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BILL OF COMPLAINT.

(Filed Aug. 26, 1926.)

IN CHANCERY OF NEW JERSEY.

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

Complainants, Lewis Wurst, Mary A. Rittmayer, 10  
Samuel Wurst, Leonard Wurst and George Wurst,  
all residing in the State of New Jersey, respectfully  
show that:

1. On or about August thirteenth, 1926, Elizabeth  
P. Wurst, died intestate, so far as your complain-  
ants know, and left her surviving as her sole heirs  
at law and next of kin, her brother, Lewis Wurst,  
her sister, Mary A. Rittmayer, George Wurst, son  
of John Wurst, a deceased brother, Samuel and 20  
Leonard Wurst, sons of Joseph Wurst, a deceased  
brother, all of whom are complainants.

2. At various times prior to the time of her death,  
Elizabeth P. Wurst had suffered severe illnesses,  
which had weakened her mental condition and this  
was especially true during the last six (6) months  
of her life, during most of which time she was con-  
fined to her bed and with a disease which was finally  
determined to be cancer of the stomach. 30

3. About nine or ten years ago, Elizabeth P.  
Wurst purchased the property in which she died,  
known as No. 622 Vine Street, which property is de-  
scribed as follows:

ALL the following described tract of land and premises situate in the City and County of Camden and State of New Jersey, known as No. 622 Vine Street, bounded and described as follows:

10 BEGINNING at a point in the South line of Vine Street, one hundred eighty-two feet and ten inches, East of the East line of Sixth Street; and extending thence Eastward along the South line of Vine Street a front of fourteen feet and one inch by Southward between lines of that width parallel to Sixth Street a depth of seventy-five feet to the North line of a certain four feet wide alley running Westward into a certain other four feet wide alley which runs from Cedar Street and Vine Street, together with the free and common use of both of said alleys forever.

20 4. The third floor of said dwelling house was occupied by Elizabeth P. Wurst and the balance of the house was rented by her, and in March, 1926, the balance of the house was rented by Elizabeth P. Wurst to Anna Mary Branin and Ellwood Branin, her husband, who were total strangers to Elizabeth P. Wurst.

30 5. Between the time which Anna Mary Branin and Ellwood Branin, her husband came to live in the property of Elizabeth P. Wurst, and up to the time of the death of the said Elizabeth P. Wurst, the said Anna Mary Branin and Ellwood Branin, her husband, at various times unknown to the complainants sought to prejudice the mind of Elizabeth P. Wurst against her family by making untrue statements against the complainants, and by other means

unknown to the complainants won over, by undue influence and duress, the mind of Elizabeth P. Wurst, so that the said Elizabeth P. Wurst was entirely under their influence and dictation.

6. The said Elizabeth P. Wurst on July tenth, 1926, withdrew her entire savings accounts from the Camden Safe Deposit & Trust Company, in the sum of two thousand six hundred six dollars (\$2,606.00) and delivered the same over to the defendants, at the time the said Anna Mary Branin or Ellwood Branin, her husband, took the said Elizabeth P. Wurst to the Camden Safe Deposit & Trust Company to withdraw the said moneys the said Elizabeth P. Wurst was so weak that she had to be carried to the car, and in fact after the money had been withdrawn, she collapsed in said bank and medical attention was necessary to revive her. 10

7. Subsequently while still under the influence of the said defendants, Anna Mary Branin and Ellwood Branin, her husband, the said Elizabeth P. Wurst conveyed to said Anna Mary Branin the property described herein, which deed was on the thirteenth day of July, 1926, recorded in the office of the register of deeds of Camden County in Book 631 of deeds, at page 400, all of which was done without the knowledge of the complainants, who from time to time visited the said Elizabeth P. Wurst, during the time of her illness. 20 30

8. The said Elizabeth P. Wurst by the acts recited herein conveyed all her property, both real and personal over to the defendants and made herself thereby absolutely destitute.

9. The defendants by reason of the untrue reports and undue influence exerted by the defendants upon the said Elizabeth P. Wurst obtained from her all her property prior to the time of her death without paying to the said Elizabeth P. Wurst any consideration therefor.

10. At the time the said Elizabeth P. Wurst was ill, her mind was weakened and she was subject to the influence of the defendants, who were constantly with her, and who did not give her the opportunity to seek independent counsel and advice and whenever the said Elizabeth P. Wurst went out during her last illness and at the time these transfers were made, it was always in the custody of the defendant, Anna Mary Branin, or Ellwood Branin, her husband.

20. 11. After the conveyance of the property to Anna Mary Branin the said defendants kept the said Elizabeth P. Wurst under their influence and at least on one occasion that the complainants know about refused to let the said Elizabeth P. Wurst communicate with the members of her family.

Complainants are without adequate remedy in the courts of law and therefore pray:

30

## I.

That the said Anna Mary Branin and Ellwood Branin, her husband, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

## II.

That the said Anna Mary Branin be declared to hold the property described herein as trustee for benefits of the heirs.

## III.

That a decree be made that the conveyance to Anna Mary Branin be declared to be null and void and of no force and effect. 10

## IV.

That a decree be made directing that the said Anna Mary Branin reconvey the said property to complainants, being the heirs of Elizabeth P. Wurst; and 20

## V.

That a decree be made for an accounting by the said defendants for the rental value of the said property during the time that they have occupied the same as owners.

30

## VI.

That the Court make such other decree as it deems just and equitable.

VII.

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

10

SECOND COUNT.

Complainant, Lewis Wurst, administrator for the estate of Elizabeth P. Wurst, says that:

1. Complainant herewith repeats paragraph one of the first count.

2. Complainant herewith repeats paragraph two of the first count.

20

3. Complainant herewith repeats paragraph three of the first count.

4. Complainant herewith repeats paragraph four of the first count.

5. Complainant herewith repeats paragraph five of the first count.

30

6. Complainant herewith repeats paragraph six of the first count.

7. Complainant herewith repeats paragraph seven of the first count.

8. Complainant herewith repeats paragraph eight of the first count.

9. Complainant herewith repeats paragraph nine of the first count.

10. Complainant herewith repeats paragraph ten of the first count.

11. On the seventeenth day of August, complainant was appointed administrator of the estate of Elizabeth P. Wurst by George W. Whyte, surrogate of the County of Camden.

10

12. The estate of Elizabeth P. Wurst consists of some small pieces of jewelry and the money wrongfully obtained by the said defendants.

Complainant is without adequate remedy in the courts of law and therefore prays:

I.

20

That the said Anna Mary Branin and Ellwood Branin, her husband, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

II.

That a decree be made that the defendants hold said funds aforesaid, as trustee and that they render therefore a strict accounting to the estate of Elizabeth P. Wurst.

III.

That a decree be made that the defendants forthwith turn over to the estate of Elizabeth P. Wurst

all moneys now in the possession of the defendants, as are shown to be due by said accounting.

IV.

That the Court make such other decree as it deems just and equitable.

V.

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

ROBERT J. TAIT PAUL,  
*Solicitor for Complainants.*  
CLIFFORD A. BALDWIN,  
*Counsel for Complainants.*

A true copy.  
THOMAS BARBER,  
*Clerk.*

ANSWER.

IN CHANCERY OF NEW JERSEY.

Between

LEWIS WURST, MARY A.  
RITTMAYER, SAMUEL  
WURST, LEONARD  
WURST and GEORGE  
WURST,

*Complainants,*  
and

ANNA MARY BRANIN and  
ELLWOOD BRANIN, her  
husband,

*Defendants.*

On Bill, &c.  
Answer.

The defendants, Anna Mary Branin and Ellwood Branin, of the City and County of Camden and State of New Jersey, jointly answering the bill of complaint heretofore filed in this cause, say that:

FIRST COUNT.

1. They admit that on or about the 13th day of August, 1926, Elizabeth P. Wurst died, but have no knowledge or information sufficient to form a belief as to the remaining allegations of paragraph one and demand proof thereof.

2. Defendants admit that prior to the time of her death Elizabeth P. Wurst suffered a severe illness but deny the remaining allegations contained in paragraph two.

3. Defendants admit that Elizabeth P. Wurst was at one time the owner of property 622 Vine Street and described as set forth in paragraph three of the bill of complaint, and further admit that said  
10 Elizabeth P. Wurst died in that property.

4. Defendants admit that in or about March, 1926, the said Elizabeth P. Wurst rented the property known as 622 Vine Street to your defendants with the exception of the third floor of said dwelling, which the said Elizabeth P. Wurst continued to occupy.

5. Defendants deny the allegations of paragraph  
20 five of the bill of complaint.

6. Defendants deny the allegations of paragraph six of the bill of complaint.

7. Defendants admit that on or about the 13th day of July, 1926, by deed recorded in the office of the register of deeds at Camden County, in Book 631 of deeds, at pages 400, &c., the said Elizabeth P. Wurst conveyed the premises known as 622 Vine  
30 Street to the defendant, Anna Mary Branin, but deny the remaining allegations of the said paragraph seven of the bill of complaint.

8. Defendants deny the allegations of paragraph eight of the bill of complaint.

9. Defendants deny the allegations of paragraph nine of the bill of complaint.

10. Defendants deny the allegations of paragraph ten of the bill of complaint.

11. Defendants deny the allegations of paragraph eleven of the bill of complaint.

10

## SECOND COUNT.

1. Defendants in order to avoid repetition hereby repeat the respective answers as set forth in paragraphs 1 to 10 inclusive under the first count as the answers to paragraphs 1 to 10 inclusive of the second count.

11. Defendants have no knowledge or information  
20 sufficient to form a belief as to the allegations of paragraph eleven of the second count and demand proof thereof.

12. Defendants deny the allegations of paragraph twelve of the second count of the bill of complaint.

## FIRST DEFENSE TO BOTH COUNTS.

30

These defendants, did not, at any time during their acquaintance with the said Elizabeth P. Wurst, endeavor to or exert any influence, persuasion or anything of that nature, or attempt in any way to influence or control her in any of her actions concerning her estate or the relations with her relatives, who are the complainants in the bill of complaint.

## SECOND DEFENSE TO BOTH COUNTS.

On or about the time that the defendants rented the property known as 622 Vine Street, Camden, New Jersey, from the said Elizabeth P. Wurst, defendants found that the said Elizabeth P. Wurst was a confirmed invalid, having a very severe illness, known as cancer of the stomach. The said Elizabeth P. Wurst was without any attendance whatever, either from the relatives named in the bill of complaint or any one else procured or sent by the said relatives or any of them. In the physical condition of the said Elizabeth P. Wurst, it was imperative that some one be in constant attendance upon her to act as a nurse and at the request of the said Elizabeth P. Wurst, the defendant, Anna Mary Branin, acted in that capacity. During the period from March, 1926, to the death of the said Elizabeth P. Wurst, the burden of taking care of her was upon these defendants. The course of action upon the part of her relatives, without any encouragement or solicitation upon the part of these defendants, caused the said Elizabeth P. Wurst to feel that she was neglected by her said relatives and some time in July, the said Elizabeth P. Wurst requested the defendants to have an attorney come and see her. Defendants requested Walter S. Keown, an attorney of Camden to call and see the said Elizabeth P. Wurst. The said Walter S. Keown saw the said Elizabeth P. Wurst at her home, in the presence of a niece of the said decedent and received the instructions as to what the said Elizabeth P. Wurst wished done. The said Walter S. Keown prepared the deed, in accordance with his instructions, had the same executed by the decedent and had the said

deed recorded. Defendants continued to take care of the said Elizabeth P. Wurst until her death and respectfully submit that the said conveyance of the property was made by the said Elizabeth P. Wurst for a consideration of the things herein set forth, without any solicitation, persuasion or influence from or by these defendants or either of them, and was solely the result of the independent decision of the said Elizabeth P. Wurst after due consideration of the same.

## THIRD DEFENSE TO BOTH COUNTS.

Defendants repeat the matters and things set forth in the second defense to both counts and say that concerning the money in bank, the said Elizabeth P. Wurst, a short time prior to her death, realized upon advice from her doctor that she was about to die and wishing to make all arrangements for her affairs, drew her money from the Camden Safe Deposit and Trust Company. She obtained the bills from the doctor and paid him; she consulted the undertaker, was advised what his charges would be for her burial, selected her clothing, etc., and paid him and also paid all other bills which she owed or which would become due up to her death and including her burial, these being paid by the said decedent prior to her death. After meeting said expenses, the money which was left the decedent turned over to the defendants, this being done by the said Elizabeth P. Wurst voluntarily and without any influence or duress upon the part of the defendant or either of them, with the request that the defendants keep this and use so much as might be necessary to give her the comforts, etc.,

during her lifetime. The decedent stating however, that upon her death she wanted the defendants to have whatever money there was left, so that her relatives would not get it, as decedent knew that the defendants and no one else had cared for and attended her prior to her death.

GEORGE D. ROTHERMEL,  
Solicitor for and of Counsel  
with Defendants.

10

REPLY.

(Filed Sept. 24, 1926.)

IN CHANCERY OF NEW JERSEY.

20

Between  
LEWIS WURST, *et als.*,  
Complainants,  
and  
ANNA MARY BRANIN, *et*  
*vir.*,  
Defendants.)

On Bill, etc.  
Reply.

30

Complainants join issue on answer of defendants.

ROBERT J. TAIT PAUL,  
Solicitor for Complainants.

A true copy.  
THOMAS BARBER,  
Clerk.

ORDER OF REFERENCE.

(Filed Oct. 20, 1926.)

IN CHANCERY OF NEW JERSEY.

LOUIS WURST, *et als.*,  
Complainants,  
and  
ANNA MARY BRANIN and  
ELLWOOD BRANIN,  
Defendants.)

Order of Reference.

10

This matter being opened to the Court by Robert J. Tait Paul, solicitor of the complainants, and it appearing that George D. Rothermel has consented thereto; it is, on this 20th day of October, nineteen hundred and twenty-six, on motion of Robert J. Tait Paul, solicitor of the complainants, ordered that the above entitled cause, be referred to E. B. Leaming, one of the Vice-Chancellors of this court, to hear the same for the Chancellor, and to report thereon to him revise what order or decree should be made therein.

20

E. R. WALKER,  
C.

30

I hereby consent to the entry of the foregoing order.

GEORGE D. ROTHERMEL,  
Solicitor for Defendants.

A true copy.  
THOMAS BARBER,  
Clerk.

ORDER OF DESIGNATION.

(Filed Oct. 25, 1926.)

IN CHANCERY OF NEW JERSEY.

10 Between  
 LEWIS WURST, *et als.*,  
*Complainants,*  
 and  
 ANNA MARY BRANIN, *et*  
*vir.,*  
*Defendants.* } On Bill, etc.  
 Order of Designation.

20 This matter being opened to the Court by Robert J. Tait Paul, solicitor for complainants, and it appearing that the due notice of this application has been given to George D. Rothermel, solicitor for defendants.

It is, on this 25th day of October, nineteen hundred and twenty-six, ordered that the 24th day of February, nineteen hundred and twenty-seven, at the hour of ten o'clock in the forenoon, at the Chancery Chambers in the court house, in the City of Camden, be designated as the time and place for the hearing in the above entitled cause.

E. B. LEAMING,  
 V. C.

30

I hereby consent to the entry of the above order.

GEORGE D. ROTHERMEL,  
*Solicitor for Defendants.*

A true copy.  
 THOMAS BARBER,  
*Clerk.*

ORDER OF RE-DESIGNATION.

(Filed Dec. 15, 1926.)

61-568

IN CHANCERY OF NEW JERSEY.

10 Between  
 LEWIS WURST, *et als.*,  
*Complainants,*  
 and  
 ANNA MARY BRANIN, *et*  
*vir.,*  
*Defendants.* } On Bill, etc.  
 Order of Re-Designation.

10

20 Counsel for the respective parties consenting hereto:

It is, on this 14th day of December, A. D. 1926, ordered that the designation made herein on October 25th, 1926, be vacated.

And it is further ordered that the 24th day of March, A. D. 1927, at the hour of ten o'clock in the forenoon at Chancery Chambers in the City of Camden, be designated as the time and place for the final hearing of the above entitled cause.

E. B. LEAMING,  
*Vice-Chancellor.*

A true copy.  
 THOMAS BARBER,  
*Clerk.*

20

TESTIMONY.  
IN CHANCERY OF NEW JERSEY.

Between  
10 LOUIS WURST, *et als.*,  
                  *Complainants,*  
                  and  
ANNA MARY BRANIN,  
                  *Defendants.* } On Bill, etc.

March 24, 25, 1927.

20

LEAMING, V. C.

## APPEARANCES:

ROBERT T. PAUL, Esq., for complainants.  
GEORGE D. ROTHERMEL, Esq., for defendant.

30 The Court: Are counsel on both sides ready in today's case?

Mr. Rothermel: The defense is ready.

The Court: I have read the pleadings and unless there are some matters you wish especially to refer to you may as well proceed with the proofs.

Mr. Paul: There is nothing I desire to state.

Mr. Rothermel: I have nothing. I think the pleadings, as far as the defense is concerned, state everything.

The Court: Are there any matters you can stipulate. Perhaps you can stipulate as to the genealogy and the administration, and the date of the death of the testatrix, and the time when the defendants leased the property. There are a number of matters of that kind that can hardly be in dispute. 10

Mr. Rothermel: If the Court please, I have no knowledge as to the heirs. I don't believe there is much dispute as to the people named in paragraph one.

The Court: If you don't think of anything you can stipulate go ahead with the proofs. 20

Mr. Rothermel: As far as the lease of the property is concerned I think there is no lease in writing but I am willing to stipulate my client rented the property from the deceased sometime in March, 1926.

The Court: March, 1926, is that the stipulation?

Mr. Rothermel: I am perfectly willing to stipulate that. I don't believe there is any dispute about that. 30

The Court: And the date of the death of the deceased.

Mr. Rothermel: I think that was August 13, 1926, sir.

The Court: Let that stand as stipulated.

Mr. Rothermel: I think paragraph 1 no doubt sets forth the heirs, sir.

The Court: It is stipulated that the heirs at law  
10 or next of kin are as named in paragraph 1 of the bill. Are the letters of administration admitted?

Mr. Rothermel: I have no dispute as to them, sir. If Mr. Paul has a certificate from the surrogate that fact may be stipulated as far as I am concerned.

The Court: Let it be understood that letters of administration were issued on the estate of intestate. On what date, Mr. Paul?  
20

Mr. Paul: 23rd day of August, 1926.

The Court: Are there any other matters that can be stipulated that will shorten the testimony. The conveyance, is that admitted.

Mr. Rothermel: I don't think there is any dispute as to that.

30 The Court: What is the date?

Mr. Rothermel: July 13, 1926. I have the deed which I have no objection to being admitted.

The Court: July what?

Mr. Rothermel: July 13, 1926.

The Court: What paragraph of the bill is that?

Mr. Rothermel: Paragraph 7.

The Court: What date was the money drawn from the bank? Was that correctly stated in paragraph 6, July 10, 1926?  
10

Mr. Paul: There was a partial withdrawal on the 10th and the full amount withdrawn on the 13th.

The Court: The 10th and 13th of July.

Mr. Paul: I have the bank book here.

The Court: Just look at your book and see.

Mr. Rothermel: On July 10th \$85.00 was with-  
drawn, and the balance was drawn on July 13th. 20

The Court: How much was that?

Mr. Rothermel: \$2,183.01.

The Court: Let it be stipulated the withdrawals were of the amounts and dates named.

Mr. Paul: Yes, sir. 30

The Court: Very well. Was all the money withdrawn, all the money that the intestate had?

Mr. Rothermel: No, sir, it was not. Pardon me. All the money that was in that bank was withdrawn, yes.

The Court: But not all that she had.

Mr. Rothermel: It is not all the assets she had. I think it was all the money she had in bank.

The Court: But she had other cash?

Mr. Rothermel: No, she was the holder of a mortgage in the sum of \$2500. That, together with  
10 the cash and the property constituted her estate, or what would have been her estate.

The Court: A mortgage of \$2500?

Mr. Rothermel: That is right, sir.

The Court: Are you familiar with that fact?

Mr. Paul: I didn't know that fact.

20 The Court: We will leave that subject to proof. What became of that mortgage.

Mr. Rothermel: That was assigned on the same day this deed was executed to her nephew, Charles Rittmayer.

Mr. Paul: I knew that under another term. I will admit that.

30 The Court: Now, it is admitted that these withdrawals of July 10th and 13th, the assignment of the mortgage on July 13, 1926, and the execution of the deed on July 13, 1926, altogether comprised the entire property of the deceased?

Mr. Rothermel: With one exception, sir. I think there were a few articles of jewelry which were of an insignificant value which were given away by the decedent at the same time.

The Court: Is that satisfactory?

Mr. Paul: I don't know the date of the jewelry being given away. I know they were given to various persons.  
10

The Court: It is admitted also that as the matter now stands there are no assets that have come to the administrator?

Mr. Paul: None whatsoever, sir.

The Court: Very well. With those admissions suppose you go ahead with your proofs. It is admitted the money was withdrawn, but the circumstances surrounding it, her weak condition, and so forth, were not included in the admission.  
20

Mr. Paul: Is your Honor ready to proceed with the proofs?

The Court: Yes.

#### THE CASE FOR THE COMPLAINANT.

30

CLARK P. WHEATON, SWORN.

By Mr. Paul:

Q. Mr. Wheaton, you are associated—you are an employe of the Camden Safe Deposit and Trust Company?

A. I am.

Q. What is your position in that bank?

A. Time paying teller.

Q. That is, you are in charge of the time deposit department and the withdrawals?

A. Yes, sir.

Q. Do you have a record of the account of Elizabeth P. Wurst, or Lizzie Wurst?

A. I have.

10 Q. This shows the account as being closed out at the present time according to your records?

A. Yes, sir.

Q. Your statement shows a withdrawal on the 13th of July in the sum of \$2183.01, have you the check for that?

A. Yes, sir.

Q. That check is marked "paid" by your bank?

A. Yes, sir.

Q. What name appears on the back of that?

20 A. Anna Branin.

Q. Does that represent the party to whom that check was paid according to the bank records?

A. Yes, sir.

The Court: Let me see the check, please.

Mr. Paul: I offer that check.

(Said check marked Exhibit C1.)

30 Q. Your statement shows a withdrawal of \$85.00 on July 10th, have you that check, sir?

A. That is a receipt. That is what we call a receipt, it is used in the bank when people call there for the money and take the money away with them.

Mr. Paul: I offer that in evidence.

(Said paper marked Exhibit C2.)

Q. That receipt, was that signed in your presence, sir?

A. Yes, sir.

Q. Do you remember the incident of the signing of that paper?

A. Yes, sir.

Q. Will you tell us the conditions surrounding the signing of that receipt so far as you recall it.

A. Mrs. Wurst was brought in the bank accompanied by a rather stout, much younger lady. Mrs. Wurst was in a very feeble condition and the young lady gave her a seat on the bench there at the side of my window and came to the window and asked me if I wouldn't come outside and speak to Mrs. Wurst—that is the way I remember that one particular case. I went outside and I took a seat alongside of her and she said she would like to withdraw some money —

Mr. Rothermel: You are referring now to Mrs. Wurst, Mr. Wheaton?

The Witness: Yes. I had one of the young men back of the counter, an assistant bookkeeper, to draw this receipt, then I took it back to Mrs. Wurst and held the book while she signed her name to this receipt.

Q. What was Mrs. Wurst's condition at that time, did she appear strong to you or feeble?

A. She appeared as though she would die at any second.

Q. What subsequently took place after she signed this receipt?

A. She was taken back—this young lady, I presume it was Mrs. Branin, but I don't know, she was taken back by the young lady who brought her in the bank, to the toilet, the ladies' toilet, and afterward brought back to where she was sitting and laid down.

10 The Court: And what?

The Witness: Laid down. She was in such a condition that everyone there thought she was about to die. In fact, we sent for the doctor and the doctor came in and administered to her, and I stayed until he left and then I left. I left her in the bank. I will say that the young lady told me she begged Mrs. Wurst not to come out of the house that day but that Mrs. Wurst insisted.

20 Q. As far as you know she subsequently left the bank?

A. How is that?

Q. As far as you know she subsequently left the bank?

A. She accepted the money at the bank.

Q. And she subsequently left the bank?

A. Oh, yes.

Q. Did you see her after that time?

30 A. No.

Q. Do you know the circumstances under which that last check was issued?

A. No, I do not. Although that is in my handwriting I don't just remember the circumstances. I will say that anybody bringing a passbook into the bank and requesting a check we will write the

check and give it back to them to have signed by the depositor.

Q. Mrs. Wurst didn't appear the second time as far as you know?

A. As far as I know of.

Q. She was only in the bank the one time?

A. The one time, yes.

Q. I notice that the receipt is given for the money the same day. This is on a time account?

A. Time account, yes.

Q. Is it customary in your bank when people request to make an immediate withdrawal on a time account to give it to them?

A. Yes, we will do that.

Cross-examination.

By Mr. Rothermel:

Q. Mr. Wheaton, this second check of \$2183.01, 20 did you have any conversation with Mr. Norcross of your trust department before that check was made out?

A. There was a circumstance, but I can't connect it with any one account, where I went back to Mr. Norcross and had him to phone some lawyer's office.

Q. That is your recollection of the circumstances surrounding that?

A. I don't know whether it is this check or not. 30

Q. Assuming that it perhaps might have been, go on, what happened?

Mr. Paul: I am perfectly willing to stipulate that Mr. Norcross, at the request of Mr. Keown, instructed the check to be issued, if that will bring the matter to Mr. Wheaton's mind. I know that.

The Witness: It may have been this case, but I don't remember which case it was.

The Court: Assuming for the moment that it may have been this check what is your recollection of the particular transaction, irrespective of whether it was this check or not.

The Witness: I really don't remember just what  
10) took place there. I went back to see Mr. Norcross but I don't remember just what did take place. Whether a check was issued afterward I don't know. I don't recall.

The Court: Don't try to testify if you don't remember.

Q. In your time accounts you require two weeks' notice to withdraw?

20) A. Yes, sir.

Q. If Mrs. Wurst was in your bank on July 10th did she give notice she wished to withdraw the balance in the account on that day?

A. No, sir.

Q. What notice did she give? Did she say anything about withdrawing the balance?

A. No notice that I remember, no.

Q. What is the significance of these two letters in the corner, "Payable N. N."?

30) A. No notice.

The Court: Notice then was waived by the bank?

The Witness: Yes, sir.

Q. On July 13th, the date of the second with-

drawal, Mr. Wheaton, the interest was computed on the account up to that time?

A. Yes, sir.

Q. And the entire account closed by that check?

A. Yes, sir.

Q. You talked to Mrs. Wurst on this date of July 10th, didn't you?

A. Yes, sir.

Q. You had some conversation with her concerning the withdrawal?

A. Only the withdrawal of the \$85.00 as of the  
10) date of the 10th.

Q. Did she make any statement with reference to why she wished to withdraw this money immediately?

A. Not to my recollection.

Q. As far as her mental condition was concerned, irrespective of her physical condition, was there anything which occurred or which she said which led you to believe she wasn't right mentally?

A. No.

Q. In your opinion was her mentality clear?

A. I wouldn't have accepted her signature otherwise. It was.

Q. You had no doubt at all as to her mental condition?

A. No.

Q. She knew what she was doing?

A. As far as I knew.

By Mr. Paul:

Q. Who conducted most of the conversation concerning this withdrawal, sir?

A. The withdrawals?

Q. Yes.

A. Which one?

Q. The withdrawal on the 10th with Mrs. Branin?

The Court: The 13th?

Mr. Paul: Your Honor, I have reference to the withdrawal when Mrs. Wurst was there.

The Court: That was the 13th?

10 Mr. Paul: No, the 13th was when the last check was drawn.

The Court: You are speaking now of July 10th?

Mr. Paul: July 10th, yes, sir.

20 Q. On July 10th when Mrs. Wurst and the younger lady was there who conducted most of the conversation?

A. The younger lady came up and said Mrs. Wurst —

The Court: This is the same lady that was with her on the last occasion?

The Witness: Only one occasion she was in the bank to my knowledge, which was July 10th.

30 The Court: I thought there was one check of July 10th, and about July 13th.

The Witness: Yes.

The Court: Haven't you been testifying to the July 13th check?

The Witness: No, not as seeing Mrs. Wurst on the 13th.

The Court: I thought your testimony related to the large check of July 13th which closed the account.

The Witness: No, when I say I saw Mrs. Wurst and she was in the bank was July 10th.

10

The Court: Your receipt was for the large check, wasn't it?

The Witness: No, the receipt is for the smaller check.

The Court: Let me see the large check. You testified Mrs. Branin received the larger check, didn't you?

20

The Witness: She is the one who evidently received the larger check, yes.

The Court: I misunderstood your testimony, I thought it related to the 13th, but it has all related to the 10th. This fainting occurred on the 10th?

The Witness: Yes.

The Court: You don't know anything about what 30 occurred on the 13th?

The Witness: No, I didn't see Mrs. Wurst on the 13th.

The Court: I will have to revise my recollection; I thought you were talking about the 13th. What further did you ask?

Q. On the visit of July 10th when Lizzie Wurst and the young lady was there who did most of the talking to you?

A. The young lady came to the window and said Mrs. Wurst would like to draw some money. She didn't want Mrs. Wurst to come out that morning but Mrs. Wurst insisted on coming, and she asked me if I wouldn't come outside where Mrs. Wurst was sitting and speak to her.

10 Q. That is, she was sitting on the bench just across from your window?

A. Yes. Then she said she would like to draw some money, and I got the amount and had the receipt drawn.

The Court: Have you that \$85.00 check there?

The Witness: This is it. That is the receipt, that is the inside check that we use.

20

Q. No check was drawn additionally but just the receipt for the money?

A. Yes.

The Court: I have your testimony straight now, have I, to the effect you don't know anything about the withdrawal on the 13th, that your testimony entirely relates to what occurred on the 10th?

30 The Witness: When I saw Mrs. Wurst.

The Court: That was the 10th?

The Witness: Yes. The check of the 13th is in place, although I had to go back and see Mr. Nor-

cross, and some lawyer's office had called him, I think it was Mr. Keown, but some lawyer's office had called him and this check was issued in consequence of that, I suppose, but I don't remember that check at all.

Q. I didn't quite understand your testimony concerning at what point Mrs. Elizabeth Wurst apparently fainted or became unconscious. When was that, after you had given her the money? 10

A. Yes, yes, she had the money then.

Q. She had the money when she apparently, to use the slang expression, passed out?

A. She received the money and was taken back to the toilet, and after she came back she was laid out on this bench. Whether she was unconscious or fainted, or what it was, I don't know, but I thought she was dying then.

Q. How long was she in that unconscious condition you speak of? 20

A. She was lying there—I don't know what to say in regard to that—probably half an hour until the doctor came there and then I left.

Q. When the doctor came did she revive at once?

A. No, I left her lying there.

Q. She was still lying there?

A. Yes, to the best of my recollection she was still lying there. She was in the bank yet.

Q. Would you recognize the young lady who came with her? 30

Mr. Rothermel: There is no dispute on that point, Mrs. Branin is the woman who accompanied Mrs. Wurst to the bank on this occasion.

Mr. Paul: Does the Court desire the withdrawal record of the bank to be kept?

The Court: I don't think we will have any use for them any more, any of them. Supposing we just stipulate into the record what this shows. The bank account shows that the account of Elizabeth P. Wurst was balanced January 1, 1926, and contained a balance of \$2634.83. That subsequent to that time there were no deposits or credits to the account except the interest which was credited when the bank account was closed on the 13th of July, 10 1926, and between January 21, 1926, and July 13, 1926, when the account was closed, the only transaction was the withdrawal of May 6th, of \$300, June 7th, \$110, July 10th, \$85.00, and July 13, \$2183.01, which closed the account.

Mr. Rothermel: May we ask Mr. Wheaton to leave the check representing the last withdrawal closing the account. I want to produce Mr. Norcross on behalf of the defense.

20

Q. You have the checks showing the withdrawals of May 6th and June 7th?

A. Yes.

Q. I show you these checks and ask you if they represent the withdrawals?

A. They do.

Q. The endorsements on the backs show these have been paid to E. Elsworth Branin. That represents the person to whom they were paid?

30 A. Yes, sir.

The Court: E. Elsworth Branin, is that the husband of Mary Branin?

Mr. Paul: Yes. I offer these in evidence at this time.

(Said checks marked Exhibit C3 and C4.)

Q. That represents the sole withdrawals from this account?

A. In the year 1926.

By Mr. Rothermel:

Q. Mr. Wheaton, they represent the only withdrawals in this account since it was opened in your 10 bank on February 11, 1924?

A. Now, this sheet only goes back to August 16, 1924. If you will let me have the book I can tell you.

Q. (Shows witness book.)

A. Yes, sir. The account wasn't opened on February 11, 1924, this was an extension book. There was a book ahead of that filled.

Q. But as far as this book is concerned there have been no withdrawals excepting the ones you specified since February 11, 1924? 20

A. That is right.

Mr. Paul: I was prepared to call Mr. Norcross but as long as Mr. Rothermel signified his intention to call him I will not call him now.

Mr. Rothermel: If the Court please, with the permission of Mr. Paul, the defense has two witnesses who are undertakers from Glassboro, and I understand they have a funeral scheduled for today. 30 The testimony will be very short and I wonder if Mr. Paul will permit me to allow them to testify so that they may be excused.

Mr. Paul: Yes, sir.

LEWIS N. SHREVE, SWORN.

By Mr. Rothermel:

Q. Mr. Shreve, you are a resident of Glassboro?

A. Yes, sir.

Q. What is your business?

A. Funeral director.

10 Q. Did you know Mrs. Elizabeth P. Wurst?

A. I did.

Q. How many years had you known her?

A. Nearly all her life, known her since she was a child, we were both young together.

Q. When was the last time you saw her prior to July 13th?

A. Now, these dates I can't tell you any dates, because I am confused on the case, I thought it was another case, but instead of that it is the Wurst case, and I didn't bring any dates with me, but I saw her probably eight or nine weeks before she paid me for the funeral expenses.

20 Q. How many other times would you say, approximately, during the year 1926?

A. During the year? I hadn't seen her previous to that.

Q. You saw her that one time eight or nine weeks —

A. Prior to the time she paid me, yes, and she called me there at that time, I don't know the date, but about two weeks after that she sent for me, she wanted to pay me for the funeral expenses. She called me there first to make arrangements for her funeral and about two weeks later she sent for me to come that she wanted to pay me for the funeral expenses.

Q. Did she?

A. Yes, sir.

Q. Do you know how much she paid you?

A. I don't know the exact amount, \$800 and something.

Q. How was that paid?

A. In cash.

Q. I show you a bill dated July 14, 1926, and ask you if that is the bill you submitted to her and which she paid? 10

A. That is the bill I submitted to her at that time.

Q. And she paid you that in cash?

A. Yes, sir. She had, I judge, about \$2,000, probably, a little more, in cash, and she wanted me to count it up, and I counted it all, I don't remember the amount, probably \$2300. I counted the money for her and handed her the balance in the lady's presence at the house at the time and my son.

The Court: Is it a receipt? 20

Mr. Rothermel: Yes, sir. I will offer that.

(Said paper marked Exhibit D1.)

The Witness: That isn't the way I make out a receipt, but she wanted it itemized, and that is what I furnished.

Q. As I understand it you saw her three times then in the year 1926? 30

A. I saw her twice; she was dead the second time.

The Court: You spoke of an amount of money she had at this time. How much money did she show you?

The Witness: I can't say the exact amount, \$2200 or \$2300, I think.

Mr. Rothermel: Perhaps this will refresh your recollection.

The Court: What did you say, she asked you to count it for her?

10 The Witness: Yes, I counted it for her.

Q. How much was there?

Mr. Paul: May I ask what the witness is shown to refresh his memory?

The Witness: I don't know the exact amount.

Q. What is this paper I just gave you?

20 Mr. Paul: Don't you recognize what it is, sir?

The Witness: I do not.

Q. Is that your signature? (Indicating.)

A. Yes, sir.

Q. It is your signature?

A. Yes.

30 The Court: It is your own handwriting?

The Witness: Yes, sir. That is right, I received this from Mrs. Branin. Mrs. Branin gave me the money and I took my money out. She said, "You take your money out," and I gave her the balance.

Q. Did you count that money?

A. Yes, sir.

Q. Was the sum that was turned over to you and then from you to Mrs. Wurst the sum represented in that receipt?

A. Yes, sir.

Q. Did Mrs. Wurst sign that receipt in your presence?

A. I couldn't say.

Q. This is your signature?

A. Yes, sir.

Q. But the money was given to Mrs. Wurst by you?

A. Yes.

The Court: You counted it, took your money out, and gave her the balance.

The Witness: She counted it for me. She gave me my money and then I counted it up. She wanted me to count it up.

The Court: And you gave it back to who?

The Witness: Gave it back to Mrs. Wurst.

The Court: And she gave you the receipt for it?

Mr. Rothermel: No, this receipt was given to Mrs. Branin, sir.

The Witness: I gave her the receipt for the payment of my bill, that is, the full amount; but she would have me to count it, and I counted it to see if it was right, and she paid me the amount of my bill.

Mr. Paul: Are you offering that?

Mr. Rothermel: No, I will prove it in part of my case. I am not offering it.

Q. Mr. Shreve, I understood you to say you saw Mrs. Wurst about eight or nine weeks—the first time in 1926 about eight or nine weeks before she called you to make arrangements for her funeral?

A. Before she called me to pay me.

Q. You only saw her the two occasions?

10 A. Yes, sir.

Q. The first occasion you went there at her request to make arrangements for the funeral?

A. Yes, sir.

Q. Did she at that time discuss with you what she wished in connection with her funeral?

A. Yes, sir.

Q. How much time did you spend with her on that occasion, have you any idea?

A. Wasn't very long, probably half an hour.

20 Q. The second occasion when you saw her was when you went back, presented this bill, and she paid you in cash?

A. Yes, sir.

Q. You saw her physical condition at that time, I presume?

A. Yes, sir.

Q. What, in your opinion was her physical condition?

30 A. Normal. I have known her for years, she was always a little peculiar, but I would say she was normal.

Q. Physically?

A. Well, of course, she was in a somewhat weakened condition; she sat up on the bed and talked with me, sat on the bed all the while.

Q. Mentally, what was her condition?

A. Mentally, she seemed to be normal.

Q. Anything at all that took place that would lead you to believe she didn't know what she was doing?

A. No, sir.

Q. Particularly when this money was turned over?

A. No.

By the Court:

10

Q. Wasn't she able to count the money for herself?

A. Yes.

Q. Why did you count it?

A. She counted it also.

Q. Why did she want you to count it?

A. I couldn't say. She did that on account of Mrs. Branin, I imagine. Mrs. Branin also wanted me to count it.

Q. Mrs. Branin wanted you to witness her receipt?

A. I imagine so, yes, sir.

By Mr. Rothermel:

Q. You say that receipt was signed when you were there?

A. Sure.

Q. This?

A. Yes, it was signed there in her presence.

30

Cross-examination.

By Mr. Paul:

Q. Mr. Shreve, you are the old family undertaker of the Wurst family?

A. I have buried a number of the family, yes, sir.

Q. This bill and this receipt, you counted the money out and receipted the bill and counted the money out for her at the same time, didn't you?

A. For myself?

Q. Yes.

A. She counted the money out for me.

Q. You gave her the receipt right there?

A. Yes, sir.

10 Q. And you subsequently counted the other money over?

A. I counted the full amount first.

Q. That was the same day?

A. Yes, sir.

Q. Who wrote that receipt for you for her to sign, do you know?

A. I don't know.

Q. Was it prepared when you got there?

A. I couldn't say.

20 Q. Where did it come from?

A. The receipt?

Q. Yes.

A. I don't know.

Q. How did you come to sign it?

A. How come I to sign it?

Q. Yes.

A. I signed it on account of the amount.

Q. Beg pardon. It is my error instead of yours.

30 How did you come to witness the receipt from Elizabeth P. Wurst to Mrs. Branin?

A. How I come to sign it?

Q. Yes, sir.

A. That was to clear Mrs. Branin as far as I know.

Q. Was it part of an apparent plan to clear Mrs. Branin?

Mr. Rothermel: I object to that, if the Court please.

The Court: I think his former answer justifies the question.

(Question repeated.)

The Witness: As far as know, yes. I counted it and signed it for that amount; and that was the 10 amount that was in her hands.

Q. Who prepared the receipt?

A. I don't know.

The Court: He said he didn't know.

Q. You saw Mrs. Wurst sign it, didn't you?

A. Sir?

Q. You saw Mrs. Wurst sign it? 20

A. Did I see her?

Q. Sign it?

A. No, I didn't see Mrs. Wurst sign it; she might have signed it right there, but I don't remember.

Q. Was Mrs. Wurst in bed at the time you went to see her the second time?

A. In bed. She was sitting up on the side of the bed nearly all the while I was there.

Q. Were her feet on the floor or was she supported by pillows? 30

A. Sitting on the side of the bed with her feet toward the floor.

Q. Was her back supported in any way or was she just sitting up in a normal sitting position?

A. Sitting up in a normal sitting position. When I first went there she was in bed lying down.

Q. Was she weak?

A. I imagine she was weak, of course, in her condition.

Q. She gave you that impression she was weak?

A. She thought she hadn't very long to live, that is why she called me there.

Q. Now, in your first statement in answer to Mr. Rothermel's question you said you received the money from Mrs. Branin.

10 Mr. Rothermel: Beg pardon, Mr. Paul.

Q. Just a minute. And the second time you said you received it from Mrs. Wurst. Now, I will ask the stenographer to read back —

The Court: He said he received it from Mr. Branin. We won't go back.

20 The Witness: Not Mr. Branin, I didn't see Mr. Branin.

The Court: You said Mrs. Branin, did you?

The Witness: Yes.

The Court: I misunderstood you.

Q. One time you say you received it from Mrs. Branin and another time from Mrs. Wurst.

30 A. I received my pay from Mrs. Wurst.

Q. What did you receive from Mrs. Branin?

A. The full amount that is receipted on that bill.

Q. The full amount?

A. Yes, sir.

Q. Who counted it?

A. I counted it, I counted it; she wanted me to count it.

Q. Did you count it first or did Mrs. Wurst?

The Court: What I understood him to say was he was given his \$860 and that he counted the money and handed Mrs. Wurst the balance of the money after counting it, is that correct?

The Witness: I counted the full amount, twenty some hundred, whatever it was, and Mrs. Wurst 10 paid me out of that amount and she kept the balance.

Q. When was it you signed your name as a witness to this agreement?

A. What date?

Q. Yes.

A. I can't say the date.

Q. You don't know when it was?

A. It was that time I was there at the house, 20 whenever that was.

Q. When you signed your name as a witness had Mrs. Wurst previously signed that agreement?

A. With me?

Q. No, this receipt, had she previously signed it before you witnessed it?

A. I don't remember that.

Q. You don't remember?

A. No.

Q. But you are sure you were there on the 14th? 30

A. I am not sure of the date, no.

Q. You are not sure of the date?

A. No, I am not sure of the date because I was confused about this case, I thought it was another case and I didn't get any dates.

Q. Your receipt says the 14th?

A. That is the date.

Q. That is the positive date, the day you were there?

A. Yes, sir.

Q. This receipt which you refreshed your memory on as to the amount of money you received from Mrs. Branin, what is the date of that receipt?

A. July 13th.

By Mr. Rothermel:

10

Q. Mr. Shreve, you have signed as a witness to that signature and Mrs. Wurst hadn't signed the receipt?

A. She hadn't signed it.

Q. You were asked by Mr. Paul whether or not Mrs. Wurst had signed this receipt before you signed it. Would you have signed as a witness to her signature if she hadn't signed it at that time?

20 Mr. Paul: I object.

The Court: I don't think that is competent. He said her signature was there before he signed it but he doesn't recall whether he saw her sign it or not.

BLAND SHREVE, SWORN.

The Court: Are you a son of the last witness?

30 The Witness: Yes, sir.

By Mr. Rothermel:

Q. You live at Glassboro, Mr. Shreve?

A. Yes, sir.

Q. Do you recall going with your father to see Mrs. Wurst at 622 Vine Street, Camden?

A. Yes, sir.

Q. How many times were you there?

A. Twice.

Q. Do you recall the date you were there the first time?

A. No, not the date, but it was on a Monday evening.

Q. For what purpose did you go?

A. They phoned to my brother, a party there, and wanted to make arrangements for a funeral, and we went up there and it was Lizzie Wurst, and she wanted to know about it, and after we made the arrangements what it would be and we told her, she said, "You come Thursday and I will have the money," and she wanted us there Thursday at noon time and I told father we couldn't make it that time, he belongs to the Rotary and it was their dinner hour, and she said, "What about Wednesday?" and I said, "That will suit me," and we were there about ten o'clock Wednesday morning. 20

Q. Tell us what happened.

A. Mrs. Branin had the money, father counted it, and I was right there with him, and we both signed the paper and gave it to Mrs. Wurst.

Q. The paper or the money?

A. The money. She said, "Well, how much is it?" and father told her \$860, and she gave him eight \$100 bills and three 20's, and father gave her the receipt, and he said, "It isn't often we give people receipts before they die for the money." 30

Q. What did Mrs. Wurst say when your father made the remark about not getting paid before they died?

A. She laughed over it as a joke.

Q. Is that one of the papers you signed on that day?

A. Yes, sir, that is where father counted the money in my presence and we signed it as witnesses.

Q. Was that signed by Mrs. Wurst while you were there, do you know?

A. I don't know.

Q. You signed as witnesses to her receiving the money?

A. Yes.

10 Q. And is this the receipt which your father gave her at that time?

A. Yes, sir.

Q. Were they both signed by you on the same day?

Mr. Paul: He answered that question, sir, I think.

20 The Court: I don't know. Can you tell?

The Witness: Yes, both on Wednesday.

Q. That was the second occasion you and your father were there?

A. Yes.

Q. Will you tell us, Mr. Shreve, just how many days or weeks elapsed between the first visit of you and your father and the second visit?

A. Two days.

30 Q. In other words, you went there first on Monday?

A. And Wednesday morning.

Q. And got the money?

A. Yes.

Q. You, of course, saw Mrs. Wurst on both occasions?

A. Yes, sir.

Q. You and your father were both talking to her about those arrangements?

A. Yes, sir.

Q. How long were you with her on Monday evening?

A. Probably an hour, an hour and a half.

Q. And on Wednesday morning how long, approximately?

A. An hour. 10

Q. Talking to her all the time?

A. Yes.

Q. Was there anything in her conversation or her condition to lead you to believe she was not mentally competent to do the things she was doing?

A. She knew what she was doing.

Q. In your opinion was she competent?

A. Yes, sir.

Q. She, of course, was weak physically?

A. Yes, sir. 20

Q. Was she in bed or sitting up on the occasion you were there Monday evening?

A. She was lying in bed when we went in the room and as soon as we got in there she recognized father and she sat up in bed and put her feet on the floor.

Q. And remained in that position until you left?

A. Yes, sir.

Q. What occurred on Wednesday?

A. She was in bed when we got there and she sat 30 right up.

Cross-examination.

By Mr. Paul:

Q. On both of these occasions when you and your father visited her she was in bed?

A. Yes, sir, and as soon as we went in the room she sat right up.

Q. Did you know Elizabeth P. Wurst prior to this time?

A. Yes.

Q. How long had you known her?

A. She was one of the Wursts. We bury in that family.

Q. You knew her through the funeral connections?

10 A. Yes.

Q. Who was in the room when you entered the first time?

A. The lady of the house took us up to the room. The front door was locked and she came down and unlocked the door and took us up there.

Q. Did you make known to her the purpose of your visit?

A. Yes.

Q. And she took you up?

20 A. Yes, sir.

Q. Were you up on both occasions?

A. Yes, sir.

Q. Who phoned to you, do you know?

A. A lady relative from, I think, Audubon, and she came later on in the evening while we were there on Monday night.

Q. The Monday before you were paid?

A. Yes, sir.

30 Q. Did you hear anyone call this relative Mrs. Rittmayer?

A. No.

Q. Never heard her called by any name?

A. No.

Q. Do you recognize her in the court room this morning?

A. No.

Q. The first time you say you stayed about an hour and a half?

A. Yes, sir.

Q. And the second time about half an hour?

A. About an hour the second time on Wednesday morning.

Q. And that was the same day you gave the receipt?

A. After she paid father.

Q. You have signed as a witness to an agreement, 10 did you see Mrs. Wurst sign that agreement?

A. No, I don't believe I did.

Q. Do you know where that receipt came from?

A. Why, I think Mrs. Branin handed it to us after father counted the money.

Q. And she asked you to sign it, Mrs. Branin did?

A. Yes.

Q. And you signed it the same time your father gave the receipt?

A. Yes.

Q. Did Mrs. Wurst seem very feeble to you? 20

A. Well, as soon as we went in the room she got right up and sat on the edge of the bed and put her feet on the floor and throwed the covers across her and sat there for a while and talked and kind of moved around to get in a better position, something like that, but kept right on talking.

Q. And during all this conversation the lady of the house was in the room?

A. Yes.

Q. And she saw you out after you were through? 30

A. Saw us a while?

Q. Saw you out?

A. Yes, to the front door.

Q. To whom did you give the receipt?

A. Mrs. Branin.

Q. By the receipt I mean the receipt for the money.

A. What father counted?

Q. Yes.

A. Yes.

Q. You gave to Mrs. Branin?

A. Yes.

Q. And that is the person from whom you received it?

10) A. Yes.

Q. And the money he received he received from Mrs. Wurst?

A. After father counted the money he handed it to Mrs. Wurst and Mrs. Wurst paid father.

Q. Did you see where Mrs. Wurst put the balance of that money?

A. In her pocketbook; she had it right with her.

Q. A large pocketbook?

A. I think so.

20) Q. Larger than the average purse?

A. A little handbag.

Q. Do you know where she put that pocketbook after you handed her the money?

A. Not unless she had it in bed. I don't remember her handing it back to Mrs. Branin.

Q. Did you see her put it under her pillow?

A. I couldn't say that.

Q. Where did she get it from?

A. Mrs. Branin had it in a bureau drawer locked  
30) when we went in there.

Q. That was the same pocketbook?

A. Yes.

By Mr. Rothermel:

Q. This lady that called you to come up to Mrs.

Wurst, this was a relative of whom, you said it was a relative?

A. Mrs. Wurst.

By Mr. Paul:

Q. Why do you think so, sir?

A. I think she told me over the phone this was a relative speaking.

Q. The next time you saw Mrs. Wurst was when 10 you buried her, is that it?

A. After she paid us, yes.

FRANK S. NORCROSS, sworn.

By Mr. Paul:

Q. Mr. Norcross, you are the trust officer of the 20 Camden Safe Deposit and Trust Company?

A. I am.

Q. You recall on July 10th of last year an elderly lady coming to the bank and becoming very seriously ill?

A. Yes.

Q. What is your knowledge of that incident?

A. My knowledge of that is entirely hearsay, I didn't see the lady.

Q. But you knew there was a commotion there? 30

A. Yes.

Q. Subsequently did you discuss with anyone over the phone the issuance of a check for the balance of the account of Elizabeth P. Wurst, and if so, with whom?

A. I have a recollection of having discussed the matter with Mr. Keown.

Q. After a discussion of that with Mr. Keown did you issue instructions to anyone in your bank for the withdrawal of that account?

A. After the explanation he gave me I did.

Q. What explanation was it he gave you?

A. He said that the lady was ill, didn't expect to live long, and wished to make arrangements for her funeral and burial, even to the point of paying the undertaker in advance, and any balance that remained she would dispose of herself. I investigated through Mr. Wheaton and found there was no question about the mentality of the woman.

Q. Did you see the check at the time it was drawn?

A. I presume I did. I can't say positively. My recollection is not clear.

Q. Would you recognize that as being the check you instructed Mr. Wheaton to draw on the account for the balance?

20 A. I can't identify that check as having seen it on the day it was issued, no.

Q. At that time did Mr. Keown state whom he was representing?

A. Yes, he said he represented the lady and had represented her.

Cross-examination.

By Mr. Rothermel:

Q. You mean the deceased?

30 A. The deceased.

LOUIS WURST, sworn.

By Mr. Paul:

Q. Mr. Wurst, you are one of the complainants in this proceeding?

A. Yes, sir.

Q. Speak loud so the stenographer can hear you. Did you visit your sister on or about July 13, 1926?

A. Yes, sir. The first day was July 13th.

Q. Beg pardon?

A. The first day was July 13, 1926.

Q. What was the occasion of that visit?

A. Well, I heard she had been very sick, and my sister and her daughter-in-law came over to my house with the intention of getting — 10

The Court: What is this gentleman's name?

Mr. Paul: Louis Wurst.

The Court: I didn't understand his relation, a son.

Mr. Paul: Brother, sir.

The Witness: My sister and daughter-in-law came to my house on the 13th — 20

Q. Your sister is Mary Rittmayer?

A. Yes, sir.

Q. And her daughter-in-law?

A. Is Clara Rittmayer.

Q. Are your mother and father now deceased?

A. Yes, sir.

Q. They were at the time of your sister's death? 30

A. Yes, sir, several years.

The Court: July 1st you said you went there?

The Witness: July 13th. I had been very sick myself and couldn't get to see her through my illness.

Q. Prior to this time had you called upon your sister the last couple of months?

A. No, I wasn't able to, I was sick myself.

Q. You paid her a visit on the 13th?

A. Yes, sir.

Q. Were you able to get upstairs alone at that time?

A. No, I was assisted by my daughter-in-law.

Q. When you got up there who was in the room 10 when you went there?

A. My sister was in bed, she was the only one in the room at that time until we got there.

Q. Who went up with you?

A. My sister, my nephew and niece, and daughter-in-law, and my wife and child.

Q. You said your sister, Elizabeth Wurst, was in bed at that time?

A. She was in bed and looked to me as if she was very feeble; she seemed to be very feeble.

20 Q. Was she able to get up and discuss things with you?

A. No, she was not.

Q. Did you shake hands with her?

A. Yes, sir, I went to the bedside and asked her how she felt and she had a great habit whenever anyone asked her, especially me, of saying, "I feel rotten, I feel rotten, I am all played out," and I took her hand and she seemed to be very weak.

Q. Was there much strength in her hand?

30 A. Wasn't hardly any strength in her hand, she just let it drop down like a log.

Q. After you shook hands with her and let it go it dropped on the bed?

A. Yes, sir.

Q. How long did you stay with her on that particular day?

A. Well, anywheres from three-quarters of an hour to an hour. There wasn't very much said at that time.

Q. Was the conversation general?

A. General.

Q. Or did she do most of the talking?

A. No, there wasn't any conversation of any account at all, because I knew she was very weak and I didn't bother, and I was weak myself.

Q. Did you subsequently between that time and 10 the time of your sister's death visit her?

A. Every day but two from the 13th of July to the 13th of August, she died 4.20 in the morning, and sometimes twice a day I would visit her.

Q. How long would those visits be?

A. Well, I will say from thirty minutes to an hour.

Q. Just short visits?

A. Just short visits, yes.

Q. On the 13th you say you were taken over there 20 by some of your family?

A. Yes, sir, some of my family.

Q. In the course of the various visits which you made to your sister did you notice anything about her mental condition and her mind?

A. I noticed she was—well, she was easily persuaded, could have been influenced very easily.

Q. In other words, she would give in to an argument, and so forth?

30

Mr. Rothermel: Let him testify, Mr. Paul.

Q. Did she have any apparent fear of any particular person?

A. Yes, she did.

Q. In what way was that fear expressed?

A. Would you wait a moment until I get a drink of water? I have been sick myself for a year. Ask that question again.

(Question repeated.)

A. On several occasions that I would go in the room, and, of course, we would just pass the time, ordinary conversations, and if I would happen to  
10 mention if she was getting her right treatment or right food of any kind she would put her finger up and say, "Be careful, they will hear you downstairs, speak German if you want to say anything." But on the 15th of July I was over there and an ordinary conversation led off to the funeral expenses and funeral arrangements —

The Court: That was July —

20 The Witness: 15th.

The Court: 16th?

The Witness: 15th. The second visit there wasn't anything of any account said, but the 15th the ordinary conversation brought up the funeral expenses, and I asked her if it wasn't rather expensive, \$860, and this is the remark she made, she said, "No, I want to show the bitches I can be buried  
30 right." Why she made that remark I don't know, and she said, "I will show you the receipt," and she turned over and reached under the pillow to get her pocketbook out and it was gone, and this is the remark she made, she said, "Well, they have got it, all the money; the property they forced from me, they came at me with both fists and said, 'You have

got to give me the property or I won't take care of you.'"

Q. You say this conversation took place on the 15th?

A. Yes, sir.

Q. Did she subsequently at any time refer to the transfer of the property again?

A. Well, through ordinary conversations she would say, "Well, I have done it, but I am sorry I  
10 did, I should have given it to the one who needed it the worst, and that is you." Several times she mentioned that.

Q. Would she permit you to discuss with her the fact of her general treatment?

A. No, she would warn me every time I would ask her how she was being treated, and whether she was getting her right food and right treatment, she would put up her finger and say, "Spreche Deutsch"  
—that means, "Speak German." 20

Q. Would you carry on a conversation with her in German?

A. Yes, two or three times in German. I can't recall what the conversation was, but it was regarding her treatment, whether she was getting the proper care or not.

Q. Was there any other evidence or anything said by your sister that indicated she was in apparent fear of anyone in the household?

A. Well, at one time she told me that Mrs. Branin  
30 came to her and asked for \$5.00 for the doctor and medicine, and she said, "You have got it all, how can I give you any more," she said, "You have got it all, I haven't any more," and she said, "Damn you, how can I take care of you then if you haven't any more money, my husband doesn't make enough so I can take care of you."

Q. How long did that conversation take place prior to the time of her death?

A. About two weeks.

Q. As your sister became weaker during her last illness was the apparent fear she had of someone in the house increased or decreased?

A. I couldn't get that question.

(Question repeated.)

10

A. Why, I imagine it increased.

Q. Why do you say you imagine it increased?

A. Well, from her ordinary conversations.

Q. Beg pardon, sir.

A. Probably I don't understand that question.

Q. I say, why do you say you imagine it increased?

A. Through her conversations with me.

Q. What do you mean by that, sir?

20

A. I can't get that question right.

Q. Was there any other references to her apparent fear of someone in the house?

A. Well, of course, when we were talking about her condition, and she would warn me not to speak too loud, she was afraid she would come up, and ordinarily speaking she would say, "Give me hell after you go out."

Q. Did she caution you about that once or many times?

A. Several times.

30

Q. How many times would you say she cautioned you?

A. Six or eight times, at least.

Q. This was during the entire period?

A. Yes. Well, the last three weeks that she was alive.

Q. Did it occur more often in that period?

A. About six or eight times she repeated that.

Q. During that last period?

A. Yes, sir, about three weeks.

Q. Did your sister discuss with you the settlement of her property other than the reference to the transfer to Mrs. Branin?

A. The only thing she would mention, "I have done it, I have given it to her, and I see my mistake, I should have given it to the one who needs it the worst, and that is you." She made that remark several times. 10

Q. You have been appointed administrator in the estate of Elizabeth Wurst?

A. Yes, sir.

Q. Have you endeavored to collect any assets of this estate?

A. No, sir.

Q. Have you received any?

A. No, sir, not a cent.

Q. Do you know where there are any assets of this estate at the present time which are not claimed by some other person? 20

A. No, I do not.

Q. Did you ever see in your sister's possession any of the money received from the Camden Safe Deposit & Trust Company?

A. No, sir, never saw the money.

Cross-examination.

By Mr. Rothermel:

30

Q. Mr. Wurst, where do you live?

A. Where do I live? 617 Vine Street, Camden, N. J.

Q. Your sister was living at 622?

A. Yes, sir.

Q. Four doors away across the street?

A. Right across the street.

Q. How long had your sister lived at 622 Vine?

A. Something like 10 years, about 10 years.

Q. When did you first know she was ill?

A. About the last of June I heard; it was brought to me by my sister and her son.

Q. Prior to the last of June how many times had  
10) you been over to see your sister between January 1, 1926, and June?

A. I couldn't get to her, I was sick.

Q. Had you been there between those dates?

A. No, sir.

Q. When were you taken sick?

A. 7th day of May, 1926.

The Court: 1926 did you say?

20) The Witness: 1926.

Q. Between January 1st and May 7th you were well, weren't you?

A. What?

Q. Between January 1st and May 7th you were well?

A. Yes.

Q. Your sister lived three doors away?

A. Yes.

30) Q. And you never went across to see her?

A. I didn't know she was sick.

Q. You didn't go over to see her irrespective of whether she was sick or not?

A. No.

Q. Did she ever see you?

A. No.

Q. Why?

A. I don't know.

Q. Had you any quarrels with her before that time?

A. No, not recently.

Q. Had she had any quarrels with you?

A. Not recently, no.

Q. When was it?

Mr. Paul: When was what?

10

Q. He knows what I mean.

A. 1919 I think it was.

Q. And since 1919 how many times have you seen your sister up to the day you went there on July 13th?

A. How many times have I seen her?

Q. Yes.

A. I saw her every day.

Q. How many times did you go to visit her?

20

A. I didn't go to visit her at all.

Q. And she didn't come to visit you from 1919 down to July 13, 1926?

A. No.

Q. And that is the time you had your quarrel, back in 1919?

A. Yes, sir.

Q. Who told you that Mrs. Wurst, your sister, drew the money from bank on July 13th?

A. Who told me?

30

Q. Yes.

A. I think it was my niece.

Q. And immediately after you found out the money was drawn from the bank you went and saw her?

A. No, I went before.

Q. Didn't you say —

A. On the 13th.

Q. Mrs. Clara Rittmayer and her mother-in-law came over and saw you on the 13th?

A. Yes, sir.

Q. And told you Mrs. Wurst had drawn the money from the bank, isn't that right?

A. No, they didn't tell me on that day.

Q. Are you sure about that?

10 A. Yes, sir.

Q. You know Mrs. Clara Rittmayer?

A. Yes, sir.

Q. Didn't Mrs. Clara Rittmayer at the time she came over with her mother-in-law tell you the money was withdrawn from the bank that day?

A. No, sir.

Q. But it was that day you went to see your sister?

A. Yes, sir.

20 Q. And from that time down to her death you were over two and three times a day?

A. Yes, but I didn't mention money to her but once.

Q. And how much did you ask for then?

A. Not a nickel.

Q. Didn't you ask your nephew to go over there and tell Mrs. Wurst you didn't have money enough to pay your rent and ask her to advance the money so you could pay the rent and stay in the house?

30 A. No, sir.

Q. Didn't you yourself do that?

A. I mentioned money once, but I didn't ask her for any money.

Q. What did you tell her?

A. She asked me how I was getting along and I told her fairly well, my son and daughter-in-law

had broken up housekeeping and come to live with me, and with my help and my other son's we were getting along all right, and I mentioned that a couple of hundred dollars would straighten me out.

Q. But you didn't get it?

A. No, and I didn't ask for it.

Q. Your son didn't with your knowledge, or on your instructions, ask for it?

A. No. That was the only time money was mentioned. 10

Q. Did you have any knowledge of your son on one occasion after July 13th asking Mrs. Wurst, your sister, for money for which to pay your rent in the presence of Mrs. Clara Rittmayer?

A. My son?

Q. Yes.

A. No.

Q. Your son wasn't working just at this time, was he? 20

A. My son wasn't working?

Q. Yes.

A. My son was almost always working.

Q. Let us go back.

A. Which son was this?

Q. How many sons have you?

A. Three.

Q. They are living with you?

A. I haven't any living with me now. At that time I had two. 30

Q. Two living with you?

A. Yes.

Q. Who?

A. Louis and Clarence.

Q. Were they both working in July, 1926?

A. Yes, sir, both working. Clarence has not lost a day in six years.

Q. What about Louis?

A. He keeps his jobs pretty well; probably out two or three days and jumps right into another.

Q. You had been sick from May up to July?

A. Yes, sir.

Q. Were you having any difficulty meeting your household expenses?

A. I did. They made me squeeze pretty hard to get by.

10 Q. When did you recover from your illness sufficiently to go back to work?

A. Not until six weeks ago; six or seven weeks ago I took a steady job. In between May and up to six weeks ago I took a job for one week at 6th and Elm, and took another job in the village for one week.

Q. But you are working steadily now, aren't you?

A. Working steadily now, yes; for small pay. And then I took a job —

20 Q. Excuse me, Mr. Wurst, please. Were you in the house with your sister on any occasion when there was someone else present other than Mrs. Branin?

A. Mrs. Branin wasn't in the room with me.

Q. She never went up with you?

A. No.

Q. She never made any objection to your coming there?

A. Once or twice.

30 Q. What did she say?

A. Not to me, but she told my sister and my sister told me.

Q. She never made any objection to your coming to the house?

A. No.

Q. You were always admitted?

A. Yes.

Q. You went up to see your sister and she never bothered you while you were there?

A. No.

Q. She never came to the room while you were there?

A. Once in a while she would walk up to see if she wanted a drink.

Q. If she wanted a drink would Mrs. Branin get it?

A. Yes.

Q. If your sister asked for anything else would Mrs. Branin get it for her?

A. I never heard her ask for anything else, just a drink of water, or a drink of milk.

Q. What assets do you know that your sister's estate might have consisted of, what do you think as administrator of her will?

A. The house on Vine Street and the farm in Mantua.

Q. Did your sister own that farm?

A. It was left to her by my father.

Q. But it was sold by her, wasn't it?

A. I couldn't swear to that. I had heard it had been.

Q. Don't you know as a matter of fact the farm was sold and your sister took back a mortgage on it?

A. No, I did not.

Q. No one ever told you that?

A. No. My sister told me once or twice that a Mrs. Sherwin had bought the place, couldn't keep it up and threw it up.

Q. Didn't you make any examination of the record to ascertain whether or not it had been sold?

A. No.

Q. What else besides the farm and the Vine Street property?

A. That is about all. I thought she had some cash money, but I didn't know how much.

Q. Why do you speak in your bill of complaint of some jewelry?

A. What say?

10 Q. In the bill of complaint filed by you in this matter you refer to certain jewelry which your sister had, what do you know about the jewelry?

A. I knew she had mentioned at one time she had a gold watch and chain.

Q. Is that all?

A. And I knew she had a couple of rings on her fingers at the time I was visiting her, and she did, I believe, have a string of pearls which she had mentioned to me.

20 Mr. Paul: May I ask counsel where there is any reference to jewelry in the bill of complaint?

Mr. Rothermel: Yes.

The Witness: I really didn't know there was any mention made.

Mr. Rothermel: Paragraph 12 of the second count.  
Wurst?

30 Q. Is this the ring you are referring to, Mr. Wurst?

A. No, I never saw this. This was a cameo, a large cameo she had from years back.

MARY RITTMAYER, SWORN.

By Mr. Paul:

Q. Mrs. Rittmayer, you are the sister of Elizabeth Wurst?

A. I am.

Q. You reside in Haddon Heights?

A. Yes.

10

Q. Prior to July 13th did you visit your sister?

A. Yes, I visited my sister all her life from time to time. I never neglected her, and especially in time of sickness, or so on, if I had a place to take her in I would take her in, but in her last illness I hadn't my own home, I was living with my daughter, but I went to see her and took her delicacies.

Q. How often did you go to see her prior to July 13, 1926?

A. Oh, I went off and on two or three times a week, sometimes every other day, just as I could go.

20

Q. Just as the occasion permitted you?

A. Yes, and she visited me once in a great while, but not so often.

Q. She was taken more or less seriously ill in May, 1926?

A. Yes.

Q. And she was more or less confined to the house from that time on to the time of her death?

A. Yes, she was very, very feeble.

30

Q. During the last month or so of her illness was she more confined than previously?

A. Yes, she was scarcely able to come down the steps, and I don't think she did, but on one occasion I was there, I think it was on the same day my daughter-in-law went to Woodbury with her hus-

band and I was left there with her, and Mrs. Branin went on an errand of some kind, and she asked me if I was going to stay there for a while and I said yes, and while she was gone my sister had a very bad fainting spell and I thought she was going to drop, and I helped her from her chair, helped her to her bed, and I said, "Shall I send for the doctor also?" and she said, "No, just give me a drink, and I will feel better after a while, I get these spells, my heart is so bad."

10 Q. That was on the 13th?

A. Yes.

Q. During her last two months' illness she was between her bed and chair, is that the situation?

A. When I was there always, she didn't go from the room.

Q. How far was the bed from her chair?

A. Well, I don't think it was any further than from here to that chair.

20 Q. Was she able to get there herself?

A. With the assistance of holding the bed, and on this occasion I helped her or she would have dropped.

Q. Could she walk, when she didn't have those fainting spells, from the bed to the chair by herself?

A. Yes, she could do that, just about.

Q. But she would have to lean —

A. She would have the chair or something between her easy chair and the bed and she would assist herself from one thing to another.

30 Q. That easy chair, where was that?

A. Right by the window.

Q. Prior to July 13, 1926, did you ever have occasion to hold a conversation with Mrs. Branin concerning your sister's care?

A. Yes, I was in the hall and she hollered to me

and she asked me if I knew what was the trouble with my sister and I said no, and she said, "Well, she has a cancer, and I think it is up to you to tell her." I said, "Mrs. Branin, I can't tell her that, because my sister would say to me, 'You are crazy, I don't believe it,' I think that is the doctor's place to tell her," and Mrs. Branin said, "I can't tell her, but if it was my sister I would tell her," and I said, "I couldn't tell her, and if the doctor is afraid she would probably die do you think for one moment I would tell her and kill her." 10

Q. Was there any conversation between you and her in connection with the fact that you would take care of her?

A. I said I was willing to do all I could for her, and the time is now that she needs care, and we are willing to get a nurse for her and pay her and provide the doctors, whatever it may be, she has been working hard and she has saved her money and now is the time to use it, and I said, "I will come up and do what I can," and I offered to come and clean the room but my sister said, "No, don't do it, Mrs. Branin might not like it." I told Mrs. Branin I couldn't take her where I was living as I was living with my daughter and son-in-law, I had no home of my own, and my health wouldn't permit me to go there and take care of her all the time. 20

Q. Had you previously taken care of your sister at your home?

A. Yes, time and time again when she would come to my home. It was 19 —

Q. Never mind the date.

A. She had typhoid fever and she was in Philadelphia and I brought her over and nursed her through her whole illness without a penny's pay, and I always took care of her when she came to my house, and she came quite often.

Q. What was the nature of your sister's life, was it a life of ease?

A. A life of hard work and struggle; she worked hard.

Q. How were her early years spent?

Mr. Rothermel: Does the Court feel it is necessary to go into all this?

10 The Court: It is so indefinite I don't think it will do any good even though it might be made so. She doesn't give any notion of the periods to which she refers at all as to when she has taken care of her, or where, or anything that gives character to the testimony.

The Witness: I took care of her in 1914 at 1310 Mt. Ephraim Avenue in my own home.

20 Q. In Camden?

A. Yes, sir.

Q. Where else did you take care of her and at what time?

A. I took care of her when we lived on Narberth Terrace in Collingswood.

Q. What year was that?

A. I can't tell you just the year.

The Court: The latest period of time that you  
30 cared for her was 1914, was it? No time between 1914 and 1926?

The Witness: Yes, I took care of her after that, too. I went up and did for her. At her last illness I went up quite a number of times and did little things for her.

Q. The last time she came to your house for treatment was in 1914?

A. Yes, sir.

Q. Subsequently, did she buy the house on Vine Street?

A. Yes, after that.

Q. On July 13th did you go over to your brother's for dinner?

A. Yes.

Q. Who went over there with you? 10

A. My daughter-in-law, Clara Rittmayer.

Q. At that time did you see your brother, Louis Wurst?

A. Yes, I saw him.

Q. Did you have any conversation with him concerning the illness of your sister?

A. I told him she was very, very sick.

Q. Do you know whether or not he subsequently visited her during that time? 20

A. Did he visit there?

Q. Yes.

A. Yes.

Q. During that time do you know whether any conversation was had giving him the information there had been any transfer of property or money by your sister?

A. No, I didn't know anything of that transfer.

Q. Did you know anything about a transfer at that time? 30

A. I did not, no.

Q. Who brought you in on the morning of July 13th?

A. My son.

Q. About what time did you arrive?

A. I should say about nine o'clock, or half-past nine.

Q. Came there good and early?

A. Quite early.

Q. Subsequently did your son and his wife leave you there alone to take care of your sister?

A. Yes, sir.

Q. Was it at that time that Mrs. Branin notified you she was going out?

A. Yes, she did.

Q. Did she say where she was going?

10 A. No, she didn't say where, she said she was going an errand; she said, "Mrs. Wurst, I am going that errand," and she said, "Will you be here for a while?" and I said, "Yes."

Q. On this particular date you say you had lunch with your brother?

A. Yes.

Q. Who had lunch with you there?

A. My daughter-in-law.

Q. That is Mrs. Clara Rittmayer?

20 A. Yes, sir.

Q. Did she stay there for the whole meal?

A. No, she got up from the table and went over, as she suspicioned something.

Q. Do you know where she went?

A. Yes, she went over to my sister's house.

Q. Did she say where her suspicions were?

A. She said she thought there was some crooked work going on there.

30 Q. After July 13th did you subsequently visit your sister?

A. Pardon?

Q. After July 13th did you subsequently visit your sister?

A. Yes, I visited her until her death. I was there on her birthday.

Q. How many times did you visit her?

A. Two or three times a week, sometimes more and sometimes less.

Q. Did your sister ever discuss with you the transfer of her property, or anything of that sort?

A. No, sir.

Q. Was there anything in her actions or words toward you to show she was in fear of someone in the house?

A. The only thing she would say, "Come in and shut the door and don't let the people downstairs hear what you are saying; if you want to talk loud speak German," but I never did, I spoke naturally to her, but I closed the door. 10

Q. Did you ever offer to do any particular thing toward making her more comfortable?

A. Yes, I offered to clean her room and take care of it, and I went to the doctor and asked if we should get a nurse for her and he said it was too late.

Q. What did your sister reply to your offer to make her more comfortable? 20

A. She said, "No, you had better not, Mrs. Branin might not like it."

Q. When did that conversation take place?

A. That took place, I imagine—I know it was the day after the 13th I was there again.

Q. Did your sister ever express in any other way the fear of any person in the house in which she was staying?

A. I don't remember any other expression she made of fear. 30

Q. Did she ever state to you any conversation she had had with Mrs. Branin concerning your treatment of her?

A. No. My treatment of her?

Q. Yes.

A. No, not concerning my treatment.

The Court: How old was your sister when she died?

The Witness: My sister was 64.

Q. What was your sister's general physical condition during this latter part of her life?

10 A. Very miserable, and to my way, when I visited her, I would say she would be very easily influenced.

Q. Were you there on the 14th when Mr. Shreve and his son, the undertakers, were there?

A. No, I wasn't there.

Q. Did you know at any time she had withdrawn the bank deposits from the Camden Safe Deposit and Trust Company?

20 A. Yes, she had a little bank book in the drawer, and she said, "Mary, open that drawer and get that book and give it to me," and she said, "Mr. Branin went down to get the money, I don't see how he can get it without this book, do you?" and I said, "No, I don't see how he can get it."

Q. What day was that?

A. The 13th.

Q. Did you know anything of the amount?

A. No, I didn't know the amount.

30 Q. About what time of day was this conversation?

A. I think that was between ten and eleven o'clock.

Q. The bank book was in the drawer?

A. Yes.

Q. Was the drawer at that time locked?

A. No, it was not locked.

Q. Was the black pocketbook there at that time?

A. I didn't see the pocketbook.

Q. Do you know whether or not your sister transferred any interest which she might have in a farm in Mantua to your son-in-law?

A. To my son, I knew she had transferred that to him.

Q. Had she ever told you that transfer would be made?

A. She said she was going to give it to Charley.

Q. You knew that prior to July 13th?

A. Yes, I knew she wanted to give him the farm.

Q. What did you say?

A. Yes, I knew that she was going to give him the farm.

Q. Were you present when Mr. George Marshall of Woodbury came up with the papers for the transfer of that farm?

A. Yes.

Q. Were there any other papers read at that particular time?

A. There was a will that had been drawn up, Mr. Marshall had drawn it up for my son, but when she heard it, or Mr. Marshall read it, she said, "No, no, no will, I don't want no will, it is all done, it is too late."

Q. Do you remember the terms of this will?

A. It was drawn up full benefit for my son's benefit, real and personal.

Q. For the entire estate?

A. The entire estate.

The Court: When is this you are speaking of?

The Witness: The 13th day of July.

Q. What time during the day?

A. The time?

Q. Yes.

A. I think that was half-past three or four o'clock in the afternoon.

The Court: Was Mr. Marshall there?

The Witness: Yes.

10

Q. Who else was in the room with you and Mr. Marshall?

A. Charley, that is all.

Q. Just your son Charles?

A. Yes.

Q. And yourself and Mr. Marshall?

A. Yes.

Q. Mr. Marshall read the will to your sister?

A. Yes, sir.

20

Q. You heard it read?

A. Yes.

The Court: This was the will for your sister?

The Witness: Supposedly the will for my sister.

The Court: The will she was supposed to sign and didn't?

30

The Witness: Yes, and Mr. Marshall said, "I understood you wanted a will," and she said, "No, no will, I don't want no will, they make too much trouble."

Q. Do you know whether or not that will was returned to Mr. Marshall or taken away by him?

A. Mr. Marshall kept that will.

Q. But the terms of the will, you remember, were to give the entire personal and real estate to your son?

A. Exactly.

Q. Were there any other papers executed at that particular time?

A. Not that I know of.

Q. Did you know at that particular time there was a transfer made of the farm to your son, or some interest in the farm to your son? 10

A. Yes.

The Court: There had been a transfer before that time?

The Witness: That transfer was made that day to my son.

The Court: On the 13th of July? 20

The Witness: Yes.

The Court: 1926?

The Witness: Yes, sir.

Q. Did you know your son had gone to Mr. Marshall's office for the purpose of having those papers prepared?

A. I knew he was going to Mr. Marshall's, but I didn't know just the reason exactly. 30

Q. Did you know whether or not Mr. Marshall had handled the legal matters connected with the farm for your sister?

A. Yes, he did.

Q. Did Mr. Marshall explain to your sister the

purpose of the instrument that was being executed?

A. Yes.

The Court: The deed?

The Witness: Of the farm?

The Court: Yes.

10 The Witness: Yes.

Q. And it was signed in your presence?

A. Yes, sir.

Q. Had your sister previously told you she was going to convey the farm to your son?

A. Yes, she had said that. She had previous before that said, "When the farm is sold, Mary, I will give you \$500," but that wasn't made out legally.

20

The Court: You say your sister had before the 13th of July said she was going to deed the farm to your son?

The Witness: Yes.

The Court: When did she tell you that?

30 The Witness: She mentioned that on different occasions. I can't say the date.

Q. Would you say this statement was made within the last two years, concerning the transfer to your son?

A. Yes, sir.

Q. Sometime between that time?

A. Yes, between that time.

Q. You say your sister had a fainting spell on the morning of the 13th?

A. Yes, sir.

Q. How long did she remain in that condition?

A. I judge ten or fifteen minutes. I helped her in bed and raised her up on pillows high and I made her comfortable, and I asked if I should send for the doctor and she said, "No, I will get over it, I get these turns, my heart is bad." 10

Q. Did she say she had the turns very often?

A. No, she didn't say very often, she said she gets them.

Q. During the time she was in this condition was she unconscious?

A. No, she wasn't unconscious, she was just in a weakened condition.

Q. Would you say that your sister was in control of her mental faculties during that time? 20

A. She was mentally nervous.

Q. What do you mean by mentally nervous?

A. Well, mentally nervous would be she would be easily led on unduly.

Q. Do you mean this was the condition that was gradually increasing as she was becoming weaker?

A. Yes, sir.

Q. Was this weakness more or less pronounced on July 13th than it had been on previous occasions?

A. Yes, she was a lot weaker on that day than any day I had seen her. 30

The Court: Why do you go into this renewal of the examination, I thought you had finished.

Mr. Paul: I had neglected to cover this particular field.

The Court: Is that the reason for renewing it because there was no cross-examination?

Mr. Paul: No, it was my recollection of it after I closed.

The Court: If it was something you left out thinking it would be developed on cross-examination I don't think you ought to renew it.

10 Mr. Paul: It is something I forgot, sir.

Q. Was her condition any different than that which you had seen in the morning?

A. She gradually gained a little in the afternoon after she had this fainting spell, and when she rested a while she seemed chipper somewhat again.

Q. Do you know whether or not during the course of her lifetime your sister was represented by Walter S. Keown?

20 A. I have never heard.

Q. Ever hear her mention Mr. Keown?

A. Never.

Q. The only lawyer you had heard her talk about was Mr. Marshall?

A. That is the only one I knew of.

Cross-examination.

By Mr. Rothermel:

30

Q. At the time your sister executed this paper, whatever it was, conveying the interest in the farm to your son, was she mentally nervous at that time?

A. Well, she was very, very weak, very weak.

Q. But she knew thoroughly what she was doing?

A. I guess she did.

Q. And she did all the time up to the time she died?

A. I don't know that.

Q. You saw her?

A. I don't know that she knew everything.

Q. You saw her daily?

A. Yes, sir.

Q. Always rational in her talks with you?

A. I am not so sure.

10

Q. Where wasn't she?

A. She seemed to be flighty.

Q. This was July 13th she was in that condition?

A. Yes, very much so that day.

Q. Particularly when she was executing this conveyance to your son?

A. Very much flighty.

Q. What do you mean when you say she gradually recovered?

20

A. She recovered from her fainting spell.

Q. Did that have any effect on her mental condition?

A. I don't know.

Q. You saw her, didn't you?

A. Yes.

Q. You heard her discussing her affairs with Mr. Marshall and her son?

A. Yes.

30

BERTHA DAVIS, SWORN.

By Mr. Paul:

Q. What is your first name, Mrs. Davis?

A. Bertha.

Q. Where do you live?

A. 624 Vine Street.

Q. That is adjoining the property which was formerly owned by Mrs. Wurst?

A. Yes, next door.

Q. Was there a fence between the adjoining property and your property?

A. Yes, sir, a fence, but it was falling down.

Q. In rather a run-down condition?

10 A. Yes.

Q. Was it possible for anyone to pass over the fence to get into your property from Mrs. Branin's?

A. If you wanted to step up like steps you could.

Q. Were you and Mrs. Wurst on friendly terms?

A. Yes, sir.

Q. During the time you lived in that house?

A. Yes, sir.

Q. How long did you live there?

20 A. I lived there going on four years this January.

Q. You had known her during all that time?

A. No, 3½ years.

Q. Had she during that time visited your house?

A. Well, for about a year, a year and a half she had been coming in and out, that is, between these 3½ years. She had been working and about a year she was taken down sick, she wasn't bad, but she didn't work.

30 Q. Would she work at all during that latter period?

A. Sometimes she would and sometimes she wouldn't.

Q. During that latter period she visited you more often?

A. Yes, sir.

Q. What would be the nature of those visits?

A. Just wanted to come in and see me, that is all.

Q. How often would they occur?

A. Oh, maybe twice a week, maybe three times a week; if she went out she would stop in on her way back.

Q. Do you recall the time when Mrs. Branin rented this property from Mrs. Wurst?

A. In March, but I couldn't tell you the date.

Q. Was Mrs. Wurst at your home at the time? 10

A. Yes, sir, she was in my house, and she went into her house when Mrs. Branin was in the house.

Q. Mrs. Branin was your neighbor then from March on down?

A. Yes, sir.

Q. Between the time of March and August of that year did you visit with her in a neighborly way over the back fence?

A. No, not in August.

Q. Between March and August? 20

A. Yes, in between those months.

Q. Just what would be the extent, did you visit one another or just chat over the fence?

A. Just talk over the fence.

Q. How many times would these talks occur?

A. Pretty often. Once in a while I would be out in the yard and she would be talking to me.

The Court: You are referring to Mrs. Branin or Mrs. Wurst? 30

The Witness: Mrs. Branin.

Q. Did you see Mrs. Wurst after she was taken ill in May of last year?

A. Yes, once, she had come in my house after Mrs. Branin had rented the house.

Q. Only saw her once?

A. After she had rented the house.

Q. About what time was that, do you know?

A. No, I couldn't tell you.

Q. During the last year that you had known Mrs. Wurst had she become weaker or feebler, or what?

10 A. She wasn't well off and on, and towards March she got worse, and I said to her, "Mrs. Wurst, you had better get a doctor," and she said, "No, I don't have to get a doctor," and I said, "Yes, you had better go," and one day she went and came back to my house and it was all she could do to get in the chair.

Q. During the time you had an opportunity to observe Mrs. Wurst more or less to a considerable extent what would you say was her mental condition during that time?

20 A. She was weak.

Q. What do you mean she was weak?

A. She couldn't help herself.

Q. Mentally or physically?

A. Well, I don't know what you would call it; one minute she would be all right and the next minute she would change.

Q. Of a changeable nature?

A. Yes. She would sit still for a while and all of a sudden she would change.

30 Q. That is her physical condition. What was her mental condition, was she bright and cheerful?

A. No, she seemed to change her mind often.

Q. Would little incidents tend to change it, or what would influence it?

A. You would go and talk to her and ask her a few things, and go over it again, and she would say she didn't say it.

Q. Did this changeable feature of her mind become more noticeable during the latter part of her illness?

A. Yes.

Mr. Rothermel: I understood this witness to testify she saw her only on one occasion since March; how she can testify to the progressiveness, if there was any, I can't see.

10

The Court: If that is a fact she can't. I thought her testimony —

Mr. Paul: Her testimony is they exchanged visits quite often during the last year and a half.

The Court: In any question you submit with respect to her condition give your dates so we can know what they apply to. I don't know now what the last time was she saw her.

20

Q. When was the last time you saw her?

A. In March, but I don't know the date, because she came in my house and asked my husband to get Mrs. Branin's husband a job. She said that Mrs. Branin's husband was out of work and she needed the money, she was back in her rent.

Q. That was sometime in the month of March?

A. Yes, sir.

Q. That was the last time you saw her?

30

A. Yes, sir, to come in my house and talk to her.

Q. You had seen Mrs. Wurst during the previous year very often, or hadn't you?

A. Yes, sir.

Q. Did you notice any change in her condition in the course of that year?

A. Only when I told you she was taken bad sick in my house.

Q. When was that?

A. Around March.

Q. Had she been ailing prior to that time as far as you know of?

A. Off and on. And one Sunday she was in my house all day and then she went out the front door and I went with her and she took a spell and fell  
10 over on the pavement.

Q. When?

A. In the cold weather, after Christmas; it was in February.

Q. Before Mrs. Branin came to live with her?

A. Yes. Nobody was in the house then.

Q. Did you notice any change in Mrs. Wurst's mental condition during the course of the year prior to the last time you saw her?

A. Which way do you mean?

20 Q. Did you notice any change in it?

A. Yes, she was changeable.

Q. What change did you notice in her?

A. When the children would come near her she would want them to go away, and other times before she was right for the children.

Q. Of a very changeable disposition?

A. Yes, sir.

Q. Would she be influenced by little things, or what?

30 A. Yes, she was easy to influence, yes.

Q. How do you mean?

A. She was in my house on Saturday afternoon and my husband had bought the girl a pair of shoes, and the other one seen them and she wanted a pair, and Mrs. Wurst pulled out a dollar and said, "Buy her a pair of shoes," and I said, "No, don't do

that, she don't need any," and she said, "Take it," and I said, "No, I don't want it," and after a while she took it off the table and put it in her pocketbook. That is what I call easily influenced, she changed her mind that quick, she wanted the money back again.

Q. Had you noticed that condition in her mind prior to this time in March to which you refer?

A. Yes, sir.

Q. You say you had noticed it before? 10

A. Off and on she changed, yes.

Q. Was that condition worse around the last time you saw her than before?

A. No, it was just the same, it was that way until March.

Q. Now, did you subsequently make any attempt to visit Mrs. Wurst in her house?

A. I asked to go in, yes, sir, I said, "I would like to see Lizzie," I always call her that name, and I asked Mrs. Branin, and she said, "She is sleeping  
20 now," and another time I asked her again and she said, "The doctor forbid anybody to talk to her."

Q. How many attempts did you make to visit her?

A. Twice. And a third time —

The Court: I think you had better fix those dates. It doesn't signify very much unless you do.

Q. About what time was the first attempt you 30 made to visit Lizzie Wurst?

A. In June.

Q. When was the second?

A. Well, sometime in July.

Q. And the third one?

A. In July.

Q. That is, the last two were in July?

A. I didn't ask the third time. Her husband asked for me to come in and she said no, she didn't want me to come in until she had the place fixed.

Q. You were on fairly intimate terms, you say, with Mrs. Branin?

A. Yes, sir.

Q. Did Mrs. Branin ever discuss with you her relationship with Mrs. Wurst and when did this conversation take place?

A. It was in the middle of June, I can't tell you the date, she said to me, she said, "Bertha, I have got the house," and I said, "You have?" and she said, "Yes, I got her to turn the house over to me," and I said, "How about the money?" and she said, "She hasn't got any money," and I said, "That is funny, she told me she had money in two banks."

20 The Court: Are you sure this was in June?

The Witness: I am not positive whether it was June or July, but I am almost sure it was June.

Q. Where did this conversation take place?

A. In the back yard.

Q. About what time of the day, do you remember?

A. Around noon.

30 Q. Did you ever see that gentleman, that gentleman there, visit Mrs. Branin's home?

A. Yes, sir.

Q. When did you see him visit there, under what circumstances?

A. About the middle of June.

Q. About what time?

A. Around noon as near as I can judge.

Q. Did he come in the front or back?

A. Back.

Q. Who was with him when he came in?

A. Mr. Branin.

Q. How did he come there?

A. He came with Mr. Branin and Mr. Branin was first.

Q. What did he do as far as you know?

A. I don't know, he went in the back door; he was the last one.

Q. Did he have anything in his hand?

A. He had a paper that long.

Q. Who was it?

A. Mr. Keown.

Q. Did you recognize it to be Mr. Keown?

A. I recognized his face, and Mrs. Branin came out and asked me if I saw Mr. Keown go in.

Q. What time did Mrs. Branin come out?

A. After Mr. Keown had been there; it was in the afternoon.

Q. Was there any conversation between Mrs. Branin and yourself with reference to the purpose of Mr. Keown's visit?

A. She said she got Lizzie to turn over the house to her and Mr. Keown had come there to sign the papers.

Q. Was there any further conversation about not divulging this information, or telling it to anybody?

A. She said to me, "Whatever you do, Bertha, don't mention it to anybody, if it gets to the brother I will lose everything, you are the only one that knows it."

Q. This conversation took place when?

A. In July.

Q. Do you know about what date?

A. No, I can't tell you the date.

Q. The first part, middle, or last part?

A. The middle, around the middle of July.

Q. You say it was about noon?

A. Yes. I wasn't positive of the time because I wasn't that much interested in it.

Q. How did you see Mr. Keown?

A. I was cleaning in the dining-room and happened to look up and I seen him go in. Mr. Branin went first and Mr. Keown came behind.

10 Q. What way does your dining-room face?

A. You could look right over her fence and see her.

Q. Does your dining-room —

A. Both windows face the alley.

Q. You had a clear and unobstructed view?

A. Yes.

Q. And you are sure Mr. Keown was the gentleman there?

20 A. Positively.

Q. Did you ever have any other conversation with Mrs. Branin with reference to this property?

A. No. Off and on she would say, "Well, Bertha, I am going to get the property, I got her to sign the house over to me."

Q. Was that before or after?

A. After and before. She said, "I am going to get her to turn it over to me."

30 The Court: Before the visit when you say Mr. Keown went in the house, before the occasion when you say Mr. Keown went in the house, had she told you she was going to have the property signed over?

The Witness: Yes, she was going to have it signed over to her.

The Court: Are you sure she told you that before the date Mr. Keown came there?

The Witness: Yes, sir.

Q. And the date Mr. Keown came there she told you she had signed it over to her?

A. Yes, sir, and that the house was hers.

Cross-examination.

10

By Mr. Rothermel:

Q. Mrs. Davis, didn't you testify that in the middle of June Mrs. Branin came out and said, "Well, Bertha, I got the house?"

A. Yes, sir.

Q. That was in the middle of June she said that?

A. Yes, sir.

Q. That was before Mr. Keown ever saw the house, isn't it?

20

A. Yes, sir.

Q. That was the time you mentioned to her about the money and Mrs. Branin said she had no money?

A. Yes.

The Court: In answer to my question whether she was sure it was June she said it might have been July.

Mr. Rothermel: And I think, if the Court please, she said, "I am almost sure it was June."

30

The Witness: Yes, in the middle of June.

The Court: You are sure she told you in the

middle of June that the house had been signed over to her?

The Witness: No, not then, that she was going to get the house; the house had not been signed over to her until July.

Q. You still live next door to Mrs. Branin?

A. Yes, sir.

10 Q. Mrs. Branin and you were friends last year?

A. Yes, sir.

Q. Does that friendship still continue?

A. No, sir.

Q. What happened to destroy it?

A. Her husband had trouble with the paint company and she blames it on me and said I was the one who let it out that he stole the paint.

Q. The result is that you are not friendly today?

A. No, sir.

20

LOUIS C. WURST, sworn.

By Mr. Paul:

Q. Mr. Wurst, you are the son of Louis Wurst, Sr.?

A. Yes, sir.

30 Q. Did you live in the month of July, 1926, at your father's residence, 617 Vine Street?

A. Yes, sir.

Q. Who else was living home at that time?

A. My brother and sister-in-law.

Q. That is, your brother —

A. Clarence.

Q. What was your business prior to July, 1926?

A. Ice business.

Q. What route did you cover?

A. I covered all this side of Fifth Street, North Camden.

Q. So you were in and around the streets most of the day?

A. Yes, sir.

Q. On those occasions, in the course of your business, did you have occasion to meet your aunt? 10

A. A couple of times on the street.

Q. How many times would you say you had met her in the course of the last six months?

A. Twice.

Q. When did those visits take place?

A. Once at Seventh and Cedar, and once on the corner of Sixth and Vine.

Q. When did they take place, I asked. Can you give me the approximate dates? 20

A. No.

Q. Was it in the winter or summer?

A. Summer time.

Q. In the spring time?

A. Yes, sir, warm weather, that is when I was out on the wagon.

Q. Did you in the course of the last six months, that is, from January, 1926, until the time of your aunt's death in August, visit her?

A. I visited her.

Q. How often did you visit her? 30

A. I visited her about a dozen times.

Q. Approximately once a month during that period, or what?

A. More than that.

Q. How many times a month would you say you visited her?

A. About four times a month.

The Court: How much before the middle of July?

The Witness: I couldn't tell you that there. Since I got work at night I would run over and speak to her when she was at the window.

10 The Court: Were your visits before the middle of July or mostly after?

The Witness: Around about the 1st of July.

Q. Did you visit her prior to the 1st of July?

A. I won't say that. It was around the first of July I started to visit her.

Q. You say you visited her around the first of July?

20 A. Yes, sir.

Q. Did you visit her prior to that time?

A. What do you mean, before that?

Q. Yes.

A. No, sir.

Q. Did you talk to her on the street prior to that time?

A. Yes, I talked to her, seen her when she used to come to work, and she would speak to me when I was on the wagon.

30 Q. How often would you see her come from work?

A. When I worked on the wagon I would see her when the factory closed and speak to her on the street.

Q. Did you visit her during her last illness in the room upstairs?

A. I visited her, I think, three times before she died.

Q. I mean prior to that time, say the last month before she died, how often did you visit her?

A. I couldn't tell you that.

Q. Well, could you estimate it; was it once a week?

A. About twice a week.

Q. About twice a week?

A. Yes, sir.

Q. You are a nephew, are you?

A. Yes, sir.

Q. Did you ever ask your aunt to give you any money? 10

A. Never did.

Q. To give you any money to pay your father's rent?

A. Never.

Q. Were you ever present when anyone else did?

A. Never.

Q. Did you visit your aunt with your father?

A. Once.

Q. And when was that? 20

A. That is the first time I went over, he took me over.

Q. He took you over?

A. Yes, sir.

Q. Was it afternoon or morning?

A. In the evening when I got through work.

The Court: Let me ask counsel. Do you agree on the age of the deceased at the time of her death? 30

Mr. Rothermel: I don't think there is any question about that. Sixty-four. I don't think there is any question about that.

Q. In the course of your visits to your aunt and

seeing her on the street, did you notice whether or not there was any change in her health?

A. Yes, sir.

Q. What sort of a change was there?

A. Why, she was weak, and she had to sit down on a step. That is how I met her, she was sitting on the step.

Q. Where was this?

A. Seventh and Cedar, between Seventh and Sixth  
10 on Cedar.

Q. Sitting on the step?

A. Yes, of the customer I was serving.

Q. Did you have any conversation with her?

A. I said, "How do you feel, Aunt Lizzie?" and she said, "I feel pretty bad, I am just taking a rest," she said, "I have a bad heart."

Q. That was in the warm weather, you say?

A. Yes, sir.

Q. That was prior to her last illness?

20 A. Yes, sir.

Q. When did you see her at Sixth and Vine?

A. Well, I figured she was taking a walk around and was coming home.

Q. Was that in the evening?

A. In the evening.

Q. Was she walking or resting then?

A. Walking, just came up on the curb.

Q. Did you have any conversation with her?

A. No, I asked her how she felt and she said, "I  
30 feel kind of rough today, it is the weather."

Q. After you saw her in her last illness in July did she seem any different than when you saw her on the street last?

A. Yes, she looked poor all the time.

Q. What do you mean, was she strong or weaker then?

A. Weaker.

Q. To what degree was she weaker?

A. She couldn't get up in bed, she was lying in bed just before she died.

Q. Did you talk to her much?

A. No, I just asked how she felt and stood looking at her for ten or fifteen minutes, and then said, "Good-bye, Aunt Lizzie, I hope you feel better," and then I walked out.

Cross-examination. 10

By Mr. Rothermel:

Q. I understood you to say the first time you went there to visit your aunt was when your father took you in the evening?

A. Yes, sir.

Q. That was the evening of July 13th?

A. Around about that time.

Q. That is the first time you went to visit your  
20 aunt?

A. Yes, sir.

Mr. Paul: That is our case, if the Court please.

Mr. Rothermel: Will your Honor hear a motion to dismiss the bill on the ground it is —

The Court: No, we have no non-suit. 30

## THE CASE FOR THE DEFENDANT.

WILLIAM B. SNELBAKER, SWORN.

By Mr. Rothermel:

Q. What is your business, Mr. Snelbaker?

A. Marble and granite business in Woodbury.

Q. Did you know Mrs. Elizabeth P. Wurst?

10 A. Known her for years.

Q. When is the last time you saw her?

A. Well, as I recollect it was sometime along the latter part of June when she first called on me and she was alone on a Saturday afternoon, I think, and she said she wanted to order a stone for her own grave, and I told her I didn't think she needed one from the way she looked at that time. I told her I wasn't able to give her the price on the stone because I would have to see the one like she referred to like her father's and mother's, which was

20 down to the Mantua Cemetery, and my record shows she placed an order with me on the 8th of July.

The Court: What?

The Witness: The 8th of July, and I told her the price would be \$75 for the stone, and she said there wouldn't be room hardly for her to lay between her mother and the end of the lot, and she wanted me

30 to move the stone, and I said that would be five dollars more, and the entire bill was \$80.00.

Q. Was that bill paid?

A. Yes, sir.

Q. By whom?

A. I am not always in when the money is paid, my secretary takes account of it.

Q. When do you say it was paid?

A. Four days later than the date she ordered it.

Q. July 12th or 13th?

A. I think it was the 12th. I had my records all out, my secretary had them out, and I came away this morning and forgot them.

Q. See if that helps you.

A. July 13th, yes, must have been the date it was 10 paid.

Q. You don't remember who paid it?

A. I told her the stone would be erected in 30 days, but we weren't able to get it up, she died in the meantime before we were able to get it in.

Mr. Rothermel: I will offer this.

(Said paper marked Exhibit D2.)

20

The Witness: I don't know whether I was in when the money was received. That is my secretary's writing, I am certain about that.

Q. Who brought the money in?

A. I wasn't there when it was paid, I see that now.

Q. On how many occasions did you see Mrs. Wurst?

A. Why, she came there on a Saturday afternoon, 30 and she was alone, at least, I didn't see anybody around.

Q. Mrs. Wurst came to see you?

A. Yes, that was sometime the latter part of June, and it took me a little time to see the stone and give her a price.

Q. Where is your place?

A. On Cooper Street, Woodbury, next to the Daily Times office there.

Q. That was the first time you saw her?

A. Yes, sir.

Q. Did you see her after that?

A. I think she was there when the order was given but I don't think she came in, I think she was in the car.

10 Q. But you have known her for a number of years?

A. Twenty-five years or more. I built stones for her father and mother.

Q. On the occasion she saw you personally in Woodbury was there any difference in her mental condition at that time than it was at any other time in the 25 years you knew her?

A. No, it appeared about right, as it always had years ago.

20 Q. In your opinion was Mrs. Wurst a woman who was weak mentally and apt to be easily influenced?

Mr. Paul: I object.

The Court: He can give his opinion, what has impressed him. That is the type of testimony that has been given up to this time.

The Witness: In my judgment when she was  
30 there on the Saturday afternoon in the latter part of June she was just as well mentally as I had ever known her to be. She joked with me about this stone, and I told her she would get one anyway after she was gone, but she wanted to take care of it while she was there.

Q. Was she set in her opinions or was she the type of a person easily influenced?

A. I think she would be set in her opinions myself.

Q. That is the way it struck you?

A. That is the way I took it. She wanted to finish this work up before she went away.

Cross-examination.

10

By Mr. Paul:

Q. Did you see her on July 8th?

A. I am unable to tell you whether I was there on July 8th or not. My secretary's receipt is on the bill; she must have paid the money while I was away.

Q. How long was she in your store on the 30th of July?

A. 30th of July?

20

Q. 30th of June?

A. I couldn't tell you whether it was the 30th of June, but it was the latter part of June, because some time intervened.

Q. How long was she there when she visited your store in the latter part of June?

A. Possibly half an hour sitting there talking to me, I should think. I had known her for years, done all the work for her father and mother.

Q. Did she fail at all since you last saw her?

30

A. She didn't call any more.

Q. Had she failed?

A. Failed?

Q. Yes.

A. I didn't see her after that. Since years ago do you mean?

Q. Yes.

A. Naturally age makes us all fail.

Q. Was there much of a change?

A. I don't think she was as strong as 25 years ago when I seen her.

Q. You are perfectly safe in going that far?

A. I have known her all of that time.

Q. Would you say she had failed since you last saw her?

10 A. She was walking around in my place at that time.

Q. Was she nervous, or anything like that?

A. No more than what I thought she was years gone by.

Q. Had she been that type in years gone by?

A. I think she has always been more or less nervous and appeared to be about the same way.

Q. In the course of your knowledge of her had she impress you as being a strong- or weak-minded,

20 A. Well, of course, I couldn't answer a question like that, I don't know.

Q. You don't know?

A. I know she was strong enough to come to my place and order this stone.

Q. In the course of your association with her did she impress you as being a strong- or weak-minded person?

A. In her mind she was about like she had been.

Q. What had she been prior to this time?

30 A. The same as she was when she came to my place.

Q. What was that condition then? What I am trying to get at —

A. I understand. I didn't see any difference in her condition only in a physical way, not in her mind at any time.

Q. What had been the previous condition of her mind when you first knew her?

A. Just as I found her the last time.

Q. What was that condition?

A. There was no peculiar condition for me to notice.

Q. You saw nothing unusual about her?

A. No.

Q. And nothing was, as far as you know?

A. No.

10

WALTER S. KEOWN, Esq., sworn.

By Mr. Rothermel:

Q. Mr. Keown, you are a counsellor-at-law of New Jersey?

A. Yes.

20

Q. Did you on or about July 13, 1926, have occasion to visit the home of Mrs. Elizabeth Wurst at 622 Vine Street, Camden?

A. If that is the date on the acknowledgment of a deed that I took at that time I did.

Q. I show you the deed. Tell us, won't you please, what occurred on that day you went up there and what you found in the house, and what was done.

A. If my memory of this is correct, as I recall the situation, a woman who represented herself as—I 30  
get this name from this deed—a Mrs. Branin, called at my office and I interviewed her, and to the best of my recollection she had with her some kind of a piece of paper that she told me that a certain woman had written out for her to go to the bank and get some money. I heard what she said about a woman

sick with cancer realizing that she was going to die and she wanted to make all the necessary arrangements or had made the necessary arrangements, and wanted to get her money out of bank so she could pay these bills she had, or was about to incur. It was very interesting. I found out it was the Camden Safe Deposit that was interested and realizing the money was in a time account and that the woman was unable to go to the bank I called them up and I think I talked to Mr. Norcross. I told Mr. Norcross generally what had been told to me and I asked him in view of the peculiar circumstances, this peculiar woman who wanted to do these things before she died, whether he would use his influence to enable her to get the money so she could do it, and I think he excused himself for a few moments and came back and made some kind of a suggestion to me as to what should be done in order to do it, and I think I turned Mrs. Branin over to one of the young men in the office and he accompanied her to the bank, and whatever arrangements were made were then made and carried out. I didn't go with her to the bank. I don't recall whether it was at that time, or whether it was later in the day, or the next day, but sometime in the course of my conversation with Mrs. Branin she told me that this woman also wanted to dispose of her home, and if I recall it, she told me of a mortgage she had on a property in Gloucester County. I think Mrs. Branin told me that this woman had told her that she should get her lawyer and she had told the other people they were to get their lawyer so it could be done right and on one could attack it. I think I told Mrs. Branin I would want to talk to the party before I did anything, and the result was I told her I would go up and see this party. I went

to this place on Vine Street, the address I don't recall, I presume it is the address we have been speaking about here, and I forget who let me in but nevertheless I was taken to the third floor front room, I don't recall whether there was anyone in the room at the time or not, but I saw this woman in bed, and as I walked into the room I think I was introduced to her, and she raised herself and sat up on the side of the bed. To the best of my recollection, and the picture I have of it, her feet did not touch the floor, her legs were not long enough to touch the floor. She was very thin, and she had a very, very bad color. I talked to her and she told me she realized she was going to die sooner or later and that she had made all these arrangements, and I was trying to console her, told her I knew of people who had cancer and who had lived years and probably she wasn't going to die as soon as she thought she was going to die, and general conversation of that kind, and I told her I understood she wanted to see me, there was something she wanted to do, and she said yes, and she briefly told me what she wanted to do, and I said, "Madam, you may live for a long, long time, I have known people with cancers who have lived longer than they wanted to live," and I said, "If you have things you want to attend to the best way to attend to them is by a will," and she said under no consideration would she have a will, there were only two people she wanted to take care of, I don't recall whether she said a niece or a nephew, and this good woman, who together with this relative have been the only people who have ever cared a bit for me in my condition here. She told me what Mrs. Branin had been doing for her, and how hard the work was, and so on and so forth, and I saw it was useless to persuade her

to have a will, she said, "No, I won't have a will, I have done everything else, I have ordered" — I am sure she told me she had even selected the dress she was going to be buried in, and I said, "Whatever you want done will be done, don't worry about it." I didn't want to excite her, and I said, "If that is what you want to do I will have to have your old deed," and she told Mrs. Branin and pointed—there was a bureau alongside the bed, not  
 10 chairs as another witness described it—I can see her holding the bed—and there was a small place and then the bureau, or something, and it was in the corner. The room was a small room, and I think I sat in the chair right next to her bed, and these papers were given to me. I don't recall what papers I got at that time, I think I only took the deed, and I went back to my office, and I recall giving the matter some thought as to the consideration in the deed, and realizing it was what in my opinion was  
 20 an absolute gift I thought it would be better to put in the true consideration, or something which would represent a true consideration —

Mr. Paul: I don't want to be captious in the matter, but I think if you tell what you did and not what you thought —

The Witness: I think I inquired from the assessor's office as to the value of the property, and  
 30 I think it was on that information I put in the consideration of \$3,000. I think I said something about when I would be back that afternoon, and if I am not wrong Mr. Branin suggested he would stop down for me at a certain hour and take me up. I did go up, and if I recall, the witness here has spoken of going in the back door, and if I recall cor-

rectly we did go in the back way. Mr. Branin stopped his machine at the end of the little street and said, "Have you any objection going in this way, it is nearer?" and I said no, and we went in the back way and went upstairs, and there was somebody else sitting there by the window, I don't know which one, if either one of these two young ladies, which one, but someone was sitting there, and that party was presented to me, and the impression I got it was the wife of the boy who was  
 10 getting the property that Mr. Marshall was taking care of for them. I told Mrs. Wurst what I had, I had done what she asked me to do, I read the paper over in substance, and told her this was the deed that was giving the property to Anna Mary Branin, and she signed it, sat up and signed it—I think she was sitting up again when I went into the room, and I witnessed her signature and took her acknowledgment. That is about all I know about it.

Cross-examination. 20

By Mr. Paul:

Q. When was it you went up there, Mr. Keown; when is it you first went up there on the morning of the 13th of July?

A. Mr. Paul, I can't tell you. I wouldn't even like to say as to either visit. One was in the morning and one in the afternoon, and I think it was around  
 30 the noon hour I went up on the first visit and then I think I had my lunch and then I think I went up there after that on my second visit. I may be wrong on that, but it was a matter I didn't think I would have to remember, and I didn't.

Q. It is my information that deed was signed about noon time. I will be frank with you.

A. I think not. I am almost satisfied it was before noon, or at noon, and then I went to my lunch—maybe I ordered the drawing of the deed before I went to lunch, and it was after my lunch when the deed was executed.

Q. Who was present at the time the deed was executed?

10 A. Mrs. Wurst, Mrs. Branin, myself, and someone else who was sitting on it was either a box or a chair, a low chair, because I can just remember seeing them looking over the bed, and it may be it was one of these young ladies, but the impression I got the party who was in the room was either the party or the wife of the party that was going to get the mortgage that Mr. Marshall was taking care of for them.

Q. When did this second person enter the room?

A. That party was there when I entered the room.

20 Q. She was there when you entered it?

A. Yes.

By the Court:

Q. Was she there on the first visit?

A. I don't recall her being there on the first visit, I don't recall.

Q. Mrs. Branin took you there, you say, and showed you up to the room?

30 A. I wouldn't say who let me in the door. I went to the house alone and someone did receive me at the door and Mrs. Branin did show me up to the room.

By Mr. Paul:

Q. And Mrs. Branin is the one who came down to see you with reference to it?

A. Yes.

Q. And she told you that Mrs. Wurst had told her she should get her lawyer to take care of that for her and Mr. Marshall would take care of the property at Woodbury?

A. I don't think Mr. Marshall's name was mentioned. I think Mrs. Branin said Mrs. Wurst said, "You are to get your lawyer and the other folks will get their lawyer so the responsibility of doing this job will be upon your lawyers," that is what she told me. 10

Q. By whom were you paid?

A. I don't know, I don't know whether I was paid, Mr. Paul. I don't know whether I charged Mrs. Wurst for doing it or not. It wouldn't be unusual to walk into a room and seeing a woman as sick as she appeared to be and not ask for compensation for drawing a deed. It may be I did charge her and it may be I did not.

Q. Was Mrs. Branin present at your first interview when Mrs. Wurst told you what she was planning to do? 20

A. Yes, she was there. I remember distinctly Mrs. Wurst told Mrs. Branin to go to the drawer for the purpose of getting the deed out to give to me.

The Court: She was there on both occasions, because she was there when the deed was executed? 30

The Witness: I think she was. There were four in the room, I am sure, when the deed was executed. I think it was Mrs. Branin who got the bottle of ink for me for Mrs. Wurst to sign.

Q. You say when Mrs. Branin came down to you

she said she also wanted to get the funds out of the Camden Safe Deposit & Trust Company?

A. My best recollection is that when she first talked to me about getting the funds out she did not say anything to me about the deed.

Q. Why should you go up if she didn't say anything about the deed?

A. As I said, she either mentioned it later, after I had 'phoned to Mr. Norcross, or she came into  
10 my office later in the day about the real estate. It may be it all happened at the same time, but I can't say positively which was the case.

Q. Did this transaction with Mr. Norcross take place in the morning, as far as you recall?

A. I think it did.

Q. And wasn't the deed, as far as you recall, shortly after lunch or dinner on the same day?

A. It may be that the conversation I had with her and the conversation I had with Mr. Norcross  
20 was on the 12th and that the plans were not carried out until the 13th, because I think Mr. Norcross suggested to me that this party come down and get a check, and I think I got one of the boys in my office to go down and get the check, and it may be that check wasn't signed and presented to the bank on that day, that it was the following day, namely, on the 13th, that Mrs. Branin then talked to me about the deed. It is possible, but I am not sure about that.

30 Q. The check would bear the date it was issued?

A. I presume so.

Q. The check bears date the 13th, that would seem to indicate that the conversation with Mr. Norcross took place on the 13th, wouldn't it, sir?

A. Yes, sir.

Q. Was this instrument recorded, as far as you know, very shortly after it was signed?

A. I think it went through the usual course of putting it in the place where all papers are put to be recorded. I don't know when it was recorded, the record will show you.

Q. If it went through the usual course would there be any delay?

A. We have a basket where things are put which are to be delivered by the boys in the office. Sometimes I notice letters that were supposed to go out one day that didn't go out until the next day.  
10

Q. Ordinarily instruments are recorded within a reasonable time after they are executed?

A. We try to make it a rule in the office of having instruments recorded almost immediately after the settlement is made.

Q. So there would have to be some time for you to return to your office and some time for the instrument to be recorded, wouldn't there?

A. Certainly.

Q. I call your attention that this instrument bears  
20 the record date "July 13, 1926, at 2.38 P. M.," so that will show that transaction took place in the early afternoon.

A. That 2.38 would practically bear out what I had told you, namely, I had gone and had lunch and then I perhaps had made an appointment with Mrs. Branin to meet at two, say, and that I had the deed executed and came back and threw it in the basket and it was recorded.

Q. So the transaction took place at noon or shortly  
30 afterward?

A. I presume so.

Q. If that state of facts is correct, sir, then you had a conference with Elizabeth Wurst sometime in the morning of that same day, isn't that right?

A. Yes, sir.

Q. What time did that take place?

A. I am awfully sorry I can't say; I can't fix the hour.

Q. It took place after Mrs. Branin had been to your office and engaged you to draw that deed?

A. It may be Mrs. Branin consulted me for the first time on the 12th in the afternoon and then came down and made this arrangement with the bank on the 13th and then it was she talked to me about the  
10 real estate.

Q. Why are you changing your dates, Mr. Keown?

A. I am not trying to change any dates, I am trying to give you the details as I remember them. I don't see where it makes a bit of difference.

Q. I am asking you for your best recollection and I am trying to establish certain facts, sir. When did you see Mrs. Wurst according to the best of your recollection?

A. According to the best of my recollection, based  
20 upon the date of the deed, I saw her on the date the deed calls for.

Q. About what time?

A. To the best of my recollection it was before noon.

Q. Who was there when you came to see her at that time?

A. I don't recall anyone but Mrs. Branin.

By the Court:

30 Q. Mr. Keown, I notice the deed has the endorsement of your law office at the bottom of the deed, and the word "Del" in front of it, I presume that means "deliver." Does that mean after the record is recorded it is to be delivered to you?

A. I think what the register of deeds does he marks

the deed for delivery purposes, but I don't know how the office gets it.

Q. And that deed comes back to you?

A. Yes, all deeds recorded with that endorsement do come back to the attorney.

Q. Who paid for recording it?

A. I don't know. I am satisfied that originally it was charged to my account which I have there in that office.

Mr. Rothermel: Are you intending to recess for  
lunch now? 10

The Court: I think we may as well. It is quarter after one. How soon can you get back? Can you get back within half an hour?

Mr. Rothermel: Yes.

(At this point a recess was taken until 1.45 P. M.) 20

(Trial of the cause resumed at 1.45 P. M., pursuant to adjournment.)

RUBY S. THIES, SWORN.

By Mr. Rothermel:

- 10 Q. I understand it is Mrs. Thies?  
A. Yes, sir.  
Q. You are a notary public, I believe, Mrs. Thies?  
A. Yes.
- Q. Also engaged in the real estate business in Oaklyn?  
A. Yes, sir.  
Q. I understand you are acquainted or a friend of Mrs. Clara Rittmayer?  
20 A. Yes, I am.  
Q. Did you know Mrs. Elizabeth P. Wurst?  
A. I met her only on the one occasion, Mrs. Rittmayer called me and asked me to go to her home and take an acknowledgment.  
Q. Do your records show when it was?  
A. My records show it was the middle of July. I have the date of the instrument, 7/9/26.  
Q. July 9, 1926?  
A. Yes. I haven't verified that with the instrument, I don't know whether that is correct or not, it is possible to err.  
30 Q. What was the instrument, do your records show that?  
A. A deed and also an affidavit. As I remember in one deed the name Wurst was spelled in one manner, and later on in the deed another manner, and there was an affidavit correcting that error.

- Q. What was the other?  
A. According to my book it is a deed.  
Q. Were those instruments executed on that day by Mrs. Elizabeth P. Wurst?  
A. Yes.  
Q. Do you remember seeing her?  
A. Yes, sir.  
Q. Do you remember where she was when you saw her?  
A. I was taken to her home; I don't know the address. 10  
Q. Taken by who?  
A. Mrs. Rittmayer.  
Q. Where was Mrs. Wurst when you called to see her?  
A. She was in her bedroom lying in bed propped up with pillows.  
Q. What was done while you were there?  
A. Mrs. Rittmayer introduced me, and when Mrs. Wurst heard the name she identified me by remembering my mother. 20

The Court: Who introduced you?

The Witness: Mrs. Rittmayer, and Mrs. Wurst remembered my family name, told me she had known my husband and had met him, too, and I told him I didn't come as the doctor's wife or nurse but I came to see what she wanted, and she told me there were certain papers she wanted signed, and I took the papers Mrs. Rittmayer had already prepared, read the papers carefully to her, and as I read the description of the instrument I remember her following me saying, "That is right, that is right," as we went around to the place of beginning, and after I had finished reading the papers and the legal phrase- 30

ology, I asked her if she understood what it meant and she told me she did, and we helped her, because she was weak, helped her to raise her back from the pillow, and she signed the papers in my presence.

Q. And acknowledged them before you?

A. Yes, sir.

Q. And you took the acknowledgment on the deed, or whatever the instrument was?

10 A. Yes, sir.

Q. And also the affidavit?

A. Yes, sir.

The Court: That was the 9th of July, 1926?

The Witness: According to my records.

The Court: This was the farm, I suppose?

20 Mr. Rothermel: Correct, sir.

Q. Do I understand you were formerly or now a doctor's wife?

A. I was. The doctor is dead.

Q. Were you at one time a nurse?

A. I was.

Q. Covering what length of time?

A. I helped the doctor in 10 years of his practice, up to the time I went into the real estate business I assisted the doctor in his office as a nurse.

30 Q. Covering what period?

A. About ten years.

Q. What was Mrs. Wurst's physical condition?

A. She was very weak?

Q. With respect to her mental condition?

A. Well, she spoke of the fact that it was a

marvelous thing that with the doctor gone I was able to take up this business, and discussed other things rather than the business at hand.

Q. Was there any question in your mind as to Mrs. Wurst's mental condition?

A. I shouldn't have taken her acknowledgment if there was.

Q. In your opinion was she mentally competent?

A. Thoroughly competent.

10

Cross-examination.

By Mr. Paul:

Q. What instrument was it she signed at this time?

A. My books only show an affidavit concerning the correction of the deed and a notation of a deed there. I recall going up there more than I do the nature of the instrument.

Q. You say you went over it thoroughly with her, 20 wouldn't that make some impression on your mind?

A. I have read over so many papers since last July.

Q. Whose name was endorsed on the back of the papers?

A. Endorsed?

Q. Yes.

A. I really don't remember. May I see the paper?

Mr. Paul: I haven't the paper.

30

Mr. Rothermel: I am sorry, I don't have it, either.

Q. There is a lawyer's endorsement, usually is one, on the bottom?

A. Yes.

Q. Do you remember seeing any endorsement on the bottom of that paper?

A. I don't know.

Q. Do you know whether or not it was Mr. George Marshall's?

A. I do not.

Q. From whom did you get the paper?

A. Mrs. Rittmayer.

10 Q. Was it a deed or a mortgage which you executed?

A. One was an affidavit, and my notation in the book said it was a deed.

Q. A deed?

A. Yes. My records may be wrong; I recorded this after I went home that evening, and naturally I didn't have my book along.

Q. So you are not sure what it was?

20 A. I am not positive of the nature of the instrument.

Mr. Rothermel: If the Court please, I understand it was an assignment of a mortgage, although I am frank to say I am not sure of that.

The Court: I should think counsel would know. Doesn't the record show the assignment of a mortgage or a deed or a mortgage executed on that date from the testator to Rittmayer.

30 Mr. Paul: If the Court please, as far as the complainant is concerned it was their knowledge the decedent had intended a conveyance of her interest in the property to her son.

The Court: You don't know of any deed or mortgage or assignment of mortgage.

Mr. Paul: In fact, my information was it was executed two years ago to him.

The Court: Two years ago?

Mr. Paul: At the time I filed the bill, and I subsequently learned the conveyance wasn't actually made until the 13th of July.

The Court: The 8th of July, wasn't it?

10

Mr. Paul: There is a variance in the dates.

The Court: Mr. Rothermel, I think I ought to know, although it may not be controlling at all, who paid Mr. Keown eventually.

Mr. Rothermel: If the Court please, I am unable to answer that question. I wish I could, sir. To the best of my knowledge I don't believe anyone paid him. As far as the actual drawing of the deed I think it was one of those matters where no charge was made. 20

The Court: He had some considerable trouble, it would seem there ought to be a charge on his books, or someone to indicate who this was either paid by or charged to.

Mr. Rothermel: Mr. Keown's books, I am frank to say, are not run on a double entry system, with a debit and credit to each thing, and as far as I know no one has paid him. 30

The Court: If you can't supply the information, you can't.

Mr. Rothermel: To the best of my knowledge I don't think there was anyone that paid. I think I am safe in saying that Mrs. Wurst did not actually pay for doing it, and I don't believe Mrs. Branin did.

The Court: Most of the lawyers in Camden either charge or collect for the work they do.

Mr. Rothermel: I don't wish to give the Court the  
10 impression we are practicing law for philanthropic purposes, because we are not. It may be in this situation when the suit was started no effort was made to collect it. As I say, I don't believe Mrs. Wurst prior to her death paid him.

The Court: I can understand how Mr. Keown might have thought it a small matter and made no charge, but it included some expenses, the deed was recorded and charged to him.  
20

Mr. Rothermel: I think that is correct, sir.

The Court: And that would apparently be an appropriate bill for someone to pay.

Mr. Rothermel: I don't think there is any question but that Mrs. Branin is perhaps the person who should be charged for the recording of that deed, it was certainly for her benefit.  
30

The Court: You wouldn't suppose the donor would pay for it, although she might. You can't tell.

DR. R. ELMER SCHALL, SWORN.

By Mr. Rothermel:

Q. Doctor, you are a practicing physician in the city of Camden?

A. Yes, sir.

Q. And a graduate of what institution?

A. Do you mean the name of the college? 10

Q. Yes.

A. P. & S., Baltimore; now it is the university.

Q. You have been practicing how many years?

A. Twenty-three.

Q. I understand you were the physician attending Mrs. Elizabeth P. Wurst, 622 Vine Street.

A. Yes, sir.

Q. When did you first start to attend her?

A. I can't give you the exact date. She came to the office at first, and it was along in the early part  
20 of the year of 1926.

Q. What was she suffering from when she came?

A. Carcinoma.

Q. Commonly called a cancer?

A. Yes, sir.

Q. Of the stomach?

A. Yes, sir.

Q. Was her condition at that time the advanced stage of that disease, or not?

A. Yes, it was. 30

Q. To what extent was it advanced, was there any possibility of curing her at that time?

A. No.

Q. What could you do for her?

A. Well, it was just a palliating treatment to keep her free from pain and try to keep up her strength. She was greatly emaciated when she came to me.

Q. Did you continue to treat her down to the date of her death?

A. Yes, I did.

Q. What did your course of treatment consist of; in other words, what medicines did you give her, Doctor?

A. I gave her stomach tonics and digestives, and when she became any worse nervous I gave her some nerve medicine, something to quiet the nerves.

10 Q. Is that medicine she could possibly send someone to your office for just as well as coming herself?

A. Why, yes. They sent in every now and then that she was out of medicine, and they would have the prescriptions refilled.

Q. Merely a question of using that same medicine with the hope that it might ease her until the end finally came?

A. I saw her now and then, but I didn't think it was necessary to stop in every day or every other 20 day the same as with pneumonia or typhoid fever, or something that way, because I knew that it was only a matter of time.

Q. Did she object to your calling to see her?

A. Never did to me.

Q. Never did to you?

A. No.

Q. Do you remember the occasion on July 10th that you were called down to the Camden Safe Deposit & Trust Company to attend Mrs. Wurst?

30 A. Yes.

Q. What time, if you recall, did you go down there, Doctor?

A. I think it was during my noon office hour, that is, between 12 and 2.30.

Q. What condition did you find Mrs. Wurst in?

A. She was completely exhausted. She had gone

as long as her vitality would permit her to go and she just couldn't go any more and she was completely exhausted.

The Court: Out of gasoline?

The Witness: Yes.

Q. With respect to her mental condition, was there anything wrong with her mental condition at that 10 time?

A. No.

Q. You continued to treat her down to the end on the 13th of August?

A. Yes.

Q. You, of course, had occasion to observe her numerous times from the date she first came to you down to her death?

A. Yes, sir.

Q. Did you notice any indication whatever, Doctor, of anything either weak or wrong with Mrs. Wurst 20 mentally?

A. No, I did not.

Q. Will you say the contrary was the fact?

A. Yes, I would say she was of a normal mind.

Q. And she continued that way down to the time she actually died, or shortly prior thereto?

A. Yes, I saw her, I think, 15 minutes before she died, near that time.

Q. And was she mentally competent at that time? 30

A. Yes, sir.

Q. Was there any time during the course of the treatment, or during the time which you treated her, when she was not mentally competent?

A. No, I don't think so.

Q. No time, at least, when you saw her?

A. No.

Q. And particularly she was in that state when you saw her on July 10th?

A. Yes, sir.

Cross-examination.

By Mr. Paul:

Q. Doctor, in these various treatments you gave  
10 her were there any drugs in a more or less mild form?

A. In which?

Q. Any treatment by the use of drugs in a more or less mild form in the various medicines you gave her, was there any drug of any sort to ease the pain which she might be suffering from?

A. I gave her a bromide and that quieted the nerves, but it is not a pain tablet, it is not like morphine, or any of those.

20 Q. The only drug you gave her was bromide?

A. Yes, it quiets the nerves, keeps the excitement away from the nerves.

Q. Did you ever give the people with whom she stayed any medicine to quiet her down in the evenings so she would sleep?

A. I gave these tablets, and I may have possibly given her something else.

Q. So Mr. and Mrs. Branin could give it to her to make her rest better?

30 A. Yes.

Q. That is what I meant by a mild drug.

A. Yes.

Q. So in the course of the treatment there were mild drugs administered to her?

A. Yes, sir.

Q. How often would you say you saw her?

A. Do you mean at the house, or office and all?

Q. During the last month of her illness I don't believe she came to the office.

A. One week I saw her twice and other weeks only one time. She would just send around when she wanted me.

Q. During the other period it was an average of once a week, that would be all?

A. Yes.

Q. And she still continued in that weak physical  
10 condition which you first discovered her?

A. Yes, she was emaciated.

By the Court:

Q. Didn't you at any time give her drugs to quiet her?

A. Not with the exception of one or two times, your Honor. I think one time at the house I in-  
20 jected a little drug to quiet the pain, an that was sometime previous to her death.

Q. About how long would you think?

A. Oh, I think a month, likely.

Q. At any other time did you give her anything?

A. She had very little pain for that form of disease.

By Mr. Paul:

Q. What sort of treatment did you give her on  
30 July 10th?

A. Stimulative.

Q. A stimulative drug?

A. Yes, a cardiac tonic.

Q. That would gradually increase her vitality?

A. Yes, sir.

Q. Did you see her between the 10th and 13th?

A. I didn't look at my records before I came, but I think I did, I think likely on the 11th. I am not just positive about that, but I saw her shortly after that, I know.

Q. What would you say was her general physical condition during the course of her last illness?

A. There was really no vitality there; she was  
10 greatly emaciated, that means loss of strength.

Q. A person in that condition is more easily influenced in his opinions than a person in normal strength, isn't that so?

A. Well, I imagine they would be.

Mr. Rothermel: There was something I should have covered in my direct and didn't; may I have the Court's permission to do it now?

20 The Court: Yes.

By Mr. Rothermel:

Q. This form of disease from which Mrs. Wurst suffered, does that involve a great deal of care upon the part of anyone attending her?

A. It did in her condition, because I considered the woman didn't have the strength to get up and down, and she lived on the third floor of the building, and I never thought after the 10th of July she would  
30 get around any after that, she was so emaciated.

Q. Does this disease cause persons to lose control of themselves physically, with reference to the bowel movements, and things of that nature?

A. In the advanced stages.

Q. In the stage Mrs. Wurst had it?

A. Yes. That is, toward the finish, toward the end of life.

Q. From your observation in visiting and seeing Mrs Wurst did she have the care which a person suffering from that disease should have the whole time?

A. Well, I think she had as good care as the average person gets at home without a trained nurse.

10

By Mr. Paul:

Q. You spoke about the condition which this disease creates in the bowels, when was that evident in Mrs. Wurst, as far as you know?

A. I think about two years before.

Q. That would continue right on down?

A. Yes.

20

CLARA RITTMAYER, SWORN.

By Mr. Rothermel:

Q. Mrs. Rittmayer, I understand you are the wife of Charles Rittmayer?

A. Yes.

Q. And your husband Charles is a nephew of Mrs. Elizabeth P. Wurst?

30

A. Yes.

Q. Who is the mother of Mr. Charles Rittmayer?

A. Mrs. Mary Rittmayer.

Q. The lady that was on the stand this morning?

A. Yes, sir.

Q. You knew Mrs. Wurst, didn't you?

A. Yes, I did.

Q Did you have occasion to visit her home at 622 Vine Street, say between March and August, 1926?

A. Not from March, from about the latter part of June up until she passed away.

Q. How many times would you visit her?

A. Well, I guess two dozen, anyhow.

Q. Been there many times?

A. Yes, sir.

10 Q. Sometimes your husband accompanied you?

A. And sometimes I went myself.

Q. Did you have occasion to observe the care given to Mrs. Wurst in her illness?

A. Well, yes, I did.

Q. Do you feel she was being properly cared for?

A. Yes, I do.

Q. Always seemed to get anything she wanted in the way of attention?

A. I do.

20 Q. Do you recall the occasion of July 13th when Mr. Keown came in?

A. Yes.

Q. I think you were the fourth person in the room on that occasion?

A. Yes.

Q. It was at that time this deed conveying the Vine Street property was executed by Mrs. Wurst in which the property was conveyed to Mrs. Branin?

A. Yes, sir.

30 Q. Could you give us your best recollection of just what took place at that time?

A. Well, I was in the room before and went across the street to Mr. Louis Wurst's to get my lunch, and when I was over there—I didn't stay for lunch, I came back again, and when I came back in the room was Mrs. Branin and Mr. Keown, but I didn't know

at the time it was Mr. Keown, and I heard Mr. Keown say, "I will do everything I can to see that it will come out all right," and he said, "Now, when you sign these papers you are transferring the deed to this house to Mr. and Mrs. Branin."

Q. Did Mrs. Wurst sign it?

A. Yes, sir.

Q. Did she acknowledge it before Mr. Keown?

A. Yes.

Q. Had she on any occasion prior to that talked to you in connection with what she was going to do with the property? 10

A. She told me she was going to give it to the people downstairs, because they were good to her and done more for her than any of her own.

Q. With respect to your husband, what did she say with respect to him?

A. She said, "I will give Charlie the mortgage to the farm and give this place to the people downstairs, and what is left in the bank after my debts are paid will not be anything." 20

Q. On how many occasions, approximately if you don't know exactly, had Mrs. Wurst expressed the intention of doing this in relation to the Vine Street property before you were in the room and saw the deed actually executed?

A. Three times she told me she was going to give it to the people downstairs.

Q. On any of these occasions was Mrs. Branin in the room? 30

A. No.

Q. Just you and Mrs. Wurst together?

A. Yes.

Q. Covering what period of time?

A. I can't mention the exact dates, but one was in the afternoon, she told me to get the mortgage and

take it home and give it to my husband, and one evening before that, and the day it was done she told me it was all over with.

Q. Were you there when Mr. Marshall was brought in by your husband?

A. Yes, I was there.

Q. What day was that, if you remember?

A. 13th of July.

Q. The same day?

10 A. Yes.

Q. Who was present?

A. Mr. Marshall, Mrs. Wurst, and my mother-in-law, Mrs. Rittmayer, and my husband and myself were in the room.

Q. What was the conversation with Mr. Marshall?

A. Mr. Marshall had brought up a will—

The Court: This was about when?

20 The Witness: This was four o'clock in the afternoon.

The Court: What day?

The Witness: The 13th of July.

Q. Go ahead.

30 A. Mr. Marshall had drawn up a will and when he was in the room and read the will over to Mrs. Wurst she said, "I don't want no will at all, I don't want him to wait a whole year before he gets it, I just want the mortgage transferred over to him," and Mr. Marshall said, "This is the better way of doing the thing by will," and she said, "I don't want no will," and Mr. Marshall left, took my husband and mother-in-law and left and they drew papers up for the

transfer, and she told me to go in the back room, and Mr. Marshall said, "Are't you afraid to leave her alone," and I said, "She told me to come back here," and I went back.

Q. Did you later get in touch with Mrs. Thies with relation to the execution of some papers?

A. Yes, sir.

Q. When was that?

A. I can't recall the date, but Mr. Marshall told us we would have to take these papers before a notary 10 public, and we called on Mrs. Thies.

Q. Did you take her up to Mrs. Wurst's home?

A. Yes, sir.

Q. Who accompanied you?

A. My husband, Mrs. Thies and myself.

Q. Do you recall what papers it was you took up there?

A. Well, it was a mortgage for the farm, signing it over, as far as I recollect.

Q. You don't have that with you? 20

A. No, Mr. Marshall has it.

Q. Those papers were executed by Mrs. Wurst?

A. Yes, sir.

Q. Do you remember whether that was the same day as July 13th, or a later time?

A. No, I won't say positive, but I think it was the next evening.

Q. That would be the 14th?

A. The 14th.

Q. Now, prior to July 13th, on the occasions that 30 you visited Mrs. Wurst did you see any other members of the family there with the exception of your mother-in-law?

A. No.

Q. On the evening of July 13th, Louis Wurst and his son did come over with your mother-in-law?

A. Yes, sir.

Q. Prior to that date no one of the family had been there except you and your husband and your mother-in-law?

A. No.

Q. You never saw anybody there?

A. No.

Q. You continued to call up to the time of her death?

10 A. Yes, sir.

Q. Did you continue to observe the care given to her by Mrs. Branin?

A. Yes, sir.

Q. Was that good care?

A. Yes, sir, for I had asked Mrs. Wurst and she said, "I am getting the best of care."

Q. Were you there when she died?

A. No, I was not.

20 Q. You talked to Mrs. Wurst, I understand, on a number of occasions, both alone and with other people in the room?

A. Yes, sir.

Q. In your opinion was Mrs. Wurst competent in her mind, did she know what she was doing at all times?

A. Yes, indeed.

Q. Do you feel she was a person easily influenced in doing something she didn't want to do?

A. No, indeed, I did not.

30 Q. What makes you say that?

A. On one occasion I asked her if she thought she was doing right in transferring the property to the people downstairs, and she said yes, and I said, "Don't forget Charles' mother, she was good to you," and she said, "Mind your own business, I will do with my things what I feel like," she said,

"I will give to those who have helped me and been good to me."

Q. Did she ever make any mention during the whole time you visited her of Mr. and Mrs. Branin endeavoring to influence her in any way in anything she was doing?

A. No.

Q. This jewelry that some mention is made of, do you know what happened to that jewelry?

A. She had given it to me. 10

Q. How long before her death?

A. She gave me the jewelry on the 12th of July when she gave me the mortgage for the farm.

Q. Do you have all that jewelry with you?

A. Yes, sir.

Q. Do you know anything of a cameo ring?

A. No.

Q. Did you know Mrs. Wurst to have a cameo ring?

A. Yes, I saw her wear it on several occasions 20 at my home.

Q. How long ago?

A. During the time she visited me in the last three or four years.

Q. That ring wasn't one of the things she gave to you?

A. No.

Q. Do you know what happened to it?

A. No, I do not.

Q. Do you know at the time of her death whether 30 Mrs. Wurst had this cameo ring?

A. No, she had given me the jewelry, and on one occasion when I came up she said, "Have you my ring on?" and I said, "No, I have only my own," and she said, "Was that ring in the box with the beads?" and I said, "No, only a watch and string of beads was in the box."

Q. Did she say anything else about the ring?  
A. Not a word.

Cross-examination.

By Mr. Paul:

Q. Mrs. Rittmayer, you say you went to visit her on the 13th of July?

10 A. I did.

Q. Was there anything that prompted your visit on that day?

A. What?

Q. Had anything happened that prompted you to visit your aunt on that day?

A. Yes, I was there on the 12th and she gave me the mortgage and told me to take it to my husband and tell him as soon as possible to attend to it.

Q. Do you know on that day or the day before your  
20 aunt had been told she was suffering with cancer?

A. Yes, I do know.

Q. And your husband and yourself went up, got your aunt Mary, rather your husband's mother, the first thing in the morning, didn't you?

A. Yes. She met my husband in Haddon Heights and said she was going up and he said, "We are, too, and you might as well go up with us."

Q. What time was it?

A. Half-past nine in the morning.

30 Q. And you got there shortly after that time?

A. Yes.

Q. And your husband was there?

A. Yes.

Q. Had he stayed there all that morning?

A. No, as soon as we arrived there we asked how she felt and then my husband and I left to go to Woodbury to see Mr. Marshall.

Q. For the purpose of having a will prepared?

A. Yes.

Q. Was the assignment of the mortgage prepared at that time, do you know?

A. For my husband?

Q. Yes.

A. That was to be done when Mr. Marshall came up.

Q. Before your husband left for Woodbury did  
10 he have any conversation with Elizabeth Wurst with  
reference to her money at the bank?

A. No.

Q. He did not?

A. No, he did not.

Q. Didn't he ask her whether or not he could get the money for her?

A. He came there for that purpose, but she said, "It is too late, it is all over with," and he didn't ask any more and he left for Woodbury.

Q. Did you hear him tell his mother not to leave  
20 your aunt alone during his absence?

A. Yes, sir.

Q. And not to let anyone near her?

A. I don't recall him saying that, but we had heard Mrs. Branin was going on an errand, and my husband said, "Well, you stay with her."

Q. And not to leave her alone?

A. Not to leave her alone.

Q. And your mother stayed there, your husband's  
30 mother?

A. Yes.

Q. Then did you subsequently return to your aunt's residence that morning after your husband had gone down to see Mr. Marshall?

A. Yes, sir.

Q. Do you know where Mr. Marshall is today?

A. I have been told he is in Florida.

Q. Then you came back to Vine Street?

A. Yes.

Q. Where did you go, did you go up to see your aunt again?

A. Went up to see my aunt and I told her I was hungry and was going across the street to get my lunch.

Q. Who went with you?

10 A. My mother-in-law went with me.

Q. At that time where did you go, over to Louis Wurst's?

A. Yes, sir.

Q. That is almost directly across the street?

A. Yes.

Q. Did you sit down and eat anything at that house?

A. No, I didn't think it was quite ready and I sat at the window.

20 Q. You were seated at the window eating a pretzel, weren't you?

A. Yes.

Q. What attracted your attention to your aunt's house?

A. Well, I saw Mrs. Branin by the window and I said, "I am going over."

The Court: Saw who?

30 The Witness: Mrs. Branin.

Q. Is that all you said?

A. I said, "I am going over, I think there is something doing other there."

Q. When you got over there what did you find was doing?

A. I found Mr. Keown and Mrs. Branin and Mrs. Wurst in the room.

Q. Mr. Keown was at that time having your aunt sign the paper in question?

A. Yes.

Q. That took place while you and your mother-in-law had gone over to your uncle's for dinner?

A. Yes.

Q. What would you say you had been over there, about twenty minutes, something like that? 10

A. Yes.

Q. Had you seen Mr. Keown in the morning?

A. No, that is the first time.

Q. You weren't in the room when he came in, were you?

A. No, they were in the room when I came in.

Q. Why were you suspicious of what was going on?

A. Because Mrs. Branin in the morning had said, "I will attend to that errand, I am going on that errand now." 20

Q. And there was something in her talk which aroused your suspicions as to what was being done?

A. Yes.

The Court: Who had said that?

The Witness: Mrs. Branin.

Q. Did you know where she was going at that time? 30

A. No.

Q. Do you know who had made arrangements to withdraw the money from the bank?

A. I did not.

Q. When was it that the assignment of the mortgage was executed by Mr. Marshall?

A. That was half-past four in the afternoon, between four and half-past.

Q. It was executed by Mr. Marshall?

A. Yes.

Q. What was Mrs. Thies doing in connection with this property?

A. Certain papers Mr. Marshall said had to be signed by the notary public.

Q. And he sent those up afterward?

10 A. Yes.

Q. This will which your husband had prepared and which was read to your aunt, gave all the property to him, didn't it?

A. Not all the property, just gave the mortgage of the farm to him.

Q. I was under the impression it gave the property to him.

A. No, just the mortgage of the farm.

20 Q. In your conversation with your aunt did your aunt ever caution you against talking out loud so your conversation could be heard by other people downstairs?

A. Never.

Q. So that Mrs. Thies is wrong when she said she went there on the 9th, it was after the 13th she went there?

A. I can't recall the date.

Q. It was after Mr. Marshall was there?

A. Yes, sir

30 Q. And Mr. Marshall was there the same day Mr. Keown was there?

A. Yes.

By Mr. Rothermel:

Q. Where did you sit at the time on the 13th when

Mr. Keown had the deed executed, what part of the room?

A. In a chair by the window.

Q. Do you remember anything that Mr. Keown said while he was there?

A. Yes, I do. He said, "I will have this attended to and everything will come out all right," he said, "I have prepared this deed as you have asked me to and after you have put your signature to this that signs the property over to Mr. and Mrs. Branin."

10 Q. What did Mrs. Wurst say?

A. She signified by the raising of her hand.

Q. And she signed the deed?

A. Yes.

Q. Did you know that the money had been withdrawn from the bank shortly after it was done?

A. She told me she had drawn it.

Q. Mrs. Wurst told you the money had been withdrawn?

A. Yes.

20 Q. Did she say she had the money?

A. She told me after the bills were paid there wouldn't be anything left. I asked who was taking care of the money and she said, "I am."

Q. Did she ever say anything about the rest of the members of the family asking for money?

A. Yes, she said my sister-in-law had asked for \$800 for a mortgage, Mr. Louis Wurst had asked her for \$50 to pay the rent, and Mr. Leonard Wurst had asked her for \$35.00 to repair the roof, and she said, "I didn't give them a cent, and I won't; that shows 30 they don't want me, they only want my money."

By Mr. Paul:

Q. When did this conversation take place with

your aunt concerning this money?

A. That was after everything had been transferred.

Q. Did you ever see your aunt's money after the 13th?

A. Never saw a penny of her money.

Q. Never saw a cent of it?

A. No.

10

CHARLES RITTMAYER, SWORN.

By Mr. Rothermel:

Q. You are the husband of Mrs. Rittmayer, Mrs. Clara Rittmayer who was just on the stand?

A. Yes, sir.

Q. And you are the son of Mrs. Mary Rittmayer?

20

A. Yes, sir.

Q. And a nephew of Mrs. Elizabeth Wurst?

A. Yes, sir.

Q. How many times, if you know, Mr. Rittmayer, did you visit Mrs. Wurst during the time she was ill on her death-bed?

A. While she was sick?

Q. While she was seriously sick?

A. I should say about a dozen times, anyway.

Q. And do you remember the occasion of July 12th  
30 when you and your wife went up there and were talking about this mortgage?

A. My wife came home and told me about it. I wasn't there.

Q. You went back the next morning?

A. I went the 13th.

Q. What took place?

A. I went up with the intentions of drawing the money for her, and she said, "That has already been attended to, and that is all changed."

Q. With respect to the mortgage what happened?

A. The mortgage I had, she had given it to my wife on the 12th of July, and she told me to have it executed as soon as possible, and that is the reason I went up on the 13th to have it taken care of.

Q. Did you go to Woodbury?

A. I went to her place first and from there my  
10 wife and I went to Mr. Marshall's and left my mother with my aunt.

Q. Did Mr. Marshall come back with you?

A. He said, "I will be back at 3 o'clock in the afternoon and to wait," but he didn't get there until 4 or 4.30.

Q. What papers did he have with him when he did get back?

A. He had prepared a will.

20

Q. What did that will cover?

A. It covered everything.

Q. What was the conversation he had with Mrs. Wurst concerning that will?

The Court: That was on the 13th?

The Witness: Yes, sir.

The Court: About 4 o'clock in the afternoon?

30

The Witness: Between 4 and 4.30.

Q. What was the conversation he had with Mrs. Wurst concerning that will?

A. Well, he opened the will and read it to her and after he got through reading it she said, "It is

all over, it is too late, and I don't want to make any will anyway, because I don't want Charles to wait a year for a settlement."

Q. Did Mr. Marshall have an assignment of the mortgage prepared at that time?

A. Prepared it right there in the back room.

Q. And Mrs. Wurst executed it?

A. Yes, sir.

10 Q. Did he later send up other papers he wanted her to sign?

A. Yes, he sent some other papers and I got a notary public to come up and take the affidavit.

Q. Do you know what those papers were?

A. That was in reference to the mortgage, but I can't tell you what it was.

Q. Did you continue to visit her down to the date she died?

A. Yes, sir.

20 Q. Did you at any time have any reason to suspect that Mrs. Wurst wasn't right mentally?

A. No, I couldn't say that.

Q. Did she always appear normal to you?

A. Yes, sir.

Q. Did you consider Mrs. Wurst the type of a person who could be easily influenced?

A. I think she had a pretty strong will of her own.

Q. Did you have occasion to observe the care that Mrs. Wurst was getting in the Branin home?

A. Only what she told us.

30 Q. What did she tell you?

A. She was perfectly satisfied with the care she was getting, that is what she told me.

Q. Always appeared to be clean when you people were there?

A. Yes, sir.

Q. Whenever she wanted anything it was gotten for her?

A. That is what she told me. That is all I know, what she told me.

Q. She said she was getting the best of care?

A. That is what she told us.

Cross-examination.

By Mr. Paul:

Q. Mr. Rittmayer, do you know that on July 12th 10 your aunt had been told she had cancer?

A. After my wife came home and told me, yes.

Q. So you arranged to go in there the first thing on the morning of the 13th?

A. Yes, sir.

Q. As soon as you got in there and found out the money had been transferred, somebody had gone down to the bank and transferred the money, you immediately went to Mr. Marshall's office?

A. Yes, sir. 20

Q. And you had him prepare a will?

A. Yes, sir.

Q. And the will was to give all the property to you?

A. That is the way I had it done.

Q. Did the property come to you?

A. Yes, sir.

Q. And also had the assignment of mortgage prepared?

A. Yes, sir. 30

Q. The assignment set forth it was the consideration of mutual love and affection, and one dollar?

A. Yes, sir.

Q. And that was executed on the 13th of July?

A. Yes.

The Court: What is that mortgage on?

The Witness: A farm in Mantua.

The Court: How much is it?

The Witness: \$2500.

Q. Before leaving for Woodbury you told your mother to stay with your aunt and not to leave her alone with any other person?

A. I told her to stay there with her.

10 Q. Why were you particularly anxious for your aunt not to be left alone?

A. I wanted to see what was going on.

Q. You thought something was in the air?

A. Yes, sir.

Q. Where did you get that idea?

A. From remarks I had heard.

Q. What remarks had you heard?

A. That things were going to be transferred over.

Q. To whom?

20 A. To Mr. and Mrs. Branin.

Q. Is that the reason you went down there and prepared a will giving all the property to you?

A. Yes, sir.

Q. So as to beat them to it?

A. I guess that was the idea.

Q. In other words, there was a grand scramble?

A. She told me to go ahead and have the papers fixed up.

Q. And it was a grand scramble?

30 A. Yes, sir.

Q. The old lady dying and everybody was out to get what she had, that is the cold proposition?

A. That was the idea if you look at it that way, but she had told me quite a while before this she was going to do this, that is the reason I was taking care of that part of it.

Q. She told you she was going to give you the farm?

A. Yes, sir.

Q. She had told you that about two years ago?

A. Yes, and she also told me she would give me the house if I came up there to live there.

Q. Why is it you had a will prepared giving all the property to you?

A. From the way she spoke.

Q. And you went down immediately after you got 10 to Camden and left someone with your aunt?

A. Left my mother.

Q. And left instructions not to leave your aunt alone?

A. Told her to stay there.

Q. When you came back did you find out there had been a transfer of this property from Mrs. Wurst to Mrs. Branin?

A. Yes.

Q. Didn't you say to them, "Why did you leave 20 her alone?"

A. Yes, I did.

Q. Mr. Marshall prior to this time had handled the legal matters for your aunt?

A. Yes.

Q. He was her lawyer, wasn't he?

A. Yes.

Q. Had you ever known her to consult Mr. Keown?

A. Not as I know of, no.

Q. Did your aunt in discussing with you ever cau- 30 tion you about speaking out loud so the people downstairs could hear?

A. She did on several occasions, yes.

Q. What would she say?

A. "Don't speak so loud," she said, "There may be someone listening, not that I mistrust them, but

they may be listening." She didn't mention any names.

The Court: Do you know who told your aunt she had a cancer, who broke that news to her?

The Witness: She didn't tell me who told her, she didn't tell me that at all. That Monday night my wife went up and then she came home and told me 10) about it.

Q. You got that information from your wife?

A. Yes, sir.

Q. Now, your aunt at this time was in rather feeble health?

A. She was, yes, sir.

Q. And she had been?

A. For some time back, yes, sir.

Q. Was she getting weaker all the time as far as 20) you could see?

A. She was, yes, very much so.

Q. You don't know what paper it was Mr. Marshall sent up to have executed sometime after this, do you, by Mrs. Thies, notary public?

A. No, I don't know that. It was something on the mortgage but I can't answer that.

Q. The paper wasn't sent to you, it was sent to Mr. Marshall?

A. Mr. Marshall drew it up and gave it to Mrs. 30) Thies and then Mrs. Thies, my wife and I came up with it and had my aunt to take the affidavit.

Q. Mr. Marshall at the present time is down in Florida, isn't he?

A. That is what I was told.

Q. Did you ever see any of your aunt's money after July 13th?

A. No, sir.

Q. Do you know what became of it?

A. No, sir, I do not.

ANNA M. BRANIN, SWORN.

By Mr. Rothermel:

Q. Mrs. Branin, when did you first meet Mrs. 10) Wurst?

A. February 28th.

Q. How did you come to meet her?

A. She had her house advertised for rent in the 20) paper.

Q. And you went to apply for it?

A. Yes, sir.

Q. Was it rented on that day?

A. No, sir.

Q. Did you go back later?

A. Yes.

Q. How long afterward?

A. 6th of March.

Q. Was that the day the house was rented?

A. Yes, sir.

Q. What part of the house did you rent?

A. The first and second floors.

Q. Mrs. Wurst living on the third?

A. Yes, sir.

Q. When did you move?

A. The 8th of March.

Q. When you got to the house what condition 30) did you find Mrs. Wurst in?

A. I moved in the 8th of March, in the evening, and on the 9th of March I was cleaning this front

room, second floor, at half-past eleven, and I thought it funny I hadn't heard from her, and I went to her door and knocked and she said, "Come in," and I went in and she was on the floor in the back room, she had her hat and coat, rubbers, and all her clothing on, and she had a bed made on the floor out of a bolster which was wrapped in a blanket, and she had a three-burner gas plate, and one burner was burning, and I said, "Mrs. Wurst, are you sick?" and she said, "Yes, I am sick," and I said, "Why aren't you in bed?" and she said, "My front room is too cold," and I said, "You must get off this floor and get fixed comfortably somewhere else," and she said, "I am more comfortable here than in bed," and I fixed her something for her lunch —

The Court: What is the idea of these details?

Mr. Rothermel: I will confine it. Except to show the conditions under which they first came together, that is all.

Q. The third floor was heated from the furnace covering the whole house?

A. One room.

Q. The front room?

A. Yes, sir.

Q. At that time there was no heat in the house, was there?

A. No, sir.

Q. How long did it take you before you got coal?

A. I got coal Thursday afternoon.

Q. Then the fire was started?

A. Yes, sir.

Q. What is the next occasion you came in contact with Mrs. Wurst?

A. The next morning she came downstairs and got a jar of water, and she said to me, "It is awfully cold"—the wind was blowing hard, and I said, "Mrs. Wurst, how do you feel?" —

Q. I don't think his Honor wants us to go into it so minutely. She got what she wanted and returned to her room?

A. Yes, sir.

Q. Was it any part of your rental agreement you were to give her food, and so forth? 10

A. No.

Q. Just to pay her a certain amount as rent?

A. Yes, sir.

Q. When did you start really taking care of her?

A. Well, off and on from that time on until she was bedfast.

Q. What did that care consist of?

A. Well, during the first part of her illness she would be in bed sometimes two days a week, toward the latter part four days. 20

Q. When did you first learn the nature of her illness?

A. I just can't remember, but it was in June.

Q. How did you learn?

A. Dr. Schall told me.

Q. Had he told Mrs. Wurst, do you think, before that?

A. I can't say.

Q. Do you know when it was Mrs. Wurst learned she had cancer? 30

A. It was in July.

Q. What were the circumstances surrounding that?

A. Why, after Dr. Schall had been there she said to me, "You know what ails me," and I said no, and she coaxed me to tell her, and I said, "No,

you will find out later," and she said, "I know what is the matter, I have got a cancer, you might as well tell me now as at any time."

Q. You didn't tell her?

A. Not then.

Q. Do you know whether she talked to Dr. Schall later about that?

A. I couldn't say.

10 Q. Why did the doctor tell you, Mrs. Branin, do you know?

A. To protect my children and myself.

Q. So that you could protect yourself and the children?

A. Yes, sir.

Q. What precautions did he advise you to take?

A. Told me to get rubber gloves and be careful not to let a thing come into contact with my hands in any way.

20 Q. You recall the occasion you went to the Camden Safe Deposit on July 10th?

A. Yes, sir.

Q. With Mrs. Wurst?

A. Yes, sir.

Q. Under what circumstances did you and your husband accompany Mrs. Wurst to that bank?

A. She asked me the day before if he could take her to the bank, and I said if he could get off from his work, and he got off at half-past eleven and took her.

30 Q. Did you remonstrate with her about going?

A. I said it was too warm and you are not strong enough.

Q. Was it a warm day?

A. Yes.

Q. Tell us what happened?

A. I took her to the bank, she got out of the car,

and I said, "Do you want me to go in with you?" and she said, "No, I will go myself," and she was gone quite some time and a lady came out and she said, "Are you Mrs. Branin?" and I said, "Yes," and she said, "You had better come in, this lady who came to the bank with you is very sick, and she won't let anybody do anything for her but you," and the man directed me to the ladies' toilet, and I took care of her and got her fixed up, and she came out and she told me to ask the man to come over, she wanted to tell him what she wanted, which I did.

Q. Did you remain there while they were talking?

A. Yes, sir. She told him she wanted about \$85.00, and he took her book and he went over to the window and then he came back to her with a paper to sign, which she signed, and then he brings her book and the cash and she put it in her waist, and it was some few minutes after that she took this spell, so the bank man said, "Do you want to get her some aromatics?" and I said, "No, I think it best to have a doctor," and we called Dr. Schall and he took care of her.

Q. You later took her home?

A. He said to let her rest 15 minutes until the medicine took hold and then take her home and put her to bed.

Q. These spells you speak of, had she been having these?

A. Had never had one before.

Q. Prior to that day?

A. No.

Q. Did she have them from that day on?

A. No, sir.

Q. You recall the occasion of the 13th of July?

A. Yes, sir.

Q. When did you first become acquainted with Mr. and Mrs. Rittmayer?

A. It was sometime in June when they started to come and see her.

Q. Who of Mrs. Wurst's family other than they had ever been to visit her while you were living in her home?

A. Beg pardon.

10 Q. Who in the family of Mrs. Wurst, with the exception of Mr. and Mrs. Charles Rittmayer, had been to visit her while you were at her home on Vine Street?

A. Mrs. Mary Rittmayer.

Q. That was the mother of Charles?

A. Yes. Mr. Louis Wurst visited her later on.

Q. Before July 13th?

A. No.

20 Q. No one but Mr. and Mrs. Rittmayer, and Mary?

A. No one.

Q. What led up to the events of July 13th?

A. In what respect?

Q. Did Mrs. Clara Rittmayer come in to see Mrs. Wurst?

A. In the morning.

Q. What about the day before?

A. She was there the day before.

30 Q. Were you present in the room when she and Mrs. Wurst were conversing the day before?

A. No, sir.

Q. You don't know what occurred?

A. No, sir.

Q. What did Mrs. Wurst say to you that day?

A. She told me she had given Clara the jewelry and she was going to give Clara the mortgage.

The Court: I don't know whether she said she was going to give the mortgage to Clara or Charles.

Q. What was it?

A. She said she was going to give the jewelry to Clara and give the mortgage to Charles, her husband.

Q. What was said with respect to the Vine Street property at that time?

A. Nothing at that time. 10

Q. Was there anything said later that day, the 12th of July?

A. In the afternoon she told me she was going to give me the house.

Q. What, if anything else, did she say?

A. Nothing concerning that.

Q. What happened the next morning, the morning of July 13th?

A. July 13th I took care of her as usual in the morning, and she said, "Are you going to do that errand for me this morning?" and I said, "Yes" 20

Q. What errand?

A. Go to the bank. I said, "Yes," and she said, "Go and do it," which I did.

Q. Just what happened, please?

A. Well, I went to Mr. Keown's office and Mr. Keown's messenger went with me to the bank.

Q. Then what did you do, return?

A. Returned to Mr. Keown's office. 30

Q. When did you get the check signed?

A. That day.

Q. You took it up and had Mrs. Wurst sign it?

A. Yes.

Q. And went back and got the money?

A. Yes.

Q. Did you have any conversation with the official at the bank after you had received the money?

A. Yes, sir.

Q. What was that?

A. I can't remember it word for word, but he told me I should protect myself, he said, "I am going to give you a little slip of paper here which you can copy," and he says, "That also clears the bank of paying you the money and will help you."

10 Q. Is that the slip that was given you there?

A. Yes, sir.

Q. Now, did you give the money to Mrs. Wurst on that day?

A. Yes, sir.

Q. And did you prepare that receipt in accordance with the teller's suggestion?

A. Yes, sir.

Q. Did Mrs. Wurst sign it?

A. Yes, sir.

20 Q. Now, Mr. Louis Shreve and his son came in on that day in reference to the funeral?

A. Yes, sir.

Q. And did you show him the money, or give him the money at that time, the older Mr. Shreve, or give it to Mrs. Wurst?

A. Mrs. Wurst gave him the money and asked him to count it, and he said, "What is the idea?" and I said it would protect me in case of any trouble, and he counted the money and he handed it to his  
30 son and he counted it and he handed it back to Mrs. Wurst, and she said, "Is it \$2,183.01?" and he said, "Yes." Now she said, "I want to pay you what I owe you," and she paid him \$860.

Q. Did she sign this receipt?

A. Yes, sir.

Q. Did you ask the two Shreves to witness her signature as to the receipt of that money?

A. Yes.

Mr. Rothermel: I offer that at this time, sir, and also offer the other slip which she testified she received at the bank.

Q. What was the next thing that occurred on that day?

A. The 13th.

Q. Yes. Who arrived there next, did Mr. Marshall come or Mr. Keown? 10

A. I didn't know Mr. Marshall was in the house until after he had gone.

Q. How did Mr. Keown get in there or upon whose request did he come up there?

A. She told me to get him.

Q. When did he arrive, do you remember?

A. Around about noon.

Q. Were you present at the time he was talking to Mrs. Wurst? 20

A. Yes, sir.

Q. You heard the conversation?

A. Yes, sir.

Q. He later returned?

A. Yes, sir.

Q. How much later was it when he returned?

A. That I just can't remember.

Q. And it was then the deed was executed, the second time he came there?

A. Yes, sir. 30

Q. You were present?

A. Yes, sir.

Q. Mrs. Clara Rittmayer and Mr. Keown?

A. Yes, sir.

Q. Was it before Mr. Keown returned the second time or afterward that Mr. Marshall and Mr. Charles Rittmayer came back, if you know?

A. I couldn't say; I didn't know he was in the house until after he had gone.

Q. Did he arrive after Mr. Keown had left the second time?

A. Who?

Q. Mr. Marshall?

A. I couldn't say that.

Q. It was the next evening that the young lady, Mrs. Thies, and Mrs. Rittmayer came back with some additional papers to be signed?

10) A. I think it was.

Q. Did you continue to take care of Mrs. Wurst up to the time of her death?

A. Yes, sir.

Q. Do you know just what happened to this \$2100?

A. I do not. After she paid her funeral expenses, outside of \$500, I knew after she paid her funeral expenses she said she had \$500 that was left.

20) Q. What happened to that?

A. She said that was to be kept to provide things she wanted while she was living and what was left was mine.

Q. Was given to you?

A. Yes.

Q. What did you do with it?

A. For different things that I needed.

Q. For Mrs. Wurst or for yourself?

A. Most of it; yes.

30) Q. Mostly for her?

A. Yes, sir.

Q. Do you remember whether or not there was any of that left at the time she died?

A. Some.

Q. How much, about?

A. Well, I should say around \$300.

Q. Around \$300?

A. Yes.

Q. Now, did you at any time endeavor to influence Mrs. Wurst for the purpose of having this property conveyed to you?

A. No, sir, I did not.

Q. What, if anything, did Mrs. Wurst tell you with respect to anyone else using some influence on her?

A. Not any more than she said her brother wanted 10 money to pay his rent, and that after he found out he couldn't get it he sent his son to ask for \$50 to pay two months' back rent, and she said a nephew from Philadelphia wanted some money to fix his roof.

Q. Do you know anything about \$800 for a mortgage?

A. Yes, she also told me that.

Q. Do you know whether or not Mrs. Wurst did make arrangements for her funeral, a monument on 20 her grave, and those things?

A. Yes, sir.

Q. Do you know whether or not she called Dr. Schall there or whether there was any doctor's bill and whether that was paid?

A. The doctor's bill was paid.

Q. Do you know of anyone else that was paid besides those two?

A. No, I believe not, outside of the tombstone bill 30 that was paid.

Q. When did Mrs. Wurst first say anything to you with respect to the Vine Street property, as to her intention concerning that?

The Court: I didn't make any note of the amount paid for the tombstone. How much was that?

Mr. Rothermel: \$80.

The Witness: The 12th day of July.

Q. What did she say at that time?

A. Well, she said, "Mrs. Branin, I am going to take care of Charley and Clara, and I am also going to take care of you, you have 5 little kids and you are deserving of everything I am going to give you, and," she said, "I want you to have this property, and I want you to get a good lawyer who will take care of it and take care of it right."

Q. What else?

A. She told me to get a good lawyer at my earliest convenience and have him come up and see her.

Q. Did she say anything with reference to where she intended to remain until she died?

A. With me.

Q. Where was that conversation?

A. During the time the undertaker was there he told her she would have to be buried from his parlors unless we would have a different door cut in the parlor so she could be taken out, and she said, "I see that will be done."

Q. Was it done?

A. It was done.

Q. And she was buried from your home?

A. Yes, sir.

Q. You at no time ever asserted any influence upon her with reference to the transfer of this property to you?

A. No, sir.

Q. The first time the subject was mentioned was when she mentioned it to you on the afternoon of July 12th?

A. Yes, sir.

Mr. Paul: Will you stop leading, Mr. Rothermel?

The Court: You had better let her testify.

Cross-examination.

By Mr. Paul.

Q. Mrs. Branin, when you came to see about this house where did you find Mrs. Wurst? 10

A. She was on the third floor, she lifted the window and hollered, "Who was there," and I said I was there to see about the house, and she said, "Wait a few minutes and I will be right down."

Q. When you came the second time where was she?

A. The same place, she hung her head out the third floor window.

Q. When you went to the bank on the 10th you say Mrs. Wurst went in the bank alone? 20

A. She went in the bank alone.

Q. And then they came out and got you?

A. Yes, sir.

Q. The bank fellow said you came there and asked for the money.

A. No.

Q. He is wrong about that, you didn't come and ask for the money?

A. Not on the 10th, she went in there by herself.

Q. He was wrong? 30

A. She went in by herself. I said, "Don't you think I had better go with you?" and she said, "No, I will go myself."

Q. He was wrong when he said you took Mrs. Wurst back to the ladies' retiring room?

A. No, I did not, I was taken there myself.

Q. The recollection of Mr. Wheaton is entirely wrong about that?

Mr. Rothermel: If the Court please, I don't think that question is proper.

The Court: I don't think that is the proper test. Whoever is mistaken is wrong.

10 Q. On July 12th you stated you had a conversation with Mrs. Wurst in the afternoon, what time was that in the afternoon?

A. With Mrs. Wurst?

Q. Yes.

A. It was just before my supper, I should say about half-past four.

Q. Half-past four?

A. Yes.

20 Q. In your direct examination you stated you went to Mr. Keown's office before going to the bank, why did you go to Mr. Keown's office before going to the bank if Mrs. Wurst asked you to go to the bank?

A. I thought it was best.

Q. Why did you think it was best?

A. I thought it would be better for me to have somebody who knew more about it than myself.

Q. Mr. Keown had formerly represented you and your husband in some other matters before?

A. Yes.

30 Q. He was your lawyer?

A. He never represented me in any other matters except this one.

Q. He represented your husband before?

A. Yes, sir, he had.

Q. So he was your husband's attorney?

A. Yes, sir.

Q. You knew that fact?

A. Yes, sir.

Q. So you went to Mr. Keown, who was your husband's attorney, to have the deed prepared from Mrs. Wurst to you, is that right?

A. Yes, sir.

Q. When was it Mr. Keown first came to your home?

A. What say?

Q. When was it Mr. Keown first came to your home, didn't he come there at noon and have the instrument prepared already when he came there?

A. He was there twice.

Q. He was there twice?

A. Yes, sir.

Q. You had come from the bank the first time he came there?

A. I don't just remember.

Q. What time in the morning was this first visit?

A. Of Mr. Keown's?

20

Q. Yes.

A. Before noon.

Q. Where was Mrs. Mary Rittmayer at that time?

A. I don't know.

Q. There was no one with Elizabeth Wurst?

A. When I went out of the house there was no one in the house, when I came back Mrs. Mary Rittmayer was in the house, and Mrs. Clara Rittmayer, the three of them were in the house when I came back.

30

Q. They weren't there when you went away?

A. Not to my knowledge.

Q. Could they have gotten in without your knowledge?

A. Yes.

Q. That is, Mr. Charles Rittmayer had a key?

A. Always had a key.

Q. Before you left did you call up to Mrs. Wurst that you were going out on her errand?

A. I went up and told her I was going.

Q. Are you sure about that?

A. I went up and told her.

Q. Was anyone with her?

A. When I went up and told her no one was in the house, and when I came back she said, "Did you  
10 do my errand?" and I said, "Yes."

Q. When you came back who was there in the room?

A. Mr. Rittmayer and Mrs. Rittmayer were in the back room and Mrs. Charles Rittmayer was with Mrs. Wurst.

Q. Did you have the money in your possession at that time?

A. Yes, sir—no, sir, I had the check.

Q. So you made one trip to get the check and  
20 one trip to get the money?

A. Yes, sir.

Q. When did you get the money?

A. In the afternoon.

Q. Did you deliver it to Mrs. Wurst that afternoon?

A. I brought it back and gave it to her.

Q. That afternoon?

A. Yes, sir.

Q. That receipt which you have, when was that  
30 signed?

A. Which receipt do you refer to?

Q. This receipt here dated August 13th, when was that signed?

A. August 13th.

Q. Mr. Shreve and his son signed as witnesses to that receipt?

A. They certainly were.

Q. They were there on the 13th, were they?

A. I am pretty sure they were there on the 13th.

Q. Did they see Mrs. Wurst sign it?

A. Yes, sir.

Q. She signed it in their presence?

A. Yes.

Q. She asked them to witness it, did she?

A. Yes, she said, "I want this woman to be free." 10

Q. Did she ask them to witness it?

A. Yes, sir.

Q. And they witnessed it in her presence?

A. Yes, sir.

Q. And it is dated the day they signed it?

A. Yes, sir.

Q. And their receipt was dated the same day that they were there, is that right?

A. Yes, sir.

Q. So that the receipt was signed, the receipt  
of Mr. Shreve's was signed the same day your re- 20  
ceipt was signed, is that right?

A. Yes.

Q. And they signed it at her request as witnesses and she signed it in their presence?

A. Yes, sir.

Q. Who told you to get that receipt, Mr. Keown?

A. No, sir.

Q. Who did?

A. They told me at the bank I should be protected  
myself. 30

Q. In other words, the bank authorities said you must be protected in the transaction?

A. No, they didn't say I must be protected, they said, "You want to be protected."

Q. Was the money turned over to Elizabeth P. Wurst in the presence of the two undertakers?

A. They weren't there at that time, no

Q. They weren't there?

A. No.

Q. Was the money turned over at the same time the receipt was gotten?

A. No.

Q. I don't quite understand the transaction. You mean the receipt was taken after the money had been delivered to Mrs. Wurst?

10 A. She had the money in her possession. Mr. Shreve and son came in to collect their money—they were supposed to go to the bank with me and get the money, but she had asked me sooner, she said, "If you can get it with the lawyer's help go ahead," and by the time Mr. Shreve and his son got there I had the money.

Q. What time did they get there?

A. I don't remember.

20 Q. Was it sometime during the afternoon of the 13th?

A. I don't remember.

Q. Was it in the afternoon or morning?

A. I am pretty sure it was in the afternoon.

Q. About what time?

A. I just can't remember that.

Q. The middle of the afternoon or the latter part of the afternoon?

A. The latter part—I don't remember.

30 Q. Who took you down to the bank to get the money?

A. My husband.

Q. He took you down in his car?

A. Yes, sir.

Q. You have a front and back door at your house?

A. Yes, sir.

Q. The front door faces the property of Louis Wurst across the street?

A. Yes, sir.

Q. In plain view of Mr. Wurst or anyone sitting in their window?

A. Yes, sir.

Q. Do you know Mr. Wurst?

A. Yes, sir.

Q. Did you know his physical condition at that time?

A. No, I did not.

Q. Did you know he was mostly sitting around, 10 looking around?

A. I knew he had been sick.

Q. And sort of laying around recuperating?

A. I didn't know where he was at the time; I knew he had been sick.

Q. Did you know he was still home?

A. Yes.

Q. You knew he was still home?

A. Yes.

Q. What time did Mr. Keown bring the deed 20 which had been prepared back for execution?

A. Soon after lunch hour.

Q. Very soon after lunch hour?

A. Yes, sir.

Q. Would you say it was between one and two?

A. Soon after lunch hour.

Q. About 1.30?

A. I just can't say what time.

Q. Did he come in the front or back door?

A. That I don't remember. 30

Q. You don't know whether he came in the front or back door, do you?

A. No, sir.

Q. Who went upstairs and was in the room at the time the paper was executed?

A. Mrs. Clara Rittmayer.

Q. When did she come in?

A. She came in a few minutes after Mr. Keown.

Q. Do you know where she was?

A. Before she came in?

Q. Yes.

A. No, I do not.

Q. Do you know where Mrs. Mary Rittmayer was, her mother-in-law?

A. I knew they were around the neighborhood.

10 Q. Do you know where they had gone?

A. I imagined they had gone to the brother's, Mr. Louis Wurst.

Q. Do you know whether they had any lunch before they left?

A. No, I do not.

Q. When did Mrs. Wurst state to you there had been attempts made on the part of other relatives to obtain some of her money?

20 A. She had told me that several times, I just can't remember what day it was. She had told me that several times.

Q. Told you that prior to the time Mr. Keown deeded the property over to you?

A. The property had been deeded over to me.

Q. Are you sure about that?

A. I am not sure.

The Court: Before you said she told you several times. Can't you recall whether any of the times  
30 were before the property was deeded to you or were all the occasions afterward?

The Witness: They were all within two days.

The Court: All within two days?

The Witness: Yes.

Q. How many times did you see Mr. Louis Wurst, Jr., visit his aunt?

A. Three times.

Q. When was the first time?

A. It was in the evening.

Q. The evening of what day?

A. I just can't say what date.

Q. The evening of the 13th?

A. I couldn't say.

Q. When was the next visit?

A. It was on a Saturday evening about five o'clock.

Q. The same week?

A. Same week.

Q. When was the third visit?

A. I think that was just at noon hour, but I can't tell you what date it was.

Q. Was it within a short while?

A. Within a short while.

Q. Now, when did you see his brother visit his aunt?

A. Whose brother?

Q. Mr. Louis Wurst's brother?

A. Junior or senior?

Q. Junior?

A. One evening.

Q. Beg pardon?

A. One evening.

Q. About what time was that?

A. I couldn't say, it was around six, half-past six.

Q. About what day was that with reference to the 13th?

A. I just couldn't say.

Q. Was it before or after the 13th?

A. I can't remember that.

Q. It might possibly have been before?

A. I couldn't say.

Q. Did you see the son, Louis, Jr., visit his aunt before the 13th when the property was conveyed to you?

A. I couldn't say.

Q. You don't know?

A. No.

Q. When did Mrs. Wurst tell you of the demands which had been made upon her for her money?

10 A. After she had gotten her money.

Q. How long afterwards?

A. I just can't remember how long afterwards.

Q. A week, or ten days, or what?

A. Not that long.

Q. A couple of days?

A. I just can't remember how long.

Q. How much money did you draw out of bank?

A. \$2,183.01.

20 Q. How much money did Mrs. Wurst pay the undertaker?

A. \$860.00.

Q. How much to the marble man?

A. \$80.

Q. And she paid Dr. Schall on his weekly visits?

A. Every time.

Q. She paid Dr. Schall on his visits there every time he came?

A. Yes, sir.

30 Q. There was no bill from him?

A. No.

Q. That made a total of \$940, and that leaves a balance of \$1100 she had in her possession, that would be the balance?

A. Yes, sir.

Q. She gave \$500 to you for various expenses?

A. Yes, sir.

Q. Do you know what became of the balance of \$600?

A. I do not.

Q. Do you know where she kept her money?

A. She kept it in her bed but I don't know where.

Q. What did she keep it in?

A. In the envelope her bank book was in.

Q. Kept all the money in that envelope?

A. Yes, sir.

Q. In what denomination were the bills which you 10 got for this \$2,100?

A. What do you mean?

Q. What sized bills were they?

A. I just can't remember now but I know they were mostly \$100 bills, if I remember right.

Q. Did they make a very big bundle?

A. Yes, sir.

Q. How big a bundle?

A. I couldn't say.

Q. Make it as big around as your wrist? 20

A. I don't remember that, I couldn't say.

Q. And yet this bundle of bills which was of some size was put in this envelope?

A. They were folded and pushed in that envelope.

Q. Where did you obtain them from to give to Elizabeth Wurst at the time she paid the money to Mr. Shreve?

A. She had the money.

Q. Had it in her possession at that time? 30

A. Yes.

By the Court:

Q. Your testimony is she paid the tombstone man \$80?

A. Yes, sir.

Q. And \$860 to the undertaker?

A. Yes, sir.

Q. And paid the doctor from time to time as he came?

A. Yes, sir.

Q. And after paying the tombstone man and the undertaker out of the money that came from the bank she paid you in all \$500 and kept all the rest for herself?

10 A. She said, "After my expenses are paid there will be \$500 left, and that I will hold onto until I am gone, and what is left is yours."

Q. She didn't turn it actually over to you?

A. No.

Q. She didn't put it in your hand?

A. She handed it to me.

Q. When she told you what she had left was to go to you, tell me what happened?

A. I am just telling you.

20 Q. This was about what time on the 13th after the money had come and these bills had been paid?

A. I think it was on the 14th.

Q. Tell me exactly what happened so I can get it in your own words and not by questioning you.

A. That is as near as I can remember it.

Q. She had the money in the first place, all the money that came from the bank went to her, she paid out the \$800 and the \$80 and she had the rest then in her hands. So we start right I want to be

30 sure she got the money that came from the bank?

A. Yes, sir.

Q. And she paid out of that \$800 and \$80 and the rest she had?

A. She would ask me to put it under her pillow.

Q. That is the nearest you had it, she had control of it under her pillow?

A. Yes, sir.

Q. In this conversation with you on the 14th, we will call it, tell me exactly what she said and what she did, and what happened to the money, and all about it, so I can know it as it was just exactly, don't change it, tell it exactly as it was.

A. She said to me on the 14th in the morning, she said, "Mrs. Branin, everything is done that I know of now," and she said, "I have \$500," she said, "I am going to keep—we will keep," she said, "10 "We will keep" and she said, "That is to be used whatever way we need it for my comforts, and when I am gone what is left is yours," and I said, "What do you want me to do with this money?" and she said, "Put it in bank and it will be safe," which I did.

Q. You took the \$500 and put it in bank?

A. The \$500. She said, "That is to be used as I need it, for whatever we want to use it for."

Q. You put it in bank?

20

A. Yes, sir.

Q. About what date did you put it in the bank?

A. The next morning, if I remember; the 14th or 15th, if I remember right.

The Court: Now see, I have gotten your statement clear. I could have questioned and questioned you and I couldn't have found that out in half an hour.

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By Mr. Paul:

Q. What bank did you put it in?

A. North Camden Trust Company.

Q. You say the balance of the money was in a little cardboard folder they kept the bank book in?

A. I didn't see anything but the \$500. A little red envelope. It wasn't so little.

Q. The \$500 was in there?

A. She handed me the \$500, and she said, "That is what we are to save for my expenses, whatever I need, and what is left of that is yours."

Q. You withdrew from the bank \$2,1000?

A. \$2,183.01.

Q. Did you know of any other bills that Mrs. Rittmayer paid except the undertaker and marble man?

Mr. Keown: You got Mrs. Rittmayer's name in there.

Q. Mrs. Wurst. Except the undertaker and marble man?

A. No, sir.

Q. Were there any other bills that you know of?

A. No, sir.

20 Q. All other things had been paid, the doctor being paid as he went along?

A. Yes, sir.

Q. And she gave you \$500?

A. To use for whatever she had need for while she lived.

Q. Do you know what became of the balance of the money which you drew out of bank?

A. I do not.

30 The Court: Don't you know where she kept it?

The Witness: She used to keep it in her bed, sometimes under her sheet. She would have a big quilt she would fold over the top of her pillow and sometimes she would have it in there.

The Court: Don't you know where it was when she died?

The Witness: I didn't see anything after that day.

The Court: Never found out where it went to?

The Witness: No.

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Q. When she gave you the \$500 where did she get it from?

A. I don't remember.

Q. Did she count it out in so many bills and give it to you?

A. I don't remember.

Q. And you don't know whether there was any left?

A. She said, "This is all I have left and this we will keep for my use, and what is left when I am gone is yours." 20

Q. When she came to give you this money do you know where she got it from?

A. I don't know.

Q. Now, where did she keep the receipted undertaker's bill?

A. I just don't remember where she kept it. Towards the last she said, "You had better take all these receipts and pin them together and take care of them." 30

Q. Where did she keep the receipted marble bill?

A. They were together on her bureau, if I remember right.

Q. Weren't those receipts in her pocketbook along with her other money?

A. She had no pocketbook.

Q. She didn't have a pocketbook?

A. No, sir.

Q. Who had the black pocketbook that the undertaker saw you take the money from out of the drawer?

A. There was no black pocketbook.

Q. Then the undertaker was wrong?

10 Mr. Rothermel: I object.

The Court: She said there was no pocketbook.

Q. There was no pocketbook there which you took the money from and turned it over to Mrs. Wurst in the presence of the undertaker?

A. That money was in the envelope.

Q. And not the pocketbook?

A. Had been kept in the envelope.

20 Q. At the time Mr. Keown came up to your home and entered by the back door did you know that Mrs. Rittmayer, Mrs. Mary Rittmayer, and Mrs. Clara Rittmayer, would be there, and Mr. Louis Wurst?

A. I did not.

By Mr. Rothermel:

30 Q. Mrs. Branin, when Mr. Keown came to the door the first time who let him in, when he came to the house the first time?

A. I guess I let him in.

Q. It was the front door that time?

A. The front door the first time he came.

By Mr. Paul:

Q. The front door during the morning?

A. I am sure it was.

Q. When did he come to the back door?

A. What say?

Q. When did he come to the back door?

A. It must have been his second trip there.

Q. Did you ever ask Elizabeth Wurst where the balance of her money was after she gave you the \$500?

A. No.

Q. Did she ever tell you what became of it?

A. She said she had paid her bills and \$500 was all she had left.

Q. Was there anyone in the house except you who kept the room and made the bed up for Mrs. Wurst?

A. Beg pardon?

Q. Was there anyone in the house except you who made the bed up and took care of the room?

A. No, sir.

Q. You were the sole person who had charge of that?

A. Yes, sir.

The Court: Was the money she gave to you exactly \$500?

The Witness: Exactly.

DEFENDANT RESTS.

(At this point an adjournment was taken until Friday, March 25, 1927, at 9.30 A. M.)

Camden, N. J., March 25, 1927.

(Trial of the cause resumed on the above date, pursuant to adjournment, at 9.30 A. M.)

EDWARD B. MAHAFFEY, SWORN.

10 By Mr. Paul:

Q. You are the treasurer of the North Camden Trust Company?

A. Yes, sir.

Q. Have you a statement of any accounts which your bank holds in the name of Branin or Wurst?

A. I have Anna M. Branin, both checking and saving account, and Ellsworth Branin.

20 The Court: Which?

The Witness: Savings account of Anna M. Branin, and also checking account, and also checking account of Ellsworth Branin.

Mr. Paul: Do you wish the records left here?

30 The Court: See if we can state quickly what they show. The account of Anna M. Branin produced is a time account beginning —

The Witness: That is the checking account.

The Court: The time account beginning July 31, 1926, shows a deposit on that date of \$300, and Au-

gust 20, 1926, the \$300 was drawn out. They are the only two items in the account. The checking account of the same party, Anna M. Branin, appears to have been opened July 31, 1926, by a deposit of \$200. Since then there have been no deposits. There has been drawn out, August 10, 1926, \$20; August 13, 1926, \$5; August 14, 1926, \$10; August 17, \$20; August 17, \$50; August 20, \$50.25. August 10th, \$20 and \$21.75. August 14, not only \$10 but also \$1.00. August 17, not only \$20, but also \$22, 10 leaving the account closed on August 20, 1926, by withdrawal of \$50.25.

Mr. Paul: Showing the balance on the death of the decedent \$153.25.

The Court: Which is that date?

Mr. Paul: August 13th.

20 The Court: \$153.25 was the balance on August 13, 1926. The account of Ellsworth Branin appears to begin November 15, 1926, \$25.00 deposit, and a further deposit on December 15, 1926, \$25.00, and withdrawals are by check, November 17, 1926, \$24.52, December 17, 1926, \$24.52, balance December 26, 1926, \$0.96.

BOTH SIDES REST.

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## CONCLUSIONS.

LEAMING, V. C.:

I am unable to think it will be of any service to me to take this matter under advisement. Cases of this class have been before the courts so frequently and have been so fully considered it seems to me  
10 there can be little doubt touching the duty of the court under given state of facts and I can't think in this case there can be any doubt touching the facts so far as the duty of the court is dependent upon such facts.

There is no dispute touching the amount of property which the deceased owned at the time it was transferred by her. She had on July 13, 1926, in the bank, \$2,183.01; she held a mortgage of something like \$2,500 against a farm, and she owned the prop-  
20 erty in which she resided, and the defendant, Anna Mary Branin, was a tenant of the two lower floors of the property and the deceased resided on the third floor. Excepting as to a few unimportant articles of jewelry, and possibly some little household furniture, that included her entire estate. On that day, July 13, 1926, she withdrew the \$2,183.01 from the bank, she made a deed on that day of her home—the house which she owned and in which she re-  
30 sided—to Anna Mary Branin, the tenant who occupied the floors below her, and on that date, or about that date, she assigned the mortgage to her nephew, Charles Rittmayer. The assignment of that mortgage and the conveyance of that house stripped her of everything she had excepting the cash which she withdrew from the bank. The value of the house which was conveyed to Anna Mary Branin I don't

recall, but it was estimated, I think, at something like \$3,000. The testimony in the case does not establish conclusively what was done with the entire \$2,183.01. It shows that on that day she called in an undertaker and a marble man and paid the undertaker in advance for his agreed price for burying her, \$860.00, and she paid \$80 to the tombstone man to make her a tombstone, making a total payment to the two of \$940. That left \$1,243 of the money in her hands, and Mrs. Branin says de-  
10 ceased handed to her \$500 to pay bills with. Assuming that to be true it would leave in the hands of the decedent \$743.00, or thereabouts, which would be all of the estate which she reserved to herself.

There can be no finding at this time made with entire confidence, probably, touching the mental condition of the decedent on the 13th of July, 1926, when these extraordinary transactions occurred. Admittedly she was in a feeble condition physically.  
20 feeble to an extreme degree. She had been suffering for a considerable time with a progressive disease and her vitality was at the lowest possible ebb. All agree as to that. There is a controversy as to her mentality. Her age was 64. My own impressions are that so far as her mentality was concerned it was probably as good as could be expected of a woman in her physical condition at that time if we should eliminate a somewhat important circumstance in the case. Only the day before, I think it was, she had learned that her malady was cancer.  
30 That fact would appropriately react upon the mental condition, or at least on the mental poise of a man in physical strength to say nothing of a person whose vitality had been reduced as the decedent's was by this disease in its progress up to that time. It is not unreasonable to conclude that that infor-

mation threw the deceased into what may be called a "flunk." The extraordinary course which she took upon being apprised of that fact shows that it must have been an important factor in her hasty determination. It is quite possible that prior to that time she had been contemplating rewarding Mrs. Branin for what appears to have been a very kind service she had performed. It may be, as the testimony indicates, that she had theretofore suggested giving the home to Mrs. Branin by reason of her gratitude to Mrs. Branin, but the precipitate manner in which it was all done was presumably much influenced, and it is almost impossible to escape the conclusion that it must have been powerfully influenced, by the information that had reached her mind in some way about a day before, I think it was on the preceding day, that her malady was cancer and, of course, necessarily fatal in time. So I say it is pretty difficult to conclude, even though we assume that her mentality may have been reasonably strong up to the time this information was received about her malady, satisfactorily just what her frame of mind might have been on the day that these conveyances were made. Certainly, she was in an agitated and distressed frame of mind, to say the least.

Now, there is no reasonable doubt touching the relations of Mrs. Branin to the deceased. They were intimate and confidential, at least to the extent that the deceased felt largely dependent upon Mrs. Branin for care and also felt under gratitude, extreme gratitude to her for the kindness which had been extended to her in looking after her during her sickness and serving her wants as they should arise during the period of time she had been a tenant of the property. The tenancy began March 19, 1926,

so that for approximately four months Mrs. Branin had occupied the lower floors of the home of the decedent and had during that time, as occasion required, administered to her wants in one way or another, and there was, unquestionably, in the mind of decedent a feeling not only of dependence but also of gratitude; appropriately so. Indeed, there is testimony to the effect that she remarked that the only two people who had ever done anything for her were this nephew to whom she assigned the mortgage and Mrs. Branin who had more or less looked after her in time of need. The deceased also probably was reasonably certain that Mrs. Branin would continue to administer to her wants and that probably entered her mind at the time, so there can be no doubt of the existence of what may be called a confidential relationship between them and a feeling of gratitude upon the part of the deceased toward Mrs. Branin and a feeling of dependence, extreme dependence, upon Mrs. Branin. Under those circumstances the conveyance was made to Mrs. Branin and the assignment was made to the nephew and she was in that manner stripped of all her property, or practically all of it, excepting the \$743 of money that appears to have been left, if it is true that only \$500 was turned over to Mrs. Branin. Mrs. Branin says that out of that \$500 she now has about \$300 left. So it is clear to my mind, and I think counsel on both sides will agree with me, that every condition existed on July 13, 1926, the date of these transactions, that brought the case within the rule which has been clearly defined in this State that to sustain gifts of this nature there must be independent advice, that is, gifts which practically strip a person of all of his possessions and leave him dependent upon the persons they have bene-

fited for his care, attention and support which will probably be needed in the future. Admittedly, these were gifts. There was no consideration for them other than gratitude. Any promises expressed or implied that might have been relied upon by the decedent for future care and attention from either the nephew or Mrs. Branin would not be regarded as a consideration unless those promises were expressed in some written or enforceable obligation.

10 So we necessarily now meet the question of whether or not the decedent received such independent advice as would sustain these gifts. The confidential relation, dependence and the improvidence of the gifts being established the law of this State requires such independent advice to be given to the donor before the gifts can be sustained. The claim is, I may add, that the gift to Mrs. Branin, and likewise, I suppose, the gift to the nephew, were the product of undue influence. In this case the gift to  
20 the nephew is not brought in question and no decree can be presently made touching it, but it is important because it stands on very much the same plane as the other gift, but at any rate the two gifts together embrace practically the entire assets of the deceased. Upon the question of undue influence the law is equally established that where this confidential relationship and dependence exists the presumption of undue influence arises. The cases hold not only that, but that the presumption casts upon the donee the burden of establishing the absence of  
30 undue influence. The donee, Mrs. Branin, in this case denies any exercise of improper influence of any nature. Her testimony is that it was a plan of the deceased, originated in the mind of the deceased, and was in no way suggested by her. Whether that is adequate to overcome the presumption of undue in-

fluence need not be determined in this case if it be found that there was a want of the independent counsel which the law requires to sustain transactions of this kind in the circumstances stated. This question of independent advice has been passed upon by our Court of Appeals so there can be, it seems to me, little doubt touching it even though there be no undue influence, as was the case in *Post v. Hagen*. If there has been no independent advice of  
10 the nature which our law demands, the gifts cannot stand, even though the presumption of undue influence be overcome. So as already suggested we bring ourselves now to the single question of whether independent advice, assuming for the purpose of the case that the undue influence claim has been adequately overcome by the testimony of Mrs. Branin and such other testimony as there is in the case. One witness, as I recall it, on the question of undue  
20 influence testified that the decedent had stated to her that this conveyance was practically forced from her by Mrs. Branin—that she made it because she had to do so. The witness stated, as I have it in my notes, that “They”—the Branins—“came to me with both fists and said I had to give them the property or they wouldn’t take care of me,” and she said she was sorry she had done so. All of that Mrs. Branin denies.

But assuming now that the claim of undue influence has been overcome, there are two elements  
30 which are absolutely essential to establish what the law classifies as independent advice that are lacking in this case. Mr. Keown was called in to advise the decedent in this matter. Too much cannot be said touching the integrity of Mr. Keown and his standing at this bar. I apprehend no lawyer at this bar can be found who commands a higher degree of

respect than Mr. Keown, and I don't hesitate to take this occasion to say that in all of the innumerable cases that Mr. Keown has tried before me he has throughout, as also as in his private conduct, elicited from me the highest degree of admiration and respect. I trust Mr. Keown implicitly and I accept his word as truth. So his testimony in this case I accept without qualification. The evidence is, however, of such a nature that I very much doubt whether it can be said that Mr. Keown was in a position to give what the law classes as independent advice by reason of his connection with Mrs. Branin in the matter. There is testimony to the effect that Mr. Keown had formerly represented the Branins in some matter. It doesn't appear what. It is admitted that Mrs. Branin at the instance of the intestate, went to Mr. Keown's office to bring him or have him come to intestate's home to attend to this matter. It does not appear who paid for Mr. Keown's services, so we will have to content ourselves without knowledge of that fact. Mr. Keown went to the home of the decedent, advised her, drew the deed of conveyance, had it recorded and paid for the recording of it. Whether he was compensated for services by Mrs. Branin or by the intestate, he does not know. He has no recollection and does not know whether any charge was made. Nor does anyone else know. I am very much inclined to think that under the testimony as it stands Mr. Keown was not in a position to meet the requirements of the law as an independent adviser by reason of his relations to Mrs. Branin at the time. Mr. Keown did, however, give advice to decedent. The nature and extent of that advice we have from his testimony, and as I have already said I accept it as he gave it. He told her, he said, that when this deed

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should be signed by her it would confer a title upon Mrs. Branin beyond recall, or something to that effect. I don't recall whether he cautioned her touching the improvidence of the transaction, touching the possibility that she might in the future need this very property for her own support or not, but I will assume for the moment that he did, or if he did not so testify I may assume that he may have merely overlooked it in his testimony, and that he did, in fact, advise her, as he should have done, of the danger that accompanied such a transaction, the danger of her becoming destitute with no property to fall back upon. In other words, impressing upon her mind the improvidence of the transaction. But passing all that, the feature which to my mind is conclusive beyond all question touching the inadequacy of the advice given by Mr. Keown to bring it within the requirements of the law is the circumstance that at no time did Mr. Keown see intestate alone or out of the presence of Mrs. Branin. According to Mr. Keown's testimony touching the first interview Mrs. Branin was present at all times. The same is true touching the second interview at the time the deed was executed in the afternoon of the same day. So at no time did Mr. Keown give advice to intestate privately or in the absence of Mrs. Branin, who was the party to be benefited by the transaction.

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Now, the law is unquestionably that the requirement of independent advice includes the element of advice privately given, advice given in the absence of the party to be benefited, and there can be no justification of a gift on the theory of independent counsel or advice when there has been no advice given privately. That has been pointed out specifically in the case of *Post v. Hagen*. In the opinion

there given by the Court of Errors and Appeals that element specifically appears as a necessary element of independent advice, advice privately given by one who is in no way interested in or connected with the proposed donee. So it seems to me that whatever view we take of Mr. Keown's being incapacitated by reason of his former or then present connection with Mrs. Branin his advice fails to meet the requirements of the law in that it was

10 not privately given. Let me, lest my recollection be inaccurate, turn to the case to which I refer. I have it now. *Post v. Hagen*, an opinion by Justice Garrison, reported in 71 N. J. E. at page 234, and on page 243 of the opinion is the following: "This presumption of apparent improvidence gives rise to the special rule followed in *Slack v. Rees* which may be called the rule of independent advice. By force of this rule, if a person upon whom another has in fact come to be dependent accepts a gift from such

20 dependent person of all of his or her estate, a court of equity, moved by the apparent improvidence of such a gift, casts upon the donee the burden of showing that the donor had the benefit of proper independent advice. Proper independent advice in this connection means that the donor had the preliminary benefit of conferring fully and privately upon the subject of his intended gift with a person who was not only competent to inform his correctly as to its legal effect, but who was furthermore so dis-

30 associated from the interests of the donee as to be in a position to advise with the donor, impartially and confidently as to the consequences to himself of his proposed benefaction."

Now, that situation, defined by the Court of Appeals as essential, did not exist. According to the undisputed testimony, not only of Mr. Keown, but

of others, Mr. Keown at no time advised with deceased except in the presence of Mrs. Branin, who was to be the beneficiary of the gift. Her presence made it impossible or impracticable for the proposed donor to confer with her counsel in the same deliberate and unrestrained confidence and freedom that would exist had they been alone, removed entirely from the hearing of anyone who might have been interested in the transaction. It is perfectly apparent to me that the very condition

10 which the rule, as defined by our Court of Appeals imperatively demands to exist to meet the requirement of independent advice and to meet the necessary elements of independent advice, was absent, and will always necessarily be absent so long as the advice is given in the presence of the proposed donee. So I can see no escape in this case from the conclusion that the gifts to Mrs. Branin must be set aside, and if the gift of the nephew were in-

20 volved in this case I apprehend the same decree probably would have to be made; it is the two things together which make the extreme improvidence of the transaction.

Now, the result is that the decree will set aside the deed, and as to the personal property it will require the defendant, Mrs. Branin, to account before a Master for what disposition she has made of such money as she received. It looks now as though only \$500 came to her hands. It seems that her bank book offered in evidence this morning measurably

30 corroborates her own testimony touching the fact that only \$500 came to her hands, but that, of course, is not conclusive. The entire money may have been received by her. It will be the duty of the Master to ascertain that, and the burden of proof, of course, will be on Mrs. Branin in an accounting before a

Master. It will be necessary for her to show what she received and what disposition she made of what she received. Such part of what she received as may have been expended for the benefit of the intestate she will, of course, be entitled to credit for, if she adequately establishes the fact of the expenditures.

Now, so far as the ultimate justice of the whole situation is concerned that is a matter with which I should not concern myself further than is beneficial in determining what transpired and the enforcement of established equitable doctrines. One cannot help but feel that if the truth were, as it has been said, that intestate stated that Mrs. Branin and this nephew were the only two people who ever had done anything for her and that her gratitude was due to them and that they should have all of her estate, it would seem more or less unfair that her wishes in that respect should be thwarted, for the benefit of those who may have done nothing for her, but with that element of the case I cannot adequately deal.

If Mrs. Branin, after an accounting for such moneys as she has received and has not applied to the use of the deceased, seeks compensation for services she has rendered to the deceased it will, of course, be her privilege and right to file a claim with the administrator for the value of those services and the administrator should, in my judgment, recognize it as right and proper that she should be compensated to a reasonable extent for such services as she has performed. This conveyance to Mrs. Branin may be reasonably said to have been a recognition upon the part of the deceased of an obligation to Mrs. Branin, and such a claim, I should think, should be allowed by the administrator to

an amount that will reasonably compensate her for such services as she may have performed. It follows that, since the whole situation is brought to this Court in this suit by the complainants, who include the administrator and the next of kin, this Court may appropriately dispose of the whole matter, so far as Mrs. Branin is concerned, by adopting the course usually adopted in cases of this class in the enforcement of the equitable doctrine that complainants' relief will only be granted on condition that Mrs. Branin be first compensated reasonably for her services. To that end the Master to whom the reference is to be made for an accounting may be directed to also ascertain and determine what amount, if anything, Mrs. Branin is justly entitled to receive for such services as she has rendered deceased.

## EXHIBIT C1.

7/13 1926.

PAYABLE N. N.  
 CAMDEN SAFE DEPOSIT AND TRUST CO.  
 55-87  
 Camden, N. J.

Pay to or bearer,  
 (10) Twenty One Hundred, Eighty Three /01 Dollars  
 and charge my time account. No. 48028

TIME ACCOUNT  
 \$2183./01 Balance Sign here Elizabeth P. Wurst  
 (Stamped)

PAID  
 Jul 13 1926  
 3

Camden Safe Deposit & Trust Co., Camden, N. J.

20

[ENDORSED]  
 Anna Branin.  
 (Perforated)  
 PAID  
 7 13 26  
 55 87

## EXHIBIT C2.

30

Deposit Book.  
 No. 48028 Camden, N. J., 7/10 1926  
 Received from CAMDEN SAFE DEPOSIT AND  
 TRUST COMPANY,  
 Eighty five 00/100 Dollars,  
 a/c of moneys standing to my credit.

595  
 198

\$85 00/100  
 N N

Elizabeth P. Wurst

(Stamped)  
 PAID  
 Jul 10 1926  
 2

Camden Safe Deposit & Trust Co., Camden, N. J. 10  
 (Perforated)

PAID  
 7 10 26  
 55 87

## EXHIBIT C3.

PAYABLE 5/6/26 4/22 1926.  
 CAMDEN SAFE DEPOSIT AND TRUST CO.

55-87  
 Camden, N. J.

20

Pay to or bearer,  
 Three Hundred/00 Dollars  
 and charge my time account No. 48028

TIME ACCOUNT  
 \$300./00 Sign here Elizabeth P. Wurst

(Stamped)  
 PAID  
 May 8 1926  
 2

Camden Safe Deposit & Trust Co., Camden, N. J. 30

[ENDORSED]  
 E. Ellsworth Branin  
 (Perforated)  
 PAID  
 5 6 26  
 55 87

EXHIBIT C4.

PAYABLE 6/7/26 5/24 1926  
 CAMDEN SAFE DEPOSIT AND TRUST CO.  
 55-87  
 Camden, N. J.

10 Pay to E. Ellsworth Branin Order  
 One Hundred & ten & no/100 or bearer,  
 and charge my time account No. 48028 Dollars  
 TIME ACCOUNT

770  
 257  
 \$110.00 Sign here Elizabeth P. Wurst  
 (Stamped)  
 PAID  
 Jun 7 1926  
 1  
 20 Camden Safe Deposit & Trust Co.

[ENDORSED]  
 E. Ellsworth Branin  
 (Perforated)  
 PAID  
 6 7 26  
 55 87

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COMPLAINANT'S EXHIBIT.

CAMDEN SAFE DEPOSIT & TRUST CO.  
 CAMDEN, N. J.  
 SHEET NO. ACCOUNT NO. 48028  
 Elizabeth P. Wurst

Date	With- drawals	Int. Bal. July.-Dec. Balance	Int. Bal. Jan.-June	Deposits	
1924					10
	Amt's Forward	2020.17	78.09		
			1.67		
Aug 16		2145.17	79.76	125.—	
			.36		
Sept 8		2181.17	80.12	36.—	
			.55		
Oct 6		2264.17	80.67	83.—	20
			.30		
		2309.17	80.97	45.—	
			.21		
Nov. 3		2340.17	81.18	31.—	
			.16		
		2387.17	81.34	47.—	30
			.07		
Dec 1		2309.17	81.41	22.—	
Dec. 31/24 Interest			√	81.41	
Jan. 1/25 Balance		2490.58	99.60		
			.92		

Jan 3		✓	2513.58	100.52	23.—
				.73	
Feb 2			2533.58	101.25	20.—
Dec. 31/25 Interest				✓	101.25
Jan. 1/26 Balance	52.68		2634.83	105.36	
	2.—			8.—	
10 May 6	300.—	50.68	2334.83	97.36	
		.37		2.57	
June 7	110.—	50.31	2224.83	94.79	
	NN	7.13		1.98	
July 10	85.—	NN	2139.83	92.81	
		43.18			
13		Int	2183.01		43.18
20 13	2183.01				
	2678.01		CLOSED		2678.01

DECREE AND ORDER OF REFERENCE.

(Filed Apr. 20, 1927.)

IN CHANCERY OF NEW JERSEY.

10

Between  
 LEWIS P. WURST, *et ux.*,  
*Complainants,*  
 and  
 ANNA MARY BRANIN, *et*  
*vir.*,  
*Defendants.*

On Bill, etc.  
 Decree and Order of  
 Reference.

20

This cause coming on to be heard in the presence of Robert J. Tait Paul, solicitor for complainant, and George D. Rothermel, solicitor for defendants, and the pleadings having been read and proofs having been taken, and argument of the respective counsel having been heard and considered, and the Court having considered said pleadings, proofs and argument of counsel; and it appearing that the complainants are entitled to the relief sought and prayed for by them in their bill of complaint.

30

It is, therefore, on this 19th day of April, A. D. nineteen hundred twenty-seven, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor by virtue of the authority of this Court, does hereby order, adjudge and decree that the convey-

ance by Elizabeth P. Wurst, deceased, on the thirteenth day of July, 1926, to Anna Mary Branin, for premises known as No. 622 Vine Street, in the City of Camden, County of Camden and State of New Jersey, which deed was on the thirteenth day of July, 1926, recorded in the office of the register of deeds of Camden County, in Book 631 of deeds, at page 400, etc., which premises are described as follows:

10 ALL the following described tract of land and premises situate in the City of Camden, County of Camden and State of New Jersey, known as No. 622 Vine Street, bounded and described as follows:

BEGINNING at a point in the Southerly line of Vine Street one hundred eighty-two feet and ten inches East of the Easterly line of Sixth Street; and extending thence Eastwardly along the Southerly line of Vine Street, a front of fourteen feet one inch, by Southward between lines of that width parallel to Sixth Street a depth of seventy-five feet to the Northerly line of a certain four feet wide alley running Westwardly into a certain other four feet wide alley, which runs from Cedar Street to Vine Street, together with a free and common use of both of said alleys forever.

20 be set aside, and hereby is declared to be null and void and of no force and effect, and to the end that title to aforesaid premises be vested in the said Elizabeth P. Wurst, and her heirs free and clear of any interest in or encumbrance upon said premises of the said Anna Mary Branin and her husband, J. Ellsworth Branin, impleaded as Elwood Branin, subject however to the conditions hereinafter recited.

30 It is further ordered that the said Anna Mary Branin do account to the complainants for the rents, issues and profits of the aforesaid premises, as well

as the use and occupation of said premises, or that part of said premises in possession or occupation of the defendants, Anna Mary Branin and her husband, J. Ellsworth Branin, allowing just credits and offsets, including occupational value, if any.

It is further ordered that the said Anna Mary Branin do account to the administrators of the estate of Elizabeth P. Wurst, for such moneys which she received from Elizabeth P. Wurst, now deceased, on and after the thirteenth day of July, 10 1926.

It is further ordered that this matter be referred to Wm. J. Kraft, Esquire, one of the Special Masters of this court, to ascertain, determine and report what amount, if any, the said Anna Mary Branin be justly entitled to receive as compensation for services rendered to the said Elizabeth P. Wurst, now deceased, from the eighth day of March, 1926, to the date of her death, August thirteenth, 1926.

It is further ordered that the said Master do take an account of the rents, issues and profits of the said premises, collected by the defendant, Anna Mary Branin, as well as the value of the use and occupation of the portion of the land and premises in possession and occupation of the defendants, Anna Mary Branin and J. Ellsworth Branin, allowing all just credits and offsets, including occupational value, if any. 20

It is further ordered that the said Master do take an accounting of the sums of money expended by the defendant, Anna Mary Branin and her husband, J. Ellsworth Branin, in the payment of taxes, assessments, water rents, fire insurance and necessary repairs and similar charges on the said premises and to ascertain the respective amounts of the said expenditures which should have been paid by the several parties interested in the said lands and 30

premises, in accordance with the terms of this order, as their interests may appear.

It is further ordered that the said Master do take an accounting of the moneys received by Anna Mary Branin from the said Elizabeth P. Wurst, now deceased, or any other person for her, on and after the thirteenth day of July, 1926; and that the Master do ascertain and determine what is the amount due to the administrator of the estate of Elizabeth

10 P. Wurst, after all proper allowances and credits have been made to the said Anna Mary Branin, for moneys expended by her in the care of the said Elizabeth P. Wurst, deceased.

It is further ordered that that portion of this decree, setting aside the conveyance of the said Elizabeth P. Wurst, now deceased, to Anna Mary Branin, hereinbefore more particularly referred to, shall not be effective until such time as Anna Mary Branin shall have been duly compensated for any moneys  
20 which shall have been determined to be due and owing to her by the said Master hereinbefore appointed, after a full and complete accounting shall have been made before him by the said Anna Mary Branin for the rents, issues and profits of the aforesaid premises, and moneys received by Anna Mary Branin from Elizabeth P. Wurst, deceased, less credits given for the services of the said Anna Mary Branin and such other expenditures of the said Anna Mary Branin as the Master shall find to be  
30 proper credits due to her.

Said master shall segregate and specify obligations due to the administrator and those due to the heirs.

E. R. WALKER,  
C.

Respectfully advised,  
E. B. LEAMING,  
V. C.

I herewith consent to the form of this decree.

Solicitor for Defendants.

A true copy.

THOMAS BARBER,  
Clerk.

NOTICE OF APPEAL.

10

IN CHANCERY OF NEW JERSEY.

Between

LEWIS WURST, MARY A.  
RITTMAYER, SAMUEL  
WURST, LEONARD  
WURST and GEORGE  
WURST,

Complainants,  
and

ANNA MARY BRANIN and  
ELLWOOD BRANIN, her  
husband,

Defendants.

On Bill, &c.  
Notice of Appeal.

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To Robert J. Tait Paul, Solicitor for Complainants,  
Wilson Building, Camden, N. J.:

30

The defendants hereby appeal from the whole and every part of the final decree made in this court in the above stated cause on the 19th day of April,

1927, to the Court of Errors and Appeals in the last resort in all causes.  
Camden, N. J.  
April 23, 1927.

GEORGE D. ROTHERMEL,  
*Solicitor for Defendants.*

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

GEORGE D. ROTHERMEL,  
*Of Counsel with Defendants.*

[ENDORSED]

20 Due and legal service of a copy of the within notice is hereby acknowledged this 23rd day of April, 1927.  
Robert J. Tait Paul,  
Sol'r for Complainants.

30

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

Between		10
LEWIS P. WURST, <i>et ux.</i> ,	} On Bill, &c. Petition of Appeal.	
<i>et als.</i> ,		
Complainants- Respondents,		
and		
ANNA MARY BRANIN, <i>et</i>	} Defendants- Appellants.	
<i>vir.</i> ,		
		20

To the Honorable, the Court of Errors and Appeals  
in the Last Resort in all Causes:

The petition of Anna Mary Branin and Elwood Branin, her husband, the appellants in the above stated cause respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date, the 19th day of April, 1927, wherein Lewis P. Wurst and others were complainants and the said Anna Mary Branin and Ellwood Branin, her husband, were defendants, which said decree set aside a certain deed made and executed by Eliza-

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beth P. Wurst to your petitioner, Anna Mary Branin and bearing date of July 13th, 1926, and of record in the office of the register of deeds of Camden County, in Book 631 of deeds, pages 400, &c., and which decree also requires your petitioners to account to complainants or some of them for the rents, issue and profits of the premises referred to in said deed and which decree further requires your petitioner, Anna Mary Branin, to account for such moneys as she may have received from the said Elizabeth P. Wurst, on and after July 13th, 1926, and certain other matters more specifically set forth in said decree, the said decree being based upon a finding by Honorable E. B. Leaming, Vice-Chancellor that there existed between the said Elizabeth P. Wurst, now deceased and your petitioner, Anna Mary Branin, a confidential relationship, and a feeling of dependence on the part of said Elizabeth P. Wurst upon your petitioner, Anna Mary Branin, and upon the further theory that because of such dependence or confidential relationship existing there was no independent advice given to or had by said Elizabeth P. Wurst, prior to the making of the deed hereinbefore referred to.

And your petitioners humbly appeal from every part of the said decree of the said Chancellor upon the ground that the same is erroneous.

And petitioners, therefore, pray that the said decree of the said Chancellor may be in the particulars, aforesaid, and in its entirety reversed, set aside and for nothing holden and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet and just.

GEORGE D. ROTHERMEL,  
Solicitor for and of Counsel  
with Appellants.

[ENDORSED]

Due and legal service of a copy of the within petition is hereby acknowledged this 25th day of April, 1927.

Robert J. Tait Paul,  
Sol'r of Complainants.

AMENDED NOTICE OF APPEAL. 10

IN CHANCERY OF NEW JERSEY.

Between  
LEWIS WURST, MARY A. RITTMAYER, SAMUEL WURST, LEONARD WURST and GEORGE WURST,  
Complainants,  
and  
ANNA MARY BRANIN and ELLWOOD BRANIN, her husband,  
Defendants.

On Bill, &c. Amended Notice of Appeal. 20

To Robert J. Tait Paul, Solicitor for Complainants,  
Wilson Building, Camden, New Jersey: 30

The defendants hereby appeal from the whole and every part of the final decree made in this court in

the above stated cause on the 19th day of April, 1927, said decree having been made by the Chancellor on the advice of Honorable E. B. Leaming, Vice-Chancellor, to the Court of Errors and Appeals, in the last resort in all causes.  
Camden, New Jersey,

GEORGE D. ROTHERMEL,  
*Solicitor for Defendants.*

10 May 3, 1927.

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

GEORGE D. ROTHERMEL,  
*Of Counsel with Defendants.*

20

[ENDORSED]

Due and legal service of a copy of the within notice is hereby acknowledged this 3rd day of May, 1927.

Robert J. Tait Paul,  
Sol'r for Complts.

30

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between  
LEWIS WURST, *et als.*,  
*Complainants-Respondents,*  
and  
ANNA MARY BRANIN, *et vir*,  
*Defendants-Appellants.*

ON APPEAL.

DEFENDANTS-APPELLANTS' BRIEF.

STATEMENT OF FACTS.

About the first day of March, 1926, the defendant-appellant rented a property at 622 Vine Street, Camden, New Jersey, from the decedent, Elizabeth P. Wurst. Miss Wurst continued to live there because she stated to the defendant-appellant that she had no place to go. During this time the defendant-appellant cared for her and secured medical attention for her. About the 10th day of July, 1926, the decedent was informed that she had cancer, and about the 11th or 12th day of July, 1926, she asked the defendant-appellant to get a lawyer and have the property in which she resided deeded to her. The defendant-

appellant then secured Walter S. Keown, a counsel-  
 lor-at-law of New Jersey, to draw up this deed. He  
 went to the decedent and explained to her that it  
 would be better for her to make a will. She was, as  
 the testimony shows, a woman of strong and deter-  
 mined mind and insisted that the deed be drawn.  
 About the same time she had the defendant-appel-  
 lant withdraw the sum of approximately \$2,183.00  
 from the bank, of which she retained possession,  
 using some to pay off her funeral bills, until about  
 July 20th, 1926. About July 13th or 14th, she re-  
 quested her nephew, Charles Rittmayer, to secure a  
 lawyer and have an assignment of a mortgage of  
 \$2,500.00 drawn. This assignment was drawn by  
 Mr. Marshall and executed some time later in the  
 same day that the deed was executed to the defen-  
 dant-appellant. The testimony on this point is  
 somewhat conflicting but it can be fixed that the as-  
 signment of the mortgage was executed at least sev-  
 eral hours after the execution of the deed of the  
 Vine Street property to the defendant-appellant.

On August 13th, 1926, the decedent died and let-  
 ters of administration were granted to the com-  
 plainant on the 23rd day of August, 1926. On the  
 24th and 25th days of March, 1927, the matter was  
 brought on for final hearing before the Honorable  
 Edmund B. Leaming, Vice-Chancellor, at Camden,  
 at which time he rendered his conclusions orally, to  
 which the defendant-appellant takes exception.

#### REASONS FOR REVERSAL.

The defendants-appellants appeal to your Honor-  
 able Court for a reversal of decree made by Hon-  
 orable Edwin Robert Walker, Chancellor, and ad-

vised by Honorable Edmund B. Leaming, Vice-Chan-  
 cellor, on April 20th, 1927, for the following reasons:

1. That the existence of a confidential relationship  
 between the decedent, Elizabeth Wurst, and the de-  
 fendant-appellant was not proven.
2. That the Vice-Chancellor erred in his conclu-  
 sions, State of Case, page 184, by disregarding the  
 consideration for the deed.
3. That the transaction, assuming that a gift was  
 made, was not improvident and the rule of indepen-  
 dent advice does not apply.
4. That, assuming that this transaction was a gift  
 demanding the application of the rule of indepen-  
 dent advice, the requisites of this rule were substan-  
 tially met with.

#### ARGUMENT.

1. That the existence of a confidential relationship  
 between the decedent, Elizabeth Wurst, and the de-  
 fendant-appellant was not proven.

The rule in this State has been repeatedly laid  
 down and followed that confidential relationship is  
 never presumed, it must be proven. Judge Garrison  
 says, in the case of *Collins v. Collins*, 45 N. J. Equity,  
 page 820:

"The relationship out of which undue influ-  
 ence can be presumed not having been shown,  
 there must be some direct proof of fraud in  
 order to set aside the conveyance,"

and in *Fulper's Estate*, 99 N. J. E. 293, at page 313, the learned Vice-Ordinary Buchanan says:

"As to the existence of the dominant confidential relationship (on proof of which the burden of disproving the presumptions heretofore considered is cast upon the transferee), the burden of proof is, of course, on the party seeking to set aside the transfer. Where such relationship is not shown the presumptions against the transferee are not raised, even though the transfer be without valuable consideration and be improvident."

*James v. Aller*, 68 N. J. Eq. 666;

*Kelso v. Kelso*, 96 N. J. Eq. 354;

*Fretz v. Roth*, 70 N. J. Eq. 764; and

*LeGendre v. Goodrich*, 46 N. J. Eq. 419.

In *Connors v. Murphy*, 4 Advance Reports, 1610, at page 1614 (not reported in Equity reports at this date), Justice Trenchard, speaking for the Court of Errors and Appeals, says:

"The complainant, however, argues that the relation of the parties raised a presumption of fraud or undue influence. We think not. The fact that the donor was one of a number of boarders living in the boarding-house kept by the donee is not sufficient to raise a suspicion of fraud or undue influence, in the absence of circumstances showing a relation of trust and confidence. And where, as here, the parties to a gift are of about equal age and mental capacity, and their relations are such as to indicate that they dealt on terms of equality, there being nothing to show superior knowledge of the matter derived from a fiduciary relation or overmastering influence upon the part of the donee, and nothing to show mental weakness or depen-

dent confidential relation upon the part of the donor, the transaction is presumed to be valid, and it is not incumbent upon the donee to show affirmatively that no fraud or undue influence was used."

In 47 N. J. Eq., page 135, in the case of *Pirioni v. Carrigan*, the Court lays down the rule that the relationship must be such as does not usually exist as between strangers.

In *Collins v. Collins*, 45 N. J. Eq. 813, at page 820, where a son had demanded a conveyance of a property from his father as a condition of supporting the father, Judge Garrison said, in upholding the transaction:

"We are not called upon to express any opinion as to the standard of conduct here displayed, suffice to say that no presumption of undue influence should rest upon the fact of family relationship in view of such language, more brutal frankness could not have existed between most total strangers."

It is contended that if the Court in that case could not presume undue influence on the part of the son where a binding relation of kinship was present, it could do less so in the case at bar.

In 96 N. J. Eq. 354, at page 358, Judge Clark says in the case of *Kelso v. Kelso*:

"It is clear, however, that the influence of one person over another is found only in certain positive acts or in certain types of confidential relationships between them. Lord Justice Fletcher-Moulton, in *Coomber v. Coomber* (1911) 1 Ch. 729, observed that although the relationship between himself and his errand boy was a confidential one, it did not follow that the

latter had any influence over him. As influence, in term, implies that dominance has been achieved, it can only be presumed in relationships where one party occupies a dominant position towards the other."

In *Daley v. Eichkoff*, 98 N. J. Eq. 404, at page 409, Vice-Chancellor Bentley observes that while a very friendly relation may exist between two parties, it can not necessarily follow that one exercises a dominating influence over another.

In *Fulper's Estate*, 99 N. J. Eq. 293, at page 315, Vice-Ordinary Buchanan says:

"It might be inferred, and not without justification, from some of the expressions in some of the adjudicated cases, that there must, necessarily, be present some mental weakness or deficiency on the part of the father. \* \* \* \* \*  
And the question of mental weakness is, perhaps, more nearly a controlling circumstance as between persons who are not parent and child or blood relatives."

From an examination of the State of the Case there is no mental weakness on the part of the decedent in the instant case.

The next question which clearly presents itself is, was there any of the circumstances present which Judge Clark lays down in *Kelso v. Kelso*, 96 N. J. Eq. 354, at page 358, when he says:

"Such dominance may arise from the facts of age, sex, the condition of mind or of body, or even of pocketbook of either of the parties, or from the customs of the particular civilization in which they live. A combination of certain of these factors without more, indicates a relation in which normally one of the parties occupies a dominant position."

It is contended by the defendant-appellant that no such physical dominance existed.

As the testimony shows at the time this transfer was made, she still had remaining a \$2,500.00 mortgage and approximately \$2,183.00 in cash. She was not isolated or kept from her relatives or friends, in fact, the testimony of Charles Rittmayer, page 142 *et seq.*, State of Case; Clara Rittmayer, page 129, *et seq.*, State of Case, and the testimony of the complainant, Lewis Wurst, State of Case, page 54, particularly at page 57, lines 10 to 20, shows that her relatives and friends had free access to her at whatever time they desired and the testimony of Lewis Wurst, *supra*, clearly shows that the reason he did not visit her before this time was the fact that he did not desire to.

Nor can there be any reasonable ground deduced from the testimony that any dominance existed, in view of the testimony of Clark P. Wheaton, whose testimony shows that on July 10th, this woman visited the bank, exercised her own mind in respect to what she wanted done and, until the time of the fainting, controlled her business relations with the bank.

It is submitted that this case, on the facts, is analogous to the transaction which occurred in *Conners v. Murphy*, *supra*.

It is thereby submitted that the complainant, Lewis Wurst, has not proven the existence of confidential relationship wherein a dominating influence could be presumed to be exercised by the defendant-appellant as required by the law, repeatedly laid down in numerous decisions in this State and the defendant-appellant respectfully prays that for this reason the Court will reverse the decree advised by the Honorable Vice-Chancellor.

2. That the Vice-Chancellor erred in his conclu-

sions, State of Case, page 184, by disregarding the consideration for the deed.

The defendants, in their answer set up at page 12, State of Case, that there was consideration given for the deed in the form of a promise to provide for the support of the decedent, Elizabeth Wurst. This is supported by the uncontradicted testimony of the defendant-appellant at page 160, line 16, *et seq.*

"Question. Did she say anything with reference to where she intended to remain until she died?

Answer: With me."

The Vice-Chancellor, in his conclusions at page 184, *et seq.*, says:

"Admittedly, these were gifts. There was no consideration for them other than gratitude,"

and he goes on to give his reason for so finding them gifts when he states:

"Any promises expressed or implied that might have been relied upon by the decedent for future care and attention from either the nephew or Mrs. Branin would not be regarded as a consideration unless those promises were expressed in some written or enforceable obligation."

It is submitted that this conclusion is contrary to a number of cases in this State, the most recent of which is *Voorhees v. Christie, et al.*, 96 N. J. Eq. 337, at page 329, where Justice Katzenbach says, at page 14:

"The agreement was not in writing. It was not necessary that it should be to make it legal,"

and further on he states:

"This view is based upon the fact that Mrs. Voorhees, although advanced in years, was at the time mentally keen and alert and willing, if not eager, to enter into a contract to secure these advantages,"

and as to the wisdom of making such a contract the Justice states:

"Yet, within limits, an aged person should be permitted to contract for her support and care during the remainder of her life, and the party with whom the contract is made, where the evidence shows that the transaction is understood, there has been no fraud or overreaching practiced, should be protected in the retention of the consideration which has induced the contract. Often an aged person can secure more comfort and care by such a contract than if the money were retained and expended from time to time."

In the Voorhees case, the transfer consisted of property amounting to approximately \$8,000 out of an estate of \$11,000, while in the instant case the transfer was of property amounting to \$3,000 out of an estate approximating \$7,700.

The State of Case shows that Mrs. Wurst accepted the benefits conferred on her by the defendant-appellant, Anna M. Branin, and solicited them while she enjoyed such benefits for a comparatively short length of time after the transfer was made because of her death.

It is submitted that this lady, having received such benefits, it is highly inequitable for her administrator to seek to rescind this transaction, for Justice Katzenbach in the Voorhees case, states on page 14:

"Having received the advantages of the contract, it seems to us that it is inequitable to oblige the other party to the contract to surrender the consideration."

The learned Vice-Chancellor, although feeling that the conveyance should be set aside, finds as a fact (State of Case, page 190, conclusions of the Vice-Chancellor), that your defendant-appellant was entitled to some compensation:

"If Mrs. Branin, after an accounting for such moneys as she has received and has not applied to the use of the deceased, seeks compensation for services she has rendered to the deceased it will, of course, be her privilege and right to file a claim with the administrator for the value of those services and the administrator should, in my judgment, recognize it as right and proper that she should be compensated to a reasonable extent for such services as she has performed. This conveyance to Mrs. Branin may be reasonably said to have been a recognition upon the part of the deceased of an obligation to Mrs. Branin, and such a claim, I should think, should be allowed by the administrator to an amount that will reasonably compensate her for such services as she may have performed. It follows that, since the whole situation is brought to this Court in this suit by the complainants, who include the administrator and the next of kin, this Court may appropriately dispose of the whole matter, so far as Mrs. Branin is concerned, by adopting the course usually adopted in cases of this class in the enforcement of the equitable doctrine that complainants' relief will only be granted on condition that Mrs. Branin be first compensated reasonably for her services. To

that end the Master to whom the reference is to be made for an accounting may be directed to also ascertain and determine what amount, if anything, Mrs. Branin is justly entitled to receive for such services as she has rendered the deceased."

It is, therefore, submitted that such an equity as is referred to by the learned Justice Katzenbach in *Voorhees v. Christie, supra*, does exist for this transfer and a valuable consideration did exist for this deed.

It is, therefore, submitted for the reason stated above that your Honorable Court will reverse the decree made by the Chancellor in this case in the Court below.

3. The transaction, assuming that a gift was made, was not improvident, and the rule of independent advice does not apply.

It has been held in numerous cases in this State, one of the more recent of which is *Morrison v. Morrison*, 94 N. J. Eq. 646, affirmed 94 N. J. Eq. 801, that the rule of independent advice does not apply where the transaction is not improvident and reiterated in *Fulper's Estate, supra*, at 307 and 308, by the learned Vice-Ordinary Buchanan, when he says:

"In *Post v. Hagen*, 71 N. J. Eq. 234 (at p. 236), this distinction is made, and the application of the rule requiring independent advice has since then been limited to cases where the transfer has comprised so much of the transferor's property as to leave him without means of support. *Groff v. Stitzer*, 75 N. J. Eq. 452, at

Naylor, 84 N. J. Eq. 646; *Grimminger v. Alderton*, 85 N. J. Eq. 425, at page 434; affirmed 86 N. J. Eq. 247; *Siebold v. Zieboldt*, 93 N. J. Eq. 327; affirmed, *ibid.*, 500; *Morrison v. Morrison*, 94 N. J. Eq. 646; affirmed, *ibid.*, 801. The Morrison case last mentioned squarely holds that the rule as to independent advice is not applicable when the transfer is not improvident."

The question, then, remains, was the gift improvident; in fact, the question is essentially a factual one.

In the instant case the transfer of the property which was valued at \$3,000.00 took place on July 13th. Some time later in the day an assignment of a mortgage for \$2,500 was made, in the testimony of Charles Rittmayer, page 142, *et seq.*, State of Case. Further, it is shown by the testimony, that the decedent had \$2,183.00 which she had drawn out of the bank on that day. These two items, taken in connection with the property in question and the \$3,000 house, would aggregate \$7,683.00 and it has been repeatedly held in this State that if the latter gifts of property may be improvident the first one will stand.

In the instant case, there remains, after the conveyance, \$4,683.00 and a promise on the part of the defendant-appellant, Anna M. Branin, to support the decedent for life, and it is submitted that on these facts that the transfer is not improvident and should not be set aside, assuming that independent advice had not been given.

A relatively recent case, giving an example of what is considered improvident by the Courts of this State, is the Morrison case, stated *supra*, where Vice-Chancellor Griffin says, at page 650:

"Where several gifts are made at different periods of time, later gifts might be held im-

provident without impairing the validity of the earlier ones."

It might be argued that the two gifts occurring at the same time are practically of the same effect, and so far as the rule is concerned, the act is one. However, if the rationale of the rule is considered as laid down in the various cases in this State, it is not the fact of the gift being made but the leaving of the donor in destitute circumstances that the Court tries to protect. The question of how long an interval of time existed between the various gifts should not be material. If a gift is not improvident when followed after an interval of two years by one which is, in fact, improvident likewise, the first gift or transaction should not be regarded as improvident, even though the second gift or transaction occurs within a few hours or a day after the first one, if the real purpose of the rule is to be considered. The amount of the instant case, as stated *supra*, cannot be considered as improvident if viewed in the light of the Morrison case, where a gift of a \$4,500 house was made and the donor still retained \$4,200 in cash in bank or less assets than the donor retained in the case at bar. In the case of *Conners v. Murphy*, *supra*, a gift of \$5,350 was not deemed improvident where the amount remaining was approximately \$6,400.00.

If the rules as laid down in these cases can be used as criteria either as to the actual amount left or as to the relative proportion, it is submitted that the conveyance made to the defendant-appellant was not in fact improvident.

There must also be considered the fact that the donor did not have long to live, as shown by the testimony of Dr. Schall, State of Case, page 124:

"Q. Is that medicine she could possibly send someone to your office for just as well as coming herself?

A. Why, yes. They sent in every now and then that she was out of medicine, and they would have the prescriptions refilled.

Q. Merely a question of using that same medicine with the hope that it might ease her until the end finally came?

A. I saw her now and then, but I didn't think it was necessary to stop in every day or every other day the same as with pneumonia or typhoid fever, or something that way, because I knew that it was only a matter of time.

Q. Did she object to your calling to see her?

A. Never did to me.

Q. Never did to you?

A. No."

And this has been considered a relevant factor in determining the improvidence of the transaction, by the Honorable Vice-Chancellor Griffen, in the case of *Morrison v. Morrison, supra*, when he says, at page 650:

"The question—and the only question in the whole case, that I can see—is, first, being possessed of this real estate (which at the time of the gift to the daughter was regarded as worth \$4,500, but a year and a half later sold for \$10,000), was this gift improvident if he still held \$4,200 in cash, considering, also, his age and the probability that his working days were about to terminate, or, at least, would terminate in the near future, holding only about \$4,200 to care for him for the balance of his days, which, taking the testimony of Dr. Connolly, could hardly be many."

For these reasons it is, therefore, submitted that the transaction was not an improvident one as measured by the tests laid down in this State as necessary for the calling of this rule of independent advice into operation.

4. Assuming that this transaction was a gift demanding the application of the rule of independent advice, the requisites of this rule were substantially met with.

It is admitted by the defendant-appellant that the advice was not given privately to the donor, but an examination of the cases will show that this rule had its origin in the need that the transaction be well understood by the donor. In the case at bar, it is clearly shown that the donor had her mind well made up before Mr. Keown was called in, as shown by the uncontradicted testimony of Mr. Keown, at page 107, State of Case:

"I talked to her and she told me she realized she was going to die sooner or later and that she had made all these arrangements, and I was trying to console her, told her I knew of people who had cancer and who had lived years and probably she wasn't going to die as soon as she thought she was going to die, and general conversation of that kind, and I told her I understood she wanted to see me, there was something she wanted to do, and she said yes, and she briefly told me what she wanted to do, and I said, 'Madam, you may live for a long, long time, I have known people with cancers who have lived longer than they wanted to live,' and I said, 'If you have things you want to attend to the best way to attend to them is by a will,'

and she said under no consideration would she have a will, there were only two people she wanted to take care of, I don't recall whether she said a niece or a nephew, and this good woman, who together with this relative have been the only people who have ever cared a bit for me in my condition here. She told me what Mrs. Branin had been doing for her, and how hard the work was, and so on and so forth, and I saw it was useless to persuade her to have a will, she said, 'No, I won't have a will, I have done everything else, I have ordered'—I am sure she told me she had even selected the dress she was going to be buried in, and I said, 'Whatever you want done will be done, don't worry about it.' I didn't want to excite her, and I said, 'If that is what you want to do I will have to have your old deed,' and she told Mrs. Branin and pointed—there was a bureau alongside the bed, not chairs as another witness described it—I can see her holding the bed—and there was a small place and then the bureau, or something, and it was in the corner. The room was a small room, and I think I sat in the chair right next to her bed, and these papers were given to me. I don't recall what papers I got at that time, I think I only took the deed, and I went back to my office, and I recall giving the matter some thought as to the consideration in the deed, and realizing it was what in my opinion was an absolute gift I thought it would be better to put in the true consideration, or something which would represent a true consideration \* \* \* \* "

And this ability to exercise a will of her own is corroborated by the testimony of Bland Shreve, page 36; Lewis N. Shreve, page 46, and William B. Snel-

baker, page 100, State of Case, all disinterested witnesses.

It is clearly shown that the donor was fairly dealt with by the testimony of Mr. Keown, stated *supra*, and the comment of the Vice-Chancellor stated as a fact, in his conclusions, when he says, at page 185:

"Too much cannot be said touching the integrity of Mr. Keown and his standing at this bar. I apprehend no lawyer at this bar can be found who commands a higher degree of respect than Mr. Keown, and I don't hesitate to take this occasion to say that in all of the innumerable cases that Mr. Keown has tried before me he has throughout, as also in his private conduct, elicited from me the highest degree of admiration and respect. I trust Mr. Keown implicitly and I accept his word as truth. So his testimony in this case I accept without qualification."

The attitude of Mr. Keown in looking after the donor's interests is shown by his testimony on page 107, recited *supra*, in this brief, and on page 106, State of Case, where he insisted that he see the donor and talk to her before he did anything.

It is submitted that this rule of independent advice is essentially an equitable one and that advice being given to the deceased in the case at bar was such that the purpose of the rule was essentially fulfilled and the conveyance should stand.

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#### CONCLUSION.

It is, therefore, prayed by the defendant-appellant, for the reasons set forth above, that the con-

veyance was not a gift, was not improvident, but made for a consideration, after disinterested advice, and should stand; and further prays that your Honorable Court will reverse the decree ordered by the learned Chancellor below or reform it in such respects as your Honorable Court will deem equitable and just.

GEORGE D. ROTHERMEL,  
*Solicitor for and of Counsel  
with Defendant-Appellant.*

NEW JERSEY COURT OF ERRORS &  
APPEALS.

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Between  
LEWIS P. WURST, *et ux*,  
*Complainants-Respondents*,  
and  
ANNA MARY BRANIN, *et vir*,  
*Defendants-Appellants.*

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ON BILL, ETC.

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BRIEF FOR COMPLAINANTS-RESPONDENTS.

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Due to the incomplete statement of facts in the appellant's brief it is considered necessary to restate the facts as follows:

STATE OF FACTS.

On or about March first, 1926, Anna M. Branin and J. Ellsworth Branin, her husband, rented the two lower floors of 622 Vine Street, Camden, New Jersey, from Elizabeth P. Wurst now deceased who retained the third floor for her own use. The deceased was at that time about sixty-four years old and had been in poor health for some time past and in May became confined to her bed and her condition be-

came gradually worse so that she was almost entirely dependent upon the Branins for care. Charles Rittmayer, her nephew, and his wife visited the deceased more frequently than any other member of her family. About July twelfth, the deceased was informed that she was suffering from cancer. At that time she was possessed of a mortgage on a farm in Woodbury in the sum of twenty-five hundred (\$2500.00) dollars, cash in bank of the sum of two thousand one hundred eighty-three dollars and one cent (\$2183.01) and the premises on Vine Street in Camden. Charles Rittmayer and his wife Clara brought his mother, Mary Rittmayer, in to see the deceased on the morning of July thirteenth. When he found that the bank account had been transferred to some one other than himself he immediately went to Woodbury and had an assignment of mortgage prepared by George Marshall, Esq., who brought this paper up to the deceased at 4.30 P. M. that afternoon and had her execute the same. Mr. Marshall also prepared a will at the request of Charles Rittmayer leaving all her property to him, but this the deceased refused to execute.

Likewise, on the morning of July thirteenth Mrs. Branin called upon Walter S. Keown, Esq., to prepare a deed to her for the property on Vine Street. Mr. Keown, who had previously represented Mr. Branin, called on the deceased and talked to her about the conveyance of the Vine Street house to Mrs. Branin and later returned with the deed and took her acknowledgment shortly after lunch. At this time he entered by the rear door of the house instead of the front door. The front door being directly opposite the house where the Rittmayers had gone for lunch. Mrs. Branin was present on both occasions of Mr. Keown's visit with deceased while Clara Rittmayer was present when the acknowledgment was

taken. She had been at the home of Lewis Wurst and had returned when she saw Mrs. Branin up at the window of the deceased room because she felt "that there was something doing over there."

On July thirteenth Mrs. Branin also engaged the services of Mr. Keown to get released from the Camden Safe Deposit & Trust Company the balance of the deceased account amounting to two thousand and one hundred eighty-three dollars and one cent (\$2183.01). The bank officials were familiar with the condition of deceased as she had fainted and "almost died" while making a withdrawal on July tenth. The money was delivered to Mrs. Branin on the afternoon of July thirteenth. On that date or the next day as there is some contradiction in the testimony, deceased paid bills amounting to \$940.00 and gave five hundred (\$500.00) dollars to Mrs. Branin to pay any current bills that might be incurred, but as to the balance of the distribution there is no testimony as to where it went, but no funds have come into the hands of the administrator of the estate of Elizabeth P. Wurst who died August thirteenth, 1927. The entire premises, 622 Vine Street, Camden, have been occupied by defendants since death of Elizabeth P. Wurst. The heirs-at-law of Elizabeth P. Wurst are: Lewis Wurst, Mary Rittmayer, George Wurst, Samuel Wurst and Leonard Wurst.

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#### REASONS FOR AFFIRMATION OF DECREE.

The complainant-defendant submits that this Honorable Court should affirm the decree made in this Court for the following reasons:

1. That there existed a confidential relationship between the defendant-appellants and Elizabeth P. Wurst which placed upon the appellants certain burdens which they have failed to disprove.

2. The transaction was such that Elizabeth P. Wurst became thereby impoverished.

3. That there was a failure to procure that independent advice which is necessary to sustain such a gift as was made in this cause.

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ARGUMENT.

I.

THERE EXISTED A CONFIDENTIAL RELATIONSHIP BETWEEN THE DEFENDANT-APPELLANTS AND ELIZABETH P. WURST WHICH PLACED UPON THE APPELLANTS CERTAIN BURDENS WHICH THEY HAVE FAILED TO DISPROVE.

The testimony as to the general health of Elizabeth P. Wurst shows that prior to March, 1925, she was in failing health (testimony of Bertha Davis p. 84, l. 25, *et seq.*), and that about March, 1926, her condition became worse. (Testimony of Bertha Davis p. 86, l. 9; p. 88, l. 1, *et seq.*, and also testimony of Anna M. Branin p. 149, l. 35, *et seq.*) Her condition was such that in May, 1926, she became exceedingly ill and remained almost bedfast up to the time of her death. In her last illness she was attended by members of the Branin family except for three visits of her nephew, Charles Rittmayer, and

Clara, his wife, and her sister, Mary Rittmayer. Shortly before her death she was also visited by Lewis Wurst and the members of his family. The condition of Elizabeth P. Wurst can be obtained from the testimony of Clark P. Wheaton who spoke with her on her visit to the bank on July tenth, when she was brought there by Mrs. Branin.

“Q. What was Mrs. Wurst’s condition at that time, did she appear strong to you or feeble?”

A. She appeared as though she would die at any second.”

State of case p. 25, l. 31, *et seq.*

Dr. Schall who attended her on that occasion described her condition as follows:

“Q. Do you remember the occasion on July tenth, that you were called down to the Camden Safe Deposit & Trust Company to attend Mrs. Wurst?”

A. Yes.

Q. What time, if you recall, did you go down there, Doctor?

A. I think it was during my noon office hour, that is between 12 and 2.30.

Q. What condition did you find Mrs. Wurst in?

A. She was completely exhausted. She had gone as long as her vitality would permit her to go and she just couldn’t go any more and she was completely exhausted.”

State of case p. 124, l. 27, *et seq.*

The testimony of Lewis Wurst on the occasion of his visit to his sister on July thirteenth, in the afternoon when he came over with his sister, Mary Rittmayer, was: “I feel rotten, I am played out.”

State of case p. 56, l. 28.

Mary Rittmayer also testified while she was with her sister on the morning of July thirteenth, that her sister had a severe fainting spell.

“Q. And she was more or less confined to the house from that time on to the time of her death?”

A. Yes, she was very, very feeble.

Q. During the last month or so of her illness was she more confined than previously?

A. Yes, she was scarcely able to come down the steps, and I don't think she did, but on one occasion I was there, I think it was on the same day my daughter-in-law went to Woodbury with her husband and I was left there with her, and Mrs. Branin went on an errand of some kind, and she asked me if I was going to stay there for a while and I said yes, and while she was gone my sister had a very bad fainting spell and I thought she was going to drop, and I helped her from her chair, helped her to her bed, and I said, ‘Shall I send for the doctor also?’ and she said, ‘No, just give me a drink, and I will feel better after a while, I get these spells my heart is so bad.’

Q. That was on the thirteenth?

A. Yes.”

State of case p. 69, l. 28, *et seq.*

The general feeble condition of the deceased was unquestionably greatly exaggerated by the fact that some time on or about July twelfth, there had been communicated to her the news that she was suffering from cancer. This fact was apparently only known to Mrs. Branin and Clara Rittmayer and on that day Mrs. Branin procured from the deceased the deed to the Vine Street property and

Clara Rittmayer likewise procured the mortgage on the Mantua farm in order to have the necessary papers, transferring these properties, prepared to them.

That Mrs. Branin had plans to get the Vine Street property is shown by the testimony of Bertha Davis at p. 92, l. 21, *et seq.*, likewise the testimony of Lewis P. Wurst as to his conversation with the deceased about this transaction (p. 58, l. 22, *et seq.*), clearly shows a carefully laid plan to obtain the property. This apparent fear of the Branins by the deceased is also brought out in the testimony of Mary Rittmayer her sister (p. 75, l. 6; *et seq.*) Charles Rittmayer, witness offered on behalf of the defendant likewise sustained this testimony, p. 147, l. 29, *et seq.*

There can be no reasonable doubt concerning the relation of Mrs. Branin to the deceased. The fact that the deceased was largely dependent on Mrs. Branin for care and the hope that she would continue to administer to her wants could not but help to create a confidential relationship between them and “a feeling of gratitude upon the part of the deceased towards the Branin family and a feeling of extreme dependence upon them.” All of which would have the natural result of subjecting the deceased to those in whose confidential relationship she was, but it is submitted that there is no necessity to presume a relationship where the facts such as these conclusively show a confidential relationship did in fact exist and also that a woman well along in years, utterly helpless, was entirely dependent upon those with whom she lived. The fact of this dependence is clearly shown by testimony as to the only time when Miss Wurst left the house which was on July tenth, when she was taken by Mrs. Branin. The relationship is further strengthened by the fact that all the checks which were drawn against the account

of Miss Wurst, so far as testimony is concerned, were endorsed by Mrs. Branin or her husband with the exception of the one on July tenth, when Mrs. Wurst was brought to the bank. See Exhibit C1, C2, C3 and C4.

All of which we submit clearly shows a relationship within the definition which Vice-Chancellor Buchanan set forth in *re Fulper Estate*, as to what constitutes a confidential relationship.

"The nature of that dominant confidential relationship is difficult of exact definition or delimitation. The relationship includes, not only all cases of technical, legal, fiduciary relationship, such as guardian and ward, principal and agent, trustee and *cestui que* trust, but also all cases where trust and confidence actually existed. It comprehends, as is said in *Cowee v. Cornel*, 75 N. Y. 91 (quoted in *Mott v. Mott*, *supra*, and in other cases in this State), all cases where 'the relationship between the \* \* \* parties appears to be of such a character as to render it certain that they do not deal on terms of equality but that either on the one side from superior knowledge of the matter derived from a fiduciary relationship or from overmastering influence; or on the other from weakness, dependence, or trust justifiably reposed, unfair advantage \* \* \* is rendered probable.' It exists, as is said in *Slack v. Pees*, *supra*, when the parties occupied 'relations whether legal, natural or conventional in their origin in which confidence is naturally inspired or, in fact, reasonably exists;' 'where the parties hold positions in which one is more or less dependent on the other.'"

*In re Fulper*, 99 N. J. Esq., 293 p. 314, 132 Atl. 844.

There remains however, the question of undue influence. The course of action followed by deceased was most extraordinary. There can be but little question that the knowledge of her ailment which came to the deceased on July twelfth certainly precipitated the completion of this plan, but the question remains, whose plan was it? To determine this we must rely wholly upon the defendants' witnesses. The testimony of Charles Rittmayer, who together with his wife arranged to take his mother in to visit the deceased for the purpose of having someone watch the deceased is certainly most significant. The reason is found in his testimony as follows:

"Q. Before leaving for Woodbury you told your mother to stay with your aunt and not to leave her alone with any other person.

A. I told her to stay there with her.

Q. Why were you particularly anxious for your aunt not to be left alone?

A. I wanted to see what was going on.

Q. You thought something was in the air?

A. Yes, sir.

Q. Where did you get that idea?

A. From remarks I had heard.

Q. What remarks had you heard?

A. That things were going to be transferred over.

Q. To whom?

A. To Mr. and Mrs. Branin.

Q. Is that the reason you went down there and prepared a will giving all the property to you?

A. Yes, sir.

Q. So as to beat them to it?

A. I guess that was the idea.

Q. In other words, there was a grand scramble?

A. She told me to go ahead and have the papers fixed up.

Q. And it was a grand scramble?

A. Yes, sir.

Q. The old lady dying and everybody was out to get what she had, that is the cold proposition?

A. That was the idea if you look at it that way, but she had told me quite a while before this she was going to do this, that is the reason I was taking care of that part of it.

Q. She told you she was going to give you the farm?

A. Yes, sir.

Q. She had told you that about two years ago?

A. Yes, and she also told me she would give me the house if I came up there to live there..

Q. Why is it you had a will prepared giving all the property to you?

A. From the way she spoke.

Q. And you went down immediately after you got to Camden and left someone with your aunt?

A. Left my mother.

Q. And left instructions not to leave your aunt alone?

A. Told her to stay there.

Q. When you came back did you find out there had been a transfer of this property from Miss Wurst to Mrs. Branin?

A. Yes.

Q. Didn't you say to them, 'Why did you leave her alone?'

A. Yes, I did."

State of case p. 146, l. 4, *et seq.*

The testimony of Clara Rittmayer is likewise significant in corroborating that of her husband.

“Q. Before your husband left for Woodbury did he have any conversation with Elizabeth Wurst with reference to her money at the bank?

A. No.

Q. He did not?

A. No, he did not.

Q. Didn't he ask her whether or not he could get the money for her?

A. He came there for that purpose, but she said, 'It is too late, it is all over with,' and he didn't ask any more and he left for Woodbury.”

State of case p. 137, l. 9 *et seq.*

This conduct on the part of the Rittmayers can only be explained in the light of Charles Rittmayer's testimony in that the Branins and the Rittmayers were trying to get what they could out of the deceased before her death. Certainly this fact is substantiated by Louis Wurst in his conversation with the deceased. State of case page 58, line 22, *et seq.*, page 59, line 27, *et seq.* It is submitted that there is ample testimony of undue influence which would warrant the decree as filed in this cause, and for the further reason that the defendants have not sustained the burden of proof placed upon them by this Court in the case of *Slack v. Rees*, wherein Chief Justice Gummere laid down the rule as follows:

The following citations from our decisions make this plain:

“In all transactions between the parties occupying the relations, whether legal, natural or conventional in their origin in which confidence is naturally inspired, or in fact reasonably exists, the burden of proof is thrown upon the persons in whom confidence is reposed, and who

have acquired an advantage, to show affirmatively that no deception was practiced thereon, no undue influence used, and that all was fair, open and voluntary, but, that it was well understood \*\*\*" "Where the parties hold positions in which one is more or less dependent upon the other, the Courts of Equity hold that the weaker party must be protected, and they set aside his gifts, if he had not advice independently of the other."

*Slack v. Rees*, 66 Eq., 447-449. 59 Atl. 466-467.

Likewise Vice-Chancellor Griffin in the case of *Siebold v. Zieboldt*, has expressed the rule in this form:

"The deceased being aged and infirm, the gift being voluntary, the persons who were recipients of the gift being in a position to exercise influence over the deceased, the gift is void unless the donor knew the nature of the act and that it was not made through the influence of the donee and the burden of proof is on the defendants to negative these inferences."

*Siebold v. Zieboldt*, 93 Eq. 327-329. 115 Atl. 577-578.

The authorities cited in the brief of the appellants' brief, do not cover the facts in the case before the Court. The decision in the case of *Connors v. Murphy*, is based upon the grounds of gifts between persons of equal age and mental capacity, while the decision in the case of *Collins v. Collins*, is based upon the grounds of laches, on the part of the plaintiff, and the opinion in the case of *Kelso v. Kelso* does not deal with a confidential relationship but rather is based upon misplaced hope of a widower and a widow. The case of *Daly v. Eckhoff* is likewise not of much assistance in this case

as that opinion is based upon a course of conduct which was followed upon the advice of the donor's own counsel and therefore the independent advice required was in fact given.

We hereby submit that the finding of the Vice-Chancellor that a confidential relationship and dependency did in fact exist are sustained by an overwhelming abundance of testimony and further that the defendants have failed to carry the burden of proof of negating the testimony of undue influence as brought out by the testimony of witnesses, some of which were offered in their own behalf, and that therefore the decree in this case should be affirmed.

## II.

THE TRANSACTION WAS SUCH THAT ELIZABETH P. WURST THEREBY BECAME IMPOVERISHED.

The estate of Elizabeth P. Wurst on the morning of July thirteenth consisted of two thousand one hundred eighty-three dollars and one cent (\$2183.01) cash in bank, a twenty-five hundred (\$2500.00) dollar mortgage and the Vine Street property. Before 2.00 P. M., the Vine Street property had been conveyed to the defendant, Anna Mary Branin and her husband; by 4.30 the mortgage had been assigned to Charles Rittmayer and the money had been withdrawn from the bank and was in the preparation for distribution which distribution was in fact completed the next day with the exception of seven hundred forty-three (\$743.00) dollars, which cannot be traced. As to that sum there is something very suspicious, although so far as it can be perceived there is nothing in the evidence which more than creates suspicion as to its probable acquisition.

The wasting of the estate of the deceased was surely all part of one distribution which took the short space of twenty-four hours to complete, no doubt due to the appearance of other persons in the household of the deceased who would interfere with the transaction being completed at once. That it was the aim of Charles Rittmayer to get the whole estate is frankly admitted by him (state of case, page 146, line 3, *et seq.*) and his testimony further shows that the visit of his wife with Anna M. Branin on July twelfth brought the information of the contemplated transfer, which would defeat his plans. So there can be but little doubt that this distribution was but part of a general scheme to distribute the estate of the deceased and the fact that it took twenty-four hours to complete, being completed on the morning of July fourteenth (see testimony of Anna M. Branin (state of case, page 173, line 1, *et seq.*), certainly did not justify the Court in considering each conveyance as a separate conveyance. The net result was that the deceased was completely impoverished and the total estate distributed while she was a helpless invalid dying with cancer and retaining no estate in her own possession to protect her in her last days. The case of *Morrison v. Morrison*, 94 N. J. Eq., 644, which deals with two conveyances over two years apart certainly cannot be considered as holding that a distribution requiring twenty-four hours to complete was such that each gift must be considered apart from the balance in determining whether each gift might be held improvident.

All the conveyances were made without consideration. The deed recites a consideration of three thousand (\$3000.00) dollars but this as explained by Mr. Keown was done to represent the full value of the premises (state of case, page 108, line 28, *et seq.*), while the assignment was for one dollar and

love and affection. The testimony of Anna M. Branin as to the alleged consideration of the deed as referred to in defendant's brief merely shows an intention to remain on the part of deceased and not even a verbal promise to care for the deceased on the part of the defendant while there is no evidence of any written statement to that effect. Vice-Chancellor Buchanan in *re Fulper* commented upon the question of a consideration which must, at the present in this case, be presumed to be a verbal promise to take care of the deceased in this case, as follows:

"The rule apparently to be adduced unless *Daly v. Eckhoff* is to be taken to overrule it is that a transfer which would be deemed improvident if there were no consideration, is not saved from being improvident by a mere verbal promise to support for life."

In *re: Fulper (supra)*.

Certainly the defendant Anna M. Branin is protected by the decree entered in this cause so far as her services performed by her are concerned. She is protected just as the services of the defendant in *re Fulper* are protected by the decree of the Vice-Chancellor in that cause, in that the Vice-Chancellor charged against the amount to be returned the value of the services rendered.

It is submitted that the deceased was impoverished by the conveyances on July thirteenth and on the morning of the fourteenth and certainly was reduced to the condition of poverty contemplated by the opinion of Vice-Chancellor Stevens in the case of *Pearce v. Stines*, as follows:

"Gifts of all, or, as is phrased in *Post v. Hagen*, 'practically all,' of the donor's property, made to a child, at the time, when by rea-

son of the donor's physical condition and his dependence upon the grantee for care and service, the relationship ordinarily existing between them had been reversed, and the child had come to occupy the dominant position. In this case proof that no influence was in point of fact exercised will not suffice. There must be proof, in addition, that the donor had competent and independent advice as to the effect of his act."

*Pearce v. Stines*, 79 N. J. Eq., page 51-54. 80 Atl. 941-942.

And as recited by Vice-Chancellor Griffin in *Grimmenger v. Alderton*:

"The principal of decision as pointed out by Judge Vreedenberger in *Coffey v. Sullivan*, 63 N. J. Eq., 302, is that a man being enfeebled by age and disease, may not inadvisably divest himself of his property at a time, when he can no longer work, and when by so doing he becomes dependent upon the charity of others or of the public. I think the practical rule to be deduced from that case is that the donor, having a balance sufficient to sustain himself for the rest of his life, should irrevocably and without advice give away so much as to leave himself an object of charity."

*Grimmenger v. Alderton*, 85 N. J. Eq., 425-434, 96 Atl. 80-84.

son of the donor's physical condition and his dependence upon the grantee for care and service, the relationship ordinarily existing between them had been reversed, and the child had come to occupy the dominant position. In this case proof that no influence was in point of fact exercised will not suffice. There must be proof, in addition, that the donor had competent and independent advice as to the effect of his act."

III.

THAT THERE WAS A FAILURE TO PROCURE THAT INDEPENDENT ADVICE WHICH IS NECESSARY TO SUSTAIN SUCH A GIFT AS WAS MADE.

The transaction having been an improvident one, in order to sustain it, it is necessary to establish that there was given to the donor an opportunity of independent advice. There are two very reputable members of the bar of this State connected with this transaction, Walter S. Keown, Esq., representing Mrs. Branin, and George Marshall, Esq., representing Charles Rittmayer. There is no testimony that either knew the other was involved in the transaction as their clients were apparently opposing interests. Nor is there anything to show that these two gentleman knew of the apparent "scramble," to obtain the property of the deceased. Mr. Keown had never represented the deceased and did not know her until this transaction; he was, however, (state of case, page 110, line 34, *et seq.*) employed on this particular transaction by Mrs. Branin (state of case, page 162, line 30, *et seq.*) On previous occasions Mr. Keown had represented members of Mrs. Branin's family (state of case, page 162, line 28, *et seq.*), Mr. Keown had two talks with the deceased and on both of these occasions Mrs. Branin was present during the entire conversation and on the second visit there was also present Clara Rittmayer, because she thought "that there was something doing over there." (State of case, page 138, line 25, *et seq.*) On neither of these two occasions was there any discussion concerning money so far as the testi-

mony concerns but this discussion took place apparently only in Mr. Keown's office. Certainly Mr. Keown could not give the deceased that free counsel which our Courts require to be given under such circumstances. In this there is no reflection whatsoever upon Mr. Keown or his integrity which is highly complimented by the Court but his inability is due to the fact that he represented Mrs. Branin in the transaction. The late Justice Garrison of this Court has stated the requirements of advice necessary in this case in the opinion of *Post v. Hagen*, as follows:

"Proper independent advice, in this connection, means showing that the donor had the benefit of conferring fully and privately upon the subject of his intended gift with a person who is not only competent to inform him correctly as to its legal effects, but who is furthermore so disassociated from the interests of the donee as to advise the donor impartially and confidentially as to the consequences to himself, of his proposed benefaction."

*Post v. Hagen*, 71 N. J. Eq., 234, page 243. 65 Atl. 1026-1027.

This principle has been reiterated by our Courts time and again. Vice-Chancellor Bentley in the case of *Hickman v. Hickman*, applied it more specifically to the facts before this Court as follows:

"Furthermore the doctrine expressed \* \* \* is not fulfilled by the object of her bounty sending an infirm and aged grantor to a lawyer of the grantee's choosing. By no stretch of the imagination can that be considered as having the benefit of the independent advice that is necessary."

*Hickman v. Hickman*, 121 Atl. p. 728-729.  
*Not officially reported*

It is therefore respectfully submitted that the decree as entered in the above entitled cause before the Vice-Chancellor should be affirmed by this Court for the reasons herein set forth.

Respectfully,  
ROBERT J. TAIT PAUL,  
*Solicitor for and of Counsel with*  
*Complainants-Respondents.*

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