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Bill of Complaint.

(Filed August 14, 1927.)

10

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey.

The complainants, Jesse E. Proctor, individually and as administrator of the Will annexed of David A. Dixon, deceased and Lillian M. Proctor, his wife, of the City of Newark, and Lillie Palmer and John A. Palmer, her husband, of the City of East Orange, all in the County of Essex and State of New Jersey and Hazel Qualles and Harry P. Qualles, her husband, of the City of New York, State of New York, John Proctor and Mittie Proctor, his wife, of the City of Perth Amboy, County of Middlesex, State of New Jersey and Eva May Bowman, widow, of the City of Philadelphia, State of Pennsylvania, respectfully show that:

20

1. David A. Dixon, late of the City of Newark, New Jersey, died on December 3rd A. D., 1926, leaving a last Will and Testament, which was on April 6th, 1927, duly admitted to probate by the Surrogate of the County of Essex, New Jersey, and letters testamentary thereon, with the Will annexed issued to said Jesse E. Proctor, who has taken upon himself the burden of administering the said estate, a true copy of the said Will is hereunto annexed and made a part hereof.

30

2. Paragraph five of said Will bequeaths the sum of two thousand, five hundred (\$2,500.00) dol-

40

Bill of Complaint.

10 lars to Henry Lowe, with the understanding that he will purchase a home for himself and wife, if married, and he will adopt the name of David Abraham Dixon, and provided further that he will visit testator's mother's tomb, at Shepherdstown, West Virginia, once each year to see that all arrangements, made by testator in his Will relative to the upkeep and embellishment of the graves referred to in his Will, are strictly performed.

20 3. Paragraph six of said Will bequeaths the sum of two thousand (\$2,000.00) dollars to provide a home or parsonage for the preachers of the Colored M. E. Church at Shepherdstown, West Virginia to be known as the Lucy Dixon Home and further provides that the pastor and trustees of the said church shall take perpetual care of the graves known as the Abraham Dixon Plot, at both the old and new cemeteries at Shepherdstown, West Virginia, and further provides that if the said Colored M. E. Church has a parsonage, the new parsonage provided for in the Will to be built for the Baptist Church at Shepherdstown, West Virginia and the same arrangement is to be carried out with the said Baptist Church as with the said
30 Colored M. E. Church, and in case neither of said Colored M. E. Church or Baptist Church will carry out the stipulations provided for, by the testator, then the building so to be constructed is to be rented under certain conditions to private individuals.

4. Paragraph seven of said Will is as follows:

40 "I desire and direct that all money left by me after the expense of administration of my estate has been paid, and not herein otherwise provided for, together with all re-

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ceipts from the sale of all railroad stock or bonds owned by me at the time of my death shall be placed with the Fidelity Trust Company of Newark, New Jersey, at a rate of interest not less than four per cent. per year, and that the principal and accumulated interest shall remain intact until the year Two Thousand and to be known as the 'David Anderson Dixon Trust Fund'; and from the interest accrued on said fund may be paid any money necessary to cover expenses in maintaining the Lucy Dixon Home and the plot in the cemetery hereinbefore referred to; that is, both old and new cemeteries at Shepherdstown, and my sister's plot at Newark, N. J."

5. Paragraph eight of said Will directs that from the accumulations of said trust fund in possession of the Fidelity Trust Company, to be known as the David Anderson Dixon Trust Fund, and Old Folks' Home for Colored People is to be constructed near the City limits of Shepherdstown, West Virginia.

6. The heirs-at-law and next of kin of the testator, David A. Dixon, at the time of his death were the complainants, his nieces and nephews, Jesse Proctor, Lillie Palmer, Hazel Qualles and John Proctor, children of testator's deceased sister, Nellie Dixon and testator's niece Eva May Bowman, daughter of testator's deceased brother, Samuel Dixon, to each of whom testator, in and by his Will bequeathed the sum of one (\$1.00) dollar, and all of whom are of age.

7. Complainants allege that paragraph five of said Will is void, in that the sum of two thousand,

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five hundred (\$2,500.) dollars is bequeathed to Henry Lowe upon certain conditions, one of which is that said Henry Lowe must visit testator's mother's tomb at Shepherdstown, West Virginia, once each year and there see that all the arrangements for the keeping up and embellishment of certain graves and tombs in perpetuity are strictly performed. This bequest violates the law of perpetuities.

8. Complainants allege that paragraph six of said Will is void in that it bequeaths two thousand (\$2,000.) dollars for charity to religious uses and at the same time directs that the trustees of said charity shall maintain in perpetuity the Abraham Dixon Plot and grave in the cemetery at Shepherdstown, West Virginia, thus embracing objects not charitable with a charitable use, and violates the law of perpetuity.

9. Complainants allege that paragraph seven of said Will is void in that testator directs that after the payment of certain legacies and the disposition of certain funds the residue of his entire estate, after being turned into cash, shall be deposited with the Fidelity Trust Company at Newark, New Jersey, and the principal and accumulated interest shall remain there intact until the year two thousand before its use as set forth in said Will. This postpones the use of the fund for a period of over seventy years and violates the law of perpetuities.

10. Complainants, as heirs-at-law and next of kin of testator allege that testator died intestate as to the residue of his estate in so far as his bequests violate the law of perpetuities and that they are entitled to such residues.

Answer of Defendants Carroll.

Complainants are without adequate remedy in the Courts of Law and therefore pray:

1. That Henry Lowe and Colored M. E. Church, who are the defendants in this suit may answer this bill of complaint and each statement therein made. 10

2. That this Court may construe the said last Will and Testament of the said David A. Dixon, deceased, and declare complainants' rights thereunder and the duties of said administrator with the Will annexed thereunder.

3. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint to abide by such decree as this Court may make in the premises. 20

Answer of Defendants Theodore Carroll, John Carroll and Louise Carroll.

(Filed July 27, 1928.)

IN CHANCERY OF NEW JERSEY.

[SAME TITLE]

The answer of the defendants, Theodore Carroll, John Carrol, an infant under the age of twenty-one years, by his guardian *ad litem*, Frances T. Roche, and Louise Carroll, an infant under the age of twenty-one years by her guardian *ad litem*, Frances T. Roche. 30

The defendants, Theodore Carroll, John Carroll and Louise Carroll, answering the bill of complaint, say that:

1. Paragraphs 1 to 5, inclusive, are admitted. 40

Answer of Defendants Carroll.

6. Paragraph 6 is denied; and these defendants allege that they are the lawful children of Jesse C. Dixon, who was a brother of the testator, David A. Dixon, deceased, and that the said David A. Dixon, deceased, in and by his last will and testa-
10 ment, bequeathed to each of these defendants the sum of One Dollar.

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted; these defendants further allege that paragraph 6 of the said last will and testament is void, in that it bequeaths the sum of Two thousand (\$2,000) Dollars, to be used in providing a new home or parsonage for the Preachers of the Colored M. E. Church, at
20 Shepherdstown, West Virginia, and directs that one room in said house shall be used expressly for the parlor furniture, pictures, property, etc. of testator's mother, which room is to be kept locked and used only by Henry Lowe, David Abraham Dixon, or his agent, when making an inspection, thus embracing objects not charitable with a charitable use and said bequest violates the rule against perpetuity.

9. Paragraph 9 is admitted; these defendants further allege that paragraph 7 of the said last will and testament violates the rule against perpetuity, and is therefore, void in that it provides that the income from the trust created therein may be used in maintaining the Lucy Dixon Home, and certain cemetery plots at Shepherds-
30 town, West Virginia, neither of which is charitable in its object or purpose.

10. Paragraph 10 is denied, but these defend-
40 ants admit that testator died intestate as to the

Replication.

residue of his estate, and that they are entitled to their proportionate share of such residue of testator's estate.

11. These defendants further answering the bill of complaint, allege that paragraph 8 of the said will is void, in that it directs that in the year Two Thousand, the sum of Fifty Thousand (\$50,000) Dollars be withdrawn from the David Anderson Dixon Trust Fund, for a trust in perpetuity, which is vague, uncertain and indefinite, and is not charitable in its purpose or object, and therefore violates the rule against perpetuity. 10

GROSSO, BRUNDAGE & ANDERSON,
Solicitors for and of Counsel with
the Defendants, Theodore Carroll, John Carroll and Louise Carroll. 20

Replication.

(Filed August 4, 1928.)

IN CHANCERY OF NEW JERSEY.

[SAME TITLE] 30

The complainants join issue on the answer of the defendants, Theodore Carroll, John Carroll, an infant, by his guardian *ad litem*, Frances T. Roche, and Louise Carroll, an infant, by her guardian *ad litem*, Frances T. Roche.

GEORGE A. DOUGLAS,
Solicitor and of Counsel with Complainants.

65/175

Final Decree.

(Filed January 19, 1929.)

IN CHANCERY OF NEW JERSEY.

[SAME TITLE]

10 This cause coming on to be heard in the presence of George A. Douglas, solicitor of complainants, John B. Stanard, solicitor of the defendant, Colored M. E. Church of Shepherdstown, West Virginia, and Grosso, Brundage & Anderson, solicitors of the defendants, Theodore Carroll, John Carroll, by his guardian *ad litem*, Frances T. Roche, and Louise Carroll, by her guardian *ad litem*, Frances T. Roche; and the Court having examined the pleadings and having taken the proofs orally and in open Court and heard the arguments of counsel thereon;

20
30 And it appearing therefrom, that the bill of complaint in this cause was filed by Jesse E. Proctor, individually and as administrator with the Will annexed of David A. Dixon, late of the County of Essex, deceased, together with the other complainants therein, who are the next of kin and heirs-at-law of said testator, David A. Dixon, for the purpose of construing the Will of said testator in relation to the fifth, sixth, seventh and eighth clauses thereof, and the Court being satisfied that under the true construction of each of said fifth, sixth, seventh and eighth clauses of said Will, that each one of said clauses is void and of no effect, as violating the statute of perpetuities, and for their vagueness and uncertainty therein;

40 And it further appearing to the satisfaction of the Court, that said defendants, Theodore Carroll,

Final Decree.

John Carroll and Louise Carroll, who allege, in the answer filed by them, that they are the lawful children of Jesse C. Dixon, who was a brother of the said testator, David A. Dixon, and as such are of the next of kin and heirs-at-law of said testator, David A. Dixon, are not in fact such lawful children and are not such of the next of kin and heirs-at-law of the said testator, David A. Dixon, and as such, are not entitled to any part of the estate of said testator, David A. Dixon; 10

And it further appearing, that the Will of said testator, David A. Dixon, did not contain any residuary clause, and that the said testator died intestate as to each one of the said fifth, sixth, seventh and eighth clauses of his said Will:

It is on this 19th day of January, 1929, Ordered, Adjudged and Decreed, that the fifth, sixth, seventh and eighth clauses in the said Will, of the said testator, David A. Dixon are, each and every one thereof, void and of no effect, as violating the statute of perpetuities, and for their vagueness of expression, and the uncertainty of their objects, and are hereby set aside, and said Will containing no residuary clause, said testator, David A. Dixon, died intestate as to each one of the said clauses so adjudged to be void and of no effect: 20 30

And it is further Ordered, Adjudged and Decreed, that the said defendants, Theodore Carroll, John Carroll and Louise Carroll, are not the lawful children of Jesse C. Dixon, a brother of the said testator, David A. Dixon, and are not of the next of kin and heirs-at-law of said testator, David A. Dixon:

And it is further Ordered, that a counsel fee of five hundred (\$500.00) dollars, be allowed George A. Douglas, solicitor of the complainants, and a 40

Notice of Appeal.

10 counsel fee of one hundred (\$100.00) dollars, be allowed John B. Stanard, solicitor of defendant, Colored M. E. Church of Shepherdstown, West Virginia, and a counsel fee of one hundred (\$100.00) dollars, be allowed Grosso, Brundage & Anderson, solicitors of the defendants, Theodore Carroll, John Carroll and Louise Carroll; said counsel fees, together with the costs of complainants in this suit to be taxed, to be paid by the complainant, Jesse E. Proctor, as administrator with the Will annexed, of David A. Dixon, out of the said estate in his hands.

E. R. WALKER,
C.

20 Respectfully Advised,
ALONZO CHURCH,
V. C.

65/175

Notice of Appeal.

(Filed February 26, 1929.)

IN CHANCERY OF NEW JERSEY.

30 [SAME TITLE]

40 The defendants, Theodore Carroll, John Carroll, by his guardian *ad litem*, Frances T. Roche, and Louise Carroll, by her guardian *ad litem*, Frances T. Roche, hereby appeal from so much of the final decree made in the above entitled cause on January 19th, 1929, by his Honor, Edwin R. Walker, upon the advice of his Honor, Alonzo Church, Vice-Chancellor, as orders, adjudges and decrees that the said defendants, Theodore Carroll, John Carroll and Louise Carroll, are not the

Petition of Appeal.

lawful children of Jesse C. Dixon, a brother of the testator, David A. Dixon, and are not of the next-of-kin and heirs-at-law of the said testator, David A. Dixon, to the Court of Errors and Appeals, in the last resort in all causes.

Dated February 15th, 1929.

10

GROSSO, BRUNDAGE & ANDERSON,
Solicitors for and of Counsel with
Defendants, Theodore Carroll,
John Carroll and Louise Car-
roll.

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

NORMAN L. BRUNDAGE,
Of Counsel with the Defendants,
Theodore Carroll, John Car-
roll and Louise Carroll.

20

Petition of Appeal.

(Filed Feb. 28, 1929.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

30

[SAME TITLE]

*To the Honorable Court of Errors and Appeals in
the Last Resort in All Causes:*

The petition of Theodore Carroll, John Carroll, by his guardian *ad litem*, Frances T. Roche, and Louise Carroll, by her guardian *ad litem*, Frances T. Roche, the appellants in the above entitled cause, respectfully shows that:

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1. Petitioners find themselves aggrieved by a

Petition of Appeal.

final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the Nineteenth day of January, A. D. One Thousand Nine Hundred and Twenty-nine, in a certain cause in

10 said Court of Chancery, wherein the said Jesse E. Proctor, individually and as administrator of the will annexed of David A. Dixon, deceased, Lillian M. Proctor, his wife, Lillie Palmer and John A. Palmer, her husband, Hazel Qualles and Harry P. Qualles, her husband, John Proctor and Mittie Proctor, his wife, and Eva May Bowman, widow, were complainants, and the said Henry

20 Lowe and Colored M. E. Church of Shepherds-town, West Virginia, Theodore Carroll, John Carroll, by his guardian *ad litem*, Frances T. Roche, and Louise Carroll, by her guardian *ad litem*, Frances T. Roche, were defendants, in this respect, to wit: that the said decree adjudges that the said Theodore Carroll, John Carroll and Louise Carroll are not the lawful children of Jesse C. Dixon, a brother of the testator, David A. Dixon, and are not of the next-of-kin and heirs-at-law of the said testator, David A. Dixon.

30 And petitioners appeal from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, in that the Court of Chancery should have held and decreed that the said Theodore Carroll, John Carroll and Louise Carroll, are the lawful children of Jesse C. Dixon, a brother of the testator, David A. Dixon, and that the said Theodore Carroll, John Carroll and Louise Carroll are the next-of-kin and heirs-at-law of the testator, David A. Dixon, and are

40 entitled to share in so much of the estate of the said David A. Dixon, as to which he died intestate.

Elizabeth Carroll, direct.

Petitioners therefore pray that the said decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

10

GROSSO, BRUNDAGE & ANDERSON,
Solicitors for and of Counsel
with Appellants.

Formal Answer Filed.

Testimony.

ELIZABETH CARROLL, sworn for defendants.

20

Direct examination by Miss Gillingham:

Q. Where are you living at the present time?

A. 141 West 45th Street.

Q. And where did you live before that? A. I lived at 198 West 10th Street.

Q. 198 West 10th Street? A. (Witness nods yes.)

Q. Are you appointed administratrix of the estate of Jesse C. Dixon in the County and State of New York? A. I am.

30

Q. In that proceeding was it decided after a trial that you (interrupted)—

Mr. Douglas: I object.

The Court: No. Do not lead the witness.

Mr. Douglas: We were not parties to that proceeding.

Miss Gillingham: I offer in evidence, your Honor, exemplified copy of letters of

40

Elizabeth Carroll, direct.

10 administration, the Estate of Jesse C. Dixon, also known as Jesse Carroll, deceased, in the Surrogate's Court in the County and State of New York, to Elizabeth Carroll, together with the petition, the answer, citations, proof of service and renunciation of Jesse E. Proctor, Lilly Palmer, John Palmer, and Eva May Bowman, and the decree entered on the eighth day of April, 1927, awarding her letters of administration.

Mr. Douglas: I object to the admission of this record. We were not party to those proceedings in the City of New York, State of New York and we are not in any wise bound by them.

20 The Court: I agree with you; in order to be *res adjudicata* it must be between the same parties.

Mr. Douglas: Well, they are not between the same parties.

Miss Gillingham: The renunciation of all these parties are those I just read to you. They were attached—

30 Mr. Douglas: They simply renounce in favor of the administration of Mr. Carroll. I assume from this paper, what it says here that that is so.

(Discussion.)

The Court: I won't receive them.

(Discussion.)

40 The Court: I will receive it and reserve decision on it. I will think about it and then decide. I think now that it is not admissible. If I decide it is not admissible, I will strike it out.

(Exemplified copy of letters of administration marked Exhibit D-1.)

Elizabeth Carroll, direct.

Q. Mrs. Carrol, are you the mother of Theodore Carrol, Louise Carrol, also known as Mary Carrol, and John Carrol? A. I am.

Q. Where was Theodore Carrol born? A. He was born at the Lying-in Hospital.

Mr. Douglas: 1902.

10

Q. Where is that Lying-in Hospital? A. On Second Avenue and 18th Street.

Q. When was he born? A. He was born on July 6, 1906—1906, yes.

Q. Who was the father of Theodore Carrol? A. Jesse Carrol.

Q. Is this the birth certificate of Theodore Carrol?

20

Mr. Douglas: Let me see it.

Miss Gillingham: I offer it.

(Birth certificate marked Exhibit D-2.)

Q. Mrs. Carrol, will you look at Exhibit D-2 and tell me whether there are any errors on that certificate?

The Court: What are you trying to do now, contradict your own evidence?

A. There is not any error except that at the hospital they made a mistake and said he was white and he was colored.

30

Miss Gillingham: I wanted to clear up that point, your Honor.

The Court: All right.

Q. And is your husband's name correct there? A. No, instead of—they have got my name in first. He should be Jesse Carrol. They have got James Carrol. They have also made a mistake in my name.

40

Elizabeth Carroll, direct.

Q. What was your maiden name? A. Lizzie James. And here they have—I don't know what this is "Bonzer" or something, I don't know just what it is, but it is a mistake, anyway.

10 Q. When was your daughter, Louise born? A. She was born 1908, July the twenty-sixth.

Miss Gillingham: I offer in evidence the birth certificate of Mary Carrol, July 26, 1908.

The Court: I thought these children were supposed to be Dixson's.

Miss Gillingham: I will explain that later, your Honor. They went under the name of Carrol.

20 I offer in evidence birth certificate of Mary Carrol.

(Birth certificate marked Exhibit D-3.)

Miss Gillingham: And also birth certificate.

(Birth certificate marked Exhibit D-4.)

The Court: Does Mr. Dixson's name appear in any of these?

Mr. Douglas: No, it does not.

30 Miss Gillingham: No; it is under the name of Jesse Carrol.

The Court: All right.

Q. Mrs. Carrol, is the Mary Carrol referred to in that birth certificate the same as Louise Carrol?

A. She is.

Q. Were you married to Jesse Carrol, the father of these children? A. I was.

Q. And will you state to the Court where you first met him and under what name?

40 The Court: No. Where were you married?

Elizabeth Carroll, direct.

The Witness: I was married in Boston out a little way in Roxbury, Massachusetts, I think it is also Boston.

Q. And when were you married? A. I was married about the 12th of December, 1905.

Q. Who were you married by? A. The Rev. Dr. Burke. 10

Q. Did he have any church? Was he a clergyman? A. He had a mission somewhere around, I don't know just where. He was an ordained minister, but he did not have a church, he had a mission.

Q. Were you married in the mission or where? A. At his home we were married.

Q. Were there witnesses to the marriage? A. There were two. 20

Q. Is the Rev. Burke living now? A. No. I learned he is dead.

Q. Did you receive a marriage certificate? A. I did.

Q. Have you that marriage certificate now? A. I have not been able to find it.

Q. Do you know whether the marriage is on record? A. I think it was. I always thought it was, but I don't think so now, because I have not been able to find it. 30

Q. Were you married to Jesse Carrol by the name of Carrol? A. By the name of Jesse Carrol Dixson.

Q. He went under that name at the time? A. Yes, at the time.

Q. Where did you first know Jesse Dixson? A. In Pittsfield, Massachusetts.

Q. And when was that? A. 1901.

Q. Were you working there at the time? A. I was working up there. 40

Elizabeth Carroll, direct.

Q. And what was he doing? A. He was a rail-road porter at the time.

Q. What was his business during the rest of his life? A. What is that?

10 Q. What was his business all through his life when you knew him? A. Well, before he was on the road he told me he had been for seven years a clerk at the United States Hotel at Saratoga and then he had been a school teacher down in West Virginia and the Saratoga job was the last one he had when he went on the road.

Q. And he was on the road all the time you knew him? A. He was on the road all the time I knew him.

20 Q. And after you married, where did you go? A. I was in Boston and I continued to stay there tending my sick sister.

Q. And when did you leave there? A. I left Boston, I came back to Pittsfield to him, I think it was about—it might have been February, I think it was about February, somewhere along there, it was either February or the early part of March; I know it was very cold when I went to Pittsfield.

Q. Was that the next year after your marriage to him? A. Yes, that was in 1906.

30 Q. And where did you live after that? A. After I went to Pittsfield?

Q. Yes. A. Why, I went back to my place where I was working and I was ill then because I was about to become a mother, so then I came down to—he brought me down to New York with him.

Q. He brought you down? A. Yes.

Q. Did he live with you in New York? A. Yes.

Q. Where did you live first? A. At number 300 17th Street, West 17th Street.

40 Q. And did you continue living with him? A. What?

Elizabeth Carroll, direct.

Q. Did you continue to live with him as his wife? A. Yes.

Q. Up until the time he died? A. Until the time he died.

Q. And when did he die? A. He died September 7, 1926. 10

Q. Where did he die? A. In Boston.

Q. And how were you notified of his death? A. Why, Mr. Klautis called me up.

Q. Who was Mr. Klautis? A. He is the gentleman sitting there. (Indicating.)

Q. Is he a relative? A. He was a nephew by marriage.

Q. Of your husband, Jesse Carrol? A. Yes.

Q. When did Mr. Dixson assume the name of Carrol? A. Well, just after we came to New York. 20

Q. Did he state to you why he took the name of Carrol? A. No—I at first thought it was strange, but after he said it was for reasons best known to himself, and thought it was for my best interest. I didn't question any more. I had all confidence in him.

Q. After that you went under the name of Carrol? A. Yes.

Q. Had you communicated with your family at all? A. What is that? 30

Q. Had you written your family at all about your marriage? A. My mother, yes.

Q. Did you receive a letter from her about January, 1915, addressed to you as Miss Louise Dixson? A. I did.

Q. At 198 West 10th Street.

Miss Gillingham: I offer in evidence, your Honor—(interrupted).

Mr. Douglas: I object to it, your Honor. 40

Elizabeth Carroll, direct.

Miss Gillingham: Letter with the envelope addressed, "Miss Louise Dixson."

Mr. Douglas: I object to that. I do not see how it is evidential in this case.

The Court: I will sustain the objection.

10 Miss Gillingham: It shows two names. Exception.

Q. After you were informed of the death of your husband, did any of his relatives come over? A. Mr. Klautis came right down.

Q. Did he speak to you about the funeral? A. Yes.

Q. Where was the funeral to be? A. Well, he was to be taken to Virginia, West Virginia.

20 Q. From Boston? A. From Boston.

Q. Did any of your husband's relatives come after to your house? A. They did.

Q. And what did they do or say there? A. Why, they were very friendly and pleasant about it, although they did go through my husband's trunk and they had taken off a few papers, I don't know just what they were, and I thought they were—meant me well and, of course, we were just like the family.

30 Q. Afterwards did you find any papers among your husband's effects? A. I did.

Q. Did you find a ticket from the New York, New Haven & Hartford Railroad referring to J. C. Dixson, porter, among his effects? A. I did.

Miss Gillingham: I offer it in evidence.

Mr. Douglas: I object to it, your Honor. I don't see how it comes in this case at all. It is simply a tag with "J. C. Dixson" on it.

40 The Court: I will sustain the objection. That is not evidential in establishing a mar-

Elizabeth Carroll, direct.

riage. In the first place you have got to establish that they were married and that you have not done, and then you establish that this Carrol man is really Dixson. You cannot do it that way. That is a self-serving declaration.

10

Miss Gillingham: This we found in his effects, your Honor.

The Court: I will sustain the objection.

Miss Gillingham: I also offer in evidence employee's duplicate notice from the pullman company in the name of J. C. Dixson, employee.

Mr. Douglas: I object to that, your Honor.

Miss Gillingham: I will—

20

Q. Was this also found among his effects? A. Found among his effects.

The Court: What is this?

Mr. Douglas: I object to it on the ground it is not of any evidential value in this case, simply a paper signed "J. C. Dixson, employee." It doesn't say whether he signed it or somebody else signed it, by whom it was signed, whether it was signed by J. C. Carrol or not.

30

Miss Gillingham: Will your Honor reserve decision on that?

Q. Mrs. Carol, did you ever see your husband write? A. I should say so, yes.

Q. You know his signature? A. I do.

Q. This paper which I show you, is that the signature of your husband, J. C. Dixson, also known as Jesse Carrol?

40

Elizabeth Carroll, direct.

The Court: Let her see it.
(Paper handed to witness.)

A. That is really his writing. That is his signature.

10 Q. That is his signature? A. That is his writing.

Q. You found that paper among his effects? A. Among his effects.

Q. You know that he was employed by the Pullman Company? A. I know that he was.

Q. By the New York, New Haven & Hartford Railroad? A. Yes.

Miss Gillingham: I now offer this in evidence.

20 The Court: I will receive it.
(Paper marked Exhibit D-5.)

Q. Mrs. Carol, who paid the rent at 198 West 10th Street where you were living? A. Well, he paid it when he was there and I paid it when I was there.

Q. You both occupied the apartment there? A. We both lived there. I used to be away every summer; he always paid the rent when I was away.

30 Q. Who was the landlord there? A. Mrs. Peterson, Mrs. Mals and Mrs. Lannin.

Q. Did you find two rent receipts among your husband's personal effects? A. I did.

Miss Gillingham: I offer these in evidence.

The Court: How in the world can that have any evidential value in proving marriage?

(Discussion.)

40 The Court: I won't allow that.

Miss Gillingham: Exception.

Elizabeth Carroll, direct.

Q. Mrs. Carroll, were you addressed under the name of Mrs. Jesse Carrol? A. I was.

Q. And did you receive this card and envelope addressed "Mrs. and Mr. Jesse Carrol, 198 W. 10th Street, New York"? A. I did.

Miss Gillingham: I offer this in evidence. 10

The Court: Any objection?

Mr. Douglas: No objection.

The Court: No objection. It will be admitted.

(Card and envelope marked Exhibit D-6.)

Q. Will you state whether this letter, which I show you, dated August 9, 1919, is in the handwriting of your husband, Jesse Carrol or Jesse Dixon. A. (No answer.) 20

Miss Gillingham: I offer it.

Mr. Douglas: I object to this. This is a letter in lead pencil signed "Pop."

Miss Gillingham: She hasn't seen that yet.

Mr. Douglas: All right. Excuse me.

Q. I also show you letters dated August 26, 1922, and August 11, 1919, August 21, 1918 and July 31, 1924, and ask you whether these are in the handwriting of Jesse Carrol or Jesse Dixon? The last letter also has the envelope attached, Miss Louise Carrol. 30

Mr. Douglas: I object to those letters being offered in evidence, your Honor. Even if Mrs. Carrol identifies them as the handwriting of the man that she knew as Jesse Carrol they do not prove the marriage in this case.

The Court: The statement that this 40

Elizabeth Carroll, direct.

woman makes is that there was a ceremonial marriage.

Mr. Douglas: Yes.

10 The Court: There is no question about any common law marriage at all—a ceremonial marriage performed in Boston, Massachusetts, and that will have to be proved; you cannot prove it in any such way as this.

Mr. Douglas: I object to the letter.

The Court: I will sustain the objection.

The Witness: Those are his writing.

Q. These are his writing? A. Yes.

20 The Court: I have sustained the objection.

Q. In this letter does he address Louise Carrol as "Dear Dot" signed "Pop"? A. Yes.

Miss Gillingham: Does your Honor still rule these shall not be admitted?

The Court: Yes. You have rested your case on a ceremonial marriage and you must prove it.

30 Miss Gillingham: I understand, your Honor, it is impossible to get the records. I am saying she was known as Mrs. Carrol.

The Court: That would be a common law marriage. You do not claim a common law marriage. You have already told us that she was married by the Rev. Somebody. Now, you must prove it.

40 Miss Gillingham: There must be a great many cases where parties are wed and the marriage is not on record. Is your Honor going to throw out all those cases?

Elizabeth Carroll, direct.

The Court: I think you ought to prove your marriage. These letters were written from him to her.

Miss Gillingham: One of them was written to his daughter, Miss Louise Carrol and addressed "Dear Daughter" and signed "Pop." 10

The Court: No, I won't allow it.

Miss Gillingham: It seems to me that those are admissions. The other is addressed "Dear Jack" signed "Pop."

The Court: They are not admissions; they are self serving declarations, if they are anything at all.

Miss Gillingham: Exception. Your Honor, these letters were offered to show that the deceased, Jesse Carrol, admitted that he was the father of Jack and Louise. 20

The Court: Well, that may be, but that does not show he was married to their mother.

Miss Gillingham: We are offering the best evidence we have.

The Court: I have already made my ruling on that. Now, have you any other testimony? 30

Q. Mrs. Carrol, did you see your husband write up any books and use the name of Dixson when he wrote? A. He did.

Q. He did? A. I have several of them at home.

Miss Gillingham: That is all.

The Court: Now, have you any other witnesses?

Miss Gillingham: Well, I have witnesses to show that they were known under the 40

Elizabeth Carroll, cross.

10 name of Mrs. Dixson and also under the name of Mrs. Carrol, that they were introduced as such, but I have no record from Boston. This clergyman is dead and the two witnesses are dead, so that it is impossible to prove that. I hadn't any idea that your Honor would not take any further witnesses.

20 The Court: No. The testimony of the people who saw them live together might help you, but not letters that they themselves wrote. You see how self serving that is. I am not saying that this woman is trying to deceive the Court, but it might very easily be that she might write a letter and say, "My dear Husband" and then introduce it in evidence.

Miss Gillingham: But they are not her letters; they were written by her husband to his children, calling them daughter and son.

The Court: It would be the same thing.

Cross examination by Mr. Douglas:

30 Q. You married in 1901, you say? A. No, sir.

Q. What year? A. I met my husband in 1901.

Q. What? A. I met him in 1901.

Q. When did you marry him? A. 1905.

Q. 1905? A. Yes.

Q. You knew at that time his name was Jesse Dixson, didn't you? A. Yes. I knew that it was also Carrol.

Q. What? A. I knew that it was also Carrol.

Q. It was also Carrol? A. Yes.

40 Q. You say you think—was he going under two names at that time, Jesse Carrol and Jesse Dixson?
A. I don't know if he was in any other place.

Elizabeth Carroll, cross.

Q. How long had you known him before you married him? A. Five years.

Q. 1901. Did you know he had a brother, David Dixson? A. Yes.

Q. You knew his name was Dixson? A. Yes.

Q. Did you know he had any other brothers or sisters at the time you first met him by the name of Dixson? A. Well, no, I didn't know of any brothers and sisters. 10

Q. Why did you marry him under the name of Carrol? A. I didn't marry him under the name of Carrol; I married him under the name of Jesse Carrol Dixson.

Q. His name was Jesse C. Dixson, wasn't it? A. Yes, but he often wrote Jesse Carrol Dixson. He wrote many times. I have letters where he had written his name. 20

Q. Don't you know his middle name was Cephas, Jesse Chephas Dixson? A. No; I never heard about that at all. He told me it was Carrol.

Q. You married under the name of Dixson; you got a marriage certificate under the name of Dixson? A. The whole name.

Q. Jesse Carrol Dixson? A. Jesse Carrol Dixson, yes.

Q. Why did you drop the Dixson? A. I never knew. I didn't drop the Dixson until after we came to New York. 30

Q. You say you lived with him as Mrs. Carrol? A. Yes.

Q. Didn't you say to him, "Why is it that—" (interrupted)— A. I did.

Q. "Why is it that we do not keep our married name?" A. I did.

Q. What did he say to that? A. He said he 40

Elizabeth Carroll, cross.

had reasons best known to himself and what he was doing was for my best interest.

Q. Why didn't you insist on your rights? A. I had all confidence in him and I thought he was doing right.

10 Q. You had children by him? A. Three.

Q. Why didn't you see they had the father's name, Dixson? A. Well, I thought that they did have.

Q. You knew David pretty well, his brother? A. No. I never saw him until after his brother's death.

Q. Your husband never introduced you to any of his relatives as his wife, did he? A. He didn't introduce me. I didn't see any of his relatives.

20 Q. Did you know Jesse Proctor here? A. I knew of him.

Q. You didn't know— A. I knew of all—

Q. Did you know of any other nieces or nephews? A. I knew of them.

Q. I see. Never introduced to them, were you? A. I never went to see them.

Q. Weren't you introduced by Jesse in New York to some of the nieces and nephews as his landlady? A. Never.

30 Q. Never? A. Never.

Q. After Jesse died David came over there, didn't he to see you, didn't he? A. Yes.

Q. And didn't he apply for administrator upon your husband's estate, saying that he was the only next of kin in New York City—David? A. Why, I don't know what he said.

40 Q. Don't you know he did and wasn't it before you employed a lawyer to say you were Jesse Dixson's wife? A. No. David Dixson came and said he was going to find out what was left to my

Elizabeth Carroll, cross.

children and see what was their interest. David seems to be very much interested in us and came to our house five times before he died.

Q. Now, since the time of your marriage to Jesse, you never met any of his relatives, you say?

A. No.

10

Q. And you were not introduced to any of them as his wife?

The Court: She told you that.

Mr. Douglas: Yes.

The Witness: I told you that.

Mr. Douglas: Yes, yes.

Q. You know that Jesse Dixson owned property in the City of Newark in 1912 on Boyden Street, and also on Central Avenue? A. I did.

20

Q. You knew that? A. Yes.

Q. You knew he made a deed of that property on Boyden Street and Central Avenue to his brother, David in December, 1912. A. He did, against my will.

Q. Yes. He did against your will. I didn't ask you that. You knew in that deed he cited himself as unmarried? A. I did not.

Q. Then you know he conveyed the property to his brother, David? A. Yes, he told me something about it.

30

Q. Why didn't you get in touch with David and say, "Here, I am the wife of Jesse Dixson and that deed you have got is affected with my dower right or interest in the property." You never said a word to David about it, did you? A. I never saw David myself. David and myself and husband did not speak for fourteen years.

Q. You knew in December, 1912, he was conveying it to David, didn't you? A. I knew something about it, yes.

40

Margaret Taylor, direct.

Q. He told you about it. Did he ask you to sign the deed? A. He did.

Q. And you would not sign it? A. I would not.

Q. And why wouldn't you sign it? A. Because I didn't want him to sell this property.

10 Q. He told you he was selling to David Dixson, didn't he? A. Yes.

Q. And David lived in Newark at the time. Why didn't you get in touch with David and tell him you were the wife of Jesse and he ought not to take over the deed unless you signed it? A. I had all confidence in my husband and I thought what he was doing was for my good.

20 Q. And you never said a word about being the wife of Jesse until you saw David in New York after your husband's death? A. Not until I saw David. I had seen the others before I saw David.

The Court: That is all.

MARGARET TAYLOR, sworn for defendant.

Direct examination by Miss Gillingham:

30 Q. Where do you live, Mrs. Taylor? A. 141 West 145th Street.

Q. Are you a sister of Mrs. Carrol that just testified? A. Yes, I am.

Q. Were you acquainted with her husband, Jesse Carroll or also known as Jesse C. Dixson? A. Yes, I am.

Q. When did you first meet him? A. I met him in the year 1901.

The Court: I cannot hear you.

40 The Witness: 1901.

Margaret Taylor, direct.

Q. 1901. Yes. Where was that? A. Pittsfield, Mass.

Q. Did your sister introduce you to him? A. No, a Mrs. Hill.

Q. And did you see him sometimes with your sister? A. Yes.

10

Q. In Pittsfield? A. All the time.

The Court: Now, don't ask her such leading questions.

Q. Were you present at the marriage of Elizabeth Carrol? A. No, I was not at the marriage.

Q. When did you first hear of the marriage?

A. Well, the same night that they were married.

Q. Will you explain to the Court when that was and where? A. Well, that was in Boston in 1905.

20

Mr. Douglas: A little louder, please.

The Witness: It was in Boston, 1905, and I was with my sick sister and Jesse came up there to visit Louise Carrol and they went out in the afternoon and when they came back they told me. He said, "I am your brother-in-law." "Now," I said, "that is very nice, I am not surprised."

Q. When you speak of your sick sister, you mean another sister? A. Another sister.

30

Q. And you were staying with her then? A. I was.

Q. And when did you next meet David Dixson?

A. I met him after that in New York; I guess it was about 1906.

Q. When you knew him in Pittsfield— A. I think it was 1906 or 1908.

Q. —or in Boston, was he going by the name of Dixson? A. He was Dixson, yes.

40

Margaret Taylor, direct.

Q. You knew him only by the name of Dixson?

A. Yes.

10

The Court: Now, that question is leading and improper. The way you should put a question of that kind is "By what name was he known in Boston?" You are testifying, not the witness.

Miss Gillingham: I am sorry.

The Court: I am sorry to call your attention to it, but hereafter, please do not lead her.

Q. I will repeat the question: "Under what name did you know her in Boston and Pittsfield?"

20

The Court: It is useless now; you have already told the answer.

Q. When you met him again in New York City, what name was he going under? A. He was going under Carrol then.

Q. And did you stop with your sister in New York City? A. Yes, I did, in 10th Street.

Q. Was she living then—(interrupted)

The Court: Who was she living with?

30

Q. Who was she living with in New York? A. Jesse Dixson.

Q. Under what name were they living there? A. Carrol.

Q. You have been married yourself, Mrs. Taylor? A. I have.

Q. Did you ever hear anyone refer to Mrs. Carrol, your sister as—did you introduce anyone to your sister? A. I did.

40

Q. How did you refer to her in the introduction?
A. As Mrs. Carrol.

Margaret Taylor, direct.

Q. Was anyone else present who knew her at that time? A. Mr. Carrol and the children.

Q. He was in the room? A. He was.

Q. Can you tell the Court who you introduced?
A. My husband. I introduced him.

Q. What was his name? A. Willie Taylor. 10

Q. Did he stay that evening? A. We spent the evening.

Q. Was anyone else introduced through you to Mrs. Carrol, that you can remember? A. Yes. I introduced a friend of mine, Mrs. Webster.

Q. When was that? A. That was in 1923.

Q. 1923? A. Yes.

Q. What words did you use? A. I introduced her to Mrs. Carrol.

Q. Was Mr. Carrol present at that time? A. He was. 20

Q. Did he say anything at the time she was introduced? A. When I introduced them they shook hands and made a funny sound and she said, "I have seen the star." And I said, "What does that mean?" "Well," she said, "we both are Masons."

Q. What were the words you used in introducing Mr. Carrol to Mrs. Webster? A. I said, "Meet my brother-in-law, Mr. Carrol, Mrs. Webster." 30

Q. Did you often visit your sister, Elizabeth Carrol? A. I did.

Q. Do you know whether she and Mr. Carrol or Dixson were living together until the time of his death? A. They were.

Q. You knew the children? A. Yes.

Q. What are the names of the children? A. Teddy Carrol and Elizabeth Carrol, Louise Carrol and Jack Carrol.

Q. And they are the same parties who are parties in this proceeding? A. Yes. 40

Lottie Williams, direct.

Q. Before the Court? A. Yes.

Q. They have always been known as the children of Jesse Carrol? A. Yes.

Mr. Douglas: I object as leading.

10 *Cross examination by Mr. Douglas:*

Q. Did you ever meet David Dixson, Jesse's brother? A. No, I never did.

Q. Did you ever meet any of the nieces or nephews of Jesse Dixson? A. I never did.

Q. You say you knew that his name was Jesse Dixson and he was going by the name of Carrol, you knew that to be a fact? A. Yes, I did.

Mr. Douglas: That is all.

20 The Court: How did you know that?

The Witness: When I came to New York I found that they were going under the name of Carrol.

The Court: How do you know his name was Dixson, to start with?

The Witness: I was introduced to him as Dixson. I didn't know.

Miss Gillingham: Mrs. Williams.

30

—————
LOTTIE WILLIAMS, sworn for defendant.

Direct examination by Miss Gillingham:

Q. Where do you live, Mrs. Williams? A. I live 350 West 118th Street.

Q. And where did you live before that? A. I lived in Corona, Long Island, just previous to this address.

40 Q. Where did you live before that? A. 101st Street, East Side.

Q. Are you acquainted with Elizabeth Carrol?
A. I am.

Lottie Williams, direct.

Q. Who has testified here? A. I am.

Q. Did you ever live in the same house with her? A. Yes, I did.

Q. Where was that? A. 198 West 10th Street.

Q. And when was that? A. From 1913 until about 1915.

10

Q. Was Jesse Carrol living with Elizabeth Carrol in that house?

Mr. Douglas: I object to that. Ask her who she was living with.

The Court: Yes. You must not lead your witnesses. Who was living with her.

Q. Who was living with Elizabeth Carrol? A. This man by the name of Jesse Carrol, to my knowledge.

20

Q. Were any children there? A. Yes.

Q. What children were they? A. Well, there is Teddy and Mary and John—and Jack, they call him Jack.

Q. Did you ever visit their apartment? A. I did.

Q. Was Jesse Carrol there when you were there? A. Several times, several meetings I met him there.

Q. Did you ever hear anyone introduced to him or to Mrs. Carrol? A. Yes.

Q. What words were said then? A. "Meet my husband" or "Meet my wife, Mr. or Mrs. Carrol."

30

Q. Did you ever hear that on several occasions? A. I have.

Q. Do you remember when? A. No, I cannot remember just because there was not any definite meeting, it was just a friendly neighbor visit that I would go into the apartment.

Q. Do you remember the time you lived in that house was Mr. Carrol and Elizabeth Carrol occupying an apartment in that house? A. Yes; directly over me.

40

John Perry, direct.

Cross examination by Mr. Douglas:

Q. How long did you live in the same house?

A. Two years, but I lodged in the house—(interrupted).

10 Q. And what floor did the Carrols live on? A. First floor.

Q. And what floor did you live on? A. The next floor, in the basement below.

Q. Were you on friendly terms with them? A. Very much so.

Q. You only knew them as Carrol? A. That is all.

20 Q. By no other name? A. Yes, I knew him by Mr. Dixson, too, because my husband worked at the station with him and he said he was recorded there at the station.

Q. Yes. Never mind that. Never mind that. You heard him—people introduced by him as Carrol, didn't you? A. Yes.

Q. "To Mrs. Carrol, my wife"? A. Yes.

Q. Did you ask him at the time why it was that she was not introduced as "Mrs. Dixson, my wife"? A. No, it was none of my affairs.

30 JOHN PERRY, sworn for defendant.

Direct examination by Miss Gillingham:

Q. What is your address, Mr. Perry? A. 218 West 133rd.

Q. Where were you living about 1917? A. At 198 West 10th Street.

Q. Did you know Elizabeth Carrol that has testified here this morning? A. Yes, I do.

40 Q. Where was she living at that time? A. At 198 West 10th Street.

John Perry, direct.

Q. In the same house? A. In the same house.

Q. And how long were you living in the same house there? A. I have lived, I might say, an indefinite length of time, that is, through several periods, beginning I should say, from 1913 through 1925.

10

Q. Were you acquainted with Jesse Carrol? A. I was.

Q. What apartment was he occupying? A. The ground floor front.

Q. Did you visit him there? A. I did.

Q. Was Elizabeth Carrol living in the same apartment? A. She was.

Q. Were you ever introduced to Elizabeth Carrol? A. No. I have known Elizabeth Carrol since I was a youngster, I should say, ten or eleven years old, so that there was no introduction in that case.

20

Q. Under what name did you know her? A. As Mrs. Carrol.

Q. And you saw them frequently together in the apartment, did you? A. Yes, sir—yes, I have.

Q. Do you remember ever hearing anyone address them—address one in the presence of the other? A. Why, yes, I have.

Q. How were they addressed? A. Well, I have often heard my grandmother speak to either as Mr. Carrol or Mr. and Mrs. Carrol whatever—depending upon the occasion.

30

Q. And in the presence of the other? A. Yes.

Q. And did you know Jesse Carrol up to the time you left the apartment in 1925? A. Yes, I did.

Q. They continued to live there as Mr. and Mrs. Carrol? A. As Mr. and Mrs. Carrol.

The Court: Any cross?

40

Mr. Douglas: No. No questions.

Jesse E. Proctor, direct.

The Court: Anything further?

Miss Gillingham: Your Honor, I would like to have these papers marked for further identification.

10 The Court: Yes, we will mark them for identification. Is that your case?

Miss Gillingham: That is all.

(Bundle of papers marked D-7 for Identification.)

Miss Gillingham: I would like to take depositions.

(Discussion.)

The Court: All right. We will take the depositions.

20

JESSE E. PROCTOR, sworn for complainant.

Direct examination by Mr. Douglas:

The Court: I will assume that these deeds have been correctly copied by you. I will assume that you will substitute certified copies.

30 Mr. Douglas: I will get certified copies. I will leave them here with the stenographer.

The Court: Very well. Then we will introduce the two deeds in evidence, in which it appears that he signed in 1912 as unmarried.

Q. You are a practicing physician in the city of Newark, Doctor? A. Yes.

Q. And what relation are you to Jesse Dixson?
A. His sister's son,—

40 Q. The nephew? A. Yes.

Q. Did you know Jesse Dixson during his lifetime? A. I did.

Jesse E. Proctor, cross.

Q. How intimately were you acquainted with him? A. Well, very—I am his namesake.

Q. Yes. Did he give any peculiar assistance to you in your education? A. Yes.

Q. In what way? A. Well, he helped me several times while at school, he sent me money. 10

Q. Yes, yes. Now, did you ever hear of his being married? A. I might add he also helped me when I bought my home. He paid for the first payment.

Q. Did you ever hear of his marriage to Mrs. Carrol? A. No, not until after.

Q. Or that he had children by Mrs. Carrol? A. No.

Q. Did you ever hear of his living with Mrs. Carrol in New York City? A. No. 20

Q. When did you first learn of his (interrupted)—

The Court: Mr. Douglas, I don't want to interfere, but Mrs. Carrol says that she never saw any of these relatives of Mr. Jesse Dixon Carrol until after his death, so you are just corroborating the other side, that is all. I don't see that is of any importance. 30

Mr. Douglas: That is all.

The Court: That is all.

Cross examination by Miss Gillingham:

Q. Dr. Proctor, did you ever visit Jesse Dixon in New York City? A. No.

Q. You never came over there to see him at his home? A. He ran on the road and he just roomed as far as we understood, he was just in and out; he was a railroad porter. 40

Q. You never visited him at his home? A. I never did.

John H. Proctor, direct.

JOHN H. PROCTOR, sworn for complainant.

Direct examination by Mr. Douglas:

Q. Where do you live, Mr. Proctor? A. 85 Boyden Street, Newark, New Jersey.

10 Q. Are you related to Jesse Dixson? A. Yes, nephew.

Q. Nephew? A. Yes.

Q. And do you know Mrs. Carrol who was on the stand here? A. I met Mrs. Carrol a number of years ago.

Q. Yes. Were you ever introduced to Mrs. Carrol by Jesse? A. Yes. By my uncle.

Q. When and where? A. In the year of nineteen and eight.

20 Q. Where? A. West 10th Street.

Q. And what (interrupted)— A. One evening (interrupted)—

Q. —what was the introduction? A. He introduced me as his landlady, Mrs. Carrol.

Q. Was she present? A. Oh, yes, she was present.

Q. Did she say anything? A. Nothing but acknowledged the introduction.

30 Mr. Douglas: That is all.

Cross examination by Miss Gillingham:

Q. You said you saw her just once? A. Just once.

Q. And that is about twenty years ago? A. Yes.

Q. You must have a good memory.

The Court: No. Don't argue with him. Wait a minute.

40 The Witness: I remember being introduced.

John H. Proctor, cross.

Q. You remember being introduced. Where was that? A. In West 10th Street.

Q. What was the number? A. I think it was 198.

Q. And what side of the street is that? A. It was going east, it was on the right-hand side of the street.

10

Q. Going east? A. And on the first floor.

Q. That would be the north side of the street.

A. That would be the south side of the street.

Q. What apartment was this introduction in?

A. On the first floor, in the front room of the first floor.

Q. And was anyone else present? A. Only some children.

Q. Only some children? A. Two or three children.

20

Q. How did you happen to go there? A. Why, I had met my uncle. I was making him some clothes at the time and I had met him for a try-on and we came down to that address to his room, as he stated to me, to go by his room, and was introduced to the landlady as his nephew.

Q. Was he occupying that room? A. Well, I don't know. He said so. I sat down there and talked for a few minutes only. I didn't stay long, and then we came out in the street together.

30

Q. You said the children were all there in that room? A. There was children going to and fro; they wasn't right in the room.

The Court: That is all, sir.

Miss Gillingham: Just a moment.

The Court: Oh!

Q. Have you see Mrs. Carrol since that time?

A. No, I have not seen her since that time.

Q. How do you identify her as the person you

40

John H. Proctor, cross.

saw? A. How would I? Well, I wouldn't hardly be able to identify her.

Miss Gillingham: That is all.

The Witness: Couldn't say that I would be able to identify her.

10

The Court: Anything further, Mr. Douglas?

Mr. Douglas: That is all, your Honor.

The Court: Now, as I understand it, this physician is going to say that he met this man in Pittsfield and at that time he told him his name was Dixson. Is that all he is going to say?

20

Miss Gillingham: He knew them well, I think he lived out in service and Mrs. Carrol also, and he knew them.

30

The Court: All right. I will assume then that that testimony is going to be—that that affidavit is going to be admitted, because I feel that I can dispose of this matter now. Even admitting that and considering the letters, which I have excluded, I do not think there is any evidence here which justifies me in assuming that these people were married. The woman says that she married him under the name of Dixson in Massachusetts, but there, apparently, is no record of that fact, and I have allowed these people to testify as to their living together. But they lived together in New York under another name and there is no testimony whatever that he held himself out as her husband or held her out as his wife. On the contrary, the last witness, if his testimony is—anyway, is to the effect that he was liv-

40

John H. Proctor, cross.

ing in her apartment and she was his landlady, not his wife. I will so rule.

Mr. Brundage: May I say a word, your Honor?

The Court: Yes.

Mr. Brundage: As far as that last witness is concerned he testified that he could not even identify the woman he was introduced to. 10

The Court: I say, if the testimony is of any value, it is to the effect that this woman was his landlady, but, excluding this man's evidence entirely, you must show that he held himself out as her husband and she as his wife.

Now, nobody says that they were held out as anything but Mr. and Mrs. Carrol. 20

Mr. Brundage: They were introduced.

The Court: That is my ruling. I do not think they were married. I will so find.

Now, what is the next part of this? Is it just merely a construction of the will?

Mr. Douglas: That is all. I will say this, your Honor, before offering the will, it is a peculiar question of law and I want to say this, that your Honor will see I was one of the witnesses to the codicil and your Honor might think that I drew this original will. 30

The Court: I remember your telling me about it and you said you begged him to straighten it out and he wouldn't. This is a home-made will.

Mr. Douglas: Yes. He didn't want to change it at all.

The Court: Don't you think you better let me have a copy of the will? 40

Elizabeth Carroll, direct.

Mr. Douglas: It is annexed to the bill, your Honor, unless you want a certified copy.

10 The Court: No, I don't want a certified copy. What I want is a copy from your office.

Is there anything in the papers I ought to consider in construing the will?

Mr. Douglas: There is nothing else that I know.

The Court: So you give me a copy of the will and your points in the matter and if the other side have any memorandum I want that.

20 Mr. Douglas: I would like to have some testimony on the record as to the assets of the estate. The will bequests a large sum of money, stocks and bonds and securities and we could not find such securities and I think your Honor ought to know just what the assets are.

Miss Gillingham: I have just spoken to my client and I would like to have her testimony on the stand denying this introduction in that apartment.

30

The Court: All right.

Miss Gillingham: Mrs. Carrol, will you take the stand?

ELIZABETH CARROL, recalled.

Examined by Miss Gillingham:

40 Q. Mrs. Carrol, you heard the testimony of John H. Proctor who just testified on the stand here?

A. (Witness nods yes.)

Elizabeth Carroll, direct.

Q. Did you ever meet him in 1908? A. I never met the man, never.

Q. Never met him anywhere? A. Never met him in my life, never. He came to my house one day, but I never met him and my husband didn't see him for he was asleep.

10

Q. When did he come to the door? A. He came to the door. I was informed it was himself. He said, "Is my uncle in?" I said, "Yes, he is asleep. I can't disturb him." However, I went in and said, "Jess, Proctor is at the door," and he said, "Tell him I will see him later, wait outside."

Q. What year was that? A. That was—I guess that was in— When was that?

The Court: In 1912?

20

The Witness: Yes, I guess it was about 1912, because I know I had my three children.

Q. And Jesse Carrol, you said, did not speak to him in your presence? A. No, he was in bed.

Q. And at no occasion did he converse with him in your presence? A. Not at any time.

The Court: But he told Proctor to wait outside?

30

The Witness: Yes, sir.

The Court: All right. That is all. That would seem to rather confirm Proctor.

Miss Gillingham: He told her to tell Proctor.

The Court: That confirms that Proctor went there apparently.

Now, Mr. Douglas, let us have the rest of it.

Miss Gillingham: May I ask a few more 40

John H. Proctor, direct.

questions? Mrs. Carrol, take the stand, please.

The Court: What is the use of that now?

Miss Gillingham: All right.

The Court: I have already decided it.

10

Miss Gillingham: Mr. Proctor, take the stand. I want to show the profits of the estate.

The Court: Is the doctor the administrator?

Miss Gillingham: He is the administrator with the will annexed.

JOHN H. PROCTOR, recalled.

20

Examined by Miss Gillingham:

Q. Are you the administrator with the will annexed of David Dixson's estate? A. Yes.

Q. What are the present assets of the estate?

A. In the bank there are \$760 about.

Q. Yes. A. There is equity—or, assets, rather, \$500 advanced to the attorney, there is \$600 held in escrow pending the decision of the dower rights, and \$600 equity in the Boyden Street property. We estimated—not six hundred, six thousand. We estimated six thousand. We valued the property at \$21,000; there are fourteen thousand mortgages on it; that would leave an equity of about six thousand.

30

The Court: What about this seven hundred in escrow. What is that?

Miss Gillingham: Maybe I can explain that better than the doctor.

40

We sold property on Central Avenue, belonging to the estate of David A. Dixson,

John H. Proctor, direct.

and before the purchaser would take title, the lady who said she was Dixson's widow had her dower right in that property and she having signed the deed in 1912, so the purchaser said he wanted some money left in escrow.

10

The Court: All right. I understand. Is that all you want of the doctor?

The Witness: That makes a total of about \$3,460.

The Court: No, no. It is more than that. There is six thousand in the house.

The Witness: It is seven hundred fifty, five hundred—

The Court: Yes?

The Witness: —and one thousand six hundred and six thousand. I had six hundred.

20

The Court: That is about in the neighborhood of eight thousand dollars.

The Witness: Eight thousand dollars.

Q. Now, Doctor, one minute; the will referred to stocks and bonds and securities. Were you able to find any? A. No. The only thing we found was one certificate of stock.

30

Q. That was oil— A. In Washington—

Q. —stock. A. And you investigated that and said it wasn't worth anything.

Mr. Douglas: Mr. John B. Stanard represents one of these defendants. Does your Honor—

The Court: Anybody that wants to file memorandums with me will have an opportunity to do so.

40

Miss Gillingham: Very well.

Stipulation.

The Court: Give me the will and you tell me what you want to construe and give your ideas to what ought to be construed.

Mr. Douglas: And you want certified copies of those two deeds?

10 The Court: In case there is an appeal they must be properly presented, don't you see, and then we must get the affidavit of the man in New York to put in the record, too.

Stipulation.

IN CHANCERY OF NEW JERSEY.

[SAME TITLE]

20 It is hereby stipulated and agreed by and between the solicitors of the respective parties hereto that the within deposition of William J. Carter shall have the same force and effect as though the same were testified to by the said William J. Carter at the hearing of this matter before Vice-Chancellor Church.

30 GEORGE A. DOUGLAS,
Solicitor for Complainants.

JOHN B. STANARD,
Solicitor for the defendant,
Colored M. E. Church of
Shepherdstown, West Virginia.

GROSSO, BRUNDAGE & ANDERSON,
Solicitor of the defendants,
Theodore Carroll, John Carroll and Louise Carroll.

40

Deposition of William J. Carter.

IN CHANCERY OF NEW JERSEY.

[SAME TITLE]

Deposition of William J. Carter, taken this 24th day of October, 1928, at the office of George A. Douglas, 164 Market Street, Newark, N. J., on behalf of Theodore Carroll, John Carroll and Louise Carroll, defendants, in the above stated cause; Mr. Norman L. Brundage and Miss Alice Dillingham appearing for defendants and George A. Douglas appearing for complainants. 10

Oath of stenographer:

You do swear that you will faithfully and truly take stenographically and reproduce in typewriting, the testimony of William J. Carter to be given this day in a certain cause now pending in our Court of Chancery of New Jersey, wherein Jesse E. Proctor, *et al.* are complainants and Henry Lowe, *et al.* are defendants. 20

So help you God.

VIRGINIA PRICE.

Sworn to before me this 24th }
day of October, 1928. } 30

JOHN W. DOUGLAS,
Notary Public of N. J.

My commission expires Oct. 11, 1933.

Examination of William J. Carter.

Questions by Mr. Norman L. Brundage, representing Theodore Carroll, John Carroll and Louise Carroll. 40

William J. Carter, direct.

Q. Where do you live? A. 213 West 138th Street, New York City, New York.

Q. Do you know Mrs. Elizabeth Carroll? A. I do.

10 Q. How long have you known her? A. I have known her forty years.

Q. When did you first know her? A. In Camden, South Carolina.

Q. Did you know her in Massachusetts? A. I did.

Q. How did you know her there? A. As a servant in the family of Mrs. Briggs, wife of Ex-Governor Briggs.

Q. You and she were employed by Mrs. Briggs? A. Yes.

20 Q. How long did you and she work together for Mrs. Briggs? A. Worked one year.

Q. What year was that? A. That was about 1899.

Q. Where did you go from there? A. I went to Brooklyn.

Q. What did you do there? A. I worked as a servant for Mrs. Mary Tolcott, 91 Columbia Heights, Brooklyn.

30 Q. What became of Mrs. Carroll? A. There were times when Mrs. Briggs would loan this girl to Mrs. Tolcott.

(Mr. Douglas objects to this testimony unless the doctor is testifying from his own personal knowledge.)

Q. When you went to work for Mrs. Tolcott at Brooklyn, where did Mrs. Carroll go? A. When I went to work for Mrs. Tolcott at Brooklyn, Mrs. Carroll remained with Mrs. Briggs.

40 Q. When did you next see Mrs. Carroll after you went to Brooklyn? A. I saw her again in 1905.

William J. Carter, direct.

Q. Where was she then? A. She was still employed by Mrs. Briggs.

Q. And you were employed by whom? A. I was employed by Mrs. Tolcott.

Q. Still in Brooklyn? A. I was with the Union Trust Company in 1905 as the reference will show. I left Mrs. Tolcott in 1902, but I continued to go to Pittsfield every summer after that until 1915. 10

Q. What would you go there in the summer? A. I would work for Mrs. Briggs at odd times.

Q. Do you know whether Mrs. Carroll worked at any time for Mrs. Tolcott? A. Oh, yes.

Q. When? A. It must have been about 1900.

Q. How long? A. That I cannot say. Just for a short period of time.

Q. A year or less? A. About six months. 20

Q. Were you working for Mrs. Tolcott the same time she was? A. Yes.

Q. During the time that Mrs. Tolcott employed Mrs. Carroll, did anybody visit Mrs. Carroll? A. Jesse Dixon was there at least once a week.

Q. Did he call regularly? A. Yes, regularly. He would surely be there every Thursday and as much as two and three times a week.

Q. You say every Thursday? A. Every Thursday. 30

Q. At that time what was the name of Mrs. Carroll? A. Elizabeth James.

Q. To your knowledge, has she been known by any other name? A. She was known as Mrs. Carroll.

Q. I mean up to the time Dixon called to see her in Brooklyn. A. No.

Q. What year was it that Mr. Dixon called upon Mrs. Carroll? A. About 1900. 40

William J. Carter, direct.

Q. At that time the present Mrs. Carroll was then known as Elizabeth James? A. Yes.

Q. And she had gone by that name during all the time that you had known her? A. Yes.

10 Q. When and where did you see Mr. Dixon after Elizabeth James or Mrs. Carroll left the employ of Mrs. Tolcott? A. I saw them in Pittsfield, at 207 Dewey Avenue, Pittsfield, my mother's residence.

Q. How long was that after you had last saw Mr. Dixon while Mrs. Carroll or Elizabeth James was in the employ of Mrs. Tolcott? A. She was not employed after 1905 by Mrs. Briggs.

20 Q. I want to know how long after she had left the Tolcott employ, you saw Mr. Dixon? A. I saw him the following year 1901.

Q. Where did you see him? A. At Pittsfield.

Q. Was he living there? A. He was living there during his run. He was a railroad man.

Q. What kind of work did he do on the railroad? A. Porter.

Q. Pullman Porter? A. I do not know.

Q. He stayed in Pittsfield from time to time? A. Yes.

30 Q. At that time Miss James was where? A. In Pittsfield.

Q. And working for whom? A. For Mrs. Briggs.

Q. Under what circumstances did you see Mr. Dixon at Pittsfield at that time? A. I would meet him in the street.

Q. With whom? A. His wife.

Q. When you say his wife, you mean whom? A. Elizabeth James.

40 Q. And that was a year after Mrs. Carroll left the Tolcott family?

(Mr. Douglas objects to any evidence assuming that they were married.)

William J. Carter, direct.

Q. Following the time that Mrs. Carroll or Elizabeth James left the Tolcott employ, you saw Mr. Dixon in Pittsfield. How soon after? A. The following year, about 1901.

Q. Under what circumstances did you see Mr. Dixon? A. I met them in the street from time to time. 10

Q. Met whom? A. Dixon and Miss James.

Q. How frequently did you see them together?
A. Occasionally. I can't state just—

Q. Did you see them at any other place, than on the street? A. They visited my home, my family, at my mother's residence.

Q. How frequently did they visit at your home?
A. Well, occasionally.

Q. How frequently? A. One a month. 20

Q. During the time that Mrs. Carroll or Elizabeth James worked at the home of Mrs. Briggs, was she visited by any man? A. She was visited by Jesse Dixon.

Q. How frequently? A. Whenever he came to Town.

Q. How frequently would you say? A. About once a week.

Q. What other person called upon her? A. No other man that I know of. 30

Q. How long did he continue to call upon her?
A. Length of time?

Q. About how long? A. He seldom stayed later than ten o'clock.

Q. I mean over what period of time did he call upon her? A. He was the only company she had.

(Mr. Douglas objects to the answer that he was the only company she had.)

William J. Carter, direct.

Q. Over what period of time did Mr. Dixon call upon the then Elizabeth James? A. From 1899 up to 1905, to my knowledge.

Q. Where were they living in 1905? A. They were living in Pittsfield.

10 Q. She was then working for Mrs. Briggs? A. Yes.

Q. And then what happened? A. She left Pittsfield to get married.

Q. How do you know she got married?

(Mr. Douglas objects to the answer because it is a conclusion of facts from undisclosed facts, and because it is hearsay.)

Q. When did she tell you? A. Several times.

20 Q. How many times did she tell you she was going to get married? A. Several times.

Q. When was the last time she told you, with respect to the time that she actually left? A. About a month.

Q. Did you see her on the day that she actually left the Briggs' employ? A. Yes.

Q. Did you have any conversation with her? A. No more than she said she was going away to get married.

30 Q. Did she say to whom she was going to get married? A. Yes.

Q. To whom? A. Jesse Dixon.

Q. Then I understand that on the day she left the Briggs' employ she had a conversation with you in which she

(Mr. Douglas objects to the last involved question on the ground that it is leading.)

40 Q. Prior to the time that Mrs. Carroll, or the then Elizabeth James left the Briggs' employ, did you

William J. Carter, direct.

have any conversation with Jesse Dixon? A. Yes, on several occasions.

(Mr. Douglas objects generally to any conversations with Jesse Dixon, on the ground of hearsay and on the ground that he is dead and it is a conversation with, or transaction had with one who is dead, and violates the statute.) 10

Q. What was the subject matter of his conversation prior to the day that Mrs. Carroll, the then Elizabeth James, left the Briggs' employ? A. Well, he spoke of how very fond he was of Miss James and was delighted to know that we were from the same home town and would speak in a general way of her. 20

Q. Did you have any further conversation with him before Mrs. Carroll, the then Elizabeth James left the employ of the Briggs? A. No.

Q. What, if anything, did he say about Elizabeth James? A. He said he intended to make her his wife.

Q. And you mean by her, Elizabeth James? A. Yes.

Q. How soon before Elizabeth James left the Briggs' employ did he make that statement to you? 30

A. He had spoken of her in that way, I dare say a year.

Q. More than once? A. On several occasions.

Q. Elizabeth James left the employ of Mrs. Briggs in 1905? A. Yes.

Q. When did you see her again after that? A. I saw her again in 1908.

Q. On the day that you testified that Elizabeth James left the employ of Mrs. Briggs, at which time you had a conversation with her about her 40

William J. Carter, direct.

marriage to Mr. Dixon, when did you see her again after that? A. After her return, which was over thirty days.

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

10 Q. When did you next see Mr. Dixon after that day? A. I saw him the next— It is hard to say exactly, but it was within five or six weeks.

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

Q. What did he tell you? A. He stated that they were married.

Q. You say he stated they were married. Who were married? A. He said he and Elizabeth James.

20 Q. Did he say where the marriage took place? A. No.

Q. Did you have any conversation with Mrs. Dixon upon her return? A. I did.

Q. What was the subject matter of that conversation? A. She said she was married in Boston.

(Mr. Douglas objects to this answer on the ground that it is hearsay.)

30 Q. What became of the then Mrs. Dixon upon her return from this thirty days sojourn? A. She left Pittsfield.

Q. How soon after? A. Within two months.

Q. Where did she live within the intervening time between her absence and the time she left Pittsfield? A. I do not know.

Q. When did you see her again? A. In 1908 or 1909.

40 Q. Where did you see her? A. At 198 West 10th Street, New York City.

William J. Carter, direct.

Q. Did you see anybody else at that address?

A. Mr. Dixon, who was also known at that time as Carroll, and two children and Mrs. Dixon.

Q. Do you know the names of the children?

A. The older child's name was Jesse. I don't recall the younger's name.

10

Q. Was there anybody else present in the household, beside the persons named? A. Only the family.

Q. And that was in what season of the year?

A. I think it was in the fall of 1908 or 1909.

Q. Did you see Mr. and Mrs. Dixon at any time after the fall of 1909? A. Several times, up to about 1910 or 1912.

Q. Where did you see them? A. At the same address.

20

Q. While you were there, were there any other people present beside Mr. and Mrs. Dixon and the children? A. No.

Q. You last saw them in 1912? A. I have seen them several times since that time, but that was the last time I called upon them.

Q. Where did you see them? A. I saw him at the Grand Central Station; and her sister's husband died some five or six years ago and I met her in Harlem on 141st Street. She was up there at the funeral. I mean Mrs. Dixon.

30

Q. Do you know from your own knowledge whether or not Mrs. Dixon is the woman whom you knew as Elizabeth James and who lived with Mr. Dixon, together as man and wife? A. I do, and I called upon them and she referred to Mr. Dixon as her husband.

(Mr. Douglas objects to the answer.)

Q. What do you mean when you say she re-

40

William J. Carter, direct.

ferred to Mr. Dixon as her husband? A. She answered the door when I went there the first time and she seated me and said, "Wait just a minute. My husband will be in shortly."

10 Q. To whom did she refer when she said her husband? A. Jesse Dixon.

Q. Did he come in shortly? A. Yes.

Q. Can you say of your own knowledge that Jesse and the woman whom you knew as Elizabeth James lived together at Pittsfield? A. I can't say that because I don't know where they lived.

Q. At the time that you first visited the Dixon's was there anyone present at the time that the conversation took place when she said she would call her husband? A. No.

20 Q. Have you ever been present when Mr. Dixon has characterized the woman whom you knew as Elizabeth James? A. I did not get the question.

Q. Have you ever been present when Mr. Dixon has characterized the woman whom you knew as Elizabeth James? A. Characterized her?

Q. Did he ever call her anything? A. He referred to her as his wife.

(Mr. Douglas objects to that answer.)

30 Q. What would he say when he referred to her as his wife? A. He would say, "What do you think of my wife? Don't you think she is an immaculate housekeeper?"

Q. How many times would you say you have heard Mr. Dixon call the woman whom you knew as Elizabeth James, his wife? A. At least six times.

Q. When was the first ever you recall? A. In 1905.

40 Q. Where? A. Pittsfield, Massachusetts.

William J. Carter, direct.

Q. Did I understand you to say that when you went to call on the Dixon's in New York, they went under the name of Carroll? A. Yes. In 1908 I had occasion to go to the Grand Central Station with my employer, Mr. J. V. B. Thayer, and seeing him there and talking to him, another porter approached and addressed him as Carroll. 10

Q. That was the first? A. Yes.

Q. Thereafter did you hear of Mr. Dixon being known by the name of Carroll? A. Yes. The caretaker or janitor of the house where he lived knew him as Carroll.

Q. How do you know that? A. She told me Mr. Carroll lived on the ground floor and he was known as Jesse Carroll there.

Q. In whose presence was the statement made by Mr. Dixon, at Pittsfield, that Elizabeth James was his wife? A. My mother's. 20

Q. In your mother's presence? A. Yes, in fact in the presence of the entire family.

Q. Did you hear any such statement made, by Mr. Dixon after that was made, on any other occasion? A. That the Elizabeth James was his wife?

Q. Yes. A. At Pittsfield.

(Mr. Douglas objects.)

Q. When you say he referred to her as his wife, what do you mean? A. In introducing her, he would introduce her as his wife. 30

Q. Were you present at any time when he introduced this woman as his wife? A. I was.

Q. On how many occasions? A. On one occasion, on a Sunday when they were being entertained at our residence.

Q. Did you hear them making an introduction to anyone else? A. I did not. 40

*William J. Carter, cross-redirect.**Cross examination by Mr. Douglas:*

Q. You are a physician? A. I am a chiropodist.

Q. You say you have known Mrs. Carroll for forty years? A. As far back as I can remember.

Q. Is she related to you? A. No.

10 Q. You knew her in Camden, in South Carolina?
A. I did.

Q. And your families are friendly? A. Yes.

Q. Your family and her family? A. Yes.

Q. And the friendship was handed down by Miss James? A. Yes.

Q. Do you know the date of the alleged marriage of Dixon to Miss James? A. I know the year.

Q. I did not ask you that. A. No.

20 Q. Did you receive an invitation to the marriage ceremony? A. No.

Q. Do you know the name of the Minister, of your own knowledge, who performed the marriage? A. I do not.

Q. All you know of the marriage is what you have been told, either by Miss James or Mr. Dixon? A. Yes.

Q. Do you know why Mr. Dixon, as you say, went by the name of Carroll? A. No, I do not.

30 Q. The only time that you know that Mr. Dixon and Mrs. Carroll were living in the same apartment, was when you found they were living in New York City? A. Yes.

Q. And that was in what year? A. 1908 or 1909.

Q. What was the address in New York City?
A. 198 West 10th Street.

Mr. Brundage redirect examination:

40 Q. Doctor, did you ask Mr. Dixon why he was known as Carroll in New York? A. I never questioned him.

Exhibits.

Q. Do you know whether or not any invitations were issued of the marriage? A. Not to my knowledge.

Q. Do you know why the marriage took place outside of Pittsfield? A. No.

Q. Was anything said about that by either Mr. or Mrs. Carroll or Dixon? A. No. 10

Q. How old are you, Doctor? A. Forty-four.

WILLIAM J. CARTER.

Sworn and subscribed to before me this 29th }
day of October, 1928, a Commissioner of Deeds, }
in and for the City of New York, County of }
New York, in the State of New York. }

WILLIAM D. JONES, 20
County of New York,
State of New York.

Commissioner of Deeds, the City of New York.

Residing in New York County.

N. Y. Co. Clerk's No. 44, Register's No. 17-0.

Term Expires April 24, 1930.

Exhibit C-1.

THIS INDENTURE, 30

Made the twelfth day of December in the year of our Lord One Thousand Nine Hundred and Twelve between Jesse C. Dixon (unmarried) of the City of Newark in the County of Essex and State of New Jersey party of the first part; And David A. Dixon (unmarried) of the City of St. Paul in the County of *Essex* and State of Minnesota party of the second part; Witnesseth that the party of the first part in consideration of One Dollars law- 40
ful money of the United States of America to him

Exhibits.

in hand well and truly paid by the said party of the second part at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged has remised released and forever quitclaimed and by these presents does re-
10 mise release and forever quitclaim to the said party of the second part and to his heirs and assigns forever All that certain piece or parcel of land and premises hereinafter particularly described situate lying and being in the City of Newark in the County of Essex and State of New Jersey.

Beginning on the West side of Boyden Street two hundred and fourteen feet one inch Northerly from the corner of James and Boyden Streets;
20 thence running (1) Northerly along Boyden Street twenty feet; thence (2) Westerly at right angles to Bolden Street ninety-two feet one inch thence (3) Southerly twenty feet and thence (4) Easterly at right angles to Boyden Street ninety two feet four inches to the place of beginning. Being part of lot No. 8 on a map of property conveyed by S. C. Williams to Thomas Garrison. Being also same premises conveyed to Walter Coulter by Charity C. Young and husband by deed dated January 8th,
30 1889 and recorded in Book M 24 of Deeds for Essex County on pages 304-305, and of which premises the said Walter Coulter died seized and intestate and a widower and leaving the said William F. Coulter his only child and heir at law. Being the same premises conveyed to David A. Dixon and Jesse C. Dixon by deed recorded in the office of the Register of the County of Essex on the 29th day of February 1908 and recorded in Book K-43 of Deeds on pages 120-122.

40 Together with the appurtenances and all the

Exhibits.

estate right title and interest of Jesse C. Dixon party of the first part therein. To have and to hold the above mentioned and described premises with the appurtenances unto the said party of the second part his heirs and assigns forever.

In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and year first above written. 10

JESSE C. DIXON.....

Signed sealed and delivered
in the presence of

.....

State of New York 20
County of New York ss. Be it remembered that on this twelfth day of December in the year of our Lord One Thousand Nine Hundred and Twelve before me personally appeared Jesse C. Dixon who I am satisfied—the grantor in the within Deed of conveyance named and I having first made known to him the contents thereof *and* did acknowledge that he signed sealed and delivered the same as a voluntary act and deed for the uses and purposes therein expressed. 30

CHAS. E. TONEY,
Commr. of Deeds New
York City.

State of New York No. 6669.
County of New York ss. I, William F. Schneider Clerk of the County of New York and also Clerk of the Supreme Court for the said County the same being a Court of Record do hereby Certify that Chas. E. Toney whose name is subscribed to the Certificate of the proof and acknowledgment 40

Exhibits.

of the annexed instrument and thereon written was at the time of the taking of such proof or acknowledgment a Commissioner of Deeds in and for the City of New York duly commissioned and sworn and authorized by the law of said State
 10 to take the acknowledgments and proofs of deeds of conveyances for land tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Commissioner of Deeds and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said Court and
 20 County the 19 day of Dec. 1912.

WM. F. SCHNEIDER, Clerk L.S.

Received in the office December 20 A. D. 1912
 at 10.18 A. M.

This is to certify that the foregoing copy of deed between Jesse C. Dixon and David A. Dixon is a true copy thereof between the said parties, recorded in the Register's Office of the County of
 30 Essex, New Jersey, on December 20, 1912, in Book D 52 of Deeds, pages 165-6, that I have compared said foregoing copy with said recorded copy and know that the foregoing is a true copy thereof.

GEORGE A. DOUGLAS,
 Counselor-at-Law.

Dated Newark, N. J.
 October 8, 1926.

*Exhibits.***Exhibit C-2.**

THIS INDENTURE,

Made the twelfth day of December in the year
of our Lord One Thousand Nine Hundred and
Twelve, between Jesse C. Dixon (unmarried) of
the City of Newark in the County of Essex and
State of New Jersey party of the first part; And
David A. Dixon (unmarried) of the City of St.
Paul in the County of _____ and State of
Minnesota party of the second part; Witnesseth
that the party of the first part in consideration
of the sum One Dollars lawful money of the
United States of America to him in hand well and
truly paid by the said party of the second part at
or before the sealing and delivery of these pres-
ents the receipt whereof is hereby acknowledged
has remised, released and forever quitclaimed and
by these presents does remise, release and forever
quitclaim to the said party of the second part
and to his heirs and assigns forever; All that cer-
tain piece or parcel of land and premises herein-
after particularly described situate lying and be-
ing in the City of Newark in the County of Essex
and State of New Jersey.

Beginning on the South side of Nesbit Street
now known as Central Avenue at a point two hun-
dred and fifteen feet distant from the south east
corner of High and Nesbit Streets and on the East
line of lot No. 154; thence along said East line in
a Southerly direction one hundred and nine feet
four inches to the rear line of lot fronting on
Bleecker Street; thence along said rear line in an
Easterly direction twenty-five feet to the West line
of lot No. 152; thence along said West line in a
Northerly direction one hundred and nine feet

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Exhibits.

seven inches to Nesbit Street aforesaid; thence
 along the line of Nesbit Street in a Westerly direc-
 tion twenty-five feet to the place of beginning.
 Being known and designated as lot No. 153 on the
 map of the Homestead Property of General
 10 Thomas Ward decd. as recorded in the Clerk's
 Office for Essex County in Book S 6 of Deeds on
 page 78. Said premises being also known as Num-
 ber 124 Central Avenue and being the same prem-
 ises conveyed by Ebenezer M. Crosby (widower)
 to Jesse C. Dixon and David A. Dixon by deed
 dated September 24th. 1907 and recorded in the
 Register's Office of Essex County in Book X 42 of
 Deed on pages 187-189.

20 Together with the appurtenances and all the
 estate right title and interest of Jesse C. Dixon
 party of the first part therein. To have and to
 hold the above mentioned and described premises
 with the appurtenances unto the said party of the
 second part his heirs and assigns forever.

In Witness Whereof the said party of the first
 part has hereunto set his hand and seal the day
 and year first above written.

JESSE C. DIXON.....

30 Signed sealed and delivered
 in the presence of

State of New York
 County of New York ss. Be It Remembered that
 on this twelfth day of December in the year of
 our Lord One Thousand Nine Hundred and
 Twelve before me personally appeared Jesse C.
 40 Dixon who I am satisfied—the grantor in the with-
 in deed of conveyance named and I having first

Exhibits.

made known to him the contents thereof and did acknowledge that he signed sealed and delivered the same as a voluntary act and deed for the uses and purposes therein expressed.

CHAS. E. TONEY.....

Commr. of Deeds, New York City.

10

State of New York, No. 6668

County of New York ss. I, William F. Schneider, Clerk of the County of New York and also Clerk of the Supreme Court for the said County the same being a Court of Record Do Hereby Certify that Chas. E. Toney whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such proof of acknowledgment a Commissioner of Deeds in and for the City of New York duly commissioned and sworn and authorized by the laws of said State to take the acknowledgments and proofs of deeds of conveyances for lands tenements or hereditaments in said State of New York. And further that I am well acquainted with the handwriting of such Commissioner of Deeds and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

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30

In Testimony whereof I have hereunto set my hand and affixed the seal of the said Court and County the 19 day of Dec. 1912.

Wm. F. SCHNEIDER, Clerk L. S.

Received in the Office December 20 A. D. 1912
at 10.18 A. M.

40

Exhibits.

10 This is to certify that the foregoing copy of deed between Jesse C. Dixon and David A. Dixon is a true copy thereof between the said parties, recorded in the Register's Office of the County of Essex, New Jersey, on December 20, 1912, in Book D 52 of Deeds, pages 163-4; that I have compared said foregoing copy with said recorded copy and know that the foregoing is a true copy thereof.

Dated Newark, N. J. October 8, 1926.

GEORGE A. DOUGLAS,
Counselor-at-Law.

Exhibit D-1.

20

THE PEOPLE OF THE STATE OF NEW YORK,

BY THE GRACE OF GOD FREE AND INDEPENDENT

To all to whom these presents shall come or may concern, GREETING:

30

KNOW YE, That we having examined the records and files in the office of the Surrogate of the County of New York, do find there remaining, a certain record of Petition, Renunciations, Citations, Answer, Affidavit and Order granting Letter of Administration in the matter of the Estate of JESSE C. DIXON, also known as Jesse Carroll, deceased.

A-206/1927

D.

[NEW YORK SURROGATE'S SEAL]

in the words and figures following, to wit:

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Exhibits.

SURROGATE'S COURT

COUNTY OF NEW YORK

In the Matter

of

The Application for Letters of
Administration on the Goods,
Chattels and Credits of Jesse C.
Dixon, Deceased.

Petition for Letters
of Administration.

10

To the Surrogate's Court of the County of New
York:

The Petition of Hazel A. Qualles of No. 2417
Maclay Avenue, of the County of Bronx, City of
New York, respectfully shows:

20

That Jesse C. Dixon, the above-named decedent,
was at the time of his death a resident of No. 198
W. 10th Street, Borough of Manhattan, in the
County of New York, and died at the City Hospital,
Boston, Massachusetts on the 7th day of August,
1926.

That your petitioner is of full age and a niece
of the deceased Jesse C. Dixon.

30

That your petitioner has made diligent search
and inquiry for a will of said deceased and has not
found any such will, nor has your petitioner ob-
tained any information concerning any such will.

That a search of the records of this Court shows
that no application has ever been made thereto
for letters of administration upon the estate of said
deceased, or for the probate of a will of said de-
ceased, or for letters testamentary thereupon, and

40

Exhibits.

your petitioner is informed and verily believes that no such application has ever been made to the Surrogate's Court of any other county of this State.

10 That the said deceased died possessed of certain personal property in the County and State of New York, and that the value of all the personal property, wherever situated, of which the deceased died possessed, does not exceed the sum of \$1,200.

That the estimated value of the real property in this State, of which decedent died seized, is \$250.

20 That said deceased left surviving one Elizabeth Carroll who claims to be the widow, who resides at No. 198 W. 10th Street City and State of New York and the following only next of kin and heirs at law, whose names, degrees of relationship, post office addresses and ages are as follows:

<i>Name</i>	<i>Relationship</i>	<i>P. O. Address</i>	<i>Age</i>
Theodore Carroll	who claims to be a son of deceased and of said Elizabeth Carroll	198 W. 10th St. New York City	20
Louise Carroll	who claims to be a daughter of deceased and of said Elizabeth Carroll	198 W. 10th St. New York City	18
30 John Carroll	who claims to be a son of deceased and of said Elizabeth Carroll	198 W. 10th St. New York City	10
Hazel A. Qualles	niece and petitioner	2417 Maclay Ave. Bronx, N. Y. C.	30
Lillian Palmer	niece	116 Lenox Ave. E. Orange, N. J.	52
John Proctor	nephew	100 Fayette St. Perth Amboy, N. J.	47
Jesse E. Proctor	nephew	15 N. 13th St. Newark, N. J.	42
Eva Bowman	niece	5914 Arch St. Philadelphia, Pa.	45
40 David A. Dixon	brother, who died December 4, 1926, unmarried and without issue	124 Central Ave. Newark, N. J.	

Exhibits.

That the above named decedent left him surviving no widow, no child or children, no child or issue of a deceased child, no adopted child or children, no issue of any deceased adopted child or children, no father, mother, brother or sister of the half or whole blood, no issue of a deceased brother or sister, no uncle, aunt, and no issue of a deceased uncle or aunt, other than those above named. 10

That there are no other persons than those mentioned interested in this proceeding.

That all of the above named persons are of sound mind and full age except, Theodore Carroll who is an minor of the age of twenty years and upwards. Louise Carroll who is a minor of the age of eighteen years and upwards, John Carroll who is minor of the age of ten years and upwards, and that all of said minors reside with said Elizabeth Carroll their alleged mother at No. 198 W 10th Street, New York City, N. Y. 20

That said deceased was in his lifetime a citizen of the United States.

Your Petitioner Therefore Prays that a citation may issue herein directed to said Elizabeth Carroll, Theodore Carroll Louise Carroll and to John Carroll and that a decree may issue awarding letters of administration to your petitioner. 30

Dated, New York, December 29, 1926

HAZEL A. QUALLES
Petitioner.

Exhibits.

SURROGATE'S COURT

COUNTY OF NEW YORK

10

In the Matter
of
The Application for Letters of
Administration on the Estate of
Jesse C. Dixon, Deceased.

Renunciation of
Right to Let-
ters of Admin-
istration

20

I, Eva Bowman, No. 5914 Arch Street, Philadel-
phia, State of Pennsylvania, a niece and heir at
law and next of kin of Jesse C. Dixon, deceased do
hereby renounce all right to letters of administra-
tion on the estate of said deceased. and hereby
consent to the appointment of Hazel A. Qualles as
Administratrix herein

EVA BOWMAN

State of Pennsylvania }
County of Philadelphia } ss.:

30

On this 28th day of December 1926, before me
came Eva Bowman to me known to be the indi-
vidual described in and who executed the within
renunciation, and acknowledged that she executed
the same.

HARVEY VOID

[SEAL]

Notary Public

Commission expires Feb 21, 1927

40

N. B. Outside the State of New York, a certifi-
cate must be procured from the County Clerk of
the *county in which the officer taking the acknowl-
edgment resides*. This certificate must show that
the officer taking the acknowledgment is an officer

Exhibits.

of the state where it is taken, and is authorized by the laws thereof to *take the acknowledgment of deeds to be recorded therein*; that said clerk is well acquainted with such officer's handwriting and verily believes the signature to the original certificate is genuine.

10

IN THE COURTS OF COMMON PLEAS OF
PHILADELPHIA COUNTY

State of Pennsylvania }
County of Philadelphia } ss.:

Acknowledgment (Notary)

I, John M. Scott, Prothonotary of the Courts of common pleas, of said county, which are Courts of record, having a common seal, being the Officer, authorized by the laws of the State of Pennsylvania, to make the following certificate, acting by my principal Deputy, William J. Kerns, or my second Deputy, Meredith Hanna, do certify that Harvey Void Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledgment a Notary Public for the commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations, and to take acknowledgments and proofs of deeds or conveyance for lands, tenaments or hereditaments, to be recorded in said State of Pennsylvania, and to all whose acts as such, full faith and credit are and ought to be given, as well as in Courts and Judicature as else where; and that I am well acquainted with the handwriting of the said Notary Public, and verily believe the signa-

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Exhibits.

ture thereto is genuine, and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania:

10 The impression of the seal of the Notary Public is not required by law to be filed in this office.

In Testimony thereof, I have hereunto set my hand and affixed the seal of said Court, this 29th day of December in the year of Our Lord, One thousand nine hundred and twenty.

[SEAL] JOHN M. SCOTT, Prothonotary,
by WILLIAM J. KERNS, Pennsylvania,
Deputy Prothonotary.
Durante Absentia Secundum Legem.

20

SURROGATE'S COURT

COUNTY OF NEW YORK

In the Matter
of
The Application for Letters of
Administration on the Estate of
Jesse C. Dixon, Deceased.

30

Renunciation of
Right to Let-
ters of Admin-
istration

I, John Proctor of No. 100 Fayette Street, Perth Amboy, State of New Jersey, a nephew and heir at law and next of kin of Jesse C. Dixon, deceased do hereby renounce all right to letters of administration on the estate of said deceased, and hereby consent to the appointment of Hazel A. Qualles as Administratrix herein.

40

JOHN PROCTOR

Exhibits.

State of New Jersey, }
 County of Essex, } ss.:
 City of Newark, }

On this 28th day of December 1926, before me came John Proctor to me known to be the individual described in and who executed the within renunciation, and acknowledged that He executed the same.

10

HENRY J. BROWN
 (Notary Public)

[SEAL]

N. B. Outside the State of New York, a certificate must be procured from the County Clerk of the *county in which the officer taking the acknowledgment resides*. This certificate must show that the officer taking the acknowledgment is an officer of the state where it is taken, and is authorized by the laws thereof to *take the acknowledgment of deeds to be recorded therein*; that said clerk is well acquainted with such officer's handwriting and verily believes the signature to the original certificate is genuine.

20

State of New Jersey }
 County of Essex } ss.:

I, John H. Scott, Clerk of the County of Essex (and also Clerk of the Circuit Court and Court of Common Pleas the same being Courts of record of the aforesaid county, having by a law a seal) do hereby certify that Henry J. Brown, Esquire, whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public, duly commissioned and sworn and residing in said State, and was, as such Notary Public an officer of said state, duly author-

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Exhibits.

10 ized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds for the conveyance of lands tenements or hereditaments and other instruments in writing to be recorded in said state, and that the said act is duly executed and taken according to the laws of said State, and that full faith and credit are and ought to be given to his official acts; and I further certify that I am well acquainted with his handwriting, and verily believe that the signature to the attached certificate is his genuine signature: And I do further certify that the impression of the seal of such Notary Public is not required by the laws of this State to be filed in my office.

20 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 28 day of Dec. A. D. 1926.

JOHN H. SCOTT
Clerk

[SEAL]

SURROGATE'S COURT
COUNTY OF NEW YORK

30

In the Matter
of
The Application for Letters of
Administration on the Estate of
Jesse C. Dixon, Deceased.

Renunciation of
Right to Let-
ters of Admin-
istration

40

I, Lillian Palmer, of 116 Lenox Avenue, East Orange, State of New Jersey, a niece and heir at law and next of kin of Jesse C. Dixon deceased do hereby renounce all right to letters of adminis-

Exhibits.

tration on the estate of said deceased, and hereby consent to the appointment of Hazel A. Qualles, as Administratrix herein.

LILLIAN PALMER

State of New Jersey }
 County of Essex } ss.: 10
 City of Newark }

On this 28th day of December 1926, before me came Lillian Palmer to me known to be the individual described in and who executed the within renunciation, and acknowledged that she executed the same.

HENRY J. BROWN
 (Notary Public)

[SEAL]

N. B. Outside the State of New York, a certificate must be procured from the County Clerk of the county in which the officer taking the acknowledgment resides. This certificate must show that the officer taking the acknowledgment is an officer of the state where it is taken, and is authorized by the laws thereof to *take the acknowledgment of deeds to be recorded therein*; that said clerk is well acquainted with such officer's handwriting and verily believes the signature to the original certificate is genuine. 30

State of New Jersey }
 County of Essex } ss.: 40

I, John H. Scott, Clerk of the County of Essex (and also Clerk of the Circuit Court and Court of Common Pleas the same being Courts of record of the aforesaid county, having by a law a seal) do hereby certify that Henry J. Brown, Esquire, whose name is subscribed to the attached certificate of 40

Exhibits.

acknowledgment, proof or affidavit, was at the
time of taking said acknowledgment, proof or affi-
davit, a Notary Public, duly commissioned and
sworn and residing in said State, and was, as such
Notary Public an officer of said state, duly author-
10 ized by the laws thereof to take and certify the
same, as well as to take and certify the proof and
acknowledgment of deeds for the conveyance of
lands tenements or hereditaments and other in-
struments in writing to be recorded in said state,
and that the said act is duly executed and taken
according to the laws of said State, and that full
faith and credit are and ought to be given to his
official acts; and I further certify that I am well
acquainted with his handwriting, and verily be-
20 lieve that the signature to the attached certificate
is his genuine signature: And I do further certify
that the impression of the seal of such Notary Pub-
lic is not required by the laws of this State to be
filed in my office.

In Witness Whereof, I have hereunto set my
hand and affixed my official seal this 28 day of
Dec. A. D. 1926.

JOHN H. SCOTT
Clerk

30 [SEAL]

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Exhibits.

SURROGATE'S COURT
COUNTY OF NEW YORK

In the Matter
of
The Application for Letters of
Administration on the Estate of
Jesse C. Dixon, Deceased.

Renunciation of
Right to Let-
ters of Admin-
istration

10

I, Jesse E. Proctor of 15 North 13th Street, Newark, State of New Jersey, a nephew and heir at law and next of kin of Jesse C. Dixon, deceased do hereby renounce all right to letters of administration on the estate of said deceased, and hereby consent to the appointment of Hazel A. Qualles as Administratrix herein.

20

JESSE E. PROCTOR M. D.

State of New Jersey }
County of Essex } ss.:
City of Newark }

On this 28th day of December 1926, before me came Jesse E. Proctor to me known to be the individual described in and who executed the within renunciation, and acknowledged that he executed the same.

30

HENRY J. BROWN
(Notary Public)

[SEAL]

N. B. Outside the State of New York, a certificate must be procured from the County Clerk of the county in which the officer taking the acknowledgment resides. This certificate must show that

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Exhibits.

the officer taking the acknowledgment is an officer of the state where it is taken, and is authorized by the laws thereof to *take the acknowledgment of deeds to be recorded therein*; that said clerk is well acquainted with such officer's handwriting and verily believes the signature to the original certificate is genuine.

State of New Jersey }
County of Essex } ss.:

I, John H. Scott, Clerk of the County of Essex (and also Clerk of the Circuit Court and Court of Common Pleas the same being Courts of record of the aforesaid county, having by a law a seal) do hereby certify that Henry J. Brown, Esquire, whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public, duly commissioned and sworn and residing in said State, and was, as such Notary Public an officer of said state, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds for the conveyance of lands tenements or hereditaments and other instruments in writing to be recorded in said state, and that the said act is duly executed and taken according to the laws of said State, and that full faith and credit are and ought to be given to his official acts; and I further certify that I am well acquainted with his handwriting, and verily believe that the signature to the attached certificate is his genuine signature: And I do further certify that the impression of the seal of such Notary Public is not required by the laws of this State to be filed in my office.

Exhibits.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 28 day of Dec. A. D. 1926.

JOHN H. SCOTT
Clerk

[SEAL]

10

VERIFICATION.

State of New York, }
County of New York, } ss.:

Hazel A. Qualles, the above-named petitioner, being duly sworn, doth depose and say, that she has read the foregoing petition subscribed by her and knows the contents thereof, and that the same is true to her own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters she believes it to be true.

20

HAZEL A. QUALLES

Sworn to this 29th day }
of December, 1926. }

MAX MACNEFSKY
Notary Public

[SEAL]

Bronx Co. No. 5 Reg. No. 2707
Cert Filed N. Y. Co. No. 349 Reg. No. 709
Commission expires March 30, 1927

30

OATH OF ADMINISTRATOR.

State of New York, }
County of New York, } ss.:

I, Hazel A. Qualles do solemnly swear and declare that I will well, honestly and faithfully discharge the duties of administratrix of the goods,

40

Exhibits.

chattels and credits of Jesse C. Dixon deceased, according to law.

HAZEL A. QUALLES

Sworn to this 29 day }
of December, 1926. }

10

MAX MACNEFSKY

[SEAL]

Notary Public

Bronx Co. No. 5 Reg. No. 2707

Cert Filed N. Y. Co. No. 349 Reg. No. 709

Commission expires March 30, 1927

DESIGNATION OF THE CLERK OF THE SURROGATE'S
COURT AS A PERSON ON WHOM SERVICE OF
PROCESS MAY BE MADE PURSUANT
TO SECTION 95, S. C. A.

20

I, Hazel A. Qualles petitioner herein for letters of administration on the goods, chattels and credits of Jessie C Dixon, deceased, a resident of 2417 Maclay Ave., Borough of Bronx, New York City, do hereby designate the Clerk of the Surrogate's Court and his successor in office as a person on whom service of any process issuing from the Surrogate's Court of the County of New York may be made in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used. I reside at No. 2417 Maclay Ave. Bronx Co. New York City.

30

HAZEL A. QUALLES

State of New York, }
County of New York, } ss.:

40

On this 29th day of December, 1926, before me personally came Hazel A. Qualles to me known to be the individual described in and who executed

Exhibits.

the foregoing instrument and she acknowledged to me that she executed the same.

MAX MACNEFSKY
Notary Public

[SEAL]

Bronx Co. No. 5, Reg. No. 2707 10
Cert filed N. Y. Co. No. 349, Reg. No. 7094
Commission expires Mar. 30/1927

CITATION

THE PEOPLE OF THE STATE OF NEW YORK
By the Grace of God Free and Independent

To Elizabeth Carroll
198 W. 10th Street, New York City, N. Y.

SEND GREETING: 20

Upon the petition of Hazel A. Qualles who resides at 2417 Maclay Avenue, Bronx, New York City you and each of you are hereby cited to show cause before the Surrogate's Court of New York County, held at the Hall of Records in the County of New York on the 4th day of Feb 1927, at half past ten o'clock in the forenoon of that day, why Letters of Administration upon the Goods, Chattels and Credits of Jesse C. Dixon, deceased of 198 W. 10th Street, New York City, N. Y. should not be granted. 30

IN TESTIMONY WHEREOF, We have caused the seal of the Surrogate's Court of the said County of New York to be hereunto affixed.

WITNESS, HONORABLE JOHN P. O'BRIEN a Surrogate of our said county, at the County of New

40

Exhibits.

York, the 17th day of January in the year of our
Lord one thousand nine hundred and twenty-seven

MARTIN G. McCUE

[SEAL]

Clerk of the Surrogate's Court

10 NOTE.—The original citation must be returned to
the Clerk of the Surrogate's Court before 1 o'clock
P. M. on the day preceding the return day, with
proof of the due service or admission of service
duly acknowledged.

SURROGATE'S COURT

COUNTY OF NEW YORK

20

<p>In the Matter of The Application for Letters of Administration on the Goods, Chattels and Credits of Jesse C. Dixon, Deceased.</p>

30

State of New York }
County of Kings } ss.:

40

James M. Campbell of the Borough of Brooklyn,
City of N. Y. being duly sworn, says; that he made
due service of the within citation in the above-
entitled special proceeding on the persons named
below; that he was eighteen years of age, or over
when he made said service; that deponent knew
the persons so served to be the persons mentioned
and described in said citation; that said service
was made by delivering to and leaving with each
of them a true copy of said citation as follows:

Exhibits.

On the 26th day of January, 1927, on Elizabeth
Carroll of No. 15 West 118th Street, Borough of
Manhattan, City of New York

JAMES M. CAMPBELL

Sworn to before me this 31st }
day of January 1927. } 10

JACOB LEVY
Notary Public
Kings County

Filed Feb 1, 1927

CITATION

THE PEOPLE OF THE STATE OF NEW YORK
By the Grace of God Free and Independent

To Theodore Carroll }
Louise Carroll }
John Carroll } 20

SEND GREETING:

Upon the petition of Hazel A. Qualles who re-
sides at 2417 Maclay Avenue, Bronx, New York
City, N. Y. you and each of you are hereby cited
to show cause before the Surrogate's Court of New
York County, held at the Hall of Records in the
County of New York on the 18 day of February }
1927, at half past ten o'clock in the forenoon of } 30
that day, why Letters of Administration upon the
Goods, Chattels and Credits of Jesse C. Dixon, de-
ceased, of No. 198 W. 10th Street, New York City,
N. Y. should not be granted.

IN TESTIMONY WHEREOF, We have caused the seal
of the Surrogate's Court of the said County of New
York to be hereunto affixed.

WITNESS, HONORABLE JAMES A. FOLEY a Surrogate } 40

Exhibits.

of our said county, at the County of New York, the
7th day of February in the year of our Lord one
thousand nine hundred and twenty-seven.

MARTIN G. McCUE

10 [SEAL] Clerk of the Surrogate's Court

NOTE.—The original citation must be returned to
the Clerk of the Surrogate's Court before 1 o'clock
P. M. on the day preceding the return day, with
proof of the due service or admission of service
duly acknowledged.

SURROGATE'S COURT

COUNTY OF NEW YORK

20

<p>In the Matter of The Application for Letters of Administration on the Goods, Chattels and Credits of Jesse C. Dixon, Deceased.</p>

30

State of New York }
County of Kings } ss.:

40

Ruby Watson of the Borough of Brooklyn, City
of N. Y. being duly sworn, says; that he made
due service of the within citation in the above-
entitled special proceeding on the persons named
below; that he was eighteen years of age, or
over when he made said service; that depo-
nent knew the persons so served to be the per-
sons mentioned and described in said citation; that
said service was made by delivering to and leaving

Exhibits.

with each of them a true copy of said citation as follows:

On the 9th day of February, 1927, on Louise Carroll at No. 15 W. 118th Street, New York City, N. Y. on John Carroll by delivering a true copy of said citation to Elizabeth Carroll his mother with whom he resides at No. 15 West 118th Street, New York City, N. Y. 10

On Theodore Carroll on February 10, 1927 at No. 15 W. 118th Street New York City, N. Y.

RUBY WATSON

Sworn to before me this 10th }
day of February 1927. }

WILLIAM RAFFEL 20
Commissioner of Deeds
New York City

Filed Feb 11/1927

SURROGATE'S COURT

COUNTY OF NEW YORK

<p style="text-align: center;">In the Matter of The application for Letters of Administration on the Goods, Chattels and Credits of Jesse C. Dixon, deceased.</p>	}	Answer 30
---	---	--------------

I, Alice Dillingham, duly appointed Special Guardian herein for the infants Theodore Carroll, Louise Carroll, and John Carroll, make the following answer to the petition of Hazel A. Qualles, on information and belief. 40

Exhibits.

1. Respondent denies the allegations of the petition, in so far as they allege that the nephews and nieces of the deceased were his next of kin, and entitled to share in his estate.

10 2. Respondent has been informed that Jesse C. Dixon was married to Elizabeth Carroll, and lived with her as husband and wife, under the name of Carroll, until the time of his death, and that the children, Theodore, Louise and John Carroll are the lawful issue of Jesse C. Dixon, deceased.

20 WHEREFORE respondent prays that the petition herein be dismissed, and that Letters of Administration issue to Elizabeth Carroll, as widow of the deceased, or as General Guardian of the infant children of the deceased, as soon as she can be appointed such General Guardian.

Alice DILLINGHAM

State and County of New York: ss.:

30 Alice Dillingham, being duly sworn, deposes and says that she is the respondent named in the foregoing petition. That she has read the same, and knows the contents thereof, and that the same is true to her own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters she believes it to be true.

Alice DILLINGHAM

Sworn to before me this 4 }
day of March 1927. }

BEATRICE V. SOMERS

Notary Public,

Kings County

40

Kings Co. Clks. No. 445, Reg. No. 8511

N. Y. Co. Clks. No. 1318 Reg. No. 8948

Commission expires March 30, 1928

Exhibits.

SURROGATE'S COURT

NEW YORK COUNTY

In the Matter

of

The application for Letters of
Administration on the Goods,
Chattels and Credits of Jesse C.
Dixon, deceased.

10

State and County of New York: ss.:

Elizabeth Carroll being duly sworn deposes and
says that she resides at 15 West 118th Street,
and is the widow of the above named Jesse C.
Dixon, deceased. That she is entitled to Letters
of Administration on the estate of said deceased
and the only reason that she did not appear on
the return day of the citation herein was that she
believed that the Attorney for the Petitioner here-
in was acting in deponent's interest and that de-
ponent and her children would be entitled to all
the estate left by Jesse C. Dixon.

20

Deponent met Jesse C. Dixon while she was
working in Pittsfield Massachusetts in 1901. He
was then known as Jesse C. Dixon and deponents
maiden name was Elizabeth James.

30

Deponent and Jesse C. Dixon were married
about the 12th day of December 1905 in Boston,
Massachusetts, by Rev. Burke a colored minister
at his house, in the presence of two witnesses who
were old ladies, and were introduced as the min-
ister's wife and his sister-in-law. The minister

40

Exhibits.

made out a certificate which Jesse C. Dixon took and kept, and deponent has been unable to find it.

10 Deponent and Jesse C. Dixon started living together in April 1906 at 300 West 17th Street, New York City. They lived together continuously until his death in September 1926. He was a porter on the New York, New Haven and Hartford R. R. and was home every other night. At the time of his death, he was in Boston attending a convention of Masons, and was taken sick there and died after an operation.

20 When deponent and her husband came to New York City in 1906 he told deponent that he wished to be known by his middle name, Carroll. Deponent and her husband lived for seventeen years at 198 West 10th Street, and were known to all their friends and neighbors as Mr. and Mrs Carroll.

There are three children of the marriage. These children are as follows:

Theodore Carroll, born July 6, 1906
Louise Carroll, born July 26, 1908
John Carroll, born August 7, 1912.

30 Deponent had never been married before and never heard that her husband had been married, and verily believes that he was not. Deponent heard her husband speak of his niece Hazel A. Qualles, and knows that he did business with Mr. Qualles, her husband. Deponent did not meet the nephews and nieces until after her husband's death.

40 Deponent's sister Mrs Margaret Taylor, knew Jesse C. Dixon under both names of Carroll and Dixon. A friend, Mrs Helen Miller, now Hill also knew him under both names.

Deponent respectfully asks this Court to permit

Exhibits.

her to appear in this proceeding and qualify as administratrix of the said deceased, either in her own right as widow or allow her to obtain Letters of Guardianship of the children and apply for administration in their rights, and that the petition of Hazel A. Qualles applying for her own appointment be denied. 10

ELIZABETH CARROLL

Sworn to before me this 28th }
day of February 1927. }

BEATRICE V. SOMERS
Notary Public,
Kings County

Kings Co. Clks. No. 445, Reg. No. 8511
N. Y. Co. Clks. No. 1318, Reg. No. 8948 20
Commission expires March 30, 1928

At Chambers of the Surrogates Court,
held in and for the County of
New York, at the Hall of Records
Manhattan, on the 8th day
of April 1927.

Present: Hon. JAMES A. FOLEY Surrogate

<p style="text-align: center;">In the Matter , of The Application for Letters of Administration on the Goods, Chattels and Credits of Jesse C. Dixon also known as Jesse Car- roll, Deceased.</p>	<p>Order Denying Application, and Granting Letters of Administra- tion to Elizabeth Carroll.</p>	30
---	--	----

Application having been made to me by petition
of Hazel A. Qualles, verified the 29th day of De- 40

Exhibits.

10 cember 1926 and citation having been issued, ad-
dressed to Elizabeth Carroll, and supplemental cita-
tion having been issued, addressed to Theodore
Carroll, Louise Carroll and John Carroll, and re-
turned with due proof of the due service thereof,
on said parties, and on the return day, the 18th day
of February 1927 the petitioner having appeared
by Samuel A. Pease, and no one having appeared
in opposition, and Alice Dillingham having been
appointed Special Guardian for the infants Theo-
dore Carroll, Louise Carroll and John Carroll, and
said Special Guardian having duly filed her an-
20 swer, and the matter having been set down for
hearing on the 22nd day of March 1927, and ad-
journed to the 31st day of March 1927, and on said
adjourned day, testimony having been taken, and
due deliberation having been had, and the Court
having rendered its decision, denying the applica-
tion of Hazel A. Qualles, niece of the decedent and
holding that Elizabeth Carroll is the lawful wife
of the decedent, and entitled to Letters of Admin-
istration, and said Elizabeth Carroll having duly
presented her petition for issuance of Letters of
Administration to her. It is

30 ORDERED that the application for Letters of Ad-
ministration by Hazel A. Qualles, niece of decedent,
be and the same is hereby denied. And it is fur-
ther

ORDERED ADJUDGED AND DECREED that Eliza Dixon
otherwise known as Elizabeth Carroll, was the law-
ful wife of the decedent, and she and their lawful
children, Theodore Louise and John Carroll, are
the distributees in this estate, And it is further

40

Exhibits.

ORDERED ADJUDGED AND DECREED that Letters of Administration, upon the Goods, Chattels and Credits of the above named intestate, Jesse C. Dixon also known as Jesse Carroll, be and the same are hereby granted to Elizabeth Carroll, of the City, County and State of New York, who appears to be entitled thereto, upon her executing a bond according to law, in the penal sum of \$1,200.00. And it is further

10

ORDERED ADJUDGED AND DECREED that Alice Dillingham as Special Guardian herein, be and she is hereby allowed the sum of \$70.00 which she is hereby allowed for her services herein, payable from the estate.

JAMES A. FOLEY
Surrogate

20

All which we have caused by these presents to be exemplified, and the Seal of our said Surrogate's Court to be hereunto affixed.

WITNESS HON. JOHN P. O'BRIEN, a Surrogate of the County of New York, at The City of New York, the 28th day of April in the year of our Lord one thousand nine hundred and twenty-eight and of our independence the one hundred and fifty-second

30

[SEAL] GEORGE LOESCH
Deputy Clerk of the Surrogate's Court.

I, John P. O'Brien a Surrogate of said county and presiding Magistrate of the Surrogate's Court do hereby certify that George Loesch, whose name is subscribed to the preceding exemplification, is the Deputy Clerk of said Surrogate's Court of the County of New York, and that full faith and credit are due to his official acts. I further certify that

40

Exhibits.

the seal affixed to the exemplification is the seal of our said Surrogate's Court, and that the attestation thereof is in due form, and according to the form of attestation used in this State.

10 Dated, New York, April 28th 1928

JOHN P. O'BRIEN
Surrogate.

State of New York, }
County of New York, } ss.:

20 I, GEORGE LOESCH, Deputy Clerk of the Surrogate's Court of the County of New York, do hereby certify that Honorable John P. O'Brien whose name is subscribed to the preceding certificate, is the presiding Magistrate of the Surrogate's Court of the County of New York, duly elected, sworn and qualified, and that the signature of said Magistrate to said certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court, this 28th day of April 1928.

[SEAL] GEORGE LOESCH
Deputy Clerk of the Surrogate's Court.

30

40

*Exhibits.***Exhibit D-2.**

N. B. Do not accept this transcript unless the raised seal of the Department of Health is affixed thereon.

New York, Mar 29 1927

10

A transcript of a record on file with the Department of Health of the City of New York.

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH.

NO. OF CERTIFICATE,
32600

STATE OF NEW YORK.

CERTIFICATE AND RECORD OF BIRTH

OF

20

Name of Child—Theodore Carroll.

Sex—Male.

Color—White.

Date of Birth—July 7, 1906.

Place of Birth, Street and No.—307 2nd Ave.

Father's Name—James Carroll.

Father Residence—300 W. 17th St.

Father's Birthplace—U. S. A.

Father's Age—38 yrs.

Father's Occupation—Porter.

30

Mother's Name—Lizzie Carroll.

Mother's Name before Marriage—Lizzie Borjamer.

Mother's Residence—300 W. 17.

Mother's Birthplace—U. S. A.

Mother's Age—24 yrs.

Number of previous Children—0.

How many now living (in all)—One.

Name and address of person making this report

Signature—J. B. Herbert, M. D.

40

Exhibits.

Lying in Hospital of the City of New York.
Residence—2nd Ave. 17th & 18th Sts., New York,
N. Y.

Date of Report,.....190

10 This is to certify that the foregoing is a true
copy (photographic) of a record on file in the
Bureau of Records, Department of Health, City of
New York.

JOHN P. WALSH, M. D.,
Assistant Registrar of Records.

20 NOTICE.—In issuing this transcript of Record the
Department of Health of the City of New York
does not certify to the truth of the statement made
thereon, as no inquiry as to the facts has been
provided for by law.

W. M. GUILFOY, M. D.,
Registrar.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

No. 5441

30 I, WILLIAM T. COLLINS, Clerk of the County of
New York, and also Clerk of the Supreme Court
for the said County, being a Court of Record, Do
HEREBY CERTIFY, That Wm. H. Guilfoy before or
by whom the annexed instrument was signed was
at the date thereof Registrar of Records in and
for the County of New York, dwelling in said
County, duly appointed and sworn, and that full
faith and credit are due to all of his official acts
as such Registrar. And further, that I am well
acquainted with the handwriting of such Registrar
and verily believe that the signature to the annexed
instrument is genuine.

40 IN TESTIMONY WHEREOF I have hereunto set my

Exhibits.

hand and affixed the seal of the said Court and County the 28th day of Sept. 1928.

(Seal) WILLIAM T. COLLINS,
Clerk.

10

Exhibit D-3.

N. B. Do not accept this transcript unless the raised seal of the Department of Health is affixed thereon.

New York, Mar. 29, 1927.

A transcript of a record on file with the Department of Health of the City of New York.

THE CITY OF NEW YORK	No. of CERTIFICATE	20
DEPARTMENT OF HEALTH	41197	

STATE OF NEW YORK
CERTIFICATE AND RECORD OF BIRTH
OF

Name of Child—Mary C. Carroll.

Sex—Female.

Color—Black.

Date of Birth—July 26th, 1908.

Place of Birth, Street and No.—307 2nd Ave.

Father's Name—Jesse Carroll.

30

Father's Residence—18 Jones St.

Father's Birthplace—U. S. A.

Father's Age—39 yrs.

Father's Occupation—Porter.

Mother's Name—Elizabeth Carroll.

Mother's Name before Marriage—Elizabeth James.

Mother's Residence—18 Jones St.

Mother's Birthplace—U. S. A.

40

Mother's Age—26 yrs.

Exhibits.

Number of Previous Children—One.
 How Many Now Living (in all)—Two.
 Name and address of person making this report
 —William Wilson.
 Date of Report,.....190

10 This is to certify that the foregoing is a true copy
 (photographic) of a record on file in the Bureau of
 Records, Department of Health, City of New York.

JOHN P. WALSH, M.D.
 Assistant Registrar of Records.

20 NOTICE.—In issuing this transcript of Record, the
 Department of Health of the City of New York does
 not certify to the truth of the statements made
 thereon, as no inquiry as to the facts has been pro-
 vided for by law.

WM. H. GUILFOY, M.D.
 Registrar.

State of New York, }
 County of New York, } ss.:

No. 5440

30 I, WILLIAM T. COLLINS, Clerk of the County of
 New York, and also Clerk of the Supreme Court
 for the said County, being a Court of Record, do
 HEREBY CERTIFY, that Wm. H. Guilfoy, before or by
 whom the annexed instrument was signed, was at
 the date thereof Registrar of Records in and for
 the County of New York, dwelling in said County,
 duly appointed and sworn, and that full faith and
 credit are due to all of his official acts as such Reg-
 40 istrar. And further, that I am well acquainted
 with the handwriting of such Registrar and verily
 believe that the signature to the annexed instru-
 ment is genuine.

Exhibits.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the said Court and County the 28th day of Sept., 1928.

WILLIAM T. COLLINS
Clerk.

(Seal)

10

Exhibit D-4.

N. B. Do not accept this transcript unless the raised seal of the Department of Health is affixed thereon.

New York, Mar 29 1927

A transcript of a record on file with the Department of Health of the City of New York.

20

THE CITY OF NEW YORK. NO. OF CERTIFICATE,
DEPARTMENT OF HEALTH. 41078
STATE OF NEW YORK.

CERTIFICATE AND RECORD OF BIRTH

OF

Name of Child—John Carroll.

Sex—Male.

Color—Black.

Date of Birth—August 7th 1912.

30

Place of Birth, Street and No.—198 W. 10th St.

Father's Name—Jess Carroll.

Father's Resident—198 W. 10th St.

Father's Birthplace—U. S. A.

Father's Age—40 years.

Father's Occupation—Porter.

Mother's Name—Elizabeth Carroll.

Mother's Name before Marriage—Elizabeth James.

40

Mother's Residence—198 W. 10th St.

Exhibits.

Mother's Birthplace—U. S. A.

Mother's Age—28 years.

Number of previous Children— ii

How many now living (in all)— ii

10 I, the undersigned hereby certify that I attended professionally at the above birth and I am personally cognizant thereof; and that all the facts stated in said certificate and report of birth are true to the best of my knowledge, information and belief.

Signature—H. M. RANIFF,

Date of Report,.....19

20 This is to certify that the foregoing is a true copy (photographic) of a record on file in the Bureau of Records, Department of Health, City of New York.

JOHN T. WALSH, M. D.

Assistant Registrar of Records.

NOTICE.—In Issuing this transcript of Record, the Department of Health of the City of New York does not certify to the truth of the statements made thereon, as no inquiry as to the facts has been provided for by law.

30

WM. H. GUILFOY, M. D.

Registrar.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

No. 5439

40 I, WILLIAM T. COLLINS, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, being a Court of Record, DO HEREBY CERTIFY, That Wm. H. Guilfoy before or by whom the annexed instrument signed was at

Exhibits.

the date thereof Registrar of Records was in and for the County of New York, dwelling in said County, duly appointed and sworn, and that full faith and credit are due to all of his official acts as such Registrar. And further, that I am well acquainted with the handwriting of such Registrar and verily believe that the signature to the annexed instrument is genuine. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County the 28th day of September, 1928.

(Seal) WILLIAM T. COLLINS,
Clerk.

Exhibit D-5. 20

EMPLOYEE'S DUPLICATE

TO EACH EMPLOYEE OF THE PULLMAN COMPANY
EMPLOYED OR TO BE EMPLOYED IN THE

STATE OF CONNECTICUT

AND TO THE HONORABLE COMPENSATION COMMISSIONER
OF THE PROPER DISTRICT

Notice is hereby given that The Pullman Company does not accept the provisions of Part B, of the Act of the General Assembly of the State of Connecticut, entitled "*An Act Concerning Compensation to Workmen injured in the Course of their Employment*" approved May 29th, 1913. 30

THE PULLMAN COMPANY
Employer

By A. J. GRANT
REMEO
Superintendent 40

Exhibits.

I hereby acknowledge service of the above notice, a duplicate of same having been personally presented to me this 22nd day of January 1914.
Occupation

J. C. DIXON
Employee

10

Exhibit D-6.

(Cancelled one cent postage stamp)

Mr. and Mrs. Jessie Carroll,
198 West 10th St.
New York
City

20

Easter Greeting Card
Signed
"From Voice and Slocum"

Exhibit D-7a (Identification).

Pittsfield Mass
Aug. 9th 1919

Dear Lizzie and the bunch

30

I thought to leave Pittsfield today but no parlor cars are running on the trains over our line so I am not sure just when I will be in N York I may come down Sunday or Monday some time. Now should you all need any thing before I get there go to the bank. Well how is little Jakie's arm. I hope it is getting on OK. Tell him to be good to his little sister and big brother also his Mama and be careful with his arm, and eat a plenty. All the trolley cars in Pittsfield have stopped, on account of strike here. This is a great

40

Exhibits.

world if dont weaken. Well I am getting a good rest up here. Now all be good and happy till I come.

With love to all.

Box 1351

Pop.

10

Exhibit D-7b.

(Cancelled twelve cents postage stamps)

J Carroll
198 W 10th St
New York NY

Miss Louise Carroll
Jamestown
Rhode Island

20

(c/ Mrs Butler)

Exhibit D-7c (Identification).

Tuesday 12:30 AM
Aug 21st 1918.

Dear Mama and Bunch:

I am glad you all arrived there alright and had a nice trip down I sent the telegram and was told it would not be delivered in two hours so you were likely there before it. So the woman had moved. What do you know about that? Well must have some trouble mixed in. It is fine you have a nice place now, probably much better satisfied than you would have been at the other place. What is the name of the people where you are stopping and what do they charge. Well never mind the charge just so you all well and happy.

30

40

Exhibits.

Be sure to have a good time. How is (Miss Prim) or Ducky Dawdle and Ted you only spoke of Jack and you playing in the sand. I judge Ted is Cartooning and Sister is Knitting. Well I got out on my run O. K. Tuesday and we had a big meeting.

10

Well I came home tonight about 9:30 took supper up 42nd St I tried to slip in but the young girl down in basement was out side and asked about you and Kids and told me to tell you she is holding the fort. Now I will venture to send you ten by special delivery let me know you got it soon. How far from the beach are you? If can get down at al I may run down Saturday before Labor Day and bring you all back Labor Day. Tell Jack to take good care of his Mama and look after Sister and Ted. So you got some sugar, Hurrah! See any one you know? Have good time.

20

Love to all

Pop.

P. O. Box 1351.

Exhibit D-7d (Identification).

30

(Cancelled two cent postage stamp)
 Miss Lizzie Dixson
 198 West 10 St
 New York City

c/o Carroll

40

*Exhibits.***Exhibit D-7e (Identification).**

Camden S C

Jan 25 1915

Dear Lizzie

We recived your letter and I was glad to hear (10
 from you it have been so long since we heard
 from you but I thought it was something to matter
 because I was dreaming about you and Mary so
 much I am so sorry to hear about your truble
 with litle Jack I am glad he is better I am glad
 that Mary was with you I know she was some help
 with the children I wrote Rebecca some time ago
 you all must write me dont wait untill you get
 something to send me write if it only a post card
 I hope Margrit have a job by this time because (20
 it bad to be out of work now if you think the
 job Mary is got is too hard for her dont let her
 do it well I hope things will be better after while
 and you will find it little better we have had a
 lot of sickness and death bearred Margret benson
 sunday but I worryed so about her I am so afraid
 she will take cold I have been sick myself for
 a mon. I am not able to do anything yet I dont
 feel so well to day but I am up and about I am (30
 so sorry that you all are haveing such a hard
 time I never seen such a time as wee are haveing
 down here Richard have been all the nurse I had
 so you know how it is every body been at me to
 send for Mary but I know that it was something
 to matter now I hope Jack is getting along all right
 dont let him take any cold tell ted and sister they
 must write me. Well I must close give my love
 to Mr. Dixson

Your Mother

(40

Mary James

*Exhibits.***Exhibit D-7f (Identification).**

198 W 10th New York N. Y
July 31st '24

Dear Dart:

10 I was pleased to get your nice little letter. I
am glad you are all well and having a nice time.
So you are sixteen. Birthday the 26th July. Now
I am sending 10.00 get yourself a nice little present
for birthday. Give Jack \$1.50 as I may send Jack
more later. When I hear from him. Tell him
he must not work too hard, Mowing, &c. So you
all are going to a dance in New Port. Helen has
a job and you help her. It is very hot here.
20 Tootsie meets me at the door when I come. I am
expecting a letter from Jack. Has Ted left there
I hear nothing from him. I see Voice and the
Duke now and then. I have just received your
Mothers letter I will answer soon, you can get
your present give Jack his and rest to your Mother
I suppose Ted has a job, as you and Helen have
one between you.

Love to all

Pop

30

40

*Exhibits.***Exhibit D-7g (Identification).**

P. O. Box 1351.

Pittsfield Mass,
Aug. 11th 1919

Dear Jack:

10

Tell the rest of the bunch that Pop is not quite sure when he will be there as I learn from the papers that the strike may continue till Friday and I may leave here then. I am taking a good rest anyway. Well how is Jackie's arm. I think you all had better get ready for the contry. Go to the bank and get all the money you need and I will put it back. You all should have two week's in country any way. Now get all you want for the Country and otherwise never mind the money. I will likely be there Friday eve. Tell Jackie to be careful with his arm. You might be all ready for the Country Saturday. I suppose Miss Prim and Big Brother are all O.K. Also the other young ladies in the house. Be good and happy till I come. With Love

20

Pop.

30

40

61

62

63

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

JESSE E. PROCTOR, individually
and as administrator of the
Will annexed of David A.
Dixon, deceased, *et al.*,
Complainants-Appellees,

and

HENRY LOWE, COLORED M. E.
CHURCH OF SHEPHERDS-
TOWN, WEST VIRGINIA;
THEODORE CARROLL, by his
guardian *ad litem*, Frances
T. Roche, *et al.*,
Defendants-Appellants.

*On Appeal
from the
Court of
Chancery.*

BRIEF OF COMPLAINANTS-APPELLEES.

Statement.

David A. Dixon, a bachelor, died testate, a resident of Newark, New Jersey, in December, 1926, leaving as his next-of-kin and heirs-at-law, certain nieces and nephews as follows: Jesse E. Proctor, Lillie Palmer, Hazel Qualles and John Proctor, children of Millie Proctor, a deceased sister of testator; and Eva May Bowman, a child of Samuel Dixon, a deceased brother of testator (Case, p. 3, fol. 30).

Testator had another brother, who predeceased him in September, 1926, Jesse C. Dixon. The bill was filed, by complainants-appellees, to construe the Will of testator, and defendants-appellants were admitted as parties defendants, alleging that said Jesse C. Dixon was joined in matri-

mony to Elizabeth James, in Boston, Massachusetts, on or about December 12, 1905, by the Rev. Burke, a Minister of the Gospel, and that they, defendants-appellants, are the issues of said marriage, and as such, are of the next-of-kin and heirs-at-law of said testator. The learned Vice-Chancellor decided, that the evidence did not satisfy him, that said Jesse C. Dixon and Elizabeth James were in fact married, and it follows as a conclusion, that the defendants-appellants are not the legitimate children of the said Jesse C. Dixon, from which adjudication defendants-appellants have appealed.

The real crux of the case on appeal is, whether there was a marriage in fact, between said Jesse C. Dixon and Elizabeth James, for Elizabeth James alleges a ceremonial marriage, not a common law marriage, and she must produce proof of such marriage. Complainants-appellees allege, that such marriage was not proved, and that defendants-appellants, children of Elizabeth Carroll, are not of the next-of-kin and heirs-at-law of David A. Dixon. The cases cited in the brief of defendants-appellants, under the eight points thereof, are not in point, as the sole question in the case is one of fact—marriage or no marriage—to be decided by the evidence taken therein. The only direct evidence of the alleged ceremonial marriage, between Jesse C. Dixon and Elizabeth James, is the uncorroborated testimony of Elizabeth James, herself (Case, p. 17, fol. 10). The evidence is entirely barren of any proof in support of the allegations of Elizabeth Carroll, of a marriage in fact. No record of the alleged marriage was produced, either by way of marriage certificate, or copy from the public records. No witnesses to said marriage were produced, nor even the names thereof, given in evidence.

No evidence of any invitations to friends of either, or both the parties to the alleged marriage, or any formal announcement to friends or relatives, nor any celebration following the alleged ceremony, inviting friends and relatives of both parties to wedding feast, but the defendants-appellants allege, that the marriage in fact is sufficiently proved, by the cohabitation and repute of the parties. Now what are the facts as to cohabitation and repute, as disclosed by the evidence all through the state of the case? Elizabeth Carroll alleges she was married to Jesse C. Dixon, as Elizabeth Dixon, on or about December 12, 1905 (Case, p. 27, fol. 10), and that she knew him as Jesse C. Dixon since 1901 (Case, p. 17, fol. 30), and in February or March, 1906, Jesse C. Dixon and Elizabeth James came to New York City to live (Case, p. 18, fol. 30), and both lived there from last mentioned date, to his death, September, 1926, as Jesse Carroll and Elizabeth Carroll, a period of twenty years. If there was a ceremonial marriage in December, 1905, why did both, Jesse C. Dixon and Elizabeth Dixon live under the name of Carroll? Why didn't she insist upon her marriage name, Dixon? Why didn't she insist at least, that the children, born of the alleged ceremonial marriage, take the proper surname of their alleged father? Why did she not see, that the records of the births of her three children, of the alleged marriage, were in the name of Dixon, and not Carroll (Case, p. 95, Exhibit D. 2; p. 97, Exhibit D. 3; p. 99, Exhibit D. 34). Why did she remain quiet, when she knew that Jesse, her alleged husband, was Carroll, to her and her friends and children, and Dixon, to his relatives and employers? Was it because there had been no marriage, ceremonial, or otherwise, and that their relations

were meretricious, and that Jesse C. Dixon was concealing this fact from his relatives and living under the name of Carroll? The date of the alleged marriage is given as about December 12, 1905 (Case, p. 17, fol. 10), and the date of the birth of the first child, Theodore, is given July 6, 1906 (Case, p. 90, fol. 20). This would make the birth of the first child, six months and twenty-four days after the alleged marriage, which would be very strong evidence, that conception took place at a time prior to the alleged marriage, and that the relations between the said parties were meretricious at a time prior to the alleged marriage, and that such meretricious relations continued, unless, there is strong evidence tending to show that there was a marriage in fact, as alleged, by Elizabeth Carroll.

Elizabeth Carroll says, that Jesse never introduced her to his relatives (Case, p. 28, fol. 10). Is that not remarkable? She says, they lived together in New York City, for twenty years as husband and wife, and she knew he had relatives, and yet she never saw them, or was introduced to any of them (Case, p. 28, fol. 10). If she were married to Jesse, would it not be natural for her to be anxious to meet his relatives, his nieces and nephews, and have her children meet and know these relatives, these nieces and nephews, or to know David, the testator, who was then living? Jesse E. Proctor, a nephew of Jesse C. Dixon, and one of the complainants-appellees, was a favorite nephew of Jesse C. Dixon. He was named for him, "Jesse," and Jesse C. Dixon helped him with money in his education, and with money in buying his home (Case, p. 39, fol. 10), and yet Jesse E. Proctor had heard nothing of this alleged marriage, until after Jesse C. Dixon's death (Case, p. 39, fol. 10).

John H. Proctor, another nephew, and one of the complainants-appellees, states (Case, p. 40, fol. 20), that Jesse C. Dixon introduced Elizabeth Carroll to him, Proctor, as the landlady of Jesse C. Dixon, and that Elizabeth Carroll acknowledged the introduction. In December, 1912, Jesse C. Dixon made two conveyances of real estate, in Newark, New Jersey, to his brother, David A. Dixon, the testator, in both of which deeds, Jesse described himself as unmarried (Case, p. 61 to p. 68 inclusive). These deeds were executed in New York City, New York. If Jesse C. Dixon was then married, why did he not have his alleged wife join in the deeds? Why did he describe himself as unmarried, if he was in fact, then, the husband of Elizabeth Carroll? It is apparent, that David, his brother, the grantee in said deeds, had no knowledge of such marriage, as it is more than likely, that David would have insisted that Jesse's wife join in the conveyances. These conveyances were brought to the attention of Elizabeth Carroll (Case, pp. 29 and 30). Elizabeth Carroll says she had full knowledge of these deeds, yet she never got in touch with David, the grantee, about them, and never said a word about her dower rights in said real properties until after the death of David, the grantee, in December, 1926 (Case, p. 46, fol. 20 and p. 47, fol. 10). If Elizabeth was the lawful wife of Jesse C. Dixon, would she have remained silent from 1912 to 1926, fourteen years, with her right of dower, in jeopardy, in the real properties so conveyed? The evidence of cohabitation and repute relied upon by defendants-appellants, in corroboration of the alleged ceremonial marriage, showed, that the parties were known as Mr. and Mrs. Carroll, and not Mr. and Mrs. Dixon, and were so known

as Mr. and Mrs. Carroll only to the relatives and acquaintances of Elizabeth Carroll, and were not so known to the relatives of Jesse C. Dixon.

Elizabeth Carroll is vitally interested in establishing that she is the widow of Jesse C. Dixon, for the reason that, as such widow, her children would be entitled to a share of the estate of David A. Dixon, as of his heirs-at-law, and that she would have a claim for dower in the real properties conveyed by Jesse C. Dixon in Newark, in 1912, to his brother, David A. Dixon. On page 46, the state of the case, folio 20, the evidence shows that six hundred (\$600.00) dollars is held in escrow, pending the decision of the claim of dower in one of the properties. This is an error in the amount so held in escrow. It should read sixteen hundred (\$1600.00) dollars, not six hundred (\$600.00) dollars, also see (Case, p. 47, fol. 10). There is an error in the state of the case on page 46, folio 30 as to the amount of equity in the Boyden street property of the testator, David A. Dixon. It should read sixteen hundred (\$1600.00) dollars and not six hundred (\$600.00) dollars. Elizabeth Carroll also claims her dower right in one of the properties on Boyden street, so conveyed to David A. Dixon by Jesse, in 1912. This situation calls for the utmost scrutiny of the Court upon the whole testimony of Elizabeth Carroll, as was said by Judge Lamm in case of *Bishop v. Brittain Investment Company*, Missouri Supreme Court, 229 Mo. 699; 129 S. W. 668, Ann. Cas. 1912A, Vol. 22, at page 876, which was a case of an alleged widow claiming dower in the land of her alleged deceased husband. Judge Lamm states that the danger of perjury in cases of this character is enhanced by a combination of powerful impulses, viz., to cleanse her social status from a scarlet stain of sexual impurity,

and, with the same stroke, line her pockets. Prestige! Money! The love of both—master passions of the human breast—in full cry. His legs go far and fast, who is running to a goal of gain and honor. Not only so, but, the alleged husband being dead, the danger of exposure in false swearing is reduced to a minimum and may invite the hazard of the experiment.

In *Smith v. Smith*, 52 N. J. L., page 209, Mr. Justice Scudder, in the Court of Errors and Appeals, states,

“It seems, however, that in this case the fact of marriage depends more strictly on the actual marriage which it is claimed is contracted in the State of Massachusetts, followed by cohabitation and repute in Vermont, as corroborating evidence of such marriage, rather than on these consequences as independent proof of marriage in the State of Vermont. The demandant stands on the first contention, and must there stand to make her proofs consistent.”

It is respectfully submitted, that the proofs offered did not sustain the contention, that Elizabeth Carroll was, in fact, the wife of Jesse C. Dixon.

In *Wallace's case*, 49 N. J. Eq., at page 535, the Court states:

“There is another element necessary to adequate proof of marriage by cohabitation and repute. The repute must be general, extending to the relatives and friends of both parties with whom their daily lives are spent. It must not be divided as though only playing a part in one side of a secretive or double life. Where a man cohabits with a woman of a more humble sphere of life than he customarily moves in, permitting her friends and acquaintances to believe that they are married, but at the same time both he and she refrain from permitting his

friends and relatives, with whom he constantly intermingles and lives, to know of the cohabitation and repute, the reputation is divided and correspondingly of less evidential value, for, under particular circumstances, a man, to preserve the good name of his mistress with her relatives and associates, and to subserve his and her conveniences, may be willing that she shall assume among those people a different character from the disgraceful one to which she really is entitled." *Rose v. Clark*, 8 Paige 574; *Cunningham v. Cunningham*, 2 Dow 482; Abb. Tr. Ev. 81.

The learned Vice-Chancellor, who heard the evidence in this case, saw the witnesses on the stand, noticed their demeanor, and the manner in which they gave their evidence, and from it all, he was justified in his conclusion, that there was no marriage between Jesse C. Dixon and Elizabeth James, and that the decision of the Court of Chancery should be affirmed.

Respectfully submitted,

GEORGE A. DOUGLAS,
Solicitor for and of Counsel
with the Complainants-Appellees.

Dated, Newark, N. J., May 22, 1929.

7474 MAY. 1. 1928

New Jersey Court of Errors and Appeals

Between:

JESSE E. PROCTOR, individually
and as administrator of the
will annexed of David A. Dix-
on, deceased, *et al.*,

Complainants-Appellants,

and

HENRY LOWE, COLORED M. E.
CHURCH OF SHEPHERDSTOWN,
WEST VIRGINIA, THEODORE CAR-
ROL, by his guardian *ad litem*,
FRANCES T. ROCHE, *et al.*,

Defendants-Appellees.

On Appeal from
The Court of
Chancery

BRIEF IN BEHALF OF DEFENDANTS- APPELLANTS CARROL.

Statement.

David A. Dixon died a resident of the State of New Jersey, in December, 1926, leaving a last will and testament, which was duly admitted to probate in the office of the Surrogate of Essex County, on or about April 2nd, 1927. The testator in his last will and testament attempted to set up certain trusts, and complainants filed their bill to have construed the trust provisions of the will. Theodore Carrol, John Carroll and Louise Carroll were admitted as parties defendant in that cause, alleging that they were the lawful children of Jesse C. Dixon, also known as Jesse Carroll, who was a brother of the testator, David A. Dixon, deceased, and that as such they were the heirs-at-law

of the testator and were entitled to their proportionate share of testator's estate to which he died intestate. Complainants filed a formal replication to the answer of these defendants. The Court of Chancery held that the defendants, Theodore Carroll, John Carroll and Louise Carroll, are not the lawful children of Jesse C. Dixon, and are not the next-of-kin and heirs-at-law of the testator, David A. Dixon. These defendants appeal only from that part of the final decree which holds that they are not the heirs-at-law and next-of-kin of the testator, David A. Dixon, deceased. (State of Case, pp. 8 and 9.) No appeal is made from that part of the decree construing the trust provisions of the will of the said David A. Dixon, deceased.

Statement of Facts.

David A. Dixon had a brother, Jesse C. Dixon, who predeceased him, dying on the 7th day of August, 1926. This brother is referred to in the will and codicil which are admitted to probate. David A. Dixon also left the children of a deceased sister, Millie Proctor. These children are Jesse E. Proctor, Lillie Palmer, Hazel Qualles, John Proctor and Eva May Bowman, who are the complainants.

David A. Dixon, although born in the South, lived for many years in Newark, New Jersey, where he resided at the time of his death.

Jesse C. Dixon was a porter on the New York, New Haven and Hartford Railroad for most of his lifetime, and in 1901 was making his home in Pittsfield, Massachusetts, where he had a room and stayed between his train runs (Case, p. 52, fol. 20). While in Pittsfield he met Elizabeth James (Case, p. 17, fol. 39), who was also a colored woman, and who was working out in service for a Mrs. Briggs in Pittsfield (Case, p. 50, fol. 15). This acquaint-

ance was continued for several years. Dr. Carter, whose testimony was taken by consent, testified that he had known Elizabeth James since they were children together in Camden, South Carolina, and that he was also employed in the same house with her in Pittsfield, Massachusetts, and saw her there between the years 1901 and 1906 and he knew Jesse C. Dixon at that time (Case, pp. 50, 51, 53).

Dr. Carter testified that one winter Elizabeth James went down to Brooklyn for several months to work for a friend of her employer, and Dr. Carter saw her there, and on one occasion saw Jesse C. Dixon in Brooklyn and had a conversation with him, and that Jesse C. Dixon then told him that he expected to marry Elizabeth James (Case, p. 55, fol. 20).

Elizabeth Carroll, whose testimony was taken on the trial, testified that her name was Elizabeth James before marriage (Case, p. 16); that she knew Jesse C. Dixon in Pittsfield, Massachusetts, about 1901 (Case, p. 17, fol. 30); that about the 12th day of December, 1905, while in Boston, Massachusetts, she was married to Jesse C. Dixon at the home of Rev. Dr. Burke who had a mission (Case, p. 17, fol. 10). Elizabeth Carroll further testified that Rev. Burke called two witnesses and he performed a marriage ceremony between her and Jesse C. Dixon in the presence of these witnesses and filled out a marriage certificate (Case, p. 17, fol. 20); that this certificate was later in the possession of Jesse C. Dixon, but she could not now find it. The exact address of Rev. Burke and the names of the witnesses she never knew, and has been unable since to locate any of them or to find any record of the marriage in the public records at Boston, but she has heard that Rev. Burke is dead.

Jesse C. Dixon and Elizabeth Dixon, following the marriage ceremony, returned to her sister's house in Boston that night, and on arriving there he told his wife's sister, now Margaret Taylor, that he and Elizabeth had just been married (Case, p. 31, fol. 20. Note error: "Louise" Carroll should be "Lizzie").

Elizabeth James, then Dixon, left Boston a month or so later and returned to Pittsfield (Case, p. 18, fol. 20). She returned to her old employment and worked there a few months until Jesse C. Dixon brought her down to New York City where they lived together at 300 West 17th Street, and continued to live together in New York City until he died in the year 1926 (Case, p. 18, fol. 30, and p. 19, fol. 10).

Early in 1906, as Dr. Carter testified, Jesse C. Dixon and Elizabeth Dixon called at the home of Dr. Carter's mother in Pittsfield, and in his presence Jesse C. Dixon introduced Elizabeth as his wife, and said they had been married. At this time Elizabeth James, then Dixon, had returned to work at her old position in Pittsfield (Case, p. 59, fols. 20, 40, and p. 56, fol. 14).

About April, 1906, Jesse C. Dixon and Elizabeth Dixon left Pittsfield together, and took a furnished room at 300 West 17th Street, New York City, and at that time Jesse C. Dixon told his wife that he preferred to be known by the name of Jesse C. Carroll (Case, p. 19, fol. 20). This is testified to by Elizabeth Carroll, who gives no explanation for the change except that her husband desired it and had his own reasons, and she accordingly assumed the name of Carroll.

On July 6, 1906, the first issue of the marriage, Theodore Carroll, was born in Lying-in-Hospital, New York City. His birth certificate has been received in evidence and shows him to be the child

of James Carroll and Lizzie Carroll (Case, p. 95, Exhibit D-2). The error in name was explained in testimony (Case, p. 15, fols. 30, 40).

After the birth of this child Elizabeth Carroll and Jesse C. Carroll continued to live in New York City, and some years later removed to 198 West 10th Street, New York City, where they remained until he died in August, 1926.

There was also born of Jesse C. Carroll and Elizabeth Carroll, a daughter, Louise Carroll, on the 26th of July, 1908, and a son, John Carroll, on August 7th, 1912, in New York City, the certificates of their births being received in evidence (Case, pp. 97 and 99; Exhibits D-3 and 4).

During all the 21 years that elapsed between the marriage of Jesse C. Dixon and Elizabeth James, they cohabited in New York City; had an apartment together; were known as husband and wife. During all this time Jesse C. Dixon was employed as a porter on the New York, New Haven and Hartford Railroad and was known on the railroad as Jesse C. Dixon, but known to his acquaintances in the neighborhood in which he lived as Jesse Carroll.

Margaret Taylor, sister of Elizabeth James, testified that she knew Jesse C. Dixon in Pittsfield about 1901; that she was in Boston when Jesse C. Dixon came in with her sister Elizabeth James and he told her they had been married (Case, p. 31). She also testified that she visited her sister Elizabeth Dixon in New York City a few years later and found Jesse C. Dixon and her sister Elizabeth were known there by the name of Carroll and that she lived with them for some time in 10th Street, New York City (Case, p. 32, fol. 21).

That in 1923, after her own marriage she and her husband, Willie Taylor, visited the Carrolls in their apartment and she introduced Jesse C.

Carroll to a Mrs. Webster using the words "meet my brother-in-law Mr. Carroll" (Case, p. 33, fol. 28).

Mrs. Williams, a neighbor, testified that she lived in the same house with Elizabeth Carroll and Jesse Carroll and they introduced people one to other as "meet my husband" or "meet my wife Mr. or Mrs. Carroll" (Case, p. 35, fols. 28, 40). She also knew that he was known as Dixon at the station where he worked (Case, p. 36, fol. 27).

John Perry testified at the trial that he knew Elizabeth Carroll and Jesse Carroll, who lived together in New York City. He visited them in their apartment often and he knew that they were reputed to be husband and wife; and heard his grandmother so address them in the presence of both (Case, p. 37, fol. 25).

Dr. Carter testified that he had visited Jesse C. Dixon in New York City, and found that he was known in his apartment and in the neighborhood by the name of Jesse Carroll (Case, p. 59, fols. 10, 20). He saw Jesse C. Dixon in his apartment, and Elizabeth Carroll and a couple of the children who were all living together. He testified also that Jesse C. Dixon called Elizabeth Carroll his wife in his, Carter's, presence (Case, p. 58, fol. 30).

After the death of Jesse C. Dixon in Boston, while attending a convention in August, 1926, David A. Dixon, his brother, called on Elizabeth Carroll. He had never been there before. Elizabeth Carroll testified that David A. Dixon said he would find out what was left to her children, and seemed much interested in them, and came to see her five times before he died the following December (Case, p. 28, fol. 40).

In January, 1927, Hazel A. Qualles, one of the nieces of Jesse C. Dixon, and one of the parties complainant herein, applied to the Surrogates'

Court in the County and State of New York, for administration on the estate of Jesse C. Dixon, deceased, stating in her petition that Elizabeth Carroll claimed to be the widow, and Theodore Carroll, Louise Carroll and John Carroll claimed to be the children of said Jesse C. Dixon. In that application all other complainants in the present proceeding, excepting Jesse E. Proctor, as administrator with the will annexed of David A. Dixon, deceased, joined by signing their renunciations and consents, duly acknowledged and filed in the proceeding in New York. A citation was issued in the administration proceeding to the widow and children, who then contested the right of Hazel A. Qualles to apply as a next of kin, and on a trial before the Surrogates' Court in New York County, it was decided that Elizabeth Carroll was the lawful wife of Jesse C. Dixon, deceased, and that the three children, Theodore Carroll, Louise Carroll, and John Carroll, were his lawful children, and administration was accordingly granted to Elizabeth Carroll (Case, pp. 91, 92, 93, Exhibit D-1). Exemplified copy of the whole proceeding in New York State, including the papers executed by all the complainants, has been filed as an exhibit in the case now on appeal (Case, p. 68, *et seq.*).

On the trial of the present action before the Vice-Chancellor, the complainants claimed that they were not bound by the proceedings had in the State of New York, only one, Hazel Qualles, having actively conducted the contest, and that the marriage was not proved because no certificate of marriage was produced, and no record of the marriage could be found. In spite of the foregoing evidence of marriage, followed by continued cohabitation and repute for over twenty years, the Vice-Chancellor held that the defend-

ants Carroll were not the lawful children of Jesse C. Dixon (Case, p. 9, fol. 30), and stated as his reason for so holding that where a ceremonial marriage is testified to there is no question of a common law marriage (Case, p. 24). The Vice-Chancellor refused to receive any letters containing declaratory statements of Jesse C. Dixon, deceased, as to his paternity of these children (Case, p. 25). These letters were marked for identification and are printed in the State of Case as Exhibit D-7a, D-7b, D-7c, D-7f, D-7g (Case, pp. 102, 103, 104, 106, 107).

The only evidence produced at the trial against the marriage was the testimony of John H. Proctor that on one occasion he visited his uncle, Jesse C. Dixon, in New York City, where he found him living in an apartment with a woman by the name of Elizabeth Carroll, and that there was a child playing around, and that Jesse C. Dixon told him that the woman was his housekeeper (Case, p. 40, fol. 20). This was not said in the presence of Elizabeth Carroll, for she denied ever having heard her husband make such a statement, and says her husband did not speak to him while she was there (Case, p. 45, fol. 25).

The only other evidence against the marriage was the record of two deeds made in 1912 by which Jesse C. Dixon conveyed to his brother David A. Dixon, his undivided half interest in two pieces of real estate in Newark. In both these deeds Jesse C. Dixon was described as unmarried. The acknowledgments were taken in New York before a notary public (Case, pp. 61, 65, Exhibits C-1, C-2). In explanation of this, Elizabeth Carroll testified that she had refused to sign the deeds when her husband asked her to because she did not want him to sell (Case, p. 29, fol. 22, and p. 30).

There was no evidence of and no claim of any incapacity of either Jesse C. Dixon or Elizabeth James to enter into a contract of marriage in 1905, or at any other time. Neither party to the marriage had been married before, nor was either of them in any way incapable of entering into the marriage state. No evidence was adduced attacking the moral character of either of the parties to this marriage. The complainants saw Jesse C. Dixon from time to time when he visited them in New Jersey, but they never called to see him in New York City except for the one time above mentioned.

To identify the deceased, Jesse C. Dixon, with Jesse Carroll, under which name the family was known in New York City, there was offered and admitted in evidence a notice of the Pullman Company produced from the personal effects of Jesse Carroll and signed by him under the name of J. C. Dixon (Case, p. 101, Exhibit D-5), and postal from the same source addressed to Mr. and Mrs. Jessie Carroll (Case, p. 102, Exhibit D-6). There was also offered in evidence and excluded, but with exception, letter dated January 25, 1915, and envelope addressed to Lizzie Dixon from her mother, Mary James, in South Carolina, showing that she was reputed by her own family to be married to Dixon and that she was also known as Carroll in the neighborhood where she lived (Case, p. 105, Exhibits D-7d, D-7e).

POINT I.

The law favors the presumption of marriage and legitimacy of the offspring.

New Jersey, following the English common law, has always protected the institution of marriage

and affirmed the innocence of the parties entering into a connubial relationship. The attitude in this respect has been well expressed by Bishop in his treatise on Marriage and Divorce.

“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 cohabiting 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.”

1 *Bishop, Marriage, Divorce and Separation*, section 956.

These principles have received recognition in the decisions of this State.

Sparks v. Ross, 72 N. J. Eq. 762, pp. 765-766;

Schaffer v. Schaffer, 88 N. J. Eq. 192; aff. 89 *id.* 549;

Keller v. Linsenmyer, 101 N. J. Eq. 664.

POINT II.

Marriage is a contract created *per verba de presenti*.

The two essentials of a valid marriage have been stated in the case of *Voorhees v. Voorhees*, 46 N. J. Eq. 413; aff. 47 *id.* 315, to be capacity and consent. By capacity is meant that there is no bar to the ability of the parties to enter into a contract, such as might arise if there were a prior subsisting marriage. Such a prior marriage was found in the *Voorhees* case, and it was that which made the attempt to enter into a second marriage contract with another in that case impossible.

“Marriage is a civil contract and no ceremonial is indispensably requisite to its creation.”

Voorhees v. Voorhees, 46 N. J. Eq. 413.

“The common law requires nothing more of parties who are under no legal disability than proof of a contract made in words of the present time.”

Pearson v. Howey, 11 N. J. L. 12 at page 18.

But the contract to be upheld must relate to the immediate present.

In the case of *Jackson v. Jackson*, 94 N. J. Eq. 233, Charles Jackson, a railroad porter, met Fannie in New York in 1883. Although they talked of a future marriage no contract was entered into before the birth of their child. However, in 1886, when he took her to New Jersey, and failing to furnish a minister, gave her a ring; told her it would be all right; set up housekeeping with her, and introduced her as his wife, living with her until 1918, the Court held a contract of marriage to have been entered into, and the issue legitimate.

This was in the face of a later ceremonial marriage contracted by the same Charles Jackson with another woman in 1893, and proof of his having divided his attentions between the two. The Court said, at page 236:

“If from what was said by the parties aided by the circumstances surrounding their entering upon their relationship, it can be gathered that they proposed to enter into a contract thenceforth to live as husband and wife, it will be sufficient, and where it appears that such relationship is matrimonial rather than illicit, co-habitation and reputation will justify the presumption that the parties came together under a mutual promise to live as husband and wife.”

In *Bey v. Bey*, 83 N. J. Eq. 239, on a bill for maintenance by a wife, the defendant disclaimed any marriage. There was no ceremony in that case, but there was proof that the parties moved to a sister's house and the defendant told the sister that they were man and wife. The Court in sustaining the complaint said:

“The subsequent co-habitation with matrimonial habit and repute is nothing more than testimony in proof of marriage. The validity of the marriage here alleged depends upon the sufficiency of the proof that the agreement was entered into *per verba de presenti* and in construing the contract, regard must be had to the intent of the parties, the time elapsed since the assumption of the matrimonial relation during which the precise words used may have passed from recollection, as well as the manner in which the parties lived together during a period of eight years.”

In the above case the Court also cited with approval the following quotation from *Van Tuyl v. Van Tuyl*, 57 Barb. 235 (N. Y.):

“If he understood it as a proposal of marriage and it was so understood by her, and she accepted the proposal, it was a valid contract of marriage. The law requires an actual meeting of the minds of the parties upon that question, namely, that they shall thenceforth from the time of the making of the agreement be husband and wife.”

Like the *Jackson* case, Jesse C. Dixon, also a porter, was free from any disability to enter into the marriage contract. Neither he nor Elizabeth James had ever been married before. He, too, stated on his return with Elizabeth James to her sister's house in Boston “We have been married,” and her sister Margaret Taylor testified to those words.

As in both the *Jackson* and *Bey* cases the connubial relationship continued over a long period of years and in the *Dixon* case three children were born and brought up in the family, only in *Dixon's* case he never attempted to repudiate his wife or children by subsequent marriage or desertion, and the relationship was only severed by his death.

POINT III.

To imply a contract of marriage no specific words are necessary.

In the case of *Pearson v. Howey*, 6 Halst. 12, where there was doubt as to the authority of a Justice of the Peace to marry persons outside his county, Justice FORD stated:

“The parties joined together were not related within any prohibited decree, nor under any disability or want of age or understanding; they were free, able and willing as it respected themselves, and they contracted marriage before him (the Justice of the Peace) in

words of the present tense, taking each other as husband and wife. I consider it to have been long and fully settled at law that such is a valid marriage even if William Harrison, Esq., had not been a Justice of the Peace. It is a maxim in the common law as ancient as the law itself that *consensus non concubitus facit nuptias*. It is the contract that makes the marriage. Such also has ever been the law or maxim of the church, in all ages, as well as the common law."

Pearson v. Howey, 6 Halst. 12.

This was followed with approval in the case of *Stevens v. Stevens*, 56 Eq. 488.

"There are probably but few instances of mutual consent by which each party in precise or unambiguous terms takes the other as spouse; but no particular words are necessary to declare an intention to enter into a contract of marriage."

Jackson v. Jackson, 94 N. J. Eq. page 242.

In the case of *State v. Thompson*, 76 N. J. L. 197, which was an action for bigamy, the Court sustained the action on the evidence that the defendant at a time in September, 1901, the exact date not given, suggested to Mary Reid that they be married, and took her before a person whom he represented to be a Justice of the Peace. This person asked if he took the woman to be his wife and if she took him to be her husband and they answered "yes."

"This evidence justified the finding that there was manifested by these parties an intent to live together as husband and wife, and with the intention carried out by their so living an actual marriage is established."

State v. Thompson, 76 N. J. L. 197.

The above case has direct bearing on the case *sub judice* because the evidence showed an at-

tempted ceremonious marriage which was not proved except by the testimony of the parties to the contract. The decision that the words of the marriage ceremony, whether performed by a legally authorized officer or not, are in themselves a contract *in praesenti*, should be also controlling in the *Dixon* case. There Elizabeth James was taken by Jesse C. Dixon, as she testifies, before a colored minister and he performed the ceremony before Mrs. Burke and another witness.

It has been held in a New York case that the exact words of the marriage service need not be given, as it will be presumed that they conform to the ordinary words of giving and taking in matrimony.

"Prima facie the fact of a marriage celebrated according to the forms of a religious denomination embraces the requisite assent of the married parties to take each other as husband and wife and if the party whose interest it is to dispute the marriage is satisfied with a general statement of the ceremony, and will not inquire more particularly as to what took place, he cannot be permitted to deny the apparent effect of the evidence."

Fleming v. People, 27 N. Y. 329.

Another case in which the parties to the marriage went before a man introduced as a minister who read the marriage ceremony was that of *Clark v. Clark*, 52 N. J. Eq. 650, in which the Court sustained the marriage.

"The person in whose presence the complainant says the mutual promises were made, has not been examined as a witness. The complainant and her counsel after extended inquiry and diligent search have been unable to find him or discover the least trace of him.

Nor has complainant been able to identify the house in which she says the defendant took her when they came out of the park.”

Clark v. Clark, 52 N. J. Eq. 650.

In that case, which was a complaint for support, the defendant denied that any marriage had taken place. The evidence showed that Clark met the complainant when she was a housekeeper for his father in Lebanon, New York; that while on a visit to Paterson, New Jersey, she came to New York City to meet Clark and he asked her to marry him that day; he took her to a house near Central Park; he introduced her to Rev. Smith and stated that they had come to be married. The testimony continued as given by the complainant herself, that Rev. Mr. Smith brought a book, made her write her name in it, joined their hands, and asked them if they took each other for husband and wife, and a prayer followed. Although the parties to this contract were never able to identify Mr. Smith or produce any certificate of marriage and although Clark impressed on the complainant that the marriage was to remain secret, the Court held that there was sufficient evidence of a present contract of marriage. The defendant's admissions to the sister of Mrs. Clark that he had married the complainant were also admitted in evidence.

In the present case Elizabeth Carroll, or Dixon, was the only witness to testify as to a marriage ceremony. She stated that Rev. Burke, before whom Jesse C. Dixon and herself appeared and were married in December, 1905, can not now be found. No record of the marriage is on file in the Department of Health in Boston where the marriage ceremony is alleged to have taken place, and inquiry in Boston, and among her friends, has not shown any record or information of a Rev. Burke nor of the witnesses to the marriage.

Neither does she remember the house and street to which they went that day, but only knows that they took a trolley car.

The testimony of Elizabeth Carroll, or Dixon, as to the performance of a marriage ceremony between herself and Jesse C. Dixon has, however, all the elements of a present contract of marriage, each party taking the other in the marital relationship which is usual in a marriage ceremony. The witness was not cross examined as to the words used by the minister and the *prima facie* marriage thus shown has not been defeated. Any failure on the part of the Rev. Burke to record the marriage should not nullify the contract entered into in good faith by the parties and relied on by them to give rise to the marital relation and the legitimacy of after born children.

“The person who celebrates may be subjected to penalties for violation of the law; but the parties who marry in good faith and consummate their marriage by co-habitation in the belief that they are lawfully married will be adjudged as legally joined in matrimony.”

Smith v. Smith, 52 N. J. L. 213.

It has been stated in *Bishop on Marriage and Divorce* as follows:

“The parties to an alleged marriage may be witnesses for or against it where there is no incompetency from interest from their being parties to the record or the like.”

1 *Bishop (supra)*, Sec. 1049.

In the present case, Elizabeth Carroll or Dixon is not a party to the present proceeding and her testimony is given only to prove the legitimacy of her children who are parties defendant.

POINT IV.

Cohabitation and repute are in themselves evidence of an intent to enter into a marital relation.

It has already been seen that in certain cases, as in *Jackson v. Jackson*, a contract of marriage will be presumed from the very fact of cohabitation and repute over a long period of years.

In *Chamberlain v. Chamberlain* (68 N. J. Eq. 737) the parties married in the belief that a first husband was dead. He was not dead, and the wife, after obtaining a divorce from him, continued to live with her second husband without another ceremonial marriage. The case distinguished a contract made in the belief that each party was free to legally marry, from a case where the relationship was meretricious in intent at the start.

“From the time of the marriage in 1880 to the commencement of the suit it was the intention of both the complainant and the defendant, as they state, that their relations should be lawful and not meretricious.”

Chamberlain v. Chamberlain, 68 N. J. Eq. 737.

In every case of cohabitation and repute it is the contract of the parties, expressed or implied, which forms the basis of the marriage.

An expressed contract of marriage, such as is testified to by Elizabeth Dixon or Carroll, is not at variance with the subsequent cohabitation, but the cohabitation and general repute is evidence bearing out the implication that a marital relation was intended.

"The subsequent cohabitation with matrimonial habit and repute is nothing more than testimony in proof of marriage."

Bey v. Bey, 83 N. J. Eq. 239.

The cohabitation must be connubial in character and not occasional.

"The evidence clearly shows that after December 22, 1886, their co-habitation was connubial and not occasional, limited or secret; that they lived together openly as husband and wife; that he acknowledged her as his wife, and his son, the complainant, as his son, both by word and in writing; that their matrimonial habit and repute was general among their friends with whom their daily lives were spent, and that their relation as husband and wife and their matrimonial repute continued even after Jackson's marriage with Catherine. All these facts support the idea that it was their mutual intent to enter into a common law marriage contract."

Jackson v. Jackson, 94 N. J. Eq., p. 242.

These tests are all met in the *Dixon* case where the parties, after the lapse of only a few months, took rooms in New York City; lived there as husband and wife; brought up their three children, one of whom has now attained manhood, and remained together for over twenty-one years until the death of Jesse C. Dixon. The Vice-Chancellor who heard the case stated that he could not find a marriage because cohabitation and repute, which might in themselves be sufficient to prove a common law marriage, could not be relied on as evidence where there was any evidence of a ceremonial marriage as was testified to here. In laying down such a proposition the Vice-Chancellor wholly lost sight of the fact that it is the intent of the parties in forming a contract of marriage

that makes the relationship marital, instead of meretricious, and that the cohabitation and repute in every case is only evidence of that contract. Whether or not the contract was made before a minister, or a layman, or without any witness, is immaterial if the intent of the parties can be shown. Parties are surely not worse off by having appeared before a minister than they would have been if they had lived in the marital state without exchanging their vows before a minister. On this point see citation from *Smith v. Smith*, 52 N. J. L., p. 213, quoted *supra*.

It is true that the Dixons were known in New York City under the name of Carroll. There is no wrong in the State of New York in assuming another name. The private reasons of Jesse C. Dixon for assuming the name of Carroll can only remain a matter of conjecture. But that he was sufficiently identified as the man who was known to his employers and to his nephew in New Jersey as Jesse C. Dixon, but to his family and neighbors in New York City, where his daily life was spent, as Jesse C. Carroll, has been shown by the testimony of Dr. Carter and of Margaret Taylor, as well as that of Elizabeth Carroll, all of whom knew him under both names.

The documentary proof in the form of letter addressed to Mrs. Elizabeth Dixon from her mother, Mary James, in the year 1908, and tag of New York, New Haven & Hartford Railroad produced from the personal effects of Jesse C. Dixon were offered in evidence to corroborate the witnesses' statements on identification. To the exclusion of these papers by the Trial Judge, an exception was taken.

In the case of *Costill v. Hill* (55 N. J. Eq. 479), a similar question of change of name appeared. A man by the name of Hill Costill assumed the name

of Capitol S. Hill. In that case, too, the respondent married him before a man who was described to her as a Methodist minister, and without witnesses. There was no record of the marriage and she never saw the minister again. On proof of the connubial character of the cohabitation with Hill and their repute in their neighborhood, the respondent was given a decree finding her to be the widow of Hill Costill, also known as Capitol S. Hill.

POINT V.

Declarations of the parties to a marriage are admissible for and against it.

In *Costill v. Hill* (*supra*), declarations denying the marriage were weighed by the Court and found insufficient to contradict the presumption of marriage. In that case a lawyer testified that Hill consulted him about drawing a deed of real property in which his wife was to join, but that she refused unless she should receive \$50; thereupon Hill told the lawyer that she was not his wife, and wanted him to draw the deed without her name. Another party testified that Hill told him that he was not married and that the woman was only his house-keeper.

“As has been intimated the last mentioned testimony comes almost entirely from interested sources, and relates only to declarations by Hill which are very limited in number, and may have been made to answer some ulterior purpose, such as was obviously the case in his denial of marriage at the time of making the deed to Jung, where, if his insistence had been acquiesced in by Jung’s lawyer it might have served to save him a few dollars.”

Costill v. Hill, 55 N. J. Eq. 483.

In *Smith v. Smith* (52 N. J. L. 207), which was an action for dower, the proof of marriage rested entirely on the testimony of the demandant against the heirs, and the admissions of Smith, who had at times declared the marriage, and at other times denied its legality.

In the *Smith* case the parties lived in Vermont and went to Boston where the demandant was introduced to a man represented to be a clergyman, and they were asked by him if they took each other for man and wife. They afterwards went back to Vermont, and lived there for nineteen years, and had four children. Smith then deserted the demandant, telling her and others that they had not been legally married. He came to New Jersey with another woman, who later joined with him in deeds to real estate in New Jersey as his wife, and who predeceased him.

“After the lapse of many years slight proof of an actual marriage followed by long continued living together as man and wife is often the best and only evidence that can be obtained. The direct proof of an actual marriage depends on the testimony of the demandant herself supported by evidence of admissions made afterwards by Hezekiah B. Smith that a marriage ceremony had been performed in Boston, but in one instant denying its legality. The demandant was a competent witness to testify against these defendants for they are sued as devisees having title to the land under the will, and not as executors and legal representatives.”

Smith v. Smith, 52 N. J. L., page 207.

In allowing in evidence the records of deeds and mortgages in the above case the Court said:

“The exception made to the exclusion of certain deeds and mortgages executed and delivered by Hezekiah B. Smith and Agnes his

wife while he was living in New Jersey, is unfounded, for they had no probative force against the demandant who was not a party to these conveyances nor shown to have had any knowledge of them. It was not competent for Smith thus to make testimony against his wife while she was living in a distant state where he had left her, by proof of specific acts of which she had no knowledge."

Smith v. Smith, 52 N. J. L. 214.

It is curious that the last two cases cited so nearly parallel the present *Dixon* case. In both of them the husband attempted, for his own ends, to defeat his wife's right to dower, just as Jesse C. Dixon did when Elizabeth refused to sign the deed for the New Jersey property and he signed without her as an unmarried man. This bit of evidence was made a great deal of by the respondents, and was indeed their principal argument against the marriage. The appellants did not object to the admission of the record in evidence because there is no doubt that Jesse C. Dixon did execute such a deed. The explanation of the circumstances was given by Elizabeth in her testimony.

The *Smith* case is also close to the present *Dixon* case in being a marriage ceremony testified to by the widow as having taken place in Massachusetts before a minister who can not now be found, and cohabitation thereafter in another state. The contract of marriage in the *Smith* case, being words used *in praesenti*, was upheld and declared valid by this Court under the laws of the State of Massachusetts.

A similar case has been made out here where the Dixons, or Carrolls, were married in Massachusetts, moved to the State of New York, which is also a state recognizing common law marriage, where they spent the next twenty-one years of married

life together, until the death of Jessie C. Dixon.

In both cases, above referred to, the declarations of the husband that they were married were received in evidence.

In the case of *Atlantic City v. Goodwin* (62 N. J. L. 394) there was received in evidence after the death of a first wife the statement "your aunt is now my legal wife." This was admitted as evidence to show a present contract to cohabit matrimonially after the bar of a previous marriage was removed.

The letters written by Dixon and offered in evidence for the defendants, but excluded by the Vice-Chancellor, were addressed to his children, and Lizzie, and were signed "Pop." These letters were offered as admissions against interest, and as declarations of his paternity, and as material on the question of pedigree, and their exclusion was excepted to. The handwriting of these letters was duly proved by Margaret Taylor who testified that she knew his handwriting.

POINT VI.

Cases involving a conflict of presumptions are to be distinguished from the case at bar.

The cases in which it has been decided that no marriage by contract arose can be classified under three headings.

(1) Those in which there is no legal capacity on the part of one of the parties to contract.

(2) Those where the presumption of marriage is overcome by another stronger presumption, such as innocence of committing a crime.

(3) Those in which the character of the party is so bad that the presumption of a meretricious relationship overcomes that of a marital relationship.

To illustrate these three distinctions one need only look at a few of the leading cases.

In *Collins v. Voorhees*, 47 N. J. Eq. 555, it was held that an interchange of consents to marry could not be inferred from cohabitation and repute where one of the parties was already married and therefore could not consent. A valid and subsisting marriage will be a bar to any contract of marriage with another party. Many of the cases turn on the question of the incapacity of one party to enter into the contract, as the intent to marry must be mutual, and capable of immediate consummation.

Under the second classification are cases like those brought for separate maintenance where the defendant denies the validity of the marriage and sets up a prior subsisting marriage on the part of his spouse. In these cases another presumption arises, that of innocence of intent to commit the crime of bigamy. This presumption is so strong that it will counteract the presumption of matrimonial intent in a previous relationship, and in the face of a later ceremonial marriage the decision will be against any prior marriage by simple contract.

“The evidence fails to establish a prior marriage with that degree of particularity required to overcome the powerful presumption of the legality of the marriage here assailed, and a denial of relief may be safely rested on this ground.”

Schaffer v. Schaffer, 88 N. J. Eq. 192, at page 195.

“It is a maxim of law that every person shall be presumed innocent of a crime until proven guilty thereof, and if this presumption prevails in the present case then complainant would not be guilty of the crime of bigamy in marrying defendant and defendant is not guilty of the crime of adultery in cohabiting with her for nearly 30 years as her husband as his counterclaim in substance alleges.”

Michaels v. Michaels, 91 N. J. Eq. 408.

It was on a similar state of facts that the case of *Sparks v. Ross*, 72 N. J. Eq. 762, was decided.

So we find the trend of the decisions to be always toward upholding a matrimonial relationship and declaring the offspring to be legitimate.

In the case *sub judice* there is no question of more than one marriage. Neither Jesse C. Dixon nor Elizabeth had ever been married before, or attempted to marry thereafter. So there is no conflict of presumptions like that of innocence from crime, to combat the presumption of marriage; nor is there any claim of incapacity to contract.

There remains to be mentioned in the above classification the case of *Haley v. Goodheart*, 58 Eq. 368, affirmed 72 Eq. 953. That case was decided on unusual and overwhelming evidence of the bad character of the mother of the claimant, and the dissolute life of his alleged father, since deceased. The father did not reside permanently with the claimant's mother, but resided with his own mother and sisters, and for the last three years of his life never saw the claimant's mother, nor did he exercise in the boy's behalf a power of appointment under will by which he had the right to dispose of considerable property.

In the present *Dixon* case no evidence whatever was adduced against the good character of either Jesse C. Dixon or Elizabeth Dixon, also known as Carroll. They lived openly together as man and

wife, being introduced as such to friends and neighbors. They were hard working, respectable colored people. Jesse C. Dixon was a lodge member all his life and a porter on the New York, New Haven and Hartford Railroad for over 25 years. That he did not choose to tell his nephew in New Jersey about his family life was his own affair. Jesse C. Proctor, the nephew, never visited his uncle in New York City, where he might easily have found him and his family. It is not, therefore, a sufficient answer for the complainants to allege that if Jesse C. Dixon had been married he would have told it to his nephew.

POINT VII.

The burden of proof to deny a *prima facie* marriage is on the party questioning it.

There is quoted in *Smith v. Smith, supra*, the following paragraph from *Piers v. Piers*, 2 H. L. 231:

“A question of the validity of a marriage cannot be tried like any other question of fact which is independent of presumption, for the law will presume in favor of marriage. This presumption must be met by strong, distinct and satisfactory disproof.”

Piers v. Piers, 2 H. L. 231.

The only proof brought against the marriage of Jesse C. Dixon and Elizabeth James by the complainant is, as has already been stated, the deed of real estate executed by him to his brother, David A. Dixon, in 1912 in which he is described as unmarried; the statement made once to a nephew in his apartment that the woman there was his housekeeper; and the fact that he never told his relatives in New Jersey that he was married.

There was little reason for Jesse C. Dixon confiding in his relatives in New Jersey. He had not spoken to his brother, David A. Dixon, for 14 years, having quarreled with him about the same piece of real estate. His only other relatives were nephews and nieces, and those he saw occasionally in New Jersey, but none of them ever visited him. The declaration to the nephew as to his housekeeper, if made at all, was not made in the presence of Mrs. Dixon or Carroll, as she denied having heard it.

In the case of *Costill v. Hill* the husband attempted to deed property as unmarried. In *Smith v. Smith, supra*, the husband on several occasions executed deeds where he described another woman as his wife and had her join with him, but in both these cases the marriage was held to be sufficiently proved in spite of such testimony.

“It is noticed that all this contradictory testimony comes from parties in interest in this controversy and their dependents (wives) and that it is subject to the criticism which is properly accorded to interested testimony.”

Costill v. Hill, 55 N. J. Eq. 479.

Like Smith, Dixon's execution of the deed may have been to make evidence against his wife, but the more likely explanation has already been given by Mrs. Dixon, or Carroll, in her testimony, that he wanted money and was bound to sell whether she would join in the deed or not. It is not to be assumed that he deliberately planned to avoid his marriage and bastardize his issue. To give weight to such testimony would be in contravention of all the rules of law and justice.

On the contrary, Jesse C. Dixon was a loving father and husband, as his letters would prove if admitted in evidence. He worked all his life, and supported his family, and never foreswore his

marriage or attempted to repudiate his obligations as a father and a husband. The complainants have failed to give any proof to overthrow this steadfast moral conduct of a lifetime.

There is then proved from the testimony, an intent on the part of Jesse C. Dixon and Elizabeth to enter into a state of matrimony, a contract which was proved by the testimony of one of the parties, Elizabeth Dixon, to the present words of the contract of marriage before the minister. There is also proved the continued connubial cohabitation and repute in the neighborhood in which they lived in New York City of Jesse C. Dixon and Elizabeth under the name of Mr. and Mrs. Jesse Carroll from 1906 to 1926 when he died. There is proved the birth and paternity of the three children, Theodore Carroll, Louise Carroll and John Carroll, and their relationship to David A. Dixon whose property is now to pass under the intestacy laws of the State of New Jersey in this proceeding.

The rights of no other children of Jesse C. Dixon, or of any other person claiming to be the wife of Jesse C. Dixon, or the husband or issue of Elizabeth Dixon or Carroll, are involved, and there are no other parties making such claim. The only parties attempting to destroy the clear matrimonial intent with which Jesse C. Dixon and Elizabeth Dixon entered into their marital relationship, and continued that marital relation, and brought up their children to take their place in society on that basis, are nephews and nieces of Jesse C. Dixon who hope, by destroying the marriage, to increase their own shares in the estate of David A. Dixon, deceased. Will this Court, weighing the rights of all parties herein, hold that the evidence produced for the marriage is in-

sufficient? The cases above cited on the marriage relationship and legitimacy of issue do not warrant such a finding.

The decree of the Court of Chancery should be reversed and the parties Theodore Carroll, Louise Carroll and John Carroll held to be the legitimate children of Jesse C. Dixon, deceased, and so entitled to share with the other nieces and nephews in the estate of David A. Dixon, deceased, as his heirs and next of kin.

Respectfully submitted,

GROSSO, BRUNDAGE & ANDERSON,
Solicitors for and of Counsel with
Defendants-Appellants Carroll.



