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in Concord, N. H. 1852

In Chancery of New Jersey.

(Filed April 20 1915)

To His Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey:

Humbly complaining, shows unto your Honor
your orators, Annie C. Moriarty and Joseph
Moriarty, her husband, of the City of Newark, in
the County of Essex and State of New Jersey: 10

1. That on and before the eighth day of April,
1911, one Thomas Kelly, a widower, was the owner
in fee and seized and possessed in fee simple in his
own right of all those certain tracts or parcels of
land hereinafter mentioned and described, situate
in the said City of Newark, Essex County and State
of New Jersey: That is to say:

First Tract. Beginning on the westerly side of
Bruce street at a point distant two hundred and
seventy-five feet from the corner of West Bank
street and Bruce street; thence along said Bruce
street south twenty-five feet; thence west one
hundred feet; thence north twenty-five feet; thence
east one hundred feet to the place of beginning.
Being lot No. 68 on a map of property of Thomas
V. Johnson, situate in the Sixth Ward as surveyed
by Dunn & Thompson, October, 1852. Being the
same premises described in P 21 of Deeds, pages 70,
&c., and same premises conveyed to Ann Kelly by
deed dated May 19, 1904 and recorded in 237 of
Deeds, pages 88, &c. 20 30

Second Tract. Beginning at a point in the west-
erly line of Bruce street at a point therein distant
three hundred feet southerly from the intersection
of the same with the southerly line of West Bank
street as laid down on the "Map of property belong-
ing to Thomas V. Johnson, situate in the Sixth
Ward of the City of Newark, surveyed October,
1852, by Dunn & Thompson, surveyors," which be-
ginning point is also the southeasterly corner of Lot
No. 68 on said map; and from thence running (1) 40

Bill of Complaint.

southerly along said lines of Bruce street twenty-five feet to the northerly line of Lot No. 70 on said map; thence (2) westerly along said northerly line of Lot No. 70 and at right angles to Bruce street one hundred feet to the rear line of Lot No. 84 on said map; thence (3) northerly along the same and parallel with Bruce street twenty-five feet to the southerly line of said Lot No. 68; thence
 10 (4) easterly along the same at right angles to Bruce street one hundred feet to the westerly line of Bruce street and the place of beginning. Recites "Being known as Lot No. 69 on aforesaid map" and being the same premises conveyed to first party by Daniel Kelly, unmarried, on May 7, 1873, Book Y 16, pages 559-561. Ann Kelly died intestate on April 1, 1911, leaving Thomas Kelly, only heir. Edward Kelly, her brother, died intestate April 30, 1904. Daniel Kelly, a brother, died January 27,
 20 1890, leaving a will J 2 of wills, pages 494 (D) etc.

Ann Kelly, Edward Kelly and Daniel Kelly were never married.

Third Tract. Beginning at a point in the westerly line of Bruce street as the same is laid down on a map of property belonging to Thomas V. Johnson, situate in the Sixth Ward of Newark, distant southerly one hundred and seventy-five feet from the southwesterly corner of the same and West Bank street; thence running westerly parallel with West
 30 Bank street one hundred feet; thence southerly parallel with Bruce street twenty-five feet; thence easterly parallel with the first line one hundred feet to Bruce street and then northerly along the same twenty-five feet to the place of beginning, known and designated as Lot No. 64 on said map. Being the same premises conveyed to Daniel Kelly by deed dated August 24, 1854 and recorded in Book 203 of Deeds for Essex County, page 322, etc.

40 Fourth Tract. Beginning on the westerly side of Bruce street at a point distant three hundred and fifty feet south from the corner of the same

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and West Bank street; from thence running along the westerly line of Bruce street forty-five feet and ten inches to the line of land of Mrs. Breintnall; thence in a southwesterly direction along said Breintnall line one hundred feet and seven inches to rear line of Lot No. 80; and thence northerly along line of Lot No. 80 and parallel with Bruce street fifty-seven feet to the southerly line of Lot No. 70 (which said southerly line of Lot No. 70 at that point is distant three hundred and fifty-three feet south from the southerly line of West Bank street) thence easterly along said line of Lot No. 70, one hundred feet (at right angles to Bruce street) to Bruce street and place of beginning. Being known as Lot No. 71 on Bruce street on Thomas V. Johnson map. Being part of the same premises conveyed to Daniel Kelly by deed dated September 14, 1859, and recorded in X 10 of deeds, pages 340, &c. The said two tracts were devised by Daniel Kelly to his sister Ann Kelly by will dated January 26, 1890, and recorded February 8, 1890. Ann Kelly died intestate April 1, 1911, leaving her surviving as her only heir at law, her brother, the aforesaid, Thomas Kelly. Edward Kelly, her brother, died January 27, 1890, leaving a will recorded in J 2 of wills, pages 494, etc. Ann Kelly, Edward, and Daniel have never married.

2. And your orators further show that being so seized thereof, the said Thomas Kelly was in full possession of said premises and received the rents and profits thereof to his own use, and exercised full ownership thereof, but was far advanced in years, being upwards of ninety-five years of age and suffering, as your orators believe and now charge, from senile debility, hardening of the arteries and other diseases incident to his advanced age, and also was subject to falling spells and other mental disorders and was then and there under medical treatment therefor.

3. And your orators further show that at this

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time, the said Thomas Kelly was residing at No. 83 Bruce street, in the said City of Newark, one of the premises above described, and that his household consisted of himself and the defendant hereinafter named, to wit, a son, Edward J. Kelly; and they lived together there and occupied one floor of the said premises known as No. 83 Bruce street, Newark, N. J.

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4. And your orators further show that by reason of the great age of the said Thomas Kelly and his sicknesses and weakness, as above mentioned, he was under the control and domination of his son, the said Edward J. Kelly, who controlled all his affairs and business.

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5. And your orators further show that on and about the eighth day of April, 1911, the said Thomas Kelly, being of the great age as aforesaid and being a widower, was induced by his said son, the defendant, Edward J. Kelly, to make, execute and deliver to him, the said Edward J. Kelly, two certain deeds, bearing date the eighth day of April, 1911, and duly recorded in the Essex County Register's Office on the tenth day of April, 1911; the first of which said deeds conveys in fee simple to the said Edward J. Kelly, for and in consideration of one dollar, as therein expressed, the first and second tracts of land above described, and being the premises commonly known and designated as No. 83 Bruce street, in the said City of Newark (and in which the said Thomas Kelly resided) and also the premises commonly known as No. 85 Bruce street, in the City of Newark; and the said second deed of conveyance conveys in fee simple, in consideration of one dollar and other good and valuable considerations the tracts and premises above described as the third and fourth tracts and commonly known and designated as No. 75 Bruce street and 89 and 91 Bruce street, in the said City of Newark; and which said last mentioned deed was also duly recorded in the Register's Office of Essex County on the said tenth day of April, 1911; and

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which said deeds are recorded in Book X 48 of Deeds for said Essex County on pages 280-283, &c.

6. And your orators further show and expressly charge that your oratrix, the said Annie C. Moriarty, is the only daughter of the said Thomas Kelly, now living, and that your oratrix and the said defendant, Edward J. Kelly, are the only surviving children of the said Thomas Kelly, who is now dead as will hereafter appear.

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7. And your orators further show that within a very few days after the recording of the said deeds, to wit, the tenth day of April, 1911, and certainly in the month of April, 1911, your oratrix, the said Annie C. Moriarty, having learned from the records in the newspapers of the recording of the said deeds from her said father to the said Edward J. Kelly, her brother, went to the home of her father, the said Thomas Kelly, at No. 83 Bruce street, and made inquiries concerning the execution and delivery thereof, and asked her father, the said Thomas Kelly, what he had been doing with his property, and a conversation was had between your oratrix, her father and her brother, the said defendant, Edward J. Kelly, concerning the said deeds, and the making thereof; and that the said Thomas Kelly, the father of your oratrix, then said that she was to be taken care of; that Edward would take care of her and attend to her; and that the said defendant, Edward J. Kelly also said that he would take care that she had one of the properties and would make it all right with her and that he would attend to her as his father wished, and promised your oratrix that she would have Nos. 89 and 91 Bruce street, which would be the smaller half of the premises in question, when she wished, and that in the meantime everything could be managed by the said Edward J. Kelly.

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8. And your orators further show that this conversation with relation to the division of the property so as aforesaid conveyed to the said Edward J. Kelly, was in the presence of all the

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parties interested, and during the visit of your oratrix to her father when she made inquiries as to what her father, the said Thomas Kelly, had done with his property; and that the said defendant, Edward J. Kelly consented to all that the father said in relation to your oratrix being taken care of and having her share of the property.

10 9. And your orators further show that afterwards and in the month of October, 1911, your orators moved into and occupied a part of the premises so as aforesaid conveyed to the said Edward J. Kelly, and being that part of the premises commonly designated as No. 83 Bruce street, Newark, N. J., as aforesaid, and where they still reside.

20 10. And your orators further show that they have never paid any rent to the said Edward J. Kelly for their occupancy in the said premises, nor has the said Edward J. Kelly ever demanded that they should pay rent to him therefor, and that it was understood and believed by your orators that they would be permitted and allowed to live there without paying rent until a proper division of the property of their late father the said Thomas Kelly, should be made as directed by him.

30 11. And your orators further show that the said Thomas Kelly (father of your oratrix, the said Annie C. Moriarty, and the said defendant Edward J. Kelly) died on the eleventh day of January, 1912, intestate, at the advanced age of ninety-five years, as aforesaid, and a widower.

40 12. And your orators further show that the said Edward J. Kelly has exercised full ownership over the said property since the said conveyances to him as aforesaid, except that your orators have never paid any rent therefor, as aforesaid, and that on or about the twentieth day of January, 1914, the said Edward J. Kelly, exercising such ownership as aforesaid, made a deed of conveyance of part of the premises, to wit, the third tract hereinabove described and known and designated as No. 75

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Bruce street, in the said City of Newark, to Max Breitkopf and Pepi Breitkopf, his wife, and which said deed of conveyance was afterwards duly acknowledged and recorded in the register's office of Essex County on March 7, 1914, in Book V 53 of Deeds for said County on pages 411, &c.

13. And your orators further show that they have just discovered that the said defendant, Edward J. Kelly, has made such deed and sold part of the premises so conveyed to him and they understand and have reason to believe that he claims to be the owner of the whole of the premises hereinabove described and insists that your orators have no estate, right or interest therein of any kind, notwithstanding the directions of their father, the said Thomas Kelly, and the agreement and promises made by the said defendant, Edward J. Kelly, as hereinabove mentioned and set forth.

14. And your orators further show that the said defendant, Edward J. Kelly, after the death of their father, the said Thomas Kelly, came to reside and live with your orators at the premises No. 83 Bruce street, and their relations were cordial as between brother and sister, and your orators aided and assisted in taking care of the premises above described and assisted in collecting part of the rents of the said premises, although your orators never paid any rent for the part occupied by them.

15. And your orators further show that lately they have made demands upon the said defendant Edward J. Kelly for their interest in the premises of their late father, the said Thomas Kelly, so as aforesaid conveyed to the said Edward J. Kelly, according to the directions of their father and the promises made in relation thereto by the said defendant, Edward J. Kelly, and that quarrels have arisen in consequence thereof, and that the said Edward J. Kelly, recently and on the sixteenth day of March, 1915, left the premises occupied by your orators and their home and wholly refused to have any further intercourse with your orators or to

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make any accounting in relation to the premises before described, as was heretofore agreed upon between them, and now threatens to sell the properties and to dispossess your orators therefrom and has told them that he would remarry (the said Edward J. Kelly being a widower at this time) and would dispose of the properties as he pleased
 10 without any recognition of your orator's rights therein according to the promises of the said defendant and the directions of their late father, the said Thomas Kelly, deceased.

16. And your orators further show that they fear and have reason to allege and charge it to be true, that unless duly restrained by an order of this Honorable Court, the said defendant, Edward J. Kelly, will dispose of said premises to innocent purchasers thereof without regard to the rights of
 20 your orators therein, whereby your orators may be deprived of their estate and interest in the premises.

17. And your orators further show that they believe and therefore charge it to be true that at the time of the making of the said conveyance by their father, the said Thomas Kelly, to the said defendant, Edward J. Kelly, their said father was of weak mind and easily influenced and strictly under the domination and control of his said son, the said
 30 Edward J. Kelly, and was, in some measure, coerced in making the said deeds of conveyance of said premises, and that by reason of their love and affection for their said brother and his expressed promises and agreements to take care and attend to the interests of your oratrix, Annie C. Moriarty, in the premises, they did not in any way attack the said conveyances of the said premises, but permitted and allowed their said brother, the said defendant, Edward J. Kelly, to have possession thereof, fully
 40 believing and relying upon his promises to convey part thereof to your orator or to the said Annie C. Moriarty when thereafter requested.

18. And your orators further show that, rely-

Bill of Complaint.

ing upon the said premises of the said defendant, Edward J. Kelly, and living in harmony with him without paying rent for said premises so occupied by them, they have refrained from requesting such conveyance until the present year, and now the said Edward J. Kelly refuses to have any intercourse with them, as aforesaid, and refuses to satisfy your orators as to their rights in the premises and refuses to make any accounting or conveyance to them in relation thereto, although your orators claim to be the owners of a one-half part thereof. 10

All which actings and doings of the said defendant, Edward J. Kelly, are contrary to equity and good conscience and tend to the manifest wrong, oppression and injury of your orators in the premises.

To the end therefore that the said Edward J. Kelly may answer the premises according to law, but without oath, oath being hereby expressly waived, and may in particular set forth and show what consideration was paid or made by him for the said deeds of conveyance so made to him by the father of your oratrix and what was the true consideration paid therefor and when it was paid and whether or not the said conveyances were made in trust to divide the said premises between the said defendant, Edward J. Kelly and your oratrix, as before mentioned and set forth and as charged by your orators and whether it is not true that the said defendant Edward J. Kelly promised and agreed to convey to your oratrix the said Annie C. Moriarty, a proper share of the above mentioned and described premises upon request therefor, and whether it is not true that your orators have resided upon the said premises as aforesaid without payment of rent in pursuance of such agreement, as hereinbefore alleged and set forth, and under what agreement, arrangement or understanding expressed or implied, the said deeds of conveyance of said lands was made by the said Thomas Kelly, to the said defendant, Edward J. Kelly, and with 20 30 40

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what intentions, and what reason the said Edward J. Kelly gave to his father, the said Thomas Kelly, for desiring him to make said conveyances.

10 And that it may be decreed by this Honorable Court that the said conveyances were made to the said Edward J. Kelly in trust for the said Edward J. Kelly and your oratrix, the said Annie C. Moriarty, and that they were to share equally therein and that the said Edward J. Kelly may be decreed by this Honorable Court to make conveyance or conveyances to your orators in fee simple for their said half interest in the said premises and may also account to your orators for such sums of rent and such sums of money as he shall have received as the purchase price on the sale of part of the said premises, the said third tract, hereinbefore described, and that in the meantime, the said Edward J. Kelly may be restrained from selling or encumbering the
20 said lands and that your orators may have such further or other relief in the premises as to your Honor shall seem meet or as shall be required by the circumstances of the case.

30 May it please your Honor, the premises considered, to grant unto your orators the State's writ of subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said Edward J. Kelly therein and thereby commanding him on a certain day and under a certain penalty to be therein expressed personally to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your orators as in duty bound will ever Pray, &c.

40 (Signed) JOHN V. LADDEY,
Solicitor of and Counsel with Complainants.

Filed April 20, 1915.

Answer of Edward J. Kelly to Bill of Complaint

IN CHANCERY OF NEW JERSEY.

(Filed June 24 1915)

Between

ANNIE C. MORIARTY AND JOSEPH MORIARTY, her husband,
Complainants,

and

EDWARD J. KELLY,

Defendant.

On Bill.
Answer.

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The answer of Edward J. Kelly, defendant to the Bill of Complaint of Annie C. Moriarty and Joseph Moriarty, complainants.

1. This defendant answering says, that one Thomas Kelly, a widower, was the owner in fee simple, absolute of those certain lots, tracts or parcels of lands, situate, lying and being in the County of Essex and State of New Jersey, particularly described in the Bill of Complaint, on or about the eighth day of April, 1911, and that all of said lots, tracts or parcels of land, particularly described as aforesaid, were acquired by said Thomas Kelly by descent from Ann Kelly, who was a sister of the said Thomas Kelly, and the aunt of this defendant; and that said tracts of land were devised to said Ann Kelly by the last will and testament of her brother Daniel Kelly, deceased, and which said will is recorded in Book J 2 of Wills for Essex County, on pages 494, &c.

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2. And this defendant further answering says that it is true as in said bill stated, that Thomas Kelly was in full possession of said premises at the time of making the conveyances to said Edward Kelly, but states that it is absolutely untrue that

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Answer of Edward J. Kelly.

his father Thomas Kelly was receiving medical treatment at that time nor for a long time prior thereto and that it is false and untrue that his father was of the age of 95 years and upwards and that he was suffering from senile debility, hardening of the arteries and other diseases, but on the contrary was a strong and vigorous man and in full possession of his mental faculties.

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3. And this defendant further answering says, that at the time of the making of the deeds the said Thomas Kelly resided at No. 83 Bruce street, in the City of Newark, being one of the tracts of land above mentioned and described in the Bill of Complaint, and that this defendant Edward J. Kelly and Isabelle Grant, a daughter of Matilda Grant, deceased, and a granddaughter of said Thomas Kelly, lived together and occupied the first floor of the building and premises aforesaid, and that one Frank Grant, a grandson of said Thomas Kelly, with his family occupied the second floor of the said building known as 83 Bruce street, in the City of Newark, New Jersey.

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4. And this defendant further answering says, that it is absolutely false and untrue the statement that his father was sick or weak and under the control of this defendant; on the contrary, this defendant says that he was under the control of his father and that if he remained out late at night, his father would wait for him on the porch of the house and in a loud tone of voice would then scold him for staying out late at night.

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5. And this defendant further answering says and admits that Thomas Kelly at the time set forth in complainants' Bill of Complaint did make and execute two certain deeds to this defendant for the two tracts of land described in said Bill of Complaint for the consideration therein named, but

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Answer of Edward J. Kelly.

this defendant denies and says that it is absolutely false and untrue that he induced his father or persuaded him or exercised any control over him in any manner whatsoever in the making and executing the aforementioned deeds.

6. And this defendant further answering says, that the said Thomas Kelly died, leaving him surviving as his heirs at law this defendant Edward J. Kelly, the complainant Annie C. Moriarty, and the children of his deceased daughter Matilda Grant, and at the time of the making of the deeds to this defendant as aforesaid Isabelle Grant, a daughter of Matilda Grant, deceased, aforesaid, and a granddaughter of the said Thomas Kelly, lived with said Thomas Kelly and this defendant and that said Thomas Kelly had a great love and affection for his granddaughter. This defendant denies and says that it is not true as stated in the Bill of Complaint that said Annie C. Moriarty was the only daughter of the said Thomas Kelly.

7. And this defendant further answering says, that it is not true as in said bill stated that any conversation took place between the said complainant, the said Thomas Kelly and this defendant, concerning the said deeds and the making thereof, nor was there any agreement of any kind whatsoever made that he, this defendant, would take care of the said complainant, or that he was to give her one of the properties; and this defendant positively denies that he at that time promised or intimated in any manner whatsoever either directly or indirectly that she the said Annie C. Moriarty would have Nos. 89 and 91 Bruce street and that he in the meantime would manage the properties.

8. And this defendant further answering, denies absolutely that any conversation regarding the conveying of the property took place in his presence,

nor was there any conversation as alleged in said Bill of Complaint took place in his presence, relating to giving her the property known as Nos. 89 and 91 Bruce street, and no such visit by the complainant, as alleged, ever took place to this defendant's knowledge and that he has no knowledge of any such conversation ever being held and states positively that such allegation is positively untrue, nor did this defendant at that time state that he would give the complainant any share whatsoever of the property aforesaid.

10 9. And this defendant further answering, says, that it is true as in said bill stated that said complainants in the month of october, 1911, moved into and occupied part of the premises conveyed to this defendant.

20 10. And this defendant further answering says, that it is not true as stated in said Bill of Complaint that the complainants never paid any rent, but that on the contrary, the said complainants did pay to this defendant the sum of eight dollars as rent for the month of October, in the month of November, 1911; and afterwards, out of pity for his sister the said complainant, Annie C. Moriarty, the said defendant allowed her to live there because her husband the said Joseph Moriarty refused to work and was drunk nearly all the time, and during the past
30 four years or more has refused to work and try to earn a living for his family; and this defendant further says that he occupied one room of the floor occupied by the said complainants and that said complainant did odd jobs such as repairing and looking out for the houses and that out of sympathy for his sister he allowed the said complainant to remain in possession of the second floor aforesaid.

40 11. And this defendant further answering says

Answer of Edward J. Kelly.

and admits it to be true that the said Thomas Kelly, the father of the said complainant Annie C. Moriarty and this defendant and Matilda Grant deceased, who died leaving several children, died on the eleventh day of January, 1912, intestate and a widower, but this defendant says it is not true that said Thomas Kelly was ninety-five years of age at the time of his death.

12. And this defendant further answering says that it is true that ever since the making of the deeds aforesaid he has exercised full ownership over the property so conveyed to him but says that it is untrue and false the statement of said complainants that they never paid any rent for that portion of the premises occupied by them; and this defendant admits it to be true that being the owner of the premises known and designated as No. 75 Bruce street, did sell and convey by deed of warranty to Max Breitkopf and Repi Breitkopf, his wife, the premises aforesaid, as stated in said complainant's bill.

13. And this defendant further answering says, that it is absolutely false and untrue that the said complainants have just discovered that the said defendant had made such a deed to said Max and Repi Breitkopf as aforesaid, but on the contrary the negotiations for the sale of the property aforesaid to said Max and Repi Breitkopf were conducted by the said complainant Joseph Moriarty and he induced this defendant to sell said property for an amount of money less than what this defendant asked for said property, and for the making of the sale and persuading this defendant to sell the property to said Breitkopfs he received a commission from the said Breitkopfs.

14. And this defendant further answering says that after the death of his father he resided with

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his sister occupying one room on the second floor and in consideration of her taking care of the first floor and second floor of the house known as No. 83 Bruce street and his room aforesaid and for the complainants collecting the rents during his absence from the tenants occupying the various houses and which rents would always be turned over to him on his arrival at home, he allowed the said complainants to occupy the second floor of the house known as No. 83 Bruce street without paying any rent for the same and during the time that this defendant was at home and not working, he collected all the rents himself and allowed the defendants to remain in possession of the second floor out of sympathy for his sister the complainant Annie C. Moriarty without paying any rent for the same because of the lazy and drunken habits of her husband Joseph Moriarty one of the complainants in the said bill.

15. And this defendant further answering says, that the said complainants have never asked for or demanded any of the property from the defendant until he informed the complainants that he was about to remarry and the said complainants then became enraged at him, and the said Moriarty threatened to kill him and repeatedly made these threats and that he would have him murdered before he would allow him to remarry and that because of these threats and because of the information he received and believing his life was in danger, and on account of his being continuously sick from the time he told them he was going to remarry he left the premises 83 Bruce street on or about March 16, 1915, and this defendant further states that on the 28th day of April, 1915, he did marry one named Margaret White and that they now reside in the City of Newark and this defendant denies that he intends to sell the property but insists that he has

Answer of Edward J. Kelly.

a right so to do at any time that he believes that he could get a suitable price for the same, as he is the absolute owner of said lands and premises and that said complainants have no right or interest in the same.

16. And this defendant further answering, says, that it is untrue that he intends to sell said properties because knowing the general business conditions now prevailing that it would be impossible for him to receive a suitable sum of money for the sale of all or any of said lands and premises. 10

17. And this defendant further answering says, that it is absolutely untrue and false that his father at the time of the making of the deeds to this defendant was weak minded or easily influenced or that his father was in any manner whatsoever under the influence and control of this defendant; that on the contrary his father had a very strong mind, and this defendant states and says that it is true that he has lived with his father all his life and until the time of the death of his father; and that after this defendant first married, his aunt built an addition to the house so that this defendant could live with his mother and father and take care of them. This defendant says that neither of the complainants ever showed any love or affection for him and that his father never showed that he had any love or affection for his daughter Annie C. Moriarty after her marriage to the said Joseph Moriarty because her father was strongly opposed to her marrying Moriarty who used to beat and ill-treat the said Annie C. Moriarty and because of his lazy and drunken habits; defendant further states that his father felt very bitter towards the said Annie C. Moriarty because of her ill treatment of his mother and the complainant Annie C. Moriarty's mother, and because during the times of their 20 30 40

Answer of Edward J. Kelly.

mother's sickness and during her last illness she refused to attend or wait on or assist their mother, and she never, after her marriage to said Moriarty, showed any love or affection for either her father or mother.

10 18. And this defendant further answering says, that since leaving the premises in March, 1915, he has demanded or caused to be demanded the payment of the rent for that portion of the premises occupied by said complainants, or the possession of the same, and this defendant denies that the said complainants are the owners of one-half of said premises or that they are owners of any of the lands and premises in question and insists that they have no right in said premises except such as they may have by reason of their being tenants of this defendant.

20 This defendant denies that the said complainants are entitled to the relief prayed for in their said Bill of Complaint or to any part thereof.

And this defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

J. R. WOODRUFF,

*Solicitor for and of Counsel with
the Defendant, Edward J. Kelly.*

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Answer of Edward J. Kelly.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

Edward J. Kelly, the defendant named in the foregoing answer, being duly sworn according to law on his oath deposes and says that the matters and things set forth and contained in the foregoing Answer so far as they relate to his own acts and deeds, are true, and so far as relates to the acts and deeds of other persons he believes them to be true. 10

EDWARD J. KELLY.

Sworn and subscribed to before me,
this twenty-third day of June,
A. D., 1915.

ELISE V. KEENEY,

Commissioner of Deeds in and for New Jersey. 20

Replication to Answer of Edward J. Kelly

Filed July 12, 1915.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i> ANNIE C. MORIARTY AND JOS- EPH MORIARTY, her husband, <i>Complainants,</i> <i>and</i> EDWARD J. KELLY, <i>Defendant.</i></p>	<p><i>On Bill, etc.</i> <i>Replication</i></p>
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The replication of Annie C. Moriarty and Joseph Moriarty, her husband, complainants, to the answer of Edward J. Kelly, defendant:

20 The complainants join issue on the answer of the defendant.

JOHN V. LADDEY,
Solicitor of Complainants.

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Order of Reference

Filed August 14, 1915.

IN CHANCERY OF NEW JERSEY.

Between

ANNIE C. MORIARTY AND JOS-
EPH MORIARTY, her husband,
Complainants,
and
EDWARD J. KELLY,
Defendant.

On Bill, etc. 10
Order of
Reference.

It is on this 13th day of August, A. D., nineteen hundred and fifteen, on motion of John V. Laddey, Solicitor of Complainants, ordered, that the above stated cause be referred to Hon. Frederick W. Stevens, one of the Vice-Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein. 20

E. R. WALKER,
C.

Consent to the making of the above order is hereby given.

J. R. WOODRUFF, 30
Solicitor for Defendant.

(NOTE: Pages 22 and 23 are blank.)

Order to Amend

IN CHANCERY OF NEW JERSEY.

Filed March 17, 1916.

	<p><i>Between</i></p> <p>ANNIE C. MORIARTY AND JOS- EPH MORIARTY, her husband, <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>EDWARD J. KELLY, <i>Defendant.</i></p>	<p style="font-size: 4em;">}</p> <p><i>On Bill, etc.</i></p> <p><i>Order.</i></p>
10		

20 This matter coming on to be heard on bill, answer and replication in the presence of John V. Laddey, of counsel with complainants, and of J. Randolph Woodruff, of counsel with defendant, and it appearing to the Court from the answer filed by the defendant that certain persons, interested in the subject-matter of this suit, have not been made parties and that the grounds and prayers of the complainants' bill should be amended;

30 It is on this 13th day of March, 1916, ordered that the complainants have leave to withdraw their replication and to amend their bill of complaint so as to include and bring in said persons as parties complainant or as parties defendant, and that they further amend their said bill in such manner as they shall be advised, and, further, that they have leave to include in their amended and supplemental bill all matters relating to the subject-matter of this suit that have arisen since the filing of their original bill of complaint.

And it is further ordered that a copy of said amended bill be served upon the solicitor of de-

Amended, Supplemental Bill.

pendants within four days and the question of costs is reserved.

E. R. WALKER,
C.

Respectfully advised,

FREDERIC W. STEVENS,
V. C.

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Amended and Supplemental Bill

IN CHANCERY OF NEW JERSEY.

(Filed March 17 1916)

Between

ANNIE C. MORIARTY AND JOSEPH MORIARTY, her husband,
et als,

Complainants,

and

EDWARD J. KELLY, *et als,*

Defendants.

On Bill etc. 20
Amended and Supplemental Bill.

The complainants, Annie C. Moriarty and Joseph Moriarty, her husband, Frank J. Grant, Mary Grant Corbitt, William H. Corbitt, her husband, Raymond Grant, Johanna Marie Grant and Thomas H. Grant, all of Newark, New Jersey, and Isabelle Grant, Mildred Grant, Lucille Camille Grant and Harold Grant, infants under the age of twenty-one years, by Frank J. Grant of Newark, New Jersey, their next friend, and John M. Lang of Bayonne, New Jersey, administrator of the estate of Rosalie Grant Lang, deceased, respectfully show that: 30

1. On and before April 8, 1911, Thomas Kelly, 40

Amended, Supplemental Bill.

widower, was the owner in fee of four certain tracts or parcels of land and premises, situate, lying and being in the City of Newark, Essex County, New Jersey, more particularly described as follows:

10 First Tract. Beginning on the westerly side of Bruce street at a point distant two hundred and seventy-five feet from the corner of West Bank street and Bruce street; thence along said Bruce street, south twenty-five feet; thence west one hundred feet; thence north twenty-five feet; thence east one hundred feet to the place of beginning. Being Lot No. 68 on a map of property of Thomas V. Johnson situate in the Sixth Ward as surveyed by Dunn & Thompson, October, 1852.

20 Second Tract. Beginning at a point in the westerly line of Bruce street at a point therein distant three hundred feet southerly from the intersection of the same with the southerly line of West Bank street as laid down on the "Map of property belonging to Thomas V. Johnson, situate in the Sixth Ward of the City of Newark, surveyed October, 1852, by Dunn & Thompson, surveyors" which beginning point is also the southeasterly corner of Lot No 68 on said map, and from thence running (1) southerly along said lines of Bruce street twenty-five feet to the northerly line of Lot No. 70 on said map; thence (2) westerly along said northerly line of Lot No. 70 and at right angles to Bruce street 30 one hundred feet to the rear line of Lot No. 84 on said map; thence (3) northerly along the same and parallel with Bruce street twenty-five feet to the southerly line of said Lot No. 68; thence (4) easterly along the same at right angles to Bruce street one hundred feet to the westerly line of Bruce street and the place of beginning. Being known as Lot No. 69 on aforesaid map.

40 Third Tract. Beginning at a point in the westerly line of Bruce street as the same is laid down

Amended, Supplemental Bill.

on a map of property belonging to Thomas V. Johnson, situate in the Sixth Ward of Newark, distant southerly one hundred and seventy-five feet from the southwesterly corner of the same and West Bank street; thence running westerly parallel with West Bank street one hundred feet; thence southerly parallel with Bruce street twenty-five feet; thence easterly parallel with the first line one hundred feet to Bruce street and thence northerly along the same twenty-five feet to the place of beginning. Being known and designated as Lot No. 64 on said map. 10

Fourth Tract. Beginning on the westerly side of Bruce street at a point distant three hundred and fifty feet south from the corner of the same and West Bank street; from thence running along the westerly line of Bruce street forty-five feet and ten inches to the line of land of Mrs. Breintnall; thence in a southwesterly direction along said Breintnall line one hundred feet and seven inches to rear line of Lot No. 80; and thence northerly along line of Lot No. 80 and parallel with Bruce street fifty-seven feet to the southerly line of Lot No. 70 (which said southerly line of Lot No. 70 at that point is distant three hundred and fifty-three feet south from the southerly line of West Bank street) thence easterly along said line of Lot No. 70, one hundred feet (at right angles to Bruce street) to Bruce street and place of beginning. Being known as Lot No. 71 on Bruce street on Thomas V. Johnson map. 20 30

2. The said four tracts or parcels of land and premises were inherited by the said Thomas Kelly, sometimes known as Thomas Kelley, from his sister, Anna Kelly, sometimes known as Anne Kelley, who died on March 24, 1911, intestate and unmarried, and leaving her surviving, as her only heir at law and next of kin, the said Thomas Kelly. 40

Amended, Supplemental Bill.

10 3. On or about April 8, 1911, about fifteen days after the said Thomas Kelly had so inherited the said four tracts or parcels of land and premises, two warranty deeds, both dated April 8, 1911, and recorded April 10, 1911, in the Register's Office of Essex County in Book X 48 of Deeds for said County, one on pages 280, etc., and the other on pages 283, etc., were procured by the said Edward J. Kelly from the said Thomas Kelly by means of the fraud, duress and undue influence hereinafter specified. The first of said deeds, recorded in Book X 48 of Deeds for Essex County, N. J., on pages 280, etc., as aforesaid, purports to convey to Edward J. Kelly in fee, the first tract and second tract hereinbefore particularly described, and the second of said deeds, recorded in Book X 48 of Deeds for Essex County, N. J., on pages 283, etc., as aforesaid, purports to convey to said Edward J. Kelly, in fee, the third tract and fourth tract hereinbefore particularly described.

20 4. At the time of the procurance of the said deeds from the said Thomas Kelly, the said Thomas Kelly was about ninety-five years of age, and was very feeble, both physically and mentally, was suffering from hardening of the arteries and from mental, nervous and physical ailments and disorders which produced frequent falling spells and periods of insensibility of short duration. Because of his feebleness, the said Thomas Kelly had not been able to work for many years and was penniless prior to the death of his sister, the said Anna Kelly, and, at the time said deeds were procured from him by the fraud, duress and undue influence of the said Edward J. Kelly, and for a long time prior thereto and until his death, he, the said Thomas Kelly was under the constant domination and control of his son, the said Edward J. Kelly, with whom he resided at No. 83 Bruce street, Newark, New Jersey.

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Amended, Supplemental Bill.

5. At the death of the said Anna Kelly, the said Edward J. Kelly, immediately took possession of and appropriated to his own use all the money and belongings of the said Anna Kelly, and proceeded to and did induce, persuade and coerce his father, the said Thomas Kelly, to sign said deeds for the said four tracts of land and premises, advising him that, owing to the old age and feebleness of the said Thomas Kelly and his ignorance regarding business matters, it would be impossible for him, the said Thomas Kelly, to take care of and manage the said lands and premises, and, in order that he, the said Edward J. Kelly, might properly take care of and manage the same, it would be necessary that deeds for the said lands and premises to him, the said Edward J. Kelly, be signed by the said Thomas Kelly. 10

6. Designing to defraud his father, the said Thomas Kelly, and the complainants, who would inherit from the said Thomas Kelly or who would be the natural objects of his bounty, and with the view of securing to himself all of the said lands and premises, he, the said Edward J. Kelly, consulted a lawyer on his own account and, after he had had several private conferences with said lawyer, the two deeds aforesaid were prepared and the said Thomas Kelly, without having the benefit of any independent advice, was induced, persuaded and coerced by the said Edward J. Kelly into signing said deeds. 20 30

7. The lands and premises particularly described in the two deeds aforesaid constituted the entire estate of the said Thomas Kelly, except the moneys and effects which had previously been appropriated by the said Edward J. Kelly at the death of the said Anna Kelly and which were never turned over to the said Thomas Kelly or accounted for to him. By reason of the procurance of said deeds, 40

Amended, Supplemental Bill.

and the actings and doings of said Edward J. Kelly, as aforesaid, the said Thomas Kelly was impoverished.

8. No consideration whatever was paid to the said Thomas Kelly for said deeds.

10 9. On January 11, 1912, the said Thomas Kelly died, intestate and unmarried, and leaving him surviving, as his only heirs at law and next of kin, his said son, the defendant Edward J. Kelly, and his daughter, the complainant Annie C. Moriarty, and the complainants, Frank J. Grant, Mary Grant Corbitt, Raymond Grant, Johanna Marie Grant, Thomas H. Grant, Isabelle Grant, Mildred Grant, Lucille Camille Grant and Harold Grant, and Rosalie Grant Lang, now deceased, children and only heirs at law and next of kin of Matilda Kelly Grant, daughter of said Thomas Kelly. The said Matilda
20 Kelly Grant died July 1, 1902, and her husband, James A. Grant, Jr., died March 19, 1912.

The said Rosalie Grant Lang died intestate September 5, 1915, without having had any issue born alive and leaving her surviving, her husband, John M. Lang, who was duly appointed administrator of her estate by the Surrogate of Hudson County on September 17, 1915.

30 10. At the time the said Edward J. Kelly procured said deeds from the said Thomas Kelly, as aforesaid, the lands and premises particularly described therein were worth the sum of fourteen thousand (\$14,000) dollars or more and were free from all incumbrances.

40 11. The said Thomas Kelly never received any of the rents, issues or profits from any of said lands and premises, but, from the time of the death of the said Anna Kelly, the said Edward J. Kelly has received all of the rents, issues and profits of said lands and premises and has appropriated the same

Amended, Supplemental Bill.

to his own use and has failed and neglected to pay the taxes or assessments levied against said premises and has failed to keep said property in proper repair.

12. On or about March 5, 1914, further designing to defraud the complainants, the said Edward J. Kelly, by deed of warranty, dated January 20, 1914, and recorded on March 7, 1914, in the Register's Office of the County of Essex, in Book V 53 of Deeds for said County on pages 411 etc., conveyed to Max Breitkopf and Pepi Breitkopf, his wife, for a consideration unknown to the complainants, the lands and premises hereinbefore particularly described and designated as Third Tract. Said third tract of land and premises at the time of said conveyance to the said Max Breitkopf and Pepi Breitkopf, his wife, were worth at least the sum of at least twenty-five hundred (\$2,500) dollars.

13. On or about April 27, 1915, further designing to defraud the complainants, the said Edward J. Kelly executed and delivered to Julia Bender a mortgage dated April 22, 1915, and recorded on June 7, 1915, in the Register's Office of the County of Essex in Book I 34 of Mortgages for said County on pages 138 etc., covering the First Tract and Second Tract of lands and premises hereinbefore particularly described and conditioned for the payment of the principal sum of one thousand dollars (\$1,000) in one year from the date thereof with interest at the rate of five per cent. per annum, which mortgage was afterwards canceled of record September 16, 1915.

14. On April 28, 1915, said Edward J. Kelly married Margaret White.

15. On or about June 1, 1915, further designing to defraud the complainants, the said Edward J. Kelly and Margaret Kelly, his wife, executed and

Amended, Supplemental Bill.

delivered to Louis J. Beers a mortgage dated April 22, 1915, and recorded on June 22, 1915, in the Register's Office of the County of Essex in Book I 34 of Mortgages for said County on pages 279, etc., covering the first tract and second tract of the said lands and premises, hereinbefore particularly described, and conditioned for the payment of the principal sum of one thousand dollars in one year from the date thereof with interest at the rate of five per cent. per annum, which mortgage was subsequently assigned by the said Louis J. Beers to Henry Ahrend on or about June 26, 1915, by Deed of Assignment dated June 26, 1915, and recorded on the same day in the Register's Office of the County of Essex in Book 124 of Assignments of Mortgages for said County on pages 316, etc.

16. On or about December 15, 1915, further designing to defraud the complainants, the said Edward J. Kelly and Margaret Kelly, his wife, executed and delivered to Louis J. Beers a certain other mortgage, dated December 8, 1915, and registered on January 17, 1916, in the Register's Office of the County of Essex in Book G 35 of Mortgages for said County on pages 122, etc., conditioned for the payment of the principal sum of six hundred dollars (\$600) in one year from the date thereof with interest at the rate of five per cent. per annum, covering the four tracts of said lands and premises hereinbefore particularly described.

17. Before and at the times of the executions and deliveries of the two mortgages aforesaid by the said Edward J. Kelly, and Margaret Kelly, his wife, to the said Louis J. Beers, the said Louis J. Beers had notice and actual knowledge of the rights and equities of the complainants in and to the lands and premises described therein, and at the time of the execution and delivery of the said Deed of Assignment by the said Louis J. Beers to the

Amended, Supplemental Bill.

said Henry Ahrend the said Henry Ahrend had notice and actual knowledge of the rights and equities of the complainants in and to the lands and premises described in the mortgage mentioned in said assignment.

In tender consideration whereof, and forasmuch as the complainants are without adequate remedy in the courts of law; to the end, therefore, that the said Edward J. Kelly and Margaret Kelly, his wife, and Louis J. Beers and Henry Ahrend may, respectively, true, full, direct and perfect answer make, but without oath, the oaths of the defendants being hereby expressly waived, to all and singular the matters and things hereinbefore stated, and that as fully and particularly as if the same were here repeated and they and each of them thereunto interrogated, paragraph by paragraph, with dates, sums, and all attendant circumstances, and the said Edward J. Kelly may answer and set forth, without oath, as aforesaid, whether he did not obtain such deeds as hereinbefore described from the said Thomas Kelly, and what consideration he paid therefore, if any, and the value of the said lands and premises at the times of getting such deeds, and what was the age of the said Thomas Kelly at that time, and whether he, the said Edward J. Kelly has mortgaged, sold or otherwise disposed of the said lands and premises or any part thereof, and to whom and for how much, and that he may account for the rents, issues and profits thereof, and that an account may also be had and stated of the moneys and other considerations that have been received by the said Edward J. Kelly from the said Max Breitkopf, and Pepi Breitkopf, his wife, for the conveyance to them as aforesaid, as well as for all moneys and other considerations received by the said Edward J. Kelly from any and all innocent purchasers or mortgagees of any or all of said lands and premi-

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Amended, Supplemental Bill.

ses for value, if any there be, and that the said Louis J. Beers may answer and set forth, but without oath, the full considerations for the said two mortgages executed and delivered to him by the said Edward J. Kelly, and whether he, the said Louis J. Beers, had not heard and did not know the facts and circumstances hereinbefore stated, or some and which
10 of them, before or at the times of the executions and deliveries to him of the two mortgages aforesaid by the said Edward J. Kelly, and that the said Henry Ahrend may answer and set forth, but without oath, the full consideration for said deed of assignment from the said Louis J. Beers, and whether he had not heard and did not know the facts and circumstances hereinbefore stated, or some and which of them, before or at the time of the execution and delivery of said deed of assignment
20 to him.

And the complainants pray that the said two deeds from the said Thomas Kelly to the said Edward J. Kelly be decreed to be fraudulent or unduly obtained, and, therefore, void and inoperative as against the complainants and that the same be set aside and decreed to be given up and canceled, and that the said Edward J. Kelly be decreed or compelled to account to the complainants for all the rents, issues and profits of said lands and premises received by him as well as for all moneys and
30 other considerations received by him from innocent purchasers or mortgagees for value, if any there be, of said lands and premises and that the said Edward J. Kelly be decreed and compelled to pay to the complainants the amount so found to be due on said accounting, and that the balance found to be due to the complainants on said accounting be declared a lien on any interest which the said Edward J. Kelly may have in said lands and premises,
40 and that all the right, title and interest of the

Amended, Supplemental Bill.

said Edward J. Kelly in and to the said lands and premises may be sold by order of this honorable court and out of the proceeds of such sale, the complainants may be paid the amount of said lien, and that all of said lands and premises be sold under the decree and direction of this court, and that the said Edward J. Kelly may be paid out of the proceeds thereof what may be found due to him, and that the residue of said moneys may be distributed among the complainants in proportion to their respective rights and interests in said lands and premises and estate of the said Thomas Kelly, deceased, and that the two said mortgages executed and delivered to the said Louis J. Beers by the said Edward J. Kelly and Margaret Kelly, his wife, be declared to be null and void and be set aside as against the complainants, and that the said Edward J. Kelly and Margaret Kelly, his wife, and Louis J. Beers and Henry Ahrend, or some or one of them be decreed to pay to the complainants their costs and charges to be taxed in this suit, and that the complainants may have such further or other relief in the premises as the nature and circumstances of this case may require, and as may be agreeable to equity and good conscience.

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May it please your honor, the premises, considered, to grant unto the complainants, the state's writ or writs of subpœna issuing out of and under the seal of this honorable court, to be directed to the said defendants, Edward J. Kelly and Margaret Kelly, his wife, and Louis J. Beers, and Henry Ahrend, commanding them, and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your honor in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order and decree therein

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Answer of Edward J. Kelly.

as to your honor shall seem meet, and as shall be agreeable to equity and good conscience. And the complainants, as in duty bound, will ever pray, &c.

JOHN V. LADDEY,

Solicitor for Complainants.

GROSKEN & MORIARTY,

Of Counsel.

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Answer of Edward J. Kelly to Amended and Supplemental Bill

IN CHANCERY OF NEW JERSEY.

(Filed May 6 1916)

20 *Between*

ANNIE C. MORIARTY AND JOSEPH MORIARTY, her husband, *et al*,

Complainants,

and

EDWARD J. KELLY, *et al*,

Defendants.

On Bill.

Answer to Amended and Supplemental Bill.

30 The answer of the defendant, Edward J. Kelly, against the complainants, Annie C. Moriarty and Joseph Moriarty, her husband, *et al*.

This defendant, Edward J. Kelly, answering the bill of complaint says:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Defendant admits that Thomas Kelly executed the two deeds mentioned in paragraph 3 of the Bill of Complaint, but denies that the same were

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Answer of Edward J. Kelly.

procured by fraud, duress or undue influence, and says that the said conveyances were the free and voluntary acts of the said Thomas Kelly, made after he had received the benefit of full, private, competent, independent advice of disinterested counsel.

4. Defendant denies paragraph 4 of the Bill of Complaint, and says that the said Thomas Kelly was about eighty-two years of age at the time of the making of the said conveyances, was well supplied with money and was not penniless; he was well and strong, both physically and mentally, and was vigorous and healthy and not subject to any of the ailments mentioned in the bill of complaint or any other ailment; said Thomas Kelly was not under the control and influence of this defendant, Edward J. Kelly, but this defendant, the said Edward J. Kelly was under the control and influence of his father, the said Thomas Kelly, who would not let him go out nights, and when he did and came home late his father would scold him, and in every way the said Thomas Kelly exercised complete control over this defendant. This defendant at the time of the execution of said conveyances resided with his father in his father's home at 83 Bruce street, Newark, N. J.

5. This defendant denies each and every allegation in paragraph 5 of the Bill of Complaint, and repeats that the execution of said deeds was the free and independent, voluntary act and deed of the said Thomas Kelly, done without one request, persuasion, coercion, or advice of this defendant.

6. This defendant denies paragraph 6 of the Bill of Complaint, and says that the said conveyances were made voluntarily by the said Thomas Kelly without any fraud, persuasion or coercion of this defendant, and were not executed by the said Thomas Kelly until he had had the benefit of full,

Answer of Edward J. Kelly.

private, competent, independent advice of disinterested counsel as to the consequences to himself of his act.

10 7. This defendant admits that the premises conveyed to him by the said Thomas Kelly constituted all of the realty of the said Thomas Kelly; this defendant denies that he ever took possession of or appropriated to his own use the money and effects of the said Anne Kelly, but avers that all the property both real and personal of the said Anne Kelly came into the possession of the said Thomas Kelly. This defendant denies that the said Thomas Kelly was impoverished by reason of any deed, act or doing of this defendant.

20 8. This defendant admits that there was no money consideration for said conveyances; the consideration therefor was the love and affection which existed between a father and son who had lived together for a great many years, the son having worked and given his earnings to his father during all that time.

9. Paragraph 9 is admitted.

10. This defendant has no knowledge, information or belief as to the value of said premises conveyed to him. Defendant admits they were free from incumbrances.

30 11. Defendant admits that since the making of said deeds he has exercised full ownership over the property conveyed to him, as he had a right to do, as he was and is the absolute owner of the title to said land and premises under said deed.

40 12. This defendant admits that he conveyed the premises known as No. 75 Bruce street, Newark, N. J. to Max Breitkopf and Pepi Brietkopf, his wife, but avers that the same was done without any fraud on his part, as he had a right to sell the same, and

that the complainants had full knowledge of said sale, and know that this defendant received as consideration for said sale the sum of eighteen hundred dollars.

13. Defendant denies fraud in the making of the mortgage to Julia Bender as alleged in paragraph 13 of the Bill of Complaint, but admits the other allegations in said paragraph. 10

14. Paragraph 14 is admitted.

15. This defendant denies fraud in the making of the mortgage to Louis J. Beers, but admits the other allegations in said paragraph. This defendant received as consideration for the said mortgage one thousand dollars, part of which was used in the payment of taxes which were a lien on the premises described in the said deeds.

16. This defendant admits the making of the mortgage of six hundred dollars to Louis J. Beers, but denies fraud in the making thereof. 20

17. This defendant admits that at the time of the executions and deliveries of the mortgages aforesaid the said Louis J. Beers had notice of the alleged rights and equities of the complainants in and to said land and premises and that the said Henry Ahrend had like knowledge.

18. Annexed hereto is the accounting prayed for in the complainant's Bill of Complaint. 30

This defendant denies that the said complainants are entitled to the relief prayed for in their said Bill of Complaint or to any part thereof.

And this defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

LOUIS J. BEERS,

*Solicitor for and of Counsel with
the Defendant, Edward J. Kelly.*

Answer of Edward J. Kelly.

The following is a copy of the account of rents, issues, and profits as prayed for in the Bill of Complaint.

RECEIPTS.

	83 Bruce St.		
	First Floor: One month at Twelve		
10	Dollars	\$	12.00
	Balance of the time occupied by		
	the defendant, Edward J. Kelly.		
	Second Floor: Five months at Eight		
	Dollars	\$	4.00
	Balance of the time occupied by		
	complainants, Grant and Mori-		
	arty.		
	85 Bruce St.		
	First Floor: Sixteen months at Ten		
20	Dollars		160.00
	One month at Nine Dollars.....		9.00
	Tenants: Powell, Milan, Breit-		
	moser and Fischer.		
	Second Floor: Thirty-six months at		
	Ten Dollars		360.00
	Tenants: Sweeney, Hitchcock,		
	Busch and Stoufenberger.		
	Attic: One month at Five Dollars...		5.00
	89 Bruce St.		
30	First Floor: Eleven months at Nine		
	Dollars		99.00
	Five months at Ten Dollars.....		50.00
	Tenants: Oliver, McManus and		
	Sensky.		
	Second Floor: Fifty-two months at		
	Ten Dollars		520.00
	One month at Five Dollars.....		5.00
	Tenant: Verne.		

Answer of Edward J. Kelly.

Third Floor: Thirty-one months at Eight Dollars	248.00	
Tenant: Fogarty.		
91 Bruce St.		
First Floor: Eleven months at Seven Dollars	77.00	
Tenant: Baum.		
Second Floor: Thirty months at		10
Seven Dollars	210.00	
Eight months at Seven Dollars and fifty cents	60.00	
Tenants: Carry and Kane.		
Third Floor: Forty months at Eight Dollars and fifty cents.....	340.00	
One month at Three Dollars....	3.00	
Tenants: Brown and Kaskey.		
75 Bruce St.		
Basement: Twenty-three months at Six Dollars	138.00	20
Tenant: Knopjt.		
First Floor: Sixteen months at Seven Dollars and fifty cents.....	120.00	
One week at One Dollar and fifty cents	1.50	
Tenants: Mily, Girkoat, Ceslka and Oblacziasko.		
Second Floor: Nineteen months at Seven Dollars and fifty cents.....	142.50	30
Tenants: Coe, Volker, Brown, Shandon.		
<hr/>		
Total of rents collected up to April 1st, 1915	\$2,600.00	
June Rents	56.50	
July Rents	59.50	
August Rents	30.50	

Answer of Edward J. Kelly.

September Rents	28.00
October Rents	47.50
December Rents	10.00

1916.

January Rents	20.00
February Rents	42.50
10 March Rents	10.00
April Rents	15.00

Total rents received \$2,919.50

Proceeds of Sale 75 Bruce street, Newark, N. J. 1,800.00

Proceeds of mortgage to Louis J. Beers 1,000.00

Total Receipts \$5,719.50

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DISBURSEMENTS.

	Maguire, carpenter	\$ 12.50
	“ metal ceiling	21.00
	“ “ “	15.00
	Crowell, lumber	19.50
	Hoffman, plumber	14.32
	“ “	6.85
	“ “	6.36
	“ “	19.30
30	“ “	24.65
	“ “	5.00
	“ “	5.65
	“ “	1.55
	“ “	6.05
	“ “	4.35
	“ “	4.47
	“ “	9.50
	“ “	6.05
	“ “	1.00
40	“ “	4.95

Answer of Edward J. Kelly.

Hoffman, plumber	\$	9.00	
Geiger, brick		5.00	
Stadlehoffer, plumber		10.95	
Kabachnick, painter		7.94	
McSulla, plumber		18.65	
Clark, plumber		11.20	
Besendorfer, painter		15.80	
“ “		7.96	
“ “		9.00	10
“ “		11.00	
McSulla, plumber		7.65	
Matthews, painter		8.00	
Schaedel, painter42	
Dennis Keeley, porch		300.00	
Weisberger, flagging		22.50	
Thompson, roof		21.00	
Clancy, cleaning		7.50	
Dougherty, cleaning		3.00	
Insurance, about		30.00	20
Louis J. Beers, search		48.75	
Taxes and interest, about		737.41	
Water Dept. for water (\$19.75 per quarter) 83-85-89-91 Bruce street		316.00	
Water Dept. for water (\$4.80 per quarter) 75 Bruce street		57.60	
		<hr/>	
		\$1,854.38	
T. F. Foyle, undertaker		250.00	30
		<hr/>	
		\$2,104.38	

**Answer of Louis J. Beers to Amended and
Supplemental Bill**

IN CHANCERY OF NEW JERSEY.

(Filed May 6 1916)

Between

ANNIE C. MORIARTY AND JOS-
EPH MORIARTY, her husband,
et als,

10

Complainants,

and

EDWARD J. KELLY, *et als,*
Defendants.

On Bill etc.

*Answer to
Amended and
Supplemental
Bill.*

The defendant, Louis J. Beers, answering so much of the Bill of Complaint as he has been advised it is necessary for him to do says:

20

1. He admits the making of a mortgage by Edward J. Kelly and Margaret Kelly, his wife, as alleged in paragraph 15 of the Bill of Complaint but denies that the said mortgage was executed by the said Edward J. Kelly and Margaret Kelly, his wife, with any fraud on their part or on this defendant's part.

30

2. Defendant admits that said mortgage was executed and accepted by this defendant with full knowledge of the pendency of a suit in this court, said notice having been received by virtue of a *Lis Pendens* recorded in the Essex County Register's office.

LOUIS J. BEERS,

Solicitor Pro se.

40

**Answer of Henry Ahrend to Amended and
Supplemental Bill**

IN CHANCERY OF NEW JERSEY.

(Filed May 6 1916)

Between

ANNIE C. MORIARTY AND JOS-
EPH MORIARTY, her husband,
et als,

Complainants,

and

EDWARD J. KELLY, *et als,*

Defendants.

On Bill etc.

Answer to
Amended and
Supplemental
Bill.

10

The defendant, Henry Ahrend, answering so much of the Bill of Complaint as he has been advised it is necessary for him to do says:

20

1. He admits the making of a mortgage by Edward J. Kelly, Margaret Kelly, his wife, as alleged in paragraph 15 of the Bill of Complaint but denies that the said mortgage was executed by the said Edward J. Kelly and Margaret Kelly, his wife, with any fraud on their part or on this defendant's part, and that the said Edward J. Kelly received as consideration for the execution of the said mortgage the sum of one thousand dollars.

2. Defendant admits that said mortgage was executed and accepted by this defendant with full knowledge of the pendency of a suit in this court said notice having been received by virtue of a *lis pendens* recorded in the Essex County Register's Office.

30

LOUIS J. BEERS,
Solicitor for Henry Ahrend.

40

Replication to Answer of Edward J. Kelly

IN CHANCERY OF NEW JERSEY

Filed May 25, 1916.

10	<p><i>Between</i> ANNIE C. MORIARTY AND JOS- EPH MORIARTY, her husband, <i>et</i> <i>al</i>,</p> <p style="text-align: center;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>EDWARD J. KELLY, <i>et al</i>,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p><i>On Bill, etc.</i> <i>Replication</i> <i>to the</i> <i>Answer of</i> <i>defendant</i> <i>Edward J.</i> <i>Kelly.</i></p>
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20 The replication of the complainants, Annie C. Moriarty and Joseph Moriarty, her husband, Frank J. Grant, Mary Grant Corbitt, William H. Corbitt, her husband, Raymond Grant, Johanna Marie Grant and Thomas H. Grant, all of Newark, New Jersey, and Isabelle Grant, Mildred Grant, Lucille Camille Grant and Harold Grant, infants under the age of twenty-one years, by Frank J. Grant of Newark, New Jersey, their next friend, and John M. Lang of Bayonne, New Jersey, administrators of the estate of Rosalie Grant Lang, deceased, to the answer of the defendant Edward J. Kelly.

30 The complainants join issue on the Answer of the defendant, Edward J. Kelly.

As to the accounting annexed to said answer complainants say that:

First. Said accounting does not contain a statement of all of the moneys received by the defendant, Edward J. Kelly, and for which he is properly chargeable to the complainants.

Second. Said accounting contains items for which the defendant, Edward J. Kelly, is not entitled to any credits as against the complainants.

Replication to Answer—Edward J. Kelly.

Third. Said accounting is not sufficiently specific in that:

(a) The dates on which certain moneys were received are not given.

(b) The dates on which certain expenditures are alleged to have been made are not given.

(c) The names of the persons from which certain moneys were received are not given. 10

(d) The names of the persons to whom certain moneys are alleged to have been paid are not given.

JOHN V. LADDEY,

Solicitor of Complainants.

GROSKEN & MORIARTY,

Of Counsel.

20

30

40

Replication to Answer of Louis J. Beers
 IN CHANCERY OF NEW JERSEY.

Filed May 25, 1916.

10	<p><i>Between</i> ANNIE C. MORIARTY AND JOSEPH MORIARTY, her husband, <i>et al</i>, <div style="text-align: center;"><i>Complainants,</i></div> <i>and</i> EDWARD J. KELLY, <i>et als</i>, <div style="text-align: center;"><i>Defendants.</i></div></p>	<p><i>On Bill, etc.</i> <i>Replication to the Answer of Defendant, Louis J. Beers.</i></p>
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20 The replication of the complainants, Annie C. Moriarty and Joseph Moriarty, her husband, Frank J. Grant, Mary Grant Corbitt, William H. Corbitt, her husband, Raymond Grant, Johanna Marie Grant, and Thomas H. Grant, all of Newark, New Jersey, and Isabelle Grant, Mildred Grant, Lucille Camille Grant and Harold Grant, infants under the age of twenty-one years, by Frank J. Grant of Newark, New Jersey, their next friend, and John M. Lang of Bayonne, New Jersey, administrator of the estate of Rosalie Grant Lang, deceased, to the answer of the defendant, Louis J. Beers.

30 The complainants join issue on the answer of the defendant, Louis J. Beers.

JOHN V. LADDEY,
Solicitor of Complainants.

GROSKEN & MORIARTY,
Of Counsel.

Replication to Answer of Henry Ahrend

IN CHANCERY OF NEW JERSEY.

Filed May 25, 1916.

Between

ANNIE C. MORIARTY AND JOS-
EPH MORIARTY, her husband, *et*
al,

Complainants,

and

EDWARD J. KELLY, *et al*,

Defendants.

On Bill, etc.

10

*Replication
to the Answer
of Defendant,
Henry Ahrend.*

The replication of the complainants, Annie C. Moriarty and Joseph Moriarty, her husband, Frank J. Grant, Mary Grant Corbitt, William H. Corbitt, her husband, Raymond Grant, Johanna Marie Grant, and Thomas H. Grant, all of Newark, New Jersey, and Isabelle Grant, Mildred Grant, Lucille Camille Grant and Harold Grant, infants under the age of twenty-one years, by Frank J. Grant of Newark, New Jersey, their next friend, and John M. Lang of Bayonne, New Jersey, administrator of the estate of Rosalie Grant Lang, deceased, to the answer of the defendant, Henry Ahrend. 20

The complainants join issue on the answer of the defendant, Henry Ahrend. 30

JOHN V. LADDEY,

Solicitor of Complainants.

GROSKEN & MORIARTY,

Of Counsel.

Annie C. Moriarty, direct.

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	}
	ANNIE C. MORIARTY AND JOSEPH MORIARTY, her husband, <i>et al,</i>	
10	<i>Complainants,</i>	}
	<i>and</i>	
	EDWARD J. KELLY, <i>et al,</i> <i>Defendants.</i>	

Before His Honor Vice-Chancellor Stevens.

Mr. John V. Laddey and Messrs. Grosken & Moriarty, for complainants.

Mr. Louis J. Beers, for defendants.

20 Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Monday, September 25, 1916, at Chancery Chambers, Newark, N. J.

ANNIE C. MORIARTY, sworn.

Direct examination by Mr. Laddey.

Q Mrs. Moriarty, you are the complainant in this case?

A Yes, sir.

30 Q And what relationship do you bear to Thomas Kelly?

A What way do you mean?

Q That was your father, Thomas Kelly?

A Yes, sir.

Q You are the daughter of Thomas Kelly?

A Yes.

Q Where did he live?

A 83 Bruce street.

Q When he died?

40 A Yes.

Annie C. Moriarty, direct.

Q Where do you live?

A Upstairs, 83 Bruce street, second floor.

Q How long have you lived there?

A Going on five years.

Q How long before his death did you live there?

A I lived there about two months when he died.

Q Where did you live before that time?

A 114 Thirteenth avenue.

Q That is about how far from 83 Bruce street? 10

A About half a block.

Q How frequently did you use to go to see your father?

A Every day in the week.

Q Did your father have other children?

The Court. What was his age at the time of his death?

A About ninety-five.

Q How do you know that? 20

A Because mother always said he was insured five years younger than he was so that the insurance would be more.

Q The insurance would be less you mean?

A Well, less or more, I don't know.

Q Did your father have other children?

A Yes, sir.

Q Who were they?

A Well, they were all dead only my brother and I. 30

Q Who is your brother?

A Edward J. Kelly.

Q And then any others?

A No, sir.

Q (*By the Court.*) Were there any grandchildren?

Mr. Beers. To save time, your honor, the pleadings show who the children are; there is a deceased child, and there is no question about that. 40

Annie C. Moriarty, direct.

The Court. The witness has not answered the question whether there were any grandchildren.

A Yes, sir.

Q (*By the Court.*) How many grandchildren at his death, children of deceased children I mean?

A Well, there is Raymond and Thomas, Isabelle, Marie, Mildred and Frank and Lucille and Harold and May.

Q (*By the Court.*) They were the children of whom?

A My sister that is dead.

Q (*By the Court.*) Your dead sister?

A Yes, sir.

Q Also a daughter of Thomas Kelly?

A Yes.

Q What was her name?

A Matilda Grant.

Q (*By the Court.*) And that was all, was it?

A That was all.

Q Did your father do any work at the time or immediately preceding his death?

A No, sir, he hasn't worked for over forty years.

Q Why not?

A Well, he wasn't able to work.

Q (*By the Court.*) What had been his work?

A Well, he used to work on the street the last time he did work, up in Woodside.

Q (*By the Court.*) What do you mean?

A Cutting streets through, shoveling dirt and picking.

Q (*By the Court.*) He was a laborer?

A Yes, sir.

Q (*By the Court.*) What was it that prevented him from working?

A His head seemed to bother him all the time, he used to get these fainting spells, and his head

Annie C. Moriarty, direct.

bothered him so he couldn't work; he got a sun-stroke about that time; he was brought home.

Q (*By the Court.*) After that he lived where?

A 83 Bruce street.

Q (*By the Court.*) Who lived with him?

A His son and my mother.

Q (*By the Court.*) Well, the name of the son?

A Edward J. Kelly.

Q (*By the Court.*) And your mother? 10

A And his wife, his first wife.

Q (*By the Court.*) Whose wife?

A Ida Clarey.

Q (*By the Court.*) Whose first wife?

A My brother's first wife.

Q (*By the Court.*) How long did they continue to live with him?

A Well, they lived with him there until she died; she is dead about six years I guess, his wife. 20

Q (*By the Court.*) Who is she?

A My brother's wife.

Q (*By the Court.*) Then what happened?

A I don't know what you mean.

Q (*By the Court.*) After she died who lived with your father?

A Nobody else only him and my mother and father.

Q (*By the Court.*) Your mother. Well, your mother lived then until when? 30

A She died 1909.

Q (*By the Court.*) Now after she died?

A There was nobody there but my brother and my father.

Q (*By the Court.*) And who took care of your father?

A Well, I took care of my father in the line of taking care of him; I didn't go out to work for him but I always took care of him.

Q (*By the Court.*) Who prepared his meals? 40

Annie C. Moriarty, direct.

A I did.

Q (*By the Court.*) Every day.

A Every day; what I had I would give to him; there wasn't anything he bought for him, I bought it myself for him.

Q (*By the Court.*) Who looked after his room?

A I did.

10 Q (*By the Court.*) Was he able to walk about?

A Just walk around with a cane.

Q (*By the Court.*) That was the situation when he died?

A Yes.

Q (*By the Court.*) Did he die in his own house?

A He died in bed with all his clothes on, shoes and all.

20 Q (*By the Court.*) Did he die in his own house?

A Yes, sir.

Q You said he hadn't done any work for forty years. What happened, if anything, about forty years ago to your father?

The Court. She said he had a sunstroke; you need not go over that again.

Q How do you know that?

A Why, Mr. Reilly brought him home in a dump cart.

30 Q Is Mr. Reilly in court now?

A Yes.

The Court. The question is what was his physical and mental condition at the time he made the deed.

Q Mrs. Moriarty, just tell us as well as you can the mental and physical condition of your father at the time of his death and before it?

A You mean those spells?

40 Q Just describe the spells?

Annie C. Moriarty, direct.

A He used to sit on a chair and he would throw his head back, he would holler and scream, could hear him as far as Bank street; all I could do was hold his head and rub it a little, that is the only relief he could get; when he would come to he would be very weak.

Q How long would they last?

A Maybe five minutes.

Q Was he conscious during those spells?

10

A No, sir, didn't know anything.

Q Did they always occur in the chair?

A No, sir, sometimes standing up on the floor; then I would try and get him sitting down if I could.

Q (*By the Court.*) What was it?

A He claimed that his brain bothered him all the time.

Q How frequently would those spells occur?

20

A Sometimes he would have three in a day.

Q Three in a day?

A Generally one anyhow.

Q Was he able to leave the house at any time?

A Only as far as the gate or the door.

Q When was the last time he left the house?

A That was before my mother died; he dressed up and went out.

Q Does that remind you of anything in connection with his going out?

30

A Yes. I went upstairs and asked my aunt if she would come downstairs and stay with mother until I would see where he went; I thought he wouldn't go only as far as the gate; when I got to the gate he was gone; when I looked up the street some man was coming down with him; he lost his way.

Q Had he the habit of going to church?

A He used to dress up and go but he never got that far, he would get as far as the gate and come back again.

40

Annie C. Moriarty, direct.

Q When was the last time he went to church?

A He hasn't went to church in forty years I guess, to my knowledge; he dressed up to go, but didn't get that far.

Q Did he have any substitute for going to church, was there any substitution made?

10 *The Court.* That does not make any difference.

Q Tell us about his mental attitude; could you converse with him, and things of that kind?

A What do you mean?

Q Could you carry on a conversation with your father?

A No, sir, he very seldom talked at all, very seldom, he just sat in the rocker, and sometimes he wouldn't know it was me at all came in.

20 Q Did he have any difficulty in recognizing others besides yourself?

A Yes, sir; when my sister's children would come down he wouldn't know who they were until they would explain and tell who they were.

Q Would he then remember them?

A Yes, after that he would, when they would explain who they were then he would know who they were.

Q Did your father have any peculiarities that you care to tell the court about now?

30 A What do you mean by that?

Q Well, does a knife remind you of anything?

A Yes, he used to have a habit of cutting his knuckles, sitting in the chair and cutting skin off, he used to sit there day after day.

Q How about his cane; does that remind you of anything?

40 A Yes, sir; just before my mother died why he was going around with the cane, he was hitting it around the floor; I asked him what he was doing;

Annie C. Moriarty, direct.

he said he was killing rats, and with that my daughter came in, Mrs. Bush, and he took the cane up to strike her with it, and said "There is one"; I said "Don't, father, that is Tillie"; just then I composed him and he sat down.

Q (*By the Court.*) Did you have any doctor?

A Doctor Cook, yes.

Q What did your father use to drink during the day? 10

A He used to have a little blue enamel cup about that high (illustrating), and poured all the dregs of the coffee out of the other cups, and he used to sit that on the sink and let it stand there day after day and drink it.

Q What appearance did that mixture have; was it appetizing?

A Oh, no; it had a thick scum on, wasn't fit for anybody to drink, was terribly looking stuff. 20

Q Did you ever try to do away with that?

A Yes, I tried to throw it out, but he wouldn't have it.

Q Try and tell us of some more of his peculiarities?

The Court. You need not go into that; it is not a question of mental competency, as I understand it. You have gone far enough; if necessary I will let you go further.

Q How was the conduct of Edward towards Thomas? 30

A He was very nasty to him when he got sick, shoved him around and pushed him down in the chair, and very ugly with him.

Q How did your father feel towards him?

A He felt very bad towards him, had no use for him whatever in the end.

Q Did your father like to see Edward come home? 40

Annie C. Moriarty, direct.

A No, he didn't care whether he came home or not at that time.

Q Did your father ever complain to you about Edward?

A How he treated him?

Q Yes?

A Yes, sir, he told me he was very nasty to him after all he done for him.

10 Q Nasty is a conclusion; tell us of some of the specific things that your father complained about?

A Well, I seen it myself, how he used to shove him around, push him down in the chair, catch hold of him by the shoulders and shake him down.

Q How about his food?

A Whatever he ate while I was there I bought it; he used to have hard bread, it was only the dog's bread.

20 Q Your father smoked, didn't he?

A Yes, he smoked.

Q Did he ever tell you anything about that?

A Yes, he told me after all he had done for Edward he couldn't get the price of a paper of tobacco out of him, he would not give it to him.

Q By the way, your mother died in 1909?

A Yes, sir.

Q And your aunt died when?

A 1911.

Q She lived in the same house?

30 A Yes.

Q Was your father at the funeral of either your mother or your aunt, did your father go to the funeral of either of these two?

A No, sir; he wouldn't go to the funeral.

Q How was Edward's conduct at the time of aunt Ann's death?

The Court. That does not make any difference.

40 Q I would like to have you tell us, if you re-

Annie C. Moriarty, direct.

member, what occurred between your father, in connection with your father and your brother Edward, during the last twelve or fourteen hours of his life?

The Court. That does not make any difference. This deed was signed long before that, was it not?

Mr. Laddey. Oh, yes.

The Court. Does this witness know anything about the circumstances under which the deed was given? 10

A No, sir, I knew nothing about it until I saw it in the paper.

Q (*By the Court.*) Did you know your father had made a deed?

A No, sir, I did not.

Q (*By the Court.*) When did you first learn of it?

A I saw it in the newspaper; I never knew a thing about the transfer, only he told me to come when the lawyer would be there so he would settle up the property of his, but when I came every day he told me the lawyer hadn't come yet, and I came there for a week. 20

Q (*By the Court.*) Who was the lawyer?

A Well, I don't know; he told me himself he had lawyer Woodruff, but I never saw him until I saw him here in court.

Q Who told you that? 30

A My brother.

Q Edward?

A Yes, sir.

Q Did you ever have any talk with your father about this deal, so to speak, this transfer I should say?

A How do you mean by talking?

Q Did you ever have any conversation, any talk with your father about his having transferred his property to Edward? 40

Annie C. Moriarty, direct.

A No, sir, I did not.

The Court. She said she did not know of it until after his death.

A I didn't know anything about the transfer, that was kept quiet, I didn't know a thing about it.

Q You didn't understand the question. You did hear about it after you saw it in the paper?

10 A Oh, yes, after I saw it in the paper.

Q You have already testified to that?

A Yes.

Q When was that?

A That was about eight or ten days after, I think it was, I saw it in the paper.

Q Eight or ten days after what?

A After the transfer.

Q And when was the transfer, according to the paper?

20 A Well, eight or ten days, that is the time I saw it, it might have been more, I can't just say.

Q Eight or ten days; can you give us the date when you noticed it in the papers?

A No, I couldn't really give the date.

Q Approximately?

A I couldn't say the date, I didn't notice it.

Q How soon, or how long after Aunt Ann's death did you see it?

A I couldn't say; it wasn't long after.

30 Q It wasn't long after?

A No, sir, very shortly.

Q About three or four weeks?

A Because I thought it was done rather quick.

Q After that did you have any talk with your father about it?

A Yes, I did ask him about the transfer, and what he had done that for, and my brother spoke up and said he was going to give me the big house.

Q What did your father say?

40 A He said, "Yes, we will give it to you," and

Annie C. Moriarty, direct.

that is all that was passed; he told me when the papers would come back he would make it all right, but I never saw the papers.

Q Who said all this?

A My brother.

Q Your brother Edward?

A Yes, sir; of course he might not remember because he is always under the influence of drink; during the time he got the money he was never sober, he drank all the time. 10

Q What moneys are you talking of, what moneys did you refer to just then?

A What money?

Mr. Beers. If the Court please, I do not see what connection the money has with this matter. The other side has been allowed quite some latitude.

Q Mrs. Moriarty, you just testified that you don't think your brother Edward remembers what he said to you because he was under the influence of liquor ever since he got the money; what money did you refer to? 20

A The money he found belonging to my aunt.

Mr. Beers. I object to any reference to the money; I don't see what connection it has with this case.

The Court. Oh, yes, it has connection if it was money of Mr. Kelly's. 30

Q Answer the question; what money do you refer to?

A The money he found belonging to my aunt.

Q How do you know that he found this money?

A Because he showed it to me.

Q When did he show it to you?

A About the third day after my aunt was dead.

Q How much money was it?

A I can't tell; it was a roll like that (indicating). 40

Annie C. Moriarty, cross.

The Court. No, do not go into that.

Mr. Laddey. I merely thought it was relevant because it showed the intention of the defendant, but if your honor doesn't desire it I will rest.

Cross examination by Mr. Beers.

10 Q You say your father hadn't worked for over forty years?

A No, sir, he did not.

Q You are certain of that?

A I am certain of it.

Q And what did your father do?

A He was a laborer at that time.

Q Just a minute. What did your father do during the forty years that he hadn't worked?

A Nothing at all, only walked around, that is all.

20 Q During that time who supported him?

A Well, I worked at that time myself; I went to work when I was twelve years old.

Q And in the last twenty years who supported him?

A Well, I suppose my brother helped to support him, I don't know.

Q You don't know?

A No.

Q But you didn't, did you?

30 A Well, I was married; I supported him up until I was married, and I got married when I was twenty-two, 1886.

Q But at no time after you were married did you support him?

A No, sir; I didn't think it was necessary for me to support him then.

Q Now, who took care of your father's person during the last twenty years prior to his death?

40 A I took care of him all this time he was sick.

Annie C. Moriarty, cross.

Q What time was it you took care of him?

A I moved there November 1st, 1911; that is when he was taken real bad.

Q And before that of course did you look after your father?

A Well, I went over there and done all the washing and ironing.

Q How often did you go over to see your father?

A Every day in the week.

10

Q And you took care of him every day in the week?

A I went over to see him every day in the week; my mother was living then, I didn't have to take care of him all the time, my mother was alive.

Q (*By the Court.*) You say you moved over to this house, as I understand it?

A Yes, the first of November.

Q (*By the Court.*) On the first of November?

20

A 1911.

Q (*By the Court.*) And you stayed there until he died?

A Yes, sir, I was there at his death bed.

Q (*By the Court.*) During that time the only occupants of the house were yourself, your brother and your father?

A Yes, sir, and my family.

Q (*By the Court.*) What did your family consist of?

30

A Well, I got five.

Q (*By the Court.*) Is your husband living?

A Yes.

Q (*By the Court.*) Then your husband and your five children?

A Yes, sir.

Q (*By Mr. Laddey.*) You lived in different flats?

A I lived upstairs and father lived downstairs at that time.

40

Annie C. Moriarty, cross.

Q When did your mother die?

A 1909, May 11th.

Q What part of the year?

A May 11th.

Q And your father died when?

A 1912, January 11th.

Q When did you begin to care for your father?

10 A I always cared for him, and always was good and kind to him.

Q What did you do for your father?

A I don't know what you mean.

Q Well, you say you cared for him; what did you do for him?

20 *The Court.* Does that make any difference? You may ask the witness what she did after she moved to the house on the first of November, 1911; that seems to be the important period. What she did twenty years before is a matter of no consequence.

Q What did you do for your father prior to April, 1911?

A April, 1911?

Q Yes?

A Well, I took care of him and done all I could for him, and I fed him too; my brother never bought enough for him, when I came there, for to eat, I bought it all.

30 Q What did you do for your father after April, 1911 and up until the time he died?

A I took care of him.

Q What did you do for him in taking care of him?

A I cannot understand that question. He was sick and I took care of him; I was there all the time, day and night.

Q What did you do?

40 A I got his meals ready for him, and all such

Annie C. Moriarty, cross.

as that; there was nothing else that I know I could do.

Q Your father died in January, 1912?

A Yes.

Q That is right?

A That is right.

Q Before that isn't it true that you went there once a week and did his washing, for which you were paid? 10

A Fifty cents at the time my mother was alive, but nothing after.

Q Nothing after 1911?

A No, sir, not a cent.

Q That is all you did, to go there once a week and do the washing?

A When my mother was alive.

Q Yes, and after that?

A I went there every day to see how he was, just in personally to ask him how he was, and go home again; I was there twice a week washing and ironing. 20

Q That is what you would do, go there and ask him how he was and go home again?

A Yes; what else could I do; my mother was alive then.

Q Well, after your mother died, that is what I refer to, after your mother died, and up to the time of the death of your father you went there, you say, frequently to ask your father how he was? 30

A Yes, I did.

Q And then you went home?

A Yes, sir.

Q And that is all you did?

A Yes.

Q You didn't know what the cup about which you have testified to contained, did you?

A Yes, sir.

Q What did it contain? 40

Annie C. Moriarty, cross.

A The dregs of all the cups that was on the table, cocoa and coffee, or whatever might be in them.

Q Did you ever see your brother strike your father?

A No, sir, I never saw him strike him, but I saw him pushing him around, shoving him down in the chair.

10 Q When was this?

A When he was sick.

Q Did you complain to your brother about it at the time?

A I told him not to shove him around.

Q Did you take any food to your father?

A Did I what?

Q Did you take any food to your father?

A Certainly, I fed him all the time I was there.

20 Q (*By the Court.*) When?

A When I moved there, and before I moved there I used to take things over to him, little things that he would like, take a fancy to.

Q Just little things that he would like?

A Yes, something tasty, such as pudding and stuff like that.

Q And that was all you took there after your mother died?

A Yes.

30 Q And up to the time of your father's death?

A Yes; well, my aunt was there to take care of him then, she lived upstairs; it wasn't necessary for me then to bring him anything.

Q Did you take care of your mother about the time of her death in 1909?

A Yes, sir, I took care of her for fourteen weeks.

The Court. That does not make any difference, as I understand the issue.

40

Annie C. Moriarty, cross.

Q Didn't your father complain to you about the lack of attention which you were showing him?

A No, sir; my father thought a lot of me.

Q Isn't it true that you abandoned your father, and that you didn't go near him from the time of your mother's death and just prior to your mother's death, and until his death?

A No, sir, that is not so; I was there at my mother's bedside when she was dying, and I have proof here in court. 10

Q You learned of the recording of these deeds by the notice that appeared in the newspaper, isn't that true?

A I saw it in the paper, and that is all I knew about it.

Q And then how long a time did you wait before going to see your father about the recording of these deeds?

A About three days. 20

Q Three days?

A Yes.

Q Are you sure it wasn't many months afterwards?

A No, sir, it was not.

Q And who was present when you saw your father?

A My two daughters, Mrs. Bush and Ethel Moriarty.

Q And your father and brother? 30

A And my father and my brother.

Q Your brother Edward?

A Yes.

Q About these spells that your father had; you say that he had them once sometimes, and sometimes three times a day?

A Yes, sir, three times, I used to have to run downstairs in the dead hours of the night to him in bed, for my brother would never think of getting up to go in to him. 40

Annie C. Moriarty, cross.

Q Sometimes would he have them four or five times a day?

A No, sir, three was about the highest he ever had in a day.

Q How often would he have three a day?

A Maybe one in the morning, and might have two in the afternoon, or two in the morning and one
10 in the afternoon.

Q How often would he have three in the day; very often?

A No, not very often; he generally had one, one every day anyhow, sometimes two, but three was the most.

Q You thought he was going to die, did you during these spells?

A I did think he would die in them, I thought he would die in one of them.
20

Q You are a member of the Catholic church, aren't you?

A Well, yes, sir, I am.

Q What did you do when you thought your father was going to die, with reference to having the last rites of the church administered to him?

A He had the last rites of the church, Father Quirk was there about two days or so before he died, and he went in the bedroom, and my father was standing—
30

The Court. That is enough. Now I understand, the deeds not being here just at present, that you admit that there was no valuable consideration paid for this property; you admit that the deeds are absolute in form, reserving no life interest, and you admit that this property which he conveyed was all the property that he possessed?

Mr. Beers. Yes, we admit that.

Edward J. Kelly, direct.

The Court. Then you have made out a *prime facie* case. Now it will rest upon the defendants to explain how it was that they came to acquire this property.

EDWARD J. KELLY, sworn.

Direct examination by Mr. Beers.

Q Mr. Kelly, you are one of the defendants in this suit? 10

A Yes, sir.

Q And you are the son of Thomas Kelly?

A Yes, sir.

Q And you are the person who received the deed from Thomas Kelly for all of his property?

A Yes, sir.

Q Do you know who drew the deed conveying to you all of that property?

A Who drew it? 20

Q Yes?

A Mr. Woodruff.

Q Do you know where the deed was drawn?

A Well, I was not in the house when it was drawn.

Q Well, it was drawn in your father's house, was it?

A Yes, 83 Bruce street.

Q Do you know, or rather did you send for Mr. Woodruff to call at your father's house? 30

A No, I did not; my father spoke to Mr. Foyle and he called up Mr. Woodruff I guess.

Q (*By the Court.*) Who is he?

A He was the undertaker.

Q He buried your aunt, did he?

A Yes, sir.

Q Do you know how many times Mr. Woodruff called at your father's house?

The Court. Well, if he was present and saw him. 40

Edward J. Kelly, direct.

A Twice.

Q (*By the Court.*) Did you see him?

A I saw him, yes.

Q (*By the Court.*) You saw him there twice?

A He came in the evening when I was home.

Q When Mr. Woodruff called at your father's house what did you do?

A Me?

10 A Yes?

A I went out.

Q You went out?

A Yes.

Q Where did you go to?

A I went down as far as the corner, Thirteenth avenue and Bruce street.

Q How far is that from your father's house?

A Half a block.

20 Q How long did you remain there?

A I guess about twenty minutes.

Q And then what did you do?

A I came back then, back to the house.

Q What did you do?

A Well, I stayed in the house.

Q Was Mr. Woodruff still there?

A Not then, no.

Q Had he gone?

A He had gone.

Q Then when did Mr. Woodruff call next?

30 A That was the time that he—

The Court. Were you there when he called the next time?

A Yes, I was there.

Q (*By the Court.*) Tell us what happened when he called. When was it?

A Well, the first time he called—

Q (*By the Court.*) You told us about the first time. Now go on to the second time; what hour of the day was it?

40

Edward J. Kelly, direct.

A It was in the evening.

Q (*By the Court.*) You were there at that time?

A Yes.

Q (*By the Court.*) Tell us all that happened?

A Well—

Q Was Mr. Woodruff alone?

A He was alone.

Q I mean the second time that he called? 10

A The second time Mr. Saupe was with him.

Q Do you know what business Mr. Woodruff had with your father; did you remain there?

A No.

Q Tell us just what took place from the time Mr. Woodruff called, so far as you know of your own knowledge.

A Well, my father was there.

Q Until Mr. Woodruff left?

A My father was there, and Captain Saupe and Mr. Woodruff; I wasn't there. 20

Q (*By the Court.*) You do not know what occurred then?

A No, sir, I do not.

Q (*By the Court.*) Where did you go?

A I was out in the street, I went down to the corner.

Q (*By the Court.*) Why?

A Went down to get a glass of beer.

Q (*By the Court.*) Was that the only reason you went down? 30

A That is all.

Q (*By the Court.*) Were you told to go down there?

A No, no.

Q (*By the Court.*) And did you remain out of the house while the deed was being signed?

A When I came back Mr. Woodruff and Mr. Saupe I met coming down the street. 40

Edward J. Kelly, direct.

Q (*By the Court.*) Did you go out of the house because they were coming?

A I had no business there.

Q (*By the Court.*) Did you go out because they were coming?

A Because they were coming?

Q (*By the Court.*) Yes?

10 A Why, no, it was my father was doing this here, it wasn't me.

Q (*By the Court.*) But why did you go out of the house on both occasions?

A I went down to get a glass of beer.

Q (*By the Court.*) Is that all?

A Yes; I was just after coming home from work.

Q (*By the Court.*) It had no connection whatever with their presence?

20 A No connection at all.

Q (*By the Court.*) When you got back was Mr. Woodruff there?

A No.

Q (*By the Court.*) The second time?

A The second time he was not.

Q Had you any conversation with your father prior to the execution of this deed about the property?

A None whatever.

30 Q Did you ever open up a conversation with your father about the property?

A Never.

Q Your mother died in 1909, didn't she?

A That is right.

Q And who looked after your father's person from 1909 until the time of his death?

A Well, my aunt lived upstairs and she looked after him until she died.

Q Who dressed your father, if you know?

40 A He dressed himself.

Edward J. Kelly, direct.

Q Who washed him?

A He washed himself, shaved himself.

Q How long prior to your father's death had he not worked?

A Well, I should judge the last he worked was about fifteen years ago when he was working on the streets, and before that he worked in Howell's leather factory.

10

Q That is prior to fifteen years ago?

A Yes.

Q Did your father have any fainting spells?

A He would take a weak spell now and then.

Q How often?

A Once a day maybe.

Q How would those weak spells affect him?

A Why he would be all right in a few minutes, just lay back in the chair and be all right.

Q Were you ever home during the day time? 20

A Not very often.

Q Did your sister care for your father?

A She did not.

Q Did your sister provide your father with any food?

A She did not.

Q At any time prior to his death?

A She might buy a can of salmon, or something like that, that is all; I brought home the meat from the store and furnished the meat every Sunday. 30

Q Did you ever see your father drink from this mysterious blue cup the dregs of other cups?

A He used to make tea and have that sit one side and take a sup out of it now and then; it wasn't cocoa or anything, because we had none.

Q Did you ever see your father drink from this mysterious blue cup?

A It wasn't mysterious, it was right there on the table or on the side of the sink. 40

Edward J. Kelly, direct.

Q Did you ever examine the contents of that cup?

A I know it was tea.

Q How do you know it was tea?

A Because I saw him make it.

Q Did you ever see your father cut the flesh from his thumbs with a knife?

10 A He had a callous and would trim that, that is all, never cut no flesh.

Q Did you ever see your father in the act of driving rats away?

A No, I did not.

Q Did he do it in your presence at any time?

A Never in my presence.

Q Did you hold conversation with your father?

A I was with him all the time.

Q Just prior to his death?

A All the time.

20 Q That is for a year or so prior to his death?

A All the time, I was with him every night.

Q Did you have any difficulty in carrying on conversation with your father?

A Not a bit, no, sir.

Q How was his memory?

A Very good.

Q What was his physical condition?

A Pretty fair.

30 Q What do you mean by pretty fair?

A He could walk around, and used to do a little work around the houses there, fixing things.

Q How, if you know, did your father spend his days?

A Spent his days?

Q Yes, his days?

A He used to help my aunt doing the work around the house.

40 Q Well, for say about two years prior to his death what did he do?

Edward J. Kelly, direct.

A He was around the house.

Q What did he do prior to the making of this deed in 1911?

A He didn't do anything then.

Q How did he spend his time?

A Just around the house and out on the front stoop.

Q Did he go out any?

A Oh, yes, out through the yard. 10

Q Did he go in the street any?

A He used to take care of my dogs and chickens.

Q Did your father smoke?

A Yes.

Q Did he have tobacco to smoke?

A Yes.

Q Who gave it to him?

A I did.

Q Who purchased it?

A I did. 20

Q Do you know whether he went to the store to make any purchase just prior to the making of this deed?

A Well, I don't know about just prior, but he has been to the store there often.

Q Do you know to whose store he went to make these purchases?

A Mrs. Henry's.

Q Did you ever suggest to your father the making of a deed to you for all of his property? 30

A Never did.

Q Did Mrs. Moriarty, your sister, call at your father's home every day after the death of your mother and up to the time of your father's death?

A No, she did not.

Q How often did she call, if you know?

A I don't know that. I know she used to come and do the washing, and I paid her a dollar every time she came, and if I wasn't there she would 40

Edward J. Kelly, direct.

come down to the store and get it off me there, or send one of the children down.

Q You don't know whether she called every day or not, do you?

A No, sir.

Q (*By the Court.*) What is your business?

A Butcher.

10 Q (*By the Court.*) And you are at your shop every day?

A Every day.

Q (*By the Court.*) And what are your hours?

A From seven until half-past six.

Q Mr. Kelley, you are a married man, are you not?

A I am, yes, sir.

Q You have a daughter?

A Yes.

20 Q You are living with your wife and daughter?

A Yes.

Q And this is your second marriage?

A Yes.

Q When were you married the second time?

A April twenty-eighth, a year ago.

Q Prior to that you had been a widower for how long?

A Six years.

Q During that time where did you live?

30 A Lived at 83 Bruce street.

Q With your father?

A With my father.

Q Were you in the habit of getting home late occasionally?

A Oh, yes.

Q Was there anybody up in your house?

A My father used to take a lay-off early in the evening, and at night he would be on the stoop.

Q How late was this?

40 A Eleven o'clock.

Edward J. Kelly, direct.

Q What would he say to you, if anything?

A "Fine hour to be coming home," and all this here; the same way on a Saturday night when I would be late coming home.

Q Did you provide a nurse for your father after your mother's death and up to the time of his death?

A Provide a nurse?

10

Q Yes?

A No, I did not.

Q Why not?

A Because my sister lived upstairs and she used to take a run down, and he was only sick for a few days, that is, real bad.

Q I mean prior to his getting sick?

A He didn't need no nurse, he done his own work.

Q What do you mean by his own work?

20

A Cleaned the house, made the fire, got his meals ready.

Q How early would your father rise in the morning?

A Oh, about half-past five.

Q Were you up when he would get up?

A No, sir, he would call me.

Q He would call you?

A Oh, yes.

Q Was he fully dressed at the time he would call you?

30

A Oh, yes.

Q Who would get the breakfast ready?

A Well, I didn't eat there; he got his own.

Q Did your sister ask you for a part of this property which your father conveyed to you?

A Never spoke to me about it at all.

Q Did you inform your sister that you were going to marry for the second time?

A I did.

40

Edward J. Kelly, cross.

Q At that time was there anything said about this property, by your sister?

A Well, that is the reason they brought this here suit.

Q I want to know whether your sister at the time you told her you were going to marry for the second time said anything to you about this property?

10 A Oh, no.

Q (*By the Court.*) Give me the date of your marriage?

A Twenty-eighth of April a year ago.

Q (*By the Court.*) Of what year?

A Last year, 1915.

Q Did your sister at any time demand of you a part of this property?

A Never demanded any property off me at all.

20 Q Did she ever ask you for a deed or for part of the property?

A Never.

Cross examination by Mr. Moriarty.

Q Mr. Kelly, you say you did not know what was going on in the house when Mr. Woodruff came?

A I didn't know? I said I didn't see it, I didn't see it.

30 *Mr. Beers.* If the Court please, is it quite proper to have—I suppose it is—I was going to say, to have the different counsel to take their turns at the different witnesses?

The Court. Well, they represent two different interests.

Q Did you see Mr. Woodruff coming in on both occasions?

A Oh, yes.

40 Q When you saw Mr. Woodruff coming in you went down to the corner?

Edward J. Kelly, cross.

A Yes.

Q And you did not know why he was coming?

A I didn't know when he was coming.

Q I say; you did not know why he was coming?

A I knew why he was coming.

Q What did you know he was coming for?

A Because my father thought that Mr. Foyle was a lawyer as well, and he 'phoned for him. 10

Q How do you know your father thought that?

A Because Mr. Foyle was over and I paid him.

Q How do you know that your father thought that?

A Why, because he told me.

Q Your father told you?

A Yes, sure.

Q What did you do?

A I didn't do anything. 20

Q What did you say to your father?

A I told him no.

Q You told him he was not?

A Yes.

Q Then what did you say?

A Mr. Foyle spoke to him then and said that he would 'phone for a lawyer for him.

Q Then you did know what was going on in the house at the time Mr. Woodruff came?

A Yes, but I didn't see it.

Q You never said anything to your father about the property before that? 30

A Never a word.

Q Never mentioned it to him?

A Never a word.

Q Didn't you ask him to convey it to you?

A I did not.

Q Didn't you know he was going to convey it to you?

A I did after, yes. 40

Edward J. Kelly, cross.

Q I mean didn't you know then?

A No.

Q You never knew that he intended to convey it to you?

A No, he never said a word to me about it?

Q He never said a word to you about it?

A No.

10 Q Did you know what he wanted a lawyer for?

A Yes, sure.

Q What did he want it for?

A He was going to convey it then.

Q Who was he going to convey it to?

A I didn't know; it was done while I was out.

Q You didn't bother to inquire, did you?

A I didn't care how it went.

Q You didn't care? You cared something for your father, didn't you?

20 A I certainly did.

Q Then why didn't you care what he did with his property?

A Because there were others.

Q There were others?

A My sister had a group of children.

Q Did you ever see these deeds?

A Oh, yes.

Q When did you first see them?

A I had them about a week after my aunt died, two weeks after.

30 Q About two weeks after your aunt died?

A Yes.

Q Where did you get them?

A Off Mr. Woodruff.

Q What did you do with them?

A Mr. Beers has got them.

Q (*By the Court.*) Was that the first you knew that he had conveyed you the property?

A Yes.

40 Q (*By the Court.*) You did not know that he

Edward J. Kelly, cross.

had conveyed you the property until Mr. Woodruff handed you the deed?

A They were private, they were in the house.

Q (*By the Court.*) No, you do not understand my question. Did you know before Mr. Woodruff handed you the deeds that your father had conveyed the property to you?

A I got them off—yes.

Q (*By the Court.*) When did you first hear that he had? 10

A That night that he conveyed it.

Q (*By the Court.*) Who told you?

A My father; he and I and my nephew, lived upstairs, we were in the kitchen.

Q (*By the Court.*) What did father say when he told you that?

A He said that he was rich the day before, and look at how poor he was then.

Q (*By the Court.*) Was that all he said? 20

A That is all.

Q (*By the Court.*) Did he give any explanation of why he conveyed the property?

A Well, he thought so much of me, I provided for him.

Q (*By the Court.*) No. What did he say?

A Well, that is all.

Q (*By the Court.*) No. Tell us what he said, tell us all that he said when he told you that he had made the deed? 30

A That is what he said, how rich he was the day before and he had nothing then.

Q (*By the Court.*) Is that all he said at that time?

A That is all, yes.

Q Is it not a fact, Mr. Kelly, that you went to Mr. Woodruff yourself?

A No, I never did, never did.

Q Is it not a fact that you knew, and that you 40

Edward J. Kelly, cross.

tried to get your father to convey the property to you?

A Never.

Q You never did?

A Never mentioned it.

Q Did you take the precaution to go to see a doctor to have your father examined as to his sanity or insanity, just after your aunt died?

10 A I did, yes.

Q Why did you do that?

A Because I was advised to.

Q Why were you obliged to?

A On account of his advanced years.

Q Did you think that there was some question?

The Court. What doctor did you go to?

A Doctor Cook and Doctor Burns.

Q You had two doctors examine your father?

20 A Yes.

Q Shortly after your aunt's death?

A Oh, no, about two weeks.

Q Anyway, before the deeds were signed?

A Oh, yes.

Q Before the deeds were signed?

A Yes.

Q What did you go to the doctor for?

A What did I go for?

Q Yes?

30 A He was going to convey the property, I didn't know what he was going to do, he couldn't take care of it, and I was doing all the work around.

Q You knew then that he was going to convey the property?

A Yes, but I didn't know for sure whether he was going to hand it to me or to somebody else, or how he was going to divide it.

Q Were you advised to get a doctor?

A No, I thought it safe myself.

40 Q You thought it safe?

Edward J. Kelly, cross.

A Yes.

Q Safe for whom?

A For all of us.

Q Who is all of us?

A There were my sister's children and my sister.

Q (*By the Court.*) Who paid the doctors?

A I paid them. I paid everything.

Q Who was there when the doctors called? 10

A I was there.

Q (*By the Court.*) And this was how long before the deeds were actually made?

A It was about three days before.

Q (*By the Court.*) Well, was not this examination made for the purpose of ascertaining whether he was capable of making a conveyance?

A Yes.

Q (*By the Court.*) That was the purpose of the examination? 20

A That was the purpose.

Q (*By the Court.*) Who advised that?

A Well, I took it on to myself.

Q (*By the Court.*) Did not anybody tell you that that was a wise precaution?

A No.

Q (*By the Court.*) You did it yourself?

A Yes.

Q (*By the Court.*) Without getting advice from anyone? 30

A No, there was nobody there but father and I.

Q (*By the Court.*) Did you tell your father you were going to have him examined?

A Yes.

Q (*By the Court.*) What did you say?

A I told him I was going to get Doctor Cook, and Doctor Cook said that he would take Doctor Burns down with him.

Q (*By the Court.*) Did you tell your father 40

Edward J. Kelly, cross.

why you were going to have those doctors come to examine him?

A He was saying about conveying the property.

Q (*By the Court.*) He was speaking about conveying the property?

A Yes.

Q (*By the Court.*) And you told him you thought he ought to be examined by doctors?

10

A Yes, it would be advisable to have the doctor.

Q (*By the Court.*) And you went and got the doctors and they examined him?

A Yes, I went and got Doctor Cook and he brought Doctor Burns.

Q (*By the Court.*) What did your father say at that time when he spoke of conveying the property?

A He didn't say anything of any account.

20

Q (*By the Court.*) What did he say?

A He didn't say anything; he said he wasn't capable of taking care of it, and wanted me to look after it, which I had done for years.

Q (*By the Court.*) What else did he say?

A That is all.

Q (*By the Court.*) He wanted you to take care of it and look after it?

A Yes.

Q (*By the Court.*) Anything else?

30

A That is all.

Q (*By the Court.*) Did he say he wanted to make you a deed for the property?

A He didn't tell me.

Q Was there some question in your mind as to your father's sanity at the time?

A No, only he would take a little spell like that.

Q But there was some question as to his sanity?

A No, no, only his advanced years, that is all.

40 Q Now when did you ask Mr. Saupe, the extra witness on the deed, to act as a witness?

Edward J. Kelly, cross.

A When Mr. Woodruff came.

Q How much did you pay Mr. Saupe for acting as a witness?

A How much did I pay him?

Q Yes?

A Paid him a dollar.

Q Didn't you pay him three dollars?

A No, I didn't pay three dollars.

Q Why didn't you act as a witness on there? 10

A Why? I had nothing to do with it.

Q You went over and got Mr. Saupe, didn't you?

A Yes, I got him, and I walked out and went down as far as the corner.

Q Why did you get Mr. Saupe?

A Why did I get him?

Q Yes?

A Well, there had to be somebody I suppose. 20

Q Wouldn't you do?

A No, I don't think so.

Q Why not?

A Why should I do?

Q You knew that the deeds were to be signed that day?

A I knew they were to be signed, yes.

Q Weren't you interested as to their contents?

A No, not a bit, I was satisfied with anything.

Q But your father told you he wanted you to take care of the property? 30

A To look after it, yes.

Q And was it for that reason that he was going to convey the property.

A Sure; of course he and I lived together, and I looked after it for years.

Q Now after your aunt died, your aunt Ann—she was the one from whom your father inherited the property?

A Yes. 40

Edward J. Kelly, cross.

Q The day of her death didn't you go up through her flat and search around for money and get two bundles of money?

Mr. Beers. I object, your honor, as having no bearing on this issue whatever.

The Court. I think on cross examination that is a proper question.

10 A I did not, but she pointed to a little box about that size (indicating) with some bills in it, she had under her dresser, and that is all the money she had; she had no money in the bank or anything else.

Q When did she point?

A When she was lying on the bed; I was there.

Q I know, but when she was dying?

A Oh, no, no.

Q This was before?

20 A Oh, yes.

Q She pointed, and then what did you do?

A I looked.

Q Did you take it?

A I took it, sure, and handed it to my father after.

Q Handed it to your father after?

A Yes, and then he handed it back to me and told me to take care of it.

Q (*By the Court.*) How much was there?

30 A About seven hundred dollars, and that is all the money she had.

Q What did you do with the money then?

A I paid her funeral expenses and paid the taxes, different things, repairs.

Q Didn't you put it in the bank?

A None of hers.

Q Where do you bank your money?

A I have no bank account now.

40

Edward J. Kelly, cross.

Q Where did you?

The Court. It did not take seven hundred dollars to pay her funeral expenses, did it?

A No, it was two hundred and something, and then the taxes and plumbing bills.

Q (*By the Court.*) Then you used it on the house; is that it?

A On the houses, yes; they were all in bad shape, papering and all such stuff as that. I had money in the bank myself, but not now. 10

Q Where did you deposit that?

A Where did I deposit it?

Q Yes?

A I deposited some in the Broad & Market.

Q And where else?

A I had some in the Howard.

Q How much did you deposit in the Broad & Market? 20

A I had six hundred dollars there.

Mr. Beers. If the Court please.

The Court. Oh, yes, this witness is competent. I will allow it.

Mr. Beers. You will allow me an exception to your honor's ruling?

The Court. Yes.

Q How much did you deposit in the Howard's?

A I don't know; I deposited small amounts there once in a while, that is of my own. 30

Q No, we are talking about this money?

A None of that.

Q Then what did you do with the balance?

A Well, I paid different things on the house.

Q What things?

A I paid the funeral expenses, and I had a back porch put up.

Q And what else?

Edward J. Kelly, cross.

A Well, different repairs, painting and papering.

Q You did all that with one hundred dollars?

A I had used my money; I drew a thousand dollars out of the building and loan and had to use some of that.

10 Q But six hundred of the seven hundred you put in the bank?

A Not all of hers, I had money of my own.

Q You didn't say that before?

A I had money of my own.

Q You didn't mention that before?

A Not all of her money, no.

Q Did you have any other bank account?

A Yes, I had one, that was my own account.

The Court. Well, I allowed you to go into this to a certain extent.

20 Q That bundle of money was tied around like that (indicating) with a piece of twine?

A It wasn't, it was in a little tin box.

The Court. He has told you he got seven hundred dollars, and he has told you what he did with it, and that is as far as you can go I think.

Q Wasn't there another bundle of money?

A No, that is all the money that was in the house.

30 Q Flat money, laid out flat?

A No, there wasn't.

Q You don't charge yourself with that seven hundred dollars in the accounting here, do you?

A I got the bills for how I spent it.

Q I say you did not in your answer filed in this suit say that you had received that seven hundred dollars?

A No, I did not.

40 *The Court.* That does not make any difference.

Edward J. Kelly, cross.

Mr. Grosken. He gives himself credit for the expenditures.

Q Who did you say, Mr. Kelly, took care of your father?

A He took care of himself.

Q Is it not a fact that he never dressed or undressed?

A He did undress and dress himself. 10

Q Did he ever shave?

A Yes.

Q Didn't he have a full beard?

A He used to shave around here (indicating), had just a little whisker here (indicating).

Q He had a whisker here and shaved here (indicating)?

A Yes, shaved up around here (indicating), and trimmed the beard as well.

Q Why didn't your father work? 20

A I couldn't say why he didn't work, he hasn't worked in quite a while; he had plenty of work around the houses there when the aunt was alive.

Q You never had to pay any rent there, did you, for that house?

A My aunt built that house for me; I didn't pay any rent.

The Court. That does not make any difference. 30

Q Mr. Kelly, was this the condition of affairs in the house before your mother died, that your aunt who lived upstairs let you have rent free?

A Oh, yes.

Q Your mother worked?

A Mother worked?

Q Yes?

A No, she did not work.

Q Didn't your mother work making button holes? 40

Rev. Edward F. Quirk, direct.

A Not in years.

Q Didn't she work right up to the time she got sick?

A Oh, no, no, no, sir.

Q Have you the account books with you and deeds?

The Court. What difference does that make?

10

Mr. Moriarty. Except on the question of accounting, that is all.

The Court. The issue is a very narrow one, and it is not worth while to go into a great many matters that might be interesting in some other suit.

Re-direct examination by Mr. Beers.

Q Did you ever strike your father or push him around?

20

A Never laid a hand on my father; he was the boss.

REVEREND EDWARD F. QUIRK, sworn.

Direct examination by Mr. Beers.

Q Father Quirk, you are the assistant pastor, are you, of St. Joseph's Roman Catholic Church of Newark?

A Yes, sir, senior assistant.

30

Q How long have you been the senior assistant pastor of this church?

A Since either the twenty-eighth or twenty-ninth of—the senior assistant?

Q Yes?

A The senior assistant I have been for the past ten years.

Q And did you know Thomas Kelly, the father of Edward Kelly?

A Yes, sir.

40

Q And you know Edward Kelly, who preceded you on the stand, do you?

Rev. Edward F. Quirk, direct.

A Yes, sir.

Q Did you ever visit the elder Kelly, Thomas?

A I did.

Q When did you first begin to visit him, and how came you to visit him?

A Well, it is altogether a matter of recollection as to when, but as far as I can remember possibly in the spring of 1904, I came to St. Joseph's, Newark, in the latter part of June, 1903, and somewhere in the spring of 1904, about the time preceding Trinity Sunday, Mr. Edward Kelly came to the rectory and asked that a priest go to visit his father for the purpose of making his Easter duty, and I was the priest who responded. 10

Q Do you recall when Thomas Kelly died?

A In a general way I do, yes.

Q Do you remember the month and year?

A No, I can't say that I remember the month and the year. 20

Q When do you think he died, about when?

The Court. We have the date of his death; January, 1912 is the undisputed date of his death.

Q Had you been visiting Thomas Kelly prior to his death?

A Yes, sir.

Q How frequently would you visit him, say weekly, or how frequently did you visit him for a year and a half prior to his death? 30

A I should judge, as far as my memory goes, about once each three months.

Q What was the occasion of those visits?

A What we term a communion call, go to hear the man's confession and bring the communion.

Q (*By the Court.*) He was unable to go to church?

A As far as I know, yes, your honor. 40

Rev. Edward F. Quirk, direct.

Q On the occasion of these visits did you hold conversation with Mr. Kelly?

A When I arrived at the house, as a rule Mr. Kelly was sitting in the window of the front room expecting my visit, and when I went there I usually saluted him, good morning, and asked him how his health was, or something of that kind, then proceeded at once with my administrations, which were
10 spiritual, and outside of that fact I really held no conversation with him whatever except to salute him and asked him how his health was.

Q How did he salute you?

A Usually "Good morning, Father."

Q Ever by name?

A Oh, always by name, as far as I recall, in fact, I am almost certain on every occasion.

Q Did you have occasion to test his memory?

A Never, not in the sense that I had any occasion to test it, because I never doubted there was
20 anything wrong with the man outside of his physical inability to get to church, as I was informed.

Q Would you say his memory was good?

A Yes.

Q How would you determine that?

A From the manner in which he made his confession, which showed that he remembered his catechetical training very well.

Q Did you observe his physical condition when
30 you would call on him?

A Excepting in this manner, that usually he was seated in a chair, as I say, by the window; there was a chair placed near a table directly across the room and to the left of the door, as I recollect now, as I passed into that front room; when I came in he stood up and saluted me, usually "Good morning, Father Quirk," and then walked over to the chair which was placed near the table and got down
40 on his knees, and I sat on the chair alongside of the table.

J. Randolph Woodruff, direct.

Q Did he have difficulty in getting down on his knees?

A He didn't seem to, as far as I can recall at this time.

Q Were you ever required to assist him?

A Never to my knowledge.

Q Did you administer the last rites of the church to Mr. Kelly? 10

A I did, sir.

Q When was that?

A As far as I can recall either two or three days before his death, I am not sure of the date, as I am not sure of the date he died, excepting as his honor has quoted.

Cross examination by Mr. Moriarty.

Q When there is any doubt as to the mental capacity of a communicant or a penitent, and you are called in to administer the sacraments, do you decide that question against or in favor of the party's sanity? 20

A Well, if there is doubt, personally my judgment has always been to decide that the person was not capable of receiving the sacraments, and I think that that is in general the manner that priests treat such cases.

J. RANDOLPH WOODRUFF, sworn. 30

Direct examination by Mr. Beers.

Q You are a counsellor at law of this State?

A Yes, sir.

Q And how long have you been practicing at the bar of this State?

A Little over twenty-four years, I think 1892 I was admitted.

Q Do you have occasion to examine titles?

A Yes, I had in my younger days. 40

J. Randolph Woodruff, direct.

Q Do you know, or did you know Thomas Kelly in his lifetime?

A I did not, not prior to the time of meeting him.

Q Did you know Edward Kelly?

A No, sir.

10 Q Did you prepare and superintend the execution of a deed by Thomas Kelly in favor of Edward Kelly?

A Two deeds; I did.

Q (*By the Court.*) Begin at the beginning and tell us just how you came to be employed, and all that you did?

A I was telephoned to by Mr. Foyle.

Mr. Moriarty. Your honor, the witness is reading from some paper.

20 A I have a memorandum here; if you object—

The Court. You cannot use the memorandum unless it was made at the time.

A No, I wanted to get exact dates, that is all.

The Court. You will have to testify from memory.

30 A Mr. Timothy Foyle, an undertaker on Warren street, telephoned me to come to his office, and informed me that he wanted me to go see Mr. Thomas Kelly of 83 Bruce street, who wanted him to transact some business, and he had told Mr. Kelley that he was not a lawyer and he couldn't do it. I went there that night.

Q At what hour?

A Well, I think it was about eight o'clock, it was after I had gotten home and had my dinner.

Q May I interrupt and ask where you lived?

A I live 114 South Twelfth street.

Q Was the trip to the Kelly home on your way home?

J. Randolph Woodruff, direct.

A No, I think I went to Mr. Foyle first and then went home and went down there after dinner.

Q How near to the Kelly home do you live?

A Oh, I suppose that is about three-quarters of a mile.

Q Now tell us.

A I went there to Mr. Kelly's house and Mr. Edward Kelly was at the door and I said—no, he wasn't at the door, I rang the bell and somebody came to the door; I said "Does Mr. Thomas Kelly live here"; they said "Yes"; I said "I am Mr. Woodruff, a lawyer; Mr. Foyle, the undertaker, sent me here."

10

Q (*By the Court.*) Where did you find him?

A In the dining room.

Q (*By the Court.*) Dressed of course?

A Oh, yes, sitting in the dining room. Mr. Edward Kelly was the man—

20

Q (*By the Court.*) Who was there?

A Edward Kelly.

Q (*By the Court.*) Anybody else?

A Isabelle Grant I think, they told me after; there was a young girl who took care of him, done the housekeeping, and she was in the kitchen; Mr. Kelly talked to me about this property; I supposed that he only had one house, I never dreamt he had more, and when he spoke to me about—no, first I said "What do you want," and we talked about it, and he said he wanted to dispose of his property; I said "Then I presume you want a will drawn," and he said "No, there are too many wills broken, I want to have a deed made." He directed Edward to bring the box to him, a black box, and Edward brought the box in, and Edward went out, and Mr. Kelly and I began to talk, and much to my surprise—

30

Q (*By the Court.*) Well, now, tell us just what the conversation was?

40

J. Randolph Woodruff, direct.

10 A Well, he told me he wanted a deed drawn, and then he opened the box and produced these papers and gave them to me, and then he said "I own four or five houses"; I said "You own four or five houses?" he said "Yes"; and I was very much surprised, and then he produced a lot of old deeds, and I think there was a copy of one will there, and I said "You own four or five houses"; he said "Yes"; I said "What do you want to do with them"; he said "I want to give them to Edward"; he said "They belonged to my sister and she has just died, and my sister always intended that Edward should have the property, so I want a deed made to Edward." I said "Well, you let me have the deeds then," and I took the deeds, and I was very much surprised that there were five houses there.

20 Q (*By the Court.*) Well, what did you say then?

A Then in the talk he mentioned about having a daughter, and he pointed to the kitchen, and he said "That is my grand-child"; I said "What is her name," and he told me "Grant," and I said "Mr. Kelly, do you know what you are doing; do you mean to say you are going to leave everything to this one boy and not give the others anything," and he said "Yes, sir." I said "Don't you want a will drawn"; he said "No, I don't want no will drawn, because I read in the papers about wills being drawn." We talked over the matter, and about how he got the property; he said he hadn't worked in years, and he said Edward supported him, and said his sister just died who owned all this property and he wanted Edward to have it all, that Edward was a good boy and had taken care of him. Well, we talked along on that line, and then I took the papers and went out.

30 Q (*By the Court.*) Who took the papers?

40 A I did; I took all the old deeds and an ab-

J. Randolph Woodruff, direct.

stract copy of a will, and outside I met Edward, he came along, and I walked up the street and I said "Edward, your name is Edward, is it not"; he said "Yes"; I said "You are the only son"; he said "Yes"; I said "Well, your father wants to make a deed or deeds to you for his property"; I said "I prefer to draw a will, and I said "I don't know, but I don't like this"; I said "Before I draw any papers I want to know who your father's doctor is"; he said "Doctor Cook"; I said "A very good man, one of the best physicians in Newark"; I said "Before I draw any deeds I want the doctors to examine him and certify he is perfectly well not alone for your protection but for my protection, as," I said "he tells me he is quite well along in years, and I can see that."

10

Q (*By the Court.*) What did he say then?

A He said "Doctor Cook is our regular physician and" he said "I will send for him and have him"; I said "No, I want two doctors," I said "Doctor Cook, and have another one." Mr. Kelly afterwards called me up, Edward Kelly, on the 'phone and said that the doctors had been there and said that his father was all right and perfectly competent to make a deed. I then called Doctor Cook, and he also informed me of that. I took the papers and went to the Court House and got an abstract of one of the wills that showed the title, that the place was all in the two deeds which I drew. I went to the house and saw Mr. Kelly, and Edward was there; I told Edward I wanted another witness to witness the signing of the deeds; I read the deeds over to Mr. Kelly very carefully and explained to him, and said "You are giving everything you possess to Edward," I said "I want you to understand that"; "Well" he said "I never had anything"; he said "My sister wanted him to have these, and Edward has always been a good boy and

20

30

40

J. Randolph Woodruff, direct.

taken care of me." I directed Edward to get another witness, and Captain Saupe came in from the fire department, the engine house being across the street, and in the presence of Captain Saupe I went over the deeds again and explained very carefully to Mr. Kelly what he was doing and what would happen to him. I told him "You are giving away everything, and" I said "Edward can kick you out of the house," and I think we all laughed, and he said "Edward is a good boy, he will take care of his sister and the Grants." He signed the deeds— I asked him to sign the deeds; he said no, he would sooner make his mark, he was old. I said "You sign them, never mind how you write but you write your name," and he wrote his name on both deeds. I said "Now you understand what you are doing", I said "You won't have a cent left and Edward can throw you out of the house"; he said "I am not afraid of that, Edward has always been a good friend of mine and he will take care of the sister and the Grant children." I took the acknowledgment, and had Captain Saupe witness it and I witnessed the signature. I called Edward in and told him, I said "Your father has made a conveyance to you of all his properties, two deeds here conveying all his property to you," and I said "You owe him two dollars," and he produced the two dollars and he wanted to give it to his father; the father refused to take it, and he said "Give it to Captain Saupe," and Captain Saupe refused to take it. I took the deeds and on Monday morning took them to the Court House. I presume it was Monday morning because the deeds are dated April eighth, and had them recorded. When I got them back I mailed them or sent and gave them to Mr. Kelly. That is all I had to do with the matter.

Q Who suggested the name of Captain Saupe?

40 A I think I did, I am not sure; I saw the Cap-

J. Randolph Woodruff, direct.

tain standing over there, and I had known the captain a good many years.

Q Then the deed was executed on the occasion of the second visit, was it not?

A What?

Q The deeds were executed the second time you called on Mr. Kelly?

A Oh, yes.

Q And before the old man executed these deeds and you took his acknowledgment, just what did you say to him as to the effect of his signing away all this property?

A That he didn't have a cent left, I kind of in an offhand way, I told him the first time while Edward was out, I went all over the deeds with him while Edward was out across the street I presume, told him what they meant.

Q What did you tell him?

A I said "This leaves you without anything at all, without a cent," and he said "Edward has been a good boy to me, and he supported me for a good many years, and Edward is a good boy, and I trust him." Then when Captain Saupe came over we went over it again, I did, went over the deeds very carefully, and told Captain Saupe why I had sent for him.

Q What did you tell Captain Saupe—was it in the presence of the old man?

A Yes.

Q What did you tell him?

A That I wanted him to witness the deeds, that Thomas Kelly was about to convey all his property to Edward Kelly, and in the presence of Captain Saupe I said "Mr. Kelly, remember now, Edward can kick you out of the house, you cannot stay here a minute now," and we laughed; and when I called him in I said "Edward, your father has given you everything, and you owe him two dollars," and he

J. Randolph Woodruff, direct.

produced the two dollars, and he wanted to give it to his father, and his father said "No, give it to Captain Saupe, and Captain Saupe refused to take the money.

Q Was anything said?

Mr. Moriarty. I object to leading the witness.

10 *The Court.* Can you remember anything that was said?

Q Do you remember saying anything else?

Mr. Moriarty. I object.

Mr. Beers. I am not going to lead the witness. Was anything said?

Mr. Grosken. I don't think it is proper to put anything into the witness's mouth. The witness was there and knows what he said and ought to remember it.

20 *Mr. Beers.* I want as to the time.

The Court. The rule is perfectly well settled, and it is followed every day, after a witness's memory has been exhausted and he has not testified to everything his attention can be called to something that he may have omitted.

Q On either the first visit or the second visit, and before the deed was executed, was there anything said by you to the father concerning his support?

30 A What is that? I didn't quite get you.

Q (Question read.)

A No, I didn't say anything to him about any support; the father said it to me; I was very suspicious, I didn't like—

The Court. You already stated what was said; it is not worth while to repeat unless you have something new.

40 A I was going to say, when I found there were five houses, that is why I didn't like the idea of

J. Randolph Woodruff, cross.

making the deed, and insisted upon Edward sending for the doctors.

The Court. Well, you have already stated that.

Cross examination by Mr. Laddey.

Q You say he was an old man?

A Oh, yes.

10

Q How old was he?

The Court. Well, you have got his age, and it is uncontradicted.

Q Was the deed signed with a free hand by the old gentleman?

A Oh, yes.

Q You saw him sign, did you?

A Yes, sir.

Q Who held his hand while he signed his signature?

20

A Nobody.

Q Signed it with a free hand?

A Oh, yes.

Q (*By Mr. Moriarty.*) Who paid you?

The Court. Well, one moment. One counsel at a time.

Q How frequently were you there, all told, at 83 Bruce street in connection with this transaction, immediately before or immediately thereafter?

30

A Twice.

Q Only twice?

A Yes, sir, when I first had the long conversation with him, and then took the papers away, and then when I went back at the time of the signing of the deeds.

Q You didn't go there after that?

A No, sir, never been there.

Q (*By Mr. Moriarty.*) Who paid you?

A Mr. Edward Kelly.

40

J. Randolph Woodruff, re-direct.

William J. Saupe, direct.

Re-direct examination by Mr. Beers.

Q What was the old man's physical condition, if you observed it, at the time of your calling there, both for the preliminary talk and the final execution of the deeds?

A Why, I thought he was a strong man.

10 Q What made you think that?

A Well, I think in his younger days he must have been a magnificent specimen of manhood, he was tall and well built, and mentally he carried on a conversation just as good as anybody; what made me mad was he insisted upon making these deeds, and I didn't like it; it was all right when I supposed he had one house, but when he said he had five houses I didn't like it, and that is why I insisted on the doctors examining him.

20 Q (*By the Court.*) Well, you were asked in reference to his physical condition?

A I thought good.

WILLIAM J. SAUPE, sworn.

Direct examination by Mr. Beers.

Q You are connected with the Newark Fire Department, are you not, as a captain?

A Yes.

30 Q How long have you been in the Fire Department as a captain?

A Fourteen years.

Q Are you a married man?

A Yes, a widower.

Q Have you any children?

A Three.

Q Are they living with you?

A Yes.

Q Did you know Thomas Kelly?

40 A I did.

William J. Saupe, direct.

Q Do you know Edward Kelly who appeared on the stand here this morning?

A I do.

Q Did you witness deeds signed by the elder Kelly sometime in April, 1911?

A April 8th, yes.

Q April 8, 1911?

A Yes.

10

Two deeds offered in evidence and marked Exhibits C. 1 and C. 2.

Q I show you Exhibit C. 1 and ask you whether you have ever seen it before, and if so when?

A Yes.

Q Is this your signature?

A Yes.

Q And C. 2, is that your signature?

A Yes.

Q When were these signatures written on these deeds, with reference to the time when they were signed by Mr. Kelly? 20

A Well, I don't know the exact time, but it was between the hour of two and three or three and four.

Q Was it at the time Mr. Kelly signed the deeds?

The Court. You saw him sign those deeds?

A Yes.

The Court. Tell us what happened when you saw them signed? 30

Q How came you to go there?

A I was sent for by lawyer Woodruff to come over there and be a witness to these deeds, and when I got there Mr. Kelly walked out of the place.

Q (*By the Court.*) Who came for you?

A Mr. Kelly did.

Q (*By the Court.*) Mr. Edward Kelly?

A Yes.

Q (*By the Court.*) You went over there? 40

William J. Saupe, direct.

A Yes.

Q (*By the Court.*) What happened?

A I got in there and Mr. Woodruff asked me would I be a witness to the signing of these deeds, and he asked Mr. Kelly to sign them; Mr. Kelly was going to put a cross on them, and counsellor Woodruff insisted on him signing his name, he said he didn't care how he signed it, he had to sign it in
10 place of putting the cross on it, and he signed it.

Q (*By the Court.*) What was said in your hearing?

A The only thing that was said after he explained things—

Q (*By the Court.*) Tell us what he explained?

A He said "Mr. Kelly do you know what you are doing"; he said "You are signing over to-day all your property away to Edward Kelly, and he could
20 put you out five minutes after you signed this," and Mr. Kelly, the father, said "Now" he said "Edward has been a good boy all his lifetime, and" he said "he will look after me"; and then the counsellor brought in the grand-children; "Well" he said "the little girl has been very good and" he said "Edward will take care of Mrs. Moriarty and the grand-children"; that is all that was said in my presence.

Q (*By the Court.*) Take care of whom?

A Of Mrs. Moriarty and the grandchildren.

30 Q (*By the Court.*) Annie Moriarty, you mean?

A Yes, the lady that was on the witness stand here.

Q You said Mr. Kelly walked out when you entered the Kelly house; which Mr. Kelly do you mean?

A Edward Kelly, the son.

Q And when did Mr. Woodruff make known the effect of this deed to Mr. Kelly, with reference to the time it was signed, was it before or after?

40 A I don't know anything about that; I was just called in to see them sign the transfer.

William J. Saupe, cross.

Q But this conversation which you have just related as having taken place between Mr. Woodruff and Thomas Kelly took place when?

A When I was there, in my presence.

Q (*By the Court.*) Well, before the signing of the deed or after the signing?

A Before the signing of the deed.

Q Do you remember how long you were in the Kelly home at the time this deed was signed? 10

A I should judge fifteen or twenty minutes.

Q And after the deed was signed what did you do; what did Mr. Woodruff do; did he leave before you?

A No, I got up and got out of the place, I was on duty and I had no time to spend there.

Q Did Mr. Kelly come in the house, Edward Kelly come in the house after the deeds were signed?

A Yes.

Q Who called him in? 20

A He went in there, I don't know; I went out, I went back to the engine house.

Cross examination by Mr. Laddey.

Q You considered this a pretty raw deal, didn't you?

The Court. Not what the witness considered; what took place is the inquiry. You are asking for the mental operations of the witness, you are not asking for a fact. 30

Q Didn't you term it a raw deal since the occurrence of this transfer?

The Court. That does not make any difference what he termed it. The question is what took place at the time.

Q Didn't you yourself inquire of the old gentleman, "Well, what about your other children?"

A Well, that is when he said that he would take care, that Edward would take care of them. 40

William J. Saupe, cross.

Q Just answer yes or no; you did, didn't you?

A Yes.

Q Don't you know Mr. Kelly's hand had to be held so he could sign his name?

A No, it did not.

Q Do you remember me calling on you with Mr. Moriarty?

A Yes.

10

Q I only called on you once?

A Yes.

Q Some time in 1915, along in March?

A Yes, at the engine house.

Q Where you are now stationed?

A Yes.

Q Don't you remember that that time you told me that his hand had—he didn't know how to write his name, his hand had to be held?

20

A No, I said no such a thing.

Q Didn't you tell me at that time you received a three dollar witness fee?

A I did not, for I didn't receive anything.

Q Didn't you also make that statement to Mr. Joseph Moriarty?

A I did not; I said I had been subpoenaed to appear as a witness.

Q No, you misunderstand me.

A No, I do not.

30

Q I don't refer to the witness at the trial that was about to take place.

A You claimed that—

Q No, I mean when you were a witness for the signing of the deed, I refer to that occasion, didn't you receive three dollars in payment for that service?

A I didn't receive one penny; Mr. Kelly offered me two dollars and I refused to take it, I said I didn't think it worth while to take it.

40

Q And you were then stationed at that time

William J. Saupe, cross.

across the street from the Kelly's, where the Kelly's resided?

A Yes, I was originally at the time.

Q And they had the system in vogue which is now in vogue?

A Yes.

Q That means that a fireman is on duty at the station house at all times except meal times and an occasional day off? 10

A Twenty-one hours out of every twenty-four.

Q Was that your day off that day?

A No, just merely in front of the quarters.

Q Isn't a fireman supposed to remain in the engine house?

A Not necessarily, no.

The Court. That is a matter of no consequence whatever, not the slightest.

A I was within hearing of the bell. 20

Cross examination by Mr. Moriarty.

Q Do you remember in the spring of 1912 after Frank Grant had been placed on the fire department, and after the Grants had moved from Bruce street, meeting Mrs. Grant, while she was passing the fire house, and having a conversation with her there?

A I believe I had several conversations with Mrs. Grant.

Q Did you say to her then, did you ask her how Frank liked the fire department; then did you say to her "Did you hear that Edward is drinking up all the money; did you hear who signed the papers; I was one of them?" 30

A I told them, yes.

Q And when asked by her why you had done it you said "I had been around this house for a good many years, and when Edward told me that everybody would get a share in it I couldn't refuse, be-

Dr. Hugh F. Cook, direct.

sides Edward told me everybody would get a share in it?"

Mr. Beers. I object to this; he would have to call the witness, making him his witness; this is not proper cross examination.

10 *The Court.* I do not think it is cross examination. He has already stated, it seems to me, all that you desire to prove. He has stated that when he asked the old gentleman what about the rest of the old family, that the old gentleman said that Edward would care for them.

A Edward would take care of Mrs. Moriarty and the Grant children.

The Court. I do not think you need any more.

20 A Particularly so the smaller girl of the Grants that kept house for Edward.

Q (*By Mr. Grosken.*) He said he trusted Edward?

A Yes, he said that Edward was a good boy, and he would look after his sister.

Q (*By Mr. Grosken.*) And that he trusted him?

A Why, yes, sure.

DOCTOR HUGH F. COOK, sworn.

Direct examination by Mr. Beers.

30 Q You are a practicing physician in the City of Newark?

A Yes.

Q How long have you been practicing as such?

A Nineteen years last March.

Q Have you had any experience in mental diseases?

A I have had some.

Q Have you practiced as an alienist?

40 A No, I have not.

Dr. Hugh F. Cook, direct.

Q Did you know Thomas Kelly?

A I remember him, yes.

Q Where did he live when you knew him?

A On Bruce street.

Q Do you recall examining Thomas Kelly in the early part of the year 1911?

A I recall it, yes.

Q Do you remember the month?

A I think it was in April.

10

Q How came you to examine him?

A I was requested to do so by Mr.—his son.

Q Then you examined him, did you not?

A I did.

Q Tell the Court what you found?

A Mr. Kelly, the son, came to my office and asked me to examine his father, that he had some business transaction to put through and on account of him being an old man he wanted to feel sure that everything would be satisfactory; I told him the proper way to do that, that the legal or proper way would be to have two physicians examine him, if he referred then to his sane condition, and he asked me at the time would I recommend anybody, and I said why I would recommend Doctor Burns, and we went there I think on the fifth of April and asked Mr. Kelly many questions, and we both agreed that he was sane and qualified to perform any business transaction.

20

Q Well, you made the examination, did you?

30

A Yes.

Q What did you find?

The Court. He has just told you that he was qualified to carry on a business transaction.

Q I mean as to his physical condition?

A Physically the man was an old man with hardened arteries, otherwise I would say, considering the man's age, that he was in pretty fair condition.

40

Dr. Hugh F. Cook, cross.

Q Did you have him move about any, doctor?

A I don't think we did.

Q Do you remember whether he moved about or not while you were there?

A I don't think he left the chair.

Q (*By the Court.*) You made a physical examination of him?

10 A Except as to his reflexes, and so on, listened to his heart, and talked with him.

Cross examination by Mr. Moriarty.

Q Who met you at the door, or who was present when you were making this examination?

A I don't remember.

Q Was Edward Kelly there?

A I couldn't say.

Q Who paid your bill?

20 A Mr. Edward Kelly.

Q Do you remember the date of the visit?

A I think it was on the fifth of April, 1911.

Q And how old a man was Mr. Kelly?

The Court. Well, you have got his age.

A About ninety.

Q Did old Mr. Kelly ask you why you were examining him, did he express any surprise?

A Not to me, no, because he was in the habit of seeing me off and on.

30 Q (*By the Court.*) How often had you seen him before?

A Well, I saw the man a great deal while attending his wife, and talked to him pretty nearly every time I went to see her.

Q (*By the Court.*) Well, his wife died in 1909?

40 A Well, during her illness I saw a great deal of him, and then following that I really don't remember, because whenever he had any little sickness they would send for me, and I would probably make a visit or two.

Dr. Hugh F. Cook, cross.

Q (*By the Court.*) How often would you see him in the course of a year after that time?

A I don't think I saw the man more than four or five times after that.

Q Did you know of those spells he had?

A He used to describe spells to me, tell me about his head, but I always thought that was due to the hardening of the arteries.

10

Cross examination by Mr. Laddey.

Q Did you ever perform a like service for Edward Kelly?

A Examine Edward's head?

Q No, a like service, examining an old person at the request of Edward Kelly?

A Only his father.

Q Not his aunt?

A No, I never did.

Mr. Beers. I object to that.

20

Q (*By the Court.*) Did you ever see any evidences of mental unsoundness during any of your visits to him?

A I cannot say that I did, your honor.

Q (*By the Court.*) Well, you hesitate a little; what do you mean?

A Well, of course on account of the man's age, we might say he was a little peculiar in some of his actions, but for what we were requested to go and examine him for we considered he was a sane man and knew what he was doing.

30

Q Did he know that he was being examined by you?

A You mean did we tell him what we were there for?

Q Yes?

A I don't think I told him; I cannot speak for the other man. As I say, he was in the habit of seeing me off and on, and asking him questions, and so on.

40

Elizabeth Henry, direct.

ELIZABETH HENRY, sworn.

Direct examination by Mr. Beers.

- Q Mrs. Henry, are you married?
 A No, sir, I am a widow.
 Q And where do you live?
 A 61 Pierce street.
 Q Did you ever keep a store on Bruce street?
 10 A 87 Bruce street.
 Q How long did you have the store there?
 A Six years and four months, 1905 to 1911.
 Q Did you know Thomas Kelly?
 A Yes, through coming in and out of the store.
 Q Did you know Edward Kelly?
 A Yes.
 Q And the Thomas Kelly you refer to was the
 father of Edward Kelly, do you know?
 A Yes.
 20 Q He visited your store how often?
 A Two and three times a week.
 Q (*By the Court.*) Up to what time?
 A Up until I moved away, and that was the
 eighth of April, 1911.
 Q What would he do in your store?
 A Well, he would get oil, and he would get a
 loaf of bread, and come in and ask for his paper of
 Hazel Nut tobacco, and sometimes two papers.
 Q (*By the Court.*) How far was your store
 30 from his house?
 A Three doors.
 Q How many articles would he purchase at a
 time?
 A Two and three sometimes, sometimes only
 one.
 Q And he would place the order himself, would
 he?
 A Yes, sir.
 Q Did you notice whether he read from a paper
 40 or not?

Elizabeth Henry, direct.

A No, sir.

Q Did he or didn't he?

A No, sir.

Q He did not?

A He did not.

Q Was your store on a level with the sidewalk?

A Four stone steps he had to go up.

Q Did he go up unassisted?

10

A Oh, yes.

Q And did he return home with his purchases, these three articles, unassisted?

A Yes.

Q Did you ever hold conversation with him?

A Just about how the weather was.

Q When he entered your store what, if anything, would he say first?

A "Good morning, Mrs. Henry," he would always greet me as "Good morning, Mrs. Henry" whenever he came in; I always answered him "Good morning, Mr. Kelly," and I always said "How are you to-day," and he would say "I am pretty well to-day."

20

Q Did he ever joke with you?

A Well, just about how the weather was, or something like that.

Q Do you remember what he said?

A Not just exactly, just little jocular.

Q Would he tell you a joke?

A Just about how the weather was, or something like that, I took it as a joke.

30

Q Who opened the door? Was the door closed when he would come in your store?

A Always closed; he always opened it himself.

Q Would he close it himself?

A Yes, because I was behind the counter, I couldn't come the entire distance to close it for him, he always did that himself.

40

Joseph Reilly, direct.

Q How long was he in your store on the occasion of these visits?

A Just a few minutes, until I waited on him, that is all.

Q At any time were there other customers ahead of him?

A Sometimes one or two in; he would wait a few minutes.

10

Cross examination by Mr. Moriarty.

Q How did you come to be called as a witness? Did you talk this matter over with anybody before?

A No.

Q Didn't you talk it over with Edward Kelly?

A Talked this over with Edward Kelly?

Q Yes?

A Not as I remember.

Q You never told anybody about this?

20

A No.

Q You didn't tell Mr. Beers about it?

A Well, just—

Q How did you come to be called as a witness?

A Just by mail.

JOSEPH REILLY, sworn.

Direct examination by Mr. Beers.

Q You knew Thomas Kelly, did you not?

30

A Yes, sir.

Q And can you hear well?

A Not very, I am a little hard of hearing.

Q In the month of April, 1911, did you have a conversation with Thomas Kelly?

A Yes, over the fence, sir.

Q About his property that he was going to sell, or convey rather?

A Yes, sir.

Q What did he say to you?

40

A He told me that he signed all over to Edward,

Joseph Reilly, cross.

and I told him he was a very foolish man didn't hold the lines and run the horse by himself, be boss.

Q What did he say?

A He said "Edward was a good boy," I said yes, Edward was a good boy, "and took care of me and stayed home to the last."

Q Did he say that he was going to sign the property over?

A He told me he gave it to Edward; then I told him he was foolish for it, not to drive the horse as long as he lived, and he said he signed it over to him. 10

Cross examination by Mr. Laddey.

Q You have known Thomas Kelly for quite a number of years?

A Yes, sir.

Q How long?

A Since I have been a boy; I worked with him too. 20

Q Do you remember taking him home?

A Yes.

Q From Woodside?

Mr. Beers. I object.

Q (*By the Court.*) That is a long time ago, is it not?

A That is a long time ago, since I was a boy.

Mr. Laddey. I want to show that at that time he was taken with sun stroke from which he suffered ever since. 30

The Court. No, I think that is too far back.

Q Has he done any work since the last forty years?

The Court. Mr. Edward Kelly admits he has not done any work for fifteen years; you need not prove that. It is not worth while to prove an undisputed fact twice, if you prove it once that is enough.

Do you deny he was sane at the time he executed the deed? 40

Dr. John G. Burns, direct.

Mr. Laddey. We do not deny sanity, except that he was extremely feeble minded.

The Court. Well, feeble, but do you admit that he had sufficient capacity to make a deed. You do not set that up in your bill as the ground upon which you base your case. Do you deny now that he did not have sufficient capacity to make a deed?

10

Mr. Laddey. Yes.

DOCTOR JOHN G. BURNS, sworn.

Direct examination by Mr. Beers.

Q Doctor, did you ever examine Thomas Kelly?

A Yes.

Q When was it?

The Court. Well, on the occasion to which Doctor Cook has referred?

20

A The fifth of April.

Q (*By the Court.*) You went with Doctor Cook?

A Yes.

Q (*By the Court.*) Tell us what you found there?

A I found that he was suffering from arteriosclerosis.

Q (*By the Court.*) Anything else?

A That is all.

30

Q (*By the Court.*) How about his physical condition?

A His physical condition was such as I would expect of a man of his age.

Q (*By the Court.*) And his mental condition?

A His mental condition was an average for a man of his age.

Cross examination by Mr. Moriarty.

40

Q Who was there at the time of your examination besides Mr. Kelly?

Joseph Moriarty, direct.

A Mr. Edward Kelly and Doctor Cook.

Q And who paid you?

A Mr. Edward Kelly.

Mr. Beers. I will call Mr. Hennicker, who was Mr. Kelly's tailor, and he can testify that Mr. Kelly was able to go about.

The Court. There is no doubt about that.

JOSEPH MORIARTY, sworn.

10

Direct examination by Mr. Laddey.

Q You are the husband of Annie C. Moriarty who testified in this case this morning?

A Yes.

Q And you are living with her of course?

A Yes.

Q You were acquainted with Thomas Kelly?

A Yes.

Q Did you pay any rent at 83 Bruce street?

20

A No, sir.

Q What can you tell us about the acts and sayings of Thomas Kelly?

The Court. You must confine it to a very limited period; I do not think this evidence is going to amount to very much, and it must be confined to the period when the deed was signed; I do not mean to say to the precise day but to a short time before and a short time afterwards.

30

Q How frequently did you call upon Thomas Kelly during the years of 1910 and 1911?

A Well, I would be working, but may be every Sunday or Saturday afternoon until I lived there, and then I saw him every day, in the morning and evening.

Q And when did you begin to live there, when did you move to 83 Bruce street?

A 1911.

40

Joseph Moriarty, direct.

Q Did you observe the relationship and the conduct of Edward Kelly to his father, and *vice versa*, and, if so, what was that conduct?

A Well, the conduct was that as far as I know when he would see Edward coming or hear tell he was coming he would be nervous, and he would say "How is he; is he full"; I would say "Not very bad"; and I bought him tobacco, and different things like that.

Q Just confine yourself for the present to the relationship and the conduct of Edward toward Thomas Kelly?

A Well, he never had much respect for him.

Q What did he do and say to him?

A The way he used to holler at him, when the old gentleman didn't know hardly what he was doing, he said "Sit down there, what are you doing, you make me sick."

Q Edward would say that to Thomas?

A Yes.

Q What would he do?

A He wouldn't do nothing, he would sit down.

Q How did he treat him?

A Treated him very rotten.

Q Well, just give us acts that have come under your observation?

A When he got the handling of this property his father didn't have hardly a shoe on his foot, and the old gentleman asked me one day if I would nail a piece of leather on the sole of his shoe, and I said I would and I did that; I said "Why don't you tell Edward to buy you a pair of shoes"; "I wouldn't ask him for nothing, he wouldn't give me a paper of tobacco."

Q Did he have plenty of money?

A Mr. Kelly?

Q Yes, Thomas Kelly?

Joseph Moriarty, direct.

A I never knew him to have five cents in my life unless I would give it to him, or somebody else.

Q Did you ever hear him ask for money?

A He asked me; I gave him money; he said "It is Christmas Eve, and" he said "I expect Edward is going to give me a dollar or some change, he promised me a dollar"; he never gave him the dollar, and that night I gave him fifty cents, and the old gentleman gave my boy back twenty-five cents out of that fifty, and then the little boy went and spent a quarter for five papers of tobacco; he said "Don't tell Edward you bought me the tobacco or he will scold me."

10

Q Did he ever ask you at any other time for money?

A Years ago he did.

Q Never mind years ago, I mean during 1910 and 1911?

20

A Only just as I said.

Q Did he ever refer to having difficulty in obtaining small amounts of money, the old gentleman?

A Of paying it?

Q You know the old gentleman smoked, don't you?

A Yes.

Q Did he always have money for tobacco?

A No, sir, he did not.

Q Did he ever tell you about it?

30

A He stopped me, I was going to work one noon time from dinner, I lived at Thirteenth avenue and Bruce street, and he said "Is little Joe in"; I said "No, grandpa, he has gone to school," I said "What do you want?" he said "I got no tobacco and nothing to eat"; I said "What do you want?" he said "A can of salmon"; I went to the store I used to trade with, got the can of salmon and paper of tobacco, and he said "I got bread, but that's the dog's bread."

Q Did he tell you why he asked for those things?

40

Joseph Moriarty, direct.

A Because he said Edward wouldn't give it to him.

Q When you called on the old gentleman during the years of 1910 and 1911 did he recognize you always?

10 A Sometimes. When I would come in I would say "How are you grandpa"; he would look at me a little while, "Who are you, I don't know you"; I would say "Joe"; "Oh, yes, oh, yes, how are you, how do you feel," and maybe in twenty minutes after that I would be talking to him, and he would say "Who am I talking to"; I would say "Grandpa, don't you know me, it is Joe"; "Oh, yes," he said "this head of mine is all gone, I got no brains."

Q Did you carry on a conversation with him?

A Hold a conversation with him for three or four minutes, and he would drift off on something else; he couldn't hold a conversation for any length
20 of time.

Q Do you know anything about his personal habits?

A His personal habits was—years ago I can't speak about his honor said, but at the time I was living there, and for fifteen years before I lived there he didn't go out of the house, and didn't work for forty years.

Q I mean personal habits, around 1910 and
30 1911?

A Around the house he never had his clothes off only to change his underclothes, and then my wife would have to be maybe two weeks before she could get him to take his pants off and change his clothes; he generally slept in his pants, and Mr. Foyle, the undertaker, had to cut the pants off him when he died.

Q Does the Saturday evening and Sunday church going remind you of anything in connection
40 with his personal habits?

Joseph Moriarty, direct.

A Yes, he had a coat, what they call an old-fashioned swallow-tail coat, that is all the clothes he had, and he would put the coat on and say "I am going to church," and go as far as the gate.

Q When did he do that?

A Sometimes in the evening and thought it was the morning; sometimes in the morning he would do it, and he has slept in them different times.

10

Q He slept in the clothes that he went to church in?

A Yes, that he thought he was going to go to church in; he would only go as far as the gate.

Q Does his food remind you of any occurrence?

A His food?

Q Yes, what kind of bread did he have to eat?

A Well, he said "I got bread there" he said "but it is dog bread; Edward buys that for his dog, but" he said "that is good enough for me, I guess that is good enough for me."

20

Q How was his health, the old gentleman's health?

A Well, his health was so good that when he would go down the back stoop, that was a couple of steps, he would have to catch hold of the banister and hold himself up with that, and when he would get in he would sit in the chair, and he said "Oh, a little bit of exertion plays me out, I am done, I am near a hundred years old."

30

Q Did you ever see any of these spells that have been testified to?

A I did.

Q Just describe one, will you, describe it?

A Oh, I saw him in the spells, but I heard of lots of them; saw two, the first one I saw he was standing just like this, at the end of the mantle-piece lighting his pipe, and all of a sudden he went "Oh, oh," and I grabbed hold of him, and the rocking chair was right near him, and he sat in the chair,

40

Joseph Moriarty, cross.

and his head went back, and was like some one dead for a couple of minutes or more maybe; when he would come out of that he would get up and look around, or holler "When did you come in," and then start to light his pipe again.

Q Did you witness any conversation between Edward Kelly and his father?

10 A No, the only conversation that I can say that I know of, after we saw this transfer in the paper my wife wanted to know why she was left out, and what was the matter with her; he said "Edward is going to take care of you; that big house we will give to Annie, won't we," Edward said "Yes, when the papers come back."

Q Did you ever hear the old gentleman and Edward quarreling, or did you ever hear Edward quarrel with the old gentleman?

20 A Not any more than I said, the old man would get a little bit fussing around and he would order him to sit down and be quiet.

Q Did he ever tell him anything else besides sitting down?

A No; he told him on one occasion he ought to go out in the yard with the dogs, and more than me knows that.

Q Was Edward afraid of the old gentleman?

A No, it was the other way.

30 *Cross examination by Mr. Beers.*

Q You had trouble with the elder Kelly, didn't you?

A Never in my life.

Q The old man was to your knowledge opposed to your marriage to Annie, was he not?

A He was not.

Q Didn't the old man say that you were a drunkard and he didn't want Annie to marry you?

40 A Never said it; I was keeping company for

Joseph Moriarty, cross.

five years before I got married, and he would be standing at the gate and waiting for me to come Wednesday, Friday or Sunday when it was beau night, and I would say "Mr. Kelly, how do you feel"; "Well, I often felt better."

Q But he didn't permit you in the house when you were courting Annie, did he?

A Yes, sir.

Q You were married quietly, weren't you? 10

A Not to her father or mother.

Q You married without the knowledge of Thomas Kelly, didn't you; you went off and were married secretly?

A Well, I got married.

Q Did you get married secretly?

A Not secretly, no; I got married.

Q (*By the Court.*) How long ago was this?

A I got married in 1886.

The Court. It is not worth while to go into this. 20

Q Didn't you have trouble with the old man right along up to almost the time he died, because you were a heavy drinker?

A No, sir.

Q Because you were not supporting your family?

A I always did, and never asked of anybody else for any aid, and worked hard all my life and raised a big family. 30

Q I understood you to say that for fifteen or twenty years Mr. Kelly didn't get out of the house?

A I didn't say twenty years.

Q For fifteen years?

A Around that neighborhood, that is, not much further than the gate, and started to go to church, and my wife went out to look for him and there was a gentleman fetching him home.

Q How often did you give the old man money? 40

Joseph Moriarty, cross.

A Well, I guess if it was all counted up it would be in the neighborhood of about five dollars; I gave him a half dollar on one occasion, and my wife and I went down to a show and when we came back—

Q You were very friendly with Edward Kelly, weren't you?

A Well, when I was keeping company he was only a little boy.

10 Q You were very friendly with Edward Kelly, weren't you?

A Why, we were all friends.

Q I repeat, you were very friendly with Edward Kelly, weren't you?

Mr. Grosken. I object to that, I do not see how that is material.

Mr. Beers. I attempted three times to finish my question but the witness does not permit me to.

20 *The Court.* Ask the question.

Q You were very friendly with Edward Kelly, weren't you, up to and including the time that he boarded at your home?

A Always friendly.

Q And then when he left your home to become married you ceased your friendship for him, didn't you?

A No, not until after an argument.

30 Q That argument took place just before he left your home, did it?

A Yes, sir.

Q And you threw his picture down the stairs, didn't you, when you had this argument?

40 A No, sir; about three days after Mr. Rowe's son and John Fritz came up with an automobile; he went in his bedroom to take out all the clothes belonging to him, and different books and things, and his picture was in the parlor, and I said "You might just as well take this too."

Joseph Moriarty, cross.

Q You threw it down the stairs after him?

A No, I laid it at the head of the stairs.

Q You had this trouble with him when you learned he was going to be married?

A Allow me to explain why.

Q Did you or didn't you?

The Court. It is not worth while to go into it; he said he had a controversy with him.

10

Q Were you friendly with the old man?

A Always.

Q Got along nicely with him?

A Nicely; from the day I got married to five years before he died I bought him all his hats.

Q You were friendly with him right up to the time of his death, were you?

A Yes, sir.

Q He had no feeling against you, did he?

A Nothing as I know of, in my life.

20

Q Carried on conversation very nicely with you?

A And always glad when Joe would come.

Q You are Joe?

A I am Joe.

Q Didn't he get angry at you?

A Never in his life.

Q Talked nicely with you?

A Always talked nice.

Q Did not in the course of the conversation criticise you at all?

30

A No, sir.

Q Carried on a nice conversation with you?

A Yes, a nice conversation.

Q Didn't criticise you?

A In no way at all, only sociability, that is all.

Q Was he real sociable with you or did he show he had some feeling against you?

A I think he liked me very much.

Q How did he show you that, by conversation?

A The way he acted.

40

Isabella Grant, direct.

Q The way he talked to you about it?

A About what?

Q About these things that made you feel he was real sociable and liked you?

A In conversation, or anything at all he was always ready for to say something; when I would be going "What are you going so soon for?"

10 *Re-direct examination* by Mr. Laddey.

Q What was this argument about with Edward Kelly?

The Court. It is not worth while to go into that. He had some feeling against Edward Kelly; he admits that.

Q What kind of conversations were these you had with the old gentleman?

A Just merely talking, he would talk about the
20 dogs, or he would talk about times when we lived across the street, that is my people and I, thirty-five years ago, and "Do you know this one and that one," that is about all.

Q Was he able to talk for any length of time?

A No; he would start on one thing and he would wind up on something else.

ISABELLA GRANT, sworn.

Direct examination by Mr. Moriarty.

30 Q What relation was Thomas Kelly to you?

A Grandfather.

Q Did you ever live with your grandfather and Edward?

A Yes, I did for a couple of months.

Q When did you go there?

A In the latter part of January and the first part of February, Uncle Edward came up for me one night and asked papa if he would let me come
40 down because Aunt Ann wouldn't come down, but

Isabella Grant, direct.

papa didn't care very much about it, but then he let me go, to be obliging to Uncle Edward.

Q (*By the Court.*) This was what year, the year in which he died?

A No, your honor—yes, when he died.

Q (*By the Court.*) Were you there when he died?

A Not when grandpa died; when Aunt Ann died; I wasn't there when grandpa died. 10

The Court. What do you want to prove by this witness?

Mr. Moriarty. This witness was living with them at the time the deeds were executed, and not at the time of the death; the death of the father was about a year after, and she was there at the time Aunt Ann died.

The Court. As I understand Annie Kelly died in March, 1911. 20

Mr. Moriarty. Yes.

The Court. And Thomas Kelly died in January, 1912.

Mr. Moriarty. Yes.

The Court. Well, that was not a year. Now you are testifying to what occurred when?

Mr. Moriarty. When Annie died, about fifteen days after, when the deeds were signed.

Q How long did you remain there? 30

A About two months or a little longer, but I should judge around two months.

Q About what time of the year was it when you left?

A It was around Easter time.

Q Now what did you do there?

A Why I cooked the dinner and took care of the house and cleaned it, and took care of grandpa, and did everything there was to do in the house.

Q Who did the washing and ironing? 40

Isabella Grant, direct.

A Aunt Annie always did the washing and ironing every week.

Q Do you remember the time Aunt Annie died?

A Yes, sir.

10 *Mr. Moriarty.* I might say for your honor's information that Aunt Ann is the short name by which they called Ann Kelly, from whom Thomas Kelly inherited the property, and when they talk of Aunt Annie that means Mrs. Moriarty, the daughter of old Thomas; Aunt Ann is the old aunt.

The Court. Yes, I understand that.

Q You remember the time Aunt Ann died?

A Yes, sir; I was there the night she died.

Q Will you tell us what happened that night?

A Why Aunt Ann died around eleven o'clock, and then Aunt Annie was there, and another
20 woman, I forget her name, and after Aunt Ann died why Uncle Edward sent me down to bed, and Aunt Annie went home, and then a little while after I came down Uncle Edward came down and he had a big roll of bills, like that (indicating), and he said "Look, kid."

The Court. What do you want to show by this witness?

30 *Mr. Moriarty.* My purpose is merely this, to show the conduct leading up to the transaction; there was only a period of fifteen days there, and if there are any symptoms of unfairness from what happened in that period I want to show it; that is my only purpose; I want to show the course of conduct from the time when the old man first got the property until fifteen days after he disposed of it.

Q Well, what happened?

A Why Aunt Ann died, and Uncle Edward sent
40 me down to bed, and Aunt Annie went home; a

Isabella Grant, direct.

little while after Uncle Edward came down and he had a roll of bills, he said "Look kid, what I found under Aunt Ann's dresser." Then he went upstairs again, and I went to bed, and then the undertakers came. The next morning, he was intoxicated of course all the time, the next morning he came downstairs and he said "Look what I found under the mattress, some more money, she certainly was a queer woman, look where she hid her money"; I said "You are a wise one, you know where to find it"; he said "I sure am, kid," and that was the end of the money; the undertakers came in; I tried to quiet Uncle Edward, and I couldn't, he was so intoxicated, he told me to tell the undertakers to go to, you know, h—, and then he didn't go up, so I went up, and then Aunt Annie came and she looked after the undertakers; he was intoxicated all during the wake too.

Q Did you see your grandfather with any money?

A Well, I saw him with two cents and a nickel once, he showed it to me, he had it in his pocket, and he gave me the nickel to get him some tobacco.

Q Did you ever see the money that Edward found in his possession?

A He didn't know anything about that, he was ignorant of that money, he never knew anything about it.

Q Did you ever see Mr. Woodruff, the lawyer?

A Yes, sir, I did.

Q When was the first time you saw Mr. Woodruff?

A One morning I went to the door and this Mr. Woodruff was standing there; I didn't know him then of course; he asked me for Uncle Edward; I asked him who he was; he said "Mr. Woodruff, a lawyer"; I said "Step in"; I went in and called Uncle Edward, and he sent me outside; that was the first time, and then he called again.

Isabella Grant, direct.

Q That first time where was your grandfather?

A Grandpa at that time was out in the yard.

Q Did your grandfather go inside with Uncle Edward and Mr. Woodruff on that occasion?

A No, sir, he did not, he didn't know, he was gone before grandpa came in.

Q Then did you ever see Mr. Woodruff again?

10 A Then I saw him again one day, I was sweeping out in the yard, I saw Uncle Edward and Mr. Woodruff walk out towards Bank street.

Q Did you ever see him any more?

20 A I saw him once more; on that occasion I was getting dinner; I told grandpa to come in to dinner, and he said "Where is Uncle Edward"; I said "He is inside with Mr. Woodruff"; he said "Who is Mr. Woodruff"; I said "He is a lawyer"; he said "What does a lawyer want here"; I said "I don't know, grandpa, you will have to ask Uncle Edward," and we dropped the subject.

Q Did you ever hear your grandfather talking about transferring the property?

A Oh, I did once.

Q When was that?

30 A One morning grandpa said to me "I didn't sleep last night." I said "You didn't, how is that"; he said "I am worried," he said "Uncle Edward had me up talking last night, and he wants me to give him the property, he could take care of it, I was so old I couldn't, if I let him have it he would take care of it, and everything would be all right"; I said "You should not worry"; he said "I should worry, because I haven't anything to say, in the end I will have to give it to him anyway."

Q What was the conduct of Edward and your grandfather towards one another?

40 A Uncle Edward was awful mean to grandpa, he treated him terrible; I thought he told an awful lie when he said that grandpa used to scold him,

Isabella Grant, direct.

because he was awful mean to grandpa; I used to feel sorry for grandpa the way he would order him around, just like a dog.

Q How about some of your grandfather's habits, can you tell us anything about them?

A He had very peculiar habits, he used to get up early in the morning, may be four o'clock, and he would eat bread, stale bread, and he had a cup and he used to put all kinds of liquids in it from the table and lay that on the sink and drink it now and then, and he used to sit by the fire days that were roaring hot, he would sit by the fire, he would be so cold, and have a thick sweater on and a coat, and he never took his clothes off when he went to bed, would even wear his hat. 10

Q Did you ever hear your grandfather ask Edward for any money?

A Yes; I often asked him to give him a nickel for tobacco, and Uncle Edward would have such an uproar and there would be a quarrel, and he wouldn't give it to him; he said "I gave you a nickel for tobacco last week, what did you do with that," and grandpa said "Do you expect a nickel to last forever," and they had a quarrel, and one day they had a quarrel and Uncle Edward told grandpa to get to h— out with the dogs, and grandpa had two spells, and I was there all alone and didn't know what to do with him. 20

Q Was your grandfather afraid of Edward or Edward afraid of your grandfather? 30

A Grandpa was afraid of Uncle Edward. Uncle Edward used to order grandpa around all the time, he couldn't have a word of his own, he would have to sit in that chair, if Uncle Edward saw him around he would give him a look, or say something to him, he was very mean to him, very mean. 40

Isabella Grant, cross.

Cross examination by Mr. Beers.

Q How old are you?

A Twenty.

Q What year were you born in?

A 1895.

Q Where do you live?

A 62 Fourth street.

10 Q With whom?

A My brothers and sisters.

Q And you are single, are you not?

A Yes, sir.

Q You were on friendly terms with your Aunt Annie?

A Yes, I was.

Q I mean with Mrs. Moriarty. I am going to call her Moriarty?

20 A Well, I was on friendly terms; we weren't in the habit of quarreling.

Q You were on friendly terms with her, were you not?

A Yes.

Q And you visited her right along for some years?

A Visited Aunt Annie?

Q Yes?

A No, I never went to visit her.

Q When did you visit her last?

30 A Only when she came over to grandpa's.

Q How often have you seen Aunt Annie in the past year?

A I think I saw her about four times, I can't just think how many times.

Q And before April last how many times had you seen her within five or six months?

A Five or six months?

40 Q Yes, the five or six months before April last, how many times did you see her; half a dozen times or a dozen?

Isabella Grant, cross.

A No, sir, I saw her three times I think.

Q Before that?

A Before this past April?

Q Yes?

A Yes, sir.

Q You were not subpoenaed to appear in this court April last, were you?

A No, sir, I was not.

Q It was in the morning, was it, that Mr. Kelly, 10
your uncle kept his father in the chair?

A He didn't keep him in it, he used to tell him when he would be home, Uncle Edward wouldn't be home in the morning, of course he was home different times during the day when he wasn't working, and that is how I say he did treat grandpa.

Q Used to keep him in the chair?

A No, not force him in it, but if he was around he would say "Go sit in your chair, you are a nuisance." 20

Q How long did you live there?

A About two months or so.

Q When did you quit there?

A No, I wasn't there at all when grandpa died; when Aunt Ann died, I was there a short time after she died and then I went home.

Q Who cared for you while you were living with the old man; Edward did, didn't he?

A I don't know if he cared for me or not. 30

Q I mean to say he provided for you?

A Well, of course I was there working for him, I am sure he would have to provide for me in regards to food.

Q He bought you your clothes too?

A No, sir, he did not; he bought me one thing, and that was Easter, he promised me a dress, and he gave me a new dress and coat and hat, and that is all Uncle Edward ever gave me, and I think I deserved that, I worked for it. 40

Matilda Shipman, direct.

Q You do not feel friendly towards your uncle, do you?

A Well—

Q Do you or don't you?

A Well, I don't feel unfriendly; I never had any quarrel with Uncle Edward.

Q Why did you look at him so fiercely when
10 you left the stand?

A I wanted Uncle Edward to look at me, I was so surprised the lies he was telling up there, and I wanted to look at him to see if he would look at me.

Q You wanted him to look at you?

A Yes, to see, because I am surprised, because I didn't think he would tell such lies.

Q Did you ever complain to Uncle Edward while you were living with him?

Mr. Grosken. Complain about what?

20 Q About the conduct of Mr. Kelly towards his father?

A Yes.

Q What did you say to him?

A I didn't say it to him, of course I was too young then.

MATILDA SHIPMAN, sworn.

Direct examination by Mr. Laddey.

30 Q You are the sister of Mr. Joseph Moriarty?

A Yes.

Q And you were acquainted with Thomas Kelly?

A Yes.

Q Did you see him in the year 1911?

A Yes, sir.

Q Can you tell us something about his conduct, his habits, and also his relationship with Edward?

A Well, I know he used to have those spells.

40 *The Court.* Never mind about the spells,

Matilda Shipman, direct.

we have had so much evidence on that subject it is not worth while.

Q Did Thomas ever complain to you about Edward?

The Court. You can call the witness's attention to the conduct of Edward, as you call him, toward his father.

Q I would like you to inform the Court as to what you know of the conduct of Edward toward his father? 10

A I used to go there a few times after Mrs. Kelly died, and I brought him pie and different things different times.

Q (*By the Court.*) Now confine your attention to the last two years of Thomas Kelly's life; what you saw as between Thomas Kelly and his son Edward during those two years; what did you see, if you saw anything? 20

A Well, I saw Edward different times there of course in the evening.

Q (*By the Court.*) What did he do?

A I never saw Edward of course do anything to any one; he would come in in the evening and go out again, and that is about all that I could say that I seen him do; of course his father got those spells, and I was the one held his head.

Q (*By the Court.*) Never mind about the spells, unless they had something to do with Edward? 30

A Well, I don't know anything about what he said to Edward.

Q Did Mr. Thomas Kelly ever complain about Edward?

A Well, he told me if he had it over again he would do very different, when I brought him the pies down; I didn't care to go much because I was a little bit timid when he was alone.

Q Anything else? 40

Matilda Shipman, direct.

A I don't know as there was anything else.

Q Does the subject of bread refresh your memory?

A He said he had stale bread to eat, and that is why I brought him those little things.

Q He complained then about that?

A He complained about that and said if he had it over again he would do very different, that is, he meant in regards to the property.

10

Q Didn't he complain about—

Mr. Beers. That is a leading question.

Q Did he complain about anything else? Just search your memory?

A No, I don't remember anything else particularly.

Q Well, it is in connection with spells, don't tell us about the spells, but something he complained about?

20

A Well, certainly his mind was wandering, he would talk wandering.

Q Did he ever complain about being left alone?

A He did, he said he was very lonely, and that is before my sister-in-law came to live there, he said that Annie had to come there to live to take care of him, he couldn't be alone, he told me that.

Mr. Laddey. Your honor doesn't care to hear anything about the spells?

30

The Court. No; Edward Kelly admits he had these spells.

Francis J. Grant, direct.

FRANCIS J. GRANT, Sworn.

Direct examination by Mr. Moriarty.

Q What relation are you to Thomas Kelly?

A Grandson.

Q Do you know anything about the conduct of Edward Kelly towards your grandfather during the limited period between the—

The Court. During the last two years of his life. 10

A Yes.

Q (*By the Court.*) Tell us?

A He treated him very mean, he abused him in every way.

Q (*By the Court.*) Give us an instance?

A If he would ask him for anything he would tell him to sit down, "don't be bothering me, I have no money to give you, I gave you some last week, I gave you five cents or so, what are you bothering about now, I bought you a paper of tobacco." 20

Q (*By the Court.*) Anything else?

A Well, I recollect one time I was living there, my wife and I had been down to the Island and came home and it was around twelve o'clock at night, and we heard grandfather downstairs, and I went down there, and he was up, he was wondering where Edward was, and he said he had nothing to eat the whole day; we went away in the morning; so in the meantime Edward came in, and he was pretty drunk, and he started to talk to him about it, he said "That is a fine way you are treating me, if I had this to do over again I would never do it"; he said "Get to hell to bed with you." 30

Q Did you ever see Mr. Woodruff up there?

A Yes, I saw him once on the back stoop talking to my Uncle Edward Kelly, I was standing upstairs in the room and could look out on the stoop; when they seen me they walked inside. 40

Matilda Bush, direct.

Q Did you see your grandfather around there?

A No.

Q What were they doing on the stoop?

A They were talking.

The Court. Never mind about that, Mr. Thomas Kelly was not there, he said he did not see Thomas Kelly.

10 *Cross examination by Mr. Beers.*

Q You are a fireman, are you?

A Yes.

Q You were a fireman during the time you are testifying to, weren't you?

A I was a fireman? No.

Q Weren't you a fireman at the time you are testifying to now?

A No.

20 Q How long have you been a fireman?

A Since November first, 1911.

Q You are interested in this suit, you are one of the children of a deceased daughter of Thomas Kelly?

A Yes, Matilda Grant.

MATILDA BUSH, sworn.

Direct examination by Mr. Laddey.

30 Q You are a daughter of Joseph and Annie Moriarty?

A Yes, sir.

Q You were acquainted with Thomas H. Kelly of course?

A Yes.

Q Did you see Thomas Kelly frequently in the years 1910 and 1911?

A Yes.

Q Can you tell us something about the conduct of Edward Kelly towards Thomas Kelly?

40

Matilda Bush, direct.

A Well, different times I seen him act very cross with him.

Q He acted cross?

A Edward with Thomas Kelly, he would scold him and holler at him, and tell him to sit down, and all such as that.

Q Can you recall any specific instances?

A In regards to the spells?

Q Regarding the conduct, or the complaints on the part of Thomas Kelly?

10

A He often complained that he didn't treat him right, and he wouldn't buy him anything to eat, or even give him tobacco, he even complained of that.

Q Did you ever observe any hallucinations on the part of Mr. Thomas Kelly?

A Any what?

Q Hallucinations, imaginings?

A Yes, one time he mistook me for a rat; I was passing through the room, and he had been going around the floor with his cane, that is before my grandmother died, my mother was taking care of her, I came down out of the dining room into the kitchen and he was going along the floor with his cane, and he said "There is a rat, Annie" to my mother, and he went to strike me, and she said "No, father, that is Tillie," and he sat down on the chair, and I went out.

20

Q Were you present at the last illness of Thomas Kelly?

30

A Yes, sir.

Q Now what do you remember of the circumstances at that time?

A Well, when he was sick?

Q Yes?

A Well, I seen him, he went around, imagined he was seeing things, and all such as that.

Q I mean more particularly the day of his death?

40

Ethel Moriarty, direct.

A I wasn't there when he died.

The Court. What difference does that make? What do you want to show?

Mr. Laddey. Conduct on the part of Edward Kelly towards his father at the time of his death.

10 *The Court.* That was six or seven months after the deed was executed; that could not throw any light upon the case.

Mr. Laddey. It would tend to corroborate the mental disposition of Edward.

The Court. Oh no, I do not think it is worth while. I will overrule that.

Cross examination by Mr. Beers.

Q You are a daughter of Annie Moriarty?

A Yes.

Q The complainant in this suit?

20 A Yes, sir.

Mr. Laddey. I have one or two more witnesses that would corroborate the last two. I also have Mrs. Annie Moriarty, and I would like to offer her testimony to the statements and complaints made by Thomas Kelly on his death bed about Edward Kelly.

The Court. Well, I overrule that.

ETHEL MORIARTY, sworn.

30 *Direct examination by Mr. Laddey.*

Q You are also a daughter of Joseph and Annie Moriarty?

A Yes, sir.

Q And you were living at home in the years 1910 and 1911?

A Yes.

Q Of course you were acquainted with your grandfather, Thomas Kelly?

40 A Yes.

Ethel Moriarty, cross.

Q Can you tell us anything of the conduct of Edward Kelly towards his father Thomas Kelly in the years 1910 and 1911?

A Yes, I can; I was working in the day but when I did see him he wasn't very good to him, he was very mean to him, very mean.

Q Give us the facts?

A If he would see him out at the gate or standing around, he would say "Get out of my way, go in and sit down, you are always in the way," and get hold of him and push him down by the chair. 10

Q Anything else? Did Thomas ever complain, did you ever hear your grandfather complain about Edward?

A Yes, he would say to me "Gee, Uncle Edward is awful mean to me."

Q Do you remember any other specific instance, any particular scenes between Thomas and Edward Kelly? 20

A No, I don't remember much because I would be working all the time and not home during the day.

Cross examination by Mr. Beers.

Q You are related to Mrs. Moriarty, are you?

A Yes, sir.

Q You are a daughter?

A Yes, sir.

Mr. Moriarty. Nothing further, except we have testimony as to the conduct of Edward Kelley from the time of the making of the deeds until the death of his father, up to the time of his death; it amounts to about the same thing, but it shows the continual domination over him. 30

The Court. I do not think it would throw much light on the case.

Mr. Moriarty. I just wish to have it appear on the record as offering that. 40

Margaret Clarey, direct.

The Court. Well, you can offer it if you want to, but it does not strike me as very important.

Mr. Moriarty. Well, we rest.

Mr. Laddey. I would like to offer another witness as to the serious charge made by Thomas Kelly against Edward Kelly at the time of his death.

10

The Court. I overrule that.

MARGARET CLAREY, sworn.

Direct examination by Mr. Beers.

Q Where do you live?

A Dover.

Q How long have you lived in Dover?

A A few months.

20 Q Prior to that you lived in Newark all your life?

A Yes.

Q You knew Thomas Kelly in his lifetime?

A Yes.

Q And Edward?

A Yes.

Q You were his mother-in-law?

A Yes.

Q His first wife was your daughter?

A Yes.

30 Q Did you ever have a conversation with Thomas Kelly about deeds that he signed?

A I did.

Q When was that and what did he say?

A He was pretty well then, a while before he died, and I went to see him, and he gave me a chair and I sat down, and he said, told me that he was going to give this money to Edward, he said "Edward has been a very good boy and he has always taken care of me"; he said "The lawyer told

40

Margaret Clarey, direct.

me "If I give this money to Edward wasn't I afraid Edward would put you in the street and you wouldn't have anything"; he said "No, Edward is a good boy, he would not do anything of that kind."

Q Was there anything said about signing papers?

A No; he just told me he had this lawyer and he had Mr. Foyle.

Q What did he tell you he had done? 10

A He told me that he had the papers all signed over to Edward.

Q For what?

A For the property.

Q Did you ever live in the house with Thomas Kelly?

A I was in the family, yes.

Q Did you live there at any time two years before his death? 20

A No, but I had visited there.

Q During the two years before his death?

A Yes, I went to see him.

Q How often?

A Not very often, I would pass and stop in to see how he was.

Q Did you have a conversation with him then about Edward?

A No; I just merely asked how Edward was, that is all.

Q What did he say? 30

A He would always say "Edward is still the good boy."

Q Did he ever complain to you about Edward's conduct towards him?

A Never complained in his life, because he couldn't.

Q Did you carry on conversation with the old man?

A Oh, very often, he would talk, he always acted very pleasant with me. 40

Margaret Clarey, direct.

Q Did you have any difficulty in carrying on conversation with him?

A Never.

Q Did he move about any while you were there?

A He always moved; every Saturday he took his bath and shaved himself, and he never lie down in his clothes while I was there, and I was there seventeen weeks, he might during the day time but never at night, he always went to bed.

10 Q (*By the Court.*) You are now speaking of something he did more than two years before he died?

A Yes.

Q Was this more than two years before he died?

A Yes.

Q Were you ever there when he retired, or did you know how he dressed?

A No.

20 Q Just a moment. At any time during the two years before he died?

A No, I never did.

Q When you visited him these two years before he died how did he appear in his person?

A Why he appeared all right to me, he would always look nice and tidy and clean, he always had good clothes on him, and he always sat in a chair of course; I considered him a very old man.

30 Q Did you have any conversation with the old man about Mr. Woodruff?

A Oh, no; he just told me that it was a lawyer, that is all, and Mr. Foyle.

Q Did Mr. Edward Kelly give the old man anything on the occasion of these visits that you made him?

A Well, as far as I can tell about Edward, he always kept his father.

Q How did you know that?

40

Margaret Clarey, cross.

A The father always had tobacco when I saw him, and he was always smoking.

Q How did you know who gave it to him?

A I knew there was nobody else gave it to him, his sister did give him a little, but nobody else ever gave him anything.

Cross examination by Mr. Moriarty.

Q You say, Mrs. Clarey, that when you had this conversation about the property being transferred to Edward by his father that the deeds were already executed? 10

A That I couldn't tell you, but he said he had done it, that is all.

Q He said that he had done it?

A He had done it.

Q How many years before Mr. Kelly's death did you have this conversation with him?

A Well, about the property, why, it wasn't years at all before his death, it might have been a short time, it wasn't years. 20

Q How long was it?

A I just can't remember the time but I know it wasn't any years.

Q What time of the year was it?

A I believe it was some time around, well, I just can't really tell you, I don't remember, but I know it wasn't in the years.

Q Do you remember coming to the house? 30

A Oh, I was there all right, and I remember him telling me that, and he got up and gave me his chair, and I said "No, I will take another one"; he said "No, you sit in that one"; and he stood with his back to the stove and his two hands behind his back, like that (indicating).

Q How many times were you there the last two years of his life?

A I wasn't there many because I hadn't any call 40

Margaret Clarey, re-direct.

there then; if I was passing I would run in to see him, but of course I have knocked on the door, I have been there and knocked on the door but the family upstairs wouldn't let me in.

Q How many times were you there?

A I was there four times and rang the bell, and I knew they were in but they wouldn't let me in.

10 Q At the time he told you about this, the grandfather, did he tell you that Edward had promised to support him?

A No, he didn't tell me, because he knew that I knew Edward always done it, so he didn't have to tell me.

Cross examination by Mr. Laddey.

20 Q Did I understand you correctly when you testified that Edward's lawyer, that the old gentleman told you that Edward's lawyer had informed him?

A No, he didn't say Edward's lawyer, he said a lawyer, and Mr. Foyle; of course I didn't know the lawyer, but Mr. Foyle I am well acquainted with.

Q Didn't you for a certain period feel angry with Edward Kelly?

A Me? No, I never held any spite against Edward at all, I had no reason to hold spite against him.

30 Q Isn't it a fact that after your daughter died that for a certain length of time your relations were broken off?

Mr. Beers. What bearing could this have?

The Court. I cannot understand.

A I can't say that, because I never did.

William Saupe, recalled.

WILLIAM J. SAUPE, recalled.

Direct examination by Mr. Beers.

Q You testified in this case this morning, did you not?

A Yes.

Q Did you have an opportunity to observe the conduct of Edward Kelly toward his father at any time within two years prior to his death?

10

A Only in the way of the street.

Q Just what was your opportunity?

A He would come over to the engine house and look for him when he would be late coming from work to his supper, like that.

Q Who would look for him?

A The old gentleman.

Q What did he say?

A He would say "Edward is late again to-night."

20

Q Did you see Edward come home late?

A Occasionally.

Q Did you hear conversation between the father and the son at that time?

A Not only in a way that he would say "Where have you been to-night, you are late again."

Q That is, his father complained of Edward?

A Yes.

Q Did you hold conversation with the father concerning Edward, ever talk to you about Edward?

30

A Only in the way that I am telling you.

Q Did he ever complain to you about Edward's conduct?

A Yes, he said that he would stay out too late, he ought to be home earlier, that is all.

Q Did he complain about the way Edward acted toward him?

A No, he never said a word about that.

Q How far was the engine house of which you were captain from Mr. Kelly's home?

40

William Saupe, cross.

A Directly across the street, 82.

Q How would he come across and get back?

A Walk right across with his cane.

Q Alone?

A Yes.

Q How did he get about?

A Oh, like an ordinary person would.

10 *Cross examination* by Mr. Moriarty.

Q When was this?

A Well, in 1910 and 1911, while I was there at
3 Truck.

Q How long were you at 3 Truck?

A I was there nearly five years.

Q That is from what date to what date?

A I don't know exactly the date but I think it
was May 5, 1908, until October, 1913, something like
that, I am not quite sure of that but very close to it.

20 Q Who was living with Mr. Kelly at that time?

A Why I believe this here little girl, this Grant
girl was living there, taking care of the house.

Q And did the old man come over from his house
or would he send her over?

A He would come over occasionally himself, not
very often.

Q Was he able to go up and down the stoop?

A Well, he seemed to get along like anybody
else would at his age, he didn't seem feeble or any-
30 thing of that kind.

Q He was not feeble?

A Didn't seem so coming across; of course he
walked with a cane?

Q Walked fast?

A Well, medium, like an old person would.

Q And Isabella would stay inside in the house
while he came over?

A Well, she would be outside around the side-
40 walk, in the yard somewhere.

James V. McGuire, direct.

Q (*By Mr. Beers.*) Did Edward ever abuse the old man?

A I don't know anything about that, I wasn't there.

JAMES V. MCGUIRE, sworn.

Direct examination by Mr. Beers.

Q You are married? 10

A Yes, sir.

Q Live with your wife?

A Yes.

Q You are in business in Newark?

A Yes.

Q How long have you been in business?

A About seventeen years.

Q You knew Thomas Kelly?

A Yes.

Q And Edward Kelly, who appeared here to-day 20
on the stand?

A Yes.

Q Did you visit Thomas Kelly within two years prior to his death. Do you know when he died?

A He is dead about four or five years, I don't know exactly the date.

Q You remember when he died?

A Yes; I went to the funeral.

Q Did you visit him before his death, within 30
two years?

A Yes, several times.

Q How soon before his death?

A Might be a month or few months, I had occasion to go around there a good many times, social and business matters, and so on.

Q Did you have a conversation with him?

A Well, different things, business used to take me around there mostly, but we used to discuss old times on the Hill.

Q Did he know your family? 40

James V. McGuire, cross.

A Yes, he was acquainted with my father.

Q How long did the conversation last?

A According to what time we had to spare; he had a little more time than I.

Q Were they of any length?

A Some times hour or half an hour.

Q Did you have any difficulty in conversing with him?

10 A No, he was very fluent in his speech for a man of his years.

Q Did he ever discuss his son Edward?

A Yes, they always seemed to be on very good terms.

Q Did he ever complain to you about Edward's conduct towards him?

20 A No, I never heard only words of kindness from the old gentleman, I never heard him complain about his son.

Q What did he say about him?

A Well—

Q Did he say Edward done anything for him?

A He always said Edward took good care of his father.

Cross examination by Mr. Moriarty.

Q What time was this, during what years?

30 A Well, it was up to, as I say, within a few months of his death, I had occasion to go around there once every month or two months on business, other times it would bring me through the street and I would run against the old gentleman, he was out a good deal, I would meet him on the stoop and we would talk about old times.

Q You would go around to see Mr. Kelly about business?

A No.

40 Q You would just stop in when you were passing?

James V. McGuire, cross.

A No, no, the aunt sent for me, and of course Edward sent for me different times.

Q You live some distance from there?

A Oh, at that time; well, of course now I live some distance.

Q At that time did you live on Warren street?

A Yes.

Q Near Norfolk?

A Yes.

Q You are in the metal ceiling line?

A Yes.

Q Ever do any work for Edward?

A Yes.

Q Aren't you related in some way to Edward by marriage?

A No, not at all.

Q Edward's wife is a niece of the husband of your sister-in-law?

A I can't follow you on that, but I maintain we are not related in any way. 20

Q Do you know Mr. Patrick?

A Very well, my brother-in-law.

Q Is Edward's wife his niece?

The Court. Well, the relationship is so distant it is not worth while to go into it.

By Mr. Grosken.

Q What work did you do for Edward?

A Repairs on the buildings.

Q Have you been paid?

A Yes.

Q Does he owe you any money now?

A I was paid for all the work we done.

Q He owes you no money at all now, does he?

A None at all.

Q Have you talked this matter over with Edward Kelly before you testified here?

A We have discussed the case ever since the matter was broached, oh, yes. 40

Ellen McKenna, direct.

Q You discussed it with Mr. Beers also?

A With Mr. Beers his counsel, yes.

Q (*By Mr. Beers.*) When did you discuss it with me?

A At different times, I might say only casually.

ELLEN MCKENNA, sworn.

10

Direct examination by Mr. Beers.

Q You owned the property in which Mrs. Henry conducted her store on Bruce street, did you?

A Yes, sir.

Q Do you know when Mr. Thomas Kelly died?

A Yes, sir.

Q When was it?

A Well, 1911 or 1913 I think, I can't exactly tell the date.

20

Q You don't remember the year, do you?

The Court. Well, you remember the time of his death?

A Yes.

Q Did you at any time within two years before his death meet him in Mrs. Henry's store?

A Yes.

Q Did he have a conversation there with anyone about Edward his son?

30

A No, sir.

Q Did you ever talk with him about Edward his son?

A No, sir; he never said nothing only when the transfer was in the paper, and he came in one day, and he always called me Nell, he said "Nell, I am a rich man but I am too old to enjoy it, but I got one, it is all his, for he is the best son that ever God let live, but he has a sister and he will never see her want."

40

Q Did he say anything about who had been or was providing for him?

Ellen McKenna, direct.

A Why, Edward Kelly.

Q Did he say that to you?

A Why, he provided for his father and mother all his lifetime I should think.

Q How do you know that; did you use to visit them?

A They lived each side, their property was each side of mine.

10

Q How near to them did you live?

A Right adjoining fences.

Q Did you carry on conversation with him over the fence?

A No, not at all; only the father and aunt lived upstairs and when they built the house above—

Q Well, all right, but did you visit them at any time?

A No, only when the aunt died.

Q How often did you talk with the father just before he died? 20

A When I met him in the store.

Q How often?

A I might meet him maybe twice a month or maybe more.

Q Did he ever complain to you about his son's conduct toward him?

A Never.

Q Did he talk with you about his son?

A Never.

30

Q Other than what you have just told us?

A That is all he ever told me.

Q Did you see the old man going about the neighborhood?

A Why from the store to his own house, just the three houses.

Q How did he get along?

A Fine.

Q How long before his death did you see him out? 40

Ellen McKenna, cross.

A Well, I should think it was about three weeks.

Q Was he walking then?

A Yes.

Q In the store?

A Yes.

Q Did you hold conversation with him?

A That is all he told me, as I tell you.

Q Did you ever talk with him about other
10 things?

A Whenever I would be coming from church he would be standing at the gate talking about one thing and another.

Q Have any trouble in carrying on a conversation with him?

A No.

Q How did his mind appear to you?

A Fine.

Q Was he standing up or sitting down?

20 A He was always at the gate when he was able to go out.

Q Was he supported by anything?

A No.

Q Standing apart from everything?

A Apart from everything; he was a tall fine old man.

Cross examination by Mr. Moriarty.

Q He was a big strong man, wasn't he?

30 A Tall.

Q Strong?

A Broad shoulders, fine build.

Q He often went further than the store though, didn't he?

A Well, every morning for years before he got so feeble he went to church, every morning of the year, that I saw.

Q Before he got so feeble?

A Before he got so feeble.

40 Q How many years ago was that?

Ellen McKenna, cross.

A Well, I don't know how long I am out of the store, Miss Henry kept it after me; it was in Miss Henry's store that he told her this, and she came and told me, and then he saw me after and he repeated the same thing to me that he told Miss Henry.

Q It was remarkable, was it not, that such a feeble old man could get down to your store? 10

A He wasn't feeble, he could walk.

Q Did he ever tell you that Aunt Ann had given them rent free, and that his wife had worked at button holes; did he ever say that to you?

A They had rent free all their lifetime from their uncle, they didn't have to pay no rent when they lived in this property.

Q You knew his wife worked?

A I knew them all, I knew them since I was a little girl.

Q Old Mrs. Kelly worked up to about the time of her death, didn't she? 20

A I couldn't tell you.

Q (*By Mr. Laddey.*) Can you tell us with any degree of accuracy when Mrs. Henry moved away from your store?

A Well, I should judge she is gone about seven years.

Q (*By Mr. Laddey.*) She is gone about seven years? 30

A No, not seven.

Mr. Beers. This is not proper cross examination.

The Court. I do not think it is at all important.

Jennie E. Burns, direct.

JENNIE E. BURNS, sworn.

Direct examination by Mr. Beers.

Q You live on Bruce street?

A No, sir.

Q Did you ever live there?

A No, put I passed there very often.

10 Q You knew Thomas and Edward Kelly?

A Yes, all my life.

Q Did you hold conversations with Thomas Kelly? Do you know when he died, Thomas Kelly?

A Yes, I think he died in 1912, it was cold weather, and the summer previous to his death I used to see his sitting on the stoop, and I would cross over and speak to him.

Q How long would you talk with him?

A Ten or fifteen minutes.

20 Q Have any trouble holding a conversation with him?

A Not at all.

Q Did he discuss his son Edward with you at any time?

A Not at all, never mentioned any of his children's name to me in any way.

Q Never complained to you about Edward's conduct?

A Didn't mention his name in any way.

30 Q Did you see the old man going about at any time?

The Court. There is no doubt at all but up to the time of his death he was physically capable of walking; it is not worth while to go into that.

Q You had no conversation with the old man about his son?

The Court. She says not.

Jennie E. Burns, direct.

A No; I asked him if he knew me the first time I went over, because I hadn't seen him in some time.

NOT CROSS EXAMINED.

Mr. Beers. The complaint and the amended complaint set forth that the property in question was owned by Ann Kelly, the sister of Thomas Kelly; that she died without a will, and that Thomas Kelly inherited this property. Now I suppose it is useless going into proof that that was so; it is admitted by the pleadings. 10

The Court. Well, the pleadings on both sides so state.

Mr. Moriarty. Yes.

The Court. Then it is not worth while.

CASE CLOSED.

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*Decree.***Decree****IN CHANCERY OF NEW JERSEY.***Between*

ANNIE C. MORIARTY AND JOS-
EPH MORIARTY, her husband,
et als,

*Complainants,**and*

EDWARD J. KELLY, *et als,*

*Defendants.**On Bill etc.**Decree.*

This cause coming on to be heard upon Bill, Answer and Replication, in the presence of John V. Laddey, solicitor for complainants, and Grosken & Moriarty, of counsel with the complainants, and of Louis J. Beers, of counsel with the defendants, and the pleadings having been read and the evidence of the witnesses for the respective parties and the arguments of counsel heard and considered, it is on this eighth day of February, 1917,

Ordered, adjudged and decreed that the two deeds made by Thomas Kelly to Edward J. Kelly and dated April 8th, 1911, one recorded in Book X 48 of Deeds for Essex County, New Jersey, on pages 280, etc., purporting to convey to the said Edward J. Kelly, in fee, the first tract and second tract hereinafter particularly described, and the other of said deeds recorded in Book X 48 of Deeds for Essex County, New Jersey, on pages 283, etc., purporting to convey to the said Edward J. Kelly, in fee, the third tract and fourth tract, hereinafter particularly described, be and the same are hereby declared null and void except as hereinafter otherwise provided and are set aside as having been pro-

Decree.

cured by the said Edward J. Kelly from the said Thomas Kelly for no valuable consideration, at a time when the said Thomas Kelly was of the age of about ninety-five years, was without means of support, had no other property, real or personal, and in making said deeds had not the benefit of any competent or independent advice. This decree, however, shall not affect the rights of Max Breitkopf and Pepi Breitkopf, his wife, in and to the lands and premises hereinafter particularly described as the third tract, which tract, in consideration of the sum of \$1,800 paid by them to the said Edward J. Kelly, was conveyed to them by the said Edward J. Kelly, by deed dated January 20, 1914, and recorded in Book V 53 of Deeds for Essex County, New Jersey, on pages 411, etc. 10

It is further ordered, adjudged and decreed that the defendants pay to the complainants, or their solicitor, the costs of this suit to be taxed and also a counsel fee of \$150.00 (one hundred and fifty dollars), to be included in the taxed bill of costs, and that the complainants have execution therefor according to the practice of this court. 20

It is further ordered, adjudged and decreed that the mortgage for \$1,000 made by the defendants, Edward J. Kelly and Margaret Kelly, his wife, to Louis J. Beers, dated April 22nd, 1915, and recorded in Book I 34 of Mortgages for Essex County, New Jersey, on pages 279, etc., covering the first tract and second tract of said lands and premises, hereinafter particularly described, which mortgage was assigned to Henry Ahrend by Deed of Assignment dated June 26th, 1915, and recorded in Book 124 of Assignments of Mortgages for Essex County, New Jersey, on pages 316, etc., be and the same is hereby declared null and void and of no effect as to the complainants and all of their estates, rights, titles and interests in and to the said lands and 30 40

Decree.

premises, but is a lien on all the estate, right, title and interest of the said Edward J. Kelly in and to said lands and premises, said Louis J. Beers and Henry Ahrend having taken said mortgage with knowledge of all the rights and equities of the complainants.

10 It is further ordered, adjudged and decreed that the defendant Edward J. Kelly is indebted to the said complainants in the sum of \$1,200 with interest at six per cent. per annum from January 20, 1914, said sum of \$1,200 being two-thirds of the purchase price received by the said Edward J. Kelly, from Max Breitkopf and Pepi Breitkopf, his wife, for lands and premises conveyed to them by the said Edward J. Kelly, as aforesaid, said lands and premises being hereinafter particularly described and designated as the third tract, and that
20 complainants have execution therefor according to the practice of this court.

It is further ordered, adjudged and decreed that the said Edward J. Kelly pay to the complainants the further sum of \$1,042.58, the complainants' share of \$1,563.87, appearing from the accounting and evidence of the said Edward J. Kelly to be the balance of the rents collected by the said Edward J. Kelly from the said lands and premises over and above the moneys expended therefrom by him, and that complainants have execution for said sum of
30 \$1,042.58 according to the practice of this court.

It is further ordered, adjudged and decreed that all of said lands and premises be and the same are hereby declared free and discharged of any and all right and rights of dower of Margaret Kelly, wife of the said Edward J. Kelly except as to such estate, right, title and interest as the said Edward J. Kelly may have therein.

40 In case the said Edward J. Kelly does not pay the amounts hereby decreed to be due from him to-

Decree.

gether with interest and costs within thirty days from the day of the service of a copy of this decree upon him, a writ of *fi fa* shall issue to levy and make said sums of money, to wit, the sum of \$1,200 with interest from the 20th day of January, 1914, and the sum of \$1,042.58 with interest from the day of the date of this decree of the goods and lands of the said defendant together with the costs of the writ. 10

It is further ordered, adjudged and decreed that out of the proceeds of the sale under said writ of *fi fa*, the sheriff shall and does pay to the solicitor of the complainants their costs of this suit to be taxed including the aforesaid counsel fee of \$150.00 (one hundred and fifty dollars), and retain his fees and commissions on said sale, as allowed by law and the practice of this court, and the residue be divided and paid by the said sheriff in the following manner; that is to say: In the first place, \$1,200 with interest at six per cent. per annum from January 20, 1914, to the complainants; in the second place, \$1,042.58 with interest from the day of the date of this decree, to the complainants; and in the third place, the balance, if any, to the clerk of the court to be disposed of by him in such manner as this court shall hereafter by order direct. 20

The lands and premises referred to in this decree and described in the said deeds and mortgage are particularly described as follows: All those tracts or parcels of lands and premises situate, lying and being in the City of Newark, County of Essex, New Jersey: 30

First Tract. Beginning on the westerly side of Bruce street at a point distant two hundred and seventy-five feet from the corner of West Bank street and Bruce street; thence along said Bruce street, south twenty-five feet; thence west one hundred feet; thence north twenty-five feet; thence west 40

Decree.

one hundred feet, to the place of beginning. Being Lot No. 68 on a map of Thomas V. Johnson, situate in the Sixth Ward as surveyed by Dunn & Thompson, October, 1852.

10 Second Tract. Beginning at a point in the westerly line of Bruce street at a point therein distant three hundred feet southerly from the intersection of the same with the southerly line of West Bank street as laid down on the "Map of property belonging to Thomas V. Johnson, situate in the Sixth Ward of the City of Newark, surveyed October, 1852, by Dunn & Thompson, surveyors," which beginning point is also the southeasterly corner of Lot No. 68 on said map, and from thence running (1) southerly along said line of Bruce street twenty-five feet to the northerly line of Lot No. 70 on said map; thence (2) westerly along said northerly line of 20 Lot No. 70 and at right angles to Bruce street one hundred feet to the rear line of Lot No. 84 on said map; thence (3) northerly along the same and parallel with Bruce street twenty-five feet to the southerly line of said Lot No. 68; thence (4) easterly along the same at right angles to Bruce street one hundred feet to the westerly line of Bruce street and the place of beginning. Being known as Lot No. 69 on aforesaid map.

30 Third Tract. Beginning at a point in the westerly line of Bruce street as the same is laid down on a map of property belonging to Thomas V. Johnson, situate in the Sixth Ward of Newark, distant southerly one hundred and seventy-five feet from the southwesterly corner of the same and West Bank street; thence running westerly parallel with West Bank Street one hundred feet; thence southerly parallel with Bruce street twenty-five feet; thence easterly parallel with the first line one hundred feet to Bruce street and thence northerly along 40 the same twenty-five feet to the place of beginning.

Decree.

Being known and designated as Lot No. 64 on said map.

Fourth Tract. Beginning on the westerly side of Bruce street at a point distant three hundred and fifty feet south from the corner of the same and West Bank street; from thence running along the westerly line of Bruce street forty-five feet and ten inches to the line of land of Mrs. Breintnall; thence in a southwesterly direction along said Breintnall line one hundred feet and seven inches to rear line of Lot No. 80; and thence northerly along line of Lot No. 80 and parallel with Bruce street fifty-seven feet to the southerly line of Lot No. 70 (which said southerly line of Lot No. 70 at that point is distant three hundred and fifty-three feet south from the southerly line of West Bank street) thence easterly along said line of Lot No. 70, one hundred feet (at right angles to Bruce street) to Bruce street and place of beginning. Being known as Lot No. 71 on Bruce street, on Thomas V. Johnson map.

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E. R. WALKER,

C.

Respectfully advised,

FREDERIC W. STEVENS,

V. C.

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Petition of Appeal

New Jersey Court of Errors and Appeals

Filed April 30, 1917.

*Between*ANNIE C. MORIARTY, *et als*,
*Complainants-Respondents,**and*EDWARD J. KELLY, *et als*,
*Defendants-Appellants.**On Bill, etc.**Petition of
Appeal.*

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*To the Honorable the Court of Errors and Appeals
in the last resort in all causes:*The humble petition of Edward J. Kelly and
Margaret Kelly, his wife. 20

The appellants in the above stated cause respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin R. Walker, Chancellor of New Jersey, bearing date the eighth day of February in the year nineteen hundred and seventeen, wherein the said Annie C. Moriarty and others were complainants and your petitioners and others were defendants, in this respect, to wit: the said decree adjudges that:

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“It is ordered that the two deeds made by Thomas Kelly to Edward J. Kelly and dated April 8th, 1911, one recorded in Book X 48, page 280, etc., purporting to convey to said Edward J. Kelly, in fee the first tract and second tract, and the other deed recorded in Book X 48 page 283, etc., purporting to convey to said Edward J. Kelly the third and fourth tracts be and the same are hereby declared null and

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Petition of Appeal.

void except as hereinafter otherwise provided and are set aside as having been procured by the said Edward J. Kelly, from the said Thomas Kelly for no valuable consideration, at a time when the said Thomas Kelly was of the age of ninety-five years, was without means of support, had no other property, real or personal, and in making said deeds had not the benefit of any competent or independent
10 advice.

“This decree, however, shall not effect the rights of Max Breitkopf and Pepi Breitkopf, his wife, in and to the lands and premises hereinafter described as the third tract, which tract in consideration of the sum of \$1,800 paid by them to the said Edward J. Kelly, was conveyed to them by said Edward J. Kelly by deed dated January 20, 1914, and recorded in Book V 53 pages 411, etc.

20 “Defendants pay the costs of suit and a counsel fee of \$150.00.

“It is further ordered and decreed that the mortgage for \$1,000.00 made by the defendants Edward J. Kelly and wife to Louis J. Beers, dated April 22, 1915, and recorded in Book I 34 page 279, etc., covering the first and second tracts which mortgage was assigned to Henry Ahrend by deed recorded in Book 124, page 316, be and the same is hereby declared null and void and of no effect as to complainants and all of their estates, rights, titles and interests
30 in and to the said lands and premises, but is a lien on all the estate, right, title and interest of the said Edward J. Kelly in and to the said lands and premises, said Louis J. Beers and Henry Ahrend having taken said mortgage with knowledge of all the rights and equities of the complainants.

“It is further ordered and decreed that said Edward J. Kelly is indebted to the complainants in the sum of \$1,200.00 with interest at six per cent.
40 from January 20, 1914, said sum being two-thirds

Petition of Appeal.

of the purchase price received by the said Edward J. Kelly, from Max Breitkopf and Pepi, his wife, for lands and premises conveyed to them by the said Edward J. Kelly as aforesaid.

“Said lands being designated as the third tract.

“It is further ordered that the said Kelly pay to the complainants the further sum of \$1,042.58 the complainant's share of \$1,563.87 appearing from the accounting and evidence of the said Edward J. Kelly from the lands and premises over and above the moneys expended by him, and that complainants have execution for said sum of \$1,042.58 according to the practice of this Court. 10

“Further ordered that said lands be and they are hereby freed and discharged of any and all right and rights of dower of Margaret Kelly, wife of Edward J. Kelly, except as to such estate, right, title and interest as the said Edward J. Kelly may have therein. 20

“In case said Kelly does not pay the amounts within thirty days from the date of service of a copy of the decree and costs, a writ of *fi fa* shall issue.

“In case of sale the sheriff shall pay the complainants their costs and a counsel fee of \$150.00 and retain his fees and commissions and the residue be divided and paid by the sheriff as follows: In the first place \$1,200 with interest from six per cent. from January 20, 1914, to the complainants: In the second place \$1,042.58 with interest from the date of this decree to the complainants: and in the third place the balance, if any, to the clerk of the court to be disposed of by him in such manner as this Court shall hereafter by order direct.” 30

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees that the two deeds made by Thomas Kelly to Edward J. Kelly, dated April 8th, 1911, one recorded in Book X 48, page 280, etc., purporting to 40

Petition of Appeal.

convey to Edward J. Kelly in fee the first and second tracts set out in the decree; and the other deed recorded in Book X 48, page 283, etc., purporting to convey to Edward J. Kelly the third and fourth tracts set out in the decree, and which decree holds the same to be and does declare them null and void, except as thereafter otherwise provided.

10 And appeals from that portion of the decree wherein the said conveyances are set aside as having been procured by the said Edward J. Kelly from the said Thomas Kelly, for the further reason that, as Thomas Kelly, having had the benefit of competent and independent advice, and further in pursuance of directions received from his sister, the former owner of the property, having conveyed the said premises to Edward J. Kelly, then the decree
20 improperly adjudges that certain moneys should be paid by Edward J. Kelly to certain other defendants named in said decree. Whereas the decree should not have required payment of any money, costs or counsel fee by Edward J. Kelly.

Nor should the decree have provided for an issuing of a *fi fa* to the sheriff, nor for the sale of the property, nor for the payment of any money raised thereby, and for the further reason that the Court should not have appointed a receiver to collect the rents of the premises in question.

30 And further appeals from that portion of the decree which provides that the defendants pay the costs of suit and a counsel fee of \$150.00.

And further appeals from that portion of the decree which orders and decrees Edward J. Kelly is indebted to the complainants in the sum of \$1,200, with interest at six per cent. from January 20th, 1914, said sum being two-thirds of the purchase price received by the said Edward J. Kelly from Max Breitkopf and Pepi, his wife, for lands
40 and premises conveyed to them, by the said Edward

Pctition of Appeal.

J. Kelly, said lands being designated as third tract in the decree.

And appeals from that order of the decree in which it is ordered and decreed that the said Edward J. Kelly pay to the complainants the sum of \$1,042.58, the complainants' share of \$1,563.87 appearing from the accounting and evidence of the said Edward J. Kelly from the lands and premises over and above the moneys expended by him and that complainants have execution for said sum of \$1,042.58, according to the practice of this court. 10

And appeals from that portion of the decree which orders, adjudges and decrees that the said lands be and they are hereby free and discharged of any and all right and interest of dower of Margaret Kelly, wife of Edward J. Kelly, except as to such estate, right, title and interest as the said Edward J. Kelly may have therein. 20

And appeals from that portion of the decree which provides that, in the event of Edward J. Kelly not paying the amounts decreed, within thirty days from the service of a copy of this decree, together with costs, a writ of *fi fa* will issue; and from that portion of the decree which provides in case of sale the sheriff shall pay the complainants their costs and counsel fee and retain his fees and commissions, and the residue be divided by the sheriff as provided in the said decree. 30

And appeals from the further portion of the decree which provides for an injunction and receiver to take charge of the properties, and appoints Henry H. Grossman, receiver, and restrains Edward J. Kelly from collecting rents, or interfering in the management of said properties.

The appellants appeal on the ground that the said decree is erroneous in that the said Chancellor should have found in favor of the defendants and as against the complainants, for the reasons: 40

Petition of Appeal.

(1) That the said Thomas Kelly was possessed of all his faculties.

(2) Had independent and competent advice.

(3) Was carrying out his own wishes in conveying the property.

10 (4) Was carrying out the wishes, as he understood them, of his sister from whom he, Thomas Kelly, received the property, which was: that the said Thomas Kelly should convey the premises in question to Edward J. Kelly.

Your petitioner, therefore, prays that said decree of the Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

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PEIRCE & HOOVER,

Solicitors of Counsel with Appellants.

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Answer to Petition of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS.

<i>Between</i> ANNIE C. MORIARTY, <i>et al</i> , <i>Complainants-Respondents,</i> <i>and</i> EDWARD J. KELLY, <i>et al</i> , <i>Defendants-Appellants.</i>	}	<i>On Appeal</i> <i>from</i> <i>Chancery.</i> <i>Answer to</i> <i>Petition of</i> <i>Appeal.</i>	10
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The answer of the above-named complainants-respondents to the petition of appeal of the above-named defendants-appellants.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit, that a decree was, on the eighth day of February, last past, made and entered in the Court of Chancery, in this cause; but as to the substance and form thereof, these respondents say that said decree is not accurately or correctly recited in the said petition, and pray to refer to the said decree when the same shall be produced. And these respondents are advised and believe, that the decree is agreeable to equity, and they pray that the same may be affirmed with costs to be adjudged to these respondents.

JOHN V. LADDEY,
Solicitor of Complainants-Respondents.

GROSKEN & MORIARTY,
Of Counsel with Complainants-Respondents.

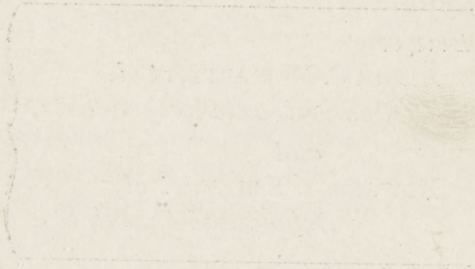
Endorsed:

Filed May 29, 1917.

THOMAS F. MARTIN,
Clerk.

Power to Police of a State

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Exhibit C. 1.

EXHIBIT C. 1.

19—Warranty Deed.

THIS INDENTURE, made the Eighth day of April in the year of our Lord One Thousand Nine Hundred and eleven. BETWEEN Thomas Kelley or Kelly, Widower and the sole surviving heir at Law and next of Kin of Ann Kelly, also known as Anne Kelley deceased, of the City of Newark, in the County of Essex and State of New Jersey of the First Part: 10

AND Edward J. Kelly, Widower of the City of Newark, in the County of Essex and State of New Jersey of the Second Part:

WITNESSETH, That the said party of the first part, for and in consideration of One Dollar and other good and valuable considerations, lawful money of the United States of America, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, to the said party of the second part, and to his heirs and assigns forever, ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey. 20 30

FIRST TRACT:—BEGINNING at a point in the West-erly line of Bruce Street as the same is laid down on a map of property belonging to Thomas V. Johnson situate in the sixth ward of the City of Newark, distant Southerly one hundred and 40

Exhibit C. 1.

seventy-five feet from the South Westerly corner of the same and West Bank Street thence running westerly parallel with West Bank Street, one hundred feet, thence Southerly parallel with Bruce Street twenty-five feet, thence easterly parallel with the first line one hundred feet to Bruce Street, and thence Northerly along the same twenty-five feet to the place of BEGINNING; known and designated as Lot No. Sixty-Four (64) on said Map.

10 BEING the same premises conveyed to Daniel Kelly by deed dated August 24, 1854 and recorded in Book 203 of Deeds for Essex County Pages 322 &c.

20 SECOND TRACT:—BEGINNING on the Westerly side of Bruce Street at a point distant three hundred and fifty feet south from the corner of the same and West Bank Street from thence running along the Westerly line of Bruce Street forty-five feet and ten inches (45 ft. 10 in.) to the line of land of Mrs. Breintnall, thence in a Southwesterly direction along said Breintnall line one hundred feet and seven inches to rear line of lot No. 80 and thence northerly along line of lot No. 80 and parallel with Bruce Street fifty-seven feet to the Southerly line of Lot No. 70 (which said southerly line of lot No. 70 at that point is distant three hundred and fifty feet south from the Southerly line of West Bank Street) thence Easterly along said line of Lot No. 30 70 one hundred feet (at right angles to Bruce Street) to Bruce Street and place of BEGINNING.

BEING known as Lot No. 71 on Bruce Street on Thos. V. Johnson Map.

BEING part of the same premises conveyed to Daniel Kelly by deed dated September 14, 1859 and recorded in X 10 of Deeds pages 340 &c.

The said two tracts were devised by said Daniel Kelly to his sister Ann Kelly by his last will and

Exhibit C. 1.

Testament dated January 26, 1890 and recorded February 8, 1890.

Ann Kelly also known as Ann Kelley, died intestate on April 1, 1911, leaving her surviving as her only heir at law her brother the aforesaid Thomas Kelly or Kelley.

Edward Kelly her brother died intestate April 30, 1904.

Daniel Kelly a brother of Ann Kelly died January 27, 1890 leaving a last will and Testament recorded in J. 2 of Wills pages 494 &c.

The said Ann Kelly, Edward Kelly and Daniel Kelly were never married.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining:

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in, and to the same, and of, in and to every part and parcel thereof;

TO HAVE AND TO HOLD all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said Thomas Kelley or Kelly, widower, and brother of Ann Kelly deceased, does for himself, his heirs, executors and administrators, covenant and grant to and with the said party of the second part, his heirs and assigns, that he the said Thomas Kelly, is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any

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Exhibit C. 1.

mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part hereby made or intended to be made, for the above described land and premises, can or may be changed charged altered or defeated in any way whatsoever.

10 AND ALSO, that the said party of the first part, now has good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid;

AND ALSO, that he the said Thomas Kelley or Kelly, will WARRANT, secure and forever defend the land and premises unto the said Edward J. Kelly, widower, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

20 IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

THOMAS KELLY, (L. S.)

Signed, Sealed and Delivered
in the presence of

30 WM. J. SAUPE.
J. R. WOODRUFF.

Exhibit C. 1.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

BE IT REMEMBERED, That on this Eighth day of April in the year of our Lord One Thousand Nine Hundred and eleven before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Thomas Kelley or Kelly, Widower, who, I am satisfied is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. 10

J. R. WOODRUFF,
M. C. C. of N. J.

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DEED.

THOMAS KELLEY OR KELLY, wid- ower, to EDWARD J. KELLY.

Dated April 8, 1911.

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Received in the Register's Office of the County of Essex, N. J., on the 10th day of April A. D., 1911, at 12.18 o'clock in the afternoon and recorded in Book X 48 of Deeds for said County, on pages 283-286.

THOMAS P. ALWORTH,
Register.

Return to J. R. Woodruff. Box 59.

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Exhibit C. 2.

EXHIBIT C. 2.

19—Warranty Deed.

THIS INDENTURE, made the Eighth day of April in the year of our Lord One Thousand Nine Hundred and eleven. BETWEEN Thomas Kelley or Kelly, widower and the sole surviving heir at Law and next of kin of Ann Kelly also known as Anne Kelley, deceased of the City of Newark, in the County of Essex and State of New Jersey, of the
10 Firs Part:

AND Edward J. Kelly, widower, of the City of Newark, in the County of Essex and State of New Jersey of the Second Part:

WITNESSETH, That the said party of the first part, for and in consideration of One Dollar and other good and valuable considerations lawful
20 money of the United States of America, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, re-
30 lease, enfeoff, convey and confirm, to the said party of the second part, and to his heirs and assigns forever, ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey:

FIRST TRACT:—Beginning on the Westerly side of Bruce Street at a point distant two hundred and seventy-five feet from the corner of West Bank Street and Bruce Street, thence along said Bruce Street south twenty-five feet; thence West one-
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Exhibit C. 2.

hundred feet; thence North twenty-five feet, thence East one hundred feet to the place of BEGINNING.

BEING lot No. 68 on a map of property of Thomas V. Johnson situate in the Sixth Ward as surveyed by Dunn & Thompson, October 1852.

BEING the same premises described in P 21 of Deeds, pages 70 &c. and same premises conveyed to Ann Kelley, by Deed dated May 19, 1904 and recorded in Q 37 of Deeds pages 88 &c. 10

SECOND TRACT: BEGINNING at a point in the Westerly line of Bruce Street at a point therein distant three hundred feet southerly from the intersection of the same with the southerly line of West Bank Street as laid down on the "Map of property belonging to Thomas V. Johnson, situate in the Sixth Ward of the City of Newark surveyed October 1852 by Dunn & Thompson, surveyors," which Beginning point is also the Southeasterly corner of Lot No. 68 on said Map; and from thence running (1) Southerly along said lines of Bruce Street twenty-five feet to the Northerly line of Lot No. 70 on said map; thence (2) Westerly along said Northerly line of Lot No. 70 and at right angles to Bruce Street one hundred feet to the rear line of Lot No. 84 on said map; thence (3) Northerly along the same and parallel with Bruce Street twenty-five feet to the Southerly line of said Lot No. 68; thence (4) Easterly along the same at right angles to Bruce Street one hundred feet to the said Westerly line of Bruce Street and the place of BEGINNING. 20 30

RECITES, "BEING known and designated as Lot No. 69 on the aforesaid map and being the same premises conveyed to the said Party of the First Part by her brother Daniel Kelly who was at the time unmarried, by deed dated May 7, 1783 and recorded in Book Y 16 of Deeds for said County on pages 559 and 561." 40

Exhibit C. 2.

Ann Kelly also known as Ann Kelley, died intestate on April 1, 1911, leaving her surviving as her only heir at law her brother the aforesaid Thomas Kelly or Kelley.

Edward Kelley her brother died intestate April 30, 1904.

10 Daniel Kelly a brother of Ann Kelly died January 27, 1890 leaving a last Will and Testament recorded in J 2 of wills pages 494 &c.

The said Ann Kelly, Edward Kelly and Daniel Kelly were never married.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining:

20 ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in, and to the same, and of, in and to every part and parcel thereof;

30 TO HAVE AND TO HOLD all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said Thomas Kelley or Kelly, widower, and brother of Ann Kelly deceased, does for himself, his heirs, executors and administrators, covenant and grant to and with the said party of the second part, his heirs and assigns, that he the said Thomas Kelly is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which

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Exhibit C. 2.

the title of the said party of the second part hereby made or intended to be made, for the above described land and premises, can or may be changed charged altered or defeated in any way whatsoever.

AND ALSO, that the said party of the first part, now has good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid:

AND ALSO, that he the said Thomas Kelley or Kelly will WARRANT, secure and forever defend the land and premises unto the said Edward J. Kelly, widower, heirs, and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

THOMAS KELLY. (L. S.)

Signed, Sealed and Delivered
in the presence of

WM. J. SAUPE.
J. R. WOODRUFF.

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Exhibit C. 2.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

10 BE IT REMEMBERED, That on this Eighth day of April in the year of our Lord One Thousand Nine Hundred and eleven, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Thomas Kelly or Kelley, widower, who, I am satisfied is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

J. R. WOODRUFF,
M. C. C. of N. J.

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DEED.

THOMAS KELLEY OR KELLY, wid- ower, <i>to</i> EDWARD J. KELLY, widower.

Dated April 8, 1911.

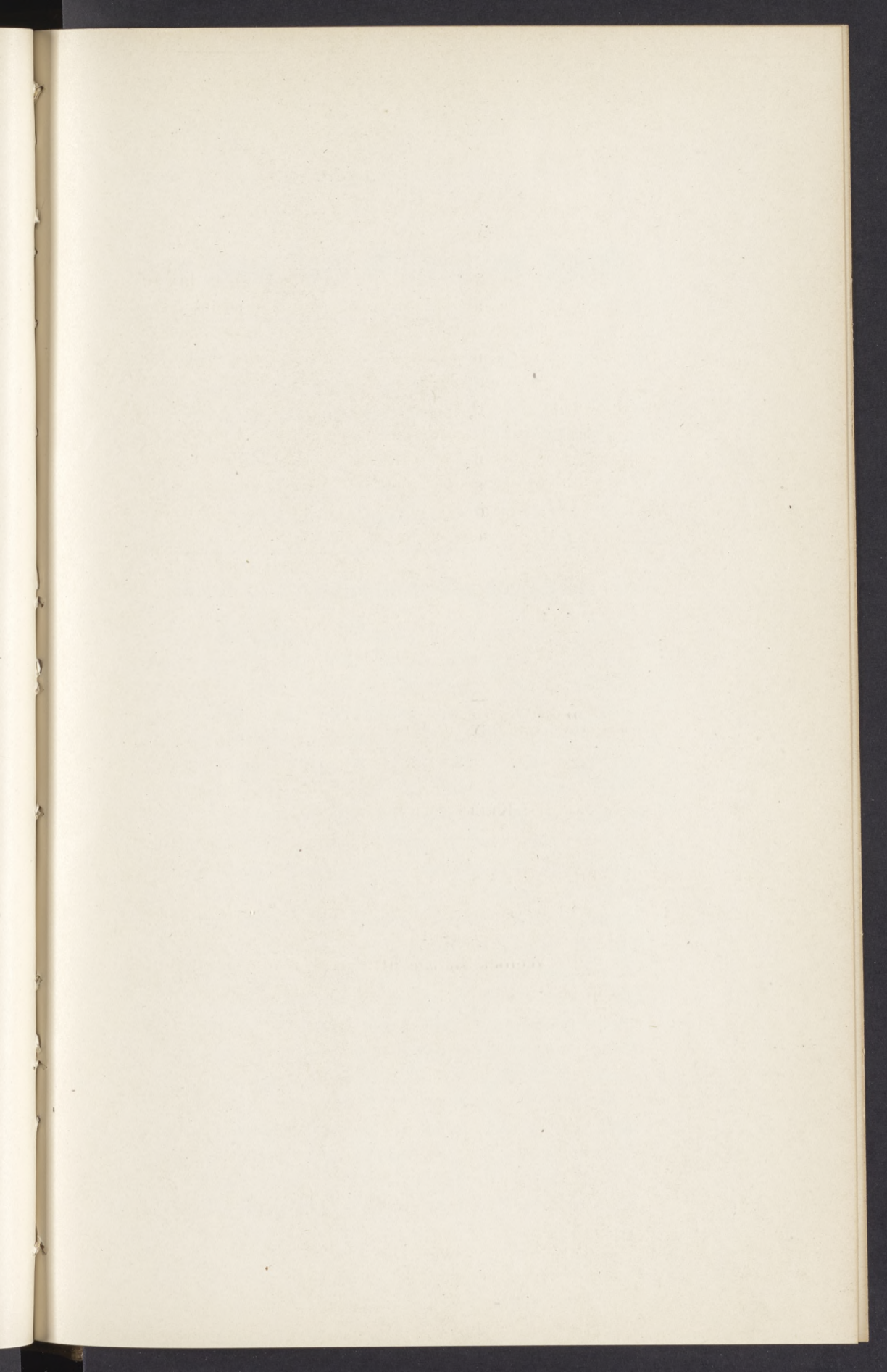
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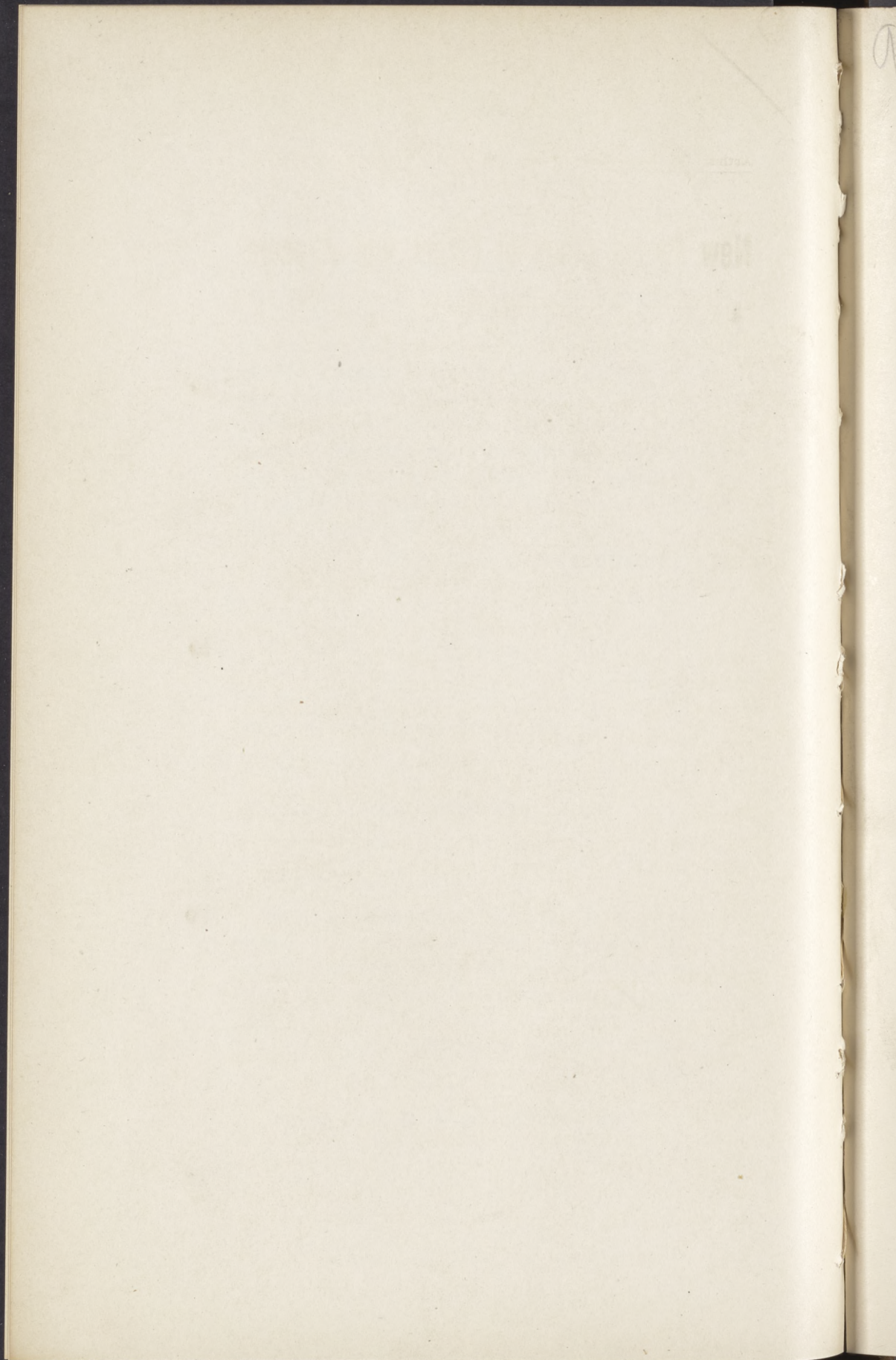
Received in the Register's Office of the County of Essex, N. J., on the 10th day of April A. D., 1911, at 12.18 o'clock in the afternoon and recorded in Book X 48 of Deeds for said County, on pages 280-283.

THOMAS P. ALWORTH,
Register.

Return to J. R. Woodruff. Box 59.

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New Jersey Court of Errors and Appeals

Between

ANNIE C. MORIARTY, *et als.*,
Complainants-Respondents,

and

EDWARD J. KELLY, *et als.*,
Defendants-Appellants.

On Appeal.

Brief of Complainants-Respondents.

The defendant, Edward J. Kelly and Margaret Kelly, his wife, have appealed from the decree of the Court of Chancery, dated February 8, 1917, and adjudging, among other things, that two deeds made by Thomas Kelly to Edward J. Kelly and dated April 8, 1911, one recorded in Book X-48 of Deeds for Essex County, New Jersey, on pages 280, etc., purporting to convey to the said Edward J. Kelly, in fee, the first and second tracts thereafter particularly described, and the other of said deeds recorded in Book X-48 of Deeds for Essex County, New Jersey, on pages 283, etc., purporting to convey to the said Edward J. Kelly, in fee, the third tract and fourth tract, thereafter particularly described, be declared null and void, except as thereafter otherwise provided, and setting aside said deeds as having been procured by the said Edward J. Kelly from the said Thomas Kelly for no valuable consideration, at a time when the said Thomas Kelly was of the age of about ninety-five years, was without means of support, had no other property, real or personal, and in mak-

ing said deeds had not the benefit of any competent or independent advice.

The only grounds urged by the defendants-appellants in their brief are stated therein as follows:

“These appellants appeal from the said decree on the ground that the same is erroneous, in that the Chancellor should have found in favor of the defendants (these appellants) and as against the complainants for the reasons:

1. That the said Thomas Kelly was possessed of all his faculties at the time of making said conveyances.

2. That he had the benefit of independent and competent advice.

3. That he was carrying out his own wishes in conveying the property as he did.

4. That in so doing he was carrying out the wishes, as he understood them, of his sister from whom he, Thomas Kelly, received the property, which was: that the said Thomas Kelly should convey the premises in question to Edward J. Kelly.”

To the complainants' bill of complaint or amended and supplemental bill of complaint, no answer was filed by or on behalf of the defendant-appellant, Margaret Kelly.

The answer of the defendant-appellant, Edward J. Kelly to the complainants' amended and supplemental bill contains the following admissions:

Paragraph one of said answer admits paragraph one of said amended and supplemental bill, which states that on and before April 8, 1911, Thomas Kelly, widower, was the owner in fee of the four tracts of land and premises in question.

Paragraph two of said answer admits paragraph two of said amended and supplemental bill, which states that said four tracts were inherited by the said Thomas Kelly from his sister, Anna Kelly, who died on March 24, 1911, intestate and unmarried, and leaving her surviving, as her only heir at law and next of kin, the said Thomas Kelly.

Paragraph three of said answer admits that Thomas Kelly executed the two deeds of said premises mentioned in paragraph three of the bill of complaint, and does not deny that, as alleged in the third paragraph of said amended and supplemental bill, said deeds were warranty deeds and were executed on or about April 8, 1911, about fifteen days after the said Thomas Kelly had so inherited the said four tracts of land.

Paragraph four of said answer says that the said Thomas Kelly was about eighty-two years of age at the time of the making of said conveyances and that the defendant at the time of the execution of said conveyances resided with his father at his father's home at No. 83 Bruce street, Newark, N. J.

Paragraph seven of said answer admits that the premises conveyed to the defendants by the said Thomas Kelly constituted all of the realty of the said Thomas Kelly.

Paragraph eight of said answer admits that there was no valuable consideration for said conveyances.

Paragraph nine of said answer admits paragraph nine of said amended and supplemental bill, which is as follows:

“9. On January 11, 1912, the said Thomas Kelly died, intestate and unmarried, and leaving him surviving, as his only

heirs at law and next of kin, his said son, the defendant Edward J. Kelly, and his daughter, the complainant Annie C. Moriarty, and the complainants, Frank J. Grant, Mary Grant Corbitt, Raymond Grant, Johanna Marie Grant, Thomas H. Grant, Isabelle Grant, Mildred Grant, Lucille Camille Grant and Harold Grant, and Rosalie Grant Lang, now deceased, children and only heirs at law and next of kin of Matilda Kelly Grant, daughter of said Thomas Kelly. The said Matilda Kelly Grant died July 1, 1902, and her husband, James A. Grant, Jr., died March 19, 1912.

The said Rosalie Grant Lang died intestate September 5, 1915, without having any issue born alive and leaving her surviving, her husband, John M. Lang, who was duly appointed administrator of her estate by the Surrogate of Hudson County on September 17, 1915."

Paragraph ten of said answer admits that said premises were free from incumbrances.

Paragraph eleven of said answer admits that since the making of said deeds the defendant, Edward J. Kelly, exercised full ownership over the property conveyed to him, and nowhere in said answer is it denied that, as alleged in paragraph eleven of said amended and supplemental bill, Thomas Kelly never received any of the rents, issues or profits from any of said lands and premises, or that the defendant, Edward J. Kelly, appropriated them to his own use, and failed and neglected to pay the taxes or assessments levied against the said premises and failed to keep said property in proper repair. (See answer of defendant, Edward J. Kelly, to amended and supplemental bill, Case, page 36.)

At the hearing, counsel for the defendants admitted that there was no valuable consideration paid for the property, that the deeds were absolute in form, reserving no life interest, and that the property which was conveyed by Thomas Kelly was all the property that he possessed. (Case, page 64.)

The only evidence as to the age of Thomas Kelly was that given by Annie C. Moriarty, his daughter, in answer to a question by the Vice-Chancellor (Case, page 47) and that given by Dr. Hugh F. Cook, one of defendants' witnesses. (Case, page 106.) Mrs. Moriarty testified that at the time of his death her father was about ninety-five years of age and Dr. Cook testified that at the time he examined the old man, Thomas Kelly was about ninety.

So much for the age of Thomas Kelly at the time of the conveyances and for the admissions, expressed and implied, contained in the answer of the defendant-appellant, Edward J. Kelly. Let us now examine some of the testimony of the said Edward J. Kelly as to the circumstances attending the conveyances of the property to him by his old father.

The following is quoted from his testimony on direct examination:

“Q How long prior to your father's death had he not worked?

A Well, I should judge the last he worked was about fifteen years ago when he was working on the streets, and before that he worked in Howell's leather factory.

Q That is prior to fifteen years ago?

A Yes.

Q Did your father have any fainting spells?

A He would take a weak spell now and then.

Q How often?

A Once a day maybe.

Q How would those weak spells affect him?

A Why he would be all right in a few minutes, just lay back in the chair and be all right." (Case, page 69, lines 3 to 19.)

On cross examination, the defendant-appellant, Edward J. Kelly, gave the following testimony, which is for the most part contradictory of the testimony given by him on direct examination:

"Q You never knew that he intended to convey it to you?

A No, he never said a word to me about it?

Q He never said a word to you about it?

A No.

Q Do you know what he wanted a lawyer for?

A Yes, sure.

Q What did he want it for?

A He was going to convey it then.

Q Who was he going to convey it to?

A I didn't know; it was done while I was out.

Q You didn't bother to inquire, did you?

A I didn't care how it went.

Q You didn't care? You cared something for your father, didn't you?

A I certainly did.

Q Then why didn't you care what he did with his property?

Q Because there were others.

Q There were others?

A My sister had a group of children.

Q Did you ever see these deeds?

A Oh, yes.

Q When did you first see them?

A I had them about a week after my aunt died, two weeks after.

Q About two weeks after your aunt died?

A Yes.

Q Where did you get them?

A Off Mr. Woodruff.

Q What did you do with them?

A Mr. Beers has got them.

Q (*By the Court.*) Was that the first you knew that he had conveyed you the property?

A Yes.

Q (*By the Court.*) You did not know that he had conveyed you the property until Mr. Woodruff handed you the deed?

A They were private, they were in the house.

Q (*By the Court.*) No, you do not understand my question. Did you know before Mr. Woodruff handed you the deeds that your father had conveyed the property to you?

A I got them off—yes.

Q (*By the Court.*) When did you first hear that he had?

A That night that he conveyed it.

Q (*By the Court.*) Who told you?

A My father; he and I and my nephew, lived upstairs, we were in the kitchen.

Q (*By the Court.*) What did father say when he told you that?

A He said that he was rich the day before, and look at how poor he was then.

Q (*By the Court.*) Was that all he said?

A That is all.

Q (*By the Court.*) Did he give any explanation of why he conveyed the property?

A Well, he thought so much of me, I provided for him.

Q (*By the Court.*) No. What did he say?

A Well, that is all.

Q (*By the Court.*) No. Tell us what he said, tell us all that he said when he told you that he had made the deed?

A That is what he said, how rich he was the day before and he had nothing then.

Q (*By the Court.*) Is that all he said at that time?

A That is all, yes.

Q Is it not a fact, Mr. Kelly, that you went to Mr. Woodruff yourself?

A No, I never did, never did.

Q Is it not a fact that you knew and that you tried to get your father to convey the property to you?

A Never.

Q You never did?

A Never mentioned it.

Q Did you take the precaution to go to see a doctor to have your father examined as to his sanity or insanity, just after your aunt died?

A I did, yes.

Q Why did you do that?

A Because I was advised to?

Q Why were you obliged to?

A On account of his advanced years.

Q Did you think that there was some question?

The Court. What doctor did you go to?

A Doctor Cook and Doctor Burns?

Q You had two doctors examine your father?

A Yes.

Q Shortly after your aunt's death?

A Oh, no, about two weeks.

Q Anyway, before the deeds were signed?

A Oh, yes.

Q Before the deeds were signed?

A Yes.

Q What did you go to the doctor for?

A What did I go for?

Q Yes.

A He was going to convey the property, I didn't know what he was going to do, he couldn't take care of it, and I was doing all the work around.

Q You knew then that he was going to convey the property?

A Yes, but I didn't know for sure whether he was going to hand it to me or to somebody else, or how he was going to divide it.

Q Were you advised to get a doctor?

A No, I thought it safe myself.

Q You thought it safe?

A Yes.

Q Safe for whom?

A For all of us.

Q Who is all of us?

A There were my sister's children and my sister.

Q (*By the Court.*) Who paid the doctors?

A I paid them. I paid everything.

Q Who was there when the doctors called?

A I was there.

Q (*By the Court.*) And this was how long before the deeds were actually made?

A It was about three days before.

Q (*By the Court.*) Well, was not this examination made for the purpose of ascertaining whether he was capable of making a conveyance?

A Yes.

Q (*By the Court.*) That was the purpose of the examination?

A That was the purpose.

Q (*By the Court.*) Who advised that?

A Well, I took it on to myself.

Q (*By the Court.*) Did not anybody tell you that that was a wise precaution?

A No.

Q (*By the Court.*) You did it yourself?

A Yes.

Q (*By the Court.*) Without getting advice from anyone?

A No, there was nobody there but father and I.

Q (*By the Court.*) Did you tell your father you were going to have him examined?

A Yes.

Q (*By the Court.*) What did you say?

A I told him I was going to get Doctor Cook, and Doctor Cook said that he would take Doctor Burns down with him.

Q (*By the Court.*) Did you tell your father why you were going to have those doctors come to examine him?

A He was saying about conveying the property.

Q (*By the Court.*) He was speaking about conveying the property?

A Yes.

Q (*By the Court.*) And you told him you thought he ought to be examined by doctors?

A Yes, it would be advisable to have the doctor.

Q (*By the Court.*) And you went and got the doctors and they examined him?

A Yes, I went and got Doctor Cook and he brought Doctor Burns.

Q (*By the Court.*) What did your father say at that time when he spoke of conveying the property?

A He didn't say anything of any account.

Q (*By the Court.*) What did he say?

A He didn't say anything; he said he wasn't capable of taking care of it, and wanted me to look after it, which I had done for years.

Q (*By the Court.*) What else did he say?

A That is all.

Q (*By the Court.*) He wanted you to take care of it and look after it?

A Yes.

Q (*By the Court.*) Anything else?

A That is all.

Q (*By the Court.*) Did he say he wanted to make you a deed for the property?

A He didn't tell me.

Q Was there some question in your mind as to your father's sanity at the time?

A No, only he would take a little spell like that.

Q But there was some question as to his sanity?

A No, no, only his advanced years, that is all.

Q Now when did you ask Mr. Saupe, the extra witness on the deed, to act as a witness?

A When Mr. Woodruff came.

Q How much did you pay Mr. Saupe for acting as a witness?

A How much did I pay him?

Q Yes.

A Paid him a dollar.

Q Didn't you pay him three dollars?

A No, I didn't pay three dollars.

Q Why didn't you act as a witness on there?

A Why? I had nothing to do with it.

Q You went over and got Mr. Saupe, didn't you?

A Yes, I got him, and I walked out and went down as far as the corner.

Q Why did you get Mr. Saupe?

A Why did I get him?

Q Yes.

A Well, there had to be somebody I suppose.

Q Wouldn't you do?

A No, I don't think so.

Q Why not?

A Why should I do?

Q You knew that the deeds were to be signed that day?

A I knew they were to be signed, yes.

Q Weren't you interested as to their contents?

A No, not a bit, I was satisfied with anything.

Q But your father told you he wanted you to take care of the property?

A To look after it, yes.

Q And was it for that reason that he was going to convey the property.

A Sure; of course he and I lived together, and I looked after it for years."

(Case, pages 75-81.)

The Mr. Woodruff referred to in the above testimony is J. Randolph Woodruff, the lawyer who attended to the drawing and execution of the deeds in question and who acted as solicitor for and of counsel with the defendant, Edward J. Kelly. The first answer filed on behalf of said defendant was signed by Mr. Woodruff (Case, page 18).

At the hearing Mr. Woodruff testified on behalf of the defendant and the following are significant excerpts from his testimony:

Case, page 93, lines 9-27,

“ ‘I don’t like this;’ I said ‘Before I draw any papers I want to know who your father’s doctor is;’ he said ‘Doctor Cook;’ I said ‘A very good man, one of the best physicians in Newark;’ I said ‘Before I draw any deeds I want the doctors to examine him and certify he is perfectly well not alone for your protection but for my protection, as,’ I said ‘he tells me he is quite well along in years, and I can see that.’

Q (By the Court.) What did he say then?

A He said ‘Doctor Cook is our regular physician and’ he said ‘I will send for him and have him;’ I said ‘No, I want two doctors,’ I said ‘Doctor Cook, and have another one.’ Mr. Kelly afterward called me up, Edward Kelly, on the ’phone and said that the doctors had been there and said that his father was all right and perfectly competent to make a deed.”

Case, page 94, lines 1-25,

“I directed Edward to get another witness, and Captain Saupe came in from the fire department, the engine house being across the street, and in the presence of

Captain Saupe I went over the deeds again and explained very carefully to Mr. Kelly what he was doing and what would happen to him. I told him 'You are giving away everything, and' I said 'Edward can kick you out of the house,' and I think we all laughed, and he said 'Edward is a good boy, he will take care of his sister and the Grants.' He signed the deeds—I asked him to sign the deeds; he said no, he would sooner make his mark, he was old. I said 'You sign them, never mind how you write but you write your name,' and he wrote his name on both deeds. I said 'Now you understand what you are doing,' I said 'You won't have a cent left and Edward can throw you out of the house;' he said 'I am not afraid of that, Edward has always been a good friend of mine and he will take care of the sister and the Grant children.' I took the acknowledgment, and had Captain Saupe witness it and I witnessed the signature."

Case, page 96, lines 26-34:

"Q On either the first visit or the second visit, and before the deed was executed, was there anything said by you to the father concerning his support?

A What is that? I didn't quite get you.

A (Question read.)

A No, I didn't say anything to him about any support; the father said it to me; I was very suspicious, I didn't like—"

Case, page 97, lines 39-40:

"Q (*By Mr. Moriarty.*) Who paid you?

A Mr. Edward Kelly."

It is evident from all of the foregoing testimony of Mr. Woodruff that he was not only paid by the defendant-appellant, Edward J. Kelly, but was acting for his benefit and not as the independent counsel of Thomas Kelly. While the testimony of Edward J. Kelly and Mr. Woodruff is to the effect that Mr. Timothy F. Foyle telephoned for Mr. Woodruff at the request of Thomas Kelly, it is a significant fact that Mr. Foyle was not produced by the defendant to testify as to who requested him to 'phone Mr. Woodruff.

Mr. William J. Saupe, the person who witnessed the deeds with Mr. Woodruff, was one of defendants' witnesses and testified, in part, as follows:

Case, page 99, lines 31-40, page 100, lines 1-32:

“Q How came you to go there?

A I was sent for by lawyer Woodruff to come over there and be a witness to these deeds, and when I got there Mr. Kelly walked out of the place.

Q (*By the Court.*) Who came for you?

A Mr. Kelly did.

Q (*By the Court.*) Mr. Edward Kelly?

A Yes.

Q (*By the Court.*) You went over there?

A Yes.

Q (*By the Court.*) What happened?

A I got in there and Mr. Woodruff asked me would I be a witness to the signing of these deeds, and he asked Mr. Kelly to sign them; Mr. Kelly was going to put a cross on them, and counsellor Woodruff insisted on him signing his name, he said he didn't care how he signed it, he had to sign it in place of putting the cross on it, and he signed it.

Q (*By the Court.*) What was said in your hearing?

A The only thing that was said after he explained things—

Q (*By the Court.*) Tell us what he explained?

A He said: 'Mr. Kelly, do you know what you are doing'; he said, 'You are signing over today all your property away to Edward Kelly, and he could put you out five minutes after you signed this,' and Mr. Kelly, the father, said, 'Now' he said, 'Edward has been a good boy all his lifetime, and' he said, 'he will look after me'; and then the counsellor brought in the grand-children; 'Well,' he said, 'the little girl has been very good and' he said, 'Edward will take care of Mrs. Moriarty and the grand-children'; that is all that was said in my presence.

“Q (*By the Court.*) Take care of whom?

A Of Mrs. Moriarty and the grand-children.

Q (*By the Court.*) Annie Moriarty, you mean?

A Yes, the lady that was on the witness stand here.”

The following are excerpts from the testimony of Dr. Hugh F. Cook, called as a witness by the defendant.

Case, page 105, lines 16-29.

“Mr. Kelly, the son, came to my office and asked me to examine his father, that he had some business transaction to put through and on account of him being an old man he wanted to feel sure that everything would be satisfactory; I told him the proper way to do that, that the legal or proper way would be to have two physicians examine him, if

he referred then to his sane condition, and he asked me at the time would I recommend anybody, and I said why I would recommend Doctor Burns, and we went there I think on the fifth of April and asked Mr. Kelly many questions, and we both agreed that he was sane and qualified to perform any business transaction."

Case, page 106, lines 18-19.

"Q Who paid your bill?

A Mr. Edward Kelly."

Case, page 107, lines 21-31.

"Q (*By the Court.*) Did you ever see any evidences of mental unsoundness during any of your visits to him?

A I cannot say that I did, your Honor.

Q (*By the Court.*) Well, you hesitate a little; what do you mean?

A Well, of course, on account of the man's age, we might say he was a little peculiar in some of his actions, but for what we were requested to go and examine him, for we considered he was a sane man and knew what he was doing."

Dr. John G. Burns, another witness, called on behalf of the defendant, testified, in part as follows:

Case, page 112, lines 21-27.

"Q (*By the Court.*) You went with Dr. Cook?

A Yes.

Q (*By the Court.*) Tell us what you found there?

A I found that he was suffering from arterio-sclerosis."

Case, page 112, lines 39-40.

“Q Who was there at the time of your examination besides Mr. Kelly?”

Case, page 113, lines 1-3.

“A Mr. Edward Kelly and Doctor Cook.

Q And who paid you?

A Mr. Edward Kelly.”

The above testimony of the defendants' witnesses is quite sufficient to support the decree advised by the Vice-Chancellor in this case. Not only does said testimony fail to make out any defense but it renders unnecessary the production of any testimony on the part of the complainants. However, for the purpose of making clear to the court the actual circumstances surrounding the conveyances by Thomas Kelly to the defendant, Edward J. Kelly, we shall quote from the testimony of Isabella Grant, who is one of the complainants and who was living with Thomas Kelly and Edward J. Kelly, her grandfather and uncle, respectively, at the time the deeds were executed. The testimony of the other witnesses, who testified on behalf of the complainants, while it throws additional light on the real facts in the case, is, for the most part, corroborative of the testimony of Isabella Grant.

Testimony of Isabella Grant, Case, page 124, lines 38-40; Case, pages 125, 126 and 127:

“Q Well, what happened?

A Why Aunt Ann died, and Uncle Edward sent me down to bed, and Aunt Annie went home; a little while after Uncle Edward came down and he had a roll of bills, he said ‘Look kid, what I found under Aunt Ann’s dresser.’ Then he went upstairs again, and I went to bed, and then the undertakers came. The next morning,

he was intoxicated of course all the time, the next morning he came downstairs and he said, 'Look what I found under the mattress, some more money, she certainly was a queer woman, look where she hid her money'; I said, 'You are a wise one, you know where to find it'; he said 'I sure am, kid', and that was the end of the money; the undertakers came in; I tried to quiet Uncle Edward, and I couldn't, he was so intoxicated, he told me to tell the undertakers to go to, you know, h—, and then he didn't go up, so I went up, and then Aunt Annie came and she looked after the undertakers; he was intoxicated all during the wake, too.

Q Did you see your grandfather with any money?

A Well, I saw him with two cents and a nickel once, he showed it to me, he had it in his pocket, and he gave me the nickel to get him some tobacco.

Q Did you ever see the money that Edward found in his possession?

A He didn't know anything about that, he was ignorant of that money, he never knew anything about it.

Q Did you ever see Mr. Woodruff, the lawyer?

A Yes, sir, I did.

Q When was the first time you saw Mr. Woodruff?

A One morning I went to the door and this Mr. Woodruff was standing there; I didn't know him then of course; he asked me for Uncle Edward: I asked him who he was; he said 'Mr. Woodruff, a lawyer'; I said 'Step in'; I went in and called Uncle Edward, and he sent me outside; that

was the first time, and then he called again.

Q That first time where was your grandfather?

A Grandpa at that time was out in the yard.

Q Did your grandfather go inside with Uncle Edward and Mr. Woodruff on that occasion?

A No, sir, he did not, he didn't know, he was gone before grandpa came in.

Q Then did you ever see Mr. Woodruff again?

A Then I saw him again one day, I was sweeping out in the yard, I saw Uncle Edward and Mr. Woodruff walk out towards Bank street.

Q Did you ever see him any more?

A I saw him once more; on that occasion I was getting dinner; I told grandpa to come in to dinner, and he said 'Where is Uncle Edward'; I said 'He is inside with Mr. Woodruff'; he said 'Who is Mr. Woodruff'; I said 'He is a lawyer'; he said 'What does a lawyer want here'; I said 'I don't know, grandpa, you will have to ask Uncle Edward,' and we dropped the subject.

Q Did you ever hear your grandfather talking about transferring the property?

A Oh, I did once.

Q When was that?

A One morning grandpa said to me 'I didn't sleep last night.' I said 'You didn't, how is that'; he said 'I am worried,' he said 'Uncle Edward had me up talking last night, and he wants me to give him the property, he could take care of it, I was so old I couldn't, if I let him have it he

would take care of it, and everything would be all right'; I said 'You should not worry'; he said 'I should worry, because I haven't anything to say, in the end I will have to give it to him anyway.'

Q What was the conduct of Edward and your grandfather towards one another?

A Uncle Edward was awful mean to grandpa, he treated him terrible; I thought he told an awful lie when he said that grandpa used to scold him, because he was awful mean to grandpa; I used to feel sorry for grandpa the way he would order him around, just like a dog.

Q How about some of your grandfather's habits, can you tell us anything about them?

A He had very peculiar habits, he used to get up early in the morning, maybe four o'clock, and he would eat bread, stale bread, and he had a cup and he used to put all kinds of liquids in it from the table and lay that on the sink and drink it now and then, and he used to sit by the fire days that were roaring hot, he would sit by the fire, he would be so cold, and have a thick sweater on and a coat, and he never took his clothes off when he went to bed, would even wear his hat.

Q Did you ever hear your grandfather ask Edward for any money?

A Yes; I often asked him to give him a nickel for tobacco, and Uncle Edward would have such an uproar and there would be a quarrel, and he wouldn't give it to him; he said 'I gave you a nickel for tobacco last week, what did you do with that,' and grandpa said 'Do you expect a nickel to last forever,' and they had a quarrel, and

one day they had a quarrel and Uncle Edward told grandpa to get to h— out with the dogs, and grandpa had two spells, and I was there all alone and didn't know what to do with him.

Q Was your grandfather afraid of Edward or Edward afraid of your grandfather?

A Grandpa was afraid of Uncle Edward. Uncle Edward used to order grandpa around all the time, he couldn't have a word of his own, he would have to sit in that chair, if Uncle Edward saw him around he would give him a look, or say something to him, he was very mean to him, very mean."

See also testimony of Annie C. Moriarty (Case, pages 46-58), Joseph Moriarty (Case, pages 113-118), Matilda Shipman (Case, pages 130-133), Francis J. Grant (Case, pages 133-134), Matilda Bush (Case, pages 134-136).

It is apparent that the amended and supplemental bill of complaint does not, in any respect, overdraw the situation. Thomas Kelly, who was about ninety-five years old and who, because of his old age, physical ailments and falling spells, had not been able to work for over fifteen years, inherited four parcels of land and premises from a sister, Ann Kelly. About fifteen days after said Thomas Kelly had so inherited the four tracts, two warranty deeds, conveying said four tracts, were procured by his son, the defendant-appellant, Edward J. Kelly, from the said Thomas Kelly. The testimony clearly shows that the said Edward J. Kelly induced, persuaded and coerced his father to sign said deeds, advising him that, owing to the old age and feebleness of the said Thomas Kelly and his ignorance regarding

business matters, it would be impossible for him, the said Thomas Kelly, to take care of and manage said lands and premises, and, in order that he, the said Edward J. Kelly, might properly take care of and manage the same, it would be necessary that deeds for said lands and premises to him, the said Edward J. Kelly, be signed by the said Thomas Kelly. In addition to this, the testimony of the witnesses produced on behalf of the defendant, shows that the old man understood that, in signing the deeds, he was making provisions for his daughter and his grandchildren, who are the complainants in this suit. (See the above-quoted testimony of the defendant, Edward J. Kelly, J. Randolph Woodruff and William J. Saupe.)

It is also clear that Thomas Kelly did not have the benefit of competent or independent legal advice. In fact, at the hearing the Vice-Chancellor did not require any argument from counsel for complainants but, after calling attention to the very suspicious circumstances in the case, said that it would be unnecessary to consider them in view of the fact that it appeared that Mr. Woodruff, the lawyer, who drew and attended to the execution of the deeds, had not insisted upon inserting in them a reservation to the donor of the power to revoke the gift. On this point the Vice-Chancellor quoted *Slack v. Rees*, 66 N. J. E. 447, (Ct. of E. & A., 1903). At the same time, the Vice-Chancellor remarked the absence as a witness of Mr. Timothy F. Foyle, the undertaker, who, Edward J. Kelly and Mr. Woodruff testified, had telephoned for Mr. Woodruff at the request of Thomas Kelly. He also remarked that the transaction had been done in extraordinary haste and that in cases not half as suspicious as this, deeds have been set aside and that this

case had an element of suspicion that does not exist in other cases. The above remarks of the Vice-Chancellor have been inadvertently omitted from the State of the Case.

The only advice given to Thomas Kelly by Mr. Woodruff as to the effect of the deeds was that Edward could kick him out of the house. No advice whatever was given as to what would happen in the event of Edward's death, nor did Mr. Woodruff advise Thomas Kelly to reserve to himself a life estate or a power of revocation, nor did he suggest to him that such reservation was possible and advisable.

In the case of *Slack v. Rees (supra)*, this court said:

“That the absence of such advice will invalidate a deed of gift, which contains no power of revocation, where a relation of trust and confidence exists between the donor and donee, is not denied, and, indeed, it was so held by the Vice-Chancellor. He seems to have considered, however, that such relationship was not shown unless it was made to appear that the donee occupied such a dominant position towards the donor as to raise the presumption that the latter was without power to assert his will in opposition to that of the donee. But this is not the situation. The rule has a much broader sweep. Its purpose is not so much to afford protection to the donor against the consequences of undue influence exercised over him by the donee as it is to afford him protection against the consequences of voluntary action on his part, induced by the existence of the relationship between them, the effect of which, upon his own interests, he may only partially understand or appreciate.”

Not only should Mr. Woodruff have advised Thomas Kelly to reserve to himself a power of revocation but should have insisted upon inserting it in the deeds, unless Thomas Kelly had distinctly refused to have it done. *Slack v. Rees* (*supra*).

In the case of *Post v. Hagan*, 71 N. J. E. 234 (Ct. of E. & A., 1906) this court said:

“That a person already aged or infirm or otherwise dependent should give to the one upon whom he thus depends practically his whole living beyond recall, and at the very time when apparently he has most need to retain it, raises in the mind of the Chancellor the presumption that the donor may not have appreciated the irrevocable character of his act or that he did not foresee its legal consequences to himself. 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.”

In view of the fact that in the case at bar the lawyer who drew and attended to the execution of the deeds consulted with the defendant-appellant, Edward J. Kelly, concerning his dislike of drawing the deeds and concerning the calling in of two doctors to examine the old man and the procurance of an extra witness to the deeds, and in view of the fact that said lawyer was paid for his services by the defendant-appellant, Edward J. Kelly, and appeared for him in this court, it is difficult to understand how his advice to Thomas Kelly, can in any sense, be considered independent advice.

In the case of *Walsh v. Harkey*, 69 Atl. Rep. 726 (N. J. Ch., 1908), although the donor after-

wards received back a lease of the conveyed premises for life, the conveyance was nevertheless set aside. In deciding the case, Vice-Chancellor Emery said:

“On the whole situation disclosed by the proofs in this case I am inclined to think that if independent counsel had been called in to advise Mrs. Walsh, the ultimate disposition of the property in favor of the grantees might still have taken place, but under conditions such as would have assured to Mrs. Walsh herself, not only the rents, but the entire benefit of the property for her maintenance, if necessary during her life, and either by a will or deed containing a power of revocation.”

In the case of *Mott v. Mott*, 49 N. J. E., 192, Vice-Chancellor Green, in setting aside on the ground of fraud and undue influence, a conveyance from a mother, sixty-nine years old, to her son, said:

“He knew his mother’s condition was a failing one. Whatever he may say to the contrary, he had a question as to her mental capacity. No other theory explains his application to Dr. Eldridge to examine the old lady as to her mental condition. He was taking from her all the means of support she had, and it was a badge of fraud not to give her independent evidence of his agreement to support her, which would avail her if her mind gave way or other instruments of evidence should fail.”

This case is doubly pertinent for the reason that the defendant in the case at bar had his father examined by doctors before the deeds were executed.

The defendant-appellant's fourth point, *i. e.*, that "The said grantor, Thomas Kelly, was also carrying out the wishes, as he understood them, of his sister from whom he, Thomas Kelly, received the property, which wishes were that the said Thomas Kelly should convey the premises in question to Edward J. Kelly," was not set up in any of the answers filed by any of the defendants in the case nor was it urged at the hearing. It is evidently an after-thought and is not borne out by the evidence of Edward J. Kelly, the person most interested. This point, not having been raised in the court below, cannot now be considered on appeal.

On page 77 of the Case, lines 4-35, in answer to questions by the Vice-Chancellor, we find Edward J. Kelly testifying that he first learned the deeds were made to him on the night of the conveyance and that the only thing his father said to him at that time was that he was rich the day before, and look how poor he was then.

On page 80 of the Case, lines 15-33, we find him testifying, again in answer to questions by the Vice-Chancellor, that at the time his father first spoke to him of conveying the property he did not say anything except that he was not capable of taking care of the property and wanted him, Edward, to look after it and that, at that time, he did not say that he wanted to make a deed of the property to him.

Again, on cross examination (Case, page 81, lines 24-35) we find Edward J. Kelly testifying that he knew the deeds were to be signed that day, that he was not interested a bit as to their contents because he was satisfied with anything, but that his father told him he wanted him to take care of the property and that was

the reason he was going to convey the property.

On pages 110 and 111 of the Case, we find Joseph Reilly, sworn on behalf of the defendant, testifying that in the month of April, 1911, he had a conversation with Thomas Kelly and that Thomas Kelly told him he gave the property to Edward and that he told Thomas Kelly that "he was very foolish for it, not to drive the horse as long as he lived." No mention is made in Mr. Reilly's testimony as to any understanding that Thomas Kelly conveyed the property to the defendant, Edward J. Kelly, pursuant to any wish of Ann Kelly.

As a matter of fact, we have no evidence of any such wishes of Ann Kelly. What we do know is that she died without having made a will and that Thomas Kelly inherited the property. We do not doubt, however, that had the idea entered the mind of the defendant at the time he was inducing his old father to deed the property to him, he certainly, in his greed, would have pretended to his father that Ann Kelly had intended the property for him. For all we know, he may have used this specious argument as one of the instruments of his fraud. In any event, we do not find it in either of the two answers filed by him, one of which is sworn to by him and signed by J. Randolph Woodruff, as his solicitor, nor do we find any mention of it in his testimony. If Ann Kelly had intended her property to go to the defendant, she would have expressed such intentions by making a will. That she did not make a will is the best evidence that she intended her property to descend to her brother, Thomas Kelly, her only heir.

It is, therefore, most earnestly submitted that for the reasons above set forth, the appeal of the defendants should be dismissed and the decree of the Court of Chancery affirmed.

Respectfully submitted,

JOHN V. LADDEY,

Solicitor of Complainants-Respondents.

GROSKEN & MORIARTY,

Of Counsel with Complainants-Respondents.

New Jersey Court of Errors and Appeals

In a Cause at the instance of Appellants
Edward J. Kelly and Mary
Kelly His Wife

vs
The State of New Jersey

Presented for review on the 10th day of
October 1888

New Jersey Court of Errors and Appeals

Between

ANNIE C. MORIARTY, *et als*,
Complainants-Respondents,
and

EDWARD J. KELLY, *et als*,
Defendants-Appellants.

On Appeal.

Brief on Behalf of the Defendants-Appellants, Edward J. Kelly and Margaret Kelly, His Wife

Facts

This is an appeal from a decree of the Court of Chancery bearing date the 8th day of February, 1917, entered in a suit brought in that court by Annie C. Moriarty and Joseph Moriarty, her husband, and others, as complainants, against Edward J. Kelly and Margaret Kelly, his wife, and others as defendants, to set aside two certain conveyances made by one Thomas Kelly to Edward J. Kelly, his son, bearing date April 8th, 1911, and recorded April 10th, 1911, in the Register's Office of Essex County; and to have the said conveyances declared void on the ground that the same were procured by the said Edward J. Kelly from the said Thomas Kelly by means of fraud, duress, and undue influence.

The Vice-Chancellor who heard the case advised a decree directing that the two deeds aforesaid

“Be and the same are hereby declared null
“and void, except as hereinafter otherwise pro-
“vided and are set aside as having been pro-

“cured by the said Edward J. Kelly from the
 “said Thomas Kelly for no valuable considera-
 “tion, at a time when the said Thomas Kelly
 “was of the age of about ninety-five years, was
 “without means of support, had no other prop-
 “erty, real or personal, and in making said
 “deeds had not the benefit of any competent
 “or independent advice.”

Case, page 154, lines 35-40.

Case, page 155, lines 1-10.

These appellants appeal from the said decree on the ground that the same is erroneous, in that the Chancellor should have found in favor of the defendants (these appellants) and as against the complainants for the reasons:

1. That the said Thomas Kelly was possessed of all his faculties at the time of making said conveyances.

2. That he had the benefit of independent and competent advice.

3. That he was carrying out his own wishes in conveying the property as he did.

4. That in so doing he was carrying out the wishes, as he understood them, of his sister from whom he, Thomas Kelly, received the property, which was: that the said Thomas Kelly should convey the premises in question to Edward J. Kelly.

It would seem, therefore, from the above, that the question presented to this court by this appeal is: whether or not the said Thomas Kelly in making said deeds had the benefit of competent and independent advice.

These deeds were dated April 8th, 1911, and recorded April 10th, 1911.

Case, page 28, lines 1-10.

Thomas Kelly, the grantor, did not die until January 11th, 1912.

Case, page 60, lines 1-10.

This suit was not begun until April 20, 1915.

At the outset we desire to call the Court's especial attention to the fact as shown by the testimony hereinafter more particularly referred to, that before the execution of said deeds and at the time of the execution of the same, the grantor, of his own volition, called into consultation a lawyer of this State of upwards of twenty years' standing who was moreover, a perfect stranger to the grantee and with whom the grantor consulted privately and at great length before the execution of the deeds in question.

Law

Point One

The law governing this case is laid down in the decision of *Post vs. Hagan*, decided by the Court of Errors and Appeals, 1907, and reported in 71 N. J. Equity, 234, which said case follows the case of *Slack vs. Rees*, which is reported in 66 N. J. Equity, page 447. That the deeds involved in this suit under the above decisions should have been upheld by the Lower Court we think is clearly shown for the following reasons:

THAT THE SAID THOMAS KELLY AT THE TIME OF THE EXECUTION OF THE DEEDS IN QUESTION WAS SANE AND POSSESSED OF ALL HIS MENTAL FACULTIES.

See testimony of Rev. Edward F. Quirk, who testified as follows:

"Q How frequently would you visit him, say weekly, or how frequently did you visit him for a year and a half prior to his death?

A I should judge, as far as my memory goes, about once each three months.

Q What was the occasion of those visits?

A What we term a communion call, go to hear the man's confession and bring the communion."

Case, page 87, lines 30-40.

Further testimony by Rev. Quirk:

"Q Did you have occasion to test his memory?

A Never, not in the sense that I had any occasion to test it, because I never doubted there was anything wrong with the man outside of his physical inability to get to church, as I was informed.

Q Would you say that his memory was good?

A Yes.

Q How would you determine that?

A From the manner in which he made his confession, which showed that he remembered his catechetical training very well."

Case, page 88, lines 20-30.

Case, page 88, lines 30-40.

Case, page 89, lines 1-10.

Case, page 89, lines 20-30.

Testimony of Dr. Hugo F. Cook, who examined Thomas Kelly in April, 1911, in which he testified that he went to see Mr. Kelly on the 5th of April, 1911, in company with Dr. Burns, that they asked Mr. Kelly many questions and that both agreed that he was sane and qualified to perform any business transaction.

Case, page 105, lines 20-30.

Case, page 105, lines 30-40.

Also testimony of Dr. John G. Burns, who accompanied Dr. Cook at the time the above examination was made, who testified that the physical condition of Thomas Kelly was such as he would

expect of a man of his age and his mental condition was an average for a man of his age.

Case, page 112, lines 30-40.

Also see testimony of Elizabeth Henry, wherein she testified that between the years 1905 and 1911, she conducted a store at 87 Bruce street which was close to where Thomas Kelly then lived; that Thomas Kelly was in the habit of going to her store to make purchases.

Case, page 108, lines 20-40.

Further that Thomas Kelly knew what he was doing and knew what he wanted.

Case, page 109, lines 20-30.

Testimony of William J. Saupe.

Case, page 143, lines 1-40.

Case, page 144, lines 1-40.

Testimony of James G. McGuire.

Case, page 145, lines 1-40.

Case, page 146, lines 1-40.

The test of mental capacity to make a deed is that a person shall have ability to understand the nature and effect of the act in which he is engaged and the business he is transacting.

Soper vs. Cisco, 85 N. J. Eq., 165, at page 169.

Point Two

THAT AT THE TIME OF THE EXECUTION OF THE DEEDS IN QUESTION THERE WAS NO FRAUD, DURESS OR UNDUE INFLUENCE BROUGHT TO BEAR UPON THE SAID THOMAS KELLY; AND THAT BEFORE EXECUTING THE SAME HE HAD THE FULL BENEFIT OF COMPETENT AND INDEPENDENT LEGAL ADVICE, AND THAT THIS ADVICE CAME FROM A COUNSELLOR-AT-LAW OF THIS STATE, WHICH COUNSELLOR WAS AN ENTIRE STRANGER TO BOTH THOMAS KELLY AND EDWARD KELLY AND WAS CALLED IN BY AN INDEPENDENT THIRD PARTY, NAMELY, TIMOTHY FOYLE, A FRIEND OF THE FATHER, THOMAS KELLY, AT THE SUGGESTION OF THOMAS KELLY.

Testimony of Edward J. Kelly:

“Q Do you know, or rather did you send for Mr. Woodruff to call at your father’s house?

A No, I did not; my father spoke to Mr. Foyle and he called up Mr. Woodruff, I guess.”

Case, page 65, lines 29-32.

Again, testimony of Edward J. Kelly:

“A Mr. Foyle spoke to him (Thomas Kelly) then and said that he would ’phone for a lawyer for him.

Q Then you did know what was going on in the house at the time Mr. Woodruff came?

A Yes, but I didn’t see it.

Q You never said anything to your father about the property before that?

A Never a word.

Q Never mentioned it to him?

A Never a word.

Q Didn't you ask him to convey it to you?

A I did not."

Case, page 75, lines 25-35.

Testimony of Edward J. Kelly:

"Q Is it not a fact, Mr. Kelly, that you went to Mr. Woodruff yourself?

A No, I never did, never did."

Case, page 77, lines 35-40.

Testimony of Mr. Woodruff:

"Q Do you know, or did you know Thomas Kelly in his lifetime?

A I did not, not prior to the time of meeting him.

Q Did you know Edward Kelly?

A No, sir."

Case, page 90, lines 1-10.

Further testimony of Mr. Woodruff:

"Q (*By the Court.*) Begin at the beginning and tell us just how you came to be employed, and all that you did?

A I was telephoned to by Mr. Foyle. * * *

A Mr. Timothy Foyle, an undertaker on Warren street, telephoned me to come to his office, and informed me that he wanted me to go see Mr. Thomas Kelly of 83 Bruce street, who wanted him to transact some business, and he had told Mr. Kelly that he was not a lawyer and he couldn't do it. I went there that night."

Case, page 90, lines 10-40.

Further testimony of Mr. Woodruff:

"A I went there to Mr. Kelly's house and Mr. Edward Kelly was at the door and I said—no, he wasn't at the door, I rang the bell and somebody came to the door; I said, 'Does Mr. Thomas Kelly live here'; they said, 'Yes'; I said, 'I am Mr. Woodruff, a lawyer; Mr. Foyle, the undertaker, sent me here.'"

Case, page 91, lines 9-15.

Further testimony of Mr. Woodruff:

“A I said: ‘Then I presume you want a will drawn,’ and he said, ‘No, there are too many wills broken, I want to have a deed made.’ He directed Edward to bring the box to him, a black box, and Edward brought the box in, and Edward went out, and Mr. Kelly and I began to talk, and much to my surprise—

Q (*By the Court.*) Well, now, tell us just what the conversation was?”

Case, page 91, lines 30-40.

“A Well, he told me he wanted a deed drawn, and then he opened the box and produced these papers and gave them to me, and then he said, ‘I own four or five houses’; I said, ‘You own four or five houses’; he said, ‘Yes’; and I was very much surprised, and then he produced a lot of old deeds, and I think there was a copy of one will there, and I said, ‘You own four or five houses’; he said, ‘Yes’; I said, ‘What do you want to do with them’; he said, ‘I want to give them to Edward’; he said, ‘They belonged to my sister and she has just died, and my sister always intended that Edward should have the property, so I want a deed made to Edward.’ I said, ‘Well, you let me have the deeds then,’ and I took the deeds, and I was very much surprised that there were five houses there.”

Case, Page 92, lines 1-20.

“Q (*By the Court.*) Well, what did you say then?

A Then in the talk he mentioned about having a daughter, and he pointed to the kitchen, and he said, ‘That is my grand-child’; I said, ‘What is her name,’ and he told me ‘Grant,’ and I said, ‘Mr. Kelly, do you know what you are doing; do you mean to say

you are going to leave everything to this one boy and not give the others anything,' and he said, 'Yes, sir.' I said, 'Don't you want a will drawn'; he said, 'No, I don't want no will drawn, because I read in the papers about wills being drawn.' We talked over the matter, and about how he got the property; he said he hadn't worked in years, and he said Edward supported him, and said his sister just died who owned all this property and he wanted Edward to have it all, that Edward was a good boy and had taken care of him. Well, we talked along that line, and then I took the papers and went out.

Q (*By the Court.*) Who took the papers?

A I did; I took all the old deeds and an abstract copy of a will, and outside I met Edward."

Case, page 92, lines 20-40.

On the second occasion when Mr. Woodruff called to see Thomas Kelly, at which time the deeds were signed, he had further independent and private advice as to the effect of the execution of these deeds, in the absence of the son who was the donee, as is evidenced by Mr. Woodruff.

Mr. Woodruff uses the following language: And in the presence of Captain Saupe I went over the deeds again and explained very carefully to Mr. Kelly what he was doing and what would happen to him. I told him "You are giving away everything, and" I said, "Edward can kick you out of the house," and I think we all laughed, and he said, "Edward is a good boy, he will take care of his sister and the Grants.' * * * I said, "Now you understand what you are doing," I said, "You won't have a cent left and Edward can throw you out of the house"; he said, "I am not afraid of

that, Edward has always been a good friend of mine and he will take care of the sister and the Grant children." I took the acknowledgment, and had Captain Saupe witness it and I witnessed the signature. I called Edward in and told him.

Case, page 94, lines 1-40.

Again testimony of Mr. Woodruff; in reply to a question as to the effect of signing away all of his property:

"A That he didn't have a cent left, I kind of in an offhand way, I told him the first time while Edward was out, I went all over the deed with him while Edward was out across the street I presume, told him what they meant.

Q What did you tell him?

A I said, 'This leaves you without anything at all, without a cent,' and he said, 'Edward has been a good boy to me, and he supported me for a great many years, and Edward is a good boy, and I trust him.' Then when Captain Saupe came over we went over it again, I did, went over the deeds very carefully, and told Captain Saupe why I had sent for him."

Case, page 95, lines 10-30.

"Q What did you tell Captain Saupe—was it in the presence of the old man?

A Yes.

Q What did you tell him?

A That I wanted him to witness the deeds, that Thomas Kelly was about to convey all his property to Edward Kelly, and in the presence of Captain Saupe I said, 'Mr. Kelly, remember now, Edward can kick you out of the house, you cannot stay here a minute now,' and we laughed; and when I called him in I said, 'Edward, your father has given you everything, and you owe him two dollars,' and he produced

the two dollars and wanted to give it to his father, and his father said, 'No, give it to Captain Saupe, and Captain Saupe refused to take the money.'

Case, page 95, lines 30-40.

Testimony of William J. Saupe:

"A I was sent for by lawyer Woodruff to come over there and be a witness to these deeds, and when I got there Mr. Kelly (Edward Kelly) walked out of the place."

Case, page 99, lines 30-40.

"Q (*By the Court.*) Tell us what he (Mr. Woodruff) explained?

A He said, 'Mr. Kelly do you know what you are doing'; he said, 'You are signing over to-day all your property away to Edward Kelly, and he could put you out five minutes after you signed this,' and Mr. Kelly, the father, said, 'Now' he said, 'Edward has been a good boy all his lifetime, and' he said, 'he will look after me'; and then the counsellor brought in the grandchildren; "Well," he said, 'the little girl has been very good and' he said, 'Edward will take care of Mrs. Moriarty and the grandchildren'; that is all that was said in my presence."

Case, page 100, lines 15-25.

"Q You said Mr. Kelly walked out when you entered the Kelly house; which Mr. Kelley do you mean?

A Mr. Edward Kelly, the son."

Case, page 100, lines 30-35.

"Q But this conversation which you have just related as having taken place between Mr. Woodruff and Thomas Kelly took place when?

A When I was there, in my presence.

Q (*By the Court.*) Well, before the signing of the deed or after the signing?

A Before the signing of the deed."

It will be readily seen from the above testimony that proper independent advice was given to the donor, which 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 him correctly as to its legal effect, but who was furthermore so disassociated from the interest 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.

Post vs. Hahgan, 71 N. J. Equity, page 234 at 243.

The only purpose of suggesting to the donor the incorporation in a deed such as these of a revocation clause is to give to the instrument practically the same effect as a will, namely, to give to the donor the power to revoke the deed at any time before his death. That it was not necessary in the case at bar to insert such a revocation clause in the deeds in question, is clearly shown by the fact that Thomas Kelly knew perfectly well that his act in executing the deeds in question would have the effect of presently depriving him of all further interest in the estates to be embraced in the deeds which he proposed to execute. In furtherance of this idea and to confirm the fact that Thomas Kelly knew perfectly well the effect of the act which he was about to commit, we respectfully refer the Court to the statement of Thomas Kelly that he absolutely refused to have a will drawn or even consider the making of a will when this was suggested to him on several occasions by the attorney, and see point four (4) herein which absolutely confirms this.

Testimony of Mr. Woodruff:

“A * * * * First I said, ‘What do you want,’ and we talked about it, and he said he wanted to dispose of his property; I said, ‘Then I presume you want a will drawn,’ and he said, ‘No, there are too many wills broken, I want to have a deed made.’”

Case, page 91, lines 29-40.

“A Mr. Woodruff then said, ‘Don’t you want a will drawn?’ Mr. Kelly said in reply to that question, ‘No, I don’t want no will drawn because I read in the papers about will being drawn.’”

Case, page 92, lines 20-30.

In view of this testimony and the further testimony as to the positive direction given by Thomas Kelly to Mr. Woodruff to draw a deed or deeds and not any other document, and that he wanted his son Edward to have the immediate and absolute title to the premises in question, in accordance with the wish of his dead sister, it would be idle as a legal proposition to contend that a revocation clause should be inserted in the deed or that Mr. Woodruff should have suggested anything more than he did, namely, Mr. Woodruff explained most fully what was the legal effect of executing a deed of the nature of those in suit and after this full explanation two separate occasions Mr. Kelly, the father, firmly insisted that these deeds should be executed that way.

See testimony as stated above under Point as also given in

Case, page 100, lines 15-25.

Case, page 94, lines 1-40.

The cases which have been decided in the New Jersey courts wherein conveyances have been set aside because of undue influence or absence of com-

petent and independent advice are all clearly distinguishable on their facts from the present case at bar, especially in view of the fact it was carrying out the wishes of the sister from whom it came.

In the case of *Slack vs. Rees*, 66 N. J. Equity, 447, at page 450, the fact was that the donor asked the attorney

“Whether he had better make a will or a deed. He was advised by the attorney that it would be better to make a deed, and did so.
* * * From his inquiry made of the attorney, whether it would be better to make a will or a deed, it seems quite probable that he considered the one would be no more effective than the other to presently deprive him of all future interest in the estate to be embraced in the instrument which he proposed to execute. It is difficult to understand the failure of the attorney to advise Mr. Slack as to the effect of such a deed as was executed.”

It is evident from the above extract that the donor did not have competent advice which is quite different from the facts in the case at bar wherein the attorney explained fully the effect of the execution of such a deed as shown by the testimony above.

In the case of *Post vs. Hagan*, 71 N. J. Equity, 234 at page 244, the court says:

“Judge Paxton, the lawyer who drew the deeds, and took the donor’s acknowledgments, was employed for that purpose by the donee and appeared for her in the court below. She called upon him with the old deeds from which he was instructed to draw new deeds, in all respects similar to the old ones saving as to the names of the grantor and grantee, and when he had the deed ready he was to attend upon the donor and have them executed. His instructions were both limited and explicit.

These instructions he carried out. *He was in no sense the adviser of the donor and at no time acted in that capacity.* His only remark to the donor, as I recall it, was that cited by the Vice-Chancellor, viz., that he reminded her that she had a son."

It is evident from the above without more, that the donor had no independent advice whatsoever.

In the case of *Reeves vs. White*, Chancery, 84 N. J. Equity, 661, the donor had a real estate agent draw an assignment of leases to his son and asked the agent if the donee would get the benefit after the donor's death if he put the assignments in a safe deposit box. This assignment together with bills of sale was put in a safe deposit box to which both the donor and the donee had access. There is no evidence in this case whatsoever that the donor had any competent or independent advice or that he was told in any way of the consequences of his act. Certainly this case on its facts is not in point.

The case of *Hunt vs. Naylor*, Chancery, 84 N. J. Equity, 646, wherein the donor allowed his niece, the donee, to deposit a check received by him from a partition sale, in the bank in their joint names and the donor later declared a lunatic, the donee died previous to the donor and from the facts the Court found:

"That Elizabeth's (donee) act of making the joint deposit, and her suggestion to the complainant that his name be included as one of the depositors, challenges seriously the idea that she had become the absolute owner of the fund, and the view she entertained of her relation to it, evinces that she understood that the enjoyment of the fund was to be hers, if at all, only when her uncle had finished—a disposition, testamentary in character, in viola-

tion of our statute of wills, and falls within the rule laid down in *Stevenson vs. Earl*, 65 N. J. Eq., 721.

In the case of *Jacobus vs. Waits*, Chancery, 1916, 97 Atlantic, 958, wherein the complainant is the donor and the donee is her daughter, they both instructed the lawyer to draw the deeds. There was a conflict of evidence as to who sent for the lawyer, but from the extract of the testimony set out in the opinion of the case, the donee urged her mother to make the conveyance. The lawyer's idea on what was said, especially by the donor was that the donor expected to live only a few days and that she expected the deed to take effect only in case of her immediate death. The Vice-Chancellor found that the lawyer gave no advice about the matter. The Court said on page 960 :

"And where, as in this case, it is apparent that the gift was made to accomplish the purpose of a will, without the safeguards surrounding the execution of a will, an additional reason is presented why the donee should clearly and convincingly show its validity. *Haydock vs. Haydock*, 34 N. J. Eq., 570, 38 Am. Rep., 385.

"I do not think the defendant has borne this burden, because her own evidence and that of the scrivener discloses that it was in part, if not entirely, due to her solicitations that these conveyances were made, and that they were voluntary gifts made in contemplation of the donor's death, without consideration, and to take effect after the death of the donor. Furthermore, the facts show that complainant, in making these conveyances, disposed of practically all her property, without the benefit of proper independent advice. Because of the absence of such advice, and the voluntary nature

of the gifts, by which improvident action complainant parted with her entire means of support, and the fact that by reason of her serious illness she was not in condition to fully comprehend, and did not comprehend, the consequences to herself of her act in making these gifts, these conveyances should be set aside.

“This conclusion is only giving effect to what the defendant says was the understanding with complainant when the deeds were executed, that the deeds were to become effective only in the event of the death of her mother from illness with which she was prostrated when the deeds were made.”

In the case of *Grimminger vs. Alderton*, Chancery, 1914, N. J. Eq., page 425, wherein conveyances made by a husband to his wife's father and mother at his wife's solicitation, were set aside, the fact being that the man suffered from epileptic fits and was well known at the time to be of unsound mind and the wife after the conveyances were made paid very little attention to her husband and allowed him to live unattended in the attic and later obtained a divorce and remarried. In that case there was no semblance of any independent advice being given and it was proved beyond a doubt that the donor was consulted by no one besides his wife and was of a weak mind. The case is evidently not at all in point. The Vice-Chancellor on page 435 speaking of conveyances without independent advice as follows:

“The law does not go to the length of saying that a donor incapacitated by age and disease from earning his own living, may not even improvidently strip himself of all his property beyond recall, although there are cases which seem almost to go to that extent. (*Powell vs.*

Powell (1900), I Ch. Div., 246); but it does say that his gift shall not stand, unless he have competent, independent advice, and refuses to act in accordance with it."

Which is an extract from *Pearce vs. Stines*, 79 N. J. Eq., page 51 at page 55.

In the said *Pearce vs. Stines* case, the Court found on page 55 that "the donor did not have competent, or any advice when he decided to deliver the deed to Lodemia in his lifetime.

In the case of *Albert vs. Haverly*, Errors and Appeals 1905, 68 N. J. Eq., 664, the facts were that a young woman just of age made a deed of gift to her step-mother. The Court found on page 666:

"There is nothing in the evidence submitted at the hearing which even suggests that in the making of this gift she received independent advice (or in fact, any advice at all), either as to the nature or effect of the conveyance which she now seeks to avoid."

It will be noted that all of the cases of similar nature in this state the Court has found on the facts that the donor had no advice whatsoever or that such advice as the donor had was not competent and independent, nor was it a fact in these cases as in the case at bar, that the sister from whom the property came wanted such a disposition of the property. We feel that it is unnecessary to digest any more cases on this proposition as the cases above set out show clearly the trend of law in New Jersey and all of these cases and in fact all the cases on this proposition are clearly distinguishable. In all these cases there are extra and different circumstances that bring each individual case within the rule of *Slack vs. Rees* and *Post vs. Hagan* and in each case as said before, either the donor had the benefit of no advice or the advice was not competent and independent.

Point Three

WE THINK THE TESTIMONY IN THIS CASE AND ESPECIALLY THAT PARTICULARLY POINTED OUT IN POINT TWO OF THIS BRIEF WILL SHOW CLEARLY THAT THE GRANTOR, THOMAS KELLY, WAS CARRYING OUT HIS OWN WISHES IN IMMEDIATELY TRANSFERRING TO HIS SON, EDWARD J. KELLY, THE LANDS AND PREMISES IN QUESTION, ESPECIALLY IN VIEW OF POINT 4 HEREIN. HIS LAWYER EXPLAINED TO HIM THE EFFECT OF EXECUTING THE DEEDS IN QUESTION AND HIS REPLY INDICATED CLEARLY THAT HE WANTED HIS SON EDWARD TO HAVE THE IMMEDIATE TITLE TO THE PROPERTY.

Point Four

THE SAID GRANTOR, THOMAS KELLY, WAS ALSO CARRYING OUT THE WISHES, AS HE UNDERSTOOD THEM, OF HIS SISTER FROM WHOM HE, THOMAS KELLY, RECEIVED THE PROPERTY, WHICH WISHES WERE THAT THE SAID THOMAS KELLY SHOULD CONVEY THE PREMISES IN QUESTION TO EDWARD J. KELLY.

This is especially borne out by the testimony of Mr. Woodruff, as follows:

“Q (*By the Court.*) Well, now, tell us just what the conversation was?”

Case, page 91, lines 30-40.

“A Well, he told me he wanted a deed drawn, and then he opened the box and produced these papers and gave them to me, and then he said, ‘I own four or five houses’; I said,

‘You own four or five houses?’ he said, ‘Yes’; and I was very much surprised, and then he produced a lot of old deeds, and I think there was a copy of one will there, and I said, ‘You own four or five houses’; he said, ‘Yes’; I said, ‘What do you want to do with them?’ he said, ‘I want to give them to Edward’; he said, ‘*They belonged to my sister and she has just died, and my sister always intended that Edward should have the property, so I want a deed made to Edward.*’

Case, p. 92, lines 1-20.

“Q (*By the Court.*) Well, what did you say then?

A Then in the talk he mentioned about having a daughter and he pointed to the kitchen and he said, ‘That is my grandchild’; I said, ‘What is her name,’ and he told me ‘Grant,’ and I said, ‘Mr. Kelly, do you know what you are doing; do you mean to say you are going to leave everything to this one boy and not give the others anything,’ and he said, ‘Yes, sir.’ I said, ‘Don’t you want a will drawn’; he said, ‘No, I don’t want no will drawn, because I read in the papers about wills being drawn.’ We talked over the matter, and about how he got the property; he said he hadn’t worked in years, and he said Edward supported him, and said his sister just died who owned all this property and he wanted Edward to have it all, that Edward was a good boy and had taken care of him. Well, we talked along on that line, and then I took the papers and went out.”

Case, page 92, lines 20-40.

From the above extracts taken from the testimony itself, we think it is clear that Thomas Kelly not only had abundant mental capacity to execute the deeds in question, but that before executing

them, he had the full benefit of competent and independent advice, consisting of his friend, Timothy Foyle; the lawyer, Mr. Woodruff; and Captain Saupe; that he called these men in of his own volition; that he talked freely with them on two occasions before signing the deeds privately, without his son Edward being present; that he went over the entire matter fully with the lawyer and Captain Saupe; that he knew perfectly well what he was doing especially in view of the wishes of the sister from whom the property came; that in spite of Mr. Woodruff's recommendation to draw a will instead of executing deeds; he stated he would have none of that and that he wanted to draw the deeds in question; that no influence of any kind was exerted upon him by the said Edward Kelly or by anyone on his behalf. There is not a single bit of testimony to show that Edward Kelly induced his father to execute the deeds and, in fact, from Mr. Edward Kelly's own testimony, he states that he knew his father intended to make a disposition of the property but he did not know what disposition was made until after the deeds were executed.

We refer the Court's attention to the testimony of Edward J. Kelly, especially the cross examination taken on Case, page 75, lines 1-40.

The testimony of uninterested witnesses, namely Captain Saupe and Mr. Woodruff, is most positive, and the picture which their testimony presents is that of a man perfectly competent in every respect, engaged in carrying out a plan of his own, as well as the wishes of the sister from whom the property came.

For the above reasons, it is respectfully submitted that the decree of the Court of Chancery should be reversed.

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