N. VANNEMAN,

Sheriff.

SALEM COUNTY, ss.

The State of New Jersey to Ada Dare.

[L. s.] You are cited and warned to appear before the Judge of the Orphans' Court, to be held at Salem, in and for the county of Salem, on Friday, the twentieth day of September next, to answer unto the caveat of Anna Dare against admitting to probate (or show cause, if any you have, against admitting to probate) a paper purporting to be the last will and testament of Anna Harris, deceased, and to abide the judgment and decree of the said Court in the premises. 20

Witness, Hon. Clement H. Sinnickson, Judge of said Court, at Salem, this fourteenth day of August, 1901.

LOREN P. PLUMMER,

Clerk. 30

Duly served, August 22d, 1901.

ROBERT N. VANNEMAN,

Sheriff.

SALEM COUNTY, ss.

The State of New Jersey to Anna Dunham.

[L. s.] You are cited and warned to appear before
the Judge of the Orphans' Court, to be held
at Salem, in and for the county of Salem, on Friday, the
twentieth day of September next, to answer unto the
caveat of Anna Dare against admitting to probate (or
10 show cause, if any you have, against admitting to pro-
bate) a paper purporting to be the last will and testa-
ment of Anna Harris, deceased, and to abide the judg-
ment and decree of the said Court in the premises.

Witness, Hon. Clement H. Sinnickson, Judge of said
Court, at Salem, this fourteenth day of August, 1901.

LOREN P. PLUMMER,

Clerk.

Duly served, August 22d, 1901.

ROBERT N. VANNEMAN,

Sheriff.

20

SALEM COUNTY, ss.

The State of New Jersey to Elizabeth

[L. s.] *Farnsworth.* You are cited and warned to
appear before the Judge of the Orphans'
Court, to be held at Salem, in and for the county of
Salem, on Friday, the twentieth day of September next,
to answer unto the caveat of Anna Dare against admit-
30 ting to probate (or show cause, if any you have, against
admitting to probate) a paper purporting to be the last
will and testament of Anna Harris, deceased, and to
abide the judgment and decree of the said Court in the
premises.

Witness, Hon. Clement H. Sinnickson, Judge of said
Court, at Salem, this fourteenth day of August, 1901.

LOREN P. PLUMMER,

Clerk.

Duly served, August 22d, 1901.

ROBERT N. VANNEMAN,
Sheriff.

SALEM COUNTY, ss.

The State of New Jersey to Emaline Row-

[L. s] and. You are cited and warned to appear be-
fore the Judge of the Orphans' Court, to be 10
held at Salem, and in for the county of Salem, on Friday,
the twentieth day of September next, to answer unto the
caveat of Anna Dare against admitting to probate (or
show cause, if any you have, against admitting to pro-
bate) a paper purporting to be the last will and testa-
ment of Anna Harris, deceased, and to abide the judg-
ment and decree of the said Court in the premises.

Witness, Hon. Clement H. Sinnickson, Judge of said
Court, at Salem, this fourteenth day of August, 1901.

LOREN P. PLUMMER,
Clerk. 20

Duly served, August 22d, 1901.

ROBERT N. VANNEMAN,
Sheriff.

SALEM COUNTY, ss.

The State of New Jersey to Ida E. Scott.

[L. s.] You are cited and warned to appear before the
Judge of the Orphans' Court, to be held at 30
Salem, in and for the county of Salem, on Friday, the
twentieth day of September next, to answer unto the
caveat of Anna Dare against admitting to probate (or
show cause, if any you have, against admitting to pro-
bate) a paper purporting to be the last will and testament
of Anna Harris, deceased, and to abide the judgment and
decree of the said Court in the premises.

Witness, Hon. Clement H. Sinnickson, Judge of said
Court, at Salem, this fourteenth day of August, 1901.

LOREN P. PLUMMER,
Clerk.

Duly served August 22d, 1901.

ROBERT N. VANNEMAN,
Sheriff.

10 SALEM COUNTY, ss.

The State of New Jersey to Lizzie Nixon,

[L. s.] You are cited and warned to appear before the
Judge of the Orphans' Court, to be held at
Salem, in and for the county of Salem, on Friday, the
twentieth day of September next, to answer unto the
caveat of Anna Dare against admitting to probate (or
show cause, if any you have, against admitting to pro-
bate) a paper purporting to be the last will and testament
of Anna Harris, deceased, and to abide the judgment and
decree of the said Court in the premises.

20 Witness, Hon. Clement H. Sinnickson, Judge of said
Court, at Salem, this fourteenth day of August, 1901.

LOREN P. PLUMMER,
Clerk.

Duly served August 22d, 1901.

ROBERT N. VANNEMAN,
Sheriff.

SALEM COUNTY, ss.

30 *The State of New Jersey to William T.*

[L. s.] *Dare.* You are cited and warned to appear
before the Judge of the Orphans' Court, to be
held at Salem, in and for the county of Salem, on Friday,
the twentieth day of September next, to answer unto the
caveat of Anna Dare against admitting to probate (or
show cause, if any you have, against admitting to pro-
bate) a paper purporting to be the last will and testament

of Anna Harris, deceased, and to abide the judgment and decree of the said Court in the premises.

Witness, Hon. Clement H. Sinnickson, Judge of said Court, at Salem, this fourteenth day of August, 1901.

LOREN P. PLUMMER,
Clerk.

Duly served August 22d, 1901.

ROBERT N. VANNEMAN,
Sheriff. 10

SALEM COUNTY, ss.

The State of New Jersey to Frank Dare.

[L. s.] You are cited and warned to appear before the Judge of the Orphans' Court, to be held at Salem, in and for the county of Salem, on Friday, the twentieth day of September next, to answer unto the caveat of Anna Dare against admitting to probate (or show cause, if any you have, against admitting to probate) a paper purporting to be the last will and testament of Anna Harris, deceased, and to abide the judgment and decree of the said Court in the premises. 20

Witness, Hon. Clement H. Sinnickson, Judge of said Court, at Salem, this fourteenth day of August, 1901.

LOREN P. PLUMMER,
Clerk.

Duly served within citation August 26, 1901, personally, on Frank Dare, the within named defendant.

S. E. JOHNSON,
Sheriff. 30

SALEM COUNTY ORPHANS' COURT.

IN THE MATTER OF THE PROBATE
 OF A PAPER WRITING PURPORT-
 ING TO BE THE LAST WILL AND
 10 TESTAMENT OF ANNA HARRIS,
 DECEASED. } ON CAVEAT.

SALEM, N. J., September 20th, 1901.

TESTIMONY

20 Before HON. CLEMENT H. SINNICKSON, Judge.

Appearances:

For Proponent, J. W. ACTON.

For Caveator, THOMAS W. TRENCHARD.

30 Mr. Acton: I hold in my hand a paper purporting to be the last will and testament of Ann Harris, deceased. I am ready, if the Court please, to proceed to make formal proof of the same.

The Court: Go on.

EMERSON SHERWOOD, sworn.

Direct examination.

By Mr. Acton :

Ques. Mr. Sherwood, where do you live?

Mr. Trenchard: With the permission of the Court, I ¹⁰ would request that a copy of the caveat, filed in this matter, be spread upon the record at this point.

The Court: I will so order.

A copy of said caveat, so ordered, spread upon the record as follows, viz :

“To Loren P. Plummer, Surrogate of Salem county.

“I, Anna Dare, the only living child of Anna Harris, deceased, late of the borough of Elmer, Salem county, ²⁰ New Jersey, do hereby caveat and protest against admitting to probate any paper purporting to be the last will and testament of Anna Harris, until examination and decree thereon by the Orphans' Court of said county of Salem.

“Witness my hand this twenty-eighth day of June, A. D. 1901.

“ANNA DARE.

“Witness, Loren P. Plummer.”

30

By Mr. Acton :

Ques. Where do you live, Mr. Sherwood?

Ans. Elmer, N. J.

Ques. Were you acquainted with Anna Harris in her lifetime?

Ans. Yes, sir.

Paper purporting to be the last will and testament of Anna Harris shown witness, and he is asked :

Ques. Is the name Emerson Sherwood affixed to this paper, your signature?

Ans. Yes, sir.

Ques. Is the name "Anna Harris" affixed to this paper, the signature of Anna Harris, the testatrix?

10 Ans. It is.

Ques. What other name is affixed to that paper?

Ans. Adin Beckett.

Ques. Did you hear Anna Harris make any statement as to this paper?

Ans. I did.

Ques. What did you hear her say?

Ans. Said this was her will.

Ques. Did she request you to sign the same?

Ans. She did.

20 Ques. Did she make a similar request of Adin Beckett?

Ans. She did.

Ques. Were you both present at the same time?

Ans. Yes, sir.

Ques. Did she sign her name in your presence?

Ans. She did.

Ques. In the presence of Mr. Beckett at the same time?

Ans. She did.

Ques. Did you and Mr. Beckett sign your names here-
to in her presence, and in the presence of each other?

Ans. Yes, sir.

30

Cross-examination.

By Mr. Trenchard :

Ques. Who was present on this occasion?

Ans. Mr. Beckett, Mrs. Harris, Judge Hitchner and myself.

Ques. How came you to be there?

Ans. Mr. Hitchner came and wanted me to come and witness a will.

Ques. Then it was from Mr. Hitchner that you learned that this was a will?

Ans. Mr. Hitchner came over to Adin Beckett's blacksmith shop and asked us if we would come over and sign Mrs. Harris' will.

Ques. Well, did you learn from any other person that this was a will, and if so, from whom? 10

Ans. I did so; I learned it from Mrs. Harris.

Ques. What was said by Mrs. Harris, or by any other person on that occasion, except what you have detailed?

Ans. I asked Mrs. Harris if that was her will, and she said it was.

Ques. And that was all that was said?

Ans. I asked her if that was her last will, and she said it was. I asked her if she made that will as she wanted it, and she said so; she said she wanted to help them that had helped her. 20

Ques. Anything else?

Ans. Well, I couldn't say everything that was said there that evening.

Ques. I am asking you now for everything that was said, so far as your memory serves you?

Ans. I think that was all.

Ques. Nothing further said on that occasion, as far as you can remember, by any person present?

Ans. Mr. Hitchner said something; we all talked; I could not tell every word said. 30

Ques. Tell, as nearly as you can recollect, what was said.

Ans. I think I have.

Ques. You say that Judge Hitchner talked; what did he say?

Ans. Well, I could not say what he said in regard to the matter of the will; we talked on other things.

Ques. Can you recollect anything he said?

Ans. No; I do not know that I could positively; we were there several minutes.

Ques. How long were you there, as nearly as you can recollect?

Ans. I did not time myself; I could not tell you.

Ques. Give us your judgment about the time?

Ans. It might have been fifteen or twenty minutes.

Ques. Was any other person present in the house besides those you have named?

Ans. Mr. Fox's wife was in the house, but not in the room when the will was signed.

Ques. You saw her there, did you?

Ans. I did, sir.

Ques. Have you told everything that occurred there that you can recollect?

Ans. No, not fully; on the first start Mr. Hitchner read some parts of the will; I cannot remember the words.

Ques. Then you cannot remember what part of the will he read?

Ans. Well, some of the last clauses he read.

Ques. Well, have you told us everything that was said and occurred, as far as your memory serves you?

Ans. I cannot tell.

Ques. You have told us everything that you can think of?

Ans. That is, I think, about what was said.

30

ADIN BECKETT, sworn.

Direct examination.

By Mr. Acton:

Ques. Where do you live?

Ans. Elmer, N. J.

Paper purporting to be the last will and testament of Anna Harris, deceased, shown witness, he is asked:

Ques. Is the name "Adin Beckett" to this paper your signature?

Ans. It is.

Ques. Is the name "Anna Harris" to that paper the signature of Anna Harris?

Ans. It is.

Ques. Is the name "Emerson Sherwood" the signature of Emerson Sherwood? 10

Ans. It is.

Ques. Did you see Anna Harris write her name there?

Ans. I did.

Ques. Did she write her name there before you and Mr. Sherwood witnessed the paper?

Ans. She did.

Ques. Was her signature put there in the presence of you and Mr. Sherwood? 20

Ans. Yes, sir.

Ques. Did you sign the paper in her presence?

Ans. Yes, sir.

Ques. Did you sign it in the presence of each other?

Ans. We did.

Ques. At the same time?

Ans. Yes.

Ques. And in her presence?

Ans. Yes.

Ques. Did you hear Anna Harris make any statement as to the nature of that paper before you and she signed it? 30

Ans. She stated that it was her will.

Ques. What statement did she make regarding this paper then?

Ans. She said it was her last will, and requested us to sign it?

Ques. She then signed it and you signed it?

Ans. We did.

Cross-examination.

By Judge Trenchard:

Ques. Judge Hitchner said "Mrs. Harris, this is your
10 will," and she said "yes"; is that it?

Ans. I do not know that he did; she said it was her will.

Ques. You heard the testimony of Mr. Sherwood with respect to what Judge Hitchner said to her and her replies; are Mr. Sherwood's answers correct? Answer that.

Ans. Yes, sir; what Mr. Sherwood said on the stand is correct.

Ques. Who was present at the execution of the alleged will?

20 Ans. Anna Harris, R. M. Hitchner, Emerson Sherwood and Adin Beckett.

Ques. Was there any other person on the premises, and if so, who?

Ans. William Fox's wife was the only one I saw, in the adjoining room.

Ques. Who met you when you went to the premises that day?

Ans. I think she met us at the door.

Ques. Who did you mean by "her?"

30 Ans. William Fox's wife.

Ques. Where did you find Mrs. Harris?

Ans. Sitting in a rocking chair.

Ques. In what room?

Ans. Well, you might say the middle room of the house.

Ques. Where did that paper come from that you hold in your hand; who produced it on that occasion?

Ans. R. M. Hitchner.

Ques. Did Mrs. Harris sign it without assistance?

Ans. She did.

Ques. Sitting in the chair where she was when you entered?

Ans. Yes.

Ques. Who brought the pen and ink?

Ans. I cannot say; she sat right by the table where we were. I cannot say who handed it to her.

Ques. Did you hear Mr. Sherwood ask her if that paper was her will? 10

Ans. Yes, sir.

Ques. What did she reply?

Ans. She replied that it was.

Ques. Now, will you tell whatever else occurred there, or what was said by these persons present?

Ans. All is I recollect that she made the remark that she wished to do for them that done for her.

Ques. That is all you recollect?

Ans. That is all. 20

Ques. How long were you there?

Ans. I suppose fifteen or twenty minutes.

Ques. What became of that paper after it was signed?

Ans. I cannot say.

By the Court:

Ques. Was her statement in answer to Mr. Sherwood's question, that this was her will, the only time she made that statement? 30

Ans. No; she stated it at other times.

By Judge Trenchard:

Ques. Who asked her if this was her will?

Ans. Either Mr. Sherwood or I.

By the Court :

Ques. Did she make this statement, that this was her will, at any other time, except when asked by you or Mr. Sherwood?

Ans. I think not.

Mr. Acton: I offer this paper for probate as the last
10 will and testament of Anna Harris, deceased.

The Court: That is, I think, sufficient proof of execution.

Judge Trenchard: We will admit that, your Honor.

(Paper writing purporting to be last will and testament of Anna Harris offered in evidence and marked Exhibit A for proponent.)

20

CAVEATOR'S TESTIMONY.

IDA M. SCOTT, sworn.

Direct examination.

By Judge Trenchard :

30

Ques. Mrs. Scott, you live where?

Ans. I live in Elmer, on Elmer street.

Ques. Your husband's name is what?

Ans. Samuel Scott.

Ques. You are how old?

Ans. Thirty-eight.

Ques. How are you related to Anna Harris?

Ans. I am the oldest granddaughter.

Ques. How many children did Anna Harris leave?

Ans. One daughter.

Ques. Her name?

Ans. Anna Dare.

Ques. And that is your mother?

Ans. Yes, sir.

Ques. Along about February, 1900, how near to Anna Harris did you live?

Ans. I should think it was not more than a square, 10 probably it was not that far.

Ques. Did you see her frequently?

Ans. Yes, sir.

Ques. Visit the house frequently?

Ans. Yes, sir; there a good many times.

Ques. What was her physical condition at that time?

Ans. Well, I do not know as I can say what did ail her.

Ques. Was she sick or well?

Ans. She was afflicted; she was able to be about the 20 house.

Ques. Well, for how long a time has she been sick physically?

Ans. She was taken sick in 1897; January, I think.

Ques. During her life, as long as you knew her, had she been troubled with hysteria; do you know of any nervous trouble she had?

Ans. She had some kind of shaky spells, would get cold; we thought she was going to die.

Ques. Well, would she become unconscious at such 30 times?

Ans. I do not know that she was real unconscious in them; she was afraid she would die, gave you the impression she was going to die.

Ques. Tell us what you know in respect to her temper?

Ans. That is hard to answer.

Ques. Well, had she any?

Ans. She was a woman of temper.

Ques. Speaking now particularly with reference to along about February, 1900, did you visit the house frequently where Mrs. Harris was?

Ans. Yes, sir; I was there; she would send for me. She would send Mrs. Fox around for me; say she wanted to see me on business.

Ques. Did you go?

10 Ans. Yes, sir.

Ques. Tell what would occur; describe any one of your visits, or all of them?

Ans. I cannot say what was the first one, but the first time I think of my grandmother did not have her right mind was just after she had been sick; she used to tell me that her mother came there and her sister, who were both dead; she said she did not know why they came there to trouble her. I would tell her she did not see them, because they were both dead. Well, it
20 seemed to trouble her a great deal because she saw them; they would be in the room nights with her, and I thought by her talking this way that she was not accountable for what she said.

Ques. Did this happen frequently?

Ans. Well, she told me that frequently, for quite a while; every time I went there she would have a conversation about it.

Ques. You visited her frequently along about February, 1900?

Ans. Yes, sir.

30 Ques. Did she say anything about these incidents you have described about that time?

Ans. I cannot remember whether she said anything about these things at that time or not; she had told about it previous times.

Ques. Along about February, 1900, when you visited Mrs. Harris, did she or did she not know you?

Ans. Sometimes she did not; I would ask her if she knew me, and she would say "no."

Ques. Did she know other members of the family?

Ans. Well, I used to think she did not know my mother, because she would send for her to come to the house, she wanted to see her on business, and when she would go she would never say anything about business to her, and she would tell me my mother never came to see her. I could not understand why she would tell me my mother never came to see her when I knew she had come to see her.

Ques. On these visits that you had along about this time, what would she do and say? 10

Ans. Well, before February, in the fall, sometimes she would send for me; she seemed to be in an awful state of mind about something; she would sit and wring her hands; this was in the fall before the will was made. In the first place, my mother and sister went over to take her away; she had been begging to go away; it seemed that she could not get ready to go that day, so she sat the day for them to come. When my father and mother went she was sick in bed. She said she could not go that day. She sent for me, and I went around there, and she seemed to be in awful trouble about something; she told me, "I don't see why Anna Dare don't come and see me," that was her daughter, my mother; I says, "Why, grandmother, my mother was here yesterday; what makes you say that mother didn't come and see you when she does," and she seemed to think she hadn't been there, and I couldn't convince her that she had been there; that was one day I was there; another time I was there, she sent for me 20 on business, but she did not say anything about her business, only that she had lost her money and her papers. 30

Ques. Did she say how much money she had lost?

Ans. Not at that time. I said to her, "Grandmother, you have not lost your money or papers; nobody wouldn't take them," but she still said she had, and I told her if she had any money I thought it was a lesson.

Mr. Acton: I object to opinion of the witness.

By the Court: I think that is competent.

The Witness: I thought she was not accountable for what she was talking about, and I says, "Grandmother, if you haven't any money to live on, you have property; put a mortgage on it and get the money; have enough to
10 do and live comfortable as long as you live if it takes every dollar you have got." She would tell me at times that she did not have enough to eat, and I thought it was strange that she did not have enough to eat.

Ques. You recall visiting her in February, 1900, when she said something about a fire?

Ans. It was in January or February, 1900, she sent for me. I think I was sitting at the breakfast table. When I got there she asked me if I did not see the fire around the room. I said "no;" and then she told me that
20 William, the man who lived with her, taken boy, was going to burn the house.

Ques. William who?

Ans. William Fox. I said to her, "Well, grandmother, he would not do such a thing as that." She said he had been throwing fire around her bed. I could not see any fire anywhere, or I couldn't see any fire there. I thought she must be out of her mind to say so.

Ques. Did you reason with her about it, and if so, how?

Ans. Well, she was undertaking to tell me about it before Mr. Fox came in; before he got in she had said that
30 William was going to burn the house down, and her up, so then Mr. Fox came in the room and he said to me, "Ida, we had a 'Harry' of a time here this morning." And I asked him what was the matter. He told me when he got up the fire was nearly out—they had a wood heater—and that he got some oil and put on the shovel and put in the stove; he said it blowed the top off the stove and

the fire flew around; that was different from grandmother's story; I thought it was so.

Ques. Well, what did Mrs. Harris say about this story?

Ans. She didn't say anything when he was there and wanted him to go out of the room; said she wanted to see me on business. He stayed in the room quite a little bit and talked, then she wanted him to go out again. He told her she was awful particular about him going out, but he went out, then she had me go to the door and see if it was closed, told me to bring my chair up side of her and she began to wring her hands and said "for the good Lord's sake, Ida, believe me;" and she wanted to know if I wouldn't believe her, but I thought she was not accountable for what she was telling me and I believed Mr. Fox. 10

Ques. Did you tell her you believed Mr. Fox rather than her?

Ans. Well, I didn't tell her whether I did or not. I did not think she thought I sympathized with her, because she began to pray, and prayed that if I wouldn't believe her that some one would. I sat there and cried while she prayed, for I did not know what to make of her talking that way, because I thought Mr. Fox had told me right about the fire. 20

Ques. At that time did she have anybody sitting with her at night?

Ans. Mr. and Mrs. Fox; they lived with her.

Ques. Did she, on that occasion, say anything about having some person other than Mr. and Mrs. Fox stay with her nights?

Ans. She said if I did not believe her she wanted to know if I would not get somebody to stay up with her nights, and I thought that she was not seriously ill at that time and did not need sitters up when she had two people in the house to stay with her. 30

Ques. She lived there with William and Maggie Fox?

Ans. Yes, sir; it was her home and they lived with her.

Ques. What room was she accustomed to occupy?

Ans. The middle room, sitting room and parlor.

Ques. Did Mrs. Fox ever say anything to you in reference to the relations that existed between William Fox and Mrs. Harris?

Ans. She did.

Ques. What did she say?

Ans. I stopped in that morning; Maggie was awful mad about something, and she commenced to tell me what
 10 she had told Mr. Brooks; she shook her fist and said, "I won't put up with it"; I cannot remember the exact words she told me in, but she gave me to understand that she was intimate with him.

Ques. That William was intimate with Mrs. Harris?

Ans. Yes, sir.

Ques. Did she say how she knew it?

Ans. She says, "What I see with my own eyes I know." I told her I didn't think anything like that.

Ques. Did you say anything to Mrs. Harris with respect to that matter?
 20

Ans. Not at that time.

Ques. When was it that this conversation took place?

Ans. During the first three months of 1900; I moved away March 22d, 1900.

Ques. Did Maggie say anything about whether she would leave William down stairs, and if so what?

Ans. I cannot remember what she would say about that; by coming in there I knew that he would stay upstairs for a while.

Ques. Did Mrs. Harris ever make any complaint to
 30 you of improper usage there in that household?

Ans. I do not know that she did; she seemed afraid to say.

Ques. What did she say with respect to it, if anything? Mrs. Harris, along about the first three months of 1900, did she ever complain to you about the treatment that she got; what did she say?

Ans. She said I didn't know how she was treated; she said one time to me, "I am a poor, lone woman in this

house"; this was when she wanted someone to come stay with her nights, and I told her I did not consider she was a lone woman when she had two people to stay with her all the time.

Ques. Did she afterwards say anything about the amount of money she had lost?

Ans. She said she had lost \$1,200 and her papers; she never told me who took them.

Cross-examination.

10

By Mr. Acton:

Ques. Is your husband living?

Ans. Yes, sir.

Ques. You are the daughter of Samuel Dare?

Ans. Yes, sir.

Ques. And you are the "Ida" named in this will as having been left \$150, in cash?

Ans. Yes, sir.

20

Ques. How old was your grandmother at the time of her death?

Ans. Seventy-five, I think.

Ques. William Fox was taken to bring up by your grandmother?

Ans. He lived with her since he was about twelve or thirteen?

Ques. Well, he lived with her, did he?

Ans. Yes, sir.

Ques. Always lived with her?

30

Ans. Since that time.

Ques. And she always lived with him?

Ans. Lived in the same house; lived together.

Ques. Thought a great deal of him?

Ans. She seemed to.

Ques. How old is he now?

Ans. I do not know; I should think thirty-six or thirty-seven.

Ques. Then for the last twenty-five years they have always lived together?

Ans. Yes, sir; I should think so.

Ques. About what is the value of the property left by your grandmother?

Ans. I cannot tell; property in Elmer is not worth
10 what they were.

Ques. Are they worth \$2,500?

Ans. Ought to be worth more than that; I cannot tell what it would bring.

Ques. You are satisfied that the property should be worth \$2,500 to \$3,000?

Ans. I should think each house should bring \$1,000 apiece.

Ques. No debts that you know of; any mortgages?

Ans. I think no mortgages; there are some notes, I
20 believe; I think there is a note for \$200 and one for \$50.

Recess until 2 P. M.

Trial of cause resumed at 2 P. M.

Examination of witness for caveator resumed.

By Judge Trenchard:

Ques. Mrs. Scott, did you, after the death of Mrs.
30 Harris, hear read what was stated to be the will of Mrs. Harris?

Ans. Yes, sir.

Ques. Where was it?

Ans. At her home.

Ques. Will you state how the paper that Judge Hitchner read differed from the paper I hand you, if it did differ?

(Paper shown witness; she holds it in her hand.)

Ans. That day, I understood, when it was read it bequeathed to William Fox and wife, Chrissie. The paper purporting to be the will says, "William Fox and his wife, Maggie."

Cross-examination.

By Mr. Acton:

10

Ques. How long did your grandmother live in Elmer?

Ans. Well, I cannot tell the exact date when she lived there.

Ques. Well, did she live there as much as twenty-five years?

Ans. No, sir.

Ques. Where did she live before she went to Elmer?

Ans. Near Monroe Church.

Ques. How long since your grandfather died?

20

Ans. Died December 11, 1887.

Ques. Soon after that your grandmother came to Elmer to live?

Ans. Yes, sir; about 1888 or 1889.

Ques. Since which time she has lived in her house in Elmer?

Ans. Yes, sir.

Ques. William Fox lived with her on the farm?

Ans. Yes, sir.

Ques. Continued to live with her when she came to Elmer?

30

Ans. Yes, sir.

Ques. They always did her cooking?

Ans. Yes, sir.

Ques. Always did her washing?

Ans. Yes, sir.

Ques. Always cared for her?

Ans. Yes, sir.

Ans. When were you married?

Ans. In April, 1887.

Ques. Never lived home since?

Ans. No, sir; always kept my own house.

Ques. Do you know the date of your mother's marriage?

Ans. No, sir.

Ques. Ever live home after her marriage?

10 Ans. I think she boarded there after her marriage.

Ques. For how long?

Ans. I do not know; it was while I was a baby.

Ques. It was at least thirty-five years ago?

Ans. No; not that long.

Ques. It was when you were three years old?

Ans. I cannot say; I don't remember.

Ques. Where does your mother live now?

Ans. Near Elmer.

Ques. Your father living?

Ans. Yes, sir.

20 Ques. You say in about the year 1897, your grandmother had a severe illness?

Ans. Yes, sir; she was taken with grippe when first taken sick.

Ques. How long did that sickness last?

Ans. Well, I cannot just remember; she got around the house but not able to do her housework.

Ques. Did she have the physician during that time?

Ans. Yes.

Ques. Who was the doctor?

30 Ans. She had all the doctors in Elmer during the time she had been sick, four and a half years.

Ques. Has she had some one of those doctors attending her continuously since that time?

Ans. Well, they did not come every day.

Ques. Did she have the doctor visit her about the time this will was made?

Ans. Yes, sir; Dr. Rogers and Dr. Conover was coming at that time.

Ques. You attended there every day?

Ans. No, sir; I had my own family and little children.

Ques. Were you down there as much as once a week?

Ans. Not on the average; sometimes I would be there two or three times a week.

Ques. Can you remember any particular date of your visit to your grandmother near the 27th day of February, 1900?

Ans. I cannot give you the dates. 10

Ques. Can you specify any date or time about February 27, 1900, at which time your grandmother did not know you?

Ans. Yes, sir; I cannot just tell the date, but in that month.

Ques. How do you know it was at that time?

Ans. Because I moved away on the 22d of March, and I think it has been about three weeks; I cannot remember the exact date; I did not charge my mind with it; my grandmother sent for me and I was sick when William Fox came in. 20

Ques. Who attended to her business for her?

Ans. I cannot tell you.

Ques. Who collected her rents for her?

Ans. Mr. Fox and herself, I guess.

Ques. Do you know?

Ans. They told me so.

Ques. When did she tell you?

Ans. She told me that Mr. Fox collected her rents.

Ques. Did she tell you that at this interview, about three weeks prior to your going away? 30

Ans. I cannot say; she told me a number of times during that winter.

Ques. Did she say who rented her house for her?

Ans. No; I do not know who rented her house for her.

Ques. Do you know who the tenants were?

Ans. No, sir; there have been so many during the last four or five years.

Ques. You say your mother has a note of her's?

Ans. No, sir; Mr. Hitchner got some money for her.

Ques. What about the note for \$50?

Ans. He told my mother, after her death, that he had gotten her \$50 more.

Ques. When was it she told you she had seen her mother and sister standing by her bed?

Ans. Along when she was first taken sick.

10 Ques. And these were the occasions when she did not know you?

Ans. No, sir; later on in the winter, when the will was made.

Ques. Were you in the room with her?

Ans. Yes, sir.

Ques. Did she wear glasses?

Ans. Not all the time.

Ques. Did she have the glasses on when she did not know you?

20 Ans. I cannot say about that.

Ques. Did you ever transact any business for her?

Ans. No, sir.

Ques. Did your mother ever transact any of her business for her?

Ans. Yes, sir; in years gone by.

Ques. How long ago; twenty years?

Ans. I should judge so.

Ques. It has been that long.

Ans. I cannot be positive; I think so.

30 Ques. Can you recall any business done for her by your mother?

Ans. My mother used to rent a part of the house.

Ques. When was that?

Ans. I cannot recall the exact date; it has been several years.

Ques. Has it been ten, fifteen or twenty years?

Ans. It has been between fifteen and twenty years.

Ques. Has there been any other business that your mother has done?

Ans. Yes; years ago mother did her business.

Ques. It was prior to twenty years ago?

Ans. Yes, sir.

Ques. Can you specify what business your mother did for her twenty years ago?

Ans. No, sir; I was smallish then.

Ques. Your mother and grandmother were not particularly friendly?

Ans. No, sir; for some time during the last seven 10 years they have been.

Ques. Wasn't there a long time when they didn't speak?

Ans. Yes; about nine years my mother and grandmother did not speak.

Ques. Wasn't the difficulty between them concerning money matters; your mother wouldn't pay the rent or something?

Ans. No, sir.

Ques. They had a difficulty?

Ans. Yes, sir. 20

Ques. At that time your grandmother had her right mind?

Ans. I have heard people say that they did not think she had her right mind for twenty years.

Ques. During the nine years of enmity of your grandmother and mother you did not visit there?

Ans. It was about eight years ago I began to visit there.

Ques. Prior to that time you did not go to your grandmother's? 30

Ans. No, sir.

Ques. Did you ever prepare food or clothing for your grandmother?

Ans. I took her in things to eat at various times.

Ques. What did you ever take her?

Ans. I do not know all that I have taken her; fried shad, mashed potatoes, beef soup.

Ques. How long ago has that been?

Ans. I think it was in the spring before this will was made.

Ques. The spring before the will was made?

Ans. Yes, sir.

20

FRANKLIN DARE, SWORN.

Direct examination.

By Judge Trenchard:

(Witness being shown Exhibit A, for proponent, is asked to examine it.)

20

Ques. Did you ever see that paper before?

Ans. Not to examine it; I saw it—about three feet away I was from Robert Hitchner—the day my grandmother was buried; Robert Hitchner read the will.

Ques. You heard Robert Hitchner read from that paper that you hold in your hands?

Ans. Yes, sir.

Ques. State wherein the paper he read differs from that now in your hands?

30 Ans. The paper that he read at this day of the funeral does not correspond with the one I am holding in my hand.

Ques. Wherein is the difference?

Ans. In reading this will the 'Squire says: "I do bequeath unto William Fox and his wife Chrissie Fox"; all the way through the will every place that her name was mentioned there was no Maggie in the will; from the beginning everything was Chrissie.

Cross-examination.

By Mr. Acton:

Ques. You are certain he said "Chrissie?"

Ans. Yes, sir.

Ques. He didn't say Clarissa?

Ans. No, sir.

Ques. You are a brother of last witness on the stand? 10

Ans. Yes, sir.

Ques. Where do you live?

Ans. In Port Republic, Atlantic county, N. J.

By the Court:

Ques. Did you read the will yourself on that day?

Ans. No, sir; Judge Hitchner read it.

Ques. Did you examine it?

Ans. No, sir. 20

ANNA DARE, sworn.

Direct examination.

By Judge Trenchard:

Ques. Where do you live, Mrs. Dare?

Ans. I live one mile from Elmer, Salem county, N. J. 30

Ques. You are the caveator—that is, you put in the caveat against the will?

Ans. Yes, sir.

Ques. You are the wife of whom, Samuel A. Dare?

Ans. Yes, sir.

Ques. Your husband is a farmer?

Ans. Yes, sir.

Ques. You are how old?

Ans. Fifty-five.

Ques. How are you related to Anna Harris?

Ans. I am her daughter.

Ques. Did she leave any other children at her death?

Ans. No, sir.

Ques. Did she ever have any other children?

Ans. No, sir; not to live any length of time.

10 Ques. Then, as I understand you, all the children died
when young?

Ans. Yes; in infancy.

Ques. They left no children?

Ans. No, sir.

Ques. What was your mother accustomed to call you
during her lifetime?

Ans. Anna.

Ques. Did she ever call you Phebe?

20 Ans. I think not. I was named "Phebe Anna." I
was not called by my first name by my mother or father.

Ques. What day did your mother die?

Ans. 24th of June.

Ques. What, in June of this year?

Ans. Yes, sir.

Ques. How old was she?

Ans. Seventy-five years old last February.

Ques. During the last five or six years of her life,
where did she live?

30 Ans. I think it has been five years since she moved
where she died, in Elmer. I do not remember the exact
date.

Ques. On Broad street, in Elmer?

Ans. Yes, sir.

Ques. With whom did she live there?

Ans. With William Fox and his wife—with William
Fox first.

Ques. William Fox's wife's name was Maggie?

Ans. Yes; that is what we always called her.

Ques. During the time that she lived there where she died, what was her physical health?

Ans. Well, in the first place, she had the grippe and it turned to the dropsy, but she did not appear to have any dropsy when she died.

Ques. Was she sick continuously, Mrs. Dare?

Ans. She was not very well.

Ques. Was she so sick she had to have doctors and could not go out of doors?

Ans. Yes, sir, she had doctors; two years ago this summer she walked out of doors; third summer from last summer; most of the time she was in the house. 10

Ques. Were you in the habit of visiting your mother?

Ans. I think it was about five years since I commenced this last time.

Ques. Previous to that time, hadn't you been visiting her?

Ans. I think it was about nine years I didn't visit her.

Ques. How did you come to resume your visits to your mother? 20

Ans. Well, because I was beginning to be broken down in health and could not stand so much confusion.

Ques. Do you recall any incident at a funeral, and if so relate it?

Ans. Seven years ago the 28th of last June my mother's sister was buried.

Ques. Did you meet your mother there?

Ans. No, sir; when we were coming home my mother stopped at Wesley Dunham's and got out of her wagon, and when our wagon came along my mother she came up 30 to the wagon we were in and said, "Is that Anna in back?" One of my daughters says "yes," and she reached out her hands and says, "Anna, I want you to forgive everything I have done and said," and I said, "Yes, mother, I have forgiven you long ago, and have prayed the Lord to forgive you." Then she said to me, "Do you see how I am afflicted with rheumatism?" She lived in the Union street house.

Ques. From that time on, didn't you visit your mother?

Ans. Yes, sir; about five years ago; I didn't visit her in the Union street house, not until she got on Broad street.

Ques. About how often did you visit her?

Ans. Sometimes I was there often, then again my health was so poor I would not go for two or three months; if I didn't go she used to send William Fox for me.

Ques. Now, tell us what kind of a temper your mother had?

Ans. Well, I hate to tell that; my mother had a temper, of course.

Ques. Was it rather a bad temper?

Ans. Well, you couldn't change her mind.

Ques. Did you ever see anything like hysteria in your mother?

Ans. Yes, sir.

Ques. Describe it?

Ans. She would be taken with nervous and shaky spells; she would be just as cold as if she was going to die.

Ques. Would she be unconscious at such times?

Ans. I do not know; she would go off into a faint; we would have to undo her dress and wait on her.

Ques. Speaking with reference to along about February, 1900, did she know you at those times when you would go to see her?

Ans. No, sir; that is what puzzled me.

Ques. You say that she would send for you by William Fox?

Ans. Yes, sir.

Ques. For what did she send for you?

Ans. He would say that "your mother wants to see you on business"; twice he said she said she was dying.

Ques. When you would go what would transpire?

Ans. I have sat all day with her, expecting her to mention business to me, and I would wonder why she would not.

Ques. Did she ever call you by name?

Ans. I do not remember; that was the part that puzzled me, because she did not call me by name.

Ques. Did she know your daughter, Mrs. Scott?

Ans. Since my daughter moved from Elmer my mother never inquired nothing from me about her. 10

Ques. About that time your daughter, Mrs. Scott, had a sick child?

Ans. When she moved from Elmer?

Ques. Yes.

Ans. She was sick herself.

Ques. How many children have you?

Ans. I have five.

Ques. Name them.

Ans. Ida M. Scott, Willard T. Dare, Lizzie A. Nixon. Franklin E. Dare and Ada M. H. Dare. 20

Ques. During this time that you were visiting her, did she ever make any inquiry in regard to these grandchildren you have named?

Ans. No, sir; when I first went there five years ago she would talk with me about them, but for the last three years she has never inquired.

Ques. During these visits, did your mother ever mention anybody's name to you?

Ans. I did not hear her speak of any lady's name only "Amanda." She said one day when I was there, "Amanda, Amanda." I said, "Who do you mean, Mag- 30
gie?" She answered, "My Mandy, why don't my Mandy come?"

Ques. Well, who was Amanda?

Ans. I cannot think; we have no relatives by that name I know of.

Ques. Were you there one day when Lizzie Nixon came in?

Ans. Yes, sir.

Ques. Did or did not your mother know her?

Ans. I do not know.

Ques. Did she make any remarks when Lizzie Nixon went in there?

Ans. I do not think so.

Ques. Did you ever hear speak anything about a pretty girl?

10 Ans. That was a short time before she died; I said to mother, "do you know who that is?" my daughter was there; I spoke to mother, "do you know who this is?" she said, "yes; I guess I do"; I said, "who is it?" she said, "it is my pretty girl"; she looked at the flowers on her hat, she said, "it's the prettiest girl I ever saw."

Ques. Did she make any reference to angels?

Ans. It was at another day.

Ques. When was it?

Ans. She called my daughter one of God's angels.

Ques. When was that?

20 Ans. In her last sickness, just before she died.

Ques. Were you present at your mother's house, after her death, when Robert Hitchner read the paper?

Ans. I was there when the will was read, after the funeral, after dinner.

Ques. You heard him read it, did you?

Ans. Yes, sir.

Ques. Did you sit so that you might hear him?

Ans. Yes, sir; I was on the other side of the room.

30 (Witness being shown paper marked Exhibit A for proponent, is asked):

Ques. In what respect does this differ from the will read? Examine the paper and see if you notice any difference between it, the paper in your hand, and the one read by Judge Hitchner?

Ans. The way I understood is "will to William Fox

and Chrissie Fox, his wife," is the way I understood the will when it was read.

Ques. Did you hear Mrs. Harris say anything about this fire?

Ans. No, sir; I did not hear her say anything about the fire to me.

Ques. Did Mrs. Harris ever say anything to you about any improper relations which William Fox had forced upon her?

Ans. Well, I felt worried about my mother all last winter; I heard what my daughter said. 10

Ques. Did you speak with Mrs. Harris about this, madam?

Ans. When my mother was taken with this last sickness I was troubled about it; I could not tell how she got in such condition.

Ques. Did you make any inquiry of her?

Ans. My daughter did in my presence.

Ques. This was because of what your daughter, Ida Scott, had reported to you? 20

Ans. Partly; but I was puzzled to know what was the matter with my mother.

Ques. What did your mother say to you with respect to this matter?

Ans. My daughter says, "Mother, what are you worrying about?" and I told her.

By the Court:

Ques. Told who? 30

Ans. I told my daughter, Lizzie Nixon; I said, "I would like to ask my mother, but I do not feel as if I could ask the question."

By Judge Trenchard:

Ques. Well, did you or did your daughter, in your presence?

Ans. Yes, sir, we went there. She said, "Well, grandmother, we have come here to ask you some questions, and I want you to talk." And at first she did not seem to understand, and my daughter told her over again. She says, "Grandmother, has William Fox ever had anything to do with you?" She said, "Yes, he has; yes, he has." And my daughter says, "Grandmother, do you think this is anything like the bad disorder, what ails you?" And
 10 my mother said, "No, I guess nothing like that." Then she commenced to wring her hands and said, "Oh, dear me, what shall I do? Can't you do something to help me?" and we did not ask her any more questions then. Maggie Fox came in to give her medicine.

Ques. At that time was anything said by her about going away from the house?

Ans. Yes, sir; she was all the time talking about going away from the house.

20 By the Court:

Ques. When was this?

Ans. Last winter, during her last sickness.

By Judge Trenchard:

Ques. Did I understand you to say that she begged her to take her away?

Ans. Yes, sir.

Ques. Just state briefly why you did not do that?

30 Ans. I was getting ready to take her away, and Dr. Conover said, "Oh, you don't want to take her away now." He didn't think she could stand it. Along—well, about four weeks before she died is when I commenced to think about taking her away.

Ques. As I understand you, one of the reasons you did not take her away was because the doctor advised against it?

Ans. Yes, sir.

Ques. In your opinion, at the time your mother talked with you in respect to these relations with Fox, was she rational or irrational?

Ans. Well, I couldn't tell that.

Ques. Well, what was your judgment about that at the time?

Ans. I haven't thought she had her right mind for the last three years.

Ques. In respect to these things?

Ans. Well, I thought she hadn't her right mind before that. 10

Ques. Did she ever say anything to you about being afraid to stay there at night?

Ans. Yes, sir; she said she wanted some one to stay up with her.

Ques. Did she say why?

Ans. About the first of June, when my husband and I went down, I was thinking about taking her away. We went down in the buggy at night. My mother she looked over to my husband and said, "Can't you take me away from here to-night?" We were in the buggy, and so I said, "I think it is too cold for you." And she says, "My God, how can I stay in this house another night." I said, "Why, mother." And she said, "You don't know how these people treat me." 20

Ques. Now, then, tell about the money and papers?

Ans. Well, I think it was before this last will was made, Mr. Cochran had been there and made a codicil to her last will, I heard her say.

Ques. That was before this will Judge Hitchner is supposed to have drawn? 30

Ans. Yes, sir. My husband took me down there one morning; before he was gone—I was to stay all day—Mr. Lashley came in; I guess my mother had sent for him, from what I could find out, to come look over some of her papers for her; after he came in they got out a book and some papers, and he sat down on the settee and

read over some of the papers, and then he said to her, "I haven't time to look over many papers"; he had to go away on some business, and he said something about—I understood him to say that there were two papers to be recorded; he didn't read anything out loud; he just looked over the papers himself and said, "Mrs. Harris, here are some papers that ought to be recorded." What my mother wanted Mr. Lashley to
 10 come for was that she thought she had lost some money and papers, so she said.

Ques. Did she say how much money she lost?

Ans. She says "considerable," I think; stating reply she made to Mr. Lashley.

Ques. Well, did you think she was rational or irrational?

Ans. I thought by the way she spoke that Mr. Cochran had some of her papers, and I think he took it that way, and he says, "Mrs. Harris, I cannot tell you anything about, but I will go and see Abe to-night and
 20 come tell you what he says about it," and the next morning I thought that I would come down and see what Mr. Lashley had found out. I came down to my mother's, and on the way I met Mr. Lashley; he was going to Malaga, he said; I asked him what he found out, "Well," he said, "I went to Mr. Cochran, and he said he didn't know anything about her papers or money; I have her will; I never had any papers or money."

30 Cross-examination.

By Mr. Acton:

Ques. You say, Mrs. Dare, that you and your mother had a quarrel of nine years' standing?

Ans. No, sir; I do not say that; I did not quarrel with my mother.

Ques. Well, there was that period of enmity?

Ans. Nine years I did not visit her; if I could have stood it, would have gone to her.

Ques. How far did you live from her?

Ans. About a mile and a half from my mother's.

Ques. You were well enough to go to the funeral?

Ans. Yes, sir.

Ques. You were in Elmer during the nine years?

Ans. Yes; three or four times in a year.

Ques. Didn't go to see your mother during any of these times? 10

Ans. No, sir; not while she was in the double house, or in the Union street house.

Ques. When did you have a reconciliation; it was your mother stopped you and asked for it?

Ans. Yes, sir.

Ques. You say your mother was always a stubborn woman?

Ans. I said you could not change her mind. 20

Ques. How long did that continue?

Ans. During the last five years.

Ques. You hadn't seen her for nine years before you met at the funeral?

Ans. I had seen her at a distance.

Ques. You hadn't spoken to her?

Ans. Not in the nine years.

Ques. Didn't you ever try to change her mind in regard to anything?

Ans. I did before the nine years, yes; I talked to my mother and begged her to be friends. 30

Ques. Since the nine years, did you ever try to change her mind with regard to anything?

Ans. No, sir.

Ques. Now, can you give any particular mental characteristics which your mother had during the last five years?

Ans. I do not understand.

Ques. Can you give any mental peculiarity?

Ans. I noticed that she never asked about her relatives; she never talked about business to me.

Ques. She had not for nine years before that time?

Ans. Not while I wasn't going there.

Ques. Then you think your mother was mentally unbalanced because she didn't talk to you about business in the last five years?

10 Ans. No, sir.

Ques. Well, what do you put it on?

Ans. Well.

Ques. Because she did not leave you all the property in the will?

Ans. No, sir; because of various things. I have never thought anything about that; I never concerned myself about it. I never asked her about that. I told my mother to live well while she lived, to use her property up. I told her I did not want her to save a dollar for me.

20 Ques. That was in the last five years?

Ans. Yes, sir.

Ques. Did she understand that?

Ans. Well, she didn't say whether she did or not.

Ques. Did she make any reply?

Ans. I do not remember.

Ques. What other peculiarities did you notice about your mother?

Ans. That she talked about things that I thought were strange.

Ques. What were they?

30 Ans. One thing she talked about three years ago, when I first thought she was acting strange, and thought perhaps she was losing her mind, she spoke about seeing my Aunt Hannah—she was sick at the time, lying in bed. I mentioned about my Aunt Hannah, and she says, "I see Hannah come in every night, and she goes over and over and 'round the bed."

Ques. She got over that sickness?

Ans. She didn't get well.

Ques. She got about again?

Ans. Yes, sir; she got about the house.

Ques. You did not hear her say that again?

Ans. No.

LIZZIE NIXON, sworn.

10

Direct examination.

By Judge Trenchard:

Ques. Mrs. Nixon, you are a granddaughter of Anna Harris?

Ans. Yes, sir.

Ques. Wife of whom?

Ans. Hiram Nixon, Jr.

Ques. And live in Whig Land, this county?

20

Ans. Yes, sir.

Ques. And you are how old?

Ans. Thirty-three years.

Ques. And you are the daughter of Anna Dare?

Ans. Yes, sir.

Ques. Did you visit Anna Harris frequently in the last five years?

Ans. Yes, sir.

Ques. Did you visit her along about February, 1900?

Ans. Yes, sir.

30

Ques. Frequently?

Ans. Whenever I had an opportunity I always went.

Ques. At the time this will was made, in February, 1900, did your grandmother know you when you went there to visit her?

Ans. She seemed pleased but would never call me by name.

Ques. Would she speak?

Ans. Yes, sir; she said to me one day, "Is Anna Dare dead or is she home?"

Ques. When was that?

Ans. In the last year and a half, I think.

Ques. How near to February, 1900, was it?

Ans. Well, it was in that winter; I do not just remember the date.

10 Ques. What did you say to her about Anna Dare?

Ans. I said, "Grandmother, don't you remember about mother's being here," and she says, "No; Anna Dare has never been here to see me since I can remember."

Ques. Did she tell you about anybody else?

Ans. No, sir; I said to her that winter, "It's too bad that Ida is going to move away," and she says, "Well, she never comes to see me anyhow," and I says, "Why, she has been to see you," and she says, "She don't come to see me."

20 Ques. Anything else on that topic?

Ans. Well, I talked to her awhile and she said, "Did you say Anna Dare is dead?" "No," I said, "she is home," and she says, "It's funny she never comes to see me."

Ques. Did she talk to you about anybody else?

Ans. She said William was awful mad at her.

Ques. Did she ever make any reference to your husband?

30 Ans. One day when I was there, I took her some cake, she says, "That is such good cake; I don't never get no cake to eat," she says, "you could always bake such good cake," and I told her I didn't think I could bake cake very good, but she took some of the cake out and eat it, and then another time I was there, when I was going away she said, "Tell your man to come see me; bring me something."

Ques. Did she say whether or not your husband had ever been there to see her?

Ans. She said he had not.

Ques. What was the fact?

Ans. He had been there three or four different times.

Ques. Did she ever mistake you for anybody?

Ans. Well, I would go in and I don't think she would know me; I would ask "Grandma, do you know me?"

She says, "No, I do not, but I know you are one of God's angels, one of God's blessed women; you are one of the best women I ever saw to come and see me." 10

Ques. When was that, as near as you can recall?

Ans. Well, I think that was five or six weeks before she died; something like that.

Ques. Ever hear her say anything in respect to her papers and money?

Ans. Well, one day when I went there she said she had lost her money, and I said, "Grandma, how much have you lost?" "\$1,200," she said. This day Emeline Rowand was there and she says, "Grandma, you don't know a thing you are talking about to-night; you haven't lost your money at all," and she says, "yes, I have; yes, I have," she says, "you don't know a thing you are talking about Aunt Anna," and then she says to my grandma, "you do intend for me have something, don't you?" 20

Ques. That is, Mrs. Rowand said that?

Ans. Yes, sir; and she made a reply, "I don't know; I don't know."

Ques. Did she repeat it over just as you have said it?

Ans. Yes, sir; and then she says to my grandmother, "I am to have the say, ain't I, Aunt Anna," and my grandmother made the reply, "I don't know; I don't know," and then she turned to William Fox, Mrs. Rowand did, and says, "you know Anna Dare intends just as soon as the breath leaves Aunt Anna's body to put this in the lawyers' hands and give them half, if not all, to keep you and Maggie out of your pay," and I says, "Emma Rowand, that is a lie; my mother has 30

never said any such a thing." She said that she had, and I told her I could not stand to hear her tell something about my mother that wasn't so when I had saw my mother work so hard to bring us children up honest and respectable.

Ques. When did this last incident happen?

Ans. I think about four or five weeks before grandma's death.

10 Ques. In your judgment, was your grandmother rational or irrational that day?

Ans. I did not think she was rational; she did not know me.

Ques. Did she call you by some other person's name?

Ans. No, sir.

Ques. What makes you say that she did not know you?

Ans. Well, she didn't call me by name.

Ques. What did she call you?

20 Ans. The prettiest girl she ever saw; I was God's angel.

Ques. Did you ask her if she knew you?

Ans. Yes, sir; she said, "yes." Another time I was there she said, "you are one of God's angels; one of God's blessed women."

Ques. Were you present at the reading of the paper after the funeral?

Ans. I was.

Ques. By Judge Hitchner?

Ans. Yes, sir.

30 Ques. What did he say it was that he was reading?

Ans. Said it was the will of the late Anna Harris.

Witness being shown Exhibit A, for proponent, is asked:

Ques. State wherein this differs from the paper read by Judge Hitchner?

Ans. Well, the day that he read it he said that the house on Broad street was to be William Fox's and his wife, Chrissie, and she was called Chrissie three times.

Ques. Did you and your mother have some talk with Anna Harris with respect to the relations which William Fox had forced upon her?

Ans. Yes, sir.

Ques. Just state what it was?

Ans. I saw my mother was awfully worried about something, and I asked her what was she worrying about, and she said, "My mother," and I said, "Why, what about her?" She said, "Why, I hear that my mother complains and I am afraid there is something wrong," and I says, "Why don't you ask grandma?" and she says, "I cannot ask." 10

(Upon objection of Mr. Acton the above conversation was ordered stricken out.)

Ans. My mother and I went to grandmother's and I said, "Grandmother, we have come to ask you some questions to-day." This was about four or five weeks before grandmother died. When I told her I had come to ask her some questions and would like her to talk, she said "ay," and looked at me, and I says "I have come to ask you some questions and I would like for you to talk," and I then asked her if William Fox had been having anything to do with her, and she made the reply "Yes, he has; yes, he has;" then I asked her if she thought it was anything like the bad disorder, and she says, "Oh, I guess 20 not, nothing like that," and she began to wring her hands and pull at her clothes, and begs me to do something for her. Maggie came in then to give her medicine. She seemed to go off into a sleep or stupor; she wouldn't say anything to me. 30

Ques. Well, did she ever at other times complain of her treatment?

Ans. Yes, sir; one day in December I was there with my husband and she begged us to take her away in the carriage.

Ques. Well, did she say anything about having men coming there?

Ans. She said to my husband, "I wish you would have three or four men come in and square up my business while I live." And I made the reply, "Grandma, I wouldn't know who to get."

10 Ques. Well, at that time did you think she was rational or irrational?

Ans. She didn't call me by name or my husband.

Ques. Answer my question?

Ans. I do not think she had her mind.

Cross-examination.

By Mr. Acton:

20 Ques. Do you recall any day in February, 1900, when you visited your grandmother?

Ans. It was in February.

Ques. Will you give the date?

Ans. I know it was in February.

Ques. How do you know it was in February?

Ans. I know I went there in February.

Ques. Were you there in January?

Ans. I don't know.

Ques. Were you there in December?

30 Ans. I was there just before Christmas.

Ques. Were you there in November?

Ans. I don't know.

Ques. Were you there in October?

Ans. I was there in the fall; I don't know whether it was October or not.

Ques. Do you know whether you were there in September?

Ans. I think so; when we went down to the store with butter I often went there.

Ques. Were you there in March?

Ans. Yes, sir.

Ques. What makes you know it?

Ans. It was just before my sister moved away.

Ques. How long before your sister moved away?

Ans. About two weeks.

Ques. Were you there in April?

Ans. I think I was. 10

Ques. What makes you think so?

Ans. Because my sister had moved away.

Ques. Were you there in May?

Ans. I don't know.

Ques. Were you there in June?

Ans. I cannot say.

Ques. Did you ever casually meet your sister there at any of these times?

Ans. I do not think I ever met my sister there.

Ques. Did you ever meet your mother casually on the occasion of any of these visits? 20

Ans. No, sir.

Ques. Did you ever meet your father on any of these occasions?

Ans. No, sir.

Ques. Can you mention any one you met there on any of these occasions?

Ans. Emaline Rowand.

Ques. On all these occasions you never met one of your family or any one else? 30

Ans. Yes; I met Mrs. Bates.

Ques. When was that; how many years ago?

Ans. Two years ago; also Dr. Rogers.

Ques. Who else?

Ans. Annie Dunham and Wesley Dunham.

Ques. How long ago has that been?

Ans. Three or four years; I cannot say exactly.

Ques. There was a time when you did not visit your grandmother for a period of nine years?

Ans. I think it was all of that long.

Ques. Now, you say you took her some cake once and she said "this is good cake; I don't get good cake to eat often;" that was good cake?

Ans. Well, it was right good.

Ques. She knew what to do with it?

10 Ans. She put it in her mouth.

Ques. And you didn't think the cake was very good?

Ans. Well, I made that remark.

Ques. Well, you made some self depreciatory remarks about the cake?

Ans. Well, I said I didn't know it was so good.

Ques. Now, after this occasion, four or five weeks before your grandmother's death, that you went to see her and asked her about her relations with Mr. Fox, she was never out of bed?

20 Ans. No, sir; this was her death sickness.

IDA M. SCOTT, recalled for

Direct examination.

By Judge Trenchard:

30 Ques. Mrs. Scott, won't you tell the Court what you know about Mrs. Harris's eyesight?

Ans. Well, I don't think her eyesight was so poor; she did not wear glasses around the house; sometimes she wore them, sometimes not.

The hearing at this point adjourned to October 24, 1901, at Salem, N. J.

SALEM, N. J., October 24th, 1901.

By Judge Trenchard: If the Court please, I here ask that the proponent produce the bank book of Mrs. Harris, all returned and cancelled checks and any securities which she may have left in the way of promissory notes, due bills or mortgages, or other evidences of debt in their control.

By Mr. Acton: I would like to have some reason for the production. 10

By Judge Trenchard: I am unable to specify until I see the papers.

The Court: I think it proper that these papers be produced; you may make search for and produce them at the next hearing.

20

MRS. IDA SCOTT, recalled for

Direct examination.

By Judge Trenchard:

Ques. You testified in this case at the last hearing?

Ans. Yes, sir.

Ques. Do you remember whether Mrs. Harris ever made any statement to you in regard to William Fox's state of mind? 30

Ans. Yes, sir; she used to send for me and she would say she didn't know what to do with William; she thought he was losing his mind; she said he used to have mad spells; she said he had broken up one of her chairs.

Ques. She said that, said that William Fox had broken up one of her chairs?

Ans. Yes, sir.

Ques. What else did she say?

Ans. Said he had torn the buttons all off his vest, and when he came in the room he showed me his vest and the buttons were all off.

Ques. What room did Mrs. Harris occupy?

Ans. The middle room.

Ques. In what conditon were the shutters at the windows of that room?

10 Ans. One of them had been closed ever since the will was made; it was kept closed as long as she lived; when I went by it was always closed.

Cross-examination.

By Mr. Acton:

Ques. When was it, madam, that she told you William Fox was crazy?

20 Ans. The winter the will was made.

Ques. That is as near as you can come to it?

Ans. It was during the winter I moved from there.

Mr. Acton: That will do, madam.

JONATHAN G. BROOKS, sworn.

30 Cross-examination.

By Judge Trenchard:

Ques. Mr. Brooks, you reside where?

Ans. Elmer.

Ques. You were formerly a mayor of the town, I believe?

Ans. Yes, sir.

Ques. You have lived there how long?

Ans. Nineteen years, the 15th of October.

Ques. Did you know Anna Harris in her lifetime?

Ans. Yes, sir.

Ques. How near to her did you live?

Ans. Well, I think our houses are fifteen feet apart, about that.

Ques. You are a next-door neighbor of Anna Harris? 10

Ans. Yes, sir.

Ques. Did you see Anna Harris frequently?

Ans. Well, I did up to a year or so before she died.

Ques. Well, from your observation, what would you say was the condition of her, physically, for four years before her death?

Ans. She was a sick woman; I should say she was sick.

Ques. Confined to the house pretty generally?

Ans. Well, she was for two years; I do not think I had seen her in the yard for two years. 20

Ques. What room did she occupy?

Ans. The middle room; I suppose it was the sitting room; the parlor was the front room, the kitchen was the rear room.

Ques. Were there any shutters on the room where she lived?

Ans. There were on the side where I lived on; I do not know about the other side.

Ques. How were they kept?

Ans. Well, for the last year and a half they have been 30 closed toward where I live.

Ques. Do you know the occasion for their being kept shut?

Ans. I do not.

Ques. Did you go to see Mrs. Harris at times?

Ans. I have been there three times since she lived in the house.

Ques. When was it you were there, as near as you can say?

Ans. I was there this last winter a year ago; it would be about Dècember or January.

Ques. Well, now, tell what transpired between you and Mrs. Harris on each of these visits, Mr. Brooks?

Ans. Well, she sent for me one day; it was the first time I went in there; she claimed she was poor and needed some money; she said she was just about out; she said
10 she was sick and had no way to get out and get any, and said she wanted me to get her some. I talked with Mr. Lashley about it, and he said that there was money due in the Association and said she could have that at any time.

Ques. Did she say she had enough to eat?

Ans. She stated she was hungry, had nothing to eat; she wanted some one to take care of her; she wanted to know if I wouldn't hunt her up a nurse. I said I would look for one. She said I would be well paid for it. I
20 went out and looked around and found Mrs. William Dunham. She was there for two weeks, I think about two weeks, if I remember. She said she hadn't nobody to take care of her, and I asked the housekeeper if there was anything to eat in the house. She said "yes;" said Mrs. Harris wanted chicken. I told her to kill her one a day. I think she had plenty to eat after that.

Ques. Did she ever complain to you on other occasions of not having enough to eat?

Ans. I think but once.

30 Ques. Well, what were the facts, so far as you know?

Ans. I think she had enough to eat; the butcher wagons, baker wagons and grocers' wagons stopped there every day. I suppose she had enough to eat; I saw them get stuff from the wagons.

Ques. What else transpired on any of these visits to Mrs. Harris?

Ans. I do not know as anything that I remember now.

Ques. Did you ever hear her say anything about burning up the house?

Ans. Well, if you want to know what I done, I went in there; I called Mr. Ladd, he went with me, we found Mrs. Harris there.

Ques. State what transpired there in her presence?

Ans. Well, when I got there everything was quiet. She said Mr. Fox was trying to burn the house down. Fox had gone to bed; the housekeeper was up. The housekeeper said Mr. Fox had poured some oil on the fire—it was low—to fix it; it blowed the lid off the stove; she thought they were trying to burn her out.

Ques. When you refer to the housekeeper, you mean whom?

Ans. I mean Maggie Fox; I think they called her that.

Ques. Did she ever say anything to you about being her guardian?

Ans. She did.

Ques. What was it?

Ans. She said she wanted me to come in, see that she had enough to eat—be her guardian.

Ques. Mr. Brooks, speaking now of these two visits which occurred winter before last, at that time do you think Mrs. Harris was rational or irrational?

Ans. Well, I think there were times when she was and there were times when she was not, or at least I thought she wasn't; I don't know much about insane people.

Cross-examination.

By Mr. Acton:

Ques. Mr. Brooks, you are now in the real estate business somewhat, are you not?

Ans. Yes, sir.

Ques. You rent houses, collect rents?

Ans. Yes, sir.

Ques. And that is what she meant when she wanted you to be guardian?

Ans. She didn't say anything about rent.

Ques. She had spoken to you about her houses and the difficulty she had collecting the rents?

Ans. Well, now, I don't think we ever had any conversation about rents.

10

E. C. HITCHNER, SWORN.

Direct examination.

By Judge Trenchard:

Ques. Your full name is what?

Ans. Everitt Cassilo Hitchner.

Ques. You live where?

20 Ans. Elmer, N. J.

Ques. How long have you lived there?

Ans. Thirty-nine years.

Ques. Until recently you were in the milk business, retailing milk?

Ans. Yes, sir.

Ques. You served Mrs. Harris with milk?

Ans. I did.

Ques. During the three or four years preceding her death, did you do that?

30 Ans. I do not know; I suppose for five years; I won't be positive; I can't be positive without the book.

Ques. You saw Mrs. Harris frequently then during the three years preceding her death?

Ans. I did.

Ques. Talk with her?

Ans. Yes, sir.

Ques. So far as you observed, what was her physical condition; was she a sick or well woman?

Ans. Well, for the last year or so, three or four years, she was not well; I don't remember hearing her complain as much at first as afterward.

Ques. She occupied the middle room?

Ans. Where she lived last?

Ques. Yes.

Ans. Well, I couldn't say about that; I have saw her there and in the back room; she slept in the middle room; I do not know how long they lived there; I served them with milk before they went in that house. 10

Ques. Did you often meet Mrs. Harris when you went to serve milk; I believe you said you did?

Ans. Yes; in good weather.

Ques. Did she ever call to you to come into the house?

Ans. She did.

Ques. Just state what transpired?

Ans. She has called me in more than once.

Ques. State what transpired every time you went in? 20

Ans. I couldn't possibly do that; she would ask me to come in at different times and for different purposes; she would want to tell me about her troubles and to pay me.

Ques. You remember any of these things that she told?

Ans. Yes; I remember one; I have tried to collect the bills; she would say she couldn't get her rents; one time I remember more distinctly than any other time, I was called in in the morning about half past five or quarter to six; I cannot say when that was. 30

By the Court:

Ques. What year was it?

Ans. As near as I can tell about two years; I cannot tell exactly; I left home at five o'clock with the milk

wagon, and it was before thorough daylight when I got there; it was getting light.

By Judge Trenchard:

Ques. Well, now, then what happened?

Ans. She called me in and told me that Bill was trying to burn her up; well, of course, I went in; I didn't generally go in when she called me; the room was dark, a dim
10 light burning; she said, "He has had the top off the stove; he has been throwing fire around the room." I looked around for fire; couldn't see any. I smelled to see if there was any smell of smoke in the room; I struck a match and looked for traces of fire; I couldn't find none; I asked Bill's wife where he was and I believe she said he had gone to bed, I am not positive. I went out, told her I couldn't see anything wrong; I then went and called Mr. Brooks.

Ques. Did you return to the house after calling Mr.
20 Brooks?

Ans. I didn't, no; I was in a hurry.

Ques. Well, in your judgment, was Mrs. Harris rational or irrational?

Ans. At that time?

Ques. Yes.

Ans. I wouldn't think a person who made statements like that was right; her mind was gone at that time; at other times I do not know what it was.

Ques. Mr. Hitchner, I believe that you said that you
30 didn't generally go in when she called you?

Ans. I did not.

Ques. Why not?

Ans. I didn't care to hear the conversation I generally heard when I went in there.

Ques. She ever say anything to you about Fox's mental condition?

Ans. She didn't to the best of my knowledge.

Cross-examination.

By Mr. Acton:

Ques. She usually paid you your milk bills?

Ans. Well, now, Mr. Acton, you mean she generally paid when anyone paid?

Ques. Yes.

Ans. Up to within a year of her death.

10

Ques. She kept an account of your milk?

Ans. No; I think not.

Ques. She took your statement?

Ans. Yes; she paid every week.

Ques. Did you make change with her?

Ans. Yes, sir.

Ques. Count the money over?

Ans. I really couldn't say; the last year, I suppose, probably, Fox's wife paid all the time. I stopped in to ask her about the pay at different times.

Ques. That is, when she was complaining about not getting the rents from her houses?

20

Ans. Yes, sir.

Ques. She owns some houses in Elmer?

Ans. Yes, sir; three little houses.

By Judge Trenchard:

Ques. When did you quit serving her?

Ans. I don't know; probably in March or April; I couldn't say.

30

Ques. March or April of this year?

Ans. Yes, sir.

Mrs. ELMER DUNHAM, sworn.

Direct examination.

By Judge Trenchard:

Ques. Mrs. Dunham, you live where?

Ans. I live between Monroeville and Elmer.

10 Ques. Will you tell us your first name?

Ans. Rose E. Dunham.

Ques. Are you in anywise related to Anna Harris?

Ans. No, sir.

Ques. You knew her in her lifetime?

Ans. Yes, sir; lived neighbors to her.

Ques. What kind of a woman was Mrs. Harris, as to temper?

Ans. She was the most devilish, contrary woman you ever knew.

20 Ques. Did you ever notice anything like hysteria about her?

Ans. Yes, I guess so; she came to visit our house about three or four years ago. Mrs. Rowand, Mr. Fox's wife, William Fox himself, were with her. She went off into some kind of a spell. You would have thought she was going to die in an instant, but after that was over, in about five minutes, she could talk as good as any of us.

Ques. Did you ever see her have these spells at any other time?

30 Ans. Yes, sir; on the farm, before she traded with Jonty Brooks.

Ques. You were called in on this occasion?

Ans. Yes, sir; especially when William Fox had one of his crazy spells she would always call for me.

Ques. Well, what kind of eyesight had Mrs. Harris?

Ans. I never saw her use glasses.

Ques. Could she see without glasses?

Ans. I saw her making William Fox's baby's outing

flannel dresses the last time I was there, about three years ago.

Ques. Was she sewing these dresses for the baby without glasses?

Ans. Yes, sir; without glasses.

Ques. How old was Fox's baby, then?

Ans. She was making short dresses for the baby.

Ques. That would make the baby how old?

Ans. Well, it was three years old.

Ques. Did you ever see any peculiar actions on the part of Mrs. Harris? 10

Ans. Yes, sir.

Ques. Tell me what they were?

Ans. She run me with a revolver all day.

By the Court:

Ques. Run you?

Ans. Yes, sir. 20

By Judge Trenchard:

Ques. When was that?

Ans. The "White Caps" got after her and Will Fox. She thought I knew who they were. I lived on the next farm.

Ques. About how long ago?

Ans. About 1889; it was just the year before she traded with Mr. Brooks.

Ques. Now, then, you may continue your answer. 30

Ans. She came up to my house and asked if I knew who the "White Caps" were. I told her I did. She said, "If you don't tell me I'll shoot you." She had a piece of paper about so long (indicating about a foot), and said her revolver was wrapped in it. She followed me around my house until my husband come home, and my husband said I should tell her who they were, and

after I told her she pulled out a stick of wood about this long (indicating about one foot), that she was calling a revolver all day.

Ques. Did she make any threats?

Ans. Yes, sir; she said she would have me arrested, and started to Elmer once to have it done.

Ques. Did you see Mrs. Harris up to as late as February, 1900?

10 Ans. The last time I saw Mrs. Harris was three years ago this winter.

Ques. Well, what transpired the last time you saw Mrs. Harris?

Ans. My husband had done up her husband's grave. I went there for the pay and whilst I was there a lady came in and paid her rent, and Mrs. Harris handed it to me.

Ques. Have any talk with her?

Ans. Yes, sir; ate dinner with her.

20 Ques. What condition was she in that day?

Ans. Right good humor that day.

Ques. When on this occasion she threatened you with shooting, did she say anything about the "White Caps" that day to you?

Ans. Yes, sir.

Ques. What did she say?

Ans. She said she had come there to ask, for she said I ought to know. I did; it was nothing but our neighbors; they did it to scare her.

Ques. What did she say about a letter?

30 Ans. She said she had a letter that if she didn't send William Fox away the "White Caps" would come; she said she wasn't going to do it.

Ques. Well, on that occasion, in your judgment, was she rational or irrational?

Ans. I never thought she had the best of wit; her actions didn't show it.

Ques. Madam, my question was, on that occasion,

the occasion of her talking about the "White Caps" letter?

Ans. Well, the woman was scared terrible.

Ques. I was asking you about this time?

Ans. Well, she was like any other woman; at that time she wasn't right.

Ques. Did you ever hear Mrs. Harris say anything about not having enough to eat?

Ans. No, sir; she always had plenty when I was there. 10

No cross-examination.

ELMER DUNHAM, sworn.

Direct examination.

By Judge Trenchard:

By Mr. Acton: I want to ask Mr. Brooks a question²⁰ in cross-examination.

Ques. Mr. Brooks, you did business with Mrs. Harris, traded farms with her; she was all right at that time?

Ans. Yes, sir; it was about thirteen years ago; about the time Mrs. Dunham has testified to.

By Judge Trenchard:

Ques. Mr. Dunham, you live where? 30

Ans. Monroeville.

Ques. You knew Anna Harris in her lifetime?

Ans. Yes, sir.

Ques. Lived neighbors to her?

Ans. I lived, just one farm between us, only one year I lived within a stone's throw of her.

Ques. Did you see her from time to time during the three years preceding her death?

Ans. No, sir; I have not.

Ques. When was the last time you saw her?

Ans. I don't think I have saw inside five years before her death.

Ques. In the days when you knew her and saw her, what kind of a temper had she?

Ans. She had a very severe temper at times.

10 Ques. Did you ever see anything in the nature of hysteria about the woman?

Ans. Not exactly; she had spells; I have been called there.

Ques. You have been called there when she had spells?

Ans. When she had trouble with her husband.

Ques. When she had sick spells?

Ans. Crazy spells or devilish spells.

20 Ques. Well, tell in your own way what you did see about Mrs. Harris?

Ans. I know that she was quite ill and contrary toward her husband.

Ques. Well, what did you hear her say; what did you see her do?

Ans. Well, I couldn't tell you; we would be called; father and I went one time, but it would seem that the hardest of it was over.

Ques. What would Mrs. Harris say and do on these occasions?

30 Ans. Well, she would have very little to say about it when I would get there to me; afterwards she would claim it was his fault. One day we found him in the barn; he said she had run him there with a butcher knife.

(Statements made by Harris objected to by Mr. Acton and ordered stricken out by the Court.)

Ques. Was she there?

Ans. No, sir.

Ques. Did she ever say anything about it?

Ans. No, sir.

Ques. Did you ever hear her say anything in reference to that matter?

Ans. Afterwards?

Ques. Yes.

Ans. No, sir.

Ques. Did you hear her say anything at the time in reference to that matter?

Ans. I just stated that she would say that he was to blame.

10

By the Court:

Ques. Just say what she would say?

Ans. She didn't say anything about it to me.

By Judge Trenchard:

20

Ques. I believe that you say that you saw Mrs. Harris from time to time up to about five years previous to her death?

Ans. Yes, sir. I don't suppose I saw her more than three different times since she left her place to come to Elmer, and not then to speak with her or talk with her.

Ques. Did you ever know of Mrs. Harris attempting suicide?

Ans. Yes, sir; at one time.

30

Ques. Well, just state it?

Ans. Well, she said she couldn't get the best of him no other way, she would go down to the pond and drown herself.

By Mr. Acton:

Ques. Who did she refer to?

Ans. Her husband.

By Judge Trenchard:

Ques. Well, now, on these occasions when you would see her, was she rational or irrational?

10 Ans. Well, at times she was and then she wasn't.

Cross-examination.

By Mr. Acton:

Ques. You refer to the period that you knew this woman, about twelve years ago?

Ans. Yes, sir; about twelve years ago; she moved away twelve years ago.

20 Ques. These occasions upon which she would appear irrational to you, was when she would quarrel with her husband?

Mr. Acton: That will do.

HIRAM NIXON, JR., sworn.

Direct examination.

30

By Judge Trenchard:

Ques. Mr. Nixon, you live where?

Ans. Whig Lane.

Ques. In this county?

Ans. Yes, sir.

Ques. You married one of the granddaughters of Anna Harris, did you not?

Ans. Yes, sir.

Ques. And you, of course, knew Mrs. Harris during her lifetime?

Ans. Yes, sir.

Ques. During the last few years, how often did you visit her?

Ans. Well, I suppose I was there five or six times since I knew her.

Ques. That during the last five or six years? 10

Ans. Yes, sir.

Ques. You were there on Decoration day last, were you not?

Ans. Yes, sir.

Ques. What was said and done?

Ans. Well, she wanted to know of my wife and me if we couldn't go out and get three or four men and have her business squared up, and my wife says, "Grandmother, I don't know who to get;" and then she turned to me and wanted to know if I couldn't take her home with me, and I said "I think you are too weak to ride so far; I think you had better get William Fox to take you out around in Elmer before you go so far." 20

Ques. Anything else on that occasion?

Ans. No, sir.

Ques. You were there on other occasions?

Ans. Yes, sir; I was there different times.

Ques. Were you there in February, 1900?

Ans. I cannot say about that.

Ques. Were you there that winter?

Ans. I do not remember the days. 30

Ques. Will you tell what transpired while you were there?

Ans. I do not know as I remember anything.

Ques. Did the old lady say anything to you about taking her away in a cradle?

Ans. Yes, sir.

Ques. Well, what did she say?

Ans. She wanted to know if I couldn't take her in a cradle; load her up anyway and take her away.

Ques. On these occasions when you went there would Mrs. Harris know you?

Ans. Well, I don't think she did.

Ques. Well, did she know her relatives?

Ans. I never heard her call them by name.

Ques. Did she know your wife?

10 Ans. She didn't ever call her by name that I know of.

Ques. What kind of eyesight did the old lady have?

Ans. All right, as far as I know.

Ques. Well, did you see her doing things about, indicating that she could see?

Ans. No, sir.

Ques. Were you present when the will was read?

Ans. Yes, sir.

(Witness shown Exhibit A for proponent, is asked to
20 state wherein it differs from the reading of the will at the funeral.)

Witness indicates.

Ans. Well, right there is one that is not like it was read. It was "Chrissie," now it is "Maggie."

Ques. See any others; if so, point them out?

Ans. Well, it is the same in down here.

Ques. Well, what do you say about it?

30 Ans. Well, it is "Maggie" here; the day the will was read it was "Chrissie."

By the Court:

Ques. Did you ever read the will before?

Ans. No, sir.

Ques. Who read the will that day?

Ans. Mr. Hitchner.

By Judge Trenchard:

Ques. These times that you saw Mrs. Harris, did you consider her rational or irrational?

Ans. Well, I didn't know; she didn't seem to know us whenever we would go there.

Ques. Well, you are permitted to give your judgment; what is your judgment?

Ans. Well, I didn't call her a woman who had her right mind, of course. 10

Cross-examination.

By Mr. Acton:

Ques. Mr. Nixon, when was the first time you went to see Anna Harris?

Ans. I cannot tell you.

Ques. It was after you had married her granddaughter? 20

Ans. Yes, sir.

Ques. How long after you were married?

Ans. I cannot tell you.

Ques. Well, couldn't you give us some idea; one year, two years or five years?

Ans. I suppose in a year.

Ques. Didn't you say on your direct examination that you had been there to see her five or six times was all?

Ans. Yes, sir.

Ques. If you were married nine years ago and went there five or six times in all you weren't there once a year, were you? 30

Ans. More than that, I think.

Ques. Did you go to see her eight years ago?

Ans. I don't know the days I went.

Ques. Did you go to see her prior to five years ago?

Ans. I don't remember.

Ques. Did you go before four years ago?

Ans. I suppose so; I said I had been.

Ques. Your wife and she were not friendly at first, were they?

Ans. As far as I know.

Ques. In nine years you have been there five or six times?

Ans. Yes, sir.

10 Ques. How many times in the last year of her life?

Ans. I don't know.

Ques. More than once?

Ans. No, sir.

Ques. Wasn't there but once during the last year of her life?

Ans. No, sir.

Ques. How many times were you there the year previous to that?

Ans. I cannot tell you.

20 Ques. Did you go there more than two times in one year?

Ans. I don't know.

Ques. Your memory good?

Ans. Yes, sir.

Ques. Had to introduce yourself every time you went?

Ans. Not quite.

Ques. Could you expect her to know you when you hadn't seen her for a year?

30 Ans. I would if I knew anyone.

ELIZA GAMBLE, sworn.

Direct examination.

By Judge Trenchard:

Ques. Mrs. Gamble, you live where?

Ans. Elmer.

Ques. And would you be kind enough to tell us how 10
old you are?

Ans. In my eightieth year.

Ques. You knew Anna Harris in her lifetime?

Ans. About twelve years I knew her.

Ques. Now, won't you tell us what kind of a woman
she was in respect to her health and temper?

Ans. She was a very queer woman.

Ques. What about her temper?

Ans. She had a very bad temper.

Ques. What did you ever hear her say or do? 20

Ans. Well, because she had such funny ways.

Ques. Won't you tell me what she said?

Ans. She was kind of quarrelsome with her friends.

Ques. Can you mention any incident?

Ans. No, sir; I cannot.

Ques. Do you know anything about her treatment
of her mother during her mother's illness?

Ans. No, sir; I was gone at that time.

Ques. Did you ever know her to have hysteria or
spells of any kind?

Ans. No. 30

No cross-examination.

CHARLES DALEY, SWORN.

Direct examination.

By Judge Trenchard:

Ques. Mr. Daley, you live in Elmer?

Ans. Yes, sir.

10 Ques. What is your business?

Ans. Insurance.

Ques. Well, does your business take you about making collections?

Ans. Yes, sir.

Ques. Did you have occasion in your past to go to Mrs. Harris's house in her lifetime?

Ans. Yes, sir.

Ques. Were you there frequently in the two or three years preceding her death?

20 Ans. Yes, sir; once a month; sometimes every two weeks.

Ques. Was Mrs. Harris a sick or well woman?

Ans. Physically unwell.

Ques. You talked with her when you would go there?

Ans. Somewhat.

Ques. Will you detail any conversation you had about February, 1900?

Ans. I cannot recall any conversation in particular.

Ques. But you say you have talked with her?

Ans. Somewhat.

30 Ques. And you have seen her frequently?

Ans. Yes, sir.

Ques. Well, now, basing your judgments on your conversations and observations, do you think she was rational or irrational during the last two or three years?

Ans. This is simply my judgment you are asking for?

Ques. Yes, sir.

Ans. There were times when she was a little unbalanced, if I am to use my judgment about it.

Ques. Did this condition of mind extend over two or three years?

Ans. No, sir; not generally speaking.

Ques. Well, did you say there were times when you thought she was unbalanced in her mind?

Ans. Well, I cannot call to memory any particular number of times; I wasn't there long, three or five minutes, then go on off.

Ques. Will you tell us what was the lady's manner ¹⁰ when you went to see her? I want to know what you know about this old lady.

Ans. There was little conversation; I didn't observe anything in particular.

Ques. What was her appearance?

Ans. Well, she seemed to be in a great deal of distress; she seemed to be suffering physically and had a great deal of trouble.

Ques. Did she speak about it?

Ans. Not that I can recollect.

Ques. Well, you judge from her conduct and general ²⁰ appearance?

Ans. General appearance.

Cross-examination.

By Mr. Acton:

Ques. You judge from general appearance?

Ans. Yes, sir. So far as business, her daughter-in-law, Mrs. Fox, did it in the last two or three years previous to her death. ³⁰

Ques. Prior to that time Mrs. Harris did it?

Ans. Yes, prior to that time.

Ques. Did Mrs. Harris ever pay you in that time?

Ans. I don't remember.

SAMUEL A. DARE, SWORN.

Direct examination.

By Judge Trenchard:

Ques. Mr. Dare, you live in Elmer?

Ans. I live about one mile from there.

10 Ques. You are the husband of Anna Dare?

Ans. I undertook to marry her; yes, sir.

Ques. You have lately been quite ill?

Ans. Yes, sir.

Ques. You were at the time of the last hearing?

Ans. Yes, sir, I have been under the weather; typhoid fever knocks you out bad.

Ques. You, of course, knew Anna Harris in her lifetime?

Ans. Yes, sir; for forty years.

20 Ques. What can you tell us respecting Mrs. Harris' temper?

Ans. Well, she used to get pretty mad sometimes.

Ques. What can you tell us about her physical health?

Ans. She had been a pretty rugged woman until the last three or four years.

Ques. What was the matter then?

Ans. Dropsy of her feet and legs, she told me; her feet was all swelled up.

Ques. Did you ever notice any signs of hysteria in her?

30 Ans. She had funny spells; I don't know what you would call it.

Ques. During the last four or five years, have you visited her?

Ans. Yes, sir; every week or two or three; Anna had rheumatism; I would go there to see how she was getting on. This last year she would go there nearly every day, then in a day of two I would go, and she would say,

“Why don’t Anna come? She ought to take care of me.”
I would tell her she couldn’t come and leave her house.

Ques. Were you there at the time of her death?

Ans. Not when she died; I was there the next morning after she was dead.

Ques. Do you know what she died of?

Ans. I suppose of the breaking out. The doctor called it erysipelas. She was raw as a piece of beef, the part I saw of her.

10

Ques. How long was that the case?

Ans. The last winter, I guess.

Ques. Well, you were there during Mrs. Harris’ last illness?

Ans. I was there several times.

Ques. I was speaking of the last part of her sickness?

Ans. I was there off and on all winter. I was there every little while; my old woman was there this last spring.

Ques. As I understand you, your wife was there with her when she died? 20

Ans. Yes, sir.

Ques. What kind of eyesight had Mrs. Harris in the last year or two?

Ans. I thought it was all right. These last three or four years she didn’t use glasses; she did use them years ago.

Ques. Just state what Mrs. Harris would state to you when you would go there?

Ans. She would ask me why Anna didn’t come; I would say she couldn’t come every day; she was there the day before. I thought she didn’t know her. 30

Ques. Did she know other members of the family?

Ans. Well, I don’t know; she appeared to know me sometimes; sometimes not.

Ques. Ever say anything to you about whether she had enough to eat?

Ans. Not particularly she didn’t; she wanted me to take her business one day and to take care of her and

get her something to eat, and I said she had a good man to take care of her business, Mr. Cochran; I told her he could get her some money; he could get it for her on mortgage. She said that the money is all gone.

Ques. Did she say anything about \$1,200?

Ans. About the \$1,200? I forget; I am pretty forgetful anyhow; she said it was all gone, said she didn't know where it had gone. I don't think she knew what she was talking about.

10 Ques. Did she say anything about losing anything else?

Ans. Yes; money and papers she said.

Ques. Did she ever say anything to you about taking her to the county house?

Ans. No.

Ques. You ever hear her say anything about the fire?

Ans. No, sir; never said anything to me about it.

Ques. In your judgment, was this lady, Mrs. Harris, rational or irrational?

20 Ans. Well, I don't think she was the last three or four years; I didn't put much confidence in what she told me.

Ques. You were present at the funeral of Anna Harris, when the will was read?

Ans. Yes, sir.

Ques. Who read it?

Ans. He did. (Pointing.)

Ques. Who is that?

Ans. Judge Hitchner; some calls him Mr. Hitchner.

30 (Witness being shown Exhibit A, for proponent, is asked to examine it and state where it differs, if at all, with the will read by Judge Hitchner at the funeral.)

Ans. I see three places here that don't read like he read it.

Ques. How does it differ?

Ans. He read it "Chrissie Fox," now it is "Maggie Fox"; three different places.

Cross-examination.

By Mr. Acton:

Ques. You say there were times when she didn't seem to know people who were calling on her? 10

Ans. Yes, sir.

Ques. That was during her last sickness?

Ans. Yes, sir; during the last two or three years I say she didn't know people who visited her.

Ques. Who ever came there when you were there?

Ans. Well, my wife, she didn't call her by name.

Ques. Your wife and she were not on friendly terms for eight or nine years, were they?

Ans. They never had any quarrels.

Ques. Were they on friendly terms? 20

Ans. Well, not for three or four years.

Ques. Then, when your wife says eight or nine years, she was mistaken?

Ans. I misunderstood you; I thought she said when she didn't know people.

Ques. I ask you how long a period your wife and Anna Harris didn't speak?

Ans. About two or three years.

Ques. How long a time didn't you visit?

Ans. Eight or ten years.

Ques. You didn't speak, did you? 30

Ans. No, sir.

By the Court:

Ques. How long have you visited this last time?

Ans. About eight or ten years.

Ques. Then this time they didn't visit was before Mrs. Harris moved to Elmer?

Ans. Yes, sir.

By Mr. Acton:

Ques. Did your wife visit her mother all the period her mother was in Elmer?

Ans. Yes, sir.

10 Ques. When was the first time you went to see your wife's mother with your wife?

Ans. I cannot tell.

Ques. Can you remember any time when you went with your wife to visit her mother before her last sickness?

Ans. No; I do not remember any particular time.

Ques. Did you ever meet any of your daughters at your wife's mother's?

Ans. I do not remember as I did.

20 Ques. Did you ever meet your daughters' husbands at your wife's mother's?

Ans. Which one?

Ques. Either one of them?

Ans. I have saw Hiram there.

Ques. And that was a short time before she died, and that was the only time?

Ans. Yes, sir.

Mr. Acton: That will do.

30

Recess until 1.15 o'clock.

Hearing resumed at 1.15 P. M.

By Judge Trenchard: If the Court please, with the exception of matters which may grow out of the production

of these books and papers, which I called for this morning, I believe I am ready to rest my case, with the understanding that the Court will allow me to re-open it if need be.

The Court: That is understood.

By Mr. Acton: I would like to ask what is the purpose of this call for papers; I think I have a right to know what they are wanted for? 10

By Judge Trenchard: I have no objection to stating to the Court that I have no well defined purpose for asking for these papers, but I think they may throw some light upon the matter of the relations of Anna Harris with the parties interested.

By Mr. Acton: If these papers are offered they will become a part of the record, and I object to encumbering the record with them. Some of them are protested notes and not in the possession of my clients. 20

By the Court: We cannot tell about their value until they are produced. You will make search and produce them. Have you any witnesses with whom you can go on to-day?

Mr. Acton: Yes, sir.

PROPONENT'S TESTIMONY.

ROBERT M. HITCHNER, SWORN.

Direct examination.

By Mr. Acton:

10

Ques. Mr. Hitchner, where do you live?

Ans. Elmer.

Ques. How long have you resided there?

Ans. All of my life.

Ques. How long?

Ans. Seventy-three years.

Ques. What is your business?

Ans. My business is farming, conveyancing, settling estates, real estate.

20

Ques. You are a scrivener?

Ans. Yes, sir.

Ques. Have you ever held any official positions in the township and county, and if so, what?

Ans. In the township I have been Assessor, Township Clerk and Township Committeeman; in the borough of Elmer I was member of Council, Mayor of the borough of Elmer, Justice of the Peace, Judge of the Court of Common Pleas for ten years.

Ques. Did you know Anna Harris in her lifetime?

Ans. I did.

30

Ques. How long did you know her?

Ans. I have always known her for the last sixty years.

Ques. Did you ever do business with her, or for her?

Ans. Yes.

Ques. Extending over the period of how many years?

Ans. I suppose it might go back thirty years; thirty-five years, probably.

Ques. She died when?

Ans. She died—I don't know exactly when, but this last spring or summer; in June of the present year, I think.

Ques. Was she, in your estimation, a woman competent to do business during the period that you knew her?

Ans. I always thought so; yes.

Ques. She was a careful and prudent business woman?

Ans. Always looked out for her own interests.

Exhibit A for proponent shown witness, he is asked: 10

Ques. What is that paper?

Ans. The last will of Anna Harris.

Ques. Who drew it?

Ans. I did.

Ques. Who signed it?

Ans. Anna Harris.

Ques. Who were the witnesses?

Ans. Emerson Sherwood and Adin Beckett.

Ques. Were you present at the execution of that will? 20

Ans. I was.

Ques. At whose request did you draw it?

Ans. At the request of Anna Harris.

Ques. Did you draw it as she requested?

Ans. I did; to the best of my knowledge I did; I tried to.

Ques. Did she sign it in the presence of these witnesses?

Ans. She did.

Ques. And in your presence? 30

Ans. She did.

Ques. Did you make her acquainted with the contents of it before she signed it?

Ans. I did.

Ques. And you and Mr. Sherwood and Mr. Beckett were all present at the same time?

Ans. I was.

Ques. And she signed it in their presence?

Ans. She did.

Ques. And they signed it as witnesses in her presence?

Ans. Yes, sir.

Ques. And in the presence of each other?

Ans. Yes, sir.

Ques. At the time you drew, was she capable of making a will?

10 Ans. I thought so.

Ques. Was she at that time perfectly sane and rational?

Ans. She was.

Ques. Did you make any suggestions to her or did anyone else make any suggestions to her as to the provisions of that will?

Ans. No.

Ques. Then the will was the result of her expressed desires, unaided?

Ans. Yes, sir.

20 Ques. Did you draw the will in her presence?

Ans. No; I pencilled it down and then went home and wrote it down and brought it back and read it to her; she was satisfied with it.

Ques. Did she want you to get witnesses?

Ans. She did.

Ques. Now, Judge, there is an interlineation in this paper on the first page thereof; the interlineation is "their heirs and assigns forever"; was that interlineation put in there before she executed the will?

30 Ans. It was.

Ques. Were all interlineations put in that way?

Ans. Yes, sir.

Ques. The item, "I give and devise to Lizzie Nixon 150, in cash," was that put in before execution?

Ans. Yes, sir.

Ques. There are three erasures, four erasures—the word "Maggie" seems to be an erasure—will you state to the Court the circumstances of that?

Ans. If my memory would serve me, I pencilled it all down as she wanted it; I went back, of course, and compared it to see if everything was correct; I found that I had omitted the Nixon bequest; that was done before it was executed. As regards the word "Maggie," when I went home she told me "William Fox and Chrissie Fox, his wife"; she said that she wanted to leave this property to William Fox and his wife; I am not sure she said "Chrissie."

10

By the Court: When did you do this, after the will was read?

Ans. Yes, sir.

Ques. Then I understand you to say that after the will was signed you changed the name?

Ans. Yes, sir. I didn't suppose there would be any trouble about that; I took the will home after the funeral and changed it. I didn't suppose it made any difference.

20

The Court: That certainly ends the case.

Mr. Acton: Oh, no, your Honor, will you hear me on that?

The Court: Well, go on.

Cross-examination.

30

By Judge Trenchard:

Ques. From whom did you learn that you had made this mistake?

Ans. William Fox told me that I had got his wife's name wrong.

Ques. How many changes did you make in this will after the death of Mrs. Harris and after reading it?

Ans. Only the one change.

Ques. I am asking how many changes you made?

Ans. Only in the one name.

(The attention of the witness is called to what appears to be an addition to the will as originally written, in these words, "to them and their heirs and assigns forever.")

10

Ques. I ask you when you made this change?

Ans. Before the will was excuted; everything was in before the will was excuted.

Ques. The bequest to Lizzie Nixon, you say you made that addition to the will?

Ans. Yes, sir.

Ques. When did you read this will to the testatrix?

Ans. Before I went after the witnesses.

Ques. Was that the only time you read it over?

Ans. Yes, sir.

20

Ques. Then you read it over to her and after thus reading it over to her you made those additions to which I have called your attention?

Ans. No; I made those additions before I read it to her; I read it to myself and saw the Lizzie Nixon omission and changed it.

Ques. That was the only time you read it to her?

Ans. That is all I remember.

By the Court:

30

Ques. When you read it to her, did you read the word "Chrissie"?

Ans. I expect so; it was "Chrissie" then.

By Judge Trenchard:

Ques. Did she make any comments about this will when you read it to her?

Ans. She said it was all right; I asked her particularly.

Ques. I call your attention to language which seems to have been written in another ink to that employed in the body of the will, "excepting what devised and bequeathed to William Fox and Maggie Fox," and I ask you when that language was written in the will?

Ans. That was written at the time I wrote the will.

Ques. Written with the same ink?

10

Ans. I have two ink stands.

Ques. I call your attention to the fact that this language which I last pointed out to you seems to be written in the same sort of ink which you wrote the word "Maggie," and I ask you if it was not written at the same time you wrote "Maggie"?

Ans. No, sir; I have two ink stands; I may have dipped into the other ink.

Ques. I believe that you say that Fox told you that this will was wrong?

Ans. Said I had got his wife's name wrong. I changed it of my own accord.

20

Ques. You have been a judge of the County Court, have you not?

Ans. Yes, sir.

Ques. Did you not know, Judge, that you had no right to change that will after it was executed?

Ans. Yes, I knew that I had no right to change it, except to correct an error of mine.

Ques. Who was making this will; was Mrs. Harris making it or were you?

30

Ans. Mrs. Harris; I didn't have anything to dictate about it.

Ques. You depended, then, upon your own judgment, or upon Fox's statement, for what should go in the will?

Ans. About the name.

Ques. Is there any more important thing than the name of the person who is to take the property?

Ans. That is all important. I thought the name was my error.

By the Court:

Ques. You read it with the word "Chrissie" in it?

Ans. Yes, sir; I must have.

10 By Judge Trenchard:

Ques. You have always regarded Mrs. Harris as a very peculiar woman?

Ans. Yes; I know she was some little peculiar.

Ques. She always was peculiar; wasn't that so?

Ans. Yes, sir.

Ques. She became more and more peculiar as this disease advanced?

Ans. Probably she did.

20 Ques. Did I understand you to say that at the time this will was written that you regarded Mrs. Harris as capable of doing business as a prudent and cautious woman?

Ans. I did; she was as much as ever in her life.

Ques. You have long held the opinion that William Fox and Maggie Fox should be compensated for the work they have done?

(Upon the objection of Mr. Acton the question is withdrawn by Judge Trenchard.)

30

Ques. You have stated, have you not, that William Fox and Maggie Fox should be compensated out of this estate, or taken care of?

(Objection by Mr. Acton.)

The Court: I think that is competent.

Ans. I never expressed an opinion of that kind before this will was made.

Ques. Have you since the will was made?

Ans. I have assented to other statements to that effect.

Ques. You know Alonzo Johnson, do you not?

Ans. Yes, sir.

Ques. Did you not tell Alonzo Johnson that Mrs. Harris had been of such trouble to William Fox and his wife that they should be paid and well paid, as you had it in your power and would see it was done, or words to that effect? 10

Ans. Never said so; never expressed myself to that effect, not in substance. I don't remember talking to Alonzo Johnson; I have no knowledge of it.

Ques. You say that you drew this will as she requested?

Ans. I did to the best of my knowledge.

Ques. Everything is in that will as she ordered?

Ans. Yes, sir. I have said that I changed the name "Chrissie" to "Maggie." 20

Ques. You certainly wouldn't have written the word "Chrissie" if she had said "Maggie" would you?

Ans. No.

Ques. Then she said it, didn't she?

Ans. If I didn't misunderstand her, she did.

Ques. Well, Judge, your hearing it good?

Ans. Pretty good.

Ques. Did you ever hear Mrs. Harris say anything about losing \$1,200, or any other sum, and a lot of papers? 30

Ans. I did not.

Ques. Ever hear her say that William Fox was trying to burn her alive, or words to that effect?

Ans. No.

Ques. You say that you wrote this will down in pencil?

Ans. She sent for me and I pencilled it down.

Ques. Where is this memorandum?

Ans. I put it in the waste paper basket.

Ques. Do you recall destroying it?

Ans. I do.

Ques. How did you destroy it?

Ans. I gave it a tear and threw it in there.

Ques. Is your waste paper basket still there?

Ans. It has been burnt up several times full of papers.

10 Judge Trenchard: I will ask you, Judge, to make a search for that paper, and if you can find it, bring it here.

Ans. It is burnt up.

Ques. Have you any recollection of burning it?

Ans. Yes; all in that basket has been emptied and burnt several times since then.

The Court: Well, make a search and report.

20

MRS. EMALINE ROWAND, SWORN.

Direct examination.

By Mr. Acton:

Ques. Mrs. Rowand, how do you spell your name?

Ans. R-o-w-a-n-d.

Ques. Mrs. Rowand, where do you reside?

30 Ans. Three miles from Elmer.

Ques. You are a niece of Mrs. Harris, one of the legatees under the will?

Ans. Yes, sir.

Ques. Did you know your aunt well?

Ans. Yes, sir; I have known her since I was big enough to know anyone.

Ques. Did you ever visit her?

Ans. Yes, sir.

Ques. Frequently?

Ans. Often.

Ques. She is the owner of two or three small houses in Elmer?

Ans. Yes, sir.

Ques. She rented these houses?

Ans. Two of them.

Ques. Lived in the other?

Ans. Yes, sir.

Ques. Did you frequently call on your aunt while she lived in Elmer? 10

Ans. I did.

Ques. What was her mental condition?

Ans. Please explain.

Ques. What was the condition of her mind?

Ans. Well, her mind seemed to be good.

Ques. Did she always know you?

Ans. Yes; until the last part of her sickness, two weeks before her death.

Ques. Prior to that time she always knew you? 20

Ans. Yes, sir.

Ques. She knew others who came in?

Ans. She seemed to; yes, sir.

Ques. The year before her death?

Ans. Yes, sir.

Ques. She ever speak to you about her business in any way?

Ans. Yes, sir.

Ques. About the renting of her houses, &c.?

Ans. Well, I have heard her say she had trouble in getting her rents. 30

Ques. How long was that before her death?

Ans. Two years.

Ques. She seemed acquainted with her business?

Ans. Yes, sir.

Ques. Any difference between her and any other old person?

Ans. No, sir; not under the circumstances of her suffering and sickness.

Ques. Was she mentally clear and bright to talk with?

Ans. Only when her disease raged on her; she suffered so.

Ques. When was that?

Ans. For two years right up she gradually grew
10 worse.

Cross-examination.

By Judge Trenchard:

Ques. You know Mrs. Ida Scott?

Ans. Yes, sir.

Ques. Along about the time the will was made you told Mrs. Ida Scott that Mrs. Harris was certainly losing her mind, did you not?

20 Ans. No, sir; I never said she was; I don't remember that I did; I have never said that she had lost her mind.

Ques. That she was losing her mind?

Ans. I don't think that I did; no.

Ques. Or words to that effect?

Ans. Well, I may have said that she didn't seem right when she had those terrible turns; I don't think she had when she was suffering so.

Ques. Have you any property which belongs to Mrs. Harris?

30 Ans. No, sir.

Ques. Did you have a sewing machine?

Ans. That she gave me two years before she died; yes, sir.

Ques. What have you done with it?

Ans. I have the table part.

Ques. Sold the other part?

Ans. No, sir; I traded it.

Ques. Are you indebted to the estate of Anna Harris?

Ans. No, sir.

Ques. Don't they hold a note of yours?

Ans. No, sir.

Ques. You tried to get them to take a note?

Ans. No, sir.

Ques. You tried to get Mrs. Harris to take a note?

Ans. No, sir.

Ques. Did you try to get her to sign a note for you? 10

Ans. She tried to sign a note for me, yes, sir; she did.

Ques. Did she sign it?

Ans. No, sir.

Ques. Why not?

Ans. She couldn't see without glasses and her glasses didn't fit her.

Ques. That was the reason she didn't sign; that was the only reason?

Ans. Yes, sir; she was weak and couldn't write well. 20

Ques. Then you didn't get this note?

Ans. No, sir.

Ques. What were you trying to get her to sign this note as, an endorser?

Ans. She wanted to pay me \$50 for services I did for her while she was sick.

Ques. She wanted to?

Ans. Yes, sir.

Ques. Did she propose that she sign the note?

Ans. Yes, sir.

Ques. Where did you get this note? 30

Ans. Mr. Cochran drew it.

Ques. Did you take it to Dr. Conover to draw and get him to get her to sign it?

Ans. No, sir; I asked him to witness the note and he said he wouldn't.

Ques. Since the last hearing, have you been to Dr. Conover and asked him to say nothing about it?

Ans. Yes, sir; as I didn't get the money I said I didn't want anything said about it.

Ques. You told him in effect, then, if he was called upon to testify, he would conceal from the Court the transaction?

(Objection to question by Mr. Acton. Objection overruled and question admitted.)

10

Exception to the ruling allowed.

Ans. I didn't go there purposely; I told doctor that he needn't say anything about it.

Ques. Here at Court?

Ans. No; I didn't know it was coming here to Court.

Ques. You say that Mr. Cochran filled out this note?

Ans. Yes, sir.

Ques. You asked Dr. Conover to fill it out, didn't you?

20

Ans. No, sir; I did not.

Ques. You also told Dr. Conover that you didn't get this note signed, but that you got something better, did you not?

Ans. Said what I got, I got.

Ques. Did you say you got something better than the signed note, or words to that effect?

Ans. No, sir.

Ques. You told Mrs. Harris, in the presence of Lizzie Nixon, that Anna Dare was going to put this matter of her estate in the lawyer's hands?

30

Ans. Yes, sir; she told me so.

Ques. And that she was going to give the lawyers one-half?

Ans. Yes, sir.

Ques. And you also said to Mrs. Harris, "Aunt Anna, I am to have something?"

Ans. No, sir.

Ques. To which she replied, "I don't know?"

Ans. No, sir.

Ques. You again said, "Aunt, I am to have something?"

Ans. No, sir.

Ques. Never had any conversation to that effect with Mrs. Harris?

Ans. No.

Ques. Did you ever see \$1,100 in money about those premises there?

Ans. No, sir, I never did; I thought it was \$1,200. 10

Ques. Didn't you and Anna Dunham see a large sum of money in a trunk?

Ans. No, sir.

Ques. You know a lady named Ida Ladd?

Ans. Yes, sir.

Ques. Did you tell Ida Ladd that you found money in a trunk upstairs, and that you took it to Mrs. Harris, or words to that effect?

Ans. No, sir. 20

WILLIAM FOX, sworn.

Direct examination.

By Mr. Acton:

Ques. William, where do you live?

Ans. Elmer. 30

Ques. You lived for a number of years with Mrs. Harris?

Ans. Yes, sir.

Ques. How old were you when taken by her?

Ans. Around twelve years.

Ques. You were a "taken boy?"

Ans. Yes, sir.

Ques. You lived with her up to her death?

Ans. Yes, sir.

By the Court:

Ques. How old are you now?

Ans. Going on thirty-six.

10 By Mr. Acton:

Ques. Lived with her for twenty-four years?

Ans. Yes, sir.

Ques. Worked and brought home your earnings?

Ans. Yes, sir.

Ques. Did Anna Harris have a house or two in Elmer?

Ans. Yes, sir.

Ques. How many houses?

Ans. Two single and one double house.

Ques. Who built them?

20 Ans. I built the two single houses for her.

Ques. Ever get any compensation from her for it?

Ans. No, sir.

Ques. Did you assist in the building of the double house?

Ans. No, sir; nothing only a part to it on the back.

Ques. Ever get any compensation for that?

Ans. No, nothing for the work; she furnished the money for the stuff.

Ques. Paid for the work?

30 Ans. No, sir.

Ques. She rented these houses?

Ans. Yes, sir.

Ques. She rented them herself?

Ans. Well, she rented them until she was unable to collect the rents, then I rented them.

Ques. When was that?

Ans. Four years ago or more.

Ques. You still with her?

Ans. Yes, sir.

Ques. She understands her business?

Ans. Yes, sir.

Ques. You act under her directions?

Ans. Yes, sir.

Ques. Who would make the improvements or alterations?

Ans. I would.

10

Ques. At whose request?

Ans. Hers.

Ques. This continue?

Ans. Clear up to her death?

Ques. She would tell you what alterations or repairs to make and you would make them?

Ans. Yes, sir.

Ques. She understood her business during all this time?

Ans. Yes, sir.

Ques. Did her daughter come to see her frequently? 20

Ans. Not very often.

Ques. Did her family come to see her frequently?

Ans. Not very often.

Ques. Was there feeling between her and her family?

(Form of question objected to by Judge Trenchard.)

By Mr. Acton:

Ques. Did you ever see any evidence of that? 30

Ans. Well, I can't tell you; well, I can tell you that I think they thought they were above her.

Judge Trenchard: I object to the opinion of the witness and ask that the answer be stricken out.

The Court: Mr. Stenographer, strike out the last answer.

By Mr. Acton:

Ques. What do you base that upon?

Ans. They thought they were above her.

Ques. Who did you hear say that?

10 Ans. I have heard them say it; I have heard the Dare-family say it.

Ques. Who of the Dare family?

Ans. Why, her daughter.

By the Court:

Ques. Which of her daughters?

Ans. She only had one.

Ques. When did you hear her say that?

20 Ans. Well, I don't recollect the time.

By Mr. Acton:

Ques. Did they ever care for the old lady?

(Objected to by Judge Trenchard and objection over-ruled.)

Ans. No, sir.

Ques. Did they ever take care of her?

30 Ans. Not to the best of my knowledge.

Ques. Well, she lived with you?

Ans. Yes, sir.

Ques. Did they ever provide things when she lived with you?

Ans. No, sir; nothing except that cake and the like of that.

Ques. Did they ever request her to come live with them?

Ans. No, sir.

Ques. Did you sit up nights with her in her last sickness?

Ans. Yes, sir.

Ques. How many nights?

Ans. Every night.

Ques. How long did you sit up that you didn't change your clothes?

Ans. I think it was about a year I didn't get to go to bed or my wife either. 10

Ques. One or the other of you up?

Ans. Well, we were always up until about twelve, until she would get easier, then I would lie on the settee in the kitchen; I would have to get up every little while.

Ques. What was her condition in February, 1900?

Ans. Why, she was all right; what do you mean, her mind?

Ques. Yes. 20

Ans. It was all right.

Ques. Did she converse intelligently upon subjects at that time?

Ans. Yes, sir.

Ques. Inquire about who the tenants of her houses were?

Ans. Yes, sir.

Ques. At that time was it required that you sit up with her nights?

Ans. No; I didn't sit up with her all nights then; I would sit up part of the night and then go to bed. 30

Ques. Was her mind clear at that time?

Ans. Yes, sir.

Ques. Do you know whether or not about that time she endeavored to procure employment for you from Enoch Garrison?

Ans. Yes, sir.

Ques. Know whether or not Mr. Garrison came to see her?

Ans. Yes, sir.

Ques. You were out of work at that time?

Ans. Yes, sir.

Cross-examination.

By Judge Trenchard :

10 Ques. Have you any trade?

Ans. Yes, sir.

Ques. What is it?

Ans. Carpenter.

Ques. Of whom did you learn your trade?

Ans. Bennie Ewans.

Ques. How long have you worked at it?

Ans. Several years.

Ques. Well, how many years have you followed your trade as carpenter?

20 Ans. Well, I can't tell exactly; you mean from the time when I commenced?

Ques. Yes.

Ans. Well, I suppose fourteen or fifteen years.

Ques. Well, how long has it been since you worked at your trade?

Ans. You mean steady working, don't you, Mr. Trenchard?

Ques. Yes.

Ans. Well, it has been six or eight years, I think.

Ques. Six or eight years you haven't worked much?

30 Ans. I haven't worked steady?

Ques. I suppose that during these three or four years that Mrs. Harris was ill you couldn't work at your trade because of her, is that so?

Ans. Yes, sir.

Ques. Well, now, since Mrs. Harris died, have you been to work at your trade?

Ans. No; but I have been working where I had been working before she did die.

Ques. Well, where is that?

Ans. Canning factory.

Ques. Mrs. Harris required your almost constant care at night for a considerable time, didn't she?

Ans. Yes, sir.

Ques. She was an invalid during that time?

Ans. During how long?

Ques. Three or four years.

Ans. No, sir; she was sick, not able to take care of herself for that time. 10

Ques. You and your wife had to take care of her?

Ans. Yes, sir.

Ques. And she grew steadily worse until her death?

Ans. She failed fast the last few weeks.

Ques. This illness of her's, I suppose, affected her mind?

Ans. Her mind was all right, good as anybody's.

Ques. That you are perfectly sure of?

Ans. Yes, sir; it was all right.

Ques. Does Mrs. Harris own a property on Union street, in Elmer? 20

Ans. Yes, sir.

Ques. Do you own any property in Elmer?

Ans. Yes, sir; I have money in both properties, but I don't know if I own anything.

Ques. In which properties have you money?

Ans. In the Union and Broad street single houses.

Ques. How have you money in them?

Ans. Helped furnish money to build them, Mr. Trenchard. 30

Ques. Where did you get the money?

Ans. Worked and earned it.

Ques. How did you get it?

Ans. Days work, carpenter work, etc.

Ques. Have you anything in the way of paper writing to show for this?

Ans. Yes, sir; receipts.

Ques. Have you them with you?

Ans. No, sir.

Ques. Will you get them and bring them with you next time we have a meeting?

Ans. Yes, sir.

Ques. Then you claim that Mrs. Harris was indebted to you at the time of her death?

Ans. Yes, sir.

10 Ques. And that is the way the indebtedness arose, by reason of your furnishing money to build these houses?

Ans. Well, I couldn't say about that; I know what the will read, but these bills are outside of the will, you know.

Ques. Did Mrs. Harris furnish you money from time to time?

Ans. No, sir.

Ques. Never furnished you money?

Ans. Yes, sir; she has gave me a little, but I had to pay it back.

20 Ques. When she would give you these moneys, was it by cash or check?

Ans. Cash.

Ques. When you paid her back would you take receipts?

Ans. Not for money loaned?

Ques. Did Mrs. Harris have any money in bank?

Ans. I don't know how much.

Ques. Did she have money?

Ans. She had at one time.

30 Ques. At the time of her death, did she have money in bank?

Ans. No, sir.

Ques. Did she ever have money in any other bank but the Elmer Bank?

Ans. No, sir.

Ques. Mrs. Harris had an idea that she was very poor financially, had she not?

Ans. That was the make of her.

Ques. Well, then, your answer is "yes" to that question?

Ans. Yes.

Ques. She at one time wanted you to take her to the county house?

Ans. No, sir.

Ques. Didn't you tell Samuel A. Dare, the husband of her daughter, that she wanted you to take her to the county house?

10

Ans. I don't remember.

Ques. Will you swear that you didn't?

Ans. No, sir; I won't swear that I did either.

Ques. Well, if she didn't want to go you wouldn't have told him so, would you?

Ans. Well, I might have done so, because I understand they say I am crazy now.

Ques. I ask you if you ever told Lizzie Nixon this, "My God, Lizzie, there is no salvation for the old woman this time"; did you ever tell her that?

20

Ans. No; if I have got my right mind I didn't.

Ques. Did you say you did or did not?

Ans. I will say I did not.

Ques. During this time that you say you worked and brought home the money that was used for the support of the family, didn't Mrs. Harris furnish money for the support and maintenance of the family?

Ans. Yes, sir.

Ques. Well, then, she was contributing toward it also with you?

Ans. Yes, sir.

30

Ques. Do you say that Mr. Dare and Mrs. Dare never said anything about taking Mrs. Harris home with them?

Ans. She was there about, I think, a couple of weeks before she died and wanted to take her home.

Ques. Now, why did you say, in answer to Mr. Acton's question, that they never wanted to take her home; did you forget about that?

Ans. Yes, sir.

Ques. Well, I understood you to say that they never cared for or provided for her; didn't come there and bring things?

Ans. A very little.

Ques. They did some little?

Ans. Yes, sir.

Ques. Well, you forgot about that when you were
10 answering Mr. Acton's questions?

Ans. Yes, sir; you have to answer short here.

Ques. The little you refer to was cake?

Ans. Yes, sir.

Ques. What else?

Ans. Mrs. Dare sent apples.

Ques. Who looked after the old lady's clothes?

Ans. She did, except what she hired done; I had to
hire some little done for her.

Ques. Did Mrs. Dare or family do it?

Ans. No, sir.

20 Ques. Who bought her shoes?

Ans. I bought her shoes.

Ques. Who would tell you to?

Ans. She would, or I would see she needed them.

Ques. Mrs. Dare do that?

Ans. No, sir.

By the Court:

Ques. When did Mr. Harris die?

30 Ans. I haven't the date; I think about fifteen years
ago.

By Judge Trenchard:

Ques. Mr. Fox, you say you bought shoes for Mrs.
Harris while she was there?

Ans. Yes, sir.

Ques. Didn't she wear cloth shoes?

Ans. Yes, sir; but she had other shoes.

By Mr. Acton: I would like to ask Judge Hitchner a question.

Ques. Judge, did you have any business transactions with Mrs. Harris about a year before her death?

Ans. About a year before her death she wanted money to pay bills, &c. I endorsed a note for \$200; she got the money on it. 10

Ques. Was she at that time capable of doing business?

Ans. Yes, sir; or I wouldn't have gone into it; it was renewed about six or eight weeks before she died and raised \$50.

Ques. Did she understand the business transaction?

Ans. Yes, sir.

Ques. Under the hands of the physicians at that time?

Ans. Yes, sir; that is why she wanted the money; they wouldn't come without pay. 20

Ques. Did she speak anything with reference to raising this money on a mortgage?

Ans. Yes, sir.

Ques. Was that the idea?

Ans. Yes, sir; but I told her I would endorse the note.

Ques. Did she tell you what property she wanted to mortgage?

Ans. Yes; the Union street houses; the single houses. 30

Ques. And this conversation occurred how long before her death?

Ans. Well, just before it came due she was talking about putting it in a mortgage with a little more money she needed; she was getting so bad, she was failing, I thought it best to let the note be renewed for \$250. It went to protest after her death; it lies there protested.

Ques. Did you hear her make any statement when she executed this will as to whom she desired to help or anything of that kind?

Ans. No.

Ques. You don't remember hearing her say that she "wanted to help them that had helped her?"

Ans. Yes, in the presence of the witnesses; they didn't know what was in the will?

10

Re-cross examination.

By Judge Trenchard:

Ques. About how long previous to her death was this money got on the note?

Ans. The first time?

Ques. Yes.

Ans. It has been over a year from this time; it was a year before her death.

20 Ques. You got this money from the Bridgeton National Bank, of Bridgeton, N. J.?

Ans. Yes, sir.

By the Court:

Ques. Did either William Fox or Maggie Fox request you to make the alteration?

Ans. No, sir.

30 Ques. Did they know whether you were going to make it?

Ans. No.

Ques. When did they first find out that you had made that alteration?

Ans. I think not before it came up here in Court.

By Judge Trenchard :

Ques. William Fox came to you and told you that you had got his wife's name wrong in the will?

Ans. He mentioned it to me; said there is a mistake in my wife's name.

Ques. What did you say?

Ans. I said I thought her name was "Chrissie."

By the Court :

10

Ques. Did you make known to him in any way that you were going to make that alteration?

Ans. No.

By Judge Trenchard :

Ques. Did you state to him that you regarded that as your mistake, and that you would make it right?

Ans. No, sir.

20

Ques. Didn't you tell him that you would make that correction?

Ans. No; I said I was sure I didn't get it right, and that I supposed that I might make it right.

The hearing at this point adjourned to Thursday, the 31st of October, instant, at 10 A. M.

SALEM, N. J., October 31, 1901.

30

By Mr. Acton: If the Court please, at our last sitting Judge Trenchard asked for the production of all returned and cancelled checks, securities, etc., which the testatrix may have left, and for all due bills, mortgages and notes in control of my clients. I would say that Judge

Hitchner informs me that he has been unable to find any promissory note, due bill or mortgage, or evidence of debt. There were some three or four cancelled checks, which he laid out and thought he had in a pile of papers which he brought down here, but when he looked in them he found they were not there; he must have left them at home. We will produce them at the next meeting or show them to Judge Trenchard. They were checks
 10 drawn upon the money realized by Anna Harris from the endorsement of a note in her favor by Judge Hitchner for \$250. She deposited this money and drew checks on it as she needed it from time to time, and these are the only checks we know to be extant.

Judge Trenchard: How about the bank book?

Mr. Acton: There is no bank book. It may be that there was a deposit slip. Judge Hitchner informs me that
 20 there is no money in the bank; she drew it all.

The Court: Does Judge Hitchner say he drew it, or did she?

Judge Hitchner: She did; I fixed up the checks. Fox would cash them. They were on the Bridgeton Bank.

EMERSON SHERWOOD, recalled for
 30

Direct examination.

By Mr. Acton:

Ques. Mr. Sherwood, you have already been sworn in this case?

Ans. Yes, sir.

Ques. You were one of the subscribing witnesses to the will of Anna Harris?

Judge Trenchard: I object to that; we have been all over that.

Mr. Acton: I merely want to identify the witness.

The Court: Go on. 10

Ans. I am, sir.

Ques. Did you know Anna Harris well in her lifetime?

Ans. I think for the past twelve years—eleven or twelve.

Judge Trenchard: One moment! The witness has already been over this ground.

The Court: This is a matter in the discretion of the Court in these will cases. They probably want to touch on the mental condition of the testatrix. I propose to allow the greatest latitude in all of the examination of witnesses. 20

Judge Trenchard: I will at the proper time interpose an objection. My objection is to recalling this witness for the purpose of proving matters to which he has already testified when formerly on the stand, or to prove any other matters to which he should have testified then, for the reason that I had a right to presume that he was not to be called again to testify to what he should have already testified to. I want to be on record in this way. 30

The Court: Go on, Mr. Acton.

By Mr. Acton:

Ques. Did you ever have any business transactions with Mrs. Harris?

Ans. I did, sir.

Ques. When and what were they?

Ans. I sold her a horse, wagon and harness.

Ques. When?

10 Ans. I think it was two years ago last spring, be three years next spring, or it was three years last spring; I am not positive.

Ques. Will you state to the Court the circumstances of that transaction?

Ans. She sent for me and said, "You have a horse, wagon and harness for sale?" I said I had; and she wanted to know what I asked for it. I told her \$110. She said she wanted to buy them, and she thought I ought to take \$100. I said I didn't think I ought to, but she beat
20 me down the \$10 and bought them. She wanted me to leave the horse in my barn for a few days until "Billy" could build a stable. I said, "All right." Mr. Fox came and got the horse; I went and got the money. She counted out the money.

Ques. Did you see her frequently during the last five or six years of her life?

Ans. Yes.

Ques. Did you converse with her on these occasions?

Ans. Not many times?

Ques. Did you ever notice any mental incapacity in
30 Anna Harris during any of these times?

Ans. No.

Ques. Will you state to his Honor what was the mental condition of Mrs. Harris in her lifetime, and during the time you knew her?

Ans. Well, sir, the time I knew her I called her just as sound of mind as any person I ever knew.

Ques. She always knew you?

Ans. For the last eleven or twelve years.

Ques. Conversed with you intelligently?

Ans. Yes, sir.

Ques. Did she ever talk to you about her house property, about the renting of them?

Ans. Yes, sir; I have done mason work for her.

Ques. Who would employ you at these times?

Ans. Mrs. Harris.

Ques. Who would pay you?

Ans. Mrs. Harris. She would send Mr. Fox to have me come over, she wanted me to do some work; she would tell me what to do and pay me. 10

Ques. You would make your reports of work done to her?

Ans. Yes, sir.

Ques. Render your bill to her?

Ans. Yes, sir.

Ques. Receive your money from her?

Ans. Yes, sir. 20

Cross-examination.

By Judge Trenchard:

Ques. You say you think it was three years ago last spring you sold her the horse, wagon and harness?

Ans. Yes, sir.

Ques. Who came to you about that matter, Mr. Fox?

Ans. Mr. Fox came to me; said Mrs. Harris wanted me to come over. 30

Ques. When you called over there, where did you find the old lady?

Ans. In her house.

Ques. In bed or sitting up?

Ans. She was in a chair.

Ques. Very feeble at that time, wasn't she?

Ans. Well, yes; quite feeble; she couldn't get around the house.

Ques. Couldn't get around the house?

Ans. Not much.

Ques. She had been in that condition for some time, had she not?

Ans. Well, she had been kind of an invalid like about getting around for three or four years; it might be a little longer.

Ques. Her condition grew steadily worse until she died; isn't that so?

10 Ans. Well, she would get worse in her health; yes.

Ques. Now, these times you saw her were along about the time you sold her the horse?

Ans. Yes, sir; and afterwards.

Ques. When did you see her afterwards?

Ans. I have been there to see Mr. Fox a number of times and she has come to the door, and I have went into the house to see Mr. Fox.

Ques. What did you see Fox for?

20 Ans. I went there to get him to cut or draw wood for me.

Ques. Was it before you sold the horse that you did the work on the house?

Ans. The mason work?

Ques. Yes, sir.

Ans. Yes, sir.

Ques. Then you haven't had any dealing with Mrs. Harris since you sold her the horse?

Ans. Not right direct.

30 Ques. Whatever dealing you have had since that time have been with Fox?

Ans. Well, I would ask Fox to cut wood; he would say, "I'll ask the old lady"; that's the reply he would make me if we were out of doors.

Ques. Well, now, you said you conversed frequently with the old lady; when was that?

Ans. I cannot tell the dates.

Ques. Since you sold the horse?

Ans. Yes, sir.

Ques. What did she say?

Ans. Well, she said she couldn't get any rents, wanted to know how business was?

Ques. That was all she said, as far as you can recollect?

Ans. Well, that is all I think of; I cannot tell you every word.

Ques. Did she say she was collecting her rents or Fox was? 10

Ans. She didn't say; she was a woman capable of doing her own business herself.

By Judge Trenchard: I ask that the last answer be stricken out.

By the Court: I will not order it stricken out.

Ques. Well, do you know, as a matter of fact, that at the time you talked about, she was collecting her rents or whether Fox was? 20

Ans. She said she was bothered in getting her rents.

Ques. Is that all?

Ans. She didn't tell me whether she or Fox or anybody else was collecting them.

Ques. Now, Mr. Sherwood, have you told us everything that she said during these conversations, as far as you can recollect?

Ans. Well, I should say all that amounts to anything. 30

By Judge Trenchard: That is all.

DR. HENRY ROGERS, SWORN.

Direct examination.

By Mr. Acton:

Ques. Dr. Rogers, where do you live?

Ans. Elmer.

10 Ques. Are you a regular practicing physician?

Ans. Yes.

Ques. Did you know Anna Harris in her lifetime?

Ans. Yes, sir.

Ques. Did you attend her professionally in her lifetime, or a part of it?

Ans. Yes, sir.

Bill of Mrs. Harris, debtor of Dr. Rogers, shown witness, he is asked:

20 Ques. Is that a bill rendered by you to Anna Harris for professional services?

Ans. Yes, sir.

(Objected to by Judge Trenchard. Objection overruled.)

Ques. Does it represent visits?

Ans. Yes, sir; and medicine.

Ques. Did you attend Anna Harris on 1, 8, 1900?

30 Ans. Yes, sir.

Ques. 1, 10, 1900?

Ans. Yes, sir.

Ques. 1, 14, 1900?

Ans. Yes, sir.

Ques. 1, 20, 1900?

Ans. Yes, sir.

Ques. 1, 25, 1900?

Ans. Yes, sir.

Ques. 1, 27, 1900?

Ans. Yes, sir.

Ques. 1, 29, 1900?

Ans. Yes, sir.

Ques. 2, 10, 1900?

Ans. Yes, sir; I attended her on every day on that bill.

(Bill offered in evidence by Mr. Acton.)

10

(Admission of bill in evidence objected to by Judge Trenchard.)

(Objection overruled.)

By Mr. Acton:

Ques. Did you know Anna Harris in her lifetime?

Ans. Yes, sir.

20

Ques. Did you know her between 1, 8, 1900, and 3, 25, 1900?

Ans. Yes, sir.

Ques. Did you attend her frequently during these dates?

Ans. Yes, sir; and previous to that.

Ques. Well, doctor, what was her mental condition during that time?

Ans. Well, I think her mental condition was all right, so far as doing her business.

30

Ques. You notice anything irrational about her mind?

Ans. No; there was nothing wrong about her mind; it was physical.

Ques. Doctor, what was her physical ailment?

Ans. Well, she had various troubles; more of a complication; she had some trouble with her heart, some bronchitis, more or less bladder trouble, the diseases of

old age; she didn't have the line of symptoms of any one disease that I could ever discover; I didn't attend her regularly; she had another doctor, I think.

Ques. Was she able to hold her urine?

Ans. Not entirely; there was some incontinence of urine.

Ques. Was there anything to indicate any virulent disease about her?

10 Ans. No, sir; any disease that was caused there was caused by the urine dripping; there was more or less irritation of the parts.

Ques. She always knew you every time you went there?

Ans. Yes, sir.

Ques. Converse intelligently on all these occasions?

Ans. Yes, sir.

Ques. From your knowledge of her, would you pronounce her competent to make a will?

Ans. I would; yes.

20 Ques. You never saw any evidence of mental disorder in the woman?

Ans. No, sir.

Mr. Acton: I intend to offer the bill.

Cross-examination.

By Judge Trenchard:

30 Ques. You took this from some book, doctor?

Ans. No, sir; I didn't; the reason I didn't have any regular account of it was because I didn't attend her regularly; I have a memorandum calendar on my desk on which I entered them; I would file the sheets and from them I copied this bill.

Judge Trenchard: I object to offering this bill,

as it is not the best evidence of what is sought to be proved.

The Court: I will admit it.

(Bill marked Exhibit B, for proponent.)

By Judge Trenchard:

Ques. During what period of time did you attend the decedent professionally? 10

Ans. Well, I attended her before these dates, but I couldn't tell when, because I haven't any ledger account of it.

Ques. Well, will you tell us when?

Ans. For the last two and a half years.

Ques. During that period of time what other physicians attended her?

Ans. I don't know.

Ques. You don't know, as a matter of fact, that Dr. Conover attended her at that time? 20

Ans. Only from hearsay.

Ques. As I understand you, there was a general breaking down of this lady's health?

Ans. Yes, sir.

Ques. And that had been going and gradually getting worse during the entire time you attended her professionally?

Ans. Yes.

Ques. As a result of these physical disorders, did the decedent at any time have any fever? 30

Ans. No, sir; not while I attended her?

Ques. She had bladder trouble?

Ans. Yes, sir.

Ques. Is not bladder trouble accompanied generally by fever?

Ans. Not necessarily so.

Ques. It is generally and frequently so, is it not?

Ans. Well, it is according to what kind of bladder trouble you are talking about; in old age there is considerable incontinence caused by relaxation of the sphincter muscles.

Ques. This general breaking down necessarily affected her mind, did it not?

Ans. I do not think so.

10 Ques. Is it not true that when there is a general breaking down physically, it invariably affects the mind to some degree?

Ans. In old age there would be some breaking down due to the systemic poisoning.

Ques. The lady's physical organs were breaking down?

Ans. Yes, sir.

Ques. The heart was breaking down?

Ans. Yes, sir.

Ques. The bladder was breaking down?

Ans. Yes, sir.

20 Ques. Isn't it true the brain was breaking down?

Ans. Well, it might be true to a certain extent. Do you know what I mean?

Ques. Yes, sir; I am satisfied with the answer. Well, doctor, you say this lady didn't hold her urine?

Ans. I did.

Ques. This lady as a matter of fact was suffering from senile dementia?

Ans. I do not think she was.

Ques. Did you ever have a case of senile dementia?

30 Ans. I have never had a case. I think I would know it if I saw it.

Ques. I presume, doctor, you consider yourself qualified to testify with respect to senile dementia?

Ans. I think I am.

Ques. I will state to you certain things concerning a woman, whom I will call "Mrs. H.," which things I will ask you to assume as true, and upon this assumption as the truth, I will hereafter ask your opinion as an expert.

Dr. Rogers: I appeal to the Judge. Is this expert testimony?

The Court: You must answer the questions to the best of your ability.

Ques. The facts I ask you to assume to be true and upon which I will ask your opinion are: "Mrs. H." died June 24, 1901, aged seventy-five years; she was always eccentric and subject all her life to hysteria, and always had, at times, a violent temper. Four years preceding her death she had the "grippe," leaving her in bad physical health, and by reason thereof she was confined to her room. Four years before her death a decided change in her mind was noticeable; from this time on her mental condition never improved, but grew steadily worse, until her death, which was the result of a general breaking down, and old age and a complication of diseases, among others, heart trouble, bronchitis, bladder trouble; the changes in her mental condition, to which I have referred, were shown in the following manner: She at times had the delusion that her mother and sister, both of whom were dead, were present in the room with her; she rarely ever made inquiries respecting her own relations, and rarely ever showed any solicitude for her living relatives; she frequently sent for her own daughter, and then would entirely ignore her when she was present; after the visits of her daughter she would have no recollection thereof, and would inquire how it was her daughter hadn't been there, and would sometimes inquire whether or not her daughter was dead; she had a delusion that she had some relative or friend by the name of "Amanda," and called for her, wondering why she didn't come. In February, 1900 (I ask your particular attention to that time), she didn't know her own daughter, Anna Dare; in February, 1900, she did not know her own daughter had been to see her; in February, 1900, she didn't know the name of the

woman who was Fox's wife, with whom she had lived for several years, and had a delusion that Fox's wife was named "Chrissie;" and that, in February, 1900, she would constantly wring her hands and claimed to be in great trouble; that she had the delusion that she had lost \$1,200 in cash and papers of value; and that she had the delusion that William Fox was trying to burn her alive; that she had the delusion that William Fox was having improper carnal relations with her. Assuming that all of these things which I have stated to you are true concerning the hypothetical Mrs. H., I ask you whether, in your opinion, in February, 1900, she possessed a sound mind, and whether, in your judgment, she was capable of making a will?

10 Ans. Assuming this to be true?

 Ques. Yes, sir.

 Ans. I would call this dementia.

 Ques. Would you consider this person competent to do business?

20 Ans. Not under those circumstances.

 Ques. And you would consider such a person to have an unsound mind, of course?

 Ans. To a certain extent.

 Ques. Doctor, you know this lady here, Mrs. Ida Scott?

 Ans. Yes, sir.

 Ques. You have talked with her concerning the mental condition of the decedent, have you not?

 Ans. To some extent; yes.

30 Ques. Did you not tell her that you would not want the decedent to do business for you?

 Ans. Couldn't say I did. I had a conversation with her one morning; I told her what I told you about more or less softening due to adolescence.

 Ques. Is that a fact that you wouldn't have wanted the decedent to do business for you?

 Ans. I did business with her and she did with me all right.

Ques. Well, then, you didn't state to Mrs. Scott that you wouldn't want her to do business for you?

Ans. I haven't any typewritten copy of what I said.

Ques. Doctor, won't you tell what you said; did you or did you not make that statement?

Ans. I did not; at least, I do not remember it if I did.

Ques. Did you make a similar statement to Anna Dare?

Ans. She was in the room at the time. 10

Ques. Did you make a similar statement to Anna Dare?

Ans. Anna or Hannah?

Judge Trenchard: Mrs. Dare, will you stand up?

Upon the rising of Mrs. Dare witness answers:

Ans. Yes, sir; she was in the room.

Ques. Did you tell her that you wouldn't want the decedent to do business for you? 20

Ans. We were all in the room at the same time.

Ques. Mrs. Harris was always a peculiar woman, was she not?

Ans. Yes, sir; she had some of the peculiarities of a woman; yes, sir.

Ques. And at times she was forgetful?

Ans. Not to my knowledge.

Ques. Never forgot to take her medicine?

Ans. I didn't have anything to do about giving the medicine; I was only the doctor. 30

Ques. Did she take her medicine?

Ans. Well, I know she didn't get all her medicine; I don't know whether she got it for herself or whether the other woman got it for her.

Ques. You know she didn't get it?

Ans. Yes, sir.

Ques. Did you ever hear her make any funny noises?

Ans. Yes, sir.

Ques. Will you describe them?

Ans. Well, making sort of a humming noise.

Ques. When would she do that?

Ans. Always did it when I was there; it was not continuous; she would stop when she was talking to you.

Ques. Well, what was the impression that these funny noises made on your mind?

10 Ans. I thought she did it to gain sympathy.

Ques. Why should she want to gain sympathy?

Ans. I don't know.

Ques. Well, as a matter of fact, you considered that particular thing to be unreasonable and irrational?

Ans. I don't know that I thought it irrational; I thought it unnecessary.

Ques. She complained a great deal of distress, did she not?

Ans. Yes, sir.

20 Ques. Would wring her hands?

Ans. I never saw her wring her hands.

Ques. Doctor, according to your observations, was Mrs. Harris tidy or untidy in her personal habits?

Ans. Well, I thought she was as tidy as she could be; she had made excuses at various times.

Judge Trenchard: That is all.

By Mr. Acton:

30 Ques. Doctor, did you ever see her have hysteria?

Ans. No, sir.

MRS. MARY HITCHNER, sworn.

Direct examination.

By Mr. Acton:

Ques. Mrs. Hitchner, did you know Anna Harris in her lifetime?

Ans. All her lifetime I knew her; all of her life she was a very nice girl, sound and nice. 10

Ques. About seventy years you have known her?

Ans. Yes, sir.

Ques. For the last ten or twelve years of her life you both resided in Elmer?

Ans. Both close together in Elmer.

Ques. Did you frequently call upon her?

Ans. Every time I went up town I called there as a resting place; she always wanted me to come again.

Ques. Did you ever see her have hysteria? 20

Ans. No.

Ques. Did she always know you?

Ans. Always.

Ques. She converse with you intelligently?

Ans. Yes, sir.

Ques. The last three or four years of her life she was physically afflicted?

Ans. Yes, sir.

Ques. Couldn't get about?

Ans. Not very much; she could go out into the garden. 30

Ques. Did she talk to you at this time about her business affairs?

Ans. Yes, sir.

Ques. Her houses?

Ans. Yes, sir.

Ques. Speak intelligently on these subjects?

Ans. Always did.

Ques. You consider her mentally unsound?

Ans. No, sir; I thought she was in her good, sound mind whenever I saw her.

Ques. You never noticed anything wrong about her?

Ans. No, sir.

Ques. She sew?

Ans. Not of late; I have seen her sew.

Ques. Lately?

10 Ans. Not for a couple of years.

Ques. Did you ever see her when she didn't know those about her?

Ans. No.

Ques. And these frequent calls that you made at the house, did you ever see her daughter, Mrs. Dare?

Ans. Never in all my life.

Ques. Did you ever see her granddaughters there?

Ans. I have seen Mrs. Rowand.

Ques. I asked about her granddaughters?

20 Ans. I don't remember ever seeing them; I know I didn't see them.

Ques. Who took care of the old lady?

Ans. Well, this Mrs. Fox; she went there before she got married.

Ques. She lived with William Fox and his wife?

Ans. Yes, sir.

Cross-examination.

By Judge Trenchard:

30

Ques. You didn't see Mrs. Harris much during the last two years?

Ans. Only four weeks—I wasn't in to see her the last four weeks before she died.

Ques. Then you saw her from time to time up to within four weeks before her death?

Ans. Yes, sir.

Ques. About how often did you see her?

Ans. Two or three weeks; every time I had an errand up town.

Ques. How far away do you live?

Ans. Not as far as the station from here.

Ques. What did you go up there for?

Ans. I would go up town on business and would call and rest.

Ques. Never had any business with Mrs. Harris? 10

Ans. No.

Ques. And then, of course, you have never talked with her about business?

Ans. Just as she would tell me.

Ques. What would she tell you?

Ans. Oh, about her rents, when she couldn't get them.

Ques. What did she tell you about them.

Ans. Said people who lived in the houses wouldn't pay their rent.

Ques. Well, I am asking you to tell it all; if you have, please state if you ever saw the granddaughters about there? 20

Ans. I don't think I did.

Ques. Never heard anything about them?

Ans. She used to talk about them; she said that Mrs. Scott came in once in a while; Mrs. Dare didn't come; she didn't seem to want to come.

Ques. That's what Mrs. Harris told you?

Ques. Did you live between the railroad station, in Elmer, and Mrs. Harris' house, or on the other side?

Ans. I live on the other side, up toward Salem. 30

Ques. Now, I believe you say you never saw anything wrong about Mrs. Harris?

Ans. I can say that I saw her very sick many times.

Ques. Well, now, was she a very sick woman for three or four years?

Ans. She had spells of being ~~mad~~ *bad*.

Ques. Do you know what was the matter with her?

Ans. No.

Ques. Did she say what was the matter with her?

Ans. Said she had bronchitis.

Ques. She complained very bitterly?

Ans. Sometimes.

Ques. And would wring her hands?

Ans. Never saw her do that.

Ques. She gradually got worse until she died?

10 Ans. I suppose so, as she got older.

Ques. Well, was Mrs. Harris, in her younger days, a bright woman?

Ans. I always thought so.

Ques. Now, I presume while she was a young woman she was very tidy in her personal appearance and habits?

Ans. Yes, sir.

Ques. Well, I presume, after she got sick her appearance and habits underwent a change, did they not?

Ans. Yes; we all would change.

20 Ques. Yes, I think that's true. Do you know whether Mrs. Harris was able to control her physical functions or not?

Ans. I don't know; I never bothered myself about that.

Ques. Well, as I understand you, after she became sick, she became untidy in her habits?

Ans. I don't think so.

Ques. Did you ever see her eat?

Ans. Yes, sir; many times.

Ques. Any trouble eating?

Ans. No, sir.

30 Ques. Use knife and fork without any embarrassment?

Ans. Yes, sir.

Judge Trenchard: That's all.

By Mr. Acton:

Ques. That's after she was ailing?

Ans. Yes, sir.

DR. ATKINSON, sworn.

Direct examination.

By Mr. Acton:

Ques. Doctor, you are a regular practicing physician?

Ans. A retired physician? 10

Ques. How old are you?

Ans. Seventy-five.

Ques. Did you know Anna Harris in her lifetime?

Ans. Yes, sir.

Ques. Doctor, how long did you know her?

Ans. Well, I have had a superficial knowledge of her for fifty years.

Ques. Well, from your knowledge of Anna Harris during the last fifty years of her lifetime, do you feel qualified to give a statement as to her mental condition? 20

Ans. I can give my opinion.

Ques. Well, what was it?

Ans. I never saw but that she was sane.

Ques. Did you ever know her to have hysteria?

Ans. Well, once; I went to see her when she was sick; she had it then.

Ques. When was that?

Ans. This last summer, about one month before her death.

Ques. That is the only occasion? 30

Ans. Yes, sir.

Ques. Did you attend her during her last illness?

Ans. Yes, sir; in 1900, in the early summer, Mr. Fox came down and said Mrs. Harris wanted me to come see her; I said I didn't go out, but if she insisted I would go; I went five or six times; she was quite sick then; that was in the spring of 1900; she was suffering from gastric trouble about that time.

Ques. Did she know you when you came?

Ans. Yes, sir.

Ques. Was she at that time competent to make a will?

Ans. Well, I couldn't say that she was not; she seemed to know everything.

Ques. Knew you and those about her?

Ans. Yes, sir.

10 Ques. When did you see her prior to the summer of 1900?

Ans. I had not seen her for several years; I doctored in her family when her first husband was living; I don't think I had seen her for fifteen years.

Ques. How long before her death did you see her?

Ans. About one month; about a year between the times.

Ques. It was the second time that you noticed a great change in her?

Ans. Yes, sir; she had aged very much in the year.

20 Ques. In the year 1900, did you notice anything mentally wrong with the woman?

Ans. I did not notice anything mentally wrong with the woman.

Ques. She give any evidence of hysteria at that time?

Ans. No, sir; she always wanted some member of the family to bring her money, and paid me every time I came; she seemed to understand that; she didn't forget it.

30 Cross-examination.

By Judge Trenchard:

Ques. As I understand you, doctor, you had not seen Mrs. Harris for fifteen years up to the early summer of 1900?

Ans. I don't think I did; I have no recollection of seeing her.

Ques. Then you visited her during that summer, did you?

Ans. Well, I visited her for awhile until she got better; not all summer, only probably may have been five or six weeks; I went every day the first week and after the second week I went about twice a week.

Ques. What was the matter with Mrs. Harris at that time?

Ans. She had considerable gastric trouble at that time. 10

Ques. Accompanied by fever?

Ans. Yes, sir.

Ques. What superinduced this fever, doctor, in your judgment?

Ans. The gastric trouble.

Ques. She had changed very much since last you saw her?

Ans. From 1900 to 1901?

Ques. No; I am confining you to this summer of 1900? 20

Ans. Yes, sir; she was so sick.

Ques. And she was undergoing the senile changes that take place in old age?

Ans. I should say so to a certain extent.

Ques. Well, now, doctor, what was her condition when you saw her in 1901; was it not very much worse?

Ans. Yes, sir; quite much worse.

Ques. So much worse that you wouldn't think her competent to do business.

Ans. Not in 1901; I saw her several times that year. 30

Ques. Will you fix the time in 1901?

Ans. Well, I should think it was along in May.

Ques. Did you see her many times, doctor?

Ans. No; I saw her four or five times probably.

Ques. About what period of time intervened between your visits?

Ans. Well, I went about three times a week; about two or three times.

Ques. And speaking now about that period you are sure that she was not competent to do business?

Ans. No, sir; Mr. Fox paid me; she didn't see anything about that; she was irritable and restless; there was a general breaking down; it seemed to be a general breaking down, owing to some extent to a general giving way of the system; there was no special disease, except maybe
10 a skin disease; that was quite troublesome.

Ques. Well, did she have that skin disease as far back as 1900?

Ans. No; not that form.

Ques. Well, then, she had some kind of skin disease in 1900?

Ans. I don't recollect that there was; I am not certain that there was not; there was something; she complained of a pruritic condition, an itching; she complained of that; that seemed to trouble her. I treated her for
20 that.

Ques. That was in the summer of 1900?

Ans. Yes, sir.

Ques. Doctor, I presume you have frequently seen cases of senile dementia?

Ans. Yes, sir.

Ques. And treated them in your profession?

Ans. Yes, sir.

Ques. You consider yourself competent to testify on senile dementia, do you not?

30 Ans. Well, I can tell you my opinion.

Ques. I will state to you certain things concerning a woman I will call "Mrs. H."; things I will ask you to consider as true, and upon this assumption of truth I will hereafter ask you questions. The facts I ask you to assume to be true, and to which I will ask your attention, are these: "Mrs. H." died June 24, 1901, aged seventy-five years; she was always eccentric and peculiar, and subject

all her life to hysteria, and had, at times, a violent temper. Four years preceding her death she had the "grippe," leaving her in bad physical health, and by reason thereof was confined generally to her home. Four years before her death a decided change in her mind was noticeable; from this time on her mental condition never improved, but grew steadily worse, until her death, which was the result of a general breaking down, accompanied by a complication of diseases, heart trouble, bronchitis, bladder trouble; the changes in her mental condition, to which I have referred, were shown in the following manner: She had a delusion at times that her mother and sister, both of whom were dead, were present with her in the room; she rarely ever inquired after her living relatives, or showed any solicitude for them; she frequently sent for her daughter, and then, upon her daughter visiting her, would entirely ignore her presence; after visits of her daughter she would have no recollection of them whatever, and would inquire why it was her daughter never came to see her; and at one time inquired whether or not her daughter was dead; she had the delusion that she had some relative or friend by the name of "Amanda," and called for her, wondering why she didn't come. In February, 1900 (I call your attention to that date particularly, doctor), in February, 1900, she didn't know her own daughter or either of her grandchildren; in February, 1900, she didn't know her daughter had been to see her, whilst the fact was that her daughter had been to see her; in February, 1900, she claimed to be in great trouble, and would almost constantly wring her hands; she had the delusion that she had lost \$1,200 and a number of valuable papers; she had the delusion that she didn't have enough to eat; and she had the delusion that the man with whom she lived, and had lived for many years, attempted to burn her up, and that he had attempted to burn down the house; she had the delusion that she was having forced upon her improper carnal relations with this man

with whom she was living; and in February, 1900, she didn't know the name of the wife of the man with whom she was living, and had lived for many years. Assuming that all of these facts that I have stated to you are true concerning the hypothetical Mrs. H., I ask you whether, in February, 1900, she, in your opinion, possessed a sound mind, and whether she was competent to make a will or to prosecute business?

10 Ans. Assuming these things to be true, I should say not.

By Mr. Acton:

Ques. Doctor, did Anna Harris give evidence of the characteristics mentioned in that hypothetical question?

Ans. I do not think that she did in 1900.

20 ENOCH GARRISON, SWORN.

Direct examination.

By Mr. Acton:

Ques. Mr. Garrison, where do you live?

Ans. Elmer.

Ques. Did you know Anna Harris in her lifetime?

Ans. Yes, sir.

30 Ques. How long did you know her?

Ans. About twenty years, the last twenty years of her life. I had no business with her except the last three years of her life.

Ques. Did she talk with you?

Ans. Yes, sir.

Ques. Ever talk about her business with you?

Ans. Well, she sent for me to see if I couldn't give Mr. Fox some work on a house.

Ques. When was that?

Ans. That was four years ago last May.

Ques. Notice anything wrong about her?

Ans. I didn't at that time.

Ques. Ever notice anything wrong about her mind?

Ans. No; I never was with her a great deal. I went there about a year or so ago about renting a house for another party; I conversed with Mrs. Harris about it.

Ques. She talked with you rationally about it?

10

Ans. Yes, sir; she didn't want to rent the house unless she got the rent in advance or security; I didn't notice anything out of the way mentally; I never did; I wasn't in the house long. She sent for me two or three times to see if I couldn't get Mr. Fox a job; he was her only support, she said; she couldn't get her rents; her houses were not rented.

Ques. Did you ever see have hysteria?

Ans. No, sir.

Ques. Ever see her when she wasn't competent to do business or make a will?

20

Ans. No, sir; she always seemed able to do the business that I had with her; I didn't take particular notice of her.

Cross-examination.

By Judge Trenchard:

Ques. When was the last time you saw Anna Harris?

Ans. The last time that I saw her, I think that was in April or the first part of May.

30

Ques. Of what year?

Ans. This last April or May, but I was on no particular business at that time; merely stopped to see how she was.

Ques. Did you talk with her?

Ans. Yes, sir; she complained of her limbs being swelled; I was on no business.

Ques. That is all that was said on that occasion?

Ans. Yes, sir.

Ques. How was she looking on that day?

Ans. She was complaining; she was sick; yes, sir; she was sick.

Ques. She had the appearance of a sick woman?

Ans. Yes, sir.

Ques. Was she in bed?

10 Ans. No, sir; she was sitting in the rocking chair; she complained of her limbs.

Ques. When was the next time previous to that that you saw her?

Ans. Probably a month before.

Ques. How did you come to see her?

Ans. I think she sent for me; I am not positive.

Ques. Did she send for you two or three different times to get Mr. Fox work?

Ans. Yes, sir; I went every time.

20 Ques. Now, tell us when those times were?

Ans. I cannot tell you just when; they have been all within four years; I don't remember just the day and dates.

Ques. Well, did you ever go to visit her on any other business?

Ans. No, sir; except about the house renting.

Ques. When was that?

Ans. About a year ago this fall.

Ques. At the time she wanted you to get Fox work, she complained to you that Fox was her only support?

30 Ans. That is what she said; said the houses were not rented. I told her she would have to ask the boss carpenter.

Ques. Well, have you told everything that transpired while you were there, so far as you can recollect?

Ans. So far as I can remember now.

Ques. What transpired on this occasion when you went there to see about renting the house?

Ans. Well, nothing transpired except she wanted the rent in advance or security.

Ques. When was that?

Ans. About a year ago.

Ques. That was about all that she said about it?

Ans. Yes, sir; except that she complained that she didn't get her rents.

Ques. Anything else said so far as you can recollect?

Ans. There was nothing said except that there was a Dunham lived in one of the houses and didn't pay rent, but she supposed that would be their's some day. 10

Ques. On these occasions when you went there to see Mrs. Harris, was she sitting up or lying down?

Ans. Always sitting up except when she stood in the door and called me.

Ques. Did you ever hear her complain of great pain?

Ans. Only in her limbs.

By Mr. Acton:

20

Ques. Ever see her have hysteria?

Ans. No, sir.

JACOB LEOW, sworn.

Direct examination.

By Mr. Acton:

30

Ques. Mr. Leow, where do you reside?

Ans. Elmer.

Ques. Were you acquainted with Mrs. Harris?

Ans. About eight years before her death.

Ques. What is your business?

Ans. Baker.

Ques. Did you live near Anna Harris?

Ans. About three or four doors from my place.

Ques. During the last eight years of her lifetime, did you frequently see Anna Harris?

Ans. Yes; I think about four years ago she was in my place.

Ques. Did you ever go to her house?

Ans. Not to see her; but as I went there she stopped
10 me.

Ques. That was since she was at your place?

Ans. Yes, sir.

Ques. Did you deliver bread there?

Ans. Yes, sir.

Ques. Did you have any business relations with her; ever sell her anything?

Ans. No, sir; not directly; always sold to "Billy."

Ques. Times you would go to the house and see him, what was her condition?

Ans. I spoke to her, called her by name; she asked me
20 about business; she told me about her business, about not getting rent for her houses. This was about eighteen months ago.

Ques. What was said?

Ans. She said she didn't get her rents; she didn't know who to get in her houses.

Ques. Did you ever know her to have hysteria?

Ans. No, sir.

Cross-examination.

30

By Judge Trenchard:

Ques. As I understand it, you have talked with her only twice?

Ans. Yes, sir; once four years ago and the other time lately.

Ques. Asked about your business?

Ans. Yes, sir; whether I was getting my money.

Ques. You told her you were getting your money?

Ans. No; I said I was getting some of it; she said she wasn't getting her money, her rents.

Ques. She seemed greatly troubled about it?

Ans. Yes, sir.

Ques. Did she say she didn't know what to do?

Ans. Yes, sir.

Ques. That is all that she said?

Ans. Yes, sir; so far as I remember.

10

Judge Trenchard: That will do.

WILLIAM FOX, recalled.

By Mr. Acton:

Ques. William, there has been something said in this case about your burning the house. 20

Judge Trenchard: I object to this. The witness has been on the stand.

The Court: I will permit it.

Ans. Well, the lid blowed off the stove.

By Mr. Acton:

30

Ques. When was it?

Ans. Well, the lid blowed off the stove; it frightened the old lady, I suppose.

Ques. What made the lid blow off the stove?

Ans. Well, anybody knows about those wood heaters.

I poured a little kerosene on the stove to start the fire; it blew the lid off.

Ques. Do you remember when this was?

Ans. I do not remember, now.

Ques. Last winter?

Ans. Yes, sir.

Ques. There was something said in regard to your keeping the shutters closed next to Mr. Brooks; have you any explanation to make of that?

10 Ans. I don't know that I have, Mr. Acton, excepting she had to get up; you know she wasn't able to get up and go out into the yard to the water-closet. I suppose you want me to speak plain?

Ques. The conveniences were in her room, then, and you kept these shutters closed for purposes of privacy?

Ans. Yes, sir.

By Judge Trenchard:

20 Ques. How many windows were there in this room she occupied?

Ans. Three windows.

Ques. Did you keep the shutters closed to all the windows?

Ans. By times, I did.

Ques. What was your reason for that?

Ans. Well, what do we put shutters on the house for? I can't answer such questions as that. Well, that is what we closed them for.

30 Ques. Closed them all for the purposes that you closed the one on the side toward Mr. Brooks?

Ans. Well, we have closed them all by times, and by times we haven't.

Ques. I didn't ask you that.

Ans. Well, I can't tell.

Ques. Kept them closed day and night?

Ans. I don't think so.

Ques. Well, do you think you didn't?

Ans. You ask me something I can't tell you; we closed them when we wanted to.

Ques. Had them closed most of the time during the year, didn't you?

Ans. They have been closed most of the time since the house was built.

By Mr. Acton:

10

Ques. Were those on the south side closed in the day time?

Ans. No, sir.

Ques. Aim to close them all at night?

Ans. Generally did; yes, sir.

Ques. Have those on the north side of the house closed all day?

Ans. Yes, sir.

By Judge Trenchard:

20

Ques. Do you mean to say that you didn't have the windows on the south side of the house closed in the day time?

Ans. I haven't got any answer for that at all.

Ques. Well, then, why did you say in answer to Mr. Acton that you kept them open in the day time?

Ans. Well, I told Mr. Acton about how things were.

By the Court:

30

Ques. Well, what is the fact?

Ans. The shutters were open in the day time generally on the south side.

By Judge Trenchard:

Ques. Were they open one-half of the time?

Ans. I was not there all the time.

The Court: You must give a direct answer.

Ans. I couldn't give any direct answer on that.

Mr. Acton: That is all.

10 Judge Trenchard: That's all.

Mr. Acton: There is one witness I couldn't get here to-day; I would have liked very much to have him; I would like to call this witness.

Judge Trenchard: We are ready to go on. Will Mr. Acton give the name of this witness.

20 Mr. Acton: The witness is Mr. Lashley; I propose to show by him that this lady was competent to make a will about the time of her death.

The Court: The understanding is that Mr. Acton rests his case with the exception of calling Mr. Lashley.

Mr. Acton: Yes, sir.

30 ROBERT M. HITCHNER, recalled.

Cross-examination.

By Judge Trenchard:

Ques. Mr. Hitchner, have you made the search for the pencil copy of the will of Anna Harris which you were requested to make by the Court?

Ans. I have.

Ques. What result?

Ans. No result; I didn't find it; I looked for it; I couldn't find it.

Ques. Now, you were called upon by me to produce the bank book of Anna Harris; have you it?

Ans. I have not; I have never had any papers of Anna Harris since her death; I looked through my books.

Ques. I asked you to produce cancelled and returned 10 checks; have you them?

Ans. I laid them out, some checks and probably two notes; in my getting off I was in a hurry; I found I hadn't them when I got here.

Ques. Will you get them and produce them at the next hearing?

Ans. Yes, sir; I will.

Ques. Have you the notice of protest which was sent to you respecting the protesting of the \$250 note in the bank? 20

Ans. It is in the Bridgeton bank.

Ques. Will you produce it?

Ans. Yes, sir.

Ques. That will show the date of the note in the Bridgeton bank?

Ans. Yes, sir; I have two notes; one of Hitchner and one of Hitchner, executor.

Judge Trenchard: I want to be understood by the Court as expecting to recall Judge Hitchner for the purpose of asking about these matters. 30

The Court: Entirely.

Recess until 2 P. M.

Hearing resumed at 2 P. M.

On motion of Judge Trenchard the Court ordered the stenographer to make the record complete as to the name of Mrs. Rowand, making it Emeline Rowand.

10

TESTIMONY IN REBUTTAL.

LOREN P. PLUMMER, Surrogate, sworn.

Direct examination.

By Judge Trenchard:

20 Ques. Mr. Surrogate, will you produce the citations in this case?

Ans. I have them all here; yes, sir.

Judge Trenchard: I offer them in evidence.

(Marked Exhibit 1 for caveator.)

Ques. You are Surrogate of this county?

Ans. Yes, sir.

30 Ques. Did Robert Hitchner bring to you, as Surrogate of the county, the paper which is alleged to be the last will of Anna Harris, and offer it to you for probate?

Ans. He did.

Ques. Did he disclose to you the fact that since its execution he had changed it three times?

Ans. I don't think he said anything to me about changing the will.

ALONZO JOHNSON, sworn.

Direct examination.

By Judge Trenchard :

Ques. Mr. Johnson, where do you live?

Ans. Elmer.

Ques. How long have you resided there?

Ans. Fifty years—forty-nine years and five months. 10

Ques. You know Robert M. Hitchner?

Ans. Yes, sir.

Ques. Did Robert Hitchner tell you that Mrs. Harris had been of so much trouble to William Fox and his wife that they should be paid and paid well—paid as he had it in his power to do and would do, or words to that effect?

Ans. He did not.

Ques. Did he tell it to some person in your presence?

(Objection by Mr. Acton. Objection overruled.) 20

Ques. Did he make that statement, or words to that effect, in your hearing?

(Objection by Mr. Acton to the form of the question.)

The Court: I think, Judge, you ought to confine yourself to the question put to Judge Hitchner, and only to contradict him. You ask him in those words.

30

By Judge Trenchard :

Ques. Now, did you hear Robert M. Hitchner say that Mrs. Harris had been of so much trouble to William Fox and his wife that they should be paid and well paid, as he had it in his power to do, or words to that effect?

Ans. No, sir.

Ques. Was there something to that effect said?

Ans. Well, it was to that effect.

Ques. Well, now, what was it?

Ans. The conversation was this: "I wouldn't want to take care of any person afflicted as she is." That is all of this conversation.

Ques. That is all?

Ans. Yes, sir.

10 Ques. Did he say anything with respect to its being paid?

Ans. No, sir.

Ques. Who was this talk of Judge Hitchner's addressed to?

Ans. Mr. Barber and I.

No cross-examination.

20 WILLIAM BARBER, SWORN.

Direct examination.

By Judge Trenchard:

Ques. Mr. Barber, you live where?

Ans. Elmer.

Ques. How long have you lived there?

Ans. Twenty years.

30 Ques. What is your business?

Ans. Stove business.

Ques. Did Robert M. Hitchner say in your hearing that Mrs. Harris had been of so much trouble to William Fox and his wife that they should be paid and well paid, as he had it in his power to do, or words to that effect?

Ans. He never said anything like that; no.

Ques. Did he ever say anything to that effect?

Ans. Well, he spoke about her being a trouble.

Ques. Say anything about proposing that they should be paid?

Ans. No, sir.

Ques. Or that Fox ought to be well paid?

Ans. No, sir; I cannot say whether he said Fox ought to be paid or not.

No cross-examination.

10

MRS. IDA SCOTT, recalled for rebuttal.

By Judge Trenchard:

Ques. You were sworn in this case at the last hearing?

Ans. In the first day of the trial I was.

Ques. Did Emaline Rowand, along about the time ²⁰ the will was made, say that Mrs. Harris was certainly losing her mind?

Ans. Yes, sir; they were the exact words used.

Ques. Did you ever tell William Fox that you thought yourself above your grandmother?

Ans. No, sir; I never even thought it.

Ques. Did you ever provide any things for your grandmother?

Ans. I have taken her different things to eat, things I didn't think she would have; fried shad, mashed pota- ³⁰ toes, cakes, sauer kraut one day.

Ques. Did you ever furnish any clothes?

Ans. I never gave her anything; I bought her a wrapper one day; she asked me to get it for her.

Ques. Do you know Dr. Henry Rogers?

Ans. Yes, sir.

Ques. Did Dr. Rogers tell you and your mother in

your presence that he wouldn't want Mrs. Harris to do business for him?

Ans. Yes, sir; they were his words.

Ques. Do you know the doctors Mrs. Harris had?

Ans. During her whole sickness, you mean?

Ques. Yes.

Ans. Yes, sir.

Ques. Who were they?

10 Ans. Dr. Atkinson, Dr. Porch, Dr. Campbell, Dr. Conover and Dr. Rogers, Dr. Woodruff.

Ques. Do you know what doctors she had about the time the will was made?

Ans. Dr. Rogers and Dr. Conover.

Ques. Where are these other doctors?

Ans. Dr. Atkinson lives in Palatine, Dr. Porch lives in Clayton, Dr. Campbell is dead; the rest are there.

Ques. Do you know this lady, Mary Hitchner?

Ans. Only know where she lives.

20 Ques. When you go from your place to Anna Harris's house would you go past Mary Hitchner's?

Ans. No, sir.

Ques. When your father and mother go to Anna Harris's house would they pass her house?

Ans. No, sir.

Ques. When Lizzie Nixon and your other sister go there would they pass the house?

Ans. No, sir.

30 No cross-examination.

ANNA DARE, recalled for rebuttal.

By Judge Trenchard:

Ques. You are the caveator in this case?

Ans. Yes, sir.

Ques. And you testified in this case before?

Ans. Yes, sir.

Ques. Did you ever tell E^maline Rowand; you know her?

Ans. Yes, sir; she is my cousin.

Ques. Did you ever tell her you were going to put the matter of your mother's estate in the lawyer's hands and give him one-half, or words to that effect?

Ans. No, sir.

10

Ques. Did you ever say anything to her like that?

Ans. No, sir.

Ques. Did you ever say to William Fox or to any person that you thought yourself above your mother?

Ans. No, sir; I never even thought it.

Ques. Did you ever provide any things for your mother in the last few years?

Ans. Nothing but fruit, apples, peaches, plums; all in their season.

Ques. Ever take any truck?

20

Ans. I don't remember that I did.

Ques. Did your husband?

Ans. Yes, sir; sometimes.

Ques. About how often were you there, as near as you can recall, during the last three years?

Ans. Last winter a year; the winter the will was wrote I was there as high as two or three times a week; there were times when I wasn't there for two or three months.

Ques. For what reason?

Ans. Well, I haven't had very good health, and I ³⁰ have had my work to do; sometimes I wouldn't go there very often.

Ques. When you were well you would go there often?

Ans. I can bring witnesses that saw me there; I have been there as high as two or three times a week the winter the will was wrote.

Ques. Well, outside of this winter the will was

drawn, about what would you average about going there, once a week?

Ans. No, sir; I don't think so.

Ques. Was it about once in two weeks?

Ans. I cannot tell what the average would be.

Ques. During the last two weeks of her life, were you there?

Ans. Yes, sir.

10 Ques. Constantly?

Ans. Yes, sir; was there eleven or twelve days before her death.

Ques. Before her death?

Ans. Yes, sir.

Ques. Taking care of your mother and helping about the house?

Ans. Yes, sir; I took care of her; I was going to take her away but Dr. Conover said, "You don't want to take her away now; she won't stand it but a few days."

20 Ques. Did Dr. Rogers state to you, in the presence of Mrs. Scott, that he wouldn't want Mrs. Harris to do any business* for him?

Ans. Said he wouldn't want Mrs. Harris to do any business for me, he said.

Ques. What do you know about the shutters on the windows of the room that your mother occupied?

Ans. They were closed on the side of Mr. Brooks, and a good bit of the time on the west; the window on the south side was the head of her bed and was covered by the bed.

30 Ques. Do you know Mary Hitchner, who testified here this morning?

Ans. I know where she lives.

Ques. In going to see your mother, did you have to pass her house?

Ans. No, sir.

Cross-examination.

By Mr. Acton :

Ques. What did you say to Mrs. Rowand about breaking the will?

Ans. I don't remember anything; we didn't talk about the will.

Ques. How did you happen to go to Dr. Rogers?

Ans. Well, we was talking about filing a caveat, and I thought we would go and see what the doctors had to say. 10

Ques. Who told you to go and see what the doctors had to say?

Ans. I don't know as any one did.

Ques. What did you say to Dr. Rogers?

Ans. I asked him what he thought ailed my mother. My daughter, she talked. We asked him what he thought about her mind. He said, "I don't know what to think about her; sometimes when I am up there I think she is putting on." 20

Ques. Did you subpoena Dr. Rogers?

Ans. No, sir; he said he wouldn't want her to do business for him.

Ques. During what part of your mother's life did he mean?

Ans. My daughter asked him if he thought she was capable of doing business, and he made the reply I just gave.

Ques. During what period?

Ans. That is what he said. 30

Ques. Did you go to see Dr. Woodruff?

Ans. Yes, sir.

Ques. What did he say?

(Objection to question by Judge Trenchard. Objection sustained and question not allowed.)

Mr. Acton: That's all.

LIZZIE NIXON, recalled for rebuttal.

By Judge Trenchard:

Ques. Mrs. Nixon, you were sworn in this case the other day?

Ans. Yes, sir.

Ques. You are one of the grandchildren of Anna Harris?
10 ris?

Ans. Yes, sir.

Ques. Did you ever say to William Fox that you thought yourself above your grandmother?

Ans. I never did.

Ques. Did you ever take things there to your grandmother?

Ans. Yes, sir; I have taken cake and rabbit different times.

Ques. Grandmother eat this cake in your presence?

Ans. Yes, sir.
20

Ques. In what manner did she eat this cake?

Ans. Well, I had the cake in a paper bag; she reached in and grabbed a piece and rubbed it into her mouth. She said, "Its good."

Ques. Did William Fox say to you on one occasion, "My God, Lizzie, there is no salvation for the old woman this time," or words to that effect?

Ans. Yes, sir.

Ques. How about these shutters, were they open or closed?

Ans. Two of them nearly all the time.
30

Ques. How about the third one?

Ans. It had a curtain on it.

Ques. Do you know Mary Hitchner?

Ans. I just know her when I see her.

Ques. Do you know where she lives?

Ans. On Broad street.

Ques. In going there to your grandmother's, do you pass her house?

Ans. No, sir.

No cross-examination.

SAMUEL A. DARE, recalled in rebuttal.

10

By Judge Trenchard:

Ques. Mr. Dare, you are the husband of Anna Dare?

Ans. Yes, sir.

Ques. And were sworn in this case at the last hearing?

Ans. Last Thursday.

Ques. Did you ever say to William Fox that you were above Mrs. Harris?

Ans. No, sir.

Ques. Or words to that effect?

20

Ans. No, sir.

Ques. Did you ever invite Mrs. Harris to come and live with you?

Ans. Why, we went over there one day for her; we stayed until noon.

Ques. Did you go to get her?

Ans. Yes, sir.

Ques. How long did you wait?

Ans. Until after eleven o'clock.

Ques. Why didn't you get her?

30

Ans. She said she was sick.

Ques. Did you go to get her on any other occasion?

Ans. I don't think I did.

Ques. Did you ever take things down to her?

Ans. I used to take her peaches, pears, apples and things like that.

Ques. Ever take her any truck?

Ans. I don't know as I ever took her any truck.

Ques. Did William Fox ever tell you that Mrs. Harris wanted to go to the county house?

Ans. I came there last fall, about can house time; I asked him how the old lady was getting on; he said she has a notion she wants to go to the county house; said she called Richard Farnsworth; wanted to know if he couldn't get her to the county house or get some-
 10 one to take her there; he appeared to be quite much worked up about it because she wanted to leave.

Ques. How about the shutters in the room where your mother-in-law lived?

Ans. They were closed on the side next to Mr. Brooks.

Ques. How about the other side?

Ans. Well, they were partly closed; some of them was and some of them wasn't.

Ques. Well, do you mean they were partly closed, or closed part of the time?
 20

Ans. Part of the time.

Ques. When you go from your house to Mrs. Harris's do you go past Mary Hitchner's?

Ans. No, sir.

Cross-examination.

By Mr. Acton:

Ques. When did you take the last truck there?

30 Ans. The last, I think it was some apples.

Ques. When did you take anything before that?

Ans. I don't remember exactly the date.

Ques. What did you take then?

Ans. Apples and pears.

Ques. How much did you take?

Ans. I don't remember.

Ques. Well, now, I would like to know from you the number of times you took things there?

Ans. Well, I don't know; I took things there every time or so I would be in town.

Ques. How many times, half a dozen?

Ans. Yes, sir; fifty, I expect; I cannot tell you how many or how much I took.

Ques. When was it you went there to get her to go away with you?

Ans. I think one time in the spring.

Ques. What time in the spring?

Ans. I don't know the date of it; it was early in the spring. 10

Ques. That is the only time you went there to get her?

Ans. Yes, sir; the only time I went there purposely to get her.

WILLIAM FOX, recalled.

20

By Judge Trenchard:

Ques. Mr. Fox, at the last hearing you said that you took some receipts from Mrs. Harris and you promised to produce them; now I ask you to produce them?

Ans. No; I never took any.

Ques. What was it you were to produce, if not receipts?

Ans. You said from Mrs. Harris, didn't you, Mr. Trenchard? 30

Ques. Yes.

Ans. I never had any receipts from Mrs. Harris.

Ques. Well, where are those receipts that you say you had as evidence of debt and that you are going to produce at this hearing?

Ans. Well, I have them for you here in my pocket.

(Produces them.)

Ques. Are these receipts from Mrs. Harris?

Ans. No, sir.

Ques. How do these papers show that Mrs. Harris owes you any money; I want to know from you whether or not you have any evidence in writing that Mrs. Harris owes you money?

10 Ans. What for, work?

Ques. Have you any evidence in writing that Mrs. Harris owes you money?

Ans. I haven't in writing.

Ques. You claim to have some lien upon these properties?

Ans. I claim I built a part of them; yes, sir.

Ques. My question is, do you hold from Anna Harris any evidences that she owes you money?

20 Ans. No, I don't hold no papers; but only hold evidences of my work that I have done.

Cross-examination.

By Mr. Acton:

Ques. Did you ever say to Mr. Dare that the old lady wanted you or him to take her to the County House?

30 (Objection to question by Judge Trenchard. Objection allowed and question suppressed.)

By Judge Trenchard:

Ques. What is this (showing witness paper)?

Ans. The deed for the Union street property in my name.

Judge Trenchard: I offer this in evidence.

William Fox: I don't own the place now.

By the Court:

Ques. What do you mean by that?

Ans. I deeded it back to Mrs. Harris.

Judge Trenchard: I will not offer the paper, then. I am ready to rest my case, with the understanding that I may open it for the purpose of rebutting or explaining all matters growing out of these papers, which I have asked Judge Hitchner to produce. 10

The Court: That is understood.

The hearing at this point adjourned to November 22d, 1901, at 10 A. M.

PROPONENT'S TESTIMONY. 20

SALEM, N. J., December 13, 1901.

Mr. Acton: If the Court please, I have here Mr. Ferd Lashley, the witness for whose evidence the case was kept open.

FERD LASHLEY, sworn.

Direct examination. 30

By Mr. Acton:

Ques. Mr. Lashley, where do you reside?

Ans. Elmer.

Ques. How long have you resided there?

Ans. About nineteen years.

Ques. Do you hold any position with reference to the Building Association there?

Ans. I am treasurer.

Ques. How long have you held that position?

Ans. About two years; probably longer.

Ques. Ever hold any township office there?

Ans. No, sir.

10 Ques. Borough office?

Ans. I was in Council.

Ques. Did you know Anna Harris in her lifetime?

Ans. Yes, sir.

Ques. How long did you know her?

Ans. Ever since I have been in Elmer; about eighteen or nineteen years.

Ques. Did you ever have any business dealings with Anna Harris?

Ans. Well, nothing very extensive; I bought poultry and eggs, I bought them from her.

20 Ques. Well, did you have any business dealings with her in respect to the Building Association?

Ans. Yes, sir.

Ques. Will you please state to the Court what these dealings were?

Ans. When I was elected treasurer I learned that there was a half loan, matured stock, that belonged to Anna Harris, and the association hadn't paid it, but they were allowing interest on it. I asked Mr. Johnson, the secretary, why it wasn't paid. Mrs. Harris told me she was
30 holding that to bury her with; that she didn't want the money.

Ques. When did she tell you that?

Ans. Well, I can't say; two or three times before it was paid.

Ques. When was it paid?

Ans. December 4, 1900.

Ques. And she had three or four conversations with

you about it within the two years that you were Treasurer?

Ans. Yes, sir.

Ques. What was her mental condition during that time?

Ans. I never saw anything the matter with her.

Ques. Converse intelligently?

Ans. Yes, sir; when I went to pay her, she sent for me to come to her house; of course, as a matter of fact, I don't suppose she had any other business with me; when I went there she said she wanted some money; she owed some bills, that she named over; now, I says, "We have \$100 that belongs to you"; she says, "I don't want to take that up." I said we wanted to pay it; the directors had determined to pay off this matured stock; I told her she had to take it; I asked her if she knew how much interest there was and she said about two years; I looked on the books and found that she was right; I paid her \$112 on December 4, 1900.

20

By the Court:

Ques. Was this conversation when you paid her?

Ans. Shortly before that.

By Mr. Acton:

Ques. Do you consider at that time she was a woman in possession of her faculties?

Ans. Yes, sir.

30

Ques. Knew the amount of the interest?

Ans. Yes, sir; she knew we paid six per cent.; she knew there was about two years coming to her.

Ques. Did she say anything to you at that time about having lost moneys?

Ans. No; not that I remember, but there seemed to be something lost; a paper, deed or bond or something.

Ques. Did you go to Mr. Cochran to see about it?

Ans. Yes, sir; I went to Cochran and asked him if he had any papers; he said not.

Ques. Did she want you to take care of her business?

Ans. Yes, sir; but I didn't want to attend to it; I thought Mr. Cochran and Judge Hitchner were doing it.

Ques. Did she want you to rent her houses?

10 Ans. No, sir.

Ques. At that time she was physically decrepit?

Ans. Yes, sir; she was in bed when I was talking to her.

Ques. Did she have hysteria?

Ans. Well, she made a funny noise; she kind of went on; I didn't think it was necessary; I thought she did it to gain sympathy. She stopped after I was talking to her. She was sitting in bed.

20 Cross-examination.

By Judge Trenchard:

Ques. You paid her this money December 4, 1900?

Ans. Yes, sir.

Ques. And was it at that time she applied to you about wanting some money?

Ans. Yes, sir; said she needed money.

Ques. And it was you yourself that suggested that
30 your association had \$100, at interest, that belonged to her?

Ans. Yes, sir; I told her that.

Ques. She said she didn't want to use it; said she wanted it to bury her?

Ans. Yes, sir.

Ques. What was said in respect to interest was that she hadn't had any interest for two years?

Ans. Yes, sir.

Ques. You made the calculation?

Ans. Well, I don't know; she knew there was \$12 due to her.

Ques. The point of it is, Mr. Lashley, did she not say that she hadn't had any interest for two years?

Ans. I think she said she hadn't had any interest for two years.

Ques. And you yourself made the calculation and paid her what was due?

Ans. \$112; yes. 10

Ques. You say that at one time she wanted you to take her business?

Ans. She wanted me to take her papers.

Ques. When was that?

Ans. A little prior to December 4, 1901.

Ques. Was that the time she said she had lost her papers?

Ans. There seemed to be a paper missing; she thought Mr. Cochran had it; it was one of two or three 20 times I was there.

Ques. Did she say anything to you about having lost some money?

Ans. Not that I remember.

Ques. Do you remember that she didn't say to you that she had lost some money?

Ans. No, sir.

Ques. You have no recollection about it?

Ans. I do not remember that part of it; I have no recollection of it.

Ques. You did go to Mr. Cochran to make inquiry 30 about some papers or moneys that were lost?

Ans. Yes, sir; I asked him if he had any papers that belonged to her.

Ques. Didn't get any?

Ans. No, sir.

Ques. You cannot state when that was?

Ans. No, sir; it was just a short time previous to

my paying the money; it was just a little while before I paid the \$112.

Ques. Who was present on this occasion?

Ans. When she talked with me?

Ques. Yes, sir.

Ans. I think her daughter and son-in-law; at one time I was there, they were there.

Ques. How did you come to go there?

10 Ans. I was sent for.

Ques. Who asked you to go there?

Ans. William Fox said that Mrs. Harris wanted to see me.

Ques. Did he say for what?

Ans. I think not.

Ques. When you were there, did you look over a lot of papers?

Ans. Yes, sir.

Ques. Who got them?

20 Ans. Either Fox or his wife; I don't know which; I think both looked for them.

Ques. Do you recall what those papers were?

Ans. No, I cannot; I didn't charge my mind with them; I know there were some deeds, and it struck me there was something in there that needs recording, but I don't remember what that was; I didn't charge my mind with it.

Ques. Pay her this money in cash, Mr. Lashley?

Ans. I gave her a check.

Ques. Have you it with you?

Ans. No, sir.

30 Ques. To whose order was it?

Ans. If I remember right, it was to William Fox's order.

Ques. Why was that?

Ans. Well, I don't know.

Ques. How did it happen that you made it to Fox's order?

Ans. Well, I knew she couldn't get out to get the money; and the day he started to bank to get the money

he came to me to get a letter of introduction to get it. I gave him the letter and he got the money.

By the Court :

Ques. Did you draw the check in her presence?

Ans. No, sir; I drew it at home.

Ques. Did she tell you to whom to draw the check?

Ans. Yes, sir.

10

By Judge Trenchard :

Ques. Will you swear that this lady told you to draw the check to William Fox?

Ans. No, sir; I think she did, but I have no recollection of her saying it; but it must have been or I wouldn't have made it to him. I know I had an order from the secretary of the association to pay the money. Mrs. Harris tried to write her name on it as a receipt, and she was so shaky, I said, "I will write your name and witness your mark." 20

Judge Trenchard: That is all.

(At this point Judge Hitchner produces the checks, notes and notices of protest called for.

By Judge Trenchard :

I offer in evidence note of Anna Harris, dated September 8th, 1900. \$200. Payable to the order of R. M. Hitchner, at the Bridgeton National Bank. 30

I offer in evidence note of Anna Harris, dated December 8, 1900. Payable to the order of R. M. Hitchner, at the Bridgeton National Bank. \$200.

I offer in evidence note of Anna Harris, dated March 8, 1900. \$200. Payable to the order of R. M. Hitchner, in the Bridgeton National Bank.

I offer in evidence check of R. M. Hitchner, dated March 5, 1900. Payable to the order of Anna Harris; drawn on the Bridgeton National Bank for \$198.90. Endorsed, Anna Harris, William S. Fox.

10 I offer in evidence check of R. M. Hitchner, dated July 2, 1900, on the Bridgeton National Bank, payable to the order of Anna Harris, for \$10.

(Upon the suggestion of Mr. Acton, Judge Hitchner explains how this check did not pass through the bank.)

Judge Hitchner: William Fox would come over and get the check; then when they wanted the money I would cash them myself, as they needed it. Sometimes I would
20 carry the notes myself and keep the checks as evidence of payment. I would just give her the money on the checks myself. The check would merely show what was coming to her.

By Judge Trenchard:

I offer in evidence check dated December 8, 1900, on the Bridgeton National Bank, made by R. M. Hitchner to the order of Anna Harris for \$3.72. Endorsed, Anna
30 Harris, William S. Fox.

I offer in evidence check of June 8, 1901, made by R. M. Hitchner on the Bridgeton National Bank to the order of Anna Harris for \$46. Endorsed, Anna Harris, William S. Fox and E. E. Hires.

I offer in evidence memorandum of the bank, dated

September 4, 1900, being a memorandum to charge the Anna Harris note for \$200 to account of R. M. Hitchner.

I offer in evidence notice of protest, signed by Orestes Cook, Notary Public, September 11, 1901, directed to R. M. Hitchner, executor of Anna Harris, deceased.

I offer in evidence another notice of protest, signed by Orestes Cook, Notary Public, dated September 11, 1901, directed to R. M. Hitchner and purporting to be notice of protest of a note of Anna Harris for \$250. Dated the 8th day of June, 1901. 10

Which exhibits have been marked in the order of their offer, respectively, Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 for Caveator.

The Court: The case is now considered as closed on both sides? 20

Mr. Acton and Judge Trenchard: Yes, sir.

IN THE MATTER OF THE WILL OF ANNA HARRIS, DECEASED.

OPINION.

On February 29th, 1900, Anna Harris, then of the borough of Elmer, Salem county, New Jersey, made her last will in writing. 30

The will was drawn, at the request of the testator, by Robert M. Hitchner, a surveyor and conveyancer, residing at Elmer. Mr. Hitchner is a man of prominence in that vicinity; has been Justice of the Peace, Township Collector, Township Clerk, Township Com-

mitteeman, member of the Council of the borough of Elmer, Mayor of said borough, and was for ten years a Judge of the Court of Common Pleas of Salem county.

The formal execution of the will was duly proved, and no question is raised as to the proper execution of the will.

The testatrix was about seventy-four years old at the time the will was executed. She lived at Elmer with one William Fox and Maggie, his wife, in a house
 10 owned by her. Fox was then about thirty-six years old. He had been taken by the testatrix when a young boy, and had lived with her ever since. She had been sick a year or two, previous to the execution of the will, and Fox and his wife took care of her. She had periods of great suffering.

She had one daughter, Phebe Anna Dare, wife of Samuel Dare, and five grandchildren, Lizzie Nixon, Ida Scott, Ada Dare, Franklin Dare and William Dare,
 20 the children of said Phebe Anna Dare. These were all of her issue.

Her property consisted of her two single houses and one double house, situate in Elmer, and worth in all about \$2,500, as near as can be gathered from the testimony. The testimony does not disclose any personal property, except a few household goods. She left debts amounting to several hundred dollars.

The relations between the testator and her daughter had been strained, and for a period of nine years they did not visit or speak, but a few years before the execu-
 30 tion of the will a reconciliation took place.

During the last two or three years of her life she seems to have had trouble in collecting her rents, which were her only source of income, and Fox seems to have contributed largely to her support, of the family of which she was a part.

Fox testifies, and it is not contradicted, that he built the two single houses for her, and supplied money for

their erection; he is a carpenter; he says that he has never been repaid.

The will leaves \$150 to the daughter, Phebe Anna Dare; \$150 to each of the granddaughters, Ida Scott, Lizzie Nixon and Ada Dare; \$100 to the two grandsons, William Dare and Franklin Dare; \$150 to the sister of the testatrix; \$150 to her niece, Emeline Rowand, and \$150 to Anna Dunham. It devises the house and lot where she lived to William Fox and his wife, and the balance, after the legacies and debts are paid, is given to Fox and his wife. 10

The executor is directed to sell all the real estate, except the house and lot devised to Fox and his wife. The said Robert M. Hitchner is named as the executor.

The testatrix died June 24th, 1901, very much broken down, physically and mentally, though her condition, according to the testimony, had very much changed since the execution of the will.

A caveat against the probate of the will was filed by the daughter, Phebe Anna Dare, and its probate is opposed by her for the following reasons: 20

First. Because, it is alleged, the testatrix had not testamentary capacity at the time the will was made.

Second. Because, it is alleged, the will was the result of undue influence exercised over the testator

Third. Because the will was altered by Robert M. Hitchner, the executor, after its execution.

First. As to testamentary capacity, the caveator 30 claims that the testatrix had not testamentary capacity at the time the will was made, because of certain delusions which she alleges the testatrix had at that time.

One was that her daughter (the caveator) did not come to see her; another, that she lost some paper; another, that she had not enough to eat; another, that Fox was trying to burn the house down; another, that

she saw, by her bedside, her mother and sister who had long been dead; another, that Fox had carnal intercourse with her; and also that she did not know her daughter (the caveator) when she came to see her, and did not know her granddaughters.

As to the delusion that she was hungry, this was based upon the testimony of one Jonathan Brooks, who says that she stated that she was hungry, had nothing
 10 to eat; that he asked the housekeeper about it, and that she said Mrs. Harris wanted chicken, and he, Brooks, told her to kill one every day, and that she never complained of not having enough to eat but once after that.

There is nothing in the alleged delusion; it seems to be merely the complaint of a sick person not satisfied with the kind of food she gets.

As to the delusion that she had lost some paper, there is no evidence that she had not mislaid or lost some paper about which she was worrying; there is
 20 nothing in the testimony to justify the conclusion that the testator had any insane delusion as to this.

As to the alleged delusion that Fox was trying to burn the house, the evidence shows that Fox, in lighting the fire in her room, poured some kerosene on the fire and there was an explosion, blowing off the top of stove; the old lady, who was sick and nervous, became very much frightened and declared that Fox was trying to burn the house down, a very natural remark for her to make, under the circumstances, and far from indicating an insane delusion.

30 As to the delusion that she saw her dead mother and sister by her bedside, the only ones who seem to know anything about this are the daughter (the caveator) and the granddaughter, Ida Scott. They both fix the time when she spoke of this as the time when the old lady had a bad case of grippe, which was in 1897, three years before the will was made. Ida, when asked if she spoke of this about February, 1900, said no, but she had

previously, and she said she told her of this when she was first taken sick in 1897. The mother's testimony is to the same effect, and neither of them testified that it was a continuing delusion, or that the testator was under such delusion at or about the time the will was made. I believe from the testimony that this was merely the delirium of fever and not an insane delusion.

As to the allegation that the testatrix did not know her daughter when she came there, and would say that she did not come, and the other various allegations as to statements alleged to have been made by her in the presence of the caveator and her grandchildren, testified to by them, or by some of them, tending to show want of mental capacity, I am not satisfied that they occurred at the time set forth in the testimony. 10

The witnesses fail to state with any certainty the exact time when, or the circumstances under which, these things happened. Their statements are general, "as she (the testatrix) would not know me," "she would send for mother," &c., &c. 20

There is no detail of time or circumstances, and only a generality of statement.

The testimony of the several witnesses as to the times of these acts and sayings of the testatrix, which are urged as evidence of her insanity or mental delusions, contradict each other. Ida Scott, the most prominent witness on the behalf of the caveator, offered to prove these alleged delusions, says: "Before February, in the fall, some-
"time, she would send for me. She seemed to be in an
"awful state about something. She would set and wring 30
"her hands. This was in the fall, before the will was
"made. In the first place, my mother and sister went
"over to take her away—she had been begging to go way.
"It seemed she could not get ready to go that day, so she
"set the day for them to come. When my father and
"mother went she was sick in bed. She said she could
"not go that day. She sent for me. I went 'round there.

"She seemed to be in awful trouble about something. She told me, 'I don't see why Anna Dare don't come to see 'me,' " &c., &c.

Now, the witness fixed this transaction on or about the time the witnesses father and mother went to take the testator away, and says this is in the first place.

The evidence shows that the witness's father and mother only went once to take her away, and that was
 10 about the first of June, 1901, a year and three months after the will was made. Anna Dare, the caveator, testifies positively as to this. She says: "About four weeks before she died is when I commenced to think about taking her away."

Again she says: "About the first of June, when my husband and I went down, I was thinking about taking her away. We went down in the buggy, at night," &c., &c.

Now, Ida says this occurred the fall before the will was made. The caveator says she commenced to think about
 20 taking her away about four weeks before she died; and about the first of June she and her husband went down for that purpose. This was a year and three months after the will was made.

Again, Lizzie Nixon, another granddaughter and witness, produced by the caveator, says: "One day in December I was there with my husband, and she begged us to take her away," &c., &c.

Then following other statements made by the testatrix, tending to show a disordered mind. Now, Hiram Nixon, the husband of the said witness, and who was produced
 30 by the caveator, testifies that this occurred last Decoration day, May 31st, 1901, and only twenty-four days before the testatrix died.

When we consider that none of the disinterested witnesses, all of whom saw the testatrix frequently about the time of the making of the will, find her in any such condition as described by the caveator and by the grandchild-

dren, that she recognized all of them, had no delusions that they knew of, acted rationally, attended to her business affairs; and when we further consider that the last month or two before her death she was broken down, both physically and mentally, her condition very different from what it was at the time of the making of the will, it seems evident that these acts and sayings, testified to by the witnesses for the caveator, as tending to show mental incapacity, occurred during the last months of the testator's life, and not at or about the time of the making of the will. 10

Other witnesses, on behalf of the caveator, saw the testatrix about the time of the making of the will, and she did not fail to recognize them.

Jonathan Brooks, a neighbor, was sent for a short time before the will was made. She recognized him, and talked to him about raising some money for her.

Charles Dailey, another witness produced by the caveator, saw the testatrix frequently about the time the will was made, and talked to her; he was there in two or three years preceding her death, sometimes once a month, sometimes once a week. He was an insurance man. The testatrix never failed to recognize him; nor does he mention hearing from her any of the delusions mentioned by her daughter and granddaughters. 20

Everett C. Hitchner, a witness for the caveator, saw the testatrix frequently during the three years preceding her death. He served her with milk. She would call him in, pay him for the milk and talk to him. He does not say that she ever failed to recognize him, or that she indicated any delusions, except that he came in just after the occurrence of the blowing off of the top of the stove, and heard her say: "He has had the top off the stove; "he has been throwing fire about the room," &c., &c. 30

There is another alleged delusion, the testimony as to which, I think, reflects discredit upon the daughter, Anna Dare; and upon the granddaughter, Lizzie Nixon, and

upon the value of their testimony. That is, that William Fox had carnal intercourse with the testator.

Mrs. Dare testifies that she troubled about her mother's condition all last winter, and finally, after she was taken with her last sickness, she requested the granddaughter, Lizzie Nixon, to ask her a question. She fixed the time as after the testator was taken with her last illness. This must have been after Dr. Atkinson was called in the second time, in May, 1901. She was taking medicine at that time. Lizzie Nixon fixed the time as four or five weeks before the testatrix's death. The old lady was, at that time, according to all the testimony, broken down physically and mentally, very much changed within the last year, and according to Dr. Atkinson's testimony, suffering from hysteria and a complication of diseases. The witness testified that, by her request and in her presence, Lizzie Nixon asked her the question. Lizzie said: "Grandmother, we have come to ask you some questions, and we want you to talk. At first she did not seem to understand, and my daughter told her over again. She says, Grandmother, has William Fox ever had anything to do with you. She says, 'Yes, he has; yes, he has.' And my daughter says, 'Do you think this anything like 'the bad disorder what ails you,' and my mother said, 'No; I guess nothing like that.' Then she commenced to wring her hands and said, 'Oh, dear, what shall I do; can't you do something to help me?' And we did not ask her any more questions. Then Maggie Fox came in to give her her medicine."

Lizzie Nixon tells this same story, and says, "She seemed to go off into a sleep or stupor, and wouldn't say anything to me."

This testimony is absolutely valueless to the caveator for any purpose. If it is intended to show the mental condition of the testatrix, it is not of any material value, it is too remote from the time of the making of the will to be of any material value. It is her condition at the

time of the making of the will that is to determine her testamentary capacity, and not her condition a year and three months after, when the testatrix has undergone a great physical and mental change and is approaching death.

"The point of time at which testamentary capacity is to be tested is that of the execution of the will."

O'Brien vs. Dwyer, 18 Stew., 689.

It is clearly unnecessary, for Dr. Atkinson, in his testimony, shows that at that time, the time when this conversation took place, she was incompetent to make a will. 10

If it is intended for proving the fact of such intercourse, it is incompetent, as the declarations of the testatrix are incompetent to prove anything but her mental capacity, for all other purposes they are merely hearsay.

Rusling vs. Rusling, 9 Stew., 607.

It does not seem intended, on the part of the daughter, to show want of capacity, for, on being asked by her counsel this question: "In your opinion, at the time your mother talked to you in respect to these relations with Fox, was she rational or irrational?" her answer was, "Well, I couldn't tell that." Moreover, the question to the testatrix, as is shown by the testimony, purports to have been asked, not to test the old lady's mental capacity, but to find out what ailed her. Anna says, in substance, that the question was induced because she was worried by her mother's condition. If she had been sincere in this she could easily have learned from Dr. Atkinson, who was attending her, what was the trouble. 30

Dr. Rogers testifies that when he was attending her more than a year before she was suffering from bladder trouble and relaxation of the sphincter muscle, and

had difficulty in retaining the urine, but had no virulent disease. It would seem that an attentive daughter would have learned about this in a year and three months.

Lizzie Nixon tells substantially the same story; that this old lady, seventy-five years of age, suffering from bladder trouble and a complication of diseases, was having carnal intercourse with this young man of thirty-six, who was then living with a young wife, seems preposterous; and the fact that her daughter and granddaughter should endeavor to make this appear in a court of justice, after her death, is hideous. It indicates an animus on their part that requires their testimony to be received with great caution. In my opinion the testimony fails to show that the testatrix had any such delusions, even at the time fixed by the witness, and there is certainly no evidence whatever that she had such delusion at the time the will was made.

The witnesses for the proponent all testify to the mental capacity of the testatrix. She did not fail to recognize any of them; Judge Hitchner, who drew the will, had known her and done business with and for her for thirty years, says she was a peculiar woman, but that she was capable of doing business, was prudent and cautious at the time the will was made; she always recognized him.

Emeline Rowand, another witness for the proponent, and a niece of the testatrix, visited her frequently during the last years of her life, and says she always knew her till the last two weeks before her death; that her mind seemed good; would talk about the renting of her houses; she does not seem to have heard of any delusions.

Emmerson Sherwood had business transactions with the testatrix about the time of the making of the will; sold her a horse and wagon; says she was sharp and beat him down ten dollars; showed herself capable of

doing business; saw her frequently during the last five years of her life; called her just as sound of mind as anybody he ever knew; always knew him and conversed intelligently; she talked with witness about her houses and renting them; the witness did mason work for her, rendered her the bill and she paid it.

Mrs. Mary Hitchner knew the testatrix all her life; for the last ten years lived near her in Elmer; frequently called on her. Testatrix always knew her; talked with her about her business, about her houses; always spoke sensibly and intelligently on these subjects. Thought her in good sound mind whenever she saw her; never knew her fail to recognize those about her; saw her often, except the last four weeks of her life; did not see her then; would see her two or three times a week; witness never saw the daughter, Mrs. Dare, there.

Enoch Garrison went to see her about a year or so ago (which is near the time of the making of the will) about renting one of her houses for another party; she talked rationally about it; did not want to rent unless she got the rent in advance or had security; witness did not notice anything out of the way; never saw her when she was not competent to do business or to make a will. Sent for witness several times to get work for Fox; told witness that Fox was her only support; that her houses were not rented.

Frederick Lashley is treasurer of the Elmer Building Association; had known testatrix eighteen or nineteen years; had business dealings with her. There was a half loan of matured stock of the association belonging to her—interest was being paid on it—and the testatrix told the witness she was holding that to bury her. Mentioned this several times before it was paid off, in December, 1900, which was after the will was made; had several conversations with her; never saw anything the matter with her mentally. When he went to pay this stock off

she said she did not want to take that up. He told her the directors had determined to pay off the matured stock. Witness asked her if she knew how much interest was due. She said two years. Witness examined books and found she was right. She knew it was six per cent., and was correct as to time and amount.

10 All these witnesses are disinterested; they knew the testatrix about the time of the making the will; conversed with her; had business dealings with her; and found her capable of intelligent consideration and of transacting business; none of them saw any evidence of mental disorder; none of them seem to have known anything of the delusions the caveator and the grandchildren mention.

In addition to these, there was offered the evidence of two of her attending physicians, both of whom attended her about the time of the making of the will. Both are intelligent and disinterested; both are regular practicing physicians.

20 Dr. Henry Rogers testified that he attended the testatrix about the time the will was made; that he attended her frequently between January 8, 1900, and March 25, 1900; he stated that her mental condition was all right; that there was nothing wrong about her mind; that she always knew him and conversed intelligently; and that, from his knowledge of her, he pronounced her fully competent to make a will. He never saw any evidence of mental disorder in her, and that she had not, while he was attending her, any senile dementia.

30 Dr. Atkinson has known the testatrix for fifty years; never saw but that she was sane; was sent for by her, professionally, in the early summer or spring of 1900; saw her five or six times. When asked "If she was competent to make a will?" answered, "I could not say she was not; she seemed to know everything, knew those about her." Was called in again about a month before her death and noticed a great change in her. In the year 1900, the witness did not notice anything mentally wrong

with her; she paid him regularly at each visit; always directed some member of the family to bring her the money, and paid him and never forgot it.

The will itself shows testamentary capacity on its face. Her daughter and each of her grandchildren are named and given legacies; also her sister and her niece. Judge Hitchner says the will was the result of her own expressed desires, unaided; that he did not, nor did any one else make any suggestions to her as to its provisions, her property named in it, and the objects of her bounty. 10

In my opinion the evidence shows that the mental capacity of the testatrix comes fully up to the standard fixed by Courts of New Jersey.

Even if the testatrix had the delusions that the caveator claims she had, at the time of the making of the will, none of them were of a character likely to influence her in the disposition of her property.

"Even if it appears that a testator was subject to insane delusions, when he made his will, if it appear that his delusion was not of a character likely to influence him in disposition which he made of his property, will should be declared valid." 20

Middleditch vs. Williams, 18 Stew., 733.

She may have been old, sick, infirm, her memory impaired, and yet, under the law of this State, capable of making a will.

Clifton vs. Clifton, 2 Dick., 227.

Turner vs. Cheesman, 2 McCarter, 243.

Whitenack vs. Stryker, 1 Gr. Ch., 8.

Stoutenburg vs. Hopkins, 16 Stew., 577. 30

The soundness of testator's mind is to be judged from his actions and conversations at the time the will was made.

Harrison vs. Rowan, 3 Wash. C. C., 262.

Stevens vs. Vancleeve, 4 Wash. C. C., 262.

While the opinions of witness generally are of little value as to the sanity or insanity of the testator, yet the opinion of medical men is an exception to this rule.

Harrison vs. Rowan, 3 Wash. C. C., 580.

Stevens vs. Vancleeve, 4 Wash. C. C., 262.

Whitenack vs. Stryker, 1 Gr. Ch., 8.

Turner vs. Cheesman, 2 McCarter, 243.

10 Now, the testimony of the physicians, both of whom attended the testatrix near the time of the making of this will, is positive as to her testamentary capacity; also, the testimony of the disinterested witnesses is to the same effect. It is true that one witness, called by the caveator, said that there were times when "her mind seemed a little unbalanced."

And Brooks, another witness called by the caveator, when asked whether he thought the testatrix rational or irrational, said: "I think there were times when she was and times when she was not, or at least I thought
20 she wasn't. I don't know much about insane people."

All the other disinterested witnesses found her sane and rational, and detailed circumstances and transactions to support their opinions; it was only the caveator, her husband, the grandchildren and their husbands, who gave testimony tending to show want of capacity.

In the case of *Sutton vs. Morgan*, 3 Stew., 629, the evidence of three or four disinterested witnesses as to a testator's capacity was held to outweigh that of the other witnesses related to the testator by blood or affinity.

30 In *Waddington vs. Busby*, the Court of Errors laid down the rule that if the testatrix, at the time she executed the writing, was capable of recollecting the property she was about to dispose of, understanding the manner of distributing it therein set forth, the objects of her bounty and the nature of her business in which she was engaged, she had the requisite testamentary capacity.

Waddington vs. Busby, 18 Stew., 173.

This rule has been repeatedly re-affirmed by the Courts of this State, and lays down the true test of testamentary capacity.

The will itself and the testimony of Judge Hitchner clearly show, that the testatrix came up to this test. She specifically mentioned all her property, names all who have any natural claim upon her and makes them the objects of her bounty, and clearly understood the business she was engaged in. She sent for Hitchner, told him the terms of the will. After it was drawn he read it over to her. She was satisfied with it, and then, in the presence of Hitchner and two witnesses, declared it to be her will, and signed it.

This will, Judge Hitchner swears, was the result of her expressed desires, unaided; that no one made any suggestion to her as to its provisions.

The law premises capacity, and the burden of proof is upon the caveator to show want of testamentary capacity.

In my opinion, the caveator has failed to show want of capacity, and further, that the proponent has shown that she had ample testamentary capacity at the time the will was made.

UNDUE INFLUENCE.

The caveator claims that the will is the result of undue influence, exercised on the testatrix by Emeline Rowand, Robert M. Hitchner and William Fox and his wife, or some of them.

“The influence which the law denominates undue, and which vititates a will executed under it, must amount to moral or physical coercion, destroying free agency and constraining its subject to that which, but for it, he would not do.”

Hampton vs. Sheppard, 4 Dick., 522.

The above general rule has been repeatedly declared by the Courts of New Jersey. Also, it is held that undue influence is a conclusion, not a presumption.

“Whether, in any case, there was undue influence exercised upon the testator, must be determined from the facts. It is not a presumption but a conclusion.”

In re. Will of Humphreys, 11 C. E. G., 513.

10

“The undue influence must amount to fraud.”
Stackhouse vs. Horton, 2 McCarter, 202.

There is no evidence in this case of any facts showing undue influence exercised either by Emeline Rowand or Robert M. Hitchner, in the making of the will.

Lizzie Nixon tells about an alleged conversation with Emeline Rowand four weeks before the death of the testatrix, which is claimed to indicate undue influence, but this is long after the making of the will, is positively denied by Emeline, whose testimony it at least as credible as Lizzie's, and, if true, does not amount to evidence of undue influence in the making of the will.

I do not find any evidence of undue influence exercised by Emeline Rowand in making the will.

There is not a particle of evidence to show undue influence exercised by Robert M. Hitchner in the matter of the will. He testified that he drew the will at the request of the testatrix; that he drew it as she instructed him. That he did not make any suggestions to her as to the provisions of the will, and that the will was the result of her unaided desires.

There is nothing to show to the contrary; he is not contradicted in any way, and he is not impeached. He takes nothing under the will; he is not shown to be interested in any way in any of its provisions (except that he was made its executor); nor is he in any way related, connected with or interested in any of the legatees or devi-

sees named in the will. He did not stand in any fiduciary relation to the testatrix; the fact that he assisted her to borrow some money out the bank, by endorsing her note, does not show any such relation. And I fail to find in the testimony the slightest evidence to show that he exercised any influence over the testatrix in the making of the will.

It is claimed that the testatrix lived with Fox when the will was made, and that Fox received a considerable portion of the estate, and therefore the burden of proof is thrown upon him, to show that undue influence was not exercised by him. 10

No general rule can be laid down in these cases.

"Each case must be judged by its own circumstance, "and no general rule can be made applicable to all cases."

Waddington vs. Buzby, 18 Stew., 173.

Our Courts have sometimes required the burden of proof to be carried by the person mainly profiting by the will and controlling the testator, but only when the circumstances surrounding the case are suspicious and raise a strong presumption of fraud. There are only three cases in our State, that I can recall, where this has been done. A very recent one is *Barkman vs. Richards*, reported in *Atl. Rep.*, 831. In that case the testator was weak-minded, easily influenced, and in the last stages of consumption; it is stated that, while he had attained the state of a grown man, he was a mere boy—the beneficiary who took most of the estate; was an acute business man; recommended the person who drew the will, and the instructions for the will to him, the testator lived with the beneficiary. 20 30

Another in the case of *Dale vs. Dale*, 38 N. J. Eq., 234, a mother with mind enfeebled by disease and with a weak will, left one of her son's, under whose control she was, all of her property, amounting to \$45,000, except \$1,000; the will was made ten days before her death; the favored

son wrote the draft of the will, and was shown to have prejudiced the mother against her other son.

The third case is *Haydock vs. Haydock*, 34 N. J. Eq., 570. That was the case of a gift *inter vivos* the donor was of so weak a mind as to raise doubts as to his capacity to make the gift—he was under the influence of his wife—and further, the Court held that the influence, which is undue in case of gifts *inter vivos*, is very different from that which is required to set aside a will. The Court held:

“In testamentary cases undue influence is always defined as coercion or fraud, but *inter vivos*, no such definition is applied.”

Haydock vs. Haydock, 7 *Stew.*, 575.

In *Buzby vs. Waddington* the will was drawn by the husband of the principal beneficiary; its execution was superintended by him, although he was a mere farmer; it was shown that he had procured the absence of the testatrix's daughter, who was the natural recipient of her bounty. It was further shown that he had great influence over the testatrix, yet this was held by the Court of Errors as not sufficient evidence of undue influence.

In each of the cases where the burden of proof was put on the beneficiary, the will was grossly inequitable on its face; in each case the instructions for the will were procured by the favored beneficiary, and in each case the testator was weak-minded; the control of the beneficiary, who was of acute mind.

None of these conditions existed in this case. The testimony of disinterested witnesses shows that the testatrix was not weak-minded at the time of the making of the will.

There undoubtedly were times when she was ill and suffering, and her mind might not have been clear, but the testimony of all the disinterested witnesses, except two produced by the caveator, and especially the testi-

mony of the two attending physicians, show her mind to have been good at the time of the making of the will. The testimony of the caveator herself shows that the testatrix could not easily be influenced. When asked the question: "Do you consider your mother to have been a stubborn person?" She answered, "You could not change her mind." This she said twice.

Fox is not an acute man; his manner on the stand showed that; he is a common carpenter of moderate intelligence, and he impressed me as quite ignorant. 10

The will does not appear inequitable under the circumstances of the case. Fox lived with the testatrix for over twenty-four years—ever since he was a small boy. He testified that he worked and brought his wages to her. After he married he and his wife lived with the testatrix. She told Garrison that Fox was her only support. The only source of income of testatrix, as shown by the evidence, was the rent of two small houses—the last few years she had failed to get the rent from them. She spoke to almost all the witnesses about her failure to get her rents, and seemed in great trouble about it. She had two doctors to pay during this time. Fox seems to be the only one who aided her. Her daughter, whose husband seems to be a well-to-do farmer, gave her no substantial assistance. When asked by the counsel, "Did you ever provide anything for your mother in the last few years?" She answered, "Nothing but fruit, apples, &c." 20

She does not claim to have ever given her mother any money or material help—the granddaughter sent some cake, &c., but there is no evidence that the testatrix received substantial assistance from any of her family at any time. 30

Fox testifies that he built the two small houses and furnished part of the money for the materials in them, and that he has never been paid. This is not contra-

dicted, although over six weeks elapsed after his testimony before the case was closed.

Fox is not impeached; he testifies that he and his wife took care of the testatrix in her sickness; that for a year neither he nor his wife went regularly to bed at night, but that one or the other of them would lie on a settee in the kitchen and would have to get up every little while to attend to her.

10 Under these circumstances I think the will is not unjust.

The evidence does not disclose any suspicious circumstances or anything in the conduct of Fox or his wife that raises the presumption of fraud. Some stress is laid on the fact that the windows on one side of the house were kept closed. I do not see any significance in that. It is not claimed that Fox made any effort to keep the family, or any one, from seeing the testatrix whenever they wished.

20 The daughter and granddaughter testify that they frequently went to see the testatrix, and that Fox frequently went to bring them. There is no evidence to show that either Fox or his wife ever attempted to influence the testatrix, or that they had any control over her, or that they had anything to do with the instructions for the will, with the drawing of it, or with its execution. They were not present when it was executed.

I see, therefore, nothing in the circumstances of this case to put the burden of proof on Fox or his wife, to show that undue influence had not been exercised. But if the circumstances of this case are such as to require Fox and his wife to bear the burden of proof, I think they have borne it.

30 The testimony of Judge Hitchner is clear and positive as to this. He swears that he drew the will at the request of the testatrix; drew it as she requested, and that no one made any suggestions to her as to its provisions;

and that the will was the result of her own expressed desires unaided.

This testimony is not in any way contradicted. Emerson Sherwood, one of the subscribing witnesses to the will, testified, on cross-examination, that he asked the testatrix if she made that will as she wanted it, and she said so, and she said that she wanted to help them that had helped her.

"Influence acquired by kindness and affection, honestly and fairly bestowed on an aged person, in not undue, though it may induce testamentary recompense." 10

White vs. S., 2 Dick., 244.

Clifton vs. Clifton, 2 Dick., 227.

I find no evidence in this case to show that the will was the result of undue influence.

ALTERATION.

20

The objection to the probate of the will, because it was altered, after its execution by Robert M. Hitchner, the executor, presents more difficulties.

The evidence shows that, after the death of the testatrix, and after the reading of the will in the presence of the family, the will was altered in the following respects: The will, as executed by the testatrix, as to the devise of house and lot to Fox and wife, read as follows: "I give and bequeath unto William Fox and Chrissie Fox, his wife, all that house and lot of land where I now reside," &c., &c., "to them, their heirs and assigns forever." This paragraph was altered by erasing the word "Chrissie," and writing in its place the word "Maggie." 30

Another paragraph was read, at the time of the execution, as follows: "I give and bequeath unto William Fox and Chrissie, his wife, all my household goods

and furniture of every kind." This was altered by erasing the word "Chrissie," and writing in its place the word "Maggie."

Another paragraph, at the time of the death of the testatrix, read: "Whatever balance, if any, should be after paying out all heretofore devised, I give and bequeath the balance unto William Fox and his wife, Chrissie."

10 This was altered by erasing Chrissie and writing in its place Maggie. Again, at the close of the will, the executor is ordered to sell all the real estate, "Excepting what is devised and bequeathed to William Fox and Chrissie Fox."

Chrissie was erased and Maggie written in its place.

These alterations were all made by Robert M. Hitchner, the executor and custodian of the will, after the death of the testatrix, and after the will was read in the presence of the family. He testified to this himself. The will was read as originally executed—Chrissie being
20 read and not Maggie.

He said: "She," meaning the testatrix, "said she wanted to leave the property to William Fox and his wife. I am sure she said Chrissie."

He further said, "I took the will home after the funeral and changed it; I didn't suppose it made any difference."

Being asked if he did not know that he had no right to change it, he said, "I knew I had no right to change it, except to correct an error of mine."

30 He is asked by the Court: "Did either William Fox or Maggie request you to make the alteration?" his answer is "No."

He is further asked, did they know that he was going to make the alteration, and his answer is "No."

He is asked, when did they find out that he had made the alteration, and he answered, "I think not before it came into Court."

After the will was read, Fox mentioned to Hitchner that he was mistaken as to his wife's name. He is asked by this Court, "Did you make known to him (Fox) in any way that you were going to make the alteration?" He answered, "No."

He is asked by counsel for caveator, "Did you tell him you were going to make that correction?" He answered, "No; I said I was sure I did not get it right and that I supposed I might make it right." He did 10
not say how he could make it right, whether by some bill in Chancery, or in what way, and there is absolutely nothing in the evidence to show that either Fox or his wife had any idea that Hitchner would make the alteration.

The Counsel for the caveator insists that it will be presumed that Fox knew of the alteration, or of Hitchner's intention to make it, and that such alteration was fraudulent. Fraud will never be presumed; it must be proved; 20
and there is nothing in the evidence to warrant such presumption.

I do not find anything in the evidence to show that the alterations were made with the consent or knowledge of Fox or his wife, or that either of them knew that Hitchner intended to make them.

Hitchner, who is the only one who knows anything about the matter, says, most positively, that they did not know that he intended to make them. Hitchner is not contradicted in any way or impeached. Nor can I divest myself of my own knowledge of the character of Robert 30
M. Hitchner for integrity and veracity. For ten years I practiced before him, when he was one of the Judges of this Court. He had filled almost every office of trust in the borough in which he resides, from Collector to Mayor. He has frequently come before me, since I have been Judge, as the executor of the wills of his deceased neighbors; and his character for integrity and veracity has never been impeached, or in any way questioned.

It is not shown that he is in any way interested in the matter of these gifts to Fox and his wife, or in any way related to, connected with or interested in them. And when he swears that neither Fox or his wife requested him to make these alterations, and that they did not know that he intended to make them, I am required to believe him.

10 And I am convinced, from the evidence in the case, that these alterations were made by Judge Hitchner without any fraudulent intent or purpose; and under the honest belief on his part that, as the error was one of his own making, he could correct it; and that neither Fox nor his wife were in any way privy to them or had any knowledge of them. Hitchner was not a party in interest, nor was he a beneficiary under the will.

20 He took nothing under the will, and his position as executor does not make him a beneficiary under it. In *Lippincott vs. Wikoff*, the Court held that an executor, not taking any legacy under a will, was not beneficially interested in the will, and could be a subscribing witness thereto.

Lippincott vs. Wikoff, 9 Dick., 107.

The same rule was laid down in *Snedicker vs. Allen*, and the Court said that the practice of allowing executors compensation for their services did not alter the case.

Snedicker vs. Allen, 1 Penn., 31.

30 This compensation is fixed by the Court, and not the testator, and does not differ in principle from the fees of the Surrogate in the probate and accounting under the will. Both the Surrogate and the executor are, to a certain extent, officers of the Court.

These alterations by Hitchner were, in my opinion, the act of a stranger and not that of a party in interest.

It was held that the alteration of an official bond by a public officer, who by law was the custodian of the bond, was the act of a stranger, and did not affect its validity.

2 *Am. & Eng. Ency.*, 215.

Also, where the bond of an executive officer was materially altered after its execution by a Judge, whose duty it was to approve it, it was held to be the act of a stranger, and did not invalidate it.

Id. 216.

An important factor in this matter of the alterations is, were they material?

"A material alteration in an instrument is one which causes it to speak a different language, in legal effect, from that which it originally spoke. 10

2 Am. & Eng. Ency., 185.

It is clearly shown by the will itself that it was the intention of the testatrix to give the property mentioned in the altered paragraph to William Fox and his wife; in the devise of the house and lot, the gift is to William Fox and Chrissie Fox, his wife; the gift of the goods is to William Fox and Chrissie, his wife; and the balance is given to William Fox and his wife Chrissie. 20

There can be no doubt as to the persons intended to receive these properties; they are clearly William Fox and his wife; and the misnaming the first name of the wife does not affect the validity of the gift.

"It is clearly not essential to the validity of a devise that all the particulars which the testator has included in his description of the subject or object of gift should be accurate; there need be only enough of correspondence to afford the means of identifying both." 30

1 Jar. on Will, 671.

"It is sufficient that the devisee or legatee should be so designated as to be distinguished from every other person, and the inaptitude of the particulars introduced into the testator's description is immaterial, and this whether the subject of the gift is a corporation or an individual."

Id., 673.

The Chancellor cites the rule approvingly in *Smith vs. Presbyterian Church*, and declares further that, "When "the name or description is erroneous and there is no "doubt as to the person intended to be named or de- "scribed, the mistake will not defeat the bequest."

Smith's Ex'rs. vs. First Presby. Church, &c., 11 C. E. G., 132.

- 10 Mr. V. C. Reed acts under the same rule in *Van Nostrand vs. Reformed Church, in America.*
14 Dick., 19.

This has always been the rule in New Jersey. And many cases of mistakes in the names of legatees or devisees have been held by the Courts not to affect the validity of the legacies and devisees.

- In the case of a legacy given to James Hooper Evans, son of James Evans, it was held that John Hooper Evans, the only son of said James Evans, was the per-
 20 son intended, and he took the legacy.

Ex'rs of Evans vs. Hooper, 2 Gr. Ch., 204.

It is not claimed that William Fox had any wife named Chrissie, and it is shown that his wife is named Maggie. It is clear, therefore, that Maggie Fox, wife of William Fox, is the person intended wherever Chris- sie Fox is mentioned in the will.

- 30 These alterations do not, any of them, make the will speak a different language, in legal effect, from that which is originally spoke. If they had not been made this property would go to William Fox and Maggie Fox, his wife, exactly the same; they do not defeat, pervert or in any way alter the intention of the testatrix, as manifested by the will itself, and are clearly immaterial.

What was the effect of these alterations upon the will, or upon the gifts to Fox and his wife?

The leading case on this question is *Smith vs. Firmen*, which was tried before Mr. Justice Story, who, for thirty years, was one of the brightest luminaries of the Supreme Bench of the United States. The case was tried in the United Circuit Court in Rhode Island.

After the death of the testator, the father of one of the legatees altered a legacy to his daughter by inserting 1700 dollars in the place of 1600 dollars, and it was claimed that, by reason of this, the will was void.

It was not shown that the daughter was privy to this. The learned Judge held, that "If the alteration be made by a stranger, and the original legacy be known, the alteration must have no legal effect, the legacy will be recoverable, and ought to be paid as it originally stood." 10

"If made by the legatee herself, at most *in odium spoliatoris*, it will only avoid the legacy so altered, but it cannot destroy the other bequests in the will, either to the legatee himself or to others.

"This is not like the case of a contract, where the alteration of a security by the obligee himself avoids it. The legatees all took by the bounty of the testator. The object is to carry his will into effect and not merely to attend to the merits or demerits of those who claim under it." 20

"If any alteration in a will could avoid it, the executor, before probate, might by such alteration destroy the rights of third persons, which would be in the highest degree unreasonable."

Smith vs. Firmen, 1 Gallison, 170. 30

A long line of cases follow this decision and cite it.

In *Doane vs. Haddock*, it was held, "Interlineations made by a stranger, when the original legacy is known, will have no effect, and the will will be approved as it originally stood. Interlineations made by the legatee

“himself will at most only avoid the legacy so altered—the
“other bequests will not be destroyed thereby.”

Doane vs. Haddock, 42 Me., 72.

To the same effect is *Malin vs. Malin, 1 Wend., 625.*

In the case of *Thomas vs. Thomas*, the Court held:
“If erasures and alterations were fraudulently made by
“the beneficiary, this would avoid the provision of the
10 “will in his favor, but if made by a stranger, without
“his procurement, they would not avoid the will, either
“as a whole or part, but it could be established and ad-
“mitted to probate as executed.”

Thomas vs. Thomas, 79 N. W., 104.

In *Camp vs. Shaw*, the Court held: “Alterations in
“a will or other instrument, if made by a stranger, are
“spoliations and do not operate to avoid it.”

If the will of a deceased person is altered without
20 fraudulent intent, or by one not interested in its provisions,
equity will enforce it, as originally written, if its original
condition can be ascertained.

Camp vs. Shaw, 52 Ill., 241.

The case of *Grubb vs. McDonald* is closely in point to
the case before us.

There one McDonald drew the will and was made executor.
After its execution, and before probate, he added the words
“his mark” after the testator’s name, and affixed a seal.
30 He seems to have done this because his book of forms
contained them in it, and he thought it necessary to perfect
the will.

This was claimed to invalidate the will. The Court said:

“This is an extraordinary proposition for a will, unlike
“a deed, has a single party, and the only thing to ascertain
“is, what that party desired concerning the disposition
“of his property. The idea, therefore, that any one,

"by unwarranted interpolations or alterations, could defeat the will is certainly novel." The will was admitted.

Grubb vs. McDonald, 91 Pa. St., 242.

The most recent case on the subject is *McIntyre vs. McIntyre*, decided by the United States Supreme Court in 1896.

In that case two papers were found pinned together, containing the will of the deceased. One was dated January 1st, 1884; the other, January 7th, 1880; and one 10 contained the words "of the city of."

The party who produced the papers for probate altered the dates of them, so as to make them both read January 1st, 1880; and changed the words "of the city of" to "of this city."

These alterations were held immaterial, and the paper was admitted to probate. The case was carried to the United States Supreme Court, and the will was sustained. The Court held: "Immaterial alterations in a will, though 20 made after the testator's death by one of the beneficiaries, will not invalidate it, when not fraudulently made.

McIntyre vs. McIntyre, 162 U. S., 383.

It is claimed by counsel of caveator that the New Jersey decisions, as to the effect of alterations of contracts or deeds, apply to this case; but I think not, for the reasons given in *Smith vs. Firmen* and *Grubb vs. McDonald*, above quoted.

All the New Jersey decisions apply to deeds or other contracts; and the rule, that an immaterial alteration, if 30 made by a party in interest, after execution, without consent, invalidated the instrument, does not apply to the case of a will.

The object of the Court is to find out the intention of the testator and carry it into effect.

It is a fundamental rule that the intention of the testator is the law of the will. And our Courts have held

that it is the duty of the Court to sift out or spell out the intention of the testator and give it effect, if possible. And that intention will not be defeated by the act of any person if the Courts can prevent it.

A party may, by his own fraudulent act, defeat a legacy to himself, but he cannot invalidate the whole will. Nor is there any rule in New Jersey which will defeat the intention of a testator when there is an immaterial alteration of a will if not made for fraudulent purpose. The
 10 New Jersey law as to alteration of contract, even when material, if made by a stranger, without the knowledge or consent of the party in interest, is that the instrument is not invalidated thereby.

Hunt vs. Gray, 6 Vr., 227.

It having been shown by the evidence that these alterations were made by one who is not a beneficiary under the will, and who has no interest in the subject matter where these alterations occur, and that the said alterations are immaterial, and were not made with any fraudulent intent or purpose, and it being clearly shown by the
 20 evidence what the will contained before these alterations were made, it will be ordered that the will be admitted to probate; but it must be proved as it stood at its execution.

The matter of these alterations being a new one in this State, I think the caveator had reasonable cause for contesting the will; and that the taxed costs of both the caveator and proponent should be paid out of the estate, together with reasonable counsel fees to the counsel of proponent and caveator, and it will be so ordered.
 30

C. H. SINNICKSON,
 Judge.

[A true copy]
 LOREN P. PLUMMER,
 Surrogate.

Filed March 1, 1902.

SALEM ORPHANS' COURT.

ROBERT M. HITCHNER,	}	ON CAVEATOR TO	
Proponent,		PROBATE WILL	
vs.		OF ANNA HARRIS.	IO
ANNA DARE,			

This matter, being opened to the Court by Jonathan W. Acton, of counsel with proponent, and the Court having taken testimony and heard the allegations of the parties herein, and counsel having been heard on behalf of the proponent and of the caveator, and the Court being satisfied that the instrument of writing, offered by the proponent for probate as and for the last will of the said Anna Harris, deceased, was duly executed by the said Anna Harris as and for her last will and testament, except that, since the execution of the said instrument of writing, on the thirteenth line of the first page thereof, the first name or word "Chrissie" has been erased, and the first name or word "Maggie" inserted in its place, making the full name of the devisee there designated read "Maggie Fox" instead of "Chrissie Fox"; and that on the twenty-first line of the first page of said instrument the first name or word "Chrissie" has been erased and the first name or word "Maggie" inserted in its place, making the full name of the legatee there designated read "Maggie Fox" instead of "Chrissie Fox;" and that on the twenty-fifth line of the second page of the said instrument the first word or name "Chrissie" has been erased and the word "Maggie" inserted in its place, making the full name of the beneficiary there designated read "Maggie Fox" instead of "Chrissie Fox"; and that on the fourth line of

the third page of said instrument the first name or word "Chrissie" has been erased and the word "Maggie" inserted in its place, making the full name of the person there designated read "Maggie Fox" instead of "Chrissie Fox"; all of which erasures and insertions were made after the execution of said instrument of writing, and after the death of said Anna Harris. And the Court being further satisfied that the said Anna Harris, 10 at the time of the execution of the said instrument, was in all respects competent to execute the same, and was not under any restraint or undue influence;

It is, therefore, on this first day of March, nineteen hundred and two, on motion of Jonathan W. Acton, of counsel with the proponent, ordered, adjudged and decreed, that the said first name or word "Maggie" is not properly in or a part of the said instrument in writing, and that the said instrument be and the same is hereby corrected and reformed, by restoring the said first name or word "Chrissie," in lieu and instead of 20 the first name or word "Maggie," wherever it occurs in said instrument, so that wherever the name "Maggie Fox" occurs in said instrument it shall read "Chrissie Fox" in lieu and instead thereof.

And it is further ordered, adjudged and decreed that the said instrument of writing, as so corrected, be and the same hereby is established as the last will and testament of the said Anna Harris, deceased, and that the same be and is hereby admitted to probate.

And it is further ordered, that a counsel fee of one 30 hundred dollars be allowed to Jonathan W. Acton, counsel for the proponent, and a counsel fee of one hundred dollars be allowed to Thomas W. Trenchard, counsel for the caveator, and that the said counsel fees, together with the costs of the proponent and the costs of the caveator of this matter, to be taxed, to be paid

by the said Robert M. Hitchner, executor as aforesaid,
from the estate of the said Anna Harris, deceased.

C. H. SINNICKSON,
Judge.

A true copy.

LOREN P. PLUMMER,
Surrogate.

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SALEM COUNTY ORPHANS' COURT.

IN THE MATTER OF THE PROBATE OF A

PAPER WRITING PURPORTING TO BE

THE LAST WILL AND TESTAMENT

OF ANNA HARRIS, DECEASED.

APPEAL.

20

The caveator, Anna Dare, the only surviving heir at law and next of kin of Anna Harris, deceased, hereby appeals to the Prerogative Court from the decree of the Salem County Orphans' Court, dated the first day of March, A. D. nineteen hundred and two, admitting the paper writing, purporting to be the last will and testament of Anna Harris, deceased, to probate, and granting letters testamentary thereon, and from each and every part of such decree.

Dated March 6, 1902.

30

THOMAS W. TRENCHARD,
Proctor and of Counsel with Anna Dare.

Service acknowledged March 6, 1902.

JONATHAN W. ACTON,
Proctor of Proponent.

Filed March 7, 1902.

SALEM COUNTY ORPHANS' COURT.

STATE OF NEW JERSEY, }
 COUNTY OF SALEM, } ss.

I, LOREN P. PLUMMER, Surrogate of Salem county
 and Clerk of said Court, do hereby certify the foregoing
 10 to be a true copy of the will, the caveat, the rule
 setting time for hearing, the citations, the testimony,
 the opinion of the Court, the decree of the Court ad-
 mitting will to probate and the appeal from said de-
 cree to the Prerogative Court respectively in the matter of
 the probate of the alleged will of Anna Harris, de-
 ceased, as the same have been taken from and compared
 with the originals now remaining on file and of record
 in my office; and I further certify that the foregoing
 20 is a complete record of all the papers in said cause on
 file and of record in my office up to the time of the filing
 of the decree of the Court admitting said will to pro-
 bate.

Witness my hand and seal of said Court at Salem,
 this 21st day of March, A. D. 1902.

LOREN P. PLUMMER,
 Surrogate of Salem County.

[L. s.]

NEW JERSEY PREROGATIVE COURT.

ANNA DARE,	}	APPEAL TO PREROGATIVE COURT. 10 PETITION, &C.
Appellant,		
AND		
ROBERT M. HITCHNER, ET AL.,		
Respondents.		

To the Prerogative Court:

The petition of Anna Dare, the only surviving heir at law and next of kin of Anna Harris, deceased, and the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Salem County Orphans' Court, by his Honor Clement H. Sinnickson, Judge thereof, dated the first day of March, A. D. nineteen hundred and two, wherein and whereby a paper writing purporting to be the last will and testament of the said Anna Harris, deceased, was admitted to probate. 20

And your petitioner appeals from the said decree on the ground that the same and every part thereof is erroneous and contrary to the proofs.

Your petitioner therefore prays that the said decree may be reversed and set aside, and for nothing holden, and that your petitioner may have such other relief in the premises as to this Honorable Court shall seem meet. 30

Your petitioner states that the persons intended to be made respondents, and who claim to be interested in these proceedings, are Robert M. Hitchner, Maggie Fox, William Fox, Ada Dare, Anna Dunham, Elizabeth Farns-

worth, Emeline Rowand, Ida Scott, Lizzie Nixon, Williard I. Dare and Franklin Dare.

THOMAS W. TRENCHARD,
Proctor for and of Counsel with Petitioner.

[ENDORSED.]

Filed March 18, 1902.

GEORGE WURTS,
Register.

10 [A true copy]
GEORGE WURTS,
Secretary of State.

PREROGATIVE COURT OF NEW JERSEY.

20	ANNA DARE, Appellant, AND ROBERT M. HITCHNER, ET AL., Respondents.	}	ON APPEAL FROM ORDER OF OR- PHANS' COURT GRANTING PRO- BATE, &C. ORDER TO ANSWER.
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The appellant in the above entitled cause having filed her petition of appeal and the transcript of the proceedings in the Court below with the Register of this Court:

30 It is, on this twenty-fourth day of March, nineteen hundred and two, on motion of Thomas W. Trenchard, proctor for and of counsel with appellant, ordered that respondents, Robert M. Hitchner, Maggie Fox, William Fox, Ada Dare, Anna Dunham, Elizabeth Farnsworth, Emeline Rowand, Ida Scott, Lizzie Nixon, Williard I. Dare and Franklin Dare, answer the said petition of appeal within twenty days after the service of a copy of the petition of appeal and notice of this order, or that, in default thereof, the appellant be heard *ex parte*.

W. J. MAGIE,
C.

Filed March 26, 1902.

PREROGATIVE COURT OF NEW JERSEY.

To Robert M. Hitchner, Maggie Fox, William Fox, Ada Dare, Anna Dunham, Elizabeth Farnsworth, Emeline Rowand, Ida Scott, Lizzie Nixon, Williard I. Dare and Franklin Dare.

By virtue of an order of the Prerogative Court of New Jersey, made on the day of the date hereof, in the cause wherein Anna Dare is appellant and you are respondents, you are required to answer the petition of appeal of said appellant within twenty days after the service of a copy of the petition of appeal and notice of said order, or that, in default thereof, the appellant will be heard *ex parte*.

THOMAS W. TRENCHARD,

Proctor of Appellant,

107 E. Commerce St.,

Bridgeton, N. J.

Dated March 24th, 1902.

20

STATE OF NEW JERSEY, }
COUNTY OF SALEM, } ss.

THOMAS G. HILLIARD, alleging himself conscientiously scrupulous of taking an oath and being duly affirmed according to law, on his affirmation saith, that on the first day of April, nineteen hundred and two, at the city of Salem, in said county, he served, respectively, on Jonathan W. Acton, and on Loren P. Plummer, the Surrogate of said county, a copy of the petition of appeal, a copy of which is hereunto annexed, and also a notice of which the annexed is a true copy, by handing the same to each of them personally.

THOMAS G. HILLIARD.

Affirmed to and subscribed before me this first day of April, A. D. 1902.

Filed April 22, 1902.

W. T. HILLIARD,
M. C. C. of N. J.

IN THE PREROGATIVE COURT OF THE STATE
OF NEW JERSEY.

Between,

10	ANNA DARE,	}	ON APPEAL TO PRE-
	Appellant,		ROGATIVE COURT.
	AND	}	ANSWER TO PETI-
	ROBERT M. HITCHNER, ET AL.,		TION OF APPEAL.
	Respondents.		

The answer of Robert M. Hitchner, respondent, to the petition of appeal of Anna Dare, appellant.

20 This respondent admits that a decree or sentence of the date, tenor and effect in said petition of appeal set forth was made by the Orphans' Court of the county of Salem, and this respondent is advised and believes, and submits that such decree or sentence is just and equitable, and, therefore, prays that the sentence or decree may be affirmed by this Court, with costs, to be adjudged, to this respondent.

JONATHAN W. ACTON,

Proctor and of Counsel with Respondent.

Filed April 3, 1902.

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NEW JERSEY PREROGATIVE COURT.

ANNA DARE,

Appellant,

AND

ROBERT M. HITCHNER, ET AL.,*

Respondents.

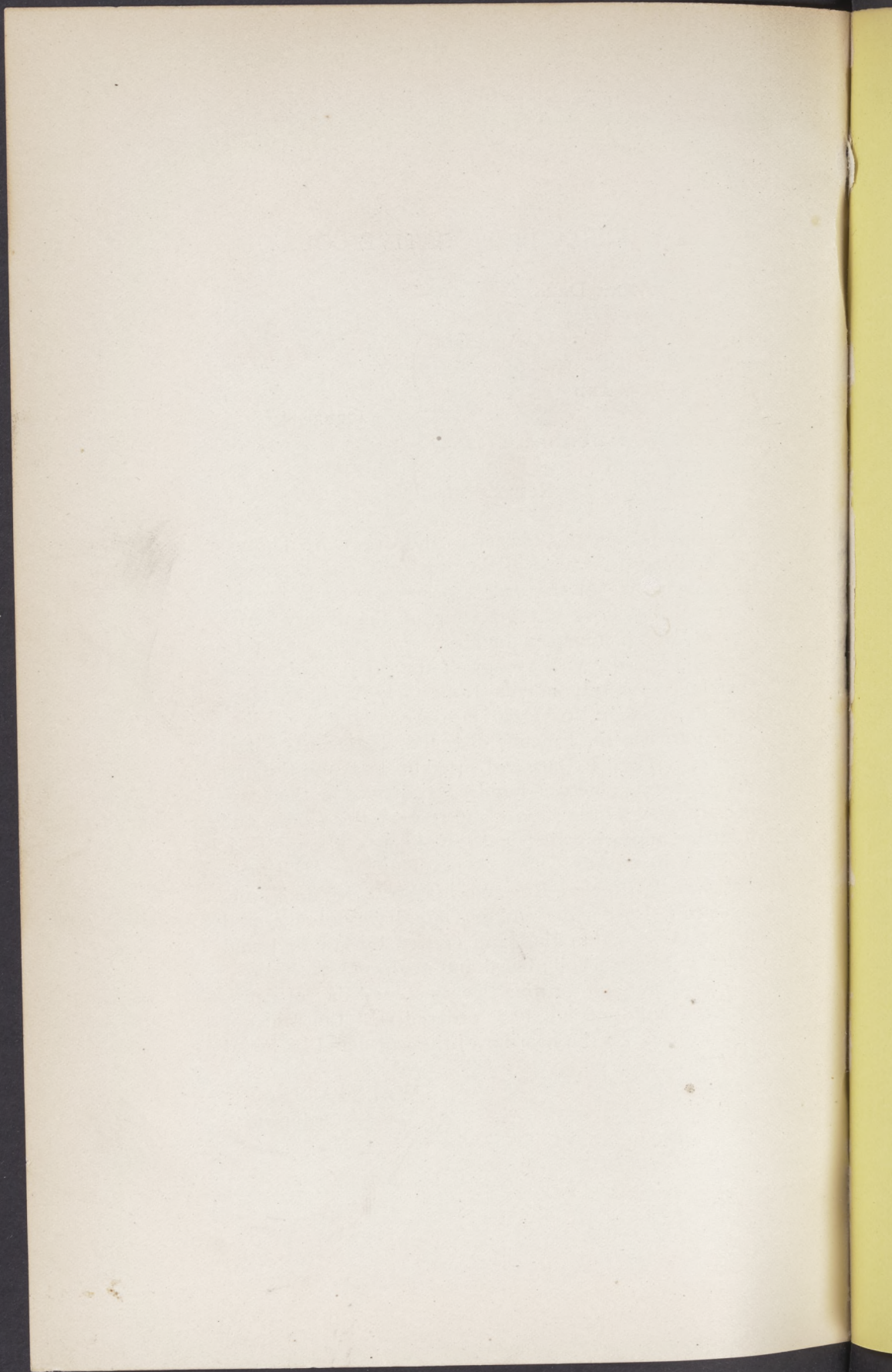
ORDER, &C.

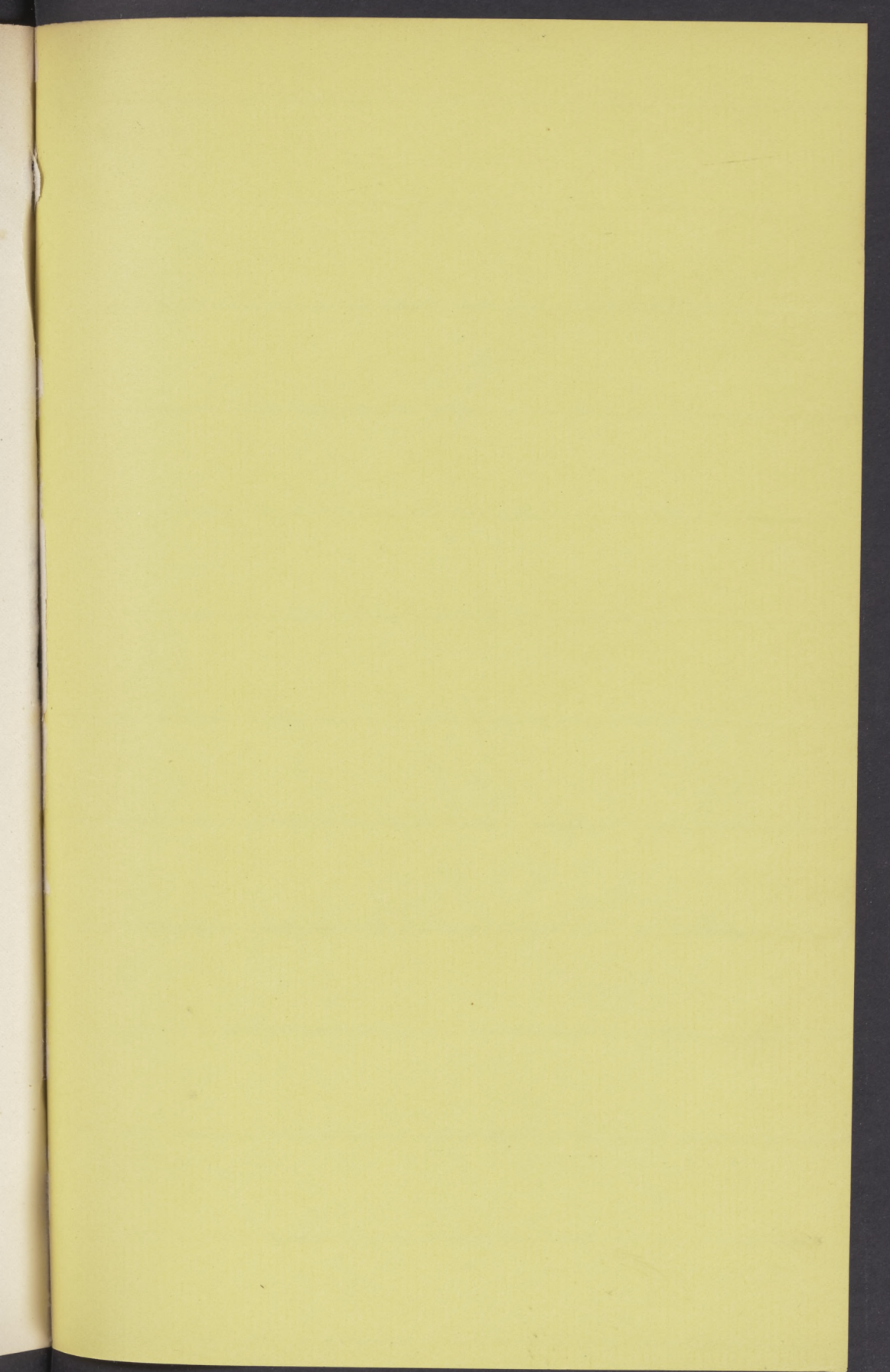
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Upon opening this matter to the Court, by Thomas W. Trenchard, proctor of the appellant, and it appearing that notice of the order to answer, made by this Court in the above stated matter, on the twenty-fourth day of March, nineteen hundred and two, was duly served, together with a copy of the petition of appeal therein, on the respondents, Robert M. Hitchner, Maggie Fox, William Fox, Ada Dare, Anna Dunham, Elizabeth Farnsworth, Emeline Rowand, Ida Scott, Lizzie Nixon, Williard I. Dare and Franklin Dare, on the first day of April, nineteen hundred and two, in the manner provided by the statute and rules of this Court, and it further appearing that said respondents, Maggie Fox, William Fox, Ada Dare, Anna Dunham, Elizabeth Farnsworth, Emeline Rowand, Ida Scott, Lizzie Nixon, Williard I. Dare and Franklin Dare, have not answered to the same within the time limited by law and said order, but have wholly failed and neglected so to do;

It is, thereupon, on this twenty-second day of April, nineteen hundred and two, ordered that the said appellant bring on the hearing of the cause and be heard *ex parte*.

W. J. MAGIE,
Ordinary.





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