Court of Errors and Appeals of New Jersey

AMELIA A. SPARKS, et als., Complainants & Appellants vs. CHARLES S. ROSS, et. als., Defendants.	On Bill to Quiet Title. Feigned Issue. Appeal from Chancery.	10

FRENCH and RICHARDS for Appellant
T. J. MIDDLETON, Solicitor for, and
J. J. CRANDALL, Counsel for Respondents

FIRST

The appeal challenges the order of the Court of Chancery, p. 83.

If the jurisdiction of Chancery to order the new trial be challenged, respondents can only reply that by the case of Brady v. Caslaret Realty Co., 64 At. 1078, has established the substantive law that the case cannot get away from the Court of Chancery.

The case of Schmitt v. Traphagen, 66 At. 937, is not comprehensible to respondents and its effect is left to this Honorable Court.

Jurisdiction will be assured and this brief will attempt the merits only.

SECOND

The controversy arises out of rights provided in the Will of Samuel Ross set up in the answer p. 5, and the pivotal question is whether the defendants in the bill and plaintiffs in the feigned issue, p. 9, are "among any children that he (Edmond Ross) may hereafter have born to him in lawful wedlock." "Hereafter" meaning after execution of the Will July 15th, 1871, p. 72. The proof is, p. 17 and 18, and Ex. p. 73, that Edmond married Mary Cavanaugh, October 24, 1873. These defendants, Charles S. and Jennie J., were the fruits of such marriage, p. 19. Edmond died July 19, 1888, p. 19. The executor of the Will, Charles Sparks, recognized the defendants as entitled by his payments to the family till 1902, four years and up to his death—then his son, E. K. Sparks, took hold of the estate and challenged the right of these defendants, p. 20, etc. The mother of these children never heard of her husband, Edmond's marriage to Maria Moose till 1902, when she was informed by E. K. Sparks, the son of the executor, Charles. The complainants evidently claim as Residuary Legatees of Samuel, p. 71.

THIRD

Complainants, Amelia and Emma, concede the formal legitimacy of defendants and the innocency of the mother, Mary, as to any intercourse which her husband, Edmond, may have had with Maria Moose, and the question which must control final determination in any Court and all Courts is, do

the complainants in this concrete and specialized controversy succeed by their evidence in basterdying defendants by establishing the impossibility of their mother having legitimate children by their father, Edmond, for the sole reason that he lived and died the husband of Maria Moose, who is the real oracle that is no doubt much relied upon to speak the fate of these children and establish the enterprise of the aunts, these complainants is Maria Moose herself, p. 43, by deposition taken January 3, 1906, some 44 years after the marriage she claims between herself and Edmond. She says there was a marriage scene enacted p 45, in the presence of her father and mother, the preacher and his wife, and that the name of the minister was Mr. Louden. No matter how formal the marriage scene—if it appears by evidence that the ceremony by the parties was had in jest—though the officer supposed himself exercising his office legally, the Court will nullify the marriage.

McClurg v. Terry, G. C. E. G., 225.

Marriage is a civil contract, and must contain the same mutuality as any other obligatory treaty.

Voorhees v. Voorhees, 1 Dick, 411, 2 do B. 15, 355.

In the examination of the deposition of Mrs. Prehl, nee Maria Moose, there is an entire absence of any statement of any acts of Edmond Ross, indicative of matrimonial intent. His acts ever after the date of such simulation of marriage as acts and doings which speak louder than words cannot be reconciled with any marriage treaty with Maria.

They wholly negative it from the first to the last and this all so consistently that it is superrogation to discuss them.

Then in Mrs. Prehl's deposition she displays her own acts and deeds for 40 years respecting the moral and legal obligation of marriage with Edmond. Does she disclose habit, conversation and demeanor matrimonial? It is essential to the proper solution of this case to subject her acts, sayings and demeanor to the lime light.

P. 44, Q. "When did you become acquainted with Edmond B. Ross?"

"A. Well, in what way do you mean?"

Mr. French could have helped her by prodding with the question—the way Cane knew his wife in the land of Nod? The counsel evade the point of the "What way do you mean?" But the counsel proceeds, p. 45, "Where did you first meet him?" Ans. "At Peashore—I was up there picking peas with a Mr. Duncan," etc.

She does not say she got acquainted with Edmond in the Pea Patch. So she evades the question as to the spot where she made his acquaintance, except as to the neighborhood, "Peashore." Edmond evidently was of good family, not a pea picker, but what can be inferred respecting Maria?

The scene at her father's house, with preacher Louden, may have been a ruse for undisturbed *laison faire* during the winter and that Mrs. Prehl is now serving herself. Her anxiety to exhibit Bible entries, p. 45, made by herself, may tend to show how the marriage record, Eq. p. 2, p. 73,

came into existence two years after the marriage in 1862. The value of her verbal testimony vanishes when her testimony, p. 53–54, touching the marriage with her present husband is examined. This marriage by Mr. Alday does not look like a marriage of any canonical dignity. It might answer two purposes—a marriage for convenience, and no marriage in case of a prosecution for bigamy.

FOURTH

Then did these defendants have a jury trial according to the report of the trial?

Did the defendants get any further than a trial by a Judge with a jury and without the consent of defendants and against their protest. If not then was it not a debt of justice for chancery to rub out the verdict?

Even if the defendants had offered no evidence at all Scudder says:

At. City R. R. Co. vs. Gooden, 33 Vr. 401.

"The defendant called no witness and in no way weakened the prima facie proof of such marriage. Of course the jury might have disbelieved the testimony, and doubtless the Judge on request would have submitted the fact of marriage to the jury instead of assuming it as proved by indisputed testimony, but he was not asked to do so and no exceptions were taken to the charge."

It is difficult to conceive a case involving the question whether there was in fact a marriage wherein property rights, and legitimacy of children, were involved; that the contract of marriage could

be precipitated as a mere question of law. The learned V. C. Chancellor quotes with approval:

I Bish. on M. & D. 956. It is laid down:

"This presumption, expressed in the maxim semper praesumitur matrimonium is spoken of in an early chapter. Every intendment of the law leans to matrimony. When a marriage has been shown in evidence, whether regular or irregular, and whatever the form of proofs, the law raises a strong presumption of its legality—not only casting the burden of proof upon the party objecting, but requires him throughout, in every particular, to make plain, against the constant pressure of this presumption, the truth of law and fact that it is illegal and void. So that this issue cannot be tried like the ordinary ones, which are independent of this presumption. And the strength of the presumption increases with the lapse of time through which the parties are cohabitating as husband and wife. It being for the highest good of the parties, of the children and of the community, that all intercourse between the sexes in form matrimonial should be such fact. The law then administered by enlightened Judges, seizes upon all probabilities, and presses into its service all things else which can help it, in each particular case, to sustain the marriage, and repel the conclusion of unlawful commerce."

There is clear septical sumptoms in the brains that can undertake in such a controversy as this to segregate the question whether Edmond and Maria were married in December, 1862, and confine the

investigation to facts and circumstances limited to that particular time. The problem for solution is whether the complainants or the defendants were successors to the property of Samuel Ross, deceased at the time of filing the bill in 1904. The allegation of the bill is that the defendants claim. The allegation of the answer is that the defendants claim and they set up the affirmatives as required by the interrogatiories constituting the complaint.

The answer sets up the affirmative that they are the children of Edmond, born in lawful wedlock of a marriage with Mary Cavanaugh, October 24th, A. D. 1875.

It will be noticed that the case as formulated by the pleadings does not refer to Edmond's marriage with Mary Moose.

This last marriage developed in the hearing before Vice Chancellor Grey, with at least one result and that is the feigned issue sent to the Supreme Court resulting in the trial which the learned Vice Chancellor found to be abortive, not because the Judge lacked the power in a proper case, to direct a verdict for complainants, but because the evidence did not authorize such action on the merits in point of law, p. 77.

Wheteer the latent intent of the form of issue was contrived to concede the mere form of marriage of Mary Cavanaugh with Edmond and thus deprive it of all probative force in the investigation of Edmond's marriage with Miss Moose is conjectural. If so it is a great wrong, a violent perversion of the energetic system of human domestic economy de-

veloped in the last one hundred years into substantive law.

The marriage *vel non* cannot conceivably be placed in any form of judicial crucible to be investigated by itself as an essayist fuses a piece of metal to determine its component parts.

This question of marriage *vel non* is usually a factor more or less controlling in the adjudication of rights to administer decedent's estate. Rights of succession as heir and next of kin, divorce nulity of marriage, alimony, etc. In the present concrete case in hand whether complainants or defendants succeed to provisions of decedents Will may in one issue be said to be to prove the generic question of the legitimacy of defendants. First subordinate species, the marriage of defendant's mother with Edmond, their assumed father. Second subordinate species, the marriage of Edmond with Maria Moose.

Because of the orderly, reputable and confessedly innocent marriage of Mary Cavanaugh with Edmond, settled law seizes upon this fact with avidity to avoid wrong to her and her innocent offspring, these defendants; and in the soulful diction of

"I Bish. on M. & D. 455, 'Unborn children do not cry out from their mother's womb, demanding that they may not be bastardized, lose a father and know only a disgraced mother.''

But as Edmond cannot have two wives at the same time the question of whose husband was Edmond at his death, become by established precedents, a question of public policy very largely.

And this social policy has been established by the Courts, and for our guidance, we must look for analogies.

Supposed Moose and Cavanaugh had applied for administration of Edmond's estate, such examples as:

Wallace Case, 4 Dick, 530 and Badger v. Badger, 88 N. Y. 546, will bear examination; it is enunciated. "The fact that respondent was more diligent than the petitioner in applying for letters of administration, and that letters have been granted pursuant to her application, manifestly does not put the petitioner under any burden that she would not have been called upon to bear if both parties to this proceeding had simultaneously appeared as rival claimants for letters."

"Nor should either of these women be accorded the benefit of a legal presumption against the other."

"Will it be said that the respondent is preferentially entitled thereto because her claim to be the decedent's wife is in point of time antecedent to that of the petitioners? This contention would rest upon a very palpable begging of the very question at issue, which is, Was the respondent the decedent's wife at any time?"

May not the petitioner invoke for herself and her children the kindly presumption with which the law surrounds one whose matrimonial status is assailed? May she not, indeed, invoke it even with greater propriety and cogency than the respondent, seeing that the latter's connection with the

defendant was admittedly illicit in its origin while he was united to the petitioner *in facie ecleae* in a matrimonial relation which lasted for twenty-eight years and only ended with his life?" The learned Justice further says:

"In general, and by the opinion of most Judges, if while three persons are living, two of them cohabiting matrimonially, and then separating, one of them and a third do the same, no marriage in either instance will be presumed from such mere cohabitation and repute; but if the actual fact of marriage is proved as to either one of the cohabitants, it will not be invalidated by the evidence of the other."

Chamberlain v. Chamberlain, 71 N. Y. 423; Dysart Peerage Case, 6 appr, Cas. 189, 534.

Again, suppose Edmond, before his death, had found it to be for his profit to resume relations with Moose, and had attempted to nullify his marriage with Cavanaugh and alleged a previous marriage with Moose. Vice Chancellor Pitney says in

Stevens v. Stevens, II Dick. 496:

"It is impossible not to discover in all these cases a deposition on the part of the Court to hold in favor of the marriage where there is issue which may be bastardized by a contrary ruling." Citations, exhausting the subject: Rooney v. Rooney, 2 Dick, 232; and Young Appeals, 52 Mich. 592.

"The opinion of this Court was pretty clearly intimated on the hearing, and careful review of the record and briefs of counsel fully confirm the views then expressed. The deceased, when he died, was

living with a woman and claimed her to be his wife, and who, as the Circuit Court Judge says, undoubtedly married him in good faith and lived with him, supposing her marriage to be lawful; she was left in full possession of his home, and so remained quietly until disturbed by petitioner."

"The finding of the Circuit Court Judge have been carefully re-examined, and in none of them do we discover the fact found that the petitioners at the time of the decease of Austin H. Odell, or at any other time was his lawful wife."

"This was the important question in the case, and it is left wholly undetermined. Some circumstances are made to appear bearing on the subject, but nothing that can be received as evidence of a valid marriage. Very important social relations and property interests may be affected and in many instances disappointed or completely destroyed by the destruction of family relations thus irregularly established. And when the relations so exist and have long been acquiesced in by all parties and the technicalities of the law are invoked as the means of producing such consequences, Courts will require full convincing proof of all the facts neccssary to effect such a consummation. The petitioner in this case not having brought her proofs within this equitable and just rule imperatively demanded by the best interests of all the parties interested as well as society, must necessarily fail."

Supposed Edmond had been given by his father's Will a fee in the lands in controversy and Cavanaugh had asked dower, we will find so far as mar-

riage is concerned, the same presumptions prevailing to advance an enlightened public policy. Smith v. Smith, 23 Vr. 207.

Scudder, Justice, cites Piers v. Piers, 2 H. L. 231; that "the question of the validity of a marriage cannot be tried like any other question of fact, which is independent of presumptions, for the law will presume in favor of the marriage. This presumption must be met with strong, distinct and satisfactory proof." And this presumption grows in intensity with the experiences of time.

Myers v. Pope, 110 Mass. 314; Com. v. Munson, 127, Mass. 459; Matter of Matthews, 153, N. Y. 444; Stevens v. Stevens, II Dick. 498.

FIFTH

Now as the testimony stood on the evidence when the Court directed a verdict, the direction was a farce and can only be maintained even in appearance except upon the hypothesis that the marriage between Edmond and Moose was as matter of law so conclusively established, that if the jury should find in favor of the legitimacy of defendants, any Court *Sua Sponte* would set the verdict aside.

The marriage of Cavanaugh being conclusive as to form and innocence of Cavanaugh, the value of the evidence in favor of the first marriage must be considered in the light of established law, and that value is "Nil" as to all habit and repute of marriage by all the cases and this elimination leaves but a single method left and that is strict proof of the marriage contract itself by eye witnesses or by

statutory substitutionary proof which uncontradicted of course is conclusive. Rooney v. Rooney, 9 Dick, 231.

In the first place the complainants introduced the following records, p. 73 : "This is to certify that Edmond B. Ross of Camden, in the State of New Jersey, and Maria Moose of Woolrich, in the State of New Jersey, were by me joined together in holy matrimony, on the fourth of December in the year of our Lord one thousand eight hundred and sixty-two.

In the presence of Elizabeth Loudenslager, Joseph Moose. JACOB LOUDENSLAGER,
Elder of the M. E. Church.

"Recorded July 29th, 1864.
Book "D" Marriages, page 145.
Clerk's Office at Woodbury, New Jersey."

Now at the time of this exploited marriage there existed in this state statutory laws authorizing registration of marriages, but under legal limitations confined to the celebration by the Justice of the Peace, or a stated and "ordained minister of the Gospel."

It must be born in mind that all the evidence touching stated and ordained minister, is contained in the certificate itself. The authorization of this celebration, is limited to exclude all such inferences as ministers *de facto*, especially where strict proof is required as in this case.

Westfield v. Warren, 3 Halst. 249; Fox v. Lamberton, 20 Halst, 280; 2 Har. 59; and Rooney v. Rooney, Supra.

To authorize the certificate of such an officer, some evidence is required of his official character on the point of "stated."

C. v. Spooner, I Pick. 235; Kebbs v. Antram, 4 Conn. 134; Gashen v. Stonington 4 Conn. 209; State v. Dooris, 40 Conn. 14.

In Erwin v. English, 23 At. Rept. 753, the following language is used:

"In order to the admissibility of the record it should at least appear under appropriate heading in the marriage register, the date of the marriage and the names of the parties, and that they have been entered by the officiating clergyman, together with his certificate attached to the record that he married the parties whose names are therein entered. It should further be shown that he was duly authorized to perform the marriage ceremony and was required to keep a record thereof, etc."

On the point of proof of ordination the Court says in Ritchie v. Weddener 30 Vr. 294:

"In the evidence produced by the defendant below, it appeared that when an ordained minister of the Protestant Episcopal Church is received into the Presbytery of the Presbyterian Church he is not required to be reordained. His previous ordination is recognized as valid by the Presbyterian Church. The proof therefore that he had been received into the Presbytery of Newark sustained the averment that he was an ordained minister of the Presbyterian Church."

In Pettyjohn v. Pettijohn, I Houst. (Del). "The solemnizing minister's authority cannot be proved

by reputation. But it is sufficient in evidence that a Methodist church to which he was sent by a conference received him as a regularly ordained minister, that he officiated at this Church, administered the Sacraments two years and then he went to another circuit."

It would be a waste of effort to attempt to show reasons why under our statute the term "Elder" appended to Loudenslager's name did not, cannot import stated and ordained minister of the Gospel.

Again, nearly two years elapsed between the time of the alleged marriage and the record. Now if this be an official record, it should be contemporaneous with the act intended to be recorded.

Derby v. Salem 30, Vt. 727; I Greenl. Ev. 727.

Now if the registry is attempted to be justified as to the time of registry under Act 1795, March 4th, to secure contemporaneousness Section 6 provides "That every Justice of the Peace and Minister of the Gospel shall make and keep a particular record of all marriage solemnized before him and transmit a certificate of every particular marriage (containing both Christian name and surnames) within six months after the solemnization thereof to the Clerk of the Court of Common Pleas of the county in which the marriage was solemnized."

The minister's own record must be made contemporaneous with the event recorded to be part of the *res gestae* and he must record in six months to prevent fraud.

Then Section 10 provides, "That such books of marriages so kept by the respective clerks of the

Court of Common Pleas shall be admitted as evidence in all Courts of Equity in this State.

But for present purposes, our act concerning evidence, 1900, p. 370, Sec. 28, supercedes all other acts on the subject to which it relates, and this act provides that transcripts of returns to officer empowered by law to receive the same.

Then in addition to the objection to the transcript from the County Clerk's office——

1st. That there was no evidence that Loudenslager was "stated." Vice Chancellor Pitney says 9 Dick. 234: "It seems to me there should be some proof of the character and authority of the person performing the ceremony."

2nd. No evidence of ordination.

3rd. No evidence that he was a minister, except his certificate "Elder."

4th. A record that does not purport to be returned to the clerk by any body, no body responsible for its being in the clerk's office.

5th. That there is no evidence that Loudenslager ever saw the paper, as it bears no date and in the strict proof required in this case it will be presumed that the paper was gotten up after his death.

6th. Loudenslager's certificate purporting to have done something in the presence of other parties who are not certified to have signed their names themselves, and

7th. That the paper did not get to the Clerk's office till nearly two years after the event certified.

8th. We have the other objection that the County Clerk was not in 1862 authorized by law to receive ever so formal, return of a marriage.

It will be noticed, Statutes of N. J. 1847, there were two acts, one entitled, "An act concerning marriages," passed March 4, 1795, the other passed May 27th, 1799, entitled "An act to register births and deaths when required," pages 376 and 378 respectively.

Now by-laws of 1848, p. 155, the above two acts were consolidated under one, entitled, "An act relating to the registry and returns of births, marriages and deaths, in the State of New Jersey."

This act prescribes an entire new scheme, just so far as registry only is concerned. The qualification of the officers to celebrate the marriages were untouched, this new scheme contemplated——

1st. That a record be made and kept by the minister or justice.

2nd. A return copy of the record made and kept by the justice or minister to the Township Clerk.

3rd. A tabular return to the Legislature, of the copies on file in the Township Clerk's office.

It will be noticed that the record, as a legal memorial was in the possession of the minister or the justice, copies were sent to the Township Clerk, constituting files.

The laws of 1851, p. 435, altered by amendment the laws of 1848 and prescribed a system of registration by the Township Clerk and a return to the Secretary of State, so that if the assessor gathered up the information and reported it to the Township

Clerk, there were two sources of information, the records of the Township Clerk and the records of the Secretary of State.

If, however, the minister and justice kept a record according to the law there would be three legislative records capable of transcript evidence under our Statutory Evidence Laws, 1900, p. 362, Sec. 28.

Laws of 1862, p. 161, and Laws of 1863, p. 472, are unimportant and so was the state of the law till 1866, p. 960, when the scheme was somewhat remodeled. 34 Vr. 329.

It will be noticed that the revision of 1874 on the subject of marriage, births and deaths p. 631 is like a Chinese laundry ticket, or the talk at the confusion of tongues, Tower of Babel. It requires a Vice Chancellor to interpret it.

So there was a great wrong in overruling objections to the Gloucester County Clerk's record of 1864. See exposition of the law of repeal by construction, II Vr. 260.

Third. Now as to Loudenslager's diary. Mr. French, with some flourish of triumph, p. 41, vindicates the diary as he called it. The notes of evidence fails to disclose the contents of the diary, so that it will have to be inspected to determine its value. It will be found to be a mere summary of what among other things occurred.

It does not purport to be an official register kept in pursuance of the law. V. C. Pitney says: Rooney v. Rooney——

"It must be remembered that a mere certificate of marriage signed by a clergyman or magistrate unattended by an oath and both signed by the contracting parties, cannot upon any recognized principle, and in the absence of any enabling statute be held to be evidence of the marriage (authorities) a different rule prevails as to entries of an official register kept in pursuance of law." Mere antiquity cannot convert the vagaries in a diary into an official register.

There is not in this case a scintilla of evidence, that Loudenslager was an official, authorized to make a register, a sacred, legal memorial of any such dignity as is required in this case or in any other case involving devolution of property, illegitimatizing of defendants.

There is an entire absence of suggestion that this casual entry was in any wise intended to be a record to comply with the law and hence inadmissible.

Its antiquity is of no force. It is inanimate vaguary. What is a record, a registry? Recordia means to remember, to perpetuate a fact by artificial means by law. A record never gets old or dim with years. It is created to defy time. To be evidential in this case, it must some how be authorized by law and up to date the law has not evolved any such monstrosity.

But where did this diary come from? It is laid down, I Whar. Ev. 197: "There must be proof that will positively trace the document to a custody that would be proper and natural for it at the time of its

inception. If the proof falls short of this the document cannot be received. Thus, where a grandson of a former rector of a parish produced a book, purporting to have been kept by such rector, but the book was not further traced to the grandfather, it was held "that the book was not sufficiently proved."

Randolph v. Gordon, 5 Price, 312; I Greenl. Ev. 142; Wigmore on Ev. 2139.

But this diary is not a document. The verdict in this case should be rubbed out and as this case is referred bodily to Vice Chancellor Leaming, he should proceed in his own way to the end of this case. The enterprising aunts should not be kept in further doubt about depriving their brother's children of the property their grandfather expected them to enjoy.

T. J. MIDDLETON,

J. J. CRANDALL,

For Defendants.

N. J. Court of Errors & Appeals

No. 31 . November Term, 1907.

Amelia R. Sparks and Emma Ross,
Complainants and Appellants,

and

Charles S. Ross and Jennie I. Thornton,
Defendants and Respondents.

BRIEF FOR APPELLANTS.

Thomas E. French,
Solicitor for and of Counsel with Appellants.

The appellants, Amelia R. Sparks and Emma Ross, in possession of the lands in question, filed a bill to quiet title, under the statute, against the respondents.

The defendants, answering, claimed to be children of Edmund B. Ross, under a marriage celebrated October 24, 1873, and to have title under will of Samuel Ross, which was dated July 15, 1871, proved January 26, 1872, and devised certain property to Charles A. Sparks and Mary Ann Murray in trust "to receive the rents and income of said lands and money and pay the same from time to time to my son Edmund B. Ross in such manner as not to be liable to his debts or contracts during his natural life and after his death to pay the sum of one thousand dollars to his son Samuel Ross SON OF HIS WIFE FORMERLY MARIA MOOSE IF THEN LIVING; the residue of said lands and money so held in trust as aforesaid on the death of the said Edmund B. Ross to be equally divided among ANY CHILDREN THAT HE MAY HEREAFTER HAVE BORN TO HIM IN LAWFUL WEDLOCK," and that Edmund B. Ross died July 19, 1888.

The defendant, under the statute, applied for an issue at law.

The issue was framed to settle the fact whether Edmund B. Ross was lawfully married to Maria Moose (case, page 8). The issue, as framed, was:

The respondent asserted (case, page 13) "That the said Edmund B. Ross mentioned in the said bill was, on the twenty-fourth day of Oceober, 1873, not the husband of Maria Moose named in said will, but, on the contrary, on said twenty-fourth day of October, 1873,

said Edmund B. Ross had no lawful wife and was lawfully capable of contracting a legal and binding marriage, and being so competent the said Edmund B. Ross, on that day and year, before and in the presence of Henry Gothe, then one of the Justices of the Peace in th county of Burlington, in the State of New Jersey, authorized to solemnize marriages according to the form of the statute in such case made and provided, was lawfully married to one Mary Cavnaugh; that as a result of said marriage * * * and that the limitation over expressed in said will of said Samuel Ross, by which said premises were to be disposed of as part of the residue of his estate (as by his last will is provided) never came into operation and effect, which assertions the appellant denied."

The appellants, answering, at page 15, "that the said Edmund B. Ross was, on the said twenty-fourth day of October, 1873, the husband of the said Maria Moose and continued to be her lawful husband until his death; that the said Maria is still living and that the said Charles S. Ross and Jennie I. Thornton are not children of the said Edmund B. Ross, born to him in lawful wedlock, and that they have no estate or interest in said lands."

The issue so framed was tried at the Supreme Court Circuit.

The respondents' proof was:

The will of Samuel Ross.

The marriage of Edmund B. Ross with Mary Cavnaugh, October twenty-fourth, 1873, by a magistrate at Bridgeboro, Burlington county, New Jersey; that they went to Virginia, where Edmund took a farm to work on

shares; that they returned to Philadelphia a year later; that they remained in Philadelphia two months and then lived in the vicinity of Camden; that Edmund, during his life, received the interest from the estate left by his father; that he died July nineteenth, 1888; that there were nine children born of the marriage, three of whom are living, two of whom are the respondents; that after the death of Edmund B. Ross an allowance was made that gradually grew down, being considerably more when Edmund B. Ross died than years after; that Edmund B. Ross and Mary Cavnaugh lived together as husband and wife.

The appellants' proof was:

1. That Maria Prehl testified that she was Maria Morse, daughter of Joseph and Jane Morse; that she became acquainted with Edmund B. Ross two years before she married him; that she married him in 1862, reading from a memorandum made by her at the time of the marriage in a Bible December 4, 1862; that she was married in her father's house in the parlor, in the presence of "my mother and father and the preacher and his wife."

"Ques. Who was the minister who married you?
Ans. Mr. Louden." (Page 45.)

On cross-examination (page 56) she calls the minister Mr. Loudenslager, and says that her father and mother, Mr. Loudenslager and his wife are all dead.

That one boy was born of the marriage October 23, 1863, and died in his tenth year.

That after her marriage with Edmund B. Ross they lived together with her parents until the following spring; her father told Edmund he thought that Edmund had been with them long enough and that he should look out for a place for both; that Edmund went away; she never saw him but once afterwards; heard that he was courting another woman and did not bother any more (page 47); that she visited his family; that she made an effort to get a record of his marriage to the other woman. (Page 48.)

2. Book from Gloucester County Clerk's office, "Marriages D., 1852." The entry is:

"This is to certify that Edmund B. Ross, of Camden, in the State of New Jersey, and Maria Moose, of Woolwich, in the State of New Jersey, were by me joined together in holy matrimony on the fourth day of December, in the year of our Lord one thousand eight hundred and sixty-two, in the presence of Elizabeth X Loudenslager, Joseph Moose.

JACOB LOUDENSLAGER,
Elder in the M. E. Church.

Recorded July 29, 1864.

FRANKLIN, Clerk."

(Pages 58 and 73.)

3. The diary of Jacob Loudenslager, which contained the following entry in the year 1862:

"1 Decr., Monday, Mer. 44, at 6 A. M., somewhat rainy.

4 Thursday, Mer. 22, at 7 A. M. In the evening I solemnized marriage between Edmund B. Ross of Cam-

den and Maria Moose at the home of her father Joseph Moose in Woolwich township Glos. county, N. J." (Pages 41, 42, 64 and 75.)

4. By Andrew J. Hendrickson, a neighbor, that he knew Maria Moose, her father and mother; lived neighbors; that she is now the wife of August Prehl in Woodbury; that he knew of the marriage but did not see it; that her husband, Ross, lived with her there at home; could not say how long. (Pages 31, 32.)

5. By Mary Adamson, that she knew both and that Edmund came down through the country, stopped at my home and told me he was married to Maria Moose, and that was between 42 and 43 years ago; that he was on his way down to see his wife and they lived in Asbury, New Jersey.

The Court directed a verdict for the appellants. (Page 65.)

Respondents then moved before the Chancellor to set aside the verdict and for a new trial.

The Chancellor decreed "that the aforesaid verdict against these defendants and in favor of complainants be and the same is hereby set aside, and be hence for nothing holden, and a new trial ordered." (Page 83.)

From that decree the appeal is taken.

The Vice Chancellor considered that while a direction might be given yet in this case, the evidence was not to his mind sufficient to overcome the presumption of legality of the subsequent marriage.

Because of lack of proof that Loudenslager was a minister.

Because the marriage record was inadmissible, not being lodged with the recording officer within six months.

THE ORDER IS APPEALABLE.

Brady vs. Cartaret Realty Co., 4 Robbins, 748.

THE TRIAL JUDGE HAD POWER TO DIRECT THE VERDICT.

This is admitted by the Vice Chancellor.

The issue is to be tried by the Law Court in the same way as other issues in that court are tried. There is no specified way nor any requirement that there shall be a verdict.

There can be at this time no serious doubt that the Court may at any time direct a verdict when the facts are undisputed, and that the jury should follow such direction.

While questions of fact are to be submitted to the jury and not to be determined by the Court, the intervention of a jury is only required where some question of fact is controverted.

In *Merchants Bank vs. State Bank, 10 Wall, 604-637,* verdict instructed for defendant. The Supreme Court, by Justice Swayze, held: "Accordingly to the settled practice in the courts of the United States, it was proper to give the instruction if it were clear that the plaintiff could not recover. It would have been idle to proceed further when such must be the inevitable result. The practice is a wise one. It saves time and costs; it gives the certainty of applied science to the results of judicial investigation; it draws clearly the line which separates the province of the judge and the jury, and fixes where it belongs the responsibility which should be assumed by the Court."

In *Pleasants vs. Fant, 22 Wall, 116-122,* the Supreme Court of the United States, by Justice Miller, says: "It is the duty of a Court in its relation to the jury to protect parties from unjust verdicts arising from the ignorance of the rules of law and of evidence and from impulse of passion or prejudice or from any other violation of his lawful rights in the conduct of a trial."

Speaking of evidence insufficient to justify a verdict: "Must the Court go through the idle ceremony in such a case of submitting to the jury the testimony on which the plaintiff relies, when it is clear to the judicial mind that if the jury should find a verdict for the plaintiff the verdict would be set aside and a new trial had? Such a proposition is absurd and accordingly we hold the true principle to be that if the Court is satisfied that, conceding all the inferences which the jury could justifiably draw from the testimony, the evidence is insufficient to warrant a verdict for the plaintiff, the Court should say so to the jury."

In *Railroad Company vs. Fraloff, 100 U. S., 26,* Justice Harlan, speaking for the Supreme Court of the United States on an exception to the ruling of the lower court in refusing to direct a verdict, says: "Had there been no serious controversy about the facts and had the law upon the undisputed evidence precluded any recovery whatever against the company, such an instruction would have been proper."

In *Hartman vs. Alden Exr., 5 Vr., 518-520-521,* the Court, by Justice Woodhull, says: "If the evidence offered by the defendant was clearly insufficient to justify a verdict in his favor on the plea of payment, there can be no doubt that it was the duty of the judge who presided at

the trial so to instruct the jury and to direct them as he did to render a verdict for the plaintiff."

"If these facts had been submitted to the jury and a verdict rendered for the defendant, could that verdict have been set aside as being unsupported by the evidence, or as against the weight of the evidence? The answer to this question furnishes the true test of the correctness of the ruling in the Court below."

If, in the case in hand, the evidence had been submitted to the jury and the jury found that Edmund B. Ross was not the husband of Maria Moose when he married Mary Cavnaugh, that verdict would have been set aside. There was no evidence to justify such a finding. No evidence from which the jury could draw such an inference.

Where the facts are not in dispute and the inferences from them are not in doubt, the question at issue is one of law for the Court and the direction of a verdict is not erroneous.

Belcher vs. Manchester B. & L. Assn., Ct. of Errors, 67 Atl. Rep., 85.

In *Schmitt vs. Traphagen, 66 Atl., 937,* it appears at the trial of the issue at law, ordered on a bill to quiet title, Justice Dixon directed a verdict. On motion for a new trial, Vice Chancellor Garrison denied the motion, stating that if it was one of legal title, it was eminently one to be passed upon by the Courts of Law, and suggested that the best solution of the question was to have an appeal taken as promptly as posible to the Court of ultimate decision.

The issue was whether Edmund B. Ross was, on October twenty-fourth, eighteen hundred and seventy-

three, the husband of Maria Moose. The respondents asserted that she was not; that Edmund B. Ross had no lawful wife at that time and was lawfully capable of contracting a legal and binding marriage; the appellants asserted the contrary.

The respondents proved the will directing that after Edmund's death money was to be paid to his son, son of his wife, formerly Maria Moose, and then proved the marriage of Edmund, October twenty-fourth, eighteen hundred and seventy-three.

The appellants proved the marriage of Edmund B. Ross by one of the parties to it, Maria Moose;

By the record from the County Clerk's office;

By the admissions of Edmund B. Ross to Mary Anderson;

By the record kept by Jacob Loudenslager, the minister.

The respondents did not allege or attempt to prove or suggest that the first wife, Maria Moose, was either divorced or dead, although the will offered by them and under which they claimed title described her as the wife of Edmund B. Ross.

They rest their case on the presumption arising from the second marriage that Edmund was lawfully capable of contracting it, although by the issue they were required to prove that fact.

THERE WAS PROOF THAT JACOB LOUDENSLAGER WAS A MINISTER.

The suggestion is made by the Vice Chancellor that there was lack of proof that Mr. Loudenslager was a minister.

First, the County Clerk accepted and recorded, in 1864, his return of the marriage, signed "Elder in the M. E. Church."

Second, George L. Dobbins, a minister of the Methodist Episcopal Church, testified that (page 60) an ordained minister might be a deacon or an elder; that an elder had the power of an ordained minister of solemnizing marriage, and at pages 61 and 62 that the word elder implies that he is an ordained minister of the Methodist Episcopal Church, implies that he is a minister and that he is ordained.

Third, Mrs. Prehl testified that he was a preacher, a minister.

Fourth, his diary shows him to have been a minister.

Fifth, *prima facie,* Mr. Loudenslager was a minister authorized to celebrate the marriage; respondents did not attempt to show that he was not.

THE RECORD FROM THE GLOUCESTER COUNTY CLERK'S OFFICE WAS PROPERLY ADMITTED.

The Vice Chancellor also suggested that it was doubtful if the record from the County Clerk's office was admissible because not lodged with the recording office within six months, and cites *Peoples vs. Etter, 81 Mich., 570-573,* as an authority. An examination of that case will show that it was an indictment for rape. The prosecution was allowed to put in evidence a certificate of the marriage of the father and mother, dated December seventeenth, eighteen hundred and seventy-three, filed in the County Clerk's office March 22, 1899, while the trial was in progress, without proving the handwriting of the jus-

tice or accounting for the delay of fifteen years in filing it. The statute required these certificates to be delivered to the County Clerk ninety days after the marriage.

The act of 1795, Revised Statutes, page 376, by its 2d section, provided that every stated and ordained minister of the Gospel is authorized and empowered to solemnize marriage between such persons as may lawfully enter into the matrimonial relation. Sec. 6 provided that the minister should make and keep a particular record of all marriages solemnized before him and transmit a certificate of every particular marriage (containing both Christian names and surnames) within six months after the solemnization thereof to the Clerk of the Court of Common Pleas for the county in which the marriage was solemnized. Sec. 7 provides a penalty for neglect of minister to make the return. Sec. 8 provides that the Clerk of the Court of Common Pleas of the county shall register and record all such returns of marriages at large in a book to be kept for that purpose, and no other, within one month after receiving the same. Sec. 10 provides that such book shall be admitted in evidence in all courts of law and equity in this State.

This act was in force until after 1868; it is found in *Nixon's Digest of 1868, page 544.*

The act relating to the registry of births and deaths and marriages of 1848 *(Nixon's Digest of 1868, page 81; P. L. 1848, page 155)* provides for a registry in the Secretary of State's office, but did not repeal the marriage act either in terms or by implication.

The supplement of 1851 (P. L. 1851, page 434) shows that the Registry act of 1848 was to an extent inoperative.

The supplement to the Registry act (P. L. 1862, page 161) shows that they were still having trouble, the duties of the Township Clerks being imposed on the Assessors.

In 1866 (P. L. 1866, page 960) there was a supplement to the Marriage act of 1795 prohibiting ministers from marrying minors, and at the end of the first section it is provided that the minister shall make a certicate of the oath or affirmation and file it with the RECORD OF THE MARRIAGE IN THE OFFICE OF THE CLERK OF THE COUNTY.

These sections continued in force until the revision of 1874 and are contained in the act concerning marriages, births and deaths. Revision, approved March 27, 1874. Revision on page 631.

This is not the return to the Secretary of State's office, but the statutory proof of the marriage in the County Clerk's office.

By sections 28 and 29 of "An act concerning evidence; Revision of 1900," (P. L. 1900, page 362, 370,) all transcripts of returns of marriages made by any clergyman or other person according to law to any officer of any municipality in this State empowered by law to receive such return or transcript of the record of such return recorded by such officer and made as directed, shall be received as legal evidence in any court in this State.

The transcript shall be a copy of the return, or a copy of the record thereof as recorded, and be signed by the Clerk or other officer and by him certified to be a true copy; thereupon such certified transcript shall be received AS PRIMA FACIE EVIDENCE OF THE MATTERS AND FACTS THEREIN STATED.

The requirement of the 6th section of the statute, that the minister should transmit a certificate of every particular marriage within six months after the solemnization thereof to the Clerk of the Court of Common Pleas for the county in which the marriage was solemnized is directory not mandatory.

The failure of the minister to transmit within the time cannot invalidate the marriage. Time is in no way of the essence of the matter. The statute imposes no penalty for failure except on the minister. If he failed to make the return, for every such offence he forfeits fifty dollars, to be recovered by the clerk of the court or any other person who shall prosecute for the same.

No advantage would be lost or right destroyed or benefit sacrificed to the public or to any individual by holding the provision that the return be made within six months directory.

Proprietors of Morris Aqueduct vs. Jones, 7 Vroom, 206.

Affirmed, 8 Vroom, 556.

Nicholl vs. N. Y. & N. J. Telephone Co., 33 Vroom, 733-738.

Pearson vs. Howey, 6 Halst., 12.

THE DIARY OF JACOB LOUDENSLAGER WAS PROPERLY ADMITTED.

At the trial it was admitted that counsel procured it from the grandson of Jacob Loudenslager, the Honorable Henry C. Loudenslager, and waived proof by counsel that he obtained it from that custody.

This is the record section 6 of the act of 1795 requires the minister to keep.

It is more than thirty years old, comes from proper custody and proves itself. It is not conclusive evidence of the marriage but is evidence of the record of the marriage.

The record shows that he was a minister of the Methodist Church and officiated as such. Maria Prehl testified that he was a minister and married them.

The Rev. George L. Dobbins testified that an elder in the Methodist Church was an ordained minister.

The County Clerk accepted his return and recorded it.

The parties to the marriage lived together after the marriage as husband and wife.

The statute required the minister to keep the records; therefore, it was admissible as a record kept under an official duty.

If the minister was not an official, yet the statute required him to keep it, the duty was a statutory duty and the record so kept admissible.

It was admissible as entries made in a regular course of business.

"Since it is not essential that the occupation should be a mercantile or industrial one, or even that it should be a regular one, it follows that a register of marriages or the like kept by a priest or minister is admissible."

Wigmore on Evidence, Sec. 1523.

A sworn and examined extract from the parish record of a Catholic Church, showing the baptism of a deceased party and reciting the names of her parents, with their description and statement of her age, supported by the

affidavit of the priest that such a record was required to be kept by the rules of the church and which is thirty years old, is admissible as evidence of age.

A leaf sworn to as taken after his death, from a soldier's private record book, required to be kept by soldiers in the British service, containing the names of the father and his wife, and the names, ages and birth places of all his children, is admissible in proof of the age of a child of such soldier.

Hunt vs. Supreme Court 64 Mich., 671; 31 N. W. Rep., 576.

The baptism of two children and the marriage of their parents, entries taken from the records of a German Luthern Church in the form of certificates by the Rev. H. Scheib that he performed the ceremonies, there being no law requiring such records to be kept, were admitted. The mother testified that she was married by that minister.

Weaver vs. Leiman, 52 Md., 708-720.

The record of baptism regularly kept by McDermott, a priest of the church for a number of years, produced from the custody of O'Brien, the present priest, into whose hands it came upon the death of McDermott, was admitted although there was no evidence that the priest was a sworn officer or that the book was required by law to be kept.

Kennedy vs. Doyle, 10 Allen, 161.

The baptismal records of St. Patrick's Parish, in the city of Boston, made by Father Lynch, found in his home after his death and continued by present priest, admitted although the handwriting was not proved.

Whitcher vs. McLaughlin, 115 Mass., 167.

ANY PRESUMPTIONS ARISING BY PROOF OF THE SECOND MARRIAGE ARE ENTIRELY DESTROYED BY PROOF OF THE FIRST MARRIAGE.

The Vice Chancellor is of the opinion that the presumptions arising from the proof of the second marriage are not overcome by the proofs made by the appellants.

These presumptions are entirely destroyed by the testimony of Mrs. Prehl, who was a party to the marriage and the only surviving person of those present.

Her testimony is clear, convincing and unimpeached.

The best proof of the marriage is by a party present.

The Vice Chancellor cites *United States vs. Green, 98 Federal Rep., 63.* In that case the government sought to recover from the defendant widow of Levi R. Davis, $1,146.25, paid as a pension. She was lawfully married to Davis January 11, 1878. The marriage was entered into in entire good faith upon the part of both parties. The claim was that owing to a prior marriage between Davis and Eliza Jane Callahan, July 6, 1848, the relation of husband and wife was not lawfully created between Davis and the defendant. On April 19, 1877, a decree of divorce was granted to Davis from Eliza Jane Callahan by the Probate Court of Malade county, Utah, which Davis, the defendant, and the department in good faith believed to be a valid decree and acted in the premises in that belief. It is now claimed by the government that by a change of the law the jurisdiction of Probate Court over matters of divorce had been abrogated at the time of the decree. The judge held that in framing stipulation the attorneys had not recited that the wife was legally competent to contract the first marriage and had

so stipulated as to the second, and it was incumbent upon the government to prove that they were lawfully husband and wife. The judge states at page 66: "It may be true that the presumption of competency is ordinarily drawn as a presumption of fact from evidence showing a proper marriage ceremony, but regard must be had to the particular issue at stake, and the special facts of the case."

Smith vs. Smith, 23 Vroom, 207, was a case where the marriage was proved by one of the parties to it. The marriage was in Massachusetts, in 1846, by a person not proved to be a minister. They lived together until 1865, when the husband told her that they were not legally married and came to New Jersey. He brought to New Jersey with him a woman whom he introduced as his wife, and she lived with him as such until her decease.

The marriage in 1846 was upheld in this Court.

Rooney vs. Rooney, 9 Dick., 231, bill to annual marriage. The record offered was a duly exemplified copy of a marriage, together with the minister's return thereon. The return was signed John Teeling. No evidence was offered of the laws of Virginia regulating the issuing of licenses, filing certificates or value or effect as evidence of such certificates when filed. Vice Chancellor Pitney held that the paper had for the then present purposes no probative force or value. As to the complainant's evidence that he was married the Vice Chancellor, for reasons given, refused to believe him. The Vice Chancellor evidently had some doubts about his conclusion that there was in the case no reliable evidence of the former marriage upon which a decree can be founded, for he says at page 245, "admitting that I am mistaken, I still feel bound to advise against complainant's prayer for relief." The Vice Chancellor held that complainant's

fraudulent conduct debarred him from the right to relief in a Court of Equity.

Stevens vs. Stevens, 11 Dick., 488. The same Vice Chancellor, on a bill to obtain a decree of nullity, found the prior marriage existed, although both parties to the prior marriage swore it never existed. He states that if there had been issue between the parties to the suit and the result of the decree was to basterdize issue, then the ruling in Rooney vs. Rooney would be more in point.

The facts in the case of *Rhode Island Hospital Trust Company vs. Thorndike, 24 R. I., page 105; 52 Atl., 873,* one very similar to the case in hand.

There was no distinct issue to try. The Trust Company filed a bill of interpleader. It was trustee under the will of Sara Thorndike, one clause of which was "but if any one of the above named children of James F. Thorndike die, leaving lawful issue, the interest or income," etc.

James Edward Thorndike, one of the children of James F. Thorndike, died November 24, 1899, at Bayonne, N. J., where he had lived for two years with his family, which then consisted of his wife Hannah, whom he married in England, October 10, 1883, and with whom ever after he lived as his wife, during his life, and his five children by her.

The brothers and sisters of James Edward Thorndike claimed that he was married to Elizabeth Gale in 1871, and that he died without lawful issue. Elizabeth Gale Thorndike, not a party or in any way pecuniarily interested in the result of the suit, testified that she and said James Edward Thorndike were married at Rutherford Park, New Jersey, July 12, 1871, by Mansfield French, a Methodist minister, at the latter's home, and that his

wife was a witness to the ceremony; that the minister gave her no certificate as he had none, but said he would send her one, which he neglected to do; she produced letters from James Edward Thorndike calling her his wife. He introduced her to his family as his wife, and introduced her to others as his wife and deserted her in 1882.

The proof of the second marriage was full, and that the family of James Edward visited them, and his brother Samuel boarded with them for two years; that there was no record of the first marriage in the Bureau of Vital Statistics of New Jersey, nor in the County Records of Bergen county, New Jersey; that the Reverend Mansfield French had been settled in Rutherford Park, N. J., but had died some years ago; that his wife died the same year, and his children could find no record of such a marriage.

The Court held the question to be, not which of the two alleged marriages is supported by the most evidence, but only whether there is sufficient evidence to satisfy the Court that the alleged Gale marriage actually took place and lawfully existed.

The opinion cites, among other cases, *Albertson vs. Smyth, 3 N. J. law, 473,* and *Stevens vs. Stevens,* and concludes, "We are of opinion that James Edward Thorndike deceased, leaving no lawful issue surviving."

In *Dailey vs. Frey, 55 Atl., 962,* partition matter. No witness was able to identify the Maggie Bradley named in the certificate of the first marriage with Margaret Josephine Bradley, the wife in the second marriage, except the two interested defendants; there were several families of Bradleys living in the same neighborhood. The two defendants testified that she told them she was

married to Thomas McClain; they had seen them together. The Court held testimony not sufficient to establish first marriage.

In *Jones vs. Gilbert, 25 Northeastern, 566-135 Ill., 27.* Bill by widow for dower and homestead. The widow being the wife of the first marriage, also the wife of the second, a competent witness denied ever having seen the pretended first husband at any time or anywhere, or that she ever knew him or knew anything about him. The Court held his testimony unreliable and that there was no sufficient identification of the woman.

Myatt vs. Myatt, 44 Ill., 473, was a dispute over letters of administration. The statute required a license; no license to celebrate the first marriage was shown or attempted to be proved. The first marriage was attempted to be proved by cohabitation and admissions of the wife.

The burden was on the respondents to prove that Edmund B. Ross was not, on the twenty-fourth day of October, 1873, the husband of Maria Moose, named in the will of Samuel Ross, had no lawful wife and was lawfully capable of contracting a legal and binding marriage. They did not put in evidence any fact to make such proof.

Any presumption that might arise by reason of the marriage with Mary Cavnaugh, October 24, 1873, was destroyed by the proof made by the appellants.

The appellants proved the marriage to Maria Moose, December 4, 1862, and that she was still living.

There could be no sufficient reason for ordering a new trial, and the order appealed from should be reversed.

THOMAS E. FRENCH,
Solicitor for Appellants.

N. J. Court of Errors & Appeals

No. 31. ~~June~~ November Term, 1907.

Amelia R. Sparks and Emma Ross,

Complainants and Appellants,

and

Charles S. Ross and Jennie I. Thornton,

Defendants and Respondents.

APPEAL.

CASE.

Thomas E. French,
Solicitor for Appellants.

Timothy J. Middleton,
Solicitor for Respondents.

John J. Crandall,
Of Counsel.

INDEX.

Bill filed January 29th, 1904.

IN CHANCERY OF NEW JERSEY.

To his Honor William J. Magie, Chancellor of the State of New Jersey:

Complaining show unto your Honor your orators, Amelia R. Sparks, wife of Charles A. Sparks, of Philadelphia, in the State of Pennsylvania, and Emma Ross, of Philadelphia, in the State of Pennsylvania, that your orators are in peaceable possession and claim to own in fee simple:

All the following described tract or parcel of land, situate in the township of Pensauken (late Stockton), in said county of Camden and State of New Jersey:

Beginning at a corner at low water mark in the river Delaware, corner to land now or late of The Shore Company; thence along lands of said The Shore Company south twenty-seven degrees and fifty-seven minutes east, four and seventy one-hundredths chains to the westerly line of the Camden and Amboy Railroad; thence in the same direction, crossing said railroad, one and twelve one-hundredths chains to the easterly line of said railroad and corner to lands of said The Shore Company; thence continuing the same course and along said lands of The Shore Company seven and twenty-three one-hundredths chains to a stone for a corner in the line of said The Shore Company, in all a distance of thirteen and five one-hundredths chains; thence along lands now or late of said The Shore Company south fifty-five degrees and forty-five minutes west, nine and fifty one-hundredths chains to a stone for a corner in the line of lands devised

by will of Samuel Ross to said Amelia R. Sparks; thence along the line of lands of said Amelia R. Sparks twenty-six degrees and thirty-three minutes west, five and thirty-nine one-hundredths chains to the easterly line of said Camden and Amboy Railroad; thence northerly, along the easterly line of said railroad, about six chains, more or less, to a corner; thence northerly, crossing said railroad to the westerly line thereof, a corner to lands of said Amelia R. Sparks, so as aforesaid devised to her by said will of said Samuel Ross, deceased; thence along said lands westerly eight and thirty one-hundredths chains, more or less, to a corner; thence still along said lands of said Amelia R. Sparks southerly, and almost parallel with said river Delaware, one and sixty one-hundredths chains to another corner in the line of said Amelia R. Sparks' lands; thence still by her lands southerly thirty-eight links, more or less, to the line of other lands of said Amelia R. Sparks; thence along said other lands of said Amelia R. Sparks north twenty-one degrees and thirty minutes west, fifty links, more or less, to low water mark in the river Delaware; thence northerly along the line of low water mark in the river Delaware, the several courses and distances thereof, to the place of beginning. Containing ten and thirty-six one hundredths acres, more or less. Being the same lands mentioned in the will of said Samuel Ross, of record in the office of the Surrogate of the county of Camden, in Book D of Wills, page 380, &c., as the Woodbine Cottage and the land now occupied by William Clement and also the land in said will mentioned as occupied by Thomas Sinex.

That the title of your orators to said land or some part thereof is denied and disputed by Charles S. Ross and Jennie I. Ross, who are the defendants in this suit, and they, said defendants, claim or are claimed and are reputed to own said lands or some part thereof or some interest therein, and no suit or action of any kind is pending to enforce or test the validity of such title or claim.

Your orators charge that such claims, so made by the defendants, are utterly without foundation, unjust and vexatious, and that by reason of such claims your orators' property in such lands is accordingly affected and the same cannot be sold as it otherwise could.

In consideration whereof and for as much as your orators are relievable only in a court of equity, where matters of this nature are properly, and according to the statute of this State in such case made and provided, cognizable and relievable:

To the end, therefore, that the said defendants and each of them may, but without oath, answer under oath being hereby waived, full, true and perfect answers make to all and singular the matters aforesaid, and more particularly that they and each of them may in manner aforesaid answer and set forth specifically what title or claim to said lands, or any part thereof or any interest therein, they or either of them make or claim and to what part or what interest, and further, how and by what instrument such title or claim is derived or was created, and that, by the determination and final decree of this Court, the rights of all the parties to this suit in and to the said lands hereinbefore set forth, and every part thereof, may be fixed and settled; that your orators may be decreed to have the perfect title thereto; the defendants to have no estate, interest in or encumbrance on said lands or any part thereof; that their claims to the same are unjust, vexatious and void, and that your orators may have such other and further relief in the premises as the nature of the case may require and as they shall be entitled to in pursuance of the statutes in such case made and provided.

May it please your Honor, the premises considered, to grant unto your orators a writ or writs of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Charles S. Ross and Jennie I. Ross, commanding them and each of them, on a certain day and under a penalty which may fall thereon, person-

ally to be and appear before your Honor in this Honorable Court, then and there, full, true, direct and perfect answer make to all and singular the premises; and further, to stand to, abide by and perform such order, directions and decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your orators will ever pray, &c.

THOMAS E. FRENCH,

Solicitor for and of Counsel with Complainant.

Answer filed August 20th, 1904.

IN CHANCERY OF NEW JERSEY.

Between

AMELIA R. SPARKS,

Complainant,

and

CHARLES S. ROSS AND JENNIE I. ROSS (NOW JENNIE I. THORNTON),

Defendants.

ON BILL, &c.

ANSWER, &c.

The joint and several answers of Charles S. Ross and Jennie I. Ross, now Jennie I. Thornton, to the bill of complaint filed in this cause.

These defendants, respectively, now and at all times hereafter saving and reserving to themselves all and all

manner of benefit and advantage of exceptions to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as the defendants are advised is material or necessary for them to make answer thereunto, severally answering say, that these defendants deny that the said complainant is in peaceable possession of, or has a claim in fee simple of the lands and premises mentioned and described in the said bill of complaint.

And these defendants, further answering, admit that the lands mentioned in the last will and testament of Samuel Ross, of record in the office of Surrogate of the county of Camden, in Book D. of Wills, page 380, &c., as the "Woodbine Cottage," and the land now occupied by William Clement, and also the land in said will mentioned as occupied by Thomas Sinex are the same premises mentioned and described in the said bill of complaint.

And the defendants, further answering, admit that the title to said land and premises is denied and disputed by these defendants, and that they claim said land and premises in fee simple, and admit that no suit or action of any kind is pending to enforce or test the validity of such title or claim, but that these defendants deny that their said claim, so made as aforesaid, is without foundation, unjust and vexatious.

And these defendants, further answering, say that their claim and title to the land and premises sought to be affected by this bill of complaint is based upon the said last will and testament of Samuel Ross, deceased, recorded as aforesaid, by virtue of that portion of said will as follows:

"Item. I give and devise to my son-in-law, Charles A. "Sparks, and my daughter, Mary Ann Murray, all that "my property known as the 'Woodbine Cottage' and the "land occupied by William Clement, situate in the town- "ship of Stockton. Also, the lands occupied by Thomas "Sinex, situate in said township of Stockton, in the

"county of Camden, and also the sum of six thousand "dollars to be taken out of my personal estate so if "the same should not be sufficient then to be taken from "my real estate to be sold if necessary by my executors "the said lands and real estate, and the said sum of six "thousand dollars to be held by them in trust, as fol- "lows: that is to say, in trust to receive the rents and "income of said lands and money and to pay the same "from time to time to my son Edmund B. Ross in such "manner as not to be liable to his debts or contracts "during his natural life, and after his death to pay the "sum of one thousand dollars to his son, Samuel Ross, "son of his wife, formerly Maria Moose, if then living; "the residue of said lands and money so held in trust as "aforesaid, on the death of said Edmund B. Ross to be "equally divided among any children that he may here- "after have born to him in lawful wedlock."

And these defendants, further answering, say that the said Edmund B. Ross, the father of these defendants, on the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and seventy-three, entered into the holy bonds of matrimony and was married to Mary Cavanaugh, these defendants' mother, by Henry Garbe, Esquire, then one of the Justices of Peace in and for the county of Burlington, in the State of New Jersey, duly authorized to solemnize marriages, according to the form of the statute in such case made and provided. A certificate of marriage, signed by said Justice of the Peace, being in the possession of these defendants ready to be produced and proved as this Honorable Court shall direct.

And these defendants, further answering, say that as a result of said marriage there was born nine children, six of whom departed this life, leaving three surviving the father of these defendants, as follows: Charles S. Ross, Jennie I. Ross, who subsequently intermarried with one Robert Thornton on the eighth day of June, A. D. nineteen hundred and four, and Clarence L. Ross not made a

party defendant to this bill of complaint, his only children and heirs at law, born to the said Edmund B. Ross in lawful wedlock by virtue of said marriage with the said Mary Cavnaugh, the mother of these defendants.

And these defendants, further answering, say that their said father, Edmund B. Ross, departed this life, intestate, on or about the nineteenth day of July, A. D. eighteen hundred and eighty-eight, leaving the aforesaid issue and his said wife Mary Ross; that until the past year or so the trustees of Samuel Ross, deceased, continued to pay to the mother of these defendants to and for their use the rents, issues, and profits of the said lands and premises aforesaid and the interest on said sum of money, so invested under and by virtue of said last will and testament of the said Samuel Ross as aforesaid, and for some unaccountable reason has ceased to pay any more money to the said Mary Ross or to any of the children of the said Edmund B. Ross, deceased.

And these defendants deny that any other matter or thing in the said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants, or which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JONAS S. MILLER,
Solicitor and of Counsel with Defendants.

Order for feigned issue, filed October 9th, 1905.

IN CHANCERY OF NEW JERSEY.

Between

AMELIA R. SPARKS AND EMMA ROSS,

Complainants,

and

CHARLES S. ROSS AND JENNIE I. THORNTON,

Defendants.

ON BILL TO QUIET TITLE.

ORDER FOR FEIGNED ISSUE.

The Court having by a decree of the twenty-third day of January, nineteen hundred and five, decreed that the complainants are in peaceable possession, within the contemplation of the statute, of the lands described in the bill of complaint, claiming to own the same; that their title is denied and disputed by the defendants; that the defendants claim to own the lands described in the bill of complaint and that no suit is pending to enforce or test the validity of the defendant's title and claim, and the defendants thereupon having applied for an issue at law to settle the fact whether Edmund B. Ross was lawfully married to Maria Moose;

It is, on this ninth day of October, nineteen hundred and five, ordered that an issue be framed to settle the facts and that the said issue be framed as follows:

"NEW JERSEY SUPREME COURT.

Pleas before the Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, for the term of , in the year one thousand nine hundred and five.

WM. RIKER, Jr.,
Clerk.

Witness:
WILLIAM S. GUMMERE,
Chief Justice.

CAMDEN COUNTY, ss.

Charles S. Ross and Jennie I. Thornton put in their place their attorney, Jonas S. Miller, against Amelia R. Sparks and Emma Ross in a plea of contract.

CAMDEN COUNTY, ss.

Amelia R. Sparks and Emma Ross put in their place Thomas E. French, their attorney, at the suit of Charles S. Ross and Jennie I, Thornton in a plea of contract.

Be it remembered, that on the day of nineteen hundred and five, before the Justices of the Supreme Court of the State of New Jersey, at Trenton, came Charles S. Ross and Jennie I. Thornton, the plaintiffs in this suit, by Jonas S. Miller, their attorney, and brought into this Court their declaration against Amelia R. Sparks and Emma Ross, the defendants in this suit, in a plea on contract, which said declaration is in words as follows:

CAMDEN COUNTY, ss.

Charles S. Ross and Jennie I. Thornton complain of Amelia R. Sparks and Emma Ross for that whereas on the twenty-ninth day of June, nineteen hundred and

four, at Camden, in the county of Camden and State of New Jersey, a certain discourse was moved and had by and between the said Charles S. Ross and Jennie I. Thornton, on the one part, and the said Amelia R. Sparks and Emma Ross, on the other part, of and concerning a certain suit depending in the Court of Chancery of the State of New Jersey, wherein the said Amelia R. Sparks and Emma Ross are complainants and the said Charles S. Ross and Jennie I. Thornton are defendants and upon that discourse a question then and their arose and was debated between the said Charles S. Ross and Jennie I. Thornton, of the one part, and the said Amelia R. Sparks and Emma Ross, of the other part, whether on the twenty-ninth day of June, nineteen hundred and four, the said Charles S. Ross and Jennie I. Thornton, the said plaintiffs, or either of them, had any estate or interest in the following described lands, being:

"All the following described tract or parcel of land situate in the township of Pensauken (late Stockton), in said county of Camden and State of New Jersey.

Beginning at a corner at low water mark in the River Delaware, corner to lands now or late of The Shore Company; thence along lands of said The Shore Company south twenty-seven degrees ad fifty-seven minutes east four and seventy one-hundredths chains to the westerly line of the Camden and Amboy Railroad; thence in the same direction, crossing said railroad one and twelve one-hundredths chains to the easterly line of said railroad, and corner to lands of said The Shore Company; thence continuing the same course, and along said lands of The Shore Company seven and twenty-three one-hundredths chains to a stone for a corner in the line of lands of said The Shore Company, in all a distance of thirteen feet and fifteen one-hundredths chains; thence along lands now or late of said The Shore Company south fifty-five degrees and forty-five minutes west nine and fifty one-hundredths chains to a stone for a corner

in the line of lands devised by will of Samuel Ross to said Amelia R. Sparks; thence along the line of lands of said Amelia R. Sparks north twenty-six degrees and thirty-three minutes west five and thirty-nine one-hundredths chains to the easterly line of said Camden and Amboy Railroad; thence northerly along the easterly line of said railroad about six chains more or less to a corner; thence northerly crossing said railroad to the westerly line thereof, a corner to lands of said Amelia R. Sparks, so as aforesaid devised to her by said will of said Samuel Ross, deceased; thence along said lands westerly eight and thirty one-hundredths chains, more or less, to a corner; thence still along said lands of said Amelia R. Sparks, southerly and almost parallel with said River Delaware, one and sixty one-hundredths chains to another corner in the line of said Amelia R. Sparks lands; thence still by her lands southerly thirty-eight links more or less to the line of other lands of said Amelia R. Sparks; thence along said other lands of said Amelia R. Sparks north twenty-one degrees and thirty minutes west, fifty links more or less to low water mark in the River Delaware; thence northerly along the line of low water mark in the River Delaware, the several courses and distances thereof, to the place of beginning. Containing two and thirty-six one-hundredths acres more or less. Being the same lands mentioned in the will of said Samuel Ross, of record in the office of the Surrogate of the county of Camden, in Book D of Wills, page 380, &c., as the Woodbine Cottage, and the land now occupied by William Clement, and also the land in said will mentioned as occupied by Thomas Sinex," and what such interest was; and the said plaintiffs, Charles S. Ross and Jennie I. Thornton, then and there asserted and affirmed that the true title of said lands is derived as follows:

That one Samuel Ross died seized in fee of the whole of said lands, having by his last will and testament duly

proved and of record in the office of the Surrogate of the county of Camden, in Book D of Wills, page 380, devised said lands as follows:

"Item: I give and devise to my son-in-law Charles A. Sparks and my daughter Mary Ann Murray all that my property known as the "Woodbine Cottage" and the land now occupied by William Clement, situate in the township of Stockton. Also the land occupied by Thomas Sinex, situate in said township of Stockton, in the county of Camden, and also the sum of six thousand dollars, to be taken out of my personal estate, or if the same should not be sufficient, then to be taken from my real estate, to be sold if necessary by my executors, the said lands and real estate, and the said sum of six thousand dollars to be held by them in trust as follows, that is to say, in trust to receive the rents and income of said lands and money and to pay the same from time to time to my son Edmund B. Ross in such manner as not to be liable to his debts or contracts during his natural life, and after his death to pay the sum of one thousand dollars to his son Samuel Ross, son of his wife formerly Maria Moose, if then living; the residue of said lands and money so held in trust as aforesaid, on the death of said Edmund B. Ross to be equally divided among any children that he may hereafter have born to him in lawful wedlock, but in case no such children should be born then the said residue to be disposed of as part of the residue of my estate as hereinafter provided," to which assertion and affirmation the said Amelia R. Sparks and Emma Ross assented and agreed:

And the said plaintiffs, Charles S. Ross and Jennie I. Thornton, thereupon further asserted and affirmed, that the said plaintiffs were the owners among themselves of interest amounting to two undivided third parts of the said premises, and that their interests therein arose and were acquired as follows:

That the said Edmund B. Ross mentioned in said will was, on the twenty-fourth day of October, 1873, not the husband of Maria Moose named in said will, but, on the contrary, on said twenty-fourth day of October, 1873, said Edmund B. Ross had no lawful wife, and was lawfully capable of contracting a legal and binding marriage, and being then so competent the said Edmund B. Ross, on that day and year, before and in the presence of Henry Gothe, then one of the justices of the peace in the county of Burlington, in the State of New Jersey, authorized to solemnize marriages according to the form of the statute in such case made and provided, was lawfully married to one Mary Cavnaugh; that as a result of said marriage of said Edmund B. Ross and Mary Cavnaugh, there was born to the said Edmund B. Ross, by the said Mary Cavnaugh, his wife as aforesaid, nine children, six of whom departed this life intestate, unmarried and without issue; that the said Edmund N. Ross, mentioned in this will, departed this life intestate, on or about the nineteenth day of July, eighteen hundred and eighty-eight, leaving him surviving the said Charles S. Ross and Jennie I. Thornton and one Clarence L. Ross, his only children and heirs at law, and that they were, on the death of said Edmund B. Ross, his only children born to him in lawful wedlock after the time of the making of the said last will, or of the death of said testator, Samuel Ross, and that by virtue whereof the said Charles S. Ross and Jennie I. Thornton each became entitled, on the death of said Edmund B. Ross, to one equal undivided third part of said premises; and that the limitation over expressed in said will of said Samuel Ross, by which said premises were to be disposed of as part of the residue of his estate (as by his said will is provided), never came into operation and effect; which said assertion the said Amelia R. Sparks and Emma Ross then and there wholly denied and asserted the contrary thereof.

Thereupon afterwards, to wit, on the day and year last aforesaid, at Camden aforesaid, in consideration that

the said plaintiffs, at the special instance and request of the said Amelia R. Sparks and Emma Ross, had then and there paid to the said Amelia R. Sparks and Emma Ross the sum of two hundred dollars, lawful money of the United States, and the said Amelia R. Sparks and Emma Ross then and there undertook and faithfully promised said plaintiffs to pay them the sum of two hundred dollars, like money as aforesaid, in case the said plaintiffs or either of them were the owners of two equal undivided third parts of said lands and premises, or any part thereof, the whole into three equal parts to be divided, as children of the said Edmund B. Ross, born to him in lawful wedlock; and the said plaintiffs in fact say that they were the owners of the said two equal, undivided third parts of the land and premises aforesaid on the said twenty-ninth day of June, nineteen hundred and four, and acquired an interest therein above set forth and still own the same, whereof the said Amelia R. Sparks and Emma Ross had notice. Notwithstanding the said Amelia R. Sparks and Emma Ross, not regarding their said promises and undertakings by them in form aforesaid made, have not as yet paid the said plaintiffs the said sum of two hundred dollars, nor any part thereof, although so to do the said Amelia R. Sparks and Emma Ross afterwards, to wit, on the day and year aforesaid, and often afterwards at Camden aforesaid, were by the said plaintiffs requested, but the same to them to pay they have hitherto altogether refused and still do refuse, to the damage of the said plaintiffs two hundred dollars, and therefore they bring this suit.

And the said Amelia R. Sparks and Emma Ross, by Thomas E. French, their attorney, come and defend the wrong and injury, when, &c., and say that the said Charles S. Ross and Jennie I. Thornton ought not to have and maintain the aforesaid action against them, because they say that although true it is the said discourse in the plaintiff's declaration mentioned was had

and moved by and between the said plaintiffs of the one part, and the said Amelia R. Sparks and Emma Ross of the other part, wherein it was agreed that the true title to said premises is derived under said will; and the further question did arise as aforesaid, and that they did undertake and promise in manner and form as the said Charles S. Ross and Jennie I. Thornton have above in that behalf alleged; notwithstanding, for a plea in this behalf the said Amelia R. Sparks and Emma Ross say, that the said Edmund B. Ross was, on said twenty-fourth day of October, 1873, the husband of the said Maria Moose, and continued to be her lawful husband until his death; that the said Maria is still living, and that the said Charles S. Ross and Jennie I. Thornton are not children of the said Edmund B. Ross, born to him in lawful wedlock, and that they have no estate or interest in said lands, and of this they, said Amelia R. Sparks and Emma Ross, put themselves upon the country, and the said Charles S. Ross and Jennie I. Thornton do the like.

The foregoing is a true transcript of the feigned issue made up in the Count of Chancery of New Jersey, and sent into this court of trial, as appears by a duly certified copy thereof on file in this court.

In witness whereof, I, William Riker, Jr., Clerk of the Supreme Court of Judicature of the State of New Jersey, have hereunto set my hand and seal, at the State House, in Trenton, New Jersey, this day of nineteen hundred and five.

WM. RIKER, JR.,
Clerk.

Respectfully advised.

M. P. GREY,
V. C.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY CIRCUIT.

CHARLES S. ROSS, ET AL.,
vs.
AMELIA R. SPARKS, ET AL. } FEIGNED ISSUE.

December Term, 1906.

Appearances:

For the plaintiff, T. J. MIDDLETON and JOHN J. CRANDALL.

For the defendant, THOMAS E. FRENCH, ESQ.

THE CASE FOR THE PLAINTIFF.

(Mr. Crandall opens the case for the plaintiff.)

MRS MARY ROSS, sworn.

By Mr. Crandall:

Ques. What is your name?
Ans. My name is Mary L. Ross.
Ques. How old are you?
Ans. 47 in last June. 48 on my next birthday.
Ques. Did you know one Edmund Ross in his lifetime?
Ans. Yes, sir.

Ques. Do you know whose son he was?
Ans. Yes, sir; I know he was the son of Samuel Ross.
Ques. The son of Samuel Ross?
Ans. Yes, sir.
Ques. (Showing witness paper.) What is that paper?
Ans. That is the will?
Ques. The will of whom?
Ans. The will of Samuel Ross, my husband's father.

(Said paper is offered in evidence and marked Exhibit P1.)

Ques. You say Edmund was your husband?
Ans. Yes, sir.
Ques. When were you married?
Ans. The 24th of October, 1873.
Ques. Where were you married?
Ans. In Bridgeboro, New Jersey.
Ques. What county?
Ans. I guess that is in Burlington county; I can't tell any more.
Ques. How long had you known Edmund B. before your marriage?
Ans. Probably not more than seven months.
Ques. Where did you get acquainted with him?
Ans. On Pea Shore.
Ques. What was he doing on Pea Shore?
Ans. Well, his sister owned a property there, and he came there where I lived.
Ques. Did he live with his sister?
Ans. No, sir; he boarded at Riverside, New Jersey.
Ques. Do you know who married you?
Ans. Sir?
Ques. Do you know the officer's name that married you?
Ans. Well, I can't just remember the name, but it is a name like McGarvey, or some name like that, Magistrate McGarvey, but I couldn't see it without glasses.

(Paper is shown witness.)

Ans. Garbe—that is right, yes, sir; I knew it was similar to that.

Ques. A Justice of the Peace?

Ans. Yes, sir.

Ques. What paper is that?

Ans. That is my marriage certificate.

(Said paper is offered in evidence and marked Exhibit P2.)

Ques. What is the date of your marriage?

Ans. October 24th, 1873.

Ques. Did you go to keeping house?

Ans. Yes, sir.

Ques. After you were married, right away?

Ans. No, sir; not right away; we went to Virginia and then we went to housekeeping.

Ques. Went where?

Ans. Went to Virginia; my husband took a farm to work on shares.

Ques. Where?

Ans. In Virginia.

Ques. How long did he stay in Virginia?

Ans. That is what I can't say, probably a year, maybe ten months, I don't know.

Ques. Where did you go then?

Ans. Then we came to Philadelphia. We stayed in Philadelphia two months, and moved to Camden on Fourth street above Line.

Ques. How long did you live in Camden?

Ans. Well, I can't just exactly remember.

Ques. Well, you lived in Camden a good while?

Ans. No, not so very long we didn't live in Camden. We moved from Camden out to Wrightsville.

Ques. Out to Wrightsville?

Ans. Yes, sir.

Ques. What did your husband do out at Wrightsville?
Ans. Just didn't do anything at that time. He was getting his interest money and wasn't doing anything.
Ques. You say he was living off his money?
Ans. He was living, yes, sir, off his interest money.
Ques. Where did he get his interest money?
Ans. Well, from his estate.
Ques. What estate?
Ans. That was left by his father.
Ques. His father Samuel?
Ans. Yes, sir.
Ques. Under this will?
Ans. Yes, sir.
Ques. Well, what was his business generally?
Ans. Farming.
Ques. And you say he died when?
Ans. In 1888, July 19th.
Ques. Any children born of this marriage?
Ans. Yes, sir; I had nine children.
Ques. How many of them are living now?
Ans. Three.
Ques. What are their names?
Ans. Charles S., Clarence L., and Jennie I.

By the Court:

Ques. Jennie I. Thornton?
Ans. Yes, sir; she is married.

Mr. Crandall:

Ques. Well, the only parties to this suit are Charles S. and Jennie I.
Ans. Yes, sir.
Ques. Well, do you remember whether this legacy continued, whether you received the legacy after your husband's death?

Ans. Yes, sir; I received money after his death until, —I presume it is about four or five years ago.

Ques. Up to four or five years ago?

Ans. Yes, sir; until the suit started, then it ceased.

Ques. What happened then?

Ans. Well, my son Clarence entered suit against them.

Ques. Your son Clarence?

Ans. Yes.

Ques. What for?

Ans. Well, for his part of the money.

Ques. That he claimed to be due under his grandfather's will?

Ans. Yes, sir.

Ques. Then at that time, whether that was the cause or not, at that time they suspended payment?

Ans. Yes, sir.

Ques. Who suspended payment?

Ans. Mr. E. K. Sparks.

Ques. Who is E. K. Sparks?

Ans. That is Charles Sparks' son, the executor's son, the executor of the will. After his father's death he took charge of the business, I suppose.

Ques. After Charles A. Sparks?

Ans. After his death; yes, sir.

Ques. One of the executors of the will?

Ans. Yes.

Ques. Then this is the son,—what is his son?

Ans. E. K. Sparks.

Ques. Did he come to see you about it?

Ans. Yes, sir.

Ques. What did he say to you about it?

Ans. He came to see me once.

(Objected to as remote.)

Mr. Crandall: Well, I will withdraw it.

Ques. Did you ever hear of a woman by the name of Maria Moose?

Ans. Yes, sir; I have lately, but not until lately.

Ques. When did you first hear about Maria?

Ans. Oh, I guess it is five years.

Ques. Who told you?

Ans. Mr. Sparks.

Ques. Which Sparks, E. K.?

Ans. Yes, sir.

Ques. What did he say to you about it?

Ans. He said, "I suppose you have heard that my Uncle Ed. had a wife living when he married you?" I said, "No, sir; I never heard anything to that effect."

Mr. French: I ask to have that stricken out. I do not see it is important. The question here is whether there was a prior marriage, and a statement made by a person not a party to the suit in the absence of the party cannot be evidence of anything.

The Court: Your motion is granted.

Cross-examination.

By Mr. French:

Ques. At the time of your marriage with Mr. Ross where were you living?

Ans. On Pea Shore.

Ques. With whom?

Ans. With a gentleman by the name of Smith; lived on Mrs. Sparks' farm.

Ques. By Mrs. Sparks you mean Amelia R. Sparks, the sister of Edmund Ross?

Ans. Yes, sir.

Ques. And what was Edmund Ross doing at that time?

Ans. I don't know that he was doing anything in particular, only working around places, the Grove property that was left to him, and his sister's place.

Ques. Was this place that you lived on the place in controversy in these proceedings?

Ans. No, sir.

Ques. You spoke of money being paid to you. Who was it paid by after Edmund Ross' death?

Ans. Well, my son can tell you better; sometimes the clerk gave it to him and sometimes Mr. Huff.

Ques. How frequently was it paid?

Ans. Once a month.

Ques. And a regular sum?

Ans. Yes, sir; if I sent down twice I could get it just the same.

Ques. Well, the same amount if you sent twice?

Ans. Yes.

Ques. So if you wanted double the amount you sent twice a month, do you mean that, or do you mean the amount was divided?

Ans. No; if I sent down and got some money and I wanted more—there was any sickness or anything—I sent down and asked them and they would send me just as much as they had given me in the first place.

Ques. That was an allowance made to you by Mrs. Sparks?

Ans. No, sir; Mrs. Sparks hadn't anything at all to do with that; it was Mr. Sparks.

Ques. Mr. Sparks?

Ans. Yes.

Ques. It was a regular allowance that was increased at times?

Ans. No, sir; it gradually grew down; when my husband first died I got considerably more than I did years after.

Ques. Then your son Clarence had a man named Fortescue bring some proceedings here in Camden county to see whether he hadn't some right in this farm?

Ans. Yes, sir.

Ques. And that was the time you spoke of when the litigation commenced and the allowance stopped?

Ans. Yes, sir; exactly.

CLARENCE L. ROSS, sworn.

By Mr. Crandall:

Ques. What is your name?

Ans. Clarence L. Ross.

Ques. Where do you live?

Ans. 1326 North Perth street, Philadelphia, Pa.

Ques. Where were you born?

Ans. Twenty-second and Federal, Camden, New Jersey, or Cramer Hill as it was then called, I believe.

Ques. What year were you born in?

Ans. 1880.

Ques. Who was your father?

Ans. Edmund B. Ross.

Ques. Your mother?

Ans. Mary L. Ross.

Ques. Do you remember when your father died?

Ans. Yes, sir.

Ques. Do you remember what time it was that he died?

Ans. I can't remember what time of the year it was; it was warm weather. I was at the time only eight years of age.

Ques. Did you know any of Samuel Ross's people?

Ans. No, sir.

Ques. Didn't you know any of them at all?

Ans. I had seen them; no, I did not, not Samuel Ross's people; no, sir. I was referring to the Sparks people.

Ques. Did you ever see Emma Ross, the plaintiff or defendant, or one of the parties to this suit?

Ans. No, sir.

Ques. Did you ever see Amelia Sparks?

Ans. No, sir.

Ques. Do you know Charles Sparks?

Ans. By sight, yes, sir; I have saw him.

Ques. Did you ever do any business with him?

Ans. Yes, sir.

Ques. Who was Charles Sparks?

Ans. My uncle; he was brother-in-law of my father.

Ques. He was a brother-in-law of your father's?

Ans. Yes, sir.

Ques. He was the husband of whom?

Ans. Oh, I believe Amelia R. Sparks.

Ques. The husband of Amelia R. Sparks?

Ans. Yes, sir.

Ques. What business did you have with him?

Ans. My business was to go down there monthly and get money from him which he paid us.

Ques. What money?

Ans. Money that was due us from our father's will, as I supposed, or from our father's estate.

Ques. Well, you know about the will, don't you?

Ans. Yes, sir.

Ques. Whose will was it?

Ans. The will of Samuel Ross.

Ques. Who is he?

Ans. Samuel Ross, my grandfather, the father of my father, Edmund B. Ross.

Ques. How long did they continue to collect that money after your father's death?

Ans. Up until the beginning of the proceedings against the estate which I brought. That was—I can't say the exact date—it was somewhere in the vicinity of five years ago.

Ques. Did you see Mr. Sparks afterward about why the money stopped?

Ans. No, sir.

Ques. Didn't have any talk about it at all?

Ans. No, sir; I had never saw him to speak to afterward.

Ques. Did you ever hear of a woman by the name of Maria Moose?

Ans. I never heard of it until the proceedings were brought in this former case.

Ques. Until your law proceedings?

Ans. Yes, sir.

Cross-examination.

By Mr. French:

Ques. You say that you never saw Emma Ross nor Amelia R. Sparks?

Ans. Not that I remember. I might have saw them when I was young, but I don't remember.

Ques. You did see Charles A. Sparks, the husband of Amelia R. Sparks?

Ans. Yes, sir.

Ques. How often did you see him?

Ans. I suppose I have saw him eighteen times, a dozen times.

Ques. That is several times?

Ans. Well, if you call that several, a dozen or eighteen times; yes, sir.

Ques. And those times were when you went after this money?

Ans. Yes, sir.

Ques. The proceedings you brought you gave a bond to a man named Fortescue—didn't you give him a note yourself?

(Objected to as not cross-examination.)

Mr. French: The plaintiff opened that by talking about his proceedings against this estate. I think I have a right to show what the proceedings were.

The Court: I think if objected to I must rule it out.

(Exception noted for the defendant.)

CHARLES S. ROSS, sworn.

By Mr. Crandall:

Ques. What is your name?
Ans. Charles S. Ross.
Ques. You are defendant in the Chancery suit here and plaintiff in this issue?
Ans. I am.
Ques. What is your father's name?
Ans. Edmund B. Ross.
Ques. What is your mother's name?
Ans. Mary L. Ross.
Ques. When were you born, do you know?
Ans. 1878.
Ques. Where have you lived generally?
Ans. All my life?
Ques. Yes.
Ans. Lived in Bucks county, Philadelphia.
Ques. Well, have you always lived with your parents?
Ans. Yes, sir; all my life.
Ques. Live with your mother now?
Ans. Yes, sir.
Ques. Where does your mother live now?
Ans. 1326 North Perth street.
Ques. What is your business?
Ans. I am a stage mechanic.
Ques. What did you say your father's name was?
Ans. Edmund B. Ross.
Ques. Did you know Mr. Sparks?
Ans. Mr. Charles Sparks?

Ques. Yes.
Ans. Yes, sir.
Ques. What relation was he to you?
Ans. My uncle?
Ques. Did you have any business with him?
Ans. Yes, sir.
Ques. What business?
Ans. I came down to his office and got money.
Ques. What money?
Ans. Money that we used to get every month from him.
Ques. Well, what money was it; what was the source of the supply?
Ans. It was to be for us, for the keeping of us children.
Ques. Where did it come from—who authorized it? Where did the money—
Ans. It was from my father, belonged to my father.
Ques. Where did your father get it?
Ans. When my father died why he paid it.
Ques. After your father died?
Ans. After my father died.
Ques. Your uncle Charles paid it to you?
Ans. Paid it to us; yes, sir.
Ques. You don't know where it came from then?
Ans. I always supposed it came from my grandfather, from my grandfather's estate.
Ques. What was his name?
Ans. Samuel Ross.
Ques. Did you ever know your father to collect this money?
Ans. I have.
Ques. How many times?
Ans. I came to Philadelphia twice with him to collect it.
Ques. Where did he go to get it?
Ans. Went to the office on Walnut street.
Ques. Did you ever hear any talk of Maria Moose?

Ans. No, sir; never until four or five months ago, first ever I heard, about a year ago, maybe, never knew there was such a woman.

Ques. Have you always lived home with your parents?

Ans. Yes, sir.

Ques. They lived as husband and wife?

Ans. Sir?

Ques. They always lived together as husband and wife?

Ans. Yes, sir.

Ques. Where is your sister, the other party to this case?

Ans. My sister is sick.

Ques. She is not here to-day?

Ans. No, sir.

Ques. Isn't able to be here?

Ans. Not able to be here.

No cross-examination.

MRS. EMMA SCOTT, sworn.

By Mr. Crandall:

Ques. What is your name?

Ans. Emma Scott.

Ques. Where do you live, Mrs. Scott?

Ans. Out on the East Side, Cramer Hill.

Ques. How long have you lived in this city?

Ans. 32 years; 35 years.

Ques. Did you know Edmund Ross and his wife Mary?

Ans. Yes, sir.

Ques. How long have you known them?

Ans. I have known them for 31 years.

Ques. How did you know them?

Ans. Well, they lived in part of our house for a while, then they moved away and then they came back again.

Ques. Did they have any children?

Ans. Yes, sir.

Ques. How many?

Ans. She had three then.

Ques. And lived there as husband and wife, as a family?

Ans. Yes, sir.

Ques. Have you known them ever since?

Ans. Yes, sir.

Cross-examination.

By Mr. French:

Ques. Your daughter married Clarence Ross, didn't she?

Ans. No, sir.

Ques. One or other of the Rosses?

Ans. No, sir.

Plaintiff rests.

THE CASE FOR THE DEFENDANT.

ANDREW J. HENDRICKSON, sworn.

By Mr. French:

Ques. Where do you live, Mr. Hendrickson?

Ans. Swedesboro.

Ques. That is in Gloucester county?

Ans. Yes, sir.

Ques. How long have you been a resident of Gloucester county?

Ans. All my life.

Ques. And how old are you?

Ans. I was born in 1839; I guess that will make 67, won't it?

Ques. Did you know a man named Joseph Moose along about 1860, along about that?

Ans. Yes, sir; pretty much all my life, after I got old enough.

Ques. Where did he live?

Ans. Well, he lived right across the swamp from us; we didn't quite join lands years ago, but since then I have owned land around him.

Ques. And you then lived at Hendrickson's Mills, where Hendrickson's Mills was?

Ans. Yes; there is where I lived until about 12 years ago I went into Swedesboro—just across the swamp from us.

Ques. How far from that was Swedesboro?

Ans. About two miles, two and a half.

Ques. How far was it from Bridgeport?

Ans. About three.

Ques. Did Joseph Moose have any children?

Ans. Yes, sir.

Ques. Who were they?

Ans. Maria Moose that you are speaking about here.
Ques. Anybody else?
Ans. Not that I know of; I have known her ever since she was a little bit of a thing.
Ques. You knew her ever since she was a little bit of a thing?
Ans. Yes.
Ques. Do you know her now?
Ans. Yes.
Ques. Where does she live now?
Ans. Woodbury, I suppose.
Ques. Is she the wife of August Prehl, in Woodbury?
Ans. Yes, sir.
Ques. Did you ever know anything about her being married?
Ans. Why, yes, it was supposed that—

Mr. Crandall: It ain't a question of suppose. The interrogatory is, do you know anything about the marriage?

The Court: The answer to that is yes or no.

Ans. Why, yes, only I didn't see it.
Ques. Just answer the question. What do you know about her being married.
Ans. Well, I know they lived there at home.

The Court: Who?

The Witness: Her and her husband.

Ques. Who is the husband?
Ans. Ross.
Ques. What was his first name?
Ans. I heard it here, but—
Ques. Only from your own knowledge. What do you remember about his name, not what you heard here.

Ans. I think it was Edward.

Ques. How long did they live there?

Ans. That I can't tell you exactly.

Ques. Did you ever have any talk with him?

Ans. Oh, yes.

Ques. Did he ever say anything about Maria Moose?

Ans. No; not particularly that I know of, only the same as any other man.

Ques. Did he speak of her as his wife?

(Objected to; objection sustained.)

Ques. What did he say about her?

Ans. Well, what I have heard, I didn't suppose but what it was his wife.

Mr. Crandall: I move to strike that all out.

The Court: The motion is allowed.

The Witness: I didn't see them married.

Ques. You didn't see them married?

Ans. No.

Ques. Where did he live while he was there?

Ans. Right with the old folks and them; they were all there together.

Ques. How was he introduced to you?

(Objected to as irrelevant; objection sustained.)

Ques. How did you first meet Mr. Ross?

Ans. Oh, we used to go by there every day or two, sometimes two or three times a day.

Ques. He used to go by?

Ans. No; we went by there more or less.

Ques. Did you ever stop there?

Ans. Yes.

Ques. When you stopped there, who did you find there?

Ans. Would find him there and the rest of them.

Ques. Who were the rest?

Ans. Well, his wife, I suppose.

Ques. That is Maria Moose?

Ans. Yes.

Ques. Anybody else?

Ans. Her mother and Mr. Moose himself generally.

Ques. Did you go in the house?

Ans. Oh, yes; I have been in the house many a time ever since I was a boy.

Ques. Have you been in the house while he was there?

Ans. Yes.

Ques. Did you spend evenings there while he was there?

Ans. Well, now, I don't know about spending any evenings particularly; I don't recollect about that.

Ques. What was the reputation in the neighborhood as to the relations existing between Maria Moose and Edmund B. Ross?

(Objected to.)

Mr. French: We claim that Maria Moose and Edmund B. Ross were married on December 4th, 1862. I am attempting to prove by this witness that they lived together as husband and wife, and I want to show the reputation in the neighborhood was that they were living as husband and wife in the neighborhood.

Mr. Crandall: I object to it.

The Court: I think I must sustain the objection.

(Exception noted for the defendant.)

Cross-examination.

By Mr. Crandall:

Ques. You knew Maria?

Ans. Yes, sir.

Ques. You were a young man about her age, weren't you?

Ans. Yes, sir; that is right.

Ques. Did you go to school with her?

Ans. No.

Ques. Didn't go to school in those days?

Ans. Well, we went to school, but the lines didn't strike through that way.

Ques. You didn't live in the same district with her?

Ans. She was in one school district and I was in another one.

Ques. Never mind; she was about your age?

Ans. That is right, I guess.

Mr. French: I would like to examine this witness further about the birth and death of the son; that I omitted.

By Mr. French:

Ques. Do you remember whether there was any child born to Maria Moose?

Ans. Yes, sir.

Ques. What was the child's name?

Ans. Charley, I think the first name; suppose the other would be Ross.

Ques. Do you remember about when the child was born?

Ans. No; I don't know that I do.

Ques. Do you remember whether Edmund B. Ross was living there at the time of the birth of the child?

Ans. I can't tell that, but mighty close to it; I know that.

Ques. Is the child still living?
Ans. No.
Ques. The child is dead, is it?
Ans. Yes, sir.

By Mr. Crandall:

Ques. You don't know what time of year, even, the child was born?
Ans. No, I don't know that I do; I didn't take so much stock in that.
Ques. Do you know what time this man Ross went to old man Moose?
Ans. In the time he lived there, do you mean?
Ques. Yes; when did you first see him there, about what time?
Ans. Oh, I can't hardly tell that.
Ques. About what time of year?
Ans. I don't know that I can tell that particularly.
Ques. Well, was it in the spring?
Ans. I wouldn't say, for I don't know.
Ques. And you wouldn't say as to what time of year it was at all?
Ans. I wouldn't say whether it was spring or fall, because I don't know.
Ques. Well, you said he wasn't there a great while?
Ans. No; I don't know that I did say that at all; I don't think I did.
Ques. You say about three months, you think.
Ans. If I did I forget it.
Ques. About three months did you say, or two months?
Ans. No; I didn't say so; if you have got it that way you have got it wrong there.
Ques. What do you say about the time just right now—what do you say about the time he was there?
Ans. Oh, I can't tell you that, but several months and maybe years for all I know.

Ques. Several months and maybe years?

Ans. I wouldn't say that for I don't know; might be over a year and might not be a year—I thought it was over a year considerably, and maybe more than that.

Ques. How is that?

Ans. I supposed it was considerably over a year; I don't know that either.

Ques. Did he engage in any business there?

Ans. Well, now, I don't know that without he was working on the farm.

Ques. Well, do you know anything about it? Do you know whether he worked on the farm or not?

Ans. Well, I have seen him work some, but to know how much he done, I can't tell that.

Ques. Well, Mr. Hendrickson, you don't remember much about this, do you?

Ans. Well, I don't claim to know so much about it; only I know—

Ques. Well, that is all; that is right; you ought to, of course, being a witness here you ought to know something.

MARY ADAMSON, sworn.

By Mr. French:

Ques. You are hard of hearing, are you; you don't hear very well, do you?

Ans. No, sir.

Ques. Where do you live?

Ans. Paulsboro, Gloucester county, New Jersey.

Ques. Did you know Maria Moose?

Ans. Yes, sir; I knew her.

Ques. Is she still living?

Ans. Yes, sir.

Ques. What is her name now?
Ans. Maria Prehl, something of that kind.
Ques. Where does she live?
Ans. Woodbury.
Ques. Where did you first meet her, do you remember?
Ans. I first met her at Jesse Mullen's.
Ques. Where was that?
Ans. That was at Gibbstown, on what they call the powder mill property now.
Ques. Did you know Edmund B. Ross?
Ans. I certainly knew the man.
Ques. Who was he?
Ans. He was Samuel Ross's son.
Ques. Did he ever stop and see you?
Ans. He came down through the country and stopped at my home and told me that he was married to Maria Moose, and that was about between '42 and '43, somewhere in that neighborhood.
Ques. 1842 or 1843, or forty-two or three years ago?
Ans. Yes, sir; that many years ago.
Ques. Were there any children of that marriage, do you know?
Ans. One son.
Ques. Just state the circumstances under which he told you that he had married Maria Moose. State how it happened.
Ans. I couldn't say anything, only just what I told you; that he had come and stopped at my place and said he was married to Maria Moose, and he was on his way down to see his wife, and they lived in Asbury, New Jersey.

Cross-examination.

By Mr. Crandall:

Ques. How many times did you see Edmund Ross?
Ans. How many times?

Ques. Yes.

Ans. Many a time, sir.

Ques. Where did you first get acquainted with him?

Ans. Up to his home, to his father's home on the river shore, up at the old home.

Ques. How came you to be up there?

Ans. I was up there to Josiah Starn's, my cousin's, on the same farm.

Ques. How old are you?

Ans. I am in my sixty-fifth year.

Ques. Were you married when he went down to see his wife?

Ans. I wasn't down to see his wife.

Ques. When Edmund went down to see his wife?

Ans. Yes, sir; he was married.

Ques. Were you married?

Ans. I was married; yes, sir.

Ques. Married and keeping house?

Ans. Yes, sir.

Ques. Was anybody with him when he came down?

Ans. No, he was just alone, driving down through the country to see his wife.

Ques. How came he to stop at your house?

Ans. Well, he had been acquainted, you know, and stopped there to see us.

Ques. Well, did he stop when he came back, after he had gone down to see his wife?

Ans. When he came back he stopped again and took dinner with us.

Ques. How many times did he perform those trips?

Ans. I couldn't tell you; he didn't always stop to our place, you know, but he drove down that day and he stopped.

Ques. Well, that one day?

Ans. Yes, sir.

Ques. You never visited old man Moose's home, did you?

Ans. No, not his home; but I knew them all.

Ques. Never mind; that is all; you never visited there?

Ans. No, sir.

Ques. You never saw Edmund Ross there?

Ans. I know of his being there—

Ques. Did you see Edmund Ross there at the house?

Ans. I seen Edmund Ross go down to the house.

Ques. Just saw him go that way?

Ans. Yes.

Ques. How far did you live from old man Moose?

Ans. Well, I suppose about—let's see, now—about two miles and three-quarters, something of that kind, no distance at all.

Ques. Two miles and three-quarters?

Ans. Yes, I knew of Edmund Ross being at the place because he lived there—

Ques. Never mind.

Ans. He lived there with them.

Ques. How do you know he lived there with them? You didn't see him there, did you?

Ans. Oh, yes, we knew he lived there.

Ques. Did you go there and see him?

Ans. I didn't go to the house to see them, but I know—

Ques. Wait a minute, that will do. You didn't go to the house to see them?

Ans. No, I didn't go to the house.

Ques. Or didn't visit them while he was there?

Ans. No, but I knew positively—

Ques. Just wait; I know you know positively; I understand you are very positive. How long did Edmund live there?

Ans. I couldn't exactly tell you, but quite a while.

Ques. What do you call quite a while, a month?

Ans. Oh, my gracious, a long time.

Ques. A year?

Ans. Yes, every bit of that and more, too.

Ques. Two years?

Ans. I couldn't tell you how many years, but quite a while.

Ques. Yes.

Ans. Yes.

Ques. You have talked this over with Mr. French, haven't you?

Ans. Haven't seen Mr. French.

Ques. Who have you been talking with, Sparks, young Sparks?

Ans. I haven't seen the man.

Ques. How did you come to be subpoenaed here?

Ans. Well, I knew the family.

Ques. Haven't you talked with anybody about this before you came here?

Ans. No; I have been subpoenaed before; I was up before.

Ques. This is the second time that you have been here?

Ans. Yes.

Mr. French: I think the third time.

Ques. The third time you have sworn to this question?

Ans. The first time.

Ques. Is this the first, second or third time?

Ans. I have been up three times altogether.

Mr. French: She has not been sworn as a witness before this time. She has been in Court three times on subpoena.

Ques. Have you talked with Mrs. Prehl, Maria Moose, about this lately?

Ans. Oh, I haven't seen the woman, haven't seen her.

Ques. How long since you saw the woman?

Ans. I haven't seen her for several years to know; she don't live so far off of us, but then I never happen up to Woodbury, and I don't see her; but I haven't seen her—I couldn't tell when, couldn't tell you the date.

Ques. Did you go to the same church with Maria Moose?

Ans. Yes; when I was young.

Ques. What church did you go to?

Ans. Methodist.

Ques. Were you a Methodist?

Ans. Yes, sir.

Ques. And Maria Moose?

Ans. Yes, sir.

Ques. Both Methodists?

Ans. Yes.

Ques. Does Maria Moose belong to the Methodist Church now?

Ans. I couldn't positively tell you, but I suppose she does; yes.

Mr. French: I now offer the diary of Joseph Loudenslager for an entry dated Monday, December 4, 1862, and if Mr. Crandall insists on it I will offer to prove that I got it from Henry C. Loudenslager, the grandson of Joseph Loudenslager, who was a minister of the gospel.

Mr. Crandall: Suppose that all to be true,—I don't think there is anything in the law that authorizes the diary of Mr. Loudenslager to be introduced in evidence.

Mr. French: I offer this as an ancient document, and offer to prove that it comes out of proper custody if Mr. Crandall insists upon it, and of course the character of the book and the entries and everything is to be taken into account. I offer it on the ground that it proves itself.

Mr. Crandall: I don't see that Jacob Loudenslager cuts any figure just now; it may come in later.

The Court: You had better make proof, then, of the book.

Mr. Crandall: It is not relevant. Now, if he attempts to prove a canonical marriage by that book of course there will be trouble.

The Court: The question is not now as to the sufficiency of the proof.

Mr. French: I just offer this as an ancient document, coming out of proper custody.

Mr. Crandall: I don't make any objection to that. It is substance we are after, you know. I don't care anything about form.

Mr. French: Now, there was a stipulation in this case that the testimony of Maria Prehl, a witness who resides at 35 Cooper street, Woodbury, may be taken; said testimony to be taken at her residence, Wednesday, the 3d day of January, 1906, and that said testimony may be taken stenographically, and I have here the testimony, which I now offer to read.

(At this point the depositions taken were read to the jury.)

NEW JERSEY SUPREME COURT.

CHARLES S. ROSS AND OTHERS,
vs.
AMELIA R. SPARKS AND OTHERS.
} FEIGNED ISSUE.

Jonas S. Miller, attorney for plaintiffs, and Thomas E. French, attorney for defendants, in above action, stipulate and consent to take, *de bene esse,* without order of the Court, in this action, the testimony of Maria Prehl, a witness who resides at 35 Cooper street, in the city of Woodbury, New Jersey; that said testimony be taken at her residence on Wednesday, the third day of January, 1906, at ten o'clock in the forenoon, before Walter McGonigle, attorney-at-law, and that said testimony may be taken stenographically.

JONAS S. MILLER,
Attorney for Plaintiffs.
THOMAS E. FRENCH,
Attorney for Defendants.

NEW JERSEY SUPREME COURT.

CHARLES S. ROSS AND OTHERS,
vs.
AMELIA R. SPARKS AND OTHERS.
} FEIGNED ISSUE. DEPOSITIONS.

Deposition of witness taken before me, in pursuance of stipulation hereto annexed, in the presence of Jonas S. Miller, attorney for plaintiffs, and Thomas E. French, attorney for defendants.

WALTER McGONIGLE,
Attorney-at-Law.

MARIA PREHL, a witness produced on the part of defendants, being duly sworn according to law, on her oath saith:

By Mr. French:

Ques. You live now at 35 Cooper street, in the city of Woodbury?

Ans. Yes, sir.

Ques. Gloucester county, New Jersey?

Ans. Yes.

Ques. What was your maiden name?

Ans. Moose, Maria Moose.

Ques. What was your father's name?

Ans. Joseph Moose.

Ques. The mother's name?

Ans. Jane Moose.

Ques. Did you know one Edmund B. Ross?

Ans. Yes, sir.

Ques. Whose son was he?

Ans. Samuel Ross's son.

Ques. And where did Samuel Ross live?

Ans. At the time we were acquainted, got acquaitned?

Ques. Yes.

Ans. Peashore.

Ques. Where is that?

Ans. Peashore? Above Camden there.

Ques. In Camden county?

Ans. Well, now, I don't know; I suppose it is; it is—I think they call it three miles above Camden.

Ques. When did you first become acquainted with Edmund B. Ross?

Ans. Well, in what way do you mean?

Ques. About what year, as near as you can remember?

Ans. Well, I was married in '62, and I was acquainted with him I guess two years maybe before we were married.

Ques. Where did you first meet him?

Ans. At Peashore; I was up there picking peas with a Mr. Duncan, William Duncan I think was his name.

Ques. After you first became acquainted with him, did he come to see you?

Ans. Yes, sir.

Ques. Where did he visit you?

Ans. At my father's house.

Ques. And where was your father's house at that time?

Ans. Well, my father's house was near—well, near Repaupo, Bridgeport we always would say. I was born in Bridgeport, New Jersey. He was to my father's house. I was never away from my father's house; I never lived from home.

Ques. How far from Bridgeport was your father's house?

Ans. About three miles.

Ques. And how far from Swedesboro?

Ans. Well, about the same distance.

Ques. You say you married Edmund B. Ross?

Ans. Yes, sir.

Ques. When did you marry him?

Ans. I married him in 1862. (Reading from Bible.) "Edmund B. Ross and Maria Moose was married the fourth day of December, in the year of our Lord eighteen hundred and sixty-two." Here it is, sir, if you want to see it.

Ques. Where were you married?

Ans. I was married at my father's house, in the parlor.

Ques. Who was present?

Ans. My mother and father and the preacher and his wife.

Ques. Who was the minister that married you?

Ans. Mr. Louden.

Ques. At the time of your marriage did you make any memorandum of it?

Ans. It is here in this Bible. (Indicating.)

(Question repeated.)

Ans. No more than it is in the Bible here.

Ques. When did you make that memorandum?

Ans. Oh, why in a few days after we were married.

Ques. Do you mean about a week, or two or three days?

Ans. Might have been; I couldn't exactly tell that.

Ques. What kind of a book was it that you made the memorandum in?

Ans. Right this one here. (Exhibiting Bible.)

Ques. Well, what is it? Just state what the book is, I mean.

Ans. Oh, family Bible.

Ques. Whose Bible was it?

Ans. It was mine.

Ques. Where did you get it?

Ans. Why, don't you see; it was by my "affectionate mother."

Ques. This was a Bible presented you by your mother?

Ans. By my mother; this was presented in 1851, this Bible was, when I was young.

Ques. Now, were there any children of the marriage between you and Edmund Ross?

Ans. One, a boy.

Ques. What was his name?

Ans. Joseph.

Ques. Is he living?

Ans. No, sir; he is dead.

Ques. When did he die? When was he born, first?

Ans. (Reading from Bible.) "Joseph M. Ross, son of Edmund B. Ross and Maria, his wife, was born the twenty-third day of October, in the year of our Lord eighteen hundred and sixty-three."

Ques. And when did he die?

Ans. I don't know whether I have got his death down or not, but he died—he was ten years old, in his tenth year; I haven't his death down here.

Ques. After Mr. Ross and you were married where did you live?

Ans. I was home with my father and he came to live there.

Ques. How long did he live with you at your father's house?

Ans. Well he was there all one winter, and he went away in the spring, sometime maybe March, April, something—I couldn't exactly tell that.

Ques. The winter that he was there, was that the winter you were married, or some other winter?

Ans. Why, the winter we were married; I didn't live with him any other winter, only the one we was married.

Ques. You say he went away in the spring—where did he live after that?

Ans. Well, he was a-working in Camden; I believe he was there on the railroad, I was told.

Ques. Do you know anything about where he was living after he left you?

Ans. No, I don't know where he boarded, or anything like that, I don't know.

Ques. What reason, if any, was there, that you know of, for the separation?

Ans. Well, there was no reason. He was at our house all winter, and the spring, and he didn't seem to make any shift to get a home for me or take me away, or anything of that kind, and my father thought it was time that he had looked after a place, and he told him that he thought he had been with us long enough, he should look for a place for him and me, and he went away and I never saw him but once afterwards. I heard that he was working on the cars in Camden, and I heard that he was courting another woman, and of course I didn't bother any more.

Ques. After the marriage did you visit any of his relatives?

Ans. Yes, sir; I was at his father's house the week after we were married. I was there at his mother's

funeral, and I was there before we were married, he took me there. I was over in market, my father was a farmer, and I was in market in Philadelphia, and he came over on a Saturday afternoon, and my father drove by the way of Camden home, and I went in the house and saw his father and mother and his sister Emma.

Ques. Where did his father and mother live then in Camden?

Ans. Why, I think at the corner of Fourth and Plum; they lived in the same house where she died; I think they lived at Fourth and Plum; I am not positive now on that, but that was the place, that is, it was where they were then living when I visited before I was married, in the same house that she died.

Ques. Afterwards did you make any effort to get a record of his marriage to the other woman?

Ans. Yes, sir.

Ques. Did you get such a record?

Ans. I thought I had it in this Bible; it was in this Bible at one time, it was—Emma Todd was the girl he was married to; I have got it about the house here somewheres; it don't seem to be in this book; I thought I had it in this book.

Mr. Miller: I enter an objection to this last question, and at the same time the producing of paper.

Ques. (Witness being shown paper produced.) Is this the record that you got?

Ans. Is that for me to answer you?

Ques. Yes.

Ans. Yes, sir.

Mr. French: This record is offered, and also the Bible in which the record of the marriage and birth of the son appears.

Mr. Miller: I object to the introduction of the paper and also the Bible.

The Witness: I even have his picture, Edmund's picture.

Ques. Will you produce it?
Ans. Yes.

Cross-examination.

By Mr. Miller:

Ques. Mrs. Prehl, you say you were married in 1862, the 4th day of December?
Ans. Yes, sir.
Ques. To Edmund B. Ross?
Ans. Yes, sir.
Ques. And that he lived there for about how many months after he was married, at your father's house?
Ans. From that time until probably March, April, somewheres; I couldn't tell the exact date of that.
Ques. Sometime in March or first of April was it?
Ans. We might say, yes.
Ques. And then he left, did he, because your father and mother told him to leave?
Ans. Well, they told him that he should then look out—that it was time that he had looked out for a place or a home for us.
Ques. Then he left, did he?
Ans. Yes, sir; he went away then.
Ques. And did you say that you saw him once after that?
Ans. Once, he drove there with a gentleman friend of his; they didn't get out of the wagon; I was in the garden.
Ques. Do you remember when that was?
Ans. No, I don't know when it was; in the summer; it was warm weather; it was quite hot out; I can remember that.

Ques. How many years after that, after the marriage was that that he drove there?

Ans. Why we were married in '62 and this was the next year, you know.

Ques. '63?

Ans. Yes, sir.

Ques. Well, was it before or after this child was born?

Ans. Why it was before.

Ques. Then it was prior to October, was it?

Ans. No—it was in warm weather, the day that he was there at our place it was right warm weather.

Ques. The child was born in October—when was it?

Ans. October 23, yes.

Ques. And did you notify him of the birth of this child?

Ans. No.

Ques. Did you ever make any application to him for support after he left?

Ans. No, I never done that; no. He saw me and the child—

Ques. You have answered the question, madam, pardon me. You never took any proceedings in Court to compel him to support you?

Ans. No, sir.

Ques. And you never saw him but once after your marriage; is that what I understand you to say?

Ans. After he left?

Ques. Well, after he left?

Ans. Yes, after he left, that is in the spring.

Ques. Now, you said that you knew him about a year prior to this time?

Ans. A year or two years.

Ques. And you met him there when you were picking peas for a man first?

Ans. Yes; there is where I first got acquainted with him.

Ques. And that was about one year before this marriage?

Ans. No; it was more than that; it was over a year; might have been two years.

Ques. Do you know when he died?

Ans. No, sir; I didn't know he was dead until Mr. Sparks told me.

Ques. Mr. Sparks told you—what Mr. Sparks?

Ans. Edward—ain't that his name, Mr. French?

Mr. French: That is right.

The Witness: Edward—ain't that his name.

Ques. Edward told you this?

Ans. Yes; he told me.

Ques. Is he a son of Charles Sparks?

Ans. Yes, because he was Amelia's son, and that was —Charles was her husband's name.

Ques. Now, you testified in a case in Camden about this matter once before, didn't you?

Ans. Yes, sir; in Mr. French's office.

Mr. Miller: Mr. Cooper's office, wasn't it?

Mr. French: In Mr. Cooper's office.

Ques. You have no personal interest in this estate that they are squabbling over, have you?

Ans. No, sir; not a thing.

Ques. Nothing comes to you?

Ans. No, sir; nothing at all.

Ques. Well, who first spoke to you about being a witness in this case, Mrs. Prehl?

Ans. Mr. Sparks.

Ques. Do you remember when that was?

Ans. No; I can't remember the date of the month, but it was a short time before I was up there, Mr. French.

Ques. He told you of Edward B. Ross' death, did he?

Ans. Yes; at that time.

Ques. And you can't recollect when that was?

Ans. No.

Ques. Can you about—in a year or so?

Ans. What? How long he had been dead?

Ques. When he spoke to you about it, how long ago?

Ans. It was the first time he came down here to speak to me about this; I cannot exactly tell, it was—was it last year? Well, it was a short time before I had to go to Camden.

Ques. Well, I know, but before you had to go to Camden in this case?

Ans. Yes; I told you—

Ques. Hold on a minute; don't argue with me. I want to know when you were first spoken to about this case which you testified to in Camden, when you were first spoken to?

Ans. I think it was on Farmers' Picnic day; I think that was the first day Mr. Sparks came here to see me, the first time I ever knew of Edward's death or from any other person, I think it was Farmers' Picnic day; now, I won't be certain of that, but I am almost positive.

Ques. Two years ago?

Ans. Yes; it wasn't this last year.

Ques. Well, what did he say to you?

Ans. Well, he told me that this here wife of Edward, his last wife, got a son I think was a-trying to get some money out of the estate, and he wanted me for to come up and prove that I was the first and lawful wife, and that is about all that he told me or said, you know; he told me what I was wanted for.

Ques. And in consequence of that you went to Camden when you were asked to come?

Ans. Yes, sir; I went.

Ques. And you knew at that time that you were not interested in the estate, didn't you?

Ans. Yes, I knew, because I had a copy of the will.

Ques. You had a copy of the will?

Ans. I had a copy of the will. When I was married to my present husband I destroyed it; I thought it was all over.

Ques. Well, when you were married, Mrs. Prehl, to Ross, did you receive a marriage certificate?

Ans. Yes, sir; but I—when I married the second man here I destroyed it; I thought it was no more use to me and I didn't want it laying around.

Ques. When did you marry the second man? What was the date of your marriage to him?

Ans. Why, in '62.

Ques. I mean Mr. Prehl; when did you marry Mr. Prehl?

Ans. Oh, this one. (Reading from paper.) "Augustus Prehl, of Mullica Hill, New Jersey, and Mary Ross, of Bridgeport, in the State of New Jersey, were joined together in holy matrimony by me on the 21st day of July, in the year of our Lord one thousand eight hundred and seventy."

Ques. Let me see that, please?

(Wtiness hands paper to counsel.)

The Witness: That there "Annie" is in there but that don't belong to my name. My husband was a German and he made a mistake.

Ques. Who was Mr. Alday who married you?

Ans. Well, he was a preacher.

Ques. Methodist preacher?

Ans. I couldn't tell you. We were married in Philadelphia in an undertaker's place; that is, this undertaker was a friend of this here Mr. Alday; he boarded there with them on Second street.

Ques. Now, did Mr. Prehl know that your husband, Edmund Ross, was living at the time of this marriage?

Ans. Yes, sir.

Ques. You told him, did you?

Ans. Oh, yes.

Ques. You never had any divorce from him?

Ans. I never had, no; I should have had but I didn't.

Ques. Now, you say this Bible was presented to you by your mother?

Ans. Look in the place there; you will see it.

Ques. Now, it appears to have been presented to you on October 12th, 1851; then there is another entry at the bottom. Now, are both these entries in your handwriting?

Ans. No; this here at the bottom is not; I don't know who ever wrote that.

Ques. Who wrote that at the top? Is that your handwriting?

Ans. Yes; I wrote up there; yes.

Ques. What was the occasion of October 12th? Was that your birthday?

Ans. No, sir; my birthday is 15th of July, 1838.

Ques. None of this is in your handwriting? (Indicating.)

Ans. That there bottom, no; I don't know who ever put that in there.

Ques. Who wrote the top?

Ans. Why, I did.

Ques. When did you write that in there?

Ans. Well, as soon as mother gave it to me; suppose I did.

Ques. In 1851?

Ans. I suppose, I don't remember; it has been so long ago.

Ques. When were born?

Ans. In 1838, July 15th, 1838.

Ques. You don't know who wrote that?

Ans. No; I don't know who wrote that bottom in there.

Ques. It seems to be a duplicate of the other to a certain extent. Now, are those records all in your handwriting there? Just look them over and see.

Ans. They are; that is. (Indicating.)

Mr. French: Speaking of the marriage of Edmund Ross, she says:

The Witness: That is. Yes; I wrote all that.

Ques. And these others, too?

Ans. That other there, too, I wrote that, yes; that there is (indicating) my daughter by my—I have only had one child by my last husband.

Ques. What is that, Mrs. Prehl? (Indicating.)

Ans. That there is my father—Maria Moose, daughter of Joseph Moose, don't you see, and Jane, his wife.

Ques. That is your writing?

Ans. Yes.

Ques. When they were married?

Ans. No, no; it is my birth, don't you see—Moose, in 1839, Maria Moose, daughter of Joseph Moose and Jane, his wife, was born the 15th day of July, in the year of our Lord eighteen hundred and thirty-nine, you see.

Ques. That was the boy, was it? (Indicating.)

Ans. Yes; Joseph M. Ross, son of Edward B. Ross and Maria, his wife, was born the twenty-third day of October, A. D. eighteen hundred and sixty-three. You see, he was named after my father.

Ques. You never had a son Samuel Ross, did you?

Ans. No; that there was John's son.

Ques. John Ross's son?

Ans. Yes; I think that was John's son.

Ques. When did you write this? Did you write this in here before or after you wrote the record of Joseph Ross' birth and death?

Ans. This Edmund B. Ross?

Ques. Edmund didn't write this? (Indicating.)

Ans. This is where we were married, don't you see?

Ques. Yes; did you write this the same time you wrote this other there?

Ans. I don't remember about that.

Ques. You don't recollect whether you did or not, do you?

Ans. No; I don't remember about that. I never expected I was going to have all this trouble over it now.

Ques. Now, can't you recollect the occasion of your mother's presenting this Bible to you, Mrs. Prehl?

Ans. Nothing more than love; that I was a daughter.

Ques. Did she go purchase it especially?

Ans. She was in Philadelphia; she was in market there, and they came along the street with those little Bibles and she got it for twelve cents.

Ques. You recollect that, don't you?

Ans. Yes; she came home, and I thought it was such a nice book for twelve cents.

Ques. Now, Mrs. Prehl, I believe I understood you to say you had one child by this marriage?

Ans. Yes; one.

Ques. And you don't recollect of hearing of the death of Edmund Ross until told by Mr. Sparks about two years ago?

Ans. Mr. Sparks; yes.

Ques. Who did you say were present at the time of the marriage?

Ans. Why, my mother and father, and Mr. Loudenslager and his wife.

Ques. Are any of the four alive to-day?

Ans. No; he is dead; he and his wife are both dead.

Ques. And your father and mother dead?

Ans. My father and mother are both dead; yes.

Mr. French: I offer the photograph, which is identified by Mrs. Prehl, and I offer the certificate of the second marriage.

Ques. Was this photograph taken before or after marriage, Mrs. Prehl?

Ans. That was taken before.

MARIA PREHL.

Sworn and subscribed before me this third day of January, A. D. nineteen hundred and six.

WALTER MCGONIGLE,
Attorney-at-Law.

(At one point of the reading of the depositions Mr. Crandall objects to the introduction of a certificate and a Bible. The offer of the paper was refused.)

The Court: Now, as to the Bible. Is there any proof that that was a family Bible?

Mr. French: No proof except by the witness that it was a Bible given her by her mother, and she made the entries. That was given to her by her mother in 1851.

The Court: I will consider its admissibility later. You may pass on.

FRANK B. RIDGWAY, sworn.

By Mr. French:

Ques. Mr. Ridgway, are you Clerk of the county of Gloucester?

Ans. Yes, sir.

Ques. As such Clerk have you in your custody a book marked "Marriages, D, 1842"?

Ans. Yes, sir.

Mr. Crandall: We will admit he has?

Ques. Is that the book?
Ans. Yes, sir.

Mr. Crandall: The trouble will be that the thing he proposes to prove is not provable. I will admit everything except its probative force.

Ques. Turn to page 145.

(Witness complies.)

Mr. Crandall: I am not making any objection outside of that.

Mr. French: Now, I offer the book for the entry on page 145 of the marriage of Edmund B. Ross.

Mr. Crandall: Wait a moment; offer the entry, identify it, but don't tell the jury what it is. I propose to object to it. That is not introduceable in evidence for any purpose.

Mr. French: May we use this certified copy so that he may take that away?

The Court: If competent the copy may be used.

Mr. French: I offer the book as an ancient record and coming out of proper custody as to the entries contained therein.

No cross-examination.

Mr. French: The record book D, of marriages of Gloucester county was offered, and also incidentally to that, the diary of Jacob Loudenslager.

Mr. Crandall: There does not seem to be anything here that will justify the introduction of that paper on the subject of ceremonial marriage. To simply say "Jacob Loudenslager, Elder of the Methodist Church" does not import anything at all. The statute is imperative. Is there any evidence here that an elder is a stated and ordained minister of the gospel, and more especially is there any evidence here that Jacob Loudenslager is a stated and ordained minister of the gospel?

The Court: He describes himself as an elder in the M. E. church.

Mr. French: Every presumption at this day must be in favor of the right acts, and I presume an elder in the Methodist church—

The Court: Is he an ordained clergyman?

Mr. French: I presume so; the Presiding Elder has charge of the ministers in the district. I presume he must be a clergyman.

The Court: Well, you should produce testimony of that.

Dr. George L. Dobbins, sworn.

By Mr. French:

Ques. Doctor, what is your profession?
Ans. I am a minister of the gospel.
Ques. Of what church?
Ans. The Methodist Episcopal Church.
Ques. Were you familiar with the practice and rules of the Methodist Episcopal Church in 1862?

Ans. I was.

Ques. Who was authorized by the rules of the church to solemnize marriages in 1862?

Ans. Every ordained minister of the gospel; an ordained minister of the gospel might be a deacon or he might be an elder.

Ques. A certificate signed Jacob Loudenslager, Elder—

(Objected to.)

10

The Court: Let him ask the question.

Ques. A certificate signed Jacob Loudenslager, Elder in the M. E. Church—what would that convey to your mind?

Mr. Crandall: I object to what it conveys to his mind.

The Court: Ask him directly whether an elder in the Methodist Episcopal Church has the power of an ordained minister of solemnizing marriage?

20

The Witness: He has.

Cross-examination.

By Mr. Crandall:

Ques. Do you pretend to say that elder is the generic name, and that an elder comprehends ordained ministers? Which is the generic term, "ordained ministers" or "elder," and which is the species under the generic?

30

Ans. Well, ordained ministers is the generic term.

Ques. That is what I thought.

Ans. And elder—

Ques. Wait a moment.

Ans. I didn't answer your question thoroughly. I thought you asked me which was the generic term.

Ques. Yes, ordained ministers.

Ans. And the species I thought you asked me.

Ques. No, I didn't ask you for the species.

Ans. I understood you did.

Ques. Does the term "stated and ordained minister" imply that a man is an elder?

Ans. Not necessarily; no, sir.

By Mr. French:

Ques. Does the term that he is an elder imply that he is a minister?

Ans. Yes, sir; and implies that he is ordained.

By Mr. Crandall:

Ques. Well, then, you have turned yourself around, haven't you?

Ans. Not at all.

Ques. Then elder is the generic term?

Ans. No, sir; elder is a specific term and deacon is a specific term.

Ques. Are there any elders that are not stated and officiating ministers? Are there any elders that have not got a—

Ans. That are not pastors?

Ques. Yes.

Ans. Yes, sir; an abundance of them, supernumerary ministers, superannuated ministers, local elders.

Ques. Does the word "elder" import alone, elder of the Methodist Church, does that import alone that a man is a stated and ordained preacher of the Methodist Church?

Mr. French: I object, because the witness has already answered fully.

The Court: He may answer.

(Question repeated.)

Ans. It does.

Ques. The word elder alone?

Ans. That is not the only term; if you mean—

Ques. Wait a minute; does the word "elder" standing alone, does that imply that he is a stated ordained minister of the Methodist Church?

Ans. It implies that he is an ordained minister of the Methodist Episcopal Church.

Ques. I put in the word "stated."

Ans. You will have to explain that before I can answer the question. If you mean by that that he is a pastor, I say no. I have answered that, I think.

Ques. You know very well that stated means a man that has a stated charge, don't you?

Ans. Not always.

Ques. Well, in appropriate terms, if you would see it in a law book in the language of the Legislature, "a stated ordained minister,"—that would not imply elder at all, would it?

Ans. I shall not hold myself responsible in answering law terms; I couldn't answer that question.

Ques. I have put the terms in your mouth. I say, if you should read "stated and ordained minister of the Methodist Church," would that nomen imply that he was an elder?

Mr. French: I object. The word stated is not in the statute. The statute says "Every minister of the gospel."

Mr. Crandall: Yes, it is.

Mr. French: I am speaking of the Act of 1795.

Mr. Crandall: Well, I am talking about the law he was married under, the law of 1848; here it is, the sec-

ond section of this act: "Every stated and ordained minister of the gospel shall be and is hereby authorized, &c., to solemnize marriages."

Ques. If you find that a man signs his name as an elder, would that import that he was a stated ordained minister of the gospel?

Ans. It would import that he was ordained.

Ques. Would it or wouldn't it?

Ans. It would import that he was ordained, but as to the word stated I cannot answer, for I don't know the significance of that word in the law.

By Mr. French:

Ques. Doctor, you mean that an ordained minister may or may not have a charge,—is that it?

Ans. I do; yes, sir. We have many ordained ministers who haven't charges.

Ques. And by charge you mean a regular church?

Ans. A pastor, that he is a pastor; yes.

Mr. French: I further vindicate that by the diary in question, that Jacob Loudenslager preached regularly and held services, so that if stated means stationed, he was a stated and ordained minister, and on the question of the admissibility of that book and the record from the County Clerk's office; these are all ancient records, that is, they appear by themselves to be more than 30 years old,—the entry made in '64 is now 42 years old and the entry made in '62, the one in the diary, is now 44 years old. Now, if those records came from proper custody, and appear to be honest records they are admissible in evidence and prove themselves without further proof, so that upon the statute and upon the law as to ancient records both of these books are admissible in evidence.

The Court: What do you say as to the Bible in this instance? Do you think that is proven to be such a record as would make it competent?

Mr. French: Well, I suppose they are self serving entries made by a party herself in a matter in which she was interested, and I take it that in the absence of proof that they were not correct, or that they were done for some fraudulent purpose, the fact that that Bible was given to her in 1851 by her mother, and she was married in 1862, would seem to indicate, with her entries in the book, that she meant to keep there a family record, and the fact that she put down her father's birth and mother's birth and the date of their marriage, &c., I think that constitutes a family record sufficient to have it admitted in evidence.

The Court: (After argument.) I will admit the diary and the records from Gloucester county. I do not think the Bible has been sufficiently proven to be such a history as will be competent. The witness referred to it when she gave her testimony, which I think is probably as far as that could be used. The other certificate I have ruled out.

Plaintiff rests.

Both sides rest.

Mr. French: I now move for binding instructions to this jury. The issue here is whether Edmund B. Ross was the husband of Maria Moose at the time of the marriage contract between Edmund B. Ross and Mary Cavenaugh. That is substantially the only issue to be determined by this jury. Now, on that issue, the plain-

tiffs having the affirmative of the issue have produced no testimony whatever, so that if at the close of the plaintiffs' case the defendants had offered no testimony, your Honor would then have been bound to direct the jury to find a verdict for the defendant, because the plaintiffs did not prove the thing they were in duty bound to prove; in other words, the affirmative of the issue, that he was not the lawful husband of Maria Moose in 1873, the time of the second marriage. Now, then, the defendant in this issue, proving the affirmative fact, proves the marriage that is recited in the will of Samuel Ross, and proves it by the party herself, Maria Moose, who is still living; proves it by the diary of the minister who married them, who made the entry, and proves it by the record of the marriage recorded in the County Clerk's office, and by statements of Edmund B. Ross made to Mary Adamson at the time and by the living together of Edmund B. Ross and Maria Moose and the birth of the child, and as against that there is no evidence at all, nothing for this jury to find. The facts are all on the part of the defendant that the marriage was contracted. They have not attempted to show that Maria Moose was dead or there was a divorce or anything that destroyed the marriage relation. On that ground it is the duty of your Honor to direct the jury to bring in a verdict for the defendants, which verdict should be in the language of the issue, that Edmund B. Ross was, on the 24th day of October, 1873, the husband of said Maria Moose and continued to be her lawful husband until his death.

The Court: (To the jury.) The Court feels that it must direct a verdict to be found in favor of the defendant in this case, and that will be in the language which the Clerk will read to you. You will, by direction of the Court, render a verdict in favor of the defendants in the following language: "You find for the defendant that

Edmund B. Ross was, on the 24th day of October, 1873, the husband of Maria Moose and continued to be her husband until his death, and that the said Maria is still living."

Whereupon the plaintiff, by his counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

Circuit Court Judge.

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PLAINTIFFS' EXHIBITS.

EXHIBIT P1.

I, Samuel Ross, of the city of Camden and State of
20 New Jersey, being in good health and of sound and disposing mind and memory, do make and publish this instrument in writing to be my last will and testament in manner following, that is to say:

First. I direct my executors hereinafter named to pay and discharge all my just debts and funeral expenses as soon after my decease as may be convenient.

Item. I give and devise to my wife, Mary A. Ross, the two lots of ground and the houses thereon erected, Nos. 22 and 24 North Fourth street, in the city of Camden,
30 also my two frame houses and lots of ground Nos. 332 and 334 Plum street, in said city of Camden, to have and to hold to her during her natural life, she paying all taxes and municipal charges and assessments thereon and keeping the same in good repair. I also give and bequeath to my said wife the use of all my household goods and furniture during her natural life, provided, that in case my said wife, at any time during her life, prefers

dividing the said household goods and furniture with my daughters, Mary Ann Murray and Emma Ross, then the said household goods and furniture to be equally divided between my said wife and my two daughters, Mary Ann Murray and Emma Ross.

It is my will and I do direct and devise that the said devise and bequest to my said wife shall be taken in lieu of her right of dower or other interest in my estate.

Item. I give and devise to my daughter Mary Ann Murray my two three-story brick houses and lots of ground Nos. 403 and 405 Plum street, in the city of Camden, also the store and dwelling house and lot of ground at the northeast corner of Plum and Fourth streets in the city of Camden, also the frame store and dwelling and lot of ground at the southeast corner of Fourth and Plum streets in said city of Camden, to have and to hold the said houses and lots of ground to my said daughter, Mary Ann Murray, during her natural life. Provided always, and it is my will, that my said daughter, Mary Ann Murray, shall have full power and authority to dispose of and devise by will executed in the usual manner all of the said houses and lots of ground among such of her children and for such estates and shares as she may think proper, and in default of her making such devise, then the said houses and lots of ground at her decease to be equally divided among her children should she leave any the issue of any deceased child to take the same share as his or her parent would have taken if living.

Item. I give and devise to my daughter, Emma Ross, all those my three stores and lots of ground situate at the northwest corner of Fourth and Federal streets in the city of Camden, being Nos. 329, 331 and the corner store and dwelling, the above-named property is now occupied as a boot and shoe store, drygoods store, licensed public house and public hall, to have and to hold the above mentioned houses, stores and lots of ground to my said daughter, Emma Ross, during her natural life, provided always, and I do hereby devise and direct that she

shall have full power and authority to dispose of the said houses and lots above devised to her to any child or children that she may have, in such shares and for such estates as she may think proper by will executed in the usual form and in case she shall leave no will executed as aforesaid, then the said houses and lots to be equally divided among her children, should she leave any, the issue of any deceased child to take his or her parents share, but in case she should leave no children, *the* after her decease the said houses and lots to be disposed of as I have hereinafter directed as part of the residue of my estate.

Item. I give and devise to my daughter, Amelia Sparks, wife of Charles A. Sparks, all that my farm situate in Stockton township, Camden county, New Jersey, with the fishery and mud flats adjoining the same, together with the farm house, out buildings and small tenement house, containing about one hundred acres of farm land, the same that Robert Smith now occupies, excepting any land I may sell for building lots during my life, to have and to hold to my said daughter, Amelia Sparks, during her natural life, and I do hereby give my said daughter, Amelia Sparks, full power and authority to dispose of said farm and lands by a will or instrument in writing in the nature of a will executed in the usual form among such of her children and for such estates as shall be by her thought best, and in default of her making such will then after her decease the said farm to be equally divided among her children, the issue of any deceased child to take his or her parents share. Provided always, and I do hereby direct and devise that if at any time during the life of my said daughter, Amelia Sparks, my executors hereinafter named or the survivor of them, can with the consent of my said daughter, Amelia Sparks, testified by her joining in the conveyance for the same, sell the said lands and farm for not less than the sum of thirty thousand dollars, I do hereby authorize and empower my said executors or the survivor

of them to sell said farm and lands for not less than the sum of thirty thousand dollars, either at public or private sale or sales, and to make, execute and deliver to the purchasers thereof good and sufficient conveyances for the same the proceeds of such sale or sales to be invested by them in such securities as they may deem best and most judicious and to be held by my said executors in trust for my said daughter, Amelia Sparks, for the same estate and for the same power over the same on the part of my said daughter, as I have herein above given to her in the said land and farm.

Item. I give and devise to my son-in-law, Charles A. Sparks, and my daughter, Mary Ann Murray, all that my property known as the Woodbine Cottage, and the land now occupied by William Clement, situate in the township of Stockton, also the land occupied by Thomas Sinex situate in said township of Stockton, in the county of Camden, and also the sum of six thousand dollars to be taken out of my personal estate, or if the same should not be sufficient, then to be taken from my real estate, to be sold, if necessary, by my executors, the said lands and real estate and the said sum of six thousand dollars to be held by them in trust as follows: That is to say, in trust to receive the rents and income of said lands and money, and to pay the same from time to time to my son, Edmund B. Ross, in such manner as not to be liable to his debts or contracts during his natural life, and after his death to pay the sum of one thousand dollars to his son, Samuel Ross, son of his wife, formerly Maria Moose, if then living, the residue of said lands and money so held in trust as aforesaid, on the death of said Edmund B. Ross, to be equally divided among any children that he may hereafter have born to him in lawful wedlock, but in case no such children should be born, then the said residue to be disposed of as part of the residue of my estate as hereinafter provided. Provided always, nevertheless, that in case the said trustees or the survivor of them should at any time think it best to sell said

lands above given to them in trust and to invest the proceeds of said sale, and also the said sum of six thousand dollars, or any part thereof, in a farm for the benefit of my said son, Edmund B. Ross, I do hereby authorize and empower them to sell the said land, or any part thereof, so as above given to them in trust, and to convey the same to the purchasers thereof free from the above trusts and to invest the proceeds of such sale in other land to be held by them for the same trust and for the same estate, as I have above given them, the said lands and money.

Item. Whereas, my son, John T. Ross, has been absent from his home since March, 1864, and has not been heard from since that time, and I think is probably dead, yet wishing to make some provision for him in case he should return home, I do give, devise and bequeath to my son-in-law, Charles A. Sparks, and to my daughter, Mary Ann Murray, the sum of one thousand dollars, to be held by them in trust for my said son, John F. Ross, as follows, that is to say, in trust to invest the same in some good security, and in case my said son should return at or before the death of my wife, Mary Ann Ross, then to pay the said sum of one thousand dollars at their discretion to my said son to start him in any business they may think best and most judicious, and in case my said son should not return before the decease of my said wife and during the minority of my grandson, Samuel Ross, son of my said son, John T. Ross, I authorize the said trustees to pay the whole or any part of the interest of the said sum of one thousand dollars so held by them in trust to the support and education of my said grandson, Samuel Ross, during his minority, and on his arriving at the age of twenty-one years the said trustees may pay the said sum of one thousand dollars to my said grandson, Samuel Ross, or keep the same invested and pay him the interest thereof, as they may think to be the best for his benefit, and in case the said Samuel Ross should die under the age of twenty-one years, the said

trustees shall pay his funeral expenses out of said sum of one thousand dollars or the interest thereof, and the remainder of said sum to be then equally divided between my daughters then living.

Item. In case my said son, John S. Ross, should have returned at or before the decease of my said wife, Mary Ann Ross, then at her death I give and devise to my said son, John S. Ross, the houses numbers 22 and 24 North Fourth street, and the houses numbers 332 and 334 Plum street, in the city of Camden.

Item. In case my said son, John S. Ross, should not have returned at or before the decease of my said wife, Mary Ann Ross, then on the decease of my said wife I give and devise to my daughter, Emma Ross, the two houses numbers 322 and 324 Federal street, in the city of Camden, and to my daughter, Mary Ann Murray, the two houses numbers 22 and 24 North Fourth street, in the city of Camden, to have and to hold to them during their natural lives, with the same power to dispose of the same by will among their children, and with the same rights of inheritance on the part of their respective children and their issues as I have hereinbefore provided in the case of the houses and lots hereinbefore devised to them respectively.

Item. In case my household goods and furniture should not have been divided between my wife and daughters as hereinbefore mentioned during the life of my said wife, then I give and bequeath all the said household goods and furniture after the death of my said wife to my daughters, Mary Ann Murray and Emma Ross, to be equally divided between them.

Item. I give and bequeath to my grandson, Samuel R. Murray, my gold watch and chain and my gold finger-ring.

Item. All the residue and remainder of my estate, real and personal of every description and wherever situate not hereinbefore specifically disposed of, I give, devise

and bequeath to my three daughters, Mary Ann Murray, Amelia Sparks and Emma Ross, to be equally divided between them, and the survivor of them, but if either of my said daughters should have died before me leaving any child or children, then such children to take his or her parent's share.

Lastly, I do nominate and appoint my son-in-law, Charles A. Sparks and my daughter, Mary Ann Murray, to be the executors of this my last will and testament. In witness whereof, I have hereunto set my hand and seal this fifteenth day of July, in the year of our Lord one thousand eight hundred and seventy-one.

SAMUEL ROSS. [SEAL.]

Signed, sealed, published and declared by the above named Samuel Ross to be his last will and testament, in the presence of us, who were present at the same time and subscribed our names as witnesses thereto in his presence and at his request, at the same time the word *"Federal"* on 10 page written over an erasure and the word "Fourth" erased before signing.

WILLIAM D. COOPER,
SIMEON T. RINGEL.

EXHIBIT P2.

This is to certify, that on the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and seventy-three, before me, the subscriber, one of the Justices of the Peace for the county of Burlington and State of New Jersey,

Edmund B. Ross
and
Mary Cavnaugh

were joined in marriage, they declaring themselves clear of all engagements or other lawful impediments and taking each other for husband and wife, according to law.

In witness whereof, I have hereunto set my hand and seal the day and year above written.

HENRY GARBE,
Justice of the Peace.

(Certified copy of entry in Book D of Mortgages, page 145, used instead of book.)

This is to certify, that Edward B. Ross, of Camden, in the State of New Jersey, and Maria Moose, of Woolwich, in the State of New Jersey, were by me joined together in holy matrimony on the fourth day of December, in the year of our Lord one thousand eight hundred and sixty-two, in presence of Elizabeth C. Loudenslager, Joseph Moose.

JACOB LOUDENSLAGER,
Elder in the M. E. Church.

Recorded July 29th, 1864.

FRANKLIN,
Clerk.

STATE OF NEW JERSEY, }
GLOUCESTER COUNTY, } SS.

I, FRANK B. RIDGWAY, Clerk of the county aforesaid and of the various courts of record therein, do hereby certify that the above certificate of marriage is a true copy as the same appears of record in my office in Book D of Marriages, page 145.

In testimony whereof, I have hereunto set my hand and affixed the seal of said county and courts this 19th day of December, A. D. 1905.

FRANK B. RIDGWAY, [SEAL.]
Clerk.

Abstract of diary of Jacob Loudenslager entries in year 1862:

"1 Decr., Monday, mer. 44 at 6 A. M.; somewhat rainy.

4, Thursday, mer. 22 at 7 A. M.; in the evening I solemnized marriage between Edmund B. Ross, of Camden, and Maria Moose, at the house of her father, Joseph Moose, in Woolwich township, Glos. Co., N. J."

POSTEA.

Afterwards, to wit, on the seventeenth day of December, nineteen hundred and six, at the circuit of the Supreme Court held at Camden, in and for the county of Camden, before the Honorable Allen B. Endicott, Judge of the Circuit Court, to whom the matters within contained were duly referred by the Honorable Charles G. Garrison, the Justice of the Supreme Court holding said circuit, according to the form of the statute in such case made and provided, comes as well the within named Charles S. Ross and Jennie I. Thornton, styled the

plaintiffs herein, and the within named Amelia R. Sparks and Emma Ross, styled the defendants herein, by their respective attorneys within mentioned, and the jurors of the jury whereof mention is within made being summoned also come, who to speak the truth of the matters within contained being chosen, tried and sworn, upon their oaths say that they find for the defendants and that the said Edmund B. Ross was, on the twenty-fourth day of October, eighteen hundred and seventy-three, the husband of Maria Moose, and continued to be her husband until his death and that the said Maria Moose is still living. And I certify that in my opinion the said verdict was warranted by the evidence.

ALLEN B. ENDICOTT,
C. C. J.

IN CHANCERY OF NEW JERSEY.

Between

AMELIA R. SPARKS AND EMMA ROSS, Complainants,

and

CHARLES S. ROSS AND JENNIE I. THORNTON, Defendants.

ON BILL TO QUIET TITLE.

ON FEIGNED ISSUE.

Take notice:

That at the Chancellor's Chambers, in the city of Camden, on Monday, the thirty-first day of this December, A. D. 1906, at ten of the clock of the forenoon of that day, before the Chancellor or such Vice Chancellor

as shall sit for him, I shall move to set aside the verdict of the jury returned by the Postea to the Supreme Court on the issue awarded the defendants in the above entitled cause, and for a new order for jury trial. For the following reasons:

First. The Circuit Court contraried the order of this Court by directing a verdict against defendants, and this deprived defendants of the right to have a verdict of the jury.

Second. The Court at the trial of the issue awarded, committed error in overruling the defendants' objections to the introduction of the County Clerk's record of July 29th, 1864, for the following reasons:

(a) It does not purport to be a report of a marriage celebrated by any one authorized to celebrate marriage in this State at its date.

(b) It does not come from any authorized authority or repository for such a record at the time it purports to have been made.

(c) The record is faulty and incomplete as not containing the ages of the contracting parties, names of parents and their condition.

Third. The Court committeed error in overruling objection to the introduction of entries in the book purporting to be the diary of some person, gotten from the home of Hon. Harry Loudenslager, of Paulsboro, for the reasons:

(a) There is a date interlined and obviously created to give the semblance of a date.

(b) It at most appears to be a mere diary, unsigned and undated and casual, without any intent to record or perpetuate the evidence of any public act contradistinguished to personal and private memorandum.

(c) It does not purport to be made by any one authorized to celebrate marriage.

(d) No evidence was introduced tending to show the identity of the parties, or that the celebrant was a stated

and regularly ordained minister, or Justice of the Peace, or in anywise authorized by law to perform the marriage ceremony in New Jersey.

Fourth. Because the record of the proceedings of the trial of the issue awarded by this Court discloses such an abortive effort to obtain any result that can in any wise inform the conscience of this Court as to the rights of the parties to the land in question.

T. J. MIDDLETON,
Solicitor for Defendants.

IN CHANCERY OF NEW JERSEY.

Between	On Bill to Quiet Title.
Amelia R. Sparks, et al., Complainants,	Motion for New Trial on Return of Postea of Feigned Issue.
and	
Charles S. Ross, et al., Defendants.	Opinion.

Complainants filed a statutory bill to quiet title. At the preliminary hearing in this court complainants were found to be in peaceable possession of the land in question. Defendants demanded an issue at law for the trial of the controverted facts upon which title depended under the issue as framed, and a feigned issue was accordingly awarded by this Court. At the trial before the law court a verdict was rendered in favor of complainants (defendants in the feigned issue) by direction of the Trial Court, and a motion for a new trial is now

made in this court on the return of the postea to the feigned issue.

The sole question for determination by the issue at law, as framed, was whether the marriage which was celebrated between Edmund B. Ross and Mary Cavnaugh October 24th, 1873, was a lawful marriage, or whether, on that date, and until his death, Edmund B. Ross was the lawful husband of Maria Moose and therefore incapable of marriage with Mary Cavnaugh. The purpose of that issue was to ascertain whether the children of Edmund B. Ross, born to him by Mary Cavnaugh, were born in lawful wedlock. The verdict instructed by the Trial Court was as follows: "You will find for the defendants that Edmund B. Ross was, on the 24th day of October, 1873, the husband of Maria Moose, and continued to be her husband until his death, and that the said Maria Moose is still living."

The evidence offered by the plaintiff in the feigned issue consisted of the testimony of Mary Ross, formerly Cavnaugh, and two of her sons, Clarence and Charles, and of one Emma Scull. Mary testified to her marriage to Edmund Ross October 24th, 1873, at Bridgeboro, New Jersey, and produced her marriage certificate, which was received in evidence without objection; that she and her husband resided together as husband and wife from the date of her marriage until his death, July 19th, 1888; that, except the first year or so, they resided, during all of that time, in South Jersey; that nine children were born to them, three of whom are now living; that she never heard of Maria Moose, or of any prior marriage of her husband, until about the time of this litigation. Her two sons testified that they never heard of Maria Moose until this litigation. Emma Scott testified to her knowledge of Mary and Edmund living together as husband and wife and having children.

The evidence offered by defendant in the feigned issue consisted of, first, depositions of Maria Prehl. Maria

testified that her maiden name was Maria Moose and that she was married to Edmund B. Ross December 4th, 1862, at the home of her parents near Bridgeport, New Jersey; that Edmund resided with her at her parents' home, until the following spring, when he went away—at the invitation of his father-in-law—and they never resided together afterwards; that she saw Edmund but once thereafter, namely in the following summer, when he, with a gentleman friend of his, drove to the house of her parents, but did not get out of the wagon; that she, at the time, was in the garden; that a child was born to her October 23d, 1863, named Joseph, who died at ten years of age; that she married Augustus Prehl July 21st, 1870, and then knew that Edmund Ross was alive; that she destroyed her first marriage certificate when she remarried. Arthur J. Hendrickson testified that he had known Maria from her childhood and that she and Edmund Ross resided together, at one time, at the home of Maria's parents; that he understood them to be married; as to how long they lived there together he was uncertain; that Maria had a son named Charley. Mary Adamson testified that she knew Maria and Edmund, and that some forty-two or forty-three years ago Edmund stopped at her home and said that he was married to Maria and that he was on his way there; that she knew, in a general way, that Edward resided with the Moose family for a time, but that she never actually saw him there. A record book of marriages from the County Clerk's office of Gloucester county was offered and received in evidence. It contained the record of a certificate signed "Jacob Loudenslager, Elder of the M. E. Church," certifying that he had married Edmund B. Ross and Maria Moose December 4th, 1862. The certificate bore no date but was recorded July 29th, 1864. A diary, shown to have been a diary of Jacob Loudenslager, now deceased, was offered and received in evidence. This diary contains an entry indicating that Jacob Loudenslager

married these parties on the date named. George L. Dobbins, a Methodist minister, testified that in the Methodist Church the word "Elder" imports an ordained minister of the Gospel.

THOS. E. FRENCH, for Complainants.

T. J. MIDDLETON and J. J. CRANDALL, for Defendants.

LEAMING, V. C.:

I have reached the conclusion that the learned Trial Judge erred in instructing a verdict at the trial of the feigned issue in this cause. There can be no doubt of the right and propriety of a binding instruction in the trial of a feigned issue where the evidence justifies the instruction given, but the evidence must be such that a verdict contrary to the instruction could not stand. The evidence against which the peremptory instruction was given disclosed a ceremonial marriage, followed by a cohabitation of the parties as man and wife for over fifteen years, and then terminated only by the death of the husband. During that period they raised a family of children and, except for the first year or so, resided in the same general section of this State where the alleged first wife resided. This raised a powerful presumption of the legality of the marriage against which a binding instruction could only be properly given when the presumption was clearly overcome. The power of the presumption of legality of such a marriage is found in the motives which govern human conduct and in the policy lying at the base of our social system. The conclusion of illegality involves the assumption that the parties have exposed themselves to the penal consequences of illegal acts and operates to bastardize their offspring. Their conduct during the fifteen years was a living declaration of its legality. It is manifest that the evidence of a prior marriage should be conclusive before such presumption of legality can be said to be clearly and wholly overthrown.

Touching this presumption of legality the text of *1 Bishop on Marriage, Divorce and Separation, Sec. 956,* is as follows:

"Every intendment of the law leans to matrimony. When a marriage has been shown in evidence, whether regular or irregular, and whatever the form of the proofs, the law raises a strong presumption of its legality—not only casting the burden of proof on the party objecting, but requiring him throughout, in every particular, to make plain, against the constant pressure of this presumption, the truth of law and fact that it is illegal and void. So that this issue cannot be tried like the ordinary ones, which are independent of this special presumption. And the strength of the presumption increases with the lapse of time through which the parties are cohabitating as husband and wife. It being for the highest good of the parties, of the children, and of the community, that all intercourse between the sexes in form matrimonial should be such in fact, the law, when administered by enlightened judges, seizes upon all probabilities, and presses into its service all things else which can help it, in each particular case, to sustain the marriage, and repel the conclusion of unlawful commerce."

In *United States vs. Green, 98 Federal Reporter,* Judge Shiras held that such a presumption was not overcome by proof of a prior ceremonial marriage, unless it should be also proven affirmatively that at the time of the prior marriage the parties were free from disabilities against a lawful marriage.

The evidence offered to establish a prior marriage is not, to my mind, of sufficient power to so clearly overthrow this presumption of legality as to warrant the peremptory instruction given. In the absence of positive evidence that "Jacob Loudenslager, Elder of the M. E. Church" was, in fact, at the time claimed, a stated and ordained minister of the gospel, the record of marriages

Order setting aside verdict, filed February 11th, 1907.

IN CHANCERY OF NEW JERSEY.

Between

AMELIA R. SPARKS, ET AL., Complainants,

and

CHARLES S. ROSS, ET AL., Defendants.

ON BILL TO QUIET TITLE.

ORDER SETTING ASIDE VERDICT.

The order for jury trial according to the terms of the feigned issue heretofore ordered by this Court having been executed as appears by return of the postea containing such issue into this Court, and now come defendants, Charles S. Ross, et al., and move the Court to set aside the verdict of the jury returned by said postea for the reason that said verdict is unjust and contrary to law and the testimony in the case, and after hearing argument of the counsel for the respective parties and reading and considering the testimony—and on motion of T. J. Middleton, of counsel with said defendants, it is, on this eleventh day of February, nineteen hundred and seven, ordered, adjudged and decreed that the aforesaid verdict against these defendants and in favor of complainants be and the same is hereby set aside, and be hence for nothing holden, and a new trial ordered.

Respectfully advised,

E. B. LEAMING,
V. C.

and the diary offered in evidence carry but faint probative force. Indeed it is doubtful whether the marriage record is admissible in evidence as a statutory record in view of the requirement of the statute that the certificate be lodged with the recording officer within six months of the date of the marriage, whereas the record offered in evidence was made two years after the alleged marriage. See *People vs. Etter, 81 Mich., 570, 573.* The testimony of the witnesses who were sworn in support of the prior marriage cannot properly be said to be of that character which commands absolute acceptance or affords a conclusive demonstration of the fact sought to be established.

A new trial will be advised.

Submitted January 22d, 1907.
Decided February 1st, 1907.

Notice of appeal, filed February 15th, 1907.

IN CHANCERY OF NEW JERSEY.

Between

AMELIA R. SPARKS AND EMMA ROSS,

Complainants,

and

CHARLES S. ROSS AND JENNIE I. THORNTON,

Defendants.

ON BILL, &c.

NOTICE OF APPEAL.

The complainants hereby appeal from a decree made in the above cause setting aside a verdict against defendants and granting a new trial filed in said cause on the eleventh day of February, nineteen hundred and seven, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated February 14th, 1907.

THOMAS E. FRENCH,
Solicitor for Complainants.

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

SAMUEL H. RICHARDS,
Of Counsel with Complainants.

Petition of appeal, filed February 23d, 1907.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

AMELIA R. SPARKS AND EMMA ROSS,

Complainants and appellants,

and

CHARLES S. ROSS AND JENNIE I. THORNTON,

Defendants and respondents.

PETITION OF APPEAL.

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

The petition of Amelia R. Sparks and Emma Ross, the appellants in the above stated cause, respectfully show: that your petitioners find themselves aggrieved by a decree made in the Court of Chancery by his Honor William J. Magie, Chancellor of New Jersey, filed on the eleventh day of February, nineteen hundred and seven, in the cause wherein petitioners are complainants and Charles S. Ross and Jennie I. Thornton are defendants, in this respect, to wit: that the said decree adjudges that the verdict in favor of petitioners and against defendants be set aside and a new trial be granted.

And your petitioners humbly appeal from said decree upon the ground that the same is erroneous for that the Trial Judge did not err in instructing a verdict at the trial of the feigned issue in the cause; said verdict was properly directed by the said judge and the verdict should have been allowed to stand and the said new trial refused.

Your petitioners therefore pray that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

THOMAS E. FRENCH,
Solicitor for and of Counsel with Appellants.

Answer to petition of appeal, filed February 28th, 1907.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

AMELIA R. SPARKS AND EMMA ROSS,

Complainants and Appellants,

and

CHARLES S. ROSS AND JENNIE I. THORNTON,

Defendants and Respondents.

ON APPEAL.

ANSWER.

The answer of the above named respondents to the petition of appeal of the above named appellants.

These respondents not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that an order was, on the eleventh day of February, nineteen hundred and seven, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated. But as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said order is agreeable to equity and they pray that the same may be affirmed with costs to be adjudged to these respondents.

T. J. MIDDLETON,
Solicitor for, and
J. J. CRANDALL,
Of Counsel with Respondents.