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## New Jersey Prerogative Court

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In the matter  
of  
The Estate of Lillian Nordica  
Young, deceased.

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### **Notice of Appeal.**

(Filed July 26, 1918.)

Please take notice that George W. Young, widower, next of kin and heir at law of Lillian Nordica Young, deceased, appellant in the above entitled matter, hereby appeals from the Decree or Order made by the Ordinary on the 1st day of July, A. D. 1918, affirming the Decree or Order of the Monmouth County Orphans' Court, made on the 18th day of October, 1916, admitting to probate the paper writing purporting to be the Last Will and Testament of the said decedent, dated January 10th, 1914, and dismissing the petition of the said George W. Young, for the probate of a paper writing purporting to be the Last Will and Testament of the said decedent, dated July 3rd, 1910, and from the whole and every part of said Decree or Order with the exception of that part thereof

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*Notice of Appeal.*

which allows costs and counsel fees to the New Jersey Court of Errors and Appeals.

ZIEGENER & LANE,  
Proctors for Appellant.

10 Harry Lane,  
Of Counsel.

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

HARRY LANE,  
Of Counsel with Appellant.

To

20 Hartshorne, Insley & Leake, Esqs.,  
Proctors for Robert S. Baldwin,  
Executor and others, Respondents.  
Osborne & Astley, Esqs.,  
Proctors for Imogene Castillo, Respondent.

(Service duly acknowledged.)

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**Petition of Appeal.**

(Filed August 14, 1918.)

(Title of Cause.)

To The New Jersey Court of Errors & Appeals,  
in the Last Resort in all Causes:

The Petition of George W. Young, widower,  
next of kin and heir at law of Lillian Nordica  
Young, late of the County of Monmouth and  
State of New Jersey, respectfully shows:

10

That your petitioner finds himself aggrieved  
by a Final Decree or Order entered on the 1st  
day of July, A. D. 1918, in the New Jersey  
Prerogative Court, affirming the Decree or Order  
of the Monmouth County Orphans' Court, ad-  
mitting to probate the paper writing, bearing  
date January 10th, 1914, purporting to be the  
Last Will and Testament of Lillian Nordica  
Young, deceased, and denying probate of the  
paper writing, dated July 3rd, 1910, being the  
Last Will and Testament of the said Lillian  
Nordica Young, deceased.

20

Your petitioner shows that said Final Decree  
or Order is erroneous and he is aggrieved there-  
by in the following particulars: That the said  
Court below adjudicated that the said paper  
writing was properly executed whereas in fact  
it is insisted:

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1. That probate of said paper writing, dated  
January 10th, 1914, purporting to be the Last  
Will and Testament of the said Lillian Nordica  
Young, deceased, should have been refused and  
denied.

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*Petition of Appeal.*

2. That the paper writing, dated July 3rd, 1910, should have been admitted to probate as the Last Will and Testament of the said Lillian Nordica Young, deceased.

10 3. That the said paper writing, dated January 10th, 1914, purporting to be the Last Will and Testament of the said Lillian Nordica Young, deceased, was admitted to probate without proof that the said paper writing was understandingly published and declared by the said Lillian Nordica Young, deceased, and without proof that the said paper writing was executed and in accordance with the provisions of the statute in such case made and provided.

20 4. That the said paper writing, dated January 10th, 1914, was not properly executed in accordance with the provisions of the statute in such case made and provided, in that it was not published and declared in accordance and compliance with the said statute and in the presence of two witnesses after it had been signed by the testatrix; and in other respects the execution of the said paper writing was defective.

30 5. That there was no proof that the said Lillian Nordica Young, deceased, knew the contents of the said paper writing, dated January 10th, 1914, at the time she signed it, or knew that it was the Will she wished to execute.

40 6. That there was no proof of any facts to justify the Court in inferring that the said Lillian Nordica Young, deceased, knew the contents of the said paper writing, dated January 10th, 1914, or knew that it was the Will she wished to execute.

*Petition of Appeal.*

7. That there was no proof that the said Lillian Nordica Young, deceased, read the said paper writing, dated January 10th, 1914, at the time she signed, same or at any other time.

8. That there was no proof that the said paper writing was read to the said Lillian Nordica Young, deceased, at the time she signed it, or at any other time. That the burden of proof that the said Lillian Nordica Young, deceased, knew the contents of the said paper writing, dated January 10th, 1914, at the time she signed it, or knew that it was the Will she wished to execute, or that she read it, or that it was read to her, was upon the respondents and the contestants of the 1910 Will, which burden was not sustained.

9. That there was affirmative proof that the said Lillian Nordica Young, deceased, did not read the said paper writing, dated January 10th, 1914; that it was not read to her, and that the contents were not stated to her.

10. That there was proof that the said paper writing dated January 10th, 1914, was not understandingly published and declared, and was not properly executed by the said Lillian Nordica Young, deceased, in accordance and compliance with the statute in such case made and provided.

11. That there were circumstances, which cast upon the respondents and the contestants of the 1910 Will the burden of proof that there was not undue influence exercised upon the said Lillian Nordica Young, deceased, which burden

*Petition of Appeal.*

the said respondents and contestants did not sustain.

12. That the said paper writing dated January 10th, 1914, was the product of undue influence, exercised upon the said Lillian Nordica Young.

10 Your petitioner complains and alleges that the portion of said Decree or Order, affirming the Decree or Order of the Monmouth County Orphans' Court, admitting to probate the paper writing, dated January 10th, 1914, as the Last Will and Testament, of Lillian Nordica Young, deceased, is erroneous, improper and illegal, and that the proceedings before the Orphans' Court of the County of Monmouth, and upon which the said portion of said Decree was based was without the jurisdiction of the said court; and that your petitioner is aggrieved thereby

20 Your petitioner complains and alleges that the portion of the said Decree or Order, affirming the Decree or Order of the Monmouth County Court, admitting to probate the paper writing dated January 10th, 1914, as the Last Will and Testament of Lillian Nordica Young, deceased, is erroneous, improper and illegal in that the Orphans' Court of the County of Monmouth was without jurisdiction to admit the paper writing of January 10th, 1914, to probate for the following reasons:

30 (a) There was no petition on file for the probate of said alleged Will of 1914.

(b) The said Orphans' Court was without power or jurisdiction to permit the filing of a petition for the probate of the said alleged Will of 1914 *nunc pro tunc*.

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*Petition of Appeal.*

(c) There was no certification from the Surrogate that there was a contest to the probate of the alleged Will of 1914.

(d) There was nothing before the said Orphans' Court relating to the probate of the said alleged Will of 1914, upon which the said Court could act.

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(e) There was no citation issued on any application or petition to probate the said alleged Will of 1914.

And your petitioner is aggrieved thereby.

Your petitioner therefore prays that the said final Decree or Order of the Ordinary, affirming the Decree of the Monmouth County Orphans' Court, admitting said paper writing, dated, January 10th, 1914, to probate as the Last Will and Testament of Lillian Nordica Young, deceased, bearing date January 10th, 1914, and denying probate of the paper writing, dated July 3rd, 1910, as the Last Will and Testament of the said Lillian Nordica Young, deceased, may be reversed, set aside and for nothing holden, that said cause may be remitted to said New Jersey Prerogative Court, with directions to enter a Decree or Order adjudging that the said paper writing dated January, 10th, 1914, purporting to be the Last Will and Testament of the said Lillian Nordica Young, deceased, was not properly executed as the Last Will and Testament of Lillian Nordica Young, deceased, and is not the Last Will and Testament of the said Lillian Nordica Young, deceased, and directing the Monmouth County Orphans' Court to refuse probate thereof and directing the said Monmouth County Orphans' Court to admit to probate the

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*Petition of Appeal.*

10 paper writing dated July 3rd, 1910 as the Last  
Will and Testament of the said Lillian Nordica  
Young, deceased, or that the Ordinary may be  
directed to make a proper decree or order and  
that your petitioner may have such other and  
further relief in the premises as to this Honorable  
Court shall seem meet.

ZIEGENER & LANE,  
Proctors for Appellant.

Harry Lane,  
of Counsel.

(Service duly acknowledged).

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**Answer of Robert S. Baldwin.****NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.**

Answer of Robert S. Baldwin, Executor of the Last Will and Testament of Lillian Nordica Young, Deceased, to the Petition of Appeal.

10

The answer of the above named respondent to the petition of appeal of George W. Young, appellant, respectfully shows:

This respondent not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereto says and admits that a decree was made and entered in the Prerogative Court of the State of New Jersey on the first day of July, 1918, and as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

20

This respondent is advised and believes, and submits that said decree is just and in accordance with the law and denies that said decree or any part thereof is erroneous, improper or illegal, but on the contrary, alleges that said decree in every part thereof is legal, proper and correct.

He, therefore, prays that the said decree may be in all things affirmed with costs to be adjudged to this respondent.

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HARTSHORNE, INSLEY & VREELAND,  
Proctors and of Counsel with Respondent.

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**Answer of Annie Baldwin.**NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.

(Title of Cause.)

10 Answer of Annie Baldwin, Executrix of the  
Last Will and Testament of Lillian Nordica  
Young, Deceased, to the Petition of Appeal.

The answer of the above named respondent  
to the petition of appeal of George W. Young,  
appellant, respectfully shows:

20 This respondent not acknowledging all or any  
of the matters which in said petition of appeal  
are contained to be true, for answer thereto  
says and admits that a decree was made and en-  
tered in the Prerogative Court of the State of New  
Jersey on the first day of July, 1918, and as to the  
substance and form thereof, this respondent prays  
to refer thereto when the same shall be pro-  
duced.

This respondent is advised and believes, and  
submits that said decree is just and in accordance  
with the law and denies that said decree or any  
part thereof is erroneous, improper or illegal,  
but on the contrary, alleges that said decree in  
every part thereof is legal, proper and correct.

30 She, therefore, prays that the said decree may  
be in all things affirmed with costs to be ad-  
judged to this respondent.

HARTSHORNE, INSLEY & VREELAND,  
Proctors and of Counsel with Respondent.

**Answer of Ione Walker.**NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.

(Title of Cause.)

Answer of Ione Walker, Executrix of the Last Will and Testament of Lillian Nordica Young, Deceased, to the Petition of Appeal. 10

The answer of the above named respondent to the petition of appeal of George W. Young, appellant, respectfully shows:

This respondent not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereto says and admits that a decree was made and entered in the Prerogative Court of the State of New Jersey on the first day of July, 1918, and as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. 20

This respondent is advised and believes, and submits that said decree is just and in accordance with the law and denies that said decree or any part thereof is erroneous, improper or illegal, but on the contrary, alleges that said decree in every part thereof is legal, proper and correct.

She, therefore, prays that the said decree may be in all things affirmed with costs to be adjudged to this respondent. 30

HARTSHORNE, INSLEY & VREELAND,  
Proctors and of Counsel with Respondent.

**Answer of Imogene Castillo.**NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.

(Title of Cause.)

10 The answer of Imogene Castillo, one of the  
respondents herein, to the petition of appeal of  
George W. Young, Caveator-Appellant, in the  
above stated cause.

20 This respondent, not acknowledging all or any  
of the matters which in the said petition of  
appeal are contained to be true, for answer  
thereto, nevertheless, says and admits, that a  
decree was made in the Prerogative Court of  
the State of New Jersey, bearing date July 1st,  
1918, and filed in the said Prerogative Court on  
the 2nd day of July, 1918, in the cause for that  
purpose mentioned in the said petition, as is  
therein stated; but as to the substance and form  
thereof, this respondent prays to refer thereto  
when the same shall be produced.

And this respondent is advised and believes,  
that the said decree is agreeable to equity and  
justice, and she prays that the same may be  
affirmed, with costs to be adjudged to this re-  
spondent.

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OSBORNE & ASHLEY,  
Proctors for Respondent,  
Imogene Castillo.

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**Notice of Appeal to Prerogative Court.**

(Filed November 14, 1916.)

**MONMOUTH COUNTY ORPHANS COURT.**


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In the Matter  
of  
LILLIAN NORDICA YOUNG, De-  
ceased.

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10

George W. Young, widower and heir-at-law of Lillian Nordica Young hereby makes appeal from the decree made by the Monmouth County Orphans Court on the 19th day of October, 1916, ordering the probate of the paper writing purporting to be the last will and testament of the said decedent dated January 10th, 1914, and dismissing the petition of the said George W. Young, for the probate of a paper writing purporting to be the last will and testament of said decedent dated July 3rd, 1910, and from the whole and every part thereof to the Prerogative Court of the State of New Jersey.

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Dated November 14-16.

30

ZIEGENER &amp; LANE,

Proctors for and of counsel with Appellant.

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

HARRY LANE,

Of counsel with Appellant.

(Service duly acknowledged.)

(Formal orders entered extending time to file Petition of Appeal and Transcript of Record

40

*Petition of Appeal.*

because of inability of Surrogate to get transcript out in time.)

**Petition of Appeal.**

10

(Filed February 28, 1917.)

## NEW JERSEY PREROGATIVE COURT.

In The Matter

of

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The Appeal from the Order or Decree of the Orphans' Court of the County of Monmouth, admitting to probate a certain paper writing, dated January 10, 1914, as the last will and testament of Lillian Nordica Young, deceased; and denying the probate of her last will and testament, dated July 3, 1910.

30

To the Ordinary of the State of New Jersey.

The petitioner, George W. Young, of the Township of Ocean, in the County of Monmouth and State of New Jersey, respectfully shows that:

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First.—Petitioner was the husband and the only next of kin of Lillian Nordica Young, late of the County of Monmouth, New Jersey, deceased. On the 19th of October, 1916, the Orphans' Court of the County of Monmouth

*Petition of Appeal.*

made its order, admitting to probate a certain paper writing, dated January 10, 1914, alleged to be the last will and testament of the said Lillian Nordica Young, deceased; and denying the probate of the last will and testament of the said Lillian Nordica Young, deceased, dated July 3, 1910. 10

Second.—Your petitioner complains and alleges that the whole and every part of the aforesaid decree is erroneous, improper and illegal and that your petitioner is aggrieved thereby.

Third.—Your petitioner complains and alleges that the whole and every part of the aforesaid decree is erroneous, improper and illegal, in that it admitted to probate a certain paper writing, dated January 10, 1914, alleged to be the last will and testament of the said Lillian Nordica Young, deceased; whereas it should have refused and denied to probate said paper writing as the last will and testament of the said Lillian Nordica Young, deceased, and that your petitioner is aggrieved thereby. 20

Fourth.—Your petitioner complains and alleges that the whole and every part of the aforesaid decree is erroneous, improper and illegal, in that it refused and denied the probate of the last will and testament of the said Lillian Nordica Young, dated July 3, 1910; whereas it should have admitted the said last will and testament, dated July 3, 1910, to probate as the last will and testament of the said Lillian Nordica Young, deceased, and that your petitioner is aggrieved thereby. 30

Fifth.—Your petitioner complains and alleges 40

*Petition of Appeal.*

10 that the whole and every part of the aforesaid decree is erroneous, improper and illegal, in that it ordered, adjudged and decreed that the document offered for probate as the last will and testament of the said Lillian Nordica Young, deceased, dated July 3, 1910, was revoked by the alleged will, dated January 10, 1914; and that your petitioner is aggrieved thereby.

20 Sixth.—Your petitioner complains and alleges that the whole and every part of the aforesaid decree is erroneous, improper and illegal, in that it admitted to probate a certain paper writing, dated January 10, 1914, alleged to be the last will and testament of the said Lillian Nordica Young, deceased, without proof that the said paper writing was understandingly published and declared by the said Lillian Nordica Young deceased, and without proof that the said paper writing was properly executed in accordance with the provisions of the statute in such case made and provided; and your petitioner is aggrieved thereby.

30 Seventh.—Your petitioner is further aggrieved by the said decree, admitting to probate said paper writing, dated January 10th, 1914, alleged to be the Last Will and Testament of the said Lillian Nordica Young, deceased, for the following reasons, to wit:

40 (a) That the said paper writing was not properly executed in accordance with the provisions of the statute in such case made and provided, in that it was not published and declared in accordance and compliance with the said statute and in the presence of two witnesses after it had been signed by the testatrix; and in other re-

*Petition of Appeal.*

spects the execution of said paper writing was defective.

(b) There is no proof that the said Lillian Nordica Young, deceased, knew the contents of the said paper writing, dated January 10th, 1914, at the time she signed it, or knew that it was the will she wished to execute.

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(c) There is no proof of any fact to justify the court in inferring that the said Lillian Nordica Young, deceased, knew the contents of the said paper writing dated January 10th, 1914, or knew that it was the will she wished to execute.

(d) There is no proof that the said Lillian Nordica Young read the said paper writing, dated January 10th, 1914, at the time she signed same, or at any other time.

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(e) There is no proof that the said paper writing was read to the said Lillian Nordica Young, deceased, at the time she signed it, or at any other time.

(f) The burden of proof that the said Lillian Nordica Young knew the contents of the said paper writing at the time she signed it, or knew that it was the will she wished to execute, or that she read it; or that it was read to her was upon the contestants of the 1910 Will, which burden the said contestants did not sustain.

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(g) There is affirmative proof that the said Lillian Nordica Young, deceased, did not read the said paper writing, dated January 10th, 1914; that it was not read to her; that its contents were not stated to her;

(h) There is proof that the said paper writing

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*Petition of Appeal.*

of January 10th, 1914 was not understandingly published and declared and was not properly executed by the said Lillian Nordica Young, deceased, in accordance and compliance with the statute in such case made and provided.

- 10 (i) That there were circumstances which cast upon the contestants of the 1910 Will the burden of proof that there was not undue influence exercised upon the said Lillian Nordica Young, deceased, which burden the said contestants did not sustain.

20 Eighth.—Your petitioner complains and alleges that the portion of said decree, admitting to probate the paper writing of January 10th, 1914, as the Last Will and Testament of Lillian Nordica Young, deceased, is erroneous, improper and illegal, in that the proceedings before the Orphans' Court of the County of Monmouth and upon which the said portion of said decree was based, was without the jurisdiction of the said court; and that your petitioner is aggrieved thereby.

30 Ninth.—Your petitioner claims that the portion of said order or decree, admitting to probate the paper writing of January 10th, 1914, as the Last Will and Testament of Lillian Nordica Young, deceased, is erroneous, improper and illegal, in that the Orphans' Court of the County of Monmouth was without jurisdiction to admit the paper writing of January 10th, 1914, to probate for the following reasons:

- 40 (a) There was no petition on file for the probate of said alleged Will of 1914.
- (b) The said Orphans' Court was without

*Petition of Appeal.*

power or jurisdiction to permit the filing of a petition for the probate of said alleged Will of 1914 *nunc pro tunc*.

(c) There was no certification from the Surrogate that there was a contest to the probate of the alleged Will of 1914.

10

(d) There was nothing before the said Orphans' Court, relating to the said alleged Will of 1914, upon which it could act.

(e) There was no citation issued on any application or petition to probate the said alleged will of 1914.

And your petitioner is aggrieved thereby.

Your petitioner, therefore, prays that the aforesaid order or decree of the said Orphans' Court of the County of Monmouth, and every part thereof, be reversed by this Court; or that an order may be made herein, admitting to probate the paper writing of July 3, 1910, as the last will and testament of the said Lillian Nordica Young, deceased; and that your petitioner may have such further and other relief in the premises as may be proper.

20

Dated, February 26th, 1917.

ZIEGENER & LANE,

30

Proctors for Appellant-Petitioner.

Harry Lane,

Of Counsel.

(Service duly acknowledged.)

40

**Answer to Petition of Appeal.**

(Filed March 9, 1917.)

NEW JERSEY PREROGATIVE COURT.

(Title of Cause.)

10

The answer of Robert S. Baldwin, executor, Annie N. Baldwin and Ione Walker, legatees, to the petition of appeal of George W. Young, appellant.

These respondents answering say:

1. Respondents deny that George W. Young was the only next of kin of Lillian Nordica Young, and say that Ione Walker and Annie N. Baldwin, two of these respondents, are sisters and next of kin of said Lillian Nordica Young.

20

Respondents admit the other allegations of paragraph one.

2. Respondents say that the whole and every part of the decree referred to in paragraph two is just and in accordance with law, and deny that said decree, or any part thereof, is erroneous, improper and illegal.

30

Respondents allege that petitioner is neither interested in the estate of Lillian Nordica Young, aggrieved thereby, nor entitled to appeal therefrom.

3. Respondents say that the decree referred to in paragraph three of the petition of appeal is just and in accordance with law, and deny that said decree, or any part thereof, is erroneous, improper or illegal. Respondents say that said decree should not have denied to probate the said paper writing as the last will and testament of said Lillian Nordica Young, and allege

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*Answer to Petition of Appeal.*

that petitioner is neither interested in the estate of Lillian Nordica Young, aggrieved thereby, nor entitled to appeal therefrom.

4. Respondents say that the decree referred to in paragraph four of the petition of appeal is just and in accordance with law, and deny that said decree, or any part thereof, is erroneous, improper or illegal. Respondents say that said decree should not have admitted to probate the paper writing of July 3, 1910, as the last will and testament of Lillian Nordica Young, and allege that petitioner is neither interested in the estate of Lillian Nordica Young, aggrieved thereby, nor entitled to appeal therefrom.

10

5. Respondents say that the decree referred to in paragraph five of the petition of appeal is just and in accordance with law, and deny that said decree, or any part thereof, is erroneous, improper or illegal, for the reasons stated in said paragraph.

20

Respondents allege that petitioner is neither interested in the estate of Lillian Nordica Young, aggrieved thereby, nor entitled to appeal therefrom.

30

6. Respondents say that the decree referred to in paragraph six of the petition of appeal is just and in accordance with law, and deny that said decree, or any part thereof, is erroneous, improper or illegal.

Respondents deny that said paper writing was admitted to probate without proof or execution, as set forth in said paragraph, and allege that said paper writing of January 10, 1914, admitted

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*Answer to Petition of Appeal.*

to probate as the last will and testament of Lillian Nordica Young, was duly and regularly published and executed in accordance with the statute in such case made and provided.

10 Respondents allege that the petitioner is neither interested in the estate of Lillian Nordica Young, aggrieved thereby, nor entitled to appeal therefrom.

7. Respondents.

20 (A).—Deny the allegations of sub-division A of paragraph seven, and allege that the said paper writing was duly and properly executed, published, declared and proved in accordance and in compliance with the statute in such case made and provided, and in the presence of two witnesses, after it had been signed by the testatrix.

(B).—Respondents deny sub-division B of paragraph seven, and allege that Lillian Nordica Young was a woman of education, able to read and write, knew the contents of the said paper writing of January 10, 1914, knew that it was the will she was to execute, and declared that she had read it and knew its contents.

30 (C).—Respondents deny the allegations of sub-division C of paragraph seven, and allege that Lillian Nordica Young knew the contents of said paper writing referred to in said sub-division, and knew that it was the will she was to execute.

Respondents also allege that there was proof of said facts before the said Orphans' Court.

40 (D).—Respondents deny the allegations of sub-division D of paragraph seven, and allege

*Answer to Petition of Appeal.*

that there was proof before the said Orphans' Court that said Lillian Nordica Young read and understood the said paper writing.

(E).—Respondents deny the allegations of subdivision E of paragraph seven, and allege that Lillian Nordica Young knew the contents of said paper writing and declared she knew and understood the same, all of which was duly proved before the Orphans' Court of said Monmouth County.

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(F).—Respondents deny the allegations of subdivision F of paragraph seven, and say that the burden of proof was upon petitioner. He failed to produce any evidence before the said Orphans' Court in support of the said burden of proof or against the due and proper publication and execution of the said last will and testament of Lillian Nordica Young, dated January 10, 1914.

20

(G).—Respondents deny the allegations of subdivision G of paragraph seven, and say that said Lillian Nordica Young declared that she had read the said paper writing and that its contents were known to her, and that it expressed her last will and wish, all of which was duly proved before said Orphans' Court of Monmouth County.

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(H).—Respondents deny the allegations of subdivision H of paragraph seven and say that said paper writing of January 10, 1914, was understandingly published and declared and properly executed by said Lillian Nordica Young, in accordance with the statute in said case made and provided, all of which was duly proved before the Orphans' Court of Monmouth County.

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*Answer to Petition of Appeal.*

10 (I).—Respondents deny the allegations of sub-division I of paragraph seven, and allege that no undue influence was exercised upon said Lillian Nordica Young, and there was no proof of any circumstances of undue influence or any circumstance which justified any inference thereof. Petitioner produced no evidence whatsoever in support thereof before the Orphans' Court of Monmouth County.

8. Respondents say that the decree referred to in paragraph eight of the petition of appeal is just and in accordance with law, and deny that said decree, or any part thereof, is erroneous, improper or illegal.

20 Respondents deny that the Orphans' Court of the County of Monmouth was without jurisdiction, but allege that said Orphan's Court had full and complete jurisdiction of the probate of the last will and testament of said Lillian Nordica Young, and that all parties interested in or affected by the probate of the last will and testament of said Lillian Nordica Young appeared before said Court in person and by attorney.

30 9. Respondents deny that the decree referred to in paragraph nine of the petition of appeal is erroneous, improper and illegal for any of the reasons stated therein, and allege that the Orphans' Court of the County of Monmouth had complete jurisdiction to admit the paper writing of January 10, 1914, to probate as the last will and testament of Lillian Nordica Young.

Respondents also—

40 (A).—Deny sub-division A of paragraph nine,

*Answer to Petition of Appeal.*

and allege that a petition for the probate of the will of 1914 was on file in the Orphans' Court of Monmouth County, and the Court had taken jurisdiction of the probate of the last will and testament of Lillian Nordica Young.

(B).—Respondents deny the allegations of subdivision B of paragraph nine, and allege that the Orphans' Court had full power and jurisdiction to permit the filing of a petition for the probate of said will of 1914, *nunc pro tunc*.

10

(C).—Respondents deny the allegations of subdivision C of paragraph nine, and allege that the petition filed by the petitioner set forth the existence of the will of 1914, and allege that there was a contest in relation thereto.

20

(D).—Respondents deny the allegations of subdivision D of paragraph nine, and allege that the said Orphans' Court had before it the petition filed by the petitioner, setting forth the existence of the will of 1914, and the said Orphans' Court had full jurisdiction to probate the said last will and testament of Lillian Nordica Young.

(E).—Respondents deny the allegations of subdivision E of paragraph nine, and allege that citations were issued on the probate of the last will and testament of Lillian Nordica Young, including the will of 1914, and say that all parties interested in the probate of said last will and testament of Lillian Nordica Young were present in person or by attorney before said Court, and said Court had full jurisdiction thereof.

30

10. Respondents deny each and every allega-

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*Answer to Petition of Appeal.*

tion of the petition of appeal, except those which are expressly admitted herein.

10 11. Respondents say that prior to the probate of the last will and testament of said Lillian Nordica Young, the petitioner, George W. Young, sold, assigned, transferred and set over unto Archibald White, of New York City, all the right, title and interest of the said George W. Young, as husband and next of kin of Lillian Nordica Young, deceased, and as legatee under the alleged paper writing of July 3, 1910, and also all the right, title, interest, claim, debt, demand or distributive share in the estate of Lillian Nordica Young, deceased.

20 Respondents further allege that said George W. Young, the petitioner herein, has no interest, direct or indirect, in the estate of Lillian Nordica Young, nor in the probate of her last will and testament, and is not aggrieved by the order or decree of the Orphans' Court of Monmouth County.

30 Respondents say that for the reasons above set forth, the said petitioner, George W. Young, is not entitled to appeal from the order or decision of said Orphans' Court of Monmouth County.

Respondents, therefore, pray that said decree may be in all things affirmed, with costs and counsel fee to be adjudged to respondents.

Dated, March 8, 1917.

HARTSHORNE, INSLEY & LEAKE,

Proctors for and of  
Counsel with Respondents.

**Answer to Petition of Appeal.**

(Filed, March 5th, 1917.)

## NEW JERSEY PREROGATIVE COURT.

(Title of Cause.)

Answer of Imogene Castillo, a respondent, to  
petition of appeal of George W. Young, appellant. 10

This respondent, not acknowledging all or any  
of the matters which in the said petition of ap-  
peal are contained, to be true for answer thereto,  
nevertheless says and admits that a decree ad-  
mitting to probate the last will of Lillian Nor-  
dica Young dated January 10, 1914, and re-  
fusing probate of an alleged will dated July  
3, 1910, was duly made and entered in Mon-  
mouth County Orphans' Court, but as to the sub-  
stance and form thereof, this respondent prays 20  
to refer thereto when the same shall be pro-  
duced, and this respondent is advised and be-  
lieves that the said decree is in all respects a  
proper decree, and that it contains no error, and  
respondent says that such decree is not errone-  
ous, illegal, nor improper in any of the par-  
ticulars set out in said petition of appeal.

And this respondent prays that the said decree  
may be affirmed with costs to this respondent. 30

ORSBORNE &amp; ASTLEY,

Proctors for Imogene Castillo, Respondent,  
800 Broad Street,  
Newark, New Jersey.

**Decree Dismissing Appeal.**

## NEW JERSEY PREROGATIVE COURT.

10	In the Matter of The Probate of the Last Will and Testament of Lillian Nordica Young, deceased.	}	On Appeal.
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Wm. H. Osborne,  
Of Counsel.

20 This cause, being the appeal of George W. Young from the decree of the Monmouth County Orphans' Court, admitting to probate the last will and testament of Lillian Nordica Young, deceased, bearing date January 10th, 1914, and denying probate of the paper writing dated July 3, 1910, having been duly argued before the Prerogative Court, held at Chancery Chambers, in the City of Jersey City, in the presence of Hartshorne, Insley & Leake and Osborne & Astley, proctors for proponent-respondent, and Ziegner & Lane, proctors for appellants; and the

30 Court having heard the argument of counsel and considered the same and finding no error in the record or proceedings before the Monmouth County Orphans' Court, and finding that the said Monmouth County Orphans' Court and this Court has jurisdiction of the whole cause:

40 It is, thereupon, on the this first day of July, nineteen hundred and eighteen, ordered, adjudged and decreed, that the judgment and decree of the Monmouth County Orphans' Court, admitting to probate the last will and testament of Lillian Nordica Young, dated January 10th,

*Decree Dismissing Appeal.*

1914, be affirmed, and that the record be remitted to the Monmouth County Orphans' Court to be proceeded with in according with this judgment and the practice of said Court.

And it is further ordered, that Hartshorne, Insley & Leake, proctors for proponent-respondents, Annie Baldwin and Ione Walker, *et al*, be allowed a counsel fee of two thousand dollars and their costs, and that Osborne & Astley, proctors for proponent-respondent Imogene Castillo, be allowed a counsel fee of fifteen hundred dollars and costs, and that Ziegner and Lane, proctors of George W. Young, the appellant be allowed the sum of fifteen hundred dollars and costs, and that Ralph Lum, proctor of E. Romaine Simmons be allowed the sum of twenty-five dollars and costs on the motion to have a portion of the costs and counsel fee assessed against the legacy of E. Romaine Simmons, which motion was denied.

And it is further ordered that said allowance be paid out of the funds of the estate by the administrator *pendente lite* thereof.

E. R. WALKER.

O.

Respectfully advised:

Eugene Stevenson,

V. O.

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**TRANSCRIPT OF RECORD.****Petition of George W. Young for Probate  
of Will Dated, July 3, 1910.**

(Filed Aug. 25, 1914.)

To JOSEPH L. DONAHAY,

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Surrogate of the County of Monmouth,  
New Jersey.

20

George W. Young of the Township of Ocean, in the County of Monmouth, and State of New Jersey, respectfully represents that he is the executor named in the last will and testament of Lillian Nordica Young, dated the third day of July, A. D., 1910. That said Lillian Nordica Young departed this life at Batavia, Java, while a resident of said Township of Ocean, in the County of Monmouth, and State of New Jersey, on or about the tenth day of May, A. D., 1914, leaving her surviving as her heirs at law and next of kin, the following named persons, to wit:

George W. Young, husband, Post Office, Deal, New Jersey.

(Mrs.) Imogene Castillo, sister, Post Office, Los Angeles, Cal.

30

(Mrs.) Annie Baldwin, sister, Post Office, Dorchester, Mass.

(Mrs.) Ione Walker, sister, Post Office, Dorchester, Mass.

A dispute has arisen respecting the existence of an alleged later will of the said Lillian Nordica Young, purporting to be dated January 10, 1914, the existence or validity of which is denied by the said George W. Young, a copy of the said alleged instrument is annexed hereto.

40

That said testator died seized of real estate to

*Petition of G. W. Young for Probate of Will.*

the value of \$50,000 and was possessed of personal property to the value of \$200,000.

Therefore, the said George W. Young, respectfully applies for probate of the said last will and testament and for letters testamentary thereon.

10

Dated, August 25th, A. D., 1914.

GEORGE W. YOUNG.

Monmouth County, ss.:

George W. Young, named in the above application, being duly sworn, on his oath says that the matters and things set forth in the above application are true, to the best of his knowledge and belief.

GEORGE W. YOUNG.

Sworn before me at Freehold, )

20

N. J., August 25, 1914. }

Joseph L. Donahay,

Surrogate.

(Will annexed.)

In the name of God, amen: I, Lillian Nordica Young, of Ocean Township, County of Monmouth, and State of New Jersey, wife of George W. Young, banker, being of sound and disposing mind, do hereby make, publish and declare, this to be my last will and testament.

30

First.—I request that my executor hereinafter named, to pay all of my just debts and funeral expenses as soon after my demise as may be practicable.

Second.—I give, devise and bequeath to my husband, George W. Young, and his heirs, all of my estate, real, personal and mixed and wheresoever situated, absolutely and forever.

40

Third.—I hereby nominate, constitute and ap-

*Petition of G. W. Young for Probate of Will.*

point my said husband, the sole executor of  
 this my will with full power to him to sell,  
 transfer and convey the whole or any part of  
 my estate and wheresoever situated, at any  
 time, or from time to time, for such price or  
 10 prices or on such terms as to my said executor  
 shall seem proper and with full power also to  
 retain any investments made by me, and I di-  
 rect that my executor shall not be required to  
 give any bond or other security for the faithful  
 performance of his duties as such.

Fourth.—I hereby revoke all wills and codicils  
 heretofore made by me.

In witness whereof, I have to this my last will  
 and testament, consisting of two pages sub-  
 20 scribed my name and affixed my seal this third  
 day of July, in the year of our Lord, one thou-  
 sand, nine hundred and ten.

LILLIAN NORDICA YOUNG, (L. S.)

Witnesses:           q           ,  
 Ada W. Baldwin,  
 Ernest Romaine Simmons,  
 Howard Constable.

Signed, sealed, published and declared by the  
 30 testatrix, Lillian Nordica Young, as and for her  
 last will and testament, in the presence of us,  
 and each of us, who at the same time, and at  
 the request of said testatrix, in her presence, and  
 in the presence of one another have hereunto  
 signed our names as witnesses, this third day of  
 July, in the year of our Lord, one thousand nine  
 hundred and ten.

Ada W. Baldwin, Ardsley-on-Hudson, N. Y.  
 Ernest Romaine Simmons, Deal Beach, New  
 40 Jersey.  
 Howard Constable, Lyons Falls, Lewis Co.,  
 N. Y.

**Petition for Appointment of Temporary  
Administrator.**

(Filed, Aug. 25, 1914.)

To the Honorable, the Orphans Court of the  
County of Monmouth, in the State of New  
Jersey.

10

The petition of George W. Young of the  
Township of Ocean, in the County of Monmouth  
and State of New Jersey, respectfully shows as  
follows:

1. Lillian Nordica Young, late of the said  
Township of Ocean, departed this life on or  
about the tenth day of May, 1914, leaving a duly  
executed last will and testament, bearing date  
the third day of July, 1910, in and by which,  
after directing the payment of her just debts and  
funeral expenses, she gave, bequeathed and de-  
vised to your petitioner, her husband, all of  
her personal and real property, wheresoever  
situated and nominated and constituted your pe-  
titioner as her sole executor, a copy of which  
will is annexed hereto, and made a part of this  
petition. Your petition has applied for the ad-  
mission of the said will and testament to pro-  
bate and for the issuance of letters testamentary  
thereon unto him. His said application has not  
been granted because a dispute has arisen re-  
specting the existence of an alleged later will of  
the said Lillian Nordica Young, purporting to be  
dated January 10, 1914, the existence or validity  
of which is denied by your petitioner. A copy  
of the said alleged instrument is annexed here-  
to. Your petitioner is informed and believes  
that by reason of the said dispute, the issuance of

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*Petition for Appointment of Temporary Administrator.*

10 letters testamentary upon the estate of the said Lillian Nordica Young will necessarily be delayed for a considerable period of time, particularly as the witnesses to the said alleged will of January 10, 1914, both reside in the Thursday Islands, in the Pacific Ocean, where they cannot be reached by mail for at least two months.

20 2. The said Lillian Nordica Young at the time of her death was possessed of goods, chattels, rights and credits of a value, as near as your petitioner can ascertain, of two hundred thousand dollars. The most valuable of said goods and chattels consist of jewelry which is in the State of New Jersey. In the opinion of your petitioner, it is advisable and necessary, because of the delay which by reason of the above mentioned dispute must necessarily result in the admission to probate of the will of the said Lillian Nordica Young, that an administrator *pendente lite* should now be appointed by this Honorable Court with all the authority usually granted in such cases so that the personal property of the said Lillian Nordica Young may be collected and preserved for distribution to the person or persons who may be entitled thereto.

30 3. The said Lillian Nordica Young left her surviving her husband, your petitioner, and as her only next of kin and heirs at law, three sisters, all of whom are of full age and whose names, residences and post office addresses are as follows:

40 Imogene Castillo, Los Angeles, California.  
Annie Baldwin, Dorchester, Massachusetts.  
Ione Walker, Dorchester, Massachusetts.

*Petition for Appointment of Temporary Administrator.*

4. Your petitioner, therefore, prays that this Honorable Court will forthwith grant letters of administration *pendente lite* upon the estate of the said Lillian Nordica Young to an impartial and disinterested person to be chosen by it, and that such further and other order may be made in the premises as the nature of the case may require.

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And your petitioner will ever pray, etc.

LINDABURY, DEPUE & FAULKS,  
Proctors for Petitioner.

State of New Jersey, }  
County of Monmouth, } ss.:

George W. Young, being duly sworn, according to law, on his oath, says that he is the petitioner in the foregoing petition named; that he has read the said petition, and that the matters therein stated are true.

20

GEORGE W. YOUNG.

Sworn and subscribed to before me }  
this 25th day of August, 1914. }  
Joseph L. Donahay,  
Surrogate.

(Copy 1910, Will annexed)

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(Copy 1914, alleged Will as follows annexed)

I, Lillian Nordica Young, of the City of New York, State of New York, U. S. A. being of clear mind declare this to be my Last Will and Testament.

It is my desire that all my property, real and personal be divided equally between my three sisters, Mrs. Imogene Castillo of Los Angeles, California, Mrs. Annie Baldwin of Dorchester,

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*Petition for Appointment of Temporary Administrator.*

Mass., and Mrs. Ione Walker with the exception of such bequests as I will hereafter make—

10 For the purpose of carrying out the provisions of this will I hereby select as Administrators George W. Young, Robert S. Baldwin, and E. Romaine Simmons who are to serve without compensation beyond the necessary expenses incident to the closing and distribution of the Estate. From these Administrators, no bond is to be exacted.

20 My real property consists of my farm called Norton Woods near Farmington, Maine, my property at Ardsley on the Hudson, N. F., also two houses and lots known as number six (6) and number eight (8) west Ninth Street, New York City, also forty (40) acres more or less with improvements at Harmon on Hudson, N. F. also such property at Deal Beach, New Jersey as now stands in my name also such property as I now hold in Los Angeles, California, also my personal property, including moneys and credits and my jewels, the list or inventory of these jewels may be found at Lloyds, London who when insuring the same some years ago, had an estimate made by the expert Cartier of Paris, also 30 my furs and laces with the exception of the largest lace shawl which is to be returned to Mr. R. Simmons.

In this distribution of my property I am not forgetful of my husband George W. Young to whom I have advanced over four hundred thousand dollars in cash which I estimate as the full or more than the full share to which he might be entitled to my estate. It is however 40 my desire that my husband, George W. Young

*Petition for Appointment of Temporary Administrator.*

shall receive his legal portion of the stock now in my name of the Securities Company.

I also wish that my body shall be cremated and that my ashes be forwarded to my family.

My entire estate when liquidated shall be subject to the following bequests before its division amongst my relatives; Maria Masino, who has been my faithful maid for a period of eight years I bequeath five thousand dollars, (\$5,000), Mrs. Ada Baldwin one thousand dollars (\$1,000) Mr. E. Romaine Simmons, who has been with me for a period of sixteen years the sum of thirty thousand dollars, (\$30,000). 10

I hereby revoke all previous wills by me at any time herefore made, and declare this writing to be my Last Will and Testament. 20

In witness whereof I hereunto set my hand this tenth day of January, in the year of our Lord, one thousand nine hundred and fourteen.

LILLIAN NORDICA YOUNG.

Signed, by the said Lillian Nordica Young the testatrix, in our presence, who in her presence and in the presence of each other at the same time subscribed our names as witnesses. 30

Sadie Charlotte Macdonald, Matron.

Torres Strait Hospital, Thursday Island.

W. M. LaReyn, Government Resident; Thursday Island.

**Order Appointing Administrator Pendente Lite.**

(Filed Aug. 25, 1914.)

10 This matter being opened to the Court by Messrs. Lindabury, Depue & Faulks, Proctors of George W. Young, and it appearing to the Court from the petition of the said George W. Young filed herein that an administrator *pendente lite* of the Estate of Lillian Uordica Young, late of the Borough of Deal, in the County of Monmouth and State of New Jersey, should be appointed pending the determination of the proceedings had upon the application for the admission to probate of a certain writing dated the third day of July, 1910, purporting to be the last will and testament of the said Lillian Nordica Young.

20 It is, on this twenty-fifth day of August, 1914, on motion of Messrs. Lindabury, Depue & Faulks, Proctors as aforesaid, ordered that David S. Crater of Freehold, New Jersey, be and he hereby is appointed administrator *pendente lite* of the goods and chattels, rights and effects of the said Lillian Nordica Young pending the determination of the proceedings for the probate of her last will and testament.

30 It is further ordered that the said David S. Crater before entering upon the duties of his office shall give bond to the Ordinary of the State of New Jersey in the sum of two hundred and fifty thousand conditioned for the due performance and faithful execution of the trusts imposed thereby, to be approved as to form and surety thereby by this Court.

It is further ordered that upon the filing with the Clerk of this Court the said bond duly

*Citation.*

approved as aforesaid, the said David S. Crater shall be and become invested with all the power and authority necessary to enable him to collect and preserve the goods and chattels, rights and credits of the said Lillian Nordica Young, deceased.

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It is further ordered that all parties interested may have leave to apply for further directions, if the case may require.

JOHN E. FOSTER,  
P. J.

Bond of Administrator *pendente lite*.  
(Filed Aug. 25, 1914.)

Letters issued to Administrator *pendente lite*.  
(Filed Aug. 25, 1914.)

20

**Citation.**

(Issued Sept. 10, 1914.)

State of New Jersey, }  
Monmouth County, { ss.:

To George W. Young, E. R. Simmons,  
Robert Baldwin, Anna Baldwin,  
Ione Walker, Imogene Castillo,  
Ada Baldwin, and Maria Masino,  
the persons interested in the  
matter of the estate of Lillian  
Nordica Young, deceased. You  
are cited and warned to appear  
before the Judge of the Orphan's  
Court to be held at Freehold, in

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(L. S.)

and for the County of Monmouth, on Thursday,  
the fifteenth day of October, 1914, at the hour  
of 10 o'clock A. M. in the matter of the applica-

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*Citation.*

tion of George W. Young for an order admitting to probate a paper or papers purporting to be the last will and testament of the said Lillian Nordica Young, deceased, and to abide the judgment and decree of the said Court in the premises.

Witness, John E. Foster, Esquire, Presiding Judge of the said Court, at Freehold, the tenth day of September, nineteen hundred and fourteen.

JOSEPH L. DONAHAY,  
Clerk.

(Endorsed)

Monmouth Orphan's Court  
The State of New Jersey

TO

George W. Young, *et al.*  
Citation to Appear. ,  
Returnable October 15th, 1914.  
Joseph L. Donahay, Clerk.

Duly and personally served on  
George W. Young and E. R.  
Simmons at their residence in  
Deal Park, Mon. Co., New Jersey  
on September 15th, 1914.

Wilbert A. Beecroft, Sheriff.

Other defendants not found in my  
County, Wilbert A. Beecroft, Sheriff.

Received Sep. 15, 1914 Wilbert A. Beecroft,  
Sheriff.

Monmouth County.

**Amended Order of Publication.****MONMOUTH COUNTY ORPHANS' COURT.**

[SAME TITLE.]

Process of citation having been issued in the above matter, and it having been made to appear to the satisfaction of the Court that Robert Baldwin, Anna Baldwin, Ione Walker, Imogene Castillo, Ada Baldwin and Maria Masino, against whom such citations have been issued, reside out of this State.

10

It is thereupon on this tenth day of September, Nineteen hundred and fourteen, ordered that the said Robert Baldwin, Anna Baldwin, Ione Walker, Imogene Castillo, Ada Baldwin and Maria Masino do appear before this Court in the matter of the application of George W. Young, for the probate of a paper or papers purporting to be the last will and testament of the said Lillian Nordica Young, deceased, on Thursday, the fifteenth day of October, Nineteen hundred and fourteen, at ten o'clock in the forenoon, and in default thereof such proceedings will be had against them as if they had appeared in said suit or proceedings, and it is further ordered that the notice of this order prescribed by the rules of the Court of Chancery shall within ten days hereafter be served personally upon the said absent defendants by the delivery of a copy thereof to each of them personally, or in default of such service that said notice be published within the said ten days in the Asbury Park Evening Press, a public newspaper printed at Asbury Park, in the County of Monmouth, in this State, for four weeks successively, once in each week, and in case of such publication that a copy thereof be mailed within the same time to each of the said non-residents directed to his or her post-office address, if the same can be ascertained, in the manner pre-

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scribed by law and the rules of the Court of  
Chancery.

By the Court,

JOHN E. FOSTER,  
P. J.

By the Court,

(Signed) JOHN E. FOSTER,  
P. J.

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**Notice Published and Served Under Order  
of Publication.**

**MONMOUTH COUNTY ORPHANS' COURT.**

To Robert Baldwin, Anna Baldwin, Ione Walker,  
Imogene Castillo, Ada Baldwin, Maria Masino:

20 By virtue of an order of the Orphans' Court of  
the County of Monmouth, made on the 10th day  
of September, 1914, as amended by an order of  
said Court made on the 12th day of September,  
1914, in the matter of the Estate of Lillian Nor-  
dica Young, deceased, you are required to ap-  
pear before the said Court on Thursday, the 15th  
day of October, 1914, at 10:00 o'clock in the  
forenoon in the matter of the application of  
George W. Young for an order admitting to  
30 probate a paper writing dated the 3rd day of  
July, 1910, purporting to be the last will and  
testament of the said Lillian Nordica Young, de-  
ceased, and you are made defendants in the  
said proceeding because you are the next of  
kin of the said Lillian Nordica Young, deceased,  
or are named either as an executor or bene-  
ficiary in another paper writing purporting to be  
the last will and testament of the said Lillian  
Nordica Young, deceased, dated the 10th day of  
January, 1914, the validity of which is disputed  
40 by the said George W. Young.

LINDABURY, DEPUE & FAULKS,

Proctors for George W. Young,

773 Broad Street,

Newark, N. J.

Dated, Sept. 12th, 1914.

**Petition for Order of Publication.**

(Petition of George W. Young for Order of Publication against Robert Baldwin, Anna Baldwin, Ione Walker, Imogene Castillo, Ada Baldwin and Maria Masina.)

Filed Sept. 10, 1914.

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**Order of Publication.**

(Order and Amended Order of Publication filed Sept. 10 and 12, 1914.)

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**Special Appearance.**

## MONMOUTH COUNTY ORPHANS' COURT.

Matter  
of  
Application for probate of  
alleged will of Lillian Nord-  
ica Young, Deceased.

The undersigned proctors appear herein specially (and not generally) for Imogene Castillo Ione Walker and Annie Baldwin, parties named in the petition of George W. Young, filed herein August 25, 1914; and so appear specially (and not generally) for the express purpose of raising the question of the jurisdiction of the Orphans Court of Monmouth County to entertain the present proceeding in any respect whatsoever.

Dated, October 15, 1914.

OSBORNE & ASTLEY,  
Proctors (appearing specially  
as aforesaid) for Imogene  
Castillo, Ione Walker and  
Annie Baldwin.

(Endorsed.)

Monmouth County Orphans Court,  
Matter of Application for probate  
of alleged will of Lillian Nordica  
Young deceased.

*Order for Adjournment.*

## Special Appearance.

Osborne &amp; Astley

800 Broad St., Newark, N. J.

Proctors appearing specially for

Imogene Castillo and others.

Filed Oct. 15, 1914.

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Joseph L. Donahay,

Surrogate.

**Order for Adjournment.**

(Filed, Oct. 15, 1914.)

(Order for Adjournment to Nov. 12, 1914 on motion of Osborne & Astley, appearing specially (affidavit of Mailing Order Publication, affidavit of Publication).

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**Caveat and Answer.**

## MONMOUTH COUNTY ORPHANS' COURT.

In the Matter  
of

10 The application for the pro-  
bate of the alleged will of  
Lillian Nordica Young, de-  
ceased.

The Caveat, objections and answer of Imogene Castillo, Annie Baldwin and Ione Walker, allege as follows:

20 1. The said contestants hereby object to the jurisdiction of the Monmouth County Orphans Court to entertain the application for probate of the said alleged will, for the following reasons:

(a) Said contestants are informed and believe to be true, that said Lillian Nordica Young was not a resident of New Jersey and not a resident of Monmouth County, New Jersey, at the time of her death.

30 (b) They are informed and verily believe to be true, that she left no personalty within said county or state at the time of her death.

(c) That on the 10th day of January, 1914, the said Lillian Nordica Young did make and execute a Last Will and Testament, which Last Will and Testament is of later date than the alleged will filed herein, which later will is on file in the office of the Surrogates of the County of New York in the State of New York.

*Caveat and Answer.*

(d) Prior to the institution of this proceeding in said Monmouth County Orphans Court, Robert S. Baldwin, one of said contestants, had theretofore duly instituted in the Surrogates' Court of the County and State of New York, a proceeding for the probate of the Last Will and Testament of Lillian Nordica Young dated, January 10, 1914, being a will of a later date than the alleged will filed herein. That the said Surrogates' Court of the County and State of New York was at all the times herein named and still is a court of competent probate jurisdiction, having full and complete jurisdiction of the probate of the said Last Will of said Lillian Nordica Young, and full jurisdiction of all the parties named therein, and also of and including George W. Young, the petitioner herein. That a petition duly verified by Robert S. Baldwin, an executor under the last will of said Lillian Nordica Young, for the probate of her said Last Will, which said last will was dated January 10, 1914, was duly filed August 13, 1914, in said New York County Surrogates' Court prior to the commencement of the above entitled proceeding, and the said Last Will was duly filed in said New York Court, and said proceeding there is still pending. That annexed hereto is a copy of said Last Will and Testament, to which your contestants beg leave to refer for its provisions. That said George W. Young was made a party to said New York proceeding. That said New York Court thereupon and upon the filing of said petition, obtained exclusive jurisdiction of the estate of Lillian Nordica Young and of all proceedings to

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*Caveat and Answer.*

10 probate her will. That she was domiciled in the State of New York at the time of her death and that she resided there and left personal property and real estate within that jurisdiction, thus giving that court in New York complete jurisdiction under and pursuant to the following sections of the New York Code of Civil Procedure, duly adopted by the New York Legislature, duly approved by the Governor, and in full force and effect at all times herein named, which said Code of Civil Procedure was so adopted and approved on or about the 2nd day of June, 1876, and they constitute the law of the State of New York in that particular:

20 The New York Code of Civil Procedure, Laws of 1876, Chapter 448—passed and approved and became a law June 2nd, 1876, and acts amendatory thereof:

Sec. 2472 (Am'd, 1913) General jurisdiction of Surrogate.

Each Surrogate must hold, within his county, a court, which has, in addition to the powers conferred upon it, or upon it, or upon the Surrogate, by special provision of law, jurisdiction, as follows:

30 1. To take the proof of wills; to admit wills to probate; to revoke the probate thereof; and to take and revoke probate of heirship.

2. To grant and revoke letters testamentary and letters of administration, and to appoint a successor in place of a person whose letters have been revoked.

*Caveat and Answer.*

3. To direct and control the conduct, and settle the accounts of executors, administrators and testamentary trustees; to remove testamentary trustees, and to appoint a successor in place of a testamentary trustee so removed.

4. To enforce the payment of debts and legacies; the distribution of the estates of the decedents; and the payment or delivery by executors, administrators, and testamentary trustees, of money or other property in their possession, belonging to the estate.

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5. To direct the disposition of real property, and interests in real property, of decedents, for the payment of their debts and funeral expenses, and the disposition of the proceeds thereof.

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6. To administer justice, in all matters relating to the affairs of decedents, according to the provisions of the statutes relating thereto.

7. To appoint and remove guardians for infants; to compel the payment and delivery by them of money or other property belonging to their wards; and, in the cases specially prescribed by law, to direct and control their conduct, and settle their accounts.

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8. To settle the accounts of a father, mother or other relative having the rights, powers and duties of a guardian in socage, and to compel the payment and delivery of money or other property belonging to the ward.

This jurisdiction must be exercised in the cases, and in the manner prescribed by statute.

Sec. 2472-a. (Added, 1910) Jurisdiction of Surrogate's Court to ascertain title to legacies, etc.

The Surrogate's Court has also jurisdiction upon a judicial accounting or a proceeding, for

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*Caveat and Answer.*

10 the payment of a legacy to ascertain the title to any legacy or distributive share, to set off a debt against the same and for that purpose ascertain whether the debt exists, to affect the accounting party with a constructive trust, and to exercise all other power, legal or equitable, necessary to the complete disposition of the matter. He must order the trial of any controverted question of fact which either party has constitutional right of trial by jury and seasonably demands the same.

Sec. 2476. When jurisdiction exclusive.

20 The Surrogate's Court of each county has jurisdiction, exclusive of every other Surrogate's Court, to take the proof of a will, and to grant letters testamentary thereupon, or to grant letters of administration, as the case requires, in either of the following cases:

1. Where the decedent was, at the time of his death, a resident of that county, whether his death happened there or elsewhere.

30 2. Where the decedent, not being a resident of the state, died within that county, leaving personal property within the State, or leaving personal property which has, since his death, come into the State, and remains unadministered.

3. Where the decedent, not being a resident of the State, died without the State, leaving personal property within the State, and no other; or leaving personal property which has since his death, come into that county, and no other, and remains unadministered.

40 4. Where the decedent was not, at the time of his death, a resident of the State, and a petition for probate of his will, or for a grant of letters

*Caveat and Answer.*

of administration, under subdivision second or third of this section has not been filed in any surrogate's Court; but real property of the decedent, to which the will relates, or which is subject to disposition under title fifth of this chapter, is situated within that county, and no other.

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2516-2517. The presentation of a petition is deemed the commencement of a special proceeding within the meaning of any provision of this act, which limits the time for the commencement thereof.

The Court acquires jurisdiction on the filing of a petition.

That the above entitled proceeding was commenced by George W. Young in Monmouth County Orphans Court at a date later than the commencement of the New York proceeding.

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II. Contestants further demur and object to the petition filed herein, and to the jurisdiction of this Court, on the ground that it affirmatively appears on the face of the petition that the later will of 1914 is in existence, a copy being annexed, and that such copy appears on its face to be the copy of a will presumptively valid and in view of such allegations in said petition this court never acquired jurisdiction under said petition, or otherwise, to probate the will of 1910 for probate.

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III. Without waiving the foregoing objection to the jurisdiction of this court, the said contestants further answer the petition herein and do caveat and protest against the alleged will of said Lillian Nordica Young propounded herein by said George W. Young, on the following grounds:

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*Caveat and Answer.*

(a) That the said alleged will is not the 1<sup>st</sup> Will and Testament of Lillian Nordica Young.

10 (b) That subsequent to the execution of said alleged will, if the same was ever executed, and subsequent to its date, and on or about January 10, 1914, said Lillian Nordica Young duly made and executed her Last Will and Testament at Thursday Island, a possession of the Kingdom of Great Britain and Ireland, and that her said Last Will and Testament was duly executed according to the laws of the State of New York and according to the laws of the State of New Jersey, and according to the laws of the Kingdom of Great Britain and Ireland, and was  
20 duly made, executed signed, sealed, subscribed, published and declared by the said Lillian Nordica Young according to law, in the presence of Sadie Charlotte Mac Donald and of W. M. Bryce, subscribing witnesses, who duly subscribed their names to said Last Will and Testament. That a copy of said Last Will and Testament, dated, January 10, 1914, is hereto annexed and made part hereof.

30 (c) That the said Lillian Nordica Young in her lifetime revoked the said alleged will filed herein.

(d) On information and belief that the said alleged will filed herein was obtained by fraud, exerted upon said Lillian Nordica Young by or on behalf and in the interest of said George W. Young, the proponent.

40 (e) On information and belief that the said alleged will filed herein was the result of undue influence, exerted upon said Lillian Nordica

*Caveat and Answer.*

Young by or on behalf and in the interest of said George W. Young, the proponent.

(f) Contestants are not yet fully informed as to the total value of real estate and personal property of which said Lillian Nordica Young died seized and possessed, and therefore leave said George W. Young to make such proof with reference to the allegations in his petition in that regard as he may be advised.

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Wherefore, these contestants pray that the petition of George W. Young, filed herein for the probate of said alleged last will, and for letters testamentary thereupon, be dismissed and that probate be denied the said alleged Last Will and Testament filed herein and that contestants be allowed their proper costs herein.

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Dated, October 14, 1914.

OSBORNE & ASTLEY,  
Proctors for Contestants,  
800 Broad Street,  
Newark, N. J.

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*Caveat and Answer.*

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

10 William H. Osborne, being duly sworn, on oath, says he is a member of the firm of Osborne & Astley, proctors for the above named contestants; that he has the management of the above proceeding on their behalf; that he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge and belief.

20 This affidavit is made by the deponent and not by contestants, because one of the contestants is a resident of California and the others residents of Massachusetts, and none is resident within or is within the State of New Jersey. Deponent is a counsellor at law of the State of New York as well as of New Jersey, and is familiar with the New York Surrogate's practice and with the sections of the code above referred to; his knowledge, information and belief in this matter, are obtained by his own inspection of the proceedings in this court, of the proceedings in the New York Court and statements made to him by various New York counsel for the contestants.

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WM. H. OSBORNE.

Sworn and subscribed before me this }  
 14th day of October, 1914. }

James J. Gibb,

Master in Chancery of New Jersey.

(Copy of 1914 will annexed.)

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**Reply.**

(Filed January 12, 1915.)

## MONMOUTH COUNTY ORPHANS' COURT.

<p style="text-align: center;">In the Matter</p> <p style="text-align: center;">of</p> <p>The Application for Probate of the alleged Will of Lillian Nordica Young, deceased.</p>	}	<p>Reply.</p>	10
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The reply of George W. Young to the caveat and answer of Imogene Castillo, Anna Baldwin and Ione Walker heretofore filed in the above entitled matter respectfully shows that:

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1. He has no knowledge or information sufficient to form a belief as to whether the contestants are informed and verily believe it to be true that Lillian Nordica Young was not a resident of New Jersey and not a resident of Monmouth County, New Jersey, at the time of her death. He says that said Lillian Nordica Young was in fact a resident and domiciled in Monmouth County, New Jersey, at the time of her death.

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2. He has no knowledge or information sufficient to form a belief as to whether said contestants are informed and verily believe it to be true that said Lillian Nordica Young left no personalty within said County or State at the time of her death. He says that said Lillian Nordica Young in fact died owning real and personal property.

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*Reply*

10           3. He denies the allegations of Paragraph I (c) of said caveat and answer, except that he admits that he is informed that a paper writing dated January 10, 1914, and alleged to be the will of Lillian Nordica Young is on file in the office of the Surrogate of the County of New York, State of New York.

          4. He denies that the said Lillian Nordica Young was at the time of her death domiciled in the State of New York, or that she resided there at said time. He says that at the time of her death she was domiciled in and a resident of the County of Monmouth and State of New Jersey.

20           5. He denies all of the allegations of Paragraph II of said caveat and answer. He says that it does not appear on the face of the copy of said paper writing dated January 10, 1914, annexed to the petition herein that the original of said paper writing was declared by the said Lillian Nordica Young to be her last will in the manner required by the statute in such case made and provided.

30           6. He denies all of the allegations of Paragraph III of said caveat and answer.

LINDABURY, DEPUE & FAULKS,  
Proctors for George W. Young.

**Conclusions as to Domicile and Jurisdiction.**

(Filed March 4, 1915.)

## MONMOUTH COUNTY ORPHANS' COURT.

<p style="text-align: center;">In the Matter</p> <p style="text-align: center;">of</p> <p style="text-align: center;">The Estate of Lillian Nordica Young, deceased.</p>	}	10
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Application is made to the Monmouth County Orphans' Court for the probate of the alleged last will and testament of Lillian Nordica Young, deceased. The will was not offered for probate before the Surrogate because the petition for probate discloses that a dispute has arisen respecting the existence of an alleged later will of the decedent. Objection is made to the jurisdiction of this court because it is claimed that Madam Nordica Young had in fact a domicile at the time of her death, separate and apart from the domicile of her husband, outside of this State. Madam Nordica Young was married to George W. Young in London, England, on July 29, 1909. The husband was born in Jersey City and had resided in Monmouth County for the past twenty years. He lived at Deal Beach and kept his house open and maintained his home there; he had voted for the past ten or twelve years at Oakhurst in this County and had been a candidate for public office in this State in the year 1912. Since his marriage with decedent, they continually lived together as man and wife

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*Conclusions as to Domicile and Jurisdiction.*

10 until she started a concert tour in the early part of June, 1913. She died at Batavia, Java, while on said world tour. Her body was cremated in London in pursuance with her own request and her remains brought back to this country by her husband. That the husband was at the date of his wife's death and for some years prior thereto a resident of Monmouth County is not disputed. For two years he took up a residence and voted in the State of New York, but his residence there terminated more than ten years ago. Mr. Young and his wife lived together apparently harmoniously during their married life, spending part of their time at Deal Beach and part of their time at hotels or apartments  
20 in New York and elsewhere, except when the decedent was away temporarily on concert tours.

The questions now before the Court are whether the contestants have shown that the decedent had the legal right to acquire a domicile separate and apart from that of her husband and if she had that right was such a domicile in fact acquired by her.

30 It is elementary law that in the ordinary case, the law fixes the domicile of a wife by that of the husband.

In 1 Jarman on Wills, Sixth Edition, page 16, the author says:

40 "The general rule is that the domicile of a married woman is that of her husband, and that married women cannot change their domicile of their own acts. But a wife, after a decree of divorce, can acquire a domicile of choice. And the same rule would seem to apply to a wife who has

*Conclusions as to Domicile and Jurisdiction.*

been judicially separated from her husband, or whose husband has deserted her, or committed some other offence entitling her to a divorce or a judicial separation. But a woman who is living apart from her husband under an agreement for separation, cannot choose her own domicile." 10

The contention of the contestants is that, the decedent left her husband, without any intention to return to him; that she was at liberty and had a right to establish a new domicile for herself, separate and apart from him; that she did in fact separate herself and establish such a domicile in the City of New York.

For proof establishing such a change of domicile by the decedent, the contestants rely (1) upon the testimony of William Baldwin and Robert S. Baldwin; (2) on certain letters and (3) upon the recital on the alleged will of 1914. 20

William F. Baldwin testified that the decedent told him in April, 1913, that she was contemplating making a trip around the world; that her husband wanted to go with her; that she did not want him to go; and that she intended to leave as quietly as possible "and found for me a home, make a home for myself"; that her suspicions were thoroughly aroused; that she was going to have her husband watched, "and if I find out, as I think I shall find out, the way he has been using me \* \* \* why, I shall immediately, at the best possible time, when I can get away in the easiest way, leave him for good and make my home elsewhere"; "and when I get it I am going to start again. He has got all of my money. I am going to start again 30 40

*Conclusions as to Domicile and Jurisdiction.*

10 if this trip is successful and form for me a home away from him and I never intend to come under his roof again.' This testimony shows that the decedent had formed no definite intent to separate from her husband. But she was considering such a step.

20 Robert S. Baldwin testified that in May and June, 1913, the decedent, told him she was leaving her husband and would never return to him "and would make her residence in New York so as to be near her sisters, and that they visited her and she visited them, so as to be near them"; "I am" or "have been totally enlightened about George as I have intimated to you I suspected in the past and from such stories and information as I can gain and I have had him watched to verify certain of this information, and you know one never knows whom to trust, unless it is one of those near and dear to us. And as long as I am leaving on this world tour with the idea of getting away from him (George) as readily as possible and without any publicity or scandal I would like to have you, if you can spare the time from your business, carry on certain investigations in connection with him." It is doubtful if Mr. 30 Baldwin was correct in his recollection of the decedent's statement that her residence was to be in New York so as to be near her sisters, since it appeared that none of her sisters resided in the State of New York.

40 It may be fairly claimed from this testimony that it shows that the decedent's plan was to use the world tour as a means of getting away from her husband without scandal, so that

*Conclusions as to Domicile and Jurisdiction.*

while away she could continue to "carry on certain investigations in connection with him, and if she found her suspicions well-founded, take up a separate domicile after her return, provided, the profits from her trip were sufficient to enable her to do so.

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It is hard to reconcile some of the expressions contained in the letters written by the decedent to her husband while on her world tour, with other expressions contained in her letters to relatives, but in them she uniformly attests her love and affection for her husband. At times she was undoubtedly disturbed, disappointed and perhaps angry over financial losses made through her husband, but I can find no evidence that she actually took up her abode at any specified place with an intent to remain there and make that place here domicile for the future. There is no evidence of the *factum* of a domicile at any specified place apart from the husband's domicile. It is not shown that she took up an abode in New York with intent to remain there. She could not have established a domicile in London without actually residing there with intent to make that city her domicile. Some of the letters indicate that at the time they were written, Madam Nordica Young was incensed against her husband, because of his financial losses which involved moneys belonging to her. She also intimates other reasons but whatever may have caused her dissatisfaction with him, a careful reading of all the evidence convinces me that she changed any idea which she may previously have been contemplating.

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In the letter of June 7th, she says, "I was terribly, terribly sad at leaving." In some of

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*Conclusions as to Domicile and Jurisdiction.*

her letters she enclosed poems and flowers. She wrote her husband on his birthday, and sent him a Christmas remembrance. In her letter of June 27th she says, "Since the first I have always believed you loved me and were true and loyal to me." In her letters of September 9, 1913 she says, "It breaks my heart to have to report failure to you—but our business in Australia has only deficit as a result—fourteen concerts we gave." In her letter of September 23d, she says, "With you I was happy. Away from you I worked only to return to you."

It is suggested by the contestants that all along she was deceiving her husband, that she hesitated to break finally with him for fear that she would not be able to recover some of the moneys she had loaned him and that he had squandered, but she continued to write and cable constantly, keeping him in touch with all of her movements, and making reports to him as to the result of her tour until almost the day of her death. Her last message to him shortly before her death was, "Tell him (George) not Japan, too lonely journey for him. Meet me Marseilles. Crazy get home. Counting minutes. Give him all my love. God is good." Her last conscious sentence was, "All my love to George." That showed a love and an affection that could easily overlook and forgive the transgressions of the husband, and confirms the conviction that she had never separated herself from him in any legal sense.

"A domicile once required is presumed to continue until it is shown to have been

*Conclusions as to Domicile and Jurisdiction.*

changed. Where a change of domicile is alleged the burden of proving it rests upon the person making the allegation. To constitute the new domicile two things are indispensable; First, residence in the new locality; and second, the intention to remain there. The change cannot be made except *facto et animo*. Both are alike and necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, cannot work the change. There must be the *animus* to change the prior domicile for another. Until the new one is acquired, the old one remains. These principles are axiomatic in the law upon the subject." 10 20

Mitchell *v.* United States, 21 Wallace, 350.

"There must be a voluntary change of residence; the residence at the place chosen for the domicile must be actual to the *factum* of residence there must be added the *animus manendi*; and that place is the domicile of a person in which he has voluntarily fixed his habitation, not for a mere temporary or special purpose, but with a present intention of making it his home, unless or until something which is uncertain or unexpected shall happen to induce him to adopt some other permanent home." 30

Harral *v.* Harral, 39 N. J. Eq., 279.

In the document alleged to be the will of the decedent, made in the year 1914, is the following recital: "I, Lillian Nordica Young, of the City of New York, State of New York, U. S. A." 40

*Conclusions as to Domicile and Jurisdiction.*

Such a declaration is valuable as expressive of intention, but not controlling.

“The recital in the trust deed is powerless to create a domicile where none existed.”

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*In re Geiser's Will*, 12 Buch., 311.

The question of domicile under circumstances in many respects parallel to the one at bar was reviewed and settled as the law of this State in the Geiser will case just mentioned, and is controlling here.

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It appeared that one Anna S. Geiser died in Atlantic City leaving a last will which was offered for probate in this State and leaving personal property in this State. Probate was protested by the decedent's husband principally upon the ground that the testatrix was not domiciled here. The deceased and the caveator had been married in Pennsylvania, and the husband's domicile continued to be in that place. The Ordinary in the opinion said:

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“It is familiar law that upon marriage the domicile of the wife merges into that of the husband. It is a legal sequence of the nuptial contract, and the unity of domicile exists during coverture, unless the wife acquires one elsewhere by the husband's consent. This consent may be either actual or constructive, and may be manifested by acquiescence, by abandonment, or by such conduct inimical to cohabitation, as would secure to the wife a decree of divorce a *vinculo or mensa et thora*.”

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*Conclusions as to Domicile and Jurisdiction.*

At page 315, he continues:

“In support of the argument that the deceased was domiciled in this State the proponents point to the failure of the husband to support the wife, her frequent declarations of ill will towards him; her oft expressed intention to adopt New Jersey as her domicile in order to circumvent the operation of the intestate laws of Pennsylvania relating to a husband’s interest in his wife’s estate; the identification card to the Montclair Trust Company giving her address as Atlantic City, and the recital in the trust deed to the Trust Company, and her declaration to counsel at the time he drew her will that she was a resident of this State, taken in connection with the testatrix’s residence for a greater part of the time within the last two or three years of her life in this State, all as creating a right in the testatrix to select a separate domicile, and as evidence of an actual exercise of that right.”

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“That upon occasions the deceased expressed her determination of becoming a citizen of New Jersey I regard as made prospectively and contingently. \* \* \*  
The recital in the trust deed is powerless to create a domicile where none existed.”

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The present record is devoid of proof that the decedent had legal ground for divorcing her husband. Some of the testimony and some of the letters offered by the contestants indicate that she thought she had, but no attempt was made to show that her belief was well founded.

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*Conclusions as to Domicile and Jurisdiction.*

There are no proofs to indicate that Mr. Young had been guilty of any misconduct toward his wife of such character as to enable her to secure a divorce from him.

10 The finding of the Court is that Lillian Nordica Young was domiciled at Deal Beach, in Monmouth County, New Jersey at the time of her death and therefore this Court has jurisdiction over the subject matter.

Application for the taking of further testimony in this matter will be heard any Thursday agreeable to counsel.

JOHN W. SLOCUM,  
P. J.

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**Notice to Close Testimony.**

(Filed March 11, 1915.)

To Messrs. Osborne & Astley,  
Proctors for Contestants.

Please take notice that on Thursday, March 11, 1915, at the Court House in the City of Freehold, New Jersey, at 10.15 A. M. or as soon thereafter as counsel can be heard, we shall apply to the Hon. John W. Slocum, Judge of the Monmouth County Orphans' Court, for an order fixing a time within which any further testimony in the above stated matter must be taken and concluded, or in the alternative fixing a time for the final hearing of the above stated matter in the event that no further testimony is to be taken. 10

Yours truly, 20

LINDABURY, DEPUE & FAULKS,  
Proctors of George W. Young.

Dated, March 6, 1915.

(Service duly acknowledged.)

**Affidavit of Walter W. Westall.**

(Filed March 11th, 1915.)

(An affidavit of Walter W. Westall was filed in response to the foregoing notice. The affidavit set forth the proceedings taken in New York on the will of 1914, and that a commission to take the depositions of witnesses on Thursday Island had been issued. The affidavit further set forth that service of citation could not be made in New York on George W. Young; that a sub- 30

*Affidavit of Walter W. Westall.*

10 poena *duces tecum* had been served upon John C. Tomlinson; that Tomlinson appeared in pursuance to said subpoena, and exhibited the original will of 1914, but declined to file same or hand same to Westall, unless personally directed to do so by the Surrogate of New York County; that on August 27th, 1914, the Surrogate directed Tomlinson to file the will with the Probate Clerk and that the will was left with the Probate Clerk, where it had continuously remained on file within the said office of the Clerk of the Surrogate's Court of New York County up to March 2, 1915.

20 That then deponent applied for a supplementary citation directed to George W. Young, and to Imogene Castillo; that he was obliged to publish the citation against George W. Young; that said Young, through his attorneys, denied the validity of the will on several grounds and also denied the jurisdiction of the said Surrogate's Court and alleged that the decedent was domiciled within the State of New Jersey, and that the Surrogate's Court of New York County was without jurisdiction to probate the said last will and testament.

30 That the following is an exact copy of a paragraph in said affidavit, relating to the determination of the Surrogate on the question of jurisdiction:

40 "That thereafter and on the said 1st Monday of February, 1915, all the parties appeared before the Surrogate's Court of the County of New York, and the Surrogate was thereupon requested first to hear and pass upon the question of jurisdiction of the said Court to hear and determine the issues therein and upon the said question of jurisdiction, and the said counsel for the said George

*Order to Take Testimony.*

W. Young having in open court admitted that there were assets of the deceased in the County of New York at the time of the death of the said deceased, Hon. John P. Cohalan, one of the Surrogates of the said Surrogate's Court, did on the 1st day of February, 1915, enter an order in which he determined that the said Surrogate's Court of the County of New York and State of New York, had jurisdiction of the said cause to hear and determine the issues raised by the said Young, an exemplified copy of which order your deponent begs leave to submit to this Court and incorporates in this affidavit without setting forth the same at length."

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(The affidavit then goes on to state that a commission was issued for the taking of the depositions of witnesses on Thursday Island.)

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**Order to Take Testimony.**

(Filed Mar. 23, 1915.)

## MONMOUTH COUNTY ORPHANS' COURT.

In the Matter of The Estate of Lillian Nordica Young, deceased.	}
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Due notice having been given the proctors of the contestants in the above matter of an application for an order fixing the time within which any further testimony in said matter must be taken and concluded, or in the alternative fixing the time for the final hearing of the above stated matter in the event that no

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*Stipulation and Petition.*

10 further testimony is to be taken, and said application coming on to be heard in the presence of Kinsley Twining, of counsel with George W. Young, proponent, and Charles H. Hartshorne and Emil Dreyfus (of the New York Bar) of counsel with contestants, and upon good cause shown.

It is thereupon on this twentieth day of March, 1915, on motion of Messrs Lindabury, Depeù & Faulks, proctors for George W. Young, proponent, ordered that any further testimony in the above stated matter must be taken and concluded on or before the second Thursday in September, 1915.

20 JOHN W. SLOCUM, P. J.

**Stipulation.**

(Filed Apr. 14, 1915.)

(Stipulation dated April 7, 1915, to take testimony on behalf of contestants of Sadie Charlotte Macdonald and W. M. LaBryce, at Thursday Island and containing Interrogatories to be answered. Interrogatories and answers offered are found in the record.)

30 **Petition for Appointment of Administrator Pendente Lite.**

(Filed Apr. 15, 1915.)

Petition of George W. Young for Appointment of Administrator *pendente lite* in Place of David Crater, Deceased.

**Order Appointing Administrator Pendente Lite.**

(Filed Apr. 15, 1915.)

Order appointing Henry E. Ackerson, Jr., in Place of David Crater, deceased, under Bond of \$250,000.

(Duly qualified and letters issued.)

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**Substitution.**

(Filed May 7, 1915.)

We hereby consent to the substitution of Messrs. Hartshorne, Insley & Leake, as Proctors of record, in our place and stead, of the following named three parties or contestants:

Annie Baldwin, Ione Walker and Robert S. Baldwin, the executor under the later will.

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Dated, May 7th, 1915.

OSBORNE & ASTLEY,  
Proctors.

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**Stipulation.**

(Filed Sept. 8, 1915.)

It is stipulated that the hearing upon the probate of the will of L. Nordica Young (which hearing was set for September 9th instant) shall be continued without appearance by either side upon that day, to such time as shall be fixed by

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*Notice of Application for Order.*

consent of both sides; or by order of court to be made upon notice.

Dated, September 7, 1915.

10 LINDABURY, DEPUE & FAULKS,  
Proctors of Proponent.  
HARTSHORNE, INSLEY & LEAKE,  
Proctors of Contestants.

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**Notice.**

(Filed July 1, 1916.)

To  
Lindabury, Depue & Faulks,  
Proctors of George W. Young.

20 To  
Osborne & Astley,  
Proctors of Imogene Castillo.

30 Take notice that on Thursday, June 29th inst., at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Court House in the City of Newark, we shall apply to the Judge of the Orphans' Court of Monmouth County there sitting, for an order fixing a day for the trial of this cause or for taking depositions therein.

Dated June 22, 1916.

HARTSHORNE, INSLEY & LEAKE,  
Proctors of Robert S. Baldwin and others.  
(Service duly acknowledged.)

Order entered settling case down for July 6, 1916, at 2 P. M.

**Answer and Cross Petition of Robert S.  
Baldwin.**

(Filed February 24, 1916.)

MONMOUTH COUNTY ORPHANS' COURT.

(Title.)

The answer and cross-petition of Robert S. Baldwin, to the petition of George W. Young, in the above stated matter.

10

Robert S. Baldwin, contestant and cross-petitioner, answering says:

1. That the alleged will dated July 3rd, 1910, stated in the petition of George W. Young, is not the last will of said Lillian Nordica Young, but that the same was revoked by a later will dated January 10th, 1914, hereinafter stated.

20

2. This cross-petitioner, Robert S. Baldwin, is one of the executors named in the last mentioned will of said Lillian Nordica Young, dated January 10th, 1914.

3. Said Lillian Nordica Young, while a resident of the Township of Ocean, in the County of Monmouth, and State of New Jersey, died on or about the 10th day of May, 1914, leaving her surviving as her heirs-at-law, and next of kin, the following named persons:

30

George W. Young, her husband, residence and post office at Deal, New Jersey.

Mrs. Imogene Castillo, a sister, residence and post office at Los Angeles, California;

Mrs. Annie Baldwin, a sister, residence and post office at Dorchester, Massachusetts; and

Mrs. Ione Walker, a sister, residence and post office at Dorchester, Massachusetts.

40

*Supplemental Caveat and Answer.*

4. The executors named in the last mentioned will are:

George W. Young, husband of testatrix, who disputes the validity of the said will.

10 Robert S. Baldwin, this cross petitioner and E. Romaine Simmons.

5. Annexed hereto is a copy of the said will dated January 10th, 1914, which is made a part of this cross-petition.

This cross-petitioner respectfully prays that the said last mentioned will may be admitted to probate.

ROBERT S. BALDWIN,

By Hartshorne, Insley & Leake,  
20 Proctors.

(Verification and Copy of 1914 Will Annexed.)

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**Supplemental Caveat and Answer of Imogene Castillo.**

(Filed March 16, 1916.)

MONMOUTH COUNTY ORPHANS' COURT.

(Title.)

30 The supplemental caveat and answer of Imogene Castillo, one of the next of kin of decedent, and one of the beneficiaries named in the will of 1914, and one of the parties to this proceeding, alleges:

40 1. This supplemental caveat and answer is filed as an addition to the caveat and answer already filed herein, and refers to and reiterates all the objections contained in the caveat and

*Supplemental Caveat and Answer.*

answer, filed on behalf of said Imogene Castillo, and others, December 21, 1914.

2. Since said last named date and since the commencement of this proceeding, the Surrogate's Court within and for the County and State of New York, being a court of competent probate jurisdiction, and having full and complete jurisdiction of the probate of the will of said Lillian Nordica Young, hereinafter referred to, and full jurisdiction of all parties named therein, and also of and including George W. Young, the petitioner herein, did by its decree made and entered after a contest raised by the answer of George W. Young therein, duly admit to probate a last will and testament of said Lillian Nordica Young, dated January 10, 1914, which said will is the last will and testament of said Lillian Nordica Young, and is subsequent in point of date and execution to the will propounded herein.

Contestant here refers to all the allegations contained in the caveat and answer as to the jurisdiction of the New York Surrogate's Court and as to the proceedings had therein, in connection with the filing of the will and the petition for its probate. Contestant claims that said decree is *res judicata* herein as against the proponent constituting the judgment of a competent court having full jurisdiction; that the said will so probated in New York is the last will and testament of said Lillian Nordica Young and therefore that the will of 1910, propounded herein, is not the last will and cannot be admitted here to probate.

Contestant makes profert of the said decree

*Petition of Imogene Castillo.*

and all the proceedings taken in said New York Court.

OSBORNE & ASTLEY,  
Proctors for Contestant,  
Imogene Castillo.

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**Petition of Imogene Castillo to Monmouth  
County Orphans' Court.**

(Filed March 16, 1916.)

To the Honorable, the Orphans Court of the  
County of Monmouth, New Jersey.

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Imogene Castillo, of Los Angeles, California, respectfully represents that she is one of the three sisters, next of kin, and one of the three residuary devisees, legatees and beneficiaries named in the last will and testament of Lillian Nordica Young, deceased, dated January 10, 1914.

30

That said Lillian Nordica Young departed this life at Thursday Island, in the Pacific Ocean, on the..... day of July, 1914, still a resident of the County of Monmouth, State of New Jersey leaving her surviving as heirs at law and next of kin the following named persons, to wit:

Imogene Castillo, of Los Angeles, California, a sister; Annie Baldwin, of Dorchester, Massachusetts, a sister; Ione Walker, of ..... a sister, George W. Young, of Deal, N. J., husband, all of full age and sound mind.

40

That said testatrix died seized of real estate to the value of more than one thousand dollars and was possessed of personal property exceeding in value the sum of one hundred thousand dollars.

*Testimony.*

Therefore the said Imogene Castillo, devisee, legatee, and beneficiary as aforesaid, respectfully applies for the probate of the said last will and testament.

Dated, March 14, 1916.

10

IMOGENE CASTILLO.

By Osborne & Astley,  
Proctors.

(Affidavit of Verification annexed.)

**TESTIMONY.****Testimony Taken at Hearing.**

(About Nov. 14, 1914.)

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MONMOUTH COUNTY ORPHANS' COURT,

<p>In the Matter of The Estate of LILLIAN NOR- DICA YOUNG.</p>
--

KINSLEY TWINING, of LINDABURY, DEPUE & FAULKS,  
Counsel for Proponents.

30

WILLIAM H. OSBORNE, Proctor for Contestants.

ALBERT G. THORNE, WALTER W. WESTALL, EMILE  
DREYFUSS, of Counsel with Contestants.

The Court has had brought to its attention the pendency in the Surrogate's Court of New York County of proceedings for the probate of the will of Mrs. Young, dated January, 1914; the Court has also had brought to its attention

40

*Testimony.*

the pendency before Vice-Chancellor Howell of rule to show cause in this matter which is returnable on the twenty-fourth of the present month; the Court has also had brought to its attention the fact that the subscribing witnesses to the paper purporting to be the will of 1910 of Mrs. Young are present in Court, but have come from some distance and the Court has decided to hear the subscribing witnesses to the 1910 will and also to hear the testimony of Mr. Young as to the domicile of Mrs. Young at the time of the making of the 1910 will and at the time of her death and Court has informed counsel for all parties interested that that is all the testimony that will be taken to-day, with the right to the other side, of course, to cross examine. This right will be given to the opposition to this application for probate at a date after November twenty-fourth to procure such affidavits as they please to show why the paper of 1910 should not be admitted to probate; of course, proponents to have the same right to offer anything in rebuttal. The counsel for the opposition to the paper now offered for probate may file an answer to-day if they see fit without prejudice to their right and standing in this matter and the Court will not consider it prejudicial to their standing if they should file their answer to-day. If an answer is not filed to-day then answer may be filed upon the hearing of the proceedings before Vice-Chancellor Howell, a copy of course, to be served on all parties, in which case of course, the proponents will have such time as will be required to file an answer and to introduce any such additional testimony

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*George W. Young, direct.*

as they may wish to offer in behalf of the 1910 will and the other side in opposition to the 1910 will.

GEORGE W. YOUNG.

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*Examined by Mr. Twining:*

Q. What is your name, Mr. Young? A. George W. Young.

Q. Are you the George W. Young who signed a petition for the probate of a paper writing purporting to be the last will of Lillian Nordica Young which paper writing bears date July 3, 1910; did you sign that petition? A. I did.

Q. Are you, or were you the husband of Lillian Nordica Young at the time of her death? A. Yes.

20

Q. Where were you born, Mr. Young? A. I was born in Jersey City, Hudson County, New Jersey.

Q. How long did you live there? A. I lived there for twenty-nine or thirty years.

Q. How old are you now? A. I am fifty.

Q. Where did you go from Jersey City to live? A. I bought a place in Belmar, New Jersey.

30

Q. What county is that in? A. I think it is in this same county, Monmouth County.

Q. How long did you remain in Belmar? A. I kept my residence there for about I should think three or four years, then I bought a place at Deal Beach.

Q. In this county? A. Yes.

Q. How long have you kept your residence in Deal Beach? A. Practically for twenty years.

40

*George W. Young, direct.*

Q. Is that your residence at this time? A. It is.

10 Q. Has it been ever since, continuously for the past twenty years? A. I have voted there for the last ten years, yes, ten or twelve years, at Oakhurst; I have voted there for the past ten or twelve years.

Q. After you bought your place at Deal Beach did you reside in it? A. I did.

Q. For how long? A. Well, I reside in it up to date.

Q. During what portions of the year? A. I always maintain a home there, open all the year round.

20 Q. Where have you voted? A. Voted in this county for the past ten years; I voted in New Jersey.

Q. In Monmouth County? A. Monmouth County.

Q. When did you become married to Madame Nordica? A. July 29, 1909.

Q. Where were you married to her? A. I was carried to her in London.

Q. Was she then on a singing tour? A. She was simply on a vacation.

30 Q. During the past ten years have you run for political office in this State? A. Well, I was a candidate.

Q. For what political office? A. Well, I ran as an unpledged delegate to the National Democratic Convention at Baltimore; at least I was a candidate.

Q. From what county? A. Well, I ran at large,—from the State.

40 Q. What year was that? A. I think it was 1912, can't say.

*George W. Young, direct.*

Q. Have you run as a candidate for any other office in this State? A. Well, there was a petition filed for me as United States Senator, to run at the primaries in 1913.

Q. From the State of New Jersey? A. From the State of New Jersey, but I withdrew after the petition was filed. 10

Q. You know how many signers that petition had? A. Three or four thousand.

Q. Were you stated to be a resident of any county in that petition, do you recall? A. Well, if I wasn't I should have been as a resident of Monmouth County.

Q. Since your marriage with Madame Nordica did she and you live together the entire time? A. Certainly. 20

Q. Continually? As husband and wife? A. Yes, sir.

Q. What have you to say about the relations between you and your wife as to whether friendly or otherwise? A. Could not have been happier, sir, or more friendly.

Q. Where did Madame Nordica die? A. My wife died at Batavia.

Q. That is,—where? A. Java.

Q. Why was she in that part of the world? A. She was carrying out a concert tour which had been contracted and arranged for some time before. 30

Q. When did she leave this country to go on that tour if you recall? A. I think the latter part of May, 1913.

Q. Where was your wife buried, Mr. Young? A. My wife was not buried; my wife was, at her own request, cremated; she was cremated in London, the services were held in Kingsway House, Grosvenor Square. 40

*George W. Young, cross.*

Q. Were you there when the services were held? A. I was.

Q. Did you bring her remains back to this country? A. I did.

*Witness cross examined by Mr. Osborne:*

10

Q. You say you married Madame Nordica in July, 1909, in London. Correct? A. That is correct.

Q. Where was she then living? A. She was at that time in London, the Earl Hotel in London.

Q. Do you know at that time what her residence was? A. She claimed her residence in New York.

20

Q. Did you first meet her in New York? A. No, sir.

Q. After you were married to her in July, 1909, or whatever the date may have been, in London, where did you and your wife go to live? A. We came directly to Deal Beach.

Q. How long did you stay there? A. Off and on during the Fall.

Q. Then after that you went to New York to live? A. We may have. We may have.

30

Q. Did you live with Mrs. Young at any place in New York? A. We stopped at several places in New York; we stopped at the Plaza, the Gotham, at a small apartment at Thirtieth Street, stopped at the Vanderbilt Hotel, we have stopped at Number eight West Ninth Street in New York.

Q. Did you have a lease on that property, 8 West Ninth Street? A. No, her sister, Mrs. Walker had a lease on that property.

Q. Whose sister? A. Madame's sister.

40

Q. When was it you lived there and for how

*George W. Young, cross.*

long? A. We stopped in that house off and on while Madame was here.

Q. You made it your residence? A. No, sir; we stopped there I should say off and on during the last three years.

Q. Go back to the year 1909; did you live in the West Ninth Street house that winter? A. No, sir. — 10

Q. You did not? A. No.

Q. Did you live in New York during the winter of 1909-1910? A. I would not say; I can't answer that, I don't know.

Q. Before you were married to Madame Young had you lived in New York yourself? A. No, my residence was in New Jersey continuously.

Q. Would you spend the winter in New York? A. I spent some winters, but always maintained my home in New Jersey, always kept it open. 20

Q. I want to find out from you whether you would actually spend your winters in New York before you were married. A. I was in business in New York.

Q. Where was your business in New York? A. 59 Cedar Street, New York.

Q. What was the name of the concern? A. George W. Young and Company. 30

Q. Did you hold any other positions in New York? A. A few.

Q. What were they? A. I was Director in the National Bank of Commerce, International and Northern Railroad, Acker, Merrill and Condit, Commercial Title Guarantee and Trust Company of Jersey City; First National Bank of Bayonne, Mechanics Bank, Perth Amboy Trust Company, Third National Bank of Jersey City and a number of others I can't recall now at the moment, Mr. Osborne. 40

*George W. Young, cross.*

Q. Where is the Mechanics Trust Co.? A. Bayonne.

10 Q. Were you an officer of the United States Mortgage and Trust Company? A. I was President of that Company for twelve or thirteen years; I resigned in 1905.

Q. Now, after your marriage to Madame Nordica in 1909 did you continue to hold these various offices in these various concerns in New York? A. Not all of them. Not all of them.

Q. When did you first come to live in West Ninth Street? A. Why, I should say, I can't really recall, the winter of 1910, 1911; it was either 1910 or 1911.

20 Q. Was it not the first winter after you married her? A. No.

Q. Then you lived in West Ninth Street with your wife in 1910, 1911, those winters, is that right? A. I think that would be a fair statement.

Q. Also 1912? A. Yes, I should think that a fair statement.

Q. Did you afterward become the owner of that house in West Ninth Street? A. No.

30 Q. Did any corporation that you are interested in purchase that house? A. Yes.

Q. What was it? A. Securities Company.

Q. When was that? A. I should think some time in the year 1910; not positive.

Q. Now, after the summer of 1909 where did Mrs. Young live? A. She lived with me.

Q. Well, she went back to Deal in 1909 for the summer? A. Yes.

40 Q. Then in the winter she lived with you in New York? A. Yes, occasionally coming to Deal.

*George W. Young, cross.*

Q. Did she ever live at Deal? A. Certainly.

Q. Did she live there in 1910? A. Yes.

Q. Well, for how many months, how many weeks? A. We opened the house in, I think, on the twenty-ninth of June, 1910, and then Madame had an engagement in Europe, in Paris; she left on the fourth of July or fifth, for rehearsals, she came back during that summer; stayed there I think until some time in October when she went back again. 10

Q. During that summer she lived there about two months? A. She was there all the time she was in this country.

Q. Now in that winter you and she went to New York, 1910-1911, and lived in the West 9th Street house? A. I think that is true. 20

Q. From about October until the following June? A. No; she returned to Europe and did not return to America until shortly after Christmas.

Q. When she returned to Europe where did you live actually? A. I lived in New Jersey in my home.

Q. You often came to Deal Beach during that winter? A. Week ends, some times stayed down for a while. 30

Q. Where did you live otherwise than at Deal? A. In 1910?

Q. Yes. A. Well, now, the Vanderbilt; I may have been at the Gotham; I can't state, Mr. Osborne.

Q. Did you while she was away live at the West Ninth Street house? A. No.

Q. Now, then, go on to 1911; did you ever live at 34th Street? A. Thirty-fourth Street? Oh, no, no. 40

*George W. Young, cross.*

Q. Did she own a property there? A. No.

Q. Fortieth Street? A. Yes, I lived in Fortieth Street.

Q. Was that a single family house or apartment? A. It was an apartment.

10 Q. How long did you maintain that apartment? A. Only a few months it was just an apartment I had subject to thirty days' notice, in the year 1913 after Madame left.

Q. Prior to the year 1913 you had never occupied that apartment? A. Oh, no.

Q. You had never occupied the West Ninth Street property unless she was there; is that correct? A. When Madame was on tour I was there occasionally.

20 Q. Then it is presumably true that you lived at the West Ninth Street house during the winter of 1910-1911 while she was away? A. No, I know I did not, because we did not go in the West Ninth Street house until after her return from Europe and we were together when she was not away.

Q. Now, the Fortieth Street house; you and she lived there for a time? A. Never.

30 Q. You lived there? A. The Fortieth Street apartment? I think I went in for a few months about 1914 or the latter part of 1913.

Q. What was the number of that house on Fortieth Street. A. 10 West Fortieth Street.

Q. Then as a matter of fact Madame Nordica after she married you was in Deal only very short times at spasmodic intervals? A. No.

40 Q. Was there any one period when she lived there six month? A. There was no period when she lived anywhere six months.

*George W. Young, cross.*

Q. No one period that she lived there six months? A. I do not think so.

Q. What is the longest period she did remain there? A. Well, I can't state, positive.

Q. Was it as long as a month? A. Oh, yes; longer.

10

Q. Two months? A. Yes.

Q. When Madame Nordica was not in Europe on a tour and except the time at Deal, you were living with her in New York? A. Or Deal.

Q. Were you in business at the time she went on tour in Europe? A. Yes.

Q. Why didn't you accompany her on these tours in Europe? A. Because my business demanded my attention here.

Q. There are two houses on West Ninth Street? A. Six and eight.

20

Q. Which one did you live in? A. Which one did we live in? We lived in Number Eight West Ninth Street.

Q. Who lived in Number six? A. That was rented to the Vice-President of Hanover Bank.

Q. Did you take title to both these houses at the same time? A. No, I never took title to the property.

Q. One of your corporations. They bought at the same time? A. No.

30

Q. When did they buy Number eight and Number six? A. I think we bought Number eight first and six very shortly after.

Q. What company has the title now? A. As I said before the Securities Company.

Q. Did you keep the West Ninth Street house open all the year round? A. I really can't say whether Mrs. Walker did or not; I think she did.

40

*George W. Young, cross.*

Q. Did you keep the Fortieth Street apartment open all the year round? A. Well, I don't know about open; I always had a servant in any house, in any house I lived in.

10 Q. What do you mean by "open" did you have servants there? A. Servants,—somebody to look after the furniture.

Q. Then both these houses, the West Ninth Street house and the Fortieth Street house were running at the same time, both open? A. You are totally mistaken, Mr. Osborne; the West Ninth Street property, after the departure of Madame for Europe Australia, was leased by the Securities Company for three years; I think they took possession the early part of the Fall of  
20 1913, the tenant; the Fortieth Street apartment was not taken. I did not occupy that until the latter part of 1914.

Q. Who was the tenant in the other house, the three-year tenant? A. I can't think of his name, he was the son-in-law or Mr. Gulliver, of the firm of Alexander and Green.

Q. Both houses, not to the same person? A. No.

Q. Who was the other? A. The other house  
30 was leased to Leroy Atell.

Q. Who is he? A. My son-in-law.

Q. Six or eight? A. The other house.

Q. Is it not a fact then that Number six is the house you lived in with Madame Nordica? A. I have said a dozen times that Number eight was the house I lived in with Madame when I stopped in New York.

Q. Have you ever voted in New York, Mr. Young? A. I have. I did for one or two years,  
40 during which period I had been appointed by

*George W. Young, redirect.*

Judge O'Brian as a member of a Commission to decide whether or not the subway should be built.

Q. That was not within the last,—how many years? A. More than ten years ago.

Q. Why did you vote there? A. I took up my residence there for that two years. 10

Q. You never voted in New York since? A. No.

Q. Ever voted in Jersey City since that time? A. No.

Q. Prior to that time? A. Yes, I think I said I maintained my residence in Jersey City.

Q. Have you voted regularly each year for the last ten years? A. Fairly so; fairly so. At all times I did not feel inclined to vote. 20

Q. Where have you cast your vote for the last ten years? A. I should say my vote has been cast at Oakhurst during the last ten years right along.

Q. Did you live at Ardsley-on-the-Hudson during that time? A. I have stayed there. I have stayed there.

Q. At a house you leased? A. No, sir.

Q. At a hotel? A. No, sir.

Q. Where? A. At a house owned by the Securities Company. 30

Q. How much time did you spend there? A. There, very short spaces of time.

Q. Month or two months? A. I should say not more than that; I have spent some time in Europe too, three or four months at a time.

*Witness examined by Mr. Twining:*

Q. Mr. Young, have you or have you not during the period of your married life with Madame 40

*Mrs. Ada Baldwin, direct.*

10 Nordica and up to and including the date of her death, had any intent as to where your permanent residence was? A. My intent absolutely has always been to be a resident of the State of New Jersey; I was born here and have been connected with certain party in this State; always been my intention to maintain that as my permanent residence.

Q. Political party? A. Yes, Democrat.

Q. And that intent has continued during the whole period of your married life? A. The whole period of my life, with the exception of my appointment to the Commission.

20 Q. During the period of your married life with Madame Nordica and at the time of her death, in what county was it your intent to claim a residence? A. In this county.

Q. This county? A. Monmouth County.

— — —  
Mrs. ADA BALDWIN.

*Examined by Mr. Twining:*

Q. Mrs Baldwin where do you live? A. My home is in Florida.

30 Q. Were you acquainted with Mrs. Young, the wife of Mr. George W. Young the last witness, during her life? A. I was.

Q. I show you a paper attached to a petition in this cause which purports to be a will and bears date July 3, 1910. Have you ever seen the paper before? A. Yes.

Q. Did you see it signed by Mrs. Young? A. I did.

40 Q. Where were you when she signed it, do you recall? A. In the room with her at the bungalow at Deal.

*Mrs. Ada Baldwin, direct.*

Q. Who else was present? A. Mr. Simmons and Mr. Constable.

Q. Did they also sign the paper at that time? A. They did.

Q. While you were all present? A. Yes.

Q. Did Mrs. Young make any statement in relation to what this paper was? A. She did. 10

Q. What did she say? A. She told me it was her will and asked me to witness her signature and act as a witness.

Q. That statement was made while all of you were present? A. It was. I mean by all those whom I have mentioned.

Q. And you signed your name to the paper? A. I did. 20

Q. I show you a signature at the end of the attestation clause and ask you if that is yours? A. It is.

Q. And it is signed again under the word witness? A. It is.

Q. I don't know whether I asked you before, if I did not I will now, whether the signature at the end of this paper is Mrs. Young's signature? A. Yes.

Q. Did she sign it in your presence and the presence of the other witnesses? A. She did. 30

Q. How many witnesses are there? A. Three.

Q. All the witnesses sign in the presence of each other and in the presence of Madame Nordica? A. We were all there at the same time.

Will offered in evidence and marked Exhibit "A."

*Mrs. Ada Baldwin, cross.*

*Witness cross examined by Mr. Osborne:*

Q. Where do you live now? A. My residence is in Florida.

Q. What part? A. My home is in Forest City.

10 Q. How long have you lived there? A. I maintain my home there; I have lived there about thirty years.

Q. Have you been staying at Deal Beach for last four or five weeks? A. No.

Q. Where have you been living four or five weeks last past? A. I have been stopping at several places, part of the time at Deal Beach and part of the time at Manasquan, New Jersey.

20 Q. When did you go to Florida? A. When do you mean?

Q. Were you born there? A. No.

Q. When did you go there to live, go there in recent years, last two or three? A. I was in Florida this Summer.

Q. Were you in Florida last Summer? A. No.

Q. Were you in Florida the Summer before? A. No.

Q. Were you in Florida in winter, last winter? A. No.

30 Q. Nor the winter before? A. No.

Q. Then your home as you say is a matter of recent establishment in Florida? A. No. I told you I had lived in Florida about thirty years I spent my married life in Florida; I went there with my family when I was a child; that has been my home.

Q. This summer you spent at Deal Beach? A. This summer I spent a large part of it in Jacksonville, Florida.

40 Q. Up to when? A. I think I left Florida the eighth or ninth of October.

*Mrs. Ada Baldwin, cross.*

Q. Where did you live in 1910 when this will was drawn? A. At Deal Beach.

Q. Now, is it not a fact, that you gave your residence at that time as Ardsley-on-the-Hudson?

A. I may have, possibly.

Q. Then you have lived at Ardsley? A. I have.

10

Q. Where was Mrs. Young living at the time when you gave your residence as Ardsley? A.

I was with Madame Nordica.

Q. That is, wherever she went you went? A. No.

Q. You lived with her for a good many years? A. Yes.

Q. Did you live with her in New York? A. I was with her in New York.

20

Q. Did you live in West Ninth Street? A. I have been in West Ninth Street and many other places with her.

Q. In the Fortieth Street house? A. She never lived in Fortieth Street that I know of.

Q. How many years did you live with Madame Nordica? A. Eight or nine.

Q. Eight or nine years? A. I think so.

Q. You remember when she was married in 1909? A. Certainly.

30

Q. Were you living with her then? A. I should say so.

Q. You were in London? A. No.

Q. Where were you living? A. At the time of her marriage I was at Ardsley.

Q. How long were you there? A. I cannot tell you because I was going back and forth.

Q. Did Madame Nordica live at Ardsley before that? A. She had been at Ardsley, yes.

Q. You also lived with her in the West Ninth Street house? A. Yes.

40

*Mrs. Ada Baldwin, cross.*

Q. For how long? A. Part of one winter.

Q. What winter was that? A. I think it was 1911.

10 Q. Now, tell us where else you lived with her, the other places? A. I do not know that I have lived with her; I have been with her at a great many places.

Q. In hotels? A. Yes; in New York and Boston. I have been on tour with her and with her at Deal.

Q. When were you with her at Deal? A. In 1909, 1910 and 1911 and early in 1912.

Q. And for how long did you remain each time; how long did she remain there each time?

A. I cannot tell you exactly.

20 Q. It was in the summer months? A. Summer and fall.

Q. You know, of course, that Deal is a summer resort? A. Not especially; a great many people live there all the year.

Q. Were you in the employ of Madame Nordica as housekeeper? A. I was with Madame Nordica.

Q. As a housekeeper? A. As companion.

30 Q. Did you keep house for her at West Ninth Street? A. Part of the time.

Q. How much? A. I don't know what you mean.

Q. You were at the West Ninth Street house? A. Yes.

Q. You and Madame Nordica and Mr. Young, you lived there together during the winter months of 1910-1911? A. Part of the time.

Q. You had lived there in 1909? A. I had not.

40 Q. You lived there in 1911--1912? A. No.

*Mrs. Ada Baldwin, cross.*

Q. Then, you moved to the Fortieth Street place? A. No, I did not do anything of the kind.

Q. When did you move to Ardsley? A. We did not move to Ardsley during that time.

Q. Give us the names of the other apartments where you lived with Madame Nordica since her marriage in 1909? A. At the Gotham, at Thirtieth Street. You understand we were not living there continuously, but we were going back and forth. 10

Q. Any other places? A. The Plaza.

Q. When you say you were going back and forth, you mean back and forth from New York to Europe? A. No, I have never gone to Europe with Madame, but when she was on concert tours I sometimes went with her. 20

Q. Did you ever go with her to Deal Beach in the winter time? A. I do not remember that I have.

Q. Now, where did you say you were when this will was executed? A. I was with Madame Nordica in the bungalow at Deal Beach.

Q. Who is Mr. Constable; is he a lawyer? A. I do not think so. I do not know what he is.

Q. Did you ever see him before? A. I think I have, but I am not sure. 30

Q. Is he the man that brought this will down there? A. I do not know; I do not think so.

Q. Who else besides yourself and Mr. Simmons and Mr. Constable were present? A. Madame Nordica.

Q. Were there no other persons present? A. Not that I remember.

Q. Was Mr. Young there? A. No.

Q. Was he on the premises anywhere? A. I do not know, he may have been. 40

*Mrs Ada Baldwin, redirect.*

Q. Did you see him that day? A. I cannot remember, I do not know; we had guests in the house; we had so many guests that one more or less did not make much difference.

10 Q. Did Mr. Constable come to the house that day with Mr. Young? A. Not that I know of.

Q. Was this in the day time or night time? A. Day time.

Q. Just tell us what Madame Nordica said on that occasion. A. I don't suppose I can tell you her exact words; she said she was making her will and asked me to witness her signature and be a witness to her signature.

Q. Where was the will at that time? A. On the table, right in front of me.

20 Q. Had she already signed it? A. Not before she asked me to witness her signature.

Q. Did Madame Nordica call you in the room, or somebody else? A. I am not sure whether she did personally or whether she sent someone for me; it was at her request that I went to the room.

Q. Did you find anybody else in the room at the time you first came in there? A. Madame Nordica, Mr. Simmons and Mr. Constable.

30 Q. They were there when you arrived? A. As I remember it, yes.

Q. Now, after Madame had signed this will, who signed first as witness, do you remember? A. I do not remember, but I think I did; I am not certain.

*Witness re-examined by Mr. Twining:*

Q. When are you going back to Florida? A. In a few days I expect to go.

40 Q. During what period of the year did Mad-

*Ernest Romaine Simmons direct.*

ame Nordica go on tour, winter or summer? A. Winter.

*Question by Mr. Osborne:*

Q. Tell me, when Madame Nordica was in America, is it not true she lived a greater part of the time in the City of New York? A. No. 10

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ERNEST ROMAINE SIMMONS.

*Examined by Mr. Twining:*

Q. Where do you reside? A. At the present moment I am living in New York.

Q. Were you acquainted with Mrs. Young during her life time? A. Yes, sir.

Q. Have you ever seen the paper which I hold in my hand marked Exhibit "A," before? A. I have. 20

Q. Will you tell the circumstances under which you saw that paper previously? A. I saw it at Deal Beach in the bungalow on the occasion of its being signed by Madame Nordica.

Q. Is the signature at the end of the will her signature? A. Yes.

Q. Was it signed in your presence? A. Yes.

Q. In the presence of any one else? A. Yes. 30

Q. Who? A. Mrs. Baldwin and Mr. Constable.

Q. Were they all present at the time it was signed? A. Yes.

Q. Did Madame Nordica make any statement to you in the presence of the other persons whom you name? A. She asked me to witness her last will and testament.

Q. Did she then sign it? A. She then signed it. 40

*Ernest Romaine Simmons, cross.*

Q. What did you do then, if anything? A. I waited for Mrs. Baldwin to sign and then signed it myself.

Q. Mrs. Baldwin was present at the time you signed? A. Yes.

10 Q. This, your signature, appearing at the close of the paper in the second place? A. Yes, that is my signature.

Q. At the close of the attestation clause? A. That is my signature.

*Witness cross examined by Mr. Osborne:*

Q. Who is Mr. Constable? A. Mr. Constable is an architect.

Q. Who drew this will? A. I do not know.

20 Q. Was Mr. Young there at the time, in the house? A. When the will was signed?

Q. Yes. A. I presume he was in the house, yes.

Q. In this room? A. Not that I remember.

Q. You do not know whether his lawyer drew this will? A. I do not know who drew it.

Q. Where did you first see it? A. I saw it at Deal Beach on the occasion of its being signed.

30 Q. Where do you reside now? A. In New York.

Q. You were Madame's manager for a number of years? A. Madame's manager and her secretary.

Q. When she lived in New York did you also live in New York? A. I lived in New York whenever she was in New York.

40 Q. And you never saw her at Deal Beach except during the summer months? A. I have seen her there as late as almost November.

*Ernest Romaine Simmons, cross.*

Q. Living there? A. Yes, staying there.

Q. Living there for a week or two weeks or a month? A. We stayed there from August until the middle of October one year.

Q. Now, you went down there because that was a summer resort and that was Mrs. Young's summer home? A. I went down there whenever she went, whenever she went there, because it was her home.

10

Q. But generally, the times she went down there were in the summer? A. I should think yes, because her winters were occupied.

Q. She lived in New York whenever she was not either in Europe or on tour? A. During the winter.

Q. When she lived in New York did Mr. George W. Young live with her? A. Surely.

20

Q. When you came to this room where this will was signed who was there? A. Madame.

Q. Who else? A. Mrs. Baldwin, Mr. Constable; I think we all went in together as I remember.

Q. Who asked you to come in? A. I do not know whether it was Madame or somebody else, I cannot remember that.

Q. Was there anybody present except those four people when the will was signed? A. I am under the impression there was a gentleman present who was a lawyer, but I do not know who it was.

30

Q. What did Mrs. Young do? A. She signed the will; she signed this paper which she said was her will.

Q. This gentleman who was present and whose name you have forgotten, was it Mr. Tomlinson? A. I do not think that it was.

40

*Ernest Romaine Simmons, redirect.*

Q. You think he was a lawyer? A. I do not think it was Mr. Tomlinson, I knew him and I think I would have remembered that.

10 Q. It was this man whom you supposed to be a lawyer who asked Madame Nordica whether this was her last will and requested you to sign as a witness? A. I think Madame stated it was her will; whether anybody asked that question I do not know.

Q. Before you signed had Mrs. Baldwin left the room? A. We were all there when we were signing.

*Witness re-examined by Mr. Twining:*

20 Q. You signed at Madame Nordica's request? A. Yes.

Q. You stated Madame Nordica's winters were otherwise engaged, what did you mean? A. She spent very little time during the winter at any special place as she was much occupied in singing and in concert.

Further hearing adjourned until November 24th.

Filed November 14, 1914.

30 JOSEPH L. DONAHAY,  
Surrogate.

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Adjourned Hearing.

Freehold, N. J., February 4, 1915.

40 Mr. Osborne: I want to offer an exemplified copy of the will of Lillian Nordica Young, dated January 10, 1914, which copy is duly exemplified under the court's seal, by the Surrogate's Clerk and by the Surrogate of New York County.

*Evidence.*

Mr. Twining: I object to the offer of this paper in evidence.

Mr. Osborne: This will has not been admitted to probate. The original will is on file. The time for probate is set for the 7th of January, pending the issuance of a commission. The object of introducing this is for the purpose of proving that the paper purporting to be her last will has been filed and, further, that in that paper the testatrix describes herself as of New York, State of New York, U. S. A. 10

Mr. Twining: That can be proved by other testimony. Of course this paper is inadmissible. They have no right to offer an exemplified copy of an exhibit in another state; that would be the first ground of my objection; my second ground is that if they offer it for the purpose of showing that the paper writing has been filed in another state, as laying the basis for introducing secondary evidence of its contents, that can be done by any one who knows the facts. But to introduce this as a paper which was signed by Madam Nordica and then claim that because of some recital in that paper showing that she was or was not a resident of the City of New York would not be proper unless they also introduce evidence to show that the original paper was signed by Madame Nordica. The mere offer of a typewritten copy with Madame Nordica's name at the bottom would not be evidence in this case. 20 30

Mr. Osborne: Do you deny that the original will was signed? 40

*Robert Southworth Baldwin, direct.*

Mr. Twining: I do not. I know nothing about it.

Mr. Osborne: I will make the offer.

The Court: It is objected to and I will sustain the objection.

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(Objection noted for contestants as ground of appeal.)

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ROBERT SOUTHWORTH BALDWIN, sworn for contestants.

*Direct examination by Mr. Osborne:*

Q. Where do you live? A. 100 Waller Avenue, White Plains, New York.

20

Q. And are you the executor named in the alleged last will of Lillian Nordica Young, dated January 10, 1914? A. Are you that Baldwin named there? A. I am.

Q. And do you remember filing that will for probate in the City of New York? A. I remember requesting my attorneys to do it.

Q. And have you seen the original will? A. I have.

Q. And in whose custody did you first see it? A. In the custody of Mr. E. R. Simmons.

30

Q. Was Mr. George Young present at the time? A. He was.

Q. And who produced it, Simmons or Mr. George W. Young? A. Mr. George W. Young asked Simmons to get it.

Q. And is that the paper which is dated January 10, 1914, and which was filed in New York for probate August 27, 1914? A. Yes, sir.

Q. Did you examine that paper? A. I did.

40

Q. And are you familiar with the signature of Lillian Nordica Young? A. I am.

*Robert Southworth Baldwin, redirect.*

Q. And did you recognize that signature of that original paper as her signature?

Mr. Twining: That is objected to. I would like to cross examine on that.

The Court: Proceed.

10

*Cross examination by Mr. Twining:*

Q. Have you ever seen Madam Nordica sign her name? A. Yes, sir.

Q. Where? A. Various places.

Q. Where? A. At Ninth Street, at Ardsley, at Dorchester and at my own home at White Plains.

Q. Are you related to her? A. I am her nephew.

20

*Redirect examination by Mr. Osborne:*

Question repeated as follows: "And did you recognize that signature on that original paper as her signature?" A. I did.

Q. Will you look at this copy and state whether or not you recognize this to be a copy of that paper? A. Well, as far as any one can remember the exact words I remember it.

Q. You filed no other will in the Surrogate's Office in New York? A. I did not.

30

Q. Purporting to be the last will of Lillian Nordica Young? A. I did not.

Q. Purporting to be the last will of Lillian Nordica Young? A. I did not.

Q. Look at the first part of that will. Do you recall that in the original it was stated, as it is in this copy, that the testatrix resided in New York and State of New York?

Mr. Twining. I object to the witness testifying as to the contents of a document that is not in evidence.

40

*Robert Southworth Baldwin, redirect.*

The Court: The paper shown the witness is what?

10 Mr. Osborne: I am reading from the document. This is an exemplified copy. I will add that this is the same copy that was annexed to the proponent's petition here. They have annexed a copy, which they allege to be a copy work for word.

The Court: They are insisting on strict proof and that is not the way to prove it.

Mr. Osborne: That paper was produced by Mr. Simmons.

The Court: He gave the paper to his lawyer.

20 Q. Where did you first see the original alleged will? A. On board the boat.

Q. What boat? A. The Emperor.

Q. Who had it? A. Mr. E. R. Simmons.

Q. Who is Mr. E. R. Simmons? A. Madam Nordica's accompanist.

Q. Now, then, was anybody else present at the time when you first saw it? A. Yes, sir.

30 Q. Who was present? A. Mr. George W. Young, Mr. William F. Baldwin, Mr. Young's attorney, Mr. Tomlinson, and Mr. Simmons.

Q. Did Mr. Simmons in Mr. Young's presence state where he got that will? A. He said it had been given him by Madam Nordica for safe keeping.

Q. He then produced it, did he? A. At the request of Mr. Young he brought it into the stateroom.

Q. Was Mr. Young present when he did produce it? A. Yes, sir.

40

*Robert Southworth Baldwin, redirect.*

Q. Was Mr. Westall there? A. In my opinion he was not.

Q. And who kept that will after that? A. Mr. Simmons brought the will into the room and handed it to Mr. Young. Mr. Young handed it to Mr. Tomlinson and said, "Read that," where-  
 10  
 upon he started to read the will and at that moment my father came in and he started to read the will over again. After reading the will my father asked Mr. Tomlinson for permission to look at the document. So he did so and after my father had read it I asked to read it. And I was in the process of reading it, I had read it through once and was rereading it a little more carefully, when Mr. George W. Young made a demand upon me to give him the will.  
 20  
 I said I hadn't quite finished with it and he thereupon said, "Give me that document," or words to that effect, and upon my not complying at that instant he reached over and grabbed it away from me, took it right out of my hands by force.

Q. What became of that alleged will after that? A. I said that I wanted my attorney to look at the paper and that I didn't think that the stateroom was the proper place for it to be  
 30  
 opened up and considered by everybody and Mr. Tomlinson said there wasn't anything like that necessary, or to the effect that there was no necessity of any lawyer. I said that I would like to see that everything was legal in the matter and to see that it was in conformity with the law and Mr. Young said, "I don't give a damn about the law." And Mr. Tomlinson, his attorney, said, "Yes, you do. You must respect  
 40

*Walter W. Westall, direct.*

10 the law," or words to that effect. And after that he said, "If there is going to be so much fuss about this matter"—I asked him if he wouldn't deliver it into the custody of Mr. Simmons, who was the original custodian of the will. He said if there was going to be so much fuss about the matter he would keep it himself. Finally after a lot of talk back and forth he handed the will over to Mr. Tomlinson, to keep and said that I and my attorney could have as many copies of it as I desired.

Q. And what happened to the paper? A. Mr. Young handed it to Mr. Tomlinson forthwith and Mr. Tomlinson took it over to his office, where he was accompanied by Mr. Young—

20 *By Mr. Twining:*

Q. Do you know of your own knowledge? A. Yes, sir.

Q. Did you accompany them? A. Yes, sir; part way to his office.

*By Mr. Osborne:*

Q. Well, after that, when did you see the paper again? A. The original paper?

30 Q. Yes. A. I haven't seen the original paper since then.

No cross examination.

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WALTER W. WESTALL, sworn for contestants.

*Direct examination by Mr. Osborne:*

40 Q. Mr. Westall, are you the attorney for Mr. Baldwin, who just left the stand? A. I am.

Q. And he is the executor named in the al-

Walter W. Westall, direct.

leged will filed by you in New York County? A. He is.

Q. For probate? A. Yes, sir.

Q. When did you first see that will? A. I was introduced to Mr. Tomlinson, who requested me to come to his office—this happened at the pier at the time the Emperor arrived in Hoboken—he took me to his office at 15 Broad Street and made three or four copies of the will. Then we compared it with the original and he gave me one of the copies. 10

Q. Now when did you file this original will in the Surrogate's Court of New York County? A. I started on the 12th day of August, I think. But subsequently it was filed by an order of the Surrogate, who caused to be served a subpoena *duces tecum* on Mr. Tomlinson to come and file the will. 20

Q. And is that the same paper that was produced by him at the Emperor? A. Yes, sir.

Q. And have you a copy? A. I have the copy which Mr. Tomlinson gave me and which we compared with the original.

Q. And can you compare that copy or have you compared that copy with the original? A. This copy? 30

Q. Yes, sir. A. Many a time.

Q. And have you compared that copy with the copy which I have offered in evidence? A. Yes, I have.

Q. Are they alike? A. They are.

Q. Exactly alike? A. Yes. I compared them in the Surrogate's office. I compared them last week. I thought I would use it down there. I compared it there in the Surrogate's office.

Mr. Osborne: Now I renew my offer of 40

*Walter W. Westall, direct.*

10 the paper. Now the purpose of offering this paper, which is a last will and testament, is for the purpose of proving the declaration contained in it, that she was a resident of the City of New York. We have shown that there was an original will, an original paper, which Mr. Baldwin says under cross examination was signed by her and that this is an exemplified copy of it, a sworn copy of it; that the original paper contains the statement, that this paper contains the statement and the paper annexed to the petition in this case by the proponents contains the same statement.

20 Mr. Twining: I object to that offer on the ground that it appears that the original is in existence and it does not appear that any effort has been made to produce the original here. I have in my practice had wills taken from the Surrogate's Court in New York for probate in New Jersey. It is perfectly possible to get the original. This is a matter in which the original should have been produced. There is no explanation why the original is not produced. And I insist that even though the document is without the state and if it is within reasonable possibility of the person who offers the document and produces it here to produce the original that the document should be produced.

30 Q. Have you made efforts to get that here, that original will here? A. No, I can't say I have. I was informed we couldn't get it here. 40 The will is filed. We were going to offer it.

- *Walter W. Westall, direct.*

We expected to attach it to the commission to be issued.

Mr. Osborne: I will also offer the copy Mr. Westall has in his hands, which came from the possession of Mr. Young's attorney.

10

The Witness: I have on this some notations in reference to the law, in my own handwriting.

Mr. Twining: I make the same objection as before. It is not an exemplified copy.

The Court: Isn't it rather unusual to offer an exemplification of an exhibit? This is nothing more than an exhibit. It is new to me.

20

Mr. Osborne: The original is out of the state. Here are people who say it is a copy. In this case we could not do anything with a notice to produce. I can call Mr. Dreyfus.

The Court: How does the exemplification help it? The paper you offer, the paper you file, is alleged to be the will if it is probated.

Mr. Osborne: It is a sworn copy. It is a copy. Now we have complied with the rule and it is filed. The statute provides for its filing. It is a record which I cannot produce here. I will withdraw Mr. Westall.

30

40

*Emil Dreyfus, direct.*

EMIL DREYFUS, sworn for contestants.

*Direct examination by Mr. Osborne:*

Q. What is your business, Mr. Dreyfus? A. Lawyer.

10 Q. And you are one of counsel for the beneficiaries named in the will of January 10, 1914, are you? A. Yes, sir.

Q. Now have you made any effort to get the original alleged will of 1914 over here in the State of New Jersey for production for the purpose of this hearing? A. Yes, sir.

Q. What did you do? A. I went to see one of the Surrogates of the County of New York.

20 Q. Who was it? A. Surrogate Cohalan. I asked him whether there was any method by which he could produce this last will and testament, as I knew of none under the laws of this State. He said that the will was on file in his office and he would not allow it to go out of the state.

Mr. Osborne: I now renew my offer.

*Cross examination by Mr. Twining:*

30 Q. Are you familiar with the proceedings under your statute by which you can petition for the removal of original wills? A. Yes, sir; for the purpose of using them as exhibits, but not for the purpose of filing them with any other county, except where the will itself has been probated in that county. The Surrogate stated that he was fearful if the will got into this state he might never get it back.

Mr. Osborne: I renew my offer.

40 Mr. Twining: This last witness says

*Emil Dreyfus, cross.*

that he knows of some New York statute by which wills can be removed from the state where they may be used as exhibits.

The Witness: After they have been probated.

10

*By Mr. Osborne:*

Q. Is that what you say? A. I do say it. I say it now.

Q. It is only after they have been probated? A. Yes, sir.

*By Mr. Twining:*

Q. Do you say there is no statute authorizing that? A. I know of none allowing original papers to be taken from the files of any court to be left in any other court.

20

Mr. Osborne: As your Honor will see we have here a declaration by the testatrix—I will not call her the testatrix—but by Lillian Nordica Young that she signed the original paper, it bears her signature and says, "I reside in New York, U. S. A.," and we are entitled to that. It goes to prove conclusively where the place of her residence was. We cannot produce the original paper. There is no doubt that the original papers themselves contain that declaration. Here we have unquestioned copies of that paper and we have the proponent submitting with his petition a copy of that paper. There is no evidence that she did not sign it, but we have evidence that she did sign it. All

30

40

*Evidence.*

we want to get before the Court is that one declaration of Lillian Nordica Young, of New York, New York, U. S. A. We have done all we can to get this before the Court, all we can do.

10 The Court: What else could they have done? What else could they do?

Mr. Twining: I think if they had asked the Surrogate to come with the original he would have done it, if the original remained in his custody. That is what would occur to me to do.

The Court: Well, he might or might not do it. That is a matter of courtesy.

20 Mr. Twining: You cannot compel it. The law is that a reasonable effort must be made to produce the documents if they are out of the state.

The Court: Haven't they shown reasonable diligence?

Mr. Twining: They have shown that he asked if he could take this down to Monmouth County and the Surrogate said no.

30 The Court: I will admit the paper subject to your objection, of course.

Paper marked Exhibit C-1.

40 Mr. Light: May it please the Court, I understand that these documents are original exhibits, being letters from Madame Lillian Nordica Young, and I understand it is necessary that they be used in connection with the litigation now going on in New York. In case they are offered I want to know if the Court will permit us to leave copies in the place of the

*William Franklin Baldwin, direct.*

originals so that they can be taken back with us.

The Court: Any objection to that, Mr. Twining?

Mr. Twining: No, sir.

10

WILLIAM FRANKLIN BALDWIN, sworn for contestants.

*Direct examination by Mr. Light:*

Q. What is your full name? A. William Franklin Baldwin.

Q. Where do you live? A. Boston.

Q. How long have you lived there? A. Oh, I have lived there for forty-two years.

Q. Did you know Lillian Nordica Young? A. Ever since she was a child.

20

Q. And how intimately did you know her? A. She was right in my family a good part of the time.

Q. What did you say? A. She was right in my family a good part of the time.

Q. For how long a time? A. Oh, for several years.

Q. You mean as a young woman? A. A young woman.

30

Q. And from that on until later on in life did she live with you? A. Yes, sir; off and on.

Q. So that you testify from childhood up until the time of her death you have known her? A. Yes, sir.

Q. Intimately? A. Yes, sir.

Q. Were you in the habit of corresponding with her? A. Yes, sir.

Q. And she with you? A. Yes, sir.

40

*William Franklin Baldwin, direct.*

Q. Do you know her handwriting? A. Yes, sir.

10 Q. And to what extent have you received letters from the deceased? A. Myself personally, I have received quite a number of letters every year.

Q. And do you know of certain letters that have been produced in connection with this hearing? A. I know there have been some.

Q. I show you a letter dated August 22, 1913, and ask you if you ever saw that letter before? A. Why, certainly.

Q. To whom was that addressed? A. Addressed to "Dear Billie."

20 Q. Who was "Dear Billie"? A. Me.

Q. From whom was this received? A. From Madame Nordica.

Q. How do you know that? A. By her signature.

Q. Anything else? A. Knowing her handwriting.

Q. Is there an envelope with that? A. Yes, sir.

Mr. Light: I will offer this.

30 Mr. Twining: I haven't seen them yet.

Mr. Light: I never saw them before, if your Honor please.

Mr. Twining: Has your Honor the papers in this case? I am wondering whether this man is a party to the suit.

Q. When did you receive this letter dated August 22, 1913? A. I couldn't say.

40 Q. About when? A. I presume I received it in about the usual length of time it would take

*William Franklin Baldwin, direct.*

to come from there. I couldn't swear to the time I received it.

Q. Will you read the letter?

Mr. Twining: I object to that. I want to see the paper. (Paper handed Mr. Twining.) I understand this witness is not a party to the suit.

10

The Court: Suppose we get along.

Q. Will you read that please, Mr. Baldwin?

A. All of it?

Q. Yes, from beginning to end.

The Court: He can identify the letter and it will be offered and marked. You can leave copies of the correspondence, if that is agreeable to all of the attorneys.

20

*By the Court:*

Q. You recognize that as being in Madame Nordica's handwriting? A. Yes, sir.

Letter marked Exhibit A for Identification.

Q. I hand you another letter dated June 8, 1913. To whom was that addressed? A. To my wife and myself.

30

Q. And the same starts off with, "My dear Anna and Billie"? A. Yes, sir.

Q. Meaning your wife and yourself? A. Yes, sir.

Q. In whose handwriting is that note? A. Madam Nordica's.

Q. Whose handwriting is that? A. My wife received it.

Q. With the envelope contained there? A. I dare say. I don't know why she wouldn't.

40

*William Franklin Baldwin, direct.*

Q. Whose handwriting is that in? A. Madam Nordica's.

Q. Whose signature to that letter? A. Madam Nordica's. Signed Lillie.

10 (Letter marked Exhibit B for identification.)

Q. I hand you a letter dated July 23, 1913, addressed to "Dear Everybody". In what envelope did that come, do you know? A. In this envelope.

Q. The one pinned to it, do you mean? A. Yes, sir.

Q. Addressed to whom? A. "Dear Everybody."

20 Q. Addressed to whom? A. To Mrs. William F. Baldwin.

Q. Did you receive it? A. Mrs. Baldwin received it.

Q. Do you know who wrote it? A. Madam Nordica wrote it.

Q. Do you know whose signature is upon this? A. Yes, sir; Lillian or Madam Nordica's.

Q. Lillian Nordica Young? A. Yes, sir.

30 Mr. Light: I offer this as an exhibit.  
(Letter marked Exhibit C for identification.)

Q. I hand you another letter addressed to William F. Baldwin, August 21, 1913. In whose handwriting is that letter? A. Madam Nordica's.

Q. To whom was it addressed? A. To me.

Q. Anybody else? A. No.

Mr. Light: I offer this letter, if your Honor please.

40 The Court: Let it be marked for identification.

*William Franklin Baldwin, direct.*

(Letter marked Exhibit D for identification.)

Q. I hand you a letter dated October 25, 1913, with an envelope pinned to the same, postmarked at Melbourne, addressed to Mrs. W. F. Baldwin and ask you whose handwriting that is. A. Madam Nordica's.

19

Q. Whose signature is attached to that? A. Lillie's, Madam Nordica's.

Q. How is it signed? A. Lillie.

Q. Do you say that letter is written by Madam Nordica? A. Yes, sir.

Q. Was that one of the methods she had of signing her name? A. Yes, sir.

(Letter marked Exhibit E for identification.)

20

Q. Did you ever have occasion to have any dealings with Madam Nordica during her lifetime—I mean to say business dealings with her? A. I don't think I had many if I had any.

Q. Whether or not Madam Nordica ever came to you in connection with her business matters? A. She very often did.

Q. And other matters in general? A. Surely.

Q. To what extent? A. Whenever I was in New York or at Ardsley. When she was in Boston she would speak almost always of her matters with me.

30

Q. You say when you were in New York? A. Yes, sir.

Q. Were you ever in New York? A. Yes, sir.

Q. How many times? A. I couldn't say how many times, a great many times.

Q. And during the last three years how often have you met Madam Nordica in connection with

40

*William Franklin Baldwin, direct.*

business matters? A. I was in New York—how often did I talk with Madam Nordica about business matters?

Q. Yes. A. I should think eight or ten times.

10 Q. And from January, 1911, up until the time that Madam Nordica went away how many times do you say you talked to her on business matters? A. I talked with her on business matters five times.

Q. And on any other matters besides business? A. Certainly.

Q. What did they relate to? A. They related to her financial dealings with her husband and also to him especially.

20 Q. When was the first time that Madame Nordica spoke with you about her dealings with her husband, as near as you can recollect, the first time? A. It was in March, 1911.

Q. And the next time, if you remember? A. In October.

Q. Where were you? A. In October I was in Portland.

*By Mr. Twining:*

Q. What year? A. 1912.

30 *By Mr. Light:*

Q. You said the second time was in October, 1912? A. Yes, sir.

Q. In Portland, Maine? A. Yes, sir.

Q. When was the next time? A. The next time was in January, 1913.

Q. Where? A. That was in New York. She sent for me.

Q. But subsequent to that did you have any talk with her? A. Yes, sir; I did, in April.

40 Q. Of the same year? A. Yes, sir.

*William Franklin Baldwin, direct.*

Q. Where? A. In Boston.

Q. Where? A. At the Copley-Plaza Hotel.

Q. That was in April, 1913. Did Madame have any talks with you in reference to any contemplated trip? A. She did.

Q. What did she say? 16

Mr. Twining: I object to that. This witness is a party.

The Court: He is not a party. His wife is a party.

*By the Court:*

Q. Anna Baldwin is your wife. That was addressed to dear Anna and Billie? A. Yes, sir.

*By Mr. Light:* 20

Q. My last question related to a talk you had with Madame Nordica in April, 1913, which you said was in the Copley-Plaza Hotel? A. Yes, sir.

Q. Did you see Mr. George W. Young in Boston? A. He had been in Boston.

Q. And on the other occasions you have referred to, in March, 1911, for instance, in New York; October, 1912, in Portland, and also January, 1913, in New York, was Mr. George W. Young present when you talked? A. He was there, yes. 30

Q. With you during the conversation? A. No, sir; he was not.

Q. With whom was the talk, or did you have that talk? A. Madame Nordica and myself.

A. Alone? A. Alone.

Q. And in April, 1913, at the Copley-Plaza, do you remember what Madame Nordica said to you? 40

*William Franklin Baldwin, direct.*

Objected to.

Mr. Twining: That calls for an answer of yes or no. I do not object if he tells what she said in the presence of Mr. Young.

10

Q. Do you remember what Madame Nordica said to you in April, 1913? A. Yes.

Q. Was anything at that time said by Madame Nordica in reference to a contemplated trip?

Mr. Twining: I object to a conversation between this witness and Madame Nordica in which this proponent was not present.

20

The Court: I think I will allow that question.

Exception noted for Proponent as ground of appeal.

(Question repeated.)

A. Yes.

Q. What did she say?

Mr. Twining: That is objected to on the same ground.

Objection overruled.

30

Exception noted for proponent as ground of appeal.

A. Can I explain?

Q. No, answer the question. A. What did she say?

Q. Yes. A. She said she was thinking of making a trip around the world. Shall I detail the conversation a little bit? And that she wanted to get away from Mr. Young—

40

Mr. Twining: I object to this conversa-

*William Franklin Baldwin, direct.*

tion, unless it is given as nearly as possible in the words of Madame Nordica. He must recount the exact words.

Q. I will ask that you repeat as near as you can the exact words Madame Nordica used at that time. A. I understand. A certain party—

10

Q. And if you cannot remember the exact words repeat the exact words as near as possible. A. "I am contemplating making a trip around the world and George wants to go with me."

Q. And did you know who she referred to when she said George? A. Mr. Young. "But I don't want him to go. I will not consent although I tell him to come along. But I know he never does as he agrees. But when I am here I am under his influence so much that I can't do what I want to do. I intend to leave and get off as easy as possible, making no row at all, and found for me a home, make a home for myself, because he has taken my money and as fast as I get money he borrows it from me and I can't get any accounting from him. And not only that, I have information which I consider good, that he has been unfaithful to me"—

20

30

Mr. Twining: That is objected to on this ground, your Honor: I understand the rule to be that the only ground upon which it can be shown that the witness had a right to take up a domicile separate from her husband, is that her husband had, as a matter of fact, given her cause for divorce. Now, the conversation in which the witness states her reasons of being desirous of taking up a separate

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*William Franklin Baldwin, direct.*

10 abode and state facts which did not give  
her a right to divorce her husband, would  
be immaterial, and that is what this tes-  
timony is directed to; and upon the fur-  
ther ground, that we should not be re-  
quired to go into the question of Mr.  
Young's fidelity to his wife. Unless this  
gentleman can show your Honor that they  
are going to couple this testimony with  
actual proof of adultery; and upon the  
further ground that we should not be  
called to go into that question unless  
this gentleman will also show your Honor  
that they are going to couple this proof  
with further proof that Madam Nordica did  
20 as a matter of fact not only contemplate  
taking up another domicile but did in  
fact take up another domicile. Of course,  
this is a discretionary right as to how  
proof should be put in. But inasmuch as  
this is a very serious charge to make  
against Mr. Young I believe we are en-  
titled to have that assumption from counsel  
on the other side before this witness  
should be permitted to recount any  
30 scandal he heard about Mr. Young which  
is not based upon any fact. This witness  
is now testifying, not to any facts which  
would have justified Madam Nordica in  
taking up another domicile, and I submit  
that in a case which has unfortunately  
gotten the notoriety this case has—your  
Honor should treat the uncorroborated  
statement of this witness or any other wit-  
ness which the other side may produce  
40

*William Franklin Baldwin, direct.*

as of no value unless it is coupled with further evidence.

The Court: I will allow it and allow you an exception.

Mr. Light: We do not propose to go into any further conversation about that particular subject until the proper time comes. I do not understand that this is a matter of inquiry here. 10

Mr. Twining: Then this testimony is immaterial and I object to it.

The Court: He was narrating a conversation between himself and Madam Nordica Young. You may continue your narration.

The Witness: Madam Nordica said, "Billie, I have received information which I consider reliable and I am—so much so that I am going to try to get further information. My suspicions are thoroughly aroused and I am going to have him watched and if I find out, as I think I shall find out, the way he has been using me," referring to— 20

The Court: Just what she said.

The Witness: "Why, I shall immediately, at the best possible time, when I can get away in the easiest way, leave him for good and make my home elsewhere." I ask if she had given it due consideration, that it was a very serious step—I knew she was a woman who duly considered—and she said, "Yes, I have." She told me, she said, "I am going to get away as easy as possible and have no row with him and you and all hands must keep on good 30 40

*William Franklin Baldwin, direct.*

10 terms even when I am away, with him. And when I get away I am going to start again. He has got all of my money. I am going to start again if this trip is successful, and form for me a home away from him and I never intend to come under his roof again."

Q. At that time was there anything said by Madam Nordica as to her feelings towards her husband? A. Why, surely. She said, "It is awfully hard, Billie, because I love him."

Q. And did you say or was anything more said at that time other than what you have related? A. She spoke of many matters.

20 Q. Leading up to this last conversation? A. Yes|

Q. What did she say?

Objected to.

The Court: Objection sustained.

Q. On any other matters besides what you have already related. A. In reference to Mr. Young, you mean?

30 Q. Yes. A. She told me she wanted to have the control of her property where he couldn't be borrowing it from her all the time. She says, "Billie, isn't it a shame for me, a woman of my age, to have to go off all over the country to earn money for him to spend and squander?"

40 Mr. Twining: That is objected to as immaterial. It throws no light on the issue we are trying here. This wife had no right to abandon her husband. Suppose he spent every cent she had, she had no right to leave him.

*William Franklin Baldwin, direct.*

Mr. Light: If your Honor please, this witness' evidence in reference to this testatrix going away not to return is not objectionable.

The Court: That is all right, that part, but what relevancy has this last part? 19

Mr. Light: Nothing except to prove the conversation that took place at that time.

The Court: It should be stricken out.

Mr. Light: I have introduced various conversations from the 4th of March until the last conversation and will give anybody a right to use them if they see fit.

Q. Now, did you see Madam Nordica after that conversation? A. The conversation of April? 20

Q. Yes. A. I saw her off at the train.

Q. Did she start her trip at that time so far as you know? A. She went back to New York, I think. I never saw her again.

Q. You have seen several letters since then? A. Yes, sir.

Q. Written to whom? A. Myself and Mrs. Baldwin and Mrs. Walker.

Q. I think that is all. Oh, during the conversation that you had with Madam Nordica or that she had with you on various occasions—referring to prior to April, 1913—did she ever express her feelings towards her husband? A. Why, certainly. 30

Q. As of the same nature you have already testified to? A. The same thing.

Objected to.

The Court: Let him describe what her expressions were. 40

*William Franklin Baīāwin, direct.*

Q. The first time. A. The first time she spoke to me about him was in March, 1911, she said, "Say, Billie"—

10 Mr. Twining: I object to that as too remote. Mr. Young was not present and the conversation is inadmissible.

Q. Where was Mr. Young at that time? A. Mr. Young part of the time was right with us.

*By the Court:*

Q. In the house with you? A. Yes, sir; in the house.

*By Mr. Light:*

20 Q. Who else was there at that particular time? A. You were there.

Q. Who else, if you remember? A. Mr. Young, myself and Madam Nordica and Mr. Light.

Q. Did the conversation take place in the hearing or presence of Mr. Young or when he was not present? A. Mr. Young was present but the conversation did not take place where he could hear.

Q. What was said at that time?

30 Mr. Twining : That is objected to as too remote. This was in 1911, that is two years before Madam Nordica died; also on the further ground that Mr. Young was not present and did not hear the conversation.

Mr. Light: I was not aware there was any such law, is it the common law, that would require the husband to be present during a conversation with a third person in order to bind him. It may be so.

40 The Court: She was living with her hus-

*William Franklin Baldwin, cross.*

band, admittedly, a long time after March, 1911. I think it is too remote. I will sustain the objection and allow you an exception if you want it.

Mr. Light: I do not care for it.

*Cross examination by Mr. Twining:*

10

Q. I show you this letter dated August 22, 1913, and marked for Identification as Exhibit A. Do you know when that was received? A. I couldn't tell you when it was received.

Q. You have no recollection when it was received? A. I received it. I don't know what time it was received.

Q. You have no recollection whatever? A. Not as to the date. I know I received the letter and gave it to my son.

20

Q. I show you a letter dated October 25, 1913, and marked for Identification Exhibit E. That letter was not addressed to you, was it? A. No, sir; it was addressed to my wife.

Q. It wasn't received by you, was it, except as handed to you by your wife? A. These letters used to come to the house.

Q. I am asking about this particular letter. A. The letter was received at my house, whether I was present or not. My wife gave me the letter.

30

Q. That is what I wanted to know. This marked for Identification as Exhibit C addressed to "Dear Everybody," do you know when that was received? A. My wife's handwriting says, "Received July 20, 1913."

Q. Do you know that as a fact? A. I have no question about it. That is my wife's writing.

Q. Do you know whether that is the fact? A. Certainly I don't know it.

40

*William Franklin Baldwin, cross.*

Q. It is addressed to Mrs. Baldwin? A. Yes, sir.

Q. Why is the postmark cut off, do you know? A. Yes.

10 Q. Why? A. Because I, like a great many others, have a fad for collecting postage stamps and these were foreign stamps from Melbourne, or from Australia, and I cut them off.

Q. They are not cut off of Exhibit E. A. Not all of them are cut off, because when I got a sufficient quantity I stopped.

Q. This letter was not received by you except as handed to you by your wife, was it?

Mr. Light: Which one is that?

Mr. Twining: Exhibit C.

20 Q. Was it received by you except as handed to you by your wife? A. No, sir; it wasn't.

Q. And the same is true of the letter dated June 8th, is it not, marked for Identification B? A. I couldn't say about that.

Q. It is addressed to your wife, is it not? A. It is addressed to my wife at the home. If these letters came there in the morning I would be there.

30 Q. Do you remember whether you opened this letter or not? A. I couldn't tell you, sir.

Q. The letter is not dated June 8th, 1913, as you stated, is it? A. I received the envelope June 8th; no, sir. No year is given.

Q. Was any year given in that letter? A. No, sir; not by her.

40 Q. And the only letters you received, that is, the only letters directed to you from Madam Nordica which have been offered in evidence, are the two marked for Identification as Exhibits

*Lillian B. Burnham, direct.*

A and D, are they not? A. Those two letters I received myself personally.

Q. They are the only two you received yourself personally, are they not? A. Yes, sir; many of these I may have received.

Q. Well, are they or are they not? A. Personally they are the only two I received. 10

Q. During this conversation in April, 1913, with Madam Nordica did you suggest that it might be well for her to talk the matter over with her husband? A. No.

Q. And how are you related, by marriage or by blood, to Madam Nordica? A. No blood relation, I am a brother-in-law.

Q. And your wife was being supported by Madam Nordica, partially or wholly for many years? 20

(Objected to. Objection sustained.)

A. Absolutely not.

Recess till 1:30 P. M.

(Trial of the cause resumed at 1:30 P. M.)

LILLIAN B. BURNHAM, sworn for contestants.

*Direct examination by Mr. Light:* 30

Q. Where do you live? A. 315 West 79th Street, New York.

Q. And did you know Madam Nordica during her lifetime? A. Yes, sir.

Q. She was your aunt? A. Yes, sir; my mother's sister.

Q. And during the last two or three years do you know where Madam Nordica lived, where she made her home? A. At 8 West 9th Street, New York. 40

*Lillian B. Burnham, direct.*

Q. And did you live with her? A. In the winter of 1912 and 1913 I lived with her at the house.

Q. After that where did you live? A. Where did I live?

10 Q. Yes. A. I lived—

Q. I mean in reference to where Madam Nordica lived. A. Madam Nordica left in June, 1914.

Q. You say two years before? A. Two years.

Q. Before her departure on the trip you lived with her? A. Yes, sir.

Q. Did she have occasion to talk with you in reference to her marriage? A. Yes, sir; many times.

20 Q. Were you with her in Boston in April, 1913? A. For a few days; yes, sir

Q. Were you down in Portland in 1912? A. No, sir.

Q. Were you present when your father talked with Madame Nordica in January, 1913, in New York? A. I wasn't there at the interview. I was in the house at the time.

Q. You were there? A. Yes, sir.

Q. And knew of her being there? A. Yes, sir.

30 Q. Did you have any talk or did Madame Nordica have any talk with you as to the matters in the hands of her husband? A. Yes, sir.

Q. How many times? A. I couldn't begin to count.

Q. Generally speaking? A. Forty or fifty times, probably.

Q. Who was present at that time if anybody? A. We were most always alone. Perhaps my mother would be there or my other aunt, Mrs. Baldwin.

40

*Lillian B. Burnham, direct.*

Q. What were the talks about, if you remember? A. Do you want her words, what she said?

Mr. Twining: Let us fix the times.

Q. Do you remember any particular occasion of any talk you had with Madame Nordica? 10

A. She was on a concert tour that year and was only in New York for a few days. I can't fix any time when she was in New York. I can fix one day in May when we were down at Deal over Sunday and we had a long talk.

*By the Court:*

Q. What year was that, 1913? A. Yes, sir.

*By Mr. Light:*

Q. What time in the year? A. In May some- 20  
time.

Q. What was the talk? A. She said she was very unhappy.

*By Mr. Twining:*

Q. Was Mr. Young present? A. No, sir.

Mr. Twining: I object to this conversation.

The Court: What do you intend to 30  
show?

Mr. Light: Cross out the last question.

*By Mr. Light:*

Q. Did you have any talk with Madame Nordica in reference to her then or future residence or domicile? A. Yes.

Q. When? A. Oh, during April and May, a number of times she told me.

Q. What year? A. 1913. 40

*Lillian B. Burnham, direct.*

Q. What did she say?

*By the Court:*

Q. Was Mr. Young present? A. No, sir.

Objected to.

10

The Court: I will hear it.

Q. What did she say? A. She said, "I am going to take this trip around the world. I am going alone. I am doing it as a means of getting away from George gradually, without any open break, because I intend to break with him finally. I never shall return to him. I shall make my home in New York and I should like to have you live with me"—meaning me—"but I never shall return to George."

20

Q. Did she use the words, "I shall keep my home in New York," or "make my home in New York"?

Objected to as leading. Objection sustained.

Q. Do you remember anything further that was said? A. I don't remember, excepting she said, "I am very unhappy." She said, "I am very unhappy. I am entirely disillusioned and disgusted with the way my money has gone. I have loaned it to George and he never has given me any accounting and I never have been able to get any accounting from him and I intend to get my affairs away from his control so that I will know just what I have and I will be able to dispose of it in the way that I want to."

30

Q. Well, now, will you repeat again, just for my benefit is all, what she said as to where she was going to make a home?

40

*Lillian B. Burnham, direct.*

The Court: That is in the record.

Q. Do you remember anything else that was said at that time that you have not already testified to? A. Every conversation was a reiteration of this statement.

Q. How many times do you say that she made such a statement? A. Well, during April and May very frequently. 10

Q. Do you know whether or not Madam Nordica had a home in New York during the time when she made these statements to you?

Mr. Twining: I object that she has already testified to that.

Q. Did she have more than one home? A. In Ardsley, New York, she had a country home. 20

Q. Do you know of her making her home at Deal, New Jersey? Yes or no. A. No.

Q. During the last three years of her life do you know of her making her home at Deal, New Jersey? A. I know one summer she spent probably six or eight weeks there. Generally she has been down for week ends, very often, never for a continuous residence there that I remember.

Mr. Twining: I move to strike out all of this evidence on the ground that it is immaterial; it does not show any one of the three elements, or tend to show any one of the three elements necessary to be shown in this case. It does not show or tend to show that Madam Nordica had any cause for divorce; it does not show or tend to show that she had a fixed intention of leaving her husband and it does not show or tend to show that she did in fact leave her husband. 30  
40

*Evidence.*

The Court: Isn't that true, Mr. Light?

10 Mr. Light: It seems to me we have established one point alone, and that is on the point referred to by my brother as to the fixed intention. I do not understand that the witness is offered for the purpose of making any testimony to suit the occasion and we are therefore bound by what was said by the testatrix herself. The evidence is she said, "I am going away and am never coming back to live with him." That is the sum and substance of it. It seems to me that was the intent and the fact that she did go away and did not come back is sufficient evidence of that intent.

20 The evidence of this last witness when connected with the evidence of auxiliary witnesses tends to show what was in the mind of the testatrix at the time she made this declaration and also followed by her subsequent act in making the instrument, which we claim to be her last will.

30 The Court: You might get sixty witnesses to swear to the same facts that this witness has sworn to but I do not believe it would be of any value, I will strike it out and allow you an exception, of course.

40 Mr. Light: I do not know that I can do any better by this witness. It is just a circumstance tending to lead up to what has been sworn to here and to lead the court to come to same conclusion as to why there is a dual action here. We have a case now pending in New York. We have followed the instructions in accordance with the will. It was immaterial to

*Robert Southworth Baldwin, direct.*

us and it didn't make any difference to us where the will was probated. But we are now in a position that the Surrogate's Court of New York has taken jurisdiction over the matter and they have set down this date as the date on which we were to be heard there—the 7th of January—that was to give a chance for a commission to be issued. We want of course to save expense. And if an instrument which is not, as we claim, a will under the law, is allowed here and another instrument which is entitled to be called a will is allowed in New York, it will be a very peculiar situation. We want to land somewhere. I say that on the part of the respondents as well as the other side.

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ROBERT SOUTHWORTH BALDWIN, recalled for contestants.

*Direct examination by Mr. Light:*

Q. Mr. Baldwin calling your attention particularly to any statements made by Madame Nordica, if at all, as to where she claimed her residence to be at the time she talked with you, or where she proposed to make her residence, now state the time when any such conversation took place if any. A. Well, I can't state the exact date but it was approximately the forepart of June or the latter part of May, 1913. On one or more instances she had stated to me that she was—

Mr. Twining: I object to any statement unless Mr. Young was present.

*By Mr. Twining:*

Q. Was he present when these statements were

*Robert Southworth Baldwin, direct.*

made? A. In the same house but not in the conversation.

Q. He didn't hear them? A. No, sir.

10 Mr. Light: I insist upon my question unless the court rules against me.

The Court: I will allow that provided you get it down to a certain time.

Mr. Light: I understand that was in April or May, 1913.

*By Mr. Light:*

Q. That was practically the last time you talked with Madam Nordica? A. That was the last time.

20 *By the Court:*

Q. Was that the last time she talked about her husband?

*By Mr. Light:*

Q. What did she say to you about her husband, if anything?

Mr. Twining: That is objected to unless it was in the presence of Mr. Young.

Objection overruled.

30 Exception noted for proponent as ground of appeal.

A. She said she was leaving her husband and would never return to him and would make her residence in New York so as to be near her sisters, and that they visited her and she visited them, so as to be near them.

*By the Court:*

Q. Was that all the conversation? A. No.

40 Q. Regarding residence? A. Regarding the specific question of residence.

*Robert Southworth Baldwin, direct.*

*By Mr. Light:*

Q. Did she make any other remarks at that time as to why she was making her residence in New York? A. She told me the reasons. The question asked me was what was said about residence. I have answered that. Now I am trying to state what else she said to me leading up to that. 10

The Court: Don't answer or volunteer anything except in response to the questions.

Q. Was there anything talked at that time with reference to a change of residence? A. Yes, considerable.

Q. What was the talk? 20

Mr. Twining: I object to it on the ground that it is immaterial.

The Court: I will allow it and grant you an exception.

*By the Court:*

Q. Just tell what was said, the words she used, as near as you can recollect it. A. As near as I can recall, if your Honor please—

The Court: You digress all the time. You must answer the question. 30

Question repeated.

A. She said she had been totally enlightened—

Mr. Twining: I object to it.

Mr. Light: If that is not a conclusion you may state it.

*By Mr. Light:*

Q. You say these are her words? A. As 40

*Robert Southworth Baldwin, direct.*

10 near as I can remember it. "I am" or "have  
 been totally enlightened about George, as I have  
 intimated to you I suspected in the past and  
 from such stories and information as I can gain  
 and I have had him watched to verify certain  
 20 of this information, but you know one never  
 knows whom to trust, unless it is one of those  
 near and dear to us. As long as I am leaving  
 on this world tour with the idea of getting away  
 from him (George), as readily as possible and  
 without any publicity or scandal, I would like  
 to have you, if you can spare the time from your  
 business, carry on certain investigations in  
 connection with him. I know it is not possible  
 for you to give enough time to it. Have you  
 30 any close friend whom you can implicitly trust  
 and who would work with you in this connec-  
 tion?" I replied that I had and recommended—

The Court: Never mind whom you  
 recommended.

The Witness: I replied that I had.

Q. Now prior to that occasion had she made  
 any remarks similar to that? A. Yes.

Q. How many times?

30

Mr. Twining: Well, when?

Q. How long prior to that? A. This time I  
 am talking about is a conversation she had with  
 me in the early part of June. She had a talk  
 with me in May also on the same lines and  
 later on in June.

*By the Court:*

Q. In the year 1913? A. In the year 1913.

40

*Robert Southworth Baldwin, cross.*

*By Mr. Light:*

Q. Now at that time did she state anything to you about making a world trip? A. I said she said she was going away on this world trip.

Q. Now was anything said by her as to whether or not she would keep you in touch with her movements? A. She said she would keep me advised of her movements. 10

Q. Did she tell you how she would keep you advised? A. By mail and by cable.

Q. And whether or not she did? A. She did do that.

Q. She did, by correspondence sent to you or someone else? A. Sent to me.

*Cross examination by Mr. Twining:*

Q. When did Madam Nordica leave on the world trip? A. I can't give you the exact date. To the best of my recollection it was in the latter part of June, 1913. 20

Q. June 6, 1913? A. I can't say.

Q. Was it before the middle of the month? A. I think it was. I am not positively sure.

Q. Well, you didn't have any conversation with her after the middle of the month such as you have recounted? A. I had none with her after she left. 30

Q. Did you or did you not have any conversation with Madam Nordica after the middle of the month of June, 1913? A. To the best of my recollection I did not.

Q. Where did Madam Nordica's sisters live during the months of May and June, 1913? A. What sisters?

Q. Any of her sisters. A. There are three.

Q. Any of them? A. There are three. 40

*Robert Southworth Baldwin, cross.*

Q. Where did they live? A. My mother was living in Boston; my Aunt Imogene was living in Cleveland and my Aunt Ione was living at times with my mother and with my Aunt Louise, back and forth. They visited a great deal.

10 Q. And none of them were then living in the City of New York and State of New York, were they? A. No, sir.

Q. Who was present besides yourself and Madam Nordica at the time of this conversation that you have recounted in the months of May and June, 1913? A. Madam Nordica and myself.

Q. No one else? A. At certain places, yes, at other places no.

20 Q. Who was present and at what place. A. The conversation I had at 9th Street, I was present with her in the room. There were other people in the house and came into the room from time to time.

Q. Who were they? A. I remember once that Mr. Young came into the room.

Q. Did you continue this conversation in his hearing? A. No.

30 Q. Were any of these conservations had in the hearing of any one besides yourself and Madam Nordica? A. Possibly, at one place.

Q. Well, were they or not? A. They could have been heard.

Q. By whom? A. By the persons who were present.

Q. Well, who were they? A. I don't know who they were.

Q. Where was this conversation you spoke of? A. Hotel Plaza.

40

*George W. Young, direct.*

Q. Well, you mean strangers? A. Yes.

Q. You have no reason for supposing that any of these conversations were heard by any one else, have you? A. Not that I know of.

Mr. Light: I understand that these letters are in evidence. 10

The Court: They have been marked for identification, that is all.

Mr. Light: I offer them in evidence.

The Court: They will all be marked then as exhibits in the case. The stenographer will so mark them.

Mr. Light: In reference to the receipt of the letters, that is the only question that occurs to me. If there is any doubt in your Honor's mind— 20

The Court: Counsel has waived all that. He makes no objection.

Letters marked Exhibits C-2, C-3, C-4, C-5 and C-6 in evidence.

Mr. Osborne: That is all we have on the question of domicile. We have no further evidence.

Contestants rest.

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#### PROPONENT'S TESTIMONY.

GEORGE W. YOUNG, sworn for proponent.

*Direct examination by Mr. Twining:*

Q. Did you receive certain letters in the handwriting of your wife Madam Nordica during the period from June 6, 1913, to the end of that year? A. I did.

Q. Have you any of such letters with you? A. I have. 40

*George W. Young, direct.*

Q. Will you produce them?

(Witness produces letters.)

Q. Are they arranged chronologically? A. I think they are.

10 Q. I show you an envelope addressed to yourself, postmarked Denver, Colorado, dated June 7, 1913, containing a letter in pencil, dated June 7th, and ask you if that letter is in the handwriting of your wife. A. It is.

Q. Can you tell about when it was received? A. Well, I should imagine about the 11th, possibly—the 7th, from Denver.

Q. It came in this envelope? A. It did.

20 Q. Is the signature to the letter in the handwriting of your wife? A. It is.

Q. How is it signed? A. Lillie.

Mr. Twining: I offer the letter and envelope in evidence and ask to have it marked for identification.

The Court: It will be marked for identification.

Mr. Dreyfus: If he will let us look through the letters it may save time.

(Letters examined by counsel.)

30 Mr. Twining: These will all be marked for identification.

(Letters marked for identification F, G, H, I, J, K, L, and M.)

Mr. Light: We understand there are other letters about the same period, written in the same tone, and we would like to have all the letters put in unless there is some objection.

40 Mr. Twining: These are the ones we are going to put in.

*George W. Young, direct.*

Mr. Light: I understand there are others written about the same time; in other words, a letter was written to us and another letter written to Mr. Young.

The Court: Let counsel offer formal proof. 10

Mr. Twining: A letter dated September 23, 1913, and an envelope accompanying the same, addressed to George W. Young, Esq., a letter dated September 9, 1913, and an envelope accompanying the same, the envelope being addressed to George W. Young, Esq.; a letter dated July 7th, and the envelope accompanying the same, addressed to George W. Young, Esq.

Mr. Light: 1913? 20

Mr. Twining: It doesn't say.

Q. Mr. Young, in this letter dated July 7th was there anything enclosed? A. I think there was a flower and a poem, something of that kind. There was a clipping—and this clipping.

Q. Was that enclosed in that letter? A. I think it was if I found it there.

Mr. Twining: Then I include in the offer of this letter the enclosed clipping. 30

Mr. Light: I suppose it is referred to in the letter. We haven't examined it.

Mr. Twining: Letter dated June 27th and the envelope accompanying same, addressed to George W. Young, Esq., a letter dated June 17 and the envelope accompanying same, addressed to George W. Young, Esq.

Q. Mr. Young, did anything accompany the letter dated June 17th? A. A poem and a flower. 40

*George W. Young, direct.*

10 Mr. Twining: I include in the offer of this letter the enclosure. I think I have included the enclosure already to the first letter of June 7th, that and the envelope accompanying the same being addressed to George W. Young, Esq.

I also offer a typewritten letter, containing certain words in lead pencil, being dated November 27, 1917, no envelope accompanying that, a memorandum on the back of the typewritten letter in the handwriting of the deceased, being dated November 27th.

20 Q. I show you the last named exhibit and call your attention to the words in pencil on the first page of typewriting saying, "My Dear George." In whose handwriting is that? A. My late wife.

Q. I also call your attention to the handwriting on the back of the fourth page of the typewritten letter and ask you whose handwriting that is. A. My late wife.

Q. Did Madam Nordica send you a book of poems while she was away? A. She did at Christmas, yes, sir.

30 Q. Have you that book with you? A. I think it is there. (Indicating satchel.)

Q. I show you a book entitled "The Value of Love" and call your attention to some writing on the frontispiece on the front page. Whose writing is that? A. My late wife.

Q. When did you receive that book, about? A. Some time after Christmas.

Q. Through the mail? A. Through the mail.

40

*George W. Young, direct.*

*By the Court:*

Q. Christmas of what year? A. Well, 1913, at Christmas.

Mr. Twining: I offer the front page of this book in evidence. Do you want to look at the writing? 10

(Book examined by counsel.)

Q. Mr. Young, do you know the date upon which Madam Nordica started on her world trip in 1913? A. June 2nd.

Q. 1913? A. 1913.

Q. Did you receive any cablegrams from her or from Mr. Simmons or from both while she was on her trip? A. A great many.

Q. From the first of January, 1914, until the time of her death how frequently did you receive such cablegrams? A. Daily. 20

Q. What was the general purport of these cablegrams?

Objected to. Objection sustained.

Mr. Twining: I offer to prove a large number of cablegrams. My offer will simply be to show the cablegrams to the witness and ask him if those are the cablegrams which he received and whether they were received in pursuance of instructions which she gave to Mr. Simmons and also whether some of them were received over the signature of his wife. In other words, I am not prepared to prove these cablegrams by any official of the cable company or by the person to whom they were dictated. I make that offer for the purpose of finding out 30 40

*George W. Young, cross.*

whether it would be agreeable for me to put them in or whether the other side will object and require formal proof.

Mr. Dreyfus: I never heard of an offer being made in that way.

10

The Court: Do I understand here that counsel insists on strict proof of it?

Mr. Dreyfus: We do insist on strict proof of it.

*Cross examination by Mr. Light:*

Q. You have seen these letters we offered this morning? A. Yes, sir.

Q. There is no doubt that these letters came from her? A. Nobody could prove that to me except my late wife.

20

Q. Did you mean to say you question the handwriting? A. I have not examined them very minutely. There is a striking similarity to her handwriting. Her sister, Mrs. Baldwin, writes like it.

Q. Is there any doubt as to who wrote those letters? A. I question the sentiments in those letters.

30

Q. Do you mean to say there is a doubt as to who wrote those letters? A. I mean to say there is. I mean to say it decidedly. No one could prove it was hers to my satisfaction except my late wife.

Q. I understood you to say the handwriting is similar to that? A. Similar to that of my wife and similar to that of Mrs. Baldwin.

Q. And if the words were not written or had not the meaning you now discover you would admit that it was her handwriting? A. No, sir.

40

*George W. Young, cross.*

Q. Look at the way the letter is signed, Lillie.

A. Yes, sir; there is a doubt.

Q. Any doubt about who signed it? A. Great, in my mind.

Q. And the reason you have these doubts are because the letters are not in keeping with what you supposed she would write? A. There is great doubt in my mind. 10

Q. They vary from the letters which you received? A. They do.

Q. And that is your only reason, is it? A. It is a very good reason to me.

Q. Does it strike you that these letters were in keeping with some letters you had written her in reference to your dealings with her? A. No, not at all. 20

Q. And didn't you realize the fact, Mr. Young, that during your married life that Madame Nordica was finding fault with you? A. Never.

Q. Because—you don't know what I am going to ask you—because of financial troubles between you two?

Mr. Twining: That is objected to as not cross examination.

The Court: The objection will be sustained on the ground that it is improper cross examination. None of this was brought out in direct examination. 30

Q. Do you know where Madame Nordica was on June 8, 1913?

Mr. Twining: That is objected to as not cross examination.

The Court: I do not see any harm in it.

A. I don't recall it; no, sir. 40

*George W. Young, cross.*

10 Q. Will you look at the postmark of that letter and see whether, after having seen that, there is any doubt whether Madame Nordica was at that place, Laramie, Wyoming, at that time—whether or not Madame Nordica was there on that date? A. I think she was.

Q. Is there any doubt in your mind that Madame Nordica was at Melbourne in November, 1913? A. I know she was.

Q. Or in October, 1913? A. She was there during the winter of 1913.

Q. And in Sydney during the winter of 1913? A. She was in Sydney.

Q. And Sydney, Australia, in August, 1913? A. About that time; yes, sir.

20 Q. And in July, say, about July 23, 1913, Sydney, New South Wales? A. She landed there in the early part of July.

Q. Now, isn't it a fact, Mr. Young, that the letters you received were mailed from the same places and about the same time? A. I think the letters I received from my wife were mailed from some of those places and about the dates of those letters.

30 Q. Do you know where Mrs. Annie Baldwin was during the period of these various letters? A. I imagine at her home at Dorchester, Massachusetts.

Q. You imagine she was there? A. Yes, sir.

40 Mr. Twining: I offer these letters, the envelopes and contents which I have offered for identification. I also offer in evidence the front page of this book reading as follows, "To George. Wishing him a Merry Christmas, 1913, Melbourne, Australia." Do you object to that?

*Mrs Ada Baldwin, direct.*

Mr. Light: The whole thing goes in?

Mr. Twining: I do not offer it all. I do not want the whole book of poems printed in the record.

Mr. Dreyfus: We object to any part of it going in. 10

The Court: He has a right to put in the whole page if it is identified as being in Madam Nordica's handwriting. I will overrule the objection. I will take the whole page as offered and allow you an exception.

Mr. Twining: That is all, Mr. Young.

The Court: Any further examination of this witness?

Mr. Light: Nothing further. 20

Mrs. ADA BALDWIN, sworn for proponent.

*Direct examination by Mr. Twining:*

Q. Mrs. Baldwin, were you with Madam Nordica at the time of her death on Thursday Island? A. She died at Batavia, Java.

Q. What was the date? A. The 10th of May or the 11th, rather.

Q. 1914? A. Yes, sir. 30

Q. Was she conscious just previous to her death? A. A short time before her death.

Q. Were you with her during her last conscious moments? A. I was.

Q. Did she make any statement? A. Her last conscious sentence was, "All my love to George."

Q. Who was George? A. Mr. Young.

Q. I show you a paper dated May 1st, and purporting to be a cablegram and ask you whether 40

*Mrs. Ada Baldwin, cross.*

you heard Madam Nordica dictate that cablegram? A. I did.

Q. To whom did she dictate it? A. To Mr. Simmons.

Q. Do you know whether or not he sent it off?  
10 A. As sure as I can be of anything.

Q. What was it that Madam Nordica said at the time she dictated this cablegram, as nearly as you can recollect it, in your own words? A. "Tell George not to meet me at Japan, journey too long and lonesome. Meet me at Marseilles. Crazy to get home. Counting the minutes. God is good."

Q. About what time was it that she dictated that cablegram? A. Very early in May.

20 Q. 1914? A. Yes, sir.

Q. And did she or did she not give directions to have that sent? A. Yes, she was dictating the cablegram as an immediate answer to one that she had received.

Q. From her husband? A. From her husband.

Q. And did she or did she not give directions to Mr. Simmons to forward this cablegram to her husband? A. That is why she was dictating the cablegram, that it should go off at once.

30 *Cross examination by Mr. Dreyfus:*

Q. When did you last see this paper that was exhibited to you? A. Just now.

Q. When was the first time you saw it? A. The first time I saw it? I couldn't tell you.

Q. Have you ever seen this before? A. I presume I have.

Q. You have never seen this original telegram that was sent off? A. I didn't. I did not, no.

40 Q. Did you see it at Batavia? A. No, sir.

*Mrs. Ada Baldwin, cross.*

Q. You didn't see this? A. I didn't see this at Batavia. I am telling you what Madam Nordica dictated at Batavia.

Q. But you were asked by Mr. Twining and you very readily said to Mr. Twining you were present when this telegram was dictated. A. I was. 10

Q. And you were able to repeat it? A. I was able to repeat it because it made a great impression on me, because this cablegram was sent out this day and because she was very ill at that time.

Q. She was very ill at that time? A. Yes, sir.

Q. Did she impress you as a woman who was suffering much? A. No, I should not say that she was suffering very much. 20

Q. Her mind was perfectly clear? A. Yes, sir.

Q. And fully able to dictate? A. She was able to dictate, yes.

Q. And converse intelligently? A. I should say so.

Q. Do you know whether she was in pain at that time? A. She didn't appear to be. She seemed to be really feeling she was going to leave Batavia, apparently.

Q. She had received, you say, a cablegram from Mr. Young? A. Yes. 30

Q. Had you seen that? A. I had heard it read.

Q. Who read it to her? A. Mr. Simmons.

Q. How long before this cablegram was sent off? A. How long before that cablegram was sent off?

Q. Yes. A. I should say immediately or very soon.

Q. Wasn't it in answer to another cablegram 40

*Mrs. Ada Baldwin, cross.*

that had been sent off by Mr. Simmons? A. I beg pardon.

Q. Wasn't the cablegram that Mr. Young sent in answer to a cablegram Mr. Simmons had sent off previously?

10

Objected to.

A. I don't know.

Q. You don't know? Do you say you do not know? A. I can't answer that question.

Q. You were able to answer Mr. Twining's questions. A. I am able to answer any question that I understand.

Q. Aren't you able to answer the question I just put?

20

The Court: She apparently does not understand the question.

Q. Do you understand my question? A. I don't think I do entirely understand the question.

Q. I now ask you the question again. A. Please.

30

Q. Was this telegram that was sent by Mr. Young to which this telegram was a reply, in answer to a telegram that had been previously sent by Mr. Simmons? A. As to that I couldn't possibly tell you. So many telegrams went back and forth I couldn't tell you what was the answer to that. I couldn't tell you what cablegrams Mr. Simmons received or what he sent, with absolute accuracy.

40

Q. This cablegram is signed by Simm, not Nordica. Did Madam Nordica direct Mr. Simmons to sign his name or sign her name? A. I don't recall she authorized him to sign any name. She gave this cablegram for him to send. I am giving you the contents of the cablegram.

*Evidence.*

Q. She dictated it to him? A. Yes, sir.

Q. Who took it down as she dictated it? A. That I can't tell you.

Q. You assumed that her directions were for him to send the precise words that she dictated?

A. Yes, sir.

10

Mr. Dreyfus: I have no objection. I offer it.

Mr. Twining: You cannot offer it on my case.

Mr. Dreyfus: I will offer it for identification.

Cablegram marked N for identification.

Both Sides Rest.

20

Mr. Osborne: I would like to strike out the answers of Mrs. Burnham. As the testimony now stands we should offer it in rebuttal, in contradiction of the testimony of the other side. Her testimony explains why Madam Nordica was assuming towards her husband an attitude of friendliness and at the same time she was conducting investigations and was actually criticising him. The testimony of Mrs. Burnham itself explains that. If it is not admissible it should have been stricken out on our case. It is properly evidence in rebuttal.

30

The Court: I cannot view it that way. I will overrule it and allow you an exception.

Mr. Dreyfus: I now renew my offer of this cablegram as an exhibit in the case

40

*Evidence.*

for the purpose of contradicting the witness's testimony in regard to the dictation of the cablegram and the instructions.

The Court: Let me see it.

10 Mr. Dreyfus: It is self-evident from the cablegram that he did not carry out her instructions.

The Court: She said Madam Nordica dictated it to Simmons.

Mr. Dreyfus: He took it at her dictation and she was as sure as anything else that that was signed by her. She said that.

Mr. Twining: I have no objection to this cablegram.

20 The Court: It will be received and marked as an exhibit in the case.

Mr. Twining: It ought to be the understanding that this was the cablegram that was received by Mr. Young. That is the only cablegram I know of that Mr. Young has.

Mr. Dreyfus: Your testimony related to what was in this paper.

30 Mr. Twining: The contents of this paper were received by Mr. Young by cable, whether this was dictated or something else was dictated.

Mr. Dreyfus: There is no evidence that it was received.

Mr. Twining: It is stipulated that the cablegram marked for identification N for contestants was received by the proponent, Mr. Young, by cable.

40 Mr. Dreyfus: But that doesn't go to the extent that Madame Nordica authorized it to be signed.

*Evidence.*

The Court: That can only be a matter of argument from the testimony.

Mr. Osborne: We rest on this question of domicile.

Letters, cablegram and book previously offered for identification on the part of the proponent offered in evidence and marked P-1, P-2, P-3, P-4, P-5, P-6, P-7, and P-8. 10

(Proponent to file brief by the 20th of February, the contestants to have five days in which to file reply briefs.)

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Freehold, N. J., July 6, 1916.

Before—Hon. RULIF V. LAWRENCE, Judge. 20

## APPEARANCES:

EUGENE W. LEAKE, ROBERT W. LIGHT, WALTER W. WESTALL and EMIL DREYFUSS, Counsel for Robert W. Baldwin and Contestants Walker and Baldwin.

WILLIAM H. OSBORNE and ALBERT G. THORNE, Counsel for Contestants Castillo.

KINSLEY TWINING and JOHN C. TOMLINSON, Counsel for Proponent. 30

(Continuation of testimony taken in the above stated cause, as adjourned from February 4, 1915.)

Mr. Twining: If your Honor please, before we start with the taking of depositions I do not know whether I should at this time or later state what the result of our effort has been to get the witness we spoke to your Honor about last Thurs- 40

*Evidence.*

day. Perhaps it would be better to wait and see how we get along this afternoon.

Mr. Leake: What prospect is there of your having her here to-morrow?

10 Mr. Twining: We cannot have her here to-day or to-morrow.

Mr. Leake: Is it your intention then to ask for an adjournment after we conclude our case?

Mr. Twining: I think so, yes.

20 Mr. Leake: I think that ought in fairness to be made plain now, for Miss MacDonald is a nurse attached to the Australian Branch of the English Army and she is obliged to return to France on Saturday. Now, if an application for an adjournment is to be made by the other side we ought now to have from them the reasons why they are unable to get their witness here; we also ought to have the evidence which they intend to prove by that witness: first, to show that it is material, and secondly, in fairness to us, that we may have this witness, who is obliged to return—have before us the evidence that they intend to produce by the witness they say they are now unable to get.

30 The Court: Well, is there any reason why the testimony of this witness should not be exhausted now?

Mr. Leake: None whatever, but if I know what they—

40 The Court: You desire to have Miss MacDonald present in the event that the witness on the other side makes some

*Evidence.*

statements as to which she may have some information of her own?

Mr. Leake: Yes, and I am not only will-  
titled to call her in rebuttal, but I think  
that I am also entitled at this time, if  
there is any material fact to which they  
desire to direct the attention of their wit-  
ness in Florida, I may ask this witness  
that fact while she is here. It may not  
be necessary to bring her back. 10

The Court: What do you say to that?

Mr. Twining: If your Honor please,  
there isn't anything that I know of that  
our witness will testify to which would  
not have to be covered in any case by the  
testimony of this witness; that is to say,  
the burden is still upon them to proceed  
with their case, and as I understand the  
rules of evidence the only evidence that  
can possibly be put in by any witness  
would be testimony which was in rebut-  
tal of what this witness and other wit-  
nesses may have said, and this witness  
then would not have the right to come  
back and contradict what my witness had  
said, because by so doing she would sim-  
ply be giving her testimony right over  
again. 20 30

Mr. Leake: I understand it is the prac-  
tice in asking for an adjournment for a  
material witness to set out what that wit-  
ness is to testify in order to obtain that  
adjournment, and particularly here, a wit-  
ness who is obliged to return, if there is a  
material fact and this witness knows any-  
40

*Sadie Charlotte MacDonald, direct.*

thing about it I would like to direct her attention to it.

The Court: I think we will allow the situation to take care of itself at the close of your case.

10

MISS SADIE CHARLOTTE MacDONALD, a witness produced on the part of the contestants, being duly sworn according to law, testified as follows:

*Direct examination by Mr. Leake:*

Q. Miss MacDonald, what is your profession?

A. At present?

20

Q. At present. A. I am an army nursing sister, attached to the Australian General Hospital, now in France.

Q. Where were you in January, 1914? A. On Thursday Island.

Q. And in what capacity there? A. I was matron of the Torres Straits Hospital.

Q. During the entire month of January, 1914?

A. Yes.

Q. Did you meet Lillian Nordica there? A. Yes.

30

Q. Do you remember what day she came to that hospital? A. Yes, she came on the 2nd of January.

Q. Of what year? A. 1914.

Q. Was she ill when she came to the hospital?

A. Yes.

Q. And what illness was she suffering from?

A. She was pleurisy and pneumonia.

Q. How long did she remain in the hospital?

A. Until the 28th of March.

40

Q. 1914? A. 1914.

Q. Did you see her frequently? A. Yes.

*Sadie Charlotte MacDonald, direct.*

Q. While she was there? A. Yes.

Q. How many times a day? A. Oh, frequently.

Q. Well, what do you mean by frequently?

A. Well, I mean to say that I saw her repeatedly. I would be only absent for an hour or two.

Q. Did you sleep near Madame Nordica's room? A. I slept on the veranda, near Madame Nordica's room. 10

Q. Did you hear any discussion by Madame Nordica prior to January 10, 1914, about a will?

A. Yes.

Q. With whom? A. I continually heard Madame Nordica ask several days previous to that if her will was ready.

Q. Of whom did she ask that question? A. Mr. Simmons. 20

Q. What did he reply to that? A. Well, he appeared to me to be putting her off always. Madame herself thought that he had a superstitious idea that if she made her will it was bad luck.

Q. Prior to January 10, 1914, did you see the Madame have a will in her possession? A. I knew that Mr. Simmons brought the Madame the draft of a will.

Mr. Tomlinson: I object to that question and that form of question. 30

The Court: Yes, but you are a little late. I thought the question was obviously objectionable, but the difficulty is you did not object in time.

Mr. Tomlinson: Well, I didn't want to take up time in objecting.

The Court: The difficulty was she was she was giving her conclusion that Mr. 40

*Sadie Charlotte MacDonald, direct.*

Simmons brought the draft of a will, without any preliminary statement as to how she knew it was the draft of a will.

10 Mr. Tomlinson: This witness is here as a subscribing witness and it is only formal proof which I desire and you desire to make at this time. All that preceded the execution of the will is unimportant.

Mr. Leake: Except in view of the fact that the other side are unable to produce a witness here I think it is material for me in my direct case to bring in all evidence that may relate to the execution and the publication and the genuineness of the will which is in question.

20 The Court: In other words, you think you should anticipate the defence, do you?

Mr. Leake: I want to lay the whole case on the record.

Mr. Tomlinson: But for the present there is no whole case on the record; there is merely a will offered for probate, to be proved by a witness, and here is the witness.

30 The Court: I assume that is true. I assume you want the orderly proof.

Mr. Leake: I think I am making orderly proof, and the reason for that is this: that there is a petition by Mr. Young for the probate of a will in 1910. We filed an answer setting up that that will of 1910 is not the last will and testament, but that the will of 1914 is the last will, and ask for the probate of that. Therefore he coming in court with an earlier will, it is perfectly proper, in fact, I conceive that this is the

40

*Sadie Charlotte MacDonald, direct.*

orderly way, for me to show the circumstances leading up to what we claim to be the will.

The Court: Suppose we save this, gentlemen. This is more or less an equitable procedure, anyway, before the Orphans' Court, in such matters. I will allow you to proceed, but get right down to the real issue.

10

(Last question repeated.)

The Court: Now that is objectionable, and I presume counsel may make an objection—did you see the Madam have a will in her possession?

Mr. Tomlinson: If your Honor will pardon me, I do not wish to take up the time of the court with objections. There is nothing in the way of any testimony that may be material here that we wish to exclude; but it seems to me we are disregarding well understood orders of proof. Take what the gentleman says as correct: this is an application for the probate of an earlier will. They answer by saying that that paper which we call the last will is not the last will, because another will was made. Now they are proving that other will. Now what antedated the execution of that will, what related to its preparation, is of no importance. It may become important by something that develops or it may not. There is no use of our trying imaginary controversies. I think we had better wait until we get the real one. And it seems to me to save objections and save time if your Honor will instruct

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30

40

*Sadie Charlotte MacDonald, direct.*

10 counsel to proceed and prove the will which he says is the last will, and let me offer my objections, he might save a great deal in the way of questions. I object to the question as irrelevant, immaterial and incompetent.

Mr. Leake: The result of that, of course, is very apparent to your Honor, the object being to jockey us into a position where this evidence which we desire to present will not come from this witness while she is here but later, when they are able to go down to Florida and produce the other witness, our witness may not be here. It is the plain purpose of the objection.

20 The Court: The question may be answered. The objection is overruled and an exception noted.

(Last question and answer repeated.)

Q. On January 10, 1914, was this paper which I show you signed by Lillian Nordica Young?

A. Yes.

Mr. Tomlinson: Can't you identify the paper that you show the witness?

30 Mr. Leake: Will you let me proceed for a moment? Then if you have any objection to make make it in the orderly way.

Mr. Tomlinson: That is what I am trying to do.

Q. Do you remember what time it was signed by Madame Nordica? A. Yes, it was signed in the morning.

Q. In the hospital? A. Yes.

40 Q. In whose room in the hospital? A. In Madame's private ward.

*Sadie Charlotte MacDonald, direct.*

- Q. Was the Madame in bed? A. Yes.
- Q. Who was in the room at the time it was signed? A. Mr. Lebryce, myself and the Madame.
- Q. Who was Mr. Lebryce? A. The Governor Resident of the Island.
- Q. Did Madame Nordica sign before or after you and Mr. Lebryce? A. She signed before. 10
- Q. Were you present when she signed it? A. Yes.
- Q. Was Mr. Lebryce present when she signed it? A. Yes.
- Q. Who next signed it? A. After Madame?
- Q. After Madame. A. I signed it.
- Q. I show you this paper purporting to be the will of Madame Nordica and ask you if the signature of Sadie Charlotte MacDonald, Matron Torres Straits Hospital, Thursday Island, is your signature? A. Yes. 20
- Q. What other signature is attached to that? A. Mr. Lebryce's.
- Q. Are you familiar with his signature? A. Yes.
- Q. Is that his signature? A. Yes.
- Q. Did he sign while you were present? A. Yes.
- Q. And while the Madame was present? A. Yes. 30
- Q. Were you all present at the time, all of the three parties, Madame Nordica, you and Mr. Lebryce, signed? A. Yes.
- Q. I show you an interlineation marked "S. C. M." on the first page, signed in two places. Whose initials are those? A. Mine and Mr. Lebryce's.
- Q. What did Mr. Lebryce say when he brought this document to the hospital? 40

*Sadie Charlotte MacDonald, direct.*

Mr. Tomlinson: I object to that as indefinite, to the hospital. Whereabouts?

A. On the 10th of January, 1914?

10 Mr. Tomlinson: I object to it on two grounds.

The Court: I don't see why it is at all material what he said.

Mr. Leake: Why, it is part of the publication of the will.

The Court: You mean in the presence of Madame Nordica?

20 Q. What did he say when he entered Madame Nordica's room? What did he say on the 10th of January, 1914, when he first entered Madame Nordica's room with this document?

Mr. Tomlinson: I object to it first as leading; in the second place as immaterial; and I press the objection, because up to the present I have not objected to questions as leading; but it seems to me that the proper question to ask the witness is what occurred and let the witness herself state.

30 The Court: Yes. I think that is so. She is perfectly competent to do that.

Mr. Leake: Well, may it please your Honor, in the first place it is not leading—

Mr. Tomlinson: Why not let her describe the situation, the scene in the room, and just what occurred? It is perfectly obvious that is the way to do it.

The Court: Proceed. The objection is sustained.

40 What was said by Mr. Lebryce when he

*Sadie Charlotte MacDonald, direct.*

entered the Madame's room on January 10, 1914, with this document?

Mr. Tomlinson: I object to that as leading. It is a suggestion that something was said by Mr. Lebryce.

10

The Court: The objection is sustained.

Mr. Leake: May it please your Honor—

The Court: Don't argue it. She may describe the scene, the situation. I have ruled upon the question.

Q. What happened when Mr. Lebryce entered Madame Nordica's room on January 10, 1914?

A. Mr. Lebryce called at the hospital and told me that he had come to witness Madame Nordica's will.

20

Mr. Tomlinson: I move to strike that out as not responsive.

The Court: Strike it out. It is not responsive and incompetent. Just describe what occurred in Madame Nordica's room when the paper was signed.

A. Mr. Lebryce presented the will to Madame and asked her if that was her will, if she read it and if she understood it.

30

Q. What did she say in answer to it? A. She said, "Yes, I have read it and I understand it." Do you want me to continue?

Q. Yes, tell the whole.

The Court: Yes.

A. I then placed the will on Madame's lap after helping her to sit up in bed.

The Court: Proceed.

40

*Sadie Charlotte MacDonald, cross.*

A. And she signed it. She signed her name. I gave her the pen and she signed her name.

Q. Did you say anything to her at that time?

A. No. I then took the will and the pad and placed it on the little locker by Madame's bed,  
10 and I said to her, "Is this your will and your wishes?" and she said, "It is my will and my wish." And I then signed my name and my occupation and address; Mr. Lebryce then signed his name, occupation and address.

Mr. Leake: Now I offer the will.

The Court: You may cross-examine.

Mr. Tomlinson: Do you mind stating upon the record that the paper to which  
20 you have interrogated the witness is the will which you now offer? It does not appear in your questions.

Mr. Leake: Yes, certainly.

*Cross examination by Mr. Tomlinson:*

Q. Did you go in Madame Nordica's room with Mr. Lebryce? A. Yes.

Q. You both went in at the same time? A. Yes.

Q. And Madame Nordica was in bed? A. Yes.

Q. Now just tell us again what occurred after  
30 you entered the room with Mr. Lebryce, as nearly as you can, beginning with what was first said and by whom it was said and then follow it up.  
A. You mean me to just tell you again?

Q. Just tell me in your own way what occurred as you and Mr. Lebryce entered the room. A. We went into the room and Mr. Lebryce had the will in his hand.

Q. That is, he had a paper in his hand? A. Had a paper, and he presented it to Madame.

40 Q. Now what do you mean by presented it

*Sadie Charlotte MacDonald, cross.*

to Madame? A. He handed it to Madame like this (illustrating).

Q. Did you say she was lying in bed? A. She was then propped up in bed. I propped her up in bed. And he said to her, "Is this your will?"

Q. Now, pardon me a moment. As he handed it to her was the paper open or folded? A. No, I think it was folded. 10

Q. Folded? A. Yes, I think it was folded.

Q. Did it have anything written on the outside? A. You mean the paper—

Q. The paper that he handed her? A. It had a typewritten sheet.

Q. Now this is the paper that he handed her, is it not? (Will shown witness.) A. This one.

Q. It is the paper here? You had better look at it and see if it bears your signature, so we won't make any mistake. A. Yes, that is the one. 20

Q. The two sheets of the alleged will of Madame Nordica, dated the 10th day of January, which I now mark, small a and small b.

Mr. Tomlinson: Do you object to my marking them?

Mr. Leake: No, but I object to your calling them two sheets unless it appears that altogether they are one sheet. 30

Mr. Tomlinson: I said that they are one sheet.

Mr. Leake: It is one sheet, they are not two separate sheets.

Mr. Tomlinson: They are two separate pages.

Mr. Leake: Well, it is one sheet.

Mr. Tomlinson: Two separate pages then which I now mark a and b. 40

*Sadie Charlotte MacDonald, cross.*

Mr. Leake: Yes.

Q. That was the paper which Mr. Le Bryce in your presence handed to Madame Nordica; is that correct? A. Yes.

10 Q. Was anything on the back of page b at the time you handed it to her? A. No.

Q. It was a plain— A. Yes, quite plain.

Q. Blank sheet? A. Yes, blank sheet.

Q. And the paper was folded, was it not? When he handed it to her it was folded? A. When he handed it to her it was open.

Q. I thought you just told me he handed it to her folded? A. No, I am sure I did not.

20 Mr. Tomlinson (to the Stenographer):  
Do you mind going back, Mr. Stenographer—

A. If I said folded I meant open this way, not open this way (indicating). I did not mean it was folded up.

Q. You did not mean it was folded small? A. No, I meant it was folded this way (indicating).

30 Q. Do you remember whether he handed it to her so she saw the blank sheet on the back or the typewritten sheet on the front? A. He presented it this way (indicating).

Q. He presented it so that she saw the typewritten sheet? A. Yes.

Q. And as he presented it to her he said something, as I understood you? A. Yes.

Q. What did he say? A. He asked her if it was her will and if she had read it and understood it.

Q. He asked her if it was her will? A. Yes.

40 Q. And she answered— A. Yes, she had read

*Sadie Charlotte MacDonald, cross.*

it and it was her will and she had read it and understood it.

Q. Now, before telling him—that is, the Madame was asked this question—did she answer it in the way you have stated? A. Yes.

Q. She didn't hesitate? A. No. 10

Q. She examined the paper? A. Yes, she looked at it.

Q. Did she read it? A. I couldn't say she read it through.

Q. What did you mean when you say she read it? A. She looked at it.

Q. She glanced at it? A. Yes.

Q. Was any time consumed in the time she glanced at it and the time she answered yes? A. No, just a short time. 20

Q. Just a second, just an instant? A. I couldn't say how long, but a very short time.

Q. What do you mean by very short time, expressed in minutes or seconds? A. Well, I should have thought about half a minute.

Q. About half a minute? A. About half a minute.

Q. Did she appear to you to read it? A. I don't think so.

Q. Your best recollection would be that she did not read it? A. I couldn't say whether she read it through or not. 30

Q. You say now read it through. Can you say whether she read it at all? A. I can't say whether she read it at all.

Q. Did he read it aloud to her? A. No.

Q. Had you read the paper prior to that time? A. I had read it that morning.

Q. You had read it that morning? A. Yes.

Q. Before going to Madame Nordica's room? A. Yes. 40

*Sadie Charlotte MacDonald, cross.*

Q. How did you come to read it? A. It was shown to me on the veranda by Mr. Lebryce when I initialed those errors.

Q. Initialed the what? A. Initialed the errors.

10 Q. Then the initialing of the errors was prior to the execution of the will, was it? A. Yes.

Q. Now we will go back to that. Mr. Lebryce met you on the veranda? A. Yes.

Q. And he then had this paper in his hands? A. Yes.

Q. And he read it aloud to you? A. No.

Mr. Leake: That is what I tried to bring out to help you, but you wouldn't have it.

20 Mr. Tomlinson: I appreciate your courtesy.

Q. And Mr. Lebryce didn't read it aloud to you? A. No, sir.

Q. Did you read it yourself? A. Yes.

Q. Did he asked you to read it? A. Yes.

Q. Did you ask him why he asked you to read it? A. No.

Q. Did it strike you as particularly strange that he should ack you to read it? A. No.

30 Q. But you did read it? A. Yes.

Q. And then he asked you to initial those corrections? A. Yes.

Q. Had the corrections then been made in the paper? A. Yes.

Q. Well, by corrections you mean— A. I mean the two typewritten errors.

Q. The two typewritten errors? A. Yes.

40 Q. Now we want to be a little particular about this. Mr. Lebryce when he handed this paper to Madame Nordica, said, "Is this your will?"

*Sadie Charlotte MacDonald, cross.*

and she said, "Yes"? A. No, he asked her, he said, "Is this your will? Have you read it and do you understand it?" She said, "Yes, it is my will, I have read it and I understand it."

Q. Were you ever present when Madame Nordica read it? A. No.

10

Q. So far as your own knowledge is concerned you have no knowledge of her ever having read it? A. No.

Q. Then what happened after that question was asked and answered as you state? A. I put the will on the writing pad on Madame's knee and handed her pen and she signed it and I then placed it on the locker, which is a little table on the side.

Q. You then placed in on the locker? A. Yes.

20

Q. Then what occurred? A. I said to her, "Is this your will and your wishes?" She said, "Yes, it is my will and my wish." Then I signed my name.

Q. Why did you ask her if it was her will? A. Well, because it is customary in a hospital that you should ask a patient if it was her will and her wishes.

Q. You had already heard Mr. Lebryce ask her? A. Yes, but then it is quite correct for me to ask her also.

30

Q. You thought it was prudent to do? A. As the matron of the hospital I make it a rule to ask them.

Q. Notwithstanding that you had already heard Mr. Lebryce ask her? A. Yes.

Q. And notwithstanding you heard her say it was her will you thought it was wise that you repeat the question? A. Yes.

Q. And nobody suggested that you ask her that? A. No.

40

*Sadie Charlotte MacDonald, cross.*

Q. That is the customary thing in a hospital?

A. Yes.

Q. It is a customary thing and you did it? A. Yes.

10 Q. Mr. Lebryce never told you to ask her that?  
A. No.

Q. Did you suggest to Mr. Lebryce that he should ask her if the paper was her will? A. No.

Q. Now, it was at Mr. Lebryce's request that you read the will on the veranda, wasn't it? A. Yes.

20 Q. Why didn't you read the will to Madame Nordica? A. Well, I didn't think it was necessary to. I should never have thought of reading her will to her.

Q. Why did you think of reading it yourself? A. Because I was going to initial some corrections in it.

Q. Now, you had no knowledge as to whether Madame Nordica had ever seen it before or not, had you? A. Well, I knew that she had had her will submitted to her some days before.

Q. You knew that she had had this exact paper submitted to her? A. No, sir.

30 Q. Now, this exact paper is the paper she signed and you were witnessing? A. Yes.

Q. And you, of your own knowledge, never knew that Madam Nordica had ever read it? A. No.

Q. This entire paper? A. With the exception that she had told me when I asked her.

Q. When you asked her? A. Well, she was sitting up in bed later, was she not? A. Yes.

40 Q. She was in the hospital some time? A. Been in there eight days.

*Sadie Charlotte MacDonald, cross.*

Q. And had pleurisy and pneumonia? A. Yes.

Q. Did you regard her as in a serious condition? A. No.

Q. You did not? A. No.

Q. And you never suggested reading the will to her? A. No.

10

Q. Did Mr. Lebryce? A. No, not in my presence.

Q. Didn't Mr. Lebryce say to Madam Nordica, "Madame, how do you know this particular paper is your will?" A. No.

Q. Never asked her such a question as that? A. Just asked her whether she had read it.

Q. Just asked her whether she had read it? A. And understood it.

Q. And understood it? A. Yes.

20

Q. She said yes? A. Yes.

Q. Did he ask her when she had read it? A. No.

Q. Do you know when Mr. Lebryce got this paper? A. I believe he got it that morning.

Q. It was typewritten that morning, was it not?

A. It was not typewritten at the hospital.

Q. Do you know where it was typewritten?

A. Yes, it was typewritten in Mr. Hennessy's, the secretary's office.

30

Q. When? A. I don't know.

Q. Did you ever hear anybody say when it was typewritten?

Objected to.

The Court: Why?

Mr. Leake: Because it is hearsay. He asks the witness if she had ever heard where it was written.

The Court: I think the gentleman will withdraw the question.

40

*Sadie Charlotte MacDonald, cross.*

Mr. Tomlinson: Did your Honor sustain the objection?

The Court: Yes, I do, unless you withdraw it. I assumed you would withdraw the question.

10 Mr. Tomlinson: I will withdraw the question.

Q. Where did Mr. Hennessy have his office?

A. Downtown.

Q. Not in the hospital? A. No.

Q. Do you know from whom Mr. Lebryce got this particular paper? A. Yes.

Q. How do you know? A. Because he told me.

Q. Mr. Lebryce told you? A. Yes.

20 Q. What did he tell you? A. Told me that Mr. Simmons had brought him the will.

Q. Told you Mr. Simmons had given him the paper? A. Yes.

Q. Did he tell you when? A. No.

Q. Did you ask him when? A. No.

Q. Have you read a number of wills? A. Not a great many.

Q. But you spoke of the head of the hospital? Yes.

30 Q. You have attended the execution of quite a few wills as a nurse in the hospital? A. Yes.

Q. Has it been your habit to read the wills which you witnessed as nurse? A. Yes.

Q. Then have you read quite a number of wills? A. Yes. I don't know how many.

Q. Now, when you read this will—do you know what the attestation clause of a will is? A. No.

Q. You have never heard that expression? A. No.

40 Q. Now, when you read this will do you remember that it had this clause at the end of the

*Sadie Charlotte MacDonald, cross.*

will: "Signed by the said Lillian Nordica Young, the testatrix, in our presence, who, in her presence and in the presence of each other, at the same time, subscribed our names as witnesses"?

A. Yes.

Q. You remember reading that clause? A. Yes. 10

Q. Now, it was after Lillian Nordica Young had signed the will immediately above that clause that you signed the name "Sadie Charlotte MacDonald, Matron"? A. Yes.

Q. Is that correct? A. That is correct.

Q. And the Government resident, Mr. Lebryce, signed after you? A. Yes.

Q. Now, after the will had been signed as you describe, what was done with it? A. I don't remember. 20

Q. Who had the custody of it, do you know?

A. I don't know.

Q. Well, you know that you didn't? A. I know that I didn't.

Q. Do you know whether Mr. Lebryce had it or not? A. I am sure Mr. Lebryce did not have it.

Q. How long did you remain in the room after the signature of the will by Madame Nordica? A. About a quarter of an hour, I should think. 30

Q. How long after the will had been signed by you and Mr. Lebryce were you in the room? A. About a quarter of an hour.

Q. About a quarter of an hour? A. Yes.

Q. And where was the will during that quarter of an hour? A. I don't know.

Q. Well, was it on the table where it was signed? A. I don't remember.

Q. Did Madame Nordica have it in her hands? A. I don't remember. 40

*Sadie Charlotte MacDonald, cross.*

Q. That is, you can tell us nothing? A. No.

Q. As to where the paper was after it had been signed? A. No.

Q. Well, you signed it first and then Mr.—

10

Mr. Leake: I object to that as a misleading question. She didn't say that she signed it first; she said Madame Nordica.

The Court: You didn't wait till she finished.

Mr. Tomlinson: I am really not so foolish or too inexperienced as to try to suggest by a question of that kind that it was signed before Mrs. Young signed it.

The Court: Proceed. Don't waste any time.

20

Q. Now, you signed as a witness first and then Mr. Le Bryce signed it? A. Yes.

Q. And it was signed on—you didn't call it a table—what did you describe it? A. Called it a locker.

Q. Where was that locker with reference to Mrs. Nordica's bed? A. It was against Madame's bedside.

Q. It was against Madame's bed? A. Yes.

30

Q. Then you have no recollection whatever as to what became of the paper after Mr. Le Bryce had signed it, immediately following your signature? A. No.

Q. Well, have you tried to refresh your recollection as to that at all? A. No.

Q. You can't tell us—you know that you didn't take it? A. I know that I didn't take it.

Q. And you can't tell whether Mr. Le Bryce took it or the Madame? A. I know that Mr.

40

*Sadie Charlotte MacDonald, cross.*

Lebryce would not take the document out of the hospital without telling me.

Q. I didn't say take it out of the hospital. A. No.

Q. I am speaking about what happened in that room. A. I can't tell you. 10

Q. Can you tell us whether it was left on the locker? A. No.

Q. You can give us no information on that subject at all? A. No.

Q. Well, when it was signed on the locker by Mr. Lebryce it was not in the hands of Madame Nordica, was it? A. No.

Q. So the last you remember of the paper was that wherever it may have been it was not in the hands or physical control of Madame Nordica? A. Not as far as I know. I don't remember anything what was done with the will after the signing. 20

Q. Now, have you told us all that you can remember, Miss MacDonald, as to what occurred in that room? A. I think so.

Q. Do you remember Mr. Lebryce asking Madame Nordica if this was her will, referring to this paper? A. Yes.

Q. And she saying yes? A. I remember— 30

Q. You remember that you asked the same question? A. Yes.

Q. And she said yes? A. Yes.

Q. Now, does that exhaust your recollection as to what occurred? A. I remember that when I first went into the room with Mr. Lebryce, Mr. Simmons was there, and that Mr. Simmons asked Madame to have his name taken out of the will. 40

*Sadie Charlotte MacDonald, cross.*

Q. Was the will then present in her room? A. Yes; and she—

Q. Then I am afraid we have misunderstood each other a little. Then when you first went into the room was Mr. Simmons there? A. Yes.

10 Q. I understood you to say you and Mr. Le-  
bryce went in and nobody was there. A. No,  
I said when the will was signed, Mr. Le-  
bryce and I were there.

Q. Mr. Simmons was there? A. Yes.

Q. You went in with Mr. Le-  
bryce? A. Yes.

Q. And Mr. Simmons was there? A. Yes.

Q. That is correct? A. Yes.

Q. Then Mr. Simmons went out; is that cor-  
rect? A. Yes, that is correct.

20 Q. Then when this paper was signed by  
Madame Nordica only you and Mr. Le-  
bryce were there? A. And Madame.

Q. And Madame? A. Yes.

Q. Now I think we understand it. Now have  
you told us all that you can remember that was  
said in that room by anybody after Madame  
Nordica signed the will? A. Yes, I remember  
that Madame expressed satisfaction that the busi-  
ness was over.

30 Q. Well, now, tell us what she said. We want  
to get— A. She said, "Thank goodness, that is  
finished," or something to that effect.

Q. That is after she had signed it and after  
you had signed it? A. Yes.

Q. She said, "Thank you, I am glad it is all  
over? A. Yes, something to that effect, when I  
was making her comfortable; and then the  
conversation was general. Mr. Le-  
bryce talked with her about a quarter of an hour.

*Sadie Charlotte MacDonald, cross.*

Q. Do you know what he said to her? A. No.

Q. What she said? A. No.

Q. Now you have told us all that you can think of, and I assume naturally, Miss MacDonald, you have tried to tell us everything that occurred as nearly as you can recollect it? A. Yes.

10

Q. Because what we are anxious to do is to get a picture of what occurred in that room. A. Yes.

Q. Now I am going to repeat that question to you because I may later want to try to refresh your recollection or ask you some other questions, and I do not want to have you misunderstand me. All that you recollect now regarding the execution of this will is that Mr. Lebryce brought the paper in and said to Madame Nordica, "Is this your will?" and she said, "Yes"? A. She first requested us to witness the will.

20

Q. Now what was the first thing she said? We want to get this exact. It is quite important. I am sorry to take up so much time in repeating the questions, but we want to get a picture as exactly as we can. The first thing she said after you went in the room? A. After saying, "Good morning, Mr. Lebryce," she said, "I want you to witness my will."

30

Q. "I want you to witness my will"? A. Yes. She said, "I sent for you to witness my will."

Q. And she said that before either you or Mr. Lebryce had said anything? A. Yes, as far as I remember.

Q. That is your best recollection? All right. Now, then, what occurred? A. Do you want me to repeat again?

Q. Yes. A. Exactly?

Q. Yes. A. After requesting—

40

*Sadie Charloite MacDonald, cross.*

Mr. Leake: Are there any number of times that counsel may ask the question?

The Court: The court will exercise a reasonable amount of discretion.

10 Mr. Tomlinson: I do not mean to go over the same ground, only I want to get it exact.

The Court: The Court itself would like to know where these parties stood when the paper was signed. That is a suggestion to counsel. If you don't ask, I will.

20 Q. What was the next thing that was said? A. Mr. Lebryce took the will and presented it to Madame and said, "Is this your will, have you read it and do you understand it?" She said, "Yes, it is my will, I have read it and I understand it." I then placed the will on Madame's knee, after propping her up, and she signed it.

Q. You placed it on her knee? A. On her knee, on a blotting pad.

Q. She was in bed? A. Yes.

Q. Where were you and Mr. Lebryce standing with reference to the bed? A. Standing right against the bed.

30 Q. So that you could see her sign it? A. Yes.

Q. Where was this locker? A. The locker is a little table about this big (indicating) right up against the bed.

Q. Upon which you put things that you serve to sick persons? A. Yes.

Q. It is like a table, is it not? A. Yes, just a straight table.

Q. And then it was that the will was signed by you and Mr. Lebryce? A. Mr. Lebryce.

40 Q. Now did Madame say to you, taking the paper in her hand, or referring to it, "This is my

*Sadie Charlotte MacDonald, cross.*

will"? A. When I asked Madame if it was her will she said, "It is my will and my wish."

Q. I understood that she answered your question when you asked her in the affirmative, and she answered Mr. Lebryce's question in the affirmative? A. Yes.

10

Q. What I want to know is whether Madame Nordica herself made the statement, "This paper is my will." A. Only in response to Mr. Lebryce, she said, "This is my will."

Q. Now, we get it perfectly clear that Madame Nordica answered the question of Mr. Lebryce as you state? A. Yes.

Q. We have got it also clear that Madame Nordica answered your question as you state? A. Yes.

20

Q. What we want to know is something different from that, whether Madame Nordica, taking the paper in her hand, said "This paper is my will." A. No.

Mr. Twining: That is, without being asked a question?

Mr. Tomlinson: Without being asked any question.

Q. You answer no? A. Yes.

30

Mr. Leake: Before this is completely torn I want the court to see that that is one pad. Now undoubtedly you cannot help but tear it. I do not see any reason why we should not pull that right out. Your Honor can see here that that is a single sheet.

(Exhibits paper to court.)

Q. Will you describe the room, telling us its

40

*Sadie Charlotte MacDonald, cross.*

size and the position of the bed in the room in which this will was signed? A. Yes.

Q. Will you please do so? A. The size of the room?

10 Q. Yes? A. Well, it was a very small room. I should think, roughly guessing, it must have been about twenty by twenty.

Q. And where was the veranda with reference to the room? A. It was the corner room with the veranda running around each end.

Q. Doors opening on the veranda? A. One door opening on to the back veranda and one opening out into the dispensary.

20 Q. How far was the bed from the door opening on the veranda? A. The bed was pulled out about into the middle of the room.

Q. Then was it about ten feet from the door opening on to the veranda? A. I should think it was about from here to there (indicating).

Mr. Tomlinson: How far is that?

Mr. Osborne: I should think about twelve feet.

Q. And the door of the veranda was about twelve feet from the bed? A. Yes.

30 Q. Do you know Mrs. Grundt? A. Yes.

Q. Was she on Thursday Island at the time this will was executed? A. She came with Madame, yes.

Q. She came with Madame Nordica? A. Yes.

Q. Do you know where she was at the time this will was signed? A. No, I remember that I met her coming out but I don't remember where she was at the time of the signing of the will.

40 Q. Coming out of Madame Nordica's room, you met her? A. When I was going in from the veranda I met her.

*Sadie Charlotte MacDonald, cross.*

Q. That is, when you were going into the room, before the execution of the will? A. Yes.

Q. She was standing on the veranda? A. No, she was going towards our quarters.

Q. She was walking on the veranda? A. Yes.

Q. How near to the door leading from Madame Nordica's room onto the veranda that you met her? A. It was on the front of the veranda, I met her. 10

Q. It was not near Madame Nordica's room at all? A. No.

Q. When you left Madame Nordica's room did you see her? A. No, I don't remember.

Q. Don't remember to have seen her? A. No, I don't remember.

Q. Do you remember whether she was in the room with Mr. Simmons when you and Mr. Le-bryce came into the room? A. I don't think she was. 20

Q. Well, you say you don't think she was. A. Well, unless she came in just immediately and went out, because I remember meeting her on the veranda, because I hastened in the room.

Q. Is your recollection so clear that you will state that she was not in the room when you and Mr. Lebryce— A. No. 30

Q. Your recollection is not clear enough— A. No.

Q. To positively state that she was not? A. No.

Q. Now, I want to call your attention to these corrections that you witnessed. I call your attention to the first page of the will dated the 10th of January, 1914, to two corrections where the word "alos" in typewriting has been erased and the word "also" in typewriting written in 40

*Sadie Charlotte MacDonald, cross.*

its stead; and to the word interlined below "alos" which has been erased and the word "also" written. Those corrections were witnessed by you and the initials are yours? A. Those are mine.

10 Q. Is that correct? A. Yes.

Q. Who called your attention to these mistakes? A. Mr. Lebryce.

Q. Before you went into the room for the will to be executed? A. Yes.

Q. Did he ask you to initial them? A. Yes.

Q. Did you have any conversation with Mr. Lebryce as to these mistakes in the will? A. No.

20 Q. Did you suggest to him having the will written over? A. No.

Q. And he didn't tell you when he had gotten the typewritten paper? A. No.

Q. And he didn't tell you from whom he had gotten it? A. No.

Q. And you don't know where he had got it or from whom he had got it of your own knowledge, do you? A. Well, Mr. Simmons.

30 Q. Never mind Mr. Simmons. Eliminating Mr. Simmons you don't know where Mr. Bryce got this paper? A. No.

Q. And you don't know when he got it? A. No.

Q. And you don't know from whom he got it? A. No.

Q. And he never told you? A. No.

Q. He never told you where he got it or when he got it or from whom he got it? A. From Mr. Simmons. He said Mr. Simmons had brought it to him.

40

*Sadie Charlotte MacDonald, cross.*

Q. He to'd you that Mr. Simmons had brought it to him? A. Had brought it to him.

Q. But he didn't tell you when? A. No.

Q. And you didn't ask him? A. No.

Q. Do you remember receiving a check from Madame Nordica for \$150, drawn on Mr. Young? 10

A. No, I didn't receive it. The hospital secretary received it.

Q. But you remember such a check was given? A. Yes.

Q. Was it made to your order? A. No, I don't think so. I remember that Madame gave a donation to the hospital.

Q. Oh, it was a donation to the hospital of \$150? A. I don't know exactly. I thought it was a hundred. 20

Q. Do you know whether the check was ever paid or not? A. When I left the island it had not been paid.

Q. Had it been presented for payment? A. I believe it was sent on to New York for payment.

Q. Before you left the hospital did you know that it had been sent to New York and had not been paid? A. Yes.

Q. Did that prejudice you against Mr. Young at all? A. No; I thought it was not kind of him not to honor Madame's checks, but that was not the hospital's. That was a donation. Madame paid her hospital fees herself. 30

Q. Herself? A. Yes, but that was a donation.

Q. But you did think it was not kind in Mr. Young not to have paid that check? A. Well, I didn't think about that check at all. It was the doctor's check that was not honored.

Q. Oh, there was a check that Madame gave 40

*Sadie Charlotte MacDonald, cross.*

to the doctor that was not paid? A. Yes, I believe so.

Q. Drawn on Mr. Young? A. Well, I don't know, but that would be the bank. It was the usual check that Madame gave.

10 Q. And did you think that Mr. Young was the man who should have paid it? A. Well, I thought his bank should, I suppose.

Q. And you thought it was not nice of him not to have paid it? A. Yes, I expect I did at the time.

Q. Did that make you feel unpleasantly toward Mr. Young? A. No, it didn't.

20 Q. Did you ever express yourself to any one as saying that Mr. Young had not acted properly in failing to pay those checks? A. Well, I think in reply to a letter from Mrs. Grundt saying how nice Mr. Young was I did say that I didn't think he should have done that.

Q. Did you ever express yourself to any one other than Mrs. Grundt in the same way? A. I don't think so, not that I remember.

Q. You would know whether you did or not, wouldn't you? A. No, I wouldn't remember.

Q. You wouldn't remember? A. No.

30 Q. What brought you to America, this case? A. Yes.

Q. You came here to testify in this case? A. Yes.

Q. Who is the first person that you talked to about the execution of this will? A. Mr. Baldwin.

Q. And where did you talk to him? A. At his own house.

40 Q. In this country? A. Yes.

*Sadie Charlotte MacDonald, cross.*

Q. Had he sent for you to come to this country? A. Yes.

Q. Had he written you? A. He cabled to me in Egypt and he wrote to me and cabled to me in France.

Q. To come to this country? A. Yes.

10

Q. Did he write you asking you to tell him what you remembered about the execution of the will? A. No.

Q. Before coming to this country did you write him? A. I wrote him and told him that I could not come because I was attached to the Australian General Hospital on active service.

Q. Well, did you tell him what had occurred at the time of the execution of the will? A. No. I had made a statement on Thursday Island to the American Consul.

20

Q. You had made a statement? At whose instance did you make that? A. Croker & Croker, of Melbourne.

Q. You made a statement at their instance? A. Yes.

Q. Do you remember whether you made it under oath or not? A. Yes.

Q. Do you know what is necessary under the laws of the State of New Jersey for the proper execution of a will?

30

Mr. Leake: I object to that as calling for an expert opinion.

A. No.

The Court: She has already answered.

Q. Now, prior to your examination at the instance of these lawyers in Melbourne, did any

40

*Sadie Charlotte MacDonald, cross.*

one talk to you about what had occurred at the execution of this will? A. Yes.

Q. Who? A. Mr. Candless.

Q. Anybody else? A. No.

10 Q. Had Dr. Wassel ever talked to you about the will? A. No.

Q. Or about its execution? A. No. Only the fact that he said Madame was quite well enough to make her will.

Q. He had never asked you what occurred at the execution of the will? A. No.

Q. Or how it was signed or what statements were made? A. No.

20 Q. There seems to be a little confusion in our recollection here; I may have to ask you a question which I may have asked you before, probably two or three times before. I want to get it clear. Mr. Lebryce, when you made these corrections on the veranda, had the will in his possession? A. Yes, it was on the table in front of him.

Q. On the table? Was there a table on the veranda? A. Yes.

Q. Now, let's get that. Was he standing in front of the table on the veranda? A. Yes.

30 Q. And the will was resting on that table? A. Yes.

Q. Was anybody there other than Mr. Lebryce? A. I think Mr. Simmons was there.

Q. You think Mr. Simmons was there? A. Yes.

Q. And Mr. Lebryce picked the paper up from the table? A. No, I don't think so. I think he just called me to the table.

40 Q. Called you to the table? A. Yes.

*Sadie Charlotte MacDonald, cross.*

Q. And then what happened? A. We signed the corrections.

Q. And then what happened? A. We took the will. I don't know who carried the will in, whether it was Mr. Simmons or Mr. Lebryce that carried the will into the room.

10

Q. But one or the other of them took the will up? A. Yes.

Q. And then you walked right into the room? A. Yes.

Q. And then the conversation took place? A. Yes.

Q. So your first knowledge of seeing the will was on the table on the veranda? A. Yes.

*By Mr. Osborne:*

20

Q. Miss MacDonald, this front veranda is how long about? A. Continues right around the hospital.

Q. Continues right around? A. It is not as long as this; about as long as—no, I don't think quite as long as this room.

Q. Madame's Nordica's private ward was in the rear of the hospital, was it? A. The hospital runs right along like this, the front veranda runs here, the side veranda, and this corner was Madame's room. (Illustrating.)

30

Q. That is the farthest corner from the front? A. Yes.

Q. Then her ward was on the other side of the hospital from the side on which you saw Mrs. Grundt? A. I was going from this way when I met Mrs. Grundt.

Q. You met Mrs. Grundt on the front veranda? A. Yes.

Q. You went through the hospital to Madame Nordica's room? A. Yes:

40

*Sadie Charlotte MacDonald, cross.*

Q. And did not stop on the way? A. No.

Q. Is that a more direct route than coming around by way of the veranda? A. Yes.

Q. How long is the hospital, about? A. Longer than this.

10 Q. Longer than this court room? A. Yes.

Q. And how wide is it? How deep is it?

A. The width is this way (indicating); not as wide as this building, the veranda and all.

Q. It is longest across the front? A. Yes, sir.

Q. And the veranda on which you saw Mrs. Grundt— A. Yes.

Q. Being the front veranda? A. Yes.

Q. As long as the side veranda, is that right?

A. No, the side veranda—you mean from where we were?

20 Q. Yes. A. We were here. This end, the door, was from here to there. (Indicating.)

Q. Is the front veranda longer than the side veranda? Which is longest, the veranda on which you saw Mrs. Grundt or the other? A. The veranda on which I saw Mrs. Grundt.

Q. Then the hospital is not so deep as it is long; is that right? A. Yes.

30 Q. Now, after Mr. Simmons left the room— A. Yes.

Q. There were no other persons present? A. Not in the room.

Q. Not in the room? A. No.

Q. Except yourself and Madame Nordica and Mr. Lebryce? A. Yes.

Q. Now, this testimony, this statement that you made—you talked to a man named McCandless, a lawyer or somebody? A. Yes.

Q. Who is he? A. I don't know.

40 Q. Well, was he in Thursday Island? A. Yes.

*Sadie Charlotte MacDonald, redirect.*

Q. He is not here present today, is he? A. Not that I know.

Q. Now, that was long before you talked or ever heard from Mr. Robert Baldwin, wasn't it? A. Yes.

Q. And you say you made a statement at the request of Croker and Croker, whoever they are. Are they lawyers? A. Yes. 10

Q. Of Australia? A. Yes, Melbourne.

Q. And before the United States Consul? A. Yes.

Q. And is this the statement which you signed? I show you a typewritten statement beginning, "My name is Sadie Charlotte MacDonald," and signed at the botton with the signature. A. Yes.

Q. That is your signature, is it? A. Yes. 20

Q. And that is the statement? A. Yes.

Q. And is that the only statement you made at that time? A. Yes.

(Paper marked Exhibit A, for identification.)

Q. Now, that statement you say you made long before you ever heard from Mr. Robert Baldwin; is that right? A. Yes.

*Redirect examination by Mr. Leake:* 30

Q. Miss MacDonald, what was Madame Nordica's mental condition on the 10th of January, 1914? A. Perfectly normal.

Q. Did she understand what she was doing? A. Yes.

Q. Did she have any general conversation with Mr. Lebryce immediately after the execution of the will? A. Yes.

Q. And how long did that last? A. About fifteen minutes. 40

*Sadie Charlotte MacDonald, r'edirect.*

Q. Do you know what they discussed? A. No, I don't remember.

Q. General subjects? A. Yes, general subjects, not the will; business matters.

10 Q. Did Mr. McCandless, when he came to you state who he represented? A. No, he said he was neutral.

Q. He said he was neutral? A. Yes.

Q. Do you know who he did represent? A. No.

20 Mr. Westall: I think the other side will stipulate that he went there at their request. He was to represent them on this commission over there, but he was not there at the time this testimony was taken. I think they will stipulate that this man's name was put in the stipulation.

The Court: Well, is it at all material, gentlemen?

Mr. Westall: No, it is not.

The Court: That is my view of it.

Mr. Leake: I first offer the document of January 10, 1914.

30 (Paper marked Exhibit 1, for Contestants.)

I also want to offer this exemplified record of the New York proceedings which contains these depositions and this stipulation. This is an exemplified copy.

Mr. Tomlinson: We object to that as incompetent, irrelevant and immaterial and not contradicting their own witness or not seeking to.

40 The Court: Why is it material, Mr. Leake? We are simply considering the matter *ab initio* here.

Mr. Leake: I will hold it for a moment.

*Sadie Charlotte MacDonald, redirect.*

The Court: I have not the slightest interest in what they have done in New York State. Well, that portion of the document will be admitted, not including probate proceedings in New York. Mr. Leake will indicate the portion of the paper he desires to mark, unless you can show that it is material in some way. 10

Mr. Leake: I would like to argue that for a moment, not to take up too much time. I don't know what the other side will set up by way of defence but I apprehend that any subject outside of the question of whether this will was duly executed under the laws of the State of New Jersey, all other questions than that that were raised in the pleadings between the same parties in a suit in another jurisdiction over the same will is well settled to be *res adjudicata*. Now mental condition, undue influence or anything—I don't know what their defense is; I can only anticipate it in a way—it seems to me the only issue here is whether this will was executed according to the formality required by the laws of the State of New Jersey, and anything else that these same parties were fighting over in another jurisdiction, that were in the pleadings as they appear to be, is a question that they have already settled and has been adjudicated. But certainly no adjudication in New York can settle the question of whether this will has been properly executed according to the laws of the State of New Jersey. 20 30

The Court: Well, now, what is your point? 40

*Sadie Charlotte MacDonald, redirect.*

10 Mr. Leake: That as to any questions involved in the pleadings between these same parties in another jurisdiction in which there has been a judgment of the superior court under the Statutes of the United States, in full faith and credit—

The Court: Well, we will meet that question when it properly arises. You may mark the paper purporting to be the last will.

Mr. Leake: We want to offer the stipulation for the taking of testimony—

The Court: Are you through with this witness?

Mr. Leake: Yes, we are through.

20 The Court: Just one question.

*By the Court:*

Q. When you signed the paper purporting to be this will as a witness where was Mr. Lebryce standing? A. Just by Madame, by my side, by Madame's bedside.

Q. And when Mr. Lebryce signed as a witness the paper in question where were you standing? A. Quite close to him.

30 Q. And when Madame signed where were you standing? A. I was standing by the bedside.

Q. Did you see her sign? A. Yes.

Q. Where was Mr. Lebryce standing? A. He was standing right there.

Q. And was he in a position where he could see? A. Yes.

*By Mr. Osborne:*

40 Q. And when the conversations were had about the will between Madame Nordica and

*Sadie Charlotte MacDonald, redirect.*

you and Mr. Le Bryce were you standing at the bedside? A. Yes.

Q. And near the head of the bed? A. Yes, right close to her.

Mr. Leake: I offer the original stipulation relating to the taking of testimony on Thursday Island.

10

(Paper marked Exhibit 2, for contestants.)

I would like also to offer the original interrogatories and the cross interrogatories and redirect interrogatories.

(Papers marked Exhibits 3, 4 and 5 for contestants.)

Also the original return of James Lequire Adams, the original return of the commissioner with the answers to the interrogatories with the certificates of the commissioner annexed. Before that is marked there is a portion of the questions I want to move to strike out.

20

(Paper marked Exhibit 6, for contestants.)

I also offer the original letter of the commissioner.

Mr. Tomlinson: I object to the letter which accompanied the depositions.

30

Mr. Leake: I also offer the registered envelope.

Mr. Osborne: I object to the registered envelope.

Mr. Leake: We want to show that they came back in a registered envelope, as the stipulation required. I think I am entitled to show the letter and the envelope.

Mr. Tomlinson: We are not objecting

40

*William Millan Lebryce, direct.*

10 to those things being admitted in evidence, but I do not see the sense of having the record cumbered up by a lot of letters and envelopes. The depositions have been taken and have been returned as provided by the stipulation and I do not object to them except the answers to the questions.

The Court: That is the customary way of doing it, that they came back in an envelope and are received by the surrogate here or by some one here in authority. Was that letter in the envelope containing the testimony?

Mr. Leake: Yes, it was offered. It came up here from the surrogate.

20 (Letter and envelope marked Exhibits 7 and 8 for contestants.)

Mr. Leake: These are interrogatories administered to William Millan Lebryce. First the direct interrogatories.

(The interrogatories were read by Mr. Leake and the answers thereto read by Mr. Twining as follows:)

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30 **William Millan Lebryce, Interrogatories  
and Answers.**

1Q. State where you reside, also what office or offices (if any) you hold and how long; you have held it or them. A. I reside at Thursday Island. I hold the office of Government Resident and have held same since second (2nd) November, 1911.

40 2Q. Did you make the acquaintance of Lillian Nordica Young on or prior to January 10, 1914? A. On the 10th of January, 1914.

*William Millan Lebryce, direct.*

3Q. If you answer the last question in the affirmative state when you made her acquaintance and the circumstances in which you did so. A. The only occasion on which I saw Lillian Nordica Young was on the 10th day of January, 1914, when I attended at the Torres Straits Hospital to witness her will.

10

4Q. Have you heretofore seen an original document purporting to be the will of Lillian Nordica Young, dated January 10, 1914, of which what purports to be a photographic copy is attached as an exhibit to the stipulations made in this cause, dated August 12, 1915, which photographic copy is shown to you by the officer administering these interrogatories at the time of so administering them? A. Yes.

20

5Q. State whether you saw Lillian Nordica Young sign the original document of which that exhibit purports to be a copy? A. Yes.

6Q. If you answer the last question in the affirmative state whether she made known to you at the time she signed it that it was her will. A. I asked her if she knew the contents of the document and whether it expressed her wishes regarding the distribution of her property. She said that it was her will and that it expressed her wishes regarding the distribution of her property.

30

7Q. If you answer the last question in the affirmative state how she made known to you whether that document was her will, whether by words or by gestures, and if by words, what words. A. By words as expressed in my answer to the sixth (6th) interrogatory.

8Q. If you state in answer to your last interrogatory that she made known to you the fact

40

*William Millan Le Bryce, cross.*

that the document was her last will and testament then state whether she requested you to sign that document as a witness. A. Yes.

9Q. State whether you signed the said document as a witness? A. Yes.

10 10Q. State whether Sadie Charlotte MacDonald was present at the same time that Lillian Nordica Young signed said document and requested you to witness the same and made known to you the fact that it was her will. A. Yes, she was present all the time I was with Lillian Nordica Young.

11Q. If you answer the last question in the affirmative state whether you signed the same in the presence of Lillian Nordica Young and of Sadie Charlotte MacDonald. A. Yes.

12Q. State whether Sadie Charlotte MacDonald also signed the document as a witness. A. Yes.

13Q. If you answer the last question in the affirmative state whether she signed the same as a witness in the presence of Lillian Nordica Young and of yourself and whether she so signed at the time that the document was signed by the testatrix and by you as a witness. A. Yes.

30 14Q. State when and where and in what circumstances the said document was signed by Lillian Nordica Young if it was signed by her. A. On the 10th of January, 1914, at Torres Straits Hospital, of which institution she was at that time an inmate.

(The following cross interrogatories were read by Mr. Twining and the answers read by Mr. Leake:)

40 1Q. Was the original document mentioned in the fourth interrogatory brought to you prior

*William Millan Lebryce, cross.*

to its execution? (Answer this question, "Yes" or "No.") A. Yes.

2Q. By whom was said document brought to you? A. By E. Romaine Simmons.

3Q. How long prior to its execution by Madame Nordica was said document brought to you? 10  
A. About half an hour.

4Q. How long did the said document continuously remain in your possession prior to the time when it was presented to Madame Nordica for her signature? A. So far as I remember said document was in my possession from the time it was first shown to me until it was executed by Madame Nordica.

5Q. Was said document in your possession when you went to Madame Nordica's room on January 10, 1914? A. I believe it was. 20

6Q. Did Madame Nordica either on January 10, 1914 or at any time read said document in your presence. (Answer the question, "Yes," or "No.") A. No.

7Q. Was the contents of said document ever made known to Madame Nordica in your presence either on January 10, 1914, or at any time? (Answer this question, "Yes" or "No.") A. No.

8Q. Of how many sheets did said document consist? A. Two (2); that is, two (2) pages. 30

9Q. Were the sheets fastened together or loose? A. I can't say whether they were fastened together or whether the will was typed on a double sheet.

10Q. If fastened together, how? A. See my answer to cross interrogatory No. 9.

11Q. Did Madame Nordica sign or affix her initials to the first sheet of said document? A. I don't remember. 40

*William Millan Lebryce, redirect.*

(The following redirect interrogatories were read by Mr. Leake, and the answers thereto by Mr. Twining:)

10 1Q. If you answer the sixth cross interrogatory in the negative state whether you heard Madame Nordica state that she had read the said document. A. I don't remember her saying that she had read it, but she satisfied me that she knew what the document contained and she acknowledged it to be her will.

20 Mr. Twining: I object to the last answer, which is, "But she satisfied me that she knew what the document contained and she acknowledged it to be her will," upon the ground that it is not responsive to the question. There was no opportunity, of course, to object to the interrogatory, which is proper in form, but the answer is not proper.

Mr. Leake: It is explanatory.

30 The Court: I think the latter part of that answer is competent, but the middle portion is not, "But she satisfied me that she knew what the document contained." You may strike that portion out and allow the balance to stand, if you make any sense of it. How would it read?

Mr. Twining: "I don't remember her saying that she had read it, and she acknowledged it to be her will." "She satisfied me," would go out.

40 Mr. Leake: It seems to me it is entirely within your discretion, with that sort of an answer, with reference to striking it out. The question is whether or not—

*William Millan Le Bryce, redirect.*

The Court: Is there anything in the balance of the testimony or the interrogatories and the answer which indicates that she testifies how she satisfied him?

Mr. Osborne: No.

The Court: Nothing at all, is there? 10

Mr. Twining: Nothing.

Mr. Leake: Well, I thought that the value of that evidence probably will be weighed in the court's mind and considered to be perhaps of little value.

The Court: It is a matter of indifference to me whether he was satisfied or not. I am the one to be satisfied.

Mr. Leake: You are the one to be satisfied; however, you will probably not weigh that evidence with any great weight. 20

The Court: You may strike out that expression in the answer and leave the balance to stand.

Mr. Leake: I would like to have the record complete on the face.

The Court: Striking out the words, "But she satisfied me that she knew what the document contained," so that the answer will then read, "I do not remember her saying that she had read it, but she acknowledged it to be her will." 30

Mr. Twining: I think the latter portion of that answer is objectionable upon the ground that it is a conclusion, "But she acknowledged it to be her will."

The Court: Well, that is susceptible, Mr. Twining, of two meanings, one a conclusion and the other the statement of a fact, I acknowledge a thing to be my will, 40

*William Millan Lebryce, redirect.*

or at least a paper to be my will; and the witness says I acknowledge it. It may be simply describing my act. I am going to allow that to stand.

10 Mr. Tomlinson: It doesn't say she acknowledged it to be her will, does it? He draws a conclusion that she acknowledged it to be her will. How does he know she acknowledged it to be her will?

The Court: I will allow it to stand.

(Counsel continue reading redirect interrogatories and answers as follows:)

20 2Q. If you answer the 'preceding question in the affirmative state whether you heard her state that she had read it, and whether or not she said so at the time of her signing the document if she did sign it. A. See my answer to redirect interrogatory No. 1.

Mr. Leake: I have just read that. That is the one that was objected to.

30 3Q. Did you testify before Charles Harlett, Vice-Consul of the United States of America at Melbourne, at Thursday Island on or about May 1, 1915, in proceedings then pending in the Surrogate's Court of the State of New York, County of New York, in the matter of the probate of a paper propounded as the last will and testament of Lillian Nordica Young, deceased, dated January 10, 1914? A. Yes.

40 4Q. If you answer the last question in the affirmative state whether on that examination an original document was exhibited to you by said commissioner with all the signatures thereon, of which what purports to be a photographic copy is attached as an exhibit to the stipulation made

*William Millan LeBryce, redirect.*

in this cause dated August 12, 1915. A. A document was exhibited to me which I believe was the original will.

5Q. If you answer the last question in the affirmative state whether or not the original document therein mentioned, with all the signatures thereon, was in the same condition when you saw it on May 1, 1915, as it was immediately after all signatures were affixed thereto on January 10, 1914, if the signatures were affixed on that day and if you know. A. So far as I can remember the document was in the same condition as on the 10th of January, 1914, after the signatures were affixed. 10

Mr. Leake: May it please the court, the original record of the Surrogate's Court in New York is here in the control of an officer of that court and I would like to have for the record here an exemplification of that original will or paper. I do not know just what will happen with respect to this paper, which is part of a series of papers forming a record of the court in New York, the Surrogate's Court, which has been by order of that court delivered in possession of one of its officers to bring over here to the jurisdiction of New Jersey, and with the direction that we return it. And I thought at least until the case was concluded and we could make some settlement of that matter that in the meantime this exemplified copy of that might be kept here as a part of this record. If another date is fixed we can have it brought back. 20 30

Mr. Twining: I never heard of such a 40

*Evidence.*

thing. This court has decided that this is the domicile of the decedent and this is the place the original will has got to be lodged.

10

The Court: Hasn't the New York court decided that Madame Nordica was domiciled here?

Mr. Westall: Yes, sir. These proceedings were started in New Jersey before they were ever started in New York.

20

Mr. Leake: The order of the court which allowed me to bring this here today orders that it be returned. Subsequently this will can be taken off the record. I did not have time to get an order today but I will do it later.

Mr. Leake: There is a special proceeding in New York for getting possession of the record and we are perfectly willing to do that and bring it here.

The Court: Well, this court has decided, by one of my predecessors, that Madame Young was domiciled here; isn't that true?

30

Mr. Twining: Yes.

Mr. Leake: It is.

The Court: Under that arrangement the will should eventually come here.

Mr. Leake: We will be glad to do that.

40

Mr. Osborne: There are two proceedings here: one is to probate the will of 1910 and another proceeding to probate this will which has been offered and admitted this afternoon. I do not think it has yet been suggested that this testimony

*Evidence.*

of the witness Miss MacDonald, taken this afternoon, may be considered to be taken in both proceedings.

Mr. Leake: I understand that there are no two proceedings here. The issue here is the probate of the last will and testament of Lillian Nordica Young, and we are taking testimony relating to that one subject, what is her last will. 10

Mr. Osborne: As long as it stands for both wills it is all I want.

The Court: I think there is no misunderstanding about it.

Mr. Leake: We rest.

Mr. Tomlinson: If your Honor please, we are going to make a motion, but before making the motion I have a suggestion to make, which is this. We have a witness, a Mrs. Grundt, whom we have endeavored to get here today, but are unable to get her. We have her telegram in which she says "Am ill and unable to travel. Probably be unable for several days. Present plan to be in New York about August 15th. Several places I must go or return later at considerable trouble and expense. Cannot be north July 6th. Beatrice Grundt." 20 30.

This is from Jacksonville, Florida, where of course process in this case won't reach. We should like to make a formal motion for the admission to probate of the will of 1910, which I would suggest your Honor do not now pass upon, because we would like to argue it.

The Court: Well, I would not pass up- 40.

*Evidence.*

on that without seeing the previous testimony. There has testimony been taken in this already, hasn't there?

10 Mr. Twining: Perhaps Mr. Tomlinson is not so familiar with that as we are. Written proof has been offered with reference to the attestation of the 1910 will, and then there was considerable controversy on the question of domicile and that has been decided. Now the 1910 will has been proved. I do not think that anybody would dispute that the proof was sufficient, providing that was the last will; and the other testimony, except relating to the question of domicile, has all been heard by your Honor, and consists of the  
20 testimony taken today.

The Court: What of the domicile?

Mr. Twining: I say all of the testimony with the exception of the question of domicile.

The Court: Where is that testimony?

Mr. Twining: I think it must be on file.

30 Mr. Tomlinson: Our suggestion would be that we would now make a motion for the admission of the 1910 will to probate; our contention being that this 1914 will has not been proved. We would like an opportunity to argue that question and your Honor hold that motion in reserve and grant us an adjournment of ten days which would permit us to endeavor to get Mrs. Grundt here, and if we fail in that time your Honor could decide. That more  
40 or less gives us leave.

*Evidence.*

Mr. Leake: I understand that Mrs. Grundt is a witness who has been in this country for more than a year, and who has been living at Mr. Young's residence at Deal. And I think before any adjournment is granted, with the knowledge that they have had the opportunity of bringing her to the trial at any time, we are entitled to know first whether her testimony is material and when and what efforts they have made to get her here today. 10

Mr. Twining: Do you want me to swear to the truth of the statement I make?

Mr. Leake: No, we would like to hear what your statement is. 20

Mr. Twining: I would be glad to read this affidavit to you.

Mr. Leake: First I would like to know what the materiality of her testimony is.

Mr. Twining: I am going to read the affidavit to you and you can listen to it.

(Reads affidavit.)

The representations made by Mr. Leake are entirely unfair. This case has been pending before this court for upwards of two years. We have given him every opportunity to get his proofs in. He has delayed the matter, he and his attorneys, for fully a year to get this testimony taken in Thursday Island and we have not made the slightest effort to have the case closed before all the proofs were in. It is true that Mrs. Grundt has been in this locality during that whole period and we have always expected her and they know we 30 40

*Evidence.*

10 have always expected to have her at the  
time of the trial. When this case came  
up, on a notice that was given me by Mr.  
Hartshorne—I think he gave me two or  
three days notice of the application he was  
to make to your Honor, of which I ack-  
nowledge due and legal service; and to  
get a witness up here from Florida on a  
minute's notice under the circumstances  
is an entirely unfair request; and I think  
Mr. Leake's statement that we are at-  
tempting to put anything over on the  
court or to get anything before your  
Honor that is not so, is entirely unwar-  
ranted. The case should be held for a  
20 reasonable time, so that we can produce  
Mrs. Grundt.

The Court: Can you produce her in ten  
days?

Mr. Twining: I was just going to say  
Mr. Tomlinson suggests ten days. I don't  
know whether we can get her then or not;  
but my application would have been for a  
month, because in view of the delay which  
the other side has put us to I do not think  
it is an unreasonable request, if your  
Honor sits as late as August.  
30

Mr. Leake: My position is this: I think  
your Honor will appreciate the difficulty  
of getting our witness, a long journey and  
the traveling around of this nurse, who  
has been in Egypt and Thursday Island  
and finally up in France, and the difficulty  
of locating her. And the point that we  
want to emphasize now is that in view  
of the fact that this woman is ordered by  
the British Government to return on Sat-  
40

*Evidence.*

urday of this week there is nothing in the affidavit which has been presented here which shows any single item of testimony that is material. He says in his affidavit that this woman was present. Suppose she was; suppose her testimony is exactly what Miss MacDonald has been testifying; is that any reason for adjournment? The burden is on them to show that they have a witness who will testify to something against the due execution of this will of 1914. They come in and they have a witness who is familiar with the circumstances. Well, is her familiarity with the circumstances the same as the familiarity of Miss MacDonald?

The Court: Oh, no, I assume she will give some testimony which is in conflict with Miss MacDonald or Mr. Le Bryce. You may note an adjournment for ten days, if that is agreeable. That will be the 17th of July, will it not? I think you should have the witness by that time.

Mr. Leake: Don't you think we ought to be entitled at this time to have a statement of the materiality of the evidence?

The Court: Their affidavit is quite within the rules and counsel under oath here testifies that in his opinion the testimony is material. That is within the rule.

Mr. Leake: I would like to have noted on the record that with that adjournment we have an opportunity, if necessary to rebut, to send for this witness.

The Court: I will give you the necessary opportunity—I say necessary, if it be necessary.

(Adjourned till July 17, 1916, at 10:00 A. M.)

*Evidence.*

## ADJOURNED HEARING.

Freehold, N. J., July 17, 1916.

## Proceedings

Before—Hon. RULIF V. LAWRENCE, Judge.

10

## APPEARANCES:

For Proponent GEORGE W. YOUNG—Mr. KINSLEY TWINING (of Lindabury, Dupue & Faulks) and Mr. JOHN C. TOMLINSON, of counsel.

For Contestants ROBERT W. BALDWIN, *et al.*—Messrs. HARTSHORNE, INSLEY & LEAKE, Mr. WALTER W. WESTALL, Mr. EMIL DREYFUS and Mr. ROBERT W. LIGHT.

20

For Contestant CASTILLO—Mr. WILLIAM H. OSBORNE and ALBERT G. THORNE.

(Continuation of testimony in the above stated cause, as adjourned from July 6, 1916.)

The Court: I understand the proponents of the paper of 1914 have rested, have they?

Mr. Leake: Yes, sir.

30

The Court: You may proceed.

Mr. Tomlinson: If your Honor please, you remember that at the last hearing we asked for an adjournment to endeavor to procure the presence of Mrs. Grundt. The situation is this. We telegraphed her as follows:

“Nurse MacDonald testified Nordica case July sixth. We applied for adjournment to enable you to be present. This opposed by attorneys for contestants. Court set

40

*Evidence.*

case for Monday, July seventeenth, to enable your testimony to be heard. Believe impossible secure further adjournments and case will be closed seventeenth. Necessary you should be Freehold then. My attorneys consider it most important your testimony given before case closed. Sincerely hope you can be present. Answer care Joline, Larkin & Rathbone, fifty-four Wall Street. 10

"George W. Young."

We received from Mrs. Grundt this reply:

"G. W. Young,  
"Care Joline, Larkin & Rathbone,  
"54 Wall Street, 20  
"New York.

"Am still ill and unable to travel for a few days. Cannot possibly be in Freehold by seventeenth.

"Beatrice Grundt."

In addition to the telegram we wrote her a letter enclosing a copy of the telegram, Mr. Coxe did, in which we said: 30

"My dear Mrs. Grundt:

"Miss MacDonald gave her testimony at Freehold on July 6th, last, and was fully examined and cross examined. We then read your telegram stating you could not be present and asked for an adjournment to enable you to come to Freehold and give your testimony.

"The attorneys for the contestants strongly oppose any adjournment and 40

*Evidence:*

Judge Lawrence finally set the case down for further hearing on Monday, July 17th, at 10:00 A. M.

10 "I do not believe that it will be possible to secure any further adjournment at that time, and we are most anxious to have you present then in order that your testimony may be taken.

"Mr. Young has telegraphed you from this office as follows:"

Then follows a copy of the telegram I read.

20 Now naturally we would like to take the testimony of Mrs. Grundt. I can briefly state it, to what effect it is, and if I do not state it correctly will you correct me, Mr. Twining? It is to the effect that Mrs. Grundt was outside on the veranda, within what she regarded as hearing distance of what took place in the room, and that she did not hear the will acknowledged or any conversation regarding it. Of course it is negative testimony; it is not a direct contradiction; and in view of Mr. Leake's request that we state the general character of the testimony, it contradicts as to matters of detail as to who entered the room first and who was present at one moment or at another. It is a general negative, and generally of that character. It is not a sharp contradiction. But in view of all the allegations before your Honor we thought it would be well that she should be present and your Honor hear her, and we would like a further adjournment, if it is not objected to.

30

40

*Evidence.*

Mr. Leake: May it please your Honor, I certainly do not want to foreclose the obtaining of any evidence in this case, and I know that your Honor is desirous of having all the evidence. We all are desirous, I think. I think, however, that some order ought to be made which will prevent a recurrence of this situation. What is the date of that telegram, Mr. Coxe, from her? 10

Mr. Coxe: July 12th.

Mr. Leake: You see July 12th. Here it is the 17th. They have had five days' notice of the fact that they would come here and ask for an adjournment. We have some lawyers from Boston and several from Newark and New York, and it is a pretty hard burden on us for them to have that knowledge and not communicate it to us before this date. 20

The Court: Do you object to a reasonable adjournment?

Mr. Leake: I certainly object to any adjournment, but I think the court will undoubtedly grant it because the court is desirous of getting all the testimony in this case. 30

The Court: Well, I think that is true; although the statement of counsel is not especially encouraging as to the importance of this witness. When do you think you could actually produce this witness? Have you any motion at all?

Mr. Tomlinson: Our difficulty is, if your Honor please, that we really don't know. She is in Florida. All the information we have is her telegram. I believe an earlier telegram said she expected to be on here about the 15th of August. We are powerless. We did not notify you— 40

*Evidence.*

Mr. Leake: What is the address of this woman?

Mr. Coxe: Care of Lorenzo W. Baldwin, 2424 St. John's Avenue, Jacksonville, Florida.

10 Mr. Tomlinson: I should assume that an adjournment would not be granted, from the attitude of counsel here.

Mr. Leake: I do not want an adjournment and I object to it, but I assume that the court in a case of this kind is going to hear all the testimony.

The Court: The court will not be in session during the month of August. The case will have to be closed during this month. This is the 17th.

Mr. Tomlinson: I do not believe—

20 The Court: What is the last day in this month?

Mr. Twining: Monday, the 31st, your Honor.

The Court: I mean the day of the week.

Mr. Twining: Monday; yes, sir.

Mr. Tomlinson: Mr. Leake, now suppose we go on to final hearing: do we understand that you are to call no more witnesses?

Mr. Leake: Mr. Tomlinson, what witnesses I call will depend upon your case.

30 Mr. Tomlinson: But if we go to final hearing now do we understand that you are closed, that you will consider that you call no more witnesses?

Mr. Leake: I do not make any bargain. I have closed my case now. If you are ready to argue it on the testimony taken I am perfectly willing.

The Court: I assume that counsel has closed his case reserving the right to produce any testimony in rebuttal.

Mr. Leake: Precisely.

40 The Court: Which is the customary way of

*Evidence.*

doing it, and if any evidence or any testimony of yours on behalf of Mr. Young reached up to the necessity of your producing witnesses in rebuttal you would claim the right to produce witnesses?

Mr. Leake: Precisely.

Mr. Tomlinson: We will go on then to-day and argue our case. 10

Mr. Leake: I am perfectly satisfied if you are.

The Court: I should say that I am perfectly willing to grant an adjournment to the last Monday of this month, that is to say, if counsel feel that they desire to produce this witness and have the ability to do it. But if they have not the ability to do it then I presume they will be perfectly frank and say so.

Mr. Tomlinson: That is the reason I said what I did. We feel— 20

The Court: Then I assume you feel you have no power.

Mr. Tomlinson: That is it. Mr. Twining suggests—I am somewhat unfamiliar—that we should move for the probate of the 1910 will. That motion is opposed by the gentlemen on the other side, those who are employed—

Mr. Leake: That is it.

Mr. Tomlinson: We then move for the probate of the will of 1910. 30

Mr. Leake: May it please your Honor, the answer to the application for the admission of the first will is the expressed revocation contained in the second will. The will of 1914 contains this clause: "I hereby revoke all previous wills by me at any time herefore made and declare this writing to be my last will and testament." So that we have first in the last will the expressed revocation of an earlier one. This 40

*Evidence.*

10 will of 1914, containing that express revocation has been proved to have been executed by Mrs. Young with all the formalities required by the law of the State of New Jersey; first, in the proof of Mr. Lebryce, one of the subscribing witnesses, under the interrogatories served upon him; and secondly, by the testimony of Sadie Charlotte MacDonald, who appeared here at the last hearing and who in every respect as to the execution, presence of both witnesses, the request to sign, the publication of the will; and in fact, her testimony showed an entire compliance with all the statutory requirements of the laws of the State of New Jersey. That is our answer to their motion for the probate of the 1910 will.

20 We ask for the probate of the 1914 will, and in that respect we are the moving party, and therefore before we can make our final argument we rest on the will and the proof and the testimony, calling upon them to show the reasons why that will should not be offered for probate, and then being entitled to answer; we being the proponents of that will.

The Court: Is there a formal petition for probate of the will of 1914?

30 Mr. Leake: Yes, sir.

The Court: On file?

Mr. Leake: Yes, sir.

Mr. Twining: I think no proceedings have been taken under that. I have never received any notice of its filing except that I have a copy of it.

40 Mr. Osborne: As far as I am concerned, Harts-horne, Insley & Leake filed a petition and I filed a petition, and I wrote a letter to Lindabury, Depue and Falkes stating that I had filed a petition;

*Evidence.*

and without troubling counsel to come down here on the motion I want at the next hearing to make application for the filing of my petition *nunc pro tunc*. Everybody understood the situation. There was no surprise and I thought it would save counsel the difficulty of coming down here simply on a mere motion which I felt would be granted. And I now make a formal motion for filing *nunc pro tunc* our petition for Mrs. Castillo for the probate of the 1914 will, which we have already filed. 10

The Court: Is there objection to the motion?

Mr. Twining: The only objection, your Honor, would be that of course our claim perhaps should be raised by answer to the filing of such a petition, namely, that the 1914 will was not a valid will. 20

The Court: I assume also that you would be permitted to file it *nunc pro tunc*. That permission will be granted.

---

(Argument of Case.)

## AFTER ARGUMENT.

The Court: You may submit your authorities, gentlemen, in this case. Let them come to me by Monday of this week. 30

**Exhibit Proponent A.**

(Will of 1910.)

**Exhibit Proponent 1, Feb. 4, 1915.**

MOANA HOTEL  
 Honolulu  
 Hawaii.

J. H. Hertsche,  
 General Manager.

10

Alexander Young Hotel  
 Moana Hotel  
 Royal Hawaiian Hotel  
 July 7th

My dear George—

This morning all five letters came from you.  
 Last week I did not get any, so they all came  
 together—now—

20

I cannot tell you how sorry I feel for you—  
 that you have been so harrassed by business af-  
 fairs and troubles of all kinds.

And Oh! I do so wish I could be of help to  
 you. You must call to mind how many times  
 I have said to you—

Let me be some comfort to you George dear  
 —money is not all. We have our great love,  
 one for the other, and no one can take that  
 from us. Let me and my love be some comfort  
 to you. We will walk out into the wide world  
 hand in hand and we will live some how, some-  
 where, happily together.

30

Do you not remember George—how often I  
 have said these things to you?

I was never afraid of material losses—never!  
 I knew you could and would win out—I know  
 it now.

40

*Exhibits.*

The fact of your business disappointments only served to make me love you the more. I never felt or thought a reproachful emotion in my life. I knew you were making a brave fight against fearful odds and all I could do in any possible way to help only made me strong and happy. All I ever asked was to let me and my love be a comfort to you. I seem to have failed!

10

But God knows it was not because I did not try my best. He knows it was not because I did not love and adore you.

I send you now once again—most lovingly and tenderly all sweet and helpful thoughts.

God will help you and He alone can—

LILLIE.

We sail within the hour.

20

The following newspaper clipping was enclosed with foregoing letter:

“MME. NORDICA IN HONOLULU.

“Sings Before Vast Audience in Opera House on First Stage of Round the World Tour.

“Mme. Lillian Nordica has reached Honolulu on the first stage of her 'round-the-world concert tour.

30

“A private cable despatch received in New York yesterday said the American prima donna sang before a vast and enthusiastic audience in the Opera House on Saturday night. She was compelled to respond to many encores. Messrs. Paul Dufault and E. R. Simmons shared in the ovation. Mme. Nordica will open her Australian tour on July 26 in the City Hall, Sydney.”

40

*Exhibits.*

The following is a copy of the envelope in which the foregoing were contained:

Cable Address Honolulu U. S. Postage  
 "Moana" Jul 8 2 Cents 2  
 4 AM  
 1913  
 HAWAII

10

MOANA HOTEL  
 Honolulu  
 Hawaii

P 13

GEORGE W. YOUNG, Esqre  
 59 Cedar Street,  
 New York

City.

20

**Exhibit Proponent 2, February 4, 1915.**

J. H. Hertsche, General Manager.  
 Alexander Young Hotel  
 Moana Hotel  
 Royal Hawaiian Hotel

MOANA HOTEL  
 Honolulu  
 Hawaii

30

June 27th

My dear George:

Last night was our first concert here and tomorrow Saturday will be the second.

Since our arrival here I have been much under the weather my hands being very lame. And it makes me very weak and low spirited. But, Thank God, our concert was a great and glorious success, and today I feel very happy and relieved My concerts on the way out were—not

40

*Exhibits.*

good. I was completely out of form in every way. You know for some weeks, before I left how very ill and suffering I was. However, that now is all past, and I am going to do my very best again to make a conquest of all this new territory.

10

The lameness clings on to me in a most disheartening manner, but I am sure it will now leave me soon, for good and all.

Of course I think of you and wonder how things are with you, and if you are all settled at Deal and if the weather is fine and if Dorothy is entirely recovered, and if George is there.

This is an enchanting isle and can only be realized when one sees it, and feels it. It is warm but a divine heat.

20

I am sending some views. We sail from here on July 7th and arrive at Sydney on the 23rd of July—I do hope and pray for success.

I do hope and pray for you dear George. You are heavily burdened. I do think of you and want you to be guided to do the right thing for yourself, and your affairs.

I so pray for you—you—just you—George—George—George—just you. All my prayers and best thoughts are forever concentrated upon you. You must come out of all trouble. I know you must. Then know too that God is All—no other cause or creator.

30

My hand is getting tired and I'll stop. The steamer sails to-morrow for San Francisco. Your cable to-day says no letter since Denver. I wrote the 16th, 22—and now 27th.

Since the first I have always believed you loved me and were true and loyal to me. I have trusted you blindly, absolutely and entirely in every pos-

40

*Exhibits.*

sible way. Please know it at all times. No living human could have trusted more implicitly in another than I in you. It would not have been possible. You know this George—you know it. In all and every way possible, I have given proof.

10 Your birthday will have come and gone ere you get this—but you will know that I sent you all the loving thoughts of my heart.

Good night.

God keep you, bless you, and guide you—forever.

Your wife,

LILLIE.

We sail from here on the S. S. Ventura.

20

The following is a copy of the envelope in which the above letter was contained:

Cable Address	HONOLULU	U. S. POSTAGE
"MOANA"	JUN 28	2 Cents. 2
	9-30A	
	1913	
	HAWAII	

MOANA HOTEL  
Honolulu  
Hawaii

30

George W. Young Esqre  
Pine Bungalow,  
Deal Beach  
New Jersey.

40

**Exhibit Proponent 3, Feb. 4, 1915.**

HOTEL ST. FRANCIS  
SAN FRANCISCO

Tuesday—June 17th

My dearest George:

On your birthday you will get the accompanying package. Alas!—only old things which already belong to you. Still—I send them along to you—Only wishing it was something far more fitting for the sweet day of your birth. May you live another 49 years—But without a care or worry. Only health—love—peace and prosperity.

These wishes are from the heart of your wife.  
Lillie.

10

Three leaves were enclosed with this letter and also the following poem—

20

God gave me thee, nor all the world's alarms  
Shall take thee, Sweet, one moment from my  
arms;

He tuned our souls in unison divine;  
Through Time, Eternity, did name thee mine.  
Ne'er fear that anything on earth could make  
Me lose the heart that my own heart did wake.  
Thy heart is mine, and thy dear self I hold  
Within my arms, that close about thee fold;  
Nor let the tempest of the world come nigh,  
To waft across thy warm red lips one sigh.  
With all my wordly goods I thee endow,  
We are no longer twain, but one; and now  
Give me thy lips, and all the world forget!  
Give me thine eyes, that like twin stars are set

30

40

*Exhibits.*

Beneath the fragrant cloud of thy soft hair—  
Thine eyes, Dear Heart, that all the world calls  
fair,

Not even knowing of the look that lies  
Within their depths, for me alone, nor dies.

10

The following is a copy of the envelope in  
which the foregoing were contained—

With Birthday gift.

San Francisco

George W. Young, Esqre,  
8 West 9th Street  
New York City.

---

**Exhibit Proponent 4, Feb. 4, 1915.**

20

Under Royal Patronage

Sept. 9th, 1913.

New Zealand

GRAND HOTEL  
ROTORUA

My dear George—

30

We arrived at Auckland Sunday the 7th after  
four days uninteresting journey. It was cold and  
windy and we kept in our cabins.

As we do not give our first concert until the  
15th we concluded—Mr. Simmons, Ada and I—  
to come up here in the mountains to this place  
where there are wonderful spouting hot sulphur  
springs, to take some mud baths to see if I can  
possibly eradicate that—(whatever it is) which  
seems to cling to my system and cause me bodily  
suffering.

40

We arrived last night and today have been to  
see the boiling lakes, &c. Later I shall have a  
bath.

*Exhibits.*

It breaks my heart to have to report failure to you—but our business in Australia has only deficit as a result—fourteen concerts we gave.

As for New Zealand—who can tell? Our first concert is some days off as yet.

I am not only disappointed but discouraged. 10

They say—hope springs &c. &c. But in my case I find I have lost heart and faith and only can plod along day after day only too happy when night comes and I can count one less day to live on this earth.

Your letters are loving and your poetry is very sweet and pretty.

I fear I am too far away alone and unhappy George.

You ask me to write of myself. Well, I have done so, and as you see there is nothing much to tell. 20

As for you—I am glad you could have your Summer as you planned with your two children, now grown to manhood and womanhood who love you dearly, and who are surely a comfort to you—together with relatives and friends.

I do not know what you intend to do this Winter or where you will abide—but in any case you will be surrounded with friends and companions, and if as you cabled me your Yerkes—and the mortgage business is settled you will be able to take up your affairs again and push forward to success. 30

All my best and loving wishes are for you at all times. You have always have had them and you always will forever.

You ask me to breathe a prayer to my God. There is only one God.—One cause—one creator. 40

*Exhibits.*

He is with you at all times—in all places—All powerful.

Good night.

Always the same.

Lillie.

10

The following is a copy of the envelope in which the above letter was contained:

Dominion of  
 ROTORUA      New Zealand  
 10 SP      1d      1d  
 13  
 N.Z.      Universal Postage  
 ONE PENNY.

20

George W. Young Esqre  
 59— Cedar Street  
 New York City.  
 U. S. A.

On back of envelope—      GRAND HOTEL  
    ROTORUA

**Exhibit Proponent 5, Feb. 4, 1915.**

GRAND HOTEL  
 Auckland, N. Z.

30

Sept. 23d, 1913.

My dear George—

Your letters A. B. C. & D. arrived in this day's mail.

When I stop to realize they were dated way back in August—6th—7—11th—15th—I do indeed feel at the end of the earth. For nearly four months I have been away—and not one familiar face have I seen. You can not realize

40

*Exhibits.*

what it is to be away among strangers. And then again the people are so very different from any I have ever met. That we are in the Colonies is on on sides apparent. And the longing for an hour with some dear one, at times nearly drives one to the shrieking point.

10

It is now however coming spring and the birds and flowers of this wonderful land give one great joy—but only deepen the sense of solitude.

Our four concerts given here this past week have been very successful artistically. Alas!—the receipts are small, and in all I have now sung seventeen—and not one dollar has found its way into my possession.

The money Mr. Shipman had he has used to pay some old debts of his, of over a years standing. Consequently when we arrived in Sydney the money was all gone, and there were bills for advertising—rent of Hall, &c. &c.

20

We landed in the midst of small pox panic, and we all had to be vaccinated, and in all, I read, there have been 208,000 cases. Thousands were being vaccinated daily in the Town Hall, where we sang. So you see, it meant ruin to our season there. We woud have made a little money here, but we have had to send it back to Svdney to pay up the bills which we were obliged to leave unpaid. We could not terminate our contract with Shipman without a great quarrel with him, and having recourse to law, and so we have thought best to struggle along until November when our contract will end.

30

I did not want it to go out to the world that our tour was a failure, and end up in a lawsuit.

40

*Exhibits.*

So we have employed a new man, a Mr. Holman, who has sailed for Java to see if he can book some dates and so on to Singapore.

10 I feel sure that without Mr. Shipman our luck will change, and that we can at least pay our way along. You see we have to charge popular prices and cannot therefore take in large sums even were the hall packed. People are not up to high class entertainment as yet and the moving pictures are a novelty still.

Mr. Simmons says he has written you fully. You know I am a poor business woman.

20 The last few concerts I have been in really good voice and I am stronger and better in every way—still I do not do much, and I rest all the time and Ada reads to me hours at a time. I should have gone made had I been alone without her. She has devoted herself to me, as have all, for I have been so miserable and lame I have had to be helped at every turn. But now I am truly better and will try and keep so.

We leave tonight for Wellington, then Christ church—Dunedin and so on. I'll try and see if Simmons has the route.

30 I have been so out of condition I really have not known or cared where we were going. I simply went along as I was taken. And tried to sing, and, as you say, smile—naturally I have not gone about any to speak of, as it was all I could do to sing two or three times and some times four times in a week.

40 The distances are long, for instance in returning from Melbourne to Sydney, we came by boat, for motives of economy. And it took from Saturday noon until Monday afternoon. And

*Exhibits.*

from Sydney to Auckland it took from Wednesday until Sunday night on board ship. We cannot realize the distances. And now when we sail for Java, it will take twenty one days. Ah—well—days lengthen into weeks, weeks to months, and so on, and I suppose we will at last be somewhere. I don't know where—I just go on. But always—please know—with the most tender and loving thoughts of you, and for you. I have always loved you, George—it was only for that—that I stepped out in front of all the world—not caring for its comments or censure—nothing—nor family ties, nor reputation, position, or anything mattered only you—you—you. With you I was happy. Away from you, I worked only to return to you. I was for you at all times, in all places, under all circumstances, and I clung to all my ideals, finding them all in you.

10

20

I could make all sorts of allowances, at least it so seemed to me. I tried to have you feel free. I tried not to be exacting. Really, George I did do my best to preserve the sacred, sweet, loving ideal conditions. You know how we have talked over the way married people became careless many times one of the other. How often have you said, never will I take things for granted. Many times I have closed my lips, that I should not make a response that would live in your memory other than that of a woman who loved and adored you. For we loved each other. We loved each other. How then then could one hurt the other by word or deed.

30

For—oh!—the frightful power one person holds to hurt another is indeed hell itself. We

40

*Exhibits.*

10 had great responsibility one for the other in the matter of conduct and choice of friends and companions. And most of all—the treatment one to the other. There are many things which have developed in our lives George which cannot be put in writing. So then—let us try to go on each doing as you say right, as far as we know, and that is much. You know—you will always be in my most tender consideration, and in all my inmost thoughts and loving wishes.

I loved you. I shall always love you—all my life—whatever may be the circumstances of the future—Know—that there is one who loves you truly. Know that in this world there is one whose prayers will always be for you.—  
20 Under all skies—all circumstances.

I know you are hard at work. You always have been. And your reward will surely come. It must come.

You asked me to send you clippings, so I have sent some together with some snap shots, &c. &c.

I truly wish all your cares and troubles might be swept away from you, and only peace reign in your poor tired heart.

30 Good bye for now. Our only address is Sydney, Hotel Australia. Mr. Simmons will telegraph there from time to time to keep them informed where to forward mail.

God bless you ever—and at all time and places.

LILLIE.

P. S.

40 I am very sorry there has been any trouble with Liggett, and I hope you will be able to

*Exhibits.*

settle it without inconvenience to yourself. It would indeed be a great pity if the business fell through. I had counted upon having that income, and as as you know need it. However I shall not worry over it. I know you will deal the very best possible with the situation. It does seem some times as if you would be overwhelmed. But you will not be. You will surely—surely win. 10

I had a nice letter from Dorothy—by now I suppose she and her husband are away. Will you send her my love when you write, and thank her for the snap shots. The bungalow must have been pretty.

Once again—

Adieu—George— 20

God with you—

LILLIE.

The following also enclosed with above letter:

GRAND HOTEL

Auckland, N. Z.

As far as we know now these are our plans:  
Wellington—Sept. 25, 27, and 30th.

Sail to

Christchurch—Oct. 4th & 6th. 30

Dunedin—Oct. 9 and 10.

Sail—Oct. 13th for

Launceston—Tasmania.

Dates of concerts undecided, but sail again Oct. 22d for Melbourne—proceeding directly to Adelaide—Sing—Oct. 25th, 27th and 29th.

Melbourne—Nov| 1st to 8th—Proceed to Sydney—Sail 13th for Java—21 days on sea.



*Exhibits.*

going to Deal today—that Lil moved to Dorothys, and that they decided in your favor about appealing your case. Good—I know you will win it.—Sure!—I wonder what you are going to do with all the things at No. 8. Well, whatever you do will be all right I know.

10

Of course I am glad you are a little lonely after my departure. I was terribly, terribly sad at leaving. Excuse pencil my hands are a size too large still.

Concert last night was very hard for me—but its all over and fine.—In bed today, but thinking of you at Deal and wish you all good luck and cheer. Always know, that I love you—George.

Ever,

LILLIE.

20

The following is a copy of the envelope in which the foregoing letter was contained—

U. S. POSTAGE  
2 CENTS 2

DENVER, COLO.

Jun 7

3 30 PM

1913

30

George W. Young, Esq.,  
8. West 9th Street,  
New York City  
N. Y.

40

**Exhibit Proponent 7, Feb. 4, 1915.**

CLIVEDEN MANSIONS,  
Wellington Parade,  
East Melbourne.

24th November, 1913.

10 My dear George—

I am sorry to say that I am dictating this letter from my bed, where I have been for the last ten days. Of course you remember how afflicted I was before leaving home with neuritis, and I have suffered from it ever since, until now I am ordered by my doctor a complete rest, and a rest in bed. It takes the form of lameness all over the body, and especially in the hands and arms—most distressing and painful. It has been positively marvellous that I have been able to appear over forty times in concert in Australia, New Zealand and Tasmania: But the end has come now for a while, for I must have perfect rest to restore the nervous system which has undergone so many shocks in the past year or two.

20 We expected to be on our way to Java at this time, and I had hoped that the three weeks journey in tropical seas would have done me a great deal of good. Ever since I left you on the 2nd. June, there has not been one day that we have not had a fire in our rooms—with the exception of a fortnight in Honolulu—and I have not been able up to the present to discard my furs. The climate of this country is truly wonderful, and while looking from my windows we see all sorts of luxuriant vegetation, flowers, roses, palm trees most wonderful and gorgeous, profuse: still the houses are unheated save by grate fires, and there sweeps up from

30

40

*Exhibits.*

the South Pole, unbroken by any other point of land, fierce winds, bringing a frosty chill which seems to penetrate our bones and marrow. I think it is not only we foreigners who feel it; it seems that the Australian themselves suffer from the cold and are, as near as I can judge, most uncomfortable in their homes on account of no provision for heating the houses. While our sitting-room may be comfortably warm, the corridors and bedrooms are icy cold, and even now, as the summer is coming on, as I sit lying dictating I have an electric stove going in my room. So you can see that we looked forward to our trip into the tropics with hope of warmth and sunshine. 10

But, alas! Mr. Shipman has brought these law-suits—one for damages against Mr. Simmons of £2,000 for slander; and one against me for £3,000 for the same thing. These law-suits are now going forward. Our solicitor is solicitor for the Crown, and a firm of high reputation: while Mr. Shipman has employed some Jew whose standing is not of the very highest. We shall have to remain in Melbourne until the 13th of December, when the next boat sails for Java. At this moment it is impossible to tell whether we will be able to leave then, either by reason of the law-suit or my state of health. For the time has come when I *must* get well. My doctor urges my removal to a Sanatarium, where I would be sure of undisturbed rest and quiet to the nerves, my case being diagnosed as “nervous breakdown”; but we are very comfortable here at Cliveden Mansions, and I receive no visitors and remain in bed all the time. Ada reads to me early and late—all times, and I try 20 30 40

*Exhibits.*

10 to sleep and forget my worries. I have massage every evening. My doctor is anxious for me to get away into a warm climate, and under no consideration to return to a cold climate for this winter. Of course there is nothing to worry about in my case; I only require absolute rest.

20 Fortunately, I have been in splendid voice, and our concerts have been the highest artistic success: financially they have left much to be desired. I attended a concert given here the other day, which fully convinces me that our style of entertainment is beyond the taste of the Australasians up to the present moment. The great public is still in the "ballad" stratum, but the cultured few who have attended regularly our concerts are most enthusiastic and appreciative.

30 Mr. Paul Dufaut, our tenor, has signed with Mr. Shipman for a few months tour here. He intended opening in New Zealand, but on account of strike could not get there, shipping being tied up. As you know he was engaged and in my employ for sixteen weeks, and while under engagement to me intrigued with Mr. Shipman and tried to get Mr. Franklin Holding (our violinist) away, and it is he who has made all the trouble in repeating—and not always exactly correctly—conversations which he heard at different times during our tour, especially when we began to find out that Mr. Shipman has misused my money. Mr. Shipman, in fact, used my money to pay some back bills of his which had been standing for four or five years, and when he wrote saying that he must cable money to  
40 pay a deposit on the hall, I find now that that

*Exhibits.*

deposit was paid for Mr. Bispham's concert, and not mine. I do not know that I can explain it all to you, but you will know that I am right, and there has been nothing said that is not truth, and that I cannot go before the judge and testify to. I think Mr. Shipman has been badly advised to bring such suits, as I fear when the truth comes out that his credit will be greatly damaged. I cannot imagine that either Schuman Heink or Misha Elman would care to come to Australia knowing that I had had this trouble with Mr. Shipman. For no one would have been so lenient towards him as I have been. He tries to say that the money he had advanced him you loaned him as a personal loan, which of course you know is not true. It was my money as you know, and as Mr. Simmons knew, and as Mr. Shipman himself knew.

10

20

I do not get much, I may say, if any news from home. The last newspaper arrived a few days ago, and was dated August 29th. I have had some magazines from you, and some illustrated papers—I think three at different times, and that is all. Newspapers in this country contain only news of this continent, and occasionally a cable from London: of American news we have nothing, and your allusion to the Sulzer trial and the Mackey scandal are still dark mysteries to me. We really get no American news in the paper here. Letters from home are few and far between, and naturally as we have been flying about from place to place they follow us around and without doubt some get lost in the transportation. You do not realise the distances here of Sydney to Auckland, four days by ship; from Wellington to Hobart another

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*Exhibits.*

four days, and so on. Now that the strikes are on everything is delayed.

10 This is a great and wonderful country, progressive: a country. I should say, where the people are going to have proper and equal rights—  
 20 if they do not have them already. The labor question is being solved in a truly equitable fashion between men and women. The resources of this country are surely beyond my small imagination to depict: the cultivation truly far beyond what one can realise from the age of the country. All the cities have wonderful parks, and the flowers—many varieties of which I have never seen—blossom in the greatest profusion, and I have them sent to me constantly,  
 30 and have been presented with most wonderful great baskets, and staffs, and wreaths, and bouquets of all sorts and kinds, one being perhaps the most wonderful in Honolulu of the night blooming Cereus.

Our amusements have been few. We drive to the Zoological Gardens or the Botanical Gardens, have been three times to the theatre I think, attended one concert, had the pleasure of going to the Ball at Government House, several very interesting spiritual seances conducted under the patronage of Mr. T. W. Stanford, brother of Leland Stanford of University fame. He is an old man, towards eighty years of age if not quite that, and holds these circles every Thursday where they have materialisations and all sorts of curious things brought by the Hindoo control, demonstrating the passage of matter through matter. Miss Wilson, who is tak-

*Exhibits.*

ing this dictation, takes down the account of these seances, and has been doing so for seven years. I will send you with this an account of our first seance there. Even Mr. Simmons is quite flabbergasted, but is always ready to cry fraud and deceit, not having great understanding in occult matters. I wish you could be present at one of these most remarkable seances. I surely hope that Mr. Bailey, the medium, will visit America. We have never seen or heard anything comparable to his rare gift. 10

Now, don't worry about me: I shall soon be strong and well again, when I shall surely strive to keep in best physical condition. As for mental—well, I expect I shall always be just as crazy as usual. We have two concerts advertised for next week, but I doubt very much if I shall be able to face the music, as it were. Last night my doctor said NO! with a great many exclamations after—you may say, with a loud report. He says if I do not take this time to fully recover (accent on the "fully") that this condition will so fasten itself upon me that I shall be an invalid. So, in the language of Jessie Baskerville, "Me. for rest." 20

Of course you will realise I am dictating this because my hands are so swollen and so painful I cannot hold a pen or pencil. Ada has read to me "The Woman Thou Gavest Me," by Hall Caine, which we found extremely interesting. We have just finished the latest, "Devil's Garden," and have now started in on "The Queens of England." I find this more soporific: whether it is the subject or the tone of voice I have 30

*Exhibits.*

not yet determined. but for monotony there is not much to choose. But, fun aside, I assure you I am deeply grateful to Ada for her devotion at all times in the twenty-four hours, and should surely have gone mad without her ministrations.

10

I am quite in the dark still as to your place of abode for the winter, wondering whether you took the apartment you intended to, or if you are staying at the Club or Hotel. I am still most anxious about Lilian and her affairs, but I feel sure that you will keep an eye out and help her in every way you can. I have not written her, simply because I cannot write, it being most painful and absolutely forbidden, as it makes my hands swell after every letter writing. In fact, almost every disturbance of mind, any anxiety, mirrors itself on my poor, aching anatomy.

20

I am sending a few little books and Christmas cards which may arrive about New Year: that is all I could send which would not give you the bother of going through the Customs. I think of you constantly, and hope and pray for your success and happiness, a speedy and satisfactory outcome of all your business plans and affairs. I suppose Dorothy is still away, but perhaps George will be with you for the Christmas holidays. That the New Year will bring you your heart's desire—more than this I cannot wish you. "Be strong and of a good courage: fear not, neither be thou dismayed, for the Lord Thy God is with Thee whithersoever Thou goest."

30

40

*Exhibits.*

On back of last sheet of above letter, the following is written in lead pencil.

Nov. 27th

In bed you see. Have had to give up for a while. The Doctor has given me something to quiet the pain. I suppose "dope" of some sort— So I am with pencil between third and fourth finger, scratching off a line. 10

This will reach you about Christmas. Well let us hope for a merry one and Happy New Year.

Always the same,

LILLIE.

God help us both.

I shall be all well long before you receive this. 20

---

**Exhibit Proponent 8, Feb. 4, 1915.**

To George—

Wishing him a  
Merry Christmas  
1913

Melbourne—

Australia. 30

---

**Exhibit Proponent 9, Feb. 4, 1915.**

COPY

May 1 1914.

17 H

F L 18

Wetevreden 54

Youngcow NY

Condition still serious but gained little ground since yesterday read her all telegrams said tell 40

*Exhibits.*

him not Japan too lonely journey for him meet  
me Marseilles crazy get home counting minutes  
give him all my love God is good are all fighting  
for her keep up courage will cable twice daily.

SIMM.

10

**Exhibit Contestants I, Feb. 4, 1915.**

(Exemplified copy of Will of 1914, on file in  
Office of Surrogate of New York County.)

**Exhibit Contestants II, Feb. 4, 1915.**

Sydney

Aug. 22/13

20

My dear Billy:

Your letter came safely all this long distance—  
along under the Southern cross—and across the  
Equator down over the bend of the earth On  
the Southern Sea and at last landed here in this  
forsaken island.

30

No words of mine can every convey to you the  
remoteness of Australia. No—it is a dreary  
waste this town—uninteresting to a degree—No  
nothing. The botanical garden is the only place  
to go—and when there—Nothing.

On the other hand, when you think one hun-  
dred years ago there was still less—why—we  
wonder and then just wait for the time to come  
to sail away from it all. We set sail again on  
Sept. 3rd for New Zealand where we shall prob-  
ably remain from four to six weeks—if we have  
luck.

40

Our business here has been too awful—owing  
to small-pox scare.

*Exhibits.*

People have not dared to move and business has been at a stand still. Shops empty and employees discharged. So while our concerts have been great artistic success they have been a total failure financially. Well—well—what next—no matter—I still live and have a being. George writes me most wonderful letter. I have written him twice. I will be very careful—to say nothing. 10

A cable from him today says “Keep well—Happy tide turned, Yerkes practically settled two fifty thousand Mortgage suit two hundred more all counsel agree, Hurrah. No letters or telegrams cannot understand Explain—Love—George.

Now I truly and sincerely hope it is true, and if it is so I shall put in a demand for payment of what he owes me. 20

If you go over to N. Y. be sure and see him. No matter if you don't specially care about it. It might be of some benefit to me.

I want to advise Lillian to keep on good terms with George and Dorothy for her own sake. Any unfriendliness would avail me nothing and might do her out of some advantages. Tell her I shall not write directly to her. But I want her to write to me. 30

I'll write to her through Boston. Then if she is asked if she has letters she can truly say—no—and it will be better so.

I hope you had a fine time this summer—at any rate the “girls” and children did.

I sing twice a week and from now or three times—if I can. It will probably be twice one week and three times the next.

I have not been very well Billy—but now am 40

*Exhibits.*

on the road to recovery. The doctor gave me some tonic and I have massage. As the circulation is not good and heart is either too fast or fast or too slow.

10 I just rest all I can and lie down. Ada is awfully good to me and when I can't sleep she reads all night long, or rubs me—or does any old thing to make me comfortable. When you write send her a little message and say something about Lorenzo. We are far away Billy and alone. Well—thank you Billy dear for all your kind and loving thoughts—I think of you very often—With my fond love.

LILLIE.

20 We don't know if we will go to Japan. If so we may see Mr. Brown.

I met some people in Melbourne who had seen George Walker in Cape Town. I suppose he is home by now.

I hear Mr. Salomon has lost millions. I truly hope it is not so.

You will all have a fine time together. I hope Hattie Bartlett will be able to come. Fannie Lamar should have departed. Well—its all right. Things will come out all right I guess.

30 Well—Good night once more.

LILLIE.

Write.

**Exhibit Contestants III, Feb. 4, 1915.**

CONNOR HOTEL,  
Laramie  
Wyoming.

June 8th

My dear Annie & Billy:

10

Since leaving, I have had 'a lot of time to think over a few things—and I want to submit an idea to you.

Now I have got a chapter and verse on the gent As you know, and expect ere long to have more information on the same subject.

I have been away a great deal and I understand that a person might side step, but to do things in such a bold and heartless manner and to be so ugly and neglectful of me. Not to say abusive and my hard earned money paying for it. Really, I have to laugh at my old fool self.

20

My idea is, if you both think best is for Billy when he goes to New York to see Lamar and under promise of secrecy, of course, to tell him everything. The burden of the song to be that if I had money I would sue for divorce right away. Some time ago I hinted to Lamar that I should go away and never come back and that I wanted to live in London. He then said, if I decided to do so to let him know.

30

I want also for him to know that I sold the nickel shares to save George from being arrested, as he had hypothecated property which did not belong to him and they were after him. At that time I had not found him out and he was in terrible distress. At least, so he represented to me, and now I am gone for good. I did not

40

*Exhibits.*

make a row before leaving for the simple reason that I have not the money, and I thought by keeping quiet that I might get back something some time, but Billy, I don't believe I ever will.

10 And if I had even a small income so that I could take a house in London where I could live and not have to sing only on some great occasion, I would free myself at once. It could be done very quietly, as he never would defend the suit.

Now Billy, this idea may not meet with your approval I mean the idea of disclosing the state of affairs to Lamar. Of course, you would tell him of your own volition Not as coming from me, and make him swear not to tell it to any one, and then no one could ever say I went to Lamar.

20 Of course, I have my jewels I could always give in exchange.

If he would put aside a sum of money from which I could have the income during my life, it would revert to his estate at my demise.

You see I am kind of thinking aloud. I think and think and the more I consider the more I see how unworthy he is, and how horribly I have been duped, betrayed, deceived and abused.

30 Now Billy, you do as you think best about it. I know if you were a rich man you would come to my aid now. If I were well and strong and could work as I once could, I should have greater moral courage. But, well, no matter I don't need to tell of my state of mind or health.

Laramie, My goodness! If you could see me in this one horse town and this hotel and to think. As, well—I'll do my best. But Oh! The terrible dissatisfaction. Such absolute confidence as I

*Exhibits.*

had—shattered! forever. Nothing can restore it.  
Too bad. Nothing Too bad.

I think of you all at home to-day, and know  
that you are thinking of me, and that you all are  
in sympathy with me. But from now I want you  
all to forget it and be happy and jolly and just  
think that everything will come out all right.  
That I shall be given strength. That all will work  
out for the best, and I'll go on doing my very  
best. 10

Don't worry—just wait and watch.

Your loving sister

Lillie

I can see you all with little sister and Onie and  
Connie. So just be happy.

Hattie Bartlett came to see me yesterday—in  
Denver—I was in bed. I did not get up as I was  
too tired after the concert the night before. 20

She looked pretty and said she was going East  
about the middle of July.

Destroy all letters

Write to San Francisco.

---

**Exhibit Contestants IV, Feb. 4, 1915.**

Sydney, N. S. W., 30

Wednesday, July 23rd, 1913.

Dear Everybody:—

Well, after two weeks of very rough sea, we  
landed here Monday evening, and all day long  
yesterday I received reporters and talked until  
I was exhausted. To-day I am in bed—not ill—  
but must rest—as our first concert is to-morrow,  
Thursday, and second on Saturday, and as the  
steamer, the same we arrived on "The Ventura" 40

*Exhibits.*

sails Saturday I want to send you a line. I feel very far away from you all and apart from kith and kin. I am very glad to have Ada, for I could not be all alone, it is bad enough as it is, but I especially feel lonesome and forlorn this time. When you stop to realize everything it looks rather blue, but on the other hand, I am free—at a terrible cost to be sure—but—no matter, it is all for the best.

I shall never come back into the same atmosphere or take up the old life. That is all finished. As for “condoning” who knows. When certain facts came to my knowledge, as a matter of fact I have, by letter, since my departure from N. Y. received information, as to date, and name, etc., etc., which I did not absolutely know before I left. To suspect is one thing but to be furnished with exact date and detail is another. This I have received by letter in San Francisco. However, any information subsequent to my departure I surely should treasure and indeed must have. Well—having or no having I have finished!

Everything here points to a success—great advertising has been done and now I’ll try and brace up once again and conquer.

It will be a long month before I can get another letter from you. Yours of June 25th came along on the steamer with me. Also code book from Billy.

I had a long cable from George, saying “He fearful of losing me forever, etc., etc., and to read Sonnets numbers 3-43-10-11-21 of Elizabeth Browning. I replied for him to read—Sonnet No. 8 and so this is where we stand at present. He has written the most heart rending letters,

*Exhibits.*

but Annie—I am done! I don't know whether some one has talked to him or whether he came to his senses after I had been gone some days, but it does not matter now, as I am "on." Rather late if you like, but it is a great and wonderful thing to stand free and with a clean record and clear conscience. That is where I stand.

10

Let me know when you have read the sonnets whether to take it as a confession. At all events, you will see where I am "at" by No. 8. I do not see what there is to be gained by trying to keep up a double-faced game any longer. I simply cannot write as of old and I will not be made unhappy. I have all I can do to carry along the responsibility that now rests upon my shoulders. We are eight—yes ten people—here and all depends upon me. So I must be free and untrammelled in my great and legitimate calling.

20

I have ceased to weep and with the Divine help I'll pull through to the end. Up to now, my hands have been swollen and painful, but as my mental condition improves my physical system! also returns to its own.

Sydney is a small Liverpool. I'll say no more. I cannot. Ada will write every week about things. I can only gossip.

30

Don't question Lillian. She is in a difficult position and it is better for her to see nothing and know nothing.

She has all she can do to attend to business and have a good time at week ends and it is better so.

I am glad you saw Mr. Hall. He is very nice and enthusiastic. How about those scent sachete, I

40

*Exhibits.*

hope he will make them for Holiday trade. A little box with a lace cap and sachet would be a novelty. Well, I wait now until Friday and send notice of concerts. Whether good or bad. But I hope and believe good. Did Gracie Cooke  
 10 find out what Mrs. Godfrey had to tell?

Good day, my hand aches. Love to all. I can see you and Onie at Farrington. Have a good time and stay as late as you want to.

July 24th Cable to-day from Rob's man saying Party spent July 6th at Lynches. Now I want to know if he only spent the afternoon or evening or night or all three. But I'll find out all in course of time.

I have decided I shall not write to him any  
 20 more. It will be better for me to put all the unhappiness possible out of my life from now on and he may as well know now that I am done with him.

I don't mean to make any public row—at all events not unless I wished to be legally free. Well, tonight is our first concert and everything in this country depends upon the outcome. Sim is terribly nervous and everybody is somesick. We are indeed out of the world. Annie—the  
 30 abomination of desolation, the name is Australia!

You can form no idea of the frightful distance we are from you all. As for the Pacific ocean, it is a misnomer of deepest hue.

Now no more until tomorrow.

The weather is cool and we have fires in all the rooms.

Friday.—Well, we had a grand success, as you see by the papers. I am very tired, but as the steamer sails tomorrow I must get these off.  
 40 To-day the Lady Mayoress gave a grand reception for me in the Town Hall. Splendid floral

*Exhibits.*

decorations—tea and cake and all the creme de la creme of society. Our second concert tomorrow night. I am tired so I'll just close up with a very thankful heart.

With love to you one and all.

LILLIE 10

P. S.—It is Winter here, so I send a snow drop.

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**Exhibit Contestants V, Feb., 4, 1915.**

August 21st, 1913.

Dear Sisters one and all:

Once again sailing day has come around and so I'll just send a line. 20

There is no news here. It is a dull awful town. In the views I send you it looks great. But Oh! the people—and the pipe smoke. But we must realize we arrived here in the thick of a Small Pox epidemic, which now, is somewhat abated.

From now on I will write more frequently so that you will have several letters in your mail. But really I have not had the heart, or in fact the desire. Our business has been "rotten." We have not even paid our expenses, but we are going on—with four more concerts here. I sing to-night and then we are sailing Sept. 3rd for New Zealand. If that Island does not pan out we don't know just what we will do. But we are living in hopes. You will get this about middle of Sept. I shall cable the result of our first concert there—so you may know if the tide has turned. 30

40

*Exhibits.*

In all my career—I was never in just such a plight. But I know I shall be taken care of and come out all right. Our Artistic success is colossal, which, after all, is our first look out.

10 I am just now recovering my spirits and strength. But nothing can kill me, and my voice is once again sounding like me.

George writes the most imploring love letters you can imagine. But I cannot forget and fear I never shall.

20 He cabled me yesterday that Counsel had agreed on Yerkes business. Also on his mortgage case, making all together \$450,000. I do truly hope it will turn out all right. I ask nothing better than that he may prosper, and at the same time pay me back even one-half of what he owes me.

I want you to tell Lillian to keep on good terms with him for her own sake for any unfriendliness would be of no avail to me and would only do her out of some sort of benefits, I understand and it is all right.

30 Tell her to keep on writing to me. I love to get her letters. If there is anything special I want to say to her I will write it to you and you can tell her.

Well, we returned here from Melbourne, where we had great artistic success. We took the boat back—two days sail—it will be five days from here to Auckland.

I met some people in Melbourne who had seen George Walker in Capetown.

40 There is not one blessed thing to be seen in this old town. We read and I rest a great deal. I was, Annie, at the end of my endurance. I adored George. I could see his faults many

*Exhibits.*

times, and he passed through great mental agony and sustained loss of all his material possessions and business prestige.

I understood and suffered with him, just as you would do with Billy or Arthur or Rob and nothing I could do was withheld.

10

Ah! Well, it is over and no fortune he could ever make can restore the sacred confidence and trust I reposed in him.

Not anything that he failed to provide of a material nature ever in my way disturbed or distressed me. You all know this. I was ready to do all I was able to do, to help.

It was the consideration—care—truth—and all things spiritual which he withheld and which he he had in his power to bestow.

20

Now all his loving letters, all his honeyed words fall dull upon my heart, and do not awaken a throb of response. I cannot help it. Something is dead and gone out of my mortal life for ever.

I don't want any publicity over the situation. I want nothing but peace.

I must live and just now that problem is a serious one still I know I shall be taken care of.

There is only One Power.

30

One cause. One Creator. Present at all times in all places.

It is time to send this off to catch the steamer at noon—But there is another boat sailing Monday for Vancouver and I'll write Sunday—tomorrow all about the most Wonderful Seance we had at Melbourne at the house of Mr. Stanford. Brother of Leland Stanford of Stanford University in California.

I had a nice letter from Immie. I'll send it tomorrow.

40

*Exhibits.*

I think of you all every day and see those little young ones trudging back and forth up to the barn.

10 Don't work—just let things kinder slide—I know the house is lovely and I do wish I could see it all.

It was too bad mother's picture was broken—but you know there is no one to give personal attention. Things have to take what ever care they can get.

Tell Robbie about George's getting all that money. That is, if he gets it—for he will be likely to do some fine entertaining.

Now I must say Good day.

20 It is a lovely sunny day. I'll lie down and then rise and go and sing.

And thank God all the time for the great blessings we are constantly in receipt of.

Give my love to all. Everybody.

We do not realize what ties of consanguinity mean—until we are entirely apart from everybody we care for.

My Doctor has come. I mean my C. S. practitioner.

30 Good B——ye. Keep well and happy *and if you ever see* George—don't know a thing.

Lillie.

P. S.

I feel it was perhaps all for the best that Lamar had departed. And departed without certain knowledge.

What he does not know he will not feel tempted to disclose.

**Exhibit Contestants VI, Feb. 4, 1915.**

Oct. 25th, 1913.

My dear Sisters and Lillian:

Yours of Sept. 5th up to 10th have just reached me. And by now, who knows what has happened.

10

I am so far away and so helpless at the moment. But things are looking up and ere long I shall be on my feet again. I am now, as far as health and voice, and after all those were the most important items for *me*, at all events.

First of all, Annie, don't you worry another moment about Farrington or anything, just rest on your oars for a while and enjoy your winter, day by day, let the future take care of itself for a while.

20

Just enjoy your blessings and trust that all will be well. This is all we can any of us do. In the meantime, we will all do our very best. To be sure, my best seems to have been all wrong. Still I did as I have done with the best and purest motives and it does seem a great pity that I should have been the dupe of such an unworthy person. Let that now pass. It is all gone, done and over with and put behind me.

Now, the question is this—Once again let me impress upon you that there is absolutely nothing to be gained by an open breach—at present. I am sure Billy will feel so too. If I were on the spot it would be so different. But thanks to God—I am away. This absence has been the saving of my health and reason. So let us rejoice at my deliverance.

30

As far as property is concerned, just as soon as I get to Melbourne, I shall make a new will. This fact you all must keep *strictly private!*

40

*Exhibits.*

10 As for the taxes at "Nortonwoods" why Annie, don't you worry over that. Just let him go along. We can always keep tract of his doings. If you will only keep a serene front. Don't let him, at any cost, quarrel with any member of the family. Be as wary as he. Don't let him know how you feel. If I can desemble to this extent, you all surely can do so too. No matter what he suspects, that does not matter. He cannot find out what I know until I let him and that is what is making him furious at present.

20 He is writing, begging me to come home. But I have no intention of doing so. So Annie, dear sister, be happy. You are all together—all your best beloved are near you, so forget all else and be happy.

I am gathering strength to meet the situation, when the time comes, and I shall meet it all right. When I get to London I am going to try and sell my emeralds and invest the money in something sure. If it only brings me in \$5. a week.

30 I wonder if Billy ever had a talk with the Capt. Well, if he does, he can say that only the hope of recovering my money keeps me from an absolute separation, you understand.

40 I cannot tell you how distressed I am about Lillian's leaving her position. What can I do? After they—Staples and Hall both promised me faithfully that she should be retained. I shall writ to Mr. Liggett in this mail. But I don't know if it will be of any avail. G. W. has blotched things so and there is so much bad blood existing—still I shall write—If I had any money or was earning any I should send some to your little Lill. The two 20 pound notes

*Exhibits.*

I have sent you is all the money I have had from the proceeds of our concerts and those I had to borrow from Simmons. He has not yet had any pay. But no matter, after Melbourne we shall be free from Shipman and DuFault and then alone with Holding through India and back to London, where we have a tour from middle of March for four weeks. 10

I feel sure I shall earn some money and go on. Of course, I can always go into Vaudeville and I may have to. Well, I don't care, I am in fine voice, and we shall see.

As you see—I am the guest of His Excellency and Lady Ellison Macartney, here at Government House. He is just like the King. Great ceremony and gold lace and really I begin to feel in my proper place and atmosphere again. 20

Lady Macartney's mother is here. Mrs. Scott. Mother of Capt. Scott who was lost at the South pole.

We have talked a lot together and tomorrow she is going to show me his last letters and tell me all about him.

Tomorrow the members of the company and Ada are invited to tea here.

Now, darling sisters, be of good cheer. We are still *we*, and all will be well. 30

The enclosed is a sample of Tasmanian daisy. Wonderful country. The view from my room is truly like fairy-land and my room and sitting room, are as large as the Methodist meeting house at Farrington.

Now Good-Bye for to-day. I sing again tonight and all the Court will again be present—and Line will play "God save the King", when he comes in and goes out Ha! Ha! This Ha! 40

*Conclusions of Orphans' Court Judge.*

Ha! is meant for poor Lines Harmonies. They are truly a wonder.

LILLIE.

Don't tell anyone any of my plans. I mean where I intend to give concerts after India.

10

**Conclusions of Orphans' Court Judge.**

(Filed Aug. 4, 1916)

Lillian Nordica Young died at Batavia, Java, May 10, 1914. Her husband, George W. Young, and three sisters survive her as next of kin and heirs at law.

20

Mr. Young, a legal resident of the Township of Ocean, in this county, presented to the surrogate on August 25, 1914, a paper dated July 3, 1910, alleged by him to be the Last Will and Testament of his wife and formally prayed its admission to probate and that letters testamentary be issued to him as the executor named therein. His petition contains the statement that a dispute had arisen respecting the execution of an alleged later will by Mrs. Young on January 10, 1914, which fact together with the validity of the instrument he denied. Annexed to his petition is a copy of this alleged later will, the original of which, the case shows, came into his possession after the death of his wife and was lodged by him, through counsel, with the Surrogate of New York County, and is now brought here in these proceedings.

30

The usual citations were issued, appearances entered for the parties in interest and the dispute accordingly brought before this Court for determination under the statute.

40

A preliminary issue was raised by those inter-

*Conclusions of Orphans' Court Judge.*

ested in the alleged later will as to the domicile of the decedent and the jurisdiction of this Court to consider the probate of any will executed by her, which, after hearing on the evidence offered, was determined to have been at the time of her death in this County, the legal residence of the husband. Caveats having been filed against the admission of the paper propounded by the petitioner, an order was made for the issuing of a commission to take the depositions of the witnesses to the so-called later will, both of whom were then residents of Thursday Island, and the proceedings were held pending the return of the commission. 10

While the depositions of both subscribing witnesses were thus returned, one of them—Sadie Charlotte MacDonald—was produced on the final hearing before the court, re-examined as a witness and subjected to extended cross-examination, and the court consequently had the benefit of her oral testimony. 20

For convenience, the court will adopt the designations used by counsel in argument and refer to the papers in dispute as the "1910 Will" and the "1914 Will," for, so far as the formalities are concerned, with regard to due execution in obedience to the requirements of our statute before at least two witnesses and their attestation and subscription in the presence of the testatrix and of each other, coupled with the usual testamentary declarations, no question is raised as to either document, and the court, under the evidence, finds that there was a legally satisfactory observance of the requirements with respect to both. 30

The single question mooted on the argument 40

*Conclusions of Orphans' Court Judge.*

is whether the 1914 Will was understandingly published and declared by the testatrix, that is to say, whether it sufficiently appears under the evidence that she had read it or was properly informed of its contents before she signed it. 10 Since the paper contains the usual revocation of prior wills, if there was due publication in the respect discussed, then the 1910 Will must be denied probate and the disputed later document decree entitled to probate as the Last Will and Testament of the decedent.

It is not seriously suggested that any undue influence or fraud is shown or indicated by the evidence to have been practiced by any person upon the testatrix at the time of the execution of 20 the 1914 Will. The most that may be said of the argument of the contestant in regard to it is that the evidence offered by its proponents fails to disclose direct proof of the fact that the testatrix had actually read the paper before affixing her signature, and that, therefore, (an innuendo merely) an opportunity might have been offered some one directly interested, as, for example, a beneficiary who at the request of the testatrix arranged for the drafting of the document, to have 30 surreptitiously brought about its execution with testamentary dispositions of which she had no actual knowledge. Suspicion, however, is not proof, and it is not even intimated that there is any actual evidence in the case to support such an argument.

The two papers are in evidence and a casual reading of them would seem to indicate knowledge in the draftsmen of facts and circumstances concerning the estate of Mrs. Young 40 which could only have been communicated by

*Conclusions of Orphans' Court Judge.*

her. This is particularly true of the 1914 will which contains a specific reference to her property and a narrative of an incident relative to the financial dealings between the testatrix and her husband, the truth of which was not during the progress of the case denied. The papers themselves are evidence of their contents, in the absence of testimony offered in denial of any fact stated therein.

10

Mrs. Young was a professional singer, and while on her way from Australia to Japan, on a concert tour, became ill of pleurisy and pneumonia. She was taken to the Torres Straits Hospital, at Thursday Island, on January 2, 1914, and remained there as a patient until March 28, 1914, her death occurring at Batavia, Java, on May 10, 1914. On January 10, 1914, she signed the paper which the proponents urge is entitled to probate as her last will.

20

There is no doubt, in view of the evidence, that she was at the time of the execution of the document in full possession of her faculties and entirely competent to comprehend the objects of her bounty, the property she possessed, the disposition she was making of it, and the fact that she was then engaged in the business of making a will; facts which are not even suggestively denied by counsel for the contestant, doubtless due to the fact that the case is barren of any evidence even remotely indicating the contrary. This question, therefore, is not in dispute. Indeed, the evidence warrants the conclusion that the testatrix retained complete control of her mental faculties until a comparatively short time prior to her death.

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*Conclusions of Orphans' Court Judge.*

10 The Court is not convinced, moreover, that Mrs. Young was either ignorant of the contents of the paper or the fact of execution. She did not afterwards make any inquiry as to the identity of the paper, or its contents, nor did she express any desire to again see it after she had signed it, although ample opportunity was afforded her to do so had she not been cognizant of its provisions.

20 The testimony of both Mr. Lebryce and Miss MacDonald, the witnesses to the 1914 will, to both of whom, in view of the circumstantial and disinterested narrative related by them, the Court must give credence, especially the latter who was examined in open court, fully supports the claim of the proponents that the paper was executed in full obedience to the requirements of the statute.

30 Concerning the testatrix's knowledge of its contents, Miss MacDonald testifies that she heard Mrs. Young, on several occasions prior to January 10, 1914, ask her secretary, Mr. Simmons, if her will was ready, that while that gentleman appeared to be putting her off, he did, in fact, before that date, bring to the testatrix the draft of a paper, characterized by the witness as a "Will"; and that finally on the date of its execution, a paper was brought to the hospital by Mr. Lebryce (who testifies that it had been handed to him by Mr. Simmons about half an hour before) which paper at the request of Mr. Lebryce was initialed by the witness with respect to one or two clerical errors as corrected, was read over by her—Miss MacDonald—and found to be the Will in question and identified

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*Conclusions of Orphans' Court Judge.*

by her as the same paper offered as the 1914 Will in this court. Miss MacDonald then states that both she and Mr. Lebryce then went into the room occupied by Mrs. Young, their visit clearly having been anticipated by her, for the purpose of witnessing the execution of the document. The testatrix was assisted by Miss MacDonald to a sitting position in bed, and Mr. Lebryce then presented the paper in question to her, and asked her if that was her Will, had she read it, and did she understand it, to which the testatrix replied: "Yes, it is my will, I have read it and I understand it." A support for the paper being then placed on her lap, Mrs. Young signed it in the presence of both witnesses, whereupon Miss MacDonald took the paper, but it on a small stand at the side and near the head of the bed, said to the testatrix, "Is this your Will and your wishes," and, on the testatrix replying, "Yes, it is my Will and my wish," she—Miss MacDonald—then signed her name to it as a subscribing witness in the presence of Mrs. Young and Mr. Lebryce, the latter then signed it as a witness in the presence of the testatrix and Miss MacDonald. It should be said for the purpose of identification that Mr. Lebryce was the Government Resident of Thursday Island and Miss MacDonald a nurse at Torres Straits Hospital at the time of the execution of the paper in question and in actual service upon Mrs. Young during her illness there, and therefore she—Miss MacDonald—was in a position to know the circumstances to which she testified.

In the opinion of the Court, the proponents of the paper in question thus make out a *prima*

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*Conclusions of Orphans' Court Judge.*

10 *facie* case, if not in fact absolute proof of due publication, and throw the burden on the contestant to establish by convincing evidence that notwithstanding the declaration of the testatrix that she had read the 1914 will and understood its contents, she in fact had not done so and did not so understand.

20 It is not enough to deny probate to a will that it does not appear affirmatively that it was read over to or by the testator before he executed it, where it does not also appear that it was not read over to or by him then, and it further appears that he was then capable of reading it, and fully understood its contents, which were in accordance with his instructions, and there is no proof of fraud or imposition.

Kahl *v.* Schober, 35 N. J. Eq., 461;

Day *v.* Day, 3 N. J. Eq., 549;

Darnell *v.* Buzby, 50 N. J. Eq., 726, 727.

30 Under the evidence in the case, especially the testimony of Miss MacDonald respecting inquiries made by the testatrix of her secretary prior to January 10, 1914, the court is further of the opinion that it must be assumed that she—the testatrix—gave the instructions as to the preparation of the will to her secretary, that these instructions were incorporated in the draft prepared or caused to be prepared by him, that when completed he carried it to Mrs. Young for her perusal, prior to the date of execution, that she did read it, and that the Secretary then arranged with Mr. LeBryce on giving him the paper—and Mr. LeBryce arranged with Miss MacDonald—to have the document executed formally in the manner satisfactorily established by

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*Conclusions of Orphans' Court Judge.*

the evidence. Unless this be the fact, then Mrs. Young would not have been able to declare (as she did declare) in the presence of the witnesses at the moment of execution, "Yes, it is my will, I have read it and I understand it," or "It is my will and my wish."

10

In view of the testimony offered, which appeals to the court as entirely credible, as has been said, the burden of proving that the testatrix had not in fact read the paper or been informed of its contents, or that it was not the same paper previously in her possession, was cast on the contestant of the 1914 will. He offers no evidence in this respect, however, but prefers to rest his case entirely on the testimony of the subscribing witnesses to the paper, insisting that the additional obligation rests upon the proponents to prove by affirmative evidence the fact of actual reading and identify of the paper prior to and at the moment of signing by the testatrix, even though the attestation clause, supplemented by the testimony of the subscribing witnesses, shows complete recognition of the statutory requirements.

20

The Court is convinced that this is not the rule applicable to this case, in view of the facts found under the evidence.

30

*Patton v. Hope*, 37 N. J. Eq., 522.

The Court, therefore, is of the opinion that probate must be denied the 1910 will and that the paper bearing date January 10, 1914, having been satisfactorily established, must be admitted to probate as the last will and testament of Mrs. Young.

A decree may be presented to me for signature

40

*Order to File Petition.*

embodying or formally carrying into effect these conclusions.

RULIF V. LAWRENCE,  
Judge.

10      **Order to File Petition for Probate of 1914  
Will.**

(Filed Sept. 21, 1916.)

20      It is ordered that the petition of E. Romaine Simmons and Robert S. Baldwin to Joseph L. Donahay, Surrogate of this County, dated September 21st, 1916, for the probate of a document purporting to be the last will of Lillian Nordica Young, dated January 10th, 1914, in which they and another are named as Executors, be filed with said Surrogate as of the twenty-first day of December, nineteen hundred and fourteen.

Dated Sept. 21st, 1916.

RULIF V. LAWRENCE,  
Judge.

30      **Petition for Probate of 1914 Will.**

(Endorsed.)

(Filed Sept. 21, 1916, as of Dec. 21, 1914.)

To Joseph L. Donahay, Surrogate of the County of Monmouth, New Jersey:

40      E. Romaine Simmons, 223 West 44th Street, Borough of Manhattan, City of New York, County and State of New York, and Robert S. Baldwin, No. 100 Waller Avenue, White Plains,

*Petition for Probate of 1914 Will.*

Westchester County, New York, respectfully represent that they are two of the executors named in the last will and testament of Lillian Nordica Young, dated the tenth day of January, A. D., 1914,

That said Lillian Nordica Young departed this life on or about the tenth day of May, A. D., 1914, leaving her surviving as her heirs at law and next of kin, the following named persons to wit: 10

George W. Young, her husband, whose residence and post office address is Deal, New Jersey.

Mrs. Imogene Castillo, a sister, residence and post office address at Los Angeles, Cal.

Mrs. Annie Baldwin, a sister, residence and post office address Dorchester, Mass. 20

Mrs. Ione Walker, as sister, residence and post office address Dorchester, Mass.

The executors named in the last mentioned will are George W. Young, husband of testatrix, who disputes the validity of said will, Robert S. Baldwin and E. Romaine Simmons.

That said testatrix died seized of no real estate in this state and was possessed of personal property to the value of about \$200,000.00. 30

Therefore the said E. Romaine Simmons, and Robert S. Baldwin respectfully apply for probate of the last will and testament and for letters testamentary thereon.

Dated, September 21st, A. D., 1916.

E. ROMAYNE SIMMONS,  
ROBERT S. BALDWIN.

*Order Admitting Probate, etc.*

Monmouth County, ss.:

10 E. Romaine Simmons, and Robert S. Baldwin,  
named in the above application, being duly  
sworn, on their oaths say that the matters and  
things set forth in the above application are  
true to the best of their knowledge and belief.

E. ROMAYNE SIMMONS,  
ROBERT S. BALDWIN.

Sworn to before me at Freehold N. J. }  
September 21st, 1916. }

Joseph L. Donahay,  
Surrogate.

(Copy of 1914 Will Certified by Surrogate of  
New York County Annexed.)

20

**Order Admitting Probate, &c.**

(Filed Oct. 19, 1918.)

MONMOUTH COUNTY ORPHANS' COURT.

30

In the Matter  
of  
The Estate of Lillian Nordica  
Young, deceased.

Order admit-  
ting to pro-  
bate the Will  
of 1914 and  
denying pro-  
bate of the  
Will of 1910.

It appearing that George W. Young, the ex-  
ecutor named in the document dated July 3rd,  
1910, purporting to be the last will of Lillian  
Nordica Young, filed his petition with the Sur-  
rogate for the admission of that will to probate;  
and a caveat against the probate of the same

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*Order Admitting Probate, etc.*

having been duly filed with the Surrogate and citations issued to all persons in interest and returned duly served or published;

And the said petition having set up that a dispute had arisen respecting the existence of an alleged later will of the said testatrix, dated January 10th, 1914, the existence and validity of which was denied by the said George W. Young, and a copy of which was annexed to his said petition; 10

And a caveat and answer having been filed in this Court by Imogene Castillo, Annie Baldwin and Ione Walker to said petition; and a supplemental answer having been filed in this Court by Imogene Castillo; and an answer to the said petition and a cross-petition having been filed in this Court by Robert S. Baldwin, in which several answers it is alleged that the alleged will dated July 3rd, 1910, is not the last will of said decedent, but that the same was revoked by a later will dated January 10th, 1914; 20

And the said cross-petition of Robert S. Baldwin having prayed that the said document dated January 10th, 1914, be admitted to probate as the last will of Lillian Nordica Young; and it appearing that the said Robert S. Baldwin is one of the persons named as executor in the last mentioned document dated January 10th, 1914; 30

And a petition to the Surrogate by R. Romaine Simmons and Robert S. Baldwin, named as executors in the will of January 10th, 1914, having been filed (by leave of this Court) with the Surrogate on September 21st, 1916, as of December 40

*Order Admitting Probatz, etc.*

21st, 1914, praying for the probate of the last mentioned will;

10 And the deposition of William Miller Lee Bryce, one of the subscribing witnesses to the said document dated January 10th, 1914, having been duly taken and filed in this Court; and Sadie Charlotte Macdonald, the other subscribing witness to the said document having appeared and testified in open court as to the execution of the said will;

20 And the Court having read and heard the said evidence, and having heard and duly considered the arguments of Messrs. Lindabury, Depue and Faulks, counsel for said George W. Young, and of Hartshorne, Insley and Leake and Osborn and Astley, counsel for the parties who have filed answers and petitions as above stated;

30 It is on this nineteenth day of October, 1916, ordered, adjudged and decreed that the aforesaid document dated January 10th, 1914, was duly executed by the said Lillian Nordica Young as and for, and that the same is, the last will and testament of the said Lillian Nordica Young, and that the same be and hereby is admitted to probate; and that letters testamentary be issued to the persons therein named as executors or to such of them as shall qualify as such;

It is further ordered, adjudged and decreed that the document offered for probate as the last will of said testatrix by the said George W. Young, dated July 3rd, 1910, was revoked by the will dated January 10th, 1914, and that the petition of the said George W. Young for probate of the said revoked will be dismissed.

40 And it is further ordered that Henry E. Ackerson, Jr., the administrator *pendente lite*, do forth-

*Order Admitting Probate, etc.*

with file his account a said administrator and pay and deliver to the executors of said will who shall qualify, all moneys and other assets of the said estate which are in his possession or under his control.

RULIF V. LAWRENCE, 10  
Judge.

A True Copy.

Joseph L. Donahay,  
Surrogate.

**Qualification of One Executor.**

State of New Jersey, }  
Monmouth County, } ss.:

Robert S. Baldwin, one of the executors in the within testament named, being duly sworn according to law, did depose and say that the annexed instrument contains the true last will and testament of Cilian Nordica Young, the testatrix therein named, as far as he knows, and as he verily believes; that he will well and truly perform the same, by paying first the debts of said deceased, and then the legacies in said will specified, so far as the goods, chattels and credits of said deceased can thereto extend; and he will make and exhibit into the Surrogate's Office of the County of Monmouth, a true and perfect inventory of all and singular the goods, chattels and credits of said deceased that have or shall come to his knowledge or possession or to the possession of any other person or persons, for his use, and render a just and true account, when thereto lawfully required.

ROBERT H. BALDWIN.

Sworn and subscribed to before me this }  
twenty-third day of October, A. D., 1916. } 40  
Joseph L. Donahay,  
Surrogate.

**Memorandum of Orphans' Court Judge as  
to Costs and Counsel Fees.**

(Filed, October 19, 1918.)

10       The controversy respecting the above matter  
having been decided in this court, application is  
made to fix counsel fees for the proponent and  
contestants. Being of the opinion that reason-  
able cause for the contest, involved existed, the  
following counsel fees and disbursements will  
be allowed and taxed and paid out of the estate  
of the decedent:

	Osborn & Astley, counsel for Baldwin, Exr. <i>et als.</i> , until May 7, 1915, and for Mrs. Castillo, for remainder of contest,	\$3,000.00
20	Hartshorne, Insley & Leake, counsel for estate since May 7, 1915,	4,250.00
	Lindabury, Depue & Faulks, counsel for Geo. W. Young, \$4,000, and dis- bursements \$219.83	4,219.83
	Disbursements made by executors in re- lation to contest,	2,816.00
	Fees of non-resident counsel engaged must be left to the adjustment of the parties in interest employing 30       them.	

RULIF V. LAWRENCE,  
P. J.

**Substitution.**

(Filed Nov. 16, 1918.)

MONMOUTH COUNTY ORPHANS' COURT.

<p style="text-align: center;">In the matter</p> <p style="text-align: center;">of</p> <p>The Estate of Lillian Nordica Young, deceased.</p>	}	<p>Substitution.</p>	<p>10</p>
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Consent is hereby given to the substitution of Ziegner & Lane as Proctors of George W. Young, in the above entitled matter, in the place and stead of Lindabury, Depue & Faulks.

LINDABURY, DEPUE & FAULKS, 20  
Proctors of George W. Young.

Dated, November 1, 1916.

—  
**Certificate of Surrogate.**

(Formal Certificate or Surrogate to Transcript of  
Record dated Feb. 2, 1917)

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[1999]

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The first of these is the fact that the  
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**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

In the Matter  
of  
The Estate of LILLIAN NORDICA  
YOUNG, Deceased.

On Appeal  
on Probate  
of Will.

**BRIEF AND POINTS OF APPELLANT**

**Statement.**

This matter comes up on the appeal of George W. Young from the decree of the Prerogative Court affirming the decree of the Monmouth County Orphans' Court admitting to probate the will dated January 10th, 1914, and denying probate of the will dated July 3rd, 1910. Mr. Young was the husband of the deceased. He is the sole beneficiary named in the Will of 1910 and the sole heir-at-law and next of kin of the deceased.

I refer in this brief and the state of case to what appellant claims is simply a paper writing dated January 10, 1914, purporting to be the Last Will and Testament of the decedent, or simply the *alleged* will as the 1914 will, without using the word "alleged" for convenience only. Of course, by so doing I do not intend that I should be understood as admitting that it is a will at all, but contend that it is simply an "*alleged will.*" This was also done by Judge Lawrence in his conclusions in the Orphans' Court.

The will executed by the decedent in the year 1910, which will hereafter be referred to as the "1910 Will" was duly offered for probate.

There is no question and it was conceded that this will was properly executed and must be admitted to probate, unless it is shown to have been revoked by a later will.

The hearing before the Orphans' Court came on regularly on citations issued on the application for the probate of the 1910 Will. There was no regular application for the probate of the 1914 will. After all of the proceedings had been taken, the Orphans' Court, by order dated September 21, 1916, directed the filing of the petition for the probate of this will, in the Surrogate's Office as of December 21, 1914.

In the paper purporting to be a will, signed by the decedent in the year 1914, and herein referred to as the "1914 Will," it was provided that all prior wills be revoked; therefore if the 1914 will be admitted to probate, it would entail a denial to the probate of the 1910 Will.

By the 1910 Will the decedent left all her property to her husband, George W. Young, and made him her sole executor. Under the 1914 will, although Mr. Young was made one of the executors, nothing was left to him. The entire residuary estate, amounting to about \$400,000, was left to relatives of the decedent; a legacy of \$30,000 was bequeathed to E. Romayne Simmons and small bequests were bequeathed to Mrs. Ada Baldwin and Maria Masino, her maid.

In the Orphans' Court there was a contest as to the residence of the decedent, the legatees under the 1914 Will insisting that she was a resident of New York, and her husband urging that she was a resident of New Jersey. The Orphans' Court

held that the decedent was a resident of the State of New Jersey at the time of her death, and the question of residence is no longer open for discussion; no appeal having been taken on that ground, and the contestants of the 1910 Will having subsequently, on September 21, 1916, filed a petition for the probate of the 1914 Will with the Monmouth County Surrogate. On this petition, however, no proceedings have been taken.

It was conceded by the respondents that the domicile of decedent was in New Jersey.

“The Court: Hasn't the New York Court decided that Madame Nordica was domiciled here?

“Mr. Westall: Yes, sir. These proceedings were started in New Jersey before they were started in New York” (page 202).

In the controversy surrounding the question of residence evidence was given by the parties in interest under the 1914 Will, suggestive of the fact that the relations between the decedent and her husband at the time of her death were not cordial. On the part of Mr. Young numerous letters and telegrams were offered in evidence, showing that their relations were most cordial and affectionate (Exhibits Proponent 2-9).

Without discussing the proper inferences to be drawn from this conflicting evidence, the Court must at least be impressed with the fact that at the time of the execution of the 1914 Will—assuming that the letters of the decedent represented her feelings at the time they were written—she must then have been in a mental condition in which her views were subject to sudden and violent change *and easily influenced*.

All that is known of the 1914 Will can be briefly stated, and rests entirely upon the testimony of Mr. LeeBryce and Miss MacDonald, the witnesses to the alleged will.

The testimony of Mr. LeeBryce is to the following effect:

He resides at Thursday Island and holds the office of Government Resident. He first met Mrs. Young on the 10th of January, 1914, when the will in question was executed, and that was the only occasion upon which he ever saw her.

The original document—the alleged Will of 1914—was brought to Mr. LeeBryce about half an hour before its execution by E. Romaine Simmons, and it remained continuously in his possession until it was executed by decedent. The alleged Will was in the possession of the witness when he entered Madame Nordica's room. At no time while the witness was present were the contents of the document made known to Madame Nordica. The witness does not remember hearing Madame Nordica say that she read the will, "but she acknowledged it to be her will."

The witness saw Madame Nordica sign the original document, and he asked her if she knew its contents, and whether it expressed her wishes regarding the distribution of her property, and she said "it was her will and that it expressed her wishes regarding the distribution of her property," and she requested the witness to sign the will. Miss MacDonald, Mr. LeeBryce says, was present and that he signed the will in the presence of both Mrs. Young and Miss MacDonald, and Miss MacDonald signed the will in his presence and in the presence of Mrs. Young.

The testimony of Miss MacDonald is to the following effect:

She is a nurse by profession and was matron of the Torres Strait Hospital in January, 1914. Madame Nordica came to the hospital on the 2nd day of January, 1914, and was ill with pleurisy

and pneumonia. Prior to January 10th, 1914, and several days previous to the execution of the 1914 Will, she heard Madame Nordica ask Mr. Simmons if her will was ready. Prior to January 10th, 1914, the witness knew "that Mr. Simmons brought the Madame the draft of a will" (page 157). The 1914 Will was signed in Madame Nordica's private ward. She was in bed, and after it was signed by Madame Nordica, it was signed by Mr. LeeBryce and the witness. When Mr. LeeBryce entered the room with the will he asked Madame Nordica if the paper was her will, and if she had read it, and if she understood it and she answered "yes, I have read it and I understand it", (page 163). Miss MacDonald, after helping Madame Nordica to sit up in bed, placed the will upon her lap and she signed it; the witness handing her a pen. The witness then took the will from Madame Nordica and placed it on a locker (or table) and said to Madame Nordica, "Is this your will and your wishes"?, and she said, "It is my will and my wish" (page 164), and she then signed as a witness.

The witness on cross-examination was closely interrogated regarding what examination Madame Nordica made of the paper handed her. She said "she looked at it". She could not say "she read it through, she glanced at it"; the "glance" occupying "but a very short time" (page 167). She was asked "Did she appear to you to read it" and answered, "*I don't think so*". She adds, "I can't say whether she read it all" page 167). The witness did not read the paper aloud to her.

The witness had read the paper on the veranda, at Mr. LeeBryce's request, but he did not read the paper aloud to Madame Nordica. The witness was never present when Madame Nordica read

the will and she has no knowledge of Madame Nordica ever having read it.

The witness testified (page 170):

“Q. Now, you had no knowledge as to whether Madame Nordica had ever seen it before or not, had you?”

A. Well, I know that she had had her will submitted to her some days before.

Q. You knew that she had had this exact paper submitted to her?

A. No, sir.

Q. And you of your own knowledge never knew that Madame Nordica had ever read it?

A. No.”

Referring to the 1914 Will the witness testified that she knew Mr. LeeBryce got the paper from Mr. Simmons. After the will had been executed the witness remained in the room for about a quarter of an hour. Where the will was during this period the witness did not know.

#### **Opinion Of Vice Ordinary.**

Vice Ordinary Stevenson in deciding this case simply sent a letter to counsel, notifying them that he had determined to affirm the decree of the Monmouth County Orphans' Court. He did not write any opinion. He stated that if an appeal were taken, he desired to be notified and that he would like to have a printed copy of the record prepared in this Court, for use in writing an opinion. Notice of the appeal was given to the Vice Ordinary immediately upon the appeal being taken. Five to six weeks before the opening of this term, the record was sent to the printers for printing. Because of the fact that nearly all of

the employees of the printers have been taken into the war service, the printing of the record has just been completed and a copy sent to the Vice Ordinary. There is no doubt but that the Vice Ordinary will not have an opportunity to prepare an opinion for the use of this court at this term.

### **Questions Involved.**

The questions involved are:

(1) As to whether the 1910 *Will* should be admitted to probate.

(2) As to whether probate of the 1910 *Will* should be denied because of the existence of the 1914 *Will*.

(3) As to whether the 1914 *Will* should be admitted to probate.

(4) As to the jurisdiction of the Monmouth County Orphans' Court to admit the 1914 *Will* to probate.

### **Argument**

#### **POINT I.**

**The 1910 will should be admitted to probate.**

The 1910 will was duly offered for probate and duly proved. There is no question as to the proof and it was conceded that this will was properly executed and must be admitted to probate unless it is shown to have been revoked by a later will.

**POINT II.****The probate of the 1914 will should have been denied by the Orphans' Court.**

(1) It was not proved that the 1914 Will was published and declared in accordance with the statute.

(2) It was not proved that the decedent knew the contents of the 1914 Will at the time she signed it, or knew that it was the will which she wished to execute.

(3) There was no proof of any fact to justify the court in inferring that the decedent knew the contents of the 1914 Will, or knew that it was the Will which she wished to execute.

(4) There is no proof that the decedent read the 1914 Will at the time she signed it, or at any other time.

(5) There is no proof that the 1914 Will was read to the decedent at the time she signed it, or at any other time.

(6) The burden of proof that the decedent knew the contents of the 1914 Will at the time she signed it, or knew that it was the will which she wished to execute, or that she read it, or that it was read to her was upon the contestants of the 1910 Will, which burden the said contestants did not sustain.

(7) The proof affirmatively showed that the decedent did not read the 1914 Will; that it was not

read to her and that its contents were not stated to her.

(8) There is—proof that the 1914 Will was not understandingly published and declared and was not properly executed by the decedent in compliance with the statute.

(9) There were circumstances which cast upon the contestants of the 1910 Will the burden of proving that there was not undue influence exercised upon the decedent, in the signing of the 1914 Will, which burden the contestants did not sustain.

(10) That the 1914 Will was the product of undue influence and fraud exercised upon the said decedent.

The proof regarding the 1914 Will is confined within very narrow limits. All that we know of the paper begins half an hour before, and ends a few minutes after, its execution.

For reasons doubtless satisfactory to the respondents, they preferred to rest their case upon the meagre proof submitted.

Giving to the testimony of the subscribing witnesses all possible credit, and the most favorable interpretation that can be asked, these facts, and only these facts appear.

Mr. Simmons—named as one of the executors and a large legatee under the will—brings to Mr. LeeBryce a typewritten paper covering two sheets. This typewritten paper Mr. LeBryce reads aloud to Miss MacDonald, and certain corrections are initialed. Mr. LeeBryce, with the papers, enters the room where deceased is lying in bed, ill with pleurisy and pneumonia. He did not read

the paper to her; he did not state its contents to her; and she did not read the paper. She was asked if it was her will and embodied her wishes. She said it was, and signed it and the witnesses signed it in her presence and in the presence of each other. In addition to this, Miss MacDonal testified that some days before, she had heard decedent refer to having to execute a will, and she knows that the draft of a will was submitted to her.

It may be conceded from this testimony that the evidence shows:

1. That Madame Nordica wished to execute a will;

2. That she, in fact, signed a paper, and the same was witnessed as stated, and that that paper was in the form of a will;

3. That in reply to inquiries made to her by the subscribing witnesses, referring to the paper, she said that the paper was her will and expressed her wishes.

*But there is absolutely no proof that Madame Nordica knew the contents of the paper she isigned, or knew that it was the will she wished to execute. And there is no proof of any fact to justify the Court in inferring that she knew the contents of the will or knew that it was the will she wished to execute.*

**The attestation clause does not state that the will was published or declared by the testatrix to be her will so no presumption arises from the attestation clause.**

By a perfect attestation clause is meant one that asserts the performance of all the acts re-

quired to be done under our statute of wills to make a valid testamentary disposition. *Stewart v. Stewart* 56 N. J. Eq., 761, Affirmed 54 N. J. Eq., 664; *Swain v. Edmunds*, 53 N. J. Eq., 143. Affirmed, 54 N. J. Eq., 438. *Beggans' Case*, 68 N. J. Eq., 572. Where the attestation clause states the performance of some of the requisite acts, but omits to state the performance of other acts also on reason and authority, the proponent must establish by evidence the performance of the latter acts. *Ayers v. Ayres*, 43 N. J. Eq., 569. *Beggans' Case*, 68 N. J. Eq., 572. *Bioren v. Nesler*, 76 N. J. Eq., 573. Affirmed, 77 N. J. Eq., 560. *Bowe v. Naughton*, 67 Atl. Rep. 184. *Allaire v. Allaire*, 37 N. J. L., 312. Affirmed 39 N. J. L., 113.

In the case of *Hildreth v. Marshall*, 51 N. J. Eq., 241, Chancellor McGill, says:

“The presumption at law is largely in favor of the due execution of the will and in that light a perfect attestation clause is a most important element of proof.”

It was held in *Patton v. Hope*, 37 N. J. Eq., 522 (Chancellor Runyon), at page 527 that the effect of a perfect attestation clause is to throw the burden on the caveators.

Before a will can be admitted to probate, it must appear, among other things, that it was declared by the testator to be his will, in the presence of two witnesses present at the same time. The recital of that fact in an attestation clause subscribed by the witnesses is prima facie evidence of the performance of that requisite. If there be no such attestation clause, the burden is upon the proponent of the will to prove such declaration to the satisfaction of the tribunal pass-

ing upon the question. *Swain v. Edmunds*, 53 N. J. Eq., 142.

*In re Van Handlyn's Will*, 89 At. 1010, the Court said:

“There is no attestation clause annexed reciting compliance with the statutory requirements. The burden of proving same is therefore cast on proponent.”

The Judge of the Orphans' Court in discussing the question as to whether due publication of the 1914 Will had been proved, treats the proponents of the paper as being called upon to “make out a prima facie case” and speaks of the “burden of proof resting on the contestant” to show that there had been no proper publication. At another point he says he “is not convinced \* \* \* that Mrs. Young was either ignorant of the paper or the fact of execution” and comments upon the fact that the appellant offered no evidence to show that the testatrix had not read the paper or been informed of its contents, or that it was not previously in her possession.

The Orphans' Court made the fundamental mistake of assuming that the appellant was called upon to prove a negative. The defect in the attestation clause required the proponents to satisfy the court, by affirmative proof that due publication of the will had been made.

*The absence of an attestation clause is not as suggestive of improper execution as a defective one.* Its absence might be the result of ignorance or negligence. A defective attestation clause, however, indicates that the party superintending the execution of the will appreciated the wisdom of an attestation clause, and intended to record on the document itself what had taken place at its

execution, and presumptively all that had taken place.

Where the attestation clause is in proper form the mere production of the will, and the proof by subscribing witnesses that it bears their signature entitles the will to probate, as the attestation clause "is prima facie evidence of the performance" of the statutory requirements (*Swayne v. Edmunds*, 53 N. J. Eq. 148).

If the subscribing witnesses be dead the will will be admitted to probate on proof of their signatures. The will in question could not be admitted to probate upon any such proof. *The will, as it exists, not only fails to tend to prove itself, but on the contrary, stultifies itself.* This condition throws upon the court the burden of requiring strict proof *aliunde* the attestation clause that the statutory requirements were fully met.

The whole opinion of the Judge of the Orphans' Court shows that he treated the testimony as though a controversy between parties was before him, when it speaks of a "prima facie case" and the "burden of proof", entirely overlooking the fact that there rested on the court the duty of being convinced from the evidence before it—irrespective of the source whence that evidence came—that due publication of the will had been established.

No knowledge of the contents of the paper in decedent is shown at the time of its execution.

Concededly she did not read the will; concededly it was not read to her; concededly its contents were not stated to her. The paper was handed to her to sign while ill with pleurisy and pneumonia, and propped up with pillows in bed, and the most the witnesses can tell is that she "glanced at it."

Nothing is shown regarding the preparation of the will, its possession or history; nothing is shown to indicate that the contents of the will correspond to the testamentary wishes of the decedent; and finally no fact is proved from which knowledge of the contents of the will on the part of Madame Nordica can be inferred.

There is no proof that the particular paper, prior to its execution, was ever in the possession of Madame Nordica. There is no proof regarding the preparation of the paper, no proof showing by whom it was prepared, no proof as to any instructions given by the testatrix to anyone regarding a will, no proof as to what her testamentary wishes and intentions were, so that these might be compared with the provisions of the paper. In fact, there is absolute silence.

The court may indulge in conjecture, and so indulging, may conjecture that decedent knew the contents of the paper. On the other hand, it may conjecture that, while she wished to make a will, and thought she was signing the will she wished to make, *the paper actually signed was an improperly and carelessly drawn paper, or even a substituted paper containing entirely different provisions than the will she wished to execute.*

In his conclusions the Judge of the Orphans' Court said that the most that may be said from the argument of the appellant in regard to undue influence or fraud is that the evidence fails to disclose direct proof of the fact that the decedent had actually read the paper before affixing her signature, and that, therefore (an innuendo merely) an opportunity might have been offered some one directly interested, as for example a beneficiary, who, at the request of the decedent, arranged for the drafting of the document, to

have surreptitiously brought about its execution with testamentary dispositions of which she had no actual knowledge. This is entirely beside the point. *Where it affirmatively appears that the testatrix did not read the instrument, the burden of showing that she knew what was in the instrument, and that it expressed her wishes is on the proponents of the will.*

The court below comments on the fact that the specific reference in the 1914 Will as to the property of the decedent and a narrative of an incident relative to the financial dealings between the decedent and her husband was not during the progress of the case denied.

It is respectively submitted that there is no proof in this case that the decedent considered, thought or declared at any time *that these statements contained in the 1914 Will were the fact.* No proof even that she knew these statements were in the 1914 Will. The most that the proof shows is that the 1914 Will was *not* read to the testatrix, and was *not* shown to have been in her possession at any time. It was *not* necessary for a determination of the questions involved in this proceeding for any denial of the statements in the 1914 Will to be made. Assuming that those statements as to the financial dealings between the decedent and her husband could be positively shown to be untrue, it could have no bearing or effect whatever on the issues in the case.

It is not necessary for those opposing the probate of this will either to allege or prove mistake or fraud, or prove facts from which mistake or fraud can be inferred. The burden rests upon the respondents to prove that when the decedent declared the paper she signed to be her last will and

testament that that declaration was an *intelligent declaration*, and that she knew the contents of the paper. Concededly this can be proved in one of two ways: by proof that the paper was read to her, or that she read it, or by proof of facts from which knowledge of its contents, on her part, may be inferred.

The leading case on this question in New Jersey, and perhaps in the United States, is the case of *Day v. Day*, 2 N. J. Eq. R. 548. The headnote in that case, quoted repeatedly in text books and in later cases, is as follows:

“In ordinary cases, where a testator is in health and of ability, it is not necessary to show that the will was read over to him, or that he knew the contents of it. The legal presumption in such cases is always in favor of the will; and he who seeks to impeach it must show conclusively that the testator was imposed on, or that there was some mistake whereby he was deceived.”

“But where it appears affirmatively that the testator did not read the will himself, and that it was not read to him, it must then be shown to the satisfaction of the court that he was in some other way made acquainted with the contents of the instrument and approved them.”

The facts in that case were briefly these: The testator had procured one Dr. Camp to draw his will. Some time after it was executed he wished to change it and had another will drawn by Dr. Camp. During his last illness being still dissatisfied with his will, and wishing to make some changes, his son, William, drew a new will from the Camp will, taking that as a basis and making

such alterations as the testator advised. He was employed in this duty for a number of hours by the bedside of the testator. The testator inquired whether the will was almost ready to be signed and was told by his son that it was, that he had written one copy through, but had made some mistakes and had commenced another copy, and that this would be done in a few minutes. After the last paper was drawn it was discovered that there was not room for the signature, and it was suggested that another piece of paper be attached with wafers to admit of signature, and this was done. The will was then executed, sealed up, and together with the Camp will, given by the son to one Mrs. Day who locked them in a drawer. The next evening the son came over with another paper which he had prepared and told the testator in the presence of witnesses that he thought the will which had been executed did not look well by reason of the paper attached to it for the signature, and he had therefore drawn another will *which was an exact copy of the one already executed*. The son then asked the testator if he would sign the will and he replied, "If I do, I must do it quickly", and the will was signed. The will of the night before and the Camp will were then destroyed. The question presented to the court was whether this last paper so executed and prepared could be admitted to probate. On page 551 the Court said:

"It is admitted on both sides, that the formal execution of the instrument, so far as regards the signing and publication, is substantially proved. The testator affixed his name in the presence of all the witnesses, and acknowledged the instrument to be his last will and testament. *The difficulty grows*

*out of the question whether it is sufficiently manifested that the testator understood the contents of the instrument he was signing."*

This language is peculiarly applicable to the case at bar and the exact question presented for decision here is the same as was then before the court.

The Court proceeds to state what is the general legal presumption, and the evidentiary requirements. It concedes that the legal presumption is always in favor of a will and that "in ordinary cases where the testator is in health and of ability, it is not necessary to show that the will was read over to him or that he knew the contents of it". It then continues:

"In this case, it is without question, that the testator did not read the will himself. It was not in his possession so as to afford him an opportunity.

It is also clear that it was not read over to him. It must then be shown to the satisfaction of the court that he was in some other way acquainted with the contents of the instrument, and approved them. In this case the presumption of law fails, and it becomes the duty of the person offering the will to show that the contents of the paper were fully made known to the testator."

Referring to the first will drawn by the son at his father's bedside, which was later destroyed, the Court says:

"I think it right to infer, that that will was correctly drawn, according to the invention and direction of the testator. It was done in his presence, and not in haste; and I see

nothing to lead to the suspicion that any deception or misrepresentations were made use of by William toward his father. If then, the fact can be established that the last will was truly copied from the one executed the night before, there can be no difficulty in admitting it to probate" (page 554).

"This fact," it adds "may be made out either by direct evidence or by circumstances *so conclusive* as to admit of *no reasonable doubt*."

The testimony in the case clearly showed that when William brought the last will to his father to be executed he told the testator that that will "was an exact copy of the one already executed" (page 553) referring to the paper destroyed, and to which the piece for signature had been attached.

The question involved was whether the paper actually executed had been proved to be a copy of the earlier will. The Court said:

"As to direct evidence, there is none. No witness has testified that this paper is a copy of the one executed the preceding evening."

The evidence relied on to show it was a copy was the statement of the son to his father when he executed the will. "That it was an exact copy from the one already executed." (page 553), and that when William drew the first will he had made two copies, that in one he had made some mistakes, and consequently drew a second, and that although this second one had been destroyed "he was enabled from the first draft to prepare an accurate copy on a paper sufficiently large to admit of the signatures of the testator and witnesses."

In analyzing this evidence the Court said:

“But that this draft was in conformity with the will actually first prepared and executed; that it was preserved by William and taken home with him; and that the second will he prepared is a copy of it; are matters which rest only in *supposition*. No one saw this rough draft after the execution of the first will; no one saw him write the second will; and no one appears to have known the contents of it, until it was opened after the testator's death. It would be entirely unsafe for the court to rest upon such evidence.”

It would be difficult to find an authority more controlling on the proposition under discussion in the case at bar than the authority cited.

The facts run along parallel and similar lines. Here, as there, there is no proof that the will was either read to or by the decedent, or that its contents were made known to her. Here, when the decedent was asked if she knew the contents of the will and it expressed her wishes she answered, “yes”, but there is no fact proved from which this can be inferred to have been, or treated as an intelligent answer.

In the *Day* case there was proof that the son William told his father that the will he executed was an exact copy of the will that had been destroyed, and evidence tending to show that William had papers from which an exact copy might well be made, and the honesty of William was not questioned, but the court said it would be entirely unsafe to rest upon evidence of that character and that the will executed was a copy of the earlier will rested only upon *supposition*. Here it would be entirely unsafe to assume from the fact that

decedent when asked if the will expressed her wishes, said, yes, that she said so intelligently. The inference that might be made from this acquiescence does not meet the requirements of the law as stated in *Day v. Day* where the court said, in such a case as this:

“It becomes the duty of the person offering the will to show that the contents of the paper were fully made known to the testator, and the burden of proof is on the person offering the will.”

In *Day v. Day*, when William told his father that the will he executed was an exact copy he may, or may have not told the truth. *In this case, when Madame Nordica without looking at the paper said it expressed her wishes her answer may or may not have been correct. Conjecture will not suffice, and proof that it embodied her wishes or that she had read the paper, or knew its contents must be made before the will can be admitted to probate.*

In this case there is absolutely no proof that the paper was a copy of the draft, which decedent had read, or that she ever could have read it. So far as the proof goes it *affirmatively shows that the decedent never did read it.*

The law as stated in *Day v. Day* is well summarized in

40 *Cyc.* 1100, 1101 (1277-1278);  
1 *Kocher's N. J. Probate Law*, pp. 137-140.

*The initiative regarding the execution of the will did not come from the decedent but from E. Romaine Simmons, a large legatee.*

When it affirmatively appears that the activities attending the execution of an alleged will are entirely those of a large legatee, the court is charged with the greatest care in admitting the will to probate. Some authorities go so far as to say that such activities raise a presumption of fraud. This may be too extreme a statement, but all authorities agree that it becomes the duty of the Court in such a case to examine the evidence most carefully and to admit the instrument to probate only upon most convincing proof.

The authorities on this subject are well collected and analyzed in a note to the case of *Kirby v. Sellards*, 28 L. R. A. (N. S. 270).

This 1914 Will must have had some history preceding the handing of the paper to Mr. Lee-Bryce by Mr. Simmons half an hour before its execution. Some one must have prepared it. If deceased knew she was to execute a will she must have discussed the question with some one. Mr. Simmons is available and he actually testified in these proceedings as a witness to the 1910 Will. Mrs. Ada Baldwin, who was with decedent, has also testified and is available. If decedent in fact knew the contents of this alleged 1914 Will, somewhere, and in some one, proof must exist by which the fact of that knowledge can be established.

It is not even shown that any attempt was made to secure the testimony of Mr. Simmons or Mrs. Ada Baldwin.

Wigmore in his work on Evidence, Vol. I, Sec. 285, uses this language:

“The failure to bring before the tribunal some circumstances, document or witness, when either the party himself or his opponent claims that the facts would thereby be eluci-

dated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the circumstances or document or witness if brought, would have exposed facts unfavorable to the party.”

This rule is so elementary that extended citation is unnecessary.

A number of authorities can doubtless be cited where wills have been admitted to probate without proof that the will had either been read to or by the testator or its contents stated to him at the time of its execution. In each one, however, some fact has been shown from which the court properly presumed knowledge of the contents of the will at the time of its execution. Among facts showing such knowledge would be proof that the will had been in the possession of the testator as in *Brick v. Brick*, 44 N. J. Eq., 282: proof that it expressed his testamentary intentions and wishes; that it had been prepared by his counsel with whom he had enjoyed intimate and confidential relations and numerous other facts, separately or collectively raising the presumption of knowledge of the contents of the instrument.

It is confidently asserted, however, that where it appears affirmatively as in this case, that the paper was not read to or by the decedent, or its contents stated or known to her at the time of its execution or at any other time, and that the papers were executed while in bed, dangerously ill, and where, in addition, there is no proof whatever that the paper actually executed was ever in the possession of the deceased or of her counsel, or a member of her family, or that the papers expressed what were known to be her testamentary

wishes, no case can be found admitting such a will to probate.

The law as stated in *Day v. Day* rests in wisdom and is fully supported by authority. In such a case as this, proof must be made, as the Court there said, that the contents of the paper "were *fully* made known to the testator:" that in some way the court must be satisfied that the testatrix was "*made acquainted with the contents* of the instrument and approved them; that *matters which* rest only in supposition will not suffice, and finally that the burden of such proof is on the party offering the will."

The case of *Day v. Day* has been consistently followed and cited with approval in New Jersey.

In the case of *Hildreth v. Marshall*, 51 N. J. Eq., 214, Chancellor McGill, in commenting on a will, executed by a sick person in bed, says on page 250:

"When such a person makes a will the legal presumption will not be in favor of the instrument, but the person who propounds it for probate must show by clear and convincing proof not only that the document was read to her but that she fully understood its contents. *Den. v. Johnson*, 2 South. 454, 456; *Harrison v. Rowan*, 3 Wash. Cir. Ct. Rep. 580; *Day v. Day*, 2 Gr. Ch. 549; *Collins v. Townley*, 6 C. E. Gr. 353; *Harris v. Vanderveer*, 6 C. E. Gr. 561; *Lyons v. Van Riper*, 11 C. E. Gr. 337; *Kahl v. Schober*, 8 Stew. Eq., 461; *Patton v. Hope*, 10 Stew. Eq., 522."

The Chancellor refused to give credence to the testimony of two witnesses, who were deeply interested in the probate of the will, to the effect that the will had been read to the decedent.

The probate of the will was denied in that case and it was,

“Held, that, even though she may have possessed testamentary capacity, the proponent of the will must affirmatively establish by clear and satisfactory proof, that the will was read to her and understood by her.”

*In that case there was a perfect attestation clause.*

In *Patton v. Hope*, 37 N. J. Eq., 522, Chancellor Runyon upheld the will, but relied on the *perfect attestation clause*, and also on the fact that *the will was not drawn by any person interested, but by her own lawyer and by her own procurement*; also on the fact that she later drew a codicil, which referred to the will by its date and ratified and confirmed it.

Citing *Day v. Day*.

In *Kahl v. Schober*, 35 N. J. Eq., 461, Chancellor Runyon, upholding a will, held—

“It is not enough to deny probate to a will, that it does not appear affirmatively that it was read over to or by the testator before he executed it, where it does not appear that it was *not* read over to or by him then, and it further appears that he was then capable of reading it, and fully understood its contents, which were in accordance with his instructions, and there is no proof of fraud or imposition.”

In this case, the Chancellor, following *Day v. Day*, relied particularly on the testimony of Mr. Garrick, a lawyer, who drew the will, *who testified that he drew it in accordance with testator's directions, which he details.*

In the case of *Barker v. Strculi*, 67 N. J. Eq., 771, Vice-Ordinary Bergen, in upholding a will, held that—

“A testatrix will be presumed to have had knowledge of the contents of her will where it appears that it was prepared according to instructions given by her, that before its execution, it was in her possession long enough to permit her to read it, and after its execution, over night, with ample opportunity to read it, and that, in the morning she sealed it up in an envelope and delivered it to her son for safe keeping.”

The Court in that case refers to the fact that *the attestation clause was in full form.*

In *Lyons v. Van Riper*, 26 N. J. Eq., 337, Vice-Chancellor Van Fleet held a will good where there was proof that the will was drawn in the presence of the testatrix, in full conformity to instructions given on the spot, and read twice to testatrix—as each paragraph was read, the scrivener inquired whether it was right and she said it was.

The Vice-Chancellor cites *Day v. Day* with approval.

In the case of *Harris v. Vanderveer's Executor*, the Court of Errors and Appeals reversed the decree of the Prerogative Court, admitting the will to probate, holding that the probate of the will was refused because it did not appear that its contents were in any way made known to the testator before, or at the time of its execution.

In that case this Court held that:

“The burden of proof is on the proponent; it will not be presumed from the fact that the testator had testamentary capacity, that he

would not have executed the will without understanding its contents.”

In this case there were two opinions written: one by VanSyckel, J., and one by Bedle, J.

On page 567, Mr. Justice VanSyckel says:

“There can be no absolute presumption that a man of testamentary capacity would not execute a will without understanding its contents, for such assumption wholly dispenses with the rule of law that it must appear as a fact that the contents were in some way made known to him.”

*In this case, this Court denied probate to the will, although two witnesses testified that the will was read to the testator, Mr. Justice VanSyckel saying, however, on page 563, that neither asserting anywhere that the testator admitted at the time, or afterwards that he understood its contents.*

An examination of the opinion, on page 563, shows the inquiry of the court as to whether the testator fully understood its contents, although he signed and pronounced it to be his last will and testament in the usual form of execution.

On page 573, Mr. Justice Bedle says:

“The important issue then before us is to know exclusively whether Doctor Vanderveer knew the contents of the paper he signed.”

And on page 574, in denying probate to the will, Mr. Justice Bedle says:

“The question of fact is undoubtedly embarrassing. but my own judgment fails to be

satisfied in favor of the proponent, and although the right of disposition by will should be carefully protected by the Court, yet in this case, the circumstances have imposed a burden upon the proponent from which the evidence has not relieved him, and enable me to say that the paper is the will of the deceased."

In *Den v. Johnson*, 5 N. J. L. J., 532, the Court, at page 537, says:

"The mere acknowledging of a writing by a blind man, that it is his will, is not sufficient, unless there be satisfactory proof that the will has been read over to him. The same proposition in the case of persons, who cannot read, or, who, by sickness are incapacitated to read the will at the time."

In the *Matter of Gertrude Rice McElwaine*, 18 N. J. Eq., 499, Chancellor Zabriskie says, on page 501:

"Four things are required: First, that the will shall be in writing; secondly, that it shall be signed by the testator; thirdly, that such signature shall be made by the testator, or the making thereof acknowledged by him in the presence of two witnesses; fourthly, that it shall be declared to be his last will in the presence of these witnesses. Each and every one of these requisites must exist. They are not in the alternative."

In the case of *Bowe v. Naughton*, 67 Atl., 184, Vice-Ordinary Bergen, recognizing the principle that the burden is on the proponent to show that the testatrix was acquainted with the disposition

of her property as made by the writing, and then went on:

“This burden, I think, has been successfully borne, for there is no charge that Mr. Coursen was benefited, nor that he had any interest of either of the legatees to serve.”

*In the case at bar, Simmons was a large legatee and benefited largely by the will.*

In the case of *Brick v. Brick*, the Court of Errors and Appeals upheld a will where the testimony did not show that the testatrix had read the will, or that it was read to her, or that she was in any way informed of its contents, because the facts proved showed that she had the paper in her possession a sufficient length of time to read it and it would therefore be presumed that she did so. There was also testimony that the scrivener followed strictly the memorandum of the testatrix written by her, from which the will was drafted.

The testimony in the case at bar goes to prove that Madame Nordica never had the 1914 Will in her possession, nor had any opportunity to read it prior to the time it was handed to her to be signed, and there is no proof that the will complied with instructions given by her. *There is no proof whatever that she knew the contents of the 1914 Will.*

In *re Will of A. Gardella*, 25 N. J. L. J., 139, Mr. Justice Trenchard, sitting in the Cumberland Orphans' court, denied probate to the will because he was not satisfied that the testator knew and approved its contents.

In that case there was a perfect attestation clause and yet the court, citing *Day v. Day*, held that the person who propounds the will for pro-

bate must show by clear and convincing proof that the testator understood its character and contents.

“In order that a will may be valid, it is, of course, essential that the testator knew and understood its contents and meaning of the instrument; such knowledge will ordinarily be presumed from its execution; *but if it appears affirmatively that he did not read the will and that it was not read to him, it must be shown that the contents were in some way made known to him.*” 40 Cyc. 1100.

Citing *Day v. Day*.

“When a will is signed and published with the usual solemnities and in the usual manner, the presumption is that the testator knew its contents, and in ordinary cases, where the testator is in health and of ability, it is not necessary to show that the will was read over to him, or that he knew the contents thereof; *but it will not be presumed, from the fact that testator had testamentary capacity, that he would not have executed the will without understanding its contents.* The burden of proof is upon him who denies such knowledge; but where it appears affirmatively that the testator did not read the will himself, and that it was not read to him, it must then be shown to the satisfaction of the court that he was in some other way made acquainted with the contents of the instrument, and approved them.”

1 *Kocher's N. J. Probate Law*, p. 137.

### **Undue Influence and Fraud.**

What has been said before, applies with great force to the question of undue influence and fraud.

The circumstances of this case are such that they cast upon the respondents the burden of proving that there was no undue influence exercised upon the decedent in the signing of the 1914 Will which burden the respondents did not sustain. In his conclusions, Judge Lawrence of the Orphans' Court, in dealing with the question of "undue influence and fraud," says: "Suspicion, however, is not proof" (page 258). This is beside the point. He considers that it is necessary for proponent to prove undue influence and fraud, whereas, although the circumstances of this case are such as to almost conclusively infer undue influence and fraud, *they are, without question, such as to cast upon the respondents the burden of proving that there was not undue influence and fraud.*

As has already been stated, the fact which stands out with greater prominence than any other, is the fact that E., Romaine Simmons was not called to testify. He is the man from whose possession the 1914 Will came and the man presumably into whose possession it went after it was signed by the decedent. Mr. Young testified that he received the 1914 Will from Mr. Simmons. All that the witnesses who were produced know about the will, occurred in a space of perhaps a half hour. Mr. Simmons received a legacy of \$30,000 under the Will. Miss MacDonald testified that Mr. Simmons asked the decedent to have his name taken out of the will. She testified that Mr. Simmons was in the room with the decedent when she first went into the room. Why should Mr.

Simmons wait until Miss MacDonald and Mr. Lee-Bryce came into the room to make this request, instead of making a *personal* request of this nature to the decedent *alone*. Why should he want to make a *public* declaration of this kind as unquestionably he did. Miss MacDonald does not state what the decedent said in reply. A fair inference is that the decedent was in such a condition at that that, that she either did not know what she was doing, or was simply intent on signing her name to what she *thought* was her will and get it over with. So far as the testimony shows, it was simply a paper produced by Simmons to the witnesses; that of the fact that she knew its contents or that she read it or it was read to her, there is no proof whatever, *and that proof could only be supplied by Mr. Simmons who was not called to testify*. On the other hand the proof is that she did not read it and it was not read to her.

The respondents went to a great deal of trouble to get Miss MacDonald to Freehold from overseas to testify personally. *Yet although Mr. Simmons was in New York and his presence could easily be obtained for the purpose of testifying; and in fact he did testify on the question of residence; and he did appear in Freehold on September 21st, 1918, and signed the petition for probate; he was not called.*

On the argument before Vice Ordinary Stevenson, the Vice Ordinary expressed surprise at the fact that Simmons had not been called to testify, and at that time no request for the taking of Simmons' testimony in the Prerogative Court was made by counsel for respondents, although the Vice Ordinary stated that he might find it necessary to direct Simmons' testimony to be taken before deciding the case. On the other hand,

counsel for the respondents stated that if the appellant desired the testimony of Simmons, his counsel could call him, but the Vice Ordinary promptly stated that it was not the place of the appellant to call a hostile witness and make him his own witness, and thus deprive themselves of the right of cross-examination and impeachment.

Great stress was laid by counsel for the respondents on the argument before the Vice Ordinary on the letters which were written by the deceased to her relatives. (Exhibits Contestant 2-6.) This will undoubtedly be argued before this court. These letters were written from Australia, and covers a period of from August 22nd to October 25th, 1913. Letters and cablegrams sent by the decedent to her husband (Exhibits Proponents, 1-9) were offered in evidence. It is not necessary to quote from these letters, but I particularly request that this Court scrutinize these letters carefully, and that it will be found that there is nothing whatever in these letters to show that they are from anybody *but an affectionate wife to an affectionate husband*. They cover a period from July 7th, 1913 to May 1st, 1914. On May the 1st, 1914, the cablegram which is signed by Simmons says that she is "crazy to get home counting minutes give him all my live," etc. Particularly the affectionate letter written at Christmas (Exhibits Proponent 6).

In his conclusion (page 259), Judge Lawrence further comments on the fact that the will contains a specific reference to the financial dealings between the testatrix and her husband. She undoubtedly refers to the statement of an advance of over four hundred thousand dollars to her husband and that this was not denied in the case. There was no occasion to deny this in the progress

of the case as counsel for appellant contend that there is no proof that the decedent knew the contents of the 1914 Will or that she read it or it was read to her. As a matter of fact so far as the proof shows, *she did not read it and it was not read to her.*

At the close of the case in the Orphans' Court counsel for appellant specifically gave counsel for respondents the opportunity to call Simmons or any other witnesses.

“Mr. Tomlinson: Mr. Leake, now suppose we go on to final hearing now, do we understand that you are closed, that you will consider that you call no more witnesses?”

“Mr. Leake: I do not make any bargains. I have closed my case now. If you are ready to argue it on the testimony taken I am perfectly willing” (page 212).

As the proof was then left we contend that the 1914 Will was not only not proved but that the affirmative testimony of witnesses for the respondents was to the effect that the deceased had not read the paper and it was not read to her. There was no occasion and I submit it would not be proper or pertinent for appellant to be obliged or expected to prove that this reference as to an advance or other inaccuracies in the will as to her property were erroneous, as he would otherwise have undertaken to prove. Certainly no acquiescence or consent on the part of appellant that the statements as to this advance and her property are correct can be spelled out in this case as was done by Judge Lawrence.

The fact that, in this case, where the will was signed by Madame Nordica, while ill in bed in such condition that she had to propped up; that the

will was produced by Mr. Simmons; that it was not even read by or to the decedent, in the presence of the witnesses; that Simmons received under the will a large legacy; that she sent letters and cablegrams to her husband, of a most affectionate nature, and that during part of the same time, she sent letters of a different character to her relatives, showing at least that her mind was such that it could be easily influenced; the fact that the amount of the alleged advance to her husband was approximately the value of the personal property of the decedent, consisting of furs and jewelry of which Simmons had full knowledge; the most peculiar fact that Simmons, although he was in the room with the deceased at the time the witnesses came into the room, when the witnesses came in he made the request that his name be left out of the will (a request most personal in nature and unless there was some reason would ordinarily be made to the decedent in private and not withheld and made publicly before the witnesses to the will); all of these facts, coupled with the fact that Simmons (the person to whom instructions were given to draw the will; the person who procured the drawing up of the will; the person who secured the witnesses and delivered the will to them; the person who was present during all of the transactions in the bed room at the time of the signing of the will; and the person into whose possession presumably the will went as it was delivered by him to Mr. Young after the death of the decedent) was not called by the respondents to testify before the Orphans' Court, although he had been produced and testified on the question of residence, and although he personally appeared at Freehold and signed the petition for probate before the Surrogate on Sep-

tember 21st, 1916; and was not called to testify in the Prerogative Court even after the statement of Vice Ordinary Stevenson on the argument as hereinbefore set forth, is to my mind, taking into consideration all of the circumstances of this case, so conclusive that undue influence and fraud must be necessarily inferred. That in any event all of these facts, and the circumstances of this case are such that the burden of proving that there was not undue influence and fraud exercised upon the decedent, is upon the respondents, which burden they did not sustain.

### **POINT III.**

#### **The Orphans' Court was without jurisdiction to admit the 1914 Will to probate.**

(a) There was no petition on file for the probate of the 1914 Will.

(b) The Orphans' Court was without power or jurisdiction to order the filing of a petition, for the probate of the 1914 Will nunc pro tunc.

(c) There was no certification from the surrogate that there was a contest to the probate of the 1914 Will.

(d) There was nothing before the Orphans' Court upon which it could act affirmatively in relation to the 1914 Will.

(e) There was no citation issued on any application or petition to probate the 1914 Will.

The proceedings before the Orphans' Court were simply and entirely upon the application for the probate of the 1910 Will. Petition for probate of the 1910 Will was duly filed with the surrogate. Process of citation on the application for the probate of the 1910 Will was duly issued. The order appointing the administrator pendente lite was entered solely pending the determination of the proceedings had upon the application for the admitting to probate of the 1910 Will. The orders for publication were made on petition, setting forth that application had been made to the Surrogate to probate the 1910 Will, and upon doubt having arisen as to the validity of that Will, the matter had been referred by the Surrogate to the Orphans' Court. Absolute proof that the contestants of the 1910 Will were not proceeding on an application for the probate of the 1914 Will is shown by the fact that a great deal of the proceedings were taken up by the contestants in endeavoring to oust the Orphans' Court of jurisdiction to determine the admissibility of the 1910 Will for probate on the ground of the non-residence of the deceased.

*The Orphans' Court is a court of purely statutory jurisdiction.*

Under the statute, when an application is filed with the Surrogate for the probate of a will, the only way in which the Orphans' Court can obtain jurisdiction is upon a citation issued by the Surrogate.

The fact in this case is that the application to the Surrogate for the probate of the 1914 Will was not actually filed until September 21st, 1916. There were no citations issued on said application and the Orphans' Court, being a court of purely

statutory jurisdiction, obtained no jurisdiction whatever to adjudicate as to the validity of the 1914 Will.

There is no statutory authority for the court to direct the filing of an application for probate with the Surrogate nunc pro tunc. The Surrogate, although he acts as the Clerk for the Orphans' Court, is entirely separate and distinct from the Orphans' Court in matters of application for the probate of wills. The Orphans' Court has no jurisdiction over him whatsoever to compel him to file an application for probate of a will as of a certain date. An application for the probate of a will cannot be filed with the Orphans' Court. It seems conclusive that if an application to probate a will cannot be filed with the Orphans' Court, the Orphans' Court can have no power to make provisions or orders respecting the filing of applications for probate with the Surrogate. Until after the application is actually on file with the Surrogate, and the citations duly issued, the Orphans' Court has no jurisdiction in the matter whatever.

*The Orphans' Court has no primary jurisdiction to admit wills to probate. It can only make decrees admitting wills to probate in cases where the question of the right to probate has been certified to it by the Surrogate.*

The legislative grant of the right to probate wills (3 C. S., page 816, Sect. 3), is as follows:

“The surrogates of the several counties of this State, shall take depositions to wills and admit the same to probate, and grant letters testamentary thereon; but in case doubts arise on the face of the will, or a caveat is put in against proving a will, or a dispute arises respecting the existence of a will, the Surro-

gate shall not act in the premises, but shall issue citations to all persons concerned to appear in the Orphans' Court of the same county, which Court shall hear and determine the matters in controversy."

In 1 *Kocher's New Jersey Probate Law*, page 45, the author says:

"The Orphans' Court has no original jurisdiction over the probate of wills. It obtains its jurisdiction, in such cases, only through the Surrogate. Such jurisdiction springs from an issue suggested in a proceeding which originates before the Surrogate. The statute does not contemplate that application for probate shall in any case be made to the Orphans' Court. That Court, so far as matters of probate are concerned, is merely the trial tribunal of issues suggested before the Surrogate."

The functions of the Surrogate and the character of his decrees is discussed in the recent case of *Crawford v. Lees*, 84 N. J. Eq., 324, where the learned Vice Chancellor says (pages 327-328):

"It has been repeatedly held in this State that a surrogate, in admitting a will to probate, holds a court and exercises judicial functions in the field prescribed by statute, and that his decree or order of probate is to be reviewed by appeal and is not subject to collateral attack except for fraud or want of jurisdiction. The proposed amended pleading is a collateral attack upon the judgment of that court, and bases the attack upon the claim that the surrogate was without juris-

diction because of doubts which it is alleged arose on the face of the will which his order admitted to probate; no fraud is charged.”

The statutory authority of the surrogate to admit wills to probate is as follows:

“The Surrogates of the several counties of this state shall take depositions to wills, and admit the same to probate, and grant letters testamentary thereon; but in case doubts arise on the face of the will, or a caveat is put in against proving a will, or a dispute arises respecting the existence of a will, the surrogate shall not act in the premises, but shall issue citations to all persons concerned to appear in the Orphans’ Court of the same county, which court shall hear and determine the matters in controversy.” P. L. 1898 P. 718; 3 Comp. Stat. p. 3816, Sect. 13.

“No adjudicated cases in this State has at any time definitely determined the meaning of the expression ‘in case doubts arise on the face of the will.’ In *Myer’s Case*, 69 N. J. Eq. 793, 796, the suggestion is made by our Court of Errors and Appeals that it may relate to erasures and interlineations. But, for present purposes, it may be assumed that the averments of the proposed answer and cross bill disclose with sufficient definiteness that when the will here in question was presented to the surrogate for probate there appeared on the face of the will interlineations or erasures or mutilations which an accurate adjudication would have determined to be suggestive of such doubts as the statute contemplates.

“It will be observed that the statutes imposes upon the surrogate two alternative duties; if no doubts rise on the face of the will, he is required to take the necessary depositions and admit the will to probate if the depositions of the witnesses are by him found sufficient. If doubts do arise on the face of the will, he is required to issue citations. The duty is thus specifically imposed upon the surrogate to determine whether doubts arise on the face of the will, for he cannot perform either of the alternative duties required of him without first determining whether doubts so arise; if he determines that such doubts exist, he is required to issue citations; if he determines that doubts do not exist, he is required to proceed to probate. The determination of the existence or non-existence of such doubts is clearly a function necessary to the exercise of his jurisdiction and in similar instances, it has been regarded as necessarily forming a part of his jurisdiction. *Stanley v. Safe Deposit Co.*, 87 Md. 450; *in re Shoenberger's Estate*, 139 Pa. St. 132. In granting probate of the will here in question, the surrogate necessarily determined that no doubts arose, on the face of the will. For any error in that determination the statute has provided a remedy by appeal and the question here presented is whether such error can be made the ground of collateral impeachment of the probate in this cause.”

In the celebrated *Straubs* case, 49 N. J. Eq. 264, affirmed without opinion, 50 N. J. Eq. 795, the ordinary said, at page 266:

“The statute does not contemplate that ap-

plication for probate shall in any case be made to the Orphans' Court. That court, so far at least, as matters of probate are concerned, is merely the trial tribunal of issues suggested before the surrogate."

*In the present instance, no proceedings have been taken before the surrogate for the probate of the 1914 Will. The only issue certified by him to the Orphans' Court related to the propriety to admit the 1910 Will to probate. The Orphans' Court when it determined that the 1910 Will should not be admitted to probate decided the only question certified to it by the surrogate.*

In 1 Kocher's *New Jersey Probate Law*, pages 196-197, the author says:

"When a caveat is filed against the probate of a will, and the surrogate cites all persons in interest to appear in the Orphans' Court or where doubts arise upon the face of the will, and the surrogate certifies the will into the Orphans' Court the surrogate is not thereby stripped of all jurisdiction over the case. The jurisdiction of the Orphans' Court attaches only to the matter in controversy, and it is over that matter only that the surrogate is ousted of jurisdiction. After the Orphans' Court disposes of the matter in controversy, further proceedings should be conducted before the surrogate. So where the Orphans' Court upon a caveat against the probate of a will, decrees the same to be invalid, proceedings for the probate of another will of decedent or for the appointment of an administrator should be before the surrogate."

In *Re Queen*, 82 N. J. Eq., 583, an appeal was taken to the Prerogative Court from an order of the Orphans' Court, dismissing a petition to vacate a decree denying probate of the will of Queen, and to set aside letters of administration granted by the Surrogate. It appeared that Queen died in Pennsylvania; that a writing purporting to be her last will was offered for probate before the Surrogate of Hunterdon County, who, because of doubts arising upon the face of it, certified the same into the Orphans' Court for adjudication. In the Orphans' Court it was made to appear that Queen resided, at the time of her death, in Hunterdon County. That her will was not executed as required by our statute, whereupon the Court denied its probate. Thereafter, the proper persons presented a petition to the Surrogate, praying for letters of administration and an order was made by the Surrogate, granting such letters. Later, a petition was filed in the Orphans' Court to set aside this decree denying probate and also to set aside the grant of administration. The petition set forth that Queen was a resident of Pennsylvania, at the time of her death; that she executed the will, provable under the laws of Pennsylvania, in which the petitioner was named as beneficiary. That petitioner had knowledge of the probate proceedings in New Jersey, but was induced to acquiesce therein because of the promises made to him, but not redeemed; that Queen's wishes as expressed in her will would be carried out. The Orphans' Court dismissed the petition upon the ground that it was without jurisdiction to revoke letters granted by the Surrogate, and from this order of the Orphans' Court an appeal was taken. The Court said, at pages 585 to 587:

“That the Orphans’ Court and the Surrogate’s Court are independent judicial tribunals and that the Orphans’ Court has not jurisdiction to revoke letters of administration granted by the Surrogate, except in the manner prescribed by statute, upon appeal, is settled by numerous authorities. Quidort’s administrator, vs. Pergeaux, 18 N. J. Eq. (3 C. E. Gr., 472; Rynoe’s Executor vs. Ryno’s Administrator, 27 N. J. Eq. (12 C. E. Gr.), 522; in Re Evans, 29 N. J. Eq. (2 Stew), 571; Straubs’ Case, 49 N. J. Eq. (4 Dick), 264, affirmed 50 N. J. Eq. (5 Dick), 795; Murray vs. Lynch, 64 N. J. Eq., 19 (Dick), 290, affirmed 65 N. J. Eq. (20 Dick), 309). A grant of letters testamentary (or of administration) by a Surrogate is a proceeding in rem, resulting in a judgment, which may not be impeached collaterally and can only be attacked by appeal. (Quidort’s Administrator vs. Pergeaux, supra.)

2. The contention is that letters of administration were issued out of the Orphans’ Court by the Surrogate, as its clerk, pursuant to the order denying probate, and that inasmuch as the decedent was not a resident of this State, the Court was without jurisdiction, and having been imposed upon by false testimony in this respect, it should vacate its decree denying probate, and revoke the letters of administration. The decree denying probate is silent as to the grant of administration. The Surrogate, in his judicial capacity, made the order upon which the letters issued. It is claimed that this order is a nullity; that the decree of the Orphans’ Court was an adjudication of the existence

of the New Jersey residence of the testatrix; that the Orphans' Court declared an intestacy, and acquired absolute jurisdiction to administer the estate; that an order appointing the administrator is implied in the decree and that this Court, on appeal, should amend it to include the appointment, the argument being that the Surrogate, as a Court, was stripped of all authority when he certified the matter of probate into the Orphans' Court, and that subsequent acts by him, although in his name, as Surrogate, were done as the Clerk of the Orphans' Court. And these things we are asked to import into the decree, so as to situate the appellant that he may, by indirection, do that which, by direction, is impossible, destroy the administrator. The proposition has neither premise or logic nor merit. *The Orphans' Court, in refusing to admit to probate the paper writing as the testament of the deceased, did not adjudge that she died intestate, nor did it thereby require jurisdiction of her estate. All that the Court was called upon to decide (jurisdiction being assumed) was whether the paper writing offered was the last will and testament of Sara E. R. Queen, deceased, and upon rejecting it as such, its office terminated.* If thereafter, another will, regular in form, concerning which there was no dispute, had been submitted for probate, it would have been the duty of the Surrogate to pass judgment. *Murray vs. Lynch, supra.* Undoubtedly when a disputed will is probated the Orphans' Court is clothed with power to appoint a representative to execute the trust. *In re Jolly*, 5 N. J. Eq. (1 Halst), 456; *Mundy*.

*vs. Mundy*, 18 N. J. Eq. (2 McCart.), 290; in *re McElwainer*, 38 N. J. Eq. (3 C. E. Gr.), 499; *Slocum vs. Grandin*, 38 N. J. Eq. (11 Stew), 485; *In Re Booraem*, 55 N. J. Eq. (10 Dick), 769. But when there is no probate there can be no trust and there being an intestacy the right to appoint an administrator rests in the Surrogate unless, because of dispute, it is referred to him to the Orphans' Court, as required by the statute. *Orphans' Court Act* (3 Com. State., p. 3822); *Plume vs. Howard Savings Institution*, 46 N. J. Law (17 Vr.), 211; *The Principle of Russell's Case*, 64 N. J. Eq. (19 Dick), 313, is illustrative. The situation, when the Orphans' Court declined probate, insofar as any other will relating to the estate of the deceased was concerned, was as if the proceedings were not had.'

A case in the Prerogative Court illustrative of the strictness with which the statutory powers of the Surrogate must be construed is, *In re Coyle's Estate*, 99 Atl. Rep., 116. That case came up on appeal from an order of the Orphans' Court dismissing an appeal from the appointment of an administrator by a Deputy Surrogate.

The Court held that:

"Under Surrogate's Act (4 Comp. St., 1910, p. 5058) 9, 10, providing that the Surrogate may appoint a Deputy Surrogate, who shall, in the Surrogate's absence, have full power to perform all the duties of the Surrogate, the Deputy Surrogate of a county, appointed by the Surrogate, was without authority to order the appointment of an ad-

administrator and grant letters of administration upon a decedent's estate in his own name and under the seal of his supposed office, and the letters granted by him were absolute nullities, since the statute means that the deputy may act as Surrogate in his name and stead, not independent of him, as the position of a 'deputy' is that of a subordinate to the Surrogate, in whom jurisdiction of issuing letters testamentary and of administration resides, which must be issued under his hand and seal of office and in the form laid down by 3 Compl. St., 1910, p. 3818, 17, and 3 Comp. St., 1910, p. 3,825, 33."

In concluding his opinion, Vice Ordinary Backes says, on page 117:

"As the order of appointment made and the letters of administration issued by the Deputy Surrogate in his own name and under the seal of his supposed office were void, and as there was nothing upon which an appeal could rest, the Orphans' Court was without jurisdiction, and consequently its dismissal of the appeal was proper. The present appeal will be dismissed and the record remitted."

### **Conclusion.**

It is respectfully submitted that the decree of the New Jersey Prerogative Court affirming the decree of the Monmouth County Orphans' Court, admitting to probate the paper writing dated January 10, 1914, and denying probate of the will dated July 3, 1910, should be reversed, and

the Courts below directed to enter a decree admitting the will dated July 3, 1910, to probate, as the last will and testament of Lillian Nordica Young, deceased.

November Term, 1918.

ZIEGENER & LANE,  
Proctors for Appellant.

HARRY LANE,  
JOHN C. TOMLINSON, } of  
ALFRED C. COXE, JR., { New York Bar.  
of Counsel.

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# New Jersey Court of Errors and Appeals.

IN THE MATTER

OF

THE ESTATE OF LILLIAN NORDICA  
YOUNG, Deceased.

On Appeal  
from Chan-  
cery.

*Prerogative court.*

## BRIEF FOR RESPONDENTS.

### Statement of Facts.

On January 10, 1914, Lillian Nordica Young duly executed and published her Last Will and Testament at Thursday Island in the Pacific Ocean. The execution of the Will was attended by William Millan LeBryce, the English Government resident, and Sadie Charlotte McDonald, an English Army nurse and matron of the Torris Straits Hospital on Thursday Island.

The Will was duly executed and published according to all the requirements of the laws of New Jersey and was admitted to probate by the Orphans' Court of Monmouth County on October 19, 1916 after a trial in which all the parties in interest appeared and participated.

The Will described in more detail than usual the real and personal property of the decedent and directed the payment of \$5,000 to Maria

Masino, a maid of the decedent for eight years, \$1,000 to Ada Baldwin, a companion of the decedent, and \$30,000 to E. Romaine Simmons, the accompanist and secretary of the decedent for a period of sixteen years. George W. Young, the husband of Madame Nordica, was given "his legal portion" of her stock in the Securities Company and the remainder of the property of the decedent was devised to her three sisters, Mrs. Imogene Castillo of Los Angeles, California, Mrs. Annie Baldwin of Dorchester, Massachusetts and Mrs. Ione Walker.

George W. Young, Robert S. Baldwin (nephew), and E. Romaine Simmons were named as "administrators."

In explanation of the bequest to George W. Young, the will contained the following statement:

"In this distribution of my property I am not forgetful of my husband, George W. Young, to whom I have advanced over \$400,000 in cash, which I estimate as the full or more than the full share to which he might be entitled" (p. 36, l. 34).

The Will made provision for the cremation of the body of the deceased and contained an express clause of revocation (p. 37, l. 20).

Madame Nordica left Thursday Island on March 28, 1914 and died at Batavia, Java, May 10, 1914, leaving surviving as her only heirs at law and next of kin, her husband George W. Young, and her three sisters above named.

On February 28, 1917, an appeal was taken by George W. Young to the New Jersey Prerogative Court from the decree of the Monmouth County Orphans' Court admitting the Will to probate and on July 1, 1918, the decree of the

Monmouth County Orphans' Court was affirmed. The appellant thereupon filed his appeal in this Court.

**The issue in this case is the determination and probate of the last Will and Testament of Lillian Nordica Young.**

Two Wills were offered for probate, one dated July 3, 1910, devising all the property of the decedent to George W. Young, and the other dated January 10, 1914, containing bequests to George W. Young and other beneficiaries but devising the major portion of the estate to the three sisters of the decedent.

**ARGUMENT.**

**POINT I.**

**The Orphans' Court had jurisdiction of the parties and the subject matter.**

On August 25, 1914, George W. Young filed in the office of the Surrogate of Monmouth County a petition for the probate of the earlier Will dated July 3, 1910. The petition alleged:

“A dispute has arisen respecting the existence of an alleged later Will of the said Lillian Nordica Young, purporting to be dated January 10, 1914, the existence or validity of which is denied by the said George W. Young, a copy of the said alleged instrument is annexed hereto” (p. 30, l. 33).

The petition prayed for the probate of "the Last Will and Testament" without distinguishing between the 1910 and the 1914 will (p. 31. l. 10). Annexed to the petition was a copy of the Will of January 10, 1914. Said

Although no caveats were filed against the probate of the 1910 Will at the time of the filing of the above petition, the Surrogate did not issue any letters testamentary but certified the entire matter to the Orphans' Court of Monmouth County. Citations were issued on September 10, 1914 to all the beneficiaries and parties in interest not only under the Will of 1910 but also under the Will of 1914, directing them to appear before the Orphans' Court on October 15, 1914 "In the Matter of the Application of George W. Young for an order admitting to probate *a paper or papers* purporting to be the Last Will and Testament of Lillian Nordica Young, deceased, and to abide the judgment and decree of the said Court in the said premises".

The attention of the Court is directed to the form of this citation which does not limit the matter in controversy to the probate of the 1910 Will but by the use of the phrase "paper or papers" indicates that the parties were also cited on the probate of the 1914 Will, attached to the petition of George W. Young. (p. 40, l. 1-10).

The sisters of Madame Nordica, being non-residents of New Jersey, were not served and an order of publication was made on September 10, 1914 and the notice to these beneficiaries, mailed in pursuance of the order of publication, contained the following language:

"You are made defendants in the said proceeding because you are the next of kin of the said Lillian Nordica Young or are named either as an executor or beneficiary in other

“paper writings purporting to be the last  
“Will and Testament of the said Lillian  
“Nordica Young, deceased, dated the 10th day  
“of January, 1914, the validity of which is  
“disputed by the said George W. Young.”

The beneficiaries under both Wills duly appeared in the Monmouth County Orphans' Court and filed answers to the petition of George W. Young, alleging the revocation of the Will of 1910 by the due execution of the Will of 1914 (page 50) and subsequently in February and March, 1916, filed answers and cross-petitions praying for the probate of the Will dated January 10, 1914 (Pages 71, 72, 73, 74 and 75). Two of the executors also filed in the office of the Surrogate of Monmouth County the usual petition for the probate of the 1914 Will (p. 264). By consent of Mr. Twining, the attorney for George W. Young, the filing of the petition for the probate of the 1914 Will was ordered entered *nunc pro tunc* (p. 215, l. 17-20 and p. 214, l. 37-40) and in accordance with this consent at the trial a formal order to file the petition for the probate of the 1914 Will as of December 21, 1914, was made by the Judge of the Orphans' Court (Page 264).

Testimony was taken by the proponents of the 1910 Will and also by proponents of the 1914 Will. The Judge of the Orphans' Court, the parties and their counsel, treated the testimony as taken not only on the petition for the probate of the 1910 Will but also on the petition for the probate of the 1914 Will and everyone connected with the case understood that the Orphans' Court was not only to determine the Last Will and Testament of Madame Nordica but also to admit to probate, the will so found to be her last will.

The first intimation that the testimony taken at Freehold and the testimony of the English

Government resident of Thursday Island, obtained at great expense and delay, related only to the consideration of the probate of the 1910 Will and was not pertinent to the probate of the 1914 Will, or that the court had no jurisdiction, was made by the counsel for George W. Young in the appeal to the Prerogative Court. No objection to the jurisdiction was made in the argument before the Orphans' Court but on the appeal counsel argued that the Orphans' Court was without jurisdiction because no citations were issued by the Surrogate on the petition for the probate of the 1914 Will. The object of the issuance of citations is to bring the parties before the Court. It is merely a form of process and we submit that no process is necessary to bring parties before the Court who are already in Court. The only party in interest under the 1910 Will was George W. Young. He was in the Monmouth County Orphans' Court as the petitioner for the probate of the 1910 Will and the proponents of the 1914 Will filed answers to his petition and cross-petitions asking for the probate of their Will. No process is necessary to bring into court a suitor already there.

“The object of service of process is only to notify persons of the suit and to bring them under the powers of the Court.”

Frank *vs.* Zeigler, 46 West Virginia, 614.

The Surrogate had no authority to probate the 1910 Will because the petition showed on its face that it was not the Last Will and Testament of the decedent. Nor did the Surrogate have any authority to probate the 1914 Will because the petition of George W. Young disputed the existence and validity of that Will notwithstanding he annexed a copy thereof to his petition.

Citations were issued on the petition of George W. Young requiring all the parties in interest un-

der both Wills to appear in the Orphans' Court and the beneficiaries under the 1914 Will were notified that they were cited to appear because they were named as beneficiaries therein.

The Orphans' Court has "full power and authority to hear and determine all controversies respecting the existence of wills" (Section 2, Orphans' Court Act, Compiled Statutes, page 3813) and although the statute contains no express authority to probate a will or probate one of two wills involved in a controversy, the authority to do so is necessarily implied from the statement in the statute that after the issuance of citations requiring "all persons" concerned to appear in the Orphans' Court, that "said Court shall hear and determine *the matters in controversy*" (Section 13, Orphans' Court Act, Compiled Statutes, page 3816).

It is difficult to conceive that the legislature intended, after a long litigation involving the validity of two Wills of a testatrix and finally resulted in the sustaining of one of the Wills, that the same parties should be required to take the same testimony over again and have another trial on the same issues involved in the first controversy, because a relative of the decedent with a knowledge of the existence of a Will made in 1914 first offered for probate an earlier Will made in 1910.

Such a result overlooks any "rule of reason" and disregards the firmly established principles of *res adjudicata* and the effect of the appearance of parties as the equivalent of service of process to confer jurisdiction.

4 Corpus Juris 1354, 1350, 1349.

The legislature did not intend that any mistake or objection of form should interfere in the Orphans' Court with the determination "in the ex-

isting suit or proceeding the real question in controversy between the parties”.

Section 1956 Orphans' Court Act, Compiled Statutes, page 3884.

“Where the court possesses jurisdiction of the general class of cases to which a particular suit belongs, it will acquire jurisdiction over the subject matter, on the parties voluntarily coming before the Court, the one demanding relief and the other defending.”

4 C. J. 1349.

“All these forms of notice which resemble process or summons are dispensed with by a general appearance.

4 C. J. 1354.

“The Orphans' Court is a court of general jurisdiction over the subjects within its cognizance.” *Cassidy's Will*, 80 N. J. Eq. 163.

“The appearance of all the parties before the Orphans' Court also makes them parties to the proceedings.”

*Kayhart vs. Whitehead*, 78 N. J. Eq. 580.

“Complete jurisdiction is vested on the question of probate by the issuance of citation.”

*In re Meyers' Estate*, 69 N. J. Eq. 793.

“The Orphans' Court has full power to hear all disputes.”

*Courson's Will*, 4 N. J. Eq. 408.  
*Young's Will*, 67 Eq. 553.

**POINT II.**

**The 1914 Will was duly executed according to the provisions of the New Jersey law.**

The testimony of one subscribing witness, Mr. W. M. Lebryce, Government resident of Thursday Island, was taken by deposition, and the other subscribing witness, Sadie Charlotte MacDonald, matron of the hospital on Thursday Island, personally testified at the trial in Freehold.

The two witnesses and the testatrix were all present at the time.

“Q. Were you all present at the time, all of the three parties, Madame Nordica, you and Mr. Lebryce?”

“A. Yes.”

*Case P. 161, L. 32.*

The will was signed by the testatrix in the presence of the witnesses who signed in her presence and in the presence of each other.

“Q. When you signed the paper purporting to be this will as a witness where was Mr. Lebryce standing? A. Just by Madame, by my side, by Madame’s bedside.

Q. And when Mr. Lebryce signed as a witness the paper in question where were you standing? A. Quite close to him.

Q. And when Madame signed where were you standing? A. I was standing by the bedside.

Q. Did you see her sign? A. Yes.

Q. Where was Mr. Lebryce standing? A. He was standing right there.” (Case, p. 192, l. 20 to 35.)

The testatrix signed before the two witnesses.

“Q. Did Madame Nordica sign before or after you and Mr. Lebryce?”

“A. She signed before.”

*Case P. 161, L. 10.*

Madame Nordica requested the witnesses to sign.

“A. After saying, ‘Good morning, Mr. Lebryce,’ she said, ‘I want you to witness my Will.’

“Q. I want you to witness my Will?

“A. Yes. She said, ‘I sent for you to witness my Will’.”

*Case P. 177, L. 28 to 32.*

The Will was published by Madame Nordica and it contains an express declaration of publication (p. 37, l. 20).

“Q. Now we want to be a little particular about this. Mr. Lebryce when he handed this paper to Madame Nordica, said, ‘Is this your Will?’ and she said, ‘Yes?’ A. ‘No, he asked her, he said, ‘Is this your Will? ‘Have you read it and do you understand it?’ ‘She said, ‘Yes, it is my Will, I have read it and I understand it.’”

*Case P. 168, L. 37 to P. 169, L. 8.*

“Q. Then what happened after that question was asked and answered as you state?

“A. I put the Will on the writing pad on Madame’s knee and handed her pen and she signed it and I then placed it on the locker, which is a little table on the side.

“Q. You placed it on the locker. A. Yes.

“Q. Then what occurred? A. I said to her, ‘Is this your Will and your wishes?’ She said, ‘Yes, it is my will and my wish.’ Then ‘I signed my name.’”

*Case P. 169, L. 14-24.*

“A. Mr. Lebryce presented the Will to Madame and asked her if that was her Will, if she read it and if she understood it.

“Q. What did she say in answer to it? A. “She said, ‘Yes, I have read it and I understand it.’ ”

*Case P. 163, L. 28-32.*

“Q. Did you say anything to her at that time? A. No. I then took the Will and the pad and placed it on the little locker by Madame’s bed, and I said to her, ‘Is this your Will and your wishes,’ and she said, ‘It is my Will and my wish.’ And then I signed my name and my occupation and address; Mr. Lebryce then signed his name, occupation and address.”

*Case P. 164, L. 2-15; P. 169, L. 22; P. 179, L. 1.*

Madame Nordica read the will before its execution.

“A. I asked her if she knew the contents of the document and whether it expressed her wishes regarding the distribution of her property. She said that it was her Will and that it expressed her wishes regarding the distribution of her property.”

*Case P. 195, L. 27.*

“A. Mr. Lebryce presented the Will to Madame and asked her if that was her Will, if she read it and if she understood it.

“Q. What did she say in answer to it?

“A. She said ‘Yes, I have read it and I understand it.’ ”

*Case P. 163, L. 27.*

“Q. Did you hear any discussion by Madame Nordica prior to January 10, 1914 about a Will?

“A. Yes.

“Q. With whom?

“A. I continually heard Madame Nordica

ask several days previous to that if her Will was ready.

“Q. Of whom did she ask that question?”

“A. Mr. Simmons.

“Q. What did he reply to that?”

“A. Well, he appeared to me to be putting her off, always. Madame, herself, thought that he had a superstitious idea that if she made her Will it was bad luck.”

*Case P. 157, L. 13.*

At the time of the execution of the Will testatrix was in a perfectly normal mental condition, understood what she was doing and entered into general conversation on general subjects. *Case P. 189, L. 30.*

After the Will had been executed Madame Nordica said:

“A. She said, ‘Thank goodness that is finished,’ or something to that effect.

“Q. That is after she had signed it and after you had signed it.

“A. Yes.

“Q. She said ‘Thank you, I am glad it is all over’?”

“A. Yes, something to that effect, when I was making her comfortable, and then the conversation was general. Mr. Lebryce talked with her about a quarter of an hour.”

*Case P. 176, L. 31.*

### POINT III.

**The proponents of the 1910 Will introduced no testimony and produced no witnesses at the trial.**

They produced no evidence of mental incapacity, undue influence, fraud or other infirmity.

Instead of alleging any fraud, undue influence or mental incapacity, which would have cast upon them the burden of supporting their allegations by proof, they make their contest by insinuation, innuendo and suspicion, and by that method they have kept the estate in litigation since August 25, 1914. Their flimsy contest rests primarily on the circumstance that George W. Young received a smaller legacy by the 1914 Will.

This is answered by the statement of Madame Nordica in her will that she had advanced him \$400,000 in cash, which she considered as his full or more than full share of her estate.

*Case P. 36, L. 34; P. 246, L. 40.*

The change in the relations between the decedent and her husband, George W. Young, are also evidenced by the following extract from a letter, written by Madame Nordica to her sister:

“He has written the most heartrending letters, but Annie, *I am done*. I don't know whether someone has talked to him or whether he came to his senses after I had been gone some days, but it does not matter now, as I am on.”

*Extract from letter July 13, 1913, Case P. 246, L. 40.*

William Franklin Baldwin testified that Madame Nordica said:

“I am contemplating a trip around the world and George wants to go with me. But I don't want him to go. \* \* \* I intend to leave, to get off as easy as possible, making no row at all and found for me a home, make a home for myself, because he has taken my money and as fast as I get money he borrows it from me and I can't get any accounting from him.”

*Case P. 119, L. 13 to L. 30.*

Lillian B. Burnham also testified as to the relations between decedent and her husband, as follows:

“A. She said she was unhappy.”

*Case P. 129, L. 22.*

“She said, ‘I am very unhappy, I am entirely disillusioned and disgusted with the way my money has gone!’ ”

*Case P. 130, L. 28.*

Robert S. Baldwin also testified that Madame Nordica said of her husband:

“She said she was leaving her husband and would never return to him and would make her residence in New York so as to be near her sisters, and that they visited her and she visited them, so as to be near them.” (Test. p. 49.)

*Case P. 134, L. 32.*

The explanation of the friendly letters sent by the testatrix to her husband during the same period, is the testimony (*Case P. 122, 14-15*) that in spite of all the financial loss occasioned by her loans to him, she said, “It is awfully hard though, because I love him.”

It was argued below from the mere circumstance that Mr. Simmons, the secretary and accompanist of Madame Nordica, received a legacy of \$30,000 after his sixteen years of service for her and the additional circumstance that he had the paper in his possession prior to its execution, and that he took it to Mr. Lebryce, therefore, Mr. Simmons must have handed Madame Nordica a Will about which she knew nothing, and must have inserted in the Will the legacy in his favor

without her knowledge, and must have reduced the legacy of her husband without her knowledge.

The only effect of a person having anything to do with a Will which provides a legacy to him is:

“To create a suspicion against the Will of more or less weight *according to the circumstances of each particular case.*” *Bennett vs. Bennett*, 50 N. J. E. 439, 447.

As Mr. Justice Dixon, in *Russling vs. Russling*, 36 N. J. E. 603, 609, says:

“Where it stands substantially alone, without any other concomitants, as it did in that case, the suspicion should be laid aside and the Will admitted to probate.”

The bequest to her private secretary and accompanist was a natural one; the reduction of the legacy to her husband, in view of her large cash advances to him, was a natural one, and besides, as stated in *Smith vs. Smith*, 48 Eq. 566, 591:

“The Will to others, not having the means of knowing what the testator knows, nor occupying his standpoint, nor having lived his life, may seem unreasonable \* \* \* but the court has no right to alter the disposition of the property simply because they may think a testator did not do enough justice to his family connections.”

“Every person competent to make a Will has the right to the aid of any person he may think proper to select, and if he exercises this right without improper interference, though he selects the person he intends to make his beneficiary, that fact and the absence of evidence showing abuse constitutes no reason why probate should be denied to his Will.”

*Bennett vs. Bennett*, 50 N. J. E. 439.

“The mere fact that the beneficiary was the confidential companion does not throw the

burden of proof upon the beneficiary to show that the Will was the act of the testator, where there is no evidence that such beneficiary took advantage of her position.”

*Wheeler vs. Whipple*, 44 Eq. 141.

That the legacy of thirty thousand dollars in an estate of more than three hundred thousand dollars, was the desire of Madame Nordica clearly appears from the fact that she had the will in her possession before the day of its execution and that on the day of its execution Simmons requested her to take his name from the Will.

“Q. Now, you had no knowledge as to whether Madame Nordica had ever seen it before or not, had you?”

“A. Well, I knew that she had her Will submitted to her some days before.”

*Case P. 170, L. 24.*

“Q. Prior to January 10, 1914, did you see the Madame have a Will in her possession?”

“A. I knew that Mr. Simmons brought the Madame the draft of a Will.”

*Case P. 157, L. 26.*

“Q. Now, does that exhaust your recollection as to what occurred?”

“A. I remember that when I first went into the room with Mr. Lebryce, Mr. Simmons was there and that Mr. Simmons asked Madame to have his name taken out of the Will.”

*Case P. 175, L. 35.*

It also appears that the will was open when it was handed to her, and that she looked at it.

“Q. And the paper was folded, was it not, when he handed it to her, it was folded?”

“A. When he handed it to her it was open.”

*Case P. 166, L. 14.*

“Q. He presented it so that she saw the typewritten sheet?

“A. Yes.”

*Case P. 166, L. 31.*

“Q. He asked her if it was her Will?

“A. Yes.

“Q. And she answered——

“A. Yes, she had read it and it was her Will and she had read it and understood it.”

*Case P. 166, L. 39.*

“Q. She examined the paper?

“A. Yes, she looked at it.

“Q. Did she read it?

“A. I can't say she read it through.

*Case P. 167, L. 11.*

The appellant has produced no evidence whatever to show any deception or imposition although he had ample opportunity to do so not only in the Orphans' Court but also in the Prerogative Court and knew of the depositions of the subscribing witnesses long before the trial. The testimony of the subscribing witnesses is as follows:

“Q. Did you hear any discussion by Madame Nordica prior to January 10, 1914 about a Will?

“A. Yes.

“Q. With whom?

“A. I continually heard Madame Nordica ask several days previous to that if her Will was ready.

“Q. Of whom did she ask that question?

“A. Mr. Simmons.

“Q. What did he reply to that?

“A. Well, he appeared to me to be putting her off, always. Madame, herself, thought

that he had a superstitious idea that if she made her Will it was bad luck."

*Case P. 157, L. 13.*

"The confidential relation existing between a testator and his \* \* \* advisor \* \* \* is not alone sufficient to raise a presumption of undue influence. The rule which raises such a presumption in transactions *inter vivos* does not apply to testamentary gifts."

Sparks Case, 63 Equity, 242;

In re: Cooper Will, 75 Equity, 177, 181.

"The inference of undue influence will not be inferred from proof alone of the opportunity to exert it."

Burns *vs.* Gibson, 73 Equity, 617.

"The burden to prove undue influence is upon those who allege it."

In re: Johnson's Will, 80 Equity, 525.

In this connection we desire to call the attention of the Court to the fact that there is no evidence of undue influence, no evidence of any domination or control of the testatrix by her secretary, nor any evidence of coercion.

Mr. Simmons was called as a witness in the Orphans' Court, by Mr. Twining of the firm of Lindabury, Depue & Faulks, the proctors for George W. Young. He was examined about the execution of a 1910 Will, but he was not questioned about any of the circumstances attending the execution of the 1914 Will (Case p. 95). Mr. Simmons was not recalled by Mr. Young's counsel and the necessary inference is that Simmons could furnish no testimony in support of the insinuations against the 1914 will.

It was the desire of Madame Nordica, as expressed in her Will, to give the bulk of her estate to her three sisters and the mere circumstance that Mr. Simmons was the private secretary of the decedent and received a legacy in the Will, furnishes no reason for voiding the Will to the extent of the devises and bequests in favor of the three sisters of the decedent.

There was no evidence that the Will was read verbatim at the time of its execution, although Madame Nordica said that she had read it and understood it (*Case p. 163, l. 27*). There was uncontroverted evidence also that she had the opportunity of reading it. The proponents of the 1910 Will collected the numerous cases requiring the reading of a Will to blind, illiterate and ignorant persons, and insisted that the rule of law in those cases be applied to an intelligent and distinguished woman, who was in a perfectly normal condition at the time she executed her will (*Case p. 189, l. 30*).

No reading of the Will is necessary.

*Kahl vs. Schober, 35 N. J. Eq. 461.*

Proof of testator's knowledge of the contents of the will executed by her may be drawn:

- a. "from the reading of the will under such  
"circumstances as to reasonably create the  
"belief that the testator heard it; or
- b. "from its having been drawn according to  
"his instructions; or
- c. "from an acknowledgment that it had been  
"read to him; or
- d. "from other circumstances which induced  
"the belief that he must have known the  
"contents."

*Harris v. Vandervere, 37 N. J. Eq. 561  
at 573.*

“In ordinary cases, where a testator is in health and of ability, it is not necessary to show that the Will was read over to him, or that he knew the contents of it. The legal presumption in such cases is always in favor of the will; and he who seeks to impeach it must show conclusively that the testator was imposed on, or that there was some mistake whereby he was deceived.”

*Day v. Day, 3. N. J. Eq. 549.*

The attestation clause and the proof of the subscribing witnesses make a clear case in support of the 1914 Will, and as Chancellor McGill said in *Darnell vs. Busby, 50 N. J. Eq. 726 at p. 727*:

“The burden of proof is thrown upon the contestant to negative its averments upon the points in dispute *by strong and convincing evidence.*”

Chancellor Runyon, in *Patton vs. Hope, 37 N. J. Eq. 522 at p. 528*, says:

“The execution of the paper according to law raises a presumption in such a case as it does when the testator is not illiterate: *that he understood its contents*, and proponent is not called upon to produce affirmative proof of knowledge of the contents, *until fraud, practice or undue influence is charged and supported by at least some evidence.*”

No evidence of any fraud was introduced.

“It often happens, perhaps in most cases, that the Will is not read in the presence of witnesses, and the conduct of this testatrix justifies the findings of the Orphans Court, that the Will was drawn according to the express wishes of the testatrix and that she was well acquainted with its contents.”

*Barker vs. Streuly, 69 N. J. Eq. 771, at p. 772.*

“When a Will was signed and published  
 “with the proper solemnities and in the usual  
 “manner, the testator declaring that he pub-  
 “lished the same as his last Will and Testa-  
 “ment, *the presumption arises that he knew*  
 “*the contents of the Will.*” *Nancy Max-*  
*well’s Will, 8 N. J. Eq. 251.*

If the testatrix, at the time of signing, possessed her rational powers and was able to read, proof that she actually read the Will or had it read or explained, *is not necessary* but is to be presumed, as in all other cases, and if she had not read it, it was her own fault. The Chief Justice in *Merritt vs. Johnson, 5 N. J. L. 454 at p. 456.*

*Day vs. Day, 2 Green’s Ch. 549.*

#### POINT IV.

**The Court should not set aside the probate unless the Orphans’ Court is clearly in error.**

“Strong, convincing evidence is necessary to overcome a Will.”

*Berdan’s Case, 65 N. J. Eq. 681.*

“The appellate court should not set aside the order unless clearly convinced of error.”

*Wright vs. Flynn, 69 N. J. Eq. 753.*

The will of January 10, 1914, is the last will and testament of Lillian Nordica Young, executed strictly and fully in accordance with all the requirements of the laws of New Jersey. It represents “her will and her wish” and should be sustained as against the will and the wish of her

husband. He has produced no witness and offered no testimony to disprove or deny the disinterested testimony of the subscribing witnesses to the solemn act of the publication of the last will and testament of Madame Nordica.

**POINT V.**

**The decree should be affirmed.**

Respectfully submitted,

HARTSHORNE, INSLEY & VREELAND.

EUGENE W. LEAKE, of Breed, Abbott & Morgan;  
ROBERT W. LIGHT, of the Boston bar;  
WALTER W. WESTALL, of the New York bar;  
WILLIAM E. DECKER,  
Counsel.

46  
*Argued by  
George B. Astley and  
Albert G. Thorne.*

## Court of Errors and Appeals of the State of New Jersey.

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IN THE MATTER  
of  
The probate of the Last Will  
and Testament of LILLIAN  
NORDICA YOUNG,  
Deceased.

On Appeal  
from Prerog-  
ative Court.

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### **BRIEF OF COUNSEL FOR IMOGENE CASTILLO, A RESPONDENT.**

This appeal is taken by George W. Young, husband of testatrix, from the decree or order made by the Ordinary of the Prerogative Court of New Jersey, on July 1, 1918, affirming the decree or order of the Monmouth County Orphans Court made on or about the 19th day of October, 1916, admitting to probate the last will of Lillian Nordica Young, dated January 10, 1914, and denying probate of a former alleged will dated July 3, 1910, under which former will the said husband was chief beneficiary, and under which later will the sisters of testatrix are the chief beneficiaries.

Note: Owing to the fact that it is desirable that this appeal be argued at the November, 1918, term of this court, and owing to the fact that at the time of the preparation of this brief, no printed record—or other record—has been served upon this respond-

*Done*

ent's proctors, her said proctors have prepared this brief, printed, leaving blanks for page and folio numbers to be inserted after printing.

This respondent, Imogene Castillo, is a sister of the testatrix and under the will admitted to probate, is entitled to a one-third interest in the residuary estate.

It will be found on examination of the petition of appeal that the grounds of appeal are directed practically, first, to the proposition that the will of January 10, 1914, was not properly executed, and, second, that such will could not be admitted in the proceeding before the Monmouth County Orphans Court, for the reason as claimed in the petition of appeal that the proceedings for the probate of the later will were defective.

### POINTS.

#### **1. The Orphan's Court Had Full Jurisdiction to Probate the Last Will of January 10, 1914.**

The proceedings, as will appear by the record, were these:

About September, 1914, George W. Young filed his petition in Monmouth County for the probate of the former alleged will, dated July 3, 1910 (p. **30** ~~fol~~ ). He brought in the interested parties by citation and in his petition set up the fact that an alleged will of January 10, 1914, had been signed or was claimed to be in existence. His counsel may claim that because said George W. Young instituted the proceeding to probate the former will that there has been no proper proceeding before the Court for the probate of the later will.

However, it appears by the record that Robert S. Baldwin and E. Romayne Simmons, the executors named in the later will, filed their cross petition for the probate of the later will, and on September 21, 1916, the Orphans Court made an order that such petition be filed with the Surrogate *nunc pro tunc*, as of December 21, 1914.

In addition to that, this respondent, Imogene Castillo, filed March 15, 1916, her petition addressed to the Monmouth County Orphans Court for probate of the will of 1914, the later will (p. ~~74~~ ~~fol.~~ ).

These petitions were followed up by an application made in open court at the time of the hearing (see pp. ~~215~~, ~~fol.~~ of the testimony), and the Court granted permission for the filing of such petitions *nunc pro tunc* and there was no objection thereto.

Therefore, since George W. Young had already submitted himself to the jurisdiction of the Monmouth County Orphans Court, and since he had, as will appear by an examination of testimony taken at the first two or three hearings, strenuously insisted that said Orphans Court was the only court that had jurisdiction of the estate of testatrix, and since he was the only party interested adversely with reference to the later will, and since he himself by his own petition made this later will one of the issues in the matter, and since all the hearings and the sole issue in the litigation related to the validity of the later will, and further, since no objection was made at any time to the procedure for the probate of the later will, we submit that it is not only too late to raise the question, but further that the proceedings for the probate of the later will were properly had and taken.

The caveat and answer filed on behalf of the three sisters, December 21, 1914, fully sets up this later will, and such caveat and answer was the subject of George W. Young's reply denying the validity of the

later will, and such will is the subject affirmatively of the two petitions for probate thereof filed with the Orphans Court, and the said Orphans Court properly exercised its discretion in that regard, since no party could have been surprised and since the issues in both proceedings were exactly the same and were fully litigated by all parties.

It should be further understood that the witnesses to the later will of 1914 were originally located at Thursday Island, somewhere in the South Seas, and one of them, Miss MacDonald, was afterwards lost sight of by having been ordered to France during the war, and the unusual delay in getting this will case to a hearing before the Orphans Court, was due to the difficulty in reaching those witnesses and producing one of them here in America. It would be impossible to take their testimony over again in a new proceeding. The unusual expense in procuring such testimony was tremendous.

We therefore claim that there is no force in this particular ground of appeal and that proper proceedings were had by way of petition for the probate of the last will, and that proper notices of such proceedings and copies of petitions, etc., were properly served on the appellant's proctors, and furthermore, that the appellant wholly failed to object to the procedure and acquiesced in it by fully litigating the question of the validity of the said last will.

## **2. There Is No Evidence of Undue Influence or Lack of Testamentary Capacity.**

The record is devoid of any such suggestion.

The former will was made in favor of George W. Young, the husband; the later will made him one of the executors, but stated that testatrix had already ad-

vanced him \$400,000 and therefore made no provision for him (see the will of 1914).

In the first two or three hearings a preliminary question of jurisdiction was raised and in connection with this question George W. Young offered a number of letters written to him by testatrix which on their face evinced affection for him. These letters are printed in the testimony. It will be seen, however, by examination of the testimony of Robert S. Baldwin (pp. ~~134~~, fol. <sup>240-236</sup>), that testatrix was actually on the verge of leaving her husband. That she suspected him of infidelity and as appears by letter introduced by us in evidence, (p. <sup>240-236</sup> fols. C2, 3, 4, 5, 6) she was actually deceiving her husband as to her feelings toward him in order that he might not suspect her investigation of his conduct.

Aside from all this, however, there is not the slightest suggestion in the evidence, nor as we recall, there was not lack of testamentary capacity or that there was any undue influence. (See a later point of this brief with reference to the instrumentality of Mr. Simmons in procuring a draft of the later will to be made for the testatrix.)

### **3. Notwithstanding the Incomplete Character of the Attestation Clause Annexed to the Will of 1914, It Appears Affirmatively That Such Will Was Properly Executed by the Testatrix According to Law.**

There are a few leading cases in this state which govern the facts; one or more of them may doubtless be cited on both sides of this controversy.

*Day vs. Day*, 3 N. J. Eq. 549, holds that it is not necessary to show that the will was read over to the

testator, or that he knew the contents of it. The legal presumption is in favor of the will and he who seeks to impeach it must show conclusively that the testator was imposed upon or that there was some mistake whereby he was deceived.

It is to be presumed that testatrix knew the contents of the will.

*Merritt vs. Johnson*, 5 N.J. L. 454 at p. 456.  
*Brick vs. Brick*, 44 N. J. Eq. 282.

If the will drawn is substantially according to the directions of the testator, and is prepared in accordance with her instructions, the testator is presumed to have had knowledge of its contents.

*Day vs. Day*, 3 N. J. Eq. 549.  
*Barker vs. Streuli*, 69 N. J. Eq. 771.

It will be found that all cases which cast doubt in any way upon a will by reason of lack of proof of express knowledge of the contents by the testator or by lack of proof that he read the same, involve feeble, aged or illiterate people, or people who have been clearly the subject of fraud or undue influence, and do not involve people in the possession of their faculties. An express request to witnesses to sign as such is not necessary—having them called in for that purpose is sufficient.

*Whitenask vs. Stryker*, 2 N. J. Eq.  
*Mundy vs. Mundy*, 15 N. J. Eq. 290.  
*Ayers vs. Ayers*, 43 N. J. Eq. 565.

Now it will be found by an examination of the testimony that the testator did read the will, that she did request the witnesses to sign as witnesses, and that she properly declared it to be her last will.

We refer first to the testimony of Sadie Charlotte MacDonald, Matron of Torres Strait Hospital, Thursday Island (pp. 156 to 194).

Let it be remembered that while Madame Nordica made her will at Thursday Island, January 10, 1914,

while slightly ill with pleurisy and pneumonia, she did not die (see petition of George W. Young, p. 30) until May 10, 1914, and died, not at Thursday Island, but at Batavia, Java. Miss MacDonald's testimony is as follows:

Page 170, fol. 40 : "Madame Nordica was an inmate of the hospital suffering, but not seriously, with pleurisy and pneumonia."

Page 157, fol. 10 : Witness heard her ask Mr. Simmons, her manager, several days previous to January 10, 1914, whether her will was ready.

Page 157, fol. 20 : He kept putting her off, but witness knows that prior to January 10th, Simmons brought Madame a draft of a will.

Pages 166, fol. 40 : The witness testifies to Madame's positive declaration that this was her will; that she had read it and understood it.

Page 177, fol. 20 : Witness says: "She first requested us to witness the will after saying, 'Good morning, Mr. LeBryce'—she said, 'I want you to witness my will; I sent for you to witness my will'" (see also p. 177, fol. ).

Pages 163, fol. 20 : Mr. LeBryce, the other witness, presented the will to Madame and asked her if it were her will, if she read it and if she understood it. She said, "Yes, I have read it and I understand it." I then placed the will on Madame's lap and she signed it. I took the will and I said to her, "Is this your will and your wish?" And she said, "It is my will and my wish." I then signed my name and occupation and address. Mr. LeBryce signed his, etc.

This testimony she repeats on cross-examination and on cross-examination as aforesaid states (p. 177, fol. 20), that Madame first requested us to witness the will.

Page 167, fol. 10 : Madame looked at the paper—I can't say that she read it through.

Page <sup>also 170</sup> 157, fol. 20 : I knew she had her will submitted to her some days before.

Page 170 , fol. 40 : She was not in a serious condition.

Page 171 , fol. 10 : Mr. LeBryce asked her whether she had read it and understood it. She said yes.

Page 172 , fol. 20 : Mr. LeBryce told her that Mr. Simmons had brought him the will (this means before it was executed).

Pages 173, fol. 20 : So far as witness knows the will remained in Madame's room. She does not know who retained the custody of the will. (This is all on cross-examination.) Witness did not take the will. She knows that Mr. LeBryce wouldn't take it.

Page 175, fol. 30 : I remember that when I first went into the room that Mr. LeBryce and Mr. Simmons were there, and that Mr. Simmons asked Madame to have his name taken out of the will (Simmons, her manager, is a legatee to the amount of \$3,000). The will was then in the room.

Page 176, fol. 30 : After the will was executed Madame expressed satisfaction that the business was over. "Thank goodness that is finished. I am glad it is all over."

Page 177 , fol. 20 : (Still cross examination.) She first requested us to witness the will (~~see~~ also p. ).

Page 182 , fol. 30 : (Still cross.) Witness repeats that Mr. LeBryce said Simmons had brought him the will before execution.

Pages 176, fol. 20 : Simmons was not in the room when the will was actually executed.

It is clear from the testimony of the foregoing witness, first, that the testatrix was in possession of all her faculties and was not feeble or seriously ill; second, that she expressly requested both witnesses to sign the will and said she had called them in for that purpose; third, that she subscribed the will in their presence and declared it to be her will; fourth, that

they signed in her presence and in presence of each other as such witnesses.

In answer to interrogatories propounded to him in Australia or Thursday Island, William Miller LeBryce, the other witness, who was the government resident at the Island, says : (See his answers to interrogatories, p. 195.)

“I asked her if she knew the contents of the document and whether it expressed her wishes regarding the disposition of her property. She said it was her will and that it expressed her wishes regarding the distribution of her property.”

In answer to the seventh interrogatory:

“She made this known to me by words.”

In answer to the eighth interrogatory:

“She requested me to sign as witness.”

In answer to re-direct interrogatory number one:

“I do not remember her saying that she had read it, but she satisfied me that she knew what the document contained and she acknowledged it to be her will.”

He further says that the document was brought to him before execution by Simmons.

Appellant will probably claim that there is no express proof that Madame read the will or knew its contents. Such proof, under the cases, is not necessary in the case of a woman of her intelligence and condition, and it must be remembered that there is no contradiction of the evidence of these witnesses and that by their evidence it appears that Madame had given instructions some days before for the preparation of her will, and that on the 10th of January, evidently some days after its preparation, Mr. Simmons, who was Madame's business manager and who attended to all her affairs, exhibited the will to Mr. LeBryce and asked him to witness it.

There is no presumption that Madame had not read it meantime. She doubtless gave instructions for its preparation. She inquired whether it was ready. It may be that she read it through when she signed it. It remained in her room, so far as Miss MacDonald knows, and it appears affirmatively in George W. Young's petition or elsewhere in the case that Mr. Simmons produced it here in America. There is no proof that she did not read it. It is a fair inference from the proof under the case that she did read it and also that it remained in her custody. There could have been no reason for Mr. LeBryce taking it out of her apartment and Miss MacDonald says that she did not take it out of the apartment.

A multitude of valid and properly executed wills are made where there is no positive proof that the testator has read the will. In this case there is positive proof and we further have Madame's positive statement that it was her will and that she had read it and understood it.

We submit that the execution of this will has been properly established.

#### **4. The Testimony of the Subscribing Witness Is Wholly Uncontradicted.**

We mention this fact, because some of the cross-examination of Miss MacDonald and much of her re-direct examination and examination by the Court, appears to have been made in anticipation of some contradiction. There was no such contradiction in the case and the testimony of the subscribing witnesses stands wholly unimpeached.

**5. The Fact That Simmons, a Legatee, Was Instrumental in Having the Will Drafted, Cannot Here Arouse Suspicion.**

There is no claim of any undue influence. Mr. Simmons, Madame's business manager, made this world tour with her and unquestionably took charge of all her business matters. Being business manager he would be the natural person to procure the preparation of the will on her behalf. There are not only no suspicious circumstances arising from his relation to the matter, but such relation in no sense affects the rules of evidence nor can it cast any burden upon us. If there were any suspicion the uncontradicted testimony of Miss MacDonald would dispel it, for, as she says, on page 175, when Mr. LeBryce and she entered the room Mr. Simmons expressly requested Madame to have his name taken out of the will, and the will was then in the room. If any fraud was about to be perpetrated upon Madame by Simmons, he would not have made such a request and he would undoubtedly have said to Madame that the will was all right, that he had drawn it in accordance with her instructions and that she need not read it. This he did not say, but on the contrary requested that his name be stricken out as beneficiary. No suspicious fact, therefore, attaches to the matter so as to cast the burden in any wise upon us. The entire burden in this matter to prove the invalidity of this last will was upon the contestant, George W. Young, and he has not only failed to sustain the burden, but we claim further that we have affirmatively by our proof precluded any question whatever being raised as to the validity of the will.

**6. We Submit That the Decree of  
the Perogative Court Should Be Af-  
firmed.**

Respectfully submitted,

OSBORNE & ASTLEY,  
Proctors for Imogene Castillo,  
Respondent,  
790 Broad Street,  
Newark, N. J.

WILLIAM HAMILTON OSBORNE,  
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PARAN F. RICE, of the California Bar,  
Of Counsel.

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