Court of Errors and Appeals.

ELLEN TURNURE and JAMES H. TURNURE, *Appellants*, and JOHN L. TURNURE and JULIA HARD, *Appellees*.	*On Appeal from Prerogative Court.*

BRIEF OF APPELLANTS.

William P. Turnure died on the 30th of August, 1880, leaving a will dated February 20, 1873. On the 9th of August, 1880, Julia Hard and John L. Turnure filed their caveat against the admission of the will to probate. The testimony of the subscribing witnesses was taken on the 25th of September and the 2d of October, 1880. They testified that the will was properly drawn and executed. (See pages 3 to 25 of Case.) There was nothing in the testimony of these witnesses—nothing in the account they gave of the execution of the will—to create a suspicion of unsound mind or memory, or of undue influence. The scrivener who drew the will testified that testator was "a man of good sense, knew what he was talking about and expressed himself well" (page 21), and that he "seemed to have good memory and ready of speech." At this point the caveators should have stopped, unless they were prepared to prove a lack of capacity on the part of the testator, or that his wife or some other person exercised undue influence over him in the matter of the execution of his will. They elected to proceed,

and by the introduction of irrelevant testimony prevented the probate of the will until the 10th day of September, 1881. There are two points I desire to make as to the testimony taken. *First.*—There is not a word from any witness upon which the caveators could have founded a reasonable doubt of the mental capacity of the testator—their father.

Second.—There is not a line of testimony which shows that the caveators ever ascertained a fact upon which they could base a reasonable suspicion that the testator was ever influenced—in the matter of making his will or any other matter—by a will other than his own. He was a singularly self-willed man, and the witness who transacted with testator the business from which he derived all the money he possessed at the time of his death, testifies that when he had this transaction he formed the idea that testator was "a staunch man," and "not a man to be ruled." (Pages 192–3.) Referring to the witnesses produced by caveators in their order, we find that they give strong testimony in favor of the will and against the propositions of undue influence.

John L. Turnure, caveator, as to capacity:

Page 30.—Thought testator was competent to act as executor of a will in which witness was interested. Never asked him about it afterward.

Pages 39, 75, 76, 77.—Thought testator competent to manage his own business and safely invest $77,000. This was seven years after he concluded that testator's mind was failing—a conclusion reached because testator asked twice in one day the same question concerning a horse which had been used in family several years.

As to undue influence:

Page 77.—Wife of testator answered questions for him in reply to witness. None of them important enough for witness to remember.

Page 78–9.—Wife of testator rubbed his head with a liquid to cure his headache. Witness generously acquits her of any intention to kill.

Pages 80, 81.—Witness gave testator sound advice concerning the payment of three notes, and testator followed the advice. Therefore, he was "capable of being persuaded."

Page 91.—Testator told witness, "You don't care anything for me." There is an attempt to credit this sentiment to Ellen, but it seems a natural remark from an aged father, whose loving son could not find time to travel half an hour to visit his father more than once in every two or three years.

John Turnure.—This witness is a very old man, whom it is charity to credit with ignorance of the meaning of the irrelevant and impertinent testimony which he was called to give by the caveators, who are willing to slander their father's memory—willing to pollute his grave, willing to do anything to obtain money and injure Ellen Turnure.

Julia Hard, caveator:

Page 121.—This witness called to see her father five or six times during the last ten years of his life. Testator does not seem to have considered this daughter worthy of his greatest love.

Page 107.—Witness thought her brother Harvey had been treated too well, and forced her father to sign a promise to give her $25,000.

Pages 135–6.—Witness has frequently stated that she refrained from visiting her father because she could not "get any satisfaction from him." She desired to tell him some things which she was prevented from telling him by the presence of his wife. When she met him alone she told him what she wanted—a note for $25,000.

Page 143.—Witness thinks her father was all right, if let alone. He was a long distance from Ellen Turnure when he made this will, and his directions to the scrivener were given in the most deliberate manner.

Milton Turnure, son of caveator:

This young man is a "practicing physician." He has read several works on mental disorders, and thinks he once had a case.

Page 154.—Witness is quite positive that testator's mind was failing in 1871 and 1873, because he looked "at his wife in her face." Had he shaken hands with her, it is reasonable to suppose that this "practicing physician" would have signed a certificate that testator was a raving madman.

Page 157.—Witness believes that eyes have a decided influence over people. He is young and unmarried. Ellen Turnure's eyes were not present when testator made his will, and the testimony does not show that he carried her photograph.

Melvin T. Hard, son of caveator:

Page 171.—This witness concluded that his grandfather looked stupid in 1871, and didn't call to see him afterward.

Jane E. Barker:

Page 173.—Saw testator in 1865; never saw Ellen Turnure, but concluded that testator was a social wreck because she heard something from a servant girl. It would be interesting to learn why the residuary legatees should pay for the taking of Mrs. Barker's testimony.

Thomas B. Wilson, the first disinterested witness produced by caveators:

Page 185.—Talked with testator about investing his money and received sensible replies.

Page 187.—Testator wrote his own receipts for interest money. This was in 1874, 1875–6.

Page 188.—Closed a transaction with testator for $77,000 worth of New York property in half-an-hour.

Page 189–90.—Testator's bearing toward his wife was very kindly and she reciprocated.

Page 191.—"I thought she was doing everything she could to make him happy."

Page 196.—Testator was alone when he sold his New York property. This was several years after his marriage with Ellen, and less than a year prior to the date of the will.

James H. McDowell, M. D., who attended testator in his last illness:

Page 200.—Testator's mind must have been vigorous and keen three years before his death.

Page 205.—His wife was "one of the most careful and considerate nurses I ever saw."

A. M. Schalkhausser:

Page 206.—Never liked Mrs. Turnure.

Page 208–9.—Testator seemed feeble during the last two years of his life; but was "always going very nice" before that time.

John B. Brill:

Thinks testator was childish during the last two or three years of his life. That testator talked to this witness, who is a barber, is the only well defined fact adduced in support of the claim of mental incapacity.

Margaret H. Turnure:

Did not see testator within several years before or after the execution; saw him once during the last fourteen years of his life, when she called to borrow money and failed to get it. Says that Ellen refused to let testator advance the money. Met him in the street, and he told her that he could not get any money; that Ellen had control of it. As testator always kept his money with a safe deposit company, where it was found after his death

and brought into court, it is evident that he did not care about assisting those who called to see him only when they desired to borrow.

Now, in the light of this evidence, what "reasonable cause" had the caveators for contesting this will? All the witnesses were accessible—six of the ten produced were closely related, and undoubtedly knew what each other would testify to. Neither of the caveators was aware of a single fact to establish undue influence or lack of mental capacity. They had neglected their father because he had married contrary to their wishes; their neglect was balanced by the kindness of Ellen Turnure. At the time the will was drawn, each of the caveators was well to do; and there is nothing on the face of the will showing that testator made an unjust division of his property. John L. Turnure, caveator, discloses the animus of the contest on page 93; he says: "We have not got all the money—that is what we are after—we have not got half of it; that is what we are fighting this thing for, and we will fight it to the bitter end." To the party who desires to "fight" a will "to the bitter end," the Courts of New Jersey are open; but he should be forced to pay the cost of that "fight," if it proves a losing one.

The injustice of another rule cannot be better illustrated than by the case of James H. Turnure, one of the appellants here. He was evidently a favorite son, but there is not a word of testimony to show that he ever spoke to his father about making a will. The costs and counsel fees in this litigation amount to over four thousand dollars. Of this, James H. Turnure is called upon to pay two thousand. Could anything be more unjust? Could a more cordial invitation be extended to disappointed heirs to enter upon costly and outrageous litigation through which the estates of their more fortunate relatives may be frittered away? After the examination of the subscribing witnesses the caveators should have withdrawn their caveat if they desired the costs to be paid from the estate. The Ordinary says (page 231): "As to his capacity it appears clearly, not only from the testimony of the two of the testamentary witnesses who were examined,

but otherwise, that he was entirely competent to make a testamentary disposition of his estate." Again (page 232), "Nor is there any proof of undue influence." Under section 177 of "An Act respecting Orphans' Courts, &c." (Rev., p. 791): "If probate be granted, the Court shall order the party or parties contesting such will or codicil to pay the costs and expenses of the litigation, unless it appear to the Court that the person or persons contesting such will had reasonable cause for contesting the validity of the same." The caveators contested upon the grounds of undue influence and incapacity. If from the testimony of their own witnesses the capacity of testator is clearly established, and if they were unable to produce any proof of undue influence, where are we to look for the "reasonable ground" which the Court must adjudge to exist before ordering costs and expenses from the estate.

It is only under special circumstances that the Court directs costs to be paid out of the testator's estate. In this case the party might earlier have judged that he ought not to have proceeded.

Dean vs. *Russell*, 3 *Phillimore*, 334. In the present case the caveators refused to cease their attack, even after the decision of the Orphans' Court and after they had been afforded several months to consider the weight of their testimony. A party pleading undue influence is liable for costs. *Harrington* vs. *Bower*, 1 *Eng. Law Reports*, (P. & D.) 264. Where an attesting witness informed the contestant that the testator had not approved the will, costs were refused out of the estate, although the Court ruled that there was reasonable ground of contest. *Tibbett* vs. *Tibbett*, 1 Eng. L. R. (P. & D.) 54. In *Bone* vs. *Whittle*, 1 Eng. L. R. (P. & D.) 249, the Court says: "If the plaintiff had contented herself with hearing what the witnesses had to say, and extracted by cross-examination the true account of the execution of the codicil she would not be condemned in costs." In *Goodacre* vs. *Smith*, *ibid.* 359, a good illustration is found of the merits which should exist to entitle a contestant to costs. In *Nichols* vs. *Binns*, 1 Swabey & Tristram's P. C., 239,

costs were refused because the contestants went further than proving in solemn form. In that case the testator made his will in November, 1851, while an inmate of a lunatic asylum where he died. Sir C. Creswell said, in that case, "If an executor or an heir-at-law enter into a contest at common law as to the validity of a will, they do so at the risk not only of not receiving, but of paying costs. The courts of common law have no power to give costs out of the estate. But, by the practice of the Ecclesiastical Courts, where there was a fair case for inquiry the next of kin might call on the executive to prove the will in solemn form and, generally speaking, at the expense of the estate. This, I understand, has gone so far that they had a right to insist upon certain witnesses being called to give them an opportunity of examining them. I am not inclined to enlarge this rule. In *Onslow* vs. *Cannon*, 2 Sw. & Tr., 135, the Court, the question being as to the residence of the testator, refused costs, because the defendants had raised questions of fact which were likely to put the plaintiff to great expense. The Court intimated that costs would have been allowed if the defendants had confined themselves to questions of law. In *Summerell* vs. *Clements*, 3 Sw. & Tr., 37, it was held that if parties choose to raise issues of undue influence and fraud and fail to prove them, they should be condemned in costs. In *Mitchell* vs. *Gard*, 3 Sw. & Tr., 279 (1863), it is forcibly said: "It is of high public importance that doubtful wills should not pass easily into proof by reason of the cost of opposing them. It is of equal importance that parties should not be tempted into useless litigation by the knowledge that their costs will be defrayed by others." In this case costs were allowed out of the estate because of fraud on the part of the principal legatee, who drew the will. In *Williams* vs. *Henry, et als.*, 3 Sw. & Tr., 472, Sir James Wilde says: "By the rule which I have laid down for my own guidance it is necessary to show, supposing the testator had in no way justified the litigation by his own act, some misconduct on the part of those out of whose pockets costs would come if paid

out of the estate." In view of the fact that the proponents of the will did not offer other subscribing witnesses; that the testimony of the caveators was from such persons that the caveators must have been aware of what it would be, the case of *Davies* vs. *Gregory*, 3 Law Reports (P. & D.) 28, is well in point. It is there said: "Where the facts show that neither the testator nor the persons interested in the residue have been to blame, but where the opponents of the will have been led reasonably to the *bona fide* belief to that there was good ground for impeaching the will, there will be no order as to costs. Of course the opponents must have taken all proper steps to inform themselves as to the facts of the case, but if, having done so, they *bona fide* believe in the existence of a state of things which if it did exist would justify litigation, then, although no blame should attach to the testator or to the executors and persons interested in the residue, each party must bear his own costs." In Ireland *vs.* Rendall, 1 L. R. (P. & D.), 194, it was *held:* There was no reasonable ground for contesting the will. It was natural that the defendant should be dissatisfied and angry with it, but he was not justified in putting a plea of undue influence upon the record. Here the contestant was condemned to pay costs. See *Smith* vs. *Smith*, 1 L. R. (P. & D.), 240, as to what constitutes such undue influence on the part of a wife as to entitle contestant to costs. In *Stacey* vs. *Spralley*, 4 De Gex & Jones, 202, costs were refused although the will was executed under "strange and suspicious circumstances." In *Bernly* vs. *Eyre*, 3 Atkyns, 387 (1746), it is said: "If the heir sets up insanity or other disability against the person who made the will, he shall not have his costs."

If probate of this will had been refused upon the ground of testator's incapacity, would not proponents have been entitled to have costs and counsel fees paid from the estate, by the reasoning in *Boylan* vs. *Meeker*, 2 McCarter, 358? It was the duty of appellants to offer the will for probate. "It would be unjust that they should suffer loss in the honest discharge of their duty." (*Day* vs. *Day*, 2 Gr., 557; *Goble* vs. *Grant*, *ibid.*, 637.)

Where a contest is prolonged after the caveator should be satisfied, costs should be awarded against him. (*Collins* vs. *Townley, et als.*, 6 C. E. Gr., 354; Perrine *vs.* Applegate, 1 McCarter, 531; *In re Wintermute's Will*, 12 C. E. Gr., 447; *Brokaw's Ex'rs* vs. *Conover, ibid.* 462; Wintermute *vs.* Wilson, 1 Stew., 437.)

There are two appeals before the Court. On the 10th of December, 1880, the Hudson Orphans' Court made an order for counsel fees (page 215), which, as is stated in the order, was subject to the allowance, disposition and decree of the Court at the close of the litigation in that Court. A second order for counsel fees was made on the tenth of September, 1881 (page 216). On the seventeenth of September, 1881 (page 216), an amended order was made that the costs and expenses of the litigation in the Orphans' Court be paid out of the estate. From this order an appeal is taken, and the order was affirmed; from which decree an appeal was taken to this Court. In the decree (page 219) it will be seen that the Prerogative Court affirmed the order of September seventeenth, 1881, "together with all the preceding orders of the Orphans' Court of the County of Hudson, directing the allowance and payment of counsel fees in this cause. Pending this appeal a question arose as to whether the matter of counsel fees was properly before the Prerogative Court. It will be seen that in the orders for counsel fees (pp. 215, 216) there is not any adjudication by the Orphans' Court as to whether the fees should be paid out of the estate. The amended order recites that the Court decided that counsel fees should be paid from the estate, together with costs and expenses. This order was entered by the proctor of caveators. On an appeal therefrom, the Ordinary passed upon the question of counsel fees, as well as upon the question of costs and expenses.

Before this decree was made, a supplemental order was made by the Hudson Orphans' Court (page 222), adjudging that the caveators had reasonable cause for contesting the validity of the will. From this order an appeal was taken, the order affirmed, and a second appeal taken to

this Court. An appeal was also taken, as will be seen by the opinion of the Ordinary, from the decree of the Orphans' Court, admitting the will to probate. If the appeal from the "amended order of allowance" (p. 216) properly brought the question of counsel fees before the Prerogative Court (and it will be seen by the decree of that Court, on page 219, that it was so considered by the Court and counsel who drew the decree) the supplemental order (page 222) and proceedings thereon were unnecessary. I apprehended, however, that the order or decree entered by the caveators did not properly set forth an adjudication of the reasonableness of their contest, which adjudication is necessary before counsel fees may be ordered from an estate. From that adjudication an appeal was taken and the supplemental order affirmed. As the contest of the caveators was unreasonable in its inception and malicious in its prosecution, I submit that the costs and expenses and counsel fees should be paid by those who have unjustly caused the expenditure.

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N. J. Court of Errors and Appeals

Ellen Turnure and James H. Turnure, Appellants, and John L. Turnure and Julia Hard, Respondents.	On Appeal.

Brief by R. P. Wortendyke for Respondents.

The proceedings out of which the two appeals arose that are now before the Court related to the probate of the last will and testament of William P. Turnure, deceased, in the Orphans' Court of the County of Hudson, the appeals from the orders of said Court thereon, to the Prerogative Court, and the decrees of said Prerogative Court on said appeals.

The first appeal now before the Court brings up the order of said Orphans' Court with reference to allowances made to counsel in said proceedings before it, relating to said probate, bearing date the 10th day of December, 1880, found on page 215 of the printed case; the order of said Court with reference to the same matter, bearing date the 10th day of September, 1881, found on page 216 of the printed case; the amended order of said Court with reference to same matter, and the costs, fees and expenses relating to said probate, bearing date the 17th day of September, 1881, also found on page 216 of the printed case; the proceedings on said appeal to the Prerogative Court from September 17th, 1881, including the decree of the said Prerogative Court

thereon, dated May 23d, 1882, found on page 219 of the printed case, and which decree affirmed said order and all the other orders above referred to.

The second appeal brings up the order of said Orphans' Court with reference to the same matter, dated March 22, 1882, entered upon the motion of counsel for appellants; the proceedings on the appeal to the Prerogative Court from said order, including the decree made thereon affirming the same, dated October 21st, 1882.

There is no appeal from the decrees admitting said will to probate and therefore there is nothing before the Court upon these two appeals than the orders already referred to and particularly set out above.

The respondents submit the following reasons why said orders should stand:

I.

The general rule is that all orders that are merely discretionary with the Court making them are not subject to appeal.

Lozear vs. Shields, 8 C. E. Greene, p. 509.
2 Daniell's Chancery Practice *p. 1463 to 1466.

The statute authorizing the allowances provided for by said orders is to be found in the Revision, p. 791, § 177.

The granting of such allowances under the provisions of said statute has been declared to be purely discretionary.

Collins, appellant, vs. Townley et al., respondents, 6 C. E. Greene, p. 353.
Mallett vs. Bamber, 6 Stewart, p. 253.
Eddy Will case, 6 Stewart, 574.

III

If however such orders are by the Court adjudged to be appealable, then we submit, that the [illegible]

II.

In a case where well founded doubts exist as to the mental capacity of a testator, and with respect to the force and character of the influences under which the testamentary act was performed, the caveators are entitled to their costs and reasonable counsel fees.

Eddy Will case, 6 Stewart, p. 574.

This was a case however where the whole question came up before the Court and not the question of costs alone.

There can be no question now raised as to the reasonableness of the allowances as to amounts thereof, as the same were assented to by counsel for appellants, at the time they were made. And besides since they were made there has been a great amount of labor and time expended and expense incurred in preparing the cause for argument before the Prerogative Court, and arguing the same, for which the Prerogative Court made no additional allowance. There is therefore, simply one question to be determined by the Court, and that is, as to whether the respondents are entitled to any fees and costs or not.

Now is this, in the language used by his Honor the Chief Justice in delivering the opinion in the Eddy Will case, a case in which there was justification and reason for taking the course that was pursued by the caveators.

The contest was based upon improper execution of the will, upon undue influence used to bring about its execution, and upon the competency of the testator to execute the same.

In order to determine whether the allowances made by said orders were just and reasonable, let us examine the case as presented by the testimony taken and see whether there was a just and reasonable ground for the making of the assertions made in the next preceding paragraph.

As to whether there was a proper execution of the will or not or sufficient grounds upon which to base that objection need not be examined with so much care as the respondents had the right to insist upon the appellants clearly proving that the will was properly executed.

Collins vs. Tounley et als. 6 C. E. Green 353.

As to the other two questions it is not necesssry in the argument of the question now before the Court to prove absolutely that the testator was unduly influenced, or that he was absolutely incompetent to execute the said last will and testament, but simply to show that the respondents had a reasonable ground to make the contest upon these questions.

And the respondents submit that the facts of the case clearly show that there was such reasonable ground for such contest on the part of the caveators and herewith present their brief used before the Prerogative Court to establish that position.

New Jersey Prerogative Court.

In the matter of the probate of a paper purporting to be the last will and testament of WILLIAM P. TURNURE, deceased. JOHN L. TURNURE and JULIA HARD, *Appellants,* *and* ELLEN TURNURE and JAMES H. TURNURE, *Respondents.*	*On Caveat, &c.* — *Brief for Appellants.*

William P. Turnure, the testator, died on the 2d day of August, 1880, aged eighty-four years, at his residence in Jersey City, where he had resided since the latter part of the year 1866.

He left him surviving, his widow Ellen Turnure, and his children John L. Turnure, Julia Hard and James H. Turnure.

On or about the 20th day of February, 1873, he executed a paper purporting to be his last will and testament, and which is the paper in controversy in this suit.

On the 9th day of August, 1880, the said John L. Turnure and Julia Hard filed their caveat in the Hudson County Orphans' Court against the admission of said paper to probate as such last will and testament.

Such proceedings were thereupon had as resulted in a decree being made by said Orphans' Court, on or about the 10th day of September, 1881, admitting said paper to probate as such last will and testament of the said William P. Turnure, deceased.

From this decree the said caveators appealed to this

Court, and it is that appeal which is now to be determined.

Pending these proceedings in the said Orphans' Court, the Hon. A. A. Hardenburgh was appointed, by the consent of the parties in interest, administrator *pendente lite;* and what were alleged by the said Ellen Turnure and James H. Turnure to be all of the assets of the estate of the said William P. Turnure, deceased, amounting to the sum of $58,000, were placed in the hands of the said administrator, where they still remain.

The caveators and appellants, in presenting their appeal to the Court, allege, first, that there is no positive, direct testimony, or what may be equivalent thereto, showing that the said testator in any way declared said paper to be his last will and testament, or in any way requested said persons who signed the same as witnesses so to do.

It may be true that the attestation clause, together with the signatures of the witnesses, is *prima facie* evidence of the facts stated therein; but it is also true that it may be overcome by the witnesses themselves or by facts and circumstances irreconcilable with its verity. Mundy *vs.* Mundy, 2 McCarter, p. 290. (References.) 1 Sand Ch. Rep., 235; Remsen *vs.* Brinkerhoff, 26 Wend., p. 324, 329; 8 Vroom, p. 312, 316, and 10 Vroom, p. 113; Allaire *vs.* Allaire.

There must be some declaration by the testator that it is his last will, and a communication by him to the witnesses that he desires them to attest it as such. Mundy *vs.* Mundy.

Now let us examine the testimony upon this question.

Testimony of William T. Hulse, p. 10, line 9 to 20; p. 14, line 23 to 27.

It will be seen from this review of the testimony of Hulse that all his positive assertions are that the testator did not declare what the paper was, and did not request him to witness the signature to the same.

These positive assertions are opposed only by the impression he has that Mr. Turnure heard Horsley make the request. This impression is very vague, and is not

based, as appears by the testimony, upon any act done by the testator giving rise to it, but simply on the fact of the nearness of the testator to Horsley and the witness when the question was propounded to Hulse by Horsley as to whether he would witness the signature to the paper. (P. 12, line 35 to 38; p. 13, line 1 to 10.

The testimony shows that the testator was an old gentleman, aged about seventy-seven years, when he executed the paper; his hearing was somewhat defective; and that when this question was asked by Horsley he was sitting at a distance of ten or twelve feet from the witness and Horsley. (P. 9, line 18 to 23.)

It seems to me that from this testimony we are forced to conclude that the facts stated in the attestation clause, both as to the publication and requesting Hulse to sign said paper as such witness, are untrue.

Now let us examine the testimony of Mr. Horsley upon the same matter (p. 15, line 21 to 40; p. 16, line 1 to 3; p. 18, line 36 to 40; p. 19, line 1 to 3; p. 27, line 26 to 33).

From this hasty review of Horsley's testimony it will appear that he swears positively that *he requested* the witnesses te sign, and that he *thought* that the testator had expressed a desire to have them witness it.

In case of Mundy *v.* Mundy, already referred to near bottom of page 293, it is said: "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."

The witness Horsley nowhere declares that the testator declared the said paper to be his last will and testament, and when he is asked, upon cross-examination, after he has detailed all that took place, he answers in the manner already referred to (p. 18, line 36 to 40; p. 19, line 1 to 3).

In Jarman on Wills, last edition, p. 208, note, it is said:—

"It will not suffice that the witnesses have elsewhere

and from other sources learned that the document which they are called to attest is a will, or that they suspect or infer from the circumstances and occasion that such is the character of the paper. The fact must in some manner, although no particular form of words is required, be declared by the testator in their presence, that they may not only know the fact but may know it from him, and that he understands it, and at the time of his execution, which includes publication, designs to give effect to it as his will. (Ref.) Hunt *vs.* Mootrie, 3 Braf., 322; Nipper *vs.* Groesbeck, 22 Barb., 670.

If, however, the Court should be of the opinion that the proofs show a due and legal execution of the paper, then the appellants desire to submit these additional reasons why said paper should not be admitted to probate, viz., that of incompetency and undue influence.

In Turner *vs.* Cheesman, 2 McCarter, p. 243, it is said :—

" No matter how little the influence, if the free agency is destroyed it vitiates the act which is the result of it."

The question of influence in cases of this character must to a very great extent be shown by circumstances, it being scarcely susceptible of direct proof; and particularly is this assertion true when applied to this case. The testator was kept from many of his relatives or friends designedly, by direct efforts to bring about that result, and by reason of his alliance with the last wife, whose reputation seems to have been such as to induce and compel them to stay away if at all solicitous about their own reputations.

The testator at the time of executing this alleged will, and at the time of his decease, had only these three children already named, John L., Julia and James H.

Now, ordinarily, what disposition would we expect him to make of his estate, assuming that his relations with all of them are all pleasant, and that all are equally deserving.

What disposition would you and I and every other reasonable, sensible man, who was entirely untrammeled and permitted to follow his own inclinations and desires,

be likely to make of our estate under such circumstances? Would it not be to divide it equally among them? Would our consciences and sense of right approve and commend any other course?

Now, what do we find the circumstances to be in this case as to the relationship existing between John L. Turnure and Julia Hard and their father, at the time of the execution of the alleged will and up to the time of his decease?

Both of them swear that there never was any unpleasantness between either of them and their father (p. 43, line 26 to 34; p. 157, line 25 to 29).

The testimony shows that John L. Turnure and his father were in business together from 1854 to 1861 (p. 39, line 1 to 32) without the slightest disagreement; that in 1866 the testator called upon John at his residence in Englewood, and was by John offered a pleasant home there if he would come there to live; that in 1867 he again called there on John and told him of his marriage, and that he had made a will dividing his property in four equal parts (p. 40, line 30 to 40; p. 41, line 1 to 40; p. 42, line 1 to 8).

That after the testator's last marriage, and up to a very short time before his decease, John L. called upon him at his residence in Jersey City on many occasions, was always received by the testator with pleasure, and testator was invited on every occasion of such visit, by the said John L., to make him a visit at Closter, where he was then living (p. 43, line 12 to 25, line 35 to 40; p. 44, line 1 to 40; p. 45, line 1 to 10.)

Julia Hard says that after her step-mother Eliza's death her father used to take dinner with her every Sunday, and that their pleasant relations always continued, although she did not call upon him very frequently after he came to Jersey City, but always invited him to come and see her when she did (p. 120, line 37 to 40; p. 121, line 1 to 24, line 40; p. 122, line 1 to 11; p. 123, line 5 to 40; p. 124, line 1 to 10; p. 118, line 5 to 14).

Mrs. Barker swears that he always thought a great deal of Julia (p. 198, line 8 to 13).

Now, from this review of the testimony, can anything be

discovered in the relationship between the testator and these two children that could induce him to cut them off with a mere pittance and give the bulk of his estate to this spendthrift, James H., and his disreputable widow.

I think the Court will, with me, conclude that some other reason must be discovered and assigned for such strange and unfatherly conduct.

The counsel for the respondents, by his examination of the witnesses produced, has suggested his theory about the matter, and it is this, that John L. and Julia already had enough, and for that reason the testator made them such a small bequest.

Now, is that the explanation—could that have been in the mind of the testator?

We assert with the utmost assurance that such could not have been the case, because it appears that at the time of the execution of the alleged will Julia's property was all encumbered for nearly all that it was worth, and her father knew it (p. 136, line 10 to 40; p. 137, line 1 to 20), and that while John L. was worth much more than his sister, and it might be said very comfortably fixed, yet the testator gives to him four times as much as to her.

Besides, in 1867, when the conditions of both of them must have been very much better than in 1873, the testator tells John L. and Julia that he has made his will and has divided his estate among them in four equal shares.

Neither John or Julia had had any advances made to them, while James H. had had many thousands of dollars (p. 34, line 37 to 40; p. 39, line 40; p. 40, line 1 to 29; p. 52, line 40; p. 53, line 1 to 40; p. 54, line 1 to 3; p. 100, line 7 to 20; p. 129, line 36 to 40; p. 130, line 1 to 3; p. 106, line 3 to 16.

Now your Honor will perceive from these several considerations that the disposition of the testator's estate in and by said alleged will, is both unreasonable and unjust, and that we have been unable thus far to discover any satisfactory reason therefor.

Can there be any other one assigned than that already suggested, viz: that the testator at the time of the execu-

tion of said alleged will was not a free agent, but was improperly influenced and prejudiced against the appellants by the said respondents.

And first, we allege that the testator was a person of that sort of disposition, and of that condition of body and mind as to make him very susceptible to influence, either proper or improper, at the time of the execution of the said alleged last will and testament.

First.—He was of kind disposition, inclined to be just, tender-hearted and ready to acknowledge a fault (p. 43, line 3 to 11; p. 109, line 32 to 36. (P. 123, line 5 to 40; p. 124, line 1 to 10), already referred to; p. 148, line 20 to 25; p. 160, line 36 to 39; p. 162, line 31 to 40; p. 163, line 1 to 2 and line 18 to 20; p. 198, line 8 to 13, already referred to; p. 237, lines 12 and 13.

Second.—He began to complain of bodily ailments, and especially of a severe pain in the back and in the head, as early as 1869 (p. 45, line 26 to 40; p. 46, line 1 to 9; p. 47, line 11 to 34; p. 49, line 33 to 40; p. 50, line 1 to 10; p. 51, line 3 to 19; p. 52, line 1 to 6; p. 66, line 11 to 23; p. 86, line 23 to 40; p. 87, line 1 to 16; p. 89, line 10 to 38; p. 125, line 32 to 40; p. 126, line 26 to 36; p. 128, line 26 to 40; p. 129, line 1 to 5; p. 167, line 10 to 24; p. 190, line 11 to 13; p. 214, line 3 to 27; p. 240, line 17 to 27).

Third.—He began to show a failing in his faculties as early as 1869 (p. 44, line 32 to 40; p. 45, lines 1 and 2; also line 10 to 25; p. 46, line 10 to 14; p. 67, line 7 to 11; p. 87, line 17 to 40; p. 91, line 28 to 40; p. 92, line 1 to 23. (P. 128, line 26 to 40; p. 129, line 1 to 5), already referred to; p. 161, line 21 to 27; (p. 214, line 3 to 27) already referred to; p. 167, line 29 to 40; p. 168, line 1 to 8; p. 170, line 4 to 40; p. 171, line 1 to 40; p. 172, line 1 to 13; also line 23 to 26; p. 173, line 3 to 5).

We now have delineated the character of the material to be operated upon. An old man aged 77 years, weak in both body and mind, needing only to be placed in proper hands to be controlled, managed and influenced as such person might desire.

In Ellen Turnure we find just the elements for such an operator—keen, shrewd, unscrupulous, and prompted and incited by a desire to get all she could from her subject for her own benefit and that of her progeny.

Now, who is Ellen Turnure, and who and what was she before her marriage with the testator (p. 31, line 22 to 37; p. 42, line 28 to 40, also line 3 to 11; p. 56, line 29 to 32; p. 63, line 16 to 40; p. 100, line 36 to 40; p. 101, line 1 to 13; p. 110, line 15 to 40; p. 111, line 1 to 30; p. 113, line 14 to 34; p. 119, line 24 to 39; p. 202, line 29 to 40; p. 203, line 1 to 4, also line 9 to 38; p. 204, line 35 to 40; p. 205, line 1 to 27; p. 206, 14 to 34; p. 207, line 17 to 29; p. 208, line 20 to 35; p. 209, line 16 to 21)?

This, then, is the creature in whose hands this old man was placed. A woman who like a serpent had crept into his domestic life and by her fascination and wiles dragged him away from his family hundreds of miles, so that she might the more completely subject him and lead him astray.

This accomplished, and the good and virtuous wife and mother gone to her last rest, this miserable creature pursues the plan and plot she has laid out, and in less than nine months from the death of that wife marries the testator, having in the meantime been living with him in Jersey City.

And she now comes into this Court and asks assistance in enabling her to consummate the plot by ordering this alleged will to be admitted to probate, and thereby rob these appellants of what is justly theirs.

Can we conceive of any form of badness worse than that emanating from a thoroughly corrupt and bad woman? Can we conceive of anything that she will not do to advance her own interests and ends?

In Ellen Turnure we have just that sort of creature—a creature fitted, not only morally but mentally and physically, to control and influence either properly or improperly.

She was a woman of strong will. She was keen. (P. 94, lines 39 and 40; p. 95, line 1 to 40; p. 108, line 11

to 40; p. 109, line 1 to 10; p. 129, line 20 to 24; p. 172, line 30 to 34; p. 186, line 14 to 21; p. 213, line 31 to 35; p. 218, line 7 to 40; p. 234, line 26 to 28; p. 241, line 15 to 18; p. 244, line 6 to 12; p. 237, line 8 to 11).

Did Ellen Turnure control and influence the testator? (P. 46, line 38 to 40; p. 47, line 1 to 10; p. 48, line 14 to 32; p. 49, line 4 to 28; p. 50, line 10 to 35; p. 74, line 16 to 40; p. 75, line 1 to 27; p. 83, line 17 to 27; p. 84, line 3 to 6; p. 88, line 26 to 40; p. 89, line 1 to 9; p. 90, line 20 to 31; p. 94, line 27 to 38; p. 95, line 28 to 40; p. 96, line 1 to 17; p. 101, line 32 to 40; p. 103, line 33 to 40; p. 104, line 1 to 30; p. 105, line 15 to 22; (p. 108, line 11 to 40; p. 109, line 1 to 10) already referred to; p. 112, line 27 to 37; p. 120, line 6 to 30; (p. 123, line 5 to 40; p. 124, line 1 to 10) already referred to; p. 125, line 22 to 31; p. 127, line 10 to 40; p. 128, line 1 to 28; p. 129, line 6 to 19; p. 130, line 4 to 18; p. 144, line 4 to 40; p. 145, line 1 to 40; p. 146, line 1 to 39; p. 161, line 28 to 34; p. 163, line 22 to 39; p. 164, line 4 to 18; p. 168, line 39 to 40; p. 169, line 1 to 40; p. 170, line 1 and 2, also line 4 to 30; p. 172, line 35 to 40; p. 173, line 1 and 2; p. 185. line 23 to 40; p. 186, line 1 to 21; p. 211, line 36 to 40; p. 212, line 1 to 9; p. 218, line 7 to 40, already referred to; p. 237, line 8 to 11, already referred to; p. 242, line 32 to 40; p. 243, line 1 to 25, also line 29 to 34.)

So great was this influence, that not only was the testator induced by her to make this alleged will, giving to these appellants this mere pittance, but even to induce him to disregard the wishes and dying bequest of that wife who had been a mother to all of his children, and had said by her last will that all of her estate after the death of the testator should be equally divided between John L., Julia, William A. and James H. Turnure, and in that alleged will not to say a syllable about this estate amounting to upwards of $13,000.

The proponents and respondents have produced no testimony in opposition to these views of the case based upon the testimony of the caveators and appellants.

And why? Is it because, as they will endeavor to show,

that they did not deem it necessary? We answer no; but it is because they dared not put upon the stand these two conspirators, Ellen Turnure and James H. Turnure.

They owed it to themselves, they owed it to the testator, they owed it to these appellants—if these allegations which have been made were not true—to come forward and prove them false; they, however, have elected in the face of these charges to stand mute and say not a word, and we say that that position justifies this Court in concluding that it is a confession as to the truthfulness of the charges made.

Who is better able to say whether Ellen Turnure has exerted any control or influence over William P. Turnure in the making of this alleged will, than she is? Who is better able to say what became of the will of which testator spoke in 1867, and the reasons that induced him to make this last disposition of his estate, than Ellen Turnure? Who is better able to say whether Ellen Turnure is the same person who was known as the keeper of a bedhouse in Walker street, in the City of New York, and then known as Nelly Weaver, than she is? Who is better able to tell whether Ellen Turnure is the same person that went to Saratoga with the testator before the death of his second wife, and there passed herself off as his wife, than she is? Who is better able to say whether Ellen Turnure was constantly after the testator before the death of his wife, as the stablemen in his stable assert, than she is? Who is better able to tell how much estate the testator left, and what has become of it, than Ellen Turnure? And who is better able to say what has become of the balance of the estate of upwards of $120,000, which the testimony shows the testator was possessed of during his lifetime—only $58,000 of which Ellen Turnure and James H. Turnure account for—than they are?

The fact of the disappearance of this large amount of money, without any explanation from those who can give it, seems to me to be a matter of very great weight in arriving at a correct result in this suit. If James H. Turnure and Ellen Turnure have secreted it, then we have solved in our minds the reason for their keeping

their mouths so close; then we can understand that it is a matter of entire indifference to them as to how this controversy may result. The testimony bears out my assertion as to amount of testator's estate.

Eliza Turnure's real estate was sold Feb 2, 1858, for.....		$12,750
(See "Exhibit C. 1.")		
There was cash paid.....	$1,750	
There was mortgage given for....	11,000	
(See "Exhibit C. 4.")		
The cash was invested on bond and mortgage, and the mortgage when paid off in 1866, in New York City Water Bonds (p. 37, line 40; p. 38, line 1 to 11; p. 75, line 38 to 40; p. 76, line 1 to 34), March 16, 1872, William P. Turnure sold the stable property which he obtained from his son William A. Turnure, in 1861, to Thomas B. Wilson for.....		77,500
Cash paid.....	$27,500	
Mortgage given for.....	50,000	
(See "Exhibit C. 5 and C. 6.")		
The mortgage was paid off February 23, 1878. (See "Exhibit C. 8.)		
The $27,500 was invested partly in U. S. bonds, and the balance was deposited in Safe Deposit Company (p. 37, line 14 to 39; p. 70, line 20 to 30; p. 85, line 8 to 38; p. 130, line 26 to 35; p. 209, line 38 to 40; p. 210, line 1 to 8.)		
About 1850 William P. Turnure and his partners William A. Turnure and Barry Cornell, sold the Broadway line of stages for.....	$110,000	
On which there was an indebtedness of.....	16,000	
Leaving a net amount of.....	$94,000	

to be divided between the three of them,

and this, with the accumulated interest on the notes given for the amount, made the share of William P. Turnure about	$32,000
(p. 38, line 12 to 40.)	
In 1853 or 1854 William P. Turnure took $10,000 of this money and bought the stables corner of West 26th street and 6th ave. About 1855 he sold out one-half interest to John L. Turnure for $5,500, and in 1861 sold to him the other one-half interest for $6,000, getting for the whole $11,500, and a profit of.....	1,500
	$123,500
(p. 39, line 1 to 36.)	

The old gentleman in 1867 said he was worth considerably over $100,000 (p. 83, line 4 to 11; p. 146, line 40; p. 147, line 1 to 7; p. 240, line 31 to 40).

From this hasty and imperfect review of what I regard as the prominent and important features of this case, I cannot but conclude, and I believe that the Court will do likewise, that exact justice can only be done as between the appellants and respondents in this cause, by reversing the decree of the Orphans' Court, and declaring that said alleged will should not be admitted to probate.

R. P. WORTENDYKE,
Proctor for Appellants.

SUMMARY.

The testator was a man aged about sixty-seven years when he married his third wife Ellen Turnure, one of the appellants. His son John at that time was about forty-five, and his daughter Julia about thirty-eight years of age. And during the many years since said respondents had arrived at the years of discretion. The relations between their father and themselves, had been of the most friendly character.

Ellen Turnure by reputation and occupation at one time, was a "bed-house keeper," in Walker street in the city of New York, and known by the name of Nelly Weaver.

This alliance as it naturally must, resulted in keeping the testator's said two children and his other relatives who had any regard for their own reputations, away from the testator, although feeling that he was not so much to blame as she was. Their friendly feelings for him and the testator's for them always continued and were shown as opportunity was offered.

Following this alliance there were complaints of sundry bodily ailments continuing up to the time of testator's decease. There were also various evidences of Ellen Turnure's influence over him in opposition to his said two children and other relatives.

And finally the climax was reached when the said last will and testament was executed, in which the bulk of his estate was given to the said Ellen and James H. Turnure and a mere pittance given to said John and his only daughter Julia.

From the caveator's standpoint it is claimed that these circumstances gave them a reasonable ground for the making of the contest, and both the Orphans' Court and Prerogative Court so concluded.

Yet the counsel for the appellants is so prejudiced as to claim before this Court that the respondents had no right or reasonable ground for making the contest, and upon that question alone appears before the Court.

I assume and believe, however, that the Court, after a careful consideration of the case, will conclude differently and affirm the decrees appealed from.

Prerogative Court of N. J.

In the matter of the Probate of a Paper purporting to be the Last Will and Testament of WILLIAM P. TURNURE, deceased.	*On Caveat, &c.* — *Appeal from Hudson Co. Orphan's Court.*

10

ALLAN MCDERMOTT, Proctor of Ellen Turnure and James Harvey Turnure, the proponents and appellants.

R. P. WORTENDYKE, Proctor for Caveators and Appellees, John L. Turnure and Julia Hard ; and Joseph D. Bedle, of Counsel. 20

LAST WILL AND TESTAMENT.

In the name of God, amen, I, William P. Turnure, of Jersey City, in the County of Hudson and State of New Jersey, being of sound mind and memory and understanding for which blessing I thank God, do make and publish this, my last will and testament in the manner following, That is to say : 30

First.—It is my will and I do order that all my just debts and funeral expenses be duly paid and satisfied, as soon as conveniently can be after my decease.

Item.—I give and bequeath unto my beloved daughter, Julia Hard, wife of Melville Hard, the sum of two thousand dollars.

Item.—I give and bequeath to my beloved son John Lawrence Turnure the sum of eight thousand dollars.

Item.—All the rest of my personal property, to wit : Bonds, Mortgages, Stocks, &c., &c., to my beloved wife Ellen Turnure and my beloved son James H. Turnure, 40 to be equally divided between them, namely: the one-half which I give and bequeath to my said wife she is to

receive and accept in lieu of her right of dower; of which she is to receive the interest accruing therefrom for her maintenance, and is to be put out at interest until it so realizes sufficient for her maintenance as above and so stated.

Lastly.—I hereby appoint my beloved son James H. Turnure and my loving wife Ellen Turnure, executors of this my last will and testament.

WM. P. TURNURE. [L.S.]

10 Signed, published and declared by the said William P. Turnure to be his last will in the presence of us, who were present at the same time and subscribed our names as witnesses in the presence of the testator, which was executed by him on the 20th day of February, 1873.

20 P. N. HORSLEY,
WILLIAM T. HULSE,
CHARLES O. OLSEN.

CAVEAT.

To ROBERT MCCAGUE, JR., *Surrogate of the County of Hudson in the State of New Jersey.*

30 We, John L. Turnure and Julia Hard, two of the children and heirs of William P. Turnure, late of the city of Jersey City, in the County and State aforesaid, deceased, do hereby caveat and protest against admitting to probate any paper purporting to be the last will and testament of the said William P. Turnure, until examination and decree thereon by the Orphans' Court of said County of Hudson.

Witness our hands and seals this 9th day of August, eighteen hundred and eighty.

JOHN L. TURNURE, [L. S.]
JULIA HARD. [L. S.]

40 Filed August 9, 1880.

September 25th, A. D. 1880.

Pursuant to adjournment, the parties all appearing, evidence was taken as follows:

WILLIAM T. HULSE, a witness produced on the part of the proponents, being duly sworn in open court, testified as follows:—

Q. [Showing witness the alleged will.] That is your signature as witness?

A. Yes, sir. 10

Q. Did you see him sign this will?

A. I saw that signature written.

Q. Who were present when the will was signed?

A. I remember no one but Mr. Horsley and Mr. Turnure.

Q. Did Mr. Turnure sign in your presence?

A. He did.

Q. Was Mr. Horsley present, too?

A. Yes, sir.

Q. Have you seen Mr. Horsley this morning?

A. I have not.

Q. Were you personally acquainted with Mr. Turnure? 20

A. I was not; I had never seen the gentleman before that morning, and was introduced to him by Mr. Horsley.

Q. You saw him sign the instrument?

A. I saw Mr. Turnure sign—that is, the gentleman I was introduced to as Mr. Turnure.

Q. Did you see Mr. Horsley sign?

A. I don't remember.

Cross-examined by Mr. Bedle:

30

Q. Where do you live?

A. In Jersey City, No. 60 Glenwood avenue; I have lived there three years. Before that I lived at Bergen Point; I lived at Bergen Point eleven years.

Q. What is your occupation?

A. School teacher in the Jersey City public schools; and have been so eleven years.

Q. Where were you teaching at the time you put your signature to this alleged will?

A. In Jersey City.

Q. Have you any recollection, outside of the fact that this appears to be your signature, of putting it there? 40

A. I have.

Q. At what place was it done ?

A. In Mr. Horsley's office in Jersey City; I think in Newark avenue.

Q. Day time or night time ?

A. Day time.

Q. You don't recollect of seeing Mr. Horsley put his signature to the paper ?

A. I don't recollect it.

Q. And you don't recollect of Charles O. Olsen putting his signature there ?

10 A. I don't.

Q. Do you know such a man?

A. I don't.

Q. Who were present when you signed this paper?

A. I remember no one but Mr. Horsley and Mr. Turnure; I don't say there were no others present, but I don't remember any others being present.

Q. You had never seen Mr. Turnure before, had you?

A. Not to my knowledge.

Q. Did you ever see him afterwards?

20 A. Not to my knowledge.

Q. What aged man do you recollect him to have been in appearance, when you put your name to this paper?

A. I should judge he was a gentleman about seventy years old.

Q. Have you any memory of his writing his name to this paper?

A. Any memory? I have not.

Q. Have you any memory of what transpired at the time you signed your name to this paper?

A. In reference to the will you mean?

30 Q. Yes.

A. I remember being introduced to the gentleman by Mr. Horsley. I remember having a little talk with him, and I remember being requested by Mr. Horsley to witness his signature.

Q. To witness what?

A. The gentleman's signature to the will.

Q. What did Mr. Horseley say to you?

A. I don't remember particularly. I remember his asking me to witness his signature, asking me if I would. I said yes.

40 Q. Where did he ask you that?

A. In the office at that time.

Q. Please give us the words to you, as near as you can?

A. I cannot do it any better than I have done, I think. I simply remember his asking me to witness the gentleman's signature, remarking there was a will there to be signed, and asking me if I would wait a minute or two, or a short time, for the purpose of witnessing the signature. I said that I would.

Q. What were you doing there at the time?

A. I had business transactions there with Mr. Horsley of a private nature of my own.

Q. You merely happened to be there?

A. I went there purposely on other business.

Q. This occurrence about the paper was a mere incident which happened while you were there?

A. I knew nothing of it when I went there.

Q. I would like you to give, now, all the memory you have of this occurrence, and just as it took place, so far as you remember it. Now, give it circumstantially.

A. I remember being in the office; I remember what was the cause of my visit to the office; I remember transacting that business with Mr. Horsley; I remember his remark to me that there was a will there to be signed, and asking me if I would be a witness, and I remember consenting; I remember being introduced to that gentleman; I remember somewhat how he looked; I remember that I wrote my signature, and I have a dim recollection of the gentleman's writing before I did, but I could not swear positively; I could swear positively that I would not write my signature until after he had written his.

The last remark is objected to by Mr. Bedle as not responsive to the question.

Q. Have you given all that you recollect as to what transpired there—I speak of your memory?

A. I have a dim recollection of his signing, but I cannot recall it very definitely.

Q. You said a few moments ago you had no memory of his signing?

A. Not positive memory, no; but it was in my mind, an impression of that sort.

Q. Where was Horsley when he asked you about witnessing the paper?

A. In his office at his table, and the old gentleman, I remember, was sitting over by the window.

Q. How far off?

A. Not as far as from here to the further chair there [pointing to the last seat of the jury box].

Q. In what way did he address this to you—you were at the desk, as I understand you?

A. I was on the other side of the desk, as I remember, and Mr. Horsley was sitting at the desk, and the old gentleman was sitting over there; it seems to me he was reading a paper; I could not swear to that, though.

Q. Reading a paper over by the window?

A. Yes.

10 Q. What was Horsley doing at the time he asked you that?

A. Writing at his desk.

Q. Do you know what he was writing?

A. Well, he was writing—attending to me at first; he got through that and handed it to me, and then I remember of his writing at the will.

Q. At what?

A. He was writing on the paper or document that I afterwards signed; or it was in that matter that he was attending to before; I can't remember whether it was 20 that paper or not: I remember his asking me to wait a little while until he had the matter fixed, had it written up.

Q. Do you recollect of Mr. Horsley's signature being on the paper when you first saw it?

A. I don't recollect it.

Q. You don't recollect of seeing him put it there?

A. No.

Q. Do you recollect when this was—how long ago?

A. It was from seven to nine years, about; not less than seven, nor more than nine.

Q. Do you recollect what time of the year it was?

30 A. No; I can't recollect about that.

Q. Do you know whether it was in the Summer, Spring, Fall, or Winter?

A. I can't recollect it now.

Q. Have you any distinct memory now of the making of your signature?

A. No; I remember distinctly that I wrote my signature at that time in his office; that's all I remember; I don't remember sitting down; simply that I did sign it at that time in his office.

Q. Can you see now in your own mind your doing the 40 act of signing your name there?

A. I can not.

Q. As I understand you, then, you have a conviction that you signed your name from the fact that it is here, but don't recollect the simple act of doing it?

A. I remember that I did do it at that time, but I don't remember the act of doing it.

Q. I don't suppose you could tell whereabouts in that room you did it, could you, from memory?

A. I never was in his office but once, and I remember how the table stood at the time.

Q. Have you an impression that Horsley was writing anything on the paper? 10

A. Yes, I have.

Q. What is your impression?

A. My impression is he was writing something in connection with the will and that I had to wait a little while, a very short time, while he finished that writing, so that I could witness the signature.

Q. How long was he writing in reference to it?

A. I cannot swear positively; as near as I remember, not more than five minutes.

Q. In your judgment do you think it was as much as 20 five minutes?

A. I should think it was probably a little more; I don't think it was ten minutes; I think it was less than ten minutes.

Q. What do you understand he was writing in reference to what you call the will?

A. I thought he was writing the dates, and the last part there at the bottom of the will. I did not think he was writing anything pertaining to the making of the will itself.

Q. What last part do you mean?

A. The witness: whereof: we the witnesses, and so 30 forth: whatever the wording of that is.

Q. "Signed, sealed and delivered in the presence of"?

A. Yes, that's my recollection. There was no dictation at all by the old gentleman while I was in there.

Q. He was sitting at a window reading a paper while this was going on?

A. Yes, sir.

Q. Do you think Horsley made his signature at the same time that he was writing there?

A. I have no impression at all as to that.

Q. You have no impression of his signing his signature after you? 40

A. No, I have no recollection at all. I have no recollection of that other gentleman, Holsen.

Q. Nor of Horsley signing his name?

A. No.

Q. How far was that window from Horsley's desk, where the old gentleman sat?

A. I think about as far as the back of the fourth chair in the last row of jury seats; that would be ten or twelve feet away, probably.

Q. And you think he sat by the window reading the newspaper while this was going on?

10 A. Yes. It was in the daytime, I remember distinctly. I could not say the time of day. I don't recollect whether the old gentleman had his glasses on while he was reading the newspaper.

Q. Were you sitting or standing when this conversation with Horsley took place.

A. I was standing right in front of his desk. I remember I was not in a very good frame of mind at the time; the business between him and myself was not a very agreeable one. I remember his speaking to me about it, and I was half inclined not to witness it at

20 all, but I finally concluded I would. His daughter was a teacher in my school at the time, and I thought she might feel a little disagreeable over the matter if I refused, and so I stayed.

Q. Just tell me whether the state of mind you were in at that time was one of a little unpleasantness?

A. It was.

Q. I imagine that what you did there you did pretty hastily.

A. No.

30 Q I mean outside of your personal business?

A. No; I never do things very hastily; rather cautious.

Q. You witnessed this paper at the request of Horsley?

A. I know that.

Q. It was not at the request of Mr. Turnure?

A. No.

Q. Quite confident of that?

A. I am positive of that.

Q. Mr. Turnure said nothing to you about witnessing it?

40 A. Nothing at all.

Q. He didn't tell you what the paper was?

A. He did not; Mr. Horsley did.

Q. Did you read at all what was in or on the paper?

A. I have no recollection.

Q. You would not naturally do that, would you?

A. I would not. I remember signing several other wills as a witness, and I didn't think it was within my province to read it.

Q. You would not have considered it any part of your duty or business to read anything that appeared on the paper?

A. I would not.

Q. Did Mr. Horsley live in that same house in which his office was? 10

A. He did not.

Q. Tell us where that office was?

A. I think it was on Newark avenue. I remember going up a pair of very rickety stairs into a small office. I remember the office was rather a poor one, and poor furniture in it.

Q. Can you give us any information at all who Charles O. Olsen is?

A. I cannot.

Q. Now, then, give us your memory as to who were in the room when you signed your name? 20

A. I can't do it. I don't remember signing my name; that is, the manual act. I simply remember that I did witness it, that I wrote my name at that time.

Q. You can give us those whom you remember were there, if you remember anybody there?

A. I simply remember that old gentleman and Mr. Horsley; that is all I remember.

Q. Have you any recollection of how the old gentleman was dressed?

A. My impressions are that he had a black frock coat on, and that's all I can remember. 30

Re-direct, by Mr. McDermott:

Q. You say you had a talk with Mr. Turnure; what was the conversation?

A. All I remember was being introduced to him and passing the time o' day.

Q. How large was the room in which you were?

A. I don't think the room was more than 12x18 or 20.

Q. How far were you from Mr. Horsley when he asked you to stay and witness the will? 40

A. We were on opposite sides of the desk: the desk was about like the stenographer's.

Q. Do you remember what tone of voice Mr. Horsley spoke in ?

A. Yes.

Q. Did he speak as loud as I am speaking now.

A. Yes, I remember his asking; the tone seemed to imply a little doubt as to whether I would witness the signature or not.

10

Q. Could his voice, as he spoke, be heard in all parts of that room, do you think ?

A. Yes, sir.

Q. You spoke of being in a disturbed state of mind at that time; were you afflicted with any such mental disturbance as to render it liable that you would do an act unintentionally?

A. Not at all.

Q. How long did you wait in the office for the Justice to finish the will ?

A. I think five to ten minutes.

20

Q. During that time, do you remember what Mr. Turnure did ?

A. I remember his sitting in the chair over by the window; I remember his getting up and looking that way, and coming towards us; I remember his standing there.

Q. This was after you had been requested to witness the will.

A. Yes, sir. It is my impression he got up when Mr. Horsley introduced us ; I think so.

Q. Had Mr. Horsley finished his writing on the document ?

30

A. It is my impression that he had not, that he introduced us before he finished the writing.

Q. Then, I understand your memory of it is this [interrupted by objection as leading,] that Mr. Horsley asked you to wait and witness the will; that he was continuing to write; that Mr. Turnure came from his chair to where you were; that you were then introduced; that afterwards Mr. Horsley continued to write.

Question objected to as leading. Admitted.

A. I think that I approached him as much as he me; we were introduced, and Mr. Horsley wrote after that, and we passed a few words; I don't remember what. I

40

remember we stood there; we had very little conversation.

Q. Do you remember whether Mr. Horsley said anything to Mr. Turnure to rise and come towards you?

A. No; I remember, certainly, that Mr. Turnure understood that I was to be a witness.

Q. [By Mr. BEDLE.] How is that?

A. That Mr. Turnure was informed that I would be a witness.

Q. Do you know how that information was conveyed to him? 10

A. Not distinctly; I have an impression that Mr. Turnure heard him ask me the question.

Q. In the tone of voice in which the question was asked of you, could it be heard in all parts of the room by any one in it?

A. It could.

Q. Did any conversation take place after the signing of the will?

A. It is my impression that I immediately left the office. 20

Re-cross:

Q. Do you recollect whether Mr. Turnure had a cane?

A. I don't.

Q. The introduction took place, as I understand you, after Mr. Horsley had spoken to you about witnessing the paper?

A. Yes, sir.

Q. You feel quite confident of that.

A. I feel quite confident about that. 30

Q. And Horsley's remark was in the shape of a question—whether you would do it?

A. Yes, sir.

Q. And of a little doubtful character as to whether you would?

A. Yes, sir.

Q. And you assented?

A. Yes, sir.

Q. And after that you were introduced to Mr. Turnure, as you supposed?

A. Yes, sir.

Q Do you recollect the fact of the introduction or not? 40

A. I simply remember our both standing, and that a word or two passed between us; that is all I remember.

Re-direct :

Q. If there is anything further that you know about the signing of this will, please state ?

A. I don't know that it would be exactly relevant, but I was going to refer to my habit as to whether my signature would be there or not before the old gentleman.

10

Interrupted by objection.

Q. Have you ever been a witness to the execution of any instrument prior to being a witness to the execution of this one ?

A. Yes, sir.

Q. Frequently ?

Objected to.

20

A. No, I could not say frequently.

Q. Have you ever been a witness to the execution of a will before ?

A. I cannot swear positively.

Q. [By Mr. Bedle.] Did anything further occur in the execution of this paper than what had occurred in the execution of ordinary instruments when you had witnessed them ?

30

A. There did not.

Adjourned one week.

Saturday, Oct. 2d, 1880.

Peter N. Horsley, being sworn on behalf of proponents, testifies :

40

Q. [Showing alleged will.] Is that your signature ?

A. Yes, sir.

Q. Who drew that will ?

A. I did.

Q. When ?

A. According to the date here, February 20th, 1873.

Q. Did Mr. Turnure request you to draw the will ?

A. Yes, sir, and spoke to me several times previously about having it done before he concluded to have it done. I was well acquainted with him.

Q. Go on and tell all the circumstances connected with the drawing and signing of the will ?

A. Captain Turnure came along frequently. I met him on the sidewalk opposite my office, and in conversing about New York matters, he being a pilot and I knew a good many of them, we got thereby intimate socially, and one day he observed on my sign that I drew wills; he says I must get you to draw mine some of these days, and in the course of a few weeks after that he came in to have it drawn up. I took down the items in brief in pencil mark, read them over to him, when he was satisfied; he then authorized me draw it up accordingly ; he asked me when it would be ready ; I told him, and he came at the appointed time in the afternoon of the day. Mr. Hulse had business with me at the time, and it accidentally happened to be at that time, and I wished him to be a witness—

Interrupted by—

Mr. Bedle: Speak distinctly.

[Witness continuing :] I asked Mr. Hulse to become a witness to the will, and also Olsen ; he was occupying a part of the office with me at the time. When they assented to it to be witnesses, I then read the will over slowly and distinctly; then Mr. Turnure, he signed it, and they signed it subsequently. That's all there is about it.

Q. Did Mr. Turnure request them to sign it, do you remember ?

A. As regards that, I think that he expressed a desire to have them witness it. There was no one else in the office excepting them.

Q. Did you ask them to sign it ?

A. I asked it. I simply made the remark wanting them to sign it.

Q. [By Mr. BEDLE.] You remarked ?

A. I remarked, and so did Mr. Turnure, that he would like to have them sign.

Q. Do you know where Mr. Olsen is now ?

A. I don't. I believe he left his country for his country's good, for certain reasons—that is he took in the natives and he had to go away.

Q. Did you see Mr. Olsen sign ?

A. I did.

Q. Did you see Mr. Hulse sign ?

10 A. I did ; I had to show them where to sign it.

Q. Was the will read over so that they could all hear it ?

A. Yes, sir. Always in drawing up wills, I always make it a point to read wills slowly and carefully.

Last part of answer objected to.

Q. Did you have any conversation that day with Mr. Turnure about the will beside what you have related ?

A. Nothing more than previously had with reference 20 to it—how he wanted it drawn up. He expressed himself satisfied with it, and that it was drawn up as he wanted it.

Q. How were the parties standing in the office ?

A. They were standing in front of my desk. I was behind the desk, they were in front.

Q. What was done with the will after it was signed ?

A. Delivered to him, inclosed in an envelope.

Cross-examined by Mr. Bedle:

30 Q. How old are you ?

A December next, I shall be sixty-two years of age.

The alleged will is marked in pencil, "Exhibit P. 1."

Q. In whose handwriting is this paper, "P. 1."?

A. Mine.

Q. How long did you draw it before it was signed?

A. I don't think twenty-four hours elapsed between the time he ordered me to proceed with it.

40 Q. My question is, how long was it that you drew it before you signed it ?

A. Four or five hours, I think.

Q. It was drawn the same day that you signed it?

A. Yes, sir, in the forenoon of the day to which the date is attached to it.

Q. You signed it in the afternoon?

A. Yes, sir; and drew it in the forenoon.

Q. When have you seen this paper before this morning?

A. I have not seen it before the first time when I was called to the Surrogate's office, when I signed the affidavit of what it might be; I don't think I saw it then any more than to see my signature, not to look at the body of the will. 10

Q. My question is when you saw this paper before this morning?

A. I could not remember how many weeks ago it is since I was called by the first subpœna to attend the Surrogate's office; about two or three weeks ago, I think.

Q. Have you seen it within the last week?

A. No, sir; not till this morning.

Q. This was signed at your desk? 20

A. Yes, sir.

Q. What sized desk was that?

A. A little wider than the stenographer's desk; I should think about three feet in length and about twenty-six inches wide; it was not a flat desk; same kind of a desk as the stenographer's, excepting a little railing round the top and some drawers on the sides below. The paper was signed at that desk; I signed it there, then got them to step inside and take my seat, so they could write comfortably.

Q. Got who to do that? 30

A. The witnesses and Mr. Turnure. They sat down on my seat.

Q. And used your pen?

A. Yes, sir.

Q. The same pen?

A. Yes, sir.

Q. And the same ink?

A. I think so.

Q. Are you sure the body of this paper is in your handwriting.

A. I am sure; I am positive of my own handwriting. 40

Q. Now, have you the memoranda from which this paper was drawn?

A. I don't think I have it, it is so many years ago; it is possibly torn up; is possible that I may have it lying round among some papers; I have not looked for it.

Q. Who were at your office with Turnure at the time this paper was signed ?

A. Not anybody but the witnesses whose name were attached.

Q. Nobody at your office who came with Turnure ?

A. No, sir; if my memory serves me right, I don't
10 think there was anybody else excepting us four.

Q. Olsen had a place in your office, had he ?

A. Yes, sir.

Q. What was he doing there ?

A. He was in the real estate business and insurance broker, and afterwards he was elected justice of the peace. He was elected justice of the peace in the Spring of 1873.

Q. Can't you tell us where we can find him ?

A. No, sir; there is a good many wants to find him; I can't tell; I never could find out where he had gone to; he left Jersey City, I think, in July, 1873.

20 Q. I understand you have given now all that occurred at the execution of this paper ?

A. Yes, sir.

Q. If anything else occurred besides what you have stated, would you have remembered ?

A. I think so.

Q. Have you any doubt about that ?

A. No doubt.

Q. You say you took memoranda as Mr. Turnure gave it to you, from which you drew the paper ?

A. I did.

30 Q. Did you take a memorandum of his property ?

A. All the items that is therein specified I took in pencil.

Q. Did you take a memorandum of his property ?

A. I don't understand you.

Q. Why don't you understand that question ?

A. All that he mentioned there, if that is property, that is what I took down in brief.

Q. Didn't you take a memorandum of the property he had ?

40 A. No, sir; nothing more than is specified there.

Q. I see this paper says : "I give and bequeath to my

beloved son John Lawrence Turnure the sum of eight thousand dollars.

Item.—All the rest of my personal property, to wit: Bonds, Mortgages, Stocks, &c., &c., to my beloved wife Ellen Turnure and my beloved son James H. Turnure, to be equally divided between them, namely: the one-half which I give and bequeath to my said wife she is to receive and accept in lieu of her right of dower." What memorandum did you take from him as to her right of dower?

A. Precisely that as is written there. 10

Q. What dower did you understand that referred to?

A. I supposed, of course, if he hadn't made a will she would be entitled to her right of dower—one-third of the property.

Q. Right of dower in what?

A. In all his estate, both personal and real, I suppose.

Q. That was your understanding?

A. Yes, sir.

Q. That she would be entitled to her right of dower in real estate and personal estate?

A. I understood the law of New Jersey to be so. 20

Q. And you put that in to meet that, didn't you?

A. As he explained.

Q. How did he express?

A. Just the same as it is put there, about.

Q. Can't you tell how he expressed it?

A. No more than it is expressed there. In trying to draw a will I try to use as much of the phraseology as they may dictate, as possible.

Q. What did he say to you about dower?

A. I I don't know as he said anything about dower.

Q. Did he say anything about dower?

A. Oh, yes; he thought that that would be the best way to satisfy her. 30

Q. You said a moment ago, that you didn't know that he said anything about dower; what did you mean by that?

A. Well, he must have said something about what she would be entitled to if he didn't draw a will; and, of course, I then said in lieu of her right of dower; that must have been the way it was brought up.

Q. That must have been the way?

A. I suppose it must have been.

Q. Have you any recollection about it at all? 40

A. Not a very distinct recollection—no.

Q. What did you mean a few moments ago by saying that memorandum must have been the same as this in the will precisely ?

A. So it is, or was.

Q. Hain't you guessing a little about it ?

A. No, sir; not the slightest.

Q. What did you mean a moment ago by saying " to satisfy her"?

10 A. I suppose that was my part in saying that to explain to you.

Q. What did you mean by that, " to satisfy her "?

A. I suppose he could have left her nothing but her right of dower.

Q. Right of dower in what ?

A. In the real and personal property.

Q. You thought he was obliged to do that, didn't you—to leave her as much as that ?

A. I dont know that I thought anything of the kind ; it was for him to dictate that.

Q. Didn't you think, that in making the will, he had 20 to leave her as much as one-third of the personal property and one-third of the real estate ?

A. I knew that, but I didn't dictate that to him.

Q. You knew that ?

A. Yes, sir.

Q. You would be greatly disappointed if you should happen to find out that a man can cut off his wife entirely as to personal property ?

A. No, sir ; I should not be disappointed, although I know or suppose, that the personal goes with the real estate.

30 Q What did you say to him about his being obliged to leave his wife one-third of the personal property—as much as that, and one-third of the real estate ?

A. I didn't say anything of the kind.

Q. What did he say about it ?

A. That I can't say, any more than he simply told me to draw up the will in that way ; as he dictated, so I put it down in pencil mark.

Q. What did he say about satisfying her ?

A. I don't know as he expressed himself as saying to satisfy her.

Q. Why did you use the expression a moment ago ?

A. To explain to you.

40 Q. Explain what ?

A. What I supposed was the matter.

Q. You supposed he wanted to make it so as to satisfy her—is that it?

A. I suppose so.

Q. You did suppose that?

A. I thought very little at the time; I did.

Q. And you understood he was doing it to satisfy her, didn't you?

A. That I could not say, because she was not present to object or acquiesce, or anything of the kind.

Q. Did he say to you what real estate he had?

A. No; didn't describe it. 10

Q. Did he say where it was?

A. No, sir.

Q. Didn't he mention the real estate where he lived?

A. No, sir; I knew where he lived at the time, in old South 7th street. I don't remember the number.

Q. I read from the paper: "Half which I give and bequeath to my said wife she is to receive and accept in lieu of her right of dower of what she is to receive, the interest accruing therefrom for her maintenance, and is to be put out at interest until she shall realize sufficient for her maintenance, &c." Where did you get that 20 from?

A. I think them are his own words as he uttered them at the time?

Q. You think so?

A. I think so; I have no doubt about it.

Q. You are pretty sure of that—his words as he uttered them at the time.

A. I think so; pretty confident of it.

Q. You think this expression, "She is to receive and accept in lieu of dower," are his words.

A. Yes, sir.

Q. You understand what you are saying? 30

A. I do.

Q. The very words?

A. I think so.

Q. What did you understand that clause to mean as you got it from him?

Mr. McDermott objects to this line of examination.

A. I should understand by that, that if he hadn't 40 drawn a will she would be entitled to her third of the

real estate and personal—that's what I thought was the cause of his making the statement there, he being aware of it; I suppose that's how he come to dictate it.

Q. What did you understand from him in his dictation to you as to this part of the residue that was to go to his wife, so far as its being used for her maintenance was concerned?

A. I could not say what I thought then.

Q. Why do you say these are the very words that he told you?

10 A. Because they are; I know that; but as to what I thought about his meaning at the time, I certainly can't remember that.

Q. You know what he told you?

A. I do, and so it is expressed.

Q. What did Mr. Turnure tell you that he wished in regard to this half of the residue that was to go to his wife?

A. I cannot answer any different to what I have answered.

Q. Answer it again.

20 A. I cannot express myself any different about the matter.

Q. Did he tell you what he wanted his wife to have?

A. He told me nothing more than what is there. He did not tell me what real estate he owned, what bonds and securities he had, or anything of the kind.

Q. What did he tell you previous to your drawing this paper that he wanted his wife to have?

Mr. McDermott objects.

30 A. Precisely the same as I have written there. Of course I submitted to writing whatever he told me, nothing more or less.

Q. Did he tell you how much he wanted his wife to have before the paper was drawn?

A. No, sir, nothing more than as I say; it is all reduced to writing, what his wish and desire was.

Q. Your own words are in this paper, are they not?

A. My writing is there, but they are his words, with the exception of being according to the form that is laid down.

40 Q. How did you adapt this residue clause to the form?

A. By embracing them in the form so as to have them in proper shape.

Q. What did you understand from him that he wanted to leave to his wife?

A. I didn't understand nothing more nor less than what he dictated.

Q. What did he say about putting out at interest the share that was to be left to his wife?

A. He didn't speak about any particular item, what it meant, or anything of that kind.

Q. What did he say about putting the share of his wife out to interest? 10

A. I shall have to repeat the same thing over again; those words are his own.

Q. Which words?

A. That you are speaking about now. He was a man of good sense, knew what he was talking about, and expressed himself well.

Mr. Bedle moves to strike out the part not responsive to the question, and the Court orders it stricken out.

20

Q. The word "Item" here is not his own, is it?

A. No, that is mine, I guess.

Q. "All the rest of my personal property, to wit," is not his own, is it?

A. That is in the form.

Q. You put those there from the form?

A. Yes, sir.

Q. "Bonds, mortgages, stocks, &c., &c.," are those his own words?

A. Those are his.

Q. You took this from the memorandum that you took down from him? 30

A. Yes, sir.

Q. Where were you when he gave you the date?

A. In the same office.

Q. "To my beloved wife Ellen Turnure," the word "beloved," is that yours or his?

A. That is part of the form.

Q. "To my beloved son," that is according to the form?

A. Yes, sir.

Q. "To be equally divided between them"? 40

A. That is his words.

Q. The very words ?

A. The very words.

Q. "One-half which I give and bequeath to my said wife, she is to receive and accept in lieu of her right of dower." Is that according to the form, or as he stated it ?

A. As he stated it.

Q. Word for word ?

A. Yes, sir.

Q. I understand you to swear that distinctly, word
10 for word, as he stated it ?

A. To the best of my recollection and belief.

Q. Notwithstanding you have already said that you don't know that he said anything about dower, you say that is word for word according as it appears here and as he gave it to you ?

A. Yes, sir.

Q. "Of which she is to receive the interest accruing therefrom for her maintenance, and is to be put out to interest." What did he say about maintenance ?

A. I can tell you no more than what that expresses there. As I said before, it is nearly verbatim of his ex-
20 pression at the time.

Q. Didn't you understand from him that he wanted that share put out for her maintenance at interest ?

A. What I understood at the time I cannot tell now.

Q. Didn't you understand at the time from him that he simply wanted that share of his wife to be put out at interest so as to realize the interest on it, which was to be used for her maintenance ?

A. I may have thought so.

Q. Well, didn't you ?

A. I cannot tell what my thoughts were at the time
30 —it is a matter of seven years past.

Q. You drew this paper ?

A. Yes, sir.

Q. What did you understand by that language ?

A. I cannot tell what I understood at the time.

Q. Didn't you think that was a queer clause ?

A. I did not.

Q. You suppose he came to you to put his will in shape, didn't you ?

A. Yes, sir.

Q. And this is just his language ?

A. Yes, sir.

40 Q. You have no doubt about it ?

A. I haven't the slightest doubt about it. I I had thought it was necessary to hunt up that brief, I would have looked for it.

Q. Will you do it?

A. I will look for it with pleasure. I am a great hand to keep those things as a curiosity.

Q. What did he say to put down in the memorandum as to his daughter, Julia Hard?

A. I have to repeat the same answer—whatever he said he so dictated, and I so subscribed it, or wrote it. 10

Q. Did you know how many children he had?

A. No, sir.

Q. Did you know John Lawrence Turnure?

A. No, sir. I never saw him till three weeks ago; he came round to my house.

Q. The father you knew very well?

A. Yes, sir.

Q. What was his business in early life?

A. He had been a New York pilot, so he told me.

Q. Had you ever been to his house?

A. Never.

Q. Do you know his wife? 20

A. I do.

Q. How long have you known her?

A. Only since the time I drew her will in 1876, I think; they both came together. That was the first time I ever saw her; and I saw her here a couple of weeks ago.

Q. You drew her will in '76?

A. Yes, I think in '76.

Q. What became of that?

A. She took it away with her.

Q. Who gave you the data from which to draw that will. 30

Objected to.

A. They both came in together, and they both, for an old couple, I think, were as jovial a couple as I ever saw, and they dictated the matter between themselves; whatever she said he acquiesced in; didn't seem to be any feeling existing between them at all; they were laughing and joking as if they were newly married.

Q. Strikingly so?

A. I don't know as strikingly so. 40

Q. What did you mention that fact for?

A. Because they seemed to be well pleased with each other; whatever one said the other agreed to. They kinder made a light matter of it.

Q. How old a man did Mr. Turnure seem to be to you?

A. I should think at that time he might be pretty near seventy.

Q. Hulse, you say, came into the office accidentally?

A. He was there to see me on business.

Q. You asked him whether he would witness this paper?

10 A. I asked him, and so did Mr. Turnure.

Q. Your testimony, as I have it, is: "I think Mr. Turnure expressed a desire to have the witness"?

A. Yes, that's about right.

Q. Did you draw off this paper in the presence of Mr. Hulse?

A. No, sir; it was drawn before he came in.

Q. All of it?

A. Yes, sir.

Q. Was the date put in before he came in or afterwards?

20 A. Afterwards.

Q. What kind of a pen do you write with?

A. A steel pen.

Q. Have you tried to make any inquiry for Olsen, lately?

A. No, sir.

Q. I ask you as to your memory—have you any recollection, now fixed in your mind, as to whether Olsen was present when you signed your name to this paper?

A. I am as confident, sir, as your name is Bedle; I think I have some of his signatures laying round now.

30 Q. Did the old gentleman have a cane when he was there?

A. Yes, sir.

Q. Did he wear glasses?

A. I think he did. I don't think he wore them in the street, but I think he wore glasses whenever he wanted to read.

Q. Did he pay you for drawing this paper?

A. Yes, sir.

Re-direct examination by Mr. McDermott:

40

Q. Did you know the names of any of his children?

A. No, sir; no more than saw one of them; the first I saw was this gentleman in Court here.

Q. When did he pay you?

A. On receipt of the will.

Q. How long had you known Mr. Turnure before he signed this will?

A. I had known him three or four years.

Q. Had you ever had any other business transactions with him before that?

A. No, not any. 10

Q. What was your opinion at the time he signed the will as to his testamentary capacity?

A. I think he was as sane as I am at present; seemed to have good memory and ready of speech.

Q Have parties inquired of you for Mr. Olsen?

A Yes, a number have inquired where he was. I don' know where he was; don't know where he went when he left Jersey City.

Q Did you suggest, or dictate, to Mr. Turnure what he should put in the will?

A. Not a word.

Q. Did you tell him he was under any obligation to 20 leave anything to any person?

A. Not a word; I didn't consider it my business.

Testimony as to probate of will closed.

JOHN L. TURNURE, a witness called on behalf of the caveators, being duly sworn, testifies as follows: 30

Direct examination by Mr. Bedle:

I live in Harrington Township, Bergen County; have lived there since 1870; before that I resided in Englewood, Bergen County; had resided there since 1865; before that I lived in New York City; I am 61 years old this month; I am a married man; my wife is living; I have three children, two sons and a daughter, all living with me except the eldest son, who lives at Schenectady, and is a physician; he is 29 years old; my youngest child is a boy nine years old, and the other is a girl eleven years old. I am a son of William P. Turnure, a 40

legitimate son ; he died the 2d of last August. At the time of his death he was living in Second street, Jersey City, No. 252 or 242; it is a little brick house, painted yellow; he lived in Jersey City, to my knowledge, since 1866; before that he lived in New York City, 24th street, near 4th avenue. He was between 83 and 84 years old when he died; he was born in 1796, I forget the month; it seems to me it was in February.

Q. How many times had your father been married ?

10

Question objected to.

A. He had been married twice, and they say he was married the third time.

Q. Who was his first wife ?

A. Hannah, daughter of John and Catherine Smith; she was my mother; she died in 1830; I think she was 28 years old when she died ; I was 11 years old when she died; I was born in 1819.

Q. How many children did he have by his first wife ?

20 A. He had six.

Q. When was he married the second time ?

A. I cannot tell that exactly; I have not got the notes in the Bible with me ; I did not charge my mind with the dates; I think it was in 1834 or 1835—either 1834 or 1835; his second wife was Eliza, the sister of his first wife; her name was Andrus; she was a widow when he married her; she died in 1866—in January, I think it was.

Q. How old was she when she died ?

A. In the neighborhood of 60; he had no children by his second wife; she left none of her own children.

30 Q. What was her state of health awhile before she died ?

A. She was a very fleshy woman; she weighed over 300 pounds.

Q. Was she in good health up to her death, or not ?

A. No; she was ailing for years before she died, with dropsy—it finally turned into dropsy; she was confined to her house some five or six months before she died, and perhaps longer.

Q. Did she leave some estate ?

A. Yes, sir.

40 Q. How many children did your father leave him surviving ?

A. Three, when the old gentleman died—myself, Mrs. Julia Hard and James H. Turnure.

Q. How old is your brother James H. Turnure?

A. He was two months old when my mother died, and was 11 years old; that would bring him 50.

Q. How old is Mrs. Hard?

A. I think she is 5 or 6 years younger than myself; that would bring her 55; she lives at Tremont, the upper part of New York City; her husband's name was Melvin Hard; he died about a year ago 10

Q. What children did he leave?

Question objected to.

A. Four—three sons and a daughter, all grown up; one is Melvin T., Julia L., Frank and William E.; none of them are married; they live with their mother in Tremont; the youngest is just of age, I think 21 years; the next is William, and Frank is the next oldest; he must be 23, and Melvin T. must be 25; they are in a wholesale paper warehouse. 20

Q. Did Mrs. Hard have any other children in 1873?

Question objected to.

A. No, sir; she had had other children, but they died when they were very small.

Q. Who did your father live with in Jersey City?

A. He lived with a woman by the name of Ellen, formerly called Nelly Weaver, and also by the name of Vanderbilt.

Q. Did you know her before your father commenced to live with her? 30

A. No, sir; only by reputation.

Q. Do you know where she lived before your father father commenced to live with her?

A. Not immediately; no, sir.

Q. Do you know where she had been living a short time before your father commenced to live with her?

A. No, sir; I cannot say that I do.

Q. How long had you known her by reputation before your father commenced to live with her?

A. Several years; I had heard of her frequently.

Q. Do you know what estate his second wife had at her death? 40

A. She did not have it in her possession—it was in his possession—but she died worth $12,750; a house and lot she sold, situate in 41st street, New York City.

Q. Did she and your father live in that house?

A. Yes; they lived there for a few years; the house was sold in 1856, I think it was, and after that house was sold my father and his second wife lived in 25th street with me, near 6th avenue, in the house with me.

Q. To whom was that house and lot sold?

A. I know the parties, but I cannot remember the
10 name.

Q. Do you know whether it was Nancy Losee?

A. Losee—that is it.

Last question and answer objected to.

Q. Do you know who she was the wife of?

Question objected to.

20 A. I do not know her husband's first name.

Q. Did she move into the house after it was sold?

A. Yes, sir, and took possession of it; she had a husband, and I think he was in the feed and flour business.

Q. I will read you the description of a piece of property in this paper—which is marked "Exhibit C. 1" for identification—and you state whether that is the property to which you have referred as sold by your stepmother Eliza to Mrs. Losee.

Counsel reads description of the property in
30 the paper, which is marked "Exhibit C. 1" for identification.

A. Yes, sir; that is the property.

Q. How soon after the sale of this property did your father and his second wife come to live with you?

A. It was not long. They sold it early in the Spring or Winter, and I hired a house in 25th street in the Spring, and they moved with me early in the Spring; they lived with me, I think, two years—I believe it was two years; it might have been three, and then my
40 brother William A. died, and they moved into 24th street, near the 4th avenue, and took possession of his

property in 4th avenue and 25th street as soon as he died.

Q. What property had your brother there?

A. He had a double lot on the corner of 25th street and 4th avenue, with a three story building on it; it occupied the whole lot; it was used as a stable; he was in business there; he kept a livery stable; he was a single man, and died intestate.

Q. When he died had you any other brothers or sisters then living than those you have stated? 10

A. No, sir.

Q. Who inherited, then, William A.'s property?

A. My father, William P. Turnure. Allow me to make a correction. My brother died in 1861, and then my father went over there immediately and took possession of his property.

Q. How long did he live there in the property left by your brother?

A. He kept it as a place of business; he did not live there; he kept it himself about four years; I think he lived in 24th street in rented property; they lived there 20 until my step-mother Eliza died, in 1866.

Q. After your step-mother Eliza died, what became of your father?

A. He had moved out of the city before that, and I understood that he lived in Jersey City.

Mr. McDermott objects to the witness telling what he understood.

Q. Did anybody live with your father and his wife in 24th street, when she, Eliza, died? 30

A. Yes; my brother James H. and his wife, and their girl help by the name of Maria.

Q. Did James H. and his wife live with your father and his wife in 24th street while they lived there?

A. Not all the time; I think James H. and his wife lived with my father a couple of years; they kept house in a different part of the house.

Q. After the death of your step-mother where did your father go to live?

A. He came over to Jersey City to 2d street, at the place which I have spoken, 242 or 252; it was then called South Seventh.

Q. How soon did he leave 24th street after your step- 40 mother died?

A. Right away.

Q. Did James continue to live there ?

A. Yes, sir, for a little while I think; I do not know how long precisely.

Q. Where did he move to then ?

A. He moved up to Tremont.

Q. Now state what you know as to the estate left by your step-mother at her death ?

A. William P. Turnure had possession of it; according to her will [interrupted by objection by Mr. McDermott] she left it to him as long as he lived. I am one of the executors named in the will; I did not qualify; my father did qualify.

Mr. Bedle offers in evidence an exemplified copy of the will, and probate thereof, of Eliza Turnure, dated August 27th, 1850, proved March 16, 1866, before the Surrogate of the County of New York, and it is marked as "Exhibit C. 2."

Q. How came you not to qualify as executor of your step-mother ?

A. We thought one was sufficient at that time to administrate.

Q. Who thought ?

A. Me and my brother-in-law and the old gentleman—all of us.

Q. Did you ever receive anything from your step-mother's estate ?

A. No, sir; I have never received anything from any of them.

Q. Did your brothers James H. or William, or your sister, to your knowledge, receive anything from your step-mother's estate ?

A. No, sir; not to my knowledge; I do not know that they did.

Q. Now, you may state what you know as to the amount of the estate that your step-mother left ?

A. She left the amount of that house and lot, what that sold for; the old gentleman had possession of that $12,750; there was a mortgage of $10,000 taken for part of the purchase money, and there was $2,750 paid at the time of the purchase; the $10,000 mortgage was given for the balance; this mortgage the old gentleman

collected after the probation of this will as executor after my mother's death.

Q. You speak of that mortgage being $10,000; just tell us whether you are certain whether it was $10,000 or $11,000.

A. I am under the impression it was $10,000; it might have $11,000.

Q. What had you to do with that transaction ?

A. I went there when he went to probate the will; at his request I went to the Surrogate's office to assist him. the witnesses were dead, and we had to get proof of the witnesses, and I assisted; I went up town in a coach and got these witnesses for him, and they went in and probated the will that afternoon. It stormed that day, and I told him to stay there so he would not get wet.

Q. What conversation did you have with your father, if any, as to how much estate he had in his hands, belonging to your step-mother that was left by the will ?

A. I have always called her mother; we always called her mother, though she was our step-mother.

Q. [The last question repeated.]

A. Well, he had the whole of it; he had this mortgage. I had no conversation with him after the probationof the will ; the day of the probation I had.

Q. What was that conversation in regard to the estate ?

Question objected to.

A. He said that he held the mortgage, and that he was going to collect it.

Q. Did your father, at any time, state to you, and, if so, what, as to how much would be coming to the children from your step-mother's estate after he was dead ?

A. No; the will expressed that.

Q. Did you see the mortgage in the lifetime of your father ?

A. Yes; I saw him have it in his possession; he had it in a little iron chest that he kept in the office; I looked over his papers one day, and I saw it; it was paid off in 1866, I think, after the probation of that will.

Q. Do you know what your father did with the money that he received for that mortgage ?

A. I think he invested it; it appears to me he invested it, if I remember rightly, in water stock bonds, city bonds of some description—I was not particular to

ask him—I mean New York City bonds; I was not particular in asking him, because I had full faith in him.

Q. Was this after your step-mother's death?

A.. Yes; I had full faith in him at that time, and I did not question him much about those things for fear he would think I was impertinent.

Q. After your step-mother's death, and after your father had moved over to Jersey City, how soon did you see him?

A. I saw him in New York; he used to go to the
10 place of business, corner of 25th street, and when I went to the city I used to call in there; I used to go there nearly every day and sit in the office for an hour or two, and I used to meet him there frequently.

Q. Did he sell that place at the corner of 25th street and 4th avenue?

A. Yes; in 1872 I think he sold it to Thomas B. Wilson; Wilson was alive a few days ago.

Q. Who ran the stables at the corner of 25th street and 4th avenue, from the time of your brother's death up to the time your father sold that place?

20 A. He ran it himself for about four years, I think; then he left my brother James H. have it, and my brother James H. ran it in the neighborhood of seven years, up to the time of the sale.

Q. Was your father in any business from the time James H. commenced to run that place up to the time it was sold?

A. No, sir; only speculating now and then in mortgages, I suppose; I have been told he did—I do not know.

Q. What do you mean by speculating in mortgages?

30

Question objected to.

A. I heard he made money out of it.

Q. Do you know how much your father sold that place, corner of 25th street and 4th avenue, for?

A. He sold it for $77,500; he got $27,500 in cash, and left $50,000 on bond and mortgage.

Q. State how you know those facts?

Mr. McDermott objects to this testimony.

40

A. He told me so, and I know it by documents.

Q. Do you know what your father did with the $27,-500 cash ?

A. He put it in a safe-deposit company—part of it—and bought bonds with part of it—that is, United States bonds—so he told me ; he told me that shortly after he sold it; and he collected, afterwards, the fifty thousand dollar bond and mortgage in 1878, I think; I know that by Mr. Wilson telling me, and I have had conversations with my father about it; he told me that they wanted to pay it oft, and I told him it was very hard to invest 10 money and get seven per cent interest, and I told him he had better let it run as long as he could, it was in a good place, and he said he would, but shortly after that, they came and paid it off—the time had expired.

Q. When was the bond and mortgage paid off, as near as you can tell ?

A. In 1878.

Q. Do you know what your father did with the money received from the sale of your step-mother's property over and above the amount that was in the mortgage ?

.Q The first payment that was made ?

A. Yes. 20

A. He put it out to interest; I think he put it in some mortgages; I am not positive, but my mother told me he put it out to interest, and she received the interest from time to time; it belonged to her, and he put it out to interest, and gave her the interest as it came due; that is, my step-mother Eliza.

Q. What other property, to your knowledge, did your father have besides what was received from your step-mother's property and from the property of your brother William ?

A. He had in the neighborhood of $32,000 that I was cognizant of, and I think there was some more besides 30 that.

Q. State how you were cognizant of it ?

A. He sold tbe Broadway line of stages ; he was in partnership with my brother William A. and Bark Cornell; they sold the line for $110,000; the indebtedness was $16,000, which left $94,000; it was given in notes of $500 each, bearing interest; two of them became due every two weeks in the Summer, and two of them became due every four weeks in the Winter, or monthly; twice a month in the Summer and once a month in the Winter. These notes were divided between Bark Cor- 40 nell, William A. Turnure and William P. Turnure; that

made over $31,000 apiece, and with the accumulation of interest, as it fell due, amounted to about $32,000, as near as I can get at it. The old gentleman took some of the long notes; those which became due first they divided between my brother and Cornell; the old gentleman took some of the long notes, saying he did not want the money, and he gave me the most of them to collect, and I put them into the Pacific Bank, New York City, where I had an account, for collection, and as they became due from time to time I gave him a check for them. He took that money and invested it from time to time; $10,000 of that money in 1853 or 1854, somewheres along there, he took and bought out the stock of a stable corner of 26th street and 6th avenue, leased property, and he kept it a year or so, and took my brother James H. in with him to help him in the office, and gave him part interest in it; and after he had been there something like a year, I was up there one day, and he says, "John Harve" that was my brother—that is what we call him—"Harve" cannot do anything; he cannot keep a book; he cannot take care of things, and I want you to come with me and let him go back to where he was before." Says I, "All right." I had been running an express line on the Harlem Road, so I sold my express line out and I went there in partnership with the old gentleman, and I paid him $5,500 for the half of the establishment. That was in 1854, I think. Then him and me was in partnership from that time until my brother died and left that 4th avenue property, and I says to him, "You will have to go and take charge there, and I will buy the other half from you." I gave him a $4,000 mortgage that I had on a piece of property corner of 41st street and 6th avenue, opposite the Central Park Square, or the Reservoir Square, and $2,000. These $2,000 I agreed to pay him within a year, from time to time as I made it, which I did before the year was up. He went over to 4th avenue and took possession. That made $11,500 which I paid him in all for the half which I first bought and the other half when he left, and he went away to 25th street and 4th avenue and took charge of that property when my brother died, the very day after he died. I am not good at remembering dates.

Q. Your father, as I understand you, was interested in that Broadway line of stages?

A. Yes, sir; they ran from Whitehall to 49th street.

Q. Who was interested with him in that line?

A. Bark Cornell and my brother William A.

Q. Is Cornell living?

A. I think he is living in Long Island.

Q. While James kept the stables at 25th street and Fourth avenue do you know what arrangement existed between him and your father in regard to them?

A. Yes, sir; he let him have the stable for $600 a year, just enough to pay taxes and insurance; that was during the whole time that James was there; and in addition to that he gave him the stock that my brother left, the horses and carriages and everything, all the paraphernalia, valued at $11,000, sleighs, etc. 10

Q. Was that, in your judgment, about the fair value of the stock?

A. Yes, it was worth that easy.

Q. What became of that stock afterwards?

A. My brother James kept it in his possession and used it until the stable was sold, and he sold it and got the money for it—sold it at auction. I do not remember the name of the auctioneer, but I have got a catalogue; I was not present at the sale; I saw a catalogue at the time, and I had one a day or two before the sale. The sale was in 1872, I think. 20

Q. [Showing witness catalogue, which is marked "Exhibit C. 3."] Is that the catalogue of which you speak?

A. Yes, sir.

Q. This catalogue refers to the contents of Turnure's stables, 337, 339 and 341 Fourth avenue, corner of 25th street. Is that the place of which you have spoken?

A. Yes, sir; that is the place; those are the numbers.

Q. How long did James H. run these stables at $600 a year?

A. The whole period he was there; about seven years. 30

Q. Now, did you have a conversation with your father after he had moved over to Jersey City, in regard to his living there and his will, and, if so, state when it was and where it was.

Question objected to.

A. He came to see me in the Fall of 1866, in company with his brother Abram, who is since deceased. I was then building at Englewood. They came up there to see me and just to look around. I took them to the 40

house; they got there about 11 o'clock in the morning; we had lunch together and we took a walk around the place, up around the hills where they where opening the streets looking at the locality; they staid there till about three o'clock in the afternoon and they both went down in the train, my father and my uncle.

Q. Now state what occurred?

Question objected to.

10

A. I said to him, "Daddy, come up here and live with me; you can take part of this house; you can have any part you like, and go and come when you please, and I will take good care of you." "Well," he says, "I guess I won't; I do not care about coming up; I do not care about living here;" so he went down on the three o'clock train. The next time I saw him was the following year, 1867, in the month of July, I think it was; I have that day impressed on my mind, because I was building on the hotel there, and I stood on the hotel piazza as
20 he came across the street; I was reading a paper and I happened to look up and I saw him coming across the street, and before he had got entirely across he says, "I suppose you heard I was married?" Says I, "No, Daddy, I have not." "I am," he says. Says I, "To who?" Says he, "To Nelly." Says I, "My God, you don't tell me so."

Mr. McDermott objects to this testimony.

"Yes," he says, "but I have made my will, and divided my property into four parts, taking out what they
30 have had so as to make a judicial distribution." "A just distribution,"—that is what he said. He says: "There won't be any more children; she is 65, and she won't have any more children." That is the very words he used. Says I, "Where do you live?" I knew he was in Jersey City, but I thought I would ask him. He told me the number of the house; in South Seventh he lived.

Q. When he said he had divided his property into four parts, did he say how much that was for each?

A. No, he did not tell me exactly how much. Says
40 I, "You must have considerable over one hundred thousand?" "Oh, yes," he says, "considerable over that." That was all that was said in regard to the property.

Q. When he spoke of the four parts, what four persons did he speak of, if anybody?

A. He meant us three children and this Ellen. After I asked him the number where he lived in South Seventh street, he told me, "Yes, yes, she bought it herself." "No," says I, "Daddy, you bought that and had it made in her name."

Q. What did he say?

A. Nothing, but he looked abashed; that is all.

Mr. McDermott objects to the witness testifying as to looks. 10

Q. Did he say when the property in Jersey City was bought?

A. He did not tell me; I did not ask him. He told me he had paid $8,500 for it, or that she had, not him. He said she had, and I said, "You paid that," and he said nothing.

Q. Did he state then as to how his property was invested? 20

A. Yes; he told me he had invested it in Government bonds.

Q. Did he state when he had married Nelly?

A. No, he did not tell me, and I did not ask him He had been maaried nearly a year, but I did not know anything about it then. I did not know the woman; I had never seen the woman, to my knowledge.

Q. Did he say to you then where Nelly had been living when or before he married her?

A. No, I did not ask him.

Q. Did he tell you where he got acquainted with her? 30

A. No; I did not ask him; it was patent; we all knew that.

Q. When you say you did not know her before, you mean personally, I suppose?

A. Of course. I knew her by reputation; of course, I had heard of her before.

Q. Did you say anything to him then in regard to his having been with her to Saratoga?

A. Yes; I did. I spoke to him about my mother's death, saying that I was sorry that he had been to Saratoga with this woman the year before she died; that the old lady felt very bad about it. I told him—says I, "The 40 old lady felt very bad before she died about that woman."

He did not say a word. but wiped the tears out of his eyes; that was all, and so did I.

Q. When did you next see your father after that conversation of which you have spoken at Englewood?

A. I did not see him until the next season, 1868. I think it was in the Fall—in September, as near as I can think; the weather was a little coolish; I met him in Grove street, Jersey City; I come over for the purpose of paying him a visit; there was another man with him—I do not know who the other man was—and he says, "I
10 am just going around the corner with this man, and I will be back in five minutes; go to the house." And so I went to the house and waited on the stoop till he came back, and then we went into the house together.

Q. When you met him in the street what did he say?

A. He shook hands and was glad to see me.

Q. How were your relations with your father during his lifetime?

A. Very good, first rate; never had a quarrel.

Q. Did you never have any difficulty with him at all?

A. No, sir; never.

Q. Had those relations continued up to his death?

20 A. Yes, sir; I never done anything to him to offend him, and he knew it.

Q. Now, then, when your father returned to his house and you were on the stoop, what then became of you both?

A. He said, "Come in." He opened the door and we went in, and we sat there and talked till two or three o'clock—the train time; I was there, I guess, about two or three hours; he introduced me to this Ellen. He says, "I will make you acquainted with Ellen, my wife." I said, "How do you do?" and she said, "How do you
30 do?"

Q. What then occurred between you and your father?

A. Nothing special; we sat there and talked on general subjects; I gave them an invitation to come up and see me.

Q. When did you next see him?

A. I saw him five or six months after that at his house; I called on him, I think it was about 11 o'clock in the morning; I took dinner there, and staid there till about three; there was nothing special occurred then; we was sociable; I went out in the yard with him and
40 he showed me his chickens and his pigeons.

Q. Did you call there again after that?

A. Yes; in perhaps six months after that I called there again; I used to go down about twice a year to see him, till of late years, and then circumstances was such that I could not get away, and perhaps a year or eighteen months would elapse before I would go there.

Q. When you went there, at the end of the six months of which you have spoken, what occurred—in the first place where was he?

A. Upstairs in the front room.

Q. What occurred at this time you saw him upstairs and when was it? 10

A. It was in 1869, in the Spring, I think; he was upstairs in the front room.

Q. Who was with him.

A. She was. He was sitting up in a rocking-chair and she was sitting close by him, looking at him, and he was talking on general subjects. He asked me about my affairs, and among the rest he asked about the old horse. He says, "How is the horse—have you got the horse yet?" Says I, "Yes." And we were talking on different subjects, and then he says again, "How is the horse—have you got the horse yet?" And he asked me that question two or three times, and I thought it queer. That was a bay horse called "Meteor;" he was 29 years old; he will be 30 this Spring; I had him for an exhibition horse in the school. 20

Q. At this interview upstairs of which you have spoken, how long did you remain there?

A. I was there about the same length of time that I usually staid; I was there after dinner; I left about three o'clock; I was not at dinner at that time. I was there about three hours, from 12 to 3; I was with him all the time I was there, and conversed on various matters. 30

Q. Did you notice then any impairment of his faculties, and, if so, what?

A. Well, he was forgetful; he would ask a question over sometimes; the same questions I would ask him he would ask me, and I would answer him, and then she would put in and answer it for him or answer for me, as the case might be. Sometimes, when I would tell him anything, he would say, "What?" and I would tell it over to him, and he would ask me "What?" again, and then she would put in and answer it herself.

Q. How many times did he ask on that occasion about this horse? 40

A. About three times.

Q. What would be the question ?

A. "How is the horse—have you got the horse yet ?"

Q. Did he at that time complain of any difficulty ?

A. Yes. He complained of pain in his head and in his back. He would get up stiff and hold his hands behind him. Says I, "What is the matter—have you got the old pain in your back again ?" He says, "Yes." He was subject to that for some time. He had been
10 subject for a long time to a kidney complaint, or a lumbago; he had had it for several years, when we were on the corner of 26th street and 6th avenue.

Q. How would it act on him ?

A. Make him lame and stiff, and sometimes he would have continuous pain; sometimes he would complain a good deal, then it would run off and he would not have it again for perhapsa month or so.

Q. When it would take him how would it apparently be, as to severity of pain ?

A. It seemed to be quite acute at first. He used to say he took cold.

20 Q. On this day in 1869, of which you have spoken, at the house in Jersey City, what did he complain of ?

A. He complained of his head and back, and got up and put his hands behind him; he said his head hurt him all over.

Q. At this interview in 1869, what impression did the mental condition of your father make on you then ?

A. I thought he was beginning to get old, and he was losing his faculties; he did not appear to be the same man he had been when we were together in business.

30 Adjourned till Monday next, December 6th, 1880, at two o'clock, same place.

Pursuant to adjournment, all the parties appearing, the taking of evidence was resumed on this December 6th.

JOHN L. TURNURE. Direct examination continued by Mr. BEDLE :

40 My father was a Sandy Hook pilot in his early life, and he continued in that business up to about 1849,

with the exception of a couple of years in the interval that he bought a farm, and lived two years on it in Rockland County, at a place called Dutch Factory; that was in 1838 and 1839, I think.

Q. In his early life, and up to the time of the death of your step-mother, Eliza, what kind of a man was your father as to business capacity and management?

A Very good; quick, spry, careful.

Q. At the time of which you have spoken upstairs, when you saw him in Jersey City, as I understood you, you saw Ellen, whom he said he had married? 10

A. Yes, sir; I saw her.

Q. What occurred at that time on her part when questions, if anythlng, were asked by you of your father —state the particulars?

A. She would set facing him generally, and if I proposed anything, or asked him a question, she would answer it for him; she would have more to say than he would. On several occasions she forstalled him; for instance, if I would ask him anything, she would answer it for him—not give him a chance.

Q. State any particulars that you recollect on the occasion in Jersey City, upstairs, in 1869, of which you have spoken? 20

A. On one visit I made him, in 1869, I found him upstairs, and she was engaged bathing his head with a preparation. I asked her what she was putting on; she said it was hemlock. After she had got through I asked her to let me try some; I did so, and put it on my own head, and it produced a tickling, prickling sensation. I told her, says I, "I would not use too much of that; it appears to make him drowsy."

Q What was he complaining of then?

A. A pain in his head and depression. 30

Q. Was he sitting up, or in bed?

A. Sitting on a chair.

Q. Were you familiar with this preparation which she called hemlock?

A. I know what it is—*conium maculatum;* it is an extract of conium, water hemlock, which produces a prickling, tickling sensation, something similar to aconite.

Q. Are you familiar with the use of that on horses?

A. I seldom ever use it, because I don't think it is safe; it is too poisonous; it is not so easily governed as aconite—I prefer aconite. 40

Q. When is the last time you were at his house in Jersey City before he died ?

A I was there about 18 months previous to his death.

Q. How often had you been to his house between 1869 and the time of his death ?

A. I don't remember the number of times; perhaps twenty, as near as I can get at it.

Q. Did you ever see him at other places than at his house in Jersey City, between 1869 and the time of his death ?

A. No; I didn't meet him anywhere except on the street, on that occasion I spoke of in my testimony before.

Q. My question is—between 1869 and the time of his death, did you meet him anywhere else than at his house in Jersey City ?

A. No, sir; that time I met him in the street was in 1868, I think—the time I met him with that man.

Q. At these different times, while you were visiting him in Jersey City, how did Mrs. Nellie Turnure act ?

A. She seemed to be more and more of a boss every visit; he seemed to be more and more dependent; she would dictate to him in spending money, and so on what he should do with it. On one occasion I repaired our lots in Greenwood Cemetery, and I had a bill made out of his and my lot separately. I went there and told him, and asked him if he was willing to pay for what had been done on his lot; he said, "Yes," and she immediately spoke up and said, "Ha, we spent $10 last Spring on that lot;" and I replied to her that she had only thrown that $10 away, as they only washed the monument off with it, and it needed a thorough repairing—the fence needed setting up," and I went on to enumerate the different things that had been done; and he asked me then, says he, "Did you see that they had done it?" says I, "Yes, sir." That is all that transpired. That was in warm weather, and I think in 1876.

Q. How often did you see Mrs. Turnure with a bottle bathing or rubbing his head ?

A. I saw her on two different occasions; it must have been in 1877 and in 1878.

Q. Did she give you the recipe ?

A. No, she did not give me the recipe; she told me it was hemlock, and I smelled it, and of course I found what it was.

Q. She didn't give you the recipe for the prescription for the hemlock?

A. No, she gave it to my sister, I believe.

Q. Did you receive any word from anybody of your father's last sickness?

A. No, sir; no word was sent to me about his death. The first intimation I had was, I saw his death in the paper and notice of the funeral in the New York Herald, on the 5th of August, 1880, and he died on the 2d, so she told me. I got the paper on the morning of the 5th, the first I saw of it, and I immediately came down. I went to the house and I was let in by a little girl; I went into the room; the room was dark, and the first thing I hit my toe against the bench under the coffin; the girl opened the window shutter, and just at that moment this Ellen came in; says I, "How long has he been sick?" "Oh," she said, "he has been sick ever since the last of December." Says I, "Why didn't you let me know?" "Het," she says, "he thought you didn't care anything about him." Says I, "You told him that," and I sat down and I asked her if she had the arrangement made for the funeral. "Oh, yes," she said that she had, and I asked her where she was going to put him in the lot. She said she was going to lay him to the east of where Eliza was. She had been to the office and tried to take Eliza's remains up and put them in the back of the lot and put him there. I told her that was impracticable.

Q. What was the object of that?

A. I don't know. I told her, says I, "I would not have her remains desecrated; you should not have done so."

Q. What conversation did you have with her then in regard to his sickness?

A. I asked her how he appeared to be through his sickness. She said that he had fallen down in the street some month or six weeks previous, and that he had been to the watchmaker's to get his watch repaired, and in coming home he had fallen down in the street, and some parties had brought him home, and he hadn't been out of the house since. I asked her how he was before he died. She said he laid asleep all the time Says I, "How long?" "Oh, he laid that way for a week, she said, "for a whole week, sleeping—in a state of coma."

Q. Did she say anything about the doctor?

A. I asked her what doctor they had. She said Dr. McDowell, I think.

Q. Did she say what he said about him ?

A. No further than that she said the doctor said he had paralysis and softening of the brain. I asked her what disposition he had made of his affairs. She said, "Oh, they are all right." "Yes, but," says I, "what has he done—where is his will ?" Oh, that is in the hands of a lawyer," she says. Says I, "He told me he had made a will." "Yes, but he has made another one since," she spoke right up. Says I, "Since when ?" "Well," she says, "he had made a will lately."

Q. Did she say who had it ?

A. I asked her who had it. She says, "It is in the hands of a lawyer." Says I, "Who is the lawyer?" She didn't know. Then I asked her—says I, "He is not quite 84 ?" "Oh, yes, he is," she says. Says I, "Where is the family Bible with his age recorded in it ? She says she didn't know. Says I, "Isn't it upstairs ?" "I don't know," she says. I staid a few minutes and left, and went there the next morning again. The funeral was on the 6th, the next day.

Q. Was anything said by her on that occasion, on the 5th, in regard to where you lived ?

A. I asked her why she didn't send me word. She said she didn't know where I lived. Says I, "You did know, because I left my address here—a card—and he put it in his pocketbook the last time I was here." She said she didn't know anything about it. She sat right opposite to him and saw him do it. I went there on the 6th, and went to the funeral, went to Greenwood with him; he was buried in his lot in Greenwood Cemetery; his lot and mine is enclosed together; we bought it in connection with one another in 1844, I think it was, and he paid for half and I paid for the other half, and we had a fence put around it.

Q. After the funeral, did you have any conversation with her in regard to any spells that your father had, and if so what ?

A. No; not after the funeral; while I was sitting there she told me about these spells ; she said he had his o'd spells again. Says I, "When did he have the spells—the first one ?" "Oh, when he was at Saratoga—when we was at Saratoga together he had one," she said.

Q. How long was that before ?

A. She didn't say how long.

Q. Did you know to what occasion she referred ?

A. No.

Q. When she spoke of these spells, did she say anything about the head trouble ?

A. Yes; dizziness in the head, and that he would fall down.

Q. Had you heard about his being at Saratoga with her ?

A. Oh, yes, in 1865; my uncle was there at that time, and she passed herself off as his wife in 1865, and my uncle told me he was so disgusted that he left. 10

Mr. McDermott objects to the latter part as hearsay.

Mr. BEDLE : We do not insist that it is legal evidence.

Q. You had heard of her being at Saratoga in 1865 ?

A. Yes, sir. 20

Q. Before your step-mother Eliza died ?

A. Yes, sir; my uncle Abram is dead, and unfortunately we cannot get his testimony.

Q. This alleged will appears to bear date Feb. 20, 1873. State, at the visits made to your father in Jersey City, after the death of your step-mother Eliza, and up to Feb. 20th, 1873, how the condition of your father's mind seemed to you to be ?

A. He seemed to be failing every year, every month that I went there, and she would take him to Saratoga in the Summer, and in the Winter she would take him down to Florida, and I asked her why she had done that. She said, "For his health; his health was poor, and it was necessary." 30

Q. What did his condition of mind during the time of which you have spoken last, appear to you to be ?

A. Seemed to be entirely under her control, as if he didn't have a will of his own.

Q. How as to memory ?

A. Not good; he would lose his memory.

Q. How as to childishness ?

A. Sometimes he would spurt up and get bright; and other times he would be what you might call a little soft, as near as I can get at it in that way. 40

Q. Was that bill of repairs to the cemetery lot paid?

A. Yes, sir; he paid me; he put his hand in his pocket and pulled the money out and gave it to me as if he was in a great hurry; she commenced talking about the $10 before he gave me the money.

Q. Had Ellen children?

A. Yes, so I heard; I saw a woman there that she called her daughter, at the house on several occasions; I saw her at the funeral, and there was two of her daughters, as she said; I inquired who they were, and they
10 said they were this Ellen's grandchildren—this woman's daughters; these daughters were girls. I should judge one of them was perhaps 14 and the other 15 years old.

Q. Do you know whether the mother of those two daughters lived with Ellen?

A. I don't think the mother did; I did not see her there on any other occasion except on the funeral; I saw these girls there on several occasions for a couple of years—yes, longer—four years before he died; they seemed to live there.

Q. Your brother James H. Turnure, is he a pilot?

A. Yes; a Sandy Hook pilot?

20 Q. Do you know of any other property that your father gave to James H. besides that which you have already spoken of?

A. Oh, yes; when I made the first payment for the first half of that stable that I gave him this house in Brooklyn for, he gave that to him; I gave him this house and lot that I describe here before, and $2,000 on the 26th street stable; I think that house was 181 Sands street—it is near Hudson avenue—and James lived in it till my father let him have the 4th avenue stable; then he moved into 24th street in the upper part of the
30 house where my father lived; I don't know what he did with the Brooklyn property; he sold it, I suppose.

Q. What was that property worth when you let your father have it?

A. Three thousand five hundred dollars; that is what it cost me; the lot was 20x106, I think.

Q. When did he let your brother James have it?

A. Immediately after I went up there with him. I saw him give him the deed. James went into possession immediately, and he lived there for four years.

Q. What other money did he let James have?

40 A. He has let him have money to buy a pilot-boat with; that was after he left the stables. He left the

stables in 1872, and kept a couple of years up to Kingsbridge; it must have been in 1875, I think.

Q. What was the pilot-boat worth ?

A. I cannot say; they used to cost about $10,000 when I was in the business, but they were worth a good deal more in 1875.

Q. How much did your father let him have for that object ?

A. I don't know; I never heard the amount.

Q. Do you know of any other property that your father let James have ? 10

A. I can't think of any at present. He got a gold-headed cane belonging to my mother when he moved from 24th street; it was given to her by my deceased brother, and the old lady gave me that cane before she died, and told me, "John, when I am done with this you take it;" that was my stepmother Eliza. I didn't get a chance to take it; Harvey grabbed it—that is, James H I spoke to the old gentleman since about it, and he said he would get it for me, but he never did.

Q. The furniture that was in the house in New York that your step-mother Eliza owned—whose furniture was that ? 20

A. It belonged to her.

Q. What became of that after her death ?

A. He moved to Jersey City; it is in the house there now I suppose; it was the day of the funeral I saw several articles there belonging to her; James H. got several things.

Q. What articles did you see in the house in Jersey City ?

A. I saw the bureau and desk that belonged to my step-mother. 30

Q. Did you see any of the furniture that belonged to your own mother ?

A. No; I can't say that I did; the occasions that I went there I only went into two or three rooms—two rooms upstairs and the front parlor.

Q. What sized house is this in Jersey City ?

A. I think it is 25 feet front, and I should judge about 35 feet depth; it was two stories, and they raised it up and put a mansard roof on it; that has been done within three or four years

Q. Do you know of anybody living with your father and Mrs. Turnure, except these grandchildren of which you have spoken ? 40

A. No, I don't.

Q. Did they keep a servant?

A. I don't know; they have kept servants; several years ago there was somebody living with her—some relative of hers I understood; the first two or three years I went there—and I would state I made visits there while he was gone—I found that he was gone to Florida in the Winter time. I think on two or three occasions I saw this woman, her step-daughter or daughter-in-lew; I mean her daughter-in-law; she married her son.

Q. Did you know her son?

A. No.

Q. When he was gone to Florida, did you understand that Mrs. Nellie Turnure was with him?

A. Yes; this woman said they had gone to Florida.

Q. Do you recollect of a diamond ring?

A. Yes; I know when he bought it; he bought it when he kept the stable in 4th avenue, the very next year he went there; he bought it in 1862 and gave $700 for it; he bought it of a Pole by the name of John that used to come in and peddle diamonds.

Q. What became of it?

A. He had it on his finger the last visit I made there; that very ring he promised to my niece Julia Elvira.

Q. Do you know what has become of it since?

A. No, sir; he had a gold watch that cost him $200; he had that a long while; he must have had it twenty years.

Q. What became of the watch?

A. I suppose it has gone after the ring; I don't know.

Q. Do you know whether he had it the last time you saw him?

A. Yes; that interview I had the day before the funeral, she told me the last time he was out he had been to the watchmaker's to get his watch, that he had left it there to be repaired, and she said that was six weeks before that; she did not say who the watchmaker was.

Q. Do you know anything about your sister's circumstances, Mrs. Hard?

A. Yes; something.

Q. State, generally?

Mr. McDermott objects to this line of testimony.

A. Mrs. Hard had considerable real estate previous to 1873, and in order to help her husband tide over the panic in 1873, she mortgaged the most of it pretty fully to keep his business going, so that I don't suppose it would bring the mortgages now if it was sold.

Q. Has she any property to your knowledge, now—any estate?

A. She holds this real estate in her name that is mortgaged; that is all she has got.

Q. When did you last converse with your father on the subject of your step-mother Eliza's estate? 10

A. I have not said anything to him since he told me he had married this Ellen.

Q. Do you recollect anything farther that he then said in regard to that estate, and, if so, what—your step-mother's estate?

A. No; I do not.

Q. Did he tell you at any time how he had invested it?

A. I was cognizant of his investing the first payment when he first sold the house, and then there was this mortgage on it; the first payment was invested in water stock bonds of New York. 20

Q. When the mortgage was paid he invested that in what?

A. In four and a half per cent. Governments; that was paid in 1866, after her death.

Q. Did your step-mother Eliza have any debts outstanding at her death, to your knowledge?

A. No, sir; she had none.

Q. What was the household furniture that she left at her death—I mean your step-mother Eliza—worth then? 30

A. Perhaps, might have been worth three or four hundred dollars.

Q. From what you saw of Mrs. Nellie Turnure, what kind of a will, in your judgment, had she—I mean will?

A. A pretty good snapping one—a kind of a knife-cutter.

Mr. Bedle: It may be that we shall want to recall this witness when we supply certain papers which have been marked for identification, when they are properly exemplified by the clerk in New York; we will want to have them exemplified. 40

Mr. McDermott: We waive the exemplification.

Counsel for caveators offers in evidence "Exhibit C. 1," already marked for identification. It is a certified copy of a deed from Eliza Turnure and William P. Turnure to Nancy Losee, dated Feb. 2, 1858, the exemplification being waived by counsel for proponents.

10 Also, a certified copy of a mortgage from Theron Losee and Nancy Losee his wife to Eliza Turnure for $11,000, dated Feb. 2, 1858, and the discharge or cancellation thereof thereon, and the exemplification also being waived by counsel for proponents, and marked "Exhibit C. 4."

Also, a certified copy of a deed from William P. Turnure and Ellen Turnure his wife to Thomas B. Wilson, dated March 16, 1872, exemplification being waived by counsel for pro-
20 ponents, and marked "Exhibit C. 5."

Also, certified copy of a mortgage from Thomas B. Wilson to William P. Turnure for $50,000, dated March 16, 1872, and the discharge or cancellation thereof thereon, exemplification b ing waived by counsel for proponents, and marked "Exhibit C. 6."

Also, a certified copy of an assignment of a mortgage from William P. Turnure to Cath-
30 erine Lynch, of the mortgage last referred to, the exemplification being waived by counsel for proponents, and marked "Exhibit C. 7," the date of said assignment being June 4, 1877.

Also, a certified copy of a satisfaction piece of the last-mentioned mortgage from Catherine Lynch, dated February 9, 1878, exemplification being waived by counsel for proponents, and marked "Exhibit C. 8."

40 Mr. Bedle [to Mr. McDermott]: Do you want us to produce the New York acts showing the record acts?

Mr. McDermott: I don't know as I do just now.

Mr. Bedle: Then we will let it stand just now.

Cross-examined by Mr. McDermott:

Q. Where was your father born?
A. In Nyack, Rockland County.
Q. Do you remember the date of his birth?
A. In 1796.
Q. How do you fix that date? 10
A. From what he told me and from the record he made in the Bible, and my uncle also, his older brother, told me he was born in '96; I asked him here the other day.
Q. Where does his brother live?
A. In New York.
Q. How old is he?
A. Ninety-one years and six or seven months.
Q. Do you remember his father?
A. Yes, sir—my grandfather; he died just fifty years ago; I was 10 years old when he died; he was 79. 20
Q. Do you remember your grandmother on your father's side?
A. I do not; she died when I was very small.
Q. Do you know how old she was when she died?
A. I don't.
Q. What was the first business that you engaged in after leaving school?
A. After I was grown up?
Q. Yes, sir.
A. Piloting; I was a Sandy Hook pilot.
Q. Engaged for yourself or employed by somebody else? 30
A. For myself.
Q. Did you own the boat?
A. Part of it; I bought part as I went along, and I earned the money; the name of the boat was James Avery, No. 9.
Q. Where did you get the capital?
A. I went to working at journey work. There are two sets of pilots—one set owns the boat, and the others work what they called journey work.
Q. When did you leave piloting?
A. I left piloting in 1851, and in 1853 went back again, and I continued piloting until 1856; since that 40

time I have not been engaged in piloting; I have no interest in piloting now.

Q. What business have you followed since 1856?

A. Kept a stable and a riding school in New York till 1865—in business for myself, corner of 26th street and 6th avenue; it was leasehold property, and I sold out to a firm by the name of English & Hobbs; I received as consideration $15,000 for the stock; I gave them $15,000 worth of stock.

Q. When you left piloting did you own any boats?

10 A. Yes, I owned a share in two; I sold my share in one, and the other was lost on Fire Island; it was not insured and was a total lots; I don't remember what I got for the share in the one that I sold; I sold that in 1844 or 1845, I think.

Q. Did you own any shares after 1850 in any boats?

A. Yes, in E. K. Collins; that is the one that I lost.

Q. Do you own any real estate in New York now?

A. No, sir.

Q. Have you any mortgages upon real estate in New York?

A. No, sir.

20 Q. Have you owned any real estate in New York within 20 years?

A. Yes, I owned property corner of 41st street and 6th avenue, but I think it was a little over 20 years ago.

Q. Do you own any real estate in any other State than New Jersey?

A. No, sir; not at present.

Q. Have you any mortgages upon any real estate in any other State except this?

A. No, sir.

30 Q. State what your real estate in New Jersey consists of?

A. It consists of two farms, one house and lot, a lot with two houses, a lot and stable property, hotel lot and a two acre lot adjoining.

Q. Is this property all together?

A. Part of it; the two farms is separate.

Counsel for caveators objects to this examination as irrelevant.

40 Q What was the consideration given by you for those farms—what did you pay for them?

Objected to as irrelevant.

A. I forget now what I paid for them; I purchased one of them in 1870; that one cost me about $18,000; the other one cost me about $4,500.

Q. What did the stable lots cost you?

A. That property cost me forty odd thousand dollars.

Q. That is in Bergen County?

A. Yes; I don't remember the exact amount; I could not tell whether it was over $45,000 without looking my bills all over, and I don't know as I could find them all, but I am sure it was over $40,000. 10

Q. What did you pay for the hotel property?

A. I cannot tell without looking over my bills; I bought the material, and had it built by day's work, and I cannot tell how much it cost me; I can approximate it, and it approximately cost in the neighborhood of $20,000—that is, the building; the ground, when I built on it, was worth about $10,000; I don't remember what I paid for it?

Q. Now we have the farms, and hotel and stables What other real estate have you? 20

A. Houses and lots.

Q. How much are the houses and lots worth?

A. I don't know, one of them cost me $2,500 under foreclosure; it is worth a good deal more than that.

Q. What are the other houses worth?

A. I cannot tell what they cost; there are two on the one lot.

Counsel for caveators wishes it understood that this examination is all taken subject to objection as irrelevant, and the same objection is applied to a continuance of it on the same subject matter. 30

Q. What do you value all your real estate in New Jersey at?

A. $65,000 to $70,000—somewhere along there.

Q. Do you keep the hotel yourself?

A. No, sir.

Q. Are you engaged in any business?

A. Yes; a veterinary surgeon.

Q. What is your income at that business? 40

A. About three or four hundred dollars a year.

Q. How long have you been engaged in that business?

A. I sold the stable in 1865; I have not done anything since except veterinary surgeon.

Q. What do you value your personal estate at—mortgages and bonds, moneys generally—everything outside of real estate?

Same, to this question.

10 A. I have got some personal property; I would not take $500,000 for it.

Q. What does that consist of—I am speaking of the market value of it?

A. I could not tell you what the market value of it is.

Q. Have you any bonds?

A. Yes; I have bonds and mortgages representing about $3,000; I have no government bonds.

Q. Have you any moneys on deposit in any bank or in any trust company?

A. Yes, a little.

Q. How much?

20 A. Not much.

Q. About how much?

A. I don't care to tell; it is nobody's business, as I know of; I don't care to tell that; I think it is too inquisitorial, with all due regard, you understand.

Q. Is your personal property worth $50,000?

Counsel for caveators: We have no objection to his answering that last question, as to the money in the bank or on deposit, unless the witness has some personal reason why he should

30 not state it; [addressing the witness] you may answer that unless there is some personal private reasons.

Q. What do you value your personal estate at?

Question objected to as irrelevant.

A. $10,000.

Q. Is that besides the $3,000 in bonds and mortgages?

40 A. No, sir; my personal estate—that is the whole question.

Q. How many children have you ?

A. Three living.

Q. Are any of them dependent upon you for support ?

A. Yes, two of them; one is between 9 and 10 years old, and the other between 10 and 11 years old; my oldest son is not married; he is living in Schenectady.

Q. Did you ever direct a letter to your father in Jersey City ?

A. Yes, sir.

Q. Do you remember how you directed the letter—did you direct it to any particular street ? 10

A. Yes, I directed it to where he lived.

Q. Was that letter ever referred to in conversation afterwards with him ?

A. No, sir.

Q. Is that the only time you ever wrote a letter to him in Jersey City ?

A. I cannot think of any other. I never wrote any letter to him that I can remember. I sent him my wedding cards when I was married to my present wife, thirteen years ago; that was in 1867.

Q. You speak of the ages of your father and brother James, and your sister. How do you recall them ? 20

A. I fix them by myself; I am 61; I made a mistake in my sister's age; I was under the impression that she was a little older than she actually is, for this reason: when I come to think, there was a girl next to me that died in infancy; then my brother William was between, and then there was another one between he and my present sister, which died in infancy.

Q. Who did you ever hear speak of Ellen Turnure as Nellie Weaver ?

A. I heard two or three of the pilots—Eugene Sullivan for one, John Kelso, John Turnure, John Johnson, 30 Robert Thompson, Thomas Vail (he is deceased) Thos. Freeborn. Her name was patent amongst all the pilots.

Q. Who did you ever hear speak of her as Vanderbilt ?

A. I never heard her called Vanderbilt except by the folks here; I forget now who it was; it was after my return; somebody told me her name was Vanderbilt.

Q. Do you know what her name was before she was married ?

A. No.

Q. Did you ever see her before you saw her in Jersey 40 City, after her marriage ?

A. Not to my knowledge.

Q. Did you know of her personally?

A. No, sir.

Q. Did you ever hear her name mentioned before you heard of it in connection with the marriage?

A. Only as Nellie Weaver; that is all.

Q. Do you know whether her name was Ellen Weaver?

A. I do not, but that is the name she went by.

10 Q. When did your father commence to live with you in 25th street?

A. When he moved out of 41st street; when he sold this house.

Q. How long did he live with you?

A. I think it was about two years.

Q. Did you own the property in which you lived at that time?

A No, sir, I did not; but I paid the rent.

Q. On what terms did he live with you there?

A. He paid half of the living expenses and I paid the whole of the rent; my family consisted of a wife and 20 three children, and his consisted of himself and his wife.

Q. Did his wife die in that house?

A. No, sir.

Q. Of what did your brother William A. die, do you remember?

A. He died of a rupture of the liver, hippitates.

Q. Was his death sudden?

A. No; he laid sick for a week or ten days; I was with him most every day and every night; that was caused by a fall from a wagon some two years before.

Q. After the death of your step-mother Eliza how long was it before you moved into this State?

30 A. I was in this State when she died.

Q. How long before her death did you move here?

A. I moved here in October, 1865; she died early in 1866—only a few months.

Q. Do you know when your father moved to Jersey City?

A. I don't know exactly the time; no, sir.

Q. When did you first see him in Jersey City?

A. I cannot tell when I first saw him here; I met him aboard the ferryboat for the first time; up there at his house; it was in 1868; that occasion I met him upon the 40 street with the other party, that was the first time; and the next time was about five or six months after that,

when I visited him; that was in the Fall of the year; then I visited him again in the following Spring—that was in the Spring of 1869, about six months after; and I called there in the Summer and he was gone to Saratoga; and I called again that Fall and saw him; I called again in the winter and he was gone to Florida —that was in the Winter of 1869-70; I can't tell exactly when I called again. Sometimes I would call shorter and sometimes longer; one time it run along two years.

Q. When after the Winter of 1869-70 can you remember? 10

A. I must have called in the Spring of 1870. I generally called there in the Fall, after I found he went to Saratoga in the Summer and Florida in the Winter—I generally called there in the Spring and Fall.

Q. Did you call during 1872 at all?

A. Yes, after he sold the stables; it was quite cold weather I was there; I know there was a fire in the stove, and he told me he sold the property; I asked him for how much; he said for $77,500. Says I, "Why didn't you let me know? I could have got you $80,000 20 for it."

Q. Did you call more than once in 1872?

A. I cannot say that I did.

Q. Did you call in 1873?

A. I did in the Spring and again in the Fall, when it was quite cold weather.

Q. Did you call in 1874?

A. Yes, sir; I think I didn't call but once in 1874; that was the year after the panic; I think I called twice or three times in 1875; I don't know whether I called once or twice in 1876, but I called, I know, in the warm weather—I think it was before July; I did not call in 30 1877, because I was away the greater portion of the time—I didn't have an opportunity—I was too busy—I was in York State.

Q. You were not farther than York State?

A. No, sir; I called in 1878 in the Fall—I think in September.

Q. Did you call in 1879?

A. I did; I think it was in the Spring of 1879 that I called there—it must have been the forepart of May; I came down after some seed.

Q. Did you call in 1880?

A. Not until he was dead. 40

Q. Then you did not see your father after the Spring of 1879?

A. No, sir; that was the time she was rubbing his head—the last time I saw her rubbing his head; I gave him one of my cards at that time; he asked me, he said if he got sick he would let me know; it was about 18 months before he died that I was there; I came down very seldom to New York.

Q. Did you ever write to him concerning his health?

A. I don't know that I did.

Q. Did you ever take any steps to ascertain what his health was?

10 A. Yes; my son called there on several occasions.

Q. Did you send your son there?

A. No; he came home and told me he had been to see grand-daddy; I didn't know he had been there till he came home

Q. Did he state to you the condition of your father's health?

A. Yes; he said the old man was feeble and complained of his head a great deal.

Q. Why didn't you go down to see him?

A. Because I was busy and couldn't get away; he told

20 my son he would telegraph if anything happened; he wanted me to come down and treat him; he said he would send for me if he got sick—wanted me to treat him medically, and I relied on his telegraphing to me if anything happened.

Q. Did you know that your father had received money on the mortgage of the stable property in New York?

A. Yes; I did.

Q. Did you know what he had done with it?

A. He told me he had put it in Government bonds, and he said he had locked the bonds up in a safe deposit company—he did not tell me what company, and I did

30 not ask him because I thought it would be too inquisitive; I did not want to worm into his affairs without being invited to it.

Q. When was it he told you he had put the money with a safe deposit company?

A. I think in 1878, after he got the money, after the mortgage was paid to him.

Q. How long before that had you noticed any signs of failing of his intellectual powers?

A. I noticed a gradual failing for years; he was not the same man at all that he was when he was in busi-

40 ness in New York.

Q. Did you consider him at that time capable of

managing and investing and properly taking care of $50 000 ?

A. Yes, the way he had invested it ; I would not like him to have gone down into Wall street with it.

Q. Why didn't you qualify as executor to your step-mother's estate ?

A We thought one was sufficient.

Q. Was there an agreement to that effect between yourself and your father ?

A. Yes, sir ; we agreed all together there at the time we probated the will ; we was all present—my brother-in-law and myself and my father—and I assisted him in getting witnesses to prove the will, to save him the trouble of running round ; it was a rainy day, and I told him if he would wait in French's Hotel I would take a carriage and go and find them.

Q. Did your father ever write to you after he came to Jersey City ?

A. Yes ; he wrote to me on the subject of that stable business.

Q Did he ever write to you any other letter ?

A No.

Q. When did you last receive any money from your father ?

A I borrowed $2,000 from him in the Fall of 1865, for which I gave him a due-bill written on a check, payable with interest ; I was engaged then in building in Englewood, and I wanted a little money to help me out just then ; I asked him to lend me $2,000 ; he lend me $1,500, but he said Harvey owed him $500, and to go and get him to give me the $500, and I drew him this bill and I went to Harvey and got $500 ; in 1867, when he came up and said he was married, he mentioned those $2,000 ; says I, "If you want it now, I will go and get it to-morrow ;" "No," he says, "you need not distress yourself ;" says I, "Will the 1st of November do for you ?" says he. "Yes ;" says I, "I will leave it in Melvin Hard's store for you ;" he was my brother-in-law, and I went down there and left the money with Mr. Hard ; the old gentleman came in in a day or two afterwards and he gave it to him, and he left the due-bill check with him, and I destroyed it.

Q. Was that the last time you received any money from him ?

A. The last time.

Q. Have you ever received any moneys other than that $500 from your brother James ?

A. No, sir; never.

Q. Have you ever received any money on account of the estate of your step-mother?

A. No, sir; not a dollar.

Q. When did you last mention the estate of your step-mother to your father?

A. I don't think I had any conversation with him in regard to it; I did not think it necessary.

Q. How long before his death was your father en-
10 gaged in any business from which he derived an income?

A. He had not been in any business since he let Harvey have the stable; that was in 1865.

Q. Then, so far as you know, during the 15 years preceding his death he depended solely upon the income from investments for his living?

A. Yes, sir, and could not consume it all the way he lived; he lived very economically; he never spent any money except on the little trips he took to Saratoga and staid there two or three weeks, and going to Florida and staying there a month or two.

20 Q. How do you know he lived economically?

A. From my own observation; I saw how he lived in his house, and I saw the clothes he wore.

Q. Did you dine with him during the ten years preceding his death?

A. Yes; once.

Q. Did you ever examine the bills that he paid for food?

A. No.

Q. Do you know what moneys he expended for his table?

A. No, sir.

30 Q. Do you know what moneys he expended for his clothes?

A. No, sir.

Q. On what, then, do you base your statement that he lived economically?

A. From observations, and knowing him so many years; he dressed about the same as he always did; he wore the same character of clothes and the same quality; and I observed that he did not get them any oftener, and I knew about what his clothes cost; he would give perhaps, $30 to $35 for a suit.

40 Q. You visited him, according to your statement. 15 times in 12 years?

A. It may be that; it must have been more than that though.

Q. Do you know what clothes he wore during the intervals between your visits?

A. No; I know what he wore when I saw him.

Q. Then your statement that he lived economically is based solely upon the fact of your noticing the character of his clothes during your visit?

A. Not solely—that is a part of it; and by his not getting anything extra in the house, such as new furniture, or anything of that kind. 10

Q. How do you know he didn't get new furniture in the house?

A. I didn't see it.

Q. How many rooms were there in the house?

A. I guess there was only four besides the basement; there was a mansard roof put on within two or three years before he died.

Q. Do you know what expense he went to in furnishing that?

A. No, sir. 20

Q. You stated that you were in but two or three rooms in the house?

A. One of them was the double parlor, and the other two was the back and front rooms upstairs; there was only two rooms on the floor upstairs, and when I took dinner with him I was in the basement, and there was ordinary furniture there—plain.

Q. Did you ever ask your father after he moved to Jersey City what his expenses were?

A. No, sir.

Q. Did you ever inquire as to how he was investing his money? 30

A. Yes.

Q. When?

A. He told me when he sold the stable, after he sold the stable he told me had $27,000 in cash, and he put $20,000 in bonds, 6 per cents.

Q. Did you ask him what he had done with the other $7,000?

A. No, I didn't; I suppose he had it in cash.

Q. When was this?

A. After he sold the stable in 1872.

Q. Why didn't you ask him what he had done with the other seven thousand dollars? 40

A. I didn't know as it was my business.

Q. Didn't it strike you that a man who was failing in his intellect should receive some guidance as to what he should invest his money in ?

A. Oh, he was cunning enough to take care of that; he knew what to invest it in.

Adjourned to to-morrow at 2 o'clock at the same place.

10

DECEMBER 7th, 1880.

Pursuant to adjournment, all the parties appearing, the taking of evidence was resumed.

Cross-examination of JOHN L. TURNURE continued by Mr. McDERMOTT :

Q. Did you ever call at your father's house and see Ellen Turnure without seeing your father ?

20 A. No, sir ; I don't think I did.

Q. After he moved to Jersey City did you ever, at his house, request him to advance you any money ?

A. No, sir.

Q. How far is your residence from Jersey City ?

A. About 21 miles by railroad ; I live a mile from the depot.

Q. What is the traveling time between your residence and Jersey City ?

A. About an hour by rail ; it takes me 10 to 15 minutes to drive to the depot.

Q. When did you retire from active business outside

30 of the business you are pursuing now ?

A. In 1865.

Q. From 1868 till now you have not been in any active business besides that of veterinary surgeon ?

A. No.

Q. What is your income from that per year ?

A. $300 to $500.

Q. You said in your testimony yesterday that your business engagements prevented your calling more than once a year upon your father ?

A. Yes, sir.

40 Q. What were those business engagements during the 12 years preceding 1880 ?

A. This business I am in—veterinary surgeon; I have had occasion to go up to Orange County, different parts.

Q. How long in 1880 were you in Orange County?

A. I was on several different occasions, and staid a week at a time sometimes.

Q. You said that your average income from that was $300 to $500 a year?

A. Yes, sir.

Q. How much time during the year would the earning of that income require? 10

A. All the time; it is mighty uncertain; sometimes parties will come to my place and bring animals, and sometimes they will send for me by telegraph; it was very uncertain.

Q. How is your compensation as veterinary surgeon regulated?

A. By the distance, so much a visit and the time consumed

Q How much would a visit to Orange County compensate you? 20

A. $10.

Q. How long would it take you to attend to that business?

A. That is uncertain; sometimes I would get through in two or three visits—it depends upon the place and what the character of the disease is.

Q. Were you paid for each visit?

A. Yes; if I had a case that took me, for instance, a week, I would put up there at a hotel, and then I would charge two dollars a visit; sometimes I would have to go twice a day, sometimes once, sometimes once every other day. 30

Q. Were you occupied during any one year from 1868 to 1880 more than 90 days in any one of those years in your professional pursuits?

A. Yes.

Q. What income would you receive for each day that you were occupied?

A. Some days I would make fifty cents, some days a dollar.

Q. Were you occupied more than 150 days in any one year?

A. I could not answer that question.

Q. Would your average be more than three months? 40

A. I cannot state that; I have never figured it up.

Q. Can you tell whether it would be between three and six months?

A. No.

Q. What was your income during the last year you were in any business besides that of veterinary surgeon?

A. I made about $8,000 over and above my expenses; that is previous to my moving up there.

Q. Why did you leave that business?

A. Because I was in ill health; I was obliged to do two men's work; I worked night and day.

10

Q. Did your ill health prevent you from traveling?

A. No; it was the confinement; I began to get thin and weak.

Q. How many days on an average was you in Bergen County each month, from the time you moved there in 1868 until 1880?

A. I was in Bergen County perhaps two-thirds of the time, and it might be more than that.

Q. Were you engaged as veterinary surgeon?

A. Yes, sir.

Q. How many days a week did your business there require your attention?

20

A. Every day.

Q. How many hours in a day?

A. All day.

Q. Were you actively engaged all day?

A. No, sir; I had to wait in anticipation of somebody coming; there was a great many days I had nothing to do, still I could not leave.

Q. What was the reason you did not call more frequently upon your father during the ten years preceding his death?

30

A. Because I did not like this woman who lived with him; that is the reason; I had nothing against the old gentleman; and he had nothing against me; we never had a quarrel.

Q. You stated in your direct examination that you did not call more frequently because you didn't have the time?

A. Yes, sir.

Q. Now, which is the reason?

A. Both.

Q. Which was the reason during the two-thirds of the time you were in Bergen County?

40

A. The same reasons.

Q. Which was the more prominent reason?

A. Because I didn't want to go away and neglect what I had to do, and another thing I had farming to attend to.

Q. What income did you derive from that?

A. Perhaps four or five hundred dollars a year.

Q. Did that occupy all your time in the Winter time?

A. Yes; a good deal of it, taking care of my stock.

Q. Did you attend to the practical details of the farm?

A. Yes, sir.

Q. Why didn't you write to your father and ask him to visit you?

A. I didn't think it necessary; I gave him an invitation every time I came there; I didn't think it was necessary, for the reason that she would not hear to it. 10

Q. How do you know she would not?

A. I know by the way she acted.

Q. Did you ever hear her say she would not?

A. Yes; on one or two occasions, when I gave him an invitation to come.

Q. What years?

A. In 1869 and 1870, and I found then that she had a great deal of control over him, the old man seemed to be disposed to come, but she would speak up and say, "Well, we can't make it convenient," or something like that. 20

Q. This was in 1868 or 1869?

A. Yes, sir.

Q. Did you request him to come after that?

A. Yes, in 1870, during one of my visits—in the Spring and Fall both; I most always asked him when I went to see him.

Q What did you say to him when you requested him to call in 1870?

A. I said, "Daddy, come up and see me—come up and visit me." 30

Q. What did he say?

A. He didn't say anything—not a word; she would speak up and say, "We have not got time; oh, we can't go away so far."

Q. How many times altogether did you request him to visit you?

A. I suppose a dozen times; and the last visit I made I gave him a card when he asked me for it, and he put it in his pocketbook.

Q Why did he ask you for that card?

A. He wanted to let me know if anything happened 40

to him; I supposed he made up his mind to come up there if he felt able.

Q. What was on that card?

A. My name and address.

Q. That was in 1879?

A. Yes; the fore part of 1879; he knew where I lived.

Q. Do you know why he asked for the card?

A. I suppose he thought if anything happened he would send for me.

10 Q. Did the card convey any additional information to him except what he already knew?

A. No, sir; here is a counterpart of the card I gave him [witness produces a card]; it is one of my professional cards; this is a fac-simile; and he put it in his pocketbook.

Q. Where was the iron chest that you spoke of?

A. I don't know of any iron chest; I know of an iron chest he borrowed from my brother-in-law that he used to have in the office up there.

Q. Didn't you say you saw him put bonds in an iron

20 chest?

A. Yes; I saw the chest he borrowed from my brother-in-law—a little iron chest; after he sold out it was sent back to him, and I think it is in his store now, in Beekman street.

Q How do you know he ever invested in water stock and bonds?

A. He told me so.

Q. When?

A. When we was in business together in New York.

Q. What year?

30 A. The year I sold that house in Forty-first street—I forget the year—he took that money and bought water stock; it was the cash that was paid for that sale.

Q. You don't remember what year it was?

A. I cannot call to mind now; I think I have testified to that before, but I don't remember the date.

Q. Is your memory, as to incidents and the circumstances that occurred between yourself and your father and brother any better than your memory of dates?

A. Yes; I good deal better.

Q. Do you know why that is so?

A. Because they were impressed on my mind, and I

40 did not impress the dates on my mind.

Q. Can you tell whether it was in 1863, 1864 or 1865

that the money was paid upon the mortgage that your stepmother left ?

A. It was paid in 1866, after her death.

Q. Do you know what was done with that money ?

A. He took it.

Q. What did he do with it ?

A. I don't know.

Q. You have testified that he told you he had invested her money in water stock—how much of it did he invest ?

A. I don't know. 10

Q. Did he tell you how much he had invested ?

A. No.

Q. Did you ask him ?

A. No.

Q. Why didn't you ask him ?

A. Because I didn't think I had any right to ask him; he then could do his own business.

Q. When you saw Mr. William Wilson a few days ago did you have any conversation with him about this case.

A. I did. 20

Q. When your father gave the stables to your brother do you know what their agreement was—was it in writing ?

A. No, sir, not when he gave them to him.

Q. How do you know it was not in writing ?

A. Because I was cognizant of the fact; I used to visit the stable office very frequently, and after he let my brother have the stable he used to be there pretty much every day about eleven or twelve o'clock, and he made it a meeting place for him and my uncle Abram, and every time I went to New York I used to stop in there and meet them; I used to see him frequently then; 30 that is one reason why I did not go to the house here so often as I would.

Q. Do you know whether or not your brother ever paid any of the receipts of that stable to your father ?

A. He paid taxes and assessments—$600 a year.

Q. Did he ever pay any of the income ?

A. No, sir; he kept that himself.

Q How do you know he did not ?

A. Because the old man never told me that he did ; he told me that he had given it to him.

Q. Did he ever pay him any of the receipts for which receipts were given by your father to your brother ? 40

A. I don't think he did.

Q. Do you know whether he did or not?

A. I know at one time after he had been there a while he says to his father—

Interrupted by Mr. McDermott.

Q. Answer my question.

Mr. BEDLE: I insist that he does answer that.

10

Mr. McDERMOTT: We don't want that.

The WITNESS: He says to his father, "Pop, you ought to give me something to secure this; if you should drop off John would have me out of here and Julie, and they would want their share, and we would have to sell the property of course to divide it;" then the old gentleman gave him a lease for ten years—there was no consideration given in fact, and he gave him a mortgage on the property for $10,000: that was done to 20 secure him for the value of the stock that was in that stable, the personal property; and in 1872 before—in the Winter of 1871—I met the old gentleman at the stable, and I says to him, "Daddy, do you know Harvey is running in debt?" Says I, "He owes B. C. Wheeler $1,500 for feed; he has been going back for feed for several months." Says he, "How do you know?" Says I, "He asked me why Harvey wasn't paying his bills?" And I looked at his books and saw that he owed him one thousand five hundred dollars; the old man made an exclamation, "I will sell the 30 place!"

Q. Where is B. C. Wheeler living now?

A. I don't know.

Q. Were you present during this conversation between your father and brother, in which he asked him to give him some security?

A. No; the old gentleman told me shortly after it happened. Says I, "Do it if you want to."

Q. What was the reason that your brother gave for asking this security?

A. That my sister and myself would have the property sold and divided in case anything happened to 40 him.

Q. Upon that request being made by your brother,

and that reason given, your father made a lease for ten years and a mortgage on the stock?

A. Yes, sir.

Q. How long had the mortgage to run?

A. I don't know.

Q. What year was this?

A. It was two or three years after he had been there, he went there in in 1864 or 1865, I think.

Q. How many years afterwards was this done?

A. It must have been two or three years afterwards— 10 between 1867 and 1868.

Q. The notes which your father gave you to collect after the sale of the Broadway stage line—what did you do with them?

A. I put them in the Pacific Bank for collection, at his request, and as they became due I drew my checks and he got the money for them.

Q. Have you those checks?

A. I don't know as I have; I will look and see; I don't think I have saved my papers so long back as that.

Q. What is your custom with bank checks—to destroy 20 them?

A. After a certain number of years I do; yes, sir.

Q. How many years?

A. I have got no stated time; perhaps I could find them yet.

Q. Were there any receipts passed between you and your father as to that money?

A. No; the checks were receipts.

Q. With the exception of the two thousand dollars which you mentioned yesterday, has there ever been, since 1865, any transaction between yourself and your father in which you gave him a receipt for money that 30 you received from him?

A. I can't think of any; I don't remember of anything except the two thousand dollars.

Q. As to the conversation in the stables where your father said, "Harvey cannot take care of things, I want you to come in"—where did that conversation take place?

A. In the office of the stables, Sixth avenue.

Q. Was your brother present?

A. No.

Q. Had there been any conversation prior to that? 40

A. Not before that, between us; when this conversa-

tion took place Harvey had gone out—he was not present—and it looked to me that the old gentleman was out of patience because he was out then.

Q. Were you at that time a better accountant than your brother?

A. Yes, sir.

Q. In what particular?

A. Every particular—every way.

Q. Were you better at remembering the rules of mathematics?

10 A. Yes, sir.

Q. How was your memory then, as to its present condition?

A. Quicker; as we grow older we get more sluggish.

Q. Could you remember dates better then than now?

A. Yes, sir.

Q. Could you remember incidents better then than now?

A. I suppose I could, just as all younger men are brighter.

Q. You say your father let your brother have the stable at $600 a year, and gave him the stock. How do you

20 know that?

A. The old gentleman told me so, and he had possession.

Q. How did your father hold the stable?

A. He had it from my brother according to the laws of the City of New York; when my brother died intestate a bachelor, it went to the old gentleman; if it had been in New Jersey we would have had our share.

Q. How do you know that your father gave your brother the stock?

A. My father told me so.

30 Q. When did he tell you so?

A. When he took me into the stable; I think that must have been in 1864 or 1865.

Q. What conversation took place between yourself and your father at that time?

A. I says, "You can do as you please; I don't object to it."

Q. Why didn't you object to it?

A. Because I didn't want to be selfish.

Q. You say he gave him his stock valued at $11,000?

A. Yes, sir.

40 Q. How do you know that?

A. Because my brother William A. and myself took

an inventory of that stock before my brother died.

Q. Do you know whether or not, when that stock was sold, your father received the proceeds of it ?

A. No, he didn't.

Q. How do you know that ?

A. He told me so—I asked him.

Q When ?

A. After it was sold, in 1872, at the house in New Jersey. Says I. "Daddy. Harvey has sold out" "Yes," he says. "Well, I suppose he has got the money ?" 'Oh, yes, he has got the money," he says, "and now he is going to open a hotel up to Kingsbridge." That is all the conversation that took place, and I didn't say more. 10

Q. You were willing that your brother should receive that money ?

A Yes; the old gentleman had told me he had made a will, and divided it in equal parts between us, and had made an equitable division.

Q. When did he tell you that ?

A When he came up to see me in 1867.

Q. How do you know what rent your brother paid ? 20

A. My father told me.

Q. Was there any lease made?

A. Yes; he gave him a lease for ten years, at $600 a year, and he sold out two or three years before the expiration of the lease.

Q. Did your father ever call at Englewood more than once ?

A. Yes, twice—once with my Uncle Abram, and he dined with me the first time—that was in 1866; he lived in Jersey City then.

Q. When did you first hear of his present wife, or know of her existence ? 30

A. In 1867, in July, he told me.

Q. Had you ever heard of it before ?

A. Yes, frequently—often; but I had never seen her though.

Q. He came to see you in July, and you said before he reached you: "He said, 'I suppose you heard I was married ?' and I said, 'To who ?' an he said, 'To Nellie.' and I said, 'My God;' He said, 'Yes; but I have made my will and put it in four parts so as to make a just distribution, and there won't be any more children—she is 65.'" Is that the exect conversation ?

A. That is just the precise conversation that took place. 40

Q. Did you make any memorandum of that conversation?

A. No, sir; it is impressed upon my mind so strong, there is no occasion for it; I have never forgotten it since.

Q. He told you the number of the house in 7th street—did you remember the number of the house?

A. I put it down on a pass-book.

Q. What is that number?

A. I don't know now; I think it is some 180 or 280, or something, South 7th; he described the house to me, so I found it; there was a vacant lot right next door to it; he told me all about it.

Q. You say you made no memorandum of the conversation, but you remember that word for word?

A. I do.

Q. You say you did make a memorandum of the number of the house, and that you called there frequently, but you don't know now the number of the house?

A. No; I think it was 185—either 185 or 285; the number of the house has been changed; I think I can hunt that book up and find the memorandum.

Q. What conversation did you have about the purchase of the house in 7th street that day at Englewood?

A. When he gave me the number of the house he says, "She bought it—she bought it—it is hers." "Yes," says I, "Daddy, but you paid for it and had it put in her name." Then he didn't say a word—he made no reply.

Q. Did you know anything about her financial circumstances at that time?

A. No, sir—not positive.

Q. Did you know whether she was worth enough to purchase a house or not?

A. No, sir.

Q. Did you ask him when he had been married?

A. No, I did not.

Q. Why didn't you?

A. Because it upset me; I had felt too much riled about it—too much grieved to think he had been so foolish; I cut short as I could.

Q. Did you have any talk to him about his will that day?

A. Only what he said himself; that is all.

Q. Did you have a talk with him about any investments of his money that day?

A. No. I says to him, "Daddy, you must be worth over a hundred thousand dollars." He says, "Yes, considerably over."

Q. This was after he had informed you of his marriage?

A. Yes; after he had informed me that he had made his will; then the gong rang, and he went in and took dinner with me.

Q. You say you were too upset to ask him when he had got married. Did that affect you with reference to his finances? 10

A. Of course it did, and everything else, morally and financially; I knew she only hooked him to get what money she could out of him.

Q. That is your general belief?

A. Yes, sir; my general belief, my honest belief.

Q. Is it your belief that she induced him to make this will?

A. Yes, sir.

Q. Would your belief exist if you were told that if he had made no will she would be better off?

A. No; she would not have been better off. 20

Q. If she would have been better off, would that belief still exist in your mind?

A. Yes.

Q. Why?

A. Because it would have been more of an act of justice if he had made an equitable distribution of his property. I relied on that word, and for that very reason I didn't worry myself about his financial affairs.

Q. Do you believe that he revoked that will at her request?

A. I don't know. What has become of it! we can't find it; she won't tell me where it is. 30

Q. Do you believe that her power over him was sufficient, from what you have seen, to have induced him to die intestate or to make a will just as she pleased?

A. I do, decidedly.

Q. Then, if it was to her advantage that he should die intestate, and she would have received more money from the personal estate by his dying intestate, do you believe, from her general disposition, that she would have induced him to die without making any will?

A. Yes, I do.

Q. When you were introduced to his wife in Jersey City, Mrs. Ellen Turnure, what was said at the introduction? 40

A. There was not anything said much. He says, "I will make you acquainted with Ellen."

Q. Did you shake hands with her?

A. No, I don't think I did. Says I, "How d'ye do?"

Q. Did you ever shake hands with her after marriage?

A. No, I don't believe I ever did; I don't remember ever doing it.

Q. By what name did you address her when you called at the house?

A. No name. 10

Q. Did you ever ask for the record of her marriage, or have any conversation about the marriage?

A. I don't know whether they are married to this day; I have seen no proof of it.

Q. This horse Meteor that he asked you about several times, in what year was that?

A. In 1869 or 1870.

Q. Did he conduct business in New York after that?

A. No; no active business.

Q. Did he transact this business in which the sale of the stable and the transfer of the stock for $57,000 was made, after that?

A Yes. 20

Q. Were you with him at the time?

A. No.

Q. Do you know who was with him?

A. No; I think she was there.

Q. Do you know whether he invested that money after that or not?

A. I was told so.

Q. Did you ever ask him?

A. No.

Q. Why didn't you?

A. I did not know it at the time the sale was made; 30 at the first visit I made to him he told me he had sold it. Says I, "What did you get for it?" He says, "$77,500." Says I, "Why didn't you let me know it? I had parties looking at it who would have given $80,000 for it." Says he, "It is too late now."

Q. Who were those parties?

A. One was Charles Newcomb, a brother-in-law of John S. Lysle, a member of the firm of Lord & Taylor.

Q. Where is Charles Newcomb?

A. Dead.

Q. Did he make an offer to you? 40

A. He came to me and says, "Turnure, we can't get

but $80,000 for that property." I asked them $100,000 for it; I was trying to negotiate the sale in the interest of the old gentleman.

Q. Had you said anything to your father about negotiating that property?

A. Yes; he told me he wanted to sell it—he wanted to find a customer—and I thought I would help him along.

Q. Did he employ you to sell for him?

A. No.

Q. When you called upon him, when he told you he had made a sale, did he tell you what kind of bonds he had invested his money in? 10

A. He told me United States bonds; he didn't tell me what per cent. bonds, and I didn't ask him.

Q. Why didn't you ask him?

A. I didn't think it was worth while.

Q. Did you think his judgment was good enough to be relied upon in that matter?

A. Yes.

Q. What year was that?

A. That was in 1877, I think.

Q. Seven years after you had the conversation about the horse Meteor? 20

A. No; we spoke of Meteor on several occasions.

Q. I mean the time you called at the house in 1869, and he repeated the questions several times about Meteor?

A. Yes; and he done that on some other occasions after that.

Q. Is this horse Meteor still living?

A. Yes; I have had him 24 years.

Q. A family pet?

A. Yes; one of mine—a trick horse.

Q Was your father particularly attached to him? 30

A. Yes, because he was the means of my buying him; he was out of business at that time, and Bark Cornell kept a stable and they wanted to sell this horse, and he says: "Daddy, I have got a note to take up of $300; give me the money and take this horse." And he came down and told me to buy it. Says he, "There is a cheap horse, go and buy him;" and so I did, and I paid for him.

Q. How often during your visits to your father did he complain of a pain in his back?

A. Very often; he had that pain for years.

Q. When did you first hear him complain of it? 40

A. He complained of it in New York when he was

with me in business, in 1856 or 1857.

Q. What did it seem to be ?

A. It was a sort of a chronic—his kidneys was affected some—lumbago, if he would get a little cold.

Q. You asked him if it was the old pain. What did he say ?

A. He said, " Yes."

Q. Did he say how it affected him ?

A. Yes; he said quite painfully, and affected his water.

10 Q. It made him lame and stiff ?

A. He would get up and hold his hand on his hips and back, and it was just as much as he could do to raise himself; I bathed his head in the stable once or twice in the office.

Q. When his head hurt him, when was that ?

A. That was in 1868 and 1869 and 1870, and the last visit I made him he complained of it—that was in 1879.

Q. Did he complain between 1870 and 1879 of the pain in his head ?

A. Yes; several times I was there.

Q. Did you ever advise him to get medical treatment

20 for it ?

A. Yes.

Q. Did you ever advise him to get any particular doctor ?

A. No

Q Did you ever go to consult any doctor about it ?

A. No; only I was speaking to my son about it.

Q. You say you thought his business capacity was very good up to the time of the death of your step-mother. Didn't you think his business capacity was good in 1878, when he sold the stable ?

A It had failed a good deal; the fact of his losing the

30 difference between $77,500 and $80,000 shows that.

Q. Had the fact of the offer of $80,000 been brought to his notice before the sale ?

A. No.

Q. Then he didn't know anything about it ?

A. He didn't take time to know it.

Q. How long before the time when he sold the stable did he speak to you about it ?

A. That Fall, as he sold in the Spring.

Q. Five or six months ?

A. About four months before.

40 Q. Did you think his business capacity in 1878, after you had been informed that he had sold the stable for

$77,500, was sufficient to safely entrust him with that money?

A. The way it was fixed, I thought it was safe enough.

Q. He had it fixed, hadn't he?

A. Yes.

Q He could change it at any time, couldn't he?

A. Yes

Q. When did you next make any inquiry of him as to that money—as to what he had done with it?

A. I did not make any after he had told me what he had done with it. 10

Q. $20,000 of it in Government bonds, wasn't it?

A. He told me so; he had the key of the safe on a little string around his neck.

Q. Did you take any trouble to assure yourself that the investment had been made of Government bonds?

A. No; not at that time.

Q. Have you dealt in Government bonds?

A. Yes.

Q. You know that they can be sold at the option of the holder? 20

A. Yes.

Q. Why didn't you inquire of him during the times succeeding 1878 what he was doing with these bonds?

A. I didn't think it was my business to inquire.

Q. Did you think he was capable of attending to his own business?

A. I thought he was capable of taking care of his money; he always did take care of it economically, and was very careful of it.

Q. What question did you ask him that his wife answered for him.

A A good many. 30

Q. Give us one?

A. I can't think of them—so many of them, I can't think of one; on most any subject I was talking to him, she would up and forestall his answer.

Q. Give us a particular instance of any question that you ever asked him and she answered for him.

A. I can't think of any particular one.

Q. If you had questions of any importance you would have remembered them, wouldn't you?

A. I don't know; I suppose I would.

Q. Then you do mean that they were not questions of any importance? 40

A. No, I don't mean that; they might have been, and might not.

Q. Can you remember of any important question that you asked him and she forestalled him?

A. Not particular.

Q. Can you remember any question that you asked him that she answered for him?

A. No; I can't remember the particulars of any question—I know the fact.

10 Q. Where was he sitting in 1869, the time she was bathing his head?

A. Sitting in a rocking chair; she was standing on his left side, back of his shoulder; I was sitting opposite to him.

Q. Have you ever bathed your head with hemlock?

A. Only once—that time that I tried it.

Q. What is the effect upon the head?

A. It produced a tickling sensation on the surface; it is a powerful narcotic—it has a narcotic influence.

Q. This was in 1869?

20 A. Yes, in 1868 too—three or four times I saw her doing it.

Q. When was the last time?

A. In 1869.

Q. That was nine years before he sold the stables?

A. In 1879 was the last time.

Q. What kind of a bottle was the hemlock in?

A. In a black bottle, I think; it looked like a pint champagne bottle.

Q. Was there a doctor's label upon it?

A. I don't think there was.

Q. Did you notice whether there was or not?

30 A. No, I didn't notice particularly.

Q. Why didn't you?

A. I didn't want to.

Q. Why didn't you want to?

A. I can't tell.

Q. Do you mean to say, or to convey the idea through your testimony, that the bathing of your father's head with hemlock was injurious to his health—did you think so at the time?

A. I did think so, and I told her so. Says I, "Do you think that is good?" "Oh, yes," she says. "I have tried it for years."

40 Q. Did you ask any physician whether it was good or not?

A. No; I didn't want to.

Q. Were you sure that it was the bottle from which she was bathing his head that you bathed your head?

A. Yes, sir; she handed me the bottle.

Q. At your request?

A. Yes, sir.

Q. Had you seen her take any liquid from that bottle?

A. I saw her pour it on and rub it on with her hands.

Q. How long after you asked her to hand the bottle to you, did she hand it to you?

A. Right away. 10

Q. Did she hesitate about it?

A. No; I don't suppose she intended to kill him.

Q. When did you ever know her to dictate the manner in which he should spend his money, except upon the occasion of the repairing of the burying ground in New York?

A. She made the assertion to my uncle that she had control of him.

Q. When did you ever know her to dictate to him how he should spend or not spend his money, except upon that occasion—not what anybody else has told you, 20 but what you know?

A. I don't know that I can state any particular time.

Q. You were shown the will during this trial, were you not?

A. Yes, I saw it in Court; that is the first time I saw it.

Q. Do you remember what year that will purports to be made?

A. In 1873.

Q. Do you remember what month?

A. In March, I think—in February—February 20th, 1873. 30

Q. You testified to that before during your examination. Now, how is your memory upon that point, as to whether it was made in February or March?

A. This last will?

Q. Yes.

A. By looking at the date of the will.

Q. How is your memory as to February or March?

A. Good.

Q. Do you remember whether it was February or March?

A. February, distinctly. 40

Q. Why did you first state just now that you thought it was March?

A. I know it was early in the Spring.

Q. Isn't your memory bad as to dates?

A. Perhaps so, a little; it is a little difficult to remember dates a good many years back; it is with everybody, I presume; I am giving all this testimony from memory without notes.

Q. Haven't you made any notes as to this testimony?

A. No, sir.

Q. Haven't you made any in the book which you have in your pocket?

A. I made some pencil notes which I handed to my counsel.

Q. You say your father was sometimes bright and sometimes a little soft. What do you mean by that?

A. He would lose his memory a little, and was capable of being turned over.

Q. What do you mean by "capable of being turned over?"

A. Capable of being persuaded, which he would not have been at other times.

Q. Give us one instance in which he was persuaded?

A. One instance was, when I asked him to indorse these notes for me—I find there are two of them; at first he refused. Says he, "No, I won't do it." Says I, "Daddy, it will give you no trouble, and if you don't sign them they may give me a good deal of trouble, and you too; and to save you trouble I am doing this thing, because I have got them to consent to take the notes in lieu of all the money." "Very well," says he, "I will endorse them." And he did so. I took occasion to look through my papers, and I found the notes that he endorsed which I paid at bank, which I hand to my counsel. [Witness hands notes to counsel.]

Q. What was the reason you say you gave him to induce him to sign these notes?

A. I represented the circumstances that they wanted the money, and that they was about entering legal proceedings against me, and I wanted to save expense.

Q. What year was this in?

A. In 1870.

Q. Did you consider the reason you gave him to induce him to sign or indorse those notes a good reason?

A. Yes; I told him it would save him and me both trouble.

Q. Then, why do you think he was easily turned over if you gave him a good reason to sign those notes?

A. I had to repeat it to him two or three times over before he understood it.

Q. Did you think it was good policy on his part to endorse those notes?

A. I did, to save himself trouble.

Q. Please give us another circumstance where you knew him to be easily turned over?

A. I can't think of any myself, but I know of other parties that have influenced him.

Q. You have said that he was sometimes "a little soft," that he was "easily turned over." Now, from your knowledge of his transactions and disposition from 1868 until the time of his death, was there any other instance which induced you to believe he was easily turned over? 10

A. Yes; plenty of them; n regard to this woman, the way she managed him.

Q. What matter of her management induced you to form that opinion?

A. She used to go with him to New York, and she was with him when he negotiated these bonds.

Q. How do you know that?

A. I got it from the parties that paid her the money. 20

Q. Does the fact that she was with him when these bonds were negotiated induce you to believe that?

A. Yes, sir; and another thing, she came home one day and told my uncle—

Interrupted by objection.

Q. You say you saw girls in the house several times?

A. Yes

Q During what year?

A. When he was lying dead there, and I saw them eighteen months ago at my last visit, and some eight or nine years before that—in 1868. 30

Q. How old were they then?

A. One of them was a little thing with great, big blue eyes.

Q Do you know what their names were?

A. No; I understood they were her grandchildren.

Q. Your father, you say, gave your brother a house and lot on Sands street, Brooklyn?

A. Yes, sir.

Q. Did you ever see the deed of that house and lot? 40

A. I owned that house and lot, and gave it to my father

as part payment, and my father immediately put him in and gave him a deed for it—he told me so.

Q. Do you know whether your father did or did not give a deed and sell that property to some one else?

A. No, sir; he told me he gave it to Harvey, and gave him a deed in the office in 26th street.

Q. You say Harvey lived there until your father gave him the stable. How much was the stock in the stable worth?

10 A. About $11,000.

Q. How much was the property in Brooklyn worth?

A. $3,500.

Q. Did you ever see a deed of that property from your father to your brother?

A. No.

Q. Did you testify on your direct examination, "I saw him give a deed to my brother"—did you or did you not?

A. It seems to me I won't be positive about that; I gave the old gentleman a deed in the office, and it seems to run in my mind—but I won't be positive about it—he 20 handed the deed to Harvey, and told him to go and get a deed made out of it in his name; I think that is the way the transaction was made; I don't know but I made a deed out to Harvey; I forget about that.

Q. You testified on your direct examination, 'I saw him give a deed to Harvey."

A. He handed a paper to him of some kind; it was either the deed I gave him or else another one.

Q. Was Harvey present at the time you gave your father the deed?

A. No; I don't think he was.

Q. How long afterwards did you see him hand the 30 paper?

A. A day or two.

Q. How did you come to think that was the paper?

A. By looking at him hand it to him. He said, "Here is the deed."

Q. From your knowledge of Mrs. Turnure's disposition and her relation with your father, do you believe that she controlled him in any way in making this will?

A. I do.

Q. Do you believe she controlled him in her interest?

A. I do.

40 Q. Do you believe that her control of him was sufficient to induce him to destroy the will that he had made,

if he had made one, that he mentioned to you in Bergen County?

A. Yes, sir.

Q. You say she had a pretty good, snapping will. When did you ever see any exhibition of that will?

A. Very often; I saw her brush up when she made these replies for him.

Q. What replies did she make that induced you to believe so?

A. I can't say what the particular conversation was. 10

Q. Did she speak crossly to you?

A. Yes.

Q. What did she say when she spoke cross?

A. When he would repeat a thing she would say, "Well, don't you understand it?" and she would say it in such a way as if she wanted to make him see it.

Q. What else?

A. That is enough; that is, she would answer it herself.

Q. Do you remember of any answer that he gave to any question where she said that?

A. No; she would not give him a chance to answer. 20

Q. Do you remember of any question being asked when she made that remark?

A. No, I don't remember the exact question.

Q. If they had been any questions of importance that she interrupted by making that remark, wouldn't it be impressed upon your memory?

A. I don't know as it would.

Q. You said she was a kind of a "knife cutter." What do you mean by that?

A. She had such a disposition and temper.

Q. Can you give us an instance of any remark by her which impressed upon your mind that she was a kind of a "knife cutter"? 30

A. Yes; even when he laid dead there, and I asked her how long he had been sick, and why she didn't let me know. She said, "He didn't think you cared anything for him." She tried to impress that on his mind all the time.

Q. How do you know she did?

A. Because he told me once, "You don't care anything for me." Says I, "What makes you think so?" "Well," he says, "Ellen says you don't, and I don't think you do either."

Q. What year was that in? 40

A. Three or four years before he died.

Q. Did you speak to Ellen about it ?

A. No.

Q. Why ?

A. I didn't want to talk to her.

Q. You had talked to her about other matters ?

A. Not much.

Q. You talked to her every time you were at the house ? 10

A. No; I talked to him.

Q. She and your father were together afterwards in your presence—after he made that remark ?

A. Yes.

Q. Why didn't you speak to him about it ?

A. I thought it was no use; she was l y talking to him when I was there, all the time.

Q. This was before he sold the stable property, wasn't it ?

A. No; it was after he sold the stable property; he sold the stable property in 1872.

Q. Was it after he collected the mortgage on the stable ? 20

A. Before he collected the mortgage.

Q. Did he ever show you the will you say he mentioned in Bergen County ?

A. No.

Q. Did you ever ask him for it ?

A. No.

Q. You say the conversation you had with him about his money in Bergen County, was because you were in fear as to what he would do with reference to his estate. Is that so ?

A. Yes, of course. 30

Q. Why didn't you then go and get the will from him ?

A. I wouldn't ask a man for his will before he was dead.

Q. Why didn't you ?

A. Because I thought it would be a piece of impudence, and I would consider it so if anyone would ask me for my will before I was dead.

Q. Did you consider him competent at that time to dispose of his property by will ?

A. At that time ? Yes, sir.

Q. Did you consider him thoroughly competent ? 40

A. Near enough to make that will—more so than

when he made this other one in 1873.

Q. What was the difference between his competency at the time he spoke to you in Bergen County and in 1873?

A. He had failed physically.

Q. You paid him how many visits between the time he spoke to you in Bergen County and the time of the date of the will, February, 1873?

A. I guess four or five.

Q. During the first visit did you notice any incidents that induced you to believe him failing in 1868? 10

A. Yes; that was the time he was asking me about the horse so often.

Q. Did you notice anything in 1869?

A. The same thing; he had lost his memory; these questions he would ask me, and he would ask me again, and repeat them, and so on for several years.

Q. Did you know his money had been invested in real estate or personal property?

A. I knew it had been invested in bonds; he told me so. 20

Q. Did you inquire as to the condition of his estate between 1868 and 1873?

A. I asked him what he had done with his money; he said he had invested it in bonds.

Q. Did you ask him whether he had invested all of it or not?

A. No; I asked him what—says I, "What have you done with your money?" Says he, "I have invested it in United States Government bonds."

Q. Did he tell you he had invested all of it?"

A. No; there was no word "all" put in.

Q. Didn't he tell you he had invested $20,000 in Government bonds? 30

A. Yes; he had two payments of that—$20,000 and $7,500.

Q. Did he tell you he had invested $7,500 in bonds?

A. No; he said he had invested $20,000.

Q. Did you ask him what he had done with the other $7,500?

A. Yes; he told me had invested it in a safe deposit company.

Q. You testified yesterday that you did not ask him, and he did not tell you. Now, which is true?

A. This is true; he told me he got a check for the $7,000. Says I, "What have you done with that?" 40

Says he, "I put it in the safe together with the bonds."

Q. Did you ask him whether he had the check cashed?

A. No.

Q. Did you ask him whether he deposited the check or the money?

A. No.

Q. Did you attempt at any time prior to March, 1873, to direct him in his business affairs; and if so, what instance?

10 A. No, sir.

Q. Why didn't you?

A. He didn't ask me to.

Q. If he had asked you would you have done so?

A. Yes, I would have assisted him just as I always had done.

Q. Then you were willing to assist him?

A. Yes.

Q. And the reason you didn't assist him was because you thought he had no need of your assistance?

A. Yes, because I thought he had his money placed safe, and it didn't require any interference; he told me his money was in the safe deposit company.

20 Q. Do you know how many safe deposit companies there are in New York City?

A. Several.

Q Did he tell you whether it was in a safe deposit company in Jersey City or New York City?

A. New York.

Q. Do you know as to the liability of safe deposit companies?

A. No.

Q. Didn't you consider he was capable of selecting a deposit company in which to deposit his money?

30 A. I presume they are all safe enough; that is what I thought at the time.

Q. What did you form that presumption upon?

A. Because they don't circulate any notes, and it is merely a place to keep property in safety; the parties have their keys, and nobody has access to the boxes but themselves, except those that they give a power of attorney to

Q. During the eight years succeeding 1872, when the stables were sold, did you advise with him as to the manner of investment of his money, or the manner of

40 keeping it in security?

A. Once; I was there in 1876; on one visit he spoke

to me about their wanting to pay that $50,000 mortgage off; he said that Wilson had sold it, and they wanted to pay the mortgage off. Says I, "Daddy, don't let them pay it off until the time runs out, because it is very hard to invest it at that rate of interest." Says I, "You had better keep it there as long as you can;" and he did so.

Q. What year was that in?

A. 1876.

Q. Did you consider it good advice to give him?

A. Yes, sir. 10

Q. He followed it, didn't he?

A. Yes, sir.

Q. Did you ever advise him at any other time?

A. He didn't ask me.

Q. From your estimation of the condition of his mind, did you think there was any danger of his misinvesting his property?

A. I don't know, but I had some doubts, but not enough to interfere in the matter.

Re-direct examination, by Mr. Bedle: 20

Q. The $2,000 which you spoke of as having been received from your father as a loan, did you pay that back?

A. I did.

Q. Have you ever received from your father any of his estate?

A. No, sir.

Q. Has he ever made any advances to you of any portion or share of it? 30

A. No, sir; I paid him all he ever let me have.

Q. The counsel on the other side has asked you in regard to certain property that you have, lands and personal property. Have you got any property that you did not earn yourself?

A. No, sir; not a dollar's worth.

Q. Did you receive any part of your estate from your father?

A. No, sir.

Q. You spoke of some property that you would not take $500,000 for. To what did you refer?

A. I referred to my children. 40

Q. Did you ever make any offer of a home to your father?

A. I did, in Englewood, in the Fall of 1866; I then owned a house, which I had built on the hill, and he came up with my Uncle Abram, and I says to him—we went around to look at the property—says I, "Daddy, come and live with me"—I didn't know that he was married at that time—"Come and live with me, and I will not sell this house; I will keep it, and you can have just what part you want, and do just as you please, and make yourself as comfortable as you can;" and he says, 'Well, no, I guess not."

10 Q. You stated, in answer to a question of Mr. McDermott, that you had frequently heard of Ellen Turnure before the time your father spoke of having married her, and when he mentioned her as Nellie—what had you heard before that time of her?

Question objected to as irrelevant.

A. I heard he had been to Saratoga with her the season before my mother died, and passed herself off as

20 his wife.

Q. You also said, in answer to a question, that you heard certain pilots speak of her as Nellie Weaver—what did you hear them say about her as Nellie Weaver?

Objected to.

A. They said she kept a house of a signation in Walker street, New York.

Q. How old is your son Milton?

A. 29 last June.

30 Q. Have you any letters from your father now, to your knowledge?

A. I don't think I have; I have got plenty of his writing in the old books.

Q. The $2,000 of which you have spoken as having been borrowed of your father, when was that paid off?

A. That was paid off in November, 1867.

Q. What were your father's habits of life previous to the death of your step-mother, Eliza—economical?

A. They lived very plain; spent no more money than was actually necessary; dressed very plain—about the same as I live now; they got things that was necessary,

40 but nothing extra.

Q. You have spoken of the capability of your father

to invest his money. State your judgment of the susceptibility of his mind to outside influences?

A. So far as money went he would take care of it pretty well from outside interference.

Q. Did you regard that in any way as inconsistent with any influence that Ellen Turnure might have over him?

A. Yes.

Q. State what you mean.

A. I think she had more influence over him than anybody else, and that she could influence him. 10

Q. If left alone, is it your judgment that he might safely invest his money in Government bonds or other securities?

A. Yes.

Q. Now, in your opinion, what would be the effect, notwithstanding that, on his mind, of persuasion or influence on the part of Ellen Turnure.

A. The effect would be to let her have control of things—being dictated to by her.

Q. Did he ever call to see you except the times you have stated? 20

A. No, sir.

Q. Do you personally attend to the management of your own property?

A. Yes.

Q. You stated something about a mortgage of $10,000 on that stock of the stables; I didn't understand you exactly; now explain that?

A. That has been brought to my memory since this cross examination. After my brother Harvey went there, after my father had given him the stable and the stock in it, he got the old gentleman to give him a lease for ten years, and to give him a mortgage on it for $10,000; that covered the amount of what he considered the stock was worth. 30

Q. To give who a mortgage on it?

A. The old gentleman gave James H. the mortgage; that was to keep him in possession of this stock that was considered valued at $10,000.

Q. Then what became of that mortgage?

A. When he sold it he made Harvey cancel the mortgage and the lease both; he said he didn't deserve it, and he made him cancel it, and it is cancelled on record.

Mr. McDermott objects to this testimony. 40

Mr. Bedle: We do not insist on that.

Q. The card to which you refer that you gave your father, state whether it was an altered card or not?

A. Altered just like this one: *Closter* was written over the word *Englewood;* this was after I had moved from Englewood to Closter.

Q. You have spoken of a hotel at Kingsbridge. Did your brother James Harvey open a hotel at Kingsbridge?

10 A. Yes, Gilden's old place—after 1872, and after he left the place; I don't know exactly how long afterwards, but a short time.

Q. Did your father say to you at any time, in regard to this stock at the stable, which you say Harvey got the benefit of, with regard to its being on his share or portion of your father's estate?

A. No; he didn't mention anything of that kind; he said he let Harvey have it, and I of course considered it that he had let him have that in advance as part of his portion—

20 Interrupted by objection.

—of his estate; that is the way I looked at it at the time, and I supposed he understood it so too, and for that reason I didn't make any objections.

Q. What was the amount of those notes which your father endorsed for you?

A. I think $269 cash.

Q. Why did you state to him that it would save him trouble as well as yourself for him to endorse those notes?

30 A. Because he had given security to the parties that owned the property, and they of course would fall back on his security; he gave his brother Abram as security, I think.

Q. When was it that your father said to you that "Ellen says you don't care anything for me"?

A. That was the last visit I made him in 1878.

Q. Counsel has made some remark which seemed to imply that you said that was four years ago. Was that correct or not?

A. No; he said it then, too; he said it both times, and

40 I told him it was no such thing; he knew better than that; I says to him, "Daddy, you know better than that"

Q. Now, just give the conversation in 1879 that you had with your father on that subject ?

A. I asked him why he didn't come to see me ; he says, " Well, you don't care anything for me." Says I, "I don't, heh; what is the reason I don't"? Says I, "You know better than that. "That is about all that was said.

Q. Did he say anything about Ellen saying you didn't care anything for him ?

A. He said E len said so, too ; she sat there and didn't deny it either. 10

Q. Now, go on and give the conversation with him four years ago on that same subject, just as it took place ?

A. It was about the same.

Q. Repeat it as you remember it ?

A. At that time I asked him to come and see me, and says he, "You don't care anything for me." Says I, " You know better than that ; I have never done anything to make you think any other ways."

Q. Go on and give the whole of the conversation ?

A. There wasn't much ; we didn't have much to say on that subject. 20

Q. Did he say anything then about Ellen, what she said ?

A. Not at that time.

Q. When was it he said, "Ellen says you don't care anything for me" ?

A. That is the last visit—in 1879.

Q. Had you any knowledge of this alleged will of 1873 until after your father died ?

A. No, sir ; I supposed all along that he had left his original will ; I knew nothing about it until father's death, whem I asked her about his affairs. 30

Re-cross-examination.

Q. You sated, in your direct examination, that when you asked your father to come and live with you in Bergen County, he says, "I don't care about living here"—you now say that he said, " I guess not." Which did he say ?

A. He said both—" I guess not; I don't care about living here." That had reference to the location—not to me personally, but to the location. 40

Q. You say that outside of matters of money, you be-

lieve that Mrs. Turnure had some influence over him—outside of monetary matters?

Question objected to as incorrect. Question withdrawn.

Q. Outside of monetary matters and matters affecting the monetary affairs of Mr. Turnure and his family, will you give an instance of anything that induced you to believe she had any influence over his mind?

A. Yes, sir; on one occasion I asked him to come and see me, and she spoke up and says, "Oh, he can't come; he is not able to come;" that was the very season she had him off to Saratoga.

Q. When you met your father at Englewood, he said to you, "I have made a will, and divided the estate into four shares"?

A. Four parts.

Q. Did you understand that he had divided into four equal parts?

A. And taken out what they had had—"four equitable parts," he said.

Q What who had had?

A Harvey and this woman.

Q. Did you understand that one-quarter of his property was to go to Ellen Turnure?

A. Except what he had given to her.

Q. You understood that?

A. Yes, sir.

Q. Did you ever have a conversation with him about Ellen Turnure?

A. No, sir; it was a delicate matter; I didn't want to have much to say about it; he knowed that I knew what sort of a woman she was by reputation.

Q. How do you know he knew?

A. By the way he spoke; he didn't let me know he was married—he failed to tell me; he ought to let his son know when he was married, and a year elapsed before he let me know it; I being the oldest child he had I had the best right to know it.

Q. You say that he said, "Ellen says you don't care anything about me." Who was present when he said that?

A. Ellen.

Q. Did she say anything?

A. No, sir.

Q. Did you say anything?

A. I says, "You know better than that."

Q. What did he say?

A. Nothing; that is all the conversation.

Q. The first time that he told you that you didn't care anything about him he didn't mention Ellen's name, did he?

A. No, not the first time.

Q. What was his remark at that time?

A. Says he, "You don't care anything about me." 10

Q. And the second time?

A. "Ellen says you don't care anything about me."

Q. Was Ellen mentioned at the first interview on which he said, "You don't care anything about me"?

A. No. I don't think her name was mentioned, but she was there.

Q. She was there both times?

A. She was there both times.

Q. You say that Mrs. Turnure could influence your father. How far, in your opinion, as to the making of a will and disposing of his property did that influence go 20 —was it absolute?

A. I think so; I think that she dictated to him, not absolute, but I think that it was sufficient influence to cut us off the way he has, if she kept at him all the time, selling him, "Well, they have got enough."
is it?" And says he, "It is the 14th, 1876;" but it was

Q. Do you know whether, as a matter of law and fact, if Mr. Turnure had not made this will at all, her share would have been greater or larger than will be under this will?

Question objected to. 30

A. No, sir; I think it would not have been so large; the amount of money has not been turned in, not half. I know what the law allows her; it allows her one-third of the personal property—that is, if they turn in all the money. We have not got all the money—that is what we are after; we have not got half of it—that is what we are fighting this thing for, and we will fight it to the bitter end.

Adjourned to to-morrow at two o'clock at the same 40 place.

DECEMBER, 8, 1880.

Pursuant to adjournment, all the parties appearing, the taking of evidence was resumed.

JOHN TURNURE, a witness produced on behalf of the caveators, being sworn, testified as follows:

10 *Direct examination by Mr. Bedle:*

Q. Where do you live?

A. I live in 18th street, near Broadway. I think it is No. 33.

Q. How old are you?

A. I was 91 on the 1st day of last March.

Q Are you a brother of William P. Turnure, deceased.

A. Yes, sir.

Q. How old was your brother when he died?

20 A. I dont't know exactly when he did die, but he was born on the 5th of January, 1797.

Q. Were you at his house when he lived in Jersey City?

A. A good many times.

Q. When were you last there?

A. I can't answer exactly; I don't know when he did die. His woman that he lived with wouldn't allow him to be seen, consequently I didn't see him very often, in fact I didn't go near the house when she forbid me.

Q. What did she say when she forbade you?

A. I went there to see him, and him and her was both 30 out, and I sat down and read the newspaper; and by-and-by she came in, and says she, "How did you get here?" Says I, "The young woman let me in"—whether it was her daughter or not I don't know. I had been in the habit of coming there weekly, sometimes once a fortnight before that, and she was very friendly to me always; and when she came in this time she said, "How did you get here," and I told her the girl let me in, and she seemed very crabbed and cross, and said that her husband would probably not see me. She said, "We have been to New York together;" and I had managed to get some 40 little money at times, but she says, "You will never get any more, because I shall have all the control of it,

and I have now got the control of the whole of his property, and I will take care that you get no more of it." She was very crabbed and short; I can't recollect her words; this must have been two years ago or more; I can't tell, for I have nothing to refer to; it is about two years ago, I think; it was the latter part of his time that she refused to let me see him; she was always very friendly when I went there before that.

Q. Who did she say had been to New York together?

A. Her husband and herself. I waited for some time to see if he would come in, and at last she says, after talking a good deal, "It will be no use for you to wait any longer, you won't see him, because he won't probably be here;" so I got under way and came away.

Q. Did you see her after that?

A. Oh, yes.

Q. Whereabouts?

A. At her door; I rung the door and she slammed the door in my face. They had a chain to the bolt on the door just to let it open so far, and nobody could get in. When she slammed the door in my face she says, "He don't want to see you any more." I didn't mind what she said about that, but I continued going there, and she says, "I told you that you can't see him no more, he don't want to see you." I never saw him after that.

Q. Did you meet him in the street any time after she had told you that she had control of all his property. Did you see him after that?

A. I don't recollect whether I did or not, but I did see him after that at the barber shop where he used to go and get shaved.

Q. What took place then, and what was said between you and him?

A. I can't say anything particular between him and me.

Q. Did he say anything to you about her in the barber shop?

A. No.

Q. Did you have any conversation with him at any time about her?

A. I can't say that I recollect distinctly.

Q. Do you recollect of meeting him in the street after she told you you need not come there any more?

A. No; I can't say that I did, because she forbid me the house; she would not open the door only the length of the chain.

Q. Had your brother William been in the habit of giving you anything?

A. Yes; a dollar at a time—generally a dollar; it may have been a little more, but if I say a dollar, I think that will be about right.

Q. Are you a poor man?

A. Yes; I have not a dollar in the world.

Q. What was your business in early life?

A. A pilot; I brought him up as a pilot—an apprentice, and I got him made a pilot—through me; he served his time with me. 10

Q. How many years ago did you quit piloting?

A. I quit, and went to Savannah as pilot of a steamer out and in, and staid by her always for several years.

Q. Before she forbid you the house, did you used to see him there with her in Jersey City?

A. Yes; friendly—all friendly.

Q. What influence or control did she seem to have over him?

A. She never spoke about her business, but he would take out a little money—a dollar generally, about a dollar—and she never said a word; it was done in her presence. 20

Q. Did you know her before she married your brother?

A. No; I never see her to my knowledge, but I knew of her living with him; I knew that from other people—from a foreman of his stables at that time.

Interrupted by objection.

Q. You didn't know her before her marriage to your brother?

A. No; but I knew her by reputation. 30

Q. What was her name by reputation before she married him?

A. As a loose woman—a common woman; she kept a bed-house in Walker street, next door to a man by the name of—I can't think of his name—Walker street, New York City.

Q. I show you a paper marked "Exhibit C. 9" for identification. [Handing witness a paper.]

A. She passed by the name of Nellie Weaver.

Q. How long have you lived in the City of New York? 40

A. I was born in Rockland County, and moved down

here when I was a boy, and I have lived in New York ever since.

Q. What neighborhoods?

A. I lived in the Swamp; I lived in Gold street, got married in Gold street—moved there from Oliver street, from that to Lexington avenue. This paper you have shown me is a paper of my mine; I have had that paper since it was published; I was in the habit of preserving such things, and when Clark was tried I saved that ever since; it is the trial—adultery—I can't read good— Clark was tried for adultery on Staten Island. 10

Q. When was this paper obtained by you—at the time of the Clark trial?

A. No; after that; I don't recollect where I got it from, but I kept it; I was in the habit of keeping such papers.

Q. When was the Clark trial?

A. I don't recollect the year; that paper will tell; I knew Clark personally; he was a notary public—

Objected to as irrelevant. 20

—and that paper tells all about where he lived and who he was.

Q. Did you get that paper about the time of the Clark trial?

A. Immediately afterwards and I have had it since.

Q. Were papers of that kind in circulation at that time?

A. Yes, at the time of the trial that kind of a paper was in circulation.

Q. What was Clark's name? 30

A. William G. Clark, I think; he was tried before Judge Kent on Staten Island.

Q. Do you recollect any conversation with your brother William in the barber shop about his wife before?

A. No; we never talked about her in the barber shop —always in the public street.

Q. What conversation did you have in the public street?

A. I met him in the street one day, and he went over into a store to get change so as to give me a dollar.

Q. What did he say then about his wife, if anything?

A. Nothing. 40

Q. Did you ever have any conversation with him anywhere about his wife?

A. Not that I recollect of, but he asked me once whether I knew that they were married. "Well," says I, "report says you are married—it is reported that you and her is married." He didn't make no reply to that as I recollect; I asked him, it was reported that he had sold his stables for $100,000; he told me himself that he had sold it for $87,000—$50,000 on bond and mortgage, and the balance in cash.

Q. How much did he say he had sold the stable for?

10 A. $87,000 he told me, and $50,000 was left on bond and mortgage and the balance cash.

Cross-examined by Mr. McDermott:

Q. Are you sure he said $87,000?

A. Yes; I feel confident that he said $87,000.

Q. How is your mind as to other things that took place—is it any clearer about those than it is about the sale being $87,000?

A. No.

20 Q. When you saw him in the barber shop, was that after the door had been slammed in your face by Mrs. Turnure?

A. I never met him after that in the barber shop.

Q. You never saw him after that, did you?

A. Yes, I met him in the street and told him that she slammed the door in my face.

Q. What did he say?

A. "Well," he says, "you come there, and I will let you in;" he always said, "I will let you in;" but I went there several times and inquired for him, and he was always denied; he was never showed, and always denied

30 himself; he denied being there.

Q. That is, she told you he was not in?

A. Told me he was not there at home—"hain't home."

Q. Where do you live?

A. 18th street.

Q. Do you keep house or board?

A. My wife is living, and she has two daughters.

Q. What is your income derived from—who pays the expenses of your housekeeping?

A. My daughters; they keep house; they hire the house, and I live with them.

40 Q. Your living costs you nothing?

A. No.

Q. How long have you lived with them that way?

A. Always; in the first place I moved to Harlem, and one of the daughters—the oldest, and my wife's sister—proposed that they would go back to New York and keep a boarding-house, and it was agreed to, and they hired a house in 31st street, between 5th avenue, together.

Q. You say that Ellen kept a bed-house in Walker street; do you know what number?

A. No.

Q. How do you know she is the one that was called Nellie Weaver? 10

A. By evidence of that newspaper; it was reported by people speaking of her.

Q. Who said she was called Nellie Weaver?

A. McBride; he lived next to them.

Q. When did you talk to him?

A. I never talked to him.

Q. Who told you that Ellen Turnure—who now claims to have been your brother's wife—was Nellie Weaver?

A. I don't know that anybody did; I know it from common report.

Q. Who did you ever hear speak of it? 20

A. I can't tell you—everybody that knew the parties.

Q. Will you name one person who ever told you that Ellen Turnure, who married your brother, was Nellie Weaver?

A. I don't recollect of any person telling me so.

Q. How long did you wait for him that day at the house, after he came from New York with Ellen?

A. I can't tell the time, but probably two hours.

Q. Give the exact words she used there that day to you, and about your getting any more money?

A. She told me that I would get no more from there, 30 for she had control over the whole of it now.

Q. What year was that?

A. I don't know.

Q. Was it ten years ago?

A. I can't tell.

Q. Was it five years ago?

A. It was certainly five years ago and upwards.

Q. Were they living in Jersey City?

A. Yes.

Q. Did you ever tell your brother about that conversation, about what she said about having control of his money? 40

A. Yes, I told him so.

Q. Did he give you any money after that ?

A. Yes.

Q. Where ?

A. In the street.

Q. Did he give you any in the house after that conversation ?

A. No, I never was admitted in the house afterwards.

Q. What did they tell you when you went to the
10 house ?

A. "He ain't home."

Q. How many times did you go after that ?

A. Two or three times, because I knew it was no use for me to go.

Q. Did anybody else come to the door except Ellen and tell you he was not home ?

A. Yes, an oldish woman, but who I don't know; she told me he was not home

Q. Did anybody else tell you ?

A. Not that I know of.

Q. Who came to the door the first time, and you were
20 told he was not home ?

A. I think his reputed wife, Ellen.

Q. Who came the second time ?

A. She always tended the door.

Q. When did the other woman tell you he was not home ?

A. I don't know.

Q. How many times did the strange woman tell you ?

A. The woman that told me he was not home came out of the area way, and said, "He is not home," without being asked for.

Q. How old a woman was she, should you judge ?

30 A. I should judge between 60 and 70.

Q. What kind of a bill did your brother change when he gave you a dollar ?

A. I don't know ; he went across the way into a store where he was acquainted, and they changed a bill for him, and he got a dollar out of it. He left me standing on the sidewalk while he went across the street, and I waited for him and he crossed back to me He told me he was going over to get some change, and that is the reason I waited for him.

Q. How long was that before he died ?

40 A. I don't know.

Q. How long before he died did you see him ?

A. A long time. After she told me he was not home I never saw him.

Q. You saw him on the street afterwards, didn't you?

A. Yes, for a short time.

Q. Did you see him four years before his death ?

A. No, I don't think I did.

Q. Did you call at the house during the four years before he died ?

A. I have no recollection of that.

Q. Did you call during the two years before he died ? 10

A. I can't say I did.

Q. When did you get this paper ?

A. At the time it was published.

Q. Was that 20, 30, or 40 years ago ?

A. I don't know.

Q When did you last have that paper before to-day —where has it been kept ?

A. I kept it amongst my private papers in a desk.

Q. Have you had it out of the desk within 10 years before to-day ?

A. I presume I have ; I can't recollect. 20

Q. Why did you keep that paper ?

A. I kept it as a keepsake.

Q. Of what ?

A. Of events.

Q. Did you know any of the parties at that time except William G. Clark ?

A. I can't say I did ; Clark lived next door to me once for a short time.

Q. Who did you buy that paper of ?

A. I didn't buy it of nobody as I know of.

Q. Was it given to you ?

A. I don't know. 30

Q. Don't you know how you got it ?

A. No.

Q Do you recollect what the name of the paper was ?

A. No ; there it is on to it.

Q There is a scrap attached to it. Who pasted that scrap on to it—was this scrap cut out of the same paper as the other ?

A. I think not.

Q. Do you know where this paper was published ?

A. No.

Q. Was this a paper printed every day or once a week ?

A. I don't know. 40

Q. Do you know whether that scrap was in the New York Herald ?

A. No.

Re-Direct examination by Mr. Bedle:

Q. Did you give this paper to John L. Turnure?

A. No; I gave it to a person that lent it to him; that was within the last six months.

Q. Did you have it from the time you first got it up to that time?

10 A. Yes.

Q. Just as it is now?

A Yes.

Q. With the scrap there just as it is now?

A. I think so.

Q. Are you a little deaf?

A. Yes.

Q. Did I understand you to state, in your direct examination, that the time that Ellen Turnure said that she had control of his property was about two years ago; and I also understood you to say, in answer to Mr McDermott, that it was perhaps over five years ago—which

20 is correct about it?

A. Well, I can't tell; I can't recollect the times.

Q. Your memory is bad as to dates?

A. Yes; dates, unless there is something to show it.

Q. It was while they lived in Jersey City that you had the conversation with her about her having control of his property?

A. Yes; it was at his house.

Q. Did you ever hear William P. Turnure say who had married this last time—what her name was?

A. No, he didn't mention no name; but he said he

30 had married her.

Q. Did he say who?

A. I don't recollect that he said who. This paper was loaned to John L. Turnure, so that if there is anything into it to refer to the case, that he could take advantage of it, and I think there was another newspaper with it.

JULIA HARD, a witness produced on behalf of the caveators, being sworn, testifies as follows:

40

I live at Tremont, New York; I am a daughter of

William P. Turnure, deceased; I am fifty-four years and two months old; my husband is dead; his name was Melvin Hard; he died January 7, 1880; I have four children—Julia E., 32, Melvin T., 30, Frank W., 34, William A., 21; neither of them are married, they live with me; my two oldest sons are in a paper warehouse.

Q. Have you any estate?

A. I have got some real estate, but it is mortgaged up pretty well, I don't think it would hardly bring the mortgage if sold under the hammer. 10

Q. Have you any property outside of this real estate?

A. No.

Q. Were you at the funeral of your father in Jersey City?

A. I was; I got no word of the funeral from the family until I happened to see it in the newspaper the night before he was buried. My relations with my father were always pleasant enough; I never had any disagreement with him; I remember my step-mother Eliza; I was married in 1846. I don't recollect when my father married my step-mother Eliza, but I guess it was in 1835, I think. I cannot remember the dates. 20

Q. Did you ever hear your father say what was the amount of your step-mother Eliza's estate?

A. I heard that the house belonging to her sold for $12,750.

Q. Did you ever hear your father say what his wife Eliza's estate amounted to?

A. No, I don't know as I did, except he told me what the house was sold for.

Q. When did he tell you that?

A. Soon after he sold it.

Q. Did you ever receive any part of your step-mother's estate? 30

A. No.

Q. From no one?

A. From no one.

Q. When did you first hear of your father's alleged marriage to Ellen?

A. I think it was in the spring of 1867 he told me. I met him in the livery stable corner of Fourth avenue and 25th street.

Q. Give us the conversation then with your father?

A. He said, "Jule, I have been getting married." "What," I says, "you must be crazy, at your time of life." He said, "Yes, but it was all right;" "he had 40

made a will and divided his property into four equal parts," and he asked me if I was satisfied with it. I told him yes. He then said that he held that property in trust for his children that belonged to my brother William; he had always said that before; he said that before he married this woman. In 1861 my brother William died, and then my father took possession of the stable, and he was there for four years. Somewhere about the end of the fourth year I happened in there, 10 and he said that that business was too much for him, he was not feeling very well, and that he was going to give it up and let my brother Harvey take it and make a stake. He "meant to give him an opportunity to make a little something, as he is the poorest one of my children, and I will let him have it for a term of years, and when he has made a nice little sum out of it then I will let you take it for the same, and you can have the use and income out of it for the same as he is going to have it" He said he was going to let him have it for a nominal rent of six hundred dollars to pay some incidental expenses; I think he said it was some insurance. He was 20 complaining of his back, and I asked him why he didn't get a physician. "Oh," he says, "the doctors was all humbugs, that he was taking buchu, and that was better than the doctor."

Q. At the time he told you he had married this woman, did he say who she was?

A. I think I asked him who she was, and he said her name was Vanderbilt, "but," says he, "your uncle Abe and your uncle John knows her—knows all about her." A short time after that I met my uncle Abram on Broadway and I said to him—

30

Interrupted by Mr. McDermott.

—I said do you know this woman Vanderbilt that my father has married. "Vanderbilt be damned," he says; "her name was Nellie Weaver." Says he, "I didn't think Bill"—that was my father—"would be such an old fool as to marry that woman. Look out for her, she will wind him round her finger before you know it."

Q. Is your uncle Abram dead?

A. He died two or three years ago.

40 Q. After the time your father told you he was married, do you recollect his calling on you with Ellen Turnure?

A. Yes; it was in Tremont.

Q. What conversation then occurred between you and him and Ellen, if any?

A. I don't know as I can recollect what was said. I recollect about the ring. "I told him," says I, "I'm afraid she will never get it if you do not give it to her now." It was a ring that he had given to my daughter; it was a diamond ring that he had worn. When he first bought it, when he was in the stable, he said that should be hers. I says, "I am afraid that she will never get it if you don't give it to her now;" and before he could say anything she said, "Oh, don't think I am so mean; I would not be guilty of such a thing as keeping it from her." 10

Q. Before he told you he was married, what had he said to you about that diamond ring?

A. He said that should be Elvira's; that was my daughter.

Q. Do you know what became of that ring?

A. He had it on his finger the last time I was there; that was in July or August, 1878. 20

Q. Do you know what that ring cost?

A. He told me what it cost, but I've forgotten what he said; I was under the impression it was $400, but my brother said seven; but I think it was four.

Q. Did they ever come to your house together after that time?

A. Only that once.

Q. Did he ever come to your house after that?

A. I think he came there once with my uncle Abram.

Q. Do you recollect any conversation then with him?

A. Nothing of any account.

Q. Did you come over to Jersey City to see him? 30

A. I come over there once to take tea with him.

Q. When was that, as near as you can fix it?

A. It must have been in '67 or '68; then I come over once again, and took lunch with him—that was about six months after; I don't know whether it was '67 or '68; it was not later than that.

Q. When you came to Jersey City and saw him, where was it you saw him?

A. In Second street; they called it South 7th street then.

Q. Is that where he died?

A. Yes, sir. 40

Q. What occurred while you were at the house taking

tea at that time, in '67 or '68 ?

A. I don't remember particular ; nothing of importance.

Q. Did you see Ellen then ?

A. Yes.

Q. How often were you at his house in Jersey City, after the time you took tea there ?

A. I don't know as I can count the times ; I was there several times.

10 Q. About how many times do you think you were at your father's house in Jersey City, after the time you took tea there in 1867 or '8 ?

A. Probably half a dozen.

Q. Did you see Ellen Turnure there every time you were there ?

A. I went there once and rung the bell and couldn't get in. There didn't seem to be anybody there. I went there again, and a little girl came to the door and said he was out.

Q. Did that occur more than once ?

A. Only once.

20 Q. At the time you saw your father at his house in Jersey City, did you see Ellen Turnure ?

A. Always ; always in front of him.

Q. Where would you see them—up stairs or downstairs ?

A. Upstairs on the second floor.

Q. Did you take tea there more than once ?

A. No, sir.

Q. Did you invite him to come and see you ?

A. Yes, sir.

Q. How often ?

A. Every time I saw him.

30 Q. Did you meet him in the street while he lived in Jersey City ?

A. Yes ; once or twice.

Q. Whereabouts ?

A. In Grove street and Erie street.

Q. At these times when you visited him in Jersey City at his house, how long would you stay usually ?

A. Two or three hours, and sometimes longer.

Q. And have conversations with him ?

A. He didn't converse much.

Q. Did you have conversation with her ?

40 A. Not very much. When I spoke to him she would answer whatever it was, and he would say yes and no,

and that would be the end of it.

Q. Did your father at any time promise to give you any share of the stables when sold ?

A. Yes ; but he promised me that I should have the use and income of it after Harvey was done with it. He said when he sold it he would give to each a portion of it.

Q. When did he say that ?

A. He said that when he first took it—after my brother died—when he first went there before he married this woman. 10

Q. Did you hear him afterwards say anything as to what he had given James Harvey ?

A. I don't know as I heard him. I heard his wife say he had given him the house in Brooklyn and a couple of shares in a pilot boat.

Interrupted by objection.

Q. Which wife ? 20

A. Eliza.

Q. Do you recollect of meeting your father in the street in Jersey City and having a conversation with him at one time about what he had given to Harvey ?

A. Yes; I said to him that I would be satisfied if he would give me half as much as he had given Harvey.

Q. When was this, as near as you can fix it ?

A. I can't remember when it was.

Q Do you recollect of meeting him in Jersey City at one time when he signed a paper ?

A. Oh, yes, that was in '77; it was in August.

Q. Whereabouts did you meet him ? 30

A. In Erie street. I went first to the house, and she said he was out. Then I went down the street and met him in Erie street, and I talked with him in the street.

Q. What time aday was it ?

A. In the morning about 11 or a little after, perhaps half-past 11.

Q. Was anybody with you ?

A. No.

Q. Now give the conversation that took place between you and your father at that time—slowly ? 40

A. I met him in the street and he seemed to be very

glad to see me, shook hands and kissed me, and asked about all my children. I told him I was in great distress, my husband had lost all his money, and I wanted assistance. I told him how he had lost his money. He said he was sorry for me and that he would help me, but Ellen wouldn't let him, that she had control of everything he had. "Well" I said, "you ought to think more of my mother than repudiate her children," and when I spoke of her he cried. Said I, "You loved her;" and he said he was sorry he hadn't done right.

Q. Did you say anything to him about what he had given to Harvey then?

A. Except that I told him that I would have been satisfied if he would give me half of what he had given him. I said, "If you are sorry for me you can give me a due-bill, that I am entitled to, that you promised me out of my brother's property; you said I could have the use and income of that, and you told me it was worth six to eight thousand dollars a year, and he had it seven years, and I will be satisfied if you will give me a due-bill for $25,000." "Oh" he said, "his hand trembled so he could not write it." Said he "You write it." So I tore the paper off of the parcel I had, and wrote it on a stoop, and when I had written it I said to him, "What day of the month is it?" And says he, "It is the 14th, 1876;" but it was not—I did not notice it; I wrote it just as he said.

Q. 14th of what?

A. 14th of August, '76; and I wrote it down just as he said, and he signed his name to it. I didn't notice the date was wrong.

Q. What was said between you and him at the time as to how much Harvey had?

A. Nothing, except that he had had the use and income of that. He said "yes." When I said he had it so many years, and you said it was worth so much a year, he said "yes." But whether he made that much out of it or not I don't know.

Q. What stoop was this that you speak of?

A. A stoop of a house in Erie street.

Q. [Showing witness "Exhibit C. 10."] Is that the paper that you then wrote, and was signed by your father, that you have spoken of?

A. That is it. It was in Erie street, not in Grove street, but I did not know the names of the streets. That was a piece of paper that I tore off of a bundle that I had in my hands. He said, "You write it, and I will

sign it." I said to him that he must have had as much as that $25,000, and he said yes.

Q. That who must have had ?

A. Harvey. Said I, "He must have had as much as $25,000.

Q. At the bottom of that paper there is a memoranda below the signature. Who wrote that ?

A. I did.

Q. [By Mr. McDermott.] Has this paper been in your possession ever since that time ? 10

A. Yes, sir.

The paper is offered in evidence.

Q. Did you see your father write the signature, "William P. Turnure ?"

A. Yes, but the date is not right upon it. I saw him write his signature, of course, but he told me that date, and I put it down.

Q. What did you do with the paper after your father signed it ? 20

A. Put it in my pocket.

Q. Have you kept it ever since until you gave it to your counsel ?

A. Yes, sir. My idea in getting that was, if the will was right, and I was going to get my portion, I would not bring it out ; but, if it was not right, I thought I would try to collect it.

Q. Who wrote this : "This was written on a bundle"?

A. That is mine.

Q. Is that your signature—Julia Hard ?

A. Yes, it is.

Q. Everything on that paper is your handwriting except the signature of William P. Turnure ? 30

A. Yes, sir.

Q. After he signed that paper, what then took place ?

A. I went home with him to his house.

Q Did you go in ?

A. I went in, into the second story ; he sat down in front of the table, and she said, "Take that tobacco right out of your mouth ;" and he took it out and laid it on the table.

Q. Did he have tobacco in his mouth ?

A. Yes , he had been round to the cigar store when I met him, that he had been in the habit of going to. 40

Q. What else occurred there then ?

A. He put his hand up to his head, and said his head felt dizzy, and she got the bottle and put this stuff on; I said my head ached, too, and I would put some on mine ; she said it was good for headache and good for neuraligy ; I put some on my head, and she gave me a recipe for it, and I have got it here ; I wrote it down just as she told me ; I got a bottle of it for neuraligy on my head; and it seemed to me as if it stupified me ; it made me stupid ; I don't know whether it was imagination or not.

Witness produces a paper that is marked "Exhibit C. 11."

Q. Is that the paper on which you wrote, and as you wrote the receipt as she gave it to you ?

A. Yes.

Exhibits "C. 10" and "C. 11" are offered in evidence.

Q. When did you write on "Exhibit C. 10," on the bottom, the words, "This was written on a bundle, &c" ?

A. I wrote that after my father's death ; my brother asked me where I got it, and I asked him the name of the street, and he said it was Grove street, and I put it down ; I said it was a street leading down from my father's.

Q. That was not written until after your father's death ?

A. No.

Mr. McDermott objects to "Exhibit C. 10" as irrelevant. Also, "C. 11."

Q. At other times when you were there, before this, did your father complain in any way ; and if so, of what ?

A. Yes ; he complained of his head and complained of his kidneys ; he said he hadn't been well then, at that time.

Q. For how long had your father complained of his kidneys, to your knowledge ?

A. Ever since I can remember—ever since I was a little girl ; he always complained of his back and kidneys, always taking quack medicine for it.

Q. Afterwards, in or about the year 1877, did you see your father again ?

A. You asked me what took place at the house. I didn't finish that—I took dinner with him that day.

Q. That is the conversation at the house the day he signed the due-bill ?

A. She put the stuff on his head, and then we went and took our dinner, then we came upstairs and he asked me about different people—old people—whether they was alive, &c., and their families. 10

Q. What conversation did you have with her, if any, then about him ?

A. Nothing particular said about him as I know of.

Q. Do you recollect anything else that occurred there at the time you took dinner ?

A. Let me look at my memorandum a minute, I have forgotten—

20

Witness looks at memoranda, and Mr. McDermott objects to witness referring to memoranda.

Well, we'll leave that for the present. After that do you recollect calling at the house again ?

A. Yes, I went there in the Summer of 1878—it must have been in July or August ; I saw them both upstairs ; I told him I had come over to ask him to give me some relief, that I was in distress and I wanted him to let me have some money, that my husband was in great distress. And he said, "You would want some thousands to help you out." And she right away spoke up before he could. She said, "No, you won't get anything until he is dead, and then you will get the same as the rest." Then I asked her if he had made a will, and she said, "Oh, yes, years ago." I thought of course it was the one he told me about when he had divided it into four, and I didn't say anything more. 30

Q. Do you recollect of being there at one time when she said anything about safe keys ?

A Oh, yes ; now I think of it, that was in 1877 ; that I could not recollect. 40

Q. What time in 1877 ?

A. August 24th, 1877.

Q. Was that the time of the due-bill ?

A. That is the time.

Q. Now, state what occurred about the safe ?

A. She opened the bureau drawer, and took his watch and held it up in front of him, and he put his hand out to touch it like a child would a toy ; and she took out two safe keys, and she said, "This one is mine, and this one is his"—two deposit safe keys.

10 Q Did he say anything ?

A. He didn't say a word.

Q. What did she do with those safe keys ?

A. Put them back in the drawers again.

Q. What kind of looking keys were they ?

A. Kind of flat keys—white, silvery looking keys—flat safe keys.

Q. Were they attached to anything ?

A. A string, I think—on different strings.

Q. Did she say anything else about it ?

A. No, nothing about that. I didn't know the mort-
20 gage had been paid off then, and I suppose that was the money.

Q. At these different times when you saw your father in Jersey City, how did his memory seem to be ?

A. Something like mine—I am just like him, look like him, my physique is like him—he had a poor memory, and so have I.

Q. While you visited him in Jersey City, did there seem to be any change in his mind in comparison with what it had been before he moved to Jersey City ; if so, what ?

A. He was gradually growing weaker and weaker,
30 both in body and mind ; he acted stupid.

Q. When did you first notice that ?

A. Sometime ago ; I could not say how long it was.

Q. How soon after he moved to Jersey City ?

A. I don't know as I can tell the time. I think he was gradually failing.

A How many years ago did that commence, to the best of your recollection ?

A. When he gave up the business—when he said it was too much for him, it taxed his brain too much.

Q. Do you recollect about how many years ago that was ?

40 A. My brother died in 1861, and he had it four years —that would be 1865; he was complaining of this,

and said he was going to leave the business.

Q. At three different times, while you were visiting him in Jersey City, state whether it struck you then, from what you saw, that Ellen Turnure had any influence over him, and, if so, what kind of influence—describe it?

A. She seemed to be boss. He would look at her when I would say anything, and she would answer it. He wouldn't say anything. What was the use of going there to see him?—no satisfaction; couldn't say anything to him. She stuck right by him all the time. 10

Q. What was the reason you didn't go to see him in Jersey City oftener than you did?

A. That was the reason—because it was no satisfaction seeing him; he would not respond. She would answer everything, no matter what it was.

Q. What kind of a woman did she seem to be as to strength of will?

A. I should think she had a good, powerful will; she governed him anyway—she must have, or she couldn't have got all this away from him out of his hands.

Q. Did you ever hear your father say how much he was worth? 20

A. In the street I asked him if he was not worth $200,000. "No," he says, "not quite as much as that." Says I, "One hundred and fifty thousand dollars." "Well," he says, "that is more like it."

Q. When was that?

A. That was between the years 1873 and 1876.

Q. Did you know anything about this alleged will of 1873 until after your father's death?

A. No, sir; I supposed the other was all right.

Q. Did you ever receive any estate from your father?

A. No; I told him the last time I was there, that was in 1878—says I, "Father, you know you never give me anything; you never give me an outfit when I was married." She was present and heard me, and he didn't say a word, and she didn't neither. Says I, "You never give me an outfit; you never give me anything, and now I want assistance." 30

Q. Did your father ever tell you at any time about his not going out on account of his wife, and, if so, what did he say?

A. "Oh, yes," he said, "he was not allowed to go out alone." She said, "No, why should I let you go alone? As long as I live I'll stick to you." 40

Q. When was that?

A. I think that was in 1877. He said, "I am not allowed now to go out much."

Q. Did you ever have any conversation with him alone on that subject?

A. In the street he said she didn't want him to go out.

Q. When was that?

A. Between 1873 and 1876—in Grove street, Jersey City.

Q. Do you recollect of any other thing that he said about his wife Ellen except what you have said?

A. No.

Q. Do you recollect any other fact, except what you have stated, that occurred on his part or on the part of Ellen in your presence?

A I don't think of any now.

Q. Did your father tell you at any time what he had sold the stables for on Fourth avenue?

A. Yes, he told me he had sold the stables for $77,500.

Q. When did he tell you that?

A. I don't remember the time he told me that.

Q. About how long ago was it?

A. It must have been soon after he sold it.

Q. Where was it that he told you that?

A. I don't remember; I think that it was in the street, though.

Q When did your own mother die?

A. When I was four years old.

Cross-examined by Mr. McDermott:

Q. How do you fix the year in which this due-bill was signed?

A. That is not the right date on it; that is the date he said, and that is the reason I put it there.

Q. What year was your husband's business in such condition as to require that you should go to your father for assistance?

A. His business has been bad for the last six or seven year; he lost a great deal of money.

Q. Did your father put the date there?

A. No, I put it there. Says I, "What day of the month is it?" Says he, "It is the 14th day of August, 1876." And I put it down just as he said.

Q. Was it in 1876 or 1877?

A. The due-bill is 1876, but it was in 1877 when I

wrote that. I asked him what day of the month it was, and that is what he said, and that is what I wrote down.

Q. Where had you been that day before you came to Jersey City?

A. I came from home.

Q. Directly?

A. Yes; I was intending to go to Hoboken on a visit —I had my work with me.

Q. What kind of work?

A. Needle-work, a spool of cotton and thimble. 10

Q. How did you reach Jersey City, leaving your house—give us the trip?

A. I came down in the steam cars from Harlem, and then took the Sixth avenue cars down to Cortlandt street, then across the ferry and walked up.

Q. Did you stop anywhere in New York that day?

A. No.

Q. Did you stop anywhere in Jersey City until after you had seen your father?

A. Not until I went to the house, and she said he was not in, and then I went out and met him in the street. 20

Q. How is your memory as to that?

A. First rate.

Q. What did the work consist of?

A. Fine needle-work

Q. How much of it was there?

A. A package pretty near as large as that [pointing to a package of papers about 10 inches long by 4 inches thick].

Q. Where did you have that bundle—in your pocket?

A. No; I had it in my hand.

Q. Was it tied?

A. No; it was done up loosely in a large piece of white paper. I don't use brown paper, because we are in the business; I use white paper for wrapping paper. 30

Q. Did this paper, "Exhibit C. 10," come from your husband's store?

A. I don't know.

Q. Were there two wrappings of paper around the package?

A. No; only one.

Q. Did you tear this piece of paper off that package?

A. I tore it off.

Q. Did you write on it after you tore it off, or before?

A. Afterwards. 40

Q. Give us all the conversation that took place—what

was the first thing you said, after tearing the paper, to your father?

A. I asked him to write it. He says, "No," his "hand trembled." He says, "You write it." So I wrote it and read it to him, and then he signed it.

Q. Was there any further conversation?

A. Not just then about that.

Q. How did his mind seem to be that day—strong?

A. Not very strong, I didn't think, or his body either; he seemed to be feeble.

Q. Did you consider that his mind was strong enough to justify you in inducing him to dispose of $25,000 of his property?

A. Because he had promised me I should have that much out of my brother's estate.

Q. I will repeat my question: "Did you consider that his mind was strong enough to justify you in inducing him to dispose of $25,000 of his property?

A. I didn't know whether it was strong enough or not.

Q. Did you consider that his mind was strong enough to judge of the equities which you had in his estate?

A. Yes; it ought to have been. He give me that; it ought to have been strong enough.

Q. Did he hesitate about signing it?

A. No.

Q. Did you read it aloud to him?

A. I did read it aloud.

Q. Was he deaf?

A. A little bit in one ear.

Q. Do you remember what kind of a house this stoop was in front of?

A. No, I did not observe it.

Q. What kind of a stoop was it—brown-stone or wooden?

A. I don't know; I think it was a stone stoop, though.

Q. How came you to date this in 1876?

A. Because he said that was the date, and I put it down just as he said.

Q. Didn't you know what year it was?

A. I did; but I put it down just as he said.

Q. Do you know whether or not, as a matter of fact, your brother Harvey did not lose money by the management of the stables?

A. I met my father in the street before he sold the stables in Fourth avenue. Says he, "I am going to sell out—Harvey ain't paying attention to his business, he is

running off deviling all the time, he has run in debt, and I am going to sell it out." Says he, "He ought to make six to eight thousand dollars a year"

Q. How did you come to fix the sum he had received at $25,000?

A. I thought it was about that.

Q. Did you make any inquiry of Harvey?

A. No.

Q. When did you speak to Harvey?

A. I haven't spoken to him in ten years, I guess; it is a good while. 10

Q. Where did you last see him to speak to him?

A. I don't remember.

Adjourned to to-morrow afternoon at two o'clock.

DECEMBER 9, 1880.

Pursuant to adjournment, the parties all appearing at the time appointed, the taking of evidence was resumed. 20

Cross-examination of Mrs. HARD continued by Mr. McDERMOTT.

Q What real estate did you own on the 1st of March, 1873?

A. I owned some lots in Harlem, 110th street; I owned those lots in Tremont where I live now, and also, 25 Beekman street, a store. I think there was 10 lots in Harlem—they were sold two years ago because we could not pay the interest on the mortgage that was on it.

Q. Do you remember what they were sold for? 30

A. I can't remember without looking at my papers.

Q. When did you buy them?

A. It must have been 25 or 30 years ago.

Q. How much did you pay for them?

A. I can't tell; I think two or three hundred dollars a lot—ten lots altogether; they were all sold under foreclosure; I know they were sold, because we couldn't pay the interest on the mortgage, and there was an assessment of $5,000 that we could not pay.

Q. When were they mortgaged?

A. I don't know, because I did not attend to any of the business; it was some years ago. 40

Q. Was it before or after 1873 ?

A. I can't tell without looking over the papers.

Q. How much did they cost ?

A. Two or three hundred dollars a lot, I think.

Q. What does this place in Tremont consist of ?

A. I think there is 7 acres—that was purchased about 14 years ago, and there is $14,000 mortgage on it; that mortgage was made when my husband was in distress three to five years ago; I don't think it was more than five years ago—I think it is perhaps less.

Q. Who did you purchase that property of ?

A. Charles Weeks ; I believe the consideration was $18,000.

Q. What did the property in Beekman street cost ?

A. $60,000, and there is a mortgage on it of $40,000; the mortgage was put on when we bought it ; I don't know whether we bought that before or after 1873—I think it must have been after 1873.

Q. Was it bought after your husband's financial trouble ?

A. No, of course not.

Q. Is the deed of the property in your name ?

A. Yes, but it does not rent for enough to pay the interest on the mortgage. When we bought, the money was seven per cent., and this man won't let us up, and the insurance won't lend us that much on it now, and it don't rent for enough to pay that mortgage.

Q. Has any of that mortgage been paid ?

A. No.

Q. Are your sons in business there ?

A. Yes.

Q. Have you any money in bank ?

A. No.

Q. Have you any Government bonds ?

A. No.

Q. What was your own personal estate worth in 1873 ?

A. I haven't any.

Q. From whom did you receive the money to make this purchase ?

A. From time to time my husband gave it to me.

Q. All of it ?

A. All of it.

Q. Did you ever receive any money from your father ?

A. No, never.

Q. Did you ever give him a receipt for any money ?

A. No, I don't think I did; I don't know whether I did or not; I don't remember.

Q. Would you have given him a receipt unless he had given you money?

A. I don't know as I would.

Q. What is your impression as to that?

A. I don't remember giving him a receipt.

Q. Did you ever receive any amount of money from him?

A. No. 10

Q. Did you ever receive any valuables from him of any kind?

A. No.

Q. Did your husband ever receive any from him?

A. Not that I know of.

Q. What was your husband's property worth in 1873, about March?

A. He hadn't anything at all.

Q. What was his business?

A. Paper business.

Q. Do you know what his income was about that time? 20

A. I do not.

Q. There was no mortgage on your lots in Harlem in 1873?

A. Yes; they had been mortgaged for years and years.

Q. There was no mortgage upon the Tremont property in 1873, was there?

Q. I don't think there was.

A. Was there an incumbrance, beside the $40,000, and odd mortgage on the Beekman street property, in 1873?

A. Not as I know of. 30

Q. Allowing the property in Harlem to be worth $2,500, your real estate at your own figures was in 1873, about the 1st March, worth $40,500?

Question is objected to as assuming what is not shown by the testimony. Question withdrawn.

Q. In March, 1873, your property in Beekman street represented $20,000, as paid? 40

A. Yes.

Q. In 1873, the first of March, your property in Tremont represented $18,000, paid, didn't it?

A. Yes, sir.

Q. On the 1st of March, 1873, your property in Harlem represented $2,500, as paid, didn't it?

A. Yes, sir.

Q. Was this property all in your own name?

A. Yes.

Q. Did your father know that you possessed it?

10 A. I suppose he did.

Q. Then the total amount of property in your own name on the first of March, 1873, represented $40,500, didn't it?

Question objected to for the same reason.

A. How could it represent that when it was all mortgaged up?

Q. It represented $40,500 as having been paid on it?

20 A. No; there was a mortgage on it.

Q. The property in your name on the 1st of March, 1873, there had been paid up on $40,500 had there?

A. I don't know whether there had or not.

Q. You have testified to $20,000, $18,000, and $2,500?

A. Then I suppose it amounts to that.

Q. Do any of your sons own real estate?

A. No.

Q. Do you know what their income is from their business?

30 Objected to as irrelevant.

A. No, it is no income; it is an outgo.

Q. Upon your Tremont property, is there any interest due upon the mortgage?

A. Yes; I have had to borrow money from my brother to pay it; I have just paid it.

Q. Upon the Beekman street property, is there any interest money due upon that mortgage?

A. I owe six months' interest.

Q. Is that all?

40 A. I think that is all?

Q. When did you see your father last before his death?

A. In July or August, 1878.

Q. When before that?

A. In August, 1877.

Q. And when before that?

A. I can't tell the time exactly; I saw him on the street once or twice between 1873 and 1876.

Q. Did you call at his house in Jersey City during 1868?

A. I think I did.

Q. Did you call in 1869? 10

A. I don't know whether I did or not.

Q Did you call in 1870 or 1871?

A. No; but I saw him, I think, in Fourth avenue in 1871 and 1872.

Q. Did you call at his house in 1872, 1873, or 1874?

A. I don't know that I did.

Q How many times have you been at his residence in Jersey City since he moved here?

A. About half a dozen.

Q. Give us the years?

A. I can't remember the years; 1867 and 1868 were two of the years; between 1873 and 1876 twice, 1876 and 1877. 20

Q. In any of your visits prior to 1876, did you ask your father to advance you any money?

A. No, not as I know of.

Q. Did you ask him for any money?

A. I don't think I did; i don't remember asking him for any.

Q. Now, as to the conversation which took place in the stable when you went to see your father after his marriage with Ellen, what did he say to you about dividing his property?

A. He said he had made a will and divided it into four equal parts, one for his wife and each of his children. He asked me if I would be satisfied. I said, "Yes." He said if he sold the stables that he would give us each a portion of it. 30

Q. Why were you satisfied?

A. Because I was willing, of course, he should give his wife one-quarter.

Q Did he say, "I have divided it into four equal parts"?

A. Yes, sir; he said, "into four equal parts."

Q. Are you sure he said "equal"? 40

A. Yes, sir; he said "four equal parts."

Q. Is there any doubt in your mind as to his using the word "equal"?

A. No; I think that is about what he said.

Q. You understood, from what he said, that he had divided his property into four parts, each being equal?

A. Yes, sir, and that he had left one as much as the other.

Q. When did you last speak to your brother Harvey?

A. I don't remember; it is so long ago.

10 Q. Did you speak to him after your father gave him the stable?

A. I think so.

Q. Did you say your father said that he would let Harvey have the stable for a term of years, and then you could have the use of it?

A. Yes; because when my brother Bill bought that stable my husband lent him the money to buy it; you see he had these long stage notes, and they were not coming due fast enough, and my husband accommodated him, and loaned him the money—part of it.

Q. What year was that?

20 A. It was when my brother bought the stables; I forget the year.

Q. Did he pay the money back to your husband?

A. Yes; as the notes became due he paid him back.

Q. Did Harvey stay there during that term of years?

A. He was there seven years.

Q. The stable was then sold out, wasn't it?

A. It was; my father gave him the mortgage; the mortgage was cancelled before the term expired, so I heard.

Q. Do you know whether or not Harvey derived any

30 income from that stable?

A. If he didn't he ought to; if he had attended to his business he would.

Q. Do you know whether he did or not?

A. I don't know; I suppose he did; he had to live out of it; he sported round all the time. I know the man that was foreman for him set up a livery business afterwards, and he is doing a good business.

Q. Do you know whether Harvey derived any income from that stable?

A. Yes, I know he did.

Q. How do you know it?

40 A. Because I know he lived out of it.

Q. How do you know he lived out of it?

A. I don't know how I know it; how do I know he breathed ?

Q. Did you ever see him receive any money ?

A. Yes, I have seen people come in and pay him bills they owed him.

Q. How much ?

A. I don't know.

Q. How many times ?

A. I don't know.

Q. More than once ? 10

A. I don't know.

Q. Do you know whether or not he gave any of that money to your father ?

A. No; I don't believe he did; but I don't know.

Q. When was the first time that you saw Ellen Turnure ?

A. I think my husband and I went over there in 1869; I don't know whether it was before or after she was at my house.

Q. When you addressed her, what did you call her ?

A. I didn't call her anything; I didn't address her at all; I said, "How d'ye do" ? I didn't call her any name; 20 I didn't call her anything.

Q. Had you any doubt about her marriage ?

A. No; because she showed me the certificate while I was there; my father asked me to write it in the Bible, and I did so, when I was copying off my brothers' and sisters' ages; while I was doing that she brought it out—the marriage certificate—and he asked me to write it in the Bible, and I did so; that was in 1877.

Q. Did you know what became of this ring ?

A He had it on his finger when I was there last.

Q. Did he have it on when he was buried ? 30

A. I don't know.

Q. Have you ever asked Ellen Turnure to give it to you ?

A. No.

Q. Did you ever mention the conversation which you had with your uncle Abram to your father ?

A. No.

Q. How far from the house, upon the stoop on which he signed the due-bill, was it that you first met him on that day you were with him ?

A. It might have been three or four houses below; I stopped and talked to him. 40

Q. Do you know who the little girl was that came to

the door when you called at the house ?

A. No, I don't.

Q. When you took tea at the house, where did you take it ?

A. Down in the basement.

Q. Did your father and Ellen go down to tea together ?

A. I think so; I don't remember.

Q. Have you ever, in your father's house, had a conversation with him when Ellen was not present ?

A. Never ; she wouldn't let you have a chance; she was afraid you might say something to him.

Q. You say when you spoke to him she would answer ?

A. Yes, he would look at her, and wouldn't say anything.

Q. Tell us one of the instances you asked him a question and that she answered ?

A. When I asked him if he would not help me, she said, "You would want some thousand dollars to help you" ; and she said right away, "No, you won't get anything till he is dead, and then you will get the same as the rest."

Q. Is there any other ?

A. Yes, there is others, but I can't think of them now; if you will let me look at my memorandum, I can think of some.

Q. Did you ever ask him to let you see the will that he said he had made ?

A. No, I wouldn't ask him that; I would not speak to him about it after he had spoken about it; I thought, of course, that was all right, and it was no use to ask him about that.

Q. And your father said that he would let Harvey have the stables. Did he say anything with reference to Harvey being rich or poor ?

A. He said he was poorer than the rest of us.

Q. What year was that in ?

A. Just before he took it—in 1865.

Q. As to this conversation with your father in Jersey City, what did you say to him first when you met him —tell us the first thing you said to him the day this paper purports to have been signed ?

A. I said, "How do you do, father ?" I shook hands and kissed him, and he said, "How do you do ?" and was glad to see me, and asked after my children.

Q. What was the first said about what Harvey had received ?

A. I asked him if he had had as much as $25,000, and he said "Yes."

Q. The conversation about Harvey's being the poorest of the children occurred in 1865 ?

A. Yes ; before he took the stables.

Q. When did he take the stable ?

A. In 1865 or 1866.

Q. Do you know whether Harvey was possessed of any more means in 1873 than he was in 1865 ?

A. I know he spent a good deal and lost a good deal in that time. 10

Q. Do you know whether or not he was poor in 1873 ?

A I dont't think he was any poorer.

Q. Do you think he was any richer ?

A. I don't know anything about it; I suppose he must have been, after having all that. What could he do with it ? What has that got to do with it anyway ? Does he want to spend all his, then have my portion too ?

Q. How do you know he ever spent any money ?

A. I never saw him enough to know much about his spending much. 20

Q. When your father told you it was 1876 that he signed that note, did you say anything to him about it ?

A. No.

Q. You knew it was 1877 ?

A. I suppose I did.

Q. How long after that did you see him again ?

A. I saw him the next year.

Q. Did you have any conversation with him then about the note ?

A. No.

Q. Did you mention it to him ? 30

A. Not at all.

Q. You saw him but once after he gave you the note until the funeral ?

A. That is all.

Q. Where have you kept that note since he gave it to you ?

A. In my safe at home.

Q. Have you shown it to anybody ?

A. Only to my brother, since his death; I showed it to nobody until my father died—then I showed it to my brother. 40

Q. When did you write that memorandum on it ?

A. When I gave it to my brother—he saw me write it.

Q. You say your father's hand trembled when he wrote the signature?

A. Trembled a little—yes, sir.

Q. Did you ever see him write before?

A. Yes; I think I have.

Q. How was he when he wrote the signature—agitated at all?

A. No; he didn't seem to be.

10 Q. Did you ever mention the fact of his having signed that paper to anyone until after his death?

A. No.

Q. Did you ever mention it to any of your own family?

A. No.

Q. Why didn't you?

A. Because I thought if the will was right I would not produce it—I would destroy it; if it was not right I would try to collect it.

Q. What do you mean, "if the will was right"—have you any doubt as to whether your father made the

20 will?

A. I don't know whether he made the will or not; I saw this woman had a great influence over him, and I didn't know what she would do.

Q. What made you think she had great influence over him?

A. Because the man didn't act like himself when I went there; he wouldn't say anything—he would look at her.

Q. Wasn't he always rather taciturn and silent?

A. I don't know that he was; when he used to come

30 to see me two or three or four times a week, and take dinner with me every Sunday, he used to talk enough.

Q. When did he take dinner with you last before he was married?

A. When I lived in Lexington avenue; it must have been 15 years ago.

Q. Did he take dinner with you within two years before he was married?

A. I moved into the country afterwards; he came up there once or twice, into West Chester; I moved into West Chester 15 years ago.

Q. Are you sure that he called at West Chester with-

40 in two years before he was married?

A. Yes, I think so.

Q. As to the influence which Ellen seemed to have over your father ?

A. When I asked him to come and see us she said right away, "No, we don't go anywheres."

Q. Did her influence seem to wholly control his actions ?

A. I think so.

Q. Do you think she could influence him in the matter of business ?

A. Certainly I did. 10

Q. Did you think she could influence him in the disposition of his property ?

A. Yes, sir.

Q. Did you think she could influence him so that he would dispose of his property just as she said ?

A. Yes.

Q That he would do with his property just as she wanted him ?

A. Yes, her will was stronger than his, and she controlled him ?

Q. Do you think that her will was strong enough over his to have influenced him to make this will that has been offered for probate ? 20

A. I suppose so.

Q. From your knowledge or observation of her control over him, do you think that she could have influenced him to make a will or not to make a will, as she pleased ?

A. Yes, I think so.

Q. Do you think she could have influenced him to make that will according to the way she desired it ?

A. Yes, sir.

Q. Do you think that he would not have made any will if she had desired him not to ? 30

A. I think he would have let the first will alone if she had let him.

Q. You never saw the first will ?

A. No

Q. You think she influenced him to revoke and destroy that will ?

A. Yes.

Q. Do you think she could then induce him to neglect making a will ?

A. Yes.

Q. Do you know what this estate consists of ?

A. I always heard it was Government bonds. 40

Q. You know that most of it is Government bonds, don't you ?

A. Yes.

Q. That there are at least $60,000 in Government bonds?

A. $78,000, I think.

Q. If, as a matter of law, your father could have handed those bonds into the hands of Ellen in the presence of witnesses, and thereby have given up the whole property, do you think her will over his was strong enough to make him do it?

10 A. I don't know about that.

Q. Do you think if she had commanded and demanded from him a delivery of those bonds to her as her property, he would have done it?

A. She would not have such a cheek as that.

Q. Do you think her will over him was strong enough to have induced him to do it?

A. I don't think she would ask such an outrageous thing as that.

Q. If she had desired it, do you think her will was strong enough over his to have induced him to do it?

A. I don't know, I suppose so.

20 Q. Then the only reason that these bonds are not now the property of Ellen Turnure, providing the delivery of the bonds would convey the property to her, is that she did not desire to demand the bonds—is that your opinion?

Question objected to as argumentative.

A. I should not think she would have desired the whole—good heavens!

30 Q. What do you estimate that your father's estate was worth?

A. I have thought that he was better off than he is; I thought he was worth certainly $150,000, because he led me almost to believe that, when I asked him if he was not worth $200,000. He said, "Oh, no, not quite as much as that." Said I, "$150,000?" He says. "That is nearer to it." And so, of course, I thought it must have been somewheres near to that.

Q. Did your children ever visit him at his house in Jersey City?

A. They did.

40 Q. How often to your knowledge?

A. I don't know how often; I know my eldest son

was, once or twice, and I know my second son was there two or three times, and I know my daughter was there once.

Q. Do you think if, during his lifetime, Ellen had asked your father to give her those bonds, he would have given them to her?

A. Hardly; I think he would not have given her the whole of them.

Q. Why not?

A. Because it would have been too contemptible and mean to rob his own children out of their birthright. 10

Q. You don't think her influence would have been sufficient to obtain the bonds by asking for them?

A. Not the whole of them.

Q. What portion of them do you think she could have obtained?

A. The portion she has got—about half, I suppose.

Q. If she had desired to possess those bonds, do you think he would not have given them to her if she had asked for them?

A. Not the whole of them.

Q. Do you think he would have given her half of them? 20

A. I think he has given her half.

Q. You think he has given half to her?

A. Yes. Hasn't she got control of them now and possession of them? And before he died she said she had control of his property, he could not give any of it away, he could not to his children—she had charge of it.

Q. Do you know where the bonds were when he died?

A. She told me they were in a safe deposit—two safe deposit companies.

Q. Do you know who brought them over here? 30

A. I have heard, but I don't know.

Q. You say that the preparation made from the prescription that you had here yesterday—what effect did that have upon your head?

A. She said it was good for neuralgia, and I used a bottle of it.

Q. Did she make any objection to giving you the prescription?

A. Not at all. She said it was good for neuralgia, and I thought I would try it.

Q. How do you find it for neuralgia? 40

A. I don't think it helped me any; I think it made me feel stupid.

C. How did your father appear to Ellen when he visited you at the house—affectionate?

A. I didn't see anything very affectionate; he sat there quietly beside her at the table.

Q. Did you ever hear him speak crossly to her?

A. No; he didn't speak cross to anybody.

Q. When did you last see your father in company with your brother Harvey?

A. I don't remember.

10 Q. About how many years ago?

A. I could not tell.

Q. Was it ten years ago?

A. It must have been longer than that.

Q Do you remember any conversation that ever took place between your brother Harvey and your father when you were present?

A. No.

Q. Of any kind?

A. No.

Q. Do you know whether or not your father was influenced in his opinions and business arrangements, more
20 by your brother Harvey than by his wife Ellen.

A. I don't know.

Q. Have you any of that prescription—any of the compound that you obtained from that prescription?

A. I used a bottle full up.

Q. Did you buy any more?

A. No; because I thought it made me feel stupid, and I don't think it done me any good.

Q. Was there any difference between your father's mental capacity, so far as you observed, at the vis t of 1878, as compared with the visit in 1877?

A. About the same.

30 Q. Did he seem to have failed any more?

A. Seemed to be the same.

Q. Did you consider that he had mental capacity in 1876 or 1877 sufficient to sensibly and justly dispose of his property, or any portion of it?

A. About as sensible as he was in 1873; I think he was as sensible in 1877 as he was in 1873.

Q. Do you think that in 1873 he was possessed of judgment and mental capacity to enable him to dispose of his property?

A. I don't know whether he was or not.

40 Q. Do you know whether he was or not in 1877?

A. I don't know.

Q. Do you think he was at that time ?

A. No.

Q. Why did you obtain from him this note if you did not think that his mental capacity was sufficient to enable him to dispose of his property ?

A. I thought it was as good as the signature on his will.

Q. That was your opinion ?

A. Yes.

Q. You thought your note, at that time, was worth $25,000 ? 10

A. My share—yes, sir.

Q. You thought that that was your share ?

A. I thought that that was about my share.

Q. That is, one-quarter of his estate ?

A. I thought he was worth more than that, still I would have been satisfied with that much—indeed, I would have been satisfied with half of that if I could have got it in cash, so as to do me any good, so I would not have to sacrifice everything I had.

Q. Did you believe you would receive more than $25,000 ?

A. I thought I would get about that. 20

Q. If you had receeived that, did you intend to use this note ?

A. No, sir, I did not; I would have destroyed it, and nobody would ever have seen it.

Q. What did you intend to do with the note in case you received $25,000 from the estate ?

A. Burn it up.

Q. Then you expected when the estate was divided up you would receive $25,000.

A. As much as that.

Q. And your brother Harvey $25,000; and your brother John $25,000; and Ellen $25,000 ? 30

A. As much as that, if not more.

Q. Did you expect, then, that this note represented what you would receive from the estate ?

A. I thought perhaps I would get more than that.

Q. If a division had been made, would you have torn the note up ?

A. Certainly, I would have torn it up.

Q. Then if your father left a $100,000, and you received $25,000, each of the children $25,000, and Ellen Turnure $25,000, you would have torn this note up ?

A. Yes. 40

Q. Was that your intention as to that when the note was given ?

A. No, there was nothing said about it.

Q. Was that your intention when you took the note?

A. Nothing was said about it; that is what I intended.

Q. Did your father understand it?

A. He never understood anything about it, only he gave it to me.

Q. Why didn't you explain to him what you wanted that note for?

A. I don't know why.

10 Q. Did you have any other object in obtaining your father's signature to this paper than to secure you after his death in receiving one-quarter of the estate that he should leave when he died?

A. Yes, that is what I wanted.

Q. Did you have any other object?

A. No, no other.

Q. Did you expect that when he died your brother Harvey would receive an amount equal to the amount you would receive?

A. Yes.

Q. Did you think he would receive any more?

20 A. I thought he had had that much already, but I was willing now he should have the same as I would.

Q. Did you understand that he would receive under your father's will the same as you got, and that you would receive the same as he got?

A. Yes sir.

Q. Why, then, if you did not expect to use this note, in case you received as much as he received, and he received as much as you did—why did you put in the words, "as her just right in lieu of what her brother Harvey has had already"?

30 A. Because he had had that, while I would be willing to give him the same as I had afterwards.

Q. What did you put that in there afterwards for?

A. Because it shows that he had that.

Q. Did your father tell you to?

A. He said he had had as much as that.

Q. What do you mean by "had as much"—from the income of the stables?

A. Yes.

Q. What do these stables rent for now?

A. I don't know.

Q. Your brother paid $600 a year didn't he?

40 A. Yes.

Q. Do you recollect what the stables rented for after the sale?

A. I don't know, but I think they were worth a couple of thousand dollars a year.

Q. Do you know what they rented at before Harvey took them?

A. They were not rented; my brother owned them.

Q. You think Harvey obtained them at $1,400 a year less than a stranger could get it?

A Yes

Q. How many years did he have it?

A. Seven years; my father told me it was worth as much as $6,000 to $8,000 a year. 10

Q. Whatever it was worth outside of the rent was what was earned by the manager of the stable, wasn't it—the receipts from the management of the stables?

A. I don't know.

Q. What there was was a matter of profit wasn't it?

A. Of course he had the use and income of it; the income was what was received from letting the horses, carriages, &c.

Q. Whoever had the management of the stable received that, didn't they?

A. I suppose so.

Q. You say that upon one visit to your father's house Ellen took a watch from a bureau drawer, and he put his hand out to touch it like a child—did she let him have it? 20

A. No; he merely put his hand out, and she put it back in the drawer again.

Q. Did he ask her for it?

A. No.

Q. Did she say anything to him about the watch?

A. Nothing, only she brought it out to show the charms on it, I guess.

Q. You say he put his hand out like a child? 30

A. As a child would if they see anything they like.

Q. Did he show any disposition to get the watch at all?

A. No.

Q. He could have got it if he wanted to?

A. Certainly he could.

Q. Were the safe keys that you saw there alike?

A. Appeared to be alike.

Q. Did you examine them at all?

A. I looked at them as she held them up.

Q. You say your father's memory, when you saw him in Jersey City, seemed to be just like your own. Do 40

you think it was as good as your own ?

A. No; but I mean that I take after him—naturally he had a poor memory.

Q. On the occasion of your first visit to your father in Jersey City, was there any action on the part of Ellen which convinced you that his will was subject to hers ?

A. It is so long ago I don't remember.

Q. On the occasion of the second visit was there any ?

10 A. It is so long ago I can't remember.

Q. On the occasion of the third visit was there any ?

A. I can't remember.

Q. On the occasion of the fourth was there any ?

A. I suppose her will was as strong then as it is now.

Q. Did you notice any exhibition of that will towards him ?

A. I don't know that I did.

Q. If there had been any exhibition of it—he being your father—wouldn't it have impressed itself upon your memory ?

20 A. I know the first time I saw him with her he didn't answer when I asked about the ring. She answered right away, and she says, "I hope you won't think I am so mean; I would not be guilty of keeping that ring away from her." I said if he didn't give it to her then I was afraid she would never get it. She answered. "Don't think I am so mean; I would not be guilty of such a thing."

Q. Did he have the ring on that time ?

A. Yes, sir.

Q. Why didn't you ask him to give it to you after that ?

30 A. I supposed he would keep it for her.

Q. Did you ever notice any exhibition of neglect or inattention on the part of Ellen towards your father ?

A. No.

Q. So far as you noticed, on your visits to the house, didn't she always seem to be careful concerning his comfort ?

A. Yes; so far as I know.

Q. How was your father's hearing ?

A. One side was a little deaf.

Q. Sitting at a distance of 3 or 4 feet from him talking in an ordinary tone ?

40 A. He could hear very good; you didn't have to halloo to him.

Q Did he read a newspaper on the occasion of your last visit ?

A. I think he was reading a newspaper when I went in.

Q. Did he have glasses on ?

A. Yes.

Q. Did he make any remark as to anything that appeared in that paper ?

A No; not that I know of.

Q. Do you ever remember an occasion when you visited him that he was reading the newspaper, and when he made a remark concerning anything in the paper ? 10

A. I don't.

Q. How long did he continue reading during your last visit ?

A. He was looking at it when I went in, and he laid it down; he was in the second story room, sitting by the window.

Did you ever see him read a book during one of your visits ?

A. I don't know as I did.

Q. Did you ever see him write in a book during one of your visits ? 20

A. No; I don't know as I did.

Q You say the reason you saw your father but half a dozen times during the 12 years he lived in Jersey City, was because you could get no satisfaction from him—he would not respond, she would answer everything for him no matter what it was ?

A. Yes, sir.

Q. State, besides the questions which you have already given, as having been answered by him, any instance of her having answered a question when you asked him ? 30

A. I can't remember now.

Q. Can't you remember a single instance ?

A. I don't know that I can.

Q. Is there anything you desired to say to him which you were prevented from saying by her presence ?

A. Of course there was some things I would have said if she was not there.

Q. Can you tell us one ?

A. No; I shan't tell, and I decline to tell my private business.

Q. When you met your father on the street, in Erie street, after he signed the due-bill, what conversation took place ? 40

A. He asked me to go home with him; he asked after my daughter—she had had a stroke of paralysis—he asked how she was; I told him what treatment she was taking; I don't remember what else was said; it was only a little way from the house; I have forgotten what I did say.

Q. If there had been anything that you considered of importance, would you have remembered it?

A. I suppose so.

10 Q. Why, then, didn't you have the conversation with him that you desired to have in his house at your former visit, but was prevented from having on account of the presence of Ellen?

A. There wasn't anything very particular, perhaps, that I wanted to say to him just then.

Q. Do you remember what you were prevented by the presence of Ellen from saying to your father?

A. No.

Q. If you had desired to say it to him when you met him on Erie street you could have done so, could you not?

A. I could.

20 Q. You have given us all the conversation that took place between the time he signed the note and the time he reached the house?

A. No, that is not all; I have forgotten now what was said.

Q. You say that you told him in 1878, "Father, you know you have never given me anything; you never gave me an outfit when I was married"?

A. Yes, and she was present, too, when I said it.

Q. Was that all the conversation on that subject that day?

30 A. That was all that was said that day.

Q. How was that conversation brought about?

A. I don't remember; I guess I asked him if he wouldn't help me and let me have some money, and he said I would want some thousand dollars to help me; and she said "No" right away. I says, "You have never given me anything; you never give me an outfit when I was married, and you might do something for me now."

Q. Did he mention about the due-bill then?

A. No.

Q. Did you?

A. No.

40 Q. When she said to him, "No, why should I let you go out alone—so long as I live I will stick to you"?

A. She said, "As long as you live I will stick to you."

Q. In your direct testimony you said, "As long as I live I will stick to you." Now, which is right?

A. She meant my father—"As long as you live I will stick to you."

Q. Then she did not say "As long as I live"?

A. No; she said, "As long as you live I will stick to you."

Q. When she said that did she gesticulate with her arms and hands at all? 10

A. I don't know.

Q. Was he angry at that time?

A. No.

Q. Was she?

A. No.

Q. Did she laugh when she said it?

A. No.

Q. Did he?

A. No.

Q. What did he say?

A. He didn't say anything.

Q. When he said, "I am not allowed now to go out much—" 20

A. "I am not allowed now to go out alone."

Q. Was that in 1878?

A. He had just come in. No, it was in 1877 when he said that. He had come in, and he said, "I ain't allowed much now to go out alone."

Q. Wasn't that after he had fallen upon the street and was brought home?

A. No.

Q. When had he fallen upon the street?

A. I think it must have been in 1879.

Q. Wasn't he subject to fits? 30

A. I never heard of it.

Q. Do you know whether he had frequently fallen on the street in fits?

A. No, I never knew that he had a fit except once, when he fell down.

Q. When your father said "I am not allowed to go out much," he was how old?

A. He must have been 81 or 82.

Q. Besides the reason you have given us, was there any other reason why you didn't call upon him more frequently in Jersey City? 40

A. No, I never had any words with him.

Q. How long does it take you to come from Tremont, by the road that you came by to-day, to reach Jersey City?

A. About a couple of hours.

Q. And when your father told you he had sold the stables for $77,500, did you tell your brother of that conversation?

A. I don't know that I did—no.

Q. Did you tell any one of it?

10 A. I told my husband, I think.

Q. Did you request him to come and see your father?

A. No.

Q. Did you request him to write to your father concerning that money?

A. I did not.

Q. Did you consider your father capable, at that time, of taking care of $77,500?

A. Yes, he was very careful—very stingy, some people called him; he knew how to take care of his pennies.

Q. Did you think he was capable of safely taking care of $77,500?

20 A. Yes; I don't know but he was capable enough then; I suppose he could not be troubled much with it to put it out, or have any trouble if he could put it in the safe deposit.

Q. Did you have any conversation with him about the price for which the stable was sold?

A. Nothing, only he told me he sold it for that.

Q. Did he volunteer that information?

A. He volunteered it.

Q. Did you have any doubt in your mind as to the safety of that money being in his keeping?

A. No.

30 Q. Have you given us all the conversation that took place upon Erie street the day that that due-bill was signed?

A. I don't think I have given it all; I cannot remember it all.

Q. Did he read the due-bill?

A. No, I read it to him.

Q. What time of day was it?

A. Between 11 and 12.

Q. How far were you standing from him when you read it to him?

40 A. Close to him, and I read it aloud, so he could hear, and as I wrote it I read it, and then I read it afterwards.

Q. What was the last expression used by him prior to the time that you commenced to write that due-bill ?

A. He said, "You write it, I will sign it."

Q. Did he say anything then until you had finished ?

A. I don't know he did; he said, "You write it and I will sign it." I asked him to write it, and he said, his hand trembled so, "You write it."

Q. Did he dictate it while you wrote it ?

A. No.

Q. Did he use any of the words that are written in it ? 10

A. No.

Q. Did you ask him for any information while you were writing it ?

A. No; I did not.

Q. Then from the time that the word "due" was written on here until you had completed the due-bill, was there any conversation between you ?

A. Not while I was writing except as I read it as I wrote it; as I wrote it I read it, and then I read it again.

Q. Did he dictate a single word in this ? 20

A. I don't know that he did.

Q. How is your memory as to that ?

A. I cannot remember whether he said anything or not.

Q. Why don't you speak to your brother Harvey ?

A. Because I don't like him; I don't like his wife.

Q. Has Harvey a family ?

A. I believe he has.

Q. Do you know how many children ?

A. Three.

Q. Do you know their ages ? 30

A One is 30½, the other about 25, the other 20 or 21.

Q. The one who is 30½, do you know where he lives ?

A. I don't know.

Q. What are their names ?

A. William P., Ebenezer, Harvey.

Q. What was your father's full name ?

A. William Turnure.

Q. How old is William P., your brother's child ?

A. 30½.

Q. Are any of your children named after your father?

A. No; one is named after my brother William A.

Q. Are any of your father's grand-children, except Harvey's son, named after your father ? 40

A. I think not.

Q. Can you remember the last time that you spoke to Harvey ?

A. No.

Q. Can you remember the last time you saw him prior to your father's death ?

A. I cannot.

Re-direct examination by Mr. Bedle:

10

Q. The property at Tremont, where you now live, was that mortgaged by you at the time of the purchase ?

A. Yes; I think there was a mortgage on it, but I don't remember the amount; but when he made money in his business, he paid that mortgage off; then when the hard times came he had to get it on again; the amount of that mortgage was $14,000.

Q. How much was the mortgage on the Harlem lots ?

A. $28,000, and an assessment of $5,000, and back

20 taxes.

Q. There seemed to be an inference from a question by Mr. McDermott that your father had a mortgage on the stable, the stock or property. Did you understand that he had a mortgage, or that the mortgage was given to Harvey ?

A. Harvey had the mortgage.

Q. You spoke of Harvey's sporting. What was his mode of life ?

A. He used to ride and go to the races; fond of company; a smart man, but he can't keep a hotel.

Q. I suppose you have no knowledge now whether

30 the will that your father first told you he had made, whether it is in existence or not ?

A. No; I don't know what has become of it.

Q. You say your father did not speak cross to anybody; what kind of a disposition had your father ?

A. Rather an affectionate disposition; kind, gentle in his manners.

Q. At the time of the funeral, did you have any conversation with Ellen in regard to what was the cause of your father's death ?

A. Nothing.

40 Q. You have been asked in regard to the judgment of your father in 1873. Do you mean if left alone ?

A If left alone his judgment would have been good enough.

Q. You were asked by Mr. McDermott as to Harvey receiving an income from the stables, and there seemed to be an inference from what he said that you meant that all he received from the stables was the income. Did you mean that?

A. I mean that he ought to have received some $5,000 a year; my father told me it was worth six to eight thousand dollars a year; he said he made $8,000 the very year before. 10

Q. How about the stock?

A. I don't think he meant to give him that; I thought he meant him to have the use of them; but I understood that Harvey got the stock.

Q. You have an opinion as to the memory of your father at different times when you visited him, and you have compared it to your own in some respects. Now state what impression, at the different visits, his memory made on you as to failing?

A. I could see he was gradually failing both in body and mind; every time I saw him I could see he failed. 20

Q. At these different visits that you made, what impression did you have at the time as to her power over his will?

A. I thought she was stronger than him, and she exercised her will; I know I can feel a person's influence stronger than mine, even if they only sit next to me, and I judged by myself.

Q. Could your father read and write?

A. Yes, sir.

Q. Was it a fact that you had no outfit from your father?

A. It was. 30

Q. When you came from New York, to-day, did you come by the elevated road?

A. I did.

Q. That has been in existence only 3 or 4 years?

A. Yes, sir; I have to drive 2 miles.

Q. When you gave your opinion to Mr. McDermott, in answer to his question as to the ability of your father to take care of this $77,500, did you mean if let alone?

A Yes; if let alone, of course.

Q. What was your judgment with reference to his ability to take care of it if Ellen Turnure exercised her influence on him? 40

A. Then I thought he was nowhere.

Q. When you read the due-bill to your father, did you read it correctly ?

A. Certainly.

Q. Were there any grandchildren named after William P. Turnure who died ?

A. My brother had two, I think, named after him.

Q. Do you recollect of any conversation with Ellen Turnure in regard to your uncle John Turnure, and, if so, what was it ?

10

Question objected to.

A Yes, I do. She said she turned him out of the house. That was in 1877, when I was there. She said something else, but I have forgotten what it was. I didn't pay much attention, it struck me I was afraid if I said something she would turn me out of the house in the same way. I asked my father when I was out in the street if he would not give those girls of uncle John enough to bury him with, and he said yes, he would. That is part of the conversation I could not remember before. And I also said to him, "Father, you know you said that that cane of my brother Bill's—you said John should have that, and my step-mother Eliza also said he should have it, and you told me you would get it from Harve and give it to John, and you never done it." Says he, "I will—I will ask Harvey for it and John shall have that." That is what I said in the street there, coming up, and that I could not remember.

20

30

Re-cross-examination by Mr. McDermott:

Q. You say he was well enough if let alone, and that she had an influence over him, and that you could feel the influence while you were present, and that influence left after he left her presence, in your opinion. Did he carry that influence with him when he went outside ?

A. No, I don't think he did.

Q. You think, then, if she was not present—

A. Then I think somebody else would influence him.

Q. You think he was easily influenced by anybody ?

40

A. I think he was.

Q. Was his will as strong as yours ?

A. It might be stronger—mine hain't strong.

Q. Wasn't your father of a strong will, and generally bluff and short in his answers, and taciturn ?

A. I don't know that he was particularly; he was of a very affectionate disposition.

Q. Do you think that if he did an act when Ellen was not present that he would be wholly free from her influence ?

A. I cannot say that; she was with him so much, I think she influenced him altogether. 10

Q. Do you think he escaped from her influence when he left the house and went outside ?

A. He might partially.

Q. Do you think he was under that influence when he signed that note ?

A. No; he was under my influence then.

Q. How did you estimate that he was under your influence—from what you had said to him ?

A. Yes; I wish I could remember all I said to him; I know both of us cried on the street.

Q. Did you have any cross words with him ?

A. No. 20

Q. Do you think that when left alone, without anyone to mention anything to him, he was sufficiently strong in mind to have drawn his will ?

A. He might be.

Q. [By Mr. Bedle.] Did you believe that your father was a just man if uninfluenced improperly—if left alone ?

A. Yes, I did.

Q. [By Mr. Bedle.] Notwithstanding such belief, did you at the same time believe that he was in that state of mind that he could be influenced ?

A. Yes; certainly he could. 30

Q. Had he always been in that condition ?

A. Yes.

Q. All his life ?

A. Yes—easily influenced.

Q. Do you think he was more susceptible to influence in 1873 than he was 15 years before that time ?

A. I could not say.

Adjourned to some future date to be fixed.

40

Pursuant to the time agreed upon the parties met on this December 27, 1880, Mr. McDermott not appearing until the direct examination of the following witness was concluded, he having sent word, however, that the direct examination might proceed. When he arrived, the direct examination was read over to him, and he then cross-examined.

10

MILTON TURNURE, a witness produced on behalf of the caveators, being duly sworn, testified as follows:

I am a son of John L. Turnure; I am twenty-nine years of age; I am a practicing physician; I graduated first at Louisville, and finally at the University of New York; I am understood to be an allopathic physician; I reside at Schenectady, New York, and am practicing my profession there; I have been practicing four years altogether; I knew my grandfather, William P. Turnure.

Q. When did you first see him after he first came to Jersey City to live?

20

A. About the year 1871 or '2; I am not quite positive which.

Q. State the circumstances under which you saw him?

A. I made a proposition to my cousin, Melvin P. Hard, to go and see our grandfather, as we had neither of us seen him for some years; he assented, and we went over in the afternoon, I think, and arrived here about half-past two; we came over to Jersey City and went to where my grandfather lived; it was then called South Seventh street; I don't remember the number; it is the house where I understood he died.

30

Q. Whom did you see there when you reached the house?

A. I saw a woman who let us in first; we were taken upstairs to the second-story front room; I there saw my grandfather sitting at a window in a rocking-chair; no one else was with him; I do not know who the woman was who let us in; I should judge she was apparently between thirty and forty years about; about thirty-five, I should judge.

Q. Did she take you upstairs?

A. I think she did.

40

Q. What occurred when you went in where your grandfather was?

A. I addressed the old gentleman, saying, "How do you do, grandfather. He looked at me a moment and said, "Oh, is it you, Milton?" "Yes, it is I. Here is some one who has come with me to see you." He looked at my cousin for a moment and said. "Is it you, Frank?" I said, "No; it is Brother." "Oh, it is 'Brother;' sit down." There was then a lull in the conversation, the old gentleman seeming at a loss what to say; finally he said, "Well, 'Brother', how have you been doing lately?" I think he said, "Well, I have been in business, I have just returned from Europe." "Oh," he says, "where did you go?" "I went to England;" and he named some places to which he went, and which I cannot remember now; the old gentleman seemed interested in that, and he then turned to me and asked me how my father was, and I told him he was well. What other conversation took place just then, I cannot exactly remember; but shortly after addressing me he addressed my cousin as Frank again; there was no correction made at that time, and we stayed but a short time longer and went away.

Q. How along were you there altogether at that time?

A. I should think about three-quarters of an hour.

Q. Did you see Mrs Eilen Turnure?

A. I did not; I understood she had gone out.

Q. Did you take any meal there that time?

A. No, sir.

Q. When did you next see him?

A. In about two years, I should judge, at his house at the same place; I was alone at this time; I saw his wife and himself; I had a bundle with me. His wife came to the door, and, not having seen me before, did not know me, and she was rather loth to allow me to come in. After I had asked for the old gentleman and had introduced myself, she excused her neglect in not asking me to come in, and she asked me then to come upstairs in rather a cordial manner. I went upstairs and found the old gentleman sitting in about the same position as I saw him the other time, at a window in a rocker; I addressed him as "grandfather" again. He looked at me in a puzzled sort of a way some time and finally recognized me, asked about my father very kindly, asked what I was doing, and I told him. After this conversation had been gone through with she took a seat in a chair opposite him at another window—he sitting at one window and she at the other. Then the conversation seemed to be

rather forced on his part. He seemed to be at a loss what to say. I asked some commonplace questions as to health, and the answers were given by his wife; I don't know that he said over a dozen words all the time I was there. He sat gazing directly in front of him, apparently at her, and she was looking straight in his face. I sat I should judge, about seven feet from the wall, midway between my grandfather and his wife, so that I could look at both of them, and I was very particular to look at his wife when I received no answer from him to my questions, and I could see that her eyes were bent on him all the time, and that the majority of the questions which were put to him were answered by her. I don't remember any conversation; it was merely commonplace at that time.

Q. Was there anything said about Saratoga?

A. I think there was; I think I asked him if he intended going to Saratoga the next Summer—this was early in the Spring I was there—she said he did not go anywhere, he was too feeble—that is out of the city; he went around the corner, I did not understand her where, but never went out of the city.

Q. Did she say what was the matter with him?

A. No, sir; only that he was feeble.

Q. How did he look as to feebleness?

A. He looked very feeble at that time.

Q. On the first occasion that you went how did he look as to feebleness?

A. I did not see much difference between the two occasions; looked about the same to me.

Q. Were you studying medicine at that time?

A. No, sir; I was studying science; I was in a course of preparation at the School of Mines, Columbia College; I did not graduate, but I remained there four years.

Q. State the condition of the old gentleman's mind as it appeared to you at the time when you first called upon him in Jersey City?

A. He appeared listless to me, as though he did not care to pay attention to anything much.

Q. How did his memory seem to be?

A. In regard to my cousin's name it seemed to be bad; that is as far as I could judge.

Q. How did his condition of mind seem to be as to his continuity of thought?

A. He did not appear to have any continuity of thought.

Q. How did his condition, when you first saw him, compare with the the second time you say him?

A. About the same, so far as I could judge.

Q. Did it strike you on those occasions, at the time that there was any impairment of the normal operation of his mental faculties?

A. As much as I knew about mental faculties at the time, I thought there was.

Q. After the second occasion did you see him?

A. I did; I saw him in September, I think, 1879, at the same house in Jersey City. 10

Q Whom did you see there besides himself?

A. I saw his wife and a young girl who was introduced to me as his wife's grand-daughter; her name I do not retain—he was then lying on a lounge in an alcove off the front room, second story; his wife and this grand-daughter was with him.

Q. State what occurred?

A. On ringing the bell for some few seconds, there was no response. Finally I heard a window on the second story raised, and, looking up, a head was thrust from the window. I did not know the owner of the head. She asked me my mission. I told her I wished to see Mr. Turnure. The head was drawn in, and immediately another head was protruded, which I recognized as belonging to Mrs. Turnure. As soon as she saw me she said, "Oh!" and drew in her head again, and in a few minutes the door was opened. I was received at that time cordially, and invited to go up stairs, where I found the old gentleman lying on the lounge, as I have said. It was his wife that received me at the door. I said to him, "How do you do, grandfather"? He looked at me and said, "Oh, how do you do, Milton? How is your father"? I answered his question, and then asked him some commonplace questions. Finally he saw that I had some bundles, and asked me what were in them. I told him some instruments I had been buying, and he wished to see them. He seemed very much interested in them, and I explained their uses. After a short time he rose from the couch and took his seat by the window, the old lady seating herself directly opposite, so as to look him in the face, and her grand-daughter sitting alongside of her, and I in a position about six feet from the old gentleman, toward the middle of the room, where I could look at them both almost simultaneously. I asked him why he did not come to see us. "Oh," she said, "he never goes 20 30 40

out; doesn't even go to New York." "Well," says I, "who does his business in New York"? "Oh, I do, when he has any business to be done." "Well", I said, "why don't you ever come to see us, grandfather"? "Oh," she said, "he could not come—he cannot go out—he can't go alone anywhere." "Well," says I, "couldn't you come with him"? She made no answer.

Q. To what place did you refer when you said: "Couldn't you come with him"?

10 A. To our home—my father's house, at Closter, New Jersey.

Q. Go on.

A. I then said to him: "I will give you my card with directions." He said, "All right," or something to that effect, and I took out a card which I had written my name on and wrote near the bottom: "Closter, New Jersey, Northern Railroad of New Jersey." He took the card, held it in his hands a short time, and she made a motion to get up and said she would take the card and put it away. He said, "No; I will take care of that," and laid it on a book alongside of his spectacles under 20 another book. I did not stay much longer; I bid them "good-day" and left; but as I was going away and walking out of the door from the second story front room into the upper hall, the old gentleman followed me—the old lady preceding us both to the front door. I turned around to shake hands with him again, and he says, "Milton, if I ever get sick I will telegraph for you;" and the old lady, apparently, as soon as she heard that, came after us upstairs again until she could see him; and then he said, "Yes; come again—come again;" and she made a motion as if to go down-stairs; I then bid him 30 "good-by" for a third time and left the house.

Q. What did you put on the card?

A. Opposite my name I put on "Closter, New Jersey, Northern Railroad of New Jersey."

Q. Did you make another visit to him?

A. I did, after that, some time within a month; when I rang the bell this time his wife opened the door, and I asked if my grandfather was home, and she said, "Yes; won't you walk in"? "Certainly," said I. She invited me upstairs; and this time he was again sitting by the same window, in the same rocker; I sat down and attempted to carry on a conversation; he seemed very 40 reticent in his answers and appeared to me to be rather dull at that time—appeared peculiar; she sat opposite

him again and answered in the same way she had done on similar occasions; in fact the conversation was carried on through questions from me to him, answered by her; I staid but a short time, and the conversation was merely commonplace.

Q. When he would look at her, how did he seem to look?

A. In a listless, childish sort of a way.

Q. Would he ask questions sometimes himself, or not?

A. I don't think he asked any. 10

Q. But you would ask questions?

A. Yes; and she would answer them, generally.

Q. Do you know whether she would answer after he had commenced answering?

A. At times; yes, sir; I think I asked him on that occasion if he thought of going to Florida for the winter, and he said: "No; I don't like Florida;" when she says, "He don't like it; but I would like to live there."

Q. Describe his condition this time, that you have just spoken of?

A. I should say that there was then a want of continuity of thought; I should call it an aphasia, in medical 20 terms; that means an inability to concentrate one's thoughts on one subject for any length of time, and a want of memory for things which apparently should be familiar to a person.

Q. State whether you discovered that condition of mind on the first, second and third visits of which you have spoken?

A. Since my medical graduation I attributed his peculiarities to that condition of mind on my first visit.

Q. Did these peculiarities of which you have now spoken make an impression upon you both on the first, second and third visits? 30

A. They did.

Q. And on the last visit of which you have spoken, was his condition of mind worse than on the previous occasions?

A. I think so.

Q. Did you see him after the last time you have spoken of.

A. No, sir.

Q. Can you form a judgment, the last time you saw him, as to the cause of the old gentleman's mental troubles? 40

A. The physical cause, I think, I could. Yes; it was

probably due to some degenerative influence in the brain —either at the base or in the lateral portions of the cerebellum.

Q. As a physician, and remembering what you saw of him on the first, second and third visits, could you form a judgment as to his condition of mind on those three occasions?

A. From memory I think I could of the first and second, and from knowledge I think I could of the third.

Q. Go on and do it?

A. My judgment of the old gentleman's condition at that time was that the arteries probably were athromatos; that is, that they had taken on an earthy or calcareous degeneration or condition which often happens in people over seventy years of age.

Q. How does that affect the mental functions?

A. It affects them by blocking up the blood vessels—either at the base or at one side or the other of the brain, that is, taking off the nutritive principle—that is the blood—rendering the brain first enemic, and finally killing it or causing it to soften.

Q. Is the description that you have given now what is commonly called softening of the brain?

A. Yes.

Q. Using the word "softening of the brain" in its common sense, would you as a physician say, from memory, what you saw on the first, second and third visits, that that condition was operating upon him on those occasions?

A. I would.

Q. Have you any doubt about it?

A. I have none, so far as my knowledge goes.

Q. State your judgment as to how a person's mind, in the condition in which his was on the first and second visits, would likely be operated upon by extraneous influence?

A. Basing my judgment on the evidence of men older in the profession and from what I have read on the subject, I think a man in his condition is very easily influenced by extraneous matters, and influenced by not one person but many.

Q. When the disease commonly called "softening of the brain" commences, does it disturb the logical or the continuous operation of thought?

A. To a certain extent it does.

Q. Does it make it very susceptible to influence extraneous ?

A. In many cases, yes, sir.

Q. What would you say as to Ellen Turnure's force of mind ?

A. She had a pretty strong mind.

Q. As to her will what would you say ?

A. A splendid will.

Q. While you were there on those different visits could you see in any way her power over him ? 10

A. I think I did.

Q. In what way—describe it ?

A. Through the action of her eyes and through her interruptions of his answers; she acted toward him as though he were a mere child.

Q. On those first, second and third visits how did he seem as to childishness ?

A. He appeared what people would call childish.

Q. On the third visit did she say anything before him then as to his condition ?

A. Yes; she said he had trouble with his head; and she said that was one reason why he could not go out 20 much, and I asked her what she did for him; I asked her if she ever gave him Rochelle salts; she said, "Oh, yes; oh, yes." I asked her if she ever gave him anything else; don't remember of her saying that she did; I recommended that she give him the Rochelle salts, and when the headaches were most severe to apply cold, either in the form of cold wet cloths, and, if necessary, ice in an oil-silk bag.

Q. Did she say what was the matter with him on the second visit ?

A. I think she said he was troubled with his head; 30 that is all.

Q. Did she say anything further about it ?

A. I don't remember that she did.

Q. Did your grandfather ever give you any money ?

A. Yes; once about the year 1859 or '60, I think.

Q. How much was it ?

A. A silver quarter.

Q. Is that the only time he ever gave you anything ?

A. That is the only time.

Q. Did you ever see him give Harvey's son, William, anything ?

A. I have, on several occasions. 40

Q. How much ?

A. That I can't tell you; sometimes ten cents; sometimes twenty-five cents.

Q. You spoke of saying something about "Brother" when your cousin was introduced; what do you mean by that?

A. That was a nickname by which he went at home among his family—"Brother;" his name was Melvin T. Hard.

10 At this point Mr. McDermott appears, and the testimony as already taken is read over to him; and he proceeds to *cross-examine* the witness, as follows:

Q. When did you see him give any money to Harvey's child?

A. Between 1860 and 1865.

Q. Did he seem more partial to them than to other children?

A. He did when I was with them.

Q. When was the first time you saw your grandfather
20 in Jersey City?

A. About 1871; perhaps 1872.

Q. When was the next?

A. About two years after.

Q. The next?

A. In September, I think, 1879.

Q. Then there elapsed seven years, about, between the second and third visits, didn't there?

A. No; my first visit was made in 1871 or 1872; my second within two years; and my third in 1879.

Q. Do you remember any particular conversation you
30 had with him on the occasion of your first visit?

A. I remember that he asked after my father, and that after I had introduced my cousin to him that he asked him what he was doing, and he asked me some commonplace questions, and he then referred to my cousin again, and I don't remember what he said after that exactly.

Q. Give us any questions and answers occurring then by which you formed an idea of his mental capacity?

A. I don't know that I did form any idea of his mental capacity from a question or answer.

Q. Did you from your conversation upon your first
40 visit in 1871 form an opinion as to his mental capacity?

A. Yes; I did at that time.

Q. Give us the conversation from which you formed it?

A. When my cousin and myself entered the room my grandfather recognized me after looking at me a moment, but my cousin he called Frank; I told him it was not Frank; it was "Brother;" and again, before we went away, he called him Frank again the second time.

Q. Who was Frank?

A. Frank was a brother of my cousin.

Q. After you said, "it is not Frank, but Brother," did he immediately recognize him? 10

A. I think he did; yes, sir.

Q. How long before that visit had you seen your grandfather?

A. About a year before that in New York.

Q. How long before that visit had your cousin seen him?

A. I don't know.

Q. When you said, "it is not Frank, but Brother," did he rocognize him immediately?

A. I don't know that he immediately recognized him.

Q. Did he recognize you without any further conversation? 20

A. Yes, sir.

Q. How long before that visit had you been in company with Melvin and your grandfather at one time—how long before that day had the two been together?

A. I could not tell.

Q. Is there any other incident occurred that day by which you formed an estimate of his mental capacity?

A. Only that he addressed him as Frank the second time; that is all.

Q. Was that the first visit that you paid to his house in Jersey City? 30

A. Yes, sir.

Q. Between 1870 and the time of your grandfather's death you saw him but four times?

A. Yes, sir.

Q. First in 1871 and then about 1873 or 1874, and then twice in 1879?

A. Yes.

Q. Did you see him in 1873?

A. I don't know positive.

Q. From having seen him those four times with the intervals elapsing between, and from your knowledge of your profession, do you consider that you are competent 40

to pass upon the question of whether he was mentally capacitated to make a will or not?

A. Yes; I think so.

Q. You say he acted in a childish manner. What did he do that was childish?

A. On that occasion of my second and third visit he apparently referred to his wife, by his actions.

Q. What were those occasions?

A. He was gazing at his wife.

10 Q. Looking at his wife?

A. Looking at his wife, in her face.

Q. How was his sight at that time?

A. I don't know.

Q. Could he see a distance of five feet?

A. Yes; I know he could, because he recognized me at that distance.

Q. Does softening of the brain impair the sight?

A. It may, possibly; yes, sir; I don't know that it generally does.

Q. Does it not always impair the sight as to recognition of form and the determining of objects looked at?

20 A I don't know as you can attribute it to sight altogether; it might be attributed to reasoning powers.

Q. When did you graduate from college?

A. I graduated in Louisville in 1876, and at the university in 1878.

Q. Had you any medical knowledge prior to that when you first saw your grandfather in 1871?

A. I don't know that you could call it real medical knowledge.

Q. Had you any when you saw him in 1873 or 1874?

A. I had just commenced to study medicine.

Q. Had you such a knowledge as to enable you to

30 form a diagnosis of a patient's affliction with softening of the brain at that time?

A. I don't think I had.

Q. Had you ever read any treatises upon softening of the brain at that time?

A. No, sir.

Q. When did you first read any treatises upon softening of the brain?

A. In 1875 I read articles on that subject; I read articles in Tanner's *Practice of Medicine*, I read an article in Hammond's treatise on the *Diseases of the Mind*

40 *and the Nervous System.*

Q. Prior to 1875 had you read any treatises or articles on softening of the brain?

A. No, sir.

Q. Then, your opinion as to any affliction of his mental capacity formed during your visits prior to 1879 was not that of an expert, was it ?

A. My opinion has been formed since from memory.

Q. Your opinion is formed now as to the manner in which his brain was affected in 1871 or 1874 by recollecting the circumstances attending your visits and observations of him; and the application of those circumstances; and your knowledge acquired subsequently to those visits—at least three years subsequent ? 10

A. Yes, sir.

Q. When you explained to him the use of the instruments did he seem to comprehend ?

A. Not altogether.

Q. It is pretty difficult to comprehend them, is it not ?

A. Some of them, probably.

Q Did Mrs. Turnure ever object to you entering the house ?

A. I don't know that she did after she knew who I was. 20

Q. As to your examination of his mental capacity, did you ever lay your hands upon his head ?

A. I don't remember that I did.

Q. Did you ever ask him any questions used in a medical application to him ?

A. I think, on my visit in September, 1879, I asked him if he felt numb in any of his limbs, and he told me no—at least I don't remember exactly whether she told me no or he told me no; one of them told me no.

Q. Numbness of the limbs is produced by a sympathy with failing mental capacity, is it not—that is, where the failing mental capacity is superinduced by softening of the brain ? 30

A. Yes, in a majority of instances it is.

Q. Did you ask him any other questions ?

A. I don't know that I asked him any pointed question beside that.

Q. Give us any answer made by Mrs. Turnure, and the question, which led you to believe that she was mentally dominating over him ?

A. I don't know that I can recall any particular one now.

Q. What makes you think that her mental faculties dominated over his ? 40

A. Her position in respect to him was one thing—I mean in the room—she sitting directly opposite him, looking right at him.

Q. What was the size of the room ?

A. It was not as large as this room.

Q. Allowing this room to be 15x20, what would you consider the size of that room ?

A. I suppose that room was about 12x15.

Q. At which window did your grandfather sit ?

10 A. The house faces south. He sat at the west window, and she sat at the east. I suppose they were four or five feet apart.

Q. Do you know what her age was at that time ?

A. I don't, but I should judge her age over 70.

Q. Was there a bureau back of her chair ?

A. There was, or near her chair.

Q. If she had sat with her back to that bureau, could she have sat by any other window in the room ?

A. She could have sat at the same windows and turned herself around the other way, with the bureau facing her and her back to him.

20 Q. If she had desired to see him could she have sat in any other position in that room except in a position that would have been darkened on account of lack of light in the room ?

A. I think the room was pretty well lighted.

Q. Were there more than two windows in the room ?

A. In that room there were two.

Q. Did you think it unnatural for her to sit at the window opposite him ?

A. I don't know that it was unnatural.

Q. Was it not, in your opinion, the most convenient

30 place for her to sit ?

A. Not by any means; there would have been many more as convenient places; she could have sat more in the centre of the room; she could have sat in the chair that I sat in; I sat, as near as I can judge, about six or seven feet from the wall, between the windows on my grandfather's left; I sat in a diagonal direction with respect to the wall, so that I could see him and her.

Q. You must have sat nearly facing the wall between the windows ?

A. If I had looked straight ahead, I would have looked at the jamb of the window that she was sitting in, and

40 at her.

Q. What peculiarity about her eyes that induced you

to believe that she controlled him ?

A. Her gaze was set right upon his face.

Q. She was looking at him ?

A. Yes.

Q. Anything more ?

A. Nothing that I know of.

Q. Did you believe that there was any mesmerism about it ?

A. That depends upon what other people believe. I believe that eyes have quite a decided influence over people. 10

Q. Give us any speech of his, or action of his, that you thought to be the result of the influence she possessed over him ?

A. I don't know that I can remember of any particular speech or action.

Q. Your opinion as to her influence over him is formed from the fact that she sat at a window—one of two windows in a room—and about four feet from his chair, and looked at him ?

A. Yes.

Q. Do yo know anything about your grandfather's business capacity during 1871 and 1872, and up to 1877 ? 20

A. No, sir.

Q. From your opinion of his mental capacity, did you think that he would have been a safe man to trust with the investment of large sums of money, or to manage business requiring the investment and handling of large sums of money, on any of your visits up to 1879 ?

A. I should not have cared to have him handle any for me.

Q. In 1873 or 1874, what was your opinion as to that ?

A. I had formed no opinion at that time.

Q. Beyond the fact that he did not recognize your cousin, and that after your introduction of your cousin he subsequently called him Frank, was there any incident in any of your visits prior to the visit of 1879 which induced you to believe that he had softening of the brain ? 30

A. The principal thing which induced me to believe that he had softening of the brain was the fact that he appeared listless.

Q. What do you mean by listless ?

A. He paid very little attention to things round about him.

Q. What question did you ask that he did not answer ? 40

A. He answered my questions when put point-blank.

Q. He did not seem to take any particular interest in your business, did he?

A. He did on one occasion; he took a little interest.

Q. Did you speak to him about his business?

A. No.

Q. As to what subject did he appear listless?

A. I don't know any particular subject.

Q. Do you remember one of any kind?

A. No, sir.

Q. Did he get out of the chair during your visit in 1872—1871 or 1872?

A. I don't remember.

Q. Have you made a specialty of diseases of the brain?

A. No, sir.

Q. Have you ever treated a case of softening of the brain?

A. Yes, I have treated a case which I called softening of the brain.

Q. How many?

A. One.

Q. Of an aged person?

A. Yes.

Q. You say he seemed at a loss what to say. What do you mean by that—that he did not keep up an active conversation?

A. I do.

Q. Did you converse with him about his money matters?

A. No.

Q. About his marriage to Ellen?

A. No, sir.

Q. Was there any part of your conversation at any of your visits which was more than commonplace conversation—anything affecting any of his interests?

A. No.

Q. Where do you practice?

A. Schenectady, New York.

Q. Been practicing how many years?

A. Four altogether.

Q. Was there anything in his conversation or action, during any of your visits prior to 1879, which impressed you with the belief that he was mentally incapacitating?

A. It was impressed upon my memory that he was going through a mental change, but I did not know what to call it at that time?

Q. What was it that impressed you with that belief?

A. The principal point was in the first visit—that he did not know my cousin.

Q. You don't know how long before that that he had seen your cousin?

A. No, sir; and on the second occasion was the difference in receiving me; he seemed more distant; did not seem to be as cordial as on the first occasion.

Q. What did he do on the first occasion that he did not repeat on the second? 10

A. He asked very minutely about my family on the first occasion?

Q. How long before that first visit had you seen him?

A. I saw him, I think, in 1870.

Q. How long before that?

A. I cannot tell you.

Q. More than seven years?

A. It might have been.

Q. In 1870 you saw him in New York?

A. Yes, in the office of my uncle's stable

Q. Did you have any conversation with him there about your father or family affairs? 20

A. He asked after my father.

Q. Did he ask minutely?

A. I don't know that he did—he asked after his health.

Q. Did he ask minutely upon your first visit to Jersey City?

A. Nothing, only in regard to my father's health, and where he was.

Q. What was the difference between the first and second reception in Jersey City as to cordiality?

A. He was more cordial to me on the first visit than upon the second. 30

Q. How did that evince itself?

A. On the first visit he asked particularly after my family, after my father, and so on—and, I believe, after myself, what I was doing, and so on.

Q. That was tha first visit you had paid him in his house in a great many years—in any house that he resided in?

A. Yes.

Q. At your second visit, didn't he ask as minutely after your affairs and your family as on the first visit? 40

A. I don't remember that he did.

Q. Is that the reason you thought he was less cordial?

A. That was one reason—yes sir.

Q. What were the other reasons?

A. His actions were distant.

Q. What did he do or neglect to do on the second visit that he did on the first?

A. He neglected to ask me to take a seat. That was a neglect of cordiality, I suppose.

10 Q. Anything else?

A. I can't remember anything else.

Q. Did you take a seat?

A. I did, at his wife's invitation.

Q. Anything else?

A. Not that I can remember.

Q. Looking at it in a medical light, do you consider the fact that he minutely asked concerning your family affairs upon your first visit to his residence during many years, and his neglect to minutely ask as to those affairs upon your second visit, an evidence that he remembered what you had related upon the first visit and considered 20 it a repetition of a minute inquiry, and that it was unnecessary?

A. I do not see how I could understand it in that way.

Q. Don't that strike you as being natural?

A. No, it does not, because I am in the habit myself of welcoming people on every occasion the same as I do on every other occasion.

Q. When he asked you minutely as to your affairs on your first visit, did you answer him?

A. Certainly.

Q. Did you give him the information he desired?

30 A. Yes, sir.

Q. Wouldn't you have considered it a repetition of those questions upon the second visit, and the evidence of a loss of memory?

A. I don't know as I would consider them an evidence of loss of memory.

Q. He had acquired that information upon your first visit?

A. Yes, sir.

Q. And there was no necessity of his asking the second time, was there?

A. I presume not.

40 Q. Do you live in New York City?

A. No, sir; I live in Schenectady.

Q. Is softening of the brain accompanied by loss of memory ?

A. I don't think it is.

Q. Does not softening of the brain at times impair some faculties and strengthen others ?

A. It impairs some faculties at times, but I don't know as it strengthens others.

Q You say she acted toward him as though he was a child. What did she do on your first visit, or on your second visit, that led you to believe this ? 10

A. On my first visit she was not at home; on the second visit she acted in a way that I would act toward a child.

Q. What did she do ?

A. By answering questions for him.

Q. What one question did she answer for him ?

A. I don't remember any particular question.

Q. When did you have a conversation about the medical instruments ?

A. In September, 1879.

Q. Did he examine the instruments with any display of interest ? 20

A Simply looked at them as they were held up.

Q. Further than what you have testified to, did you not in 1879 take any steps to find out his mental capacity ?

A. I did not.

Q Or to find out his condition of health ?

A. Beyond what I asked her I did not.

Q. Do you know whether he was attended by a physician in 1879 ?

A. I do not know.

Q. Did you ask him ?

A. I don't remember. 30

Q Did you consider him in need of medical assistance ?

A. Yes.

Q. Why did not you ask him whether he had any ?

A. I might have asked him; I don't remember whether I did or not.

Q. Did it impress itself upon you as a matter of importance at that time that he needed medical assistance ?

A. It did.

Q. What medical assistance do you think he needed as to the head troubles ? 40

A. She said he had a severe headache at times.

Q. Haven't you been troubled with severe headaches?

A. Yes; and I have attended myself.

Q. If you had not had medical knowledge, would you have considered when you had a severe headache that it was necessary to have a physician?

A. I think it would be good judgment on the part of a person suffering to get the assistance of a physician.

Re-direct examination by Mr. Wortendyke:

10

Q. On your cross-examination you were asked if from those four visits you had formed an opinion as to whether your grandfather was competent to make a will or not, and your reply was, "I think so." State what you meant when you made that reply?

A. I meant by that that I thought I had formed an opinion.

Q. What was the opinion that you had formed?

A. My opinion was that he was a man who might be easily influenced by extraneous circumstances, and a person in that predicament I should not think would be capacitated to make a will.

20

Q. Do you mean that if not influenced improperly you considered him competent to make a will at that time?

A. He might have been.

Q. Was your conversation at your visits addressed to him or to her?

A. To him.

Q. Would he make any attempt to reply?

A. On several occasions he did.

Q. Would he make complete answers to your questions?

30

A. Not always.

Q. Who completed them?

A. His wife did.

Q. Did you form an opinion during those four visits of the extent of her influence over him?

A. I did.

Q. What was your opinion?

A. That she either did or attempted to influence him, most decidedly.

Q. From your experience, what is your opinion as to her will power in that direction?

40

Question objected to.

A. I should judge that she was a woman who would have a decided influence over any one; her will power was decidedly good, I should judge.

Q. Is numbness of the limbs a usual attendant of softening of the brain?

A. It may be; it generally takes place towards the end of a patient's life; sometimes it commences as much as three or four years before.

Q. Was your opinion, as to the influence that she exerted over him gathered only from the fact of her gazing at him constantly while you were there on these visits? 10

A. Principally from that, and from the fact that she answered some of the questions which were put to him.

Q. You say that in 1879 you would not have cared to have him handle any money of yours. Now, why?

A. Because from my observation, and from questions which I asked, I was under the impression that his memory was failing to some extent. I cannot remember the questions which I asked beyond the ones which I have given.

Q. Was the conversation that you had in 1871 or 1872 the same character of conversations that people ordinarily have at interviews—that is, between people living some distance apart? 20

Question objected to.

A. Yes, sir.

Q. Were your questions on your two visits in 1879 of that character that it should require anybody else to answer them than himself? 30

A. No, sir; commonplace questions.

Re cross-examination by Mr. McDermott:

Q. Were there any questions during any of your visits that, in your opinion, she could have had a motive in answering other than a desire to hasten the conversation?

A. I don't know what her motive might have been; it might have been to hasten the conversation; I would not like to give any opinion on that point. 40

Q. Was there any answer given to any of your questions which at that time conveyed to your mind the idea that she, in answering the questions, could have had any other motive than to hasten the conversation?

A. I asked one question, I think, at that time as to why he never came to see us. She said, "Oh, he is too feeble; he never goes out alone." That was at the visit in September, 1879, I think; either that or the visit following it, which was the next month—a little short of a
10 year before he died.

Q. Can you give us any other question at that or any previous visit?

A. I cannot remember any other particular question.

Q. Can you remember any question?

A. I asked what he did for these headaches; I asked him, and she says, "Oh, I attend to that."

Q. Any other?

A. I cannot recall any other now; but there were many questions asked that she answered, which I don't remember.

20 Q. You say, towards the end of a patient's life there is generally a numbness of the extremities. Isn't that always the case where death is produced by old age?

A. I don't think that invariably it is the case.

Q. How is it generally?

A. If it is not invariably the case it cannot be generally the case; I should think generally would mean nearly always.

Q. Invariably would mean always, would it not?

A. Not—invariably would not mean always.

Q. How about generally?

A. I don't know that it is generally.

30 Q. You say it takes place toward the end of the patient's life. I suppose it continues in its rigidity afterwards, don't it?

A. As long as the *rigor mortis* continues.

Q You say she had a will that would influence anyone. Did she influence you with that will when you were there?

A. She did not. I did not mean to state that it would influence any one, but that it might influence any one; that is the idea I meant to convey.

Q. When he left her presence, do you know that that will followed him in its influence?

40 A. I think it did to a great extent.

Q. To a greater or lesser extent, as to her presence—did

it decrease the influence by her presence being wanting?

A. I think, so far as his cordiality was concerned—that is, as far as I could judge—that it decreased when her presence was wanting.

Q. You merely judge from cordiality.

A. Yes; that is the only way I have of judging. I never consulted him on his business matters.

Q. Did she ever act towards him, during any of your visits, in a way that you would consider peculiar as an action from a wife to a husband? 10

A. I cannot say as to that.

Q. Are you a married man?

A. No, sir.

Adjourned to Wednesday, January 5th, proximo, 1881, at 11 o'clock in the forenoon.

JANUARY 5, 1881.

Pursuant to adjournment, the parties all appearing, the taking of testimony was continued as follows: 20

MELVIN T. HARD, a witness produced on the part of the caveators, being duly sworn, testified as follows:

I reside at Tremont, New York City; I am a grandson of William P. Turnure, deceased; I am 30 years old; I am in the paper business; have been engaged in that business ten or twelve years, at 44 and 25 Beekman street; am now at 25 Beekman street; have been located there about six years and a half. 30

Q. Did you after your grandfather began to reside in Jersey City, call upon him?

A. I did once in 1871; my cousin, Milton Turnure, was with me; it was in South Seventh street, as it was called at that time; some woman came to the door; I do not know who she was; I should think she was between 30 and 35 years old; we went upstairs into the second story front room, and found there my grandfather sitting in a chair alone.

Q. State briefly what occurred after you found your grandfather at that place? 40

A. I went up to him and said, "How do you do,

grandfather"? He said, "How do you do, Frank"? My cousin told him it was not Frank. "This is Brother," which was my nick-name. "O," he says, "is that so"? I asked him how he was. He said he was pretty well, I do not recollect what else. We had some few words of conversation.

Q. Did you have any conversation with him at that time about your absence, or where you had been traveling?

10 A. Milton told him I had been to Europe; he said, "Yes." I told him I had He asked me what part of Europe I had been to. I told him I had been in England, Scotland, France. He did not seem to say much of anything else, but answered "Yes" and "No;" he said very little.

Q. How long did you remain there at that time?

A. I suppose I was there half an hour.

Q. Did he again call you "Frank" before you went away?

A. Yes; he called me "Frank," twice.

Q. How long before that was it that you had last seen

20 him?

A. I had not seen him in three or four years.

Q. How did he act at that time?

A. He seemed to be very feeble. He did not know what to say, hardly.

Q. What opinion did you form as to his condition of mind from his actions at that time, and what was said?

A. I made up my mind that he ought to have somebody to take care of him—to look after him—that he was not able to attend to business or anything, himself.

Q. What particular disabilities was your attention

30 directed to?

A. That his memory was very bad—forgetful.

Q. Did you call on him at any time after that?

A. I did not; I never saw him again.

Cross-examination by Mr. McDermott:

Q. You say from his actions that you thought he was not able to take care of himself. What actions induced

40 you to form that belief.

A. He seemed to look around, and did not look at you

when you talked to him, and did not know what to say.

Q. Did you ask him any questions that he did not answer; and, if so, state the questions?

A. I do not recollect any.

Q. How long did your conversation with him occupy that day—I mean your own talking to him?

A. It might not have been over 10 or 15 minutes, and might not have been that.

Q. You say he looked around. Wha do you mean by that? 10

A. Well—glanced around the room.

Q. Did he have his spectacles on?

A. I think not.

Q. Do you know what he glanced around the room for?

A. I do not.

Q. What year was this?

A. 1871.

Q. Did you mention your visit to anybody after you left that house?

A. I might have told them at home I had been to see my grandfather? 20

Q. Do you remember what you told them about your visit?

A. I do not know now.

Q. Did you tell them that he appeared very ill?

A. I did not.

Q. Did you tell them anything about his general condition of health?

A. I do not think I did

Q. Did you speak to your mother about his general condition of health?

A. I do not recollect that I did.

Q. What is your opinion or memory on the point? 30

Question objected to.

A. I think my memory is pretty good on that point.

Q. What is the best of your memory on the point?

A. I do not think I told them anything; I do not think I did.

Q. If you thought that he was failing, physically and mentally, why did you not say so when you went home?

A. I do not know; I suppose they had seen him 40 oftener than I had, and they knew more about him than I did.

Q. How long before that visit had you seen him?

A. I do not think I had seen him in three or four years.

Q. And how long before that time?

A. It might have been six months or a year.

Q. Was that the first time you had seen him since your return from Europe—this last time?

A. Yes.

Q. Do you remember whether you wore a beard when you went to see him in Jersey City or not?

10 A. I do not.

Q. You were then 21 years old?

A. Yes.

Q. And the time prior to that you were 16 or 17?

A. I might have been; I have not thought of it.

Q. Was there any remark made by him that day except the mistake in the name that led you to believe that he was mentally failing, and, if so, what was it?

A. I do not recollect now of any.

Q. Did Ellen Turnure come in the room while you were there?

A. I did not see her; I never saw her.

20 Q. Who is Frank?

A. My brother.

Q. What is his age?

A. 24, I think, now.

Q. Why did you not call to see your grandfather after 1871?

A. I very seldom go out of the house much, and I did not think it was much use; there was not much satisfaction.

Q. What do you mean by not much satisfaction?

A. He never talked, never said anything except "yes" and "no".

30 Q. Do you recollect any question you asked him that required any answer more explicit than "yes" or "no"?

A. I do not recollect now.

Q. From your place of business in Beekman street, New York, to his house would require about 35 minutes?

A. About that, I guess.

Q. Were you daily at your place of business for the past seven or eight years?

A. Yes; nearly every day.

Q. Is your time occupied on Sundays in any business capacity?

40 A. No, sir.

Re-direct examination:

Q. What do you mean when you say he seemed to be at a loss what to say?

A. He did not know what to say, I suppose—would not ask any questions, and would not say anything hardly.

Q. How did he act with reference to replying to questions asked?

A. He sometimes said "yes," sometimes said "no," and, I think, sometimes he said nothing. 10

Q. Seemed to be at a loss what to say when such questions were asked?

A. He did.

Re-cross examination:

Q. Do you remember any questions which you asked him to which you did not receive a satisfactory reply?

A. I asked him how he was, and he said pretty well. I do not know whether he was or not. 20

Q. Did you continue the conversation on the subject of his health?

A. Oh, no.

Q. I repeat my question: Do you remember any question that you asked him to which you did not receive a satisfactory reply?

A. I do not recollect now—it has been so long ago.

Q. Was there any reason for his asking you any questions?

A. Not that I know of.

Q. In what way did he indicate that he was at a loss of conversational power? 30

A. It seemed his memory was very bad; he had no memory, I should think; he did not know what to do, hardly.

Q. Give us the circumstances by which you decide his memory was bad, except his calling you "Frank"?

A. I do not recollect now—it is so long ago.

Q. How did you arrive at the opinion that his memory was bad?

A. From his calling me by some one else's name twice.

Q. And except that?

A. From his looks.

Q. What was there about his looks that denoted lack of memory or failing memory? 40

A. He seemed to be a sort of—I do not know how to explain it—dazed or flighty.

Q. What do you mean by "dazed"?

A. Why, stupid.

Q. Then you formed your opinion of his mental faculties, so far as memory and conversational power are concerned, from the fact that you looked at him and that his physical appearance made an impression to that effect upon you—is that true?

10 A. I did.

Q. Did you form it from anything else?

A. And from his calling me by some other name.

Q. Anything else?

A. I do not recollect now.

Q. Were his eyes glassy?

A. I do not recollect.

Q. Were they watery?

A. They were watery, because his eyes used to be rather watery.

Q. As to his complexion, did you notice any difference in that from the time you had seen him previous to this

20 visit?

A. He was very pale.

Q. Was he very pale on the visit previous to that?

A. I do not know; he appeared to be in good health before that.

Q. Did you ever study medicine or surgery?

A. No, sir; neither.

Q. Did you know anything about his business in New York at that time?

A. No.

Q. Did you ask him anything about it?

A. No.

30 Q. Did he appear friendly to you?

A. No.

Q. Did he ask you why you had not been to see him before?

A. No.

Q. Did you explain why you had not been to see him before?

A. I did not.

Q. Why did not you?

A. I do not know.

Q. Did you not consider it necessary to give him any

40 explanation.

A. I did not think he would understand very much if I told him about it.

Q. You told him about your travels in Europe?

A. I told him where I had been.

Q. Did you tell him any incidents of your travels?

A. I did not.

Q. How long did that conversation as to your travels last?

A. Two or three minutes.

Q What was the rest of your conversation about?

A. I do not recollect now.

Q. Except the question which you asked him about his health, and to which he replied. "Very well," did you ask him anything else about his health? 10

A. I do not recollect now; I could not say—it is so long ago.

Q. If you thought that he needed some one to take care of him, and that he was very weak, physically, why did you not ask him more questions about his health?

A. I might have—I do not recollect now.

Q. Who is in business with you in New York?

A. My brother.

Q. How many brothers have you? 20

A. Two.

Q. What business is the other brother in?

A. He is with us in the store there.

Q. [By Mr. Wortendyke.] Upon what particular things and occurrences of that day did you base your opinion as to your grandfather's mental and physical condition?

A. Upon his memory and his general appearance, and his actions also.

By Mr. McDermott: 30

Q. His general appearance is what you have described, and his memory you tested on the question calling you "Frank" twice, and his actions you stated were looking around the room. Now, was there anything else?

A. His appearing stupid.

Q. You formed your opinion that he appeared stupid, from occular demonstrations—from looking at him?

A. Yes, sir.

Q. Nothing else?

A. No. 40

Jane E. Barker, a witness produced on the part

of the caveators, being duly sworn, testified as follows:

I live in New York, 1568 Broadway, next to the corner of 47th street; I am 67 years of age; I knew William P. Turnure; he was my mother's brother; during the fore part of his life we were on very intimate and social terms—that is, the families were; my mother's
10 name was Mary Turnure—Mary Shaffer when she died; our intimacy continued up until his second wife's death —Eliza's death; we were always on very intimate and social terms up to that time; her name was Eliza Andrews when she married him; she was a sister of his first wife; up to the time of Eliza's death he lived at 24th street, New York City; after that time he lived in Jersey City, in the house in which he died; I do not remember the number of the house.

Q. Were you ever there?

A. I was over there, and was refused seeing my uncle. I think that was three or four years ago last May. I
20 simply called over to see him, and was refused admittance under the plea that he had gone to bed and was not very well. The door was not opened hardly.

Q. Who did you see at the door?

A. It was a female, but I could not tell who she was, because I did not know any of the inmates of the house. It was a small person, and I should judge rather young. It was about five in the evening when I called there—five or six.

Q. Do you know Ellen Turnure, his widow?

A. I do not. I should not know her if I should meet
30 her. I saw her the day of the funeral—the only time I ever saw her.

Q. What did you say to this person on the day you called at the house?

A. I told her I was the niece of Mr. Turnure, and would very much like to see him in a friendly way. She said that I could not see him, that he was ill and had gone upstairs to bed. I did not make any further inquiry about it, as I felt very much surprised at not being allowed to see him.

Q. Did she say he was too sick to be seen?

A. Simply said he was not very well and had gone to
40 bed; that he was sick and had gone to his room. I said, "Can't I see him"? and the answer was "No."

Q. Have you given all the conversation you had there?

A. Every word; and then the door was closed.

Q. Did you see him after that?

A. No; I called a second time about 11 o'clock in the morning, not very long after the first time. We were out in the country, and I came down from Catskill and I called to see him again. They told me he had gone to New York. I came down to the ferry and waited until four o'clock, and I watched every ferry-boat, but did not see him. Since then I have not been there at all. 10

Q. Who did you see at the house the second time when you called?

A. I could not tell whether it was the same person or not. I simply asked for Mr. Turnure, and they said he had gone to the city.

Q. Do you recollect whether it was an old or young person you saw at the door?

A. I cannot tell; I think it was the same person.

Q. Did you make any other endeavor to see Mr. Turnure?

A. Not at all; I never saw him since three or four weeks after his wife was buried until he was a corpse. 20

Q. What was his disposition during the time you knew him?

A. A mild, kind disposition—very plain man, very indeed—steady, straightforward—we always found him so; and a man very much attached to his family, particularly his daughter.

The last question and answer is objected to, and Mr. McDermott asks to have it stricken out.

30

Q. Was he a man, in your opinion, that was easily influenced, or otherwise?

A. Well, I think he was; I am very sure he was the latter part of his life.

Cross-examined:

Q. The last time you saw him was in 1865?

A. I think it was—yes; two or three weeks after the death of his wife.

Q. That was 14 or 15 years before he died? 40

A. That was in 1864 or 1865, I think; I disremember

the dates, but he was living in 24th street, and it was just after the death of his wife Eliza.

Q. Why do you say he was easily influenced during the latter part of his life—from what do you form your opinion?

A. I think he was a man easily influenced—an easy-going man—a man that I think was easily persuaded. I cannot bring forward any one thing. I merely judge from the manner in which he treated his family. He was a very kind, indulgent father—very, indeed.

Q. The first time you called at his house in Jersey City, did you go into the house?

A. O no; the door was opened on a very small opening.

Q. Would you judge that the person who came to the door was over 20 years old?

A. I should judge not. I supposed it was the servant, and paid no attention to her appearance.

Q. The second time, was the door opened any wider?

A. No; and closed before I could turn 'round. I then made up my mind I should never go there again.

Q. Were you not asked to call again on the occasion of your first visit?

A. No, sir.

Q. Did you ask, on either of those occasions, to see Mrs. Turnure?

A. I did not.

Q. If you were upon such intimate social terms with Mr. Turnure, why did you not call to see him from 1866 to 1876?

A. Because I heard that almost everybody who called there were treated with coolness, and not allowed to go in. Of course, I did not throw myself in his way; and when I went, I called on a friendly motive.

Q. Who told you before 1876 that they could not see Mr. Turnure?

A. Could see him—could see him, but were coolly treated. The family said they did not go there to see uncle William because they could not see him—he was very ill they said, or was out. His brother called there and he was very badly treated by her, and told not to come there again, for she did not want him, and that he need not come for money, and that he must not come there again, that he could not get a dollar from uncle William unless she would give it to him.

Q. Was this before you went?

A. No; I guess this is not more than two years ago.

Q. Who told you before you called the first time that you could not get admitted to the house?

A. I simply supposed that nobody would be received by the family.

Q. Did you think the first time you called that you would be received in a friendly manner?

A. I did when I first went there, of course; I had no idea otherwise; we were out of town at Catskill, where I resided in the Summer. 10

Q. You resided in the Winter in the city?

A. Yes; every Winter.

Q. Before they refused to admit you to the house, or rather told you that Mr. Turnure was sick and in bed, had you any idea that they would not allow you to see him?

A. I had not.

Q. Did you think that you would be cordially received at that house when you went to the door?

A. I supposed I would; I did not know anything about the woman, but supposed uncle William was man enough to have his friends admitted when they called; 20 and of course I called and thought I would be received there and go in and see him.

Q. Did you think you would be received cordially?

A. Yes; by him.

Q. You did not know anything about her?

A. Only what I heard.

Q. Did you think you would be admitted freely to the house?

A. I did.

Q. Then, why did you not call during the ten years previous to that?

A. I had no reason to feel other— 30

Q. Then, why did you not call during the ten years previous to that?

A. I was out of town a great deal of that time—I was in Washington a great deal of the time, and some of the years at Catskill, and staid the Winter there.

Q. Was there any year in which you were not in New York City?

A. No; but came in perhaps to-day, and go back to-morrow or next day, but never came over to Jersey City.

Q. Was there any year that you were not in New York City six months of the year? 40

A. Yes.

Q. Was there any year in which you were not in New York City three months during the year?

A. No; I think I was in New York every year three months.

Q. Why did you not call to see him?

A. Simply because I heard I would not be admitted, and I did not push myself.

Q. You say when you went to the house, when you called at the door, you thought you would be freely admitted and cordially received?

10 A. Yes; and was very much surprised at receiving the answer I did, and in the manner I did.

Q. Why did you not call before that if you thought you would be cordially received?

A. I had heard a good deal of him and of her through my uncle Abram Turnure.

Q. You did not ask for her on the occasion of any visit?

A. No.

Q. Did you ever try to form her acquaintance?

A. No; I did not wish to do so.

20 Q. When did you first learn that he was married to her?

A. It must have been eight or nine years ago. I have not treasured these things at all—they have passed from my memory; but I heard of her long before that.

Q. Do you remember whether the answer of the person who came to the door was "No," or "No, ma'am," on the first visit when you were there?

A. I could not tell you.

Q. Did the person who came to the door answer you respectfully as a servant should?

A. She simply said, "You cannot see him; he is not

30 well, and has gone up to his room." That was five o'clock in the afternoon. That was the first time I called.

Re-direct examination by Mr. Wortendyke:

Q. Did you tell who you were when you called there the second time?

A. I did not.

Q. Did they seem to recognize you?

40

Question objected to.

A. O, yes: she recognized me as soon as I went there. I said, "Is Mr. Turnure in"? She said, "No ma'am, he is not." Said I, "Is he well"? She said, "He is gone to the city." And I then went to the ferry and waited for him.

Q. Upon what do you base your opinion that they recognized you when you were there the second time?

A. A person of my age does not change very much, and it was not a very long time after; it was the next time I came from Catskill—within a week, or three or four weeks; it was not more than three or four weeks; at all events, it was the same season. 10

Q. Had William P. Turnure been in the habit of calling upon you frequently before he came to Jersey City?

A. O, my, yes.

Q. And you upon him?

A. O, yes. During his first wife's life, we were on very intimate and social terms; called very often, and was always received very kindly.

Q. You said that you did not desire to form the acquaintance of Ellen Turnure—why was that?

A. From what my uncle Abram told me. 20

Mr. McDermott objects to what Abram told her, as hearsay.

Q. Why did you not wish to form the acquaintance of Ellen Turnure?

A. Because I heard that her character was not a very good one, from my uncle—none else—and he judged from being at Saratoga the same time they were there—when his first wife was alive.

Q. That is, Ellen and William were there at Saratoga together? 30

A. Yes.

Re-cross:

Q. Did any one tell you what her name was before she married Mr. Turnure?

A. I saw it in print.

Q. Did any one tell you? 40

A. I never asked the question; I never asked anything about her.

Q. Do you know when her first husband died ?

A. No.

Q. Do you know when her second husband died ?

A. No; I knew nothing about her.

Q. Did you ever hear her called Nelly Weaver ?

A. I think that is the name my uncle gave me, but I am not positive.

Q. Did you ever hear her called Vanderbilt ?

A. No.

10 Q. Do you not know that she married a gentleman named Vanderbilt ?

A. I do not.

Q. Then all the objection you had to calling upon her was a social objection on account of her standing ?

A. On account of her standing. My home is with my daughter, and there are young ladies in the family, and I objected socially to have anything to do with her.

Q. You founded that objection upon what some one had told you—that she had been at Saratoga with William P. Turnure ?

A. He took her there; yes, sir.

20 Q. Did you ever take any steps to ascertain whether that was true or not ?

A. No, sir.

Q. Do you know any of her children ?

A. No; I do not know anything about her or her family. I presume those I saw the day of the funeral were her family, but I should not recognize any of them now.

Q. How was the last meeting you had with your uncle Mr. Turnure—very pleasant ?

A. That was shortly after the death of his second wife —certainly, we were always on the most social terms.

30 Q. Do you remember the last conversation you had with him ?

A. I do not; the last conversation I remember was the making of the arrangement for her funeral; that was a business arrangement.

Q. Was the party who came to the door the second time the same party who came to the door the first time ?

A. I could not tell you—I presume it was.

Q. It was only a short time from your first to your second call ?

A. I think about a week.

40 Q. During so short a time would you be likely to forget the countenance you first saw ?

A. I might not pay particular attention to it. My countenance would not be very likely to be forgotten by a person attending the door the first call; they would recollect a person of my age the second time. Young persons change their dress more than old persons.

Q. Except from your own opinion that you would be recognized upon the occasion of the second visit by anybody who had seen you on the first visit, you have no means of telling whether the same person came on the
10 first as on the second occasion?

A. I have not.

Re-direct:

Q. Did you learn how William P. Turnure and this Ellen were at Saratoga at that time?

Question objected to.

20 A. I heard that they had gone on a trip of pleasure, and that they were there as a married couple—as a man and wife—and my uncle left Saratoga on account of being his brother.

Re-cross:

Q. What year was this?

A. I could not tell you—it was before they were married; I do not suppose it was over two or three years before they were married; it was before his second wife's
30 death; it must have been two years before.

Q. Was it two years before?

A. I think it was.

Q. Was it more than two years before?

A. I could not tell you.

Q. Was it more than three years?

A. I think it was.

Q. More than four years?

A. No, I think not.

Q. Was it more than five?

A. I could not tell you?

Q. How is your memory as to that?

40 A. I did not trouble my mind about it; I simply knew these things as facts, and my uncle Abram I do

not think ever told a falsehood in his life.

Q. Was it before or after he was 60 years old?

A. I would not be safe in answering that question.

Q. Do you know when he married his second wife?

A. I do not remember the dates.

Q. How long was she married before she died—that is, his second wife?

A. I disremember dates.

Q. Can you remember the color of the dress of the party that came to the door when you first called at the house in Jersey City?

A. No; the door was not wide open enough.

Q. Do you know how many stories high the house was?

A. I think it is a two-story and basement house, if I am not mistaken.

Q. Was it wood or brick?

A. A frame building. I think it was—it was just below the Catholic Church.

Q. How is your memory as to whether it was a frame or brick building?

A. Not good.

Q. Will you swear that it was not a brick building?

A. No; I could not swear to that.

Q. Do you remember writing to William P. Turnure?

A. I never did.

Q. Why did you not write to him?

A. I gave him up entirely after my going over the second time.

Q. Why did you not write to him during the ten years before you went there the first time?

A. I do not know; there was some circumstances that led me to feel I had given him up; and when I went there and was refused admittance of course I gave him up entirely.

Last question and answer objected to as not proper examination.

Q. What were the circumstances that led you to give him up?

A. From what a maid-servant told me the night the second wife died—Eliza Turnure.

Q. That led you to give him up?

A. That is to give him up; it was the night she died, and after that I thought he was doing wrong, and then my uncle told me what he did, and I thought that the best society is the best for persons, and consequently I I concluded to let him alone; I supposed he would come to me, but he never did.

Q. After you made up your mind to give him up, on being told something by a servant, did you ever see him?

A. I never saw him after the second week after his wife's death. 10

Q. Did you have any friendly conversation after you had made up your mind to give him up?

A. I never saw him after he broke up housekeeping, after the death of his wife, till I saw him a corpse.

Q. On the night of the death of the second wife his servant in his house told you something, did she not?

A. Yes.

Q. Did you then make up your mind to give him up?

A. No; not until after his children had been distributed and he went to housekeeping with this woman.

Q. When did you see him after the death of his second wife? 20

A. From two to four weeks after her death, about settling up the affairs.

Q. Then did you have any friendly conversation with him?

A. No business conversation with him at all—social conversation—very pleasant and agreeable conversation.

Q. You had made up your mind at that time to give him up?

A. I had made up my mind that he was not conducting himself rightly; I thought he had been persuaded in some way. 30

Q. Had you made up your mind at that time that socially he was not a proper person to come to your house?

A. I never thought so of him at all, but I did of his associates.

Q. He never invited his associates to your house, did he?

A. No; but his companion was enough.

Q. Did you ever try to see him again after the occasion of the two or three weeks after his second wife's death? 40

A. No.

Q. When did you first hear that he was married to Ellen Turnure?

A. I think it was in August or September after his wife's death—the same year.

Q. Did you hear where he was married?

A. No.

Q. Did you ever see the marriage certificate?

A. No.

Q. Did you ever see anybody who had seen it?

10 A. No; his brothers have never seen it?

Q. Did any of his children ever tell you that they had seen the certificate?

A. I never had any conversation with his children concerning that woman. I simply know that they did not go there very much, on her account.

Q. What induced you to pardon his social sins so far as to call upon him in Jersey City?

A. I felt I was not doing right—he was an old man. I did not call to see her; I did not ask for her; I simply called to see him.

Q. You say you did not feel you were doing right. What do you mean?

20 A. I mean that I did not mean to associate with any woman that I felt toward as I felt toward her.

Re-direct:

Q. Your uncle Abram left Saratoga—you were going to tell us why he left Saratoga. Now tell us why?

A. Simply on that account. Uncle Abram was a business man, and well known through New York by many persons who were at Saratoga—and so was William

30 Turnure—and they were passing as man and wife, and uncle Abram left Saratoga on that account; he told me that himself.

Q. What was this information that the servant gave you which induced you to break up relations with him?

Question objected to.

40 A. That she was always after him, and it came from the men in his own stable. That was the night of the death of the second wife when I got that information.

Re-cross :

Q. The information that you received from the servant was, that the servant had received information that the men in Turnure's stable believed that they knew that Ellen Vanderbilt was always after Mr. Turnure ?

A. Yes.

Q. Anything further than that ?

A. Nothing further than that at all. 10

Q. Is that sufficient, in your mind, to socially ostracise Ellen from your society ?

A. Certainly, certainly; it is enough for any person and particularly those who have grand-children.

Q. Did you ever hear during his younger days—when he was between 25 and 40 years old—William P. Turnure speak of Ellen as "Nellie Weaver" ?

A. I never did.

Q Did you ever hear her name mentioned ?

A. Never.

Q. When the servant told you that night—was that the first time you had ever heard of her ? 20

A. That was the first time I ever heard of her. This servant was an American girl, who had lived with him a number of years—a girl I think you could depend upon; she was more of a nurse to him.

Adjourned to Thursday, January 13th, at 2 p. m.

30

Pursuant to adjournment, on this January 13th, A. D , 1881, the parties all appearing, the taking of testimony was continued.

THOMAS B. WILSON, a witness produced on the part of the caveators, being duly sworn, testifies :

I reside at 389 Bergen avenue, Jersey City; my business is mineral water manufacturer; I am 56 years old; I knew William P. Turnure in his lifetime for about ten years—from 1866 until he died. 40

Q. Did you have any business transactions with him during that time?

A. I did, in April, 1872, I think; I bought a piece of property of him on the corner of Fourth avenue and 25th street, New York, which was 50 feet front by 100 feet, covered with an old stable—a livery stable down-stairs, and the city had an armory upstairs; the consideration or purchase price was $77,500. I paid $27,500 cash in two checks—one a check of $20,000, and I think the
10 other was for $7,500; $50,000 remained on bond and mortgage on that property for five years at seven per cent.

Q. How long did you own it?

A Pretty near five years.

Q. How did you pay the interest on the mortgage during that time?

A. Always promptly, to Mr. Turnure, I brought it over to his house in Jersey City when he could not come. That continued for about four years and six months, I think; I sold it about six months before the mortgage was due, to James Lynch

20 Q. Do you know what disposition William P. Turnure made of the $20,000 and the $7,500 you paid him?

A. Only what he told me; he said he was going to give it to two sons—$20,000 to one and $7,500 to the other—so that they would not quarrel after he was dead; that is about his remarks to me.

Q. Did he say to which he was going to give those different amounts?

A. No, not to my recollection.

Q. Did he ever say anything to you about his money matters at these different interviews?

A. Yes.

30 Q. State what?

Question objected to.

A. It was a general talk of investments—asking about certain securities, such as buying bonds and mortgages, asking advice which was the safest and best investments; his favorite was small bonds and mortgages on real estate; he said he had purchased some and rather liked that kind of securities.

40 Q. Did he say anything to you as to the amount that he held of that sort of security, at any one of those interviews.

A. I don't think he did; in one or two instances he spoke of a $4,000 bond he had bought, and got a good shave on it, and thought that was a pretty good transaction; that is about the only item I can remember.

Q. Did he say where that property was?

A. I don't recollect now.

Q. Did he say anything about the property in which he was living, in Seventh street, Jersey City?

A. Yes; in speaking of that house and a lot adjoining —I think he had sold the lot about one of the last times I had seen him—that he had sold the lot alongside of him, I think, for $4,000; I don't know what he said about the house that he was living in in particular, only that it was all the property that he wanted, and that he had sold the lot, and did not want to be bothered with real estate. 10

Q. What did he say as to who purchased that property?

A. I don't remember that.

Q. During this period that you were acquainted with William P. Turnure, how frequently did you meet him?

A. The last two or three years not more than two, three or four times a year; if I met him more than twice it was by his coming to see me; he came once or twice in his carriage, with his wife, for some purpose. 20

Q. When you paid the interest money in Jersey City, did you see her?

A. Always.

Q. What was her conduct with reference to conversations that were had at that time, or at those times?

A. She always came down and opened the door, and asked me up, and would say that William was not very well to-day, or that she had taken a walk this morning—a general conversation which didn't amount to much, but nothing about money matters that I am aware of. 30

Q. Was she always present when you had your interviews with William P. Turnure?

A. Always.

Q. Did she take any part in your conversations in reference to business, or your business with him?

A. Yes; she always had to say all that was necessary.

Q. Anything more than was necessary?

Question objected to.

A. Well, she would like to talk about those matters like all other women, I suppose; she was a business 40

woman; she was present, and done the advising generally when I went there.

Q. Do you recollect anything in which she took the part of adviser at any of those interviews?

A. No, not particular—only the investments; that she did not want him to be bothered in real estate, and would rather have the money in bonds and mortgages; she said it was the least trouble, in speaking of safety and prudence, and things of that kind.

10 Q. What did she say about that?

A. She said William was getting too old to be bothered with real estate; it was more than he could attend to; she didn't want to be bothered with it. This was brought up by a purchase of the house next door, in 25th street, when we were pulling down to build, and we would like to buy the one on 25th street to make ours a deeper lot, and I wanted to make a larger mortgage to cover the whole property and get a builder's loan, and I thought he would like to invest, as I thought he would have plenty of money, and I had some talk with him about it, and she didn't want him to invest any money in anything 20 except something that would bring him an interest.

Q. What did she say about that particular investment?

A. She did not want it.

Q. What did he then say?

A. Her say was sufficient; he didn't have anything to say; that was the answer.

Q. When was this?

A. I think I commenced building in 1874—no, 1875; it was when he was in pretty good health.

Q. Had you a conversation at any other time with reference to investments in which she took part?

A. Not after that.

30 Q. Before that?

A. I don't think I did.

Q. To whom did you pay the moneys that you paid as interest when you called at Jersey City?

A. I generally laid it on the table, and she took care of it—put it away, or he told her to, and she would take it. He would sit there at the end of the table, and she would sit at the other end, or else he would sit at the middle of the table, and I would sit near to the window to count out the money; it was some $1,750 every six months, and he told her to put it away.

40 Q. Who gave the receipts for it?

A. I think I have got his own receipts.

Q. Who wrote them?

A. I think he wrote them; I don't ever remember of her writing one of them.

Q. In these different interviews that you had with Mr. Turnure, did you form an opinion as to what kind of man he was, as to his disposition?

Question objected to.

10 A. No.

Q. Did you form any opinion as to the character of woman she was, as to disposition?

Question objected to.

A. No.

Q. Did you form any opinion as to which of the two were stronger in will?

A. It did not require to form any opinion on that; I knew that, or at least I thought I did; I thought she was
20 the ruling power in the house.

Q. What led you to that conclusion?

A. She appeared to take the lead in matters; the old gentleman along in his later years wanted to have somebody to do the work, and she was quite willing to do it; I don't know, probably if he had been younger, but what he would have ruled, because he was not a man to be ruled by anybody when I first knew him.

Q. It was in 1865 you first knew him?

A. Yes, sir.

Q. Did you notice any change in his disposition after that when you called upon him in Jersey City?

30 A. Oh, yes.

Q. What change did you notice?

A. He became weak apparently.

Q. When did you first discover that?

A. About 1875, I think.

Q. Did you discover it before that?

A. No; I don't think I did.

Q. What was the character of that weakness that you discovered?

A. I guess what led me to it was that he told me he had a little paralytic feeling; my partner had been
40 affected by the same thing, and I had made up my mind if he had of course he would become weak.

Q. Did his actions indicate anything of the kind ?

A. Yes; he became stiff in his joints, didn't want to get up, and could not walk very well.

Q. How did he appear mentally ?

A. I don't know of any particular thing, only I came to the conclusion that he was getting a little weak.

Q. Both mentally and physically ?

A. Yes, sir.

Q. Did he state to you at any time when you paid him these amounts of interest what disposition he was making of those funds ?

A. I don't think he did, not particular, only that he wanted to invest—that is all.

Q. These amounts of principal that were paid—were paid when ?

A. I think they were paid in April, 1872; I think I took possession on the 1st.

Q. Those payments amounted to how much ?

A. $27,500; that is, I paid him $27,500 on the building; then I sold his horses and carriages for him at auction; Dingey was the auctioneer; and they brought nearly $7,000 for the horses, carriages, and his traps in the building; that was the time we took possession of the building, I always paid him the interest afterwards.

Q. What became of the mortgage when you sold ?

A. Mr. Lynch paid the mortgage.

Q. Do you know that fact ?

A. Yes, I know the fact of seeing them both going down to invest the money, in a carriage; I did not go down with them; Mr. Lynch told me he had invested the money for Mr. Turnure; I did not go with them to Drexel, Morgan & Co., but Mr. Lynch knows about that; I was not present—only I saw them together.

Q. When you said he didn't want any property, you meant real estate ?

A. He did not want any more real estate than he had.

Q. Do you know whether his wife could write ?

A. I don't know.

Q. You had no relations with him except this matter of business ?

A. No; I bought that property in an hour's conversation; that is all the business transaction I had with him; Horatio Averill done the business for me; he made the deed, and the property, when I bought it, was bought free of incumbrances.

Cross-examined :

Q. Who was present during this hour's conversation in which the property was bought ?

A. Horatio Averill and Henry Smith; Henry Smith kept a hotel at the depot, and I telegraphed to Mr. Turnure to meet us there—Mr. Averill and Mr. Smith and myself. 10

Q. In what capacity was Mr. Smith there ?

A. I think he got $100 from Mr. Turnure

Q. With whom did you have your conversation concerning the price of the property ?

A. With Mr. Turnure.

Q. Did Mr. Smith interfere with that conversation at all ?

A. Nothing particular—only him and Mr. Dingey brought the property to my notice.

Q. Did you and Mr. Turnure have any difficulty in agreeing upon the price of the property ?

A. No, sir; the price paid was the price he asked for it. 20

A. As to his mental capacity at that time, did you consider it sound ?

A. Yes.

Q. What was the remark that he made about the division of the $27,000 among his sons ?

A. He wanted two checks—he wanted one for $20,000, and one for $7,500.

Q. Did he mention the name of either sons ?

A. No, not to my recollection.

Q. Did you understand from his conversation, that he was going to give $20,000 to one, and $7,500 to the other ? 30

A. I came to that conclusion.

Q. As to this shaving of the mortgage of $4,000—what year was that ?

A. I think about the fifth interest I paid him—about the middle of 1874.

Q. You thought at that time it was a pretty good investment ?

A. He said so; he said that pleased him best.

Q. When you saw him with Mrs. Turnure in the house in Jersey City, what was her bearing and conduct toward him—was it pleasant ? 40

A. Yes.

Q. What was his toward her?

A. Very pleasant.

Q. Did they enter into pleasant conversation?

A. Always.

Q. How many times did you visit them in Jersey City?

A. Not over a dozen, may-be not so much.

Q. Did he write the last receipt that was given to you for interest?

10 A. I think he wrote all the receipts.

Q. Did he have any hesitancy in writing them?

A. I don't recollect ever seeing any hesitancy in writing them.

A. When did you first notice what you considered a failing of his mental faculties?

A. The last two, three or four times I went there.

Q. That would be about what years?

A. From 1874 to 1876.

Q. State an instance of his conduct or conversation, during 1874, that led you believe that his mental faculties were failing?

20 A. He used to speak of it himself.

Q. What did he say?

A. Speaking of his physical ability to get about, that he did not want to go out, could not go out; when he would go out his wife would go with him so he could lean on her, and a block or two used to be as much as he wanted to walk, he said.

Q. As to his mental failure, his mind—what induced you to believe his mind was failing?

A. I cannot state an instance.

Q. Did he have any hesitancy in conversation?

30 A. He would, sometimes.

Q. Do you remember an instance in which he hesitated in conversation?

A. The last two or three times I saw him, in talking he would stop sometimes and put his hand to his forehead and rub it.

Q. Did he complain of headache?

A. He complained of being, as he called, stiff on one side apparently.

Q. Did you ever ask him a question to which you did not get an intelligent reply, and, if so, what was the questions?

40 A. I don't remember of one.

Q. When you went to see him in 1864 in relation to

the enlargement of the property in New York, did you have any conversation with him?

A. Yes.

Q. From your conversation with him at that time, and the time immediately previous to that, when you went to pay interest, did you consider him a man whose capacity was such as to lead him to a good investment of money in New York?

A. Yes, I think he was.

Q. Did you consider that a good investment. 10

A. It was a good investment.

Q. You say you thought she was the ruling power in the house. State an instance of her conduct that induced you to believe that she was the ruling power?

A. On every instance in the house—every time I went there—she always was the spokeman, and she would say to William, "Is that correct"? or something of that kind.

Q. She would ask him whether what she said was correct?

A. She would refer to him.

Q. Give us any of that conversation that you refer to? 20

A. I don't think I can.

Q. Can you recall a single question that you asked him that she answered?

A. She had most of the conversation generally.

Q. Can you recall a single question?

A. My questions were merely to pay money and to get a receipt, and generally other questions would come in speaking of investments; I cannot recall them, because it was something that has passed away.

Q. What other reason induced you to form the opinion that she was the ruling power in the house?

A. She done all the business. 30

Q. All the business she did, according to your testimony, is the receiving of this interest money?

A. No; she done all the business of the house; she hired the carriages; she went with him; she carried him along on her arm when he could not walk—so she told me—and that is the reason I came to the conclusion she was a great help and support to him; she appeared to want to please him—willing to take him along; I thought she was doing everything she could to make him happy.

Q. And he seemed to appreciate it?

A. Yes; willing to let her do so.

Q. You say you became acquainted with Mr. Turnure 40 in 1865?

A. Yes.

Q. Did you have any business transactions with him prior to 1872?

A I don't think I did.

Q. Were you intimately acquainted with him?

A. No, I merely lived on the New Haven Railroad, and went up every night to the depot, and sometimes stopped there, and the old gentleman would be sitting in the stable.

10 Q. You say he was not a man to be ruled?

A. No.

Q. When did you form that opinion?

A. When I first knew him, and from people generally speaking of Mr. Turnure.

Q Did you have that opinion when you bought the property of him?

A. Yes; his price was such a price, and he would not deviate a cent from it?

Q. That was in what month?

A. April, 1872.

Q. Did you notice any failing of that quality—that
20 determination in his character—during the year 1873?

A. He was quite a different man the last two or three years I saw him.

Q. I mean the next year after the sale of the property?

A. For the first two years after I bought the property I didn't have any business with him only once in six months, either to send the interest or to go to him with it.

Q. Did he call at your place for it?

A. I think he called at our factory in New York once or twice to get it, and she came with him.

Q. When did you last see Mr. Turnure?

30 A. About the time I sold the building to Mr. Lynch; I think I took Mr. Lynch over there and introduced him to Mr. Turnure at the house; that is my impression.

Q. That was in 1876, wasn't it?

A. It must have been the latter part of 1876.

Q. Were you present when he was with Mr. Lynch in the house?

A. I think I took Mr. Lynch there and made him acquainted with him?

Q. Do you remember the conversation at that meeting?

40 A No; I cannot say sure that I took him there, but I am under the impression I went there with him.

Q. If you did, that was the last time you saw him?

A. No, I saw him when Mr. Lynch, I think, paid the mortgage.

Q. Did you have any conversation with him at that time?

A. Not particular; I don't think I had much.

Q. Did you form any opinion as to his mental faculty then?

A. No, I don't think of it.

Q. How long were you together? 10

A. They had a carriage, and his wife was with him; Mr. Lynch went off with him.

Q. Where was the money paid?

A. At Mr. Lynch's office, No. 2 Nassau street, I think.

Q. To whom was the money paid?

A. I guess Mr. Lynch got a certified check made to William Turnure, I think.

Q. How long were you present at that interview?

A. I don't think I was there very long.

Q. Do you remember any of the conversation in which Mr. Turnure took part?

A. No; the business was with Mr. Lynch entirely; I 20 didn't have anything further to do only to make them acquainted at that meeting, and I think I left them in the office.

Q. You say that in 1872, in your transaction with Mr. Turnure, you formed an opinion that he was not a man to be ruled; did you form any opinion as to his character?

The form of the question is objected to, on the ground that it assumes a statement of the 30 witness which is erroneous.

A. No; I never formed any opinion of Mr. Turnure, only that he was a staunch man; I thought that when I first knew him.

Q. Did you think that when you bought the property of him?

A. I did not have any opinion; I did not have cause to form an opinion.

Q. How many times did you see him in the presence of his wife in Jersey City? 40

A. Maybe under a dozen times.

Q. What was the average length of each of those interviews?

A. I staid there maybe sometimes half an hour, and might have been over half an hour.

Q. Ever over an hour?

A. No; I generally staid there a half an hour; he was in no hurry to have me leave.

Q. Was she present all the time you were there?

A. Always.

10 Q. How many times did you see him in New York after the sale of the property?

A. Once or twice.

Q. How long were you in his company on either of those occasions?

A. Not five minutes.

Q. From 1872 until the time of Mr. Turnure's death, about how many times were you in his company?

A. I could not tell you.

Q. Was there any other occasion that you were in his company, except on the occasion of the twelve visits in Jersey City, and the two in New York?

20 A. No; I don't think there was any other occasion.

Q. Allowing the visits in Jersey City to have averaged a half an hour each, what would you add to that, according to the best of your recollection, as to the time you were in his company in New York?

A. When I saw him in New York it was always very short; that was after I became his debtor.

Re-direct examination:

Q. What year was it that this mortgage was paid off

30 by Lynch?

A. The mortgage was paid off about eighteen months ago; I think it is under two years.

Q. Have you any memoranda on your books of this transaction and purchase, which will show the amount of the checks you gave to Mr. Turnure on the purchase money?

A. I presume the checks are in our old factory in Franklin street; the checks themselves will show, and we must have some entry of it in our old books over there; our old bookkeeper, Mr. Philip Ritchie, is dead.

40 Q. You speak of one check being for $20,000, and the other for $7,500. Could you say whether or not you

are mistaken as to there being one check for $7,500, or two checks for $3,750 each ?

A. He told me to make two or three checks for that amount, I forget which; $77,500 was the price of the property, and he made the remark of two or three checks, and I am under the impression it was two checks.

Q. I put this question to you for the purpose of refreshing your recollection as to whether you have any memory of his saying to you that he wanted three checks, one for $20,000 and two for $3,750 each, so as to give his two boys each $3,750, and that he wanted the $20,000 for himself ? 10

A. I remember his remark very distinctly of to make two or three checks, and I am not sure whether it was two or three

Q. Is your memory clear as to his saying that he wanted to give those checks to his boys; I mean the $20,000 check and the $7,500 ?

A. He made the remark that I have made here as near as I can remember.

Q. Repeat it.

A. "I want you to make, Wilson, two or three checks; I want to give it to my boys"—or "children"—I don't know which word he used—"so they won't quarrel for it after I am dead." 20

Q. Is your memory so clear on the subject as to say whether he said how much he wanted to give to each of the boys ?

A. No

Q. If it should turn out that the checks were a $20,000 check—this one for $20,000 and two for $3,750 each—could you say as to which he said he wanted to give to his boys ? 30

A. I gave him no other checks for the property but those three checks or two checks, and those checks were made payable to his order on the Chemical Bank, and whatever the checks read that would be better than my memory of course.

Q. Suppose it should turn out that there were two checks of $3,750 each ?

A. Then they would be the checks.

Q. Then could you say whether he said that he was to give the $20,000 check to his boys, or the other two.

A. Only the general remark that he made, that he was going to divide it amongst his boys or children; I knew that he had two boys then. 40

Q. Did you understand from him that he was going to divide it equally between his children or not?

A. Only that remark.

Q. Repeat it again.

A. "Wilson, make two or three checks that I may divide it or give it to my children, so they will not quarrel about it after I am dead" Horatio Averill has got all those things entered in his books, and if you will write to him you can get those entries; I think we must have
10 the checks.

Q. [Showing paper to witness]. Did you ever see this memorandum before?

A That writing looks like our old book keeper's writing—that is, the book-keeper who is dead.

Q. Won't you see whether you can find any memorandum of this fact or not, such as is on this paper. Did you keep a memorandum book?

A. We made our notes generally on the stub of the check-book, and we did not keep a copying press to copy letters.

Q. Have you any idea, if that is your old book-keeper's
20 hand-writing, as to how that entry was made up?

A. It looks very much like the transaction, the whole of it; it looks very much like it, and that is made up probably just as I paid it—$27,500.

Q. This purchase, or bargain for purchase, was made where?

A. At Henry Smith's.

Q. Mr. Turnure was there?

A. I telegraphed to Mr. Turnure to meet me there; I telegraphed to Mr. Averill to meet me there; I had an offer from Mr. Dingey of $10,000 a year if I could get the property; as soon as they came there I closed the
30 bargain at once and gave Mr. Turnure $500 down.

Q. Was his wife with him there?

A. No, he came alone; he was all right then.

The paper which was last shown witness is offered in evidence by caveators. It is objected to by the proponents, and it is marked as "Exhibit 12."

Re-cross-examination:

40

Q. Did you understand from the conversation that he

was going to give $27,500 to his children ?

A. I did.

Q. Did you understand that he was going to give the checks that you drew to his children ?

A. I did.

Q. Did you draw those checks according to his order ?

A. I think I did.

Q. You drew one for $20,000 ?

A. Yes, sir.

Q. Did you understand that he was going to give that check to one of his children ? 10

A. From his conversation, I did.

JAMES H. MCDOWELL, a witness produced on the part of the caveators, being sworn, testifies :

I reside at 595 Jersey avenue, Jersey City; I have resided in Jersey City 16 years; I am a practicing physician, have been practicing for 27 or 28 years; I have been practicing in Jersey City 16 years; I knew William P. Turnure in his lifetime; he died August 3d last—1880; I was called upon before his death to see him; the order was left at the house, as near as I can remember—I do not know by whom; his wife was the first that I had any interview with, and that was at the house. 20

Q. You were called upon how long before his death ?

A. The first record I have got is the 21st of June, 1880; I called there 11 times, not including the time of his death—12 times altogether; the last time was in reference to his death.

Q When you went to the house first, who did you see ?

A. A young lady—I think she said she was her niece; she opened the door; I was invited into the parlor, and then waited there a little while and his wife came, and she asked me to go upstairs, she wished me to see her husband; I went up and saw him. 30

Q. What did she tell you as to the matter with him ?

A. She told me he was acting rather singularly, but what was the general trouble she did not know.

Q. From your observation, what was the matter with the old gentleman ?

A. I found him with local paralysis in the right arm and with general mental imbecility. 40

Q. Was he in bed or sitting up when you went there ?

A. Sitting up in a large arm chair, on the second floor front room.

Q. Could you do anything for him?

A. I helped his paralysis; it was overcome, I think, on the fourth visit—that is, the paralysis was overcome.

Q. That is, the strictly physical trouble?

A. Yes, sir; it was local paralysis in one arm and the tongue.

Q. This mental imbecility of which you speak—
10 is that synonymous with softening of the brain, in common acceptation?

A. No, sir; we find it generally, as a result of softening; it don't indicate the degree, particularly, of softening.

Q. State whether, when you went there, he had what is commonly understood as softening of the brain or not?

A. I was impressed with that idea; I only remember the conditions by my own thoughts on the subject; I took no notes at all, and I remember distinctly my own thoughts, and that leads me to answer a little more definately than I could otherwise; I thought that here was
20 the strongest exhibition ever I saw of the fall of manhood into dotage, into second childhood; that was my expression in soliloquy.

Q. And that was your judgment?

A. That was my judgment.

Q. Did you state to his wife as to whether he could recover or not?

A. I did; I told her that he could not possibly.

Q. I don't suppose you could form any opinion as to how long he had been affected in this way?

A. I could not.

Q And this remark to her, that he could not recover,
30 what visit was that?

A. That remark was made on the first visit; she asked my opinion as to the fact.

Q. Do patients linger a long time sometimes with softening of the brain?

A. They do sometimes under favorable conditions.

Q. Was the old gentleman's constitution a good one for that?

A. I regard it as one that was very fine at one time, and strong in resisting the influence of disease; I based my idea of the fact that the temperaments were equal,
40 the sanguine, bilious, lymphatic—all the temperaments were equal—and through those circumstances the inroads

of desease have to fight for a long time, and it is very often the case that they last considerable time under those conditions—it would be more gradual under those circumstances.

Cross-examined by Mr. McDermott:

Q. Allowing the temperaments to be so favorable as you formed an idea they were in the case of Mr. Turnure, how long would the patient probably linger with what you speak of as a general mental imbecility?

A. I think from six months to a year.

Q. Will you give us a diagnosis of his mental complication which led you to believe that he had softening of the brain?

A. Diagnosis in reference to it? Or the symptoms that led to the diagnosis? I wish to understand you properly. In the first place I looked at the paralysis; my next question is, what does this come from. I asked him to show me his tongue; he looked at me with a blankness in his smileless eyes that showed a half recognition of the question, but not a whole. Said I, "Show me your tongue, Mr. Turnure." "I am well." "I want to see your tongue," showing him with my mouth what I wanted; and he put it out against his cheek first "Put it out further." He put it to the right, on the same side of the paralysis. Said I, "Do you suffer much"? "No." The next question was in reference to the arm. "Does this hurt you," while pinching the muscles; I wished to ascertain whether sensation was blunted; he seemed to have an over-sensitiveness; he done the best he could to move, but the nerves of the arm were paralyzed and he seemed to be hurt—manifested hurt by a frown only. I was looking into his face at the time, and only by a frown he seemed to manifest sensation; the muscles were not rigid, hence I concluded there was no conjestion about the brain; they were soft, which led me to think there was some acute trouble with him. He seemed to be out of patience with me, seemed to be irritable about something, and I looked into his eyes and found the pupils were dilated; I took his pulse on the left and found 65, which is about 4 below the normal standard; then he got impatient and I believe he wished to pass water, and he was irritable about that and looked about the room and seemed to insist upon immediate attention; the remark

was, "I want to go and pee"—he said that clear enough. I stood aside and he got up, and she took hold of him and his gait was erratic, it was sideways more than direct, and he seemed to be a little weakened all the way down, but I could not determine there was any paralysis about the right leg; his gait was thus [illustrating]; didn't seem to look ahead as if he had any particular object after he said he wanted to pee; but she led him to the vessel and I could see no more then; but most of his answers were
10 not direct; he would sometimes say "no" when his wife would remark that he means the opposite, means "yes" —such, for instance, as, "Have you pain"?—he would answer a kind of diffident expression—which are all I think of now, so far as I remember the symptoms of softening of the brain. I would further say that he answered questions direct in some of the subsequent visits.

Q. How long, in your opinion, had he been afflicted with mental imbecility?

A. My opinion was that it was at least six months prior to my visit that there was more or less mental imbecility; I could not go further back than that.

20 Q. Could it have been more than two years?

A. I don't believe it could.

Q. Could it have been more than three years?

A. I believe not—no, sir.

Q. Do the books authorize a statement that a patient can be afflicted with general mental imbecility or softening of the brain, even in its incipient form, more than three or four years?

A. Yes, according to age; as much as ten or twelve years with a young person, but not with the aged.

Q. With a person of Mr. Turnure's age?

A. I think it could not exist much longer than six
30 months—not possibly longer than a year; that is my honest opinion.

Q. You formed an opinion as to his physical temperaments being well balanced. Did you form an opinion as to his mental capacity, as to what he had been prior to the attack of this disease?

A. I should judge it was quite vigorous and keen, from the sharpness of the eye and general outlines of the face.

Q. How long, in your opinion, had his mental faculties departed from that keenness and strength?

40 A. I think it had been so for six months; it might have been by slow graduations, the departure might; I

think it could not have been much longer than six months.

Q. Do you think that three years prior to the time you saw him he was a man of strong mental temperament?

A. I think he was.

Q This was the first time you saw him?

A. Yes. I always take account of temperaments in all my patients—first, so as to ascertain the power they can stand in reference to remedy and so on.

10

Re-direct examination:

Q. When you give your opinion that it could not have been farther back than six months since the mental imbecility of which you have spoken commenced, do you assume, in connection with that, that he had had paralysis?

A. I think the paralysis was the result of the softening of the brain.

Q. What are the principal disposing causes of softening of the brain?

20

A. They are various; we could not hit upon any definite one; sometimes it is by an accident, by wounds, syphilis, rheumatism, and I believe severe intermittence with a person over 65 years old might lead to that condition. There are various causes for that disease, but we cannot fix upon anything definite

Q. Sometimes its commencement and progress are very subtle and insidious, are they not?

A. Oh, yes.

Q. Is it a common attendant upon old age?

A. No, sir—not according to my opinion; it is not.

Q. Does it occur sometimes as the result of old age?

30

A. Yes, it occurs frequently; but in my mind the cases in which it occurs are in a very small minority. There appeared to be a little difference of opinion between his wife and myself on that matter; she thought he was perfectly sensible and understood all, and I attributed that to the fact that she was always with him and understood every motion and every sign, but I could not help but think he was in his dotage.

Q. If the old gentleman had been afflicted with pain in the head for 15 years, or in that neighborhood, previous to his death, would that indicate any mental organic disturbance of the brain?

40

A. No not necessarily so; yes, it would indicate organic disturbance or any irritation of the membranes of the brain, and yet the convolutions of the brain not be affected at all.

Q. Would it affect the mental powers or the power of the will?

A. I think not, except only it was acute pain, which would confuse the mind a little, but might not affect the power of the will at all, but might affect reflection and
10 memory.

Q. Would the tendency of that difficulty have an impairing power upon the brain?

A I think it would if long continued for years, especially over an individual over 60 years; it might exist much longer with childhood.

Q. What is the childishness which we speak off in old people?

A. I think it is due alone to an altered condition of the brain—a diseased condition of the brain—that prevents the proper manifestations of the mind's desires and wants; I look upon the brain as the organ of the mind,
20 and if the soul has not a healthy brain to play upon its manifestations will not be equal.

Q. There are a good many old people who would be in that condition of childishness, as it is commonly understood, without really reaching the point which is called softening of the brain, would there not?

A. Yes—in sub-acute irritation or a partial congestion without softening of the brain; a sub-acute congestion might be the cause. This old gentleman seemed to show to me perfect childishness in all his moods; I sometimes would come in and find him eating with his fingers and
30 with no clothes on except his shirt, and indeed most of the time he was without any other covering but his shirt, and he acted very much like a rude boy under five years of age, at his disposition in eating.

Q. When you speak of six months that this disease might have been upon him, do you mean in its acute shape—this mental imbecility?

A. Not in its acute—in its sub-acute condition; if there was acute softening it would not last that long; it would have produced more general paralysis than the local that I referred to.

Q. These conditions of the brain which we commonly
40 understand as childishness—how long may that last in old people, provided the constitution otherwise is in good health?

A. Without softening it may last ten or twelve years, but with softening not.

Q. And with softening they may last how long—about?

A. Over 75 years of age, I think not longer than a year.

Re-cross-examination by Mr. McDermott:

Q. From the diagnosis that you have made of Mr. Turnure's physical and mental condition, can you state whether he was afflicted with childishness three or four years before his death? 10

A. I do not believe that he was, from the general nature of his constitution.

Q. There is no intermission in childishness when it once attacks a person?

A. Not when it is derived from softening of the brain; there is when it is derived from congestion.

Q. Do you think he had ever been afflicted with childishness further back than one year before his death?

A. From the history I got, I think not.

20

Re-direct examination:

Q. These answers I understand you make from what you understood from the wife, as to his past history, up to the time you went there?

A. Yes, I base them somewhat—I base my opinion of the condition somewhat upon the peculiar constitution; the resisting powers of such a constitution give me some idea of the truth of her statements.

Q. Had you any idea that he had any attacks of paralysis in any form, previous to the time you came there? 30

A. No, sir.

Q. And your opinion is based upon the idea that his system had not been affected in that way?

A. Yes.

Q. If he had had attacks of paralysis, either severe or partial, would those facts operate on the the judgment you have given here on your cross-examination?

A. Yes; they would operate on my judgment.

Re-cross-examination by Mr. McDermott:

40

Q. In your opinion, if he had had an attack of paraly-

sis or other disease sufficient to have produced childishness in a man of his constitutional power, as you formed your opinion of it, would he have survived?

A. For what period do you speak of?

Q. Prior to two years before you saw him.

A. Would he have survived the attacks of paralysis?

Q. In your opinion, if he had had an attack of paralysis or other disease sufficient to have produced childishness in a man of his constitutional power, as you formed your opinion of it, would he have survived?

A. I believe not.

Re-direct examination:

Q. Is it common for old people to have attacks of paralysis extending over a period say of eight or ten years, and by reason of them have their faculties gradually impaired or affected, without having softening of the brain?

A. It is not uncommon for them to have softening of the brain without having had several attacks of paralysis, in aged people.

Q. Do these attacks of paralysis, covering the period of eight or ten years, weaken the mental power?

A. They do. I have never seen a case that they did not.

Re-cross-examination by Mr. McDermott:

Q In your opinion, had Mr. Turnure been attacked with paralysis to an extent that weakened his mental power at a period over two years prior to his death?

A. No, sir; I do not say so; I could not go farther than six months prior to his death, considering his constitution.

Q. Do you know whether he had had paralytic attacks prior to the time you went to see him?

A. I understood not, though they told me he would fall by becoming somewhat dizzy; he complained very much of dizziness—his wife told me that; and, for the purpose of managing him—being a heavy man—she asked me whether it would be best to employ a male nurse. I told her by all means to do so, because this matter would soon close. She said that he would fall

against a wall sometimes from dizziness, and she finally got a male nurse; but he seemed uncomfortable with anybody around the house but he.self, and she had to send him away, as she told me.

Q. Did he make any complaints to you about the male nurse ?

A. No, sir.

Q. Did she make any other statement ?

A. No, sir—nothing further; she would talk about his condition, saying she thought he was a great deal better; up until the 3d of July she said she thought he was doing very well—that he was tired of medicine, but seemed to be very good, and I think she intimated that she could manage him, and I left on the 3d of July; I didn't see him again until August.

Q. How was she in her attentions toward him ?

A. One of the most careful and considerate nurses I ever saw; I would stay there a little longer than usual for the purpose of satisfying myself in regard to his manners and habits; sometimes I would stay there 10 or 15 minutes, and I saw that he seemed to look to her as a child would look to its mother for everything, and she seemed to be very attentive.

Q. Her attitude to him was very kindly ?

A. Yes, sir.

Re-direct examination:

Q. Did she say how long he had had these attacks of falling ?

A. I don't remember whether she did or not.

Q. She seemed like a pretty smart woman, too, didn't she ?

A. Keen, and apparently affectionate.

Caveators offer in evidence a deed from William V. Brady and Cornelia Brady to Eliza Turnure, dated May 13, 1852, and marked "Exhibit 13," exemplification of the same being waived by the proponents.

Adjourned to Thursday, January 20, 1881.

Pursuant to adjournment, the parties all appearing, on this January 20th, A. D. 1881, the taking of evidence was resumed as follows :

ANGANETE M. SCHALKHAUSSER, a witness produced on behalf of the caveators, being duly sworn, testifies as follows :

10 Q. Where do you reside ?

A. 234 Second street, Jersey City; I have lived there 23 years next April; we own the property where we live.

Q. Did you know William P. Turnure and his wife Ellen Turnure ?

A. Yes, sir; we lived four doors away from them on the same side of the street.

Q. How long had they lived there ?

A. I don't know exactly; I believe they bought the house nine or ten years ago.

Q. Mr. Turnure was quite an old man when he died ?

20 A. I believe he was in the eighties.

Q. Did you ever have a conversation with Ellen Turnure in regard to the property of her husband, and, if so, when was it and what was it ?

A. I never had any conversation in regard to property, because I never liked her very much, and I never had much to say—only it is about five or six years ago, I could not exactly say—the time that she came back from the country, and that she had some quarrel with her daughter and was putting them all out and was running them down to me; and she said, "Not a cent will they have of me." 30 I says to her, says I, "Well, I suppose it belongs to your husband just as well as to your family ?" "Oh," she says, "nobody shall have a cent off him." She said his son. I never knowed he had two sons; I have since heard that he had two sons. After that I never spoke to her.

Q. What did she say about his son having anything ?

A. That is all I know.

Q. Where was this conversation ?

A. On the sidewalk; I was sweeping the sidewalk; she never was in my house.

Q. Who was with her ?

A. Nobody; she had a basket on her arm to go to the 40 grocery.

Q. Do you know what kind of a woman Mrs. Turnure is as to temper ?

Question objected to.

A. I did not hear what kind of a woman she is; she is not a very pleasant woman; I don't know much about her temper, only I always heard she was not very good tempered.

The last question and answer are objected to. 10

Q. Did you see much of old Mr. Turnure?

A. No, except that I met him in the street; a couple of times I was in the house and spoke to the old gentleman, but that was on politics.

Q. Where did you meet him?

A. I met him a couple of times in the house; that was at least six or seven years ago.

Q. Who was present?

A. Her daughter was there, and she was there, and the children were there; I ran in for something, I forget 20 what it was.

Q. What children?

A. Mrs. Burns' children—that is her daughter.

Q. What family lived at Mr. Turnure's house?

A. Her daughter, Mrs. Burns, and her children; she had two little girls at that time, and a son—Mrs. Burns had.

Q. Was Mrs Burns a married woman at the time?

A. I heard she had been married twice, but she had no husband; I don't know whether her husband was dead or not; she was a Mrs. Underhill first, and after that she was Mrs. Burns; I never knowed her husband. 30

Q. When you saw Mr. Turnure at his house whereabouts did you see him?

A. I saw him upstairs in the front room; it was on election day; we talked about the election.

Q. And Mrs. Ellen Turnure was there at the time?

A. Yes, sir.

Q. What influence did Ellen Turnure seem to have over her husband?

A. That I could not tell you; it is very hard to tel. that.

Q. How did she seem to you at the time? 40

A. Always seemed that Mrs. Turnure ruled all there

was about her and around her; she was master and boss of them all, because everybody was afraid of her—that I knew.

Q. How did the old man seem?

A. Very pleasant—very nice.

Q. How did he seem as to weakness and feebleness?

A. He was not feeble that time, he was only feeble the last couple of years that he was walking about; he was not feeble at that time, but he was just as solid a mind as my own; the last two years when he passed by I said, "Good morning, Mr. Turnure," and he looked like a child to me—and, "How are you"? I had to talk to him before he knows who I am—that was not very often; it was in the Summer more than any other time that I saw him.

Q. How long ago is it that you saw them in the house together?

A. I could not tell you; I think it must be eight years, by calculating the election; I know it was election day, and the last four years I was not here—I was in Europe—so it must be the four years before—eight years ago.

Q. Had you had any conversation with him between the time you met him in his house and the last time of which you have spoken?

A. No; only "How do you do"? He was so feeble, it was too much for him to stand in the street; he stood very weak on the street, and I never entertained him on the street only to say, "How do you do"? and "It is a very fine day."

Q. You was in the house twice?

A. Yes, sir; maybe I was there a hundred times in the house, but not to see him nor her; when I went in the house, it was down-stairs in the front basement with Mrs. Burns and her children; and we would stay there a couple of hours in the evening, but did not see her; the children was as afraid as death—afraid of speaking a little loud, for fear mama would hear it; the children were all afraid of her—the children, and likewise Mrs. Burns was; we never would laugh, because we was afraid they would hear it.

Q. At these calls on Mrs. Burns and her family, as I understand you, old Mr. Turnure and his wife would not be present?

A. Never; they was always upstairs.

Q. When he would walk along the street, how would he seem to go?

A. Always going very nice; but the last couple of years he was going very feeble.

Adjourned to Wednesday, the 26th inst., at two o'clock.

WEDNESDAY, January 26, 1881.

10

The taking of testimony was further adjourned to Wednesday, February 2d, 1881, at which time evidence was taken as follows, Mr. McDermott not appearing, but with the understanding that he may at some future time, if he desires so to do, cross-examine the witnesses who may be examined to-day.

JOHN B BRILL, a witness produced on the part of the caveators, being duly sworn, testified as follows:

20

Examined by Mr. Wortendyke:

I live at Jersey City; have lived here 25 years; my business is that of a barber, and my shop is 157 Newark avenue; have been engaged in that business for 13 years.

Q. Did you know William P. Turnure during his lifetime?

A. I did.

Q. How long had you known him?

A. About 10 or 12 years.

Q. How did your acquaintance begin? 30

A. Through his coming to the shop and getting shaved.

Q. Did you shave him during most of that time?

A. I did.

Q. Where?

A. At 157 Newark avenue, in the shop; I shaved him about three or four months before his death at his house.

Q. What sort of a man did he seem to be, with reference to childishness?

A. In some things I thought he was childish; in other things I thought he was pretty sound.

Q. How long had you noticed that childishness on his 40 part?

A. I guess, about three years previous to his death.

Q. Hadn't you noticed it more or less during the time you had known him ?

A. I think I noticed it more or less all the time, but particularly in the last three years.

Q. It was more marked during the last three or four years of his life ?

A. Yes, sir.

Q. What did you notice about his actions that indicated it when in your shop ?

10

A. One thing was—his asking everybody for tobacco.

Q. Whether he knew them or not ?

A. Yes; if they were strangers to him—anybody that happened to be there—he would ask them for tobacco; and also while getting shaved he would lift up his head suddenly and stare at you, or turn it round just the same as a child would do that did not know what he had to do.

Q Did he do it most of the time that you knew him ?

A. He only done that about a year and a half or so before his death.

Q. Do you recall any particular instance of that kind that occurred at your shop ?

20

A. I don't hardly understand that question.

Q. You say that on several occasions he would get up in the chair. Now, do you remember any particular instance in which he did that and at which he said anything ?

A. Yes; I rememler a particular instance where he got up as I told you; he jumped right off the chair and stood on his feet while getting shaved; I asked him what was the matter; he said he thought the chair was falling over—he thought the chair was falling backward, and it made him jump up.

30

Q. That was how long before his death ?

A. About a year and a half before his death, as near as I can remember.

Q. How did his hands and limbs seem to be while you knew him ?

A. Ever since I knew him, the whole time he was always trembling-like, shaking, but toward the end it was more so.

Q. How with his walking ?

A. It always appeared to me as though he didn't appear safe on his feet; he would shake as if a man were weak.

40

Q. Somewhat tottering ?

A. Yes; always had to have a pretty good cane.

Q. How were his eyes?

A. His eyesight, I think, was very good, as far as I know.

Q. Did you ever have any talk with him about his property, while you knew him?

A We were talking at one time about property, and he told me that he didn't care much about having his money invested in property, that he had $60,000 invested in Government bonds; he also told me at one time that he had given one of his sons $20,000 cash. 10

Q. Did he tell you that at two different times?

A. No, sir; I can't remember that he told me more than once

Q. You said that he told you he had $60,000 in Government bonds, and at another time he told you he had given $20,000 to one of his sons?

A. This was all at one time—the same day.

Q. Do you remember about how long that was before his death?

A. I guess that was a year and a half or so, as near as I can remember. 20

Q. How long have you known Mrs. Turnure?

A. I have been personally acquainted with her from the first time I went to the house to shave him; that was three or four months before his death; I had seen her once before, but did not speak to her, and I didn't know who she was at that time.

Q. What sort of a woman did you take her to be, as to will power?

A. I always thought that she would have her own way from what I knew of her.

Q. You say you had met her once before you went to the house. Tell us under what circumstances those were? 30

A. Part of the time I knew him he did not get shaved with me, and during that time she came to the shop and opened the door and asked me had Mr. Turnure been there, and I told her no, and she went away, and I afterwards found out that that was Mrs. Turnure, and that she had went after Mr. Turnure; that he had went out to get shaved and didn't come back, and she went to see where he was, and found him down to Mr. McLaughlin's cigar store.

Q. Did you see Mr. Turnure fall on the street at any time? 40

A. Yes, sir.

Q. When was that ?

A. A little over four months before his death.

Q. Was that the time that you took him home ?

A. I took him over to the shop with Mr. Allen; I am not sure now whether he got home alone or whether she came after him—I think she came after him—and he never came out after that, to my knowledge.

Q. Did Mr. Turnure say what the name of that son was to whom he had given $20,000 ?

A. No, sir.

10 Q. Nor where he lived ?

A. No, sir.

Q. He said nothing to you by which you could tell who he was ?

A. No, sir; never mentioned only the fact.

Adjourned to Thursday, February 10, at the same place.

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20 FEBRUARY 10th, 1881.

The taking of testimony is adjourned to the fifteenth inst.

FEBRUARY 15th.

30 Pursuant to adjournment, the further taking of testimony was continued as follows, Mr. McDermott not present :

MARGARET H. TURNURE, a witness produced on behalf of the caveators, being sworn, testifies as follows :

Examined by Mr. Wortendyke :

I live at 33 East 18th street, New York City; I am a
40 daughter of John and Susan Turnure, a niece of William P. Turnure, deceased; I had known William P. Turnure

as long as I can remember. Previous to his last marriage in 1866, I saw him very often, both at his place of business and at his house; I never saw him after that marriage until the summer of '76, then I saw him at his house in Jersey City. I then came here to call upon my uncle to ask him to assist me in taking a house; he told me he hadn't anything, that he couldn't help me, that his wife—or the old woman, as he said—had all in her hands, and that he only had what she gave him. She was in the room at the time; he repeated the statement that Uncle William hadn't anything, he couldn't do anything for me, that she had 10 everything in her hands and that when my father came over there to see Uncle William she gave Uncle William money to give to him, thinking it would be pleasanter for father to receive it from Uncle William than from her. I wanted to take boarders in this house that I wanted him to help me get—and I explained to him that I was in need of assistance. That's about all that occurred at that time; the substance of it. I next saw him on the street in September of the next year. I came over then to ask him to help me buy a sewing machine; I explained to him my circumstances; I told him I wanted to buy a sewing machine, 20 and I could get it cheaper by buying it for cash, and I wanted him to give me something toward it. He told me he hadn't anything, that the old woman had everything; that he hadn't anything only just what she handed out to him, and he couldn't do anything for me. I forget whether I asked him to give it or lend it to me. The first time I came over, I think I asked him to give me the money.

Q. What sort of a dispositioned man was he previous to '66.

A. He was always very pleasant.

Q. In what condition of mind did he seem to be 30 when you saw him in '76 and '77?

A. He seemed to be rather weak; he waited before he answered me; he looked at his wife as if he was waiting for her permission to speak. He seemed to be rather nervous.

Q. Would you say he was weak-minded or strong-minded at that time?

A. I should say he was decidedly weak; I thought he was getting childish.

Q. How did his actions compare with his actions in '66, before he came to Jersey City? 40

A. Then he was a very different man ; we used to see him at home ; he was always outspoken.

Q. Any hesitation about answering in those days ?

A. Not at all ; he was very quick in those days, and very decided in his way of speaking.

Q. What sort of a woman did you judge Mrs. Turnure to be ?

A. To look at her eyes was sufficient to judge what sort of a woman she was. I judged she was very sharp and very determined, both by her eyes and mouth ; and the way in which she spoke to me showed
10 that she was very determined ; she spoke very plainly.

Q. How did your Uncle William seem to be, physically, in '76 and '77, when you called there ?

A. He was not at all well ; he said himself that he was not well. The day I met him on the street he seemed quite feeble ; he walked unsteadily, carried a cane, and the day I saw him at the house his hands trembled.

Caveators' testimony closed.

DECREE TO ADMIT WILL TO PROBATE.

The Court, having heard the testimony taken in the above-entitled matter, and the arguments of counsel thereon, and having considered the same, and being of opinion that the said paper purporting to be the last will and testament of William P. Turnure, deceased, is the true last will and testament of said deceased, and that the same should be admitted to probate:

It is, on this 10th day of September, A. D. 1881, ordered and decreed, that the said paper writing purporting to be the last will and testament of William P. Turnure, deceased, be admitted to probate by the Surrogate according to law. 10

By the Court.

A. Q. GARRETSON, *P. J.*
JOHN BRINKERHOFF } *Judges.*
A. W. FRY,

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FIRST ORDER FOR COUNSEL FEES.

The counsel for the proponents of the alleged will of William P. Turnure, deceased, and the counsel of the caveators, they representing all the heirs-at-law and distributees of said deceased, having in open Court consented to the following:

It is on this 10th day of December, A. D. eighteen hundred and eighty, ordered: That Augustus A. Hardenbergh, the administrator *pendente lite* of said deceased, do pay to Allan L. McDermott, counsel of said proponents, and to R. P. Wortendyke, counsel of said caveators, each the sum of five hundred dollars out of the assets of said deceased, on account of counsel fees and services on each side, and which sums respectively shall be subject to the allowance, disposition and decree of this Court at the close of the litigation in this Court, concerning the probate of the alleged will. 30

By the Court:

A. Q. GARRETSON, *P. J.*
JOHN BRINKERHOFF, } *Judges.*
A. W. FRY,

SECOND ORDER FOR COUNSEL FEES.

The Court having considered the depositions taken in this matter, and counsel having been heard, and it being decreed that said will shall be admitted to probate, it is, on this tenth day of September, A. D. 1881, ordered, that Augustus A. Hardenbergh, the administrator *pendente lite* of said deceased, do pay to Allan L. McDermott, counsel of said proponents, and R. P. Wortendyke, counsel of said caveators, the further sum of one thousand dollars each, as counsel fee, and for services on each side.

A. Q. GARRETSON, *P. J.*
JOHN BRINKERHOFF, } *Judges.*
A. W. FRY,

AMENDED ORDER FOR ALLOWANCE.

The Court having decided that all the costs and expenses of the caveators in the above matter, should be paid out of the estate of the said William P. Turnure, deceased, alike with the counsel fees allowed:

It is, on this seventeenth day of September, eighteen hundred and eighty-one, ordered that the Hon. Augustus A. Hardenbergh, administrator *pendente lite*, do pay the costs and expenses of the caveators aforesaid out of the estate of said deceased.

And it is also further ordered, that the said administrator *pendente lite*, do pay out of said estate the costs and expenses of the Court and Surrogate, and of the proponents, all of said costs to be taxed by the said Surrogate.

A. Q. GARRETSON, *P. J.*
JOHN BRINKERHOFF, } *Judges.*
A. W. FRY,

NOTICE OF APPEAL.—1.

The said proponents, James H. Turnure and Ellen Turnure, hereby appeal to the Prerogative Court from

so much of the order made in this Court in the above cause on the seventeenth day of September, eighteen hundred and eighty-one, as orders that Augustus A. Hardenbergh, Esquire, administrator *pendente lite*, do pay the costs and expenses of the caveators aforesaid out of the estate of said deceased.

And also from so much of said order as orders that the said administrator *pendente lite*, do pay out of said estate the costs and expenses of the Court and Surrogate, and of the proponents.

Dated Sept. 21, 1881. 10

A. L. McDERMOTT,
Proctor for Proponents.

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

ALLAN L. McDERMOTT,
Of Counsel with Proponents.

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PREROGATIVE COURT OF NEW JERSEY.

To the Honorable Theodore Runyon, Ordinary of the Prerogative Court:

The humble petition of James H. Turnure and Ellen Turnure, the appellants in the above stated matter, respectfully shows to your Honor that on or about the ninth day of August, A. D. eighteen hundred and eighty, John L. Turnure and Julia Hard filed in the 30 office of the Surrogate of Hudson County, a caveat against admitting to probate any paper purporting to be the last will and testament of William P. Turnure, deceased.

That on or about the day of August, A. D. 1881, James H. Turnure and Ellen Turnure presented a paper to the said Surrogate, purporting to be the last will and testament of said William P. Turnure, and, as the executors named therein, asked that the same might be admitted to probate, and letters testamentary issued thereon to them, and that such proceedings were thereupon had in said Orphans' Court that a de- 40 cree was entered therein on the tenth day of Septem-

ber, A. D. 1881, directing the admission of said will to probate.

That on the seventeenth day of September, A. D. 1881, an order was made by said Orphans' Court directing Augustus A. Hardenbergh, administrator *pendente lite*, to pay the costs and expenses of the caveators aforesaid, and the costs and expenses of the said Court and Surrogate, and of said proponents, out of the estate of said William P. Turnure, to which decree and order, recitals, and matters and things therein contained, on file in the Surrogate's office of said County
10 of Hudson, your petitioners beg leave to refer, and that reference for greater certainty may be thereunto had.

And your petitioners, the said appellants, complain and allege that the whole and every part of said order is erroneous, improper, illegal and unjust; and that your petitioners are aggrieved thereby.

And your petitioners humbly appeal from said order of the said Orphans' Court, which orders as aforesaid upon the ground that the caveators aforesaid had not reasonable cause for contesting the validity of the said last will and testament, and that said costs and ex-
20 penses so ordered to be paid out of the estate of said William P. Turnure, deceased, should be paid by said caveators.

And your petitioners pray that the said order of said Orphans' Court, and every part thereof, may be reversed, set aside, and for nothing holden by this Honorable Court.

And that your petitioners may have such relief in the premises as to this Honorable Court may seem meet.

ALLAN L. McDERMOTT,
Proctor, and of Counsel with Appellants.

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Dated December 20, A. D. 1881.

ANSWER.

The answer of the above named respondents to the petition of appeal of the above named appellants. These respondents not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereon, nevertheless say and
40 admit that a decree or order was, on the seventeenth

day of September last past made and entered in the Hudson County Orphans' Court, in the cause mentioned in said petition for the purposes as is therein stated ; but as to the form and substance thereof, these respondents pray to refer thereto, when the same shall be produced. And these respondents are advised and believe that the said decree or order is agreeable to law, and pray that the same may be affirmed with costs, to be adjudged to these respondents.

R. P. WORTENDYKE,
Solicitor, and of Counsel with Respondents. 10

DECREE.

The appeal coming on to be heard in the presence of Allan L. McDermott, of counsel for the appellants, and Raymond P. Wortendyke and Joseph D. Bedle, of counsel for the respondents, at the same time as the argument on the appeal from the probate of the alleged will of William P. Turnure, deceased, and the record and proceedings of the Orphans' Court of the 20 County of Hudson, with all the orders of said Court for the payment of counsel fees, costs and expenses of litigation in said Court, being examined and considered, and it appearing to this Court that the order of the Orphans' Court of the County of Hudson, of September seventeenth, eighteen hundred and eighty-one, and all the preceding orders of said Court, allowing and directing the payment of counsel fees, were legally and justly made, and such allowances appearing to be just and reasonable and properly payable out of the estate of William P. Turnure, deceased.

It is on this twenty-third day of May, A. D. eighteen 30 hundred and eighty-two, by Theodore Runyon, Ordinary and Surrogate-General of the State of New Jersey, ordered, adjudged and decreed, that the said order of the seventeenth day of September, A. D. eighteen hundred and eighty-one, together with all the preceding orders of the Orphans' Court of the County of Hudson, directing the allowance and payment of counsel fees in this cause be in all things affirmed, and the amounts thereof allowed and paid, if not already paid, out of the estate of William P. Turnure, deceased, without costs, to either party on this appeal.

THEODORE RUNYON, *O.* 40

NOTICE OF APPEAL.

The appellants above named hereby appeal from the whole and every part of the decree of the Prerogative Court, in the above stated matter, bearing date the twenty-third day of May, eighteen hundred and eighty-two, affirming the prior order of the Orphans' Court of the County of Hudson, in the above matter, made on the seventeenth day of September, eighteen hundred and eighty-one, together with all the preceding orders of the Orphans' Court of the County of Hudson, di-
10 recting the allowance and payment of counsel fees in this cause, out of the estate of William P. Turnure, deceased, to the Court of Errors and Appeals, in the Last Resort in all Causes.

ALLAN L. McDERMOTT,
Proctor of Appellants.

PETITION OF APPEAL.

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The humble petition of Ellen Turnure and James H. Turnure, the appellants in the above stated cause respectfully shows that your petitioners find themselves aggrieved by a final decree made by Theodore Runyon, Ordinary or Surrogate-General and Judge of the Prerogative Court of New Jersey, on or about the twenty-third day of May, eighteen hundred and eighty-two, in a proceeding wherein the said Ellen Turnure and James H. Turnure were appellants, and the said John L. Turnure and Julia Hard were respondents, in respect that the said decree ordered and adjudged
30 that the prior order of the Hudson County Orphans' Court, made on the seventeenth day of September, A. D. eighteen hundred and eighty-one, together with all the preceding orders of the Orphans' Court of the County of Hudson, directing the allowance and payment of counsel fees in this cause be in all things affirmed, and the amounts thereof allowed and paid, if not already paid, out of the estate of William P. Turnure, deceased.

And your petitioners appeal from the said decree of the Ordinary, upon the ground that the same is inequitable and erroneous, and because the said Preroga-
40 tive Court ought to have reversed the said order of the

Hudson County Orphans' Court, made on the seventeenth day of September, eighteen hundred and eighty-one, together with all the preceding orders of the said Orphans' Court, directing the payment and allowance of counsel fees in this cause out of the estate of William P. Turnure, deceased, and decreed and adjudged said counsel fees, together with all the costs, &c., to have been paid by said respondents.

Your petitioners therefore pray that the said decree of the Ordinary be reversed, set aside and for nothing holden, and that the Ordinary be directed to do and perform such things in the premises as to this Honorable Court may seem equitable and just. 10

ALLAN L. McDERMOTT,
Proctor for Appellants.

A. L. McDERMOTT,
Of Counsel with Appellants.

ANSWER. 20

The answer of the above named respondents to the petition of appeal of the above named appellants.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless, say and admit, that a decree was on or about the twenty-third day of May, eighteen hundred and eighty-two, made and entered in the Prerogative Court of New Jersey, in the cause in said petition mentioned, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced; and these respondents are advised and believe that the said decree is agreeable to equity and law, and they pray that the same may be affirmed with costs to be adjudged to these respondents. 30

R. P. WORTENDYKE,
Solr. for and of Counsel with Respondents.

APPEAL NO. 2.

Supplemental Order—Hudson Orphans' Court.

It appearing to this Court that the determination and order of the Court that there was reasonable cause for contesting the validity of the will in this matter, and that the amounts allowed for counsel fees to the counsel of the caveators, as well as the amounts allowed for counsel fees to the counsel of the proponents, should be paid out of the estate of the deceased, was not included in the order of the Court of the tenth day of September, 1881, fixing the amount to be paid for counsel fees in addition to the amount which had been previously allowed by this order of the Court of the tenth day of December, A. D. 1880.

It is on this twenty-second day of March, A. D. 1882, as of the tenth day of September, A. D. 1881, adjudged that the said caveators had reasonable cause for contesting the validity of said will, and it is ordered that the counsel fees heretofore allowed in this matter be paid out of the estate of William P. Turnure, deceased.

Order actually made on March 22, 1882.

A. Q. GARRETSON, *P. J.*
JOHN BRINKERHOFF, } *Judges.*
A. W. FRY,

NOTICE OF APPEAL.

The said proponents, James H. Turnure, and Ellen Turnure, hereby appeal to the Prerogative Court from so much of the order made in this Court, in the above cause, on the twenty-second day of March, 1882, as adjudged that the said caveators had reasonable cause for contesting the validity of said will.

And also from so much of said order as orders that the counsel fees heretofore allowed in this matter be paid out of the estate of William P. Turnure, deceased.

Dated March 27, 1882.

ALLAN L. McDERMOTT,
Proctor for Caveators.

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

ALLAN L. McDERMOTT,
Of Counsel.

PETITION OF APPEAL.

To the Prerogative Court of the State of New Jersey: 10

The petition of James H. Turnure, and Ellen Turnure, respectfully shows that on or about the ninth day of August, A. D. eighteen hundred and eighty, John L. Turnure and Julia Hard filed in the office of the Surrogate of Hudson County a caveat against admitting to probate any paper purporting to be the will and testament of William P. Turnure, deceased.

That on or about the tenth day of August, A. D. eighteen hundred and eighty, James H. Turnure and Ellen Turnure presented a paper to the said Surrogate purporting to be the last will and testament of said 20 William P. Turnure, and, as the executors named therein, asked that the same might be admitted to probate, and letters testamentary issued thereon to them and that such proceedings were thereupon had in such Orphans' Court that a decree was entered therein on the tenth day of September, A. D. 1881, directing the admission of said will to probate.

That on the tenth day of December, eighteen hundred and eighty, an order was made by said Court, directing Augustus A. Hardenbergh, the administrator *pendente lite*, of said deceased, to pay Allan L. McDermott, counsel of said proponents, and to R. P. Wortendyke, counsel of said caveators, each the sum of five 30 hundred dollars, out of the assets of said deceased, on account of counsel fees and services on each side, which sums the said Court ordered should be subject to the allowance, disposition and decree of said Court at the close of the litigation in said Court concerning the probate of the said will.

That on the tenth day of September, A. D. 1881, a further order was made by said Court, directing the said Augustus A. Hardenbergh, administrator as aforesaid, to pay Allan L. McDermott, counsel of said proponents, and R. P. Wortendyke, counsel of said 40

caveators, the further sum of one thousand dollars each as counsel fee, and for services on each side.

That on the 22d day of March, A. D. 1882, a further order was made by said Court as follows: "It appearing to this Court that the determination and order of the Court that there was reasonable cause for contesting the validity of the will in this matter, and that the amounts allowed for counsel fees to the counsel of the caveators as well as the amounts allowed for counsel fees to the counsel of the proponents should be paid out of the estate of the deceased, was not included in
10 the order of the Court of the tenth day of September, 1881, fixing the amount to be paid for counsel fees in addition to the amount which had previously been allowed by the order of the Court of the tenth day of December, A. D. 1880.

It is on this twenty-second day of March, A. D. 1882, as of the tenth day of September, A. D. 1881, adjudged that the said caveators had reasonable cause for contesting the validity of said will, and it is ordered that the counsel fees heretofore allowed in this matter be paid out of the estate of William P. Turnure, deceased.

20 Order actually made, March 22, 1882.

A. Q. GARRETSON, *P. J.*
JOHN BRINKERHOFF, } *Judges.*
A. W. FRY,

To which several orders on file in the Surrogate's Office of said County of Hudson, your petitioners beg leave to refer, and that reference for greater certainty may be thereunto had.

And your petitioners, the said appellants, complain and allege that the whole and every part of said order
30 made on the twenty-second day of March, A. D. 1882, as aforesaid, is erroneous, improper, illegal and unjust, and that your petitioners are aggrieved thereby.

And your petitioners humbly appeal from said order of the Orphans' Court, which orders that the counsel fees allowed as aforesaid should be paid out of the estate of William P. Turnure, deceased, upon the ground that the caveators aforesaid had not reasonable cause for contesting the validity of the said last will and testament, and that said counsel fees so ordered to be paid out of the estate of said William P. Turnure, deceased, should not be paid out of said estate, but
40 should on the contrary be paid by said caveators.

And your petitioners pray that the said order of said Orphans' Court, and every part thereof may be revised, set aside, and for nothing holden by this Honorable Court.

And that your petitioners may have such relief in the premises as to this Honorable Court may seem meet.

Dated March 28, 1882.

ALLAN L. McDERMOTT,
Proctor, and of Counsel with Appellants. 10

ANSWER.

The answer of John L. Turnure and Julia Hard, respondents to the petition of appeal of James H. Turnure and Ellen Turnure.

These respondents not confessing or acknowledging all or any of the matters and things in said petition of appeal mentioned to be true, as the same are therein 20 set forth, and reserving to themselves all benefit and advantage of exception to the errors, defects and imperfections in said petition contained for answer, thereunto, say, that they admit the filing of the caveat as in said petition stated; also that James H. Turnure and Ellen Turnure presented a paper purporting to be the last will and testament of William P. Turnure, deceased, for probate, as mentioned in said petition, and that a decree was entered on the tenth day of September, A. D. eighteen hundred and eighty-one, by the Orphans' Court of the County of Hudson, admitting said will to probate. 30

The respondents also admit that on the tenth day of December, A. D. eighteen hundred and eighty, an order was made by said Orphans' Court as mentioned in said petition directing Augustus A. Hardenbergh, administrator *pendente lite*, to pay to Allan L. McDermott and R. P. Wortendyke, each the sum of five hundred dollars, but the respondents say that such order was based upon the written consent of the counsel of the proponents and the counsel of the caveators, and filed with the Surrogate of the County of Hudson as a part of the proceedings in the matter of probate aforesaid, and to which reference is made as a part of this answer. 40

The respondents also admit that on the tenth day of September, A. D. eighteen hundred and eighty-one, a further order was made as mentioned in said petition. Reference is made to all of the orders referred to in said petition and this answer for full particulars thereof.

The respondents also admit that an order was made by said Orphans' Court on the twenty-second day of March, A. D. eighteen hundred and eighty-two, as mentioned in said petition, and which order the respondents say was made on the application of the counsel of the proponents of the will, and the same was unnecessary as all the matters therein contained had been acted upon and concluded by the Court previous thereto, as will appear by the proceedings; but the respondents say that the merits of said order and the said order are agreeable to law, and the said order should either be affirmed, or if set aside or reversed, that such reversal should be without prejudice to any of the proceedings of the Orphans' Court aforesaid involved in the said order.

The respondents further answering say, that there is another order of the Orphans' Court of the County of Hudson, made on the seventeenth day of September A. D. eighteen hundred and eighty-one, directing the administrator *pendente lite* to pay out of the estate of the deceased the costs of the Orphans' Court and Surrogate, and if the proponents, the Court reciting in said order that it having been so decided that the same should be paid out of the estate of the deceased, alike with the counsel fees allowed, to which order reference is made for the full particulars thereof. An appeal was taken by the proponents to this honorable Court from said order, and is now pending therein. No appeal has been taken from the preceding orders. allowing counsel fees, and the time for any appeal has already passed. These respondents say that no action of this honorable Court on this appeal can reach or should affect the validity of the orders heretofore made by the Orphans' Court aforesaid on the subject of counsel fees. The respondents also say, that the consent hereinbefore referred to, filed as aforesaid, upon which the order to pay each side five hundred dollars counsel fees as aforesaid, to which reference is made as aforesaid, did not contemplate any appeal from the action of the Orphans' Court of the County of Hudson; that the action of said court was intended to be final.

These respondents are advised and believe that the order appealed from in these proceedings, although unnecessary as aforesaid, is agreeable to law, and they pray that the same may be affirmed with costs, to be adjudged to these respondents, or that the Court may take such other action thereon as will not interfere with the validity of the orders heretofore made in regard to counsel fees.

R. P. WORTENDYKE,
Proctor for and of Counsel for Respondents.

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DECREE.

This appeal coming on to be heard in the presence of Allan L. McDermott, of counsel for the appellants, and Raymond P. Wortendyke and Joseph D. Bedle, of counsel for respondents:

It is on this twenty-first day of October, A. D. eighteen hundred and eighty-two, by Theodore Runyon, Ordinary and Surrogate-General of the State of New Jersey, ordered, adjudged and decreed, that the order of the Orphans' Court of the County of Hudson, bearing date the twenty-second day of March, A. D, eighteen hundred and eighty-two, appealed from, be in all things affirmed without costs on this appeal to either side.

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THEODORE RUNYON, *O.*

NOTICE OF APPEAL.

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The appellants above named hereby appeal from the whole and every part of the decree of the Prerogative Court, bearing date the twenty-first day of October, 1882, affirming the prior Order of the Hudson Orphans' Court, in the above matter made on the twenty-second day of March, eighteen hundred and eighty-two, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated November 27, 1882.

ALLAN L. McDERMOTT,
Proctor of Appellants.

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

ALLAN L. McDERMOTT,
Of Counsel with Appellants.

PETITION OF APPEAL.

The humble petition of Ellen Turnure and James H. Turnure, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made by Theodore Runyon, Ordinary, or Surrogate-General and Judge of the Prerogative Court of New Jersey, made on or about the twenty-first day of October, eighteen hundred and eighty-two, in a proceeding wherein the said Ellen Turnure and James H. Turnure were appellants, and the said John L. Turnure and Julia Hard were respondents, in respect that the said decree ordered and adjudged that the prior order of the Hudson County Orphans' Court, made on the twenty-fifth day of March, eighteen hundred and eighty-two, be in all things affirmed, without cost to either side.

And your petitioners appeal from the said decree of the Ordinary, upon the ground that the same is inequitable and erroneous, and because the Prerogative Court ought to have reversed the order of the said Orphans' Court, adjudging that the said John L. Turnure and Julia Hard, caveators in the proceeding before said Court, had reasonable ground for contesting said will, and ordering that the counsel fees allowed in the proceedings before said Court be paid out of the estate of said William P. Turnure, deceased, and should have adjudged and decreed that said caveators had not reasonable ground for contesting said will, and should have ordered said counsel fees, with all the costs, &c., to have been paid by said respondents.

Your petitioners therefore pray that the said decree of the Ordinary be reversed, set aside and for nothing holden, and that the Ordinary be directed to do and perform such things in the premises as to this Honorable Court may seem equitable and just.

ALLAN L. McDERMOTT,
Proctor of Appellants.

A. L. McDERMOTT,
Of Counsel with Appellants.

ANSWER.

The answer of the above named respondents to the petition of appeal of the above named appellants.

These respondents, not acknowleding all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless say and admit that a decree was on or about the twenty-first day of October, eighteen hundred and eighty-two, made and entered in the Prerogative Courts in the cause in said petition mentioned, as is therein stated, but as to the substance and form thereof, these respondents pray to refer thereto, when the same shall be produced, and these respondents are advised and believe that the said decree is agreeable to law and equity and they pray that the same may be affirmed, with costs, to be adjudged to these respondents.

R. P. WORTENDYKE,
Solicitor for and of Counsel with the Respondents.

A true copy.

HENRY C. KELSEY,
Clerk.

OPINION.

THE ORDINARY:—

These are appeals from the decree of the Orphans' Court of Hudson County, admitting to probate a paper writing, purporting to be the last will and testament of William P. Turnure, deceased, late of Jersey City, and an order directing that the costs and expenses of the litigation be paid out of the estate. The will is dated February 20th, 1873, and was drawn by Peter N. Horsley, a scrivener of that city, at the request of the testator, and its execution was witnessed by Horsley and two other persons, William T. Hulse and Charles Olsen. It gives to the testator's daughter, Mrs. Julia Hard, $2,000; to his son, John Lawrence Turnure, $8,000; and all the rest of the estate to his widow and his son, James H. Turnure, in equal shares, and appoints the residuary legatees executors. The testator died August 2d, 1880. He was then over 83 years of age. The

caveators are his son John and daughter Mrs. Hard, and the will is propounded for probate by the executors. It will be seen that it was made seven years before the testator died. Two of the witnesses to it, Messrs. Horsley and Hulse, were sworn before the Court below; the other Olsen, had left the State, and therefore could not be produced. The proof is clear that the will was drawn at the testator's request and according to his directions. He applied to Horsley on the subject on the morning of the day on which the will bears date, and requested him to draw it giving him direc-
10 tions as to what it should contain. Horsley made an appointment with him to come to the office of the latter in the afternoon of that day, to execute the instrument, and he came accordingly. Horsley had drawn it.

Just before it was signed he read it over to him in the presence of the other witnesses, and the testator approved of it; said he was satisfied with it, and that it was drawn up as he wanted it. He signed it in the presence of the three witnesses who saw him sign it, and signed their names as witnesses in his presence, and in the presence of each other. And they wit-
20 nessed his execution of the instrument at his request. The caveators insist, however, that the will was not duly published; that the writing was not declared by the testator to be his last will and testament in the presence of the witnesses. But by the attestation clause the witnesses certify that the writing was signed, published and declared by the testator to be his last will and testament in their presence, and that they were present at the same time, and subscribed their names as witnesses in his presence.

Neither of them was inquired of on the trial before the Orphans' Court, as to whether the testator did or
30 did not make, or assent to, a declaration that the instrument was his last will and testament. Indeed, no question was asked on the subject. "There must," says the Ordinary (Williamson) in Mundy *v.* Mundy, 2 McCart., 290. "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
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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."

It appears by the evidence that the will was, as before stated, read over to the testator in the presence of the witnesses just before it was signed, and he expressed his approval of it. It purports to be his last will and testament. In requesting Hulse and Olsen to witness the execution of it, the paper was spoken of as his will. Horsley testifies that the testator requested the witnesses Hulse and Olsen to witness his execution of the paper, and Hulse testifies that Horsley told him in the presence and hearing of the testator what the paper was. There is no room for doubt that the testator spoke of the instrument to the witnesses as his will, and requested them to witness it as such. Moreover, as before stated, the will was read over to him in the presence of the witnesses immediately before he signed it. He probably otherwise formally declared the instrument to be his will. But they knew it was his will, and he executed it as such in their presence and they witnessed it as his will at his request. The attestation clause states that the instrument was published and declared by him to be his last will and testament, in the presence of the three witnesses.

The effect of this statement is, it may be added, to throw the burden of proving that such declaration was not made on the opponents of the will. Mundy *v.* Mundy, 2 McCart., 290; Allaire *v.* Allaire, 8 Vroom, 312; Tappen *v.* Davidson, 12 C. E. Gr., 459; Wright *v.* Rogers, L. R., 1 P. and D., 678. They have not shown that the certificate of attestation is untrue. It must be held that the testator duly declared the instrument to be his last will and testament. The will is proved to have been executed with all the due legal formalities.

It is further insisted on the part of the caveators, that the testator, at the time of making the will, was not possessed of testamentary capacity, and that if he was the will was the result of undue influence of his wife over him in her own favor and against the caveators. As to his capacity, it appears clearly, not only from the testimony of the two of the testamentary witnesses who were examined, but otherwise, that he was entirely competent to make a testamentary disposition of his estate.

He had, previously to the day on which the will was drawn, spoken to the scrivener about drawing his will, and on that day he gave him all the particulars of the disposition he desired to make of his property, and it appears from the testimony of the scrivener that the very language of the will was the testator's. It may be remarked that he was not accompanied by any one when he went to Horsley's office. The scrivener knew the testator well, and he speaks in positive language of his entire conviction that the testator was possessed of full testamentary capacity.

10 Hulse was not previously acquainted with him, but he conversed with him on the occasion, and had an opportunity of judging of his competency.

Both are very intelligent witnesses.

The other testimony in the cause shows that at that time the testator was in the full possession of his mental faculties ; that he was able, wisely, to conduct business transactions involving very large sums of money, and, indeed, there is no evidence of any importance or value against his testamentary capacity. As before stated, the will was made seven years before he died. Nor is there any proof of undue influence. His wife

20 appears to have been very kind and affectionate towards him, and to have been extremely attentive to his wants and comfort to the very last.

In the will he remembers all his children. His estate is all personal. To his daughter he gives but $2,000, indeed, and to his son John but $8,000, while he divides all the residue of his estate equally between his other son James and the widow. What the amount of the residue will be does not appear clearly, but out of the estate is (it is said) to be paid to the testator's children a considerable sum of money for their legacies, under the will of his second wife. The

30 widow was his third wife. That he had reasons for the difference which he made in the bequests to his children is evident from the testimony, but if he was possessed of testamentary capacity, and was free to do as he would in the testamentary disposition of his estate, it is not necessary to inquire for his reasons. The law guaranteed to him the right to make disposition of his property according to his own pleasure. I have not deemed it necessary to discuss the evidence, either on the subject of capacity or undue influence. There is no evidence on either head, except what is produced by

40 the caveators. The burden of proof is on them. Ca-

pacity in a man theretofore sane will be presumed until the contrary is made to appear and undue influence is to be established by proof. As has been said, it is by no means enough to establish undue influence, to show interest and opportunity.

The decree admitting the will to probate will be affirmed, as also will the order for the payment of the costs and expenses of the litigation in the Orphans' Court, out of the estate, but no costs of the appeal will be awarded to either side. 10