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*Bill of Complaint.***IN CHANCERY OF NEW JERSEY.****Bill of Complaint.**

(Filed April 2, 1921).

TO HIS HONOR EDWIN ROBERT WALKER, 10  
 CHANCELLOR OF THE STATE OF NEW  
 JERSEY.

The complainant Charles Morrison, of the City of  
 Jersey City, County of Hudson and State of New  
 Jersey shows that :

*FIRST CAUSE OF ACTION.*

1. On July 27th, 1906, the complainant Charles 20  
 Morrison acquired title to premises known as No.  
 236 Jackson Avenue, in the City of Jersey City  
 from Heinrich Staubitz and wife, by deed of even  
 date above mentioned and recorded in the office  
 of the Register of the County of Hudson in book  
 942 of deeds for said County at page 536.

2. Thereafter to wit on May 14th, 1920, com-  
 plainant conveyed said premises to his daughter,  
 Grace Morrison, in trust however for the uses and 30  
 purposes hereinafter mentioned.

3. Said conveyance was made by deed dated  
 May 14th, 1920, and recorded in the office of the  
 Register of Hudson County in book 1363 of deeds  
 for said County at page 357, and is absolute in its  
 face, but although said transaction is purported to  
 be made in consideration of \$4,500.00 paid to the  
 complainant, there was no good and valuable con-  
 sideration whatever paid to complainant by said 40

*Bill of Complaint.*

Grace Morrison nor by any one else in her behalf.

4. The said Grace Morrison is a daughter of complainant Charles Morrison, but said conveyance was not made by the complainant in consideration of any love or affection which he bore towards his said daughter Grace Morrison.

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5. Prior to the date of said conveyance the complainant and his daughter resided together for a number of years at the property above mentioned and continued to so reside together until the month of October, 1920. Up to the first part of the year 1920 complainant was engaged in his trade as a ship caulker and worked continuously at that trade, and entrusted his said daughter with the care and management of his property affairs, subject however to his directions and instructions.

20

6. Shortly prior to the delivery of the deed by complainant to his daughter Grace Morrison for the premises above mentioned, complainant had trouble with a tenant in possession of part of said premises and said tenant threatened to cause suit to be brought against complainant for alleged violation of a heat ordinance enacted by the City authorities of Jersey City.

30

7. At the time of such threat complainant's daughter Grace Morrison represented to him that he ought to convey the title to this property to her and urged him continuously to do this so he would not be troubled with any suit which the tenant might start.

8. Complainant finally acceded to the urging and demands of his daughter Grace Morrison and conveyed the premises above described at the time

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*Bill of Complaint.*

above mentioned, but at the time of said conveyance it was distinctly understood that his daughter Grace Morrison should hold said property in trust for complainant and should not convey or mortgage the same or encumber it in any way without his consent, and that said Grace Morrison would re-convey said property to complainant upon his request. 10

9. Shortly after complainant had conveyed said premises to his said daughter she began ill-treating him and abusing him to such an extent that to preserve his health and comfort he was obliged to leave his home with her at the premises above mentioned, and take refuge with his son at his home, and complainant has been informed and verily believes that his daughter Grace Morrison has made a contract to sell said premises to a purchaser, for a good and valuable consideration, whose name complainant cannot ascertain. 20

10. If said conveyance by complainant to his daughter Grace Morrison was not made in trust for the uses and purposes above mentioned then complainant alleges that his signature to the deed and delivery of the same and acknowledgment thereof were procured through the fraudulent representations and statements of his daughter, and through duress and undue influence exercised by her over him. 30

11. The fraudulent statements and representations of his daughter Grace Morrison consisted in that said Grace Morrison told complainant that he should convey this property to her, for purposes which would be ineffectual and with the intent to own said property and sell the same and said 40

*Bill of Complaint.*

daughter Grace Morrison knew this to be a fact and knew that her statements were false and misrepresentative and made them for the purpose of deceiving complainant and obscuring from him her true intent and desire to obtain a conveyance of this property to her from complainant which was to get title to said premises in her own name, and  
10 complainant relied upon the truth of the statements made by his daughter at that time and has suffered or is about to suffer irreparable damage by reason thereof.

12. The duress and undue influence exercised by his daughter Grace Morrison upon complainant consisted of her actions towards him and threats of bodily harm and continual hounding until complainant was forced to accede to the demands of  
20 his daughter in order to preserve his health and have peace of mind and some semblance of comfort in his home.

13. Because of the fraudulent representations and statements and the duress and undue influence of his daughter Grace Morrison, the complainant is placed in a position where he will suffer great financial loss and irreparable damage if the said Grace Morrison conveys the property above mentioned to the purchaser whom she has procured for  
30 the same, and the money for said conveyance is paid to his said daughter Grace Morrison.

14. Complainant has requested his said daughter to deliver a deed to him re-conveying the title to the above mentioned premises but his said daughter has refused to do so.

*Bill of Complaint.**SECOND CAUSE OF ACTION.*

1. A number of years ago complainant opened an account in his name in the Provident Institution for Savings in Jersey City, and made various deposits in said account.

2. On or about August 13th, 1918, there was 10  
about \$2,500.00 on deposit in said account.

3. On or about the last mentioned date the complainant is informed and verily believes said account was transferred in full from his name to that of his daughter's Grace Morrison, and complainant is informed that the voucher transferring said account purports to be signed by him.

4. Up to the first part of the year 1920 complainant was engaged in his trade as a ship caulker and worked continuously at that trade, and he entrusted his daughter with the care and management of his business affairs subject to his directions and instructions, and on any occasion when complainant transacted any business in connection with the above mentioned bank account his daughter either accompanied him to the bank or he sent her directly with instructions, and she would have complete charge of his affairs. 20  
30

5. Said bank account as it now stands is entirely in the name of complainant's daughter Grace Morrison and she is able to withdraw the full amount of said account without the consent or signature of complainant, and the bank is obliged to pay her the same if she so demands.

6. If said voucher purporting to be signed by complainant transferring the balance on hand 40

*Bill of Complaint.*

from his account to his daughter's, was actually signed by complainant, then complainant alleges that his signature to said voucher was procured through the fraudulent representations and statements of his daughter.

7. Because of the fraudulent representations  
10 and statements of his daughter Grace Morrison the complainant is placed in a position where he will suffer great financial loss and irreparable damage if the said Grace Morrison withdraws the money from said bank account which she has opened in her own name in the Provident Institution for Savings, and complainant will be unable to trace and recover the same if said Grace Morrison parts with the possession of said money.

20 8. The false representations and statements of his daughter Grace Morrison consists in that said Grace Morrison presented to complainant a voucher of the Provident Institution for Savings for the full amount on deposit in said account and represented to complainant at that time that he was signing a paper to enable his daughter to comply with instructions which he had given her regarding the making of a deposit and the transaction of other  
30 business in connection with his account, and his said daughter knew that her statements were false and made them for the purpose of deceiving complainant and obscuring from him her true intent and desire to obtain absolute control of the bank account of complainant, and complainant relied upon the truth of the statements made by his daughter at that time and has suffered or is about to suffer irreparable damage by reason thereof.

*Bill of Complaint.**THIRD CAUSE OF ACTION.*

1. About the year 1914 complainant opened a bank account in the Claremont Bank on Jackson Avenue in Jersey City in his own name, and deposited therein about \$2,000, and no additional deposits or withdrawals have been made since that time. 10
2. Complainant's daughter Grace Morrison has possession of the bank book for said bank account and refuses to deliver the same to complainant upon his demand.
3. Complainant has caused inquiries to be made at the Claremont Bank regarding this account and said bank claims to have no such account, but has an account in the name of Grace Morrison, and complainant has been informed and verily believes that his said daughter has caused the account in this bank in his name to be transferred to her name solely through deception and subterfuge. 20
4. If said account has been transferred from complainant's name to that of his said daughter's name, complainant alleges that said transfer was procured through the fraudulent representations and statements of his said daughter Grace Morrison. 30
5. Up to about the first part of the year 1920 complainant was engaged in his trade as a ship caulker and because he was obliged to be at work every day he entrusted the active management of his affairs to his said daughter Grace Morrison, subject however to his directions and instructions.
6. The fraudulent representations and state- 40

*Bill of Complaint.*

ments of his daughter Grace Morrison consisted in that said daughter presented to complainant a voucher to be signed by him for the transfer of his account to his said daughter's name, and at that time represented to complainant that it was a paper necessary to be signed by complainant in the ordinary transaction of his business with the bank, and at that time complainant's said daughter knew that her statements were false and made them for the purpose of deceiving complainant and obscuring from him her true intent and desire to obtain a transfer of his account in the Claremont Bank to her, and complainant relied upon the truth of the statements made by his said daughter at that time and was deceived, and has suffered or is about to suffer irreparable damage by reason thereof.

20 7. Complainant has been informed and verily believes that this account is entirely in the name of his said daughter in the Claremont Bank and she may compel the said bank to pay her the full amount thereof without the consent or signature of complainant.

30 8. Because of the fraudulent representations and statements of his said daughter, complainant is in a position where he will suffer great financial loss and irreparable damage if the said Grace Morrison withdraws the money from the bank, and if said daughter transfers the money to some other person complainant will be unable to trace or recover the same.

40 9. Complainant has demanded of his said daughter the possession of the bank book for this account but his daughter has refused to deliver the same to him.

*Bill of Complaint.*

Complainant is without adequate remedy in the Courts of Law and therefore prays:

1. That Grace Morrison, who is the defendant to this suit, may answer this bill of complaint and each statement therein made.

2. That a decree may be made that said defendant holds the title to said premises in trust for the complainant Charles Morrison, and directing the defendant Grace Morrison to deliver a deed to complainant for the reconveyance of the title to premises mentioned in the first cause of action in this bill of complaint. 10

3. That an account may be taken of the amount due complainant on the rents from the premises mentioned in the first cause of action of this complaint. 20

4. That a decree may be made that said defendant holds said bank accounts mentioned in the second and third causes of action of this complaint, in trust for complainant, and directing the defendant Grace Morrison to transfer and set over to complainant, the amount found due on said bank accounts, as ascertained by an account to be taken. 30

5. That an account may be taken of the amount due complainant on the bank accounts mentioned in the second and third causes of action in this bill of complaint.

6. That in the meantime the defendant Grace Morrison may be enjoined from delivering a deed for or transferring title to, or encumbering in any way the premises mentioned in the first cause of action of this complaint. 40

*Bill of Complaint.*

7. That in the meantime the defendant Grace Morrison may be enjoined from either withdrawing or causing to be withdrawn the moneys on deposit in the accounts mentioned in the second and third causes of action of this complaint.

10 8. That a writ of subpoena may issue commanding said defendant Grace Morrison to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

ROBERT H. DOHERTY,  
Solicitor for and of Counsel  
with complainant.

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*Amended Bill of Complaint.*

complaint.

4. Complainant is an old man seventy-eight years of age and enfeebled by disease and old age and is unable to work and is confined to his home, and requires constant care and attention, and for about fifteen years last past complainant has lived  
10 alone with his daughter at the property mentioned in the first cause of action of the bill of complaint and has been subject to her sole influence.

5. The disposition made by complainant of his property mentioned in the first, second and third causes of action of this complaint, if it was not induced by fraud and misrepresentation as alleged in said causes of action, made voluntarily in favor of the defendant Grace Morrison, his daughter, and  
20 complainant did not understand the nature of his act, because of his enfeebled condition and on account of the influence of the defendant with whom he was living at the time, and he had no intention of giving all of his property to the defendant, his daughter and leaving out the remaining children of his family.

6. All of the alleged gifts mentioned in the first, second and third causes of action of the bill contain no power of revocation, and a relation of trust  
30 and confidence existed between the complainant and his daughter at the time of the making of said alleged gifts, and complainant had no independent or competent advice as to the effect of such gifts upon his interests in the subject matter of the gifts.

7. By reason of the disposition of his property mentioned in the first, second and third causes of action of the bill of complaint, complainant has  
40 disposed of all of his property to the defendant

*Amended Bill of Complaint.*

Grace Morrison, with the exception of two small bank accounts in New York Banks, and is practically destitute and likely to become a charge on the State in his old age.

ROBERT H. DOHERTY,  
Solicitor for Complainant.

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*Answer.***Answer.**

(Filed June 24, 1921).

## IN CHANCERY OF NEW JERSEY.

10

Between

CHARLES MORRISON,  
Complainant,

and

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GRACE MORRISON,  
Respondent.

Respondent, Grace Morrison, answering the complaint filed herein says that:—

1. She admits paragraph one of the complaint.
2. She admits that part of paragraph two which alleges a conveyance but denies that said conveyance was in trust.
3. She admits said property was conveyed to her but denies that no consideration was paid therefore.
4. She admits that she is a daughter of complainant but denies the remainder of the fourth paragraph.
5. She admits paragraph five except that she

*Answer.*

states that she did not manage her fathers affairs but merely assisted him in their management.

6. She denies paragraph six of the complaint.
7. She denies paragraph seven of the complaint.
8. She denies paragraph eight of the complaint. 10
9. She denies paragraph nine of the complaint except that she admits that she has conveyed the premises to one Rose Koch by permission of this Court.
10. She denies paragraph ten of the complaint.
11. She denies paragraph eleven of the complaint. 20
12. She denies paragraph twelve of the complaint.
13. She denies paragraph thirteen of the complaint.
14. She denies paragraph fourteen of the complaint. 30

*ANSWER TO SECOND CAUSE OF ACTION.*

1. She admits paragraph one.
2. She admits paragraph two.
3. She admits paragraph three and alleges that said transfer was made by reason of a gift from complainant to her. 40

*Answer.*

4. She admits paragraph four but alleges that complainant understood his affairs and although she accompanied him to the bank he transacted the business himself and she merely assisted him.

5. She admits paragraph five.

10 6. The voucher mentioned in paragraph six was signed by complainant of his own free will and not through any fraud or deceit on the part of respondent.

7. She denies paragraph seven.

8. She denies paragraph eight of complaint and alleges that said voucher was signed without any fraud or deceit on the part of the complainant or  
20 any other person.

*ANSWER TO THIRD CAUSE OF ACTION.*

1. Respondent denies paragraph one.

2. She denies paragraph two and alleges that she has her own account in said bank which account was opened by her.

30 3. She denies paragraph three.

4. She denies paragraph four.

5. She admits paragraph five except that she alleges complainant managed his own affairs assisted by respondent.

6. She denies paragraph six.

40 7. She admits paragraph seven but alleges that

*Answer.*

the account in the Claremont Bank is her personal account and was never in the name of her father or any other person.

8. She denies paragraph eight.

9. She denies paragraph nine.

10

*ANSWER TO FOURTH CAUSE OF ACTION.*

1. Respondent repeats the answers and allegations made by her to the allegations in the First, Second and Third Causes of Action.

2. She admits that complainant is an old man but denies that he is feeble or that he requires constant care and attention. She admits complainant has lived with her for the past fifteen years but denies that he was under her sole influence.

20

3. She denies paragraph five of the complaint and alleges that said property was conveyed to her without any influence or fraud and that it was his express intention at the time said gifts were made that respondent was to receive the sole benefits of said gifts to the exclusion of her brother and sisters.

4. She admits that all of the alleged gifts are absolute but says that complainant had independent and competent advice on the subject.

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5. Respondent denies paragraph seven.

Defendant prays that the bill of complaint be dismissed with costs.

ERIC H. JENTZ,  
Solicitor of Respondent. 40

*Decree Dismissing Bill.***Decree Dismissing Bill.**

(Filed October 16, 1922).

IN CHANCERY OF NEW JERSEY.

10 Between

WALTER MORRISON, as Executor,  
etc., and WALTER MORRISON  
and ETHEL DALY, Individually,

Complainants,

and

20 GRACE MORRISON,  
Defendant.

} On Bill, Etc.

Upon application of Eric H. Jentz, solicitor of  
defendant, and in the presence of Robert H. Do-  
herty, solicitor for complainant Walter Morrison,  
individually and as executor of the last will and  
testament of Charles Morrison, deceased, and Mark  
30 Townsend, Jr., solicitor of complainant, Ethel  
Daly, and the Court having duly considered the  
pleadings and proofs in this matter and heard the  
argument of counsel for the respective parties, it  
is on this 16th day of October, 1922, ordered and  
decreed that complainants bill be and the same is  
hereby dismissed.

E. R. WALKER,  
C.

Respectfully advised.

JOHN GRIFFIN,

V. C.

40



*Order.*

that said defendant might remove from the State, so that the decree of the Court of Errors and Appeals would have no subject matter upon which to operate.

10 It is, on this 17th day of October, 1922, on motion of Robert H. Doherty, of counsel with the complainant, ORDERED that the Clerk in Chancery retain in his custody and control the funds now on deposit with him in the above-entitled cause, until the final determination of said appeal, or the further order of this Court; and

It is further ORDERED that as a condition for the restraint above imposed, the complainant perfect his appeal for the November, 1922, term of the Court of Errors and Appeals, provided the same can be done according to the statute and rules of Court.

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E. R. WALKER,

Respectfully advised.

C.

JOHN GRIFFIN,

V. C.

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*Supplement Order.***Supplement Order.**

(Filed November 10, 1922).

## IN CHANCERY OF NEW JERSEY.

Between		
WALTER MORRISON, Executor of the last will and testament of CHARLES MORRISON, de- ceased, et al.,	} On Petition, Etc.	10
Complainants,		
and		
GRACE MORRISON, Defendant.		20

This matter being opened to the Court by Robert H. Doherty, of counsel with the complainant in the above entitled matter, and it appearing from the duly verified petition filed in said cause that a decree dismissing the Bill of Complaint has been advised, which will have the effect of releasing the moneys, which are the subject matter of the suit, so that the defendant may obtain possession and control of the same; and 30

It further appearing from said petition that the Complainant intends to take an appeal from said decree dismissing the Bill of Complaint, and that in case of the reversal of said decree the moneys, which are the subject matter of this suit, might be dissipated by the defendant, Grace Morrison, or that said defendant might remove from the State, so that the decree of the Court of Errors and Appeals would have no subject matter upon which to 40

*Supplement Order.*

operate.

It is, on this 10th day of November, 1922, on motion of Robert H. Doherty, of counsel with the complainant, ORDERED that the Clerk in Chancery retain in his custody and control the funds now on deposit with him in the above entitled cause, until the final determination of said appeal, or the  
 10 further order of this Court; and

It is further ORDERED that the order heretofore entered on October 17th, 1922, that as a condition for the restraint above imposed, that the Complainant perfect his appeal for the November, 1922, term of the Court of Errors and Appeals be modified, so that the time to perfect said appeal be extended to the March, 1923, term of the Court of Errors and Appeals.

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E. R. WALKER,

Respectfully advised.

C.

JOHN GRIFFIN,

V. C.

30

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*Order on Suggestion of Death.***Order on Suggestion of Death.**

(Filed July 21, 1922).

IN CHANCERY OF NEW JERSEY.

Between	} On Bill, Etc.	10
CHARLES MORRISON, Complainant,		
and		
GRACE MORRISON, Defendant.		20

It appearing by affidavit filed in this cause, that the complainant herein departed this life on the 30th day of July, 1921, having first duly made and published his last will and testament, whereby among other things he appointed Walter Morrison his executor, who has taken upon himself the burden of the execution thereof, and it appearing further that the said Walter Morrison is a proper and necessary party for the final determination of the matters involved in this suit. 30

It is on this 19th day of July, 1922, ORDERED, that the said Walter Morrison, a son of Charles Morrison, deceased, and sole devisee of the said Charles Morrison, deceased, be made, a party to this suit on motion of Robert H. Doherty, Solicitor of Walter Morrison, both as individual and executor of the last will and testament of Charles Morrison, deceased.

And it further ORDERED, that having been 40

*Order on Suggestion of Death.*

substituted as executor on the record as party complainant, upon the suggestion of the death of the said complainant, that he be permitted to amend the Bill of Complaint herein as his interest may require.

E. R. WALKER,

10      Respectfully advised.      C.

JOHN GRIFFIN,

V. C.

I consent to the entry of the above Order.

ERIC H. JENTZ,  
Attorney of Defendant.

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*Opinion.***Opinion.**

(Filed January 22, 1923).

## IN CHANCERY OF NEW JERSEY.

Between	}	10
WALTER MORRISON, Individually, and as Executor of the last will and testament of CHARLES MORRISON, deceased, et al.,	}	
Complainants,	}	
and	}	20
GRACE MORRISON, Defendant.	}	

Submitted September 8, 1922; decided September 8, 1922.

Mr. Robert H. Doherty and Mr. William R. Gannon, for Complainant Walter Morrison. 30

Mr. Mark Townsend, Jr., for Complainant Ethel Daly.

Mr. Eric Jentz and Mr. William E. Sewel, for Defendant.

GRIFFIN, V. C.:

40

*Opinion.*

The bill in this cause was filed by Charles Morrison in his lifetime to set aside a conveyance which he made to his daughter in May, 1920, when he was about seventy-five years of age, and also a gift of moneys on deposit in the Provident Institute for Savings, on February 13, 1918, amounting to \$2,409. Various grounds are alleged why they should be set aside, namely, fraud, undue influence, lack of independent advice, and that the gifts were improvident.

The claim is that the donor was enfeebled in body and mind, and under the dominating influence of his daughter, the defendant, now aged thirty-five years. The complainant had three children, two daughters and a son.

The defendant is unmarried; the other daughter and son have been married for a number of years. The mother died some sixteen or seventeen years ago. Since that time the defendant kept house for her father, who was suffering, according to the doctor, in his latter years, with a chronic Bright's disease, and had a rheumatic tendency, and he says that he would urinate as he walked across the floors in the house, in the presence of his daughter, with only his undershirt on. At the time that he made the gift of \$2,409 to the defendant he was still possessed of the house where he resided, part of which was rented and from which he derived an income. He was also working as a ship-caulker; and there is no evidence that he was not working steadily at the time he made the gift of the bank deposit. He also had moneys in New York banks amounting to over forty-two hundred dollars. The defendant was never paid any wages; she merely received her clothing and board and lodging; and my recollection is that the father said, when he gave the money to her, that it was for her kindness and services. He was not bound to do this, be-

*Opinion.*

cause, in the law, being his child and a member of the same family, no presumption arises that there was a contract of hiring; nevertheless, there was a moral obligation on his part which he might readily satisfy by a gift of these moneys—in fact, at the time he signed the deed he said the services rendered were in value largely in excess of the value of the property.

After the deed was made, in May, 1920, the son, it seems, called to see his father more frequently, and had knowledge of the conveyance, which was recorded. One day in September, or October, he called; the front door was locked, the bell apparently was out of order, and he went around to the kitchen door and entered, and saw his father there with his sister; and, in substance, he says that the father complained that his daughter was not treating him properly, and the son took the father with him; and afterwards, on April 2d, 1921, this suit was brought by the father to set aside the conveyance and the gift of moneys; and thereafter he made a will giving practically everything to his son, and small sums of money to his two daughters.

He died on July 31st, 1921, about fourteen months after making the conveyance. Caveats were filed against the probate of the will, and it is alleged that the claim was that the will was executed under the undue influence of the son, who is the chief beneficiary; and the claim also was that the man was not of sound mind at the time of the making of the will. The Orphans Court sustained the will. I am not so clear whether it was on stipulation, or not, because the record was not offered in evidence; but, in any event, about the time of the trial in the Orphans Court, or shortly thereafter, the brother expressed a willingness to divide the estate into thirds, which would include the proceeds of the

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*Opinion.*

10 sale of the lands conveyed to the defendant (which had been sold for ten thousand dollars) and also the gift of \$2,409 and an item of \$800, to which reference will be made hereafter, and whatever moneys were left over parcel of the moneys in the New York banks. It seems that the moneys in the New York banks stood in the name of the complainant, Charles Morrison, and he brought suit in replevin to recover the bank books from the defendant, obtained the books, drew out the moneys and had them in his possession while residing with his son at Rosendale, New York, in the Catskills. When he died there was five hundred dollars left over; so that in the short period of less than a year this old gentelman had disposed, in some manner, of about \$3,700, and gave the remaining \$500 to his son.

20 There is an intimation (and I am not certain whether it appears in the record, or was merely the statement of counsel) that this son first denied having ever received any part of the \$4,200, but finally admitted that he received \$500 from his father. He said his father could not walk in that hilly country, and took taxicabs to take the air. There is something very suspicious about this; although, so far as I can now perceive, there is nothing in the evidence which more than creates suspicion on the probable acquisition of these moneys by the son, due to the fact that he resided in the same household; and after the testators death the money was not found.

30 Dealing with the personality of the defendant, she appears to me to be a simple-minded girl; she does not impress me as being even of average mentality. She acted on the stand more like a child than a woman of thirty-five. She answered the questions, however, fairly and honestly.

40 At some questions, which probably did not call for

*Opinion.*

a display of such conduct, she smiled and laughed. On the whole, however, she exhibited marks of refinement, but she did not exhibit the slightest mark of such character or disposition as would enable her to dominate her father; and I am satisfied that whatever he did was done voluntarily to protect his one child who was faithful to him for so many years as against children who were married and settled down away from his household, and who seldom visited him. The others were married, and were caring for themselves. The defendant was unmarried, and after the father died would be compelled to depend on her own exertions for her livelihood. She had allowed the prime of her life to pass in her devotion for her father; and if the disposition that he made of his property by gift was contained in a will, no one could say aught against its justice. But it was made by deed, which was the voluntary act of the father, free from even a suspicion of undue influence exerted upon him by his daughter; but if the gifts were improvident, and the man, somewhat enfeebled by age, with his mentality somewhat impaired, in making the gifts committed an improvident act, and did not have independent advice, and did not fully comprehend the act, then the conveyance must be set aside as improvident.

When the gift of the lands was made to the daughter, what was his physical condition? Dr. Connolly testifies that he was decrepit. The defendant does not say that he was extra strong, and she says that later on he became somewhat weak, although he maintained the same general condition. Dr. Connolly says his disease was progressive. It is a significant fact, however, that on December 24, 25, 27 and 18, 1919, and also January 31, 1920, he worked at his trade. The trade of a ship caulker, which keeps a man in the air, exposed to the winter

*Opinion.*

weather, and on the water front, to my mind indicates that the man was stronger physically than the witnesses would have us believe. This work was done about four months before the deed in question was made. At that time, in addition to this property, he had about \$4,200 in the New York banks. The question—and the only question in the whole case, that I can see—is, first, being possessed of this real estate (which at the time of the gift to the daughter was regarded as worth \$4,500, but a year and a half later sold for \$10,000), was this gift improvident if he still held \$4,200 in cash—considering also his age and the probability that his working days were about to terminate, or at least, would terminate in the near future—holding only about \$4,200 to care for him for the balance of his days—which, taking the testimony of Dr. Connolly, could hardly be many.

On March 12th, 1921, the defendant made a contract to sell the real estate for ten thousand dollars, and received a deposit of a thousand dollars, which she spent, and the remaining nine thousand dollars, or the balance of the purchase price, has been deposited in court.

As to the first gift of \$2,409, on February 13, 1918, this gift was clearly not improvident. Where several gifts are made at different periods of time, later gifts might be held improvident without impairing the validity of the earlier ones. At the time of this gift he owned the house in question, valued at about \$4,500, and had in the neighborhood of about \$5,000 in bank, making upwards of nine thousand dollars; and, as I have found that there was no fraud or undue influence, and it was the voluntary act of the donor, the gift was good.

When the deed was made, on May 14, 1920, the donor had upwards of \$4,200 in bank, possibly \$5,400 000. He did not have independent advice, but it

*Opinion.*

was his voluntary deed unaffected by influence which might be considered undue. The only influence that actuated him in making the gift was love for his child and a purpose to reward her for the services which she had rendered. The question, therefore, is, was the act improvident? I will not deal at length with this question because it is fully covered in the opinion of Vice Chancellor Stevens in *Pearce vs. Stines*, 79 N. J. Eq., p. 51, where he analyzes all the authorities and deals with the question as to what proportion of a man's property given to the donee would be regarded as improvident. Under the circumstances of this case, if he gave to his daughter the house valued at \$4,500, and retained the \$4,200 in bank, he would have reserved to himself a sum which, in my judgment, did not render the gift of the house improvident. 10

On the hearing there was offered in evidence the account of the defendant in the Claremont Bank of Jersey City which showed that, on July 21, 1920, the defendant deposited in that account \$800. Where she obtained these moneys did not, as I recall it, appear in the testimony; and counsel, to my inquiry, could not point to any testimony covering this point. It was suggested, however, that it might have been moneys which she had saved from her allowance for running the house. I therefore do not regard this item as being a gift from the father. 20 30

The decree will be for the defendant.

*Notice of Appeal.*

**Notice of Appeal.**

(Filed January 31, 1923).

IN CHANCERY OF NEW JERSEY.

Between

10 WALTER MORRISON, Executor  
of the last will and testament  
of CHARLES MORRISON, deceas-  
ed and WALTER MORRISON and  
ETHEL DALY, Individually,  
Complainants-Appellants,

On Petition.

and

20 GRACE MORRISON,  
Defendant-Respondent.

30 Walter Morrison, as executor of the last will  
and testament of Charles Morrison, deceased, and  
Walter Morrison, and Ethel Daly, individually,  
the above named complainants, hereby appeal from  
the Decree dismissing Bill in this cause and dated  
October 16th, 1922, and form every part thereof,  
to the Court of Errors and Appeals in the last re-  
sort in all causes.

ROBERT H. DOHERTY,  
Solicitor of and of counsel with  
Complainants-Appellants.

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

ROBERT H. DOHERTY,  
Of Counsel.

40

*Petition of Appeal.***Petition of Appeal.**

(Filed February 9, 1923).

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between  WALTER MORRISON, as Execu- tor, etc., and WALTER MORRI- SON and ETHEL DALY, Indi- vidually, Complainants-Appellants,  and  GRACE MORRISON, Defendant-Respondent.	}	10	} On Appeal from Chancery.	20
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To the Honorable the Court of Errors and Appeals  
in the Last Resort in All Cases:

The petition of Walter Morrison, Executor of 30  
the last will and testament of Charles Morrison,  
deceased, and Walter Morrison and Ethel Daly,  
individually, appellants, respectfully show that  
your petitioners find themselves aggrieved by a de-  
cree dismissing the Complainants' Bill of Com-  
plaint in the Court of Chancery, by His Honor Ed-  
win Robert Walker, Chancellor of the State of New  
Jersey, on the 16th day of October, 1922, in that the  
said decree recites and adjudges, that the Court hav-  
ing duly considered the pleadings and proofs in the 40

*Petition of Appeal.*

matter, and heard the argument of Counsel of the respective parties, doth decree that Complainants' bill be and the same is hereby dismissed.

10 And your petitioners appeal from the said decree and every part thereof, on the ground that the same is erroneous, for that the said Chancellor should have recited and adjudged, that your petitioners are entitled to the relief prayed for in the Bill of Complaint.

Your petitioners therefore pray, that the said decree may be reversed, rescinded and for nothing holden, and that your petitioners may have such further relief as shall be meet.

ROBERT H. DOHERTY,  
Solicitor for and of counsel  
with Appellants.

20

30

40

*Answer.***Answer.**

(Filed February 23, 1923).

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between  WALTER MORRISON, as Execu- tor, etc., and WALTER MORRI- SON and ETHEL DALY, Individ- ually, Complainants-Appellants,  and  GRACE MORRISON, Defendant-Respondent.	} On Appeal from Chancery.	10
		20

The answer of the respondent to the Petition of Appeal of the Appellants:

The respondent admits it to be true that a certain decree was on the 16th day of October, 1922, made and entered in the Court of Chancery as in the Petition of Appeal is 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 law and equity, and she prays that the same may be affirmed with costs to be adjudged to this respondent.

ERIC H. JENTZ,  
Solicitor of Respondent.  
LEWIS G. HANSEN,  
Of Counsel with Respondent. 40

*Testimony.*

## IN CHANCERY OF NEW JERSEY.

<hr/>		} } } } }
	Between	
10	CHARLES MORRISON, Complainant,	
	and	
	GRACE MORRISON, Defendant.	
<hr/>		} } } } }

On Bill, Etc.  
Minutes of  
Final Hearing.

## APPEARANCES :

20 ROBERT H. DOHERTY, solicitor, and WM. R. GANNON, of counsel, Esquires, for Complainant.

MARK R. TOWNSEND, Esq., for Ethel Daly.

ERIC H. JENTZ, solicitor, and W. E. SEWELL, of counsel, Esquires, for Defendant.

Before HON. JOHN GRIFFIN, Vice-Chancellor.

30 Chancery Chambers, Jersey City, N. J., March 14, 1922.

**The Case for the Complainants.**

TIMOTHY K. REILLY, sworn.

DIRECT EXAMINATION by Mr. Townsend :

40 Q. You are connected with the Register's Office

*Timothy K. Reilly—Direct.*

of Hudson County? A. Yes, sir.

Mr. Sewell: We will admit the record.

Q. (Referring to a book of record now produced by the witnesses). The book which you produce shows a deed from Charles Morrison, widower, to Grace Morrison, dated May 14, 1920; acknowledged on the same day; recorded on May 18th; for the premises (236 Jackson Avenue) in question; consideration stated in the deed, One Dollar; and the revenue stamps on the deed are \$4.50; with no seal after the signature "Charles Morrison"? 10

The Vice Chancellor: Haven't you got the original?

Mr. Sewell: The original has been destroyed, your Honor. 20

The Vice Chancellor: The consideration is one dollar?

Mr. Sewell: That is the consideration mentioned in the deed—"One dollar."

The Vice Chancellor: What kind of a deed is it?

Mr. Sewell: (Examining the record): It seems to be a full, covenant, warranty deed.

The Vice Chancellor: You have read it all through, now and there are no particular conditions or provisions in it? 30

Mr. Sewell: No, sir.

The Vice Chancellor: A plain warranty deed?

Mr. Townsend: Yes, sir—with no reservations.

The Vice Chancellor: Well, go on with the case.

(The record contained in the book produced by the witness was offered in evidence 40

*John J. Cadmus—Direct.*

by Mr. Townsend, admitted without objection, and the witness excused from further testifying).

Mr. Sewell: Might I ask, your Honor, that it be noted on the record that this deed is duly acknowledged, in due form, by Charles Morrison, before—

10 The Vice Chancellor: You had better offer a certified copy of the deed. Get a certified copy of that. If there is anything unusual about it, I want to see the whole deed. You should have determined this before.

Mr. Townsend: Can we arrange to get a certified copy?

The Vice Chancellor: Yes, you might get it and put it in as a substitute for the offer of the book.

20 \_\_\_\_\_  
JOHN J. CADMUS, sworn.

DIRECT EXAMINATION by Mr. Townsend:

Q. You are connected with the Provident Institution for Savings? :A. Yes, sir.

Q. In what capacity? A. Bookkeeper.

30 Q. Do you have an account of Charles Morrison with the Provident Institution for Savings, with you—an abstract of it? A. I have the check that he closed his account with.

Q. When was that account opened? A. His account—his personal account?

Q. Yes. A. I couldn't tell you when that was opened.

Q. Does your record show it there? A. That shows when it was closed; this shows when it was transferred to Grace Morrison's account.

40 Mr. Sewell: I object, unless this infor-

*John J. Cadmus—Direct.*

mation is within the personal knowledge of the witness.

Q. What is this paper you have there? A. That is a copy of Grace Morrison's account from the time it was opened.

Mr. Sewell: I object to the use of a copy. 10

The Vice Chancellor: I will sustain the objection. Do you want the Bank to bring its books here?

The Witness: This is certified by the Treasurer of the Bank.

Q. I show you another paper, and ask you what that is? A. That is Mr. Morrison's check, closing his personal account.

BY MR. SEWELL: 20

Q. Were you personally acquainted with his signature? A. Yes, sir.

The Vice Chancellor: That will be admitted.

(The check is marked Exhibit C. 1).

Q. Was that the amount of that account at the time he closed it? A. That is the amount. 30

Q. \$2,406.17? A. Yes.

Q. That was closed on February 13, 1913? A. Yes.

Q. What date was Grace Morrison's account opened? A. The same day.

Q. Was that amount transferred from his account to her account in your bank? A. Yes, sir. 40

*Joseph A. Hall—Direct.*

The Vice Chancellor: Well, this account of Grace Morrison's is objected to, so you will have to produce the Bank's books, if necessary.

Mr. Sewell: We withdraw the objection.

The Vice Chancellor: Then the paper will be admitted.

10 (The paper was thereupon marked Exhibit C. 2).

Q. Do you have an abstract of his account here?

A. No, not of his; Mr. Newkirk thought that was all you wanted.

Q. Can you get us a copy of his account? A. I cannot; it is so long ago; it is an old bird.

Q. Is that account still in her name there (referring to the Grace Morrison account?) A. Oh, 20 yes, yes.

Q. Is there any other account in that bank in his name? A. No, sir.

Q. Do you know whether she had an account in that bank up to the time that check was given? A. No, I cannot tell you that.

No cross examination.

JOSEPH A. HALL, sworn.

30 DIRECT EXAMINATION by Mr. Townsend:

Q. You are connected with the Claremont Bank? A. Assistant Cashier.

Q. Do you have an account in that bank in the name of Charles Morrison or Grace Morrison? A. We have an account in the name of Grace Morrison; I have a transcript of that account with me (producing a paper).

40

*Joseph A. Hall—Cross.*

Mr. Sewell: Could I just let my client see it? If it is all right, I will admit it.

Q. Does that account still stand in her name?  
A. Yes, it does.

Mr. Sewell: We have no objection.  
(The transcript produced by the witness 10  
was thereupon offered and admitted in evi-  
dence, and marked Exhibit C. 3).

Q. You say this account was opened on January 9, 1919? A. That is correct—January 9, 1919.

Q. And the balance in that account, at the present time, is \$712.66? A. That is correct.

Q. Has she any other account there? A. She has not.

CROSS EXAMINATION by Mr. Sewell: 20

Q. That account was originally opened by Grace Morrison, was it not? A. Yes.

BY MR. TOWNSEND:

Q. Did Charles Morrison ever have any account in your bank? A. Not that I know of; not to the best of my knowledge. 30

MISS FANNIE A. BRADEN, sworn.

DIRECT EXAMINATION by Mr. Gannon:

Q. Miss Braden, where do you live? A. 88 Oak Street.

Q. And how long have you lived there? A. Since 1920—about July or August, 1920.

Q. And where did you live before you moved to 40

*Fannie A. Braden—Direct.*

your present home? A. In Mr. Morrison's house, at 236 Jackson.

Q. 236 Jackson Avenue? A. Yes.

Q. How long did you live there? A. From October, 1918, until July or August—I have forgotten which—of 1920.

10 Q. Do you know the defendant in this suit—Grace Morrison? A. I do.

Q. And do you know where she lived during that period? A. She lived with her father.

Q. Did anybody else live with them? A. No.

Q. How frequently would you see Mr. Morrison? A. Well, I saw him as I passed in and out—sometimes on the street, sometimes in the hall.

Q. About how many times a day, or a week, would you say? A. Well I couldn't just say.

20 Q. Well, approximately? A. Nearly every day I would see him sometime in the day, as I passed in and out.

Q. How old a man was he? A. Why, I think Miss Morrison told me he was over seventy, or seventy-five; that is all I know about that.

Q. And what was his appearance? A. Apparently a feeble old man.

Q. Did you ever have any conversation with the defendant, Grace Morrison?

30 Mr. Sewell: I object.

The Vice Chancellor: On what theory?

Mr. Sewell: Unless the nature of the conversation is specified.

The Vice Chancellor: Oh, the witness cannot state everything that she has got to tell in one breath; if the conversations are not relevant, they can be stricken out.

40 Q. Well, did you ever have any conversations with Grace Morrison relative to her father's prop-

*Fannie A. Braden—Direct.*

erty? A. I did.

Q. Will you repeat that, as nearly as you can recollect?

Mr. Sewell: When?

Q. When did you have this conversation? A. I couldn't positively give the date, but it was in the year of 1919. 10

Q. In 1919—do you remember the part of the year? Was it at the beginning, or towards the end?

A. I think there was a fire in the parlor at the time. I think it was near Christmas time.

Q. In 1919? A. Yes.

Q. And did you have any conversation with her regarding these matters in 1920, do you recall?

The Vice Chancellor: How about the conversation in 1919? 20

Mr. Gannon: I will go into that. They were all the same.

Q. Well, couldn't you just give the dates of the conversations? A. They might have been in the early part of 1920, or the latter part of 1919.

Q. Will you tell us what those conversations were? A. Why, Miss Morrison called me down twice, to ask me what method she should take to have— 30

Mr. Sewell: I object; and ask that the specific words of Miss Morrison be quoted.

Q. What did she say to you? A. I couldn't remember the specific words.

The Vice Chancellor (To to the witness): You are not bound to answer in the specific 40

*Fannie A. Braden—Direct.*

words, but give, in substance, what she said, using her language, as nearly as possible.

A. —what she could do to have her father sign over the property to her. I told her that she would have to employ a lawyer, and asked her who her lawyer was, and she said, "Mr. Aleck Simpson," and she said her father would not consent to that;  
10 that she wouldn't be able to get her father to.

Q. How many times did Miss Morrison speak to you about this subject? A. Twice she called me down; but frequently spoke to me about the property and money, in the hall-way.

Q. And it was always on the same subject? A. Yes; her mind was on that.

Q. Did you have occasion to ever go into Mr. Morrison's apartment downstairs? A. Well, I was in several times; I always went to the door to  
20 pay my rent—to her door.

Q. And whom did you pay the rent to? A. Generally Miss Morrison came to the door, and I gave it to her.

Q. And, from your observation of affairs around his home, can you tell us who was managing the place?

Mr. Sewell: I object to it as a conclusion.

The Vice Chancellor: I think I will sustain the objection; it is too indefinite.  
30

Q. Did you ever have any repairs made in and around your apartment? A. No; not while I was there. Before I went in they renovated the place a little.

Q. Who gave you receipts for your rent? A. Miss Morrison.

Q. Do you know who wrote them out? A. Miss Morrison.

Q. Did you ever see Mr. Morrison working  
40 around the house, at all? A. Yes; I have seen

*Fannie A. Braden—Direct.*

him do housework.

Q. What work was he accustomed to do?

Mr. Sewell: I object, as irrelevant, incompetent and immaterial.

Mr. Gannon: This is for the purpose of showing his condition of mind, and his feeble physical state. 10

Mr. Sewell: That don't show anything about that.

The Vice Chancellor: I think I will overrule the objection. It calls for generally what work she saw him doing. That thing goes more to the man's capacity, rather than his incapacity.

A. Why, he beat the rugs; carried up all the coal, and carried down the ashes; and fell, several 20 times, down the cellar stairs.

Q. From what?

Mr. Sewell: I object, unless it is within the physical knowledge of this witness.

The Vice Chancellor: Oh, yes; I will sustain the objection.

BY THE VICE CHANCELLOR:

Q. You say he fell downstairs? A. Twice, to my recollection, he fell, and I spoke to Miss Morrison about it. 30

Q. Did you see him fall? A. No; she told me; and I saw a cut in his head that he had received from it.

Q. When was that? A. It was during that year—I couldn't just give any particular date.

Q. 1920? A. About 1919—it was 1919. 40

*Fannie A. Braden—Cross.*

BY MR. GANNON:

Q. What did Miss Morrison say to you when you spoke to her about her father falling down-stairs? A. Why, I told her that she shouldn't allow him to go down stairs to carry up coal, that he was too old for that—not to allow him to go down the dark stairway. She made no response to my remark.

Q. Do you recall whether or not Miss Morrison's name or Mr. Morrison's name was signed on the rent receipts you received? A. Mr. Morrison's name was signed "per Grace Morrison."

CROSS EXAMINATION by Mr. Sewell:

Q. Did you always pay your rent to Miss Morrison, Miss Braden? A. I may possibly have paid it once to Mr. Morrison, if he came to the door; but Miss Morrison always came to the door.

Q. In other words, whoever came to the door you paid the rent to? A. I paid the rent to.

Q. You had no particular reason to pay it to anybody in particular, had you? A. No.

Q. Only that it was paid—that was the main thing? A. Yes; and Miss Morrison gave me the receipts.

Q. You are an assistant clerk, or have a position up in the District Court, have you not? A. Yes.

Q. You have been there for a good many years? A. Yes.

Q. Did Miss Morrison know this? A. Yes.

Q. She new of that fact, and you did not consider it very strange to have her come and ask you how the old gentleman could transfer this property, did you? A. I didn't think anything about it at the time; still, I felt that—

Q. (Interrupting). You often have people ask

*Fannie A. Braden—Cross.*

you little questions about what they should do, don't you? A. No, no.

Q. Don't you? A. I give everybody information that asks—what I can give.

Q. That is what I mean—you often have people who know you are employed in Court ask you for information, thinking you know a little more than the average person about the law—is not that true? 10

THE VICE CHANCELLOR: She asked

this lady about having the property transferred—what difference does it make why she asked her any more than any other?

Mr. Sewell: Why, I want to show that, having so many inquiries, it is possible this lady does not exactly recall. I will withdraw that question. 20

Q. Now, Miss Braden, are you positive that Miss Morrison said to you that she wanted the old gentleman to convey the property, or that he wanted it, or that it was a mutual understanding? A. I am positive Miss Morrison asked me how she should go about getting her father to convey the property.

Q. I see—do you recall every inquiry of that nature that has been made upon you in the last two years? A. I never had any other inquiry of that nature made upon me. 30

Q. I mean, on all questions regarding the law and courts—do you recollect the questions asked you during that time? A. No; but to my mind, that was peculiar.

Q. Why was that peculiar? A. In the first place, I didn't think, myself, it was right.

Q. Yes—go ahead—to cut off her brother and sister? A. Well Miss Morrison was living home 40

*Fannie A. Braden—Cross.*

with her father, wasn't she?

Q. That is true, she was; and the brother and sister did not pay much attention to the old gentleman, did they? A. Well, it was Miss Morrison's duty to attend to her father.

Q. Yes, that is true; and she performed that duty—but did the other brother and sister perform their duty toward the old gentleman?  
10

Mr. Townsend: I object to that.

Mr. Sewell: I withdraw that.

Q. Did you ever see them visiting the house?

A. No, but I know that Mr. Morrison went to their house.

Q. Did you ever see them visiting the old gentleman? A. I saw the granddaughter there; I never saw any visitors there.  
20

Q. I mean Mrs. Daly and Mr. Morrison? A. I did not know them at the time.

Q. You know that neither of them was visiting there during the time you lived there? A. No, sir.

Q. You lived there from October, 1919, until July, 1920? A. Until August or July, 1920, I am not positive which.

Q. That is over two years ago? A. Nearly two years.

Q. Now Mr. Morrison worked during all the time you lived there, didn't he—went out daily to work? A. Yes, he worked in the shipyard.  
30

Q. Don't you recall the strike which took place in the shipyard about May, 1920? A. No, I do not remember anything about those strikes; I never interested myself in them.

Q. Do you know whether he was working when you left the house? A. No; he was not working when I left, and had not been working for a year.

Q. As matter of fact, hadn't he worked up until  
40

*Fannie A. Braden—Re-Direct.*

about August or September of 1920? A. I think not—no, not as far as I can remember.

Q. I see; and what do you base your knowledge on that he was not? A. That I would see him around when I went home.

Q. Other than that, he never said anything to you, or you never said anything to him? A. No.

RE-DIRECT EXAMINATION by Mr. Gannon: 10

Q. Did Miss Morrison tell you why the property had been transferred or that she had obtained the transfer to her?

Mr. Sewell: I object to it as leading.

The Vice Chancellor: I will sustain the objection.

A. No. 20

Mr. Sewell: I withdraw the objection.

Q. After May 14, 1920, did Miss Morrison ever have any conversations with you about this property? A. No.

Q. Miss Braden, could you tell us if his physical condition, from your observation, was the same when you left as about May 14, 1920? A. Well, 30 he was getting weaker all the time, from the first time I went in there. We could notice that he was sickly, and getting weaker all the time.

Q. Why did you say he had not worked for a year, Miss Braden? A. As far as I can remember; I wouldn't say positively that he had not, but he had not worked for some time, I know, before I left. All that Winter of 1920 he had not worked.

Q. Do you know whether or not he used to go out of the house alone? A. Oh, yes, he went for 40

*Andrew J. Mellor—Direct.*

all the errands in all kinds of weather.

BY THE VICE CHANCELLOR:

10 Q. When did you leave the house? A. Either July or August of 1920, I am not positive. I left in June, in order to go down to the Shore to commute; but then I moved out of her place either in July, 1920, or August; I am not positive which one it was.

Q. And you think that for a year before that time he had not done any work? A. Well, that Winter he had not done any, and, I do not think, that Fall.

Q. You mean the Winter of 1919, or 1920? A. The Fall of 1919, and all the Winter of 1920.

20 ANDREW J. MELLOR, sworn.

DIRECT EXAMINATION by Mr. Townsend:

Q. You are the Sergeant-at-Arms of the Second District Court of Jersey City? A. Yes, sir.

Q. Do you know Grace Morrison, the defendant in this case? A. Yes, sir.

Q. In 1920, did you serve any demand upon her for certain bank books?

30

Mr. Sewell: I object, as irrelevant and incompetent and immaterial.

The Vice Chancellor (To Mr. Townsend): In when?

Mr. Townsend: May, 1920—or March, 1921, I mean—pardon me.

Mr. Sewell: What difference does it make whether he demanded bank books from this woman, or not, after this man's decease?

40

Mr. Townsend: He was not dead at that

*Andrew J. Mellor—Direct.*

time.

The Vice Chancellor: I don't know; I will overrule the objection.

A. I did.

Q. Do you have the demand for the possession in your pocket? A. Yes, sir (producing a paper).

Mr. Sewell: I would also like to object to any use of this instrument, on the ground that this paper does not refer to the bank accounts in controversy now, but to some other accounts.

10

The Vice Chancellor: I have not seen the paper.

Q. I show you paper which purports to be a demand, and ask you if that is the paper you served upon her? A. Yes.

20

Q. Did she deliver the bank books called for in that demand, at the time you served it upon her? A. No, sir.

Q. Did she refuse to do so? A. Yes, sir.

Mr. Townsend: I offer this paper, if your Honor please.

Mr. Sewell: I object, on the same ground, your Honor.

30

The Vice Chancellor: What ground is that?

Mr. Sewell: That it does not refer to the bank accounts in controversy here.

(The paper was thereupon handed to the Court for his inspection).

The Vice Chancellor: I will overrule the objection. The objection may be largely to the materiality and not to the admissibility of it.

40

*Andrew J. Mellor—Direct.*

Q. Was there afterwards a writ of replevin issued out of your court for these books in question, served by you? A. Yes.

Q. Is that the original writ (showing the witness a paper)? A. Yes, sir.

10 Mr. Sewell: Same objection.  
The Vice Chancellor: Same ruling.  
Mr. Townsend: I offer this paper, if your Honor please.  
The Vice Chancellor: It is a writ of replevin to procure the same books?  
Mr. Townsend: Yes, sir.  
(The paper is admitted and marked Exhibit C. 5).

20 Q. At the time you served that writ, Mr. Mellor, did she give you those bank books in question?  
A. She did not.

CROSS EXAMINATION by Mr. Sewell:

Q. Did you personally serve this writ, Mr. Mellor? A. Yes, sir.

Q. You don't know whether the case was ever tried, or not, do you? A. No, sir; I believe the memorandum here says "Settled, and never tried."

30 Mr. Sewell: Does your Honor want a copy of these two papers here?  
The Vice Chancellor: Oh, no.  
Mr. Sewell: Shall I give them back to Mr. Mellor?  
The Vice Chancellor: Yes, but there should be copies made.  
Mr. Townsend: I offer in evidence certified copy of the last will of Charles Morrison,  
40 and copies of the letters testamentary

*Thos. W. Connolly, M. D.—Direct.*

issued by the Surrogate. (Admitted without objection, and marked Exhibit C. 6.)

THOS. W. CONNOLLY, M.D., sworn.

DIRECT EXAMINATION by Mr. Townsend:

Q. Doctor, you are a practicing physician of Jersey City? A. I am. 10

Q. A graduate from any institution? A. New York University.

Q. How long have you been practicing? A. Eight years.

Q. And in what part of Jersey City? A. Why, I have been in the Greenville section of Jersey City until the first of this year.

Q. In Octoer, 1917, were you first called upon to treat Charles Morrison? 20

Mr. Sewell: I object to it, as irrelevant, incompetent and immaterial; and ask counsel to state the purpose of this.

The Vice Chancellor: Oh, well, he is only asking him if he has treated him; I will overrule the objection.

A. I did treat him at that time; I don't know whether that was the first time I was called to treat him, or not; but I do remember that date. 30

Q. Where did you see him for the first time?

A. At 236 Jackson Avenue, at his home.

Q. Do you know Grace Morrison, his daughter?

A. I do.

Q. Was she there at that time? A. She was—I presume you mean the physical condition of him?

Q. I do—what did you find his condition to be?

Mr. Sewell: May I ask the purpose of this 40

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10 examination now? As I understand it (having knowledge of the previous trial before Judge McCarthy in the Orphans Court) an attempt will be made, by this Doctor, to show that this man was in a feeble condition; whereas, counsel for the other side have already introduced a last will and testament showing that this man was declared by the Orphans Court to be in a condition, in 1921, to make a will.

The Vice Chancellor: Certainly a man may be in a condition to make a will where it would be utterly futile for him to make a deed and divest himself of his property. The principles involved in the two cases are entirely different. I will overrule the objection.

20 Q. (Question repeated): A. I found a man past middle life; somewhat feeble; and, on physical examination and urinalysis, I found him to be suffering from chronic kidney disease.

Q. What is the technical name of that disease?

A. It is called a chronic Bright's Disease.

30 Q. What was the condition of his arteries? A. He had a condition of his arteries which was somewhat harder than a man of his age should have. A man of his age is entitled to a moderate degree of hardening of the arteries—his hardening was more extensive than that.

Q. Was that known as arterio-sclerosis? A. Arterio-sclerosis.

Q. How does that condition affect a man's mental condition, such as he was?

40 Mr. Sewell: I object; I do not believe the Doctor is qualified to testify as to the effect on a man's brain of this condition; I think

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a specialist should be called.

The Vice Chancellor: You may examine him as to his knowledge of such matters, Mr. Sewell.

BY MR. SEWELL:

Q. Doctor, after leaving medical school did you have any other experience? A. I did. 10

Q. Where? A. Bellevue Hospital, New York.

Q. For how long a time? A. Eight months.

Q. Did you serve there as an interne? A. As an interne.

Q. And after that time did you have any other experience? A. At the City Hospital of Jersey City.

Q. As an interne? A. As an interne.

Q. How long a time were you in the City Hospital? A. About a year. 20

Q. After the City Hospital did you have any other experience, beside your private practice? A. I went to medical school again, at the United States Army Medical School, in Washington.

Q. How long were you there? A. About seven months, in that school.

Q. Anything else, after that? A. No further, except my Hospital connections.

Q. In your training, such as you were given, had you come in contact with such cases as this? A. I had. 30

Q. Had you made any special study, other than your general practice—I mean, you do not specialize in any particular line? A. Into brain conditions, and mental conditions, do you mean?

Q. Yes. A. I have not.

Q. Would that come within the province of your general practice, such as you had? A. To a limited extent, yes; a general practitioner is not an ex- 40

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pert on mental conditions; he can tell, in a general way, though, what action a moderate degree of hardening of the arteries would have on a person.

Q. Have you seen many cases of Bright's Disease and arterio-sclerosis? A. I have.

Q. And the resultant effects from them? A. I have.

10 Q. Now, just tell us, Doctor, how many times after that were you called upon to treat him? A. (Consulting some memoranda now produced by the witness). In the month of October I saw him three times.—

BY THE VICE CHANCELLOR:

Q. In what year? A. 1917, that was. I saw him in 1918; I saw him again in 1920.

20 BY MR. TOWNSEND:

Q. How many times did you see him in 1918? A. In 1918 I saw him in the early part of the year.

Q. Did you see him after that? A. I saw him in 1920.

BY THE VICE CHANCELLOR:

30 Q. What month? A. September.

BY MR. TOWNSEND:

Q. Now, Doctor, just describe, if you will, his condition, from the time you first saw him,—so far as his physical and mental conditions were concerned,—that you observed?

Mr. Sewell: I object, as to his mental condition.

40 The Vice Chancellor: I will overrule the

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objection.

A. I found a man past middle life, in not good physical condition. He was feeble. At times he appeared mentally unsound. On one occasion I was called to his house, I remember his daughter told me he had been wandering around the house in his undershirt, urinating on the floor as he went; and, on another occasion, in my office, he urinated on the chair in my office, while he was there. 10

BY THE VICE CHANCELLOR:

Q. Was that intentionally, or because he lacked control? A. Why, the kidney disease, your Honor, would not give him loss of control of his bladder; but owing to his general physical condition, physical weakness, he would urinate and would not be conscious of the fact. 20

Q. He would not do it intentionally? A. He would not do it intentionally.

BY MR. TOWNSEND:

Q. Did you have any conversations with him, Doctor, at any time? A. I did.

Q. What was his ability, so far as engaging in a conversation goes? A. He would come to my office sometimes, and instead of walking into my office, he would walk clear into the dining room, and sit down there, not knowing just where he was. He was rather confused. And another time he would come into my office and not know what he would be there for. 30

Mr. Sewell: I object to his drawing conclusions. How does the Doctor know what he was there for? 40

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The Vice Chancellor: Well, the man may have told him.

The Witness: He would sit in my office and ask me where he was. At other times he would come in and call me by another Doctor's name; and the other Doctor and I are distinctly different—we do not look alike, and live in different parts of the town.

10

BY THE VICE CHANCELLOR:

Q. When was this—what years would this be?

A. This was more recent—in 1918 and 1920. In 1917, when I was called to see him, I was called for a chronic arthritis and kidney disease.

Q. What is "chronic arthritis"? A. A chronic attack of rheumatism. More latterly, though, in 1920, I noticed he became very feeble.

20

Q. And that was in September, 1920? A. September, 1920.

Q. How did you find him in 1918? A. In not good physical condition.

Q. Now, can you state anything that happened in 1918, which might tend to show his mental condition? A. Nothing, your Honor, except that he was incoherent at times; he would come in and start talking in a wandering way. He would come in for one condition, and start talking about something else—about his physical condition always—he would start telling me about some pain in his joints, and go from there to his eyes—his trend of thought was not in sequence.

30

BY MR. TOWNSEND:

Q. How did he walk during these periods of time, Doctor? A. Well, all the time I knew him was when he was quite old, and naturally, he would

40

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be feeble.

Q. Now, during any of those visits to the house, did Grace have any conversation with you as to what her father's physical or mental condition was?

A. I really could not recall.

Q. Well, do you recall any instance of her ever telling you of his going out of the house—

Mr. Sewell: I object to it, as leading. 10

The Vice Chancellor: I think he has got a right to refresh the witnesses's memory; I will overrule the objection.

A. Do I recall any instance of she having told me he walked out the house?

Q. Yes, without any clothes, and she thought he was crazy? A. Not in walking out of the house, but walking about the house in his undershirt, in her presence, and she was a maiden lady. 20

Q. Did she say anything about his mental condition to you—as to what she thought his mental condition was? A. She did, but I would not be sure at what date it was, whether it was early or late—I remember thinking it was odd that a daughter should speak that way about her father.

Q. What did she say about him? A. She asked me if I thought he was crazy.

Q. What did you tell her? A. I very likely 30 told her that he was not.

BY THE VICE CHANCELLOR:

Q. Can you form any idea as to when these conversations happened? A. I could not be exact, your Honor, as to dates.

Q. Well, can you tell whether it was as late as 1920, or earlier? A. Earlier than 1920.

Q. Then it must have been before your visit in 40

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September, 1920? A. Yes, sir.

Q. And that visit was some time in 1919, wasn't it—or was it 1918? A. It could be 1919, or in 1918—early in 1918, or late in 1919.

Q. Just the reverse, wasn't it—late in 1918, or early in 1919? A. No, it was early in 1918, or late in 1919. From 1918 to 1919, for a year, I was  
10 not here.

BY MR. TOWNSEND:

Q. Did you ever see him walking around the streets in a dazed condition? A. I would not be able to tell whether he was in a dazed condition, or not. I lived close to him; I saw him wandering around the streets many a time.

Q. Well, how did he appear to you when you saw him wandering around the streets? A. Why,  
20 he walked in a shuffling manner, dragging himself along the street in a listless sort of way.

Q. Did you ever have any experience with him in reference to paying your bill, or your fee, when he would make an office call? A. Why, he seemed to be confused. That is the reason I have those dates. I have marked down the occasions he came and did not pay me; and sometimes when he did come and pay me he wanted to pay me too much.  
30 I remember one instance when he gave me a twenty dollar bill for a visit, or offered me a twenty dollar bill.

Q. Did he walk out of the office then without the change? A. No, I gave him the change.

Q. I mean, did he begin to walk out without the change? A. Oh, yes; he just laid the money on the desk and started to walk away.

Q. He did not owe you any such amount, did he, for any services? Why, I don't imagine so.

40 Q. Doctor, what, in your opinion, was his men-

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tal condition in 1920 when you saw him last, so far as his ability to transact business—

Mr. Sewell: I object, your Honor, on the ground that this doctor, being a general practitioner, has a right to testify as to what he observed, the same as a layman; but, nevertheless, not having qualified as an expert, the cases are uniform that he has no right to testify as to his opinion of the man's sanity, but merely as to what he saw and observed. 10

The Vice Chancellor: Then, when you have two doctors certify that a man is insane, their certificate is worth nothing?

Mr. Sewell: I do not say that, your Honor—I say this—that this Doctor, being a general practitioner, can testify to what he saw, what he observed this man do, and his conversations with him; but he cannot testify as to what his opinion is of his mental capacity, whether he had a diseased condition of brain, or what not. He can only testify to what he saw or observed. I have not the particular cases with me, but I recall looking them up here recently, in a will case, and they are all uniformly on that line. 20

The Vice Chancellor: I think, when you come to the very fine point as to what a man is suffering from, and it calls for answers that require considerable knowledge of the subject, you are right; but I do not see that there is anything here which prevents this witness, from his own experience, from testifying as to what the man's mental condition was, generally. 30

Mr. Sewell: He is not asked that; he is asked what was his mental condition, as far 40

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as being able to carry on business was concerned. Now, that surely calls for an expert opinion.

The Vice Chancellor: That is even more reason why it should be admitted; because the ordinary layman, at times, could tell whether a man is fit to carry on business.

10 Mr. Sewell: The courts would not allow them to so testify. He can just merely testify to what he has seen, or what he has observed.

The Vice Chancellor: I think I will overrule the objection.

(Question admitted).

A. The man was feeble; past middle life, and had a chronic kidney disease which would produce a toxæmia. He had that constant source of trouble  
20 in his back from his kidneys; and, with a moderate degree of hardening of the arteries, he would not be in good physical or mental condition.

Q. Was there any material change in his condition between 1920, when you saw him, and the last time you saw him in 1918 or 1919? A. His condition was aggravated during all this period. He was in a poor physical and mental condition from the time I first saw him.

30 Q. Was he, in your opinion, in 1918 and 1919, when you saw him, in a fit physical condition to transact business? A. Why, the man was feeble.

The Vice Chancellor: Well, just state your conclusion—do you think he was?

A. I don't think so.

BY THE VICE CHANCELLOR:

40 Q. Would his mind and his body be affected pro-

*Thos. W. Connolly, M. D.—Cross.*

gressively by this disease? A. They would.

Q. And he was much weaker, then, in 1920, when you saw him in September, than he was in 1918, or '19? A. He was.

BY MR. TOWNSEND:

Q. Well, Doctor, you ascribe his condition, that you speak of, to what is commonly known as "senile dementia," would you not? A. Senile dementia. 10

Q. Is that what you would say he was suffering from that period of time? A. I would.

Mr. Sewell: I object; the Doctor is not qualified to so testify, not being an expert.

BY THE VICE CHANCELLOR:

Q. Have you made a study of senile dementia? A. I have recently, since I became interested in this case—since I have been in court; not previous to that time. 20

Q. And, without that study, would you have been able to treat senile dementia, and discover it from your examination of the patient? A. Yes, sir—any general practitioner can.

The Vice Chancellor: I will admit the question.

Question repeated, as follows: 30

Q. Is that what you would say he was suffering from that period of time? A. I would.

CROSS EXAMINATION BY MR. SEWELL:

Q. In 1917 was this man capable of going out daily to work? A. Why, during all the time I think the man was capable of doing some work.

Q. Was he able to do laborious work? A. Yes, 40

*Thos. W. Connolly, M. D.—Cross.*

laborious work that did not require any mentality, did not require any thought.

Q. Well, was he able to do any work that required strength? A. He could.

10 Q. Well, what did you mean when you told us he was in such an enfeebled condition all this time that he was shuffling along the streets? A. A man of his age, and in his poor physical condition, if he had to do it, could do a lot of work.

Q. How old did you take the man to be, from your examination? A. At that time, I imagine he was about sixty-five.

20 Q. Suppose you were informed that his correct age was nearer seventy-six or seventy-eight, would that change your opinion or any of your testimony at all? A. Why, it would increase my conviction that he was not physically capable of doing mental labor.

Q. And would it increase your conviction that the same proportion of hardening of the arteries would exist, or would not exist, in such a man—I believe you stated something to the effect that for a man of his age, his arteries were a little harder than they should be—now, with an increase of ten or eleven years in his age, would that change your opinion as to the condition of his arteries?

30 The Vice Chancellor: No—would it change his opinion that his arteries had hardened in advance of his age?

A. It would.

Q. Why so, Doctor? A. Because then he probably would have normal arteries for a man of seventy-six.

Q. Well, did he have normal arteries for a man of seventy-six? A. He probably did.

40 Q. He did? A. Yes.

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Q. And, having those normal arteries for a man of seventy-six, how would that compare with the rest of the diagnosis that you made of his case?

A. Well, a man of seventy-six years of age, with the normal hardening of that age, is not capable of doing the mental work of a younger person.

Q. Is he capable of doing the physical work?

A. I think he could.

Q. Did you consider this man in a condition that he could work as a caulker in a shipyard every day? 10

A. Yes.

Q. You do? A. Yes.

Q. And if he was in such an enfeebled condition, how could he do this, Doctor? A. Why, we have men sweeping our streets more feeble than that; we have men sweeping the streets of Jersey City that are blind—can hardly see at all.

Q. Tell us what you mean by this man being “feeble”? A. Not physically able to walk upright, sprightly; they shuffle along—think slowly; influenced in all their actions as all old people are. 20

Q. You figure that any man, Doctor, seventy-six or seventy-eight years of age, would walk along with a shuffle, which a normal person would not do? A. Yes.

Q. They walk along without a shuffle? A. Yes.

Q. And you consider a normal man, seventy-six years of age, could work daily in the shipyards as a caulker? A. It depends on who his firm is—how hard they made him work. 30

Q. Well, doing the normal work of a man there—do you consider a normal man of seventy-six years of age capable of working daily in a shipyard as a caulker of ships? A. What efforts are required in caulking? I do not know just what physical efforts are required to caulk.

Q. Climbing—you know what the caulking of a ship is—driving the caulking into the seams—using 40

*Thos. W. Connolly, M. D.—Cross.*

physical strength? A. He would not be able to climb.

Q. Would he be able to keep up with the work in this particular line, do you think? A. Not with younger men.

Q. Do you think a man of that age would be able to get up every morning in the week and travel from his home in Jersey City to the shipyards on the meadows? A. Men of that age generally get very weakened, and are not as active as younger men.

Q. Now, did this man shuffle more than the average man of seventy-six or seventy-eight years of age? A. I believe he did.

Q. You believe he did? A. Yes.

Q. And it is your opinion that a normal man, of that age, walks upright and straight, and has no shuffle about him, and is spry? A. He would not walk upright—erect.

Q. And he would shuffle a little, wouldn't he, Doctor? A. A little bit.

Q. And so did this man shuffle a little bit, the same as a normal man of that age? A. More than that.

Q. Don't you think a man of that age would shuffle a little bit? A. Not as much as this man did.

Q. Well, did you consider this man, Doctor, more feeble than the average man of that age? A. I know he was.

Q. You considered him more feeble than the average man of that age? A. Yes.

Q. Now, do you speak from the physical standard, or from his mental, or from both? A. I would speak from both.

Q. And the fact that he went (if he did go) to the shipyards and worked every day, up to 1920, would not change your opinion one bit? A. It

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would not.

Q. Even the fact that he had to climb around on the boats and ships, and around scaffolding, and do heavy work, would not change your opinion a bit as to his being feeble? A. Oh, yes, if he climbed scaffolding.

Q. Well, would that change your opinion any?

A. It would.

10

Q. In what way? A. I do not believe a man of seventy-six years is capable of climbing a scaffold.

Q. Well, you know what the ways of a shipyard is, don't you? A. Not intimately. It is a sort of a dry-dock, ain't it?

Q. No, they are not dry-docks, but it is a sort of scaffolding they put these boats on to keep them out of the water while building them. A. Yes.

Q. If the man was capable of walking around those things, and doing work, would that change your opinion any as to his being feeble?

20

Mr. Townsend: I object to the question, on the ground that it is based on an unwarranted assumption of fact. There is no evidence of the fact that this man ever climbed up on ships.

The Vice Chancellor: Well, they may want to prove it.

Mr. Townsend: Well, if he expects to prove it, I have no objection to it.

30

Q. Would that change your opinion any, Doctor? A. If he did climb.

Q. If he walked around these places, and along narrow ledges, and did the general work of a man in that line of work, in climbing around a ship, and all,—would that change your opinion as to his condition? A. It would.

Q. In what way would it change it? A. If he 40

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was capable of doing that work—capable of climbing ladders and walking on scaffolding—his physical condition was deceiving—he was better physically than I thought.

Q. Well, if a man was capable of carrying up coal from a cellar, doing general chores, going to stores, etc., would that change your opinion any?

10 A. No.

Q. You do not consider it any effort for a man of seventy-six years of age to carry a scuttle of coal up from a cellar, do you? A. No.

Q. That is a normal thing for a man that old to do? A. It would be.

RE-DIRECT EXAMINATION BY MR. TOWNSEND:

20 Q. What kind of a build was this man, Morrison?

A. He had a good frame—good, solid frame.

Q. Was he a large or small man? A. He would be ranked as a large man.

Q. Wasn't he over six feet tall, and very broad-shouldered? A. I do not recall if he was over six feet. When I saw him he was rather stooped, but he was not slight.

Q. How much do you think the man weighed?

30 A. Old men do not weigh so much; their weight is deceiving; they might look to weigh about 170 and not weigh 130. Their frame is big, but their muscles and legs are very thin.

Q. You testified in the hearing before Judge McCarthy, in the Court of Common Pleas? A. Yes, I did.

Q. You testified on behalf of Grace Morrison, to the effect that her father lacked testamentary capacity, did you not?

40 Mr. Sewell: I object. The record is the

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best evidence.

Mr. Townsend: You are attempting to impeach him—I want to show that he is a man you used in another proceeding to show he was mentally incapable.

The Vice Chancellor: I think I will sustain the objection. You are not offering evidence to impeach. The only theory upon which I would allow the evidence would be, perhaps, that the defendant produced this man to set aside the will on the ground that the father was insane,—that she offered that as evidence. Now, she might not be able to prove insanity there, and yet show that he was sane here. But the Court, by its decree, said the man was sane. Besides that, there is a different degree of mentality required in the making of a will, and the divesting by one's self of all of one's property. 10 20

Mr. Townsend: That is all, Doctor.

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Mr. Sewell: I would like your Honor to allow Judge Butler to take the stand now, so he can get away.

The Vice Chancellor: All right.

JAMES A. BUTLER, ESQ., sworn. 30

DIRECT EXAMINATION BY MR. SEWELL:

Q. Judge Butler, you are a practicing counselor of the State of New Jersey? A. I am.

Mr. Townsend: I will admit that.

Q. Your office is located where? A. 586 Newark Avenue, Jersey City. 40

*James A. Butler, Esq.—Direct.*

Q. Is there a Counselor in that building by the name of Alexander Simpson? A. There is.

Q. And Mr. McComb has his office there, too? A. Yes.

10 Q. Now, do you recall taking the acknowledgement of a certain deed from Charles Morrison to Grace Morrison, covering premises known as 236 Jackson Avenue, on May 14, 1920? A. Well, some things I could remember, but I could not remember all of them. For instance, I don't know of the date—I don't know whether it was in May, or not. I remember taking an acknowledgment for a deed for Mr. McCombs,—the only acknowledgment of a deed I ever took for Mr. McCombs.

Q. And did Mr. Morrison appear before you?

A. Mr. Morrison came in with Mr. McCombs.

20 Q. Will you tell us what happened after they got into your place? A. When they came in, if I remember correctly, it was in the morning, and the man came in with Mr. McCombs, and he wanted to take an acknowledgment of a deed, and I asked this old gentleman if he knew what a deed was, and he said he did; I said "Do you know that you are giving away a piece of property to your daughter?" and he said, "I do," and then I took his acknowledgment. I don't know whether I mentioned where the property was located—I think it was on Jackson Avenue, if I remember; but I don't know; I wouldn't say I mentioned that to the old man, but I asked him if he knew he was giving away, by this piece of paper, some property to his daughter.

30

Q. And he stated that he did? A. Yes.

Q. And did you see the man sign the deed? A. Oh, yes; of course I am presuming this is the deed that I took the acknowledgment of; the deed is not here; I could tell that if I saw it.

4) CROSS EXAMINATION BY MR. TOWNSEND:

*James A. Butler, Esq.—Cross.*

Q. What kind of a looking man was this? A. Why, a man, I should say—do you mean a description of his height, etc.?

Q. No, his age—how old was he? A. Oh, he was an elderly man—apparently, to me, somewhere between fifty-five and sixty, apparently.

Q. And was Grace Morrison with him? A. No—nobody but Mr. McCombs and this gentleman. I did not go in the other office. This was in my office. 10

Q. Mr. McCombs is associated with Mr. Simpson? A. I understand so.

Q. How did you know that he was giving the property away? A. Why, read the deed before I asked him to sign; I looked over the deed to see what was in the deed, and then after I read it I said, “Mr. Morrison, you understand you are giving away this property to your daughter?”

Q. You understood, from reading the deed, that he was giving the property away? A. Well, by this paper, deeding it to his daughter. 20

Q. Was that the only source of your information? A. That is all.

Q. Were the revenue stamps put on while you were there, or were they already there? A. No, there was no stamps on the deed at that time, because immediately after I took the acknowledgment he and Mr. McCombs went out.

Q. Did you have any general conversation with him, at all? A. Nothing at all. 30

Q. Further than when you asked him if he knew what it was? A. I said, “Do you know that you are giving it away to your daughter”—I put the word “daughter” in.

Q. And he said, “Yes”? A. He said “I do,” and I said, “Do you understand, if you sign this paper, that you are giving the property away to your daughter?” and he said “I do”; then I said, “Sign your name here,” and he signed his name. 40

*James A. Butler, Esq.—Re-Direct.*

Q. Did he speak to you in a firm voice, or weak voice? A. Why absolutely firm; the man appeared all right to me.

Q. He did not appear to you as if he was sick in any way? A. Absolutely not. He had a red face—a healthy looking man.

10 Q. He was so healthy to you that he looked about between fifty-five and sixty? A. Well, as near as I could tell. He had a red face and grey hair. The only thing I could see, he was walking a little round-shouldered when he came in.

RE-DIRECT EXAMINATION BY MR. SEWELL:

20 Q. Did this man appear to you to be in an enfeebled condition? A. Well, no absolutely; to me he was not. He walked in without any help; with a firm tread; and came in, in front of my desk, with Mr. McCombs.

Q. Did he say anything while in your office to lead you to think that he was not mentally sound? A. Mr. Sewell, he only said just what I told you before, that was all.

Q. Did he shuffle along when he walked? A. Well, I wouldn't say. I saw him come in with Mr. McCombs; I did not notice anything peculiar about his walk.

30 RE-CROSS EXAMINATION BY MR. TOWNSEND:

Q. Bye-the-bye, did you witness his signature? A. I did.

40 Q. I suppose you were in a position like any lawyer when another lawyer comes in to you to ask you to take somebody's else's acknowledgment—you did not pay any more attention to this than to any other? A. I have not taken acknowledg-

*James A. Butler, Esq.—Re-Cross.*

ments that I have not informed or read to the parties the contents.

Q. That is not my point. A. Well, what was it?

Q. I say, you dealt with that the same as you would with any other case when a lawyer comes in your office— A. (Interrupting). Well, the only thing I know is that Mr. McCombs only came in to me once with a deed.

10

BY THE VICE CHANCELLOR:

Q. The point he makes is, that this acknowledgment you took of Mr. Morrison you paid only just passing attention to? A. Oh, yes; no more particular attention—absolutely no.

BY MR. TOWNSEND:

Q. I don't suppose your memory is really fresh about what happened there, is it? A. The only thing that reminds, or brings it to my mind is this,—there was only one deed I ever took the acknowledgment for for Mr. McCombs; and when this case came up Mr. McCombs said, "Do you remember that deed?" I said, "I do remember the deed you asked me to take the acknowledgment of an old man that was giving a piece of property to his daughter." Now, that is the way it was brought to my attention.

20

30

Q. So your memory respecting this particular transaction is very clear? A. As clear as I have told you.

Q. Would it surprise you to know that you did not sign your name to this deed as a witness to the signature? A. I would say that I did sign it.

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MRS. ETHEL DALY, sworn.

40

*Mrs. Ethel Daly—Direct.*

DIRECT EXAMINATION BY MR. TOWNSEND:

Q. Mrs. Daly, you are one of the daughters of Charles Morrison, deceased? A. I am.

Q. You are a sister of Grace Morrison, and a sister of Walter Morrison? A. Yes.

10 Q. Where do you live? A. 54 Monticello Avenue.

Q. Jersey City? A. Yes.

Q. You are married? A. Yes.

Q. And have two children? A. Yes, sir.

Q. How old are your children? A. Well, fifteen and six and a half.

Q. How long has your mother been dead? A. Well, I think seventeen or eighteen years.

20 Q. How long did your father live at 236 Jackson Avenue? A. About fifteen years.

Q. Who lived there with him? A. Why, my sister and father lived together.

Q. That is, your sister, Grace? A. Yes.

Q. Do you know when your father died? A. A year ago.

Q. July 29, 1921, was it not? A. I think it was July 31st; I was away at the time.

30 Q. Now, I take it that your father and Grace made their home at 236 Jackson Avenue—how long did you say they had lived there, Mrs. Daly? A. About fifteen years.

Q. How old was your father when he died? A. I think he was eighty years old—perhaps a couple of years older; I don't really think he knew himself.

Q. In the later years of his life did he visit your house with Grace at times? A. He did.

4) Q. When was the last time that you can recall he was at your house? A. In August, 1918—perhaps 1919.

*Mrs. Ethel Daly—Direct.*

Q. And where were you living at that time? A. At 592 Bramhall.

Q. What was his condition—his physical condition—when he came to your house this last time?

A. Well, he was very quiet; he never had much to say; he always seemed to me as if he was not just right.

Q. Well, what was his physical condition so far as to whether he was feeble, or not, or whether he was active? A. He was feeble; he didn't ever seem to me as if he could do much work. 10

Q. How did he walk? A. He walked very slow.

Q. Would he come to your house alone, or would Grace be with him, or someone else? A. He used to come alone.

Q. Now, at times your children would go down to visit your father and sister at their premises, would they not? A. Yes, they did. 20

Q. And it was your children that Miss Braden referred to in her testimony as "when the grandchildren came"? A. Yes.

Q. How long had he been in that feeble condition you have spoken about, before 1918, would you say? A. Why, he never worked very much; in the Winter he never worked hardly at all, and would not go out when it was stormy; he was really feeble, I think, for some years back, because he would not go out in the Winter at all, it was too stormy. And if it was very cold where he had to work, he couldn't stand it. 30

Q. In the latter years of his life, what were your father's habits, so far as taking care of his money, or spending money, was concerned?

Mr. Sewell: I object; it is irrelevant, incompetent and immaterial; and, furthermore, I presume this lady knows only from 40

*Mrs. Ethel Daly—Direct.*

hearsay.

The Vice Chancellor: You can test her and see whether she knows. I will sustain the objection now.

Q. I am referring to the time when you actually saw this yourself, not from what someone told you?

10 A. Well, I saw myself that he was very close. He would always go to the end of the room, if he was going to take any money out of his pocket, and turn his back, so you would not see what he did take out. No one ever knew what he had.

Q. You mean, none of your family knew that?

A. No; he never told us anything.

Q. Would your mother know? A. My mother would not.

20 Mr. Sewell: I object to it, your Honor. How does this lady know, of her own knowledge, whether her mother knew?

The Vice Chancellor: Well, I think, if she was her daughter, and lived in the same household, it would not take very long to find out.

Mr. Sewell: Well, she only knows from what the mother told her.

30 The Vice Chancellor: That is drawing the line too fine. She can tell, from living in the household with her father and mother, whether her father was close, or not.

Mr. Sewell: I do not mean that, but whether the mother knew what he had, etc. Furthermore, it is irrelevant and immaterial.

The Vice Chancellor: I will strike out the question and answer. I do not think it is material.

40 Mr. Townsend: My whole purpose of that question is to show how, in the normal course

*Mrs. Ethel Daly—Direct.*

of life, he handled his money.

The Vice Chancellor: She has testified that he was very close and secretive about his money.

Q. Now, do you know the last time that he worked, Mrs. Daly? A. Well, no, I don't. He used to work on and off, and then he would stay home a while, and then would go again. 10

Q. Since 1918, do you know whether he worked steadily, every day? A. I remember, in 1918, when he came to see me, he was not working then.

Q. For how long a period of time had he not been working?

Mr. Sewell: I object, on the ground that she only knows from hearsay.

The Vice Chancellor: You can ask the question if she knows, and how she knows. 20

The Witness: I really don't know when he stopped. I only know he used to take a position every once in a while, and then he would give up again.

Mr. Sewell: I object, and ask that that be stricken out.

The Vice Chancellor: I will strike it out.

BY THE VICE CHANCELLOR: 30

Q. How do you know your father did not work? A. Well, he would come and see me at different times during the day; then, again, I would meet him on the Avenue, and would know, of course, that he was not working; and my sister often, when she came to see me, would say "Papa is not working."

Q. That is, your sister, Grace? A. Yes. 40

*Mrs. Ethel Daly—Direct.*

BY MR. TOWNSEND:

Q. Now, did Grace come and see you frequently? A. She did, quite often—every little while.

Q. Do you recall any particular time when Grace came to you and stated, or made a statement respecting some trouble with tenants? A. Why, 10 yes; she had trouble with every tenant that lived there.

Mr. Sewell: I object, and ask that it be stricken from the record.

The Vice Chancellor: I will strike it out.

Q. Did she, at any time come to you and say that anyone was going to sue her father?

20 Mr. Sewell: I object, on the ground that it is very leading.

The Vice Chancellor: It is leading.

Mr. Townsend: I put it that way in order to avoid the other questions.

Q. Well, was there ever any conversation between you and Grace respecting any complaints by a tenant for lack of heat in the apartment, or wall-paper, or something like that?

30

Mr. Sewell: I object to it, as leading.

The Vice Chancellor: I will sustain the objection.

BY THE VICE CHANCELLOR:

Q. Did Grace ever talk to you about any difficulty your father had with the tenants? A. Yes, she did; she didn't say father had; but she said the 40 tenants was going to sue father on account of the

*Mrs. Ethel Daly—Direct.*

wall-paper was not clean on the wall.

BY MR. TOWNSEND:

Q. And when was that—can you specify the day or the year? A. Well, that might have been 1919—I don't know just what year that was.

Q. To the best of your recollection, when was it, Mrs. Daly? A. Well, I should think, 1919, or around that—no, I don't know—it might have been 1918. 10

Q. Some trouble developed between you and Grace, did there not, after this transfer of this property took place? A. Yes.

Q. You never saw Grace after that? A. Well, yes; I told her I did not wish to see her any more.

Q. I say, you never saw or talked to her after that? A. No, I did not. 20

Q. Did she tell you at any time that her father was going to give her all the property?

Mr. Sewell: I object; it is leading.

The Vice Chancellor: Do not lead the witness that way. It is simply destroying her testimony, this thing of asking the witness a leading question so as to suggest the answer.

Mr. Townsend: When I refer to the subject-matter, it is not leading. 30

The Vice Chancellor: I know, but this question is distinctly leading.

Mr. Townsend: I do not want to lead the witness.

Q. Was there anything ever said between you and Grace respecting the property or moneys of your father?

Mr. Sewell: I object, on the same ground. 40

*Mrs. Ethel Daly—Direct.*

The Vice Chancellor: I will overrule that objection. This is only directing her attention to the subject-matter, without putting the words into her mouth.

10 A. Why, Grace said that she had the house turned over to her; and I said, "Well, there is two of us," I said, "and if that is the way you look at it, you need never come to see me no more." That is the last time I saw her.

Q. Was that the first conversation you had had with Grace respecting that subject-matter? A. Yes, that is the first.

Q. Now, you saw your father in the month of March, the latter part of March, 1921, or the first part of April, did you not, at your brother, Walter's, house? A. Yes, I did.

20 Q. What was his physical condition then, Mrs. Daly? A. Why, I think it was very bad.

Q. Well, I mean, how did he act—was he able to walk alone—was he able to see—did he recognize you, or anything like that?

30 Mr. Sewell: One moment—I do not like to keep objecting, but Mr. Townsend might just as well take the stand and testify that the man was unable to walk, and could not see, etc.

Mr. Townsend: I am just directing the witness's attention to the subject-matter.

The Vice Chancellor: I think you are telling her what to answer, Mr. Townsend.

Mr. Townsend: I do not want to do that.

The Vice Chancellor: I know you do not, but that is the effect of it.

40 Q. Just tell us what your father's condition was when you saw him in March or April, 1921? A.

*Mrs. Ethel Daly—Direct.*

Well, he was very feeble; he could not walk very good without being assisted; and he could not see very good.

The Vice Chancellor: That was in 1921?

Mr. Townsend: Yes, sir.

The Vice Chancellor: That is long after this deed was made.

Mr. Townsend: It was just about one year, your Honor. If your Honor thinks it is to remote— 10

The Vice Chancellor: Of course it is too remote. I want evidence of what his condition was when he made this deed.

The Witness: Well, his eyesight was always very bad.

Q. Did you see him during the year 1920, Mrs. 20  
Daly? A. No, I don't think so.

Q. You don't remember? A. No. I didn't see him then, but Grace used to come and see me, and then she said he was not working and so he didn't come. It was Christmas at that time, and he did not come then.

Q. Did Grace say anything to you respecting his physical condition? A. She just said he was not working, and that is why he would not come. He used to always bring some money, around Christmas time, to the children; but he didn't then because he was not working then, so she said. 30

Q. When was that? A. About 1920, I think— during 1920.

Q. Was that Christmas, 1920, or Christmas, 1919?

Mr. Sewell: I object. The witness has already answered that it was December, 1920.

The Vice Chancellor: I will allow it. 40

*Mrs. Ethel Daly—Cross.*

A. Well, I don't know just what date it was.

BY THE VICE CHANCELLOR:

Q. When did you learn that your father had given this deed to Grace? A. When she came and told me about it.

Q. Well, when was that? A. 1920, I think.

10 Q. When did you father die? A. He died July 31.

Q. What year? A. 1921.

Q. Well, did Grace come down to your house on Christmas before your father died? A. No, not that Christmas, it was the Christmas before, because that Christmas I think he was with my brother.

20 Q. Was he living with your brother? A. Yes, around that time.

CROSS EXAMINATION BY MR. SEWELL:

Q. When you say that your father was "in a feeble condition," what do you mean by that? A. Well, he walked very slow, and he looked very bad in his face—sort of a dazed look.

Q. You know, however, that he worked down in the shipyards, don't you? A. On and off, he did.

30 Q. Well, pretty steady, didn't he? A. I don't think so; he never went out during the winter, even for years back.

Q. But, with the exception of cold days in the winter, he worked pretty steady down there, didn't he? A. I don't know; he would be home quite some few weeks, and then he would work again, like that.

40 Q. Would you consider a man who was so very feeble could do that? A. Well, to tell you the truth, I don't think he did it when he was there, be-

*Mrs. Ethel Daly—Cross.*

cause he was very slow in his movements, very slow.

Q. You did not see your father very often during the last years of his life, did you? A. He used to come to see me. (Question repeated): A. When he came to see me.

Q. Well, how many times a year, would that be? A. Well, every couple of months, or so.

Q. Since the time that your mother died, or since your marriage, which ever was last, your sister Grace lived with your father, didn't she? A. Yes. 10

Q. And how many times have you been in your father's house since the time of your marriage? A. I went there very seldom; once in a while I would go, but very seldom.

Q. The only time you ever saw your father, then, was when he called at your home, or when you accidentally met him on the street? A. No—that is, once in a while I would stop there, but very seldom, because— 20

Q. Never mind the "because"—how many times during the fifteen or sixteen or seventeen years of your married life did you call at that house to see your father? A. Well, not very often.

A. About how many times? A. Well, maybe once every few months.

Q. What do you mean by "every few months"? A. Or once, maybe, in six months; I don't know; I did not care to go there. 30

Q. You did not see him at his own home in the last five years he lived with Grace, did you? A. Oh, yes; I did.

Q. Well, when you say you did not go there very often, what do you mean? A. Well, maybe once in six months, or maybe once in a few months.

Q. And sometimes once in a year, isn't that right? A. Well, perhaps lately, yes, perhaps.

Q. In fact, in the whole year 1919 you did not go to the house once, did you? A. Well, I don't know 40

*Mrs. Ethel Daly—Cross.*

about that. He used to come to see me.

Q. And, during the first part of 1920 you did not go to see him, either, did you? A. I don't know as I was there; my children was there. I didn't go there very often; my sister and I did not agree.

10 The Vice Chancellor: I understand the witness's testimony was that she did not see her father in 1920.

Mr. Sewell: That is what I understand.

Q. Now, you have some interest in this particular litigation going on now, haven't you, Mrs. Daly? A. Yes, I have.

20 Q. You made an agreement with Walter Morrison that you would not contest the will, or make any protest against his obtaining this property, and that you would divide the proceeds fifty-fifty between you two—is not that correct? A. I only wish my share.

Q. Well, your share would be one-half, wouldn't it? A. I do not wish one-half, I only wish one-third.

30 Q. But this agreement you made, through your attorney, Mr. Townsend, is that you will receive one-half and your brother Walter will receive one-half—is not that correct? A. Perhaps that is so, but I only wish my share.

BY MR. GANNON:

Q. Did you have any reason for not going to your father's house during that year that you did not go?

Mr. Sewell: I object; it is irrelevant and incompetent and immaterial why she did not go there.

40 The Vice Chancellor: He is asking her if she had any reason. The answer is "Yes," or "No."

*Mrs. Ethel Daly—Cross.*

A. I never had no reason toward my father, but my sister and I did not agree; in fact, she did not want my brother to come; she has even said so to me—she didn't want him, as she had everything in her own hands.

Q. And that is the reason you did not go to see your father at his home during that year? A. That is just the reason. He used to come and see me. 10

BY MR. SEWELL:

Q. But your sister visited your home, did she not? A. She did.

Q. And your relations were not so objectionable she would not visit you? A. I told her I did not care to see her at all, and finally I told her I did not want her to come any more. I would not shut the door in her face; I naturally told her I did not want her. 20

Q. But she was perfectly willing to visit you, wasn't she? A. I suppose she was.

Q. So she did not have such an unfriendly attitude toward you, did she? A. But I did toward her.

Q. That is the only reason you stayed out of the house? A. That was the reason.

Q. And you did not think sufficient of your father, during the last fifteen years of his life, to visit him? A. Sometimes; once in a while; and father used to come quite often to see me; and he also brought money to the children at Christmas time. 30

BY MR. TOWNSEND:

Q. On any of the times that you visited your father, in the later years of his life, at his home, would anyone be there beside your father and your- 40

*Mrs. Mary Larkin—Direct.*

self? A. When I would visit?

Q. Yes? A. No. My sister would be there.

Q. Was she, or was she not, always present when you talked with your father? A. Well, I don't know, I guess she was.

BY THE VICE CHANCELLOR:

10 Q. Well, when did this feeling come between you and your sister? A. Well, we were never on very friendly terms; and I don't really think she wanted my brother, from what she would say to me.

Q. No, do you mean to say, since your mother died, you and she have not been on friendly terms? A. Well, I don't know; we did not seem to agree very well at all times.

20 BY MR. SEWELL:

Q. But this was no open bitterness toward one another—that is, you would speak if you met, wouldn't you? A. Oh, yes; we would speak.

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MRS. MARY LARKIN, sworn.

DIRECT EXAMINATION BY MR. GANNON:

30 Q. Where do you live? A. 65A Atlantic Street.

Q. What is your occupation, or profession? A. Nurse.

Q. How long have you been a nurse? A. About thirty years.

Q. Are you a graduate nurse? A. No, not from this country.

Q. But you do nursing? A. Yes.

40 Q. Did you ever live at 236 Jackson Avenue,

*Mrs. Mary Larkin—Direct.*

Jersey City? A. Yes, sir.

Q. For how long? A. From the 1st of August until the 1st of April.

Q. What year? A. 1921, I think it was.

Q. From the 1st of August, 1921? A. Yes.

Q. To the first of when? A. April.

Q. Of what year? A. 1921, I think it was—well it was from August until the following April. 10

Q. Take your time—now, the 1st of August of what year? Let me ask you this—when did you move from that place? A. On the 1st of August, but I don't know positive the year, whether it is 1920.

Q. You moved from 236 Jackson Avenue on the 1st of August of last year? A. No, we moved from Jackson Avenue on the 1st of April of last year.

Q. Of last year? A. Yes. 20

Q. How long had you been living there? A. From the August preceding.

The Vice Chancellor: That would make it from August, 1920, to April, 1921.

BY THE VICE CHANCELLOR:

Q. How many winters have passed since you live there? A. Just one. 30

Q. Is that the present winter? A. Yes, sir.

BY MR. GANNON:

Q. What floor did you live on in that house? A. The top floor.

Q. Who lived downstairs? A. Miss Morrison and her father.

Q. You and Miss Morrison were quite friendly when you lived there? A. Yes; I always felt very sorry for her; she was all alone.

Q. And what is your feeling towards her to- 40

*Mrs. Mary Larkin—Direct.*

day? A. Well, I still feel very sorry for her; of course we are not such good friends as we were, but I still have a friendly feeling toward her.

Q. Now, while you lived at the Morrison house did you ever have occasion to go down to Mr. Morrison's apartment?

10 Mr. Sewell: I ask that the time be fixed.

Q. While you lived there between August, 1920, and April, 1921, did you ever have occasion to go down to Mr. Morrison's apartment? A. Yes; I have spoken to him several times.

Q. About how many times? A. Oh, I don't know; I couldn't really say that; any time I would meet him I would always speak to him.

Q. How frequently would you see Mr. Morrison? A. Well, sometimes if I was home in a month, I  
20 might see him once in the month.

Q. What was his physical appearance? A. Well, he was a very sick man, to my mind.

Q. Well, how did he look?

Mr. Sewell: May I ask that Mr. Gannon fix the times she saw this man? That is quite a long time, from August, 1920, to April, 1921.

30 Mr. Gannon: She says she saw him many times between the times she was there.

The Vice Chancellor: Fix the time, as near as you can.

BY THE VICE CHANCELLOR:

Q. How frequently did you see him? A. Well, sometimes I would be away a month, and would not see him; and sometimes I might be home just one day, and see him; and perhaps I wouldn't see him  
40 again for another month.

*Mrs. Mary Larkin—Direct.*

Q. But how frequently were you at home? A. Well, sometimes I am on a case for two weeks, sometimes four weeks; and I am very seldom home, very seldom.

Q. What length of time would you be home, when you came home—how long would you stay?

A. Sometimes a week, sometimes only a couple of days.

Q. During the time you were at home how frequently would you see Mr. Morrison? A. Well, sometimes I would not see him at all, and sometimes I would. 10

BY MR. GANNON:

Q. Now, Mrs. Larkin, did you ever have any conversations with the defendant, Grace Morrison, regarding her father's physical condition, or his affairs? A. Not his affairs, at all, but his physical condition, I did. 20

Q. And do you recall how many times you had conversations of that nature? A. Well, just about once or twice; that was about all.

Q. Do you recall what that conversation was?

Mr. Sewell: I ask that the time be fixed.

Q. Well, do you recall about when this conversation took place? A. Well, I really could not recall just the time. 30

Q. Was it in the first part of the period that you lived in their house, or the middle, or toward the end? A. No, it was about the middle.

Q. About the middle? A. Yes.

Q. And that would be, I suppose, around December, 1920?

The Vice Chancellor: About Christmas 40

*Mrs. Mary Larkin—Direct.*

time.

A. Yes, about that, I think.

Q. Do you recall what Miss Morrison said to you at that time regarding her father's physical condition? A. Well, she was very much worried about her father.

10 Q. What did she say? A. She told me her father's feet swelled terribly, and that he was up at all hours of the night; and I told her I didn't think that was a very good sign.

Q. What else? A. Well, that was about all I said to her.

Q. At the times when you went down to Mr. Morrison's apartment you saw him there? A. Yes.

Q. And you saw his daughter? A. Yes.

20 Q. And did you notice any unusual actions, either on Mr. Morrison's part, or Miss Morrison's part? A. No, never; the only thing was that Mr. Morrison, at times, I couldn't understand what he would say to me when he did speak.

Q. Why? A. Why, he seemed to mumble so that I could not understand him sometimes, at all.

Q. What was his manner of speech, ordinarily—clear, or indistinct? A. It was never very clear.

Q. Ordinarily? A. No, it was very, very weak.

30 Q. Never clear? A. No.

Q. And when you went into his apartment, or around the house, did you ever notice how Miss Morrison treated her father? A. Well, I always thought she was very good to her father, as far as I saw.

Q. Do you recall an incident, Mrs. Larkin, about the throwing away of a pitcher or dish belonging to Mr. Morrison? A. Well, I don't know anything about that; my daughter was the one that  
4) noticed that.

*Mrs. Florence Todd—Direct.*

Q. Who collected your rent, while you were there? A. Miss Morrison.

Q. Who signed the receipts? A. Miss Morrison.

Q. Do you recall how they were signed? A. "Grace Morrison."

Q. Charles Morrison's name did not appear in the receipt, at all? A. Not at all.

10

No cross examination.

MRS. FLORENCE TODD, sworn.

DIRECT EXAMINATION BY MR. GANNON:

Q. Mrs. Todd, you are a daughter of Mrs. Larkin, the former witness? A. Yes.

20

Q. And you lived with her at 236 Jackson Avenue, Jersey City, during the period that Mrs. Larkin has mentioned? A. Yes, sir.

Q. Of course you knew the deceased, Charles Morrison, and his daughter, Grace Morrison? A. Yes, sir.

Q. Did you ever go to Charles Morrison's apartment during the time that you lived there? A. Well, not until the last year, when Mr. Morrison was sick; that was the first time I ever went in, outside of paying the rent.

30

Q. Was he in bed at that time, or walking around? A. No, he was walking around.

Q. And from your observation, could you see any physical ailment that he had—could you see what his physical ailment was? A. Well, of course I didn't know much about it, but—

Q. (Interrupting). Well, what was the signs that you saw? A. Well, I cannot really say, because I only used to see him walking around the

40

*Mrs. Florence Todd—Direct.*

dining-room.

Q. You just knew that he was sick, that is all?

A. Just knew he was sick, that is all.

Q. Did you ever have any conversation with the defendant, Grace Morrison, regarding the property or physical condition of her father? A. Well, the only time was when her father was sick, she said she would like to have the minister.

10

Q. The minister? A. Yes.

Q. Did she ever talk to you about her father?

A. No, the only thing she said was she thought it was the old age causing her father to be sick.

Q. How did Mr. Morrison act the times you saw him around the house? A. Well, the only time I would see him was when I was going down to pay the rent, and then he would be walking back and forth; he wouldn't have anything to say to me.

20

Q. While you were living there, do you know whether or not Mr. Morrison left the house? A. Why, I didn't know at the time that he left; I guess he had been gone three or four days when I met the daughter in the hall.

Q. Did he come back and live with the daughter during the period that you lived there? A. No, sir.

Q. He had not come back, up to the time you had left? A. No, sir.

30

Q. Did Grace Morrison tell you why her father left? A. No, she said her brother came and took her father away.

Q. Did you ever talk to Charles Morrison, the father? A. Well, the only time I met him was when I was in the yard.

Q. What was his manner of speech? A. Well, he didn't speak very plain.

Q. Did you ever observe the actions of Grace Morrison around the house? A. Well, at times  
40 I noticed she was queer.

*Mrs. Florence Todd—Direct.*

Q. In what way? A. Well, sitting up at night-times—that is, I would hear her up at nights—sitting up.

Q. Whereabouts? A. Well, through her apartment—at two or three o'clock in the morning—sitting up, looking out of the window.

Q. Did you ever observe her conduct toward her father? A. No, I never saw it.

Q. Never saw anything unusual? A. Not anything unusual; no, sir.

Q. Do you recall an incident of a pitcher, or a plate, being thrown out by Grace Morrison? A. Yes, sir.

Q. Will you kindly tell us of that incident? A. Well, I was in the yard, and the old man came back off the back stoop with a pitcher in his hand and said Grace wanted him to throw it out—

Mr. Sewell: I object to what was said.

10

20

BY THE VICE CHANCELLOR:

Q. When was this? A. This was in the year 1920—probably July or August—no, I guess it was later in the year, in September, probably.

The Vice Chancellor: That was after the will was made.

Mr. Sewell: Oh, yes—after the deed was made.

Mr. Townsend: This conversation took place between the 1st of August and the 1st of October; it was only two months afterwards. I take it it is admissible for the purpose of showing the deceased's mental condition.

The Vice Chancellor: I think I will let it in. I will strike it out if I find it is not material.

40

*Mrs. Florence Todd—Direct.*

Mr. Sewell: I would like to make an objection to anything that Charles Morrison said as not binding against the defendant, and that it is only hearsay from this witness.

The Vice Chancellor: Oh, no; this witness heard it.

10 Mr. Sewell: This witness heard Charles Morrison say something.

The Vice Chancellor: I do not understand that that is what she is going to testify to.

Mr. Sewell: That is what she is asked to testify to—that is the question.

The Vice Chancellor: I will let it go.

20 Q. What did he say, Mrs. Todd? A. He said Grace wanted to throw the pitcher out, and would I mind taking it. I said, "Why, yes," because I thought from that, that Mr. Morrison did not want to part with it.

Mr. Sewell: I object to what she thought.

The Vice Chancellor: I will strike that answer out, unless the attention of Grace was called to it.

30 Q. Did you speak to the defendant, Grace Morrison, afterwards about that incident? A. No; she stood in the doorway, and didn't say anything.

Q. And you took the pitcher? A. Yes.

BY THE VICE CHANCELLOR:

Q. Did she hear what her father said? A. Yes, she stood in the door.

40 Q. And she heard what her father said? A. Yes.

*Mrs. Florence Todd—Direct.*

Mr. Sewell: I withdraw my objection then.

BY MR. GANNON:

Q. What happened to the pitcher? A. I took it upstairs, and I still have it.

Q. What kind of a pitcher was it? A. It was a glass pitcher, with a sort of silver top to it. 10

Q. And was it in good condition? A. Yes, sir—outside of the cover—it didn't have any cover on it.

Q. You had occasion to go in and around the Morrison apartment after the father had left? A. After the father had left, yes.

Q. Were you ever there while the father was living with her? A. No, sir.

Q. Did you notice the condition in which the apartment was kept? 20

Mr. Sewell: I object to what the condition was after the old gentleman left.

The Vice Chancellor: I will admit it.

A. Why, the same condition as when the father was there.

Q. Mrs. Todd, do you know of anything unusual in the treatment by the defendant, Grace Morrison, of the father, Charles Morrison? A. No, sir. 30

Q. After Grace Morrison sold this property on Jackson Avenue she lived with you for a while, did she not? A. Yes, sir.

Q. And how long? A. About three months.

Q. Was there anything unusual about her actions during the time she lived with you? A. Well, the only thing I used to notice was that she would sit at the table and laugh; I asked her what she was laughing at; she would say "Nothing." 40

*Walter Morrison—Direct.*

Q. Did she ever talk to you about her father's property, during that time? A. No.

Q. Ever have any conversation with her about the pendency of this suit? A. Well, the only thing she said to me was that the brother thought he would get it, and she would fool him—that it was all hers, and she was going to have it.

10 Q. Did you ever notice anything in Miss Morrison's conduct, during the time she lived with you, regarding the stories she would tell you about things that would happen to her on the street?

Mr. Sewell: I object to it, as irrelevant and incompetent.

Mr. Gannon: Well, I will withdraw it. It is material, of course.

20 Mr. Townsend: If your Honor please, we think it is material, for this reason: We propose to show, if your Honor considers it material, that the defendant in this case is affected mentally. We offer that for the purpose of showing that her father, of course, must have realized that he would not divest himself of his property and give it to a person who was not competent to handle it.

30 The Vice Chancellor: I will not admit the offer. If she is not of sound mind, you had better have a guardian appointed for her in this case.

No cross examination.

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WALTER MORRISON, sworn.

DIRECT EXAMINATION BY MR. DOHERTY:

40 Q. Walter, you are the son of Charles Morrison, deceased? A. Yes.

*Walter Morrison—Direct.*

Q. And during the time that your father lived in Jackson Avenue did you ever have occasion to visit him? A. Yes, sir.

Q. And how frequently did you visit him? A. Probably sometimes twice a month, sometimes three times—except about five months during each year for the last four years back.

Q. And did you have free access to the house? A. Well, I walked into the house where my father was, and sat down and talked to him; and my sister was always there. 10

Q. And did you have occasion to visit your father on or about the middle of May, 1920? A. Yes, sir.

Q. And could you state what his general condition was at that time, physically? A. Why, his condition at that time was very feeble, in my opinion, because I asked him, at that present time, if I should take him up to the country— 20

Mr. Sewell: I object, unless it was in Grace's presence.

Q. Was Grace present when you talked to your father? A. Yes, sir.

Q. All right—what was said? A. Why, his condition, at that time, was very feeble; he was doing nothing; and, as I was opening up a hotel up in the Catskills Mountains (that was about May 19, 1920) and I was to open up May 30, Decoration Day, I came about a week and a half or a week and three days before, and asked him if he cared to go away to the country with me, and I would bring him back in September after Labor Day, probably the 15th, or the 1st of October—that I would go up with him and bring him back again, and I thought it would do his health good. 30

Q. Now, along about the middle of May, 1920, 40

*Walter Morrison—Direct.*

what was his condition when you went to visit him, and Grace was present? A. Why, he was very feeble at the time being; he was practically doing nothing, and hadn't been doing nothing for quite a while, more or less.

10 Q. And did he go out walking alone, that you know? A. Why, he went out occasionally to the store; but he seemed to be very forgetful as to what he was to get, and the like of that; and there used to be a dispute between Grace and himself.

Q. While you were there? A. When I was there, that Sunday morning.

20 Q. What was the dispute about? A. Why, in October, late, 1920 (I should judge around the 15th or 16th), on Sunday morning, I had occasion to go out through there and pass the door, so I stopped in to see him; it was around half-past ten in the morning; and as I came to the front door the bell had a sign on that it was not working; so it was the first occasion I ever went around to the back, because I knocked in the front and got no answer this morning; so I walked around through the back way and up the back stairs, and I knocked at the door, and she opened the door. I walked into the kitchen, and she turned around and deliberately said to me, "What do you want here?" That was the first occasion she ever asked me to that effect. I said, "I  
30 came here the way I always came—to see my father." She said, "I want you to perfectly understand this is my house, and not yours, and I want you to get out of it." I said, "Just a second—I won't get out of this house as long as my father is here, unless he says he don't want to see me; then it is time to move; but, as for you, I don't recognize you, at all."

40 Q. Did you ask your father if he wanted to see you? A. Yes, I asked him; and he was sitting at the stove in a chair, crying; and he says to me then

*Walter Morrison—Direct.*

—he got up from the chair and said, "I am sick and tired of it all; I am sorry I didn't go away with you the early part of the season"; he says, "if I had any way to be there I would have been up there before this, but I couldn't find you"; so he said, "I will go with you now." So I said, "Well, you have got your home; you don't have to go with me." He said, "I have no home; I am treated worse than a dog in the street"; and he says, "She abuses me." And at that time he was crying for forgetting a bag of salt that night before. 10

Q. Was Grace present then? A. Yes. At that time being he said he was ready to go with me and do any chores at all for me. I said, "It is not necessary to do any chores for me"; I says, "you kept me," I says, "it is my turn to keep you at present." So he went to get up, and his coat and hat—

Q. (Interrupting). Did your father go with you that morning? A. That morning he came to my house. 20

BY THE VICE CHANCELLOR:

Q. What day was that? A. That was about October 15, 1920—I think the 15th or 16th; it was on Sunday morning. So then he said he was ready to go now. And she got up, kind of bold, and she says, "If you want to go, here is your coat and hat" —they was hanging on a hook on the door-jamb in the kitchen—and she deliberately went over and got his coat and hat and kind of threw them at him. The buttons was tore off his shirt where he told me that she had beat him. He was sitting there, crying. He had no cuff buttons; his shirt was all open, with no buttons on it. So I stepped down on Jackson Avenue and got a pair of cuff buttons for his shirt— 30

40

*Walter Morrison—Direct.*

Mr. Sewell: I object.

Q. Did you take him home with you? A. He came home with me at that time.

Q. Did he have any money in his pocket? A. He had seventeen cents in his pocket.

10 Q. Where did he go after that? A. Why, he came down, and he lived with me from that time on until the time of his death; and he asked me—

Q. (Interrupting.) When did he die? A. He died July 30, 1921.

Q. Where? A. At Rosendale, New York.

Q. Was that at your home? A. Yes, sir.

Q. Now, during the time when he first came to live with you in October, 1920, did your father have any funds from which to draw? A. He didn't have nothing at all, at the present time.

20

BY THE VICE CHANCELLOR:

Q. What do you mean by "the present time"?

A. Why, he had a couple of bank books, it seemed, that was in his name, but she held on to the books and he could not get them.

BY MR. DOHERTY:

30 Q. I mean, up to the time she refused to give up the bank books, from the time he came to live with you in October, did he have any funds, other than the seventeen cents that he came to you with? A. No, sir.

Q. And where did he get his money during that time? A. Why, I had to keep him myself for that time.

40 Q. Did Grace come to visit you during that time? A. She came there two weeks after he had came to my house, and she knocked at the door—

*Walter Morrison—Direct.*

during the day—I wasn't home myself, but my wife was there——

The Vice Chancellor: Your wife will testify as to that.

Q. Well, you don't know about that; it was only what your wife told you. You were the executor of your father's estate—letters testamentary were granted to you by the Orphans Court? A. Yes, through the Orphans Court. 10

Q. Do you know what your father's estate consisted of, in assets, on or about May 14, 1920? A. Why, yes; he had the property on Jackson Avenue; he had an account——

Q. (Interrupting.) That is, 236 Jackson Avenue? A. Yes; he had an account in the Provident Savings Bank. He had one—well it was practically understood that it was his—in the Claremont Bank. Of course it seemed to be in her name, but he always had the understanding it was his. 20

Mr. Sewell: I object to that.

The Vice Chancellor: That will be stricken out.

Q. What about the banks in New York? A. He had one in the Seamen's Bank; and he had one in the Greenwich Savings Bank. 30

Q. Did he draw any money from those banks after he came to live with you, and before the demand made on Grace Morrison? A. No; he couldn't.

Q. Why? A. He didn't have the books, or nothing.

Q. Did he ever make a demand on Grace for those bank books?

*Walter Morrison—Direct.*

Mr. Sewell: One moment—was he there?

A. Yes, I was there when he made the demand.  
BY MR. SEWELL:

Q. When who made the demand? A. When my father made the demand for his personal property, papers and all.

10 BY MR. DOHERTY:

Q. Did she give them up? A. No, she wouldn't give nothing up; she wouldn't even give the deed up for his grave. I had to swear an affidavit out in the cemetery to bury his body; and she holds to-day the deed for this grave.

Q. And at the time your father came to you he had no other property than the seventeen cents he had when he came? A. That is all.

20 Q. Now, how long had your father been living at 236 Jackson Avenue? A. I should judge, around fifteen years.

Q. And during that fifteen years Grace lived with him? A. Yes, sir.

Q. Had anybody else lived with her during that time? A. Why, I lived there myself.

Q. When did you leave there? A. Twelve and a half years ago.

30 Q. So that for twelve years Grace and your father lived together at the homestead, 236 Jackson Avenue? A. Yes, sir.

Q. And who took care of his affairs, if you know, during that time?

Mr. Sewell: I object, unless this man knows of his own knowledge, and states the basis of his knowledge. Probably someone has told him.

40

*Walter Morrison—Direct.*

Q. Do you know who took care of your father's affairs during the twelve years he lived on Jackson Avenue? A. Why, I couldn't positively say of the late years, at all, or practically any time, who took care of them. It seems he took care of everything himself until late years, after I was out of there.

Q. Well, up to what time did he take care of his affairs himself, do you know? A. Why, I should judge about five years, say—it was about 1910 or '12, something like that, I should judge, because he got kind of feeble. 10

Q. How do you know that? A. Well, I used to go in there quite often, and he seemed to be quite feeble; and, practically, from 1915, to my knowledge, he done very little work, only on and off; he never, practically, what you call "worked steady."

Q. Who took care of his affairs after 1910 or '12? A. Why, there was very little affairs to take care of, excepting collecting the rents and the deposits; and I always had the understanding—— 20

Mr. Sewell: I object.

Q. Not your understanding, your knowledge, Mr. Morrison— do you know who made the deposits in the banks—in the Claremont Bank and the Provident? 30

Mr. Sewell: I object, unless this man knows of his own knowledge.

The Vice Chancellor: He is asking him if he knows.

Mr. Sewell: All right; I withdraw the objection.

The Vice Chancellor: He may say "Yes," or "No."

A. Why, it was my father and my sister—— 40

*Walter Morrison—Direct.*

The Vice Chancellor: No, the answer is "Yes," or "No."

A. Yes, I know.

Q. Well, how do you know? A. Because he told me himself that he went to these banks with Grace.

10

Mr. Sewell: I object.

Q. Was Grace present when your father told you how it was these deposits were made? A. She even told me herself, at the present time, that she went to the bank.

Q. First of all, I want to get whether what you know from your father was in Grace's presence?

A. Yes, she was in the kitchen at the present time.

20

Q. What did your father say about these deposits?

Mr. Sewell: I object. I don't know whether he means they were in the same room, or not.

The Witness: In the same room.

BY THE VICE CHANCELLOR:

30 Q. Grace and your father and you were in the same room? A. Yes; she never left us out of her sight from the time we entered the house until I left, for fear he might say something.

BY MR. DOHERTY:

Q. What was said? A. He said every time he went to the bank she had to draw out the money; he was not working steady; sometimes he used to draw money out, and he was doing a little repairing, more or less, at the house—he changed his tubs  
40 and sink, and had made some improvements in the

*Walter Morrison—Direct.*

house—and at those times he went to the bank, drew the money out, and Grace went with him; and he had to open a bank account in the other bank, in the Claremont Bank, and it was always understood that it was to be in his name, and she would go down with him.

BY THE VICE CHANCELLOR:

10

Q. Is that what your father said? A. I understood that he told——

Q. No, did your father say he understood the money was in his name? A. Father said that right in the kitchen.

BY MR. DOHERTY:

Q. In Grace's presence? A. In Grace's presence. 20

Q. That the money that was deposited in the Claremont Bank was to be deposited in his name?

Mr. Sewell: I object. This is your witness. Do not tell him what to say.

Q. Did you have a talk with Grace about these deposits afterwards? A. No, I never had a talk with her in regards to them. 30

Q. Didn't she make any comment about what the father had told you in her presence? Did she just sit there and say nothing? A. Why, she practically said nothing, only sat there and listened; and he said he was getting feeble and she had to go down with him.

Q. Did she ever have any conversation with you regarding these bank deposits? A. No; she said nothing in regards to them.

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*Walter Morrison—Direct.*

(At this point, the further examination of the witness was suspended by consent, in order to allow Mr. Warren to testify.)

JOHN WARREN, ESQ., sworn.

DIRECT EXAMINATION BY MR. GANNON:

10 Q. You are a counsellor-at-law of the State of New Jersey? A. Yes, sir.

Q. And did you know Charles Morrison in his lifetime? A. Yes, sir.

Q. How did you become acquainted with him? A. Why, his son, Walter, brought him to my office.

Q. When was that—do you remember when he first brought him to your office? A. October, 20 1920.

Q. And what was the purpose of his visit to your office?

Mr. Sewell: I object.

The Vice Chancellor: Why?

Mr. Sewell: What difference does it make what the purpose was—how is that binding on the defendant?

30 The Vice Chancellor: I don't know what it is. It is not binding on the defendant as a conversation affecting a contract, but it may have some relation to the man's mental condition.

Q. What was the purpose of his calling at your office? A. To engage me as a lawyer.

Q. What professional work did he want you to perform? A. I don't know whether or not I should answer that, sir.

40

*John Warren, Esq.—Direct.*

Mr. Gannon: I might state to the Court that I have subpoenaed Mr. Warren, and he says he don't know that he should waive the privilege without the consent of the decedent's representative. Now, Mr. Walter Morrison is in court, and he is his representative; and if he wishes to waive, I do not suppose Judge Warren will have any objection to testifying. 10

Mr. Sewell: But is Mr. Morrison in a position to waive? The old gentleman came to hire Judge Warren.

The Vice Chancellor: Where does the confidential come in, in a case of this character?

Mr. Sewell: I don't know. Mr. Gannon has raised that point himself.

The Witness: I had some doubt, if your Honor please,—I did not know exactly what the rights were, or what the ethical situation was; and if your Honor thinks I should testify, of course I am perfectly willing to testify. 20

The Vice Chancellor: You are not making known secrets of transactions with the deceased, of a confidential character; I suppose you are here to testify to his mental capacity. 30

Mr. Gannon: In which will be involved, however, transactions and conversations between them.

The Vice Chancellor: That may be. Those things must come in to show mental capacity.

Q. What was the nature of the professional service you were called upon to perform, Mr. Warren?

A. In the first instance, he wanted some relief 40

*John Warren, Esq.—Direct.*

with reference to his property. He said that he had——

Mr. Sewell: I object to what he said.

The Vice Chancellor: What he said will be stricken out.

10 A. He wanted some relief with reference to some property——

Mr. Sewell: One minute, Judge Warren: Your Honor, why is not this method of putting in proof merely having Judge Warren testify, in an indirect way, as to what he said, and, in that way, using certain declarations? This man must have come in and said he wanted Judge Warren to do so-and-so; and Judge Warren, as a result of that conversation, got the idea that his purpose in coming to the office was to do so-and-so.

20

The Vice Chancellor: His purpose is to testify to the man's mental capacity.

Mr. Sewell: Well, is he limited to that?

The Vice Chancellor: That is what he is limited to at the present time, as I understand it.

30 Q. What was the matter concerning which he consulted you? A. To pass the property on Jackson Avenue, and some bank accounts.

Q. And at the time he came to your office, what inquiry from him did you make for any of the facts in the case?

Mr. Sewell: I object.

40 The Vice Chancellor: I overrule the objection.

*John Warren, Esq.—Direct.*

A. I asked him concerning his bank accounts, and concerning the transfer of the property, and with as much detail as was possible; and acquired the information from him after some effort.

Q. What do you mean by "after some effort"?

A. Well, it was rather difficult to obtain from Mr Morrison a connected story, or any assurance that what he said was absolutely accurate, and that he knew it definitely. He seemed to be very hazy, and I had very great— 10

Mr. Sewell: I object to that, and ask that "he seemed to be very hazy" be stricken from the record; that is drawing a conclusion.

The Vice Chancellor: I overrule the objection. He is merely describing a mental condition now.

A. (Resuming)—and he seemed to have very great difficulty in giving me any accurate statement of what had occurred, both with reference to his relations with his daughter prior to the transfer, and with his visit to Mr. Simpson's office, and as to the location of his bank accounts, or the amounts he had in them. 20

Q. Were you able, from your conversation with him, to locate the bank accounts, or was it necessary to institute an independent investigation? 30

Mr. Sewell: I object; it is very leading.

Mr. Gannon: Well, strike out the last part.

Q. Were you able, from your conversation with him, to identify and locate the bank accounts that he talked about? A. Not all of them.

Q. What ones were you not able to locate? A. The Seamen's Bank for Savings. I finally located 40

*John Warren, Esq.—Direct.*

that, though.

BY THE VICE CHANCELLOR:

Q. That is, located the book? A. No, I located the bank in which he had a deposit.

BY MR. GANNON:

10 Q. In what manner did you locate that bank account?

Mr. Sewell: I object.

The Vice Chancellor: The objection will be overruled.

A. Through an inquiry by letter; and I finally ascertained there was no "Seamen's Savings Bank" in New York, and I investigated the list of savings  
20 banks in New York and found out there was a "Seamen's Bank for Savings," and in that bank I located the deposit.

Q. In other words, by investigation independent of any information he was able to give you? A. Yes, except what he said to me that he "thought he had an account in the Seamen's Savings Bank." That is the way he described it.

Q. Were there any other bank accounts you located, besides the Seamen's Bank for Savings? A.  
30 Provident Institution for Savings; Greenwich Savings; and an account in the Claremont Bank, which, I believe, was in the name of his daughter.

Q. Regarding the Greenwich Savings account, did he mention that to you specifically? A. I could not say just now, unless I refer to a memorandum which was made at that time.

Q. Have you those memorandums with you? A. Yes.

Q. Will you kindly refresh your recollection?  
4) A. (Referring to a memorandum produced by the

*John Warren, Esq.—Direct.*

witness.) He mentioned "The Greenwich Bank"—I don't know whether I am permitted to state what he said with reference to trying to locate the bank accounts himself.

Q. Well, we will pass that over. Are you referring to a typewritten statement, Judge Warren?

A. Yes, sir.

Q. And was that statement made up at your dictation? A. It was dictated in the presence of Mr. Charles Morrison and his son, in my office, by me. 10

Q. Now, Judge Warren, can you fix for us the time of this interview you had with Mr. Morrison?

A. By reference to this statement, I can.

Q. What was the time? A. October 19, 1920, in my office.

Q. And how long was he in your office that day? A. Oh, I should say, at least an hour and a half.

Q. Now, did you ever perform any other professional services for him? A. Yes, sir; I drew his will. 20

Q. And what date was that? A. I don't know the date that I drew it, sir; I know the date it was executed.

Q. Was the will executed? A. Yes, sir.

Q. Have you the will with you? A. I have, sir.

Q. I ask you to produce it? A. (The witness produces a paper and hands the same to examining counsel.) 30

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Recess until two o'clock p. m.

AFTERNOON SESSION.

Hearing of the cause resumed at two o'clock p. m.

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JOHN WARREN, ESQ., recalled.

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*John Warren, Esq.—Direct.*

DIRECT EXAMINATION resumed by Mr. GANNON:

Q. As a result of your interview, you drew up a will for Mr. Morrison? A. I did draw a will for him.

10 Q. Were there any unusual facts concerning the execution of this will? A. Well, I would not attend the execution of the will, nor permit anybody in my office to witness it.

Q. Why not?

Mr. Sewell: I object to his reason.

20 The Vice Chancellor: I will sustain the objection. He can testify as to what he found the man's mental condition to be—he can testify to what the man's mental condition was, and that he did not sign as a witness to the will.

Q. From your conversation and interview with Mr. Morrison, did you form any opinion as to his testamentary capacity? A. Yes—with qualifications.

Q. And what was the basis of that opinion—what were the facts upon which you founded that opinion?

30

Mr. Sewell: I object, and ask that the witness be confined to simply relating what he saw and observed, and what he heard.

Mr. Gannon: That is the purpose of this question now. The former question was just to lay the foundation for the production of the facts.

Mr. Sewell: Well, I just want him confined to that.

40

Mr. Gannon: Oh, yes.

*John Warren, Esq.—Direct.*

A. Mr. Morrison's statements to me, in my office, plus his apparent inability to recollect facts that I thought ought to be in his mind——

Mr. Sewell: I object, and ask that it be stricken out from the record. We cannot tell what facts Judge Warren thought should be in his mind. That is drawing a conclusion. I do not think it is warranted. 10

The Vice Chancellor: The will was sustained?

Mr. Gannon: No, this is another will.

Mr. Sewell: This is a will in between the other two. They had this third will; and then this will of Judge Warren's, I believe, was in between the other two.

Mr. Gannon: Yes—in February, 1921.

Mr. Sewell: Then there was this will that was probated by Mr. Gannon. 20

Mr. Gannon: In April, 1921. The purpose of this testimony is not to prove the contents of this will, but merely to prove the man's general mental condition about this time and for some time previous.

The Vice Chancellor: That was a year after the property was deeded over.

Mr. Gannon: It is to link it up with the Doctor's testimony that this condition existed in October, 1917, and while it was progressive, being very, very slowly progressive—— 30

Mr. Sewell: I do not think he said that, your Honor.

The Vice Chancellor: He said it was progressive; he did not say "slowly progressive."

Mr. Gannon: Well, he said he was not in a very much worse condition the last time he saw him in September, 1921, than when he 40

*John Warren, Esq.—Direct.*

saw him in 1920.

(The last answer of the witness was repeated at the direction of the Court.)

The Vice Chancellor: I will not strike it from the record; you can ask him what the facts were, if you want to.

10 Q. What were the facts upon which you based this opinion, Judge Warren? A. Well, he was unable to state to me with any definiteness as to where his bank accounts were.

BY THE VICE CHANCELLOR:

Q. Do you mean, what banks his money was in?  
 A. Yes, sir. He told me he had gone to New York, to a bank on Sixth Avenue, as I recollect, where he  
 20 thought he had a bank account, and had inquired there, and they had told him that he had no bank account there, at all; and he wanted me to find out where his bank accounts were. When I was inquiring as to his relations with his daughter, Grace, and the matter of deeding over this property, at times he seemed to be unable to state any facts concerning certain things, and was unable to do so until his attention was directed to them by his son, who was present at that time, and would say some-  
 30 thing to this effect: "Well, Pop, you told me so-and-so." Then he would recollect that that situation had occurred, and would state it to me as a fact. That is, generally, the fact.

BY MR. GANNON:

Q. Now drawing your attention to the execution of this will, on account of the opinion that you had, what precaution, if any, did you take concern-  
 40 ing the execution of this will?

*John Warren, Esq.—Direct.*

Mr. Sewell: I object to it, as irrelevant, incompetent and immaterial what precaution was taken.

The Vice Chancellor: I am inclined to think that all this testimony as to a transaction with the testator after this deed was made is purely hearsay and not admissible; but I am going to let it go, though, for the present. He may answer. 10

A. I ascertained the name of the family physician, which was given to me as Dr. Peter Maras; and I called Dr. Maras on the telephone, and stated to him that Mr. Morrison desired to execute a will, and inquired of him as to what he thought as to the mental capacity of Mr. Morrison to execute a will.

Q. Do you recall Mr. Morrison's appearance when he called at your office? A. Well, he was an elderly and feeble man. 20

Q. What do you mean by "feeble"? A. Well, he did not have the appearance of strength; he seemed to be weak physically.

Q. Do you refer more to his physical condition, or his mental condition, when you say "feeble"? A. I was referring to his physical condition, in that connection.

Q. You did not know, of your own knowledge, how old he was at the time he called at your office? A. Why, yes; he told me he was seventy-four years old. 30

Q. You have drawn quite a number of wills in your professional experience, I take it? A. Yes, sir.

Q. And did you make any inquiry of Mr. Morrison whether or not he realized who the natural objects of his bounty were—just "yes" or "no"? A. Well, I got the family situation from him.

Q. From him? A. Well, I don't know—I don't 40

*John Warren, Esq.—Direct.*

think that he mentioned Mrs. Daly; I don't think he mentioned Mrs. Daly to me, but I am not quite sure, I am not quite sure.

Q. How long did it take you to get the statement from him, when he called at your office? A. Well, I should say that he was there at least an hour and a half, according to my best recollection, Mr. Gannon.

10 Q. So that it took you an hour and a half to get the information, or the particulars for the business you were to transact for him?

Mr. Sewell: I object. That is not the Judge's testimony. He said he was there an hour and a half—now, he may have drawn the will in that hour and a half, also.

20 Q. Did you draw the will the day he was there?  
A. I did not, sir.

Q. And what was done the day he came there, during this hour and a half that he was present?

A. He was telling me about his bank accounts, and his property, and his relations with his daughter, Grace, and the reason why he turned the property over to her, and the circumstances surrounding that. I was going to say that I have here what epitomizes what he told me in the form of a state-

30 ment, which was dictated in his presence.

Mr. Gannon: I would like to offer that statement for the purpose of proving his mental condition at the time he called at Judge Warren's office.

Mr. Sewell: I object to it.

The Vice Chancellor: I will sustain the objection. The witness can use it to refresh his memory.

40

*John Warren, Esq.—Direct.*

Q. How many times did Mr. Morrison call at your office, all together? A. Once or twice—it was not more than twice; I think he was there a second time.

Q. The first time he called was in October, 1920? A. October 19th, 1920.

Q. Was the will discussed the first time that he called at your office? A. My recollection is that he said that he would want to make his will; the details of it were not discussed on that date. 10

Q. Did you have any conversation with him, at the time of his first visit to your office, about his leaving his daughter?

Mr. Sewell: I object.

Q. Well, just "Yes" or "No"? A. Yes.

Q. What was that conversation? 20

Mr. Sewell: I object.

The Vice Chancellor: What is the objection?

Mr. Sewell: It does not seem to me that it is competent, in the absence of the defendant.

The Vice Chancellor: I will sustain the objection. 30

Q. At the time you were talking with Mr. Morrison and discussing his affairs with him, did you have more than the usual difficulty in making him understand your questions?

Mr. Sewell: I object; it is calling for a conclusion. What is the standard of "usual difficulty"? And furthermore, it is so remote from the time of the execution of this deed that it seems to me it would be imma- 40

*John Warren, Esq.—Direct.*

terial.

The Vice Chancellor: Well, the witness can answer whether he had difficulty more than usual.

A. I did have difficulty.

Q. And in what way?

10

Mr. Sewell: I object.

The Vice Chancellor: Objection overruled.

A. Why, he could not recollect facts until reminded of them; and, as I stated before, he didn't even know what banks he had his money in.

Q. Did you have any difficulty in making him understand your questions? A. At times.

20

Q. In what way? A. He did not seem to answer readily; and he would ask me a couple of times what I meant by what I asked him.

Q. Did you notice whether or not he kept his attention concentrated on the matter you were discussing with him?

30

Mr. Sewell: I object. I do not see how it is possible for the witness to answer that question,—whether he could tell whether the man had his attention concentrated, or not.

The Vice Chancellor: Oh, I think he could.

(Question repeated.) Or would his attention wander? A. I cannot recollect that, Mr. Gannon.

Q. In your discussion with Mr. Morrison did he talk to you about a lawsuit against himself?

40

Mr. Sewell: I object; it is leading.

*John Warren, Esq.—Cross.*

Q. Well, did you have any discussion with him about a lawsuit against himself? A. About a "threatened lawsuit."

Q. And what was that discussion?

Mr. Sewell: I object; it is irrelevant, incompetent and immaterial.

The Vice Chancellor: I sustain the objection. 10

CROSS EXAMINATION BY MR. SEWELL:

Q. Judge, was that statement written on the day that Mr. Morrison was in your office? A. Yes, sir.

Q. And in his presence? A. It was dictated in his presence.

Q. And who supplied the information as to the banks in which this money was located? A. Well, the information that is in this statement, Mr. Sewell, was information which I obtained from Mr. Morrison, and, at times, his recollection being refreshed by his son. 20

Q. Well, how many times was he in your office? A. Not more than twice.

Q. Was his son with him both times? A. I am very hazy about whether he was there a second time, or not, and, if so, with whom; but I think that he was, and I think his son was with him, but I am not sure, though. 30

Q. The first time, the old gentleman told you that he had money in "The Seamen's Savings Bank," and the only thing wrong about the detail was that the name of the bank should have the words "for Savings"—is not that right—instead of being "The Seamen's Savings Bank," it ought to be "The Seamen's Bank for Savings"? A. With reference to that bank, yes, sir.

Q. That is the only discrepancy, then? A. 40

*John Warren, Esq.—Cross.*

Then he told me "The Greenwich Bank," but did not say "Greenwich Trust Company," or whatever the trade name was; he said "the Greenwich Bank."

Q. Did that strike you as being very far wrong, Judge? Did you have to make much of an investigation after you got that information? A. In reference to the Greenwich Bank?

10 Q. In reference to both these accounts? A. Well, I had some little difficulty about the Seamen's Bank because there is no such bank as "The Seamen's Savings Bank"—when we looked it up in the telephone book there was no "Seamen's Savings Bank."

Q. But you mean, the only investigation you made was on account of not having the proper name—just the bank being a bank for savings—is that the idea? A. With reference to that bank.

20 Q. Where did you get the numbers of the bank books? A. Why, I corresponded with the banks.

Q. Oh, I see—you got them that way? A. Yes, sir; and drew stop orders, and had them executed by Mr. Morrison, and had them sent to the banks.

Q. Will you let me see that will that you were speaking of? A. (A paper was handed to cross-examining counsel by the witness.)

Q. When this will was executed was Mr. Morrison, Jr.—that is, Walter Morrison—with the old gentleman? A. I don't know.

30 Q. You do not recall? A. That is a thing that I do not recall; I don't know; I was not there; I wouldn't be there.

Q. Well, when the will was drawn, or the information was given you as to what provisions to put in the will, was he there? A. I got the information from Mr. Walter Morrison.

Q. So Mr. Walter Morrison was the one that told you what to put in this will? A. Eventually  
40 —the final thing—yes, sir.

*John Warren, Esq.—Cross.*

Q. And this will provided that each of the daughters should get \$500? A. I would have to see the will, sir; you are reading from it; I have not got it before me.

Q. In this will (showing the witness the paper) it provides for \$500 for each of the two daughters, and everything else to go to Walter—is that correct? A. That is correct.

Q. And this information was given to you by Walter? A. That part of it was. 10

Q. Now, after your talk with Dr. Maras, you were satisfied to have the will executed, Judge? A. I was satisfied to have the will executed, but I would not attend the execution myself, nor would I permit anybody in my office to witness the execution of the will, and stated to Dr. Maras that he would have to be one of the witnesses, and I stated to Mr. Walter Morrison that he would have to procure another witness. 20

Q. Now, who paid you for your services in this case, Judge? A. In this case Mr. Charles Morrison has not paid me, at all.

Q. Did Walter Morrison pay you anything? A. No.

Q. So you have not been paid anything for your work in this case? A. No.

Q. Did you render any bills to anyone? A. Yes, sir. 30

Q. To whom? A. I rendered a bill to the Estate of Charles Morrison.

Q. And have you got a copy of that bill with you, Judge? A. I have, sir.

Q. Will you let me see it? A. (The witness produces and hands to cross-examining counsel a paper.)

Q. Did you render any bill before this, or is this the first one you rendered? A. That was the first bill I rendered. 40

*John Warren, Esq.—Cross.*

Q. You waited from October, 1920, up to January 6, 1922, before rendering a bill? A. Well, my work was not done in October, 1920.

Q. That is when the first came to you, wasn't it? A. He first came to me then; he did not have any money to pay me.

10 Q. By the way, how much was in these bank accounts—take, for instance, the Greenwich Trust Company—how much was in that bank account?

A. Well, I don't know whether I can tell you; (after consulting his memoranda). I have not got a memorandum of that here. I have got a memorandum of the amount in the Seamen's Bank for Savings.

Q. How much was that, Judge? A. \$2,288.88—Account No. 354122.

20 Q. And there was about the same amount in the other bank, was there not? A. That I do not recollect, Mr. Sewell.

Q. Do you recall whether the total sum was about four thousand dollars? A. I do not recall that, sir. Mr. Morrison stated to me what amount he thought he had in the banks, the first time he came.

Q. What did he state he thought he had in the Seamen's Bank? A. Not in the separate banks—

30 Q. Wait a minute—what did he say he thought he had? A. Well, that is not in the statement, but I do recollect, oh yes—between six and eight thousand dollars—the amount of the money turned over.

Q. In those two banks? A. I do not say that, sir.

Q. Well, what? A. That is the amount of money he stated that he had turned over to his daughter, Grace; he did not know the number of banks.

4) Q. Did you procure those bank books for him—

*John Warren, Esq.—Cross.*

those two bank books, the Greenwich and the Seamen's? A. No, sir; I procured stops of payments or transfers of accounts for him.

Q. And did you know he obtained these bank books? A. I learned that to-day, I think it was, sir.

Q. I mean, you did not know it at the time? A. Oh, no, I did not know it until to-day, or possibly yesterday. 10

Q. You did not start that replevin suit in the District Court? A. I did not. I was dismissed by Mr. Morrison through his son, Walter, after I drew a bill to set aside these transactions.

Q. Now, in your bill, Judge, you state here "Attended thereafter to the execution of his will"—what does that mean? A. That I arranged with Dr. Maras, and for some other witness to be present. I sent a clerk from my office with the will, at the time appointed, to Mr. Morrison's house, where he waited until it was executed, and then he brought the will back to me to be kept in the safe. 20

Q. Then, when you say you did not attend the execution, you mean you did not actually, personally, but someone from your office did? A. Oh, somebody from my office was there to see that the formalities (that is, that the testator signed in the presence of the witnesses, and the witnesses signed in the presence of the testator and of each other) 30 were carried out.

Q. So your bill states, Judge, that the services terminated in March, 1921, and you submitted no bill up to January 6, 1922? A. I did not submit a bill until after I learned that Mr. Morrison had died, and that I ought to be paid and I should put my claim in. I do not know that there is any money there yet, as far as I know.

Q. Well, there ought to be? A. Well, that I don't know. 40

*John Warren, Esq.—Cross.*

Q. And Walter never paid you anything? A. No, sir.

Q. Did you ever receive a letter from Walter Morrison? A. Sure.

Q. And what was the nature of that letter?

10 Mr. Townsend: I object to it, as not being proper cross-examination, and immaterial and irrelevant.

The Vice Chancellor: I will sustain the objection. The letter will speak for itself, when produced.

Q. Have you got the letter with you, Judge? A. What letter?

Q. How many letters did you receive from him?

A. I have had some of them, I don't know how many.

20 Q. Did you receive any letter in which he objected to some of your actions, or upbraided you for something, or other? A. I did.

Q. Will you produce that letter? A. I can, if you think it is necessary; I think it is rather—

Mr. Townsend: I object, as not proper cross-examination, immaterial and irrelevant.

30 Mr. Sewell: I withdraw it; never mind it, Judge.

Mr. Townsend: I offer this will, and the bill that Mr. Sewell called for.

Mr. Sewell: I object; it is irrelevant, incompetent and immaterial.

Mr. Townsend: He has called for them, and used them; that makes them evidential. They were inspected by counsel after he called for them.

40 The Vice Chancellor: Did you call for

*John Warren, Esq.—Cross.*

them?

Mr. Townsend: No, sir; we did not.

Mr. Sewell: Why, yes, your Honor—especially the will. Mr. Gannon was questioning Judge Warren about it. He had the will in his hand, and read it; I thought I was entitled to the same privilege.

The Vice Chancellor: If the will has been read, at all, it becomes evidence. I will admit it in evidence. 10

(The will was thereupon marked Exhibit C, 7).

Mr. Townsend: Your Honor will admit the bill, as well?

The Vice Chancellor: Oh, yes, I do not see what value it has.

BY MR. TOWNSEND:

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Q. Why did you not attend the execution of the will?

Mr. Sewell: I object.

The Vice Chancellor: That has all been gone into, as I understand it—is not that right?

The Witness: Yes, sir.

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A. I didn't want to take any chances on it; I thought he was very feeble-minded, and I was afraid there might be a contest over the will; and I would not witness the execution of the will unless I was satisfied in my own mind that he was of sufficient testamentary capacity to make his will.

Q. You first stated that the statement you had was dictated on the day he was there, in his presence—you later have, in the statement, something about the number of the bank books as a result of 40

*John Warren, Esq.—Cross.*

your investigation? A. No, sir; I have not.

BY MR. GANNON.

Q. About the bill you submitted—it is a fact, is it not, that you were very ill the first part of last year? A. Yes, sir.

10 Q. And out of your office for two or three months? A. Yes, sir.

Q. That would account for you not submitting the bill earlier, wouldn't it?

Mr. Sewell: Oh, we do not have any question about that.

The Witness: There was no money there to pay, either.

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WALTER MORRISON, recalled.

CROSS EXAMINATION BY MR. SEWELL:

Q. How many days after your father was taken from home by you did you take him to Judge Warren? A. Why, he came to me on Sunday, and it was sometime around the middle of the week, or the last of the following week.

30 Q. And was Judge Warren your choice, or his choice? A. He asked me in reference to a lawyer.

Q. And you took him to Judge Warren? A. Yes.

Q. And at that time did you ever know Judge Warren? A. Yes.

Q. Had he ever done business for you before? A. Yes, sir.

40 Q. During the years he lived with your sister did you know anything about your father's business—how much money he had, or anything of that kind? A. No, not what money he had.

*Walter Morrison—Cross.*

Q. Did you know anything about his affairs?

A. Why, I knew that it was too far for him to go to the bank, and after the Claremont Bank was opened he could use that.

Q. Did you know what banks he had his money in, eh? A. Not until later on; he told me later on.

Q. I mean at that time, when he lived with his daughter? A. Not at that time.

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## BY THE VICE CHANCELLOR:

Q. Did you know what banks his money was kept in prior to his leaving his daughter? A. Oh, I knew what banks he had his money in, yes.

Q. Before he left his daughter? A. Yes; I knew what accounts he had.

## BY MR. SEWELL:

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Q. You did not state that a moment ago, did you? A. I cannot remember; I meant it, if I did not—I meant it that way.

Q. Didn't you state that you learned it afterwards?

The Vice Chancellor: No, he said he learned "later,"—now, what the "later" referred to I don't know.

30

Q. What did you mean by "later"? A. I knew he had bank accounts in the Provident and these other banks.

Q. Well, what different banks did you know he had accounts in? A. Well, in the Greenwich Savings Bank, and he had it in the Seamen's.

Q. When did you learn that? A. I knew that when I was living with him—that is twelve years ago.

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*Walter Morrison—Cross.*

Q. What did you mean when you said you learned it later? A. I mean I learned it then.

Q. When? A. Twelve years ago.

Q. What did you use the word "later" for? A. I don't know just what I used it for.

Q. As matter of fact, you learned it after you took him from the sister's house, wasn't it? A. Why, he didn't have a bank book when he came to me.

Q. I know, but you learned he had accounts then, didn't you? A. I knew he had them before that.

Q. But you did not know where they were? A. I knew what banks they were in—I never knew the amount of them.

Q. Now, when you went to Judge Warren's office who furnished the information as to the two accounts in New York? A. Why, he furnished that, himself, more or less.

Q. He told Judge Warren that in the Greenwich Bank and in the Seamen's Savings Bank there were accounts—is that correct? A. Well, at times he would be forgetful.

Q. Well, did he tell Judge Warren that, or didn't he? A. Well, I couldn't remember, quite, whether it was myself or him who told him in regards to which bank.

Q. You don't know who told him? A. Well, he might have told him, and I might have told him; but I know it was told to Judge Warren at the time being, because he was forgetful.

Q. Do you recall your father getting the books? A. Yes.

Q. Now, during the time that your father was living with you did he pay you anything for his support? A. No, sir.

Q. Not a cent? A. No, sir.

Q. He had no money, in fact? A. No, sir.

*Walter Morrison—Cross.*

Q. That you are quite sure of? A. That he could draw on—he had nothing he could draw on.

Q. Not all the time he was living with you? A. Not until April, 1921, when he got his bank books.

Q. Then how much did he have? A. He had one account in the Seamen's and one in the Greenwich, at that time.

Q. And how much was the Greenwich account? 10  
A. Why, I can't say just what the Greenwich account was.

Q. Well, go on and tell us—how much was it?  
A. Well, that was somewhere from seventeen to nineteen hundred; I couldn't tell exactly.

Q. That is, in the Greenwich Bank? A. Yes.

Mr. Townsend: I can tell you what it was.

Mr. Sewell: How much?

Mr. Townsend: It was \$2288 in the Sea- 20  
men's, and \$1940 in the Greenwich.

Q. So, then, during the last year of his life, he had the sum of \$4200 to draw from—is that correct? A. Yes, sir.

Q. Did he draw any of that money? A. He drew it all.

Q. What happened to that money? A. Why, he kept it, himself.

Q. What did he do with it finally? A. Well, 30  
finally he gave me around fifty dollars at a time, I guess—I should judge it was around \$400; and at the time of his death I practically had \$100 left.

Q. So he gave you, during the time he lived with you, \$400? A. \$500.

Q. That would leave a balance of \$3700—what happened to that? A. Well, from what I know, he paid his lawyer's fee.

Q. How much was that? A. \$400.

Q. Whom to? A. Lawyer Doherty. 40

*Walter Morrison—Cross.*

Q. He paid Lawyer Doherty \$400? A. Yes.

Q. For what? A. Well, for counsel fees—in connection with the ejectment suit, or whatever it was—for the case.

Q. That would leave a balance of \$3328—what happened to that? A. Why, he used it for his own personal use.

Q. When did he draw the money out of the bank?

10 A. I don't know just the month—it was some time in February or March, I should judge.

Q. Of 1921? A. '21.

Q. And he died in July, '21? A. Yes.

Q. So he had it, approximately, April, May, June and July—four months? A. Yes.

Q. So he spent \$3328 in four months? A. I didn't say he spent it.

Q. What did he do with it, if he did not spend it?

20 A. I don't know just what he done with it. He might have put it away and forgot it, for all I know—he was so forgetful.

Q. At one time you said he used it for taxicabs?

A. Why, no, I said he enjoyed himself going around.

Q. Did he “enjoy” any of this money he drew that way, that is, in going out? A. Yes, any time he could go out. Well, he enjoyed it while he was in the mountains at that time; I don't say he used it

30 all.

Q. You don't mean that, Mr. Morrison, do you?

A. Well, I don't know whether the man did, or not; that is plain enough.

Q. Whom did he hire the taxicabs from? A. From the Hack people.

Q. What are their names? A. I don't know just their names.

Q. You lived up there, didn't you? A. I couldn't tell you the names; I only know them by

40 sight.

*Walter Morrison—Cross.*

Q. Whereabouts are they located? A. Why, they are in Rosendale.

Q. How much money did he spend on these joy rides? A. I never kept account of what he spent; it was his money, not mine.

Q. How many times would he go out in them?

A. I never kept account of that. He went out occasionally, as he was too fat himself—

Q. (Interrupting). Well, how many times, from April to the time of his death, did he go out in them?

A. I could not give you an answer to that.

Q. Approximately? A. Well, sometimes he was out, probably, two or three times a week.

Q. And how long did he stay on each trip? A. I never kept account of how long.

Q. Oh, about how long? A. I couldn't remember how long; he was out practically all day, sometimes.

Q. Do you mean to say that a man that was ready to die— A. (Interrupting). He was not ready to die at that time.

Q. He was in pretty good health? A. No, he wasn't in pretty good health.

Q. Well, all the witnesses have said this man was very feeble? A. Well, he was feeble; but you can sit in a car if you are feeble, I understand.

Q. You can sit in an automobile and ride around all day long? A. Why, certainly—getting out at times.

Q. How much money did you get? A. I got \$500.

Q. A moment ago you said "\$400," didn't you?

A. No, I said at the time of his death it was \$400, and there was \$100 left.

Q. How much in addition to that did you get?

A. Nothing.

Q. You don't know what happened to this

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*Walter Morrison—Cross.*

money? A. No, sir, I do not.

Q. Did you make any investigation afterwards?

A. I did not bother with it; it was not mine.

Q. It was yours, under the will? A. What did you say?

Q. Wasn't it yours, under this last will? A. Yes.

## 10 BY THE VICE CHANCELLOR:

Q. You, as executor, were bound, by law, to collect the property of the testator—did you look around to see where this money was? A. Why, after I moved out of the place I couldn't find nothing. He used to go out with it in his clothes; he wouldn't put it in the bank; he said he had the other tied up, and he was afraid she would take it off of him.

## 20 BY MR. SEWELL:

Q. Did you own your own place then, or didn't you? A. I rented it.

Q. Now you own your own place? A. No, I do not.

Q. Did you buy any place since? A. No.

Q. Have you bought any real estate? A. No, sir.

Q. Nothing at all? A. No.

30 Q. Where did you live at that time? A. Up in the Catskills.

Q. Where do you live now? A. Rosendale.

Q. In New York? A. Yes.

Q. Is that in the Catskills, too? A. Yes.

Q. Well, how far did you move, to Rosendale? A. 31 miles.

Q. What kind of a place have you got now? A. About 17 or 18 room house.

Q. And you run a furnished room house there?

40 A. No, sir.

*Walter Morrison—Cross.*

Q. What do you run? A. A boarding house.

Q. Was it furnished when you hired it? A. No, sir.

Q. Is it furnished now? A. Yes, sir.

Q. Where did you buy your furniture? A. Why, I bought it for the last ten or twelve years back; I don't know just where I bought it.

Q. Where was it, all these years? A. It was all through this city. 10

Q. I say, where was this furniture for these seventeen rooms, for these last few years? A. I did not have all for the last few years; I am increasing it every year.

Q. Where did you get sufficient to furnish a seventeen room house? A. Why, Counselor, this last summer I had sold an eleven room house.

Q. Where was the eleven rooms? A. At 105 Crescent Avenue. 20

Q. Did you have eleven rooms there yourself? A. Yes.

Q. That you occupied yourself? A. Yes.

Q. Did you buy any extra furniture last summer? A. Yes.

Q. Where did you get any money to buy that furniture? A. I am working for a living.

Q. How much have you been earning the last three or four years? A. I have been earning from ninety to one hundred and fifty dollars a week. 30

Q. Doing what? A. Working at the electrical business and for a hotel.

Q. For whom? A. For the United States Shipping Board.

Q. Doing that you have made \$100 a week? A. Yes, and \$150 a week.

Q. You had sufficient to furnish this house? A. Yes.

Q. That is, you made it during the War? A. I have been doing it for the last four years. 40

*Walter Morrison—Cross.*

Q. Doing what? A. Running a hotel up through the mountains.

Q. How long was the old gentleman confined to the house before he died? A. Why, he was around the house all the time; he was not confined to bed, if that is what you mean.

10 Q. How long was he confined to bed? A. He was confined to bed I guess about four days.

Q. Was that all? A. Yes.

Q. During the month of July, we will take it—about how many times that month was he capable of going out and taking a walk, or doing anything? A. He was not practically able to go in the month of July; he was not able to go around at all, much; he got very feeble.

20 Q. And I suppose his condition gradually weakened until finally the end came? A. Yes, he got weaker all the time.

Q. In June, what was his condition? A. About the same as July; he was able to go around riding, but he was not able to walk, because it is very hilly there.

Q. About how many times was the man able to go out during June? A. Why, he probably went out, if it was nice weather, three times a week, four times; sometimes practically every day.

30 Q. Three or four times a week? A. Yes, sir.  
Q. So that would make, for the month of June (we will say three or four times a week) that he was out somewhere around fifteen times? A. Yes, on an average.

Q. About half the time he was able to go? A. Yes.

Q. How about May—the same way? A. About the same; if the weather was warm, he went out; otherwise he went around the place.

Q. That was during May? A. Yes.

40 Q. About the same as June?

*Walter Morrison—Cross.*

The Vice Chancellor: What is the idea of all of this?

Mr. Sewell: To show how he could spend this money.

Mr. Doherty: He has not testified that he spent this money.

The Vice Chancellor: I am not trying where this money went. If you are offering this evidence— 10

Mr. Sewell (Interrupting): It was to impeach this witness, who has stated he never received anything from his father.

The Vice Chancellor: I know, but how long are you going to keep this up as to inquiring how he spent this three thousand dollars? You have been all over it once, and he does not know.

Q. You had your sister Grace arrested last Christmas Eve, hadn't you? A. No, sir, I had not. 20

Mr. Doherty: I object to it as incompetent, irrelevant and immaterial.

The Vice Chancellor: He has answered "No."

Q. When was it you had her arrested? 30

Mr. Doherty: I object, for the same reason.

The Vice Chancellor: What is the idea?

Mr. Sewell: To show the general attitude of this man towards his sister.

The Vice Chancellor: It is perfectly plain what it is—they are not friendly.

Q. How many times did you visit your sister 40

*Walter Morrison—Cross.*

during the last twelve years of your father's life?

A. Probably two or three times a month, excepting about five months of the year—that was from May to September.

Q. Where did you go to visit them? A. 236 Jackson Avenue.

10 Q. Did you ever notice anything improper, during those years, relative to the actions of your sister toward him? A. Why, yes, I did; she abused him; the morning he came to me she had beat him.

Q. Well, before the time you speak of, when you came in the back door, did you ever notice anything prior to that time? A. Why, yes; she said detectives had followed her, and they had detectives in the house—

20 Q (Interrupting). I say, did you ever see anything improper before you entered the kitchen that day? A. Why, she would never leave me in the house alone with him.

Q. Well, did you notice anything? A. No, I never noticed her beating him, or anything like that, while I was there.

Q. Did you ever notice her neglect and mistreat him at any time while you were there? A. Not just when I was there, but from his own words I know she did.

30 The Vice Chancellor: Strike that out.

Q. When did you find out that he had conveyed this property to Grace? A. Why, it was after October—about the 15th or 16th—1920.

Q. And how long before you took him from Grace's home did you learn that? A. Well, that was the day he came to my home.

Q. You did not know it before that time, at all? A. No, sir.

40 Q. Mrs. Daly did not tell you anything about it?

*Walter Morrison—Cross.*

A. No, sir.

Q. She did not tell you that Grace had told her?

A. No; I never saw Mrs. Daly.

BY THE VICE CHANCELLOR:

Q. Then your father waited from October until the following April before he started suit? A. 10  
Why, he had started proceedings, through Judge Warren, in October, and they did not seem to advance satisfactorily to himself, and that was his object in changing lawyers.

Q. Well, there was no proceedings started, I believe, was there, by Judge Warren?

Mr. Doherty: We started proceedings; I don't know whether there was by Judge Warren, or not. 20

The Vice Chancellor: Well, the bill here was filed April 2d, 1921.

BY MR. SEWELL:

Q. When did you speak to Judge Warren as to the making of a will for the old gentleman? A. Some time in the week of about October—I should judge, something around the 20th or 21st, of 1920.

Q. That is the first time you spoke about drawing a will for the old gentleman? A. No, not drawing the will—that was the time in regards to his law-suit. 30

Q. I am asking you, when did you speak first to him about drawing the will? A. I couldn't say just when that was; that was my father that started that proceeding.

Q. I am not talking about "proceedings"—

The Vice Chancellor: He means the will. 40

*Walter Morrison—Cross.*

The Witness: The will.

Q. When was that? A. I should judge (I couldn't say exactly) but I think it was about a month or so after the deed; it might probably be around the 20th of November.

Q. Your father started that, you say? A. Yes.

10 Q. Who told Judge Warren what to put in the will? A. My father told him what he wanted. Judge Warren was not there himself, at all.

Q. As matter of fact, you told him, didn't you? A. No, sir; I did not.

Q. Did you ever tell Judge Warren what was to go into that will? A. No, sir; not to my knowledge.

Q. You are positive of that? A. I say, not to my knowledge; I don't remember telling him.

20 Q. Well, you know whether you did, or not, don't you? A. It was through my father he was told.

Q. Well, never mind who it was through—did you tell him, or your father tell him? A. My father told him.

Q. You are positive of that? A. Yes.

Q. And you heard Judge Warren testify a couple of moments ago that you were the one that told him what to go into that will?

30

The Vice Chancellor: No; Judge Warren did not say that; he said he made some suggestions.

Mr. Sewell: I ask that we refer to the record. I asked Judge Warren specifically that question.

The Vice Chancellor: I know, but what Judge Warren said was that the father told him and this man told him—he got the information from both.

4.)

*Walter Morrison—Cross.*

Q. Were you present when your father told Judge Warren what should go into the will? A. Why, I guess I was; yes, I was present.

Q. And that was when? A. Why, I should judge it was some time in the middle of November, or a little later.

Q. And when was that will actually executed? A. I couldn't tell you that myself.

Q. Were you present when it was executed? A. 10  
No, sir.

Q. You were not present? A. No, sir.

Q. Well, it was done at your home? A. Yes, sir.

Q. Did Judge Warren ever render any statement to you as to the charges for the work he performed? A. No, sir.

Q. Never rendered one? A. Oh, he rendered them—he didn't make nothing at that time being. 20

Q. I mean, he has rendered a statement? A. Yes; I should judge, three months back, or four months, probably.

Q. And was there only one statement that he rendered? A. I think he sent two, if I ain't mistaken.

Q. When was the first one? A. Sometime in January—something like that.

Q. Of this year? A. Of this year.

Q. Was there any time you neglected visiting 30  
your father during the course of the month, with the exception of the time you were up in the Catskills? A. No, I visited him every month, sometimes twice a month, and three or four times; mostly twice or three times.

Q. You are sure of that? A. Yes.

Q. Did you ever see Miss Braden around there? A. Very seldom. I always used to go there in the evening. I might have passed her by the door, but never spoke to the woman, only "Good Evening." 40

*Walter Morrison—Cross.*

Q. Did you say "Good Evening" to her? A. As I met her I might have said "Good Evening" as I entered into the door. She might have been standing there. I never spoke to the women.

Q. You are sure you saw Miss Braden there?

A. I saw her there occasionally.

10 Q. And you are sure she saw you? A. Why, I guess she might have been looking at me. If she was on the stoop or was around the door of an evening, that was all I would say—"Good Evening." I never stayed and had a conversation with her.

Mr. Sewell: My recollection is that Miss Braden said she never saw this man or his sister visit the home there, and I would like to refer back to it.

20 The Vice Chancellor: Oh, no; I want to close this case to-day, if possible.

Mr. Sewell: That is all.

BY THE VICE CHANCELLOR:

Q. Do you know how old your father was? A. I should judge he was around seventy-eight years old.

Q. When he died? A. Yes, sir.

30 Q. Where did you get that information? A. Well, the only way we could find out this information was from his back dates; he practically did not know himself, but he was in the draft in the Civil War, and he was an older brother; judging he was twenty-one at the draft in the Civil War, and figuring up the time, he would be from about 78 to 80; and a younger brother went to the Civil War, and he was the money-maker of the house and had to stay home.

40 Q. How old was the other brother? A. Well,

*Walter Morrison—Cross.*

we judged the man couldn't be married under twenty-one, as he said—he didn't think at the time he was less than twenty-one when he was married; so, figuring from that, we judged he was around from seventy-eight to eighty.

Q. That is, your father was? A. Yes.

Q. Do you know what estate your father had at the time he made this deed—what property? 10

A. I don't remember when he made the deed. At that time?

Q. No, do you know what property your father had on May 14, 1920, when he made this deed to your sister—what property did he have left? A. Why, he had only the bank accounts, after he had the property deeded over.

Q. That is, the Seamen's and the Greenwich bank accounts? A. And the Provident and the Claremont. 20

Q. Now, what was the total amount of money in those four banks? A. Why, I never knew the exact amount in those banks; I couldn't say that.

Mr. Sewell: It would be about \$7000.

The Vice Chancellor: Why don't you prove it.

The Witness: Something like \$1900 in the Greenwich—

The Vice Chancellor: Yes; I have got 30 that, and I have got \$4200 in the two New York banks.

Mr. Sewell: Well, the Provident Bank account was in Grace Morrison's name, which was \$2409—I think it was.

The Vice Chancellor: He did not own that.

Mr. Sewell: Who did not own it?

The Vice Chancellor: The father was not possessed of the \$2409 in the Provident. I 40

*Walter Morrison—Cross.*

want to know what property he had.

Mr. Sewell: All he had, at the time he made this deed, in his own name, was the \$4228 in the two New York banks.

Mr. Gannon: Of which he did not have the bank books.

10 The Vice Chancellor: I do not care about that, if it was his.

Mr. Sewell: It was his; and then there was this bank account in the Provident, of \$2409, which was in his daughter's name, and had been in his daughter's name since 1918—two years, up to that time; and then the Claremont account, which was \$700 and some odd dollars, which had been in her name from the very beginning, when it was opened some number of years ago.

20 The Vice Chancellor: All right. There is no proof as to the value of this real estate.

Mr. Gannon: Except that the contract of sale was for \$10,000.

The Vice Chancellor: When?

Mr. Gannon: In April of last year.

The Vice Chancellor: What was its value in May, 1914?

Mr. Sewell: I suppose, about the same.

30 Mr. Gannon: Here is a copy of the contract, which has been filed.

The Vice Chancellor: It has not been offered in evidence.

Mr. Gannon: It is marked "Filed," by the Clerk in Chancery.

The Vice Chancellor: I know; but it is not in evidence.

Mr. Sewell: Well, I don't know as the selling price would be evidence of its value in 1920.

40 The Vice Chancellor: That contract is

*Walter Morrison—Cross.*

not in evidence.

Mr. Townsend (To Mr. Sewell): Will you stipulate as to the contract, to save time?

Mr. Sewell: I will stipulate that the property was sold for \$10,000.

Mr. Gannon: I think they are bound by that contract, because, under the order of the Court permitting the contract to go through, they were directed to file a statement of the closing figures on the title, the deposit and the balance due on the contract, with the Clerk in Chancery. 10

The Vice Chancellor: I know, but merely filing it does not make the paper evidence.

Mr. Gannon: Well, I will offer it now.

Mr. Sewell: I object to the offer, on the ground that it does not establish the value in 1920, when this property was conveyed to the daughter. 20

The Vice Chancellor: Well, it can be offered in evidence for what it is worth, as to the selling price of the property.

(The contract was thereupon admitted, and marked Exhibit C, 9).

Mr. Townsend: I want to call Mr. Gannon, to prove that he received a bona fide offer for this property in excess of the amount it was sold for, as evidence of its value. 30

The Vice Chancellor: In excess of what what sold for?

Mr. Townsend: In excess of what it sold for under this contract—that is, more than ten thousand dollars.

The Vice Chancellor: When?

Mr. Doherty: In April. 40

*Walter Morrison—Cross.*

Mr. Gannon: April of 1921.

Mr. Sewell: I object to any evidence of that character.

The Vice Chancellor: I will not receive the evidence. Have you any further evidence?

10 Mr. Townsend: No. I would like to offer the affidavit of Charles Morrison attached to the bill of complaint in this cause, for the purpose only of showing his mental condition.

Mr. Sewell: I object to the offer of the affidavit.

Mr. Townsend: I offer it as being a declaration by the decedent.

Mr. Sewell: It is a self-serving declaration, at best.

20 Mr. Townsend: Under the Court of Errors case I showed your Honor, it has been admitted for that purpose.

The Vice Chancellor: Against interest, or for interest?

Mr. Townsend: They are not admissible for the purpose of showing the truth of the statements in them, but just for the purpose of showing the testator's mental condition.

30 The Vice Chancellor: I will not admit it. If the statements are against interest, they are admissible.

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The Complainants rest.

*I. Ross McCombe, Esq.—Direct.*

THE CASE FOR THE DEFENDANT.

I. ROSS McCOMBE, ESQ., sworn.

DIRECT EXAMINATION BY MR. SEWELL:

Q. You are an attorney-at-law of the State of New Jersey? A. Yes.

Q. Where do you practice? A. Jersey City.

Q. Your office is with whom? A. 586 Newark Avenue.

Q. Whom are you associated with? A. I am not associated, I am employed by Alexander Simpson.

Q. He is also a Counselor-at-Law of New Jersey? A. Yes, sir.

Q. Do you know a man by the name of Charles Morrison? A. I do.

Q. Do you recall when you first met this man? A. The first time I met him was in February, 1920.

Q. Had you ever seen him before that date? A. I had.

Q. Where had you seen him? A. In the office.

Q. Alone, or accompanied by anyone? A. Accompanied by his daughter.

Q. And what did you observe that day—did you see him go in and talk to anyone, or did you see him talk to anyone at that time? A. I recollect that he and his daughter had a conference with Mr. Simpson, in Mr. Simpson's office.

Q. Do you know the nature of the conference, or were you present during the conference? A. I was not.

Q. Then you saw him and talked to him in the month of February, 1920? A. The next time I saw him was, if my recollection serves me right, in February, 1920. At that time I had an interview with him, myself.

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Q. Was he alone, or accompanied by anyone?

A. He was accompanied by his daughter.

Q. Now, what talk did you have with Mr. Morrison? A. They said they came in to do something about a deed, and I went into the matter in detail with them.

10 Q. When you say you "went into the matter in detail with them," just explain what you said to them? A. Well, it would have to be in substance; I would not be able to tell the exact wording; but the substance of the matter was that he wanted to convey his property to his daughter.

## BY THE VICE CHANCELLOR:

20 Q. Why? A. He said that he had been living with his daughter for upwards of fourteen years, and that he wanted to see that his property was where he wanted it to be before he died. I asked him if he owed his daughter anything, so as to find out whether or not there was any consideration for the deed; he said he thought that possibly he owed her more than what the value of the property was, because she had been taking care of him for upwards of fourteen years, he having lived in the house with her. I am not certain whether the deed was prepared that day—or, I mean executed—yes,  
30 it is coming to me now: I prepared a deed and took it into the office of George Cutley, together with Mr. Morrison; Mr. Meaney was in George Cutley's office at the time, and Mr. Morrison executed the deed.

Q. Did his daughter go with him? A. No, not at that time. After the deed was executed I discovered that he had signed his initials instead of the full name; that I did not like, and told him that that would not go, and I would be under the  
4) necessity of preparing a new deed. I recall that I

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did not have the time to do it at that particular time, but asked him to come sometime later.

BY MR. SEWELL:

Q. Now, before you go any farther, in your affidavit, executed on April 13th, I think it is, 1921, you stated that that incident on May 14th—that he called in your office in February, 1920, and then called in the office again on the 13th of May, 1920, and on the 14th of May, 1920, he executed this deed, but made this mistake in the signature—now, are you sure you are right in your dates—whether it was on the first visit that he made this error in the deed, or just when it was? Try and refresh your recollection? A. No, it was on the second visit that the error was made in the deed. There were four visits, in all, to the office.

Q. Four visits? A. That is, at the first visit with me there was nothing happened, any more than consulting about how the property should be conveyed, and a possibility of a will—my recollection was there was something mentioned about a will. The second time he called, some time later—

Q. (Interrupting). About when was the second visit? A. May, 1920.

Q. And was he accompanied by anyone, or alone, at that time? A. Yes, at that time he was accompanied by his daughter, and then he was prepared to have the deed prepared.

Q. Did he order you to draw the deed? A. He did.

Q. And on that occasion did you go over the facts with him? A. Yes; I carried out his instructions; and again, when I took him before Mr. Meaney (that was on the second trip) he was asked if he knew what he was doing.

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Q. When you took him in before Mr. Meaney, was that to execute the deed that he ordered on his first trip in the month of May?

Mr. Townsend: I object, on the ground that it is leading.

Mr. Sewell: I withdraw it.

10 Q. You stated that his first trip was in February, then he came in again in May—now, what trip was it in May that he went before Mr. Meaney—was it the first, second or what trip? A. The first trip in May.

Q. And that is when he made the error? A. That is when he made his initial "C," instead of writing it out in full for the "Charles."

Q. Then did he come in again to see you? A. Yes; that was two or three days afterwards.

20 Q. And was he alone, or accompanied by anybody? A. At that time he was alone.

Q. Tell us what happened on that occasion? A. He was out in the outer office, and between the time he first came in, in May, and his second visit, I had prepared the deed and had it ready when he came; so I called him into the office, and I told him "I have the deed ready," and he says, "All right." At that time I took him into Judge Butler's office. I  
30 recall now that, on the way to Judge Butler's office, when we were out in the hallway, he said "Wait, I want to go back and get my hat"; I says, "Don't bother; you don't need that, because you are coming back again." So we continued to Judge Butler's, and Judge Butler asked him if he knew what this was, and he said, yes, that it was a deed. He said "Well, do you know what you are doing?" He said, "Yes; it is a deed; I am giving my property over to my daughter, Grace." He thereupon signed it, and  
40 Judge Butler took his acknowledgment, as a Master

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in Chancery. That is the second visit in May I am speaking about now, making his third to the office.

Q. Did your office charge him a fee for the work that you performed? A. We did.

Q. Do you recall the amount?

The Witness (To the Court): Is not this confidential, your Honor? 10

The Vice Chancellor: What difference does it make?

The Witness: Well, I do not want to be divulging any information—

The Vice Chancellor: No, I am asking counsel. (To Mr. Sewell): What is the idea?

Mr. Sewell: Just to show that Mr. Morrison paid the bill, and that he was not retained by Miss Morrison; and bringing out 20 the fact that, prior to this time, they had acted as Mr. Morrison's attorney.

## BY THE VICE CHANCELLOR:

Q. Who paid the bill? A. Mr. Morrison.

## BY MR. SEWELL:

Q. Mr. Morrison paid the bill? A. Yes. 30

Q. Now, had your office ever acted for Mr. Morrison before this time in any matters?

Mr. Townsend: I object, unless he was there.

The Vice Chancellor: What difference does it make?

Mr. Sewell: To show that he was the attorney of his own selection; and if he went there and arranged this matter he surely got 40

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independent advice from his own attorneys.

The Vice Chancellor: He has not sworn that he had any advice.

Q. Did you advise Mr. Morrison of the nature of his act?

10 Mr. Townsend: I object, on the ground that the question is leading.

BY THE VICE CHANCELLOR:

Q. Just state what conversation you had with him? A. When the deed was prepared I asked him if he knew what this really meant. He said, "Yes." I said, "Do you know that you are deeding all this property, as indicated by this instrument, to your daughter, Grace"? He says, "Yes." I 20 says, "Do you know about how much the property is worth?" He says, "Around \$4500." I says, "Then, is it in consideration of that amount that you are deeding your property over to your daughter?" He says, "Partially, because I do not think that that even would pay my daughter for what she has done for me." So, it was in answer to that question that I was prompted to put revenue stamps on the deed,—to show the equity in the property.

30 The Vice Chancellor: Was this property mortgaged?

Mr. Sewell: I do not believe so. (To Mr. Jentz): Was there a mortgage on this property?

Mr. Jentz: No.

BY MR. SEWELL:

40 Q. Who is Emma Hubner? A. She is the

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stenographer of our office, or one of them—Mr. Simpson's stenographer.

Q. Do you know anything about this will that Mr. Morrison executed in February 26th, 1918?

A. Yes; I have a recollection of the codicil being prepared, too; I think I prepared the codicil.

Q. I show you this codicil, Mr. McCombe, dated May 18, 1920, and ask you did you prepare that codicil? A. That was prepared by me, between the second and third visit. 10

Q. And at whose direction? A. Mr. Morrison's.

Q. Was that executed at the same time, that is, on the same day as the last deed? A. It was; but it was executed before the deed, because he had an after-thought, and said "I want to be sure that my property is going where I want it to go before I am called, and do not want any misunderstanding about it." So, to please the old gentleman, I did just what he wanted me to do—prepared the codicil. 20

Q. And you witnessed it, and Miss Hubner witnessed it? A. Yes.

Mr. Sewell: I offer a certified copy of the last will and testament of Charles Morrison, deceased, dated February 26, 1918, and codicil attached thereto, dated May 18, 1920.

The Vice Chancellor: That is the next to the last will. 30

Mr. Sewell: Well, with the exception of that one Judge Warren had.

The Vice Chancellor: Is this the one that was admitted to probate?

Mr. Sewell: This was originally admitted to probate, and then was set aside on account of the last will that Mr. Doherty had, which came later.

Mr. Gannon: There were two made after 40

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that date—the one that Judge Warren had, and the one that was admitted to probate.

(The paper offered by Mr. Sewell is admitted in evidence, and marked Exhibit D, 1).

10 Q. Mr. McCombe, was Mr. Morrison able to sign his own name when he executed this codicil and the deeds? A. He was.

Q. He required no assistance in that? A. None, whatever.

Q. What was the man's condition, from a physical standpoint—was he feeble, or what was his condition? A. Oh, he was a feeble old man.

Q. What was his condition mentally, from what you observed? A. Very alert.

Q. Very alert? A. Very.

20 Q. Did he answer questions that you put to him? A. Yes.

Q. And did he seem to understand the nature of his acts? A. Absolutely.

Q. When this final deed was executed he was alone? A. He was alone, and waiting.

Q. And, at that time, did you give him independent information?

(Objected to; question withdrawn).

30

Q. At that time did you talk to him about what he was doing, or anything along that line? A. I asked those questions when with him the last time the deed was prepared, ready for his signature, (owing to the fact that I had all the data, and the only thing wrong in the first deed was that he had signed his name with a "C" instead of signing it "Charles") and on the second time, when he called two or three days after, the deed was waiting for  
40 him to sign, and I took him, as I said, before Judge

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Butler, and then again the questions were asked him; and he signed in the presence of Judge Butler.

Q. Did Miss Morrison ever pay your fees on account of this transaction, or any other transaction, as far as you know? A. No.

Q. Did you ever see Miss Morrison prior to the first day that she came in with her father, that you speak of? A. I saw her that time prior to the time that I interviewed them both, yes. 10

Q. That was the first time you ever saw her? A. That was the first time I ever saw her.

Q. And your office had done no work for her, to your knowledge, prior to that time? A. To my knowledge, no.

Q. So you are positive, Mr. McCombe, that the last time you saw this man (which was the time the deed was executed) that at that time Judge Butler informed him of the nature of his act, in your presence? 20

(Objected to; objection sustained).

Q. Tell us again just what happened after you left your office with him to go to Judge Butler's office?

Mr. Townsend: I object, on the ground that it is a mere repetition, and it is a leading question. 30

The Vice Chancellor: I do not think it is leading; I will let the question be asked.

A. The last time Mr. Morrison called into the office the instrument was prepared, awaiting for his signature—

Q. Never mind all that—just start from the time you left your office? A. I took him in to Judge Butler, and told Judge Butler what we came 40

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in for; and Judge Butler asked him the regular questions; and then I says, "Now, you know what you are doing, Mr. Morrison?" He says, "Yes." He says, "What are you doing?" He says, "I am deeding my property over to my daughter, Grace."

## BY THE VICE CHANCELLOR:

10 Q. Was there anything more said, before he executed the deed, on that subject? A. At that time, your Honor, no, because he had come in purposely to re-execute the deed. He had, previously to that time, executed a deed, but improperly.

Q. You have said that now two or three times?

A. Yes.

Q. Then, what was said to Mr. Morrison was the usual statements made and questions asked by  
20 a Master in Chancery when he ordinarily has a deed executed before him and he takes the acknowledgment? A. Yes, sir; and, in addition to that, he asked the old gentleman, after I did, if he knew what he was doing.

Q. Was anything said about his future support—where that was going to come from? A. No, your Honor.

Q. Not a word? A. No, sir.

Q. Not a word was said about that? A. I do  
30 not recall about that—no, I am quite sure there was not, in Judge Butler's room.

Q. And there was not in your office, either?

A. No, there was not, in mine.

## BY MR. SEWELL:

Q. Well, prior to the 18th, was there anything  
said on that subject? A. One of the questions  
was where he was living, and he said, "I am living  
40 with my daughter," and he gave the address—it

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was an address on Jackson Avenue—that he and his daughter were living together.

Q. Well, was there anything further said on that subject, such as the Court indicated, about what he was to do in the future?

Mr. Townsend: I object, on the ground that the question is leading.

The Vice Chancellor: I will permit it.

10

A. I do not recollect.

BY THE VICE CHANCELLOR:

Q. Was the point put to him—was he asked how much property he had left after he conveyed this? A. No, your Honor; there was not any question about that.

20

Q. There was no discussion as to his support, and that the daughter was not bound to support him after she got the property? A. No, your Honor.

Q. It was simply a case where he was asked if he understood what he was doing, and he said "Yes," and he got no further advice or instruction on the subject, and then acknowledged the deed; saying he owed this daughter probably more money than the property? A. Nothing more than that.

30

BY MR. SEWELL:

Q. Well, prior to that he had stated about his connections with his daughter?

Mr. Townsend: I object, on the ground that the question is leading.

The Vice Chancellor: I will sustain the objection, because he has answered that two

40

*I. Ross McCombe, Esq.—Cross.*

or three times over. He said his daughter was with him about fourteen years, and took care of him, and that the money she would get by that gift would not compensate her.

The Witness: Yes.

10 CROSS EXAMINATION BY MR. TOWNSEND:

Q. Did you take any more than the usual precautions, at this visit to Judge Butler's office, or was that your usual method of doing business? A. When I have a deed all prepared (which is very seldom), I make it a point to have someone outside of the office take the acknowledgment, irrespective of who the party is.

20 Q. So that, as matter of fact, that had been your course of business before in respect to deeds—what little you had done? A. Yes.

Q. Had you ever gone into Mr. Butler's office before to get him to take an acknowledgment? A. Not with respect to a deed. I have had someone in his office witness a will.

Q. So that your treatment of this particular deed on this day was nothing aside from your usual treatment of other cases that came in? A. No.

30 Q. You related to the Court and to Mr. Sewell all the conversation that you had with this gentleman, as I understand? A. As near as I can recall now.

Q. You do not recall anything else? A. Not just now, no.

Q. Now, it is a fact, is it not, Mr. McCombe, that Miss Morrison first telephoned you, before she came to your office, and asked you how much you would charge for drawing a deed and a will—do you recall that? A. I am quite sure she did not.

40 Q. Well, see if I cannot refresh your recollection.

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tion: Did she come in at any time, alone, and ask you how much you would charge for drawing a deed and a will? A. No.

Q. Did she telephone, as far as you can recall? A. As far as I know, she did not.

Q. I want to see if I cannot refresh your recollection, Mr. McCombe: Do you remember telling Mr. Gannon—William R. Gannon, one of the counsel in this case—some time ago, that she first called you up on the telephone and asked you how much you would charge for drawing a deed and a will? A. No. 10

Q. Will you say that no such conversation as that took place between you and Mr. Gannon? A. I am quite positive no such conversation took place.

Q. Did you ever have any conversation with Mr. Gannon about this case? A. I think I do recall Mr. Gannon calling at the office and asking if I had prepared a deed for Mr. Morrison, and I told him I did, or had. 20

Q. Don't you recall that you told him, at that time, that she had asked you how much you were going to charge? A. No; no such conversation.

Q. Was there any question of any kind put to you, in advance, by anyone, as to how much you were going to charge for drawing the deed? A. There was not.

Q. Nor the will, either? A. Nor the will, either. 30

Q. The fact is that neither Morrison nor Miss Morrison knew how much you were going to charge until you presented your bill after that work had been done? A. Not until during the conference.

Q. Who witnessed the signature on the deed? A. I think I did; I won't be positive about that.

Q. Well, now, was there any material change in his condition from the time he came into your place in February, 1920, and the last time you saw him, 40

*I. Ross McCombe, Esq.—Cross.*

in May of 1920? A. I didn't see him in February—I mean by that, I had no conference with him in February; I saw him in the office in February.

Q. That was the first time you saw him, but you had no conference with him at that time? A. That is right.

10 Q. But his daughter was with him? A. I would like to make a correction there; it was in February I did see him, and it was before February he called that I hadn't seen him. The second visit to the office I saw him—that was in February.

Q. Then what you call "the second visit" was in February—this was the time he came there with his daughter? A. Yes.

20 Q. Now, was there any material change in his condition between that time in February, and the last time you saw him, in May, 1920? A. He seemed to be in a better physical condition in May than I recall him being in February.

Q. Well, what was his physical condition in February? A. In February he had a cane.

Q. Did he walk with a limp? A. No, he walked with the aid of a cane.

Q. How old a man did he appear to you to be, Mr. McCombe? A. Oh, from my own personal judgment, he was over seventy, easy.

30 Q. Did he appear to you to be feeble, in February? A. He was feeble, unquestionably; he walked slowly.

Q. What other characteristics did you notice about his physical condition, at that time? A. None, particularly.

Q. Now, the last time you saw him, in May, 1920, what was his physical condition? A. In May he was more talkative.

Q. Than he had been in February? A. Than he had been in February.

40 Q. Yes—what else? A. He had quite a good

*I. Ross McCombe, Esq.—Cross.*

color, as I recall; in fact, he had, at any time I saw him, good color in his cheeks; he was red-faced.

Q. Anything else? A. No.

Q. Was he still walking with a cane? A. The first time, in May, yes.

Q. I am speaking of the last time you saw him in May? A. No, I did not see him with a cane then; in fact, I am positive he walked from my office into Judge Butler's office without a cane. 10

Q. Did he seem to be feeble? A. Well, he walked slowly.

Q. Well, did he appear to you to be feeble? A. No more than what you would expect from an old man.

Q. And I assume that during all of these conferences you speak about his daughter was present—she was right there in the room with you and with him? A. With the exception of the last one. 20

Q. You say she was not in your office at all at the last one? A. She was not.

Q. Did she participate in the conversation, whatever? A. The first time, she introduced me to him as her father.

## BY THE VICE CHANCELLOR:

Q. That was in February? A. In February, yes. 30

## BY MR. TOWNSEND:

Q. Did she say anything? A. That they came to get some information respecting the will and deeding over the property.

Q. Did she ask for that information in February? A. Yes.

Q. And you gave her the information in the presence of her father? A. I recollect there was 40

*I. Ross McCombe, Esq.—Cross.*

some conversation had on that matter.

Q. But no decision had been reached at that time as to whether the deed was going to be drawn then, or any will going to be made, as far as that conversation went? A. That was simply a consultation.

10 Q. Who did most of the talking then? A. Miss Morrison.

Q. Now, they returned again in the first part of May—was that when the subject-matter of the codicil to the will was discussed? A. I think it was.

Q. And she discussed the matter with you? A. No, he wanted to know if that would suffice.

Q. Well, was she there, participating in the conversation? A. She was present.

20 Q. I notice in a part of the codicil, the second paragraph, it opens with this phrase: "Realizing my inability to take care of my affairs, and desiring to be assured that my wishes will be carried out"—whose language is that? A. That is my language.

Q. How did you happen to put in that sentence, or that phrase—"realizing my inability to take care of my affairs?" A. He told me he was getting feeble and to that age where he did not know but that he might be taken at any time.

30 Q. Well, did he tell you he was unable to take care of his affairs? A. No, he said he was getting to that age where he would be.

Q. I know, but if that were true, how did you come to put in that phrase "Realizing my inability to take care of my own affairs," if he had said nothing to you about being unable to take care of his affairs? A. That is what prompted me to use that phraseology, when he said "I am getting to that point where I will be."

40 Q. Was it because you thought he was not able to take care of his affairs, or was it because he told

*I. Ross McCombe, Esq.—Cross.*

you he was not able to take care of his affairs? A. No, absolutely not.

Q. You mean that it was not either? A. It was not; because he was at that time able to take care of his affairs.

Q. Well, why did you put that in, Mr. McCombe? A. Because I got the suggestion from him that he was arriving at that age wherein he would not be able to take care of his affairs; and that gave me the suggestion to incorporate that phraseology. 10

Q. It was not due to his physical appearance, or physical condition, that gave you that idea? A. No, any more than his age would warrant me.

Q. Well, what was it about his conversation, then, that gave you that idea? A. What he had told me. He says, "I am getting to that point where I won't be able to take care of my affairs; I want to see that my property is where I want it to be before I pass on." Now that was the substance, and I am quite sure it was almost the language, that he used. 20

Q. When he came in, in February, he told you he did not expect to live very long, did he? A. No, he did not.

Q. Did he, at any time, tell you he did not expect to live very long? A. No, it was in the first conference, in May, that that point was suggested.

Q. Well, who suggested that point at the first conference in May, that he would not live very long? A. I got the suggestion from him—that he was getting to that point where he would not be able to take care of his affairs. 30

Q. Well, did he use the words that he "did not think he was going to live very long"? A. No, he did not.

Q. But "he did not think he would be able to take care of his affairs"? A. That is right.

Q. Did he want someone to take care of his 40

*I: Ross McCombe, Esq.—Cross.*

affairs?

Mr. Sewell: I object.

Mr. Townsend: In his conversation.

Mr. Sewell: Well, that is different.

A. He did not say it in those words, but I deducted that that was the intention.

10 Q. When were you admitted, Mr. McCombe? A. In New York, or New Jersey?

Q. In New Jersey? A. I think, around over two years ago—I think going on three.

Q. Was it June, 1920? A. Oh, it was before that.

Q. Sure of that? A. No, I am not sure, to be honest with you, now. I was admitted in New York in 1912, and I have been with Mr. Simpson  
20 now going on four years.

Q. Wasn't it in the June Term, 1920, you were admitted to the Bar of New Jersey? A. It may have been.

Q. Were you admitted to the Bar at the time this deed was drawn? A. I was positively admitted to the New York Bar, but whether I was admitted to the New Jersey Bar, I am not sure.

Q. Is not the reason you took him in to Judge Butler because you were unable to take the acknowledgment yourself? A. No; I understood the rule  
30 to be in New Jersey that the deed had to be sworn to before a Master in Chancery, and I was not any too familiar with the rules in New Jersey, being a New York lawyer and admitted in New York.

Q. You knew at that time that an attorney-at-law was authorized to take acknowledgments and affidavits, didn't you? A. I did not understand it so in a deed.

Q. Morrison told you that he thought the prop-  
40 erty was worth about \$4500, and that he thought he

*I. Ross McCombe, Esq.—Cross.*

owed the daughter more than that for taking care of him? A. Yes.

Q. Did you inquire as to whether the daughter had ever worked, herself? A. I did not.

Q. Did you inquire as to whether she had any source of income? A. I did not.

Q. As to whether she was married? A. I did not.

Q. Or as to whether or not he had always taken care of her from the time of her infancy? A. I did not. 10

Q. Did you make any inquiries from anyone else as to how much the property was worth? A. I did not.

Q. I take it, from your examination, that you made no inquiries as to how much money he had? A. I did not.

Q. So far as your knowledge went, you did not know whether he had any more money than this \$4500 in this property, or not? A. I did not. 20

Q. And, so far as your services were concerned, you had no conversation whatever with him as to what might become of him in the future? A. No.

Q. You, of course, realized, that if this property got away from the daughter, he would have no means of support, so far as your knowledge went? A. I never gave it a thought.

Q. Of course they did not ask you about that, and you never gave the matter a thought? A. No sir. 30

Q. Likewise, you never gave the matter a thought as to whether you should not incorporate in that deed a power to revoke it in the event that a time should come when he needed money to support him? A. I did not.

Q. Did you not think that was your duty, Mr. McCombe?

*I. Ross McCombe, Esq.—Cross.*

Mr. Sewell: I object to it.

The Vice Chancellr: I will admit the question.

A. I did not, for the reason that there seemed to be a sort of fondness between father and daughter exhibited to me in the office.

10 Q. You did not insist upon inserting in it a reservation to the donor of a power to revoke the gift? A. I did not.

The Vice Chancellor: I do not know that it was a gift.

Q. Or the transfer? A. I did not consider it as a gift.

20 Q. Did you, other than what you have already told us, examine him, or examine her, as to how much work she had done? A. Nothing more than what he said, that he had been living with her for over fourteen years; and when I asked him what the equity was he says "\$4500," and I says, "Do you consider the value of her services—what she has been doing for you for the last fourteen or upwards of years—to be that much?" He says, "Why, I don't think even that would pay her." Those are his exact words.

30 Q. Did you ask him what he thought those services were worth? A. No.

Q. In other words, nothing more than you have told us? A. Just what I have told you.

Q. Did you ask how old Miss Morrison was? A. I did not.

40 Q. You did not attempt to check up as to what you thought he meant, or whether the consideration was adequate or inadequate? A. No, sir; I was only considering what I was asked to do by the old gentleman.

*I. Ross McCombe, Esq.—Cross.*

Q. Nothing was discussed with him relative to the transfer of the bank accounts? A. Nothing whatsoever.

The Vice Chancellor: That had been done two years before.

Q. Oh, by the way—your office, when this litigation of these wills took place, or were instituted, withdrew from the case, did you not? A. We had nothing to withdraw from. We were consulted, and I said, "Inasmuch as the office was involved in preparing the codicil and preparing a deed, we did not think it was policy for us to take any action in any subsequent proceeding that might be involved therein." That was my own, as I might say, notion in the matter. 10

Q. You recommended Mr. Jentz, I assume? A. I recommended them to get another attorney, not particularly Mr. Jentz. 20

Q. Did you suggest his name then—including him among other lawyers? A. I might have, but I wouldn't say.

Mr. Sewell: I object to this.

The Vice Chancellor: I do not see where it is all leading; it has not the slightest bearing on undue influence. 30

Q. Why didn't you put the consideration, \$4500, in the deed?

Mr. Sewell: I object. It is irrelevant, incompetent and immaterial why he did not.

The Vice Chancellor: I will overrule the objection.

A. I asked what equity there was in the prop- 40

*I. Ross McCombe, Esq.—Cross.*

erty; he says "\$4500." That is where I got the idea of the value.

BY THE VICE CHANCELLOR:

Q. And you put stamps on accordingly? A. Accordingly; yes, sir.

10 BY MR. TOWNSEND:

Q. But why didn't you name that as the consideration in the deed, instead of "One dollar?" A. I thought it was safer to put it "One dollar"; and, then again, it was my habit, in preparing deeds, not to put in the true consideration, because it would be better, possibly to sell, or to make a subsequent sale.

20 Q. You knew you had to put the true consideration in stamps, and you knew that anyone looking at the deed would get the true consideration from the stamps?

The Vice Chancellor: Not necessarily; the Government does not say he shall not put on three times as many stamps as the law requires.

30 Mr. Townsend: I think, your Honor, no one is going to pay more out in stamps than what they are supposed to pay, under the law.

The Vice Chancellor: But a man, in order to prevent the idea that he was getting something cheap, might put on the extra stamps.

Q. That was not your idea, was it?

4) The Vice Chancellor: He put on stamps equivalent to the true consideration.

*William Van Wagener—Direct.*

Q. I think you said you made inquiries, and there was not any mortgage on the property? A. I do not recall that; but the question was, what is the equity.

Q. You did not ask whether there was any mortgage? A. I do not recollect it; possibly I did; otherwise I would not have made the deed as I did draw it; I would have provided for the mortgage, had I ascertained that there was one. 10

Q. What did the daughter say about these past services, as to how much she was entitled to, if anything? A. Nothing whatsoever.

WILLIAM VAN WAGENER, sworn.

DIRECT EXAMINATION BY MR. SEWELL:

Q. How many years did you know Mr. Morrison? A. Well, to the best of my knowledge, I guess about fifteen years. 20

Q. Did he work at the same place you worked? A. Yes, sir.

Q. For how many years last past, previous to his death? A. Well, let me see—I think about five years, he worked down in the Vulcan Iron Works.

Q. Jersey City? A. Yes.

Q. What kind of work did he do there? A. Mr. Morrison followed caulking; I don't know whether he was a caulker, or not; I never heard him say so. 30

Q. Just tell us, briefly, what the duties of a caulker, down at that place, consisted of? A. What do they use caulkers for?

Q. Yes, what do they do? A. They drive cotton in the seams of a vessel to make them watertight.

Q. Is that hard work, or is it easy work? A. It is laborious work. 40

*William Van Wagener—Direct.*

Q. And up to when did Mr. Morrison work there? I will ask you this way—when did you have the strike down there? A. Well, we had one there in October, 1919.

Q. Now, did Mr. Morrison work after the strike? A. Oh, yes.

10 Q. That was after October, 1919? A. Yes, I think somewhere along in the Spring of 1920.

Q. About what month in the Spring of 1920? A. I don't know that I can just recall—somewhere along April or May.

Q. April or May, 1920? A. I should say so.

Q. What was his physical condition, from what you observed of him, during that time? A. Well, I don't know just what you mean. He was an old man, of course; he was not young, you know.

20 Q. What was his condition for a man of that number of years? A. Well, I thought he was pretty well.

Q. Was he what you would consider a feeble old man? A. No, I would not.

Q. Did he have to do any lifting—was it necessary for him to lift any weight in his work down there? A. Yes, sir.

Q. What would he have to lift? A. Well, we had to carry our horses with our staging, and the planks to put on them.

30 Q. How heavy are those? A. The plank is about all two men could carry, and the horses the same.

Q. And would he have to do his share of the work? A. Yes.

Q. What about the mallets and hammers—were they small affairs, or were they goodly size? A. Well, any horse and beetle I should judge would weigh six pounds.

*William Van Wagener—Direct.*

BY THE VICE CHANCELLOR:

Q. Generally, it is wood, is it not? A. Yes, sir; live oak.

BY MR. SEWELL:

Q. How was Mr. Morrison, as far as working steady, or did he lay off a great deal? A. Well, he worked about as steady as the average caulkers. Of course they never work as steady as a carpenter, generally. 10

Q. Did you ever see him working on any cold days, during the Winter of 1920, down there? A. Yes, I have.

Q. Did you notice anything peculiar in the man's actions, that would indicate to your mind that he was mentally unsound, or anything of that kind? A. I don't quite understand that. 20

Q. Did you ever see Mr. Morrison do anything that would indicate to your mind that he was mentally unsound? A. No.

Q. As far as you know, what was his ability to attend to his own affairs—from what you saw?

Mr. Gannon: What does he know about his affairs?

Mr. Sewell: Oh, well, I wanted to shorten it. 30

Q. Were you in a position, during this number of years that you knew this man, to know anything about his business affairs? A. Well, I didn't know so much about it. I done a little work for him; he asked me to come up to his house and do a little work for him at one time.

Q. When was that? A. I think that was in 1919, in the Spring. 40

*William Van Wagener—Direct.*

Q. In the Spring of 1919? A. Yes.

Q. Did he ever require any assistance, down at the plant, in doing his work, up to the time that he quit in April, or May, 1920? A. Require any what?

10 Q. Did he ever require any assistance down there, in doing his caulking work? A. No; we all have to do our share, of course; that is customary; only one would help the other out a little bit for to get done with the work.

BY THE VICE CHANCELLOR:

Q. Was the wage standard per day, or by piece-work? A. No, sir, by the hour.

Q. You were paid by the hour? A. Yes, sir.

20 Q. And if you were working one hour you were paid regardless— A. (Interrupting). Well, eight hours constituted a day's work.

Q. But you were not paid by the piece? A. No; we were not working piece-work. Of course there were times we used to work by piece-work, but that is all done away with now.

Q. Then, if you drive fifty feet of seam in an hour, or caulk forty feet in an hour, you get the same pay? A. Yes.

30 BY MR. SEWELL:

Q. Were there any foremen around, or superintendents, inspecting the work, or examining the amount of work the workmen did? A. Yes, sir; there was a head foreman, and we have an assistant foreman there.

Q. And would they watch the men working? A. Yes.

4.) Q. Was there any standard set as to how much work you would do an hour? A. No, the work

*William Van Wagener—Cross.*

was never rated; all they asked was a man to do a fair day's work, and the boss was the judge of that himself.

Q. And did the boss require every man to do a fair day's work? A. Yes.

## CROSS EXAMINATION BY MR. TOWNSEND:

Q. What company did you work for, and did Morrison work for? A. The Vulcan Iron Works. 10

Q. What is the name of the firm? A. That is the name at the present time. Of course the place has changed quite a few times.

The Vice Chancellor: It is the old Theodore Smith & Sons Company.

The Witness: 36 Hudson Street is their address now.

Q. Well, where was the place you would report for work? A. 36 Hudson Street. 20

Q. Who was your foreman? A. Well, my foreman's name was Mr. Peterson, Harry Peterson. That wasn't Mr. Morrison's foreman.

Q. Who was Mr. Morrison's foreman? A. Well, that is more than I could tell you. He is an Italian, and I don't know his name.

The Vice Chancellor: You can go down there and get the record, if they keep the thing the way it was when I was their counsel. You will find there is a regular time-sheet, with the regular days marked on it. 30

Mr. Townsend: That was my idea—that if we found out who his foreman was we can get it more quickly.

The Vice Chancellor: You can get it from the bookkeeper. They used to keep a regular time-sheet. 40

*William Van Wagener—Cross.*

Q. So far as you and your wife are concerned, you are very friendly with Miss Morrison to-day, are you not? A. What is that?

(Question repeated). A. Yes, sir; we are.

Q. She frequently visits your house? A. Yes, sir.

10 Q. And has continued to do so ever since this trouble between herself and her father? A. No, sir; we have been friends for sometime. I went to Mr. Morrison's house a good deal.

Q. Well, was this deck work, or the seams of iron ships that you saw Morrison working on? A. We do not drive oakum in iron ships.

Q. Was it in the deck you did the caulking? A. Yes, sir—wooden hull boats.

## BY THE VICE CHANCELLOR:

20 Q. Was Mr. Morrison caulking the sides? A. Sides, deck, or bottom, or wherever they required him to go.

## BY MR. DOHERTY:

Q. Is it not possible for these people to sit down while they are caulking? A. Oh, they do usually sit down on a little stool, just a little plank.

30 Q. Is it not a fact that a caulker sits down while he is working? A. If we are working on the bottom we have to sit on a stool—or working on the deck.

Q. The only time you are standing is when you are working on the side of the boat, upright? A. When we are working on the sides we have to stand up.

Q. Did you think Mr. Morrison was capable of caulking a boat in 1920? A. Yes.

40 Q. Did you see him do it? A. Yes, sir.

*William Van Wagener—Cross.*

Q. On what barges? A. Well, I couldn't recall that, because we would have so many of them.

Q. Well, how many of them did he work on the sides of, caulking the sides? A. Well, he generally was working on one at a time.

Q. Yes, well, after he got finished with the one he was working on, how many more did he work on? Is it not a fact that Morrison was not capable of going up on a scaffold and working on the side of a ship? A. Mr. Morrison was capable of going up on a scaffold and working on the side of a boat, and swing a horse and beetle—maybe not as strong and lively as I would, but he did it. 10

Q. What kind of a scaffold did you use—one that was swung over the side—just a plank—or an ordinary painter's scaffold? A. We hadn't, down in the Vulcan Iron Works, but two planks, of ten inches wide, each plank; that is 20 inches of staging; and if we were working off on the dry dock, we floated the stage, and sat down on that; and if we were up on the ship we had— 20

Q. (Interrupting). And while working on this scaffolding you could sit down, and have your legs hanging over the scaffold—is not that so? A. You might for one seam.

Q. You could for all the seams, couldn't you, if you so desired? A. No, sir.

Q. Why not? A. It is impossible to reach 30 them; you couldn't sit down and reach up so high. You could stand up.

Q. No, but you could put the scaffold up? A. No, it is easier to stand up than it is to raise the scaffold.

BY MR. TOWNSEND:

Q. How did you fix the time as to when he last did any work? A. I don't quite understand that 40

*William Van Wagener—Cross.*

question.

Q. How do you fix the day, or the month of the year that he last did any work down at the Vulcan Iron Works? A. How do I fix that date?

Q. Yes. A. Well, I can only just kind of surmise it in that way; I haven't any particular date of it; I know it was right along in the Spring of the year.

10 Q. When was the last time you saw Mr. Morrison alive? A. Well, that I couldn't just recall.

Q. Well, about when? A. It may be a year and a half; it may be a little longer.

Q. Well, do you know that he died on the 31st of July, 1921? A. Yes, sir.

Q. Now, you say it is about a year, or a year and a half before that? A. No.

20 The Vice Chancellor: He did not say that; he said a year and a half from now.

Q. What month, if you can fix it, was the last time you saw him alive? A. I could not possibly say.

Q. Well, about when?

30 The Vice Chancellor: Did you see him alive last year?

A. It might have been probably in June of 1920.

Q. June or July, 1920? A. I should think so.

Q. Was there any change in his physical condition between that time and the time you last saw him working down at the Vulcan Iron Works? A. I don't think so. The last time I saw the old gentleman he was sitting on the stoop of his house on Jackson Avenue.

40

*Grace Morrison—Direct.*

At this point, the further hearing of the matter was adjourned to Wednesday, March 15th, 1922, at ten o'clock, a. m., at the Chancery Chambers, Jersey City, N. J.

Chancery Chambers,

Jersey City, N. J., March 15, 1922.

10

Hearing of the cause resumed, in the presence of the counsel of the respective parties, pursuant to adjournment.

GRACE MORRISON, sworn.

## DIRECT EXAMINATION BY MR. SEWELL:

- Q. Where do you reside at the present time? 20  
 A. At 274 Fairmount Avenue.  
 Q. Jersey City? A. Yes, sir.  
 Q. How old are you? A. Thirty-one.  
 Q. How long is your mother dead, Miss Morrison? A. Well, since 1905.  
 Q. Where did you live from 1905 up until October, 1920, and with whom? A. Most of the time at Jackson Avenue.  
 Q. And with whom did you live during those years? A. With my father. 30  
 Q. And your father is Charles Morrison? A. Yes.  
 Q. When did your father die? A. July 31st, 1921.  
 Q. Miss Morrison, up until what time did Mrs. Daly live with your father? Did she live with your father after your mother died, or did she leave home before that? A. Well, she left about a year after my mother died, when she got married.  
 Q. And who kept house during that year? A. 40

*Grace Morrison—Direct.*

Well, we had a housekeeper that year.

Q. And then, how long did your brother Walter, Mr. Morrison, live at home? A. Well, he got married three years after that.

BY THE VICE CHANCELLOR:

10 Q. After your mother died? A. Well, I guess four years—three years after my sister got married.

BY MR. SEWELL:

Q. And who kept house during that three years? A. I did.

Q. Now, who lived with your father after your brother Walter was married? A. I did.

Q. You did? A. Yes.

Q. Did anyone else live with him? A. No.

20 Q. Did your sister, Mrs. Daly, or your brother, Mr. Morrison, live with him? A. No.

Q. Did anyone else live with him? A. No, I was the only one.

Q. Now, do you recall going to the office of Alexander Simpson, at 586 Newark Avenue, or whatever his address is? A. I do.

30 Q. And when was the first time you went there to that office? A. Well, it was pretty cold weather; I guess it was in January, or so; I don't just remember the first time.

Q. What year? A. In 1920.

Q. Did you, at that time, see anybody at the office—talk to anyone? A. Yes, — Alexander Simpson.

Q. Did you speak to him, personally? A. I did.

Q. And was your father there, to? A. Yes.

Q. And did your father speak to him? A. Yes.

Q. And then, when did you go to the office again? A. In May, I think.

40 Q. In May, nineteen hundred and what—what

*Grace Morrison—Direct.*

year? A. 1920.

Q. Whom were you accompanied by, on that occasion? A. My father.

Q. And who did you see there, if anybody? A. Mr. McCombe.

Q. And did your father have a talk with Mr. McCombe, in your presence? A. Yes, he did.

Q. What did your father have to say to Mr. McCombe? A. Well, he said that he wanted the property conveyed over in my name. 10

Q. Well, tell us fully, everything he said? A. And that I had taken care of him all of those years.

Q. Yes—go ahead? A. That is all.

Q. Was there anything further said by Mr. McCombe, or by yourself, or by your father? A. I don't remember of anything else.

Q. You do not remember? What was said on the first occasion, when you talked to Mr. Simpson? A. Well, he told him that he was getting old, and he wanted me taken care of, and that is the reason he was conveying it over to me. 20

Q. What did Mr. Simpson say to him? A. Well, there was a big crowd there in the office he would see him after a while, and then we went outside and sat outside there, and someone else came in there, and we waited and waited there, and my father got kind of fidgetty, and he says, "Well, I will come back again." 30

Q. How many trips did you make to Mr. McCombe's office in the month of May, 1920? A. Well, I guess about a couple of trips.

Q. A couple of trips? A. I don't know whether it was one, or two.

Q. What happened the second time you went there, in May? A. Well, that was the time about the deed.

Q. The second time in May—what happened that time? A. Well, he transferred the property 40

*Grace Morrison—Direct.*

over to me.

Q. Now, was anything said about it at that time—any conversation? A. Not that I know of.

Q. Do you know whether your father went there a third time in the month of May? A. I think he did.

10 Q. You don't know, though, of your own knowledge—you were not with him, were you? A. No.

Q. Now, tell us how it was that your father happened to leave your home? A. Well, my brother, he came of a Sunday morning, and he said that he knew the property was turned over to me, and he said he was entitled to a third, and he started in to fight over it; so, of course, I got kind of mad over it; I ordered him out, on account of the fight; and then he took my father along with him.

20 Q. Was your father sitting on the stove, crying, when he came in? A. No.

Q. Or had there been a fight of any kind between you and your father, or any trouble, just before your brother Walter came in? A. No.

Q. How had you treated your father up to that day that your brother took him away? A. Well, we always got along fine.

Q. Did you ever have any fights with him? A. No, we always got along very good.

30 Q. Did you ever compel him to sleep out in the hall, or abuse him in any way? A. I did not.

Q. Did your father ever go to see anybody, protesting against your actions toward him, that you know of? A. No.

Q. How often did your brother Walter visit the home there since he was married, twelve years before your father left the home? A. Well, he used to come about once a year, around the holidays.

Q. Did he ever come more than once a year? A. That is all.

4) Q. Eh? A. That is all.

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Q. And did you ever tell him to keep away from the house, or get out of the house, prior to October 15th, 1920? A. I did not.

Q. Did you ever do anything to cause him not to come? A. No; he was welcome any time.

Q. Did your sister, Mrs. Daly, visit the home frequently? A. No, she hardly came at all.

Q. Say the last five years that your father lived with you, about how many times was Mrs. Daly there? A. Well, I believe, once. 10

Q. Once in five years? Were you bad friends with Mrs. Daly at that time? A. No, I was not.

Q. Did you visit her home? A. Yes, I did.

Q. And did you ever do anything to cause Mrs. Daly to stay out of your home, as far as you know? A. Not that I know of.

Q. Who did the housework in the house—did you do it, or did your father hire someone else to do it? A. I always done it. 20

Q. Up until when did your father work, Miss Morrison? A. Up until April, 1920.

Q. And do you know where he worked? A. At the Vulcan Iron Works.

Q. What kind of work did he do, do you know?

A. Ship-caulker.

Q. And what was your father's condition, physically—was he a well man, or was he a sickly man?

A. Well, he wasn't really sick; he was always up and around, and all. 30

Q. Now, Dr. Connolly testified yesterday, if I remember correctly, that in 1917 he treated your father; in 1918 he treated your father; and then later, about September, 1920, he treated your father—now, with the exception of those three times, was your father treated by any physicians?

A. No.

Q. He required no medical attention, with the exception of those three occasions, during those 40

*Grace Morrison—Direct.*

three years? A. That is all.

Q. Now, do you recall when the strike took place down in the Vulcan Iron Works? A. I do.

Q. About when was that? A. It was in the Winter, in the cold weather.

Q. Of what year? A. 1920—1919.

BY THE VICE CHANCELLOR:

10 Q. That is, was it the Winter of 1919-20, or the Winter of 1918-19? A. The Winter of 1919.

Q. And 1920, was it? How long before your father died? A. He died in 1920—no, 1921.

The Vice Chancellor: Then it was about thirteen months after this deed was made.

Mr. Sewell: No, the deed was made in May, 1920.

20 The Vice Chancellor: That is what I say; he died in July, 1921.

Mr. Sewell: Yes, he died about fourteen months afterward.

Q. Well, was the strike before your father gave you the deed, or was it after? A. It was before.

Q. Now, how many winters before was it? A. It was that Winter.

30 The Vice Chancellor: I see, and that was the Winter of 1919-20.

Mr. Sewell: Mr. Van Wagener testified yesterday that it was October, 1919, that the strike was.

The Vice Chancellor: Well, it may have run on through the Winter.

Mr. Sewell: Yes, it did.

Q. How long did the strike run, about? A. Well, he was home quite some time.

40 Q. Four or five months? A. No, it didn't last

*Grace Morrison—Direct.*

as long as that.

Q. But you think it ran into the Winter of 1919-20? A. Yes.

BY MR. SEWELL:

Q. Now, after the strike was over, what did your father do regarding work—did he stay at home, or did he return to work? A. He went to work. 10

Q. And then he worked from that time up until when? A. Up until April.

Q. What year? A. 1920.

Q. And did he work continuously during the balance of that winter and up to April 1st, 1920? A. Yes.

Q. Now, what was his condition then, Miss Morrison—his physical condition? A. Well, he always seemed to me to be the same. 20

Q. Was he able to walk around alone, or did he require assistance? A. No.

Q. Did you have to help him around, or was he able to walk by himself? A. He was able to walk all right.

Q. He did walk all right? A. Yes.

Q. Did he ever do anything, as far as going down cellar and doing anything for you? A. Oh, yes; he was very good that way; he used to do lots for me. 30

Q. Tell us some of the things he used to do? A. Well, he used to go down and get up the coal, some of it.

Q. Go ahead—what else? A. And he used to shovel all the snow.

Q. And did he shovel the snow during the Winter of 1919-20? A. I believe he did.

BY THE VICE CHANCELLOR:

40

*Grace Morrison—Direct.*

Q. Well, you did not bring a man in from the outside to do it, did you? A. No.

Q. And you did not pay for shovelling the snow?

A. He always seemed to want to do it.

BY MR. SEWELL:

10 Q. Did you, at any time, Miss Morrison, tell your father that he had better convey any property to you because he was going to be sued, or anything along that line?

The Vice Chancellor: That is charged in the bill, but not proven.

Mr. Sewell: Then I will withdraw it.

20 Q. Did you ever speak to Miss Braden about this property, Miss Morrison? A. Well, I think I did, when my father—or when we went once, I says to her——

Q. Went where once? A. Went to the lawyer's.

Q. Mr. Simpson's office, do you mean? A. Yes.

Q. All right—what did you say to her? A. I said that papa was thinking of turning the property over to me.

30 Q. Did you say anything further? A. That is all I know of.

Q. Now, just before your father left, or your father was taken away from your home by your brother Walter, did Walter visit the house more frequently there, for a short period of time, or did he not? A. Well, he had just been in from the mountains, he came in about two weeks, and in that two weeks he had me pestered, he was around there over half a dozen times.

40 Q. Was that unusual for him to be there so frequently during a period of two weeks, or was that

*Grace Morrison—Direct.*

his usual custom of coming in—half a dozen times during two weeks? A. It was not.

The Vice Chancellor: She said about once or twice a year he called.

The Witness: Well, this was when he took him away. Before that, it was about once a year.

10

## BY THE VICE CHANCELLOR:

Q. When he came in to see you, the last two weeks, what did he talk about? A. Well, a couple of times I was out, and he was there, and I didn't know what he was saying, or anything.

Q. Well, when you were there, when he would call, what did he say to you, and what did he talk about? A. Well, he didn't—

20

Q. (Interrupting). Did he say anything about the property—about its being conveyed to you? A. No; it seems he had been looking for a place to move into, and that is what he was talking about.

## BY MR. SEWELL:

Q. When he was coming there, during that two weeks, for five or six times, did he know that you had already received the deed of the property? A. 30 Yes.

Q. And do you know how he found that out? A. Well, it came out in the paper, in the conveyances; and I told him, too; I told him papa had given me it.

## BY THE VICE CHANCELLOR:

Q. What did he say to that? A. Well, he didn't say much.

40

*Grace Morrison—Direct.*

BY MR. SEWELL:

Q. Well, what did he say? A. He didn't say nothing, in fact; he looked as if he felt it, rather.

Q. Well, was that the day he took the old gentleman away you told him that; or did you tell him that before he took him away? A. I told him that before that.

10 Q. And then it was after you told him that that he made these frequent visits. And was he ever alone with the old gentleman? A. Well, when I was there he was not.

Q. Well, when you were not there was he ever there? A. Yes, he was there.

BY THE VICE CHANCELLOR:

20 Q. One moment—did you ever go into the house and find your brother there with your father? A. Yes.

Q. Did you ever ask your father to give you this property? A. I did not.

Q. Why did he give it to you—what reason did he assign for giving it to you? A. Well, on account of my taking care of him, and he was getting old, and he thought it was best to do it, that I would have it.

30 Q. Well, suppose you lost the property, what would become of him? A. Well, he had a couple of bank books of his own; I knew everything that he had; I knew every dollar that he had.

Q. Now, he had a couple of bank books of his own—in what banks were the moneys? A. In the Seamen's Bank and the Greenwich.

Q. How much did he have in the Seamen's Bank? A. Well, it was pretty near a couple of thousand.

40 Q. And how much in the Greenwich? Well, I

*Grace Morrison—Cross.*

think it was over that, in the Greenwich.

Q. Over a couple of thousand? A. Yes.

Q. And did you expect, if he could not work, that he would live on that three or four thousand dollars the balance of his days? A. Well, I don't know whether he could, or not, but he had it in his name.

Q. Then, as I understand you, he gave you this property—now, what reason did he assign for giving you the property in preference to your brother and sister? A. Well, I suppose I being there all the time with him, and like that. 10

Q. No, do you suppose—what did he say; what reason did he give for giving it to you, and not to your brother and sister? A. Well, he said I had taken care of him.

BY MR. SEWELL:

20

Q. Do you remember the sum of \$4500 ever being mentioned by your father at any time, in the presence of anybody else? A. I do not.

CROSS EXAMINATION BY MR. TOWNSEND:

Q. Miss Morrison, how do you fix the time as April, 1920, that he stopped working? A. Well, it was coming on warm weather, I know. 30

Q. Did you make any record anywhere of it, as to up to what time he worked? A. No, I did not.

Q. Well, do you know what day of the month of April, 1920, he stopped working? A. I don't know that.

Q. Do you have any way of fixing on the month of April—how do you arrive at that, when he quit working? A. Well, I thought it was that; it was coming on to warm weather.

Q. He had worked continuously there from the 40

*Grace Morrison—Cross.*

early part of the winter until April, 1920, you say?

A. Yes.

Q. Now, Miss Morrison, is it not a fact that you telephoned the Vulcan Iron Works this morning, about half-past nine, asking when he left their employ? A. Well, Mr. Van Wagener did.

Q. Well, didn't you—weren't you talking on the telephone to the gentleman—Mr. Mason? A. Mr. 10 Van Wagener.

Q. Were you present when Mr. Van Wagener did? A. Yes.

Q. Well, was there any other lady present? A. No; that is all.

Q. Well, what lady's voice answered the telephone, or asked those questions, on your end of the wire? A. Well, he called up, I believe, Mr. Mason.

Q. Yes, Mr. Mason—well, didn't you talk to Mr. 20 Mason this morning, and ask him how long your father worked there? A. No.

Q. There was not any other lady around, except you, at that time, with Mr. Van Wagener? A. No.

Q. And where did you call from—your home? A. From the drugstore.

Q. And that is the reason. You know that Mr. Mason did say, on the telephone, did he not, that "our records show that he was not employed after April 1st," and is not that the reason why you say 30 he stopped working there in April? A. Well, I know he was working up until the warm weather.

Q. I know, but you mentioned here "April" on your direct examination—is not the reason why you say he worked until April because of what Mr. Mason told you over the telephone this morning, about half-past nine, or quarter to ten—is not that the fact, Miss Morrison? A. What?

Q. Is not that the fact—that your reason why you say "April" was because of what Mr. Mason 40 told you over the 'phone this morning? A. Well,

*Grace Morrison—Cross.*

I thought that it was about that, anyhow.

## BY THE VICE CHANCELLOR:

Q. Well, why did you telephone, or have the Vulcan Iron Works telephone you, about when he quit working? Why did you do that? A. Well, Mr. Van Wagener says, "I will get the exact date." 10  
BY MR. TOWNSEND:

Q. And after what Mr. Mason said over the telephone, that is the reason why you say it was April—is not that so? A. Well, I didn't say exactly that, but I say he was working in the warm weather.

Q. Did you have any other record than that? A. No.

Q. Well, don't you know, Miss Morrison, that your father did not work at the Vulcan Iron Works after January 21st? A. I know he did. 20

Q. Don't you know that he only worked at the Vulcan Iron Works five days all together, between December 18, 1919, and April 21st, and those days were December 24, December 25, December 26, December 28 and January 21st? A. Well, I don't care where he was working, I know he was working; but whether he was working out there or in Bayonne, I don't know.

Q. Don't you know that that is all he worked down there, all together, at any time? (No response). 30

Q. Now, did Miss Braden give you Mr. Simpson's name, as a lawyer? A. No.

Q. How did you know Mr. Simpson, or where did you get his name as a lawyer? A. Well, he was my father's attorney.

Q. Had your father given you that name? A. Yes.

Q. Did you go up and see Mr. Simpson alone, before you went there with your father? A. No; 40

*Grace Morrison—Cross.*

I went there with my father.

Q. You went to see Mr. Simpson before you talked with Miss Braden? A. Yes.

Q. You remember your conversation very well with Miss Braden? A. Yes, I remember it.

10 Q. And your conversation with Miss Braden, as I understand you, was after you and your father had been to Mr. Simpson's office, as you say, and your father said he wanted to turn the property over to you? A. Yes.

Q. Well, why did you ask Miss Braden then how you could get your father's property turned over to you? A. Well, I didn't; I told her that he was thinking about it.

20 Q. Well, didn't you ask Miss Braden as to how you could get that property turned over, and did not she tell you you would have to see a lawyer? A. No, I did not.

Q. And didn't you tell her that your father would not go to a lawyer? A. No.

Mr. Sewell: I object; I do not think Miss Braden testified to that effect, your Honor.

The Vice Chancellor: I do not recall it.

Mr. Sewell: I do not recall it. She says this woman asked her how she could get her father to turn this property over to her.

30 Mr. Townsend: And Miss Braden told her to go see a lawyer; and Miss Braden then said that she said she could not get her father to go to a lawyer. That is my recollection.

Mr. Sewell: I beg to differ with counsel.

Q. Well, did you tell Miss Braden that you could not get your father to go to a lawyer? A. I did not.

Q. Did you have any difficulty in getting your father to go up to Mr. Simpson's office? A. No.

40 Q. How long before you went to Mr. Simpson's

*Grace Morrison—Cross.*

office was it first suggested about turning over the property to you? A. Well, it was just the night before, there.

Q. The night before you went to Mr. Simpson's office—do you remember whether it was in January, 1920? That was the first time you went to Mr. Simpson's office—and it was the night before, at your home, that was the first time that the subject was discussed? 10

The Vice Chancellor: Not January, 1920; the first time anyone went there was in February; and the next trip was in May.

Mr. Townsend: She said, in January.

Mr. Sewell: She said "about January."

Q. Where was it this subject was discussed—at your house, the night before? A. Yes. 20

Q. Was anybody there beside you and your father? A. That is all.

Q. Was it while you were at dinner, or after dinner? A. Well, it was before.

Q. Before dinner?

The Vice Chancellor: Before which one?

The Witness: Before dinner.

The Vice Chancellor: That is, before six o'clock? 30

The Witness: Yes.

The Vice Chancellor: And after twelve?

The Witness: Yes.

Q. And do you know about what time of the day it was? A. Well, I don't know; it was late in the afternoon.

Q. Had your father been working that day? A. I don't think so; no, he was not working that day. 0

*Grace Morrison—Cross.*

Q. Well, who opened the discussion—what did you have to say about it, or what did you say to your father? A. Well, I didn't say nothing—it didn't bother me one way or another.

Q. Didn't you say anything to your father, at all, when the subject-matter was talked about? A. No.

10 Q. Now, just tell us what your father said on that occasion? A. Well, he says, "I want to give you the house," he says, "and we will go in the morning to the lawyers."

Q. And what did you say? A. Well, I said, "All right."

Q. Did he say anything more? A. No.

Q. He didn't say anything more? A. No.

Q. And you said nothing more? A. No.

20 Q. And what time the next morning did you go to the lawyer? A. Well, I guess it must have been about—— it was real early.

Q. Well, about what time in the morning—I suppose it was before noon-time, wasn't it?

The Vice Chancellor: Was it before you had your mid-day meal?

A. I guess it was about half-past ten.

30 Q. Your father, at that time, walked with a cane, didn't he? A. I don't remember.

Q. Why did you go with him? A. Well, he wanted me to go with him.

Q. Well, when did he first suggest to you that you go with him to a lawyer's office? A. The day before.

Q. And that was this afternoon when you had this conference—on the afternoon before? A. Yes.

40 Q. Did you think he was perfectly able to walk up there himself, and go up alone? A. Well, he seemed to be about the same as any other time.

*Grace Morrison—Cross.*

Q. Well, how was he at other times? A. Well, he seemed a little feeble.

Q. Well, you really thought that he was not able to go up there alone, didn't you, Miss Morrison?

A. Yes.

Q. And you were really the one that suggested to him that you go with him, weren't you, because you were fearful that something might happen to him on the way to the lawyer's office? A. No, I went out with him a lot, so it was nothing new for me to go. 10

Q. You were in the habit of going to the banks and other places of business with him? A. Well, I did.

Q. You made that your practice for some years? A. Well, no, I did not—only, I guess, the last couple of years.

Q. You mean the two years before that—and that was because he was old and feeble, was it? A. No, just to go along with him. He wanted me to go with him. 20

Q. You would go to the banks with him when he made his deposits? A. Well, I didn't go very often.

Q. How did you find out, Miss Morrison, how much it was going to cost you to have the deed drawn? 30

Mr. Sewell: I object; there is no testimony that she knew.

Mr. Townsend: I submit it is proper cross-examination.

The Vice Chancellor: I will strike that question out.

Q. Did you know how much he was going to ask you to have the deed drawn? A. No, I did not know. 40

*Grace Morrison—Cross.*

Q. Did you attempt to find out? A. No.

Q. Did you telephone Mr. Simpson's office to see whether he would be in? A. No.

Q. You had not communicated with his office, at all, until you got there? A. No, I did not.

Q. Now, you say your father got tired that day, and he went out; and how long after that was it you came back again?  
10

The Vice Chancellor: At Mr. Simpson's office?

Mr. Townsend: Yes.

Q. He got tired that time of waiting at Mr. Simpson's office—how long was it again before he went back? A. Well, it was—I think it was in May.

Q. Did you go with him at that time? A. Yes.  
20

Q. How did you come to go back in May? A. Well, he suggested it then, and kept putting it off.

Q. Had you suggested to him you thought it ought to be done then instead of keep putting it off all the time? A. No.

Q. You made no suggestion, whatever? A. No.

Q. And he suggested that you go with him? A. Yes.

Q. And he went back again the second time, and you went with him, did you? A. Yes.  
30

Q. Now, the third time why did he go there? A. Well, I believe he went after the deed.

Q. Did you ever talk with your father after he conveyed this property to you, about making a will in your favor? A. Well, the codicil—he had the codicil fixed.

Q. Were you there the day the codicil was fixed? A. Yes.

Q. Did you ever talk with your father after he  
40

*Grace Morrison—Cross.*

had conveyed this property to you by deed, that he should make a will, giving you the property? A. No, the codicil—he made the codicil.

Q. Yes, I mean the codicil? A. No.

Q. You never talked with him about it—did he ever talk to you? A. No.

Q. Didn't you discuss it down in the house, that you thought it would be better, or he thought it would be better, to have a codicil made to his will, so as to make sure that you could keep that property? A. No. 10

Q. As far as you know, you don't know how that happened to be drawn? A. No.

Q. Your father never said anything to you about the codicil, and you never said anything to him—is that right? A. Yes.

Q. Now, why did you go to Mr. Simpson's office with him the day the codicil was drawn? A. Well, that was the day the deed was drawn up. 20

Q. You say that was the day the deed was drawn up? A. Yes.

Q. But are you sure of the fact that you were there when this codicil was drawn and signed? A. Yes.

Q. You say you were? A. Yes.

Q. Well, don't you know, Miss Morrison, that the codicil was not drawn, or executed, until some days after the deed was signed? A. Well, I think it was. 30

Q. Don't you know that it was four days after the deed was drawn that the codicil was executed?

The Vice Chancellor: Do you mean the deed drawn, or signed?

Mr. Townsend: Signed.

A. Well, the deed—I think the deed was made up that day of the codicil. 40

*Grace Morrison—Cross.*

Q. Well, do you say that both the deed and the codicil were executed by your father on the same day, in your presence? A. Yes.

Q. Sure about that? A. Yes.

Q. Now, did you ever have occasion to go to the lawyer's office with your father, after that? A. No.

10 Q. Did your father, so far as you know, ever go to a lawyer's office after that, up to the time he left your house? A. Yes, I think he went there again.

Q. You don't know—you were not with him,—were you with him, or not? A. No, I wasn't with him.

Q. Well, where did you get your information that he went there again? A. Because I think he brought home the deed; he brought home the deed that time, I guess.

20 BY THE VICE CHANCELLOR:

Q. How long after the deed was signed did he bring home the deed? A. Just the next day, I think.

Q. And who sent the deed to be recorded? A. I believe it was Mr. McCombe.

Q. Then, when your father brought home the deed, had it been recorded? A. Yes.

30 Q. And you think it was the next day after it was signed? A. I don't know whether it was recorded then, or not; I don't remember.

BY MR. TOWNSEND:

Q. Where is that original deed that he gave you? A. Well, I haven't got it.

Q. Where was it, the last time you saw it? A. Well, I had it, and I have been moving around so  
40 much that it seemed it got destroyed, with some

*Grace Morrison—Cross.*

papers or other.

Q. You mean to say, you think you lost it? A. No, I didn't lose it.

Q. Don't you have a safe deposit box somewhere? A. Yes.

Q. Where is your safe deposit box?

Mr. Sewell: I object; I do not think that is relevant, competent or material. 10

The Vice Chancellor: What difference does it make?

Mr. Townsend: I would like to ascertain where this deed is, if your Honor please.

Mr. Sewell: What difference does that make?

Mr. Townsend: If your Honor please, there may be an ulterior motive in the destruction or loss of this deed. 20

The Vice Chancellor: Well, in proving the mentality of this witness to be as low as it is, aren't you disproving your own case, to a great extent—namely, that this young woman had not the mental power to dominate her father, reducing the whole issue down to one question, namely as to whether this man, aged and infirm, has made an improvident disposition of his property? 30

Mr. Townsend: I think that she was the stronger of the two.

The Vice Chancellor: I doubt it; but the unfortunate part of the case is this—that this young woman worked for years for her father, and was entitled to a preference from his estate. He sought to make a preference under circumstances which probably will result in the deed being set aside; but it does seem to me that there should be some 40

*Grace Morrison—Cross.*

10 way of taking care of this young woman and protecting her. These others have taken it by the will of the father (which was probably made at a time when he had less mentality, and might have been set aside, perhaps); but the difference in the law as to setting aside a will and setting aside a deed is so radical that a will might be good where a deed might be bad. Now, if I decide to dismiss the bill, then this lady gets all—it is not much, and perhaps she has earned it. If I set aside the deed, then she gets nothing. It is not fair; and there is no way of doing justice in this case, to my mind; and I think it is a case where your clients (I am saying this now to you, and perhaps it is not within my province to do it) but I think your clients ought to make some little provision for this young woman; and I think the money ought to be put in such a position that it would be a protection for her, and where she could not squander it.

20  
30 Mr. Townsend: We are quite ready and anxious to do that; and the only difficulty is that Miss Morrison does not seem to look at it that way, nor is she willing to take anybody's advice. We are perfectly willing that she should have a share in excess of our share.

The Vice Chancellor: Well, what is your offer?

Mr. Townsend: Our offer is that the property be divided into three parts, and that she get one thousand dollars in excess of whatever we get.

40 Mr. Sewell: That one thousand dollars they speak of was obtained before this litigation ever started, and was probably spent

*Grace Morrison—Cross.*

long before the litigation was ever started; and as soon as the old gentleman was taken from the home the litigation started.

Mr. Townsend: The thousand dollars that he is speaking of is the thousand dollars paid on account of the contract of sale; and we are perfectly willing that she should keep that; we are perfectly willing that she should keep the household effects, whatever the value was, and whatever she received for them; and that, in addition to that, she should get a share in this estate equal to them. 10

The Vice Chancellor: Oh, why don't you take the thousand dollars out of the nine thousand, and give her the personal effects? These people must understand that they are brother and sisters. I say, let the thousand dollars that is past go, and settle it. This young woman is the sister of both these parties; they are both married and away; and she is alone in the world; it may devolve upon them, sooner or later, to take care of her. 20

Mr. Townsend. I think it will, your Honor.

The Vice Chancellor: Well, why don't they do right, and be decent? Now, all the money that is given her, if it is given, should be placed in trust in some manner for this young lady, so she would not squander it. 30

Mr. Townsend: We are perfectly willing to that as far as the money she has gotten goes, that she should keep it, and the money in the bank be divided up equally.

The Vice Chancellor (To the witness): What do you think—don't you think you had better settle that way—let the thousand 40

*Grace Morrison—Cross.*

dollars that you have had be treated as a by-gone, and take a thousand extra, and then divide the balance by three, and each take a third.

The Witness: I do not.

The Vice Chancellor: Well, I am afraid you are making a mistake.

10 The Witness: Well, it has been given to me; I won't give it up.

The Vice Chancellor: I know, but the trouble is, the Court may have to set it aside, and take it away from you.

The Witness: There is supposed to be a couple of bank books standing; someone must have them.

The Vice Chancellor: Those bank books are the ones he took away with him?

20 Mr. Townsend: The bank books are the ones that we got from her on the writ of replevin—in the New York Banks—the Seamen's and Greenwich Banks.

Mr. Sewell: Then there are two other accounts in this lady's name at the present time.

30 The Witness: My father was only living with my brother nine months; I had him all the rest of the time. I lived with him all my life.

The Vice Chancellor: Have you any other questions to ask, Mr. Townsend?

Mr. Townsend: Yes, sir; I have.

The Vice Chancellor: You may proceed.

BY MR. TOWNSEND:

Q. How old were you when your mother died, Miss Morrison? A. I was thirteen.

40 Q. And your sister, Ethel, how much older is

*Grace Morrison—Cross.*

she than you? A. Well, she is a couple of years older.

Q. And you went to school, I assume, in your younger days? A. Yes.

Q. Did you ever graduate from High School? A. No, just to Public School.

Q. Your father supported him all the time that you lived with him? A. Well, yes. 10

Q. You never had any means of income yourself? A. No.

Q. You never worked anywhere? A. No.

Q. You are not schooled in any line of business? A. No.

Q. Or profession, are you? A. No.

Q. So much so that you could not go out and earn a living except at general housework, could you?

The Vice Chancellor: Oh, well, that is not quite so. Any woman of intelligence would seek other employment. 20

Q. Have you ever been employed, Miss Morrison, up to the time of your father's death? A. Well, since my father left me, I have, but not before.

Q. Before that time, did you ever attempt to get any employment but with him? A. Well, no; he didn't want me to. 30

Q. How much money did your father give you, a month? A. He didn't give me nothing.

Q. Didn't he give you anything? A. No.

Q. Weren't you paid a salary by the month? A. No.

Q. Didn't you receive the rents from the property? A. Well, they were given me—that is, I signed for them, and all, but he got the money.

Q. You mean, after you collected the money 40

*Grace Morrison—Cross.*

you turned the money over to your father? A. Yes.

Q. Where did you get the money that you put in the Claremont Bank? A. Well, he gave me that.

10 Q. What did he give you that for? A. Well, he gave me first the Provident, and then he says, "I will give you this; and, in case of any trouble," he says, "you show that book to the lawyers, and don't you show them the other."

Q. Do you mean, he gave you the bank book? A. Yes.

Q. In the Claremont Bank? A. No, he gave me the money—like a hundred dollars at a time.

Q. Was that for any work that you did for him? A. No.

20 Q. I notice that, in your Claremont Bank account, on July 21, 1920, you deposited \$800 at one time—where did you get the \$800?

Mr. Sewell: I object, on the ground that it is irrelevant, incompetent and immaterial; and it is up to the complainants to prove that this money came from the old gentleman.

The Vice Chancellor: Well, perhaps this is one way of proving it.

30 Mr. Sewell: It is improper cross examination. The subject was not gone into on direct—unless they want to make her their own witness.

The Vice Chancellor: I will allow the question, and overrule the objection.

Q. Where did you get that \$800? A. Well, he gave it to me.

Q. At that time? A. Yes.

40 Q. Where did he get the \$800 from, if you

*Grace Morrison—Cross.*

know?

Mr. Sewell: I object; it is irrelevant, incompetent and immaterial.

The Vice Chancellor: Same ruling.

A. Well, he always had lots of money lying around.

Q. Did he get that from the house, or did he draw it out of one of his bank accounts? A. Well, he had it in the house; he always had lots around the house. 10

Q. Was that in cash, or by check? A. In cash.

Q. Did he go down to the bank with you when you deposited it? A. No.

Q. What reason did he give you at the time he gave you this \$800? A. What did you say?

Q. What reason did he give you? A. Well, he gave it to me, and of course he says, "There is repairing to be done, and all like that." 20

Q. Repairing to be done to what? A. In the house there.

Q. And that was to be paid for the repairs? A. Well, I suppose, if it was necessary.

Q. What repairs did you pay for, out of that \$800? A. Well, the house was painted, and decoration was done around.

Q. When the house was painted did you pay for that? A. Yes. 30

Q. How much did you pay for the painting of the house? A. I think it was something like \$300.

Q. And who was the man that painted the house? A. I don't know whether it was Gordon, or who.

Q. Did you pay for any other repairs? A. Yes; I had a whole floor decorated, and the hall done, but I had a different one to do that, though.

Q. That was all that was said at the time he 40

*Grace Morrison—Cross.*

gave you the \$800—what was said when he gave you the money down in the Provident Institution for Savings?

Mr. Sewell: I object; the question has already been asked and answered.

Mr. Townsend: I don't think so.

10

The Vice Chancellor: I don't know that it has been answered; I will overrule the objection.

(Question repeated.) A. Well, he said that he wanted it to be mine; and he says, "That is one thing they won't fight over."

Q. That who wouldn't "fight over"? A. Well, I suppose he meant my brother and sister.

Q. Did you tell your brother and sister about it?

20

A. No.

Q. Never said anything to them about it, at all?

A. No.

Q. How did he come to transfer the account in that bank to your name? A. Well, that is the one that he transferred—that is the bank book that he transferred.

Q. That is, the \$2,409.17? A. Yes.

30

The Vice Chancellor: That was done in 1918?

Mr. Townsend: Yes.

Q. How long before he transferred that did you have a conversation with him about it? A. Well, it was in the morning.

Q. The morning of the day he transferred it? A. Yes.

Q. What did you say to him? A. Well, I didn't say much.

40

Q. Well, what did you say? A. I don't know

*Grace Morrison—Cross.*

that I said anything; I don't remember.

Q. What did he say to you? A. Well, he wanted me to go with him down to the Provident Bank, and he turned that book over to me.

Q. That is all that was said—is that right? A. Yes.

Q. Did you go down to the Provident Institution right away? A. Yes.

Q. What time of the day was it you went to the Provident Institution? A. It was in the morning, sometime—ten or eleven o'clock. 10

Q. Now, when he gave you the bank books for the Seamen's Bank and the other banks, and the Greenwich Bank in New York, what did he say to you, and what did you say to him? A. He didn't give me them. They were his own.

Q. Well, you had possession of them? A. Yes, I know; he left them with me.

Q. How did you get possession of them? A. Well, he trusted me with them. 20

Q. In other words, you took care of his bank books and different affairs for him, did you? A. No. I didn't; he had them there; I knew where he had them.

Q. Well, where did he have the bank books? A. He had them in the house.

Q. What part of the house? A. In a box.

Q. In a box? A. In a box. 30

Q. You mean, he had one of these tin, or iron boxes, with a lock on it? A. Yes.

Q. And that is where he kept his other bank books—in that box, was it? A. Yes.

Q. How many keys did he have to it? A. Well, he only had the one.

Q. Did he keep that key in the house? A. Yes.

Q. Where, in the house, was the key kept? A. Well, in the closet; he had it with some other keys.

Q. That is where he had always kept that key? 40

*Grace Morrison—Cross.*

A. Yes.

Q. Now, when he left the house, those two bank books in New York banks were in this tin box, were they; and your bank books were in there—the Provident Institution for Savings book—was your book in there? A. There was one book there, and Father, I believe the last year or so, he took it out; I don't understand much about it. I know I took  
10 out of the box and he took it out with me.

Q. Where? A. Well, in the bank.

Q. What bank? A. Do I have to tell that?

The Vice Chancellor: Oh, yes; it won't hurt.

A. Up at the Five Corners.

Q. Now, the day that he left, you did not give  
20 him his books? A. No, he didn't ask me; he never asked me for them.

Q. Now, did you see your father between that time and the time he died? A. Yes, I went up there once in a while.

Q. How many times did you see him? A. I think it was about three times.

Q. When was the last time that you were there?  
A. When he moved away. They moved up to  
30 Rosendale, and I went around there to see him, and the house was occupied by other people, and he was up to Rosendale.

Q. Well, how long before that was it that you had gone to see him? A. Well, I went a few times.

Q. Well, how long before he moved away was it that you went up there to see him the last time?  
A. I don't know just how long.

Q. When the constable came down for the bank books why didn't you give them to him when he  
40 demanded them?

*Grace Morrison—Cross.*

Mr. Sewell: I object, as not proper cross-examination.

The Vice Chancellor: I will sustain that objection.

Q. Did you ever offer to give the bank books back to your father?

Mr. Sewell: I object. (Objection sustained.) 10

Mr. Townsend: If your Honor please, I think this is proper cross-examination, and competent, to show this woman's intent and her actions.

Mr. Sewell: Oh, we will admit we would not give the bank books up, because she knew Walter Morrison wanted them; that is the reason. 20

The Witness: He never asked me for them; he thought they were better where they were.

Q. Now, did I understand you to say, Miss Morrison, that you always turned over the rents to your father, and you never kept any portion out of them?

A. No, I never kept any of it.

Q. And he never paid you any salary of any kind whatever? A. No. 30

Q. How was the house run—who paid the expenses of the house? A. Well, he did.

Q. Well, did he give you the money? A. Yes, until lately.

Q. Up "until lately"—what do you mean by that? A. Up until late, there, when I drew some of my own out.

Q. Up until what time was that? A. Well, I guess it was after he left me to go to my brother's house. 40

*Grace Morrison—Cross.*

Q. Before that time, how much money did he use to give you? A. Well, he used to give me the money, like, whatever the bill was, and for me to pay it.

Q. Well, who bought your clothes? A. Well, he bought it; he gave me the money for it.

Q. He did give you the money to do that? A. Yes.

10 Q. And did he give you money to spend? A. Yes.

Q. But you don't know how much that was? A. No.

Q. That has always been so ever since you lived with him, hasn't it? A. Yes.

Q. Now, you remember Walter coming down, in the Spring of 1920, telling you that he was going to move up in the country, and wanted to take his father up there for the summer? A. Yes, I do.

20 Q. Wasn't it the fact that at that time you thought your father was not well enough to go with him? A. No; he was perfectly well, but he just wanted him to be there.

Q. You mean Walter wanted him up there? A. Yes.

Q. Well, didn't you say, or didn't you tell Walter at that time, you and your father would talk the matter over, and you would let him know in a few days as to whether he would go? A. No; he said he didn't care about going; and my brother says, "Well, I will bring the dress-suit case," and afterwards—I don't know whether it was a few days, or not, I guess it was a few days—he came up with the dress-suit case, and my father would not go.

Q. Didn't you say, at that time, you did not think your father was able to stand the journey? A. I did not; I had nothing to say. He wouldn't go.

40 Q. Didn't you think your father was not able to

*Grace Morrison—Cross.*

stand the journey up to New York State that day?

A. No, sir; I didn't say nothing.

Q. No, I say didn't you think so?

Mr. Sewell: I object to what the witness thought.

The Vice Chancellor: I will admit the question.

10

A. No, because he was all right.

Q. Now, in October, 1920, when Walter took him away, what was his condition? A. Well, the same as ever.

Q. No change? A. No.

Q. Was there any change in his condition up to the last time you saw him—was he just the same then, or not? A. Well, when I went around there to the house he seemed to be getting awful thin; he was thin.

20

Q. Was that all that you observed about him?

A. Yes.

Q. Was there any change in his condition the last time you saw him, from what it was when he left your house? A. No, he seemed to be all right, otherwise.

Q. Was that the same condition he had been in for several years before that time? A. He seemed to be the same.

30

Q. Did you want your brother or sister to have any of his property? A. Well, I don't know. He gave it to me.

Q. I say, did you want your brother and sister to have any of that?

Mr. Sewell: I ask that the time be fixed. When are you speaking of?

Q. Before he gave it to you, as you say?

40

*Grace Morrison—Cross.*

Mr. Sewell: I object; I do not believe it is relevant, competent or material what she wanted.

The Vice Chancellor: I do not quite see the point. Suppose she did, or suppose she did not?

10 Mr. Townsend: Only as bearing on what she did, as a result of it.

The Vice Chancellor: Oh, it is pretty far-fetched. The only point that you have got is that this lady was in a dominant position in the household, and that this deed was not the voluntary act of the father, but represents her will. Now, if you prove that, then you are probably entitled to have the deed set aside—that, coupled with the fact that it may be regarded as improvident for a man to give away all his estate, practically, except four thousand dollars, at his time of life.

20

Q. Now, were there any of your tenants upstairs that ever threatened any trouble to you or your father respecting the condition of the premises, or the wall paper?

The Vice Chancellor: You say in your bill it was for the heat; the testimony on the stand by Walter was that it was for wall paper.

30

Mr. Townsend: I do not see that we are bound by the mere statement in the bill, when we say it was for "heat."

The Vice Chancellor: Well, of course pleadings do not mean anything any more. Years ago, when a man made an allegation in a pleading, he was held to the pleading, so as to apprise the opposite party of what the claim is; but they do not do it any more,

40

*Grace Morrison—Cross.*

and it ought to be stopped.

Mr. Townsend: All right; if the fact is that it appears in the affidavit that she got that property by reason of certain threats, whether it was because of the heat or the wall-paper, the effect was the same.

The Vice Chancellor: I am not stopping you; go ahead. 10

(Question repeated.)

Mr. Sewell: I object, on the ground that it is incompetent, irrelevant and immaterial that they threatened the father, your Honor.

The Vice Chancellor: I will overrule it, because it is part of your prima facie case, and you rested without proving it. It is in your bill. 20

Mr. Townsend: Well, we did prove that. The testimony of Mrs. Daly is that this defendant told her that one of the tenants in the building, up above, was going to sue the father over wall-paper.

The Vice Chancellor: Then you have got it in the case, and it is not denied. What more can be proven?

Mr. Townsend: Your Honor just said it was not in the case. 30

The Vice Chancellor: I said the heat was not in the case. She has not said the first word about that, and you have got your own evidence—what more do you want?

Mr. Townsend: Your Honor, counsel started to examine her about it, and you said there was nothing in the case about it.

The Vice Chancellor: About the heat, I said.

Mr. Townsend: No, about the wall-paper. 40

*Grace Morrison—Cross.*

The Vice Chancellor: No, I said plainly there was testimony in the case about wall-paper. Now, as to the heat, you have rested your case, and I am not going to let it be opened up as to that. You may examine her about the wall-paper, but the wall-paper incident has been proven and not denied.

10 Q. Do you remember any occasion when your father slept out in the hall all night? A. No, he never was out a night.

Q. Do you remember any occasion when your father went to the Police Station in Greenville? A. I don't know of any. I know he told me there, when he came back; he came back once to me, to see me, from my brother's home; he came to see me once, and he said he "had a ride in the Patrol," or something; I don't know what he said—something like that.

20

Q. Your father said that, or your brother said that? A. My father told me that.

Q. Well, did you ever have any quarrels of any kind with your father during the time you lived there? A. No.

Q. Now, do you have any bank accounts in New York, to-day, in your own name?

30 Mr. Sewell: I object, as irrelevant, incompetent and immaterial. We are only concerned with certain specific property in this litigation.

The Vice Chancellor: I will sustain the objection.

Mr. Townsend: I think it is revelant, if your Honor please, for the reason that if she has any other estate belonging to Mr. Morrison, we are entitled to know it—if she has any other property or bank accounts belong-

40

*Grace Morrison—Cross.*

ing to him.

The Vice Chancellor: You have filed a bill to set aside certain things, the bank accounts and this deed, and I am going to limit the proof to that.

Q. After your father filed the bill in this court against you, to have this property given back to him, did you go to your father then and offer to give him his bank books in the New York banks? 10

A. No.

Q. You read the affidavits of your father that were attached to the bill of complaint, did you not, at that time?

(Objected to as irrelevant, incompetent and immaterial.)

The Vice Chancellor: The answer is "Yes," or "No." 20

A. I don't know whether I did, or not.

Q. Did you go to your father at that time and offer to give him any money back?

Mr. Sewell: I object, as irrelevant, incompetent and immaterial.

The Vice Chancellor: What is the point?

Mr. Townsend: To show her frame of mind. 30

The Vice Chancellor: When—a year later?

Mr. Townsend: Yes, a year later, even.

The Vice Chancellor: I will treat it as too remote. When this father was taken away from this young woman, after taking care of him for fourteen years, her frame of mind could not possibly be the same as it was while he was living with her. 40

*Grace Morrison—Re-Direct.*

Mr. Townsend: Yes, but your Honor must recall that this bill was filed by the father.

The Vice Chancellor: I know it was, probably by the direction of the son. I will not listen to the testimony; it is too remote.

## 10 RE-DIRECT EXAMINATION BY MR. SEWELL:

Q. Miss Morrison—just one question—do you recall your father ever having any trouble with any tenant over any matter, whatsoever, with a threatened lawsuit? A. No.

The Vice Chancellor: I think she has answered that once before.

20 Q. Did you ever tell Mrs. Daly, or any other person, that your father was going to be sued by some tenant for some sort of a claim about wall-paper? A. I did not.

Q. Do you know of any such claim? A. No, no.

## BY MR. TOWNSEND:

Q. Where did you get your information about the bank accounts in New York, as to how much was in them? A. Well, I always looked in them.

30 Q. Where did you get your information about the account down in the Provident Institution for Savings? A. Well, I didn't know what was in there until he brought me there; that was the first I ever knew of any of his money.

Q. Did you make any deposits yourself, after that time, in the Provident Institution for Savings? A. Yes, a little.

Q. Did your father go with you then? A. No.

40 Q. Did you ever make any deposits for your father in any banks? A. No.

*Joseph W. Mason, Rebuttal—Direct.*

Q. Or were you with him when he made any deposits? A. No.

\_\_\_\_\_

The Defendant rests.

\_\_\_\_\_

COMPLAINANTS' REBUTTAL EVIDENCE.

\_\_\_\_\_

JOSEPH W. MASON, sworn.

10

DIRECT EXAMINATION BY MR. TOWNSEND:

Q. You are employed by the Vulcan Iron Works in what capacity? A. Employment Manager.

Q. You have been there for how long? A. Thirty years.

Q. Are you familiar with the record of Charles Morrison, as to when he worked for that company? A. Yes, sir.

20

Q. Will you just kindly tell us when he worked there? A. Well, I gave you a card this morning, sir, that was taken off of our data.

Mr. Sewell: I object to this witness testifying, unless it is within his personal knowledge.

The Witness: It is within my personal knowledge. I have a copy of it right here, if I can find it (producing a paper.) This card is just the same, so it does not make any difference; I wrote the card out.

30

Mr. Sewell: Could I question this witness, before using this memorandum?

The Vice Chancellor: Yes.

BY MR. SEWELL:

Q. Where did you get this memorandum from, Mr. Mason? A. From our Time Clerk.

40

*Joseph W. Mason—Direct.*

Q. From your Time Clerk? A. Yes.

Q. Who keeps your time records down there?

A. The Time Department.

Q. In what way are you associated with the Time Department? A. I am Employment Manager, and report every man that comes in the service, and every man that goes out of the service, and do not recognize him otherwise.

10 Q. Did you personally make these records from which you took this date? A. No, the Time Clerk makes that; we report him in and out, and then he takes the time.

Q. Do you personally report them or does some employee under you report them in and out? A. Sometimes I do, and sometimes the clerk.

20 Q. So you don't know which day—you cannot recall just which day you reported them personally, or which day this other clerk reported them, can you? A. It is all there.

Q. I say, you cannot recall? A. No.

Q. So the only basis you have for your information, and from which you get this memorandum, are the records of the office? A. The records of the office.

30 Mr. Sewell: I interpose an objection to any testimony by this gentleman from the records.

BY THE VICE CHANCELLOR:

Q. Can you tell, without looking at the records, when Mr. Morrison left the employment of the Company? A. Why, sometime last January.

Q. No, can you, without referring to the records, tell what time he left? A. Why, no.

40 Mr. Townsend: I assume that he cannot.

*Joseph W. Mason—Direct.*

Q. And do you examine these time books of the men, from time to time, to see whether or not they are correct? A. When a man starts in to work we send the record down to the Time Department; when he is discharged——

Q. (Interrupting.) You say "we"—do you mean you? A. Well, I, or the clerk in the office, in the Department. I have an assistant. And when he discharges a man, or he leaves, the foreman signs a blank slip stating that the man is out of the service, and we have to give the Time Department a record that that man is out of the service. 10

The Vice Chancellor: The evidence is not competent.

Mr. Townsend: I ask leave, then for us to bring the original records here. I did not think counsel would stand on that point. 20

BY MR. TOWNSEND:

Q. Do you know this gentleman sitting here?

A. Mr. Van Wagener?

Q. Yes. A. Yes, sir.

Q. Did he telephone you yesterday afternoon?

A. No, sir.

Q. Did anyone telephone you this morning, while I was in your office, respecting the working records of this man? A. Yes. 30

Q. What voice was it over the 'phone? A. A lady's voice.

Q. What did she ask you?

Mr. Sewell: I object, as irrelevant, incompetent and immaterial.

The Vice Chancellor: I will sustain the objection, unless you can show it was this Miss Morrison. 40

*Joseph W. Mason—Direct.*

Q. Now, what did you tell them?

Mr. Sewell: I object.

The Vice Chancellor: Same ruling.

10 Mr. Townsend: I think that is competent, on the ground that Miss Morrison has testified that she telephoned, or that Mr. Van Wagener telephoned to Mr. Mason in her presence this morning, to find out when he stopped working there, and I want to show that she testified here to-day as to when he stopped working in response to what Mr. Mason said over the telephone to them.

The Vice Chancellor: She did not hear it.

Mr. Townsend: Yes, but, as I recall her testimony, she said that he said he stopped working there in April, 1920.

20 Mr. Sewell: Call Mr. Van Wagener, if you want to. He is sitting there.

The Vice Chancellor: You may ask him. I guess you are right. I will admit it.

(Question repeated.) What did you tell whoever spoke over the 'phone? A. Well, I spoke on the 'phone, and I told her that he was employed there in December, and he was taken out of service previous to April—April 1st, I think it was.

30 Q. 1920? A. 1920, sir.

Q. And you got that information from what?

A. From the card, sir.

The Vice Chancellor: Well, that accords with what they swore to?

Mr. Townsend: No, sir; it does not, for this reason—their statement is that he worked there up until April, 1920.

40 The Vice Chancellor: And that they got the information from this gentleman. Now,

*Joseph W. Mason—Direct.*

the language he used would indicate, if he said he left "before April 1st, 1920," that he worked pretty close to April 1st.

Mr. Townsend: Well, that is not the fact, as matter of fact.

The Vice Chancellor: Well, I do not care what the fact is, but you are trying to impeach these witnesses.

Mr. Townsend: No, I am not, otherwise, than that I say that from information they got from him they go on the stand and swear, of their own knowledge, that he worked there until April 1st, 1920. I would like to ask permission now to produce the original records, to show what time this man worked.

(Mr. Sewell thereupon examined the card produced by the witness.)

The Vice Chancellor: If counsel cannot agree to what the books show, I do not see any reason why the Vulcan Iron Works should not bring them here.

The Witness: It is a great big book; it weighs about half a ton, or I should bring it up here. Here is when he went into the service (referring to the card); here is the information I gave the young lady this morning—

The Vice Chancellor (To the witness): Wait a minute.

The Witness: Well, caulkers don't work every day at one place; they shift about; they may be here one day, and at Tietjen & Lang's the other day; they are like long-shoremen.

Mr. Sewell: We will let the man testify. Let him testify.

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*Joseph W. Mason—Cross.*

BY MR. TOWNSEND:

Q. He has no objection now to you using this memorandum; kindly give us the dates that he worked there, and the last day that he worked there? A. He worked from December 24, 1919; December 25, December 27, December 28, all 1919; he also worked there January 31, 1920. That is the last day he worked.

CROSS-EXAMINATION BY MR. SEWELL:

Q. You say that caulkers are somewhat like longshoremen—they work at different places? A. Yes, sir.

Q. And it is quite possible this man was working at some other place, after that time?

20

The Vice Chancellor: How does he know? Cannot I judge of that quite as well as he can?

Mr. Townsend: I offer in evidence Abstract of Morrison's account in the Provident Institution for Savings.

Mr. Sewell: I object to it; I do not believe it is material. This is the account of Charles Morrison, beginning in 1912.

30

The Vice Chancellor: Well, you do not object to it on the ground that it is a transcript?

Mr. Sewell: No, I do not.

The Vice Chancellor: Then I will admit it. It merely shows that he had \$2,409 in the bank on a certain date, and it was withdrawn and went into the daughter's account.

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Testimony closed.

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*Exhibit C. 6.*

## EXHIBIT—C. 6.

In the Name of God, Amen :

I, Charles Morrison, of the City of Jersey City, County of Hudson and State of New Jersey, being of sound mind, memory and understanding, and mindful of the uncertainty of life, do make, publish and declare the following to be my last will and testament, hereby revoking all former wills by me made. 10

FIRST: It is my will and I do order that all my just debts and funeral expenses be duly paid as soon as conveniently may be after my death.

SECOND: I give and devise to my beloved son, Walter Morrison, my two-family frame house at 236 Jackson Avenue, Jersey City, N. J. 20

THIRD: I give and bequeath to my beloved son, Walter Morrison, all of my personal property of every nature and description whatsoever and whersoever found, particularly the account in the Provident Institution for Savings in Jersey City, N. J., as well as the account in the Claremont Bank on Jackson Avenue, in Jersey City, New Jersey, and also an account in the Greenwich Savings' Bank in New York City. 30

FOURTH: It is my will and desire that my daughters Grace Morrison and Ethel Daly be cut off from sharing any of the benefits of my estate in either my real property or personal property with the exception that I do hereby give and bequeath to Grace Morrison the sum of One (\$1.00) Dollar and my daughter Ethel Daly the sum of One (\$1.00) Dollar, for the reason that both of my daughters, 40

*Exhibit C. 6.*

the said Grace Morrison and Ethel Daly have neglected me and ill-treated me in my old age.

10 FIFTH: I hereby appoint and designate my beloved son, Walter Morrison, Executor of this my last will and testament, with power to do all lawful things necessary to carry out the intent of this my last will and testament, the said Walter Morrison to serve without bond.

His  
Charles X Morrison  
Mark

Dated April 13th, 1921.

20 Signed, sealed, acknowledged, published and declared by the said Charles Morrison as and for his last will and testament in the presence of us, who were present at the same time, and who subscribed our names as witnesses thereto, in the presence of the said testator and of each other and at his request.

Witnesses:

30 Daniel Sullivan, 105 Garrison Avenue, Jersey City,  
N. J.

Edward Doherty, 128 Mercer Street, Jersey City,  
N. J.

Peter E. Maras, M.D., 80 Tonnele Avenue, Jersey  
City, N. J.

*Exhibit C. 6.*

## EXHIBIT C-6.

## LETTERS TESTAMENTARY.

COUNTY OF HUDSON }  
 STATE OF NEW JERSEY } ss:

I, James F. Norton, Surrogate of the County of Hudson, do certify that the last will and testament of Charles Morrison, late of the County of Hudson, deceased, was proved before the Orphans' Court of the said county on the 30th day of November, 1921, and that Walter Morrison the executor therein named is duly authorized to take upon himself the administration of the estate of the said testator agreeably to said will, he having qualified as such this day. 10

Witness my hand and seal of office the twentieth day of December, in the year of our Lord, One thousand nine hundred and twenty-one. 20

James F. Norton,  
 (Surrogate)

(Seal)

per John F. Callahan,  
 Deputy Surrogate.

30

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△

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△

66 MAR. 1, 1925

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between—

WALTER MORRISON, as Execu-  
tor, etc., and WALTER MORRI-  
SON and ETHEL DALY, Indi-  
vidually,

Complainants-Appellants,

and

GRACE MORRISON,

Defendant-Respondent.

Brief of  
Complainants-  
Appellants.

This appeal is from a decree of the Chancellor dismissing Complainants' Bill of Complaint, and the appeal to this Court is from the whole and every part of said decree, in that the Chancellor should have granted the relief prayed for in the Complainants' Bill and should have refused to dismiss said Bill.

*FACTS.*

The Bill in this cause was filed by Charles Morrison, in his lifetime, to set aside a conveyance which he made on May 14th, 1920. to his daughter the Defendant herein, of premises at No. 236 Jackson Avenue, Jersey City, and also to set aside a gift by transfer on February 13, 1918, of moneys on de-

posit in the Provident Institution for Savings in Jersey City, amounting to \$2,409. The original bill in this case, was predicated on the theory of fraud and misrepresentation, but it was later amended and an answer filed thereto, so that the case was tried upon the issue, that Charles Morrison at the time he made the conveyance and transfer of the bank accounts above mentioned was an old man of seventy-five years of age and upwards, whose mind was enfeebled by disease and old age and was in a position where he was continually under the influence of his daughter, the defendant, an unmarried woman of thirty-five years of age, who exercised a dominant influence over him. These facts being made out, it is contended that the burden rested upon the said defendant, to show that the donor understood the nature of his acts and that they were not done through the influence of the donee. The case was tried upon the further issue, that Charles Morrison had made a gift of practically all of his property to his daughter the defendant, at a time when by reason of his enfeebled physical condition and his absolute dependency upon his daughter for advice, care and service, the relation ordinarily existing between them had been reserved and the daughter had come to occupy the dominant position, and these facts being shown, the burden was cast upon the defendant to show that Charles Morrison had competent and independent advice as to the effect of his act.

After the cause was at issue, and before the date set for a hearing, Charles Morrison died and his executor and devisee Walter Morrison under the Last Will and Testament of the said Charles Morrison deceased, was substituted as Complainant. Ethel Daly, sister of the aforesaid Complainant as well as of the defendant, was made a party by con-

sent.

The fact that Charles Morrison made a will subsequent to the conveyance, giving practically everything to his son Walter Morrison, and that the Orphans' Court of Hudson County sustained the will, (as pointed out in the opinion of the Court below), although undue influence was alleged, does not argue that from the facts in this case to set aside the conveyance and transfer, undue influence was not exercised. The rule is well settled further, that undue influence may be sufficient to set aside a gift, under a set of facts such as we have in the instant case, and still be insufficient to set aside a will. A set of facts to sustain the finding of undue influence must be the sole determining factor in each case, and it is idle to argue, that because the will was sustained after undue influence had been alleged, that a pari the conveyance and transfer were likewise to stand as untainted by undue influence.

This is clearly pointed out in *Haydock vs. Haydock* 34 Eq. 570 at page 575 paragraph 1—"The presumption of undue influence, however, does not also arise from the same state of facts, in the case of a gift, because the rule in regard to what constitutes undue influence differs when applied to wills and when applied to gifts. *Boyse vs. Rossborough*, 6 H. L. Case 149; *Parfitt vs. Lawless*, L. R. (2 P. & D. 462). This principle is referred to by the Court (Case P. 54 L. 14). The Vice Chancellor. Certainly a man may be in a condition to make a will where it would be utterly futile for him to make a deed and divest himself of his property. The principles involved in the two cases are entirely different.

The influence which is undue in cases of gift

inter vivos, is very different from that which is required to set aside a will. In testamentary cases, undue influence is always defined as coercion or fraud, but, inter vivos, no such definition is applied. Where parties hold positions in which one is more or less dependent upon the other, courts of equity hold that the weaker party must be protected, and they set aside his gifts if he had not proper advice independently of the other. *Hugenin vs. Baseley supra*, notes p. 1271, 2 L. C. in equity (4th Am. Ed). Notes, pp. 1183-1185, American notes pp. 1192-1194.

The following facts were brought out by the testimony, that Charles Morrison was a feeble old man of upwards of seventy-five years of age and that he was suffering from Chronic Bright's Disease, which caused his death within fourteen months after the conveyance of the property on Jackson Avenue to the defendant; that the defendant was the only one living with him in the property on Jackson Avenue at the time of the transfer of the bank account and the conveyance of the property on Jackson Avenue; that he was continually consulting Doctors concerning his disease; that his mind and mentality were impaired by said disease; that the defendant and her father went to Lawyer Simpson's office, where a clerk in said office by the name of McCombe drew up the deed of conveyance, whereby the defendant obtained title to the property on Jackson Avenue; that the Complainants did not know of the transfer of the bank account or the conveyance of the property until some time after it had happened; that immediately after the son Walter Morrison learned of the transfer of the bank account and the conveyance of the property, when he spoke to his father about it, his father complained that the defendant

was not treating him properly, when he left his daughter and went to live with his son Walter Morrison; that at the time the father, Charles Morrison, left his daughter, the defendant, he had no money whatever under his control and the only moneys remaining in his name were in two New York banks, and he had to sue his daughter the defendant in replevin to obtain possession of said bank books, which she refused to deliver up until compelled to do so by Court action.

The Court below in its opinion refers to an expressed willingness on the part of the brother, which however, appears nowhere in the evidence (and so stated by the Court in its opinion) to divide the estate into thirds. This discussion was held by counsel at the suggestion of the Court, that the case should be settled, and inasmuch as mention had been made of the said incident we feel that it should be pointed out, that a conference wherein statements were frankly made, was unavailing to effect a settlement, because of the absolute refusal and adamant and obstinate position taken by the defendant to come to any settlement. We merely refer to this phase of the case, to point out to this Court, that the Court below was deceived by the defendant in her demeanor upon the stand, and that she was not a simple minded girl; and was not below the average mentality, and displayed such a character and disposition as would enable her to dominate her father.

#### *ARGUMENT.*

The Appellants will rely upon the following points which will be taken up in their order.

FIRST—That the Court below erred in dismissing the Bill, because the Complainants adduced

testimony which showed, that Charles Morrison made a gift of part of his property, namely, the bank account in the Provident Institution for Savings and his house on Jackson Avenue to his daughter, the defendant, at time when he was enfeebled by age and disease, and his daughter was then in a position to exercise a dominating influence over him, and had in fact assumed a dominant position over her father, and this state of facts being shown that the defendant—

(1)—Did not sustain the burden of proving that the donor had mental capacity to make said gifts, and

(2)—Did not sustain the burden of proving, that the donor understood the nature of his acts, and that they were not done through the undue influence of the donee.

This point is covered by the case of *Haydock vs. Haydock*, 34 N. J. E. 570, where a donor strips himself of only a portion of his property.

SECOND—That the Court below erred in dismissing the Bill, because Charles Morrison made a gift of practically all of his property to his daughter, at a time when by reason of his enfeebled physical condition and his dependency upon the defendant for care and service, the relation ordinarily existing between them had been reversed, and the child had come to occupy the dominant position, and this being shown, that the defendant failed to sustain the burden of showing that the donor had competent and independent advice as to the effect of his act, under which set of facts the question of undue influence had no place. This point is set forth in the case of *Slack vs. Rees* 66 E. 447. Cof-

fey vs. Sullivan, 63 E. 302, and is known as the rule of independent advice.

Under the first point, the Appellants contend, that the facts as brought out on the trial of this cause, placed the case squarely upon the doctrine laid down in Haydock vs. Haydock supra, decided by this Court, where it was held that—"When a person whose mind is enfeebled by disease or old age, is so placed, as to be subjected to the influence of another person, and makes a voluntary disposition of property by gift in favor of such person, the Court requires proof of the fact, that the donor understood the nature of the act, and that the act was not done through the influence of the donee."

#### *POINT ONE.*

Under subdivision (1)—On the question of mental capacity, we contend further, that this donor at the time of making the gift and transfer, was mentally incompetent to make such disposition of his property, which was the point raised by Magie J. in Haydock vs. Haydock in 34 E at page 576, wherein he bases his consent to affirmance in that case on the fact that the donor did not have mental capacity to make the gift in question. To use his language we feel, "That there is in the evidence, ample proof that deceased did not possess that degree of mental capacity, which under the lenient rules on the subject, adopted in this state, will justify the establishment of such a disposition of donors property. That the donor did not have mental capacity is clearly brought out by the testimony of Dr. Connolly who treated Morrison for a number of years. (Case P. 56 L. 9).

Q. Now you tell us Doctor, how many times

after that were you called upon to treat him? A. (Consulting some memorandums produced by witness) In the month of October I saw him three times.

Q. In what year? A. 1917 that was, I saw him in 1918; I saw him again in 1920.

Q. How many times did you see him in 1918? A. In 1918 I saw him in the early part of the year.

Q. Did you see him after that? A. I saw him in 1920.

Q. What month? A. September.

Q. Now Doctor, just describe if you will, his condition from the time you first saw him—so far as his physical and mental condition were concerned—that you observed? A. I found a man past middle life, in not good physical condition. He was feeble. At times he appeared mentally unsound. On one occasion I was called to his house, I remember his daughter told me he had been wandering around the house in his undershirt, urinating on the floor as he went; and, on another occasion, in my office, he urinated on the chair in my office, while he was there.

Again—(Case P. 57 L. 25).

Q. Did you have any conversation with him Doctor at any time? A. I did.

Q. What was his ability, so far as engaged in a conversation goes? A. He would come to my office sometimes, and instead of walking into my office he would walk clear into the dining room and sit down there, not knowing just where he was. He was rather confused. And another time he would come into my office and not know what he would be there for.

Continuing—(Case P. 58 L. 5). The Witness: He would sit in my office and ask me where he was. At other times he would come in and call me by another Doctor's name; and the other Doctor

and I are distinctly different—we do not look alike and live in different parts of the town.

Q. When was this—what years would this be?

A. This was more recent—in 1918 and 1920. In 1917, when I was called to see him, I was called for a chronic arthritis and kidney disease.

Q. What is chronic arthritis? A. A chronic attack of rheumatism, more latterly though, in 1920, I noticed he *become very feeble*.

Q. And that was in September, 1920? A. September, 1920.

Q. How did you find him in 1918? A. In not good physical condition.

Q. Now, can you state anything that happened in 1918 which might tend to show his mental condition? A. Nothing, your Honor, except that he was incoherent at times he would come in and start talking in a wandering way. He would come in for one condition and start talking about something else, about his physical condition always—he would start telling me about some pain in his joints, and go from there to his eyes—his trend of thought was not in sequence.

Q. (Case P. 62 L. 23). Was there any material change in his condition between 1920 when you saw him, and the last time you saw him in 1918 or 1919? A. His condition was aggravated during all this period. He was in poor physical and mental condition from the time I first saw him.

Q. Was he, in your opinion, in 1918 and 1919, when you saw him, in a fit physical condition to transact business? A. Why, the man was feeble.

The Vice-Chancellor: Well, just state your conclusion—do you think he was? A. I don't think so

By the Vice-Chancellor:

Q. Would his mind and his body be affected progressively by this disease? A. They would.

Q. And he was much weaker, than in 1920, when you saw him in September, than he was in 1918 or 1919? A. He was.

Q. Well Doctor, you describe his condition, that you speak of to what is commonly known as "senile dementia," would you not? A. Senile dementia.

Q. Is that what you would say he was suffering from that period of time? A. I would

That the donor lacked mental capacity to make the conveyance to his daughter is borne out by the testimony of John Warren, Counsellor at Law, called by Complainant.

Q. (Case P. 112 L. 4 and following): As a result of your interview, you drew up a will for Mr. Morrison? A. I did draw a will for him.

Q. Were there any unusual facts concerning the execution of the will? A. Well, I would not attend the execution of the will, nor permit anybody in my office to witness it.

Q. Why not? A. (Case P. 113 Line 3). Mr. Morrison's statements to me in my office, plus his apparent inability to recollect facts that I thought ought to be in his mind.

Q. (Case P. 114 L. 10). What were the facts upon which you based this opinion Judge Warren? A. Well, he was unable to state to me with any definiteness as to where his bank accounts were.

Q. (Case P. 116 L. 6). How long did it take to get the statement from him, when he called at your office? A. Well, I should say that he was there at least an hour and a half, according to my best recollection.

Q. (Case P. 117 L. 31). At the time you were talking with Mr. Morrison and discussing his affairs with him, did you have more than the usual

difficulty in making him understand your questions. A. (Case P. 118 L. 8). I did have difficulty.

Q. And in what way. A. Why, he could not recollect facts until reminded of them; and as I stated before he did not even know what banks he had his money in.

Q. Did you have any difficulty in making him understand your question? A. At times.

Q. In what way? A. He did not seem to answer readily; and he would ask me a couple of times what I meant by what I asked him.

Mary Larkin who lived on the top floor of same house when Charles Morrison lived downstairs, from August 1920 to April 1921, testified that Charles Morrison was a very sick man. (Case P. 88 L. 22). Q. What was his physical appearance? A. Well, he was a very sick man to my mind.

Florence Todd, who is a daughter of the last witness, Mary Larkin, called by Complainants, testified that Charles Morrison was feeble and that the defendant had admitted the same.

Q. (Case P. 92 L. 12). Did she ever talk to you about her father? A. Well the only thing she said was she thought it was old age causing her father to be sick.

Touching on this point further we contend, that Charles Morrison at the time of the conveyance in question was mentally incompetent to make such conveyance, because if the testimony of the defendant's witnesses can be believed, he thought that the property in question was worth \$4,500. (Case P. 150, L. 22), whereas a short space thereafter, the

defendant contracted to sell the same for the sum of \$10,000. As pointed out by this Court in Haydock vs. Haydock supra at page 573, we contend that a considerable degree of business recollection is an obvious prerequisite to such a disposition of the donor's property. It is apparent from the testimony of Dr. Connolly and John Warren that the mind of Charles Morrison was so disorganized that he did not understand the nature of his act.

Under subdivision (2)—We take exception to the finding as a matter of fact by the Court below, that the defendant had sustained the burden of proving, that the transfer and conveyance were not induced or brought about by the undue influence of the defendant. That undue influence was used is brought out by the testimony of Miss Braden who testified for the Complainant as follows:

Q. And where did you live before you moved to your present home? A. In Mr. Morrison's house at 236 Jackson Avenue, Jersey City, N. J.

Q. How long did you live there? A. From October 1918 until July or August—I have forgotten which of 1920.

Q. (Case P. 42 last line). Well did you ever have any conversations with Grace Morrison relative to her father's property? A. I did.

Q. (Case P. 43 L. 36). What did she say to you? A. What she could do to have her father sign over the property to her. I told her that she would have to employ a lawyer, and asked her who her lawyer was, and she said, "Mr. Aleck Simpson," and she said her father would not consent to that; that she wouldn't be able to get her father to.

Q. How many times did Miss Morrison speak to you about this subject? A. Twice she called

me down but frequently spoke to me about the property and money in the hallway.

Q. And it was always on the same subject? A. Yes, her mind was on that.

On cross examination Miss Braden testified to the same effect.

Q. (Case P. 47 L. 22). Now Miss Braden, are you positive that Miss Morrison said to you that she wanted the old gentleman to convey the property, or that he wanted it, or that it was a mutual understanding? A. I am positive Miss Morrison asked me how she should go about getting her father to convey the property.

Florence Todd also testified that the defendant was bent on getting her father's property. (Case P. 96 L. 5). Q. Ever have any conversation with her about the pendency of this suit? A. Well, the only thing she said to me was that the brother thought he would get it, and she would fool him—that it was all her and she was going to have it.

The only evidence upon which the Court below bases its finding of the fact, that the defendant had sustained the burden of proving, that the transfer and conveyance were removed from the undue influence of the defendant, was the testimony of I. Ross McCombe, Clerk in Lawyer Simpson's office, who drew up the deed of conveyance and who stated (Case P. 152 L. 14) that when the donor came to his office, that although he was a feeble old man, he was mentally "Very alert," and who also testified that the donor had repeated over and over again in his office that the reason why he deeded this property to his daughter the defendant, was for services she had rendered to him during his lifetime, and that Charles Morrison at that time considered that the property in question was worth

the sum of \$4,500. (Case P. 150 L. 22). The evidence shows that the deed contained \$4.50 in Revenue Stamps and McCombe testified that the \$4.50 was put on the deed to represent a consideration of \$4,500. We contend that at the time of the conveyance, that Charles Morrison had already taken care of the defendant bountifully, because she had under her control at that time his whole estate, including the possession of the New York bank books.

*POINT TWO.*

The complainants contend that the Court below was in error in concluding as a matter of fact, that Charles Morrison, deceased, did not commit an improvident act when he stripped himself of practically his whole estate, reserving to himself after the said conveyance to his daughter the defendant in May, 1920, the sum of \$4,200 in two New York banks. The Court below as pointed out in his opinion, has based his determination in this case upon the case of *Pearse vs. Stines* 79 N. J. E. p. 51, wherein he says, "The only question in the whole case, that I can see—is first, being possession of this real estate, was this gift improvident, if he still held \$4,200 in cash considering his old age and the probability" of the duration of his remaining days. The Court below goes on further to state that, "I will not deal at length with this question because it is fully covered in the opinion of Vice Chancellor Stevens in *Pearse vs. Stines*, 79 N. J. Eq. p. 51. This stands for the principle that—"Where a donor of eighty-three years of age, enfeebled in health, strips himself of practically all of his property, conveying the same to his daughter, where the relation existing between them had reached a point where the daughter had occupied the dominant position, and where he had no independent advice,

the gift had to fail, because the donor had stripped himself of practically everything, with the exception of his unimproved property which amounted to \$3,759 to which had to be added the value of his household furniture in the sum of \$300 which brought the total property reserved up to \$4,059. In the case at hand, we have precisely the same set of facts, the only difference in the two cases being founded on the question as to the amount of property that a donor must reserve to himself in order to constitute the act an improvident one, because the Court below finds as a fact that Morrison did not have independent advice. In the case of *Pearse vs. Stines*, the fact that the donor reserved to himself only \$4,059 cause this Court, to conclude that the gift made under such circumstances was improvident, and the gift was therefore set aside. In the case at hand, Charles Morrison reserved to himself the sum of \$4,200 in bank and it is urged, that if the Court in this case concludes that the act is not improvident, that the decision must be based upon the one simple fact that in the case *supra*, if the donor had reserved to himself an additional \$141 the Court would have decided the case differently and in favor of the defendant, and concluded that the act was a provident one.

The question as to the amount which a donor must reserve to himself before the act would be considered an improvident one, is discussed by Vice Chancellor Stevens in *Pearse vs. Stines supra* at p. 55 par. 1, where he says, "In none of these cases has it been necessary to pass upon the question of exactly how much a donor might give without bringing himself within the rule of *Slack vs. Rees supra*, "That the rule may apply, must he give at least nine-tenths or some other definite fractional part of his whole estate? Or are we to look at the

effect of the gift upon himself? The question seems to me to be not so much one of definite fractions, as of practical results. The principle of decision, as pointed out by Judge Vredenburg in *Coffee vs. Sullivan*, supra, is that a man enfeebled by age and disease may not inadvisedly divest himself of his property, at a time when he can no longer work, and when by so doing, he becomes dependent upon the charity of others or of the public. I think the practical rule to be deduced from the cases is that a donor having barely sufficient property to sustain himself for the rest of his life, shall not irrevocably and without advice give away so much of it as to leave himself an object of charity."

Applying the rule which was laid down by the learned Vice Chancellor, in that case, it appears that although ostensibly this money in the two New York banks was in the name of Charles Morrison, the pass books to the same accounts in both banks, were held by the defendant, and the evidence clearly shows, that when Charles Morrison demanded these bank books from the defendant, that she absolutely refused to hand them over and it was only after an action in replevin had been started in the Second District Court of Jersey City to secure possession of these two books, that the same were turned over to the said Charles Morrison. It therefore appears conclusively that at the time of the conveyance of the property in question to the defendant in May, 1920, that the donor had stripped himself of practically his whole estate, because he did not even have access to the moneys in the two New York Banks. Bearing further upon the question of the improvidence of his act, at the time that Charles Morrison came to live with Walter Morrison in October, 1920, which is practically seventeen months after the voluntary conveyance to the defendant,

he had only seventeen cents in his pocket and he came to the home of Walter Morrison practically a pauper. This is borne out by the testimony of Walter Morrison which is uncontradicted.

Q. (Case P. 100 L. 5). Did you take him home with you? A. He came home with me at that time.

Q. Did he have any money in his pocket? A. He had seventeen cents in his pocket.

Q. (Case P. 100 L. 30). I mean, up to the time she refused to give up the bank books, from the time he came to live with you in October, did he have any funds, other than the seventeen cents that he came to you with? A. No, sir.

Q. And where did he get his money during that time? A. Why, I had to keep him myself for that time.

A careful study of the testimony as a whole, shows that the Court below was deceived by the cunning and artifices of the defendant, because it decided the case on the theory alone that the daughter had sacrificed the prime of her life in her devotion to her father and that therefore she was entitled to the property. This conclusion of the Court is not based upon any evidence in the case, but merely on the bare fact that she lived with her father for a number of years. The evidence shows that defendant was bent on getting the donor's property having already secured to herself the \$800 in the Claremont Bank and the \$2,409 in the Provident Bank and shows further that when she did get practically everything she began to ill treat her father.

We realize as pointed out by Magie J. in *Haydock vs. Haydock* Par. 3. P. 576, "That the careful and

deliberate judgment of the Vice Chancellor pronounced often an opportunity to see and hear the witnesses, has and ought to have great weight. It ought not to be reversed unless clearly wrong.”

We feel that the Court below failed to consider any question, but the one referred to in his opinion—namely, that the gift was not improvident.

We would point out further that the Court below was deceived by the artifices of the defendant, in releasing the restraint on the monies in the Claremont Bank and Provident Institution for Savings, pending the determination of this appeal, and permitting the defendant unreservedly to come into possession of said moneys.

Respectfully submitted,

ROBERT H. DOHERTY,  
Solicitor and of Counsel  
with Complainants-Appellants.

NEW JERSEY  
Court of Errors and Appeals.

Between

WALTER MORRISON, as Execu-  
tor, etc., and WALTER MOR-  
RISON and ETHEL DALY,  
Individually.

*Complainants-Appellants,*

*and*

GRACE MORRISON,  
*Defendant-Respondent.*

*On Appeal  
From the Court  
of Chancery.*

**Brief of Defendant-Respondent.**

This appeal is from a decree of the Court of Chancery dismissing Complainants' Bill of Complaint and the appeal to this Court is from the whole and every part of said decree, in that the Chancellor should have granted the relief prayed for in the Bill of Complaint.

**FACTS.**

The bill in this cause was filed by Charles Morrison to set aside a conveyance of real estate which he made to his daughter Grace Morrison, the defendant, in May, 1920, when he was about seventy-five years of age, and also to set aside a gift of money on deposit in The Provident Institution for Saving, amounting to \$2,409.00, and also a gift of money on deposit in The Claremont Bank, amounting to \$800.00.

Vice-Chancellor Griffin before whom the case was tried, after hearing the evidence, advised a decree in favor of defendant, dismissing complainant's bill.

### ARGUMENT

Complainants were the executor and two of the heirs and next of kin of Charles Morrison, deceased. It was their contention that the conveyance of real estate and the gifts of money above set forth should be set aside because of fraud and misrepresentation, undue influence, lack of independent advice, and that said conveyance and gifts were improvident. The theory of fraud and misrepresentation was practically abandoned at the trial, and it is our intention therefore to merely argue the question of lack of independent advice, undue influence and the improvidence of the gifts, and conveyance of the real estate.

There was much conflicting testimony on the question of undue influence, complainant contending that the deceased an old man had been unduly imposed upon by his daughter, Grace, the defendant-respondent. The Court found as a fact, that by reason of the apparently low mentality of the defendant-respondent, Grace Morrison, that she could not have dominated over him to the extent of being able to induce him to convey to her his property and make gifts of large sums of money. The Court also found as a fact that the defendant had been living with her father for many years, whereas the complainants, Walter Morrison and Ethel Daley, his other children, were married and had little or nothing to do with their father over a period of years. After hearing all of the evidence and seeing the witnesses on the stand, the Court decided that the gifts were not brought about by any undue influence exercised by Grace Morrison upon him, but

that they were voluntary and were made with a desire to show his appreciation for what his daughter had done for him during the many years that they had lived together.

### THE GIFTS WERE NOT IMPROVIDENT

After making these conveyances and gifts to his daughter, Charles Morrison still had about \$4200.00 left to his credit in his own name in New York Bank. He was at that time seventy five years of age, and if we are to believe complainants testimony, was growing feeble both physically and mentally, although he had performed vigorous labor up to within a few months of the time of the gift of the property. He did not strip himself of all his worldly goods, but still had \$4200.00 cash upon which to live for the remaining years of his life.

As to the gift of the \$2409.00 on February 13, 1918, this gift was clearly not improvident. At that time he owned the real estate in question which he valued at \$4500.00, and had a large sum of money in the bank. When he conveyed the real estate he still had \$4200.00 in cash. It seems to us that the question of improvidence is a question of fact, which may differ in every specific case according to circumstances. In the present case the Court found as a fact, that in view of all the circumstances the gifts were not improvident, because of the fact that the grantor reserved to himself for his support in his remaining days, which he must have realized were comparatively few, the sum of \$4200.00. The sum, taking into consideration his station in life (he was a mechanic) together with his condition of mind and body, was surely ample for his support and maintenance in a manner to which he had been accustomed.

We respectfully refer to the case of  
Pearce vs. Stines, 79 N. J. Equity 51,  
wherein it was held that the question of improvi-  
dence was one to be decided in each given case.

### RESUME

Taking into consideration all the facts in the case, together with the fact that the Court had the opportunity of hearing the evidence and observing the demeanor of the witnesses on the stand, it is our contention, and we respectfully submit that the decree of the Court of Chancery dismissing complaintants' bill should be affirmed.

Respectfully submitted,

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