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PETITION FOR PROBATE

To the Surrogate of Passaic:

The petition of David Wilson of 126 West 66th Street, New York, the Executor named in the Last Will and Testament of Sophie Wilson (aged 43 years) of 48 Henry Street, late of the City of Passaic in the County of Passaic and State of New Jersey respectfully shows that the said Testatrix died on the thirty-first day of March, 1922, and that the next of kin and heirs at law of said Testatrix with their respective residences or post office addresses, and the manner and degree in which they severally stand related to said Testatrix so far as the same are known to your petitioner are as follows to wit, her brother, John Stanisewsky, of Pennsylvania, her sister Kaulusky, husband's name unknown, last heard of living in Pennsylvania, also a sister in German Poland name unknown and City of Town unknown, and all of full age.

10

Your petitioner therefore prays that the aforesaid Will be admitted to probate, and that Letters Testamentary thereon be issued to your petitioner.

20

David Wilson.

Dated Paterson, New Jersey.

April 17, 1922.

Passaic County, SS.

David Wilson above named being duly sworn on his oath says that the statements in the foregoing petition contained are true.

30

David Wilson.

Sworn to before me this

17th day of April, 1922

George L. King

Deputy Surrogate.

Last Will and Testament of Sophie Wilson

Filed April 19, 1922.

Recorded April 24, 1922.

Frederick Beggs,

Surrogate & Clerk of the Orphans Court.

**LAST WILL AND TESTAMENT OF
SOPHIE WILSON**

10 I, Sophie Wilson, being of sound and disposing mind, memory and understanding do hereby make, publish and declare the following to be my last will and testament.

First: I order and direct my executor hereinafter named to pay all my just debts, funeral and testamentary expenses as soon as conveniently can be done after my decease.

20 Second: I give, devise and bequeath all the rest, residue and remainder of my estate whatsoever and wheresoever real, personal or mixed to Annie Wilson and David Wilson, absolutely, share and share alike.

I do this in consideration of the kindness, care and attention given me by them, during my illness, when I was without friends and no one to extend to me the consideration that they have done and I consider it proper and just that they should have whatever belongs to me after my decease.

30 Third: I nominate, constitute and appoint said David Wilson, sole executor of this my last will and testament.

In Witness Whereof, I have hereunto set my hand and seal this 29th day of March in the year nineteen hundred and twenty-two.

her
Sophie X Wilson (L.S.)
mark

Affidavit

Signed, sealed, published and declared by the testatrix above named to be her last will and testament in the presence of us and of each of us, who in her presence and in the presence of each other and at her request have hereunto subscribed our names as witnesses.

Anna M. Doherty

Edna M. McCarty

A. A. Butterfield, M.D.

10

AFFIDAVIT OF SUBSCRIBING WITNESSES

State of New Jersey, }
County of Passaic. }SS.

Anna M. Doherty who resides at 231 Wall Ave., Paterson, N. J., one of the witnesses to the annexed writing purporting to be the last will and testament of Sophie Wilson deceased, being duly sworn according to law upon her oath deposes and says that she saw Sophie Wilson the said Testatrix sign and seal the annexed writing and heard her publish, pronounce and declare the same to be her last will and testament.

20

Deponent further says that at the time of the doing thereof the said Testatrix was over the age of twenty one years of sound and disposing mind, and memory and not under any restraint so far as this deponent knows and as she verily believes; and that Edna M. McCarty who resides at 57 Clark Street, Paterson, N. J., and A. A. Butterfield, who resides at 153 Aycrigg Avenue, Passaic, N. J., the other subscribing witnesses to said Will were present at the same time with deponent when the said Will was signed by the said Testatrix and by her published and declared as and

30

Affidavit

for her last will and testament as aforesaid and that the said Edna M. McCarty and A. A. Butterfield and deponent both subscribed their names to said will as witnesses at the request of and in the presence of the said Testatrix and in the presence of each other.

Anna M. Doherty.

Subscribed and sworn to this
17th day of April, 1922, be-
fore me.

10

George L. King,
Deputy Surrogate.

State of New Jersey, } SS.
County of Passaic.

Edna M. McCarty who resides at 57 Clark Street, Paterson, N. J., one of the witnesses to the annexed writing purporting to be the last will and testament of Sophie Wilson deceased, being duly
20 sworn according to law upon her oath deposes and says that she saw Sophie Wilson the said Testatrix sign and seal the annexed writing and heard her publish, pronounce and declare the same to be her last will and testament.

Deponent further says that at the time of the doing thereof the said Testatrix was over the age of twenty one years of sound and disposing mind, and memory and not under any restraint so far as this deponent knows and as she verily believes;
30 and that Anna M. Doherty who resides at 231 Wall Avenue, Paterson, N. J., and A. A. Butterfield, who resides at 153 Ayerigg Avenue, Passaic, N. J., the other subscribing witnesses to said Will were present at the same time with deponent when the said Will was signed by the said Testatrix

Affidavit

and by her published and declared as and for her last will and testament as aforesaid and that the said Anna M. Doherty and A. A. Butterfield and deponent both subscribed their names to said will as witnesses at the request of and in the presence of the said Testatrix and in the presence of each other.

Edna M. McCarty.

Subscribed and sworn to this 18th

day of April, 1922, before me,

George L. King,

Deputy Surrogate.

10

State of New Jersey, }
County of Passaic. } SS.

A. A. Butterfield who resides at 153 Ayerigg Avenue, Passaic, N. J., one of the witnesses to the annexed writing purporting to be the last will and testament of Sophie Wilson deceased, being duly sworn according to law upon his oath deposes and says that he saw Sophie Wilson the said Testatrix sign and seal the annexed writing and heard her publish, pronounce and declare the same to be her last will and testament.

20

Deponent further says that at the time of the doing thereof the said Testatrix was over the age of twenty one years of sound and disposing mind, and memory and not under any restraint so far as this deponent knows and as he verily believes; and that Anna M. Doherty who resides at 231 Wall Avenue, Paterson, N. J., and Edna M. McCarty who resides at 57 Clark Street, Paterson, N. J., the other subscribing witnesses to said Will were present at the same time with deponent when the said Will was signed by the said Testatrix and by her published and declared as and for her last

30

Order of Probate

will and testament as aforesaid and that the said Anna M. Doherty and Edna M. McCarty and deponent both subscribed their names to said will as witnesses at the request of and in the presence of the said Testatrix and in the presence of each other.

A. A. Butterfield, M.D.

Subscribed and sworn to this 19th
day of April, 1922, before me,

10

George L. King,

Deputy Surrogate.

ORDER OF PROBATE

PASSAIC COUNTY SURROGATE'S COURT

In the matter of the Probate of
the alleged Will of Sophie
Wilson, deceased.

On Petition
for Probate.

20

On reading and filing the petition of David Wilson for probate of the last Will and Testament of Sophie Wilson deceased, and for Letters Testamentary thereon, and the Surrogate having inquired into the circumstances and taken proof, and, being satisfied of the genuineness of the Will produced the validity of its execution and the competency of the testatrix and, it further appearing that the said testatrix died on the 31st day of March, Nineteen Hundred and Twenty-two, and

30

more than ten days ago, and that no caveat has been filed against the probate of said Will.

It is thereupon, on this nineteenth day of April, Nineteen Hundred and twenty-two ordered and adjudged that the instrument offered for probate in this matter be and the same hereby is estab-

Oath of Executor

lished as the last Will and Testament of the said Sophie Wilson, deceased and that the same be and hereby is admitted to probate.

It is further ordered that Letters Testamentary thereon be issued to David Wilson the Executor named in said Will upon his qualifying as such Executor.

Frederic Beggs,
Surrogate

Received April 19, 1922
Recorded April 26, 1922.

10

OATH OF EXECUTOR

State of New Jersey, }
County of Passaic. } SS.

David Wilson, the executor in the annexed writing named, being duly sworn according to law upon his oath, deposes and says, that the annexed writing contains the true last will and testament of Sophie Wilson, the testator therein named, so far as he knows, and as he verily believes; that he will, as executor thereof, well and truly perform the same by paying first the debts of said testator, and then the legacies therein specified, so far as the goods, chattels and credits of deceased will thereunto extend; and that he will make and exhibit into the Surrogate's Office of the County of Passaic a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, that have or shall come to his knowledge or possession, or to the possession of any other person for his use, and that he will render a just and true account, when thereunto lawfully required.

20

30

David Wilson.

Letters Testamentary

Subscribed and sworn to this 17th
day of April, 1922, at Paterson,
N. J., before me,
George L. King,
Deputy Surrogate.

LETTERS TESTAMENTARY**PASSAIC COUNTY SURROGATE'S COURT**

10 I, Frederic Beggs, Surrogate of the County of
Passaic, do certify the annexed to be a true copy
of the last Will and Testament of Sophie Wilson,
late of the County of Passaic, deceased, and that
David Wilson, the Executor therein named, proved
the same before me, and is duly authorized to take
upon himself the Administration of the Estate of
the Testatrix agreeably to the said Will.

(Seal) Witness my hand and seal of office the
nineteenth day of April in the year of
our Lord One thousand nine hundred
and twenty-two.

20

Federic Beggs,
Surrogate.

PETITION OF APPEAL

In the Matter of the Estate of Sophie Wilson, deceased.	}	On Appeal from Probate of Will by Surrogate
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30 To the Surrogate of the County of Passaic.

The petition of Anne Kulbackie, of the City of
Shamokin in the County of Northumberland, in
the State of Pennsylvania, shows that:

1. Your petitioner is the sister of Sophie Wil-
son, late of the County of Passaic, deceased, who

Petition of Appeal

died on the 31st day of March, 1922, leaving her surviving as her next of kin Annie Kulbackie, your petitioner.

2. On the 19th day of April, 1922, one David Wilson produced before the Surrogate of the County of Passaic for probate a paper writing purporting to be the last will and testament of the said Sophie Wilson, deceased, wherein the said David Wilson was named as the sole executor thereof, and the said Surrogate thereupon, on the day last named, made his order admitting the said paper writing to probate, as and for the last will and testament of the said Sophie Wilson, deceased, and granting Letters Testamentary thereon to the said David Wilson which letters were duly issued on the day last aforesaid. 10

3. Your petitioner claims and alleges that the whole and every part of the said order of the said Surrogate admitting the said will to probate and issuing Letters Testamentary thereon to the said David Wilson as aforesaid is erroneous, improper and contrary to law, and that your petitioner is aggrieved thereby. 20

4. Your petitioner alleges for grounds of appeal as follows:

a. At the time of the making and of the supposed execution of said paper writing and for a long time prior thereto the said Sophie Wilson was of unsound mind and as such incapable of disposing of her estate by will. 30

b. The said David Wilson and his wife, Annie Wilson, did unduly, illegally and fraudulently influence the said Sophie Wilson in respect to the making and supposed execution of the said paper writing.

Petition of Appeal

c. The supposed execution of the said paper writing is illegal and insufficient under the Laws of the State to constitute the same the last will and testament of the said Sophie Wilson, deceased, for that the said Sophie Wilson did not at the time of the supposed execution thereof sign, publish and declare the said paper writing as and for her last will and testament in the presence of two witnesses present at the same time pursuant to the statute in such case made and provided.

10

5. The names of all persons concerned in this proceeding are as follows:

David Wilson of No. 126 West 66th St., New York City, N. Y., Executor and one of the beneficiaries named in the alleged will; Annie Wilson, wife of the said David Wilson, of No. 126 West 66th St., New York City, N. Y., one of the beneficiaries named in the alleged will, and your petitioner, Annie Kulbackie, of No. 1005 West Pine Street, Shamokin, Pa.

20

Your petitioner therefore prays that the above named persons concerned in this proceeding and each of them may be cited to appear in the Orphans' Court of the County of Passaic, in the State of New Jersey, pursuant to the rules and practice thereof, and that the aforesaid order of the said Surrogate and the proceedings thereon may be reversed and set aside by the said Orphans' Court and that the letters Testamentary issued to the said David Wilson may be revoked

30

Any Kulbacki,
Petitioner

Dated, May 6, 1922.

Petition of Appeal

State of Pennsylvania, }
 County of North Cumberland } SS.

Annie Kulbackie being duly sworn according to law upon her oath deposes and says, that she is the petitioner in the foregoing petition named and that the matters and things therein contained are true to the best of her knowledge and belief.

Any Kulbacki.

Sworn to and subscribed this sixth
 day of May, 1922, at Shamokin,
 Pa., before me.

10

R. B. Ryan,

Notary Public.

My Commission Expires Feb. 19, 1925.

RECORDER'S OFFICE

State of Pennsylvania, }
 Northumberland County, } SS.

I, John I. Carr, Recorder of Deeds in and for said County, the same being the office of Record, and I the officer duly authorized to issue this certificate, do hereby certify that R. B. Ryan Esq., whose name is subscribed to the certificate of proof or acknowledgment of or affidavit to the annexed instrument, and thereon written was at the time of the taking of the same, a Notary Public in and for said County and resided therein, and was duly sworn and authorized to take the same and to take the acknowledgment or proof of deeds to be recorded therein.

20

30

And further that I am well acquainted with the handwriting of said R. B. Ryan and verily believe that the signature to the said certificate is genuine; and that said instrument is executed and acknowledged in conformity with the Laws of this State.

Petition of Appeal

In Testimony Whereof, I have hereunto set my hand and seal affixed the Seal of said office at Sunbury, Pennsylvania, this 12th day of May A.D. 1922.

John I. Carr,
Recorder of Deeds.

(Seal)

(Filed May 15, 1922)

10 PASSAIC COUNTY ORPHANS' COURT

ANSWER

In the Matter of the Estate
of
Sophie Wilson, deceased.

} On Appeal from
} Probate of Will
} by Surrogate.

20 David Wilson, residing at No. 126 W. 66th St., New York City, executor of Sophie Wilson and beneficiary under the Last Will and Testament of said decedent and Annie Wilson wife of David Wilson and beneficiary under said will residing at the same address, answering the petition of Annie Kulbackie say that:

- 30
1. They deny that Annie Kulbackie the petitioner in said petition named is the sister of Sophie Wilson, the above named decedent and further deny that she is the said Sophie Wilson's next of kin.
 2. Paragraph two is admitted.
 3. Paragraph three is denied in toto.
 4. Paragraph four, a, b and c are denied in toto.
 5. Paragraph five is admitted as to David Wilson and Annie Wilson his wife, being beneficiaries and persons concerned, but deny that said Annie

13
Answer

Kulbackie, the petitioner, is a person concerned or in interest in this proceeding.

The said David Wilson and Annie Wilson therefore pray that the said petition be dismissed and that the order or decree of the Surrogate of the County of Passaic admitting the Last Will and Testament of said Sophie Wilson to probate and granting letters testamentary to said David Wilson be sustained and upheld and that they be granted such further and other relief as the nature of the case requires in the premises. 10

Robert J. McDermott,
Proctor for David Wilson
and Annie Wilson.

Filed June 29, 1922.

PASSAIC COUNTY ORPHANS' COURT
NOTICE OF APPLICATION

In the matter of the Estate
of
Sophie Wilson, deceased.

20

To David Wilson, or Robert J. McDermott, Proctor for David Wilson:

You are hereby notified that on the sixth day of July, 1922, at the Court House in the City of Paterson, at ten o'clock in the forenoon, I shall apply to the Orphans' Court of the County of Passaic for an Order appointing an Administrator Pendente Lite in the above entitled cause. 30

Michael Dunn,
Proctor for Petitioner.

Dated Paterson, New Jersey,
June 29th, 1922.

Filed July 7, 1922.

Notice of Application

PASSAIC COUNT YORPHANS' COURT

PETITION

In the Matter of the Estate
of
Sophie Wilson, deceased.

On Petition for
Letters of Ad-
ministration
Pendente Lite.

To the Orphans' Court of the County of Passaic:

10 The petition of Annie Kulbackie, who resides at 1005 West Pine Street in the City of Shamokin, in the County of Northumberland and State of Pennsylvania respectfully shows that:

1. Your petitioner is the sister and sole heir and next of kin of Sophie Wilson, late of the City of Passaic in the County of Passaic and State of New Jersey, who died on or about the 31st day of March, 1922, possessed of goods, chattels, rights and credits to the value of \$12,000.00, as nearly as
20 your petitioner can ascertain.

2. On the 19th day of April, 1922, one David Wilson offered a certain paper writing purporting to be the last will and testament of the said Sophie Wilson for probate to the Surrogate of Passaic County, and said paper writing was admitted by the Surrogate as and for the last will and testament of the said Sophie Wilson and letters testamentary thereon were granted to the said David Wilson.

30 3. The beneficiaries under the said paper writing are the said David Wilson and his wife, Annie Wilson who reside at 126 West 66th Street, New York City, N. Y.

4. Your petitioner filed a petition of appeal from

15
Petition

the probate of the said paper writing on the 15th day of May, 1922.

5. On the 14th day of May, 1920, the said Sophie Wilson was admitted as an insane patient for care and treatment to the New Jersey State Hospital at Morris Plains, and that on the 7th day of February, 1921, an inquisition issued out of the Court of Chancery of New Jersey, found that the said Sophie Wilson was insane at that time and had been since May 11th, 1920. That the said Sophie Wilson remained in the said Hospital as an insane patient until March 25th, 1922, when she was removed therefrom by the said David Wilson, who had been appointed her guardian on the 21st day of April, 1921. That the said paper writing was executed on the 29th day of March, 1922, and that said Sophie Wilson died on the 31st day of March, 1922.

10

Your petitioner therefore prays that this Honorable Court may, by its order, appoint some fit person the administrator pendente lite of the Estate of the said Sophie Wilson, deceased, in accordance with the statute in such case made and provided.

20

her
Any X Kulbackie
mark

Witness to mark
J. A. Welsh

State of Pennsylvania, }
County of Northumberland. } SS.

30

Annie Kulbackie being duly sworn on her oath, according to law, deposes and says that she is the petitioner in the foregoing petition named and

17
Order

that said David Wilson and his wife, Annie Wilson, are the sole beneficiaries under the said will; and it appearing to the Court that it is to the best interest of the estate that an administrator pendente lite be appointed; and it further appearing that Franklin Trust Company of Paterson, New Jersey, is a proper corporation to administer upon the estate of the said Sophie Wilson.

It is thereupon, on this Seventh day of July, 1922, Ordered, Adjudged and Decreed that letters of Administration pendente lite upon the goods, chattels, rights and credits of the said Sophie Wilson, deceased, be granted to the said Franklin Trust Company of Paterson, New Jersey, upon the giving by them of a bond in the sum of Twenty-two thousand dollars with sureties to be approved by the Judge of the Orphans' Court of the County of Passaic and upon its duly qualifying as such. 10

Jos. A. Delaney,
Judge. 20

PASSAIC COUNTY ORPHANS' COURT
DECREE AFFIRMING ORDER OF SURROGATE ADMITTING WILL TO PROBATE

Annie Kulbackie, one of the alleged next of kin of Sophie Wilson, deceased, having filed her petition of appeal from an order of the Surrogate of the County of Passaic, made on the twenty-fifth day of May, nineteen hundred and twenty-two, admitting to probate a certain paper writing as and for the last will and testament of said Sophie Wilson, deceased, and it appearing that citations were thereupon duly issued by the Surrogate of the County of Passaic to all persons concerned to appear before this Court on the 29th day 30

Decree

of June, 1922, at 10 o'clock in the forenoon on the hearing of said appeal and that said citations have been returned duly served upon the persons to whom they were respectively directed and the Court having taken testimony and heard the allegations of the parties herein and being satisfied that the said paper writing was duly executed by the said Sophie Wilson as her last will and testament in manner and form prescribed by the Statute in such case made and provided and that the

10 said Sophie Wilson at the time of making said will was of sound and disposing mind, memory and understanding and that said will was not the production of undue influence.

It is thereupon, on this 3rd day of April, 1924, ordered, adjudged and decreed that the aforesaid decree of the Surrogate of the County of Passaic, admitting to probate the said paper writing as and for the last will and testament of Sophie Wilson, deceased, and directing that letters testam-
20 entary thereon issued to David Wilson, the executor therein named be and the same is hereby in all things ratified and confirmed and that the said paper writing is the last will and testament of said Sophie Wilson, deceased.

Jos. A. Delaney,
Judge.

Filed: April 3, 1924.

Recorded: April 5, 1924.

30 Frederic Beggs,
Surrogate & Clerk of the
Orphans' Court.

Notice of Appeal

PASSAIC COUNTY ORPHANS' COURT

NOTICE OF APPEAL

In the Matter of the Probate of the Will of Sophie Wilson, Deceased.	}	On Petition of Appeal
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Annie Kulbackie, one of the next of kin of Sophie Wilson, deceased, hereby appeals to the Prerogative Court from the Decree entered herein on the third day of April, 1924, admitting to probate a certain paper writing as the last will and testament of Sophie Wilson, deceased, and every part thereof. 10

Michael Dunn,
Proctor for Appellant.

Dated Paterson, New Jersey,
 April 17th, 1924.
 Filed April 17th, 1924.

20

PASSAIC COUNTY ORPHANS' COURT
**AFFIDAVIT OF SERVICE OF NOTICE OF
 APPEAL**

In the Matter of the Estate of Sophie Wilson, deceased.	}	
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30

County of Passaic. }
 State of New Jersey, } SS.

Arthur C. Dunn, being duly sworn according to law upon his oath deposes and says that: On the 17th day of April, 1924, he served the Notice of

Petition

Appeal to the Prerogative Court in the above entitled cause upon Robert J. McDermott, Proctor for David Wilson, Executor under the last will and testament of Sophie Wilson, by delivering to him at his office, a true copy thereof.

Arthur C. Dunn.

Sworn to and subscribed before me
this 7th day of May, 1924.

Norah O'Rourke,

Notary Public of N. J.

10

(Seal)

NEW JERSEY PREROGATIVE COURT

PETITION OF APPEAL

In the matter of the Appeal
from the Decree of the Or-
phans' Court of the County
of Passaic admitting to pro-
bate a certain paper writing
as the last will and testa-
ment of Sophie Wilson, de-
ceased.

20

On Petition
of Appeal

To the Ordinary of the State of New Jersey:

The petition of Annie Kulbackie of the City of Shamokin, in the County of Northumberland and State of Pennsylvania, respectfully shows that:

30

1. Your petitioner is one of the next of kin of Sophie Wilson, late of the County of Passaic, deceased. On the 3rd day of April, 1924, the Orphans' Court of the County of Passaic made its order admitting to probate a certain paper writing purporting to be the last will and testament of Sophie Wilson, deceased.

Affidavit

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

Your petitioner therefore prays that the aforesaid Order of the said Orphans' Court and every part thereof be reversed by this Court.

Michael Dunn,

Proctor for and of Counsel
with Appellant. 10

Dated Paterson, New Jersey,

April 17th, 1924.

Service Acknowledged

April 17th, 1924.

Robt. F. McDermott,

Proctor.

Transcript of Testimony

PASSAIC COUNTY ORPHANS' COURT

In the Matter of the Estate
of
Sophie Wilson, Deceased.

Before: Hon. Joseph A. Delaney, J.

Paterson, N. J., November 27, 1922.

10 Appearances:

Michael Dunn, Esq.,

Michael Murphy, Esq.,

Arthur Dunn, Esq.,

For the Appellant.

Albert Comstock, Esq.,

Robert McDermott, Esq.,

For the Appellee.

20 The deposition of Annie Kolvakie, was read by
Mr. Murphy.

Photograph of Sophie Wilson admitted in evidence and marked Exhibit "A-1", for the appellant.

Birth record of Sophie Grajewska, admitted in evidence and marked Exhibit "A-2", for the appellant.

Marriage certificate of Staniswa Koski and Antonina Grajewski admitted in evidence and marked Exhibit "A-3", for the appellant.

30 Birth record of Antonina Grajewski admitted in evidence and marked Exhibit "A-4", for the appellant.

Anthracite Miner's Certificate admitted in evidence and marked Exhibit "A-5" for the appellant.

Katherine Rubacke—direct

The deposition of Mrs. Josephine Shizkoskie is then read by Mr. Murphy.

KATHERINE RUBACKE, sworn as a witness for the appellant and testifies as follows:

Direct Examination by Mr. Murphy:

Q. Where do you live now? A. 82 Sussex Street, Jersey City. 10

Q. How long have you lived there? A. Over a year.

Q. Where were you born? A. I was born in Austria.

Q. When you came to this country what city did you go to live in? A. Shamokin.

Q. And you continued to stay there for what length of time? A. About three and a half years.

Q. What time was that? A. About twenty-six years ago. 20

Q. What kind of work did you do there? A. I used to do housework.

Q. Did you know a young woman named Sophie Grajewski? A. I did.

Q. Was it there you first became acquainted with her? A. Yes, sir.

Q. What was her age twenty-two years ago? A. I believe around seventeen or eighteen years of age at that time.

Q. What did she do there? A. She was doing housework. 30

Q. Were you or not much in her society or company? A. Not very much, not very often.

Q. Did you meet her often? A. Yes, sir.

Q. Where did she live? A. The time I knew

Katherine Rubacke—direct

her she lived in Mike Steves' house on Shamokin Street.

Q. Did she work there? A. Yes, sir.

Q. Do you know whether she had parents or sisters there? A. She told me she had a sister and often told me about a father but I didn't know the father nor the sister.

Q. Do you know what name she called her sister there? A. Mrs. Kulbackie.

10 Q. Do you know what street she lived on? A. I don't know at that time.

Q. From Shamokin where did you go? A. Jersey City.

Q. For how long? A. I am here twenty-five years.

Q. Was it that length of time? A. It will be twenty-five I believe, next month.

Q. After coming to Jersey City did you meet Sophie Grajewski? A. No, I had been here a couple of years before I met her.

20 Q. Then you met her? A. Yes, sir, she came to my house.

Q. After she came to your house did you then keep associating with her? A. Whenever she could come to my house she did. She lived in Rutherford and then she left the place in Rutherford and stayed in my house for five or six months I don't remember which.

30 Q. After she stayed in your house do you know where she went to? A. She went back to Rutherford.

Q. Did you see her after she went back to Rutherford? A. She came to see me several times and then after that she went out of my sight and I didn't see her any more.

Katherine Rubacke—direct

Q. I show you this photograph and ask you whether that is a photograph of Sophie Grajewski? A. Yes, sir.

Q. Where was that taken? A. I cannot tell you where it was taken but she gave me that when in my house in Jersey City.

Q. How long ago was that? A. About fifteen or sixteen years ago, in this photograph she is even wearing my hat when she had the photograph taken.

10

Photograph offered in evidence and admitted and marked Exhibit P-6 for the appellant.

Q. When was that photograph taken? A. I don't remember.

Q. Was it taken in Jersey City? A. I believe it is written on there.

Q. Is that Sophie Grajewski? A. Yes, sir, that is the one that she gave to me.

20

Mr. Murphy—I ask that this photograph also be marked in evidence.

Photograph offered in evidence and admitted and marked Exhibit A-7 for the appellant.

Q. I show you this photograph marked Exhibit P-1 and ask you if you know whose photograph that is? A. That is Sophie Grajewski.

30

Q. Are you positively sure of that? A. Positively.

Q. About how many years all together did you know Sophie Grajewski after she came to Jersey

Katherine Rubacke—direct

City? A. After coming to Jersey City I have known her for over sixteen years.

Q. While you knew her do you know whether she went under any other name beside Grajewski?

A. Yes, Sophie Graver.

Q. How do you know that? A. Because she had written letters in my house and letters came to my house that way, that is how I know.

10 Q. After she used the name Sophie Graver did she use that to a greater extent than she used Grajewski? A. Yes, sir, she used that to a greater extent.

Q. She was generally known among her acquaintances as Sophie Graver? A. That is what I heard.

Q. So you know it is right? A. Yes, sir, I do.

Q. Do you know this lady here? A. I do.

Q. What is her name? A. Mrs. Thompson.

20 Q. Did you know her while acquainted with Sophie Grajewski or Graver? A. I did because she came with Mrs. Thompson to my house to pay me a visit.

Q. How many times? A. Two or three times, I don't exactly remember.

Q. When Mrs. Thompson spoke to her did she address her as Sophie Grajewski or Sophie Graver? A. I cannot remember; she called her by the name of Sophie, that is all I remember.

30 Q. Did you know that Sophie Graver or Grajewski was married? A. I heard she got married.

Q. Did you know where she lived when she got married? A. No, I don't know.

Q. You never saw her after she got married? A. No.

Katherine Rubacke—cross

Cross Examination by Mr. McDermott:

Q. When was the last time you saw Sophie Grajewski? A. I saw her around fifteen or sixteen years ago.

Q. These photographs were taken since that time? A. No, it was in my possession at that time.

Q. Not this one with the edges cut off, was it? A. She stayed with me and she gave them to me.

Q. Tell me which of these photographs was in your possession? A. These two. 10

Q. Was this one? A. No only these two, I don't remember exactly the length of time they were in my possession, but they were in my possession.

Q. You had them all this time? A. Yes, sir.

Q. Did you know Sophie was dead? A. I heard Sophie died from Mrs. Thompson.

Q. When did she tell you that? A. I don't remember just exactly when. 20

Q. About when? A. Five or six months ago.

Q. Five or six months ago? A. Four, five or six months, something like that.

Q. Do you know that the Sophie Grajewski that is dead is the same Sophie as in this picture?

A. Yes, sir, the same.

Q. Did you see her when she was dead? A. No, sir.

Q. You did not view the remains? A. No. 30

Q. You didn't go to the funeral? A. No, sir.

Q. Have you seen her for fifteen years? A. Fifteen or sixteen years, in fifteen years I guess because my baby was born after she left my house.

Q. You haven't seen her for that length of time? A. No.

Mary Thompson—direct

Q. You don't know whether Sophie Graver who was buried was the Sophie Graver of this picture? A. That is her picture.

Q. You didn't see her in the coffin? A. No, sir.

Q. You don't know then? A. I can't say.

10 MARY THOMPSON, sworn as a witness for the Appellant and testifies as follows:

Direct Examination by Mr. Murphy:

Q. Where do you live? A. In the city of Rutherford.

Q. How long have you lived there? A. I was born there.

Q. Did you know Sophie Grajewski sometimes known as Sophie Graver in her lifetime? A. Yes, sir.

20 Q. When did you first become acquainted with her? A. About nineteen or twenty years ago.

Q. Where? A. In Rutherford.

Q. Under what circumstances? A. Well, Mrs. Macey sitting there introduced me to her.

Q. What was Sophie doing at that time? A. Keeping house for Mr. Lansing.

Q. Of Rutherford? A. Yes, sir.

Q. About what was her age then? A. I should judge around nineteen or twenty.

30 Q. How long did you know her after becoming acquainted with her? A. I knew her and seen her most of the time until she was committed to the asylum.

Q. I show you this photograph marked Exhibit A-1 and ask you if you know who it is? A.

Mary Thompson—direct

Yes, sir, Sophie Graver, I have one like it but I cannot find it.

Q. I show you Exhibit A-6 and ask you if you know who that is? A. Yes, sir, Sophie Grajewski.

Q. Also Exhibit A-7 and I ask you whose picture that is? A. Sophie Grajewski too.

Q. When you knew her at Rutherford was she more generally known as Sophie Grajewski or Sophie Graver? A. She was more generally known as Sophie Graver. 10

Q. Do you know positively if she was known as Sophie Graver? A. Yes, sir, I know because she stayed with me on different occasions and had her mail addressed there as Sophie Graver.

Q. Do you know of her having the name of Grajewski on her bankbook? A. She was going to Indiana and she had a balance in the Hoboken Savings Institution and we were going to New York to buy some clothes and she asked me to go with her and said we will stop in the bank and get the money I have got there and that will save me trouble. So the clerk in the bank when she wanted to withdraw her money wasn't satisfied with her signature and gave her a paper and asked her to write her name again and when she brought it back he said to her "You have improved in writing." 20

Q. Did you see her write her name? A. Yes, sir. 30

Q. What name was it she wrote? A. Grajewski.

Q. That was the name on the bankbook she used? A. Yes, sir.

Q. After she left Rutherford do you know

Mary Thompson—direct

where she went to? A. She went back and forth, she went to Mrs. Rubacke in Jersey City and she stayed there several months.

Q. Did you see her there? A. No, but I had visited Mrs. Rubacke with her on several occasions before she went there to stay.

Q. Where did she go then? A. She came to my house.

10 Q. How long did she stay there? A. I cannot say, but she came and stayed two or three months as near as I can recall.

Q. Where did she go from that place? A. I don't remember whether she went to Hoboken or Paterson, she lived on Paterson Street for a little while.

Q. Did you visit her there? A. Yes, sir.

Q. She moved where, then? A. She lived on Bloomfield Avenue in Hoboken.

Q. Did you visit her there? A. Yes, sir.

20 Q. Then where did she go? A. She stayed with me a little while and went to Atlantic City to stay a couple of weeks and she obtained a position down there and stayed all summer and then she came back and came to Paterson again.

Q. To what place then? A. On the corner of Van Houten Avenue and Summer Street.

Q. Did you visit her there? A. Yes, sir.

Q. More than once? A. Yes, sir, very often.

Q. Do you know how long she stayed there?

30 A. I cannot exactly say how long she stayed there.

Q. Do you know where she went to from that place? A. Yes, sir, she went to another place in Paterson but I don't remember the street.

Mary Thompson—direct

Q. And from there where? A. She took apartments.

Q. Where? A. She had furnished rooms on Church Street and also in this other place and after that she went to the Van Houten Avenue house she lived there I guess a year or more.

Q. Where did she go then? A. I went to visit her on Broadway, I don't remember what number or where it was.

Q. Do you know where she went to from Paterson? A. She lived in Passaic. 10

Q. Where? A. In an apartment house on Bloomfield Avenue.

Q. Did you visit her there? A. Yes, sir.

Q. Did she move from that place? A. Yes, sir, to High Street. To High Street and the street where the cars go into Newark I think it is Franklin Avenue.

Q. Did you visit her there? A. Yes, sir.

Q. When was it she lived there, about? A. 20
She lived there five years or six years ago. My boy was injured and in the hospital in New York five years ago, it will be six years ago this coming February and she lived there then.

Q. Do you know where she went then? A. Then she married Mr. Wilson and went to live on Henry Street.

Q. Did you know Mr. Wilson? A. Yes, sir.

Q. How long had you known him? A. I don't know whether I knew him before I knew her but my brother used to work for Mr. Wilson. 30

Q. What business was he in? A. Horseshoeing business or blacksmith business.

Q. Do you know when they were married? A. I don't remember the day. She came to my house and told me she was going to marry Mr. Wilson

Mary Thompson—direct

and several days after she came and showed her certificate to me. It was in book form and she was married in Paterson by the Rev. Mr. Hamilton.

Q. Did you see her after she was married? A. Yes, sir.

Q. Where did she live? A. No. 48 Henry Street.

Q. Did you go to see her and Mr. Wilson? A. Yes, sir, Mr. Wilson was there.

10 Q. How many times? A. Well, if I said about twenty it might be right.

Q. Do you know what became of her after her marriage and residence with her husband on Henry Street? A. Yes, sir, I know she lived there and Mr. Wilson died and she called me up and told me he was dead and I went up there and went to his funeral.

20 Q. Did you come back to the house with her after the funeral? A. Yes, sir, I came back to the house.

Q. Did you visit her again after that? A. No, I didn't. I went to the house and I didn't get no answer and I went again after that and asked upstairs and Mrs. Wimple told me she was in the insane asylum.

Q. Did you see her in the asylum? A. Once.

Q. When? A. About two or three months after she went there.

30 Q. What asylum was it? A. Morris Plains.

Q. Did you see her from that time until her death? A. No.

Q. Were you at her funeral? A. Yes, sir.

Q. Were you at her funeral and did you see her in the coffin? A. Yes, sir.

Mary Thompson—cross

Q. You know it was Sophie Graver or Sophie Grajewski that was buried from the Wilson home in Passaic? A. Yes, sir, 48 Henry Street.

Cross Examination by Mr. McDermott:

Q. Where did you say you lived? A. In the city of Rutherford.

Q. How long have you lived there? A. I was born there.

Q. You were always a pal of Sophie's? A. Always, for twenty years, that I had known her.

Q. Did you know her in Pennsylvania? A. No.

Q. Did you ever see her sister in Pennsylvania? A. Yes, sir.

Q. When? A. After Sophie's death.

Q. How do you know this person you speak of was Sophie's sister? A. Sophie told me.

Q. You went up there after she was dead, didn't you? A. Yes, sir.

Q. You went up there and looked this woman up? A. Yes, sir.

Q. You didn't know for sure she was Sophie's sister? A. She had that photograph of Sophie.

Q. Is it not true you brought that photograph with you? A. Positively no.

Q. Is it not true you clipped the edges off this photograph so it would not be shown where it came from? A. That is not so, on my honor. I asked her what her name was and if she had a sister and I asked her whose this picture was.

Q. You are not thinking now? A. No, sir.

Q. You are willing to swear that you didn't bring this photograph to Shamokin with you? A. Positively, before my God.

Mary Thompson—cross

Q. Did you communicate with Shamokin people? A. Yes, sir.

Q. What was your purpose? A. She told me her family affairs and she had a sister in Pennsylvania and they brought her from the old country and said she wasn't on very good terms with her sister but she was her sister just the same.

Q. This woman you saw you told her she was a sister of Sophie's? A. No.

10 Q. This woman hadn't seen her for twenty years? A. I don't know.

Q. You were down to the house on Henry Street where Sophie died? A. I was there after she died.

Q. These pictures were around the house? A. One of those pictures was on the desk and another one in a long princess dress a full length picture was on Mr. Wilson's desk.

Q. You saw them there? A. Yes, sir.

20 Q. How is it you remember that so well? A. Why, do you think I can't remember?

Q. Why do you remember you saw these pictures? A. From inspection.

Q. You wanted to get one didn't you? A. No.

Q. Do you know these young ladies sitting back there, those nurses? A. No.

Q. Did you ever see them? A. I cannot identify them, I seen nurses there though.

30 Q. Did you take up one of these pictures? A. I did not. Mr. Dave Wilson was in the room with me all the time.

Q. When this will was offered for probate you were present? A. I was there just before.

Q. You were there when we came in? A. I didn't see you; I saw Mrs. Wilson.

Mary Thompson—cross

Q. You were there, you got there before we did? A. Yes, sir.

Q. Didn't you tell Mr. King you were the sister of this woman? A. Yes, I did, because I told lawyer Conklin of Rutherford and you see I am very green in law and I understood you couldn't see it unless you were related or had something to do with it and I told Mr. Dunn afterwards I was sorry I had misrepresented myself but Mr. Conklin told me to go there and find out how Mrs. Wilson had left her property. 10

Q. You thought it was necessary to tell a lie to see the record? A. Yes, sir, and I was sorry I did.

Q. Was that your only purpose in saying you were the sister of this woman? A. That was my only purpose.

Q. Do you know Mrs. Wilson over there? A. Yes, sir.

Q. Did you ever have any conversation with her concerning this sister? A. Yes, sir, the day Mrs. Wilson was dead, Mrs. Wilson wasn't there when Mr. Wilson took me up to see Sophie and Mr. Wilson and I sat in the room that used to be Mr. Wilson's office and I said "Did you notify her sister" he says "She hasn't got any sister". I said "Oh, yes she has." This was with Mr. Wilson. I said "Oh, yes she has a sister and I am not sure whether it is a brother or an unble but someone is in Pennsylvania. He used to write to Sophie. Mr. Wilson says, "No, I am satisfied she has no one." He says it is a shame to think this house has got to go to the State of New Jersey" and I said "No, it didn't if she has got people." 20 30

Q. I ask you Mrs. Thompson if you didn't pass as her sister in the Surrogate's Court would you

Mary Thompson—cross

admit? A. Yes, sir, I admit it, yes, sir, because I was under the impression they wouldn't let anyone in there unless a relative.

Q. Subsequent to that did you have any conversation with Mrs. Wilson, Sophie's sister-in-law? A. Yes, sir.

Q. What conversation did you have concerning Sophie Wilson? A. I told them she had a sister, that is all.

10 Q. Did you say to Mrs. Wilson that if she would give you certain money you wouldn't bring forth a sister? A. No, Mrs. Wilson sent Mr. Dekwer in Passaic and Monroe Street to me and offered me five hundred dollars and I could bring Mr. Dekwer to prove it, if I wouldn't go to Pennsylvania and say there were no sisters out there and settle it.

Q. You knew Sophie had certain money in a joint account? A. I knew she had an account of her own.

20 Q. Didn't you say that if you got that account that everything would be all right? A. No, I did not, positively not.

Q. After that you went to Shamokin? A. Yes, sir.

Q. And you brought this photograph with you? A. No, I did not, you can't make me say what I didn't do.

30 Q. When you went to Shamokin did you know where to go? A. No, I understood she lived in Shamokin but I inquired and found out from a Mrs. Roper where she lived.

Q. What was your interest in this matter? A. Just simply justice.

Q. How far is it from here to Shamokin? A. I don't know, I didn't keep track of it.

Mary Thompson—cross

Q. How long did it take you to go there? A. From nine in the morning until three in the afternoon.

Q. About six hours ride? A. Yes, sir.

Q. You went to Shamokin I understand— A. Yes, sir.

Q. To look up these people? A. Yes, sir.

Q. Did you then go direct to the sister to these people? A. No, I did not, in fact I didn't see her the first day. 10

Q. How did you know you were talking to a woman that was related to Sophie? A. When she showed me the picture.

Q. She showed it to you? A. Yes, sir.

Q. She had it up there? A. Yes, sir.

Q. You know these people hadn't seen Sophie for twenty or twenty-five years? A. Yes, sir, they had, they told me it was only a couple of years before I met her.

Q. Well, how long is that? A. Twenty years. 20

Q. This picture was taken twenty years ago?
A. It must have been because she had given me one of them.

Q. How old was Mrs. Wilson when she died?

A. Her sister says she was forty.

Q. How long would you suppose she would be in that picture?

Objected to by Mr. Murphy.

Objection sustained by the Court. 30

Q. When you went to Pennsylvania you looked up this lady's sister and you found her? A. Not the first time.

Q. Did you go a second time? A. Yes, sir, I

Mary Thompson—cross

had business down in that direction and I went to see them.

Q. You made two trips to Shamokin? A. Yes, sir.

Q. In order to find this sister? A. Yes, sir, I went to see my daughter up in Pennsylvania.

Q. The second time you went there you found her? A. Yes, sir, the second time I found her, I didn't go looking for her, I wrote to Mrs. Roper
 10 I was coming and Mrs. Kulbackie, Sophie's sister came to Mrs. Roper's house, that is in a different part of town and before I had any conversation at all she showed me the picture.

Q. You didn't know anything about it and she didn't know anything about it but she showed you the picture? A. To prove that she was Sophie's sister.

Q. Did you believe you were talking to Sophie's sister? A. Certainly, I believed her, how
 20 would she have her picture if she wasn't.

Q. What nationality was Sophie? A. Polish, I believe.

Q. Polish? A. Yes, sir, I think so.

Q. You and Sophie were pals? A. Yes, sir.

Q. Your used to go around places together? A. Yes, sir.

Q. You and Sophie used to conduct a little business together? A. No.

Q. You and Sophie used to go around to back-
 30 doors and tell fortunes? A. Sophie did, I never did.

Q. When you went to Shamokin and you saw this woman what did you tell her? A. Mrs. Kulbackie?

Q. Yes. A. I cannot remember exactly the conversation we had, I asked her if she had a sis-

Mary Thompson—cross

ter and where she lived and I wanted to be sure she was her sister.

Q. What else did you say? A. I don't remember exactly the conversation we had.

Q. Your memory seems very good? A. It was a general, ordinary conversation, she told me about Sophie living up there and of the family they had and how the father worked in the mine a little ways from there and how he died in Centralia, a little bit up from Shamokin.

10

Q. What did you tell her about this estate? A. I told her Sophie was dead and I had asked Mrs. Wilson if she made a will and she said no, and naturally I supposed her sister would be her heir.

Q. Didn't you say to her you would want certain advances for your services? A. No, sir.

Q. Is there agreement like that? A. No.

Q. Absolutely not? A. Absolutely not.

Q. Positively none? A. Positively.

20

Q. How did she spell her name? A. Which do you mean, Graver or Grajewski?

Q. Sophie Wilson? A. Wilson.

Q. What was her first name? A. Grewaska, that is the nearest I can remember.

Q. Did you know her by that name? A. Yes, sir.

Q. You kept good track of her all the way through for twenty years? A. I have seen her every little while during these twenty years.

30

Mary Macey—direct

MARY MACEY, sworn as a witness for the appellant and testifies as follows:

Direct Examination by Mr. Murphy:

Q. Where do you live? A. Passaic, Washington Place.

Q. How long have you lived in Passaic? A. As long as I come from the old country.

Q. When did you come from the old country?

10 A. Austria.

Q. When? A. Thirty-eight years ago.

Q. Did you know Sophie Grajewski also known as Sophie Graver? A. Sophie Graver I knew her by and after when she married she gave herself Grajewski.

Q. When did you first become acquainted with her? A. I lived in Passaic so many years and then after my husband moved to Rutherford and he has got a little business in shoe repairing there and I met Sophie there at Rutherford.

20 Q. How long ago was that? A. About twenty years ago.

Q. About how old was Sophie when you met her there? A. Twenty years old I guess, very young.

Q. How long did you know her after that? A. Twenty years all together.

30 Q. I show you this photograph marked Exhibit A-1 and ask you whose photograph it is? A. Sophie's, when she was very young, taken quite awhile ago when she was young.

Q. I show you a photograph marked Exhibit A-16 and ask you whose photograph that is? A. Sophie's just the same.

Q. I show you Exhibit A-7? A. That is

Mary Macey—direct

Sophie because even I know that suit, it was made by a tailor in Rutherford.

Q. When you knew her when she lived in Rutherford where was she living? A. Some place on Madison Avenue by Mr. Lansing just keeping house for Mr. Lansing.

Q. Did you know her then as Sophie Grajewski or Sophie Graver? A. Sophie Graver.

Q. Did you also know her as Sophie Grajewski? A. After that she married and she gave this name. 10

Q. After she left Rutherford do you know where she went to? A. Paterson.

Q. Did you ever visit her in Paterson? A. A couple of times, twice or three, she lived different places around Paterson.

Q. Do you know where she went from Paterson? A. I guess after Paterson, she came back to Passaic.

Q. Do you know where she lived in Passaic? A. On High Street and I don't know the other street in a private house. 20

Q. Did you visit her there? A. I think several times.

Q. About how many years ago did she live on High Street in Passaic? A. About four years ago.

Q. Did you know she got married to Mr. Wilson? A. Yes, sir, I talked to them just a couple of days before they got married they came to my house. 30

Q. Did you visit her after she got married? A. Yes, sir, I did several times.

Q. Where did she live then? A. At that time Mr. Wilson came home from lunch and I was sitting at the table with Sophie.

Mary Macey—direct

Q. Did you know Mr. Wilson before they got married? A. Yes, sir.

Q. What business was he in? A. He had a blacksmith shop where I lived on Main Avenue.

Q. How long had you known him before he got married to Sopic? A. I know him about seven years.

10 Q. About how many times did you see Sophie after she got married? A. Several times she came to my house with Mr. Wilson.

Q. They both came together? A. I seen him several times on the street and I asked him how is Sophie and he said "very well". I said, "Why don't you come over? what's the matter, you know where I live here" and they came over.

Q. And you would go to see them? A. Yes, sir.

20 Q. Do you know when Sophie went to the Asylum? A. I knew Sophie quite a long while before Mr. Wilson took sick and just before he took sick I was over there and I was there just before Mr. Wilson got sick the last time.

Q. Did you know her husband died? A. I did.

Q. Did you go to the funeral? A. I meant to go but it was a rainy day and I was moving.

Q. Do you know what became of Sophie after her husband died? A. I cannot tell you exactly. Sophie was all right.

30 Q. Do you know whether she went away? A. She stayed home Saturday and Sunday and then she went some place Monday, I went to the house and I couldn't find her any more.

Q. Did you learn where she had gone to?

Mary Macey—cross

Objected to by Mr. McDermott.

The Court—The answer is yes or no.

A. Yes, sir.

Q. Where had she gone to?

Objected to by Mr. McDermott.

Objection sustained by the Court.

Q. Did you go to Sophie's funeral? A. I did, 10
Sunday evening.

Q. Where was she buried from? A. The Henry Street house.

Q. The Wilson house? A. Yes, sir.

Q. Did you see Sophie in the coffin? A. I did, I was talking to Mrs. Wilson.

Q. You attended the funeral? A. I did.

Cross Examination by Mr. McDermott:

Q. How long did you know her? A. Twenty 20
years.

Q. Where did you first meet her? A. Rutherford.

Q. New Jersey? A. Yes, sir.

Q. What was her name? A. Sophie Graver.

Q. How long did you know her as Sophie Graver? A. All the while for twenty years.

Q. For twenty years as Sophie Graver? A. Not twenty years then, something like seventeen something like that. 30

Q. You didn't know her by any other name then, did you? A. She didn't have any other name only just generally I called her Sophie but if she gave a different name to herself she did that after she was married.

Mary Macey—cross

Q. What name did she give herself? A. Sophie Grajewski.

Q. Did you go to the funeral? A. I did.

Q. How long prior to that had you seen her?

A. A couple of years, a year and a half or two years at Morris Plains I have seen her, I would like to go only they wouldn't let me in.

Q. How long have you lived in Passaic? A. Three years in Rutherford and all around all together I am thirty-eight years here all together.

10 Q. Did you see Sophie often? A. I went to Mr. Wilson in the shop and they came and called over for me and would have a cup of coffee in my house mostly every time.

Q. What was her nationality? A. She told me she is Polish but I didn't know very well her parents and she had a sister some place in Pennsylvania, Shamokin, but she said she wasn't on good terms there.

20 Q. Do you know whether this woman is her sister? A. That is all she was talking about.

The Court—You understood she said she had a sister in Shamokin.

The Witness—She said she didn't go there because they were very mean to her.

Q. Do you know who her parents were? A. No.

30 Q. Did she tell you who her parents were? A. The name was Grajewski not Sophie Graver, and Grajewski was her name that is what she said.

Q. You testified that she was married to a man by the name of Wilson? A. Yes, sir.

Q. William Wilson? A. Yes, sir.

Mary Macey—redirect

- Q. In business in Passaic? A. Yes, sir.
- Q. Do you remember the time they were married? A. Yes, sir.
- Q. Do you remember where she was married? A. Paterson.
- Q. In the church of the Holy Communion? A. I think so.
- Q. Do you know she gave the name of her parents there? A. I gave my parents when I was married, but I didn't know much about what she did, I didn't associate myself with her business. 10
- Q. Are you aware she gave the name of her mother as Eva Klein and father John Graver? A. I only know she said it was Grajewski, that is all I know.

Redirect Examination by Mr. Murphy:

- Q. You are Hungarian? A. Yes, sir.
- Q. You are not Polish? A. No, sir. 20
- Q. You don't speak Polish? A. No.

EMMA ARNELL, sworn as a witness for the appellant and testifies as follows:

Direct Examination by Mr. Murphy:

- Q. Where do you live? A. 64 Henry Street.
- Q. Passaic? A. Yes, sir.
- Q. How long have you live there? A. Three 30 years this coming May.
- Q. Before that where did you live? A. 50 Henry Street.
- Q. How long have you lived in Passaic all together? A. Twelve years.

Emma Arnell—direct

Q. Were you acquainted with Mr. William Wilson who died a year ago? A. I was.

Q. Do you know his brother David Wilson? A. I have met him several times.

Q. Did you know William Wilson? A. Yes, sir.

Q. Did you know William Wilson's wife? A. I knew her after she married Mr. Wilson.

Q. Where did they live? A. 48 Henry Street.

10 Q. Next door to you? A. Yes, sir.

Q. How long did you know her there? A. From the time she was married to Mr. Wilson and he brought her there as his bride.

Q. Were you intimately acquainted with her? A. Yes, sir.

Q. You visited her in her house? A. Yes, sir, quite often.

20 Q. In her house? A. Yes, sir, and she came in my house too, my bedroom windows faced her dining room and kitchen windows.

Q. I show you a photograph marked Exhibit A-1 and ask you whose it is? A. It resembles Mrs. Wilson very much, only a great deal younger.

Q. Would you swear whose photograph that is? A. Yes, sir, I will.

Q. I show you Exhibit A-6 and ask you who that is? A. Yes, sir, that is Mrs. Wilson.

30 Q. And A-7, do you know whose picture that is? A. Very much, it is Mrs. Wilson.

Q. Do you remember when Mr. William Wilson died? A. I do.

Q. I suppose you attended his funeral? A. That is I was to the house to the funeral services, I didn't go to the grave.

Emma Arnell—direct

Q. When was that do you remember? A. That I cannot tell you, it is about three years ago he died, I know because I had a brother-in-law very ill at my home.

Q. After his funeral did you see his Sophie, his widow? A. After his funeral?

Q. Yes? A. Very often.

Q. How long did she stay in the house? A. A few days.

Q. What became of her then? A. They told me they had taken her to an Asylum. 10

Q. What asylum? A. Morris Plains.

Q. Did you go to see her? A. Tuesday, March the 14th, 1922, how I came to go I was asked to go up with the Red Cross Secretary of Passaic to the asylum and while we were there I said I would like to see Mrs. Wilson, I understood there is no one allowed to see her but when I went in I saw her.

Q. Well, you did see her that is just what we want to find out? A. Yes, sir. 20

Q. That was in March 1922? A. Yes, sir.

Q. When did you see her after that? A. After she was brought home.

Q. Do you remember when she was brought home? A. I do.

Q. How did you come to see her when she was brought home? A. I saw the ambulance go past the house and I was on the porch when they drove up to the house I says "I guess they are bringing Mrs. Wilson home." At the hospital they told me that she would die a week before, they said they didn't think she would live more than a couple of hours after. 30

Q. Then you went into the house? A. I went

Emma Arnell—cross

to the door and asked Mrs. Wilson if I could see her.

Q. Mrs. David Wilson? A. Yes, sir. I said I understood no one was allowed to see her and she said you can see her if you want to but she is sleeping. I went in and I said I won't bother her now, but I went to the bedroom door and looked at her and the poor soul was in a coma.

Q. How soon after that was it that she died?
A. The following Friday, that was Wednesday.

10 Q. Wednesday was how soon after she was brought home to the Wilson house? A. They brought her on Saturday and I saw her the following Wednesday.

Cross Examination by Mr. McDermott:

Q. Did you ever know her by the name of Sophie Grajewski? A. No, I did not.

Q. You say you knew her about twelve years?
A. No, I did not.

20 Q. How long did you say you knew her? A. From the time she was married to Mr. Wilson.

Q. How long was she married? A. I cannot tell you the day or date but I think it was over four years.

Q. That was 1918, they were married? A. I don't know that date.

Q. You knew her from the time she was married? A. She came there as the bride of Mr. Wilson.

30 Q. She was married January 17, 1918, from that time on you were acquainted with her? A. Yes, sir.

Q. You never knew her under the name of Sophie Grajewski? A. No.

Anna M. Doherty—direct

Q. What did you know her as? A. Sophie Wilson.

Q. You never knew her as Sophie Graver? A. I never knew her as Sophie Graver, only Sophie Wilson.

Mr. Murphy—We have a witness supposed to be here from Shamokin, Pennsylvania, who is not here yet.

Mr. McDermott—I have the witnesses here to prove the will and I think we might just as well go ahead and offer the will for probate and let that witness testify later. 10

November 27, 1922.

ANNA M. DOHERTY, sworn as a witness for the Appellee and testifies as follows:

Direct Examination, by Mr. Comstock: 20

Q. Where do you live? A. Seven hundred and Twenty-nine East Twenty-second Street.

Q. Paterson? A. Yes, sir.

Q. What is your business? A. Nursing. Trained nurse.

Q. Were you a nurse in March, Nineteen Hundred and Twenty-two? A. Yes, sir.

Q. Where were you at that time? A. At Henry Street. 30

Q. Whom were you attending? A. Mrs. Wilson.

Q. Sophie Wilson? A. Yes, sir.

Q. Did she sign her will while you were nursing her? A. Yes, sir.

Anna M. Doherty—direct

Q. I show you a paper purporting to be the last will and testament of Sophie Wilson and ask you if that is your signature appended thereto?

A. Yes, sir.

Q. Do you know Edna M. McCarty? A. Yes, I do.

Q. Did Miss McCarty sign this also? A. Yes, sir.

10 Q. Where was it signed? A. It was signed in the room.

Q. The bedroom? A. Yes, sir.

Q. Did Mrs. Wilson say anything at the time she signed it? A. She said she wanted to sign it and when I brought the paper in to her side she didn't feel she could sign it, write her name and I said it wasn't necessary to write her name just to make a mark, a cross.

Q. Did you see her make this cross? A. Yes, sir.

20 Q. Was Miss McCarty present when she made the cross? A. Yes, sir, Miss McCarty helped to hold her up.

Q. What else did she say if anything? Did she request you to sign it? A. I asked her if she wanted me to sign and she said yes. I asked her.

Q. Did she read it? A. No, I read it to her.

Q. After you read it to her did she sign it? A. Yes, sir.

30 Q. Who signed it next? A. I signed it next after she signed it and Miss McCarty signed it after in my presence.

Q. You saw her sign it? A. Yes, sir.

Q. And she saw you sign it? A. Yes, sir.

Q. And Sophie Wilson saw you both sign? A. Yes.

Anna M. Doherty—cross

Q. It was all done in the room while you were together? A. Yes, sir.

Cross Examination, by Mr. Dunn:

Q. How long had you been in attendance on her? A. It was only a week.

Q. This was on the twenty-ninth of March this was signed, that is the date here. Do you know whether that date was on at the time it was executed? A. That date was put on at the time but I must have made a mistake, I think it was the thirtieth. 10

Q. When did you go there to attend her? I really cannot say.

Q. How many days had you been there? A. Over a week.

Q. Haven't you got a history of your cases? A. No.

Q. Don't you keep a memorandum about the history of your cases? A. No, sir, I don't. 20

Q. What day of the week did you go there on? A. I really don't remember.

Q. Do you remember what day of the week she died? A. A few days after she signed the will.

Q. How many days after she signed the will was it that she died? A. I just don't remember, it was a couple of days after, I cannot say just how many.

Q. Why do you say a couple of days? A. I don't remember exactly. 30

Q. You don't remember the day of the week she signed it? A. It was the thirtieth.

Q. That is the day of the month. You don't remember the day of the week, Monday, Tues-

Anna M. Doherty—cross

day, Wednesday, Thursday, Friday, Saturday or Sunday? A. No.

Q. Do you remember the day she died? A. No, I don't remember that either.

Q. Do you remember the day of the week you were first called in to attend her? A. I cannot say.

Q. Did she die that same week you were called to attend her? A. No, I don't think she did, I think I was there all the week.

10 Q. You stayed there after her death didn't you getting ready for her funeral? A. Yes, sir.

Q. At whose request were you brought there? A. From Mrs. Geary's Register on East Twenty-fourth Street she called me up and told me to go to Forty-eight Henry Street.

Q. You had been out nursing, you are a graduate nurse? A. Yes, sir.

Q. When you got there who did you meet? A. The first one I met was Mrs. Wilson.

20 Q. That is the lady back in the audience there? A. Yes, sir.

Q. What did she say to you?

Objected to by Mr. Comstock.

Objection sustained by the Court.

Q. Did you see the patient the first day you went there? A. Yes, sir.

30 Q. Where was she? A. In bed.

Q. Just describe her condition.

Objected to by Mr. Comstock.

Question withdrawn.

Anna M. Doherty—cross

Q. Between the day you first went there and the day the will was signed did her condition improve?

Mr. Comstock—Do you mean her mental condition or physical condition?

Mr. Dunn—Her mental condition.

A. Her mental condition was perfectly all right from the time I went there until she died, she was conscious when she died. 10

Q. Are you quite sure? A. Positive.

Q. What was there occurred that enables you to make that statement?

Objected to by Mr. Comstock.

Objection sustained by the Court.

Q. You had been there how many days before this paper was signed? A. About a week I think it was. 20

Q. When did you first hear anything said about signing a will or make a will? A. She said Nan was very good to her and I asked her who Nan was and she said her sister-in-law and several times she said that, that Nan was very good to her and had been all the while she was sick.

Q. That was nothing about making a will? A. She wanted to make a will and wanted to leave her property to Nan and I asked her what she had and she said she owned the house, that is all she told me she owned. 30

Q. Where did you get this paper that you presented to her to sign? A. I took it from the desk in the den.

Anna M. Doherty—cross

Q. Who wrote it? A. I don't know where it came from; it was on the desk in the den.

Q. Did anybody in your hearing have any conversation with Sophie in reference to this paper before she signed it? A. I believe it was in the doctor's possession that is the first I seen it and it was left on the desk in the den.

10 Q. Did you hear any conversation with anybody and Sophie as to dictating what she wanted to put in the paper. A. No, sir, I didn't know anything about it.

Q. You don't know who drew the will, it was made on the typewriter? A. No, sir.

Q. Did the doctor bring it to the house? A. I cannot say, I seen it in the doctor's hands in the room but I didn't see him bring it in.

20 Q. What was done with this paper from the time you first seen it down to the time you put your name on it? A. Yes, I saw it the time I signed it.

Q. What was done with the paper? A. It was left on the desk.

Q. When was the next you saw it? A. When Sophie said she wished she had signed it.

Q. What did you do then? A. I went out and got the paper and brought it in and read it to her.

Q. Who told you to do that? A. Nobody.

Q. Had she seen it before that? A. Yes, sir.

30 Q. She didn't read it? A. I don't know sure the first time.

Q. How did you know this paper was out on the desk? A. I had seen it there, it was out in the open.

Q. Was anything said about leaving it on the desk? A. No.

Anna M. Doherty—cross

Q. It was left on the desk by the doctor? A. Yes.

Q. Was she awake when the doctor was there?

A. Yes, sir.

Q. Did he have any conversation with her about the paper? A. I didn't listen, I wasn't there, I was in the kitchen.

Q. How far was her room from this desk where the paper was left on the desk? A. The bathroom was between the bedroom and the desk. 10

Q. What suggestion was made that caused you to go and get the paper? A. The patient said she wished she had signed the paper.

Q. Did you know what she meant by paper?

A. Yes, I knew she meant this paper.

Q. How did you know she meant this paper?

A. I guessed it.

Q. You had received no instructions from anybody to get the paper and make her make her mark on it? A. No, sir. 20

Q. You went out and got the paper and brought it in and what did you do with it? A. Read it to the patient.

Q. Did you know the patient had just come from the asylum and had been there two years?

A. I knew she was there but I didn't know how long.

Q. Do you know how long she had been in the asylum? A. I don't know.

Q. During the time you went in to her to read this paper to her, was anybody else present? A. Yes, the other nurse. 30

Q. Had you received any instructions from anybody as to what you should do with this paper if anything was said to you about it by the patient? A. No, sir.

Anna M. Doherty—cross

Q. Why then did you go get the paper and bring it in to her? A. I had seen the paper in the doctor's hand and that is the paper I imagined she wanted.

Q. Did anybody tell you to have her sign that paper? A. No, sir.

Q. Did anybody tell you if she couldn't sign it to make her make her mark? A. No, sir.

Q. Who wrote the name Sophie Wilson on the paper? A. I did that.

10 Q. Where was she when you did that? A. In the room.

Q. In bed? A. Yes, sir.

Q. She couldn't see you do that? A. Yes, sir, she saw me do that, after she made the cross I wrote the name right after.

Q. You handed the pen and ink to her? A. Yes, sir.

Q. Was anybody present but you and her? A. The other nurse was there.

20 Q. Where was she? A. Holding her up. We had to prop her up with pillows and the nurse had hold of her.

Q. The other nurse didn't hear you read this to her before she made her mark? A. Yes, sir.

Q. Who told you to do that? A. Nobody told me to do it.

Q. Had anybody given you any instruction before? A. No, sir.

30 Q. Had you ever had a will signed before? A. Yes, sir, in the hospital I had some experience, that is how I knew.

Q. You were directed there what to do? A. Yes.

Q. Who gave you instruction this time that

Anna M. Doherty—cross

that was a will and how it should be signed? A. Nobody, I knew.

Q. You don't know whether this paper was satisfactory or whether it wasn't?

The Court—The witness said she read it to her.

Q. Was Mrs. Wilson that day able to understand the things you said to her? A. Yes, sir. 10

Q. Everything you said to her? A. Yes, sir.

Q. When you read it did you make sure she understood it? A. Yes, sir.

Q. And then you handed it to her and she signed it, made her mark? A. Yes, sir, I asked her if she wanted to sign it and she said, "Yes," and I said, "Are you sure," and she said, "Yes."

Q. You knew she had been in the asylum?

Objected to by Mr. Comstock. 20

Objection sustained by the Court.

Q. What did you tell her this was when you gave it to her to sign? A. I didn't tell her it was anything, she said she wanted to sign the paper.

Q. Did Miss Edna McCarty sign it? A. Yes.

Q. Where was she? A. In my presence.

Q. Where was the patient? A. In the bed.

Q. Had she laid back down on her pillow? A. No, sir, she laid her back down a little and then I took her. 30

Q. Did you hold her then? A. Yes, sir.

Q. When did she die after that? A. I don't know, I really cannot say.

Edna M. McCarty—direct

EDNA M. McCARTY, sworn as a witness for the Appellee and testifies as follows:

Direct Examination, by Mr. Comstock:

Q. You are a nurse by profession? A. Yes, sir.

Q. You nursed Mrs. Sophie Wilson? A. I did.

10 Q. In March, Nineteen Hundred and Twenty-two? A. Yes, sir.

Q. Who else nursed Mrs. Wilson? A. Miss Anna Doherty.

Q. Do you remember her signing her will? A. I do.

Q. I show you a paper purporting to be the last will and testament of Sophie Wilson and ask you if your name is appended thereto? A. Yes, sir.

Q. You signed that? A. Yes, sir.

20 Q. Did you see Mrs. Wilson sign? A. Yes, sir. Mrs. Sophie Wilson.

Q. She signed by her mark? A. Yes, sir.

Q. Was it read to her before she signed it? A. She made a remark to me she would like to make some arrangements. She made the remark that she would like to make some arrangements about her property and said she wanted Mrs. Annie Wilson to have it because she was so good to her.

30 Q. This day the will was signed was it read to her? A. Yes, sir.

Q. Who read it to her? A. Miss Doherty.

Q. Did she then sign it? A. Yes, sir.

Q. Who was present when she signed it? A. She, Miss Doherty and myself.

Edna M. McCarty—cross

Q. Who signed it first? A. Miss Doherty, and then I signed it, in the presence of each other, and then Doctor Butterfield signed it the next day.

Q. Did Mrs. Wilson see you sign it? A. Yes, sir.

Q. Did she request you to sign? A. Yes, sir.

Q. What was done with it after it was signed?
A. I don't remember, I think it was taken back out in the den.

10

Cross Examination, by Mr. Dunn:

Q. How long had you been in attendance on Mrs. Wilson? A. Eight days, seven days.

Q. How do you know you were there eight days? A. I cannot be positive, it was seven or eight days.

Q. What day of the week did you go there?

Objected to by Mr. Comstock.

Objection sustained by the Court.

20

Q. How many days before the will was signed were you there?

Objected to by Mr. Comstock.

Objection sustained by the Court.

Q. Do you know where this paper came from that was signed?

30

Objected to by Mr. Comstock.

Question withdrawn.

Q. Where did you find it? A. She had been talking about making a will before only she didn't

Edna M. McCarty—cross

feel like signing it and the doctor says, "In case she wants to do anything, the paper is there and read it over to her."

Q. You had been speaking about it before it was signed? A. She spoke about it herself.

Q. She didn't want to do it? A. Yes, sir, but not the first time, she said she didn't feel like doing it.

Q. When she wasn't feeling like it the paper was placed where? A. In the den.

10 Q. How many days afterwards was it she said anything about the paper? A. I don't remember the number of days.

Q. Do you remember what day of the week it was she signed the paper? A. I think it was the twenty-ninth of March.

Q. You think it is the twenty-ninth of March? A. I am not positive.

Q. Had anything been said to you except what the doctor said in reference to having her sign the paper? A. Nothing at all.

20 Q. It had been read over to her before that? A. I don't know, the patient wanted Mrs. Wilson to have everything she had because Mrs. Wilson was the only friend and I didn't hear if she had any relatives outside of that.

Q. Had it been read over to her before that? A. I don't know.

Q. Was it read before she made her mark? A. Miss Doherty read it.

30 Q. Doctor Butterfield was not there when it was signed? A. No, he was there the next day.

Q. What did you do after it was signed? A. Put it out in the den. I said to Miss Doherty, "If you want that will to stand you better have Doctor

Edna M. McCarty—cross

Butterfield sign it," and she said, "All right let the doctor sign it."

Q. It was laid out for a day on the desk? A. Yes, sir.

Q. Did Doctor Butterfield, when he signed it, sign it right on the desk? A. He signed it in the patient's room and Miss Doherty and myself were present.

Q. Did the patient understand what she was doing? A. Absolutely. Everything. 10

Q. She wasn't crazy? A. Not when I was there.

Q. You knew she had been? A. I knew she had been but not when I saw her. She was perfectly rational.

Q. All the time you were there? A. Yes, sir.

Q. Where were you sitting or standing in the room when this will was signed? A. I was standing by the bed because we had propped the patient up with pillows. 20

Q. Were you holding the patient up? A. I propped her up in the bed as you would any person.

Q. When she made her mark was either of you holding her up? A. No, she was propped up.

Q. Where was the paper? A. On the book in front of her.

Q. Where was the pen? A. In her hand, Miss Doherty gave her the pen.

Q. Did she take the pen in her hand? A. Yes. 30

Q. What did she do with it? A. Tried to write her name and then said, "I don't think I can write," and Miss Doherty said, "Make a cross of some kind, a mark," and after she made it she didn't think that was good enough and Miss Doherty told her, it was just as good as her name.

Edna M. McCarty—cross

Q. What did you do? A. Miss Doherty signed her name.

Q. Look at that and show me where there is anything to show she tried to write her name? A. Well, you know how weak a person in—

Q. You said she tried to write her name on that? A. She said she didn't think she could and Miss Doherty—

10 Q. She didn't try to use the pen? A. Yes, sir, she had the pen in her hand.

Q. There is nothing on the paper to show it? A. I don't know it is written over there now, you couldn't tell.

Q. Did she hold the pen in her hand? A. Yes.

Q. You didn't guide her hand while making it? A. No.

20 Q. After she made the mark what did you do with the paper then? A. We said, "Do you want us to sign this," and she said, "Yes," so then we signed our names.

Q. How many days after that was it she died? A. Two days after I think, she died on a Friday night I think.

Q. You remember she was in a coma on Friday? A. No, she was perfectly rational all the time and not at all dopey.

Q. What time of the day did she sign that? A. I don't remember.

30 Q. Do you say it was the twenty-ninth or thirtieth? A. I cannot be positive.

Q. Miss Doherty said it was the thirtieth, didn't she?

The Court—I understood the other witness to say she made a mistake in the date.

Frederic Beggs—direct

Mr. Dunn—Yes, sir, I just wanted to see which it was.

Q. Can you fix the time of day for us? A. The time of day we signed the will? I think it was the afternoon but I don't know what time.

Q. Who was present in the house at the time? A. Just Miss Doherty and myself.

Q. Where was Mrs. Wilson? A. She went out during the day. 10

Q. Do you remember what was done with the will in reference to her? A. I don't know of anything.

Q. Who did you first mention it to? A. The doctor.

Q. When did he sign it? A. Next day.

Will offered in evidence and admitted and marked Exhibit D-1, for the Appellant. 20

FREDERIC BEGGS, sworn as a witness for the proponent and testifies as follows:

Direct Examination by Mr. Murphy:

Q. Is that a complete record of the files in your office in the matter pertaining to the commission in lunacy for Sophie Wilson?

Mr. Gourley—Just a moment. I understand this is the opening and I think we ought to have on record a statement of what the contentions in the case are. We ought to know specifically what the grounds for the contest are. 30

Frederic Beggs—direct

Mr. Murphy—The ground stated in the petition and filed. (Mr. Murphy reads petition.)

A. That is a complete record of the files in the matter of Sophie E. Wilson, a lunatic, the files of the Surrogate's office.

10

Records offered in evidence and admitted and marked Exhibit T-1 for the Proponent.

Mr. Murphy—If the Court please I intend to read from these records.

Mr. Gourley—I object them on the grounds that they cannot be used to prove facts. You must prove facts by witnesses.

The Court—You may proceed subject to disposition later by me.

20

(Mr. Murphy then reads petition filed December 6th, 1920, in the Court of Chancery in the matter of the appointment of a guardian for Sophie Wilson and signed by David Wilson. Mr. Murphy also reads the affidavit made by Lawrence M. Collins. Mr. Murphy also reads affidavit by Marcus A. Curry, medical superintendent of Morris Plains.)

Mr. Gourley—May I ask what the object of this is?

30

Mr. Murphy—First to prove the lunacy of the testatrix and second to show the confidential relationship between her and the beneficiary.

Marcus A. Curry—direct

MARCUS A. CURRY sworn as a witness for the Proponent and testifies as follows:

Direct Examination by Mr. Murphy:

Q. You are a physician and surgeon of the State of New Jersey? A. I am.

Q. For how long have you been such? A. In the State of New Jersey?

Q. Yes. A. Since 1909.

Q. Have you or not specialized in any branch of medical science? A. I have. 10

Q. What branch? A. I am at present superintendent and chief executive officer of the State Hospital at Morris Plains.

Q. How long have you occupied that position? A. I came there first as Assistant Physician in 1909 and at the death of the Superintendent in January 1920 I was made Superintendent.

Q. You are in intimate communication with the inmates constantly? A. I am. 20

Q. Do you recollect a patient named Sophie E. Wilson being admitted to your institution? A. I do.

Q. Do you remember the date she was admitted? A. May 14th, 1920.

Q. Did you observe her condition on her admission to the institution? A. Not personally, no, sir.

Q. How soon after her admission did you? A. Within the first few days. That perhaps would need some explanation in that when a case is admitted to the hospital it is assigned to a certain ward and the assistant physician who is in immediate charge of that ward immediately looks the patient over for fractures and bruises and 30

Marcus A. Curry—direct

then makes a physical and mental examination. The Superintendent does not see them immediately but does a few days after.

Q. You say you did see Sophie Wilson? A. Yes, sir, I did.

10 Q. Describe her condition for us? A. The patient was confused, intensely suicidal and homicidal. She had delusions and hallucinations that she was going to be killed and wanted to be killed and made attempts at suicide and during this time when anyone attempted or made an attempt to keep her from these she became excited and would try homicide. She alternated between periods of excitement and periods of great depressions.

Q. That was her condition when you first noticed her? A. Yes, sir.

Q. How did she manifest, if she did, these delusions, by words or actions? A. By words.

20 Q. About how often would you see her from that time until she was removed from the institution? A. I would see her at various times. I cannot tell you exactly. The Assistant Physician who has charge of the wards would see her at least twice a day.

Q. Who was that? A. Dr. Collins.

Q. But you did see her did you not, on several occasions? A. I did.

30 Q. When you did see her what have you to say as to her condition as compared with when she was admitted. A. She continued very much in the same manner at times better than at other times she would get worse but during the entire period she had these ideas and delusions that she ought to be killed, that she wanted to die and that she begged the doctors and nurses to kill her and at other times she would be very much excited and

Marcus A. Curry—direct

would try to strike and did strike other patients and nurses and this continued until along about March, 1921, when she started to refuse to eat and had to be tube fed, and she gradually lost weight and became more or less in a condition that we thought was critical and the relatives were notified of her condition and from 1921 to 1922 she gradually failed both physically and mentally and in the latter part became very much depressed refusing at times absolutely to eat anything and to answer questions and it was necessary to tube feed her. During the latter part of this period she was confined to bed during the entire time and she absolutely refused to talk to any of the physicians and she gradually failed physically and mentally.

10

Q. You have said at times she was a little better. Do you mean mentally or her mental state was better or she was less violent? A. She was more quiet. We frequently have patients that will be very excited or very depressed and they become less excited or less depressed than they were during certain periods. This does not mean they have recovered. It means they are less violent and less depressed but are still suffering from the same psychosis they were during the entire period.

20

Q. During the whole period she was confined there was she ever of sound mind?

Objected to by Mr. Gourley.

Question withdrawn.

30

Q. So far as you observed was she at any time during her confinement there of sound mind?

Objected to by Mr. Gourley.

Objection overruled by the Court.

Marcus A. Curry—direct

A. I don't think so, no, sir.

Q. Do you know whether or not, Doctor, all the faculties of the mind, the memory, will and understanding were affected? A. That is more or less a general term. When we say a person is insane all of the faculties as we understand it and believe are affected, yes, sir.

10 Q. From your knowledge of Sophie Wilson during her confinement in your institution and her condition at the time she was removed and knowing when she died, within six days thereafter, what would you say as to the probability of her, during that period of six days, recovering the use of her mind? A. I should say she did not.

20 Q. Would her physical condition at the time she was removed from the hospital have any effect upon her mental condition between that time and the time of her death which was six days after? I am referring to the conditions as you have described them. You said she was in a weakened condition. A. I should say her physical condition would have a direct bearing on her mental condition.

Q. What bearing would it have? A. It would increase the retarded conditions of her depression and in the weakened condition she was the mental faculties would not be as alert as ordinarily they would be in a person physically well. The lower physical resistance would naturally lower the mental condition.

30 Q. From your knowledge of the condition of Sophie Wilson, both physical and mental, would you be able to forecast the probable time she would survive after leaving your institution?

Marcus A. Curry—direct

Objected to by Mr. Gourley.

Question withdrawn.

Q. From your knowledge of her condition at the time she was removed from the institution both physical and mental was there or not a probability of her recovering? A. I should say not.

Q. From your knowledge of her condition at the time she was removed from the hospital what would you say as to the probability of her regaining such a degree of soundness of mind in six days as to render her capable of disposing of her property?

10

Mr. Gourley—I object to the form of the question.

Q. I will change the last part of the question to be so as to render her capable of knowing her connection, and knowing her position and transacting business.

20

Objected to by Mr. Gourley.

Question withdrawn.

Q. What exactly are your reasons for stating there was no probability of her recovery after having left the hospital for six days, Doctor?

Objected to by Mr. Gourley.

Objection overruled by the Court.

30

A. Based on her history and observances from the time she entered the institution until she left gradually over a period of several months and

Marcus A. Curry—direct

her gradual failing both physically and mentally and at the time taken out of the institution her mental condition was such that it was absolutely impossible for us to get her to co-operate with us in any way. Her physical condition was such that it was necessary to keep her in bed and she was removed from the hospital on a stretcher.

Q. Have you any fixed rules as with reference to the removal of patients from your institution?

10

A. Absolutely not. We are only too glad to allow friends and relatives to take the patient out if she or they can possibly go.

Q. Who asked for her removal? A. I believe her guardian asked and signed the paper for her removal.

Q. You remember the date of her removal? A. It was in March, 1922, the exact date I would have to refer to my records for.

Q. Have you the record? A. Yes.

20

Q. Will you refer to it? A. It was March 25th, 1922.

Cross Examination by Mr. Gourley:

Q. How many patients were at the hospital during this period? A. During that period? Well, we might have been running as many, that was about 1920, about twenty-seven hundred. At the present time we have twenty-nine hundred and fifty.

30

Q. You superintend the whole institution? A. Yes, sir.

Q. With so many people under your control you couldn't have a very minute knowledge about each patient? A. I don't try to.

Q. There was nothing especially exceptional

Marcus A. Curry—cross

about this case was there? A. The woman was on admission very violent and homicidal and each physician reports to the superintendent all excited patients and critical patients.

Q. In other words you got most of your information from the physicians, from conversations with them? A. I did not. I got my report. That is my report from the assistant physician as to the conditions and then I went to see the patient.

Q. Will you tell me during the entire time this woman was in your institution the number of times you visited her in her room? A. I wouldn't try to tell you. 10

Q. Did you see her once? A. I did.

Q. Well, you came here to testify, can't you tell us how many times you saw this woman in her room? A. I told you I wouldn't try to tell you.

Q. Did you ever see this woman in your life? A. I have seen her, yes. 20

Q. You know you are under oath to tell the truth, Doctor. A. You don't have to tell me that.

Q. Never-the-less I am telling you that. Will you answer the question? Did you ever see this woman in your life? A. I did.

Q. Are you sure of it? A. I am sure.

Q. Why do you answer in that hollow voice? A. I told you I had seen her.

Q. I wanted to ask you how many times you saw this woman during the entire time she was in the institution in her room? A. I told you I wouldn't try to tell you the number of times I had seen this patient. 30

Q. Can you give us an approximate notion?

Marcus A. Curry—cross

A. I saw her several times when I was making my rounds.

Q. On your rounds through the ward? A. Yes.

Q. Then you would walk into the ward, see that everything was clean and nice, talk to the nurse and walk out. That is the method, isn't it?

A. It is approximately, yes.

Q. How many times did you enter her room and converse with her while there? A. She wasn't in a room the entire time she was in the ward.

10

Q. My question was while in her room? A. At least twice.

Q. How long each time? A. I should say fifteen minutes.

Q. How wide apart were these two visits? A. I wouldn't try to say when they were. They were at different times when she was in a room and I went down to see her.

Q. Are there any records anywhere of these visits? A. No.

20

Q. When this woman wasn't in her room was she in the corridor or hall with other inmates? A. Yes, sir.

Q. You had great hundreds of them crowded together? A. Yes, sir.

Q. And you would walk through and see that everything was all right? A. Yes, sir.

Q. You are basing your opinion quite naturally upon the reports of subordinates to you? A. Yes, sir, partially.

30

Q. And you have looked up these records or reports before coming here today? A. I have.

Q. And you are testifying very largely from that information which a superintendent would naturally obtain from the people under him? A.

Marcus A. Curry—cross

Partially and partially from my own examination.

Q. I should judge that it was very near impossible for a person to give particular minute attention to one out of twenty-six hundred? A. Absolutely.

Q. And it wouldn't be fair to the other patients to do that? A. No.

Q. What is the technical term for the trouble under which she was suffering? A. Maniac Suicidal Sycosis. 10

Q. That was observed when she entered? A. Yes, sir.

Q. Did it progress, do you know? A. Yes, sir.

Q. When you talked with us was she able to talk to you, if you remember? A. The first time, yes, the last time I saw her absolutely no.

Q. You don't know what the conversations were about? A. The first time I talked to her I presided at a staff meeting. The first time I saw her was after the doctor made his report and then I presided at a staff meeting and we brought in the patient and she was questioned for a hour and a half or two hours by the entire staff and then I saw her not in a room but in the ward on several different occasions. Then I saw her on one or two occasions, the last within a week before she came down here. 20

Q. These times when you were passing along the corridor were just natural conversation? A. The nurse might call this woman to my attention and I would stop to say something to her and go on. 30

Q. Nothing particular arises in your mind about the impression she made on you then? A. Yes, quite some.

Marcus A. Curry—cross

Q. Was there much marked difference between her and the other twenty-six hundred? A. You mean in her mental condition?

Q. Any way you chose to put it. A. At times she was very much excited and the nurse reported the woman tried suicide and homicide.

Q. Are not all the twenty-six hundred confined for some special reason? A. They don't all try suicide.

10 Q. This attempted suicide was some report that reached you? A. Yes, sir.

Q. You didn't hear her say anything about it? A. She attempted and tried to kill herself and said she wanted to die.

Q. Did she tell you that? A. Yes, sir.

Q. What occasion was there for discussing that? A. Why I asked her why she wanted to put herself out of the way.

20 Q. I should think that would excite her rather than quiet her. A. It is necessary at times.

Q. Necessary to ask a person mentally deranged why they want to commit suicide? A. Yes, sir.

Q. Why was it necessary to ask her that? A. We believe that as a medical proposition that question has to be made by a medical man and deduction has to be drawn from the answer from the patient.

30 Q. Were you to determine the truth of the report or of the answer? A. What do you mean?

Q. I understood you to say the report reached you? A. Yes, I did.

Q. Then you questioned her about it? A. Yes, sir.

Q. When you said you know or knew it was

Marcus A. Curry—cross

true you were endeavoring to find out whether it was true. A. I was attempting to get her reasons for her act.

Q. What significance, may I ask, did the question as to her reason have. What reason was there for a physician to ask such a question? A. There are a great many reasons why we should know.

Q. Why you should know her reasons? A. What her reasons are for wanting to commit suicide.

10

Q. At any rate you did ask her? A. Yes, sir.

Q. What reason did she give? A. She simply wanted to die. Her relatives had called her a prostitute and they wanted to get her money and she wanted to die.

Q. Did she say how she wanted to die? A. She tried to hang herself.

Q. You are repeating reports? A. Yes, sir, and windows were broken. They were shown to me.

20

Q. You don't know these things. They were reports? A. Yes, sir.

Q. Did you tell her relatives they could take her away? A. I did.

Q. Did you tell them there was nothing wrong with the woman so far as taking care of her person? A. I did not.

Q. Did you say it was perfectly safe to take her away? A. Well, I thought she was in a dying condition.

30

Q. Did you tell them it was perfectly safe to take her away? A. I don't think I did. I simply said the woman was in a dying condition and undoubtedly I might have said it would be safe for her to be removed.

Marcus A. Curry—cross

Q. Did you tell Mr. McDermott it was perfectly safe for there was nothing wrong with the woman mentally? A. I didn't tell him or anyone else that.

Q. Did you tell Mr. McDermott it was perfectly safe to take her away? A. I may as I have stated said her physical condition was such that she was very much weakened and I might have told him it was perfectly safe to take her away.

10 Q. During this time she was confined in bed did you talk with her? A. Yes, sir, I did.

Q. Did she recognize you? A. No.

Q. She hadn't seen enough of you to know you? A. She had seen enough of me if she had recognized me.

Q. Do you know the nurse who attended her? A. There were several nurses there during the three years she was there. I don't know which one you refer to.

20 Q. Give me the name of one nurse? A. I cannot tell you.

Q. You remember her but don't remember the nurse? A. Certainly I do.

30 Q. Give me one of the nurses, someone who attended her during all this time. A. She was first admitted into the admission ward known as 22 and then transferred from 22 to 24A. There was a Mrs. Scales looking after her in 24A but I wouldn't try to say who the other people were. The nurses are changed there very often.

Q. Don't you remember going in the room and talking to the nurse about her? A. Yes, sir, but I go in the rooms and see dozens of patients and

Marcus A. Curry—cross

the nurses I don't remember. Ordinarily the physician in the ward is along with the superintendent. I am interested in the patients and not the nurses and I wouldn't try to tell you who the particular nurse was in charge.

Q. You don't know? A. I said I wouldn't try to say who it was one day because the next day it might be another nurse, one day one nurse the next day another.

Q. I say you don't know? A. Well, if you want to put it that way. 10

Q. Do you know a nurse Beatrice Norris? A. The name sounds familiar.

Q. Do you know her face? A. I don't know.

Q. Look around this room and see if you can pick a nurse out. A. I wouldn't try.

Q. That girl on the left over there? Is it she? A. It might be so. I don't hire or discharge nurses.

Q. You don't know the nurses? A. I don't know. 20

Q. You don't know whether Beatrice Norris was there or not? A. I don't know.

Q. You don't know of what patients she had charge? A. I don't know.

Q. You don't know whether Beatrice Norris had charge of this woman or not? A. I don't know.

Q. She or any other nurse that attended her would have a pretty good opportunity to observe her? A. She would be able to see her. 30

Q. Have you a night and a day nurse? A. We did have.

Q. How long before she left did you talk with her? A. I don't know whether it was the day she left or the day before I talked with Mrs. Wil-

Marcus A. Curry—redirect-recross

son. I went down and talked with the patients after Mrs. Wilson was there to visit her. She asked me particularly about the patient and I told her to talk to Dr. Collins.

Q. Did you go into the patient's room with young Mrs. Wilson? A. I don't think I did. I think Dr. Collins was there.

Q. You didn't see them leave the hospital? A. No.

10

Re-direct Examination by Mr. Murphy:

Q. You have testified you visited her twice while in a room. Do you remember how long she was an inmate of the room? A. I can't tell you, no, sir. Very often they might be in a room when they receive visitors or to receive visitors. Very often they are in a room for some time on account of the over-crowded condition of the institution. I cannot tell you just how long.

20

Re-cross Examination by Mr. Gourley:

Q. Do you know Mr. McDermott? A. Yes, sir.

Q. Do you remember saying to him you didn't know anything about her condition and had to refer him to Doctor Collins? A. Mr. McDermott called and asked me some questions—

30

Q. I am asking you did you tell Mr. McDermott that you didn't know anything about the patient, about her condition and you would have to refer him to Doctor Collins? A. I don't remember that I did.

Re-direct Examination by Mr. Murphy:

Q. When did you see Mr. McDermott? A. I cannot tell you the date.

Lawrence M. Collins—direct

Q. Before or after her removal from the institution, if you remember. A. I think Mr. McDermott was there both before and after but as to that I wouldn't testify. He was there before she was moved and I think he was there after.

Q. Do you remember the conversation you had? A. He called and I saw him and told him Doctor Collins was the physician who had charge of Mrs. Wilson and I would refer him to him. I don't remember the exact words I had with him. Doctor Collins was the physician who had charge of Mrs. Wilson and Mr. McDermott did see and talk with him. 10

Q. Do you remember the subject of the conversation Mr. McDermott had? A. I don't remember. I had very little conversation with him. There were other subjects which came up and Mr. McDermott and I talked for a few minutes. I think it was about the removal of the patient, but I am not positive about that. I simply referred him to Doctor Collins. 20

Q. Did Mr. McDermott try to get from you your knowledge of her condition, etc.? A. He may have. I don't remember.

Q. If he did did you answer him in full or refer him to Doctor Collins? A. I would say I referred him to Doctor Collins but I do not remember.

LAWRENCE M. COLLINS, sworn as a witness for the proponent and testifies as follows: 30

Direct Examination by Mr. Murphy.

Q. You are a practicing physician of this State? A. I am.

Lawrence M. Collins—direct

Q. Where were you graduated? A. Georgetown University.

Q. When? A. 1912.

Q. Have you specialized in any branch of medical science? A. I have.

Q. What branch was it? A. Mental and nervous diseases.

Q. Did you take a special course in that? A. I have.

10 Q. Where? A. I was under Doctor White at St. Elizabeth and I have been at Morris Plains Hospital since 1917.

Q. What position have you held there? A. One of the senior assistant physicians.

Q. Do your duties there require you to have supervision of all patients or a section of them? A. I have a section.

Q. What section have you? A. It is divided into different sections. One is called the South side and other divisions.

20 Q. Do you remember a patient admitted to your institution in May, 1920, named Sophie E. Wilson? A. Yes, sir, I do.

Q. Do you remember exactly when she was admitted and her condition then? A. It was in May, I believe the 14th, in 1920.

30 Q. What was her condition upon her admittance? A. At the time of her admittance she was quite excited and disturbed and she was brought by Mr. Wilson and admitted by one of the doctors and it was around six o'clock in the evening. She was sent to twenty-two which is the admission ward under my charge and she was very excited and suicidal, in fact she attempted suicide the day before in St. Joseph's hospital here in Paterson.

Lawrence M. Collins—direct

Mr. Gourley—I ask that what she attempted in Paterson be stricken out.

The Court—Strike that out.

Q. Proceed. A. During the first night she was very excited and disturbed and thought she was going to be placed in a dungeon. Had many ideas of self-destruction and made several attempts at suicide, by hanging and using a sheet and in order to protect herself and the others I had her placed in milder restraint and for a period of fourteen days she was very disturbed and excited and kept repeating when I came into the ward Christ was crucified why am I allowed to die this way and that poison was being put in her food and she remained in this condition for fourteen days, then she continued in such an excited and disturbed condition it was necessary to transfer her to a more disturbed ward. The other patients were complaining they couldn't sleep at night and naturally I give all patients the benefit of the doubt and I tried her out but she attacked or attempted to attack the other patients and nurses and attacked me and after that circumstance I had to send her to the disturbed ward which was called 24A and there she remained under my immediate charge until she was removed from the hospital in March, 1922. 10

Q. During the period she was there how often did your duties require you to see her? A. I see every patient at least twice a day and sometimes four or five times. 20

Q. Did you see Sophie Wilson so frequently? A. Very frequently, yes, sir. 30

Q. What have you to tell the court as to her condition from the time she was admitted until

Lawrence M. Collins—direct

the time she was removed? A. You want the mental and physical?

Q. Yes. A. On her entrance to the hospital the history of the Doctors was gone over by me and I made a complete medical and physical examination and she co-operated fairly well on the mental examination.

10 Q. What do you mean? A. She responded to questions, that is, to the questions in line with which we carry out. She co-operated fairly well and I came to the conclusion that her mental trend was suicidal and delusion and she expressed many ideas of a Paranoia nature.

20 Q. What do you mean by Paranoia? A. Paranoia ideas are persecutory ideas. These patients systematize these in a way of their own although hers were loosely connected. They were directed at no particular person. It was the neighbors who bothered her but no one particular neighbor. She expressed ideas against her sister-in-law and a person by the name of Nellie and she also expressed ideas self-accusatory, that she was going to be placed in a dungeon, that attempts were being made at her life, poison being placed in her food and she tasted the poison and then she wanted some poison and thought she was going to die quickly. She also had hallucinations. She heard various voices but when asked what voices they were or what they said she was unable to say.

30 She said they were whispering, and she had hallucinations as being objects and persons and things but when asked who these persons were or this person was she replied Nellie. I never found out who Nellie was, the woman who was persecuting her. I asked her about these ideas

Lawrence M. Collins—direct

and she said people were persecuting her to get her money, that her relatives had put up a story to hang her.

Q. Did she mention any names? A. She mentioned no names. This continued on and off and then she had another idea that she was syphilitic that she had contracted syphilis some twenty years ago and I went into the history of that idea and had a Wasserman test made but there was nothing in it so far as I could learn because the tests were negative and she worried considerably over this. The latter part of November, 1920, she was doing fairly well. She was up and around at that time doing well and sleeping fairly well at night but she alternated between periods of excitement and depression. She kept herself neat and tidy and mingled with the other patients but told them about these ideas she had and about the voices and things she heard and saw, etc. That continued around up until about January, 1921, and then she started to get bad again. She went into periods of excitement which alternated with periods of depression. In March, 1921, her physical condition was very bad. She suffered considerable loss of weight and took no particular interest in her environment and was very indifferent. She didn't talk to me and I couldn't get much out of her. She remained in a stupid, indifferent condition. So much so that I had a letter sent through Doctor Curry notifying her guardian, notifying him that she was failing very fast. She continued to follow the same trend of self-accusatory and persecutory ideas and became in such a bad state of depression that I was unable to get anything out of her at any time during the

Lawrence M. Collins—direct

last two or three months. I would shake her trying to make some impression upon her but she was absorbed and refused to answer all questions. Why I was interested in this way was that one of the nurses had told Mrs. Wilson how good Sophie was and naturally being interested in my patients I went in to see how good she was but was surprised when I couldn't get anything out of her. I think it was due to the habit of the nurses to tell visitors how good they are but there
10 is nothing to it at all. She went on to March, 1922, and there was a gradual failing. She lost weight, she wasn't anything but a skeleton. Her eyes were sunk in and I told Mrs. Wilson and in fact I told Mr. Wilson too about the bad condition of the patient and said that it was only a matter of time when she would die. Mr. Wilson or Mrs. Wilson, I am not sure, but I think I spoke to him about taking her home. I told them what her conditions were, that it was bad, and they spoke
20 about taking her in an ambulance, which we were willing to let them do but they had the forethought to bring an interne along with them when they came for her and she was brought home on March 25th, 1922.

Q. You have said in November she was better. Do you mean she was physically or mentally better? A. In November, 1920? Well, these patients pick up lots and lots of times doing better but her delusions still remained. She was physically in better condition to some extent but she
30 still retained her delusions.

Q. During the period you say she was better she still had delusions? A. Yes, sir.

Q. When you say she got better you were referring to her physical condition? A. Yes, sir.

Lawrence M. Collins—direct

Q. What was her physical condition when admitted? A. She was fairly good as I recall. She was a woman weighing about 160 pounds.

Q. About how much did she weigh when she was removed? A. It is pretty hard to make a correct guess but she wouldn't weigh over one hundred or one hundred and ten pounds at the most.

Q. In the physical condition that you found her when she was removed was she able to help herself such as to eat and sit up? A. She could not, in fact it was necessary to feed her at this time and then she was only taking liquid nourishment. 10

Q. Was nourishment administered by a nurse or was she able to help herself? A. By a nurse and she herself. I have watched her take a spoon up to her mouth very slowly and usually toward the last the nurse administered food.

Q. I am referring directly to the period immediately preceding her removal from the hospital? A. She would have to be fed by the nurse mostly but she could eat herself but only in a slow hesitating manner. 20

Q. You were actually present when she was removed from the room to the ambulance? A. No, but I was present at the door of the hospital with the interne who accompanied them when she was taken out.

Q. How was she removed from the hospital? A. By an ambulance. 30

Q. Was she helped out? A. She was carried out on a stretcher.

Q. That was the last you saw of her? A. Yes, sir.

Lawrence M. Collins—cross

Q. From your knowledge of her physical and mental condition would you say there was any probability of her recovering? A. In her condition as she left me and as I saw her and told her people I would say there was a probability, that is, I would say there was a possibility, but it was not probable.

10 Q. Comparing her mental condition with the time she was removed and the time she was admitted what can you say as to the improvement or otherwise? A. She did not improve.

Q. Did she show a progression? A. Yes, it was progressive from the beginning.

Q. Did she at any time while she was detained there regain her soundness of mind for any period?

Objected to by Mr. Gourley:

Question withdrawn.

20

Q. At the time she was removed from the institution what was the condition of her mind as to being able to comprehend what was going on about her? A. She took little notice of her environment. She was in a very deep depression.

Q. In your opinion was she able to understand her surroundings, recognize her relations and property, etc. when she left? A. No, sir.

30 Cross Examination by Mr. Gourley:

Q. Doctor, you have given us a long story about this woman which covers a period of nearly two years? A. Yes, sir.

Q. During this period of two years there were intervals in which she was conscious and know what was going on? A. Perfectly.

Lawrence M. Collins—cross

Q. What period, if you are able to say, how much of the time of those two years was she in that condition? A. Around the latter part of November, in 1920 at that time she was in a state where she was able to recognize and know her environment and had a fairly good idea or knowledge of what was going on about her but still retained her delusions.

Q. Aside from her having that peculiar delusion was there anything peculiar about her? A. 10
Not at that time.

Q. Did she clothe herself? A. She kept herself neat and tidy.

Q. How long did that continue? A. In February, 1921, or March, 1921, she started to get bad again and she was very destructive about her clothing.

Q. Was she isolated? A. No, she was up and about the ward.

Q. Mingling with the other patients? A. Yes. 20

Q. This ward is known as what? A. Two four A.

Q. Was she in there during this entire period? A. Yes, sir.

Q. In a room by herself? A. No, at times by herself and of course in our over-crowded condition she had to be put in the hall at times but when she was bad and her weakened condition justified it she was placed in a room by herself.

Q. What period was she in the room by herself during this entire two years? A. She was 30
in a room at times in March, 1921. She would have a room and get so her physical condition picked up a little we would let her go out with the others again but in February and March in

Lawrence M. Collins—cross

1922 I remember she did have a room during these months.

Q. Just the last two months of her period? A. Yes, sir.

Q. Can you give us any approximate notion of the time she had a room out of this two year period? A. I cannot.

Q. These other times she was sleeping in the hall-way with the other patients? A. Yes, sir.

10 Q. What time do you go to bed up there? A. Some times half past six, sometimes seven o'clock.

Q. Do the patients take care of themselves? A. Some of them take care of themselves and others are taken care of by the better patients.

Q. How many nurses in the institution have you for these twenty-six hundred people? A. I cannot tell you how many. I haven't any idea.

Q. Well, how many in your ward? A. I can't say.

20 Q. During this period give us an approximate notion. A. We would have one sometimes and sometimes two or three.

Q. Did you ever have three nurses during the entire period? A. Three? Well, I don't keep track of the nurses. I cannot say. The nurses are not under me. I have no idea who the nurses are or how many were around.

30 Q. How many persons have you under you or had you under you during this period? How many patients? A. Five or six hundred.

Q. And how many nurses? A. At least a nurse to a hall.

Q. That means how many? A. Oh, in the neighborhood of twenty nurses at least.

Q. That is both day and night? A. No, then we have night nurses. Of course they vary, the

Lawrence M. Collins—cross

night nurses with the day nurses. Some of these halls where we had nurses in the day time we would have what we would call a night service or watch service. That is where one would take two or three halls. These patients are able to take care of themselves.

Q. And some of the patients took care of other patients? A. Yes, under the ward supervisor.

Q. And you had that number of nurses under you for this number of patients under you? A. 10
Yes, sir.

Q. During these periods of excitement and periods of delusion which you speak of did the patient recognize you when you came in? A. No doubt, Mrs. Wilson recognized me but she never gave any definite idea that she did.

Q. The question is, Doctor, did she or not? A. In fact I know she called me by name.

Q. Did she ask you anything about her condition? A. Never. 20

Q. She talked to you? A. Yes, she talked to me about these ideas and delusions.

Q. What about her physical condition? A. She never talked to me about her physical condition.

Q. Did she talk about her relatives? A. She never talked to me about her relatives. The relatives I saw were good and kind to her, visited to her and they were the only people who did visit her. I asked her about her relatives and said they seemed good and kind to her but she never mentioned them. 30

Q. Did she speak about any other subjects of the outside world? A. Her husband, he died. She mentioned about him when he died.

Lawrence M. Collins—cross

Q. Did she say when he died? A. She was very indefinite. She said he had died two years before and that ever since her husband had left her they had persecuted her.

Q. When speaking of her husband did she mention her family? A. No, never.

Q. Did she say where she came from? A. No, sir. She told me at one time in a mental examination that she came from Shamokin, Pa., and lived some place, they lived in Pennsylvania some place.

Q. Did she speak about Passaic? A. She told me about going to Passaic and living in Passaic.

Q. You knew she came from Passaic? A. Yes, sir.

Q. During these times you were not concerned much about her conversation? A. No, sir.

Q. You had six hundred people under you? A. Yes, sir.

Q. You cannot remember enough about the conversation you had with them several years ago to recall them very well? A. I had a fairly good idea of the mental condition of every patient. There is very few out of the six hundred that I cannot tell you what their delusions are.

Q. When speaking on subjects on which they were talking intelligently would that make any impression on your mind that you would remember it for a period of years? A. Yes, sir.

Q. It would only be the exceptional conversations that you would recall? A. Yes, sir, and some others.

Q. What is the distinct characteristics of this peculiar form of mental disturbance? A. You mean by distinct I suppose the usual. You usually got this condition following a shock. They are

Lawrence M. Collins—cross

disturbed by a shock from death or something in that line which is followed by marked activity and excitement with flighted ideas. The patient jumps from subject to subject. They jump from subject to subject constantly. Hallucinations also follow. They hear voices and also have delusions. They are also mentally hysterical and alternate with periods of excitement and depression.

Q. And when these pass over they become quite normal? A. Yes, sir.

10

Q. Of course Doctor, recovery is had frequently from these? A. Yes, sir, absolutely.

Q. There was nothing about the woman to your mind that was suffering in that condition, nothing about her that would indicate she was going to die? A. In the mental disturbance no, but that left her physical condition very weak and that played the greater part in the end.

Q. When she came to your institution, Doctor Collins, suffering from what you say was mental disturbance was there anything about her physical condition at that time that would indicate or lead you to believe she was probably dying? A. No, but if this constant emotion kept up followed by delusions and hallucinations and periods of deep depression it usually follows, that is if that continues indefinitely, death is the inevitable result.

20

Q. The fact that the patient had been affected with a mental disturbance at a given period would not indicate to any doctor that probably she was going to die, she wouldn't recover? A. That is pretty hard to say.

30

Q. There was nothing unusual about the condition when she was admitted? It didn't neces-

Lawrence M. Collins—cross

sarily mean death? A. It didn't necessarily no, but if it continued it would mean death.

Q. You mean if she didn't get better she would die? A. Yes, sir.

Q. But the mere fact that she was in that condition at any time doesn't of itself indicate death? A. No, not in the beginning.

10 Q. Nor the fact that if I told you now I knew a man suffering from that infirmity would not necessarily follow or indicate to you that death must necessarily follow? A. No.

Q. Patients recover from these delusions? A. Yes, sir.

Q. Where two persons, a couple, live together to old age and one dies frequently a very great shock is felt? A. Yes, sir.

Q. A paroxysm of grief would likely produce that condition? A. Yes, sir.

20 Q. You knew of course this woman's husband had died? A. Through her relatives I knew it. I knew it but it was just heresay.

Q. Were you so informed in the history of the case that her health had been good up to that time and that she was all right before her husband's death? A. Yes, sir.

30 Q. Taking that into consideration with what you discovered after her husband's death wouldn't you impute that condition in a very large degree to the husband's death? A. Perhaps it had a lot to do with it.

Q. Time is a great healer in all things. Wouldn't time lighten the load. I mean the probability. A person who presumably was in good health both physically and mentally and then after a death in the family show signs which you say this woman

Lawrence M. Collins—cross

suffered wouldn't time have a very marked tendency to alleviate that suffering? A. Time?

Q. Yes, it is quite probable. A. In some cases it does and in some cases it does not. Some cases go right on progressing.

Q. But the probability under such circumstances wouldn't you reasonably conclude that?

A. I would say yes. They would probably continue to get better.

Q. Is this peculiar form of mental disturbance always followed by delusion? A. As a rule. 10

Q. A person may suffer from delusion and may be absolutely mentally right about other things?

A. Yes, sir.

Q. You have heard stories in books about a man doing business and going along alright until you mentioned Napoleon Bonaparte's name and then he went off? A. Yes, sir.

Q. There are peculiar cases of that kind? A. Yes, sir. 20

Q. They are affected by that particular thing and outside of that they are absolutely clear? A. Now you are hitting another form of mental disease.

Q. When did you last talk with this patient before her removal? A. Several weeks, in fact two or three months. She wouldn't speak. I tried to rouse her and get a response from her especially as these nurses told me how good she was.

Q. What nurses? A. Mrs. Scales and another tall girl, a Miss somebody. I believe you mentioned her name. I have some trouble remembering the nurses' names that I have for the patients. 30

Q. You must know their names. You would have to distinguish between them? A. I always

Lawrence M. Collins—cross

called them nurse ond sometimes wouldn't know their names.

Q. You don't know Miss Norris? A. That is the name. That is familiar. There is a Miss Norris or was a Miss Norris there as I recall it.

Q. Do you see her here? A. I cannot tell. You see they change so much.

Q. Can you pick her out in the court room? A. If she had bobbed her hair she might be that girl sitting there but I wouldn't swear to it.

Q. You didn't see her when she was removed from the room? A. Mrs. Wilson?

Q. Yes. A. I did not but I was at the door.

Q. Did you say anything to Mr. McDermott or the Wilsons about that she could be removed in safety? A. As I remember it I told Mrs. Wilson at different times I did not believe Doctor Curry would offer any objections.

Q. How long before her removal could she have been removed with safety? A. She could have been removed at any time. I wouldn't say with safety except within the last two or three months in her weakened condition.

Q. When was her last period of violence? A. In March and February of 1920 she did very well. In March, 1921, she had gone into a depression. No, I am mistaken. It was around September or October of 1920. That was the period in which she was very violent and very disturbed and then she alternated between periods of excitement and periods of depression. She was very disturbed about things and wouldn't co-operate at all and then she got better and then from March, 1921, she passed into this period of depression.

Q. For a year preceding her removal there was no violence? A. No, except suicidal ideas.

Lawrence M. Collins—cross

Q. I am speaking of bodily activity? A. No.

Q. Before March, 1921, what was the last period of violence that you can tell us of? A. In November, 1920, she had a period, well it was around September and October. She was very excited and disturbed.

Q. Do you know the date of her husband's death? A. I do not.

Q. From November, 1920, was there any period of violence at all? A. Not violence. She had gone into a period of depression. 10

Q. When you speak of her violent period that was during November, 1920? A. Yes, sir.

Q. And from then on she got better and then went into this period of depression? A. Yes, sir.

Q. By that do you mean bodily or mentally depression? A. One goes hand in hand with the other.

Q. Tell us what you mean by depression? A. 20
All the functions of the body suffered due to her being in such a state that she was no longer able to recognize what was going on about her. She didn't appreciate her environment and while in these periods of depression showed a decreased activity and she would and did refuse to eat at times and it was necessary to force feed her or tube feed her.

Q. During this period she could have been removed with bodily safety to her home? A. 30
Comparatively, yes, sir.

Q. I presume or may I say that if she was brought home the probability is in a quiet reposed home it would help somewhat toward recovery. A. It may and it may not. I couldn't tell.

Lawrence M. Collins—cross

Q. Then if a person is suffering from excitement I presume it is good for them to be quiet. It would not be good for them to see others excited?

A. Some of the best patients I have get better in this manner.

Q. But a person who is excited and sees somebody else excited wouldn't that make their condition worse? A. It makes very little difference in a case of that kind.

10 Q. But a quiet home is helpful? A. It would be under proper conditions.

Q. If a quiet home would help an excited home would not? A. Of course a quiet home would help any patient.

Q. And an excited home would have a tendency toward mental disturbance? A. Of course.

Q. During these periods of mental depression after these disturbances or after violent periods had passed are there intermittent periods when they are better or is it uniformly one condition? A. One condition continually the same.

20 Q. Do you remember asking her questions and receiving answers? A. Not in the last few months.

Q. No, during the Fall. A. I would ask her questions and I might get an answer. I would question her as I was going through and as I say she might say something and she might not. I would ask her a question but she didn't seem to carry the question.

30 Q. What was your object in asking the question? A. I ask questions of every patient I have. It is the only way I judge how a patient is doing. I make notes on these patients or at least try to at least once a month but having so many under

Lawrence M. Collins—cross

my care if I don't make a note I question them as I go along day by day.

Q. At what period did you form the opinion or were you of the opinion she would not recover her bodily health? A. In March, 1921. It was then that the Doctor, Doctor Curry, wrote a letter. The letter was sent to her guardian then.

Q. Were you of the opinion then that she was going to die? A. I wouldn't have sent the letter if I was not. 10

Q. Did you think she was going to die? A. I did.

Q. Did you think removal to other conditions would help somewhat? A. No, I did not think so.

Q. Where is that letter? Will you let me look at it? A. Yes, sir.

Q. This is the letter to Mr. Wilson? A. Yes, sir.

Q. I thought it was a letter to Doctor Curry? 20
A. No, Doctor Curry sent this out.

Q. Did you sent any letter to Doctor Curry?
A. Yes, sir, the letter is sent through Doctor Curry.

Q. Have you the letter there sent to Doctor Curry? A. No. I didn't write it to Doctor Curry. Doctor Curry wrote it to them.

Q. Have you any writing, a report, on the case in March, 1921? A. No, sir, I brought Doctor Curry over to see the case himself. 30

Q. This woman was how old? A. Around thirty-eight or forty years of age.

Q. I suppose you can recall or rather you know from experience these women patients don't respond as rapidly to men as they do to the women?
A. I have not seen that.

Lawrence M. Collins—redirect

Q. Have you noticed that they often talk to the nurse and not to the Doctor? A. I can get patients to talk to me that wouldn't look at the nurse.

Q. You don't know or you didn't know that this woman was afraid of you? A. Afraid of me? I think I was more afraid of her.

Q. Did you know she was afraid of you? A. I did not.

10 Q. Do you know you were said to be rough with her? A. I didn't know that.

Q. You learn it now for the first time? A. I didn't know it.

Q. She didn't respond to your advances at all? A. No.

Q. So when you would ask her a question she was rather inclined to throw you off? A. No, she didn't throw me off but she wouldn't speak.

20 Q. I understand her condition was such that she was carried out on a stretcher? A. Yes, sir.

Q. Is it your opinion that a woman in the condition she was couldn't walk around the room when she got home? A. It was at that time.

Q. You didn't think she could walk around the room? A. No.

Re-direct Examination by Mr. Murphy:

Q. That wasn't possible when she left to do that? A. No.

30 Q. If she had been removed to a quiet home during the period of her confinement there would there have been a greater probability of her recovering than by the treatment she received there? A. No.

Q. Was her mental disease limited or confined

Lawrence M. Collins—recross

to a single delusion? A. She had many delusions.

Q. She was not what you call a monomaniac?

A. That is an old name.

Q. She wasn't like the man that went off the handle when Napoleon's name was mentioned that Mr. Gourley was talking about? A. No.

Q. Would you say that all her actions were colored by the delusions under which she was suffering?

10

Objected to by Mr. Gourley.

Objection overruled by the Court.

A. Several of them yes. Her actions were suicidal, acts of trying to get away from people whom she thought were persecuting her. That was one of her ideas.

Re-cross Examination by Mr. Gourley:

20

Q. That was in the so called violent period?

A. Continually up to the time she refused to talk to me she still retained these ideas.

Q. Of course there is nothing about this disease that a doctor could say makes a patient irrational? A. Nothing about the disease itself but they could not be rational if they had it.

Q. You mean a person could not be— A. Could not be rational suffering from this disease.

30

Q. Do you mean she was not rational at any period? A. What do you mean by rational? She had these ideas, self-accusatory, suicidal and homicidal and she had this trend of delusion. She was not rational.

Lawrence M. Collins—recross

Q. No, not about that, but about other things?

A. That is perfectly natural in lots and lots of patients.

By Mr. Murphy:

10 Q. When you say she was rational about other things do you mean to say when she was in such condition of mind as she was while under your observation that she was able to transact business as an ordinary person would? A. She was not able to in my opinion.

By Mr. Gourley:

Q. It depends on the business? A. I wouldn't say so. I wouldn't say she would be able to transact business.

Q. She might select her dresses and things like that? A. She might do that.

20

By Mr. Murphy:

30 Q. Would you say whether or not she was capable of knowing her relatives and knowing her duty toward them and knowing the extent of her possessions? A. I believe in these mental cases the patients do know their relatives and appreciate their visits and realize what they are doing for them when they visit them and they appreciate their visits and I believe Mrs. Wilson appreciated her relatives.

Q. Do you know whether—or I will withdraw that. Did you in any way determine whether or not or to what extent her memory was affected? A. No, sir. Only by mental examination.

Q. What did that disclose? A. She was put

Emma Arnell—direct

through the system of the mental examination when she first came in and what happened recently she was not quite clear about, what happened in the past she was a little bit clearer. She had no conception of time. Had no idea about recent events. She didn't know anything about the hospital and didn't know whether her husband had just died or when or where he died. She had no idea of time. She wasn't sure whether her husband was dead or alive.

10

By Mr. Gourley:

Q. That was when she came in? A. Yes, sir.

By Mr. Murphy:

Q. What have you to say as to whether that condition remained when she was removed?

Objected to by Mr. Gourley:

Objection sustained by the Court.

20

Q. Can you tell the court whether, with your knowledge of the conditions at the time she was removed, whether or not she was susceptible to outside influence? A. I cannot say that.

EMMA ARNELL, sworn as a witness for the Appellant and testifies as follows:

30

Direct Examination by Mr. Murphy:

Q. Where do you live? A. 64 Henry Street.

Q. What city? A. Passaic.

Q. How long have you lived there? A. Four years in my present place.

Emma Arnell—direct

Q. Did you know Mrs. Sophie Wilson? A. I did.

Q. When she lived on Henry Street? A. I did.

Q. How long did you know her? A. From the time she came there as Mr. Wilson's wife. I lived right next door to her.

Q. Do you remember her removal to Morris Plains Asylum? A. I do.

10 Q. How soon before her removal did you see her? A. Well, the same day her husband went in the accident on the automobile ride—

Q. When did you see her last before she was removed to Morris Plains? A. The day of Mr. Wilson's funeral.

Q. How soon after that was she removed? A. The next day after the funeral I seen her and that was the last time.

Q. In what month was that? A. May.

20 Q. Do you remember the date? A. Between the 5th and—no, I can't tell you the date.

Q. Did you have a conversation with her on that day? A. The day she was removed? No, I didn't.

30 Q. I mean on the day you saw her last? A. I did the day of Mr. Wilson's funeral. As I went in I said How-do-you-do Mrs. Wilson and I said what is the matter because she was all excited and she says for God's sake will you stay with me to-night. Them two will drive me crazy. They got papers they want me to sign.

Q. Where was she then? A. In the kitchen and I said to her you know I can't stay with you.

Q. Did you notice her condition? A. She was very excitable and her eyes were staring.

Emma Arnell—direct

Q. Do you know to whom she referred when she said them two? A. Yes, sir, Mr. and Mrs. Wilson.

Q. Were they there? A. Yes, sir, because they came out and as they were coming out she put her fingers to her mouth like that and said don't say anything.

Q. Did you see her while she was confined at Morris Plains? A. I did on the 14th day of March, 1922. 10

Q. About two weeks before she was removed? A. Yes, sir.

Q. What was her physical condition then? A. She was very, very weak. She couldn't raise a hand to wipe her mouth and when I went in she was just laying there on the bed and she opened her eyes and I said don't you know me Mrs. Wilson and she said no and her voice was very weak.

Q. Did she speak very loud? A. No, her voice was hardly over a whisper and I went over to her side— 20

Q. How long did you stay there? A. Only about ten minutes.

Q. During that time did her condition change? A. She asked me where her husband was.

Q. That was on the 14th of March, 1922? A. Yes, sir.

Q. When did you see her next? A. She was brought home to the house and on the Thursday before she died I saw her. 30

Q. What day of the week did she die? A. She died on Friday.

Q. Do you know the date of her death? A. No, I can't say. I don't remember.

Q. Do you mean you saw her the day before

Emma Arnell—cross

she died? A. I do. I went and asked Mrs. Wilson if I could see her.

Q. Who let you in? A. Mrs. Wilson.

Q. What did Mrs. Wilson say? A. She said that she was sleeping now and she wouldn't want her disturbed but she said that I could see her if I wanted to, so I asked her if I could see her and I walked in and looked at her lying on the bed and I said to Mrs. Wilson her time is very short.

10 Q. Did she recognize you? A. She never opened her eyes.

Q. Who was present? A. Mrs. Wilson.

Q. Was there any nurse there? A. I seen a nurse there but I couldn't identify her.

Q. What time of day was that? A. Right after twelve o'clock.

Q. How do you know she died the next day? A. Because word was brought to me.

20 Cross Examination by Mr. Gourley:

Q. You say you saw her the day after the funeral? A. The day after her husband's funeral, the day on which her husband was buried and the day after.

Q. Did you see her while her husband was alive? A. I used to see her every day.

Q. There was nothing unusual about her at that time? A. She was very excitable, very nervous.

30 Q. Even before her husband's death? A. Yes, sir.

Q. He met with an automobile accident and was killed? A. He died from the wounds but he wasn't killed immediately.

Q. He died from injuries received? A. Yes.

Emma Arnell—cross

Q. About how long after the accident? A. I can't tell you.

Q. Weren't you living next door? A. Not at the time he died.

Q. Where were you living? A. 64 Henry Street.

Q. You knew her before that time? A. I did.

Q. You don't know how long it was from the time her husband was injured until he died? A. No, I didn't keep track of it. 10

Q. You cannot give us any information on that? A. No.

Q. When you saw her on this day it was the day of the funeral? A. Yes, sir.

Q. You were just attending the funeral? A. No. I was attending the services. I wasn't able to attend the funeral but I went to the services.

Q. Did you talk with her? A. I did. That is the time she told me they were very much put out.

Q. Had you seen her between the time the husband met with the accident and the time of his death? A. I saw her every day all while he was in the hospital. 20

Q. What was her condition then? A. She was very nervous.

Q. Did she show any marked signs more than before? A. She always was nervous but at that time extraordinarily nervous.

Q. What were the aggravated signs? A. Well the woman showed signs as though somebody was bothering her. 30

Q. Did you see her the day after the funeral? A. Yes, sir.

Q. How frequently did you see her after that? A. Only the next day.

Q. How long was it before she was taken away? A. The next day.

Emma Arnell—cross

Q. Do you remember when that was? A. I don't remember the day or the date.

Q. You say you saw her at the hospital? A. Yes, sir.

Q. That was a week before she came home? A. Yes, sir.

Q. Did she know you? A. She did not.

10 Q. How did you come to go there? A. The Secretary of the Red Cross Chapter in Passaic was going up and she asked me if I would go up with her.

Q. Did you go to see Mrs. Wilson? A. When I left the house I didn't intend to go, I didn't believe you could—

Q. Never mind that, did you see her? A. Yes, sir.

Q. Who was the nurse in attendance? A. I don't know.

20 Q. Would you know her if you saw her now? A. I would not.

Q. How long were you in the room? A. About ten minutes.

Q. Was anyone with you? A. No, sir.

Q. Was this woman that went up with you? A. No, sir.

Q. Mrs. Wilson then was lying in bed? A. Yes, sir.

Q. Did you speak to her? A. Yes, sir.

30 Q. She opened her eyes? A. Yes, sir, and looked at me.

Q. Did she say anything? A. I asked her if she knew me and she said no.

Q. Did you remind her who she was talking to? A. I said, yes you know me, this Mrs. Arnell and she shook her head and said no.

Beatrice B. Norris—direct

Q. How long had you known her? A. From the time she was married.

Q. That was how long ago? A. I couldn't tell you that.

Q. At that time did you say anything else to her? A. I did not.

Q. You don't know how she was in health at that time except what you saw? A. I know the nurse told me—

Q. Don't tell what the nurse told you. Could you tell from her appearance? A. From her appearance to me I didn't think the woman would live two days. **10**

Q. You say you saw her afterwards at the house? A. Yes, sir.

Q. Was anyone in the room with you? A. Mrs. Wilson was in.

Q. She was up in her bed? A. Yes, she was in bed practically dead.

Q. Mrs. David Wilcon was in the house then? A. Yes, sir. **20**

Q. You had no opportunity to talk to her then? A. None whatever.

Q. You didn't speak to her? A. Nothing whatever.

Proponent Rests.

BEATRICE B. NORRIS, sworn as a witness for the proponent and testifies as follows: **30**

Direct Examination by Mr. Gourley:

Q. What is your business? A. At the present time?

Q. What was your business? A. Hospital nurse attendant.

Beatrice B. Norris—direct

Q. Where are you living now? A. In Philadelphia.

Q. Were you at one time a nurse at the State Hospital of New Jersey? A. Yes, sir.

Q. How long were you there? A. About three months in all.

Q. Beginning when? A. In January, 1922.

Q. Did you know Mrs. Wilson who has been spoken about? A. Yes, sir.

10 Q. When did you first meet her? A. I went in charge of the ward the latter part of January. I believe about the 25th of 1922.

Q. Did you have charge of her? A. I had charge of the ward.

Q. How many patients were in the ward? A. I should say about fifty-two.

Q. All directly under you? A. Under me, but I had two assistants.

20 Q. Who were the assistants? A. Miss Campbell.

Q. Do you know where she is now? A. She is still there so far as I know.

Q. And who else? A. Miss Micina, but she is not there now.

30 Q. Will you tell us from your observation, Miss Norris, whether Mrs. Wilson was confined to her room during the period you were there? A. Mrs. Wilson was in a room with five other patients when I went into the ward, and she was in very poor condition and I asked if she couldn't have a room to herself and after two weeks Doctor Collins gave me permission to put her in a vacant room in the ward so I removed her there I should say the first week in February. Before that she was sitting up in the ward mornings and in the

Beatrice B. Norris—direct

afternoon she would go to bed for a while but after she was given a room she was in bed all the time.

Q. Why did you ask her whether she wanted to be in a room? A. The other patients were complaining that Mrs. Wilson wasn't able to be up there with the other patients and Mrs. Wilson herself was complaining because she was afraid of the other patients. I asked the Supervisor and she told me to ask the Doctor so I did.

10

Q. And you got permission? A. Yes, sir.

Q. Will you tell us what her mental condition was? A. All the time I ever talked or had Mrs. Wilson under my observation she was alright, perfectly alright and talked very rational.

Q. What did you talk about? A. I asked her how she was, etc., what she wanted to eat and who she wanted to see and all such questions.

Q. Were her answers reasonable to these questions? A. Yes, sir, they were.

20

Q. Did you learn from her anything about the family at all? A. When I went there I was under the impression that she was a miss and I asked her where her husband was and she said her husband had died.

Q. Did she say under what circumstances? A. I didn't question her.

Q. Did she say anything further? A. She told me she lived on Henry Street, Passaic.

Q. Did she say whether she owned any property there? A. Yes, sir. She told me she owned a house there.

30

Q. Did she mention about any relatives? A. No. She told me she didn't want to see anyone

Beatrice B. Norris—direct

but Mr. and Mrs. David Wilson. She called them Annie and David.

Q. And they were the only ones that came to see her? A. I asked the nurse about that.

Q. What nurse did you ask? A. Miss Campbell. She tended on the ward before I did. She didn't care to see anyone but them. She said they were the only ones that were good to her and they brought everything for her. A comforter, things
10 to eat and wear and they would bring thermos bottles with hot milk and soup, etc.

Q. Do you mean the Wilsons brought them?
A. Yes, sir.

Q. Are you saying what she said or what you saw? A. What I saw and what Mrs. Wilson told me herself.

Q. Did she know where she was? A. She knew she was in a hospital in New Jersey and knew she was in an asylum. She often told me.

20 Q. Was there anything about her conversation with you that in any way indicated that she didn't understand what you were talking about? A. No, sir.

Q. Did she understand the questions you put to her? A. Yes, sir, she did.

Q. Were her answers to these questions reasonable? A. Yes, sir, they certainly were.

30 Q. Was there anything about her that indicated when you were talking to her that she didn't understand the subject? A. No, sir.

Q. How frequently did Doctor Curry see her while you were there? A. Doctor Curry paid a visit once a week if I remember correct. He may have seen her every time he came in but there is just once that I remember that he had any conversation with Mrs. Wilson.

Beatrice B. Norris—direct

Q. How about Doctor Collins? How frequently did she see her? A. He always paid a visit at least twice a day to the ward.

Q. To your knowledge did she show Doctor Collins any particular regard? A. She was always afraid of Doctor Collins, I don't know why.

Q. Did she show fear by her actions? A. No.

Q. How did she show fear? A. She said she was afraid of Doctor Collins.

Q. She said she was afraid of him? A. Yes, 10
sir.

Q. Did she give any reason? A. Why, no.

Q. Did she say why in any way she was afraid of him? A. No, I never asked her why.

Q. Did she show any desire to talk to him? A. No.

Q. How was it with yourself? A. She always talked to me when I was in the room with her. I went in to see her four or five times a day.

Q. Did she know your name? A. Yes, sir, 20
she did.

Q. Did she call you Miss Norris? A. Yes, sir, she called me Miss Norris.

Q. Was there any time she didn't recognize you? A. No, sir.

Q. Was there any time she didn't respond to any question you put to her? A. No, sir.

Q. Any time you put a question to her her answer was always intelligible? A. Yes, sir.

Q. Do you remember when she went away? A. 30
Yes, sir.

Q. Were you there at the time? A. Yes, I was.

Q. Was there any marked change in her mental condition? A. No, not in the length of time I had her.

Beatrice B. Norris—cross

Cross Examination by Mr. Murphy:

Q. Was this the first institution of the kind that you worked in as a nurse? A. No, sir.

Q. Where did you work? A. In Allentown, Pa.

Q. You say you had two assistants there after you had been there one month? A. Yes, sir.

10 Q. What hours of service did you have? A. From six in the morning I believe until six or seven at night.

Q. Day time or were you on all the time during the day while you were there? A. Once or twice a month I worked until ten o'clock at night only.

Q. Did you work elsewhere than in this ward? A. I worked in 24B and 24A.

Q. This is 24A.? A. Yes, sir.

Q. How long did you work there? A. Two and a half months.

Q. When did you start? A. In January.

20 Q. What date? A. I should say the latter week of January. I couldn't tell you the exact date.

Q. And you worked there until April? A. Yes, sir.

Q. Then you left? A. Yes, the first day of April.

Q. You left the institution then? A. Yes, sir.

Q. You resigned from your service? A. Yes, sir, I resigned.

30 Q. Did you receive any criticism from Doctor Collins or Doctor Curry? A. Not that I know of.

Q. They were all women in this ward? A. Yes, sir.

Q. How many did you say? A. Fifty-two if I remember correctly.

Beatrice B. Norris—cross

Q. Do you remember how many? A. I should say fifty-two.

Q. Was the same number there all the time you were there? A. No, sometimes a patient was transferred to another ward or discharged.

Q. Did patients in this ward have a particular position to occupy or in different places? A. No.

Q. They intermingled with each other? A. Yes, sir.

Q. Except those which had a special room? A. 10
It wasn't necessary for them to be confined to the room.

Q. How many rooms were there used by patients of this ward? A. There was five on the ward and four on the cross hall.

Q. Did Mrs. Wilson occupy a room in the ward or one of the other rooms? A. A room in the ward for at least six weeks before she went home.

Q. Who occupied the next room to her? A. A Mrs. Caroline Spanning. 20

Q. Are you sure of that? A. Yes, sir, I am quite sure.

Q. Who occupied the room next to Mrs. Spanning? A. I couldn't just recall the name but I remember the patient well.

Q. Do you remember any patient that occupied one of the rooms not in the ward? A. I don't know just what you mean.

Q. You said some were in the ward and some outside of the ward? A. That is what we called on the cross hall. 30

Q. Do you know a patient who occupied a room on the cross hall? A. Very well.

Q. Who were they? A. I can't recall the names but there was a Mrs. Wasasa.

Beatrice B. Norris—cross

Q. What was her first name? A. I don't know her first name now.

Q. Which room did she occupy? A. The first room on the right.

Q. Where did she come from? A. I couldn't tell you that.

Q. Do you remember her at all? A. Yes, sir, I do.

Q. Do you remember any of the others? A. Yes, sir, I remember an Emma Bower who was in that ward.

Q. Do you remember the names of any patient who didn't occupy rooms? A. Yes, sir, I do.

Q. How old was the oldest patient about? A. Sixty or seventy years old.

Q. And how old was the youngest? A. Fifteen if I remember right.

Q. What was her name? A. Rose, she was a Polish girl, Sicofky. It was something like that. I cannot tell you her exact name.

Q. When you went to your duties what was the first thing you had to do? A. Count my patients and see if they were all there.

Q. Did you have to know their names? A. It wasn't necessary to know all their names but you knew all your patients.

Q. Did you know their names? A. You knew your patients.

Q. How did you know they were all there? A. We knew the number and we had cards.

Q. After doing that what did you do next? A. I got my patients ready for breakfast at seven o'clock.

Q. Get them ready? How do you mean? A. Those that ate in the dining room, put them in there for their meals.

Beatrice B. Norris—cross

Q. Did that take all your time up to breakfast? A. Yes, sir, generally.

Q. Then what did you do? A. I went to breakfast at seven and had to get back by seven-thirty. Then my assistants went at seven-thirty or eight o'clock. After that I started bathing the bed patients, the patients in the room.

Q. How was your time occupied from then on until noon? A. What do you mean?

Q. I mean did that occupy all your time up to noon, bathing the bed patients? A. Not always. 10

Q. What did you have to do after bathing these patients? A. Straighten up the ward, there was not much to do after dressing all the ward patients.

Q. After that what did you do? A. You could do anything you wanted to do, talk to the patients, or I usually made up my reports around ten o'clock.

Q. And that took you until what time? A. Sometimes until I went to dinner at twelve o'clock. 20

Q. How long were you off for dinner? A. A half an hour. I was back at twelve thirty.

Q. Then what did you have to do? A. Help in the dining room.

Q. When you returned to the ward what were your duties? A. Straighten out the ward and take care of the patients.

Q. You were in the ward all the time? A. In the ward when I wasn't in the office making out reports. 30

Q. Your duties required you to have supervision over these fifty-two women? A. Yes, sir.

Q. And it was necessary to be passing back and forth and looking into the different rooms? A. Yes, sir.

Beatrice B. Norris—cross

Q. There was no privacy except in these rooms? A. No.

Q. How long was Sophie Wilson in a room all together? A. Six weeks anyway.

Q. Was she in the room when you got there? A. No.

10 Q. How soon after did she go in a room? A. It took quite some time for me to vacate a room. I should think I had the patient there three weeks anyway. Three weeks after January 25th she went into a room.

Q. That would bring it until about the middle of February? A. Yes, sir.

Q. Do you remember when she was taken away from the hospital? A. Yes, sir.

Q. What date? A. The 25th day of March, 1922.

20 Q. Were these rooms locked during the day time when occupied by patients? A. The doors were never locked.

Q. The doors were open? A. Yes, sir.

Q. People were passing back and forth in front of them? A. Yes, sir.

Q. Did you know Sophie Wilson better than any other patient? A. No, I won't say I knew her any better.

Q. Did you take any special interest in her? A. Yes, I did.

30 Q. Why? A. Because she was the only bed patient I had at the time.

Q. I thought you said there were four? A. No, not bed patients.

Q. Did you have more time to speak to Sophie than to the others? A. It wasn't necessary to talk to any particular person but I just made it my business.

Beatrice B. Norris—cross

Q. Why did you make it your business? A. She was a bed patient and I had more time to spend with Sophie.

Q. How did you first enter into conversation with Sophie? On what topic did you first speak?

A. She didn't care to eat the food they had there but she was brought food by her relatives. She would ask me to heat milk and I would do it. I really felt bad for her because she was quite sick.

Q. What do you mean? Physically or mentally? A. Physically. 10

Q. Did she receive medicine? A. Who?

Q. Didn't you report to the doctor that she was sick? A. The doctor could see for himself.

Q. What did the doctor say? A. He went in to see her.

Q. But he didn't prescribe any medicine for her? A. No.

Q. Did she start the conversation with you about her history or did you ask her? A. I asked her. 20

Q. Is that a habit you have? A. No, not a habit.

Q. Did you have any special reason for asking her? A. No, I would ask any patient.

Q. There wasn't anybody else in that ward you asked? A. I have asked others, yes.

Q. Who did you ask? A. I know I asked some.

Q. Can you tell us anyone? A. Yes, sir. I believe I have questioned Mrs. King quite a bit. 30

Q. Where was Mrs. King born? A. She was born in Ireland.

Q. Was she married? A. Yes, sir.

Q. Where did she live? A. I can't tell you just where she lived.

Beatrice B. Norris—cross

Q. Is that the only reason you can give for being so interested in Sophie Wilson? A. Yes, sir.

Q. Did you ask her where she was married or did she tell you? A. I asked her.

Q. Did she tell you that her husband had died? A. No, she simply told me she was a widow.

Q. Did she tell you of what ailment he died?

10 A. No.

Q. Did you see the removal of Mrs. Sophie Wilson from the institution? A. Yes, sir.

Q. Did you help remove her? A. Yes, sir.

Q. How was she taken out? A. She was taken out on a stretcher.

Q. Did you help lift her out of the bed? A. Yes, sir.

Q. Who assisted you? A. Miss Campbell.

Q. Did you speak to her then? A. Yes, sir.

20 Q. What did you say? A. I told her I was getting her ready to go home.

Q. You testified she was afraid of the other patients? A. Yes, sir, she was.

Q. Do you know whether or not she was afraid of the other nurse? A. No, she showed no fear for the nurses.

Q. You were relieved at night by another nurse? A. Yes, sir.

30 Q. How did you know or how do you know whether or not she was afraid of her? A. I don't know but I don't think she was.

Q. You don't know? A. I don't know but I don't think she was.

Q. Do you remember the last time before her removal that Doctor Collins came to her? A. Yes, sir.

Beatrice B. Norris—cross

Q. Was it the same day? A. No, the day before.

Q. Did he speak to her? A. Yes, he did. He spoke to her.

Q. What did he say? A. I couldn't tell you what he did say but I know he spoke to her.

Q. How did she act toward him? A. She was always afraid of him.

Q. Was she afraid of him then? A. She was the same as usual. 10

Q. What did she say? A. She said nothing.

Q. What did she do? A. She didn't do anything.

Q. How do you know she was afraid of him? A. She told me she was afraid of him.

Q. And she was afraid of the other patients as well? A. Yes, sir, she was afraid of the patients.

Q. Do you remember when Mr. and Mrs. Wilson visited her the last time before she was removed? A. Yes, sir. 20

Q. You said something about that they brought presents to her? A. They brought her things to eat.

Q. The last time? A. Mrs. Wilson brought soup and hot milk and fruit.

Q. How long before she was removed? A. The day before that.

Q. When before that did she come? A. Mrs. Wilson was there most every day for two weeks before Sophie was removed from the hospital. 30

Q. Did she bring her presents? A. Yes, sir.

Q. Food? A. Yes, sir.

Q. Fruit? A. Yes, sir.

Beatrice B. Norris—cross

Q. Were you present when Sophie took her nourishment? A. Yes, sir, I gave her her nourishment.

Q. How did you give it to her? A. In a cup she took her milk and soup.

Q. Did she take any liquid food beside milk and soup? A. She had the milk and soup.

Q. She didn't eat any solid food? A. Yes, sir, a little chicken once in a while and mashed potatoes.

Q. What kind of fruit did she eat? A. Granges and pears, etc.

Q. You prepared them for her, did you, or did she prepare them for herself? A. Yes, I prepared them.

Q. Do you remember Sophie Wilson better than any other patient? A. I remember her because she had company so often and I had to get her dressed and move her to the other ward for company.

Q. Did the other patients have company? A. No, very few of them had company.

Q. Have you made any special effort to distinctly remember Sophie Wilson and her condition while you attended her? A. Why, yes.

Q. What efforts did you make and how? A. Well, I made it because Mr.—

Q. I didn't ask you why, I asked you how? A. Well, by being kind and waiting on her and assisting her all I could.

Q. Why did you make it? A. Because I was asked to.

Q. By whom? A. They asked me to be good to her.

Beatrice B. Norris—cross

Q. I asked you if anybody asked you to try and remember distinctly about Sophie Wilson?

A. I didn't ask her any such question.

Q. I ask you did anybody ask you to try and remember distinctly what you have remember about Sophie Wilson? A. No, sir.

Q. Did you speak to Mrs. Wilson when Sophie was discharged? A. Yes, sir, I believe I talked to her over the telephone.

Q. You believe you did? A. Yes, sir. 10

Q. Do you know this gentleman over there? A. Yes, sir.

Q. Mr. McDefmott? A. Yes, sir.

Q. Did you speak to him about it? A. Yes, sir, I spoke to him. I met him in the hospital.

Q. Did you speak to somebody else? A. I don't think I did.

Q. Did you go over the whole case? A. No, I was asked a few questions and I answered them.

Q. At the hospital? A. Yes. 20

Q. Did you speak to him since about it? A. No, I did not.

Q. Did you speak to him today? A. Yes, sir, just on the same questions he asked me before.

Q. You did speak to him? A. Yes, sir.

Q. You haven't been to Mrs. Wilson's house, have you? A. No, I have not.

Q. Did you ever have to use any physical force in restraining Mrs. Sophie Wilson while you were there? A. None whatever. 30

Q. Did anybody? A. No, not as long as I was there.

Q. You said you were present when Doctor Collins saw her the last time before she was removed? Do you remember the time previous to that? Were you present? A. Yes, sir, I was.

Beatrice B. Norris—redirect

Q. That was the day before? A. Yes, sir.

Q. Do you remember what was said at that time? A. He asked her how she was. He never asked her any more.

Q. What did Mrs. Wilson say? A. Told him her condition. If not feeling well, she told him, she didn't feel well.

Q. I am speaking of the next to the last time? A. She said she wasn't feeling well.

10 Q. Did she manifest any fear of him then? A. No, not to him but she did to me. She always told me when Doctor Collins was making his rounds she didn't care to see him.

Q. And always in your presence and his presence she never manifested any fear of him? A. No.

Re-direct Examination by Mr. Gourley:

20 Q. You say she manifested no fear; what did she do? A. She acted as though she wasn't afraid of him when in the room but she always said she didn't care to see him.

Q. Was she able so far as you know to take hospital food? A. No, very seldom. She was always supplied pretty well by Mrs. Wilson.

Q. Were the eatables Mrs. Wilson gave her a little more dainty? A. Yes, sir.

30 Q. Did you ever hear her talk about or beg to be killed? A. No, sir.

Q. Or beg to die or desire to die during your time there? A. No.

Q. When Doctor Collins was there was she morose or cheerful? A. She always seemed to very cheerful.

Q. What was her usual disposition? A. She

Beatrice B. Norris—recross

always seemed to be very cheerful and talked to me better than any patient there.

Q. How was her appetite for the things Mrs. David Wilson brought her? A. Very good.

Q. Did you ever see Doctor Collins shake her or use her in that way at all? A. No, I never did.

Re-cross Examination by Mr. Murphy:

Q. I suppose while under your treatment you were under the impression that she was perfectly rational? A. Yes, sir. 10

Q. Did it appear strange to you that with these friends visiting her so often they didn't remove her but waited until she was physically exhausted?

A. No; it didn't appear strange to me.

Q. If she was sick didn't it appear strange to you that she was detained there? A. No.

At this point the hearing was adjourned until Thursday, April Fifth, Nineteen Hundred and Twenty-three. 20

May 17, 1923.

JAMES GORMLEY, sworn as a witness for the caveators, and testifies as follows:

Direct Examination by Mr. Murphy:

Q. What is your business, Mr. Gormley? A. I am an undertaker. 30

Q. Where is your place of business? A. One hundred and fifty-four Washington Place, Pas-saic.

Q. Were your services engaged on the twenty-

James Gormley—direct

fifth of March, nineteen hundred and twenty-two to go to the institution at Greystone Park and remove Sophie Wilson from there to her home? A. Yes, sir.

Q. Who engaged your services? A. Mr. Wilson I understood, over the wire.

Q. What is his first name? A. I don't know, he is a brother-in-law of Sophie Wilson.

Q. When did you go? A. In the afternoon.

10 Q. Who went with you? A. My nephew, James Gormley, and Doctor Labelle from Saint Mary's hospital.

Q. What vehicle did you take there? A. Ambulance.

Q. What time did you arrive there? A. Between two and three o'clock.

Q. Did you find Sophie Wilson there? A. Yes.

Q. Where was she? A. In bed.

20 Q. Was she removed by you from the bed to the ambulance? A. Yes, sir, by me and my nephew.

Q. Who was present? A. Mrs. Wilson was there and the nurse who belonged to the hospital and Mr. Wilson.

Q. What was the condition of Sophie Wilson when you saw her in bed, physical condition? A. In a very weak condition, unable to move hand or foot.

30 Q. How was she removed from bed? A. We carry a stretcher in the ambulance and carried that right in and lifted her out on the stretcher, me and my nephew, and carried her out and put her in the ambulance.

Q. During that time did she do anything of her own volition? A. Never spoke a word or made any move of any kind.

James Gormley—direct

Q. Did anybody speak to her? A. No, nobody.

Q. As far as you were able to see was she able to do anything to help herself? A. She wasn't able to do anything to help herself.

Q. What was the appearance of her face, as to whether her eyes were shut or open? A. She looked very pale and her eyes were shut.

Q. Where did you notice this? A. I was in this seat alongside of the driver and was constantly looking in that front door of the ambulance thinking she might slide off but she never moved. 10

Q. Did you keep a constant lookout?

Objected to by Mr. Gourley.

Question withdrawn.

Q. Did you notice her or not all the way down from the institution to Passaic? A. Yes, sir.

Q. You say that condition you have described her to be in, she stayed in? A. Yes, sir. 20

Q. What time did you arrive in Passaic? A. I think it must have been in the neighborhood of a little after five or around that time.

Q. What did you do when you got to Passaic? A. Carried her in on the stretcher and put her on the bed.

Q. Did you notice any change in her condition when you got there? A. No change whatever.

Q. While taking her from the ambulance and putting her in bed in the Wilson home, did she do anything or say anything? A. Never made a move or didn't speak. 30

Q. What at that time was the appearance of her features? A. Very pale and weak.

James Gormley—direct

Q. What can you say as to whether her eyes were open or shut? A. Her eyes were shut.

Q. Did you at any time during her removal attempt to speak to her or call her attention to anything? A. No.

Q. Did you notice whether anybody else did? A. Nobody spoke to her.

Q. From the time you took her from bed in the asylum and until the time you put her in bed
10 the Wilson home she didn't do anything of her own volition or say a word?

Objected to by Mr. Gourley.

Question withdrawn.

Q. Who was in the ambulance coming down besides you and the driver? A. Doctor Labelle.

Q. Anybody else? A. The Wilson car, Mrs. Wilson and her husband rode in another car and
20 were ahead of us. We caught up to them on the road and took Mrs. Wilson in the ambulance and took her along.

Q. Whereabouts was that? A. Along the road some place, I cannot say where, between Morris Plains and Passaic.

Q. Was Mrs. Sophie Wilson and Mrs. Wilson under your observation all the way down? A. Yes, sir.

Q. During that time did Mrs. Wilson speak to
30 Sophie? A. No, sir.

Q. Did Sophie speak to her? A. No.

Q. At the time you left Sophie Wilson in the bed in the Wilson home who remained with her? A. Mrs. Wilson, Doctor Labelle and the other Mrs. Wilson.

James Gormley—direct

Q. When you left her did you attempt to speak to her or she to you or anybody? A. No, sir.

Cross Examination by Mr. Gourley:

Q. How long were you at the institution before you took her out? A. Probably twenty-five or twenty minutes.

Q. How long were you in her room? A. That is about the time we were there.

Q. Why were you there so long? A. Trying to dress her and get clothes on her. 10

Q. Nothing was said? A. No.

Q. They just dressed her for her trip and when they dressed her and had her ready you helped carry her out? A. Yes, sir, myself and my nephew.

Q. You sat on the front seat of the ambulance? A. Yes, sir.

Q. Looking forward? A. Sitting partly sideways to watch. There is a partition between with a window to observe the patient so I could see her. 20

Q. You weren't sitting sideways for twenty-five miles? A. We couldn't ride any other place on the ambulance.

Q. You couldn't face forward? A. Yes, I looked forward, certainly.

Q. You had the road in view? A. I didn't have to.

Q. I am asking you did you have the road in view over which you went? A. Sure. 30

Q. So you could tell us which road you came? A. That I came down, sure.

Q. You do know the road you came? A. Yes, sir.

Q. You made such observations as a person does when traveling? A. Yes, sir.

James Gormley—direct

Q. And when you got down you took this woman out and lifted her into the room where she was in? A. Yes,

Q. And that is all you had to do with her? A. Yes, sir.

JAMES GORMLEY, sworn as a witness for the caveators and testifies as follows:

10

Direct Examination by Mr. Murphy:

Q. You are a nephew of the gentleman who just testified? A. Yes, I am.

Q. Did you drive the ambulance which conveyed Sophie Wilson from Croton Park to Passaic, on March twenty-fifth, nineteen hundred and twenty-two? A. I did.

Q. You were present at the institution when Sophie was prepared to be taken from her bed and put in the ambulance? A. Yes, sir.

20

Q. What was her condition when you first saw her in the institution? A. She appeared in a very weak condition to me.

Q. Where was she? A. In bed.

Q. What was the condition of the countenance, her face? A. A very pale appearance.

Q. As to the eyes being open or closed, shut? A. When I looked at her her eyes were closed.

Q. Were you present from the time you arrived at her bed until she was removed into the ambulance? A. Yes, I helped them carry her out.

30

Q. During all that time did you hear her speak to anybody? A. I didn't hear her say a word.

Q. Did you hear anybody speak to her? A. No, I didn't.

James Gormley—direct

Q. How was she removed from bed, by herself or helped up? A. We put her on the stretcher.

Q. You mean you lifted her? A. From the bed to the stretcher.

Q. Did she make any effort herself to raise from the bed? A. She made no effort at all.

Q. Could she have? A. I don't think so.

Mr. Gourley—I object to the answer and ask that it be stricken out.

10

The Court—Strike it out.

Q. Did you notice her all the way down in the ambulance? A. I didn't. I drove all the way.

Q. Did anybody else get in your ambulance until you arrived at Passaic? A. Yes, sir, Mrs. Wilson that was at the hospital when we got there. We met her about half way down and she got into the ambulance with us.

Q. When you arrived at Passaic, what did you do with reference to Sophie Wilson? A. Carried her in her house and put her on the bed.

20

Q. Who carried her in? A. Mr. Gormley and myself.

Q. How was she placed in the bed? A. We set the stretcher on the bed and lifted her off.

Q. Did she make any efforts to help herself to get off the stretcher? A. Not at all.

Q. Did you do everything required to remove her from the stretcher to the bed? A. We did.

30

Q. What was her condition as compared with her condition when you took her from the institution, any change or not? A. The same.

Q. Did she speak or did she do anything until you left her there? A. I didn't hear her say a word all the time.

James Gormley—cross

Cross Examination by Mr. Gourley:

Q. You were the driver of the car or ambulance? A. Yes, sir.

Q. You were concerned about your own duties coming down? A. Yes, sir.

Q. Did you see Mrs. Sophie Wilson at the institution? A. Yes, sir, I did.

Q. She met you there? A. Yes, sir, we went there to the room she was in.

10 Q. I mean the woman you picked up on the way down? A. Yes, sir.

Q. Mrs. William Wilson? A. We met her at the institution.

Q. Was she there before you? A. I can't say, we were waiting for her on the road.

Q. Did they leave the institution before you? A. I think they did, before us, I don't know.

Q. Was she there when you were putting Mrs. Sophie Wilson in the ambulance? A. Yes, sir.

20 Q. Then she walked on ahead of you? A. Yes, sir, or after us, I don't know which.

Q. Did she have a car? A. Yes, sir.

Q. Then she got out of her car, her own car and got into the ambulance with the old woman? A. Not at the institution, about half way down.

Q. Half a block away or down? A. Yes, sir, half way down.

Q. Did you overtake her car? A. They were stopped on the side of the road.

30 Q. She got in alone? A. Just her, yes, sir.

Q. She got into the ambulance with the old woman and remained with her until she got out? A. Yes, sir.

Q. Was there any noticeable change in her after they left? A. She stayed about the same.

James Gormley—redirect

Annie Wilson—direct

Re-direct Examination by Mr. Murphy:

Q. Do you know why Mrs. Wilson's car was stopped on the road when you overtook it? A. I think they had tire trouble.

Q. That is the reason? A. That is the reason we picked her up.

ANNIE WILSON, sworn as a witness for the proponent and testifies as follows: 10

Direct Examination by Mr. Comstock:

Q. You are a sister-in-law of Sophie Wilson?

A. Yes, sir.

Q. The testatrix in this matter? A. Yes, sir.

Q. Do you recall the time she married your brother? A. I didn't know her then.

Q. How long ago is it? A. Four years ago.

Q. Two years before she died? A. Yes, sir. 20

Q. What was your brother's name? A. William.

Q. Where were they married? A. Paterson.

Q. Did they begin house keeping after that?

A. Yes, sir.

Q. Where? A. Passaic.

Q. In the house your brother owned? A. Yes, sir.

Q. Where in Passaic? A. Forty-eight Henry Street. 30

Q. Is that the same house as the house your sister-in-law owned when she died? A. Yes, sir.

Q. She got it from your brother?

Mr. Murphy—Her brother or brother-in-law?

Annie Wilson—direct

Answer—My brother-in-law.

Q. Who occupied that house in Passaic? A. There is a tenant in the upper floor and the other has been kept just as they had it at first.

Q. The first floor is still unoccupied? A. Yes, sir.

Q. That was where Sophie Wilson and her husband resided? A. Yes, sir.

10 Q. Do you recall the time Sophie Wilson's husband died? A. Yes, sir.

Q. What was the cause of his death? A. He was in an automobile accident.

Q. How long after the accident was it that he died? A. About four weeks, I believe.

Q. Was he confined to the hospital during that four weeks? A. Part of the time.

Q. Where was he the rest of the time? A. In the hospital.

20 Q. Where did he die? A. In the hospital.

Q. In Passaic? A. Yes.

Q. Did they take him back to the hospital? A. He was home first and then they took him to the hospital.

Q. When after her husband's death was it she was taken to the hospital at Morris Plains? A. About a week after.

Q. Did you accompany her there? A. Yes, sir.

30 Q. That was in what year? A. Nineteen hundred and twenty.

Q. In the Spring? A. Yes, sir, in May.

Q. Whom did you see at the hospital? A. The attendant.

Annie Wilson—direct

Q. Did you see the Doctors? A. Not at that time, no.

Q. What was her condition at that time? A. She was very excitable.

Q. How did you take her to the hospital? A. In an automobile.

Q. Who took her? A. The man who makes a practice of that in Paterson.

Q. Prior to taking her to the hospital at Morris Plains she was confined to a hospital in Passaic? A. In Paterson, at St. Joseph's. 10

Q. Why there? Why was she there? A. She had a nervous breakdown.

Q. How long was she in St. Joseph's? A. About five days, four or five.

Q. Do you know what doctor attended her there? A. Doctor McBride.

Q. Did you call to see her at the hospital at Morris Plains after she was taken there? A. Every visiting day and at the last when she became better I went days that were not visiting days. 20

Q. During the last part of her confinement? A. The last two weeks I was there most every day.

Q. Did you talk to her? A. Yes, sir.

Q. That nurse was in attendance at that time? A. Miss Morris.

Q. Did you meet the Doctors there? A. Sometimes, not often.

Q. Doctor Collins? A. Not unless we asked for him. 30

Q. Who would you see when you visited the hospital? A. Just the attendant who admitted the visitor and the nurse.

Q. Where would you spend your time with the

Annie Wilson—direct

patient? A. They always took her into a private room.

Q. Did they leave you alone? A. Sometimes the nurse stayed with us and after she became better the nurse left us alone.

Q. Who accompanied you on these trips? A. My husband when he was able to.

Q. Sometimes your husband? A. Yes, sir.

Q. Did she appear to be glad to see you? A. 10 Very glad.

Q. How did she make that known? A. She came to the door and kissed me good-bye and told me to come the next visiting day and she would tell me what to bring her.

Q. What did you bring her? A. Everything to tempt her appetite.

Q. What did you take her? A. Different kinds of meat and things and we had three thermos bottles of hot milk and had sugar and milk.

Q. The last two weeks you had that every day? 20 A. Yes, sir, most every day because she complained about the hospital food.

Q. How did it happen she was removed from the hospital? A. She was wanting to come home all the time and I got so I couldn't go out there every day and so I made arrangements to bring her home.

Q. With whom did you make the arrangements? A. With the nurse and I spoke to the 30 Doctors.

Q. Doctor Collins? A. Yes, sir.

Q. What did they say about taking her home? A. They said it was alright.

Q. During that period of two weeks did you notice anything wrong with her mind? A. She

Annie Wilson—direct

was very anxious to get home but she had changed considerably.

Q. How long would your visits be? A. I stayed until five and half past five and sometimes I would stay later.

Q. What time did you get there? A. Half past one or two.

Q. And stayed until five? A. Yes, sir.

Q. Did you conduct any conversations with her? A. Yes, sir.

Q. Do you remember any subjects you discussed? A. Inquired about different people and when she became very weak she told me she would like to have me take the things she left.

Q. What did she tell you she had? A. A home, Liberty bonds, I believe, and she told me things she wouldn't tell me when she was first taken out there.

Q. What persons did she inquire about? A. Neighbors and trades people in Passaic.

Q. Who were they? A. Mrs. Handley and the people upstairs and she told me where she used to go shopping and that she had shopped in Quackenbushes in Paterson and in different stores and knew the clerks and asked me to get stuff and tell the clerks it was for her and they knew just what she would like.

Q. What did she say about her house? A. told her everything was just as she had left it when she was ready to go back she could find it just as she left it.

Q. Did she express any desire to go home? A. Yes, sir.

Q. What did she say? A. She wanted also to go to a hospital in New York and get strong.

10

20

30

Annie Wilson—direct

Q. What was her physical condition? A. Very bad.

Q. Do you know what her ailment was? A. Tuberculosis.

Q. What part of the last two weeks was she up and what part in bed? A. Most of the time in bed.

Q. Who arranged to bring her home? A. Mr. Wilson and myself.

10 Q. Did you accompany the driver of the ambulance when you went for her? A. Yes, sir, I sat opposite her in the ambulance.

Q. Where did you take her? A. To Forty-eight Henry Street.

Q. Passaic? A. Yes, sir.

Q. To her old home? A. Yes, sir.

Q. Did she go to bed when she got there? A. Yes, sir, we put her in bed.

20 Q. Who did you get to take care of her? A. Two nurses from the Paterson registry.

Q. How many nurses? A. Two.

Q. Who were they? A. Miss McCarty and Miss Doherty.

Q. Did they stay with her then? A. Yes, sir.

Q. How long? A. About a week.

Q. When she expressed a desire to leave anything she had to you what did you do if anything? A. I spoke to our attorney.

Q. Who is that? A. Mr. McDermott.

30 Q. And what happened? A. Mr. McDermott went out and called on her but he knew her formerly.

Q. He went to the hospital at Morris Plains? A. Yes, sir.

Annie Wilson—direct

Q. Did you go with him? A. No, sir, not inside.

Q. He went alone? A. Yes, sir.

Q. As a result of that visit what happened? A. He told me to take her home.

Q. Was there a will drawn after that? A. Yes, sir.

Q. By whom? A. Mr. McDermott.

Q. Do you know whether he got his instructions or where he got his instructions for that will? A. No, I had a talk with him and she had a talk with him.

Q. Did you see the will after he prepared it? A. Yes, sir.

Q. Where? A. In his office.

Q. Did he hand it to you? A. Yes, sir.

Q. What did you do with it? A. I took it down to Forty-eight Henry Street.

Q. That is where she lived? A. Yes, sir.

Q. What did you do with it when you got there? A. Gave it to the Doctor and read it to her and he asked her if she was of the same frame of mind and wished still to sign it, if she did all right.

Q. Who was the Doctor? A. Doctor Butterfield.

Q. Do you know what he did? A. Yes, sir.

Q. What did he do? A. He took it in and read it to her and asked her if she wished to sign it and she said she wasn't quite ready yet. She was afraid we would take her back to the hospital.

Q. Then what happened to the will? A. They left it in the den on the desk.

Q. Afterward it was signed? A. The next day.

Annie Wilson—direct

Q. You were not present? A. I was in New York.

Q. I believe the two nurses witnessed it? A. Yes, sir.

Q. When afterward did you see it? A. When I came back to forty-eight Henry Street.

Q. After it was signed? A. Yes, sir, the next night.

10 Q. You learned she had signed it? A. She expressed a desire to see it and they took it in. It seems one nurse had had experience in taking wills in the hospital and knew what to do.

Q. It was signed? A. Yes, sir.

Q. Where was it then? A. In the room, on the dresser I think. I am not sure whether it was in the den or in her room.

Q. When did she die? A. The second or third day after.

20 Q. Did she talk about the will? A. She said you will be good to me Annie and I said yes.

Q. Did she say she had signed the will? A. She said everything is the way I want it. I said you are satisfied, and she said yes.

Q. Did she ever speak of her relative? A. No one was interested in her at all. She said there was no one she cared to leave anything to.

30 Q. During that week she was home did you hold any conversations with her? A. Well, I tried to keep her from talking because she would cough.

Q. Was there any time during that two weeks or week did she express a desire to see any relatives? A. No.

Q. What did she talk to you about? A. Different food and things to eat and that she was comfortable and so on.

Annie Wilson—direct

Q. Did you discuss her condition? A. Yes, she said she knew she had consumption and would never get well.

Q. Did Doctor Butterfield attend her during that week? A. Yes, sir.

Q. Any other doctor? A. Doctor Reynolds.

Q. Two doctors were in attendance? A. Yes, sir.

Q. Do you remember her marriage to your brother, did you attend the wedding? A. No, I didn't know her then. 10

Q. When was the first you met her? A. After they were married.

Q. How long after? A. Probably about nineteen nineteen.

Q. They were living then in Passaic? A. Yes, sir.

Q. Where were you living? A. In New York.

Q. How often did you visit them? A. Quite frequently. 20

Q. Did you know whether any of her relatives ever visited her? A. No.

Q. Did anyone notify her sister? A. Yes, sir, we had two addresses and wrote to them but got no reply.

Q. What addresses were these? A. In Shamokin.

Q. Do you know the names of the people? A. Polish names, I don't know.

Q. Where did you get these names? A. From Mr. Butz. 30

Q. He represented her husband? A. Yes, sir.

Q. He gave you these addresses? A. Yes, sir.

Q. When was it you wrote to Shamokin? A. The latter part of nineteen hundred and twenty.

Annie Wilson—direct

Q: While she was at Morris Plains or at home?

A: At Morris Plains.

Q: You received no reply? A. No.

Q: Did you write again? A. No.

Q: Did you notify the people there of her death? A. No, I got no address. We had no reply.

10 Q: Did you send it to these addresses? A. I didn't have the house addresses and I wrote to the post master but couldn't get any information.

Q: What kind of a house is this that Sophie owned in Passaic? A. A two family frame apartment house.

Q: With one apartment rented? A. Yes, sir.

Q: What is the rent upstairs? A. Thirty-five dollars.

Q: Downstairs is empty? A. Yes, sir.

Q: You know the value of it? A. I believe the assessed value is forty-five hundred dollars.

20 Q: She also had some liberty bonds? A. Eleven hundred and fifty dollars.

Q: Where were they? A. In a Paterson institution.

Q: The Paterson Savings Institution? A. Yes, sir.

Q: Was anything else left? A. Her home.

Q: We have spoken of that. A. A bank account.

30 Q: Where was that? A. In the Hoboken Trust Co.

Q: How much was that? A. I don't recall the exact figures.

Annie Wilson—direct

Q. About five hundred or a thousand dollars?

A. More than that. I couldn't give the figures.

Q. In what bank was this? A. In the Hobart Trust Company and some in the Peoples and she and her husband had joint accounts.

Q. These accounts are still in the Passaic bank? A. Yes, sir, in Passaic.

Q. After Mr. McDermott came back from the hospital did you have a talk with him? A. Yes, sir.

10

Q. I suppose he told you his conversation?

Objected to by Mr. Murphy.

The Court—The answer is yes or no.

Q. He told you he saw Mrs. Sophie Wilson?

A. Yes, sir.

Q. Did he tell you he had a conversation? A. Yes, sir.

Q. I suppose he told you what that conversation was. 20

Objected to by Mr. Murphy.

Q. As a result of that conversation he drew this will?

Objected to by Mr. Murphy.

Q. What did he do as a result of this conversation? A. He drew up the will. 30

Q. Before that at the hospital did Sophie Wilson speak to you of her relatives? A. She always said she had none.

Annie Wilson—cross

Q. The only persons she spoke of were friends in Passaic? A. They weren't any friends. They were her neighbors.

Q. Did you know who they were? A. Yes, sir, she talked about differen people she used to visit.

Q. Did she tell you what she wished done with her property? A. Yes, sir.

10 Q. What did she tell you? A. That David and I were the only ones who had done anything for her and she wished us to have it all.

Q. Did she tell that to you voluntarily? A. Yes, sir.

Cross Examination by Mr. Murphy.

Q. How long had Sophie been married when you first became acquainted with her? A. Probably two or three months.

20 Q. Just what relation are you to Sophie? A. Her husband and my husband were brothers.

Q. When you became acquainted with Sophie where did she live? A. She lived in forty-eight Henry St.

Q. Where did you live? A. New York.

Q. What street? A. One hundred and twenty-six West Sixty-sixth Street.

Q. When did you move from New York if at all? A. I haven't moved.

30 Q. Before Sophie got married to your husband's brother were you in the habit of visiting them in Passaic? A. We visited cousins who lived in the upper floor at that time.

Q. How frequently? A. Once in two or three weeks.

Q. What is the cousin's name? A. Hayden.

Annie Wilson—cross

Q. How often did you visit Sophie from New York after her marriage until her removal to Morris Plains? A. We called down there often and we were down there three times on a special invitation, Christmas, Thanksgiving and New Years.

Q. When you did visit her it was incidental to visiting Mr. Hayden? A. Not on three occasions.

Q. Those were the only occasions you came to visit Sophie? A. Yes, in holiday time.

Q. Do you remember any proceedings prior to her removal to Morris Plains? A. Yes, sir. 10

Q. What? A. The last one.

Q. Here in the court house? A. Yes, sir.

Q. Were you a witness? A. Yes, sir.

Q. Did you visit her at the hospital in Paterson? A. Not until the day she was taken away.

Q. Did you visit her at all? A. The day she was taken away to Morris Plains.

Q. How long was she at the hospital? A. Four or five days. 20

Q. When did you first learn she was in there? A. She had been there two days when Mr. Butz telephoned to us.

Q. And you didn't come to see her? A. My husband went up the next day.

Q. You did not? A. No.

Q. When was your first visit to Morris Plains after she had been removed there? A. The next week.

Q. So you went after that every visiting day? A. Not every visiting day, most every visiting day and holidays. 30

Q. During the first six months during her incarceration there did you notice any change? A. She was quite ill.

Annie Wilson—cross

Q. The first six months did you notice any change? A. No.

Q. Why did you think it necessary to go there?

A. I went to visit my husband's sister-in-law.

Q. You only visited her three times in Passaic with your husband? A. Well, she had other friends at that time.

Q. Who were they? A. Her neighbors and other friends.

10 Q. How do you know she had them? A. I don't know.

Q. Do you know any of her friends in Passaic? A. Yes, sir.

Q. Who? A. Mr. and Mrs. Handley, the people upstairs, the people living on the other side and in the back.

Q. Is that the reason you didn't visit her so frequently because she didn't have friends there? A. No.

20 Q. Why did you take such an interest in her when she was removed to Morris Plains? A. She was ill.

Q. What was her condition of health before she was taken there? A. Physical condition good, so far as I know.

Q. Robust? A. Yes, sir.

Q. Stout? A. Yes, sir.

Q. About how much did she weigh in your estimation? A. About one hundred and seventy.

30 Q. At that time she didn't complain of any illness whatever? A. No, she spoke of how good her health was.

Q. Was she physically ill immediately after having been removed to Morris Plains? A. No.

Q. Was there any change in her physical con-

Annie Wilson—cross

dition that you could notice? A. Not for some time.

Q. When did you first notice that change? A. When she was there about a year.

Q. What change did you notice then? A. She became very thin.

Q. Did that change come on her suddenly? A. Yes, sir.

Q. Did you notice it from one visit to another?

A. No, I noticed it each time and she got thin very quickly. 10

Q. Did you speak to anybody there about it? A. Yes, sir.

Q. Whom? A. I asked the doctor.

Q. What doctor? A. Doctor Collins and I tried to get her in a private room because she wished a private room and thought it would be better for her.

Q. You continued to visit regularly until the last two weeks? A. There was a space I was ill and my husband went up. 20

Q. How long were you ill? A. About four weeks.

Q. From the time you first noticed the change in her physical condition how did that change occur? A. She got thinner and thinner and became skinny.

Q. During all that time did you notice any change in her mental condition? A. She had cleared up and wanted to go to a hospital and talked rational. 30

Q. What indicated that to you? A. She talked differently.

Q. What do you mean differently? A. She

Annie Wilson—cross

could carry on a conversation and take an interest in different things.

Q. Couldn't she do that when she went there first? A. No.

Q. You have said that you would talk to her in a private room sometimes staying alone with her? A. Yes, sir.

Q. And sometimes the nurse would be there? A. Yes, sir.

10 Q. And you said after she became better. What do you mean? A. She talked rational and asked me about things.

Q. Do you mean by that when you first went into the private room she didn't talk rational? A. She didn't take an interest.

Q. I ask you what do you mean when you say she become better? A. I mean her mental condition.

20 Q. You do mean when you first went into the room she wasn't well mentally? A. No.

Q. After she was there a while how did she become better? A. I don't know how she became better but she became quiet and talked more rational.

Q. Therefore when you first seen her she wasn't quiet and didn't talk rational? A. Not all the time, no.

Q. Was she then always rational and always quiet? A. At first, no

30 Q. I don't mean the first period of her stay there. I mean the first moments of your visits there to her? A. She wouldn't always be making a noise but she wouldn't take an interest in things.

Q. Would she always talk rational to you when

Annie Wilson—cross

she first saw you? A. Do you mean the first or last period?

Q. On the occasion of your visits to her? A. Not at the first.

Q. But latterly she did? A. Yes, sir.

Q. Who first spoke about making a will, you or she? A. She did.

Q. Where was that? A. At Morris Plains.

Q. When? A. In April.

Q. What year? A. Nineteen hundred and **10**
twenty-two.

Q. What time in April? A. The first part, I don't know the day. No. In February, about six weeks before. We took her out; she spoke of it first of all.

Q. What was the occasion of her speaking of a will? A. She said she was feeling poorly and how good we had been to her and she would like for David and I to have these things and I said Sophie you are going to get well and get strong. **20**

Q. Did you think she was going to get well and strong? A. I didn't think she was going to pass off so quickly.

Q. How long before that did you notice she began to get thin? A. About ten months.

Q. When was it you first noticed it? A. A cough developed at that time.

Q. Did that come on suddenly too like the physical change? A. I didn't notice it first.

Q. Did you speak about that cough? A. Yes, **30**
sir.

Q. Did you say to her that it was tuberculosis?
A. No.

Q. Did she say that to you? A. Not until af-

Annie Wilson—cross

ter she got home. She said she thought she had consumption.

Q. Who was it mentioned the lawyer McDermott was to draw the will? A. He had been our attorney.

Q. Did she agree to that selection? A. There was no dispute about it.

Q. Did you ask her whether she knew any lawyer? A. She knew Mr. McDermott.

10 Q. Did you ask her? How did you know she knew Mr. McDermott? A. Because she had been up to see him.

Q. When? A. Before she was taken ill.

Q. How do you know that? A. She said she had and Mr. McDermott also had spoken about it.

Q. When did she say that to you? A. I asked her if she knew Mr. McDermott of this city and she said yes.

20 Q. Is that the same time you mentioned him in connection with drawing the will? A. It was the time she spoke of wishing Dave and I to have everything she had if anything happened to her.

Q. You didn't ask her whether or not she knew any lawyer? A. No.

Q. How soon after you had this conversation with Sophie was it that you saw Mr. McDermott? A. About four days after.

30 Q. What did you tell him? A. I told him that she had expressed a desire that she wished to leave my husband and I whatever she left because we had taken care of her.

Q. What did you ask him in reference to the will? A. I asked him what he thought about it.

Annie Wilson—cross

Q. Do you mean what he thought about the legality of it? A. Yes, sir.

Q. Did you have a doubt as to whether or not she could do that legally at that time? A. I didn't know anything about it.

Q. You knew she could make a will if she were competent? A. Yes, sir.

Q. What created the doubt in your mind? A. I didn't know how to go about it in any way.

Q. Why did you have a doubt that she could legally make a will disposing of all the property in your and your husband's possession? A. I didn't know anything about the law in that respect. **10**

Q. You asked a lawyer's advice as to whether she could do that? A. Yes, sir.

Q. Did you instruct him to go up to Morris Plains and have the will drawn? A. No, I was in the hospital that day.

Q. When he came? A. Yes, sir. **20**

Q. You knew he was coming? A. Yes, sir.

Q. How long did you and the lawyer stay there that day? A. I had gone up early in the morning to be with her all that day.

Q. Did you go with the Lawyer to Sophie's room then? A. I was there part of the time then.

Q. Did you discuss the subject of disposition of property? A. No.

Q. What was said about the will when you and Mrs. McDermott were in Sophie's room? A. Nothing was said while I was there. **30**

Q. Nothing about the will? A. No.

Q. Nothing about the property? A. No.

Q. Did you introduce her to Mr. McDermott?
A. No.

Annie Wilson—cross

Q. How do you know Mr. McDermott had arrived at her room? A. I forget how I found out.

Q. Were you in there when he came in? A. No.

Q. Somebody told you? A. I think the lady at the desk told me.

Q. When you learned he had come you went to the room? A. Yes, sir.

10 Q. How long did you stay there? A. Oh, just a few minutes.

Q. You were not there all the time he was there? A. No, I wasn't in the room all the time he was there.

Q. You don't know how long before you went in he was there? A. No.

Q. After he came out I presume you discussed the subject that had been spoken of? A. Yes, sir.

20 Q. You knew what disposition was to be made of the property? A. No, he said take her home. She is alright.

Q. Was that said so that she might make a will at home rather than at the institution? A. That wasn't mentioned at that time.

Q. Was Mr. McDermott the only person who made that suggestion to you? A. No, the nurse had told me she should not be there.

Q. How about the doctors? A. They said whatever I thought best.

30 Q. The doctors didn't until after you asked them if she could be removed? A. No.

Q. You desired and expressed your desire to have her taken from the institution? A. Yes, sir.

Q. And brought to your home? A. Brought

Annie Wilson—cross

to her home and was perfectly alright and was so glad to be home.

Q. How long after you and Mr. McDermott had been at Morris Plains was it that Sophie was brought home? A. The next day.

Q. And the next day you went to Mr. McDermott's office? A. No.

Q. When did you go up? A. The second or third day after that.

Q. You went to inquire as to whether the will had been drawn up? A. I talked to them and she had made that same desire to him and the nurse. 10

Q. You went to Mr. McDermott to find out whether he had drawn up the will? A. No, sir.

Q. What for? A. To see if he thought we should draw it up.

Q. I thought you had decided that? A. No, I was going to take her home. I had no cause outside of that. 20

Q. Didn't you believe Mr. McDermott when he said she was alright to bring home? A. No.

Q. Didn't you understand him to mean that she was alright to make a will? A. No, that subject was dropped.

Q. You were somewhat doubtful? A. I did not know the law.

Q. You were somewhat fearful that the will might not stand? A. I didn't think so at all. I didn't think she had relatives. I didn't know anything about it. 30

Q. You knew she had relatives? A. I couldn't find them.

Q. I understood you to say she said to you that she had no relatives that would take an interest

Annie Wilson—cross

in her. A. That she had no one at all who would take an interest in her.

Q. Didn't she give you the address of relatives in Shamokin? A. No.

Q. Where did you get these addresses? A. From Mr. Butz.

Q. You knew he got them from her? A. Yes, sir.

Q. You knew they were relatives? A. He said they were cousins but I couldn't find them. I wrote to them and to the post-office.

Q. You didn't write after her death? A. No.

Q. But you went out there? A. Not until after they started the suit.

Q. What did you go out there for? A. To see if it was a sister, to see if there was a relative.

Q. Did you meet anybody who was a relative? A. So they say.

Q. Did you see anybody who says she was a relative? A. Yes, sir.

20 Q. Who? A. This Mrs. Kulbackie.

Q. Did you have a conversation with her? A. Yes, sir.

Q. Did you make an offer to her to compromise if she would call quits on this matter? A. I said if she was a sister that we had had three years of it nursing her and if we could get together and—

Q. Did you offer her any money? A. Yes, to see what we could talk about.

30 Q. When you offered her this money did you then have any doubt as to the validity of the will? A. No.

Q. If you had no doubt, if you believed the will was legal and valid why did you offer a per-

Annie Wilson—cross

son whom you believed a mere friend, money? A. We had had three years since her husband's death, my husband being executor of the estate and we had had it for three years and we wished to have it now and not drag through the courts for several months.

Q. Is that your reason? A. Yes, sir.

Q. The third day after she came back to Passaic you say you went to Mr. McDermott's office and then got the will from him? A. Yes, sir. 10

Q. Did you read it in his office? A. Yes, sir.

Q. Did you ask him then as to whether he thought it was alright? A. Yes, sir.

Q. What did you do with it? A. I took it home to forty-eight Henry Street.

Q. That is your home? A. Mrs. Wilson's home.

Q. Who lived at that time at forty-eight Henry Street? A. Mrs. Wilson.

Q. Sophie Wilson was there then and nobody lived upstairs? A. Yes, sir, there were tenants up there. 20

Q. Who was with Sophie Wilson? A. The nurses.

Q. What did you do with the papers? A. I gave it to the doctor.

Q. Was the doctor there when you came into the house? A. I think he was or he came in shortly after I got home.

Q. What had you done with the will before the doctor came in? A. I had it in my pocket book. 30

Q. Did you mention the fact to Sophie that you had a will? A. No.

Q. Did you say anything to her about it? A. No.

Annie Wilson—cross

Q. What did you do with the paper? A. When the doctor came I gave it to the doctor.

Q. With what instructions? A. Asked him to read it to her and if she wished to sign it all right and he said that she was competent to sign it.

Q. After that you don't know what became of it? A. She wasn't ready that day.

10 Q. You don't know what the Doctor did? A. No.

Q. You didn't speak to Sophie at all about the fact that you had the will with you? A. No.

Q. Did she ask you about it? A. No, not at that time.

Q. Did she know you were coming to Mr. McDermott's office for it? A. Yes, I told her I was coming to Paterson.

Q. About what? A. To see the attorney.

20 Q. About the will? A. No, I wouldn't mention the will. It seemed cold blooded when a person was ill to get things arranged.

Q. Did it appear then to you from Sophie's condition that she was then on her death bed? A. No. I thought she would live awhile if we could keep her from coughing so much.

30 Q. You say you rode in the ambulance all the way from the institution, all the way to forty-eight Henry Street? A. The first few miles I didn't. I got out of my car at the end of two miles and got into the ambulance.

Q. Did you get out of your machine intentionally to get in that car with Sophie? A. Yes, sir.

Q. Do you remember who was in the ambulance beside yourself? A. Dr. Laman. We had a doctor accompany the ambulance.

Annie Wilson—cross

Q. Did you see Mr. Gormley? A. Yes, sir, he was in the seat driving.

Q. Where did you sit with reference to Sophie?

A. I sat opposite her and turned toward her.

Q. She was lying on the cot? A. Yes, sir.

Q. Did you speak to her? A. Yes, sir.

Q. And she spoke to you? A. Yes, sir, she answered me.

Q. What did you say? A. I asked her if she were comfortable and she was laying on her side and asked her if she wanted to be turned and how her head was and so on. 10

Q. Did she answer merely yes or no or say more than that? A. She said she was not comfortable and told me where she was uncomfortable.

Q. Did the doctor have hold of her hand feeling her pulse occasionally? A. Not after she left the hospital, no.

Q. The ambulance is open from the rear and front and the occupants in the ambulance can see each other? A. The driver couldn't see us. 20

Q. If they looked around they could? A. Yes, sir.

Q. She was carried from the bed into the ambulance on a stretcher? A. Yes, sir.

Q. Were you in the room when she was removed from her bed in the institution? A. Yes, sir, I went out early in the morning and was with her all day.

Q. Did she do anything to help herself to get out of bed? A. We dressed her. 30

Q. Did she do anything herself? A. She assisted us of course.

Annie Wilson—cross

Q. Did she sit up in bed? A. I don't remember.

Q. You know she was lifted bodily from the bed and placed on the stretcher and taken to the ambulance? A. Yes, sir.

Q. In the same manner she was taken from the ambulance to the bed on Henry Street? A. Yes, sir.

Q. Did you see Doctor Collins when she was removed from the institution? A. No, after that
10 I did, yes, I seen Doctor Collins that day.

Q. Who was present? A. He wasn't in the room at all. He was out in the office part.

Q. Didn't he see her taken out of the door and put in the ambulance? A. No.

Q. Didn't any of the attendants from the institution see that? A. Just the nurse, just Miss Norris.

Q. Didn't Doctor Collins have a conversation with Doctor Levi? A. I wasn't with them at that
20 time. I was in the room with her.

Q. Wasn't the doctor in the room? A. Doctor Laman came into the door.

Q. Wasn't Doctor Collins with him? A. No.

Q. How near to forty-eight Henry Street do you live? A. I don't know the distance.

Q. You live in New York City? A. Yes, sir.

Q. After Sophie was placed in her bed on Henry Street and two nurses provided for her care what did you do? A. Prepared meals and went
30 home and came back and got things for her, clothing, etc.

Q. When you say home you mean New York? A. I would go to New York to do my house work.

Annie Wilson—cross

Q. You would go back and forth every day?

A. No, not every day.

Q. Which day after the arrival of Sophie from this hospital at Henry Street did you get the nurse? A. I had the one the very same night, the other came the next morning.

Q. How many days did Sophie live after her removal to Henry Street? A. I think it was six days, either five or six days.

Q. Don't you know? You have said it was about a week. Do you know the day she was taken from the institution? A. I think she was home a week. **10**

Q. Do you swear to that? A. Either six days or seven.

Q. If I told you she was brought from the institution on March twenty-fifth and died on March 31st, would you agree with that? A. Yes, sir.

Q. Who first spoke of the amount of the estate that Sophie had, that is the value of the house, the liberty bonds and the deposit in the bank, you or Sophie? A. Sophie, I never mentioned it whatever. She was the one. **20**

Q. What did she say? A. Whatever she had she wanted Dave and I to have.

Q. When she said that did you ask her what she had? A. Yes, sir.

Q. If Sophie said whatever I have it will be yours why did you go into details as to what she had? A. I don't know. **30**

Q. You did? A. No.

Q. Well, who did? A. No one did.

Q. How did you learn these amounts you have mentioned? A. Eleven hundred and fifty dollars Liberty bonds and the other thousand dollars in

Annie Wilson—cross

the bank, she told me where they were and my husband was executor of her husband's estate and he was her guardian.

Q. Did you at any time call the attention of any doctor or attendant at the asylum to the fact that Sophie had contracted tuberculosis there? A. No, they told me.

Q. Who told you? A. The nurse told me.

Q. What nurse? A. I don't know her name.

10 Q. When? A. About five months before I took her away.

Q. Was that the first time you thought of it? A. Yes, sir.

Q. Wasn't that ten months before when you noticed the decline in her health? A. No.

Q. Did Sophie, from appearances, as far as you could observe, improve or get worse in her state of health after she came back to Passaic? A. She ate very hearty.

20 Q. Do you think she improved or got worse? A. She didn't get any better, she died.

Q. Did you notice any change? A. Yes, sir, she seemed very glad to be home.

Q. How long did that condition last? A. The whole week.

Q. Did she die suddenly? A. Yes, sir, she was conscious right up to the last minute.

Q. Were you present at her death? A. Yes, sir.

30 Q. How long before her death did she speak to you? A. The minister was there and I was out in the hall because the minister was talking to her and she said, Annie I can't move my feet, then she said my hands, I can't move my hands. I stepped back to the door on account of that and

Annie Wilson—cross

she said Annie my head, I can't move my head. My head and arms feel so strange and then that was the last.

Q. How long did that last? A. That part didn't last for over about ten or fifteen minutes. The minister was with her a half an hour.

Q. Did you see her the day before she died?
A. Yes, sir.

Q. Did you see her every day in Passaic? A.
Yes, sir. 10

Q. Did you speak to her every day? A. Yes,
sir.

Q. Did you at any time speak to her about the will? A. She spoke about it to me. She said you will be good to me. I said, certainly. Haven't Dave and I been good to you since you have been sick and she said, yes.

Q. After you left it in the Doctor's care did you speak to Sophie about it? A. No, it was signed. 20

Q. Did you speak to her about the will any time after you had left it with the doctor? A. No.

Q. Didn't you ask her whether she had executed it? A. No.

Q. Did you know whether she had? A. Not until after it was over.

Q. After her death? A. No, before.

Q. How did you know? A. The nurse told me. 30

Q. Did you ask the nurse or did the nurse volunteer the information? A. The nurse told me.

Q. Had you before this time spoken to the nurse about the will? A. No, only that I gave it to the doctor.

Annie Wilson—cross

Q. Did you know why the nurse was so interested in you as to tell you the will was executed?

A. I should think that would be the most natural, wouldn't it?

Q. Did you speak to the doctor after you had left the will with him about it? A. No.

Q. Did you ask him whether the will had been executed? A. No.

Q. Did you know who the witnesses to the will were? A. Yes, sir.

10 Q. Did you know whether or not Doctor Butterfield was a witness? A. Yes, sir.

Q. How did you know that? A. I seen it.

Q. You saw his name? A. Yes, sir.

Q. That is the way you know? A. Yes, sir.

Q. Do you know whether he signed his when the other witnesses signed it? A. He did not, no.

Q. How do you know that? A. I seen it before that.

20 Q. You saw it when only he had signed it? A. The nurses had signed it.

Q. Afterwards did he sign it? A. Yes, sir.

Q. At whose suggestion did he sign it? A. I don't know. I wasn't there.

Q. Did you have any conversation with him about signing? A. No, sir, not after I had given it to him the first time.

30 Q. Did you know what became of the will after the two nurses signed as witnesses? A. I think it was left in the room on the bureau.

Q. Had you seen it there? A. No, yes, I did too.

Q. Where? A. In the room on the dresser.

Q. Laying on top of the dresser? A. Yes, sir.

Annie Wilson—cross

Q. Open? A. Yes, sir.

Q. When did Doctor Butterfield get hold of it?

A. The following day.

Q. Did you see him? A. No, I was in New York at the time.

Q. Did you speak to him about it? A. No.

Q. When did you next get possession of it? A. When I returned to Passaic that night.

Q. Who gave it to you? A. One of the nurses.

Q. In the meantime Doctor Butterfield had signed it? A. Yes, sir. 10

Q. Did he tell you he had signed it? A. No, I didn't see him.

Q. What day was it when you returned and got the will in reference to the day of Sophie's death? A. I don't know.

Q. What did you do with the will? A. I don't remember whether I left it there in the room or whether I put it in the writing desk.

Q. Was it in a envelope? A. No. 20

Q. Was it loose? A. Yes.

Q. Did you leave it that way? A. Yes, sir.

Q. You have testified every time you visited the hospital Sophie would greet you cordially, thank you for the things and converse with you about her friends and other persons. Did that continue for every visit up to the last? A. She didn't do that at first but at the last, yes. She would come to the door too.

Q. Did she come to the door and do that every visit? A. After she became ill she couldn't come to the door, of course. 30

Q. When was that? A. The last two or three weeks she didn't walk to the door outside of the corridor.

Q. When did Doctor Reynolds come to Henry

Annie Wilson—cross

Street, before or after Doctor Butterfield? A. He came right after we brought her from the hospital.

Q. Before Doctor Butterfield came? A. Yes, sir.

Q. When he came did you have the will? A. Not at that time.

Q. When did you speak to him about it? A. I don't just remember.

Q. Before her death? A. Yes, sir.

10 Q. What did you say to him? A. I said if he was still willing that I had the will drawn up.

Q. Why did you think it necessary to say that to Doctor Reynolds. He wasn't a witness to the will? A. No.

Q. Why? A. Well, I was acquainted with Doctor Reynolds.

Q. Did you ask him as to his opinion as to whether she could make a will? A. Yes, sir.

Q. Whether it would be legal? A. Yes, sir.

20 Q. Why? Did you have a doubt as to whether she could make a will that would be legal? A. I don't know why.

Q. Was it because of her physical condition or her mental condition or both? A. Her physical condition at that time.

Q. I thought you said she was in good physical condition up to the moment of her death? A. She was sick in bed.

30 Q. Did you also ask Doctor Butterfield's opinion as to whether she might make a valid, legal will? A. No, I didn't ask his opinion.

Q. Why didn't you ask him if you knew he was going to be a witness? A. I don't know why.

Q. You did ask Doctor Reynolds? A. Yes, sir.

Arey A. Butterfield—direct

Q. In this will you and your husband are the sole beneficiary? A. Yes, sir.

Q. You get all the estate of Sophie Wilson, don't you? A. Yes, sir.

Q. You get practically all of it, I think? A. Half and half.

DOCTOR AREY A. BUTTERFIELD, sworn as a witness for the proponent and testifies as follows: 10

Direct Examination by Mr. Comstock:

Q. You are a practicing physician of New Jersey? A. Yes, sir.

Q. And have been how long? A. Eight years.

Q. Have you been practicing in Passaic or Paterson? A. In Maine and Passaic.

Q. Do you remember being called in to take care of Mrs. Sophie Wilson of Passaic? A. I do. 20

Q. About March 25th nineteen twenty-two? A. It was March 29th.

Q. What was her physical condition, what was her ailment? A. She was suffering from bronchitis at the time.

Q. Did you examine her? A. Yes, sir.

Q. What was your diagnosis? A. Bronchitis with suspected tuberculosis.

Q. Was she in bed? A. Yes, sir.

Q. Weak? A. Yes, sir. 30

Q. Did you talk to her? A. Yes, sir.

Q. What was your conversation with her? A. I asked her how she was feeling and she said she was weak, tired.

Q. Did you get a history of the case from her?

Arvey A. Butterfield—direct

A. Not much of a history. I talked the condition over with Doctor Reynolds.

Q. What else did she say to you? A. There wasn't a great deal of conversation due to the fact that she was weak and didn't feel like talking.

Q. As far as you talked to her did she seem to be rational? A. Yes, sir.

Q. Did she seem to be normal mentally? A. Yes, sir.

10 Q. Did you meet Mrs. Wilson who just testified here? A. I did.

Q. Where did you meet her? A. At the time at forty-eight Henry Street.

Q. Did she call you in on the case for this person? A. No, sir.

Q. Who called you in? A. Dr. Reynolds.

Q. Did you afterward have handed to you what purported to be a will? A. Yes, sir.

20 Q. Who gave you that? A. The nurse handed me that. It was in the room on the dresser.

Q. When, do you recall? A. On the thirtieth of March, nineteen hundred and twenty-two.

Q. What did you do with that? A. I read the will to Mrs. Wilson.

Q. What comment did she make upon it? A. I read the will and asked her if she wanted me to sign it as a witness and she said she did.

Q. Did she say anything about the contents? A. Yes, sir.

30 Q. I believe at that time had already been signed by the nurses? A. Yes, sir.

Q. When did you see her again after that? A. I didn't see her after that.

Q. Did she consent to the terms of it when you read it?

Arey A. Butterfield—cross

Mr. Murphy—I object to the question on the grounds that it calls for a conclusion.

Question withdrawn.

Q. What did she say about it when you read it to her? A. I read the will and asked her if she wished me to sign it and she said she did.

Q. That is all she said? A. Yes, sir.

Cross Examination by Mr. Murphy:

10

Q. What city in Maine did you practice? A. Danforth.

Q. When did you come to Passaic? A. Nineteen hundred and fourteen.

Q. Have you been there ever since? A. Yes, sir.

Q. What time of the day were you called in to see Sophie Wilson? A. I think it was before noon.

Q. Do you remember that distinctly? A. No, sir. 20

Q. Might it have been the afternoon? A. It could have been then.

Q. Was Dr. Reynolds present when you went in? A. No, sir.

Q. These people were strangers to you I understand? A. Yes, sir.

Q. And you went at his request? A. I was to meet him there and I arrived before he did. He arrived shortly after. 30

Q. Was it a consultation? A. No, sir.

Q. What was the purpose of your attendance? A. I worked with Doctor Reynolds, assist him, and he was very busy and asked me if I could

Arey A. Butterfield—cross

come in on the case with him so he could see her one day and I the next.

Q. Did he mention there might possibly be an operation required? A. No, sir.

Q. It wasn't such a case? A. No, sir.

Q. You called his attention to that fact then? A. No, sir.

Q. Didn't you think it was rather strange when you were called in when there was no case of surgery to be performed? A. No, sir.

Q. You were not called in as a consultant? A. No, sir.

Q. Did you ask him for what purpose you were called? A. He told me when he called me.

Q. You have said he called you when he had surgical operations? A. No, I didn't say that.

Q. Did he call you in all cases? A. No, sir.

Q. Do you know of any special reason why he should call you on this case? A. Yes, sir.

20 Q. What was the reason? A. To help him out.

Q. In cases of this kind? A. Yes, sir, I would make a call one day and he would make a call the next day.

Q. Who was with Sophie Wilson when you first saw her? A. Doctor Reynolds and two nurses.

Q. I thought you got there ahead of him? A. I did.

30 Q. You didn't go in to see her before he came? A. I did not.

Q. You waited for him? A. I did.

Q. You both went in together? A. I did.

Q. Who attended to her, you or Doctor Reynolds? A. Doctor Reynolds.

Arey A. Butterfield—cross

Q. Did you do anything? A. Examined her.

Q. What examination did you make? A. Of her lungs and this—what I naturally do when examining a person.

Q. Were you asked to make that examination by Doctor Reynolds? A. Yes, sir.

Q. You diagnosed it as a case of bronchitis? A. Yes, sir, with suspected tuberculosis.

Q. Did you make any tests? A. No, sir.

Q. Why do you say suspected? A. Because I didn't think she had it. 10

Q. Every case of bronchitis is close to suspected tuberculosis? A. No.

Q. During that visit, that was the first visit you made to her, did you say anything to Sophie Wilson? A. Nothing except what I have stated.

Q. Did you say anything to her? A. Yes, sir.

Q. What did you say? A. Asked her how she was feeling.

Q. In those words? A. Practically. 20

Q. How did you say it? A. I says How do you feel.

Q. What did she say? A. Said she was feeling weak and tired.

Q. Did she say all of that? A. Yes, sir.

Q. Just use her words? A. That is as near as I can state them.

Q. What are they? A. I am feeling weak and tired.

Q. Did you notice whether she said these words with a foreign accent or not? A. No, sir. 30

Q. Plain English? A. Yes, sir.

Q. Did Doctor Reynolds say anything to her? A. Yes, sir.

Q. What did he say to her? A. I don't remember. He asked her a few questions.

Arey A. Butterfield—cross

Q. Don't remember anything he said? A. He asked her if she was feeling better or how she was feeling and as I remember she said she was feeling tired.

Q. He asked practically the same question you did? A. Yes, sir.

Q. And she replied in practically the same manner to both of you? A. No, sir.

Q. Did you ask before him? A. No, sir.

10 Q. Why did you think it necessary to repeat his question? A. I didn't think it necessary but thought I would say something.

Q. Aren't you trying now to remember some words you thought were said, you hoped were said? A. No.

Q. Do you positively swear that you repeated practically the same question Doctor Reynolds asked of this woman immediately after him and she repeated the same answer to you as you have said? A. Yes, sir.

20 Q. And give no reason for it other than what you have said? A. That is all.

Q. How long did you stay with her? A. I was in the house about ten minutes. I left ten or fifteen minutes after Doctor Reynolds arrived.

Q. Were the two nurses in the room at that time? A. Yes, sir.

Q. Did they ask the question too? A. Not in my presence.

30 Q. You don't remember the hour of the day it was? A. No, sir.

Q. Are you sure about the day? A. The twenty-ninth, yes, sir.

Q. How do you fix it? A. I was to call the next day and I did and he was to call the follow-

Arey A. Butterfield—cross

ing day and the following day he notified me, that night I believe, that she had died.

Q. You stayed there about ten minutes that day. When did you see her next? A. The next day.

Q. What hour? A. In the forenoon.

Q. Sure? A. Yes, sir.

Q. Between what two hours? A. Around ten o'clock I believe.

Q. Who was there? A. The two nurses. 10

Q. Do you know them? A. Yes, sir.

Q. Did you see her that day? A. I made a consultation, made a call and examined her condition but didn't prescribe for her.

Q. When you came in that day what did you say to her? A. I said Good-morning.

Q. What did she say? A. She said good-morning.

Q. How was she lying in bed? A. On her back, bolstered up in bed. 20

Q. Were her eyes open or closed? A. Open.

Q. Did she look at you when you came in? A. Yes, sir.

Q. What did you do, feel her pulse? A. Yes, sir.

Q. What was her condition? A. Weak.

Q. In your judgment, then, what probable time would you give her to live? A. That is a hard question. If I remember correctly I didn't think she would live a week. I am under that impression. 30

Q. You know she died the following day? A. Yes, sir.

Q. Were you surprised at her death? A. Yes, because I was intending to go the next day.

Arey A. Butterfield—cross

Q. Was that the reason you were surprised she died? A. Not necessarily.

Q. Were you surprised she died in her condition? A. No.

Q. These were the only two visits you made? A. Yes, sir.

Q. When did you see the will? A. The first visit.

Q. How was it called to your attention then?

10 A. I had the will there and Doctor Reynolds read it.

Q. You had the will there? A. I said I seen it there.

Q. Who had it? A. It was lying on the dresser.

Q. Who called your attention to it? A. I seen a piece of paper lying on the dresser and saw Doctor Reynolds pick it up.

20 Q. Did he say anything to you about it? A. No.

Q. What did he do with it? A. He read it.

Q. Sophie was then in bed on her back? A. Yes, sir.

Q. Were her eyes open or closed? A. Closed.

Q. In the same room where this will was picked up off the dresser? A. Yes, sir.

Q. Had Doctor Reynolds spoken to you before going in about this will going to be read? A. No, sir.

30 Q. Was it a surprise to you or not when he picked up this paper and read it to Sophie? A. I never thought anything about it.

Q. Did you know then it was Sophie's will? A. Yes, sir.

Q. You didn't know that until you heard it read? A. No, but I surmised.

Arey A. Butterfield—cross

Q. Did Doctor Reynolds read that out loud or how? A. He read it out loud.

Q. Loud enough for everyone in the room to hear it? A. Yes, sir.

Q. Did he say anything to anybody before he read the will? A. There was a conversation we had when we first went in.

Q. When he picked up the paper and proceeded to read it did he say anything to anybody as to what he was going to do? A. Yes, sir. 10

Q. What did he say? A. He said here is a will and I am going to read it to you.

Q. To whom? A. To Sophie Wilson.

Q. Was he speaking then to Sophie? A. Yes, sir.

Q. Then he read it? A. Yes, sir.

Q. What did Sophie do or say during this time? A. She didn't say anything.

Q. Did you notice a change in her condition during the time the paper was read or after? A. No. 20

Q. After he read it what did he do with it? A. He asked her if she wished him to sign it.

Q. Did she say anything? A. I didn't answer that last question properly.

Q. Then answer it properly. A. He asked her if she cared to sign it.

Q. Was that every word he said? A. Yes, sir.

Q. What did she say, if anything? A. She said she was tired. 30

Q. Is that all she said? A. And didn't feel like doing it.

Q. And then what happened? A. He talked with her a few minutes.

Arey A. Butterfield—cross

Q. We are very anxious to know what he said; so please don't be general if you can be particular. A. He said, don't you want to sign it today and she said she didn't feel like it.

Q. He asked her to sign it and she said no? A. She didn't feel like it, she was tired and didn't feel like it.

Q. Did you see from her condition she was able to sign it if she wished? A. I thought she was.

10 Q. Did you at any time while she was lying in bed notice whether she used her hands? A. Yes, sir.

Q. How did she use them? A. Put them up to her face.

Q. What was done with the will when she said what you have said? A. Put it back on the dresser.

Q. In the same form it was? A. Yes, sir.

20 Q. How many times did he ask her whether she cared to sign it? A. Twice, two or three times, something like that.

Q. Did you join with him in asking her to sign it? A. No, sir.

Q. Did either of the nurses? A. I think they asked her.

Q. You only think that, you don't know? A. I know they talked to her.

Q. Do you know what they said? A. No.

30 Q. All this I understand you to say was in less than about ten minutes? A. Between ten and fifteen minutes.

Q. You have said ten minutes. Now you say ten to fifteen, which is right? A. I didn't take the time. That is about that time, ten to fifteen minutes.

Arey A. Butterfield—cross

Q. You came the next day. Was your attention then at any time called to this will or paper?

A. Yes, sir.

Q. By whom? A. The nurse.

Q. Which nurse? A. Miss—I forget her name. She is a graduate from St. Mary's.

Q. What did she say? A. She said here is the will. She wishes you to witness it.

Q. Was the other nurse present? A. Yes, sir.

Q. Did she say anything to you? A. No, sir. 10

Q. She said here is the will and she handed the paper to you? A. Yes, sir.

Q. What did you do with it? A. I read it.

Q. That was the first time you saw it? A. No, sir.

Q. That was the first time you read it? A. Yes, sir.

Q. While Doctor Reynolds was reading it you didn't look over it? A. No, sir.

Q. This was the first time you actually saw it then? A. A. No, sir. 20

Q. Did you read it out loud? A. Yes, sir.

Q. To whom did you read it? A. Mrs. Wilson and the two nurses standing by.

Q. Were you asked to read it out loud? A. No, sir.

Q. Why did you volunteer to do so? A. I knew that was what should be done.

Q. You knew it had been read the previous day? A. Yes, sir. 30

Q. When you saw it then had it been signed by anybody? A. Yes, sir.

Q. Whose names were on it? A. The two nurses.

Q. Any other names? A. I don't remember.

Arey A. Butterfield—cross

Q. What did you do? A. I read it and asked Mrs. Wilson if she wished me to sign it.

Q. Did you volunteer that or was it suggested that you ask her? A. I knew enough for that.

Q. You think you had enough legal knowledge? A. Yes, sir.

Q. Why were you interested in her will? A. From courtesy.

Q. Nobody had spoken to you about it? A. **10** No, but it was my idea they wanted this will made out.

Q. How did you know that if nobody else spoke to you about it? A. It was right there before me. I supposed the people wanted it executed properly.

Q. You think to have it executed properly you would have to sign it too? A. Yes, sir.

Q. Which of the nurses were in the room at that time? A. Both.

Q. That was the 30th of March, was it not? **20** A. Yes, sir.

Q. You have taken an affidavit in this matter, have you not in the surrogate's office? A. Yes.

Q. Is that your signature? A. Yes, sir.

Q. In which you swear that Anna M. Doherty, a subscribing witness to the will and Edna McCarty, the other subscribing witness to the will and that they and you signed the will. When the said will was signed by the testatrix and by her published and declared, etc. That is not true? A. **30** Yes, sir.

Q. Did she sign it when you signed it? A. No, sir.

Q. She had signed it? A. I don't know whether she had signed it or made her mark.

Q. She didn't sign in your presence? A. No.

Arey A. Butterfield—cross

Q. You swore here she did that and saw her make her mark? A. No, if I have said that it is not true.

Q. You now swear that Sophie Wilson signed her name or made ther mark on this will in your presence, do you? A. Yes, sir.

Q. On what day did she do that? A. March 30th, nineteen hundred twenty-two.

Q. How did she do it? How was the will brought to her so she could sign it? A. I had the will. I don't remember. But I remember I signed it at her request. 10

Q. You have sworn she signed it in your presence. I am asking you how she signed? A. I am telling you as far as I can remember.

Q. Where was she when she signed it? Lying on her back? A. In bed, I believe.

Q. Who brought the will to her? A. I had the will.

Q. Did you hold it in your hand? A. I don't remember. 20

Q. Did you place it on the bed? A. I don't remember.

Q. Did you sign it then or when? A. I don't remember.

Q. Did she sign her name or sign by making a mark? A. I cannot say that.

Q. You have sworn she signed in your presence? A. It has been so long I have forgotten. 30

Re-direct Examination by Mr. Comstock:

Q. The last time you saw her at the time you signed this will you asked her if she wanted you to sign it? A. And she said yes.

Q. And nothing else? A. No.

Robert J. McDermott—direct

ROBERT J. McDERMOTT, sworn as a witness for the proponent and testifies as follows:

Direct Examination by Mr. Gourley:

Q. You are a practicing attorney in this city?

A. Yes, sir.

Q. You knew Sophie Wilson in her life time?

A. Yes, sir.

10 Q. How long had you known her? A. I met her shortly after her husband died. I can't recall the date of that but it is several years ago, I believe. I had known her casually before that here but I was never intimate with her. She had been recommended to me by somebody in Passaic and came to consult me about her affairs.

20 Q. How frequently did she come? A. She came possibly half a dozen times and seemed to be laboring under a terrible fear. She was very nervous and after I got quite well acquainted with her I told her you better calm yourself or something terrible might happen to you. She says I know it but I can't do it. The shock of my husband's death has been so much I can't pull myself together. I said you know you have an interest in your husband's estate. I said have you any relatives or friends and she said the only ones I have any interest in is my brother and sister. I said your brother and sister and she said I call them my brother and sister but they are my brother-in-law and sister-in-law. I said if anything
30 happened to you where do you want your property to go to and she said to them. I said you ought to draw a paper to that effect and I told her if she would come in some time later and execute

Robert J. McDermott—direct

it I would have her will drawn up but she never came back.

Q. When was the next you learned of her after that? A. I did learn she had been adjudged insane. I believe after she had been in the insane hospital a long time Mrs. Wilson came to see me.

Q. Mrs. David Wilson? A. Yes, and told me Sophie had fully recovered her mental condition.

Q. Did you meet Mrs. David Wilson before that visit? A. Yes, I met her and her husband. He had some little thing to take care of with reference to the husband's estate. 10

Q. Did he come to you with Sophie Wilson? A. No.

Q. Did Mrs. Wilson? A. No.

Q. Did she come with her husband? A. Mrs. Wilson had come with her husband, but Sophie Wilson had never come with her or David Wilson and I says that is very interesting to me because I would like to know that. I am interested sufficiently to know to go to the institution and I go in my automobile and went out there. 20

Q. Was that visit to the state hospital suggested by Mrs. David Wilson? A. No, it was on my own volition, I went to the New Jersey State Hospital and there asked for Doctor Curry and I was introduced to him and asked him if he knew Sophie Wilson. He said no, I don't know all the patients in this institution. I says do you know anything about her mental condition and he said no. I said what means have you of ascertaining and telling me of the mental condition of Sophie Wilson, a patient of your institution. Well, he says, I haven't any means. I think Doctor Collins has charge of that department and he would very likely get his information from the nurse 30

Robert J. McDermott—direct

in attendance but I will call Doctor Collins in and we three talked together and then he suggested we go out and see the nurse and Doctor Collins and I walked out in the corridor and met Miss Norris. I asked her if she knew Sophie Wilson and she said yes, very well. How is she, I says. She has been in fine mental condition some time. I says can I see her. She says I think you may but I must find out if she is sleeping. I wouldn't advise you to awake her. She went inside of her ward and found that she had had a hard day and found that she was upstairs. Doctor Collins and I came back to see Doctor Currey and told Doctor Currey that Miss Norris had informed me that Mrs. Wilson was alright. He said, well that is where we get our information from and I asked him about taking her out and he says in these cases I like to have a commission appointed to have her adjudged insane but you may have her taken away. I informed Mrs. Wilson and David Wilson, her husband, of what I had learned. I understood she wanted to die there although I don't think that is true and then I informed Mrs. Wilson that Mrs. Sophie Wilson had made a will in her favor. I said I wanted to be very careful on account of this condition having been there but I said if I were you I would call in two nurses who do not know Sophie and then I would get a physician in attendance and have these three sign whether she is competent and capable of executing a will and I sent the will to Passaic and put it in the custody of these nurses.

Q. How did it get into the custody of these two nurses? A. I told Mrs. Wilson to take it. I had drawn that will before that and I said now

Robert J. McDermott—cross

it would be well. I cannot bother with this thing any more. I cannot run down with this thing and find out if she is capable or competent. I don't think that I would be a judge. You give it to the nurses and the doctor and let these three be the sole judges and about ten days or so, well, they called me up and told me about the nurses and I had a consultation with Doctor Butterfield and we had the will probated.

10

Cross Examination by Mr. Murphy:

Q. Do you remember the date of your visit to the State Hospital? A. No, I cannot recall that.

Q. Can you tell approximately how soon before her removal? A. I believe she was removed a day or two afterwards. I don't know that but it was all done on my advice.

Q. You didn't notice her condition because she was asleep when you got there? A. No, I didn't know anything about her mental condition before that.

20

Q. You didn't notice her physical condition at all? A. No.

Q. It was a few days before that Mrs. David Wilson had gone down to you and informed you she had improved? A. She came into my office, not on that business at all, but told me in the course of the conversation, she told me Sophie had recovered her mental condition.

30

Q. I would like to know when that was with reference to the time you went up there? A. I cannot tell you.

Q. Was it the same week? A. That I went up there?

Q. Yes. A. I think it was.

Robert J. McDermott—cross

Q. It was all within two weeks before her death? A. Yes, I may say it was. I may say this, Mr. Murphy. I asked Doctor Curry about removing her from the institution.

11 10 Q. When Mrs. David Wilson saw you and informed you or told you that Mrs. Sophie Wilson was better did she take your advice about whether she could make a will? A. No, she didn't, as I recall the conversation. Sometime previous I had had this draft of the will in my office which had never been signed. The fact was she had never come back to sign it and I had heard she had been adjudged insane and sent to the asylum.

Q. You heard Mrs. David Wilson testify this morning? A. No, I didn't hear at all. I came in late.

21 20 Q. The truth is when you went up to draw the will you went of your own initiative? A. I went up to find out if the woman had recovered her mental condition and had been informed by the nurse whom the doctors referred me to that she had.

Q. Was that the only reason that prompted your visit to her? A. Yes.

Q. The fact that you learned she had recovered? A. Yes.

30 Q. You had no interest in her? A. Absolutely none. I only knew she had lost her mind and had been adjudged insane and the news came to me she had recovered her mental condition. All these instructions had been given to me prior to her losing her mind, not on my visit to her.

Q. What instructions? A. If she had any property she wanted it to go to those two.

Robert J. McDermott—cross

Q. Two years before? A. I didn't know whether that same condition existed in her mind that is why I told the nurse to find out if it was in the same condition.

Q. You don't know how long it was before she was committed there that she had this conversation with you about the disposition of her property? A. No, I don't. I believe Mr. Butz was the counsel then.

Q. You say Mrs. David Wilson when she told you about Sophie a day or so before you went up didn't speak at all about Sophie's will? A. I don't think she did. I acted entirely on my own initiative and then I had my recollection of it. 10

Q. It was about two years before that? A. Yes. I don't know how long it was prior to that time but it was before she was adjudged insane.

Q. When you paid this visit to Greystone Park was it your intention to have her make a will? A. I went up there to find out her mental condition and thought that would be the proper place to find out. 20

Q. What was your purpose? A. To find out if she had recovered her mind and still intended to carry out her previous intentions. If Doctor Curry hadn't consented to having her removed from the hospital I would then have delivered the will to her.

Q. Did you tell Doctor Collins or Doctor Curry you had visited the institution for that purpose? A. I don't think I did. We had a general talk about things. I don't know just all that took place there. 30

Q. Where did you get the data from Mrs. Sophie Wilson to draft the will? A. From her.

Robert J. McDermott—cross

Q. From Sophie? A. Yes, sir.

Q. Where? A. In my office.

Q. Two years before? A. I suppose it would have been.

Q. You have the data still written? A. I drew the will expecting she would come back.

Q. It wasn't a will? A. It was a draft of a will but she never came back.

10 Q. Did you just redraw that exactly as you had it in your office? A. Yes, sir, it was a very brief will providing for the payment of debts, residue to go to these two.

Q. When you called at the institution you didn't speak to her and didn't speak to her until she died? A. No, never spoke to her after that.

Q. You don't know whether she had intended to make any change in that draft? A. No, I don't know.

20 Q. Did you speak to Mrs. David Wilson? A. I spoke to her after I came back and advised her to get the nurse.

Q. Did you tell him or her the contents of the will? A. I said she had requested me at that time to make a will in your favor, in favor of you and your husband.

Q. And was that the last time she was in your office? A. Yes, sir, I never seen her there after that.

30 Q. Who took the will from the office? A. I told Mrs. Wilson to take it down.

Q. That was the last you saw of it? A. Yes, sir.

Q. Until it was offered for probate? A. Yes, sir.

Q. When she took the will from the office was any conversation had? A. I said you don't know anything about the execution of this will and I

Anna Doherty—direct

am not going down there to lay around and see Sophie Wilson. I cannot afford to come so if I were you I said you give this will to the nurses and the doctor and then let them be the judges of her mental condition and that is all I had to do with it.

Q. What did you do with the old draft of the will? A. I destroyed that.

Q. Did you tell Mrs. Wilson you had that? A. What? 10

Q. This old draft, this memorandum? A. I told Mrs. Wilson about Sophie's instructions to me before she lost her mind.

Q. Could you have used the old draft? A. No, sir, it had been dated too far back and I thought it would be best to redraw it and I had it redrawn.

ANNA DOHERTY, sworn as a witness for the proponent and testifies as follows: 20

Direct Examination by Mr. Comstock:

Q. You are a trained nurse? A. Yes, sir.

Q. You attended Mrs. Sophie Wilson? A. Yes, sir.

Q. Did you sign the will as one of the witnesses? A. Yes, sir.

Q. I believe you testified in this case once before? A. Yes, sir.

Q. When were you called in to attend Mrs. Sophie Wilson? A. I understood it was the same day she came from the hospital or the next day. 30

Q. March 25th nineteen hundred and twenty-two? A. Yes, sir.

Anna Doherty—direct

Q. How long did you stay there? A. About six or seven days.

Q. You stayed until she died? A. Yes, sir.

Q. When did you first see this will you signed as a witness? A. I saw it in the doctor's hands, but that day I didn't know what it was.

Q. What doctor? A. Doctor Reynolds and Butterfield.

10 Q. What did Doctor Reynolds do with the will? A. He left it on the desk in the den.

Q. Did you hear him read it to Sophie Wilson? A. Yes, sir.

Q. Did he request her to sign it? A. He asked her if she wanted to and she said she didn't feel like it. She said she was tired and didn't feel like it that day.

Q. It was the following day she signed it? A. I believe it was, or two days later.

20 Q. How did you come to sign it then? A. She told me she wanted to sign it.

Q. Just what did she say? A. She said she wanted to sign that paper and that is the first time I knew just what it was.

Q. Did you get it? A. Yes, sir, and took it in to her and asked her if she wanted to sign it. She said yes, and I read it to her and asked if she wanted to sign it again.

Q. Who was present then? A. Miss McCarty.

30 Q. What did you do then? A. Propped her up with a pillow under her shoulders to be a little bit higher and she took the pen in her hand.

Q. Could she write her name? A. No, she made a cross.

Q. How long after that was it she died, two or three days? A. Yes, sir.

Anna Doherty—direct

Q. While you attended her did you have any conversations with her? A. Yes, sir, I asked her how she felt. I used to ask her every day how she felt and she realized her condition and also realized she was getting weak.

Q. What was her mental condition? A. Absolutely normal. The same from the day I went there until she died.

Q. You saw nothing irrational about it? A. No, sir. 10

Q. She made no queer remarks? A. No, sir, we used to leave her alone and if I thought she wasn't normal I would not leave her alone for a moment.

Q. Who was present when she died? A. Miss McCarty. I was there. Miss McCarty was there and I am most sure Mrs. Wilson was there.

Q. Do you recall when Doctor Butterfield signed this will? A. Yes, sir.

Q. When did he do so, the same day or the day after? A. The day after she signed it. 20

Q. How did he come to sign it? A. I told him she had signed it and we had signed it and asked him if he was going to sign it and he asked the patient right in my presence, read it to her and asked her aloud if she wanted him to sign it. He laid it on the dresser right in her presence and signed it.

Cross Examination by Mr. Murphy: 30

Q. Sophie was there when you got there? A. Yes, sir.

Q. Where was she? A. In bed.

Q. You came there what hour of the day? A. Sometime in the morning, before lunch.

Anna Doherty—cross

Q. What was the first thing you said when you went into Sophie's room? A. I said how-do-you-do to her and asked her how she felt.

Q. You say she was lying in bed? A. Lying on her back.

Q. How did you think she looked? A. She looked quite thin but she looked normal. I didn't know there was anything the matter with her mental condition at all.

10 Q. How could you judge mental condition? A. You usually can tell by the expression of their eyes.

Q. What is the first word you said to her? A. When I went in the room I asked her. I said how-do-you-do to her and asked her how she felt.

Q. What did she say? A. She said she was weak.

Q. Use her words if you can? A. She just said I am very weak.

20 Q. Nothing else? A. That is all.

Q. Then you attended to her during that whole day? A. Yes, sir.

Q. What did she take in the way of nourishment? A. She took anything we gave her.

Q. What did you give her? A. Soup, broth, and she took plenty of milk.

Q. How many times did you give her nourishment that day? A. Every hour, something like that.

30 Q. Did she take it? A. Yes, sir, she appeared to be very hungry.

Q. Did you speak to her when you gave her nourishment? A. Sometimes.

Q. I am speaking of the first day? A. I asked her if she had enough or did she want any more.

Anna Doherty—cross

Q. What did she say? A. No, she had enough or was satisfied.

Q. Was anybody else present in the room besides you when she took nourishment? A. Sometimes Mrs. Wilson would be there.

Q. How was she placed to take nourishment? A. She used to have two pillows under her head, sometimes three.

Q. Did you lift her up alone? A. No, called the other nurse. 10

Q. Did she take nourishment laying down? A. Only drink.

Q. Any nourishment? A. She sometimes took something to eat or some milk or something and different times I went into the room and found her trying to help herself.

Q. How? A. Reaching for the glass of milk on the table.

Q. Did she ever get it? A. No, because I kept it away where she could not get it. 20

Q. How late in the evening did you leave there? A. I slept there.

Q. When were you relieved by the other nurse? A. At seven o'clock.

Q. When did you go on in the morning? A. Seven o'clock.

Q. Did you notice any change in her condition the second day? A. No, about the same.

Q. Did she take just as much nourishment the second day as the first? A. Yes, sir. 30

Q. With the same apparent relish and appetite? A. Yes, sir.

Q. And expressed the same words technically to your question? A. Yes, sir.

Q. When was her attention first called to this

Anna Doherty—cross

paper or will? A. The day the doctors had it there.

Q. What did they do, what day was that? A. I think it was about two days before she signed it or three.

Q. Who brought it to your attention first? A. I seen it in the doctor's hands.

Q. What doctor? A. I don't know which one brought it in.

10 Q. You don't remember that day exactly, do you? Do you remember it? Do you remember what day of the week was that? A. No, I don't.

Q. Do you remember the day of the week she died? A. I think it was the 31st.

Q. How many days before that was it that you saw this will in the doctor's hands? A. About three or four days, I just don't remember.

Q. In the forenoon or afternoon? A. In the forenoon.

20 Q. Who spoke about it first? A. The patient herself mentioned it to me.

Q. Before you saw it? A. Yes, sir.

Q. What did she say? A. She said she wanted to sign the papers.

Q. Nothing else? A. I got it for her and said she wished she had signed the paper. I said do you want to sign it and she said yes.

Q. You hadn't seen it then? A. I knew it was there but I hadn't looked at it.

30 Q. You hadn't seen it? A. I knew the doctors had it.

Q. How did you know if you hadn't seen it? A. I seen it in I don't know which doctor's hands. I seen it in one of their hands.

Q. You said you knew it was there before you saw it. A. I knew there was a paper. I didn't know it was a will to be signed.

Anna Doherty—cross

Q. You knew they had a paper but didn't know it was a will? A. No, the doctors had had it.

Q. Isn't that what you mean? A. Yes, sir.

Q. When she spoke to you and said she wished she had signed it did you know then it was there?

A. I knew it was in the den.

Q. Had you seen it? A. Yes, sir.

Q. When she said she wished she had signed it what did you say? A. Do you want me to get it and she said yes, and I went out and got it. 10

Q. It was in the den? A. Yes.

Q. Who was in the den? A. Nobody.

Q. Is the den a separate room or the same room where she was? A. A separate room.

Q. Just a door between? A. The bath room was between her room and the den. There was the den, then the bath and her room on the one side of the hall.

Q. Could you see persons in her room in the den? A. Not from her room. 20

Q. Who told you it was in the den? A. I seen the doctor put it in the den.

Q. Did he tell you what it was? A. No.

Q. Did you pick it up and look at it? A. Not until she asked me for it.

Q. How long had it been there, two or three days or one day? A. I don't remember.

Q. You went and got it? A. Yes, sir.

Q. Was she alone? A. Miss McCarty was with her. 30

Q. Did Miss McCarty go with you? A. No, she stayed in the bed room.

Q. Did she suggest that you get it? A. No. I told her I was going to get it.

Anna Doherty—cross

Q. Did you get it? A. Yes, sir, and brought it out and read it to her.

Q. To whom? A. To Sophie.

Q. Did she ask you to? A. I don't remember if she did or not.

Q. You brought it out because she had said she wished she had signed it? A. Yes, sir.

Q. And without her saying anything more you read it? A. I don't remember whether she said anything or not but I know I read it to her.

10 Q. Where was Miss McCarty? A. In the room.

Q. What position? A. Standing.

Q. Near the bed? A. Yes, sir.

Q. What did you do after you read it? A. Asked her if she wanted me to sign it.

Q. After you read it Sophie said nothing to you until you spoke to her? A. I don't remember.

20 Q. After you read it what did you do? A. I signed it.

Q. Where was it when you signed it? A. I had it on the dresser and signed it on the dresser.

Q. That is before Sophie signed it? A. I don't know whether she signed it first or I did.

Q. Where was Edna McCarty when you signed it? A. She was right there in the room with me.

Q. Near the bed, standing by? A. Yes, sir.

Q. Looking at Sophie or toward you? A. 30 Looking at me.

Q. How do you know? A. I seen her.

Q. Did you have to turn your back to the bed to lean on the dresser? A. No.

Q. When you signed were you turned toward the bed or away from it? A. I was turned toward the bed.

Anna Doherty—cross

Q. What did you do after you signed it? A. Miss McCarty signed it.

Q. What did you do, let it lay on the dresser or did you hand it to anybody? A. I believe I handed it to Miss McCarty.

Q. Then she signed it? A. I know she signed then.

Q. After that was done what was done with it? A. Sophie signed it but I don't know whether she signed it before or after us two nurses. 10

Q. What was done with it? A. We left it in the room.

Q. Was anything else done with it? A. Outside of Sophie's signing it whether it was before or after we left it there in the room.

Q. Now you say Sophie signed it? A. She put her mark on it.

Q. When did Sophie sign it if you know? A. The same day we did.

Q. The same hour? A. Yes, sir. 20

Q. Was it before or after? A. I don't remember that.

Q. You remember whether she signed her full name or made her cross? A. She made her mark.

Q. If you don't remember the time how do you remember that instance? A. I don't know. I just forget whether it was before or after.

Q. Was she sitting up in bed or lying down? A. We had her propped up on pillows. 30

Q. How was this paper placed? A. It was placed on a pad or something we had in the room.

Q. You don't remember exactly? A. No.

Q. When it was placed there was it you placed it there? A. Yes, sir.

Anna Doherty—cross

Q. Edna McCarty was helping to support her?

A. Yes, sir.

Q. What was the next thing done? A. Sophie made her mark.

Q. Did she do it with any help? A. Her hand was kind of shaky. I just had my hand on her pen.

Q. After making the mark somebody wrote her name? A. Yes, sir, I did.

10 Q. You took it away and put it on the desk?

A. Right near her on the dresser.

Q. How could you turn around and write the name in front of her? A. I was standing right beside her.

Q. Who took possession of this paper, you or Edna McCarty? A. I believe I did and left it on the dresser.

20 Q. In this open state or did you put it in an envelope? A. I don't remember putting it in an envelope.

Q. That is all that was said about it? A. That is all that I know.

Q. That is the last you saw of it until it was brought to the Surrogate's office to be probated?

A. No, sir, the next day.

Q. Did you take it out of the room and put it in the den? A. No, sir.

Q. Did somebody else do it? A. No, sir, left it on the dresser.

30 Q. And it stayed there until the next day? A. Yes, sir.

Q. When did you first notice it the next day?

A. When the doctor Butterfield came in the next day I told him about it.

Q. Who told you to tell him? A. Nobody.

Edna McCarty—direct

Q. Why did you tell him? A. I don't know why. I just told him.

Q. You said she signed the paper and made this cross? A. Yes, sir.

EDNA McCARTY, sworn as a witness for the proponent and testifies as follows:

Direct Examination by Mr. Comstock:

Q. What is your business? A. Graduate nurse. 10

Q. What did you say? A. Nursing.

Q. A trained nurse? A. Yes, sir.

Q. And you have been for how long? A. Three years.

Q. Did you nurse Miss Sophie Wilson? A. I did.

Q. In the latter part of March nineteen hundred and twenty-two? A. I did.

Q. Who called you in? A. I was called from Mrs. Geary's registry. 20

Q. Who? A. From Mrs. Geary's nurse registry.

Q. Where did you go? A. Henry Street, Passaic.

Q. What did you find when you got there? A. That Mrs. Sophie Wilson was the patient.

Q. What did you find when you went in? A. When I went in the patient was sitting in the bath room and I helped the other nurse put her back to bed. I was on the case about a week, six or seven days. 30

Q. You stayed until she died? A. I was there mostly during the day and sometimes at night I went home.

Edna McCarty—direct

Q. Did you stay until she died? A. I was there when she died.

Q. Who was the other nurse? A. Miss Doherty.

Q. You and Miss Doherty signed her will? A. Yes, sir.

Q. How long had you been there when the will was signed? A. I don't remember exactly the time but I think it was about two or three days.

10 Q. When did you first see or hear of the will? A. The doctors had it first.

Q. Was that before it was signed? A. Yes, sir.

Q. What did they do with it? A. I think it was left in the den, left on the desk in the den and they said in case the patient said anything about it that it is on the desk outside there, and when I was there a day or two the patient started talking to me about her affairs.

20 Q. What did she say to you? A. She started to say something and talk and I said I would rather you wouldn't talk. She was quite weak and her lung condition was bad and after awhile she said I wish I had made those arrangements when the doctor was speaking to me and Miss Doherty was there and started talking to her and she said I wish I had signed the paper and then she went out and got the will and read it over to her and we propped her up with pillows and she started to write. I think there was a book under
30 the paper and she said I don't think I can. She had the use of her arms but couldn't make any definite movement to write.

Q. Did she have the pen in her hand? A. She had the use of her hand but couldn't write.

Edna McCarty—direct

Q. Then what was done? A. She just made a mark there and after that Miss Doherty signed first and then I signed. I said to Mrs. Wilson are you sure you are satisfied with this before I sign it and she said yes that is alright. I want Mrs. Annie Wilson, she called her Annie, to have everything because she has been so good to me and the next day Doctor Butterfield, Miss Doherty and myself were both present at the time. Before he signed it he read it over to her.

10

Q. Doctor Butterfield read it over to her? A. Yes, sir.

Q. That was the following day? A. Yes, sir.

Q. The first time you saw the paper which doctor had it? A. I don't remember which one. They were both there together.

Q. Doctor Reynolds and Doctor Butterfield? A. Yes, sir.

Q. Why didn't she sign it that day? A. She said she felt too tired and weak.

20

Q. It was read over to her? A. Yes, sir, the doctors were talking to her.

Q. What did she say with reference to signing it? A. She didn't want to do it this day. She was too tired and weak and said I will do it later.

Q. Then the will was left where? A. On the dresser.

Q. Was it the following day she mentioned it again? A. I don't know whether it was the next day or two days later.

30

Q. She asked for it? A. She said she would like to make the arrangements.

Q. Then the signing occurred which you have just testified to? A. Yes, sir.

Q. And the following day after that Doctor

Edna McCarty—cross

Butterfield signed it? A. The following day after we signed it.

Q. He read it to her? A. Yes, sir.

Q. Did he say anything to her? A. Asked her if she was satisfied and before I signed it I asked her if she had any other relatives and she said no.

10 Q. During the week you were there did you hold any conversation with her? A. Only to ask her how she felt and what she would like to do.

Q. Did she answer you rationally? A. Yes, sir.

Q. She was rational? A. Yes, sir.

Q. Did you notice anything irrational about her? A. No, I couldn't see anything happened at all while I was there to show that she was other than normal.

20 Q. She appeared to be normal? A. Throughout the week her mental condition seemed to be normal.

Q. What did she say to you about her property? A. Started to talk to me and told me she had some stocks in Paterson in the vault and I said Mrs. Wilson I am not interested in that. I would rather you would keep quiet.

Cross Examination by Mr. Murphy:

Q. What day of the week did you go there? A. I don't remember the day.

30 Q. What day of the month? A. I don't remember the day of the month.

Q. How many days before her death? A. I think it was about a week.

Q. You got paid, didn't you? A. Yes, sir.

Edna McCarty—cross

Q. Don't you know how much you got? A. I don't remember now. It was over a year ago.

Q. Did you go there in the morning or in the afternoon? A. I went there in the morning.

Q. Was the other nurse there ahead of you? A. Yes, sir.

Q. What time did you get there ordinarily? A. We are supposed to work from seven in the morning until seven at night and then the other shift goes on.

10

Q. Was there another shift? A. Miss Doherty and myself were supposed to be on each twelve hours.

Q. What time did you quit? A. I was supposed to go off at seven o'clock but often stayed there at night because Paterson is so far away.

Q. All night? A. Yes, sir.

Q. And worked all day too? A. Yes, sir, I slept there. We used to take turns being on duty.

Q. When you first saw Sophie was there anybody else in her room? A. There was nobody else in the room except the nurse, Miss Doherty.

20

Q. Was she standing right by her? A. She came out when I went in.

Q. When you went in Sophie was alone? A. Miss Doherty was standing in the door but Sophie was sitting on the chair.

Q. What kind of a chair? A. A straight chair with some pillows on it.

Q. How far from the bed? A. The bath room outside of the door.

30

Q. How far was the door from the bed? A. She was in the bath room. Her door was over there.

Q. You mean she sat on a chair in the bath room? A. Yes, sir.

Edna McCarty—cross

Q. Outside of her room altogether? A. Yes, sir, of course she needed help to get there.

Q. When you came in her room she wasn't in there at all. She was in the bath room? A. Yes, sir.

Q. The nurse was in her room? A. In the bath room with the patient. When I went in she came to the door.

10 Q. Then the nurse went out? A. Then I helped the other nurse put her back to bed.

Q. How did you help her? A. Well, between us we thought of lifting her in.

Q. Could she walk at all? A. I don't remember whether she walked or whether we carried her.

Q. While you were carrying her from the bath room to the bed did she say anything? A. She made some remark about she would like to sit up. She didn't like to stay in bed on her back.

20 Q. What was the remark she made? A. I don't remember what the remark was.

Q. Did she volunteer the remark or in answer to a question you put? A. No, I think I asked her how she felt before she said anything and she said something to the effect that it is so good to sit up.

Q. Did you put her in bed? A. Yes, sir.

30 Q. Did she get out of bed after that? A. No, we kept her in bed because she had a terrible cough.

Q. What time of the day was this? A. It must have been eight o'clock in the morning.

Q. When did she take nourishment after that? A. We gave her something every hour.

Q. Were you present every day with Miss

Edna McCarty—cross

Doherty? A. Part of the time we were both there together but one of us was there all the time.

Q. You were in there all the time with Miss Doherty? A. Not all the time.

Q. What were the hours you gave her nourishment? A. Well, if she liked it she would take it and if she didn't like it she would tell us what she wanted.

Q. After taking it would she go to sleep? A. Sometimes go to sleep, other times she wanted to be washed, etc. 10

Q. What time did you leave her room that first night? A. I don't remember the time.

Q. What time did you go on duty next? A. Seven o'clock in the morning.

Q. Was it the next day the paper was brought? A. I don't know whether it was the next day or the day after.

Q. What called your attention to this paper? A. The doctors had it first. 20

Q. Which one spoke about it? A. I don't remember which one spoke about it, both were there together.

Q. What was said about it? A. One of the doctors said in case she made up her mind it was there.

Q. Was it read the day the doctors called your attention to her? A. I believe one of the doctors read it to her but I am not positive.

Q. That was either the second or third day after you got there? A. Yes, sir. 30

Q. How soon after that did you see that paper again? A. When the patient asked to make arrangements she said she wished she had done it.

Q. When was that? The next day? A. I think it was the next day.

Edna McCarty—cross

Q. Do you know how many days before her death? A. Two days before her death.

Q. Do you know whether it was forenoon or afternoon? A. I think it was around noon time.

Q. Who first spoke about it? A. She did.

Q. What did she say? A. She wished she had made those arrangements.

Q. To whom did she say that? A. Miss Doherty and myself were both in the room and I said
10 what paper and she said the one the doctor had.

Q. When you said that she was talking to you? A. Yes, sir.

Q. She wasn't talking to Miss Doherty? A. We were both there.

Q. When you said that did Miss Doherty say anything? A. She had the paper or she got the paper and read it over to her.

Q. Did she say anything? A. I don't think she said anything to her.

Q. What did you do? A. After Miss Doherty
20 got the paper I helped prop her up in bed.

Q. Where was the paper? A. While propping her up in bed the paper was on the dresser.

Q. After you propped her up did you both leave her alone? A. We propped her up with pillows and Miss Doherty put the paper on a book.

Q. What did you do while she was doing that? A. Stood beside the side of the bed.

Q. Holding her? A. Just standing there.

Q. Miss Doherty brought that paper over. Had
30 Miss Doherty signed it? A. No, the patient signed it first. She went to write her name and then said I don't think I am able.

Q. Who helped her make her mark? A. The patient asked if her mark would be alright and Miss Doherty did have hold of her arm.

Edna McCarty—cross

Q. You didn't do anything? A. I was just standing by the bed.

Q. After that was done what did you do with the paper? A. After the paper was signed?

Q. After she made her mark on the paper? A. I said are you sure you are satisfied with this and she said yes and I signed it and I think the paper was put back on the dresser.

Q. Where was the paper when you signed it?

A. In the patient's room. 10

Q. On the desk or on the bed? A. No, I was standing by the patient's bed.

Q. After you signed it Miss Doherty signed it?

A. She signed it before I signed it.

Q. When you signed it were you looking at the patient or away from it? A. I was looking at the patient to see if she was willing, to see what she said and when she said yes she was perfectly satisfied I signed it.

Q. After the paper was signed what was done with it? A. It was put back in the den I think. I don't remember. 20

Q. By whom? A. Miss Doherty took it because I helped put the patient in bed.

Q. Did you see it after that? A. It was out in the den after that but I didn't bother with it.

Q. Did you see it at all after that? A. No.

Q. Did you see it when the doctor signed? A. Oh, yes, the next day when the doctor signed it they left it on the dresser, until Doctor Butterfield came in. 30

Q. You didn't remember these details very distinctly? A. I remember the doctor signing.

Q. The rest you don't remember distinctly? A. I remember those details distinctly.

Edna McCarty—cross

Q. But the rest are not so distinct? A. The conversations I had with the patient etc. I don't remember.

Q. What did you next do, or first what time next day the doctor came in and signed it? A. It was before noon time.

Q. Who got it out for him? A. After the patient signed the paper it was laying on the dresser until the doctor came in.

10 Q. Do you know when the doctor came in did he pick it up? A. No, Miss Doherty said something about if the patient wanted the doctor to sign that paper and the patient said yes and the will was read over again.

Q. Before that happened the doctor hadn't said anything about the paper? A. Do you mean that day?

Q. Yes. A. Well, he just came in and Miss Doherty told him.

20 Q. I ask you if the doctor said anything? A. No, I think we told him the paper was signed and asked him if he should sign it.

Q. When you told him about the paper did you tell him about what it was or for whom it was to be signed? A. Said it was the will he had left there.

Q. Did you tell him? A. The doctor knew.

Q. How do you know? A. He left the paper there.

30 Q. You didn't tell him? A. We said we have signed it and signed it when we were both present in the patient's room.

Q. Did he sign it on the little stand you mentioned? A. He read it over to the patient.

Q. Did he sign it on the little stand you mentioned? A. I didn't notice.

Edna McCarty—cross

Q. Where were you when he signed it? A. In the room.

Q. Where? A. Standing by the patient's bed.

Q. Where did he sign it? A. I think on the dresser.

Q. How far away from the bed was the dresser? A. Right next to the bed.

Q. How many feet? A. I can't say the exact number of feet.

10

Q. Where was he standing? A. Right by the head of the patient's bed.

Q. What caused you to be so interested in Sophie as to ask her if she had any other relatives? A. Because of her condition. I thought if she had anybody else they should be notified and she never had any calls and if she had any people I wanted them to come to see her before she died. I always ask my patients that.

Q. Did you talk to Mrs. David Wilson about her relatives before this? A. I don't think I said anything to her. I don't remember ever asking Mrs. David Wilson if she had any relatives and nobody else came to the house.

20

Q. When Mrs. Sophie Wilson said I wish I had signed that paper was that the first remark she made to you in reference to it? A. She made a remark about I would like to make some arrangements.

Q. Did you know the paper was there when she said that? A. It was out in the den.

30

Q. Did you know it was there? A. The doctor had said it was out there.

Q. Did Sophie Wilson speak to you the day of her death? A. He did, several times.

Edna McCarty—cross

Q. What did she say the first time? A. In the morning she wanted a piece of orange.

Q. What did she say in reference to it? A. I don't remember what she said but I remember getting the orange for her.

Q. What was the next time? A. If I asked her how she felt she would say weak and tired.

10 Q. Did she say anything else besides these words in answer to your question besides I am weak and tired? A. Yes, she used other words than those.

Q. What did she say? A. She would sometimes say where is my sister-in-law. Other times she would say where is Annie?

20 Q. Did she speak of anything else during the time you attended her except to answer your questions about how she felt and asking for nourishment? A. I asked her what her maiden name was and she said it was Sophie Graeber and besides that I had little talks with her.

Q. And from that much conversation that you had with her you have answered here in your opinion she was mentally normal? A. Well, if Miss Doherty went in or I went in she knew us.

Q. Do you have any other criterion or guide by which you form that opinion? A. I can't think of all the conversations I had now.

Q. I ask you about forming your opinion? A. I think the patient was rational.

30 Q. You formed that opinion only from the words you used to hear and what she said to you, is that so? A. Yes, sir.

Q. I show you an affidavit signed Edna McCarty, dated April 18th nineteen hundred and twenty-two, made before George L. King, deputy

Edna McCarty—cross

surrogate and ask you if that is your signature?

A. Yes, sir.

Q. I ask you if the statements you made in that affidavit that Anna Doherty and Arey A. Butterfield who resides on Crooks Avenue, Passaic, the other subscribing witnesses were present at the same time that the deponent of said will was signed by the testatrix? A. Yes, sir.

Q. Do you understand that? A. Yes, sir.

Q. Is it the truth that when they signed the paper you refer to Doctor Butterfield was also present? A. Not the day she signed. 10

Q. That is what you have sworn to? A. The next day Doctor Butterfield was in there.

Q. Did she sign it or make her mark? A. Made her mark.

Mr. Comstock—I understand the testimony taken early with reference to this case is to be used as part of the main case, also that the testimony is relevant to show why, if she had any relatives, she didn't leave any property to. 20

The Court—If there is any testimony in it which is relevant you might use it.

EXHIBIT T-1

IN CHANCERY OF NEW JERSEY

PETITION

In the matter of the appoint- ment of Sophie E. Wilson, a lunatic.	}	Filed Dec. 6, 1920. David H. Butz, Solr.
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To the Hon. Edwin Robert Walker,
 Chancellor of the State of New Jersey.

The petition of David Wilson, of the City of New York and State of New York, respectfully shows that:

20

(1) Sophie E. Wilson, formerly a resident of the City of Passaic, County of Passaic and State of New Jersey, now an inmate of the Morris Plains Asylum, an institution of the State of New Jersey for insane persons and the widow of William Wilson, deceased, is now and for the period of five months or more last past, has been so far deprived of her reason and understanding that she is rendered altogether unfit and unable to govern herself or to manage her affairs, as by affidavits hereto annexed appears.

30

(2) That to the best knowledge, information and belief of your petitioner the said Sophie E. Wilson has no kin or other blood relations residing in this State or the United States, that your petitioner is a brother of the aforesaid William Wilson, husband of the said Sophie Wilson who, up to the time of his death about six months ago was a resident of the City of Passaic and State of New Jersey.

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Your petitioner therefore prays that a commission in the nature of a writ de lunatico inquirendo may issue out of this honorable court, to inquire of the lunacy of the said Sophie E. Wilson directed to such persons as your Honor shall think fit.

And your petitioner will ever pray.

David Wilson,
Petitioner.

David H. Butz,

Solicitor and Counsel
with Petitioner.

10

State of New Jersey, }
County of Passaic. } SS.

David Wilson, being duly sworn says that he is the petitioner named in the foregoing petition; that the matters and things therein set forth are true.

David Wilson.

20

Sworn and subscribed to before me
at Passaic, N. J., this 22nd day of
November, 1921.

David H. Butz,
Atty. at Law of N. J.

State of New Jersey, }
County of Passaic. } SS.

Lawrence M. Collins being duly sworn according to law on his oath deposes and says that he is one of the assistant physicians of the New Jersey State Hospital at Morris Plains and acting in that capacity he is acquainted with one Sophie Wilson (Sophie E. Wilson) who was admitted as an insane patient for care and treatment to said hospital on the fourteenth day of May A.D. 1920; that

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Exhibit T-1

he has observed the actions and behavior of the said Sophie Wilson (Sophie E. Wilson) and that in his opinion she is suffering from a form of insanity known as maniac depressive psychosis.

Deponent further says that the said Sophie Wilson (Sophie E. Wilson) has exhibited many hallucinations of sight and hearing, claiming that she has seen people in her room when she would close her eyes at night and that she has often heard
10 voices talking to her; that she has many delusions of a paranoid nature directed against her neighbors and her late husband's relatives, believing that the neighbors were trying to get rid of her and that her husband's relatives were in league with them because they were trying to get her husband's estate; that she had many delusions of a self-accusatory character believing that she was to be placed in a dungeon and was to be buried
20 alive; that she had been alternately excited and depressed; that she has made numerous suicidal attempts and that she has required constant care and attention.

Deponent further states that at the present time the said Sophie Wilson (Sophie E. Wilson) continues to be delusional and to be subject to alternating attacks of excitement and depression; that at times she will walk about the ward crying and wringing her hands, saying that others are trying to get her property, and that at other times
30 she will sit about the ward for long periods taking no interest in her surroundings.

Deponent further says that in his opinion the said Sophie Wilson (Sophie E. Wilson) because of her mental condition and by reason of her insanity, is not capable to receive, manage or take care of her personal property and is incompetent

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to control herself, her affairs or her estate and is a suitable person to be under restraint, care and treatment in some institution for the insane.

Laurence M. Collins.

Sworn to and subscribed before me

this 12th day of November, 1920.

(L. S.) Wm. Jno. Littell,

Notary Public N. J.

State of New Jersey, }
County of Passaic. } SS.

10

Marcus A. Curry being duly sworn according to law on his oath deposes and says that he is the Medical Superintendent of the New Jersey State Hospital at Morris Plains, and acting in such capacity he has charge of and care over all the patients in said hospital; that one Sophie Wilson (Sophie E. Wilson) a resident of Passaic in the County of Passaic and State of New Jersey, aged 38 and widowed, was admitted as an insane patient for care and treatment to said hospital on the fourteenth day of May A.D., 1920; that she was admitted on certificates as made out by Doctors Andrew F. McBride and Thomas Dwyer, both of Paterson, New Jersey; that these certificates were approved and a Court order for the detention of the said Sophie Wilson (Sophie E. Wilson) was issued by Honorable William W. Watson, Judge of the Court of Common Pleas of the County of Passaic dated the 27th of May A.D. 1920; that the said Sophie Wilson (Sophie E. Wilson) has been under care and treatment to the present time and is still a patient in said hospital.

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Deponent further says that during the confinement of the said Sophie Wilson (Sophie E. Wil-

Exhibit T-1

son) in said hospital she has given evidence of many hallucinations of sight and hearing and delusions of a self accusatory character and paranoid nature; that she has been alternately excited and depressed; that she has made numerous suicidal attempts, and that at the present time she shows no improvement in her mental condition and requires constant care and attention.

10 Deponent further says that in his opinion the said Sophie Wilson (Sophie E. Wilson) is suffering from a form of mental disease known as Maniac Depressive psychosis and that because of her mental condition and by reason of her insanity she is not capable to receive, manage or take care of her personal property and is incompetent to control herself, her affairs or her estate, and is a suitable person to be under restraint, care and treatment in some institution for the insane.

Marcus A. Curry,
Medical Superintendent.

20

Sworn and subscribed before me this
12th day of Nov., 1920.

Wm. Jno. Littell,
Notary Public of N. J.

Order for Commission
Filed December 16, 1920.

30 Upon opening the matter this day to the Chancellor by David H. Butz, solicitor and of counsel with the petitioner, and upon reading the petition of David Wilson, and the affidavits of Dr. Marcus A. Curry, Medical Superintendent of the New Jersey State Hospital at Morris Plains, N. J., and Dr. Laurence M. Collins, one of the assistant physicians of said State Hospital thereto annexed.

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It is on this sixth day of December, 1920, ordered, that upon filing the said petition and affidavits, a commission in the nature of a writ de lunatico inquirendo, do issue out of, and under the seal of this Court, agreeably to the prayer of the said petition to inquire of the lunacy of the said Sophie E. Wilson, to be directed to Clifford L. Newman and Andrew F. McBride and Winfield S. Cox of the County of Passaic who, or any two of them of whom said Clifford L. Newman, shall be one, are hereby appointed commissioners for that purpose.

10

E. R. Walker,
C.

Respectfully advised,
Eugene Stevenson,

V. C.

Commission Filed February 7, 1921.
New Jersey SS.

The State of New Jersey to Clifford L. Newman, Esq., Dr. Andrew F. McBride and Winfield S. Cox, all of the City of Paterson, County of Passaic and State of New Jersey.

20

Greeting:

Know ye, that we have assigned you and any two of you of whom you, the said Clifford L. Newman, shall be one and you are hereby assigned to inquire by the oaths or affirmations of good and lawful men of the said County of Passaic, by whom the truth of the matter may be better known whether Sophie E. Wilson, a former resident of the City of Passaic, County of Passaic and State aforesaid, and now confined as a patient at the New Jersey State Hospital at Morris Plains, County of Morris and State aforesaid, is a lunatic of unsound mind, so that she is not fit for the government of

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Exhibit T-1

herself, her lands and tenements, goods and chattels; and if she the said Sophie E. Wilson, being in that condition, has alienated any lands and tenements, or not, and if so, what lands and tenements, to what person or persons, where, when and after what manner, and how; and what lands and tenements, goods and chattels yet remain to her, and of what value the lands and tenements by her alienated, as well as those by her retained are; and of what person or persons, as well as the lands and tenements so alienated as the lands and tenements by her retained, are held, and after what manner, and how much the issues and profits thereof are worth by the year and what is the value of her goods and chattels and personal estate and who are her nearer heirs and of what age. And, therefore, we command you, or any two of you as aforesaid that at certain days and places which you, or any two of you as aforesaid, shall for that purpose appoint you diligently make inquisition in the premises and that you cause ten days' notice of the time and place by you appointed for that purpose be given to the said Sophie E. Wilson, and that you send the inquisition which you shall thereupon make, under your seal, or the seals of any two of you as aforesaid and the seals of those persons by whom it shall be made distinctly and plainly, and without delay, to our Chancellor in our Court of Chancery together with our writ, And we command by the tenor of these presents, the Sheriff of the County of Passaic and State aforesaid that at certain days and places which you or any two of you as aforesaid shall make known to him, he cause to come before you, or any two of you, so many and such good and lawful men of the said County of Pas-

Exhibit T-1

saic, each of whom is a citizen of this State, resident in said County of Passaic above the age of twenty-one years and under the age of sixty-five years as you shall direct by whom the truth of the matters aforesaid may be the better known and inquired into.

Witness Edwin Robert Walker, our Chancellor at Trenton, the 21st day of December, Nineteen Hundred and Twenty.

Jesse R. Salmon, 10
Clerk.

David H. Butz,
Solicitor.

The execution of this commission appears by the return hereto annexed.

Clifford L. Newman
Andrew F. McBride
Winfield S. Cox.

Precept, etc. 20
Filed February 7th, 1921.

By virtue of a commission in the nature of a writ de lunatico inquirendo, under the seal of the Court of Chancery of the State of New Jersey, bearing date at Trenton the twenty-first day of December, Nineteen Hundred and Twenty to us whose names are hereunder written to inquire whether Sophie E. Wilson, a former resident of the City of Passaic County of Passaic and State aforesaid and now confined as a patient at the New Jersey State Hospital at Morris Plains, County of Morris and State aforesaid be a lunatic or not; these are therefore to will and require you to cause to come and appear before us twelve good and lawful men of the said County of Passaic above the age of twenty one years and under the

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age of sixty-five years on the 4th day of February, Nineteen hundred and twenty-one, at 3 o'clock in the afternoon of the same day at Court House, Paterson, N. J., then and there upon their oaths and affirmations to inquire of the lunacy of the said Sophie E. Wilson, and all such other matter and things as shall be given them in charge by virtue of the said commission and therefor fail not at your peril.

10 Given under our hands and seal the 30th day of December, Nineteen Hundred and Twenty.

To the Sheriff of

County of Passaic.

Clifford L. Newman (L. S.)

Winfield S. Cox (L. S.)

Andrew F. McBride (L. S.)

Commissioners.

State of New Jersey, }
County of Passaic, } SS.

20

An inquisition indented and taken before John McCutcheon, Sheriff of Passaic County at the Court House, Paterson, New Jersey, on the 4th day of February, 1921, by virtue of the writ of inquirendo to the said Sheriff, directed and to this inquisition annexed to inquire of certain matters in the said writ specified by the oaths of twelve jurors,

- | | |
|---------------------|----------------------|
| 1. Frank Holt | 7. Herbert Davies |
| 2. Isaac Young | 8. Benj. Jacobs |
| 3. Thomas Schofield | 9. Walter S. Rogers |
| 4. Philip Woodruff | 10. Antonio Ippolito |
| 5. Joseph Portelli | 11. George Cooper |
| 6. Joseph Feeney | 12. John Livesey |

30

honest and lawful men of said County upon their oaths and affirmations aforesaid that the said

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Sophie E. Wilson, is a lunatic and of unsound mind, so that she is not capable of the government of herself her lands, tenements, goods and chattels.

In witness whereof, as well I, the Sheriff as the said jurors set their hands and seals to this inquisition the day and year first above written.

John McCutcheon,
Sheriff.

10

Notice to lunatic.

Filed, February 7th, 1921.

Take Notice that a commission to inquire as to your alleged lunacy issued out of and under the seal of the Court of Chancery of the State of New Jersey and to us directed as commissioners will be executed at Court House, City of Paterson, N. J., on the 4th day of February, 1921, at 3 o'clock in the afternoon.

Dated January 10th, 1921.

To Sophie E. Wilson.

20

Clifford L. Newman
Winfield S. Cox
Andrew F. McBride
Commissioners.

State of New Jersey }
County of Morris. } SS.

Laurence M. Collins, of full age being duly sworn on his oath according to law deposes and says that he served a true copy of the annexed notice upon Sophie Wilson (Sophie E. Wilson) personally by delivering said copy to her at Grey-stone Park, New Jersey, on the 22nd day of January, 1921.

30

Laurence M. Collins.

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Sworn and subscribed before me this
22nd day of January, 1921.

Wm. Jno. Littell,
Notary Public, N. J.

Inquisition of Lunacy,
Filed February 7, 1921
State of New Jersey,
Passaic County,

To Wit:

- 10 An Inquisition taken at the Court House, City of Paterson, County of Passaic and State of New Jersey, on the 4th day of February, 1921, before Clifford L. Newman, Andrew F. McBride and Winfield S. Cox, Commissioners, by virtue of a commission in the nature of a writ de lunatico inquirendo, issuing out of and under the seal of the Court of Chancery of the State of New Jersey, bearing date at Trenton, the 21st day of December, 1920, to inquire of the lunacy of Sophie E.
- 20 Wilson, formerly a resident of the City of Passaic, and now an inmate of the New Jersey State Hospital, Greystone Park, Morris County and State aforesaid, in the said commission named, upon the oaths and solemn affirmation of twelve good and lawful men of the said County of Passaic, that is to say upon the oaths of (1) Frank Holt, (2) Isaac Young, (3) Thomas Schofield, (4) Philip Woodruff, (5) Joseph Portelli, (6) Joseph Feeney, (7) Herbert Davies, (8) Benjamin Jacobs,
- 30 (9) Walter S. Rogers, (10) Antonio Ippolito, (11) George Cooper and (12) John Livesey, who being duly summoned and charged upon their respective oaths say that the said Sophie E. Wilson at the time of taking this inquisition is a lunatic of unsound mind and does not enjoy lucid intervals

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and incapable of the government of herself, her lands, tenements, goods and chattels, and that she has been in the same state of lunacy since May 11th, 1920.

And the jurors aforesaid upon their respective oaths further say that they find that the said Sophie E. Wilson at the time of taking this inquisition is seized of and entitled to under the last will and testament of her husband, William Wilson, deceased, to all that certain tract, parcel of land and premises, situate, lying and being in the City of Passaic, County of Passaic and State of New Jersey, known as No. 48 Henry Street, and more particularly described as follows:

Beginning on the northerly side of Henry Street, distant one hundred and eighty-seven and one-half ($187\frac{1}{2}$) feet westerly from the corner formed by the intersection of the northerly side of Henry Street and the westerly side of Leonard Place, and running thence (1) Northerly and parallel with Leonard Place, one hundred (100) feet; thence (2) Westerly, parallel with Henry Street, thirty-seven and one-half ($37\frac{1}{2}$) feet; thence (3) Southerly parallel with the first course one hundred (100) feet to the northerly side of Henry Street; and thence (4) Easterly, along the same thirty-seven and one-half ($37\frac{1}{2}$) feet to the point or place of beginning.

And also that the said Sophie E. Wilson has not alienated any lands or tenements during her lunacy aforesaid, to the knowledge of the said jurors.

And the said jurors upon their respective oaths aforesaid, further say that the said Sophie E. Wilson is at the time of taking this inquisition possessed of goods, chattels and personal estate

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20

30

Exhibit T-1

consisting of money in the bank, stocks and bonds of the value of \$11,647, or thereabout, and lastly, to the best knowledge, information and belief of said jurors the said Sophie E. Wilson has no heirs at law or next of kin in this State or in the United States, except her brother-in-law, David Wilson, a resident of New York City, who is a brother of her deceased husband, William Wilson.

10 In testimony whereof, as well the said Commissioners as the jurors aforesaid have to this inquisition set their hands and seals the day and year first above written.

Clifford L. Newman (L. S.)

Andrew F. McBride (L. S.)

Winfield S. Cox (L. S.)

1. Frank Holt (L. S.)

2. Isaac Young (L. S.)

3. Thomas Schofield (L. S.)

4. Philip Woodruff (L. S.)

20

5. Joe Portelli (L. S.)

6. Joseph J. Feeney (L. S.)

7. Herbert A. Davies, Jr. (L. S.)

8. Benj. Jacobs (L. S.)

9. Walter S Rogers (L. S.)

10. Antonio Ippolito (L. S.)

11. George H. Cooper (L. S.)

12. John Livesey (L. S.)

Decree

30 Filed March 14, 1921

Upon opening the matter to the Chancellor this day by David H. Butz, solicitor for and of counsel with the petitioner and it appearing that the Commission awarded in this matter has been duly executed and returned into this Court with an in-

Exhibit T-1

quisition thereto annexed, taken before Clifford L. Newman, Esquire, a Master in Chancery of the State of New Jersey, and Andrew F. McBride and Winfield S. Cox, Commissioners in the said Commission named, and bearing the 4th day of February, 1921, by which the Jurors who passed upon that inquiry have found that the said Sophie E. Wilson formerly a resident of the City of Passaic, County of Passaic and State of New Jersey and now an inmate of the New Jersey State Hospital, Greystone Park, Morris County, and State aforesaid, was at the time of taking that inquisition a lunatic and of unsound mind, and does not enjoy lucid intervals so that she is not capable of the government of herself, her lands, tenements, goods and chattels and that she has been in the same state of lunacy since May 11, 1920, and that at the time of taking said inquisition she was seized of or entitled to real and personal estate as is mentioned in the said inquisition.

It is thereupon on this 11th day of March, 1921, Ordered and Decreed by the Chancellor that the said proceedings be in all things confirmed and that the Clerk of this Court transmit to the Orphans' Court of the County of Passaic a certified copy of all the proceedings in the case, agreeably to the statute in such case made and provided.

E. R. Walker,
C.

Respectfully advised,
Bayard Stockton,
A. M.

IN CHANCERY OF NEW JERSEY

In the Matter of Sophie E.
Wilson, alleged to be a lun-
atic.

ORDER FOR ALLOWANCE

- 10** This matter being opened to the Court by David H. Butz, solicitor for the petitioner, and it appearing by the inquisition returned herewith that the alleged lunatic is seized of certain lands and premises known as No. 48 Henry Street, Passaic, Passaic County, N. J., and also certain personal property of the value of \$11,647 or thereabouts, and application now being made for allowances to the Commissioners, Jurors and a counsel fee, and the Court being satisfied that reasonable allowances
- 20** should be made:

It is thereupon on this 31st day of March, A.D., 1921, on motion of David H. Butz, Solicitor as aforesaid, Ordered that there be allowed to the Master Commissioner, the sum of Twenty dollars, and to each of the other Commissioners, the sum of Ten dollars, and that there be allowed to each of the Jurors, the sum of Two dollars:

- 30** And it is further ordered that a counsel fee of Fifty dollars be allowed to Counsel in this matter as and for his services, all of the aforesaid sums to be included and taxed in the costs on this application.

E. R. Walker,
C.

Respectfully advised,
Bayard Stockton,
A. M.

Exhibit T-1

I, Jesse R. Salmon, Clerk of the Court of Chancery of the State of New Jersey, the same being a court of record do hereby certify that the foregoing is a true transcript of all the proceedings "In the matter of Sophie E. Wilson, of the City of Passaic, in the County of Passaic, a lunatic," now on the files of my office.

In Testimony Whereof, I have hereto set my hand and affixed the seal of the said Court at Trenton, this 11th day of April, A. D. 1921.

Jesse R. Salmon, Clerk.

10

L. S.

Filed April 21, 1921.

Recorded April 25, 1921.

Frederic Beggs,

Surrogate and Clerk of
the Orphans' Court.

In the Matter of the Guardian-
ship of Sophie E. Wilson, a
lunatic.

On Petition for
Letters of
Guardianship

20

ORDER APPOINTING GUARDIAN

It appearing from the petition of David Wilson, filed herein, that on February 4, 1921, an inquisition by virtue of a commission composed of three commissioners, in the nature of a writ de lunatico inquirendo, issuing out of and under the seal of the Court of Chancery of the State of New Jersey, bearing date of December 6, 1920, to inquire of the lunacy of the said Sophie E. Wilson an inmate of the New Jersey State Hospital at Morris Plains, upon the oaths and solemn affirmations of twelve good and lawful men of the County of Passaic, found that the said Sophie E. Wilson

30

Exhibit T-1

was a lunatic of unsound mind and did not enjoy lucid intervals and was incapable of the government of herself, her lands, tenements, goods and chattels and that she has been in the same state of lunacy since May 11, 1920, and the said jury further found that the said Sophie E. Wilson is possessed of a two family house and lot, known as No. 48 Henry Street, in the City of Passaic and State of New Jersey, and also personal property consisting of money in the bank, stocks and bonds, including her portion or share of the personal property from the Estate of her husband, William Wilson, deceased, of approximately \$11,647;

10

And it further appearing that the said Sophie E. Wilson has no kin or other blood relatives in the State of New Jersey or in the United States, other than David Wilson, a brother of her deceased husband, William Wilson;

20

It is thereupon on this 21st day of April, one thousand nine hundred and twenty-one, Ordered that the said David Wilson be and he is hereby appointed guardian of the said Sophie E. Wilson, a lunatic as aforesaid, and that letters of guardianship be issued to him accordingly upon his entering into a bond to the Ordinary in the sum of \$12,000., with conditions prescribed by law, which said bond shall first be approved by the Court as to the form and sureties thereon.

William W. Watson,

Judge.

30

Filed April 21, 1921.

Recorded April 25, 1921.

Frederic Beggs, Surrogate and
Clerk of the Orphans' Court.

Exhibit T-1

I, Frederic Beggs, Surrogate of the County of Passaic, do certify that on the twenty-first day of April, in the year of our Lord one thousand nine hundred and twenty-one, the Orphans' Court of the County of Passaic admitted David Wilson, of the County of New York, State of New York, as guardian of the person and property of Sophie E. Wilson, a lunatic.

Witness my hand and seal of office the twenty-eighth day of April, in the year of our Lord one thousand nine hundred and twenty-one. 10

Frederic Beggs,
Surrogate.

(L. S.)

By George L. King,
Deputy.

20

30

EXHIBIT A.

PASSAIC COUNTY ORPHANS' COURT

In the Matter of the Estate of Sophie Wilson, Deceased.	}	On Appeal from Probate of Will by Surrogate.
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10 Testimony heard in the above cause before L. E. Gribbin, Notary Public, the Commissioner for taking the testimony, at his office in the K. of C. Building, Shamokin, Pa., on the nineteenth day of October, A.D., 1922, reported and transcribed by E. C. Burdish.

Appearances

J. A. Welsh, Esq., for Appellant.

D. H. Butz, Esq.

PASSAIC COUNTY ORPHANS' COURT

In the Matter of the Estate of Sophie Wilson, Deceased	}	On Appeal from Probate of Will by Surrogate. Stipulation to take Testimony De bene Esse.
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30 It is hereby stipulated and agreed by and between Michael Dunn, Esq., Proctor for the Appellant, Annie Kulbackie, and Robert J. McDermott, Esq., Proctor for the Appellee, David Wilson, to take de bene esse the testimony of Annie Kulbackie, the above named Appellant, whose address is 1005 West Pine Street, Shamokin, Pa., and of Mrs. Joseph Shizkoskie, a witness in said cause, whose address is corner Chestnut and Oak Street,

Exhibit A

Shamokin, Pa. The said testimony to be taken on the Nineteenth day of October, at one P. M., at the office of L. E. Gribbin, Notary Public, K. of C. Building, Shamokin, Pa., before the said L. E. Gribbin, the Commissioner for the taking of said testimony. And the said testimony is to be taken stenographically.

Michael Dunn,
Proctor for Appellant.
Robert J. McDermott,
Proctor for Appellee.

10

Dated October 2nd, 1922.

PASSAIC COUNTY ORPHANS' COURT

In the Matter of the Estate
of
Sophie Wilson, Deceased.

On Appeal from
Probate of Will
by Surrogate
Oath of Officer
taking Depositions.

20

State of Pennsylvania,
County of Northumberland. } SS.

I, L. E. Gribbin, Notary Public, and Commissioner appointed by stipulation of counsel for the taking of testimony in the above stated cause, do solemnly swear that I will fairly and impartially take the depositions de bene esse of Annie Kulbackie and Mrs. Joseph Shizkoskie, witnesses on behalf of the appellant, pursuant to the foregoing stipulation.

30

L. E. Gribbin,
Notary Public.

Exhibit A

Sworn to and subscribed to before me,
a Notary Public, in and for said County
of Northumberland, State of Pennsylv-
ania at Shamokin, in said County and
State this 19th day of October, 1922.

John W. Tunimies,
Notary Public.

PASSAIC COUNTY ORPHANS' COURT

10

In the Matter of the Estate	}	Op Appeal from
of		Probate of Will
Sophie Wilson, Deceased.		by Surrogate. Appointment of Stenographer.

I, L. E. Gribbin, Notary Public and Commis-
sioner, appointed by stipulation of counsel for the
taking of testimony in the above stated cause do
hereby appoint, E. C. Burdish, stenographer to
take stenographically the evidence of Annie Kul-
backie and Mrs. Joseph Shizkoskie, in the above
stated cause, pursuant to the form of the statute
in such case made and provided.

20

L. E. Gribbin.

PASSAIC COUNTY ORPHANS' COURT

30

In the Matter of the Estate	}	On Appeal from
of		Probate of Will
Sophie Wilson, Deceased.		by Surrogate. Oath of Stenographer.

State of Pennsylvania, }
County of Northumberland } SS.

I, E. C. Burdish, do solemnly swear that I will
carefully, faithfully and impartially take steno-

Exhibit A

graphically the evidence of Annie Kulbackie and Mrs. Joseph Shizkoskie in the above stated cause, pursuane to the foregoing stipulation, and make a true and correct transcript thereof.

E. C. Burdish.

Sworn to and subscribed before me at Shamokin in the County of Northumberland, State of Pennsylvania, this 19th day of October, 1922.

Leo E. Gribbin,
Notary Public.

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PASSAIC COUNTY ORPHANS' COURT

In the Matter of the Estate of Sophie Wilson, Deceased.	}	On Appeal from Probate of Will by Surrogate.
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TESTIMONY

E. C. Burdish, stenographer, having first been sworn as interpreter.

20

ANNIE KULBACKIE, the appellant, being sworn and examined testifies as follows:

By Mr. Welsh:

Q. What is your name? A. Antonina (Annie) Kulbackie.

Q. What is your name? A. Annie Kulbackie. 30

Q. Where do you live? A. Shamokin, Pennsylvania.

Q. What is the street and number? A. No. 1005 Pine Sstreet.

Exhibit A

Q. What was your husband's name? A. George Kulbackie.

Q. Where were you born? A. Old country.

Q. Where? A. Szczuczyn, Poland.

Q. What is the name of the State you were born in? A. Lomza.

Q. What was your father's name? A. John Grajewski.

10 Q. What was your mother's name? A. Eva Kalinowskich.

Q. Did you have any brothers and sisters? A. No, brothers, I have sisters.

Q. How many sisters? A. Two.

Q. What are their names? A. Alice and Sophie.

Q. Is your mother living or dead? A. I had a letter, but don't know whether she is living.

Q. How many years since you had a letter? A. About a month ago.

20 Q. Where does she live? A. Szczuczyn.

Q. Did you hear from your mother? A. I had a letter, but don't know whom it was from.

Q. You had two sisters, Alice and Sophie? A. Yes.

Q. Did either one of them come to this country? A. I sent for Sophie and raised her.

Q. How old was Sophie when she came to this country to stay? A. Nine years.

30 Q. How long did she remain with you? A. I can't remember just how long, but she went to school for four years.

Q. Where did she go after she left you? A. She stayed with that (pointing to Mrs. Shizkoskie) woman.

Q. Who is that woman? A. Mrs. Shizkoskie.

Exhibit A

Q. How long did she live with her? A. I don't know.

Q. You remember when she left Shamokin? A. Twenty-two years past.

Q. Who went with her? A. Mrs. Rebar's sister.

Q. Where were they going to? A. Jersey City.

Q. How old are you? A. Fifty years.

Q. When did you come to this country? A. 10
Before I was seventeen years of age.

Q. How old was Sophie when she came to this country? A. Nine years.

Q. How old would she be now? A. Forty years old last May.

Q. You had a sister, Stella? A. She died when she was a little baby.

Q. When? A. She died, she was the second baby after me.

Q. She died when she was a baby? A. Seven 20
months old.

Q. When you came to this city, who came with you? A. Myself.

Q. Who came with Sophie? A. My cousin.

Q. What is his name? A. Joe Stanishefskie.

Q. To whom did she come? A. To my place.

Q. Your place? A. Sure.

Q. He (Joe Stanishefskie) is your cousin? A. Yes.

Q. How long did Sophie stay with you? A. 30
Until she was about fourteen years old.

Q. Then where did she go? A. To Mrs. Shizkoskie to work.

Q. You say she went to Jersey City with Mrs. Rebar's sister? A. Yes, to my grandfather's step-son.

Exhibit A

Q. What was his name? A. Pete Krombitski.

Q. Did she ever come back? A. Once, I don't know how many years after.

Q. How old was she when she came back? A. She came for a visit when she came back.

Q. Did she tell you where she was staying? A. She was mad at me and stayed at cousin's place.

Q. She went back to Jersey City? A. I don't know.

10 Q. Did you see her? A. Yes.

Q. Did she write you once in a while? A. One letter.

Q. Where from? A. I don't know.

Q. Did she have other relatives? A. No.

Q. No cousins? A. Joe Stanishefskie.

Q. When did your father die? A. Fourteen years ago, 1913, or 1914, in July.

20 Q. Do you know whether your mother is living or dead? A. I don't know, I didn't get a letter for a long time.

Q. Did you send her money? A. Yes, but I don't know who got it.

Q. How old would your mother be now? A. Eighty-five years.

Q. You say your father came to this country? A. When I was a little girl.

Q. Your mother never came? A. No.

Q. Your father worked in the mines? A. Yes.

Q. Did he have a miner's certificate? A. Yes.

30 I show Plaintiff, Petitioner's Exhibit No. 1, marked Oct. 21st, 1922, E. C. B.

Q. What is that? A. My sister's picture.

Q. What is her name? A. Sophie.

Q. Is that the sister that went to Jersey City? A. Yes.

Exhibit A

Q. Where did you get these birth records? A. A man who stayed with Stanishefskie's wrote to a relative in old country to send them on.

Q. Was your father's name John? A. Yes.
I show Plaintiff, Petitioner's Exhibit No. 5, marked Oct. 21st, 1922, E. C. B.

Q. Is that your father's miner's certificate?
A. Yes.

By Mr. Butz—We object to the offer of Petitioner's Exhibit No. 1, on the grounds that proper proof has not been shown that she is the same Sophie E. Wilson, who died March 31st, 1922. 10

Mr. Welsh—We offer in evidence Petitioner's Exhibit No. 2, marked Oct. 21st, 1922, E. C. B., purporting to be the birth record of Sophie Grajewski, born May 6th, A. D., 1882, to Eva Kalinokzkich and John Grajewski. 20

Mr. Butz—We object to this offer for the reason that we do not know where this certificate was obtained.

Mr. Welsh—We offer in evidence Petitioner's Exhibit No. 4, marked Oct. 21st, 1922, E. C. B., purporting to be the birth record of Antonina Grajewski, born May 10th, A. D., 1872, to John Grajewski and Eva Kalinowzkich.

Mr. Butz—We object to this offer for the reason that we do not know where this certificate was obtained. 30

Mr. Welsh—We offer in evidence Petitioner's Exhibit No. 3, marked Oct. 21st, A. D., 1922, E. C. B., being the marriage cer-

Exhibit A

tificate of Wojisch (George) Kulbackie and Antonina Grajewski, the witness.

Mr. Butz—We object to the admission of this offer on the grounds that it is irrelevant to this case.

Mr. Welsh—We offer in evidence, Petitioner's Exhibit No. 5, marked Octo. 21, 1922, E. C. B., being the miner's certificate of John Grajewski, father of Sophie Wilson, deceased.

10

Mr. Butz—We object to the admission of this offer for the reason that it is irrelevant to this case.

Cross Examination by Mr. Butz:

Q. Mrs. Kulbackie, when were you born? A. May 10th, fifty years ago.

Q. You say you came here when? A. Thirty-three years last March.

20

Q. Who did you come with? A. Myself.

Q. When did your father come? A. He came himself, too.

Q. Before or after you? A. He came first.

Q. And then who did you come over with? A. I came myself, father sent for me.

Q. Where was your father at that time? A. Shamokin.

Q. Did you come to Shamokin? A. Yes.

Q. Did you live with your father? A. Two and one-half months father kept me, then I was married.

30

Q. When did Sophie come? A. I sent for Sophie.

Q. At that time did you keep house for your

Exhibit A

father? A. For my man, my father stayed with me.

Q. When Sophie came you sent for her? A. Yes.

Q. Did you send her money? A. Yes.

Q. When she came over where did she go? A. To me.

Q. When Sophie first came where did she she come? A. To my place.

Q. How old was she? A. Nine years. 16

Q. And then she lived with you how long, in Shamokin? A. Until she was about fourteen or fifteen years of age.

Q. What did she do? A. Went to school.

Q. Did she live with anyone else? A. She went to work.

Q. Where, what is the name? A. For Mrs. Shizkoskie.

Q. What did she do? A. She helped with house work. 20

Q. What is her name? A. Mrs. Shizkoskie.

Q. Where did she go after that? A. She went to work for English people.

Q. Who were the people? A. I don't know.

Q. During that time did you see her? A. She came to the house often.

Q. What became of her after she left Shamokin? A. She went to Jersey City and had the address of grandfather's stepson.

Q. Did you ever go to Jersey City to see her? 30
A. No.

Q. Did you hear from her after she went to Jersey City? A. Yes.

Q. How many years is it since she went to Jersey City? A. Twenty-two years, past.

Exhibit A

Q. How much more? A. I guess about twenty-two years.

Q. Did you hear from her when she went to Jersey City? A. She sent one or two letters.

Q. You have those letters? A. No.

Q. Why don't you have those letters? A. I never save letters.

Q. Did you ever write your sister? A. No, I never answered.

10 Q. Did you hear from your sister? A. Only two letters.

Q. You had heard from your sister, Sophie, only twice in twenty-two years? A. Once or twice.

Q. You didn't get to see your sister, Sophie? A. No.

Q. Did Sophie come here? A. Once.

Q. When? A. In summer.

Q. When did she come? A. In summer.

20 Q. How long ago, since you saw Sophie? A. I don't remember.

Q. When was it, what time of the year was it? A. Couple years after she left the first time.

Q. When she came here did she stay at your place? A. No.

Q. Why not?

Objected to by Mr. Welsh.

30 Q. Why didn't Sophie stay at your place? A. She came to my aunt's and stayed there only on a visit.

Q. Where did you see her when she was here? A. She passed the street and talked to me but did not stay at our place, I lived in John Surbish's house.

Exhibit A

Q. Did she ask you to come and see her? A. Yes, and she talked to me and said she was going back.

Q. Where? A. To the place she stayed.

Q. She said she was going back to Jersey City?

A. She went back to the aunt and stayed a couple days.

Q. Is that the last you saw of her? A. Last I saw her, but had one or two letters from her.

Q. How long after did you receive the letters? 10

A. Some years.

Q. That is the last you heard from her? A. Yes, last time. I didn't answer her letters.

Q. At the time your sister was here the last time did she tell you what she was doing? A. Maid for some people.

Q. Who told you about her being dead?

Objected to by Mr. Welsh.

20

Q. Who told you she was dead? A. One woman, she came to Shamokin, and said she died.

Q. Who told you? A. Mrs. Thompson.

Q. Who was Mrs. Thompson? A. A woman.

Q. Who? A. I don't know where she is from.

Q. What is her first name? A. Mary Thompson.

Q. Why didn't she say where she lived?

Objected to by Mr. Welsh.

30

Q. Did Mrs. Thompson come to Shamokin to see you? A. Yes.

Q. What did she say?

Exhibit A

Mr. Welsh—Objected to as being not pertinent to the issue.

Q. When Mrs. Thompson was here what did she say about your sister? A. She told me she was dead.

Q. How did you know your sister was dead?

A. I had a letter from a woman, who knew she was dead.

10 Q. Was it Mrs. Thompson? A. Yes.

Q. Did you attend the funeral? A. No, I was too poor.

Q. Did you know your sister was married? A. Yes.

Q. How did you find that out? A. Mrs. Thompson told me.

Q. Did you know when she was married? A. No.

20 Q. When did Mrs. Thompson tell you that your sister was married? A. She sent me a letter.

Q. How long ago did you receive this letter from Mrs. Thompson? A. I don't know.

Q. Don't you remember? A. A. No.

Q. Was it one year? A. I don't know.

Q. When did you hear from Mrs. Thompson, when did you get the first letter? A. I don't know.

Q. What year? A. I don't remember.

Q. Was it this year? A. Yes.

Q. What month? A. In the spring.

Q. You say you didn't know anything only what Mrs. Thompson told you? A. No.

Q. Mrs. Thompson wrote you that your sister was dead? A. Yes.

Q. When did Mrs. Thompson come to see you?

A. I don't remember.

Exhibit A

Q. Did Mrs. Thompson tell you, your sister was married? A. Yes.

Q. Did she give you the name of the man? A. Yes, Bill Wilson.

Q. Did she say where Bill Wilson lived? A. I didn't ask.

Q. What did your sister do? A. Housework.

Q. You didn't know whether she was married before? A. I don't know.

Q. What was your sister's health? A. I don't know. 10

Q. You say again that you did not know anything about Sophie Wilson, except what Mrs. Thompson told you? A. Yes.

Q. Did you ever have any of your relatives write your sister? A. I don't know.

Q. When you didn't hear from your sister, why didn't you write?

Objected to by Mr. Welsh.

20

A. I didn't have to write.

Q. How did you know about the will of William Wilson? A. Somebody told me.

Q. Who told you? A. My son was down and saw it.

Q. Who told you there was a will? A. Mrs. Raber.

Q. Didn't Mrs. Thompson tell you? A. Yes.

Q. You are the plaintiff, or the petitioner in this case? A. Yes, I want money, I'm poor. 30

Q. You want to get the money because you are poor? A. No.

Q. What makes you think that your sister was the same Sophie E. Wilson, whose will was probated in the Orphans' Court in New Jersey? A.

Exhibit A

My name was mentioned there. Mrs. Thompson told me about the papers that were made out.

Q. Did Mrs. Thompson tell you that it was your sister Sophie's will that was probated April 15th, 1922, at Paterson, New Jersey? A. Mrs. Thompson told me everything.

Q. Did Mrs. Thompson tell you that she was your sister? A. Mrs. Thompson said she (Sophie) told her that she had one sister in Shamokin, Pennsylvania, that kept boarders.

Q. How did Mrs. Thompson know that you were her sister? A. Sophie told her.

MRS. JOSEPHINE SHIZKOSKIE, sworn and examined testifies as follows:

By Mr. Welsh:

Q. What is your name? A. Josephine Shizkoskie.

Q. Where do you live? A. Corner Chestnut and Oak Streets.

Q. At Shamokin, Pennsylvania? A. Yes.

Q. Do you know Mrs. Kulbackie? A. Yes.

Q. How long? A. Twenty-six years.

Q. What was her husband's name? A. Kulbackie.

Q. His first name? A. George.

Q. Did she live near you? A. Couldn't be a square away.

Q. Did you know whether she had a sister, if so, what was her name? A. Yes, sir, that is Sophie always told me.

Q. Sophie told you what? A. That Mrs. Kul-

Exhibit A

backie was her sister and she came from Mrs. Kulbackie to me.

Q. How old was she? A. I don't know.

Q. How long did she stay with you? A. I don't know.

Q. She worked for you? A. Yes, sir.

Q. She lived with Mrs. Kulbackie? A. Yes.

Q. How long? A. I don't remember.

Q. How long did you know her before she came to your house? A. Two or three years. 10

Q. With whom did she live? A. Mrs. Kulbackie.

Q. What was her name? A. Sophie Grajewski.

Q. Did you know Mrs. Kulbackie's maiden name? A. Grajewski.

Q. Did you know her father? A. Yes, John Grajewski.

Q. Did he board with Mrs. Kulbackie? A. Yes. 20

Q. Was he there when Sophie was there? A. Yes.

Q. Did Sophie say he was her father? A. Yes, he came to our house.

Q. With Sophie? A. I can't remember.

Q. You knew them all personally? A. Well, just that long.

Q. You were neighbors? A. Yes.

Q. Did she go back to Mrs. Kulbackie? A. Yes, she did. 30

Q. Did she call her "sister"? A. Yes.

Q. Did she tell you she was her sister? A. Yes.

Q. How long did she stay with you? A. Over two years.

Exhibit A

Q. Do you remember the time Sophie went away? A. No.

Q. Do you know when she went away? A. No.

Q. Did you see her when she came back? A. Yes.

Q. Did she state where she was living, what town? A. I don't remember.

Q. What did their father say? A. The father came to our house,—he called them daughters.

10 Q. I show witness Petitioner's Exhibit No. 1, marked Oct. 21, 1922, E. C. B., what is that? A. Sophie's picture.

Q. Sophie who? A. Sophie Grajewski.

Q. You swear that it is she? A. Yes.

Cross Examination by Mr. Butz:

Q. When was that photo taken? A. I don't know.

20 Q. How old was Sophie when she lived with you? A. I don't know.

Q. How old was she when she came? A. I don't know. We never talked about age.

Q. Do you know how old Sophie was when she left Shamokin? A. No.

Q. You have stated you know that to be her picture? A. She looks exactly like she did when I knew her.

Q. How old was she when she left you? A. I can't say.

30 Q. When she was staying with you, did she talk about her mother? A. Yes, about her mother and father.

Q. Where did she stay? A. She never said anything, only that she was in old country.

Exhibit A

Q. Did she say how many brothers and sisters, she had? A. Only her.

Q. Who? A. Mrs. Kulbackie.

Q. Mrs. Kulbackie, is who? A. A sister to Sophie.

Q. I think you said you saw her? A. Yes.

Q. How long ago? A. I couldn't say, she was there with Mrs. Stanishefskie.

Q. Was it five, ten, or fifteen years ago? A. More than fifteen years. 10

Q. Probably twenty years? A. I don't know.

Q. When you saw her the last time, did she say whether she was married or single? A. She didn't say.

Q. Did she say where she was living? A. No, just that she was working.

Q. What kind of work? A. I imagine housework.

Q. Did she say what kind of work? A. No.

Q. Did you ever hear her address, Mrs. Kulbackie, as her sister? A. Yes. 20

Q. And did she address Mr. Grajewski, as "Papa", showing that he was her father? A. Yes.

Q. You know nothing about her after the time of her last visit? A. No.

Q. Did you hear her sister, Mrs. Kulbackie, speak about her?

Objected to by Mr. Welsh, as not being cross examination. 30

A. No.

Q. Did you ever talk to Mrs. Kulbackie, about her? A. I don't remember.

Exhibit A

Q. Do you see each other frequently? A. Sometimes, once a year, or more.

Q. You never talked about Sophie at all? A. No.

Q. You never heard her say her sister was dead? A. No, only after she was dead her boy told me.

I, L. E. Gribbin, Notary Public, and Commissioner appointed by stipulation of counsel for the
10 taking of testimony do hereby certify that the foregoing is a true and correct transcript of the testimony of Annie Kulbackie and Mrs. Joseph Shizkoskie, given before me on the 19th day of October, 1922; that before taking the said testimony I first took the oath hereinabove set forth; that each of the said witnesses, Annie Kulbackie and Mrs. Joseph Shizkoskie, before testifying, having raised her right hand, was duly sworn as follows: I put to the witness the following question:
20 "Do you solemnly swear by the Ever-living God that the evidence you shall give to the Passaic County Orphans' Court in an appeal from probate of will by Surrogate, in the matter of the Estate of Sophie Wilson, deceased, shall be the truth, the whole truth and nothing but the truth, so help me God?" to which she replied in the affirmative; that the said testimony was taken stenographically in my presence by E. C. Burdish, who was first duly sworn by me as appears by his
30 oath hereinabove set forth; that thereafter the said testimony was transcribed, and was sub-

Exhibit A

scribed before me by the said witnesses respectively.

In Witness Whereof I have hereunto set my hand and seal this 23rd day of October, 1922.

Leo E. Gribbin,
Notary Public.

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Order

(Filed Feb. 15, 1926)

NEW JERSEY PREROGATIVE COURT

In the matter of the appeal
 from an order of the Or-
 phans' Court of the County
 of Passaic admitting to pro-
 bate a certain paper writing
 as the last will and testa-
 ment of Sophie Wilson, de-
 ceased.

10

ORDER

This matter being opened to the Court by Wil-
 liam B. Gourley, proctor for proponent, and it
 appearing that David Wilson the executor named
 in the last will and testament of Sophie Wilson,
 late of the County of Passaic, deceased, duly pre-
 sented the said paper writing to the Surrogate
 of the County of Passaic aforesaid for probate
 and it appearing that a caveat against the pro-
 bate of said will had been filed with the said Sur-
 rogate and citations issued to all persons in inter-
 est and returned duly served and the matter com-
 ing on to be heard and the said Court having taken
 testimony and examined into the matter did duly
 order, adjudge, and decree that the aforesaid
 paper writing was the last will and testament of
 the said Sophie Wilson, deceased, and that the
 same be admitted to probate and that letters testa-
 mentary thereon be issued to the said David Wil-
 son the executor named therein, and

20

30

It further appearing that said caveator duly
 filed her notice of appeal from said decree with
 the said Surrogate and served a copy thereof upon

Order

the proctor of the said proponent and duly filed her petition of appeal with the Register of this Court and served a copy thereof upon said proctor and that said proponent duly filed his answer thereto all within the time allowed by law and the said cause having been duly argued before the Prerogative Court by the respective counsel for
10 said caveator and said proponent

It is thereupon on this fifteenth day of February, 1926, ordered, adjudged and decreed that the aforesaid decree of the Orphans' Court of the County of Passaic admitting to probate the said paper writing as and for the last will and testament of Sophie Wilson, deceased, and directing that letters testamentary thereon be issued to David Wilson, the executor named, be and the same
20 is in all things ratified and confirmed and that said paper writing is the last will and testament of the said Sophie Wilson, deceased:

And it is further ordered that a counsel fee of one thousand dollars be allowed to William B. Gourley, the proctor for proponent, and the Court being satisfied that the appellant had reasonable cause for contesting the validity of the said will,
30 it is further ordered that a counsel fee of seven hundred and fifty dollars be allowed to Michael Dunn, proctor for the caveator, the aforesaid counsel fees to be paid by the Franklin Trust Company of Paterson, the administrator pendente lite of the estate of said Sophie Wilson, out of the estate of the said testatrix and that said proctor of said caveator be also paid the cost of printing the state of the case amounting to the sum of two hundred and eighty seven dollars and fifty (\$287.50) cents. Respectfully advised,

Vivian M. Lewis.

E. R. WALKER,
Ordinary.

Petition of Appeal

(Filed April 17, 1926)

NEW JERSEY COURT OF ERRORS
AND APPEALS

In the matter of the appeal
from the decree of the Or-
phans' Court of the County
of Passaic admitting to pro-
bate a certain paper writing
as the last will and testament
of Sophie Wilson, deceased.

On Appeal from ¹⁰
Prerogative
Court.

PETITION OF APPEAL

To the Honorable, the Court of Errors and Ap-
peals in the last resort in all causes: ²⁰

The petition of Annie Kulbackie, the appellant
in the above-stated cause, respectfully shows that
your petitioner finds herself aggrieved by a final
order made in the Prerogative Court by his Hon-
or Edward Robert Walker, Ordinary of the State
of New Jersey, bearing date the fifteenth day of
February, 1926, wherein the said Annie Kulbackie
was appellant in this respect, to wit, that the
said order ratifies and confirms a decree of the ³⁰
Orphans' Court of the County of Passaic admit-
ting to probate a certain paper writing as and for
the last will and testament of Sophie Wilson, de-
ceased, and directing that letters testamentary
thereon be issued to David Wilson the executor
therein named

And your petitioner humbly appeals from that
part of the order of the Prerogative Court which
orders as aforesaid, upon the ground that the
same is erroneous for that

Petition of Appeal

(1) At the time of the making and of the supposed execution of said paper writing and for a long time prior thereto the said Sophie Wilson was of unsound mind and as such incapable of disposing of her estate by will.

10

(2) The said David Wilson and his wife, Annie Wilson, did unduly, illegally and fraudulently influence the said Sophie Wilson in respect to the making and supposed execution of the said paper writing.

20

(3) The supposed execution of the said paper writing is illegal and insufficient under the laws of the State to constitute the same the last will and testament of the said Sophie Wilson, deceased, for that the said Sophie Wilson did not at the time of the supposed execution thereof sign, publish and declare the said paper writing as and for her last will and testament in the presence of two witnesses, present at the same time pursuant to the statute in such case made and provided.

30 Your petitioner therefore prays that the said order of the said Prerogative Court may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

MICHAEL DUNN,
Proctor of Appellant and
of Counsel with Appellant
(Formal answer filed.)

Opinion

(Filed January 17, 1931)

NEW JERSEY PREROGATIVE COURT

In the matter of the appeal
 from the decree of the Or-
 phans' Court of the County
 of Passaic admitting to pro-
 bate a certain paper writing
 as the last will and testament
 of Sophie Wilson, deceased.

10

OPINION

(Syllabus)

WILLS—Publication of a will need not be by any
 special form of words. 20

WILLS—A presumption of continuance of un-
 soundness of mind arising from findings
 of a commission de lunatico inquirendo
 may be rebutted.

WILLS—On a contest of a will held, that publica-
 tion of the will by the testatrix was suf-
 ficiently shown there was not sufficient
 proof of undue influence and that there
 was sufficient proof that the testatrix
 had testamentary capacity. 30

ARTHUR DUNN, Esq.,
 Proctor and of Counsel for
 the Appellant;

WILLIAM B. GOURLEY, Esq.,
 Proctor and of Counsel for
 Respondents.

*Opinion***LEWIS, VICE ORDINARY:**

10 This is an appeal from a decree of the Passaic County Orphans' Court affirming the decree of the Surrogate of the County of Passaic admitting to probate the will of Sophie Wilson, deceased. The will was executed on the 30th day of March, 1922, the day before her death. By its terms she conveyed to her brother-in-law, David Wilson, and Annie Wilson, his wife, all her estate, which consisted chiefly of a house in Passaic. The will is contested by her sister on the grounds of improper execution of the will, undue influence and lack of testamentary capacity in the administratrix.

20 William Wilson, the husband of testatrix, whom she had married in 1918, was killed in an automobile accident in May, 1920. By his will he devised to her the real estate which is now the bulk of her estate. Before his death she was a strong, healthy woman but within a few days after his funeral she suffered a severe nervous breakdown, and on May 14, 1920, she was committed to the State Hospital at Morris Plains as an insane person and on April 21, 1921, her brother-in-law, David Wilson, was appointed her guardian. On 30 March 25, 1922, she was brought back to her home in an extremely feeble physical condition and almost at the point of death and as stated she died on March 31, 1922. There is no dispute as to any of the foregoing facts.

An attack is made on the validity of the will on the ground that the requisite formalities attending its execution were not complied with, in that at the time she signed it by her mark testatrix did not declare the document as and for her last will

Opinion

and testament. No particular form of words are necessary to comply with this requirement so long as it is made clear to the witnesses that it is a will and that the testatrix knows that such is the fact. **Mundy v. Mundy, 15 N. J. Eq., 290.** The day before the execution of the will the document was read to her by one of the doctors in attendance upon her and he asked her if she cared to sign it to which she replied she was too weak and tired. The next day one of the witnesses to the will, who was nurse in attendance upon her, read the will to her and the will was then handed to the testatrix and she signed it by her mark. She was asked if she wanted to sign it and she said "Yes". She was then asked if she wished the witnesses to sign the paper and she said "Yes". It thus clearly appears from the reading of the document to her that both she and the witnesses knew it was a will and her reply in answer to questions put to her clearly shows that she wished to execute it and have the witnesses sign it. This constitutes a sufficient compliance with the requirements as to publication and declaration.

It appears that at the time testatrix was committed to the hospital she was a lunatic and was in such a mental condition that she would have been incapable of executing a valid will. There is a presumption that the incapacity continues but this presumption is not conclusive but may be rebutted. **In re: Colman's will, 103 Atl., 521.**

The mental capacity requisite to make a will is very low. **Clifton v. Clifton, 47 N. J. Eq., 227.**

The testimony as to the mental condition of the testatrix at the time of the execution of the will

Opinion

convinces me that she had sufficient mental capacity to execute a valid will. The history of her case shows that her insanity was brought on by a violent shock and it would seem a fair inference from all the testimony as to her conduct and condition while in the State Hospital that she gradually became quieter and more nearly normal mentally, while there was a steady deterioration in her physical condition. The testimony of the nurse who had charge of her during the last few months she was in the State Hospital clearly indicates that she was rational. As against this there are the opinions of two doctors from the hospital, one the head physician, the other one in charge of her ward. It was shown that the head physician had scarcely any personal contact with her and had substantially no knowledge of her individual case on which to base an opinion. The other doctor had more opportunity and in fact saw her daily. It would appear from the testimony of the nurse, however, that the testatrix seemed to have a fear and dislike for this particular physician and shrank from any conversation or relations with him so that in his presence it is likely that she did not display her natural degree of mental alertness. There is also testimony to show that her mental condition materially improved when she was transferred from a public ward and this improvement is more or less in proportion to the degree of isolation and quiet that she had. At any rate when she was taken from the hospital to her own home the testimony of her nurses there and of one of the doctors who attended her is to the effect that although she was in an

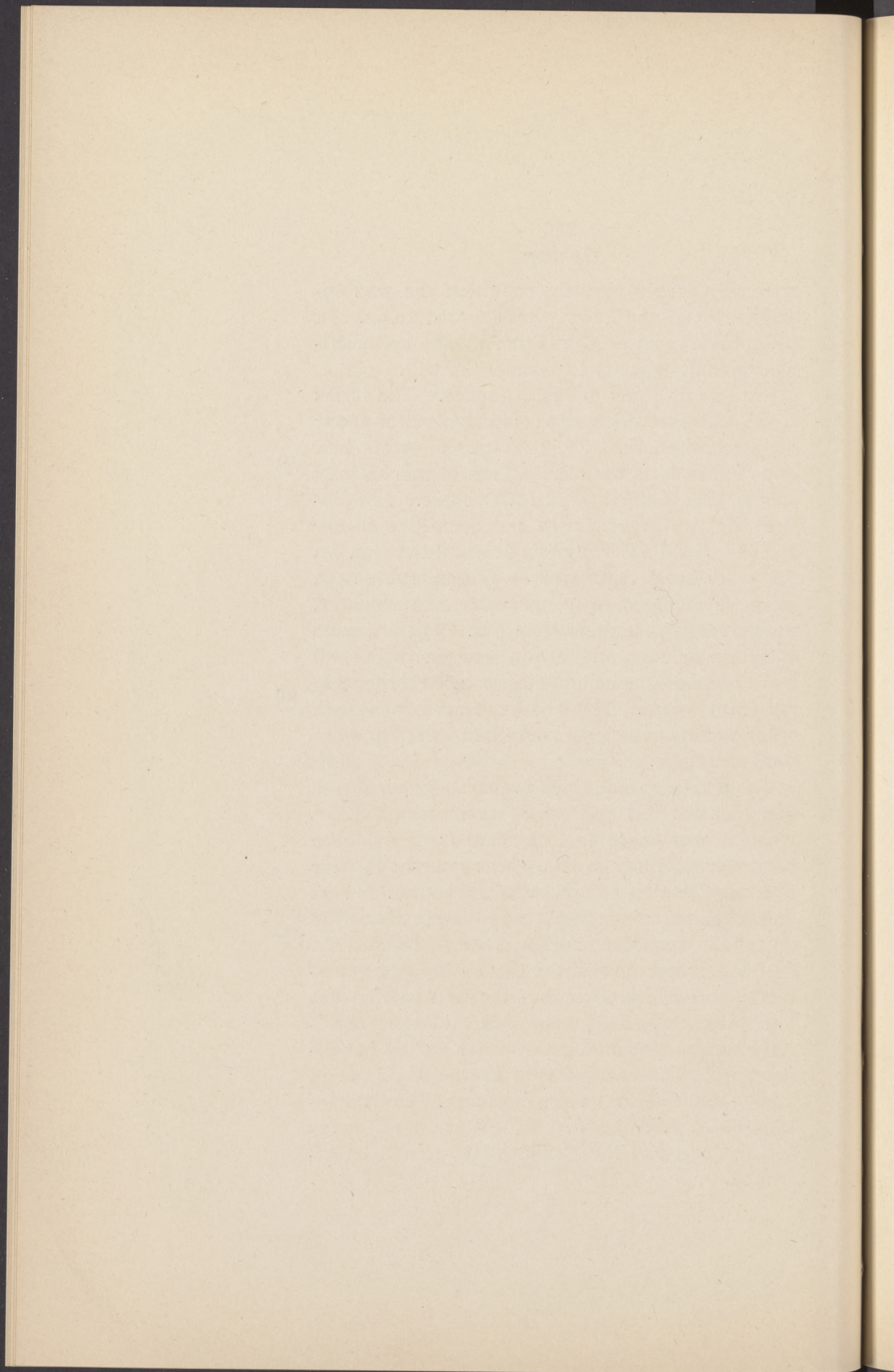
Opinion

extremely feeble physical condition she was entirely rational and knew what she was doing. In my opinion from all the testimony she had sufficient mental capacity to execute the will.

I fail to find any undue influence. The terms of the will were themselves entirely natural under the circumstances. The bulk of the estate had come to her from her husband and it was entirely proper that it should go to his people. In addition, the two beneficiaries had been kind to her and she would naturally feel grateful to them. On the other hand there was no reason, except the mere tie of blood, why her sister, the caveator, should receive anything from her. There was no affection or even friendship between them, and there had been no communications or relationship for many years. They had not even seen each other for about twenty years and in effect were total strangers.

The will in question was prepared by one of the beneficiaries but neither of them was present when it was executed and there is no evidence whatever that any pressure was brought to bear upon the testatrix to induce her signature. In fact one of the nurses testified that the testatrix on the day of the execution expressed her regret that she had not signed the will the day before and volunteered the information that the will carried out her intentions. The mere fact that the beneficiaries were kind and good to her during her illness, which naturally would arouse gratitude in her, would not be undue influence. *Craft's Estate*, 85 N. J. Eq., 125.

The decree of the Orphans' Court will be affirmed.



91 MAY 7 1931

New Jersey Court of Errors and Appeals

In the matter of the appeal
from the decree of the Pre-
rogative Court affirming the
decree of the Passaic County
Orphans' Court admitting
to probate a certain paper
writing as the last will and
testament of Sophie Wilson,
deceased.

On Appeal from
Prerogative
Court

Brief of Appellant

STATEMENT OF FACTS

This appeal is taken from a Decree of the Prerogative Court affirming the decree of the Passaic County Orphans' Court, in admitting to probate a certain paper writing as and for the last will and testament of Sophie Wilson, deceased. The appellant, Annie Kulbackie, is a sister of the alleged testatrix, who had been an inmate at Morris Plains approximately two years prior to the execution of the alleged will, which is purported to have been executed four days after her removal from the said Institution, and a day prior to her death.

The alleged testatrix was the widow of William Wilson whom she married on January 17th, 1918, they having taken up their abode in the City of Passaic and continued to dwell there until May 5th, 1920, when her husband died. See p. 46, l. 10. A few days after the funeral of her husband, Sophie Wilson, the alleged testatrix, was removed

to St. Joseph's Hospital, Paterson, suffering from a nervous breakdown, p. 133, line 10; and on May 14th, 1920, she was committed to Morris Plains as a violently insane person, p. 65, line 25.

By decree of the Court of Chancery, dated March 11th, 1921, she was adjudged a lunatic without lucid intervals since May 11, 1920, by a commission in the nature of a writ de lunatico, inquirendo, the members of which Commission were former Circuit Judge, Clifford L. Newman, and former Labor Commissioner, Andrew F. McBride, p. 218.

On April 21st, 1921, David Wilson, brother of the alleged testatrix' deceased husband, was appointed guardian of Sophie Wilson, a lunatic, p. 221. The alleged testatrix was confined at the Institution at Morris Plains until March 25th, 1922, approximately two years, when upon application of her guardian, David Wilson, who is also one of the principal beneficiaries, she was removed to her former home in Passaic, p. 70, lines 15 to 20, where she remained until her death on March 31st, 1922, p. 1, line 8.

Under the last will of her husband, William Wilson, Sophie Wilson, the alleged testatrix, was to receive everything with the exception of \$6,000, which was specifically bequeathed by Mr. Wilson to his brothers and sisters. The inventory filed by the Executor showed his personal estate to be worth \$19,839.55, and in addition thereto, Mr. Wilson also owned real estate valued at between \$15,000 and \$20,000, page 217. David Wilson, the guardian of Sophie Wilson, a lunatic, and one of the principal beneficiaries under the alleged

will, was also the executor of the Estate of William Wilson, her husband. The inventory of the Estate of Sophie Wilson, a lunatic, shows the value of the same to be \$10,416.00.

The alleged last will and testament of Sophie Wilson was claimed to have been executed on the 30th day of March, 1922, p. 51, line 10, the day before her death, although it bears the date of March 29th, 1922, page 2, line 32, and by its terms devises the entire estate to the aforesaid David Wilson and his wife, Annie Wilson, to be equally divided between them.

This alleged will was admitted to probate by the Surrogate of the County of Passaic, on April 19th, 1922, p. 6, and an appeal therefrom was taken by Mrs. Kulbackie, sister of the alleged testatrix, to the Orphans' Court, which Court, by decree admitted the will to probate and which decree was affirmed by the Prerogative Court, from which determination the present appeal has been taken.

I.

AT THE TIME OF THE DRAFTING AND OF THE ALLEGED EXECUTION OF SAID PAPER WRITING AND FOR A LONG TIME PRIOR THERETO SOPHIE WILSON WAS OF UNSOUND MIND AND INCAPABLE OF DISPOSING OF HER ESTATE BY WILL.

The purported will is alleged to have been executed on March 30th, 1922, although the same bears date March 29th, 1922. The alleged testa-

trix died on March 31st, 1922. She had been removed from the State Hospital at Morris Plains on March 25th, 1922, and had been confined at that Institution as a violently insane patient, without lucid intervals from May 14th, 1920, said removal having occurred at the application of David Wilson, her guardian, and one of the two beneficiaries under her will, her condition at that time being described by Dr. Collins, p. 80: "she wasn't anything but a skeleton. Her eyes were sunk in, and I told Mrs. Wilson, and in fact I told Mr. Wilson, too, about the bad condition of the patient, and said that it was only a matter of time when she would die. I told them what her condition was; her condition was bad and they spoke about taking her in an ambulance, which we were willing to let them do, but they had the forethought to bring an interne along with them when they came for her. She was brought home March 25th, 1922": and as described by Mr. Gormley, who was in charge of the ambulance, p. 123, she was in a state of collapse and showed no signs of life.

The history of her case as shown by the testimony, discloses that a few days after the death of her husband on May 5th, 1920, Sophie Wilson was removed to St. Joseph's Hospital, at Paterson, New Jersey, in a violent condition. While there she was very violent and attempted to commit suicide. On May 14, 1920, she was committed to the Institution for the Insane at Greystone Park as a violent patient upon the affidavits of Dr. McBride and Dr. Dwyer who examined her while she was in St. Joseph's Hospital. On December 6th, 1920,

while Sophie Wilson was still an inmate of the Institution at Greystone Park, David Wilson, one of the beneficiaries under the purported will, filed a petition in the Court of Chancery for the appointment of a Commission in the nature of a writ de lunatico inquirendo to inquire of the lunacy of Sophie Wilson. On February 7th, 1921, this Commission found that "Sophie Wilson at the time of taking this inquisition is a lunatic of unsound mind and does not enjoy lucid intervals, and is incapable of the government of herself, her lands, tenements, goods and chattels and that she has been in the same state of lunacy since May 11th, 1920." These proceedings were confirmed by the Chancellor on March 11th, 1921, and on April 21, 1921, David Wilson was appointed guardian of Sophie Wilson, a lunatic.

The law in our State is well settled that where insanity in the testator has been shown to exist at a time previous to the execution of the will, the party offering the will for probate has the burden of proof showing capacity in the testator. *White-neck v. Stryker and Voorhis*, 2 N. J. E. page 8; *Hunt v. Hunt*, 13 N. J. E. page 161; *Yauger v. Skinner*, 14 N. J. E. page 389.

In re Coleman's will, 103 Atl. 521, "the finding (of the inquisition) is only prima facie evidence of the facts found and may be overcome by satisfactory evidence of capacity at the time the will was made. The finding raises a presumption against the validity of the testament, one which is not conclusive but which may be rebutted."

Furthermore, the law of our State holds that when a man has been proved insane the presumption of law is that that condition will continue to exist until the contrary is shown. See *State v. Spencer*, 21 N. J. L. J. 196 at 210; *Empire Steel & Iron Co. v. Merononk*, 41 N. J. L. J. p. 15; *Boylan v. Meeker*, 28 N. J. L. 274 at 280.

Dr. Curry testified, p. 66, line 8, concerning the condition of Sophie Wilson at about the time she was admitted to Greystone Park as follows:

“The patient was confused, intensely suicidal and homicidal. She had delusions and hallucinations that she was going to be killed and wanted to be killed and made attempts at suicide and during this time when anyone attempted or made an attempt to keep her from these she became excited and would try homicide. She alternated between periods of excitement and periods of great depression.”

Dr. Curry gives a history of the case, p. 66, line 28:

“Q. When you did see her what have you to say as to her condition as compared with when she was admitted? A. She continued very much in the same manner at times better than at other times she would get worse but during the entire period she had these ideas and delusions that she ought to be killed, that she wanted to die and that she begged the doctors and

nurses to kill her and at other times she would be very much excited and would try to strike and did strike other patients and nurses and this continued until along about March 1921 when she started to refuse to eat and had to be tube fed and she gradually lost weight and became more or less in a condition that we thought was critical and the relatives were notified of her condition and from 1921 to 1922 she gradually failed both physically and mentally and in the latter part became very much depressed refusing at times absolutely to eat anything and to answer questions and it was necessary to tube feed her. During the latter part of this period she was confined to bed during the entire time and she absolutely refused to talk to any of the physicians and she gradually failed physically and mentally.

Q. You have said at times she was a little better. Do you mean mentally or her mental state was better or she was less violent? A. She was more quiet. We frequently have patients that will be very excited or very depressed and they become less excited or less depressed than they were during certain periods. This does not mean they have recovered. It means they are less violent and less depressed but are still suffering from the same psychosis they were during the entire period.

Q. So far as you observed was she at any time during her confinement there of

sound mind? A. I don't think so, no, sir.

Q. From your knowledge of Sophie Wilson during her confinement in your institution and her condition at the time she was removed and knowing when she died, within six days thereafter, what would you say as to the probability of her, during that period of six days, recovering the use of her mind? A. I should say she did not.

Q. Would her physical condition at the time she was removed from the hospital have any effect upon her mental condition between that time and the time of her death which was six days after? I am referring to the conditions as you have described them. You said she was in a weakened condition. A. I should say her physical condition would have a direct bearing on her mental condition.

Q. What bearing would it have? A. It would increase the retarded condition of her depression and in the weakened condition she was the mental faculties would not be as alert as ordinarily they would be in a person physically well. The lower physical resistance would naturally lower the mental condition.

Q. What exactly are your reasons for stating there was no probability of her recovery after having left the hospital for six days, Doctor? A. Based on her history and observances from the time she entered the institution until she left gradually over a period of several months and

her gradual failing both physically and mentally and at the time taken out of the institution her mental condition was such that it was absolutely impossible for us to get her to co-operate with us in any way. Her physical condition was such that it was necessary to keep her in bed and she was removed from the hospital on a stretcher."

Dr. Collins testifies, p. 80, line 25:

"Q. Do you remember exactly when she was admitted and her condition then?

A. It was in May, I believe the 14th, in 1920.

Q. Proceed. A. During the first night she was very excited and disturbed and thought she was going to be placed in a dungeon. Had many ideas of self-destruction and made several attempts at suicide, by hanging and using a sheet and in order to protect herself and the others I had her placed in milder restraint and for a period of fourteen days she was very disturbed and excited and kept repeating when I came into the ward Christ was crucified, why am I allowed to die this way and that poison was being put in her food and she remained in this condition for fourteen days, then she continued in such an excited and disturbed condition it was necessary to transfer her to a more disturbed ward. The other patients were complaining they couldn't sleep at night and natur-

ally I give all patients the benefit of the doubt and I tried her out but she attacked or attempted to attack the other patients and nurses and attacked me and after that circumstance I had to send her to the disturbed ward which was called 24A and there she remained under my immediate charge until she was removed from the hospital in March, 1922.

Q. During the period she was there how often did your duties require you to see her? A. I see every patient at least twice a day and sometimes four or five times. In March, 1921, her physical condition was very bad. She suffered considerable loss of weight and took no particular interest in her environment and was very indifferent. She didn't talk to me and I couldn't get much out of her. She remained in a stupid, indifferent condition. So much so that I had a letter sent through Doctor Curry notifying her guardian, notifying him that she was failing very fast. She continued to follow the same trend of self-accusatory and persecutory ideas and became in such a bad state of depression that I was unable to get anything out of her at any time during the last two or three months. I would shake her trying to make some impression upon her but she was absorbed and refused to answer all questions. Why I was interested in this way was that one of the nurses had told Mrs. Wilson how good Sophie was and naturally being inter-

ested in my patients I went in to see how good she was but was surprised when I couldn't get anything out of her. I think it was due to the habit of the nurses to tell visitors how good they are but there is nothing to it at all. She went on to March 1922 and there was a gradual failing. She lost weight, she wasn't anything but a skeleton. Her eyes were sunk in and I told Mrs. Wilson and in fact I told Mr. Wilson too about the bad condition of the patient and said that it was only a matter of time when she would die. Mr. Wilson or Mrs. Wilson, I am not sure, but I think I spoke to him about taking her home. I told them what her conditions were, that it was bad, and they spoke about taking her in an ambulance, which we were willing to let them do but they had the forethought to bring an interne along with them when they came for her and she was brought home on March 25th, 1922.

Q. Comparing her mental condition with the time she was removed and the time she was admitted what can you say as to the improvement or otherwise? A. She did not improve.

Q. Did she show a progression? A. Yes, it was progressive from the beginning.

Q. At the time she was removed from the institution what was the condition of her mind as to being able to comprehend what was going on about her? A. She took little notice of her environment. She was in a very deep depression.

Q. In your opinion was she able to understand her surroundings, recognize her relations and property, etc. when she left?

A. No, sir."

The testimony given by Dr. Collins and Dr. Curry regarding the insanity of Sophie Wilson during the last few weeks that she was in the hospital is corroborated by testimony of Mrs. Arneel, a disinterested witness.

She testified that on March 13th, 1922, she was asked to go up to the Asylum at Greystone Park by the Red Cross Secretary of Passaic on another matter, and that while she was at Greystone Park she went in to see Sophie Wilson, p. 47, line 15. She had been a neighbor and on very intimate terms with Sophie for the two years immediately preceding her commitment to the hospital at Greystone Park. When she spoke to Sophie, she said Sophie did not recognize her. She informed Sophie who she was and asked her again if she recognized her but Sophie did not, p. 106, line 34. Mrs. Arneel also saw Sophie, after she had been removed to Passaic, on March 30th, the day that the purported will was supposed to have been executed, and she says that at that time Sophie was in bed, practically dead, p. 107, line 20.

Mr. Gormley, p. 124-125, the undertaker, who removed Sophie from Greystone Park to Passaic on March 25, 1922, testified that Sophie was in a state of collapse and showed no signs of life. Another Mr. Gormley, p. 128-129, the driver of the ambulance, corroborates this testimony. They

helped to carry her in the stretcher from the hospital to the ambulance at Greystone Park and from the ambulance to the house at Passaic. The testimony of these witnesses is entitled to great weight.

Dr. Curry is the superintendent in charge of the New Jersey State Hospital for the Insane at Greystone Park, and is a specialist in mental diseases, having been engaged in that line of work for the past fourteen years. This Institution is the largest of its kind in the State and one of the foremost in the country. Dr. Curry has been superintendent of this Institution since January, 1920.

Dr. Collins was the assistant physician who had personal charge of Sophie Wilson during the entire time she was at the Institution at Greystone Park. He has been specializing in mental and nervous diseases for the past eleven years and has been connected with the Greystone Park hospital for the past six years. Dr. Collins visited Sophie twice a day during the time she was under his charge and his testimony based upon personal observation of Sophie Wilson at such frequent intervals for so long a period of time is entitled to great weight and especially so in view of his eminent qualifications as a physician in mental diseases. These physicians are men of the highest type and standing in their profession. They hold very responsible public offices and their reputations are beyond reproach. It is needless to say that such men are disinterested.

To overcome the testimony of these eminent men and to rebut the presumption of insanity that we have shown exists in this case the proponents of the purported will offer very meagre and unsatisfactory testimony as to the mental condition of Sophie Wilson and for some unknown reason have failed to produce the doctor who had charge of her after her discharge from the hospital and removal to Passaic, and David Wilson, one of the beneficiaries of the purported will and one against whom the law on account of the circumstances surrounding the supposed execution of the purported will has raised a presumption by showing undue influence. The minister who attended Sophie in her last moments was not called. These people could have thrown light on the question now before the court and it was incumbent upon the proponent to produce them or explain the reason for their failure to appear. This they did not do.

Miss Norris testified in a very extravagant manner that during the two months that she was employed as a nurse at the hospital and while Sophie Wilson, together with fifty-two other patients were under her supervision, she was under the impression that Sophie was perfectly rational. This opinion is based upon conversations which she says she held with Sophie Wilson. An inspection of her testimony will show that these conversations consisted of answers to a few simple questions put by her to Sophie Wilson. To show how little reliance can be placed upon her testimony we have but to refer to her statements that Sophie

Wilson was afraid of Dr. Collins whom she admits visited Sophie twice a day. She testifies that Sophie did not show any fear of Dr. Collins by her actions but that she said she was afraid of him, and therefore Miss Norris made the statement under oath that Sophie Wilson was afraid of Dr. Collins. The best explanation of her extravagant testimony is given by Dr. Collins on p. 84, line 8, where he states "I think it was due to the habit of the nurses to tell visitors how good they (the patients) are but there is nothing to it at all." She did not think it strange that Sophie was detained in the disturbed ward of an insane asylum although as she expressed it Sophie was very rational. Her testimony is so ridiculous and inconsistent with the facts in the case that it is incredible.

Miss Doherty is produced by the proponents of the purported will. She was one of the nurses who attended Sophie at Passaic after her removal from the institution at Greystone Park and she was one of the witnesses to the supposed will. She testifies, p. 185, line 8, that Sophie Wilson's mental condition was absolutely normal and that she saw nothing irrational about it. When asked on direct examination of the conversation she had with Sophie she replied, p. 185, line 1, "yes, sir, I asked her how she felt, I used to ask her every day how she felt and she realized her condition and also realized she was getting weak." It is from these conversations that she forms the opinion that Sophie Wilson was normal. It is to be remembered that Miss Doherty on her oath before

the Surrogate, p. 3, swore that Dr. Butterfield and Miss McCarthy were present with her at the time that Sophie Wilson signed the purported will and that each signed in the presence of the other and the testatrix at that time. On the stand she admitted that the statement contained in the affidavit taken before the Surrogate was incorrect and that Dr. Butterfield had not signed the purported will until the following day.

Miss McCarthy, the other nurse who attended Sophie at Passaic after her removal from the Institution at Greystone Park, was also an attesting witness to the purported will and took the same affidavit that Miss Doherty did before the Surrogate, p. 4, and admitted that it was incorrect when placed on the stand. She testifies, p. 196, line 8, that Sophie Wilson was rational and on the same day says in answer to the question

“During the week you were there did you hold any conversation with her? A. Only to ask her how she felt and what she would like to do.”

On cross-examination she admitted that she did not remember the conversations she had with the patient.

All three of these witnesses were the employees of Mrs. Annie Wilson, one of the beneficiaries named in the purported will. The fact that Miss Doherty and Miss McCarthy were subscribing witnesses to the purported will does not lend any weight to their testimony as to the mental capa-

city of the testatrix for the law in this State is well settled on this point and is well stated in 1 Kocher, p. 123, in the following language:

“The modern rule, however, is that the mere fact of a man having affixed his signature to a will as a subscribing witness does not entitle his opinion as to the competency of the testator to any more weight than that of anyone else who may be called upon to testify.”

In *Grant v. Stanler*, 68 N. J. E. page 555 at 561, it is held

“with respect to capacity the evidence of the subscribing witness possesses very little force because they had no previous acquaintance with the testator.”

The following quotation from *Garrison v. Executors of Garrison*, 15 N. J. E. page 266 at 269 very clearly explains the law of this State on this point:

“The mere opinion of a subscribing witness is entitled to no more weight with the court than that of any other witness. It is true he is called upon by the testator, as his witness of the execution of the instrument and of his competency to make a will, and the theory is, that the attesting witnesses to a will are regarded in the law as placed around the testator in order that no fraud

may be practised upon him in the execution of the will, and to ascertain and judge of his capacity." 1 Jarman 73.

Our experience in these matters is sufficient to satisfy us that the subscribing witnesses seldom if ever take any pains to ascertain the capacity of the testator, and are generally those who know least of his general character and disposition or of his mental capacity. As a general thing, very little regard is paid by the testator to the character of the individuals who are called upon as the attesting witnesses to this most solemn and important act. Their duty is discharged by their formal attestation of the instrument; and any effort on their part to ascertain the state of mind of the testator, or the fact, whether he was the dupe of others who were more active in the transaction, and upon whom the testator was reposing his confidence, would be regarded as inquisitive, and as an unwarrantable interference with matters which did not concern them. The opinion of a witness who is a stranger to the testator, and who sees or hears nothing except what is necessary to enable him to attest the instrument as a subscribing witness, is not as much to be relied upon as that of a neighbor and familiar acquaintance of the testator. The truth is, the opinion of neither is of any weight with the court, except as it proves itself to be a correct and sound conclusion from facts which justify and warrant it. A man who will subscribe an instrument attesting that the testator is of sound mind, memory and understanding, and then repudiate under oath his

own attestation does not occupy a position that will justify a court in giving any weight to his mere opinion. A will may be sustained although all the subscribing witnesses depose to the incapacity of the deceased. *Le Breton v. Fletcher*, 2 Hagg. 568; *Lowe v. Jolliffe*, 1 Sir Wm. Bl. 365; *Shelford on Lunacy* 54, 55. And it is a frequent occurrence for a will to be refused to probate, notwithstanding the strongest kind of testimony in support of the mental capacity of the decedent. I have thought proper to say more, as to the weight to be given to the evidence of a subscribing witness, than perhaps is called for by this particular case. But in several cases, lately argued, before this court, an undue weight, it seems to me, was attached to the opinions of subscribing witnesses, and an idea seemed to prevail that a court ought not to scrutinize as closely the facts from which such witnesses formed their opinions as those which were the base upon which the opinions of other witnesses rested. The observation of Swinburn is applicable to all witnesses—whether attesting or otherwise:

“It is not sufficient for a witness to depose that the testator was mad or beside his wits, unless a sufficient reason can be given to prove this deposition, as that he saw him do such acts, or heard him speak such words, as a person having reason would not have done or spoken.” (Swinburn, 72.)

Mrs. Annie Wilson who was one of the beneficiaries under the purported will and the moving spirit behind the entire enterprise, and whose testimony we have seen is very contradictory and unreliable, also testifies that Sophie was rational at the time she executed the purported will. The fact that if this purported will is sustained Mrs. Annie Wilson will receive between 15 and 20 thousand dollars will show to the court how deeply she is interested in the matter and will explain to the court the character of her testimony.

Dr. Butterfield testified that Sophie was rational although he had only asked her how she felt and she had replied weak and tired. Dr. Butterfield likewise signed an affidavit before the Surrogate in which he swore that he was present with the other two nurses when they signed the purported will of the testatrix, and in attempting to justify himself on the stand he contradicted himself under oath, first by swearing he was not present when the nurses signed it and later by attempting to show that he was present although that was denied by the nurses, see p. 174, line 19, and finally said, p. 175, line 29 "it has been so long I have forgotten".

It is upon such sketchy and unreliable testimony that proponents come before this court and claim that they have overthrown not only the testimony of the eminent and disinterested witnesses produced by the appellant, but also the presumption which the law in its wisdom has seen fit to create under the circumstances existing in this case.

Proponents did not put David Wilson on the stand although he was present in court, nor did they explain any reason for not doing so. They did not put on the stand the minister who attended Sophie during her last illness nor explain any reason for their failure to do so. They did not produce Dr. Reynolds who attended Sophie Wilson during her last illness in Passaic. These were witnesses who could have aided the court in the determination of this question.

We are confident that this court can readily read between the lines and ascertain the true situation which existed in this matter. Keeping in mind the disposition which was to have been made of the estate of Sophie Wilson under the terms of the purported will, the court can readily understand the sinister motive which impelled Annie Wilson to be so active and solicitous about the welfare of Sophie Wilson during her last few weeks on this earth.

II.

WE CONTEND THAT THE PURPORTED WILL IS THE PRODUCT OF UNDUE INFLUENCE BROUGHT TO BEAR ON THE DECEDENT BY THE BENEFICIARIES, DAVID WILSON AND HIS WIFE, ANNIE WILSON.

David Wilson, who with his wife, are the sole beneficiaries named in the purported will of Sophie Wilson, was duly appointed guardian of Sophie Wilson, a lunatic, on April 21, 1921, and con-

tinued to serve in that capacity and has never filed an account nor been discharged from the performance of the duties of that office. He also qualified and was appointed as executor of the estate of William Wilson, the husband of Sophie Wilson, in which estate Sophie Wilson was the chief beneficiary. In these two representative capacities David Wilson was in custody of between 30 and 40 thousand dollars, consisting of real and personal property, which he held for Sophie Wilson, who had been adjudged a lunatic upon his application in 1920.

Annie Wilson, wife of David Wilson, and who would receive an equal, undivided one-half of the estate of Sophie Wilson if the purported will were admitted to probate made all arrangements for the removal of Sophie to the flat at 48 Henry Street, Passaic, where Mrs. Annie Wilson was in complete charge and provided a physician and an ambulance for that purpose, and a physician and nurses for the care of Sophie when she should be brought there. The only people with whom Sophie came in contact thereafter were employees of Mrs. Annie Wilson and Sophie was completely in her charge and subject to her control.

These circumstances show that the relationship between Sophie Wilson and David Wilson and his wife, Annie Wilson, was a confidential one.

Our law raises the presumption of undue influence and against the validity of the will when confidential relations exist between the beneficiary and testator, coupled with the existence of any of the following facts:

(1) That the testator was of weak mind. Dale v. Dale, 11 Stew. Eq. 274; Re Sparks, 63 Eq. 247.

The present case falls within this ruling. The evidence shows that Sophie Wilson was adjudged a lunatic by a commission, by decree dated March 11, 1921, that she was confined to the insane asylum at Greystone Park until March 25, 1922, when she was removed at the request of her guardian, David Wilson, the beneficiary named in the will, under arrangements made by his wife, Annie Wilson, the other beneficiary named in the will. The court must keep in mind that the purported will was executed on the 30th day of March, 1922, and that Sophie Wilson died the 31st day of March, 1922.

The testimony of Dr. Curry, the superintendent of the New Jersey State Asylum for the Insane at Greystone Park, and Dr. Collins, the assistant physician at that Institution, who had personal charge of Sophie Wilson for the entire period of her confinement at that Institution, is to the effect that she was a maniac with suicidal and homicidal tendencies when she was received at the Institution and that her mental condition remained in that state during the whole period of her confinement there. That she suffered from delusions and hallucinations and was depressed and sullen. That her physical condition towards the latter part of her confinement grew gradually weaker and that when she was finally removed to Passaic on March 25, 1922, which was five days before the execu-

tion of the purported will, she was practically in a state of collapse and in extremis.

These facts bring the case within the ruling of the Sparks case and Dale v. Dale, *supra*, and clearly raise the presumption of undue influence.

(2) The beneficiary selected the witnesses. Wheeler v. Whipple, 17 Stewart Eq. 141.

The testimony of Mrs. Annie Wilson, one of the beneficiaries, shows that she hired the nurses who were the witnesses to the purported will and who attended to its execution. She says that she did this at the suggestion of Mr. McDermott, the attorney whom she consulted.

This is another circumstance which raises the presumption of undue influence when coupled with the confidential relationship which has been shown to exist in this case.

(3) If the legatee caused the will to be drawn in her own favor, Dale's appeal, 57 Conn., 127, in re Welsh, 1 Redf. 228; Kocher's Probate Law and Practice, 162.

Under the third point of this brief we have shown that it would have been impossible for Sophie Wilson to have instructed Mr. McDermott to draw her will at the time when he testifies he received the instructions. We have shown that it was not only physically impossible for her to have called upon him as he testified, but also that it

would have been inconsistent with the statements contained in the draft of the purported will for him to have received the instructions before Sophie went to the Institution at Greystone Park. The will recites that the reason for the bequest is "I do this in consideration of the kindness, care and attention given me by them during my illness when I was without friends and no one to extend to me the consideration that they have done and I consider it proper and just that they should have whatever belongs to me after my decease."

This statement could not have been incorporated into the draft of the will that Mr. McDermott testifies he made on Sophie Wilson's instructions two years before her death because at that time she had received no care or attention from the beneficiaries, Mr. and Mrs. Wilson, nor had she been ill previous to that time.

Mr. McDermott testifies that he did not see Sophie Wilson at any time after he alleges he received these purported instructions about two years before the death of Sophie Wilson, at which time he says Mr. David Butz was the counsel, and therefore the necessary inference to be drawn from the facts is that the instructions from which he, Mr. McDermott, drew the purported will were obtained from Annie Wilson.

These circumstances, when coupled with the confidential relationship already shown, raise the presumption that the purported will is the product of undue influence.

(4) When a will is executed by a person virtually in extremis, the legal presumption will not

be in favor of the instrument, but the person who propounds it for probate must show by clear and convincing proof not only that the document was read to her, but that she fully understood its character and contents. *Den. v. Johnson*, 2 South, 454, 456.

The testimony of Dr. Curry is to the effect that Sophie was removed from the Institution on March 25th, 1922, in a dying condition, p. 75, line 30.

Mr. Gormley, the undertaker, who removed her from the Institution to Passaic, testified that she was in a state of collapse and exhibited no signs of life.

Mrs. Annie Wilson testified that Sophie's physical condition was very bad, although she did not think she would pass off so quickly.

We have shown facts and circumstances which when coupled with the confidential relationship which existed between Sophie Wilson and David Wilson, her guardian, and Annie Wilson, his wife, the two beneficiaries of the purported will of Sophie Wilson, under the law of this State as shown by the cases cited above raises the presumption that the will offered for probate was the product of undue influence exerted upon Sophie Wilson by David Wilson and Annie Wilson, his wife, the beneficiaries. This presumption casts upon the proponents of the purported will the burden of proving the absence of undue influence and upon their failure to do so, probate of the will will be

denied. A careful review of the testimony shows that the proponents have not sustained this burden but have utterly failed therein, and the evidence strengthens the presumption which the law has raised.

Sophie Wilson was married on January 17th, 1918, to William Wilson, the brother of David Wilson, the proponent, and they lived together at 48 Henry Street, until his death, May 5th, 1920. During that time, a period of over two years, Mrs. Annie Wilson testifies that she and her husband only visited Sophie on three occasions which were formal visits on Christmas, Thanksgiving and New Years. Immediately after the death of William Wilson, we notice the first time that Annie Wilson was taking an active interest in Sophie Wilson. This is indicated by the following quotations from the testimony of Mrs. Arneel on page 102, line 20:

“Q. Did you have a conversation with her on the day you saw her last? A. I did the day of Mr. Wilson’s funeral. As I went in I said, how do you do Mrs. Wilson, and I said what is the matter, because she was all excited and she says for God’s sake will you stay with me tonight, them two will drive me crazy. They got papers they want me to sign.

Q. Did you know to whom she referred when she said them two? A. Yes, sir, Mr. and Mrs. Wilson.

Q. Were they there? A. Yes, sir, because they came out and as they came

out she put her fingers to her mouth like that and said don't say anything."

Although Sophie was removed to St. Joseph's Hospital on the next day and remained there for four or five days according to Mrs. Wilson's own testimony, she did not see fit to call upon her or visit her until Sophie was being removed to Greystone Park, at which time Mrs. Annie Wilson accompanied her to that Institution.

Under the will of William Wilson, Sophie was the residuary legatee and David Wilson was named the executor. David Wilson was likewise appointed guardian of Sophie Wilson after she had been adjudged a lunatic, and the assets which he held in these two representative capacities were valued at between 30 and 40 thousand dollars. The uncontradicted testimony of the Doctors is that Sophie remained in a violent condition until the latter part of November, 1920, and then lapsed into a state of depression about March, 1921, at which time she failed very fast and the hospital authorities notified her relatives to that effect. She continued to fail rapidly until March, 1922, when she was removed as Dr. Curry testified in a dying condition and as Dr. Collins stated, it was only a matter of time when she would die.

Mrs. Annie Wilson testifies that she visited Sophie regularly on the visiting days, but that during the last two weeks of her stay when she became better, she visited her every day. She further testifies that Sophie first mentioned making a will

in favor of herself and her husband about this time and this may afford some explanation for her increased devotion. She testifies that immediately on receiving this information she called upon Mr. McDermott and sought his advice as a lawyer as to the legality of Sophie drawing a will in favor of herself and her husband. Mr. McDermott testifies that on the day following this conference, of his own accord, he went to Greystone Park to find out personally about Sophie's mental condition, although he had no interest in her whatsoever. He testified that he did not see Sophie while there, p. 182, line 28. In this he contradicts Mrs. Annie Wilson who testifies, p. 149, line 25, that she was with Mr. McDermott in Sophie's room at the hospital part of the time that he stayed there, and that after he came out of the room they talked over the subject that had been spoken of. On the following day, upon the advice of Mr. McDermott, Sophie was removed to the apartment in Passaic where she was under the custody and control of Mrs. Annie Wilson, and those whom she hired to take care of Sophie. She testified that on the second or third day after Sophie was at home she went to Mr. McDermott's office and received from him the draft of the purported will, and Mr. McDermott said, p. 178, line 35:

“I had drawn that will before that and I said now it would be well as I cannot bother with this thing any more, I cannot run down with this thing and find out if she is capable or competent. I don't think I would be a judge. You give it to the

nurses and the doctor and let these three be the sole judges."

Mrs. Annie Wilson testifies that she did not inform Sophie about the arrangements for drawing the will. On page 154, line 19, she testifies:

"No, I would not mention the will, it seemed too cold blooded when a person was ill to get things arranged."

The draft of the purported will which she had received from Mr. McDermott was taken to Passaic by Mrs. Annie Wilson and given to the doctor who read it to Sophie, but Sophie refused to sign it. On the next day it is contended by the proponent that the will was executed in the presence of the two nurses.

Let us examine these conflicting stories and ascertain what the fair inferences that are to be drawn therefrom are, and what probably happened.

As we have seen, Mr. David Wilson, the husband of Annie, had in his custody 30 to 40 thousand dollars worth of assets which rightfully belonged to Sophie Wilson. These had been in his custody since 1920, and he has never had to account to anyone for them. Mrs. Annie Wilson unconsciously threw a great deal of light on the question when she testified, p. 151, line 27:

“Q. You were somewhat fearful that the will might not stand? A. I did not think so at all. I did not think she had relatives. I did not know anything about them.”

and again on page 131, line 30, in regard to the house at 48 Henry Street, the question was asked:

“Q. Is that the same house as your sister-in-law owned when she died? A. Yes, sir.

Q. She got it from your brother? A. My brother-in-law.”

In order to enable Annie Wilson and David Wilson to retain the funds which were in the custody of David Wilson, the heirs of Sophie Wilson would have to be cut off in some manner. Mrs. Annie Wilson testified that she had attempted to locate them previously but had been unable to do so, and from her remarks she did not think there were any relatives, it is apparent that her idea was that this paper writing could be foisted upon Sophie Wilson and it could be probated as a matter of course, there being no one to contest it. We have seen from the contradiction in her testimony how little reliance can be placed upon anything she has said. We believe the following to be the true history of this case.

Annie Wilson wished to retain the money in her husband's hands and not turn it over to any strangers who had not assisted in building up the fortune, and who to her way of thinking were not

entitled to share in it. She knew that Sophie Wilson had been adjudged insane and knew that if a will were drawn in the insane asylum at Greystone Park, considerable doubt would be cast upon its validity. She therefore informed Mr. McDermott of the circumstances and asked his advice concerning the removal of Sophie to Passaic where the will might be executed without raising undue suspicion. When Mr. McDermott informed her that Sophie could be removed with safety from Greystone Park she immediately attended to this and upon obtaining the will from Mr. McDermott gave instructions for its execution. Mr. McDermott received his instructions for the drafting of the purported will from Mrs. Annie Wilson at about this time. It was physically impossible for him to obtain the data from Sophie at the time at which he says he received it.

The presumption that Annie Wilson and David Wilson exerted undue influence upon Sophie Wilson and obtained the execution of this instrument is borne out by the testimony as we have shown. The testimony of Annie Wilson is full of contradictions and absolutely, unreliable. David Wilson against whom this presumption of undue influence is raised by the circumstances of the case was not put on the stand to rebut it, although present in court. Dr. Reynolds, to whom Mrs. Annie Wilson delivered the draft of the purported will and who attended Sophie during her illness while in Passaic, was not produced although he was in a position to throw very great light upon the mental and physical condition of Sophie about the time of the execution of this purported will.

As a matter of fact there is nothing in the evidence adduced to rebut this presumption and we contend the probate of this will should be denied on the ground of undue influence.

III.

THE SUPPOSED EXECUTION OF THE SAID PAPER WRITING IS ILLEGAL AND INSUFFICIENT UNDER THE LAWS OF THE STATE TO CONSTITUTE THE SAME THE LAST WILL AND TESTAMENT OF THE SAID SOPHIE WILSON, DECEASED, FOR THAT THE SAID SOPHIE WILSON DID NOT AT THE TIME OF THE SUPPOSED EXECUTION THEREOF SIGN, PUBLISH AND DECLARE THE SAID PAPER WRITING AS AND FOR HER LAST WILL AND TESTAMENT IN THE PRESENCE OF TWO WITNESSES PRESENT AT THE SAME TIME PURSUANT TO THE STATUTE IN SUCH CASE MADE AND PROVIDED.

We contend that the purported will was never duly executed by the said Sophie Wilson as her last will and testament in compliance with the provisions of the Statute in that the said Sophie Wilson never declared and published the same as her last will and testament.

The requirements for the proper declaration in the due execution of a will under our statute are well set forth in Kocher's P. L. & P. 130, in the following language:

"It appears to be settled that the witnesses must know the instrument to be the will of the testator by virtue of some declaration made by the testator, or in his presence, or some conduct or circumstance or acquiescence at the time indicating that the testator was executing a will and that the testator requested the witnesses to sign as such."

Under the present heading we will not discuss the mental incapacity of Sophie Wilson but will confine ourselves to the question of whether or not she made proper declaration of this paper writing as her last will and testament.

(a) All the evidence shows that Sophie Wilson did not give the directions for the drafting of the purported last will and testament, and did not know of its existence until it was brought to her death bed for execution.

Let us briefly review the testimony of the witnesses with reference to this.

The witness, Robert McDermott, testifies, page 176, line 10, that he first met Sophie Wilson shortly after her husband's death. She called at his office and after some conversation it was decided that he should draw her will, leaving everything to Mr. David Wilson and his wife, Annie Wilson. He then says that he did not see her any more, p. 182, line 13.

It may be said in passing that the testimony of the witness, Annie Wilson, does not agree with

the above testimony of Mr. McDermott. She testifies, page 149, line 22, that when Mr. McDermott called at the Asylum to see Sophie, she, Annie Wilson, was there and spoke with both Mr. McDermott and Sophie and was in the room with them.

Mr. McDermott testifies that he drew this purported will after his visit to the Asylum and within two weeks of the date of Sophie's death, p. 180, line 1, and 182, line 3. He testifies that he drew the purported will from the data which he retained in his office from the time that Sophie Wilson had visited him a few days after her husband's death and before she was committed to the asylum, p. 180, line 30, and 182, line 3. This was two years before the date when it is alleged the purported will was signed by Sophie Wilson, and Mr. McDermott says that this purported will was a verbatim re-draft of the paper he had two years previously prepared as Sophie's will to be signed by her when she should return to his office. and that his reason for not using the first draft was "it had been dated too far back and I thought it best to re-draw it and I had it re-drawn," p. 183, line 10.

We will demonstrate beyond question that Mr. McDermott is positively mistaken when he testifies that the purported will was a re-draft of the form of the will that he prepared two years previously as he says from instructions given him by Sophie Wilson.

Mr. McDermott testified that Sophie Wilson called on him shortly after her husband's death and before she was committed to the Asylum.

That she called on him five or six times, p. 176, line 16. Sophie Wilson's husband died May 5, 1920, and was buried on the 8th, and Sophie was committed to Greystone Park on May 14th, leaving an intervening period of but six days. Mrs. Annie Wilson testifies that prior to Sophie's removal to Greystone Park Sophie had been in St. Joseph's Hospital four or five days, page 133, line 15. Mrs. Arneel testifies, p. 102, line 15, that she saw Sophie the day after the funeral and that she was removed on the day after that, which would be Monday, May 10th. Mrs. Macy, p. 42, line 30, testifies that Sophie stayed home Saturday and Sunday and then she went some place Monday, which was May 10th, "I could not find her any more".

Dr. McBride, in the affidavit taken May 14, 1920, upon which application for the commitment of Sophie Wilson as a lunatic was made by David Wilson, says that Sophie Wilson had been under his care and treatment for forty-eight hours prior to the time of taking the affidavit on May 14th, and he is corroborated in this by the affidavit of Dr. Dwyer, both of which affidavits were read to the court in this case.

This testimony shows that Mr. McDermott is evidently mistaken when he says that Sophie Wilson called at his office half a dozen times between the date of her husband's death and her commitment to Greystone Park, and gave him instructions as to how she wished her will to be drawn. She could not have called at his office because

immediately after the funeral of her husband she was taken to St. Joseph's Hospital and from there to Greystone Park. The will itself contains the positive proof that Mr. McDermott did not get the instructions from Sophie Wilson to draw her will when he alleges he did, about two years before her death, and according to his own testimony he did not see her and had no relations with her thereafter. Furthermore, Mr. McDermott testified on cross examination, p. 181, line 5, that he did not know how long it was before she was committed to Morris Plains, that he had this conversation with her about the disposition of her property, and he stated that Mr. David Butz was her counsel at that time, p. 181, line 5.

The will, after bequeathing the remainder of the estate to David Wilson and Annie, his wife, recites as a reason for said bequests, "I do this in consideration of the kindness, care and attention given me by them during my illness when I was without friends and no one to extend to me the consideration that they have done and I consider it proper and just that they should have whatever belongs to me after my decease."

The testimony shows that prior to Sophie's husband's death she had little, if any, social intercourse with David Wilson or his wife, Annie, who had always resided in New York, and who paid no more than three visits to Sophie Wilson up to the time of her husband's death, p. 143, line 5. The testimony also shows that Sophie Wilson enjoyed robust health up to the time of her husband's

death, p. 144, line 22. It is obvious, therefore, that in view of the physical facts and circumstances as outlined by the testimony that it would have been impossible for Mr. McDermott to have drafted the purported will from instructions received two years prior to the death of Sophie Wilson, as he alleges in his direct testimony. The Court must bear in mind the fact that Mr. McDermott testified that Mr. David Butz was Sophie's counsel at that time, p. 181, line 5. We have shown that Sophie Wilson, at the time he alleges she gave him the instructions was confined in St. Joseph's Hospital at Paterson as a violent insane patient. We have further shown that prior to the funeral of her husband she was enjoying robust health and had never been ill, and consequently the reference to the kind treatment that she had received from David Wilson and Annie Wilson during her illness, could not have referred to a time prior to the death of her husband. We have further shown that by Mrs. Annie Wilson's own admission, that prior to the death of William Wilson, Sophie's husband, she visited Sophie only on three occasions, consequently there is no other alternative for the court but to decide that the instructions from which the draft of the purported will was prepared were received by Mr. McDermott from some one other than Sophie Wilson, and at a time subsequent to her commitment to Greystone Park and that under the testimony she had no knowledge of the provisions of the purported will until the same was placed before her for execution.

Mr. McDermott testifies at p. 178, line 35, that he delivered the draft of the purported will to Mrs. David Wilson to take to Passaic for execution and instructed her to obtain two nurses and a physician and let these three be the sole judges as to whether or not Sophie was capable or competent to execute a will. Mrs. Wilson says she delivered the will to Dr. Butterfield, p. 137, line 20, although Dr. Butterfield says that the first he knew of the will was when he saw a piece of paper lying on the dresser and saw Dr. Reynolds pick it up, p. ~~164~~¹⁷⁸, line 18. Dr. Reynolds was not produced as a witness in this matter, although he was the physician in charge of the patient while she was confined to her home in Passaic.

Dr. Butterfield testifies that Dr. Reynolds read the paper to Sophie out loud, p. 171, line 1, and asked her if she cared to sign it and that she replied that she was weak and tired, p. 171, line 25. Mrs. Annie Wilson testifies p. 137, line 30, that Sophie refused to sign the paper when requested by Dr. Reynolds, because she was afraid that they would send her back to the hospital. Dr. Butterfield testifies that Dr. Reynolds and the two nurses, Miss Doherty and Miss McCarthy, were the only persons present at this time, p. 168, line 25. Miss Doherty testifies that she was in the kitchen at the time, p. 55, line 5, and does not know whether or not the will was read. None of the persons who were present testify that Mrs. Annie Wilson was there. Miss McCarthy, p. 199, line 28, says "I believe one of the doctors read it to her, but I am not positive". Very little weight

should be given to the testimony of Dr. Butterfield for reasons that will be hereinafter pointed out.

The evidence adduced regarding this occurrence does not show that Sophie Wilson became cognizant of the contents of the paper that was attempted to be foisted upon her as a last will and testament.

The evidence adduced by the witnesses to the alleged execution of the purported last will and testament of Sophie Wilson does not show that Sophie Wilson knew that the paper writing was a last will and testament nor does it show that she declared it to be such to the witnesses who were present nor did she request them to sign as witnesses to a last will and testament.

The following quotations comprise all the testimony of these witnesses relative to this point.

Page 50, line 12, Miss Doherty:

“Q. Did Mrs. Wilson say anything at the time she signed it? A. She said she wanted to sign it and when I brought the paper in to her side she did not feel she could sign it—write her name, and I said it was not necessary to write her name, just to make a mark, a cross.

Q. What else did she say, if anything, did she request you to sign it? A. I asked her if she wanted me to sign and she said yes. I asked her.

Q. Did she read it? A. No, I read it to her.

Q. What suggestion was made that caused you to go and get the paper?, page 55, line 11. A. The patient said she wished she had signed the paper.

Q. Did you know what she meant by a paper? A. Yes, I knew she meant this paper.

Q. How did you know she meant this paper? A. I guessed it."

Page 57, line 15:

"Q. And then you handed it to her and she signed it and made her mark? A. Yes, sir, I asked her if she wanted to sign it and she said yes, and I said are you sure and she said yes."

Page 57, line 22:

"Q. What did you tell her this was when you gave it to her to sign? A. I did not tell her it was anything. She said she wanted to sign the paper."

Page 62, line 15, Miss McCarthy:

"Q. After she made the mark, what did you do with the paper then? A. We said do you want us to sign this and she said yes and then we signed our names."

Page 184, line 21, Miss Doherty testifies:

"She said she wanted to sign that paper and that is the first time I knew just what it was. I took it in to her and asked her if she wanted to sign it. She said yes. I read it to her and asked her if she wanted to sign it again."

Page 188, line 25:

"She said she wanted to sign the paper. I got it for her and she said she wished she

had signed the paper. I said do you want to sign it and she said yes."

Page 190, line 9:

"I don't remember whether she said anything or not but I know I read it to her."

Page 190, line 15:

"Q. What did you do after you read it? A. Asked her if she wanted to sign it.

Q. After you read it, Sophie said nothing to you until you spoke to her? A. I don't remember.

Q. After you read it, what did you do? A. I signed it.

Q. That is before Sophie signed it? A. I don't know whether she signed it first or I did."

Page 191, line 8:

"Q. After that was done what was done with it? A. Sophie signed it but I don't know whether she signed it before or after us two nurses."

Page 200, line 6, Miss McCarthy says that Sophie told her that she wished she had made those arrangements when the Doctor was speaking to her, and Miss Doherty was there and Sophie said "I wish I had signed the paper", and Miss Doherty got the paper, read it to her, and that they propped her up with pillows and she started to write. I said to Mrs. Wilson, page 195, line 6 "are you sure you are satisfied with this before I sign it" and she said "yes, that is all right. I want Mrs. Annie Wilson, she called her Annie, to

have everything because she has been so good to me." This is denied by Miss Doherty, the other attesting witness.

Page 200, line 8: She said she would like to make the arrangements.

Page 199, line 32:

"Q. How soon after that did you see that paper again? A. When the patient asked to make arrangements and said she wished she had done it. She wished she had made those arrangements.

Q. When she said that did Miss Doherty say anything?"

Page 200, line 16:

"A. She had the paper or she got the paper and read it over to her.

Q. Did she say anything? A. I don't think she said anything to her."

Page 201, line 5:

"Q. After she made her mark on the paper what did you do? A. I said are you sure you are satisfied with this and she said yes, and I signed it."

Page 202, line 1:

"The conversations I had with the patient, etc. I don't remember."

This contradicts the statement made by this witness on page 195, line 6.

Page 203, line 25:

"Q. When Mrs. Sophie Wilson said I wish I had signed that paper was that the

first remark she made to you in reference to it? A. She made a remark about I would like to make some arrangements."

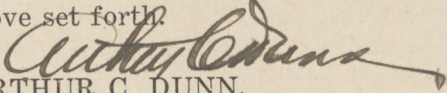
In weighing the testimony of these witnesses, Miss McCarthy, Miss Doherty and Dr Butterfield, it will be well for the court to keep in mind the fact that each of them took an affidavit before the Surrogate, pages 3, 4, 5, in which it was set forth that they were all present at the same time when Sophie Wilson signed the alleged will and that each of them signed the will in her presence and in the presence of each other. When Miss Doherty and Miss McCarthy were on the stand they testified that Dr. Butterfield signed the alleged will on the day following that upon which Sophie Wilson and the nurses had signed it, and thus contradict themselves under oath. Dr. Butterfield, on the stand, at first swore that he did not sign it at the same time as Sophie and the nurses as was testified to by the nurses, but upon being confronted with the affidavit which he had taken before the Surrogate, swore that the statements contained therein were true and that his previous statements made on the stand were wrong, (see pages 174-175). No reliance can be placed upon such testimony.

In view of the testimony in regard to the execution of the will and the conduct and statements of Sophie Wilson at the time at which it is alleged the purported will was executed, it will be seen that there is nothing from which an inference can be drawn that Sophie realized that she

was making her mark to a testamentary document, nor can it be inferred that she communicated to the nurses that she knew she was executing a testamentary instrument or that she was requesting them to witness such an instrument. And that the evidence shows first that Sophie said she wished she had signed a paper, that a paper was brought to her, was read, and upon being asked whether she wished to sign it she replied in the affirmative. After her cross was made to the same by the assistance of one of the nurses she was asked whether she wished the nurses to sign the paper also and upon replying in the affirmative it was signed. There was no mention of will made any where in the testimony, and we contend that the requirements of the due execution of a will are wholly lacking in this paper.

CONCLUSION

We therefore respectfully submit that the Decree of the Prerogative Court should be reversed for the reasons above set forth.


ARTHUR C. DUNN.

Proctor for and of Counsel with
Appellant.

91 MAY 1 1931

New Jersey Court of Errors and Appeals

In the matter of the appeal from the decree of the Prerogative Court affirming the decree of the Orphans' Court of the County of Passaic, admitting to probate a certain paper writing as the last will and testament of Sophie Wilson, Deceased.

Brief for Respondent

This is an appeal from the decree of the Prerogative Court affirming the decree of the Orphans' Court of the County of Passaic admitting to probate the last will and testament of Sophie Wilson, deceased.

By this last will and testament, the testatrix bequeathed and devised all her estate, after paying her debts and funeral expenses to Annie Wilson and David Wilson, her brother-in-law and sister-in-law. The will recites that it was "in consideration of the kindness, care and attention given me by them, during my illness when I was without friends and no one to extend to me the consideration that they have done and I consider it proper and just that they should have whatever belongs to me after my decease."

The executor is David Wilson. The testatrix was forty years of age, p. 229, and lived at 48 Henry Street, in the City of Passaic. Her will is

dated March 29th, 1922, and was executed two days before she died, p. 62, 51, 184, and 188. She died on March 31st, 1922. She was married to William Wilson, January 17, 1918. By the will of her husband she was devised the real estate known as 48 Henry Street, the property on which she died, and also bequeathed considerable personal property. It was therefore proper in addition to other reasons that the property should go to her husband's brother. She had a sister living in Pennsylvania, who, (as afterwards will appear) had not seen her in nearly 22 years, p. 223. Her husband lost his life in an automobile accident, dying four weeks later at a hospital, p. 132. This accident was a great shock to her with the result that she lost her reason for a time.

She was committed to the State Hospital at Greystone Park as an insane person on May 14th, 1920, p. 80, a week after her husband's death, p. 132. Her husband's brother, David Wilson was appointed her guardian on April 21, 1921. She was brought back to her home on March 25th, 1922, p. 70. She died as stated on March 31, 1922.

HISTORY OF THE EXECUTION OF THE WILL

Robert J. McDermott, a counsellor-at-law of this state, said that the testatrix came to see him several years before for the purpose of having a will executed. She gave her instructions to him and accordingly he made a draft of the will. He said that she "seemed to be laboring under a

terrific fear," p. 176. She did not return. Later he heard that she was confined at Greystone Park and that she was improving in mental health. He made a visit to the State Hospital and found upon inquiry, that her mind was normal and that she ought to be taken home. He gave the present will to Mrs. Annie Wilson with instructions to take the opinion of the Doctor and nurses in attendance upon her as to her mental capacity and if they found that she had possession of her mental faculties to inquire whether she desired still to execute the paper. The paper was then given by Mrs. Wilson to the doctor in attendance who read the paper over to her and asked whether she wished to sign it. She said that she was too tired at the time. One of the nurses the following day upon her statement that she was sorry she had not signed the paper, asked her whether she wished to sign it then. Upon her expressing such desire, the nurse read the paper again, p. 55, and it was executed—as will appear later in more detail—and was signed by the two nurses as witnesses. The following day Doctor Butterfield, one of the attending physicians, read the paper over to her and asked whether she wished to have him sign it. She said that she did. He thereupon added his signature to the paper. This completes the history of the execution of the will.

The validity of this will is challenged on the usual grounds of want of mental capacity; undue influence and informal execution.

Each of these points is argued in the brief of appellant. The argument in support of the will will follow the same arrangement.

Some consideration was given to the question whether the appellant was a sister of the testatrix. I need not pause to discuss this question now and will assume in this argument that she was.

PART I.

THE TESTATRIX AT THE TIME OF THE EXECUTION OF HER WILL WAS POSSESSED OF TESTAMENTARY CAPACITY.

The depositions taken to establish the relationship of the appellant to decedent do not affect the point now under consideration and are not evidence on the main case. I consent, however, to their use here if they will aid to the solution of the case.

There were three witnesses only produced for the caveators, Dr. Curry, and Dr. Collins of the State Hospital at Greystone Park, and a woman named Emma Arnell, on the question of testamentary capacity. An analysis of their testimony shows them wanting in accurate knowledge of this subject. The two witnesses who brought her home from the hospital add nothing of consequence.

DR. MARCUS A. CURRY

The first witness to testify for the appellant was Dr. Marcus A. Curry who was the superintendent of the hospital at Greystone Park in which the testatrix was an inmate from May 14th, 1920, p. 80 to March 25th, 1922, p. 70-84. The state of the case refers to him as a witness for the proponents, p. 65. He was, however, a witness for the caveator. His cross examination showed that his testimony was of little value as will appear. On her entrance to the hospital there were about 2700 inmates. At the time he testified there were 2950, p. 70. He did not have a very minute knowledge of each patient and it is difficult to believe that he could have such knowledge. He received his report from the assistant physician as to the condition and then went occasionally to see the patients. He would not attempt to say the number of times that he saw the testatrix. He was pointedly asked whether he would say he saw her once and the answer was that he did, but upon being pressed he said he would not attempt to try to tell the court.

“Q. Did you ever see this woman in your life? A. I have seen her, yes.

Q. You know you are under oath to tell the truth, Doctor? A. You don't have to tell me that.

Q. Nevertheless I am telling you that. Will you answer the question: did you ever see this woman in your life? A. I did.

Q. Are you sure of it? A. I am sure.

Q. Why do you answer in that hollow voice? A. I told you I had seen her.

Q. I wanted to ask you how many times you saw this woman during the entire time she was in the institution in her room.

A. I told you I wouldn't try to tell you the number of times I had seen the patient.

Q. Can you give us an approximate notion? A. I saw her several times when I was making my rounds.

Q. On your rounds through the ward?

A. Yes.

Q. Then you would walk into the ward, see that everything was clean and nice, talk to the nurse and walk out. That is the method, isn't it? A. It is approximately, yes."

He said he saw her at least twice in her room.

"Q. How wide apart were these two visits? A. I wouldn't try to say when they were. They were at different times when she was in a room and I went down to see her.

Q. Are there any records anywhere of these visits? A. No.

Q. You had a great many hundreds of them crowded together? A. Yes, sir.

Q. And you would walk through and see that everything was all right? A. Yes, sir.

Q. You are basing your opinions quite naturally upon the reports of subordinates to you? A. Yes, sir; partially.

Q. And you have looked up these records or reports before coming here today?

A. I have.

Q. And you are testifying very largely from that information which a superintendent would naturally obtain from people under him? A. Partially, and partially from my own examination, p. 70, 71.

Q. I should judge that it was very nearly impossible for a person to give particularly minute attention to one out of 2600? A. Absolutely." P. 73.

How is it possible under such circumstances for anybody to testify to the minute knowledge required by a court on such a serious subject as the mental condition of a testatrix? Whatever was done by Dr. Curry was to read over the records before the day he testified. His testimony was given two years and a half after her entrance there. When the testatrix entered the hospital she was very violent. This was the result, as stated, of a mental shock due to her husband's injury in an automobile accident and his consequent death. The first time he saw her she was brought before a staff meeting and was questioned with Dr. Curry presiding, p. 73. This was upon her entrance to the hospital. He saw her in a ward under the conditions I have mentioned. He admitted that he might have told Judge McDermott that she was perfectly safe to take home, p. 77. In other words he conceded that when she

was removed from the hospital all tendencies that marked her entry at the hospital had ceased so far as safety went.

Under the conditions at the hospital it is urged that observation made under the conditions mentioned was of little value. If it had not been for the reports on file concerning this inmate, I gravely doubt whether Dr. Curry would have been able to say anything about her at all. He would be expected to say that as superintendent he had some knowledge of the deceased but it is respectfully urged that no close and careful observation was made of her by him in her later days at the hospital. Upon the important question of her mental condition in March, 1922, we are left without any information whatever. There is nothing of material value to influence the judgment of the court. About her mind, his was almost a blank. Without his records he seemed lost. By way of illustration he could not give the name of a single nurse who attended her. His reason was that "I go in the rooms, and see dozens of patients and nurses and I don't remember." He was asked if he knew the nurse, Beatrice Norris. His answer was that he did not, p. 76; nor could he give the name of any other nurse who attended her. He could not point out Miss Norris in court although she was for several months in charge of the testatrix. This is what might be expected from a superintendent in charge of thousands of patients.

"Q. I am asking you did you tell Mr. McDermott that you didn't know anything

about the patient, about her condition and you would have to refer him to Dr. Collins? A. I don't remember that I did," p. 78.

On such an important subject which would show whether or not he was familiar with the patient at all his answer was that he did not remember.

Judge McDermott, p. 177, said that when he asked Dr. Curry if he knew Sophie Wilson, "He said, no, I don't know all the patients in the institution." He asked him further, "Do you know anything about her mental condition, and he said, no. I said what means have you of ascertaining and telling me the mental condition of Sophie Wilson, a patient of your institution? Well, he said, I haven't any means."

This would conform to the probabilities, but it is rarely that some of these officials admit want of knowledge on any subject.

DR. LAWRENCE M. COLLINS

The other doctor produced by the appellant was Dr. Lawrence M. Collins. He was in charge of a section of the hospital. He stated his rank to be that of one of the senior assistant physicians, p. 80. He described the condition of the testatrix upon entry to the hospital and her periods of excitement. This question was asked on cross examination:

"During this period of two years there were intervals in which she was conscious and knew what was going on? A. Perfectly.

Q. What period, if you are able to say how much of the time of those two years was she in that condition? A. Around the latter part of November, in 1920, at that time she was in a state where she was able to recognize and know her environment and had a fairly good idea or knowledge of what was going on about her but still retained her delusions.

Q. Aside from her having that peculiar delusion was there anything else peculiar about her? A. Not at that time.

Q. Did she clothe herself? A. She kept herself neat and tidy."

He says this continued until February or March, 1921.

"she would have a room and get so her physical condition picked up a little we would let her go out with the others again but in February and March in 1922, I remember she did have a room during those months."

He could not give any approximate notion of the time she had a room out of this two year period. At times she was sleeping in the hallway with the other patients. He had no idea how many nurses there were or could he say how many were in his ward. His answer was that he

couldn't keep track of the number of nurses. He had five or six hundred nurses under him.

It is about impossible for accurate observation to be had of a single person out of this vast number. He admitted Mrs. Wilson recognized him; that she called him by name, p. 89. She told him about her husband's death; that she came from Shamokin; about living in Passaic. This of course was all accurate. He admits he was not concerned about her conversation. He admitted that it was only exceptional conversation that he would recall, p. 90. Her condition was such as is found usually following a shock. After the excitement passes over the patient becomes quite normal, p. 91.

“Q. When this passes over they become quite normal? A. Yes, sir.

Q. Of course, Doctor, recovery is had frequently from these? A. Yes, sir, absolutely.”

Here is a strong admission that the patient becomes normal after the excitement passes away. There is not the smallest evidence in this whole case that the testatrix before her departure from the hospital or during her latter days at Passaic was under any excitement whatever. The whole mass of testimony is against that view. He admits that death did not necessarily ensue. Grief would likely produce this condition, p. 92. He was informed through the history of the case that her health had been good till the death of her husband and that that had a lot to do with it; that

time would have a very marked tendency to alleviate that suffering, p. 93; that the probability was that such patients would continue to get better; that "a person might suffer from delusions and be absolutely mentally right about other things," p. 93. *He had not spoken to her for two or three months before her removal*, p. 83 yet this is the crucial period of the inquiry. His exact words are "I was unable to get anything out of her at any time during the last two or three months. I would shake her trying to make some impression upon her but she was absorbed and refused to answer all questions," p. 83-84. Yet this doctor with all his professional knowledge did not know that he was not an agreeable personality to the patient. He only learned this in court. He did not exchange a word with her for the last three months before her departure. She disliked him and refused to talk to him. His rough treatment was not likely to win her. To the gentle and womanly treatment of the nurse, Miss Norris, she responded freely during these three months. This dignitary could not understand it.

The last period of violence was about September or October, 1920. This was four or five months after her entrance and about a year and a half before her removal from the hospital, p. 94. "Then she got better and then from March, 1921 she passed into this period of depression," p. 94. It will be remembered that she was removed March 25th, 1922.

"Q. From November, 1920, was there any period of violence at all? A. Not vio-

lence. She had gone into a period of depression."

In order to fix the last period of violence he was asked:

"Q. When you speak of her violent period that was during November, 1920? A. Yes, sir.

Q. And from then on she got better and then went into this period of depression?

A. Yes, sir. P. 95.

Q. If a quiet home would help an excited home would not? A. Of course a quiet home would help any patient, p. 96."

It was only after pressing this doctor that he yielded this answer. He speaks on p. 99 "up to the time she refused to talk to me." This implies that she could talk but did not.

From the testimony of this witness he is also wanting in particular knowledge of facts that would be helpful to determine the question at issue. His knowledge is not all comparable to the knowledge of the nurses who had her every hour under observation. He heard the nurse tell Judge McDermott that "she was in fine mental condition for some time," and made no denial, p. 78. This was just the day before she left the State Hospital.

These physicians say that the mental condition of the patient was due to a shock received from the violent accidental death of her husband; that

under such circumstances some patients get better. Therefore the whole case of the appellant is based upon the assumption that she did not get better. It is therefore the duty of the appellant to prove to the satisfaction of the court that this testatrix was one of those persons who did not get better, while it is incumbent on the respondent to show that she did get better. Not a word of proof is offered to influence the judgment of the court that she did not get better except the statement of the witness Emma Arnell to which reference will be immediately made. They rely chiefly on the burden of proof resting on the proponents. The testimony of Dr. Collins himself shows the change from the violent to a calmer condition.

For more than a year preceding her removal there was no violence whatever. There were suicidal ideas Dr. Collins says, but no violence; she had gone into a period of depression. With his admission that a quiet home was helpful and an excitable house would have a tendency toward mental disturbance it is difficult to see how this woman living in the atmosphere of excitement with crowded corridors of patients mentally disturbed would be likely to improve. In a private room at the hospital and upon her restoration to her own home the surroundings with which she was familiar, it is not difficult to understand that improvement would take place. He thought she would not be able to walk when she got home. It appears later that she did, p. 193.

EMMA ARNELL

The only other witness produced to support this case on this point was Emma Arnell who lived at 64 Henry Street. The testatrix lived at 48 Henry Street. The last time the witness saw the testatrix before her removal to the hospital was the day after the funeral of her husband. At that time she was all excited. She saw her on the 14th of March, 1922 at Greystone Park and this was only to ask one question. She asked the testatrix if she knew her. The answer was "no," p. 103. She does not even say so much in describing her visit to the State Hospital upon the inquiry about relationship if any between the caveator and the testatrix, p. 47. She also saw her the day before she died, but did not speak to her. This is the sum total of the evidence to prove that testatrix was not possessed of sufficient mental strength to make a will under our law.

Two witnesses were presented, James Gormley and his nephew, James Gormley who took the testatrix from the State Hospital to the house. There is nothing of consequence in their testimony. The woman was carried on a stretcher to the ambulance and was taken to her home.

*THE TESTIMONY FOR RESPONDENTS AS
TO TESTAMENTARY CAPACITY*

The main testimony presented for the respondents came from nurses and the doctor who were in immediate charge of the patient. Miss Norris at the State Hospital saw her four or five times

a day, and the nurses at her home were at her bedside every hour and are all without the slightest interest in the result of this inquiry. They testified in considerable detail about her condition.

BEATRICE B. NORRIS

The nurse, Beatrice B. Norris, had her in charge at the State Hospital for two months immediately before her departure; from January 25th, to March 25th, 1922, p. 108. It will be remembered that Dr. Collins had no communication with her for these two months. These two months of course are the vital months of the case. It is significant that the caveator did not subpoena a single nurse who had charge of the patient at the State Hospital. Miss Norris had two assistants; one was still at the hospital and the other was not there at the time she gave her testimony. When she took charge of Mrs. Wilson she was in a room with five other patients. After two weeks she got permission to put her in a vacant room about the first week in February, p. 108. Before that she was sitting up in the ward in the mornings and in the afternoon she would go to bed for a while. After she was given a room she was in bed all the time, p. 108. Concerning her mental condition she said: "all the time I ever talked or had Mrs. Wilson under my care and observation she was all right, perfectly all right and talked very rational." She asked her how she was, etc., what she wanted to eat, whom she wanted to see and to such questions her answers were reasonable. She told her that her

husband died, that she lived on Henry Street, Passaic; that she owned the house there; that she didn't want to see anyone but Mr. and Mrs. David Wilson, whom she called "Annie and David," and they were the only ones that were good to her and brought her everything; (different kinds of meats, p. 134; a comforter, things to eat and wear, thermos bottles of hot milk, soup, fruit, etc.) p. 109, 110. The witness saw this done and the patient also told her. The statement of the testatrix conformed to the facts. There was no hallucinations whatever. She did not care for the hospital food. She knew she was in a hospital in New Jersey and knew she was in an asylum. She often told the nurse so. There was nothing about her conversation that in any way indicated that she didn't understand what she was talking about. She understood the questions and answers.

"Q. Was there any time she didn't respond to any question you put to her? A. No, sir.

Q. Any time you put a question to her, her answer was always intelligible? A. Yes, sir."

She was always afraid of Dr. Collins, p. 111. She told the nurse so but gave no reason for it. She showed no desire to talk to the doctor. She always talked to the nurse when she was in the room and called her Miss Norris and never failed to recognize her, p. 111; there was no marked change in her mental condition the whole time she was in charge of her, p. 111. Mrs. Wilson

occupied a room in the ward for at least six weeks before she went home, p. 113. This must have been a great aid to calm her nerves and to improve her mental condition. She would ask the nurse to heat the milk which was done, p. 117. She told the nurse she was a widow. Mrs. David Wilson was there almost every day for two weeks before Sophie was removed from the hospital. The testatrix had company so often that she had to get her dressed and moved to the other ward to receive the company, p. 120. The company was of course her brother-in-law and sister-in-law. She never had occasion to use any physical force in restraining her nor did anyone else as long as she was there. When Dr. Collins called he asked her how she was but never asked her anything more, p. 122. She often told her when Dr. Collins was making his rounds that she didn't care to see him. In answer to the question, what was her usual disposition, the answer was "she always seemsd to be very cheerful and talked to me better than any other patient," p. 122.

ANNIE WILSON

Annie Wilson one of the two devisees testified about her visiting the State Hospital; she was there every visiting day and at the last when she became better she went on days that were not visiting days, p. 133. They always took her into a private room there, the testatrix was always very glad to see her, came to the door with her and kissed her good-bye and asked her to come

back again. She complained about the hospital food and the witness brought her everything to tempt her appetite. She wanted to come home all the time and Mrs. Wilson who could not get to the hospital every day made arrangements to bring her home for Collins spoke about taking her home. The witness stayed until 5 or 5:30 sometimes later at the hospital. The testatrix inquired about different people she knew, neighbors and trades-men in Passaic, Mrs. Hanley and people where she used to go shopping; names of places and stores. Her ailment was tuberculosis which she thought was contracted at the hospital, p. 158. We had no statement of this from the physicians at the hospital. We learn it here for the first time. The witness described her condition while at St. Joseph's hospital at Paterson where she was for four or five days before going to Greystone Park as a nervous breakdown, p. 133. After the excitement was over at the State Hospital there was a change in her mental condition. Her mind cleared up and she wanted to leave the hospital. She talked rational; she talked differently, she could carry on a conversation and took an interest in different things which she could not do when she was first there, p. 146. Her mental condition was better. She became quiet and talked rational which was not so at first. She was brought home and Mrs. Wilson applied to a registry of nurses at Paterson for two nurses who were sent to the house and took charge of her. She did not know the nurses. The testatrix said that David and herself had done everything for her and she wished us to have everything, p. 135. The testa-

trix was conscious up to the last minute. This witness said "the minister was there and I was out in the hall because the minister was talking to her and she said, Annie, I can't move my feet, then she said, my hands, I can't move my hands." I stepped back to the door on account of that and she said, Annie, my head, I can't move my head. My head and arms feel so strange and then that was the last, p. 158, 159.

DOCTOR AREY A. BUTTERFIELD

Doctor Reynolds was in charge of the case and Doctor Butterfield assisted him, calling on different days. He said "I work with Doctor Reynolds, assist him, and he was very busy and asked me if I could come in on the case with him, so he could see her one day and I the next," p. 165. He had been practicing his profession for eight years. In his opinion the patient was suffering from bronchitis with suspected tuberculosis, p. 163. He found her rational and normal mentally. All the people were strangers to him, p. 165. He called at the request of Dr. Reynolds. Dr. Reynolds also in his presence questioned her. These were the usual, professional questions to elicit the condition of the patient. There was no change in her condition during the time the paper was read or after, p. 171. She answered the questions asked by Dr. Reynolds. Dr. Butterfield asked her if she wished him to sign the will. He says she spoke about the contents to him, p. 164. She expressed her wish for him to do so, p. 175. He said that Dr. Reynolds, the day before asked her if she cared to sign the will and she said

that she was tired and didn't feel like doing it. This was of course an intelligent answer to the question. The doctor's opinion was that she was able to sign it; he had seen her use her hands and put them up to her face.

ANNA DOHERTY

This nurse was obtained from a nurses' agency and like her colleague was not known to Mrs. Wilson. She was in attendance from the time of her arrival to the death of the testatrix at her house in Passaic. She was, therefore, in touch with her every minute of the time. She said that she was absolutely normal and was the same from the day the nurse went there until the patient died. There was nothing irrational about her. She was conscious when she died. Occasionally she would leave her alone and she said if she thought otherwise she would not have left her alone for a moment, p. 185. The testatrix "said she wanted to sign it and when I brought the paper to her side she didn't feel she could sign it, write her name, and I said it wasn't necessary to write her name, just to make a mark, a cross," p. 50. Then followed the request to the witnesses, the whole showing complete comprehension. This nurse further said "Her mental condition was perfectly all right from the time I went there until she died. She was conscious when she died."

"Q. Are you quite sure? A. Positive,"
p. 53.

All agree that she was conscious when she died. "She wanted to make a will and wanted to leave her property to Nan," p. 53. After she made her mark she said that "she didn't think it was good enough," p. 61. She describes what she gave her in the way of nourishment, and how often it was administered; that she went into the room at different times and found the testatrix trying to help herself, p. 187.

EDNA McCARTHY

Edna McCarthy, another trained nurse, was obtained at the same registry of nurses at Paterson. She found the patient in the bath-room on her arrival. She stayed as attending nurse until the patient died. She was rational all the time she was there. Nothing happened that indicated in any way that she was other than normal, p. 196. She told the nurse she had some stocks in Paterson in a vault and the nurse said she was not interested and would rather have her keep quiet. She told both nurses that she desired to make some arrangements, p. 203. The witness gives the conversations from time to time.

The brief for the appellant devotes some space and cites some cases concerning the ability of the subscribing witnesses to judge the testamentary capacity of a testator. These cases are not in point nor is the argument based thereon in point for the simple reason that they relate to the casual subscribing witness who is brought in for a few minutes to witness the signature of a testator. Here these subscribing witnesses were profes-

sional nurses trained to observe every passing change of their patient and were at her bedside for a week.

THE LAW CONCERNING THE MENTAL CAPACITY REQUIRED IN THE EXECUTION OF WILLS.

In *Clifton v. Clifton*, 47 N. J. Eq. 227, Chancellor Walker sitting as Ordinary stated the law to be:

“Opinions of witnesses concerning the testamentary capacity of a testator have weight as evidence only when they are based upon facts and occurrences which those witnesses detail, before the court. They are received because the observation of the witnesses may have conveyed to them little, indefinable and almost imperceptible actions and expressions which language cannot adequately describe. Their value at best light is enhanced or diminished according to the opportunities for observation and the honesty and intelligence of the witness.”

It is evident that based on this rule, that the testimony for the proponents outweighed by far the testimony of the caveatrix. Within the period of time this testatrix was recovering her mental capacity nobody for the caveator has made any definite statement of value about her condition.

The Ordinary further states that the fact that "the will is in itself natural and reasonable is a fact corroborative of the correctness of the opinions of the subscribing witnesses that the testator possessed testamentary capacity at the time of the execution of the will."

He further held in the language that is now universally used in these cases:

"The memory of a testator may be imperfect and impaired by age or disease so that he may not be able to recollect the names, the persons or the families of those with whom he has been intimately acquainted, and he may, at times, do childish things, speak disjointedly, abruptly pass from one subject to another or ask idle questions and repeat those which have before been asked and answered, and yet possess capacity to make a will."

It was further held in this case, concerning the capacity required:

"The capacity required in making a will is limited, to the testator's comprehension of the property he is about to dispose of, the natural objects of his bounty, the meaning of the business in which he is engaged, the relation of each of these factors to the others, and the distribution that is made by the will. The amount of mental capacity must be equal to the subject with which it has to deal."

The subject that Mrs. Wilson had to deal with was also not a difficult one. Her estate consisted of the property on which she resided for some years. She knew the property came from her husband. There was, in addition to this property, only \$ of personal property, p. . Her brother-in-law and sister-in-law had been a great service to her. It was a simple mental process as was stated in *Clifton v. Clifton*, supra, to reason and determine how that estate should go.

The capacity of the testator in *Boylan v. Meeker*, 2 McCart. 310, was stated by Justice Potts to be

“no doubt, to some extent, a fluctuating capacity, greatly impaired at times, and occasionally sinking into the imbecility of second childhood.”

In *Collins v. Townley*, 21 N. J. Eq. 353, the testator was 98 years of age at the time she made her will and she was held to possess testamentary capacity.

In *re Humphrey's Will*, 26 N. J. Eq. 513, the testator was 94 years of age at the time of executing the codicil and was held to have been possessed of testamentary capacity. Aff'd. 27 N. J. Eq.

This court in *Rusling v. Rusling*, 36 N. J. Eq. 603 said in their judgment the evidence established:

“nothing more than an occasional forgetfulness of the names and faces of the persons with whom he did not come into frequent contact. His power to recollect his nearer kindred and to appreciate their claims upon him, to comprehend the amount and character of his estate and to intelligently direct its distribution does not appear to have been seriously impaired. Such capacity is sufficient for the making of a valid will.

The point of time at which testamentary competency is to be tested, is that of the execution of the will. The antecedent and subsequent condition of a testator is chiefly important as bearing upon that epoch.”

O'Brien v. Dwyer, 45 N. J. Eq. 44.

In *Pancoast v. Graham*, 15 N. J. Eq. 294, 300, the testator had been declared a lunatic from excessive indulgence in intoxicating liquors, but his mental faculties were subsequently restored. In such case it was said that it was not to be expected that the mind would reassume all its former vigor. The question is whether he had recovered that quantum of disposing mind at the time of the execution of the writing which ought to give it effect.

The testator in *Collins v. Osborn* was 85 years of age and blind for the last fifteen years of his life. 34 N. J. Eq. 511.

In *Lowe v. Williamson*, 2 N. J. Eq. 82; the testator was above 80 years of age. His bodily facul-

ties were impaired and who without good reason entertains feelings of hostility to his family, cannot invalidate a will.

“Mere forgetfulness of recent events in a testatrix eighty-three years old, is no evidence of incapacity to make a will.”
Eddy's case. 32 N. J. Eq. 701.

PART II.

THE QUESTION OF UNDUE INFLUENCE.

There is no evidence of undue influence in this case. The mere fact that the property of the testatrix was devised to her brother-in-law and sister-in-law does not cast upon them any burden of exculpation. The testatrix was, as stated, 40 years of age. She was born in German Poland now a part of the Republic of Poland. She had no communications whatever with her sister for 22 years. She denied to several witnesses that she had any relatives. Her sister made no inquiries about her; where she lived; how she lived; what her circumstances were in life, or exchanged letters with her for this period of time. The testatrix wrote two letters something less than 22 years ago which were never answered, p. 235. When asked why she did not answer the letters of testatrix the reply of this caveator was “I didn't have to write,” p. 237. She left Shamokin in Pennsylvania about 22 years ago and came back once on a visit. She did not stay at her sister's. The explanation that this sister gives is as follows “She was mad at me and

stayed at cousin's place." She never saw her again, p. 230. This visit was "a couple of years after she left the first time, p. 234. She passed the street and talked to me but did not stop at our place." She never saw her again. The testatrix did not write to her about her marriage, p. 236. Measured by any standard of relationship it must be conceded that this was most extraordinary to exist between two sisters. It is only now when she thinks there may be an opportunity to improve her fortune that she proclaims her relationship. The testatrix said at the State Hospital that her "relatives had called her a prostitute and they wanted to get her money and she wanted to die," p. 75. After this remark it is not likely that she would look upon them with favor. David Wilson because of his kindly acts and those of his wife and their effort to soften the blow that fell upon her is charged with undue influence. It is difficult to characterize such allegations properly without over-straining language. Mrs. David Wilson is complained about because she did not visit St. Joseph's Hospital in Paterson for several days after the testatrix was an inmate there and again complained of because she went frequently to Greystone Park. Apparently there is no standard of conduct that would satisfy the appellant. What would be said of David Wilson by any fair-minded person if he allowed his brother's widow to remain unassisted and un-comforted in her distress? When she was removed to Greystone Park Hospital Mrs. Wilson went along with her. Is this undue? Must relatives and friends obtain a certificate of disinterestedness from some authority before do-

ing a charitable act? One can quite understand to what severe criticisms the Wilsons would have been very properly subjected if they had closed their hearts against the natural appeal for aid for this distressed woman. As stated she supplied her with delicacies. Was this undue? Much of the glory of our humanity will have passed away if the declining years of the afflicted cannot be softened as they approach the tomb because some discredited relative shrieks at every act of Christian kindness "undue influence."

All her own fortune was \$1150. in Liberty Bonds, p. 140, and something more than \$1000. in a bank, p. 141. But even this money may have been her husband's as they had a joint account, p. 141. Her husband's will or his inventory was not put in evidence. Counsel in their brief say, p. 2, that by his last will in addition to the real estate already referred to, he left all his personal property to his wife amounting to \$19,839.55 less \$6000. or \$13,839.55. At the time of the inquisition a year later her personal property was put at \$11,647 "or thereabouts," p. 218. The house was a two family frame apartment house, the upper floor of which rented for \$35. a month. The assessed value was \$4500, p. 140.

By every standard of equity unaffected by statutory rules the property belongs to the Wilsons. Where reasonably should it go if not to his brother? The sole question is whether or not the testatrix comprehended what she did when she expressed the wish to leave everything to David and Annie. The case seems wholly clear on this

point and is supported by the judgment of the Orphans' Court and the Prerogative Court.

To charge as is done in this case that the two nurses whom Mrs. Wilson never saw in her life until they came in response to her request at the public registry for nurses, were her employees and therefore subject to improper control, is straining language to the limit. There is no evidence that Mrs. Wilson had the slightest thing to do with the will after it was left at the house. She did not select the nurses. They were sent to her; she did not select Doctor Butterfield. Doctor Reynolds selected him, p. 164. There is no evidence of refusal to let any friend call as the witness Emma Arnell did. The testatrix was not secluded; she was under the care of two competent nurses and two competent physicians, three of whom Mrs. Wilson had never previously seen in her life. What is there in this conduct indicative of undue influence? When the testatrix expressed a desire to leave anything she had to Mrs. Annie Wilson she spoke to Mr. Robert J. McDermott, p. 136 but did not instruct him to go to Morris Plains, p. 149 but knew he was coming.

Mrs. Annie Wilson had ascertained the names of certain persons in Shamokin from Mr. Butz a Passaic attorney who were said to be relatives and to whom she wrote but from whom she received no rely. This was while the testatrix was at the State Hospital, p. 139.

“Q. Did she ever speak of her relatives? A. No one was interested in her at

all. She said there was no one she cared to leave anything to." P. 138.

She never expressed a desire to see any of her relatives. She said voluntarily to Mrs. Annie Wilson that David and she were the only ones who had done anything for her and she wished them to have it all, p. 142. She first spoke of a will about six weeks before leaving the State Hospital, p. 147. He had nothing to do with its execution. Very commonly in contested will cases the attorney is selected by the beneficiary and attends to the execution of the will. Here no such claim is made. The language of Judge McDermott was that of an honorable member of the Bar.

"I informed Mrs. Wilson that Mrs. Sophie Wilson had made a will in her favor. I said I wanted to be very careful on account of this condition having been there but I said if I were you I would call in two nurses who do not know Sophie Wilson and then I would get a physician in attendance and have these three sign whether she is competent and capable of executing a will and I sent the will to Passaic and put it in custody of these nurses. I told Mrs. Wilson to take it. I had drawn that will before that and I said now it would be well, I cannot bother with this thing any more. I cannot run down with this thing and find out if she is capable or competent. I don't think I would be a judge. You give it to

the nurses and the doctor and let these three be the sole judges" p. 178, 179.

Where is there in this conduct the slightest indication of undue influence? He satisfied himself by a visit to the hospital of her condition and felt I presume that some duty rested upon him because he had received instructions from her to draw a will before she was committed to the State Hospital.

"Sometime previous I had had this draft of the will in my office which had never been signed. The fact was that she never came back to sign it and I had heard that she had been adjudged insane and sent to the asylum."

Upon his visit to the hospital he was informed by the nurse to whom the doctors referred him that she had recovered her mental condition, p. 180. That was the only reason that prompted his visit. All the instructions had been given to him prior to her losing her mind. He said that she wanted all her property to go to Mr. and Mrs. Wilson; that he didn't know whether the same condition existed in her mind and that is why he told the nurse to find out if it was in the same condition. His instructions were received before she was adjudged insane, p. 181. If Dr. Curry hadn't consented to have her removed from the hospital I would then have delivered the will to her, p. 181. The instructions were given to him in his own office.

Counsel in his brief contends that Judge McDermott is mistaken when he says that the testatrix visited him in his office in Paterson and gave him instructions about the will before she went to Greystone Park. The Judge says that at the time she was "laboring under a terrible fear," p. 176. This was then after the accident to judge by her condition. There were several visits presumably before and after her husband's death. He gives the conversation of only one visit which seems to be after her husband's death. Counsel seems to have overlooked the fact that her condition sprang originally from the accident and not from the death, although the death may have increased it. It is reasonable to believe that death by illness in the normal way would not have caused such a shock and overthrown her reason. It was a wholly different thing to find her husband of two years carried into their home a crushed and stricken thing; to be taken after a few days to a hospital in Paterson, there to die. He died four weeks after the accident, p. 132. During her visits to her husband at the hospital in Paterson she had not far to go to reach Judge McDermott's office. It is probable that she was convinced that death was not far away. It is also probable that she knew the terms of her husband's will and that she might wish to consult him about her affairs. She knew the Judge before, p. 148 and she also told Mrs. David Wilson that she had been up to see him, p. 148 before she was taken ill. The date of lunacy fixed in the Inquisition is May 11, 1920, p. 217. The date of death of her husband is given by counsel in his

brief as May 5th, 1920, although there is no evidence in the case to this effect. This gives six days between his death and her affliction, ample time for several visits even after his death.

His description of her condition on her last visit, *supra*, would show that the disease had made considerable headway.

Counsel argues that the statement in the will as follows:

"I do this in consideration of the kindness, care and attention given me by them, during my illness, when I was without friends and no one to extend to me the consideration that they have done and I consider it proper and just that they should have whatever belongs to me after my decease."

could not have been part of the first will drawn by the Judge after he received instructions from the testatrix before her illness. She had told the Judge that she wished her property to go to Mr. and Mrs. David Wilson, p. 176. He could not say how long it was before she was committed that he had this conversation, p. 181. Counsel says that the present will was "a verbatim draft of the paper he had previously prepared as Sophie's will." This is inaccurate. "It was a draft of a will but she never came back," p. 182 * * * "it was a very brief will providing for the payment of debts, residue to go to these two," p. 182. No inquiry was made by counsel as to whe-

ther the clause now under consideration was part of the original draft. It was not called to the attention of the witness or shown to him. What the witness had in mind evidently was the fact that both draft and will provided for her estate to go to the proponents. That was the principal feature of the document of course. The testatrix had so instructed him. Mrs. David Wilson had told him of the desire of the testatrix so to dispose of her property and her reason for it. When he visited Greystone Park he had an interview with her nurse, Miss Norris who as a witness confirmed the fact of such intention, so that this particular clause did correctly set forth the reasons of the testatrix for such disposition. This was later confirmed by the witnesses to the will. It is therefore, unimportant whether such a clause was in the original draft or not.

Dr. Reynolds an attending physician read the will to testatrix so that she was familiar with its contents. She said at that time that she was too tired and didn't feel like it that day; so Miss Anna Doherty the nurse, testified. The following day or two days later testatrix told the nurse she wanted to sign that paper. The nurse said: "Do you want me to get it and she said yes," p. 189.

Miss Doherty testified of a previous conversation. "She said Nan was very good to her and I asked her who Nan was and she said her sister-in-law and several times she said that Nan was very good to her and had been all the while she was sick * * * she wanted to make a will and wanted to leave her property to Nan and I asked

her what she had and she said she owned the house that is all she told me she owned," p. 53. The nurse read it and asked her if she wanted to sign it. She describes the circumstances of the execution. She repeats again on cross examination that the testatrix herself mentioned the matter to her. What is there undue in this proceeding? To the same purpose is the testimony of the other nurse, Miss Edna McCarty. When she was there a day or two the patient began to talk about her affairs, p. 194. She said again "I wish I had made those arrangements when the doctor spoke to me," p. 194. Again, "I wish I had signed the paper." "I asked Mrs. Wilson if she was sure she was satisfied with this and she said yes." She said "I want Mrs. Annie Wilson, she called her Annie, to have everything because she has been so good to me," p. 195-58. The next day Doctor Butterfield read it over to her again before he signed it. No beneficiary was present at its execution.

It is respectfully submitted that there is not a single act mentioned that is not consistent with perfect freedom of will. On this subject the Vice Ordinary said in his opinion:

"I fail to find any undue influence. The terms of the will were themselves entirely natural under the circumstances. The bulk of the estate had come to her from her husband and it was entirely proper that it should go to his people. In addition, the two beneficiaries had been kind to her and she would naturally feel grateful to

them. On the other hand there was no reason, except the mere tie of blood, why her sister, the caveator, should receive anything from her. There was no affection or even friendship between them, and there had been no communications or relationship for many years. They had not even seen each other for about twenty years and in effect were total strangers."

THE LAW RELATING TO UNDUE INFLUENCE.

The caveatrix of course has the burden of proof. In re Kraft's Estate, 85 N. J. Eq. 125.

"A will cannot be set aside on account of any moral obliquity or prejudice of the testator exhibited in the devise in it, or because the disposition of property in it is unnatural or unjust."

Trumbull v. Gibbons, 22 N. J. L. 117.

"It is well known that the declarations of a testator are competent to show the condition of his mind, but not to prove undue influence."

Middleditch v. Williams, 45 N. J. Eq. 726.

Reversed 47 N. J. Eq. 585, but not on this point.

Boylan v. Meeker, 28 N. J. L. 274.

In re Anastasia Davis, 73 N. J. Eq. 617.

“On an issue whether a will is the product of undue influence the declarations of the testator respecting previous occurrences which are alleged to have exerted the influence are not evidence to prove or disprove such occurrences.”

Rusling v. Rusling, 36 N. J. Eq. 603.

“The influence which the law denominates undue must be such as destroys the testator’s free agency by amounting to moral or physical coercion.”

Clifton v. Clifton, 47 N. J. Eq. 227.

“The influence of affection and kind offices, unconnected with fraud and contrivance though it induces gratitude and testamentary recompense is not undue.”
Ibid.

“The inference of undue influence will not be drawn alone from proof of opportunity to exert it, nor will influence be deemed undue which may reasonably be inferred to have been produced by kind attentions and services rendered by the beneficiary. In re: Anastasia Davis, 73 N. J. Eq. 617.”

“Every will is the product of some influence. The influence which arises from legitimate family and social relations comes without suspicion or taint of illegality, and,

there can be no presumption that it is unlawfully exercised merely from the fact that it appears that, when the will was made, the testator was surrounded by it and it operated upon his mind to induce the testamentary disposition. It is only when such influence is shown to have been unduly exerted over the subject of the will-making; so as to constrain the testator to do that which he would not have done if left to himself that the law condemns it." *Arnault v. Arnault*, 52 N.J. Eq. 801.

"No court has power to refuse probate to a will merely because the disposition testator has made of her property by it appears to the court to be unnatural, unreasonable or unjust. It is as much the duty of the court to uphold the right of the owner of property to dispose of it by will as she pleases, as it is to see that she is not imposed upon in the exercise of that right."

In re Young's Estate, 106 At. 425.

It is said that the principal elements affecting undue influence are these:

Presence at the execution of the will:

No legatee was present at the execution of the will.

Efforts to exclude the natural objects of testatrix' bounty.

There is not a word to support this statement in the case.

Concealing the making of the will.

No question was ever asked whether there was a will and consequently there was no denial.

There was no occasion to proclaim that the will was made. It would have been a want of good faith to have done so after testatrix had told her that she had made her will.

It was said in *Dumont v. Dumont*, 46 N.J. Eq. 223,

“The party alleging undue influence must prove it, either directly or by establishing such circumstances as will warrant a presumption against the instrument, which in the absence of affirmative evidence, showing that the paper was the spontaneous act of the testator, must control as a conclusion of fact.”

“It is only upon allegations of fraud that the courts will inquire into the reasons for changes and inequalities in testamentary dispositions, and then they will consider them merely in connection with, and as corroborative of, proofs which tend to show that they were not the voluntary act of the person who made them.”

*PART III.**THE WILL WAS EXECUTED ACCORDING TO LAW.*

The will was properly executed. The attestation clause is in proper form and so to speak executes itself. The caveator who is the appellant here must conclusively convince the court that the formalities required by our statute have not been observed. The testatrix had given instructions before she went to the State Hospital to have her will made leaving her property to these two beneficiaries. She desired to leave her property to her brother-in-law and sister-in-law, the only persons that were favorably known to her. Her husband had just died. She, through his will came into possession of his property. It is a natural sequence in thought that this property under circumstances should go to his brother. This is a reasonable assumption and supports her testamentary capacity. It is what any disinterested person, under the circumstances would advise her to do. Clearly no claim of any weight could be entertained for this so-called sister in Shamokin. There is no comparison in the respective positions of the parties. Therefore on this first requisite to test the validity of the will the merits are with the beneficiaries.

The reason for the devise is set forth in the will. It is because of their kindness to her that she wanted them to have the property. She would not likely say to others, I received the property from my husband and it is but fair in the absence of

children that the property should go to his brother. This may presumably have been an influential reason but not likely to be mentioned to strangers. It was simpler to say that they have done so much for me that I want them to have the property.

The whole paper was read to her by Doctor Reynolds. It was read to her again by the nurse before execution. Indeed it was read to her a third time by Doctor Butterfield. Doctor Reynolds said: "Here is a will and I am going to read it to you." P. 171. The nurse said to Doctor Butterfield in her presence: "Here is the will. She wishes you to witness it." P. 173. She told the nurse that "she wanted to make a will and wanted to leave her property to Nan," p. 53. The two nurses added their respective signatures to the document after the testatrix. The next day Doctor Butterfield added his signature as a witness. The three subscribing witnesses appeared before the deputy Surrogate who read to them the usual printed form of affidavit used in such cases which they signed. Counsel seems to think that because they did not detect the inaccuracy in the legal phraseology that this should affect their testimony. When examined on the witness stand they each told the story as it was, viz, that Dr. Butterfield signed the next day.

It is difficult to see how anyone who is in the possession of any understanding could have the slightest doubt what the paper is that begins as follows:

"I, Sophie Wilson, being of sound and disposing mind, memory and understanding do hereby make, publish and declare the following to be my last will and testament."

It is not necessary that the testatrix verbally make such declaration in so many words. It is sufficient that she knows what the instrument is. The common method is for a lawyer to say to a person about to execute a will: "Do you declare this paper to be your last will and testament and do you wish us to witness the same?" The common reply is "I do." This conforms to the law. This meets our statutory requirements. It is sufficient if the signature is acknowledged by her and the writing declared to be her last will and testament. She signed it by making her cross or mark. The attestation controls until over-thrown. By speech and act she made the declaration that it was her will in the presence of the two nurses who were present at the same time, and who, in her presence, and in the presence of each other signed their names as witnesses after her. This was in complete conformity with our statute.

The nurse describes the execution in detail on pages 194, 184, 50, 61. After Miss Doherty had read the will to her the other nurse said: "we propped her up with pillows and she started to write." P. 194. She made her cross. After that Miss Doherty and I signed, Miss Doherty first and then Miss McCarty. She said she wanted Mrs. Wilson to have everything because she had been so good to her, p. 195.

Q. When you read it did you make sure she understood it? A. Yes, sir. P. 57.

Therefore it is clear that the testatrix knew that the paper was a will.

“No particular form of words are necessary to comply with the requirements of the statute so long as it is made clear to the witnesses that it is a will and the testatrix knows that such is the fact.”

Mundy v. Mundy, 15 N. J. Eq. 291.

After what had taken place can there be any doubt that the witnesses and testatrix knew that it was a will that they signed? It would be highly detrimental if excessive technicality were required upon such a solemn occasion as the execution of an instrument that can never be corrected in this life.

THE LAW AS TO EXECUTION OF A WILL.

The will has been executed in accordance with the statutory requirements. Our statute 4 Comp. St. 5867, declares that all

“wills and testaments shall be in writing and shall be signed by the testator, which signature shall be made by the testator, or the making thereof acknowledged by him, and such writing declared to be his last will and testament in the presence of two witnesses, present at the same time who

shall subscribe their names thereto as witnesses in the presence of the testator."

It was stated in this court in *Booren v. Nesler*, 77 N. J. Eq. 560, by Justice Trenchard speaking for the court that the formalities described by the act upon which valid wills must rest are:

"First: That the will shall be in writing.

Second: That it shall be signed by the testator.

Third: That the signature of the testator shall either be made or acknowledged by him in the presence of two witnesses who shall be present at the same time.

Fourth: That the writing shall be declared by the testator to be his last will in the presence of those witnesses present at the same time as aforesaid, and

Fifth: That the two witnesses shall subscribe their names in the presence of the testator."

It was further said in that case that:

"It is essential to the validity of a will that everything required to be done by the testator shall precede in point of time the subscription of the witnesses."

I purpose to show that the will in question has been executed with the proper observance of these formalities:

- (1) It is in writing.
- (2) It was signed by the testatrix.
- (3) The signature of the testatrix was made in the presence of two witnesses who were present at the same time.
- (4) The writing was declared by the testatrix to be her last will and testament in the presence of those witnesses who were present at the same time.
- (5) Two of the three witnesses subscribed their names thereto in the presence of the testatrix.

There is the regular attestation clause appended to the will in question. It was not essential of course to have such a clause. It is sufficient that the testator sign and the witnesses sign without any formal record of the facts, provided of course that the formalities have been observed.

The court in the case cited above declared what the effect of the attestation clause is. The language is as follows:

“An attestation clause is made for the purpose of preserving in permanent form a record of the facts attending the execution of the will, so that, in case of the failure of the memory of the subscribing witnesses, or other casualty, they may still be proved; and the courts have accordingly held that, on proof of the authenticity of the signatures of the subscribing witnesses, the facts in the attestation clause must be

accepted as true until it is shown that they are not." Cases cited, p. 562.

Vice Chancellor Williamson said in *Mundy v. Mundy*, 2 McCart. 290-293.

"There seems to be sufficient proof of all the requirements except as to his declaring it his will. There must be some declaration by the testator that it was his will, and a communication by him to the witnesses that he desires them to attest it as such. But this need not be done by word—any act or sign by which that communication can be made is enough. The scrivener, in the presence of the testator, says, this is the will of A.B. and he desires you to witness it—the testator standing by—is a sufficient publication or declaration. The form is immaterial. But the witnesses must know it is the will of testator they are witnessing, and they must witness it at his request."

This language has been affirmed many times by our courts. Vice Ordinary Van Fleet said in *Robbins v. Robbins*, 50 N. J. Eq. 742:

"To comply with the statute a testator must declare the writing which he executes as his will 'to be his will, in the presence of two witnesses, present at the same time, who shall subscribe their names thereto as witnesses.' Rev. p. 1247, sec. 22. He may

do so, however, by act or sign, as well as by words if the act he does or the sign he makes clearly indicates the character of the instrument. The statute does not require that publication shall be made by words alone; any act or sign by which the testator makes known to the subscribing witnesses that he executes the paper as his will is enough. Chancellor Williamson as surrogate-general, said in *Mundy v. Mundy*, 2 McCart. 290, 293: 'The scrivener in the presence of testator says this is the will of A.B. and he desires you to witness it—the testator standing by—is a sufficient publication or declaration. The form is immaterial. But the witnesses must know it is the will of the testator they are witnessing and they must witness it at his request.' The present surrogate-general gave a like exposition of this requirement of the statute in *Elkinton v. Brick*, 17 Stew. Eq. 154, 167 where he said a sufficient publication is made to comply with the statute 'when enough is said or done, in the presence and with the knowledge of the testator to give the witnesses to understand distinctly that the testator desires them to know that the paper is his will and that they are to attest it.' Mr. Justice Scudder speaking for the court of errors and appeals, in *Ludlow v. Ludlow*, 9 Stew Eq. 597, 601, said in substance that it was not necessary that a testator should, by his own word, declare the writing to be his

will, but that if by sign or act he clearly manifests to the attesting witnesses that he desires them to attest the paper as his will, such sign or act will constitute a publication. Mere form in such transactions is a thing of very slight importance; the substance is the thing which must be regarded, and that consists in the testator's making known, clearly and distinctly, in any way, by which one mind can communicate with another that the paper which he desires the subscribing witnesses to attest is his will.

To illustrate by example: Suppose A. gives his counsel instructions in the morning to draw his will and bring it to his house at five o'clock in the afternoon for execution, and then goes to his neighbor and says: 'I am going to execute my will at five o'clock this afternoon; my lawyer will be there at the time with the will; I want you and he to sign it as witnesses.' The neighbor appears at A's home at the time appointed; he finds the lawyer there, and A, soon after his neighbor's appearance, produces the paper which he signs in the presence of both witnesses, and then, on rising from his chair, hands the paper to his neighbor saying: 'Sit here while you sign' and after his neighbor has signed the paper, A says to the lawyer, 'now you sign,' and the lawyer does so, and this embraces all that is said and done

while the three are together could there be a doubt, looking at the transaction in its entirety that the witnesses clearly and distinctly understood and were bound to understand from A's acts, considered in connection with what had previously occurred that he executed that paper as his will? All that the statute requires, in respect to publication is that the testator shall make known to the subscribing witnesses, at the time of execution, that he executes the paper as his will. It is true that a will cannot be published before it is written, nor in the absence of the writing itself, but the previous knowledge of the subscribing witnesses, communicated by the testator himself, may impart to an act done or a sign made by him when he comes to execute his will a meaning as clear, certain and definite as the most lucid words would express, but which, to a person without such previous knowledge would be unmeaning or at best ambiguous. In the case supposed, the knowledge of the subscribing witnesses, respecting the purpose for which A wanted them to come to his house, made his acts in producing the will, signing it and then handing it to one of them to sign, so unmistakable in their significance, that his meaning was made as plain and as certain to them as he could have made it by any oral declaration."

In *Darnell v. Buzby*, 50 N. J. Eq. 725, aff'd. 52 N. J. Eq. 337, opinion by Ordinary Alexander R. McGill, the syllabus declares:

“When enough is said or done, in the presence and with the knowledge of the testator, to give the witnesses to understand distinctly that the testator desires them to know that the paper produced is his will, which they are to attest as such, the statutory requirement that a testator shall declare his will in the presence of witnesses, is sufficiently complied with and that which is said or done must plainly lead to the single necessary inference that the document executed is the testator's will.”

In the above case no part of the will or of the attestation clause was read in the presence of the witnesses.

It was said in *Witenach v. Stryker, et al.* 2 N. J. Eq. p. 8, as early as 1838:

“It is not necessary that the testator should openly make the request. His acquiescence when the witnesses are called in for the purpose by another, is sufficient.”

In *Lacey v. Dobbs*, 63 N. J. Eq. 325 the specific rule was laid down in this court that:

“It is essential to validity that everything required to be done by the testator shall

precede in point of time the subscription of the witnesses."

It is clear in the case now before the court that all these requirements preceded in point of time the subscription of the witnesses. The attestation clause in the present case is perfect on its face and certifies the facts which demonstrate a legal execution and publication of a will.

The rule was referred to *In re: Sutterlin* 99 N. J. Eq. 363, 368, wherein Justice Parker speaking for this court said:

"Later in the Prerogative Court the rule was strengthened to the extent of saying that the presumption arising from the clause was impregnable unless overcome by strong and convincing evidence."

To the same effect is *Berdan's case*, 65 N. J. Eq. 681.

In the *Sutterlin* case both witnesses flatly contradicted the attestation clause.

Vice Chancellor Backes, in *re: Gahegen*, 82 N.J. Eq. 601, said:

"It is said that the witnesses did not understand that the document which they attested was of a testamental nature and it is claimed that their testimony in this re-

spect overcomes the presumption of publication which arises from the attestation clause, and also preponderates as against the weight to be given to the positive evidence of Dr. Probasco. The substance, extent and effect of their testimony, as I read and consider it, is, that they did not remember the act of publication, and did not remember whether they knew, at the time of the transaction, from the act of publication, that the instrument which they subscribed as witnesses was a codicil to the testator's will. This evidence is not inconsistent with nor does it militate against the legal presumption."

Judge Joline in the Camden Orphans' Court in Veazey's Case in 80 N. J. Eq. 466, said upon the authority of *McCurdy v. Neall*, 42 N. J. Eq. 334;

"It was held that where the attestation clause is perfect the court must have clear proof to warrant the conclusion that the will was not duly executed."

The Ordinary affirmed the decree upon the opinion of Judge Joline. This court speaking through Justice Swayze said:

"We concur in the opinion."

The Judge of the Essex Orphans' Court In re Will of Pierson, 40 N. J. L. J. 137, after reviewing the cases said:

"It appears to be settled that the witnesses must know the instrument to be the will of the testator by virtue of some declaration made by the testator, or in his presence, or some conduct or circumstances or acquiescence at the time, indicating that the testator was executing a will and so understood it, and that the testator requested the witnesses to sign as such."
(Quoting Kocher's P. L. & P. 130.)

The Judge said that Mrs. Pierson did not announce that the instrument she signed was her will nor was that fact announced in her presence by which her act of signing it could be a ratification of such a statement.

The facts in *Hildreth v. Marshall*, 51 N. J. Eq. 241, are: Mrs. Marshall instructed J. to prepare her will. After its preparation he entered the room where Mrs. Marshall was with two persons whom he had asked to be witnesses to the execution of the will and in their presence announced to Mrs. Marshall that he brought those persons to witness the will and thereupon Mrs. Marshall understanding the character and contents of the document signed it in the presence of the persons so brought in. It was held:

"that the requirement of the statute that the will should be declared by the testatrix was sufficiently complied with."

It is respectfully submitted, that the decree of the Prerogative Court should be affirmed.

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