STATE OF NEW JERSEY.

In The Prerogative Court.

In the matter of admitting to probate a certain paper purporting to be the last will and testament of Gertrude Rice McElwaine, dec'd.	On caveat filed by Holmes McElwaine.

IN THE NAME OF GOD, AMEN:

I, GERTRUDE RICE MCELWAINE, of the Township of Manalapan, of the County of Monmouth, and State of New Jersey, being of sound mind, do of my own free will, make this my last will and testament:

Item—To my husband, HOLMES MCELWAINE, I will and bequeath three hundred dollars ($300).

Item—To my sister, ABIGAIL POLHEMUS SUYDAM, I will and bequeath three hundred dollars ($300).

Item—To my sister, ANN ELIZABETH SUYDAM, I will and bequeath three hundred dollars ($300).

Item—To my neice, MARGARET MATILDA WALTON, I will and bequeath all my interest in the estate of my mother, MARGARET SUYDAM, deceased.

Item—To my brother, ELIJAH PERRINE SUYDAM, I will and bequeath all that remains of my worldly goods, after the expenses of my funeral shall be paid.

And I appoint as executor of this, my last will and testament, ELIJAH P. SUYDAM.

Made, signed, sealed and witnessed, in the Township of South Amboy, in the county of Middlesex, and State of New Jersey, on this eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-five.

GERTRUDE RICE MCELWAINE. [L. S.]

ALBERTUS VANDEWATER, } Witnesses.
CORNELIA MAGEE, }

U. S. R. STPS. 40

To John R. Conover, Surrogate of the County of Monmouth :

I, Holmes McElwaine, of the Township of Manalapan, in the county of Monmouth, New Jersey, late the husband of Gertrude McElwaine, late of said Township of Manalapan, in said County, deceased, do hereby caveat and protest against admitting to probate any paper purporting to be the last will and testament of the said Gertrude McElwaine, deceased, until examination and decree thereon by the Orphan's Court of said county of Monmouth.

Witness my hand, this 23d day of August, A. D. eighteen hundred and sixty-five.

HOLMES McELWAINE.

Witness Present—C. A. Bennett.

Monmouth Orphans' Court of the term of December, A. D., 1865 :

At an Orphans' Court, holden at Freehold, in and for the County of Monmouth.

Present—Peter Vredenburgh, P. J. ; William P. Forman, Charles Butcher, Charles H. Conover, Esqs., Judges.

In the matter of proving and recording a paper purporting to be the last will and testament of Gertrude Rice McElwaine, deceased, upon the caveat filed thereto of Holmes McElwaine, August 23d, 1865.

Counsel of Executors—G. C. Beekman, Esq., Hon. Joel Parker.

Counsel of Caveaters—Ryall & Vredenburgh, Esqs., and Hon. Charles Haight.

Upon motion of George C. Beekman, Esq., Counsel of Executor, it was ordered by the Court that this cause now come on, and it was agreed by the respective Counsel that George C. Beekman, Esq., Counsel of Executor, reduce the depositions of the witnesses to writing, whereupon the following witnesses were sworn and examined in open Court, and the evidence taken down in writing, namely :

A paper purporting to be the last will and testament of Gertude Rice McElwaine, deceased, was presented by the Counsel of the Executor, and

ALBERTUS VANDEWATER (sworn.)—I live at Spotswood, in this State. Was present at making of the will of Gertrude R. McElwaine. It was done at the house of Elijah P. Suydam. I did not see Gertrude R. McElwaine sign her name to the will—her name was written to the will by me, at her direction. I asked her to write her own name; she replied she thought she was not able. I said she perhaps had better try; she replied she thought she could not. I wrote her name for her. I then asked her: Is that your name? She said it was. Yes, her name and seal. She then requested me to witness the name, which I did. I wrote the will the same day it was dated. She was perfectly sound in mind. When I wrote her signature she was sitting up in bed. I was distant from her bed about five feet when I signed her name. She did not have hold of my hand nor touch me in any way. I signed her name at her request in her presence. When I signed her name I do not know that she was looking at me; I did not notice. She could see me. Immediately after she asked me a second time I signed her name. I asked her if she acknowledged that to be her will immediately after I signed it. There were present at the time I asked her, Miss Cornelia Magee, Elijah P. Suydam, testatrix, and myself. At the time I signed her name I believed her to be of sound and disposing mind and memory.

Cross Examined.—Was acquainted with Mrs. McElwaine, prior to the making of the will about nine years. She was a married woman at the time of making the will. Her husband's name is Holmes McElwaine. Testratrix was a sister of Elijah P. Suydam, at whose house the will was made. Her husband was not there at the time of making the will. He had been there the evening previous, as late as twelve o'clock, but had left. I wrote the will,

I think, between 9 and 11 o'clock the morning after Holmes left. They were at that time living together as man and wife, I believe. She died next Sunday after the will was written. I think the will was written on Friday. The husband came after me the evening before the will was written. His coming after me was the reason of my going up. I got there on Thursday evening at 8 o'clock. I saw her that night. She did not say she had sent for me. I supposed the
10 sole object of the call was for me as a clergyman. I thought that night she wanted to see me as a clergyman. Nothing was said by her, or any one else, on Thursday night about making a will. The first I heard about making a will was fifteen or twenty minutes before it was made. About half an hour previous, Mr. Elijah Suydam told me that Mrs. McElwaine wanted to make a will, and asked me if I could write one. I answered I thought I could. This conversation was not in the room where she was. Afterwards, in her sick cham-
20 ber, Mr. Elijah P. Suydam told her I could write a will for her if she wished it. She said she did, and asked me to do it. It was a few minutes before I wrote it. Her husband was not present at either of the places when Suydam spoke of making a will. Suydam's house was in South Amboy Township, Middlesex County. I believe Holmes McElwaine had gone home at these two conversations. He was not about the premises as I saw. I supposed he had gone home. He lived at Englishtown, in Monmouth County.
30 I suppose Mrs. McElwaine was twenty-five years old. She had been married about a year. At the time of the execution of the will her husband was not present. At the time I wrote the name to the will there were present Mrs. McElwaine, testatrix, Miss Cornelia Magee, Elijah Suydam, (the brother of testatrix, and one of the legatees named in the will.) There were others in and out of the room, but whether present at that moment I do not remember. Miss Magee is a sister of Elijah P, Suydam's wife. Cor-
40 nelia Magee was present when I began the perform-

ance. I rested paper on the table when I wrote her name. The bed in which she was, stood in the corner of room, siding toward the window, feet toward the door. But one door to the room. There was another bed in the room at the time of executing will. Mrs. McElwaine's face was toward the window which was on the opposite side of the room from the door. She was sitting up in bed, because I understood, and she said so, that she was too sick to be down. She was more comfortable so. The table upon which I rested 10 when signing her name was about a foot and a half to two feet wide. Window was one and one-half by two feet. I was then distant from the head of her bed the whole width of the room, except the width of the table and the width of the window about two feet wide. There was nothing on the table but pen, ink and paper. I believe there were no other papers but what I held in my hand. Elijah Suydam brought me the paper on which will was written. He brought pen and ink also. There was more paper than this (Exhibit 20 "A") handed to me. I began to write the will, and from some mistake I made I separated the paper in parts; whether the other part was torn up or destroyed or what became of it I cannot say. Mrs. McElwaine knew how to write I suppose. I had never seen her write. After writing the will I read it to her. Present at that time Mr. Elijah Suydam, Miss Cornelia Magee, myself, and testatrix. There are eight five cent stamps on the will. They were put on at my suggestion. Supposed it required fifty cent stamp. 30 I happened to have two revenue stamps in my pocket. There are eight on the will. The rest of the stamps were furnished me by Elijah Suydam. She was very ill. I am sure the family thought she was in a very dangerous condition.

By Court.—When I asked her if it was her will I handed her this very paper, (Exhibit "A") so she could see the name. I took it to her bedside and put my finger on her name, and asked her if she acknowledged it to be her name. I did not ask her if it was 40

her signature. (Question by Court.) Whether at any time during execution she acknowledged that signature? (Answer.) I think not. She acknowledged it to be her name, will, and seal.

Re-examined in Chief.—At time of writing the will my body was partially between the paper and Mrs. McElwaine. I consider it possible for Mrs. McElwaine to have seen me write at that time. Left side of her bed was toward the table. She was not propped
10 up by pillows. She would have to look over my right shoulder to see me write. I was writing the will from ten to fifteen minutes. I arose from table before paper was completed as it now is. I arose, went to her to have her sign it. She did not sign it. I do not know whether she actually saw me write her name. She died on Sunday in the morning. I did not see her again after Friday morning, or afternoon, alive. She did not read the will. She looked on me as I read the will to her. I took another chair, sat by her bed-side
20 and read paper to her. I do not know that she read a single word in that paper. I am under impression she took the paper or touched it. I thought both had hands in it at same time. She did not touch the pen or make any mark on paper. While writing the will Mrs. McElwaine dictated all the contents of the will. I wrote it as she dictated the matter, not the form. Had no issue by her marriage with Holmes McElwaine.

Cross Examined.—Never heard she had any children.

MONMOUTH ORPHANS' COURT.

In the matter of admitting to Probate a certain paper purporting to be the last will and testament of Gertrude Rice McElwaine, dec'd.	On caveat filed by Holmes McElwaine. Depositions, &c.

Depositions of witnesses &c., in a matter depending in the Orphans' Court of Monmouth County, in the

matter of admitting to probate a certain paper purporting to be the last will and testament of Gertrude Rice McElwaine, taken on Tuesday, the thirteenth day of February, A. D. eighteen hundred and sixty-six, before Aaron A. Throckmorton, one of the masters in chancery of New Jersey, at his office in Frehold, in presence of George C. Beekman, Esquire, attorney of Holmes McElwaine, caveator, and Ryall & Vredenburgh, Esquires, attorneys of the executor, pursuant to an order of said court, and upon notice given, the service of which is acknowledged. 10

A R. Throckmorton,
Master in Chancery.

Cornelia Magee, of the county of Monmouth, a witness produced on the part of the executor, being duly sworn on her oath saith:

I reside in Englishtown, in Monmouth county. I was acquainted with Mrs. Gertrude McElwaine. I was at the house of Elijah P. Suydam last August. I had been staying there five days. Mrs. McElwaine had been at her brother's house about two weeks, as I understood. Her health was very poor. It is my name signed as a witness to the paper marked "Exhibit 'A,' on the part of the executor." Albertus Vandewater wrote the paper marked "Exhibit A." He wrote it at the request of Mrs. Gertrude R. McElwaine. Mr. Vandewater, Elijah P. Suydam, Mrs. McElwaine, (the testatrix) and myself, were present when Mr. Vandewater wrote that paper. Mrs. McElwaine requested him to write it. Mrs. McElwaine dictated the contents of the paper to him. She could see him while writing this will.. I heard the will read to her. After Mr. Vandewater had read the will to Mrs. McElwaine, he asked her who should witness it. I heard her ask Mr. Vandewater to write the will for her. He said if she wished a will written he could write it for her. He commenced writing it for her, and after he had written the will he brought it to the bed and read it to her. He asked her if that was her will. She answered yes, sir. Then he asked her who 20 30 40

she would have to witness the will. She asked Mr. Vandewater if he would witness it, and she asked me if I would witness it. She asked me personally. Then he brought back the paper again to the bed and read it to her again, and told her to sign her name to it. She took the paper in her hands and took hold of a pen. Mr. Vandewater stepped back to get a book for her to rest the paper upon. When he came with the book she asked him if he wouldn't sign her name for
10 her. He told her that he would. Question. Why did the testatrix ask Mr. Vandewater to sign her name? (Objected to.) Answer. She thought that she was too weak to write it. She told me so. She spoke loud enough for Mr. Vandewater to hear it, but whether he did or not I can't say. Mr. Vandewater wrote the name and brought the paper (marked Exhibit A) back to the bed. He put his finger on the name to will and asked her if that was her name and seal. She said yes; and that was all. Mr. Suy-
20 dam, Mr. Vandewater, and myself, were present when she said this. Mr. Vandewater was right by the bed when he asked her if that was her name and seal. He then gave the will to Mrs. McElwaine. She took it and thanked him for writing it. The witnesses, Mr. Vandewater and myself, signed it before Mrs. McElwaine took the will in her hand the last time. Mrs. McElwaine, Mr. Suydam and myself were present when Mr. Vandewater signed his own name to the will. The same persons were present when I signed
30 it. Mrs. McElwaine was of sound mind at the time this was done. I had known her for a number of years, as long as I can remember. She could read and write. She was married at the time this paper was executed, She had been married more than a year. She had no children by her marriage. She had been sick about six months previous to her death. She had been staying most of the time while she was sick at her brother Elijah Suydam's and with her folks. The rest of the time when not staying there,
40 she was staying with her husband, at Englishtown.

She had the consumption. She died in August. I can't state the day. The will was written on Friday morning and she died the following Sunday.

And being Cross Examined on the part of the Caveator says:

Mr. Vandewater, after she said she was too weak to sign it, took the paper from her. She had hold of the paper the first time he took it to her. She sat at the head of the bed, in the centre of the bed. The bed was a single bed with two pillows ranged along, side by side. The table was between two and three feet from the bed. It wasn't hardly three feet. She was sitting up in the bed. She was sitting up without any support. The table, with reference to her, was at her side. She was sitting up in the bed and her face was toward the back of the bed, and the table was at her side. She was sitting so when Mr. Vandewater signed her name. She did not change her position. The ink was on this little table. When Mr. Vandewater took the paper the second time I stood at the head of the bed, and when he signed it I went with him. I stood right at the table by him when he signed her name to it. By this little table. I did not stand between Mrs. McElwaine and Mr. Vandewater when he signed her name. I stood on the other side of the table. This little table, upon which the paper was signed, was a foot one way and a little longer the other way. It sat out in the middle of the floor. I was on one side of the table, the farthest from the bed. Mr. Vandewater was sitting on the opposite side of the table to me when he signed her name. He signed Mrs. McElwaine's name. I think before he signed his own name to it. I signed my name after he signed his name. Mr. Vandewater had written Mrs. Gertrude Rice McElwaine's name there before I signed my name. I think he had made the seal there before I signed it. He had not at that time put the stamps on the will. He signed his own name to it before I signed my name. Mr. Vandewater sat down first to sign. I don't know that there was any writing done

by Mr. Vandewater upon the will after I signed my name. He took hold of the pen after I signed my name. There was only one pen there. He took hold of the pen after I signed and laid it down upon the table. I don't remember of seeing him write any more on the will after I signed. The stamps were not on when I signed. I did not see him write on the stamps. I think the stamps were on the will when he handed it to Mrs. McElwaine the last time. I don't know
10 whether they were cancelled then as they are now, for I didn't examine. I saw them there but I did not notice the writing upon them. I saw him put the stamps on after he had written it and after I had signed my name. He put the stamps on immediately after I had signed my name and before he had given it to her. He read the will twice. I think the will was not at that time attached to the other paper as it now is. Mr. Suydam was in the room at the time Mr. Vandewater signed Mrs. McElwaine's name to the
20 will. I don't know how near he was to the little table. He was standing up. There were two beds in the room and I think he was standing by the other bed, (not the one Mrs. McElwaine was in,) and near the table. He was as near the table as Mrs. McElwaine was.

And being Re-examined in Chief says:

I mean when I say that Mrs. McElwaine was not supported in the bed when she was sitting up, that she had no pillows behind her. When Mr. Vande-
30 water signed her name to the will she was looking at him. She could see him write her name to the will. I took particular notice of the size of the table. I did not take particular notice of the stamps on the will.

And being again Cross Examined says:

When he signed her name to the will I was looking at Mr. Vandewater make the signature to the will, but I could see that she was looking also. The table was about three feet high. I think it was as high as the bed. It was rather a low bed. At the time I was
40 looking at Mr. Vandewater sign her name I was not

looking at anything else. She was looking at him when he wrote the will and I supposed she was when he signed her name.

And being again Re-examined says:

When Mr. Vandewater wrote her name to the will Mrs. McElwaine's face was toward the table. Mr. Vandewater asked Mrs. McElwaine if that was her name and seal to the paper, (marked Exhibit A,) before either he or myself signed our names there as witnesses. 10

And being again Cross Examined says:

Mr. Vandewater read the will to the testatrix twice. Before he signed her name he read it to her. Then he took it and signed her name. And after we had witnessed it he read it again. He asked her if that was her name and seal before we signed as witnesses. He rose from the table, and after he was through he came back to the table. I think he set down and signed his own name as a witness, and it was after that I signed my name. 20

CORNELIA MAGEE.

Sworn and subscribed at Freehold, this 13th day of February, A. D. 1866, before me

A R. THROCKMORTON,
Master in Chancery.

ELIZABETH MAGEE, *of Monmouth County, a witness produced on the part of the Executor, being duly sworn on her oath, saith:*

I live in Englishtown, Monmouth County. I was acquainted with Gertrude Rice McElwaine. She was 30 the wife of Holmes McElwaine. I knew her before she was married. Her maiden name was Gertrude R. Suydam. I had known her ever since I can remember. I went to school with her. She lived near to us. She could read and write. She had been married over a year. Not quite two years before her death. She lived at Englishtown after she was married. She was not there much. She was with her folks most of the time while she was sick. She had no children by her marriage. She had no children born alive 40

by her marriage. She had been sick for six months previous to her death. I was at Elijah P. Suydam's previous to Mrs. McElwaine's death. Mrs. McElwaine was at her brother Elijah Suydam's two weeks previous to her death. Her sister and my sister nursed her while she was there. No one nursed her before she came there. Her husband's mother and sister lived only a little ways from her in Englishtown, and they used to go in and see her. Her hus-
10 band was at Mr. Suydam's while she was sick there. He came on Monday and staid a little while. Then we sent for him on Thursday before she died. He came at night and staid until Friday morning. Saturday morning he came again. Saturday night he came again and staid until she died on Sunday. She was in sound mind up to the time of her death. She didn't show any wandering of mind at all up to the time of her death.

And being Cross Examined says:

20 I am not related to Mr. Elijah P. Suydam. I live at his house most of the time. I am a sister of his wife. Cornelia Magee is an own sister of mine. I have been at Mr. Suydam's house for a number of years. I was staying at Mr. Suydam's house before Mrs. McElwaine came there. My sister Cornelia was only there on a visit. Mrs. McElwaine was there when she came. I have not been living with Mrs. McElwaine ever since she was married. I have been with her a great deal. My sister Cornelia has not been
30 living with her ever since she was married either. Mrs. McElwaine lived home with her mother a year after she was married, she then went up to her husband's mother's in Englishtown, in February, and staid there most of the time until April, then she went to housekeeping.

ELIZABETH MAGEE.

Sworn and subscribed at Freehold, this 13th day of February, A. D. 1866, before me

A. R. THROCKMORTON,
40 *Master in Chancery.*

The Court ordered that the remaining testimony in the above cause should be taken before A. R. Throckmorton, Esq., a Master in Chancery, and reported to this Court with all convenient speed.

In pursuance of the above order the following evidence was reported to this Court, on the sixteenth day of April, in the Term of April, 1866.

Present—Peter Vredenburgh, P. J., William P. Forman, Charles Butcher, Charles H. Conover, Esquires, Judges.

And upon motion of George C. Beekman, Esq., 10 Counsel for Executor, it was ordered that this cause now come on, and that all the evidence taken down in writing be read to the Court.

The evidence being read to the Court, and the cause being summed up by the respective Counsel, the Court made the following decree, to wit:

MONMOUTH ORPHAN'S COURT,
April 7, 1866.

In the matter of admitting to Probate a certain paper purporting to be the last will and testament of Gertrude Rice McElwaine, dec'd. On caveat of Holmes McElwaine.	Decree of Court, April 16, 1866.

The evidence being hereupon closed and the cause summed up by counsel, the Court, after hearing the evidence and allegations on this sixteenth day of April, 30 A. D. eighteen hundred and sixty-six, order that the paper marked Exhibit "A," on the part of the Executor, purporting to be the last will and testament of Gertrude Rice McElwaine, dec'd, be admitted to probate. And the Court is of opinion that the said testatrix at the time of making and executing the said last will and testament, was of sound and disposing mind and memory, and possessed of sufficient testamentary capacity to make and execute the said last will and testament, and that the said will was execu- 40

ted by the said Gertrude Rice McElwaine, the testatrix, according to law.

And the Court is further of opinion that Holmes McElwaine, the husband of the said testatrix, is entitled to the right of administration of the estate of said testatrix, and do order that letters of administration of the goods and chattels, rights and credits, moneys and effects, which were of said Gertrude Rice McElwaine, at the time of her death, with the will annexed,
10 be granted to the said Holmes McElwaine.

And it is further ordered that letters testamentary on the said last will and testament of the said Gertrude Rice McElwaine, be not granted to the said Elijah P. Suydam, the Executor named and appointed in and by said last will and testament; and do decree that letters testamentary on said will be refused the said Elijah P. Suydam, Executor named therein, because Holmes McElwaine, her husband, is entitled to the same.

20 And the Court do further order that the costs on both sides be taxed by the Surrogate, and together with reasonable counsel fees, be allowed and paid out of the estate of the testatrix.

MONMOUTH ORPHANS' COURT, April 7, 1866.

In the matter of admitting to probate a certain paper purporting to be the last will and testament of Gertrude Rice McElwaine, dec'd. On caveat of Holmes McElwaine.	Demand of Appeal from Decree of Orphans' Court of the County of Monmouth.

Let this be notice and demand of appeal from that part of the decree of the Orphans' Court of the County of Monmouth, made on the 16th day of April, A. D. 1866, which refused letters testamentary on the last will and testament of Gertrude Rice McElwaine, dec'd, to Elijah P. Suydam, the Executor named and

appointed in and by said will, and which also granted letters of administration of the estate of said Gertrude Rice McElwaine, dec'd, to Holmes McElwaine.

April 21, 1866. JOEL PARKER,
Proctor for Elijah P. Suydam, Appellant.

To the Surrogate of the County of Monmouth:

Let this be notice of appeal from that part of the decree of the Orphans' Court of the County of Monmouth, made in the matter of admitting to probate a certain paper purporting to be the last will and testament of Gertrude Rice McElwaine, dec'd, on the sixteenth day of April, A. D. 1866, admitting said paper to probate, and deciding that the said Gertrude Rice McElwaine was, at the time of making and executing the said paper, purporting to be her will, of sound and disposing mind and memory, and possessed of sufficient testamentary capacity to make and execute the said last will and testament, and that the said will was executed by the said Gertrude Rice McElwaine, the testatrix, according to law.

RYALL & VREDENBURGH,
Proctors of Holmes McElwaine, the husband of said Testatrix.

June 11, 1866.

STATE OF NEW JERSEY, }
MONMOUTH COUNTY, } *ss.*

I, John R. Conover, Surrogate of the said County of Monmouth, certify the above to be the depositions, proceedings and orders or decrees had and made by the Orphans' Court of said County, in the cause aforesaid.

[L. S.] In witness whereof I have hereunto set my hand and seal of office this twenty-third day of June, A. D. 1866.

U. S. R. STPS. 5

JOHN R. CONOVER,
Surrogate.