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Exhibit P-1—Photostatic Copy of Certificate of French Physician. Marked at folio 10, page 605. Printed at folio 10 849

Exhibit P-2—Certified Copy of Will of William C. Squier. Admitted at folio 20, page 610. Printed at folio 10 850

Exhibit P-3—Will of Catherine C. Squier. Admitted at folio 30, page 612. Printed at folio 10 856

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Exhibit P-4—Deed from Katherine C. Squier to Stuart C. Squier, and others, dated April 6, 1907. Marked at folio 20, page 692. Printed at folio 10 865

Exhibit P-5—Deed from Stuart C. Squier and others to the International Agricultural Corporation, dated October 19, 1912. Marked at folio 20, page 692. Printed at folio 10 874

Exhibit P-6—Petition of Trustees for discharge of Co-trustee, in the matter of the Estate of William C. Squier, deceased. Marked at folio 20, page 745. Printed at folio 10 917

Exhibit P-7—Letter to Charles B. Squier, dated May 29, 1923. Admitted at folio 10, page 760. Printed at folio 10 982

Exhibit P-9—Letter to Charles B. Squier from E. M. Squier, dated June 14, 1912. Marked at folio 10, page 766. Printed at folio 10... 983

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Exhibit P-11—Letter from E. M. Squier to Charles B. Squier, dated February 28, 1913. Admitted at folio 30, page 775. Printed at folio 10 985

Petition for Probate of Will.

(*Filed November* 20, 1926)

To the Surrogate of the County of Union:

William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles and Augustus S. Houghton, the Executors named in the last Will and Testament of Edwin M. Squier, late of the City of Rahway in the County of Union, and State of New Jersey, deceased, hereby apply for the probate of the said last Will and show that the deceased died November 9th, 1926, and that he was a single man and the next of kin and heirs at law of the said deceased together with their respective residences or post office address, so far as the same are known or these applicants have been able to ascertain, are as follows: Frederick C. Squier, a brother, of 427 St. Georges Ave., Rahway, N. J.; Helen S. Keene of Greenwich, Conn.; William C. Squier, 3rd, of Greenwich, Conn.; Carol S. Houghton of 136 East 74th St., New York City; Katharine S. Montgomery of 1111 Park Ave., New York City; Elsie S. Edson of Greenwich, Conn.; Hester S. Smiley of Great Barrington, Mass.; Children of Stuart C. Squier, a deceased brother, Charles B. Squier of Old Bennington, Vt., only child of Charles B. Squier, a deceased brother.

WILLIAM C. SQUIER, 3RD,
FREDERICK C. SQUIER, JR.,
HAROLD M. SEARLES,
AUGUSTUS S. HOUGHTON.

Petition for Probate of Will

UNION COUNTY, SS.:

William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles and Augustus S. Houghton, above named, being duly sworn on their oaths, say that the statements in the foregoing application for probate of Will made are true.

WILLIAM C. SQUIER, 3RD,
FREDERICK C. SQUIER, JR.,
HAROLD M. SEARLES,
AUGUSTUS S. HOUGHTON.

Sworn before me Nov. 20, 1926.

W. B. PARROT,
Deputy Surrogate.

I, Edwin M. Squier, of the City of Rahway, County of Union and State of New Jersey, being of sound and disposing mind and memory, do hereby make, execute, publish and declare this to be my last Will and Testament, hereby revoking all other wills or codicils heretofore by me made.

After the payment of my just debts and funeral expenses:

I. I give, bequeath and devise to the City of Rahway, County of Union, New Jersey, the following real estate, with the buildings and improvements thereon, except as hereinafter provided, known as 342 St. George's Avenue, 339 St. George's Avenue, and the vacant lot owned by me on the westerly side of St. George's Avenue and adjoin-

ing number 339 St. George's Avenue on the south, such property to be used and maintained as a public park and to be known as the "Catherine Craig Squier Park" in memory of my mother, in whose family 342 St. George's Avenue has been for nearly 150 years. Should the City of Rahway within one year from the date of probate of my will, not accept this device for the uses and purposes herein stated, then this device shall become null and void and the property in this paragraph mentioned shall revert to and become a part of my residuary estate to be devised as in the residuary paragraph provided.

II. I give and bequeath to my executors hereinafter named the sum of Ten Thousand ($10,000) Dollars and request them to use the principal and accruing interest for the care and support of such horses as I may own at the time of my death.

III. I give and bequeath (a) to The First Presbyterian Church of Rahway, New Jersey, the sum of Five Thousand ($5,000) Dollars; (b) to the Young Men's Christian Association of said City the sum of Five Thousand ($5,000) Dollars; (c) to the Rahway Hospital of said City the sum of Five Thousand ($5,000) Dollars; (d) to the Rahway Library Association of said City, and association of which my mother was the first directress and actively interested in during her life time, the sum of Twenty Thousand ($20,000) Dollars.

It is my wish and I authorize my said executors to pay the bequests in this paragraph enumerated, as soon as they conveniently can, without detriment to my estate.

IV. I give and bequeath to the persons hereinafter named who have been in my employ and have faithfully served in my family for many years, if they are still in my employ at the time of my decease; (a) to Mary Conroy, the sum of Five Thousand ($5,000) Dollars; (b) to Mary Cavanaugh, Nora Riley, Thomas Clark, Alfred Pierce and James Avery, the sum of Twenty-five Hundred ($2500) Dollars each; such bequests to be paid by my executors as soon as they conveniently can without detriment to my estate.

V. I give and bequeath (a) to Helen S. Keen, William S. Squier, 3rd, Carol S. Houghton, Katharine S. Montgomery, Elsie S. Edson and Hester S. Smiley, children of my brother Stuart, the sum of Five Thousand ($5,000) Dollars each; (b) to Marjorie S. Searles and Frederick C. Squier, Jr., children of my brother Frederick, the sum of Five Thousand ($5,000) Dollars each; (c) to Charles Burnham Squier, son of my deceased brother, Charles, the sum of Five Thousand ($5,000) Dollars.

I make no further provision directly or indirectly for my nephew, Charles Burnham Squier, as he was and will be the sole beneficiary in the interest his father, if living, would have received from the trusts created by the Will of my father, William C. Squier.

VI. I give and bequeath to my brother, Frederick C. Squier and his heirs, all the personal property and contents in the barns and conservatories situated on the property mentioned in Paragraph I of this my Will.

VII. I give and bequeath to my brothers Stuart and Frederick and their heirs, share and share alike to be equally divided as they may determine between them, all the contents in my home, number 342 St. George's Avenue, Rahway, New Jersey.

VIII. Should there be any items mentioned in Paragraph VI and VII of this my Will which neither of my brothers desire, I direct that they shall preferably be given away or sold.

IX. It is my wish and I hereby direct my said executors that before the provisions of Paragraphs VI and VII are complied with, that they give to such of the persons mentioned in Paragraph IV of this my Will, as shall be in my employ at the time of my decease, some article or articles of value as a remembrance of the house which has been their home or where they have served for so many years.

X. All the rest, residue and remainder of my estate, real, personal and mixed and wheresoever situate I give, bequeath and devise to my brothers, Stuart and Frederick, and their heirs, in equal shares, the issues of either brother dying before me, taking the share its parent would have taken if living, per stirpes and not per capita.

XI. I hereby nominate and appoint my nephews, William C. Squier, 3rd, and Frederick C. Squier, Jr., and my nephews in law, Harold M. Searles and Augustus S. Houghton, or the survivor or survivors of them, executors of this my Will. It is my wish and I so direct, that they or either of them shall not be required to give any bond for the faith-

ful performance of their duties as executors in this or any other jurisdiction. And I further direct that in case of any difference of opinion shall arise among said executors as to the proper management of my estate, the decision of a majority of them shall be conclusive and no liability shall attach to a dissenting executor. In the event of any of my real estate reverting to my residuary estate, I do hereby give my executors full power to sell and dispose of any and all of my real estate, at public or private sale and to give good and sufficient deeds of conveyance for the same to the purchaser or purchasers thereof.

It is my wish and I so direct that the securities which I may have at the time of my decease, shall be kept intact by my executors pending the settlement of my estate or the carrying out of the provisions of this my Will and that when the division of my residuary estate is made that my executors shall make an equal division of such securities in kind between my two brothers or their issue as herein provided.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 6th day of July, 1926.

EDWIN M. SQUIER.

[SEAL]

In presence of:

WOOLSEY A. SHEPARD

GEO. A. FERRIS

PETER J. MCCOY

Petition for Probate of Will

The foregoing instrument consisting of five typewritten pages was on the day of the date thereof signed, published and declared by Edwin M. Squier, the testator therein named, as and for his last will and testatment, in the presence of us, the undersigned, who at his request and in his presence and in the presence of each other, have hereunto set our names as witnesses, this clause having been first read to us, and we now intending to certify that the matters herein specified took place in fact and in the order herein stated.

Name	*Address*
Woolsey A. Shepard,	312 W. 93rd St., N. Y. City.
Geo. A. Ferris,	330 W. 102nd St., N. Y. City.
Peter J. McCoy,	315 W. 78th St., N. Y. City.

Petition for Probate of Will

STATE OF NEW JERSEY, }
UNION COUNTY, } SS.:

Woolsey A. Shepard, one of the witnesses to the annexed writing, purporting to be the last Will and Testament of Edwin M. Squier, the Testator therein named, deceased, being duly sworn, says that he saw the said Testator sign and seal the said annexed writing, and heard him publish, pronounce, and declare the same as and for his last Will and Testament. That at the time of the doing thereof, the said Testator was upwards of the age of twenty-one years, and of sound disposing mind, memory, and understanding, so far as this deponent knows, and as he verily believes; that George A. Ferris and Peter J. McCoy, the other subscribing witnesses thereto were present at the same time with this deponent, and that they and this deponent subscribed their names thereunto as the witnesses in the presence of the Testator and of each other, at the request of the said Testator.

WOOLSEY A. SHEPARD.

Sworn before me this 20th day of November, A. D. 1926, at Elizabeth. }

W. B. PARROT,
Deputy Surrogate.

Petition for Probate of Will

STATE OF NEW JERSEY, }
UNION COUNTY, } ss.:

George A. Ferris, one of the witnesses to the annexed writing, purporting to be the last Will and Testament of Edwin M. Squier, the Testator therein named, deceased, being duly sworn, says that he saw the said Testator sign and seal the said annexed writing, and heard him publish, pronounce, and declare the same as and for his last Will and Testament. That at the time of the doing thereof, the said Testator was upwards of the age of twenty-one years, and of sound disposing mind, memory, and understanding, so far as this deponent knows, and as he verily believes; that Woolsey A. Shepard and Peter J. McCoy, the other subscribing witnesses thereto, were present at the same time with this deponent, and that they and this deponent subscribed their names thereunto as the witnesses in the presence of the Testator and of each other, at the request of the said Testator.

GEORGE A. FERRIS

GEO. A. FERRIS

Sworn before me this twentieth day of November, A. D. 1926, at Elizabeth.

W. B. PARROT,
Deputy Surrogate.

Petition for Probate of Will

STATE OF NEW JERSEY, }
UNION COUNTY, } ss.:

William C. Squier, 3rd, of Greenwich, Connecticut; Frederick C. Squier, Jr., of 427 St. George Ave., Rahway, N. J.; Harold M. Searles, of 443 St. George Ave., Rahway, N. J., and Augustus S. Houghton, of 136 East 74th St., New York City, N. Y., the executors in the annexed writing named, being duly sworn, say that the annexed writing contains the true last will and Testament of Edwin M. Squier, the Testator therein named, deceased, as far as they know and they verily believe, that they will as the executors thereof, well and truly perform the same, first by paying the debts of said deceased, and then the legacies therein specified as far as the Goods, Chattels and Credits of said deceased will thereunto extend, and the law charges; that they will make and exhibit unto the Surrogates' Office of the County of Union a true and perfect inventory of all and singular the said Goods, Chattels and Credits, as far as the same have or shall come to their possession or knowledge, or to the possession of any other person or persons to their use, to their knowledge.

And that they will well and truly account when thereunto lawfully required, and that the said Testator died on the 9th day of November, A. D. 1926.

WILLIAM C. SQUIER, 3RD
FREDERICK C. SQUIER, JR.
HAROLD M. SEARLES
AUGUSTUS S. HOUGHTON

Sworn before me this 20th day of November, A. D. 1926, at Elizabeth. }

W. B. PARROT,
Deputy Surrogate.

Order for Probate.

(*Filed November* 20, 1926)

STATE OF NEW JERSEY,

SURROGATES' COURT OF UNION COUNTY.

In the Matter
of
The Last Will and Testament of
EDWIN M. SQUIER,
Deceased.

Application having been made to me by William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles and Augustus S. Houghton, for probate of the last will of Edwin M. Squier, late of Rahway, N. J., deceased, and letters testamentary thereon, and no caveat having been filed against admitting said will, and the depositions of Woolsey A. Shepard and George A. Ferris, two of the subscribing witnesses to the same having been duly taken, and it appearing to me upon such proofs that the will produced was duly executed according to law and that more than ten days have elapsed since the death of the testator.

It is, on this twentieth day of November, nineteen hundred and twenty-six, ordered and adjudged that the said will be and the same is hereby established as the last will and testament of said deceased, and that the same shall be and is admitted to probate, and that letters testamentary be issued thereon.

GEORGE H. JOHNSTON,
Surrogate.

Certificate of Surrogate.

STATE OF NEW JERSEY,
COUNTY OF UNION, } ss.:

I, Charles H. Johnston, Surrogate of the County of Union, do hereby certify the annexed to be a true copy of the last will and testament of Edwin M. Squier, late of the County of Union, deceased, and that William C. Squier, 3rd, of Greenwich, Connecticut; Frederick C. Squier, Jr., of 427 St. George Ave., Rahway, N. J.; Harold M. Searles, of 443 St. George Ave., Rahway, N. J., and Augustus S. Houghton, of 136 East 74th St., New York City, N. Y., the executors therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the estate of said testator agreeably to said will.

Witness my hand and seal of office, the twentieth day of November in the year of our Lord One thousand nine hundred and twenty-six.

[SEAL] GEORGE H. JOHNSTON,
Surrogate.

Certificate of Surrogate.

STATE OF NEW JERSEY,

UNION COUNTY SURROGATE'S COURT.

I, George H. Johnston, Surrogate and ex-officio Clerk of the Surrogate's Court of the County of Union and State of New Jersey, do hereby certify that I have compared the annexed copy of the Last Will and Testament of Edwin M. Squier, late of the County and State aforesaid, deceased; and the annexed copies of the application for probate, of the proofs, of the order of the Surrogate granting the probate of said Will and of the Letters Testamentary granted and issued thereon, with the records thereof, now remaining in this office, and have found the same to be a correct transcript thereof, and of the whole of such records. And I further certify that said letters as appears from our Records are now in full force and unrevoked.

Witness my hand and seal of office, this twenty-third day of November in the year of our Lord One thousand nine hundred and twenty-six.

[SEAL] GEORGE H. JOHNSTON,
Surrogate and Clerk of the
Surrogate's Court.

Decree Affirming Order of Surrogate.

(*Filed June* 12, 1928)

UNION COUNTY ORPHANS' COURT.

In the Matter of the Estate of EDWIN M. SQUIER, *Deceased.*	On appeal from probate of will by Surrogate.

Charles Burnham Squier, a nephew of Edwin M. Squier, late of the County of Union, deceased, having presented his petition of appeal from an order of the Surrogate of the County of Union, made on the 20th day of November, 1926, admitting to probate a certain paper writing purporting to be the last will and testament of the said Edwin M. Squier, deceased, and granting letters testamentary thereon to Augustus S. Houghton, Frederick C. Squier, Jr., William C. Squier, 3rd, and Harold M. Searles, executors therein named, and it appearing that citations were thereupon duly issued by the Surrogate of the County of Union to all persons concerned, to appear before this Court on the 15th day of June, 1927, at 1:30 o'clock in the afternoon on the hearing of said appeal and that said citations were duly served on or acknowledgment of service made for those to whom said citations were respectively directed, and the matter having been regularly adjourned from time to time and hearings having been had, and the court having taken testimony and heard the allegations of the parties herein and being satisfied that the said paper writing was duly executed by the said Edwin M. Squier on his last will and testament in man-

ner and form prescribed by the statute in such case made and provided, and that the said Edwin M. Squier at the time of making said will was of sound and disposing mind, memory and understanding, and that said will was not the product of undue influence, conspiracy or fraud.

It is thereupon on this twelfth day of June, 1928, ordered, adjudged and decreed that the aforesaid decree of the Surrogate of the County of Union, admitting to probate the said paper writing as and for the last will and testament of Edwin M. Squier, deceased, and directing that letters testamentary thereon issue to Augustus S. Houghton, Frederick C. Squier, Jr., William C. Squier, 3rd, and Harold M. Searles, the executors therein named, be, and the same is hereby in all things ratified and confirmed, and that the said paper writing is the last will and testament of the said Edwin M. Squier, deceased.

The fixing of all allowances is reserved for further order of this Court.

ALFRED A. STEIN,
Judge.

A true copy.

W. B. PARROT,
Deputy Surrogate of Union County, N. J.

Order Fixing Allowances.

(*Filed July* 6, 1928)

UNION COUNTY ORPHANS' COURT.

In the Matter of the Estate of EDWIN M. SQUIER, *Deceased.*	On appeal from probate of will by Surrogate.

This matter being opened to the Court by Edward Maxson, proctor for the contestant-appellant, and it appearing that upon the appeal to this Court from the order of the Surrogate admitting to probate a certain paper writing purporting to be the last will and testament of Edward M. Squier, deceased, a decree was entered, dated June 12, 1928, confirming the order of the said Surrogate of Union County, wherein the fixing of all allowances was reserved for the further order of this Court; and the Court being satisfied of the reasonableness of said appeal, and due consideration to the matter of allowances having been given; it is on this 6th day of July, 1928,

ORDERED, that there be allowed to the proctors for the parties in this cause, and to the Commissioner appointed by order of this Court, dated November 25, 1927, to take testimony of witnesses *de bene esse,* the folowing sums, as compensation in full for services, to wit: To Edward Maxson, Esq., proctor for Charles Burnham Squier, the contestant-appellant, the sum of Twenty-two thousand five hundred ($22,500) dollars, and the further sum of Fifteen hundred ($1500) dollars

for their reasonable disbursements; to Hyer & Armstrong, Esqrs., and George A. Torris, Esq., proctors for the proponents-respondents, the sum of Fifty-five thousand ($55,000) dollars and the further sum of Three hundred fifty ($350) for reasonable expenses; to Mark Townsend, Jr., Esq., Commissioner, the sum of One thousand ($1,000) dollars; and it is further

ORDERED, that the representatives of the Estate of the said Edwin M. Squier be, and they are hereby directed to make payment of the aforesaid sums from the funds of the said estate now in their hands.

ALFRED A. STEIN,
Judge.

Petition of Appeal to Prerogative Court.

(*Filed August* 8, 1928)

NEW JERSEY PREROGATIVE COURT.

In the Matter
of the
Estate of EDWIN M. SQUIER,
Deceased.

On Notice of Appeal from a Decree of the Orphans' Court of the County of Union, affirming the probate of a certain paper writing as the Last Will and Testament of Edwin M. Squier, deceased.

To the Ordinary of the State of New Jersey:

The petition of Charles Burnham Squier, of the City of New York, State of New York, respectfully shows:

1. Your petitioner is one of the next of kin and a legatee mentioned in a paper writing purporting to be the last will and testament of Edwin M. Squier, deceased, who died November 9, 1926, a resident of the City of Rahway, Union County, New Jersey.

2. On November 20, 1926, the Surrogates' Court of the County of Union made its order admitting said paper writing to probate as the last will and testament of the said Edwin M. Squier, deceased, and granting letters testamentary to William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles and Augustus S. Houghton, the executors named therein.

3. Your petitioner, Charles Burnham Squier, on May 19, 1927, filed in the Union County Surrogates' Court a petition of appeal, appealing to the Orphans' Court of Union County from the order of said Surrogate, admitting the paper writing to probate, and granting letters testamentary thereon. That subsequent and on December 24, 1927, said petition of appeal was amended and an amended petition of appeal filed in said court, appealing to the Orphans' Court of Union County from the order admitting the paper writing to probate as aforesaid, alleging therein:

> That at the time of the making and of the supposed execution of said paper writing, and for a long time prior thereto, the said Edwin M. Squier was of unsound mind and as such incapable of disposing of his said estate by will.
>
> That the said William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles, Augustus S. Houghton, Frederick C. Squier, Helen S. Keene, Carol S. Houghton, Katharine S. Montgomery, Elsie S. Edson, Hester S. Smiley, George A. Ferris, Peter J. McCoy and Woolsey A. Shepard unduly, illegally and fraudulently influenced the said Edwin M. Squier in respect to the making and supposed execution of the said paper writing.
>
> That the supposed execution of the said paper writing is illegal and insufficient under the laws of this State to constitute the same last will and testament of the said Edwin M. Squier, deceased, for that the said Edwin M.

Squier did not at the time of the supposed execution thereof publish and declare the said paper writing as and for his last will and testament in the presence of two witnesses, present at the same time, pursuant to the statute in such case made and provided.

That the said paper writing was not freely or voluntarily made or executed by Edwin M. Squier as his last will and testament, but that the said paper writing purporting to be his last will was obtained and procured as a result of a conspiracy on the part of William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles, Augustus S. Houghton, Frederick C. Squier, Helen S. Keene, Carol S. Houghton, Katharine S. Montgomery, Elsie S. Edson, Hester S. Smiley, George A. Ferris, Peter J. McCoy and Woolsey A. Shepard. That said persons, without the knowledge of Edwin M. Squier, connived, federated and conspired together in causing said paper writing to be signed, if in fact it was signed, by the said Edwin M. Squier. That without the knowledge of Edwin M. Squier said persons held divers meetings and concerted divers plans and unlawful designs in order to deceive and mislead Edwin M. Squier; that they conspired together unlawfully to get possession of the property and estate of Edwin M. Squier and in order to more effectually deceive and mislead Edwin M. Squier it was secretly agreed by and between the said persons that the said paper writing should be drawn and signed and executed by Edwin M. Squier, if in fact it was

signed and executed by him, and to present said paper writing for probate as his last will and testament.

That said paper writing was not freely or voluntarily made or executed by Edwin M. Squier, but said paper writing purporting to be his last will and testament was obtained and procured by the fraud practiced upon the said Edwin M. Squier by William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles, Augustus S. Houghton, Frederick C. Squier, Helen S. Keene, Carol S. Houghton, Katharine S. Montgomery, Elsie S. Edson, Hester S. Smiley, George A. Ferris, Peter J. McCoy and Woolsey A. Shepard.

That the said paper writing purporting to be the last will and testament of Edwin M. Squier was signed and executed under a mistake of fact by the said Edwin M. Squier, if in fact it was signed and executed.

and praying that the order of the Surrogate, and all proceedings thereon, might be reversed and set aside by the said Orphans' Court of the County of Union, and that the letters testamentary issued to William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles and Augustus S. Houghton might be revoked.

4. That such proceedings were had on said appeal; that the Orphans' Court of the County of Union did, on the 12th day of June, 1928, make an order adjudging and decreeing that the order of the Surrogate of the County of Union, admitting to probate the said paper writing as and for the

last will and testament of Edwin M. Squier, deceased, and directing that letters testamentary thereon issue to William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles and Augustus S. Houghton, the executors named therein, be in all things ratified and confirmed, which order was, on the 12th day of June, 1928, duly filed by the said Orphans' Court of the County of Union, in the office of the said Surrogate.

5. That in and by said last mentioned order or decree, it was specifically adjudged that the said paper writing is the last will and testament of the said Edwin M. Squier, deceased.

6. Your petitioner complains and alleges that the whole of the aforesaid order of the Orphans' Court of Union County, and the following parts thereof, are erroneous, illegal and improper, and that your petitioner is aggrieved thereby:

a. That part of said order which adjudges that the said paper writing was duly executed by the said Edwin M. Squier for his last will and testament in the manner and form prescribed by the statute in such case made and provided.

b. That part of said order or decree which adjudges that the said Edwin M. Squier at the time of making said alleged will was of sound and disposing mind, memory and understanding.

c. That part of said order which adjudges that said alleged will was not the product of undue influence, conspiracy or fraud.

d. That part of said order or decree which adjudges that the said order made by the Surrogate of Union County, dated November 20, 1926, admitting said paper writing to probate as and for the last will and testament of Edwin M. Squier, deceased, and directing that letters testamentary issue thereon to William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles and Augustus S. Houghton be ratified and confirmed.

e. The whole of said order or decree which adjudges that the said paper writing is the last will and testament of the said Edwin M. Squier, deceased; that it was executed in the manner and form provided by the statute; that the said Edwin M. Squier was of sound mind, memory and understanding at the time of its alleged execution; that it was not the product of undue influence, conspiracy or fraud; that it was not signed and executed under a mistake of fact, if in fact it was signed and executed.

7. Your petitioner therefore prays that the whole of the aforesaid order, and each and every part thereof, made by the Orphans' Court of Union County on June 12, 1928, and filed in the office of the Surrogate of the County of Union on June 12, 1928, be reversed by this Court.

Dated, Newark, N. J., July 19, 1928.

EDWARD MAXSON,
Proctor for and of Counsel with
Appellant-Contestant

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

EDWARD MAXSON, being duly sworn, according to law, on his oath, deposes and says: That he is the proctor and counsel for the petitioner, Charles Burnham Squier, named in the within petition of appeal, and that the matters therein contained are true.

EDWARD MAXSON.

Sworn and subscribed to before me, }
this 19th day of July, 1928. }

JOHN MILTON,
Master in Chancery of New Jersey.

Answer to Petition of Appeal.

(*Filed August* 22, 1928)

NEW JERSEY PREROGATIVE COURT.

In the Matter
of the
Estate of EDWIN M. SQUIER,
Deceased.

The answer of the respondents, Frederick C. Squier, Helen S. Keen, William C. Squier, 3rd, Carol S. Houghton, Catherine S. Montgomery, Elsie S. Edson, Hester S. Smiley, Frederick C. Squier, Jr., legatees and devisees under the last will and testament of the said Edwin M. Squier, deceased; William C. Squier, 3rd, Harold M. Searles and Augustus S. Houghton, as executors under the last will and testament of Edwin M. Squier, deceased.

These respondents answering the petition of Charles Burnham Squier say that:

1. The allegations of paragraphs 1, 2, 3, 4 and 5 are admitted.

2. The allegations of paragraph 6 are denied.

HYER & ARMSTRONG,
Proctors for and of Counsel
with the Respondents.

DEPOSITIONS DE BENE ESSE

UNION COUNTY ORPHANS' COURT

In the Matter
of the
Estate of Edwin M. Squier,
Deceased.

Transcript of shorthand notes of testimony taken in the above cause before Mark Townsend, Jr., Commissioner, at the office of Edward Maxson, 165 Broadway, New York City, on Monday, the 12th day of December, 1927, at the hour of ten o'clock in the forenoon.

Appearances:

Edward Maxson, Esq., for the Appellant; Frank Hendrick, Esq., of Counsel.

Frederick Hyer, Esq., of Hyer & Armstrong, for the Appellee.

George A. Ferris, Esq., of Ferris, Shepard, Joyce & McCoy, of Counsel with Mr. Hyer.

Mr. Van Brunt, of Larkin, Rathbone & Perry, for Mrs. Edson.

William A. Todd, Esq., and Mathew Shevlin, Esq., of Zabriskie, Sage, Gray & Todd, for Mrs. Montgomery.

Mr. Houghton of Ferris, Shepard, Joyce & McCoy: I might state that we have produced these

witnesses by arrangement with Mr. Maxson so as to avoid the necessity of going to the different states where they live, so we have agreed to produce them here.

Mr. Maxson: Your firm, Mr. Houghton is appearing——

Mr. Houghton: Fol all except Mrs. Edson.

WILLIAM C. SQUIER, being duly sworn on his oath, testifies as follows:

Direct Examination by Mr. Maxson:

Q. Where do you reside, Mr. Squier? A. Greenwich, Conn.

Q. And what is your address there? A. At the Maples.

Q. Hotel Maples? A. Yes.

Q. What was your relation to the testator, Edwin M. Squier? A. Nephew.

Q. And who were his other next of kin and heirs at law, if you know? A. His next of kin, you mean living at that time?

Q. Yes, at the time of his death? A. Frederick C. Squier was his only brother.

Q. There were other branches of the family interested in his estate? A. Yes.

Q. Who were they, please? A. The children of Stuart C. Squier.

Q. And how many were there—children of Stuart C. Squier? A. Six.

Q. Name them. A. Helen S. Keen, Caroline S. Houghton, Katherine S. Montgomery, Elsie S. Ed-

New Jersey State Library

son, Esther S. Smiley and William C. Squier, 3rd.

Q. Do you know where they reside? A. Yes.

Q. Give their residences. A. Mrs. Keen's is Greenwich, Conn., Dublin Road, Greenwich. Mrs. Houghton is 74th Street in New York City, I can't give the number. Mrs. Montgomery, I think it is 1001 Park Ave. Mrs. Edson, Mount Hill Road, Greenwich. Mrs. Smiley, Great Barrington, Mass. You have my address.

Q. How many brothers were there of Edwin M. Squier and what were their names? A. Stuart C. Squier, William C. Squier, 2nd, Charles B. Squier, Edwin M. Squier and Frederick C. Squier.

Q. How many of these brothers survived Edwin M. Squier? A. One.

Q. Was Edwin M. Squier married? A. No, sir.

Q. When did he die? A. In November, the early part of November, a year ago last November. I can't give the exact date. I think it was about the 6th.

Q. And when did he make this will which is now in controversy, do you know? A. I don't know, sir. I have seen the will but I can't give you the exact date. I think you have a record right there.

Q. Dated July 6? A. July was the period that I thought, sir.

Q. July 6, 1926? A. Yes, sir, that sounds correct.

Q. When did you first see it? A. When I went to Elizabeth—no before that—it was before that time. I can't give you the exact date. I should say it was some days after he died, some days after the funeral.

Q. Was that the first time that you had any information about his having made this will? A. Yes, sir.

Q. Did he have a previous will, do you know? A. I know nothing about it at all.

Q. Was the occasion when you just spoke of the first time that you knew anything of the contents of the will? A. I didn't know anything about it, no, sir.

Q. Until after it had been probated? A. No, sir, I did not.

Q. Were you one of the executors? A. Yes.

Q. Who were the others?

Mr. Ferris: I might suggest, Mr. Maxson, that you have incorporated your conclusion of the fact in your question. He testified it was some days after the death. In your last question you said after the probate. The witness did not say that he saw the will after the probate. He said he saw the will after the death.

(Last two questions and answers were read by stenographer.)

A. Mr. Houghton, Augustus S. Houghton, Harold Searles and Frederick C. Squier, Jr.

By Mr. Maxson:

Q. And what is Mr. Houghton's connection with the estate, if any? A. Connection with the estate?

Q. Strike that out. What is Mr. Houghton's connection with the Squier family? A. He married one of the—married one of my sisters.

Q. One of your sisters? A. That is the connection, sir.

Q. Mr. Searles? A. He married the daughter of Frederick C. Squier.

Q. Did all of these executors qualify? A. Yes.

Q. And are they still acting? A. No.

Q. Have any of them renounced? A. No.

Q. Then they are still acting, are they not? A. I think that is not clear to me. I am not up on law. When I say that they are not acting, they have been temporarily set aside.

Q. Under what conditions? A. Order of the court.

Q. I understand what you mean. Were they acting up to the time this contest began and administrators pendente lite were appointed by the Court? A. Yes, sir, they were.

Q. After the death and after you discovered that there was a will and that you were one of the executors, what did you do, if anything, with respect to the estate? A. Simply administered it as it should be done.

Q. And what did you do?

Mr. Ferris: I think that is certainly remote, Mr. Commissioner, what the executors did after the probate of the will can hardly have any relation whatever to the defenses that were interposed by Burnham C. Squier here. They all relate to what took place up to and preceding the death of Mr. Squier. I don't see what good purpose it would serve to inquire what these executors did as such after the probate of the will.

The Commissioner: I assume I have no power to rule on questions under our practice.

Mr. Ferris: I have looked up the New York practice and while it is true that the New York

courts are loathe to interfere with a deposition being taken in a foreign state, still where it is clear that matters have no relation to the subject matter concerning the issues that are raised by any pleadings, they will prevent the hearing.

Mr. Maxson: The practice here as I have known it for quite a good many years is to take the testimony unless counsel advises witnesses that they need not answer because of immateriality or some such thing. Of course if they do that the matter goes before the Supreme Court.

Mr. Ferris: I don't want to do that. I am perfectly willing to discuss it informally with counsel at any time because I don't want to delay the hearing. At the same time I am frank to say I don't see what materiality what the executors did as such can have to the issues raised here. If I can be enlightened on the subject, I would be glad.

The Commissioner: The rule is the commissioner has no power to rule on questions.

Mr. Ferris: So I am advised.

The Commissioner: If there is any objection, it has to be put up to the court to have them rule on it.

Mr. Ferris: I appreciate that. I am perfectly willing to have all questions asked that have even a remote bearing to the issues raised here but frankly I don't see what materiality that would have. If Mr. Maxson cares to indicate in what way it may be material, I am perfectly willing to reconsider my objection.

Mr. Maxson: I think the question is obviously material. Do you want me to argue the proposition?

Mr. Ferris: Off the record, if you can tell me how it is material, I will be perfectly willing to withdraw the objection. I don't want to appear contentious just for the sake of contending with you.

Mr. Maxson: I think it is material and I am going to press it unless——

Mr. Ferris: You don't care to indicate in what way it is material.

Mr. Maxson: It seems to me it is obviously material.

Mr. Ferris: If it is obviously material, I am dense.

Mr. Maxson: You gentlemen may all join in advising this witness not to answer. That is the practice, I think.

Mr. Van Brunt: I can't see any materiality.

Mr. Ferris: We have no difficulty. I may withdraw the objection. On the other hand, if we are going to have an accumulation of questions, we may as well have them passed upon.

Mr. Maxson: Now is the time to determine the question. It is a matter for you gentlemen to say whether you are going to advise this witness that this is immaterial and if it is, advise him not to answer.

Mr. Ferris: I press my objection to the question and urge as a ground that the question is addressed to conduct on the part of the witness that obviously took place long subsequent to the execution of the will and even subse-

quent to the death of the testator, and that the question asked is wholly immaterial and irrelevent and I advise the witness that he need not answer the question until directed to do so by some court of competent jurisdiction.

Mr. Maxson: He is advised not to answer.

Q. You refuse to answer under advice of counsel, Mr. Squier? A. I suppose that is the form. I am not familiar——

Q. Do you? A. Yes, sir.

Q. How soon after the probate of the will did you find out that you were one of the executors?

Mr. Ferris: I object to the question on the ground that it assumes a state of facts not testified to by the witness.

Mr. Maxson: I will withdraw it. That will save time.

Q. When did you first discover that you were an executor under this will? A. That would be a repetition of the question I answered.

Mr. Ferris: Please answer the question.

A. I should say a short time after his death, after the funeral.

By Mr. Maxson:

Q. How long? Can't you give it approximately? A. I am not very good on dates, sir.

Q. When did you qualify as executor? A. I can't give you that date either.

Q. How soon after the death of the testator? A. I could not even approximate that.

Q. Well, you did qualify? A. I did, sir.

Q. And after you qualified, what did you do with respect to the administration of the estate. What was the first thing you did?

Mr. Ferris: I make the same objection as heretofore. This relates to the acts and conduct of the witness long after the death and probate of the will and has no materiality or relevancy whatever and I advise the witness that he need not answer the question until passed upon by some court of competent jurisdiction.

By Mr. Maxson:

Q. You refuse to answer, Mr. Squier, under direction of counsel? A. Yes.

Q. After the will had been probated and all the executors had qualified, as you have testified that they did, did you have any meetings with respect to the administration of the estate.

Mr. Ferris: I object to that on the same grounds and I advise the witness the same way.

Mr. Maxson: Will you please ask the witness to say that he refuses to answer under the advice of counsel?

Mr. Ferris: That may be assumed.

Mr. Maxson: We are not assuming it. Then in each instance we will repeat it.

Mr. Ferris: It is unnecessary to repeat it unless you want to repeat it.

William C. Squier—For Appellant-Contestant—Direct

By Mr. Maxson:

Q. Do you refuse to answer under advice of counsel? A. I do.

Q. Who told you that you were an executor under the will? A. Mr. Houghton.

Q. And when did he tell you, that is, with respect to the death of the testator, was it before or after his death? A. After his death.

Q. Did he at the same time tell you who your co-executors were? A. Yes, sir.

Q. What did you do about taking over the estate?

Mr. Ferris: I object to that on the same ground as previously urged.

Q. You refuse to answer? A. I do.

Q. I am sorry to be obliged to ask you this over and over again. Did you take over the estate with the co-executors and administer it? A. I did, yes, sir.

Q. Where did you find the corpus of the estate?

Mr. Ferris: I object to that as wholly immaterial, incompetent and irrelevant.

By Mr. Maxson:

Q. You refuse to answer? A. I do, sir.

Mr. Maxson: Can't we have it on the record that wherever you advise the witness that the question is immaterial, that it is assumed that we ask this question.

Mr. Ferris: That is exactly my suggestion which you refuse to accept. I suggested that

very thing. Certainly I am perfectly willing to have it appear on the record that where counsel objects to a question and advises the witness not to answer the question, we waive the necessity of asking the witness if he refuses to answer.

The Commissioner: Where it appears that counsel has objected to a question, the witness will refuse to answer upon the advice of counsel.

Mr. Maxson: Wherever you interpose an objection, you are not going to have the answer go on the record.

Mr. Ferris: Can't until passed upon by the court.

By Mr. Maxson:

Q. What was the corpus of the estate?

Mr. Ferris: I make the same objection.

By Mr. Maxson:

Q. When did you first have a meeting with your co-executors after you and they qualified?

Mr. Ferris: I object to that on the same grounds and on the further ground that it incorporates a state of facts not testified by the witness.

By Mr. Maxson:

Q. Did you have a meeting with your co-executors after you had all qualified?

Mr. Ferris: I object to that on the same ground and advise the witness the same way. May it also appear on the record that where I make an objection, it is unnecessary to state on the record that I advise the witness not to answer. That saves time also.

By Mr. Maxson:

Q. Did you have meetings with your co-executors in connection with the administration of the estate?

Mr. Ferris: Same objection.

By Mr. Maxson:

Q. Did you take over any property in the state of New York belonging to this estate?

Mr. Ferris: Object to that as immaterial, incompetent and irrelevant.

By Mr. Maxson:

Q. If so, where did you find the property, in whose custody?

Mr. Ferris: Object to that especially in view of an action brought by Burnham Squier in the State of New York which is now pending, as it appears obviously that this is an attempt to secure under guise of this commission documents to be used in the action pending in New York state.

By Mr. Maxson:

Q. If you had such a meeting with your executors, did you discuss a plan under which you would take possession of the estate?

Mr. Ferris: Same objection.

Q. And if you did discuss such a plan, where did you find the corpus of the estate, in the State of New Jersey or in New York or in both states?

Mr. Ferris: I object to that.

Mr. Maxson: You might expedite this a little by letting me finish my questions.

Mr. Ferris: I am expediting it by making my objections as promptly as possible.

By Mr. Maxson:

Q. When did you last see Mr. Edwin Squier, the testator? A. At the wedding on New Year's Day of my sister, Mrs. Houghton's daughter Caroline. If I am correct, that was two years last January.

(By some lady in the room) next January.

No it would be two years this coming January.

Q. And where? A. In New York City in the 74th Street home.

Q. At that time you did not know that he made a will or that you were an executor under it if he had made one? A. No, sir.

Q. I think you have testified that you don't know whether he made a will previous to this one now in this controversy? A. No, sir.

Q. When did you first see the will? Think you have testified two or three days after the testator's death. A. Think I have testified two or three times this morning regarding that.

Q. Who showed it to you? A. Mr. Houghton. I testified to that, I think.

Q. And where? A. I think that was in my mother's home in Greenwich. I think that is right.

Q. And did he ask you to come there to see it? A. No.

Q. Did you have some conversation with Mr. Houghton on that occasion?

Mr. Ferris: Just answer yes or no.

A. Yes.

By Mr. Maxson:

Q. I mean with respect to this document which we are discussing. A. Naturally.

Q. What was the conversation?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant.

By Mr. Maxson:

Q. Did Mr. Houghton have the will with him at that time? A. Yes, I should say—may I stop there a moment,—a copy, a copy of the will.

Q. How do you know it was a copy? A. Because there were no signatures, simply typed in signatures.

Q. Did you make any inquiry from him as to where the will had been from the time it was executed? A. No.

Q. Do you know where it had been, in whose custody? A. No.

Q. What was the corpus of the estate?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant.

By Mr. Maxson:

Q. You testified, didn't you, that you did have a conversation with Mr. Houghton about this will when he produced the copy? A. Yes, sir.

Q. I ask you again to give the conversation.

Mr. Ferris: I again object.

Q. Do you remember after the death of your grandmother, Katherine C. Squier, the reading of her will at her residence? A. Do I remember?

Q. Do you remember that her will was read? A. Yes, sir, I do.

Q. Who were present? A. That would be a very hard question to answer.

Mr. Ferris: May I inquire as to the date of that, Mr. Maxson?

Mr. Maxson: I don't remember the date.

By Mr. Maxson:

Q. You don't remember who was present? A. I should say that most of the family.

Q. Give the names of those whom you do remember?

Mr. Ferris: I have just been informed that this occurrence took place in 1913, some 14

years ago. I therefore object to that line of examination as to who was present at the reading of that will as being immaterial and too remote.

By Mr. Maxson:

Q. Did you have anything to do with the administration of your grandmother, Katherine C. Squier's estate?

Mr. Ferris: Yes, or no, please.

A. No.

By Mr. Maxson:

Q. Who were her executors? A. Stuart C. Squier, Edwin M. Squier and Frederick C. Squier.

Q. How is Stuart C. Squier related to you? A. My father.

Q. Did he qualify as executor under that will? A. Yes, sir.

Q. Did he act? A. Yes, sir.

Q. Is he still living? A. No, sir.

Q. When did he die? A. On the 2nd of November, 1926.

Q. And up to the 2nd of November, 1926, did he continue to act as executor of Katherine C. Squier's estate? A. He did not.

Q. Somebody substituted in his place? A. Yes.

Q. Who? A. Mr. Houghton.

Q. Haven't you confused the will of your grandfather, William C. Squier with that of your grandmother, Katherine C. Squier, in answering that question? A. No.

Q. Who were the executors under the will of William C. Squier, your grandfather? A. The same, I think, sir.

Q. And did they all qualify? A. Yes.

Q. All act? A. Yes.

Q. For how long? A. I don't know.

Q. Were you finally substituted in place of your father as executor under that will? A. No.

Q. Did he act as executor up to the time of his death under that will? A. No.

Q. Who was substituted in his place? A. Mr. Houghton.

Q. Then Mr. Houghton was substituted as executor under both those wills, that of William C. Squier, your grandfather, and Katherine C. Squier, your grandmother? A. Yes.

Q. Do you remember when? A. No, sir.

Q. How long ago? A. I don't know.

Q. Can't you say approximately? A. I don't think I could, sir.

Q. When did you take over your father's duties under those two wills? A. I didn't. I didn't take them over.

Q. Didn't you have a power of attorney from your father to act for him as attorney in fact? A. Yes.

Q. When was that executed? A. I can't tell you.

Q. How many years ago, approximately? A. I wouldn't want to guess.

Q. Give us the best guess you can make. Was it 1909, 10, 11, 12? A. No, sir, I wouldn't care to guess.

Q. Was it ten years ago? A. I don't think we will get anywheres that way for I can't give you the date.

Q. Can you tell me whether it was one year or ten years? A. Over ten, I should say.

Q. How frequently did you see your uncle, Edwin M. Squier, prior to his decease? A. I have mentioned one date that was that wedding. Prior to that time, I think, was when he broke his leg. If anybody can fill in those dates or help me, I would be very glad to give you that. It was very seldom, I might add that.

Q. I assume that you saw him after he broke his leg at his residence in Rahway? A. Yes, sir, he was in bed at the time.

Q. How long was that, approximately, before the occasion you spoke of in New York when you saw him? A. Two or three years: I might say that is only a guess.

Q. Did you have any connection personally with Mr. Houghton's office? I mean did you have an office there? A. No, sir.

Q. Your uncle, Edwin M. Squier, did, did he not? A. Yes, sir.

Q. Did you see him down there at any time? A. Yes.

Q. When was the last time? A. I can't tell you. It would be prior to the time he broke his leg, quite a little, I should think.

Q. How frequently did you see him down there? A. Possibly once every three or four or five years.

Q. Did you correspond with him? A. No, sir.

Q. Did you talk to him over the telephone? A. No.

Q. You had no communication with him directly or indirectly during that four or five years? A. I should say, no.

Q. Did you have no family gatherings that he attended with the exception of the one that you speak of up in the Seventys in New York? A. No.

Q. Your father, Stuart C. Squier, lived in Europe for some years before his death? A. Lived in Europe?

Q. Yes? A. No, sir.

Q. Where did he live? A. Isn't that rather a broad question?

Q. Yes, he may have moved. Where did he live at the time of his death? A. Connecticut, Greenwich.

Q. Was his will probated in Connecticut? A. It was a trust. All his affairs were in trust for——

Q. He did not leave a will? A. No, sir.

Q. How long since the trust was established?

Mr. Ferris: You mean preceding his death, don't you, Mr. Maxson?

Mr. Maxson: Yes.

A. In 1919.

By Mr. Maxson:

Q. And he died in 1926? A. Yes, sir.

Q. Where is the trust deed, do you know? A. Where is what?

Q. Do you know where the trust deed is of your father's estate?

Mr. Ferris: You don't understand the question.

By Mr. Maxson:

Q. Have you it in your possession, is it filed or is it in the possession of an attorney? A. I have it in my possession.

Q. Who drew it, do you know? A. Mr. Lockwood, Vincent Lockwood. That is Lockwood here in this building. I think you know the firm.

Q. Did your father, Stuart C. Squier, see the testator from time to time in the latter part of his life, do you know?

Mr. Ferris: That is, if you know.

A. I don't quite get that. I should be up a little on the law probably.

By Mr. Maxson:

Q. Did your father and Edwin M. Squier meet more or less frequently during the latter part of their lives? A. No.

Q. How often did they see each other, that is, as far as you know, of course? A. Oh, I should say ten years between meetings.

Q. Had they any business connection? A. My father was retired from business.

Q. Were they stockholders or directors of any corporation together?

Mr. Ferris: I have no objection to directors, Mr. Maxson, but I certainly do object to stockholders.

Mr. Maxson: All right, I will sever the question.

Q. Were they stockholders of any corporation together?

Mr. Ferris: I object to that.

By Mr. Maxson:

Q. Were they directors of any corporation?

Mr. Ferris: You can answer that.

A. No.

By Mr. Maxson:

Q. As far as your recollection goes for ten years before the death of your father and Edwin M. Squier they hadn't met? A. It would not be proper for me to ask anyone a question here as to the date my oldest daughter was married. Would that be proper? Would it help you any?

Q. Answer the question, if you will please, was that the last time that they met? A. Yes, I should say so. If you would like to have me make a guess, I should say that was between seven and eight years ago as near as I can figure it.

Q. When was the last time before that, if you know? A. I wouldn't want to try to guess.

Q. And during all that period your father lived in Greenwich, Conn., and Edwin M. Squier lived in Rahway, New Jersey? A. During all what period, sir?

Q. During all the period from the time they last met down to the date of their death? A. Yes, sir.

Q. Did your father come to New York? Was he actively engaged in business in New York? A. During what period, sir?

Q. During that period? A. No, sir.

Q. Was Edwin M. Squier engaged in business in New York, if you know? A. Yes, sir.

Q. Do you know how frequently he came to business? A. I should say—you are referring to what period, sir?

Q. Same period, this eight or ten year period? A. Not being in touch with him, again I would have to guess. All I know in regard to that would be hearsay. I know that he was active from being told so.

Q. Did you know where his office was in New York? A. Yes, sir.

Q. Did your father know? A. Yes, sir.

Q. Was there any difficulty between you and your branch of the family and the Edwin M. Squier branch? A. No, sir.

Q. Frederick C. Squier branch? A. No.

Q. Any of the other branches? A. No.

Q. Then there was no reason why during those ten years, although you were living within easy access of each other, that you did not meet? A. I might answer that question by saying that we were all Squiers and that simply meant that we weren't great callers and never were.

Q. Didn't you have any family gathering at Christmas time or Thanksgiving time? A. You refer to the immediate family?

Q. I refer to the whole family? A. We had gatherings of the immediate family, that is Stuart C. Squier's children and grandchildren.

Q. Branches of the family but not of the whole family? A. No.

Q. Did you ever have a gathering of the whole family that you remember? A. Not that I know of and I couldn't imagine where the occasion would arise for such a thing.

Q. On the occasion of the reading of your grandmother's will practically the whole family were present, were they not? A. My guess would be yes.

Q. Was your father there at that time, if you remember? A. Yes.

Q. Do you remember the reading of the will? A. Yes, I do. When I say that, I remember that there was a will read.

Q. Who read it?

Mr. Ferris: I object to that as immaterial.

By Mr. Maxson:

Q. Do you remember at that time that Mr. Houghton read the will and made some explanation of its contents.

By Mr. Ferris: I object to that as immaterial.

Q. And that Mr. Houghton's explanation was to a certain extent directed toward the contestant of this will?

Mr. Ferris: I object to that.

Q. And that Mr. Houghton's explanation at the time of the reading of your grandmother's will had to do with the disposition of the property of the Edwin M. Squier estate.

Mr. Ferris: I object to that on the same grounds and I would like to have put on the record the fact that these questions are asked obviously not for the purpose of this proceeding but for the purpose of an action now pending in New York State.

Mr. Maxson: We are quite willing to concede that. We are contesting this will and want to get at the facts with relation to the execution and the circumstances that led up to it. We are not concerned with the New York case. It is not in aid of the New York case. I am not a party to that suit. I haven't anything to do with it.

Mr. Ferris: We heard what you said first.

Mr. Maxson: It evidently affords a lot of amusement to your friends so I am glad. Please say that as far as I am concerned personally I have nothing to do with any New York litigation,—I am concerned only with the New Jersey litigation,—and that none of my questions are addressed for the purpose of getting information to assist it.

Mr. Ferris: Well, I notice that Mr. Hendrick is suggesting a great many questions. I suppose I ought to refer that to him.

Mr. Hendrick: If Mr. Maxson will state for the record that it would be within his power to serve a summons and complaint and all sorts of papers on the persons here present and he refrained from doing so because he will not take advantage of anything that occurs here in the New York case. Has no purpose whatsoever in doing it.

Mr. Ferris: Mr. Hendrick should be a good enough lawyer to know that all persons here present are exempted from any service of process.

Mr. Hendrick: They came voluntarily. They are here because they wanted to be here.

Mr. Ferris: Let us not go into any further colloquy.

Mr. Maxson: With respect to the other witnesses here present, will counsel say whether the same objections are going to obtain and whether the same directions are going to be given.

Mr. Ferris: That is impossible for counsel to state. I don't know what questions you are going to ask.

Mr. Maxson: The same questions.

Mr. Ferris: You mean the series of questions as to what transpired on the reading of some will back in '13?

Mr. Maxson: Yes.

Mr. Ferris: I will object to that.

Mr. Maxson: Wherever it is connected as it was, with this estate. Do you know anything about the affidavits interposed in these proceedings?

Mr. Ferris: In which action?

Mr. Maxson: In all of them. It doesn't make any difference where they have been interposed. These people all know something about the circumstances.

Mr. Ferris: You mean the New York Court actions?

Mr. Maxson: I don't know where the affidavits came from. I have copies of affidavits.

Mr. Ferris: I don't know what affidavits you are referring to.

Mr. Maxson: I suppose I am entitled to assume they are true and made by people connected with this transaction.

Mr. Ferris: That is a safe assumption.

Mr. Maxson : I am going to ask that this matter be continued now until it is determined whether or not these questions are material. We will go before the Supreme Court and have it determined.

Mr. Ferris: I suggest, Mr. Maxson, that to save the trouble and labor of making repeated trips to Special Term Part 2 of the Supreme Court, that you finish the direct examination of this witness and then we have all questions submitted to the Judge at the same time and then we will answer them pursuant to his direction.

Mr. Maxson: I am assuming that where we get a direction relating to the materiality that you won't advise the witness not to answer.

Mr. Ferris: I am not in the habit of advising any one to do that.

Mr. Maxson: We can test these questions out and find out what is material and what is not and then go ahead with this examination. I don't purpose to ask questions in this futile sort of way.

Mr. Ferris: Have you finished the various lines of examination?

Mr. Maxson: No.

Mr. Ferris: Then I suggest you finish it.

Mr. Maxson: I don't purpose to. I want to lay a foundation for certain testimony so that I can connect it up. You have blocked that up by directing your witness not to answer. Now we will find out whether this testimony is material by an application to the New York Supreme Court.

Mr. Ferris: Now it is ten minutes to twelve. I have no objection to go up there now.

Mr. Maxson: Before whom do you propose to appear?

Mr. Ferris: Special Term Part 2 New York County. That is ex parte business.

Mr. Maxson: Do you think you would get in?

Mr. Ferris: Yes.

Mr. Maxson: All right if you think you can get in before whoever is sitting.

Mr. Ferris: Let us go right up to the court.

Mr. Maxson: You gentlemen arrange to get in.

Mr. Ferris: You just go right up there.

Mr. Maxson: I am not going up unless we make some arrangements.

Mr. Van Brunt: Not necessary to make arrangements.

Mr. Ferris: Since counsel states that he will not proceed with the further direct examination of the witness now on the stand until a ruling has been received from the Court with relation to the questions objected to, which in my judgment is not the course to pursue, I stand ready to proceed at once with coun-

sel and the stenographer to the Judge sitting in Special Term Part 2 of the Supreme Court, New York County, and there have the questions objected to read to the Judge and obtain his ruling thereon and then I am willing to immediately return here and proceed with this examination until it is completed.

Mr. Maxson: All right.

The Commissioner: Can you finish your examination on all matters except those that relate——

Mr. Ferris: That is what I suggested, Mr. Commissioner, but counsel is unwilling to do that. I am sorry.

Mr. Maxson: We have two witnesses under subpoena who are coming here this afternoon at three o'clock.

Mr. Ferris: I am perfectly willing to suspend the testimony of this witness and put on any other witness. I want to facilitate it.

Mr. Maxson: I don't want to do that. I want to facilitate it also and I don't want to appear captious, but I want to find out how far we can go ahead in these examinations before I go ahead.

Mr. Ferris: Now another thing, Mr. Maxson, may I put this statement on the record. Mrs. Smiley is here from Great Barrington, Mass. The other witnesses here for the purpose of this hearing live in Connecticut adjacent. They can go back and come again, if necessary. It will be a great convenience to Mrs. Smiley if you will examine her out of her order so that she may be disposed of and permitted to go back to Mass.

Mr. Maxson: You will produce them again? I don't want to inconvenience the ladies at Christmas time or any other time.

Mr. Ferris: I may say, Mr. Maxson, for your information that I have been up there a thousand times on similar situations. That is what Special Term Part 2 is for. You just drop in there and take your chances and you wait 10 or 15 minutes. If you get there before one, you can get the matter disposed of. If not, you will have to wait until after two.

Do you want to put Mrs. Smiley on?

Mr. Maxson: No, I don't purpose to put any witnesses on until we get a ruling.

Mr. Ferris: We might adjourn until two. These witnesses might just as well go to lunch.

Adjourned until two p. m.

Counsel for both sides then appear before Justice Crain of the New York Supreme Court.

(Introductory remarks by Mr. Ferris before stenographer reached a chair.)

Mr. Ferris: I think it well to also advise your Honor that an action was instituted in the State of New York in a large measure based upon the will of one of the parents of the deceased that was filed for probate in 1913. That action is pending here. Now counsel for the objectors to the will has asked certain questions, which, practically speaking, follow

two lines. One is as to the conduct of the executors under the will contested in New Jersey subsequent to their qualifying, and the other is in relation to what transpired at or about the time of the probate of the will of one of the parents of the deceased in 1913. Now obviously, and I don't think it could be contended otherwise, the last series of questions are an effort to secure evidence under the guise of this proceeding for the proceeding in New York and I have objected to those, and the others and also for the same design and I have objected to those. They follow these two definite lines, and we appear before your Honor to ask that you rule on same.

The Justice: I can hear you better, perhaps if the statement made by Mr. Ferris is supplemented by the reading of the questions.

Mr. Maxson: I want to ask whether your Honor has jurisdiction in this situation.

The Justice: I assume that I have.

Mr. Maxson: We want to know how after we have your Honor's ruling, we could have this matter reviewed. That is one of the things that we are somewhat disturbed about.

The Justice: I may not have jurisdiction. The proceeding is in New Jersey?

Mr. Maxson: The proceeding is in New Jersey.

Mr. Ferris: The proceeding is in New Jersey and depositions to take testimony here. Your Honor has jurisdiction because the court provides the method of taking depositions out of a foreign state and all the states have prac-

tically the same provisions. In other words, your Honor has power to enforce the appearance of witnesses under subpoena to testify in such proceeding, and may punish them in such proceeding for contempt of court.

The Justice: That involves my right to pass upon the propriety of the questions——

Mr. Ferris: I am frank to state to your Honor——

The Justice: How would my rulings be reviewed?

Mr. Ferris: Reviewed in the proceeding in New Jersey. I might state frankly to your Honor it is only such questions that are obviously improper. In other words the courts here do not rule with the same degree of strictness as in a proceeding that was instituted here. I feel that the line of questions that I have objected to overstep those bounds.

Mr. Maxson: He is in error in saying that this is a proceeding to take testimony in New York. It is a commission issued to a New Jersey commissioner or special master of the Court of Chancery to take testimony any where, an open commission. Some of these witnesses come from Massachusetts, and some from Connecticut. The instant witness whose testimony is here objected to comes from the State of Connecticut. Counsel says that we may review your Honor's ruling in the Orphan's Court, in the Prerogative Court of New Jersey. That would be futile. The witnesses are out of the jurisdiction of that court and can't be called upon to answer questions. They have submitted themselves voluntarily and are

not here under a subpoena issued by your Honor under the Evidence Act.

The Justice: Will you kindly turn to the section of the Civil Practice Act which gives me jurisdiction.

Mr. Ferris: They are included in sections 310, if your Honor please, to 312 inclusive.

The Justice: If you will hand it to me I will read it.

I would say, offhand, that you ask the witness practically anything but you should make your appropriate objection and the witness would make answer and then afterwards those objections would come before the Court in New Jersey and be either sustained or overruled as the case might be.

Mr. Ferris: I agree with your Honor, practically speaking, but it seems to me that where witnesses are residents of this State, and five of these witnesses are, this Court would have power to rule on the questions where they are of such a character as to be clearly outside the proper limits of inquiry.

The Justice: The witness may refuse to answer.

Mr. Ferris: Under advice of counsel, that is true.

The Justice: The witness may refuse to answer. It would be within my power to determine whether that was in the nature of a contempt.

Mr. Ferris: That is exactly the situation here because we have advised the witness not to answer and the witness has refused to

answer on the advice of counsel. I think it is quite clear that your Honor has jurisdiction to pass upon the matter. I agree with you that it is only in such flagrant cases where the questions have no relation whatever to the inquiry that your Honor may rule that they are outside the proper limits of inquiry and I consider the two lines of questions asked here to be those kind of questions that your Honor has the right to rule on, so wholly outside the issues.

The Justice: I don't think that I have a right in what might be called the restrictive or technical sense to rule on the admissibility of the evidence. I think that I have the right to pass on the questions as to whether under all the circumstances the witness is to be deemed in contempt. Your objections to the evidence must be taken in New Jersey and they will be passed upon by the Judge trying the case.

Mr. Ferris: Then, perhaps, we are before your Honor in the nature of an effort, to put it this way, in order for your Honor to pass upon the question as to whether the witness is in contempt for failing to answer the question. You must, perhaps, in so deciding rule on the materiality and relevancy of the questions which the witness refuses to answer.

The Justice: The question whether the witness is in contempt is in part dependent upon the circumstances under which the witness declines to make an answer.

Mr. Maxson: Our practical difficulty, may it please your Honor, we have a roving commission in New Jersey——

The Justice: It is too bad that you are not before the Court on written interrogatories.

Mr. Maxson: No process has been issued out of the New York Supreme Court with respect to this proceeding and neither is this matter directed to an officer of the New York Supreme Court as it might have been; but we, in order to facilitate our proceeding, wanted to have one officer take all the testimony and go from one state to another as he has the power to do under the New Jersey Statute. And then my adversary said, "We will save you the trouble of going to Massachusetts and Connecticut, we will produce the witnesses in New York."

The Justice: Did this Court issue the subpoena?

Mr. Maxson: We have no subpoena. They are produced voluntarily.

Mr. Ferris: We produced them voluntarily, not requiring my adversary to issue any subpoena. They have submitted themselves to the jurisdiction of this Court and certainly as to five of those witnesses they are residents of the State of New York and this Court has jurisdiction.

The Justice: I can't take any action at all in the absence of subpoena; predicated entirely on the issuance of a subpoena and the attitude of the witness in the light of the process of the Court.

Mr. Ferris: That is true so far as contempt proceedings are concerned. I don't think your Honor would unless a subpoena was issued.

That would be fatal, but it would seem to me that under the decisions that your Honor has before you——

The Justice: I should say offhand that it would be a matter of practical advantage to all of you gentlemen were I to indicate my opinion as to the impropriety of the questions so as to perhaps guide you but I am clear that I have not any authority in the matter.

Mr. Maxson: We would be glad, of course, if your Honor would assume that burden and it is some burden because this is an extended proceeding and we would be back here frequently I am afraid and I know what your Honor has to do.

The Justice: All you can do is when the question is put——

Mr. Ferris: Advise the witness not to answer.

The Justice: Advise the witness not to answer or make objections and they will resort then, undoubtedly, to subpoenas. Then I would have the power to determine in a roundabout way——

Mr. Townsend: May I suggest, if the Court please, if it agreeable that we go over to Judge Stein this afternoon and have these things ruled on.

Mr. Ferris: I am perfectly willing to do this. I want a ruling on the merits of the case. I am perfectly willing to have you proceed with the examination of these other witnesses who are here for that purpose. I have already indicated that there are only two lines so far

concerning which I would raise any objections. As to all them, we can, before we suspend the case, go before Judge Stein because ultimately he is to pass upon them. That suggestion is perfectly satisfactory.

Mr. Townsend: Doesn't that mean you will have to bring your witnesses back again?

Mr. Maxson: Why take Judge Crain's time?

Mr. Ferris: Judge Crain has so kindly made a suggestion.

Afternoon session continues at 2:30 P. M.

Mr. Maxson: Mr. Hyer and Mr. Houghton, we have made up our minds under the direction of the Court in New York to go to New Jersey to have these questions passed upon. I am not going on with this examination until I get some determination as to the scope of this inquiry. I will go over there just as soon as I can make an appointment with Judge Stein.

Mr. Ferris: Personally, of course, I think you ought to proceed along other lines with other witnesses. I don't want to waste time and I don't want to cause any delay. Suppose you take on the witness from Massachusetts now. I apprehend you won't ask the same line of questions from her. We don't think she is one that had anything to do with the situation you have asked about. Then I will be very glad to go with you or with Mr. Hyer and

Mr. Hendrick before Judge Stein and get a ruling.

Mr. Maxson: I don't see how I can do that. I would like to.

Mr. Ferris: Why not? The lady is here from Massachusetts.

By Mr. Maxson: She goes back and forth, doesn't she?

Mr. Ferris: She does not go back and forth.

Mr. Maxson: I don't want to inconvenience her. We will suit her convenience again.

Mr. Ferris: She came on especially for this purpose. She doesn't come back and forth to New York. I see no reason why you can't proceed with her.

Mr. Maxson: I would like very much to do that but after talking it over with my associates, I don't see how I can. I have got to know what the scope of this inquiry is. We will get in the same impasse that we were in this morning. I am going to ask the same line of questions from each witness.

Mr. Ferris: That particular witness knows nothing at all about the line of questions that you questioned Mr. Squier about and knowing that she knows nothing, I may not object to the questions being asked of her, because all that you can elicit from her in response is the answer "I don't know." I think we ought to go on with this deposition.

Mr. Maxson: We will go up to Massachusetts at some convenient time and take the lady's testimony up there so she won't be put to the inconvenience of coming down to New York. I can't go on with this this afternoon.

Mr. Ferris: Let us call a spade a spade. If you don't want to examine this witness who has come here from Massachusetts and who is present to be examined, it appears quite obvious to me that your refusal to examine her is in order to delay and to defer the trial of these issues. I formally tender Mrs. Smiley of Great Barrington, Mass., who has come here especially to be examined before trial under a stipulation that was made before Mr. Justice Stein in the Orphan's Court in New Jersey. Mrs. Smiley you are here in Court now?

Mrs. Smiley: Yes.

Mr. Ferris: You are ready to testify, are you not?

Mrs. Smiley: Yes.

Mr. Ferris: Her answer is yes to both questions.

Mr. Maxson: You now have it on the record.

Mr. Ferris: You mean that you decline to examine her.

Mr. Maxson: Yes.

Mr. Ferris: I make the same tender with reference to the other witnesses. Give me their names, please?

(By a voice) Mrs. Helen S. Keen of Greenwich, Conn., Mrs. Elsie S. Edson of Greenwich, Conn.

By Mr. Ferris: I make the same formal tender as to those two witnesses and offer them now for examination and we stand ready to proceed with this examination until five or six o'clock this evening and to adjourn from day to day.

Mr. Maxson: Very well.

Mr. Ferris: Now I offer Mr. Squier, the witness who is on the stand, for further examination as to any other questions that you desire to ask of him, excepting on the lines objected to.

Mr. Maxson: I am wondering if you are willing to suggest what lines you will permit me to ask.

Mr. Ferris: I am perfectly willing to.

Mr. Maxson: Go ahead.

Mr. Ferris: I have objected to two lines of inquiry directed by Mr. Maxson to Mr. Squier, one relating to conversations and acts on his part that occurred subsequent to the death and the first probate of the will of the deceased. I take the position and have taken the position that no such testimony can have any materiality or relevancy to the issues raised by the pleading interposed by Burnham C. Squier or C. Burnham Squier.

Mr. Maxson: Not even on the ground of undue influence?

Mr. Ferris: Yes, not even on the ground of undue influence because it does not take any great legal mind to determine that you can't influence the mind of a man who is already deceased.

The other line of questions that I objected to and will object to are questions relating to the will or wills of William C. Squier and Katherine C. Squier as obviously and by an admission of the examining counsel, which he later withdrew, those questions were directed

to elicit testimony not relating to the instant case but relating to an action instituted in New York Sate and which is now pending. I will vigorously oppose inquiry on either of those lines on the grounds stated.

Mr. Maxson: I thought you arose to tell us what lines of testimony you would not object to.

Mr. Ferris: No line of testimony that has any bearing to the issues raised in the instant examination. I have answered that; now we are ready to proceed with the examination.

Mr. Maxson: We have nothing further to say except that we tender ourselves ready to go where they live or anywhere in the neighborhood where they wish to appear. Outside of that I have nothing to add.

Mr. Ferris: You refuse to proceed now with this examination.

Mr. Maxson: I do.

Mr. Houghton: You want to fix the time to go before Judge Stein.

Mr. Ferris: I think we had better consult the convenience of Judge Stein.

Mr. Maxson: I thought we might do that right now.

(Instructions issued to stenographer to get Judge Stein on the telephone and advice is received that he is out but will call on his return.)

Mr. Ferris: Judge Stein may make a suggestion that may cause you to change your mind, Mr. Maxson, and proceed with the examination.

Mr. Ferris: I don't notice the other two witnesses who are mentioned in the stipulation, Miss Martin and I think Mrs. Ayres, who are to be examined. Are they available?

Mr. Maxson: Mentioned in what stipulation?

Mr. Ferris: As witnesses to be examined.

Mr. Maxson: They were named in the notice for examination.

Mr. Ferris: We might perhaps proceed with them.

Mr. Maxson: Suppose we do when they come. They are here under subpoena, not under a stipulation.

Mr. Ferris: Were they here this morning?

Mr. Maxson: I don't think so. I haven't seen them.

(Here follows telephone conversation with Judge Stein in which Wednesday morning at 11:00 A. M. is agreed upon as the time to appear before him in Elizabeth, N. J.

Mr. Ferris: I understand that the two witnesses, Miss Martin and Mrs. Ayres, are now here. They are witnesses that you have under subpoena. I am perfectly willing to proceed with them.

Mr. Maxson: We are going to do that. That is what we called them for.

Don't you want to fixe some date of adjournment or do you want to leave that until Wednesday.

Mr. Ferris: I think we had better fix it then.

Mr. Maxson: Off the record——

Mr. Ferris: Take it down, Mr. Stenographer.

Mr. Maxson: I really don't want to harass you in any respect. We want to make it as convenient for you as possible, but I feel my duty to my client indicates that I should not go on with this examination until we find out what the scope of the inquiry is going to be. We are perfectly willing to come up anywhere you wish in your neighborhood so that you will not be inconvenienced by coming back to New York.

The Commissioner: It is understood that the date of adjournment is to be fixed on Wednesday morning.

Mr. Ferris: After we have conferred with Judge Stein.

The Commissioner: And the witnesses will appear on the new date set.

Mr. Ferris: Depending, of course, upon what we agree upon.

The Commissioner: So far as Mr. Squier is concerned.

Mr. Ferris: He will be produced.

The Commissioner: Mr. Squier will appear on the date to which this is adjourned.

Mr. Ferris: These witnesses I will produce voluntarily.

The Commissioner: My inquiry is directed to Mr. Squier.

Mr. Ferris: That is, of course, if the inquiry is extended beyond—when are you going to California?

The Witness: December 27.

Mr. Ferris: I will want his examination finished before he leaves.

Mr. Maxson: I think we can do that.

MRS. J. MARTIN AYRES, being called and sworn, testified as follows:

Direct Examination by Mr. Maxson:

Q. Where do you reside, Mrs. Ayres? A. In New York.

Q. Will you give us your address? A. 125 East 72nd Street, Manhattan.

Q. Mrs. Ayres, did you know Edwin M. Squier in his lifetime? A. I did.

Q. And for how many years did you know him before his death, approximately? A. Well, I have known him since I was a young girl. I suppose 18 or 19.

Q. When did you last see him? A. I am not positive of the date, but I think it was last July, a year ago last July.

Q. Will you state under what circumstances you saw him? A. My sister and I were driving past in our car and we saw him in the garden and we stopped the car and spoke to him, got out of the car and went into the garden and spoke to him.

Q. Did he know you?

Mr. Ferris: I object to that.

Mr. Maxson: Q. I will withdraw the question and put it in another form. What conversation did you have with him?

Mr. Ferris: Mr. Maxson, may I interrupt? Do I understand that all objections to the form of the question must be made upon the record.

Mr. Maxson: I think you should make your objection.

(Question repeated by stenographer).

A. I simply said "How do you do, Mr. Squier," and then I said "I don't think you know me."

Q. And what did he say, if anything? A. Well, I guess he said "No" and I said that "I was Jennie Ayres." To that question he answered "No" but when I said "I was Jennie Martin" I couldn't tell you what was in his mind, but he said "Yes" and that was all.

Q. Did you continue the conversation with him, I mean, was anything else said after you discussed the question as to whether or not he recognized you? A. No, there was nothing particular said. He was in the garden watching a man who wanted to sell him a sprinkler and he was interested in that.

Q. That is all.

Mr. Ferris: I move to strike out all of the last answer with the exception of the word "No" as not responsive to the question.

Cross Examination by Mr. Ferris:

Q. Mrs. Ayres, how old are you? A. I am sixty.

Q. And you were acquainted with the late Mr. Squier, you say, since you were about 18 or 19, is that right? A. Since I was a young girl, yes.

Q. And where did you live in July of 1926, the date that you met Mr. Squier? A. We were at our summer home in Spring Lake.

Q. How many times had you been in Rahway, New Jersey, during the summer of 1926? A. Not at all.

Q. When were you in Rahway before this occasion that you have just testified about? A. Well, I could not tell you that exactly.

Q. Had you ever been before in Rahway? A. Why, I lived in Rahway.

Q. How many years before 1926? A. I left Rahway in 1904.

Q. Do you recall that you had been in Rahway at any time between 1904 and 1926? A. Why——

Q. Yes or no? A. Yes.

Q. You had been? A. Yes.

Q. When was the occasion just before the one you have testified about in July, 1926? A. That I was in Rahway?

Q. Yes. A. Well, I always go to Rahway twice a year at any rate.

Q. When was the time that you saw Mr. Edwin Squier before July, 1926? In other words, how many years had elapsed? A. Probably—I couldn't tell you exactly.

Q. Was it as many as 20 years? A. Since I had seen him?

Q. Yes. A. I had seen him—I don't know to have any conversation particularly with him——

Q. Well when was that? A. On the train. I could not tell you the date.

Q. You can't tell us whether it was 10 years or 20 years before this talk you had with him in July, 1926? A. I couldn't tell any date particularly.

Mrs. J. Martin Ayres—For Appellant-Contestant—Cross

Q. When was the last time that you had spoken to Mr. Squier before July, 1926? A. I could not tell you that either because I don't remember.

Q. Would you say that you had spoken to him before July, 1926, within a space of twenty years? A. Yes, I think that I had.

Q. Approximate as nearly as you can how many years before July, 1926, you had spoken to him? A. I met him one afternoon coming out on the train, going out to Rahway.

Q. When? A. I could not tell you that.

Q. Was it 10 years before July, 1926, or more or less? A. Less than that.

Q. Would you say it was five years? A. Possibly five.

Q. When and where did you meet and talk to him on the train? A. Simply getting off the train.

Q. You merely passed the time of day with him? A. That was all.

Q. You did not mention your name on that occasion? A. No.

Q. All you did was greet him and passed on? A. Yes.

Q. Had you ever been in Mr. Squier's house in Rahway, New Jersey? A. In my life you mean?

Q. Yes. A. Yes.

Q. When was the last time you had been in the house of Mr. Squier in Rahway, New Jersey? A. I could not tell you that.

Q. Was it more than 20 years ago? A. Yes.

Q. So that in the space of 20 years you had only talked to Mr. Squier, so far as you can recall, twice? A. Yes.

Q. Once as you passed the time of day boarding or leaving the train and the other time when you were driving in the car? A. Yes.

Q. When you told him that you were Jennie Ayres I think you said he did not seem to recognize the name did he? A. No.

Q. When you told him you were Jennie Martin, he recognized you, did he not? A. I am not sure.

Q. He did not say anything one way or the other? A. No.

Q. How long have you been Mrs. Ayres? A. Since 1904.

Q. Then when you lived in Rahway, New Jersey, you were still Miss Martin, weren't you? A. I was.

Q. Had the late Mr. Squier ever met your husband, Mr. Ayres? A. Yes.

Q. When and where, if you know? A. At my home, possibly.

Q. That is while you were engaged and before you were married? A. Possibly.

Q. Had he seen him since the date of your marriage, if you know? A. No, not that I know of.

Q. Is your husband living? A. No.

Q. When did he depart this life? A. In 1914.

Q. Who was with you on this occasion? A. My sister, Miss Martin.

Q. You were driving from Spring Lake through Rahway? A. Yes.

Q. Who else was with you? A. My chauffeur.

Q. And you say you stopped the car in front of the home of Mr. Squier? A. Yes.

Q. And what was he doing when you stopped the car? A. He was in the garden.

Q. Was anyone with him? A. A man who was selling a sprinkler of some kind for the lawn.

Q. You stood there and heard him talking with this sprinkler man, did you not, before you addressed him? A. No, I did not hear him say anything except that he was looking at the sprinkler.

Q. You did not go inside the grounds, did you? A. Yes.

Q. You walked in through the gate and into the garden? A. Yes.

Q. How far away from the gate was Mr. Squier? A. I suppose 30 or 40 feet perhaps.

Q. And you saw him in conversation with somebody. Did you go right up and interrupt him or did you wait until he was finished? A. I think we walked up to him and said "Good Day."

Q. When you said "Good Day," did he respond? A. Naturally.

Q. He treated you courteously and responded and said "Good Day"? A. Yes.

Q. It was you that asked him or made the statement that he did not know you? A. I asked him if he knew me.

Q. Then what did he say? A. He said "No."

Q. Can you tell, Mrs. Ayres, whether your appearance has changed any in over 20 years? A. Naturally I suppose it has.

Q. Was your hair gray 20 years ago? A. Not perhaps as white as it is now.

Q. Were you surprised that Mr. Squier should not have recognized you after 20 or more years? A. Yes, I was.

Q. How frequently did you see Mr. Squier when you did live in Rahway prior to 1904? A. He used to come to the house perhaps once in two or three weeks.

Q. What relation are you to Mr. Squier, if any? A. None whatever.

Q. Have you any relatives who are related to him in any way? A. None whatever.

Q. How frequent were Mr. Squier's visits to your home in Rahway, New Jersey, prior to 1904?

Mr. Maxson: She just testified to that. I object to repetition on this record.

Mr. Ferris: Pardon me, I am cross-examining this witness. Answer the question, please.

The Witness: What was the question?

By Mr. Ferris:

Q. My question is how frequently did Mr. Squier visit at your house prior to 1904? A. I could not tell you that really.

Q. Was he a monthly visitor? A. I would not like to say because I don't remember.

Q. Would you say that he visited your house more than once a year prior to 1904? A. Yes, I would say he did.

Q. Would you say that he visited your house twice a year? A. That is rather——

By Mr. Maxson:

Q. Can you say approximately? A. Approximately, I suppose he did.

By Mr. Ferris:

Q. Once or twice a year? A. Yes.

Q. When he called at your house whom did he call to visit, your father or some other member of the family? A. No, he came to see either myself or my sister.

Q. At that time were your parents living? A. They were.

Q. How long was the friendship between Mr. Squier and your parents in existence prior to 1904? I said I had always known Mr. Squier because I was a young girl and always lived in Rahway.

Q. I am sure of that. My question is how long had your parents been friends of Mr. Squier? A. My father and mother had known Mr. and Mrs. Squier for many years.

Q. When he called there he called to visit the family? A. Yes, as a friend.

Q. You say you have only known Mr. Squier since you were 18 or 19? A. I have known him all my life, always.

Q. On your direct testimony when Mr. Maxson asked how long you had known him, you answered since you were 18 or 19? A. I said since I was a young girl. The family had always known each other.

Q. My question is as to your knowledge of him. Would it date back until the time when you were a little girl or only commence when you were 18 or 19? A. He came to the house to see my older sister and then when she went away, he came to the house to call on my sister and myself.

EMMA L. MARTIN, being duly sworn on her oath, testifies as follows:

Direct Examination by Mr. Maxson:

Q. Where do you reside, Miss Martin? A. At present?

Q. Yes. A. 126 East 72nd.

Q. Did you know Edwin M. Squier in his lifetime? A. Yes, as long as I remember anyone, I suppose, in Rahway.

Q. Do you remember the occasion when you last saw him? A. With my sister. I am not sure of the date but it was some time in July, 1926.

Q. And what were the circumstances under which you saw him? A. We had driven up from Spring Lake, were driving past Rahway and seeing him in the garden, we left the car and went in.

Q. Did you talk to him? A. We did not have very much conversation.

Mr. Ferris: I object to that and move to strike it out.

By Mr. Maxson:

Q. Go ahead and answer the question. A. A little.

Q. What was said? A. I think I asked him about his rugs.

Q. Did you say anything to him about your identity or did he say anything to you about who you were?

Mr. Ferris: I object to that as leading.

A. I think it was the same with my sister. She told him the same time who we were.

By Mr. Maxson:

Q. Did he know you as distinguished from your sister?

Mr. Ferris: I object to that as calling for a conclusion.

A. He spoke to us both. I could not tell you exactly, that is whether he knew me. She gave the name and then he spoke to us.

By Mr. Maxson:

Q. Did you or your sister carry on the conversation with him? A. We probably both did.

Q. Did he say anything to you about the days when he had known you in Rahway?

Mr. Ferris. I object to that as leading.

A. No.

By Mr. Maxson:

Q. What did he say, if anything, other than yes and no? A. He did not say very much. He seemed rather quiet.

Mr. Ferris: Move to strike out the last part of the question as not responsive.

Mr. Maxson: All right. I don't mean to say that I am conceding that it should be stricken out.

Mr. Ferris: Your concession would not help me, Mr. Maxson, the judge will do that.

Cross Examination by Mr. Ferris:

Q. Miss Martin, how long is it since you lived in Rahway, New Jersey? A. In 1913, since 1913.

Q. And when you moved from Rahway, where did you move to? A. We were in Spring Lake until 1917. Then we came to New York.

Q. Prior to this alleged conversation that you had with Mr. Edwin Squier in July of 1926, when was the last time that you had seen and talked to Mr. Squier.

Mr. Maxson: I object to the inference, the offensive inference to be drawn from the word "alleged" in that question.

By Mr. Ferris:

Q. Will you answer that question? A. I think we were going to Mrs. Fred Squier's, possibly two years ago. We met him on the train.

Q. Is that the occasion you heard your sister, Mrs. Ayers, testify to? A. Yes, we were together.

Q. Where did you see Mr. Squier, as you were boarding the train? A. As we were getting off.

Q. That was at Rahway, New Jersey? A. Yes.

Q. You passed the time of day? A. I think we said we were going to Mrs. Squier's and we took a taxi.

Q. Prior to that when had you seen and talked to Mr. Edwin M. Squier? A. I think I met him at some funerals and weddings. I can't tell you the exact dates.

Q. Can you give us the approximate date of these weddings and funerals? A. I think a wedding about three or four years before that.

Q. Before July, 1926? A. Yes.

Q. Whose wedding was it? A. Miss Elliot's wedding in Rahway.

Emma L. Martin—For Appellant-Contestant—Cross

Q. You are sure it was in 1923 that this wedding took place? A. No, I am not.

Q. Can you fix the year as near as you can when that wedding took place? A. That is about as near as I can say.

Q. Who was the bridegroom at that wedding? A. Mr. Durand.

Q. Mr. Durant? A. Mr. Durand.

Q. At this wedding are you sure that Mr. Edwin M. Squier was present? A. I am not sure.

Q. Give me any other incident when you are sure that you saw and talked to Mr. Edwin M. Squier? A. I don't think I can. I saw him, met him off and on all these years but I can't remember exactly the date.

Q. Not exactly. Give me your best approximation. Search your recollection well and tell me any occasion when you are sure that you saw and talked to Mr. Squier prior to July, 1926, excepting the time when you met him alighting from the train? A. I really couldn't do that. Met him on the train I suppose.

Q. You won't say under oath that you met and talked to Mr. Squier any time during the last 20 years outside of the occasions you have mentioned, that is, the occasion when you say you and your sister talked to him in the garden and the other occasion when you met him alighting from a train.

Mr. Maxson: I object to "under oath" in the question and move that that part of the question be stricken out. The witness is sworn.

A. I lived in Rahway until 1913.

Emma L. Martin—For Appellant-Contestant—Cross

By Mr. Ferris:

Q. Do you recall any single incident when you met and talked to Mr. Edwin M. Squier since 1913, that is the day when you moved from Rahway, New Jersey, outside of these two incidents you have testified about? A. I can't say how often but there were occasional meetings.

Q. You have no recollection as to the time or place or the subject matter of the conversation, if any, that you had with him? A. No.

Q. Now prior to 1913 when was the last time that you have a recollection of having met and talked to Mr. Edwin M. Squier? A. I saw him frequently. We lived right next to the Craftmen's Club. I met him there frequently. He was a member of the Club and I am a member.

Q. That is you met him at a club of which you are both members? A. Yes, of course, I had always known him.

Q. How frequently were those meetings? A. I don't know, might be in the course of every two or three weeks, I don't know.

Q. What is your recollection? A. I had no particular reason for remembering it. We were both members of a club. We lived in the same town and I met him on the train. Simply saw him from time to time.

Q. I am asking you to recall that which you have a recollection of and tell me, if you can, how frequently you met Mr. Edwin M. Squier at this club prior to 1913? A. Say once a month, perhaps.

Q. Was he an active attendant? Did he attend all meetings? A. No, I think not.

Emma L. Martin—For Appellant-Contestant—Cross

Q. How many meetings a month did this club have at that time? A. I don't know.

Q. Are you sure they met monthly? A. The club is open all the time. I did not say the Club met once a month. Said I met Mr. Squier at the club about once a month.

Q. At any rate since 1913 you have no recollection of seeing and talking to Edwin M. Squier with the exception of those two occasions you have talked about.

Mr. Maxson: I object to the form of the question indicating testimony. I would make the further objection that this witness said she met him on the train on numbers of occasions, that she met him at the club on numbers of occasions.

Mr. Ferris: Mr. Maxson, I am sure knows you cannot make objections that way. He corrects the testimony incorrectly. I ask that the witness answer the question.

A. Well, I could not state the occasions.

By Mr. Ferris:

Q. My question is have you any recollection as to any occasions between 1913 and 1926, other than those two occasions you have testified about, of having seen and talked to Edwin M. Squier? A. I think so.

Q. Having refreshed your recollection, will you give me the occasions when you saw and spoke to Mr. Squier between that period of 13 years, that is between 1913 and 1926? A. What I said to him?

Q. First the occasions where you saw him? A. I told you on the train between 13 and 26 and I think at a wedding.

Q. Did you talk to him on those occasions? A. Not very much.

Q. Did you talk to him at the wedding of Mr. Durand and Miss Elliott? A. I think that I did. I am not certain about that.

Q. Are you sure he was there? A. I am not sure.

Q. If you are not sure that he was there, you can't be sure that you talked to him?

Mr. Maxson: Almost a certain conclusion I should say without asking the witness.

The Commissioner: Isn't that argumentative?

Mr. Ferris: I will withdraw the question.

Q. Have you any other occasions that you recall in your mind now than those that you have testified to? A. No, I have possibly met him on the train.

Q. You are guessing?

Mr. Maxson: I object.

A. Many times but I can't tell you how many.

By Mr. Ferris:

Q. From 1913 to 1926 have you ever been in his house? A. I don't think so.

Q. Coming down to this day in July of 1926, what time of day was it that you and your sister passed Mr. Squier's home. A. As I remember we

left Spring Lake in the car it must have been about ten or half past.

Q. In the morning? A. Yes.

Q. Where was Mr. Squier standing when you passed? A. We saw him in the garden.

Q. With whom was he talking, if anybody? A. With some man selling sprinklers.

Q. How long did you watch him before you walked into his garden? A. Did not watch him at all, stopped and went into the garden.

Q. Did you hear any part of the conversation between him and this man trying to sell him the sprinkler? A. I don't think so.

Q. Will you kindly repeat for me, as closely as you can, all that was said by you and your sister and by Mr. Squier on this occasion? A. You see it is very hard to remember.

Q. Do it to the best of your recollection. A. As I remember, my sister said "Don't you know who we are?" and Mr. Squier said "No." Then she told him who we were. Talked about the sprinkler and I asked him about his collection of rugs. We were only there about five minutes and then went on.

Q. When you asked him about his collection of rugs, what did he say? A. Said sometime he would show them to me.

Q. You asked to be shown his rugs? A. I said I would like to see his collection of rugs.

Q. What, if anything did he say about the sprinkler? A. Did not say anything in particular.

Q. Didn't you just mention that something was said about the sprinkler? A. He was looking at the sprinkler and said it went around the grounds or something to that effect. Very little was said.

Emma L. Martin—For Appellant-Contestant—
Redirect
Recross

Re-direct Examination by Mr. Maxson:

Q. Have you any interest directly or indirectly in this matter? A. Not the slightest.

Q. You came here under subpoena from the New York Supreme Court? A. That is the reason.

Re-cross Examination by Mr. Ferris:

Q. Have you your subpoena here? A. No, I have not.

Q. May I ask you this question? To whom did you tell about this conversation that you had with Mr. Squier? A. To Mrs. Charles B. Squier.

Q. Have you seen Mr. Hendrick at any time, the lawyer? A. Not until today.

Q. Where did you see him today? A. Here in this building.

By Mr. Maxson:

Q. Do you know Mr. Hendrick?

Mr. Ferris: Don't interrupt me, please.

By Mr. Ferris:

Q. Who was it that served you with your subpoena? A. I don't know.

Q. You never saw the man? A. I never saw the man.

Q. When were you served? A. Last Friday night.

Mr. Maxson: She said that she hadn't it.
Mr. Ferris: Just a minute.

Emma L. Martin—For Appellant-Contestant—Recross

Mr. Maxson: I object to any inquiry about the subpoena. It is a matter of public record in the New York Supreme Court.

By Mr. Ferris:

Q. Where is the subpoena? A. In my apartment.

Q. Paper actually left with you? A. Actually left with me.

Q. Were you given a subpoena fee, any money? A. No.

Q. Was your sister served at the same time as you were? A. Yes.

Q. Did anyone call to see you and ask you if you knew anything about this case before you were subpoenaed? A. No.

Q. And you say you related about this conversation with whom? A. Mrs. Charles Squier.

Q. Where does she live? A. 521 Park Avenue.

UNION COUNTY ORPHANS' COURT.

IN THE MATTER
of the
ESTATE OF EDWIN M. SQUIER,
Deceased.

Transcript of shorthand notes of proceedings in the above cause before Honorable Alfred A. Stein, Judge, at the Union County Court House, Elizabeth, New Jersey, on Wednesday, December 14, 1927, at 11:00 A. M.

Appearances:

EDWARD MAXSON, ESQ., for the Appellant, Frank Hendrick, Esq. of counsel.

FREDERICK HYER, ESQ., for the Appellee, George A. Ferris, Esq. and Augustus A. Houghton, Esq. of counsel.

Mr. Ferris: We are appearing before your Honor to ask your Honor to rule on certain objections made to questions propounded by the appellant. These objections are directed to two lines of inquiry that, in the judgment of counsel for the respondent, are wholly immaterial under the issues raised by the pleadings herein, and we appear voluntarily before

you in order that we may have the benefit of your Honor's ruling on those questions.

The Court: In each case where the objection is overruled, if it subsequently appears on the hearing before me that the question now permitted to be answered is not connected so as to become material, I will allow you to move to strike it out.

Mr. Maxson: May we have it on the record that in the event that where objections were sustained to the questions and subsequently they appear to be material to your Honor on the trial of the cause, we may have the witnesses produced so that we may have an opportunity to take their testimony.

Mr. Ferris: The first question objected to appears on page 6 of the stenographer's minutes. "Q. And what did you do?" Objection was sustained to that.

The next question is on page 10. It reads as follows: "And after you qualified, what did you do with respect to the administration of the estate? What was the first thing you did?" Objection was sustained.

Page 11—the question "After the will had been probated and all the executors had qualified, as you have testified that they did, did you have any meetings with respect to the administration of the estate?" Objection is withdrawn.

Page 12—"What did you do about taking over the estate?" The objection is sustained.

On the same page "Q. Where did you find

the corpus of the estate?" Objection is sustained.

On page 13: "Q. What was the corpus of the estate?" Objection withdrawn.

On the same page: "Q. When did you first have a meeting with your co-executors after you and they qualified? Objection is withdrawn.

On the same page: "Q. Did you have a meeting with your co-executors after you had all qualified?" Objection is withdrawn.

On page 14: "Q. Did you have meetings with your co-executors in connection with the administration of the estate?" Objection withdrawn.

Question on the same page: "Q. Did you take over any property in the State of New York belonging to this estate?" Objection is sustained.

On the same page: "Q. If so, where did you find the property, in whose custody?" Objection sustained.

On the same page: "Q. If you had such a meeting with your executors, did you discuss a plan under which you would take possession of the estate?" Objection is withdrawn.

On page 14 and running to page 15: "Q. And if you did discuss such a plan, where did you find the corpus of the estate in the State of New Jersey or in New York or in both states?" Objection sustained.

On page 14-A: "Q. What was the conversation?" The objection is withdrawn. On the

same page, 14-A: "Q. What was the corpus of the estate?" Objection sustained.

Mr. Maxson: That question is withdrawn. I asked it previously.

Mr. Ferris: On page 15-A: "Q. I ask you again to give the conversation." Objection is withdrawn.

On the same page: "Give the names of those whom you do remember." The objection is overruled.

Page 21: "Q. Were they stockholders of directors of any corporation together?" Objection is sustained.

On the same page: "Q. Were they stockholders of any corporation together?" Objection is sustained.

Page 24. "Q. Who read it?" Objection is withdrawn.

"Q. Do you remember at that time that Mr. Houghton read the will and made some explanation of its contents?" Objection is overruled.

"Q. And that Mr. Houghton's explanation was to a certain extent directed toward the contestant of this will? Objection overruled.

"Q. And that Mr. Houghton's explanation at the time of the reading of your grandmother's will had to do with the disposition of the property of the Edwin M. Squier estate?" Objection is overruled.

Mr. Maxson can you tell me when you will go on.

Mr. Maxson: I will go on on Monday of next week, that is the earliest possible time.

I can't possibly go on this week unless you want to go on on Saturday.

Mr. Ferris: Just this one witness. We want to finish with that one witness. I will be ready to proceed with the examination of this one witness, William C. Squier, 3rd, on Saturday morning at ten a. m. at the office of Mr. Maxson as this witness must depart for California on the 27th of December and I am anxious to have his testimony concluded so that his departure will not be delayed. It is stipulated that the examination will proceed at ten a. m.

Mr. Townsend: Would it be just as convenient for you gentlemen to have it at my office in Jersey City?

Mr. Maxson: You are not going to produce all your witnesses to take this testimony.

Mr. Ferris: At the suggestion of the Commissioner, all parties stipulate that the examination of this one witness, Mr. Squier, will take place on Saturday, December 17, 1927, at ten a. m. at the office of the Commissioner, 921 Bergen Avenue, Jersey City.

UNION COUNTY ORPHANS' COURT.

IN THE MATTER *of the* ESTATE OF EDWIN M. SQUIER, Deceased.

Transcript of shorthand notes of testimony taken in the above case before Mark Townsend, Jr., Commissioner, at his office, 931 Bergen Avenue, Jersey City, N. J., on Saturday, the 17th day of December, 1927, at the hour of ten o'clock in the forenoon.

Appearances:

EDWARD MAXSON, ESQ., for the Appellant, Frank Hendrick, Esq., of counsel.

FREDERICK HYER, ESQ., for the Appellee, George A. Ferris, Esq., and Augustus Houghton, Esq., of counsel.

The Commissioner: Unfortunately, I overlooked mentioning as to whether you desired to waive the signature of the witness or not. Otherwise, it will be necessary, after the testimony is transcribed, to have the witness read it and sign it.

Mr. Ferris: Can I reserve decision on that matter for the time being? I will give that consideration.

The Commissioner: Let me know at the end of the testimony.

Mr. Maxson: Do you construe the equity rules relating to the signature of testimony as not to apply to this proceeding? You know that rule 276 which provides that where the stenographer is sworn, the testimony need not be signed. I think it is 276 or 278. Of course, we are not concerned about whether Mr. Hyer or Mr. Ferris want to have their witnesses subscribe to the testimony but we don't want to go back to those two ladies.

Mr. Ferris: So far as those witnesses, I am perfectly willing to stipulate that it is not necessary.

Mr. Hendrick: That waiver comes from you.

Mr. Ferris: I think probably we will waive that but I want an opportunity to examine the minutes and see how accurately they are transscribed.

Mr. Maxson: I think it is a good proceeding to correct the testimony on the day following while it is fresh in our minds.

Mr. Ferris: I have just received the copy.

Mr. Maxson: I just had an experience in New York where we had between 400 and 500 corrections but we did not have Miss Ogden take it. I am quite sure you won't find any such situation here.

Mr. Ferris: You expect to get through with Mr. Squier today because he leaves next week.

Mr. Maxson: We want that trust deed but you can produce that in Mr. Squier's absence, can you not?

Mr. Ferris: Yes, any such document that you are entitled to have.

The Commissioner: I have the rule. It is Rule 105.

Mr. Maxson: I thought it was 276 or 278.

The Commissioner: This rule provides that in litigated cases by consent of parties and ex parte cases where the master shall certify that in his judgment it should be done, the testimony may be taken by a stenographer selected by the master and sworn as required by rule 178, and afterwards written out in full; and in such case the master shall accompany the depositions with his certificate that the testimony was taken in his immediate presence and hearing by the stenographer so selected and sworn, and that he believes that it accurately states the evidence given; and no deposition, so taken under the provisions of this rule, need be subscribed by the witness. I had forgotten that this is ex parte and there has to be a consent, has to be a waiver.

Mr. Ferris: We will probably do it, as I say.

WILLIAM C. SQUIER, continued:

Direct Examination by Mr. Maxson:

Q. Now, Mr. Squier, you were asked on the last hearing this question:

Mr. Ferris: Will you indicate the page?

Mr. Maxson: Page 11.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. "After the will had been probated and all the executors had qualified, as you have testified that they did, did you have any meetings with respect to the administration of the estate?" and you were directed by counsel not to answer the question after objection and that objection has been overruled. Now will you answer?

Mr. Ferris: No, it has been withdrawn. Let's have it accurate.

A. Yes.

By Mr. Maxson:

Q. What happened at that meeting? Just a minute, I will withdraw that question. Where was the meeting held? A. Mr. Houghton's office.

Q. And who were present, and when? A. All the executors.

Q. And when was it held? A. I don't remember.

Q. Well, how soon after the will was probated? A. I wouldn't want to say.

Q. When did you receive notice of the probate of the will?

Mr. Ferris: I object to that question on the ground that it assumes a state of facts not testified to.

By Mr. Maxson:

Q. I will withdraw the question. Did you receive notice of the probate of the will? A. I don't know as I entirely understand that.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Ferris: Do you mean written or oral notice?

By Mr. Maxson:

Q. Did you receive any sort of notice, either written or oral, of the probate of the will? A. Oral, yes.

Q. Oral, well when did you receive that notice? A. I don't remember.

Q. Approximately? A. I don't think I could come near enough to approximate.

Q. You have testified that you received verbal notice of the probate of the will? A. Yes, sir.

Q. You have further testified that you can't give approximately the time when you received the notice? A. I cannot, sir.

Q. Can you say whether you received it before the meeting of the executors at Mr. Houghton's office?

Mr. Ferris: I assume you mean or in the alternative after?

Mr. Maxson: I will say before or after.

A. I cannot tell you.

By Mr. Maxson:

Q. Who invited you to come to the meeting of the executors at Mr. Houghton's office?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant. He may answer, nevertheless. I am just putting the objection on the record.

The Witness: I was just wondering if I should answer.

Mr. Ferris: Go ahead, answer.

The Witness: What was the question?

(Question repeated by stenographer.)

A. Mr. Houghton.

By Mr. Maxson:

Q. At that time have you any uncertainty as to whether or not you knew that the will had been probated? A. No.

Q. Then you did receive notice of the probate of the will before the meeting at Mr. Houghton's office?

Mr. Ferris: That follows does it not?

A. It would seem so. If I were more of a lawyer I would probably understand the significance of it.

By Mr. Maxson:

Q. Can't you say approximately how long before you had the meeting at Mr. Houghton's office at his invitation that you had notice, either verbal or written, of the probate of the will? A. No, sir.

Q. And I think you have testified that you can't approximately fix the time of the meeting at Mr. Houghton's office? A. I cannot.

Q. Who were present at this meeting at Mr. Houghton's office?

Mr. Ferris: He has answered that before. He said the executors.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

A. The executors.

By Mr. Maxson:

Q. Anybody else? A. No.

Q. What was the purpose of the meeting?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant, calling for a state of mind, calling for a conclusion. You will answer the question, Mr. Squier.

The Witness: What was the question?

(Question repeated by stenographer.)

A. I should say to organize as executors.

By Mr. Maxson:

Q. What was done looking to the organization?

Mr. Ferris: You mean at that meeting, Mr. Maxson?

Mr. Maxson: At that meeting.

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant. (pause) You don't care to withdraw the question?

Mr. Maxson: No.

Mr. Ferris: I will let him answer this one. You may answer—at that meeting.

A. I don't remember, Mr. Maxson.

By Mr. Maxson:

Q. Now did you personally exercise your duties as executor?

Mr. Ferris: I object to that and direct the witness not to answer on the ground that Judge Stein on our appearance before him sustained the objection to this question. "Q. What did you do about taking over the estate?" That objection was sustained and questions such as this "Q. Did you take over any property in the State of New York belonging to this estate?" to which objection was sustained. "Q. If so, where did you find the property, in whose custody?" Objection was sustained. I advise the witness that he need not answer the question.

Mr. Maxson: In order to possibly save other trips to Elizabeth I want to say for the record that this witness has testified on two or three occasions that he was not a lawyer, indicating that he was receiving advice with respect to his duties as executor in this proceeding. That is all I have to say on that objection.

Mr. Ferris: In answer to the statement of Mr. Maxson I am willing to concede that he was advised by legal counsel as to his duties as executor.

By Mr. Maxson:

Q. In the last proceeding you were asked this question——

Mr. Ferris: What page, Mr. Maxson?
Mr. Maxson: Page 14.

Q. "If you had such a meeting with your executors, did you discuss a plan under which you would take possession of the estate?" A. Yes.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. What was the plan?

Mr. Ferris: I object to that as incompetent, immaterial and irrelevant and I advise the witness he need not answer because the very next question following the one quoted from page 14 "Q. And if you did discuss such a plan, where did you find the corpus of the estate, in the State of New Jersey, etc.", to which objection was sustained.

By Mr. Maxson:

Q. Mr. Squier, do you refuse to answer?

Mr. Ferris: That is unnecessary under our stipulation. No sense of burdening the record.

Mr. Maxson: Now, Mr. Ferris, I am beginning to resent your coaching. I would like to try my case as I see it.

Mr. Ferris: Don't misunderstand me. I am only calling your attention to the fact that we have already stipulated that where counsel objects and advises the witness not to answer, he will refuse. That stipulation is on the record. If you desire to ask the formal question and burden the record, you may, of course, do so. I am not attempting to indicate in what way you should try your case.

By Mr. Maxson:

Q. I don't remember whether you testified, Mr. Squier, that you did not remember who was present at that meeting of the executors or not, do you

New Jersey State Library

or do you not remember? A. I said the executors were present.

Q. Anyone else? A. No.

Q. No one of counsel present? A. No.

Q. How were the executors related to the testator? A. Two were nephews, the others were not.

Q. Were they related to him by marriage? A. Yes.

Q. In what way? A. One married the daughter of Frederick C. Squier and the other married the daughter of Stuart C. Squier.

Q. So that each one of the executors was directly or indirectly interested in the estate?

Mr. Ferris: I object to that as calling for a legal conclusion as well as a conclusion of fact. It also calls for the operation of the witness' mind. You may answer the question.

The Witness: Will you repeat the question?

(Question repeated by stenographer.)

A. Yes.

By Mr. Maxson:

Q. In answer to the question as to whether or not you had had a meeting of the executors and as to whether or not you discussed a plan for taking possession of the estate, you answered "Yes", did you not? A. Yes, sir.

Q. What was said at that discussion with respect to the plan under which you were to take possession of the estate?

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant. Go ahead and answer.

A. I don't remember.

By Mr. Maxson:

Q. Who conducted the discussion?

Mr. Ferris: I object to the question as to form on the ground that it assumes a state of facts not testified to and incorporates a conclusion of both fact and law.

A. I don't remember.

By Mr. Maxson:

Q. When you went to attend the meeting, did you have any information about the estate?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant. Go ahead and answer.

The Witness: Will you repeat the question?

(Question repeated by stenographer.)

A. No.

By Mr. Maxson:

Q. You had no knowledge about what you were expected to do as executor?

Mr. Ferris: I object to that on the ground that it is wholly immaterial, incompetent and irrelevant.

The Witness: Do you wish me to answer?

Mr. Ferris: Yes, go ahead and answer it.

The Witness: I am sorry to ask you to repeat these again but I want to get it——

(Question repeated by stenograhper.)

A. No.

By Mr. Maxson:

Q. When you finished this conference did you know what your duties were as executor?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant and totally outside the issues, but answer the question.

A. Yes.

By Mr. Maxson:

Q. From whom did you get the information?

Mr. Ferris: Now I object to that on the ground it is immaterial, incompetent and irrelevant and calls for possibly a confidential communication between client and attorney and I advise the witness that he need not answer.

By Mr. Maxson:

Q. Who was your attorney——

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Ferris: I object to that——

By Mr. Maxson:

——or who were your attorneys in this situation?

Mr. Ferris: You mean as executor, do you, Mr. Maxson?

Mr. Maxson: Yes.

Mr. Ferris: I have no objection to that question.

A. Mr. Ferris' firm.

By Mr. Maxson:

Q. You have testified that no one of the firm was there except Mr. Houghton? A. Yes.

Q. You have testified that you don't recall who gave you the information necessary for you to exercise your duties as executor?

Mr. Ferris: I object to that on the ground it incorrectly states what the witness has testified to as the record discloses.

Mr. Maxson: Now, Mr. Ferris, I have asked him whether he has testified to that. I don't recall. I am not trying to encumber the record with unnecessary questions.

Mr. Ferris: For your information what you did ask him was who conducted the discussion and he told you he did not remember.

Mr. Maxson: Read the question please.

(Question repeated by stenographer.)

Mr. Ferris: I object further on the ground that he did not so testify.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Maxson: Well, I can see whether he did or not.

Q. Did or didn't you so testify? A. Yes.

Q. You don't recall whether or not you received any information or instruction as to your duties as executor on that occasion, is that so? A. Yes.

Q. You do recall that you received no instructions? A. The last part of your question was different than the first. Would you repeat that for me yourself?

By the Commissioner:

Q. Will the stenographer repeat the question?

(Question repeated by stenographer.)

A. No, I did not receive any.

By Mr. Maxson:

Q. You have testified, haven't you, that you had no knowledge of your duties as executor when you went to attend that conference? A. Yes.

Q. Then after the conference you continued with no knowledge of your duties as executor, is that correct? A. No.

Q. Then where did you get the information or advice which gave you knowledge of your duties as executor?

Mr. Ferris: I object to that as calling for a confidential communication between attorney and client and I advise the witness that he need not answer.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Maxson: Overlooking the fact, perhaps, he might have received some instructions from somebody who was not his attorney?

Mr. Ferris: You may ask him that question.

Mr. Maxson: Do you advise him not to answer?

Mr. Ferris: My statement is on the record as well as my suggestion that you may ask him that question.

Mr. Maxson: Does the record show that the witness is advised not to answer?

The Stenographer: Yes.

By Mr. Maxson:

Q. At this meeting was Mr. Houghton acting as your personal attorney or as attorney for the estate?

Mr. Ferris: I object to that on the ground that it is immaterial, incompetent and irrelevant, calling for a conclusion both as to fact and law, and I advise the witness that he need not answer.

By Mr. Maxson:

Q. Is Mr. Houghton your personal attorney?

Mr. Ferris: I object to that but you may answer the question. You mean at the present time, don't you?

Mr. Maxson. Yes.

A. No.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. Has he been in years past?

Mr. Ferris: I object to that as immaterial.

A. Yes.

By Mr. Maxson:

Q. When did he begin to represent you?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant and I advise the witness he need not answer.

By Mr. Maxson:

Q. When did he cease to represent you?

Mr. Ferris: I object to that on the same grounds and advise the witness that he need not answer.

By Mr. Maxson:

Q. He did not represent you at this meeting of the executors personally?

Mr. Ferris: I object to that on the same grounds and advise the witness he need not answer.

By Mr. Maxson:

Q. Did he represent you as executor of the estate at that meeting?

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Ferris: I object to that on the ground it has already been answered.

Mr. Maxson: You have not instructed your client yet.

Mr. Ferris: Permit me to tell you that no suggestions from you are necessary, Mr. Maxson (pause). And on the further ground that it is immaterial, incompetent and irrelevant.

Mr. Maxson: Now, may it please the court

The Commissioner: Answer the question.

The Witness: May I have the question repeated.

(Question repeated by stenographer.)

A. No.

Q. I repeat the question as to whether or not you received information there which gave you knowledge or instructions as to your duties as executor?

A. No.

Q. And do I understand you to say that you had no knowledge or information as to your duties as executor either before or during the time of this meeting of executors or subsequently?

Mr. Ferris: Or subsequently, you are adding to that?

Mr. Maxson: Yes.

A. I have a general knowledge what executors' duties are and had at that time.

By Mr. Maxson:

Q. What are their duties as you conceive them to be?

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Ferris: I object to that as wholly incompetent, immaterial and irrelevant and I advise the witness that he need not answer.

Q. What is your general idea as to the duties of executors?

Mr. Ferris: I object to it on the same grounds as to the question preceding and I give the same advice.

The Commissioner: For the record, I assume the witness is following your advice.

Mr. Ferris: Under our stipulation it is so assumed.

By Mr. Maxson:

Q. On the last hearing you were asked "You testified, didn't you——"

Mr. Ferris: What page?

Mr. Maxson: 15-A.

"——that you did have a conversation with Mr. Houghton about this will when he produced the copy?" and your answer was "Yes, sir." You were then asked "I ask you again to give the conversation." Will you please give the conversation?

Mr. Ferris: You may as well put on the record that that was objected to and since then it has been withdrawn.

Mr. Maxson: The record shows it.

A. I don't remember.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. Now at the same hearing and as appears from 15-A of the record, you were asked "Q. Do you remember after the death of your grandmother, Katherine C. Squier, the reading of her will at her residence?" The answer was "Do I remember?" "Q. Do you remember that her will was read?" "A. Yes, sir, I do." "Q. Who were present?" "A. That would be a very hard question to answer." "Q. You don't remember who was present?" "A. I should say that most of the family." "Q. Give the names of those whom you do remember," I repeat that question.

Mr. Ferris: The last question?

By Mr. Maxson:

Q. Give the names of those whom you do remember? A. I should say my father.

Q. Will you give the names, please, Mr. Squier, for the record? A. Stuart C. Squier, Edwin M. Squier, Frederick C. Squier and Mrs. Frederick C. Squier. You would like me to give the names all the way through?

Q. Yes, all that you remember, please? A. All my sisters. Would you like to have their names?

Q. Yes, let us have the names. A. Helen S. Keen, Caroline S. Houghton, Katherine S. Montgomery, Elsie S. Edson and Esther S. Smiley.

Q. Was Mr. Houghton there? A. Yes, Augustus S. Houghton. That is approximately all I remember.

Q. You were asked on the last hearing "Q. Who read the will?"

Mr. Ferris: On what page?

Mr. Maxson: On page 24.

Q. I repeat that question. A. Augustus S. Houghton.

Q. You were further asked "Q. Do you remember at that time that Mr. Houghton read the will and made some explanation of its contents?" I repeat that question. A. No.

Q. Do I understand that you do or do not remember? A. I do not remember.

Q. Do you remember whether or not the will was read? A. I do.

Q. Do you remember who read it? A. Mr. Houghton.

Q. Was there any discussion about the provisions of the will? A. I don't remember.

Q. Was Charles Burnham Squier, the appellant in this proceeding—— A. What is that, sir?

Q. Was Charles Burnham Squier, the appellant in this proceeding, present at that time? A. Yes, sir.

Q. Do you remember any conversation had with him or any statement that he made at that time? A. I do not.

Q. Have you any recollection of anything that was said at that time by anybody? A. No.

Q. Do you recall the provisions of the will? A. I do not.

Q. Did you understand the provisions of the will at that time? A. No.

Q. You testified that Mr. Houghton doesn't represent you personally now or his firm?

Mr. Ferris: I object to that on the same grounds previously urged to that line of ques-

tions and advise the witness he need not answer.

By Mr. Maxson:

Q. Does or does not Mr. Houghton represent you now in the proceeding in New York?

Mr. Ferris: I object to that. Do you mean the proceeding in New York?

Mr. Maxson: Yes.

Mr. Ferris: I object to that as wholly immaterial, incompetent and irrelevant and advise the witness he need not answer.

Mr. Maxson: I will say that the purpose of this examination is to test the witness' recollection and credibility.

Mr. Ferris: I still adhere to that objection and to the advice given.

By Mr. Maxson:

Q. Do you recall who were the witnesses to the will of the testator?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant and on the further ground that it calls for the contents of a written document and is not the best evidence. Go ahead and answer.

The Witness: Will you repeat the question?

(Question repeated by the stenographer.)

A. Three of Mr. Ferris' law firm.

William C. Squier—For Appellant-Contestant (Recalled)—Direct

By Mr. Maxson:

Q. That is Mr. Houghton's law firm also, is it not? A. Yes, sir.

Q. You have testified that you do not remember that Mr. Houghton made some explanation at the time of the reading of the will as to its contents, is that correct or is it not?

Mr. Ferris: On what page is that?

Mr. Maxson: In this proceeding.

A. That is correct.

By Mr. Maxson:

Q. Now would it refresh your recollection if it was suggested to you that Mr. Houghton made some reference to Charles Burnham Squier at that time and the provisions of the will as relating to him? A. It would not.

Q. You remember that Charles Burnham Squier was mentioned at that time, referring to the time when the will was read? A. No.

Q. Did Charles Burnham Squier have anything to say at that time? A. Yes.

Q. What did he say? A. I don't remember.

Q. Remember the effect of what he said?

Mr. Ferris: You mean the substance, don't you?

Mr. Maxson: Yes, I mean the substance, I will accept that.

A. No.

William C. Squier—For Appellant-Contestant (Recalled)—Direct

By Mr. Maxson:

Q. Do you have any recollection as to anything that he did or said at that time? A. No.

Q. Did you have any conversation with Charles Burnham Squier with respect to the provisions of the will? A. No.

Q. I refer not only to the time when the will was read but subsequent to that time?

Mr. Ferris: But at the same meeting.

By Mr. Maxson:

Q. At the same meeting? A. The same answer, no.

Q. You have a clear recollection of the occasion and the people who attended, have you not? A. To the extent that I have already testified.

Q. You have given their names? A. Yes, sir.

Q. You have also testified that you know that Mr. Houghton read the will? A. Yes, sir.

Q. But you don't recall the provisions of it? A. I do not.

Q. And you don't recall having any conversation with Charles Burnham Squier on that occasion in any part of the house?

Mr. Ferris: I object to that question, Mr. Maxson, on the ground it incorrectly summarizes the testimony of the witness. As I recall he testified he recalled having a conversation but not the subject matter of it. That is what I recall he said.

William C. Squier—For Appellant-Contestant (Recalled)—Direct

By Mr. Maxson:

Q. Is that what you testified, that you do recall having a conversation but not the substance of it? A. Yes, sir.

Q. You have no recollection as to what the conversation was about or what inspired it? A. No, sir.

Q. Can you say whether it was or was not about the will and its provisions? A. No.

Q. You mean to say you cannot recall? A. I cannot.

Q. How long had it been previous to the reading of the will since you had seen Mr. Charles Burnham Squier? A. I certainly couldn't say.

Q. Well, approximately. A. I couldn't do that, couldn't approximate it.

Q. Were your relations with him friendly up to the time of the reading of the will?

Mr. Ferris: That is, referring to the will of Katherine Squier so there won't be any confusion.

Mr. Maxson: Referring to the will of Katherine Squier all the time.

A. Yes.

Q. Were they after the reading of the will. A. No.

Q. Why not? A. I think that is as much on his side as it was on mine.

Q. What caused the antagonism. A. I don't remember.

Q. You mean to say you do remember that there was an antagonism but you don't remember what

caused it? A. In such a general way that I couldn't give it.

Q. Well, give it in a general way? A. I suppose it was due to some objection on his part.

Q. When made? A. At that time, I suppose.

Q. You have no recollection as to what the objection was? A. I certainly could not give any details.

Q. Did it relate to the estate of your grandmother, Katherine C. Squier? A. Naturally.

Q. You recall it did relate to that but you don't recall what the character of the objection was? A. In connection with his share.

Q. What did he say about it? A. I can't remember.

Q. Can't you give me the substance of the conversation? A. I cannot.

Q. You have no recollection of it? A. No, I think if this were not put on the record I would like to say——

Mr. Ferris: No, please answer the questions. That is what you are here for. You are under oath.

Mr. Maxson: We haven't any objection to the witness making a statement if it relates to this proceeding.

Mr. Ferris: Now wait a minute. Answer questions, that is all.

By Mr. Maxson:

Q. Did the statement which you sought to make and which you were directed not to make by your counsel relate to the reading of the will of your grandmother, Katherine C. Squier?

Mr. Ferris: I object to that question on grounds too obvious to state on the record and advise the witness he need not answer.

By Mr. Maxson:

Q. Did the statement which you were about to make and which you were directed not to make by your counsel relate to your relationship with Charles Burnham Squier?

Mr. Ferris: I object to that question on the same grounds and call counsel's attention to the fact that he is incorporating statements of fact in his questions that are not correct and advise the witness he need not answer.

By Mr. Maxson:

Q. Did the statement which you were about to make and which you were directed not to make by your counsel refer to any of the questions that have been asked you previously?

Mr. Ferris: I object to that on the same grounds and advise the witness he need not answer.

By Mr. Maxson:

Q. Did it refer to the question that you just answered previously? A. No.

Q. What did it refer to?

Mr. Ferris: I object to that and advise the witness he need not answer.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

The Witness: I would like to answer that.

Mr. Ferris: Now, please, Mr. Squier.

Mr. Maxson: I wasn't laughing at your objections. Please understand that.

Mr. Ferris: I didn't assume you were, Mr. Maxson.

By Mr. Maxson:

Q. You testified. Mr. Squier, on the last hearing——

Mr. Ferris: What page, Mr. Maxson?

Mr. Maxson: On page 18.

——that you hadn't seen the testator for two or three years previous to the time when he broke his leg at his residence in Rahway, do you remember that? A. Yes, if not a longer period.

Q. Can you fix approximately the time when his leg was broken? A. I should say six or seven years ago.

Q. And subsequent to that time how frequently did you see him? A. Oh, two or three more years prior to that time, I can't tell you exactly.

Q. I am asking you now after the time when his leg was broken when did you next see him? A. That would be at the wedding of Mr. Houghton's daughter.

Q. How long after was that about? A. I should say that was two or three years.

Q. Were the relations between you and the testator friendly? A. Always.

Q. You never had any difficulty of any kind with him? A. No, sir.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. And during previous years had you been accustomed to visit him from time to time? A. Yes.

Q. How frequently? A. Very long periods between, I should say.

Q. Well, how long? A. Oh, two, three, four or five years.

Q. Between each visit? A. Yes.

Q. Did he visit you? A. Yes.

Q. And at intervals of two, three, four or five years? A. I would say ten.

Q. Ten years. Do you know with respect to the other members of the family, what the relation was, whether friendly or not? A. Yes.

Q. It was friendly? A. Yes.

Q. How often did the other members of the family see the testator, if you know?

Mr. Ferris: I object to that as hearsay and as immaterial, incompetent and irrelevant.

Mr. Maxson: You can't think of a situation where he might have been present?

Mr. Ferris: I am letting him answer. I am entitled to have my objection on the record.

Mr. Maxson: Certainly, I know you are. I am not complaining about the objections.

The Witness: May I hear the question?

(Question repeated by stenographer.)

A. No, I don't know.

By Mr. Maxson:

Q. Did you have any family gatherings at which you were present?

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Ferris: You mean, I assume, the entire family.

Mr. Maxson: No, I mean the family or part of the family.

The Witness: What part?

By Mr. Maxson:

Q. When you were present and some of the other members of the family and the testator? A. No, I don't remember.

Q. No Thanksgiving dinners? A. No.

Q. No Christmas dinners? A. No.

Q. Not at any time in your recollection? A. That would be going back into ancient history at the time of my grandfather and grandmother.

Q. Well, during their lifetime, did you have family gatherings? A. Yes.

Q. And all the family came together? A. Yes.

Q. How far back were those occasions? A. I should say I would put that at 20 odd years.

Q. Then for 20 or more years there were no family gatherings on the occasion of Thanksgiving or Christmas or occasions of that kind that you recall when the family were together?

Mr. Ferris: I object to that question on the ground that it incorrectly summarizes the testimony of the witness.

Mr. Maxson: I am asking him whether that is so.

Mr. Ferris: May I ask what part of the family, Mr. Maxson?

Mr. Maxson: Any part of the family.

Mr. Ferris: That is different. I have no objection to that question.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. I am also asking whether you and the testator were present.

Mr. Ferris: I object to the question as being a double question and ask counsel to clarify it by dividing his questions so that they may be intelligently answered.

Mr. Maxson: The witness may not take your point of view that it can't be intelligently answered.

The Witness: I do. I take that point of view. I would like to have it separated.

By Mr. Maxson:

Q. You have testified that on the last occasion that you remember when the family were together during the lifetime of your grandfather and grandmother, it was about 20 or more years ago? A. I should say so.

Q. Then for 20 or more years according to your recollection there has been no family gathering on any occasion when you and the testator were present with other members of the family? A. You refer to Thanksgiving and Christmas in your previous questions, I want to ask what occasion is meant?

Q. I said at any time?

Mr. Ferris: On any occasion.

A. At funerals.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. Which ones do you recall that were attended by you and the testator? A. My grandmother's.

Q. Is that the only one during the 20 or more years. A. My grandfather's.

Q. Were there any weddings during that period? A. Yes.

Q. Did the family attend those? A. Yes.

Q. You and the testator present? A. I don't remember.

Q. Were the relations, if you know, between your father and the testator friendly and affectionate? A. Yes.

Q. How frequently did they see each other, if you know? A. Very seldom.

Q. Well, at what intervals? A. I should say even greater intervals that I saw him.

Q. I think you testified here that it was about 10 years between their meeting as far as you know? A. That is a fair approximate.

Q. Did your father and the testator meet at these family gatherings? Yes.

Q. Did you and the testator attend your grandmother's funeral, did you say? A. Yes.

Q. Was your father there? A. Yes.

Q. Did you testify that your father was present at the reading of your grandmother's will? A. No.

Q. Was he or was he not there according to your recollection? A. Yes, he was there.

Q. Did you have any discussion of the contents of the will with your father at that time? A. No.

Q. Did you with anybody? A. No.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. And that question, of course, relates to the time after the will had been read? A. My answer to that is yes.

Q. At no time after the will had been read did you have a discussion with anybody as to its contents or provisions? A. No.

Q. Now, you have testified that a hostility arose between you and Charles Burnham Squier, does that still continue? A. Will you repeat that question?

(Question repeated by stenographer.)

A. I don't know as I testified as to hostility.

Q. That is my recollection.

Mr. Ferris: He is right Mr. Maxson.

By Mr. Maxson:

Q. If you didn't testify as to hostility, what did you say about your relations with Charles Burnham Squier subsequent to the reading of the will? A. As different than before.

Q. Well, in what respect? A. There is no change in my answer to that.

Q. Your relations, as I recall from your testimony, were friendly with Charles Burnham Squier before the reading of your grandmother's will, is that so or not? A. Yes.

Q. And that subsequent to the reading of your grandmother's will those relations changed, is that so? A. Yes.

Q. I ask you again to say whether you can recall what inspired or what caused the change in your relations? A. No.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. You cannot recall? A. No.

Q. Do you know of your own knowledge what the relations are between Charles Burnham Squier and the other members of the family? A. No.

Q. Your sisters? A. No.

Q. Did you ever discuss Charles Burnham Squier with your sisters on any occasion? A. Simply in a general way as we would discuss the family.

Q. What was the character of the discussion? A. I don't recall.

Q. Did it have to do with the disposition of the estate?

Mr. Ferris: Which estate do you mean, Mr. Maxson?

By Mr. Maxson:

Q. The estate of Katherine Squier and I am referring to that all the time? A. I don't remember.

Q. Did you at any time discuss this change in your relations with Charles Burnham Squier, the appellant, with Mr. Houghton, not as your attorney I mean? A. No.

Q. Not on any occasion? A. No.

Q. Subsequent to the reading of your grandmother's will when was the first time you saw Charles Burnham Squier? A. I don't remember.

Q. Did you see him between the reading of your grandmother's will and the time when you met him the other day in my office? A. Probably, but I don't remember the occasion.

Q. Have you any recollection as to the number of times that you saw him? A. No, I have not.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. Did you call on him or did he call on you during the period between the reading of the grandmother's will and the time that you saw him in my office on the last hearing? A. No, sir, not that I know of.

Q. Do you know whether any of the other members of the family called on him during that period? A. I do not.

Q. Have any of the other members of the family expressed themselves to you as to their feeling toward Charles Burnham Squier? A. No.

Q. Never discussed it with them on any occasion? A. No.

Q. Neither before the inception of this proceeding or afterward? A. No.

Q. You have not discussed the appellant and his relation to the estate since this proceeding was started with any of the family? A. I think I have answered that about——

Mr. Ferris: I object to that as an incorrect statement of the testimony of the witness and incorporating a double question.

By Mr. Maxson:

Q. I will change he question to make an inquiry. Have you discussed Charles Burnham Squier with the other members of the family since the inception of this proceeding? A. I have not.

Q. Did you discuss him and his relations with the estate with them before the inception of this proceeding? A. No, sir.

Q. At any time? A. No, sir.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. Did you ever discuss his relations to the members of the family with Mr. Houghton? A. No.

Q. As executor? A. No.

Q. Not on any occasion either before this proceeding was started or subsequent to it? A. No.

Q. You had no conferences about this proceeding in which this testimony is taken?

Mr. Ferris: I object to that as calling for conferences between attorney and client and advise the witness he need not answer.

Mr. Maxson: I simply asked him whether there were such conferences, not what was said.

Mr. Ferris: I have no objection to the question being answered yes or no. Read the question.

(Question repeated by stenographer.)

Mr. Ferris: Just answer that yes or no.

The Witness: Naturally.

Mr. Ferris: Yes or no.

The Witness: Yes.

By Mr. Maxson:

Q. And with whom?

Mr. Ferris: Didn't the question say with Mr. Houghton?

(Previous questions read by stenographer.)

Mr. Ferris: Go on, answer that.

A. With Mr. Houghton's firm.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. And who were present?

Mr. Ferris: I think you are overstepping the bounds but I will not take any objection to it.

A. Why, I should say Mr. Ferris or Mr. Shepard.

By Mr. Maxson:

Q. Did you have any conferences with Mr. Houghton acting——

Mr. Ferris: Just yes or no.

By Mr. Maxson:

Q. Just a minute. Let me finish my question. Acting as co-executor with you of this estate with respect to your relations with Mr. Charles Burnham Squier? A. No.

Q. Or the relations of any other member of the family with Charles Burnham Squier? A. No.

Q. During the period between the time of the probate of the will and the inception of this proceeding did you have any discussion with the members of the family as to its relations with Charles Burnham Squier? A. No.

Q. Did you or did you not discuss with other members of the family the antagonism which arose between you and Charles Burnham Squier after the reading of your grandmother's will?

Mr. Ferris: I object to the question on the ground it incorrectly incorporates the testi-

mony of the witness and particularly with reference to the use of the word "antagonism," the witness merely having testified they were friendly before and unfriendly afterward.

A. No.

By Mr. Maxson:

Q. Do you or do you not know whether any feeling of unfriendliness existed between the other members of the family and Charles Burnham Squier after the reading of your grandmother's will? A. No.

Q. You never inquired of them? A. No.

Q. And they never told you? A. No.

Q. What their relations were? A. No.

Q. Do you remember when the estate of your grandfather, William C. Squier, was distributed? A. I do not.

Q. You had an interest in it, did you not? A. I did not.

Q. Did your father? A. Yes.

Q. And at that time were you acting as his attorney in fact or not?

Mr. Ferris: What time do you mean, the probate of the will? The question is vague.

By Mr. Maxson:

Q. At the time of the distribution of the estate of your grandfather, William C. Squier, was this witness acting as his attorney in fact. A. I acted as attorney many times during my father's absence in Europe.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. Didn't you have a general power of attorney to act for him? A. To be used during his absence.

Q. Do you recall whether or not he was absent when your grandfather's estate was distributed? A. I do not.

Q. Have you any recollection as to whether or not you received the distribution of your grandfather's estate on your father's behalf? A. I do not.

Q. Have you any recollection about the distribution of your grandfather's estate? A. I have not.

Mr. Maxson: We are not going on any longer today.

The Commissioner: Unfortunately, I have an engagement to go to Atlantic City this afternoon.

The Witness: I have an important engagement at one o'clock.

Mr. Ferris: Mr. Commissioner——

Mr. Maxson: Just one minute, will you let me finish, I have the floor.

Mr. Ferris: I am trying to answer the Commissioner.

The Commissioner: Mr. Squier, you said you had an important engagement at one o'clock.

Mr. Ferris: None as important as this.

Mr. Maxson: I assume that you are prepared to leave this matter to the Master. That is one of the things within his province. This is Saturday and a half holiday and I ask that we adjourn at 12 o'clock.

Mr. Hendrick: Witness asked that.

Mr. Ferris: Mr. Commissioner, I want to again make the statement on the record that

this witness has stated long since and Judge Stein has been advised that this witness is going to California on December 27. While I am equally as busy as Mr. Maxson, I am perfectly willing to cancel all engagements to permit him to complete this examination before the 27th. I will have no objection to an adjournment providing that no adjournments of this witness's examination will be taken beyond the day before Christmas. We only have next week to complete it.

The Commissioner: I suggest that we go on on Monday morning.

Mr. Ferris: I have a man coming from Montreal but he will have to wait.

Mr. Commissioner, I have a suggestion to make and that is that the further examination of this witness take place in Elizabeth, New Jersey, where Judge Stein may be immediately available to pass on objections as they are made and I am perfectly willing to produce the present witness in Elizabeth, New Jersey, on the adjourned date in order that not only the present objections that are on the record may be passed upon, but in order that any additional objections might be immediately passed on. I offer that suggestion.

Mr. Maxson: That is quite agreeable to us. However, I cannot go on until Wednesday.

Mr. Ferris: You have some engagements for Tuesday?

Mr. Maxson: I only have the engagement of looking after the commission of banking and insurance on that day, as you know.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Ferris: I did not know that.

Mr. Maxson: I find that I have the Phelps Manor matter on for Wednesday. The Commissioner happens to know something about it. It is set down for eleven o'clock on Wednesday morning but I understand that it has been settled and I can find out about that and let you know on Monday morning. If it is to go on, of course, I cannot go on with this on Wednesday.

Mr. Ferris: Not at all on Wednesday?

Mr. Maxson: I may be able to go on part of the day.

Mr. Ferris: Suppose for the time being we stipulate that the hearing is adjourned until Wednesday at 10:30 A. M. at Elizabeth unless Mr. Maxson finds that he cannot go on.

Mr. Maxson: Here is a suggestion that Mr. Hendrick has made. I can put off the other matter. Let us fix it for Wednesday.

Mr. Ferris: Definitely at 10:30 A. M.

Mr. Maxson: Make it eleven o'clock. That gives us a chance to do something before it goes on.

Mr. Ferris: At Elizabeth, New Jersey.

The Commissioner: I think that we can get a court room. Judge Daly is not sitting now, is he Mr. Hyer?

Mr. Hyer: No.

The Commissioner: I am sure there will be some court room or office available.

Examination continued until Wednesday, December 21, 1927, at eleven A. M. at the Court House, Elizabeth, N. J.

TESTIMONY

UNION COUNTY ORPHANS' COURT.

IN THE MATTER *of the* ESTATE OF EDWIN M. SQUIER, Deceased.

Transcript of shorthand notes of testimony taken in the above cause before Honorable Alfred A. Stein, Judge, at the Union County Court House, Elizabeth, New Jersey, on Wednesday, December 21, 1927, at 11:00 A. M.

Appearances:

EDWARD MAXSON, Esq., for the Appellant,
FRANK HENDRICK, Esq., of Counsel.

FREDERICK HYER, Esq., for the Appellee,
GEORGE A. FERRIS, Esq., and AUGUSTUS A. HOUGHTON, Esq., of Counsel.

The Court: If you come any more there is going to be something said that is going to be very unpleasant. I cannot understand why intelligent fellows like you cannot get along without this thing. It seems to me it is so easy.

Mr. Ferris: Judge, you can see by the record——

The Court: Here is another thing. I want to say to you frankly that I don't propose that Mr.

Townsend who has been appointed by me should take 25 pages of testimony and then have a wrangle and have him come back here without my paying him for his time irregardless of what the statute may say about it. He has frankly suggested that I relieve him and I don't want to do it.

Mr. Ferris: May I ask what the attendance fee is, Mr. Townsend?

The Court: Attendance is $10.

Mr. Ferris: I think, Mr. Maxson, that we ought to stipulate——

The Court: Whether you do or don't it isn't right to make him run out here and he should be here. If I could let him rule, that would be one thing, but I can't do it. I can't permit him to rule because I can't find the authority for it. I would be only too glad to because I know it would be all right. The worst feature is that you gentlemen too know what is proper. Let us hear what it is.

Mr. Ferris: Page 8 is the first one.

Mr. Maxson: I will withdraw those.

Mr. Ferris: Page 8 and 10 are withdrawn. Page 13——

Mr. Maxson: Questions are withdrawn but it is not conceded that they are immaterial except at the present time. We are filing an amended petition next week setting up conspiracy and fraud and under those allegations we feel that some of these questions may be material later on and I don't want to have it appear on record that we have withdrawn that line of testimony from the consideration of the Court.

The Court: You withdraw them for the purposes herein this morning and so far as the petition that

you are going to file is concerned, until that is filed and the allegations are made known to me and some questions are asked in pursuance of the amended petition I cannot rule on them.

Mr. Ferris: I may state that none of the questions can possibly be material even under the amended petition.

The Court: I don't suppose you can very well object to the filing of the petition.

Mr. Ferris: No, we won't.

Mr. Maxson: The first question that we would like to have your Honor pass upon is this: "Q. You had no knowledge about what you were expected to do as executor" and the answer was "No." "Q. When you finished this conference did you know what your duties were as executor?" and he said "Yes." "Q. From whom did you get the information?"

We are claiming that there was a conspiracy and a continued conspiracy to defeat our client's interests in this estate. That means that before the probate of the will and after any act which shows the state of mind of any of the parties is material.

The Court: That may be so but——

Mr. Maxson: I can submit to your Honor decisions upholding that.

The Court: That may be so but the question from whom did you get the information——

Mr. Ferris: That is with reference to his duties as executor.

The Court: How would that be material? What I want to say this morning I am going to say now. You must have in mind a line of bona fide questions that you desire to ask these wtinesses that are per-

tinent to the issue here and those questions you ought to ask so that the examination can be completed without these constant interruptions and we are getting nowhere with them. If you men would feel more comfortable and your witnesses are willing, why don't you have them come here on the hearing and let them call them here and go ahead with this thing.

Mr. Ferris: That is just my suggestion.

The Court: Come right here on the hearing on the 16th or whenever it was set for, but one of these men is going away?

Mr. Ferris: One of these men is going to California. If you want to finish your examination of him today——

The Court: If you can do that, I will hear it.

Mr. Ferris: That was my suggestion.

The Court: I tell you frankly in view of this amended petition I will allow you to go quite a ways in order to prove if you can that there was a conspiracy. The New York litigation and all that sort of stuff will be left out.

Mr. Maxson: Then you will take the testimony here and hear Mr. Squier today?

The Court: Yes.

Mr. Maxson: Would your Honor have time to look over this record.

The Court: I will rule now on what you have in the way of objections.

Mr. Ferris: In regard to your Honor's suggestion about producing the witnesses, I offer now to stipulate that I will produce every witness who was sought to be examined outside of the State of New York.

Mr. Maxson: All right, does that apply to both sides. They have called our client?

Mr. Ferris: Of course, I asked Mr. Hyer to say so to your Honor before I made that offer.

The Court: Will you gentlemen now stipulate on the record that you consent to a reasonable allowance to Mr. Townsend in view of the unusual conditions that he was confronted with in this proceeding.

Mr. Ferris: I certainly consent.

Mr. Maxson: We consent.

The Court: All right, I will make a fair allowance when the time comes. Taking testimony over there would be one thing. There are regular fees that would be allowed, but he has had to chase out to New Jersey a couple of times.

Mr. Ferris: He has been very competent.

The Court: If it appears to me and you can show me that you need more time to get other witnesses to substantiate certain things and represent as a fact that you can get them, I will hear them. In other words, if you have a case, I do not want to deprive you of every reasonable chance to prove it.

Let us pass on the objections that are in the record.

Mr. Maxson: Of course, I think if your Honor could take 10 minues or so to read this over and get the testimony in mind.

The Court: I will do it and then take the testimony.

Mr. Hyer: We should like to reserve the right to dismiss the amended petition in view of the statute which provides that an appeal must be filed within a certain time. I don't know of any law which permits an amended petition adding new matter.

The Court: When did Mr. Squier die?

Mr. Hyer: November 9, 1926.

The Court: The original petition was filed in time and you no doubt won't dispute that. That is the commencement of the proceeding and if that is within time the proceeding may be amended notwithstanding the statutory provision.

Mr. Hyer: If this is considered as new matter, I would say no. If it is amending something in the original petition, that is something different.

The Court: I will hear you make an objection.

Mr. Hyer: Like to reserve that privilege.

The Court: The difficulty about that is this. If you are going to reserve the right and I allow certain testimony to go in in order to meet the allegations in the amended petition——

Mr. Ferris: My own view is, let them interpose anything they want. I would not stand on any technicality.

The Court: So that you would have to make your motion directed against the amended petition before the testimony is given. That would be my motion.

Mr. Hyer: I have not, of course, read it over.

Mr. Ferris: We will look over the petition while your Honor is reading the testimony.

The Court: All right, I will read this now. (Short recess.)

Mr. Maxson: May it please the Court we find one error in that amended petition and that is it gives the residence of the contestant as out of the State of New York. He lives in the City of New York now, has moved there, and we would like to ask that that be changed giving his residence in New York.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Ferris: He is a non-resident.

Mr. Maxson: Not a resident of the State of New Jersey. We would like to have that changed.

The Court: It is a sworn petition. You can't amend this petition now.

Mr. Maxson: Then we will file another one with your Honor's permission.

WILLIAM C. SQUIER, continued:

Mr. Maxson: I want to ask if counsel will produce the trust deed from Stuart C. Squier, father of the witness now on the stand, to the witness.

The Court: Notice to produce been given?

Mr. Ferris: No, we don't stand on technicalities. I haven't it here but I will be very glad to furnish it.

Mr. Maxson: Also the power of attorney.

The Court: Mentioned in this testimony?

Mr. Maxson: Mentioned in this testimony.

Mr. Ferris: I will produce that also.

Mr. Maxson: Also an inventory of the estate which afterward is to be filed.

Mr. Ferris: As to that, if your Honor please. It was suggested that we furnish them with that and we said we would, but when I returned to New York I ascertained upon inquiry that some of the securities listed in that inventory are securities concerning which the other side had no knowledge. If they secure that they will do what they already have done.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

There are several corporations, the New Jersey Zinc Company and the Pennsylvania Railroad, who are refusing to pay dividends because of the action commenced in New York and interest on those dividends is being lost. In other words they claim that they should not pay dividends on account of the broad injunction they were able to secure ex parte. In view of the possibility of that, I think they should not have this inventory because I have no doubt that that course will be followed. In other words there are securities in the hands of the administrators now which I believe the other side have no knowledge of and if they obtain that inventory, they will immediately enjoin them. Those securities are safe in the hands of the administrators who have been collecting the dividends and I am reticent to furnish them with this information at this time. In view of the threatened conduct we ask your Honor's permission to withdraw our consent to furnishing this inventory.

Mr. Maxson: We are not going to ask for an injunction to prevent the administrators from collecting any dividends or returns.

Mr. Ferris: Nor do I want you to commence action. The assets of this estate are safe and secure now and it would only subject these defendants to further mortification and expense.

The Court: Why do you want the inventory?

Mr. Maxson: We want to know where these securities are and in whose possession they were at the time of the death of the testator. If

they were in his possession and control, that is one of the factors in this case that we think is of utmost importance. I say now before the court that we don't purpose to ask for any injunction restraining the transfer of these securities or the payment of any returns or dividends on them to the officers of the court appointed by your Honor.

Mr. Ferris: What about the individual?

The Court: Now, gentlemen, let us get this record right and not like the one I have just read. This is in horrible shape. I don't see how the inventory of the estate would have any bearing upon the present inquiry and while I take counsel's word now in the case that they will not ask for an injunction, there is such a thing possible as a change of counsel and I am not going to allow this inquiry to go beyond the scope of this investigation. I will give you every reasonable chance to make good on the petition and amended petition filed but how you can be interested at this time in the inventory of the estate, I don't know.

Mr. Maxson: An inventory should be filed, may it please your Honor, anyway.

The Court: The entire estate is now in the hands of this court and you needn't worry about the securities and things of that kind. They have been impounded by the order of the Court. Coupons are being clipped from time to time and the money is deposited as should be done in line of conservation and if you succeed in your contest ultimately, everything that this deceased left will be intact.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Maxson: I don't want to press this but it seems to me that the custody of these securities and the collection of dividends during the lifetime of the testator is a matter material to this inquiry now before the Court to show what control somebody may have had over him and his estate.

The Court: All right. Ultimately if you succeed in your present appeal from the probate of this will on any of the grounds that you have advanced, you will be in a position to get all that information and you can follow it as you will afterwards if you have any interest in it.

Mr. Maxson: If it please your Honor, we are pressed for time and most of the information that we seek is in the control of our adversaries.

The Court: You mean in this case?

Mr. Maxson: Yes.

The Court: If that should develop later, I will hear you then but just now I can't see how it is material. You won't be shut out at any time in this case from obtaining any information that I deem is necessary and material for you to have in the prosecution of your appeal but just now there isn't the slightest thing that I can see which should make you interested in the inventory.

(Colloquy about contemplated action not to be taken under instructions of Court.)

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

WILLIAM C. SQUIER, continued:

Direct Examination by Mr. Maxson:

Q. Mr. Squier you have testified that the first time you saw the will of Edwin M. Squier, deceased, was at your mother's residence in Greenwich, Conn., is that right? A. Yes.

Mr. Ferris: May I make an objection. I think, Mr. Maxson, your recollection is incorrect, it was only a copy of the will.

The Court: Ask him that.

By Mr. Maxson:

Q. Did you say that you saw the original will on that occasion or a copy of it? A. A copy of it.

Q. I show you a printed copy which purports to be a copy of the will of Edwin M. Squier and ask you if it was a copy similar to that which you saw? A. May I ask a question? How could I attempt to answer that without reading it all over.

The Court: I expected that answer. Is this a copy of the will?

Mr. Ferris: I will stipulate if Mr. Maxson says so.

The Court: Will you stipulate that that is a copy?

It is stipulated on the record that that is a copy of the will. Now you can go on and examine him on that.

By Mr. Maxson:

Q. Was it a printed copy that you saw there? A. I should say typewritten if I remember rightly.

Q. Typewritten, then it was not similar to this copy which I show you now? A. That is printed.

Mr. Maxson: I ask that this be marked for identification. Marked Ex. P.—1 Id.

Q. You have testified that you do not know whether there was a will preceding this of this testator or not, isn't that so? A. Yes, sir.

Q. Did you ever make any inquiry to find out? A. I did not.

Q. Didn't you think it was a matter of some importance to know whether there was a will preceding this one? A. I did not.

Q. Do you know who drew this will? A. No.

Q. Ever make any inquiry to find out? A. No.

Q. You weren't interested in it? A. Those things didn't interest me.

Q. You recall that your attention was called on one of the previous examinations to the conversation—I will withdraw that with your Honor's permission—Do you recall that on one of the previous examinations that your attention was called to the reading of the will of your grandmother, Katherine C. Squier? A. Yes.

Q. And the conversations that were had at that time? A. I didn't remember them.

Q. You said you did not remember them?

By the Court:

Q. Was there any conversation, Mr. Squier? A. Yes, sir, I believe there was.

Q. You know that there was a conversation? A. Yes, sir.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. You ought to be able to recall some part of it. I mean if you know there was some conversation, then you know there was something said. Otherwise you would not say there was a conversation. Now what was said? Do you remember any part of it? A. The only thing I can remember, Judge, was an objection.

Q. By whom? A. Mr. Charles Burnham Squier.

Q. Now what was the objection? A. I wouldn't like to try to give it to you.

Q. Whether you would or whether you wouldn't, what was it? A. Objecting to the terms, sir.

Q. What was it he said? A. I think it was objection to his share.

Q. And what did he say? A. I can't give any further.

Q. Why not? A. I don't remember.

Q. Even so. There was an objection to his share. If there was an objection to his share, if you remember he objected to his share, he must have said something. Your best recollection is all you can give. What was it he said? It was perfectly all right for him to object if he wanted to object.

Mr. Ferris: This is 14 years ago.

The Court: It doesn't make any difference how long ago it was.

A. I can't remember.

Q. Can you remember any part of the objection? A. No, sir.

Q. All you do remember is he objected to his share? A. Yes, sir.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. You remember that Mr. Houghton read the will? A. Yes.

By the Court:

Q. Mr. Houghton is a member of the bar and is a son-in-law of the Squier's, is that right? A. Yes, sir.

By Mr. Maxson:

Q. Do you remember what Mr. Houghton said with respect to the provisions of the will? A. I do not.

Q. Did he say anything with respect to the provisions of the will? A. I don't remember anything.

Q. Would your recollection be refreshed by this affidavit of Mr. Houghton in which he says that he gave as a reason for such unfairness that he should have been left the same share in her estate as that of his uncles? A. Never heard that before.

Q. You didn't hear Mr. Squier say that? A. No, sir.

Q. Wouldn't your recollection as to what Mr. Houghton said be refreshed by this excerpt from this affidavit. "I explained to him immediately, in the presence of his other relatives, that his grandmother had considered that he had received all of the share of his father at the time of his grandfather's death?

By the Court:

Q. Do you remember him saying that?

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. This is what Mr. Houghton is supposed to have said. Have you any recollection of Mr. Houghton having said it? A. No, sir.

Q. And that under the terms of his grandfather's will he would further receive the full share that his father would have received upon the death of such of his uncles who died without issue on account of the distribution of the trusts which had been established for their benefit of the will of his grandfather. Remember Mr. Houghton saying that? A. I do not.

Q. You don't deny that he did say it?

The Court: Well, he doesn't remember him saying it.

A. My answer is the same.

Mr. Ferris: May I ask that the paper read from——

The Court: What is the paper?

Mr. Maxson: Excerpts from affidavit made by Mr. Houghton.

The Court: Have it marked for identification.

(Marked Ex. P-2 Id.)

Mr. Ferris: I think it might be sufficient to have Mr. Maxson state that it is merely an excerpt taken from an affidavit in the New York action because he has not the original here.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. After the conversation that was had and after the statement which Mr. Houghton made—strike that out please with the Court's permission. Do you remember that Mr. Houghton did make a statement there? A. I do not.

Q. You remember that he read the will? A. Yes, sir.

Q. And you recall that after the will was read, Mr. Charles Burnham Squier made a statement or objection to the terms of the will. You have testified to that, haven't you? A. I think I have.

By the Court:

Q. Yes, he said he objected to his share.

By Mr. Maxson:

Q. Did you have a conversation with Charles Burnham Squier after he made this objection? A. I don't remember, sir.

Q. Don't you recall taking him aside upstairs in another room and talking to him about his objection and the character of it? A. No, sir, all that is decidedly hazy.

Q. You have no recollection at all of going upstairs with him and discussing his attitude towards the provisions of this will which had just been read? A. My answer is the same, sir.

By the Court:

Q. Well, what is the answer? A. No.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. You have said that one of the few occasions on which the family came together was at a wedding held about two years before the death of the testator, about six months before the death of the testator?

The Court: The testator you are referring to now is the grandmother?

Mr. Maxson: Edwin M. Squier.

A. You want the date of that wedding?

By Mr. Maxson:

Q. Mr. Squier, you have testified that one of the occasions when the Squier family came together was on the occasion of a wedding which took place about six months previous to the death of Edwin M. Squier, the testator, is that correct? A. As to that time——

Q. Well, approximately, I am not asking you to fix the time accurately? A. I think that wedding will be two years this next January first.

By the Court:

Q. You remember the family coming together at that time? A. Yes.

Q. Now what do you want to ask?

By Mr. Maxson:

Q. And you have given in your testimony the members of the family who attended as you recall them? A. Yes.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. At that time did you have any conversation with Edwin M. Squier, the testator? A. Such as one would have at a wedding, sir.

Q. Do you recall what the subject of the conversation was? A. The bride and groom.

Q. Say anything to him about the last visit you made to Rahway? A. No.

Q. Or the last time you saw him in New York? A. No.

Q. When had you seen him previous to this time in New York? A. I have already answered that.

By the Court:

Q. Answer it again.

A. It was not in New York, sir. I testified that I saw him in Rahway.

By Mr. Maxson:

Q. And how long previous to the date of the wedding? A. Between two and three years, I think, if I remember rightly that was when he broke his leg.

Q. Was your father with you at that time? A. No.

Q. Where was your father at that time, if you remember? A. In Greenwich, Conn.

Q. Who drew the trust deed from your father to you, if you remember. A. Luke Vincent Lockwood.

Q. At that time did Mr. Houghton represent you or your father as your personal attorney? A. I have no record of any lawyer. I have no proceedings that call for a lawyer.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. Did Mr. Houghton ever represent you as your attorney, personal attorney? A. Yes, sir.

By the Court:

Q. Without any proceedings pending in which you would require a lawyer? A. Yes, sir, I did not have any stated lawyers.

Q. Whether you did or did not have a stated lawyer did Mr. Houghton represent you? A. Yes, sir.

Q. About the time of this trust deed? A. No, he did not, sir.

By Mr. Maxson:

Q. When did he last represent you? A. I couldn't answer that for I don't remember.

By the Court:

Q. As near as you can remember, Mr. Squier, as near as you can get to it? A. If I said five years, that might be near.

Q. That would be your best recollection? A. Yes, sir.

By Mr. Maxson:

Q. And he has not represented you in any matter or proceeding within the last five years? A. No, sir.

Q. Aren't you mistaken about that? A. I would like to ask you a question.

Q. He acted for you in the New York proceeding that has been so much talked about? A. That is the question I wanted to ask. I did not know as

long as Mr. Houghton is a defendant whether I should say that his firm represented me or whether he is out of it.

Q. I did not get that. A. The point was this. As Mr. Houghton is a defendant in this case that you refer to, I might have said that Mr. Houghton's firm represented me.

Q. I see. You distinguished between Mr. Houghton and his firm when you say that he has not represented you in the last five years? A. I should think I should in regard to this case.

Q. All right, I only wanted to get the record straight, that is all. Were there any co-trustees in this trust deed made by your father to you? A. No.

Q. You were sole trustee, weren't you? A. Yes, sir.

By the Court:

Q. That will speak for itself anyhow when it is produced.

By Mr. Maxson:

Q. Who represented you as attorney under that trust. A. Luke Vincent Lockwood.

Q. Where is his office? A. 165 Broadway.

Q. Did he continue to represent you as long as you were trustee under that trust deed? A. Yes, sir.

The Court: Now, Mr. Maxson, I imagine that this is going to take a little longer than I anticipated and I must be back here for the Orphans' Court. The Orphans' Court calen-

dar will take probably a half an hour and you can continue your examination at quarter past two.

Mr. Ferris: May I say that this witness has planned to go to California on the 26th and we are hoping to conclude his examination today.

Adjourned until 2:15 P. M.

Afternoon Session.

By Mr. Maxson:

Q. I show you Ex. P-1 and call your attention to the last part of paragraph 5 and ask you whether your attention has been directed to that before? A. I have read that because I have read the will.

Q. Just a minute, I would like to read this paragraph to which I have directed your attention. "I make no further provision, directly or indirectly, for my nephew Charles Burnham Squier as he was and will be the sole beneficiary in the interest his father if living would have received from the trust created by the will of my father, William C. Squier."

The Court: This is read from the will of whom?

Mr. Maxson: This is from the will of the testator in this proceeding.

Q. Was that question answered?

(Answer repeated by stenographer.)

Q. That does not answer the question. Will you answer the question, Mr. Squier? A. Yes.

Q. Do you understand that provision?

The Court: I will take it for granted that he does. It is good English.

By Mr. Maxson:

Q. Is the statement of fact contained in that provision true?

Mr. Ferris: I object to that, if your Honor please, calling for a conclusion and on the ground that the paper speaks for itself. It seems clear——

The Court: Just let me see it.

Mr. Maxson: I am asking the witness, may it please the Court, whether it is a fact as stated in that provision.

The Court: Will you read the question, please?

(Question repeated by stenographer.)

The Court: He may or may not know that to be true. This testator makes this statement of fact. You might ask him what he knows, if he knows anything about the fact.

By Mr. Maxson:

Q. Do you know anything about the fact as to whether or not that statement is true as stated in this will? A. I do not.

Mr. Ferris: I object to that.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

The Court: That wasn't quite what I meant. Ask him whether he knows as a matter of fact the man was provided for in the will of the grandfather.

By Mr. Maxson:

Q. Do you know as a fact whether provision was made in the grandfather's will for Charles Burnham Squier? A. Yes.

Q. What was the provision?

Mr. Ferris: I object to that.

Mr. Maxson: All right I will withdraw it.

Q. With whom did you discuss this provision of the will? A. I never discussed it.

Q. Didn't you testify that you had some talk with somebody about it?

By the Court:

Q. Said it was called to his attention. By whom was this particular provision called to your attention? A. It was not called to my attention, sir.

Q. How did you come to know about it? A. Because I read the entire will.

By Mr. Maxson:

Q. I ask you whether this certain provision was called to your attention and you said "yes" did you not? A. I did not.

Q. I would ask to have the testimony read and the witness' recollection refreshed about it.

(Testimony read by stenographer.)

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By the Court:

Q. Namely, that it was called to your attention? A. I did not understand it, sir, in that way.

By Mr. Maxson:

Q. Did you ever discuss this provision of the Edwin M. Squier will with anyone? A. No, sir.

Q. Ever discuss the will with anyone? A. No, sir.

Q. With your co-executors or anyone else? A. As an executor?

By the Court:

Q. You discussed it—— A. Yes.

Q. You can't very well separate yourself from the fact that you discussed with your executors. You were interested in it and it is more than likely that you talked about this thing.

By Mr. Maxson:

Q. With whom did you discuss it? A. With my co-executors.

Q. Who were they?

The Court: We know who they were. If you want to know which ones, we will ask him that. Did you discuss it with all of them or only one of them?

The Witness: All of them.

By Mr. Maxson:

Q. And where?

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By the Court:

Q. It was very likely in Mr. Houghton's office? A. Mr. Edwin M. Squier's—the Estate office.

Q. Discussed it in several places, did you not? A. Yes.

Q. And in this office in particular? A. Yes.

Q. When was that, was it more than once? A. No.

Q. When was it, after the will was probated or before or when? A. After, I assume.

By Mr. Maxson:

Q. How soon after the will was probated?

Mr. Ferris: That is immaterial.

The Court: Why shroud this thing in mystery? Why, if he did not, he would be an abominable executor. Let us talk about this think and talk about it like real men. There is no necessity for hinging or shrouding this thing in secrecy. What is all this about?

Mr. Ferris: I withdraw my objection.

The Court: All of them probably talked about this clause. Strange to me if they did not.

The Witness: What was the question?

(Question repeated by stenographer.)

A. It would only be a guess but I would say a week.

By the Court:

Q. That is all right. Your best recollection is all you can give.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. You have testified it was at the Estate Office of Edwin M. Squier, is that so? A. Yes, sir.

Q. Where was that office? A. 111 Broadway.

Q. Was it or was it not at the office of Mr. Houghton? A. In the same suite.

By the Court:

Q. He is a member of that firm? A. Mr. Houghton, yes, sir.

Mr. Ferris: Your Honor, Mr. Squier had his own private office.

The Court: Mr. Squier's office was located right in the suite of Mr. Houghton's firm.

By Mr. Maxson:

Q. Did you talk in Mr. Squier's Estate office or in Mr. Houghton's private office? A. Mr. Squier's estate office.

Q. Now I read to you the provision of the will which says that "Charles Burnham Squier was and will be the sole beneficiary in the interest of his father in the estate of my father Wiiliam C. Squier" now do you or do you not know whether Charles Burnham Squier received his father's interest from the grandfather's estate as a fact? A. No.

Q. You don't know. A. No.

The Court: Let me ask counsel at this point, why can't we get for my information on

the record now the date of Edwin M. Squier's will, that is this will.

Mr. Maxson: That is dated the 6th day of July, 1926.

The Court: Now the date of the grandfather's will.

Mr. Ferris: That was back in 1903.

Mr. Houghton: Mr. William C. Squier died in 1906 and made his will about six years before he died.

Mr. Ferris: 1900 and the grandmother's will was probated in 1913 and was executed in 1907.

Mr. Hendrick: Codicil in 1912 confirming the entire will.

The Court: Let us have that on the record right at this point.

Mr. Ferris: There is no dispute as to those. All parties know them.

Mr. Maxson: Will counsel state for the record who drew these three wills?

Mr. Ferris: I could not tell you that. I can tell you that Mr. Houghton drew the grandmother's will, Katherine C. Squier. Who drew the grandfather's will, I don't know.

Mr. Houghton: If your Honor please, it was Mr. English of Elizabeth.

The Court: Which Mr. English?

Mr. Houghton: The father of the one who is now in the Inheritance Tax Department.

The Court: Mr. Theodore C. English?

Mr. Houghton: I think it was he.

The Court: He was more or less crippled. Do you remember the man?

Mr. Houghton: I never knew him. I think he was the man. He is one of the witnesses, and I understand he drew it.

Mr. Maxson: May I ask if counsel will state for the record who drew the will of Edwin M. Squier?

Mr. Ferris: Yes, Mr. Houghton drew that will.

The Court: I think if you come to see me a little more often we can get along very nicely. Get all the information you are entitled to have.

By Mr. Maxson:

Q. Do you remember the special bequest in this will Ex. P-1 to the different servants in the testator's family? A. Yes.

Q. Do you know any of them from having visited the testator?

By the Court:

Q. Any of the servants?

By Mr. Maxson:

A. Yes.

By the Court:

Q. Do you know any of them? A. As I would naturally see any servants in the house.

Q. You knew them when you saw them? A. Yes.

By Mr. Maxson:

Q. Had they been long in the service of the testator, if you know? A. Several of them, yes.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. Which ones, if you can tell? I show you the will and call your attention to four to which he makes these special bequests, giving their names? A. There are two Marys mentioned here. I could not separate them because I never knew their last names. Of those I would say Thomas Clark and Alfred Pierce were ones I knew were long in service.

Q. How long had they been with him, if you know? A. I don't know.

By the Court:

Q. That was true too of the two Marys. Were they long in service? A. One of the Marys.

By Mr. Maxson:

Q. How long approximately had they been in the service of the testator? A. I don't know.

Q. Was it one year or ten years? A. When you say long I would say ten years.

The Court: That is a long time in service these days, domestic service.

By Mr. Maxson:

Q. Where are these servants employed now, if you know? A. I don't know.

Q. Any of them employed with any of the members of the Squier family? A. I don't know.

Q. Previous to the inception of this contest were any of the legacies paid? A. Not that I know.

Q. Was any distribution of any kind made of any of the property of the estate? A. Not that I know.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. Well you would have known if any such distribution had been made inasmuch as you were an executor? A. Naturally.

Q. Can't you say whether any such distribution was made? A. No, it was not.

Q. Do you know whether any payments of any character have been made to any of these servants?

The Court: What do you mean by that, any gifts made to them?

Mr. Maxson: Gifts or payments. Payments perhaps is not a good word.

Q. Has any money been given to them in any way coming from——

The Court: That is interesting if it is from the estate.

A. Not that I know.

By Mr. Maxson:

Q. I ask you again, wouldn't you know if any such payments had been made? A. I will say no. My answer is no.

Q. Do you know whether any of these servants are now working on the estate? A. I do not.

The Court: Isn't it a fact that those servants are there?

Mr. Maxson: I don't know whether they are or not.

Mr. Houghton: Thomas Clark is still taking care of the grounds and Mr. Avery is custodian.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

The Court: I understood that the administrators *pendente lite* have kept them in order to protect the property instead of hiring police. My information is that there are in that home some very valuable rugs and other things that are best preserved by being retained right there where they are. Understand some servants are there. Who are they?

Mr. Houghton: William Avery and Thomas Clark.

The Court: They are right there at the present time, those two.

Mr. Maxson: We have no criticism, may it please your Honor, of that. I want to find out what this witness knows about the administration of the estate.

The Court: That is all right. I want to help you.

By Mr. Maxson:

Q. Previous to the time when the administrators *pendente lite* were appointed by this Court were Clark and Avery two of the servants still in the employ of the Estate? A. I don't know.

By the Court:

Q. If they were employed by the estate and were being paid any money, you would know about it, wouldn't you? A. The details——

Mr. Ferris: Mr. Searles, the resident executor in Rahway, is the one who attended to it. Money was drawn from the local bank.

The Court: They were paid?
Mr. Ferris: Yes, sir.

By the Court:

Q. You don't know anything about it? A. No, sir, that was a detail I know nothing about.

Mr. Houghton: To conserve the property Mr. Frederick Squier, Jr., one of the executors, moved into the house immediately after the death of this testator and they kept the same servants that were there during the lifetime of Mr. Squier and the servants' wages were paid after Mr. Squier moved it. That was attended to entirely by Mr. Searles who lives in Rahway.

The Court: And that continued until the administrators *pendente lite* were appointed?

Mr. Houghton: Yes, sir.

By Mr. Maxson:

Q. Mr. Squier, you have heard Mr. Houghton's statement. Did or did not you know that Mr. Searles was paying these servants up to the time the administrators *pendente lite* were appointed by this Court? A. It would be hearsay. I might say yes but it would be hearsay.

By the Court:

Q. Do you know? A. By hearsay. I did not suppose I was to say anything that was hearsay, is that correct?

Q. Who told you about it? A. It might have been Mr. Houghton.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. Can't you say whether it was Mr. Houghton or not? You have no recollection as to who told you? A. No, sir, I have not.

Q. Or the occasion when you were told? A. No, sir.

Q. Or the place where you heard it? A. No.

Q. How about the women servants, were they paid from the estate up to the time the administrators *pendente lite* were appointed?

Mr. Ferris: The statement is on the record that all the servants were paid.

The Court: I think that is right.

Mr. Maxson: I beg the Court's pardon. I understood that Mr. Houghton referred only to the men servants.

The Court: The two men servants were paid from the time of the death of the testator and were retained by the administrators *pendente lite.* I understand the women servants were dismissed when the administrators *pendente lite* were appointed.

By Mr. Maxson:

Q. What service did the women servants render to the Estate, if you know, from the time of the death of the testator up to the time the administrators were appointed in this Court? A. I don't know.

Q. Did you know they were being paid? A. No.

Q. No one ever told you that? A. As I told you, hearsay, a moment ago.

The Court: Said he was being told.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. This money was being paid out of the Estate and you as an executor knew nothing about it? A. Many details I knew nothing about, small matters.

Q. That doesn't answer my question.

By the Court:

Q. This is one of the details you knew nothing about? A. That is correct, sir.

By Mr. Maxson:

Q. Now as an executor wouldn't you have wanted to know whether any service was being rendered by these servants?

Mr. Ferris: May I respectfully object to that question?

The Court: I don't think we are interested. If he is guilty of any dereliction in his duty as an executor, that may be taken up at the time his account is filed by objections to his account. Just now I am not interested in that, later on I may be.

By Mr. Maxson:

Q. Mr. Squier, you have heard Mr. Houghton's statement as to these servants of the household and the fact that they were being paid their wages since the death of the testator? A. Yes.

Q. Did you understand that to mean that they had all been paid their wages without regard to where they are? A. No.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. What did you understand Mr. Houghton to mean? A. Those that are necessary.

Q. Do you know whether or not all the servants who were in the household at the time of the testator's death have been retained and paid their wages since his death? A. I do not.

Q. Didn't you know as executor whether that money was being disbursed out of the estate? A. Not necessarily.

Q. Who would make the payments if they were being made? A. If they were being paid by the executors, one of the executors would do it.

Q. Well, which one? A. I don't know.

Q. Wouldn't you be concerned to know whether the money of the estate was being disbursed in that way? A. The matter of small items, no.

Q. Who were the executors and trustees under the will of your grandfather, William C. Squier?

The Court: That is provided for in the will. We are going to have that document.

Mr. Ferris: Yes, sir.

Mr. Maxson: I want to find out what this witness knows about it.

The Court: You know who they were?

The Witness: Yes, sir.

Mr. Ferris: That is in the record.

By Mr. Maxson:

Q. You have testified that your father was one of them? A. Yes, sir.

Q. Did he continue to be one of them down to the time of his death? A. No, sir.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. Who was substituted in his place? A. Nobody.

Q. During his lifetime you had a power of attorney for him? A. During his—I had it, yes.

Q. And under that power of attorney did you act as trustee in his place? A. I did not.

Q. Who acted for him as trustee during his absences abroad? A. Nobody.

Q. How frequently was he abroad? A. Possibly once in two years.

Q. And how long would he stay on those trips? A. Anywheres from six to eight, ten months.

Q. Now with respect to the estate of your grandmother, Katherine C. Squier, your father was one of the executors and trustees under that will also, was he not? A. Yes.

Q. Did he continue to act as executor and trustee up to the time of his death? A. No.

Q. Who was substituted in his place?

Mr. Houghton: If your Honor please, the estate was all settled.

Mr. Ferris: Nobody was substituted.

Mr. Maxson: That is what I am trying to find out.

Q. Did you act as attorney in fact with respect to the estate of Katherine C. Squier in your father's behalf? A. I did not.

Q. Was the deed, the power of attorney, rather, executed during the time your father was acting as executor and trustee under the will of Katherine C. Squier?

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Ferris: Would you mind fixing the date of that, Mr. Maxson, so he can understand?

Mr. Maxson: Fix the date, I am asking the witness to fix the date.

The Witness: I can't fix it.

Q. But you do recall that you didn't act in your father's behalf in the administration of the estate of your grandmother, Katherine C. Squier? A. I did not.

Q. Not in any capacity? A. No, sir.

Q. You did testify, Mr. Squier, did you not that you acted for your father as his attorney in fact under that power of attorney with respect to your grandfather's estate, William C. Squier? I am asking you whether you did or not. I don't remember. A. Simply as receiving moneys.

Q. And in no other respect? A. No other respect.

Q. And when he was in Europe for eight or ten months at a time, who looked after his duties as executor and trustee under that will? A. No one.

The Court: Where does all this lead us to?

Mr. Maxson: I think I am going to connect it up now, may it please your Honor.

By Mr. Maxson:

Q. Then who looked after the duties of executor and trustee during those periods? A. The other executors and trustees.

Q. Which ones? A. Frederick C. and Edwin M. Squier.

Q. How about Mr. Houghton? A. He had nothing to do with it.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. Wasn't he substituted in your father's place? A. Not back in those days.

Q. Wasn't he substituted during the time your father was abroad? A. No, sir.

Q. Your father made no trips abroad after Mr. Houghton was substituted as trustee in his place? A. No, sir.

Q. Are you sure about that? A. As nearly so as I can be.

Q. Do you remember when Mr. Houghton was substituted? A. I do not.

Mr. Ferris: It is 1925. I will put it on the record.

The Court: What month?

Mr. Houghton: I think it was in January or February, 1925, that your Honor appointed me in place of Mr. William C. Squier, my father-in-law.

By Mr. Maxson:

Q. Now that you have the date fixed, was your father abroad subsequent to that? A. No, sir.

Q. Are you sure about that? A. You say after that period?

By the Court:

Q. After January, 1925?

By Mr. Maxson:

Q. After January, 1925? A. He wasn't sir.

Q. From January, 1925, Mr. Houghton handled the estate, did he not?

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Ferris: I object to that as calling for a conclusion and calling for hearsay.

The Court: He may know as a fact.

The Witness: He did not.

By Mr. Maxson:

Q. You have heard Mr. Houghton make the statement for the record that he was substituted as trustee for your father in January, 1925? A. Yes, sir.

Q. And you say that to your knowledge he had nothing to do with the administration?

Mr. Ferris: I object to that. That is not what he said:

Mr. Maxson: That is the effect.

The Court: You asked him whether Mr. Houghton after January, 1925, handled the estate. May I have the question repeated?

(Question repeated by stenographer.)

By Mr. Maxson:

Q. Did he have anything to do with the administration of the estate after January, 1925? A. Yes.

Q. What did he do, if you know? A. Simply the duties of trustee.

Q. Is that all? A. That is all.

Q. Did he represent the estate, he or his firm?

The Court: You mean as counsel?

Mr. Maxson: As counsel.

A. I don't know.

By the Court:

Q. You must have had some counsel? A. I don't know, Judge, that they needed any counsel.

Mr. Ferris: He had nothing to do with that, Judge. Wasn't one of the executors.

The Court: He can tell that.

The Witness: I don't know that they did.

By Mr. Maxson:

Q. You don't know whether there was any counsel for the estate subsequent to that time? A. I do not.

Q. Who was counsel before that time?

By the Court:

Q. If you know. A. No, I don't know.

By Mr. Maxson:

Q. Who was counsel during the time you were acting under the power of attorney for your father? A. Counsel for me?

Q. Who was counsel for the estate, executors and trustees? A. I don't know.

Q. You don't know who represented you acting for your father under the power of attorney as trustee?

Mr. Ferris: I object to that as incorporating a conclusion of fact and a conclusion that anyone was representing him. A power of attorney is limited.

The Court: He can say that.

The Witness: Will you repeat that question?

(Question repeated by stenographer.)

A. I don't remember that I had occasion to have any counsel.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

The Court: I must take notice of the fact that Mr. Squier is one of the interested parties.

Mr. Ferris: He wasn't before. Had no interest in that trust.

The Court: But he is one of the interested parties in this proceeding. I can't see the purpose of the question just yet but we will let it go. Just now I think the easiest way is to let this inquiry go right on as long as it doesn't go too far afield.

By Mr. Maxson:

Q. Then during all the period that you were acting for your father as his attorney in fact under that power of attorney you had no one representing you as counsel to the best of your recollection? A. No.

Q. Did the other trustees, if you recall, have anyone representing them? A. There was nobody connected with that paper. The power of attorney you refer to, sir?

Q. Yes. A. I was the only one in connection with that.

Q. Under that power of attorney you were acting as co-trustee representing your father with the other trustees under the will of your grandfather, William C. Squier?

Mr. Ferris: I object to that.

The Court: The paper will speak for itself.

Mr. Maxson: This witness is going to California.

The Court: The document will be here.

Mr. Maxson: Then it will be too late to examine him with respect thereto. May I ask

him again who handled the estate of your grandfather William C. Squier as executor and trustee?

The Court: That he has testified to.

The Witness: Four times, I think.

The Court: All right, answer it again.

A. Stuart C. Squier, Edwin M. Squier and Frederick C. Squier.

Q. Stuart C. Squier was your father, was he not? A. Yes.

By the Court:

Q. Now when he was away who represented him? A. Nobody.

By Mr. Maxson:

Q. How frequently was he away? A. I already told you that.

Q. You said he was away on trips to Europe for ten months at a time. How frequently was he in Europe during the period from the time of the death of your grandfather down to the time of his death? A. I can't remember that.

Q. Give it approximately? A. I can't approximate anything like that.

By the Court:

Q. Go away every year? A. Quite frequently.

Q. Is frequently every year? A. Possibly once a year.

By Mr. Maxson:

Q. And stayed for eight or ten months? A. Not necessarily.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. Well, how long would he stay? A. Four, six, eight, possibly got up to nine and ten months.

Q. Sometimes he stayed twelve months, did he not? A. I don't know whether I can say that.

The Court: Says he doesn't know if he can say that. That means he might have stayed a whole year. What I am trying to get in mind —I don't want to confuse you, Mr. Maxson, is what difference does it make at this particular inquiry whether this co-trustee remained away for a whole year at a time or six months or eight months. How does it affect the will in question?

Mr. Maxson: We contend that if one certain person handled all of these estates from the time of the death of William C. Squier down to the present time that it has some bearing on the issues before your Honor. I think we will be able to show you that.

The Court: Well that may be so, but I want to know where you are leading to.

Mr. Maxson: Your Honor will remember the Cooper case——

The Court: And several others of the same kind.

Mr. Maxson: Yes, several others of the same kind. That is what we are getting at. Now this witness, I think, is a very intelligent witness. I say so in his presence. He is an adverse witness, definitely adverse and his testimony shows it. I don't like to point out to him exactly what we are seeking to elicit.

The Court: If you will tell me, maybe I can get out of him what you want. If I think it is

material and I think he is not giving it to you, I will help you.

Mr. Ferris: I was going to suggest that if Mr. Maxson wishes to tell your Honor, even not in my presence, I have no objection.

The Court: Whatever we do we will do in the presence of all. Do not take this down (to the stenographer).

Colloquy.

By Mr. Maxson:

Q. How long do you purpose to stay in California, Mr. Squier? A. About three months.

Q. You won't be here for the trial of this case if it is tried in January or February? A. No.

Q. There were certain court proceedings in connection with the administration of your grandfather's estate, were there not? A. Not that I know.

By the Court:

Q. You filed an account. There was an account filed? A. Yes, sir, I don't understand that.

By Mr. Maxson:

Q. Probate of the will? A. I suppose that is natural.

By the Court:

Q. Were there objections filed to the account? A. Not that I know of.

By Mr. Maxson:

Q. I might ask you this. There were some attorneys' fees paid, weren't there. A. You ought to know that.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Q. If they were paid it follows that there were some services rendered?

The Court: I will take cognizance that if they were paid they did something.

A. Yes, sir.

By Mr. Maxson:

Q. Can you say whether there were any attorneys engaged in connection with the administration of that estate, referring to your grandfather's estate? A. I don't know that there were.

By the Court:

Q. Was Mr. Houghton paid a fee? A. Not that I know.

Q. Did you ever hear of a fee being paid? A. No.

The Court: Did you get a fee, Mr. Houghton?

Mr. Houghton: My firm did. My firm got a fee.

The Court: How much did you receive, do you remember?

Mr. Houghton: I think on the final accounting we took 1%——

The Court: In other words you didn't get enough. May we have the further concession as to whether or not there were any other attorneys concerned in advising the executors and trustees or in directing the proceedings?

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

Mr. Houghton: In the William C. Squier estate there was no other firm except my firm, then Shepherd & Houghton. In the Katherine C. Squier estate there was a contest started by Mr. Charles Burnham Squier. He had, I think a Mr. Parrot representing him. Also some attorneys in New York whose names I do not recall. Aside from that there have been no other attorneys except my firm.

The Court: You represented the estate right straight through?

Mr. Houghton: Yes.

Mr. Maxson: Mr. Houghton might have asked me.

Mr. Houghton: You asked me for the names of the attorneys.

Mr. Maxson: You have it now on the record, Mr. Houghton.

By Mr. Maxson:

Q. Now do you know that Mr. Houghton and his firm represented, took care of the legal matters in connection with the administration of your grandfather's estate? A. No, except as I have just been told by Mr. Houghton.

Q. Until you heard what Mr. Houghton said in court today you did not know that? A. No.

Q. Do you know that Mr. Houghton and his firm represented the administrators of your grandmother's estate?

The Court: What difference does all this make, whether he knows it or not?

Mr. Maxson: It may.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

The Court: You have on the record now all about that. I don't think it makes any difference.

By Mr. Maxson:

Q. You yourself had to do with the administration of the William C. Squier estate, did you not? A. I did not.

Q. Not in any respect? A. No, sir.

Q. You did not receive moneys and disburse them? A. (No answer.)

Q. You did not receive and disburse moneys of that estate? A. No.

Mr. Maxson: I ask Mr. Houghton if that is a copy of a letter which you wrote to the Surrogate?

Mr. Ferris: We believe it is a copy but we can't tell whether it is accurate.

Mr. Houghton: It is apparently because I remember writing the letter.

Mr. Ferris: At any rate the original will be on your Honor's file, I suppose.

By Mr. Maxson:

Q. Mr. Squier, Frederick C. Squier, your uncle, was also one of the executors and trustees under the will of your grandfather, was he not? A. Yes.

Q. When you were acting for your father did you confer with him about the administration of the estate at any time? A. No.

Q. Do you know whether your father did when he was acting for himself? A. Yes.

Q. How frequently? A. Oh, possibly once a year, maybe once in six months.

New Jersey State Library

Q. And where would they meet, if you know? A. In the office of Edwin M. Squier.

Q. That is in Mr. Houghton's suite.

Mr. Ferris: I object to that, if your Honor please.

Mr. Maxson: All right, I will withdraw the question.

Q. In an office that was connected with the suite of Mr. Houghton or his firm? A. Yes.

Q. Now you have testified that they met possibly once in six months. Were you present? A. No, sir.

Q. And where did you get your information about these meetings? A. From the fact my father told me he was going to attend them.

Q. And what was the last one he told you he had attended? A. I would not want to try to guess.

Q. Are you guessing at the fact that he told you he did attend them? A. Not at all.

Q. Can't you say approximately when he had the last meeting? A. I could not.

Q. How many years before his death? A. I could not.

Q. Whether it was in the summer or the winter? A. I could not.

Q. Whether it was ten years or twenty years? A. I would not want to say. Would not want to guess. It would be perfectly absurd.

Q. You can't come within ten years of saying? A. That is ridiculous. Of course, I could.

The Court: Answer the questions.

A. Certainly within ten years.

William C. Squier—For Appellant-Contestant—(Recalled)—Direct

By Mr. Maxson:

Q. That is the best approximation you can give? A. Before my father's death.

Q. How many years before your father's death did he tell you he had the last meeting with Frederick C. Squier? A. Possibly ten or twelve years.

Q. Ten or twelve years before his death? A. Yes, sir.

Q. Was Edwin M. Squier present, do you know? A. Yes, it being a meeting of the trustees, naturally he was.

Q. Did your father tell you that? A. Sometimes they would all be there.

Q. Did your father tell you who were present of the trustees on those occasions? A. He never made a point of it.

By the Court:

Q. You can answer that yes or no. A. No.

By Mr. Maxson:

Q. He did not tell you? A. No.

Q. Then you don't know whether Edwin M. Squier was present or not? A. No.

Q. Did your father tell you of the meeting previous to the one twelve years before his death? A. No, not that I know of.

Q. Is that the only one that he ever told you about? A. No, there were many others.

Q. Tell me approximately when they were? A. I would not like to guess.

Q. Well, how many years before the one twelve years before his death? A. I don't know.

Q. Was it one, two, three, four years? A. It might have been six months or a year or two.

Q. And he did not tell you who was present? A. No.

Q. All he did was to tell you there was a meeting? A. Generally.

Q. Did he tell you why he had given you the information? A. Mere fact there was a meeting of the trustees, that is all.

Q. Where did he tell you this? A. Generally in his own home.

Q. And did he tell you of all the meetings of the trustees, if you know? A. No, I don't suppose he did.

Q. Then there were some meetings that he did not tell you about? A. Probably.

Q. Why did he tell you about the meetings which he did?

Mr. Ferris: I object to that.

The Court: May have said something that would lead this witness to remember.

A. Isn't any reason that I know of.

By Mr. Maxson:

Q. Was Mr. Houghton present at those meetings? A. Not that I know of.

Q. Then your father did tell you with respect to some of the people who were present but not all of them, is that so? A. I see no reason why Mr. Houghton should be present.

Q. That does not answer the question. A. May I have the question repeated?

(Question repeated by stenographer.)

William C. Squier—For Appellant-Contestant—(Recalled)—Cross

A. Yes, that is probably so.

Mr. Maxson: That is all for the present. If we demonstrate to your Honor that some of these matters that this witness won't recall now may be material, we shall ask that he be produced here on the trial of this case before it is finished.

The Court: Either that or we will adjourn until such time as he can be produced or we will send a commission to take his testimony, send some interrogatories to him.

Cross Examination by Mr. Ferris:

Q. Just a few questions, Mr. Squier. You were questioned somewhat at length by Mr. Maxson with respect to your knowledge as to the payment of wages to the household employees of the late Edwin Squier. Now I ask you from December, 1926, the month following the death of Mr. Squier, until the early spring of 1927 where were you? A. I went to California shortly after the first of this year and was there arriving home shortly after the first of April.

Q. And it was during that period of time that these payments of salaries to the household employees were made? A. Yes.

Q. Now in the amended petition of the appellant sworn to today it is alleged by the appellant as follows: "(B) The said William C. Squier, 3rd," that is yourself, is it not? A. Yes, sir.

Q. "Frederick C. Squier, Jr., Harold M. Searles, Augustus S. Houghton, Frederick C. Squier, Helen S. Keene, Carol S. Houghton, Katharine S. Mont-

gomery, Elsie S. Edson, Hester S. Smiley, George A. Ferris, Peter J. McCoy and Woolsey A. Shepard, unduly, illegally and fraudulently influenced the said Edwin M. Squier in respect to the making and supposed execution of the said paper writing (referring to the will)." Now I ask you if at any time, at any place, on any occasion whatever, you discussed with the persons whose names I have just read to you, either separately or together, the subject matter of any will of Edwin M. Squier, the making thereof or the not making thereof? A. I did not.

Q. Now with respect to the two persons named, George A. Ferris and Peter J. McCoy, that is myself and one of my law partners, when was the first time with respect to the death of Edwin M. Squier that you first met either Mr. McCoy or myself? A. On our way to this Court, to this building.

Q. To probate the will? A. Yes.

Q. And that was the first time you met either myself or Mr. McCoy? A. Yes.

Q. Now had you on any occasion at any time discussed the subject matter of the will of Edwin M. Squier with any of the other persons whose names I have read to you? A. No.

Q. Had you ever discussed it with Mr. Augustus S. Houghton at any time or place? A. No.

Q. Now did you at any time do any overt act or do anything whatever to conspire to cause Edwin Squier to make a will or refrain from making a will or to bequeath or give anyone anything or to refrain from doing so? A. No.

Q. Had you any knowledge of any of the other persons named in that part that I have read to you doing any such thing? A. No.

William C. Squier—For Appellant-Contestant—(Recalled)—Cross

Q. When was the first time that you ever heard about any such conspiracy? A. When I was served with papers.

Q. That is in the New York action? A. Yes.

Q. Now in paragraph (d) of the amended petition the following allegation is sworn to by Burnham C. Squier——

The Court: Paragraph (d)?

Mr. Ferris: Yes.

"The said paper writing was not freely or voluntarily made or executed by Edwin M. Squier as his last will and testament, but that the said paper writing purporting to be his will was obtained and procured as a result of a conspiracy on the part of William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles, Augustus S. Houghton, Frederick C. Squier, Helen S. Keene, Carol S. Houghton, Katherine S. Montgomery, Elsie S. Edson, Hester S. Smiley, George A. Ferris, Peter J. McCoy and Woolsey A. Shepard. That said persons, without the knowledge of Edwin M. Squier, deceased, federated and conspired together in causing said paper writing to be signed, if in fact it was signed, by the said Edwin M. Squier. That without the knowledge of Edwin M. Squier said persons held divers meetings and concerted divers plans and unlawful designs in order to deceive and mislead Edwin M. Squier; that they conspired together unlawfully to get possession of the property and estate of Edwin M. Squier and in order to more effectually deceive and mislead Edwin M. Squier it was secretly agreed by and between the said persons that the

said paper writing should be drawn and signed and executed by Edwin M. Squier, if in fact it was signed and executed by him, and to present said paper writing for probate as his last will and testament." Now did you ever hold any such meetings as are described in that paragraph? A. I did not.

Q. Did you ever talk to Mr. Edwin M. Squier about his making a will or refraining from making one at any time or place? A. I did not.

Q. Do you wholly and emphatically deny the allegations that I have just read to you? A. Absolutely.

Q. Do you know of any act or any word or any deed on your part that could justify any such allegation against you? A. I do not.

Q. Do you recall receiving checks to the order of your father coming from the executors or trustees under your grandfather's will? A. Yes.

Mr. Maxson: How is this cross-examination?

Mr. Ferris: Because he referred to a letter.

Mr. Maxson: I have not put in any letter.

Mr. Ferris: This witness is going to California. His presence here may not be available beyond today. He was shown a letter written by Mr. Houghton which makes reference to certain checks and he was also asked if he did anything in connection with the estate of his grandfather. I apprehend that some point may be made of certain checks that were drawn and under the power of attorney given to this witness were endorsed in the father's name.

Mr. Maxson: I object to counsel coaching the witness. He has not been shown any letter. We did not show the letter to him. We asked

Mr. Houghton if he had sent the letter for the purpose of identification but it was not shown to this witness.

The Court: I have not seen any letter that was shown him. If counsel showed Mr. Houghton a letter I did not see it and the witness did not see it so you are anticipating something that you may want to introduce to meet some proof that they are going to make but at this time it isn't cross examination.

Mr. Ferris: May I understand something. Perhaps I am in error. This is a commission to take the deposition of this witness as to all matters that may be material upon the trial. In other words I may elicit from him evidence which may be material at the trial even though it isn't cross examination.

The Court: Taking no testimony like that before me.

Mr. Ferris: If that is the case, then my question is material on the ground that he was asked if he did anything on connection with the estate?

The Court: That question was asked.

Mr. Ferris: This is a question which is addressed to that phase of his testimony taken on direct examination insofar as this proceeding is concerned I am to cross-examine him.

Mr. Maxson: I have no objection to this examination except when the witness' attention is called to a letter which counsel says was shown him. No letter was shown him.

By Mr. Ferris:

Q. Do you recall endorsing checks in the name of your father? A. Yes.

William C. Squier—For Appellant-Contestant—(Recalled)—Cross

By Mr. Maxson:

Q. Who told you that during your absence in California that these servants were being paid from the moneys of the estate? A. I don't remember.

Q. You do remember that you knew they were being paid? A. That was a detail that I gave no attention to.

Q. You have just said so in answer to a question of your attorney, Mr. Ferris? A. That was the latter part of the question.

By the Court:

Q. Do you understand the question? A. I don't think I do.

By Mr. Maxson:

Q. You testified that you knew that during your absence in California that these servants were being paid with the moneys of the estate, is that so or not? A. Could I have Mr. Ferris' question read?

The Court: No.

(Question just asked by Mr. Maxson repeated by stenographer.)

A. Did I know that during my absence—I did not know during my absence, sir.

Q. You did not know that they were being paid from the moneys of the estate?

The Court: Says he did not.

By Mr. Maxson:

Q. You had no information about that from any source? A. No, sir.

William C. Squier—For Appellant-Contestant—(Recalled)—Cross

Q. Didn't you testify that you did know about it and that it was during your absence—— A. I did not.

Q. Will you please permit me to finish my question? A. Certainly I will. That is what I am here for. Pardon me for butting in.

Q. Didn't you testify in answer to Mr. Ferris' question that you were absent in California while the moneys of the estate were being used to pay these servants?

The Court: You did so testify a little while ago.

By Mr. Maxson:

Q. Didn't you so testify? A. Yes.

Q. Doesn't it follow that you knew they were being paid during that time? A. I don't get the question.

The Court: The question is certainly argumentative.

Mr. Maxson: This is a difficult witness.

The Court: I understand. That is the reason I am allowing you to examine him the way you have been doing. This is argument. Isn't it so and so forth and so on. That part of the question is argument.

By Mr. Maxson:

Q. When did you first find out that the servants were being paid out of the moneys of the estate?

By the Court:

Q. When you got back home? A. Yes.

William C. Squier—For Appellant-Contestant—(Recalled)—Cross

By Mr. Maxson:

Q. Who gave you the information? A. One of the executors.

Q. Well which one? A. I can't tell you.

Q. Well, where was the information conveyed to you? A. I could not tell you that.

Q. Remember when? A. No.

Q. How soon after you came back from California? A. No.

Q. Weren't you concerned as an executor of the estate to know about the disbursements of money in your absence? A. Not such small matters, no.

Q. So that whether or not these servants were working, rendering services to the estate—— A. I am not a foreman.

Q. You promised you would wait until I finished my question. And being paid moneys out of the estate you were not concerned about, is that so? A. I would not say that.

Q. It was a trivial matter as you say? A. I always check those things up later. Petty cash matters did not bother me.

Q. When do you check these petty cash matters up?

The Court: Now, Mr. Maxson, suppose he never did. Some of these days there will be an accounting filed and somebody may come along and object to it. Then will be the time to find out if he was concerned at the time.

By Mr. Maxson:

Q. With your Honor's permission I am going to ask one more question. Then you are quite sure

that you knew nothing about these moneys being paid out during your absence in California? A. Those small items, no.

Q. I am talking about these moneys, small items or large items, you knew nothing about it?

By the Court:

Q. The items to the help? A. No, sir.

By Mr. Maxson:

Q. You knew they were small items? A. Naturally would be.

Q. You assumed they were small items and consequently you made no inquiry as to whether or not they were being paid? A. Correct.

The Court: You will take no further testimony now until the final hearing. Understand these witnesses are to be produced here and that is stipulated and agreed to.

Mr. Maxson: I don't want to make any stipulation, with your Honor's permission, until after I have time to talk that over with my associate.

The Court: (To the stenographer.) You need not take this. (Colloquy follows.)

Mr. Maxson: If your Honor please, we are not ready to proceed this morning. I asked my office to so inform your Honor, (I do not know whether that message came or not), and also inform my adversary. Notwithstanding that fact, they are here this morning with a lot of witnesses. Our point is we are entitled to have produced to us, and there was promised

to us on the last hearing, a copy of a trust deed, and a power of attorney. Every day since that hearing I have had my office inquire for those papers, and up to the present time we are in court this morning without them. I have been here since 10 o'clock with the idea if they insisted on going on, perhaps they would let me inspect them before we go on and were ready to try the matter. We have not them yet. I think now the matter should go off until we have an opportunity to inspect these important papers.

Mr. Ferris: If your Honor please, in the first place Mr. Maxson is incorrect in stating that he said he would not be ready to go on. His office called up yesterday and said they would apply for an adjournment, and gave as their only reason they hadn't seen this second power of attorney. Mr. William Squier, before he went away to California, searched in his vault and was unable to find it. We have searched, with the New Jersey Zinc Company and one other corporation. It expired in 1919. We have been unable to locate it. It is just the usual form of power of attorney, and what significance it can have in this proceeding I fail to see. As to the trust deed, however, I said I would produce it in Court. It is here. I told Mr. Maxson it would be here. I think it is wholly immaterial to this proceeding. It is a private paper between Mr. William Squier, a witness who is here, and his father. And the members of that family, they do not want Mr. Burnham Squier to see it, or his counsel. They do not want them to use it in the New

York action. It is wholly immaterial in this action. And I am ready to submit it to your Honor and you can see by its terms it cannot have the slightest materiality in this action. We are wholly unwilling to submit to Mr. Burnham Squier or his attorney a paper that has no relation whatever to this proceeding.

The Court: How do you make it important, in the present inquiry, that this paper be inspected?

Mr. Maxson: May it please your Honor, I do not know whether your Honor's recollection about this is clear. We stood before your Honor, and this matter unfortunately does not appear on the record; and we asked for the production of these two papers. They said it is going to be difficult to get the original of those papers. And my associate, Mr. Hendrick, said we do not care about originals; will you give us copies before the next hearing.

The Court: That is correct. But how are they material?

Mr. Maxson: We want to see them. We have never seen those documents, and they promised to produce them here or rather give us copies of them. They promised to give us copies of them. They said they did not want to produce the originals, and we agreed to take the copies in place or the originals. For the whole time since the last hearing I have been endeavoring to get them, without success. Now they come here this morning and say they do not want us to have them.

The Court: Maybe they are right. We will see.

Mr. Ferris: It is in the record we agreed we were to produce them in Court. There is nothing in the record to indicate we promised to have copies of them in advance. That I never promised.

The Court: I have this in mind: That promise to produce them was brought about through the suggestion of the Court.

Mr. Ferris: Yes.

The Court: I think I said, "Why not produce them?"

Mr. Ferris: Yes.

The Court: "Let them see them."

Mr. Ferris: Yes.

The Court: "What harm can there be?" Something of that kind.

Mr. Ferris: That is in the record.

The Court: Now, I have in mind, of course, this: That I ought not to permit, unless it is important in the present inquiry, an inspection of any private papers between the parties. Your case, that you are about to make, is predicated upon the petition of appeal and the amended petition. Unless these papers have some bearing on the charges you make in the amended petition I do not see how they would be at all pertinent to the injury. They certainly would not be pertinent to the original petition.

The deed of trust Stuart C. Squier to William C. Squier, handed me by counsel, has absolutely no bearing upon the present inquiry. And absolutely a different, and private matter, and separate and distinct from anything you allege.

Mr. Maxson: We claim, may it please your Honor, in our amended petition (and I do not think it was necessary to amend it for that purpose, perhaps,) these people acted in concert in the procuring and making of this document. One of the beneficiaries, natural beneficiaries, under the estate, divests himself of all his estate by power of attorney and a trust deed; and reposes whatever power he may have in respect to the estate in some of the people we claim are acting in concert to take our interests away from us. We say, in that aspect of the case this power of attorney has some bearing: The powers which it reposes in the other people, and the exercise of those powers by the other people. At any rate, at your Honor's suggestion, they said they would produce them. Your Honor said why not produce them.

The Court: They have been produced.

Mr. Maxson: And they said "We don't know about the original." Mr. Hendrick then said "We will take copies." They said, "Very well, we will give you copies." It seems to me, with that stipulation before the Court, we ought to be allowed to have them.

The Court: After inspection of this deed of trust by the Court, I do not see it is at all pertinent. In fact, to put it plainly, I do not see it is any of the appellant's business at all what is in this paper; has no bearing whatever on the case.

Mr. Maxson: Then they might have said that, before they agreed to give us a copy of them.

The Court: I am afraid the Court has brought about the situation which is now unpleasant for Counsel, and I express my regret in that regard. I do not see how it has any bearing at all.

Mr. Maxson: We are not ready to go on. We made no preparation to go on this morning. Your Honor set this case down——

The Court: Now, Mr. Maxson, that will not do. I am sure you cannot help but recognize the fact that I have done about everything that a man can do on the bench—in fact I have gone out of my way—in order to give counsel an opportunity to make its case. Now these people are here, and they are here for your examination. If your entire case depends on the Squier family, that is one thing. If you have any evidence outside of the Squier family you should have had it here this morning.

Mr. Maxson: The burden is not on us. The Squier family has to make their case.

The Court: We will go on this morning and prove the will.

Mr. Maxson: Your Honor fixed the time for the sixteenth.

The Court: I fixed the time as this morning for the taking of the testimony of the subscribing witnesses, and having the will admitted in evidence, if it can be admitted in evidence, and then you go on and make your case.

Mr. Maxson: I am surprised at that suggestion. Your Honor gave us the date to try it on the sixteenth of the month. And at that time we will be ready to try the case.

The Court: We put the date forward to today because it was not possible for counsel to get along taking testimony by commission. There were these differences between counsel, as to whether certain questions were proper, and there were these admonitions to the witnesses not to answer, and all that sort of thing which made it necessary for me to hear this case. I will hear the testimony of the subscribing witnesses this morning, and then, if you are not ready to go on with your end of it, we will take a short adjournment. But this case involves in the neighborhood of five millions of dollars or more, and as I said at the last hearing, the persons who are entitled to this estate should have it and have it as soon as it is convenient and possible to give it to them, consistent with your rights. I propose that your rights shall be maintained, of course. But now we have dragged along with this thing for a long time, and if it is adjourned after today, it is going to be adjourned to a short date.

Mr. Maxson: Will your Honor please hear me a little further on the situation? It is very important to us, otherwise I would not be so insistent about it.

The Court: Yes.

Mr. Maxson: Your Honor put this down, as I have said, in order that we could produce these witnesses before the Court and not have this difficulty over the admission of evidence; that part we had no objection to. In fact, we preferred to examine our witnesses before the

Court and thereby expedite the case. But now it is understood that all those witnesses are to be produced in court. We do not want to examine them before trial, if they are going to be produced in court. We want to go along in the orderly way in the trial of this case. But now it seems, because your Honor has been good enough to give us this time, that they intend to start the proceeding and try this case before your Honor. That is not the matter we expected to come here for. If we came for anything, we expected to come to examine these witnesses before trial. Now, we are not ready to go on with the main case. That is a matter of a good deal more importance, for which we want to have all of our preparation made, before the first witness is put on the stand by the proponent of this document, in order to put us in the position to properly cross examine these witnesses.

The Court: What do you want to go on with this morning?

Mr. Maxson: I don't want to go on with anything.

The Court: You must go on with something. If you want to go on with the examination before trial, as you put it (which is a distinction without a difference, as I see it) go on with that. And after you have gone as far as you want with that, we will hear the main case, if that is what your plea amounts to, on the 16th of January, but then we will hear it.

Mr. Ferris: If your Honor please——

The Court: Just a moment.

I am not going to have this dragging around.

Mr. Maxson: We contend, and that may be a matter of some argument, that the burden of proof is on the proponents of this will, under the well-known Cooper case. If that be so, then they must prove their case first and sustain that burden of proof. After that, we put our case in. Now, in view of the fact that they have agreed to produce all these witnesses, whose testimony we were going to take out of the jurisdiction, on the trial of the cause, our contention is that the orderly way to handle this proceeding is to go on on the date fixed by Your Honor, when we will be ready to go on. Let them put in their case, and then we will put in such a case as we may have.

The Court: Do you say now that you do not desire to examine anybody before trial?

Mr. Maxson: They have agreed to produce them on the trial.

The Court: No! I want you to take a position one way or the other. You intimate to me that you would rather go on with your examination before trial, as you call it, and you do not want to go on with the main case. Now, of course, the orderly procedure you need not indicate to me, because I know it. I know what it is. If you want to go on with your examination before trial today, tomorrow and the next day and as many days as it will take before the 16th, I will hear all of your preliminary examination. I am trying to indicate to both counsel now that I propose this case be tried. You had a long time in which to prepare it, and the case should be thoroughly prepared by this time, because I am busy too,

you know. I have a lot of things to do. Next Tuesday the term opens, and I am now negotiating and arranging for another Judge to come here and help us. The case will not go on beyond the 16th. We will put it down peremptorily for that day, if you want, for your main case.

Mr. Maxson: That is what I want done.

The Court: Before you commence your main case I want to make sure all your preliminary examinations are concluded. You have until the 16th to do that. If you have any witnesses here to hear them prior to the 16th, let us hear them today.

Another thing I want to call to counsel's attention, I set this day, January 5, because there was very little criminal business and almost no Orphans' Court business to do. I do not want to lose this day. It is important to me I should not lose it. I have been as considerate of counsel, and more so, than I have been to counsel since I have been on this bench.

Mr. Maxson: We are quite willing to concede that, and we regret exceedingly any loss of time to the Court. But I say again, really we consider the burden of proof is with our adversary, and that burden of proof should be sustained before we are required to put our proof in.

The Court: You need not argue about the burden of proof. I will see that the burden of proof is sustained. What about the preliminary examination?

Mr. Maxson: Things may be suggested to us in the plaintiff's case which we may want to

meet. If we take the examination of those witnesses *de bene esse* before your Honor here and conclude with them, and your Honor may say "Well, you have concluded with these witnesses," and we may have some very pertinent things to ask after the proponent's case is in. That is our difficulty.

The Court: Are you ready?

Mr. Ferris: I am ready immediately. Our witnesses are here from all over.

The Court: It was understood you were to examine them today. Put your witnesses on.

Mr. Maxson: If your Honor is going on, may we have the witnesses excluded?

The Court: Yes.

Mr. Maxson: Those not on the witness stand.

The Court: Yes. Glad to do that thing for you or any other reasonable thing.

Mr. Ferris: That includes the appellant.

The Court: All the witnesses, except the witness called to the stand, will be excluded from the court room for the time being.

Mr. Ferris: Does that include myself?

The Court: Oh, no.

Mr. Ferris: I am also a witness.

The Court: No. You have to be here.

WOOLSEY A. SHEPARD, one of the subscribing witnesses, having first been duly sworn on his oath according to law, testified as follows:

Direct Examination by Mr. Ferris:

Q. Mr. Shepard, where do you reside? A. 312 West 93rd Street, New York City.

Q. Are you a member of the New York Bar? A. I am.

Q. When did you become a member of the New York Bar? A. 1903.

Q. Were you, and are you now, a member of the firm of Ferris, Shepard, Joyce & McCoy? A. I am

Q. Of 111 Broadway, New York City? A. Yes, sir.

Q. Is Mr. Augustus S. Houghton a member of that firm? A. Yes.

Q. Do you recall the 6th day of July, 1926? A. Yes, sir.

Q. At that time did the late Edwin M. Squier occupy an office adjoining the suite of Ferris, Shepard, Joyce & McCoy? A. He did.

Q. Do you recall going into his office on that date? A. Yes.

Q. Will you tell in your own language——

The Court: What date was that?
Mr. Ferries: July 6, 1926.

Q. (Continuing)—in your own language, as nearly as you can recall, exactly what transpired thereon that date? A. That morning, I don't recall the exact time, my partner, Mr. Houghton, asked me if I would step in to Mr. Squier's room. I went in there and Mr. Squier was, I think, standing by a long table which was in his room; had some papers on the table before him. He smiled, and said "I am going to sign my will at last. But," he said, "I expect to live a long time." And I laughed, and I said, "Yes. All the people who sign their wills in our office live a long time." And he said to me, "I would like to have you act as a wit-

ness for this will." I think a few moments afterwards you, Mr. Ferris, came into the room, and but a short, perhaps a moment or so after that, Mr. McCoy, another one of our partners. Mr. Squier repeated substantially the same thing to you and to Mr. McCoy, namely, that he was going to sign his will and wanted to know if they would witness it. I don't recall the exact sequence of events, but Mr. Squier, I know, sat down to the table then and signed his name to the paper which he said was his will. We had some little banter as to who should sign first as witnesses, whether you or Mr. McCoy or myself; and finally, I think someone said "You have known Mr. Squier the longest. You sign first." I sat down at the table, and asked Mr. Squier if that was his will, and he told me that it was. And I said, "Do you wish me to sign as a witness?" He said, "I certaintly do." and I read the attestation clause that was then written out at the foot of the will, signed my name, and, I think, my address. When it was your turn to sign—I think you were the next one to sign—you picked the paper up and in rather a formal manner, read the attestation clause to him and asked him if that was his will and he wished you to sign it; and if what you had read to him was what he wished to say, namely, that he published it as his will, and wanted you to act as a witness, and he smiled, and laughed, and said "Certainly." You signed it then with your name and address. And Mr. McCoy sat down immediately after you, and signed his name and address to it.

Q. I show you this will and ask you if that is the will you signed on that day in the manner that you have just described it? A. Yes, sir.

Q. I ask you to read the attestation clause and state whether it is not a fact that that correctly sets forth what transpired there on that day?

Mr. Maxson: I object to that as leading.

The Court: Objection sustained.

Mr. Ferris: I withdraw the question.

Q. Is that your signature? A. It is; yes.

Q. Did you see Edwin Mr. Squier sign his name to that paper? A. I did.

Q. Did you sign in his presence? A. I did.

Q. Did you sign in the presence of Mr. Ferris and Mr. McCoy, the other subscribing witnesses? A. I did.

Q. Did you all sign as witnesses in the presence of Edwin M. Squier? A. All of the witnesses signed in his presence; yes sir; and in the presence of all of us.

Mr. Ferris: You may cross examine.

Cross Examination by Mr. Maxson:

Q. How many times did you sign this document, Mr. Shepard? A. Twice. You mean, I assume, on the same page? How many times did my name appear?

Q. Yes. A. Yes; twice.

Q. Does your signature appear there twice? A. It does.

Q. May we see the will? You did not testify that you signed this twice on your direct examination, did you? A. No, sir.

Q. What time of day was it that these things took place? A. In the morning. I don't recall the exact

hour. I should say between ten and twelve some time.

Q. How long had Mr. Squier been associated with your office? A. He never was associated with our office. If you mean how long had he rented an office next to us, ever since he came downtown, which was in 1903.

Q. Have a door connecting? A. Yes, sir.

Q. Is that as near as you can come to fixing the exact time when this will was executed? A. As to the hour, yes, sir.

Q. Within two hours of the time? A. Yes. Yes.

Q. What is your recollection as to the day? A. You mean the day of the week?

Q. Yes. A. I think it was a Tuesday.

Q. And the day of the month? A. 6th of July, as I recall it, but I would not know unless my recollection was refreshed by the paper.

Q. Who drew this instrument?

Mr. Ferris: I object to that as not proper cross examination.

The Court: I will allow it. If you know. Do you know?

A. I know it was drawn——

The Court: Do you know who drew it?

A. Yes, I do.

The Court: All right. Who?

A. In consultation with Mr. Houghton and myself.

The Court: Who drew it?

A. The physical act, I don't know who drew it; no, sir.

The Court: That is what I am asking you?

A. No, sir; I don't know.

Q. Who dictated it, if it were dictated? A. That I don't know of my own knowledge. I only know what I was told.

Q. Who were present when you had this consultation with Mr. Houghton about the preparation of the will?

Mr. Ferris: I object to that as incorporating a set of facts not testified to by the witness. He said the will was drawn in conference with Mr. Houghton. That is all.

Mr. Maxson: All right. I will withdraw the question.

Q. Was anyone else present besides you and Mr. Houghton when this conference was had? A. There were two conferences, one with Mr. Houghton and myself; one with Mr. Houghton, Mr. Squier, and myself.

Q. How long preceding the preparation of the will? A. I shoud say the first conference perhaps took place a week before the final preparation, as I recall it. I would not say exactly.

Q. Did you make some notes at that time? A. I didn't; no.

Q. Mr. Houghton? A. That I don't recall.

Q. When was the second conference? A. Why, I think the morning of the execution of the will.

The Court: This is not strictly cross examination, but I will allow it.

A. My recollection is——

The Court: Pardon me.

A. Pardon me.

The Court: It has nothing to do with the execution of the will. Go on.

A. My recollection is that the morning that I came in to witness the will, before my other partners came in, I think Mr. Houghton and Mr. Squier asked me to look it over once more before it was signed. That is my recollection.

Q. Did they tell you what their purpose was in asking you to look it over again?

Mr. Ferris: I certainly object to that, if your Honor please. It is not proper cross examination. If I sit quiescent the doors may open too wide.

The Court: It is not cross examination, but I will allow it, and you make your objection from time to time.

Mr. Ferris: All right, sir.

The Court: And I will rule on them.

A. It is the custom of our office for me to examine all our wills.

The Court: No! Do not tell about the custom.

Q. (Question repeated by the stenographer).

The Court: Yes or no.

A. No.

Q. Do you know who actually prepared this instrument in its present form?

Mr. Ferris: I object to that. That question has been asked and answered before.

The Court: I will allow it once more. He has answered by saying "No, except by hearsay."

A. I can only repeat the same answer.

Q. At the time when you signed this instrument as subscribing witness, was the seal on it?

The Court: Do you know?

A. May I look at it for a moment, and then I can tell you.

The Court: Show him the paper.

Mr. Maxson: May I ask him another question before I show it to him?

The Court: Yes.

Q. Can't you remember from your own recollection whether or not the instrument was sealed before it was executed? A. I cannot; no.

Q. All right. I show you the instrument and ask you if your recollection is refreshed by its appearance? A. Yes, sir. The seal was on it.

Q. There was the seal on it when it was subscribed by the testator? A. Yes, sir.

The Court: How can you tell by looking at the paper?

A. The way the paper is fastened up. We fasten them up in our office by sewing tape through, and then putting the seal on before the will is executed, and the will was completely fastened up when it was signed.

Q. I want to be quite sure about this. You are quite sure that that seal, blue seal, was on this document——

The Court: "This document," which purports to be?

Q. (Continuing)—which purports to be the will of Edwin M. Squier? A. Yes.

Q. Before the testator signed it? A. Yes, sir.

Q. Is your recollection as sure about that as it is about all the other matters that you have testified to? A. Yes, sir.

Q. Now, is that reply your independent recollection, or is it a matter of the custom of your office? A. Both.

Q. On which you base your recollection of this sealing of this document? A. Both. One refreshes my recollection in respect to the other.

Q. Now previous to the first conference you had with the testator and Mr. Houghton about this will, had you had any other conference?

Mr. Ferris: With whom?

Q. I mean the first one you have related?

Mr. Ferris: I object to that. With whom? Unless counsel indicates with whom?

A. I don't quite understand the question.

Q. You testified that you had two conferences in respect to the preparation of this will, with Mr. Houghton originally, and then with Mr. Houghton and the testator. A. Yes; yes.

Q. And as I recall it, that no one else was present at either of those conferences? A. I think not.

Q. No stenographer? A. No.

Q. Now, did you have any conference with anybody about this document or its preparation previous to these two conferences that you have testified to? A. No, sir.

Q. Ever speak to the testator about the execution of a will? A. Not that I recall.

Q. You recall that you testified that he said "I am going to sign my will at last," when you came in the office? A. Yes, sir.

Q. Did that "at last" have reference to any previous communication that he had made to you? A. Not that he had made direct; no.

Q. Well, then, through whom? A. Mr. Houghton.

Q. Well, how long previous to the first conference which you had with Mr. Houghton? A. Oh, possibly seven or eight years.

Q. Well, what was said at that time?

Mr. Ferris: I certainly object to that, as totally outside of the limits of proper cross examination, if your Honor please.

(Last few questions and answers repeated by the stenographer.)

The Court: By whom?

A. By Mr. Houghton.

The Court: Said by Houghton to the witness?

Mr. Maxson: I understand he had a conference with Mr. Houghton seven or eight years before this document was prepared, about the preparation of this will.

A. I didn't so testify.

The Court: Wait a minute! When you say "he," means the witness?

Mr. Maxson: The witness.

The Court: Had a conference with Mr. Houghton?

Mr. Maxson: Had a conference with Mr. Houghton.

A. I didn't so testify, if your Honor please.

Mr. Maxson: May I have the record read? Perhaps I am mistaken about it.

The Court: Ask him again. What is the use of going back over the record?

Q. Previous to the two conferences which you had with Mr. Houghton and with the testator about the preparation of this will, did you, or did you

not, have a conference with Mr. Houghton? A. No, sir.

Q. Well, now, may I have that record read?

The Court: What is the difference? I will read it after a while. I will read it after a while, and if he did testify differently——

Mr. Maxson: I want to refresh my own recollection.

The Court: It is your recollection he did say he had a conference.

Mr. Maxson: My recollection is that he testified he did have a conference with Mr. Houghton seven or eight years before.

The Court: We will both see the record after a while on this thing, and your argument on it as to how far this man can be believed then.

Mr. Maxson: All right.

The Court: What I am trying to do, Mr. Maxson, as you see, is to save some time. There is no use going back over the record. If he did say that, depending on how this case develops, (it won't be decided in a minute or two) argument will be heard on it.

Q. Previous to the two conferences which you had, one with Mr. Houghton, that one with Mr. Houghton and the testator, before the preparation of this will, did you have any talk with anybody about its preparation? A. No, sir.

Q. You testified that you had a conference with somebody seven or eight years before, did you not?

Mr. Ferris: I object to that. I object to that.

The Court: He did say something about seven or eight years.

Mr. Ferris: Yes, but not about a conference.

A. Yes, but not——

The Court: Do not forget you are a witness now.

(Question repeated by the stenographer.)

A. Not in that form; no.

Q. Did you have a talk with somebody seven or eight years before about the execution of this will? A. There was a mention made—of this will?

Q. Of a will? A. Yes. There was a conversation with Mr. Houghton in reference to Mr. Squier making a will.

Q. Well, now, what was that conversation? A. Mr. Houghton told me that Mr. Squier had spoken to him several times about drawing a will for him and had told him that when he was ready he was going to give him some notes from which to draw it. And although he had spoken about it several times, he had never gone any farther with it.

Q. Was that during the lifetime, if you know, of Catherine C. Squier? A. No; I think it was shortly after her death.

Q. Did Mr. Houghton ever say anything to you, either at that conference or any other time, about talking to Catherine C. Squier, about Edwin Squier's making a will?

Mr. Ferris: I object to that as being totally outside of this scope of this examination; certainly not proper cross examination.

The Court: It may not be. There is a charge of conspiracy here. I will allow it.

Mr. Ferris: Counsel should be bound by the answers, where he goes outside of the scope.

The Court: We will take care of one thing at a time.

Mr. Ferris: I warn my adversary.

The Court: You need not warn him. If he is bound, I will see he is bound by it without any warning.

Mr. Ferris: I take exception.

The Court: Exception allowed.

A. I don't recall any such conversation with reference to Catherine C. Squier.

The Court: You see, sometimes we get excited over nothing.

Q. What was the first thing that you recall was said when you came in the room on the morning when this will was executed? A. "Good morning."

Q. Then you, I assume, you said "Good morning?" A. No. And after Mr. Squier smiled, he said "Good morning, Mr. Shepard."

Q. And then what next? A. As I testified before, he said, "Well, I am going to sign my will at last."

Q. Was anything said about the previous conference that you had had with respect to the contents of the document? A. No; I don't recall anything.

Q. After the other witnesses came in was anything said about the contents of the document? A. I think not.

Q. Was there any other conversation had other than that which you have related, about the execu-

tion of the will? A. Mr. Squier got out a box of cigars and passed them around, and asked us "Will you have a cigar."

The Court: That is not conversation.

A. He asked us "Will you have a cigar."

Q. What did you say? A. "Thank you."

Q. Do you recall any other conversation besides that that was had? A. I do not; no.

Q. Then did you all go out? A. We did.

Q. Did somebody take along the executed document? A. No, sir.

Q. Did Mr. Squier keep that? A. It was still lying on his table when I left the room. That's all I can say.

Q. When did you next see it? A. The day that I came out here to Elizabeth and it was offered for probate.

Q. Was it in the custody of your firm or a member of your firm during the period between the time of its execution and the time you saw it out here? A. I haven't the slightest idea.

Q. Have no information about that? A. No, sir; I haven't.

Q. Never made any inquiry about it? A. No, sir.

Q. And have never been told about it? A. Not that I recall.

Q. Had no interest in it? A. No, sir; none whatever.

Q. Who went out first after the execution of the will? A. The three witnesses. We all went out together. I don't recall which one stepped out the door first.

Q. Was Mr. Houghton there? A. He was.

Q. From the beginning of the talk about the execution of the will? A. Yes, sir.

Q. Was he there when the testator said, "I am going to sign my will at last?" A. He was.

Q. Did he have anything to do with the execution of the will? A. No, sir.

Q. And made no comment on it? A. No, sir.

Q. Did not say a word while he was in there? A. He asked me to read the will over, as I have already testified before the will was signed.

Q. That is what I am asking you. A. Yes, sir.

Q. He did ask you to read it over? A. He did.

Q. Who produced the document? A. When?

Q. Before it was executed? A. It was lying on the table when I went in there.

Q. Was Mr. Houghton there at the time? A. He was.

Q. Do you know which one of your stenographers drew this document? A. Not positively; no.

Q. What is your best recollection about it? A. I think a Miss Tanner drew it. Wrote it, at least.

Q. Is "he" still with you? A. Yes, sir; I am not certain, however, as to whether she wrote it or not.

Q. Mr. Hannen, did you say?

The Court: Miss Tanner.

Mr. Ferris: T-a-n-n-e-r.

Q. She is still in your employ? A. She is.

Mr. Maxson: That's all.

Mr. Ferris: That's all.

The Court: Call your next.

Mr. Ferris: May I ask Mr. Shepard one question?

The Court: Yes.

Re-direct Examination by Mr. Ferris:

Q. Mr. Shepard, you have testified on cross examination that you examined this document. A. Yes, sir.

Q. Before you and the other two subscribing witnesses witnessed it? A. Yes, sir.

Q. Approximately how long a time elapsed between your reading that will and your signing it as a subscribing witness? A. Five or ten minutes.

Q. Now at the time that you read the will was it fastened in the manner that it appears to be fastened now, and was the seal, a blue seal, affixed thereto? A. Yes, sir.

Q. And now I ask you to look at this will and read it, and state, if you can, whether the document which you now have before you is the same document which you read ten minutes prior to its execution and your subscribing as a witness to that document? A. Yes, sir.

Mr. Ferris: That is all.

May I have this document offered for identification?

The Court: Yes.

(Paper marked P-1 for Identification.)

PETER J. MCCOY, a subscribing witness, having been first duly sworn on his oath according to law, testified as follows:

Direct Examination by Mr. Ferris:

Q. Mr. McCoy, where do you reside? A. 315 West 78th, New York City.

Q. Are you a member of the Bar of the State of New York? A. I am.

Q. How long have you been such? A. 1911, I think.

Q. When did you become a member of the firm of Ferris, Shepard, Joyce & McCoy? A. Well, when the firm was organized, I believe, three years ago; January, 1925.

Q. '25? A. Yes.

Q. Prior to your joining the firm, what was your occupation? A. Assistant United States Attorney, Southern District.

Q. How long had you been in that office? A. Four years.

Q. Now, do you recall an occasion in the summer of July, 1926, when you were present at the execution of a will by Edwin M. Squier? A. I do.

Q. I show you this document, which is marked Proponent's Exhibit 1 for Identification, and I ask you to examine the signatures appearing on that document. Now, having examined that document, is your signature on that paper? A. Yes.

Q. Will you kindly tell his Honor, in your own words, following the sequence of events as nearly as possible, all that you recall as having transpired on that day. First of all, give us the date, if you can? A. Date is July 6th, 1926.

Q. You had no independent recollection of that, did you? Until you examined the paper? A. I looked at a copy of the will a short time ago and refreshed my recollection. I didn't remember; I would not have remembered.

Q. Will you kindly tell his Honor all that you can recall as having transpired on that day? First of all, where it took place. A. Sometime in the forenoon, I think around noon, on that day, Mr. Houghton came to my room and asked me—earlier in the day he asked me would I be available to witness the will of Mr. Squier. And I told him I expected to be in all morning. And I think it was some time around noon or in the forenoon, late forenoon, he came to my room and I was engaged, and he said "Can you step into Mr. Squier's room?" I said, "I will be right in." I went into Mr. Squier's room. Mr. Squier was there. Mr. Squier was seated at a long table he had in his room, with his back to the safe. He had a big safe in his office, and his back was to the safe and the windows are on his—as I entered, they were on my right, but they were on his left as he was sitting. Standing on his left, near the head of the table, was Mr. Houghton. My recollection is this will was on the table in front of him. Mr. Ferris and Mr. Shepard were there, and when I came in Mr. Houghton asked Mr. Squier, picking up this paper, if this was his last will and testament, and he said, "It sure is," or something to that effect. "Certainly." I don't recall the exact words. I believe then Mr. Houghton asked him if he desired to sign this will, and if he desired Mr. Ferris, Mr. Shepard, and myself to witness it. He said he did. He then signed the will, sitting just as he was, and I believe I

signed third. The signature came on the—after the signature of the will, the signatures witnessing the signature were put on, in the order in which they appear here. I remember Mr. Shepard—there was some delay as to who was going to sign first. And Mr. Shepard, I believe, had his pen, or took a pen, and signed, and you signed, Mr. Ferris and then I signed it. Then the attestation clause was read. I don't recall whether it was read by Mr. Houghton or not, but it was read, and then Mr. Shepard signed, and before you signed I recall you picked the paper up and read the attestation clause and asked Mr. Squier "Is this your will, and do you wish me to witness it?" substantially that. And you signed. And then I signed.

Q. Now, is that all that you recall? A. Well, as to the signing, yes.

Q. Well, now, Mr. Edward M. Squier signed the will in your presence, did he not? A. Yes.

Q. And you saw him sign it? A. Yes.

Q. Did you see the other subscribing witnesses, Mr. Shepard and Mr. Ferris, sign it? A. Yes.

Q. In your presence? A. Yes.

Q. And in your vision? A. Yes.

Q. And did you sign it where they could see you sign it? A. Yes.

Q. That is, Mr. Squier and the other subscribing witnesses? A. Yes.

Q. I ask you to look at that paper and identify it as the document you witnessed on that occasion? A. Yes.

Q. Now, do you recall if it was in the same condition as it is now? That is, if it was fastened with the blue ribbon and the seal affixed at the time you signed it as subscribing witness?

Mr. Maxson: I object.

A. Yes.

Mr. Maxson: Just a minute. I object to the form of that question as leading.

The Court: Objection overruled.

Q. What is your answer, Mr. McCoy?

The Court: He said, "Yes."

Mr. Ferris: "Yes." All right. You may cross examine.

The Court: Let me ask you whether all of the witnesses signed in the presence of Mr. Squier?

A. Yes; yes, your Honor.

The Court: Go on.

Cross Examination by Mr. Maxson:

Q. Did you say that that was the document which you signed out there? A. Yes.

Q. How do you identify it? A. By my signature.

Q. Did you identify it by looking at the last page only? A. I did; yes.

Q. So that you do not know whether it is the same document, with the exception of the last page, do you? A. No, except for the seal, the blue ribbon, that runs through the pages and affixed on the first.

Q. Was the blue seal on this document, Exhibit P-1 for Identification, when Mr. Squier signed it in your presence? A. My recollection is that it was; yes.

Q. Well, is your recollection changed by an examination of the document? A. No.

Q. You haven't looked at it? A. Yes; I have.

Q. Examined the seal? A. Yes.

Q. And you still say, after examining that seal, that Mr. Squier signed it after the seal was affixed? A. No. After the seal was affixed?

Q. Yes. A. Yes. That is, the best of my recollection.

Q. And your recollection is not refreshed by an examination of the document? I show it to you again. After examination of this document, do you still say that Mr. Squier signed it after the seal was affixed?

Mr. Ferris: I object to that. The witness has already answered——

A. I say that Mr. Squier signed this will as it now appears with his signature on it, and with the seal and ribbon affixed.

Q. In the same position it is in now? The seal in the same position it is in now? A. Approximately, yes.

The Court: Does a will have to be sealed?

Mr. Maxson: It goes to the credibility of these witnesses about this seal. It may be a matter of some importance.

Q. Who produced the document for execution?

Mr. Ferris: I object to that question as calling for a conclusion and assuming a state of facts not testified to by this witness.

The Court: He may know that somebody produced it. I can't tell. I will allow it.

A. When I entered the room the will was lying on the table in front of Mr. Squier.

Q. Is that the first time you ever saw it? A. Why, I didn't see it then until Mr. Houghton picked it up and read it, and then I knew he was reading the will and then I saw it signed.

Q. Does it follow from your answer that was the first time you ever saw the document? A. Yes.

Q. When did you next see it? A. When I signed it.

Q. When did you see it after that? A. I didn't see it after that until—I don't know whether I saw it prior to my testimony here or since this proceeding started. I don't recall ever seeing it since then.

Q. Is Mr. Houghton a member of your firm? A. Yes.

The Court: Did you come out here to act as a witness when the will was probated?

A. No; I did not.

Mr. Ferris: No. We only used two subscribing witnesses.

The Court: I understand. I wondered whether this witness was one of the two.

Mr. Ferris: No.

The Court: Go on. I assumed he was not because he said he had not seen it since.

Q. Do you know whether Mr. Houghton had the custody of this document previous to its execution? A. No; I don't.

Q. Do you know whether he had it subsequent to the execution? A. No.

Q. Have any information about who had possession of it? A. No.

Q. At either time? A. No.

Q. What did the testator say about the execution of this will? A. I don't recall anything particularly.

Q. Do you recall his saying "I am going to sign my will at last"? A. I don't recall any exact statement of that sort; no. There was some talk between him and Mr. Shepard, and Mr. Ferris, and Mr. Houghton when I entered the room. But what it was I don't know. As soon as I entered the room, why we proceeded to the execution—he executed and we went on with witnessing, and I had to go back to my room.

Q. You were the last of the party to come in? A. Yes.

Q. Do you recall any conversation or any remarks that were made there other than those which you have related in your direct testimony? A. Well, after I signed, I—something was said; I know a cigar was given to me, and I left the room immediately after. There was some talk. I do not know what it was. Didn't pay any attention to it.

Q. So that your testimony as to conversations or remarks made there is all that you recall at the present time? A. Yes.

Q. Did you testify that you didn't know where this document went after it was executed? A. Yes.

Q. Never knew whether it was in the possession, in your firm's custody or not? A. No.

Q. From that time on or not? A. No.

Q. Who would know about that? A. Why, I imagine the man who drew it and was handling it.

Q. Well, now, I mean you keep wills in your custody, do you not, as a firm? A. Oh, yes; yes.

Q. Who has charge of that? A. Why, the individual partner or man in the firm who draws the will, goes to the file in the safe, where these wills are kept, and puts them there.

Q. Have you a safe for that purpose in the office? A. Not for that specific purpose. We have a drawer in a safe, in the office safe for that purpose; yes.

Q. Have any of your individual clients any wills? A. Oh, yes; yes.

Q. Do you have occasion to go to this drawer from time to time?

Mr. Ferris: I object to that as immaterial and irrelevant.

The Court: What is the materiality of that?

Mr. Ferris: What we do in other cases.

Mr. Maxson: I want to know who had custoday and control of this will.

The Court: He has already told you that the partner who drew the will or had to do with the execution of the will, likely put it in the safe. He can't say whether he did or not; he does not know.

Mr. Maxson: He said he does not know anything about it from that time until the present time.

The Court: All right.

(Question repeated by the stenographer)

Q. Well, from the time of the execution of this will down to the present time have you ever seen it? A. Well, as I would say, I don't recall whether I have seen it since these proceedings have started or not. My recollection is that I didn't. I don't ever recall seeing it since I signed it.

Q. Did you have anything to do with the probate of the will? A. No.

Q. Any conferences about it? A. No.

Q. Do you know when it was being probated? A. Oh, I don't know the date. I remember that the matter was in the office. That's all.

Q. But you were not consulted? A. No.

Q. In any respect? A. No.

Q. So that you have told now all you know about the document and its execution, have you? A. I believe I have.

Mr. Maxson: That's all.

Mr. Ferris: That's all.

GEORGE A. FERRIS, one of the subscribing witnesses, having been first duly sworn on his oath, according to law, testified as follows:

Direct Examination by Mr. Hyer:

Q. What is your business, Mr. Ferris? A. 850 Seventh Avenue, New York City.

Q. What is your business? A. I am an attorney at law; member of the Bar of the State of New York.

George A. Ferris—For Proponents-Respondents—Direct

Q. How long have you been a member of the Bar? A. For nearly nineteen years.

Q. Where are you in business at the present time? A. I am a member of the firm of Ferris, Shepard, Joyce & McCoy, 111 Broadway, New York City.

Q. I show you a document marked for identification P-1 and asked you if that is your signature on that paper. A. It is; in two places.

Q. When was your signature affixed to that paper? A. On the date it bears, July 6, 1926.

Q. Will you state what transpired at the time that you affixed your signature to that paper? A. Yes. I was requested some time before, by Mr. Houghton, if I would find the time to act as a subscribing witness to a will for Mr. Squier. Told him I would. And some time later I walked into Mr. Squier's room, which is on the extreme easterly end and has a separate exit to the main hall, but there is a small door cut in between, so that there is access to our offices. When I entered there Mr. Squier was seated at his long table, I think. And Mr. Houghton was there and Mr. Shepard was there. And there was some talk, the substance of which I don't recall. Then we were all waiting for Mr. McCoy, who hadn't yet come into the room. As I recall it, Mr. Houghton went out, and returned, and shortly afterwards Mr. McCoy then came in. The next thing that happened, I think Mr. Shepard asked Mr. Squier if this was his last will, and whether he wanted us to subscribe; something to that general effect. Mr. Squier said it was, and he did want us to subscribe as witnesses. And then there was some little talk and some joking about who should sign first. Mr. Edwin M. Squier signed the will. And then I discussed whether—I think

there was something stated about age, and Mr. Shepard was the oldest, and we gave priority to him, or something to that effect. At any rate he signed it. And when he signed it, or just before he signed, he asked Mr. Squier if this was his last will and testament, whether he wanted us to sign it; and Mr. Squier said yes. When it came to my turn to sign, I read the attestation clause to myself first. I saw that it varied slightly from the form that we used in New York State. I then read the attestation clause, it being written in the second person, and I transposed it into the first person, simply reading the entire clause to Mr. Squier. And I asked him, I think, as nearly as I can recall, as follows: Whether this will, consisting of five typewritten pages, is his will; and whether he signed, published and declared it to be his will, his last will and testament; and whether he did so in the presence of us, the subscribing witnesses, and myself particularly, and whether he requested us to sign as subscribing witnesses in his presence. And thereupon I signed my name in both places.

The Court: At this point we will take an adjournment until two o'clock.

The Court thereupon adjourned for lunch, and reconvened at two P. M. as per adjournment taken, the witnesses to be called to the stand again being excluded from the court room.

George A. Ferris—For Proponents-Respondents—Direct

GEORGE A. FERRIS, resumed:

Direct Examination (continued) by Mr. Hyer:

(Last portion of the answer repeated to the witness, by the stenographer and the witness requested the word "second" on the twenty-fourth line of page 43 to be changed to "third," and the word "first" on the same line be changed to "second").

Q. Mr. Ferris, will you state if the condition of the paper purporting to be the will of Mr. Squier is in the same condition as when it was executed? A. I would like to see the will again before I answer that question. (Mr. Hyer hands the witness the will). I can only answer as to the last page, on which the signature of the testator appears, and the signatures of the attesting witnesses. As to that page it is in the same condition now as it was at the time of execution. I do recall now that Mr. Squier, the testator, filled in the date of 6th of July himself at the time that he signed his name. And I think, if I recall correctly, that I called his attention to the fact that the date was blank, and asked him to fill in the date, the 6th of July. That page is in the same condition as it was on the date the will was executed.

Q. Will you look at that instrument again and see if it is in the same condition now it was at that time? A. I can't say whether it is or not as to the contents of it, but judging from the way it is fastened, the way the papers were fastened on that instrument now were fastened there at the time of its execution.

Mr. Hyer: That is all.

Cross Examination by Mr. Maxson:

Q. You represent the estate of Edwin "C" Squier? A. I—my firm; yes.

Q. How long have you represented it? A. Since the probate proceedings. That was, I believe, last November, 1926.

Q. Then you did not represent the estate before the probate of the will? A. The estate didn't have any existence prior to the death of the testator. He died on, if I recall correctly, on the 6th of November, and we probated the will right afterward.

Q. I don't mean technically. I mean did you represent Mr. "Houghton" in his lifetime, before —— A. Mr. Boughton?

Q. Mr. Squier. Edwin "C" Squier and his affairs before the probate of the will? A. Not that I know of.

Q. Did your firm? A. Not that I know of. Neither me or my firm. I am speaking of my knowledge, now.

Q. Do you include Mr. Houghton in that? A. That includes Mr. Houghton; yes.

Q. How long had you known Mr. Squier? A. I first met Mr. Squier on or about the first day of January, 1925. I should say on or about. Either shortly before the first of the year or immediately after the first of the year when my new firm was formed.

Q. You had not been associated with Mr. Houghton before that time? A. No. I never met Mr. Houghton or Mr. Shepard, for that matter, until, if I recall correctly, October, 1924.

Q. Subsequently, did Mr. Squier continue to have the room connected with your office? A. Right from the day that the firm was formed. I was informed that he occupied a room in the suite of my partners' former firm at 33 Rector Street. When the new firm was formed they leased offices at 111 Broadway, and Mr. Squier rented a room adjoining our suite.

Q. Were you present during all the transaction that went on for the execution of this will, as testified to by the other witnesses? A. No; not all.

Q. When did you come into the room? A. I think I came in shortly after Mr. Shepard. Mr. Shepard's room is the nearest, and if my recollection serves me correctly he preceded me into the room. What conversation took place prior to my coming there I don't know, of course.

Q. Did you hear Mr. Squier say that he was now "at last" executing his will? A. I don't recall that. I don't recall his saying that in my presence.

Q. When was the will signed with respect to the other things that went on in the room? A. You mean what time of day?

Q. No. I mean was it signed before the witnesses signed or afterwards? A. Here is the order: Mr. Squier signed the will first, and after he signed it, Mr. Shepard signed it; then I signed, and then Mr. McCoy signed it. And, of course, the conversations to which I testified took place during that process.

Q. When did you read the attestation clause? A. Before I signed my name to the paper.

Q. Subsequent to the time when Mr. Squier signed his? A. Subsequent to the time Mr. Squier signed his; yes.

Q. Was the seal on the instrument at that time? A. It was.

Q. Was it on there before Mr. Squier signed it? A. It was. At least it wasn't placed on there while I was there, so I am sure it was on there before he signed it.

Q. Then you, when you came into the room and first saw this instrument, plaintiff's Exhibit P1 for identification, the paper was in the condition it now is in? A. They were fastened together in that condition; yes.

Q. And it had the ribbon and the seal and all that on it? A. Yes; yes. It had.

Q. And I ask you again "You are quite sure that the seal was on before the testator signed and subscribed his name to it? A. That is according to my recollection, yes.

Q. Well, now, from examination of the paper would you say—— A. I still say so, yes. I see nothing in the paper to cause me to change my—or refresh my recollection to the contrary.

Q. I understand you to say that there is nothing in the present appearance of the paper that would cause you to change your recollection about his having signed it—— A. That is the substance of my answer; yes.

Q. Did he sign an "S" to his name? A. I don't recall. I don't recall of Mr. Squier's signing anything else but that paper at that time.

Q. Did you see him sign anything else? A. No; I have seen his signature since.

Q. How did he sign it? A. I don't recall, whether it was with the "S" or without the "S" at the end.

Q. I call your attention again to plaintiff's Exhibit 1 for identification and ask you whether you

can, from examination of that, state how he spells it?

The Court: That speaks for itself, doesn't it?

A. I would say he spells it without the "S." Quite apparently, because there is no "S"s here and his name is without the "S." So it is quite natural to assume he would not add an "S" to that name if it didn't belong there.

Q. Where did this document go after it was executed, if you know? A. I don't know of my own knowledge. I only know from hearsay.

Q. In whose custody was it when it was presented for probate? A. You mean in whose physical possession was it?

Q. Yes. I mean in whose physical possession was it? A. Let me see if I can recall. I think it was in Mr. Searle's physical custody at the time we appeared here in this court for the first time in the probate proceedings. At least it was in his possession part of the time.

Q. You heard the testimony of your partners about the manner in which these documents were kept in the office? A. Which documents? Wills?

Q. Wills. A. Some wills we keep in the manner that was testified to here by Mr. McCoy; others are not.

Q. Where are the others kept? A. By the clients, many of them. We have copies which we put there.

Q. Those which remained in the office and in the custody of your firm are kept in a drawer in your safe, are they? A. They are not kept in a separate drawer. They are kept in the part of the file

number given to the particular matter. In other words, I have personally seen wills in different drawers. There is not a separate drawer for wills.

Q. Where was this document kept? A. I don't know of my own knowledge. I know only by hearsay.

Q. You never saw it in that safe? A. No; I never saw it in that safe; never. And I have had occasion to go to the safe quite often.

Q. Would your personal impression be that it was not in the safe? A. It was not in the safe.

Q. And you do not know who had it? A. Well——

The Court: Is that statement——

A. Not of my own knowledge, Judge. I want to add to that. I don't know of my own knowledge where it was kept. I only know by hearsay where it was kept.

Q. Did Mr. Squier have a safe of his own in the office? A. He did, in his own office.

Q. Did anybody in your firm, if you know, have access to that safe? A. I don't know if any of my own firm had access to it. I know some of us didn't. I don't know about the others to my knowledge.

Q. After Mr. Squier's death do you know whether anybody in your firm had access to that safe? A. Yes; Mr. Houghton did after Mr. Squier's death, as well as the other executors.

Q. Mr. Houghton and the other executors? A. Yes.

Q. Did they occupy that same room, do you know? A. Well, we put on there—on the door "Estate of Edwin M. Squier." I can't say they

occupied it. The furniture of Mr. Squier, which belonged to his estate, was still in that room, left undisturbed as it was.

Q. Did you personally have anything to do with the administration of the affairs of the estate after the will was probated? A. No.

Q. Who had charge of that? A. Mr. Houghton, Mr. Field I know, he is another member of the firm, had perhaps something to do with it; not very much. Mr. Houghton was the chief one. There is no doubt about that.

Q. Where were the papers or documents belonging to the estate kept after that time? A. In the room formerly occupied by Mr. Squier.

Q. And in the safe? A. And the safe, I believe.

Q. Is there a Francis S. Vanderveer connected with your firm? A. Francis S. Vanderveer?

Q. Francis S Vanderveer. A. I think we have a client by that name, if I am not mistaken.

Q. I do not mean a client. Did you have anybody in your employ, or anybody connected with your firm, by that name? A. No; not with the firm, that is certain. I am just trying to recall the name. It is familiar. I think there is a man right in the hall, the other side of Mr. Squier's office, whose name is Vanderveer, who occasionally came to the office. I am wondering if that is the man you refer to; but he was never connected with our office.

Q. Do you know whether this man Vanderveer had the combination to the safe or not? A. I don't know anything about that. It is not likely he did.

Q. After the probate of the will who had the combination of the safe, if anybody? A. I don't know. I don't know. I assume the executors, of course.

Q. You never had occasion to use it in any way? A. Never, except within the last ten days.

Q. Well, I mean during the time the estate was being administered? A. No.

Q. Previous to the inception of this proceeding? A. No; no.

Q. Have you testified when you first saw this will after the time of its execution? A. No; I haven't.

Q. Well, I ask you now. A. I think the first time I saw it after its execution on the occasion I have testified to, was when it was produced here in this building upon the probate proceedings at which time I appeared as a witness.

Q. And had you any knowledge of its custody previous to that time? A. Only by hearsay, Mr. Maxson, not of my own knowledge.

Q. Who left the room first, if you recall, at the time of the execution of the will? A. I recall Mr. Squier gave us a cigar and we thanked him. If I recall correctly I think Mr. McCoy probably left before we did because he had a client waiting in his office. And I think Mr. Shepard and I lingered for a few moments and talked with Mr. Squier, and we left there together, or shortly after one another.

Q. So the last people in the room were Mr. Houghton and the testator? A. I think Mr. Houghton left with us, if my recollection serves me correctly. His room adjoins mine, and Mr. Shepard's room adjoins mine on the other side. I think the three of us left together. I think Mr. Squier said he would leave for lunch, and I said something about meeting him at lunch at the lawyer's club, because I met him frequently there, he was a member there.

Q. You heard Mr. Shepard say about the conferences he had with reference to the preparation of the will. A. Yes.

Q. Did you have anything to do with those? A. No.

Q. Have any knowledge of them at the time? A. No. I have no knowledge of them until I heard them on the stand this morning from Mr. Shepard.

Q. Did you know there was a will in contemplation previous to the morning when you were asked to act as a subscribing witness? A. Well, I don't know whether it was the date preceding, or early that morning, Mr. Houghton asked me if I would be available to subscribe to a will as a witness. That is all the knowledge I had.

Q. You knew nothing about the circumstances leading up to the drawing of the document? A. No; I would not know anything about that. I am the trial man, in court, all the time.

Q. You do not know who, in the office, actually transcribed the document? A. No, I don't; no. I notice Mr. Burnham Squier is seated in the room. He is just as much a witness as anybody else. If your Honor please, Mr. Burnham Squier is seated in the room. He is no more a party to this proceeding than the other parties are charged with all sorts of crime.

The Court: Nobody is being charged with any crime around here at all. I do not see any reason for excluding him at all. He has none of his other witnesses here. There is an object in asking the rest to step out, and I can see it, and I made the order that way.

Q. When was the will dated? A. July 6, 1926.

Q. I mean when was the date put in here? A. July 6, 1926.

Q. Well, with respect to the time when you entered the room? I mean was it before the will was executed or afterwards? A. I am not sure whether it was immediately after Mr. Edwin Squier signed the will, or just before. The two were almost simultaneous. I called his attention to the fact the date was still blank in the will. And it was at my suggestion he put the numeral "6" on the will. Whether he did that just before he signed, or immediately after, I don't just recall.

Q. Who told him the date? Did you tell him? A. I didn't tell him the date. I might have mentioned the date. I do not recall it specifically. I told him to date the will, in substance. Whether I mentioned the date or not I don't recall.

Q. Did anybody direct him where to subscribe the document? A. Not that I recall.

Q. Were you there when he subscribed it? A. Oh, yes; I was sitting there.

Q. And you do not recall at that time whether the date was in it or not? A. I have just stated, Mr. Maxson, the date wasn't on there at the time I executed the will, or rather it was on there before I executed the will as a subscribing witness.

Q. Well, was it on there before the testator signed it or not? A. I have just testified I can't recall that, whether it was immediately before or immediately after. The two were almost simultaneous.

Q. You do remember it was at your direction he put the date in? A. Yes; I called his attention to the fact that the date was blank.

Q. Now, you read the attestation clause to him in the first person, did you not? A. No; that was a mistake. I read it to him in the second person.

Q. You testified you read—— A. Yes; I say that is an error.

The Court: And then proceeded——

A. To transpose it.

The Court: ——to show how he did it in the second person.

A. I meant to say from the third to the second person.

The Court: All right.

Q. When you read that, was Mr. Squier's signature on the will? A. Yes, it was.

Q. And were the signatures of the subscribing witnesses on the will? A. Mr. Shepard's only.

Q. Were you there when Mr. Shepard signed? A. Oh, yes.

Q. Had this attestation clause been read to the testator before he signed? A. Not the attestation clause, but the substance of it was asked of him by Mr. Shepard before he signed as a witness. In other words, if I remember correctly, he asked him if he published and declared this to be his last will and testament, and Mr. Squier replied that he certainly did, or, it is his will.

Q. And did each one of the witnesses, being attorneys, ask him the safe thing? A. No; Mr. McCoy didn't. But I did in the manner I have already testified.

Q. You did, and you did that with somewhat more care? A. Much more care.

Q. And you read him the text of the will, did you? A. No; I did not. I never read the text of the will until—well, not from the original will ever, as I recall it.

Q. Is this document in the same condition as it was when it was executed? I ask you to look it over carefully, if you will, again. A. Yes, sir. Up to—that is, with the exception that the fastening which fastens these two paper documents to it,——

Q. I see. A. ——as far as I say, up to the back, which bears our firm name, and inclusive of the ribbon fastening, it is in the same condition. I don't think this character of fastening, that is, these metal fastenings which attach these two papers to the will, were on the will at that time, naturally.

Mr. Maxson: All right. That is all.

Mr. Ferris: Any questions, Mr. Hyer?

Mr. Ferris: Now, if your Honor please, I offer this will in evidence, together with the parts attached thereto, consisting of——

The Court: You need not offer any proof.

Mr. Ferris: I hardly think that is necessary.

The Court: Offer the document.

Mr. Ferris: I offer the document in evidence.

Mr. Maxson: I object to it on all the familiar grounds, may it please the Court, it is not the last will and testament of the testator; that he lacked capacity to make it; and that it was executed under undue influence; that there is both fraud and mistake in its execution, and that before this will can be received

as the last will of the testator the burden of proof must be sustained by the proponents.

The Court: It will be omitted.

Mr. Maxson: No due proof of the due execution of the will.

The Court: Admitted in evidence. Exception allowed.

Mr. Maxson: So no further proof is required.

The Court: As to the execution.

Mr. Maxson: Your Honor will take my exception?

The Court: No further proof required as to the execution.

Mr. Maxson: Take an exception.

The Court: Now you can proceed with your case.

Mr. Ferris: And the proponents rest. If your Honor please, we have produced such witnesses as we believe the other side desires.

The Court: Now it is up to the other side entirely.

Mr. Maxson: Now, may it please the Court, we are not prepared to proceed with the witnesses from out of the state. Perhaps I have assumed erroneously and improperly the case would not go on today on account of these stipulations. Of course, I had no assurance from anybody that it would not. I am here in the unfortunate position of not being able to go on. If your Honor will set this case down for the day fixed we will go on with it until it is finished.

The Court: There is an understanding I want to have with you, gentlemen, and I want

to make it peremptory. We already set down the 16th and 17th for your case. Will two days be enough?

Mr. Maxson: No, sir; I doubt it. We will expedite it as much as possible, but I doubt whether we can put our case in in two days.

The Court: The reason I want to know that is I am arranging some time today to get Judge Robbins up here on next Tuesday, which is the opening day, to take up the civil calendar.

(In discussion between counsel and the Court as to length of time to be given to case.)

(Paper writing, heretofore marked P-1 for identification, entered in evidence, and marked Exhibit P-1.)

Mr. Maxson: We claim the burden of proof is on the proponents.

The Court: There is no doubt about the burden being with the proponents of the will to establish the due execution thereof so it can be placed into evidence before the Court for the purpose of an attack. Now you are going to attack it.

Mr. Maxson: I assume your Honor is dependent on the testimony produced——

The Court: If this will were not properly executed, or so appeared on the testimony so far offered, we could not receive it here for a moment. You can now proceed to attack it on the ground of lack of capacity, undue influence, and on the ground of fraud, if you want to; there was a conspiracy to defraud your

man, and procure the execution of a will unfavorable to him, and whatnot. If you make out a case such as required under the decisions the burden will be shifted.

Mr. Maxson: Shifted?

The Court: The burden will then be shifted.

Mr. Maxson: I want it understood on the record that matter is being reserved until your Honor hears the situation.

The Court: Certainly. I can't shift the burden to them until you have made out a case.

Mr. Maxson: I think this is one of those cases where the burden does not shift, where the burden is on him, from the surrounding circumstances.

The Court: You will have to show to me some law for that. The presumption of sanity is there. The will, so far as the execution of it is concerned, has been admitted in evidence as properly executed. Now, if you can show that the person who executed this will was of unsound mind, it makes no difference how properly it was executed the presumption will be he was sane until you prove otherwise. Undue influence, if you can get to the point where you show undue influence, depends on the amount of evidence you produce, and the kind of evidence, and the burden may shift to them; and it may not shift. Just depends on your evidence. That is simple. There are too many cases on that. But I will hear anything that you propose. There is no court that is so wise that it knows all the law. This court certainly does not feel it knows all the law. And

if at any time you can show me that the general principle of law which I have just expounded is wrong or at least my conception of it is all wrong I will change very quickly.

Mr. Maxson: Our position was not as to the undue influence. Our contention is as to the very character of this instrument and the manner in which it was executed with reference to the beneficiaries, and the man who drew it, as brought out here, does not shift the burden of proof, as laid down by the Cooper case. I want it clearly understood we are not waiving the right to raise that question at any time.

The Court: No. I will not ask you to waive anything, and I will not shut you out at all. If at any stage in the proceeding anything that I do can be shown to me to be wrong you will never get out of this court room before I will correct it. Once you are here you must have full and complete justice and I will try to give it to you.

The Court: The 16th.

Mr. Maxson: The 16th.

Mr. Ferris: If you will put on the record the names of the witnesses whom you desire to produce, over whom I have any control, I will endeavor to produce them.

Mr. Maxson: Mr. Smiley.

Mr. Ferris: "Mister"?

Mr. Maxson: Mrs. Smiley.

Mr. Ferris: Yes.

Mr. Maxson: Mr. Frederick C. Squier; Mr. W. C. Squier.

Mr. Ferris: W. C. Squier?

Mr. Maxson: Third.

Mr. Ferris: He is in California. You have examined him.

Mr. Maxson: Junior.

Mr. Ferris: You have examined him at great length. You do not want me to produce him again? I can't produce him.

The Court: I will not ask you to. That man was here, and I said I would sit until midnight, if necessary. I sat until, I think, pretty nearly five o'clock.

Mr. Maxson: I do not think we should ask that he be produced, unless, as your Honor said, certain facts developed that required his further testimony in the case, and we are simply reserving that; not asking him to be produced on the 16th.

The Court: If you can show me you desire further testimony from him I will issue a commission.

Mr. Maxson: Mrs. Houghton, Mrs. Edson, Mrs. Keene, Mary Conroy.

Mr. Ferris: You can serve her with a subpoena. She is not in our employ. That is the ex-servant. I won't assume to produce her.

Mr. Maxson: The testimony is she is in your employ, by these people. Still in the employ of the estate.

Mr. Ferris: She is in the employ of Mr. Frederick C. Squier.

The Court: Where?

Mr. Ferris: In Rahway. All right, we will produce her.

Mr. Maxson: Nora Conroy. Is she in the employ of the estate?

Mr. Ferris: I don't know. I will inquire. No. I cannot produce her because she is not in our employ.

Mr. Maxson: Mary Kavanaugh.

Mr. Ferris: Is she, Mary Kavanaugh, in our employ? No.

Mr. Maxson: Harold M. Searles.

Mr. Ferris: Yes.

Mr. Maxson: Mr. Avery.

Mr. Ferris: Who is Mr. Avery? Do you want him here? All right, sir.

Mr. Maxson: Mr. Pierce.

Mr. Ferris: Is he another employee?

Gentleman in the Audience. I think he is working for the Wheatena Company; the last I heard.

The Court: I am not going to ask this estate to produce every witness that you want. I will ask the estate to produce the relatives and those interested in the estate. That is as far as I will go. The rest you will have to subpoena. That is according to the correct procedure. This Mr. Pierce, God knows where he may be. Somebody thinks he may be employed in the Wheatena plant. If it turns out a week from next Wednesday that he cannot be found you will ask me to hold up this case and I will not do it. All of the Squier relatives, and so on.

Mr. Maxson: My attention is called to the fact these are all beneficiaries.

The Court: Even so. That does not follow they would be able to help any in this case because they are beneficiaries. I am willing you

should have everybody that might otherwise be considered to be hostile to you. That is going a great ways.

Mr. Ferris: I am bringing people from Massachusetts, Connecticut, New York.

Mr. Maxson: Mr. Clark.

Mr. Ferris: Yes. We will produce him without further subpoena, if he is alive.

Mr. Maxson: Can you give us the address of the others?

Mr. Ferris: Any information I have as to the whereabouts of these witnesses I will be glad to give you.

The Court: Does anybody know where Mr. Clark is?

A Gentleman in the Audience. Westfield avenue, Rahway. I can't give you the number.

The Court: Working at the Squier home, old homestead?

A Gentleman in the Audience: He is taking care of the house.

The Court: You can subpoena him there.

Mr. Ferris: Does anybody know where either Mary Kavanaugh or Nora lives?

A Gentleman in the Audience: No. I don't know where they are.

Mr. Maxson: All right.

The Court: I will set down Monday, Tuesday, and Wednesday for you. Start Monday at ten, and sit until five.

Mr. Ferris: Mrs. Montgomery? We will have her here.

(The matter is thereupon adjourned until Monday, January 16, 1928, at ten o'clock, A. M.)

George A. Ferris—For Proponents-Respondents—(Recalled)—Cross

GEORGE A. FERRIS recalled.

Cross Examination (continued) by Mr. Maxson.

Q. At the last session you made some request of the stenographer to change the record, did you not? A. I did; yes.

Q. Will you say why you did not make those audibly and to the court? A. Yes; I will. At the conclusion of the morning session; when recess was declared for lunch, I asked the stenographer to read the last answer that I had made, in order that I may have a continuity of the testimony, and in reading that answer I discovered the error, and I told him to make that correction.

Q. But you did not tell him audibly.

The Court: What was the correction?

Witness: The correction from the first to the second person; when I said I read the attestation clause and transposed it.

The Court: Yes. I think you called that to my attention.

Witness: Yes; I called that to your attention and called it to the attention of the stenographer. And as the stenographer heard me I assumed you did; I did not make any secret of it.

The Court: I directed the correction to be made. If counsel does not know about it, will you read that to counsel or have you a copy?

Mr. Maxson: I have a copy. Just discovered the change was made. We knew nothing about it.

The Court: I ordered the change made. It does not change the substance at all; only the form.

George A. Ferris—For Proponents-Respondents—(Recalled)—Cross

Q. Didn't you testify that you, from time to time, went to the Lawyers Club for luncheon? A. No; I did not.

Q. What did you say about it? A. I testified that on the occasion of the execution of his will Mr. Edwin M. Squier stated he was going to lunch, I think, to the Lawyers Club. And I said something about meeting him there, about seeing him there, as I did very frequently.

Q. How frequently did you see him there? A. Oh, I should judge on an average of four or five times a month. I go for lunch there every day.

Q. Well, over what period? A. Beginning with January, 1925, and continuing up to the day of his death.

Q. Four or five times a month? A. I would think so; with the exception of the summer months I was away on a vacation. That is as nearly as I can estimate it, Mr. Maxson.

Q. How frequently did you lunch with him there? A. I didn't lunch with him.

Q. Didn't you testify you had luncheon with him there? A. No; I didn't; I said I met him there. It was our habit to meet frequently there. It wasn't our habit——I would see him as we finished luncheon. I would go into the reading room, smoke a cigar, and I would see him in there. I never lunched with him at the same table.

Q. Did you testify he invited you for luncheon there? A. No; I didn't.

Q. When did you first become acquainted with the testator? A. On or about the early part of January, 1925, when the firm of Ferris, Shepard, Joyce & McCoy was formed for the first time.

Q. I can't hear you. A. I say on or about January, 1925, when the firm of Ferris, Shepard, Joyce & McCoy was formed for the first time.

Q. What was the occasion of your meeting him? A. Well, I was just introduced to him because he was going to occupy offices adjoining ours. That is all.

Q. It was a casual sort of introduction, was it? A. No, it wasn't a casual one. Mr. Houghton introduced me to him designedly and on purpose. It wasn't casual.

Q. Did he say anything about his being connected in any way with the firm? A. He did not. Do you mean Mr. Houghton?

Q. Yes. A. No, he did not.

Q. Did the testator say anything to you about being a client of the firm? A. No, he did not.

Q. When did you first discover that he was a client? A. I don't think I ever discovered that he was a client during his lifetime.

Q. Was he ever a client of the firm? A. I don't know.

Q. Yet you were a member of the firm? A. Oh, yes.

Q. How frequently did you see the testator at lunch at the Lawyers' Club?

The Court: Where is this leading to?

Mr. Maxson: I am going to connect it up, may it please your Honor.

The Court: In what way? How can you connect that up? What difference does it make? Suppose he met him every day and had lunch with him?

George A. Ferris—For Proponents-Respondents—(Recalled)—Cross

Mr. Maxson: I am going to connect this up. It is a matter of some importance, we think, as to the frequency with which the testator went. This witness volunteered this testimony; it was not responsive to any question that was asked.

The Court: Even so, you and I might lunch together every day for years, and after you died I happened to be a witness to your will, what is the connection?

Mr. Maxson: Suppose this witness—this is cross-examination. Suppose it appears that this witness is, we will say, mistaken about the testator going to the Lawyers' Club, after he has volunteered the testimony? It has some effect on his credibility.

The Court: It might with a jury. Not with me. An honest mistake, or a dishonest mistake even on some unimportant, immaterial matter, would not affect me any. I do not see the object of it. If you say you can connect it I would like you to indicate how, and what is in your mind. You can do it here privately, if you want. You need not do it publicly so that the witness will hear it.

Mr. Maxson: I prefer to tell your Honor privately. This witness is a lawyer and an alert one and I do not want to tell him what I am trying to elicit.

The Court: You can tell me here at the bench.

(Conference between counsel and the court.)

The Court: I will hear something more about it. But there must be a limit, of course, to it, Mr. Maxson.

George A. Ferris—For Proponents-Respondents—(Recalled)—Cross

(Question repeated by stenographer.)

A. I don't recall ever seeing him at lunch at the Lawyers' Club. I have seen him a great many times during the two years preceding his death, in the reading room of the Lawyers' Club.

Q. At what time of the day? A. Noon. During the noon hour, I would say around one o'clock or one-thirty, thereabouts.

Q. You testified as follows, page 53. A. May I have the testimony here?

Q. "I think Mr. Squier said he would leave for lunch and I said something about meeting him at the Lawyers' Club. I am frequently there and he was a member there." Did you say to him that you would meet him at the Lawyers' Club for lunch that day?

Mr. Hendricks: Mr. Maxson read it wrong.

Q. There is a word here. I will call your attention to it. Look at the testimony. "I think Mr. Squier said he would leave for lunch and I said something about meeting him at lunch at the Lawyers' Club, because I met him frequently there. He was a member there." A. Yes.

Q. Is that your testimony? A. Yes, I so testified. Just let me read it again, please. Yes.

Q. Now, did you meet him at lunch that day? A. No, I did not.

Q. What did he say in response to your suggestion that you meet him at lunch? A. I don't recall his saying anything.

Q. Did he make any response? A. I don't recall what response, if any, he made.

George A. Ferris—For Proponents-Respondents—(Recalled)—Cross

Q. Your recollection is pretty clear about the other incidents? A. Oh, yes.

Q. The execution of this will? A. Oh, yes.

Q. Now just one more question about that: You said around noon that you saw him there frequently, did you? A. Yes.

Q. At the Lawyers' Club? A. Yes.

Q. How long did he stay? A. You mean with me?

Q. No. How long did you see him there? A. Very frequently, only I would stop and say a word or two to him, and then go to some other chair; on a number of occasions I sat next to him and chatted with him.

Q. Four or five times a month for two years? A. No, sir; I didn't chat with him that often; I said I had seen him there. That may be perhaps too frequently, four or five times a month. Probably less than that; three times a month.

Q. Three times a month? A. And on some occasions I would merely nod or say a word to him, and smoked a cigar with him and chatted with him.

Q. And this was around twelve o'clock? A. No, I wouldn't say——

Q. What time of the day? A. I would say around one o'clock would be nearer, perhaps one or two. I usually go to lunch at 12:30. That is the way I fixed the time.

Q. Did you smoke with him frequently? A. I can't say frequently; no. I smoked with him on a number of occasions.

Q. And exchanged cigars with him? A. No; I smoked my own brand and he smoked his; they weren't the same.

Q. Do you recall what brand of cigar he smoked? A. No; I don't. He didn't smoke my brand; I recall that.

Q. How often did you see him smoke cigars?

The Court: Oh, don't! don't.

Mr. Maxon: What?

The Court: Put another question.

Mr. Maxson: This is the last question on this line, may it please your Honor.

The Court: Can you tell?

Witness: I cannot, Judge.

The Court: All right.

Q. Can you tell approximately? A. No; I cannot. Never gave the matter any thought.

Q. Was it often?

The Court: He does not know; "Never gave it any thought."

Mr. Maxson: All right, that is all.

The Court: Is the will offered now?

Mr. Ferris: Yes, sir; it has been received in evidence and the proponent rested.

The Court: It has been received?

Mr. Ferris: Yes.

The Court: All right.

FREDERICK C. SQUIER, a witness produced on behalf of the appellant, having been duly sworn on his oath, according to law, testified as follows:

Direct Examination by Mr. Maxson:

Mr. Maxson: Your Honor, I think your Honor ruled that the witnesses might be ex-

cluded. I just spoke to Mr. Hyer about that, and he said, of course some of them were parties. Well, of course, I do not suppose your Honor ruled that the parties are to be excluded, although they are witnesses, but I think those witnesses who are not parties to this proceeding should be excluded.

The Court: Which ones?

Mr. Maxson: That is if there are any here.

The Court: There are no witnesses here, as I understand it, except those you asked them to produce here. Now, I take it for granted, unless it can be indicated to me that I am wrong, that pretty much everybody in the audience is interested in this case as a party. I believe they are all Squiers who have some interest in the will.

Mr. Ferris: And the witnesses who are here are also beneficiaries under the will, so they are parties. They were cited in these proceedings as well, and I think the only witnesses present in the courtroom are those whom we produced at the request of Mr. Maxson, representing the appellant.

The Court: I do not feel inclined to send a lot of ladies back there in that jury room, that stuffy room, unless it is absolutely necessary.

Mr. Maxson: I do not want them to.

The Court: All right, let us go on.

Mr. Maxson: On the last hearing even Mr. "Hulton" who said he was only a witness, he excluded himself. Now, they seem to have changed their policy.

The Court: No; I indicated this morning to Mr. Hyer in audible language I did not see any sense in excluding any witnesses today. That was in reference to the execution of the will. Now, if you can show me any reason why the parties in interest should be excluded, it will have to be a mighty good one, before I will do it.

Mr. Maxson: We can't show your Honor, except they hear all the testimony.

The Court: Well, they are entitled to hear all that as parties.

Mr. Maxson: Parties are undoubtedly entitled to.

Q. Mr. Squier, where do you reside? A. Rahway, New Jersey.

Q. And how long have you lived there? A. About seventy-one years.

Q. Lived there all your life? A. All my life.

Q. What is your relation to the testator? A. Brother.

Q. And you are a son of William C. Squier? A. I am.

Q. And of Catherine Squier? A. Yes.

Q. How far from the testator is your residence? A. About two blocks, a block and a half.

Q. And during his lifetime did you call on him frequently? A. I did.

Q. How frequently? A. Oh, three or four times a week.

Q. And in the evening generally? A. Generally in the evening.

Q. And did he call on you? A. Yes.

Q. How frequently? A. Well, not near as often.

Q. What kind of a house did the testator live in? A. Well, he lived in the old homestead.

Q. And was it a large or small house? A. Large.

Q. Having how many rooms? A. Oh, fifteen or sixteen, I should say.

Q. And which room did he occupy? A. Well, he occupied—at what time do you mean?

Q. Well, generally? I mean at the time of his death. A. At the time of his death he occupied the rear room over the library.

Q. Had he, previous to that, occupied another room. A. Yes; years before that.

Q. Which one? A. In the third story.

Q. Did the other members of the family come out to Rahway to visit him? A. Yes.

Q. Which members? A. In fact all of them have been out there at different times.

Q. How often? A. Well, that I couldn't say.

Q. When—do you remember the last occasion when they were there before the testator's death?

Mr. Ferris: Which one, Mr. Maxson? A. Any of them.

Mr. Ferris: Well, the question will include the visit of all of them.

The Court: Mr. Ferris, if you have no objection to make, please sit down.

Mr. Ferris: I object to the question, if your Honor please, that it is——

The Court: On what grounds?

Mr. Ferris: ——(continuing) It is misleading.

The Court: Overruled.

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Mr. Ferris: Exception.
The Court: Overruled.
Mr. Ferris: All right.
The Court: Go on.

A. No; I couldn't give the date.

Q. [Question repeated by the stenographer.] A. No; I couldn't give the date.

Q. Well, how long before his death do you remember any one of the family came there? A. That I couldn't answer.

Q. Who was the last member of the family that you remember having been to call on him before his death? A. I am not sure but I think it was William B. Squier third.

Q. Will you say approximately how long before his death that call was made? A. No, I could not. A year or more.

Q. Some years? A. A year or so.

Q. Was that the last occasion that you remember any member of the family calling on him? A. Yes.

Q. Well, now, when before that do you recall any member of the family being there to see him? A. Well, I couldn't give you anywhere near the date or anything else.

Q. Well, I am not asking for the date, Mr. Squier. I am just asking you for your recollection. A. A year or two before that.

Q. And then who called on him? A. Beg pardon?

Q. And then which member of the family called on him? A. I couldn't tell you that. I don't remember.

Q. So that these calls were very infrequent, were they not? A. They were. Because he lived out of town, and came very seldom.

Q. In fact, they were years apart? A. Yes.

Q. Were there any family gatherings that you recall out there at the old homestead? A. Not except away back, years back.

Q. How many years back? A. During my mother's lifetime.

Q. From your mother's lifetime down to the time of the testator there were no family gatherings when the most of the family, or all of them, were there? A. Not that I remember.

Q. Now, at your house did you have family gatherings there? A. No. My brother was over there at times, Christmas time. We never had all the rest of the family there.

Q. Not at any time from the time of your mother's death down? A. Not that I remember.

Q. Did the testator come there on each Christmas? A. No, not on each Christmas. Sometimes he did and sometimes he did not.

Q. When was the last one that you recall that he was there? A. I think it was the Christmas previous to his death.

Q. Now, who that you recall were present at that time? A. Well, my own family, Mr. Searles' family and brother Ed.

Q. Did he come to see you or you go to see him on the other holidays during the year? A. No. I was generally home.

Q. How about Thanksgiving? Did you have any family gathering at that time outside of your own family. A. Yes. Generally my son-in-law and my daughter came.

Q. Any other members of the family? A. No, not as I remember. Some may have been.

Q. Did the testator come on those occasions? A. No, I don't know as he was ever there on Thanksgiving.

Q. His relation with your immediate family was pleasant, was it not? A. It certainly was.

Q. And with your family connections, your son-in-law and daughter-in-law? A. Certainly.

Q. Did Mr. Houghton, and Mrs. Houghton, come out to any of those gatherings? A. No, not to those gatherings, but they were out there.

Q. How frequently did they come? A. Oh, maybe two or three times a year or something of that kind.

Q. Where did they stay when they came out? A. Well, if they stayed all night they stayed at my house.

Q. Ever know them to stay all night in the testator's house? A. Yes.

Q. How often? A. That I couldn't say.

Q. When is the last time that you knew that they were out there? A. I couldn't tell you that either.

Q. Well, can't you tell me approximately how long before the testator's death? A. Yes, the previous year.

Q. A year before his death? A. Sometime during the previous year.

Q. What was the occasion, do you recall? A. No, I don't think it was any particular occasion.

Q. How long did they stay when they came? A. Generally stayed over night.

Q. Did you know every time they were there? A. Well, that I couldn't say.

Q. Well, I mean—— A. Yes, I think I do.

Q. Did they come over to see you on those occasions? A. That I don't remember.

Q. Well, they did come to visit you, did they not? A. They did.

Q. How frequently? A. I think I answered that, didn't I?

Q. Well, I don't remember that you did. A. Well, two or three times a year.

Q. And they also came to see the testator two or three times a year? A. They did.

Q. But you don't recall how long they stayed? A. I do not.

Q. Well, just over night or a day or two? A. Just over night as a general thing.

Q. Which room did they occupy in the testator's house, if you know, when they were there? A. Well, as a general thing I should say the front room.

Q. What season of the year did they usually come out there? A. Well, they didn't have any particular season for coming.

Q. They came any time of the year, did they? A. Any time.

Q. And just for the purpose of making a visit? A. That is all.

Q. Then Mr. and Mrs. Houghton were more frequently at the house? A. Yes.

Q. Than were any other members of the family, is that so? A. Yes.

Q. During the period that they were coming there to visit the testator, do you know whether Mr. Houghton was representing him as his attorney? A. He was.

Q. Do you know how long he represented him as his attorney? A. Well——

The Court: Can't we put that on record how long he was?

Mr. Ferris: I think that is already on the record.

Mr. Houghton: I never represented the testator personally.

The Court: How long did your firm represent him?

Mr. Ferris: He never represented Mr. Squier personally. Only as trustee for his father's estate and mother's estate. Since 1907 for William P. Squier estate, and since 1913 for Catherine Squier estate.

The Court: No need of taking any time over those things.

Mr. Maxson: May I have the admission read so that I will know just exactly what it is?

(Admission read by the stenographer.)

Mr. Maxson: When you say Mr. Squier does he refer to the testator?

Mr. Ferris: Yes, sir. Edwin Squier the testator.

Q. Do you recall the last time that Mr. and Mrs. Houghton were out there?

The Court: What is the object of that? What is the difference if one member of the family visited the deceased a little oftener than the other? In other words, I am perfectly willing to listen to everything you have, but we do not want to take up any time unnecessarily.

Mr. Maxson: May it please your Honor, I am not asking questions that I have not some purpose in asking. I am not trying to take your Honor's time unnecessarily.

The Court: For the time being, we will discontinue that line of testimony, unless something develops that shows any necessity for it. I cannot see it at all.

Mr. Maxson: May I again tell your Honor what my purpose is?

The Court: Yes. I do not see what possible connection all this thing can have with this case as to how many visits were made by the family.

(Conference between counsel and the Court.)

Q. Do you know who were the trustees under the will of your grandfather and grandmother? A. My grandfather and grandmother?

Q. I mean your father and mother. Excuse me. A. Yes, the four brothers.

Q. The four sons? A. Four sons.

Q. And they were under both of the wills, were they? A. Not under the—do you mean my grandmother's?

Q. Yes. A. Or my mother's, you mean?

Q. Your mother's, yes. A. No. One of my brothers had died.

Q. Was there a substituted trustee? A. Not at that time.

Q. Well, there was subsequently? A. Yes.

The Court: Why do we have to ask him about that? Does not the record show that? A. It is all on record.

Mr. Maxson: I want to show the relation of the family with the testator and what brought about—how frequently they were together and what brought about the relations.

The Court: That is another matter. There is no testimony you can offer which will be quite so good as the record itself as to who were the trustees. This man's memory may fail him on some of these things. The record is here.

Mr. Maxson: It is simply preliminary to showing how frequently they got together. I want to find out what the relations of the family were.

The Court: You have already asked him about how often they got together. In other words, what I am trying to get to is this: You know, Mr. Maxson, as a New Jersey Counsel, that all of this is of no use to me. I notice your associate every now and then consults with you, and it is perfectly all right for him to make suggestions that may be all right in New York, but they are no good here. You will have to tell him that, and see to it that he does not get you to ask questions that are of no assisance to this Court. I do not want to interfere with your examination, I do not want to interfere with your general thought upon the subject, but all of this is simply, so far, of no use. It does not get us anywhere. It takes up a lot of time, costs a lot of money, and nothing to it, so far. Now, if there is anything that you have that will lay the foundation for a real legitimate attack on this will, produce

it right away, and then after that you can fill in all of your finer lines of testimony leading up to that, if you want to. Otherwise I will have to exclude it for the time being until you do make a worth while attack. As soon as I indicate to counsel that the examination is not interesting, counsel makes the general suggestion, I am going to connect it up. Meanwhile we are losing a lot of good ground and time.

Mr. Maxson: As we view this it is a complicated situation.

The Court: No doubt about that, but you must by this time know the fundamentals of the attack you are going to make, and you must by this time have some evidence to show me that the contest is founded upon good reason, and produce those reasons as soon as you can now on the stand. So that I will let you fill in and connect up afterward, but give us the substance of this thing soon.

Mr. Maxson: This is a complicated thing all the way through. It involves not only the administration of this estate, but the administration of the grandmother's estate——

The Court: No. That is where you are wrong. I apprehend that is going to be the line of this testimony and I will not hear it. I might as well have that understood now, that I will only hear the attack upon this will. I am not going to hear any administrations of estates in the past. There were times when, and places where attacks of that kind could be made and settled, and they cannot be made now and settled. Might just as well have that

understanding. If that is your purpose, I will exclude that testimony now, and you can take your exception to my ruling.

Mr. Maxson: We have not formally offered it so that we can get the exception.

The Court: Now you offer that as soon as you can and I will rule on it.

Mr. Maxson: Then I offer in evidence——

The Court: Your position in this case is an appeal from the probate of this Edwin M. Squier deceased's will, predicated upon three usual grounds, undue execution, unsoundness of mind, and undue influence.

Mr. Maxson: And conspiracy and fraud.

The Court: That petition has been amended alleging a conspiracy on the part of William C. Squier, third, Frederick C. Squier, Jr., Harold M. Searles, Augustus S. Houghton, Ferederick C. Squier, Helen S. Keene, Carol S. Houghton, Catherine S. Montgomery, Elsie S. Edson, and others to cause and procure the deceased to sign this last will and testament. Now, it may be that visits to and fro might have some bearing on the amended petition, but there is a limit to the scope of that inquiry beyond which I cannot allow you to go. Now, I have indicated precisely what I have in mind and what I propose to do, now, try and conform to it. If I am wrong I can be reversed.

The Court: Make your offers, and I will rule.

Mr. Maxson: Our claim is that this is a conspiracy. That under the will of both of the grandparents, William C. Squier and Cathe-

rine C. Squier that this contestant of this will did not receive his interest, and that it has continued right down to the present time, and that the will of Catherine Squier is bound up with the will of this testator, under its terms.

The Court: No.

Mr. Maxson: And of course, that is more a matter of argument, but the explanation of that situation, it seems to me, is necessary for your Honor to get the atmosphere of this case. I could not see it myself, at the start of it, but I think I see it clearly now.

The Court: I am not so much worried about the atmosphere. I have that and I have had it for some time. What I want is some evidence.

Mr. Maxson: I will offer in evidence for the purpose of getting your Honor's ruling the will of William C. Squier.

Mr. Ferris: I object to it.

The Court: Wait!

Mr. Ferris: I thought he had finished.

Mr. Maxson: That is all.

The Court: For what purpose?

Mr. Maxson: For the purpose of showing the beginning of this conspiracy which we allege.

The Court: You mean you offer in evidence a record of the Surrogate's office in which is recorded the will of William C. Squier.

Mr. Maxson: I mean that: I beg your Honor's pardon.

The Court: Yes.

Mr. Maxson: I mean the record. All these records.

The Court: For the purpose of showing the beginning of the conspiracy?

Mr. Maxson: To defeat this contestant's interest in this property.

The Court: In what way do you contend that that will show the beginning of a conspiracy to make the will in question?

Mr. Maxson: The situation with relation to the parties was practically the same as the time of the probate of that will as it was in respect to the probate of this will.

The Court: Well, you are asking me there to assume facts not in evidence, Mr. Maxson. I will reserve on the admission of that will in evidence.

Mr. Maxson: Now, I offer the will of Catherine——

The Court: If, at the conclusion of your case, it appears that those two wills are——

[Court's statement repeated by the stenographer].

—(continuing) important to the present inquiry they will be admitted.

Mr. Maxson: Now, will your Honor hear me on the second? Your Honor will recall that under the testimony of the other Squier who as on the—I have forgotten his name now—William C. Squier, third, who was the stand, that he was interrogated as to what happened at the time of the reading of Catherine C. Squier's will and whether or not that inspired an antagonism in the family which continued against the contestant. Now, the terms of that will are clearly material to that situation, and

it is on that ground that we offer the will in evidence, and the probate proceeding, in connection with it.

The Court: I have already indicated that if at the close of this case that testimony appears to be material I will admit it. I will allow you to renew your motion at that time. Just now the ruling will be reserved.

Mr. Maxson: We are laying the foundation.

The Court: I know.

Mr. Maxson:—(continuing) For the offer of evidence to your Honor that we may not be able to offer unless we have the will in as a foundation for it. Will your Honor permit me to renew this motion at any other time rather than wait until the close of the case.

The Court: Surely, surely. If it will appear that is necessary, go on and make your motion.

Mr. Maxson: I think the last question was, who the trustees were under the will, and your Honor excluded it. Is that your recollection? Your Honor will give me an exception.

The Court: On the theory and on the ground that the will would speak for itself, and if it is necessary later to be introduced in order that it should be I will allow it.

Q. Mr. Squier, do you remember the occasion of the reading of your grandmother's will? A. I do.

Q. Your were present, were you not? A. I was.

Q. Who read the will? A. Mr. Houghton.

Mr. Ferris: I object to that, if your Honor please, on the ground it is wholly immaterial, incompetent and irrelevant.

The Court: The answer is in, and I will allow it to stand.

Mr. Ferris: I don't think it is, is it?

(Question repeated by the stenographer.)

Mr. Ferris: I did not hear it. When I rise, Mr. Squier, will you please not answer.

Q. And who were present?

Mr. Ferris: I object to that, as immaterial, incompetent and irrelevant, altogether too remote.

Mr. Maxson: The testimony has already been ruled on by his Honor.

The Court: Answer that question.

Mr. Ferris: Exception.

A. The entire family, as far as I know.

By the Court:

Q. Now, talk a little louder, Mr. Squier, so counsel can hear you. I do not hear you over here at times.

Mr. Maxson: You said the entire family.

The Court: Yes.

By Mr. Maxson:

Q. And did that include Mr. Stewart C. Squier?

The Court: If the entire family were there it included him. Was he there?

A. I wouldn't swear to it.

The Court: Well, you do not know whether the entire family was there or not.

A. No; but I think with his exception they were.

Q. Well, you know he was not there, don't you? Isn't that your recollection? A. No; it is not, I am not sure of it. But I don't think he was there.

By the Court:

Q. Any reason for thinking that, Mr. Squier? A. No, not that——

Q. Let me understand: Was there any unfriendliness on the part of the balance of the family toward him? A. Toward Stewart C?

Q. Yes. A. No; not at all.

Q. Why do you think he was not there? A. Whether he was sick or away I don't know.

Q. Would that be the only reason why he was not there? A. That would be the only reason.

Q. Isn't there some feeling in the Squier family against this particular man? A. Against Charles Burnham?

Q. Yes.

Mr. Ferris: Your Honor means the appellant?

The Court: Yes.

A. Well, there was after the reading of the will.

Q. Which will? A. My mother's.

Q. Your mother's will. What was the feeling? Let us get into this thing. What was it about? A. You mean why the feeling was started?

Q. Yes, yes. A. Well, he got up, and he said he was going to contest the will because my mother was tricky.

Q. All right. Let us have it all. What else was said, if you remember? A. Well, several of the others got up and I think talked to him.

Q. There is no need of all this secrecy and so on. I do not say it is present. But let us have the story. Let us have this much understood. That these things happen in families. And when they do that does not of necessity mean that a man cannot make a will any way he wants to. Do not let us have this thing enshrouded in mystery. What else was there about? A. Well, in what way?

Q. Any way? Any feeling on the part of the rest of the family as against Burnham Squier, the cause of that remark? Any other thing you can think of? A. I think the entire family resented it, the way he spoke and the way he acted.

Q. Well, after that was there a feeling on the part of the entire family against him? A. I think there was.

Q. Well, you would know if there was, wouldn't you? A. I know there was most decidedly in my case.

Q. There was in your case. Let us go on from that point. Let us have it right out.

By Mr. Maxson:

Q. Who arose and made the remarks about Mr. Charles Burnham Squier? A. Well, I think William T. Squier, the 3rd did, for one.

By the Court:

Q. And was Mr. Edwin M. Squier there?

Mr. Maxson: No; he was the testator.

Mr. Ferris: Wait a minute, please.

Q. At the grandfather's, grandmother's will? at the mother's will? A. Certainly.

Q. Was Edwin M. there? A. Certainly.

Q. What did he say about Burnham Squier's attitude? A. I don't think he said anything at the time.

Q. After that did he ever say anything to you about him? A. Yes; I think he did.

Q. Well, do you know whether he did or not? A. I do.

Q. What was it? A. Well, just speaking in a general way about the remarks that he made.

Q. Yes. Well, from what he said was he pleased or displeased with him. A. He was most decidedly not pleased.

Q. And was he friendly thereafter with him or unfriendly? A. Unfriendly.

Q. Go on. A. Naturally.

Q. Well, I don't know whether it was naturally or not, but he was unfriendly.

By Mr. Maxson:

Q. Now, who else rose and made any remarks at that time? A. I think Mr. Frank Keene did.

Q. Who? A. Mr. Frank Keene.

Q. What did he say? A. I think he said, "Burnham, you are no Squier."

Q. Was Frank Keene, was he a Squier? A. No; he married a Squier.

Q. Did Mr. Houghton have any remarks to make?

The Court: Therefore he knew the Squiers?

A. Yes.

The Court: Go on.

Q. Did Mr. Houghton have any remarks to make? A. I think very likely he did, but I can't remember what they were.

Q. Did he say something to Charles Burnham Squier about his attitude to the will. A. I think he very likely did. Just what he said I couldn't say.

Q. After he read the will did he make any remarks explanatory of its provision?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant.

The Court: I am going to allow it.

Mr. Ferris: If your Honor please, that merely is for the eliciting testimony for the New York action. That is the only reason.

Mr. Maxson: I resent it, may it please your Honor.

The Court: Please don't! I have ruled, and these little things, they are not conducive to the trial of this cause, and they do not help me any. I know there is a New York case.

Mr. Ferris: Will your Honor grant me an exception?

The Court: I will grant you an exception surely.

A. Will you please repeat the question

Q. [Question repeated by the stenographer].

A. I think he did.

Q. Well, what did he say? A. That I couldn't remember, but I think he made some remarks.

Q. Did he say anything about Mr. Charles Burnham Squier's interest in the estate? A. I don't remember.

Q. Did he say anything, if you recall, about why your mother made the limited provision for Charles Burnham Squier, that she did?

Mr. Ferris: I object as incorporating a state of facts not appearing there.

The Court: He said he did not remember what was said. He thinks some remarks were made but don't remember what they were.

Mr. Maxson: I am trying to refresh his recollection.

The Court: But he has already said he don't know.

Mr. Maxson: Well, your Honor knows this is an adverse witness.

The Court: I know—well, I can't say that exactly, that he is adverse.

Mr. Maxson: I mean his interest is adverse.

The Court: Yes, his interest is adverse.

Mr. Maxson: I do not mean to say that he has shown an adverse attitude on the stand.

The Court: His interest is adverse. Does that question help you recall anything that was said?

A. Yes, it does.

The Court: What was said?

A. He said the reason that he only gave him $15,000, I think it was, because it was on account

of his already having his father's full share in my father's will.

The Court: Now, then, there we will stop with the mother's will. Let us get back to this one now.

Mr. Maxson: Won't your Honor permit me——

The Court: No.

Mr. Maxson: ——(continuing) To go on and show what happened after that?

The Court: No, no further now. You can take exception to my ruling.

Mr. Maxson: May it please your Honor, will your Honor hear me?

The Court: Yes, I will hear you. What do you want to show now?

Mr. Maxson: Mr. Squier was on the witness stand, the previous witness.

The Court: Yes.

Mr. Maxson: Testified with respect to a conversation that he had with Charles Burnham Squier and I asked him whether he went upstairs and talked to him, and that sort of thing, and he said he didn't. I want to find out what this witness has to say about it.

The Court: As to whether he went upstairs with him or not?

Mr. Maxson: As to whether he took him aside and had a conversation with him at that time.

The Court: Did he? Did he?

A. I think he did; I am not sure.

The Court: Did you hear the conversation?

A. No; I didn't.

Q. Where did he take him, do you know? A. Upstairs, I think. It might have been out in the hall.

Q. Subsequent to that, did you ever hear anything about what that conversation was? A. No.

Q. Or what it was about? A. No.

Q. Ever talk to your brother about it? A. No.

Q. He had never mentioned it to you? A. No.

Q. And you were not curious to know what it was about? A. No.

Q. Was that situation in relation to your grandmother's will discussed among the members of the family? A. I presume——

Mr. Ferris: I object to that, if your Honor please, certainly immaterial, incompetent and irrelevant, in relation to the grandmother's will in 1913.

The Court: I understand, but I want to close this case and finish it up, and whatever there is to it I want them to show it, if it is competent to be shown, no matter who it hurts or who it favors. We are never going to get anywhere with this case. It is going to cost a lot of money and spend a lot of time over nothing. If there is anything in this case, let us have it. If there is nothing in the case let us know it as soon as possible.

Mr. Ferris: I have no objection——

The Court: All those objections and all that sort of thing do not help any.

Mr. Ferris: I will refrain from making objections.

The Court: There is nothing unusual about difficulties in families, family differences; nothing unusual about that.

Mr. Maxson: Your Honor did not say——

The Court: Let us have this case, let us see how far it went.

Mr. Ferris: I withdraw my objection.

The Court: I bear in mind the New York action but I can't—if it is necessary for me in this inquiry to inquire into some things which may have a bearing over there, I cannot help it.

Mr. Ferris: I will withdraw the objection.

The Court: Go on.

[Last question reepated by the stenographer.]

Mr. Ferris: You mean his mother's will?

Q. His mother's will, yes. A. It was, undoubtedly.

Q. Where did those discussions take place? A. Action No. 1.

Q. Where did those discussions take place? A. Over at my brother's house, I should say, generally.

The Court: Which brother?

A. My brother Edwin.

The Court: Edwin.

Q. And who were present? A. Well, that I couldn't answer, because sometimes there was some persons and sometimes others. There may be only my brother and myself would be talking about it.

Q. Well, now, how frequently did those discussions take place? A. Oh, couldn't tell you that.

Q. Can you tell me any time when one of those discussions was on who was present and participated? A. No; I couldn't.

Q. Do you remember what was said? A. No; nothing any more than conversation about it.

Q. You can't remember the effect of the conversation. A. No, I cannot.

Q. Or who was there? A. No.

Q. Or when they took place? A. No.

Q. What was the last one? A. That I couldn't tell you.

Q. How long before his death? A. I couldn't tell you.

Q. Well, was it a month or a year or two years? A. It might have been a year.

Q. You attended the discussion but you cannot remember who was there? A. Oh, there were hundreds of discussions.

Q. Over what? A. Period from the time of my mother's death up to the time of my brother's death, you might say.

Q. And with those hundreds of discussions in mind you can't remember the occasion of one of them or who was present, is that so? A. No; I cannot.

Q. How were the conferences brought about? A. By the parties leaving each other.

Q. Who gave the invitation? A. I don't think there was ever any invitations given. People just happened to meet.

Q. Just happened to meet at Edwin Squier's house, is that so? A. Yes.

The Court: Just as those things sometimes happen in longtailed families, when they do meet they will discuss the rest of the family; for want of conversation, sometimes.

Q. You say now there were about one hundred of those conferences? A. No; I didn't say there was a hundred, I said there was—from the time of my mother's death until my brother's death——

Q. From the time of your mother's death until the time of brother's death there was a hundred? A. No, I didn't say that.

Q. Of those conferences. Didn't you testify to that? A. No; I don't think I did.

The Court: He said hundreds.

Q. Hundreds of those conferences? A. Yes.

Q. During that period? That is what you said? A. Yes.

The Court: "Conversations."

A. Just conversations. That conversation presupposes a meeting, doesn't it? A. Naturally.

Q. Yes. And you can't tell who was present at any one of those hundreds of conversations? A. Oh, yes, I can.

Q. Tell me one of them. A. My brother Edwin.

Q. And who else? A. Myself.

Q. And no other member of the family? A. We had lots of them only between ourselves.

Q. And no other member of the family? A. At times there were other members of the family.

Q. Now, tell me who were the other members of the family? A. It might have been my wife; it might have been Mr. Houghton.

Q. How frequently was Mr. Houghton there? A. That I couldn't say.

Q. Did he attend fifty or one hundred conferences? A. No; I don't think he did.

Q. Did he attend twenty-five of them? A. No; I don't think he did.

Q. Well, five of them? A. I wouldn't put any limit on it.

Q. Can't say? A. No; I can't say.

Q. You do remember he was there. Who else was there? A. I don't remember any one else.

Q. Mrs. Houghton there at any other time? A. I think very likely she was.

Q. And on the occasions when Mr. and Mrs. Houghton came out to visit you or visit the testator did you discuss what happened at your grandmother's? A. That I don't——

Q. ——reading your grandmother's will? A. That I couldn't say. I think very likely it was.

Q. But you do not remember any occasion? A. No.

Q. Definitely? A. No.

Q. Did Charles Burnham Squier ever come out there? A. No.

Q. Ever in your house? A. At Rahway?

Q. Yes. A. No.

Q. Ever in his life? A. Yes. I guess he had during his life, but never after my mother's death.

Q. How frequently did he visit you after your mother's death? A. Very seldom.

Q. Well, over what period? At what intervals? A. I couldn't say.

Q. Your best recollection?

Q. (By the Court.) After your mother's death you were not friendly with him? A. I was not; decidedly not.

Q. And after that he never visited you? A. He never did, in Rahway.

The Court: What is the use of all that?

Q. So far as you knew, were any of the other members of the Squier family friendly with him after your mother's death? A. They were not, as far as I knew.

By Mr. Maxon:

Q. And was the testator friendly to him?

The Court: He was a member of the family. He said as far as he knows there was none of the others friendly with him.

Mr. Maxson: I want to particularly——

The Court: Was the testator friendly with him?

A. No; I don't think he was.

Q. Was he unfriendly with him? A. No; not particularly.

Q. What was his attitude toward him, if you know? A. Simply ignored him.

Q. Do you know that to be so? A. I am pretty positive.

Q. Positive of it? A. I know I did.

Q. What makes you so positive of it? A. Well, I don't know as I could answer that.

The Court: Except that you knew that your brother, Edwin M.

A. Yes.

Q. Do you know whether your brother, the testator, and Charles Burnham Squier had any correspondence after the incident of the reading of your grandmother's will? A. I think he did. I am not certain.

Q. Did he ever say anything to you about the letters? A. Yes, he did.

Q. What did he say about those? A. Well, he thought they were not very good taste.

Q. Which letters did he refer to? Those of Charles Burnham Squier, I assume, of course? A. Yes.

Q. These letters were not in good taste? Did he say anything about the replies which he sent? A. Well, I know he replied to it.

Q. Did he tell you what he said or what the effect was of what he did? A. No; I don't.

Q. Now, would you estimate of the relations between the parties change if you knew that they were friendly letters exchanged between them? A. I don't think they were friendly letters exchanged.

Q. While these conferences were taking place about this thing, which was a matter of some importance in the family, was it not, did Mr. Squier say anything to you about his attitude—I mean Mr. Squier the testator—toward Charles Burnham Squier, the contestant here? A. No, I don't think he did; but I know it.

Q. He never expressed himself about how he felt toward him? A. Oh, he certainly did.

Q. Well, what did he say about it? A. That I couldn't say, but I know he didn't have a very good opinion of him.

Q. And you can't tell me how he expressed that sentiment? A. No, I cannot.

Q. Not on any occasion? A. No.

Q. And you had hundreds of talks with him? A. Yes.

Q. And you can't recall one of them? A. No.

Q. Is that because you don't want to? A. No.

Q. Did your brother, the testator, go away from time to time? A. No, he very seldom left.

Q. Did he go to Florida in the winter on occasions? A. Never. He was always home.

Q. What did he do? A. Well, he went to New York, the office, three times a week.

Q. What days in the week? A. On Tuesdays, Wednesdays and Fridays.

Q. Was that an invariable custom with him? A. Invariable, except he was sick or something of that kind.

Q. And how long did he do that? Over what period of his life? A. Oh, for years.

Q. Do you know where his office was? A. 111 Broadway.

Q. In connection with Mr. Houghton and his firm? A. It was in the same suite.

Q. Did you go in there? A. I did. Very seldom.

Q. Very seldom? A. Yes.

Q. As one of the trustees of these wills, did you have meetings? A. We did. Particularly held them at my brother's house.

Q. Did you ever hold any of them in New York at his office? A. I think we did.

Q. How frequently did you hold those? A. I couldn't say, but it was not very often.

Q. Who were present when you held them? A. Well, generally the executors.

Q. And trustees? A. Yes.

Q. Among whom was Mr. Houghton? A. No. What will is this?

Q. Either one of them. A. Well, later he was a substituted trustee.

Q. How long was he trustee, substituted trustee? A. I think it was '94 or '95.

Q. How did he come to be trustee?

Mr. Ferris: I object to that, if your Honor please.

The Court: What difference does it make to us? What is the purport?

Mr. Maxson: I will withdraw the question.

Q. Was your brother Stewart present at those meetings? A. No. Very seldom.

Q. Mr. Houghton was substituted in his place, was he not? A. He was.

Q. Did you testify that those meetings were generally held, when they were held, in Rahway at Edwin C. Squier's residence? A. I did.

Q. And how frequently did you have those meetings? A. Oh, I couldn't say.

Q. Well, do you remember, Mr. Squier—— A. Whenever it was necessary.

Q. Do you remember when the last meeting was held? A. No, I do not.

Q. Well, approximately how long before your brother's death? A. Oh, I should say six months.

Q. And who were present at that meeting? A. Well, my brother and myself and Mr. Houghton.

Q. At those meetings of the trustees did he discuss Charles Burnham Squier in his relation to the estate? A. He may have.

Q. Well, do you remember whether you did or not? A. No, I do not.

Q. Do you remember what the discussions were about that you had at the meetings? A. No.

Q. Do you remember what your purpose was in getting together to hold the meetings? A. No, I couldn't answer that.

Q. Yet you were one of the trustees? A. It would be the general line of business in connection with it.

Q. In connection with what? A. Why, with the trustees under the will of my father.

Q. You are referring now to your father's will, aren't you? A. Which one were you speaking about?

Q. I was referring to both of them and the meetings that you had as trustee of either your father or your mother?

By the Court:

Q. Were those meetings all on the business of the estate all the time? A. Yes.

Q. No private affairs? A. No private affairs.

By Mr. Maxson:

Q. Haven't you testified that you discussed Charles Burnham Squier at those meetings?

By the Court:

Q. You didn't meet for that purpose, did you? A. No, we did not.

By Mr. Maxson:

Q. Well, did you discuss——

The Court: He said they did.

By the Court:

Q. You did, didn't you? A. I did.

By Mr. Maxon:

Q. Well, what did you say about him at any of those meetings?

The Court: I do not care. I do not want to hear about it. It might not be pleasant for him and not for anybody else.

Mr. Maxson: I do not want to be unpleasant, may it please your Honor, but his attitude toward this contestant, with his brother.

The Court: He says after this affair when the mother's will was read he was unfriendly to him and he told why. Now, if subsequently he said some harsh things about them I do not care anything about it in this case. I know he is Burnham Squier, and from his lips I know the rest of the family, so far as he could tell, are unfriendly to him, and why.

By Mr. Maxson:

Q. You had a substantial interest in this estate, did you not? A. I did.

Q. Very large interest? A. Yes.

Q. Which was largely affected by Charles Burnham Squier in his relation to the estate?

Mr. Ferris: I object to that as calling for a conclusion of both fact and law.

Mr. Maxson: I want to find out whether he knows it or not.

The Court: It will not help me any, Mr. Maxson. What you have shown so far, and I dare say with my help, is that there was an unfriendly feeling on the part of the testator and the Squier family in general toward your client.

Mr. Maxson: What I want to show is how far expression was given to that.

The Court: By whom?

Mr. Maxson: By this witness in his relation with the testator.

The Court: How far did that feeling go on the part of this testator, that is all I am interested in. Was it his feeling or was it the feeling of someone else that brought about this situation of which Burnham Squier now complains?

Mr. Maxson: Here is a witness who is not only a very large beneficiary under this estate, and whose interest is very largely affected by Charles Burnham Squier, if he is cut out who is a co-trustee, and with his brother he says hundreds of times; now, what he may have said, about his opinion of Charles Burnham Squier, it seems to me is very material.

The Court: That is not what you asked this witness.

Mr. Maxson: That is what I intended to ask.

The Court: Well, but you did not ask it. You want to know what was said about Charles Burnham Squier and I do not care anything about it.

Mr. Maxson: What he said indicates what his attitude is toward it.

The Court: That is another question.

Mr. Maxson: I do not know how else to elicit that.

The Court: I have not ruled on that question. In other words, I will allow you to show, if you can, by anyone of the Squier family, if you can show it by them, that they said things to this deceased about Burnham Squier the effect of which was to cause him to cut him out of his will, if you can show that, as far as that I will allow you to show they conspired together, and got their heads together to say things about him, true and untrue, to the deceased, that he did not know anything about theretofore; true or untrue. But what this particular witness said to Burnham Squier at any time I do not care anything about that.

Mr. Maxson: I did not intend to ask that.

The Court: If you can show what he said about Burnham Squier at these conferences of the trustees, after the incident which took place at the reading of the mother's will, and can show that that took effect upon this deceased, and how much, that would be making good on your appeal, to a certain extent. So far I cannot tell until I hear it all.

(Question repeated by stenographer.)

The Court: I will allow that.

By the Court:

Q. Do you know what you said about him? A. No, I do not.

By Mr. Maxson:

Q. Well, was it favorable to him or unfavorable? A. No. It was unfavorable undoubtedly.

By the Court:

Q. Did you, at any time, at these conferences say anything to Edwin M. Squier, concerning Burnham Squier, concerning things which Edwin M. Squier did not know about? A. No.

Q. Before you told him? A. No.

The Court: Go on.

By Mr. Maxson:

Q. Well, in these hundreds of meetings that you had with him how frequently did you discuss Charles Burnham Squier? A. That I couldn't say.

Q. Well, approximately. A. I don't suppose five per cent. of the time.

Q. This was a matter of some importance, was it not, his relation to the family and the testator? A. Well, not particularly after the way he spoke.

Q. Then you didn't consider it of any importance, is that so? A. I didn't think it was of very much importance.

Q. Did your brother think it was of much importance? A. That I couldn't say.

By the Court:

Q. Can you tell what your brother thought? A. Pretty hard job.

By Mr. Maxson:

Q. Did he ever express himself about it? A. No, I don't know as he did. I couldn't give you the words.

Q. Never on any occasion expressed himself about Charles Burnham Squier's relation to the estate after the incident at your grandmother's will? A. Yes, but I couldn't tell you what he said.

Q. Well, what was the effect of what he said? A. The effect on whom?

By the Court:

Q. The effect of what he said concerning Burnham Squier. I think I asked you that question before. Was it friendly or unfriendly? A. Unfriendly.

By Mr. Maxson:

Q. Well, whenever you discussed Charles Burnham Squier it was in an unfriendly way, was it not? A. It was, if I discussed him at all.

Q. And you, during those hundreds of conferences, you repeated to your brother a good many times, did you not? A. Well, I should not say how many times.

Q. Well, a good many times out of the hundred times? A. No, not a good many times because it wasn't necessary after I had repeated it once, that was sufficient.

Q. You told your brother what you thought of Charles Burnham Squier, did you not? A. I certainly did.

Q. And what did you say to him about it? A. Well, I think it was particularly that I hadn't any use for him.

Q. And how frequently did you tell your brother that? A. That I couldn't say. I should think once would be enough.

Q. Well, you have said that you discussed it with him on a number of occasions? A. Well, I didn't say that, I didn't say that I said that on a number of occasions.

Q. Well, what did you say on the other occasions? A. I told you that I couldn't remember.

The Court: He has said that a half dozen times. That does not surprise me any. I would be surprised if he could.

By the Court:

Q. In a general way those conversations between you and the deceased concerning Burnham Squier were to the effect that you were unfriendly to him? A. Yes, I should say they were.

Q. And what was his conversation with reference to Burnham Squier to you? A. About on the same lines.

The Court: That is about as far as you can go.

By Mr. Maxson:

Q. Did you testify that your brother expressed himself about it, the testator?

The Court: Yes, twice now. Being unfriendly.

Q. Was he a very talkative man? A. Who, my brother.

Q. Yes. A. Not particularly.

Q. But on this subject he was talkative, was he? A. No, not any more than any other.

Q. Did you ever discuss with your brother the provisions of your grandmother's will in relation to the contestant? A. No, never.

Q. Did you ever talk to him about Mr. Houghton's explanation of your grandmother's will?

The Court: Explanation?

A. I may.

The Court: Wait a minute.

Mr. Maxson: He has testified, as I recall it, that Mr. Houghton explained the provisions of the will to the family after they were read.

By Mr. Maxson:

Q. Is that so, Mr. Squier? A. I think so.

Q. And you testified what his explanation was, did you not? A. I believe so.

Q. That is, that Charles Burnham Squier had already had his interest in the estate? A. That is right.

Q. And that that is the reason the grandmother didn't leave him anything except a fifteen thousand dollar bequest, that is so, isn't it? A. Right, that is so.

Q. You have testified to that? A. That is so.

Q. Did your brother ever talk to you about that? A. No, I don't know as he did. He may have.

Q. It was that provision in the will that created the antagonism, wasn't it?

The Court: What antagonism?

Mr. Maxson: The $15,000 bequest to Charles Burnham Squier.

The Court: Antagonism on whose part?

Mr. Maxson: On the part of the family.

The Court: No. His testimony was that the antagonism was created by a remark which Burnham Squier made concerning the grandmother, the mother of these Squier boys.

Mr. Maxson: Which related to this provision of the will.

The Court: Which related to this provision of the will wherein she left him $15,000, or whatever it was, some remark which he then made led to the antagonism of the rest of the Squier family, as I understood him.

By the Court:

Q. Is that right? A. That is right.

Q. What was that remark again? You did testify to it. A. Well, he testified she was tricky.

By Mr. Maxson:

Q. Are you very sure about those words? A. Positive.

Q. Did you ever discuss that incident with your brother? A. I think I very likely did.

Q. Did you ever discuss the provisions of your grandmother's will with your brother? A. At what time?

Q. At any time.

By the Court:

Q. Afterwards? You were functioning as trustees, did you ever discuss it? A. I suppose we did.

The Court: I do not see how you could help it.

By Mr. Maxson:

Q. Did you ever take advice about the provisions of your mother's will?

Mr. Ferris: I object to that.

Mr. Maxson: I am not asking what the advice was.

The Court: I do not see why they should not have taken advice.

By the Court:

Q. Did you take any? A. Why, certainly.

By Mr. Maxson:

Q. Who represented you? A. Mr. Houghton's firm.

Q. Anyone else? A. No.

Q. Now, do you recall what your brother said at any time about the provisions of your mother's will? A. No, I do not.

Q. Not at any of these meetings of the trustees? A. No.

Q. Was Mr. Houghton ever present? A. Might have been to some of the meetings.

Q. He was a substituted trustee of your mother's will, was he not? A. Of my father's.

Q. And how frequently did he attend? A. That I could not answer.

The Court: He says he does not know. He might have been present. If he does not know it would be hard for him to say how frequently he attended.

Mr. Maxson: I am trying to get his best recollection.

The Court: Yes.

Q. When you held the meetings of the trustees at your brother's office in New York did Mr. Houghton attend? A. I think he very likely would.

Q. Well, what is your recollection about it?

By the Court:

Q. You were asked whether he did or not. What is your recollection, did he or didn't he? A. My recollection is he did.

By Mr. Maxson:

Q. Did the trustees ever discuss among themselves at any of these meetings the provisions of your mother's will with relation to Charles Burnham Squier?

The Court: I think that has been asked enough now. He has answered that several times.

Mr. Maxson: I do not remember how he answered it.

The Court: Well, I do. They did. They had to. How could they get away from them? What the discussion was he could not recall. He has answered it.

Mr. Maxson: This is a matter of the utmost importance in this case.

The Court: Yes, I know it is in your case but I have allowed you to ask considerable about it and that is enough now.

Mr. Maxson: I do not understand your Honor when you say my case.

The Court: It is not important to me here. The only thing that is important to me in this case was to show whatever enmity there was on the part of this testator toward Burnham Squier, started, originated at the time of the reading of the mother's will, and because of a remark which was made. After that I do not care anything about the provisions of the mother's will. She had a right to do as she pleased about it. I am not concerned with that. I will allow you to show that much, and I did, because I thought you were going to show some conspiracy formulated then. So far as that will is concerned, and the provisions of it, I am through with it, as far as this case is concerned; I want to make it plain that I will hear no more about it, that is, the provisions of that will.

Mr. Maxson: Will your Honor examine the provisions of the will?

The Court: I do not need to. They may be interesting to you in your New York action.

A. What do you mean with the business?

Q. Yes. A. He was a member of the Passaic Zinc Company, the same as the rest of us boys.

Q. Did he hold an office. A. Office, yes.

Q. What was his position? A. Well, he was a director and I think he was afterward secretary.

Q. Did he have any active part in the consolidation of the company? A. He did.

Q. Handled it all, did he not? A. No, not all that. The greater part of it.

Q. Who else had anything to do with it? A. Well, I think we all had more or less.

Q. Did he have some part in it? A. Yes.

Q. What part did you take?

Mr. Ferris: I object to that. That refers away back to the early 1900's, long before the death of the father.

Mr. Maxson: It is most material, in this case.

The Court: In what way is it material to this case? The New York action seems to be a sore spot between you two gentlemen; there is no reason why it should be. If there is anything in it, the time will come when it will be shown, and if there is not anything in it, that time will come too. What is the materiality of this question in this inquiry?

(Question repeated by stenographer.)

Frederick C. Squier—For Appellant-Contestant—Direct

The Court: I do not care what part he took.

Mr. Maxson: There is a lot of documentary evidence, and there are a lot of letters here, and I want to find out what this witness is going to say about those relations which are referred to in these letters. I do not like to be obliged to tell your Honor all about what I am about.

The Court: No, I do not want you to.

Mr. Maxson: I have to prove my case, may it please your Honor, in the way I have it in mind to prove it.

The Court: If you can do it, if the Court allows it.

Mr. Maxson: Yes, if the Court allows.

The Court: I will not allow this question.

Mr. Maxson: Prays exception.

Q. What were the relations between your mother and Charles Burnham Squier? A. Very good.

The Court: No. I will allow you an exception.

Mr. Maxson: Did he answer it? May I have the answer if he did?

The Court: He said very good.

Mr. Maxson: They are exceedingly important in the disposition of this case.

The Court: There was a bill of complaint handed to me, when the administrators *pendente lite,* whom I appointed here, were restrained from the New York action, so I have some idea about the subject matter contained in the bill of complaint. That is how I know about it. Otherwise I would not know. Now, I must keep this within proper bounds and I

am going to do it, now go on. You take an exception to the ruling which I make. If you think it is any good, because I hold that it is discretionary with the trial court how far it will go on matters which are of no particular importance to the subject matter involved in the contract.

Mr. Maxson: May it please your Honor, I think that this will matter is the most important thing in this contest. The will of the grandmother.

The Court: For the time being I have ruled. Later on, if it should appear that I am wrong, I will reverse myself very quickly.

Mr. Maxson: I am sure your Honor will, but in the meantime, the witness wil be gone.

The Court: No, there will not be any of these witnesses gone.

Mr. Maxson: If your Honor will call them back.

The Court: I will see to it that they are not gone, if there is any reason for holding them.

By Mr. Maxson:

Q. Did any other members of the family agree with you about these antagonisms against Charles Burnham Squier? A. Well, I couldn't tell whether they did or not, but I suppose they did.

The Court: I did not know there was any antagonism so far; I do not think that is the right way to put it.

Mr. Maxson: That is what the other Mr. Squier testified, that there was an antagonism.

The Court: This Mr. Squier has not testified there was any antagonism. He has testified to unfriendliness, that is quite a different thing.

Mr. Maxson: I will say hostility.

The Court: I do not think that is the word.

Mr. Maxson: Will your Honor suggest what word I can use?

The Court: I can be unfriendly, and the truth is I am with some people, but I am not hostile.

Mr. Maxson: Well, may I ask this witness whether there was any hostility?

The Court: Yes, you may ask him whether there was any hostility.

Q. Was there any hostility between you and Charles Burnham Squier? A. No. I should call it unfriendliness.

Q. What? A. I should say I was not friendly with him.

Q. You are adopting what the court said?

Mr. Ferris: I object to that. The witness himself originally said it.

The Court: Let him answer. Maybe he is.

A. I think I answered it once before.

By the Court:

Q. You did, but are you adopting my definition of hostility and unfriendliness, or your own? A. I think I adopted yours.

Frederick C. Squier—For Appellant-Contestant—Direct

By Mr. Maxson:

Q. Are you distinguishing between hostility and unfriendliness? A. Well, I think the Judge did.

By the Court:

Q. Well, do you? A. Yes, certainly.

By Mr. Maxson:

Q. Just what is your distinction?

Mr. Ferris: I object to that.

The Court: Do not let us go into that now.

Mr. Maxson: The other witness in this case testified to antagonism.

The Court: He may be antagonistic. This witness is not. He is unfriendly.

Q. Did you ever talk to any other members of the family about this unfriendliness? A. I think very likely I have.

Q. Well, on what occasion? A. I couldn't answer it.

Q. Well, on what occasions? A. I couldn't answer that either.

Q. With whom did you talk? A. I could not answer that.

Q. Can you select one member of the family with whom you talked? A. No, not particularly.

Q. Well, particularly or otherwise? A. No.

Q. You talked with all of them about this antagonism?

Mr. Ferris: I object to the use of the word "antagonism."

Q. All right, unfriendliness. I misspoke myself.

Mr. Maxson: I beg your Honor's pardon.

Q. Unfriendliness. A. I think I have at times to all of them.

Q. Were your relations with your brother Charles friendly or unfriendly? A. Decidedly friendly.

Q. Was he a trustee of the two estates, your father's and mother's—of your father's estate, I mean? A. Yes.

Q. Was he active? A. He died before my——

Q. Was he active as a trustee of your father's estate? A. No.

Mr. Ferris: I object. The witness said he died before his father died. He could not very well be active.

Mr. Maxson: I do not see how he could have been a trustee either.

Mr. Ferris: He was named as a trustee but never active.

The Court: He was a nominee.

By Mr. Maxson:

Q. What were your brother Charles Burnham Squier's relation to the estate and the business?

Mr. Ferris: I object to the latter part of the question "and the business." I assume now counsel is referring to the business that was conducted by the father back in 1903.

The Court: What is the difference?

Mr. Ferris: If we do not draw the line somewhere we can go on indefinitely.

The Court: I will draw the line.

Mr. Ferris: I move to strike out the answer.

The Court: The answer is of no use to me in this case. Strike it out.

Mr. Maxson: Prays exception.

Q. Just previous to the death of the testator did you have a meeting of the trustees? A. No, I don't think we did.

Q. Well, how long previous to the death of the testator?

The Court: Now, Mr. Maxson, this will of this testator was made July 6, 1926. Now, suppose they had a meeting just—he died when?

Mr. Houghton: November 9, 1926.

The Court: Suppose they had a meeting November 9, 1926, what can that possibly elicit that would be of benefit to me here? A. A meeting immediately prior to the date of the will might.

Mr. Maxson: What happened at the meeting might be quite material.

The Court: I cannot see it. I will rule that out.

Mr. Maxson: Prays exception. Take the witness.

The Court: Any questions?

Cross Examination by Mr. Ferris:

Q. You testified, Mr. Squier, that Mr. Houghton became substitute trustee in '94 or '95. Did you mean 1894 or 1895, or 1924 or 1925? A. 1924 or '25.

Frederick C. Squier—For Appellant-Contestant—Cross

Q. Are you familiar with the signature of the deceased Edwin M. Squier? A. I am.

Q. Mr. Maxson questioned you concerning letters that had been written by Burnham Squier to Edwin Squier and replies sent by Edwin to Burnham, did he not? A. Yes.

Q. Now, I show you this letter pressed book, on page 108, and ask you to look at the signature and tell us if it is the signature of the deceased? A. That is his signature.

Mr. Ferris: I offer that letter in evidence.

The Court: Mark it for identification.

Mr. Ferris: I offer it for identification at this time then. From page 105 to 108, inclusive, constituting the entire letter.

The Court: In other words, I assume you do not want to put them in evidence unless it becomes necessary.

Mr. Ferris: Yes, sir.

The Court: Therefore you will put it in on your own case, in reply to their case.

Mr. Ferris: Yes, sir.

Mr. Maxson: May he introduce it now? He offered it in evidence.

The Court: He has offered it for identification. I have not allowed it in evidence. I said I would allow it to be marked for identification, assuming that he would not want it in evidence unless it was necessary to introduce it in evidence in reply to some communications that you might put in. On the other hand, it is entirely improper for him to offer anything in evidence now.

Mr. Maxson: We haven't any objection if your Honor will let me see it.

The Court: I do not care whether you have or not. Later on if he wants to introduce it in evidence, all right. Just now there is no need of complicating the situation by going outside of the rules of the proper procedure. He has nothing to offer in evidence now.

(Letter dated February 28, 1913, marked D-1 for identification, consisting of three pages in letter press book.)

Q. You testified, Mr. Squier, on direct examination that there were no family gatherings at Edwin's house for some year or two preceding his death? A. I did.

Q. Did you intend to include in that statement your visits to his house and his to yours? A. No, I didn't. Family gathering, I understood him.

Q. You were questioned concerning the reading of the will of Catherine Squier. What year did that take place? A. What, the reading?

Q. Yes. A. 1913.

Mr. Ferris: That is all.

Frederick C. Squier—for Appellant-Contestant—(Recalled)—Direct

UNION COUNTY ORPHANS' COURT

In the Matter

of the

Paper Writing purporting to be The Last Will and Testament of Edwin M. Squier, Deceased.

Before: Hon. Alfred A. Stein, Judge.

Elizabeth, N. J., January 16, 1928.

1:30 P. M. Session.

Frederick C. Squier, rcalled:

Direct Examination (continued) by Mr. Maxson:

Q. Mr. Squier, when did you first hear of your brother's will? A. The day after his death I saw a copy of it.

Q. He never told you he was going to draw one? A. No.

Q. Never discussed it with you? A. No.

Q. Did anybody else discuss it with you? A. No.

Mr. Maxson: All right. That is all.

Mary Conroy—For Appellant-Contestant—Direct

MARY CONROY, a witness on behalf of the appellant, having first been duly sworn in her own behalf according to law, testified as follows:

Direct Examination by Mr. Maxson:

Q. Miss Conroy, where do you live? A. I live at 427 St. George's Avenue, Rahway.

The Court: Will you talk a little louder?

A. I live at——

The Court: All right. Just hereafter talk a little louder.

Q. And with whom? A. With F. C. Squier.

Q. How long have you lived with him? A. Three months.

Q. Since the death of Mr. Edwin Squier? A. No; I haven't lived with him since the death of Edwin M. Squier.

Q. Where did you live between the time of the death of Mr. Squier, Edwin Squier, and the time you went to live with Mr. Ed. Squier? A. I lived with a family by the name of Woodruff in Elizabeth.

Q. In Elizabeth. Where in Elizabeth? A. At 40 North Avenue. 40 North Avenue.

Q. 40 North Avenue?

The Court: 40 North Avenue, yes.

Q. How long were you a member of Mr. Edwin Squier's household? A. Twenty-one years.

Q. Twenty-one years? A. Yes; twenty-one years.

Q. And during that time what were your duties? What did you do there? A. Well, I went there as a waitress unto Mrs. W. C. Squier.

Q. I am sorry; I cannot hear you.

The Court: You have nothing to be afraid of. Speak louder. You went there as a waitress?

A. Yes.

Q. And then after that did you change your employment? A. Then I changed it, because Mrs. W. C. Squier got older, he got in the third girl, and I done the upstairs work, and I kind of looked after Mrs. W. C. Squier. She was getting old, and I kind of helped her to run the house.

Q. Mrs. W. C. Squier? A. Yes; Mrs. William C. Squier, his mother.

Q. You were there? A. Yes.

Q. Before you went with Mr. Edwin Squier? A. Yes; I was there seven years with her.

Q. Did you stay with Mrs. Catherine Squier? A. Yes.

Q. Until the time of her death? A. Yes; I stayed there until the time of her death.

Q. And then you went with Edwin Squier? A. Yes; then I went with him.

Q. And you continued with him? A. Yes.

Q. Until the time of his death? A. Yes; I continued with him until the time of his death.

Q. And how long afterwards? How long afterward did you stay in the house after his death? A. Until last May. I attended the job until last May.

Q. In that house? A. Yes.

Q. The same house, in the old house? A. Yes; in the old house.

Q. And then you left there last May? A. Yes.

Q. The old house, and went with Mr. Fred Squier? A. No, I went with Mr. Woodruff.

Q. You went with Mr. Woodruff? A. Yes. I went with Woodruffs.

Q. Did you take employment with them? A. Yes.

Q. How long did you work for them, about? A. I worked three months.

The Court: Now you are employed by?

A. F. C. Squier.

Q. Were you paid your wages? Yes; I was paid my wages.

Q. By whom?

The Court: When?

Q. I mean from the day of Mr. Edwin Squier's death down to the present time. A. yes; I was paid my wages by the executors of the will.

Q. Who paid you? A. Mr. Searles paid me.

Q. Mr. Searles? A. Yes.

Q. Now, Mr. Edwin Squier was a good employer, wasn't he? A. Yes; he was a good man, Mr. Edwin Squier.

Q. And you liked him, did you not? A. Yes; yes; I liked him.

Q. How frequently did he go to business? A. He went three times a week.

Q. And on what days? A. On Tuesdays, Wednesdays and Fridays.

Q. Regularly? A. Yes, sir; he went regularly.

Q. And what time did he leave in the morning? A. Why, he left on the 8:29 train from Rahway.

Q. And what time did he return? A. Well, on Tuesdays and Fridays he came home around three o'clock, and on Wednesdays he came home around five.

Q. And how did he travel back and forth to the station, if you know? A. Well, until his own horses, his own team of horses were able to do it, he retained the horses, and I guess horses are retained yet, he went down on his own team of horses, and when they weren't able to go he went down by taxi.

Q. When did he stop going with the horses and begin riding in the taxicab? A. I guess about a year before he died.

Q. Did he have one man drive him? A. Yes; he had one man drive him.

Q. Who was that man? A. Thomas Clark.

Q. Thomas what? A. [Repeated by the stenographer.] A. (continuing by the witness) Clark.

Q. Thomas Clark? A. Yes.

Q. You are talking now about the man who drove the horses? A. Yes.

Q. Oh, yes. Who was the taximan? A. I don't know who he was.

Q. Did he have the same man? A. No; he hadn't the same man. It was different.

The Court: What do we care about that? About the taxicab? Go on.

Mr. Maxson: I want to—well, I don't like to continue to tell your Honor what I am trying to elicit.

The Court: That you will have to do——

Mr. Maxson: Then, if I have to——

The Court:—(continuing) Because I do not see——

Mr. Maxson: I want to show how frequently the taximan saw this testator; how much opportunity he had to observe him. If it was the same man I want to prove that.

The Court: Do you know if it was the same man who took him up and down all the time?

A. No; it wasn't the same man. Different men came after him. There was different men came after him.

Q. Did you know who they were or where they came from? A. No; I don't know.

Q. Do you know whether they came from regular——

The Court: Now let us stop with this sort of thing.

Mr. Maxson: Well, I am very sorry——

The Court: I am very much annoyed. Cannot possibly have any bearing on this case, how many taxicab drivers took him to the station. Put the next question.

Mr. Maxson: Your Honor rules it out?

The Court: I will rule it out.

Mr. Maxson: May I have an exception.

The Court: Yes.

Q. Now, during the latter part of the testator's life who came there to visit him? A. Well, he had his own friends.

Q. And who were they? A. Well, I don't know who they were. I don't know.

Q. You did not know any of them? A. No; I don't know.

Q. Didn't the family come to see him? A. Well, once in awhile. Once in a great while they came to see him.

Q. How frequently, about? A. Well, his brother came in maybe a couple of times a week, and his family, but outside of that it might be six months or a year before the rest of the family came in.

Q. Did they have family meetings at the house? A. No; they didn't.

Q. Or at any time during the time you were there with him? A. No.

Q. Ever have a family gathering there? A. No.

Q. On the occasion of holidays did they have dinners, family dinners? A. No.

Q. Did Mr. Squier go to any family gatherings, if you know? A. No; I don't know.

Q. Did he spend his Christmases and Thanksgivings at home? A. Well, his Thanksgivings at home—spent at home, and his Christmas. If he felt like going to his brother for his dinner he went, but if he didn't he stayed at home.

Q. When you say his brother you mean Mr. Fred Squier? A. Yes, Mr. Fred Squier.

Q. When was the last time that he went to Mr. Fred Squier's if you remember for Christmas dinner? A. Well, I think it was the Christmas before he died.

Q. Had he gone there on the previous Christmas if you know? A. No, he did not.

Q. When did you first learn that Mr. Squier had left a will? A. Not until after he died.

Q. How soon after he died? A. Well, maybe a couple of days or a week after he died.

Q. A week after he died? A. Maybe.

Q. Who told you that he had left a will? A. Well, Mr. Houghton told me.

Q. Did Mr. Houghton come out to the house at the time of his death? A. I think so.

Q. I am sorry I can't hear you. A. Yes, he did.

Q. How soon after his death did he come? A. Right after he died.

Q. I can't hear you.

The Court: Talk a little louder than that, please.

A. Right after he died.

The Court: Keep your voice up that way.

Q. On the morning after his death? A. Yes.

Q. What did he do, if you know? A. Well, I don't know what he done. I wasn't paying no attention what they did. I went on about my business and done my work and further more I didn't bother what they were doing.

Q. Did you have to do with taking care of the rooms at that time? A. Yes, I done my work and went about my business and I didn't bother what they were doing.

Q. Did anybody come with Mr. Houghton? A. I don't know who came with him. I didn't let them in. I don't know who came with him.

Q. Don't know anything about who was in the house? A. No.

Q. Did he stay in the house? A. Well, he didn't stay for long. He went out and I don't know where he went.

Q. Did he stay in the house? Have any room in the house? A. Well, when he did come to the house he always occupied the front bedroom upstairs.

Q. Did he occupy that room on this occasion? A. Well, he always, when he came to the house, occupied it.

Q. Did he occupy that room on this occasion? A. Yes, he did.

Q. And how long did he stay? A. Well, he didn't stay only over night and he went home right after the funeral.

Q. He stayed one night? A. Yes, one night he stayed.

Q. What did he say to you about the will? A. Well, he told me he left a will. That was all he told me. So any more I don't know.

Q. Didn't tell you anything about any provision made for you? A. Yes, he did.

Q. What did he say to you about it? A. Well, he told me that the help, he left some money there for the help, and any more I don't know anything about it.

Mr. Maxson: I am sorry I cannot hear this witness.

(Answer repeated by stenographer.)

Q. Did he tell you anything about the help being taken care of? A. Yes, he did.

Q. Well, what did he say about that? A. Well, all he said was he left money there for the help in his will. That he remembered all the help in his will.

Q. I mean did he say anything about their being taken care of for the rest of their lives? A. No, he did not.

Q. Nothing about that? A. No, nothing about that.

Q. Now, did you testify that you could not remember who came to see him? A. Well, all his own friends come there, and they went out, and I don't know who they were. He had his own friends come in there once in a while.

Q. You don't know any of them? A. No, I didn't know any of them. Surely you wouldn't want me to go in and ask the man who they were. I went on about my business and done my work and that was all I bothered.

Q. You didnt know anybody who came to visit him? A. No.

Q. During all the time you were there? A. No.

Q. With the exception of his brother, you testified to his brother? A. Yes, with the exception of his brother, barring his own family, his nieces and nephews, and those people, I knew them, but outside of that I didn't know who they were.

Q. Were you in the house all the time? A. Yes, I was in the house when I got through with my work I went out.

Q. What time did you go out? A. Maybe around half-past seven or eight o'clock.

Q. And what time did you return? A. Well, maybe helf-past eleven or twelve o'clock, whenever I got ready to come back I come back.

Q. And that was every night? A. Pretty near every night.

Q. So that you were not around the house from half-past seven until half-past eleven generally? A. No, generally I was out.

Q. And you don't know who came during those hours? A. No, I don't know who came.

Q. When was Mr. Houghton last there before Mr. Squier's death? A. Well, I don't think I seen Mr. Houghton there since around New Years. He was there around New Years and I don't think I seen him there until after around the time he died.

Q. And how long did he stay on that occasion? A. Well, he come out New Years day and he ate his dinner there and he went home around four o'clock.

Q. Anybody with him? A. His wife was with him.

Q. Anyone else? No, nobody else.

Q. When was he there previous to that time? A. Well, it might be nearly a year before that.

Q. When was he there previously when he stayed over night? A. I couldn't remember. It might be a year before that since he stayed.

Q. Two years before the New Year's when he was there for dinner? A. Yes.

Q. Since he had been there to stay over night? A. Yes.

Q. And yet he had a room in the house? A. Well, every time he came there he slept in the room.

Q. Was anybody else in the room when Mr. Houghton came out the day after Mr. Edwin Squiers death? A. I don't know.

Q. You don't know whether anybody was occupying Mr. Houghton's room the day after Mr. Squier's death? A. I don't know. I don't think so.

Q. Wasn't the nurse in the room? A. Well, the nurse left the day after the funeral. She left that day.

Q. Now, Mr. Houghton came out the morning after Mr. Squier died, didn't he? A. Yes.

Q. And he stayed over two nights in the house, didn't he? A. Yes.

Q. And he occupied the same room he always had? A. Yes, sir.

Q. Wasn't the nurse occupying that room when he came in? A. No, the nurse occupied another room. There was other rooms there.

Q. Before Mr. Houghton came wasn't the nurse occupying that room? A. I don't know whether she was or not.

Q. You don't remember? A. No, I don't remember whether she was or not.

Q. You remember the nurse being there, don't you? A. Yes, I remember the nurse being there, two nurses being there.

Q. And you don't know which room she occupied? A. No, I do not.

Q. And yet you took care of the rooms? A. Yes, I went in there and I made the beds and I didn't know who slept in them. Didn't make any difference to me.

Q. Was there anybody else to sleep in them besides the nurse in the house? A. No. There was two rooms there and she slept in one room over the kitchen.

Q. The room which Mr. Houghton occupied, was that occupied before he came out there that night to stay? A. No, it was not.

Q. It was not occupied? A. No.

Q. You are sure the nurse didn't stay in it? A. I don't think so. Not that I know of.

Q. Don't you know whether the nurse moved when Mr. Houghton came out there? A. I don't know.

Q. And yet you took care of the rooms.

The Court: What is the fact about that? Does anybody know? Did the nurse give up her room to you, Mr. Houghton, that night?

Mr. Houghton: When I got back there were two nurses, and one of them had left before I got there. I got there about ten o'clock.

The Court: One of them had been in the room that you then occupied?

Mr. Houghton: I don't know.

By the Court:

Q. What do you know about it? What are you going to say? A. Well, one nurse came on Monday morning and the two nurses occupied the same room.

Q. The two nurses occupied the same room? A. Yes. One came on Monday morning and she left Tuesday morning and he died that night.

Q. Were those two nurses in the room that Mr. Houghton afterwards occupied? A. No.

Q. Were they ever in it? A. Not that I know of.

Q. You would know if they were in there, wouldn't you? Wouldn't you know? A. I think so.

Q. Because you made up the beds and took care of the rooms, didn't you? A. Yes.

By Mr. Maxson:

Q. You think that neither one of them were in that room at any time?

The Court: Not that she knows of.

A. No, not that I know of.

Q. You know that they were not in those rooms? A. Not that I know of.

Q. Who came with Mr. Houghton that morning when he came there after Mr. Squier's death? A. I don't know. I didn't see Mr. Houghton come into the house that morning. I didn't know. He was quite some time in the house before I knew he was in the house.

Q. Did any of the rest of the family come during the day? A. No, they didn't. The only one in the family I seen was Thursday Mrs. F. C. Squier come in there.

Q. And no one else? A. No one else.

Q. Did Mr. Searles come? A. Yes, Mr. Searles was there.

Q. And how long did they stay? A. They didn't stay very long until they went back home again.

Q. Where does Mr. Searles live? A. On St. George Avenue.

Q. In Rahway? A. Yes.

Q. Did he come around to visit Mr. Squier from time to time? A. Yes, he did.

Q. How frequently? A. Well, maybe once every couple of weeks, he was in there.

Q. Did Mr. Squier come with him? Mr. Fred Squier? A. No, he didn't always come with him.

Q. And when did he come, what time of day? A. Well, I couldn't say what time of the day.

Q. Well, in the afternoon or the evening? A. Sometimes he came in the afternoon, sometimes he came in the evening.

Q. And those were the nights when he came in the evening that you were home? A. Well, sometimes Mr. Squier might tell me, if I was out, that Mr. Searles was there, so once in a while he might say something, but outside of that I didn't know.

Q. Do you remember when Mr. Squier was taken ill? A. Yes.

Q. How long was that before his death? A. Well, he was taken ill Saturday morning and he died Monday night. Off and on during the summer sometimes he used to complain of a little attack of indigestion, but outside of that I didn't think nothing, but he was taken ill Saturday morning and he died Tuesday morning.

Q. I am talking about this last illness now. A. Saturday morning.

Q. At the time he was taken ill was anybody there with him at the house besides the servants? A. No.

Q. Do you remember when he went to bed? A. Yes, I do.

Q. And was anybody there at that time? A. Well, the doctor was there and F. C. Squier was there and Mr. Searles.

Q. What happened just before he went upstairs, if anything? Was there a luncheon, or something like that? A. No, there was not.

Q. Were Mr. Squier and Mr. Searles there for lunch that day? A. No.

Q. Who sent for the doctor? A. I did.

Q. And at whose direction or request? A. His request.

By Mr. Ferris:

Q. You mean Edwin's? A. Yes.

By Mr. Maxson:

Q. You mean Mr. Ed Squier's request? A. Yes. And at his request at one o'clock I telephoned over after Fred Squier's and when he came in Mr. Searles came with him and they and the doctor took him upstairs and put him to bed.

Q. How soon did the doctor arrive? A. Well, I called him around half-past eight, and I guess he was up in about ten or fifteen minutes. He was up around quarter to nine.

Q. Were you there when he arrived? I mean did you open the door for him? A. Yes, I opened the door for him.

Q. Was Mr. Squier in bed at that time? Or was he downstairs? A. Well, he came downstairs and he came downstairs after what I thought was breakfast, and he came downstairs to his breakfast he told me to call the doctor he wasn't feeling well. So I called the doctor and anyway the doctor came in and he thought it was a cold he caught; so he went away and he ordered some medicine, and he went out, and he told me after while if he wasn't any better,—he lay on the sofa in the library. So he got up again and told me he wasn't feeling any better, to call the doctor back; so I called the doctor back;

so he asked me if I wouldn't send word over to Fred's; so I called Fred Squier and he came in there around one o'clock. Himself and Mr. Searles.

Q. How soon after that did Mr. Squier go to his room? A. Well, I should think about some place around two o'clock he went to his room.

Q. Were you downstairs? A. I was in the kitchen when they took him up to his room.

Q. Were you downstairs? A. I was in the kitchen when they took him up to his room.

Q. Do you know whether he wanted to go to bed or not? A. Well, he must have because the man was pretty sick.

Q. Well, I mean do you know whether he was advised to go by the doctor, or whether he wanted to go himself? A. I don't know. That I don't know.

Q. You don't know anything about that? A. No, that I don't know about.

Q. What did Mr. Squier do on the days when he didn't go into New York? A. Well, he went to his library and he read; and he went out around the yard, and he read the most of his time.

Q. Did he have flowers, and so forth? A. Yes.

Q. And he looked after those? A. Yes.

Q. He took an interest in keeping the grounds up, didn't he? A. Yes.

Q. How many gardeners did he have? A. Two.

The Court: What is the object of all that? Taking up an awful lot of time explaining to me this man's method of living. I do not see any sense in it at all.

Mr. Maxson: Well the manner in which he conducted himself is something for your Honor to consider.

The Court: Oh, no. If you mean by that his sanity, everybody is presumed to be sane, and I am going to presume that he was sane, and reasonable, and all those things.

Mr. Maxson: No matter what he may have done?

The Court: That is a matter for you to prove.

Mr. Maxson: That is what I am directing these questions to.

The Court: No.

Mr. Maxson: Your Honor rules out his manner of living?

The Court: I rule out his manner of living, yes; you may ask her directly any questions you want which may indicate that the man was of unsound mind. Ask her directly. Ask her how he lived; what time he went to bed; what time he got up; where he walked to; whether he smoked; whether he drank; whether he looked at the flowers; or loved flowers, I do not see that is important.

Mr. Maxson: I want to get your Honor's ruling so as not to——

The Court: You have it, Mr. Maxson. Ask her directly anything you can show—you must have in mind in this case something on the things that you allege. Now you allege unsoundness of mind and you must have in your mind some things you are going to prove.

Mr. Maxson: We not only have them in our minds, but we propose to prove them.

The Court: Go right on and prove them.

Mr. Maxson: I am frank to say I cannot get your Honor's position.

The Court: That is very unfortunate. I thought I made it clear. Go right on now and prove what you are going to prove by way of unsoundness of mind.

Mr. Maxson: I do not see how I can prove it without proving what the testator did.

The Court: Ask her some particular thing that he did, whether she saw him do something that a rational person would not do.

Q. On the evenings when you were home do you know what Mr. Searles did?

Mr. Ferris: Mr. Searles?

A. I don't know.

Q. I mean Mr. Squier did? A. I do not know.

Q. You do not know anything about that? A. No.

Q. And you have testified that you do not know who his companions were? A. Yes.

Q. Who came in to see him? A. No; I don't know. I solemnly swear——

Q. You never went to the door? A. No; very seldom I went to the door.

Q. Who attended to the door? A. Generally himself if he was around, went to the door.

Q. Who? A. Himself, he went to the door. But I could solemnly swear——

The Court: No.

Q. Never mind that.

The Court: He went to the door himself?

A. Yes; he went to the door himself.

Q. Now, do you remember the occasion when Mr. Squier lost a lot of his pre-war liquor? A. I don't know.

Q. You do not know anything about that? A. No, I do not know anything about it.

The Court: Do not know what?

Q. (continued) Whether they were pre-war liquors or not? A. No; I don't know anything about it.

The Court: Don't know anything at all about it?

A. Don't know anything at all about it.

The Court: Pre-war or otherwise?

Q. You did not know he had any? A. No; I didn't know he had any.

Q. You never saw any about the house? A. No; never saw any about the house.

Q. And never heard that he lost thirty or forty thousand dollars worth of liquor? A. No; I never knew what he lost.

Q. And never went down the cellar? A. Well, I went in the cellar if my business brought me there.

The Court: But might not see the liquor if she did.

A. No; I didn't see liquor if I did.

Q. And you never saw any served in the house? A. No; I didn't.

Q. During all the time that you were there? A. No.

Q. With whom have you talked about this case? A. I have talked about it with nobody.

Q. Nobody has discussed it with you before you came here today? A. No; nobody at all.

Q. Not a word has been said to you about it? A. No; not a word has been said to me.

Q. How did you know you were coming here today? A. Well, Mr. Searles informed that I was to come down here today. He stopped at the door this morning and told me to be ready. That's all I know.

Q. And that is the first you have heard of this case, is it? Yes; yes.

Q. You did not know case was going on? A. No; I did not know what was going on.

Q. You knew that you were remembered in this will, didn't you? A. Oh, yes, I did.

Q. Have you gotten your—the money? A. No; I haven't got the money.

Q. How much was it? A. Well, I seen it in the papers that it was $5000, when the will was probated. I know it was $5000.

Q. And that is the only thing you know about it? A. Yes; that is the only thing I know about it.

Q. Nobody in the family has said a word to you about being left $5000 in the will? A. No; nobody said anything about the will——

The Court: Oh, yes! Mr. Houghton told you about it.

A. Yes, he told me.

The Court: He is in the family, isn't he?

A. Yes; he is in the family.

Q. Then, Mr. Houghton told you about it? A. Yes; I told you he did.

Q. But he has not said anything to you about this case going on and you being a witness here? A. Well, I suspected there was some flaw in the will; Burnham Squier had some flaw in the will, but what it was I didn't know.

Q. You did not know what it was? A. No.

Q. And nobody has told you what the flaw was? A. No.

Q. And Mr. Searles said anything to you about the payment of your wages since Mr. Squier died? A. No; but he paid me up all my wages, Mr. Searles did before I left there.

Q. Before you left? A. Yes, before I left there.

Q. For how long did he pay you? A. Well, he paid me from the time Mr. Squier died up until May when I left there in May.

Q. I see. And how did he pay you? Weekly or monthly? A. Monthly.

Q. And did he never say anything to you about any trouble over this will? A. No.

Q. Any court proceeding over the will? A. No.

Q. And where did he pay you these wages? A. Why, right in the old homestead.

Q. While he came there to pay you did he—— A. Yes; he came there to pay me.

Q. ——(continuing) Did he say anything about continuing to pay you? A. No, he didn't.

Q. Did you know you were going to be paid as you went along? A. No.

Q. You were not paid during the time from May on, then? A. I wasn't working there so I wasn't paid.

Q. I see. And you were in the other place how long? A. Three months.

Q. And what happened there? A. Which?

Q. What happened in the place you were in? How did you come to leave there? A. Well, I didn't like the place.

Q. I see. And then, did you get in communication with Mr. Fred Squier? A. Yes.

By the Court:

Q. How did you get Fred Squier's job? Did you go and ask him for it, or did he come and get you? A. No.

Q. How did you come to get that position? A. Well, Mrs. Fred Squier asked me. She had no cook and she asked me if I might help her out.

Q. Mrs. Fred Squier asked you to come there? A. Yes.

Q. And you went there? A. Yes.

Q. Was that after you left the other place? A. Yes.

Q. You left the other place first? A. Yes.

Q. Is that right? A. Yes.

Q. How long were you out of the other place before Mrs. Fred Squier came? A. It must be a couple weeks.

Q. And then she came and asked you to take this position? A. Yes.

The Court: All right. Go on.

By Mr. Maxson:

Q. Have you been in communication with Mr. or Mrs. Fred Squier? A. No.

Q. Not at all? A. No.

Q. How did they find you? A. Well, some of my friends in Rahway knew where I was, I guess she must have found out, through that way.

Q. You do not know? A. I do not know.

Q. How she happened to find you? A. How she happened to find me.

The Court: You know and I know how it happened. If we have a good domestic and your wife hears she is out of a job they find them.

A. Yes, and if you have good people to work for you know how to find them.

The Court: You are glad to go back?

A. Yes.

The Court: That's right.

Q. Did the other servant stay with the wife after Mr. Squier's death? A. Yes; they did until the day I left. The three of us left there in May.

Q. The three of them? A. Yes.

Q. How many servants were there altogether in the house? A. Three.

Q. How many outside? A. Three.

Q. The three outside, did they stay also until May? A. Well, one of them stayed until May and I guess the other two is there yet.

Q. Who, if anybody, was living at the house from the time of Mr. Squier's death on until May when you left? A. Mr. Fred C. Squier, Jr., and his wife were there.

Q. They were living there all the time? A. Yes; they were living there all the time.

The Court: Somebody living there yet?

A Gentleman at the Counsel Table: Only the caretaker put in there by the administrator.

Q. How soon after Mr. Squier's death did they arrive? A. Right after he died. The night——

Q. The next night? A. Yes; the next night.

Q. Then they were there while Mr. Houghton was there. A. I don't think so. I think Mr. Houghton was left there when they came in there.

Q. Mr. Houghton stayed, according to your testimony, two nights after—— A. No; he stayed there Thursday night and left there Friday morning. They came in. I guess, Friday night.

Q. When was the funeral? A. Thursday afternoon.

Q. Thursday afternoon? A. I think so.

Q. He died at two o'clock on Tuesday morning, was that not so? A. Maybe it was Monday morning. I don't really know.

Q. Well, Mr. Houghton left on Thursday. A. Maybe it was Friday he left—maybe it was Saturday morning. I really forget if it was Friday or Saturday.

Q. But you are quite sure he left before the younger—— A. Yes.

Q. Mr. and Mrs. Squier came there? A. Yes; I am sure that he left before they came in.

Q. Were you told they were coming to occupy the house? A. Yes; I was told.

Q. Who was in charge of the servants? Were you in charge of the servants after Mr. Squier's death? A. There was no charge taken, but for us to do our work and Mr. Searles paid us.

Q. I mean, didn't somebody act as housekeeper? A. Well, as far as housekeeping, when we buy I always attended to ordering and Mr. Squier paid his bills. I always attended to ordering and he paid his bills. That is all there was to it.

Q. Didn't some one of you direct the running of the house? A. Mr. Squier, up until the time he died, was very capable of running his own house. He always ran the house.

Mr. Maxson: I move that that be stricken out, may it please the Court, as not responsive.

(Last question and answer repeated by the stenographer.)

The Court: Later part, about his capabilities.

Mr. Maxson: Yes; that is not responsive.

The Court (continuing): I will strike out as not responsive.

(The last testimony repeated by the stenographer.)

Q. After his death, who directed the management of the house? Did you? A. Yes, I went and

I got the stuff and we done the work between us, the girls and I, and we got our stuff, and Mr. Searles, I guess, paid the bills.

Q. Where did the three servants, three men outside, live, in the house? A. No; they had their own houses.

Q. They lived away from the premises? A. Yes, they lived away.

Q. What did they do? A. I don't know.

Q. You do not know, whether they were gardeners or hostlers? A. I never went out of the house to see what they did do on the outside.

Q. How long were they? A. Well, I guess they must be there some time.

Q. Well, some years, do you mean? A. Well, I guess the coachman was there for over forty years.

Q. Thirteen years? A. Over forty.

Mr. Ferris: Forty years.

Q. How many?

Mr. Ferris: Forty years, she said.

Q. Forty years? A. Yes. The other man was there over thirty, and I guess the third man must be there over fifteen or sixteen.

Q. Although the coachman was there forty years, you did not know he was the coachman? A. Well, he came in and out and I kind of knew what he done, but furthermore I never went into any details what he did do, or what they did do on the outside.

Q. The other men being there thirteen years or more, you did not know what they did? A. No; I did not bother what they did.

Q. You did not pay very much attention to the household, did you?

Mr. Ferris: I object to that; on the contrary that is why she does not know what the others were doing.

The Court: Did you pay very much attention to the household?

A. Yes; I did. But I went on and done my own work, what I was assigned to do; and I done it.

The Court: All right.

Q. Did these men outside get their meals at the house? A. One man got his dinner at the house. That's all.

Q. None of the others ate there? A. No.

Q. Did not get their lunch there? A. No.

Q. Did you ever come in contact with them at all? A. Well, once in a while if they came in the house, and they would come in the house I would hold a conversation with them. If I wanted them to do anything I called one of them, when they came in and done it, and that's all there was to it.

Q. You told them what to do? A. Yes; if they came in the house, and there was anything to be done around the place, I would call them, and the nearest one would come and do what I asked them.

Q. Yet you did not know what they did outside? A. Well, I paid no attention to it.

Q. Who besides you answered the door at the house?

Mr. Ferris: I object to that. The witness having already testified Mr. Edwin M. Squier himself usually answered the door.

The Court: Yes. She testified he answered the door when he was home.

Q. Did you ever answer the door? A. If I was convenient at the door.

The Court: If you were not convenient over there, anybody else do it?

A. Yes.

The Court: Besides Mr. Squier himself?

A. There was another girl there. If he wasn't there she answered.

The Court: What is her name?

A. Mary Cavanaugh.

The Court: Mary Cavanaugh?

A. Yes.

The Court: She answered it sometimes?

A. Yes.

The Court: Who else?

A. Nobody else. If I was upstairs——

The Court: All right, you have answered it.

Q. How long was Mary Cavanaugh there? A. I guess she must be there around ten years.

Q. A friend of yours? A. Well, she is no friend of mine. She simply worked there.

The Court: Was she there when Mr. Squier died?

A. Yes; she was there when Mr. Squier died.

The Court: Where is she now?

A. I don't know where she is.

Q. Have you seen her since Mr. Squier's death? A. I did see her last November. The latter part of November, and she told me she was going to New York to look for a job and I didn't hear from her since.

Q. When did you see her? A. I see her here in Elizabeth.

The Court: Do you know any of her friends' names?

A. No, I know there is——

The Court: Where did she visit up to Rahway when her day was off? When she had a day off where did she visit?

A. She was a girl never went out very much at all.

The Court: Did you ever know of her visiting anybody in Rahway?

A. No.

The Court: Who might know where she lived?

A. No; I never knew her to visit anybody.

Q. Where did she come from when she came to the Squiers? A. She landed from Ireland.

The Court: Oh!

Q. Did she come from the same part of Ireland as you came from?

The Court: Well, we do not care anything about that.

A. I don't think she exactly came from the same part of Ireland.

The Court: Never mind.

Mr. Maxson: I will withdraw the question.

Q. You do not know where she is? A. No; I do not know where she is.

Q. How did you happen to see her when she came to Rahway?

Mr. Ferris: Elizabeth, she said.

Q. Elizabeth? A. She didn't come to Rahway. She was down here to Elizabeth.

Q. Down here to Elizabeth? A. Yes.

Q. That is what I intended to ask you.

The Court: Well, now——

Q. I want to find out if it was by appointment?

The Court: Did you have any appointment to meet her here?

A. She was staying in Elizabeth one day, and I came down.

The Court: Where was she staying.

A. I didn't ask her who she was staying with. I met her down here on Broad street.

The Court: By accident.

A. By accident.

Q. Have you any conversation with her. A. I did. I asked her where she was going and she told me she was going——

The Court: Don't. Don't. Stop.

Q. Who was the other servant? There were three of you in the house, weren't there? A. Yes; yes.

Q. Who was the other besides you and Mary Cavanaugh? A. There was a cook there.

The Court: What was her name?

A. Nora Reilly.

The Court: Nora Reilly.

A. Yes.

The Court: Another Frenchwoman. Where does she live?

A. I think she lives here and there, and all over. I never seen her since she left there. And that was right after leaving there.

Q. Did she leave there at the same time you did? A. Yes; she left at the same time I did.

Q. And you did not give each other your addresses where you were going? A. No.

Q. How long has she been there? A. Oh, I guess she must be around eighteen years there.

Q. And you were not interested to know where she was going? A. No; so long as anybody don't like to tell me where she was going, I wasn't interested. I went to work, and I didn't care anything about her.

Q. Were you unfriendly with her? A. No, I was not.

Q. Were you unfriendly with Mary Cavanaugh? A. No.

Q. You were all good friends, weren't you? A. Yes.

Q. Always good friends a long while together? A. Yes.

Q. And yet you did not want to know where they were going? A. Well, they were in different places. They were here and there and all over since they left there.

Q. The other two servants were relatives were they?

Mr. Ferris: Relatives of whom?

Q. Each other? A. I don't know.

Q. You were there with them eighteen years and you did not know whether they were related to each

other or not? A. I don't know whether they were not.

The Court: Was there ever anything ever said about that between them?

A. Not that I ever heard of.

The Court: They never claimed to be related? A. I wouldn't say one way or the other.

The Court: One way or the other?

A. No, so.

Q. How did you get down to the cellar in that house?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant.

Mr. Maxson: It is very material.

Mr. Ferris: I withdraw the objection.

The Court: In what way?

Mr. Maxson: Yes. In what way?

The Court: In what way is it material as to how you got to the cellar?

Mr. Maxson: It is unfortunate I have to tell your Honor all about my case.

The Court: You will have to tell me.

Mr. Maxson: What this witness did with respect to the cellar and what was in it and that sort of thing has some bearing on his ability to make a will. That is all I have to say about it.

The Court: I do not quite get that.

[Mr. Maxson's statement repeated by the stenographer.]

The Court: On Squier's ability?

Mr. Maxson: I cannot hear you.

The Court: On Squier's ability to make a will?

Mr. Maxson: Yes.

The Court: I do not see it. We are taking up a lot of time on the way to the cellar. Would you know a vault in which liquor is kept if you saw one?

A. No.

The Court: Was there any vault down in the cellar at all?

A. I once saw a little in the cellar. I——

The Court: Was there a vault in the cellar?

A. No; I didn't see any.

The Court: Was there any room was locked up?

A. No; I didn't see any.

The Court: Was there a preserve closet there or anything of that kind that was locked up?

A. No; we kept the preserves upstairs in a room that was off the pantry.

Q. [By the Court] Now, did you know your way to the cellar? A. Well,——

Q. Did you know the way to get to the cellar? A. Yes; I did.

Q. How many ways are there to get to the cellar? A. One I know of. And I knew there was——

Q. From the inside? A. You could get from the inside, and then there was a back kitchen we always——

Q. Could you get from the outside, too? A. Yes; same as any other house.

Q. There was two ways to get there? From the inside and outside? A. Yes; and the way we always went there from a back kitchen that was there. That is the only way I knew of. The ice box and all was kept upstairs.

The Court: Stop. Go on.

By Mr. Maxson:

Q. Did Mr. Squier ever sleep downstairs? A. No.

Q. Neither during the daytime or the night? A. No.

The Court: This will, as I understand it, was executed over in New York.

Mr. Ferris: It was.

Mr. Maxson: Beg your pardon.

The Court: The will was actually executed in New York. That is the reason I do not see all these connections between the cellar and the making of the will and the ability to make it, and all that sort of thing.

Q. Did you remember the 4th of July, 1926, a year ago last 4th of July? A. I think so. That is far back.

Q. I can't hear you. A. Yes; I remember.

Q. Where were you at that time? A. I was in Rahway.

Q. At the old house? A. Yes.

Q. And do you remember the 4th of July came on a Sunday that year and was celebrated on that Monday? A. Yes.

The Court: Answer.

Q. You do remember that. Where was Mr. Squier at that time? A. He was at home.

Q. And anybody come to see him? A. No.

Q. Either on Sunday or Monday? A. Not that I know of.

Q. At any time during the day or night? A. I didn't see anybody come.

Q. Were you home during the day on Sunday and also during the evening? A. I couldn't rightly say. I might have been out there. I don't think I was home in the evening.

Q. You do not think you were home Sunday evening? A. No.

Q. Did you go to church service? A. Yes, sir.

Q. And when was that, in the evening? A. Yes.

Q. Well, I mean there was an evening service, wasn't there? A. There was, but I didn't all the time get there.

Q. What? A. I didn't all the time get to the evening service.

Q. [Question and answer repeated by the stenographer.]

Q. But you went, I suppose, when you could? A. Well, I went every Sunday morning.

Q. You went in the morning? A. Yes.

Q. But not always in the evening? A. No.

Q. And you do not remember whether you went to service that Sunday night or not? A. No.

Q. Well, now, how about Monday, do you remember about Monday? A. I remember about Monday, but I guess I was out.

Q. You think you were out? A. I think I was out.

Q. But Mr. Squier was home? A. He was home.

Q. Can't you recall whether you were home or not? A. No; I can't recall whether I was home or not.

Q. Either in the day or in the evening? A. No; I can't recall whether I was home or not.

Mr. Ferris: Speak a little louder, please.

Mr. Maxson: She said she can't recall whether she was home or not.

Q. Can't you recall whether anybody came or not there on Sunday or Monday? A. No; I cannot recall.

Q. Now, was Mr. Squier regular in his habit of going to business? A. Yes; he regularly went three days a week.

Q. And how often did he miss that—how often did he miss going there during the time you were employed by him? A. Well, he very seldom missed going except when he was sick.

Q. Well, was he sick? A. Well, I never knew him to be sick, only twice, and that was about five years ago he broke his rib and he was in the house all that summer, and then another time he was sick about twelve years ago and he was in for three weeks.

Q. Well, with the exception of those two times when he was sick, he went to business three times a week regularly, did he? A. Yes, regularly; until he broke his hip he went five days a week. After breaking his hip, after he got out again, he went three days a week.

Q. He took the same train? A. He took the same train.

Q. And came back by the same train? A. Yes; he always got in the house around three o'clock, with the exception of Wednesday, and on Wednesday it was five o'clock.

Q. Did he take any vacation? A. No.

Q. How frequently did the members of the family come to see him? Has she testified to that?

Mr. Ferris: Yes; you asked her that.

Q. How frequently did the members of the family come to see him? A. They didn't come very frequently. Only one came. His brother came in four or five times a week. Mr. Searles once in awhile, but the rest came very seldom.

Q. I mean how far apart were their visits? A. Some of them varied, I don't think I have seen them in the house three or four years, and then there is others they maybe came in once in awhile. They might not have seen him there for a year ago.

Q. Then with the exception of Mr. Searles? A. Yes.

Q. Who is married into the family, is he not? A. Yes.

Q. And Mr. Fred Squier, the other members of the family did not come there except rarely? A. Very rarely.

Q. Some years apart? A. Yes.

Q. As far as their visits went? A. Yes, years apart.

Q. And how about Mr. Squier visiting them, if you know? A. No; he never visited. He was a man never went out very much. He was around his home. He liked his home and he stayed in it.

Q. He stayed in his home generally? A. Yes.

Q. Did he go out to moving pictures? A. No.

Q. Or the theatre or anything like that? A. No; he was a very quiet disposition man.

(Answer repeated by the stenographer.)

Q. Didn't he sometimes go to the moving pictures? A. No; he didn't.

Q. Never knew him to do that? A. I never knew him to do that. He would read.

Q. I can't hear you. A. He would read.

Q. Do you know Mr. Freeman? A. No, I don't.

Q. You never knew him to come to the house? A. No; I never knew him.

Q. You never heard of him? A. Well, I might have heard of him, but I don't know the name.

Q. A man who is in the bank in Rahway? A. No; I don't know the name.

Q. Do you know Mr. Berry? A. No; I don't.

Q. Never heard of him? A. No.

Q. And you are quite sure you don't know the name of anybody who came to the house during the time you were there? A. No; I am quite sure I don't know him.

Q. In all the years that you were there? A. Yes.

Q. Or what they did? A. No; I don't know anything about them.

Q. Not a person? A. No.

Q. And you have not talked to anybody about this case at all? A. No, I haven't.

Q. Until you were told that you were coming here? A. Yes; I was told I was coming here.

Q. Mr. Houghton never mentioned it to you? A. No, Mr. Hougton never mentioned it to me.

Q. Mr. Squier never mentioned it to you? A. No; Mr. Squier never mentioned it to me.

Q. And nobody else in the family? A. No.

Q. Do you remember those nurses? Those nurses who were there at the time of Mr. Squier's last illness? A. I remember them but I don't remember their name, because really I was so busy I never got into any details with them.

Q. Well, where did they come from, do you know? Did they come from Rahway or from away from town? A. I don't know where they came from.

Q. Well, who got them, do you know? A. I guess the doctor got them. The doctor got them.

Q. Did you have any conversation with them at all? A. No, I did not.

Q. Never spoke to them? A. Well, I passed them by and speak; I walk through the house and speak, but that is all I did with them.

Q. Who gave them their meals and so forth? A. Well, I cooked. Sometimes the other girl was busy I gave them their meals, and if I was busy she gave them to them.

Q. Did they have a night nurse and a day nurse both? A. Well there was one there only from around ten o'clock Monday morning until Tuesday morning. That was all she was there. So the other one was there since Saturday.

Q. Were they both there together? Did one stay there at night and the other in the daytime? A. Well, the one that came there Saturday she was up all night Saturday night and Sunday night and when the other one came in she went home to sleep.

Q. Did she come back again? A. Yes, sir; she came back then on Monday night to relieve the other one.

Q. So that they were there one at one time and one at another relieving each other, is that so? A. Yes.

Q. Do you remember their name? A. I don't remember theiir names.

Q. One of them was Miss Miller, wasn't she? A. I couldn't really say whether she was or not.

Q. You didn't hear their names? A. I didn't hear their names.

Q. And you didn't talk to them at all? A. Well, I talked to them.

Q. What about? A. Well, it might be some foolish thing, about something else, it wasn't concerning the house or anything. It might be some foolish thing about somebody else or something.

Q. Do you remember having some conversation with Miss Miller about moving her room? A. No.

Q. Well, did you or didn't you? A. No, I did not.

Q. You didn't have any conversation with her about that? A. No.

Q. Are you quite sure? A. I am quite sure.

Q. Did you have any conversation with her about the people who came to the house to visit Mr. Squier? A. No.

Q. Quite sure about that? A. Yes.

Q. What did you talk to her about? A. I really forget all I did talk to her about.

Q. But you remember you didn't say anything to her about a room? A. No.

Q. About where she was to have her room in the house, nothing about that? A. No.

By the Court:

Q. Do you remember or do you not remember anything about it? A. I disremember.

The Court: Then that is the answer, you don't remember it.

A. I don't remember. Two nights she was there she was up——

The Court: Never mind. Go on.

By Mr. Maxson:

Q. You can't remember any conversation you had with her about anything while she was there? A. No.

Q. Is that so? A. No.

Q. Did you tell Miss Miller anything about Mr. Squier in his habits? A. No.

Q. Or did she ask you anything about them? A. I don't think so.

Q. Who let the nurses in the house when they came? A. Well, I really couldn't say which. The doctor was there and Mr. Fred Squier was there and Mr. Searles was there.

Q. Did anybody talk to them when they arrived? A. Well, I suppose Mr. Fred Squier spoke to them, and Mr. Searles. Not that I remember there was nobody else there.

Q. You didn't say anything to them? A. No.

Q. When did you first come in contact with them? When did you first have a talk with them? A. Well, I went upstairs and she was upstairs——

Q. A little louder. A. I went upstairs after she was a while in and I met her upstairs and spoke to her.

Q. What about? A. Well, I said how do you do to her and she answered me.

Q. Which one was that? A. The first one that came there.

Q. Well, was that Miss Miller or the other one? A. Well, I don't know which of them. I don't know which of them. I didn't really catch on to either of their names.

Q. You don't know which one came first? A. I don't know.

Q. And you didn't talk to either one of them about Mr. Squier? A. No.

Q. They didn't ask you anything about whether he went to bed early, or whether he went to bed late, or anything like that? A. Oh, no.

Q. Not a thing of that kind? A. No.

Q. Ask you whether he smoked or not? A. Oh, no.

Q. Whether he drank or not? A. No.

Q. They didn't ask you anything about any of those things? A. Oh, no.

Q. And you didn't tell them about any of those things? A. No.

Q. And you don't remember anything that you said to either one of them? A. No.

Q. But you are quite sure that you didn't say anything about the rooms to them? A. No.

Q. So you don't know who if anybody told them where they were to stay in the house, do you? A. Well, no.

Q. Well, do you know whether anybody told them or not? A. I don't know. The doctor was there and Mr. Fred Squier was there and Mr. Searles was there.

Q. Did anybody say anything to you about the rooms, which rooms were prepared for them, or anything like that? A. No.

Q. Did anybody tell you to prepare a room for them so they could stay there? A. No.

Q. You were not interested in that at all, being the upstairs girl? A. Well, I tell you I wasn't interested in it because the house was always in pretty good shape ready for anybody to come into it.

Q. You took care of it, didn't you? A. Yes, I took care of it.

Q. Which rooms did they occupy?

The Court: Are these the nurses you are speaking about?

Mr. Maxson: The nurses, yes.

A. Well, what they did occupy was the one over the kitchen.

Q. And no other room? A. No other room. The one—the two took the room.

Q. They both stayed in one room?

The Court: That is what she said.

Mr. Ferris: At different times.

By the Court:

Q. The one nurse that came first occupied the room over the kitchen, did she? A. Yes.

Q. And when the other nurse came she occupied the same room with her? A. Yes.

The Court: That is as I understood it long ago.

By Mr. Maxson:

Q. They were never in any other room in the house to occupy it?

The Court: She said no.

By the Court:

Q. You say no, don't you? A. Yes.

By Mr. Maxson:

Q. Are you sure about that?

The Court: Never mind whether she is sure or not. That is her testimony.

Mr. Maxson: That is very important.

The Court: That is her testimony. If it is not so it will show itself later. What is the use taking up a lot of time with that sort of thing?

Mr. Maxson: Your Honor must bear with us when we are——

The Court: Mr. Maxson, I am not impatient but tomorrow when we go on with this hearing we are going to exclude a lot of these

things unless you make good on them. It is nonsensical.

Mr. Maxson: May it please your Honor, you are suggesting to me that I make good on them. I am doing the best I can with adverse witnesses. When we bring our own witnesses it will be another matter.

The Court: I think you ought to bring them right away. And then if you want to call these adverse witnesses I will see to it that nothing is hidden from you. That is my duty. If they try to hide anything from you I will find it out.

Mr. Maxson: If your Honor were trying my case I think you would try it just this way.

The Court: No, I would not try it that way at all. I would not put on adverse witnesses, if they are adverse from whom you cannot obtain the truth. There is nothing in this case so far that I can see that would indicate to me that these witnesses are not telling the truth. Nothing so far.

Mr. Maxson: I want to ask just one or two more questions and then I am through with this witness.

By Mr. Maxson:

Q. Did you tell one of the nurses, Miss Miller——

The Court: That is what I have been waiting for. That is the way to question this witness. Lay your foundation.

Q. (Continued)——that Mr. Squier was a very peculiar man, peculiar in his habits? A. No.

Mr. Ferris: Do not shake your head. Say yes or no.

A. I did not.

Q. Did you say that he sat up late at night? A. I did not.

Q. Did you say that he smoked a great deal? A. I did not.

Q. And could not sleep? A. I did not.

Q. Was Mr. Squier a peculiar man? A. No, he was not a peculiar man.

Mr. Maxson: That is all.

Mr. Ferris: That is all. No questions.

HAROLD M. SEARLES, a witness produced on behalf of the caveators, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Maxson:

Q. Where do you live, Mr. Searles? A. Rahway, New Jersey.

Q. And what is your business? A. I am manager of an estate.

Q. What estate? A. Estate of E. P. Brereton.

Q. How long have you been manager of that estate? A. Since 1913.

Q. You married into the Squier family, did you? A. I did.

Q. And which branch of the family? A. Married Mrs. F. C. Squier's daughter.

Q. And when? A. 1917.

Q. Now, since your marriage to Mr. F. C. Squier's daughter where have you lived? A. Why, the first year, the greater part of the year we lived out in Wyoming on a ranch. After that we lived in New York State for about a year, Westchester County. We have lived in Rahway since April, 1918.

Q. Do you live with your in-laws? A. We have our own home.

Q. And is that near the old homestead where Mr. Edwin C. Squier died? A. About three blocks.

Q. How long before his death were you living there? A. Well, we have lived there since 1918 anyways.

Q. In the house you now live in? A. Yes.

Q. How frequently did you see Mr. Edwin C. Squier? A. Oh, possibly two or three times a month.

Q. On business or socially? A. Just friendly call, that is all.

Q. And where did you see him, at his residence or your house? A. At his residence more often than at my house. Sometimes he came in to see us just to stop in and say how do you do.

Q. How often did he come there? A. Oh, I don't suppose he has been there more than a dozen times since we have been living there. More frequently since my little girl was born, because he was very fond of her.

Q. That is a little over an average of once a year? A. Well, I don't think he hardly averaged that coming to see me.

Q. Do you remember his last illness? A. Very distinctly.

Q. And when did you first know about it? A. I was called on the 'phone between twelve and

one as near as I can recollect of Saturday afternoon saying that Mr. Squier was ill and would I come over.

Q. Who called you? A. One of the maids.

Q. And you went? A. Of course.

Q. How did you find him? A. Well, I found him suffering pain in his legs. The doctor told me due to possible hardening of the arteries.

Q. Was anybody else there? A. Mr. F. C. Squier went with me and we found the doctor there when we arrived.

Q. Where was Mr. Squier? A. Do you mean where was he, what room in the house?

Q. Yes, what part of the house? A. He was sitting in the dining room.

Q. And did he stay there after you came? A. For a short time.

Q. You say the doctor was there when you arrived? A. The doctor was there when I arrived, as I recollect it.

Q. Did you assist him upstairs? A. No. He was very independent and insisted on walking up himself.

Q. Did you assist him to undress and go to bed, anybody? A. Well, we wanted to but he also did that for himself.

Q. Would not permit you to do that? A. No.

Q. As a matter of fact he didn't want to go to bed, did he? A. Why, I don't think he did, no.

Q. Well, didn't he so express himself? A. Why, he thought he was going to be all right. Thought it would pass off, and he didn't want to go to bed.

Q. Well, who prevailed on him to go there? A. I think possibly I had as much to do with it as anybody. I told him I thought he should go.

Q. Now, did you continue there in the house? A. No. After he got to bed and the doctor had gotten a nurse in there I went back to my own home.

Q. Do you know who got the nurse? A. The doctor.

Q. Do you know where they came from? A. I do not.

Q. Do you know their names? A. My recollection is that one of them was named Miller, and the other one I couldn't tell you.

Q. Miss Miller came from Rahway, did she not? A. I don't know where they came from.

Q. You never have heard? A. No.

Q. Did you have any conversation with them at all about him? A. Not that I recall.

Q. They didn't ask you anything about him at all? A. Not that I recall, sir.

Q. How frequently did you see them? A. Well, I presume I saw one or the other of them whenever I went to the house while he was ill, but I don't know how frequently that was.

Q. He was taken ill on Saturday? A. That is my recollection.

Q. And he died on Tuesday? A. Early in the morning.

Q. Early Tuesday morning? A. Yes.

Q. About two o'clock Tuesday morning? A. Yes.

Q. How many times were you there during that time? A. Well, as I recall it I went back that Saturday night to see how he was, and he was resting very much easier and, of course, I went over at different intervals the next day, I don't recall how often. Possibly four or five times. When I went there why he was resting. And then when

he developed pneumonia and we discovered that he was seriously ill, from that time on I stayed right there.

Q. At the house? A. Yes.

Q. Occupied a room there? A. I didn't undress at all.

Q. Do you know which rooms these nurses occupied? A. I do not.

Q. Well, were they there together any part of the time? A. Well, I presume one had to wait until the other arrived, and she remained—I suppose they met there.

Q. I mean they relieved each other. A. I don't think there were two on duty at the same time, if that is what you mean.

Q. That is what I mean. A. I don't think so. I don't know.

Q. So that one was there in the day time and the other at night? A. Yes, that is my understanding.

Q. Do you remember whether Miss Miller was on in the day time or at night? A. I think she was the day nurse. That would be—that is my recollection of it.

Adjourned until tomorrow, Tuesday, January 17, 1928, at 10.00 A. M.

The Court: Ready to proceed?

Mr. Ferris: If your Honor please, I noted an error in the transcription of the minutes on page 106, and I am just conferring with Mr. Maxson regarding it so it may be corrected. I think your Honor will recall Mr. Fred Squier

was questioned concerning what explanation Mr. Houghton made at the reading of Catherine Squier's will, and Mr. Fred Squier said as follows: "He said that the reason he only gave him $15,000, I think it was, because it was on account of his having already having received his father's full share in my father's will." Now, the answer as transcribed is: "He said the reason he only gave him $15,000, I think it was, because he was on account of his already having his brother's full share in my father's will." And of course, Mr. Burnham Squier had no brother. And my recollection is that Mr. Squier said, "Father's full share," and that he used the word "it" in place of "he" on that second line.

Mr. Maxson: Of course, may it please the Court, that would not be so because the reference made was to his mother's will, to Catherine C. Squier's will.

The Court: Who was it transcribed that? I think it was page 106, I think that was the young lady——

Mr. Ferris: No, that was in yesterday's testimony. In yesterday's testimony given by Mr. Fred Squier. It does not read with sense as it is. It has no meaning whatever.

The Court: All right. Look it up. We cannot take the time on that now. Let us try the case. We want to get through with this case.

Mr. Maxson: I am ready to proceed.

The Court: Yes, it is of no such moment that we need lose any time over it.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

HAROLD M. SEARLES, recalled.

Direct Examination (continued) by Mr. Maxson:

Q. The last question asked you, Mr. Searles, you remember was "Do you remember whether Miss Miller was on in the daytime or at night", and your answer was, "I think she was a day nurse, that is my recollection of it." Who was the night nurse? A. I don't recall her name.

Q. Where did she come from? A. I do not know.

Q. Did you recall Miss Miller's name? A. Yes. I met Miss Miller oftener than I did the other nurse. I only saw the other nurse momentarily once or twice.

Q. Well, were they consistently night and day nurse? They didn't change their duties? A. That I don't know.

Q. Well, how frequently were you around there? A. Well, I came in off and on during the day just to see how Mr. Squier was.

Q. Well, during the day did you see the other nurse? A. Not that I recall unless I happened to be there just when she was coming or going.

Q. Miss Miller was there during each day you were there, was she? A. To my recollection, yes.

Q. Did you have any talks with Miss Miller at all? A. Not that I remember.

Q. Say anything to her about Mr. Squier's condition? A. I may have asked how he was. Quite natural that I should. Possibly did.

Q. Can you say why you became acquainted with her and learned her name and not the name of the other nurse? A. Well, the doctor got the nurses and Miss Miller was the first on to arrive and it

being a rather common name I would remember that. Possibly if I heard the other nurse's name I might recall that also but I couldn't tell you what it is.

Q. What was the doctor's name? A. Dr. Lance.

Q. Was he Mr. Squier's family physician? A. Since Dr. Claddock's death, yes.

Q. How long had that been? A. Oh, I think possibly a year or two.

Q. After Mr. Squier's death were you about the house? A. Yes.

Q. How frequently? A. Well, I don't remember. In and out making arrangements for the funeral.

Q. What other members of the family were there if any? A. Well, I think my wife was over there. I know she was on several occasions. And Mr. Houghton came out, as I recall.

Q. When did he arrive? A. Well, that would be mere guess work on my part. I don't recall.

Q. Well, I mean when did you first see him after Mr. Squier's death? A. The following day.

Q. When did you first learn of the will which is in question in this case? A. The day after Mr. Squier died.

Q. And from whom? A. From Mr. Houghton.

Q. What did he say to you about it? A. He said that he was wondering where Uncle Ed had left his will, and he and I found it over in the office over in the safe.

Q. In New York? A. Yes.

Q. Did you read it? A. Yes.

Q. Together? A. He read it.

Q. And then what was done with it? A. Why, I think he brought it out with him.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. Was it read out at Rahway? A. It was read right immediately after the funeral services.

Q. To whom? Who were present? A. The entire family. All who attended the funeral.

Q. Does that include the servants? A. No.

Q. None of the servants were there? A. They were not.

Q. Anybody inform the servants about the bequests that were made to them in the will? A. Mr. Houghton and myself did.

Q. And were they together when you gave them the information? A. As I recall the three maids were present, and then I think we went out and told the men. No, we called the men in and told them afterward.

Q. Did you say anything to them about continuing their employment? A. No. Only so far as in preserving the estate while the house was being kept open.

Q. Just what did you say to them? A. I told them for the present that we would continue employing them just as Uncle Ed had.

Q. All of them? A. Yes.

Q. Did you tell them for what period? A. I did not because I did not know.

Q. Who paid them? I did.

Q. From what fund? A. From the estate funds.

Q. How long did you continue to pay them?

Mr. Ferris: I object, if your Honor please. That is long after the death. Certainly can have no relation to any issue present here. That may be the subject matter at the accounting, but certainly not at this time.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

The Court: What is the object of this? How do you connect this?

Mr. Maxson: Goes to show the relation; goes to show the relation of these witnesses to this situation, apparently.

The Court: I will sustain the objection.

Mr. Maxson: I take an exception. You rule out all the testimony as to whether or not these servants continued to be paid?

The Court: Only ruling on the objections made, Mr. Maxson.

Q. How long did you continue to pay the servants? A. I paid them until the administrators were appointed.

Q. And were they working for the estate? A. They were.

Mr. Ferris: I object to that. Well, it is answered.

Q. All six of them? A. Yes, sir.

Q. For whom were they working in the house?

Mr. Ferris: I object to that if your Honor please.

The Court: Objection sustained.

Mr. Maxson: Exception.

The Court: Exception allowed.

Q. Any purpose in paying these servants except to get their service in the house and out? A. None whatever.

Q. Who lived in the house after the testator's death? A. When Mr. Frederick Squier, Jr., arrived from Pennsylvania——

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

The Court: Who lived in the house after the testator's death?

A. Mr. Frederick Squier, Jr., and his wife.

The Court: You can shorten these answers and shorten the proof a lot by answering the questions directly.

Q. Did Mr. Squier make a will previous to this? A. I know nothing about it.

Q. Never heard anything about a will until two—— A. Never.

Q. Were you concerned to know whether he had made one or not? A. No, sir.

Q. Ever hear him say whether he had made one or not? A. Never mentioned it to me.

Q. Did Mr. Houghton ever tell you whether he had made one or not? A. Never.

Q. Ever hear from any other member of the family anything about the will? A. Never heard it mentioned.

Q. Never discussed it with him? A. Never.

Q. All right. Where was the safe? A. I don't know that he had a safe. I never saw one there.

Q. Where did you find his will? A. Over in his office.

Q. Well, in what sort of receptacle? A. In the safe. I thought you were alluding to a safe in the house.

Q. Oh, no. I mean the safe in the office. That is the only one that has been spoken about. The safe in his room? A. In his office.

Q. Did you go over with Mr. Houghton to get the will? A. No; I met him over there.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. Who opened the safe? A. Neither one of us could open it, and we had to call in somebody that was more familiar with the combination.

Q. Well, who was that?

The Court: Do you know?

A. I can't recall it, Judge.

Q. Somebody in Mr. Houghton's office?

The Court: What was the man's name?

Mr. Houghton: Vandeveer—Mr. Vanderveer.

Mr. Maxson: Who was he?

Mr. Houghton: He was a cousin of Mr. Squier's and he used to be the bookkeeper of the Passaic Zinc Company, and he kept the books, and therefore, had the combination of the safe.

Mr. Maxson: Will you also say for the record what his connection with your office was?

Mr. Houghton: Absolutely none.

Q. Where did you find Mr. Vanderveer? A. I didn't find him.

Q. Who found him? A. Somebody in Mr. Houghton's office.

Q. Where were you while he was being located? A. Right in Mr. Houghton's office, in the waiting room there.

Q. You never saw him before? A. Never met him before.

Q. Did not know who he was? A. He was introduced to me as Mr. Squier's cousin.

Q. I mean previous to this incident? A. No.

Q. Previous to this incident? A. No.

Q. Did you inquire who he was? A. No.

Q. Weren't you interested in the estate? A. I was introduced to him as Mr. Squier's cousin.

Q. Weren't you interested in the estate? A. I didn't know——

The Court: Of course he was. You were interested in the estate anyway, whether there was any left to you or not, weren't you?

A. No, I wasn't interested in it.

The Court: Not interested in your brother-in-law's estate?

A. He wasn't my brother-in-law.

The Court: What was he to you?

A. He was my uncle-in-law.

The Court: Well, your uncle-in-law; whether there was anything left to you or not?

A. Never dreamed of any such thing being left to me.

The Court: Far fetched, but you were interested.

Q. Mrs. Searles was interested? A. Possibly, yes.

Q. Well, possibly? A. Probably.

The Court: Oh, don't. Let us——

Mr. Ferris. I object to it as argumentative. It is his own witness.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. And having the interest, either direct or indirect, didn't you want to know who the man was that opened the safe?

The Court: No——

Mr. Ferris: I object to that.

The Court: (Continuing) Do not answer that.

Mr. Maxson: Exception.

The Court: Exception allowed. Nothing to except to except my direction not to answer. Away beyond the scope of the hearing, and the trial.

Q. In what part of the safe did you find the will?

A. Why, as I recall it——

The Court: You did not find it, did you?

A. Mr. Houghton and I found it.

The Court: How is that?

A. Mr. Houghton and I found it.

The Court: Together?

A. After the safe was opened; yes.

The Court: Where did you find it?

A. In the inner compartment of the safe.

Q. In what? Sealed up? A. Yes.

Q. Was it locked, was the inner compartment locked? A. It was.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. Did Mr. Vanderveer have that key? A. No.

Q. Who had that key. A. I don't recall where that key came from.

The Court: Who had it, Mr. Houghton?

Mr. Houghton: It was in the inner drawer of the safe.

The Court: You knew where it was.

Mr. Houghton: I had seen Mr. Squier open that inner safe many times.

The Court: All right.

Q. Was it in an envelope or—— A. It was sealed in an envelope.

Q. And did the envelope have any description of any kind on it? A. "Will".

Q. Anyone's name? Name of any firm? A. Not that I recall.

Q. Now, after you got the will what did you do with it? A. Mr. Houghton took it, put it in his pocket.

Q. You have testified that you read it first, did you not? A. Yes; he read it to me.

The Court: Is that the envelope?

Mr. Ferris. That is the counter-part of the envelope in which the will was contained.

The Court: Oh, well!

Mr. Ferris. It is not the envelope.

Q. And after it was read he retained possession of it, did he? A. We went out to Rahway.

Q. And you were named in the will as one of the representatives of the estate, weren't you? A. One of the executors.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. One of the executors. And when did you take up your duties as executor? A. Why, immediately.

Q. And have a meeting of all the executors? A. No; not then.

Q. You and Mr. Houghton took up the duties in the absence of the others? A. There weren't any duties to take up until we had had a meeting.

Q. When did you have your first meeting and where? A. The first meeting was had the day we offered the will for probate, and after we had done that we went to my home and had the meeting there.

Q. I see. A. That's my recollection.

Q. Now, did you have any conversation with the maid about Mr. Houghton's occupying the room which he had in the house? A. Not that I recall.

Q. Well, did you know where the nurses were rooming? A. No.

Q. Know anything about the household arrangements at all at the time of Mr. Squier's death? A Well, I possibly might have known but I didn't consider it of enough importance to remember it and I don't recall it now.

Q. Heard nothing about the nurses being moved from one room to another? A. Not that I recall.

Q. You called in a specialist in consultation? A. I did.

Q. And who was he? A. Dr. Carl Vogel, of New York.

Q. What is his name? A. Vogel.

Q. Had you known him before? A. Yes.

Q. Had him in other cases? A. He took care of my brother for the same trouble a few years previous.

New Jersey State Library

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. What was the illness? A. Pneumonia.

Q. Is Dr. Vogel a friend of yours? A. No. My physician.

Q. What is Dr. Vogel's first name? A. Carl.

Q. Did Mr. Squier have a supply of liquors and wines in his house. A. He did.

Q. Was it a rather extensive supply? A. Well, I don't know that you would call it extensive.

Q. Did something happen to it one time? A. Well, it is common knowledge that he was robbed three or four years ago. I don't just recall the time.

Q. Well, of course I do not know about the common knowledge. A. It was in all the papers.

Q. When did the robbery take place?

Mr. Ferris: I object to that as immaterial and incompetent.

The Court: What is the object of that? Why should I sit here and listen to a robbery of Mr. Squier's house? How can that possibly affect this case?

Mr. Maxson: The demeanor of the testator with respect to it might have some bearing.

The Court: No.

Mr. Maxson: What he did about it. Whether or not it indicated that he was normal or abnormal, rational or irrational.

The Court: I will take judicial notice of the fact that a man acts rather irrationally when he is robbed as soon as he finds out about it.

Mr. Maxson: Your Honor rules all that line of testimony out?

The Court: I will not rule all that line of testimony out. I will rule this particular testimony out that you are asking about, this

robbery. I cannot tell what you are going to ask in connection with it, or what you mean by the line.

I will not rule it all out until I hear what it is. Your offer to show that he was robbed and that at the time he may have acted irrationally, as you put it, has no bearing on this case. You must bear in mind that even though in the extreme case of the testator who may have been at times irrational, still you have cast upon you the burden to show that he was irrational and of unsound mind at the time he made the will, at that time.

Mr. Maxson: I suggest to your Honor respectfully that this robbery might have taken place somewhere about the time the will was made.

The Court: The will was made in July, 1926. The robbery took place according to your say-so three years ago.

Mr. Maxson: I have made no statement about it. I do not know that it took place.

The Court: You did say robbery three years ago.

Mr. Maxson: I said so? I beg your Honor's pardon. I have no idea about it.

The Court: We will take the time to go back about it.

(Testimony read by stenographer.)

Mr. Maxson: That is fairly near the time of making the will. If there were irrational——

The Court: I will allow you to show how irrational he was at the time of the robbery. Go ahead and ask the witness what you want to ask about it.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. When was this?

The Court: Three or four years ago.

A. I can't give you the exact date.

Q. Well, at what time of year? A. I don't recall. It must have been in the late Fall or early winter. I don't just recall when it was.

Q. Did you have some talk with the testator about it? A. Naturally I went down to sympathize with him.

Q. Where was it kept? A. In his wine cellar.

The Court: I suppose you mean the liquor?

Mr. Maxson: Yes.

Q. Where there was a way of reaching it from the inside of the house? A. Well, you had to go down cellar to reach it.

Q. Was there a trap door? A. Into the wine cellar?

Q. No. Going down to the cellar?

By the Court:

Q. Was there any door outside? A. Oh, yes, from the outside, yes.

Q. Also from the inside? A. Yes.

By Mr. Maxson:

Q. Was there a trap door in the hall? A. Yes.

Q. Was there a couch on it? A. No.

Q. Near it? A. Well, there is a couch there in the hall. I don't know how near.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. Did you ever hear that the testator Mr. Edwin Squier slept on the couch over the trap door? A. Never. Never to my knowledge. It is news to me if he did.

By the Court:

Q. How old a man was Mr. Squier? A. He was in his seventy-fifth year when he died, I think.

By Mr. Maxson:

Q. Do you know what he did about the loss of the wines and liquors? A. Why, he reported it to the police and tried to locate it.

Q. Did he do anything else about it? A. Not that I know of.

Q. Did he get a new supply?

Mr. Ferris: I object to that. Certainly wholly immaterial incompetent and irrelevant.

The Court: That would not show him to be irrational, would it?

Mr. Maxson: No. Quite the contrary. But what he did about the new supply I think shows it.

The Court: Now, he was robbed. Let us get to the irrational conduct, when it happened. Does this witness know anything about it?

Mr. Maxson: I have asked him and he says he does not.

By the Court:

Q. Did he get a new supply, do you know about that, whether he did or not? A. Why, your Honor——

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. Well, if you know, and if you don't know, all right. A. I know that he had an offer of some. Whether he took advantage of that offer or not I don't know.

By Mr. Maxson:

Q. Did you know he bought thirty thousand dollars worth of water?

Mr. Ferris: I object to that.
The Court: Of water?
Mr. Maxson: Yes.

Q. Did you ever hear of that? Well, any amount? A. No.
Q. Any substantial amount? A. No.
Q. Never heard of that? A. No.
Q. That wasn't common knowledge?

The Court: Well, whether it was or not he did not hear of it.

Q. Well, he did eventually get a new supply, did he not?

Mr. Ferris: I object to that.
The Court: The witness, I believe, said he does not know.

By the Court:

Q. Is that what you say? You know he had an offer of a new supply but do you know whether he got it or not? A. I know there was some there.
Q. Afterward? A. Yes.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

The Court: I will take it for granted he got a new supply. Now, let us go on.

By Mr. Maxson:

Q. Did you ever talk to anybody about that incident of his losing the liquor? A. Why, I talked to members of the police. That is all I can recall.

Q. Did you ever talk to him about it? A. I went down there to sympathize with him and talked with him of course.

Q. Did he tell you anything about the precautions he had taken to prevent them from getting it? A. No.

Q. Did he tell you anything about the precautions which he took to prevent them from getting the new supply? A. No.

Q. Never mentioned it to you? A. No.

Q. When was the testator taken ill? A. Saturday morning previous to his death.

Q. How long had he been failing before this illness?

Mr. Ferris: I object to that on the ground it assumes a state of fact not testified to. It does not appear that he had been failing.

The Court: It does assume a state of facts not in evidence.

Mr. Maxson: All right, I will withdraw the question with your Honor's permission.

Q. Had he been failing some time before his death? A. Not to my knowledge.

Q. Did you talk to Dr. Lance about his condition? A. Oh, I certainly did.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. Did you tell Dr. Lance that the testator had been failing for about six months before his illness, final illness? A. I was away for four or five of those months.

Q. Did you tell Dr. Lance or did you not that he had been failing physically six months or more before his death? A. Well, when we got back from the mountains I think Uncle Ed told me that he had had some of these summer colds and I may have mentioned it to Dr. Lance that his condition showed it. Now, I don't recall of having done so. But I won't say that I didn't.

The Court: He died when?

Mr. Ferris: November 9, 1926.

Q. How frequently did the members of the family come out to see him? A. That I don't know.

Q. Well, did you meet them there from time to time? A. I never met any members of the family there.

Q. You testified yesterday that you went over there from time to time to see him? A. I did.

Q. And he came to see you? A. Why, occasionally.

Q. On any of those occasions did you meet any members of the family there? A. Why, I have gone over there with my wife.

Q. On any of those occasions did you meet any other members of the family there? A. Not that I remember.

Q. Never on any occasion? A. Possibly did, but I do not remember.

Q. How long had you been in the habit of going over there to see him? A. Well, since possibly a year or two after I was married.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. Well, how long ago is that? A. Married in 1917, and we were away; well, I should say since 1919.

Q. Then from 1919 to 1926 you went over there frequently, did you not? A. Possibly two or three times a month.

Q. And he came over to see you as many times? A. No.

Q. How often did he come to see you? A. Oh, maybe once or twice a year.

Q. And during all those eight years you don't recall meeting a member of the family at his house, is that so? A. That is so.

Q. And does that include Mr. Houghton? A. It does.

Q. Never saw him in the house, either he or Mrs. Houghton? A. No, I don't recall having done so.

Q. You won't say that you did not? A. No; I won't say that I did not, but I don't recall it if I did.

Q. Where were you over the 4th of July, 1926? A. Lace Placid.

Q. And with some other members of the family? A. With my father-in-law's family, my wife.

Q. Any of the other members of the family besides your father-in-law and mother-in-law? A. I don't recall——

Q. And your wife? A. I don't recall whether my brother-in-law was there or not.

Q. Well, you said you and Mrs. Searles, didn't you? A. Yes.

Q. Not your mother-in-law? A. Yes

Q. Any other members of the family? A. I don't think so.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. How long did you remain there? A. Until October.

Q. What time did you go up there? A. The first part of June.

Q. Came down on any occasion during that period? A. What year was this, please?

Q. 1926? A. 1926? I came down to attend a funeral and I can't recall whether it was in 1926 or '05.

Q. Funeral of a member of the family? A. No; it was a funeral of Mr. Cole's, who was president in the bank there. And I can't recall what year it was.

Q. Now, were there any differences between—in this family that you know about? A. Not that I know about.

Q. Any unfriendliness? A. No.

Q. Do you know any reason why no member of the family—why you met no member of Mr. Squier's family at his house for a period of nine years? A. I just didn't happen to be there at the same time they were there.

Q. Then you knew they were there, did you? A. I have heard that they had come, yes.

Q. How frequently? A. Oh, I don't recall.

Q. Well, what was the occasion of your having heard that they were there? A. Why, possibly a holiday, New Year's or Thankgiving, or something like that.

Q. Can't you be a little more definite about it? A. I cannot because I do not recall.

Q. Who of the family did you hear was out there on a holiday? A. Oh, I have heard of the Keene family being out there. I think—I come to think of it I met the Keene family there one day.

Harold M. Searles—For Appellant-Contestant—(Recalled)—Direct

Q. Oh, yes. What was the occasion of your having met them there? A. I think they came out to spend the day and have dinner with Mr. Squier.

Q. And you were over there? A Yes; I think I was.

Q. Just happened in? A. Yes.

Q. What was the occasion? A. I don't——

Q. Holiday? A. Possibly. I don't recall.

Q. How long ago is it? A. I don't know.

Q. When was it? A. I don't recall.

Q. No recollection about it?

The Court: He says not.

A. None whatever.

Q. Who else? Who else was out there, of the family? A. Why, Mr. and Mrs. Houghton have been out there with their family.

Q. Well, now, how frequently? A. That I don't know.

Q. I understand you to say that you didn't know of Mr. and Mrs. Houghton being out there. A. You asked me if I had met them there.

Q. Well, you did know of their being there? A. Yes.

Q. How often? A. I don't recall.

Q. Well, approximately?

The Court: What is the object——

A. Do you want me to guess at it? I don't know.

The Court: Wait, please! What is the object of this?

Mr. Maxson: May it please your Honor I have a definite object in asking these questions.

The Court: I know you may have a definite object, but I have a definite object, too, and that is to keep this trial within confines. Wandering all over won't do the case any good so far as I am concerned. I do not care if nobody ever visited him, family or anybody else.

Mr. Maxson: Your Honor is not interested in knowing how many times Mr. Houghton visited him?

The Court: No.

Mr. Maxson: You rule that out?

The Court: I will rule out this visitation business for the time being.

Mr Maxson: Exception.

The Court: Until you make out something in your case which might make it necessary for me to find out how many times some member of the family visited there.

Mr. Maxson: That is all.

The Court: And in making that ruling I have in mind, Mr. Maxson, the charge of conspiracy. The mere fact of their meeting there would not in any way, unless you showed what they did when they met, aid you in the charge of conspiracy at all.

Mr. Maxson: That is all.

The Court: Because in a conspiracy, of course, as you well know, you must not only show the meetings and the agreements, but something done in execution of it. They might meet for one hundred years and intend to form a conspiracy, and an agreement, maybe only form the agreement, but yet do nothing

in execution of it. What is the use? Take up a lot of time of the Court for nothing. Now go on.

Cross Examination by Mr. Ferris:

Q. Just one question: You testified you said you never met any members of the family at Mr. Edwin Squier's house during this period of nine years. Did you have in mind also Mr. Fred Squier, your brother-in-law? A. Oh, no.

Q. You excluded him?

The Court: Of course.

A. I often went over there with him.

The Court: You need not go over that, of course.

Mr. Ferris: That is all.

JOSEPH RUDDY, a witness produced on behalf of the petitioner, being duly sworn according to law as follows on his oath says:

Mr. Maxson: Will your Honor permit Mr. Hendrick to examine this witness while I make a telephone call?

The Court: Yes.

Direct Examination by Mr. Hendrick:

Q. What is your business? A. Taxi, City of Rahway.

Q. Did you know the late Edwin M. Squier? A. Yes, sir.

Q. How long did you know him? A. Well, I have known him all my life, but I have been driving him for about fifty years; forty to fifty years.

Q. Do you know Mary Conroy? A. Yes, sir.

Q. Yes. Do you know who drove Edwin M. Squier from the station to his house in the afternoon? A. Well I did, as a general thing.

Q. Well, how generally? A. About two or three times a week.

Q. Yes. A. Sometimes four times a week.

Q. Yes. And when you went to the house did you see Mary Conroy? A. Sometimes.

Q. Yes. Did you ever talk to Mary Conroy? A. No, sir; no more than pass the time of the day.

Q. Does she know your name, do you know? A. She had ought to, yes, sir.

Q. What days of the week did you bring Mr. Squier home? A. Well, sometimes it would be Monday, Tuesday, maybe, skip a day, and then Thursday, Saturday; sometimes Friday or Saturday he would not go in.

Mr. Hendrick: Yes. That is all.

Mr. Ferris: No cross examination.

Mr. Hendrick: Will your Honor extend your permission for me to examine another witness in the absence of Mr. Maxson?

The Court: Oh, yes. Go right along. Call your next.

Mr. Hendrick: May Mr. Ruddy go? I understand his family is ill.

The Court: If he is not wanted he may go.

Mr. Ferris: I do not want him.

James E. Borden—For Appellant-Contestant—Direct

JAMES E. BORDEN, a witness produced on behalf of the appellant, having been duly sworn according to law, as follows on his oath says:

Direct Examination by Mr. Hendrick:

Q. Where do you live, Mr. Borden? A. My home is at Grovesville, about six miles out of Trenton.

Q. Were you agent for the Marsh Rainmaker? A. March Rainmaker; M-a-r-c-h.

Q. March? A. Yes.

Q. Did you sell a rainmaker to Edwin M. Squier? A. Not directly.

Q. Yes. But indirectly? A. Indirectly; yes.

Q. Do you know the date of the sale?

Mr. Ferris: I object to that.

A. No, sir; I don't.

Mr. Ferris: If he only knows of it indirectly, it would be hearsay.

The Court: Let him go ahead.

Mr. Ferris: All right.

A. They were sold through a sub-agent.

Mr. Ferris: I move to strike that out as not responsive. The date was asked.

The Court: That is not responsive. That will be struck out. What was the date? Do you know the date?

A. I couldn't say.

Mr. Hendrick: That is all.

Mr. Ferris: No questions.

Mr. Hendrick: I would rather have Mr. Maxson examine the witness, if your Honor please.

The Court: I am perfectly willing that you gentlemen may examine, either one of you, but I am unwilling to delay the trial.

Mr. Hendrick: Not a minute or so?

The Court: A minute or so is not the question.

Mr. Hendrick: He just went to the telephone. That's all.

The Court: Suppose we swear another witness. We will save that much time anyhow.

Mr. Hendrick: I would rather Mr. Maxson decided what witness to call. He is in charge of the case.

The Court: All right. I want to finish this case today if I can.

Mr. Hendrick: I am only asking for a few minutes recess.

The Court: Take a recess for three minutes.

The Court took a recess for three minutes, at the end of which time the Court reconvened pursuant to the recess taken; the same parties and their respective counsel being present.

JAMES W. AVERY, produced on behalf of the appellant, being duly sworn according to law, on his oath says:

Direct Examination by Mr. Maxson:

Q. Where do you reside, Mr. Avery? A. Rahway.

Q. Where in Rahway? A. 244 Grand Street.

Q. How long have you lived there? A. All my life.

Q. Did you know Mr. Edwin Squier? A. All my life.

Q. In his lifetime? A. Ever since I knew anybody, you might say.

Q. And were you in his employ at one time? A. About eighteen years.

Q. And in what capacity? A. Outside man, in the garden.

Q. Gardener? A. Gardener.

Q. Beginning what time and ending about what time was your employment? A. Well, I have been with him about eighteen years, as near as I can recollect; I was with him up until the time that he died.

Q. Oh, you were with him at the time he died? A. Yes.

Q. And did you continue in the employment of the family after his death? A. I have.

Q. Are you still in its employ? A. Yes.

Q. Do you remember after Mr. Squier's death the reading of the will? A. I wasn't there at the time. I was called in a day or two afterward, after the funeral.

Q. And who sent for you? A. Well, I can't just remember. It was either Mr. Searles, I think, or Mr. Houghton. I wouldn't say which one.

Q. At that time you learned the provisions of the will? A. Well, yes, part of it, I suppose.

Q. And did they say anything to you about your employment, the continuance of your employment? A. What say?

Q. Did they say anything to you about your continuing in the employ of the family? A. Yes, to this extent, they said that things would continue the same until further notice. That is the way I understood it.

By the Court:

Q. You are not employed there now in the family? A. Yes, sir.

Q. Still there? A. Yes, sir.

Q. What are you doing now? A. I am caretaker.

Q. Are you there all alone? A. Well, we have another man there that looks after the——

Q. Well, you and one other man? A. One other man, yes, sir.

Q. And all the rest of the help have gone? A. All gone.

Q. How long has that state of affairs existed? A. Well, if I can remember right about the first of June.

Q. First of June the rest of the help were allowed to go? A. Yes, sir.

By Mr. Maxson:

Q. Were you in and out of the house frequently during the time you were employed there? A. Very little. I was outside man. I had nothing to do whatsoever with the house end of it. I was in the garden.

Q. Did you know anything about Mr. Squier and his habits? A. Not any more so than I see him every day, he would come out after he returned home from business. out in the green house, out in

the yard and chat a little while and go in. Outside of that I might say, see him every day. Possibly outside of Sundays.

Q. Have you recently expressed yourself about Mr. Squier's making a will? A. No, sir, not that I know of. I can't recall it.

Q. Have you recently expressed yourself to anybody about his habits? A. No, sir; not that I can recall, never.

Q. Tell anybody about his staying up all night? A. Never.

Q. Say anything to anyone about his drinking? A. Never. Never in my life.

Q. Or about his excessive cigarette smoking? A. No. I might have said as far as—I might possibly said he was a great man to smoke cigarettes, but not to excess.

Q. Do you remember when the liquor was stolen from the house? A. Well, I was told of it that morning when I went to work.

Q. See any evidence of it around the place?

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

The Court: I will allow it. Any evidence of the robbery you mean?

Mr. Maxson: Yes.

A. Why, naturally I see where the robbers had broken in and went down and seen that they had cleaned things up pretty well.

Q. Did you go in and talk to Mr. Squier about it? A. I did not, no, sir.

Q. Did you talk to Mary Conroy about it? A. I did not. Not more than general conversation

might come up between the employees about the robbery but nothing in particular that I can recall now of any importance.

Q. Do you know whether it was replenished or not?

Mr. Ferris: I object to that. I object to that as immaterial, incompetent and irrelevant. After all this man is dead. If he replenished it we all know that he violated the law of this land.

Mr. Maxson: That is not the purpose of this examination.

Mr. Ferris: I object to it as wholly immaterial.

The Court: I will sustain the objection.

Mr. Maxson: Prays exception.

Q. Did or did not you tell someone recently that Mr. Fred Squier had agreed to take care of you and Tommy for life and then when you finished here you were going over with him? A. I did not. That is I can explain that if you will allow me.

Q. Well, did you tell somebody that recently? A. I might have said this that I was told after the estate was settled that I was to go over there, but no life business. No life business. That I don't know anything about.

Mr. Maxson: That is all.

Mr. Ferris: No cross-examination.

Samuel C. Du Rie—For Appellant-Contestant—Direct

SAMUEL C. DU RIE, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Maxson:

Q. Where do you reside, Mr. Du Rie? A. Rahway.

Q. Do you remember Mr. Edwin Squier in his lifetime? A. Yes, sir.

Q. Do you remember an occasion when you sold him a sprinkler, lawn sprinkler? A. Yes.

Q. Do you remember two ladies coming and talking with him while you were displaying it? A. Yes.

Q. Do you know the Misses Martin, one of them is married, I have forgotten her name? A. I did know them, yes.

Q. How long did you know them? A. Probably thirty or thirty-five years.

Q. They were old residents of Elizabeth—or I mean of Rahway? A. Yes.

Q. When did this incident happen? A. At the time when I sold him the rainmaker?

Q. Yes, when the two ladies came to see him. A. As near as I can figure it must have been July 17, 1926.

Q. July 17, 1926. How do you fix the date? A. Well, that was quite a long time, we really didn't keep any record. We had to check up on when we first started selling them and figure, I knew it was within a week of that time and it was a Saturday afternoon.

Mr. Maxson: That is all.

Mr. Ferris: No questions.

Thomas W. Clark—For Appellant-Contestant—Direct

THOMAS W. CLARK, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Maxson:

Q. Where do you live, Mr. Clark? A. Westfield Avenue, 21.

Q. Elizabeth? A. Westfield Avenue, Rahway.

Q. Were you in the employ of Mr. Edwin Squier in his lifetime? A. Yes, sir.

Q. And how long? A. About forty-two or three years; I went there in '84.

Q. And what were your duties, Mr. Clark? A. Coachman, looking after the heat and the house.

Q. Did you drive Mr. Squier back and forth to the station? A. Yes, sir.

Q. How often did he go into town? A. Why, he went in Mondays, Wednesdays and Fridays.

Q. It was his invariable habit? A. Yes, sir.

Q. For how many years? A. Oh, quite a few years. I couldn't just say how many years.

Q. Well, ten or fifteen, say? A. Well, somewheres along about like that. I don't know as it was. Yes, I guess it was.

Q. And what time did he leave in the morning? A. Eight o'clock.

Q. And what time did he get back in the afternoon? A. Well, he come back about half-past three, which I didn't call for him.

Q. How did he get home? A. Why, he come home in a taxi.

Q. Who drove him generally? A. Rody.

Q. Were you here when he was on the witness stand? A. Rody?

Q. Yes. A. Yes, sir.

Q. That is the man who drove him down? When he came from the station? A. Yes, sir.

Q. Do you remember having some conversation with Mr. Fred Squier after the will was read? A. No, sir.

Q. Did he say anything to you about continuing your employment? A. No, sir.

Mr. Maxson: That is all.

Mr. Ferris: That is all. No cross examination.

ALFRED PEARCE, a witness, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Maxson:

Q. Where do you live, Mr. Pearse? A. 36 Westfield Avenue, Rahway.

Q. Were you in the employ of Mr. Edwin Squier in his lifetime? A. Oh, yes.

Q. How many years? A. I was in the employ of the Squier family for thirty-four years and a half.

Q. Were you there at the time of his death? A. I was, yes, sir.

Q. And still there? A. No, I am not there now, no.

Q. What is your present employment? A. I am managing the grounds for the Wheatena Company in Rahway, New Jersey.

Q. What was your employment with Mr. Squier? A. I was the gardener at Mr. Squier's.

Q. All the time gardener? A. All the time, yes, sir. I had charge of his place in his mother's time.

Q. Did you have opportunities to observe him? A. Oh, yes.

Q. How frequently did you see him? A. Every day—well, possibly every day. If he was detained in New York, which he was sometimes, why, I would not see him that day, but as a rule I saw him almost every day.

Q. Did he go to New York frequently? A. Oh, yes. When I first went there he went every day but latter years he went three times a week.

Q. Over what period of time did he go three times a week? A. Oh, that I couldn't tell you.

Q. Ten or fifteen years? A. Somewhere about there, yes, sir.

Q. And what days did he go in? A. Monday, Wednesday and Friday.

Q. Was that invariable with him? A. Oh, yes, invariably. Sometimes I have known him to go on Tuesday when he had special business but not otherwise.

Q. Did you know about his going in on Tuesday to execute this will? A. I don't know anything about his will. I never knew he made a will.

Q. Well, you have heard about it since, haven't you? A. Only intimation I had was after the funeral that Mr. Searles and Mr. Houghton called the employees into the house and said that Mr. Squier had remembered us in his will.

Q. And he told you what provision had been made for you? A. Yes, sir.

Q. Did he say anything to you about the continuance of employment? A. No. There was no definite contract. Not with me, no.

Q. Well, what did he say, if anything? A. What did who say?

Q. What did Mr. Squier say? A. Never said a word to me, Mr. Squier didn't. If Mr. Squier had been alive I would have been there today, possibly.

Q. Mr. Fred Squier there? A. Mr. Fred Squier, no, not when he spoke to me.

Q. Mr. Houghton there? A. Mr. Houghton was there, yes.

Q. And Mr. Searles there? A. Mr. Searles, yes.

Q. Have any conversation with either of them about continuance of the employment? A. No, not particularly. I remember Mr. Searles said to me that in the event of any changes they would give me ample notice at the time.

Q. Have you talked to anybody about this case? A. No, sir.

Q. Since you knew that you were going to be heard as a witness here has anybody approached you about testifying? A. No; not a soul. First intimation I had was yesterday afternoon when I was working on the company's grounds, the Sheriff called in and gave me the subpœna.

Q. Since you were interviewed about the case has anybody talked to you about——

Mr. Ferris: I object to that as assuming——

A. I don't understand you.

The Court: Wait, please!

A. I just answered your question.

Mr. Ferris: I object to that question as incorporating a state of facts not proved.

The Court: That is objectionable.

Mr. Maxson: I will withdraw it with your Honor's permission.

Q. Has any of the Squier family said anything to you about testifying in this case? A. Not a word. Not one word. No, sir.

Q. Nothing about keeping out of the limelight? A. Why, no.

The Court: He said no. Please! He said not a word.

A. Not a word.

The Court: Wait. Please!

A. Not a thing.

The Court: He said not one word was said to him.

Q. Have you talked to anybody about this case recently? A. I have not; no.

Q. No one whatsoever? A. No.

Q. Did you tell—have you told anybody that—what was Mr. Squier's habit about smoking, if you know? A. Smoking? Why, like every other man he would indulge, have his cigarettes when he felt like having a cigarette; he would have one.

Q. Not very frequently, or much? A. No; some days he would smoke more than others.

Q. How about drinking? A. That I couldn't answer. I am not interested in the drink question.

Q. You do not know whether he drank or not? A. I suppose he did; most people do today.

Q. I see. Have you talked to anybody about his—about excessive cigarette smoking or drinking? A. No; no.

Q. No one whatsoever? A. Why, no.

Q. Have not discussed Mr. Squier at all? A. Why, no.

Q. With anybody recently? A. Why, no.

Q. Didn't you say to somebody who came to see you about Mr. Squier, that he drank to excess? A. No, sir.

Q. Didn't you say that he was doped with cigarettes? A. I did not. I did not. Can I ask your Honor where this man is getting his information?

The Court: Oh, no. Just answer the question.

Q. You have not talked to a lady about this case at all recently? A. No; not about this case, no.

Q. Or about Mr. Squier and his habits? A. Why, no.

Q. Did you ever see this lady before? A. Oh, yes; I seen her before.

Q. When did you see her? A. Last Saturday afternoon.

Q. Talk to her about the Squier case at all? A. I did not. She came to me with reference to a case, she said she represented a commercial insurance company, automobiles, and came to ascertain information——

Mr. Maxson: I move that be stricken out.

A. No, I am vindicating my character.

Mr. Ferris: No. He said——

The Court: Wait, please! When I speak to you (addressing the witness), you must pay some attention and stop talking.

(Question and answer repeated.)

The Court: That is the answer, the rest will be stricken out. "I did not." Now pay attention to the question.

Q. Never mentioned Mr. Squier? A. Oh, yes. I mentioned Mr. Squier, yes.

Q. You mentioned Mr. Squier. What did you say? A. What did I say?

Q. Yes. A. What did I say about Mr. Squier?

Q. Yes. A. I don't know what exactly what I said. I don't recall what I said. We just talked in a casual way about Mr. Squier, and me being there. Yes.

Q. How long did you talk? A. I couldn't say how long the lady was in my house.

The Court: How old a man are you?

A. I was sixty-three years old last November.

Q. And you have not any recollection of anything you said in that conversation about Mr. Squier? A. Not any more than casual conversation. I said I had been there about thirty-five years.

Q. Did you say anything about Mr. Squier's habits at all? A. No.

Q. About his going to New York? A. No; we never mentioned about going to New York.

Q. What did you talk about? A. I have just told you. Just a casual conversation. That's all.

The Court: You go on and tell what you wanted to tell about before. It has been opened up to you. What did you talk about?

A. This lady came to me——

Mr. Maxson: I submit, if your Honor, please, I asked him——

The Court: I now am going to have the witness tell what they talked about. You asked him that question. Go on and tell.

A. This lady came into my house last Saturday.

Mr. Maxson: I asked him what he said.

A. I am going to tell you what I said.

The Court: Please!

Mr. Maxson: I take exception to your Honor's direction to the witness to continue the testimony.

The Court: Go back to the question of Mr. Maxson wherein he asked the witness: "What did you talk about?"

(Last question repeated by the stenographer.)

The Court: What did you talk about?

Mr. Maxson: Have you got that on the record, "Go on and tell what you talked about before?"

The Court: Yes.

Mr. Maxson: I take exception to it.

The Court: Exception allowed.

A. This lady called at my house and she said to me that her name was Mrs. Lewis. And she said she had called with reference to an automobile accident that occurred outside of Mr. Squier's house. She asked me if I knew anything about it, and I said I didn't recall. She mentioned the fact of the rain sprinkler and asked me if I thought I was in the yard when Mr. Duree brought up that sprinkler. Mr. Duree who was on the witness-stand. And I said I didn't recall whether I was there or not. I remember trying out this sprinkler. Distinctly remember that, and this lady represented to me that she was with an insurance company to look after automobile insurance. And the witness is here, she can testify to this question.

The Court: No, no!

A. I said to her, "I believe you are looking for information for the Squier will," and she distinctly said to me, "I am not."

The Court: Is that all that took place?

A. No. She asked me she said that she was trying to locate a Mary Conroy. Now, this is the truth, so help me God. I am under oath.

The Court: Go on and tell the story.

A. She said to me that she thought she was cleaning windows on that day, with somebody else, and that she thought possibly that she might recall the incident. So I told her where I thought Miss Conroy was. I said I thought she would find her

over at Mrs. Fred Squier. Whether she went or not I don't know. But this is the lady over here came to my house. And represented to me she was an insurance agent.

The Court: Were you asked anything about Mr. Squier's habits?

A. Not particular; no.

The Court: Whether particular or not.

A. No; I don't remember, your Honor, honestly anything about it.

The Court: All right now. Stop and think, and answer whether you were asked anything about Mr. Squier's habits, and what you said in reply to that question.

A. No; I don't recall the conversation, that part of it.

The Court: All right. Wait now.

Q. Your recollection is very clear about all the other part of the conversation, isn't it? A. Yes; yes. Very clear.

Q. But you can't remember anything you said about Mr. Squier? A. If I had said it I would remember it.

Q. You can remember it? A. I said I would have remembered it if I said it; yes.

Q. Did you or didn't you say anything about Mr. Squier and your employment with him? A.

I don't remember saying anything about Mr. Squier; no.

Q. Was there anything said about the Squier family at all at that talk? A. At that talk?

Q. Yes. A. Well, this lady said to me that—
10 she said to me she had met Mr. Avery the witness who was here, and she had quite some conversation with him in the yard there, and he took her to the green house and showed her the flowers.

Q. Did she say what her purpose was in going there? A. No; I don't know. I found out her purpose, she came to see me, representing she was an insurance agent.

Q. But nothing about the Squier estate? A. No, sir.

20 Q. Not a word? A. Only just as I have just told you just now.

Q. Did you say anything to her about someone saying—telling you not to mix up with this case? A. No, sir.

Q. Did you say to the lady sitting there, if she wanted to talk to you about the Squier case that you didn't want to talk because Mr. Fred Squier had sent over to you and told you to keep—that they were after you and to keep out of the lime-
30 light? A. No, sir.

Q. No conversation of that kind? A. No, sir; Mr. Fred Squier's name was not mentioned in the conversation; no, sir.

Q. Any of the Squiers' names mentioned? A. No, sir.

Q. In the conversation? A. No, sir.

Q. Mr. Edwin Squier's name mentioned in the conversation? A. Why, no.

Q. Squier estate mentioned? A. Why, it might have been, casually, as I just told you.

Q. What was said casually? A. That I don't remember. It was such a casual remark I didn't commit it to my memory.

Q. But your recollection is very clear about all the other part of the conversation, isn't it? A. Yes; as I said to you just now.

Q. You remember that very well? A. Oh, yes; I remember it.

Q. But you can't remember anything else? A. No; I can't remember anything else; no.

Mr. Maxson: All right. That is all.

Mr. Ferris: No questions.

ELIZABETH C. LEWIS, being duly sworn according to law, on her oath, saith:

Direct Examination by Mr. Maxson:

Q. Where do you reside, Mrs. Lewis? A. 103 Fayette Street, Perth Amboy, New Jersey.

(Answer repeated by stenographer.)

Q. Did you interview some people in connection with the Squier estate? A. I did.

Q. And when?

Mr. Ferris: Will you raise your voice, please, so I can hear you?

A. I did.

Q. When? A. Well, I saw Mr. Avery; it was in November. And then I saw Mr. Pearce, a Saturday afternoon. Saw Mr. Du Rie a Saturday afternoon.

Q. What did you talk to Mr. Avery about?

Mr. Ferris: I object to that; calls for a conversation. I have no objection to what was said.

Mr. Maxson: All right. I withdraw it.

The Court: Mr. Avery's attention was not called to this.

Mr. Ferris: Not specifically to any particular statement. No proper foundation has been laid to impeach him.

Q. Did Mr. Avery say anything to you about the testator's peculiarities?

Mr. Ferris: I object to that, if your Honor please, on the ground that counsel is now attempting to impeach his own witness.

The Court: Well——

Mr. Ferris: And that he has not laid any foundation for asking that question.

The Court: He has not laid any foundation for it, of course. But I am going to allow it.

Mr. Ferris: All right.

The Court: Repeat the question.

(Last question repeated by the stenographer.)

A. Well, yes, he did.

The Court: Yes or no.

A. Yes; he did.

Q. What did he say? A. Well, he said he was an excessive smoker; that at night he was up most of the night smoking. He smoked a turkish cigarette that was specially made, and that he was very nervous, and that he was an excessive drinker. And that his cellar was full of wines all the time and he went on to say that Mr. Squier went to New York—he used to go every day, but the last few days he didn't go but more than two or three times a week. Especially since he met with an accident and had broken his leg. And that in the last two years he come around and they wouldn't be doing any work, and he would never ask, only he would just say "how do you do," or walk right on. He said another thing was, he said, that he never did want to remove his mother's rugs from the floors. And then that he had taken a notion that he would recarpet the house from top to bottom, and he went out and got the finest rugs. That they were on those chairs from top to bottom. He said in the dining room I think the rug cost $7,000, and in the front room I think it was $10,000. And he said that all the servants—I was looking for Mary Conroy, when I went there——

Mr. Ferris: I move to strike that out. The question is what did he say; not what her purpose was in being there.

Mr. Maxson: All right.

The Court: I will allow it to stand.

Mr. Maxson: All right.

A. He said it would be very hard for me to locate Mary Conroy or any of the other servants, and that

they were all she put away to keep out of the will; that they were contesting Mr. Squier's will.

The Court: And this man said all these things?

A. Yes; your Honor. And he said that Mary—this Mary Conroy was getting her mail at a Mrs. Butler's in Roselle, and he went home and got the address and brought it to me, and I think you have the piece of paper there with his writing on it, there.

Q. All right. Go on. Anything else? A. Well, he said that Celia Cavanaugh and Mary Cavanaugh and Nora Reilly were all related, and living together in Hoboken, but where he couldn't say, and he said that he was—that he had been in the employ there for years. And he said since the house had been closed that he was staying there at night and he was being paid well for it; that Mr. Squier told him—Mr. Fred Squier told him if he stuck by and looked after things he would give him a position at his home just as soon as the will was settled. He said that he got $2500; Mary Conroy $5000 and that Mr. Clark—there was $10,000 left for the maintenance of the horses. And the other girls all got twenty-five hundred. And he said for that reason why, he was afraid to talk. He didn't know who he was talking to. But he come there at night around about ten; some nights he would come early, some nights later. It didn't make no difference just so he looked after things until the estate was settled. He said there was thing about—he said Mary Conroy was the housekeeper, and she

was the one that got the $5000. And then I said to him, "Why, are they trying to break the will?" "Well," he said, "They claim Mr. Squier was a little—that he was mentally off." And I said, "Was there anyone in the family that was mentally off?" He said, "Yes, his brother Will," he said, "I think, he was committed at Elizabeth, but," he said, "I don't think," he said, "He was ever committed at any place. I think," he said, "That they had a guard was at the house taking care of him." And of course then he said, "I know well Mr. Edwin Squier was a very, very fine man; very liberal with his help." He went on to tell how Mrs. Squier every Christmas would give a big basket of fruit, turkey, $25; and that Mr. Edwin had always kept that up after his mother died. Then he said, "Well, I know the older he got, he was always very eccentric, but the older he got the more pronounced it was. But he was always very good to his servants." Then Saturday Mr. Pearce——

Mr. Ferris: Is that all of that conversation?
The Court: Please! Please!

Q. Did he say anything about Mr. Squier? Did Mr. Avery say anything about Mr. Squier's will? A. Oh, yes; he said Mr. Squier told him if he stayed there and looked after things——

Q. No. I do not mean that. I mean about his making a will? Did he say anything about that? A. He did say this: He said he thought Mr. Squier had pneumonia fever, and he was only sick for a couple of days, and if he hadn't been such an excessive smoker that he "thinks" he would survive

the illness. But he said "I will tell you one thing right now: Within my own heart I believe if Mr. Edwin knows he was going to die he would have made a different will."

Mr. Maxon: All right. Mr. Avery, stand up.

Q. Is this the man you saw? A. Yes; that is Mr. Avery.

Q. I show you these two papers. Are either one of these the ones he gave you with the address on? A. This is the one.

Mr. Maxson: I ask that it be marked for identification.

The Court: Do those papers contain your handwriting?

A. No, they are Mr. Avery's handwriting.

The Court: They are Mr. Avery's handwriting?

[Paper marked for identification No. D2.]

Q. Did you see Alfred Pearce? A. Yes, I was to see him Saturday.

Mr. Maxson: Mr. Pearce, will you stand up, please?

Q. Is this the man you saw? A. That is Mr. Pearce.

Q. Did you have some conversation with him about the Squier will? A. Yes. When I knocked at the side door why he was the one that opened it.

Greeting me he said he was Mr. Alfred Pearce. He admitted me to the dining room and the very first question he asked me, when I told him I was trying to locate Mary Conroy, he said, you are not here, he said, with reference to the Squier will? And I said, why. He said, Mr. Fred Squier said the will—he said the trial would be on Monday and he told me to stay out of the limelight, that he didn't want—I wouldn't have to give any information if they didn't get me; but he said I will tell you I have nothing to hide, and if they call me I am going to tell the truth. And he said everybody in the house knows that Mr. Edwin was very, very peculiar; but, he says, the question of the will now is more as to where the whiskey and wines were stored; but, he said, I know where they were taken to, he says, part of them was taken to Mr. Fred Squier's and the rest I know where they were taken, and he said, if they ask me on the stand I intend to tell. And he said I was left $2500, but, he said regardless what you don't have you never miss. And then he went on and he said, well, I will tell you how peculiar Mr. Edwin was, he said, he used to go to New York, and he said there was a saloon down by the station, Kennedy's saloon, and Mr. Edwin used to go in there to drink.

By the Court:

Q. Did you ask him how he knew that? A. No, I didn't, your Honor.

Q. Weren't you surprised at that statement? A. Well, this is the only thing he said, one day while drinking there at the Kennedy saloon with strangers, Mr. Edwin had received a check that day

for $75,000, and that it was endorsed, and that he pulled it out of his pocket and displayed it among the crowd; and he said another one of his peculiarities was——

Q. Did he say he was with him when this happened? A. I never questioned that, your Honor, because if I questioned it he would not have talked.

Q. Didn't you think that was strange for this man, who was a gardener around there, to talk about Mr. Edwin Squier over the saloon in New York exhibiting checks? A. Not in New York. In Rahway.

Q. Oh, in Rahway? A. Yes, in Rahway.

Q. Well, even in Rahway. A. Well, I don't know about that. He told me the man who could verify that was Mr. Ed. Collins, the bar tender. I don't know whether they ever had a bar tender by that name or not.

Q. What I meant was whether you asked him whether he was with him at the time, whether he was with Mr. Squier. A. I did not. I didn't question that.

Q. What is your business? A. I am an investigator.

Q. Well, being an investigator didn't it strike you that you would not be able to repeat in court here any hearsay evidence, if this man was giving you hearsay? A. Well, from the way he spoke——

Q. Didn't that occur to you? A. No. From the way he spoke I thought he knew what he was talking about.

Q. Never mind what you thought. Didn't that occur to you? A. No, it didn't.

Q. That that would not be good evidence? A. No, it didn't because he said he was going to admit and tell the truth if he was called on the stand.

Q. Never mind about that. You are an investigator and you know, of course, that if he was not with him when Mr. Squier did these things, and he only heard tell about it, that would not be good evidence? A. Naturally you would assume that he was with him or he wouldn't have known it.

Q. Oh, no, you would not assume anything. Investigators do not assume things. Go on.

By Mr. Maxon:

Q. Go ahead. A. Well, he said another one of his peculiarities was when he went to a director's meeting he would always get a handful of twenty dollar gold pieces, and that he would invariably display them among them, pull them out and show them to people. Then he spoke about what way he smoked and said he ordered these cigarettes by the ten thousands. Ordered them from New York. And then another peculiarity of his was, he said, many nights that he would sit up until way late smoking, that every time you would see him he would have to have a cigarette. Then I asked him how many times he went to New York and he said towards the last he didn't go so very often.

By the Court:

Q. Did you find out from this man how he knew about this man staying up late at nights smoking cigarettes? A. No, I did not.

Q. Ask him whether he lived in the house with Mr. Squier? A. No, I did not.

Q. Why not ask him that? How do you know these things? A. Well, I was only sent there to really locate the man. That was all.

Q. You were sent there to get some real evidence, were you not? A. No, I was not. I was sent to just really locate him. That is what I was sent there for. Everything he told me that way he told it voluntarily.

Q. Well, I know, but it was good stuff, wasn't it, as you heard it there? A. Why, naturally.

Q. You knew this was a will contest, didn't you? A. I certainly did.

Q. And that this was good material in the contest? A. Well, the way he said—the way he told it to me he said, you know, he said——

Q. You are not answering me. A. I beg your pardon.

Q. Wasn't it some of your concern to know whether this man was telling you things that he knew about? A. Naturally you would think a man who had been in the employ——

Q. Not what you naturally think. Here was a man who was talking about a man's excessive smoking, sitting up all night smoking, weren't you interested in getting how he knew that to be so? A. No, I wasn't because everybody I heard speak said the same thing.

Q. All right. With those as well, were you not interested in knowing how he knew, or how any of them knew that he did smoke all night long? A. Well, you see, your Honor, when I went to——

Q. Why don't you answer me? Were you interested? A. Not when I interviewed Mr. Avery I was not. I was only locating the servants.

Q. Well, when did you interview this man, Mr. Pearce? A. I was only locating him.

Q. Not interested in the truthfulness of what they were telling? A. Naturally you are always interested in the truthfulness, that is what you are sent out for.

Q. Now then, why didn't you ask either of these two men how they knew these things they were talking about to you? A. Well, when he said he was there thirty-five years——

Q. You assumed he was living in the same room with him at night? A. No, I didn't assume that.

Q. Now, then, if he was up all night long as this man said he was—— A. Well, of course don't you know how people talk? I don't know how he knew that. I never questioned that.

Q. You never thought of that? A. No, I never thought of it.

Q. How long have you been an investigator? A. Well, I have been—you remember when the Mravlag case was on?

Q. Which? A. The Mravlag case here you represented? I was two years.

Q. What case? A. The case that you represented the mayor.

Q. Mayor Mravlag? A. Yes.

Q. When I defended Mayor Mravlag on a manslaughter case? A. Yes. I was two years. I investigated that for you.

Q. You have been an investigator then for about nine years. That never occurred to you? A. It never did, your Honor.

The Court: All right. Go on.

By Mr. Maxson:

Q. Go ahead. Did he say anything else to you?

By the Court:

Q. You didn't investigate that for me. You investigated it for Mr. Bergen of the Public Service Railway Company, didn't you? A. Well, didn't I give you——

Q. You gave me the report but you investigated it for—— A. I don't know where it came from. It came from Mr. Orsor, the chief investigator.

Q. Mr. Bergen of the Public Service Railway? A. Yes.

The Court: Go on.

By Mr. Maxson:

Q. Go ahead. A. I don't know, my mind was taken off now.

(Testimony read by stenographer)

By Mr. Maxson:

Q. Did he say anything else to you?

Mr. Ferris: That is Mr. Pearce, Mr. Maxson?

The Court: Yes, this is on Mr. Pearce.

A. Why, he gave me, he was telling me about Mr. Fred Squier, and he told me where to locate Mary Conroy. He said there was some reason or other, he said, that Mr. Fred Squier was harboring Velia Mullins and Mary Conroy in his kitchen up

there and he said, of course, naturally, you know what that is for, that is nothing but to keep their mouths still about the will. And I said to him are you sure Mary Conroy is up there. He said, why, certainly she is. And he takes out a piece of paper and he draws a diagram, I think you have it there, of their home, and tells me how I can locate Mr. Squier's home, and how I can go to the rear to the kitchen, and he said Mary Conroy, and writes her name out. There is a diagram right on the back of it that he drew himself.

Q. Is that the paper which he prepared for you? A. Yes, he wrote that out himself. There is a diagram right on the back.

Mr. Maxson: I ask that be marked for identification.

(Paper marked P-3 for identification.)

Q. Did you see him write this? A. Yes, sir.

Q. Did you see Mr.—— A. No. Mr. Avery brought that from his home to me.

Q. Did he say anything else to you, referring to Mr. Pearce? A. Why, his wife came in.

Q. Do you remember anything else that he said to you? A. I can't recall now everything because my mind, don't you see the interruption and everything takes the trend of the mind off.

Mr. Maxson: All right, cross-examine.

Mr. Ferris: May I reserve the right to strike out certain portions of this witness' testimony, when I receive the written testimony? Some of it is objectionable and I believe should

be stricken out. It is rather difficult for me to carry it in mind.

The Court: You may do so but I will allow it all to stand.

Mr. Ferris: May I be considered to have made the motion at this time to strike out certain parts of it, which tended to contradict testimony given by Mr. Avery, on the ground first that no proper foundation was laid, that Avery was not asked specifically if he made a definite statement to anyone and therefore the rule about impeaching ones own witness has been violated. Another ground I wish to urge for striking out a portion of the testimony is that it is only hearsay, not only on the part of the witness herself, but on the part of the person whom it is claimed told her certain things. Therefore they had no probative force.

The Court: You are right on all the grounds you advance but I am going to allow the testimony to stand. That may sound arbitrary but that is what I am going to do.

Mr. Ferris: May I have the benefit of an exception?

The Court: Yes, certainly.

Cross Examination by Mr. Ferris:

Q. How old are you, Madam? A. Well, I don't quite recall the exact date.

Q. Your recollection as to conversation is good but as to ages it is poor, is that correct? A. Well, of course I am—I know my last birthday was thirty-five.

Q. Thirty-five? A. Yes.

Q. How long have you been married? A. Well, I have been married I guess twenty years.

Q. If you are thirty-five you were married at the age of fifteen, is that correct? A. That is correct.

Q. Where were you married in New York? A. Down south.

Q. Where? A. I am from the south.

Q. What state? A. I came to Jersey from Louisville, Kentucky.

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

Q. What is the name of the town. A. Knoxville.

Q. You say you came to the State of New Jersey in what year? A. I came here in 1920.

Q. How long had you been married when you came to the state of New Jersey in 1920? A. Well, I have been married I told you twenty years.

Q. Please tell me how long you had been married. A. Well, I have been here eight years.

Q. How long had you been married, is my question. A. Well, naturally I had been married twelve years.

Q. Now, when was the first time that you heard about this Squier case? A. Well, the first time that I ever knew there was any person by that name was here just about a month ago.

Q. You know my question calls for time. When? What is the date you first heard about the Squier case? A. Well, I should say it was around about in the latter part of November.

Q. 1927? A. Yes, that is what it was.

Q. From whom did you first hear it? A. I think it was from Mr. Maxson.

Q. Where were you when you first heard it? A. Why, I happened to go to Mr. Maxson's office to

meet a friend of mine an attorney in Jersey City.

Q. In New York or New Jersey? A. I met Mr. Maxson in New York.

Q. 165 Broadway at his New York office? A. Yes, sir.

Q. And your visit there was purely accidental? You were not sent for by Mr. Maxson, were you? A. Not at that time, no.

Q. When did you first meet Mr. Hendricks? A. I met him the same day.

Q. He happened to be there? A. No, he was not.

Q. He was sent for while you were there? A. No, sir. I was sent to his office.

Q. Then from Mr. Maxson's office you went to Mr. Hendricks' office? A. Yes.

Q. Now, you served some papers in this case or rather in the New York case on some of the parties, didn't you? A. Yes, Mrs. Montgomery.

Q. When did you serve those papers? A. I don't exactly recall the date.

Q. Was it before November when you say it was the first time that you heard about this case or was it after? Yes or no? A. I won't say at the time. I may be a little off on the time.

Q. I have not asked you that. I have asked you whether it was before November when you say you first heard about this case or was it after? That is a simple question. A. I don't recall. I couldn't exactly tell you unless I looked at my expense book just what date it was.

Q. Give me your best recollection. A. I am not giving any date at all because I don't recall the dates.

Q. Then you are unwilling to state now? A. I am not unwilling.

Q. Let me finish my question. You are unwilling to state now whether you served Mrs. Montgomery with certain papers before November or after November of 1927? A. Well, the date I say I won't say the date because I don't recall.

Q. I am asking you whether you will state whether it was before or after November. A. Well, I won't say which date. It may have been October it may have been November. That I won't state the date.

By the Court:

Q. You are not being asked about the date. The fact whether it was before or after. A. That I don't know.

By Mr. Ferris:

Q. If you served these papers before November you still persist that it was in November that you first heard about the Squier case? A. No, I will not persist that.

Q. Then you will change your testimony in that respect? A. As to the month, yes. If it was October or November I don't recall.

Q. Where is your husband? A. My husband? He is working.

Q. You live with him? A. Certainly.

Q. Have you any children? A. I have a son.

Q. What does he do? A. My son?

Q. No. Your husband. A. My husband does the same kind of work I do.

Q. He is an investigator too? A. Yes.

Q. What agency are you employed by? A. We are not employed by any agency. Free lance work.

Q. You work for yourselves in other words? A. Yes, sir.

Q. How much money have you received so far in connection with this estate? A. I have not received any money.

Q. Not even expense money have you? A. Yes, I think I did receive, Mr. Hendricks gave me the first day I started out ten dollars.

Q. Did you receive expense money?

Mr. Maxson: I submit this witness should be permitted to answer a question as long as she is responding.

Mr. Ferris: She is responding.

The Court: They have all been answered.

(Question repeated by stenographer.)

A. The first day I went to Mr. Hendricks' office that was to service the papers on Mrs. Montgomery and he gave me ten dollars for expenses.

By the Court:

Q. That is all you have so far? A. No. When I was called back on the case here a week ago, that was Monday, I was given fifty dollars for expenses.

By Mr. Ferris:

Q. And that is all you have received? A. Yes.

Q. Were you promised payment for your services? A. Naturally, I work.

Q. Just yes or no, please. A. Yes, sir.

Q. Who promised you? A. Why, Mr. Hendricks here.

Q. What promise did he make you with reference to payment? A. Do you mean in reference to payment? When my work is completed I will be paid.

Q. Did you discuss the rate of compensation with him? Yes or no. A. I think I did.

Q. Aren't you sure? A. I think I did.

Q. Well, is there any doubt in your mind that you discussed the rate of compensation? A. But it wouldn't be such a fabulous amount I couldn't remember it, I will tell you that.

Q. Please answer my question? Is there any doubt in your mind concerning the subject matter whether you discussed your compensation or not with Mr. Hendricks? Yes or no, please? Is there any doubt? A. I don't recall whether we discussed it or not, because many many cases of attorneys, work we have that I don't discuss.

By the Court:

Q. Not the other cases. If you did not discuss it say no. If you did discuss it say yes that it was. A. I don't remember.

By Mr. Ferris:

Q. That was when? A. Monday.

Q. Last Monday? A. Last Monday.

Q. That is a week ago from yesterday? A. Yes.

Q. A matter of eight days? A. Yes, on the ninth I started.

Q. And you say now that you have no recollection whether you discussed the matter of your compensation with Mr. Hendricks then or not, is that correct? A. It was on Thursday.

Q. Yes or no, please, do you say so? A. Well, I should imagine he knows what my rate is.

Mr. Ferris: I move to strike that out as not responsive.

The Court: That is not responsive.

Q. Now, will you answer the question please? A. I wouldn't say whether I discussed the rate with him or not, but perhaps I did. He may have asked me and I would have told him my rate.

Q. My question is concerning your recollection, madam. Have you now any present recollection that eight days ago, when you were employed by Mr. Hendricks, that you discussed with him the matter of your compensation? Yes or no? A. Not on Monday because I received——

By the Court:

Q. Any time? A. Well, your Honor, if he wants to know how much I get a day——

Q. Did you discuss it with him any time that is the question now. A. I will tell him what my rate is a day. My rate is twelve dollars a day.

Q. If you don't pay some attention to me you are in difficulty, madam. A. Your Honor, I don't know how to answer you.

Q. It is a very simple question.

(Question repeated by stenographer.)

A. I don't recall but my rate is twelve dollars a day if that is the answer.

By Mr. Ferris:

Q. You have no recollection as to whether you did or did not discuss it? A. I don't know whether I told him what my rate is.

Q. Now, you say you were sent to see Mr. Avery pursuant to instructions given to you by someone, don't you? A. Mr. Hendricks.

Q. What did he tell you to do? A. The only thing he told me to do was to locate the servants, where they lived.

Q. Did he discuss with you what grounds had been urged as a basis for preventing the probate of this will? Yes or no? A. No, he did not.

Q. And you discussed that question with no one whatever, did you, at any time? A. Would you mind repeating that question?

(Question repeated by stenographer.)

A. No.

Q. Before you mounted the witness-stand you have no knowledge as to what grounds were being urged in opposition to the probate of the will, did you? A. I knew nothing of the contents of the will at all.

Q. I have not asked you that.

(Question repeated by stenographer.)

A. No, I did not.

Q. What instructions did Mr. Hendrick give you before you went to see either Avery or Pearce? A. Only told me to locate the servants, where they lived, and the addresses, but he did not tell me to interview them.

Q. What servants did he tell you to locate? Give me their names. A. He told me to locate Nora Reilly, Mary Cavanaugh, Mary Conroy, and Delia Mullins.

Q. Did he tell you that Mary Conroy was employed by Mr. Fred Squier? Yes or no? A. Yes, that was the servant up there.

Q. No. I am asking you if Mr. Hendrick told you that Mary Conroy was employed by Mr. Fred Squier? A. Oh, no. I ascertained that myself.

Q. Oh, you did? A. Yes.

Q. When did you talk to Mr. Hendrick again after the Monday you have testified about? A. I never saw Mr. Hendrick until yesterday morning.

Q. Did you talk to Mr. Hendrick since eight days ago? A. I don't think—I don't believe I have.

Q. Did you talk with anyone in the office of either Mr. Maxson or Mr. Hendrick? A. No.

Q. Since a week ago yesterday? A. No one in the office.

Q. When did you first make your report as to the result of your investigation? A. I haven't given them all my report yet. I gave Mr. Hendrick some of my report yesterday morning.

Q. When is my question? A. Yesterday morning.

Q. Mr. Hendrick at no time before he sent you on this errand of locating witnesses, did he tell you that Mary Conroy was employed in Fred C. Squier's home? A. No, sir, he didn't.

Q. He didn't tell you that Mary Conroy was to be produced here by the Squiers at this trial, did he? A. No, sir.

Q. You had no knowledge of that? A. No, sir.

Q. Now, of course, all this conversation that you have testified to verbatim you wrote down after you left the place and after you had interviewed these two gentlemen, didn't you? A. I base my notes, yes.

Q. Where are those notes? A. Well, I haven't them with me.

Q. Produce them. A. I haven't them with me.

Q. I thought you said you had them? A. Oh, no.

Q. Where are they? A. My notes are at home.

Q. Your home is where? A. In Perth Amboy.

Q. When did you write out those notes? A. I dictated my report Sunday.

Q. Have you a stenographer? A. I have.

Q. Do you have an office? A. In my home.

Q. Your office is in your home? A. Yes.

Q. What is the name of the stenographer to whom you dictated your report? A. Miss Mollie Salmon.

Q. Where does she live? A. She lives in South Amboy.

Q. What is the street and number? A. That I couldn't recall. She lives on Main Street. I can't tell you where it is.

Q. What is the telephone number? A. That I couldn't off-handed remember the telephone number.

Q. Does she come to your home every day? A. Not every day.

Q. She comes when you send for her and you have work for her? A. She will be there Wednesday night.

Q. Please answer my question? She comes there when you send for her to work for you, does she not? A. Well, when she comes I usually tell her, don't you know, when I will need her again.

Q. In other words, you never write to her to come?

Q. And so far as you know now you can't recall the telephone number by which you communicate

with her? A. I couldn't off-handed recall the telephone number.

Q. Is she listed in the telephone book? A. Yes, sir, she is.

Q. You are sure of that? A. I am quite positive.

Q. You have looked it up personally in the telephone book? A. Yes, I have.

Q. Now, did you ever read that report after you dictated it? A. I always read my report.

Mr. Ferris: I move to strike it out as not responsive.

The Court: It is not responsive.

A. I did.

Q. How long after you dictated your report did you read it? A. Immediately after.

Q. Have you read it since? Yes or no? A. No.

Q. You read it last when? A. Sunday night I dictated it.

Q. That is this past Sunday night? A. Yes.

Q. You didn't bring it here to refresh your recollection, did you? A. Oh, no.

Q. Your recollection needs no refreshing, does it? A. No, it does not.

Q. You testified accurately? A. I testified——

Q. In conformity with the report you dictated? A. Accurately.

Q. Who is in charge of your office today? A. Well, there is no one. My sister usually takes the telephone calls.

Q. What is the name of your sister? A. My sister's name is Marie Koch.

Q. She lives with you? A. Yes.

Q. Has she access to your reports? A. No, sir.

Q. Where exactly are the reports concerning these two conversations now? A. They are locked up in my desk.

Q. Who has the key to your desk? A. I always carry my own key.

Q. You have it here now with you? A. Yes, sir, I have.

Q. Is the stenographer Miss Soloman there today? A. Oh, no. She works during the day.

Q. She works during the day? A. Yes.

Q. Where does she work during the day? A. She works for Mr. Attorney Coan in South Amboy.

Q. What is Mr. Coan's first name? A. That I couldn't tell you.

Q. How does he spell his name? A. C O A N, I think.

The Court: It is John, isn't it?

A. Yes.

Q. She works for Mr. Coan? A. Yes.

Q. You called her in Sunday evening and dictated this report to her, is that right? A. I didn't call her, no.

Q. How did she happen to come to your house Sunday night? A. She called me, don't you see——

Q. She called you? A. Yes.

Mr. Maxson: I submit the question was how did she happen to come there. Counsel has had all sorts of latitude in this examination.

The Court: I have accorded the same to you, Mr. Maxson. I make no distinction between Counsel at all.

A. Well, you see, she went to the automobile show, she was expected to take my dictation on Saturday and she phoned me from Newark saying that she had gone there and that she would be at my house Monday—Sunday at one o'clock, and she was, and she stayed until ten-thirty Sunday night.

Q. Sunday noon at one o'clock? A. One o'clock noon Sunday and she stayed at my house until 10.30 Sunday night.

Q. You have not been subpoenaed to come here, have you? A. Oh, no.

Q. You came here. No part of your testimony that you have given here is affected in the slightest degree by your expectation of compensation, is it, madam? A. Oh, no, sir.

Q. Not the slightest? A. No, sir.

Q. Now, when you went in there to see Mr. Avery as I understand all that you desired to know was the address of these witnesses? A. That was just exactly what I wanted.

Q. And when you went there you had no knowledge whatever that anyone was urging that Mr. Edwin M. Squier the deceased was mentally incompetent? A. No, I did not.

Q. When did you first learn that fact if you ever learned it? A. Yes, I did. The way I learned it was people said he was queer and had very peculiarities. Why, you would even speak to a car man they asked outright, I said he was a tall man. Oh, they said that is that big man that smoked so every time you would see him he was smoking and he is always handing his cigarettes out and saying these are ten cent cigarettes. Of course naturally I never knew Mr. Squier and it was only—I would just like you would send me out, I went out to get

information and I didn't ask anyone if he was mentally wrong. That would be a terrible thing.

Mr. Ferris: I move to strike out the entire answer as not responsive.

The Court: I will allow it.

(Question repeated by stenographer.)

The Court: She is describing.

Mr. Ferris: I want the time, sir. My question was when.

Q. When did you first learn that anyone was urging in this contest that Mr. Squier was mentally incompetent? Give me the time?

The Court: When she started to make this investigation.

Mr. Ferris: I have not heard her say so.

The Court: I have heard it. I understand that answer fits in with the whole story she is telling and she found it out when she started to make this investigation and then she said people told her, carmen and everybody else, how peculiar he was.

Q. When did you start making this investigation? A. Monday.

Q. Whom did you interview? A. Why, the first person that I interviewed was Mr. Finnerity at the West End Garage.

Q. Where? A. In Rahway.

Q. Who was the next?

The Court: Now, we are spending a lot of time on testimony indicating the testator was queer. If you keep on we will all be queer,

myself included. I think we are going entirely too far in spending too much time on it. This is part and parcel of the case which the other side is going to make. Just a queer thing by itself alone——

Mr. Ferris: May I ask your Honor's permission to reserve any further cross examination of this witness until later, in the event that it develops that her testimony becomes material?

The Court: If it appears to become necessary.

Mr. Ferris: That is all I desire.

Q. Have you received any written instructions from anyone concerning what investigation or what duties you were to perform in connection with this investigation? A. No, sir. The only thing that I received was a check as I told you Monday morning.

Mr. Ferris: That is all.

Mr. Ferris: Will your Honor instruct this witness to remain within the jurisdiction of the court for further cross examination?

The Court: She will remain within the jurisdiction of the court.

Mr. Maxson: You will have no difficulty in getting this witness.

The Court: Her business is investigation. Her business is investigating, and she is not going to go away. She will stay right here. No danger about that. Do you want her any more today?

Mr. Ferris: I hardly think so. I cannot tell.

Witness: I will remain right outside.

Mr. Ferris: I assume Mr. Maxson is going to call all the people in the courtroom today?

Mr. Maxson: Mary Cavanaugh.

Mrs. O'Grady: She is sick in the hospital.

The Court: Whereabouts?

Mrs. O'Grady: St. Mary's Hospital in Hoboken.

The Court: In Hoboken?

Mrs. O'Grady: Yes.

Mr. Maxson: I understood that witness would be produced.

Mr. Ferris. No. You did not understand any such thing.

Mr. Maxson: All right. I do not want to have any difference. If I am mistaken I am very sorry.

Mr. Ferris: Permit me to say you are mistaken, Mr. Maxson.

Mr. Maxson: Thank you.

DELIA O'GRADY produced on behalf of the appellant, being duly sworn according to law, on her oath says:

Direct Examination by Mr. Maxson:

Q. You say your sister is ill? A. Yes.

Q. And in the hospital? A. Yes.

Q. Was she served with a subpoena to come here today? A. Yes; at my house, yesterday.

Q. Do you know Mary Conroy? A. Yes.

Q. Does she live with you? A. Yes.

Q. All right.

The Court: And the sister you speak of, her name is what?

A. Mary Cavanaugh.

The Court: Mary Cavanaugh.

Q. What was your maiden name? A. Delia Cavanaugh.

Q. And did you work at Mr. Squier's? A. Yes.

Q. And for how many years? A. Six years.

Q. And up to the time of his death? A. No; ten years ago since I worked there.

Q. So I see. You lived there ten years ago? A. Yes.

Q. Where did you last meet Mary Conroy, if you remember? A. Well, about a month ago she was to see me.

Q. She came to your house, did she? A. Yes; I know her well, see?

Q. Was your sister there at that time? A. Yes.

Q. Anyone else there? A. My aunt was there, too.

Q. What is her name? A. Nora Reilly.

Q. How often did Mary come up to see you? A. Well, maybe every two or three months or so.

Q. She has known where you were ever since—— A. Yes.

Q. (continuing) You left? A. Yes.

Q. Did you have any conversation with her about the Squier family or about this will contest? A. No, sir.

Q. Have you seen her since the will contest started? A. Yes; a couple of times in the summer time, and a couple of months ago.

Q. When did she speak to you about the Squier will contest, if you remember?

Mr. Ferris: I object.

A. She has not really said anything about that, only of course——

Mr. Ferris: I object to the question on the ground——

The Court: She has answered she did not talk to her.

Mr. Ferris: All right.

The Court: Sometimes, if you listen when they answer you will save yourself a lot of trouble. Go on.

A. She has not really said anything concerning the will or anything, but she knows——

Mr. Ferris: Speak a little louder.

A. She knows I know she was left the money and all. And I just asked her a couple of times did she get the money yet and she said no.

Q. Is that the only conversation you had with her—— A. That is the only conversation.

Q. (continuing) About the Squier estate? That is all.

Cross Examination by Mr. Ferris:

Q. Are you sure it was only a month ago that Mary Conroy called to see you? A. Yes; about a month ago. I think so.

Q. Was it before Christmas? A. No; I think it was a couple days after Christmas.

Q. After Christmas. You know Christmas is less than a month ago, isn't it? A. Well, I really can't recall, but I know it isn't very long ago.

Q. Have you any children? Yes; two.

Q. Did you have a Christmas tree for them? A. Yes.

Q. Was Mary there at the same time the Christmas tree was there? A. No; she didn't come. It is such a long journey. I live in Hoboken, see?

Q. I mean, when she called there was the Christmas tree still up? A. Yes.

Q. Are you sure? A. It was up to the other day.

Q. What is the matter with your sister? A. She really don't know until today. She had an X-ray taken of her side. She had a pain in her side.

Q. When was she served with the subpoena? A. Yesterday afternoon about four o'clock.

Q. Where? A. In my house.

Q. In your house? A. Yes.

Q. And she has been taken to the hospital since? A. Thursday she was in the hospital before that; last Thursday.

Q. She was at your home yesterday when she was served with a subpoena? A. No; she wasn't home.

The Court: Why all of this?

Mr. Ferris: All right. No further questions.

Mr. Maxson: That is all.

NORA REILLY, a witness produced on behalf of the appellant, being duly sworn according to law, on her oath says:

Direct Examination by Mr. Maxson:

A. That is my full name.

Q. How long were you with Mr. Squier? A. I want to come near. I am hard of hearing.

Q. All right. How long were you with Mr. Squier? A. I was nineteen years in the family.

Q. And were you with him at the time of his death? A. Yes.

Q. And did you stay with the family after his death? A. Yes, until the time that I had to go.

Q. I see. When did you leave the family? A. 27th of May.

Q. Then where did you go to live? A. I went to Hoboken. 58 Eleventh Street, Hoboken.

Q. To live with some friends or with some other family? A. With my niece.

Q. Who was just on the witness-stand? A. Yes; that is the very one.

Q. Are you still living with her? A. Yes.

Q. During the latter part of Mr. Squier's life what were your duties? A. Cook.

Q. I see. Have anything to do with the upstairs part of the house? A. Nothing at all; ain't whatever.

Q. Did you know who was visiting the house? A. Mr. Squier was.

Q. No. I mean did you know who visited Mr. Squier? A. Oh, no; no.

Q. You do not know anything about that at all? A. No; I don't know anything about that at all. I

was in the kitchen. I didn't see Mr. Squier's people in and out or nobody. I can't say.

Q. Have you talked to anybody about this case at all? A. Not one word, or anybody have I seen since the day I left Mr. Squier's house.

Q. Talked to anybody before you went—before you came here today in court? A. No; no.

Q. Have you seen Mr. Houghton or anybody? A. I haven't seen anybody now. Not one.

Q. Have you seen Mary Conroy? A. Yes; I seen Mary Conroy, but not spoke about—she doesn't know nothing about anything more than I do, what we could talk about.

Q. You had some conversation with her about the will, didn't you? A. Oh, no; no.

Q. How often have you seen her since you left Rahway? A. Oh, about once or twice, I should say. One I think.

Q. Came up to call on you? A. Yes; she was acquainted, and that's all.

Q. She knew where you were all the time? A. I don't know whether she knew or not. She was away all summer. Whether she knew where I was all the time or not; couldn't tell you that.

Mr. Maxson: All right.

Mr. Ferris: No cross examination.

Q. Do you know whether there was any liquor in the house during the time you were there? A. What did you say? I can't answer until I know what——

The Court: That's all right.

Q. Do you know whether there was any wine or liquor in the house while you were there? A. No. I don't know nothing about Mr. Squier's private affairs or business. I will say that. I had enough to do in my kitchen and I didn't know anything at all about it.

Q. You do not want to testify about that? A. No; I have no testimony to give, because I don't know. I will tell you the truth, I cannot tell you anything about his private affairs at all.

Q. I am told you are a very good cook. Didn't you ever use any sherry in your cooking? A. Well, I don't know about sherry. Not very much so. It is not—I do just plain cooking; nothing at all out of it. Mrs. W. C. Squier employed me. And I have the same kind of cooking; nothing fancy. Good plain, plenty of food.

Q. Well, there was some wines and liquor in there? There were wines and liquors in the house. weren't there? A. I don't know. I don't know his private affairs.

The Court: I guess that is admitted.

Mr. Ferris: It is admitted.

Mr. Maxson: What time is your Honor going to take an adjournment?

The Court thereupon adjourned for lunch until this afternoon at 1:30 o'clock, P. M.

The Court reconvened at 1:40 p. m., pursuant to recess taken, same counsel and same parties being present.

Augustus S. Houghton—For Appellant-Contestant
Direct

AUGUSTUS S. HOUGHTON, a witness produced on behalf of the appellants being duly sworn according to law, on his oath says:

Direct Examination by Mr. Maxson:

Q. Your residence on the record, Mr. Houghton. A. No. 136 Seventy-Fourth Street.

Q. New York? A. Yes. Temporarily staying at 14 Sixtieth Street, New York.

Q. You are a practising attorney of the New York Bar? A. I am.

Q. A member of the New Jersey Bar? A. I am not.

Q. How long have you been a member of the New York Bar? A. 1891; April, I think.

Q. 1891. And Mrs. Houghton is one of the Squier family? A. She is.

Q. And of which branch of the family? A. She is a daughter of Stewart Squier.

Q. And may I ask when you were married? A. November 2, 1896.

Q. Haven't you been acquainted with any of the members of the Squier family before you met Mrs. Houghton? A. No.

Q. When did you first become acquainted with Mr. Edwin Squier, the testator? A. Either '92 or '93; 1892 or 1893.

Q. And in connection with what matter, if you remember? A. I think I met him at the house of Mr. Stewart Squier, at Monmouth Beach.

Q. You represented him, didn't you, in his lifetime? A. Not personally; no.

Q. You never represented him as his attorney personally? A. Not until I drew the will.

Q. Previous to that time do you know who did represent him? A. I don't.

Q. Have your firm done any work for him? A. I am mistaken about that. There was a claim some time around 1912—1910 that we had for him in the office. I had forgotten that.

Q. When you say—I think my question was addressed to personal representation. A. Yes.

Q. Now, did you or your firm ever represent him in a representative capacity? A. Yes.

Q. In what capacity? A. First in the probate of the will of William C. Squier in 1906. Then as attorney for the trustees and executors under that will which has continued down to date. Then my firm or myself (I did most of the work) represented the executors and trustees under the will of Catherine C. Squier who died in 1913, and continued as attorney for that estate until it was settled, I think, 1915 or '16. Then I represented the administrators Frederick C. Squier and Edwin M. Squier as administrator of the estate of William C. Squier, Jr., which was in 1915. I think he died in July 1915.

Q. And then you continued to represent him until his death in those capacities? A. Well, only as long as those capacities existed, yes.

Q. Did I understand you to say that the estate of Catherine C. Squier was wound up in 1915? A. Approximately '15 or approximately '16 with the death—it was in 1915, with the death of William C. Squier, Jr., because a trust was created for him under her will.

Q. Was an accounting of the executors and trustees made in 1915?

Mr. Ferris: I object to that as immaterial, incompetent, and irrelevant. It is not one of the issues here. It is one of the issues in the other action we have spoken of.

Mr. Maxson: May it please the court I again offer the will of Catherine C. Squier?

Mr. Ferris: I object to that.

Mr. Maxson: Well,——

Mr. Ferris: Pardon me. I thought you had finished.

Mr. Maxson: Wait until I finish. I offer the will of Catherine C. Squier, and may I ask if your Honor will have it produced and examined for the purpose of this offer?

Mr. Maxson: The will, as it appears from the testimony of some of these witnesses, was read by Mr. Houghton after the death, and at that time he made an explanation, or rather an interpretation of the terms of the will, to the next of kin or the devisees under the will, in the house. If your Honor will remember there has been quite some testimony in the case about an incident which happened there at that time.

The Court: Yes.

Mr. Maxson: She said, according to the testimony of some of the witnesses, that the testator had made no provision for the contestant in his will, Charles Burnham Squier, because he had had his full share of his grandfather's estate. We are prepared to show that that was a mistake of fact, from the instrument. We are contending that the effect of that declaration by Mr. Houghton, and it

went to Mr. Edwin Squier, the testator, was for him to assume that that was true. Now, if it were true, it might have had a serious effect on the disposition of his estate, and when we show, as I think we can, to your Honor, as a matter of law, that that was a mistake of fact, then Mr. Edwin Squier, the testator, in making this will, was laboring under a mistake with respect to the interest that our client had in the estate. I want to ask Mr. Houghton one more question before I renew the offer.

By Mr. Maxson:

Q. Did you draw the will of Catherine C. Squier? A. I did.

Q. And you, after her death read the will to the family? A. I did.

Q. And were they all there? A. I think they were all there except Mrs. Edson.

Q. The sons were all there, were they? A. Yes. Those that were surviving.

Q. All that survived him? A. Yes.

Q. Mr. Charles Squier had died before his father? A. Yes.

Q. And at that time did you make some explanation, give some interpretation of the terms of that will?

Mr. Ferris: I object to that as calling for a conclusion.

The Court: It asks him whether he did make an interpretation of the will.

Mr. Ferris: I think the proper question would be to ask him what he stated, because that incorporates a legal conclusion.

The Court: You may put it in another way but so far as the present question is concerned, it is not objectionable, as I see.

Mr. Ferris: I take an exception.

A. I made no interpretation of the will.

Q. Did you discuss the terms of the will? A. No.

Q. Did you or did you not say at that time that the reason no provision except a fifteen thousand dollar bequest was made to Burnham Squier was because he had had his full interest in the estate from the estate of his grandfather or words to that effect?

Mr. Ferris: I object to that as leading. This is his own witness, and the proper way to ask him is what was said.

The Court: I will allow it. I will allow you an exception.

Mr. Ferris: Prays exception.

A. I did make a statement, yes.

Q. That is not entirely responsive. I asked you whether you made a statement in those words or to that effect. A. Substantially to that effect.

Q. Was Mr. Edwin Squier there present? A. He was.

Mr. Maxson: Now, may it please the Court I again renew my offer of that will.

Mr. Ferris: I object to it.

The Court: The offer is made because of the explanation which you have heretofore made as to how the offer would be competent?

Mr. Maxson: Yes, sir.

The Court: The objection will be sustained to the offer.

Mr. Maxson: May I ask to get your Honor's mind on that. I do not exactly get why the objection is sustained.

The Court: You made your offer upon the theory that Mr. Houghton had made a misstatement of fact and you were going to show that it was a misstatement of fact by the document itself.

Mr. Maxson: Yes, sir. And of course by testimony in furtherance of it, that Mr. Squier, our client, Charles Burnham Squier, the contestant, never did receive a full distributive share of this estate.

Mr. Ferris: Which estate?

The Court: And your offer is further made upon the theory that that misstatement of fact was the reason why, perhaps, Mr. Edwin M. Squier did not remember your client for a larger and greater amount?

Mr. Maxson: Not the sole reason. I say that that is one of the facts that may have influenced his mind in cutting Mr. Charles Burnham Squier, who was one of the natural objects of his bounty, out of his will. And, of course, your Honor will bear in mind the fact that Mr. Houghton was a member of the family, that Mrs. Houghton had an interest in the estate, that he was in a confidential relation with the testator at the time he made these statements. It seems to me that that is clearly an element in this case. I do not mean to say that it is determinative of the issue, but it is

one of the things which we claim may have gone to influence the making of this document.

The Court: Well, there are a great many other things that may have gone to influence the testator. I do not see how it is material at all, and hence my sustaining the objection.

Q. You have testified that you drew Mr. Edwin Squier's will also. A. I haven't testified, but I did.

Q. Well, I didn't know whether you had or not. but you did draw it? A. I did.

Q. I think it was stipulated on the record, wasn't it, here in the proceedings? A. I think Mr. Shepard testified to that.

The Court: Whether it was or not.

Q. At any rate it is a fact.

The Court: Now says that he did draw it.

Q. There was a clause——

The Court: Speaking now of Edwin Squier's will.

Mr. Maxson: Beg your pardon.

The Court: Speaking now of Edwin Squier's will.

Mr. Maxson: Yes, the will now in controversy here.

Q. Now, in an affidavit which you made in that celebrated New York proceeding, you said as follows: (This is on page 10 of the affidavit.)

Mr. Ferris: Will you just wait until I get it.

Mr. Maxson: Yes.

Mr. Ferris: Go ahead. It does not matter. Let us not waste time.

Q. You referred to the contestant, the opponent of this will, and what he said, and then you go on and say: "I explained to him immediately in the presence of his other relatives that his grandmother had considered that he had received all the share of his father at the time of his grandfather's death, and that under the terms of his grandfather's will he would further receive the full share that his father would have received upon the death of such of his uncles who died without issue on account of the distribution of the trusts which had been established for their benefit in the will of his grandfather?" Now is that what you said? A. In this affidavit or at that time?

Q. No. At that time? A. Substantially.

Q. Now, I call your attention to copy of the will of Edwin M. Squier and ask you whether the provision on page 2, which is in brackets, lead pencil brackets, does not carry out that statement which you made at the time of the reading of Catherine C. Squier's will?

Mr. Ferris: I object to that. The paper states for itself, and it is for your Honor to determine whether it does or not.

The Court: You are asking for an interpretation?

Mr. Ferris: Yes.

Mr. Maxson: I am asking him whether that was not in furtherance of the situation which

arose, which he explained at the time of the reading of the grandmother's will?

The Court: How am I interested in that, if it is so?

Mr. Maxson: I want to get this witness's attitude on it.

The Court: I know, but you do not want to get it unless it is of some benefit to me.

Mr. Maxson: Well, the state of mind of this witness is decidedly a benefit to your Honor. It is one of the elements in this case, one of the issues in this case.

The Court: I do not see that at all.

Mr. Maxson: Well, under——

The Court: I cannot see how; if his answer was yes or no, how it would help me any in this case.

Q. Didn't you discuss with Mr. Edwin Squier that fact or that which you had stated as a fact that his mother had not made the provision for our client for the reasons which you have stated.

Mr. Ferris: I object to that.

The Court: Now, Mr. Maxson, your case is predicated either upon the reasons in the first petition: unsoundless of mind, undue influence, or undue execution; or it is predicated upon the amended petition, which charges a conspiracy. If you had made out, up to this time, by evidence, something which might be regarded as a conspiracy between this witness and some others, it may be that the present offer of testimony would have some bearing.

But of course one man cannot conspire alone. That is impossible.

Mr. Maxson: May it please the court——

The Court: And so far I don't recall any testimony of any agreement or arrangement between at least two, if not four, persons to enter into a conspiracy. I can't see how this question is at all material.

Mr. Maxson: You have got, haven't you, to begin, I say respectfully to the court, to prove any conspiracy by first showing the participation of one of the parties. Now, that goes to show that fact.

The Court: Yes. But the testimony you are now seeking to elicit from this witness is some statement that he made of interpretations of wills, or reasons rather why your client was not left the same amount of money as some others in certain wills, which statement was to the effect that he had been remembered in some other will, and that in another will he was to get the full share of his father. Now suppose he did say all those things. Suppose he was all wrong about it? Does not prove any conspiracy, nor has it any of the earmarks of an attempt, by him, together with some others, to conspire to injure your client in the mind of the testator here, Edwin C. Squier. Besides that, the testimony as directed towards certain documents concerning which this witness made explanations. Now, how anybody can be misled, even this testator, by any statements that you or I or this witness might make concerning the contents of papers, documents,

which he himself could read, I do not know. I do not know how it can be done.

Mr. Maxson: This witness——

The Court: Suppose he did say that this client of yours was to be—or had been remembered or would be remembered in some other will not yet in existence, or that the provisions of some will which he was then reading contained this or that or the other thing, and for reasons which he claims to have known, and no one else knew? I do not see how that could possibly mislead Mr. Squier, the deceased.

Mr. Maxson: If it please your Honor in the case perhaps of an ordinary attorney, yes. But Mr. Houghton was in quite a different position. He was a member of the Squier family by marriage.

The Court: Yes.

Mr. Maxson: He had represented the grandfather's estate to a certain extent; he had represented them all as trustees and executors under these different wills. He was in a position of more than ordinary confidence with these people. Now when he rises and makes a mistake about the effects of a will, as we will be able to show your Honor, this testator would naturally rely on what he said about it.

The Court: Can you show by any evidence that he did so rely?

Mr. Maxson: We say that it is to be presumed that he relied on it, especially when, may it please your Honor, especially when this will we are contesting here has this very clause in it, showing that he had it in mind.

The Court: There is no presumption one man relies on another's statement; not at all.

Mr. Maxson: Here is evidence from which your Honor, anybody, must draw the inference he had it in mind when he put it in his will. His will says "I make no further provision directly or indirectly for my nephew, Charles Burnham Squier as he was and will be the sole beneficiary in the interest of his father, if living, would have received from the trust created by the will of his father——

Mr. Ferris: Of my father.

Mr. Maxson: Of my father, William C. Squier.

The Court: Well?

Mr. Maxson: Well, we say that is a mistake of fact.

The Court: You say he made the same mistake Mr. Houghton made?

Mr. Maxson: I say when your Honor examined these documents that you are going to find as a matter of law that it was a mistake of fact in construction, and we are going to further show you by direct evidence that he never did receive these interests. He never could have received them under those wills.

The Court: Well, I know, but Mr. Maxson, suppose you do show that to me, do you think I can sit down then and make Mr. Squier's will for him?

Mr. Maxson: What we say is that Mr. Houghton was in a confidential relation with him; that he drew all these wills; that, as it appears, he had an office with Mr. Houghton in New York, was with him early in his life the

whole week, all the days of the week, and laterally three days a week, Mondays, Wednesdays and Fridays, regularly, and that the will was drawn in Mr. Houghton's office, was witnessed by three of his firm. Now, the effect of that is, as we say, under the authority of the Cooper case, is to shift the burden of proof in this case. That is the purpose of it. It is not to have your Honor declare, on that evidence, or on the interpretation of these documents, that this is not a good instrument. It seems to me that this situation here presented, beginning with the will of Catherine C. Squier and coming down to the present time, brings this case on all fours with the Cooper case, and the other authorities with which your Honor is familiar, that followed and preceded that case in New Jersey.

The Court: Was that the Morristown case?

Mr. Maxson: I do not remember where the situs of the case was. It is reported in 75 Equity.

The Court: I remember the facts.

Mr. Maxson: I am not discussing with your Honor the main issue in this case as to whether or not this is a good document. I am discussing what we are concerned about now is whether or not the burden of proof shifts under the authority of these cases on this testimony.

The Court: Yes. Where you show a confidential relationship so strong that it might have affected the exercise of free will on the part of the deceased, the burden, of course, is shifted to show that that did not happen. But

what I am still putting to you is this: That I do not see at this time, even with the things that you have recited, and which I have in mind, and they are all correct as you recited them, where there is anything like what we call in law a confidential relationship between Mr. Houghton and the deceased, so far.

Mr. Maxson: Of course there is not anything in this case to show, but I think we will be able to show that the testator had no independent advice with respect to the making of this will.

The Court: Even so.

Mr. Maxson: Of course that is our idea of the law.

The Court: That is what happens as a rule. A man goes to a lawyer and has his will drawn and he has no further advice than the advice of that particular lawyer, as a rule. Whether he be a relative or not makes no difference.

(Question repeated by stenographer.)

The Court: I will allow that question. A. May I see that?

The Court: Yes.

Mr. Ferris: I object to that question.

The Court: Yes, you may object.

Mr. Ferris: May I have an exception?

The Court: Yes. I want to remind you that exceptions in New Jersey are not worth much unless you give the ground of the objection.

Mr. Ferris: I had better state the ground. That is the rule in our state also. I will not object to that question, but I ask that it be answered only yes or no.

The Court: I will direct you to answer that yes or no.

A. No. Not other than at the time of the funeral.

By the Court:

Q. How do I understand that? A. I did not want to contradict myself, your Honor. I have already testified that I made substantially that statement when I read the will. Now, he asked me if I made that statement to Mr. Squier. And I say no, except at the time of the reading of the will. I made it then because he was present.

The Court: Oh, yes. Go on.

By Mr. Maxson:

Q. Did Mr. Squier give you the direction for the making of this will at your office in New York? A. He did.

Q. And how long before you drew it? A. He gave me a paper with his instructions on it perhaps—I think on the second of July, on Friday, four days before be executed it.

Q. Have you that paper? A. I have.

Q. In his handwriting? A. It is.

Q. May we see it? A. Certainly. (Witness produces two sheets of paper.)

Mr. Maxson: Will your Honor pardon us for a moment while we examine it?

The Court: I do not like to do that. Suppose you let your assistant examine it, your associate, so that we do not lose too much time.

Mr. Maxson: All right.

By Mr. Maxson:

Q. Is this all there was to it? A. That is all there was to it.

Mr. Maxson: I offer it in evidence.

Mr. Ferris: No objection. The two sheets may be marked as one exhibit?

The Court: Yes.

(Two sheets entered in evidence and marked Exhibit D-4.)

Q. Is that all the direction you received for the preparation of this will which is here in controversy? A. After I made the first draft I had a talk with Mr. Squier which resulted in my adding to the provisions of the will that section you were just asking me about with relation to the reason why he made no further provision.

Q. And did you suggest that to him? A. No. He brought it up and then I suggested that it be put in the will.

Q. It does not appear in these notes which he originally gave you, does it? A. I just said that it did not.

Q. How soon after you received the notes did you discuss this certain provision of the will that we are talking about, to Mr. Squier? A. It was on the morning after—it was Tuesday morning, the sixth, the morning that was executed.

Q. Then you hadn't drawn the will on Tuesday the sixth? A. I told you I had drawn a draft and submitted it to him.

Q. When did you submit it to him? A. Tuesday morning.

Q. What time did he arrive in New York? A. He generally got to the office half-past nine.

Q. Well, what time did he get there that morning? A. I don't remember.

Q. What time was the will executed? A. Somewhere around noon if I remember rightly.

Q. And you don't know what time he reached there? A. I say around half-past nine. He took that eight-twenty-nine train from Rahway that got him in about half-past nine.

Q. Then did he come in to see you immediately on his arrival? A. No. I went to him in his office.

Q. For what purpose? A. To show him the draft of the will.

Q. Anybody present beside you and Mr. Squier? A. Not at that time, no.

Q. Did you call his attention to the fact that he had overlooked this provision? A. I did not.

Q. Did he call your attention to the fact that he had overlooked it? A. No.

Q. Then who originated this provision of the will? A. I told you that he spoke to me about it first, he brought it up.

Q. I have just asked you whether he spoke about it. A. You asked about the omission from the will. There was no omission from the will. I was answering your question.

Q. Then let us get back to the subject. Leave the will out. A. Yes.

Q. When he got there did he send for you? A. No. I went into his room.

Q. For what purpose? A. To submit to him the draft of the will that I had prepared at his instructions.

Q. Did it include this provision?

The Court: No.

A. It didn't.

Q. Did he call your attention to the fact that it did not include it? A. He did not.

Q. You called his attention to the fact that it did not include it? A. I am trying to explain to you, Mr. Maxson, that he raised the subject. He did not say it was not included in the will. He raised that question.

Q. Now, let us find out what he said. What did he say to you? A. He told me that he did not wish to leave Burnham Squier any more than he had to, that I knew the reasons; and he also had in mind that Burnham Squier would obtain from the trust created by William C. Squier for Edwin M. Squier the share that Burnham Squier's father would have taken, if living, as Edwin M. Squier was not married, and he would not, therefore, leave issue.

Q. Did he ask you whether or not that was so with respect to the distribution of these estates? A. No. He made that statement.

Q. Did you tell him it was not so? A. I accepted his statement as he made it.

Q. You were advising him at the time? A. I was not advising him.

Q. You were drawing his will? A. I was not advising him.

Q. Weren't you advising him with respect to the provisions of this will which you drew for him? A. No. He told me to draw the will. He gave me the instructions. I did not advise him how to draw his will.

Q. If he made a statement of a fact, which you knew was not true, didn't you think that it was your duty to call his attention to it?

Mr. Ferris: I object to that question on the ground that there is nothing in the testimony of this witness to show that the statement made by Mr. Edwin M. Squier was not true. And on the further ground it is an attempt to impeach his own witness in that regard. He is examining him now as to a conversation had with Edwin M. Squier and he may not impeach him in that fashion. He must first show that the statement was untrue before he can attempt to impeach this witness, as to his motives in sitting by, in case the statement were untrue.

(Question repeated by stenographer.)

The Court: Of course that assumes this witness knew it was not true.

Mr. Maxson: I say if you knew it was not true didn't you consider it was your duty to call his attention to it?

The Court: I sustain the objection. I will allow you an exception.

Q. Did you discuss with him the fact as to whether or not Charles Burnham Squier had received the full share of the estate that his father would have received, if living?

Mr. Ferris: I object to that question on the ground that it incorporates a statement not testified to by this witness. As I recall it, this witness merely testified that Mr. Edwin Squier

said that Burnham Squier, upon the death of Edwin Squier, without issue, would receive the portion of a trust that was created under the will of William C. Squier, for the benefit of Edwin Squier. That Burnham Squier, his father would have received, if he had been living.

The Court: I know all about that.

Mr. Ferris: The question now incorporates a whole different state of facts.

The Court: No, it does not. I will allow the question.

A. May I ask it be read, please?

(Question repeated by stenographer.)

The Court: Answer that yes or no.

A. No.

A. Did he ask you about it? A. No.

Q. What did he say to you about this provision?

The Court: He has already answered that. This witness has answered that. He says what he told him at that time. He has already testified to that.

Mr. Maxson: All right. Are you quite sure that no one was present while this conference was going on?

A. Not this conference; no.

Q. Wasn't Mr. Shepard there? A. He didn't come in until——

Q. At any time? A. You did not ask me that. He was there later; yes.

Q. I mean at any time while this conference was going on with your client? A. I had shown the draft to Mr. Shepard—I think before I showed it to Mr. Squier. Whether Mr. Shepard was present at this particular time that I am testifying about I don't recall, but I had gone over the will with Mr. Shepard before that, rather the draft.

Q. The whole will? A. The draft which I submitted to Mr. Squier when he came in that morning.

Q. Will you point out on this instrument how much of the will was in the draft which you showed to Mr. Shepard? A. As far as I recall, everything except that paragraph which is in brackets.

Q. Did Mr. Edwin Squier explain to you why he hadn't put this provision in his notes which he gave you? A. He did not.

Q. Did you ask him why? A. I did not.

Q. Did Mr. Squier say anything to you about the explanation which you gave the distribution of his mother's estate? A. He did not.

Q. You said under the terms of his grandfather's will he would further receive the full share that his father would have received upon the death of such of his uncles who died without issue, on account of the distribution of the trusts, and so forth, that is what you said? A. On account——

Mr. Ferris: What are you reading from?

Mr. Maxson: I am reading from this affidavit.

Mr. Ferris: Pardon me. What is the date of that affidavit?

Mr. Maxson: What is that question?

[Question repeated by the stenographer.]

At the reading of Catherine C. Squier's will? A. Substantially that; yes.

Q. Yes. Substantially that. Now, is that a fact that he had received or would receive his full share that his father would have received if he had survived?

Mr. Ferris: I object to that, if your Honor please. It is wholly immaterial, incompetent and irrelevant. That is back in 1913. It does not tend to establish any conspiracy. It does not show any attempt to improperly influence the mind of Edwin M. Squier, and certainly is too remote if proved that to the slightest extent, from 1913 to 1926.

Mr. Maxson: Certainly.

Mr. Ferris: Pardon me.

Mr. Maxson: Pardon me.

Mr. Ferris: Furthermore there is no evidence here to indicate that Mr. Edwin M. Squier did not know the very terms of the will of which he was acting as executor and trustee. Now it appears here by uncontradicted testimony that Edwin M. Squier was the executor and trustee of his father's will. Now certainly any statement made by Mr. Houghton could not in anywise deceive, or in any wise tended to have influenced him in making his will. It is quite clear the thing that influenced Edwin Squier, if anything at all, was what Burnham Squier said there; not what Mr. Houghton said.

Mr. Maxson: If it has no further competency, it goes to the witness's credibility.

Mr. Ferris: If that is the purpose, it is his own witness. He has no right to attack his own witness's credibility.

The Court: All of which is true. I have disregarded that rule. I have allowed you to go a great ways——

Mr. Maxson: The rule does not operate when you are examining adverse witnesses, as your Honor knows.

The Court: You call them adverse witnesses, but——

Mr. Maxson: I distinguish between hostile and adverse.

The Court: I know you do. If you called them hostile, I would say I would have something to say about whether they are hostile or not. That is the reason you conveniently call them adverse witnesses. I would first have to find they were hostile before you could find them to be so. I do not know how you call them adverse.

Mr. Maxson: Adverse in interest.

The Court: Adverse because they may have an interest in a will. I would not say for that reason they were adverse. Why do you think they are adverse?

Mr. Maxson: That is the reason I say they are adverse. I evidently disagree with your Honor. It is unfortunate.

The Court: But that is one of the things that judges are subject to, disagreements on the part of counsel.

Mr. Ferris: Certainly.

The Court: With the court as to what it says. I suppose that is why we call it litigation. That is perfectly all right. But I have allowed that rule to be violated right and left. I am going to allow it some more. I do not see why this question should not be answered. I do not see that any of this is going to get us a great ways, really, to be perfectly candid with all of you.

Mr. Ferris: I only make the objection, if your Honor please, because if I sit quiescent here, I may be held, as a matter of law, to have acquiesced in my adversary's efforts to go outside of the realm of what is pertinent in this issue. If your Honor, in his discretion, sees fit to overrule my objection, I will take an exception, and preserve the record.

The Court: That is perfectly all right.

[Question repeated by stenographer.]

The Court: Do you know?

A. Yes.

The Court: You do know about that, as to whether he received it or not?

A. I do know.

The Court: Well, was that a fact?

A. He has, yes.

Q. And does that apply also to the distribution of his grandmother's estate? A. Yes.

Q. He has received his full share that his father would have received if he had survived the grandmother, is that so?

Mr. Ferris: I object to that summary. That is incorrect. That is not what the witness testified to.

Mr. Maxson: Yes. If his father survived.

A. The grandfather's estate?

Mr. Ferris: I make my objection.

The Court: That is the grandfather now. You are talking about the grandfather's will now. I will——

A. The grandmother's will.

The Court: Read the question.

[Question repeated by the stenographer.]

A. Well, I can't speculate on that. The will was made after the son, Charles C. Squier, was dead. I don't know what he would have received if he had been alive.

Q. The will provided a power of distribution, didn't it? I mean, yes, power of disposition.

Mr. Ferris: I——

The Court: The will would speak for itself, and I have ruled that out.

Mr. Ferris: Yes.

Mr. Maxson: What I am concerned to establish is the question as to whether or not this was a mistake.

The Court: Well, now, you can ask that directly.

Q. Was your statement made at the time of the reading of Catherine C. Squier's will accurate or not as to fact? A. As far as I know it was, yet.

Q. Well, I do not understand exactly what you mean by "As far as you know." You know all about that estate, do you not? A. Well, I will say, "Yes," then.

Q. Say, "Yes"? A. If that will please—I will say "Yes".

Q. And that as a matter of law, as well as facts, do you consider it that way? A. That I didn't say.

Mr. Ferris: That I certainly object to.

The Court: He is not offered as an expert, and if he were he might demand a fee before he would testify. Then you would be in trouble.

A. Possibly.

Mr. Maxson: I am assuming your Honor is going to occupy the expert position in this matter.

Q. Now, you go on in this affidavit to which I have already called attention, and say: "In view of that fact as stated to him his grandfather had said that he would receive a good deal more money than any of the other grandchildren of William C. Squier." Did his grandmother say that? A. She did.

The Court: Oh, well!

Q. And to you? A. She did.

The Court: Now, we will have to stop somewhere on this, Mr. Maxson.

Q. Well, then, if that be so—and did you agree to that as a matter of fact?

Mr. Ferris: I object to that, if your Honor please.

The Court: I really don't know what that refers to. This thing has gotten beyond me. The last question?

(Last question repeated by the stenographer.)

Mr. Maxson: He had made the explanation which I read before. I will read it again to your Honor so as to get the context. "I explained to him immediately—that is to Charles Burnham Squier——

The Court: Yes.

Mr. Maxson: (Continuing) The presence of his other relatives that his grandfather had considered that he had received all of his share of his father at the time of his grandfather's death?

The Court: Yes.

Mr. Maxson: (Continuing) And that under the terms of his grandfather's will would receive the full share that his father would have received upon the death of such of his uncles who died without issue, on account of the dis-

tribution of the trusts which had been established for their benefit in the will of the grandfather.

The Court: Yes?

Mr. Maxon: Now, there were trusts in the will of the grandmother and power of disposition. Then he goes on to say: "In view of that fact as stated to him his grandmother had said that he would receive a good deal more money than any of the other grandchildren of William C. Squier." Now, I am asking this witness if he knows whether that is a fact, that he would have received a good deal more money than any of the other of the grandchildren.

The Court: He cannot testify to that. He can only testify that the grandmother said so.

Mr. Maxson: He has already testified to it.

The Court: He is laying that on the grandmother, that the grandmother said that to him.

Mr. Maxson: May I not ask him if that is the fact, what the grandmother said?

The Court: That the grandmother said it to him?

Mr. Maxson: He has testified that he said that to him.

The Court: Well, now——

Mr. Maxson: I am asking him whether or not she was mistaken when she said that.

The Court: Do not let us get back that far, to the grandfather and grandmother. We have been going back too far. The whole family has been mistaken, evidently, from the grandfather and father down.

Mr. Maxson: The very provision of the will caught him——

The Court: Let us leave some one rest in peace. I am not going back into the great grandparents of these people.

Mr. Maxson: We have not got back that far yet.

The Court: We got back to the grandmother. Perhaps in a few more years she may be a great grandmother.

A. She would have been a great, great, if she was alive.

Mr. Maxson: May I find out where we are on the question?

The Court: We are at the point where you want him to testify whether the grandmother told the truth. That is it in effect.

Mr. Maxson: I am not asking that. I am asking him whether he was laboring under a misapprehension.

The Court: How can he tell that?

Mr. Maxson: He can tell it very well, if he wishes to, and if your Honor will permit him to.

Mr. Ferris: I resent that statement. If it appears on the record I ask it be stricken out from the record.

The Court: Do not resent anything. Don't you see the way I am smiling?

Mr. Ferris: It is my law partner that is being attacked.

The Court: After all, when you gentlemen get all wrought up somebody has to smile, so I keep on smiling.

Mr. Maxson: I have been too many years at the Bar to be offensive to a brother attorney on the witness-stand. If any remark I made appears to be so, I am sorry. It is not so intended.

The Court: That is all right.

(Question repeated by the stenographer.)

Mr. Maxson: And your Honor ruled that out?

The Court: Yes, I did not think you ought to ask him that.

Q. You or your firm also represented Mr. Edwin Squier as one of the officers or directors of the New Jersey Zinc Company? A. No.

Q. Did you represent that company? A. Never.

Q. Have anything to do with it? A. Prior to his death?

Q. Yes? Prior to his death? Yes? A. Never.

Q. Was he an officer of the Morris Land & Improvement? Port Morris Land & Improvement Company or a director? A. He was vice president and director.

Q. Did you represent him in that capacity? A. I did not. I represented the company.

Q. I think you testified that you did have some business for him personally in his lifetime? A. I think there was——

The Court: 1910, one case, wasn't it?

A. Yes, the man skipped to Venezuela.

The Court: Never mind what it was. Do not let us try that case. My recollection was it was one personal matter.

Q. Were you associated with him in any other company or concern?

Mr. Ferris: What do you mean by "other?"

Q. Any other corporation?

Mr. Ferris: Well, that assumes that he was associated with him in some other corporation.

Mr. Maxson: I said were you?

The Court: No.

Mr. Maxson: I said were you associated with him in any other corporation?

Mr. Ferris: I am objecting to the word "other."

The Court: The witness was counsel to a company in which the deceased was interested.

Mr. Ferris: All right, Judge.

The Court: Now he wants to know if there were any others. Were there?

A. Yes; I was interested in another company with him.

Q. What company was that? A. Called Shur Loc Elevated Safety Company.

Q. And what was the association? A. I was a director and he was a director.

Q. You were co-director? A. Yes.

Q. Were either of you officers of that company? A. I was secretary and treasurer. I do not recall whether he was possibly a vice—no, no. I don't think he was an officer. He was just a director.

Q. I do not remember whether you have testified as to when Mr. Squier came into your suite of offices or that of your firm? A. May 1st, 1901, when I made the firm of Shepard & Houghton.

The Court: He did testify to that.

Mr. Maxson: I thought perhaps he did.

The Court: When he was on the stand as a witness to the will.

Mr. Ferris: He wasn't on the stand. Mr. Shepard testified to that.

The Court: Oh, Mr. Shepard.

Mr. Ferris: Yes.

The Court: Somebody did, connected with the firm.

Mr. Ferris: Yes.

Q. And he continued in that office until the time of his death, did he not? A. Well, he was with us as a tenant from that time on until his death.

Q. Did he have the same room or change rooms from time to time? A. No; we were in two other buildings during that time.

Q. Was his office connected with yours by connecting door? A. It was.

The Court: Somebody, I think, testified it was.

A. It was.

Q. Did you see him frequently? A. Very frequently.

Q. When he came in there did he come in your office generally to see you? A. He very seldom came into my office. I generally went into his.

Q. Talk to him about these corporation matters? A. Well, what do you mean by "these corporations?"

Q. I mean corporations that you were concerned about with him, in association with him? A. Yes, we talked about those at times.

Q. But never gave him any advice as an attorney? A. No. You mean to him individually, in his individual affairs?

Q. Yes. I mean individually? A. Never as to his individual affairs.

Q. Now, in which one of these estates were you co-trustee with him? A. The estate of William C. Squier.

Q. And whose place did you take? A. I took my father-in-law's place, Mr. Stewart C. Squier.

Q. When? Do you remember? A. Early in 1925. It may have been February. But it is early in 1925.

Q. That substitution came about because of the senior Mr. Squier's incapacity, did it not?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant. What relation has that to this issue?

The Court: I will allow it.

Mr. Ferris: Prays exception.

A. The papers so recite, yes.

Q. I am asking you. A. Yes.

Q. You understand please, that I mean—— A. No. I meant to say yes the papers so recited.

Q. Yes. I don't want to go into unpleasant matters. A. I appreciate that.

Q. Did you give the date when you came in? A. I say I think it was in February, 1925.

Q. Who were your co-trustees? A. Mr. Edwin M. Squier and Mr. Frederick C. Squier.

Q. Did you hold meetings in the administration of the estate? A. Very occasionally only.

Q. Where did you hold them generally? A. Sometimes I would discuss matters with Mr. E. M. Squier in the office and sometimes I would discuss with both of them when I was out at Rahway.

Q. When did you first visit Mr. Squier at Rahway, if you remember, approximately, I mean? I mean Mr. Edwin M. Squier. A. On September 27, 1898.

Q. And did you continue to visit him along during his life? A. Well, I visited the family. He and his father and mother were living then and I used to visit the family occasionally.

Q. Weren't your relations with Edwin M. Squier closer than they were with the other members of the family? A. I wouldn't say that necessarily, except I saw him more frequently because he had an office.

Q. I am not referring to your friendship or anything of that kind, but I mean your relations with him on account of your business connections and the fact that he had an office with you. A. I couldn't say that they were more so excepting that I saw him more frequently than the others, that is all.

Q. Did you visit the other members of the family from time to time? A. Yes.

Q. Visited them as frequently as you visited Mr. Edwin C. Squier? A. No.

Q. How often did you go to Rahway to visit him? A. It varied. Sometimes it would be possibly two or three months, four months, and then when he broke his hip I was out there three times a week and

then for some after that I was out there about once a month. In the last year I don't think I was there more than perhaps two or three times during the twelve months before his death.

Q. You had testified, as I recall it, that Mr. Squier first spoke to you about making a will on the Friday preceding the Fourth of July, 1926, is that so? A. No, I didn't say that. I said that is the day that he gave me these written instructions. You have not asked me that.

Q. Now, had he previously talked to you about making a will? A. He had.

Q. And how long previous to the time when he made it? A. It may have been in 1922, or '23. I can't remember the exact date but it was two or three years before that, or three or four years. I don't recall.

Q. But he did not draw a will at that time? A. He did not.

Q. This is the only will he ever drew as far as you know? A. He told me it was the only will he had ever drawn.

Q. Well, at that time did he give you any notes, I mean in 1922 or 1923 when you talked to him about it? A. He did not.

Q. Do you recall why the will was not made at that time? A. He told me that he was thinking over what disposition to make of certain of his property and he hadn't made up his mind quite yet, and then when he had he would let me know and have me draw the will.

Q. Well, now, did he speak to you again about it before the will was finally drawn? A. No. I spoke to him twice about it.

Q. And on what occasions? A. Oh, perhaps a year apart. I urged upon him the necessity of making a will, so as to avoid having an administrator put up a large bond, as they would have to in his estate. That is all I said.

Q. Where did that conversation take place? A. In the office.

Q. How many occasions? A. I think perhaps twice. Between the first time he spoke to me and the time of July 2, 1926.

Q. Now, just previous to the making of this will, just previous to the second of July, 1926, did you talk to him about it again? A. No.

Didn't I understand you to say that you had had some conversation about the making of this will before the Friday when you received these instructions? A. I said I had spoken to him perhaps twice between 1922 or 1923 and the time when he gave me the instructions.

Q. But that did not relate to the preparation of this certain instrument we have here? A. I repeated to you the entire conversation. No.

Q. Did he bring to you these notes which have been offered in evidence? A. Yes, he did.

Q. Exhibit D-4. Are you quite sure these are the only notes he ever gave you? A. I am positive.

Q. When did he hand these to you? A. Sometime during the morning of July 2, 1926.

Q. Did you ever see them before? A. I had not.

Q. Do you know of your knowledge whether Mr. Squier ever brought any notes in to any other member of your firm at any time? A. I do not.

Q. Previous to bringing these in? A. I do not.

Q. If so you were not informed about it? A. I don't know anything about it.

Q. I say, if he did bring such notes in you were not informed about it? A. I was not.

Q. He didn't tell you anything about it? A. He did not.

Q. Have those lead pencil notes on the back anything to do with this memorandum? A. They have, yes. When I read over this memorandum I think I was standing in the outer office, and I said to Mr. Squier, Ed, you have not specified who should be the executors; and he said in this order, I want Harry, Frederick, Will, and yourself; so I wrote down Harry, Fred, "W" for Will, that is my brother-in-law, and "ASH" for myself.

Q. Now, when he handed you these notes did you discuss these different provisions with him? A. No. They are understandable.

Q. Did you say anything to him at that time about the physical condition of your father-in-law, make any suggestions to him about it? A. No.

Q. Didn't your father-in-law have a life estate in one of—under one of the other wills? A. He had a life estate,—no—yes, he had a life estate in the will of William C. Squier only.

Q. Well, did that will precede this one? A. Which one?

Q. Did the will of William C. Squier precede this will of Edwin Squier? A. William C. Squier died in 1906.

Q. This matter is a little complicated to me. A. I don't blame you.

Q. Mr. Stewart C. Squier had been declared incompetent before the making of this will, had he

not? A. He had never been declared incompetent by judicial proceeding but we knew that he was at times incompetent.

Q. Did you discuss his condition with Mr. Edwin Squier when you were getting ready to prepare this will? A. No.

Q. He never said anything to you about it? A. Do you mean at this time?

Q. I mean when you were preparing the draft of the will did he say anything to you about his brother's condition? A. No.

Q. And you said nothing to him about it? A. No.

Q. And he made a provision for his brother, did he not, directly to him? A. One half of the residuary went to his brother, yes.

Q. Without providing any representation for him. A. Yes. He had never been judicially declared unsound.

Q. Well, didn't you think you should have called his attention to that?

Mr. Ferris: I object to that as immaterial incompetent and irrelevant.

The Court: How would that be proper? I will allow him to answer it.

A. I did not.

The Court: To what? What does that refer to?

Mr. Maxson: As I understand it—now I may be mistaken about this, because, as I say, I am in some difficulties about keeping all these different situations in mind—my understand-

ing is that previous to the making of the will of Edwin M. Squier, the testator, Stewart C. Squier had been found to be incompetent, he had not been judicially found to be so——

By Mr. Maxson:

Q. He had been taken out of the administration of some estate, had he not? A. Right.

Mr. Maxson: Because of that condition?

The Court: Yes.

Mr. Maxson: Now, what I am interrogating Mr. Houghton about is whether or not that condition was considered by the testator in the making of this will, if he knows.

The Court:

Q. Was it? A. He knew of this condition.

Q. Was it considered in the making of the will? A. I don't know what his operation of mind was.

Q. Nothing was said about it? A. Nothing was said about it.

Q. Either by you or him? A. No.

Q. Did you think you should have called it to the testator's attention when he was making this will? A. Did not because he knew the situation.

By Mr. Maxson:

Q. He left what he did leave to him absolutely, did he not?

Mr. Ferris: I object to that. The will speaks for itself. It is in evidence.

The Court: Of course it does.

Mr. Maxson: Yes, it does, of course.

Q. You were quite familiar with the old house out there where he lived, of course, were you not? A. Yes, I had been out there a great many times.

Q. Was that the house that was bequeathed to the city of Rahway for a park? A. That is one of the pieces of property, yes.

Q. Where was the other piece, right across the street from it? A. Right across the street, the other corner.

Q. How large were they approximately? A. I think perhaps there was an acre in the homestead, and the same, more or less, on the other corner. I don't know.

Q. Well, they were small pieces of property, were they not? A. Oh, yes.

Q. And they were separate? A. Oh, yes.

Q. Did you discuss that provision with him at all? A. Yes, he gave me his reasons for doing that.

Q. Do you know whether the city of Rahway accepted the bequest?

Mr. Ferris: I object to that.

Q. Or rejected it?

Mr. Ferris: I object to that as immaterial.

The Court: I do not see what benefit that is to me.

Mr. Maxson: All right. I will withdraw the question.

Q. Now, did you discuss any of the other provisions with him? A. No.

Q. On this memorandum you prepared a draft? A. Yes.

Q. And the draft did not include that clause?

The Court: That is what he said. That he put it in afterward, or redrew it.

Q. Did you preserve the draft?

By the Court:

Q. The first draft? A. No. I destroy all drafts after the wills are executed. That is generally, I mean.

By Mr. Maxson:

Q. Did you present that draft to him or read it to him when he came in the office? A. I gave him the draft to read.

Q. In his office. A. Yes.

Q. Did you take it in to him? A. I did.

Q. Did you stay there while he examined it? A. I may have. I don't recall now whether I went out and came back or not.

Q. How long from the time you gave it to him to the time you discussed it with him? A. I am guessing now by the fact it was executed somewhere around twelve o'clock, and it had to be re-drafted, that it must have been very shortly after I gave it to him. Just gauging by the lapse of time between the execution and the time I gave it to him.

Q. As soon as he had examined it did he then call your attention to the fact that it made no explanation of the fact that he made no provision for Charles Burnham Squier?

Mr. Ferris: I object to the question on the ground that it incorporates an incorrect statement of this witness's testimony.

Mr. Maxson: I will withdraw the question and save the Court's time, or try to.

Q. Immediately after he had examined it did he come in to you, or did he send for you? Or you go in to him, if you recall? A. No. I went in. I went in voluntarily.

Q. You found out then he had looked over the draft you had drawn, did you? A. Yes.

Q. Did he say anything to you about it? A. Yes, he brought up this question of the bequest to Burnham Squier and the reason why he had made it that amount, and he asked me if I thought the will was all right.

Q. What did you say? A. I told him it was his property and he was justified in doing what he pleased with it.

Q. Did you say anything to him at that time about his mother's estate? A. No.

Q. Did he recall to you anything about that statement which you had made at the time of the reading of his mother's will? A. No.

Q. Did he ever say anything to you about that? A. Well, not for over ten years, I should say. I am guessing at it, but it is a very long time after his mother's death.

Q. Who was responsible for the wording of this clause that we are discussing here? "I make no further provision directly or indirectly for my nephew Charles Burnham Squier as he was and will be a sole beneficiary in the interest of his

father, if living?" A. I suppose I am responsible. I drew it.

Q. And did he tell you to provide that he was and and will be sole beneficiary in the interest of his father? A. Well, that is drawn in accordance with what he asked me to do. Just the exact wording he used I don't know, but I tried to put it into legal form.

Q. Yes. But did he say to you—what words did he use in giving you the directions? A. He spoke of the fact that as his brother Charley had pre-deceased the father, William C. Squier, the son, Burnham Squier had received not only the one-half interest in the residuary, or in the one-fifth of the residuary, to be exact, two-fifteenths of the residuary, which was to be paid to him direct, and he also received the other one-half which was left in trust for Charles Burnham Squier, Sr., because Charles Burnham Squier, Sr., having died, the trust ended, or rather never took effect, but the property left to Charles Burnham Squier, Sr., both outright and in trust, went directly to his issue, which was Burnham Squier, the contestant in this case. Then he spoke of the fact that in this trust created by William C. Squier for Edwin M. Squier that the share which his brother Charles Burnham Squier would have received if he outlived Edwin would be one-third of this trust, and that Burnham Squier, the contestant in this case, would get that one-third, and he has received it since Edwin M. Squier's death. That is what he had reference to.

Q. If you recall what part of that did he say and what part of it is your explanation of what he said? A. I have used the names so as to be able to have

you follow it. He said very briefly, Burnham will get Charley's share in my trust. But I knew you would not understand it, so I elaborated it a little bit.

Q. And that is all he did say? A. Practically.

Q. Those things which you said in addition to that were, as you say, in elaboration of it to make it understandable? A. Yes.

Q. And it was on that short statement of his that you prepared this provision of the will to which I have been directing you? A. On that short statement and my knowledge of the history of the family.

Q. Do you remember Mr. Houghton going out to Rahway on the morning after Mr. Edwin M. Squier's death? A. I do.

Q. You remained there during the day taking charge of things? A. No. I remained there. I don't say that I took charge of things.

Q. Well, who beside you was there? A. Well, I think Mr. Frederick Squier and Mr. Searles came over and they took charge of things. I think it was Mr. Searles who took entire charge of the funeral arrangements. I had nothing to do with that at all.

Q. At that time did you bring some papers out with you in connection with the estate? A. I brought the office copy of the will.

Q. Anything else? A. Not that I recall.

Q. You had a brief case with you, did you not? A. No. I think I had a bag, with my night things in. I came next day.

Q. The testator died about two o'clock in the morning, as I understand? A. So I understand.

Q. You came about what time? A. I must have taken a train around ten o'clock, because I stopped at the office on the way out, and got the office copy of the will.

Q. And how long did you remain there? A. Either Friday or Saturday.

Q. What day was the funeral? A. Thursday, if I remember rightly.

Q. And was that a house funeral? A. It was.

Q. Or at the church. And which room did you occupy there? A. It seems to me I occupied the room over the front door, over the front hall. That is the room I generally occupied when I was there, but not always.

Q. If you know, was anybody in the room when you got there? I mean, was anybody not actually in the room, but was anybody occupying it.

Q. Who had charge of the rooms? A. Mary, Mary Conroy.

Q. Mary Conroy who was on the stand? A. Yes.

Q. So that when you went to occupy the room you did not find anyone's else baggage in there, did you? A. I don't just recall whether I went to the room before night. I don't recall.

Q. You always occupied that room when you were out there? A. I generally did, except when Mr. Squire broke his hip. Then I occupied the room which Mary Conroy called "over the kitchen." It was to the left of the room as you go up the stairs.

Q. The room was the one directly across the hall from the testator's room, was it not? A. Yes.

Q. Have you testified about these nurses, as to whether or not you knew them? A. I haven't, but I didn't know them.

Q. You did not know either one of them? A. I don't think so.

Q. Or where they came from? A. I didn't know anything about them.

Q. Do you know who got them? A. Only by hearsay.

Q. Do you remember—recall whether you had any conference with Mr. Shepard about those notes, this exhibit D4? A. When?

Q. At any time? A. I don't know whether I showed them to him when I showed him the draft of the will or not.

Q. When did you show him the draft of the will? A. On the morning that I gave it to Mr. Squier, which I think was July 6th.

Q. Had you discussed the making of the will with him previous to that time? A. Yes. You mean Mr. Shepard, do you not?

Q. Yes. I mean Mr. Shepard. A. Yes, yes.

Q. Where have these notes been, if you know, since the testator gave them to you? A. In Mr.—as far as I know—in Mr. Squire's office.

Q. In his safe? A. In the drawer of the table in his room.

Q. Where did you find them before you produced them here today? A. In the drawer of the table.

Q. When did you find them? A. Within the last two weeks I should say.

Q. And are these in his handwriting? A. They are.

Q. Did you have anything to do with retaining these servants personally? A. No, except that the executors at this conference that Mr. Searles testified to this morning as having taken place at his

house, we discussed what we should do with the house with all the valuables in it, and we decided it would be advisable for Mr. Frederick Squier, Jr., and his wife until after the settlement of the estate, and that we would maintain the servants there while Mr. Frederick Squier and his wife were there.

Q. Was anything said to the servants, that you know of, about keeping them on indefinitely? A. Nothing was said to that effect as far as I know.

Q. Mr. Searles handled that matter? I mean for the executors. A. Yes, there was—yes, he handled it.

Q. Has there been any distribution under this estate? A. No.

Q. Of any of the bequests? A. No, no. I am wrong about that.

The Court: What difference does that make? Any distribution been made? I mean to me, in this inquiry.

Mr. Maxson: I will withdraw it. All right, that is all.

Cross Examination by Mr. Ferris:

Q. Just one question: When the will was drawn and executed by Mr. Squier did you return to him these papers marked Ex. D4? A. I did.

Q. When did you next see them? Was it approximately two weeks ago?

Mr. Maxson: Well, I object to the question as leading. This witness is quite able to take care of himself.

Q. When did you next see them?

Mr. Ferris: I amend the question. When did you next see them?

A. About within the last two weeks.

Q. Did you search for them before you found them where you say you found them? A. I did.

Q. And where did you search? A. Through the files of the estate of Edwin M. Squier.

Q. Yes. A. In the file room, in my safe, in Mr. Squier's safe, and through the two desks in Mr. Squier's room, and the drawer of the table.

Q. Yes. Now, when you found them were they in exactly the same condition as they are now? A. Except they were torn and I had these pasters put on to hold them together.

Q. In other words, you put pasters on the back to hold them together. As I recall you testified that the initials or letters in pencil on the back were put on there by you on or about July—— A. 2nd.

Q.——(continuing) 2nd, 1926. A. That's right.

Q. And they signified whom Mr. Squier stated whom he wanted to act as executors under his will? A. That's right.

Q. That's all.

Mr. Maxson: That is all.

Q. Where did you find the will of Mr. Squier's that is now in evidence? A. In the inner receptacle in his safe.

The Court: That has been——

New Jersey State Library

Q. Do you know whether it was ever in your safe? A. It never was.

Q. That is in the firm's safe? A. Never was.

Redirect Examination by Mr. Maxson:

Q. When you were searching for it, did you find anything else relating to the estate?

Mr. Ferris: Searching for what? The will?
The Court: Searching for the will.
Mr. Maxson: Searching for the will.
The Court: Did you?

A. I don't know exactly how to answer that. I went through all his—no. I didn't search for the will, because I knew probably where it was. I think I saw Mr. Squier put it in the safe after it was executed. And I went right to that receptacle and got it out.

Q. Immediately after it was executed? Immediately after it was executed? A. What, that I went for it?

Q. No, no. That you saw Mr. Squier put it in the safe? A. I think I folded it up and put it in an envelope similar to this, and then I sealed it, by wetting the mucilage, and gave it to him and he turned around and put it right in that inner receptacle of the safe.

Q. Did you ever see it again from that time on until you found it? A. I did not.

Q. From the time of the making of the will to the time of his death did you ever discuss it with him again? A. Never was mentioned, as I recall.

Mr. Maxson: That is all.

Eleanor A. Miller—For Appellant-Contestant—Direct

ELEANOR A. MILLER, a witness produced on behalf of the appellant being duly sworn according to law, on her oath says:

Direct Examination by Mr. Maxson:

Q. Where do you live, Miss Miller? A. 17 West Eighth. Chester, Pennsylvania.

Q. And what is your profession or vocation? A. I am a trained nurse.

Mr. Ferris: Would you mind raising your voice so I can hear you?

Mr. Maxson: "I am a trained nurse."

A. I am a trained nurse.

Mr. Ferris: Yes.

Q. Were you one of the trained nurses who took care of Mr. Edwin C. Squier? A. I was.

Q. At the time of his last illness? A. I was.

Q. And when were you called in? A. Saturday afternoon, around two o'clock. I don't remember the date.

Q. Saturday afternoon before his death? A. Saturday afternoon before his death, yes.

Q. And you have continued there until the time of his death? A. Yes. And then until after the funeral.

Q. What room did you occupy? A. Well, when I went there I occupied the room over the front porch, right at the head of the stairs. And then after he died I——

Q. Was that directly across from Mr. Squier's room? A. Right opposite his room.

Q. And did you move? A. Yes; I moved to the room back; down two or three steps, and that was over the kitchen, I believe.

Q. How long were you in the room in the front of the house directly across from Mr. Squier? A. Well, I was there until after he died.

Q. Well, how many nights was that? A. Well, I——

Q. Two? A. I was there—I came Saturday, and I was there Sunday, and he died Tuesday morning. I was there all that time.

Q. You were there Saturday night and Sunday night and Monday night and Tuesday night? A. Yes.

Q. He died Tuesday morning or Tuesday, two o'clock? A. Two o'clock. No—no.

Mr. Ferris: Apparently she wants to correct her testimony.

A. Saturday—I came there on Saturday. Sunday. That's right, Tuesday, two o'clock, he died in the morning.

Q. Who moved you from that room? A. Why, the housekeeper, Mary Conroy.

Q. Mary Conroy? A. Yes.

Q. Did she tell you at the time why she moved you? A. Well, because Mr. Houghton was coming to occupy the room. He usually did while he was there, when he came out. And so they moved me back.

The Court: Is that all?

Mr. Maxson: That is all.

Mr. Ferris: No cross examination.

Eleanor A. Miller—For Appellant-Contestant—Direct

By Mr. Maxson:

Q. Did you have some talks with Mary Conroy or did she have some talks with you about the testator? A. Well, she talked about——

Mr. Ferris: Just yes or no, please.

A. Yes.

Q. Yes. What did she say to you?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant, and as there has been no proper foundation laid.

The Court: There was a foundation laid. I believe Mr. Maxson asked Mary Conroy, was that her name?

Mr. Maxson: Yes.

The Court: Whether the nurse did not ask her something about Mr. Squier's personal habits, as to how he lived and so forth. Of course if you want to—if you ask those questions for the purpose of laying the foundation, then you want to direct the witness's attention to that testimony categorically.

Mr. Ferris: It has been transcribed.

The Court: I suppose that is the objection?

Mr. Ferris: That is one of the grounds, of course. It has been transcribed, so you will have no difficulty in quoting the record.

The Court: In the meanwhile let me ask you this question.

By the Court:

Q. Did you ask Mary Conroy anything about the personal habits and manner of living of your patient, Mr. Squier? A. Well, of course I did.

Q. Either you did or you didn't. Did you ask her? A. Well, I did.

Mr. Ferris: I have no objection to her being interrogated as to what was asked and answered.

By the Court:

Q. Well, what did you ask her? A. Well, I asked——

Mr. Ferris: A little louder, please, so I can hear you.

A. I am sorry. Well, I naturally asked about his appetite, and what his meals were, and how he slept, and what he did during the day. And she told me that he——

By Mr. Maxson:

Q. What did she say in reply to those questions, as nearly as you can remember now? A. Well, his appetite was very poor, and he didn't sleep a great deal at night, he would hardly go to bed at all; and he—and about him going to town every day.

Mr. Ferris: Going where?

A. To New York every day or two or three times a week, I believe.

Mr. Ferris: Yes.

A. And about him smoking cigarettes.

Q. Did she say——

Mr. Ferris: Wait.

Mr. Maxson: All right. Go ahead.

A. He smoked a great deal. And the cigarettes were—I had some of them.

(Answer repeated by the stenographer.)

A. (Continuing)——they were unusual cigarettes.

Mr. Ferris: I move to strike it out.

Mr. Maxson: All right.

Mr. Ferris: "They were unusual cigarettes."

A. Naturally I have never seen any like that before.

Q. Is that one of the brand? A. Those are the cigarettes, Mr. Maxson.

The Court: What is unusual about that?

A. They are larger in size than the usual cigarettes, and they are Turkish cigarettes.

Mr. Ferris: I may tell you they are very usual in Egypt and Turkey. I have been there. They smoke them larger than that.

(Cigarette marked D-3 for identification.)

Q. Did Mary Conroy say anything to you about as to whether or not he drank?

Mr. Ferris: I object to that as leading.

The Court: Well, it is leading. What else did she say about his personal habits?

Mr. Maxson: All right. I will withdraw it.

The Court: That you recall.

A. Well——

The Court: Did she say anything about his drinking? Let us get along with this.

A. Well, she did say that, well, he was in the habit of drinking with the policeman who would come in at night.

The Court: With whom?

A. The policeman. And they would stop in and he would give them a drink. That was his habit.

The Court: He would give the policeman a drink?

A. Yes, and he himself would drink with them.

The Court: Well, that is sociable.

A. She said sometimes he would drink to excess, and she would wait up for him and take him upstairs to bed.

Q. Anything else you remember?

The Court: Mr. Squier was a bachelor, wasn't he?

Mr. Ferris: Yes, sir; he was.

Q. Anything else you remember, Miss Miller?

The Court: Well, now, you say that Mary Conroy told you that he smoked cigarettes to excess. Did she say that?

A. She did say that.

The Court: To excess?

A. Well, a great deal.

By the Court:

Q. What did she say about that? A. He smoked most of the time.

Q. He smoked cigarettes most of the time? A. When he was up and around, of course.

Mr. Ferris: I cannot hear you.

(Answer repeated by the stenographer.)

Q. Well what I am trying to get at is did she use the word "excessive" or that he smoked cigarettes most of the time? A. I am sure she didn't say to excess.

Q. Did not use the word "excess"? A. No.

The Court: Anything further from this witness?

By Mr. Maxson:

Q. Do you know where you were in the house when the will was read? A. I was in the kitchen.

Q. And where were the servants, if you know?
A. They were in the living room.

The Court: If you were in the kitchen, how do you know where the will was read?

A. Because they told me they were called in to be read—to have the will read.

The Court: Well, you do not know that the will was read then except what they told you?

A. Yes; what they told me.

Mr. Maxson: I interrogated Mary Conroy about that, if your Honor recalls.

The Court: Yes. Mary Conroy said they were called in; all the help was there. They were called in and told what was in the will.

Mr. Maxson: I also asked Mary Conroy what she said about the will to Miss Miller.

The Court: Yes.

Q. What if anything, did Mary Conroy say to you when she came out from the reading of the will?
A. She told me about the money was left, and she told me they were to stay there a year and——

Mr. Ferris: To when?

A. A year. They were allowed—they would be allowed to stay a year until—in the meantime make other arrangements for themselves.

Mr. Maxson: All right. That is all.

Eleanor A. Miller—For Appellant-Contestant—Cross

Cross Examination by Mr. Ferris:

Q. Just a few questions: Who was it that first came to see you about testifying in this case? A. Mr. Hendrick.

Q. Yes. Where did he call to see you? A. Chester, Pennsylvania.

Q. When? A. The week before Christmas. I don't remember just the day.

Q. Did you volunteer this information to him or did he question you regarding it? A. He questioned me.

Q. Yes. You told him now—I mean you told him what you have testified to now on the stand? A. Yes.

Q. Yes. Now, you remembered all those things without having anyone aid your recollection, didn't you? A. Oh, yes.

Q. Didn't you? A. Yes, I remember.

Q. Mr. Hendrick did not prompt you in any respect with regard to refreshing your recollection, did he? A. Well, he asked me some questions, I remember.

Q. Yes. I am asking you if he did not prompt you? A. No; he did not prompt me.

Q. In your recollection. How many cases have you been on since November, 1926? A. I have been on quite a few.

Q. Yes. Do you remember all of the talks that you have had with the domestics in places where you are employed? A. No; I didn't. I don't.

Q. What was there about the conversation that you have related with Mary Conroy that fixes it so firmly in your memory? A. Well, I don't know, but I remember the Squier case, because I was

naturally interested, because at one time—I was a resident of Rahway, and it just seems to dwell in my mind. I don't know any other reasons.

Q. Well, it dwelt in your mind although you did not hear anything at all about a will contest until Mr. Hendricks called to see you in Chester, Pennsylvania, is that right? A. Certainly.

Q. You knew nothing at all about a will contest, did you? A. No.

Q. How much have you received to come here to testify? A. $100.

Q. Yes. And your expenses besides? A. Yes.

Q. How much did you receive for your expenses? A. Oh, I have been—I received $100.

Q. Including, to cover your time and your expenses, is that correct? A. Yes.

Q. When did you arrive here? A. A week today, a week ago today.

Q. And you have been in Elizabeth ever since? A. Been in Woodbridge.

Q. Pardon? A. Woodbridge.

Q. Is that near here? A. Yes, sir.

Q. With whom are you staying there? A. With Mrs. Poahl, a friend of mine.

Q. Have you received anything more than the $100? A. No.

Q. Have you received any promise of payment or anything in excess of $100? A. I was promised what my expenses would be, what my professional earnings would be from the time I spent away from home.

Q. What are they per day? A. $8.

Q. Then you expect to receive in addition to what you have received at the rate of $8 per day while

you are attending this case, is that right? A. Yes, sir.

Q. Now, did you ever talk to Mr. Maxson or did you talk to that gentleman seated alone there at any time? A. Yes.

Q. When?

Mr. Ferris: Indicating Mr. Brunham Squier.

A. He came to Chester with Mr. Hendrick to see me.

Q. When did you see Mr. Maxson? A. In New York last Friday.

Q. And you made a trip to New York in order to see Mr. Maxson, did you? A. No; I didn't.

Q. What did you go to New York for? A. Well, I came to Woodbridge, and I hadn't heard from Mr. Hendrick or anyone, and I called up to find if —so that I wouldn't have to stay in all the time, if they wanted to get in touch with me. I was going to New York, and they told me come to the office.

Q. Who gave you the address of Mr. Maxson in New York. A. I went to Mr. Hendrick's office.

Q. You went to Mr. Hendrick's office and he took you over to Mr. Maxson's, is that correct? A. His secretary did, to be exact.

Q. Yes. Did you ever sign any statement regarding that which you testified to here today? A. I did not.

Q. No affidavit? A. I did not.

Q. Nor letter? Nor any dictated or typewritten statement of any sort? A. I did not.

Mr. Ferris: That is all.

Mr. Maxson: That is all. Will your Honor adjourn until Monday morning? We may rest, but I would like permission, if we determine to put Mr. Charles Squier on the stand, to put him on the stand.

Mr. Ferris: Do I understand you want the rest—the other members of the family?

Mr. Maxson: No.

Mr. Ferris: If you do, Mrs. Montgomery won't be able to be here next Monday.

The Court: I understand Mr. Maxson does not want any other members of the family. We will adjourn until Monday morning, ten o'clock, and I understand that maybe you might rest.

Mr. Maxson: Maybe we have one or two more witnesses. We have one witness who is sick in the hospital.

The Court: That is the domestic who was spoken of this morning?

Mr. Maxson: Yes.

Mr. Ferris: I haven't any obpection, if Mr. Maxson will state what she will testify to, I may consent if she was called she would so testify.

The Court: As I understand, her illness, she probably will not be available. I understand Monday morning you may rest. If you do not rest there may be two more witnesses, and that will finish your side.

Mr. Maxson: I think we can finish very quickly on Monday morning.

(Further discussion off the record.)

The Court: We will adjourn until Monday morning at ten o'clock.

EMIL FASANO, a witness produced on behalf of the caveator, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Hendricks:

Q. What is your business, Mr. Fasano? A. Barber.

Q. And where is your place of business? A. In Pennsylvania station, Jersey City.

Q. How long have you been there? A. Thirty-five years.

Q. Did you know the late Edwin M. Squier? A. Yes, sir.

Q. Was he a customer of yours? A. I shave him for twenty-three years.

Q. How often did you shave him? A. Five days a week.

Q. Five days a week? A. Yes, sir.

Q. Did he at any time talk to you about having some liquor?

Mr. Ferris: Just yes or no, please.

A. Well, I read in the paper myself——

The Court: No. You can answer that yes or no.

By the Court:

Q. Did he ever speak to you at any time about having liquor? A. Yes, sir.

Mr. Ferris: Please fix the time.

By Mr. Hendricks:

Q. When was that? At what time was that? A. Well, he always come in the shop in the afternoon between one to two o'clock.

Q. That was his time for coming to the shop? A. Yes, sir.

Q. Do you remember Mr. Squier saying something to you about liquor?

Mr. Ferris: I object to that. It seems to me before this can be material the date ought to be fixed.

Mr. Hendricks: How can you fix the date of something that has not happened?

The Court: One counsel at a time.

Mr. Hendricks: I ask your Honor——

The Court: Go on.

Q. Do you remember Mr. Squier saying something to you about his having liquor? A. Yes, sir.

Q. And when was that? A. Well, it was a few weeks after they took it away from him.

Q. How many years ago was that? A. Oh, I don't remember.

Q. What did he say to you?

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

The Court: I will allow it.

Mr. Ferris: May I have an exception?

The Court: Exception allowed.

A. He says to me he says he was willing to lose any money but he wanted to have that stuff back.

Q. Did he mention any amount he would be willing to give to get it back? A. Well, he says he was willing to lose any money as long as he can have that stuff back, because it was pretty old stuff and it was hard for him to get that quality stuff back.

By the Court:

Q. Did he mention any amount? A. No, sir.

By Mr. Hendricks:

Q. When Mr. Squier was in your chair and while you were shaving him what did he do? A. Well, what I know he was with a cigarette in his mouth all the time.

Mr. Hendricks: That is all.

Cross Examination by Mr. Ferris:

Q. How long did it take to shave Mr. Squier as a rule? A. Well, Mr. Squier was special customer and I was took pretty near sometimes from twenty-five to half an hour.

Q. During the time that you shaved him how many cigarettes did he smoke? A. Well, no more than one. Of course——

Q. You have answered the question. On an average it took you twenty-five minutes to a half an hour to shave him, is that right? A. Yes, sir.

Mr. Ferris: That is all.

Redirect Examination by Mr. Hendricks:

Q. Do you mean that all the time he sat in your chair at that time that he only smoked one cigarette, or do you mean one at a time?

Mr. Ferris: I object to that. It is quite obvious what the witness means.

The Court: I will allow it.

(Question repeated by stenographer.)

By the Court:

Q. In other words, he never smoked two at a time? A. Well, he couldn't.

Q. Did he smoke more than one cigarette during the twenty-five minutes to a half hour that you shaved him? A. He smoke more than one when he was waiting, when the barber was not ready to shave him.

By Mr. Hendricks:

Q. Do you know what chain smoking is?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant.

The Court: It may not be. I will allow it.

By the Court:

Q. Do you know what it is? A. No, sir.

By Mr. Hendricks:

Q. Suppose Mr. Squier got a haircut, how many cigarettes would he smoke? A. Well, of course, he had a chance to smoke more than one.

Q. What is that? A. Then he had a chance to smoke more than one.

By the Court:

Q. Did you ever cut his hair? A. Every two weeks.

By Mr. Hendricks:

Q. You say he had a chance to smoke more than one. Did he smoke more than one? A. Yes, whenever he had a haircut.

Q. Well, now, when you were shaving Mr. Squier and when he was in your shop did you ever see him without a cigarette in his mouth? A. Well, he did smoke all the time when he was waiting.

Q. I ask you if you ever saw him without a cigarette in his mouth? A. Once in a while.

Q. Was it often that you saw him without a cigarette in his mouth? A. Not often.

Q. Almost all the time that you saw him in the thirty-two years he had a cigarette in his mouth, is that right?

Mr. Ferris: I object to that. Counsel is summing up, in substance, the effect of the——

The Court: Yes. That is objectionable.

Mr. Hendricks: That is all.

The Court: He may tell what he saw.

Mr. Ferris: That is all.

LUKE HOSKO, a witness produced on behalf of the appellants being duly sworn according to law, on his oath says:

Direct Examination by Mr. Hendricks:

Q. Mr. Hosko,

Mr. Hendricks: Mr. Fesano may go, I suppose.

Mr. Ferris: I have no further need of him.

Mr. Hendricks: All right. You may go.

Witness: 2 Morton, Jersey City.

Q. What is your business? A. Cashier in a restaurant.

Q. Where? A. Pennsylvania station, Jersey City, Savarin.

Q. Do you know the late Edwin M. Squier? A. I did, yes, sir.

Q. Was he a customer of that restaurant? A. Yes, sir; he was.

Q. How often did he come there? A. Why he came there about three or five times a week; three to five times a week.

Q. How long did you know him? A. I knew him for the last five years.

Q. Did you ever sell him any cigarettes? A. Yes, I did.

Q. Many? A. Why, he always bought two packs at a time.

The Court: What kind of cigarettes?

A. Why I sold him Philip Morris. Before that he bought imported Nestors, but they were out, so we had to sell him Philip Morris.

Q. Did you ever see with a package, say about that long (indicating)? A. Yes, sir.

Q. And that high? A. I did.

Q. When did you see him with that kind of a package? A. Let me see. I just can't remember the date, but he used to come in once a week and have that package.

Q. Once a week he would have that kind of a package? A. Yes, sir.

The Court: Do you want to have indicated on the record the size of the package you have just indicated?

Mr. Ferris: Suppose we let the witness indicate by his own measurements and we will stipulate approximately the measurements, with your Honor's permission?

The Court: What was the size of the package?

A. It was about that long.

Mr. Ferris: And how thick?

A. About that thick.

Mr. Ferris: I think he indicated a package about seven inches long.

Mr. Hendricks: No; I would not say that. I would say eighteen.

Mr. Ferris: I am perfectly willing to let the judge indicate on the record his estimate of the size. It is quite apparent yours and mine differ radically.

The Court: 3 by 6, I would say.

Mr. Ferris: You saw how nearly right you were, Mr. Hendricks.

Mr. Hendricks: About how much?

The Court: About 3 by 6.

Q. Would you say it was 3 by 6? A. No; I think it was longer than that.

The Court: What size package do you think it was?

A. I think it was about 12 by 6.

The Court: 12 by 6; all right.

Q. 12 by 6 by 6? A. Yes, sir.

Q. Did you ever see him with a cigarette in his mouth? A. Yes, sir.

Q. Did you ever see him without a cigarette in his mouth? A. I did when he was eating.

Q. Except when he was eating did you ever see him without a cigarette in his mouth? A. No, sir.

Mr. Hendricks: That is all.

Cross Examination by Mr. Ferris:

Q. How big a restaurant is the Savarin in the Pennsylvania station? A. Why, we have fifty-seven stools in there, in the lunch room.

Q. Is it a counter? A. Yes, sir; counter.

Q. And the position of your desk, where you act as cashier, is where with relation to the entrance? A. Right at the front as you come in.

Q. And can you view every part of the counter where you stand? A. Yes, sir; every part of it.

Q. Every part of it. Now, that restaurant is patronized a great deal, isn't it? A. Yes, sir; it is.

Q. And Mr. Squier used to come in there approximately what time of the day? A. Well, now, I would say between two and three.

Q. And was the restaurant patronized at that time? A. Why; yes, sir.

Q. Quite fully? A. Yes, sir.

Q. People were coming out and paying their checks to you, were they not? A. Yes, sir.

Q. And did you have time to observe Mr. Squier while he was eating? A. Why, yes, from where I stood I could see him eating.

Q. And you kept constantly watching him, did you? A. Why; no, sir, I did not.

Q. What was there about Mr. Squier's appearance or manner that should attract your attention while he was eating? Was there anything? A. No, sir; there was not.

Q. He was just like any other man who came into the restaurant? A. Yes, sir.

Q. To have his lunch and buy cigarettes from you? A. Yes, sir.

Q. There was nothing either in his appearance or mannerism that caused you to watch him closely, was there? Yes or no? A. No, sir.

Q. Now, you say that he bought two packages of cigarettes. A. Yes, sir.

Q. Whenever he bought cigarettes? A. Yes, sir.

Q. Are you able to state, from your recollection, how frequently he made these purchases every week? A. Now, I will say——

Q. Are you able to say? A. No, sir; I am not.

Q. You are not. But whenever he did purchase cigarettes he usually bought two packages at a time? A. Yes, sir.

Q. Now, this other package that you have described as being 6 by 12 inches. By the way, how long would you say this pencil is? A. That pencil is about seven inches.

Q. Yes. You say that this box then was about this much longer? A. Yes, sir.

Q. In length? A. Yes, sir.

Q. And about how deep was it? A. About six inches deep.

Q. About six inches deep. Would you say that is six inches deep?

The Court: What is the object of this box thing?

Mr. Ferris: I assume it is of some importance.

The Court: I am not going to assume anything.

Mr. Hendricks: Does your Honor wish me to state? It is not in evidence.

The Court: You are going to put it in?

Mr. Hendricks: I hope so.

The Court: What is it?

Mr. Hendricks: It had cigarettes in it.

The Court: All right.

(Questions repeated by the stenographer.)

A. No, sir.

Q. Indicating this much of the pencil? A. No, sir; that is about three inches.

Q. You say the box was about as deep as the pencil? A. I think that is more than six inches.

Q. You indicate on this pencil how deep that box was. A. I think six inches is this much.

The Court: You do not know what was in the box, do you?

A. No, sir; I don't.

Mr. Ferris: That is just what I was going to ask the witness, if he knew its contents.

The Court: No use going over that. That is all.

Mr. Ferris: That is all.

Redirect Examination by Mr. Hendricks:

Q. Did you ever observe anything about Mr. Squier's fingers or mustachia? A. No, I can't say that.

Q. You were asked whether there was anything that made you observe Mr. Squier particularly. Is there any doubt in your mind who Edwin M. Squier was?

Mr. Ferris: I object to that.

A. No, sir; there was not.

Mr. Ferris: I object.

A. There is not.

Mr. Ferris: His state of mind. He has identified him. I have not questioned the identity of the man. So his statement is of no benefit to us.

Q. Did you ever talk to him? A. Yes, sir; I did.
Q. Called him by name? A. Yes. sir.

The Court: He says he knew the man.

Q. Yes. Now, I ask you whether or not there was anything that he did that was different from other people who came in there?

Mr. Ferris: I object to that. The witness was asked if he noticed any particular peculiarities in either the appearance or conduct of the man.

The Court: No; he was asked whether he noticed the peculiarities.

By the Court:

Q. Were there any peculiarities about the man? A. Why, yes.

Q. What were they? A. He always carried his money in his inside pocket, and it was always loose.

Q. What is peculiar about that? A. People usually carry their money in a wallet. He carried his loose, and he had a lot when he paid his check.

Q. You say they usually carry it in a wallet? A. Yes, sir.

Q. Would you be surprised if you asked all the men here how they carry their money, that over half of them do not carry it in a wallet? A. They usually don't carry as much as he did.

Q. How much did he carry? A. I don't know the amount, but the package was pretty thick.

Q. You do not know how much it was? A. When he took it out I always used to see he had tens and twenties in it. There seemed to be a lot in it.

Q. All right. What other peculiarities were there? A. That's all I noticed.

Q. Just that one peculiarity you noticed? A. Yes, sir.

Q. To you that was peculiar? A. Yes, sir; it was.

By Mr. Hendricks:

Q. Did you notice any change in the apperance of Mr. Squier from the first time that you saw him until the last time that you saw him?

Mr. Ferris: I object to that, if your Honor please. First on the ground it is leading and secondly on the ground it is not proper redirect. These questions were all proper on direct examination.

The Court: I know. But that is a matter for the discretion of the court.

Mr. Ferris: That is true, sir.

The Court: I will allow the question.

Mr. Ferris: Exception.

A. There was some time there he had a fall and I always thought after that fall he didn't seem the same man. He seemed nervous.

Mr. Ferris: I move to strike that out as a conclusion on the part of the witness.

The Court: What was the question?

(Question repeated by the stenographer.)

The Court: Can't you answer that question?

A. Yes.

The Court: Well, what change did you notice?

A. That is the change I said.

The Court: What change?

A. After that fall he had he did not seem to be the same man.

The Court: Did you see him fall?

A. I didn't see him fall, but he said he had a fall. He came in with a cane.

The Court: All right.

Mr. Ferris: I renew my motion to strike it out, if your Honor please, as a conclusion.

The Court: I will allow it. The testimony the witness gives is that the deceased told him that he had a fall and he noticed a change thereafter, namely that he walked with a cane.

A. I know I just can't——

The Court: About?

A. I think it was about a year I noticed.

The Court: And after that, without it?

A. No; he always had it after the fall. Always had the cane.

The Court: Go on. What other change did you see?

A. That is the only change I seen.

The Court: All right. That is the only change he saw.

By the Court:

Q. Did you know how old this man was? Did you know how old Mr. Squier was? A. No, sir, I did not.

By Mr. Hendricks:

Q. Can you fix the time of the fall, when Mr. Squier fell? A. No, sir, I cannot.

Q. Well, about how long ago was it? A. I thought it was about two years ago, as I said before. I am only guessing at that, though. I am not sure.

Q. With respect to the time of his death how long before he died do you think it was?

By the Court:

Q. If you know when he died. Do you know that? A. Yes, sir. I do.

Q. When did he die? A. November, 1926, about.

By Mr. Hendricks:

Q. How do you know when he died? A. Why, a week later somebody told me Mr. Squier died. It wasn't a week later. It must have been about three days later.

Q. Is that the only reason you knew he died? A. Well, I didn't see him for about four days and I

thought there was something wrong, until I was told that he died.

Q. Were you accustomed to see him come in? A. Yes, sir, I was.

Q. Now, the cigarette that you saw him smoking would not be the cigarette that you sold him, or would it?

Mr. Ferris: I object to that as leading. It is his own witness.

Mr. Hendricks: I said, or would it.

Mr. Ferris: That does not remove the stigma.

By the Court:

Q. Was the cigarette you saw him smoking the same cigarette or the kind of cigarette you sold him? A. No, I can't say it was.

Q. Yes or no. A. No.

By Mr. Hendricks:

Q. How often did you sell him cigarettes? A. Well, he didn't buy them there very often because we didn't have the kind he wanted.

Q. How often did you sell them to him? A. About once a week.

Mr. Hendricks: That is all.

Recross Examination by Mr. Ferris:

Q. When did you take this job that you now have? Give me the exact month if you can? A. Do you mean for the corporation that has it at present?

Q. No. How long have you been working in that place as cashier? A. In that particular place about three years.

Q. Where did you work before that? A. In the Pennsylvania station, New York.

Q. Now that you have testified about concerning Mr. Squier occurred in the Pennsylvania station, Jersey City? A. Jersey City.

Q. Then you have been in the Pennsylvania Jersey City station? For three years? A. About three years.

Q. Well, can't you fix the date more accurately? A. Let me see, the Pennsylvania had the restaurants before——

Q. Think to yourself and fix the date? A. Well, I think it must have been about two and one-half years.

Q. Well, two and one-half years from now would be approximately July 1925, wouldn't it? A. Yes, sir.

Q. Now, prior to July, 1925, had you seen Mr. Squier? A. Why, yes, sir, I did.

Q. Where? A. In the Pennsylvania station, Jersey City.

Q. I think you said that was when you came to the Pennsylvania station, Jersey City? A. Well, they used to send me over from New York to relieve the cashiers while they were on their vacations.

Q. When was the first time that you saw Mr. Squier with relation to the time when you first started working in the Pennsylvania station, Jersey City? A. Why, the first time I saw him must have been about five years ago.

Q. Was it before you went to the Pennsylvania station, Jersey City? A. No, sir.

Q. And you went to the Pennsylvania station, Jersey City, two and one-half years ago? A. As a regular cashier, yes, sir.

Q. Well, did you go there as a temporary cashier before that? A. Yes, sir, to relieve during vacations.

Q. When was that, during what years? A. That must have been about 1923.

Q. From 1923 on? A. Yes, sir.

Q. To 1925? A. Yes, sir.

Q. You only went there during the summer vacations, did you, to relieve the cashier? A. Well, I lived in Jersey City and I used to drop in once in a while to see them.

Q. I am asking you about your work. Did you relieve the cashiers only during the summer months from 1923 to 1925? A. If they ever got sick and they couldn't show up they would send me on over.

Q. How frequently did you go over during those two and one-half years or two years? A. Well, I guess about five or six times.

Q. And it was during one of these five or six times that you first met Mr. Squier? A. Yes, sir.

Q. You never met him in the Pennsylvania station, New York, did you? A. No, sir, never saw him.

Q. This broken leg that you have testified about, that was after you went there to work permanently, wasn't it? A. Yes, sir.

Q. And that was within two and one-half years? A. Yes, sir.

Q. Now, would it surprise you if I told you that he did not break his leg except in 1922? A. I didn't say he broke his leg.

Q. Well, that he was hurt or injured as you have described? That injury didn't take place ex-

cept in 1922? A. Well, I would not be surprised because I am only guessing at that.

Q. You are only guessing at that? A. Yes, sir.

Q. From whom did you hear that Mr. Squier had injured himself? A. Why, one of the waiters told me.

Q. When did he tell you? A. Well, I can't remember.

Q. Well, was it recently? A. No, it wasn't recently.

Q. Well, was it two years ago? A. It must have been around two years ago.

Q. That was after you went to the Pennsylvania station to work there permanently? A. Yes, sir.

Q. Did he tell you when Mr. Squier broke his leg? A. No, sir.

Q. Or hurt himself? A. No, sir.

Q. Now, you say that you noticed a change in him after he broke his leg? A. Yes, sir.

Q. Or hurt himself? A. Yes, sir.

Q. Of course you understood, didn't you, that that implied that you knew his condition before the injury? A. No, sir.

Q. You didn't know that? A. No, sir.

Q. When you were asked that question to describe the difference in the appearance of Mr. Squier before the injury and after the injury you didn't understand it, is that correct? A. No, sir.

Q. As a matter of fact you never saw Mr. Squier before he was injured, did you? A. Before he was injured? Yes, I saw him.

Q. When? A. I saw him five years ago, that is the first time I met him.

Q. That is on one of these five or six occasions? A. Yes, sir.

Q. So that during two and one half years you saw him five or six times when you went there to relieve someone and you recalled him two and one-half years ago when you went there to work permanently? A. Yes, sir.

Q. How many times did you see Mr. Squier before he was injured? A. Five or six times.

Q. Before he was injured? Now, think and answer me. A. Well, I saw him five or six times the times I went over there to relieve as cashier.

Q. That is not my question. How many times did you see him before he was injured is my question? Did you see him at all? A. Yes, sir, I did.

Q. Now, how many times? A. That depends when he was injured. I think he was injured two years ago.

Q. How many times did you see him before his injury, is my question? A. I can't say. I can guess at it, but I can't say.

Q. You are under oath, you know that, don't you? A. Yes, sir.

Q. You know that guessing does not go under oath, don't you? A. Yes, sir.

Q. I want you to testify according to your best recollection how many times you saw Mr. Squier before he was injured? A. I can't say.

Q. You won't say you saw him at all, will you, before he was injured? A. Yes, I saw him.

Q. You are sure of that, are you? A. Yes, sir.

Q. When did you start working for the Savarin Restaurant in New York Pennsylvania station? A. Well, I worked over there about three or four months with the Savarins.

Q. Yes, but I mean when, what year, what month, what date? A. 1925 is when they took the restaurant over.

Q. Your first connection with the Savarin restaurant either in New York? A. In New York.

Q. Or Jersey City was in 1925? A. 1925.

Q. Of course you never saw Mr. Squier before 1925, did you? A. Why, yes, I did when the Pennsylvania would send me over as relief cashier.

Q. I have asked you before when was the first time that you worked in either restaurant, New York or Jersey City? A. I worked in New York first.

Q. Well, when, what year? A. Well, I started over there about 1919.

Q. 1919? A. Yes, sir.

Q. Have you ever seen Mr. Squier without a cane? Yes or no. A. Why, yes, I did, yes, sir.

Q. When? A. Well, that is about the first time they sent me over to Jersey City.

Q. When? Give me a year. A. 1923 about.

Q. 1923? A. Yes, sir.

Q. You are sure of that? A. Well, I think I saw him with a cane. I can't remember that far.

Q. With whom did you talk before you came here, young man? A. Sir?

Q. With whom did you talk about your testimony before you came here? A. With whom did I talk?

Q. Yes, that is my question. A. The gentleman right there (indicating).

Q. Which gentleman, seated at the table here? A. Yes, sir.

Mr. Ferris: Indicating Mr. Hendricks.

Q. When did you see him for the first time? A. About two months ago.

Q. What did he say to you the first time? A. He just wanted to know if I knew Mr. Squier.

Q. What did you say? A. I said I did.

Q. Go on and tell us the whole conversation. A. He asked me if I noticed any thing peculiar about him.

Q. What did you say? A. I said he smoked so many cigarettes was the only thing made him peculiar to me, outside of carrying that money loose. I thought that was peculiar.

Q. That is all that you told him was peculiar? A. That is all, yes, sir.

Q. Now, as I understand your testimony, a man who carries a wad of money, consisting of twentys and tens, and he does not carry it in a wallet, to your mind is peculiar, is that right?

Mr. Hendricks: I object to that as argument.

The Court: That is what the witness says.

Mr. Hendricks: Other conclusions may be drawn by the court.

The Court: His conclusions will not bind me. The question is perfectly proper. It is not argument. He says as I understand it.

Q. That is correct, isn't it? A. Yes, sir, I thought it was peculiar.

Q. If I pull my money out of this pocket, and if I carry on the outside a fifty-dollar bill, and I have twenties, I am peculiar, am I? A. Why, no, sir.

Mr. Ferris: That is all.

Emanuel Rosen—For Appellant-Contestant—Direct

EMANUEL ROSEN, a witness produced on behalf of the caveator, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Hendricks:

Q. Mr. Rosen, what is your business? A. Retail tobacco business.

Q. Where? A. At 111 Broadway, New York City.

Q. Did you know the late Edwin M. Squier? A. Yes, sir, I knew him very well.

Q. How long did you know him? A. For about sixteen or seventeen years.

Q. Was he a customer of yours? A. Yes, sir.

Q. What did you sell him? A. Cigarettes, mostly.

Q. What kind of cigarettes did you sell him? A. I sold him Nestor's imported, Dimitrino's imported and another cigarette called Eton.

Q. I show you appellants exhibit D-3 for identification and ask you whether or not that is the kind of cigarette that you at one time sold Mr. Squier? A. Yes, sir, I did.

Q. That is Shepard's Hotel, Cairo, Dimitrino? A. That is right.

Q. What is the largest quantity of cigarettes you ever sold Mr. Squier at one time? A. In the neighborhood of about twenty thousand cigarettes.

By the Court:

Q. One sale? A. Yes, sir.

By Mr. Hendricks:

Q. What kind were they? A. They were the Nestor's.

Q. Imported Nestors? A. Yes, sir.

Q. Any other kind of name to it? A. Nestor's Gi Anacles.

Q. Was it Royal Nestors, or plain Nestors? A. No. Plain Nestors. Imported cigarettes.

Q. How often did you sell him cigarettes in the last, well, prior to November, 1926, for a year back say how often did you sell him cigarettes? A. About once a week.

Q. How many would you sell him? A. Four hundred at a time, and at times he would take five or six hundred saying that some would be for the office and some for the house.

Q. How big a carton would that be? A. Well, about that big I should imagine (indicating).

Mr. Hendricks: May we agree that is about a foot long, Mr. Ferris?

Mr. Ferris: Yes.

By the Court:

Q. You know something about inches yourself, don't you? A. Something, yes.

Q. What do you say about it, without indicating? You saw the package. A. Yes. Well, say about a foot long, about.

By Mr. Hendricks:

Q. By how much wide? A. The width of a cigarette, about the width of this here—

By the Court:

Q. How many inches is a cigarette? You are in the business? A. I know.

Q. Don't you know the length of a cigarette? A. Yes, I know the length.

Q. All right, well, what is the length of one cigarette? A. I should say about three inches.

By Mr. Hendricks:

Q. What would be the width, I mean the carton or box? A. Yes, I understand. The cartons were about that way, about five inches.

Q. About twelve by five? A. That is right.

Q. What would the other dimension be? A. Why, the depth of one hundred cigarettes say about four inches.

Q. Well, it would be that, wouldn't it? A. Well, no, they were thicker, those that he took recently were thicker boxes. They were packed differently than these. About twice the thickness of this box.

Q. Somewhere around twelve by five by five? A. About that.

Mr. Hendricks: That is all.

Cross Examination by Mr. Ferris:

Q. This purchase of twenty thousand Nestor imported cigarettes took place when? A. During the War.

Q. You recall, do you not, that Mr. Squier wanted a large quantity imported so that he would not be without his brand of cigarettes by reason of the interference of the war? A. That is right.

Q. That is the only occasion when you sold him any large quantity? A. That is right.

Q. His purchases at other times were about four hundred cigarettes a week? A. Four to six hundred.

Q. What would you say the average was? A. Oh, well, about five hundred.

Q. Five hundred? A. Yes.

Q. Now, of course you have no knowledge as to how many cigarettes Mr. Squier gave away, have you? A. No.

Mr. Ferris: That is all.

Mr. Hendricks: That is all.

JOHN T. SHARP, a witness produced on behalf of the appellant, being duly sworn according to law, on his oath says:

Direct Examination by Mr. Hendricks:

Mr. Ferris: What is the address?

A. 294 Forest Street, Jersey City.

Q. What is your business? A. I am a waiter at the Saverin.

Q. Where? A. Jersey City.

Q. How long have you been a waiter there? A. More than twenty years.

Q. Did you know the late Edwin M. Squier? A. Yes, sir; I knew him very well.

Q. Did you ever wait on him? A. I waited on him usually about three or four times a week. Every week.

Q. For how long a period? A. Twenty years or more.

Q. Yes. Do you know Frederick C. Squier? A. No; that is, I knew a brother, but what his name was I didn't know.

Q. Do you know him by sight? A. Well, it has been twelve—fourteen years since I seen him, but I thought it looked like a gentleman sitting right over there (indicating).

Q. Pointing to this gentleman here? A. Yes, sir; this one on this side with the gray suit.

Mr. Ferris: Do you mind giving us your name?

Mr. Hendricks: That is not Mr. Squier.

Mr. Ferris: Yes. But would you mind——

Mr. Hendricks: Mr. X.

The Court: Notwithstanding that, would you mind giving us your name?

The Gentleman Indicated. My name is King, Dr. George King.

Q. Did you remember an incident with respect to Mr. Squier giving you some money? A. Why——

Q. Do you, yes or no? A. Yes.

Q. How long ago was that? A. It was in approximately '24, October.

Q. October, 1924. Will you tell the court what happened? A. Well, I am very popular in this restaurant and I was taking up a subscription for the benefit of my church. And I had a paper that I passed around among the guests. Mr. Squier was one of my best customers and I gave him the slip, and he marked down on this slip something I didn't see. But he reached his hand down in his inside pocket and he gave me four five dollar bills. So several of the customers gave me almost equal amounts; I didn't pay much attention to it. When I got chance to look at the slip I saw where he put his name down for $5, but he gave me four five

dollar bills. They were not stuck together, they were kind of separated like, so you could see it was twenty when he handed it to me.

Q. What did Mr. Squier—what was his diet? What did he order from you? A. Mr. Squier, when he first began to—well, he was probably eating there before I went there. Every day he would come in between one and two, generally, for his lunch. Up until about five or six years ago he used to change most every day, like tongue, and spinach and different entrees on the bill. But in the past, you might say—at least, to be safe—five years, he never changed. It was the same thing every day. Crackers, cream, and milk, cup of coffee. Never changed. The same thing.

The Court: How old a man was he?

A. Well, you know some people deceive in looks; but I would judge Mr. Squier was at least sixty-five to sixty-six or over.

The Court: Have you served many men of that age?

A. Yes, sir.

The Court: Do they usually take heavy meals?

A. Why, yes, sir. We have some men take heavy meals right along.

The Court: Usually.

A. Yes, sir.

The Court: That is your experience. Men of that age usually have heavy meals?

A. Yes, sir; they don't any other part of the day much, I don't know. I only see them once a day.

The Court: All right. Next question.

Q. Did you ever see Fred Squier, Mr. E. M. Squier's brother in the restaurant? A. Yes, sir.

The Court: The witness does not know Fred Squier, do you?

A. Yes, sir; I knew him at that time; twelve or fourteen years ago.

The Court: Fred Squier? Fred?

A. Well, I don't know that is his name, Fred.

The Court: Then why do you know his name is Fred?

A. I will rescind that.

The Court: You knew a man.

A. I knew a brother, but I didn't know his first name.

The Court: That is the way I understood you.

Mr. Hendricks: That is all.

Cross Examination by Mr. Ferris:

Q. This incident in 1924, when you passed the subscription——

Mr. Hendricks: Will you pardon me just a minute?

Mr. Ferris: Certainly.

By Mr. Hendricks:

Q. Did you ever see Mr. Squier smoking cigarettes? A. Yes, sir; he would always come in with a cigarette, generally, and when he finished eating he would go out with one smoking.

Mr. Ferris: That is all.

Mr. Hendricks: That is all.

By Mr. Ferris:

Q. This incident of the four five dollar bills, do you remember what day of the week that was? A. I knew it was October. I think it was around the latter part. Around about the 24th.

Mr. Hendricks: Will you bear with me just a minute. I have one more question I have forgotten.

The Court: Yes, I want you to finish your direct examination with every witness so we will go over it again like this.

Mr. Hendricks: Yes; that's right.

By Mr. Hendricks:

Q. Did you ever see Mr. Squier carrying a package? A. Yes, sir.

Q. About how often and when? A. Why, he would bring that package in every Friday, whenever he came in.

Q. Yes. Do you know what was in the package except from what you heard here? A. Well, I used to tease him and tell him I thought he had a package of Huyler's candy taking it to his sweetheart, and he said "No, she don't smoke."

Q. About how big was the package? A. I should judge it was about probably—it looked to me about like a two-pound box of candy, something about maybe ten inches long; probably that thick.

Q. About five. A. And maybe about that wide.

Mr. Hendricks: That is all.

By Mr. Ferris:

Q. Now, this incident about the four five dollar bills. How many days after that did Mr. Squier come into the restaurant again? A. How many days?

Q. Yes. A. That was in 1924.

Q. How many days after he gave you four five dollar bills did he come into the restaurant? A. Do you mean that week, that month, or what?

Q. You know what next time is, don't you.

The Court: Whenever it was. That is a very understandable question.

(Question repeated by the stenographer.)

A. Why, he used to come in just as regularly as he always did, four or five days a week.

Q. Can't you answer my question. A. I don't understand your question.

Q. How many days after the incident—you said that on one day—— A. Yes, sir.

Q. (Continuing)——he gave you four five dollar bills and signed a subscription blank? A. Yes, sir.

Q. Now, he came to the restaurant when next after that? A. Next day.

Q. Did you speak to him about this incident the next day? A. No, sir; I did not. I marked it all down.

Q. You did not say, "Mr. Squier, you perhaps made a mistake and only intended to give me one five dollar bill, and you gave me four five dollar bills?" A. I didn't say anything to him at all. Just sent the twenty along with the slip.

Q. In other words, you never discussed that incident? A. No, sir; not with him.

Q. You have testified on your direct examination that Mr. Squier in the last five years was in the habit of coming in how many days? A. Three to four days a week.

Q. Are you sure it is three or four? A. Yes, sir; pretty near.

Q. Well, what days of the week did he usually come in? A. Well, say Monday, generally, Tuesdays; probably Thursday and Friday.

Q. He never came in on a Wednesday, did he? A. That I wouldn't say that he didn't.

Q. Well, if I tell you that he lunched at the Lawyers' Club on every Wednesday, would that refresh your recollection? A. No, sir.

Q. But you are sure he came in four times a week on an average? A. Well, three or four, until he got hurt.

Q. Oh, until he got hurt. A. Yes, sir.

Q. I am asking you after he got hurt how many days a week? A. After he came out he usually came in on that average. Around three or four times a week.

Q. Which was it, three or four? A. Three and four, probably both. Some weeks he might come in three and some weeks probably four. No less than generally three times a week.

Q. He did not come in twice a week? A. Yes, sir, he had to come in twice to be there three times.

Q. I mean only twice a week? A. No.

Q. You cannot recall of a single week? A. No; we always——

Q. ——since he was hurt that he came in only twice during that one week? A. Well, it might have been when I was on my vacation. I can't say about that.

Q. I am not asking you about when you were on your vacation. Do you recall any week—— A. When I was there——

Q. Wait a minute, please! A. When I was there?

Q. Wait a minute. I have not finished my question. Do you recall any single week when Mr. Squier came into the restaurant and you waited on him but twice during the single week? A. I couldn't say truthfully because I made no note of those things, but he didn't come in for a general thing—if he happened to miss, we always figured out something had happened to him.

Q. What year was he hurt? A. I don't know exactly, but I remember every Christmas he always remembered us.

Mr. Ferris: I move to strike that out.

A. And on this——

The Court: Wait, please! It will be struck out.

Q. When was he hurt? A. I was trying to explain that the Christmas he missed——

The Court: Never mind the explanation. Do you know when he was hurt?

Q. What year?

The Court: If you do not know, say so.

A. I am trying to think now. I know he missed—I think he must have been hurt in approximately '25.

Q. '25. That is one year before his death, is that right? A. Well, somewhere around that.

Q. Give me your best approximation.

The Court: That is his best approximation.

Mr. Ferris: Is it? All right. That is all.

Mr. Hendricks: That is all.

CLAY THOMAS, a witness produced on behalf of the appellant, being duly sworn according to law, on his oath says.

Mr. Ferris: Address?

A. 101 Woodlawn Avenue, Jersey City.

Direct Examination by Mr. Hendricks:

Q. What is your business, Mr. Thomas? A. Waiter, Saverin Restaurant.

Q. Same plase as—— A. Same place as Captain.

Q. —as Sharp? A. Yes, sir.

Q. How near him is your station? A. How many what?

Q. How near to the station to Mr. Sharp is your station? A. I am next to him.

Q. How long have you been a waiter at the Saverin Restaurant? A. I have been a waiter at the Saverin Restaurant since 1925.

Q. What time in 1925? A. Well, I was there; the Pennsylvania had it before; I have been there fifteen years.

Q. Been where fifteen years? A. At the Pennsylvania station.

Mr. Ferris. New York?

Q. Jersey City? A. Jersey City.

Q. Well, you mean you have been in that actual place fifteen years? A. In that actual place fifteen years.

Q. But they changed the name of it? A. But they changed the name of it.

Q. It used to be the Keystone? A. It used to be the Keystone, Pennsylvania Restaurant.

Q. Did you know the late Edwin M. Squier? A. I did; yes, sir.

Q. Did you ever wait on him? A. Yes, sir.

Q. For how long did you wait on him? A. For about fifteen years; between Cap and I.

Q. Will you tell the custom as between Mr. Sharp and you of waiting on him? A. Yes, sir.

Q. What was the custom? A. What was the custom?

Q. Yes. A. Well, when Cap would get filed up he would sit on me. When I got filled up, he sat on Cap; between the two of us he would alternate.

Q. Did you ever see him smoking? A. Yes, sir.

Q. When? A. When he comes in and when he goes out.

Q. Yes. A. I have lit his cigarettes many times.

Q. Did you know his brother, Frederick C. Squier? A. No, sir; I did not.

Mr. Hendricks: That is all.

Mr. Ferris: No cross examination.

ELTON WALLACE LANCE, a witness produced on behalf of the appellants, being duly sworn according to law, on his oath says:

Direct Examination by Mr. Hendricks:

Q. Are you a practicing physician, Doctor? A. I am.

Q. Where is your office? A. 93 West Milton avenue, in Rahway, New Jersey.

Q. How long have you been there? A. Since April, 1926. Pardon me! Yes, that is right, April, 1926.

Q. When were you graduated? A. June, 1924.

Q. And was this your first office? A. Yes.

Q. Did you know the late Edwin M. Squier? A. I did.

Q. Did you ever treat him? A. I did.

Q. When did you first treat him? A. The latter part of June, 1926.

Q. Can't you fix the date? A. I think it was the 30th of June.

Q. Yes. And who called you? A. Mr. Squier.

Q. Himself? A. I can't remember whether he called or whether one of the servants called.

Q. Do you know who called you? A. I do not.

Q. Of your own knowledge. And where did you see him? A. At his home.

Q. And what did you treat him for? A. As I remember it he complained of a slight attack of indigestion. He called it indigestion.

Q. Did you observe his symptoms? A. There weren't very many to observe, except subjective symptoms, that is, the trouble that he said he had.

Q. And what did he say he had? A. He complained mainly of being troubled with gas.

(Answer repeated by the stenographer.)

Q. Did you talk to him about it? A. I did.

Q. Talk to him about the probable causes of it? A. I did.

Q. And what did he say or what did you say about the probable causes of it? A. I don't remember.

Q. Yes. What treatment did you give him? A. I gave him some tablets known as "BB" Culture tablets, and as I recollect a liquid medicine that I canot tell what was in it; I am not sure.

Q. When did you treat him again? A. Well, I am not exactly certain but I think it was the following August or September.

Q. Yes. A. Of the same year.

Q. Did you make any observations on the 30th of June, 1926 as to his general condition? A. Not especially; no.

Q. And what did you treat him for in August or September, 1926? A. Well——

The Court: August, you said, didn't you?

A. Well, I am not exactly sure, whether it was August or September.

Q. Was it July? A. No; it was not July.

The Court: It was August or September?

A. I think it was.

Q. And who called you at that time? A. Someone at the house. I don't remember who, because I can't remember whether I took the call or someone at my office.

Q. Do you know who called you from the Squier house? A. I do not.

Q. In June, where did you see him? A. At his home.

Q. Yes. In what room? A. Well, I believe that he met me as I came in the door and walked what is the dining room back into the next room, beyond, and sat down there.

Q. Yes. Was that where you saw him in August? A. I think so.

Q. And what did you see him for in August? A. Well, he still complained of some stomach trouble, and also of a slight cough.

The Court: A what?

A. A cough.

Q. Did you have any talk with him at that time with respect to the cause or causes of his ailment?

A. I probably did. I can't remember what it was, though.

Q. What treatment did you give to him then? A. I can't remember that, I am sure. Except that I gave him some probable medicine for his stomach. And I know that I gave him a cough medicine. I don't know what it was.

Q. Did you observe the cough objectively or did you depend on him to tell you about it? A. Both.

Q. Both? A. Both.

Q. He coughed? A. He did.

Q. In your presence? A. Yes.

Q. Could you classify the cough in any way? A. Well, it was a rather shallow cough; not a hard cough, nor not a cough as we say where it sounded tight, or anything like that. Just an ordinary hacking cough.

Q. Did he complain as to the distress the cough had caused him? A. I can't remember that he did.

Q. Well, what else can you remember that you said to him at all about his distress in August or September, 1926? A. Well, I don't remember any conversation particularly except that usually I examined to find out what the causes are, and I believe I told him it was probably due to a slight bronchitis.

Mr. Ferris: Like what?

A. Bronchitis.

Q. You treated him for that, I suppose? A. Yes.

Q. Had you ever seen him before June, 1926? A. Not that I know of.

Q. When did you next see him? A. Well, I can't remember exactly. I was there two or three times

after the latter part of August. I think during September I was there once or twice. I can't remember the date.

Q. Can you remember anything about those instances? A. No; nothing particularly, except that I went in and we talked a few minutes. I remember on two occasions he took me to his conservatory to show me some cucumbers he was raising, and he gave me some to carry home.

Q. And what were his ailments at that time? A. Well, it was the same thing. The cough hadn't cleared up.

Mr. Ferris: Cough had cleared up?

A. Had not cleared up.

Q. And the stomach, was it—— A. The stomach was better.

Q. Was there anything the matter with the stomach in these later calls? A. No, sir.

Q. Did he then tell you what distress the cough occasioned him? A. Except that—I can't remember exactly.

Q. Yes. A. I wouldn't say exactly.

Q. Have you told us everything you can remember about those occasions? A. Yes, sir; I have. Pardon me. One thing that I did do, perhaps I should mention: On one occasion I took his blood pressure.

Q. And when was that? A. I don't remember, but it was along the third or fourth visit, probably.

Q. What date would you place that? A. I couldn't say. Some time in September.

Q. What did you find his blood pressure to be? A. I don't remember the exact figures, but I do re-

member that I remarked it was low for a man of his age.

Q. Was it subnormal? A. No; it was not subnormal. But it was not high.

The Court: Low for a man of his age, is that what you said? Low, Doctor?

A. Yes, sir.

Q. It was subnormal? A. No; it was not subnormal be low considering the circumstances? A. I suppose you might consider it that, yes. But oftentimes in people of his age we see a pressure higher. I think there are various ranges within which a pressure may be considered normal.

Q. But considering his age he had a subnormal blood pressure? A. I wouldn't say that he had a subnormal blood pressure.

Q. Well, compared with the normal man of his age, his was sub, wasn't it? Isn't that what you said, it was low?

Mr. Ferris: I object to that.

A. It was low.

Mr. Ferris: As argumentative.

The Court: The Doctor has already explained that.

Mr. Hendricks: I think he has; yes.

The Court: Explain it again, why you want to say it was low.

A. I would not say it was subnormal because I believe there are ranges wherein a blood pressure

may be considered normal for a certain individual; ranges within perhaps twenty degrees.

Q. Did you take his pressure more than once? A. I don't remember that I did, except during the last illness I did.

Q. Can you remember why you took his blood pressure? A. I wanted to find out something about his general condition.

Q. And did you find out something about his general condition? A. I found that I thought he was in pretty good physical condition.

Q. Yes. That was in September? A. Yes.

Q. Now, in these calls did you see anybody else beside Mr. Squier? A. I saw the servants occasionally.

Q. And which servants did you see? Do you know them by name? A. There was two that I knew the name of one. Mary Conroy was one. But I can't tell you the name of the other.

Q. You saw her in June? A. Yes; I saw her every time I went there.

Q. Did you ask her anything about the condition of Mr. Squier? A. Well, I asked her if his cough troubled him very much, I think.

(Answer repeated by the stenographer.)

A. —if he was having very much distress, and I asked her also the second time I went there if she thought that he had got any relief from his medicine.

Q. Yes. And what did she say? A. I can't remember the reply that she gave me.

Q. Can you remember anything that she said to you at any of these visits? A. I remember on one

occasion when I took the call personally she called me from the house——

The Court: When you what?

A. I personally took the call, and when I arrived there she said that she thought I should come to see Mr. Squier. That she had asked him to call me, but that he hadn't deemed it necessary to do so, so she took the liberty of calling me herself.

Q. When was that. I can't remember, but it was after I had been there once or twice.

Q. And did she call you personally at any other time? A. Not that I remember of.

Q. Now was this call for his last illness? A. No; it was not.

Q. Do you remember who called you for his last illness? Did you get the call? A. I don't remember whether I did or not. I couldn't say as to that.

Q. Do you remember whether or not it was Mary Conroy? A. I don't remember; no.

Q. Did you see anybody else about during these visits in June, August and September? A. No.

Q. No—— A. Well, do you mean—I saw Mr. Avery, I think it was, outside the gate. But not in the house.

Q. You did not speak to Mr. Avery, of course? A. Except to say how-do-you-do.

Q. Did Mary Conroy tell you anything about Mr. Squier's habits or did you ask anything about that? A. Not that I remember; no.

Q. Did you ascertain anything about his habits? A. Well, what do you mean?

Q. Anything? A. No.

Q. I do not want to suggest anything to you. A. Nothing particularly. Except that he was in the habit of going to New York three times a week; I believe they told me that.

Q. Did they tell you anything about his personal habits? A. No, sir; not that I remember of.

The Court: Smoking and so on?

A. No; I asked—I don't remember that I asked about that particularly; nothing was said——

Q. Did you get any information about it? A. I probably did, but I can't recollect; I can't remember.

Q. Did you have any information about it? A. I usually do get, yes, but I can't remember exactly.

Q. If you had received any information concerning his personal habits which would have been of importance in connection with his complaint? A. No, nothing.

Q. Would you then have paid attention to it and remembered it? A. I would have, yes.

By Mr. Hendricks:

Q. Now, did you call on him in October? A. No, I didn't because I was on my vacation in October.

Q. Doctor, when did you next visit the late Edwin M. Squier? A. After what date?

Q. After October?

The Court: October?

A. I think I was called in in November to see him.

By the Court:

Q. Did you visit him in October? A. No.

The Court: You mean after August or September?

Mr. Hendricks: Yes. The witness has said in October he had not. And I want to question at the last visit.

The Court: You are right.

By Mr. Hendricks:

Q. Who called you, if you remember? A. I do not remember now.

Q. And when you got to the house whom did you see? A. I saw Mr. Squier and Mary Conroy.

Q. Who did you see first? A. I think Mary let me in.

Q. At what door? The front door.

Q. Where was Mr. Squier when you first saw him? A. He was sitting at the dining room table, the table in the front room.

Q. Before you went in to see Mr. Squier did Mary say anything to you? A. Not that I remember of, no.

Q. Did you say anything to her? A. No, I don't think so.

Q. Well, did Mary take you into the dining room where he was? A. Well, I don't remember as to that. I usually left my hat and coat and then walked in.

Q. Did she go in with you? A. I think she did.

Q. Did she stay there? A. I don't remember whether she was there all the time or not.

Q. Was she there any of the time? A. Yes, she was there some of the time.

Q. The first or last part of the time? A. First she was there. I don't remember about her being there at the last.

Q. Did she say anything that you remember? A. No.

Q. Now, at any time during that visit did Mary Conroy tell you anything about Mr. Squier's condition? A. No.

Q. During that visit did you see anybody else outside of Mr. Squier except Mary Conroy? A. Not that I remember of; no.

Q. Well, what did you say to Mr. Squier when you first saw him in the dining room on that visit? A. Well, I don't remember exactly. I probably asked him what the trouble was.

Q. Did he tell you what the trouble was? A. He complained I believe of having some pain.

Q. Where? A. He said it was in his legs.

Q. What part of his legs? A. The leg from the knee down.

Q. Both legs? A. Yes. In the shin.

Q. Did he describe the pains in his shins? A. Well, I don't know that he could describe them exactly except to say that it was a severe pain and apparently paroxysmal. It came on at different intervals.

Q. Spasms? A. Yes.

Mr. Ferris: I do not think that is right. Paroxysms are not spasms.

The Court: You can ask the gentleman about that.

Q. Were they spasms? A. I would not call them spasms, no.

Q. Were they spasmodic? A. Spasmodic, yes.

Q. Were they convulsive? A. No.

Q. Did he say how often they came on? A. He did not.

Q. Did they come and go while you were there so that you could observe them?

Mr. Ferris: I object to that. It is quite evident that pains cannot be observed.

The Court: You can observe what the patient might do and then you might characterize it as evidence of pain.

Mr. Ferris: That is different. If the question were what evidence of pain did the doctor observe I would have no objection to it.

The Court: The question was what, Mr. Ziegler?

(Question repeated by stenographer.)

The Court: These spasmodic pains is the condition referred to, isn't it, Mr. Hendricks?

Mr. Hendricks: Yes.

The Court: Go on.

By the Court:

Q. Did they? A. Well, I suppose he had pain. He acted as if he did.

By Mr. Hendricks:

Q. Did he act at any time while you were there as if he were free from pain? A. Yes.

Q. How long would the interval be between the two occasions of the evidence of pain? A. Well, I should judge—I can't remember exactly but I should say that there were times when he was free or practically free, at least he was not making any demonstration that he had pain for intervals of five minutes. Sometimes longer.

Q. How long were you there? A. I stayed there nearly three quarters of an hour.

Q. Was he standing all the time, or sitting, or what? A. Well, both. At times he was sitting and at times he was standing.

Q. Well, now, did the times that he would rise coincide with the evidence of pain? A. Yes.

Q. Will you describe, doctor, for the Court what he did? A. Well, he complained that he had pain in his shins and he said that they came on, and then they would leave him, and when the pain came on, at least I would ask him if he had the pain again, he would say yes, grasp the edge of the table and rise, and at times the pain seemed to be so severe that he was trembling as the result of it.

Q. How many times did that happen? A. I don't know. I couldn't say exactly, but at different intervals.

Q. Now, did he tell you anything about his habits? A. No.

Q. Did you ask him anything about his habits? A. No, not that I remember.

Q. Did you have any information about his habits? A. No, nothing special.

Q. Did Mary Conroy at that time tell you anything about his habits? A. Not that I remember of, no.

Q. Did you, in any way, from observation or otherwise derive any information about his habits? A. No, I don't remember that I did.

Q. Did you make an examination of him at that time? A. I did.

Q. Did you examine his body? A. I didn't strip him, no.

Q. Did you examine his shins? A. I don't remember that I did.

By the Court:

Q. What did you do? A. I examined his pulse and I examined his chest. I don't remember exactly what I asked him but I asked him the usual questions in an attempt to find out what the trouble was.

Q. From what you saw there and the complaint which he made what questions did you ask him? A. Well, I asked him if he had had any cold, probably. If his cough was better. And usually we ask if the patient has any idea as to what caused their trouble, and I probably asked him that. And I asked him no doubt about his stomach since I saw him last, or if he had ever had attacks like this before.

Q. You probably had some idea of what it was that would likely cause these pains in the shins? A. No, I did not because I had never seen anything like it before.

By Mr. Hendricks:

Q. You say you probably asked him, doctor, whether he had a cold. Now, does that refresh

your recollection as to any conversation? A. No, it does not because as I remember it he did not talk very much because he seemed to be in such severe pain that questioning was not possible—I would not say that it was not possible but it seemed better not to disturb him.

Q. Did Mary Conroy tell you anything about cold, and catching cold? A. I think that she did say,—I don't remember whether it was at that time or not,—something that he had been out on the grass without having put his rubbers on prior to that time?

Q. Did she tell you whether she had said anything to him about it? A. I don't remember that she did.

Q. Now, doctor, trying to refresh your recollection, didn't you tell me when I called on you at your office that Mary Conroy had said that she tried to keep him from going out and walking about without his rubbers on the day before? A. I don't remember that she did state that. She said that he had been out without his rubbers on.

Q. There was something like that, wasn't there? A. Something like that. I don't remember the exact conversation.

Q. Did Mary tell you that she had tried to take care of him herself?

Mr. Ferris: I object to that as leading.

Mr. Hendricks: Refreshing his recollection.

Mr. Ferris: I know but there are limits to that. I object to it as leading.

The Court: I will allow it.

(Question repeated by stenographer.)

A. Well, no, not that she had tried to take care of him.

Q. What did she say about that general subject? A. Well, the general idea was that she thought I should have been called in order to get me there, she would have to call me because he didn't think that it was necessary, didn't think that he was ill enough to need the doctor.

Q. Did she say that at that time or was that a thing that she said several times? A. I don't remember whether she said it at that particular time or not but she said it, and whether she said it more than once I can't remember.

Q. Did he have any cold? A. Apparently not.

Q. Did you test his lungs? A. I did.

Q. Were they all right? A. They seemed to be.

Q. Did you test his heart? A. I did.

Q. Was it all right? A. His pulse was rapid.

Q. How high? A. I can't remember but I know that it was above normal.

Q. Now, doctor, what treatment did you give him? A. I gave him morphine.

Q. Where did you administer it? A. I gave him a hypodermic injection in the arm.

Q. And for that purpose you had to expose his arm, didn't you? A. Yes.

Q. How high up? A. Usually we give it in the arm about midway or two thirds of the way up between the elbow and the shoulder on the outer side.

Q. Just below the vaccination mark? A. Yes. Usually we——

Q. And for that purpose you had to take his coat off? A. I think as I remember that he did have his coat off when I went in.

Q. How was he dressed? A. He was wearing his vest but he was in his shirt sleeves.

Q. All you had to do was roll up his shirt sleeve? A. Roll up his sleeve, yes.

Q. Did you notice any discoloration on his arm? A. Not that I remember of, no.

Q. At that time did you examine any other part of his body and notice any discoloration? A. No.

Q. Did you later? A. Not that I remember of.

Q. Now, doctor, didn't you tell me at the time that I have indicated that you noticed that his shins were blue? A. I did not.

Q. Did you ever tell me that? A. I don't remember that I ever did.

Q. Did you ever see any blueness on his body? A. During the latter part of his illness he turned—his color changed to a sort of a bluish color.

Q. What parts of his body? A. The lips and the finger tips, and the general color of his skin.

Q. What general process would you call that? A. Cyanosis.

Q. How long did you stay after you administered the morphine? A. I think I stayed, it was that first time that I saw him about three quarters of an hour. I would fix that. I can't remember exactly.

Q. After you administered the morphine? A. Probably a half an hour.

Q. And how much morphine did you give him? A. As I remember it, it was one eighth of a grain.

Q. Now, doctor, is your recollection accurate on that? A. It is not absolutely accurate. I can't tell except usually when I give a dose of morphine I start with one eighth of a grain.

The Court: What difference does that make?

Mr. Hendricks: I think it will appear in a moment that it didn't take effect and it was a large dose.

Q. Did you give him the ordinary dose or larger than the ordinary dose? A. I gave him the ordinary dose at first.

Q. When did you give him the next dose? A. In about a half hour, I think, as I remember it, I gave him a tablet to take by mouth, another one eighth of a grain, because he didn't seem to be getting any relief at all from the hypodermic.

Q. The one eighth of a grain is a full dose, is it? A. Well, I think that depends; some doctors give one quarter of a grain as a first dose.

Q. When did you next give him some? A. Well, it was—I don't remember exactly. I had to go out and make some calls and then I came back. How long it was, I think it was around two hours. And then he was still complaining of this severe pain and apparently had had no relief and as I remember it, I gave him one quarter of a grain of morphine in about two hours.

The Court: Is this testimony for the purpose of predicating a hypothetical question later?

Mr. Hendricks: Yes, your Honor.

The Court: And if so, how would testimony as to medicine administered, and the condition of the patient, in November, 1926, have any bearing on this case? The will having been made July, 1926.

Mr. Hendricks: I think the general development of the examination in connection with

what is about in, and what will be put in, will connect this, with the general condition and habits and mental condition of the patient.

The Court: In July, 1926?

Mr. Hendricks: Yes. Four months before. The condition established being a chronic systematic condition.

The Court: Go on.

Q. What was the third dose you gave him after you came back from your calls? A. Well, I can't tell exactly but I think I gave him a quarter of a grain of morphine.

Q. So that would be in two hours a half a grain? A. Yes.

Mr. Ferris: I object to that. That is not so. The witness testified he was there forty-five minutes and gave him the first twenty-five minutes afterward, and the second a half an hour afterward, and the third two hours after that.

A. That is right.

By Mr. Hendricks:

Q. Was it all within two hours? A. No, it would not be within two hours.

Q. Within how many hours? A. Perhaps three hours in all.

Q. How long did you stay after you gave him the quarter of a grain? A. I don't remember but I stayed there—I was in and out during that day, I don't remember the exact limits of time.

Q. Did you notice the effect of the dose? A. Yes, I stayed to watch to see whether he got relief or not.

Q. Did you observe whether he did or not? A. He apparently did not get much relief, no.

Q. Up to when? A. Up to about five o'clock in the afternoon.

Q. Did you note then whether he got any relief? A. Well, he seemed to be a little more easy. He did not seem to be suffering as much.

Q. But he was still suffering? A. Somewhat, yes.

Q. During this time was he up and about? A. Yes, he was.

Q. Did he lie down? A. Not at all.

Q. Did you tell him to lie down? A. We tried to have him lie down.

Q. Where? A. We tried to have him go to bed.

Q. What did he say? A. He didn't want to go to bed.

Q. He refused to go to bed?

Mr. Ferris: I object to that.

Q. Who asked him to go to bed? A. I asked him to go to bed.

Q. Who else asked him to go to bed? A. Mr. Searles asked him to go to bed.

Q. When did Mr. Searles come in? A. He was there the second time that I came.

Q. Did you talk to Mr. Searles? A. Well, I don't remember what we said. Probably I did.

Q. Did you ask Mr. Searles any questions about the habits of the patient? A. I did not that I remember.

Q. Did Mr. Searles tell you anything that you remember? A. Not that I remember, no.

Q. At that time? A. No.

Q. Or afterwards? A. Not that I can remember, no.

Q. Now, I wish to refresh your recollection, doctor; did Mr. Searles tell you at that time that the patient had failed in the six months preceding? A. He did say that he thought that Mr. Squier had failed, that is, that he didn't look as well since the middle of the summer, that he had not seemed to be as strong.

Q. Now, did he say the middle of the summer? A. Well, I don't know that he said exactly when but in the last few months. I wouldn't say exactly what he said except to say that he thought he had failed.

Q. Did you try to get Mr. Squier to lie down anywhere except going to bed? A. I think—I don't remember that we did. I think we suggested first that he had better go to bed.

Q. And what did you suggest afterward, if anything? A. Nothing except that he should go to bed and it was also suggested that he probably had better have a nurse to take care of him, and he thought that he was not sick enough to need the attention of a nurse.

Q. Was there a couch there in the hall where he could lie down? A. There was one in the hall, I think.

Q. Did you tell him to lie down there? A. I don't remember that we did.

Q. Have you told everything, doctor, that took place up to five o'clock? A. As far as I can remember.

Q. And what day of the week was that? A. I think it was on Saturday. I am not sure. Either Friday or Saturday.

Q. Now, did you leave at five o'clock? A. Yes, I think I did.

Q. With whom did you leave there? A. I think that at that time we secured a nurse for him and left him in her charge. I think we had succeeded in getting him in bed. Whether it was five or four or six I can't exactly remember, but I know he did go to bed.

Q. May I suggest you are leaving out a day? A. Possibly I am. I am not sure exactly. I haven't looked it up in my book. It might have been on Friday.

Q. Then your recollection is not so clear as it might be? A. I can't remember the exact date, no, when he was taken. I can't remember whether it was Friday or Saturday.

Q. Who got the nurse? A. I secured the nurse.

Q. What was her name? A. Miss Miller.

Q. Is she here now? A. I think she is.

Mr. Hendricks: Stand up, Miss Miller.

Q. Is that Miss Miller? A. That is the nurse, yes.

Q. Who was the other nurse? A. I secured another nurse from an agency in Elizabeth and I can't remember her name nor her address.

Q. Did you stay there that night after five o'clock? A. No, I did not.

Q. Do you remember when you got the nurse? A. Well, it was in the middle of the afternoon as I remember it. It might have been about that

time, five or six. I am not sure. I went down and got her in my car and took her up there.

Q. Was there any talk about how long the nurse would stay?

Mr. Ferris: With whom?

Q. Mr. Searles or Mr. Squier or Mary Conroy? A. Not that I remember of. They just wanted someone there to take care of Mr. Squier and see that he did have care. I don't believe there was any time limit mentioned.

Q. What was your idea of that? A. Well, I didn't know how long she would have to stay.

Q. From his condition what was your idea? A. Well, I wasn't sure, as I said, I couldn't tell what the condition was.

Q. Did you tell the nurse what you wanted her for? A. I told her we wanted her to take care of Mr. Squier and to make him comfortable. That I didn't know what the matter was with him as I remember it, that is what I told her.

Q. When did you next see him? A. The next morning.

Q. What morning would that be? A. Well, if it were on Saturday that I first saw him, it might be Sunday morning, although I am not clear about that.

Q. It might have been Saturday morning? A. If it was the next morning, it was Sunday.

Q. If it was Saturday morning was the nurse there? A. She was, I think.

Q. What time did you come, then? A. I don't remember. Probably about nine or half past. I am not sure about that.

Q. Do you remember whom you saw? A. No, I do not.

Q. You didn't come according to call? A. No. I came of my own accord.

Q. And where was the patient? A. In bed.

Q. Were you present when the patient went to bed? A. I was.

Q. Well, now, will you describe what took place before he went to bed? A. Well——

Q. Now, you were downstairs, weren't you? A. Yes, we were downstairs.

Q. And who were present? A. Mr. Searles and Mr. Squier's brother, Mr. Fred Squier.

Q. You have not mentioned him? A. I have not been asked about him.

Q. When did he come? A. He was there when Mr. Searles—when I came back the second time in the morning.

Q. In the morning? A. Yes, on the first day that I saw him.

Q. And he was there throughout afterward? A. He stayed there I think during the day I don't know how long or when he——

Q. Did you talk to him? A. Not especially. There was general conversation although I don't remember what it was about.

Q. Did you ask him anything about the patient's habits? A. I did not, that I remember.

Q. You were present, Mr. Searles and Mr. Fred Squier? A. Downstairs, yes.

Q. And who else? A. Well, I suppose that Mary Conroy was in and out. I don't remember.

Q. Was Miss Miller there? A. Not at that time, no.

Q. Now, tell us what happened about getting the patient to bed. A. Well, it was in the afternoon, along in the middle, I think. I wouldn't be sure exactly, but Mr. Searles and I think Mr. Squier finally prevailed upon Mr. Edwin Squier to go to bed.

Q. How did they prevail on him? A. Well, they just kept suggesting it and I guess he felt as if he wanted to go and so he started——

Q. What was said? A. I don't remember.

Q. What was done? A. Nothing except that Mr. Squier got up and started for the stairs and Mr. Searles and I followed him.

Q. Anybody else follow him? A. Not that I remember of, no. Mr. Searles and I, I think were alone with him.

Q. Did you help him to the stairs? A. No.

Q. Why not? A. Because he didn't want us to.

Q. Did he say he didn't want you to help him? A. He said that he was all right.

Q. Did he say he didn't want to go to bed? A. Not at that time, no.

Q. Did he say anything about it at that time? A. No. He seemed willing to go to bed, but he didn't care to have us take hold of him or help him.

Q. Didn't want you to touch him? A. Apparently not.

Q. Did you help him up the stairs? A. I don't think we did. I think he walked up alone.

Q. Nobody helped him? A. Not that I remember of, no.

Q. Did anybody offer to help him? A. Yes, Mr. Searles offered to and I offered to.

Q. What did he say? A. He said he guessed he could get along all right.

Q. And was he in a condition to get along all right? A. He should have had some help to get up the stairs.

Q. And he refused it? A. Well, he didn't—he refused in that he said he was all right and we didn't press him with our assistance.

Q. Can you describe how he got up the stairs? A. Well, he walked up slowly by taking hold of the stair rails. Whether he went up one step at a time I can't remember, but he was quite shaky, but he did get up all right and walked into his room all right.

Q. Would you say he ought to have been carried up when he was in that condition? A. No, I wouldn't think that he needed to be carried.

Q. Did you go into his room? A. I did.

Q. Anybody else? A. Mr. Searles.

Q. Anybody else? A. Well, I don't think so. I don't remember.

Q. Was anybody else outside of the door before he went into his room? A. I guess Mary was standing in the hall but I am not sure. I think she made up his bed, got his bed ready or something like that.

Q. Was Miss Miller there? A. No, she was not.

Q. Are you sure of that? A. I am pretty sure of it, yes. I can't remember exactly.

Q. Who undressed him? A. He undressed himself.

Q. Did he want to get undressed? A. Oh, he didn't say whether he did or not, but he started to undress. We didn't encourage him to. When he got in his room he started to undress.

Q. Now, doctor, didn't you tell me that you had to keep at him to get him undressed piece by piece?

Mr. Ferris: I object to that as an attempt to impeach his own witness.

Mr. Hendricks: He is the Court's witness.

Mr. Ferris: He seems to have a perfect recollection. He is testifying fairly.

The Court: He is your witness in the sense that you have got him. Now, that he is here all witnesses are the court's witnesses.

Mr. Hendricks: I am only trying to get the facts.

The Court: I understand. I will allow the question.

(Question repeated by stenographer.)

A. I think I told you that we had to keep at him to get him to go up to bed. I don't remember we had to keep at him to get him undressed.

The Court: I do not know what significance all of this might have with reference to his—testimony with reference to his so-called stubbornness, except I might say that I will take notice of the fact that men seventy-five get to be pretty fixed in what they want to do and when they will do it, and how.

Mr. Hendricks: At what age do women get fixed in their ideas?

The Court: Well, since we do not have to decide that we will not speak about it.

Mr. Hendricks: Has your Honor got so far as to attribute to the testator what we call a fixed idea?

The Court: Unless you show something different from what I have in mind now, of course,

this testimony so far does not throw any light upon his stubbornness at all, except that condition we know exists in old men. Some men even around fifty are a little fixed in their ideas. I can understand you may want to connect this up in some way with a hypothetical question, it may have some bearing upon the general condition of the man. I have been wondering whether that is so or not.

Q. At that time the patient had morphine in him? A. Yes, I think he did.

Q. A half a grain? A. Yes.

Q. Did you treat him after he went to bed? A. I did.

Q. What treatment did you give him? A. Well, I don't remember exactly. I think we tried to make him comfortable by putting hot bags around him, and what else was done I am not sure except just to try to keep him quiet. That is all.

Q. Did you give him any more morphine? A. I don't remember. I think I did. But I am not sure about that.

Q. Did you give the nurse any instructions? A. Well, I told her to make him comfortable as I remember it.

Q. Did she have some morphine? A. I don't know whether she did or not.

Q. Did you give her any? A. I don't remember whether I did or not.

Q. Did you learn afterward whether she had given him any morphine? A. Not that I remember of.

Q. Well, after you put him to bed——

By the Court:

Q. Did she keep a chart, doctor? A. I think the nurse did. I am not sure. I didn't.

Q. Well, I mean the nurse. A. Yes, I suppose so. They are supposed to keep charts.

Q. Where is that chart now, do you know? A. I don't know, no.

By Mr. Hendricks:

Q. Did you see the chart? A. Probably. They usually show them to you when you go in to see the patient.

Q. Did you leave the patient alone in the bed room? A. As I remember it.

Q. What bed room was that? A. Well, I don't know. As you go up the stairs you turn sharply to the left and went back parallel to the stairway into I suppose it would be a back room.

Q. You left the patient alone? A. Well, I didn't know. I think Mr. Searles was there but I am not sure.

Q. Was the nurse there? A. I don't know whether she was there when he went to bed, or afterward. I can't tell you about that.

Q. When did you see the patient again? A. Well, I am not exactly clear. I think I came in that night. I may have been wrong. It may have been Friday that he was taken sick and Saturday—and Friday that he went to bed. Because I know I stayed all night with him one night. I am not exactly sure.

Q. What night did you stay all night with him? A. The night that he died. That was on Monday night. He died early Tuesday morning.

Q. What happened Saturday, the second day? A. He seemed to be a little better in the morning of the day after he was taken sick, as I remember it, and he didn't have apparently any temperature. I do remember that. And no cough, apparently, except that either Saturday or Sunday, I think it was Saturday night, while I went over to Mr. Fred Squier's house and suggested that I would like to have consultation because I was not sure. I think that Saturday afternoon he developed what we call a pulmonary oedema, that is fluid in the lungs, and was coughing and was raising quite a bit, and I was at that time afraid he might have pnuemonia so I suggested that we have consultation.

Q. To whom did you suggest that? A. Well, I went over to Mr. Squier's house, and as I remember it, Mr. Fred Squier, and Mr. Fred Squier and Mr. Searles I believe were both there, and we got busy and got a consultant.

Q. Dr. Carl Vogel. When did he come? A. I think he came that night.

Q. What was the condition of the patient on the night of the second day? That is twenty-four hours after you put him to bed? A. Twenty-four hours after he went to bed he seemed to be a pretty sick man. That is, he was coughing, and his respiratory rate was rapid. I don't remember what his temperature was, but I know that he was coughing considerably, and I examined his chest; it seemed to me that there were no normal breathing sounds audible. It was what we call rales all over the chest. Apparently a pulmonary oedema had developed.

Q. That is, it was what you would call a stertorous breathing? A. No, sir.

Q. Was it a liquid breathing? A. I don't know of any such term. It was just moist rales in the chest.

Q. Moist rales? A. Yes.

Q. When did you first notice that—— A. In the afternoon——

Q. —(continuing) before his death? How long before his death? A. Well, if it was on Saturday, it would be about forty-eight hours, I should say. A little more than forty-eight hours. It was the afternoon of the second day of his illness.

Q. Yes. Was Dr. Vogel there when you noticed that first? A. No; he was not.

Q. Did you connect that in any way with the pains in his shins? A. After that developed, I did.

Q. In what way? A. I assumed that the pain he had in his shins was probably a type of onset of pneumonia.

Mr. Ferris: Of what?

A. Of pneumonia.

Q. Did you ever see any symptoms of that kind in pneumonia? A. I never did, no.

Q. Now——

The Court: Is there such a type?

A. Well, the modes of onset sometimes differ. There is a type of lobar pneumonia may—the onset may be in typical cases, there is a certain type of onset. In a typical case it may come on in different ways.

Q. But this one you never heard of before? A. No; I never had seen that type before.

Q. What treatment did you give him when you noticed the rales? A. Moist rales? I think—usually we use atropine in those cases, and I probably gave him some, but I don't remember.

Q. What would the effect of that be? A. Usually it has the effect of drying up the secretions.

Q. Yes. Was this condition that you first noticed in his breathing anything different from what happens when old men lie down for a long period? A. Well, it—how long do you mean?

Q. Well, long enough to induce the condition? A. Well——

Q. Does hyperstatic congestion come to old men if they lie down for a protracted period? A. It depends some on them, on their general condition.

Q. It does happen? A. It does happen, yes; sometimes.

Q. And it is better for them to stay upright a certain part of the day if their condition warrants it?

Mr. Ferris: I object to that as purely speculative.

Q. Scientific, I mean.

Mr. Ferris: It all depends on the condition of the particular man, as the Doctor said; and I think any general statement of that sort would not enlighten your Honor any because there is not any evidence that the conditions incorporated in the question are the conditions that pertain to Mr. Ed. Squier at that time.

The Court: I will allow the question.

(Question repeated by the stenographer.)

A. Why, yes, if their condition warrants it.

Q. Yes. This moist breathing was not the ordinary hyper-static congestion? A. I don't think it was; no.

Q. It was more than that? A. It was in the front of the chest, it was hyper-static congestion you get the collection of fluid on the side on which the patient is lying. If the patient turns eventually the congestion will shift.

Q. What do you mean by fluid? A. Well, oedema means a collection of fluid. That is, there is an inflammatory condition, or due to poor circulation, serum is poured out into the bronchi and into the alveoli of the lungs so that you get, when the air goes in, a sound of bubbling.

Q. Yes. A. Or moist rales.

Q. Yes. A. Is that what you want?

Q. Yes.

The Court: Here you got it on both sides of the chest?

A. Both sides; in front and back, and at the apeces——

The Court: He was lying which way?

A. On his back.

The Court: On his back?

A. And sitting up; we sat him up to examine both the front and back.

The Court: And if you sat him up it happened to be on one side, the side on which he was lying, would it disappear in time?

A. In time it probably would.

The Court: How long?

A. Well, I should say——

The Court: I mean would it disappear during the period of examination?

A. No; I don't think it would.

The Court: Go on.

Q. At that time did you make any observations as to the condition of the circulatory system? A. As I remember it he had begun to be somewhat cyanosed, that is blue. And his pulse was rather rapid and thready then—I wouldn't say it was thready; it was rapid.

Q. What did you observe as to his respiratory system? A. As I have said there were moist rales present, front and back at the apeces of the lungs, as well as at the base. And the respiratory rate was rapid.

Q. And would you say—— A. And he was also coughing and raising.

Q. Would you say there was a paralysis of the respiratory machinery? A. Not a bit.

Q. Did you observe that any time up to his death? A. Not at all; there was no paralysis.

Q. Did you look for it? A. You can't help but notice it; if he had paralysis, they don't breathe.

Q. They finally cease to breathe? A. Yes.

Q. Would the paralysis appear gradually? Develop gradually? A. Why, yes. I suppose it would.

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Q. Yes. A. I don't know exactly what you are asking, what kind of a paralysis you mean. A sudden paralysis or—there are different kinds.

Q. The paralysis would be in the diaphragm, wouldn't it? A. Partly; and partly in the intercostal muscles.

Q. And it would come on gradually and communicate up to the lungs? A. Toxemic paralysis would be gradually—would come on gradually.

Q. Yes. Now, would that have its route or base in his general condition? A. I don't think so. Not in a case of lobar pneumonia.

Q. Did you discover any other cause of the condition that you found? A. Not that I know of; no.

Q. Yes. You never explained the blueness of the body? A. Yes.

Q. How did you explain that? A. On the basis of toxemia.

Q. What do you mean by toxemia? A. I mean that in cases where infection is virulent enough, and the toxemia is great, the heart muscle is weak, and the patient is apt to be blue.

Q. Yes. A. Some cases of pneumonia go through a course of fever without having any signs of cyanosis at all.

Q. Yes. But you judged that there was poison present? A. Yes, I did.

Q. Did you investigate to find out what the poison was? A. I don't know of any particular investigation you could make except examination of the sputum.

Q. Did you make such an examination? A. Before we could get sterile receptacles in order to collect the sputum his lungs had apparently cleared, and he was not raising at all. There was consoli-

dation present enough so that we knew it was lobar pneumonia.

Q. Yes? A. And that in itself would explain the toxemia.

Q. Do you mean to say he cleared after he had congestion? A. He did—no. No, not after he had congestion. After he had oedema. The oedema cleared up but not the congestion.

Q. But there was no time when you could get any evidence of the real nature of the poison? A. Yes; from his symptoms and physical examination I knew it was lobar pneumonia.

Q. But you said there was poison present? A. Poison elaborated by the bacteria, when they form in the body, elaborate toxins. And the toxins is what caused the trouble.

Q. This was an auto toxic trouble? A. Not at all.

Q. Was the toxin foreign to the body? A. Foreign in so far as lobar pneumonia is caused by bacteria, the pneumococcus.

Q. Manufactured by the body itself? A. No; it grows itself. It enters the body, and if it elaborates, they reproduce themselves.

Q. Yes. How long before the toxic condition was manifested would you say that the toxin had entered the body? A. I can't say as to that, I am sure.

Q. You do not know the nature of the toxin?

The Court: He has already said——

Mr. Hendricks: Pardon!

The Court: He has already told you the nature of the toxin.

Mr. Hendricks: He was about to tell me.

The Court: No. He did tell me.

Q. It might have been already there?

The Court: Tell him the nature of the toxin.

A. The toxin is the poison elaborated by the bacteria themselves. That is, they manufacture this substance known as poison, or toxin.

The Court: You named it, what do you call it?

A. Toxin.

The Court: You named it.

A. No, I named the bacteria, but not the toxin.

Q. What did you name the bacteria? A. Pneumococcus.

Q. You did not analyze them, though? A. No.

Q. You have no evidence except your scientific conjecture they were pneumococci?

Mr. Ferris: I object to that "scientific conjecture."

Mr. Hendricks: I asked him was it a scientific conjecture.

Mr. Ferris: I object to that form of the question, on the ground it assumes the substance of the witness's testimony on this subject is a conjecture. I do not care what adjective you add to it.

The Court: There is no jury. There is no jury here.

Mr. Ferris: May I have an exception?

The Court: Exception.

(Question repeated by the stenographer.)

A. I think you can say more than conjecture. From experience in past cases, physical examination, and symptoms, consultation with two men agreeing, I should say it was lobar pneumonia, probably of the pneumococcus type.

Q. Probably. You were going to say it probably might have been in the system, and you did not finish your answer. A. You asked me when the toxin or the bacteria entered the system.

Q. Yes. A. I cannot answer that.

Q. Yes. A. Because in several—if you should take cultures of normal throats, you might find the bacteria present.

Q. It might have been there how long? A. It might have been there three days, three weeks, three months, or three years.

Q. Or more? A. Probably.

Q. After the patient got to bed you spent some time by his bedside? A. Yes.

Q. Did you talk to him? A. Except I asked him how he was feeling I think, probably.

Q. How many times? A. Well, every time I went in I would ask him, I think.

Q. What did he say? A. He always agreed he was feeling pretty good.

Q. What language did he use, do you remember? A. I remember one particular instance that, the night before he died, I came into the room and I said, "Mr. Squier, how do you feel this evening?" He said, "I feel pretty snappy." That was about twelve hours before he died. I guess less than that.

Q. Did you have any talk with him of any kind? A. No; I tried to keep him as quiet as possible.

Q. Did he ask for anything? A. Not that I remember of. Not even a drink of water.

Q. What? A. I don't remember that he asked the nurses to bring him a drink of water.

Q. Do you remember particularly that he didn't ask for anything? A. That struck me—during the time that I was with him I never heard him ask for any single thing.

Q. Yes. A. Or any form of assistance whatever.

Q. Did the nurse tell you that he did not ask for anything? A. I don't remember that they said he did not ask. But I remember that they thought he was a remarkable patient in that he didn't require more attention or ask for more attention.

Q. Yes. But you did remark that he did not ask for help? A. Yes.

Q. At all? A. Yes; that seemed to me——

Q. You have no knowledge of any request he made for water or anything? A. I have not; no.

Q. How did he lie, when you observed him? A. He was usually lying on his back, propped up.

Q. Did he sleep when you were there? A. Some of the time; yes.

Q. Do you know whether that was natural sleep? A. Well, probably it was not specially natural.

Q. Did you ask anybody in the household who had known him, about his habits of sleep? A. Well, I don't know—I don't remember that I did.

Q. Did you get any information with respect to his habits of sleep? A. I don't think I did.

Q. Now, Doctor, don't you always try to get the medical history of a patient? A. Usually.

Q. Well, did you get his medical history in any way? A. Why, I asked him, and he, as I remember it, there was nothing particular in his medical his-

tory except that he had had an accident. I don't know what year, but he said he had broken his leg. And that Dr. Cladek had taken care of him.

Q. Did he tell you that or did somebody else tell you that, do you remember? A. He told me that, I believe.

Q. When did he tell you that? A. I don't know; I don't remember.

Q. Do you remember anything else that he told you? A. No; I don't.

Q. Was he talkative? A. I don't think he was especially talkative. I wouldn't call him that.

Q. Would you say that he was taciturn? A. Well, I don't know exactly how to characterize him. I think that probably with a man of his own age and of his acquaintance he might probably talk more than he would to me.

Q. He was not very communicative to you? A. He was always very pleasant to me and we talked a little bit. I never stayed very long. But except at the times we talked about Dr. Cladek, and those flowers I believe were mentioned once or twice.

Q. And that was in the summer, was it? A. Yes; that was before his last illness.

Q. Yes. A. And as I said, he took me out and showed me his cucumbers and gave me some to carry home.

Q. Did he show you the rugs? A. Well, he didn't specially, no.

Q. You saw them? A. I could see them.

Q. You could see them? A. Yes.

Q. Did you have to look around to see them? A. Not very much.

Q. They were everywhere, weren't they? A. Quite evident; yes. There were a number of them.

Q. Any on the chandeliers? A. No; not that I remember of.

Mr. Ferris: Is that intended to be facetious?

Mr. Hendrick: It is. And I apologize. We lawyers have to have some relief.

The Court: Please! Please!

Mr. Hendricks: That is all.

Cross Examination by Mr. Ferris:

Q. Doctor, you are not certain as to the day of the week when you first called to see Mr. Squier on the occasion of his last illness? A. Apparently not. I was thinking it was on a Saturday. I know it was the latter part of the week.

Q. If I told you he was in his office on Friday that would fix the date more exactly in your mind? A. If I knew for sure.

Q. During the two or three days preceding the death of Mr. Squier did you hear from any source that on that Saturday morning Mr. Edwin Squier had received news of the death of his brother, the previous night? A. Why, it seems to me that I did, but I don't remember for sure about that.

Q. You have some faint recollection of such—— A. I don't know who told me. I know that I heard that his brother had died.

Q. Wouldn't the fact that he had received shocking news of that character have had something to do with the physical condition that you have described here on the stand? A. I think it might have an effect on his mental condition. I don't know about his physical condition.

Q. And you observed no effect upon his mental condition? A. Apparently not.

Q. While you were there. You testified that you gave him an eighth of a grain of morphine on the occasion of your first visit with regard to his last illness? And I think that you said you gave him that dose by means of a hypodermic needle? A. Hypodermic.

Q. And that subsequently you gave him an additional eighth grain in the form of a tablet. Did you observe Mr. Squier taking that tablet in your presence or did you leave it for him to take in the event he felt the necessity of it? A. I think I gave it to him.

Q. Are you sure of that? A. I am not sure. But I think I did give it to him.

Q. That is according to your best recollection? A. Yes.

Q. You had your needle there, did you not? A. I did.

Q. You had enough liquid morphine to inject—or morphine? A. I used the same form of morphine, except in preparing it for hypodermic I dissolved the tablet.

Q. I only recall that to your mind in order to find out more definitely from you whether you recall the tablet of morphine was taken in your presence or not? A. I can't be absolutely sure but I think he took it before I left to make a call.

Q. When did the nurse, Miss Miller come there? The first day that you called on his last illness, or was it the following day? A. It seems to me it was the first day; the afternoon of the first day.

Q. Your first visit that day was early in the morning? A. Well, it was around half-past nine or ten in the morning.

Q. And you believe that the nurse came there some time in the afternoon? A. I think I went and got her that afternoon.

Q. You yourself went and brought her there, did you not? A. I did, I believe.

Q. Now, you say that Mr. Searles said to you during those two or three days of the last illness of Mr. Squier that he thought that Mr. Ed. Squier had been feeling or looking worse since the middle of the summer, is that right? A. Well, I would not fix it as the middle of the summer, but during the last few months I thought he had failed.

Q. Well, you yourself had seen him from June to November, had you not? A. Yes.

Q. Had you observed any marked difference in his appearance—— A. Well, I can't——

Q. —(continuing) between June, the first time you saw him and the end of September—— A. The only difference——

Q.—(continuing) concluding the last time you saw him, of his last illness? A. The only difference I saw was that he seemed to have a cough; aside from that I don't think that he had changed much from the first time I saw him.

Q. Now, when did the doctor whom you called in for consultation arrive there, do you know? A. I think the evening of the second day.

Q. And that was how long before the death of Mr. Squier? A. Well, as I say, I am not exactly clear. If it was on Saturday, it was forty-eight or more hours before his death.

Q. Yes. A. He died early——

Q. How many times did this doctor call there? A. Dr. Vogel came out once and stayed all night,

and it seems to me that he came out once again. I think he was there twice.

Q. And when he stayed there all night was that the night that you stayed? A. No.

Q. All night also? A. No, sir; that wasn't the night.

Q. That was the following night after you had stayed all night? A. No; it was before I had stayed all night. Before I had stayed.

Q. You stayed the following night after he? A. I stayed the night that he died.

Mr. Ferris: Yes. That is all.

Redirect Examination by Mr. Hendricks:

Q. Doctor, do you know the date on which the late Edwin M. Squier died? A. It seems to me that it was the 9th of November.

Q. And that would be Tuesday? A. It was a Tuesday morning; I remember that.

Mr. Ferris: The 9th of November was a Wednesday, 1926? Pardon me. That is 1927.

Q. Well, now, if you came there Friday for the first time——

The Court: Is this further redirect?

Mr. Hendricks: No, no.

The Court: What is it?

Mr. Hendricks: I don't know what you call it. I am not technical.

The Court: Well, I am. Sounds like further redirect. Put your question.

Mr. Hendricks: This is on what was brought out by my friend, whatever you call that.

Q. You came there Friday the 5th of November and Stuart C. Squier, Edwin M. Squier's brother, died on the 6th, then the news of the death of Edwin M. Squier could not have been a competent cause of the condition that you observed could it?

The Court: There is no claim made as to that.

Mr. Ferris: I object to that.

The Court: The doctor did not say that. Nothing at all to do with his physical condition, the news of his brother's death. The doctor so stated.

Q. Now, if Mr. Searles had not been in Rahway since the 1st of June, 1926, then the remark that he made about the difference in the condition would have referred to the condition which he observed the first of June, wouldn't it?

Mr. Ferris: I object to that.

The Court: Do not answer that.

Mr. Hendricks: If your Honor please, I submit that Mr. Searles has testified——

The Court: I know but this witness need not testify for me to interpret the evidence here. I place my own interpretation on it.

Mr. Hendricks: Pardon me?

The Court: I say I will place my own interpretation upon the evidence.

Mr. Hendricks: Yes.

Eleanor A. Miller—For Appellant-Contestant—(Recalled)—Direct

Q. When the patient stood at the bottom of the stairs ready to go up unaided, he was pretty shaky, wasn't he?

Mr. Ferris: I object to that as not proper redirect.

The Court: The doctor said he went up the stairs shaky.

Mr. Hendricks: Shaky, that's all.

Mr. Ferris: That's all.

The Court: We will adjourn now until 1:30 o'clock.

AFTERNOON SESSION 1:30 P. M.

ELEANOR MILLER, recalled.

Direct Examination by Mr. Hendricks:

Q. Miss Miller, who paid you for your services as nurse at the house of Edwin M. Squier? A. Mr. Houghton.

Q. When did Mr. Houghton arrive? A. The morning after the death of Mr. Squier.

Q. What day was that? A. That was on Tuesday morning.

Q. What did he do when he arrived?

By the Court:

Q. You say the morning after the death, or the morning of the death? A. Well, the morning of the death. That was Tuesday morning. Why, he came there and I was introduced to him and he

came and said he would make his stay there until after the funeral.

Q. Did he say anything to you? A. Well, I don't remember whether he said anything.

Q. How? A. Nothing definite.

Q. Well, about your room? A. Oh, well, Mary moved me back. I was in the room in the front——

Mr. Ferris: I move to strike it out.

Mr. Hendricks: I consent.

Q. Did he say anything to you about your room, the room you were occupying? A. No, he did not.

Q. What else did he do? What did he do after he came there?

The Court: She went all over that, I think, on her former testimony.

Mr. Hendricks: I think not, if your Honor please.

The Court: Well, all right.

A. He seemed to have a lot of writing to do and he was there about, in and out all day, and writing in the library, and that is all I know.

Q. When you got there was there a crepe put on the door? A. Oh, well, there was a crepe put on the door. The undertaker put a crepe on the door and then Mr. Houghton took it off.

Q. That was before the funeral? A. Yes, sir.

Q. Now, you heard Dr. Lance testifying about dates. What time did you first arrive at the house? A. I arrived in the afternoon, on Saturday, Mr. Hendricks. I don't remember the time but it was afternoon.

Eleanor A. Miller—For Appellant-Contestant—(Recalled)—Direct

Q. Was it as late as five o'clock? Or earlier? A. I think it was earlier.

Q. Did you have any talk with the doctor about how long the patient had been ill? A. Well, it seems to me that he had been ill——

Mr. Ferris: Yes or no, please. That only calls for a yes or no answer.

A. Yes.

Q. And what talk did you have? A. Why, it seems to me that he said he had been ill since Friday.

Q. Your understanding is that the patient had been ill a day when you were called?

Mr. Ferris: I object to that as summarizing the effect of the witness's testimony,

Mr. Hendricks: I will withdraw it. I agree that it is.

Q. Were you told what you were called for? A. I was told, yes, sir.

Q. And who told you? A. Dr. Lance.

Q. And what did he say? A. Said he had given the patient an opiate and that he needed watching and he thought it would not be longer than twenty-four hours as far as he knew.

Q. When you first arrived who were in the house? A. Mr. Fred Squier and Mr. Searles and Mr. Ed Squier, they were at the table, and Mary met me at the door, she let us in.

Q. In what room were they at the table? A. In the dining room.

Eleanor A. Miller—For Appellant-Contestant—(Recalled)—Direct

Q. Was a meal being served? A. It seems to me there was just a luncheon, just Mr. Squier,——

Mr. Ferris: I cannot hear you.

A. Just Mr. Squier had been eating. That is my impression.

By Mr. Ferris:

Q. That is Mr. Ed Squier? A. Yes.

By Mr. Hendricks:

Q. Did Mary go in and out of that room? A. She did.

Q. Can you tell us the time that that was that they were in the room, in the dining room, that you have just talked about? A. Yes.

Q. Can you place the time of day, what time it was? A. Well, I should judge about two o'clock, or between two and three. I am not sure.

By Mr. Ferris:

Q. What day? A. On Saturday.

By Mr. Hendricks:

Q. What happened after that? A. Why, then the doctor asked Mr. Squier if he wouldn't go to bed, and we all asked him to go, urged him to go, but he didn't want to go, he was unwilling to go, but he finally consented and he went up the stairs alone, he would not allow anyone to assist him. He was very feeble. He staggered and really should

have had someone help him go but he wouldn't allow anyone to touch him.

Q. Did you go up the stairs afterward? A. I went up with him, yes, sir.

Q. Did you go in the bed room? A. I did not.

Q. Did you wait outside of the door? A. I did.

Q. Well, now, when Dr. Lance came out did he say anything to you? A. He said that he didn't want to go to bed and he had great difficulty in getting him undressed.

Mr. Ferris: I cannot hear you.

A. Dr. Lance came out and told me that he didn't want to get undressed, that he had great difficulty in getting him to undress and, of course, he did, but he really didn't——

Mr. Ferris: Why do you drop your voice? I can't hear that last part.

A. I said that he finally did get him to go to bed but he didn't really want to go.

Q. Now, did the testator or did Edwin Squier say what he wanted to do when they told him they wanted to put him to bed?

Mr. Ferris: I object to that, if your Honor please. That was gone over in this witness's testimony before, and gone over again now. He has reiterated several times that the testator was unwilling to go to bed.

The Court: Wherein does this testimony differ from the former testimony? We have it here. I recall it very distinctly.

Mr. Maxson: Would your Honor like to have it?

The Court: Yes. There is not any difference as to that. I think for the purpose of the case you could admit he did not go to bed right away. Go on. Go on.

(Question repeated by the stenographer.)

A. He said he would rather sit up; that he didn't care to go to bed.

Q. Yes.

The Court: I want to finish this case today, if we can. I think it is possible to do it. Go on.

Q. Did you give the patient any opiate? A. I did not.

Q. Did you know how much opiate he had had? Did anybody tell you? A. As I remember it was a half a grain——

The Court: Oh, now, the Doctor—"As you remember" and so on. Yo udid not give him any yourself, so you do not know anything at all about it except what somebody told you. I will not listen to that. Were you there when opiates were administered?

A. I was not.

The Court: No, so you did not see it, and what you know about it somebody told you.

Q. How long did you stay after that? A. I came on Saturday and I was there—and he died Tuesday morning, and I was there until after the funeral.

Eleanor A. Miller—For Appellant-Contestant—(Recalled)—Direct

The Court: There until after the funeral.

Q. Yes. Were you in his room?

Mr. Ferris: When?

A. Oh, I was in the room, yes.

Q. When did you first go into his room after he was put to bed? A. Well, after the Doctor and Mr. Searles had gone and I was in and out all afternoon watching him.

Q. Did he sleep? A. He did sleep.

Q. When did he first go to sleep if you observed? A. He didn't go to sleep right away. He may have been awake a few hours and then he finally dropped off into a heavy sleep.

Q. When did you next see him awake? A. Well, he was awake during the night several times and I would go in to look at him, just for a little while, and he would go right off to sleep again.

Q. And the next morning did you see him? A. I did.

Q. Was he awake? A. He was.

Q. Was he conscious? A. He was.

Q. Now, that was Sunday morning? A. Yes, sir.

Q. Now, up to Sunday morning were you told what the matter with him was?

Mr. Ferris: I object to it.

Q. By the doctor?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant. The doctor was here and testified.

The Court: How do you make that competent?

Mr. Hendrick: I withdraw it.

Q. Did you stay all day Sunday? A. I did.

Q. Were you on duty with him? A. I was.

Q. Did he ask you for anything? A. He did not.

Q. At any time during his illness did he ask you for anything? A. He did not.

Q. Or anybody else while you were there? A. No; he did not.

Q. Was he conscious Sunday morning? A. He was.

Q. When did he first lose consciousness?

Mr. Ferris: I object. Well, all right, he died, and I assume then he lost consciousness.

The Court: When did he first lose consciousness?

A. Well, I can't remember definitely. Just he gradually became worse.

Q. When did you notice that? A. Well, the pains came on Sunday night.

Q. What time? A. Towards evening, maybe six o'clock.

Q. What was his condition then? A. His pulse became more rapid and his breathing much more rapid and he had what we call pulmonary oedema.

Q. Yes? A. Moist breathing.

Q. What? A. Moist breathing, or rales, as they call it.

Q. What do you call it? A. Moist breathing, or moist rales as they call it.

Q. Moist rales? A. Yes.

Q. And when was that pronounced? A. Sunday evening.

Q. Was he conscious at that time? A. Yes; he was conscious.

Q. Did he talk? A. Not a great deal, only when spoken to.

Q. What did he say, if anything? A. Well, just in answer as to how he felt, he always felt fine.

Q. Yes. A. That was peculiar with him.

Mr. Ferris: I move to strike out that last murmur. I didn't hear it.

The Court: Why do you move to strike it out, then?

(Answer repeated by the stenographer.)

Mr. Ferris: I move to strike that out.

The Court: Why?

Mr. Ferris: Because that is purely a conclusion on her part.

The Court: No. I would not go so far as to say it was a conclusion with her. She was there. It was peculiar with him in his illness, she said.

(Question and answer repeated by the stenographer.

Mr. Ferris: I move to strike it out on the further ground it is not responsive to the question.

The Court: I will allow it to stand and give you an exception.

Q. What was the next change in his condition after Sunday night when he had the moist breathing? A. Well, it became more pronounced and then

drugs were administered to allay his condition and he rapidly became worse, along with the pneumonia, and became unconscious.

Q. Yes. When did Dr. Vogel come? A. Sunday night.

Q. Yes. Did you get any instructions from Dr. Vogel? A. Only to try to keep him propped up in bed.

Q. Did you administer anything in response to any instructions from Dr. Vogel after Dr. Vogel came? A. Well, I may have, Mr.—I don't remember.

The Court: Where is your chart?

A. I don't have my chart.

The Court: Where is it? Didn't you have one in this case?

A. I had one, but I don't keep all of them.

The Court: Well, do you keep any of them?

A. Some of them.

The Court: What did you do with this chart?

A. I don't know, I may have destroyed it.

The Court: All right. Go on.

Q. Did Dr. Vogel administer anything?

The Court: If you know?

Eleanor A. Miller—For Appellant-Contestant—(Recalled)—Direct

Q. In your presence? A. I don't know. I don't remember.

(Answer repeated by the stenographer.)

Q. Was the patient conscious after Sunday night? A. Oh, yes, he was conscious.

Q. After Sunday night, late Sunday night? A. Oh, he was conscious; yes.

Q. Was he conscious Monday? A. Yes; he was conscious some.

Q. Did he talk Monday? A. When spoken to. But he was——

Q. When spoken to? A. Yes.

Q. He sat up in bed, did he, propped up? A. Propped up; he didn't sit upright.

Q. Did you get a good look at his hands? A. Yes, sir.

Q. Did you look at his fingers? A. Yes, sir.

Q. Did you observe anything about them? A. Well, the usual cyanosis with pneumonia.

Q. Usual cyanosis. And what evidence of cyanosis did you see? A. Blueness of the skin, which is cyanosis.

Q. Did you see anything else on his hands? A. No.

Q. Did he have a mustache? A. Yes.

Q. And what was the color of his mustache? A. It was gray.

Q. Gray. Any other color in it? A. Probably had been brown.

Q. What? A. Brown, probably.

Q. Yes. Did you see any brown on his fingers? A. Not unusual.

Q. Yes. What color was the brown on his mustache?

The Court: Brown color.

Mr. Hendricks: What?

The Court: Brown color.

Mr. Hendricks: I am trying to ask a leading question. Evidently I didn't succeed.

The Court: I know. "But what color was brown!"

By the Court:

Q. What counsel evidently wants to know was whether or not his gray mustache showed any signs of it having been turned brown at any particular point in the mustache. A. Well, I don't know as I could answer.

Q. Did you ever see a grey mustache on the face of a smoker where it was brown from a cigar or cigarette or whatever he smoked? A. Yes, but I couldn't say that.

Q. You couldn't say that about him, is that what you mean? A. That is what I mean.

By Mr. Hendricks:

Q. You were there when he died? A. I was.

Q. Did you lay the body out? A. Yes, sir.

Q. Did you observe any discoloration of the body? A. Not only what comes with death. Nothing unusual.

Q. What color was the body? A. Oh, bluish tint.

Q. Blue? A. Bluish tint, yes.

Q. Did anybody tell you what occasioned his illness, what he had done that occasioned his illness?

Mr. Ferris: Just yes or no.

The Court: Anybody?

Mr. Hendricks: Well, anybody in the household.

The Court: Of what value would that be to me if some lay person in the household had undertaken to tell what this deceased had done that occasioned his illness?

Q. Well, did Mary Conroy tell you?

The Court: Mary Conroy has testified to that before, and that he smoked a lot of cigarettes and didn't sleep well at night, if that is what you mean.

Mr. Hendricks: And drank a lot.

The Court: I do not know that she said and drank a lot, but she said something about him drinking.

Q. Did Mary say that he drank a lot? A. She said that he drank, occasionally drank to excess.

The Court: That was her testimony.

Q. Did she say whether or not he smoked to excess? A. She said he smoked a lot.

Q. What did she say about his smoking? What words?

The Court: Suppose she said to excess would I be bound by that? There are people who think if you smoke one cigarette a day that it is smoking to excess. There are others who do not think so if you smoke a dozen. Depends upon who it is who says it.

Mr. Hendricks: And how she says it.

The Court: And how she says it.

Mr. Hendricks: I am trying to get at what Mary said in Mary's language.

The Court: I do not care what she said about his smoking.

Mr. Hendricks: I was going to ask about something else that Mary said.

The Court: I thought you said about smoking.

By the Court:

Q. Well, have you told us all that Mary said? A. Well, I don't know.

By Mr. Hendricks:

Q. Have you told us all that Mary said? A. I told it about smoking and drinking. That is all.

Q. You have told us all about with whom he drank? You have told us all about that? You don't remember anything else that Mary said about the patient about his having caught cold? A. Oh, about him walking around the grounds and that was the reason she thought that he was sick.

Q. Well, did she say whether or not she had told him not to walk around the grounds? A. Yes, I think that was the impression I got.

Q. Did she say who called the doctor? A. She told me that she called the doctor.

Q. Did she say whether or not the patient wished a doctor? A. She said at first she wanted to call him, and he didn't want him, and then he got so much worse that he thought he had better have the doctor.

Eleanor A. Miller—For Appellant-Contestant—(Recalled)—Cross

Mr. Hendricks: That is all.

Cross-Examination by Mr. Ferris:

Q. Now, you say that during all the time that you attended Mr. Squier that he never asked for anything at all, is that right? A. Right, sir.

Q. Never asked for a drink, did he? A. He didn't ask for a drink.

Q. He never asked for a cigarette, did he? A. No, he didn't.

Q. As a matter of fact you never saw him smoke a cigarette or take a drink of liquor, did you? A. No, I didn't.

Q. Of course you didn't wait for him to ask to be fed, did you? A. No.

Q. You fed him when you thought it was necessary? A. I fed him.

Q. Now, what would you, in your experience as a nurse, surmise that he would ask for under those circumstances?

The Court: Oh, well——

Mr. Ferris: I will withdraw it.

Q. This bluish color that you testified to, you have attended pneumonia cases of this character many times, haven't you? A. Yes, sir.

Q. And isn't that color natural to a pneumonia case of that character?

The Court: She has already testified to that.

Mr. Ferris: I just wanted to make sure.

The Court: Why make sure? As long as I have heard what she said. She has already said it.

Mr. Ferris: That is all.

Redirect Examination by Mr. Hendricks:

Q. You have been asked about his asking for a cigarette or smoking a cigarette. Did you see any cigarettes there? A. I did see cigarettes.

Q. How many?

The Court: She has testified to that too.

Q. Did you see five million? A. I saw many.

Mr. Hendricks: That is all.

FREDERICK F. SQUIER, a witness produced on behalf of the caveator, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Hendricks:

Q. What does the "F" stand for, Mr. Squier? A. Frelinghuysen.

Q. Did you know the late Edwin M. Squier? A. Yes, sir.

Q. Were you related to him? A. Yes, sir.

Q. What relation to you was he? A. My cousin.

Q. Did you know him in his youth? A. Yes, sir.

Q. Do you know the whole family? A. Yes, sir.

Q. Now, how many boys were there? A. Five.

Q. Who were they? A. There was Stewart, and Edward—there is another one comes in there, the artist. What was his name?

Q. William, Jr.

Mr. Ferris: Do not prompt him.

Mr. Hendricks: He asked me. He said the artist.

A. Then there was Charley and then Ed and Fred.

Q. Did you know Charley all his life? A. Yes, sir.

The Court: If he says he knew all the Squier family I am going to believe him until cross-examination shows he does not know them, or has forgotten some of them.

Q. What was the condition of the health of William C. Jr., the artist?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant. He is not involved in this case. He is dead.

The Court: Is it your purpose to show that there was a mental trouble that ran through the Squier family?

Mr. Hendricks: I do, yes, your Honor.

The Court: Is that your object?

Mr. Hendricks: It is.

The Court: How are you going to show that by the witness?

Mr. Hendricks: Perhaps the other side will concede that William C. Jr., was incompetent for a long time before he died.

The Court: I think that is already in the testimony.

Mr. Ferris: It is in the testimony.

Mr. Hendricks: All right. And will they also concede that Stewart C. Was incompetent for a long time before he died?

Mr. Ferris: No, we will not.

The Court: Let us take up Stewart C. then.

Mr. Hendricks: How long will they concede he was incompetent before he died, because there is a concession?

Mr. Ferris: What do you mean by incompetent? That is the point. Do you mean that he was crazy or insane?

Mr. Hendricks: That is a broad term. Under physical and mental disabilities.

Mr. Ferris: That is not incompetent or insane. Which is it, physical or mental?

Mr. Hendricks: Both.

Mr. Ferris: I am willing to stipulate that Mr. Stewart Squier in 1917 suffered a stroke of paralysis, and that after that time he had some—not for six years thereafter, that is 1923, did he show any signs whatever of mental incapacity. That from 1923 to the time of his death he had intervals of lucidity and intervals of non-lucidity.

The Court: How old was he when he died?

Mr. Ferris: He was eighty-four years of age at the time of his death.

The Court: Is that satisfactory or can you prove beyond that statement?

Mr. Hendricks: With this witness? I am not sure with this witness. No.

By Mr. Hendricks:

Q. When did you last see Stewart? A. I couldn't answer that.

Q. Did you see Charley before he died? A. The last time I saw Charley was one Summer afternoon

he was coming from the depot going home and he saw me, I was walking on the street, he bowed to me. That is the last time I ever remember seeing him. That is a good many years ago.

Q. Now, with respect to Edwin, did you know Edwin well? A. Quite well, yes, sir.

Q. Come back to Fred. You grew up with Fred, didn't you? A. No. Charley was my friend. I always associated with him and went out with him. He visited my home. I went there in the winter time and he used to come up to Somerville in the summer time. I went more with Charley.

Q. Did you know Fred as a child? A. Oh, yes.

Q. How old are you, Mr. Squier? A. Seventy-nine.

Q. Did you know Fred as a baby? A. No, I can't say that I did.

Q. Well, how young was Fred when you first knew him? A. Well, he was a young fellow. I should judge about maybe twelve years old.

Q. Didn't you know him earlier than that? A. I don't remember of knowing him earlier than that.

Q. Did you know anything about his health? A. No, sir. At that time he seemed to be all right.

Q. Were you told anything about his health? A. Nothing in particular.

Q. Yes. A. I would hear——

The Court: No. Do not tell us what you would hear.

Q. When did you last see Edwin M. Squier, your cousin? A. As near as I can remember it is about three years ago.

Q. Yes. A. It might possibly be four.

Q. Where were you at the time? A. I was going to visit my niece. I got off the trolley car at the corner, and as I passed the house he was sitting on the stoop, and I went in to see him. I hadn't seen him for some time, and I went in to see him, and I asked him if he knew who I was, and he said, "Yes, you are Fred Squier."

Q. Yes. What was he doing?

The Court: Let me ask——

A. Smoking.

The Court: What did you say?

(Answer repeated by the stenographer.)

The Court: How long prior to that time was it that you had seen Edwin M. Squier?

A. Well, I think it was a long time.

The Court: About how long?

A. Well, I think maybe the time his father died. I was at the funeral, and I may have seen him then.

The Court: And that would be about how many years do you think?

A. That his father had been dead?

The Court: Yes.

A. I couldn't just remember how long he had been dead.

The Court: For the record, when was that?

Mr. Houghton: 1906.

The Court: 1906.

A. Yes.

The Court: All right.

Q. Now, you say he was smoking. What was he smoking? A. Cigarettes.

Q. Cigarettes? A. Yes.

Q. Or one cigarette? A. Well, one cigarette at a time.

Q. Yes. Will you describe his method of smoking? A. Well, I wasn't there hardly long enough——

The Court: Wait, please. What is the difference how he smoked? Do not let us take up any time with that.

Mr. Hendricks: I submit——

The Court: You mean whether he inhaled or not?

Mr. Hendricks: (Continuing) It is a matter of some importance.

The Court: I will take judicial notice of the fact he inhaled his cigarettes.

Mr. Hendricks: Yes.

The Court: A man who smoked as many cigarettes as that man smoked, if somebody said he did not inhale them I would not believe them.

Mr. Hendricks: May he describe the method in which he smoked?

The Court: No, not the method.

Mr. Hendrick: Will your Honor indicate what questions in that particular line I may ask?

The Court: I will not indicate. You ask your questions.

Q. Did you smoke one of the cigarettes? A. No.

The Court: Do not answer that.

Q. Did he light one cigarette from the other? A. I don't remember that he did; I don't remember. I wasn't there very long. I don't think he smoked more than one all the time I was there.

Mr. Hendricks: That is all.

Mr. Ferris: That is all.

The Court: There is no—you gentlemen claim this man was not a cigarette smoker, do you?

Mr. Ferris: Of course, he was. Nobody doubts it. Nobody is disputing it.

Mr. Hendricks: Will the other side stipulate how many he smoked a week?

The Court: Of course, they couldn't do it. There isn't anybody in my family could stipulate how many cigarettes I smoke.

Mr. Ferris: Or how many cigars I smoke.

The Court: Of course they cannot. Do not let us lose time on that. They would have to keep somebody on my trail all the time to find out about that, and then they couldn't do it.

Mr. Hendricks: Recall the last witness, if your Honor please.

Frederick F. Squier—For Appellant-Contestant—(Recalled)—Direct

FREDERICK F. SQUIER recalled.

Direct Examination by Mr. Hendricks (cont'd):

Q. Do you remember what your cousin Edwin said to you during that conversation? A. Well, the principal conversation was about not knowing each other and not knowing our children. He said, "Here we are, we live here, and you live in Plainfield, and," he said, "I don't know your son. I never saw him." And he said, "We don't seem to come together at all." He said, "We seem to just live you ourselves." That was the principal conversation.

Q. What else did he say in that way? A. I don't remember what else he said.

Q. Did he say anything about Squiers generally and their way?

The Court: He said he does not remember what else was said.

Mr. Hendricks: Can I refresh his recollection, if your Honor please?

The Court: Not unless you were there.

Q. Do you remember what you told me about what he said to you? A. No.

Q. Did he say to you that the Squiers were a peculiar people, that each one stuck in his own hole? A. Well, he didn't just say it in that words, but he said that we kept by ourselves, he said. He said, "It would be nice if I knew your children, and you knew us better." He said, "You keep by yourself."

Q. But you did not visit, did you? A. What?

Q. You did not visit one another?

Mr. Ferris: I object to that.

A. No.

Mr. Ferris: The witness testified he only saw him twice in twenty some odd years.

Mr. Hendricks: That is all.

Mr. Ferris: That is all.

Mr. Hendricks: Mr. Davis! (No response.)

The Court: Mr. Davis around? (No response.)

The Court: Call your next, then.

Mr. Hendricks: We have not any other witness here just now. There was a man——

The Court: You will not have him here any other day, then.

Mr. Hendricks: A man coming from the station. And I had to have one man come and then go back and relieve the other at this restaurant, and I am waiting for the relay to arrive.

The Court: What is he to testify to? About cigarette smoking?

Mr. Hendricks: And a little something else.

The Court: What else?

Mr. Ferris: I may stipulate it.

The Court: Maybe we can agree.

Mr. Hendricks: That Edwin M. Squier exhibited gold and he got that at the Jersey Zinc meeting.

Mr. Ferris: I will stipulate if he were called he would so testify.

Mr. Hendricks: And that he purchased cigarettes from him and purchased imported cigarettes from him in the past.

Mr. Ferris: I will stipulate——

Mr. Hendricks: Nestor cigarettes in quantities.

Mr. Ferris: I will stipulate if he were called he would so testify.

Mr. Hendricks: That is all right.

Mr. Ferris: What is the name of this witness, please?

Mr. Hendricks: Silas Davis.

Mr. Ferris: Silas Davis.

Mr. Hendricks: Silas Wright Davis.

The Court: Of where?

Mr. Ferris: Of this Restaurant, I assume.

The Court: The same restaurant?

Mr. Hendricks: Yes, sir, your Honor.

Mr. Hendricks: The appellant rests, if your Honor please.

MOTION TO DISMISS.

Mr. Ferris: If your Honor please I move to dismiss the petition of the appellant, and I move to probate the will of the testator on the ground that the appellant has wholly failed to adduce any evidence whatever having any probative value, to support the allegations of his petition or the grounds urged by him as a reason why the testator's will should not be probated.

The Court: What have you to say about that, Mr. Maxson?

Mr. Maxson: If it please your Honor we again contend before your Honor, and we would like to have an opportunity to brief the subject, that this case is on all fours with the Cooper case. Your Honor asked, off the record, whether that was the Morristown case, and it is, the opinion by Mr. Justice Mills, a very exhaustive one. We say that the facts in this case are almost on all fours with that case which is recognized as one of the leading authorities in the State of New Jersey on the subject, and we would like not only to digest that with a view of the evidence which has been taken, but the other authorities, and we will do it very shortly, if your Honor will give us permission to do it. The whole case turns, to my mind, on the question of whether or not the burden of proof has shifted in this case under the authorities of the Cooper case, and the other cases, preceding and following it in this state.

The Court: On the question of what, Mr. Maxson?

Mr. Maxson: Undue influence. And whether or not this Mr. Houghton who drew this will was in a confidential relation with this testator, as was the man who drew the will in the Cooper case.

The Court: Well, the reason I asked that is this: If an opportunity is given to counsel to brief this case, I think you ought to indicate, so that counsel can prepare each brief on the other side, what it is that you claim that you have established——

Mr. Maxson: We claim—Your Honor ruled——

The Court: —(continuing) which you would either argue is sufficient to set aside this probate or which you argue has been of sufficient force to shift the burden.

Mr. Maxson: That is our position.

The Court: To the other side.

Mr. Maxson: That is our position.

The Court: Your position is simply that the burden is shifted.

Mr. Maxson: The burden of proof has been shifted.

The Court: On what? On undue influence?

Mr. Maxson: On every element which goes to make this a will. If the burden of proof has shifted then that burden has got to be sustained with respect to the fact that it is free from undue influence, that the testator was able to make a will, had testamentary capacity on all those things.

The Court: Now, how much time do you want in which to submit your brief?

Mr. Maxson: I do not want more than two weeks.

The Court: Two weeks?

(At this point a constable announces Mr. Davis has arrived.)

The Court: Then you want until February 14th——

Mr. Ferris: That would be three weeks. February 6th would be two weeks.

The Court: I will give you until February 6th to file your brief with me, and also to serve it on the other side, and give you a week in which to answer. That ought to be plenty.

Mr. Ferris: May I just make a few words before your Honor determines that?

The Court: Yes.

Mr. Ferris: I think your Honor asked Mr. Maxson a very proper question as to what facts were raised by him that would raise the legal proposi-

tion in going to brief. I haven't heard any evidence here that tends in anywise to create any issue that shifts the burden on us to meet. And simply to take two more weeks to brief an innocuous question, I fail to see what question there is to brief. It would be only that much more delay. Your Honor has very fittingly said, in the early part of the trial of this case, a lot of money is involved. Someone is deprived of it. They have been deprived of it a good many months. And I apprehend, no matter what your Honor's decision is in this, it will be many more months before they receive what they are rightfully entitled to, by reason of an appeal. I think two more weeks is entirely too long to give to the other side to brief the question. I do not want that. I am willing if your Honor will give one week to both sides to submit both our briefs. And I think Mr. Maxson should state what the legal question is he claims has shifted the burden. I am a lawyer with some degree of intelligence, and I really fail to understand what I am to brief in this case at the present stage of the case. If there is any evidence on the opponent's side of the case that in your Honor's opinion is required to be met by counter-proof, I want to go forward with that proof. If there is not, what is the delay, and why take all this time?

Testimony.

IN CHANCERY OF NEW JERSEY.

In the Matter *of* The Appeal for the Prerogative Court in the Estate of EDWIN M. SQUIER, Deceased.	On Appeal. Transcript.

Transcript of the testimony and proceedings taken in the above-stated cause, on appeal from the Prerogative Court, at the Chancery Chambers in Jersey City, on April 9, 1929, before His Honor JOHN BENTLEY, Vice-Chancellor.

Appearances:

EDWARD MAXSON, ESQ., for the Contestant-Appellant, FRANK HENDRICK, ESQ., of Counsel.

HYER & ARMSTRONG, ESQ'RS, by FREDERICK HYER, ESQ., for the Proponent-Respondent, GEORGE A. FERRIS, ESQ. (of Ferris, Shepard, Joyce & McCoy, of New York Bar), GUSTAV C. HOUGHTON, ESQ. (of New York Bar), THOMAS J. BROGAN, ESQ., of Counsel.

Mr. Maxson: Since Your Honor set this case down for hearing, our client has been taken rather seriously ill in France, and I want to offer a cer-

tificate of a French physician. I think two of the counsel here speak French, and my suggestion to Your Honor is to have them translate it.

The Court: You want an opportunity to examine him, I suppose?

Mr. Maxson: Yes.

The Court: Any objection to that?

Mr. Brogan: This date for the hearing was well known to counsel for two months, and he knew that there was great urgency to have this case disposed of and it might have been out of the way long ago if he had cooperated with us.

This physician merely says that he has been treating this man since January 15th. That is almost three months ago. If this man went through the trial before and stood mute and didn't put in a word of testimony, it hasn't been indicated to the court what he possibly might testify to now, or that his testimony would be relevant to the issue here.

The Court: Well, do you object to the postponement?

Mr. Brogan: I do.

Mr. Maxson: The certificate speaks for itself. And, in answer to this attack, may it please the court, we are not asking for an adjournment for today; we are prepared to go on today and on Friday. But we asking now that we shall be permitted to take our client's testimony. We didn't take it in the court below. We made up our mind after the ruling in the court below that it would be taking the time of the court without avail to continue, because he had ruled out the important things in support of our theory and it was for

that reason that we didn't put our client on the witness-stand.

Now, this attack came on, as the certificate says, just recently. He had his reservations on the boat to come here and expected to be here today.

The Court: Well, suppose you proceed with the examination of such witnesses as you want to swear now and I will hold the application open until I have the benefit of what you are going to develop today and Thursday.

Mr. Maxson: I offer the doctor's certificate in evidence.

(Admitted and marked Exhibit P-1.)

Mr. Maxson: I next offer in evidence the record in the Surrogate Court of the probating of the will of William C. Squier, who died in July, 1906. A representative from the Surrogate Court is now here.

FRANK D. JACQUES, sworn on behalf of appellant, testified as follows:

Direct Examination by Mr. Maxson:

Q. Are you engaged in the Surrogate's office of Union County? A. I am Chief Clerk in the Surrogate's office.

Q. And have you produced the record of the probate proceedings and the things incidental to them, in the estate of William C. Squier? A. I have produced here all the papers that are now on file in our office in that matter.

Mr. Maxson: I offer them in evidence.

Mr. Brogan: I object, on the ground that they are not material or relevant to this cause. We are here, I understand, to probate the will of William C. Squier. This man died in 1906, the will was then probated, and I see no materiality in it.

The Court: Now, from my hasty and incomplete examination of the transcript of the proceedings below I am afraid I don't get your theory.

Mr. Maxson: I want to call Your Honor's attention to this provision in the will of William C. Squier which is material to this proceeding:

> The several shares of my estate given in trust to my executors by the foregoing fourth paragraph of this, my will, I give, devise and bequeath upon the death of any or all my said five sons to their issue, in each case, in such manner and in such portions as my said five sons may direct in and by their several last wills and testaments; but no devise or bequest of any such shares by any of my said sons otherwise than to their issue shall be valid; and if any such son or son shall neglect to so devise his share to his issue, such issue shall nevertheless be entitled to the parent's said share and the same shall be paid to them by said executors. In case any one or more of my said five sons shall die, without leaving issue, then such share or shares held in trust for him or them as aforesaid shall go to their surviving brother or

> brothers as the case may be, and the issue of any deceased brother or brothers in equal parts. The issue of any such deceased brother to take the parents share. The meaning hereof being, that said several shares so held in trust shall ultimately go to and belong absolutely to the issue of my said five sons per stirpes and not per capita.

Now, the authorities in New Jersey hold, and I think it is general, that where undue influence is charged, all the circumstances surrounding the making of the will, its text, as to whether or not the testator has made a mistake of fact are elements material to a determination by the court; and this will and the will of Katherine C. Squier, the grandmother of the contestant, are, we think, material to the issue.

Now, in the will in this proceeding there is disclosed,—and Your Honor will perhaps remember that it was referred to a good many times in the court below:

> I make no further provision directly or indirectly for my nephew, Charles Burnham Squier, as he was and will be the sole beneficiary in the interest his father, if living, would have received from the trusts created by the Will of my father, William C. Squier.

Now, that isn't the fact, and it is necessary that Your Honor should examine these two estates in order to determine whether or not that is material and whether the testator knew what he was doing when he made this will, or whether, as we claim, this statement was the statement of counsel and not his statement.

Of course, there is no jury here, and this, as Your Honor knows, is a very large estate and of great importance to us. We have gone into it very carefully and we believe that this evidence should be admitted. At any rate, if Your Honor should later on determine that it is immaterial it can be stricken out.

The Court: Oh, of course I do that very frequently. A great deal of proof I would not permit if a jury was to pass on the facts. But what will the record of the Probating of the will of William C. Squier disclose if I now admit it?

Mr. Maxson: Well, with respect to the proceedings taken under the will, they are not so important to our case; but the will itself is an important document and there is a certain provision in it that goes all through the administration of this estate. It is mentioned in this very instrument.

The Court: You mean the——

Mr. Maxson: The will of the grandfather of this contestant. Now, the only way that your Honor can determine whether or not that statement of the testator in this will is true, and whether he knew what he was doing when he made the statement, is to not only examine the will of William C. Squier but also the will of Catherine C. Squier.

The Court: Well, gentlemen, what harm would it do?

Mr. Brogan: Those who are very familiar with the genealogy of the family and disposi-

tion of the property assure me what Mr. Maxson says has no application to the property and even the trustees realized that this contestant did get his share of the estate of William C. Squier. Of course, it is going to be a heavy and voluminous record if these extraneous matters are admitted, but I don't suppose I ought to worry about that.

The Court: I am going to do what I have so frequently done. I suppose if I sustain the objection now it would practically decide the entire case, so it seems to me.

Mr. Maxson: Did counsel say it wouldn't? I have heard there was some other basis for this contest other than our theory.

Mr. Brogan: Of course, if you rest on this and the other things,—lack of capacity, and fraud, and conspiracy is abandoned, we can narrow the issue and rest on that if you want to. If that is so, I think we ought to clear the atmosphere quickly.

The Court: I mean, if I overrule the offer that is now made and reject this proof, it seems to me I wipe out of the record all foundation upon which the appellant intends to build his superstructure of argument. For that reason, I am going to overrule the objection and will, of course, deal with the materiality and relevancy of the proof now being offered when I come to decide the case. And if you wish this ruling to apply to similar objections that may be made it will so be understood, or you may renew your objection, as you please,

to all offers along this line, both as to the will of William C. Squier and Catharine C. Squier.

Now, you want the will?

The Witness: We haven't got the will.

Mr. Maxson: Oh yes, the will is in Trenton. I will have that brought up here. Of course, we have certified copies if Your Honor wishes to have them now.

The Court: Mr. Brogan, Mr. Maxson overlooked the fact that this will must be in Trenton in the Register's office, and for that reason this, witness, of course, can't produce it. Counsel says he has certified copies of them; have you any objection to the use of certified copies? There is no question of forgery here, I suppose.

Mr. Brogan: All right.

(Admitted and certified copy of the will of William C. Squier is marked Exhibit P-2.)

The Court: The offer that is about to be made of the will of Catherine C. Squier is, of course, subject to the same objection that was interposed to the admission of Exhibit P-2.

Mr. Brogan: Of course, I ought to make myself square on the record: We charged and made it quite clear in the court below that this will and the record of the probating of both wills have no place in this case at all. Even if it be demonstrated to the court below that the facts recited in the will of Edwin M. Squier be true, Your Honor doesn't know that there have been a great many suits started in New York in regard to this matter. For in-

stance, I am told by my associate that, one or two terms since, the Appellate Division in New York decided all of six appeals arising out of this very situation. Counsel is adroitly trying to get into this record now information which he knows full well, and which he knows the court well recognizes as being of no value here—having no materiality here, but helpful in the tactics and litigation that is going on over in the State of New York. For my part, I would much rather, since this court has to deal with it, stand right where we are now and let counsel, if I may make that suggestion, establish once and for all the materiality and the relevancy of the matters and things involved in the probate court. The court will have to deal with it anyway alone without the help of the men who have handled this thing for years and years, on one side Mr. Houghton and on the other side Mr. Hendrick, who know the case; and if Your Honor admits this record and we proceed on, I think Your Honor will be struggling with it and will be reaching out for information and which won't be available.

The Court: Why won't it be available?

Mr. Brogan: My proposition is that if we stop here and take what proofs and arguments which may be offered, your Honor will see the lack of relevancy of these records of the Probate Court.

The Court: I understand the offer to have been modified and they now simply offer the respective wills.

Mr. Maxson: Yes.

Mr. Brogan: Well, the materiality of those should be established now,—not for our benefit but for the court's benefit.

The Court: I don't think so. It seems to me I ought to err on the side of leniency in the admission of proof rather than the other way, because if I erred by excluding proofs of course the contestant is injured or the party making the offer which cannot be overcome; but if all that you say is true, and all the more if I believed it, that an attempt is being made here to secure proofs for use in a litigation for other jurisdictions, I would not only give no consideration to it but I will strike it from the record, if requested.

Mr. Maxson: Now, if your Honor please, I want to make myself very clear on the New York situation——

The Court: What is the use going into that? I will have to hear a full argument on this after the proofs are all in.

Mr. Maxson: Will your Honor permit me to say this much: I have had no part in the New York case and I even don't know what the prayers are.

The Court: Do you suppose I sit here day in and day out listening to things like that and don't learn to disregard them? There is no jury here and there is no reason for attempting to create atmosphere, on either side; and that is a mere statement of counsel. If it were corroborated by proof it would be another thing.

Now, as I understand it, the will of Catherine is to be marked in evidence.

(The same is marked Exhibit P-3.)

Mr. Maxson: We have asked for the production of a deed of trust from Stuart C. Squier to William C. Squier 1st, made in 1915, and any other deed of trust executed and delivered between the same parties.

Mr. Houghton: Did you ask for a power of attorney or deed?

Mr. Maxson: Deed of trust.

Mr. Houghton: (Producing paper and hand it to counsel.) That is a copy.

The Court: You don't need this witness any longer today, do you?

Mr. Maxson: I don't think so today.

(The witness leaves the stand.)

Mr. Maxson: I think there are some of these records that we may want to offer as the case develops, in connection with the administration, but we do not today. Would your Honor permit us to call him later on if we found it material?

The Court: Yes; but why wouldn't it be more satisfactory if you would indicate to the Surrogate what you want and secure certified copies?

Mr. Maxson: Well, we may do that later on.

Mr. Brogan: I find it here. The notice to produce doesn't call for it, but here it is. This is a copy of a trust certificate, executed between Stuart C. Squier and the son, that money be set aside for the support of the children and their maintenance. I don't see the relevancy of it, however.

The Court: Who is Stuart, one of the sons of William?

Mr. Brogan: Yes, Stuart C. Squier is a brother of the man who made the will you have just admitted in evidence.

The Court: No, the will of the grandfather.

Mr. Brogan: That's right, the grandfather.

The Court: What is the purpose of this, Mr. Maxson?

Mr. Maxson: We want to show the relations of all these parties to the other. We think they are all material; and, in respect to this trust deed, your Honor will remember that they promised to produce it in the court below. I can't point it out in the record now.

The Court: I don't remember it. But, Mr. Maxson, what will be disclosed by this deed that will be of any assistance on the issues here?

Mr. Maxson: The maker of this deed is one of the trustees under the will. We claim that the whole situation beginning with the administration of the estate of William C. Squier, deceased, going down through, play a part as showing the state of mind of the testator at the time he made this will and also the state of mind of those people more closely associated with the making of the will.

The Court: All right, but what is there in this particular document? You reply to me generally what the entire surroundings will show, but what is there in this particular document?

Mr. Maxson: We have never seen it, may it please your Honor. They promised to produce it in the court below and we have never seen it.

Mr. Ferris: We did promise to produce it in the court below; we made that promise and we fulfilled it. When these documents were called for we submitted them and they were given to Judge Stein under those circumstances.

Mr. Maxson: Of course, we take issue with counsel on his statement. The record will speak for itself.

The Court: I think I remember that particular one. Well, I suppose the only thing for me to do is to examine this at recess.

Mr. Brogan: It is not lengthy. You can read it in two or three minutes now if you care to.

Mr. Maxson: Mr. Houghton, may it please the Court, succeeded as trustee of this situation.

Mr. Houghton: No, that isn't right. There are a great many elements and you have got it mixed up.

The Court: There is nothing in here, by any stretch of my imagination at least, that connects this with the issues in this case. It is purely a family matter in reference to this man Stuart C. Squier that applies to nobody else.

Mr. Ferris: Will your Honor bear with me a moment so that we can look it up in the record. On page 207 of the record, under the remarks by the Judge:

> The Court: The deed of trust, Stuart C. Squier to William C. Squier, handed me by counsel, has absolutely no bearing upon the present inquiry. And absolutely a different

and private matter, and separate and distinct from anything you allege.

The Court: I had a pretty fair memory of that myself.

Mr. Hendrick: I don't want Mr. Ferris, the New York counsel, to prejudice our case, and so to counterbalance that I am going to say that the relevancy of this is due to the fact that the maker of this trust deed was one of the three trustees, and one of the others was William C. Squiers, and this record shows that for many years prior to 1925 when Mr. Houghton was substituted for him as a trustee of the estate with William C. Squier he was not in complete possession of his physical and mental faculties.

The Court: Which one of the Squiers is that?

Mr. Hendricks: Stuart C., the maker of this trust deed. It is also submitted in the record that the trustee named in this paper acted as his attorney-in-fact from 1909 on. We will prove by one of the records here that this trustee acted for his father as trustee of the will of William C. Squier, who was the trustee here. William C. Squier 3d is one of the proponents of this will. I take it that the fact of the trusteeship is material, in view of the inter-relation of the parties, and in view of what might develop, it seems to me it wouldn't do any harm if you included in your ruling the other papers with which it is very closely related, because the persons are the same, the

trusteeships are the same, the trust referred to in the will of Edwin M. Squier of which this William C. Squier 3rd is trustee, is one of the proponents of the will; and here is a letter which Mr. Maxson received which says —perhaps I ought not to read it to the court, but there being no jury here it wouldn't do any harm—the receipts are signed S. C. Squier by William C. Squier. Mr. William C. Squier, who is a son of Mr. S. C. Squier, has acted since 1909 as agent and attorney-in-fact, and that accounts for the signature on the receipt in place of the father. In other words, we wish the dealings of one of the proponents of the will with the property in litigation referred to in the will, which is being contested.

The Court: Well, I can't follow you on that, and I can't bring myself to permit this to go in for what it is worth to be dealt with when I come to decide the case, because the case of the will of the grandparents I can see some substance to what may be argued from that, but I can see none to be argued from the introduction of the deed whereby the uncle of the present appellant dealt with his own property in appointing his son his trustee. I will sustain the objection.

Mr. Maxson: Now, let me make this suggestion: Will your Honor permit us to renew this later on if we have the evidence?

The Court: Certainly.

Mr. Maxson: I call for the production of a certain power of attorney. I had a conference with Mr. Houghton and he tells me that they

have made a careful search for that and has been unable to find it.

Mr. Ferris: No, we haven't it.

Mr. Maxson: We ask further, for the production of all the documents, letters, books, &c. relating to the estate of Edwin M. Squier, the maker of this paper writing.

Mr. Ferris: That is such a broad demand that the only way I can answer that is to say that the only things we have are the books and records in regard to the estate and they must be in the hands of the temporary administrator. If Mr. Maxson will be a little more specific and if there is anything that we can produce I will be glad to produce it, subject to its materiality. His demand is in such broad terms that we cannot understand it, but the books are in the hands of the temporary administrator.

Mr. Maxson: The reason for this demand is, that counsel on the trial in the court below produced a letter-book and some communications between the testator and the contestant of the will, and that indicated to us that perhaps there were some other documents that might be material.

The Court: I understand him to say that the books, letter-books, books of account, papers and writings of the estate of Edwin M. Squier, deceased, would, of course, be in the hands of the temporary administrator, and they can produce nothing.

Mr. Maxson: My associate suggests to me to ask for what they have, and I suppose that is the only thing we can ask for.

Mr. Ferris: We have nothing.

Mr. Maxson: On the trial in the court, below, I don't know whether it was Mr. Houghton or Mr. Ferris, produced the letter-book with a letter of February, 1918, addressed to my client.

Mr. Ferris: It was marked for identification

Mr. Maxson: Now may we have that book?

Mr. Ferris: I think so; we will produce it in court, and if you had told us you wanted that book we would have produced it. That book will be here after lunch.

Mr. Maxon: All of the records of this transaction were within the possession of our adversaries here from the start. We have nothing. Now, I would like to have it appear on the record that counsel now says they will produce it, but not for our inspection.

Mr. Ferris: The only statement I made on the record is that it will be produced after the noon recess.

Mr. Maxson: Well, for our inspection or not?

Mr. Ferris: We will determine that later.

Mr. Maxson: I ask that the court will examine it and determine that.

Mr. Maxson: You are wasting a terrible lot of time, Mr. Maxson.

Mr. Maxson: I beg your Honor's pardon; I have to confer with my associate here. We may ask for some of these things, that we call for the production of, later on.

Now I call Mr. Shepard.

Woolsey A. Shepard—By Appellant-Contestant
Direct

WOOLSEY A. SHEPARD, sworn on behalf of the appellant-contestant, testified as follows:

Direct Examination by Mr. Maxson:

Q. Mr. Shepard, in the court below you testified that you made an examination of this document? A. What document?

Q. In contest here, the will of Edwin M. Squier. A. I don't know what you are referring to, Mr. Maxson. You say I made an examination of it?

Q. Well, did you make an examination of it at any time? A. I read it through, certainly.

Q. In the court below didn't you say that you were the member of the firm who made examinations of wills as to their form? A. I might these.

Q. And you did examine this one as to its form? A. Yes, sir.

Q. And when you made the examination did you pay particular attention to this provision under section 5 of the will:

> I make no further provision directly or indirectly for my nephew, Charles Burnham Squier, as he was and will be the sole beneficiary in the interest his father, if living, would have received from the trusts created by the Will of my father, William C. Squier.

A. I don't think I paid any particular attention to that paragraph, no.

Q. What was your province or purpose in examining the document? A. To see that the will was properly drawn as to form, so that there would be no legal objections to it, based on the form of the instrument.

Q. And you gave no consideration to the different provisions, as to whether or not they were true in their statement of facts? A. I did not, no.

Q. And you didn't discuss those provisions with the testator, or any other provisions? A. I didn't discuss that provision with the testator, no.

Q. Did you discuss any provision of the will with the testator? A. I might be able to refresh my memory if I looked at the will for a moment. It is so long ago since I have seen it.

Q. There is a copy of it. A. (After examining paper.) Well, I don't think I discussed any of this with the testator.

Q. How long have you been associated with Mr. Houghton? A. 26 years.

Q. And during that time did you individually have anything to do with any of the Squires? A. Not individually, no sir.

Q. As a member of the firm? A. I might have been so, yes.

Q. Then did you, of your knowledge, know whether or not that statement in the will was a true statement? A. I did and do.

Q. And it is? A. It is.

Q. And is that based on a construction of the Catherine C. Squier will? A. Only partly; also on the construction of William C. Squier's will and my knowledge of how the assets were distributed during a period of years.

Q. And you had to do with the administration of the estate of Katherine C. Squier? A. I don't think I did, no.

Q. But you construed the will? A. When?

Q. Well, I wil withdraw that. Did you or did you not construe the will? A. I will have to ask you when you mean, Mr. Maxson.

Q. At any time. A. Well, since Mr. Hendrick started his New York suit I construed it, many times.

Q. And had you construed it at the time you concluded that this was a true statement of this will in controversy? A. I think I discussed it with Mr. Houghton.

Q. Had you construed it previous to the time when you reached the conclusion that this was a true provision in the will in controversy? A. I haven't sat down and construed it, no.

Q. Was it necessary that it be construed in order to reach your conclusion as to whether or not this was a true provision? A. Why, I had knowledge of it in my mind. It was necessary to take the provisions of that will into consideration, yes.

Q. It was necessary to construe it, was it not? A. I should say so, yes.

Q. Now, when did you construe it previous to your passing on this certain instrument? A. I don't think I ever construed it before that time.

Q. Then you found this was the true provision in this will without having previously construed the will of Katherine C. Squier? A. Without having previously construed it.

Q. Didn't you testify that you talked with Mr. Houghton about it before you determined that this was a true provision in this will before the will was executed? A. Before the will was executed? Yes; not before it was drawn.

Q. And did that conference relate to the construction of the will of Katherine C. Squier? A. Only incidentally. That was one of the elements to be considered, of course.

Q. Did that conference result in a conference with the testator? A. Not with me present.

Q. Was that the purpose of it?

Mr. Ferris: I object to that. It calls for a conclusion of the witness's mind.

A. Well, I don't quite understand the question.

Mr. Ferris: The question is, was that the purpose of the conference. That calls for the operation of Mr. Houghton's mind.

The Court: I would say that that is so.

Q. Subsequent to the discussion which you had with Mr. Houghton about the provision of this will that has just been called to your attention, did you discuss it with the testator? A. Not that I recall, Mr. Maxson.

Q. Do you know whether Mr. Houghton did or not? A. I don't know; I assume he did.

Q. He never told you whether he did or not? A. Never in so many words, no.

Q. How long before this will was eecuted did you have this conference with Mr. Houghton? A. Oh, I should say—well, I could only guess it would be between three days or ten days, whenever the draft of the will was presented to me. I don't recall the exact date; shortly before it was put in final form.

Q. Well, the draft of the will was presented to you? A. The draft of the will, yes.

Q. And did the draft contain this certain provision? A. As near as I can recall.

Q. Well, it was an important provision of the will, in your opinion? A. Oh yes.

Q. And you have no recollection as to whether or not it was in the draft? A. I have not, no; not in those words.

Q. And you had previously had a conference with Mr. Houghton about this very provision? A. I didn't say so.

Q. Well, then, what did you say about it? A. I said that when the draft of the will was presented to me Mr. Houghton and I talked over its provisions, and I tried to pass on the question of the form in which the will was drawn and had some talk as to whether or not that was a correct statement.

Q. Well, then, you did have that provision in mind when the draft was presented to you; isn't that so? A. No, that isn't so at all.

Q. When did you first consider this provision of the will? A. When I saw it written out.

Q. In the draft? A. Yes.

Q. And then you had a conference with Mr. Houghton about it; is that so? A. We went over the whole draft of the will, every paragraph of it.

Q. How long was that before the will was executed? A. Well, I shouldn't think that would be very long. I couldn't state the exact period of time.

Q. Did you know that the testator had asked Mr. Houghton to make this will? A. I know that he didn't.

Q. You know that he testified to it in the court below? A. No, I don't. I know that the testator asked that the will be drawn.

Q. You know that he didn't ask him to make it; is that so? A. Make this particular will?

Q. Yes. A. Certainly he didn't ask him to make this particular will.

Q. How do you know that? A. I know that Mr. Squier has written out matters in longhand and given them to Mr. Houghton himself.

Q. You are distinguishing perhaps between this will and a will? A. Why, yes; I was asked about this will.

Q. Very well. Now, you knew that he asked him to make any will? A. I didn't know it, no.

Q. Well, do you know whether he did or not? A. I don't know of my own knowledge, no; I never heard of it.

Q. But you do know that he didn't ask him to make this will? A. Well, I possibly surmised it, based on the fact——

Q. On what fact? A. The fact that I knew Mr. Houghton had been presented with the draft of a will by Mr. Squier; and when I say a draft I mean written out in longhand with the provisions that he wanted; so that it was Mr. Squier's request and not Mr. Houghton's.

Q. Did Mr. Squier ever say anything to you about it? A. He talked about it before he executed it; asked me if I had seen the draft of the will.

Q. And what else, if anything, did he say? A. I don't recall.

Q. Where did that conversation take place? A. It might have been in his room and it might have been in mine; I don't recall.

Q. But in the office in New York? A. Yes.

Q. And when with relation to the execution of this will? A. Why, I have answered that as well as I can.

Q. How long before? A. I can't say exactly.

Q. Was the conference at his suggestion or yours? A. I don't think it was at either's. I always saw Mr. Squier every day. He was in the office frequently.

Q. Saw him every day? A. Practically. He always said "Good morning"; sometimes he would chat and sometimes he wouldn't chat.

Q. And your calls on him were largely social calls? A. Largely; practically entirely.

Q. Did you on those occasions discuss the administration of any of the other estates of which he was executor and trustee? A. Never.

Q. You never had anything to do with those, professionally? A. No, sir.

Q. Did you ever have anything to do with any of his other matters, professionally? A. I had nothing to do with any of Mr. Squier's matters, professionally.

Q. And he was practically every day in the office? A. I think so, yes.

Q. And that would be about three days a week? A. Latterly, about that, yes.

Q. Going over what period? A. 27 years—26 years.

Q. Have you stated when you had the discussion about the draft of this will with Mr. Squier? A. I said I didn't recall the exact time.

Q. That is my recollection. Do you remember the draft in his handwriting? A. I remember seeing it, yes.

Q. And did you have a discussion with him about that—with Mr. Squier? A. Not with Mr. Squier, no.

Q. When did you first see that? A. Well, I think at the same time that I saw the draft that I speak of of the will, what I call the personal draft before it was put into the shape in which it was executed. We always have a written draft on yellow paper first.

Q. How long before it was executed? Can't you tell that, approximately? A. No. It would be a mere guess, Mr. Maxson.

Q. Was it a week, or a month, or a few days? A. Well, it would naturally be within a week. That is all I can say.

Q. And who directed your attention to it, Mr. Houghton? A. He always presents it to me, yes.

Q. And you are uncertain whether the draft contained this certain provision we had under discussion? A. I don't recall that.

Q. So you don't recall when you first saw that provision, whether it was in the will or in the draft? A. No, I don't recall.

Q. Were you away over that holiday? A. What holiday?

Q. You recall that the will was executed on the 6th of July and that the previous day was celebrated as the national holiday, the 4th coming on Sunday? A. I didn't know it until you told me.

Q. The 4th of July came on Sunday, and Monday the 5th was celebrated as the holiday, and the will was executed on the morning of the 6th, Tuesday, sometime, according to the record, before noon; were you away over that holiday? A. I haven't the slightest recollection. I didn't take my vacation, in those days, in July and I probably was not away unless over week-ends.

Woolsey A. Shepard—By Appellant-Contestant
Cross

Cross Examination by Mr. Ferris:

Q. In your examination by Mr. Maxson you referred to a draft of the proposed will of the testator made in the handwriting of the testator. A. Yes.

Q. I show you these two papers, marked "C-4, 1-17-28" in the court below and ask you if those are the papers to which you refer? A. Yes, those are.

Mr. Ferris: I offer those.

(Admitted and marked Exhibit R-1.)

Q. Mr. Shepard, you have testified in response to a question asked by Mr. Maxson whether the statement contained in the will of Edwin M. Squier, read to you by Mr. Maxson, is true; will you kindly explain to his Honor the facts upon which you base that conclusion, as concisely as you can. A. In the first place, at the time of the death of William C. Squier, the contestant's grandfather, his father had already died having predeceased his grandfather; he, therefore, took under his grandfather's will all of the share in his grandfather's estate which the father would have received at the time had he been living. Then his grandmother died, and in that estate he was left a specific legacy by his grandmother, as I recall it.

The next member of the Squier family to die was his uncle, William C. Squier, Jr., who died, unmarried, and leaving no issue and also leaving no will. This contestant received from that uncle's estate that share which his father would have received if living.

At the time of the death of William C. Squier certain trusts fell which has been established un-

der his grandmother's will, applying equally to the various sons——

The Court: Grandmother or mother?

A. I am speaking now of this contestant. Those trusts were distributed, and this contestant received the share that his father would have received if living. The same thing was true at the time that Edwin M. Squier died. He being the next of the children, Stuart C. died a few days before him, of course no trust fell in there because Stuart C. left children surviving. When Edwin M. Squier died, a certain sum went to all the sons equally and this contestant received the share which his father would have received if living in any trust that fell in at the time of Edwin M. Squier's death. Of course, I am speaking wholly from memory as to this particular trust. I will have to refer to that matter. But I am outlining now what I mean when I said that this is true, and that is what I understand was meant by the statement in this testator's will that this contestant here had stood in the shoes of his father in any event up to the time of the death of this testator and so had received all of the money which the father would have received if living, he being the only child. That is why I say this statement is true. Furthermore, the other brothers who were living at the time this will was drawn were all married and had children, so that this contestant's father, if living, would not have shared in their estate had they died intestate. So that, on all of those grounds the statement that he received and would receive all that his father would have received if living in the case of intestacy, of course, is a true statement.

Redirect Examination by Mr. Maxson:

Q. Now, your summary of the law here—— A. That is facts, Mr. Maxson.

Q. Your summary of the law is based on the construction of these wills? A. I have summarized the facts, as I recall them.

Q. That is to say, you were saying that this provision in the will was true? A. A true statement of the facts.

Q. Based on a construction of the will? A. Not necessarily.

Q. As you construe the will the statement is still true? A. At the time that will was drawn.

Q. Is that so with respect to the will of Katherine C. Squier?

Mr. Ferris: I object to that. Mr. Maxson in his direct examination refers to the last paragraph of Section 5 of the will and that refers to the will of William C. Squier. Here is what it says:

> I make no further provision directly or indirectly for my nephew, Charles Burnham Squier, as he was and will be the sole beneficiary in the interest his father, if living, would have received from the trusts created by the will of my father, William C. Squier.

There is no mention made of Katherine. So that, whether or not Mr. Shepard construed the will of Katherine C. Squier makes no difference.

Mr. Maxson: I don't think that necessitates a reply, if the Court please. Your Honor has

seen these wills and, of course, it requires a construction to find out what his father would have gotten under the will. It isn't a question of fact; it is a mixed question of fact and law, and among the New Jersey authorities is the Hall Case with which Your Honor is familiar, and the Farnam Case. These constructions by Mr. Shepard are obviously wrong.

The Court: What is the purpose of your examination now along this particular line?

Mr. Maxson: This side of it was opened up by counsel. We haven't gone into it, but now that they have gone into it we have the right to test this man's knowledge of the subject he is talking about, and his credibility. He has made broad statements of fact here as a lawyer, which would decide the whole case.

Q. Did you testify, Mr. Shepard, that it made no difference how you construed these wills, as to whether or not this provision in the will in controversy here is true? A. Well, that was referred to simply as I understand it, in reference to the will of William C. Squier.

Q. Well, that doesn't answer the question. A. If you will repeat the question.

Q. (Question is read by the stenographer.) A. Yes, I think I so testified but I think that is an error, and I withdraw that, since I have heard this read.

Q. Then it does make some difference, as you construed the will of Katherine C. Squier? A. Yes.

Q. And was it on your construction of the will that this provision was put in this will of Edwin M. Squier? A. Why, no.

Q. Well, you say that you passed on it? A. I approved of it, yes, based on that construction.

Q. And you approved of this form? A. Of the form, yes.

Q. And didn't you, at the time you examined it, take into consideration the question whether or not that provision was true? A. No, because I hadn't handled the Squier estate up to that time. I assumed it was true and believe it is.

Q. You assumed it was true at that time? A. Yes.

Q. But you didn't discuss it with Mr. Houghton? A. Not that I recall, particularly.

Q. Since your examination of this document Exhibit R-1, is your recollection refreshed as to whether or not that provision was in that draft? I am now referring all the time to the provision in the will of Edwin M. Squier and read to you, that Charles Burnham Squier received all that his father would have received? A. This doesn't refresh my memory on that point.

Q. Well, is it in this Exhibit R-1? A. That statement? No.

Q. Now, is your recollection refreshed as to where that clause originated? A. I don't know where it originated, no.

Q. Or when and where you first heard of it? A. As near as I can recall, I first heard of it when I read over what we call the final draft of the will of the testator, meaning the will in its final form.

Q. Now, when was that? A. It was naturally before that was executed; I couldn't tell you when.

Q. And where? A. In our office in New York; I can't tell in which room.

Woolsey A. Shepard—By Appellant-Contestant
Redirect

Q. Can you describe the situation, as to who was present and what the occasion was of your examining it? A. I recall Mr. Houghton asked me to go over this draft of Mr. Squier's will and see if it was all right, and that was my custom.

Q. And does that draft, according to your recollection, contain this provision? A. You mean, as it now appears in the final will?

Q. Yes. A. Yes, that is my recollection.

Q. And was there any discussion about it when you examined the draft? A. No, I didn't see any discussion.

Q. You have seen this previously (showing witness exhibit R-1)? A. No, I said I saw that when it was handed to me together with the draft of the will. That is the first time that I had seen that.

Q. And your attention at that time wasn't called to the fact that these notes did not contain that certain provision that was in the draft of the will? A. No, those notes stated that all of his property was to be left to his three brothers.

Q. Now, you are an attorney and of some standing at the bar; you know that that isn't responsive. A. I know that is no jury here and I can't answer that "yes" or "no."

Q. I will ask that the question be read. (It is read by the stenographer.) Now, isn't that susceptible to a categorical answer "yes" or "no"? A. Yes, I think it is.

Q. What is your answer? A. No.

Q. When did you first construe the will of Katherine C. Squier? A. When Mr. Hendrick started the New York suit.

Q. And did you construe it as a New Jersey or New York document? A. New Jersey document.

Q. And having construed it did you or not reach the conclusion that Mrs. Katherine C. Squier had exercised her power of appointment in the will? A. I reached the conclusion that she had, based on the surrounding circumstances, as well as the will.

Q. And that was based largely on fact, wasn't it, and not on law? A. Both.

Q. That is, that she hadn't enough property at the time of her death to meet the specific legacies of the will? A. That isn't so; she did have at the time of her death, as I understand it. At the time the will was drawn——

Q. Now, just a minute; you misunderstood the question: At the time of her death she had not enough property in her estate to meet the specific legacies in the will?

Mr. Ferris: What is the significance of that here. The question asked Mr. Shepard is how the will of Katherine C. Squier is to be construed. Your Honor will construe it. Now, are we going to drift from the issues here? I submit, that we are rather far afield. Mr. Maxson opened the door himself by asking this witness, and after my brief cross-examination he proceeds to examine him as to the details.

Mr. Maxson: The witness has testified in response to a question by Mr. Ferris and I am trying to find out whether or not this provision is true.

The Court: What bearing has that on the issues of undue influence?

Mr. Maxson: Oh, it has this bearing, that Mr. Houghton is a member of Mr. Ferris's firm and one of the Squier family by marriage, and

has handled this whole transaction, and we want to know if they, having reached the conclusion that it was true, told the testator about it, and if they did whether they discussed with him whether or not it was true. We say it isn't true, and we say under the law of New Jersey it isn't true.

The Court: Of what moment is Mr. Shepard's opinion as to the construction of that language?

Mr. Maxson: Well, he is giving testimony here and, in response to a question, he is giving his conclusion as a lawyer. He shakes his head. It must be as a lawyer, because his answer to the question has got to be based on the construction of these wills.

The Court: In answer to Mr. Ferris he explained some of the genealogy and the sequence of deaths of members of the family.

Mr. Maxson: Now we want to prove whether that was an accurate answer; and we also want to test his credibility.

The Court: But what Mr. Ferris says now is true in explanation of the answer, that you secured it from the witness yourself. You asked the witness to state the facts upon which the opinion that you brought out was based. As I remember it, you asked him if that was a true will.

Mr. Maxson: A true statement of the facts in the will.

The Court: And his answer was "yes."

Mr. Maxson: Now I want to find out whether those facts which he gave were true.

The Court: Which you may do, but why interrogate him as to the opinion that he may have formed.

Mr. Maxson: He gave his opinion and conclusions. Of course, they were not evidence, but they have gone in. They might not have been received if we objected to them, but we permitted them to go in for what they were worth. Now we want to find out whether they were true or not.

The Court: Of course, you have a right to find out whether the facts are true, but not by an examination as to his opinion.

Mr. Maxson: Well then, may it please the Court, I think, in order to simplify the situation, I will move that all of his conclusions and opinions be stricken from the record. Of course, the genealogy of his family was important and we are glad to have that on the record.

Mr. Ferris: The very thing that counsel seeks to strike out was brought out by counsel. He has brought it out and it is in the record for what it is worth.

The Court: The facts that have been given by the witness may remain, but his opinions and conclusions may be stricken out. Have you any objection to that?

Mr. Ferris: No.

Mr. Maxson: We will withdraw it in order to save the Court's time.

Augustus S. Houghton—By Appellant-Contestant
Direct

AUGUSTUS S. HOUGHTON, sworn on behalf of the appellant-contestant, testified as follows:

Direct Examination by Mr. Maxson:

Q. You are a member of the New York bar? A. I am.

Q. And one of the firm of Ferris, Shepard, Joyce & McCoy? A. Yes.

Q. Are you a member of the New Jersey bar? A. I am not.

Q. Is any member of your firm a member of the New Jersey bar? A. I think not.

Q. Mrs. Houghton was one of the Squier family, was she not? A. She was.

Q. And the daughter of which one of the brothers?

The Court: You have gone all through that before in the Orphans' Court, haven't you, Mr. Maxson?

Mr. Maxson: Some of it.

The Court: But why go over it again?

Mr. Maxson: Well, I wanted to get it before your Honor.

A. Stuart C. Squier.

Q. You testified in the proceedings below? A. I did.

Q. In the Orphans' Court? A. I did.

Q. Where are the securities belonging to the estate of Edwin M. Squier kept?

Mr. Ferris: I object to that as wholly immaterial and irrelevant. It bears directly upon

the issues of the New York case; it has no bearing upon the issues here.

The Court: Of what relevancy and materiality can the location of these securities be in the determination of whether or not this will was the result of undue influence or fraud, or conspiracy?

Mr. Maxson: We want to find out what this witness knows about the affairs of this testator, what he had to do with the testator's securities in his lifetime, and so forth.

The Court: I thought the question was directed to the present location of those securities.

Mr. Maxson: All right, I will withdraw it.

Q. Mr. Squier had an office with you for how many years? A. A little over 25 years.

The Court: You have covered that.

Mr. Maxson: Yes.

Q. And he had a safe in the office? A. He did, and I so testified.

Q. Did he keep securities in that safe?

Mr. Ferris: You mean, during his lifetime, of course?

Mr. Maxson: The witness understands me without prompting.

A. He did. I have seen securities in his safe, yes.

Q. And were they there at the time of his death?

Mr. Ferris: Well, I object to the question. He says "were they," "they" would imply

specific securties. If counsel would ask, "Were securties" there would be no objection; but when he says "were they" the inference is that he means some specific securities.

Mr. Maxson: I am referring to the securities that Mr. Houghton knew were there.

Q. Were those securities that you knew kept there? A. At what time, Mr. Maxson, please?

Q. Haven't you testified that there were securities there in that safe belonging to the testator, and that you knew it? A. I did.

Q. You did? A. But I don't know what securities they were, and I don't know that those securities were there at the time you ask.

Q. Well, how did you know they were there? A. I was in the office, and I saw him receive the securities and put them in the safe. What they were, I do not know.

Q. He never discussed them with you? A. No, I didn't say that he did.

Q. Never discussed any of his securities with you on any occasion? A. Once in a while he had bought some bonds, I think within the last three or perhaps four years of his life, which I don't recall exactly, and he would tell me that he had bought some bonds, or that bond, and that is all. I don't remember any specific bonds that he spoke to me about. I don't remember now the names of any specific securities he spoke to me about.

Q. Did you have access to his safe? A. I did not, except on one occasion.

Q. What occasion? A. As I testified before, when he broke his leg, in 1922 I think it was, I had access to his safe for the purpose of getting

out his check-books and took them out to him in Rahway when he was laid up in bed.

Q. How long did that continue? A. Well, he was confined to his house, I should say, somewheres in the neighborhood of eight or nine months, as I recall it.

Q. And when was that? A. I say, I think in 1922 or 1923; I don't remember the exact time. But I had nothing to do with the securities, and I never handled any of his securities during that time. The only occasion I had to go to his safe was to get out the check-book, and I don't think I opened his safe during his nine months' illness a dozen times.

Q. Did you have a man in your office by the name of Vandervoort? A. I tried to explain that to you in the lower court. He was not in the office; he was in an adjoining office.

Q. What did he have to do with Mr. Squier? A. He had nothing to do with Mr. Squier personally. He was his cousin.

Q. Did he have anything to do with his business or affairs? A. No; he used to be a bookkeeper in the Passaic Zinc Company before it was merged with the New Jersey Zinc Company, and there were certain properties that did not go into the merger that the Passaic Zinc Company kept, and after the merger in 1907 Mr. Vandervoort came over and kept the books of the Passaic Zinc Company and in that way he had the combination of the safe.

Q. Under whose supervision did he keep the books of the company? A. I suppose under Mr. Squier's. He was President of the Passaic Zinc Company.

Q. You don't know under whose supervision he kept them, if anyone? A. I don't know exactly

what you mean by "under whose supervision." He came in there and balanced the books.

Q. Was he an expert accountant or public accountant? A. I don't know whether he was a public accountant, but he was an expert book-keeper.

Q. And who supervised his work, if anyone? A. He didn't have anyone to supervise his work, in the sense you mean, because he came in after office hours and posted up the books. How often that was I don't know.

Q. Didn't he have any communication with you? A. I would say, "How do you do, Mr. Vandervoort" and that's all.

Q. He made no report to you? A. No.

Q. You had nothing to do with the Passaic Zinc Co.? A. I wouldn't say that.

Q. What did you have to do with it? A. I had nothing to do with Mr. Vandervoort.

Q. What did you have to do with the Passaic Zinc Co.? A. I was one of the directors perhaps four or five years before it was dissolved.

Q. And it was combined with another corporation, was it not, by a merger? A. Part of its property was taken over by the New Jersey Zinc Company.

Q. And did you ever have anything to do with the New Jersey Zinc Company? A. No.

Q. At any time?

Mr. Ferris: I object to that, if he has anything to do with it now; up to the probating of the will.

Mr. Maxson: This witness needs no protection. I notice that he looks at Mr. Ferris and then my opponent rises and makes objection.

The Court: Why not limit it to a certain time?

Q. I will limit it to the time before the death of the testator. Did you have anything to do with the New Jersey Co.? A. No.

Q. Did the testator have anything to do with it? A. Oh, he was a director. He succeeded his brother Charley as director at the time of his death. He has been a director ever since, up to the time of his death.

Q. Was he director of the Passaic Zinc Company? A. That was the amalgammated? Yes.

Q. Were you a director of that company in his lifetime? A. Which company.

Q. Passaic Zinc Company? A. Yes, I testified about four or five years before the dissolution.

Q. And succeeded the testator as director of the New Jersey Zinc Company?

Mr. Ferris: I object to that. This witness had no relation to these companies.

The Court: I don't see the relevancy of that. I sustain the objection.

Q. I asked you whether there were any securities belonging to the testator in his safe at the time of his death, that is, referring to the safe in the office, and there was an objection made, and it was ruled on, and you didn't answer it; now I ask you that question again.

Mr. Ferris: I object to that, on the ground that the fact as to whether or not there were securities in the safe at the time of the testa-

tor's death can have no bearing on the issues here. If there are any securities missing the time to deal with that is not now.

The Court: Well, I think I have already indicated that that is of no moment in this appeal, whether there were any securities there at the time of Mr. Squier's death or otherwise.

Mr. Maxson: It is to show what control he had over the estate and what connection he had with it. In the court below he testified, but the effect of his testimony was, that he was not in a confidential relation with this testator. Now, what control he may have had over his property and access to his safe in the office has to do with the question of undue influence.

Mr. Ferris: I have no objection to a question of that character, whether or not there were securities there at the time of the testator's death, but that wouldn't establish the facts that counsel seeks. I have no objection to it, but I do object to any question that has not, in my humble opinion, any relation to a case that is not here and the question itself not relating to anything presented here.

Mr. Maxson: I have been a member of the New Jersey bar for many years, and I think the court will take my statement that this has nothing to do with the New York litigation, and I don't propose to ask what the securities were.

Mr. Ferris: I have no doubt of the truth of Mr. Maxson's statement being true, so far as he is concerned, but this does not apply to the knowledge of Mr. Hendrick, his associate.

The Court: I am going to abide by my former determination not to permit any testimony as to the whereabouts of those securities.

Mr. Maxson: But, may it please the court, we are not asking where they are now. We know where they are now. They are all in the hands of the administrators pendente lite; so it isn't a matter of information. We want to find out—if your Honor will permit me to make a little further argument on this—we want to find out what the relation of this witness was to the testator and his estate, if he had access to the safe and could go there immediately after the testator's death, which would show a more or less confidential relation with the testator in his lifetime. That is the purpose of it.

The Court: Well, that may be; but I'm not going to allow you to go on any fishing excursion.

Mr. Maxson: When your Honor says "fishing excursion"——

The Court: I don't know, as a matter of fact. I don't know that he had the combination of the safe at the time of the testator's death.

Mr. Maxson: This question doesn't presuppose that; if he gets into the safe——

The Court: Yes, but you wanted to show that he knew the combination and had access to it.

Mr. Maxson: I want to show that he had access to it,—not necessarily that he knew the combination. Mr. Vandervoort knew that combination. Of course, when your Honor says "as fishing excursion" in a case like this, we start off with knowledge that Mr. Squier, the

testator, was for a great many years in the same office with the witness and the witness is a member of the family, and then he drew this will;—now, of course they have all the facts with relation to the making of the document in their possession, and to that extent we are on a fishing excursion. We want to find out how it was done.

The Court: Yes, but the location of the securities at that time I think is a matter of no moment in this case, and that is what the question, in effect, is directed to:—"Were there securities at the time of the death of the testator"?

Mr. Maxson: The effect, no; the selection of the securities or the securities themselves have no materiality. But "did this witness know they were there," and "did he have access to the safe at the time of the testator's death?" we claim is material.

The Court: It certainly would indicate the friendship and confidence on the part of the decedent in this witness, but I don't think you can go any beyond that.

Mr. Maxson: If he had confidence in him that would go to show a close relationship between them.

The Court: I don't know whether Mr. Houghton would deny friendship, generally, on the part of the decedent.

The Witness: Of course not.

Mr. Maxson: He said there was no confidential relation.

The Court: That is a very different thing.

There isn't any confidential relation shown, but complete understanding and friendship between them. That always must be the foundation of friendship, I suppose.

Q. Do I understand the witness to answer Your Honor's question that there was a friendship?. A. I don't know that I said so, but I will concede it. I think Mr. Squier had a great deal of confidence in me.

Q. You were co-trustee with the testator in the estate, were you not? A. Yes.

Q. And for how many years? A. About a year and a-half before he died.

Q. And you, or your firm, were attorneys for the trust estate? A. Yes.

Q. Were you associated with him on any other boards—trustees or directors? A. I think I testified in the lower court, on the Shur-loc. That is the only one.

Q. How long were you on that board? A. Oh, seven or eight years perhaps; I don't exactly recall; it was quite a long time.

Q. Who promoted that company—the Shur-Loc company? A. A man by the name of Williamson, connected with the New York World.

Q. And who first called it to Mr. Squier's attention, referring to the testator. A. Undoubtedly I did, although I don't recall exactly now.

Q. You were interested in its promotion, were you? A. Yes.

Q. And did you incorporate the company? A. Yes.

Q. And did you invite Mr. Squier to invest in it? A. I did not.

Q. Did he invest in it? A. He did.
Q. To what extent?

Mr. Ferris: I object to all that. What is the purpose of that? It is only a collateral matter; it can have no bearing on the question here.

Mr. Maxson: It seems to me that that is obviously material—what were his relations to this matter is obviously material, because it indicates the relation between this witness, who procured the making of this document, and the testator. What was the relation between them? Were they intimate enough so that he could promote a company and get this testator to invest in it? The cases hold that all those matters are material to the question of influence that he had over him.

The Court: All right; I will allow it.

Mr. Ferris: I make no objection to the question that was asked in regard to the investment in the company, but when he asks how much he invested in it and what became of it I think that is entirely outside of this case. And it occurred years before—seven or eight years before.

A. The company was formed in 1914.

Mr. Maxson: Is this responsive to a question now?

Mr. Ferris: I asked as to when that was and he has just answered me.

A. The company was formed in 1914, and I think it was a year or two after that that Mr. Squier bought the stock in the company.

Q. And at whose suggestion? A. I don't know.

Q. You have testified that you helped promote the company and you incorporated it. A. I beg pardon, I didn't say I helped promote the company; I said I incorporated it.

Q. And you had nothing to do with it until it was incorporated? A. I incorporated it and drew up the papers.

Q. You had nothing to do with the promotion until the incorporation; is that so? A. I invested some money in it at the time of the incorporation, but I did no promotion.

Q. You had nothing to do with the getting the matter together until you filed the certificate of incorporation; is that so? A. In fact, I don't understand your question.

Q. Well, you know what a promotion means—getting the people together to form a corporation? A. There was no promotion that I know of, prior.

Q. Did you have anything to do with that?

Mr. Ferris: I object. That assumes that there was a promotion.

A. I was just going to say, Mr. Maxson, when you interrupted me, that there was no promotion. As I understand the word "promotion" it refers to the time prior to its incorporation. There was a promotion afterwards, but not by me.

Q. Well, let us distinguish between a promotion and the formation of a corporation. Now, when did you first hear about this company? A. When

Mr. Williamson came to me and said that he had got a patent or, rather, a device for a safety door of elevators and he wished to have a company formed so that it could be put on the market.

Q. And did he ask you to take an interest in it? A. He did.

Q. And you took it? A. I did.

Q. How soon after that did Mr. Squier come into the picture? A. Of course, that is so long ago. I think it was within a year or two. Just exactly how near to that, to the incorporation, I don't recall.

Q. And not at your suggestion? A. Not at my suggestion.

Q. You were one of the officers of the company, were you not? A. I was the treasurer and put money into it.

Q. You put money in? A. I did.

Q. Mr. Squier put a hundred thousand in it, didn't he?

Mr. Ferris: I object to that, if Your Honor please. I think it is immaterial.

A. I would like to answer that.

Mr. Maxson: This witness has testified——

The Court: He says he would like to answer the question.

Mr. Ferris: I am trying the case and I have the responsibility, and I prefer to try it in my own way. I would like to have my objection ruled upon.

The Court: Well, I will allow it, to save time if nothing more.

Q. (The question is read by the stenographer.) A. He did.

Q. He did put $100,000 in it? A. Yes.

Q. At whose suggestion? A. It was his own suggestion and over my protest—in spite of my protest.

Q. Well, who brought the company to his attention? A. I think I testified that I did.

Q. He didn't know Mr. Williamson, did he? A. Oh yes, I think he did, because Mr. Williamson and I were very close friends and he had been into the office a great many times.

Q. What is your recollection about whether you or Mr. Williamson invited Mr. Squier to make this investment? A. Neither one of us invited him.

Q. He said that he would make it himself? A. He did.

Q. Where did he get his information from about the company? A. I told you that I spoke to him about it.

Q. And did you paint a glowing picture of it? A. To the contrary; I told him as it was a corporation started in my office I was very loath to have him go into it, because I didn't want to feel the responsibility that would fall upon me in the event that the company was not successful.

Q. And notwithstanding that, he made an investment of $100,000? A. No, you are wrong there. He made an investment of $5,000, and his statement was—well, it was substantially this: "It is an interesting development," speaking of the device, and he frequently took a gamble of $5,000 on things of this kind and he would like to do it on this, and so he did.

Q. How did he take the additional—— A. Well, the company went along and was in need of money and he and I and a Mr. Becker, who was also a director, put up money from time to time.

Q. Did he put up these moneys over your objection? A. Well, I wouldn't say that exactly. I know in the latter years of the company—I would say the last four or five years before he died and he had this money in there, I told him I wished he would quit, because it was worrying me a good deal, the amount of investment he had in there, and the development was progressing so slowly and in view of the fact that the operation of elevators was changing and this was a mechanical thing that needed to be changed, and he was getting into it deeply and it had worried me several times, so I asked him several times: "Why don't you wind up the company and quit?" and he says, "It is the mechanical device that I am interested in," and over my objection he went into it.

Q. And he continued to make the investment until the company finally liquidated? A. No, it liquidated as the result of his death, I think on a Friday before he died. He died on a Tuesday morning and I think we had a directors' meeting. I wasn't there, but they generally had the directors' meeting on Friday, and, if I remember rightly, I think he made a contribution to the pay-roll at the time he died.

Q. And he was furnishing the pay-roll at the time of his death? A. Well, as the company was in need of funds, yes.

Q. But you had no confidence in it latterly? A. I didn't say that.

Q. You continued to be an officer? A. I did.

Q. Up to the time of its liquidation? A. I resigned as an officer shortly after Mr. Squier's death because, being in the meantime an executor of his will I felt that I could not occupy the dual position in both capacities.

Q. Was that claim against the company asserted against it on behalf of the estate?

Mr. Ferris: I object.

Mr. Maxson: I withdraw the question.

Q. Was that claim—chose in action—a part of the figures that were given to the administrators pendente lite?

Mr. Ferris: I think that is fully indicated.

Mr. Maxson: The question is whether this claim was concealed or not. I think Your Honor is interested in that.

The Court: Not at all. That is a matter for another court.

Mr. Maxson: There is a conspiracy alleged in this petition also.

The Court: I sustain the objection.

Q. Mr. Squier was a director of this company, I think you testified? A. Yes.

Q. How frequently did you meet? A. On an average of three or four times a month; sometimes more frequently when we were taking out these patent developments. But that was pretty early in the company, and we held them on Friday of each week. I know this because I was one of the attorneys for the company, or my firm was.

Q. Did Mr. Squier attend these meetings of the board of directors? A. He did.

Q. All of them? A. Except when he was home ill with a broken leg, but he recovered after nine months.

Q. And who was looking after his interests during that period? A. I suppose I did; I don't know.

Q. Who brought the affairs of the company to his attention in Rahway where he was laid up? A. Sometimes I did and sometimes Mr. Williamson, or sometimes Mr. Old who was the salesman.

Q. Was Mr. Old well known to Mr. Squier? A. Oh yes.

Q. Had he known him before he came into this company? A. I don't know.

Q. Had you known Mr. Williamson before he came into this company? A. Did who know Mr. Williamson?

Q. Did Mr. Squier know Mr. Williamson before he made this investment in this Sur-Loc Company? A. Yes, I think he did.

Q. Was Mr. Squier furnishing the pay-roll during the period of his illness? A. Very frequently, yes.

Q. You gave that some attention with Mr. Old? A. I didn't say so.

Q. What do you say about it? A. He generally gave me the check and I took it in and deposited it.

Q. Did he make any inquiry of you about the necessity of contributing it? A. Oh yes; certainly he did.

Q. And he took your word for the situation? A. He had that much confidence in me, yes.

Q. And gave you the money?

Mr. Ferris: I object to that. There is no evidence here that Mr. Squier gave his money to that company.

Q. Mr. Squier's investment was a total loss, wasn't it?

Mr. Ferris: I object to that as calling for a conclusion.

The Court: I sustain the objection.

Q. Doesn't the inventory filed show it was a total loss?

Mr. Ferris: I also object to that.

Q. Assuming that the inventory did show it was a total loss, did the company go on?

Mr. Ferris: I object to that.

Q. Did or did not the company go on after Mr. Squier got out?

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

The Court: I sustain the objection.

Q. You are one of the executors of this estate, are you not? A. I am nominated; I don't know whether I am or not.

Q. To be more exact, you were named to be executor, in the will? A. I was, yes.

Q. Did you file an inventory? A. I did not.

Q. No inventory was ever filed until after this?

Mr. Ferris: I object.

The Court: That is a matter that would be gone into on an accounting. How it can throw any light on the matter of conspiracy or undue influence, or any other matters in issue between these people, I can't understand.

Mr. Maxson: I was leading up to the question as to what the inventory contained—whether or not it contained certain things which we say are material to the issues, because that was the relation between this witness and the testator in his lifetime.

The Court: I don't see any materiality to that either.

Mr. Maxson: During recess may I call Your Honor's attention to one or two authorities that we have? You are undoubtedly familiar with them.

The Court: Yes, I would like to have them.

Q. You represented the estate of William C. Squier, Sr., did you not? A. My firm did, yes.

Q. Who did the actual work in relation to that estate? A. I did.

Q. You represented the estate of Katherine C. Squier? A. Yes.

Q. You drew her will? A. Yes.

Q. Did you have the active charge of that estate, as counsel? A. As attorney, yes.

Q. During the period of the administration of those two estates, did Edwin M. Squier have an office with you? A. Yes.

Q. Was he an executor or trustee under either one of those documents? A. He was both under both wills.

Q. Did you represent him as executor and trustee? A. I represented the estate.

Q. Professionally, I mean. A. I represented the estate, which would necessarily include individual trustees and all the executors of one individual.

Q. Well, you did represent him, then, as one of the three trustees and the executors? A. Yes.

Q. Consult with him frequently about the disposition of the matters that arose in connection with those two estates? A. Well, I wouldn't say "frequently", because, with William C. Squier, it was mostly securities and there was very little outside of an accounting, and the trustees had very little to do with that except in connection with dividends from the securities and the semi-annual distribution to the beneficiaries.

Q. How often did the board convene to dispose of the things to be done? A. Well, they very seldom convened to dispose of the things, because I would make up the statements and send them to the beneficiaries, I think—I ought to say that the beneficiaries were the trustees.

Q. As a matter of fact, you handled those things for them? A. Yes.

Q. Sent them the papers and they signed on the dotted line?

Mr. Ferris: One moment; I object to that question. The witness merely testified that he prepared the accounts for the trustees.

The Court: Yes, I think the question does assume more than it should.

Q. What did Mr. Squier, the trustee, have to do with the administration of those estates, as executor and trustee? A. Well, he signed most of the checks.

Q. Where did he sign them, in Rahway or in the office? A. In the New York office. I think the check-book, in fact, I know the check-book was kept in the office all the time.

Q. Who drew the checks? A. Whoever was in at the time. I know Mr. Squier never drew them.

Q. Under whose direction were they drawn? A. I can't say under whose direction.

Q. Anybody in the office who directed the cashier to draw a check for his signature and he would do it? A. No.

Q. You don't know who directed the drawing of those checks? A. Mr. Squier directed the drawing of the checks in the first instance, every time.

Q. During the time that he was nine months laid up? A. Yes. I don't say he did, because statements and checks were taken out to him to Okeh and sign.

Q. And who took them out? A. I did.

Q. And how did he give the directions for the drawing of the checks? A. By word of mouth.

Q. To whom? A. To me.

Q. And from whom did he get the facts to draw the checks? A. The facts of what?

Q. The facts on which he based these checks? A. That was prepared by the bookkeeper.

Q. Did he direct the drawing of these checks without conference with the other trustees? A. Oh yes.

Q. Did they pay any attention to the administration of the estate? A. They did, when any question came up. But as I told you, there was very little to do except to look after the income. It was mostly connected with money loaned on property, and they would then get together and determine what to do.

Q. And how frequently? A. Whenever there were investments to be made, depending upon whether a mortgage was to be replaced or extended.

Q. What were these checks drawn for that Mr. Squier, as you say, directed them?

Mr. Ferris: I object to that. What relation has that to the issues of fraud or undue influence?

The Court: I can't see. Mr. Maxson, if I permitted you to cross-examine on every transaction that took place we would never get through. We now have had three hours of this examination and I don't know of anything that has been developed out of the witnesses that have been examined. The trial counsel is willing to admit, of course, that there was a relation of friendship, which was quite necessary in carrying out their trust, and it would be rediculous to say that such relations had such influence over the mind of another as to induce him to dispose of property in a way he otherwise would.

Mr. Maxson: Very true. I agree with the court thoroughly, as a legal proposition.

Mr. Ferris: And particularly the drawing of checks on his suggestion.

Mr. Maxson: Of course, I will meet Your Honor's suggestions as to that.

Q. Were the coupons to be clipped and taken care of? A. When?

Q. With respect to the different estates in which Edwin M. Squier was interested. Were there any bonds? A. I am trying to recall, Mr. Maxson. I know that there were no coupons except on Liberty Bonds.

Q. You personally never cut any coupons? A. I never did.

Q. You testified in the court below that your relations with the testator were not confidential, did you not? A. I don't recall that I said that. I don't understand what you mean.

Q. You know what "confidential" means when it comes to the construction of a will?

Mr. Ferris: I object to that. Counsel asks a question based upon his own interpretation, and he has made him his own witness, and it isn't fair to cross-examine him.

The Court: I think that is so, Mr. Maxson. Why not give Mr. Houghton the information that he asks for, what you consider "confidential" to mean.

Mr. Maxson: I will withdraw it.

Q. Now, what other financial relations did you have with the testator in his lifetime besides the Shur-Loc matter; personally, I mean.

Mr. Ferris: I object to the form of the question.

The Court: What do you mean by "form"?

Mr. Ferris: If counsel would ask the witness, "Did you have any other investment," I would have no objection.

Mr. Maxson: Of course, counsel would have no objection to my asking questions if he could frame them.

The Court: Well, I do think that it assumes an unwarranted state of facts.

Q. Did you have any personal financial relations with Mr. Squier in his lifetime? A. In the way of investment, do you mean, or what?

Q. Did you have any investments with him or did he have any with you? A. Yes, on two occasions I had dealings with him. One was in 1925 and the other was in 1926.

Q. Well, what were they? A. They were both practically the same thing. We had a joint venture on some property in 1925.

Q. Did you buy it together? A. Yes; I bought it first, and then he came in with me because it got too big for me to carry, and then we sold it at a profit and got some of the money out of it, and then later on it transpired that the deal in Florida was not carried out in accordance with the contract, and in that contract it was provided that I should take the property subject to but not be responsible for the mortgages, and the vendor was to assume the mortgages and he did. I was not there at the time. Notes were given and they were made payable at different times, and Mr. Squier told me that he would go in with me and help me pay those notes.

Augustus S. Houghton—By Appellant-Contestant
Direct

Q. You bought some property in Florida with Mr. Squier? A. I bought it first and he came in afterwards.

Q. And at whose suggestion did he come in? A. At mine.

Q. You asked him to come in with you? A. I asked him if he would, yes.

Q. And then he did, and you sold that property to him? A. Yes.

Q. At a profit? A. Yes.

Q. And then you bought some more? A. No, no; we didn't buy some more. The lawyer in Florida was not there at the time and my brother who lives in Florida attended to it and acted for me as my attorney-in-fact by power of attorney. The contract provided that I should take the property subject to mortgages but not to assume the payment of the mortgages, and the lawyer in Florida drew the deed to me and made it so that I could only take it subject to the mortgage and when the notes came due later on, the prior mortgages came back on me to pay them and I couldn't pay them, and Mr. Squier said he would come in with me and help me out, and then we sold and got out.

(Recess until 2 o'clock)

Q. How were the notes drawn? Who was the payee and who was the maker? A. Which notes do you refer to.

Q. How many notes were there all together? A. What? In my transaction with Mr. Squier on the Florida transaction?

Q. All together, how many notes did you have with Mr. Squier? A. You mean the notes I gave to Mr. Squier?

Q. Yes. A. Two.

Q. And how were they drawn? A. To his order, if that is what you mean. I promised to pay him.

Q. It was not an individual transaction between you and Mr. Squier? A. Yes.

Q. You promised to pay him the amount? A. Yes.

Q. How much were they? I think the first one was for——

Q. What was the aggregate amount? A. I think the first one was $17,000, dated July 26, 1926, and the other one was, if I remember rightly, for $10,000, sometime in August, if I remember rightly, 1926.

Q. The total amount, then, was $27,000, round figures? A. Approximately that, yes.

Q. How were they drawn with respect to time? A. Demand.

Q. Did he demand payment of them? A. No, he did not. I insisted upon giving him the notes because I did not have title to the property.

Q. Well, they were demand notes; did he demand payment on them? A. I hadn't finished: I insisted upon giving them because I had not title to the property, and those notes I gave voluntarily thinking he would advance the money.

Q. Were they demand notes? A. They were.

Q. Did he ever demand payment of them? A. He did not.

Q. So that the notes are still due and owing, are they? A. They are unpaid; I wouldn't say they

were due and owing, because of this arrangement I had with him.

By the Court:

Q. You mean that your litigation in Florida is not yet closed A. It is terminated now, yes, but it was a joint venture, but I gave these notes as evidence of his demand on me.

By Mr. Maxson:

Q. Well, you gave him these notes and your present position is that you didn't owe him the money?

Mr. Ferris: I object. That isn't it.

Mr. Maxson: That is what the witness says.

The Court: Don't let us get into an argument. Counsel took issue on the use of the word "owing." He says that the witness did not say that the notes are owing.

Mr. Maxson: All right, I will waive that, with Your Honor's permission.

Q. At the time you gave the notes did you consider that you owed him $27,000? A. No, I considered that he had an interest to that extent in this Florida property.

Q. And you gave your obligation to secure his interest in the Florida property? A. No, I gave to him as evidence of his advance of the money on the property so that if anything happened to me.

Q. But he didn't want the notes? A. He didn't ask for them, and I offered them to him and he said "no." I said "Well, I will feel better if you

will take these notes to show that you have advanced the money towards the purchase of the property," and he said, "If you want to do it that way, all right."

Q. When did this transaction take place? A. I think the first note was dated July 26, 1926, and the other in August. It was after the making of the will.

Q. Are the notes, if you know, with the administrator pendente lite? A. They are not with them; they are impounded with the New Jersey Title & Guaranty Company.

Q. They were not there at the time of the trial of the case below? A. I think they were. I think we turned over all the securities there. Yes, they were; I know.

Q. There was no mention made of them in the trial of the case below? A. I wasn't asked about them, no.

Q. Now, did you have any other financial transactions with the testator besides the Shur-Loc matter and the notes with respect to the Florida property? A. No, I don't recall any other.

Q. Well, you are not sure about it? A. I am pretty positive. No, I beg pardon; as far back as 1899 I borrowed a thousand dollars from Charley Squier, the father of this contestant, and from Ed. Squier the testator in this case. That was in 1899.

Q. Now, you remember a man running away to Venezuela in connection with some transaction? A. Yes, a fellow by the name of Archer.

Q. Did the testator have any interest in that matter? A. That is the matter I referred to in the

lower court. That is the only personal matter we had in the office for Mr. Squier, and that was in 1912 or 1913, I think, and he turned over the papers to us. I think it was in the nature of money advanced to this man Archer, and he skipped to Venezuela. I'm not sure whether it was Venezuela, but some South American country. I think the matter was dropped and nothing further done with it.

Q. Now, in addition to the three transactions that you have mentioned did you have any other financial transactions with the testator in his lifetime? A. I think not.

Q. Well—— A. I am pretty positive that I did not.

Q. Did you have anything to do with the bank accounts of the testator in his lifetime? A. In what respect?

Q. I mean, did you know anything about it. A. Whose bank account?

Q. Edwin M. Squier's bank account. A. No, I did not know anything about that at all. He broke his leg in 1923——

Q. Did you ever know what his balance was in the Farmer's Loan & Trust Co. was at the time of his death? A. I only knew it at the time of death when I got the report from the bank.

Q. How much was it?

Mr. Ferris: I object.

The Court: What is the purpose of that?

Mr. Maxson: If he had a very large amount there it goes to show how he handled his affairs.

The Court: How who did?

Mr. Maxsn: How did the testator handle his affairs.

The Court: How is that going to help on the question of undue influence.

Mr. Maxson: It helps Your Honor with the question as to what his knowledge of his estate was and what he did with it and that sort of thing in his lifetime. I am asking now, at the time of his death what he had, not in respect to the administration of the estate. I will ask him this:

Q. Did he have a very large balance at the time of his death?

Mr. Ferris: I object to that.

The Court: It seems to me that is the same question.

Mr. Maxson: I think it is very material. Of course, we can prove it by other testimony, but if this witness knows it it would conserve the court's time.

The Court: That isn't it. I don't understand Mr. Ferris objects to the mode of proving it, but the technical objection is that it is irrelevant and immaterial for the purpose of this appeal.

Mr. Maxson: If Your Honor found as a fact that this testator had $700,000 balance in the bank wouldn't that have some weight, or more weight, with Your Honor, as one of the incidents to show how he handled his estate and what his capacity was to handle it, which goes to the question, of course, of undue in-

fluence. Anything that he might have done with his estate would show what grasp he had of his business, how much of a business man he was? Now, a man in these days who has, say, $700,000 in a bank account obviously isn't much of a business man or he wouldn't have it there.

The Court: Mr. Ford is said to have accumulated $25,000,000 of cash so as not to be caught again as he was three years ago.

Mr. Maxson: Yes, but this man was in no business except the Shur-Loc. That is the only one that we know of, and the Florida transaction. That is all the business he had except the mining companies.

The Court: The mining companies he merely had an interest in.

Mr. Maxson: But those were all investments in the family. If our information is correct, this was an inactive bank account with that much money in it. We say that all these things are a part of the picture that we have in mind, and we are trying to place it before Your Honor.

The Court: Well, I can't see the relevancy or materiality of the amount that this gentleman may have kept in bank, with all deference to counsel in that regard. And even though it was relatively a very high fraction of his entire wealth I don't see how, in the slightest degree, it can prove the fact of a conspiracy, or fraud, or any of the other issues presented here.

Mr. Maxson: Well, we think that a man's grasp of his affairs and his business capacity has some bearing upon whether or not he may be influenced in the disposition of his property.

The Court: I don't think that the amount that he carried in cash on hand is any indication of his lack of grasp of business principles.

Mr. Maxson: Well, if either your Honor or I had that much on deposit at 2% we wouldn't leave it there very long; we would invest it where it would earn more.

The Court: But you or I or any other man know how widely men differ in that regard. We have known men who were successful that have kept money hidden away. I sustain the objection.

Mr. Maxson: We are not claiming that he was incompetent, but as showing undue influence. Your Honor sustains the objection?

The Court: Yes.

Q. You had charge of the bank account during those nine months that he was ill? A. I did not.

Q. What did you say about your connection with the bank account, a moment ago? A. I took his check-book out to Rahway.

Q. He didn't keep any check-book out there? A. I didn't say that.

Q. Where did he keep them? A. He had a check-book at the Farmer's Loan & Trust and in his safe. That is the one he had me take out to him. I know he had an account in the Rahway National Bank

but I never saw that check-book, as I recall; and the reason I know is because when the estate was turned over to the executor we found that check-book.

Q. I am directing your attention now to his personal account and not his account as trustee. A. I am talking about his personal account.

Q. And that was in the Farmer's Loan & Trust Co.? A. Yes, one of them was.

Q. And the check-book was where in the office? A. In his safe.

Q. And you had access to it? A. To what? To the safe or to the check-book?

Q. Either one or both. A. He gave me the combination and I went and opened the safe and took the check-book back to him and, as I testified before, I went to the safe during those nine months perhaps a half dozen times, at his request, but at no other time.

Q. And did you have knowledge of the transaction? A. What transaction?

Q. That required the drawing of the checks when you took the check-book out? A. Knowledge of the transaction? I don't understand.

The Court: For which he wanted the check-book.

A. No, I did not.

Q. Did you take the check-book out each time you visited him? A. I left it out with him until he came back to New York.

Q. You took it out and didn't bring it back? A. No.

Q. Now, you testified in the court below: (page 483, paragraph 1449.)

Q. Well, now, did he speak to you again about it before the will was finally drawn? That is about the disposition of his property. I will read the question before:

> Q. Do you recall why that will was not made at that time? A. He told me that he was thinking over what disposition to make of certain of his property and he hadn't made up his mind quite yet, and then when he had he would let me know and have me draw the will.
>
> Q. Well, now, did he speak to you again about it before the will was finally drawn? A. No. I spoke to him twice about it.

A. That's right.

Q. Now, when did you speak to him again about it, and where? A. I think the first time after that was about a year after he had spoken to me, and I told him——

Q. Well, fix that time, will you, as nearly as you can. A. I think it was before he broke his leg the first time he spoke to me the first time, if I remember rightly.

Q. Well, when was that? A. I think he broke his leg, as I said, in 1922 or 1923. I can't tell you exactly.

Q. All right. A. And it was about a year after he spoke to me in the first instance about drawing his will that I spoke to him and told him I thought it was necessary for him to draw up his will so as

to avoid intestacy and putting up a large bond that I knew would have to be put up in view of the size of his estate. And then perhaps a year later—it may have been 17 months and it may have been 14 months, but I think it was considerable time after that that I spoke to him again in the same tenor as I have just testified to.

Q. And where did these conversations take place? A. I think they were in the office.

Q. Did he initiate the conversation about the will, or did you? A. At which time?

Q. At either of those times or both of them. A. At those two interviews I initiated the conversation, or words to that effect.

Q. Now, you urged him to make a will in order to save his estate the expense of an administration bond? A. I did not urge him.

Q. You so testified, I think; but I will take that word "urge" out; you asked him to make a will, put it that way. A. I suggested the advisability of making a will.

Q. On two occasions? A. Yes.

Q. So as to save the estate expense of an administration bond; is that it? A. Yes.

Q. So that the only reason you had for urging him to make a will was to save the expense, of an administration bond? A. It was.

Q. And you thought that the fact that a bond had to be paid for by the estate was a good reason for you to twice see the testator and tell him you thought he should make a will? A. Yes, from my experience in the family.

Q. What experience? A. This contestant's father did not make a will and we had trouble with that.

Q. Trouble in what respect? A. Over the bond.

Q. Anything else besides the bond? A. Oh No. It added additional expense and trouble in administering the estate.

Q. Well, that was the only reason you had? A. That was the sole reason I had.

Q. Did you say to avoid intestacy? A. Well, I don't remember the exact wording, but that is the thought I had in mind. I don't remember the exact words, but that was the spirit of the conversation.

Q. You say you didn't urge it; simply talked to him about it. A. I didn't urge it; I advised it.

Q. I read from the record below, page 484:

> Q. And on what occasions? A. Oh, perhaps a year apart. I urged upon him the necessity of making a will.

A. If I testified to that at that time I have no doubt about it. Wasn't careful in the use of my words, probably.

Q. Now, that conversation, the last one you testified to in the court below, took place in the office. Now, did you have any other conversation anywhere else excepting in the office about the making of a will? A. I don't recall it. I don't think I did.

Q. You don't think so? A. No.

Q. You are not sure about that? A. I only recall those two instances in connection with the will.

Q. You remember the occasion of the reading of the will of Katherine C. Squier? A. I do.

Q. And the testator, Edwin M. Squier, was there present? A. He was.

Q. And so were practically all the other members of the family? A. I think everybody was there except Mrs. Edison.

Q. And on that occasion you rose and construed that will, didn't you? A. I did not.

Mr. Ferris: I object to that, first, on the ground that it assumes something not testified to, and also as calling for a legal opinion.

Mr. Maxson: I will withdraw it.

Q. On that occasion what did you do, if anything? A. I read the will to the family.

Q. Did you do anything else? A. I did.

Q. Well, what did you do? A. After the contestant had protested against the terms of the grandmother's will, in which he was left only a legacy of $15,000 like the rest of the grandchildren, I told him that Mrs. Squier had told me that the reason that she wished to have a will drawn in the form that it was drawn, and executed by her, was because she felt that the grandfather, or, rather, her husband's heirs should share equally as far as possible in the estate. Now, I am giving you the substance, not the exact words.

The Court: What is the use of this; it is already in the record. You have already examined on this.

Mr. Maxson: I have asked this question, but I have something else based on this. I am not repeating, if I can avoid it.

The Court: Let us go right to the subjects that you want to interrogate him on in addition to what is already in.

Mr. Maxson: This is one of the subjects.

The Court: Well, hasn't he told all about that in the Orphan's Court?

A. I don't think so. I don't think I was asked about that.

The Court: Then go on with your answer.

A. And, consequently she left the estate as she did, having that in mind, endeavoring to make an equal distribution among the prominent heirs of William C. Squier, the deceased husband.

Q. If that is the position which you took in the interview which you have related with the testatrix, did that have any bearing on this clause which we have been discussing, in the will of the testator?

Mr. Ferris: I object.

Mr. Maxson: I will reframe it.

Mr. Maxson: If the objection is to the form of the question I will withdraw it.

Mr. Ferris: And also to the question.

Augustus S. Houghton—By Appellant-Contestant
Direct

Q. Did you have the position which Katherine C. Squier took with you about the making of her will in mind when you drew the will of Edwin M. Squier? A. I don't think so, no.

Q. That was not one of the reasons why you urged him to make a will? A. What was one of the reasons?

Q. The situation which you related about the distribution of the estate and the equalizing of the shares? A. I told you I did not urge him as to the terms of his will, only the mere act of making the will, and for the sole reason, as I have already testified, to save the expense of a bond.

Q. I haven't asked you about that. A. Yes you did.

The Court: Don't let's argue about it; go ahead.

Q. You testified, I think, that you drew Katherine C. Squier's will? A. I did.

Q. Did you represent the estate? A. I did.

Q. All the way through to its conclusion? A. I did.

Q. Has it been administered? A. Yes.

Q. Distributed? A. Yes.

Q. Has an accounting been made? A. No, we took general releases from the parties in interest instead of an accounting.

Q. Did you represent the estate of William C. Squier? A. Senior?

Q. Yes. A. Yes.

Q. Was there an accounting in that estate? A. There was.

Q. When was that made, approximately? A. Well, December, 1907 or January, 1908.

Q. Final accounting? A. Final accounting.

Q. Final distribution? A. Well, the distribution follows, of course, after the decree.

Q. At the time you discussed the terms of Katherine C. Squier's will with her was there anything said about Charles Burnham Squier having had. or getting in the future, the full amount that his father would have gotten if he had survived him? A. I don't think so; not in that exact way.

Q. Anything to that effect? A. It was what I said before: Mrs. Squier told me that she felt that Burnham was getting enough. She may not have said those words but I am trying to recall. And, consequently, she wanted to make the will the way she did. I took her instructions and gave her no advice.

Q. How old was she when she died? A. She was about 84—I think she was 91 when she died and the will was drawn something like 7 years before she died.

Q. How long had you been representing her before the will was made? A. That was the only thing that I represented her in, excepting her husband's estate.

Q. Do you know what brought about that retainer? A. I never received any retainer; or do you mean employment—engagement?

Q. Put it that way. A. Well, I handled her husband's estate and I suppose she asked me to draw her will. That is the only reason I know of. She never gave me any reason for it.

Q. How frequently did you see her before the will was drawn? A. Oh, I think my wife and I used to go down there occasionally, perhaps two or three times a year, perhaps more frequently; I don't recall.

Q. Did you suggest to her that she make this will? A. I did not.

Q. You didn't have in mind the cost of an administration bond in respect to her estate? A. She had never broached the subject of a will, so that there was no occasion to have it in mind.

Q. How many codicils were there to her will?

Mr. Ferris: I object to that, if your Honor please.

Mr. Maxson: The will is in evidence.

The Court: What is the use of inquiring of Mr. Houghton as to how many codicils there were?

Mr. Maxson: Well, it simply saves the court's time. He knows very well. I can direct his attention to it and then, not only that, may it please the court, it goes to his knowledge of this whole situation, how much interest he had in it, how much he knew about it.

Q. I call your attention to Exhibit P-3 and ask you whether you remember drawing those codicils? A. I assume that I did. I will say that I did. I think I did, or was consulted in the drawing of it. It may have been done by me; I am pretty sure; or it may have been done by my partner. I don't recall that now.

Augustus S. Houghton—By Appellant-Contestant
Direct

Q. Codicil No. 1 is dated the 17th day of October, 1911. Now, did you have some conferences with the testatrix before you drew that codicil?

Mr. Ferris: I object to that. We are going back to 1911; that is some 15 years before the execution of this will and has nothing to do with the will in issue here. I object to this as wholly irrelevant and incompetent.

Mr. Maxson: Your Honor has admitted this document, and I am examining this witness who says he drew it, as to the circumstances under which he drew it. Now, I think I can demonstrate to your Honor that, on our theory of the case, this is one of the most important facts to us. In fact, I am always encouraged when my learned adversary objects, because it indicates to me that there is something good coming.

The Court: You don't attack it?

Mr. Maxson: We are not attacking it, but it goes to the construction of this will. Mr. Shepard testified that the clause in this will was true. Whether it was true, or suggested by somebody who had the opportunity to suggest it, as being the reason. He inquired of this witness, "Is this will all right as far as my bequest to Charles Burnham Squier is concerned?" It is most important to us, on our theory of this case.

The Court: Yes, on your theory of the case it is, subject to the same provision under which I admitted the wills P-2 and P-3. I will admit

this and deal with it when I come to decide the case.

Q. (The question is read by the stenographer.) A. I will have to see the codicil to recall it. (Paper is handed to the witness.) Not in the first instance no.

Q. Well, I don't understand that, I am frank to say. A. I mean, that I did not discuss or have any talk with Mrs. Squier about that codicil until after it was drawn.

Q. Who drew it? A. I drew it, probably; or one of my partners.

Q. On whose direction? A. Mr. E. M. Squier, the present testator.

Q. And where were the instructions given? A. Given to me in the office.

Q. Now, do you remember codicil No. 2? A. No, I don't recall that.

Q. I call your attention to Exhibit P-3. A. Yes, I recall it; I drew it.

Q. By whose instructions was that drawn? A. Mrs. Squier's, conveyed to me by Mr. E. M. Squier.

Q. There was a certain purpose in the drawing of that codicil, was there not?

Mr. Ferris: Well, I object to that as calling for the mental operation of the testator in making the will.

Mr. Maxson: I will withdraw it. You are successful again.

Q. That codicil was drawn by the administratrix to give title to a certain piece of property; isn't that so? A. No.

Q. It wasn't? A. No.

Q. Did it have any other purposes?

Mr. Ferris: I object to that as calling for the mental operation of the testatrix.

Mr. Maxson: I will withdraw it; I will withdraw it.

Q. Did the testatrix, through Edwin M. Squier, give you any particular instructions about the drawing of this codicil No. 2, referring to the same exhibit? A. Yes.

Q. What did he say to you? A. I haven't the slightest recollection.

Q. Is your recollection refreshed by reading this (handing paper to the witness)? A. I do recall it now: In the will of William C. Squier, as I recall it, he left all his real estate to his widow, Katherine C. Squier. Later on—Is that codicil dated 1911?

The Court: That is what he said, October 17.

Q. This is the 12th of October. A. They discovered that Mr. William C. Squier had purchased the same property down along the hills, I believe, of the town of Roosevelt, if that is the name of it, and nobody knew about it, and it was discovered at that time—and Ed. Squier told me this—that Mrs. Squier wished to convey that real estate—her interest in that real estate—to her son, and I think that was the purpose of that. The property was later sold, and I think, as I recall the transaction,

the title company held that she didn't have ample right to convey that property because it was in a residuary clause rather than a certificate conveyed to her, and she gave a deed of her dower interest. I am speaking now from memory. And I think the property later was sold. And then a deed was executed to convey her interest in the property and this codicil, as I remember it, was practically disregarded.

Q. As a matter of fact, an attempt had been made to make title to this Roosevelt property before this codicil was drawn? A. There may have been.

Q. There had been a deed made of it, in fact? A. That's right.

Q. And when an investigation was made the title company said "No, that deed isn't good because the testatrix hasn't exercised her power of disposal under this will? A. Well, she wasn't dead.

Q. You had her will? A. Yes, but the will wasn't in evidence at the time of the sale of this property.

Q. Didn't they know about this will? A. Why, no.

Q. Are you sure about that? A. What is the date of the sale? You see, your Honor, this is a long time ago and I don't remember these dates. There was a mix-up about the title, I know.

Q. And it related to this very instrument that I have in my hand, didn't it? A. That I don't recall.

Q. The deed was dated on the 19th of October, 1912; the codicil referring to this property in this will was dated the 21st day of October, 1912; does that refresh your recollection as to whether or not

that codicil had to do with this conveyance? A. It had something to do with the property. Just what the purpose of that was I don't recall. There is no dispute about that.

Q. The deed was dated the 3rd of October 1912, and the codicil was dated the 21st of October, 1912, and the deed was delivered subsequently to the making of this codicil. A. And whom is the deed to, may I ask, which one of the sons?

Q. The International Agricultural Corporation, organized under the laws of the State of New York. Now, does that refresh your recollection about this codicil? A. No, I don't recall.

Q. And there was no conversation had with Mr. Edwin M. Squier about the purpose of drawing this codicil? A. I didn't say that.

Q. Well, was there? A. He gave me instructions to draw it, yes.

Q. Well, was there any conversation about the purpose in making the codicil? A. Yes, the purpose was this: If I recollect rightly, Mrs. Squier would have a life estate in a certain portion of the proceeds of this property, it having gone into the residuary estate, and the money after the sale was collected and was set up as a portion of her estate for the purpose of conveying the real estate to the people mentioned in that codicil, that the codicil was drawn.

Q. Now, will you tell me why you mentioned the testatrix's power of disposal in this codicil and didn't mention it, in fact, in all of the instruments?

Mr. Ferris: I object to that, if your Honor please. That is the very issue presented in the New York action, and it is not material to this case, and I don't think it is fair to get testimony in here that is not designed here but designed for another case

Mr. Maxson: I object to that remark from the beginning. I don't know what they have to conceal in the New York jurisdiction, but I know nothing about this New York action. I have never been consulted about it; I have never seen any of the papers except two affidavits which were shown to me and which had matters in them relating to this over here, and they have used that sort of thing, for what reason I don't know. These are all estate matters. They must have something serious in them or they wouldn't be afraid of their being divulged in New Jersey.

The Court: The question is whether it is admissible in this appeal, and if it is, of course I will have to admit it.

Mr. Maxson: This goes, may it please the court, to the very foundation of our situation, the construction of this will. It is a question whether under this will our client, Charles Burnham Squier, has gotten what his father would have gotten in these estates. That is the recital in this will before your Honor here. Now, it depends upon the construction of this instrument whether he got it or not.

The Court: How can his explanation of why it appears in the codicil and not in the will

affect the construction to be given to the language of the will?

Mr. Maxson: If, with knowledge of what the testatrix had in mind he got the instructions for drawing this will—your Honor remembers those cases, the Farnum Case and the Hall Case, where it was held that where the power of disposal was not set forth or expressed in the answer, then, under certain circumstances, extraneous contracts might be had to determine whether or not the testator intended to exercise his power of disposal or not.

The Court: I don't yet understand why you think that affects the construction to be given to the language of the earlier will,—the will of Edwin M. Squier.

Mr. Maxson: It doesn't, but it goes to the question as to whether or not he knew what he was doing when he disinherited our client and when he gave the reason for the disinheritance, —not only cutting off the bequest but gave the reason for it, and that reason checks up very closely with the reason which this witness gave at the time of the reading of this will for his disinheritance, in his presence and in the presence of Edwin M. Squier; and we say, taking these things all together, and the other things which we propose to show here, that that indicates undue influence. We say that that created, at the start when this will was read and this witness rose and told what this testatrix said to him, who represented our client

one of the natural objects of his bounty,—when he gave those reasons, that created a certain atmosphere. This witness was the attorney for these various interests. He had been connected with the family, and he had certain reasons for making this will now in controversy, and that he had indicated by the fact that he states those same reasons now.

Mr. Ferris: If I may say a word: What Mr. Maxson is attempting to prove is untrue. Now, he claims that this instrument does not, in fact, devise to Burnham Squier that which his father might have received under the will if living. That is something of a legal question for your Honor to determine. The ultimate fact of what that will contained must be obtained by a reading of the will. Now, the discussion as to what took place between Mr. Houghton and Katherine C. Squier, the grandmother, some 15, or 16, or 17 years ago is not at all material in this litigation, despite the fact that he indicates that he doesn't know about it.

The Court: The only thing that concerns me is Mr. Maxson's contention that he has a right to introduce extraneous evidence to prove the meaning of the oral construction of the will.

Mr. Maxson: Yes, the courts have held that. They held it in the Farnam Case, one of the leading cases decided by Vice-Chancellor Backes.

The Court: Can you leave this subject and continue your examination along some other

line, and then day after tomorrow call this to my attention?

Mr. Ferris: There are a number of witnesses who come from a distance whose testimony we might take.

Mr. Maxson: I don't feel disposed to change the order of proof unless your Honor directs me to do it.

The Court: I am surprised to hear you say that.

Mr. Maxson: I am going to do whatever your Honor directs me to do, but I would rather go on with this witness while he is on the stand.

The Court: I don't see that you will be under any disadvantage if there are other short witnesses here to be disposed of.

Mr. Maxson: My difficulty is, that I have made my preparation for today and a part of the next day in the examination of this witness. I have one witness here that I can put on, but after I get his testimony I shall not be able to proceed further.

Mr. Ferris: I don't care whom you call, Mr. Maxson. They all come from a fairly long distance.

Mr. Maxson: May I ask if Mr. Frank H. Keen is here?

Mr. Ferris: He is here.

Mr. Maxson: All right; I will call him.

(Mr. Houghton stands aside.)

Frank H. Keen—By Appellant-Contestant—Direct

FRANK H. KEEN sworn on behalf of the appellant-contestant, testified as follows:

Direct Examination by Mr. Maxson:

Q. Where do you reside? A. Greenwich, Conn.

Q. Are you acquainted with the Squier family? A. I married a daughter.

Q. Which one? A. Helen S. Keen.

Q. And from which branch of the family was Mrs. Keen? A. Daughter of Stuart C. Squier.

Q. Sister of Mrs. Houghton? A. Sister of Mrs. Houghton.

Q. Were you present, Mr. Keen, at the reading of the will of Katherine C. Squier, your wife's grandmother? A. I was.

Q. Did you hear the statement which Mr. Houghton made at that time? A. I don't remember it.

Q. You do remember that Charles Burnham Squier made some statement, do you not? A. I do.

Q. And did you have some expression to make about his statement? A. I don't remember.

Q. Well, Mr. Frederick C. Squier, as I recall it —and I call your attention to the testimony— testified that you said to Charles Burnham Squier, "Burnham, you are no Squier"? A. If Frederic C. Squier said it I guess he was right, but I don't remember it.

Q. Well now, with your recollection refreshed about that, do you remember saying that? A. If Mr. Squier said that, if he remembers it, why I said it.

Q. Then I assume you don't remember having said it? A. If he said it, maybe I did.

Q. If you did say it, then what did you have in mind; what did you mean by that?

Mr. Ferris: I object to that, sir. The witness is merely speculating; he doesn't recall that he did say it. He certainly can't recall what he had in mind if he doesn't recall that he said it.

Mr. Maxson: I am trying to find out.

A. I do not recall it.

Q. Do you remember statements that Mr. Houghton made? A. I do not.

Q. Do you remember his reading the will? A. I have a slight recollection that I sat there and listened to it. I don't remember now the contents of it.

Q. Your recollection about the whole business is very hazy today? A. Yes.

Q. You don't recollect saying, "Burnham, you are no Squier?" A. If he says I said it, then I said it.

Q. You feel that way about it now? A. I do.

Q. Do you feel now that Burnham was no Squier?

Mr. Ferris: I object to that question, if Your Honor please, on the ground that it is wholly immaterial. He hasn't testified that he remembers saying that.

Mr. Maxson: He said, "If Mr. Frederic Squier testified that then I said it." Now I want to find out whether that is his present attitude and whether it was his attitude at the

time he made the statement, and if so what caused him to say it.

Mr. Ferris: He doesn't say that he ever did say it.

Mr. Maxson: I object to counsel coaching the witness.

The Court: (Addressing the witness) What the lawyer asked you is, if you said such a statement to Mr. Burnham at that time do you still feel what you said at that time was true?

A. I don't know; I haven't anything to say about that.

The Court: Does that complete your examination of him?

Mr. Maxson: Yes.

The Court: And you don't want him any more?

Mr. Maxson: No.

The Court: Mr. Ferris, have you any witness from out of town?

Mr. Ferris: There is one from Massachusetts and one from Connecticut.

The Court: Who is the one from Massachusetts?

Mr. Ferris: Mrs. Smiley, and Mrs. Keen from Connecticut.

The Court: Are you prepared to examine these witnesses today.

Mr. Maxson: No, I am not prepared to call Mrs. Smiley today.

Mr. Ferris: How about Mrs. Keen?

Mr. Maxson: I am not prepared to call Mrs. Keen today.

The Court: I am at a loss to understand how you have dealt with this case in the time you have had and not be prepared to examine and cross-examine any of these witnesses.

Mr. Maxson: I have got to put my proof in in an orderly way. Your Honor remembers the case in the court below. Our theory wasn't sustained at all and we didn't stay there very long. We are here testing out this theory of the case with your Honor, and it depends upon how this case goes in an orderly way whether we want to ask certain questions of these witnesses who are here now, Mr. Smiley and Mrs. Keen.

Mr. Ferris: Mrs. Edson comes from a distance, and also Mrs. Montgomery.

Mr. Maxson: We will waive them. We will waive the presence of all the ladies here. Of course, if they come here later we may want to put them on.

The Court: You may put anybody on later if they are available within the confines of the court-room.

Mr. Maxson: Or we can call them by subpoena, I assume.

The Court: Then that is as far as you can go today?

Mr. Maxson: We have Mr. Houghton's examination carefully prepared and I assume his testimony will occupy the rest of the day.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

AUGUSTUS S. HOUGHTON, resuming the stand, testified as follows:

Direct Examination by Mr. Maxon (Continued):

Mr. Maxson: I offer in evidence these two deeds referred to by the witness.

Mr. Ferris: If your Honor please, there are two deeds offered in evidence. The first one is dated April 6, 1907, which is five years before the execution of the will of Katherine C. Squier. Now that deed is at all material I can't see, and, I must therefore object to it as being incompetent, immaterial and irrelevant.

The second deed is dated the 19th day of October, 1912, and is from Stuart C. Squier of two properties to the International Agricultural Corporation. That I object to also as immaterial, irrelevant and incompetent to the issues presented here, although I apprehend since Your Honor has permitted the will of Katherine to go into evidence subject to a motion later to strike out, I merely make the objection so as to preserve our rights in the event that Your Honor admits them.

The Court: What do you say about the early deed?

Mr. Maxson: The early deed is dated the 26th day of April, 1907, and the will is dated the 30th day of April, 1907. It is our contention that it is all one mass connection. The first deed was made simultaneously with the will, and then in order to meet the objection

made by the title company they made this codicil.

Mr. Ferris: It stands to reason that the making of the codicil has no relation to the transfer of the property by the son, which had been deeded to them in 1907, five years before. The codicil had no relation to that.

The Court: I confess, I am not entirely clear on it. There is no jury here, and to save time I am going for the present to admit it and deal with it at the close of the proofs.

Mr. Ferris: I was going to say, will Your Honor entertain a motion later on to strike out the documents if admitted?

The Court: They will be admitted for the present. The first one to be marked is the deed from Katherine C. Squier to Stuart C. Squier, and others, dated April 6, 1907.

(The same is marked Exhibit P-4.)

And the other is a deed from Stuart C. Squier and others to the International Agricultural Corporation, dated the 19th day of October, 1912.

(Marked Exhibit P-5.)

Q. Mr. Houghton, in the case below did you testify about the relations between the entire Squier family and Charles Burnham Squier, as to whether or not they were pleasant or unpleasant? A. I don't recall doing so, Mr. Maxson.

Q. Didn't you say there was intense antagonism against Charles Burnham Squier in the mind of most all the other members of the Squier family? A. I don't recall saying it.

Q. Well, is it a fact? A. It is a fact.

Q. Do you know when it arose? A. I do.

Q. At the time of the reading of Katherine's will? A. Yes.

Q. Is that the only basis for it, that you know? A. Yes.

Q. You remember the occasion of the reading of the will? A. I do.

Q. As you have already testified? A. I do.

Q. Do you remember Mr. Keen saying "Burnham, you are no Squier"? A. I do.

Q. Did you ever hear any other members of the family say that? A. I may have; I don't recall any specific instance or time.

Q. What did you gather from that?

Mr. Ferris: I object to what he gathered from the remark.

The Court: How is that competent?

Mr. Maxson: Well, I will withdraw it.

Q. Did you ever say that? A. Say what?

Q. "Burnham, you are no Squier"? A. I don't think I did.

Q. Did the testator, now referring to Edwin M. Squier, say it? A. He may not have said it in those exact words, but he gave me the impression at that time and very shortly afterwards that that was his opinion.

Q. Did he ever suggest to you that Charles Burnham Squier was not legitimately a member of the Squier family? A. No.

Q. Then it didn't mean that? I mean, in your estimation it didn't mean that he was not legitimately a member of the family?

The Court: I have taken it to mean right along that he wasn't worthy of the family.

Q. That is what I want? A. His Honor has it exactly.

Q. How often did you discuss Charles Burnham Squier with the family of the testator, Edwin M. Squier? A. Very few times; I don't recall. I don't think it was referred to between us during the 8 years previous to the making of the will.

Q. Well, on the other occasions when you asked him to make a will, or urged him to make it—put it as you please—was anything said at that time about Charles Burnham Squier? A. No, his name was not mentioned.

Q. At or about the time when Katherine C. Squier's will was read and you rose and made the statement, did you discuss Charles Burnham Squier with the testator, Edwin M. Squier? A. No, I did not.

Q. How soon afterwards? A. Well, it may have been three or four weeks after.

Q. And where? A. In the office.

Q. And who initiated the conversation? A. Mr. Squier.

Q. What was said? A. He handed me a letter written by Burnham to the testator, and he said "read that," or words to that effect.

Mr. Ferris: Go on; what else.

Q. Have you finished? A. Yes.

Q. That is all he said? A. Not until I finished reading the letter, yes.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Q. What else; after you had read the letter what did he say? A. I don't remember his exact words, but he expressed considerable indignation with his nephew.

Q. Did he say anything about making a will at the time? A. He did not.

Q. When, if at any other time, did you discuss Charles Burnham Squier? A. I don't recall, except it may have been in that immediate period of that year. I don't recall discussing Burnham until the will was drawn.

Q. Until the will was actually drawn? A. Until he had given me the instructions to draw the will. Put it that way.

Q. At the time you urged him to make a will in 1922 or 1923 was anything said about Charles Burnham Squier?

Mr. Ferris: Now, that is not correct. The witness testified a number of times that Edward M. Squier came to him and spoke to him about drawing the will and subsequently Mr. Houghton asked him about it. If I am in error the witness can correct me.

Mr. Maxson: Well, I will call his attention to the testimony and the page. May we have the answer again?

Mr. Ferris: I object to the question, on the ground that counsel has incorporated a state of facts in his question that is not in his testimony.

The Court: He has explained, Mr. Maxson, that when he used the word "urge" in the Orphans' Court he testified to an unhappy

choice of language, and that he intended to say that he advised the making of a will for the reasons he has stated, so that his testimony in the position that it stands now is, that he did not urge it, but after having consulted him about it he did advise on two occasions that the will be drawn.

Q. Then when you advised him to draw a will was Burnham's name mentioned? A. No, his name was not mentioned.

Q. Did he at any other time discuss Charles Burnham Squier with you? A. He did on the morning of July 6th, the day the will was executed, and he did on the Friday before the 6th, about the 2nd or 3rd of July, when he gave me these written instructions that are now in evidence.

Q. Did he on the day the will was executed? A. No, I didn't see him the day the will was executed.

Q. You testified in the court below, page 464, as follows:

Q. How soon after you received the notes—

(Referring to Exhibit that you have there, R-1)

did you discuss this certain provision of the will that we are talking about——

This says "to Mr. Squier," but, of course it means with Mr. Squier.

A. It was on the morning after—it was Tuesday morning the 6th, the morning that was executed.

The Court: Yes, that is what he testifies to now.

Q. Then the conversation that you had with Charles Burnham Squier about these notes was on the day before the will was executed? A. No, not with Charles Burnham; with Edwin M.

Q. I mean Edwin M. Now, that was on the 5th of July, wasn't it? A. The 6th.

Q. No, the record says, "It was on the morning after," the 6th; the 6th means the next day?

Mr. Ferris: Why don't you read the whole answer?

Mr. Maxson: I have read it once. If you can get a different construction on it, go ahead and read it.

Mr. Ferris: (Reading) "It was the morning after—it was Tuesday morning, the 6th, the morning that it was executed." That is the answer, and that means that it took place on the morning that the will was executed. That is what it says.

Q. Then you didn't intend to say "on the morning after?" A. After what?

Q. I will read it to you again.

The Court: Do you want to read it for yourself, Mr. Houghton (handing printed record to the witness)?

Mr. Ferris: There is a dash after the word "after," which indicates an interruption.

Mr. Maxson: Undoubtedly, it ought to be corrected.

Augustus S. Houghton—By Appellant-Contestant
—(Recalled)—Direct

By the Court:

Q. Do you know when you did receive those notes of instruction? A. If Friday was the 2nd of July, I received the instructions then.

Q. Now, how would you answer this question now that you were asked: "How soon after you received the notes did you discuss this certain provision of the will that we are talking about, with Mr. Squier? A. On Tuesday morning, July 6th.

The Court: Well, can we stipulate that the witness testified in the Orphan's Court when he said it was on the morning after it is understood that he then interrupted himself and changed his answer and made the direct answer "Tuesday morning the 6th?"

Mr. Maxson: That is the way we interpreted it.

The Court: All right, then we will go ahead with your examination.

Q. Have you testified to what he said about Charles Burnham Squier at that time?

Mr. Ferris: At which time?

Mr. Maxson: We are getting back to Friday now, the 2nd of July, when he received these instructions.

Q. Some reference was made at that time to Charles Burnham Squier; is that so? A. Yes.

Q. Now, what was the conversation? A. It had reference to the legacies to his nephews and nieces of $5,000 each. He asked me if I thought that was

all right, and I said it was his money and he could do as he pleased with it. He says, "You know the reason I am doing this; you know, of course, I do not wish to leave Burnham any more than I have to."

Q. Is that all the conversation? A. I think that is all of it.

Q. And did you know the reason? A. I knew what he referred to, yes.

Q. What was it? A. Burnham's conduct at the time of his mother's death and the subsequent writing of a letter to the testator.

By Mr. Ferris:

Q. By whom? A. Burnham.

By Mr. Maxson:

Q. And when was the letter written? A. Shortly after the death of his grandmother; the date I don't recall exactly.

Q. Was it February 28, 1913, or about that time? A. Yes, about that time.

Q. So that 13 years had elapsed between the writing of this letter and the conversation which you had about how much he was obliged to leave Charles Burnham Squier?

Mr. Ferris: I object to "how much he was obliged to leave," on the ground that counsel has interpolated into his question a statement of fact not testified to by the witness.

Mr. Maxson: I will withdraw the question.

Q. Didn't you say that he asked you how much he was obliged to leave Charles Burnham Squier? A. No.

Q. What words did you use? A. If I remember rightly I said, that he didn't want to leave Burnham any more than he was obliged to.

Q. Then at that time did he ask you how much he must leave him? A. No.

Q. Did you make any suggestion about how much he must leave him? A. I did not.

Q. Well now, between the time of that conversation, and that was on Friday previous to the drawing of his will? A. No, previous to the execution.

Q. All right, let's be very accurate about this—previous to the execution of his will, had he said anything to you about Charles Burnham Squier, going over the whole period back to the time of the writing of this letter in February, 1913? A. The conversation I just repeated on the 2nd of July; and I don't recall that this matter was discussed between the testator and myself for probably eight years prior to the execution of the will.

Q. Was the occasion of that discussion, in 1922 and 1923, when you talked over the will with him? A. Eight years before the execution, that would take it back to 1918; I don't recall speaking to the testator about Burnham in relation to his conduct at the grandmother's funeral more than once or twice, which would have been on or about just before or after the receipt of that letter—the date of the letter which you just referred to.

Q. Now, I call your attention to this letter; did he read it to you? A. Which letter?

Q. Some letter you testified that he called your attention to. A. That he received from Burnham?

Q. Yes; did he read it to you, or did you read it to yourself? A. I read it to myself.

Q. Any conversation about it? A. There was.

Q. Let's have the conversation, please. A. The only part that I definitely remember is, that I thought it was a dastardly letter.

Q. You commented to that extent on it? A. I did.

Q. Did he say anything about it? A. He used a few swear words about it.

Q. Well, we will leave those off the record. Did he say anything about replying to it? A. That I don't recall.

Q. Have you a stenographer in your office whose initial is L, or did you have in 1913? A. I don't recall. Oh, wait a minute; yes, we did have.

Q. Did Mr. Squier have a stenographer? A. He used our stenographer.

Q. Who was L? A. I don't remember now; I think it was Miss Lowenstein, or something like that. I think Lowenstein.

Q. And going to the other question, did he say anything about replying to this letter? A. As I say, I don't recall.

Q. Do you know whether he did reply to it or not? A. I do.

Q. When did you first see this reply? A. It is my impression he gave it to me before he sent it out.

Q. For your consideration? A. No, he asked me what I thought of it.

Q. Well, what did you tell him? A. I told him that I thought it was a bully good letter.

Q. A very good letter? A. Bully good letter.

Q. Did it go just as he handed it to you? A. I don't know.

Q. Have you any recollection as to whether you suggested any changes in it? A. I know I didn't.

Q. And the phraseology is that of the testator all the way through? A. Absolutely, so far as I know.

Q. And that's the letter that was in the letter-book that you produced in court on the trial below? A. Yes.

Q. The one you referred to? A. Yes.

Q. Where was that letter and the letter-book from the time you first saw it in 1913 down to the time you produced it in court?

Mr. Ferris: There is no evidence by this witness that he saw the letter-book. He testified merely that he saw the original letter.

The Court: You mean there is no testimony that he saw the letter-book?

Mr. Ferris: That is, the letter-press book. He saw the original letter before it went out.

Mr. Maxson: He can say; I don't know. That is an easy way to answer it.

Mr. Ferris: Well, why did you assume a false state of facts?

Mr. Maxson: He came into court with this letter-book.

By the Court:

Q. Did you have possession of it from 1913 on? A. I did not.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

By Mr. Maxson:

Q. All right; where was it, if you know? A. I don't know where it was kept.

Q. When did you get possession of it? A. After his death I found it in his desk when cleaning out the desk.

Q. And did you know that this letter that you have referred to was in that letter-book? A. Not at the time I found the letter-book, no.

Q. When did you discover that it was in there? A. In reading through the letter-book.

Q. Did you discover any other letters there to Charles Burnham Squier? A. There may have been but I don't recall.

Q. There may have been one or two? A. I don't recall.

Q. Where is that letter-book now?

Mr. Ferris: It is right here.

Mr. Maxson: May we have that for inspection?

Mr. Ferris: I don't think that they have to have this book for inspection. It was produced on the trial in the court below and the said letter was marked for identification, so that Burnham Squier might take the stand for cross examination, but we didn't realize our expectations.

Mr. Maxson: You will have the opportunity. We are going to put him on for cross-examination.

Mr. Ferris: I don't think this book should pass out of my hands. If they say they want

that particular letter that was marked for identification produced I will be glad to do it.

Mr. Maxson: We can get along very well with counsel from New York if we do everything that he suggests.

Mr. Ferris: In the jurisdiction I come from we treat each other courteously, and Mr. Maxson has made insinuations several times before about that.

The Court: On what do you base your application of going through the records of the adverse party?

Mr. Maxson: May it please the court, we are a member of this family, having an interest in this estate the same as themselves. It isn't as if we were outsiders coming in here, asking for something; what are the records here that these people have. If the making of this will was open and aboveboard, and it is a valid document, why all this secrecy about these things?

The Court: Well, my experience has been that people, as a rule, don't want their private affairs pried into.

Mr. Maxson: Well, may it please Your Honor, we have just as much interest, notwithstanding the fact that someone has said "This is no Squier." He is entitled to as much honor in this family as anybody else. We don't propose to advertise anything that we find here.

The Court: If, as counsel says, you will indicate any particular thing that is relevant to this inquiry in that book he will produce it

and is ready to produce the letter that has been marked for identification, although it is not in evidence.

Mr. Maxson: How safe he plays! He knows that we don't know what is in the letter-book when he makes that suggestion. But counsel has said that he thinks there are some other letters to Charles Burnham Squier in there, and they might be very illuminating in showing the disposition of this testator towards our client. We haven't got the letter. We have made a search for all the letters we can find. Isn't it fair to let us have any letters to our client?

Mr. Ferris: If counsel limits his request to that I think perhaps we can find it. I don't want to conceal from this court any letter that will shed any light on the issues here; but I am opposed to his conducting a fishing excursion here for anything that may be used elsewhere. I am happy to produce the book (handing it to the witness). Mr. Houghton, you might see if there are any other letters in that book addressed to Charles Burnham Squier.

The Court: There appear to be seven letters.

Mr. Ferris: I am perfectly willing to produce those for inspection if the inspection will be confined to those letters.

The Court: I won't compel the respondent to turn over the entire book, which would be an outrageous thing for one party to ransack the records of the other without being able to point out any materiality, or apparent materiality, of the records to be inspected.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Mr. Maxson: We are dealing here, may it please Your Honor, with the validity of this will. The man that we represent is a son of the whole stock in this estate, and according to the record in the court below he was more instrumental than any other man in making this money, and he is a reputable member of this Squier family and he has no reason to do anything to affect its reputation. Why are we not just as much entitled to have those records to show that he was disinherited as they are. They are just as much our records as theirs. They are not representing this estate now, may it please the court. The administrators pendente lite are having charge of this property. Now, they have access to all these things, and they say to us, "You can't go on a fishing excursion to find out the relation between our client and yours."

The Court: I still think it would be an outrageous thing to compel the respondents who have this book in their possession to deliver it over to an adverse party and to have information contained therein open for general inspection.

Mr. Ferris: We are perfectly willing to furnish them with copies of the seven letters, or whatever letters there are addressed to the contestant in this book.

The Witness: In the index there are four pages of one letter.

Mr. Ferris: I will have copies made and produce them here on Thursday.

Mr. Maxson: We want them before Thursday.

Mr. Ferris: I will be glad to deliver them to you tomorrow. I meant that they would be given you so that they would be available in this courtroom on Thursday, and I will see that Mr. Maxson gets them tomorrow afternoon.

Mr. Maxson: That means any time, I suppose.

Mr. Ferris: Unfortunately, I have some engagements for tomorrow morning. If Mr. Houghton will see to it he will see that you get them by noon.

Mr. Houghton: I will forward them to you by 12 o'clock.

The Court: Now, having gotten past that ripple, let's go on with the cross-examination.

Mr. Maxson: How long is Your Honor going to sit here today? I would like to stop now, if I could, until I get these letters.

Mr. Ferris: Why not use them right now. You don't need copies?

Mr. Maxson: It is now after the hour for adjournment and I should prefer not to go on any longer tonight.

The Court: Do you contemplate examining Mr. Houghton any more?

Mr. Maxson: I don't think very much longer. But I think after we get these letters, and after Your Honor determines about this estate matter, how far we can go into that—

The Court: You mean about the difference between the will and the codicil?

Mr. Maxson: Yes.

The Court: How long will your cross-examination be?

Mr. Ferris: I will be very brief, unless something additional comes up.

The Court: How many more witnesses will you call on Thursday?

Mr. Maxson: I don't want to call any more witnesses at all until I take the testimony of my client. This is merely a suggestion: Wouldn't it be well to determine how we are going to proceed further when we have finished with Mr. Houghton? I mean for your Honor's convenience.

The Court: Why do you say you don't want to examine any more witnesses until after you examine your client?

Mr. Maxson: Oh, I do. Here is Mr. Fred Squier; I have got four or five questions to ask him. I mean I haven't any extended examination except of our client Charles Burnham Squiers.

The Court: Then do I understand you will be able to clean up all the witnesses you wish to call, except your client, on Thursday?

Mr. Ferris: May we have a clear statement as to whether Mr. Maxson wants any of those people here except Mr. Frederic Squire?

Mr. Maxson: Not for the present. Those witnesses that we have subpoenaed, I suppose it is for Mr. Ferris to produce them again.

The Court: He has no control over them. He is producing some witnesses and wants to know

whether you want them to return or whether you can dispose of them.

Mr. Maxson: We have, don't expect to call them, but they might be instructed to return.

The Court: I will make the announcement that there is a cointinuance until Thursday morning; I am not going to instruct them to return.

WOOLSEY A. SHEPARD, recalled on behalf of the appellant-contestant, testified as follow:

Direct Examination by Mr. Maxson:

Q. Mr. Shepard, how frequently did you come in contact with Charles Burnham Squier? A. Senior or junior?

Q. Junior, the contestant. A. Well, a number of years ago we were quite intimate.

Q. See him quite often? A. Rather frequently.

Q. And where? At the office generally? A. Oh, we used to play golf together, dine together; used to see him quite frequently. That is good many years ago.

Q. Well, were your relations with him pleasant? A. At that time, yes.

Q. Well, were they interrupted—your pleasant relations? A. No, I should say we just gradually drifted apart.

Q. You had no differences with him? A. None whatever.

Q. Did he come around the office from time to time for any purpose? A. During the last few years he used to.

Q. Well, frequently or infrequently? A. Not very frequently, no.

Q. And for what purpose, when he came, if you know? A. Well, of course, I only know by hearsay, because any time I saw him was on social occasions.

Q. Dou you know whether he came there from time to time to see the testator, Edwin M. Squier? A. He used to come occasionally, yes.

Q. Now, have you told anybody recently, since this litigation was going on, that Charles Burnham Squier was no good? A. I don't recall ever making any such statement.

Q. Well, of course, you remember talking with Mr. Hendrick about him? A. I have from time to time when we would meet in the New York action.

Q. Did you tell him that he was no good? A. I have no recollection of making any such statement.

Q. Did you say anything about his never having worked during his lifetime? A. I suppose I have discussed that, yes.

Q. Well, I will ask you this: What was your impression of him at the time you were talking with Mr. Hendrick?

Mr. Ferris: I object.

Mr. Maxson: All right; I withdraw it.

Q. You have no recollection of having told Mr. Hendrick that? A. What?

Q. That he was no good? A. I have no recollection of having said so, no.

Q. And if you did tell him did you have anything to base it on?

Mr. Ferris: Just a moment. I certainly object. He is assuming something that the witness said he didn't recollect.

Mr. Maxson: The witness says he has no recollection of it.

The Court: I don't understand him to deny that the expression was used.

Mr. Ferris: Well, when a witness says "I have no recollection of any such event," can there be any stronger denial than that?

The Court: Yes.

Mr. Ferris: Isn't that a sufficient denial so that it cannot be followed by a question which assumes a state of facts contrary to the recollection of the witness? He could go on in that way and build up on false premises and the development would be ludicrous. It seems to me where a witness testifies that he has no recollection and counsel bases a question upon an assumed state of facts that the witness hasn't said, is entirely improper.

The Court: Mr. Ferris, while Mr. Shepard has been called by Mr. Maxson you have been fair enough not to object to the examination in the form of cross examination.

Mr. Ferris: I have not because I realize that he is supposed to be an adverse witness and I have not tried to limit it.

The Court: Well, now, it would be a novel thing if cross examining counsel should accept any statement at its face value made by every

witness. Isn't it just exactly such an examination frequently resorted to to refresh the memory of the witness, or to place him in the position where he is obliged to say that he does not recall?

Mr. Ferris: If a particular question were framed that way, to refresh his recollection, there wouldn't be any objection. Here, counsel is going much further. He had assumed a state of facts that the witness hasn't testified to. Now, no question is proper, according to the ordinary rules of evidence, that assumes a state of facts that the witness hasn't testified to. He doesn't recollect at all. I think the objection is well founded.

(The question is read by the stenographer).

Mr. Ferris: If the question were put in this form: "Was your state of mind such at the time you talked with Mr. Hendrick so that you held that opinion?" I think it would be proper.

Mr. Maxson: I will adopt that suggestion.

A. Yes.

Mr. Ferris: I object to that question, on the ground that it is incompetent and irrelevant. What opinion he now holds, or what he has held since the institution of this action might have been well created by this very action itself. It can't possibly relate back to the alleged conspiracy. If you are asking this witness as to his state of mind since the institution of this action, say within a month, or two

months, or three months after, it would be wholly immaterial.

The Court: It seems to me that there is some substance to that. Suppose you frame a question so that counsel may have an opportunity to object, based upon his state of mind at a time prior to the taking of appeal from the order admitting the will to probate.

Mr. Maxson: Well, I will ask this witness whether his answer to this question relates back to the time or period before this proceeding was instituted.

Mr. Ferris: I object to that question. The question isn't addressed to that; it is addressed to his state of mind at the time he spoke to Mr. Hendrick during the process of litigation.

Mr. Maxson: I want to find out how long he retained that opinion, or when that opinion began—when that state of mind began. Now, I am doing the best I can to adopt counsel's suggestion here. I have taken his question as framed. I can't meet him any further on the road than that. My suggestion to Your Honor is, that this witness's state of mind with respect to this contestant, coming as it does from his association with him in relation to these different estates, is entirely relevant to this proceeding, because if he had that state of mind that he says he has, I would like to know from what observation did it arise—whether it came from somebody who had some control over the testator or whether it came from his personal observation of the man.

Mr. Ferris: If the witness answered, Your Honor, I didn't hear it. If he answered it, I move to strike it out, on the ground that I did not hear it and did not have time to object.

The Court: There is no question about it. Your objection came late on the record. Mr. Shepard said it just as Mr. Maxson began.

Mr. Ferris: I didn't hear it at all and, therefore, I didn't have time to object.

The Court: It may be stricken out. Have you any objection to this question: "Were you of a state of mind, that the appellant was no good, at any time that you discussed the appellant or made any remark about him to Mr. Hendrick, prior to the appeal from the Surrogate's office?"

Mr. Ferris: There will be no objection to that question, except that the witness hasn't testified about talking to him.

Mr. Maxson: Yes, he has talked to him.

Mr. Ferris: When? Before taking the appeal was taken? That is His Honor's question.

Mr. Maxson: I will ask him.

Q. Was this conversation that you had with Mr. Hendrick before the taking of this appeal or not?

A. This appeal?

Q. Yes.

The Court: No, no, the appeal from the surrogate's order.

A. I hadn't met Mr. Hendrick at that time.

Q. Well, will you tell me whether you had any reason from your personal association with Charles

Burnham Squier for concluding that he was no good?

Mr. Ferris: That is, based on personal observation.

Mr. Maxson: Yes, his personal observation.

A. Yes.

Q. And did it arise entirely from your personal relation with him? A. Not entirely, no.

Q. Well, what else contributed to it? A. His actions, statements made to me by the testator——

Q. And what were the statements made to you by the testator? A. I can't give them in the exact language they were made, at various times as far back as three years before his death.

Q. And were those statements made prior to 1923, when he talked with Mr. Houghton about making the will he has testified to? A. I will have to think a moment about the date. What year did the testator die?

Q. 1926. A. Some of them were made prior to the time he made his will, I think, as near as I can recall.

Q. Oh, yes, your testimony was they were two or three years prior to his death? A. Yes.

Q. Then the statements were made at or about the time of the making of his will? A. No, I think some little time before he began to talk about his nephew to me.

The Court: What do you mean by making his will? The will was executed the year he died, wasn't it?

Woolsey A. Shepard—By Appellant-Contestant—(Recalled)—Direct

Mr. Ferris: The 6th of July, 1926.

Q. You recall the will was made in July and that the testator died in November of the same year, 1926? A. Yes.

Q. So that if it were two or three years prior to his death it would relate back to 1923? A. Yes.

Q. Well, was it at that time or prior to that time? A. Oh, well, it was prior to the making of the will.

Q. Well, did you testify that it was two or three years before he died? A. Yes.

Q. And is that your testimony now? A. Yes.

Q. Where were these conversations had? A. Why sometimes in Mr. Squiers' office and sometimes in my office.

Q. Ever in his office?

The Court: Yes, sometimes, he says.

Mr. Maxson: Oh, yes, in Mr. Squier's office.

I was thinking about Mr. Houghton.

Q. Sometimes in his office and sometimes in yours? A. Yes.

Q. What was the purpose of these meetings? A. The meetings had no purpose; as I told you, Mr. Squier and I were very friendly.

Q. They were social meetings? A. Yes; he would wander in my room and I would wander in his room.

Q. Did any one of these meetings relate to professional matters? A. None.

Q. You had nothing to do with him professionally? A. Nothing whatever.

Q. Not at any time? A. No, sir.

Q. Until you looked over the will and passed on it? A. That's the first time.

Q. Anybody else present when these conversations took place? A. I think not.

Q. Did you ever discuss them with Mr. Houghton? A. I don't think I ever did, no.

Q. Did your opinion, as you have stated it, arise from anything except what the testator said to you? A. Yes, my own observation.

Q. And when did you come in contact with Charles Burnham Squier latterly? A. You mean, when did I last see him?

Q. Well, my recollection of your testimony is that you said that your relations were very friendly and that you actually drifted apart for no reason whatever? A. Yes.

Q. Some years ago? A. That's true.

Q. Well, when did you last see him? A. I don't believe I can fix the date, Mr. Maxson.

Q. I don't suppose you can, but give it approximately? A. Well, I should imagine it was probably a year before Mr. Squier died. That is as near as I can recall.

Q. What was the occasion of that meeting, if you remember? A. I saw him coming out of my office. When I say "my office" I mean my firm's office. I stopped and shook hands with him, passed a few words, and went on.

Q. No business purpose in the conversation? A. No.

Q. Did you express your opinion of Charles Burnham Squier to the testator at any time? A. No.

Woolsey A. Shepard—By Appellant-Contestant—(Recalled)—Direct

Q. And when he said these things that laid the basis for your opinion as expressed here, were you of those opinions that he said from your own observation?

Mr. Ferris: I object to that unless the question calls for the things that were said by the testator.

Mr. Maxson: I will withdraw that.

Q. Did you express yourself to the testator? A. I think I said "To bad it is like that."

Q. You didn't express yourself as in agreement with him? A. Neither way. I rather sympathized.

Q. Do you recall what you said? A. As I say, as near as I can recall I made some remark like this: "Too bad," or "a shame" or something like that. That would be the purport of the conversation.

Q. How often did you talk to him about it? A. Oh, I don't suppose all together it occurred more than two or three times over a period of as many years.

Q. Do you know whether the testator had similar conversations with other people in the office? A. That I don't know.

Q. Well, what caused you to say that it was a shame, and what exactly did you mean by that? A. Well, the things that were told me by the testator as to what his nephew was apparently doing.

Q. Now, won't you fix approximately when you had for the first time one of these discussions relating to Charles Burnham Squier with the testator; how far back? A. If I could remember the

date that I moved from 33 Rector Street I could come nearer to fixing the date. Mr. Ferris could probably tell me that date.

Mr. Ferris: End of December, 1924.

A. Well, then, I would say that my first conversation was, as near as I can fix it, the early part of 1924.

Q. Did your firm represent any other members of the family, or any other members of the Squier family? A. When, Mr. Maxson?

Q. Any time? A. If you go way back, yes.

Q. You at one time represented Charles Burnham Squier, the father of the contestant, did you not? A. I think my father represented him in some matters; I don't recall it myself.

Q. Well, the firm represented him? A. Yes, the firm as it then existed.

Q. And Mr. Houghton was a member of it, was he not? A Yes.

Q. And the firm, as it then existed with Mr. Houghton, represented the estate of Charles Burnham Squier? A. Yes.

Q. And represented Mrs. Charles Burnham Squier, Sr.? A. I don't think it did. I think she had another attorney. She may have consulted us in reference to a guardianship matter, but she had other attorneys, I know.

Q. Are you sure about that, that she had other attorneys? A. Yes, Kellogg & Rose were her attorneys, and Mr. Woodruff was her attorney at one time.

Q. Which Woodruff? A. I don't remember his name. He lives in Rahway.

Q. A New Jersey lawyer? A. Well, he practiced in New York.

Q. Mr. Houghton brought this business to your firm, didn't he?

Mr. Ferris: I object to that.

Q. Well, if you know.

Mr. Ferris: I object to it as immaterial. How can he tell who brought this firm business.

Mr. Maxson: Well, it seems to me, Your Honor, that it is entirely material.

The Court: What is the materiality of it?

Mr. Maxson: To show confidential relation between the contestant and his family and Mr. Houghton who drew this will.

The Court: Of what possible purpose would it be to show that the contestant and Mr. Houghton were in confidential relations.

Mr. Maxson: He owed a slight duty to this contestant in connection with his affairs.

Mr. Ferris: To do what?

The Court: To divert his estate?

Mr. Maxson: No, not to divert it from him. It is one of the small elements in this case that that goes to make up the picture as to Mr. Houghton's connection with this family and thereby use the influence which he had over everybody concerned. Suppose Mr. Houghton said, "I know all about these people," and the testator said, "I know all about that; I think you are perfectly right in making this will which disinherits this contestant." That is

practically what he has said. He said, "that was a bully letter you wrote," and that sort of thing.

The Court: But now you are getting onto something else. The object of your question now is to show confidential relation between Mr. Houghton and your client, the contestant.

Mr. Maxson: But the testator wouldn't be concerned about Mr. Houghton's opinion if he didn't know that he had any basis for it, and that he had had opportunities for observation; that he had been closely associated with him and had opportunities for observation. It would make all the difference if I came to Your Honor and said this man is no good and Your Honor knew I was closely associated with him and had some basis for it and that I was not a stranger to him and never had anything but close contact with him.

The Court: But there hasn't been any proof so far that Mr. Houghton ever did say anything.

Mr. Maxson: We are going to produce some. I am putting Mr. Shepard on here out of order for his convenience.

The Court: Well, if you think it is worth while I will allow it, to save time.

Mr. Ferris: Well, I won't press my objection.

A. Yes.

Q. Now, I have forgotten the question. A. You asked me if Mr. Houghton brought this business to us, and I answer "yes."

The Court: And by that you mean that he had represented the contestant's father?

Mr. Ferris: Did I understand that to be the question?

A. I understood the question to be, if he brought any such Squier business that we had to the firm.

Q. Any Squier business such as he had? A. Yes.

Cross Examination by Mr. Ferris:

Q. Mr. Shepard, you have been questioned by Mr. Maxson concerning several conversations that you had with the decedent during a period approximately 3 years prior to his death; can you give me the exact number or the approximate number of conversations? A. I don't think I could, Mr. Ferris, no.

Q. Well, according to your best recollection, how many of them were there? A. In which the contestant was mentioned?

Q. In which the testator mentioned the contestant to you? A. I should say not more than three.

Q. Give us your best recollection of how far apart they were in point of time? A. Quite far apart.

Q. Now, you said you did not recall the exact words used by the testator, but do you recall the substance of what he said? A. Well, on one occasion he showed me a postal-card which he had received from the contestant, on which he had written his opinion in general on the postal-card, and the testator told me that he thought it was a disgraceful thing to do. That was the purport of it.

Mr. Maxson: I move that that be stricken out as incompetent, the contents of this postal-card, as not being the best evidence.

Mr. Ferris: Counsel himself asked concerning these conversations and left me suspended in mid air. I think I am entitled to cross-examine on it.

Mr. Maxson: Mr. Ferris, I have listened to your objections courteously and I would like to finish what I have to say.

Mr. Ferris: I apologize.

Mr. Maxson: I did ask this witness for these conversations and had no objection to his giving them, but when he gives the contents, in effect, of a postal-card that is another thing. That isn't what the testator said to him. I object to it; it is not the best evidence.

The Court: You have inquired as to the conversation and that calls for all the conversations and all he said of the conversations. I overrule the objection.

Mr. Maxson: And permit the contents of this postal-card?

The Court: To remain in the record—not the contents but the witness's recollection of the purport of it.

Q. Now go on and tell me all that you recall the testator's saying to you and all that you said in response to him—not the exact words unless you recall them, but the substance? A. I can't give it, if I am required to fix the time; I only remember the general purport of these conversations. That is the one that I have just spoken about, and I

think that is the one in which I said it was too bad.

Q. Now, what other occasions do you recall his discussing the contestant? A. He discussed the contestant's divorce proceedings with me; referred to the newspaper articles in which it appeared, and referred to it. He said he didn't understand what had come over Burnham; that he supposed it was due to his drinking too much. Well, it was largely an implication of those subjects. I can't recall in any greater detail what it was.

Q. Now, do you recall any other occasions conversing with the decedent on that subject? A. No, those are the things that I recall, and I can't fix the date now. It was a social conversation.

Q. Now, you testified that the last time you saw Burnham was a year before Edwin Squier's death? A. As near as I can fix the date.

Q. Did you, or did you not, see him in court before Judge Stein in the Orphan's Court? A. I did not.

Redirect Examination by Mr. Maxson:

Q. You saw him at no time in between? A. No.

Q. Did Mr. Squier, in any of these conversations, comment on Charles Burnham Squier's drinking? A. He did.

Q. Adversely? A. Adversely.

Q. He was a drinking man himself, wasn't he?

Mr. Ferris: I object to that as immaterial, irrevalent and incompetent. That is, the decedent?

Mr. Maxson: Yes, I am talking about the decedent now.

The Court: To what issue is that directed?

Mr. Maxson: It goes to the witness's credibility. If he was a drinking man himself he wouldn't be apt to have a conversation with another man about his nephew's drinking habits.

Q. Did Mr. Squier drink himself, do you know? I mean the testator.

Mr. Ferris: I object to that as incompetent, immaterial and irrevalent.

The Court: What is the purpose? Are you going to undertake to say that he was an exceptionally heavy drinker?

Mr. Maxson: Well, I can show it. I want to know whether this witness knows it or not. May it please the court, it was a notorious fact; Your Honor can take judicial notice of the fact.

Mr. Ferris: I move to strike from the record the statements of counsel that it was a notorious fact and any other comments about the habits of the decedent.

Mr. Maxson: I am very sorry that counsel has interrupted me. As I said before, I have given him every opportunity to address the Court when he wanted to do it, and I think it is due me that he give me the same opportunity. It is in this record that the testator drank a good deal, and it is also in the record that there was a lot of whiskey in the house out there.

The Court: I noticed that in the record.

Mr. Maxson: Now, whether that was for his personal use or for other people, of course we have no proof about that, but there is a fair inference to be drawn from it.

The Court: Well, suppose he was a heavy drinker; do you think that every man who drinks heavily thinks that it is all right for everyone else to drink heavily? I don't think it follows.

Mr. Maxson: No, sir; I know very well that there are many men who are personally wet and politically dry.

Mr. Ferris: May I have a ruling on my objection and motion?

The Court: Yes, I don't think the statement ought to stand, that it was a notorious fact, and so forth.

Mr. Maxson: Well, I will consent that that may be stricken from the record.

Mr. Ferris: Yes, and the question on the record whether the decedent was a drinking man. I object to that. There is nothing to show that this witness has any first-hand knowledge of it.

The Court: I sustain that objection.

Q. Did you talk to Mr. Houghton about these conversations with the testator? A. No.

Q. Not on any occasion? A. I think I have since the death of the testator. I considered them confidential at the time.

Q. You mean, you considered the conversations between you and the testator confidential? A. I certainly did.

Q. For what reason? A. They were told to me from one friend to another.

Q. Not for professional reasons, then? A. Certainly not.

Q. Did he say that he wanted you to consider them confidential? A. He didn't.

Q. Did the testator express himself as being disgusted with him or simply that he felt sorry for him? A. I would rather say that he expressed himself as being disgusted with him.

Q. And that related back to the early part of 1924, you said? A. Fully as far back as that.

Q. It may have been earlier than that? A. As near as I can fix the date it was around about that time.

Q. Did you know that Mr. Houghton advised him to make a will in 1922? A. No.

Q. Or 1923? A. I didn't know it, no.

Q. Or at any time before the will was actually made? A. No, I have never heard Mr. Houghton advise him. He never told me that he did.

Q. Did Mr. Houghton ever tell you that? A. Not that I recall, no.

Q. Isn't it possible that these conversations might have been in 1923? A. I wouldn't think they would, Mr. Maxson.

Q. Did you or not so testify? A. No, I don't think I said so. I think I said two or three years before the testator's death, but I didn't have at that time the exact date of his death.

Q. And then you fixed time with relation to your moving from 33 Rector Street? A. Yes.

Q. And then it was sometime previous to your moving? A. It was about the time we were getting ready to move, yes.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Q. Did you follow the divorce proceeding in the newspapers? Did you read about it? A. I did.

Q. When did it happen? A. I don't know; I don't recall.

Q. Don't you know that the divorce proceeding didn't arise until 1925? A. I don't know the date, Mr. Maxson.

The Court: In which the appellant was involved?

Mr. Maxson: About which this witness says the testator was disgusted, in 1923 or 1924.

A. Oh, no, I didn't so testify.

AUGUSTUS S. HOUGHTON, resuming the stand, testified as follows:

Direct Examination by Mr. Maxson (continued):

Q. You testified, Mr. Houghton, in the court below that as far as your knowledge went the testator made no previous will, did you not? A. I testified that he told me that he made no previous will.

Q. Then the provision in the will revoking all former wills and codicils—was that incorporated in the will by you? A. It is the usual form we use in all wills.

Q. As a precaution against any mistake of his about previous wills? A. I won't say that, no.

Q. Well, that is the purpose of it, isn't it? A. It is the form we always use, but not necessarily in reference to Mr. Squier making any mistake.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Q. Well, you had no certainty about Mr. Squier's statement to you that he had never made a will previously? A. I did not know of that until the will was signed. He told me then that that was the first will he ever executed.

Q. He never said anything to you about it and you never said anything to him about it at these previous conferences about having never made a will? A. I don't think he did.

Q. You didn't know that he had no previous will until this certain document was executed; is that so? A. I am of that impression, as I recall it now.

Q. Well, that is the first time he told you that he hadn't made any previous will? A. Yes.

Q. Now, are you sure about that, Mr. Houghton? A. As I recall it now, yes, I am.

Q. So that when you were advising him to make a will in 1922 and 1923, you didn't know whether he had made a will or not? A. I did not.

Q. You remember the bequest in the will to the City of Rahway of real estate for park purposes? A. Do I remember that bequest?

Q. In the will. A. I know that there was such a bequest in the will, yes.

Q. Do you know the property? A. I do.

Q. Did you have its location and character in mind at the time the will was made? A. I don't think I did, no.

Q. Was there any discussion with the testator about that provision in the will? A. I think there was.

Q. Will you please give it. A. I think he said something about being the last of the Squiers to live in that house, the family having lived there for

150 years perhaps, and that his brother, Frederick C., had his own house, and that he had no children and the nephews and nieces being all married and having their own homes, he didn't wish this to get into alien—I don't know that he used the word "alien"—but in other people's hands, and that, therefore, he thought he ought to make a bequest to the City of Rahway, to be known as the "Katherine Craig Squier Park," that being his mother's name, and the property having come down through the Craig family.

Q. Now, the bequest was not only of the old home property, which had been used for the family residence, but it was some other property as well, was there not? A. Yes.

Q. And how was it located? A. Right across the street.

Q. Some of it was on one corner and some on another? A. Yes.

Q. And how large were the properties, approximately? A. Oh, there may be an acre in the old family homestead, and there may be more or less the same amount on the other side of the street. One is vacant and one with a house on it across the street.

Q. Was there any discussion about the character of this property as being adapted for that purpose? A. I don't think there was.

Q. Did the testator discuss with you the bequest of $5,000 to the contestate, Charles Burnham Squier? A. He did, to the extent that I testified to day before yesterday.

Q. Well, now, I don't remember what you said about it. A. The question came up in connection

with the bequest to all of his nephews and nieces, and he said, "Do you think that is all right?" and I said, substantially, "Well, it is your property and you have a right to do as you please with it." But he said, or words to that effect, "I am making the same bequest to all the nephews and nieces because I don't want to give any more to Burnham than I have to."

Q. Did he ask your advice as to whether or not he had to leave $5,000? A. He did not.

Q. He simply said, "I don't want to leave him any more than I have to?" A. Yes, or words to that effect.

Q. And did you comment on that statement? A. Just as I said. I told him that it was his property and he had the right to do as he pleased with it.

Q. No, did you comment on the statement that he was obliged, in effect, to leave him $5,000? A. No.

Mr. Ferris: I object. There is no such testimony at all.

Mr. Maxson: Well, the inference to be drawn from that is plain. He said, "I don't want to leave any more than I have to," and he left him $5,000 and he left the nephews and nieces $5,000. And he said, "I don't want to leave him more than I have to."

Mr. Ferris: It is wrong to base your question on that, especially when another inference can be drawn.

Mr. Maxson: I don't know of any other inference that can be drawn. The testator said, "I don't want to leave him any more than I have to," and he leaves him $5,000.

The Court: When you say that he was obliged to leave him $5,000 that that was all he was obliged to leave him, by law?

Mr. Maxson: I don't know what he means.

The Court: That is the basis of Mr. Ferris' objection.

Mr. Maxson: He says he was obliged, I don't know why he was obliged.

The Court: He said he had to.

Mr. Maxson: No more than he had to, he says. It seems to me it makes no difference whether it was in his mind that he was obliged to leave it to him by law or for some other reason, as long as he felt obliged to do it.

Mr. Ferris: The question is predicated upon an inference as to the state of mind of the testator.

Q. (The question and answer are read by the stenographer.)

Mr. Ferris: I move to strike out the answer, because I had no opportunity to interpose my objection before the answer was made. There is another objection on the ground that he bases the entire question on an inference drawn from the statement made by the decedent, that it was the only inference to be drawn, and that makes it objectionable.

Mr. Maxson: The question is material, because any conversation which Mr. Houghtan had with the testator at the time is material.

The Court: Yes, there is no question about that, but the form in which you ask it is an implication. Would it suit your present inquiry just as well if he should be asked the

question, "Did you comment on the testator's statement that he didn't want to leave any more than he had to to him?

Mr. Ferris: I have no objection to that question.

Mr. Maxson: All right, I will ask that question.

A. I did not.

Q. But you were advising him as his attorney at the time, weren't you? A. As to what?

Q. As to the making of this will? A. I don't think I was advising him, in the sense that you lead me to understand your words.

Q. Well, wait a minute: What was your position with him? A. Mr. Squier came to me with the instructions which have been put in evidence here and marked Exhibit R1, and said, "I have made up my mind that I would like to have my will drawn, and I have finally decided on the disposition," or something like that; and I went over his instructions and drew the will.

Q. Now, did you have in mind at that time that there was any improper provision in those instructions which for any reason, legal or otherwise, should be called to Mr. Squier's attention?

Mr. Ferris: I object to that question, if Your Honor please, because the opinion of this witness as to proper provisions or how his property should be disposed of is not proper. If the question should be addressed to the legal instructions, not written instructions, there

would be no objection. Counsel has framed his question so as to cover all.

The Court: Isn't that the very basis for the attack on the will?

The Court: I think Your Honor is right. I withdraw the objection.

A. I did not consider any of the provisions set forth in the instructions as improper, either legally or otherwise.

Q. That doesn't answer the question, Mr. Houghton. (The question is read to the witness by the stenographer.) A. I don't think I can answer that other than I have. I did not consider that there were any improper provisions.

The Court: The question is, whether at the time you received these written instructions or memorandum, R-1, was it your intention to call to the attention of the testator anything that you thought might be an improper provision of the will, whether for reasons of law or any other reason.

A. If the instructions contained a bequest the provisions of which I might have considered illegal or couldn't be sustained, I certainly would have called his attention to it.

Q. Now, you would have called his attention to it if you found any other provision in that will which you thought was an improper provision, in your estimation?

Mr. Ferris: That is speculative.

The Court: Well, it is a condition of mind that Mr. Maxson is inquiring about now. Suppose, to give a ridiculous situation, he had found that Mr. Squier intended to make as the sole beneficiary of the will some person living in Canada whom he had never seen in his lifetime and no relation, would he have talked to him about it.

Mr. Ferris: Of course, you wouldn't sustain an objection to such a question. That isn't the true test of the validity of my objection, that it is too speculative, because no state of facts has been shown that could have caused the testator's mind to operate that way.

The Court: Let me ask you this: Suppose a man, with whose affairs and family you were well acquainted with, should give you instructions to prepare for him his last will and testament, and suppose that there were four children of the testator and only three were to share in the estate, and you knew in your mind why the interest of the fourth should be cut off; wouldn't you at least inquire of your client about that?

Mr. Ferris: No doubt about it; but it hasn't been disclosed by this witness that any such thing existed; therefore, it is speculative, unless the witness has testified that there was something in the instructions that was improper or illegal. You are simply speculating as to what the state of mind might be under a state of facts that never existed.

The Court: This is cross examination. This appellant says that through the influence of

this witness with the testator this appellant was practically cut off. Now, Mr. Houghton says that is not true, and it is necessary to cross examine him as to what was going on in his mind at the time with relation to his duty to the testator and his advice to him, and his opinion of the appellant.

Mr. Ferris: If any questions of that sort were asked I wouldn't object to them.

The Court: Mr. Houghton is a lawyer and can foresee, of course, the cross examination perhaps better than I can; and, to be very frank about it, I assume what Mr. Maxson is trying to do is to develop a state of facts from this very examination from which he will be able to argue that the probabilities are that Mr. Houghton did, either consciously or unconsciously, influence the testator.

Mr. Ferris: Yes, Your Honor, but I don't question his right to establish any state of facts if they existed, but I do most strenuously object and insist that he can not, under the widest limit of cross examination, ask him what the testator's state of mind has been under a state of facts which the witness has not given and which has not been proved.

The Court: He is asking what his state of mind was before he ever read the instructions.

Mr. Ferris: I don't understand that he asked that question, as to whether or not he had any other state of mind.

The Court: Well, perhaps I am drawing an unwarranted assumption. He didn't say it at the time the instructions were handed him,

but I assume, of course, he wants to know what Mr. Houghton intended to do in relation to advising the testator—not after he had digested the contents of the instructions but at the time he received them, or before he received them. Is that right?

Mr. Maxson: Yes. The question isn't predicated on any state of facts at all.

The Court: I will allow it.

A. In my examination, there was nothing improper in the instructions about Mr. Squier.

Q. Mr. Squier had no independent advice? A. I don't know what he had. You mean from other people?

Q. Yes. A. I don't know.

Q. Did he have any other attorney in connection with this will besides you and your firm? A. No, he did not.

Q. That is what I mean by independent advice; I mean with respect to making an execution of his purported will. That is what I mean, Mr. Houghton, and your answer to that is that he didn't have? A. So far as I know, he did not.

Q. Did he leave his office at the time or during the time it was under discussion and before its execution? A. I say I would say he did not.

Q. Did he have independent advice as to the making of the will—any other advice than yours?

Mr. Ferris: The witness can't answer that.

Mr. Maxson: If he says he doesn't know, that answers it.

Mr. Ferris: I submit that the question can not possibly be answered by this witness.

Mr. Maxson: Well, I withdraw it.

Q. Do you know whether or not the testator had independent advice in the making of this will?

Mr. Ferris: I object to that question. Now, independent advice means what, for instance?

The Court: What has independent advice to do with the making of a will?

Mr. Maxson: Well, it has a good deal to do with this witness's part in the matter.

The Court: Have you in mind those cases of Slack v. Reeve and Haydock v. Haydock?

Mr. Maxon: Yes.

The Court: They will all deal with the disposal of a man's property in his lifetime without revocation, where he didn't appreciate the consequences of his act and didn't have independent advice.

Mr. Maxson: If Your Honor please, don't those cases all hold that where a man had no independent advice except that of the man who drew the instrument is charged with undue influence, that that is a factor from which the Court is to determine or not undue influence was used?

The Court: Yes, I was wrong when I spoke. Now, I will tell you what I am going to do: I will direct the witness to answer it categorically, and if he says "yes" I will hear you further.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Mr. Ferris: There is a question whether advice by this witness is independent advice.

Mr. Maxson: All right; I will withdraw the question. That is a different objection entirely.

Q. Do you know whether this testator had any other advice about the drawing of this will except from you and your firm? A. I do not know.

Q. You don't know? A. No.

Q. Did you discuss that with him? A. Discuss what?

Q. Did you discuss that question with him as to whether or not he talked to anyone else about the making of a will? A. I did not.

Q. You testified that he left each one of the nieces and nephews $5,000; is that so? A. Yes. I beg pardon, I thought you were going to follow it up with something more.

Q. You didn't mean the inference to be drawn from that that he recognized them equally in this will? A. I meant no inference to be drawn except the statement of the fact that he left the same amount to each one of them.

Q. Did he leave the same amount to each one of them? A. Yes, $5,000 to each one of his nephews and nieces.

Q. You don't mean the same amount; you mean the same specific legacy? The same amount might mean that he recognized them equally. If he did, of course we wouldn't be here.

Mr. Ferris: The will is in evidence and it seems to me reference to it will tell just what it does specify.

Mr. Maxson: Up to the present time there is nothing before this court to show what the corpus of this estate was. So that by leaving $5,000 he may have left less than if there had been intestacy.

Mr. Ferris: It seems to me that the record in the court below is here before the court.

The Court: It is.

Mr. Ferris: Then it seems to me that this question is idle. The will speaks for itself and no cross examination on the part of this counsel of the witness can change it.

Mr. Maxson: That is elementary and you don't need to tell me that.

The Court: Then why examine Mr. Houghton on it?

Mr. Maxson: I will withdraw it.

Q. Well, do you know, Mr. Houghton, whether these notes of yours to the order of Edwin M. Squier, were put in the inventory of the estate?

Mr. Ferris: I object to that as incompetent and irrelevant, and relating to the accounting.

The Court: I think we went all through that last Tuesday.

Mr. Maxson: I didn't go through that; I didn't have the inventories before me at that time.

The Court: I know, but that is a matter of accounting. He is liable, of course. There will have to be an accounting before it is passed upon.

Augustus S. Houghton—By Appellant-Contestant
—(Recalled)—Direct

Mr. Mason: I believe there are authorities holding that the withholding of things of that kind, and knowledge of that kind, is enough to show the state of mind of those in charge of undue influence. For instance, I think there is a case in New Jersey where the custody of the will itself, between the time it was executed and the time of the death of the testator is an element in the consideration of the question. Now, this witness didn't put these notes in the estate. Is that an evidence of his state of mind with respect to this question? It seems to me so. Anything that this witness may have done after the will was executed, up to this minute, with relation to this estate is material. Of course, he couldn't have the will after it was executed. And undoubtedly there is a case in this state where the withholding custody of the instrument itself is made.

Mr. Ferris: That is in relation to the very will itself. There is a collateral matter entirely and has no possible relation to the issue.

Mr. Maxson: Of course, this witness, Mr. Houghton, is not a beneficiary, but his wife is. So to that extent he has the interest that the beneficiary would have. I think the custody of these notes and the fact, if it is a fact, that they were not produced, and we didn't know anything about it at the time this matter was heard in the court below, is an element in determining what the state of mind of this witness was and his relation with the testator and his relation to the estate.

The Court: I think that is entirely too remote a transaction.

Mr. Maxson: Your Honor overrules it?
The Court: Yes.

Q. Now, you testified in the court below, Mr. Houghton, that the contestant here, Charles Burnham Squier, contested his grandmother's will? A. I did. I think I said he filed a caveat, Mr. Maxson.

Q. You testified that he contested it? A. Well, I think he filed a caveat.

Q. Now, you have testified that if you knew there was anything wrong in that will, either as a matter of fact or law, you would have called the testator's attention to it? A. I did so testify.

Q. Stuart C. Squier was mentally incompetent at the time of the making of this will, was he not?

Mr. Ferris: Do you mean he was judicially so declared?

Mr. Maxson: No, I mean mentally incompetent.

Mr. Ferris: I object to it as irrelevant and incompetent, and calls for a conclusion and something that this witness is not called upon to testify to.

Mr. Maxson: All right; I will withdraw it.

Q. Did you make an affidavit, in which you said that this witness was—Stuart C. Squier was mentally incompetent? You did make such an affidavit, didn't you? A. I don't think I did.

Q. Did you join in a petition, in wihch you said that he was unable to look after his affairs? A. I think Mr. E. M. Squier, the testator, made that affidavit.

Q. Didn't you join in a petition to have his affairs taken from him and administered by trustees? A. No.

Q. Maybe I am wrong about it. A. I think you have got the fact a little wrong, Mr. Maxson.

Q. Well, I think I have it right now. You didn't join in the application, but there was an application made for a trustee to be substituted, for him, because of his incapacity, and you were substituted as that trustee?

Mr. Ferris: I object to that. If that be material the best evidence is the record itself.

Mr. Maxson: We will produce the record. All those matters have been objected to as immaterial; is there any objection to the use of this certified copy?

Mr. Ferris: If there is going to be any offer of any part of this record I am going to object to it.

The Court: On what phase is that directed?

Mr. Maxson: The materiality of it is this: This witness has testified, if there was anything wrong, either in fact or in law, in this document, or in these instructions, that he would have called it to the testator's attention. Now, the testator leaves directly to Stuart C. Squier part of his estate, and at the time he was mentally incompetent but hadn't been declared so in that sort of judicial proceeding, but had been so on a petition, and this witness was appointed in his place as trustee. I have it here, but I won't take the time to read it to Your Honor. Now, we say that that is something that should have been called to the testator's attention as being wrong. Now, isn't it a question for discussion as between an attor-

ney who is a member of the family by marriage and who knows all about the estate who represented him; isn't it a question for discussion whether that is a proper thing to do or not?

The Court: Well, I don't know, knowing as he did the family affairs. There may have been a very good reason why it was unnecessary in this case to set up a trust for the benefit of this brother.

Mr. Ferris: Stuart C. Squier was older or younger?

The Witness: Older.

Mr. Ferris: He was over 72 or 73 years of age, wasn't he?

The Witness: As I recall, he was almost 12 years older.

Mr. Ferris: Just think of the absurdity of setting up a trust for a man 83 years of age. A committee would be the proper thing to look after him. His brother was the most natural object of his bounty.

The Court: I don't know whether there was or not. I don't suppose there is anybody better than Mr. Houghton who can tell us, and for that reason I am going to allow the examination.

Q. I show you a certified copy of a petition, in the matter of the estate of William C. Squier, and ask you whether you prepared that?
A. I did.

Mr. Maxson: I offer it in evidence.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Mr. Ferris: I renew my objection, on the grounds stated, as entirely immaterial, incompetent and irrelevant, and has no tendency to support in any way, even in the remotest manner, the issues presented by the amended petition in this case.

The Court: I will overrule the objection, but will listen to a motion to strike it out after Mr. Houghton has been examined and cross examined on it.

Mr. Maxson: I offer the petition of trustees for discharge of co-trustee, in the matter of the estate of William C. Squier, dec'd.

The Court: Do you offer the whole record?

Mr. Maxson: This record includes the accounting and everything.

Mr. Ferris: I object to the whole record.

Mr. Maxson: But Your Honor has admitted it.

(The same is marked Exhibit P-6).

Mr. Maxson: Now, this petition, paragraph 3 says:

> That the said Stuart C. Squier is in his 83rd year, and by reason of his physical and mental infirmity he is unable further to continue with the duties of trustee, and not able to join in the petition.

Q. Now, did you know that he was in that condition at the time of making of this will?

The Court: You are talking now about the will in dispute?

Mr. Maxson: The will in dispute.

Mr. Ferris: Was who?

Mr. Maxson: Stuart C. Squier.

A. I did know it, yes.

Q. Did you have any discussion with the testator about his condition? A. I don't recall that I did.

Mr. Ferris: Have you finished with that line?

Mr. Maxson: Yes.

Mr. Ferris: May I now move to strike it from the record. He now has the admission from the witness that he knew that Stuart C. Squier was in that incompetent position and it doesn't serve any good purpose to encumber the record with anything known, and therefore I move to strike it out.

The Court: Isn't that so?

Mr. Maxson: Strike out the document?

The Court: You only put it in for the purpose——

Mr. Maxson: I would just as lief have Your Honor pass upon it. I don't want to make any comment on it.

The Court: I will strike out the petition of P-6, upon the ground that it is entirely unnecessary and unduly encumbering of the record.

Mr. Maxson: May this appear, that the testator made this petition which has just been stricken out.

Mr. Ferris: If he wants to press that point, it can be marked for identification in case he takes an appeal.

The Court: Well, our practice is, where a document is excluded and the one who offers it still thinks it is admissible, to mark it and then have it printed with the state of the case; but this having been already given a mark, it will not be given another, because the document that will be offered is sufficiently identified and in that way you can get the contents of it for appeal if he does so.

Mr. Maxson: Mr. Ferris, I have here a transcript of the record in the matter of the estate of Katherine C. Squier, deceased, and ask you if you object to that?

Mr. Ferris: Any papers that you say are correct copies, subject to comparison later on, will be admitted.

Q. I show you a printed record in the Union County Orphans Court, in the matter of the estate of Katherine C. Squier, and ask you if that is the record of what you call the contest of her will? A. It is not the entire record of that contest.

Q. Then I will ask you this: Is that all the testimony that was taken in what you call the contest?

Mr. Ferris: I object to that, if Your Honor please, whether it is all the testimony unless this witness was present during the entire proceeding.

Mr. Maxson: All right; I will withdraw it.

Q. Did you take this testimony yourself? A. No.

Mr. Ferris: Did you write it out, he means.

A. No, I didn't take it; I examined the witness.

Q. That is what I mean? A. Yes, I examined the witnesses.

Q. And conducted the proceedings? A. I did.

Q. Was there any other testimony taken except that which appears there? A. I am pretty sure there was not.

Mr. Maxson: Then I offer that.

Mr. Ferris: May I see it, please.

(Paper is handed to the counsel).

Mr. Maxson: It might be illuminating to the court perhaps for me to state what the object was of the taking testimony on the probabing of the will of Katherine C. Squier 16 years ago. It is introduced because it is a factor in this case whether or not Mr. Squier contested the grandmother's will, and Mr. Houghton has testified that he did not. Now, the matter of whether he contested it or not is what Your Honor can gather from this will. We say there was no contest. The witnesses to the will were sworn in the ordinary way that you prove a will.

The Court: I thought I understood Mr. Houghton to say that that was not complete.

A. It isn't.

Mr. Ferris: What he says is, the appellant in this case filed a caveat. Is it a fact that he did file a caveat? If he did, produce the whole record to establish that fact.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

By the Court:

Q. Did you so testify that that was not complete?
A. I did so testify.

The Court: The witness says it is not complete?

Mr. Maxson: Then the only thing that we can do is to ask Your Honor's permission to have the record brought over here. The Surrogate gave us this as the whole record, and this is a certified copy.

Mr. Ferris: Is it a certified copy and is that the whole record?

Mr. Maxson: This is what we asked for. If Your Honor please, the caveat does not accompany that. The testimony is complete.

The Court: That is all it purports to be. It says here:

> I have compared the annexed copy of testimony in the matter of the probate of the last will and testament of Mrs. Katherine C. Squier with the record thereof now remaining in this office and fined the same to be a correct transcript.

Mr. Maxson: That is all we want here now. Here is our position, may it please the court, about it: If it is material whether or not there was a contest of that will, there is all the testimony that was taken which would indicate to Your Honor's mind whether or not there was a contest, the caveat being filed.

The Court: I understand the loose use of the term "contest" was subsequently made

more accurate by Mr. Houghton, by saying that there had been filed on behalf of this defendant a caveat. Isn't that your recollection of the testimony?

Mr. Maxson: Yes. About that, may it please the court, unless he goes further it doesn't mean whether or not subsequent to the filing of this caveat it was contested.

Mr. Ferris: You ask him.

Mr. Maxson: But this record shows that.

Q. Did he press the contest? A. He did, up to the day of the hearing.

Q. What did he do in pressing it up to within a day before the hearing? A. Only what his proctor told me. That is all I know about it.

Q. I don't get what he did. Tell me what he did. You say he did something between the filing of the caveat and the time this testimony was taken. Was there any other testimony taken? A. All I know as to what he did was what he told me, or what came from his counsel.

Q. He didn't do anything in court did he? You were on the other side; he didn't appear in court? A. He did appear in court.

Q. And some testimony was taken? A. He appeared by counsel. His counsel appeared for him on the return of the caveat.

Q. Now, do you want the court to gather from your testimony that he did really contest this will after he filed the caveat?

Mr. Ferris: I object to that. The court can determine that from the testimony.

The Court: How about getting the fact, instead of asking this witness for his opinion. After the caveat was filed it became the duty of the Surrogate to issue citation; and the next thing after that are the appearances in court for the determination of the legality of the probate of the will.

Mr. Maxson: Now, our position is, that you can file a caveat and abandon the contest, and we say that this record shows that it was abandoned, and it is material to that situation whether or not he did contest the will.

The Court: You are struggling over something that is of no importance. Isn't it fair to assume what Mr. Houghton means is this: That a caveat was filed and that he thought, through communication with this appellant's caveator's legal representative that there was going to be a contest up to the time of the return of the citation.

A. That is what I was trying to explain to Mr. Maxson.

Mr. Maxson: I know, but after this caveat was filed, this witness testified that there was a contest.

The Court: And then he modified it after he had testified that way and said he had inadvertently said it was a contest but that it was an unhappy use of language and he preferred to say that he filed a caveat. It isn't contradictory of Mr. Houghton's testimony, in view of his former testimony. Now he says

that, as a matter of fact, there was nothing done in the prosecution of a caveat, but that up to the time the citations were returnable he thought that there was going to be.

Mr. Maxson: My difficulty is, may it please the court, that Your Honor has nothing before you on this record to show that there was no contest.

Mr. Ferris: If counsel states that in his opinion no caveat was filed and he wants to offer any testimony against that I have no objection to it; but, as I understand it, he wants to establish that there was no contest.

Q. Have you testified that after the caveat was filed, the contest was abandoned? A. I don't recall.

Q. Well, is that a fact? A. It was on the return of the caveat.

Q. That is, the contest was abandoned? A. Yes.

Q. Now, Mr. Houghton, after the filing of this caveat did you ever talk to Mr. Charles Burnham Squier about his grandmother's estate? A. I think I must have.

Q. Well, when and where? A. At the time that I gave him the check for his legacy of $15,000 and he signed a general release.

Q. Well, did you discuss any possible contest with him at that time? A. It was all over then. It was some months after the caveat was withdrawn.

Q. From the time the caveat was filed down to the present time did you ever have any discussion with Charles Burnham Squier about a contest of

his grandmother's will? A. I don't think I ever did.

Q. As far as you know, he had no idea of making a contest?

Mr. Ferris: I object to that.

Q. I mean, as far as you have any information.

Mr. Ferris: I object to that.

Q. Any further contest?

The Court: Why not ask him what he said or did?

Q. Did he ever say anything to you after the filing of the caveat that indicated that he had any idea of making a contest? A. I don't think he ever discussed the contesting of his grandmother's will except on the occasion I just testified to.

Q. Mr. Houghton, you testified, did you not, that there were no bonds that you knew about in this estate upon which coupons could be cut? Did you testify to that? A. I did not.

Mr. Ferris: I object to that.

Mr. Maxson: He says that he didn't.

A. I suppose you are referring to the estate of William C. Squier?

Q. No, no, I am referring to this estate of Edwin M. Squier? A. I didn't so testify. I never was asked the question.

Q. All right; I'm not saying that you did, I am simply asking you. There were a great many bonds, were there not?

Mr. Ferris: I object to that, if Your Honor please, as not having any bearing whatever on the issues of the contest here, and I think Your Honor similarly ruled before.

Mr. Maxson: Now I think there must be some good reason for putting it in on our side.

Mr. Ferris: One more reason, and that is to same time.

The Court: What is the purpose of it?

Mr. Maxson: I want to find out how much confidence the testator had in this witness to permit him to have anything to do with the cutting of bonds and things like that. I don't have to argue the materiality of that.

Mr. Ferris: If your question relates to the confidential relation prior to the decease I have no objection.

A. I didn't so understand it. If you will ask me the question again, please——

Q. I asked you yesterday about the cutting of coupons, not only during the time of the testator's illness in Rahway but at other times. Do you recall that? A. You didn't ask me any question regarding the bonds belonging to the testator. I recall you asked me about the bonds belonging to the estate of William C. Squier, which were held in trust.

Q. That is where I made a mistake if you said William C. Squier. Now, Mr. Edwin C. Squier,

the testator, had a great many bonds, did he not? A. He did.

Q. And where did he keep them, if you know? A. Only by hearsay do I know.

Q. You never had anything to do with them? A. I never handled one of his bonds during his lifetime.

Q. Never saw any of them? A. I didn't say that. I did see them in his office while he had his office in our suite, connected with our suite, and I was often in his office when brokers would leave any bonds that he purchased.

Q. And you never knew what he did with them? A. I saw him wrap them up in a newspaper and put them under his arm and walk out. I never inspected them.

Q. Of course, if you never saw them you never cut any coupons? A. I never did.

Q. And never was with him when he cut any? A. I never was.

Q. These bonds at one time were in the same safe deposit box with the securities of the estate of William C. Squier? A. I believe so, and the trust securities, yes.

Q. And you were one of the trustees? A. For a year and a half before Mr. Squier died, only.

Q. And you had access to that box? A. I did not have access to that box.

Q. Who had access to it? A. Mr. E. M. Squier and Mr. Frederic C. Squier.

Q. And although you were the trustee you didn't have access to it? A. I did not.

Q. Were there a great many uncut coupons for

some period of a year and 18 months on these bonds at the time of the testator's death?

Mr. Ferris: Which bonds?

Mr. Maxson: These bonds of Edwin M. Squier I am referring to.

A. I don't recall whether there was or not. There may have been the last month or so before his death.

Q. No, I am talking about a period going over a year to 18 months. A. I don't know.

Q. Well, you are one of the executors, aren't you? Under this will you are one of the executors named in the will? A. I was named in the will.

Q. Well, do you know what property the testator left? A. I couldn't list everyone from memory.

Q. I am not asking you to do that, but do you know from your investigation of the estate, the corpus of the estate, whether or not there were uncut coupons for as long as 18 months before the testator's death? A. I just stated that I thought there were uncut coupons for possibly two or three months prior to his death.

Q. Well, were there any for as long as 18 months? A. I don't recall that there was.

Q. Well, do you know whether there was or not? A. I don't know; I don't recall.

Q. Well, that's all I want to know; if you don't know that's all there is to it. When Mr. Squier showed you the letter which he wrote, addressed to Charles Burnham Squier, and you told him it was a bully letter, did he tell you any purpose he had in showing the letter to you? A. No, it was very shortly after his mother's death, and he was—I

suppose he wanted me to know what he was doing, that's all. He didn't give me any reason for showing me the letter.

Q. He did not give you any reason for it? A. No.

Q. This letter-book which you had over here with these letters which you transmitted to me copies of, was that the only letter-book you had of Edwin M. Squier? A. I think it is the only one we found after his death.

Q. And where did you find it? A. In his desk.

Q. Over what period does it go? A. I don't recall.

Mr. Maxson: Well, may I have that?

Mr. Ferris: 1904 is the earliest letter and August 9, 1926, is the last letter, running for a period of 22 years.

Mr. Maxson: Now, may it please the Court, I don't know whether I made a motion yesterday for the inspection of that book. My recollection is that I did day before yesterday.

The Court: You did.

Mr. Maxson: In order to be sure of that, I want to renew the motion.

The Court: You did and argued it at length and I refused it.

Mr. Maxson: I want to renew the motion—well, I will reserve the right to renew it when this witness's testimony is completed, so as to have the entire testimony.

Q. Are there any letters in that book from Mr. Squier to you, Mr. Houghton? A. I don't know; I don't recall.

New Jersey State Library

Mr. Ferris: Just a moment and I will see if there is.

Q. I show you a copy of the——

Mr. Ferris: May I answer that question? There is one in it, dated March 21, 1926, which I have no objection to being put in the record.

Mr. Maxson: That isn't an answer to my question. I want to know how many letters there are there.

The Court: One, he said.

Mr. Ferris: One, I said, under date of March 21, 1916, addressed to Albany, New York.

Mr. Maxson: May we see the letter?

Mr. Ferris: Yes. I have no objection to your seeing this letter.

Q. Mr. Houghton, I show you the copy of a letter which you sent from your office yesterday to me, addressed to Charles B. Squier, 521 Park Avenue, New York, and dated May 29, 1923, and ask you if that is a correct copy of the letter? A. I assume it is. I didn't compare them.

Mr. Maxson: I offer this letter in evidence, a letter from the testator to Charles Burnham Squier.

Mr. Ferris: No objection. May I have it appear on the record that the copy of letter produced, dated March 21, 1916, written by the testator to the present witness, has been inspected by counsel.

Mr. Maxson: We are going to read it into the record, and in order to get that out of the way I will do it immediately.

Mr. Ferris: I will have copy of it made and sent to you.

"March 21, 1916.

Mr. A. S. Houghton,
7 Northern Boulevard,
Albany, N. Y.

My dear Gus:

I am in receipt of your letter of March 20th, in the matter of Eliza Squier estate. I think it will be better to send to Miss Crane the Public Service bonds that we were talking about on Friday last, for the reason that they are not subject to personal tax in the State of New Jersey and they are more of a woman's bond than the Colorado Southern. I have not seen Mr. Old, but will do what I can for him in the matter which you wrote me about. Mr. Hughes has sent us two letters in regard to the insurance matter, and Mr. Christie will no doubht communicate with you relative to this matter. The amount of the insurance received, I believe, is something less than $48,000. Hoping to see you Friday next, I am

Yours very truly,

E. M. SQUIER."

(Admitted in evidence and marked Exhibit P-7.)

The Court: I assume this letter, P-7, is one of the copies that you furnished—one of the four letters?

Mr. Ferris: Yes.

Q. Mr. Houghton, I show you a paper headed "Union County Orphans' Court, in the matter of the Estate of Edwin M. Squier, deceased; on Appeal from Order of Surrogate admitting will to probate," addressed to Hon. Alfred A. Stein, Judge of the Orphans' Court of Union County, and ask you if you prepared that petition. A. I don't recognize this paper.

Q. That is not the original, of course; that is a copy. (A. (Witness looking paper over.) I think this was prepared in the office and I may have done it.

Mr. Maxson: I want to have this marked for identification.

(The same is marked P-8 for Identification.)

Q. Now, I call your attention to that document. A. It is called a certificate of the New Jersey Title & Guaranty & Trust Company of Jersey City, as to the securities impounded with it.

Q. I call your attention now, in this so-called certificate, Exhibit P-8 for identification, that there were 100 thousand dollar bonds of the County of Hudson, New Jersey Road Bonds, due 1941-42, with the interest on them from February 1st and

August 1st, 1925, subsequent coupons attached. A. Yes.

Q. So that with respect to those bonds the coupons hadn't been cut since when? A. August, 1925.

Q. Mr. Hendrick says that indicates August, 1924. A. If your Honor please, it says "Interest February 1st and August 1st,"—August, 1925, and subsequent coupons detached. I say that no coupons have been cut since August, 1925. I might say, "since February 1st, 1925" if you choose. It says "August 1st, 1925."

The Court: That's right, in between February. February 1st was the last cut.

Q. Now, was this list prepared to show the property of the estate? A. It was to show the income from the securities of the total.

Q. And nothing else? A. Stocks and bonds.

Q. Was it because the Shur-Loc Company bonds were not income bearing that they don't appear clipped? A. There were no Shur-Loc Company bonds.

Q. Stocks? A. Will you give me the date of that and I can tell you.

Q. It is dated June 14, 1927. A. The stock of the Shur-Loc Company had been appraised at one dollar, and the interest of the estate had been sold prior to this inventory, so that the stock was no longer in the possession of the estate. That is as I recall it now.

Q. Here is the inventory, as I understand it, by the administrator pendente lite, and that shows

that these bonds were, at the time this was made, in the estate.

Mr. Ferris: I object. It is wholly immaterial. He is delving now into matters of the administration of the estate. Going at this pace we will never get through. I object to the question directed to the contents of the paper, it not being admitted in evidence, so that it can be ruled on.

Mr. Maxson: The matter is already in evidence. We are trying to straighten it out now.

The Court: What bearing has it on the issue here?

Mr. Maxson: We think it has a material bearing, and there was no objection to it when the witness was testifying about it and I am now calling his attention to them, that they were in the estate, in order to make the matter straight on the record.

Mr. Ferris: That would only serve to prove that one inventory was wrong and the other, right. It was filed June 18, 1928. This is between the close of the other trial and the time of this one.

The Court: How is it going to be at all helpful if this discrepancy appears?

Mr. Maxson: Well, we may as well get it straight.

The Court: You can straighten it out at the adjournment, but in its present shape it wouldn't do much good.

Mr. Maxson: Well, does your Honor rule it out?

The Court: I think it is immaterial.

Mr. Maxson: Well, it is admissible—if your Honor will allow me to renew my argument—to show how accurate this witness's testimony is. He has testified that these things were disposed of.

The Court: You recall at the conclusion of the testimony he indicated that that was the best recollection he had of it. He didn't make any absolute statement.

Q. Did you represent Eliza M. Squier, or her estate? A. There is no Eliza M. Squier that I know of; there is Louise.

Q. Well, Louise. A. I was appointed trustee in 1907 upon the death of William F. Squier, who was Miss Louise Squier's brother, and I was appointed trustee under her will of certain trusts that she had created in her will.

Q. Was that an estate that Charles Burnham Squier was interested in? A. Yes.

Q. Has there been an accounting in that estate? A. Since 1907,—let me see—there have been at least four accountings, possibly five accountings.

Q. Any distribution? A. Distribution upon the death of the beneficiaries, yes.

Q. Did you represent the estate of Charles Burnham Squier, Sr.? A. I made an accounting, yes.

Q. Did you represent Mrs. Charles Burnham Squier? A. The widow?

Q. Yes. A. Yes.

Q. Did you represent Charles Burnham Squier, the contestant, in relation to that estate? A. No,

I represented the mother who was the administratrix.

Q. You never represented him? A. Not in that estate, no.

Q. Well, did you represent him in any matter? A. Yes, good many of them.

Q. And extending over what period? A. From the time he came of age until—I don't know whether it is 1922 or 1923.

Q. And did you have some difference with him? A. No.

Q. You haven't represented him since 1923; is that so? A. It might have been a little later than that; but we had no difference.

Q. So that, so far as you know, there was nothing to interrupt your professional relations with him? A. Not in the matters I had charge of.

Q. Did you have a man by the name of Christie in your office? A. Yes, for a number of years.

Q. In what capacity? A. First as bookkeeper, then when he was admitted to the bar he was a sort of law clerk in the office and notary.

Q. How many years was he there, practically; you say a number of years. A. I should say all of six and perhaps more; I don't recall.

Q. Did you ever discuss the contestant, Charles Burnham Squier, with him? A. I may have but I don't recall it.

Q. Did you ever tell him on any occasion that Charles Burnham Squier was no good? A. I don't recall that I did.

Q. You don't recall that you didn't then? A. I don't recall either way.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Q. When did Christie leave your employ? A. I don't recall whether it was 1921 or 1922.

Q. Did you have, during the time Mr. Christie was there, such an opinion of Charles Burnham Squier as might have made you say that he was no good? A. It is very possible that I did.

Q. Well, did you or didn't you? You can answer that. A. I did have that opinion.

Q. Did you express that to Edwin M. Squier at any time? A. Not other than I have testified already day before yesterday, in my conversation with him.

Q. Well, how freqently did you express that opinion to him? A. I told you.

Mr. Ferris: Just a moment. The witness hasn't testified that he expressed that opionion to Mr. Edwin Squier, and I object to it, on the ground——

Mr. Maxson: All right.

Q. Did you or didn't you express that opinion to Edwin M. Squier, the testator? A. What opinion do you refer to?

Q. Your opinion that Charles Burnham Squier was no good? A. No, I don't think I ever said that to anybody.

Q. Well, did you ever say to Mr. Edwin M. Squier words indicating that and conveying that idea? A. No, I wouldn't say that I did, just exactly that.

Q. Well, is it your testimony that you won't say whether you did or not? A. Whatever remarks that I made had more reference to what respect I held the contestant in than any specific thing.

Q. What respect you held him in? A. Yes, or lack of it; that is the same thing.

Mr. Maxson: I offer in evidence letter of June 4, 1912, copy of which was sent me yesterday, addressed to Charles B. Squier from the testator.

Mr. Ferris: No objection.

(Marked Ehibit P-9.)

Mr. Mason: I offer letter from the testator to Charles B. Squier, dated August 5, 1912, copy of which came to me yesterday from Mr. Houghton's office.

Mr. Ferris: No objection.

(Marked Exhibit P-10.)

Q. Do you remember your attention being directed to a letter dated in 1913, which was marked for identification in the court below, and your having testified that Mr. Edwin M. Squier read it to you and you told him it was a bully letter? A. I didn't say he read it to me; he gave it to me to read.

Q. You did read it, and you commented on it and said it was a bully letter? A. Yes.

Q. Did you ever discuss that letter with Charles Burnham Squier, the contestant? A. No.

Q. Did he ever mention it to you at any time? A. No.

Q. And you never mentioned it to him? A. No.

(Recess until 2 o'clock.)

The Court: Acting on what you told me on Tuesday, I have set something else down for this afternoon.

Mr. Maxson: Well, I will finish as soon as I can. It won't take but a short time after recess.

Mr. Ferris: What about the other witnesses you asked me to produce, Fred Squier and the others?

Mr. Maxson: I am making an application here to Your Honor now for permission to take Mr. Charles Burnham Squier's testimony on an open commission. It depends upon Your Honor's disposition of that motion whether we will want to examine these witnesses now. Of course, we think we are entitled to that. The situation is, that this man is very ill. He was prepared to come over here for this trial and, in fact, had engaged his passage, so that when counsel said the other day we had six months to take the testimony it has no application because we expected to have him here before the court. He is very ill and his testimony is essential and we want to take it. And at the same time, if we cared to do it—I don't know that we would—we would like to take the testimony of Mr. William C. Squier, whose testimony was taken in the court below. He is also in Paris.

The Court: Cousin of the appellant?

Mr. Maxson: Yes.

The Court: What do you hope to get by the examination?

Mr. Maxson: Well, we are going over the whole situation of this relations with Mr. Houghton, his relations with the grandmother,

and his relations with the testator. There has been an impression created in this proceeding that the relations were unpleasant from the time of the reading of the grandmother's will.

The Court: Was that date fixed?

Mr. Ferris: 1913.

The Court: You were saying that the testimony here was to the effect that the relations were unpleasant from that time.

Mr. Maxson: Yes, and whatever else that we think of at the time that is material to the issues here. This man is a member of the family representing the old stock, and his relations, of course, have been intimate in all these situations.

The Court: What did he testify to in the Orphans' Court?

Mr. Maxson: He didn't testify there, because he was stopped in the lower court. We found out that the learned judge sitting there didn't consider our theory of this case at all and, of course, we had in mind that we could come to this Court and try this case de nova, and after he excluded all these——

The Court: You won't need any witnesses as your theory that his uncle, the testator, labored under mistake.

Mr. Maxson: No, not that; that is only one phase of this case. Our theory of this case is this: Mr. Houghton, at the time of the reading of the grandmother's will, made a statement of her intention and that went to the whole family; in fact, it was made to them. They were all present with the exception of

one and it is uncertain whether he was there. That that created an atmosphere that came down through this case, and that is in evidence, as your Honor will particularly recall, was in the will of this testator. Of course, that isn't all. Anything else going to show that Mr. Houghton used undue influence, either consciously or unconsciously. Those are matters of evidence.

The Court: What will he testify to in that respect?

Mr. Maxson: Does your Honor want me to tell what his testimony is going to be?

The Court: That is not an unusual thing in making an application of this kind. You don't think that Mr. Houghton or anyone else can influence your client to testify against himself?

Mr. Maxson: No, sir, (counsel smiling). I would rather not outline all the testimony we intend to take. Your Honor will remember that you have ruled that we can't look into a lot of things that our adversaries have, and by the same process of reasoning we don't want them to know about our case until we get ready to put it in. But inasmuch as this contestant was a member of the family and should have a greater interest in the estate than he has received, we think we have the right to go into it.

The Court: Isn't there testimony that he wasn't with the family at all?

Mr. Maxson: Witnesses have testified that he was there in the office. Mr. Shepard testified that he was there in the office; that is

where he met him right where this testator had his office. He had it there for years, the same office, and my client was there all the time and Mr. Shepard got to know him and they played golf together. Of course, he was there all the time and we can prove it. That is one thing that we want to prove. And not only that, but what his relations with the testator were. Your Honor saw this letter written in 1923 which is in evidence, which does not show unpleasant relation with the testator.

The Court: They are all formal letters.

Mr. Maxson: Yes, "Respectfully yours," and "Very truly yours," such as he addressed to everybody. I noticed that about his letters.

The Court: But in those two letters—three letters—there isn't one single personal word except where he addresses the appellant in London, where he concludes his letter by saying "Hope you are well." That is the only inquiry to him about his happiness.

Mr. Maxson: That is a peculiarity not only of this man but all the family, your Honor remembers from reading this record in the court below that they didn't visit each other, even on holidays; they didn't get together on Christmas or other holidays.

Mr. Ferris: Not all the branches but certain branches got together and the other two branches in the same way. That was all testified to. Of course, we oppose very vigorously this application, and for many reasons: This litigation has been going on for a long period

of time. Whether this contest is successful or not, a number of beneficiaries are entitled to the money that has been given them under the will; and I think the other side is looking for delay and with that view they will take an appeal after this is through. Burnham Squier was available at the time of the trial in the court below but he was not called, and we think there was very good reason for it because he didn't want to take the stand.

Mr. Maxson: That isn't so.

Mr. Ferris: Now he has been abroad some six months. The doctor's certificate indicated that he has been under treatment since last January——

The Court: January or February?

Mr. Ferris: January 15th, if I recall right. Mr. Houghton tells me that there was some discussion before your Honor where Mr. Maxson assured your Honor that there would be no further delay and that he would appear here. They knew all along that he was ill.

Mr. Maxson: That isn't true.

Mr. Ferris: This is dated March 23rd.

Mr. Maxson: We didn't have it in our possession at that time.

Mr. Ferris: I'm not questioning your word or veracity, but I may say this, however, that Burnham Squier didn't, of his own initiative, get that doctor's certificate and send it here unless he was requested to do so by Mr. Hendrick, and, therefore, his counsel knew that he wouldn't be available, and he had ample opportunity to elicit any testimony that they

would want from Burnham Squier, that would be material.

Mr. Maxson: These statements that are being made are most of them not true. I have told your Honor that this witness was to come over here and had reserved his passage to come over here, and we wanted him here. It is foolish to say we didn't want to put him on the stand because we were afraid of the cross examination. We are entitled to have his testimony, may it please the Court.

The Court: How do you know that his physical condtion is such that his testimony can be taken over there?

Mr. Maxson: Well, we will have to find out about that.

Suppose a physician in Paris says he is in no physical condition to do so?

Mr. Ferris: May I make a suggestion that will dispose of this question: If Mr. Maxson will put in all the evidence today that he has outside of the deposition of Charles Burnham Squier and close his case with that exception, I will consent to the taking of the deposition on proper terms, provided it will be at the expense of Charles Burnham Squire.

Mr. Maxson: There might be documentary or other evidence suggested by Mr. Burnham that we would want to put in.

* * * * * *

Mr. Ferris: May I ask Mr. Houghton to make a statement in reference to the matter.

Mr. Houghton: When we came before you after the production of witnesses to see if we

could get together and stipulate, I said and the other side said there would be no request for adjournment, and Mr. Maxson stated that he would go on and wouldn't ask for any adjournment, and he finally agreed to produce everybody and we told Mr. Maxson that he wouldn't have to produce Mr. Squier and he consented.

Mr. Maxson: Not William C. Squier; I consented that Mrs. Houghton need not be produced, but I didn't say anything about William C. Squier.

Mr. Houghton: And he said he would be ready to go on with it and wouldn't ask for an adjournment unless something unusual or unexpected turned up.

Mr. Maxson: That is just what has turned up.

Mr. Houghton: Mr. Maxson said he did not have a certificate from the doctors, and the very next day it was sent down to our office to investigate.

Mr. Maxson: I didn't say I didn't have any certificate on Tuesday.

Mr. Houghton: A week ago today.

The Court: I think you are referring to the talk I had with Mr. Maxson and Mr. Brogan sometime last month. I thought that was the time that Mr. Maxson said he didn't have the certificate.

Mr. Ferris: No, no; I was referring to our interview last week.

Mr. Maxson: Well, we will fix the time when it arrived so as to clear that up. It arrived here the 2nd or 3rd of April.

The Court: You want an additional half hour to examine Mr. Houghton?

Mr. Maxson: Yes, perhaps not that long.

The Court: Well, no more than that?

Mr. Maxson: No, not any more than that.

The Court: Then you have some witnesses here now that you want to examine, that have been produced?

Mr. Maxson: I wanted to ask William C. Squiers some questions.

The Court: He is dead.

Mr. Maxson: I mean Frederick C. Squier.

The Court: How long do you want with him?

Mr. Maxson: I may not put him on the stand.

The Court: I cannot go on with this this afternoon. I simply wanted to have some idea of how much time will be necessary to close up the hearing before me.

Mr. Maxson: I could close up my end of it in less than an hour.

Mr. Ferris: This is an important case, as Your Honor knows, and we are extremely anxious to have it terminated. However, if we can conclude this testimony and it will take only about a half an hour, we hope Your Honor can find some way to close it.

The Court: That doesn't include your cross examination.

Mr. Ferris: I shall have no cross examination except one or two questions.

Mr. Maxson: Counsel has asked the court to advance this case, how long, may I ask? I mean, hasn't your Honor advanced it a year ahead of other litigation? If this case had

taken its usual course it wouldn't have been heard for a year.

Mr. Ferris: You stated that you expected to be through this forenoon. You have allowed to elapse as much as three or four minutes between the taking of testimony, and you have covered the same ground over again. You didn't tell me what witnesses you want produced.

Mr. Maxson: May we send you word tomorrow morning? Will that be all right, as well as telling you now. I assume the Court will tell the witnesses to come back if we pay their fees the same as before.

The Court: Is that agreeable for them to give you a list?

Mr. Ferris: Before noon tomorrow.

The Court: The witnesses who are here under subpoena, upon receiving a further witness fee will return on Monday afternoon at 2 o'clock.

APPELLANTS' CASE (continued).

Hearing on Monday, April 15, 1929, 2. P. M.

All counsel present as before.

AUGUSTUS S. HOUGHTON, resuming the stand, testified as follows:

Direct Examination by Mr. Maxson (continued):

Mr. Maxson: I offer in evidence copy of letter of February 28, 1913, written by the testator to the appellant.

(Admitted and marked Exhibit P-11).

Q. Mr. Houghton, at the time of the drawing of the Katherine C. Squier will what were your

relations with the contestant, friendly or otherwise? A. Friendly.

Q. And when did they change? A. After the episode that has been spoken of at the time of the grandmother's funeral.

Q. Did the divorce proceeding in which he was a party have anything to do with your change of feeling toward him? A. Oh, no, that was 12 years after the death of the grandmother.

Q. Did you ever discuss the divorce proceeding with the testator, Edwin M. Squier? A. I think I did, from seeing it in the newspaper.

Q. Did you have any knowledge of it outside of what you saw in the newspaper? A. Not a bit.

Q. Did you ever discuss the contestant with Mr. Shepard? A. I may have.

Q. Have you any recollection about where the discussion took place, if you had one? A. Probably in the office.

Q. And the effect of it? A. I don't recall.

Q. Did you talk over the affairs of the Squier family with Mr. Christie in your office associated with you? A. He wasn't associated; he was a clerk in the office. I may have discussed with him the mechanics, because he was a bookkeeper and kept the books; but other than that I don't recall speaking about the Squier family.

Q. Did you ever talk with him about your feeling for the appellant? A. You mean Burnham?

Q. Yes, the contestant? A. I don't recall that I ever did.

Q. Did you ever discuss Charles Burnham Squier, Sr. with Mr. Christie on any occasion? A. I do not recall that I did.

Augustus S. Houghton—By Appellant-Contestant
—(Recalled)—Direct

Q. Will this refresh your recollection: Did you ever tell Mr. Christie that Charles Burnham Squier was a favorite son of his mother? A. Must have been, because he was the only child.

Q. I am talking about Senior? A. No, I don't think I ever did, because I never heard that he was.

Q. Now, did you ever have any conversation with the testator, Edwin M. Squier, about his mother's will previous to the time when she made the second codicil? A. I suppose that he told me that Mrs. Squier wanted to have the codicil drawn. It is so long ago that I don't recall any particular conversation about it.

Q. Well, did you have your conferences with Katherine C. Squier or through Edwin M.? I mean, did he bring you directions from his mother for the preparation of these codicils? A. He did.

Q. Then did you talk to him about her purpose in making the codicil of the effect of that? A. I don't recall he said that. It is so long ago I can't recall.

Q. Did you ever talk with him about that Roosevelt property? A. Yes, on several occasions.

Q. Discuss with him the advisability or the necessity of making that codicil? A. That I don't recall.

Q. But any direction that you received from Katherine C. Squier came through him? A. It did.

Q. And you drew the codicil? A. I think I did. It was done in the office and I think I did it.

Q. Were you advising him as a trustee of his father's and mother's estate during the period between the making of her will and the making of this codicil? A. I was.

Q. Did he have any other attorney that you know of? A. Outside of my firm I don't know. That is, I am referring to Mr. Shepard Senior when I am referring to my firm.

Q. You referred to both William C. Squier, Senior's estate and Katherine C. Squier's estate? A. I am.

Q. And Edwin M. Squier was one of those trustees? A. He was.

Q Did he ever ask you to construe Katherine C. Squier's will for him as trustee? A. No, sir.

Q. Or Edwin M. in reference to his duties as trustee?

Mr. Ferris: I object to that question. The question includes the construction of the will and as to what his duties were. That is a double question. If counsel means, did he apply to Edwin M. Squier as to what his duties were——

Mr. Maxson: I will withdraw the question.

Q. Did you ever construe the will of Katherine C. Squier? A. No, not prior to the death of Mr. Edwin M. Squier.

Q. Did you ever discuss the provisions of her will with any of the trustees?

Mr. Ferris: I object to that. How is that competent?

Mr. Maxson: I withdraw that.

Q. Did you ever discuss the provisions of the will with Edwin M. Squier, the testator? A. That is, the will of Katherine C. Squier?

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Q. Yes, the will of Katherine C. Squier? A. I may have, yes.

Q. Did he ever ask you for advice about her power of disposal or appointment? A. No, not as I recall.

Q. And you never gave him any? A. If you will fix the time.

Q. Well, at any time? A. Probably at the time of drawing the will I may have discussed it with him, about the preparation of the will.

Q. You mean the preparation of his will or the preparation of Katherine C. Squier's will? A. Katherine C. Squier's will.

Q. And was that under instructions brought by him, to you? A. It was.

Q. Did you testify that you hadn't given any consideration to the exercise of that power until after the death of Edwin M. Squier, the testator? A. Not since the settling of Mrs. Squier's estate in 1913 or 1914.

Q. Why did you insist on general releases from Charles Burnham Squier in connection with anything that he received from the estate?

Mr. Ferris: I object to that.

The Court: What is the purpose of that?

Mr. Maxson: Our information is that where partial payments were made with respect to any of these estates general releases were insisted upon and taken. I want to find out what the purpose of the witness was in taking general releases? I say, "our information"; Mr. Shepard testified to it.

The Court: What difference can that make?

Mr. Maxson: We say that there was an atmosphere created in this estate that Charles Burnham Squier, the contestant here, received all that his father was to receive. We say that he didn't and the inspection of the documents will show your Honor that he didn't. Now, the question is, who created that impression and what was the purpose in creating it, if there was any purpose, in the family?

The Court: I understand the purpose of that and the theory upon which you are proceeding, but how can the taking of releases have any bearing on that?

Mr. Maxson: To find out why they took them from the contestant, and to show what the relation of the witness was with the appellant. I don't know why he took them. It might not be material but we have to find that out.

Mr. Ferris: Suppose the witness can testify why he did or did not do a certain thing; unless the subject matter sheds some light on the issues I can't see how it is material. We have got to bear in mind we are being charged that the decedent was mentally incompetent to make a will; we are charged with conspiracy and undue influence. Mr. Houghton has been on the stand now for at least five consecutive hours and there hasn't been elicited, to my mind, anything material. I hesitate to rise and make objection, but I can't see what light that will shed on the charge of undue influence.

The Court: Of course, you and Mr. Max-

son are at odds as to the substance of his theory, that this appellant did not receive what was to have been received by his father. Now, if I pass upon that matter now it would be deciding the case. I will allow it and deal with it later when I come to decide the case.

Q. The question is, why were the releases taken? A. They were taken from all of the people receiving any part of the estate of Katherine.

Q. General releases? A. Yes, required by the New Jersey statute.

Q. And that wasn't done at the direction of the trustees? A. I suppose I advised them that the statute of New Jersey required it.

Q. So that, acting upon your advice, Edwin M. Squier, one of the trustees, required these releases?

Mr. Ferris: I object to that as improper and incorrect summation of the witnesses's testimony.

Mr. Maxson: I will withdraw it.

Q. Didn't you testify, Mr. Houghton, that you took the releases at the direction of the trustees? A. I did not testify.

The Court: He said that acting upon his advice they were demanded. Is that what you said, Mr. Houghton?

A. Yes, sir.

Q. The trustees were all acting, weren't they? A. Yes.

Q. And they held meetings to determine how to administer the estate when questions arose? A. I don't think they held very many meetings, because there wasn't much to discuss except the mechanics.

Q. Did Mr. Edwin M. Squier, the testator, attend these meetings? A. Always.

Q. Did you advise him that they should have general releases? A. From the beneficiaries.

Q. And this appellant was one of the beneficiaries? A. He was.

Q. And they adopted your advice? A. I suppose I might say "yes" to that. We got the general release, anyway.

Q. And these general releases were for partial payments, were they not?

Mr. Ferris: I object to that. The releases themselves are the best evidence.

Mr. Maxson: All right; then let us have them.

Mr. Ferris: We haven't been asked to produce any of those. I haven't got them. You don't expect me to produce papers 16 years old on a mere notice in the court room?

Mr. Maxson: Well, may we have them later on?

Mr. Ferris: There isn't going to be any "later on" if we can help it. We are going to object to any "later on".

Q. Well, how many times did you take releases from them?

Mr. Ferris: Now, I object to that line of cross-examination, if your Honor please. It

seems to me it has been thoroughly exhausted. Whatever materiality may exist in the situation has been developed and it is only consuming the time of the court.

The Court: Well, I will allow this question to stand. Now, go ahead; you have gotten what you want in that regard.

Q. (The question is read by the stenographer.) A. No, they weren't.

Q. Well, they related to William C. Squier's estate and Katherine C. Squier's estate, did they not? A. We had different sets of releases in each estate.

Q. And the distribution under Katherine C. Squier's estate didn't relate to William C. Squier's estate in any way, her husband? A. No, sir.

Mr. Ferris: I object to that. The witness stated the release in one had nothing to do with the release in the other. That doesn't quite fit in with the facts.

The Court: I think that is so.

Q. Did you give consideration to the fact in the distribution of Katherine C. Squier's estate that there were provisions in the will of William C. Squier which more or less directed it or over which you had no control?

Mr. Ferris: The question asked and this whole line is not material in any branch of this case.

Mr. Maxson: I will withdraw the question.

Q. Did you discuss that with the testator?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant. Why not go directly to any particular subject matter.

The Court: Well, I don't want to disturb the plan of the cross-examination.

Mr. Ferris: I withdraw the objection.

A. No.

Q. You are still of the opinion that the will of Katherine C. Squier was contested by the appellant?

Mr. Ferris: Now, it seems to me, if your Honor please, he has covered that fully. Mr. Houghton had used the word "contest" and your Honor said something to the effect that that had been covered.

Q. Well, did you use the word "inadvisable", and do you want to change it, Mr Houghton? That is what I want to find out. A. I still insist that a contest was initiated.

Q. Was there a contest? A. It was initiated and, to my mind, there was a contest.

Q. Did you prepare this memorandum? A. What is it, sir?

Q. I don't know where it is from. A. (Witness looking at paper.) Oh, this is in the New York action. No, I didn't prepare that.

Q. You had nothing to do with its preparation? A. I doubt if I did. I don't prepare them. I had nothing to do with the preparation of that brief.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Q. So that when this says——

Mr. Ferris: I object to counsel reading anything that the witness says he did not prepare, as an indirect method of doing what he cannot do directly to get it in evidence.

Q. This memorandum was prepared by your firm, was it not? A. It was.

Q. And did you have anything to do with the litigation? A. Well, that is a very broad question. In what respect?

Q. In any respect. A. I had something to do with it, yes; I had a lot to do with it.

Q. But this memorandum which I showed you, you say you had nothing to do with its preparation?

Mr. Ferris: I object to that. It has been answered twice, if not three times.

A. I had nothing to do with the preparation of that memorandum.

Q. And you had nothing to do with the preparation of the defense in the case? A. I didn't so testify.

Q. Well, did you?

Mr. Ferris: Just "yes" or "no".

A. Yes.

Q. And not this paper memorandum? A. That doesn't follow my answer. The preparation of the case and the preparation of the memorandum are two different things.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Q. Who did prepare this memorandum?

Mr. Ferris: I object to that as immaterial and irrelevant unless it is put in evidence.

Mr. Maxson: I don't see how I can get it in evidence unless I ask these questions and lay the basis for it.

The Court: What difference does it make? This is for the purpose of cross-examination of the witness upon his explanation last week as to what he mentioned about the contest.

Mr. Maxson: He didn't explain it, and he is trying to explain it now. He says there was a contest inaugurated but not a contest. Is that your testimony?

Mr. Ferris: I object to that. The testimony of the witness is on the record. It has been repeated a half dozen times. It doesn't serve any purpose except the waste of time.

The Court: Well, how are you going to use against him something that somebody else prepared.

Mr. Maxson: This memorandum emanates from his firm, of which he is a member, and yet he repudiates it, and he says he has had nothing to do with it.

Mr. Ferris: Let me say on that——

Mr. Maxson: No, I am making an argument. His testimony was that he had nothing to do with the preparation of this memorandum, and I want to call his attention to some of the statements in it. They come from his client and they directly contradict what he has testified to. He is a party to the proceeding and

he is a member of the firm where this memorandum was prepared, and yet he says he had nothing to do with it.

Mr. Ferris: Now, I move to expunge from the record the remarks of my learned adversary in respect to his alleged repudiation of this memorandum. I have heard no testimony to that effect.

Mr. Maxson: I withdraw the word "repudiate".

Mr. Ferris: Now, the last sentence in which you use the word "repudiate" is withdrawn. As to the other, I have nothing further to add, except that this whole inquiry as to a document with which the witness testifies he had nothing to do with its preparation is not contradictory, nor does it tend to affect his credibility in the slightest degree.

Mr. Maxson: If it doesn't affect the witness's credibility that a memorandum submitted in a proceeling of which he is a party, by a firm of attorneys of which he is a member,—if that doesn't contradict his testimony to a certain extent then I don't understand the purpose of these memorandums. They are submitted to the court's judgment. Here is a statement that this very witness has testified was a contest, and then he changed his testimony and said it was a contest inaugurated. It goes to the effect of saying that it was res judicata.

Mr. Ferris: In the earlier part of the trial, if your Honor please, I objected on the ground

that they were not germane to this action; they were more germane to the New York action, and that is more than borne out by the stringent effort made to get from this witness's testimony in this proceeding that may be used against him in an action pending in the New York action, in which he is a party. I think in justice to us that that course should not be followed. Now, whether or not this witness, or his firm, in the New York action made a statement in a legal brief submitted to a judge, or in the Appellate Division as to some fact that occurred in some ancient proceeding, may be germane there but it is not germane and material here.

Mr. Maxson: I have nothing to do with the New York case and I don't know what the prayer for relief is. I don't know what they are seeking to get, but if one of these witnesses had said something in the New York case in a paper of this kind which contradicts his testimony, why shouldn't we read it?

The Court: You should, but I don't think you have the right to take the memorandum prepared by someone else and use that for the purpose of confronting the witness with anything for which he isn't responsible.

Mr. Maxson: Of course, our objection to that is that nobody else knew anything about these things enough to prepare a memorandum.

Mr. Ferris: Then you are mistaken.

The Court: I am going to take his statement that he did not prepare it or have anything to do with its preparation.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Q. Did Mr. Shepard prepare this paper? A. I don't recall whether he did or not.

Q. Can you tell by examining it whether he did or not? A. What does it say at the bottom?

Q. Woolsey A. Shepard. A. Then he did prepare it.

Q. Was he representing you at the time he prepared it?

Mr. Ferris: I object to that as immaterial, irrelevant and incompetent. It was prepared by somebody else.

The Court: I sustain the objection.

Mr. Ferris: Now, I ask that that memorandum be marked for identification, and if counsel had any particular page in mind I ask that be referred to.

Mr. Maxson: Is this to be marked in evidence?

Mr. Ferris: No, I said for identification.

(Same is marked P-12 for identification.)

Mr. Ferris: May I ask to have the page indicated that it is on.

Mr. Maxson: Pages 46 and 47. I offer in evidence this part of the memorandum which is referred to, pages 46 and 47.

Mr. Ferris: I have no objection to that part being read into the record. Shall I read it for you (addressing the witness)?

The Witness: Yes.

Mr. Ferris: (Reading from P-12):

It has already been said that the issue of whether or not, Katherine C. Squier died intestate as to the life estate left to her, and as to whether or not she exercised her power to bequeath, while it may not have been precisely

litigated it was necessary to determine, and comprehended and involved in the proceedings in New Jersey. There is no question but what these individual defendants were bound by that decree, and to the same extent this plaintiff is bound by it. These, on which the entire cause of action depends, therefore, have been determined by the decree of a court of competent jurisdiction as res judicata and the complaint should be dismissed.

Q. That statement res judicata wasn't put in there under your direction or after consultation with you? A. Well, there are two questions there. Will you separate the question?

Q. Was it put in there under your direction? A. It was not.

Q. Was it put in there after consultation with you?

Mr. Ferris: I object to that. It is immaterial and no time given, whether it was after or before.

The Court: I will allow it.

A. It undoubtedly was.

Q. And you gave consideration to the question, I assume, before it went in this paper?

Mr. Ferris: I object.

The Court: Yes, there is no foundation for that question. He doesn't say what consultation he had or what he was consulted about.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Q. I show you Exhibit P-11 and ask you whether you remember that letter. A. I do.

Q. Is that the letter that you referred to when you said that you told the testator it was a bully letter? A. It is.

Q. And did that estimate of yours that it was a bully letter relate to anything that was said in it? A. It related to more than that.

Q. Well, did it relate to everything that was said by the testator in the letter? A. Not only to that, no.

Q. What do you mean by that? A. It was more comprehensive than just the letter itself.

Q. When you said it was a bully letter you had reference to something in it contained in the communication itself. A. Something to which it referred, yes.

Q. Did you have in mind, when you said this was a bully letter, this paragraph, "Your statement that you have been maliciously done out of your just rights is false for you have been left equal with the other grandchildren"? A. What I had in mind——

Q. Won't you answer that question? A. Well, I want to answer it in my own way: It did not refer to that provision alone, no. You asked me that, didn't you?

Q. Yes. But did you have that paragraph in mind when you said it was a bully letter? A. No, I did not. I read the letter and my general impression was expressed by my remarks.

Q. Well, one of your considerations must have been this paragraph, wasn't it? A. The general tone of the letter was what I referred to when I said "bully".

Q. Did you have reference to the facts stated in the letter when you said "bully"? A. I cannot recall that now.

Q. Well, did you or did you not? A. I can't recall that we discussed any specific statement in that letter. My remarks were addressed to the fact that the letter that he received and this answer. It was a bully letter because it met all the contentions that the contestant had made in the letter.

Q. And this was one of the contentions that he made in the letter to which this was an answer?

Mr. Ferris: I object to that.

Q. Did you testify that you read the letter to which this was the answer? A. Yes.

Mr. Ferris: As to what contentions were contained in the letter of the contestant, the letter speaks for itself.

(The question is read by the stenographer.)

Mr. Ferris: I will withdraw the objection.

A. That I don't recall.

Q. But you do recall this statement in this letter? A. Yes, because you just called my attention to it.

Q. But you didn't have it in mind at the time you said this was a bully letter (referring to Exhibit P-11). A. I do not recall. It is 16 years ago.

Q. And your recollection isn't refreshed by a reading of this document which I just handed to you? A. Not refreshed as to what was contained

in the letter of which this is an answer in every respect.

Q. How long before you saw this letter which you say was a bully letter did you see the letter that it is a reply to? A. I don't know whether it was the same day, but it was within a day or two of the answer, if I remember rightly.

Q. And what was the occasion of your having seen that? A. Seen what?

Q. Seen the letter. A. Which letter are you speaking about?

Q. I am speaking about the letter to which this is a reply, referring to Exhibit P-11. A. Mr. Squier gave it to me to read—the testator.

Q. Where? A. In his office.

Q. What did you say when he called your attention to the letter? A. I don't recall.

Q. Was it just a social situation that arose there or were you in there as his attorney? A. I testified several times I never was his attorney until he drew his will.

Q. So that when he showed you this letter he wasn't asking for your advice? A. He was not.

Q. You were representing Mr. Squier as trustee at that time? A. Yes.

Q. And he was associated with you in the same office, and had been for how many years—a great many years, hadn't he? A. He was not associated with us in our office; he had an office in the same suite and rented it from our firm.

Q. You were a member of the firm and a member of the Squier family by marriage? A. Yes.

Mr. Ferris: Is it necessary to go over that again? This is not the time to sum up. The witness has testified to all this.

The Court: Yes, I don't see any use in having it in more than once.

Mr. Maxson: I want to call the witness's attention to that which he has testified to before I ask a question. I don't want any insinuations about the facts as they are. That is the purpose of asking these questions.

The Court: It is entirely unnecessary to repeat the testimony.

Q. All you had to do with this letter was, as a social matter the testator handed it to you and you volunteered the opinion that it was a bully letter? A. I volunteered no opinion; I stated it was a bully letter.

Q. And your connection with it went no further than that? A. Absolutely not.

Q. You weren't asked for any professional advice about it? A. No.

Q. And you weren't asked for your opinion about it? A. What do you mean by "opinion"? Legal or individual?

Q. Individual or social? A. I may have volunteered the statement that it was a bully letter without his asking me what I thought about it, but I don't recall that now.

Q. Did you volunteer any opinion as to the letter that came to the testator of which this was a reply, referring to Exhibit P-11? A. I testified that I told him it was a dastardly letter.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Q. I didn't ask you for your opinion about that. A. I don't recall whether I did or not.

Q. Did he send for you to come in to see the letter into his room? A. That I don't recall.

Q. Did you consider this paragraph to which I have called your attention, that he was left equal with the other grandchildren, as a statement of fact? A. I didn't consider it at all.

Q. Never gave it any consideration? A. I wasn't making that statement; somebody else was making it.

Q. But when you said it was a bully letter did you have in mind the question whether these statements were true or not?

Mr. Ferris: I submit——

Mr. Maxson: When anything of importance is to be elicited from this witness counsel makes an objection. He has been doing it all the afternoon.

Mr. Ferris: It seems to me that I have the right to make objections, and I object to this question and this whole line of examination, on the ground that he has gone over it, again and again.

Mr. Maxson: And by the same token, I have the right to protest also to the making of these objections to such a question as that. That is a perfectly fair question and it calls for matter that is material to this litigation.

The Court: Well, I generally allow a very wide latitude to cross examination. I will allow you to proceed.

A. I did not consider any particular or single statement in the letter. My remark or comment on the letter referred to another letter first. Its general tone was what I thought was a mighty good, dignified letter for a man to write to another man who had written the things that he had of a man's mother who was dead.

Q. Did you have in mind the contents of the letter then? A. Yes, the whole letter.

Q. Did you have it before you? A. Which letter are you speaking of? Do you mean the original letter?

Mr. Ferris: You mean the contestant's letter?

Mr. Maxson: I mean the original letter to which this is a reply.

A. As I say, I don't remember whether it was that very day or not I saw the letter from the contestant to the testator; whether it was the same day or not, or whether it was after that I saw this letter, I don't know but when I made the statement I just made I had not only these two letters in mind but also the occurrences at the time of the funeral, which I believe was the same month after these letters were written.

Q. What were the occurrences at the funeral that you had in mind? A. First, the contestant's statement that it was a very unfair will; that his grandmother was a deceitful woman and had been tricky in her actions toward him; that he was a favorite grandson, and had he known his grandmother was

going to make such a will as this he wouldn't have come out there as often as he had; and that he was going to do what he could to break the will.

Q. When did you first recall this matter that you have testified to? A. I have known it all the time, but you never asked me for it before.

Q. You were asked in the court below what this witness said. A. Pardon me, I was asked what I said.

Q. I am asking you what testimony you have any recollection of that you were asked in the court below. A. I have a very positive recollection that I was not asked it.

Q. And you were not asked it in this proceeding? A. You just asked it of me.

Q. Up to now? A. Up to now—now is the first I was asked.

Q. Now, did you discuss that with the testator at any time? A. I don't think I did. No, I don't think I ever discussed that statement. I may have discussed Burnham's conduct with him.

Q. Well, when? A. I doubt if it was more than two or three times from the time of this occurrence to the time of the testator's death.

Q. When? A. I cannot fix the time.

Q. Where? A. Probably in the office, and it may have been pretty much about the time of this correspondence. I don't remember speaking to him after the occurrence until this correspondence.

Q. You have a very clear idea of what the contestant said and his language? A. It made a most vivid impression on my mind.

Q. But the conversation you had subsequently with the testator isn't so clear? A. The conversa-

tion with the testator didn't impress me as much as what the contestant said.

Q. The old lady was how old at the time of the occurrence you speak of? A. She was dead. Are you referring to the date when she died?

Q. How old was she at the time of the making of this remark; was it immediately after her death? A. Yes.

Q. About how old was she then? A. 91.

Q. She wasn't your grandmother? A. She was not.

Q. She was no relation to you? A. She was not.

Q. Did you ever consider that the contestant might have been referring to you when there was some tricks in connection with the making of this will? A. No, because he said his grandmother was a tricky woman.

Q. You are very sure about that conversation? A. I may not have given the exact words, but I am positive that he used the word "deceitful" and the word "tricky". They are very vivid in my mind.

Q. And he referred to his grandmother and not to you? A. Absolutely.

Q. Now, you can't tell us when you discussed these things with the testator, or where you discussed them with him? A. Oh, I didn't say that.

Q. Well, I will ask you which—to separate the question; when did you discuss this incident with the testator? A. If I discussed it at all it was at his office, and I don't recall ever discussing it since that correspondence took place.

Q. Two or three times you said, did you not? A. Yes.

Q. And who initiated the discussion? A. I don't recall.

Q. And you can't remember where they were had? A. I told you they were in Mr. Squier's office three times Mr. Maxon.

Q. You don't recall whether he invited you in there or whether you went in voluntarily? A. He never invited me in.

Q. Then you always went in when you felt like it without invitation? A. Absolutely, the same as he came into my office when he felt like it.

Q. In 1922 and 1923 when you advised or urged him to make a will— A. I didn't advise him.

Q. Did you discuss this incident at his mother's funeral with him?

Mr. Ferris: I object to the word "urge."

Mr. Maxson: We solved that when we showed it to the court. If you want to see it again I will show it to you.

The Court: I remember that. I think last week it was shown that he had said that he urged this testator to make this will.

Mr. Ferris: Very well, go ahead.

A. I didn't urge him to make this will, and I don't think it was in 1922 or 1923, because it was after he had spoken to me about his intention to draw a will, and he said he would give me the facts when he had made up his mind definitely as to the disposition he wanted to make of his property; and I spoke to him—I will use the word "advise" or "urge", whichever you prefer,—about executing a will so as to avoid the giving of a bond on his administration.

Q. That doesn't answer the question. A. Oh, did you ask me if I discussed that letter?

Q. I asked you if you discussed the incident—A. No, I did not.

Q. With the testator at the time in 1922 or 1923 when you either urged or advised him to make a will? A. I did not.

Q. And you never discussed it at any other time? A. None other than I have already testified, so far as I can recall.

Q. So that this single paragraph about his having been left equal with the other grandchildren was not a matter of discussion at any time from 1922 or 1923 on, to the time that the testator made his will? A. It was not.

Q. No reference was made to this grandmother's estate when he put that certain clause in his will that the contestant had received all that his father would have had? A. You ask with reference to the grandmother's will? There was not.

Mr. Ferris: He didn't ask with reference to the grandmother's will.

A. There was no reference to the grandmother's will.

Q. The testator volunteered that provision without any advice from you with respect to it? A. I haven't so testified, but I testified to the contrary.

Q. Well, did he or didn't he? A. I told you he suggested it, and I said "Why don't you put it in the will;" and then you asked me if he prepared that, the wording, and I told you no that I had prepared it.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Q. Is that your testimony as you recall it? A. Yes.

Q. When did he suggest it to you? A. As I said before, on the morning that he executed the will, before the final draft was drawn.

Q. Then there had been no discussion of that provision previous to the morning the will was drawn? A. There had not been.

Q. And he had no independent advice about it then? A. I don't know what he had.

Q. Did he have any advice that you know of from the time that was put in his will at your suggestion? A. I don't know whether he had or not. It wasn't put in at my—oh, yes, it was put in at my suggestion.

Q. You don't know whether he had any advice there in the office? A. I don't, no.

Q. Who were there when this conversation was being had between you and the testator about this clause? A. I think he and I were alone.

Q. And yet you don't know whether he had any other advice or not? A. I wasn't with him the whole time after I took the draft from him to have it prepared. I didn't see him until the will was prepared. I don't know whom he discussed it with.

Q. Have you any reason to think that he had any independent advice? A. I have no reason to think so, no.

Q. Did you have any knowledge as to the disposition of Katherine C. Squier's estate? A. Of course, I know how it was distributed, yes.

Q. You know how it was distributed? A. Yes.

Q. And you know that releases were taken and all that? A. Yes.

Q. And they were taken under your direction?
A. Yes.

Q. Did the contestant here get the same share of his grandmother's estate that his father would have gotten if she had died intestate?

Mr. Ferris: I object to that, as to what he would have gotten if she had died intestate. She didn't die intestate; she made a will. There is nothing in this clause of the will that the grandmother died intestate.

Mr. Maxson: All right; I will withdraw it.

Q. Did the testatrix exercise her power of disposition under that will?

Mr. Ferris: I object to that, on the ground that it calls for a legal opinion on the part of the witness. The court has the will before it and if it is material to determine that from the will whether she exercised her power of disposition under the will Your Honor can determine that. This witness is not a practitioner of New Jersey.

The Court: I suppose that is so, Mr. Maxson. He is not a member of our bar.

Mr. Maxson: It would be illuminating to know how he dealt with this instrument. He drew the will even though he wasn't a member of this bar. He dictated the clause in the will and said our client got all his father would have gotten.

Mr. Ferris: That is not so. I can read it right from the record.

Augustus S. Houghton—By Appellant-Contestant
—(Recalled)—Direct

Mr. Maxson: I see I am mistaken, Your Honor; I withdraw it.

The Court: I am going to sustain the objection to this question in its present form. It clearly calls for an opinion.

Q. I will put it this way: Did you deal with this estate as though you had advised the trustees and people in interest that Katherine C. Squier had exercised her power of disposal?

Mr. Ferris: I object to that as calling for a conclusion. It doesn't meet the objection at all; in fact, it is still more objectionable.

The Court: Why spend time on that? Why isn't what Mr. Ferris says sound, that the effect to be given to those instruments is something that the court will have to deal with.

Mr. Maxson: I want to know what this witness's state of mind was about it, how he dealt with it when he was advising the testator to make this will and put this certain clause in it; was it true or not and did he tell the testator it was true or did the testator have reason to believe from his action and the advice he had given him about the disposition of Katherine C. Squier's estate that it was true?

The Court: Well, those are different things from what you are asking now.

Mr. Maxson: I am asking him how he dealt with it. I don't suppose it would be of any use to ask this witness whether he told the testator about these things, but if he stood by and saw him administering the estate in this

way and advising him, has something to do with confidential relation.

Mr. Ferris: If counsel wishes to elicit from this witness anything that he said to the decedent on this matter there would be no objection by a proper question, but when he attempts to get a legal opinion from this witness in order to establish the will, it is in no sense cross-examination.

The Court: It certainly is not for the purpose of determining what construction ought to be put upon the will. I think that perhaps if counsel had thought a second time before making the statement that it is useless to question Mr. Houghton as to what he told the testator, he would't have said it.

Mr. Maxson: I didn't have any intention of accusing him of perjury. He has already testified to most of those things. I have asked him categorically about what he said to the testator. But what he did, from our point of view, is quite as important. You can do certain things that will lead a person to think your way.

The Court: I may be wrong, but I can't recall your asking him what he told the testator in that regard.

Mr. Ferris: He did ask the question, was there anything said at that time about the power of disposition in the grandmother's will, and the testimony was that nothing was said. My recollection is quite clear on that. As a matter of fact, I suggested to the witness whether he understood the question, and then

the question was repeated to the witness. And I am reminded, Your Honor, that this all relates to a period long before it was drawn up in 1913.

The Court: What I meant was, that Mr. Maxson might have asked as to what the testator told him in regard to the grandparent's will and the distribution under it at or about the time that it was suggested that he put that provision in the will.

Mr. Ferris: I think Your Honor is mistaken about that. He did ask him.

Mr. Maxson: I would be glad to have it cleared up on the record.

A. I can remember it. No discussion was had of Katherine C. Squier's will at that time.

Q. Or of the disposition of her estate? A. Or of the disposition of her estate.

Q. Well, now, at any other time did you discuss with the testator the disposition of his mother's estate, Katherine C. Squier? A. I discussed with all of the trustees the disposition at the time the thing was disposed of.

Mr. Ferris: What year was that?

A. 1913. I don't remember whether it was in the fall of 1913 or the spring of 1914 that the estate was settled.

Q. And Edwin M. Squier was there present when you had that discussion? A. All of the trustees were there, as I recall it.

Augustus S. Houghton—By Appellant-Contestant —(Recalled)—Direct

Q. At that time did you say whether or not Katherine C. Squier had exercised her power of disposal? A. No, I did not.

Q. Was there any question asked about that? A. There wasn't any.

Q. And the estate was distributed as if she had exercised it?

Mr. Ferris: The record of the disposition is the best evidence, if it is material, and it also calls for the operation of the witness's mind and calls for a legal conclusion on his part.

Mr. Maxson: All right, we will offer the record.

Mr. Ferris: That takes time.

Mr. Maxson: I will offer it now.

Mr. Ferris: Where is it?

Mr. Maxson: I am going to ask the court's permission to produce it. Oh, by the way, my associate calls my attention to the fact that you didn't file any. No wonder they are willing to have these records introduced. They never filed any accounting. There is nothing on record to show how the estate was distributed. Now, may we put in evidence the best record we have.

Mr. Ferris: If counsel wants the record here he should subpoena those records or papers.

Mr. Maxson: We can't produce papers when there are none.

Mr. Ferris: Pardon me: The witness has testified while no formal account was had the

estate was distributed and there were releases given—a receipt for anything there was. Now, if counsel anticipated these papers were at all material to his case the least he should have done was to serve us with notice; but at this late date after we have been in the trial before Your Honor for three days to have the first intimation that they want these papers it isn't reasonable for us to produce them. Two of the executors under the will are dead and unquestionably they are not easily to be found. I understood Your Honor was to conclude this trial today.

Mr. Maxson: I suppose they are dead. I thought there was something strange about this situation, you were so glad to have us put these records in. We want to put them in; we want to know what happened as to the distribution of this estate, and this witness knows. He was attorney for the testator. He knows that they didn't make an accounting. They wound up the estate without an accounting. Now, how are we going to say that the estate was distributed except by the testimony of the people who did it and made the distribution?

The Court: (Addressing the witness) Do you remember?

A. I do.

The Court: Well, I realize that there is a great deal of force in what you say, that the documents desired must be procured by process.

Mr. Ferris: I don't say that we should be served with subpoena, but at least give us notice and I would have them here.

The Court: Mr. Houghton is not a party, is he?

Mr. Ferris: Yes. So am I. I am charged with conspiracy. I am also a party although I didn't know the whole Squier family but a few months of my retainer. Yes, I am such a nefarious person.

The Court: Well, I am going to relax the rule, in view of the fact of Mr. Houghton's position and his opinion that he recalls what disposition was made of the estate of Katherine C. Squier; I am going to overrule the objection, and that to save time.

A. The cash bequests are $15,000 to each one of the grandchildren and they were paid. The cash bequests to the servant I have forgotten. The amounts were paid. The cash bequest to the Rahway Library was paid. One-third of the residue was turned over to the executors as trustees for the life of William T. Squier, Jr.; one-third of the residue was paid over to Stuart C. Squier, as provided by the will; one-third to Edwin M. Squier, the testator in this case. The real estate, such as she owned follow the provisions under the will. I think they were all to Mr. Frederic C. Squier, except the Massachusetts real estate which went to Edwin M. Squier; and the contestant in this proceeding got $15,000. He got what the will provided.

Q. And that is all he got? A. He got the money provided by the will out of this estate, $15,000.

Q. Well, that residue of the estate included the one-third of the estate of her husband? A. So much of it as was left after paying the cash legacies,— after paying $280,000, as I recall it.

Q. Mr. Shepard has testified that she didn't have enough money to pay the cash legacies in her private estate.

Mr. Ferris: I object to counsel stating that. It is directly to the contrary.

Mr. Maxson: Well, the record will show.

Mr. Ferris: Yes, and counsel has put a question in the form of a statement. It isn't a fact at all. But what purpose can it serve in this case?

Mr. Maxson: It serves a whole lot of purposes in this case.

Mr. Ferris: Tell us, Mr. Maxson what good purpose it serves? The story of the respective counsel is on the record, and whatever is recorded is recorded. The only thing I am objecting to is the form in which these questions are put by Mr. Maxson. He makes statements not based on the facts at all.

Mr. Maxson: I withdraw it.

Q. Did or did not Katherine C. Squier have ample estate to pay all of the specific bequests in her will?

Mr. Ferris: I object as immaterial, if Your Honor please.

Mr. Maxson: It is the same situation.

Mr. Ferris: What is the materiality of such a question, and what is the relevancy of it.

Mr. Maxson: Your Honor has just admitted that line of testimony, to find out how her estate was distributed and whether she exercised her power of disposal, and whether she, in fact, in her own individual estate met these bequests. Now, this witness knows; he handled it.

The Court: I will allow it, Mr. Ferris, and deal with it later on.

A. At what time do you mean when you say she had enough?

Q. At the time this estate was distributed. Did she have enough in her personal estate to pay the bequests, in the bank or anywhere?

Mr. Ferris: I object, if Your Honor please, because that isn't true, as I recall it. It is at the time of the maknig of the will and not at the time of the distribution.

Q. All right, at the time of the second codicil was drawn; that is, a part of the second making of the will.

Mr. Ferris: If you know.

A. I couldn't state as to that, whether at the time the will or codicil was made she had received enough money from the life estate to pay

the cash legacies; but she did not have more than $10,000 at the time she made the will in 1897.

Q. At the time the codicil was drawn did she have something like $700,000 in the bank?

Mr. Ferris: I object. I don't think he knows.

A. I don't recall.

Mr. Maxson: I want to know if he does know.

A. I don't recall.

Q. At the time the distribution was made did you know about that?

Mr. Ferris: I object to that, when the distribution was made. It certainly can have no effect upon her right after she was dead.

The Court: What difference does it make how much she had at the time of her death.

Mr. Maxson: At the time of her death?

The Court: That is what you ask.

Mr. Maxson: Yes.

The Court: Well, that isn't the test.

Q. Do you know how much she had in the bank, approximately, at the time the second codicil was drawn? A. I do not. I had nothing to do with her personal affairs until after her death, and then I handled the estate.

Q. How long before her death was that second codicil drawn? A. As I recall it, she died in 1913. That is as I recall it.

Q. It was only three months, wasn't it, between the time the codicil was drawn? Wasn't it drawn in August and she died in the fall? A. No, she died in February the next year, and she died six or seven months after she drew the codicil.

Q. Was it in October that the codicil was drawn?

Mr. Ferris: The codicil is in evidence here. Why waste time on that?

The Court: Why waste time on that when you have that definitely in the proofs.

Q. You don't know how much money she had at the time of her death, and you don't know how much she had at the time the codicil was drawn?

Mr. Ferris: I object to that.

The Court: I sustain the objection.

No cross-examination.

FREDERICK C. SQUIER, sworn on behalf of the appellant, testified as follows:

Direct Examination by Mr. Hendrick:

Mr. Ferris: Mr. Squier, will you kindly raise your voice so that we can hear you.

The witness: I will if I can.

Q. Mr. Squier, were you one of the trustees of your mother's will? A. I was.

Q. And you lived across the street from your mother, did you? A. Yes, couple of blocks away.

Q. Did you see your mother frequently before she died? A. I did.

Q. Did you know about her affairs? A. Well, in a general way, yes.

Q. Did you know how much money she had? A. No, not exactly.

Q. Well, generally? A. You mean the amount?

Q. Yes. A. No, I couldn't give it to you.

Q. You know what she was receiving, don't you? A. In a general way, yes.

Q. Was it a large sum in cash?

Mr. Ferris: I object to that as immaterial, incompetent and irrelevant. How is that material, if Your Honor please, on the issues here?

Mr. Hendrick: I want to show what she had at the time the codicil was drawn.

The Court: I will allow it.

Mr. Ferris: If Your Honor please, this is the very issue in New York. They are using this as a vehicle to get evidence in the other case. If it weren't for that I wouldn't care, but they are getting this for the New York case. Matters that are germane there are wholly immaterial here, and I cannot sit by and let them get away with something of that sort.

Mr. Hendrick: It would seem obvious that the jurisdiction of New York is not without power to afford relief to its litigants, and it would seem absurd, because of the weaknesses and processes of the courts of New York, to come across the Hudson River to get testimony.

Your Honor, within a very short time, has ruled that this testimony is germane here——

Mr. Ferris: May I say just a word more: As I understand it, the only theory upon which Your Honor admitted any of this evidence was on the theory that Mr. Edwin Squier, the testator, was induced under a set of mistaken facts to make a will by which Charles Burnham Squier, the contestant here, received that part that his father would receive if his father lived. Now, whether or not Katherine C. Squier had the right of disposition and if she did have, whether she exercised it, cannot make that statement false or true at all.

The Court: Now, I am going to do something that I have not had an opportunity to do to read that will of William Squier. Now, what was the power that I have heard so much about?

Mr. Ferris: It is a very short will, and instead of my attempting to explain it, I would prefer to have Your Honor read it, and then you will see how the trusts were created. It is in evidence. You see, she might have died intestate, and if she did die intestate we might suffer. But she didn't. She executed a will. There is nothing in Edwin's will that said that he wouldn't receive that which the father might have received if she died intestate and she didn't exercise the right of disposition. Burnham Squier got every cent that his father would have gotten under the particular circumstances.

Mr. Houghton: Mr. Hendrick ought to know more about these things than anybody. The will gave one-third of the residuary estate to the wife for life and disposed of it in the same manner as if the individual had exercised that power of disposition. This one-third to the widow during her lifetime was to revert to the residuary estate to be disposed of according to the terms of the will.

Mr. Maxson: I will read this from the will:

> I do further give, devise and bequeath to my said wife the third part of all the rest and residue of my real estate now owned by me or which may hereafter be acquired by me and wheresoever situate, together with the third part of all the rest and remainder of my personal property, not hereinbefore bequeathed, to be used and enjoyed by her during her natural life, and with full power to dispose of the same in as ample manner as if it were her individual private estate, in and by her last will and testament. In case she shall not make disposition of the real and personal property in this section mention and devised, by a proper last will and testament, the same shall revert to and become a part of my residuary estate and be disposed of as hereinafter mentioned.

The Court: What is your position in regard to the residuary estate?

Mr. Houghton: There were five trusts.

Mr. Maxson: One of which is represented by this contest. It says:

> The several shares of my estate given in trust to my executors by the foregoing fourth paragraph of this, my will, I give devise and bequeath upon the death of any or all my five sons to their issue, in each case, in such manner and in such portions as my said five sons may direct in and by their several last wills and testaments; but no devise or bequest of any such shares by any of my said sons otherwise than to their issue shall be valid; and if any such son or sons shall neglect to so devise his share to his issue, such issue shall nevertheless be entitled to the parent's said share and the same shall be paid to them by said executors. In case any one or more of my said five sons shall die, without leaving issue, then such share or shares held in trust for him or them as aforesaid shall go to their surviving brother or brothers as the case may be, and the issue of any deceased brother or brothers in equal parts. The issue of any such deceased brother to take the parent's share. The meaning hereof being, that said several shares so held in trust shall ultimately go to and belong absolutely to the issue of my said five sons per stirpes and not per capita.

Mr. Ferris: And that, strictly speaking, refers to each one of them on which the trust fell, and was manifestly what was meant by

the statement made by the testator, and Charles Burnham Squier was given exactly the same part. He got one-fifth.

Mr. Hendrick: Did he get a fifth of a third of the residue that was left to Katherine for life?

Mr. Ferris: That is, if she didn't dispose of it. It was disposed of.

Mr. Hendrick: Did he get it?

Mr. Ferris: It was disposed of. He had no right to get it.

Mr. Hendrick: Did he get it?

Mr. Ferris: I have just answered.

Mr. Hendrick: Then he didn't get it?

Mr. Ferris: Of course he didn't; she disposed of it.

The Court: Mr. Hendrick, what is there for thinking that his father would have gotten it if he had lived?

Mr. Hendrick: Because Katherine didn't exercise her power of disposition. It went back to William and became a trust under William's will.

Mr. Ferris: That being the case, I think I understand for the first time, just their contention, that somebody falsely represented to Edwin M. That Katherine did exercise when, in fact, she did not. Is that what you mean?

Mr. Hendrick: I will frame my own statement to the court.

Mr. Ferris: I think that we, as members of the bar, should do what we can to help His

Honor in determining what the question at issue is. It doesn't do any good to submerge it.

Mr. Hendrick: We tried to get it by evidence and we are willing to rest on the evidence. We would be glad to get the evidence more freely than we have been able to.

The Court: I am afraid I don't quite understand you. Will you tell me again.

Mr. Hendrick: One-third of William C. Squier's estate went to Katherine for life. We say she did not exercise her power of disposition, and that upon her death that one-third went back into the residue of William's estate, and by the terms of William's will the appellant here was entitled to a one-fifth.

The Court: One-fifth of the third?

Mr. Hendrick: Yes, one-fifth of the third. That is, one-fifteenth of William's estate. Now, according to the statement of Mr. Ferris, which I take it now is the fact on the record agreed to, in the distribution upon the death of Katherine that one-third was distributed to four stocks, to the exclusion of the stock of Charles Burnham Squier, Senior—to the exclusion of his son, the appellant, the only surviving heir. Now, we say that those shares went into the trust shares of the estate of William C. Squier, Senior, and that, as a matter of fact according to the record and according to the statement of Mr. Ferris, this appellant did not get what his father would have got, on the assumption that Katherine C. Squier did not exercise power of disposition.

Mr. Ferris: That may all be very interesting and amusing, but we are drifting away from the issue in this case. It may be interesting to read to Your Honor from the opinion in the court below, in re. Williams, where it is said:

> It is not required that he shall in fact correctly ascertain the legal status of each person who apparently stands in natural relation to him. In the exercise of reason, he may move upon premises established by false or insufficient evidence, or by mistake of law, and thus determine to exclude from his bounty those whom, but for his error, he would have recognized. The test is his ability to exercise reason and reach a rational conclusion, however erroneous, with reference to that. Stupid error in either his reasoning or his conclusion, is not lack of testamentary capacity.

Now, that is the law of the case. It is very interesting to discuss the academic question whether or not, under the law of New Jersey, Katherine C. Squier exercised the right of disposition. It was excluded over in New York. They couldn't get an injunction—

Mr. Hendrick: Just a moment please.

Mr. Ferris: Let me finish.

Mr. Hendrick: May I object to its continuance?

The Court: No, Mr. Hendrick; he has interposed an objection to your question which you have made.

Mr. Hendrick: I take it, Your Honor, that that has been lost in the limbo of forgotten things.

The Court: You are entirely wrong.

Mr. Ferris: So it becomes, in the light of the law ennunciated in the Williams Case, wholly immaterial, as a matter of law, whether or not Katherine C. Squier exercised her right of disposition or what the relations between the testator and Mr. Houghton has been. There has been no testimony that he made any representations in regard to the correctness or incorrectness of whether Katherine C. Squier exercised her right of disposition. Now, what value can there be to determine the fact under the pleadings as to whether or not she did or did not exercise that right. As I say, it may be material elsewhere where other issues are involved; but even assuming Mr. Houghton did advise Mr. Squier or Katherine C. Squier as to his or her will it doesn't render this testator incompetent to dispose of his estate. So, I say, what will it avail to go into these ancient documents and releases to determine the issue that is presented here whether this man had testamentary capacity, and whether he was induced by false representations or by duress in making this will. And Your Honor can see what a paucity of evidence there is. Their policy is simply delay, and we want a termination of this litigation. Here are beneficiaries under this will who are far advanced in years, and they have been deprived of their money from this estate for

three years. And Your Honor can see what a paucity of evidence there was in the court below. I think in the interest of justice Your Honor ought to limit to those things that are material.

Mr. Maxson: May it please the court, this testimony doesn't go to the testamentary capacity of the testator at all; it goes to undue influence. That case is not a case in point on the situation presented here.

Mr. Hendrick: If Your Honor please, I take it that Mr. Ferris and his client are not so impatient that they desire the appellant to be precluded—that they would not wish the appellant to have an opportunity and a full opportunity,—that they would not desire to extend to this appellant a generous opportunity to have his day in court, and perhaps to show that included in the amount out of which they say their clients have been kept for three years, is an equal if not a larger amount out of which the appellant has been kept for 13 years. The point, it seems to me, has been very definitely and clearly made, over objections, that there has always been a question of uncertainty as to whether Katherine C. Squier did exercise her power of disposition. Mr. Houghton has never said that he gave anybody any advice as to what the effect would be if she had exercised her power of disposition and yet the statement is made, admittedly by himself, that he handled the estate and the distribution was made on that assumption of the law.

Now, I take it that the Squier family, clients of Mr. Ferris, would like me to say, if there was any doubt according to the laws of New Jersey that the testator—unwittingly, of course, because we all admit he was a scrupulously honest man—included in his property as trustee this 15th part of the estate of his father, that belonged, according to our theory of the law, to his nephew he would never in the world kept him out of it, and if he found it in his estate he wouldn't have kept him out of it by making a will, practically disinheriting him. Now, the admission has been made—I heard Mr. Shepard make it in his voluntary statement, which we permitted him to make—that Katherine C. Squier, upon her death, did have ample funds with which to pay her specific legacies. She died about three months after the second codicil. In that second codicil, drafted, as we have shown, for the specific purpose to satisfy the title company, when the title company said without that codicil she would not have exercised her power of disposition, drawn by Mr. Houghton within a few months of her death, she showed by the reception of one to the exclusion of the other, that there couldn't have been any construction of the will on the facts because of a rule of construction I now gather from the document itself, and the document itself says, with great formality, that the testator knew the fact as the New Jersey law requires as to the power of disposition. He knew that. And as to the

parcel of real estate in Rosevelt, New Jersey, we put in the deed and all the parties to it, showing that the deed from Katherine to her three sons surviving—the other one being, we might say for the purpose of this argument, incompetent in 1907—she made a deed to them which was dated at the time of her will. Her will was executed between the time of the execution of the deed of this Rosevelt property and the time of the filing of the deed, in 1912, three months before her death. She made another deed and between the date of the execution of the deed and the filing of the deed she made her codicil, and that codicil, as Mr. Houghton himself testified, was to satisfy the title company because in the body of her will she had not covered that part of her estate which required the exercise of the power of disposition. Now, if we adopt a construction according to the Farnum and the Hall case, as the other authorities have, where there is doubt, that the intention of the testator was to leave only a specific tract or piece of property —that is, if she had a specific trust fund of odd dollars and cents and had nothing else and left that, evidence would be taken to show that in spite of the failure to refer to the power of disposition the court would assume on that evidence that she did. Now, here she left a specific bequest of property which undoubtedly belonged to her as her very own, and then she said "the rest and residue of my estate," what she had left, belonged to her estate. Now, without referring to this evidence that has been

elicited as to what she had—the evidence with respect to what she owned, not going by what she said in the codicil, would be to exclude all evidence to show that in spite of the failure to refer to the power of disposition she did execute it, and when Mr. Shepard said that she did have enough money to pay specific bequests —ample money—I won't split hairs—and I take it my friends don't contest the age she died, 91, four months after the codicil with reference to this Rosevelt property; they do not claim at the time she died, about the time she reenacted this will by putting in the codicil a reference to the power of disposition for the first time, she didn't have ample money, because it has been testified by Mr. Houghton what the income was from this enormous life estate—the principal of it. Now, that being so, there is no question in the case at all, according to the law of perpetuity of which Mr. Houghton says he has made no specialty of according to the laws of New Jersey, Katherine C. Squier did not exercise her power of disposal. And further than that, the evidence is that Mr. Houghton made a representation of the fact that Katherine told the same thing.

Now, Mr. Maxson has very well said, that in the scene where the appellant was supposed to have said an outrageous thing because the young man at the age of 17 said, "Why, I have been disinherited; there is something wrong here,"—perhaps, as Mr. Maxson said, he didn't choose his language. Surely, it is not true now, according to Mr. Houghton's testimony,

that the grandmother said those things, because she didn't say so, and Mr. Houghton said he didn't get it from her, he got it from Edwin M. Squier. Your Honor can imagine Edwin M. Squier, a layman, going into these abstruse questions, and to which Mr. Houghton, a New York lawyer, said on the stand he was blind for all these years.

Now, if Your Honor please, let us take up the matter of the New York lawyer. In 1924, a young man, his father of the stock of William C. Squier, deceased, comes in the picture. Mr. Houghton, the factotum attorney for all of the trustees, admitted handling it all, and Your Honor would know that, naturally, he would handle it all. Now, there is a representation that the grandmother had disinherited him. It passed through the whole family. They protested and said "you are wrong." His uncle wrote him a letter, saying "You are wrong; you have been unjust." But, Your Honor, the evidence shows that he wasn't wrong. He was disinherited for 13 years; he was kept out of an enormous amount of money that belonged to him. However, Mr. Maxson put in evidence, with the consent of the other side, a statement in New York that this thing that took place that I have referred to, terminated before the young man mentioned got his pacifying letter. Mr. Houghton says the Squier family now say that the appellant knew about this question of the New Jersey law which Mr. Houghton said he didn't know and didn't bring up at all and never mentioned

and he was satisfied that the court construed and passed upon it, a thing Mr. Houghton said nobody ever did. In 1927 we find the Squier family taking the position that if the appellant might be entitled to this amount his father would have given it in trust under the will of William C. Squier; yet, by reason of this transaction in court which Mr. Houghton rather in a sneering way, now one way and then another, says it was a contest and not a contest, says that they got it and if there is no question they want to keep it now. Now, we are not here to rectify anything in the Squier will, but we do say that the scene at the funeral comes from Mr. Houghton, the spokesman of Squier family in every incident in which there is any reference in Edwin M. Squier's letter, the speech at the funeral, the statement on the stand, what was put into Edwin Squier's will, everything—we find this expression that Mr. Houghton says is so, and what Katherine's will does not say so, and what Mr. Houghton has never been willing to vouch for in open court.

Now, Mr. Ferris says he would like to have a determination of this litigation. I hope that is so. I think I speak for the entire Squier family when I say that the question ought to be determined. It is relevant, for the reason that it appears that this appellant has been put under a ban by the whole family, under a representation that is untrue, made under the atmosphere at the grandmother's funeral, made by Mr. Houghton. We say our client knew nothing about this at all all of these

years. Mr. Houghton says that he didn't speak to him about it at all.

The Court: Mr. Hendrick, assuming that everything that you say to be true, and assuming that this appellant has not secured all that he should secure under the will of his grandfather, how does that prove undue influence in the making of the will of Edwin.

Mr. Hendrick: That fact itself does not, if Your Honor please; that fact itself does not, but I take it Your Honor is going to consider all of the facts, all of the testimony, and all of the atmosphere, and all of Mr. Houghton's actions and consider whether this whole situation, according to Mr. Houghton, doesn't constitute undue influence. I take it if Mr. Houghton by a misstatement of fact about this young man, I take it from the whole situation, the fact that just before the will was executed the testator asks some questions and Mr. Houghton gave assurance in answering these questions affirmatively; we have a lot of evidence here as to talk against Burnham Squier, talk to the family against Burnham Squier, embitterment created by Mr. Houghton to all the other members of the family, and added to that is this general situation that all of these years this family would not knowingly cheat one of the members or withhold a part of these very trust funds from the others; and I take it that if Mr. Edwin M. Squier, who wasn't a lawyer, had been advised as to what these trusts consisted of and how they were distributed, and had been advised that his

nephew was entitled to something that he had not been enjoying for 13 years, that Edwin M. Squier would not for a moment have made that statement if he hadn't been influenced to make it.

The Court: Made what statement?

Mr. Hendrick: That his nephew—you remember the statement in the will.

The Court: Oh, yes.

Mr. Hendrick: And Mr. Houghton does not say to Edwin M. Squier, "Let's explain this, let's make it look better for the public; he didn't say that, but he does say that Edwin M. Squier gave him the ideas and he expanded them into legal language. He referred to the trust in the will with which Mr. Houghton was thoroughly familiar, and Mr. Houghton took the decision on his own responsibility, according to his own testimony.

* * * * * * * *

I withdraw this witness, Your Honor.

Mr. Ferris: Have you any other witnesses?

Mr. Hendrick: No, we have no other witness here. We have the testimony of our client which we want to take.

Mr. Ferris: If no further testimony is to be taken, the respondent close their case. We have no rebuttal.

The Court: I still have under consideration an application to take the testimony of the appellant.

Mr. Hendrick: And William Squier.

Mr. Ferris: Before Your Honor hears the application to take William Squier's testimony, I ask Your Honor to take the record,

and I think Your Honor ought to be advised as to that. William C. Squier 3rd is abroad at the present time. He was extensively examined before Judge Stein. There are 100 pages or more of his testimony. He testified that he never knew the testator had made a will; and he also testified he never talked with the testator or anybody else regarding the making of a will; that the first time he saw the will or a copy of it was at Greenwich, Conn. some days after the funeral.

The Court: Let me see if I can shorten this: Didn't I understand you to say on Thursday, Mr. Maxson, that you reserved merely the right to cross-examine William C. upon anything that might be brought out in the examination of your own client or which might be learned from him?

Mr. Maxson: That is it, or anything new. We don't want to go over the same testimony that he gave below, and yet we don't want to preclude ourselves from taking his testimony if he is there. We see no reason why we shouldn't be able to do it.

Mr. Ferris: I think we ought to tell Your Honor that we learned yesterday that William C. Squier is to return here. I will not give the name of the person from whom I learned it, for obvious reasons.

The Court: Oh, he will be here in America in the next few days?

Mr. Ferris: Yes.

The Court: Did I understand you to say that if the proofs here in America were closed you would have nothing further.

Mr. Ferris: Well, I made a statement to that effect, but I made it without conference with my clients. I am authorized not to renew that offer. It wasn't accepted.

Mr. Maxson: It was accepted. We made preparations to finish up the testimony this afternoon.

Mr. Ferris: No, we feel that Burnham Squier had ample and complete opportunity to testify. He was present throughout the entire course of the trial and he did not see fit to testify. We feel if they really wanted his testimony they could have had it. When Your Honor fixed the date of the trial for last December they came here and it is quite probable that they must have written to him to obtain this certificate. We do not now think the application to take his testimony is made in good faith. They said that they do not want to disclose what they want to have him testify to before me. We don't think he has made out a case where his testimony will be necessary.

Mr. Maxson: It is very unfortunate that these questions of veracity arise here.

The Court: They are not questions of veracity; it may be bad memory.

Mr. Ferris: Just to refresh your recollection, I did say at the close of the testimony that afternoon if there was a consent to an open commission it would be upon broad terms. I said under those circumstances I would consent to it, and I turned around and said, "Is that agreeable to you?" and you said, "No, I won't accept it."

The Court: I am inclined to think that it was to be upon condition that the proofs here be closed last Thursday.

Mr. Maxson: I don't think it makes any difference. We think we should have this witness's testimony.

The Court: But it is such a bad thing to have counsel disagree upon what has taken place.

The Court: I haven't given the application any consideration, and it is such a radical thing that I think I would like to turn it over in my mind, and I will decide the motion tomorrow morning at 10 o'clock.

HEARING OF TUESDAY, APRIL 16, 1929, 10 A. M.

All counsel present as before.

Mr. Maxson: Before passing on this question of the commission to take testimony abroad, I overlooked something that is very important to me, and that is to prove this record on appeal in the court below, as to the corpus of this estate.

Mr. Ferris: We can stipulate that.

Mr. Maxson: And will you also stipulate what allowances were made to the proponents of the will?

The Court: That appears in the order for allowances.

Mr. Ferris: Your Honor, I think we ought to make a motion to close the case. Yesterday

Your Honor granted me the privilege of moving to strike out documents at the close of the appellant's case. I now formally move to strike from the record the will of William C. Squier, the will of Katherine C. Squier, and the two deeds in relation to the Rosevelt property, on the ground that they are entirely immaterial, incompetent and irrelevant and have no bearing upon any of the issues whatever. I may add to my motion that I assume that Your Honor won't pass on this motion until you have passed upon the theory advanced by the appellant, and I make the motion on the record and assume Your Honor will reserve decision.

The Court: You can present your argument on that in your brief.

Mr. Maxson: Mr. Hendrick calls my attention to the fact that we asked the other side for copies of the notes that were referred to in the testimony of Mr. Houghton, and that they protest against supplying them. I would now like to have the Court direct that they furnish copies of those notes that went in evidence in the case.

Mr. Ferris: The notes are in the possession of the temporary administrator. They were available to Mr. Maxson by subpoena on the administrator to produce.

Mr. Maxson: Well, I am sorry about that, but one of my clerks told me he had a conversation with someone in your office—I don't know who it was—and he was told that copy of the notes was refused, and I assumed from that that you did have them.

Mr. Ferris: No, we haven't.

The Court: No, but of course those being admitted in evidence they become a part of the record. If you require them for any proper purpose they must be produced. You must be given access to them if you need them,—either the original notes or copies of them if that is satisfactory.

The Court: A motion was made at the beginning of the hearing of this appeal, on April 9th, for a commission to take the testimony of the appellant in his own behalf. That motion has been taken under advisement until all of the other proofs have been submitted, except perhaps a further examination of William C. Squier who has already been examined *de bene esse* and in open court in the Orphans' Court. It now becomes necessary to pass upon that motion. Of course, it is a rather disagreeable duty for any court to refuse, and especially for a court that is governed by rules of equity, any opportunity for presenting proofs, whether out of the mouth of a witness or otherwise, unless it is clear that the offer should be refused, but that disagreeable duty has to be performed in a great many cases and I feel that I must overrule the motion in this case, for these reasons:

The testator has been dead for approximately two years and a-half. His will has been admitted to probate by the Surrogate of Union County on the 20th of November, 1926. Appeal was taken from that order to the Orphans' Court and there a rather voluminous

record was made upon the examination of witnesses, both in open court and, as I have stated before, depositions taken *de bene esse*. The order of reference to me was made by the Ordinary on the 31st of October, 1928. The application for the fixing of a time for the hearing of the appeal was made to me shortly thereafter, and I think made to me exclusively by counsel for the respondents, and, after considerable urging, this matter was given a much earlier date than would have been given for a hearing ordinarily. The 6th of March and the 7th both,—at any rate the 6th of March the hearing was to have begun, and I am quite sure that two days were allowed at that time.

But that is of no great moment. Shortly before the time fixed, counsel for the appellant presented a great many reasons for a brief continuance and I was very disinclined to grant it. I had, at great personal inconvenience, given the time that had already been allowed to it, and it was only very largely because of a personal appeal made by counsel, besides an appeal on behalf of his client, that I finally again disarranged my calendar and put the matter down for April 9th and April 11th.

Now, it wasn't until April 9th that there was brought to my attention a certificate made by some Parisian physician, setting forth, as nearly as I am able to read his handwriting in the French language, that the appellant has been under his care for a diabetic condition since the 15th of January of this year.

It does seem to me that with this hearing pending counsel ought to have communicated this to their client and I think that the client owed a duty to himself and the court and everybody else involved to get in contact with counsel in a matter of the importance that the disposition of a five million dollar estate is. There has been great delay.

I don't know—it doesn't appear before me when this man went abroad but he must have gone there last summer. I find that the answer of the respondents to the petition of appeal to this court was filed in August, 1928. I assume that he left not much before that time, because it does appear before me that he was present in the Orphans' Court and remained present throughout the taking of proofs in that tribunal.

Now, there are a good many reasons why I do not think I ought to hold this matter up. As has been pointed out, there is quite a class of small beneficiaries—old servants, people who must be in need of this money in their old age as partial compensation, or in any other way that it might be considered; and, in the second place, the appellant could have been examined in the court below. At least, an offer of his testimony could have been made. That was not done. This man doesn't stand in the position of an ordinary witness; he is an interested party. He ought to have communicated the fact of his illness to counsel so that application could have been made promptly to have taken his testimony if it was thought advisable.

In the next place, there is no assurance before me that it would be possible to take his deposition even if that expensive trip were authorized. And, in the next place, I have no information whatever as to what he will testify. If there was anything in the case that he could testify to that would shed any light on the issues presented, I suppose it would have been forcibly brought to the attention of the court. I can understand in some instances—not in this—but I can understand in some cases why an ordinary witness not a party to the proceeding might be subject to influences where counsel would preferably not wish to expose his testimony to the other side, but certainly nobody could tamper with this appellant himself.

Now, the nearest case that I know to this is the case of Schlessinger v. Noonan, 26 Ill. App., 525. In that case it was said with great force, that where a continuance is sought for the purpose of producing the testimony of a party it must be scrutinized much more carefully than a witness over whom an applicant has no control because of his being beyond the reach of process, and it was there held that it was positive negligence upon the part of the man to go away and seek his health at a considerable distance. And so with this man Squier; when he knew at the time he left that there might be a trial in the autumn and didn't know when it might be reached. It seems to me that this is on all fours. Here is a man who is *sui juris,* who takes a solemn appeal,

knows that he is interfering with the administration of what to me is a very large estate, knows that there are innumerable people interested with himself—not the only one concerned in the determination of the appeal—and then when the time comes for his testimony he allows himself to get into a position so that it will be impossible for him to be heard.

I don't see what this man could possibly develop by his testimony that would be of any assistance in the issue raised here. If he knew anything about the mental condition of his uncle, he knew it when it was heard in the Orphans' Court. If it relates to the real ground upon which this appeal appears to be based, namely, undue influence, or on the theory of non-exercise of the power given to Katherine by the will of her husband, William, then I don't see how it would be of any very great value. Correspondence has been admitted in the case that she had not, in terms, a very warm affection for the appellant, and just what would have gone on between the decedent and Mr. Houghton I don't think would have been promulgated by anyone during the testator's lifetime.

With these views, I very reluctatnly feel that I ought to deny the motion for a commission, notwithstanding the incidental fact that it will deprive some of the counsel of a delightful trip abroad.

Mr. Maxson: Your Honor, we feel that it is very essential to our case, and rather than to be precluded entirely we would have no ob-

jection to the payment of these specific legacies mentioned by Your Honor. There can't be more than a little further delay, and I feel that Your Honor is under some misapprehension about the situation. This man had his reservation to come back here when he had this attack of gangrene,—a later symptom of this diabetic condition. We are willing to waive the payment of those legacies in order to get his testimony, and, of course, in the first instance, his reservation was on the steamship Olympic to come over here. He had it when this gangrene condition arose. Now, a man may have diabetes and have it for a long time, as Your Honor knows, and live with it, but when gangrene occurs it indicates a serious condition. And Mr. Hendrick and I talked the matter over very carefully and we made up our mind that we didn't want to take responsibility of having him come here, in view of what we heard in France. But we wanted him to come here and he wanted very much to come and give his testimony with respect to what happened at the time of his uncle's Will, which is exceedingly important, as to what he meant and what he said.

The Court: You only cover two of the many objections that I have mentioned for allowing this commission.

Mr. Maxson: The reason that we didn't put this testimony in in the court below is, as I think this record discloses, the judge in the court below didn't see this case as we see it, at all.

The Court: But he certainly would have permitted you to develop completely the testimony of your client as to the will of the grandmother.

Mr. Maxson: I doubt it. He wouldn't permit us to go into it or put in the will.

The Court: He would have allowed your client to testify fully as to his relations.

Mr. Maxson: But the basis of it had no importance without the will—if we weren't allowed to put the will in.

The Court: But you have the will in now.

Mr. Maxson: And now we haven't his testimony. If you have examined that record, it shows that the case, as Your Honor can see, without being concluded. We stopped in the case there because we saw we weren't getting anywhere, and we knew that we could prove our case *de novo*. Now, what was the use of going on and taking the time of the court in putting in additional testimony when it was quite evident from some of the statements that were made were clearly against us. I saw one of them in the record yesterday where he practically overruled our whole theory of the case —ruled it out.

Now, of course, if Your Honor would permit us to try to get the appellant over here and take his testimony, that would be all right. But if he dies in the meantime we couldn't get it and there would be no way of our meeting the situation. We couldn't meet it on appeal.

The Court: If he dies, no.

Mr. Maxson: Well, we can if he doesn't die. What is the court going to do about it? They are not going to set aside the decree of this court and give us a decree. It is more or less a discretionary matter with your Honor to give us this opportunity to put in our complete case.

The Court: I realize that and I am sorry to do it, but I believe that unless stringent methods are used this case will never be concluded.

Mr. Maxson: I say to your Honor in all sincerity, as a member of this bar, that we haven't any intention of delaying this case and never have had. We have nothing to gain by it, but we have something to gain by prosecuting the appeal if your Honor could give us the opportunity to do so.

The Court: Although I understand you are the moving party you have done nothing to hasten this very important matter to your client. The respondents have had to take the elk by the horn.

Mr. Maxson: We have acquiesced. Your Honor advanced this case at least a year on the calendar, from what I think I know about your Honor's engagements. If we had gone along in the regular course the case wouldn't have been heard until a year from the date it was set down. Why should these parties be heard to complain? It isn't as if they were poor people needing this money. There isn't one of them except these beneficiaries who need this money. The estate is in safe hands and nobody is losing anything, and this is a very

serious situation for our client, and he is one of the members of the family. It isn't as if he were an outsider trying to come in here and get something.

The Court: No, but as an interested party he hasn't acted with discretion.

Mr. Maxson: We expected him to be here. As I have said to your Honor, he had his reservation to be here and expected to be here when he had this attack. Now, we might have properly come before your Honor and moved for an adjournment, but the way your Honor has taken this testimony, giving us such time as you could, we went on and took such testimony as we could and went along as fast as we could until we reached the point where we felt that we needed his testimony, and, as I say, it is with your Honor a discretionary matter.

The Court: Sound discretion. It is not supposed to be a capricious discretion but based upon sound, legal reasons.

Mr. Maxson: Undoubtedly; but I don't think the Court of Errors will interfere with your Honor's discretion in this matter. I think they will allow us the use of this testimony, whatever it may be.

The Court: Well, I have examined the authorities, and I judge from what I have read of the cases if I allowed a commission they would say that I didn't use discretion, because I don't see any reason in the world why this man, smitten three months ago——

Mr. Maxson: But he wasn't smitten to the extent that he couldn't come here three months ago, may it please the court. He didn't have gangrene three months ago. Now, you may have diabetes and have it for your lifetime and be able to transact your regular business, but when you have an attack of gangrene, that indicates a very advanced stage of the disease. We had no notice of it until just before this case was to go on, and the reason we didn't come in with the doctor's certificate and move for a continuance then was as I have stated.

The Court: What assurance can you give me if you went there next week you could examine him?

Mr. Maxson: He isn't in the sanitarium, but he is ill to the extent that the doctor says he shouldn't come over here, as the certificate indicates. Now, are we to take the responsibility of forcing him to come over here and have him lose his life?

The Court: I think you could cable him and see if he could be examined.

Mr. Maxson: We have no doubt about that.

The Court: I don't know what you may have before you.

Mr. Maxson: We wouldn't go over there unless we knew that we could take his testimony. We could cable him and he might be dead when we got there, but we wouldn't go over there unless we had made arrangements to take his testimony when we arrived. Now, we are willing to make any concession we can without

yielding our position in the case, to get this testimony, and it isn't because we want the trip over there.

The Court: I hope you don't take that seriously. That was entirely for the benefit of Mr. Brogan who confidentially said to me last week, "If you do order that commission is there any way I can be one of the party". No, Mr. Maxson, I am convinced that this man ought to have been produced, or the matter developed very much sooner than it was, and I think that this whole litigation ought not to go on any longer, and it is outrageous, for the reasons I indicated, that the testimony you wish was not in some way produced if it is as important as you think it is.

Mr. Maxson: We feel that he can give the most important testimony in the case, as a member of the family; in fact, we wanted him to testify in the court below and the reason we didn't put him on were those which I have given. We have the privilege to come here and move your Honor to try this case *de novo,* and that is what we have done.

The Court: Well, I am going to discourage it as a waste of time. I don't think this court ought to be called upon to hear these matters *de novo,* and I have never heard, personally, of a case where it was heard. It is a dreadful waste of time to take an appeal from the Orphans' Court and then hear the testimony over again here.

Mr. Maxson: We did it in the Cox Case in Newark, and we tried the Barnet case *de novo* in the last two or three years in Essex County.

The Court: But I only said that I have never known of such a case. I know that Vice-Chancellor Stevenson and Vice-Chancellor Pitney discouraged the taking of testimony except in the Prerogative Court.

Mr. Maxson: I think it is a matter entirely within your Honor's discretion. In both of those cases I mention I happened to be counsel, and we put the same witnesses on the stand that we had in the court below.

The Court: Well, I won't change my attitude, Mr. Maxson. I feel, for the reasons I have given, I ought to end this litigation as quickly as possible, and I will decide the petitioner's appeal on the proofs now before me. It now remains to be determined whether you want to argue this orally or by briefs.

Mr. Maxson: Well, we feel the case is important enough to submit briefs.

The Court: I think that would be more helpful to me.

* * * * * * * *

Mr. Maxson: Before we conclude, I want to again ask Your Honor's permission to bring Mr. Squier back here and take the testimony here. Mr. Will. Squier is on the high seas, coming over here. And, by the way, he had reservations to come back on the Olympic, too. Mr. Houghton was over there and he knows about it.

Mr. Ferris: Lest some inference may be drawn from that, I want to say that Mr. Houghton accompanied his wife—merely took her over there for a specific purpose.

Mr. Maxson: We might bring our client back and take his testimony before a Special Master or before Your Honor. We are entitled to do that.

The Court: I don't think so, because I think it is only for delay, and I can't believe that this man can be able to give us any light upon the question to be resolved at all. The more I see of this world the more I am convinced that litigation ought to be closed up once and for all. When it is dragged out, witnesses disappear and die and evidence fades from everybody's memory and to take up those old dead things is most unsatisfactory, and I don't think it is ever properly disposed of.

Mr. Maxson: Well, I make the application. I can't say more than I have.

The Court: You say he is coming back. You don't know that you can bring him back.

Mr. Maxson: We will tell him to come, and of course if he can't come we can't take his testimony.

The Court: No, I think I ought to decide that this man ought to have been here. He ought not to have gone to Paris at a time he knew the trial was to be had in which he claimed an interest; and, in the second place, in the time that has elapsed if it could have been brought to my attention promptly of course I would have made some arrangement so that his testimony could have been produced.

Mr. Maxson: I brought it to Your Honor's attention as soon as we had the certificate.

The Court: I am not blaming you; I am blaming this man who has evidently disregarded his duty to remain here and who is trying to hold up the decree of this court.

Mr. Maxson: He had his reservations, Your Honor, to come here in time for this trial when he was taken sick? Does Your Honor question that?

The Court: You have told me that, and I have no doubt that somebody has told you that he had.

Mr. Maxson: If there is any uncertainty about that we can prove that also.

The Court: That doesn't excuse the delay. I have given you a postponement upon the very eve of the hearing, and if he had made reservation at a timely date we would have known about this and wouldn't have sat the last two days we have spent here.

Mr. Maxson: He was to have been here on the 2nd day of April. Three proponents of the will were over there at the time. Will Squier went over just before the trial started. They were over there.

The Court: You are not seeking a postponement by reason of that?

Mr. Ferris: This case was originally set for December, and then on the application of Mr. Maxson it was adjourned—December 17th and 18th, I think it was.

The Court: No, my mind is definitely made up. Now, in regard to the matter of briefs.

Mr. Maxson: I want it to appear on the record that Your Honor denies our application.

The Court: I deny, as I have already denied, the motion to take the testimony by commission; and I also deny—you mean to hold the proofs open until you can recall him to the United States and take his testimony as I might direct? I deny both applications. I understand you offer to proceed as soon as possible, and to examine him and submit him to cross examination, either before me or in any way I might direct.

Mr. Ferris: With the denial of the two motions made by counsel for the appellant, the respondent is ready to rest their case; they have nothing further to offer.

Mr. Maxson: I want to find out what Your Honor's recollection is about what that doctor's certificate is—whether it is a matter of record.

The Court: It is not in the record.

Mr. Maxson: Then I want to offer the doctor's certificate in evidence.

The Court: Have you a translation of it.

Mr. Maxson: Well, Mr. Hendrick made a translation of it. I understand Mr. Houghton doesn't want that translation accepted.

The Court: Now, what do you say as to the time within which you can have your briefs ready?

Mr. Maxson: We say we want this record before we file a brief, and we think we are entitled to have it, and we think that Your Honor should permit us to have it.

Mr. Ferris: What record?

Mr. Maxson: The record here will show there have been all sorts of differences of opinion. Mr. Ferris said yesterday that he was willing to testify that he urged this testator to make the will. It is most important that we have this record to aid us in the preparation of our brief. I can't charge my mind with all the testimony.

The Court: It was taken in less than two days, 10 hours of hearing, all within a week's time.

Mr. Maxson: Well, that is my position about it. I don't feel that I could write the brief without having the testimony for reference.

* * * * * * * * * * * * * *

The Court: How long would you want in order to submit your briefs after getting the transcript?

Mr. Maxson: Two weeks.

The Court: Well, two weeks after receiving the testimony.

Mr. Ferris: I assume the transcript will be sent to us simultaneously so that we will both get it at the same time.

The Court: Yes.

Mr. Maxson: Will your Honor hear applications for allowances on the settlement of the decree?

The Court: Yes, I can't very well hear it now.

H-61602

LP 1

16 rue Montaigne Paris

Je soussigné, docteur en médecine de la Faculté de Paris certifie que je donne mes soins depuis le 15 janvier 1929 à Monsieur Charles Squier qui a été atteint d'un volumineux anthrax du cou, suivi d'un panaris du médius de la main droite. M. Charles Squier étant atteint de glucosurie, ce panaris s'est transformé en gangrène et il a fallu un traitement très énergique pour éviter l'amputation d'une ou deux phalanges.

J'estime que le diabète dont est atteint M. Squier est très sérieux. Je m'oppose à ce qu'il parte en Amérique avant d'avoir reçu des soins spéciaux dont une saison d'un mois à Vichy aussitôt que possible

23 Mars 1929

Dr Vaillant

Dr Vaillant

23 MARS 1929

Mangard

619

Exhibit P-2

I, WILLIAM C. SQUIER, of the City of Rahway, County of Union and State of New Jersey, being of sound and disposing mind and memory, do make, publish and declare this my last will and testament in manner and form following:

First—I direct the payment of all my debts and funeral expenses together with the cost of a proper stone to mark my burial-place, as soon as conveniently may be after my decease.

Second—I give, devise and bequeath to my wife, Catharine Squier, absolutely, all my household goods, furniture, plate, pictures, library books and furniture, horses, carriages, harness, farm-tools, live stock and other personal property in and about my residence, and also, all interests and rights that I may have acquired in the house and property belonging to my said wife where we now live, at the corner of Grand St. and St. Georges Ave., in said City of Rahway, by reason of any improvements or additions made to the same by me. I do also, give, devise and bequeath to my said wife the real estate owned by me and situate at the corner of Westfield and St. Georges Ave., in said city of Rahway; and also the real estate owned by me at the corner of Church St., and Hamilton St., in said City of Rahway, to her, her heirs and assigns forever.

Third—I do further give, devise and bequeath to my said wife the third part of all the rest and residue of my real estate now owned by me or which may be hereafter acquired by me and wheresoever situate together with the third part of all the rest

and remainder of my personal property, not hereinbefore bequeathed, to be used and enjoyed by her during her natural life, and with full power to dispose of the same in as ample manner as if it were her individual private estate, in and by her last will and testament. In case she shall not make disposition of the real and personal property in this section mentioned and devised, by a proper last will and testament, the same shall revert to and become a part of my residuary estate and be disposed of as hereinafter mentioned.

Fourth: I give, devise and bequeath the remaining two-thirds of all the rest and residue of my estate, real and personal, not hereinbefore disposed of, to my five children, Stuart C. Squier, William C. Squier, Charles B. Squier, Edwin M. Squier and Frederick C. Squier, share and share alike, in manner following.

Of the shares herein given to my said sons Stuart C. Squier, Charles B. Squier, Edwin M. Squier and Frederick C. Squier one-half part thereof shall be paid to them directly and the other half part shall be retained by my executors hereinafter named, in trust, to collect and receive the rents, issues and profits thereof and to pay over, annually, to my four sons the net income arising therefrom. Of the other share, given as aforesaid, to my son William C. Squier, my said executors shall pay to him directly therefrom the sum of ten thousand dollars, in securities, yielding an annual income, and the balance or remainder of his said share they shall hold in trust to collect and receive the rents, issues and profits thereof and to pay to him annually, such

part of the net income thence arising as he may wish to have and may ask for, and the balance of such net income, not used or received by the said William C. Squier, my said executors are directed to invest and hold in trust in the same manner as the principal sum herein given to them as aforesaid for my said son William C. Squier.

Fifth—The several shares of my estate given in trust to my executors by the foregoing fourth paragraph of this, my will, I give, devise and bequeath upon the death of any or all my said five sons to their issue, in each case, in such manner and in such portions as my said five sons may direct in and by their several last wills and testaments; but no devise or bequeath any such shares by any of my said sons otherwise than to their issue shall be valid; and if any such son or sons shall neglect to so devise his share to his issue, such issue shall nevertheless be entitled to the parent's said share and the same shall be paid to them by said executors. In case any or more of my said sons shall die, without leaving issue, then such share or shares held in trust for him or them as aforesaid shall go to their surviving brother or brothers as the case may be, and the issue of any deceased brother or brothers in equal parts. The issue of any such deceased brother to take the parent's share. The meaning hereof being, that said several shares so held in trust shall ultimately go to and belong absolutely to the issue of my said five sons per stirpes and not per capita.

Sixth—Upon the death of my said wife, in case she shall not have disposed of the third part of my

estate given and bequeathed to her by the foregoing third paragraph of this, my will, as hereinbefore provided, then I direct my executors, hereinafter named, to divide such third part into five equal parts or portions and to pay over to each of my said five sons the equal half part of such part or portions directly; and the other half of each of said parts or portions they are to hold in trust in the same manner and for the same purposes as the portions given to them in trust by the fourth paragraph of this, my will aforesaid, and, upon the death of any or all of my said sons, such several parts or portions of this particular part of my estate shall go to their issue in the same manner and form and together with the other trust funds under and in accordance with the foregoing fifth paragraph of this my will as if the same were originally parts of such trust funds.

Seventh: I hereby authorize and empower my said executors and trustees, in their discretion, to retain the trust funds herein given to them invested in the same stocks, bonds or other securities as shall come to their hands and hereafter to sell and dispose of any or all such securities whenever they deem it necessary and for the best interest of my estate so to do, at either public or private sale, and to reinvest the proceeds thereof in such securities as they may deem safe and proper. And for the proper and due administration of my estate, I do hereby give them full power to sell and dispose of any and all real estate, not herein specifically devised, of which I may die seized, at public or private sale and to give good and sufficient deeds of conveyance for the same to the purchaser or purchasers thereof.

Exhibit P-2

Eighth: I hereby nominate and appoint as the executors and trustees of this my last will and testament my four sons Stuart C. Squier, Charles B. Squier, Edwin M. Squier and Frederick C. Squier, or the survivors of them, and direct that no bonds or security shall be required of them for their due execution of this my will and that they shall execute the trusts and perform the duties required thereby without commission or compensation; and I further direct that, in case any difference of opinion shall arise among said executors as to the proper management of my estate, and decision of a majority of them shall be conclusive and no liability shall attach to a dissenting executor or trustee; and further that the number of said such executors and trustees shall never be less than two, any vacancy to be filled according to law upon the request of the beneficiaries of my estate.

In Witness Whereof, I have hereto set my hand and seal, and subscribed my name in the margin of each of the foregoing five pages hereof this second day of October, A. D. nineteen hundred.

WILLIAM C. SQUIER (seal)

Signed, sealed, published and declared by the said William C. Squier, as and for his last will and testament, in the presence of us, who were present at the same time and signed our names hereto as witnesses in the presence of the said testator and of each other and at his request.

Theodore C. English, Elizabeth, N. J.

James P. Kelly, Elizabeth, N. J.

Exhibit P-2

STATE OF NEW JERSEY

UNION COUNTY SURROGATE'S COURT

I, GEORGE H. JOHNSTON, Surrogate and Clerk of the Surrogate's Court of the said County of Union, do hereby certify that I have compared the annexed copy of the Last Will and Testament of WILLIAM C. SQUIER, late of the County and State aforesaid, deceased, which will was admitted to Probate in this Office on September, eleventh, Nineteen Hundred and Six, ... with the record thereof in Book V of Wills, Page 135 &c., now remaining in this office, and have found the same to be a correct transcript thereof, and of the whole of such record.
(seal)

WITNESS my hand and seal of office, this twenty-eighth day of March, in the year of our Lord one thousand nine hundred and twenty-nine.

GEORGE H. JOHNSTON, (*signed*)
Surrogate and Clerk of the Surrogate's Court.

Exhibit P-3

I, CATHERINE C. SQUIER, of the City of Rahway, County of Union and State of New Jersey, being of sound and disposing mind and memory, do make, publish and declare this my last Will and Testament in manner and form following, hereby revoking all other Wills heretofore by me made;

FIRST: I direct the payment of all debts and funeral expenses.

SECOND: I give, devise and bequeath to my son, Edwin M. Squier, and his heirs forever, all my household goods, furniture, plate, pictures, library books, horses, carriages, farm-tools, live stock and all other personal property in about the premises of my residence, at the corner of Grand Street and St. George's Avenue in said City of Rahway, together with the house and lot, barn and other buildings thereon, situated at the corner of Grand Street and St. George's Avenue aforesaid.

THIRD: I give, devise and bequeath to my son, Frederick C. Squier, and his heirs forever, the lot with the hotel and other buildings thereon, situated at the northwest corner of Westfield Avenue and St. George's Avenue, in said City of Rahway, and the lots adjoining thereto and belonging to me; the lot at the northeast corner of Church Street and Hamilton Street, in said City of Rahway; also the property known as the "farm" located in said City of Rahway and bounded in part by St. George's Avenue, Stone Street and Westfield Avenue and lying and being in the Fifth Ward.

Exhibit P-3

FOURTH: I give and bequeath to each of my grand children the sum of Fifteen thousand dollars each, in cash or securities of equal market value. Should any of my grandchildren pre-decease me, leaving him or her issue surviving, such issue to take the share its parent would have taken, if living.

FIFTH: I give and bequeath to my coachman Thomas Clark, of the City of Rahway, the sum of One thousand dollars; to my gardner, Alfred Pearce, of the City of Rahway, the sum of five hundred dollars; to Catherine O'Brien, and Mary Conroy, should they be in my employ at the time of my death, the sum of Two hundred and fifty dollars each; to Delia Mullins, of the City of Rahway, Two hundred and fifty dollars; to Margaret Connors, of the City of Rahway, Two Hundred and fifty dollars.

SIXTH: I give and bequeath to the Rahway Library Association of the City of Rahway, the sum of Twenty-five thousand dollars.

SEVENTH: I give and bequeath to the Rahway Cemetery of the City of Rahway, N. J., the sum of Five thousand ($5000.) Dollars the income derived therefrom to be used for the perpetual care and maintenance of the various burial plots standing in the name of Squier and in the name of Craig in said Cemetery.

EIGHTH: I give and bequeath to my son, Stuart C. Squier, the loving cup given to my husband and myself on the Fiftieth Anniversary of our wedding.

NINTH: All the rest and residue of my estate, real and personal, not heretofore disposed of, I di-

rect my executors hereinafter named to divide into four equal parts; One of said fourth parts I give, devise and bequeath to my son, Stuart C. Squier, and his heirs forever; another of said fourth parts I give, devise and bequeath to my son, Edwin M. Squier, and his heirs forever; a third of said fourth parts I give, devise and bequeath to my son Frederick C. Squier and his heirs forever; the remaining fourth part shall be retained by my said executors, in trust, to collect and receive the rents, issues and profits thereof and to pay over, annually, to my son, William C. Squier, such part of the net income thence arising as he may wish to have and may ask for, and the balance of such net income, not used or received by my said son, William C. Squier, my said executors are directed to invest and hold in trust in the same manner as the principal sum herein given to them as aforesaid for my said son, William C. Squier. Upon the death of my son, William C. Squier, I give devise and bequeath to each of my sons, Stuart C. Squier, Edwin M. Squier and Frederick C. Squier, and their heirs forever, an equal third part of the said fourth part held in trust by my executors as aforesaid.

TENTH: I hereby authorize and empower my said executors and trustees, in their discretion, to retain the trust funds here given to them in the same stocks, bonds or other securities as shall come to their and hereafter to sell and dispose of any or all such securities whenever they deem it necessary and for the best interests of my estate, so to do, at either public or private sale, and to reinvest the proceeds thereof in such securities as they may deem safe and proper. And for the proper and due administration of my estate, I do hereby give them

full power to sell and dispose of any and all real estate, not herein specifically devised, of which I may die seized, at public or private sale and to give good and sufficient deeds of conveyance for the same to the purchaser or purchasers thereof.

ELEVENTH: I hereby nominate and appoint as the executors and trustees of this my last Will and testament my three sons, Stuart C. Squier, Edwin M. Squier, and Frederick C. Squier, or the survivors of them, and direct that no bonds or security shall be required of them for their due execution of this my last will and that they shall execute the trusts and perform the duties required thereby without commissions or compensation; And I further direct that, in case any difference of opinion shall arise among my said executors as to the proper management of my estate, the decision of a majority of them shall be conclusive, and no liability shall attach to a dissenting executor or trustee; And further, that the number of said executors and trustees shall never be less than two, any vacancy to be filled according to law upon the request of the beneficiaries of my estate.

IN WITNESS WHEREOF, I have hereto set my hand and subscribed my name in the margin of each of the foregoing pages hereof, this 30th day of April in the year One Thousand Nine Hundred and Seven.

CATHERINE C. SQUIER (Seal)

In the presence of
DAVID JONES
FRED. C. SHOTWELL

Exhibit P-3

Signed, sealed, declared and published by the said Catherine C. Squier the testator above named, in our presence as her last Will and Testament and presence of each other severally signed our names we, at her request and in her presence and in the presence of each other severally signed our names as subscribing witnesses thereto.

David Jones	Rahway, N. J.
Fred. C. Shotwell	Rahway, N. J.

CODICIL NO. 2

I, Catherine C. Squier, of the City of Rahway, County of Union and State of New Jersey, being of sound and disposing mind and memory, do make, publish and declare this to be a Codicil to my last Will and Testament, signed, sealed, declared and published by me as such on the 30th day of April, 1907, in the manner and form following:

First: I hereby revoke so much of Paragraph Fifth of my said Last Will wherein and whereby I give and bequeath to Catherine O'Brien the sum of Two Hundred and Fifty ($250.) Dollars, she having left my employ.

Second: I give and bequeath to Nora Reilly, should she be in my employ as a servant, at the time of my death, the sum of Two Hundred and Fifty ($250.) Dollars.

Third: I hereby revoke Paragraph Sixth of said Last Will, wherein I give and bequeath to the Rahway Library Association, of the City of Rahway, the sum of Twenty-five thousand ($25,000) Dollars.

Exhibit P-3

FOURTH: I give and bequeath to the Rahway Library Association, of the City of Rahway, the sum of Twenty-five Thousand ($25,000.) Dollars; in trust, nevertheless, for the following uses and purposes: To invest the principal and keep the same invested, and to use the income from such principal for the general uses of the library in such manner as the trustees of the same shall deem for the best interests of said library.

FIFTH: In all other respects I hereby reaffirm and confirm my said Last Will and Testament, dated the 30th day of April, 1907.

IN WITNESS WHEREOF, I have hereunto set my hand and seal and subscribed my name this 17th., day of October, in the year Nineteen Hundred and eleven.

CATHERINE C. SQUIER (L.S.)

In the presence of:

FREDERIC C. SHOTWELL
DAVID JONES.

Signed, sealed, declared and published by the said CATHERINE C. SQUIER, the Testatrix above named, in our presence as a Codicil to her last Will and Testament, and we, at her request and in her presence and in the presence of each other severally signed our names as subscribing witnesses thereto.

FREDERIC C. SHOTWELL	Rahway N. J.
DAVID JONES	Rahway N. J.

Exhibit P-3

CODICIL NO. 2

I, CATHERINE C. SQUIER, of the City of Rahway, State of New Jersey, having made by Last Will and Testament, bearing date the 30th day of April, 1907, do now make, publish and declare this Codicil thereto, which is to be taken as an addition to and a part of my said Last Will and Testament.

WHEREAS, my husband, William C. Squier, did by his last Will and Testament, give, devise and bequeath to me the third part of all the rest and residue of his real estate to be used and enjoyed by me during my natural life with full power to dispose of the same in as ample manner as if it were my individual private estate by my last Will and Testament, and

WHEREAS, I now desire to so dispose of all my interest in and to the real estate situate, lying and being in the Borough of Roosevelt, County of Middlesex and State of New Jersey

FIRST: I hereby give, devise and bequeath to my sons, Stuart C. Squier, Edwin M. Squier and Frederick C. Squier, their heirs and assigns forever, all my interest in and to said real estate situate in the Borough of Roosevelt aforesaid. Should said real estate be conveyed during my life-time, then and in that event such moneys derived from such sale as are set apart for my use and enjoyment during my natural life, I give and bequeath to my said sons, Stuart C. Squier, Edwin M. Squier and Frederick C. Squier, their heirs and assigns forever,

share and share alike; the heirs of any deceased son taking the share which the parent would have taken if he survived me.

And I hereby ratify and confirm my said last Will and Testament and the Codicil thereto, heretofore by me made.

IN WITNESS WHEREOF, I have subscribed my hand and affixed my seal this 21 " day of October, 1912.

CATHERINE C. SQUIER (L.S.)

In the presence of

DAVID JONES
FREDERIC C. SHOTWELL

Signed, Sealed, published and declared by said Catherine C. Squier, as a Codicil to her last Will and Testament, in the presence of us who were present at the same time and signed our names hereto as witness in the presence of said testator, and each of them, and at her request.

DAVID JONES Rahway, N. J.

FREDERIC C. SHOTWELL Rahway, N. J.

Exhibit P-3

STATE OF NEW JERSEY

UNION COUNTY SURROGATE'S COURT

I, GEORGE H. JOHNSON, Surrogate and Clerk of the said County of Union, do hereby certify that I have compared the annexed copy of the Last Will and Testaments and Codicils thereto of CATHERINE C. SQUIER, late of the County and State aforesaid, deceased, which Will and Codicils were admitted to Probate by Order of the Orphans' Court of Union County, on February, twenty-eight, Nineteen Hundred and Thirteen, with the record thereof in Book B, No. 2 of Wills, Page 368 &c., now remaining in this office, and have found the same to be a correct transcript thereof, and of the whole of such record.

WITNESS my hand and seal of office, this first day of April, in the year of our Lord one thousand nine hundred and twenty nine.

GEORGE H. JOHNSTON
Surrogate and Clerk of the
Surrogate's Court.

[SEAL]

Exhibit P-4

CATHERINE C. SQUIER, widow

to

STUART C. SQUIER, *et als.*

THIS INDENTURE MADE the twenty sixth day of April, in the year of our Lord one thousand nine hundred and seven, BETWEEN Catherine C. Squier, widow of the city of Rahway, in the county of Union, and state of New Jersey, party of the first part;

AND Stuart C. Squier of the town of Greenwich, State of Connecticut, and Edwin M. Squier and Frederick C. Squier, both of the City of Rahway, in the county of Union, and state of New Jersey, parties of the second part;

WITNESSETH that the said party of the first part, for and in consideration of the sum of one hundred ($100) dollars, lawful money of the United States of America to her in hand well and truly paid by the said parties 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, hath given, granted bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said parties of the second part and to their heirs and assigns forever,

An undivided one third interest in and to ALL that certain lot tract or parcel of land and premises, hereinafter particularly described, situate, lying

Exhibit P-4

and being in the township of Woodbridge, in the county of Middlesex, and state of New Jersey. BEGINNING at a stake or stone planted by a small worm that puts out of creek called Rum Creek; thence running north fifty degrees east, three chains and two links to a stake or at one planted in a line of meadow belonging now or formerly to William Edgar; thence along the said Edgar line, south forty three degrees and forty five minutes east, seven chains to the Sound; thence along the Sound, to the mouth of said Rum Creek; thence up said Creek to the mouth of said worm; thence up said worm to the place of beginning. Containing eight acres and twenty hundredths of an acre more or less. Being a tract of salt meadow conveyed to John Shotwell, deceased, by George Moore and wife, September 30, 1824, and recorded in the Clerk's office of Middlesex Co. Apl. 19, 1825, in book D. 17 of Deeds, pp. 573 &c. Which said tract was bequeathed to the said Abraham F. Shotwell by the last will and testament of said John Shotwell, his father. Being the same tract of land conveyed to William C. Squier of the city of Rahway, by Abraham F. Shotwell and Mary L. his wife, by deed dated the 10th day of May, 1873, and recorded in the office of the Clerk of the County of Middlesex, on the 15th day of August, 1874, in liber 149 of Deeds, page 145; subject, nevertheless, to a certain right of way granted by deed made by William C. Squier and the party of the first part to the Sound Shore Railroad Company, dated the 31st day of January, 1896, and recorded in the office of the Clerk of the county of Middlesex, on the day of , 1896, in Liber , page .

Exhibit P-4

ALSO an undivided one third interest in and to ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Woodbridge in the county of Middlesex, and state of New Jersey. Being salt marsh or meadow. THE FIRST TRACT: BEGINNING at a stake planted at the southerly corner of lands of Israel Moore; and running thence north forty six degrees fifty minutes east, six hundred and seventy four feet and seven tenths of a foot along the said Moore's line to Rahway River, thence south twenty nine degrees forty two minutes east four hundred and thirty feet and two tenths of a foot along Rahway River; thence south five degrees, fifty three minutes east, three hundred and seventy six feet and two tenths of a foot along Rahway River and Staten Island Sound; thence south forty six degrees, forty six minutes west, five hundred and forty one feet and seven tenths of a foot along Staten Island Sound to lands of Abraham Shotwell; thence north forty five degrees twenty five minutes west, eight hundred and seventy nine feet and thirty five hundredths of a foot along said Shotwell's land and also other land; thence north forty seven degrees fifty eight minutes east, two hundred and thirty four feet and sixty five hundredths of a foot; thence south forty degrees, fifty minutes east, one hundred and fifty five feet and seven tenths of a foot along lands of said Israel Moore to the place of beginning. Containing thirteen acres and forty seven hundredths of an acre of land. Subject nevertheless, to a certain right of way granted by deed made by William C. Squier and the party of the first part to the Sound Shore Railroad Company, dated the 31st day of January 1896,

and recorded in the office of the clerk of the county of Middlesex, on the day of 1896, in Liber page ,

THE SECOND TRACT: BEGINNING at a stake planted on the southeasterly side of Cross Creek; and running thence north thirty nine degrees, forty two minutes east, sixty six feet along said creek; thence north seventy nine degrees, fifty six minutes east, three hundred and ten feet and four tenths of a foot; thence south twenty seven degrees, twenty five minutes east one hundred and twenty two feet and six tenths of a foot; thence south fifty eight degrees, thirteen minutes east, one hundred and seventy three feet and seven tenths of a foot; thence south sixty four degrees one minute west, three hundred and thirty nine feet and seven tenths of a foot; thence north thirty six degrees, thirty minutes west, four hundred and twenty six feet and thirty five hundredths of a foot to the place of beginning. Containing two acres and fifty two hundredths of an acre. The two tracts hereby conveyed, being part of lands conveyed to said John B. Edgar by deed from James A. Edgar and wife, dated March 28th, A.D. 1867, and recorded in Middlesex County Clerk's Office in book 106 of Deeds page 640. The two tracts last above described being the same premises conveyed to William C. Squier by John B. Edgar by deed dated the 21st day of June, 1873, and recorded in the office of the clerk of the county of Middlesex on the 15th day of August, 1874, in Liber 149 of Deeds, page 143.

ALSO an undivided one-third interest in and to ALL that lot, tract or parcel of land and premises hereinafter particularly described, situate lying

Exhibit P-4

being in the township of Woodbridge, in the county of Middlesex and state of New Jersey. BEGINNING at a stake planted by the Deep Creek at the mouth of a small creek below a bridge over said Deep Creek; the said stake being on the north side of said Small Creek and about three chains and a half from said bridge, thence running south forty four degrees west, nine chains and sixty links to the Great Creek, so called; thence along up said creek until it comes to the Deep Creek; thence down Deep Creek to the place of beginning. Containing four and a quarter acres of land more or less. Being a tract of Salt Meadow conveyed to John Shotwell, deceased by Thomas R. Brown & Isaac Moore, Executors of the last will and testament of Francis Everst, Feby. 11, 1829, and recorded in the Clerk's office of Middlesex County, June 13, 1829, in book 21 of deeds, pp. 351, &c. Which said tract was bequeathed to the said Abraham F. Shotwell, by the last will and testament of said John Shotwell his father. Being the same property conveyed to William C. Squier by Abraham F. Shotwell and Mary L. his wife, by deed dated the 10th day of May, 1873, and recorded in the office of the clerk of Middlesex County on the 15th day of August 1874, in Liber 149 of Deeds, page 147. To all of which property above described was bequeathed a one-third interest to the said party of the first part by the last will and testament of said William C. Squier, her husband, probated in the office of the Surrogate of Union County on the 11th day of September, 1906.

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 parties of the second part their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever.

AND the said Catherine C. Squier, doth for herself, her heirs executors, and administrators, covenant and grant to and with the said parties of the second part, their heirs and assigns, that she, the said Catherine C. Squier is the true, lawful and right owner of an undivided one third interest 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 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 except as above described.

AND ALSO that the said party of the first part now hath good right, full power and lawful authority to grant, bargain, sell, and convey the said land and premises in manner aforesaid. AND ALSO that Catherine C. Squier will warrant, secure and forever defned the said land and premises unto

Exhibit P-4

the said parties of the second part their heirs and assigns forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of an from all manner of encumbrance whatsoever.

IN WITNESS WHEREOF, the said party of the first part hath hereunto set their hands and seals the day and year first above written.

CATHERINE C. SQUIER [L. S.]

Signed, sealed and delivered
in the presence of
AUGUSTUS S. HOUGHTON.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

BE IT REMEMBERED that on this 27th day of April, in the year one thousand Nine hundred and seven, before me, a Notary Public in and for the county of New York, personally appeared Augustus S. Houghton, the subscribing witness to the foregoing instrument with whom I am personally acquainted, who being by me duly sworn, did depose and say that he resided in the borough of Manhattan, County and State of New York; that he knows Catherine C. Squier, the individual described in, and who executed the foregoing instrument; that he was present and saw her sign, seal, and deliver the same as her voluntary act and deed, and that he said witness, thereupon subscribed his name as witness thereto.

WOOLSEY A. SHEPARD,
Notary Public,
New York Ctunty.

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STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

I, Peter J. Dooling, Clerk of the County of New York, and also Clerk of the Supreme Court for the said county the same being a Court of Record, DO HEREBY CERTIFY that Woolsey A. Shepard whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment, a Notary Public in and for said County, duly commissioned and sworn, and authorized by the laws of said state, to take acknowledgments and proofs of deeds or conveyances for land, tenements or hereditaments in said state of New York. AND Further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the said Court and County 27 day of Apr. 1907.
[SEAL]

PETER J. DOOLING, Clerk.

Received and Recorded May 4,
1907, at 8:00 A.M.

JOHN H. CONGER, Clerk.

Exhibit P-4

MIDDLESEX COUNTY CLERK'S OFFICE

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } SS.:

I, F. WILLIAM HILKER, Clerk of the County of Middlesex, do hereby certify that the foregoing is a true and correct copy of the record of a certain deed made by Catherine C. Squier, widow, to Stuart C. Squier, *et als.* and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book 396 of Deeds for said County on pages 203.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 20th day of January A.D. 1928.

F. WM. HILKER,
Clerk.

[SEAL]

Exhibit P-5

STUART C. SQUIER, *et als.*

to

INTERNATIONAL AGRICULTURAL CORPORATION
(A corporation)

This Indenture, made the 19th day of October in the year of Our Lord one thousand nine hundred and twelve, between Stuart C. Squier of the Town of Greenwich, State of Connecticut, individually and as Executor and Trustee under the last will and testament of William C. Squier, deceased, and as Trustee for William C. Squier, Caroline B. Squier, his wife, Edwin M. Squier (unmarried) of the City of Rahway, State of New Jersey, individually and as Executor and trustee under the last will and testament of William C. Squier, deceased and as Trustee for William C. Squier, Frederick C. Squier, of the City of Rahway State of New Jersey, individually and as Executor and Trustee under the last will and testament of William C. Squier, deceased, and as trustee for William C. Squier and Minnie S. Squier, his wife and Charles B. Squier (unmarried) of the City, County and State of New York, son of Charles B. Squier, deceased, but who predeceased said William C. Squier, parties of the first part. And International Agricultural Corporation, a corporation, organized under the laws of the State of New York, with its principal office in the City, County and State of New York, party of the second part.

WITNESSETH: That the said parties of the first part for and in consideration of the sum of one

thousand dollars ($1,000.) lawful money of the United States of America, and other valuable considerations to them 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 parties of the first part therewith fully satisfied, contented and paid, have given, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed and by these presents do give grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to its successors and assigns, forever.

All those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Roosevelt, County of Middlesex and State of New Jersey, bounded and described as follows:

Being salt march or meadows: The First Tract: Beginning at a stake planted at the southerly corner of lands of Israel Moore, and running thence North forty six degrees fifty minutes east six hundred and seventy four feet and seven tenths of a foot along said Moore's line to Rahway River; thence south twenty nine degrees forty two minutes east four hundred and thirty feet and two tenths of a foot along Rahway River; thence south five degrees fifty three minutes east three hundred and seventy six feet and two tenths of a foot along Rahway River and Staten Island Sound; thence south forty six degrees forty six minutes west five hundred and forty one feet and seven tenths of a foot along Staten Island Sound to Lands of Abraham Shotwell; thence North forty five degrees,

twenty five minutes west eight hundred and seventy nine feet and thirty five hundredths of a foot, along said Shotwell's lands and also other lands; thence north forty seven degrees fifty eight minutes east two hundred and thirty four feet and sixty five hundredths of a foot; thence south forty degrees fifty minutes east one hundred and fifty five feet and seven tenths of a foot along lands of said Israel Moore to the place of Beginning. Containing thirteen acres and forty seven hundredths of an acre of land, more or less.

The Second Tract: Beginning at a stake planted on the southeasterly side of Cross Creek, and running thence North thirty nine degrees forty two minutes east sixty six feet along said Creek; thence North seventy nine degrees fifty six minutes east three hundred and ten feet and four tenths of a foot; thence south twenty seven degrees twenty five minutes east one hundred and twenty two feet and six tenths of a foot; thence south fifty eight degrees thirteen minutes east one hundred and seventy three feet and seven tenths of a foot; thence south sixty four degrees, one minute west three hundred and thirty nine feet and seven tenths of a foot; thence North thirty six degrees, thirty minutes west four hundred and twenty six feet and thirty five hundredths of a foot to the place of beginning. Containing two acres and fifty two hundredths of an acre more or less.

Being the same premises conveyed by John B. Edgar to William C. Squier by deed bearing date June 21st, 1873, and recorded on August 15th, 1874 in Book 149 of Deeds, in the County of Middlesex on page 143.

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The Third Tract: Also, all the certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Woodbridge in the County of Middlesex and State of New Jersey.

Beginning at a stake or stone planted by a small worm that puts out of a creek called Rum Creek; thence running North fifty degrees east thee chains and two links to a stake or stone planted in a line of Meadow belonging, now or formerly, to William Edgar, thence along the said Edgar line, south forty three degrees and forty five minutes east seven chains to the Sound; thence along the sound to the mouth of said Rum Creek; thence up said Creek to the mouth of said worm; thence up said worm to the place of beginning. Containing eight acres and twenty hundredths of an acre more or less.

Being the same premises conveyed by Abraham F. Shotwell and Mary L., his wife, to William C. Squier, by deed bearing date May 10th, 1873 and recorded on August 15th, 1874, in book 149 of Deeds in the County of Middlesex on page 145.

The fourth tract: And also, all that certain lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Woodbridge, in the County of Middlesex and State of New Jersey.

Beginning at a stake planted by the Deep Creek at the mouth of a small Creek below a bridge over said deep Creek, the said stake being on the north side of said Small Creek and about three chains and a half from said Bridge; thence running south forty four degrees west nine chains and sixty links

to the Great Creek so called; thence along up said Creek until it comes to the Deep Creek; thence down Deep Creek to the place of beginning. Containing four and a quarter acres of land more or less.

Being the same premises conveyed by Abraham F. Shotwell and Mary L. his wife, by deed bearing date May 10th, 1873, to William C. Squier, which deed was recorded on August 15th, 1874, in Book 149 of Deeds in the County of Middlesex on page 147.

Reserving and excepting so much of the property hereinabove described as was heretofore conveyed by William C. Squier and Catherine C. Squier, his wife to The Sound Shore Railroad Company by deed bearing date the 31st day of January 1896.

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 parties 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 its successors and assigns to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever.

And the said Stuart C. Squier, Edwin M. Squier, and Frederick C. Squier, do hereby covenant promise and agree to and with the said party of the second part, its successors and assigns, that they

have not as such executors and trustees aforesaid done or caused suffered or procured to be done any act, matter or thing, whereby the said premises or any part thereof, with the appurtenances are or may be changed, or encumbered in estate, title or otherwise.

And the said Stuart C. Squier, Edwin M. Squier and Frederick C. Squier have executed and delivered this deed, as such executors and trustees by virtue of the power of sale vested in them in the last will and testament of said William C. Squier,

And the said Stuart C. Squier, Edwin M. Squier, Frederick C. Squier, and Charles B. Squier, do for themselves, their heirs, successors executors and administrators covenant and agree to and with the said party of the second part its successors and assigns, that the said Stuart C. Squier, Edwin M. Squier, Frederick C. Squier, and Charles B. Squier are the true, lawful and right owners 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 no encumbered by any 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.

And also, that the said party of the first part now have good right full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid. And also, that said

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Stuart C. Squier, Edwin M. Squier, Frederick C. Squier, and Charles B. Squier will warrant secure and forever defend the said land and premises unto the said International Agricultural Corporation, its successors 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 encumbrance whatsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hereunto set their hands and seals the day and year first above written.

STUART C. SQUIER [L. S]

Signed, Sealed and Delivered
in the presence of

BENJ. S. HELMER as to
S. C. and C. L. B. SQUIER.

Individually and as Executor and Trustee under the last will and Testament of William C. Squier, deceased and as Trustee for William C. Squier.

CAROLINE L. B. SQUIER [L. S.]

HERBERT F. CHRISTIE as to
EDWIN M. SQUIER.

Individually and as Executor and Trustee.

EDWIN M. SQUIER [L. S.]

Exhibit P-5

Individually and as Executor and Trustee under the last will and testament of William C. Squier, deceased, and as Trustee for William C. Squier.

FREDERICK C. SQUIER [L. S.]

FRED C. HYER as to
FREDERICK C. SQUIER.

Individually Executor &C and also as to Minnie S. Squier.

Individually and as Executor and Trustee under the last will and testament of William C. Squier, deceased and as Trustee for William C. Squier.

MINNIE S. SQUIER [L. S.]

HERBERT F. CHRISTIE as to
CHARLES B. SQUIER.

CHARLES B. SQUIER [L. S.]

Exhibit P-5

STATE OF NEW YORK, }
COUNTY OF ULSTER, } ss.:

BE IT REMEMBERED, that on this 19th day of October in the year of Our Lord One Thousand Nine Hundred and twelve, before me, a Notary Public in and for said County personally appeared Stuart C. Squier and Caroline L. B. Squier, his wife, who, I am satisfied are two of the grantors mentioned in the within Indenture and to whom I first made known the contents thereof, and thereupon they severally acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed: And the said Caroline L. B. Squier, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

BENJ. S. HELMER,
Notary Public.

[SEAL]

Exhibit P-5

STATE OF NEW YORK,
ULSTER COUNTY CLERK'S OFFICE, } ss.:

I, John D. Fratsher, Clerk of the County of County of Ulster and also Clerk of the Supreme Court in and for said County, being a Court of Record do hereby certify, that Benj. S. Helmer whose name is subscriber, to the certificate of the proof or acknowledgment of the annexed instrument and thereon written was, at the time of taking such proof and acknowledgement a Notary Public in and for said County dwelling in said County, duly commissioned and sworn and authorized by the laws of said State to take the acknowledgment and proofs of Deeds of conveyances for lands, tenements or hereditaments in said State and county,

And further that I am well acquainted with the handwriting of such Notary Public and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court and County the 21 day of Oct. 1912.

JOHN D. FRATSHER,
Clerk of Ulster County.

[SEAL]

Exhibit P-5

STATE OF NEW JERSEY, }
COUNTY OF UNION, } SS.:

Be it Remembered, That on this 23rd day of October in the year of our Lord One Thousand Nine Hundred and twelve, before me, a Master in Chancery of the State of New Jersey personally appeared Frederick C. Squier and Minnie S. Squier, his wife, who I am satisfied are two of the grantors mentioned in the within Indenture and to whom I first made known the contents thereof, and thereupon they severally acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. And the said Minnie S. Squier being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear threats or compulsion of her said husband.

FRED C. HYER,
Master in Chancery
of New Jersey.

Exhibit P-5

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

Be it remembered, That on this 25th day of October in the year of our Lord One Thousand Nine Hundred and twelve, before me, a Notary Public in and for said county personally appeared Edwin M. Squier, who, I am satisfied is one of the grantors mentioned in the within indenture and to whom I first made known the contents thereof, and thereupon he duly acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed

HERBERT F. CHRISTIE,
Notary Public,
New York County, No. 48.

[SEAL]

Exhibit P-5

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County the same being a Court of Record do hereby certify, that Herbert F. Christie whose name is subscribed to the Certificate of the proof or acknowledgement of the annexed instrument, and thereon written, was at the time of taking such proof and acknowledgment a Notary Public in and for said County duly commissioned and sworn and authorized by the laws of said State to take acknowledgments and proofs of Deeds or conveyances for land tenements, or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the said Court and County the 28 day of Oct. 1912

WM. F. SCHNEIDER,
Clerk.

[SEAL]

Exhibit P-5

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

Be it remembered that on this 28th day of October in the year of Our Lord One Thousand Nine Hundred and twelve before me, A Notary Public in and for said County personally appeared Charles B. Squier who I am satisfied is one of the grantors mentioned in the within Indenture and to whom I first made known the contents thereof, and thereupon he duly acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

HERBERT F. CHRISTIE,
Notary Public,
New York County No. 48.

[SEAL]

Exhibit P-5

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County the same being a Court of Record do hereby certify, that Herbert F. Christie whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was at the time of the taking such proof and acknowledgment, a Notary Public in and for said County duly commissioned and sworn and authorized by the laws of said State to take acknowledgments and proofs of deeds or conveyances for land, tenements, or hereditaments in said State of New York. And further that I am well acquainted with the handwriting of such Notary Public and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County the 28 day of Oct. 1912.

WM. F. SCHNEIDER,
Clerk.

[SEAL]

Received and recorded November 1, 1912 at 8:00 A.M.

BERNARD M. GANNON,
Clerk.

Exhibit P-5

MIDDLESEX COUNTY CLERK'S OFFICE

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } SS.:

I, F. WILLIAM F. HILKER, Clerk of the County of Middlesex, do hereby certify that the foregoing is a true and correct copy of the record of a certain Deed made by Stuart C. Squier, *et als.* to International Agricultural Corp. (A corporation) and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book 511 of Deeds for said County on page 151.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 20th day of January A.D. 1928.

F. WM. HILKER,
Clerk.

[SEAL]

Exhibit P-5

UNION COUNTY ORPHANS' COURT

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	FIRST ACCOUNT.

The first Account of Edward M. Squier and Frederick C. Squier, on behalf of themselves and on behalf of Stuart C. Squier, who by reason of physical and mental infirmities, is unable to join in this account, shows as follows:

AS TO CORPUS

FIRST

These Accountants charge themselves as follows:

1907	To the amount received from Stuart C. Squier, Edwin M. Squier and Frederick C. Squier, as executors of the last Will and Testament of William C. Squier, deceased, as per decree of this Court October 23, 1907		$696,240.01
1912	To amount received in addition thereto as follows:		
Oct. 31	By sale of interest in property at Roosevelt, N. J.	$15,791.61	
	By sale of 11-$1,000 Penn. R. R. 3½% bonds due 10/1/12	$11,000.	
	Appraised at	9,680.	1,320.00
1915			
Oct. 19	By sale of 19-$1,000 Penn. R. R. 3½% bonds due 10/1/15	19,000.	

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1916	Appraised at	16,150.	2,850.00	
Jan. 2	By 2,092½ shares of N. J. Zinc Co. stock representing a 250% stock dividend at 100		209,250.00	
6	"sale of ½ share of N. J. Zinc Co. stock.....	150.		
	Issued at $100 per share..	50.	100.00	
1917				
July 6	"excess payment on satisfaction of Piaget Ave. Mtge..	14.		
1919				
Dec. 31	"conversion of 42 shares of Passaic Zinc. Co. stock on its dissolution for which the trustees received:			
	Cash		$6,647.48	$696,240.01
	1-$5,000 2nd L. L. Conv. 4¼s at 85⅓		4,260.00	
	159 shares Va. Iron Coal & Coke Co. Conv. at 90.....		14,310.00	
	Total		$25,217.48	
	42 shares of Passaic Zinc Co. appraised at 21,000.00		4,217.48	
1920				
June 10	By 585⅘ shs. of N. J. Zinc Co. stock representing a 20% stock dividend at 100		58,580.00	
25	"87 shares of Va. Iron C. & C. Co. preferred stock representing a 50% stock dividend at 100.....		8,700.00	
1922				
Nov. 1	"Cash received from Pt. Morris Land & Improvement Co. representing a 20% distribution of capital assets.		2,268.00	

Exhibit P-5

1923				
Aug. 3	By ditto representing a 15% distribution of capital assets.....		2,010.00	
1924				
Feb. 10	" ditto representing a 15% distribution of capital assets		2,010.00	
Nov. 5	" ditto representing a 30% distribution of capital assets.....		4,020.00	311,543.09
				$1,007,783.10

SECOND.

These Accountants pray allowances as follows:

1922			
Dec. 15	With distribution to cest*in* que trustents	2,680.00	
1925			
Feb. 4	Ferris, Shepard, Joyce & McCoy, expenses of this accounting, chargeable to corpus	10,000.00	12,680.00
	Balance of corpus		$995,103.10

AS TO INCOME

FIRST

These Accountants charge themselves as follows:

1908			
Feb. 13	By N. J. Zinc Co. Dividend.....		$4,185.00
18	" Income estate W. C. Squier.....		258.96
19	" Wittner-Jaffe Mtge. interest.....		491.21
27	" Oppenheim Realty Co. interest....		229.12
Apr. 1	" N. J. Zinc Co. coupons.....		500.00
27	" Builders Cons. Co. Mtge. Int.....		776.15
May 8	" Penn R. R. coupons.....		192.50
11	" N. J. Zinc Co. Dividend.....		4,185.00

Exhibit P-5

June 2	By Penn. R. R. Dividend	1,680.00		
	"Penn R. R. coupons.....	332.50		
	"Bank interest	1,267.34		
Aug. 11	"N. J. Zinc Co., Dividend.....	4,185.00		
12	"Isaacson Bros. Mtge. Interest....	559.62		
17	"Wittner-Jaffe Mtge. Interest	565.38		10
	"Oppenheim Realty Co. Mtge. Interest	738.47		
Sept. 4	"Builders Cons. Co. Mtge. Interest.	865.39		
14	"Oppenheim Realty Co. Mtge. Interest	102.69		
Oct. 5	"N. J. Zinc. Co. coupons.....	500.00		
Nov. 10	"Penn R. R. coupons.....	192.50		
	"N. J. Zinc Co. Dividend.....	4,185.00		
Dec. 1	"Penn R. R. Dividend.....	1,680.00		
	"Bank interest	924.34		
7	"Penn R. R. coupons.....	332.50	28,928.67	20
1909				
Jan. 11	By N. J. Zinc Dividend	$4,185.00		
12	"Passaic Zinc Co. Dividend.....	840.00		
Feb. 10	"N. J. Zinc Co. Dividend.....	4,185.00		
13	"Isaacson Bros. Mtge. Int.....	559.62		
	"Oppenheim Realty Co. Mtge. Int.	623.08		
18	"Wittner-Jaffe Mtge. Int.....	566.54		
Mar. 1	"Fidelity & Security Co. Mtge. Int.	2,971.01		
	"Oppenheim Realty Co. Mtge. Int..	217.57		30
15	"Builders Cons. Co. Mtge. Int.....	462.38		
Apr. 8	"N. J. Zinc Co. coupons.....	500.00		
14	"Builders Cons. Co. Mtge. Int.....	173.07		
May 10	"N. J. Zinc. Co. Dividend.....	4,185.00		
11	"Builders Cons. Co. Mtge. Int.....	235.07		
19	"Penn R. R. Coupons.....	192.50		
June 1	"Bank Interest	190.97		
	"Penn R. R. Dividend	1,680.00		
3	"Penn R. R. Coupons	332.50		

Exhibit P-5

July	22	By Oppenheim Realty Co. Mtge. Int.	836.53	
Aug.	10	" Mandel Mtge. Int.	300.68	
		" N. J. Zinc Co. Dividend	4,185.00	
	18	" Wittner-Jaffe Mtge. Int.	565.39	
Sept.	10	" Builders Cons. Co. Mtge. Int.	865.39	
		" Fidelity & Security Co. Mtge. Int.	2,875.00	
Oct.	5	" N. J. Zinc Co. coupons	500.00	
Nov.	10	" N. J. Zinc Co. dividend	4,185.00	
	30	" Penn R. R. dividend	1,680.00	
Dec.	2	" Penn R. R. coupons	525.00	
		" Bank interest	317.89	38,935.19
1910				
Jan.	7	" Pt. Morris L. & I. Co. Dividend	670.00	
	10	" N. J. Zinc Co. Dividend	8,370.00	
		" Passaic Zinc Co. Dividend	840.00	
	26	" Oppenheim Realty Co. Mtg. Int.	836.53	
Feb.	10	" N. J. Zinc Co. Dividend	4,185.00	
1910				
Feb.	17	By Wittner-Jaffe Mtge. Int.	566.53	
	28	" Penn R. R. Dividend	1,050.00	
Mar.	11	" Fidelity & Security Co. Mtge. Int.	2,875.00	
	29	" Builders Cons. Co. Mtge. Int.	868.56	
	31	" N. J. Zinc Co. coupons	500.00	
May	4	" Penn R. R. coupons	192.50	
	10	" N. J. Zinc Co. dividend	4,185.00	
	31	" Penn R. R. dividend	1,050.00	
June	1	" Bank interest	347.13	
	3	" Penn R. R. coupons	332.50	
July	26	" Oppenheim Realty Co. Mtge. Int.	836.53	
Aug.	10	" N. J. Zinc Co. Dividend	4,185.00	
	18	" Wittner & Jaffe Mtge. Int.	567.69	
	31	" Penn R. R. Dividend	1,050.00	

Exhibit P-5

Sept. 13	By Fidelity & Security Co. Mtge. Int.	2,875.00	
Oct. 13	"Builders Cons. Co. Mtge. Int.....	865.39	
18	"N. J. Zinc Co. coupons.....	500.00	
Nov. 3	"Penn R. R. coupons	192.50	
10	"N. J. Zinc dividend	4,185.00	
30	"Penn R. R. dividend.....	1,050.00	
Dec. 1	"Penn R. R. coupons.....	332.50	
	"Bank interest	265.17	
21	"Fidelity & Security Co. Mtge. Int..	708.34	44,481.87
1911			
Jan. 6	"N. J. Zinc Co. dividend.....	8,370.00	
16	"Passaic Zinc Co. dividend.....	1,260.00	
23	"Oppenheim Realty Co. Mtge. Int...	836.53	
Feb. 10	"N. J. Zinc Co. dividend.....	4,185.00	
15	"Wittner-Jaffe Mtge. Int.....	565.39	
28	"Penn R. R. dividend.....	1,050.00	
Mar. 6	"Fidelity & Sec. Co. Mtge. Int.....	1,625.00	
15	"Fidelity & Sec. Co. Mtge. Int.....	520.85	
23	"Builders Cons. Co. Mtge. Int.....	432.69	
1911			
Mar. 31	By N. J. Zinc Co. coupons.....	500.00	
Apr. 13	"Fidelity & Securitio Co. Mtge. Int.	6.93	
	"Builders Cons. Co. Mtge. Int.....	184.61	
May 4	"Penn R. R. Coupons.....	192.50	
10	"N. J. Zinc Co. dividend.....	4,185.00	
31	"Penn R. R. dividend.....	1,050.00	
June 1	"Bank interest	342.75	
	"Penn R. R. coupons.....	332.50	
2	"Builders Cons. Co. Mtge. Int.....	252.81	
July 18	"Oppenheim Realty Co. Mtge. Int..	836.53	
Aug. 10	"N. J. Zinc Co. dividend.....	4,185.00	
15	"Wittner-Jaffe Mtge. Int.....	565.39	
31	"Penn R. R. dividend.....	1,155.00	

Exhibit P-5

Sept. 6	By Builders Cons. Co. Mtge. Int.....	865.38	
	" Fidelity & Sec. Co. Mtge. Int.....	2,875.00	
Oct. 19	" N. J. Zinc Co. coupons.....	500.00	
31	" Penn R. R. coupons.....	192.50	
Nov. 10	" N. J. Zinc Co. dividend.....	4,185.00	
10 29	" Penn R. R. dividend	1,155.00	
Dec. 6	" Penn R. R. coupons.....	332.50	
	" Bank interest	213.70	42,953.56
1912			
Jan. 9	" Passaic Zinc Co. dividend.....	1,260.00	
10	" N. J. Zinc Co. dividend.....	8,370.00	
16	" Oppenheim Realty Co. Mtge. Int...	836.53	
Feb. 13	" N. J. Zinc Co. dividend.....	4,185.00	
19	" Wittner-Jaffe Mtge. Int.....	565.39	
20 28	" Fidelity & Sec. Co. Mtge. Int.....	2,875.00	
29	" Penn R. R. dividend	1,155.00	
Mar. 8	" Builders Cons. Co. Mtge. Int.....	721.14	
1912			
Apr. 1	By N. J. Zinc Co. coupons.....	500.00	
May 10	" N. J. Zinc Co. dividend.....	4,185.00	
	" Penn R. R. coupons.....	192.50	
31	" Penn R. R. dividend.....	1,155.00	
June 1	" Bank interest.....	320.55	
4	" Penn R. R. coupons.....	332.50	
30 July 10	" N. J. Zinc Co. dividend.....	8,370.00	
19	" Pioget Ave. Mtge. Int.....	716.67	
Aug. 12	" N. J. Zinc Co. dividend.....	4,185.00	
23	" Wittner-Jaffe Mtge. Int.....	566.94	
Sept. 3	" Penn R. R. dividend.....	1,155.00	
12	" Fidelity & Sec. Co. Mtge. Int....	2,875.00	
Oct. 3	" N. J. Zinc Co. coupons.....	500.00	
15	" Builders Cons. Co. Mtge. Int.....	726.18	

Exhibit P-5

Nov. 7	By Penn R. R. coupons.....	192.50		
11	"N. J. Zinc Co. dividend.....	4,185.00		
Dec. 1	"Bank interest	242.33		
2	"Penn R. R. dividend	1,155.00		
10	"N. J. Zinc Co. dividend.....	8,370.00		
19	"Penn R. R. Coupon.....	332.50	60,225.73	10
1913				
Jan. 10	"Builders Cons. Co. Mtge. Int.....	565.25		
	"N. J. Zinc Co. dividend.....	8,370.00		
14	"Passaic Zinc Co. dividend.....	840.00		
16	"Pioget Ave. Mtge. Int.....	1,075.00		
Feb. 10	"N. J. Zinc Co. dividend.....	4,185.00		
13	"Wittner-Jaffe Mtge. Int.....	565.39		
27	"Fidelity & Sec. Co. Mtge. Int.....	2,875.00		
28	"Penn R. R. dividend.....	1,155.00		
Apr. 2	"N. J. Zinc Co. coupons.....	500.00		20
May 12	"N. J. Zinc Co. dividend.....	4,185.00		
June 1	"Bank interest	605.83		
2	"Penn R. R. dividend	1,155.00		
6	"Penn R. R. coupons.....	332.50		
1913				
June 30	By Cassell Mtge. Int.	750.00		
July 10	"N. J. Zinc Co. dividend.....	8,370.00		
Aug. 11	"Pioget Ave. Mtge. Int.....	1,055.25		
	"Wittner-Jaffe Mtge. Int.....	565.39		30
	"N. J. Zinc Co. dividend.....	4,185.00		
Sept. 2	"Penn R. R. dividend.....	1,270.50		
3	"Fidelity & Sec. Co. Mtge. Int.....	2,875.00		
Oct. 10	"N. J. Zinc Co. dividend.....	8,370.00		
21	"N. J. Zinc Co. coupons.....	500.00		
Nov. 10	"N. J. Zinc Co. dividend.....	4,185.00		
28	"Penn R. R. coupons.....	332.50		
Dec. 1	"Penn R. R. dividend.....	1,270.50		
	"Bank interest	560.59	60,698.70	

Exhibit P-5

1914				
Jan.	12	By N. J. Zinc Co. dividend.....	8,370.00	
	16	" Passaic Zinc Co. dividend.....	840.00	
Feb.	11	" N. J. Zinc Co. dividend.....	4,185.00	
		" Wittner-Jaffe Mtge. Int.....	565.39	
		" Cassell Mtge. Int.	754.63	
		" Pioget Ave. Mtge. Int.....	1,074.64	
	17	" Fidelity & Sec. Co. Mtge. Int.....	2,875.00	
Mar.	3	" Penn R. R. dividend.....	1,270.50	
Apr.	3	" N. J. Zinc Co. coupons.....	500.00	
May	13	" Fidelity & Sec. Co. Mtge. Int.....	2,300.00	
	11	" N. J. Zinc Co. dividend.....	4,185.00	
	29	" Penn R. R. dividend.....	1,270.50	
June	1	" Bank interest	371.42	
	12	" Cassell Mtge. Int.....	750.00	
	26	" Penn R. R. coupons.....	332.50	
July	3	" Pioget Ave. Mtge. Int.....	1,044.29	
	10	" N. J. Zinc Co. dividend.....	8,370.00	
	31	" Clement Mtge. Int.	482.13	
Aug.	10	" N. J. Zinc Co. dividend.....	4,185.00	
1914				
Aug.	14	By Wittner-Jaffe Mtge. Int.	565.39	
	31	" Penn R. R. dividend.....	1,270.50	
Oct.	9	" N. J. Zinc Co. dividend.....	4,185.00	
	27	" N. J. Zinc Co. coupons.....	500.00	
Nov.	10	" N. J. Zinc Co. dividend.....	4,185.00	
	19	" Fidelity & Sec. Co. Mtge. Int....	1,875.00	
	30	" Penn R. R. dividend.....	1,270.50	
Dec.	1	" Bank interest	282.21	
	10	" N. J. Zinc Co. dividend.....	4,185.00	
	23	" Penn R. R. coupons.....	332.50	
		" Samel Mtge. Int.	1,000.00	63,377.10

Exhibit P-5

1915				
Jan. 6	By Cassell Mtge. Int.	750.00		
8	"Passaic Zinc. Co. dividend	840.00		
11	"N. J. Zinc Co. dividend	8,370.00		
Feb. 2	"Wittner-Jaffe Mtge. Int.	565.38		
4	"Clement Mtge. Int.	481.25		10
10	"N. J. Zinc Co. dividend	4,185.00		
25	"Pioget Ave. Mtge. Int.	1,052.64		
Mar. 1	"Penn R. R. dividend	1,270.50		
Apr. 20	"N. J. Zinc Co. coupons	500.00		
May 10	"N. J. Zinc Co. dividend	4,185.00		
29	"Fidelity & Sec. Co. Mtge. Int.	1,200.00		
June 1	"Penn R. R. dividend	1,270.50		
	"Bank interest	273.36		
4	"Fidelity & Sec. Co. Mtge. Int.	677.21		
11	"Penn R. R. coupons	332.50		20
18	"Samel Mtge. Int.	1,000.00		
July 7	"Pioget Ave. Mtge. Int.	1,028.93		
15	"N. J. Zinc Co. dividend	25,110.00		
16	"Cassell Mtge. Int.	750.00		
23	"Clement Mtge. Int.	481.25		
Aug. 9	"Wittner-Jaffe Mtge. Int.	475.26		
1915				
Aug. 10	By N. J. Zinc Co. dividend	7,322.50		
31	"Penn R. R. dividend	1,270.50		
Oct. 11	"N. J. Zinc Co. dividend	5,858.00		30
19	"N. J. Zinc Co. coupons	500.00		
	"Penn R. R.	221.73		
Nov. 10	"N. J. Zinc Co. dividend	7,322.50		
20	"Fidelity & Sec. Co. Mtge. Int.	1,875.00		
30	"Penn R. R. dividend	1,270.50		
Dec. 1	"Bank interest	523.38		
14	"Samel Mtge. Int.	1,000.00	81,962.89	

Exhibit P-5

	1916				
	Jan.	7	By Cassell Mtge. Int.	750.00	
		10	" N. J. Zinc Co. dividend	29,290.00	
		17	" Wettner-Jaffe Mtge. Int.	419.40	
		19	" Passaic Zinc Co. dividend	1,260.00	
10	Feb.	1	" Clement Mtge. Int.	483.65	
			" Pioget Ave. Mtge. Int	1,038.84	
		10	" N. J. Zinc Co. dividend	11,716.00	
		29	" Penn R. R. dividend	1,270.50	
	Apr.	1	"N. J. Zinc Co. coupons	500.00	
		10	" N. J. Zinc Co. dividend	29,290.00	
	May	11	" N. J. Zinc Co. dividend	26,361.00	
		31	" Penn R. R. dividend	1,270.50	
	June	1	" Bank interest	1,184.25	
		10	" N. J. Zinc Co. dividend	14,645.00	
20		21	" Samel Mtge. Int.	1,000.00	
	July	6	" Cassell Mtge. Int.	750.00	
		10	" N. J. Zinc Co. dividend	29,290.00	
	Aug.	10	" N. J. Zinc Co. dividend	11,716.00	
		17	" Piogit Ave. Mtge. Int	1,041.95	
		18	" Argo Realty Co. Mtge. Int.	2,875.00	
		23	" Clement Mtge. Int.	200.00	
	1916				
	Sept.	1	By Penn R. R. dividend	1,270.50	
		6	" Clement Mtge. Int.	284.85	
30	Oct.	4	" N. J. Zinc Co. coupons	500.00	
		10	" N. J. Zinc Co. dividend	29,290.00	
	Nov.	10	" N. J. Zinc Co. dividend	26,361.00	
		29	" Penn R. R. dividend	1,270.50	
	Dec.	1	" Bank interest	1,149.54	
		11	" N. J. Zinc Co. dividend	14,645.00	
		21	" Samel Mtge. Int.	1,000.00	242,123.48

Exhibit P-5

1917			
Jan. 10	By N. J. Zinc Co. dividend.....	29,290.00	
16	"Passaic Zinc. Co. dividend.....	1,260.00	
20	"Cassell Mtge. Int.	750.00	
Feb. 13	"N. J. Zinc Co. dividend.....	11,716.00	
19	"Argo Realty Co. Mtge. Int.....	2,875.00	
21	"Piogit Ave. Mtge. Int.....	1,042.26	
28	"Clement Mtge. Int.	484.77	
	"Penn R. R. dividend	1,270.50	
Mar. 12	"N. J. Zinc Co. dividend.....	11,716.00	
Apr. 1	"N. J. Zinc Co. coupons.....	500.00	
10	"N. J. Zinc Co. dividend	11,716.00	
May 10	"N. J. Zinc Co. dividend.....	11,716.00	
31	"Penn R. R. dividend.....	1,270.50	
June 11	"N. J. Zinc Co. dividend	11,716.00	
15	"Samel Mtge. Int.	1,000.00	
	"Bank interest	922.00	
July 6	"Cassell Mtge. Int.	750.00	
	"Piogit Ave. Mtge. Int.	1,269.21	
10	"N. J. Zinc Co. dividend.....	11,716.00	
Aug. 10	"N. J. Zinc Co. dividend.....	11,716.00	
31	"Penn R. R. dividend	1,270.50	
Sept. 1	"Clement Mtge. Int.	484.95	
10	"N. J. Zinc Co. dividend.....	11,716.00	
1917			
Sept. 11	By Argo Realty Co. Mtge. Int.	2,875.00	
Oct. 5	"N. J. Zinc Co. coupons.....	500.00	
Nov. 12	"N. J. Zinc Co. dividend.....	11,716.00	
30	"Penn R. R. dividend	1,270.50	
Dec. 1	"Bank interest	849.81	
14	"Samel Mtge. Int.	1,000.00	156,379.00

Exhibit P-5

1918				
Jan.	8	By Cassell Mtge. Int.	750.00	
	16	" Clement Mtge. Int.	481.25	
	17	" Passaic Zinc Co. dividends	840.00	
Feb.	11	" N. J. Zinc Co. dividends	11,716.00	
	28	" Penn R. R.	1,270.50	
Mar.	21	" Argo Realty Co. Mtge. Int.	2,875.00	
Apr.	8	" Stammelman Mtge. Int.	1,237.50	
May	10	" N. J. Zinc Co. dividend	11,716.00	
	16	" N. J. Zinc Co. coupon	500.00	
	31	" Penn R. R. dividend	1,270.50	
June	10	" N. J. Zinc Co. dividend	11,716.00	
	14	" Samel Mtge. Int.	1,000.00	
		" Bank interest	321.90	
July	5	" Cassell Mtge. Int.	750.00	
	17	" Clement Mtge. Int.	481.25	
Aug.	12	" N. J. Zinc Co. dividend	11,716.00	
Sept.	3	" Penn R. R. dividend	1,270.50	
	19	" Argo Realty Co. Mtge. Int.	2,883.75	
Oct.	4	" Stammelman Mtge. Int.	1,237.50	
	9	" N. J. Zinc Co. coupons	500.00	
Nov.	11	" N. J. Zinc Co. dividend	11,716.00	
Dec.	2	" Penn R. R.	1,270.50	
Dec.	2	" Bank interest	231.20	
	16	" Samel Mtge. Int.	1,000.00	78,751.35
1919				
Jan.	7	By Cassell Mtge. Int.	750.00	
	15	" Clement Mtge. Int.	481.25	
	27	" Passaic Zinc Co. dividend	1,260.00	
Feb.	10	" N. J. Zinc Co. dividend	11,716.00	
	28	" Penn R. R. dividend	1,270.50	
Mar.	28	" Argo Realty Co. Mtge. Int.	2,892.00	
Apr.	4	" N. J. Zinc Co. coupons	500.00	
		" Stammelman Mtge. Int.	1,237.50	
May	12	" N. J. Zinc Co. dividend	11,716.00	

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June 3	By Penn R. R. dividend	1,270.50		
	" Bank interest	249.22		
17	" Samel Mtge. Int.	1,000.00		
July 1	" Cassell Mtge. Int.	750.00		
10	" N. J. Zinc Co. dividend	5,858.00		
18	" Clement Mtge. Int.	481.25		10
Aug. 14	" N. J. Zinc Co. dividend	11,716.00		
Sept. 2	" Penn R. R. dividend	1,270.50		
10	" Argo Realty Co. Mtge. Int	2,882.25		
Oct. 1	" N. J. Zinc Co. coupon	500		
7	" Stammelman Mtge. Int.	1,237.50		
Nov. 10	" N. J. Zinc Co. dividend	11,716.00		
Dec. 1	" Penn R. R. dividend	1,270.50		
	" Bank interest	319.38		
10	" N. J. Zinc Co. dividend	5,858.00		
23	" Samel Mtge. Int.	1,000	79,202.35	20
1920				
Jan. 2	By Cassell Mtge. Int.	750.00		
20	" Clement Mtge. Int.	481.25		
Feb. 10	" N. J. Zinc Co. dividend	11,716.00		
27	" Argo Realty Co. Mtge. Int.	2,875.00		
Mar. 2	"Penn R. R. dividend	1,270.50		
Apr. 9	" Stammelman Mtge. Int.	1,237.50		
May 10	" N. J. Zinc Co. dividend	11,716.00		
1920				
May 11	By N. J. Zinc Co. coupons	500.00		30
20	" Va. I. C. & C. Co. int.	34.44		
	" Va I. C. & C. Co. coupons	100.00		
	" 2nd L. L. Conv. coupons	100.00		
June 2	" Penn R. R. dividend	1,270.50		
	" Bank interest	276.55		
17	" Samel Mtge. Int.	1,000.00		
14	" Cassell Mtge. Int.	750.00		
	" Clement Mtge. Int.	481.25		
27	" Va. I. C. & C. Co. dividend	477.00		

Exhibit P-5

	Aug. 10	By N. J. Zinc Co. dividend.....	14,056.00	
	31	" Argo Realty Co. Mtge. Int.....	2,875.00	
	Sept. 1	" Penn R. R. dividend.....	1,270.50	
	Oct. 13	" Stammelman Mtge. Int.	1,317.50	
	19	" N. J. Zinc Co. coupons.....	500.00	
10	Nov. 10	" N. J. Zinc Co. dividend.....	14,056.00	
	19	" 2nd L. L. Conv. coupon.....	106.25	
	23	" Pt. Morris L. & I. Co. a/c loan....	1,407.00	
		" Pt. Morris L. & I. Co. Int. on loan	168.84	
	30	" Penn R. R. dividend	1,270.50	
	Dec. 2	" Bank interest	316.11	
	16	" Samel Mtge. Int.	1,000.00	73,379.69
	1921			
	Jan. 12	" Cassell Mtge. Int.	750.00	
20		" Va. I. C. & C. Co. rights sold.....	86.90	
		" Pt. Morris L. & I. Int.....	688.10	
		" Pt. Morris L. & I in re-payment of loan	5,293.00	
	21	" N. J. Zinc Co. rights sold.....	176.00	
	25	" Va. I. C. & Co. Co. dividend.....	522.00	
	Feb. 10	" N. J. Zinc Co. dividend.....	7,028.00	
	28	" Penn R. R. Co. dividend.....	1,270.50	
	Mar. 21	" Argo Realty Co. Mtge. Int.....	2,875.00	
		" Clement Mtge. Int.	481.25	
	1921			
30	Apr. 6	By Stammelman Mtge. Int.	1,500.00	
		" N. J. Zinc Co. coupons.....	500.00	
	May 10	" N. J. Zinc Co. dividends.....	7,028.00	
	23	" 2nd L. L. Conv. coupon.....	106.25	
	31	" Penn R. R. dividend.....	847.00	
	June 1	" Bank interest	317.88	
	July 6	" Samel Mtge. Int.	1,002.50	
		" Cassel Mtge. Int.	750.00	
	27	" Va. I. C. & C. Co. dividend.....	522.00	
	Aug. 1	" Clement Mtge. Int.....	525.00	
	10	" N. J. Zinc Co. dividend.....	7,028.00	

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Sept. 1	By Penn R. R. dividend	847.00	
2	"Argo Realty Co. Mtge. Int.....	2,875.00	
Oct. 7	"Stammel*l*man Mtge. Int.	1,500.00	
Nov. 10	"N. J. Zinc Co. dividend	7,028.00	
Dec. 1	"Penn R. R. dividend	847.00	
	"Bank interest	245.32	
2	"N. J. Zinc Co. coupons.....	500.00	
	"2nd L. L. Conv. coupons.....	106.25	
19	"Samel Mtge. Int.	1,000.00	54,245.95
1922			
Jan. 25	"Va. I. C. & C. dividend.....	522.00	
Feb. 9	"Clement Mtge. Int.	1,278.75	
10	"N. J. Zinc. Co. dividend.....	7,028.00	
Mar. 2	"Penn R. R. dividend	847.00	
7	"Argo Realty Co. Mtge. Int.	2,875.00	
Apr. 17	"N. J. Zinc Co. coupons.....	500.00	
25	"Stammelman Mtge. Int.	1,500.00	
May 10	"N. J. Zinc. Co. dividend	7,028.00	
June 1	"Penn R. R. dividend	847.00	
	"Bank interest	186.13	
	"2nd L. L. Conv. coupon.....	106.25	
12	"Samel Mort*ge* Int.	1,000.00	
1922			
July 8	By Va. I. C. & C. Co. dividend pfd..	217.50	
19	"Cassell a/c Mtge. Int.	145.93	
	"Clement Mtge. Int.	525.00	
Aug. 11	"N. J. Zinc Co. dividend.....	7,028.00	
14	"Cassell bal. Mtge. Int.	759.36	
24	"Argo Realty Co. Mtge. Int.....	2,875.00	
31	"Penn R. R. dividend.....	847.00	
Oct. 11	"Stammelman Mtge. Int.	1,500.00	

Exhibit P-5

	Nov. 1	By Pt. Morris L. & I. dist'b. cap.....	2,680.00		
	10	" N. J. Zinc Co. dividend.....	7,028.00		
	28	" N. J. Zinc. Co. coupons	500.00		
		" 2nd L. Loan conv. coupons.....	106.25		
	29	" Penn R. R. dividend	1,270.50		
10	Dec. 12	" Samel Mtge. Int.	1,100.00		
		" Bank interest	213.49	50,514.16	
	1923				
	Jan. 3	" Va. I. C. & C. dividend pfd.....	217.50		
	10	" N. J. Zinc Co. dividend.....	7,028.00		
	24	" Clement Mtge. Int.	525.00		
	Feb. 14	" Cassell Mtge. Int.	905.70		
		" N. J. Zinc Co. dividend	7,028.00		
	28	" Penn R. R. dividend.....	1,270.50		
20	Mar. 4	" Argo Realty Co. Mtge. Int.....	3,450.00		
	Apr. 17	" Stammelman Mtge. Int.	1,500.00		
	May 3	" N. J. Zinc Co. coupons.....	500.00		
		" 2nd L. Loan conv. coupons.....	106.25		
	11	" N. J. Zinc Co.	7,028.00		
	June 1	" Penn R. R. dividend.....	1,270.50		
		" Bank interest	241.67		
	26	" Samel Mtge. Int.	1,100.00		
	July 2	" Va. I. C. & C. dividend pfd.....	217.50		
		" Va. I. C. & C. dividend com.....	348.00		
	11	" N. J. Zinc So.	7,028.00		
30	Aug. 3	" Clement Mtge. Int.	525.00		
	1923				
	Aug. 3	By Cassel Mtge. Int.	904.50		
	13	" N. J. Zinc. Co. dividend	7,028.00		
	Sept. 4	" Penn R. R. dividend.....	1,270.50		
		" Argo Realty Co. Mtge. Int.....	3,450.00		
	Oct. 2	" N. J. Zinc Co. dividend.....	500.00		
	19	" Stammelman Mtge. Int.	1,500.00		

Exhibit P-5

Nov. 3	By N. J. Zinc Co. dividend.....	7,028.00	
15	"2nd L. Loan Bond coupon.....	106.25	
30	"Penn R. R. dividend	1,270.50	
Dec. 13	"Bank interest	298.92	
Dec. 13	"Samel Mtge. Int.	1,100.00	64,746.29
1924			
Jan. 2	"Va. I. C. & C. dividend pfd.....	217.50	
	"Va. I. C. & C. dividend com.....	261.00	
23	"Clement Mtge. Int.	525.00	
	"Cassell Mtge. Int.	900.00	
Feb. 11	"N. J. Zinc. Co. dividend	7,028.00	
19	"Argo Realty Co. Mtge. Int.....	3,450.00	
29	"Penn R. R. dividend	1,270.50	
Apr. 3	"N. J. Zinc Co. coupons.....	500.00	
	"2nd L. Loan conv. coupons.....	106.25	
9	"Stammelman Mtge. Int.	1,375.00	
May 12	"N. J. Zinc Co. dividend.....	7,028.00	
June 2	"Penn R. R. dividend.....	1,270.50	
19	"Samel Mtge. Int.	1,100.00	
	"Bank interest	192,68	
July 2	"Va. I. C. & C. dividend pfd.	217.50	
Aug. 4	"Clement Mtge. Int.	525.00	
11	"N. J. Zinc Co. dividend	7,028.00	
15	"Cassell Mtge. Int.	906.00	
22	"Argo Realty Co. Mtg. Int.....	3,450.00	
Sept. 2	"Penn R. R. dividend.....	1,270.50	
Oct. 10	"N. J. Zinc Co. dividend.....	7,028.00	
	"Stammelman Mtge. Int.	1,375.00	
15	"N. J. Zinc Co. coupons.....	500.00	
1924			
Nov. 10	By N. J. Zinc Co. dividend.....	7,028.00	
21	"2nd L. Loan conv. coupon.....	106.25	

Exhibit P-5

Dec.	1	By Penn. R. R. dividend	1,270.50	
	15	" Samel Mtge. Int.	1,100.00	
		" Bank interest	220.90	57,250.08
1925				
Jan.	2	" Va. I. C. & C. Co. dividend	217.50	
	23	" Clement Mtge. Int.	525.00	
Feb.	4	" E. M. Squier, loan	12,500.00	13,242.50
		Total receipts		$1,291,398.56

SECOND

These accountants pray allowance as follows:

1908				
June	10	To Shepard & Houghton, legal services	$200.00	
		" S. C. Squier	4,546.28	
		" E. M. Squier	4,546.27	
		" F. C. Squier	4,546.27	
Dec	1	" Shepard & Houghton, legal services	308.27	
	9	" S. C. Squier	4,532.76	
		" E. M. Squier	4,532.76	
		" F. C. Squier	4,532.76	
	23	" Borough of Roosevelt 1908 taxes	15.03	27,760.40
1909				
June	8	" S. C. Squier	7,085.02	
		" E. M. Squier	7,085.03	
		" F. C. Squier	7,085.03	
		" Shepard & Houghton, legal services	300.00	
Dec.	9	" Shepard & Houghton, legal services	300.65	
		" S. C. Squier	6,082.58	
		" E. M. Squier	6,082.58	
		" F. C. Squier	6,082.57	
	16	" Borough of Roosevelt taxes 1909	26.10	40,129.56

Exhibit P-5

1910			
June 1	To Shepard & Houghton, legal services	300.80	
21	" S. C. Squier	8,736.45	
	" E. M. Squier	8,736.45	
	" F. C. Squier	8,736.45	
Nov. 21	" Borough of Roosevelt taxes 1910..	24.15	
Dec. 1	" Shepard & Houghton, legal services	300.00	
15	" S. C. Squier	5,637.71	
	" E. M. Squier	5,637.71	
	" F. C. Squier	5,637.71	43,747.43
1911			
June 1	To Shepard & Houghton, legal services	303.16	
19	" S. C. Squier	8,570.81	
	" E. M. Squier	8,570.81	
	" F. C. Squier	8,570.81	
Dec. 1	" Shepard & Houghton, legal services	300.80	
7	" Borough of Roosevelt, taxes 1911..	27.00	26,343.39
1912			
Jan. 3	" S. C. Squier	7,695.91	
	" E. M. Squier	7,695.92	
	" F. C. Squier	7,695.91	
June 2	" Shepard & Houghton, legal services	302.75	
13	" S. C. Squier	6,749.71	
	" E. M. Squier	6,749.71	
	" F. C. Squier	6,749.71	
Dec. 2	" Shepard & Houghton, legal services	300.75	
11	" S. C. Squier	11,090.45	
	" E. M. Squier	11,090.46	
	" F. C. Squier	11,090.46	77,211.74

Exhibit P-5

1913				
June	2	By Shepard & Houghton, legal services	302.85	
	13	" S. C. Squier	8,812.87	
		" E. M. Squier	8,812.88	
		" F. C. Squier	8,812.87	
Dec.	8	" Benjamin, Shepard H. & T. legal serv.	301.10	
	11	" S. C. Squier	11,329.54	
		" E. M. Squier	11,329.55	
		" F. C. Squier	11,329.54	61,031.20
1914				
June	1	" Benjamin, Shepard, H. & T., legal serv.	304.80	
	10	" S. C. Squier	9,419.09	
		" E. M. Squier	9,419.09	
		" F. C. Squier	9,419.10	
	29	" Chas. Duffy, collector income tax..	69.51	
Dec.	1	" Benjamin Shepard, H. & T., legal serv.	303.85	
1914				
Dec.	11	To S. C. Squier	11,036.38	
		" E. M. Squier	11,036.39	
		" F. C. Squier	11,036.39	62,044.60
1915				
June	1	" Benjamin, Shepjard, H. & T., legal serv.	302.20	
	11	" S. C. Squier	8,883.71	
		" E. M. Squier	8,883.72	
		" F. C. Squier	8,883.72	
	25	" Chas. Duffy, collector income tax..	132.63	

Exhibit P-5

Dec. 1	To Benjamin, Shepard, H. & T., leval serv.	312.10		
9	" S. C. Squier	18,299.10		
	" E. M. Squier	18,299.11		
	" F. C. Squier	18,299.11	82,295.39	
1916				
June 1	" Thomas & Houghton, legal services	305.20		
15	" S. C. Squier	40,057.98		
	" E. M. Squier	40,057.98		
	" F. C. Squier	40,057.98		
23	" Chas. Duffy, Collector income tax.	113.88		
Dec. 1	" Thomas & Houghton, legal services	302.05		
8	" S. C. Squier	35,527.80		
	" E. M. Squier	35,527.80		
	" F. C. Squier	35,527.81	227,478.48	
1917				
June 1	" Thomas & Houghton, legal services	303.75		
5	" Chas. V. Duffy, Collector income tax	114.56		
25	" S. C. Squier	38,157.24		
	" E. M. Squier	38,157.24		
	" F. C. Squier	38,157.24		
Dec. 1	" Thomas & Houghton, legal services	304.75		
27	" S. C. Squier	18,943.07		
	" E. M. Squier	18,943.08		
	" F. C. Squier	18,943.07	172,024.00	
1918				
June 1	To Thomas & Houghton, legal services	302.80		
21	" S. C. Squier	15,130.61		
	" E. M. Squier	15,130.62		
	" F. C. Squier	15,130.62		
Oct. 3	" Pt. Morris L. & I. Co. loan	6,700.00		

Exhibit P-5

Dec.	2	To Thomas & Houghton, legal services	301.75	
	26	" S. C. Squier	8,684.98	
		" E. M. Squier	8,684.99	
		" F. C. Squier	8,684.98	78,751.35
	1919			
June	4	" Thomas & Houghton, legal services	381.75	
	25	" S. C. Squier	11,320.40	
		" E. M. Squier	11,320.41	
		" F. C. Squier	11,320.41	
Dec.	3	" Thomas & Houghton, legal services	377.90	
	24	" S. C. Squier	14,827.16	
		" E. M. Squier	14,827.16	
		" F. C. Squier	14,827.16	79,202.35
	1920			
June	3	" Thomas & Houghton, legal services	383.70	
	25	" S. C. Squier	10,981.34	
		" E. M. Squier	10,981.35	
		" F. C. Squier	10,981.35	
Dec.	1	" Thomas & Houghton, legal services	376.50	
	27	" S. C. Squier	13,225.15	
		" E. M. Squier	13,225.15	
		" F. C. Squier	13,225.15	73,379.69
	1921			
June	2	" Thomas & Houghton, legal services	382.45	
	29	" S. C. Squier	9,695.81	
		" E. M. Squier	9,695.81	
		" F. C. Squier	9,695.81	
Dec.	1	" Thomas & Houghton, legal services	375.56	
	14	" S. C. Squier	7,800.17	

Exhibit P-5

1921				
Dec. 14	To E. M. Squier.....	7,800.17		
	" F. C. Squier	7,800.17		
20	" S. C. Squier	333.33		
	" E. M. Squier	333.34		
	" F. C. Squier	333.33	54,245.95	10
1922				
June 6	" Thomas & Houghton, services (Legal)	375.00		
July 20	" S. C. Squier	7,781.05		
	" E. M. Squier	7,781.04		
	" F. C. Squier	7,781.04		
Dec. 4	" Thomas & Houghton, Legal Serv..	379.36		
28	" S. C. Squier	8,805.55		
	" E. M. Squier	8,805.56		
	" F. C. Squier	8,805.56	50,514.16	20
1923				
June 1	" Thomas & Houghton, legal serv..	375.00		
July 6	" S. C. Squier	10,598.71		
	" E. M. Squier	10,598.71		
	" F. C. Squier	10,598.70		
Dec. 3	" Thomas & Houghton, legal serv..	398.90		
15	" S. C. Squier	11,395.42		
	" E. M. Squier	11,395.42		
	" F. C. Squier	11,395.43	66,756.29	30
1924				
June 4	" Thomas & Houghton, legal serv..	375.00		
30	" S. C. Squier	7,548.92		
	" E. M. Squier	7,548.92		
	" F. C. Squier	7,548.91		

Exhibit P-5

Dec.	1	To Thomas, Houghton & Shepard, legal services	377.33	
	15	"S. C. Squier	10,613.66	
		"E. M. Squier	10,613.67	
		"F. C. Squier	10,613.67	55,240.08
1925				
Feb.	4	"Ferris, Shepard, Joye & McCoy, expenses of this accounting, chargeable to corpus		12,790.50
		Total disbursements		$1,290,946.56

1925
Feb.

These accountants charge themselves as follows:

With Corpus	$995,103.10
With Income	452.00

These accountants pray allowance as follows:

Fees of Surrogate on First Accounting:
Balance of Income
Balance of Corpus

Balance in hands of trustees as per Schedule "A" hereto annexed.

Exhibit P-5

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

EDWIN M. SQUIER and FREDERICK C. SQUIER, two of the Trustees above named, being duly sworn, say that the above account is in all things just and true, both as to the charge and discharge thereof, according to the best of their memory and belief.

EDWIN M. SQUIER

FREDERICK C. SQUIER

Subscribed and sworn *beofre* me this 4th day of February, 1925.

[SEAL] GEO. H. COREY

Commissioner of Deeds for the State of New Jersey in New York with Offices at No. 56 Wall Street, New York, N. Y.

The above account having been placed on the files of my office on the fifth day of February, 1925, and being by me audited and stated, is now reported for settlement.

Dated, March 20, 1925.

CHARLES D. CODDING,
Surrogate.

Exhibit P-5

SCHEDULE "A".

1694 shs.	Penn. R. R. Co. at average price of $52.644 plus per share	$89,180.00
3514 "	N. J. Zinc Co. at average price of $159.547 plus per share	560,650.00
134 "	Pt. Morris Land & Improvement Co. at $300 per share	40,200.00
159 "	Va. Iron, Coal & Coke Co. common at $90 per share	14,310.00
87 "	Va. Iron, Coal & Coke Co. pfd. at $100 per share	
	Bond and Mortgage of E. E. Cassell dated December 31, 1912 at 5% extended to Dec. 31, 1927 at 6% covering Buildings and lot at 362-4 Clinton Ave., Newark, N. J.	30,000.00
	Bond and Mortgage of Arthur E. Clement, dated January 13, 1914 at 5% extended to January 13, 1927 at 6% covering Building and lot 98-100 Broadway, Paterson, N. J.	17,500.00
	Bond and Mortgage of Morris Samel dated June 11, 1914 at 5% extended to June 11, 1927 at 5½% covering Building and lot at 466 Clinton Avenue, Newark, N. J.	40,000.00
	Bond and Mortgage of Argo Realty Co. dated February 18, 1916 at 5%; extended to February 18, 1926 at 6% covering premises at S. E. Corner of Main St. and Washington Place, Passaic, N. J.	115,000.00
	Bond and Mortgage of Joseph Stammelman, dated October 5, 1917 at 5½% increased June 25, 1920 by $5,000, extended to October 5, 1926, at 5½% covering Building and lot on Glenridge Ave., near Fullerton Ave., Montclair, N. J.	50,000.00
25-$1,000	Bonds N. J. Zinc Co. at 4%	25,000.00
1-$5,000	Bond 2nd Liberty Loan converted 4¼% at $85⅕ per $1,000	4,260.00
	Cash in hand	

Exhibit P-6

UNION COUNTY ORPHANS COURT,

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition of Trustees for Discharge of Co-Trustee. PETITION

To—Orphans' Court of Union County:

The petition of Edwin M. Squier and of Frederick C. Squier, both of Rahway, New Jersey, respectfully shows that:

I. Your petitioners are two of the Trustees named in the Last Will and Testament of William C. Squier, deceased, which said Will was duly proved before and Letters Testamentary duly issued by the Surrogate of Union County on the 11th day of September, 1906.

That your petitioners, together with Stuart C. Squier, of Greenwich, Connecticut, the other Trustee named in said Will of William C. Squier, deceased, have entered upon the duties of their office.

II. That the trust created by the Last Will of said William C. Squier, deceased, is to continue during the lives of the three Cestui Que Trustents therein named; who are your petitioners and the said Stuart C. Squier.

III. That the said Stuart C. Squier is in his eighty-third year and by reason of physical and

mental infirmities is unable further to continue with the duties of Trustee, nor is he able to join in this petition.

IV. That no committee of the person or property of the said Stuart C. Squier has been made by any Court or Judge, and the said Stuart C. Squier resides with his wife, Caroline LaBau Squier, at Greenwich, Connecticut.

V. That your petitioners are about to file in this Court their accounts as Trustees, on behalf of themselves and the said Stuart C. Squier.

VI. That the persons interested in this application are as follows, to wit:

Stuart C. Squier, who resides at Park Avenue, Greenwich, Conn., a son and one of the Cestui Que Trustents;

Edwin M. Squier, who resides at 342 St. George's Avenue, Rahway, N. J., a son, and one of the Cestui Que Trustents;

Frederick C. Squier, who resides at 427 St. Georges' Avenue, Rahway, N. J., a son and one of the Cestui Que Trustents;

Helen S. Keen, who resides at Dublin Road, Greenwich, Conn., a granddaughter and remainderman;

William C. Squier, 3rd, who resides at Field Point Road, Greenwich, Conn., a grandson and remainderman;

Exhibit P-6

Carol S. Houghton, who resides at 136 East 74th Street, New York City, a granddaughter and remainderman;

Katherine S. Montgomery, who resides at Ocean Drive, West, Stamford, Conn., a granddaughter and remainderman;

Elsie S. Edson, who resides at Round Hill Road, Greenwich, Conn., a granddaughter and remainderman;

Hester S. Smiley, who resides at Fenton Brook Farm, Great Barrington, Mass., a granddaughter and remainderman;

Charles B. Squier, who resides at 521 Park Avenue, New York City, a grandson and remainderman;

Marjorie S. Searles, who resides at 443 St. Georges' Avenue, Rahway, New Jersey, a granddaughter and remainderman;

Frederick S. Squier, Jr., who resides at 427 St. Georges' Avenue, Rahway, New Jersey, a grandson and remainderman, all of whom are of full age.

VII. Your petitioners, therefore, pray, on behalf of themselves and of said Stuart C. Squier, that the said Stuart C. Squier may be discharged from the further performance of the duties of his said office as Trustee of the estate aforesaid.

Dated: Rahway, N. J., Feby 4, 1925.

EDWIN M SQUIER

FREDERICK C SQUIER

Exhibit P-6

STATE OF NEW YORK, }
County of New York. } ss.:

Edwin M. Squier and Frederick C. Squier, being duly sworn upon their oaths according to law, depose and say that they are the petitioners in the foregoing petition named, and that the matters and things therein contained are true to the best of their knowledge and belief.

EDWIN M SQUIER

FREDERICK C SQUIER

Subscribed & Sworn to before me at New York City, this 4th day of February 1925.

GEO H COREY

(Seal) Commissioner of Deeds for the State of New Jersey in New York with Offices at No. 51 Wall Street, New York, N. Y.

Exhibit P-6

UNION COUNTY ORPHANS COURT,

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition of Trustees for Discharge of Co-Trustee. WAIVER and CONSENT.

I, CHARLES B. SQUIER, residing at #521 Park Avenue, City, County and State of New York, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a Notice of Application in the above entitled matter, and consent that STUART C. SQUIER, one of the Trustees appointed in and by the aforesaid Last Will of William C. Squier, deceased, be discharged from the further performance of his duties as such Trustee.

Dated: New York, N. Y., January 27th, 1925.

CHARLES B. SQUIER

Exhibit P-6

STATE OF NEW YORK, }
County of New York. } SS.:

BE IT REMEMBERED that on this 27th day of January, A. D., 1925, before me, the Subscriber Lillian Sauer personally appeared CHARLES B. SQUIER, who I am satisfied, is the person named in and who executed the within Waiver and Consent, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

LILLIAN SAUER
LILLIAN SAUER
Notary Public, Bronx County
Bronx Co. Clerk's No. 302, Register's No. 2621D
Certificate filed in New York County
Commission expires March 30, 1926

Exhibit P-6

State of New York, }
County of New York, } ss.:

No. 21024 Series B

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county, DO HEREBY CERTIFY, That said Court is a Court of Record, having by law a seal; that Lillian Sauer whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed Instrument was at the time of taking the same a NOTARY PUBLIC acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Bronx with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York, to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal of said Court at the City of New York, in the County of New York, this 3 day of Feb 1925

JAMES A DONEGAN
Clerk.

(Seal)

Exhibit P-6

UNION COUNTY ORPHANS COURT,

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition of Trustees for Discharge of Co-Trustee. WAIVER AND CONSENT.

I, MARJORIE S. SEARLES, residing at #443 St. Georges' Avenue, City of Rahway, County of Union, State of New Jersey, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a Notice of Application in the above entitled matter, and consent that STUART C. SQUIER, one of the Trustees appointed in and by the aforesaid Last Will of William C. Squier, deceased, be discharged from the further performance of his duties as such Trustee.

Dated: Rahway, N. J., January 30, 1925.

MARJORIE S. SEARLES

Exhibit P-6

STATE OF NEW JERSEY, }
County of Union. } SS.:

BE IT REMEMBERED that on this 30 day of January A. D. 1925, before me, the Subscriber, a Notary Public for New Jersey personally appeared MARJORIE S. SEARLES, who, I am satisfied, is the person named in and who executed the within Waiver and Consent, and I having first made known to her the contents thereof, she did thereupon acknowledge that she signed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

ABBIE E. HILLMAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires
May 6th, 1925

(Seal)

Exhibit P-6

UNION COUNTY ORPHANS COURT,

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition of Trustees for Discharge of Co-Trustee. WAIVER AND CONSENT.

I, HELEN SQUIER KEEN, residing at Dublin Road, Greenwich, County of Fairfield, State of Connecticut, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a Notice of Application in the above entitled matter, and consent that STUART C. SQUIER, one of the Trustees appointed in and by the aforesaid Last Will of William C. Squier, deceased, be discharged from the further performance of his duties as such Trustee.

Dated: Greenwich, Conn. January 31. 1925.

HELEN SQUIER KEEN

Exhibit P-6

STATE OF CONNECTICUT, }
County of Fairfield } ss.:

BE IT REMEMBERED that on this 31 day of January, A. D. 1925, before me, the Subscriber a Notary Public personally appeared HELEN SQUIER KEEN, who, I am satisfied, is the person named in and who executed the within Waiver and Consent, and I having first made known to her the contents thereof, she did thereupon acknowledge that she signed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

A. B. STANTON
(Seal) Notary Public

Exhibit P-6

State of Connecticut
COUNTY OF FAIRFIELD
County Clerk's Office.

I, FRED W. TRACY, Clerk of said County and of the Superior Court in, and for said County, the same being a Court of Record, having by law a seal, hereby certify That A. B. Stanton whose name is subscribed to the certificate of proof, acknowledgment, or affidavit of the annexed instrument, and thereon written, was, at the time of taking such proof, acknowledgment or affidavit, a Notary Public, within and for said County, residing in said County, duly appointed, commissioned and sworn, and authorized by the laws of said State, to administer oaths, and take the acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments, in said State, and other instruments to be recorded therein, and to certify the same; that full faith and credit are and ought to be given to his official acts; and I further certify that I have compared the signature to the original certificate with that deposited in this office by such person and verily believe that the signature to the attached certificate is his genuine signature and said certificate is not required to be under seal, and the person signing such certificate is not required by law to file in this office an impression of his official seal.

(Seal) In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Bridgeport, in said County and State, on the 4th day of February 1925

FRED W TRACY Clerk.
By.....
Asst. Clerk.

Exhibit P-6

UNION COUNTY ORPHANS COURT,

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition of Trustees for Discharge of Co-Trustee. WAIVER AND CONSENT.

I, HESTER SQUIER SMILEY, residing at Fenton Brook Farm, Great Barrington, County of Berkshire, State of Massachusetts, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a Notice of Application in the above entitled matter, and consent that STUART C. SQUIER, one of the Trustees appointed in and by the aforesaid Last Will of William C. Squier, deceased be discharged from the further performance of his duties as such Trustee.

Dated: New York N. Y. February 2nd 1925

HESTER S. SMILEY

Exhibit P-6

STATE OF NEW YORK }
County of New York } SS.:

BE IT REMEMBERED that on this 2nd day of February, A. D. 1925, before me the Subscriber a Notary Public personally appeared HESTER SQUIER SMILEY, who, I am satisfied, is the person named in and who executed the within Waiver and Consent, and, I having first made known to her the contents thereof, she did thereupon acknowledge that she signed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

LINCOLN CORNEIL
Notary Public, Queens County No. 224
Certificate Filed In New York County No. 182
NEW YORK REGISTER'S No. 5266
(Seal) Commission Expires March 30, 1926

Exhibit P-6

State of New York, }
County of New York, } ss.:

No. 115146 Series B

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county,

DO HEREBY CERTIFY, That said Court is a Court of Record, having by law a seal; that Lincoln Corneil whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a NOTARY PUBLIC acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his Appointment and qualification as Notary Public for the County of Queens with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

(Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 3 day of Feb 1925

JAMES A DONEGAN Clerk

Exhibit P-6

UNION COUNTY ORPHANS COURT,

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition of Trustees for Discharge of Co-Trustee. WAIVER AND CONSENT.

I, WILLIAM C. SQUIER, 3rd, residing at Field Point Road, County of Fairfield, State of Connecticut, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a Notice of Application in the above entitled matter, and consent that STUART C. SQUIER, one of the Trustees appointed in and by the aforesaid Last Will of William C. Squier, deceased, be discharged from the further performance of his duties as such Trustee.

Dated: Greenwich, Conn., January 23rd, 1925.

WILLIAM C. SQUIER 3rd

Exhibit P-6

STATE OF CONNECTICUT, }
County of Fairfield. } ss.:

BE IT REMEMBERED that on this 23 day of January, A. D. 1925, before me, the Subscriber a Notary Public personally appeared WILLIAM C. SQUIER, 3rd who, I am satisfied, is the person named in and who executed the within Waiver and Consent, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

A. B. STANTON
(Seal) Notary Public
My commission expires February 1, 1929

Exhibit P-6

State of Connecticut
COUNTY OF FAIRFIELD
County Clerk's Office.

I, FRED W. TRACY, Clerk of said County and of the Superior Court in, and for said County, the same being a Court of Record, having by law a seal, hereby certify That A. B. Stanton whose name is subscribed to the certificate of proof, acknowledgment, or affidavit of the annexed instrument, and thereon written, was, at the time of taking such proof, acknowledgment or affidavit, a Notary Public, within and for said County, residing in said County, duly appointed, commissioned and sworn, and authorized by the laws of said State, to administer oaths, and take the acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments, in said State, and other instruments to be recorded therein, and to certify the same; that full faith and credit are and ought to be given to his official acts; and I further certify that I have compared the signature to the original certificate with that deposited in this office by such person and verily believe that the signature to the attached certificate is his genuine signature and said certificate is not required to be under seal, and the person signing such certificate is not required by law to file in this office an impression of his official seal.

(Seal) In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Bridgeport, in said County and State, on the 4th day of February 1925

FRED W TRACY Clerk
By.....
Asst. Clerk.

Exhibit P-6

UNION COUNTY ORPHANS COURT,

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition of Trustees for Discharge of Co-Trustee. WAIVER AND CONSENT.

I, ELSIE SQUIER EDSON, residing at Round Hill Road, Greenwich, County of Fairfield, State of Connecticut, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a Notice of Application in the above entitled matter, and consent that STUART C. SQUIER, one of the Trustees appointed in and by the aforesaid Last Will of William C. Squier, deceased, be discharged from the further performance of his duties as such Trustee.

Dated: Greenwich, Conn., January 22d, 1925.

ELSIE SQUIER EDSON

New Jersey State Library

Exhibit P-6

STATE OF CONNECTICUT }
County of Fairfield } ss.:

BE IT REMEMBERED that on this 22d day of January, A. D. 1925, before me, the Subscriber a Notary Public personally appeared ELSIE SQUIER EDSON, who, I am satisfied, is the person named in and who executed the within Waiver and Consent, and I having first made known to her the contents thereof, she did thereupon acknowledge that she signed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

FRANKLIN EDSON
Notary Public

Exhibit P-6

State of Connecticut
COUNTY OF FAIRFIELD
County Clerk's Office.

I, FRED W. TRACY, Clerk of said County and of the Superior Court in, and for said County, the same being a Court of Record, having by law a seal, hereby certify That Franklin Edson, whose name is subscribed to the certificate of proof, acknowledgment, or adavit of the annexed instrument, and thereon written, was, at the time of taking such proof, acknowledgment or affidavit, a Notary Public, within and for said County, residing in said County, duly appointed, commissioned and sworn, and authorized by the laws of said State, to administer oaths, and take the acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments, in said State, and other instruments to be recorded therein, and to certify the same; that full faith and credit are and ought to be given to his official acts; and I further certify that I have compared the signature to the original certificate with that deposited in this office by such person and verily believe that the signature to the attached certificate is his genuine signature and said certificate is not required to be under seal, and the person signing such certificate is not required by law to file in this office an impression of his official seal.

(Seal) In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Bridgeport, in said County and State, on the 4th day of February 1925

FRED W TRACY Clerk
By.....
Asst. Clerk.

Exhibit P-6

UNION COUNTY ORPHANS COURT,

STATE OF NEW JERSEY.

In the Matter of the Estate
of
WILLIAM C. SQUIER,
Deceased.

I, KATHERINE SQUIER MONTGOMERY, residing at Ocean Drive, West, City of Stamford, County of Fairfield, and State of Connecticut, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a Notice of Application in the above entitled matter, and consent that STUART C. SQUIER, one of the Trustees appointed in and by the aforesaid Last Will of William C. Squier, deceased, be discharged from the further performance of his duties as such Trustee.

Dated: Stamford, Conn., January 26th, 1925.

KATHERINE SQUIER MONTGOMERY

Exhibit P-6

STATE OF NEW YORK }
County of New York } ss.:

BE IT REMEMBERED that on this 26th day of January, A. D. 1925, before me, the Subscriber a Notary Public personally appeared KATHERINE SQUIER MONTGOMERY, who, I am satisfied, is the person named in and who executed the within Waiver and Consent, and I having first made known to her the contents thereof, she did thereupon acknowledge that she signed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

LOUISE A. HUNT
(Seal) LOUISE A. HUNT
Notary Public Queens Co. No. 540
Kings Co. No. 118 Kings Co. Reg. No. 6093
N. Y. Co. No. 378 N. Y. Co. Reg. No. 6303
Bronx Co. No. 11 Bronx Co. Reg. No. 2620
Commission expires March 30, 1926

Exhibit P-6

State of New York, }
County of New York, } ss.:

No. 115149 Series B

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county,

DO HEREBY CERTIFY, That said Court is a Court of Record, having by law a seal; that Louise A. Hunt whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a NOTARY PUBLIC acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York, a certified copy of his appointment and qualification as Notary Public for the County of Queens with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further. that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

(Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 3 day of Feb 1925

JAMES A DONEGAN
Clerk.

Exhibit P-6

UNION COUNTY ORPHANS COURT,

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition of Trustees for Discharge of Co-Trustee. WAIVER AND CONSENT.

I, CARROL SQUIER HOUGHTON, residing at #136 East Seventy-fourth Street, City, County and State of New York, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a Notice of Application in the above entitled matter, and consent that STUART C. SQUIER, one of the Trustees appointed in and by the aforesaid Last Will of William C. Squier, deceased, be discharged from the further performance of his duties as such Trustee.

Dated: New York, N. Y., January 30th, 1925.

CAROL S. HOUGHTON

Exhibit P-6

STATE OF NEW YORK, }
County of New York. } ss.:

BE IT REMEMBERED that on this 30th day of January, A. D. 1925, before me, the Subscriber Francis L. Field a Notary Public personally appeared CARROL SQUIER HOUGHTON, who, I am satisfied, is the person named in and who executed the within Waiver and Consent, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

FRANCIS L. FIELD
FRANCIS L. FIELD
Notary Public
Kings County No. 74
Kings County Register No. 6075
New York County No. 188
New York Register No. 6187
Commission Expires March 30, 1926 (Seal)

Exhibit P-6

State of New York, }
County of New York, } ss.:

No. 1151 51 Series B

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county,

DO HEREBY CERTIFY, That said Court is a Court of Record, having by law a seal; that Francis L. Field, whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a NOTARY PUBLIC acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York, a certified copy of his appointment and qualification as Notary Public for the County of Kings, with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

(Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 3 day of Feb 1925

JAMES A DONEGAN
Clerk.

Exhibit P-6

UNION COUNTY ORPHANS COURT,

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition of Trustees for Discharge of Co-Trustee. WAIVER AND CONSENT.

I, FREDERICK *B.* SQUIER, Jr., residing at #427 St. Gearges' Avenue, City of Rahway, County of Union, State of New Jersey, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in persona and waive the issuance and service of a Notice of Application in the above entitled matter, and consent that STUART C. SQUIER, one of the Trustees appointed in and by the aforesaid Last Will of William C. Squier, deceased, be discharged from the further performance of his duties as such Trustee.

Dated: Rahway, N. J., January 30, 1925.

FREDERICK C. SQUIER, JR

Exhibit P-6

STATE OF NEW JERSEY, }
County of Union } SS.:

BE IT REMEMBERED that on this 30 day of January, A. D. 1925, before me, the Subscriber a Notary Public for New Jersey personally appeared FREDERICK *B.* SQUIER, Jr., who, I am satisfied, is the person named in and who executed the within Waiver and Consent, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

ABBIE E. HILLMAN
(SEAL) Notary Public of New Jersey
My Commission expires
May 6th, 1925

Exhibit P-6

UNION COUNTY ORPHANS COURT,

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition of Trustee for Discharge of Co-Trustee. ORDER DISCHARGING TRUSTEE.

It appearing from the petition of Edwin M. Squier and Frederick C. Squier, filed herein on their behalf and on behalf of Stuart C. Squier, all of them Trustees of the above estate; that the said Stuart C. Squier is one of the Trustees appointed by the Last Will of William C. Squier, deceased, and that Letters Testamentary were issued to them by the Surrogate of Union County; and that the said petitioners pray that the said Stuart C. Squier may be discharged from the further performance of his duties as such Trustee; and it appearing that either due notice of this application has been given to all the parties interested or that all of the parties in interest have duly consented hereto, and the Court having examined into the matter and it appearing that there is sufficient reason for such discharge;

IT IS, thereupon, on this 20 day of March 1925, ORDERED that the said Stuart C. Squier be, and he is hereby relieved and discharged from all further duties of his said office, except accounting for and paying over monies or assets received by him by virtue of his office.

Dated: Elizabeth, N. J., March 20, 1925.

ALFRED A STEIN
Judge

Exhibit P-6

UNION COUNTY ORPHANS COURT,
STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition for Appointment of Co-Trustee. PETITION.

To—*Orphans' Court of Union County*:

The petition of Edwin M. Squier, residing at 342 St. Georges' Avenue, Rahway, New Jersey, and of Frederick C. Squier, residing at 427 St. Georges' Avenue, Rahway, New Jersey, respectfully shows:

I. That William C. Squier, of Rahway, New Jersey, died on or about the 30th day of August, 1906, leaving a Last Will and Testament, wherein and whereby he devised and bequeathed a certain portion of his property, real and personal, in trust to Stuart C. Squier, Charles B. Squier, who predeceased the said testator, Edwin M. Squier and Frederick C. Squier, to invest the principal and to pay the net income therefrom to his sons, the said Stuart C. Squier, Charles B. Squier, Edwin M. Squier and Frederick C. Squier. Upon the death of any son, the share of such son to be paid to his issue, if any, and in the event of there being no issue of such deceased son, to the other surviving brothers, the issue of any deceased brother taking the share that his father would have taken if living.

That said Will was, on the 11th day of Septem-

ber, 1906, duly admitted to probate by the surrogate of Union County.

II. That the said William C. Squier left him surviving his widow, Catherine C. Squier, now deceased, Stuart C. Squier, a son, William C. Squier, Jr., a son now deceased, Edwin M. Squier, a son, Frederick C. Squier, a son, and Charles B. Squier, a grandson, son of Charles B. Squier, deceased. That all of the above, except those as are stated to be dead, are of full age.

III. That an application has been signed by your petitioner herein requesting that the said Stuart C. Squier one of the Trustees named in the last Will and Testament of William C. Squier, deceased, may be discharged and relieved of further duties of his office at such Trustee by reason of his mental and physical disabilities.

IV. The persons interested in this application are as follows, to wit:—

Stuart C. Squier, who resides at Park Avenue, Greenwich, Conn., a son and one of the Cestui Que Trustents;

Edwin M. Squier, who resides at 342 St. Georges' Avenue, Rahway, N. J. a son, and one of the Cestui Que Trustents;

Frederick C. Squier, who resides at 427 St. Georges' Avenue, Rahway, N. J., a son and one of the Cestui Que Trustents;

Helen S. Keen, who resides at Dublin Road, Greenwich, Conn., a granddaughter and remainderman;

Exhibit P-6

William C. Squier, 3rd, who resides at Field Point Road, Greenwich Conn., a grandson and remainderman;

Carol S. Houghton, who resides at 136 East 74th Street, New York City, a granddaughter and remainderman;

Katherine S. Montgomery, who resides at Ocean Drive, West, Stamford, Conn., a granddaughter and remainderman;

Elsie S. Edson, who resides at Round Hill Road, Greenwich, Conn.; a granddaughter and remainderman;

Hester S. Smiley, who resides at Fenton Brook Farm, Great Barrington, Mass., a granddaughter and remainderman;

Charles B. Squier, who resides at 521 Park Avenue, New York City, a grandson and remainderman;

Marjorie S. Searles, who resides at 443 St. Georges' Avenue, Rahway, New Jersey, a granddaughter and remainderman;

Frederick S. Squier, Jr., who resides at 427 St. Georges' Avenue, Rahway, New Jersey, a grandson and remainderman, all of whom are of full age.

V. Due notice of this application has been given to all persons interested in the execution of the aforesaid Trust who have not duly waived service of such notice and consented hereto as by their waivers and consents hereto annexed will more fully appear.

Exhibit P-6

VI. That there is no real property remaining in said Trust and the personal property in the hands of the remaining Trustees amounts to Nine hundred ninety-five thousand and one hundred three and 10/100 dollars ($995,103.10).

Your petitioners therefore pray that Augustus S. Houghton, of 136 East 74th Street, New York City, an attorney-at-law of the State of New York for over thirty years, the son-in-law of said Stuart C. Squier, and for seventeen years one of the attorneys for the estate aforesaid, or some other suitable person, may be appointed as a substituted Co-Trustee to execute the aforesaid Trusts created in and by the Last Will and Testament of William C. Squier, deceased, as aforesaid, in the place and stead of said Stuart C. Squier, who has been relieved and discharged as aforesaid.

Dated: Rahway, N. J., February 9th, 1925.

EDWIN M SQUIER

FREDERICK C SQUIER

Exhibit P-6

STATE OF NEW JERSEY, County of Union. } ss.:

Edwin M. Squier and Frederick C. Squier, being duly sworn upon their oaths according to law, depose and say that they are the petitioners in the foregoing petition named, and that the matters and things therein contained are true to the best of their knowledge and belief.

EDWIN M SQUIER

FREDERICK C SQUIER

Subscribed & Sworn to before
me at Rahway, this
9th day of February, 1925.

FRED C HYER
Notary Public of New Jersey (Seal)
My commission expires July 6, 1927

Exhibit P-6

UNION COUNTY ORPHANS' COURT

STATE OF NEW JERSEY

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition for Appointment of Trustee. WAIVER AND CONSENT.

I, HELEN SQUIER KEEN, residing at Dublin Road, Greenwich, County of Fairfield, State of Connecticut, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a notice of application in the above entitled matter and consent that Augustus S. Houghton, residing at 136 East 74th Street, City, County and State of New York, or some other suitable person, be appointed to execute the Trusts declared in the Last Will and Testament of William C. Squier late of the City of Rahway County of Union, State of New Jersey, in the place and stead of Stuart C. Squier, one of the Trustees in said Will named.

Dated: Greenwich, Conn. January 31, 1925.

HELEN SQUIER KEEN

Exhibit P-6

STATE OF CONNECTICUT, }
COUNTY OF FAIRFIELD, } ss.:

BE IT REMEMBERED that on this 31 day of January A.D. 1925, before me, the subscriber, a Notary Public personally appeared HELEN SQUIER KEEN, who I am satisfied is the person named in and who executed the within Waiver and Consent, and, I having first made known to him the contents thereof, she did thereupon acknowledge that she signed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

(Seal) A. B. STANTON Notary Public

Exhibit P-6

State of Connecticut
COUNTY OF FAIRFIELD
County Clerk's Office.

I, FRED W. TRACY, Clerk of said County and of the Superior Court in, and for said County, the same being a Court of Record, having by law a seal, hereby certify That A. B. Stanton whose name is subscribed to the certificate of proof, acknowledgment, or affidavit of the annexed instrument, and thereon written, was, at the time of taking such proof, acknowledgment or affidavit, a Notary Public, within and for said County, residing in said County, duly appointed, commissioned and sworn, and authorized by the laws of said State, to administer oaths, and take the acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments, in said State, and other instruments to be recorded therein, and to certify the same; that full faith and credit are and ought to be given to his official acts; and I further certify that I have compared the signature to the original certificate with that deposited in this office by such person and verily believe that the signature to the attached certificate is his genuine signature and said certificate is not required to be under seal, and the person signing such certificate is not required by law to file in this office an impression of his official seal.

(Seal) In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Bridgeport, in said County and State, on the 4th day of February 1925

FRED W. TRACY Clerk

By.....Asst. Clerk.

Exhibit P-6

UNION COUNTY ORPHANS' COURT

STATE OF NEW JERSEY

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition for Appointment of Trustee. WAIVER AND CONSENT.

I, WILLIAM C. SQUIER, 3rd, residing at Field Point Road, Greenwich, County of Fairfield, State of Connecticut the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a notice of application in the above entitled matter and consent that Augustus S. Houghton, residing at 136 East 74th Street, City, County and State of New York, or some other suitable person, be appointed to execute the Trusts declared in the Last Will and Testament of William C. Squier late of the City of Rahway County of Union, State of New Jersey, in the place and stead of Stuart C. Squier, one of the Trustees in said Will named.

Dated: Greenwich, Conn., January 23rd, 1925.

WILLIAM C. SQUIER 3rd

Exhibit P-6

STATE OF CONNECTICUT, }
COUNTY OF FAIRFIELD, } ss.:

BE IT REMEMBERED that on this 23 day of January A.D. 1925, before me, the subscriber, a Notary Public personally appeared WILLIAM C. SQUIER, 3rd, who I am satisfied is the person named in and who executed the within Waiver and Consent, and, I having first made known to him the contents thereof, he did thereupon acknowledge that he signed and delivered the same as his voluntary act and deed for the use sand purposes therein expressed.

A. B. STANTON
Notary Public

(Seal) My commission expires February 1, 1929

Exhibit P-6

State of Connecticut
COUNTY OF FAIRFIELD
County Clerk's Office.

I, FRED W. TRACY, Clerk of said County and of the Superior Court in, and for said County, the same being a Court of Record, having by law a seal, hereby certify That A. B. Stanton whose name is subscribed to the certificate of proof, acknowledgment, or affidavit of the annexed instrument, and thereon written, was, at the time of taking such proof, acknowledgment or affidavit, a Notary Public, within and for said County, residing in said County, duly appointed, commissioned and sworn, and authorized by the laws of said State, to administer oaths, and take the acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments, in said State, and other instruments to be recorded therein, and to certify the same; that full faith and credit are and ought to be given to his official acts; and I further certify that I have compared the signature to the original certificate with that deposited in this office by such person and verily believe that the signature to this attached certificate is his genuine signature and said certificate is not required to be under seal, and the person signing such certificate is not required by law to file in this office an impression of his official seal.

(Seal) In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Bridgeport, in said County and State, on the 4th day of February 1925

FRED W. TRACY Clerk

By.....Asst. Clerk.

Exhibit P-6

UNION COUNTY ORPHANS' COURT

STATE OF NEW JERSEY

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition for Appointment of Trustee. WAIVER AND CONSENT.

I, CARROL SQUIER HOUGHTON, residing at 136 East Seventy-fourth Street, City, County and State of New York, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a notice of application in the above entitled matter and consent that Augustus S. Houghton, residing at 136 East 74th Street, City, County and State of New York, or some other suitable person, be appointed to execute the Trusts declared in the Last Will and Testament of William C. Squier late of the City of Rahway County of Union, State of New Jersey, in the place and stead of Stuart C. Squier, one of the Trustees in said Will named.

Dated: New York, N. Y. January 30th 1925.

CAROL S. HOUGHTON.

Exhibit P-6

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

BE IT REMEMBERED that on this 30" day of January A.D. 1925, before me, the subscriber, Francis L. Field a Notary Public personally appeared CARROL SQUIER HOUGHTON, who I am satisfied is the person named in and who executed the within Waiver and Consent, and, I having first made known to her the contents thereof, she did thereupon acknowledge that she signed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

FRANCIS L. FIELD

(Seal)

FRANCIS L. FIELD NOTARY PUBLIC
Kings County No. 74
Kings County Register No. 5075
New York County No. 186
New York Register No. 6167
Commission Expires March 30, 1926
No. 1151 52 Series B

Exhibit P-6

State of New York, }
County of New York, } ss.:

I, JAMES A. DONEGAN, Clerk of the County of the County of New York, and also Clerk of the Supreme Court in and for said county,

DO HEREBY CERTIFY, That said Court is a Court of Record, having by law a seal; that Francis L. Field whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a NOTARY PUBLIC acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York, a certified copy of his appointment and qualification as Notary Public for the County of Kings with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

(Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 3 day of Feb 1925

JAMES A DONEGAN
Clerk.

Exhibit P-6

UNION COUNTY ORPHANS' COURT

STATE OF NEW JERSEY

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition for Appointment of Trustee. WAIVER AND CONSENT.

I, KATHERINE SQUIER MONTGOMERY, residing at Ocean Drive, West, City of Stamford, County of Fairfield, and State of Connecticut, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a notice of application in the above entitled matter and consent that Augustus S. Houghton, residing at 136 East 74th Street, City, County and State of New York, or some other suitable person, be appointed to execute the Trusts declared in the Last Will and Testament of William C. Squier late of the City of Rahway County of Union, State of New Jersey, in the place and stead of Stuart C. Squier, one of the Trustees in said Will named.

Dated: Stamford, Conn., January 26th, 1925.

KATHARINE SQUIER MONTGOMERY

Exhibit P-6

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

BE IT REMEMBERED that on this 26th day of January A.D. 1925, before me, the subscriber, Louise A. Hunt a Notary Public personally appeared KATHERINE SQUIER MONTGOMERY, who I am satisfied is the person named in and who executed the within Waiver and Consent, and, I having first made known to her the contents thereof, she did thereupon acknowledge that she signed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

LOUISE A. HUNT (Seal)
LOUISE A. HUNT
Notary Public Queens Co. No. 540
Kings Co. No. 113 Kings Co. Reg. No. 6093
N. Y. Co No. 378 N. Y. Co. Reg. No. 6303
Bronx Co. No. 11 Bronx Co. Reg. No. 2626
Commission expires March 30, 1926
No. 115148 Series B

(Seal)

Exhibit P-6

State of New York, }
County of New York, } ss.:

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county,

DO HEREBY CERTIFY, That said Court is a Court of Record, having by law a seal; that Louise A. Hunt whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a NOTARY PUBLIC acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York, a certified copy of his appointment and qualification as Notary Public for the County of Queens with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidenec or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

(Seal) IN TESTIMONY WHEREOF, I have hereunto, set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 3 day of Feb 1925

JAMES A DONEGAN
Clerk.

Exhibit P-6

UNION COUNTY ORPHANS' COURT

STATE OF NEW JERSEY

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition for Appointment of Trustee. WAIVER AND CONSENT.

I, ELSIE SQUIER EDSON, residing at Round Hill Road, Greenwich, County of Fairfield, State of Connecticut, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a notice of application in the above entitled matter and consent that Augustus S. Houghton, residing at 136 East 74th Street, City, County and State of New York, or some other suitable person, be appointed to execute the Trusts declared in the Last Will and Testament of William C. Squier late of the City of Rahway County of Union, State of New Jersey, in the place and stead of Stuart C. Squier, one of the Trustees in said Will named.

Dated: Greenwich, Conn., January 22d, 1925.

ELSIE SQUIER EDSON

Exhibit P-6

STATE OF CONNECTICUT, }
COUNTY OF FAIRFIELD, } ss.:

BE IT REMEMBERED that on this 22d day of January A.D. 1925, before me, the subscriber, a Notary Public personally appeared ELSIE SQUIER EDSON, who I am satisfied is the person named in and who executed the within Waiver and Consent, and, I having first made known to her the contents thereof, she did thereupon acknowledge that she signed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

FRANKLIN EDSON
Notary Public

Exhibit P-6

State of Connecticut
COUNTY OF FAIRFIELD
County Clerk's Office.

I, FRED W. TRACY, Clerk of said County and of the Superior Court in, and for said County, the same being a Court of Record, having by law a seal, hereby certify That Franklin Edson, whose name is subscribed to the certificate of proof, acknowledgment, or affidavit of the annexed instrument, and thereon written, was, at the time of taking such proof, acknowledgment or affidavit, a Notary Public, within and for said County, residing in said County, duly appointed, commissioned and sworn and authorized by the laws of said State, to administer oaths, and take the acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments, in said State, and other instruments to be recorded therein, and to certify the same; that full faith and credit are and ought to be given to his official acts; and I further certify that I have compared the signature to the original certificate with that deposited in this office by such person and verily believe that the signature to the attached certificate is his genuine signature and said certificate is not required to be under seal, and the person signing such certificate is not required by law to file in this office an impression of his official seal.

(Seal) In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Bridgeport, in said County and State, on the 4th day of February 1925

FRED W. TRACY Clerk

By.....Asst. Clerk.

Exhibit P-6

UNION COUNTY ORPHANS COURT

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition for Appointment of Trustee. WAIVER AND CONSENT.

I, HESTER SQUIER SMILEY, residing at Fenton Brook Farm, Great Barrington, County of Berkshire, State of Massachusetts, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a notice of application in the above entitled matter and consent that Augustus S. Houghton, residing at 136 East 74th Street, City, County and State of New York, or some other suitable person be appointed to execute the Trusts declared in the Last Will and Testament of William C. Squier, late of the City of Rahway, County of Union, State of New Jersey, in the place and stead of Stuart C. Squier, one of the Trustees in said Will named.

Dated: New York N. Y., February 2", 1925.

HESTER S. SMILEY

Exhibit P-6

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

BE IT REMEMBERED that on this 2nd day of February A. D. 1925, before me, the subscriber a Notary Public personally appeared HESTER SQUIER SMILEY, who I am satisfied is the person named in and who executed the within Waiver and Consent, and, I having first made known to her the contents thereof, she did thereupon acknowledge that she signed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

LINCOLN CORNEIL
Notary Public, Queens County No. 224
Certificate Filed in New York County No. 182
(SEAL) New York Register's No. 8206
Commission Expires March 30, 1926

Exhibit P-6

State of New York, }
County of New York, } ss.:

No. 115147 Series B

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county,

DO HEREBY CERTIFY, That said Court is a Court of Record, having by law a seal; that Lincoln Carneil whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a NOTARY PUBLIC acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his Appointment and qualification as Notary Public for the County of Queens with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

(Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 3 day of Feb 1925

JAMES A DONEGAN Clerk

Exhibit P-6

UNION COUNTY ORPHANS COURT

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition for Appointment of Trustee. WAIVER AND CONSENT.

I, CHARLES B. SQUIER, residing at #521 Park Avenue, City, County and Sate of New York, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a notice of application in the above entitled matter and consent that Augustus S. Houghton, residing at 136 East 74th Street, City, County and State of New York, or some other suitable person be appointed to execute the Trusts declared in the Last Will and Testament of William C. Squier, late of the City of Rahway, County of Union, State of New Jersey, in the place and stead of Stuart C. Squier, one of the Trustees in said Will named.

Dated: New York, January 27th 1925.

CHARLES B. SQUIER

Exhibit P-6

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

BE IT REMEMBERED that on this 27th day of January 1925, before me, the subscriber Lillian Sauer, a Notary Public personally appeared CHARLES B. SQUIER, who I am satisfied is the person named in and who executed the within Waiver and Consent, and, I having first made known to him the contents thereof, he did thereupon acknowledge that he signed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

LILLIAN SAUER

LILLIAN SAUER
Notary Public, Bronx County
Bronx Co. Clerk's No. 302, Register's No. 2621D
(Seal) Certificate filed in New York County
Commission expires March 30, 1926
No. 21023 Series B

Exhibit P-6

State of New York, }
County of New York, } ss.:

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county, DO HEREBY CERTIFY, That said Court is a Court of Record, having by law a seal; that Lillian Sauer whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed Instrument was at the time of taking the same a NOTARY PUBLIC acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Bronx with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York, to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal of said Court at the City of New York, in the County of New York, this 3 day of Feb 1925

JAMES A DONEGAN
Clerk.

Exhibit P-6

UNION COUNTY ORPHANS COURT

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition for Appointment of Trustee. WAIVER AND CONSENT.

I, MARJORIE S. SEARLES, residing at #443 St. Georges' Avenue, City of Rahway, County of Union, State of New Jersey, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of notice of application in the above entitled matter and consent that Augustus S. Houghton, residing at 136 East 74th Street, City, County and State of New York, or some other suitable person be appointed to execute the Trusts declared in the Last Will and Testament of William C. Squier, late of the City of Rahway, County of Union, State of New Jersey, in the place and stead of Stuart C. Squier, one of the Trustees in said Will named.

Dated: Rahway, N. J. January 30 1925

MARJORIE S. SEARLES

Exhibit P-6

STATE OF NEW JERSEY }
COUNTY OF UNION } ss.:

BE IT REMEMBERED that on this 30 day of January A. D., 1925, before me, the subscriber a Notary Public for New Jersey personally appeared MARJORIE S. SEARLES, who I am satisfied is the person named in and who executed the within Waiver and Consent, and, I having first made known to her the contents thereof, she did thereupon acknowledge that she signed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

ABBIE E. HILLMAN
NOTARY PUBLIC OF NEW JERSEY
(Seal) My Commission Expires May 6th 1925

Exhibit P-6

UNION COUNTY ORPHANS COURT

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition for Appointment of Trustee. WAIVER AND CONSENT.

I, FREDERICK C. SQUIER, Jr., residing at 427 St. Georges' Avenue, City of Rahway, County of Union, State of New Jersey, the undersigned, one of the remaindermen of the Trusts created in and by the Last Will and Testament of William C. Squier, deceased, probated on the 11th day of September, 1906, do hereby appear in person and waive the issuance and service of a notice of application in the above entitled matter and consent that Augustus S. Houghton, residing at 136 East 74th Street, City, County and State of New York, or some other suitable person be appointed to execute the Trusts declared in the Last Will and Testament of William C. Squier, late of the City of Rahway, County of Union, State of New Jersey, in the place and stead of Stuart C. Squier, one of the Trustees in said Will named.

Dated: Rahway, N. J. January 30-1925.

FREDERICK C. SQUIER JR

Exhibit P-6

STATE OF NEW JERSEY. }
COUNTY OF Union } ss.:

BE IT REMEMBERED that on this 30 day of January A. D., 1925, before me, the subscriber a Notary Public for New Jersey, personally appeared FREDERICK C. SQUIER, Jr., who I am satisfied is the person named in and who executed the within Waiver and Consent, and, I having first made known to him the contents thereof, she did thereupon acknowledge that he signed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

ABBIE E. HILLMAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 6th 1925

(Seal)

Exhibit P-6

UNION COUNTY ORPHANS COURT,

STATE OF NEW JERSEY.

In the Matter of the Estate of WILLIAM C. SQUIER, *Deceased.*	On Petition for Appointment of Co-Trustee. ORDER.

It appearing from the petition of Edwin M. Squier and Frederick C. Squier, the two remaining Trustees of the Trusts created by the Last Will and Testament of William C. Squier, deceased, filed herein, that William C. Squier did, in and by his Last Will and Testament duly admitted to probate by the Surrogate of Union County, devise and bequeath certain portions of his property to Stuart C. Squier, Charles B. Squier, who predeceased the testator aforesaid, Edwin M. Squier and Frederick C. Squier, upon certain trusts in said Will created and declared, and it appearing that the said Stuart C. Squier, after taking upon himself the duties of said trust, has been duly relieved and discharged from all further duties of his said office by an order of this Court, dated the 20th day of March 1925, and that all the persons interested in the execution of this trust have either been duly notified of this application or have duly consented thereto;

And, it appearing that there is no real estate in the hands of the said remaining Trustees aforesaid and that the personal property in their hands amounts to nine hundred and ninety five thousand one hundred three 10/100 dollars ($995103.10);

Exhibit P-6

IT IS, thereupon, on this 20th day of March, 1925, ORDERED, ADJUDGED and DECREED that Augustus S. Houghton residing at 136 East 74" Street, New York City, New York, who in the judgment of the Court is a suitable person, be, and he is hereby appointed in the place and stead of said Stuart C. Squier, to execute and complete, together with the remaining Trustees, the trusts created and declared in said Last Will and Testament of William C. Squier, as aforesaid; and it is

FURTHER ORDERED, ADJUDGED and DECREED that the said Augustus S. Houghton, before entering upon his duties as such Trustee enter into bond to the Ordinary of this State, in the sum of Nine hundred ninety five thousand 00 dollars ($995000/00) with sufficient securities to be approved by this Court, conditioned for the faithful performance of his duties as such Trustee.

ALFRED A STEIN
Judge.

Exhibit P-6

ORDER FOR APPOINTMENT OF TRUSTEE.

KNOW ALL MEN BY THESE PRESENTS that we AUGUSTUS S. HOUGHTON of 136 East 74th Street, City, County and State of New York, EDWIN M. SQUIER and FREDERICK C. SQUIER both of the City of Rahway in the County of Union, State of New Jersey, are held and firmly bound unto the Ordinary of the State of New Jersey in the sum of Nine Hundred and Ninety-five Thousand ($995,000.) Dollars, lawful money of the United States to be paid to the said Ordinary as aforesaid, his successors or assigns, to which payment well and truly to be made we bind ourselves our heirs, executors and administrators jointly and severally firm by these presents.

Sealed with our seals and dated the 24" day of March, one thousand nine hundred and twenty-five.

The condition of this obligation is such that whereas the said Augustus S. Houghton has been appointed by the Orphans Court of the County of Union substituted Trustee to execute the trust created in and by the Last Will of William C. Squier, deceased in the place of Stuart C. Squier one of the trustees in said will named. Now after the said Augustus S. Houghton shall duly perform the said trust, then this bond shall be void otherwise to remain in full force and effect.

Sealed and delivered in the presence of:

AUGUSTUS S. HOUGHTON (L. S.)
EDWIN M. SQUIER (L. S.)
FREDERICK C SQUIER (L. S.)

Witness

FRED C HYER

Exhibit P-6

STATE OF NEW JERSEY }
Union County. } ss.:

EDWIN M. SQUIER and FREDERICK C. SQUIER the sureties named in the within bond being duly sworn each for himself says that he is a resident and freeholder in the State of New Jersey and that he is worth at least the sum of One Million Five Hundred Thousand ($1,500,000) Dollars over and above all his just debts and liabilities.

EDWIN M SQUIER

FREDERICK C SQUIER

Subscribed and sworn to this
24th day of March, 1925, at
Rahway, N. J., before me

FRED C HYER
Master in Chancery of New Jersey

Exhibit P-6

STATE OF NEW JERSEY

UNION COUNTY SURROGATE'S COURT

I, GEORGE H. JOHNSTON, Surrogate and ex-officio Clerk of the Orphans' Court of the said County of Union, do hereby certify that I have compared the annexed copy of the First Accounting; of the Petition for Discharge of Co-Trustee; of the Waivers and Consents for Discharge of Co-Trustee; of the Order Discharging Trustee; of the Petition for Appointment of Co-Trustee; of the Waivers and Consents for Appointment of Trustee; of the Order for Appointment of Co-Trustee and of the Bond of Substituted Trustee in the matter of the Estate of WILLIAM C. SQUIER, late of the County and State aforesaid, Deceased, with the originals thereof now remaining in this office, and have found the same to be a correct transcript thereof, and of the whole of such record.

WITNESS my hand and seal of office, this twentieth day of March, in the year of our Lord one thousand nine hundred and twenty-nine.

GEORGE H. JOHNSTON
Surrogate and Clerk of the Orphans' Court
of Union County, N. J.

Exhibit P-7

COPY

- - - - - - - - 33 Rector St.
May 29, 1923.

Mr. Charles B. Squier,
521 Park Avenue,
New York City.

My dear Burnham:—

I am in receipt of your letter of May 27th together with estimate covering head-frames, etc. which same I am returning to you.

I have been out of the mining business so long and conditions and prices changed so much in the meantime that my opinion would be of no value whatever. I recollect some years ago that gold was discovered in Virginia and think it was at Charlotteville. This, however, was a placer mine and not a vein as in your case. You state in your letter that there is a shaft of 200 feet and cross-cuts over 5000. In view of this development I do not see how, if the property is very valuable, it could remain unexploited so long a time. I would advise you having some good man examine the property and make a report thereon before you expend too much money on it.

It would be impossible for me to see you on May 30th as I have an engagement for that date. However, I am down at my office Monday, Wednesday and Friday of each week and when you return from Bennington it will probably be more convenient for you to see me at my office. You can always telephone and find out whether I am there or not.

Hoping that your mining adventure may prove a success, I am,

Very truly yours,

EMS:LC.
Encl.

Exhibit P-9

COPY

New York, June 14, 1912.

Mr. Charles B. Squier,
c/o Brown, Shipley & Co.,
123 Pall Mall,
London, S. W.,
England.

My dear nephew:—

I am enclosing you herewith copy of agreement drawn up by the Finance Committee of the Empire Land Company.

Mr. Butcher is a large owner and Mr. Cox is of Robert Winthrop & Company. Mr. Hecksher, of course, you know.

You will notice by the agreement that directors and their representatives hold over 80 per cent of the bonds and stock and floating indebtedness.

I herewith enclose you powers of attorney covering the coupons and notes which you and your mother hold. Please have them signed and returned to me as soon as possible.

Very truly yours,

E. M. SQUIER

Exhibit P-10

COPY

August 5th, 1912.

Mr. Charles B. Squier,
c/o Brown, Shipley & Co.,
123 Pall Mall,
London, S. W., Eng.

My dear Burnham:—

I have sold for $85,000. all cash the property located in the Borough of Roosevelt, situated on the Rahway River. I had previously offered this property for $90,000., forty per cent cash, and sixty per cent bond and mortgage, but thought that the $85,000. all cash a much better proposition, and therefore accepted it, and hope you will coincide with my views in this matter.

As the deeds will probably be passed before your return, I herewith enclose you power of attorney which will have to be witnessed before an American Consul, so get busy and return the power of attorney as soon as possible.

We are all well on this side of the water, and hope to see you with us again before long.

Very truly yours,

E. M. SQUIER

EMS/CL

Exhibit P-11.

COPY

February 28, 1913.

Mr. Charles B. Squier,
"The Breakers",
Palm Beach, Fla.

My dear Burnham:—

I am in receipt of your letter of February 23, 1913, and do not see why you should have written such a letter to me, more especially, after what I have done for you.

You seem to forget that had it not been for my efforts in your behalf that you would not now be enjoying the full benefits of the money which your Grandfather Squier left you, for if I had not disuaded him from so doing he would have added a codicil to his will and left the portion which you now have full possession of in trust for your use during your life, the same to return to the Squier family at your death. I told him that you were Charlie's boy and your father had helped to make the money, and that I did not see any reason why the money left to Charlie should not go to his son.

I am pleased to learn that you have at last arrived at the conclusion that my mother had a perfect right to leave her money in any way she wished.

My mother never had any favorite sons or grandchildren—she loved them all alike, and her will is a proof of this statement.

Your remarks about degeneracy, &c. are too childish to be worthy of comment. I should think

you would be ashamed of yourself to even intimate that my mother was unfair and tricky, and the only conclusion I can arrive at, judging from your actions at my mother's funeral and from what you have written me, is that you have gone crazy on the subject of money, or that you were only acting the part of a hypocrite and never loved your grandmother, but loved only her money.

In regard to your intimation of undue influence, your grandmother's will was made by herself and the only questions which she asked me were the ones which I stated at the time that the will was read, which you no doubt remember.

Your statement that you have been maliciously done out of your just rights is false for you have been left equal with the other grandchildren.

At the time that the Passaic Zinc Company was merged with the New Jersey Zinc Company you were only about seven years old, and, consequently, can only know what occurred by hearsay, the facts of the case being that there was many a night when your father, my brother Fred and myself were up until late in the night discussing this matter when you were abed and asleep.

Your remarks about the principal legatees and their conscience have, I think, been answered in a previous paragraph and as to your feeling towards the Squier family, I think the family can stand it if you can.

I am pleased to learn that you intend to make something of yourself and I assure you that in that connection you have my very best wishes and hope that you will hold to your good resolutions.

That you are superior to the generation to which you belong is flatly contradicted by your recent

acts and words which have desecrated the memory of your grandmother, whom you at least pretended to love.

As to your assumed broad-mindedness and sense of justness, I am not prepared to say whether you inherited it or not, but will say, that if you can find any person who ever had any dealings with the Squier family who will say that they were not fairly treated, I would like you to produce them.

As to your father and grandfather concurring in your views will say, that I knew them both better than you did, and if they were here they would decide against you.

As to your life being broader and more interesting than the rest of the family, I was never sufficiently stuck on myself to make a remark of that kind. It seems to me to be puerile.

In regard to family dishonor, I refer you to your own conduct.

Your remarks on newspaper notoriety savor very much of an attorney who was at one time employed by your family, and the revengeful feeling expressed in this connection seems to me to be the remarks of a boy whose mind is not mature enough to know better.

Whatever money there is that may be rightfully due you, you will certainly receive.

In regard to copy of your will, which you left with me, as you have revoked it, it would only gratify idle curiosity to read it, so I return it, together with whatever other papers you may have left with me.

The delay occasioned by the misdirection of the cards was no inconvenience, as they arrived in ample time, and in this connection allow me to

again thank you for attending to this matter for me.

I have no hard feeling except as may be occasioned by your conduct. I may, under certain conditions, forgive the harsh words you used about my mother, but I do not think I will ever forget them as long as I live.

If there appears to be anything harsh and unfeeling in this letter it is only because your letter suggested it. There is one thing I can never forget, and that is, that you are a son of my brother Charlie.

Very truly yours,

E. M. SQUIER

Enc.
EMS/L

Memorandum of Opinion

(*Filed July* 8, 1929)

IN THE PREROGATIVE COURT.

IN THE MATTER *of* The Appeal from the Prerogative Court, in the matter of EDWIN M. SQUIER, DECEASED.	(Not for Print) ON APPEAL Memorandum of Opinion.

July 8, 1929.

EDWARD MAXSON, Esq., Proctor.
FRANK HENDRICK, Esq., (Of N. Y. Bar) of Counsel
For Contestant-Appellant.

HYER & ARMSTRONG, Proctors.
FREDERICK HYER, Esq., Of Counsel,
FERRIS, SHEPARD, JOYCE & MCCOY, of N. Y. Bar, Proctors,
GEORGE A. FERRIS, Esq., and
THOMAS H. BROGAN, Esq., of Counsel,
For Proponents-Respondents.

MEMORANDUM OF OPINION

(This memorandum is not to be published in the official or unofficial reports)

BENTLEY, *V-C.*:—

On appeal from the Orphans' Court.

In November, 1926, Edwin M. Squier died leaving a will which has been admitted to probate. An

appeal has been perfected on behalf of Charles Burnham Squier from the decree of the Orphans' Court, affirming the order of the Surrogate admitting the will to probate. From a subsequent order of the Orphans' Court of Union County, there is a cross appeal from so much thereof as allows the sum of $22,500. counsel fee and $1500. for disbursements to the proctor for this contestant.

The decedent appears to have been a member of a rich family, who was engaged about his affairs until within a few days of his death, and then appears to have been smitten with an ailment that would not have been a serious one except for his advanced age, which developed into pneumonia and caused his death. His will first devised to the City of Rahway his home and the curtilage upon which it stood, for the use of a park; secondly, he established a fund of $10,000. for the care and support of the horses owned by him at the time of his death; thirdly, he made certain charitable bequests; fourthly, some private bequests; fifthly, bequests of $5,000 each to his nephews and nieces, after which the will reads:

> I make no further provision directly or indirectly for my nephew, Charles Burnham Squier, as he was and will be the sole beneficiary in the interest of his father, if living, would have received from the trusts created by the will of my father, William C. Squier.

The will next makes some unimportant disposition of certain chattels and then provides for the division of the residuum between his surviving brothers, Stuart and Frederick, and the appointment of ex-

ecutors and certain instructions to them. The point of the appeal by Charles Burnham Squier (who will be called the contestant, for convenience's sake) is indicated by the portion of the will just quoted. His father predeceased the testator and also the testator's father, William C. Squier, so that, as the will has pointed out, the contestant (an only child) took from his grandfather's estate all that his father would have taken had he been living when the grandfather died.

In the Orphans' Court a great deal of testimony was taken under several petitions and amended petitions. The original petition of appeal set forth three grounds alleging testamentary incapacity, undue influence and non-compliance with the requirements of our statute as to execution. The first amended petition of appeal added to those grounds the further charge that the will was procured as the result of a conspiracy among a large number of people, most of whom are were related to the contestant by ties of blood or marriage, and also that it was procured by fraud practiced by the same persons upon the testator, and, finally, that it was the result of a mistake. The second amended peition reiterates the same grounds of appeal as the first amended petition.

During his lifetime the testator appears to have been friendly with the members of a firm of lawyers practicing in New York City. He leased from this firm an office in their suite, from which he carried on his business activities. One of the members of the firm, Mr. Augustus S. Houghton, was associated with the testator as a trustee of the estate of William C. Squier, and there was apparently quite

a friendship between them of the kind to be expected between a rich, elderly man and a much younger one who had married into his family. It is against this gentleman that the contestant launches his chief attack. Mr. Houghton has married into the Squier family, and from that it is argued that he became the directing head of the conspiracy by reason of his legal education and his personal interest in the Squier fortune. It would be an intolerable task to analyze and explain why there is not a scintilla of proof to substantiate this charge of conspiracy. Both in the Orphans' Court and this court witnesses have been called, examined and cross-examined in a prospecting expedition, founded upon the hope that something might be turned up which would raise a suspicion. I have read through the testimony which the judge of the Orphans' Court so patiently heard, and for three days I listened to what was principally, as the journalistic fraternity would call it, a rehash of the testimony in the Orphans' Court. The result of all my investigation leads me to say without hesitation that there is not a scintilla of proof that Mr. Houghton, or any of the others charged, were guilty of any fraud, undue influence or conspiracy.

Neither is there anything to make it appear that the exclusion of the contestant from the residuary estate of his uncle was in any respect the result of a mistake upon the latter's part. The thing is as plain as facts and circumstances well could make it. A good many years before the execution of the will in question the contestant's grandmother died and left a will which appears to have been read at a family gathering. The contents of that will also

appeared to have displeased the contestant who, after having heard the reading of it, in the language of his uncles, "got up, and he said he was going to contest the will because my mother was tricky". The effect of this brutal statement at such a time, had upon the other members of the family present the result that might have been expected. This was the undoubted reason that the testator did not desire the contestant to share in his estate. Matters of this sort are not ordinarily spread upon the face of a will, and the testator cut off this nephew with $5,000. in the manner that has already been described. Afterwards, under date of February 28, 1913, the testator wrote a letter, apparently in response to one from the contestant, which is too long to be reproduced here by which shows as clearly as words can perform their office, the opinion that the testator had formed of the contestant. The letter breathes sarcasm. Among other things, it says: "I am pleased to learn that you have at last arrived at the conclusion that my mother had a perfect right to leave her money in any way she wished". Again it says: "I should think you would be ashamed of yourself to even intimate that my mother was unfair and tricky, and the only conclusion I can arrive at, judging from your actions at my mother's funeral and from what you have written me, is that you have gone crazy on the subject of money, or that you were only acting the part of a hypocrite and never loved your grandmother, but loved only her money." Again he says to his nephew: "That you are superior to the generation to which you belong is flatly contradicted by your recent acts and words which have dese-

crated the memory of your grandmother, whom you at least pretended to love". Finally, the letter closed:

> I have no hard feelings except as may be occasioned by your conduct. I may, under certain conditions, forgive the harsh words you used about my mother, but I do not think I will ever forget them as long as I live.
>
> If there appears to be anything harsh and unfeeling in this letter it is only because your letter suggested it. There is one thing I can never forget, and that is, that you are a son of my brother Charlie.
>
> Yours very truly,
>
> E. M. SQUIER.

Through all the testimony there runs the indication contained in the last sentence just quoted, namely, that the Squiers were a close-knit family; that great respect and affection existed among them. It is fair to assume that the testator venerated and loved his mother and her memory, and no great knowledge of human nature is required to appreciate the outraged feelings of this man when he heard that memory "desecrated", as he says, almost on the morrow after her form had been laid to its final rest. Edwin M. Squier made no mistake.

The attempt to prove lack of testamentary capacity has utterly failed. It is proverbial to what lengths disappointed kin will go to secure a large estate or a considerable portion thereof, but I will undertake to say that no more shocking instance

has been presented to any court in an attack upon the mental capacity of a testator than appears here. The sum total of the testimony is that this man in his life time smoked cigarettes in very large numbers and that from a cellar which he seems to have stocked before January 16th, 1920, he occasionally imbibed intoxicating beverages to an extent that made their effect upon him visible. There is not one direct word of insanity or of any fact upon which insanity might be predicated.

I have read the exhaustive collection of authorities that counsels' industry has incorporated in the brief filed on behalf of the contestant. Of course, no one will quarrel with them; but the difficulty is that they have no application to the facts in the case *sub judice*.

The remaining subject to be decided is the appeal from the order of the Orphans' Court allowing $24,000. to contestant's proctor in that court for counsel fee and disbursements. It has been said time and time again that where there is disparity in the distribution of an estate by will, one who is the loser thereby should be entitled to have it clearly proved that the testator executed the will, realizing that it was his testamentary act. This policy of the law is encouraged by allowing to such a contestant his costs and counsel fees out of the estate. But when such a litigant goes beyond this, and continues the litigation by a protracted trial with the necessary delay and expenses it is within the discretion of the court not to make any such allowance. Collins v. Townley, 21 N. J. Eq., 352. In the case at bar, it seems to me that it must be apparent to any disinterested person that the con-

testant must have known from the very beginning that his suit could not prevail. It is not a violent assumption to suppose that one is more or less familiar with the activities and conditions of his close relatives, even though, as here, he may be estranged from them. From this it will follow that the contestant must have known from the beginning that the testator was a man of rather large affairs, financially, engaged in business and other activities that would have made it imperative that he be of at least normal intelligence and clearness of mind. In fact, after the proof of the testator's consumption of cigarettes and intoxicants there was no attempt made to prove the charge in this connection. By the time the matter reached this court all of the astounding allegations had been abandoned except the main attempt to prove the exercise of undue influence by Mr. Houghton. Even that proof was confined to the effort to arouse suspicion in the court's mind. There was not one scintilla of evidence produced from the beginning to the end to impeach the professional honor of this lawyer; not one word by a witness or otherwise to show that he had done anything more in his relations with the testator than to honestly advise him when so requested to do. Not a word anywhere by anyone who happened to have overheard him try to poison the mind of the testator against the contestant. Not a syllable of admission against interest; not a scrap of paper to make it appear that he had made any effort to do so. The sole attempt has been to play on the friendship which seems to have existed between this lawyer and the decedent and to magnify their relations into that of the

ordinary relationship of attorney and client, in the hope, as I have just said, that a suspicion would be engendered that would cause the court to color and misconstrue every word of testimony.

It is disagreeable, as anyone may suppose, to interefere with members of the bar securing compensation for their efforts, but this life is very largely made up of the performance of disagreeable duties and I cannot divest my mind of the firm conviction that it is my duty to reverse the Orphans' Court, insofar as the allowance to contestant's counsel is concerned; The courts have raged for years against the attempts of individuals to loot estates by litigation of this character, from the case cited, down to the case of In re Wandell, 92 N. J. Eq., 195. This court and the court of Errors and Appeals have done what they could to discourage such raids. The Court of Errors and Appeals refused any further allowance in the Wintermute Case, 28 N. J. Eq., 437. And Chief Justice Beasley intimated that the allowance in the court below would not have been allowed to have stood undisturbed if it had been included in the appeal. Vice-Chancellor Backes, in the Sebring Case, 84 N. J. Eq., 453, said, in circumstances comparable to those presented here, that to reimburse the contestant in that case would have been to have revived the old practice denounced by Chancellor Green in Perrine v. Applegate, 14 N. J. Eq., 531.

The testimony taken in the Orphans' Court runs over 493 pages which are replete with statements by the court indicating that he was allowing the widest latitude in the examination and cross-examination of witnesses by counsel for the contestant.

He indicates again and again that the great bulk of the testimony was of no assistance to him in passing upon the truth of contestant's charges. It seems to me that he must have realized, and counsel must have understood, almost at the threshold, that if he showed everything he hoped to show, it would not prove undue influence, fraud, conspiracy, testamentary capacity, or informality of execution.

Sight has not been lost of the Chancellor's warning in the Wandell Case (supra). It seems to me that it "quite conclusively appears that the contest below developed no reasonable ground for further litigation" or for any litigation beyond the proper execution of the will and the testator's understanding that it was his will.

I suppose that under the rule the contestant must be held to have been justified in initiating this litigation and carrying it to the point where the rule was satisfied, and for that purpose it seems to me the Orphans' Court might have made an allowance of $5,000. when the magnitude of the estate is considered. There is some disagreement as to its exact size, but it seems to be of no moment whether it is approximately $5,000,000. or $6,000,000.

I will advise a decree dismissing the appeal of the contestant and modifying the order allowing counsel fee by reducing the same from $24,000. to $5,000. out of which disbursements will have to be paid.

Order Affirming Probate

(*Filed July* 23, 1929)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of EDWIN M. SQUIER, *Deceased.*	ON APPEAL

On Appeal from a Decree of the Orphans' Court of the County of Union, affirming the probate of a certain paper writing as the last will and testament of Edwin M. Squier, deceased. Order affirming decree and dismissing appeal.

Charles Burnham Squier, one of the next of kin and legatee under the will of Edwin M. Squier, late of the County of Union, deceased, having presented his petition of appeal from an order of the Orphans' Court of the County of Union, made on the 12th day of June, 1928 which ratified and confirmed the decree of the Surrogate of Union County, made on November 20th, 1926, admitting to probate a certain paper writing purporting to be the last will and testament of the said Edwin M. Squier, deceased, and granting letters testamentary thereon to Augustus S. Houghton, Frederick C. Squier, Jr., William C. Squier, 3rd and Harold M. Searles, executors therein named and which decree of said Orphans' Court also declared that said paper writing was the last will and testament of the said Edwin M. Squier, deceased, and the answer of Frederick C. Squier, Helen S. Keen, William

C. Squier, 3rd, Carol S. Houghton, Catherine S. Montgomery, Elsie S. Edson, Hester S. Smiley, Frederick C. Squier, Jr., legatees and devisees under the last will and testament of the said Edwin M. Squier, deceased, William C. Squier, 3rd, Harold M. Searles and Augustus S. Houghton, Frederick C. Squier, Jr., as executors under the last will and testament of Edwin M. Squier, deceased, having been duly filed and the matter having been brought on duly for a hearing and the Court having taken testimony and considered the evidence and heard the allegations of the parties herein and being satisfied that the said paper writing was duly executed by the said Edwin M. Squier as his last will and testament in manner and form prescribed by the statute in such case made and provided and that the said Edwin M. Squier at the time of making said will was of sound and disposing mind, memory and understanding and that said will was not the product of undue influence, conspiracy or fraud and that said order or decree made June 12th, 1929 should be ratified and confirmed.

It is thereupon on this 22nd day of July, 1929, ordered, adjudged and decreed, that the aforesaid decree of the Orphans' Court of the County of Union which ratified and confirmed the said decree of the Surrogate of Union County admitting to probate the said paper writing as and for the last will and testament of Edwin M. Squier, deceased, and directing that letters testamentary thereon issue to Augustus S. Houghton, Frederick C. Squier, Jr., William C. Squier, 3rd, and Harold M. Searles, the executors therein named, be and the same is hereby in all things ratified and confirmed, and it is further adjudged and decreed that the

said paper writing is the last will and testament of the said Edwin M. Squier, deceased.

It is further ordered, adjudged and decreed that the appeal of the said Charles Burnham Squier as aforesaid be and the same is hereby dismissed and that the costs and disbursements be taxed against the appellant.

It is further ordered that a counsel fee of $50,000.00/100 dollars be allowed to attorneys for proponents-respondents to be paid out of the estate.

Respectfully Advised:

JOHN BENTLEY
V.O.

E. R. WALKER
Ordinary.

Petition on Appeal

(*Filed August* 30, 1929)

NEW JERSEY COURT OF ERRORS AND APPEALS

In the Matter of the Estate of EDWIN M. SQUIER, *Deceased*	On Appeal from the Prerogative Court. PETITION OF APPEAL

To the Honorable, the Court of Errors and Appeals, in the Last Resort in all Causes:

The petition of Charles Burnham Squier, the contestant-appellant, in the above-entitled cause, respectfully shows that:

I. Petitioner finds himself aggrieved by an order made in the New Jersey Prerogative Court by His Honor, Edwin Robert Walker, Ordinary of the State of New Jersey, bearing date the 22nd day of July, 1929, in a certain cause or proceeding wherein Charles Burnham Squier was contestant-appellant and William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles and Augustus S. Houghton were proponents-respondents, in this respect, to wit:

(a) That the said order ratified and confirmed an order or decree of the Orphans' Court of the County of Union, bearing dated June 12, 1928, which ratified and confirmed a decree of the Surrogate of Union County made November 20, 1926, admitting to probate a certain paper writing purporting to be the last will and testament of Edwin

M. Squier, deceased, and granting letters testamentary thereon to Augustus S. Houghton, Frederick C. Squier, Jr., William C. Squier, 3rd, and Harold M. Searles.

(b) That said order adjudged and decreed that the said paper writing is the last will and testament of Edwin M. Squier, deceased.

(c) That said order adjudged and decreed that the appeal of Charles Burnham Squier to the Prerogative Court be dismissed, and that the costs and disbursements be taxed against the appellant.

II. And your petitioner humbly appeals from that part of the said order adjudging that the said paper writing is the last will and testament of Edwin M. Squier, deceased, and from the whole of said order of the Ordinary as aforesaid, upon the ground that the same is erroneous, in that:

(1) At the time of the making and of the supposed execution of said paper writing, and for a long time prior thereto, the said Edwin M. Squier was of unsound mind, and as such incapable of disposing of his said estate by will.

(2) That said William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles, Augustus S. Houghton, Frederick C. Squier, Helen S. Keene, Carol S. Houghton, Katherine S. Montgomery, Elsie S. Edson, Hester S. Smiley, George A. Ferris, Peter J. McCoy and Woolsey A. Shepard unduly illegally and fraudulently influenced the said Edwin M. Squier in respect to the making and supposed execution of the said paper writing.

(3) The supposed execution of the said paper writing is illegal and insufficient under the laws of this State to constitute the same last will and testament of the said Edwin M. Squier, deceased, for that the said Edwin M. Squier did not at the time of the supposed execution thereof publish and declare the said paper writing as and for his last will and testament in the presence of two witnesses, present at the same time, pursuant to the statute in such case made and provided.

(4) The said paper writing was not freely or voluntarily made or executed by Edwin M. Squier, as his last will and testament, but that the said paper writing purporting to be his will was obtained and procured as a result of a conspiracy on the part of William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles, Augustus S. Houghton, Frederick C. Squier, Helen S. Keene, Carol S. Houghton, Katharine S. Montgomery, Elsie S. Edson, Hester S. Smiley, George A. Ferris, Peter J. McCoy and Woolsey A. Shepard. That said persons, without the knowledge of Edwin M. Squier, deceased, federated and conspired together in causing said paper writing to be signed, if in fact it was signed, by the said Edwin M. Squier. That without the knowledge of Edwin M. Squier said persons held divers meetings and concerted divers plans and unlawful designs in order to deceive and mislead Edwin M. Squier; that they conspired together unlawfully to get possession of the property and estate of Edwin M. Squier and in order to more effectually deceive and mislead Edwin M. Squier it was secretly agreed by and between the said persons that the said paper writing

should be drawn and signed and executed by Edwin M. Squier, if in fact it was signed and executed by him, and to present said paper writing for probate as his last will and testament.

(5) That said paper writing was not freely or voluntarily made or executed by Edwin M. Squier, but said paper writing purporting to be his last will and testament was obtained and procured by the fraud practiced upon the said Edwin M. Squier by William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles, Augustus S. Houghton, Frederick C. Squier, Helen S. Keene, Carol S. Houghton, Katharine S. Montgomery, Elsie S. Edson, Hester S. Smiley, George A. Ferris, Peter J. McCoy and Woolsey A. Shepard.

(6) That said paper writing purporting to be the last will and testament of Edwin M. Squier, was signed and executed under a mistake of fact by the said Edwin M. Squier, if in fact it was signed and executed.

(7) The said order or decree is not in conformity with the evidence taken in said cause, is against the weight of evidence, and is not agreeable to law and equity.

And your petitioner therefore prays that the said order may be, in all particulars, reversed, set aside and for nothing holden, and that your petitioner may have such other relief in the premises as to the Court shall seem meet and proper.

EDWARD MAXSON,
Solicitor and of Counsel with Appellant.

Answer on Appeal

(*Filed September* 14, 1929)

NEW JERSEY COURT OF ERRORS AND APPEALS

In the Matter of the Estate of EDWIN M. SQUIER, Deceased.	On Appeal from the Prerogative Court. ANSWER TO PETITION OF APPEAL.

The answer of the respondents, Frederick C. Squier, Helen S. Keen, William C. Squier, 3rd, Carol S. Houghton, Katherine S. Montgomery, Elsie S. Edson, Hester S. Smiley, Frederick C. Squier, Jr., legatees and devisees under the last will and testament of the said Edwin M. Squier, deceased, and William C. Squier, 3rd, Frederick C. Squier, Jr., Harold M. Searles and Augustus S. Houghton, as executors under the last will and testament of Edwin M. Squier, deceased, to the Petition of Appeal of Charles Burnham Squier from the order made in the New Jersey Prerogative Court by his Honor, Edwin Robert Walker, Ordinary of the State of New Jersey, bearing date the 22nd day of July, 1929 in the above entitled proceeding, ratifying and confirming an order or decree of the Orphans' Court of the County of Union which ratified and confirmed a decree of the Surrogate of Union County made on November 20, 1926 admitting to probate the last will and testament of Edwin M. Squier, deceased, and granting letters testamentary to the executors therein named.

Answer on Appeal

These respondents answering the petition of Charles Burnham Squier say that:

I. The allegation contained in paragraph "I" including subdivisions "a," "b" and "c" of the Petition of Appeal are denied.

II. These respondents deny that the order made in the New Jersey Prerogative Court by his Honor, Edwin Robert Walker, Ordinary of the State of New Jersey, bearing date the 22nd day of July, 1929 in the above entitled proceeding is erroneous in any of the particulars set forth in paragraph "II" including subdivisions "1", "2", "3", "4", "5", "6" and "7", of said Petition of Appeal but on the contrary allege that said order in every respect is legal, proper and correct.

They therefore pray that the said decree or order may be affirmed with costs to be adjudged to these respondents.

HYER & ARMSTRONG,
Proctors for and of Counsel
with the Respondents.

"The page citation numbers in this brief are taken from the State of Case in the Prerogative Court and from the Stenographer's Minutes of the hearings in that Court. The corresponding page numbers in the State of Case in this Court have been inserted in margin."

In the Matter

of

A certain paper writing purporting to be the Last Will and Testament of EDWIN M. SQUIER, deceased.

ON APPEAL FROM PREROGATIVE COURT, BENTLEY, VICE-ORDINARY.

DECREE AFFIRMING DECREE OF UNION ORPHANS' COURT, STEIN, JUDGE, WHICH HAD ADMITTED WILL OF EDWIN M. SQUIER TO PROBATE.

BRIEF FOR APPELLANT.

The contestant, Charles Burnham Squier, appealed to the Prerogative Court from an order of the Union County Orphans' Court made on the 6th day of July, 1928, which affirmed the probate of the will of Edwin M. Squier, deceased, leaving his entire residue to his two brothers to the exclusion of the contestant, the only issue of a deceased brother, by the Surrogate of Union County. By a decree dated July 22, 1929, the Vice-Ordinary affirmed the Orphans' Court judgment. The briefs upon the trial were submitted May 14, 1929. In his opinion dated July 8th, 1929, the Vice-Ordinary

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SUMMARY OF ARGUMENT

New Jersey Court of Errors and Appeals

In the Matter

of

A certain paper writing purporting to be the Last Will and Testament of EDWIN M. SQUIER, deceased.

ON APPEAL FROM PREROGATIVE COURT, BENTLEY, VICE-ORDINARY.

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New Jersey State Library

sustained in every part the contention of the respondents and held that the bringing of the contest was so lacking in justification that it was the duty of the Court to reverse in ~~every part~~ the decree of the Orphans' Court, making allowance to contestants counsel

The issue of this appeal, namely, whether the evidence discloses incompetency and undue influence, conceded by the resort of the respondents to wholesale misrepresentation of the evidence.

The purported will of Edwin M. Squier was designed by Houghton to ensure the consummation of the fraud wrought by him through his misinterpretation of the will of Catherine C. Squier by preventing that part of the contestant's share caused to be temporarily diverted to Edwin M. Squier, who had no need of it or motive to take it or divert it from the contestant, as if under the will of Catherine C. Squier, from going after all in large part to the contestant through the intestacy of Edwin M. Squier. To conclude that honest Edwin M. Squier, for the first time, after thirteen years, precisely when making a will and contemplating facing his Maker, determined to ensure the consummation of a fraud is to go against all the evidence among which particularly the purported will and the letter of 1913.

PRELIMINARY STATEMENT.

STATEMENT AND ARGUMENT OF THE FACTS.

The parties and their relations with one another.

The two other stocks combined for equal control and complete exclusion of the contestant.

This combination not consistent with any uniform purpose in purported will.

The lawyer admits creating provisions testator, if competent, wouldn't and actually didn't authorize.

Lawyer controlled testamentary disposition in his own interest.

The motive of Houghton individually, as apart from his wife and family and clients and the need to ensure the consummation of the diversion of contestant's share by preventing the intestacy of Edwin M. Squier, was established.

Lawyer knowingly falsified fact and reasons in representations to Edwin M. Squier.

Lawyer's influence alone embodied mistake in purported will.

No reason for preferring other stocks existed.

Knowledge of incompetency of Edwin M. Squier basis of agreement of combined stocks.

Edwin M. Squier was a prime subject for undue influence.

Houghton's control of the family and of Edwin M. Squier gradually became complete and absolute.

The attempted suppression of the testimony of those who surrounded Edwin M. Squier shows up the control of Houghton over Edwin M. Squier and the other respondents whom he caused to adopt this program of suppression.

Houghton controlled all the Squier estates without competing influence inside or outside the family.

The evidence of the existence of the most extreme type of confidential relation between Edwin M. Squier and Houghton is overwhelming.

The evidence of conspiracy of all those charged is too well established for argument on the facts.

Houghton's opportunity for undue influence unparalleled.

The inclination of Houghton to influence Edwin M. Squier adversely to the contestant is both proved and admitted.

The *factum* of undue influence is proved by both indirect and direct evidence.

The witnesses to the purported will combined with Houghton in inclination, opportunity, and *factum*.

Motive of Houghton to commit and of the other respondents to permit, ratify and cooperate in the acts and omissions of Houghton, is established.

The Court's opinion and respondents' defense confounded by the evidence.

Houghton drew Edwin M. Squier's purported will by intuition and without instructions or ratification by Edwin M. Squier.

The form of the "explanatory" clause was so garbled in the haste to "put the will over" that not even intuition can give it any meaning.

Houghton was unable to give to the "explanatory" clause any meaning or to show either its legal effect or justification in fact.

The learned Vice-Ordinary appears to have accepted Houghton's intuitions, despite their vagueness, as binding as to both fact and law.

The family relations found by the learned Vice-Ordinary contrary to all the proved facts.

The 1913 letter expressed neither bitterness nor sarcasm and was such as a fond uncle would write under the misapprehension of fact caused by Houghton.

The estrangement, if any, had disappeared in 1926, and only the intuition of Houghton, who

had attempted to create it and wished to perpetuate it remained.

The only person shown to have been bent on disinheritance of the contestant was Houghton, who alone had the motive and the knowledge of the means thereto.

The evidence shows Edwin M. Squier had no comprehension of the meaning of what Houghton was causing to be done.

The last resort to strategy of Houghton and Shepard is a complete confession of the matters charged in the petition.

The record is replete with confessions of Houghton which make the opinion of the Vice-Ordinary incomprehensible.

The parallelism between Houghton's deception as to Catherine C. Squier's will and Edwin M. Squier's is unescapable.

Even if the wills of William C. Squier and Catherine C. Squier had no materiality, the exhibition of duplicity by Houghton in testifying about them would be weighty evidence of fraud and undue influence.

These documents were the occasion of material correspondence between Edwin M. Squier and the contestant.

This correspondence and a letter of 1923 from Edwin M. Squier to the contestant absolutely refute the fiction of an estrangement in 1926.

Advising and urging the making of a will by one so estranged from a natural object of his bounty as to disinherit him is advising and urging disinheritance. The use made by Houghton of the 1913 letter to show an estrangement in 1926 appears in the very opinion of the learned Vice-Ordinary as conclusively establishing undue influence.

The provocative incident after Catherine C. Squier's funeral was a ruse of Houghton absolutely on all fours with that of the *Ulrich* case to combine the family against the contestant and to create an estrangement with Edwin M. Squier.

Houghton, an outsider, imposed and carried out a false interpretation of the will of Catherine C. Squier.

The letter of Edwin M. Squier approved by Houghton conclusively establishes undue influence deliberately exerted.

This letter constituted a promise by Edwin M. Squier endorsed by Houghton neither to defraud nor disinherit the contestant.

The promise was upon natural, valuable and equitable considerations and upon that of forbearance.

The promise to the contestant was not broken by Edwin M. Squier, but by lawyer Houghton.

The Court need not decide in favor of contestant's construction of the wills of William C. Squier and Catherine C. Squier to deny probate to the purported will of Edwin M. Squier.

Without an understanding by Edwin M. Squier of the wills of William C. Squier and Catherine C. Squier, which is simply inconceivable, the only words attributed to him by Houghton, such as "I don't want to leave Burnham any more than I have to" and "Is it all right?" and the answers of Houghton in the "Houghton explanatory clause" and "It is your property" and "You have a right to dispose of it as you wish" absolutely preclude the possibility of the conception that Edwin M. Squier "consented" to the provisions of the will drafted by Houghton.

The text itself of the wills of William C. Squier and Catherine C. Squier establishes without need of argument the validity of the contestant's contentions.

Rights of the contestant under the will of William C. Squier, vested both before and after the decease of Catherine C. Squier, were confiscated under the influence of Houghton in violation of duties so clear to a lawyer that the wrong could not have been other than deliberate.

Houghton as draftsman of Catherine C. Squier's will himself wrote into it the construction contestant now contends for.

Houghton himself left the one-third of William C. Squier's residue left to Catherine C. Squier for life in the residue of the estate of William C. Squier and vested in the beneficiaries including the contestant under his will.

The failure of Catherine C. Squier to refer to her power vested the one-third residue in the beneficiaries of William C. Squier's will.

Even the lack of property to pay bequests or devises out of testatrix's private estate would not introduce doubt as to contestant's rights.

Houghton himself wrote plainly into Catherine C. Squier's will that it was of her private estate she was disposing.

The trusts under the will of William C. Squier also included the "directly" half of the two-thirds of the residue of which Catherine C. Squier's one-third for life also became a part.

The disregard of the trust provision of the will of William C. Squier as to trust shares received from a deceased brother is characteristic and typical of the general disregard of the rights of contestant under the will of William C. Squier.

Respondents' argument and the learned Vice-Ordinary's opinion that because the person presumed to have exercised undue influence in the *Cooper* case was the testator's lawyer and a direct beneficiary and Houghton claims he had no benefit under the purported will and was rather friend than lawyer to Edwin M. Squier, therefore Houghton neither under the *Cooper* case nor otherwise may be presumed to have exercised undue influence is as fallacious as the claim that because in the *Williams* case a mistake of fact was held not to justify rejecting a will, the circumstance that Edwin M. Squier labored under a mistake of fact alone makes it mandatory that the purported will be upheld, since Houghton was lawyer, false lawyer as well as false friend, and sustained a doubly sacred relation of trust and confidence which he grossly abused, and received benefit direct as well as indirect under the purported will, and exercised undue influence as an individual and as agent and attorney for direct beneficiaries who cooperated with and authorized him, and the mistake of fact was one which was part of the *res gestae* and went vitally to the matter of testamentary capacity and was caused and fostered by the deliberately false representation of Houghton and was an essential element of Houghton's undue influence which alone, it is admitted in effect, by the plea of the *Williams* case by the respondents and the statement of alleged facts in the "explanatory" clause, was sufficient to and did actually influence Edwin M. Squier to make, if he did make, the purported will. The facts established showing undue influence are so overwhelming that argument on the law and reliance upon presumptions are unnecessary. The Orphans' Court and the Prerogative Court both relegated the contestant to the one point of presumption of undue influence under the

Cooper case and both decided it wrong under even the skeleton facts considered, and failed to consider the whole body of facts established through the hostile testimony of Houghton and over respondents' opposition and left the contestant erroneously without opportunity to present the whole case either as it was in or as contestant should have been permitted, but wasn't, to put it in. The contestant is left to his appeal to this Court for the first consideration of *the whole case as proved establishing all contestant's contentions.*

Disregard of a *cestui's* rights by trustees admittedly honest and uninformed under the guidance of a lawyer with those same fiduciary obligations, but with the added duty to be informed, is conclusive evidence, if not controverted, of undue influence as to every transaction going back to the same matters by which property which the contestant was warranted in expecting from the same source was diverted.

Proof of other objections confirms proof of undue influence.

Contestant's natural expectancy one-third.

Two other stocks combined in 1913 against contestant.

Combination a partly consummated conspiracy to divide contestant's share.

Edwin M. Squier not in the conspiracy.

Houghton worked out corrupt bargain of two stocks without authority of testator.

The purported will negatives purpose to cut off contestant.

Contestant's expectancy the spoils of the conspiracy.

Secrecy and exclusiveness maintained in the trial.

Houghton alone managed the task of getting the purported will executed and probated.

The partner witnesses having depended on Houghton in the alleged execution were unable to supply the necessary testimony.

When and in whose presence instrument was signed left doubtful.

The instrument was not properly identified.

Even the contents of drafts and final instrument and time of making left in doubt.

Proof the instrument brought to knowledge of Edwin M. Squier lacking.

Every element of evidence and of conduct of Houghton inconsistent with the assumption that the purported will, which thus remains unproved as such, was the valid last will and testament of Edwin M. Squier.

POINT I.—The facts established operate as a matter of law to shift the burden of proving that the purported will was executed without undue influence to the proponents.

Undue influence may be established either by direct evidence or it may be inferred from a variety of circumstances.

In the application of the legal conception of undue influence as hereinbefore defined to the particular evidence showing such influence, the law has laid down an all important preliminary consideration, viz.: the mental condition of the testator as showing susceptibility to such influence, even if he had capacity to make a will if he were not unduly influenced.

Even if the cause of the disinheritance of contestant was his bitter feeling toward contestant, if

Houghton secured the making of the will by undue influence so as to affect the interest of others of the Squier family, the whole will must fall.

POINT II.—The testimony discloses fatal defects in proof of due execution which also bear on the proof of lack of testamentary capacity and undue influence.

POINT III.—The will setting forth a material mistake of fact upon which the entire will was expressly based is a will drawn by mistake and as a result of undue influence and probate must be denied.

POINT IV.—The conspiracy to obtain a paper purporting to divide the expectancy of the applicant among some of the conspirators is fully established by the evidence.

POINT V.—The learned Vice-Ordinary having decided that there was not a scintilla of evidence and that the letter of 1913 sustained the burden of the respondents the decision against the respondents here of the Special Term of the Supreme Court of New York upon the documents the Vice-Ordinary admitted as material, only to disregard them, may be cited on the issues of fraud and conspiracy, since it was not appealed from and is *res adjudicata* between the parties, to show that these documents were really part of the *res gestae* and that the respondents having attempted to present their full defense on the law and the facts did not present the 1913 letter and knew, when they objected to the admission and consideration of the documents admitted, that they were material evidence of great weight as to *the meaning of which they had assumed a contrary attitude elsewhere.*

POINT VI.—The purported will should be denied probate.

New Jersey Court of Errors and Appeals

In the Matter

of

A certain paper writing purporting to be the Last Will and Testament of EDWIN M. SQUIER, deceased.

ON APPEAL FROM PREROGATIVE COURT, BENTLEY, VICE-ORDINARY.

DECREE AFFIRMING DECREE OF UNION ORPHANS' COURT, STEIN, JUDGE, WHICH HAD ADMITTED WILL OF EDWIN M. SQUIER TO PROBATE.

BRIEF FOR APPELLANT.

The contestant, Charles Burnham Squier, appealed to the Prerogative Court from an order of the Union County Orphans' Court made on the 6th day of July, 1928, which affirmed the probate of the will of Edwin M. Squier, deceased, leaving his entire residue to his two brothers to the exclusion of the contestant, the only issue of a deceased brother, by the Surrogate of Union County. By a decree dated July 22, 1929, the Vice-Ordinary affirmed the Orphans' Court judgment. The briefs upon the trial were submitted May 14, 1929. In his opinion dated July 8th, 1929, the Vice-Ordinary sustained in every part the contention of the respondents and held that the bringing of the contest was so lacking in justification that it was the duty of the Court to reverse ~~in every part~~ the decree of the Orphans' Court, making allowance to contestants' counsel.

The Issue of this Appeal, namely, whether the Evidence discloses Incompetency and Undue Influence, Conceded by the Resort of the Respondents to Wholesale Misrepresentation of the Evidence:

The Orphans' Court having excluded a large part of the essential evidence and the Prerogative Court having admitted it only to disregard it, all in response to the respondents' insistence upon obstruction and suppression, the Prerogative Court even holding that the contestant should have known better than to try to obtain and introduce evidence, it remains for this Court to give the contestant a "day in court," if he is to have one. The circumstances that the estate is worth six million dollars and that the contestant has uncontrovertible, natural, legal and equitable claims upon the bounty of the alleged testator constitute no bar, though they were made to appear so, and precisely because of the contestant's rights to a "day in court" and a fair trial of the issues.

It may be premised that the vigorous opinion of the learned Vice-Ordinary is made up, on the authority, of course, of representations in respondents' brief, entirely of misstatements of the evidence and invention of facts not found in the evidence, such as it was necessary, and would be necessary, for any one, to make, in order to arrive at a conclusion adverse to the contestant. The learned Court sums up its opinion in these words:

> "I have read through the testimony which the judge of the Orphans' Court so patiently heard, and for three days I listened to what was principally, as the journalistic fraternity would call it, a rehash of the testimony in the Orphans' Court. The result of all my investigation leads me to say without hesitation that there is not a scintilla of proof that Mr. Hough-

> ton, or any of the others charged, were guilty of any fraud, undue influence or conspiracy."

This portion (really a summary of the whole) of the Court's opinion (in which the learned Vice-Ordinary omits to say that he read and considered the exhibits, which he declared material, although excluded by the Orphans' Court, and his opinion, in the part just quoted shows he didn't read or consider them) is shown to be absolutely a misstatement of fact by the circumstance that the Court's entire opinion is based upon a document which was not in evidence before or considered in the Orphans' Court and by the other circumstances that the Court absolutely misconceived the import of this document and absolutely disregarded, although admitted as material, as indeed they were, being a part of the *res gestae* upon which the respondents and the learned Vice-Ordinary respectively rested their defense and decision, another set of documents, explaining this document, upon which the entire case of the contestant was based. The attention of this Court is now directed to the opinion of the Supreme Court of New York County in the suit between the parties, the decision not being appealed from by the respondents, to the effect that on the construction of these documents depended the validity of the contestant's charges of fraud and conspiracy. This decision is cited and printed in full hereinafter under Point V. These important documents were strenuously objected to by the respondents and admitted by the learned Vice-Ordinary with a declaration that they were material, and admitted over their protest. These documents were the wills of William C. Squier and Catherine C. Squier, contestant's grandparents.

The Purported Will of Edwin M. Squier Was Designed by Houghton to Ensure the Consummation of the Fraud Wrought by Him Through His Misinterpretation of the Will of Catherine C. Squier by Preventing that Part of the Contestant's Share Caused to be Temporarily Diverted to Edwin M. Squier, Who Had No Need of It or Motive to Take It or Divert It from the Contestant, as if Under the Will of Catherine C. Squier, from Going After All in Large Part to the Contestant Through the Intestacy of Edwin M. Squier. To Conclude that Honest Edwin M. Squier, for the First Time, After Thirteen Years, Precisely When Making a Will and Contemplating Facing His Maker, Determined to Ensure the Consummation of a Fraud is to Go Against All the Evidence Among Which Particularly the Purported Will and the Letter of 1913.

After the funeral of Catherine C. Squier, Houghton had arisen and volunteered the statement that Catherine C. Squier had exercised a power of disposition of a life estate of one-third of the estate of William C. Squier to the exclusion of the contestant. These documents show absolutely that the statement was false. Houghton testified that he had never interpreted the will of Catherine C. Squier and his partner Shepard, who "looked over all the wills in the office," testified that he did not consider the question involved in such interpretation, which was whether the contestant had or had not been deprived, by a false interpretation of the will of Catherine C. Squier by Houghton, of contestant's one-fifteenth part, diverted to the other "stocks" represented by Houghton, including Edwin M. Squier, of the estate of William C. Squier vested in contestant subject to

the disposition by Catherine C. Squier, until after the contestant had followed the institution by him of this contest by bringing a suit in New York in equity against the principal respondents and several corporations for a recovery of that fifteenth. Although neither Shepard nor Houghton claimed that Catherine C. Squier had made a disposition and both admitted facts which made it doubly sure that she had not and argued that it made no difference whether Edwin M. Squier labored under a delusion as to the matter, they, in some inexplicable manner and as a pure afterthought, assumed that it appeared that no falsehood had been uttered by Houghton or any interpretation made to deceive Edwin M. Squier. It appears that the contestant was deceived by the false declaration of Houghton, which he, Houghton, admitted to be absolutely false, and was provoked to make a scene and write a letter, both now shown to have been justified, to Edwin M. Squier, which drew forth the letter from Edwin M. Squier upon which Houghton now bases his defense. Now if Houghton hadn't understood the will of Catherine C. Squier (though he let it be assumed he did) and the contestant hadn't understood it, how could Edwin M. Squier have understood it? If he didn't, he couldn't have understood his own letter or the will imputed to him, for both were based upon the will of Catherine C. Squier. The "history of the family," as Houghton understood it, was what Houghton, out of his own mind, based the explanatory clause (which didn't explain) of Edwin M. Squier's alleged will, upon. The true history was not as Houghton represented it to the world, for the evidence shows that Edwin M. Squier never understood or even knew about the so-called "explanatory" clause. Houghton's afterthought as to the letter and everything surrounding it took back

all his former false declarations and course of conduct and attempted to make the Court forget the misrepresentation by treating the letter as an outburst of righteous indignation by Edwin M. Squier, of his own motion and uninfluenced, and as an outraged son who understood the whole situation in its true light. This is the truth as to the belated misstatement by the Court as to an estrangement.

This general misstatement of fact in the opinion is supplemented, as to every part of the case and of the opinion, by broad special misstatements, all which misstatements, covering the entire case, will be severally demonstrated upon the evidence to be absolutely false. The principal misstatement of fact, namely, that Edwin M. Squier was estranged from the contestant, obviously a mere afterthought of the respondents, hazarded when they thought the danger of the refutation of what they dared not assert was past, namely, when, free from the peril of oral argument, which was not permitted on exchanged briefs, they came to impose upon the Court the fictions of their briefs, is made the basis of the Court's opinion. Not only is there no evidence of this estrangement, but the admitted evidence to the contrary is conclusive. The denial by the Court of adequate time for contestant's brief, for oral argument, and for obtaining the testimony of the contestant, who was ill, and one of the "executor" respondents, who voluntarily remained out of the jurisdiction, in Europe, all at the request of the respondents, marked the occasion for their false surprise claim of a fact not in evidence but actually contradicted by the evidence.

Preliminary Statement.

The purpose of the respondent Augustus S. Houghton, who may be named for what contestant's counsel call his sins, the principal respondent, although he should have remained, as he really was, a rank outsider, maintained for a quarter of a century and down to the close of the trial in the Prerogative Court, that the meaning of what was being done by him and under his guidance with the estates subject to his influence, all of which constitute one subject-matter, every element of which is a part of the *res gestae* of this contest, should remain obscure to the members of the Squier family, including the contestant and Edwin M. Squier, without their wishing it, but by the desire of all the others, and also to any court before which these matters should come, including the Surrogates' Court and the Orphans' Court in this and other prior but related matters and the Prerogative Court and this Court in this matter, stands as established by almost every transaction and in very nearly every page of this record. The manifestation and carrying out of this purpose, as to the *res gestae* of this contest, which will be clearly demonstrated from the evidence, would, without affirmative proof on behalf of the contestant, be enough to determine the case against the validity of the purported will of Edwin M. Squier.

> *In Re Morrissey Will,* 91 New Jersey Equity, at page 487, quoted below, under discussion of the law.

But such manifestation of the purpose does more. It discloses the more plainly not only the purpose, but also what it is attempted to conceal. A consideration of the record in the Orphans' Court and the record in the Prerogative Court and the exhibits will show clearly that this purpose to

obscure and to confuse the mind together with the difficulties which such purpose creates for the contestant could lead only to the conclusion that every claim of the contestant is sustained to the extent, when each claim is considered by itself and with the others, necessary to disclose the plan to impose upon the Court a document not entitled to probate as the Last Will and Testament of Edwin M. Squier.

Time is not of the essence of a conspiracy and the latecomer may be more effective than the originators. Every act, too, may appear, when considered separately and as of the time of its performance, in fact may deliberately have been made to appear, not only innocent, but the precise thing indicated by duty as necessary and proper to be done. But this Court will consider the sequence of acts and their effect, and will not hesitate, out of an oversensitive solicitude for the feelings of those who perform the acts (since it is a court of equity, where not the moral standards of the parties, but the conscience of the Court, is the test, and a guilty intent of the doer is not necessary to undo his deeds), to impute to them the intent to cause the natural consequences thereof, and will, without going into the matter of guilty intent at all (since it is, after all, the contestant's rights and not, strange as it may seem, those of Houghton, the only person who seems now concerned or now seems to have been concerned to defeat the rights of the contestant and to preclude him here, and seems to have been the only object of the solicitude of the learned Vice-Ordinary, or other outsiders, associates of Houghton, that are involved), arrive directly at the result of sustaining right and equity between the parties.

That result is, here, too clear for argument. The letter of the alleged testator to the contestant,

dated February 28th, 1913 (made the *ratio decidendi* of the learned Vice-Ordinary, as if it were referred to in and made a part of the will, and were of even date therewith), had been permitted for thirteen and a half years to express the alleged testator's purpose and will and to coincide with the purpose and will to remain intestate and to leave the contestant, as he was, a principal object of the bounty of a fond bachelor uncle who had no other person for whom he had preference or affection or even consciousness of their existence, expressly asserts that the estate willed by William C. Squier belonged to his active sons, among them the contestant's father, who helped to earn it, and that any share that the father, if living, would get should go to the contestant, and that the will of William C. Squier so directed and that he, Edwin M. Squier, insisted that it be not changed, but carried out as if the contestant's father were alive, and that he, Edwin M. Squier, whatever happened and whatever displeasure arose, would treat the contestant as his father's son, and entitled, by right of his father's ownership, to a full, undiminished share of what came from the source nominally of William C. Squier's estate, but really from the common fund belonging equally *per stirpes* to his active sons, of whom contestant's father was, if not first, at least, not last. To break down the supposed will of the nonogenarian, William C. Squier, apparently a contract of his active sons entitled to the estate, and the purpose and will of Edwin M. Squier, one of them, as expressed in the 1913 letter, approved as correct by Houghton, was the continued purpose of Houghton, admitted by him and established beyond cavil or peradventure in the record.

Statement and Argument of the Facts.

The Parties and their Relations with One Another:

Edwin M. Squier died November 9, 1926, at Rahway, New Jersey. He was 73 years of age. He never married and was one of the five sons of William C. Squier, who died in Rahway in the year 1906, at the age of 96, and Catherine C. Squier, who died in February, 1913, at the age of 91. The other brothers were Stuart C. Squier, Charles Burnham Squier, Sr., William C. Squier, Jr., and Frederick C. Squier. Charles Burnham Squier, Sr., predeceased his father, William C. Squier, and died in the year 1904 at the age of 54. He died intestate, leaving a widow and an only son, Charles Burnham Squier, the contestant. William C. Squier, Jr. died in the year 1915, intestate and without issue. Stuart C. Squier predeceased Edwin M. Squier by three days and died November 6, 1926, leaving six children. Thus there were left, surviving Edwin M. Squier, the contestant, representing his father, Charles Burnham Squier, Sr., Frederick C. Squier, and the six children of Stuart C. Squier. The children of Stuart C. Squier are the respondents, William C. Squier, 3rd., Helen S. Keene, Elsie S. Edson, Carol S. Houghton, Katharine S. Montgomery and Hester S. Smiley. Frederick C. Squier has two children, the respondent Marjorie S. Searles and Frederick C. Squier, Jr., named as executor in the purported will. Other respondents are Mary Conroy, James W. Avery, Thomas Clarke, Alfred Pearce, Mary Cavanaugh and Norah Riley, servants retained by the executors at the charge of the estate as possible witnesses, the City of Rahway, made in the alleged will the beneficiary of a provision for the perpetuation of a park on the household site and an unconnected lot—an impossible thing—a Presby-

terian Church, and a library. Houghton, who is the husband of Carol S. Houghton, and thus was a son-in-law of the late Stuart C. Squier, William C. Squier, 3rd., and Harold M. Searles, also named as executor in the purported will, husband of the respondent Marjorie S. Searles, and thus son-in-law of the respondent Frederick C. Squier, and Frederick C. Squier, Jr., also named as executor, were the proponents of the purported will. The two stocks of Stuart C. Squier and Frederick C. Squier, two of the five sons of William C. Squier, Sr., are thus represented as executors. The stock of Charles Burnham Squier, Sr., is not represented. The stocks of William C. Squier, Jr., and Edwin M. Squier are now extinct. The representation as to execution of the purported will of Edwin M. Squier was divided equally between the stocks of Stuart C. Squier and Frederick C. Squier with the added items of equality that one executor for each is a son-in-law and that the representation is in the generation of the grandchildren of William C. Squier. In connection with an explanation of an alleged offhand direction by the aged Edwin M. Squier for this careful adjustment of equal control of two apparently bargaining and fencing stocks, Houghton blundered into a betrayal of himself as the real author of the alleged will. This direction was testified to as having been given at a time when Houghton said Edwin M. Squier made no communication to him of any kind and the elimination of Frederick C. Squier, Sr., as executor was inconsistent with the alleged direction. This surviving brother appears in the evidence to be incapable of transacting the business required of an executor. The two brothers, Stuart C. Squier and William C. Squier, Jr., had, admittedly, been incompetent for many years before their deaths.

The Two Other Stocks Combined for Equal Control and Complete Exclusion of the Contestant:

The exclusion, therefore, of the stock of Charles Burnham Squier, Sr., was absolute, with the exception that Edwin M. Squier left to his brother's only son, the contestant, in the purported will, the sum of $5,000, being the amount left to the contestant and each of the contestant's eight cousins above-mentioned by name and names of their fathers. This exclusion and this equal division appear from the evidence to have been the work of
470 Houghton. He testified at page 485 of the record in the Orphans' Court as follows:

> "Q. Have those lead pencil notes on the back anything to do with this memorandum? A. They have, yes. When I read over this memorandum I think I was standing in the outer office, and I said to Mr. Squier, Ed, you have not specified who should be the executors; and he said in this order, I want Harry, Frederick, Will and yourself; so I wrote down Harry, Fred, 'W' for Will, that is my brother-in-law, and 'ASH' for myself.
>
> "Q. Now, when he handed you these notes did you discuss these different provisions with him? A. No. They are understandable."

This testimony, as the circumstantial recollection by a witness whose specialty was not recalling indicates, was pure invention, as was the naming of the executors by Edwin M. Squier. It is obvious that the language would not indicate what persons were meant and the conversation, even if it took place, which Houghton himself, as will be shown, testified that it never did, was insufficient for a decision as to the identity. "Frederick" would indicate the brother of Edwin M. Squier and would not explain even to Houghton. There is a lack in the evidence for the conclusion that

Edwin M. Squier knew off-hand the named nephews and the nieces whose husbands were named, in the way that Houghton did, or so as to make the fine, calculated adjustment and balance of control represented in the division of control of execution, or had any reason or motive, or cared to do so. At the time of the supposed communication there is no reason to suppose Edwin M. Squier had any intention to exclude the contestant. The so-called manuscript notes do not name the executors, certainly not to the exclusion of or discrimination against the contestant. This explanation, which involved the contributing of something to the substance of the will, was all of a piece with the contribution by the respondent Houghton to the paragraph purporting to explain the discrimination against the contestant, which, obviously, if understood at all by Edwin M. Squier (the evidence being that it was never shown to him), was understood by him as an explanation not of discrimination but as a similar explanation to him by Houghton, shown in the letter of 1913 to be false, of supposedly equal treatment of the contestant.

This Combination not Consistent With Any Uniform Purpose in Purported Will:

The explanation was made in the purported will of Edwin M. Squier, in the fifth paragraph, in the words following:

> "I make no further provision, directly or indirectly for my nephew, Charles Burnham Squier, as he was and will be the sole beneficiary in the interest of his father, if living, would have received from the trusts created by the will of my father, William C. Squier."

Although, for the purposes of argument, this paragraph will be dignified with the same con-

sideration as if it conveyed or was meant to convey an idea, the attention of this Court should be called, at the outset, to the fact that the relative clause purporting to explain has such a defective construction that it says nothing at all. The effect of this circumstance in connection with a clause inserted between two hurried drafts of a purported will designed by the author to dispose of an estate of six million dollars should not be lost from view. The purported will should be examined also as to whether there was not a seal under the final seal and as to the meaning of leaving the word "whose" spelled "whoses."

The purported will divided the residue equally between the two stocks, even to the extent of making the two brothers, Stuart C. Squier and Frederick C. Squier, the immediate beneficiaries, and provided that the share of each should be paid to him in kind, and, in the event of the decease of either of them, should be paid to their issue *per stirpes* and not *per capita*. The principle of equality is further enhanced by the fact that it was admitted that one of the brothers, Stuart C. Squier, had been, to the knowledge of Edwin M. Squier, incompetent and without control of his own estate, as far back as 1915, and perhaps to 1909. The equality of control was protected by a provision making a decision of a majority of the executors conclusive. These provisions prescribing equality are not to be found in the manuscript notes which Houghton testified were handed to him by Edwin M. Squier and served as a basis of his purported will. Nor was the important provision, also missing from the first draft of the purported will, giving the alleged reason for leaving only $5,000 to Charles Burnham Squier, "son of my deceased brother, Charles. * * *" The fifth paragraph of the purported will giving $5,000 to each niece and

nephew is a contradiction of the general purport of the document. It specifies, among the nieces and nephews, Charles Burnham Squier, "son of my deceased brother, Charles." Taking into consideration the size of the estate and the circumstance that Stuart C. Squier was to all purposes civilly dead, it is obvious that the six children of Stuart C. Squier were remembered to an almost negligible extent by the gift of $5,000 to each of them and that the gift of $5,000 to each of the six children of Stuart C. Squier and to the two children of Frederick C. Squier and to the one child of Charles Burnham Squier, Sr., was mere dust to be thrown in the eyes of Edwin M. Squier, who, Houghton said, asked what it meant, and of the Court, and in contradiction both to what Houghton sought to have appear as the expressed intent to disinherit Charles Burnham Squier and the similarly ostensible intent to benefit the stocks of Stuart C. Squier and Frederick C. Squier, equally *per stirpes* and not *per capita*. The words of the so-called explanatory clause would apply with almost equal force to the two children of Frederick C. Squier as against their cousins, children of Stuart C. Squier, who, moreover, if mere vesting were meant, had, already, many years before, stepped into the shoes of their insane father.

The Lawyer Admits Creating Provisions Testator, if Competent, Wouldn't and Actually Didn't Authorize:

The fallacy of the fact and theory upon which the appellant purported to be excluded must certainly have been obvious to Edwin M. Squier, if the purported will were his. The inevitable dilemma faces the respondents that either Edwin M. Squier did not have that essential element of testa-

mentary capacity which consists of knowing the situation of the natural objects of his bounty and the nature and extent of his property, or that the purported will was not the last will and testament of Edwin M. Squier. Houghton appears from the purported draft of the will to have supplied the names of the nephews and nieces for Edwin M. Squier, since Edwin M. Squier didn't give them, just as Houghton, admittedly, (Houghton, Orphans' Court Record p. 485), placed his own interpretation on the alleged direction, "Harry, Frederick, Will and Houghton," to eliminate Frederick C. Squier, Sr., as executor, and just as Houghton, admittedly, expanded the brief comment, "Burnham will get Charlie's share in my trust," admittedly a statement that contestant would get only his own vested share and a contradiction rather than a support of future elimination of contestant, since the brothers Stuart and Frederick and their children would also get their respective shares in Edwin's trust, into the elaborate statement, found in the purported will, of fact and law, explaining different reasons for the exclusion of the contestant, not only admitting having supplemented it from the lawyer's "knowledge of the history of the family" (Houghton, Orphan's Court Record, pp. 490-491), but also: "I suppose I am responsible. I drew it," although he had attempted, until cornered, to make the Court think that Edwin M. Squier had been responsible (Houghton, Orphans' Court Record, p. 490), for the statement. Houghton also admitted more than inferentially that the gift of power to the executors without bonds and the maintaining of the securities intact for delivery in kind as to one-half to his incompetent father-in-law personally were of his own devising. Whether or not, however, Edwin M. Squier knew the purport of the alleged

will and the fallacy of fact and theory expressed in that paragraph diverting the property of the purported testator from its natural destination, Houghton not only admittedly knew of this fallacy and admittedly pretends he didn't care whether it was fallacious or not.

Houghton testified at page 490 as follows: 475

> "Q. Immediately after he had examined it, did he come in to you, or did he send for you? Or did you go into him, if you recall? A. No, I went in. I went in voluntarily.
>
> "Q. You found out then he had looked over the draft you had drawn, did you? A. Yes.
>
> "Q. Did he say anything to you about it? A. Yes, he brought up this question of the bequest to Burnham Squier and the reason why he had made it that amount, and he asked me if I THOUGHT the will was all right.
>
> "Q. What did you say? A. I told him that it was his property and he was justified in doing anything he pleased with it."

The effect of this is that Houghton had originated the provision disinheriting the contestant, that Edwin M. Squier had questioned it, and that Houghton, although he attempted to testify to the contrary, actually testified to the effect that he had so argued with Edwin M. Squier, at a psychological moment, that it was the will and purpose of Houghton and not that of Edwin M. Squier that was expressed in the provision. It was Houghton's creation that Houghton said was all right as the will of Edwin M. Squier.

Lawyer Controlled Testamentary Disposition in His Own Interest:

The effect of this testimony is that Houghton told the testator that he, Houghton, thought the will he had drawn was all right in respect to the cutting off of the contestant. The admission that Houghton

urged and advised Edwin M. Squier to make a will thus becomes a confession (even without consideration of the circumstance that Houghton insists [and the learned Vice-Ordinary found] that the estrangement existing between Edwin M. Squier and the contestant at the time and for a long time before and after was of such bitterness on the part of Edwin M. Squier that his uppermost purpose was to prevent the contestant getting anything out of his estate when he died) that Houghton urged and advised Edwin M. Squier to make *that* will. The lawyer admits that the client took the purported will as justified in reliance upon the lawyer's assurance that it was all right and thereby admits that all he had to do to obtain the will was to draw it and say that it was all right. Placing the purported estate of Edwin M. Squier at six million dollars, the effect of the answer of Houghton was to deprive the contestant of two million dollars, to raise Frederick C. Squier's share to three million dollars and the incompetent Stuart C. Squier's share to three million dollars. Or, if assuming the survivorship of the issue of Frederick C. Squier, the effect was to raise the shares of Frederick C. Squier, Jr., and Marjorie S. Searles, each, from one million dollars to one and a half million dollars, and the shares of Carol S. Houghton, Hester S. Smiley, Katharine S. Montgomery, Elsie S. Edson, Helen S. Keene and William C. Squier, 3rd, each from $333,333.33 to $500,000, or, by $166,666.67 each, at the expense of the contestant. The question, according to Houghton's version, asked by the client of the lawyer, was directed to the "amount", *i. e.*, $5,000, left to the contestant, which, as written by the lawyer, was the same amount left to each of the contestant's cousins. Not counting the effect upon the lawyer as manager of the estate, with control, only too

evident in this proceeding, of the beneficiaries of his advice, among whom, it was contemplated, would also be his father-in-law, who (Houghton, Orphans' Court Record, p. 481) "had been taken out of the administration of the estate," and the exclusion of the contestant, with whom the lawyer would have had to contend if the client had left his estate to be administered according to the rules of intestate succession, a thing the necessity of avoiding which the lawyer had urged upon the client admittedly twice (Houghton, Orphans' Court Record, p. 483), the lawyer benefited by the increase of his wife's share by $166,666.67, and by the increase of the shares of each of her brother and sisters and of each of their cousins, all his clients, by a like amount. 466 468-469

The Motive of Houghton Individually, as Apart from His Wife and Family and Clients and the Need to Ensure the Consummation of the Diversion of Contestant's Share by Preventing the Intestacy of Edwin M. Squier, Was Established:

That motive was not lacking for this appears clearly in the evidence, for after the trial below, Houghton first disclosed that he had had intimate business relations with Edwin M. Squier and had incurred obligations to him to the admitted amount of $37,000 and participated in a venture in which Edwin M. Squier lost $100,000 in an unexplained manner and in a "Florida real estate deal." A letter read into the Prerogative Court Record at page 106, wrenched by main force from Houghton's possession, shows the compliance of Edwin M. Squier with pleas for funds in the disastrous $100,000 venture to keep it afloat. Another version of the matter is that a short time after the execution of the purported will Houghton had to

force upon Edwin M. Squier notes to the amount of $37,000. Nothing could be more eloquent of the attitude of mastery to which the respondent Houghton had brought Edwin M. Squier with respect to him. An adequate motive for the purpose of the respondent Houghton to exclude the contestant from interest in other than the fixed amount in the estate of Edwin M. Squier abundantly appears in the fear of Houghton of a discovery and a demand for an accounting by him in reference to the estate. The inference is unavoidable that a fair disclosure would be progressively damaging to the claim sustaining the purported will. Houghton testified that he would rule that the $37,000 owed the estate by him on his notes, dated shortly after the alleged execution of the purported will, should not be paid.

Lawyer Knowingly Falsified Fact and Reasons in Representations to Edwin M. Squier:

The theory upon which Houghton worked out this inequality in his own mind and ostensibly in the mind of the client was double, first, that the contestant should not get more than one of Stuart C. Squier's six children even if each of Frederick C. Squier's two children would, although the contestant stood by law and by the grandfather's will and the *per stirpes* principle of the purported will, as representative of his deceased father, the brother of the Edwin M. Squier, and, second, that the contestant had been the beneficiary of a prior inequality, calculating *per capita,* under the will of William C. Squier, to the detriment of and at the expense of his eight cousins. The first part of the theory was inherently false, since, among other things, the contestant did not stand in the position of a cousin, but of the parent of cousins, since, also, what the contestant got in representa-

tion of his father could not be to the detriment or at the expense of his cousins, and since, finally, each of the six cousins who would have been most aggrieved did not assert the principle against the two children of Frederick C. Squier or against themselves when, by reason of their father's incompetency, they divided up his estate in 1919. But the theory was also based upon the contrary of the facts. The theory volunteered by Houghton, in 1913, just after Catherine C. Squier's funeral, with no authority from Catherine C. Squier's will (or, as it is now admitted, from her outside her will), and, inserted by him in the purported will of Edwin M. Squier, also without authority, that the contestant should be cut off from Catherine C. Squire's private estate and the residuary third of which she had the power of disposition under the will of William C. Squier, was absolutely false, but the theory inserted by Houghton in the purported will of Edwin M. Squier was at least twice as false at the time it was thus inserted. It was, by the very unwarranted application by Houghton of the false theory in the disposition, never accounted for to any court, of Catherine C. Squier's private estate and the said third residue of the estate of William C. Squier, true, that the cousins of the appellant as well as Edwin M. Squier received by such disposition to the detriment and at the expense of the appellant large amounts from the estates of William C. Squier and Catherine C. Squier which the contestant's father would have received if living. Even Houghton was unwilling (Houghton, Orphans' Court Record, pp. 472-474) to maintain (or as he said, evading the question, he "wouldn't speculate," it being nevertheless a matter within his personal knowledge), that the contestant received his full share his father would have received if he had been living either as a

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matter of law or as a matter of fact, assuming for the purpose of argument that the so-called "explanatory" clause means this. The proof was duly made that the distribution made by Houghton under the wills of William C. Squier and Catherine C. Squier deprived the contestant of the share which he claims and which neither Houghton nor anybody else down to date has ever asserted was not legally the contestant's. But the point of his representation to the family at the funeral of Catherine C. Squier was that Catherine C. Squier "had said that the appellant would receive a good deal more money than any of the grandchildren of William C. Squier," and, which he later swore was false, said it to him, Houghton (Houghton, Orphans' Court Record, pp. 474-475). A very exhaustive, if not also exhausting, analysis of and argument upon the will of William C. Squier are made hereinafter. Any one who finds them abstruse and labored will be thereby making the incidental contention for the contestant, as important, really, as the one directly aimed at that Catherine C. Squier made no disposition of her one-third life interest, namely, that the supposition that Catherine C. Squier, whether at the age of eighty-four, when her will was executed, or of ninety-one, when the last of her two codicils, ratifying also the will, was dated, understood, or at any time of her life could have, understood personally her husband's will is a howling absurdity. This statement by Houghton meant, of course, that William C. Squier's will had provided as he said Catherine C. Squier told him. The argument, therefore, used in support of the distribution, by Houghton, personally, but ostensibly as attorney for the executors and trustees, of the part of the estate of William C. Squier over which Catherine C. Squier had power of disposition, to the exclu-

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sion of the contestant, was an argument in support of rewriting or countervailing against the will of William C. Squier and making sure that the contestant would not get what his father would have got if living. It was this argument which was used by Houghton, as attorney, to Edwin M. Squier, as trustee and executor of the will of Catherine C. Squier. Under the influence of that argument, whether actively or passively, Edwin M. Squier himself ostensibly, but Houghton really, diverted from the contestant a very large amount which his father would have received if living. It was this same argument, with, admittedly, the added misrepresentation or suppression, by Houghton, of what had already been accomplished against the contestant, that was used (whether repeatedly or not is of no importance), to obtain a purported will of Edwin M. Squier framed on the same principle. This addition was really a subtraction, for instead of the contestant having received through his father's right what the others had not, there had been subtracted from contestant's father's share, not by Catherine C. Squier but by Houghton and the trustees and executors he was directing, and given to the others, a large amount which may be measured without fear of exaggeration as more than the contestant's natural share in the bounty of Edwin M. Squier. What William C. Squier, Jr., got under the disposition, whether warranted or not, of Catherine C. Squier's estate, was distributed as a remainder after his death. The share of Catherine C. Squier's estate, therefore, which was not added to the appellant's natural share in representation of his father but was subtracted from it and added to those of the others, was one-fourth of Catherine C. Squier's estate, whether her own or subject to her power of disposition. Whatever basis, therefore, of Catherine C. Squier's right to

devise be assumed, the contestant was excluded from it in favor of the three other stocks, represented by Edwin M. Squier, Stuart C. Squier and Frederick C. Squier. At this time, moreover, in 1913, the contestant had not received anything the other stocks had not received. Nor did he thereafter. But for almost fourteen years, from February, 1913, to November, 1926, the other stocks had the capital sums received through Catherine C. Squier which the contestant did not. Disregarding stock dividends and war profits in New Jersey Zinc, the main item of the family holdings, and assuming only the normal rate of increase for fourteen years, that sum would, on November 9th, 1926, be almost doubled. During the period, therefore, from 1906, the date of William C. Squier's death to 1926, the contestant received no addition to his estate in representation of his father or from any provision of the will of William C. Squier. What fell in to him, was his, or only a part of "his," vested in him, under the will of William C. Squier, upon the death of William C. Squier, in 1906. The other stocks were in exactly the same position in 1913, but after that period the relative situation, whether rightfully or not, changed to the disadvantage of the contestant, and, when Houghton suggested
449 (Houghton, Orphans' Court Record, p. 464), to Edwin M. Squier, that he put in a provision excluding the contestant from the bounty of Edwin M. Squier on the ground which, as the above reference shows, was false and deliberately so, of the contestant receiving, as Houghton swore falsely Catherine C. Squier told him, a "good deal more money than any of the other grandchildren of William C. Squier" (Houghton, Orphans' Court
459 Record, p. 474), or whatever ground it was that Houghton, on his own responsibility (Houghton,

Orphans' Court Record, p. 491), and upon his knowledge of "the history of the family" (Houghton, Orphans' Court Record, p. 492), and upon the assumption that Edwin M. Squier knew that Houghton knew that he did not wish to leave the contestant any more than he had to (Houghton, Orphans' Court Record, p. 466), all Houghton's testimony as to reasoned directions or any directions for the express exclusion of the contestant being admitted by Houghton (Houghton, Orphans' Court Record, pp. 490-492) to be fictitious and the elaborations and inventions of Houghton, himself, he, Houghton, well knew that, if the incident actually occurred, he, Houghton, then and there, in and about the preparation and execution of the purported will of Edwin M. Squier, made a misrepresentation of fact and of law upon which the entire structure of the will, so far as it departed from the natural disposition of the estate of Edwin M. Squier, was grounded.

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Lawyer's Influence Alone Embodied Mistake In Purported Will:

It must be assumed that, assuming that the will was actually made by the testator in sound mind and full testamentary capacity, if the reason for the will would fall, being supplied by the mind of another, the whole will would fall; that if the reason for the will, supplied by the mind of another, was false in fact or theory, or was based upon a mistake or confusion as to fact or theory, the will would fall; that if the reason was insufficient, being supplied by the mind of another, the will would fall; that if it was without force at the time the will was executed, being supplied by the mind of another, the will would fall; that if the reason for the will was Houghton's, the will was Houghton's; that if Edwin M. Squier relied,

in whole or in part, upon Houghton for the truth, in fact or theory, of the reason for the will, then, whether the reason upon which the will based was true in fact or theory, the will was the result of undue influence.

No Reason for Preferring Other Stocks Existed:

There appears no reason other than the influence of Houghton for excluding the contestant from the bounty of his uncle and no reason other than the combination of Frederick C. Squier and Houghton in such influence for the diverting of the contestant's expectancy to the stocks of Frederick C. Squier and Stuart C. Squier. It was Houghton's interest that his father-in-law's stock should be enriched at the expense of the contestant. But the evidence is overwhelming that Stuart C. Squier was more dead to his brother Edwin than was their brother Charles; that Stuart was dead to Edwin while Stuart was in life, while Charles, though dead, was living in the tender recollections of Edwin, and that Stuart's children meant nothing to Edwin, according to the testimony of Stuart's only son, William C. Squier, 3rd., if he even knew their names, which Houghton admittedly supplied out of his own knowledge "of the family history" for the purported will. Houghton admittedly knew that Stuart C. Squier had been incompetent for a long time. He says that Edwin M. Squier knew that Stuart C. Squier was incompetent. He also says that he did not mention the circumstance to Edwin M. Squier in and about the drafting of a will providing for the ostensible delivery to Stuart C. Squier personally, but really to Houghton (who actually sold some of them in violation of the specific mandate of the purported will, to a friend of his) of several million dollars worth of specific securities.

Knowledge of Incompetency of Edwin M. Squier Basis of Agreement of Combined Stocks:

The conclusion that Houghton and Frederick C. Squier and the children of Frederick C. Squier and Stuart C. Squier considered Edwin M. Squier lacking in testamentary capacity is unavoidable. They did just what they had done for Stuart under like circumstances and arranged for control of his property before and after his death. The estate was kept, a fact concealed until after the Orphans' Court trial, in the safe deposit box of William's estate, of which Houghton was trustee, and was and had for many years been the only active trustee. Houghton and those for whom he was working must be presumed to have had in mind what is a commonplace of the law of wills, namely, as said in *Waterman et al.* v. *Whitney et al.*, 11 N. Y. 157, quoting JARMAN on Wills: "The amount of undue influence which will be sufficient to invalidate a will must of course vary with the strength or weakness of the mind of the testator." The failure of Stuart C. Squier and Edwin M. Squier, co-trustees and co-executors, as well as beneficiaries under two wills, not to say brothers, to meet more than twice in twenty years, although neither appears to have had anything else to do, is not nearly so significant as the complete failure to add Edwin M. Squier to the family gatherings of Frederick C. Squier and his daughter, who lived beside one another two blocks down the same street from Edwin M. Squier, or to visit him at the old homestead. That Mary Conroy, Frederick C. Squier, Harold M. Searles, Eleanor Miller and Dr. Lance regarded Edwin M. Squier as incompetent on November 5th and 6th, 1926, four months after the execution of the purported will, is obvious. That Jennie Martin Ayers and Emma Martin regarded Edwin M. Squier as incompetent July

17th, 1926, eleven days after the alleged date of the purported will and came to testify, as they did testify in effect, that they were shocked to find that Edwin M. Squier was so far gone that, although they were lifelong personal and family friends, he did not know them by name or otherwise, is equally obvious, and Frederick C. Squier, Fred Hyer, Houghton, George A. Ferris, Harold M. Searles quite as obviously agreed with them, since Samuel C. Du Rie, of Rahway, who was present July 17th, 1926, when Edwin M. Squier failed to recognize these two ladies, whom he had known well for many years, was permitted to leave the stand without a question in cross examination. The harboring of Mary Conroy, at the house of Frederick C. Squier, with the result that she concealed and misrepresented, as testimony, to be referred to, shows, facts within her knowledge concerning the habits of Edwin M. Squier tending to show his incompetency, discloses better than the information possessed by Mary Conroy and the honest expression thereof and of her opinion by her directly (it was partly disclosed by her admissions before the trial) would have done, that the defendants knew that the truth would conclusively indicate the incompetency of Edwin M. Squier. It is obvious that the control of knowledge of the mental condition of Edwin M. Squier by Frederick C. Squier was a bargaining point in the compromise. The evidence of control of dangerous witnesses by holding out the bait of benefactions and the continuation of employment and wages without work, is complete, and is eloquent, not only of the consciousness of guilt of Frederick C. Squier and Houghton, but of suppression by the proponents of a purported will of information and evidence necessary to enable the Court to determine the testamentary capacity of the purported

testator. Mary Conroy, the cook, who was obviously so ignorant that the imputation to her of the word "excess" by the nurse, Eleanor Miller, was properly suspected by the Court, protested that she knew nothing of Edwin M. Squier's peculiarities, habits, or liquor, except that "he read most of the time" (Mary Conroy, Orphans' Record, pp. 338-340, 345) and "up until the time of his death—was very capable of running his own house." Mary Conroy is probably the first woman who ever proclaimed the ability of any man to run his house, which, as her testimony shows, she had herself run completely since the death of Catherine C. Squier, and with her theretofore. This testimony, volunteered by this false witness, was the chief lie of the respondents and betrayed that they were using this witness to cover up the contrary fact, namely, incompetency. The testator certainly had some help, with three men and three women servants, in a house in which he lived alone. None of these escaped control by Frederick C. Squier and Houghton. Each was warranted in relying and obviously did rely on the others to keep their influence exclusive. The two stocks were well represented. The third stock was kept out before and after Edwin M. Squier's death. After the trial before the Vice-Ordinary and the constant clamor that counsel for the respondents had a right to secrecy against not only the contestant, but also the Court and the State of New Jersey, it is unnecessary to make much argument that the respondents suppressed evidence unfavorable to them.

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Edwin M. Squier was a Prime Subject for Undue Influence:

At the time of his decease Edwin M. Squier was seventy-three years of age. About four years be-

fore, he had sustained a fall which resulted in a broken hip and he was confined to bed and his home for nine months. Thereafter, and from the year 1923 onward, he came to his office in New York not more than three days a week and remained only a few hours. He had declined decidedly before the date of the alleged will. He had, as one of the parties admitted, always been eccentric and this eccentricity became more and more pronounced as he grew older. He was an addict to cigarettes of a very virulent type to an extraordinary degree. He stayed up almost all night smoking cigarettes. He was also a very heavy drinker and had a stock of liquors valued at many thousands of dollars. He drank in his home constantly and invited acquaintances of a very mixed class to drink with him in the evening and often had to be carried up to bed—and by none other than Mary Conroy, who had to wait up for him. Cigarettes and drinking habits, in combination, such as the incontrovertible facts establish Edwin M. Squier's addictions to have been, are not to be and were not judged by Houghton as mere inveterate smoking and drinking. The taking home for many years of five hundred Turkish cigarettes a week, from one place alone, and the purchase of twenty thousand at once and in addition provision for a supply by special manufacture during the War of "knockout" cigarettes, together with the fact that he resisted a half grain of morphine and died of pneumonia induced by nicotine poisoning, and the getting drunk with anyone he could find, gave Houghton a measure of Edwin M. Squier's intellect and will power. Two important elements go to make up the undue influence, first, what was in Houghton's mind, and second, what was in Edwin M. Squier's mind. Houghton's mind appears, on

the open book of the record, as intent, for thirteen and more years, on depriving the contestant of a share, which Houghton reserved the right at his own convenience to judge, whether it was the contestant's by right or not, of his grandfather's estate. The fact is sealed with Houghton's admission, and even boast. That Edwin M. Squier never shared Houghton's purpose, the letter of 1913 and the purported will proclaim, although Houghton planned that they should conceal the fact. Houghton's hostile purpose preceded the death of Catherine C. Squier. The claim of Houghton himself is that Edwin M. Squier became antagonistic first after the funeral of Catherine C. Squier. Houghton continued for more than thirteen years to be antagonistic to the contestant and never ceased to work out his purpose. Edwin M. Squier remained on friendly terms with the contestants, and admittedly remained intestate and a source of "bounty" to the contestant, and the act attributed to him, after thirteen years, as in effectuation of a hostile purpose, itself discloses that the appearance of hostility was imposed on Edwin M. Squier without his knowledge and was the work of Houghton. The purported will is itself the best evidence of the unawareness of Edwin M. Squier. That Houghton and Shepard practised not letting those who relied upon them know what was in their minds is evidenced by their confession that while they were betraying the contestant and were antagonistic and contemptuous of him, they acted as his attorney and counsellor and continued to greet him socially as a friend. Reasons that are lacking would have to be supplied to rebut the evidence that they treated Edwin M. Squier as a victim for whose mentality they had nothing but contempt. Houghton fastened himself on the cigarette and alcohol addict slowly but surely as the addiction itself

marked the loss of independent judgment and will-power. The proved purpose to withhold from the Court the nature and extent of the addiction and of its effect upon Edwin M. Squier plainly characterizes the addiction itself and the use Houghton made of the lone old bachelor of seventy-three following a treadmill path as if blindfolded until he was finally put to bed against his will like a child. All that was necessary was that a situation existed *prima facie* in the proof which should move the Court to rule that the proponents of the purported will should facilitate the obtaining of all the information within the reach not of the hampered, excluded and obstructed contestant but of the Court, material to the question of undue influence. Not only a *prima facie* case was made out but a conclusive case of fraud, incompetency, and undue influence, and this by Houghton himself.

Houghton's Control of the Family and of Edwin M. Squier Gradually became Complete and Absolute:

The control of Edwin M. Squier by Houghton was exactly of a piece with and part of his general control of an indolent and incompetent family for a score of years. The early death of Charles Burnham Squier in 1904 removed the only obstacle to Houghton's control. The conceded insanity of William C. Squier, Jr., for many years, if not always, before his death in 1915, the conceded incompetency of Stuart C. Squier, Houghton's father-in law, from 1923, together with his indifference to the management of his affairs for many years, evidenced by his appointing as attorney-in-fact, and *such* an attorney, his son, William C. Squier, 3rd, in 1909, and by his appointing that son trustee of all his property in 1919, together with the

renunciation by Stuart C. Squier in 1915 of his appointment as administrator of William C. Squier, Jr., and the lamentable indifference of Stuart C. Squier and his son as attorney-in-fact and trustee to the management of the estates of William C. Squier and Catherine C. Squier, the indifference of this son, William C. Squier, 3rd, going also to the estate of Edwin M. Squier, are consistent elements of the common inheritance and the family destiny. The plastic veracity of Frederick C. Squier, which permitted him to answer, at page 103, that Edwin M. Squier was unfriendly to the contestant, at page 115, to answer that Edwin M. Squier was not particularly unfriendly to the contestant, to answer, at pages 119 to 128, in a variety of conflicting ways as to the facts of talks and the substance of talks by and with Edwin M. Squier concerning the contestant, making, however, the admission that he talked against the contestant to Edwin M. Squier with respect to contestant generally and as to the contestant's attitude toward the talk of Houghton after the funeral of Catherine C. Squier, to answer, at page 105, that he didn't remember any remarks made by Houghton after Catherine C. Squier's funeral with respect to the contestant's interest in her estate, to answer, at page 128, that he did remember the explanation had been that "the reason had been that the grandmother didn't leave him anything more than a $15,000 bequest because contestant had had his interest in the estate," the testimony, at page 106, having been: "He said the reason that he only gave him $15,000, I think it was, because he was on account of his already having his brother's full share in my father's will," which Mr. Ferris insisted did not make any sense but which plainly indicates that Frederick C. Squier was mumbling a jumble of what he had tried to

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command, the first "he" meaning Houghton, the second "he" meaning Edwin M. Squier, the third "he" meaning nothing, the word "brother's" meaning confusedly Charles Burnham Squier, Sr., William C. Squier, Jr., or Edwin M. Squier; to answer, at page 87, that Houghton had visited Edwin M. Squier at his home two or three times a year and was at the time representing him as his attorney, which Houghton denied; and, finally, to answer, at page 118, that it was '94 or '95 that Houghton became substituted trustee, which Mr. Ferris patched up, at pages 142-143, as 1924 or 1925, which was itself an admission of lack of knowledge and of the non-importance of the change from the dummy trustees to the actual trustee, all indicate what the "family history" was that Houghton "knew," namely, one of a consistent strain of progressive mental incompetency. Edwin M. Squier had known this family history as he had also known that the land left for a park was absolutely unsuitable and unadaptable. But at the date of the alleged will Edwin M. Squire was unaware of either matter. The manuscript notes which were "expanded" by Houghton from *his* "knowledge of the family history," became the independent product of the brain of Houghton. On the assumption that Edwin M. Squier read a draft of a proposed will, consent to such a provision as that for a park or for control of securities by Stuart C. Squier, or the "explanatory clause" would be evidence of mental incapacity, since he would be taking a false representation from Houghton as to a matter which a normal mind, with the same opportunity to know the facts, would discover immediately. This, together with the other evidence, shows that Edwin M. Squier had gone the way of his brothers Stuart and William, Jr., and Frederick, of whose incapacity the

failure of Houghton to name him as executor in the purported will, or to leave him with Edwin in 1925, to serve together alone as trustees, no necessity for a new trustee arising so long as two remained, or theretofore at all, to do anything except to accept what Houghton did as trustee, and the evidence of his own testimony above referred to, are complete proof. Charles Burnham Squier, Sr., died prematurely at the age of fifty-four in 1904. The evidence is conclusive of the fact that, after the decease of William C. Squier, the active management of the legal affairs of the entire family, including those of the contestant down to the year 1924, such as the execution of the wills and management of the family estates, passed under the exclusive control, down to the minutest details, of Houghton. The trustees were trustees in name only. The record discloses the most extreme indolence of the Squier family and a complete lack of resistance to control and undue influence. Through the entire period from 1906 down to and including the time of the date of the purported will of Edwin M. Squier, the relation of Houghton to the contestant was in effect, even if not in name, that of actual trustee; from 1904 down to 1924, Houghton also acted as attorney and counsellor to the contestant; during the entire period Houghton was attorney for the executors and trustees under the wills of Catherine C. Squier and William C. Squier and for the administrators of William C. Squier, Jr., and for Eliza Squier, a sister of William C. Squier. In 1925 he was substituted nominally for the incompetent Stuart C. Squier and actually for all of the trustees under the will of William C. Squier. He was also attorney for the administratrix of the estate of Charles Burnham Squier, the father of the con-

testant, who had, up to the time of his death, occupied the office with his brother Edwin M. Squier in Houghton's office. The health certificate of the contestant received in evidence, the record of what the witnesses Shepard and Houghton *said* they thought of the contestant, their betrayal of him and his keeping them as his lawyers after the provocation of the will incident of which they now make so much, and the record of what they and others did to him, make the inheritance record of the stocks of Edwin M. Squier's family complete as to the susceptibility to undue influence. The record of Edwin M. Squier's inviting casuals in to drink with him his rare and bountiful supply of fine liquors, the unpunished theft of his first supply of liquor, his never taking a vacation, winter or summer, nor any amusement or social intercourse, but walking, like an automaton, the treadmill that led him to Houghton's office and back, show that the inertia that dominated him was extreme.

The Attempted Suppression of the Testimony of those Who Surrounded Edwin M. Squier Shows up the Control of Houghton over Edwin M. Squier and the Other Respondents whom He Caused to Adopt this Program of Suppression:

The learned Vice-Ordinary says in his opinion that the trial before him was a "rehash" of the trial in the Orphans' Court. The law provides a trial *de novo*. The principal purpose so served by a retrial is to test the veracity of witnesses in the light of new evidence, evidence excluded in the court below, and of the evidence if given unguardedly in the court below by witnesses convinced of immunity from real cross examination. The

learned Vice-Ordinary appears to have thought himself bound by the respondents' "parties" testimony.

McGrath, New Jersey Trial Evidence, at pages 423-424, summarizes the cases as follows:

> "Of course a party is not 'bound' by what a hostile witness whom he calls testifies to (*Moebius* v. *Williams*, 84 L. 540), nor is the jury bound to believe such evidence merely because it has been called forth by such party's examination (*Buchanan* v. *Buchanan*, 73 Eq. 444), and a party may always show by other evidence the true facts in the case, though such evidence incidentally contradicts the testimony of such hostile witness or even of some of his own witnesses (*Ingersoll* v. *English*, 36 L. 463); (*Fox* v. *Forty-four, etc.*, 90 L. 483); (*Buchanan* v. *Buchanan*, 73 Eq. 444); (*Schrieber* v. *P. S.*, 89 L. 183); (*Bussy* v. *Hatch*, 111 A. 546); (*Moebius* v. *Williams*, 85 L. 540), or of himself. (Section 95.)
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> "The rule approved by the Court of Errors and Appeals is that cross examination of a party on matters directly in issue, or directly relevant to the issue is a matter of right, and failure to allow such cross examination is reversible error (*Prout* v. *Bernards, etc.*, 77 L. 719; *Baus* v. *Trenton, etc.*, 100 L. 368; *Davenport* v. *Patterson*, 98 L. 65; *Babirecki* v. *Virgil*, 97 Eq. 315; *Perrine* v. *Van Note*, 4 L. 146; *Somerville* v. *Doughty*, 22 L. 495) and this is true, although the party cross examining is barred by some rule of practice from putting in a defense, as for instance, when a defendant fails to file a specification of defenses in the District Court (*Trivole* v. *Tramonde*, 95 L. 363); and it is also true, although the matter to which the question is directed was not actually mentioned on cross examination. Thus, in a suit for services covering a considerable period, it was error to exclude questions designed to bring out whether or not the plaintiff

kept books, and if so, whether he had entered the services therein, although nothing had been said on direct examination as to keeping books (*Prout* v. *Bernards, etc.*, 77 L. 719); and in a suit for slander it was error to exclude a question on cross examination as to why the plaintiff had waited twenty months before bringing suit, although this had not been touched on in direct examination (*Davenport* v. *Patterson*, 98 L. 65); and in a suit to recover for trespass by defendant's cattle, it was error to exclude a question as to whether any other person's cattle had trespassed there during the period in question (*Green* v. *Skocquist*, 57 L. 617); and in a suit to set aside a conveyance it was error to exclude a question as to the circumstances under which the conveyance was made (*Babirecki* v. *Virgil*, 97 Eq. 315). So long as the cross examination of a party is directed to matters directly in issue or directly relevant to the issue it may be pursued as matter of right (*Prout* v. *Bernards*, 77 L. 719; *Davenport* v. *Patterson*, 98 L. 65; *Green* v. *Skocquist*, 57 L. 617; *Baus* v. *Trenton, etc.*, 100 L. 368).

"It may be conceded that the foregoing rule is confined to witnesses who are also parties (*Baus* v. *Trenton*, 100 L. 364; *Reilly* v. *Lobdell*, 134 At. 834; see also *State* v. *Murphy*, 87 L. 515); but it is undoubtedly true that even when a witness is not a party, the right to cross examine him on any relevant and material matter *within the scope of his direct examination* is absolute. It is not necessary that such matter has actually been mentioned on direct examination; it is sufficient if it is within the scope of it."

The law also provides for a review by the Vice-Ordinary of the rulings of the Orphans' Court. The comment of the Vice-Ordinary shows that he did not avail himself of the opportunity to test respondents' party-witnesses's testimony or to draw the logical conclusion from it, but took it

in the sense the respondents attached to it in their brief. He appears not to have compared the testimony given in two courts nor the different parts of the testimony in either court, and, indeed, the most favorable inference from his opinion would appear to be that he never read or read only casually the testimony of either trial or any of the exhibits, as he omits to say he did, of either. Nor did he, apparently, consider whether the contestant had been hampered by the rulings of the Orphans' Court but devoted a special misstatement of fact to praise of the Orphans' Court's liberality in admitting evidence where, as he actually found, in effect, that the Orphans' Court's error in excluding the wills of William C. Squier and Catherine C. Squier, of which the respondents, through Corporation Counsel Brogan, as appears below, boasted, was error, and, if it was error, it was error which constituted a denial of his "day in court" to the contestant in the Orphans' Court. Certainly there is no evidence of any use by Edwin M. Squier to make up his mind of the letter of 1913 or of the idea given in Shepard's testimony that the contestant was no good. The use of these matters by the learned Vice-Ordinary in his opinion was based clearly upon the absolute invention of Shepard and Houghton, the latter of whom testified that no mention of the letter of 1913 was made by Edwin M. Squier nor comment upon the conduct of the contestant after the funeral of Catherine C. Squier at the time of the alleged execution of the will or for a long time previously —as to the letter and incident for over thirteen years. Whether as friend or as lawyer of Edwin M. Squier, Houghton's purpose of precluding the contestant from his just share of the estate of his grandfather, whether through his uncle or otherwise, both before and after the alleged execution

of the purported will, is transparent. The estrangement was created after the death of Edwin M. Squier, when the fiction was both safe and necessary to Houghton's purpose, and not only does there not exist one shred of proof of its existence, but its non-existence is doubly proved by the evidence and by the falsity of the testimony given by Shepard and Houghton to support their frauds by the fiction of its existence. The learned Vice-Ordinary commented sharply upon the length to which people will go to get money out of family estates. The records of the two trials proved an example of a purpose on the part of Houghton, which, in persistence, skill, resource and defiance of all ethical considerations has seldom been equalled and never surpassed. It is worse to attempt, by suppression and obstruction, to cause the Courts to make a will the alleged testator never made than to attempt to cause a court to refuse probate of an alleged will by bringing to its notice that evidence as to the making thereof is lacking or open to suspicion, and attempting to induce the court to investigate the facts.

The treatment, to be discussed in a moment, of the servant witnesses, a legitimate source of information to the court, favorable to the contestant, clearly shown to exist and to have been available but for the intervention of Houghton, illustrates his own attitude and plainly shows that other testimony was manipulated to supplement his own concealment of the true facts. This attitude of Houghton was clearly indicated at page 12 of the Record in the Prerogative Court, where Thomas J. Brogan, Corporation Counsel of Jersey City, who took no other part in the trial, except as sitting counsel, expressed the position of the respondents as follows:

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> "We charged and made it clear in the court below that this will and the record of the probating of both wills have no place in this case at all."

Despite Mr. Brogan's protest, The Court said:

> "In the case of the wills of the grandparents I can see some substance of what may be argued from that."

The wills of the grandparents, excluded in the Orphans' Court but admitted thus in the Prerogative Court, became conclusive evidence, with cotemporaneous documents, admitted with them, of all the charges made in the contestant's petition, and showed conclusively that Houghton had, since the death of the contestant's grandfather, William C. Squier, pursued a course of conduct culminating in the attempt to propound the alleged will of Edwin M. Squier, designed so far to defeat the will of William C. Squier as remained possible at that time. Having admitted these wills and documents and having seen their relevancy, competency, materiality, and conclusive weight, conclusively demonstrated by the evidence, the learned Vice-Ordinary absolutely disregarded them. It is proper to ask the Court to regard Houghton as doing as a witness what he put up his lawyers to do, namely, to keep from the Court evidence going to the very *res gestae.*

A less imposing but no less useful agent, of Houghton's purpose of suppression, than Corporation Counsel Brogan, and his partner lawyers, whom he used as spokesmen or as witnesses testamentary and otherwise, as served his turn, was Mary Conroy, who, having been for many years with the contestant's grandmother whom she helped run the house, continued as housekeeper from 1913 with Edwin M. Squier until the time of

his death (Orphans' Court trial, p. 322). This witness was kept, from the death of Edwin M. Squier, November 9th, 1926, until May, 1927, in the house with other servants, to work for Frederick C. Squier, Jr., one of the executors named in the purported will, at the expense of the estate. Houghton testified that the executors decided to have Frederick C. Squier, Jr., live in Edwin M. Squier's house and to keep the servants. The witness, Mary Conroy, was also taken on by Frederick C. Squier, Sr., a short time afterward, and lived with him until after the trial. She and the other servants were also mentioned in the purported will as beneficiaries of specific bequests. During the illness of Edwin M. Squier, Mary Conroy unburdened herself to Eleanor Miller, one of the nurses in attendance upon him, who testified as to inquiries as to the way of living of Edwin M. Squier as a part of the duties as nurse. She told her that Edwin M. Squier's appetite was very poor and that he didn't sleep a great deal at night, he would hardly ever go to bed at all, that he smoked unusual cigarettes of a large size. Other witnesses testified that he was an incessant smoker and was provided by one person alone with an average of five hundred of these cigarettes a week, for about seventeen years, and, at one time, purchased about twenty thousand (pp. 532-535, Orphans' Court Record). The nurse also testified that Mary Conroy told her that Edwin M. Squier would invite the policeman on the beat to drink with him and would, himself, drink to excess and that she would wait up for him and take him up to bed, that, when the will was read, after the funeral of Edwin M. Squier, the servants were called in to listen to the reading of the will, and that, when they came out, Mary Conroy told her about the money she was left and that the servants

were to stay there a year (pp. 502-509). Emil Fasano, who shaved Edwin M. Squier for twenty-three years, testified that Edwin M. Squier was an incessant smoker and that he told him that he would be willing to lose any money to get back the liquor that was stolen from him. Harold M. Searles testified that he paid the servants after the death of Edwin M. Squier from the estate funds until stopped by the appointment of the administrators (p. 375). Houghton testified that he had the "executors" vote in favor of that procedure. Harold M. Searles also testified that about three years before his decease, Edwin M. Squier was robbed of a large quantity of liquor from the cellar of his house and got a new supply, and that the matter was common knowledge and appeared in the newspapers (fol. 383). This was at the time Shepard testified that Edwin M. Squier was disgusted at the contestant's action, because, as Shepard said, the contestant drank, of which fact, either as to Edwin M. Squier's disgust or the contestant's drinking, there was not a bit of evidence, it being shown also, by Edwin M. Squier's own letter and Shepard's own testimony, that the contestant and Edwin M. Squier, and Shepard himself, were on terms of friendly social intercourse. Mary Conroy was induced, as has been above indicated, to testify, at pages 339 and 340, that, during all the time that she was with Edwin M. Squier, she never saw any liquor, and didn't know he had any, and never saw any about the house, and though her business brought her into the cellar, she didn't know he had any and never saw any about the house or in the cellar, and never knew who came into the house or drank with Edwin M. Squier. She testified also that she didn't know where another servant, Mary Cavanaugh, was, and that she never had seen Norah Riley, another

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335-337 servant, after she left the house (pp. 350-352). Norah Riley, herself, who also testified that she 433 knew nothing about the liquor, page 488, testified that Mary Conroy came to call on her at 58 Eleventh Street, Hoboken, after the death of 432 Edwin M. Squier (p. 447). Delia O'Grady, who had worked for Edwin M. Squier for six years ending ten years ago, and who was the sister of Mary Cavanaugh, testified that she lived with her aunt Norah Riley in Hoboken and testified that Mary Conroy came to see them every two or three months and as late as the month before the trial, and she testified that Mary Conroy had known where Mary Cavanaugh and Norah Riley were at 427 all times since they left the Squier house (pp. 442-429 444). At the time of the giving of this testimony this witness was living in the house of Frederick C. Squier concerning whose attitude we have the further evidence that he told Alfred Pearce to keep out of the way, since the trial was coming up Monday, and that Frederick C. Squier, although in Court, let Mary Conroy go on with her false testimony and never took the stand to contradict the charge as to his warning to Alfred Pearce. James W. Avery, a beneficiary, one of the servants, testified that he knew of the robbery of the liquor and that there was general conversation about it among the servants. Alfred Pearce, also a beneficiary, one of the servants, told a detective that Frederick C. Squier was harboring Delia Mullins and Mary Conroy, servants, in his kitchen, to keep their mouths still about the will (pp. 410-411 425-26).

That there was much, as Houghton knew, tending to show Edwin M. Squier's incompetency and susceptibility to undue influence, to keep the servants still about, appears conclusively in the evidence. Avery said that Fred Squier had told him

that after the estate was settled he was to go over to his house to work (p, 401). Alfred Pearce, one of the servants testified, at page 406, that he had been told that he had been remembered in the will and would be given ample time before notice of any change in his employment. He also testified, in answer to about a dozen questions, that he had not talked to anybody about the case, and denied categorically any conversation about specific questions (pp. 406-408). Then, asking the Court where the examiner got his information, he again denied that he talked to a lady about the case (p. 408), and then admitted, when actually confronted with the lady, that he did talk to her about Mr. Squier but couldn't remember what he said (p. 409). Then he said that he remembered particularly that he was not asked by the lady about the habits of Edwin M. Squier. He said that he told her that he thought she was looking for information for the Squier Will case (p. 411), and that she had said nothing about the Squier estate (p. 413). Elizabeth C. Lewis testified, at page 416, that the servant Avery told her that Edwin M. Squier was an excessive smoker. At night he was up most of the night smoking, that he smoked Turkish cigarettes, and that he was an excessive drinker, and that the servants were all put away to keep out of the will. He said, she testified, that on account of having been left $2,500 in the will and having been promised by Fred Squier that he would be taken care of, he was afraid to talk, that Edwin M. Squier's brother William was insane, that Edwin, the older he got was more pronounced in his eccentricity, which was always great, and the cause of Edwin M. Squier's death was the cigarettes. The attending physician testified that he had never seen a case of pneumonia begin with the symptoms observed in Edwin M. Squier. The

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conclusion from the evidence of the smoking habit of Edwin M. Squier is obvious that he had been for a long time narcotized. So far had this gone that twice the average dose of opiate had no effect upon him. The evidence tends to show that from the beginning of his illness until the end he was oblivious of his surroundings and was unconscious of his situation. Both the nurse and the doctor testified that this lethargy was singular and characteristic of the condition peculiar to his individual case.

399 404 This detective produced papers in Avery's handwriting giving the address of the servants (pp. 414-419). She testified also that Alfred Pearce told her that everybody in the house knew that Edwin M. Squier was very, very peculiar, that Fred Squier told him to keep out of the limelight, that the trial would be on Monday and he would not have to give any information if they didn't get him but said he would tell the truth and he knew that part of the liquors left by Edwin M. Squier were taken to Fred Squier's house, that Edwin M. Squier used to drink at Kenney's saloon and had once pulled out a check for $75,000 and exhibited it to the crowd in the saloon. This was in Rahway. He said that another one of his peculiarities was that, when he went to directors' meetings, he would exhibit the twenty dollar gold pieces to people, which he would receive as director, that he sat up long into the night smoking and was never without a 404-409 cigarette (pp. 419-424). This lady had been an investigator for the Judge of the Orphans' Court and had had, since that time, nine years' experience and was, therefore, worthy of credit, and, as the 409 record shows, was credited, in that court (p. 424). She testified that Pearce told her that Fred Squier was harboring Delia Mullins and Mary Conroy, servants, in his kitchen, to keep their mouths still

about the will (pp. 425-426). The Judge of the Orphans' Court expressed the opinion that the matter elicited by the witness was good stuff in a will contest (p. 423). The testimony of Alfred Pearce himself, and his manner, as demonstrated in the record, removed all doubt that the testimony of the investigator was absolutely true. Particularly significant was the remark that he had a grievance against a living person for the loss of his employment (p. 406). The Judge of the Orphans' Court found that the evidence was that Edwin M. Squier smoked a lot of cigarettes, didn't sleep well at night and occasionally drank to excess (p. 602). The Vice-Ordinary declared that "Edwin M. Squier in his lifetime smoked cigarettes in very large numbers and that from a cellar which he seemed to have stocked before January 16, 1920 (of which there is not the slightest evidence, restocking being conceded), occasionally imbibed intoxicating liquors to the extent which made their effect upon him visible". This is equivalent to the finding in both courts that witnesses harbored and paid by the respondents committed wrongs in attempting to conceal material facts as to the ways of living of Edwin M. Squier which were relevant to his testamentary capacity. Even if the two trial judges had not actually found these things expressly, the findings would have to be imputed to them on the assumption that the matters are of common knowledge and such as would require a court to take judicial notice of them. The poisonous nature of nicotine, and its effect, which was asserted, by one of the party-servant-witnesses in his admission, to have resulted in Edwin M. Squier's death, of such addiction as Edwin M. Squier's, even without the complication of alcoholism are "well established facts in nature and science." (Wharton and Stille's Medical Jurisprudence, 5th Ed., Vol. 2, Sec. 730, *et*

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seq.; Withaus, Medical Jurisprudence, Forensic Medicine and Toxicology, 2nd Ed., Vol. 4, p. 1000, *et seq.;* O'Shea Tobacco and Mental Efficiency, McMillan, 1925; Schrumpff-Pierron, Tobacco and Physical Efficiency, Hoeber, 1927.) And alcoholism alone, which appears from the evidence to have been chronic with Edwin M. Squier at the time of the alleged execution of his will, is recognized as affecting capacity to perform legal acts. In *Burroughs* v. *Richman,* 13 L. 233, it is said that the presumption is against the capacity of an intoxicated man to contract and if intoxication is shown, capacity must be proved. Compare *Curtis* v. *Hall,* 4 L. 361; *Crane* v. *Conklin,* 1 Eq. 346. There is no purpose to stretch this evidence too far, but it has weight, which is made greater by the circumstances and the attitude of the respondents.

It is in evidence that Edwin M. Squier purchased and took home every Friday an average of five hundred Egyptian cigarettes and that he purchased them and many more for his own use and had been a consistent smoker or such cigarettes for a long period of years. It is in evidence that he was a victim of alcoholism combined with tobacco and nicotine narcotism and poisoning. It is in evidence that he showed the results which common knowledge, and the ordinary affairs of life, and deductions from human experience and well established facts in nature and physical science indicate as inevitable, to wit, a dulled intellect, inability to recognize old friends, a cough, stomach upsets, feebleness, infirmity of purpose, cyanosis, paralysis of the circulation, chronic narcosis counteracting the ordinary dose of opiate, paralysis of the respiratory tract, accumulation of poison in the system, congestion thereof in both lungs, and death. It is in evidence that these results were affected by addiction to alcoholic liquors. Of these

things and the causative value the Court will take judicial notice.

State v. *Elliott,* 94 N. J. L. 76;
Ware v. *Chew,* 43 N. J. Eq. 494;
Schriener v. *N. Y. & N. J. etc.,* 82 N. J. L. 743;
McGrath New Jersey Trial Evidence, 840, p. 32.

It is in evidence and the two trial judges must be assumed to have found that the inability of Edwin M. Squier to resist the addictions which were undermining his physical and mental stamina combined with the effect of the addictions upon him to make him susceptible to become a victim of undue influence. It was inevitable that these judges should find that Houghton knew what everybody else knew and, having the intent he did, profited by it, of which last element his concealment and suppression are alone sufficient proof. The respondents may be said to have admitted the conclusion the facts they admitted involve. These admissions place it beyond any doubt that Edwin M. Squier was before and at the time and after the time of the alleged execution of the purported will constantly in a narcotized condition and under the influence of alcoholic overindulgence and incapable of conducting himself in a normal manner. His eccentricity had become intensified and his will power destroyed. These things were known to the respondents and to both courts. The respondents joined in concealing facts and induced the courts to disregard them. Houghton had ample opportunity to introduce evidence correcting the facts admitted by the parties under this control, but failed to do so. Frederick C. Squier also failed to deny that he told the servant Pearce to keep out of the way. The unavoid-

able effect of this evidence is to show Houghton's method of suppression, which, proved as to one material matter, is so easy to recognize in the others, and in the whole scheme of things, that it was reversible error that the Vice-Ordinary did not find it as a matter of fact and law. These things are the admissions of servants harbored and controlled by Houghton to suppress evidence as they did. The testimony of the servant Mary Conroy, a party kept under pay, like the rest of the party-servants by the other parties, that she never knew of any liquor in a house where a supply was notorious is palpably false and controlled and was contradicted by her own admissions and those of other parties (Orphans' Court Record, Avery, p. 400; Conroy, p. 354, 362, 364; Miller, p. 502-506; Fasano, p. 511) and shows that the habits and mentality of Edwin M. Squier were such that the proponents needed to conceal and purposed to conceal them from the Court and did so improperly and that they were such as the servant parties Conroy, Avery and Pearce admitted them to be. During the last years of his life Edwin M. Squier made no visits, but kept to himself entirely. He did not visit his brother, the respondent Frederick C. Squier, who lived very near to him. He had no relations whatever with his brother Stuart C. Squier or any of the six children of Stuart C. Squier, whom he did not see more than twice in twenty years, although nominally they were co-trustees with Houghton as their attorney. Not even at Christmas did he visit with his family or receive them in his own home. He did not meet either of his brothers, Stuart C. Squier or Frederick C. Squier, as co-trustees. The children of Stuart C. Squier did not visit him nor did he visit them. The evidence is that his brother Stuart had long passed out of his life and that the children

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of Stuart C. Squier and Frederick C. Squier to a lesser degree were strangers to him. The equal division between brothers would look well to the public, but would be the merest window-dressing and would mean nothing to Edwin M. Squier, for if he understood the provision and had testamentary capacity, he wouldn't make it. One of the parties, James W. Avery, a servant, admitted that if Edwin M. Squier had survived he would not have "left" the will attempted to be propounded. Whether Avery knew facts that appeared after the illness or referred to elements of the general situation within his knowledge is unimportant, since he is a party, and, under control or inducement of the other parties, suppressed facts.

On the 28th day of July, or twenty-two days after the date of the purported will, Edwin M. Squier appeared unable to recognize two ladies with whom he had been on a basis of close social relations and had seen and spoken to only two years before. This was the day Houghton's concealed notes, which were not disclosed in any inventory until after the Orphans' Court trial, for thirty-seven thousand dollars, to Edwin M. Squier were dated. The explanation was a Florida land deal with Houghton. The inventory filed in the probate proceedings discloses that Edwin M. Squier allowed coupons of gilt-edged bonds in large amounts to remain uncut for more than a year before his death. Other filed papers show the fact, concealed for eighteen months, and until after the Orphans' Court trial, at the cost of postponing income, that his own estate and that of his father were mingled in the same box (Houghton, Prerogative Court Record, p. 201). Another transaction with Houghton caused a mysterious loss of one hundred thousand dollars, also con-

cealed until after the Orphans' Court trial, and never explained.

The learned Vice-Ordinary in his opinion said as follows:

> "The attempt to prove lack of testamentary capacity has utterly failed. It is proverbial to what lengths disappointed kin will go to secure a large estate or a considerable portion thereof, but I will undertake to say that no more shocking instance has been presented to any court in an attack upon the mental capacity of a testator than appears here. * * * There is not one direct word of insanity or of any fact upon which insanity might be predicated."

The learned Vice-Ordinary seems to lose from sight the obvious fact that undue influence of an insane person, who is then beyond control by reason, is a contradiction in terms. This opinion, which speaks of insanity where only lack of testamentary capacity and susceptibility to undue influence need be shown, echoed and exaggerated the claim of the respondents' brief, which expressed the following:

> "The contestant's counsel must have realized the force of these facts, for he made a pitiful attempt to produce some evidence to show lack of testamentary capacity. This evidence would be almost laughable were it not that it consumed many hours of the Court's time. * * * Counsel is not inclined to waste the time of the Court in any elaborate discussion of the evidence introduced on behalf of the contestant on this point. It would seem sufficient to say that none of it even established a suggestion that this testator was mentally incompetent or in any sense lacked testamentary capacity."

Counsel who are parties to the suppression of evidence relating to testamentary capacity may not

be permitted to make light of such evidence as is admitted. The foregoing paragraph was obviously the creation of Shepard, who, with Corporation Counsel Brogan, signed the brief, and was reprimanded in the Orphans' Court for his nonchalance and superciliousness. The evidence that respondents' counsel controlled the witnesses who knew Edwin M. Squier's habits is complete. As to the effect of smoking upon Edwin M. Squier, the Judge of the Orphans' Court, where the evidence of smoking was introduced, accepted, as a fact, as has been shown above, that Edwin M. Squier sat up all night smoking (p. 423). The detective witness's report of testimony was thus accepted. It was reported also that the opinion was expressed by a servant that excessive smoking caused the death of Edwin M. Squier. This opinion was confirmed by the testimony of the doctor and nurse. No person examining the evidence with respect to his last illness could doubt it. The brief of the respondents said as follows: 408

> "He showed that Mr. Squier did not recognize a certain lady when she stopped in front of his house one day, until she had told him her maiden name. In view of the fact that he had not seen her for twenty years this could scarcely be said to indicate lack of testamentary capacity."

This statement is obviously false in every element. The evidence taken in the Orphans' Court, page 98, established that Edwin M. Squier did not know the Martin sisters. Emma L. Martin testified, at page 96 of the Orphans' Court Record, that she had met Edwin M. Squier once a month at a club prior to 1913 (p. 95), had always known him, they were both members of the club. There were occasional meetings after 1913 (p. 95), she met him on the train (p. 94), met him off and on all these 83 81 80 80 79

years, thought she saw him at a wedding in 1923,
78 met him (p. 93) two years before as they were getting off the train, passed the time of day and said that they were going to visit Mrs. Fred Squier, also met him at some weddings and funerals. She knew Edwin M. Squier as long as she knew any
76 one in Rahway (p. 91). Emma L. Martin testified after her sister that the same incident took place as testified by her sister, and Mrs. Jennie Martin
75 Ayres testified, at page 90, that Edwin M. Squier used to call on another sister and herself. The families had always been friends and had always known each other since they were young girls; she had known him all her life, always, he had come to call as a friend. Her mother and father had known his mother and father for many years. She had always known Mr. Squier because she was a young girl and always lived in Rahway. When he called at the house he came to see her
74 and her sister (p. 89); he called at their house twice a year prior to 1904. He used to come to the house once in every two or three weeks. She was surprised that Mr. Squier did not recognize her; she asked if he knew her, and he said, "No." Edwin M. Squier knew the husband of Mrs. Ayres. When she told him that she was Jennie Martin he gave no sign of recognizing her and did not
72 seem to recognize the name (p. 87).

Five years before Mrs. Ayres had passed the time of day with Edwin M. Squier getting off the train. She said to him, in his garden, eleven days after the alleged date of the alleged will: "How do you do, Mr. Squier," and "I don't think you know me," and she guessed he said "no," and then she said that she was Jennie Ayres and to that he answered "no," and she said she was Jennie Martin and she couldn't tell what was in his mind, but
69 he said "yes," and that was all (p. 84).

This falsehood as to the testimony of the Martin sisters was so seriously taken by the learned Vice-Ordinary, if the opinion is to be taken into account at all, that he disregarded it entirely. Since the occasion of the failure to recognize two women with whom he had been associated all his life occurred within less than two weeks of the date of the purported will, it was some evidence of lack of testamentary capacity, and, taken into consideration with the other elements, was of great weight. The respondents may be said to have admitted the conclusions the facts they have admitted involve. They left admissions establishing the contestant's contentions unexplained, although they had the right to explain them.

McGrath, New Jersey Trial Evidence, at page 96, says, as follows:

> "Proof of an admission of a party out of court, undenied, is not necessarily conclusive against the party, and may be explained on the ground of surprise (*Schmidt* v. *Marconi, etc.*, 86 L. 183), insanity (*Allen* v. *Allen*, 86 Eq. 441), mistake (*Schreiber* v. *P. S. Ry.*, 89 L. 184), or other grounds; and in any case if an issue of fact is presented the case must go to the jury. (*Schreiber* v. *P. S. Ry.*, 89 L. 184; *Schmidt* v. *Marconi*, 86 L. 183.)"

Houghton Controlled All the Squier Estates without Competing Influence Inside or Outside the Family:

All of the estates above-mentioned were under, theoretically, the control of the courts of the State of New Jersey. At no time was Houghton ever a lawyer admitted to practise in the State of New Jersey or learned in the law of the State of New Jersey, nor did he at any time have recourse or permit his principals to have recourse to independent counsel or to the advice of any lawyer

admitted to practise or learned in the law of New Jersey. Nor did Houghton at any time submit any questions of law or equity or right or construction to any court of the State of New Jersey. In the matter, particularly, of the administration of William C. Squier, Jr., and of the execution of the will of Catherine C. Squier and carrying out of the trusts therein, the only recourse had by Houghton to any court was to obtain, in the former case, letters of administration, and in the latter case, letters testamentary; in neither case did he file any inventory or any account. His method dispensed with courts; it was to require the general release for all time to the executors and trustees or administrators, as the case might be, from the beneficiary, whenever the partial payment of the amount due the beneficiary, whether the true amount, or not, was made. A reference to the opinion of the Special Term of the Supreme Court of New York County in *Squier* v. *Houghton*, 226 N. Y. S. 162, quoted in full under Point VI, will show that the purpose of obtaining these releases was precisely to bar the contestant's claim to what Houghton had, and, as it appears now, consciously with knowledge of the wrong involved, withheld from the contestant.

The Evidence of the Existence of the Most Extreme Type of Confidential Relation Between Edwin M. Squier and Houghton Is Overwhelming:

And the evidence is overwhelming that a relation of trust and confidence existed between Edwin M. Squier and Houghton. The proof set up by Houghton, as to the execution of the will, shows this. He took everything for granted. He went ahead in disregard of the rule of the Cooper case. He destroyed drafts. He was attorney for Cath-

erine C. Squier or for those who planned her will and for the trustees under her will and the executors and for both under the will of William C. Squier. He drew Catherine C. Squier's will upon communications from Edwin M. Squier (Prerogative Court Record, p. 231), and also testified that, 778
though he had not spoken to Catherine C. Squier directly, he only *might* have discussed the provisions of her will with Edwin M. Squier (Prerogative Court Record, p. 230). He was associated 777
with Edwin M. Squier in his office, and had the combination to his safe (Houghton, Prerogative Court Record, p. 89; Orphans' Court Record, pp. 669
496-497), in his household, in his trusteeships and 481 - 482
executorships and in the administration of the Estate of William C. Squier, Jr., in the Port Morris Land and Improvement Company, in which Edwin M. Squier was an officer, as attorney for the company, and was associated in the Shur-loc Elevator Company with Edwin M. Squier, where one hundred thousand ($100,000) dollars was lost and the loss concealed until after the close of the Orphans' Court trial (Prerogative Court Record, p. —), and in a Florida land deal and gave Edwin M. Squier notes for $37,000, also similarly concealed, dated twenty-two days after the date of the purported will (Prerogative Court Record, p.). He shared his office with him, drew his will and that of his mother, and was attorney in every matter from which any member of the family received or expected family money from the time of the probate of the will of William C. Squier on. In addition to this, he precipitated a situation at the funeral of Catherine C. Squier, not by interpretation of her will or discussion of its terms (Houghton, Orphans' Court Record, pp. 314-315), 299 - 300
but by an extraneous false statement of her intention (Houghton, Orphans' Court Record, p.

319) by which he accomplished the union of all the other members of the family excepting Edwin M. Squier, in a purpose to exclude the contestant from the family, and had attained so much power over Edwin M. Squier that in the absence of any unfriendliness of Edwin M. Squier to the contestant and without, so far as the evidence shows, any knowledge upon the part of Edwin M. Squier of what was in the document, Edwin M. Squier merely asked Houghton if his will was all right and, without more ado, by merely signing on the dotted line, as the respondents say, divided the contestant's expectancy IN AN ESTATE OF SIX MILLIONS between Houghton's wife and the other members of the opposition which Houghton had united against the contestant. Houghton protested in vain (Houghton, Orphans' Court Record, p. 466) that he was not advising Edwin M. Squier or advising how to draw his will, since he admitted, first, that he urged him on two occasions to draw a will, and (Houghton, Orphans' Court Record, p. 484) that he suggested that the excluding provision be put in the will, and, with no authority, framed the provision out of his own head, then tried to avoid the effect of urging by saying that he advised (Prerogative Court Record, p. 234). Houghton shared his secret with nobody and had no competition for influence with Edwin M. Squier. Nobody appears to have known what was in the alleged will, including Edwin M. Squier, for the will was found sealed in an envelope, as Houghton had left it, while Houghton had copies to exhibit before he obtained the original. Houghton brought an office copy to Edwin M. Squier's house the morning he died (Houghton, Orphans' Court Record, p. 492). By July 6th, 1926, Houghton had Edwin M. Squier just where he had planned since 1913 to get him, and he had the contestant by the

sole power of himself, Houghton, definitely barred from his father's expectancy, direct or indirect from the estate of his grandparents, and servants and other possible witnesses, controlled by an interest given in the purported will. IN ADDITION TO THE CONFIDENTIAL RELATION OF WHICH EDWIN M. SQUIER WAS AWARE, THERE WAS ANOTHER, OF WHICH HE WAS NOT AWARE, OF HOUGHTON'S OWN MAKING. BOTH RELATIONS ENTERED INTO THE OBTAINING OF THE PURPORTED WILL AND EDWIN M. SQUIER RELIED ABSOLUTELY UPON HOUGHTON, WHO WAS HIS RIGHT HAND, HIS BRAIN, AND HIS CONSCIENCE.

The purpose, moreover, to conceal the fact that Houghton represented in fact and in law the stock of Stuart C. Squier is established as clearly as the fact itself. William C. Squier, 3rd., testified that the lawyer didn't represent him as trustee for Stuart C. Squier or otherwise, merely, as he admitted, because Houghton was actually identified with him and his sisters, one of them Houghton's wife, as a defendant. A letter, on record and brought to the attention of the Court and of which as a part of the records of the court judicial notice will be taken, it being addressed to the Surrogate's Court, signed by Houghton, emphasizes the long course of his active duty as attorney in all these matters and for the estate of Stuart C. Squier. The wills of William C. Squier and Catherine C. Squier are informing as to the service of Houghton as trustee and are all filed in the name of his firm. The Roosevelt property deeds which were a part of the transaction leading to Codicil No. 2 of Catherine C. Squier's will emanated from Houghton's office and bear the names of Houghton as attesting witness and Shepard as notary.

The Evidence of Conspiracy of all those Charged is too Well Established for Argument on the facts:

Overt acts, community of purpose and pursuit of the object, with each of the persons charged doing his part at one or more times, early or late, from 1913 down to date, are incontrovertible. The combination in result alone reveals the combination in plan and purpose. The testimony of Shepard to the effect that, although he was golf partner and associate and lawyer to the contestant, he regarded him as "no good" and sympathized with Edwin M. Squier that his nephew should have done something disgraceful, the nature and merits of which are not disclosed by Shepard (who saw the contestant visiting Edwin M. Squier during more than two years afterward and himself shook hands with him) or otherwise, and the admissions of Houghton that he called the contestant's justified conduct dastardly and his uncle's reproof in the 1913 letter thereof "bully-good" and considered the contestant no good, though he was his attorney and trustee, and pretended to be so disposed as to make the continuation of those relations proper, make argument as to Houghton's hostile purpose, and that of those who co-operated with him and permitted him to represent them, unnecessary.

Houghton's Opportunity for Undue Influence Unparalleled:

For about twenty-five years Charles Burnham Squier, Sr., and Edwin M. Squier occupied an office in the suite occupied by the law firm which Houghton was first a member and then the head of the firm. Houghton brought to the firm and conducted personally all the legal business of the entire

Squier family. The bulk of the money of the Squier family came from the zinc business, originally under the corporate form of the Passaic Zinc Company and afterward by combination with the New Jersey Zinc Company. This combination was made in the lifetime of Charles Burnham Squier, Sr., and was put through largely by his efforts. He became secretary and treasurer of the New Jersey Zinc Company and held that office and that of director until the time of his death in 1904. The relations of Houghton with the said business and that the family as stockholder were such that, upon the decease of Edwin M. Squier, despite the fact that Stuart C. Squier and Charles Burnham Squier, Sr., had each left a son of mature age at that time, namely, William C. Squier, 3rd., who had nominally been attorney and trustee for his father, and the contestant, whose attorney Houghton was, Houghton was elected director in the place of Edwin M. Squier as the only representative of the Squier family in the organization. Houghton had thus had for a period of twenty-five years the opportunity to influence the judgment of any member of the Squier family and this opportunity became greater as time went on. The decease of Charles Burnham Squier, Sr., the decease of Catherine C. Squier, the insanity of William C. Squier, Jr., the incompetency of Stuart C. Squier, the indolence and incapacity for any kind of business of Frederick C. Squier, the relationship by marriage with the family of Stuart C. Squier, the status of being the only lawyer in the whole family connection, the immaturity of Charles Burnham Squier, Jr., and his disinclination, which he shares with his cousin, William C. Squier, 3rd., for any kind of business, made it unavoidable that Houghton should become a *factotum* or master mind to the entire family and stood and appeared to stand even during the contest almost *in loco parentis.*

The Inclination of Houghton to Influence Edwin M. Squier Adversely to the Contestant is Both Proved and Admitted:

The evidence leaves absolutely no doubt of the inclination of Houghton to influence Edwin M. Squier adversely to the interest of the contestant as the natural object of the bounty of his uncle. This interest was stimulated two ways, first, by the dislike of Houghton for the contestant, and, secondly, by his interest not only for a pecuniary advantage but also in the way of prestige. Houghton admitted that, after the funeral of the contestant's grandmother, he made a statement with respect to the communication of the grandmother to him of her purpose so to dispose of her estate as to make the amount each of her grandchildren would receive equal rather *per capita* than *per stirpes*. This disposition would, incidentally, benefit the wife and children of Houghton, by reason of the fact that under the *per stirpes* arrangement, directed to be followed under the will of William C. Squier, the share of the contestant would, as Houghton said, be greater than that of any of his cousins. It is unnecessary after the trial to argue that this statement of Houghton was a mistake of fact, since Houghton himself based his entire case upon the theory of law that even if Edwin M. Squier had based his entire will, so far as it refers to the contestant, upon a grave mistake of fact, the contestant could take no exception thereby which the court would consider. Houghton admitted that his statement was untrue not only in substance but also as to the fact that communications with respect to her intentions were made to Houghton by Catherine E. Squier herself, for, in the course of the trial in the Prerogative Court, he testified he had had no communications directly with Cath-

erine C. Squier, but had them with Edwin M. Squier. This statement, too, was obviously false, for the double reason: first, that the will of Catherine C. Squier discloses with absolute plainness upon its face the absence of intention upon the part of anybody, including Houghton and Edwin M. Squier, that the will of Catherine C. Squier should express the execution by her of the power of disposition of one-third of the residue of her late husband, and, also, second, that the facts admitted in evidence show that the form of the will of Catherine C. Squier was dictated almost entirely by the purpose, held from the year 1907, the date of the will, and including 1912, the date of the codicil, to provide a clear title to a small piece of property, valued at $90,000, in Roosevelt, New Jersey. The letter of February 28th, 1913, of Edwin M. Squier, which Houghton testified he told Edwin M. Squier he approved, and which, from its use of legal phraseology and from its characteristic Houghton style, shows that Houghton helped compose, resents being blamed for influencing Catherine C. Squier and denies having anything to do with making her will and refers to what she disposed of as "her money." This letter, therefore, refutes Houghton's testimony that he merely received from Edwin M. Squier communications from Catherine C. Squier of directions, which the latter wouldn't know how to make and the former, who Houghton said, only *might* have communicated them, wouldn't know how to communicate. The correspondence between the contestant and Edwin M. Squier was provocative not because Edwin M. Squier or the contestant knew what he was writing about but precisely because of the mystification which Houghton precipitated and attempted to perpetuate. Further than this, the evidence also shows that the one reliance of Hough-

ton, namely, that the interpretation of the will of Catherine C. Squier must be made in connection with evidence that she had not enough money or property to pay her specific bequests out of her private estate, itself an admission that she had not exercised her power of disposition, has had to be abandoned, since both his partners, Shepard and Ferris, nobody contradicting them, declared that she had ample money for the purpose. The attitude of Houghton to not only the contestant but also to the court, in attempting to effectuate his purpose to prevent a decision upon the whole truth, and to preclude the contestant, and, thereby, to prevent a reparation of the mistake of fact assumed by Houghton to have been made and shown by evidence indisputably to have been made, is clear. The situation of exclusive control of the management of the Squier estate by Houghton was maintained from 1906 down to the last moment of the trial in the Prerogative Court.

The *Factum* of Undue Influence is Proved by Both Indirect and Direct Evidence:

From the proof of opportunity and inclination on the part of Houghton to influence Edwin M. Squier to the prejudice of the contestant, the *factum* of undue influence would follow as a necessary conclusion. But it is not necessary to rely upon indirect evidence or upon inference, since the *factum* of undue influence upon Edwin M. Squier in and about the making of the will is abundantly proved by direct evidence.

The Witnesses to the Purported Will Combined With Houghton in Inclination, Opportunity, and *Factum:*

The evidence of execution of the purported will comes from three witnesses who were law partners of Houghton. In addition to this, the witness Shepard showed himself bitterly prejudiced against the contestant and admitted that he had had conversations with Edwin M. Squier concerning the character of the contestant, in which his, Shepard's, attitude was prejudicial to the contestant. We need not take the recollection and the interpretation of these conversations precisely in the adverse way in which the witness offered them, or otherwise than as they afford a basis for the unavoidable deduction that the witness pursued, during a period of twenty-five years, the purpose his associate, Houghton, had. The witness George A. Ferris gave on the stand evidence of, and later he adopted, the same purpose, and his attitude as trial lawyer was a demonstration of all that the contestant claims. The testimony of Peter J. McCoy, the remaining partner, was of the character to show willingness to do or say anything that Houghton directed. Over the proceedings leading up to and terminating in the alleged execution of the purported will, Houghton hovered as a guiding star. Not only might he have been all the witnesses but he made himself appear to have been in fact the testator. According to his own admissions, which we are not required to take as he would have us take them, in view of his uncertainties and contradictions, he supplied the detrimental language and provisions of the will and spurred on the hesitant testator with subtle suggestions at the psychological moments. His own testimony and that of his partner-witness and fellow respondents shows that he excluded control and

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knowledge by others and kept the contents and even the existence of the purported will secret.

Motive of Houghton to Commit and of the Other Respondents to Permit, Ratify and Cooperate in the Acts and Omissions of Houghton, is Established:

Inasmuch as the admitted conduct of Houghton with respect to the estate of the contestant's grandfather affords the basis for an accounting by the estate of Edwin M. Squier and by all of the respondents to the contestant, the fact becomes of the highest importance that the accountability was occasioned by the acts of Houghton, whose motive then and there with respect to the estate of Edwin M. Squier has been shown by the evidence set forth, page 79, as the representative of all the respondents and that they have permitted him to carry out the work of defrauding the contestant by his conduct, without their control, of the proceeding to sustain the purported will, as if he, Houghton, were himself the sole beneficiary. It was this control by Houghton which made it possible for him, who should have been a rank outsider, to invent, for the first time at the thirteenth hour, a defense of which no other respondent ever had any idea or has down to the present moment, unless advised thereof by the learned Vice-Ordinary's opinion and the fictions of Houghton's brief, upon which the opinion was based.

The Court's Opinion and Respondents' Defense Confounded By the Evidence:

Having assumed the position that the facts surrounding the will of Catherine C. Squier in its relation to the will of William C. Squier had no place in this contest, the respondents were driven

by the admission by the Vice-Ordinary in evidence, as material, of the wills of William C. Squier and Catherine C. Squier and the deeds of the Roosevelt property, which were the occasion for the will of Catherine C. Squier, to shift their position and say that the expression by the contestant of discontent with the will of Catherine C. Squier after her funeral is the entire basis of their support of the alleged will of Edwin M. Squier—which they say, was motivated by an estrangement between Edwin M. Squier and the contestant arising out of the contestant's angry attitude occasioned by the false declaration of Houghton as to the will of Catherine C. Squier after her funeral. The issue which the respondents were thus driven into making is whether Houghton or the contestant was right in the matter and whether it was not Houghton who wickedly, deliberately, and wantonly "desecrated" the memory of the mother of Edwin M. Squier by attributing to her just after her funeral a purpose which her will showed and Houghton must have known (although the contestant whom Houghton then and there designedly made angry and played upon as his client and *cestui* and otherwise for many years, didn't), Catherine C. Squier never had.

It would be unnecessary to consider this matter for the purpose of determining the right, for the reason that Houghton admits that his statement which provoked the contestant, namely, that his statement of what Catherine C. Squier had told him and was what her will expressed, was entirely false, but the interest in this matter lies in the circumstance that, as to the very ground upon which the respondents attempt to support the will, namely, the alleged estrangement, they attempted to exclude, and induced the Court to refuse to consider, the evidence admitted as bearing upon it, which sustains absolutely the position taken by the

contestant, without knowledge of the falsehood of Houghton at the time of his grandmother's funeral, and taken advisedly by him, after attempts by Houghton to propound the alleged will of Edwin M. Squier. It is precisely evidence as to the issue which they themselves make by resting upon the 1913 letter that the respondents seek to avoid and succeeded in having the Vice-Ordinary disregard, being matters necessary to present the real facts and the whole situation.

Having said, at the funeral of Catherine C. Squier, that she had made certain communications to him, Houghton first protested that he had never made a construction or interpretation of her will, but had merely repeated what she said to him, then denied that he had received any such communications and testified that all the communications, if any, with respect to the making of her will and codicils were given to him in his office by Edwin M. Squier, and, having been driven to argue upon the letter of 1913, which he approved, if he did not actually dictate it, is contradicted by the language, as he himself imputes it, of Edwin M. Squier, to the effect that he had nothing to do with the making of the will of his mother. Being driven to admissions of fact and law which prove conclusively that Catherine C. Squier did not dispose of her one-third for life of the estate of William C. Squier, in other words, to admit the attempt to defraud the contestant. charged to him, Houghton is driven, by his other admissions that the codicil of the will of Catherine S. Squier was occasioned by an attempt to make title to the Roosevelt property by the insistence of the title company that a disposition of this one-third part of the estate of William C. Squier had not been made in her will, the dates of the will and the original deed being contemporaneous and

the dates of the second codicil and the deed of sale being contemporaneous, to the clear admission that the fraud of Houghton, since he knew precisely why the will of Catherine C. Squier and the codicils were made, and that a purpose to dispose of the one-third of the estate of William C. Squier which would otherwise remain part of the estate in which the contestant had a vested interest in the right of his deceased father, was alien to the said will and codicils and that he misrepresented the facts, was deliberate.

The letter of Edwin M. Squier, in the face of these wills and deeds, really made Edwin M. Squier the trustee for the contestant, charged, by his own declaration, to pay the contestant such sums as would go to the contestant under a proper construction of the will of Catherine C. Squier from the estate of William C. Squier. These sums, including, as they would, moneys shown by the evidence to have been distributed actually by the trustees of the estate of William C. Squier, purporting to act as trustees of the will of Catherine C. Squier, but actually through Houghton's bookkeeper as agent for Houghton, to Edwin M. Squier, Frederick C. Squier, William C. Squier, Jr., and Stuart C. Squier, would be very much more than the amount received by Edwin M. Squier, and might be equal to the entire estate of Edwin M. Squier. The evidence shows that the contestant gave consideration for the trust agreement expressed by him in the letter by "holding his hand" and withdrawing the contest, which, nevertheless, Houghton pleaded wickedly in the New York case and herein as *res adjudicata,* he is alleged to have initiated, of the will of Catherine C. Squier, and continuing for more than ten years thereafter as the docile client of Houghton. The endorsement of this letter by Houghton, being, as he was, attor-

ney for the trustees, and occupying a confidential relation, constituted him a trustee, even before he succeeded as an actual trustee of the will of William C. Squier, to carry out the will of William C. Squier in the light of a proper construction of the will of Catherine C. Squier (see *Strahan Digest of Equity,* p. 77).

The learned Vice-Ordinary was at pains to defend the character of the defendant Houghton and his associates. This showed a misconception of the nature of the contest. It is not necessary for a person charged with a confidential relation to have a guilty mind. The test is whether the action may be defended in a court of equity on the test of conscience. The court disregards the standards of individuals and applies its own. That the actions of Houghton could not be so defended appears throughout the case from his resort to technical defenses. A court of equity, being a court of conscience, will not allow technical rules to be employed to protect fraud. The opinion of the learned Vice-Ordinary, therefore, may fairly be said, in the face of the admission of the wills of William C. Squier and Catherine C. Squier and the deeds of the Roosevelt property, to defeat its own expression and to establish the contentions of the contestant. The very letter upon which the Court based its opinion not only set up the issue, which the wills of William C. Squier and Catherine C. Squier and the deeds of the Roosevelt property are necessary to resolve, but, alone and unaided, meets the entire contention of the respondents, to-wit, that the alleged will of Edwin M. Squier, being made to purport to treat the contestant in the alleged will equally with the next of kin of the same generation, a palpable falsehood apparent on the face of the alleged will, that is, in the very "explanatory" clause, shows that

Edwin M. Squier intended to treat the contestant otherwise than the representative of his deceased father equally with the two surviving brothers of Edwin M. Squier, which intention is disproved by the very words of the said explanatory clause. The last words of the letter are as follows:

> "If there appears to be anything harsh and unfeeling in this letter it is only because your letter suggested it. There is one thing I can never forget, and that is, that you are the son of my brother Charlie."

The learned Vice-Ordinary treated this letter as if it were cotemporaneous with the purported will and as if it were without the paragraph just quoted. As a matter of fact, the letter was dated February 28th, 1913, thirteen years and six months prior to the date of the purported will and, far from being a confirmation of a purpose not expressed but negatived by the latter itself, on the part of Edwin M. Squier, to cut off the contestant, was proof of the purpose maintained during all these years to treat the contestant as the laws of Descent and Distribution would treat him, namely, in his father's stead, as equal with Edwin M. Squier's surviving brothers.

Houghton Drew Edwin M. Squier's Purported Will by Intuition and Without Instructions or Ratification by Edwin M. Squier:

Not only did the purpose to treat the contestant, so forcefully and tenderly expressed in the letter, by a fond uncle chastising, under a mistaken idea of the facts imposed upon him by Houghton, as he thought justly, but, in reality, under a mistake induced by Houghton, prevail over the harsh portions in the letter but the evidence shows that these harsh portions were occasioned not by the

contestant but by the lawyer whom the Court so eloquently defended. The Court expressly found that the contestant made an unjustified statement of fact at the funeral of the grandmother thirteen years and six months before the date of the purported will of Edwin M. Squier and makes that finding the *ratio decidendi* of the contest. If Catherine C. Squier's will did not dispose of the one-third residue to the exclusion of the contestant, the contestant's surprise would be easy to understand as consistent with the personal relations with the grandmother and his natural expectations which Houghton testified he claimed. Anything which would explain the contestant's attitude and Edwin M. Squier's understanding of it would be of great weight—as these wills and deeds certainly were. That any court should make such a finding without a consideration of the evidence on the issue is incomprehensible. It is obvious, therefore, that this evidence shows up clearly the reversible error of the Court. The evidence clearly shows that the misstatement of fact was made to Edwin M. Squier by the lawyer and the misrepresentation was continued on every occasion where it would count, including the drafting of the purported will of Edwin M. Squier, while Edwin M. Squier ceased to have any feeling against the contestant, if he ever had any, and only continued to harbor, or rather to let go uncorrected, the error perpetuated in his mind by the lawyer. The purported will shows upon its face that Edwin M. Squier never during all the time down to and including that of the alleged execution of the will intended to treat the contestant otherwise than as his father's son and was made by the fraud of the lawyer to appear to express the error first foisted upon Edwin M. Squier by the lawyer to the effect that

the purported will so treated him. Nowhere, in the conflicting stories of the lawyer and his associates, is there one word of evidence which imputes to Edwin M. Squier either understanding or ratification or even knowledge of the contents of the alleged will or cognition of the error of fact expressed therein, as Houghton himself testified, by Houghton without the assent or even the knowledge of Edwin M. Squier.

The Form of the "Explanatory" Clause Was so Garbled in the Haste to "Put the Will Over" that Not Even Intuition Can Give it Any Meaning:

In the face of conclusive evidence, the learned Vice-Ordinary repeated the misstatement of fact made by Houghton. The opinion shows that this misstatement of fact went to the essence of the alleged will of Edwin M. Squier and the evidence of the fraud of Houghton was a part of the *res gestae* and was absolutely disregarded by the learned Vice-Ordinary. What Houghton did with respect to the will of Catherine C. Squier after her will took effect, he did, if what he testified is true, prior to and in and about the alleged execution of the purported will of Edwin M. Squier. The opinion of the learned Vice-Ordinary reads as follows:

> "The will reads:
>
> " 'I make no further provision directly or indirectly for my nephew, Charles Burnham Squier, as he was and will be the sole beneficiary in the interest of his father, if living, would have received from the trusts created by the will of my father, William C. Squier.'
>
> "The will next makes some unimportant dispositions of certain chattels and then provides for the division of the residuum between his surviving brothers Stuart and Frederick,

and the appointment of executors and certain instructions to them. The point of the appeal by Charles Burnham Squier (who will be called the contestant, for convenience sake) is indicated by the portion of the will just quoted. His father predeceased the testator and also the testator's father, William C. Squier, so that, as the will pointed out, the contestant (an only child) took from his grandfather's estate all that his father would have taken had he been living when the grandfather died. * * *

> "Neither is there anything to make it appear that the exclusion of the contestant from the residuary estate of his uncle was in any respect the result of a mistake upon the latter's part. The thing is as plain as facts and circumstances well could make it. A good many years before the execution of the will in question the contestant's grandmother died and left a will which appears to have been read at a family gathering. The contents of the will also appeared to have displeased the contestant who, after having heard the reading of it, in the langauge of his uncles, 'got up, and he said he was going to contest the will because my mother was tricky.' The effect of this statement at such a time, had upon the other members of the family present the result that might have been expected. This was the undoubted reason that the testator did not desire the contestant to share in his estate. * * *
>
> "Edwin M. Squier made no mistake."

The essence of the foregoing statement is that the contestant took from his grandfather's estate all that his father would have taken had he been living when the grandfather died. The use of the word "of" before "his father" in the "explanatory" shows that whatever Houghton meant to express he garbled and thus made it impossible for Edwin

M. Squier or the Court to understand what was meant. This slip and the uncorrected "whoses" in a will disposing of six million dollars shows that somebody was in a hurry. The opinion assumes from this meaningless clause that the result, whatever it was, followed because the law would have it so and fails to consider the facts and overlooks the statement by Houghton that he stated, and, as he now admits he stated falsely, Catherine C. Squier purposed what would deprive the contestant of a part of what his father would have got. This process of reasoning wouldn't give the contestant his own against Houghton's will. The contestant's father would have taken at the time of his father's death, if he had then been living, the share of the two-thirds of the residuary which the contestant got, but the father would have received it with the conditions of the trust provisions of the grandfather's will. The father would also have received the vested remainder in the other one-third of the residuary subject to the life interest of the contestant's grandmother and defeasible upon the disposition thereof by her to the exclusion of the contestant's father, the last element itself an impossible hypothesis. Not only would this share of the one-third have vested in contestant's father, as it actually did in the contestant, but, since, as the evidence clearly shows, contestant's grandmother never disposed of the one-third, this share, which would thus have gone to the contestant's father, was never received by the contestant. That Edwin M. Squier would never have desired such a result, either as to father or to son, is not only proved by the evidence, but is the claim of the respondents. If, therefore, it is true, as Houghton claims it to be, that Edwin M. Squier knew what was being done by Houghton, it certainly is true also that he did not know the meaning of what

was being done. The assumption being unavoidable that Houghton knew what was being done, the conclusion is inevitable that Houghton acted apart from any independent judgment of Edwin M. Squier, and was, thus, the true author of the alleged will, and that Houghton's perpetration of the fraud upon the contestant, clearly established in evidence, was deliberate, and, if, as he claims, with the apparent aid of Edwin M. Squier, it was because Edwin M. Squier did not know either what he or Houghton was doing. Houghton's entire testimony is that his communications with Edwin M. Squier were mute and psychic. There is nothing to which either could be held. Houghton acted upon his, Houghton's knowledge, without any agreement with Edwin M. Squier as to what that knowledge was. The weakness in this plan of avoiding the imputation of undue influence consists in this, namely, that Houghton did not show that there was any agreement between him and Edwin M. Squier as to facts and that as a lawyer his mind would place a construction on facts upon which more than Houghton's testimony would be necessary to show any meeting of the minds with Edwin M. Squier, if such a meeting would ever have been possible.

Houghton Was Unable to Give to the "Explanatory" Clause Any Meaning or to Show Either its Legal Effect or Justification in Fact:

Similarly the words of the opinion to the effect that Catherine C. Squier left "a will which appears to have been read at a family gathering" show that the learned Vice-Ordinary was the dupe of Houghton just as were the contestant and Edwin M. Squier. Houghton did not just "read" the will of Catherine C. Squier, or, as he says, even inter-

pret it. He made, in connection with the will, a false statement with respect thereto as if we were communicating from Catherine C. Squier her testamentary purposes, but since he has sworn that he had no communications from Catherine C. Squier with respect to her will and the will propounded by him shows that the purposes stated therein were not those stated by Houghton, what Houghton did at the family gathering was to communicate a "will" invented by himself, which he was permitted to carry out without let or hindrance or any accounting or filing of inventories. He wrote into the purported will of Edwin M. Squier what he "approved" in the 1913 letter repelling the insinuation of favoritism, namely, a denial of the purpose he had carried out under color of a "will" of Catherine C. Squier, since it was he who had seen to it that the grandfather's will should not be carried out and the contestant should not get his father's share. This false denial was what he sought to impute to Edwin M. Squier in the "explanatory" clause. It shows that Houghton mystified Edwin M. Squier, as he did the contestant, at the family gathering and in the alleged execution of the purported will, of which, thus, the matters surrounding Catherine C. Squier's will become a part of the *res gestae*. If the Court read the testimony of Houghton in the Orphans' Court from folios 1406 to folio 1433, together with the objections of respondent's trial counsel, who was the testamentary witness Ferris, it would have been clear that Houghton wove the same mesh of falsehood and fraud into the web and woof of the carrying out of the provisions of the wills of William C. Squier and Catherine C. Squier as into the alleged making and execution of the purported will of Edwin M. Squier and into the trials of these contests. To support the argument on the facts

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now being made, the substance of that testimony is reproduced with some of the objections and arguments:

"Q. Will you point out on this instrument how much of the will was in the draft which you showed to Mr. Shepard? A. As far as I recall, everything except that paragraph which is in brackets.

"Q. Did Mr. Edwin M. Squier explain to you why he hadn't put this provision in his notes which he gave you? A. He did not.

"Q. Did you ask him why? A. I did not.

"Q. Did Mr. Squier say anything to you about the explanation which you gave of the distribution of his mother's estate? A. He did not.

"Q. You said under the terms of his grandfather's will he would further receive the full share that his father would have received upon the death of such of his uncles who died without issue, on account of the distribution of the trusts, and so forth, that is what you said? A. On account—

"Mr. Ferris: What are you reading from?

"Mr. Maxson: I am reading from this affidavit.

"Mr. Ferris: Pardon me. What is the date of that affidavit?

"Mr. Maxson: What is that question?

"(Question repeated by the stenographer.)

"At the reading of Catherine C. Squier's will? A. Substantially that, yes.

"Q. Yes. Substantially that. Now, is that a fact that he had received or would receive his full share that his father would have received if he had survived?

"Mr. Ferris: I object to that, if your Honor please. It is wholly immaterial, incompetent and irrelevant. That is back in 1913. It does not tend to establish any conspiracy. It does not show any attempt to improperly influence the mind of Edwin M. Squier, and certainly is to remote if proved that to the slightest extent, from 1913 to 1926.

"Mr. Maxson: Certainly.

"Mr. Ferris: Pardon me.

"Mr. Maxson: Pardon me.

"Mr. Ferris: Furthermore there is no evidence here to indicate that Mr. Edwin M. Squier did not know the very terms of the will of which he was acting as executor and trustee. Now it appears here by uncontradicted testimony that Edwin M. Squier was the executor and trustee of his father's will. Now certainly any statement made by Mr. Houghton could not in anywise deceive, or in any wise tended to have influenced him in making his will. It is quite clear the thing that influenced Edwin M. Squier, if anything at all, was what Burnham Squier said there; not what Mr. Houghton said.

"Mr. Maxson: If it has no further competency it goes to the witness's credibility.

"Mr. Ferris: If that is the purpose, it is his witness. He has no right to attack his own witness's credibility.

"The Court: All of which is true. I have disregarded that rule. I have allowed you to go great ways—

"Mr. Maxson: The rule does not operate when you are examining adverse witnesses, as your Honor knows.

"The Court: You call them adverse witnesses, but—

"Mr. Maxson: I distinguish between hostile and adverse.

"The Court: I know you do. If you called them hostile, I would say I would have something to say about whether they are hostile or not. That is the reason you conveniently call them adverse witnesses. I would first have to find they were hostile before you could find them to be so. I do not know how you call them adverse.

"Mr. Maxson: Adverse in interest.

"The Court: Adverse because they may have an interest in a will. I will not say for that reason they were adverse. Why do you think they are adverse?

"Mr. Maxson: That is the reason I say they are adverse. I evidently disagree with your Honor. It is unfortunate.

"The Court: But that is one of the things that judges are subject to, disagreements on the part of counsel.

"Mr. Ferris: Certainly.

"The Court: With the court as to what it says. I suppose that is why we call it litigation. That is perfectly all right. But I have allowed that rule to be violated right and left. I am going to allow it some more. I do not see why this question should not be answered. I do not see that any of this is going to get us a great ways, really, to be perfectly candid with all of you.

"Mr. Ferris: I only make the objection, if your Honor please, because if I sit quiescent here, I may be held as a matter of law to have acquiesced in my adversary's efforts to go outside the realm of what is pertinent in this issue. If your Honor, in his discretion, sees fit to overrule my objection, I will take an exception, and preserve the record.

"The Court: That is perfectly all right.

"(Question repeated by the stenographer.))

"The Court: Do you know?

"A. Yes.

"The Court: You do know about that, as to whether he received it or not?

"A. I do know.

"The Court: Well, was that a fact?

"A. He has, yes.

"Q. And does that apply also to the distribution of his grandmother's estate? A. Yes.

"Q. He has received his full share that his father would have received if he had survived the grandmother, is that so?

"Mr. Ferris: I object to that summary. That is incorrect. That is not what the witness testified to.

"Mr. Maxson: Yes. If his father survived.

"A. The grandfather's estate?

"Mr. Ferris: I make my objection.

"The Court: That is the grandfather now, you are talking about the grandfather's will now, I will—

"A. The grandmother's will.

"The Court: Read the question.

"(Question repeated by the stenographer.)

"A. Well, I can't speculate on that. The will was made after the son Charles B. Squier was dead. I don't know what he would have received if he had been alive.

"Q. The will provided a power of distribution, didn't it? I mean, yes power of disposition.

"Mr. Ferris: I—

"The Court: The will would speak for itself, and I have ruled that out.

"Mr. Ferris: Yes.

"Mr. Maxson: What I am concerned to establish is the question as to whether or not this was a mistake.

"The Court: Well, now, you can ask that directly.

"Q. Was your statement made at the time of the reading of Catherine C. Squier's will accurate or not as to fact? A. As far as I know it was, yes.

"Q. Well, I do not understand exactly what you mean by 'as far as you know,' you know all about the estate, do you not? A. Well, I will say, 'Yes,' then.

"Q. Say, 'Yes'? A. If that will please—I will say, 'Yes.'

"Q. And that as a matter of law, as well as facts do you consider it that way? A. That I didn't say.

"Mr. Ferris: That I certainly object to.

"The Court: He is not offered as an expert, and if he were he might demand a fee before he would testify. Then you would be in trouble.

"A. Possibly.

"Mr. Maxson: I am assuming your Honor is going to occupy the expert position in this matter.

"Q. Now, you go on in this affidavit, to which I have already called your attention, and say: 'In view of that fact as stated to him his grandfather had said that he would receive a good deal more money than any of the other grandchildren of William C. Squier.' Did his grandmother say that? A. She did.

"The Court: Oh, well!

"Q. And to you? A. She did.

"The Court: Now, we will have to stop somewhere on this, Mr. Maxson.

"Q. Well, then, if that be so—and did you agree to that as matter of fact?

"Mr. Ferris: I object to that, if your Honor please.

"The Court: I really don't know what that refers to. This thing has gotten beyond me. The last question?

"(Last question repeated by the stenographer.)

"Mr. Maxson: He had made the explanation which I read before. I will read it again to your Honor so as to get the context. 'I explained to him immediately—that is to Charles Burnham Squier'—

"The Court: Yes.

"Mr. Maxson (continuing): The presence of his other relatives that his grandfather had considered that he had received all of his share of his father at the time of his grandfather's death.

"The Court: Yes.

"Mr. Maxson (continuing): And that under the terms of his grandfather's will would receive the full share that his father would have received upon the death of such of his uncles who died without issue, on account of the distribution of the trusts which had been established for their benefit in the will of the grandfather.

"The Court: Yes.

"Mr. Maxson: Now, there were trusts in the will of the grandmother and power of disposition. Then he goes on to say: 'In view

of that fact as stated to him his grandmother had said that he would receive a good deal more money than any of the other grandchildren of William C. Squier.' Now, I am asking this witness if he knows whether that is a fact, that he would have received a good deal more money than any of the other grandchildren.

"The Court: He cannot testify to that. He can only testify that the grandmother said so.

"Mr. Maxson: He has already testified to it.

"The Court: He is laying that on the grandmother, that the grandmother said that to him.

"Mr. Maxson: May I not ask him if that is the fact, what the grandmother said?

"The Court: That the grandmother said it to him?

"Mr. Maxson: He has testified that she said it to him.

"The Court: Well, now—

"Mr. Maxson: I am asking him whether or not she was mistaken when she said that.

"The Court: Do not let us get back that far, to the grandfather and grandmother. We have been going back too far. The whole family has been mistaken, evidently, from the grandfather and father down.

"Mr. Maxson: The very provision of the will caught him—

"The Court: Let us leave some one rest in peace. I am not going back into the great grandparents of these people.

"Mr. Maxson: We have not got back that far yet.

"The Court: We got back to the grandmother. Perhaps in a few more years she may be a great-grandmother.

A. She would have been a great, great, if she was alive.

"Mr. Maxson: May I find out where we are on the question?

"The Court: We are at the point where you want to testify whether the grandmother told the truth. That is it in effect.

"Mr. Maxson: I am not asking that. I am

asking whether he was laboring under a misapprehension.

"The Court: How can he tell that?

"Mr. Maxson: He can tell it very well, if he wishes to, and if your Honor will permit him to.

"Mr. Ferris: I resent that statement. If it appears on the record I ask it be stricken out from the record.

"The Court: Do not resent anything. Don't you see the way I am smiling?

"Mr. Ferris: It is my law partner that is being attacked.

"The Court: After all, when you gentlemen get all wrought up somebody has to smile, so I keep on smiling.

"Mr. Maxson: I have been too many years at the Bar to be offensive to a brother attorney on the witness stand. If any remark I made appears to be so, I am sorry. It is not so intended.

"The Court: That is all right.

(Question repeated by the stenographer.)

"Mr. Maxson: And your Honor ruled that out?

"The Court: Yes, I did not think you ought to ask him that."

The Learned Vice-Ordinary Appears to Have Accepted Houghton's Intuitions, Despite Their Vagueness, as Binding as to Both Fact and Law:

If, as is now admitted by Houghton's sworn testimony, Catherine C. Squier said nothing to Houghton at all (even if there might be a possible doubt as to the issue of a judicial interpretation of Catherine C. Squier's will as contestant now claims it to be), then the fraud and misrepresentation of Houghton as to a fact going to the *res gestae* of Edwin M. Squier's alleged will, and, as the Judge of the Orphans' Court said, resulting in

a mistake, was a fraud on the Orphans' Court and a fraud on the learned Vice-Ordinary, as his opinion clearly shows.

The Family Relations Found by the Learned Vice-Ordinary Contrary to All the Proved Facts:

The Court found as a matter of fact that the great respect and affection existed among the family of Edwin M. Squier and that the contestant was an outcast. The evidence shows that the family of Edwin M. Squier were, rather, unconscious of one another's existence. A brother to whom the purported will left one-half the estate in kind, had been, to the knowledge of Edwin M. Squier, insane for many years, and had never, as his own son testified, visited or been visited by Edwin M. Squier more than twice in twenty years, although they were co-trustees of trusts, alive during all that time, from the will of their father. Frederick C. Squier testified (Orphans' Court Record, p. 271) that the last visit of any member of the family of Edwin M. Squier was a year before his death, and he couldn't say who made it, and the one preceding that visit was a year or two before that, and he couldn't tell who made it. Frederick C. Squier also testified (p. 474, Orphans' Court Record) that Stuart C. Squier, the brother for whom Edwin M. Squier disinherited, as Houghton, the brother's son-in-law, would have it, his dead brother Charlie's son, was not even at the grandmother's funeral. The evidence shows, on the contrary, that the contestant, down to and including recent years, prior to the death of Edwin M. Squier, had visited him frequently, socially, in the office, which he occupied in the suite of lawyer Houghton, during all the years the contestant was actually guided by the lawyer, as attorney, down to a short time before the death of Edwin M. Squier.

The misstatement of fact of the learned Court to the effect that there is not a scintilla of proof of undue influence appears flagrant, in the face of the admission of fact that the lawyer kept urging Edwin M. Squier to make a will at the very times when all the circumstances which the Court assumes to have existed, first, that there was an estrangement between Edwin M. Squier and the contestant, and second, the purpose likely to be attained by any deviation from the natural course of Descent and Distribution would be the disinheritance of the contestant. The admissions of the lawyer to the effect that he continuously thought the contestant to be no good, of which there is no evidence, either that the facts were so or that Houghton or Edwin M. Squier so believed, the contrary being so, shows that the purpose of the lawyer, in obtaining the purported will, was precisely what his purpose had been in misrepresenting to the family that the contestant's grandmother had disinherited him, namely, to procure by misrepresentation, fraud, and undue influence, practised upon Edwin M. Squier, and upon the Court, the disinheritance of the contestant by his uncle. Of this the misuse of the letter of 1913 is conclusive proof.

The 1913 Letter Expressed Neither Bitterness nor Sarcasm and Was Such as a Fond Uncle Would Write Under the Misapprehension of Fact Caused by Houghton:

It may be useful at this time to set forth the passages of the letter of 1913 which were not referred to in the opinion of the Vice-Ordinary. They read as follows:

"February 28th, 1913.

Mr. Charles B. Squier,
'The Breakers,'
Palm Beach, Fla.

Mr. dear Burnham:

I am in receipt of your letter of February 23, 1913, and do not see why you should have written such a letter to me, more especially, after what I have done for you.

You seem to forget that had it not been for my efforts in your behalf that you would not now be enjoying the full benefits of the money which your Grandfather Squier left you, for if I had not dissuaded him from so doing he would have added a codicil to his will and left the portion which you now have full possession of in trust for your use during your life, the same to return to the Squier family at your death. I told him that you were Charlie's boy and your father had helped to make the money, and that I did not see why the money left to Charlie should not go to his son. * * *

My mother never had any favorite sons or grandchildren. She loved them all alike, and her will is a proof of this statement.

Your remarks about degeneracy, &c. are too childish to be worthy of comment. * * *

In regard to your intimation of undue influence, your grandmother's will was made by herself and the only questions which she asked me were the ones I stated at the time the will was read, which you no doubt remember.

Your statement that you have been maliciously done out of your just rights is false for you have been left equal with the other grandchildren.

At the time that the Passaic Zinc Company was merged with the New Jersey Zinc Company you were only about seven years old, and, consequently, can only know what occurred by hearsay, the facts of the case being

that there was many a night when your father, my brother Fred and myself were up until late in the night discussing this matter when you were abed asleep.

Your remarks about the principal legatees and their conscience have, I think, been answered in a previous paragraph, and as to your feeling towards the Squier family, I think the family can stand it if you can.

I am pleased to learn that you intend to make something of yourself and I assure you that in that connection you have my very best wishes and hope that you will hold to your good resolutions.

As to your assumed broad-mindedness and sense of justness, I am not prepared to say whether you inherited it or not, but will say, that if you can find any person who ever had any dealings with the Squier family who will say that they were not fairly treated, I would like you to produce them.

As to your father and grandfather concurring in your view will say, that I knew them both better than you did, and if they were here they would decide against you.

As to your life being broader and more interesting than the rest of the family, I was never sufficiently stuck on myself to make a remark of that kind. It seems to me to be puerile.

In regard to family dishonor, I refer you to your own conduct. Your remarks on newspaper notoriety savor very much of an attorney who was at one time employed by your family, and the revengeful feeling expressed in this connection seems to me to be the remarks of a boy whose mind is not mature enough to know better.

Whatever money there is that may be rightfully due you, you will certainly receive.

In regard to copy of your Will, which you left me, as you have revoked it, it would only gratify idle curiosity to read it so I return it, together with whatever other papers you may have left with me.

The delay occasioned by the misdirection of the cards was no inconvenience, as they arrived in ample time, and in this connection allow me to again thank you for attending to this matter for me.

I have no hard feelings except as may be occasioned by your conduct. I may, under certain conditions, forgive the harsh words you used about my mother, but do not think I will ever forget them as long as I live.

If there appears to be anything harsh and unfeeling in this letter it is only because your letter suggested it. There is one thing I can never forget, and that is, that you are the son of my brother Charlie.

Very truly yours,

E. M. SQUIER.

Enc.
EMS/L"

Only a reader eager to twist this letter to his own uses could make sarcasm or bitterness out of it, or believe that it expressed, at the time it was written, anything but the affection natural in a bachelor uncle of sixty for his dead brother's only child, or retained or acquired, after thirteen years, when age had mellowed the old man and the young man was on friendly terms with him, a bitterness it originally did not have. According to Houghton's testimony and so far as can be gleaned from the entire testimony, the letter and the incident, which Houghton says even he didn't mention, and Edwin M. Squier didn't, were both forgotten. It is against common sense to believe that a letter was evoked in 1926 as a string of vows of vengeance which in 1913 was, as consideration of the paragraphs just set forth shows, a succession of friendly paragraphs. The first two paragraphs and the last paragraph say, in substance, that Edwin M. Squier had always worked to get

the contestant, as his dead brother's son, what that brother had helped to make, namely, a full share of the family fortune, and that he would continue to do that as long as he lived. The third paragraph said, in substance, that such was the grandmother's attitude also. The fourth paragraph dismissed the younger man's criticism as too youthful to be condemned seriously. The fifth paragraph repels the possibility of suspicion that the uncle would have even thought of influencing the grandmother against the contestant. The sixth paragraph asserts the writer's understanding that the grandmother had not been influenced by anyone against the contestant. The seventh paragraph is reminiscent of the collaboration of the writer with the contestant's father and the contestant's childhood. The eighth paragraph dismisses lightly the younger man's fiery breathings against the whole family; the retort would be kind even if the point was rather well made, assuming, as the writer did, that the contestant had no grievance. The ninth paragraph is frankly and plainly paternal. To say that Edwin M. Squier intended the paragraph as sarcastic would be rather cruel to the older man and somewhat of a "desecration" of his memory. The tenth and eleventh paragraphs answer such a contention, for they proclaim the fairness of the Squier nature. The twelfth and thirteenth paragraphs also sustain the family standards and refuse to blame the contestant on account of immaturity. The fourteenth paragraph shows this, for it constitutes an openhearted promise to see that the boy gets what may be rightfully due him. The fifteenth paragraph is mere comment of no importance. The sixteenth is an expression of thanks for a courtesy from the contestant to the writer. The seventeenth constitutes an attempt to make the point of the whole

letter appear kindly and well meant. The eighteenth paragraph takes the contestant to the writer's bosom as the son of the writer's dear dead brother.

The interpretation of this letter by the respondents (who didn't dare to make an issue of fact and strained every effort to suppress facts) adopted by the learned Vice-Ordinary, apparently on faith, would never be accepted as that of an impartial critic, but, being such as it was, must be condemned as gross and deliberate misinterpretation and misrepresentation.

The Estrangement, if Any, had Disappeared in 1926, and Only the Intuition of Houghton, Who Had Attempted to Create it and Wished to Perpetuate It Remained:

The interpretation imposed upon the learned Vice-Ordinary by Houghton is but a confession of the desire of Houghton from before the death of Catherine C. Squier to the death of Edwin M. Squier for an estrangement between the contestant and Edwin M. Squier, and of his active effort, beginning with his approval of the letter as one marking, as he says, a definite estrangement, and ending with his creation of the "explanatory" clause of the purported will, which, also, he and Edwin M. Squier, if the latter understood it at all, understood in different ways. In other words, if there ever was an estrangement, Houghton deliberately caused it. The idea that an estrangement persisted, even if it ever existed, is, however, purely a fiction of Houghton's creation. The contestant, the injured party, made friends with both Edwin M. Squier and Houghton. He trusted Houghton, who covered up what he now says was, if anything, only a mistake. But Houghton also covered it up for Edwin M. Squier, who, honestly purposing to be

just to the contestant, left for thirteen years the carrying out of the fraud to Houghton's bookkeeper. The letter was an honest attempt to Edwin M. Squier not only to straighten out his angry young nephew, but to square himself with the nephew. This letter Houghton never permitted Edwin M. Squier to carry out, but Edwin M. Squier never knew it, nor the nephew, until after his uncle's death.

The Only Person Shown to Have Been Bent on Disinheritance of the Contestant Was Houghton, Who Alone Had the Motive and the Knowledge of the Means Thereto:

The statement of fact in the opinion of the learned Vice-Ordinary to the effect that Edwin M. Squier was moved thirteen years after the date of this letter to disinherit the contestant because the contestant had "desecrated" the memory of Edwin M. Squier's mother (in favor of an insane brother who, though not insane at the time, didn't even attend her funeral), and that in so doing Edwin M. Squier made no mistake, is shown to be flagrantly false and absurd by the expression of affection in the letter itself of Edwin M. Squier for the contestant's father and the certainty that Edwin M. Squier would not permit any reflection upon his brother's memory through discrimination against the son. The testimony of Houghton himself is to the effect that Edwin M. Squier wished an explanation of what might appear, under a certain construction, which the lawyer's testimony showed he was himself anxious to prevent Edwin M. Squier from adopting, to be a discrimination against the contestant. The equal specific bequest mentioned Edwin M. Squier's "deceased brother Charles" and the other parents whose children were remembered and who would inherit from

them. To assume that Edwin M. Squier had the 1913 letter before him when he read "my deceased brother Charles" in the will would be fatal to the contention, whatever it is, of Houghton. The whole truth of the influence of the lawyer is to be found not in any supposition of estrangement between Edwin M. Squier and the contestant but in the documentory history of the falsehood forced upon Edwin M. Squier for over thirteen years, without his consciousness thereof, set forth in the documents which the Orphans' Court refused to admit and the learned Vice-Ordinary refused to consider. Until a Court shall have decided the question which Houghton and the Vice-Ordinary have both avoided presented by the documents admitted by the Vice-Ordinary as material, the contestant will not have had his "day in court." The findings of the Court to the effect that there was "not one word by a witness or otherwise to show he (the lawyer) had done anything more in his relation with the testator than to honestly advise him when requested to do so * * * Not a scrap of paper to make it appear that he had made any effort to do so," and that the contestant should have assumed at the outset that no Court would give him a discovery of the facts and a "day in Court" upon them, since he must have known from the beginning that the testator had been, (a condition in the course of nature by no means perpetual), "a man of large affairs, financially engaged in business and other activities that would have made it imperative that he be of at least normal intelligence and clearness of mind," are in violent conflict with the evidence. Another example of the same kind of reasoning is found in that part of the opinion which, with the obvious desire of avoiding the mandate of the authorities holding that undue influence by a lawyer is pre-

sumed under the circumstances established here, as a matter of law, accuses the *contestant* of the contemptible design of "*magnifying*" the friendship between Edwin M. Squier and Houghton into the ordinary relationship of attorney and client. No magnifying of the confidential relation admitted, after fencing, by Houghton (Prerogative Court Record, p. 59) could extinguish, as the opinion and respondents obviously sought to do, the admitted relation of attorney and client. It is premised in the opinion of the Court that Edwin M. Squier was of such an advanced age that it took only a slight ailment to carry him off. The finding that "he was engaged about his affairs until a few days of his death," is likewise flagrantly false in conflict with the evidence. It is obvious that Edwin M. Squier was at all times incapable of comprehending the principles of law which determined the facts upon which the distribution of his property would be based and that he took fact and principle without question from Houghton. Presumptions of the honesty of a lawyer are not presecribed by law and are certainly not to be forced, especially in a court of equity, where the conscience of the court is the real test and it is unnecessary to consider the evil intent with which acts are done, when a low-grade attitude of concealment stamps him as discouraging the confidence of the Court and of the contestant. The motive of Houghton, moreover, specifically, is supplied in the opinion of the Court. Houghton admits that he thought that the contestant should not be treated otherwise than as a mere individual *per capita* in the distribution of his grandfather's estate. The Court approves Houghton's position that Edwin M. Squier's will should express this. Houghton admittedly supplied the language, the theory, and the thought, both of the assumed disinheritance of the con-

testant by his grandmother and of the false appearance of the planned disinheritance of Edwin M. Squier. Houghton's declared purpose was to break the will of William C. Squier through Edwin M. Squier's purported will, by attempting to carry over to the other two stocks that part of the contestant's share he had diverted to Edwin M. Squier, just as he had carried over the rest of the contestant's share to those two stocks through his false declaration as to Catherine C. Squier's will. The Court accepts Houghton's motive of an invented antagonism arising out of something besides greed as the *ratio decidendi* and adopts the Tartuffian pathos of the lawyer as if both he and the Court never loved anyone so much as Catherine C. Squier. The character of Edwin M. Squier from the point of view of resistence to influence was shown, by Houghton himself, when he testified that Edwin M. Squier asked why the contestant should be provided for as in the purported will and failed to go into the matter, which involved the essential purpose of Houghton expressed in the will, any further. The characteristic non-resistence was testified to by the nurse and doctor who attended him in his last illness, who testified that he never asked for help, not even for a cigarette, allowed himself to be driven to bed, and replied whenever asked how he felt, that he was "fine" and "pretty snappy." The Vice-Ordinary found as a matter of fact that the contestant was "more or less familiar with the activities and conditions of his close relatives even though, as here, he may be estranged from them." It must be assumed that Houghton, who was not "estranged," knew the non-resistent character and extraordinary indolence of mind of Edwin M. Squier. He himself testified to his bitter antagonism to the contestant, although during the long

years when he entertained this antagonism, he acted as the contestant's attorney. He testified that he thought that the contestant had received and would receive, without anything from his grandmother and uncle, all the money he ought to get in addition to what he already had, and, by not only failing to obtain a construction of Catherine C. Squier's will but actually making himself not trustee's attorney but personally the final and exclusive judge against the contestant, also, as he admitted, insisted on Edwin M. Squier's making him the final judge as to the making and the provisions of his will, just as, as the opinion shows, he apparently induced the learned Vice-Ordinary to make him the final judge of the contest. There is absolutely no record of any expression of the wish that the contestant should not receive more money than he had, by anybody except Houghton and those whom his manipulation of the mind of Edwin M. Squier would benefit, except the words falsely attributed, as the testimony itself shows, to Edwin M. Squier, that he didn't want to leave the contestant any more money than he had to. These words were placed, in time, before the explanatory clause should have been discussed, that is, after the first alleged draft of the purported will was completed (although, in fact, the discussion of that clause is placed at three mutually exclusive times) but, the alleged will having all its provisions of disinheritance already, if any, and no instructions having been given as to any amount to be left to the contestant, the words would have had no meaning at any time, not having been uttered before the will was complete and not being necessary afterward, and, having been placed at three mutually exclusive times, must have existed not in fact but as a fiction of Houghton. This wish to exclude the contestant from testamentary provi-

sions, was expressed by Houghton himself alone, first, after the funeral of Catherine C. Squier, and, second, in the passage admittedly created by him in the purported will of Edwin M. Squier. He testified that his theory, which he had thus expressed, was that the *per stirpes* provision of the grandfather's will should be mitigated in favor of the family into which he had married and his client, and partner to the agreement to divide the contestant's share, Frederick C. Squier. The finding of the Vice-Ordinary that Edwin M. Squier must be concluded from the letter which he wrote in 1913 to the contestant, closing with the words: "there is one thing I can NEVER forget, and that is, that you are the son of my brother Charlie," to have been moved thirteen years later by the incident mentioned in the very letter closing thus to disinherit the only "son of my brother Charlie" is in violent conflict with the evidence that the only person bent on this disinheritance, with any motive thereto, and any knowledge of the means thereto, was Houghton.

The Evidence Shows Edwin M. Squier Had No Comprehension of the Meaning of What Houghton was Causing to Be Done:

Nothing could be clearer than the fact that Edwin M. Squier had no knowledge of the true import of the paper purporting to be his will and that Houghton arranged everything without disturbing Edwin M. Squier's mind in the least and himself made the purported will. By this will he purposed to make himself manager of the estate. The will would make him not merely its draftsman but would maintain him in the position he had occupied with regard to the family fortunes for so many years which would otherwise cease. He himself testified he had done all the work with re-

spect to the estates from the beginning. He was not only lawyer, enough with the benefits derived by him and his through and under the purported will to establish under the authorities, undue influence as a matter of law, but, the added circumstances being erroneously considered by the learned Vice-Ordinary to make the presumption of undue influence less instead of more conclusive, also mentor and dictator of the whole family, including Edwin M. Squier, and, until a short time before, the contestant. He had a room in the house of Edwin M. Squier and, as the nurse testified, arrived the morning of the decease of Edwin M. Squier and took charge of everything without any question by the family. He was writing papers all day. He alone, not excepting Edwin M. Squier, had access to the contents of the will after its alleged execution. He had laid down the law in the purported will just as he had laid down the law after the funeral of Catherine C. Squier. In neither case did anybody seem to think that lawyer Houghton could be questioned. The contestant, who, together with Edwin M. Squier, although as Houghton planned it, raised a dispute between them after the funeral of Catherine C. Squier, entirely misconceived, in the same way as Edwin M. Squier, what Houghton was really doing, and continued to do so until discovery was made, of the deception in both cases, namely, the wills of Catherine C. Squier and Edwin M. Squier, after the decease of Edwin M. Squier, through an examination by the contestant's attorney of a matter which uninformed and uninquiring laymen, such as Edwin M. Squier, was, would not comprehend. Edwin M. Squier himself was never permitted to discover the falsehood of Houghton, which falsehood Houghton himself now admits, namely, that his story of what Catherine C. Squier had told him,

which was a way of saying what she provided in her will, was false.

The opinion of the Court reduced the lawyer-like and scholarly presentation of the contestant's case through documents which the Court found relevant and afterwards disregarded absolutely and the testimony of none but Houghton and his partner as to the exact facts of what Houghton actually did to a low attempt "to play on the friendship which seems to have existed between this lawyer and the testator and to magnify their relations into that of the ordinary relationship of attorney and client, in the hope, that a suspicion would be engendered that would cause the Court to color and misconstrue every word of testimony." And the Court considered this the most shocking instance of an "attack upon the mental capacity ever presented to any Court." The course of conduct on the part of the lawyer thus set forth by unimpeachable evidence of the lawyer himself and his partner and of the documents they had drawn is as clear a fraud as was ever shown in a court, and the opinion of the learned Vice-Ordinary shows that their testimony was also a successful fraud upon the Prerogative Court. In considering this course of conduct for the purpose of arriving at the character which the learned Vice-Ordinary so heatedly defends, of these two lawyers, it is only necessary to remark that this course of conduct was perpetrated against one who was and had been for almost all of the time the course of conduct covered the client of these lawyers. The demonstration of this fraud by Houghton, the contestant's former lawyer, is imputed to the contestant for the purpose of blackening the character of the contestant without the slightest bit of evidence and for the ulterior motive of imputing the opinion thus expressed of the contestant to Edwin M. Squier.

The Last Resort to Strategy of Houghton and Shepard is a Complete Confession of the Matters Charged in the Petition:

Contestant's counsel have no quarrel with respondents' counsel on the ground of forceful argument or even of vehement statement, nor with the right of the Court to form its own opinion upon the evidence and to express its conclusions sharply. But neither the Court nor respondents' counsel did these things. The obvious reason is that the evidence and statements of conclusions from it had to be carefully avoided if a decision in favor of the respondents were to be made and expressed. Here, too, the objection is to the method rather than to substance. But when the respondents' counsel misrepresent the evidence with an evident purpose to deceive and invent facts and the Court succumbs to the deception and accepts the invention as facts, not only is the decision of the Court absolutely discredited but it follows as the night the day that the lawyers who unduly influenced the Court to sustain the alleged will unduly influenced Edwin M. Squier to obtain it and shaped their conduct before and after the alleged execution to further their plot begun, as the disregarded evidence clearly shows, thirteen years before, to preclude the contestant from his inheritance, his expectancy, and his day in Court. In the brief for the respondents before the Vice-Ordinary upon which the opinion of the Vice-Ordinary appears to be solely based, without the consideration of the evidence, there appears the following words:

> "The character of these charges and their utter recklessness is, as is disclosed by the evidence, quite in keeping with the man who is making them. The evidence shows that he has been an outcast in his family for over ten years and he disgusted, not only the testator, but the

other members of his family by his methods of living, his looseness of morals and his propensity for reckless accusations beginning with the calling of his grandmother 'a tricky old woman' and continuing down and throughout this disgraceful contest."

The evidence contains not one word to sustain this wild statement. Pillaged, the contestant has been, and deceived and betrayed, but spurned, never. Who better than the authors of the above statement know that it is the contestant's attorneys and not the contestant, whom they charge with not testifying at all, who are responsible for the formulation of the charges of the petition and for the substantiation of them, as they have successfully done here, as this wild passage tends to indicate, out of the mouths of Shepard and Houghton themselves!

"There is not only not a scintilla of evidence to support a single one of the allegations in his petition for appeal but the evidence introduced on his behalf flatly contradicts every one of them and goes beyond that and shows a very real reason for the testator's leaving him only a small bequest in his Will. In fact it becomes perfectly evident that had it not been that the contestant was the only son of the testator's deceased brother he would have left him out of his Will entirely and that he only mentioned him so that the world at large would not be informed that he was entirely cut off from his family. * * *"

This wild statement, accepted almost verbatim by the learned Vice-Ordinary for his opinion, is based upon the assumption that Edwin M. Squier singled out the contestant as his father's only son, instead of referring generally to nephews and nieces and their parents by name, by leaving him five thousand ($5,000) dollars out of six million

and further showed his affection by glossing over the truth of his preference by giving a false reason not for preference but for disinheritance. Solicitude for the "son of my deceased brother Charles" would not have been aimed at or would have gone to the limit, except in the desire of Houghton for *his* "explanation" and appearances, and *alibi.* Solicitude and hate would not live together in the heart of Edwin M. Squier. The 1913 letter shows in the strongest terms the purpose of Edwin M. Squier toward "the son of my brother Charlie." Old men don't waste much time hating when they think the time has come to make a last will. There is not a word of suggestion in the evidence that there was any desire to cover up a disinheritance any more than there is evidence that there was any desire to disinherit. This theory of respondents' brief is, like the so-called "explanatory" clause, which was invented by Houghton to cover up his dirty work, purely an unskillful liar's afterthought.

> "The basis for complaint on the part of this contestant is that he was the son of a deceased brother and hence that the testator's residuary estate should have been divided into three parts instead of into two and that he should have had one of those parts. Again, however, the testimony introduced on behalf of the contestant himself gives full and complete explanation of the Will in that respect. It was shown that at the time of his grandmother's death this contestant was dissatisfied with her Will and made derogatory remarks concerning her character in the presence of the rest of the family including the testator. The testimony is uncontradicted that all the members of the family resented such remarks on his part, particularly at such a time, and that from then on he was practically estranged from all of them. When counsel says that this testi-

mony was uncontradicted it should be borne in mind that this contestant was present in the courtroom at the hearing before the Orphans' Court and was therefore in the position to go upon the stand and contradict this testimony if it had been untrue. The testimony further shows that while the testator and the contestant were in touch with one another at certain intervals following the death of the contestant's grandmother and up to the death of the testator there was no real affection between them. The letter written some years before the making of the Will by the testator to the contestant and which was introduced in evidence by counsel for the contestant clearly shows the state of mind of the testator and the opinion that he had of the contestant. Furthermore, the testimony of Mr. Shepard and Mr. Houghton brought out by counsel for the contestant shows that up to the time of his death the testator was disappointed in and disgusted with the actions of the contestant. Mr. Houghton's testimony, therefore, shows that the testator deliberately left the comparatively small legacy that he did to the contestant and that he knew precisely what he was doing when he did it. As to undue influence then the contestant himself has sustained the burden of proof for the benefit of the proponents and the evidence adduced on his behalf is the strongest evidence that could be produced to rebut his contention."

In other words, the testimony of Shepard, Houghton's partner, that he, Shepard, tried to influence Edwin M. Squier against the contestant, sustains respondents' claim that the burden of proving that Houghton didn't exert any influence and Houghton's testimony as to what he, Houghton, did and thought in making up a purported will to exclude the contestant, has the same effect. Never was there a plainer confession of guilt. The authors of the above paragraphs are the witness Shepard and

the Corporation Counsel of Jersey City, who knows nothing about the case. Shepard is here imputing to the contestant and Edwin M. Squier his own innuendoes, for example, the one about the contestant drinking, there being no evidence that he had ever taken a drop of liquor in his life. The letter referred to was so contradictory of the idea of estrangement that Shepard fought to keep knowledge of it from contestant's counsel and the Court. What Houghton's testimony shows is that it was Houghton alone who knew why the alleged will was framed to discriminate against the contestant and that Houghton neither asked nor learned any reason from Edwin M. Squier nor gave him any reason or explanation. Houghton's only communications, as he testified, to Edwin M. Squier, were that Edwin M. Squier should make a will and the will Houghton had drawn was all right. Designing to lie about the contestant, the lawyers tell the truth about themselves, which is that they were not only capable but were actually guilty of the misdeeds laid by the contestant to their charge. The explanation of the "explanatory" clause undoubtedly is that Houghton invented an *alibi* for himself and a method of meeting the imputation that he had permitted the contestant to be overlooked. It was he who invented the clause and he put it in the will because he wished it there. That is, in effect, the testimony of Houghton himself, who testifies to a talk with Edwin M. Squier about a provision as existent which he, Houghton himself, testified never existed except in his mind and was always unexpressed (Prerogative Court Record, pp. 259-261).

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> "Q. The testator volunteered that provision without any advice from you with respect to it. A. I haven't so testified, but I have testified to the contrary.

"Q. Well, did he or didn't he? A. I told you he suggested it and I said 'Why don't you put it in the will?'; and then you asked me if he prepared that, the wording, and I told you no that I had prepared it.

"Q. Is that your testimony as you recall it. A. Yes.

"Q. When did he suggest it to you? A. As I said before, on the morning that he executed the will, before the final draft was drawn.

"Q. Then there had been no discussion of that provision previous to the morning the will was drawn? A. There had not been.

"Q. And he had no independent advice about it then? A. I don't know what he had.

"Q. Did he have any advice that you know of from the time that was put in his will at your suggestion? A. I don't know whether he had or not. It wasn't put in at my—oh, yes, it was put in at my suggestion.

"Q. You don't know whether he had any advice there in the office? A. I don't, no.

"Q. Who were there when this conversation was being had between you and the testator about this clause? A. I think he and I were alone.

"Q. And yet you don't know whether he had any other advice or not? A. I wasn't with him the whole time after I took the draft from him to have it prepared. I didn't see him until the will was prepared. I don't know whom he discussed it with.

"Q. Have you any reason to think that he had any independent advice. A. I have no reason to think so, no."

The Record is Replete with Confessions of Houghton Which Make the Opinion of the Vice-Ordinary Incomprehensible:

The testimony of Houghton, assuming it to be true, which is logically impossible, absolutely proves that Edwin M. Squier had no knowledge of what the purported will meant or said or of the ef-

fect of its contents and that the theory expressed in the brief before the Vice-Ordinary and the opinion of the Vice-Ordinary as to the inserting of the provision of "explanation," namely, that the provision of the whole will was caused by the incident at the grandmother's funeral is absolutely false. There is nothing to meet the contestant's claim that the testimony shows that Edwin M. Squier had no knowledge of either of the two alleged drafts of the purported will. The testimony of Houghton shows that he was unable to say that Edwin M. Squier had seen either draft and actually represents Edwin M. Squier inquiring about a clause, namely, the "explanatory" clause, which was said not to be in the first draft, as if it were in the first draft, and querying, as of a matter which he had no part in determining, namely, the disinheritance, and the extent thereof, of the contestant, and about which he left everything to Houghton. Shepard testified in the Prerogative Court, pages 32, 41, 43, that the only talk he had with Edwin M. Squier was a question by Edwin M. Squier whether Shepard had seen a draft of the will and that the first he heard of the "explanatory" clause was when he read over the final draft of the will before it was executed and that he didn't hear any discussion. The testimony of Shepard at pages 221-230 of the Orphans' Court Record, shows, by comparison with the above, that both were inventions and that the testimony of Houghton in respect to the same matter was false. Furthermore, Houghton, having testified at page 485 of the Orphans' Court Record, that no discussion of the manuscript notes handed him, as he testified, by Edwin M. Squier, was had as to their provisions, since they were understandable, testified at pages 126-127 of the Prerogative Court Record, that it was at the time, July 2, 1926, the manuscript notes were

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handed him, that the instructions with reference to the "explanatory" clause were given him by Edwin M. Squier in terms, to be sure, framed by Houghton, as he testified, drawn by Houghton's intuition from Houghton's own inner consciousness. A comparison of this testimony with that about to be quoted shows absolutely that Houghton's theory that Edwin M. Squier was the author of the explanatory clause or the idea of disinheritance was a pure fiction. In the Orphans' Court trial, at page 488, after having been questioned as to all other provisions of the will except the one "explaining" the disinheritance, he Houghton, testified: 473

"Q. Now, did you discuss any of the other provisions with him? A. No.

"Q. On this memorandum you prepared a draft? A. Yes.

"Q. And the draft did not include the clause?

"The Court: That is what he said that he put it in afterwards, or redrew it.

"Q. Did you preserve the draft?

"The Court: The first draft? A. No, I destroy all drafts after the wills are executed. That is, generally, I mean.

"By Mr. Maxson:

"Q. Did you present that draft to him or read it to him when he came in the office? A. I gave him the draft to read.

Q. In his office? A. Yes.

"Q. Did you take it to him? A. I did.

"Q. Did you stay there while he examined it? A. I may have. I don't recall now whether I went out and back or not.

"Q. How long from the time you gave it to him to the time you discussed it with him? A. I am guessing now by the fact it was executed somewhere around twelve o'clock and it had to be redrafted, that it must have been very shortly after I gave it to him. Just gauging by the lapse of time between the execution and the time I gave it to him.

"Q. As soon as he had examined it did he then call your attention to the fact that it made no explanation of the fact that he made no provision for Charles Burnham Squier?

"Mr. Ferris: I object to the question on the ground that it incorporates an incorrect statement on this witness's testimony.

"Mr. Maxson: I will withdraw the question and save the Court's time, or try to.

"Q. *Immediately after he had examined it did he come in to you, or did he send for you?* A. *No, I went in, I went in voluntarily.*

"Q. *You found out then he had looked over the draft you had drawn, did you?* A. *Yes.*

"Q. *Did he say anything to you about it?* A. *Yes, he brought up the question of the bequest to Burnham Squier and the reason why he had made it that amount, and he asked me if I thought the will was all right.*"

"Q. *What did you say?* A. *I told him it was his property and he was justified in doing what he pleased with it.*

"Q. *Did you say anything to him at the time about his mother's estate?* A. *No.*

"Q. *Did he recall to you anything about that statement which you had made at the time of the reading of his mother's will?* A. *No.*

"Q. *Did he ever say anything to you about that?* A. *Well, not for over ten years, I should say. I am guessing at that, but it was a very long time after his mother's death.*

"Q. Who was responsible for the wording of this clause that we are discussing here? 'I make no further provision directly or indirectly for my nephew Charles Burnham Squier as he was and will be the sole beneficiary in the interest of his father, if living?' A. I suppose I am responsible. I drew it.

"Q. And did he tell you to provide that he was and will be the sole beneficiary in the interest of his father? A. Well, that is drawn in accordance with what he asked me to do. Just the exact wording he used I don't know, but I tried to put it in legal form.

"Q. Yes, but did he say to you—what words did he use in giving directions? A. He spoke of the fact that as his brother Charlie had predeceased the father, William C. Squier, the son, Burnham Squier, had received not only the one-half interest in the residuary, or in the one-fifth of the residuary, to be exact, two-fifteenths of the residuary, which was to be paid to him direct, and he also received the other one-half which was left in trust for Charles Burnham Squier, Sr., because Charles Burnham Squier, Sr., having died, the trust ended, or rather never took effect, but the property left to Charles Burnham Squier, Sr., both outright and in trust, went directly to his issue, which was Burnham Squier, the contestant in this case. Then he spoke of the fact that in this trust created by William C. Squier for Edwin M. Squier that the share which his brother Charles Burnham Squier would have received if he outlived Edwin would be one-third of this trust, and that Burnham Squier, the contestant in this case, would get that one-third, and he has received it since Edwin M. Squier's death. This is what he had reference to.

"Q. If you recall what part of that did he say and what part is your explanation of what he said? A. I have used the names so as to be able to have you follow it. He said very briefly, Burnham will get Charlie's share in my trust. But I knew you would not understand it, so I elaborated it a little bit.

"Q. And that is all he did say? A. Practically.

"Q. Those things which you said in addition to that were, as you say, in elaboration of it to make it understandable? A. Yes.

"Q. And it was on that short statement of his that you prepared his provision of the will to which I have been directing you? A. On that short statement and my knowledge of the history of the family."

Houghton testified, at folios 1370 to 1388 of the Orphans' Court Record, that he, at no time, except

at the time of the funeral of Catherine C. Squier, when he made the explanatory statement of the reason why Catherine C. Squier made no provision for the contestant, spoke to Edwin M. Squier about it. Houghton testified, at folios 1395-1398 of the Orphans' Court Record, to the effect that Edwin M. Squier made a statement of instructions to him with respect to the explanatory clause which, he testified, at folio 1469, Edwin M. Squier did not know anything about until after it was incorporated in the finished draft of the purported will. At pages 126 and 127 of the Prerogative Court Record, Houghton testified to the effect that the conversation which he had about the finished draft of the will took place with respect to the manuscript instructions four days before, as follows:

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> "Q. Do you know when you did receive those notes of instructions? A. If Friday was the 2nd of July, I received the instructions then.
>
> "Q. Now, how would you answer this question now that you were asked: 'How soon after you received the notes did you discuss this certain provision of the will that we are talking about, with Mr. Squier'? A. On Tuesday morning, July 6th.
>
> "The Court: Well, can we stipulate that the witness testified in the Orphans' Court when he said it was on the morning after it is understood that he then interrupted himself and changed his answer and made the direct answer 'Tuesday morning the 6th'?
>
> Mr. Maxson: That is the way we interpreted it.
>
> "The Court: All right, then we will go ahead with your examination.
>
> "Q. Have you testified to what he said about Charles Burnham Squier at that time?
>
> "Mr. Ferris: At what time?
>
> "Mr. Maxson: We are getting back to Fri-

day now, the 2nd of July, when he received these instructions.

"Q. Some reference was made at that time to Charles Burnham Squier, is that so? A. Yes.

"Q. Now, what was the conversation? A. It had reference to the legacies to his nephew and nieces of $5,000 each. He asked me if I thought that was all right, and I said it was his money and he could do as he pleased with it. He said, 'You know the reason I am doing this; you know, of course, I do not wish to leave Burnham any more than I have to.'

"Q. Is that all the conversation? A. I think that is all of it.

"Q. And did you know the reason? A. I knew what he referred to, yes.

"Q. What was it? A. Burnham's conduct at the time of his mother's death and the subsequent writing of a letter to the testator."

Attention is here called to the citation in the brief of the rejection of the method of ratification of a will by nods. It will be observed, too, that the admission of the expansion of the "explanatory" clause, from the brief sentence of Edwin M. Squier, which was all he said, is a plain confession that the words attributed to Edwin M. Squier in the testimony just quoted were never spoken. The two speeches attributed to Edwin M. Squier are absolutely contradictory, the one refers to a satisfaction that the contestant has what will make him well provided for, the other to the desire of Edwin M. Squier that the contestant be no better provided for, if Edwin M. Squier can prevent it.

Houghton had already testified in the Orphans' Court trial, at page 485, that there was no further discussion of the provision of the manuscript drafts, since they were understandable. This also contradicts the testimony to the effect that he dis-

cussed the names of those to be added as executors, which were omitted in the first manuscript draft.

468-470 Houghton testified at folios 1447 to 1454 in the Orphans' Court trial as follows.

"Q. You had testified, as I recall it, that Mr. Squier first spoke to you about making a will on the Friday preceding the fourth of July, 1926, is that so? A. No, I didn't say that. I said that is the day that he gave me these written instructions. You have not asked me that.

"Q. Now, had he previously talked to you about making a will? A. He had.

"Q. And how long previous to the time when he made it? A. It may have been in 1922 or 1923. I can't remember the exact date but it was two or three years before that, or three or four years, I don't recall.

"Q. But he didn't draw a will at that time? A. He did not.

"Q. This is the only will he ever drew as far as you know? A. He told me it was the only will he had ever drawn.

"Q. Well, at that time did he give you any notes, I mean in 1922 or 1923 when you talked to him about it? A. He did not.

"Q. Do you recall why the will was not made at that time? A. He told me he was thinking over what dispositions to make of certain of his property and he hadn't made up his mind quite yet, and then when he had he would let me know and have me draw the will.

"Q. Well, now, did he speak to you again about it before the will was finally drawn? A. No, I spoke to him about it.

"Q. And on what occasions? A. Oh, perhaps a year apart. I urged upon him the necessity of making a will, so as to avoid having an administrator put up a large bond, as they would have to in his estate. That is all I said.

"Q. Where did that conversation take place? A. In the office.

"Q. How many occasions? A. I think perhaps twice. Between the first time he spoke to me and the time of July 2nd, 1926.

"Q. Now, just previous to the making of this will, just previous to the second of July, 1926, did you talk to him about it again? A. No.

"Q. Didn't I understand you to say that you had some conversation about the making of this will before the Friday when you received these instructions? A. I said I had spoken to him perhaps twice between 1922 or 1923 and the time when he gave me the instructions.

"Q. But that did not relate to the preparation of this certain instrument we have here? A. I repeated to you the entire conversation. No.

"Q. Did he bring to you these notes which have been offered in evidence? A. Yes, he did.

"Q. Exhibit D-4. Are quite sure these are the only notes he ever gave you? A. I am positive.

"Q. When did he hand them to you? A. Some time during the morning of July 2, 1926.

"Q. Did you ever see them before? A. I had not.

"Q. Do you know of your knowledge whether Mr. Squier ever brought any notes in to any other member of your firm at any time? A. I do not.

"Q. Previous to bringing these in? A. I do not.

"Q. If so you were not informed about it? A. I don't know anything about it.

"Q. I say, if he did bring such notes in you were not informed about it? A. I was not.

"Q. He didn't tell you anything about it? A. He did not.

"Q. Have those lead pencil notes on the back anything to do with this memorandum? A. They have, yes. When I read over this memorandum I think I was standing in the outer office and I said to Mr. Squier, 'Ed, you have not specified who should be the executors'; and he said, in this order, I want Harry,

> Frederick, Will and yourself; so I wrote down Harry, Fred, 'W' for Will, that is my brother-in-law and 'ASH' for myself.
>
> "Q. Now, when he handed you these notes did you discuss these different provisions with him? A. No, they were understandable."

It certainly took a lot of intuition to expand the manuscript notes into either draft of the purported will.

That there is absolutely no doubt of the falsity of Houghton's testimony as to the conversation about what Edwin M. Squier was obliged to leave the contestant appears from Houghton's testimony, at page 129 of the Prerogative Court Record, where he swears again, in contradiction to the passage just quoted, that it was at this time (one of three versions and an impossible one) that Edwin M. Squier said, or Houghton said, some vague thing about obligation to the contestant. At page 91 in the Prerogative Court Record Houghton testified that he advised Edwin M. Squier to make a will so as to avoid intestacy. The Vice-Ordinary so found at pages 123 and 124. At page 167 of the Prerogative Court Record, however, Houghton testified that the first intimation he had that Edwin M. Squier had not made a prior will came to him after the alleged execution of the purported will. This reduces to purest fiction all the testimony of Shepard and Houghton with respect to earlier intimations by Edwin M. Squier of an intention to make a will. If this talk about the making of a will had taken place, then was the time Houghton would have found out whether Edwin M. Squier had already made a will.

The two witnesses, Houghton and Shepard, were not only hostile witnesses technically but their testimony showed a double purpose of turning their words against the contestant and of avoiding any-

thing which might be susceptible of construction favorable to the contestant. No witness, all being respondents' witnesses really, showed the slightest purpose to give the facts. The lawyers absolutely refused to commit themselves wherever their extreme skill at evasion made evasion possible. The evasion itself and the indefiniteness of their testimony must be taken against these witnesses. The abetting by team-work with and objections by their counsel is an added ground. But the mistake must not be made of taking in a positive sense what the witnesses meant as a mere cover for evasion.

The language attributed to Edwin M. Squier, for example, in "explanation" of cutting off the contestant, expressed no antagonism to the contestant but concern for him and the belief of Edwin M. Squier that the contestant had and would receive the full share that his father would have received if living. It is inconsistent with the purpose to disinherit. The three forms of explanation of this clause given by Houghton referred to three different occasions and each excluded, of course, both the other occasions. The whole story of the submission of any draft of the purported will of Edwin M. Squier is disproved by the testimony of Houghton himself. Houghton testified, at page 98 of the Prerogative Court Record, that Catherine C. Squier told him that she felt that Burnham, the contestant, was getting enough and consequently she wanted to make a will the way she did. At page 100, he testified that he didn't have any conference with her before he drew Codicil Number 1, that he didn't have talks with her about that codicil until after it was drawn by the direction and upon instructions coming from Edwin M. Squier. He testified, at page 232 of the Prerogative Court Record, that the instruction for the preparation of Catherine C. Squier's will were brought to him by

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Edwin M. Squier. According to this testimony the statement made by Houghton after Catherine C. Squier's funeral, which provoked the contestant, was palpably false. At page 95 of the Prerogative Court Record, Houghton testified that his representation was that Catherine C. Squier had herself told him the reason she was to have the will drawn, and, at page 96, that he had an interview directly with Catherine C. Squier. He denied, at page 96, that he had this position attributed by him to Catherine C. Squier in mind when he drew the purported will of Edwin M. Squier. Yet the subterfuge of appearing to leave the nephew and nieces equal amounts, in the face of the fact that any gift to their children, immediately, in the case of Stuart C. Squier, was the same as the certain bequest attributed to the hypothetical and purely fictitious interviews with Edwin M. Squier. It is significant, although Houghton fell back on the story that it was Edwin M. Squier and not Catherine C. Squier, who gave the instructions concerning Catherine C. Squier's will, that he did not dare attribute to Edwin M. Squier the declaration of the purpose to mitigate the *per stirpes* rigors of the will of William C. Squier, not generally, but, inconsistently, only against the contestant, which he attributed, as he admitted, falsely, to Catherine C. Squier. Houghton, thus, himself, was the sole author of the idea. Edwin M. Squier, in the very letter over which the respondents gloat, declares he never had the purpose and never would have it. It is plain as day that if Edwin M. Squier would indignantly renounce the hostile purpose while the so-called estrangement was supposed to be at its height, he certainly wouldn't act upon it thirteen years later—certainly not in a purported will expressing, as the respondents and the learned Vice-Ordinary both say, a solicitude that the public

shall be led to believe by the express declaration of the purported will that the contestant was being treated, not as Houghton intended to treat him, for that, he said, the will was intended not to express, but to conceal, but as his cousins were to be treated, namely, as the father's children—in the case of the contestant as "the son of my deceased brother Charles." It is obvious, therefore, that Houghton had in mind, as he said he had, at page 93 of the Prerogative Court Record, the thought of avoiding not intestacy merely, for he said he didn't know that Edwin M. Squier had not made a will, but precisely the intestacy by which he feared that the contestant would get more than his cousins out of the estate of Edwin M. Squier, and advised Edwin M. Squier and urged him to make a will, not ostensibly for the real reason Houghton had in mind, but, as he said, didn't express to Edwin M. Squier, which he appears not to have permitted, and to have taken pains not to have permitted Edwin M. Squier to sense, but for the fictitious reason of avoiding expense and trouble in administering his estate. Houghton testified, at page 81 of the Prerogative Court Record, that the intendment of his interview with Edwin M. Squier was that the nephew and nieces should be treated equally. This was the repetition of the error which he permitted Edwin M. Squier to make in the 1913 letter, where he said "your grandmother had no favorite sons or grandchildren, she loved them equally and treated them alike, and her will is proof of this statement." The same statement was attributed to Edwin M. Squier by Houghton at page 169 of the same record. It appears that Houghton and Edwin M. Squier knew that Stuart C. Squier, the father of Houghton's brother-in-law and sisters-in-law, was, in so far as the possession and enjoyment of property was concerned and the postponement of the

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distribution among his children of anything coming to him, to all intents and purposes, already deceased. In either alternative, whether the expression that Edwin M. Squier and Catherine C. Squier were treating those of the third generation equally was true or untrue, there is no basis for the assertion that Edwin M. Squier had expressed at any given time or place by any means or manner of expression to Houghton his purpose to disinherit the contestant. Rather the contrary is shown and the result of disinheritance was aimed at by Houghton glossing over the error of law and logic.

The Parallelism Between Houghton's Deception as to Catherine C. Squier's Will and Edwin M. Squier's is Unescapable:

The imaginary conversations of Houghton with Edwin M. Squier were no more real than the conversations with Catherine C. Squier, which were admitted by Houghton to have been imaginary. Only when the true facts were put up to Houghton on the witness stand did he admit the truth. That fact, however, is of less importance than the fact that the imaginary conversations with Catherine C. Squier were almost identical with those with Edwin M. Squier and that the second fiction was built upon the first and was indelibly stamped with the thoughts and style of Houghton. The whole plot is exposed in the following testimony:

> "Q. You remember the occasion of the reading of the will of Catherine C. Squier? A. I do.
>
> "Q. And the testator, Edwin M. Squier, was there present? A. He was.
>
> "Q. And so were practically all the other members of the family? A. I think everybody was there except Mrs. Edson.
>
> "Q. And on that occasion you rose and construed that will, didn't you? A. I did not.

"Mr. Ferris: I object to that, first, on the ground that it assumes something not testified to, and also as calling for a legal opinion.

"Mr. Maxson: I will withdraw it.

"Q. On that occasion what did you do, if anything? A. I read the will to the family.

"Q. Did you do anything else? A. I did.

"Q. Well, what did you do? A. After the contestant had protested against the terms of the grandmother's will, in which he was left only a legacy of $15,000 like the rest of the grandchildren, I told him that Mrs. Squier had told me that the reason that she wished to have a will drawn in the form that it was drawn, and executed by her, was because she felt that the grandfather, or, rather, her husband's heirs should share equally as far as possible in the estate. Now, I am giving you the substance, not the exact words.

"The Court: What is the use of this; it is already in the record. You have already examined on this.

"Mr. Maxson: I have asked this question, but I have something else based on this. I am not repeating, if I can avoid it.

"The Court: Let us go right to the subjects that you want to interrogate him on in addition to what is already in.

"Mr. Maxson: This is one of the subjects.

"The Court: Well, hasn't he told all about that in the Orphans' Court?

"A. I don't think so. I don't think I was asked about that.

"The Court: Then go on with your answer.

"A. And, consequently she left the estate as she did, having that in mind, endeavoring to make an equal distribution among the prominent heirs of William C. Squier, the deceased husband.

"Q. If that is the position which you took in the interview which you have related with the testatrix, did that have any bearing on this clause which we have been discussing, in the will of the testator?

"Mr. Ferris: I object.

"Mr. Maxson: If the objection is to the form of the question I will withdraw it.

"Mr. Ferris: And also to the question.

"Mr. Maxson: I will reframe it.

"Q. Did you have the position which Catherine C. Squier took with you about the making of her will in mind when you draw the will of Edwin M. Squier? A. I don't think so, no.

"Q. That was not one of the reasons why you urged him to make a will? A. What was one of the reasons?

"Q. The situation which you related about the distribution of the estate and the equalizing of the shares? A. I told you I did not urge him as to the terms of his will, only the mere act of making the will, and for the sole reason, as I have already testified, to save the expense of a bond.

"Q. I haven't asked you about that. A. Yes you did.

"The Court: Don't let's argue about it; go ahead.

"Q. You testified, I think, that you draw Catherine C. Squier's will? A. I did.

"Q. Did you represent the estate? A. I did.

"Q. All the way through to its conclusion? A. I did.

"Q. Has it been administered? A. Yes.

"Q. Distributed? A. Yes.

"Q. Has an accounting been made? A. No, we took general releases from the parties in interest instead of an accounting.

"Q. Did you represent the estate of William C. Squier? A. Senior?

"Q. Yes. A. Yes.

"Q. Was there an accounting in that estate? A. There was.

"Q. When was that made, approximately? A. Well, December, 1907, or January, 1908.

"Q. Final accounting? A. Final accounting.

"Q. Final distribution? A. Well, the distribution follows, of course, after the decree.

"Q. At the time you discussed the terms of Catherine C. Squier's will with her was there

anything said about Charles Burnham Squier having had, or getting in the future, the full amount that his father would have gotten if he had survived him? A. I don't think so; not in that exact way.

"Q. Anything to that effect? A. It was what I said before: Mrs. Squier told me that she felt that Burnham was getting enough. She may not have said those words but I am trying to recall. And, consequently, she wanted to make the will the way she did. I took her instructions and gave her no advice.

"Q. How old was she when she died? A. She was about 84—I think she was 91 when she died and the will was drawn something like 7 years before she died.

"Q. How long had you been representing her before the will was made? A. That was the only thing that I represented her in, excepting her husband's estate.

"Q. Do you know what brought about that retainer? A. I never received any retainer; or do you mean employment—engagement?

"Q. Put it that way. A. Well, I handled her husband's estate and I suppose she asked me to draw her will. That is the only reason I know of. She never gave me any reason for it.

"Q. How frequently did you see her before the will was drawn? A. Oh, I think my wife and I used to go down there occasionally, perhaps two or three times a year, perhaps more frequently; I don't recall.

"Q. Did you suggest to her that she make this will? A. I did not.

"Q. You didn't have in mind the cost of an administration bond in respect to her estate? A. She had never broached the subject of a will, so that there was no occasion to have it in mind.

"Q. How many codicils were there to her will?

"Mr. Ferris: I object to that, if your Honor please.

"Mr. Maxson: The will is in evidence.

"The Court: What is the use of inquiring of Mr. Houghton as to how many codicils there were?

"Mr. Maxson: Well, it simply saves the court's time. He knows very well. I can direct his attention to it and then, not only that, may it please the court, it goes to his knowledge of this whole situation, how much interest he had in it, how much he knew about it.

"Q. I call your attention to Exhibit P-3 and ask you whether you remember drawing those codicils? A. I assume that I did. I will say that I did. I think I did, or was consulted in the drawing of it. It may have been done by me; I am pretty sure; or it may have been done by my partner. I don't recall that now.

"Q. Codicil No. 1 is dated the 17th day of October, 1911. Now, did you have some conferences with the testatrix before you drew that codicil?

"Mr. Ferris: I object to that. We are going back to 1911; that is some 15 years before the execution of this will and has nothing to do with the will in issue here. I object to this as wholly irrelevant and incompetent.

"Mr. Maxson: Your Honor has admitted this document, and I am examining this witness who says he drew it, as to the circumstances under which he drew it. Now, I think I can demonstrate to your Honor that, on our theory of the case, this is one of the most important facts to us. In fact, I am always encouraged when my learned adversary objects, because it indicates to me that there is something good coming.

"The Court: You don't attack it?

"Mr. Maxson: We are not attacking it, but it goes to the construction of this will. Mr. Shepard testified that the clause in this will was true. Whether it was true, or suggested by somebody who had the opportunity to suggest it, as being the reason. He inquired of this witness, 'Is this will all right as far as my bequest to Charles Burnham Squier is

concerned?' It is most important to us, on our theory of this case.

"The Court: Yes, on your theory of the case it is, subject to the same provision under which I admitted the wills P-2 and P-3. I will admit this and deal with it when I come to decide the case.

"Q. (The question is read by the stenographer.) A. I will have to see the codicil to recall it. (Paper is handed to the witness.) Not in the first instance; no.

"Q. Well, I don't understand that, I am frank to say. A. I mean, that I did not discuss or have any talk with Mrs. Squier about that codicil until after it was drawn.

"Q. Who drew it? A. I drew it, probably; or one of my partners.

"Q. On whose direction? A. Mr. E. M. Squier, the present testator.

"Q. And where were the instructions given? A. Given to me in the office.

"Q. Now, do you remember codicil No. 2? A. No, I don't recall that.

"Q. I call your attention to Exhibit P-3. A. Yes, I recall it; I drew it.

"Q. By whose instructions was that drawn? A. Mrs. Squier's, conveyed to me by Mr. E. M. Squier.

"Q. There was a certain purpose in the drawing of that codicil, was there not?

"Mr. Ferris: Well, I object to that as calling for the mental operation of the testator in making the will.

"Mr. Maxson: I will withdraw it. You are successful again:

"Q. That codicil was drawn by the administratrix to give title to a certain piece of property; isn't that so? A. No.

"Q. It wasn't? A. No.

"Q. Did it have any other purpose?

"Mr. Ferris: I object to that as calling for the mental operation of the testatrix.

"Mr. Maxson: I will withdraw it; I will withdraw it.

"Q. Did the testatrix, through Edwin M. Squier, give you any particular instructions about the drawing of this codicil No. 2, referring to the same exhibit? A. Yes.

"Q. What did he say to you? A. I haven't the slightest recollection.

"Q. Is your recollection refreshed by reading this (handing paper to the witness)? A. I do recall it now: In the will of William C. Squier, as I recall it, he left all his real estate to his widow, Catherine C. Squier. Later on —Is that codicil dated 1911?

"The Court: That is what he said, October 17.

"Q. This is the 12th of October. A. They discovered that Mr. William C. Squier had purchased the same property down along the hills, I believe, of the town of Roosevelt, if that is the name of it, and nobody knew about it, and it was discovered at that time—and Ed. Squier told me this—that Mrs. Squier wished to convey that real estate—her interest in that real estate—to her son, and I think that was the purpose of that. The property was later sold, and I think, as I recall the transaction, the title company held that she didn't have ample right to convey that property because it was in a residuary clause rather than a certificate conveyed to her, and she gave a deed of her dower interest. I am speaking now from memory. And I think the property later was sold. And then a deed was executed to convey her interest in the property and this codicil, as I remember it, was practically disregarded.

"Q. As a matter of fact, an attempt had been made to make title to this Roosevelt property before this codicil was drawn? A. There may have been.

"Q. There had been a deed made of it, in fact? A. That's right.

"Q. And when an investigation was made the title company said "No," that deed isn't good because the testatrix hasn't exercised her power of disposal under this will? A. Well, she wasn't dead.

"Q. You had her will? A. Yes, but the will wasn't in evidence at the time of the sale of this property.

"Q. Didn't they know about this will? A. Why, no.

"Q. Are you sure about that? A. What is the date of the sale? You see, Your Honor, this is a long time ago and I don't remember those dates. There was a mix-up about the title, I know.

"Q. And it related to this very instrument that I have in my hand, didn't it? A. That I don't recall.

"Q. The deed was dated on the 19th of October, 1912; the codicil referring to this property in this will was dated the 21st day of October, 1912; does that refresh your recollection as to whether or not that codicil had to do with this conveyance? A. It had something to do with the property. Just what the purpose of that was I don't recall. There is no dispute about that.

"Q. The deed was dated the 3rd of October, 1912, and the codicil was dated the 21st of October, 1912, and the deed was delivered subsequently to the making of this codicil. A. And whom is the deed to, may I ask, which one of the sons?

"Q. The International Agricultural Corporation, organized under the laws of the State of New York. Now, does that refresh your recollection about this codicil? A. No, I don't recall.

"Q. And there was no conversation had with Mr. Edwin M. Squier about the purpose of drawing this codicil? A. I didn't say that.

"Q. Well, was there? A. He gave me instructions to draw it, yes.

"Q. Well, was there any conversation about the purpose in making the codicil? A. Yes, the purpose was this: If I recollect rightly, Mrs. Squier would have a life estate in a certain portion of the proceeds of this property, it having gone into the residuary estate, and the money after the sale was collected and

was set up as a portion of her estate for the purpose of conveying the real estate to the people mentioned in that codicil, that the codicil was drawn.

"Q. Now, will you tell me why you mentioned the testatrix's power of disposal in this codicil and didn't mention it, in fact, in all of the instruments?

"Mr. Ferris: I object to that, if Your Honor please. That is the very issue presented in the New York action, and it is not material to this case, and I don't think it is fair to get testimony in here that is not designed here but designed for another case.

"Mr. Maxson: I object to that remark from the beginning. I don't know what they have to conceal in the New York jurisdiction, but I know nothing about this New York action. I have never been consulted about it; I have never seen any of the papers except two affidavits which were shown to me and which had matters in them relating to this over here, and they have used that sort of thing, for what reason I don't know. These are all estate matters. They must have something serious in them or they wouldn't be afraid of their being divulged in New Jersey."

Even if the Wills of William C. Squier and Catherine C. Squier had No Materiality, the Exhibition of Duplicity by Houghton in Testifying about Them Would be Weighty Evidence of Fraud and Undue Influence:

It must be remembered, first, that Stuart C. Squier acted only through his son, the respondent William C. Squier, 3rd, as his attorney in fact, from 1909, and had conveyed all his property to the son, as trustee, in 1915, and that the contestant whose father had died in 1904, was only seventeen years of age in 1907. The provision by Houghton, in the purported will of Edwin M. Squier, of a specific sum for each grandchild of William C. Squier dif-

ferentiated each child of Stuart C. Squier from the father and made more pointed the devise to Stuart C. Squier personally of half the estate in kind. The move was as false on the part of Houghton as the mention of the contestant personally, as the object of an equal benefaction, as his deceased father's son, since it made more marked the purported design to disinherit the stock of the contestant's father. Stuart C. Squier was far more dead to Edwin M. Squier than his deceased brother Charlie. The same was true of Catherine C. Squier's will, which Houghton drew, as he says, in effect, without instructions from her. Houghton testified doubly that he did not know the reason why Catherine C. Squier made a will, and each time falsely. He said, first, that he merely followed instructions, and, secondly, that he did not associate the making of the deeds to the Roosevelt property with her will. An analysis of these deeds shows clearly that his testimony was deliberately false. Having insisted, at page 96 of the Prerogative Court Record, on giving an admittedly false explanation, in the form of an imaginary conversation with Catherine C. Squier, protesting, in contradiction to the learned Vice-Ordinary's "rehash" theory, that he had not been asked about this crucial matter in the Orphans' Court, Houghton was forced, by being confronted a moment later with the deeds to the Roosevelt property, to concede that the circumstances surrounding the selling and making title to that property dictated the making and the form of Catherine C. Squier's will. The evidence is overwhelming that it was only the use of the deeds by contestant's counsel that surprised Houghton and his pretense of vague recollection was deliberately studied and false. These deeds had obviously been a nightmare to him in this contest, as well as in the New York

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case. A mere reference to the citation under Point VI of the opinion in the New York case shows clearly that Houghton, throughout his testimony, was deliberately abusing the confidence of the Prerogative Court. No more striking example of Houghton's policy of suppression and misrepresentation could be had than this pretense of lack of knowledge. He admitted drawing these deeds and his name and those of his partner witness Shepard are the sole authority as attesting witness and notary successively for believing the deed of Catherine C. Squier valid and his bookkeeper Christie officiated as notary on the deeds conveying the property to the purchaser. In the first deed, Catherine C. Squier conveyed, on April 26th, 1907, or three days before she executed her will, to Stuart C. Squier, Frederick C. Squier, and Edwin M. Squier an undivided one-third of the real estate, "to all which property above described was bequeathed a one-third interest to the said party of the first part by the last will and testament of said William C. Squier, her husband, probated in the office of the Surrogate of Union County on the 11th day of September, 1906." In the second deed, made October 19th, 1912, a few days before the execution of the second codicil of the will of Catherine C. Squier, "between Stuart C. Squier of the town of Greenwich, State of Connecticut, individually and as Executor and Trustee under the last will and testament of William C. Squier, deceased, and as Trustee for William C. Squier, Caroline L. B. Squier, his wife, Edwin M. Squier, (unmarried) of the City of Rahway, State of New Jersey, individually and as Executor and Trustee under the last will and testament of William C. Squier, deceased, and as Trustee for William C. Squier, Frederick C. Squier, of the City of Rahway, State of New Jersey, individually and as Executor and

Trustee under the last will and testament of William C. Squier, deceased, and as trustee for William C. Squier and Minnie S. Squier, his wife, and Charles B. Squier (unmarried) of the City, County and State of New York, son of Charles B. Squier, one of the executors and trustees named in the will of said William C. Squier, deceased, but who predeceased said William C. Squier, parties of the first part, and International Agricultural Corporation, a corporation organized under the laws of the State of New York, with its principal office in the City, County ad State of New York, party of the second part," the same property was conveyed.

These Documents Were the Occasion of Material Correspondence Between Edwin M. Squier and the Contestant:

That the property was attempted to be got out of Catherine C. Squier, as far as possible, by the making of the second codicil, at the same time as the second deed by reason of the failure of her will to operate on property over which she had a power of disposition, is obvious not only from the admission of Houghton but from the will itself and the codicil and by the letter of Edwin M. Squier showing the time that passed between the contract and the actual conveyance, evidently necessary to clear up the title in this respect. The letter reads as follows:

"August 5, 1912.

Mr. Charles B. Squier,
c/o Brown, Shipley & Co.,
123 Pall Mall,
London, S. W. England.

My dear Burnham:

I have sold for $85,000. all cash the property located in the Borough of Roosevelt, sit-

uated on the Rahway River. I had previously offered this property for $90,000, forty per cent cash, and sixty per cent bond and mortgage, but thought that the $85,000 all cash much better proposition, and therefore accepted it, and hope you will coincide with my views in this matter.

As the deeds will probably be passed before your return, I herewith enclose you power of attorney which will have to be witnessed before an American Counsel, so get busy and return the power of attorney as soon as possible.

We are all well on this side of the water, and hope to see you with us again before long.

Very truly yours,

EMS/CL" E. M. SQUIER

Another letter, a little earlier, showing the relations of Edwin M. Squier to the contestant, is as follows:

"New York, June 14, 1912.

Mr. Charles B. Squier,
c/o Brown and Shipley,
123 Pall Mall,
London, S. W.
England.

My dear nephew:

I am enclosing you herewith copy of agreement drawn up by the Finance Committee of the Empire Land Company.

Mr. Butcher is a large owner and Mr. Cox is of Robert Winthrop & Company. Mr. Hecksher, of course, you know.

You will notice by the agreement that directors and their representatives hold over 80 per cent of the bonds and stocks and floating indebtedness.

I herewith enclose you powers of attorney covering the coupons and notes which you and your mother hold. Please have them signed and returned to me as soon as possible.

Very truly yours,

EMS/L" E. M. SQUIER.

The first deed being to the beneficiaries of the testatrix's private estate, contestant contends, under her will, the deed would have been considered unnecessary by the parties, if the will operated to pass property held under the power of disposition, which was by will and not by deed. On the other alternative, if the intent was to pass the title of Catherine C. Squier by the deed and the will combined, the second codicil was proof not only that it hadn't been done and when it came to be done by will, a limitation was expressly made to a disposition of a life estate in one-third of the specific parcels of real estate enumerated in the deed.

This Correspondence and a Letter of 1923 from Edwin M. Squier to the Contestant Absolutely Refute the Fiction of an Estrangement in 1926:

Very cogent proof that the estrangement which the misrepresentation of Houghton threatened to create had, if it ever existed, no permanence, was furnished by Houghton himself when he testified that the contestant withdrew his attack on the will of Catherine C. Squier after the assurance in the letter of 1913 that he would get whatever money was justly his, endorsed by Houghton, and took Houghton, who had theretofore opposed the contestant and was the real party to the conflict, since Edwin M. Squier appears to have assauged the contestant's rage, as his lawyer, and visited him in his office, where his uncle was and the contestant's father had been, and visited him socially there frequently until a year prior to his uncle's death. Houghton and Shepard attempted to prevoke an estrangement and had to be satisfied with the characteristic acceptance, unknowingly, by

uncle and nephew, of the fraud, until a new fraud became necessary, after the trial, before the learned Vice-Ordinary, and after the establishment of undue influence, and the appearance was invented of an estrangement to give color to a misrepresentation of a continued estrangement for a stale cause, or, of a new one, without cause.

The testimony of Shepard as to the talks of Edwin M. Squier about the contestant are palpably false. At pages 151-152 of the Prerogative Court Record he testified that the last time he met the contestant, the contestant was coming out of the firm's offices. This was a year before Edwin M. Squier died, or in November, 1925. Shepard stopped and shook hands with the contestant and passed a few words and went on. Shepard evidently shapes his attitude toward people to suit his turn. This was, according to Shepard's testimony, at pages 153, 157-158, almost two years after the alleged conversation with Edwin M. Squier to which Shepard testified. These conversations took place, according to the witness, at page 158, three years prior to the death of Edwin M. Squier and long prior to the event to which they were supposed to relate, referred to at page 160, which didn't arise (p. 165) until 1925, as he said. Houghton was advising Edwin M. Squier, without knowing whether he had already made one, to make a will, in 1922 and 1923. The letter by Edwin M. Squier to the contestant, Exhibit * * *, inviting him to call at his office, shows that friendly relations existed between the contestant and Edwin M. Squier, at the time, namely, three years before Edwin M. Squier's death. Respondents' brief characterizes this letter as not affectionate. It is addressed in the same way as the letter of 1912, before the so-called estrangement episode, in which Edwin M. Squier requested the contestant

to join in the deed of the Roosevelt property. The letter itself, moreover, stamps that characterization as false. Certainly the only material thing about the "impartial" Shepard's characterization was his willingness to make it. It was only after persistent demands that the respondents made this letter available to the court, which shows what the respondents really thought about it. The letter reads as follows:

"33 Rector Street,
May 29, 1923.

Mr. Charles B. Squier,
521 Park Avenue,
New York City.

My dear Burnham:

I am in receipt of your letter of May 27th together with estimate covering hear-frames, etc., which same I am returning to you.

I have been out of the mining business so long and conditions and prices changed so much in the meantime that my opinion would be of no value whatever. I recollect some years ago that gold was discovered in Virginia and think it was at Charlotteville. This, however, was a placer mine and not a vein as in your case. You state in your letter that there is a shaft 200 feet and cross-cuts over 5000. In view of this development I do not see how, if the property is very valuable, it could remain unexploited so long a time. I would advise you having some good man examine the property and make a report thereon before you expend too much money on it.

It would be impossible for me to see you May 30th as I have an engagement for that date. However, I am down at my office Monday, Wednesday and Friday of each week and when you return from Bennington it will probably be more convenient for you to see me at my office. You can always telephone and find out whether I am there or not.

Hoping that your mining adventure may prove a success, I am,

Very truly yours,

E. M. SQUIER.

EMS/LC"

It cannot be doubted that this letter is more than enough to show that there was no estrangement, and, together with the other evidence, that Shepard was trying to represent as existing a relation which no longer existed, if it ever had. At pages 149, 150, 153, 158, and 165, the testimony of Woolsey A. Shepard shows that friendly relations not only between Edwin M. Squier and the contestant (pp. 141, 142 and 152), but also between Shepard and the contestant continuing until after the events with which Shepard connected the alleged disparaging comments which Shepard made to Edwin M. Squier concerning the contestant and within a year prior to the death of Edwin M. Squier. The testimony of Shepard and the claim based upon it that the respondents thereby sustained the burden of proof that no undue influence was wrought upon Edwin M. Squier, based upon the claim in the respondents' brief, "that contestant is a man of low morals," is not only a deliberate lie and no basis of the claim of loose morals of which there is no evidence but is itself conclusive evidence of the purpose of the witnesses Shepard and Houghton wantonly to defame the contestant and to obtain and sustain the purported will by false representations. There is not one word of evidence to sustain the hypothesis set forth by Shepard that the contestant "had been drinking" or ever tasted liquor in his life. The innuendo, being gratuitious, convicts the witness.

Advising and Urging the Making of a Will By One so Estranged from a Natural Object of His Bounty as to Disinherit Him Is Advising and Urging Disinheritance. The Use Made by Houghton of the 1913 Letter to Show an Estrangement in 1926 Appears in the Very Opinion of the Learned Vice-Ordinary as Conclusively Establishing Undue Influence:

The opinion of the Vice-Ordinary has the effect of proving the contention of the contestant that the paper attempted to be propounded as the last will and testament of Edwin M. Squier was the result of undue influence exerted by Houghton and since the opinion is the defense of the respondents, the opinion constitutes the admission of the contention of the contestant. It is not necessary to argue that the opinion is not justified by the facts proved in evidence, for the reason that the opinion itself sets up, as the facts upon which it is based, matter not only not proved in evidence but absolutely disproved and disregards the main body of facts, shown by the opinion itself to be vital to the issue, proved clearly in the evidence overlooked, by this letter of Edwin M. Squier to the contestant in 1923, and the admission that the contestant visited his uncle in his office, up to a year before his death. It was upon the insistence of the respondents that the Vice-Ordinary refused to permit the contestant's testimony to be taken or that of William C. Squier, 3rd., and refused to permit the contestant's counsel adequate time for a brief or oral argument. The respondents refused to disclose evidence in their possession. Houghton admitted that the contestant was his client and visited his office until the year 1925. This absolutely disproves the theory of the estrangement of the contestant from the family. We have the picture of

the contestant's own lawyer stating that during all these years while he was acting for the contestant in a confidential capacity, he was serving interests conflicting with those of the contestant and plotting to carry out to its logical results the plot of disinheritance, even by misrepresentation and suppression of evidence in Court, and, after the trial, by the afterthought of the hypothetical estrangement upon which Houghton now relies. The letter-press copy of the letter recited in the opinion of the Vice-Ordinary was offered in evidence by the respondents at the time of the trial in the Orphans' Court, but the offer was withdrawn and the letter was only marked for identification. The contestant never had access to this book and the respondents, who had selected this letter as the basis of their contention that Edwin M. Squier was estranged from the contestant, never produced the copy until compelled to do so, near the end of the trial in the Prerogative Court. Houghton tried to create the estrangement in the beginning, tried to keep it up, and, failing that, also tried to make it appear that an estrangement existed at the date of the alleged execution of the purported will. The will, itself, however, contradicts the fact of the estrangement. The misrepresentation that Houghton made as to the facts of the estates of William C. Squier and Catherine C. Squier to Edwin M. Squier and to the Court were not expressed in the purported will as showing a result in the relations between Edwin M. Squier and the contestant. **Upon the assumption of an estrangement, which Houghton himself alone made, and the Court adopted, sufficient to cause disinheritance, the admission by Houghton that he urged and advised Edwin M. Squier to make the will under and with knowledge of the circumstances, is an admission that he urged him to make**

a will disinheriting the contestant. The document created by Houghton shows, further, that Edwin M. Squier never knew or shared this purpose or entered into it at all, and that Houghton only achieved the appearance of disinheritance.

The provision which the respondents say purposed to give Edwin M. Squier's reason for disinheriting the contestant says nothing about any difference between them. The respondents pretend as an afterthought that this provision was intended to cover the real reason and to keep the real reason from the public. The trouble with this explanation is that anyone reading the testimony is sure to conclude that Edwin M. Squier never expressed any reason whatsoever. Houghton himself testified that no mention of the episode arising out of the will of Catherine C. Squier was ever made by him or Edwin M. Squier after the time of the episode. The episode was, therefore, and had been for over thirteen years closed. There was absolutely no reason given by Edwin M. Squier for any discrimination against the contestant and everything which Houghton and Shepard said about it first and last was pure invention. The purported will, therefore, as an alleged instrument disinheriting the natural object of the testator's bounty upon a false pretense provided by another and not shared by the alleged testator, should be refused probate.

The Provocative Incident After Catherine C. Squier's Funeral Was a Ruse of Houghton Absolutely on All Fours With that of the *Ulrich* Case to Combine the Family Against the Contestant and to Create an Estrangement with Edwin M. Squier:

In the *Ulrich* case, to be discussed as to the law hereinafter, the son-in-law said the son had re-

jected a good order for the father's business, while the proof showed it was the order of a bad discarded customer; here Houghton made it appear that the contestant had resented his good construction of the will of Catherine C. Squier, whereas it is now conceded the construction was false and was made in a false declaration of fact as to a communication from Catherine C. Squier. In that case the son-in-law and in this case son-in-law Houghton followed up the advantage until, by undue influence, a purported will could be alleged to have been obtained.

But this conduct of Houghton had commenced prior to the occasion when, as he testified, the contestant gave offense to the members of the Squier family whom Houghton, although trustee for trusts in which the contestant was interested and also contestant's attorney, has ever since represented adversely to the contestant. It is admitted that prior to the decease of Catherine C. Squier, the contestant visited her frequently and showed her such attention that he, as Houghton testified, considered that he had merited reciprocation as the favorite grandchild. There is no evidence offered that any other grandchild stood or claimed to stand in the same relation to Catherine C. Squier. Nor is it claimed, the contrary being admitted, that the contestant had prior to the occasion referred to after the funeral been discriminated against or held in dislike by Catherine C. Squier or by any member of the Squier family. The letters from Edwin M. Squier to the contestant in London, Exhibits P-9 and P-10, dated June 14, 1912, addressed "My dear Nephew," and August 5th, 1912, requesting co-operation in the conveyance of the Roosevelt property, respectively, the subject of the second codicil of the will of Catherine C. Squier, as to which Edwin M. Squier asked that the contestant

execute a deed and a power, showing that Edwin M. Squier represented the contestant to be in common interest with all the members of the Squier family. Since these letters were written at a time when it is admitted the attitude of Edwin M. Squier to the contestant was the natural one, the use of the same address, My dear Burnham, which was used alternately with "My dear Nephew," and the same "Very truly yours," used in 1923 to the contestant, is interesting and repels the theory that uncle and nephew were estranged in 1923. By the time that the contestant is alleged to have occasioned the dislike of the other members of his family, the will of Catherine C. Squier, understood to have disinherited the contestant and to have executed the power of disposition as to the one-third of the residue of the estate of William C. Squier, was a *fait accompli*. If there was provocation, it originated in the interpretation placed upon Catherine C. Squier's will by the contestant. If this interpretation was false, it was yet natural to a layman, and the only lawyer present, namely, Houghton, did not inform the contestant of his mistake, but, as a matter of fact, by what is now admitted to be a misrepresentation, made to the contestant, and to those present, that the understanding of the contestant, adopted from Houghton, expressed the effect of the will and of the declared intention of Catherine C. Squier, maliciously created the provocation and attempted to use it to deceive and stir up the whole family. The indignation voiced and expressed vehemently, as it seems, exclusively by Houghton and Frank H. Keene, the latter to the extent of declaring the contestant not a true member of the family whose name he bore, was that attributed to members of the family induced by Houghton to believe that Catherine C. Squier had anticipated the resentment of the contestant and

in prophetic indignation thereat had disinherited him to their gain. There was no righteousness about this pretended indignation on the part of the gloating members of the family. The difference between the combination for which Houghton was already working and the contestant was that they were "angri wi' the siller in their pocket." And the purpose manifested by Houghton ever since in combination with the other respondents has been to keep that "siller," and more and more of it, belonging to the contestant in their pocket. Of the conflicting indignations that of the contestant best bespoke the man and the Squier. The will of William C. Squier expressly provided that the death, before the testator, of a son with issue (and he was cleaving to the New Jersey law in that) should not work any loss to the issue, AND that if one son had twenty children and another only one the many children of the one son should not take from the one child of the other. The expression of this purpose of William C. Squier, which did not except the issue, if any, of the insane son, whether they might be twenty or only one (what Houghton would have done to the issue of the insane son it would be painful to think), is so strong and fundamental that it is unbelievable that Catherine C. Squier, at eighty-four, or ninety-one, should have entertained for one moment the idea of counteracting it. She actually adopted the very provision in the fourth paragraph of her own will. More, certainly, would be necessary than the language of her will and/or the doubt-begetting story of Houghton, the very author of her will, to gain credit for the theory that Catherine C. Squier, who made no "explanatory" clause, was capable of such an idea. The fact that the "family," including the contestant, let Houghton's story go unchallenged in the face of the contradiction thereof in the will itself

shows how Houghton dominated the family from the beginning. In carrying out the ridiculous idea in his execution of Catherine C. Squier's will, Houghton was protecting his own brain child and he is still doing it in this contest.

Houghton, An Outsider, Imposed and Carried Out a False Interpretation of the Will of Catherine C. Squier:

Upon the occasion mentioned and down to a date subsequent to the decease of Edwin M. Squier, Edwin M. Squier and the contestant interpreted the will of Catherine C. Squier to the exact opposite of what it meant owing to the false representation of Houghton and Houghton at all times knew that the represented interpretation was a false one and used the false interpretation and the ignorance of the contestant and Edwin M. Squier to influence Edwin M. Squier and the rest of the family adversely to the contestant. Under the circumstances it is disclosed uncontrovertibly that any influence exerted by non-members of the family, as for example Houghton and Frank H. Keene, would be undue. The evidence shows that from 1906 down to the death of Edwin M. Squier no member of the family, although he acted for all the respondents and was interested for them and for himself together, had influence with Edwin M. Squier comparable to that exerted by Houghton or had any influence at all upon Edwin M. Squier except through him. This is not only to be gathered from the evidence, but of it every word and gesture of Houghton in the record of his dealings and on the witness stand, was a boast.

The Letter of Edwin M. Squier Approved by Houghton Conclusively Establishes Undue Influence Deliberately Exerted:

The chief evidence that the constant and unintermittent exercise of this influence is indisputable is that it is written in a document signed by Edwin M. Squier and approved, according to the testimony of Houghton, by him, from the time of its date down through the time of the alleged execution of the purported will and down to his representation either tacitly or expressly in every court in which he appeared as representative or in any part of the business of the Squier estates. This evidence consists of the expression by Edwin M. Squier of two conclusions of law which were absolutely erroneous. It must be assumed, and Houghton has taken the position, that Edwin M. Squier believed these conclusions to be true. It cannot be assumed that Houghton had any idea at any time that they were otherwise than false. His last rampart in his defense of his conduct is the weak one, amounting to a confession, that even if Edwin M. Squier made a mistake of fact, the purported instrument in which that mistake is expressed, must be regarded as the valid expression of his last will. It certainly would not be held that the mistake of fact would be overlooked, if it were not a mistake of fact upon the part of Houghton, or were a deliberate imposition upon Edwin M. Squier by Houghton of a false theory of law and of fact made the basis of his purported will. The mere statement of two passages in the letter of Edwin M. Squier, dated February 28, 1913, and addressed to the contestant, establishes that whatever Houghton endorsed to Edwin M. Squier was a conscious misrepresentation. These passages are as follows:

"My mother never had any favorite sons or grandchildren—she loved them all alike,—and her Will is a proof of this statement."

"Your statement that you have been maliciously done out of your just rights is false for you have been left equal with the other grandchildren."

The first passage above-quoted does not depend upon any interpretation of the will of Catherine C. Squier to be adjudged absolutely false in fact and in theory. Certainly it is a contradiction of the theory declared to the assembled Squier family after the funeral of Catherine C. Squier to the effect that the contestant's grandmother had attempted in her will to equalize the wealth of grandchildren by withholding, on account of the greater amount received by the contestant from his grandfather's estate, as much as possible, from the contestant, so that the wealth of the grandchildren might be made more equal. Even if Catherine C. Squier is assumed not to have exercised her power of disposition, and to have left undisposed of the share belonging to the stock of Charles Burnham Squier under the will of William C. Squier, nevertheless, by the letter of her will, she did eliminate the contestant from the father's share of what we may term her private estate. Not only did she discriminate against the stock of Charles Burnham Squier and thus against one of the five sons by the disinheritance of his issue in her private estate, but she also did that to the profit of the issue of Frederick C. Squier and Stuart C. Squier, her sons, and their children, her grandchildren. Her will, therefore, is nothing but disproof on its face of the theory that Catherine C. Squier left her sons and children equally. The only theory upon which this position may be answered is that Catherine C. Squier estimated, if she

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had any thought of her own at all, that the residue of her private estate, after the payment of the specific legacies, would be small. This assumption, however, would certainly involve the further one that Catherine C. Squier intended no discrimination against the contestant as to one-third residue of the estate of William C. Squier.

The second statement of the fact that the contestant was left equal with the other grandchildren by the will of Catherine C. Squier is so indicative of the lack of comprehension on the part of Edwin M. Squier as to make the conclusion unavoidable that Houghton knew, when he told Edwin M. Squier that the letter was a "bully-good" one, that the letter was written under a delusion, which he, Houghton admits that he then and there fostered, to the effect that the contestant had gratuitously made a false statement of fact to the effect that he had been discriminated against in the will of his grandmother. The contestant had sound cause for complaint against the interpretation put upon the will of his grandmother by Houghton. Every decent instinct called upon the contestant to protest. Whatever the manner of his protest, it was the natural one and the conclusion is unavoidable that the admitted cause of provocation by Houghton was not only deliberate but was intended to influence and did influence Edwin M. Squier to surrender to Houghton the distribution to the estates of the contestant's grandfather and grandmother and, as the evidence shows, of Edwin M. Squier himself. The passage in the will of Edwin M. Squier explaining not the disinheritance by him of the contestant but rather that there was no real disinheritance was precisely the false statement of fact and theory twice repeated in the letter endorsed to Edwin M. Squier by Houghton. Certainly the statement:

> "Charles Burnham Squier—was and will be the sole beneficiary in the interest of his father, if living would have received from the trusts by the Will of my father William C. Squier."

is false in fact and theory, for, according to the contention that the contestant was discriminated against by the execution of the power of disposition of the one-third of the residue of the estate of William C. Squier, the trusts were diverted to that extent from the contestant as his father's representative to his uncles and their issue, and it was this very contention which, under the guidance of Houghton, Edwin M. Squier permitted, as trustee of the estate of William C. Squier and Catherine C. Squier, to be carried out, to the prejudice of the contestant. The letter, moreover, of February 28, 1913, establishes beyond peradventure of doubt, that never would Edwin M. Squier divert or willingly diminish by a penny the amount which might go, in the event of his still living, to his brother Charles Burnham Squier, Sr., or, in the event of his death, to his only son. It must be remembered, considering this letter, that if Edwin M. Squier had died at any time within thirteen years and six months from its date, the contestant would have got the share his father would have received in the estate of Edwin M. Squier.

This Letter Constituted a Promise by Edwin M. Squier Endorsed by Houghton Neither to Defraud nor Disinherit the Contestant:

Had the event been thus we would have been facing the performance of a promise by Edwin M. Squier to the contestant, made in the face of a misunderstanding created by Houghton. This promise was upon a consideration, namely, the acceptance of the chiding by the contestant and

the leaving of his share in the interest his father if living would have received from the trusts created by the will of William C. Squier, diverted under the guidance of Houghton by Edwin M. Squier to himself and represented in his estate and to his brothers, to the keeping of the author of the letter.

The Promise was Upon Natural, Valuable and Equitable Considerations and Upon That of Forbearance:

This consideration was good and valuable in the highest measure without reference to the relationship which existed, as it is admitted in evidence, prior to the occasion after the funeral of Catherine C. Squier, and, as the letter shows, thereafter, between uncle and nephew. It may be premised, incidentally, although it is a fact of such weight that it alone would decide this contest in favor of the contestant, that the letter does show, and all the evidence confirms, that neither Catherine C. Squier nor Edwin M. Squier would diminish or willingly permit the circumstance of the decease of Charles Burnham Squier, Sr., to diminish the share or interest of any of his stock in the father's expectations from the Squier family. This letter imposed upon the legal interloper, Houghton, the affirmative duty, even if it did not exist before, to resolve all questions in favor of the known attitude of the entire family toward Charles Burnham Squier, Sr., and his stock. For it is certain that if the contestant had prosecuted the contest, which upon the request of Edwin M. Squier he withdrew, and resorted seriously to other counsel than Houghton, he would have upset the construction imposed by Houghton of the will of Catherine C. Squier.

The Promise to the Contestant was Not Broken by Edwin M. Squier, But by Lawyer Houghton:

If, in that contest, the respondent Augustus S. Houghton, had informed the Court, as he had the family, that Catherine C. Squier had meant by her last will and testament to deprive the contestant of the share in one-third of the residue of the estate of William C. Squier, the Court would undoubtedly have said that Houghton was using his position to influence unduly adversely to the contestant the disposition of the property within the testamentary power of the testatrix. It would also have become known, as it has become known in the two trials, that the will of Catherine C. Squier was not only drafted but made by Houghton, for he testified both that he received communications from Catherine C. Squier as to the provisions of her will and that he did not receive any communication from her. He does say that whatever communications he had, were received from Edwin M. Squier, but the evidence shows that the will was made to serve another purpose than the making of a will, and that *the result of disinheritance of the contestant was the will of Houghton worked out through the pretext of making title of a piece of real estate, as it was in the case of the purported will of Edwin M. Squier, through the pretext of saving the expense of a bond on administration.* This latter pretext reaches the height of absurdity, for the beneficiaries of the estate could agree to dispense with the bond. It is obvious that the respondent knew this when, as he has testified, he urged and advised Edwin M. Squier to make the will, well knowing that he would draft the will and would know how to work out through it a disinheritance of the contestant against justice and the true desire of Edwin M. Squier. He never reminded Edwin M. Squier that the reason for mak-

ing the will was to save expense. He never disclosed what his partners Shepard and Ferris let slip, namely, that at the time of the death of Catherine C. Squier, from which time her will, ratified by a codicil a little over three months before her death, speaks, she had funds of her own to meet the specific legacies of her will (Shepard, p. 43; Ferris, p. 270, Prerogative Court Record), a fact the importance of which the witness Houghton certified by refusing to "recall" (Houghton, Prerogative Court Record, p. 274), but which, as he knew, determined beyond peradventure that he had knowingly caused Edwin M. Squier to divert from the contestant one-fifteenth of his grandfather's estate. Houghton has shown this Court most clearly that he never abated his purpose to influence Edwin M. Squier as a testator and as a trustee adversely to the contestant. Setting up the plea that a mistake of fact would not void the will, he also set up the plea of *res adjudicata,* falsely, as is now admitted, with respect to that mistake, through his false interpretation of what he first termed the contest of the will of Catherine C. Squier and then termed not a contest and thirdly refused to qualify as to its being a contest or not, all three versions being given under oath as an attorney-at-law and as a trustee, and as a member of the bar with the duty not merely of honesty but of complete candor and frankness.

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The Court Need Not Decide in Favor of Contestant's Construction of the Wills of William C. Squier and Catherine C. Squier to Deny Probate to the Purported Will of Edwin M. Squier:

Houghton was admittedly a party to the agreement expressed in the letter of Edwin M. Squier to the contestant and was in all the conduct of Ed-

win M. Squier and his co-trustees in the distribution of the estate of William C. Squier, Sr., and Catherine C. Squier, and William C. Squier, Jr., the protagonist. It is this intervention of Houghton which affords the true measure of his influence as undue or not and gives true value to the admitted words of advice he extended to Edwin M. Squier in what may be called and what Houghton must be taken to have regarded as psychological moments. There was at all times from the decease of Catherine C. Squier the question for the Court to decide as to the meaning of her will. Until the Court decided that question adversely to the contestant, he had the chance of an interpretation favorable to him. At all times, Houghton, despite the fact that he testified in the Orphans' Court that he had never given an interpretation of the will of Catherine C. Squier, had the duty not only to interpret the will, but also to submit all possible issues involving the rights of the contestant to impartial counsel and to the courts without prejudicial influence. Whether or not, as a matter of fact or of law, the contention contended for now by the contestant was right, the influence exerted both in omission and commission by the respondent Augustus S. Houghton upon Edwin M. Squier was palpably undue. If the contestant was right and is right in his present contention, that influence was certainly undue. But, in any event, the very existence of a possible construction favorable to the contestant and the omission to secure to the contestant every possible chance made the conduct of those charged with a trust toward the contestant and standing toward him in a relation of confidence deliberate undue influence, making it not only possible, but the proper thing for the Court to decide for the contestant without deciding the correctness of the con-

testant's present contentions with respect to the wills of William C. Squier and Catherine C. Squier. The merest scrutiny of the will of William C. Squier, which Houghton said that Catherine C. Squier told him she thought gave the contestant as much as or more than he ought to have, shows that the idea that Houghton promulgated as the *Magna Charta* of the Squier family, namely, that Catherine C. Squier, at eighty-four and ninety-one, understood the will of William C. Squier, is a howling absurdity, and the indignation of sons-in-law, Houghton and Keene at doubt cast upon grandmother's legal acumen, even without the echoing chorus of the enriched and gloating "family" is Greek comedy of the classic period. The Court may well test how capable Catherine C. Squier, Frank H. Keene, the "family," Edwin M. Squier, or even Houghton, was of construing the two wills of the grandparents or judging the contestant's indignation.

Without An Understanding by Edwin M. Squier of the Wills of William C. Squier and Catherine C. Squier, Which Is Simply Inconceivable, the Only Words Attributed to Him by Houghton, Such as "I Don't Want to Leave Burnham Any More Than I Have To" and "Is It All Right?" and the Answers of Houghton in the "Houghton Explanatory Clause" and "It Is Your Property" and "You Have a Right to Dispose of It as You Wish" Absolutely Preclude the Possibility of the Conception that Edwin M. Squier "Consented" to the Provisions of the Will Drafted by Houghton:

When a lawyer uses "words of art" to a layman, or discusses a subject-matter as to which a layman must be assumed to be ignorant, it is a prerequisite to proof of the layman's consent to show

that he understood the words used by him. When Houghton himself pretends not only ignorance, but unconcern, as to the legal "family history" on which he, Houghton, based, what he asked it to be believed were Edwin M. Squier's, provisions, it is not to be assumed that blind Edwin saw any more clearly than the blind Augustus who led him. It takes a lawyer of a higher type than Houghton to impose a "will" on a court on the faith of his "honor."

The Text Itself of the Wills of William C. Squier and Catherine C. Squier Establishes Without Need of Argument the Validity of the Contestant's Contentions:

Nothing could be more clear and certain than the fact that the contestant is correct in his contention that the intimation after the funeral of Catherine C. Squier, maintained by Houghton and acted upon by him down to date, was false in fact and theory. An examination of the will of William C. Squier and of the will of Catherine C. Squier and the consideration of the circumstances that William C. Squier, Jr., died intestate and that Edwin M. Squier died without issue will determine this conclusively.

The will of William C. Squier provides as follows:

> "THIRD.—I do further give, devise and bequeath to my said wife the third part of all the rest and residue of my estate now owned by me or which may be hereafter acquired by me and wheresoever situate together with the third part of all the rest and remainder of my personal property, not hereinbefore bequeathed, to be used and enjoyed by her during her natural life, and with full power to dispose of the same in as ample manner as if it were her individual private estate, in and

by her last will and testament. In case she shall not make disposition of the real and personal property in this section mentioned and devised by a proper last will and testament, the same shall revert to and become a part of my residuary estate and be disposed of as hereinafter mentioned.

"FOURTH.—I give, devise and bequeath the remaining two-thirds of all the rest and residue of my estate, real and personal, not hereinbefore disposed of, to my five children, Stuart C. Squier, William C. Squier, Charles B. Squier, Edwin M. Squier and Frederick C. Squier, share and share alike, in manner following.

"Of the shares herein given to my said sons Stuart C. Squier, Charles B. Squier, Edwin M. Squier and Frederick C. Squier one-half part thereof shall be paid to them directly and the other half part shall be retained by my executors hereinafter named, in trust, to collect and receive the rents, issues and profits thereof and to pay over, annually, to my said four sons the net income arising therefrom. Of the other share, given as aforesaid, to my son William C. Squier, my said executors shall pay to him directly therefrom the sum of Ten Thousand Dollars, in securities, yielding an annual income, and the balance or remainder of his said share they shall hold in trust to collect and receive the rents, issues and profits thereof and to pay to him annually, such part of the net income thence arising as he may wish to have and may ask for, and the balance of such net income, not used or received by the said William C. Squier, my said executors are directed to invest and hold in trust in the same manner as the principal sum herein given to them as aforesaid for my said son William C. Squier.

"FIFTH.—The several shares of my estate given in trust to my executors by the foregoing fourth paragraph of this, my will, I give,

devise and bequeath upon the death of any or all of my said five sons to their issue, in each case, in such manner and in such portions as my said five sons may direct in and by their several last wills and testaments; but no devise or bequest of any such shares by any of my said sons otherwise than to their issue shall be valid; and if any such son or sons shall neglect to so devise his share to his issue, such issue shall nevertheless be entitled to the parent's said share and the same shall be paid to them by said executors. In case any one or more of my said five sons shall die, without leaving issue, then such share or shares held in trust for him or them as aforesaid shall go to their surviving brother or brothers, as the case may be, and the issue of any deceased brother or brothers in equal parts. The issue of any such deceased brother to take the parent's share. The meaning hereof being, that said several shares so held in trust shall ultimately go to and belong absolutely to the issue of my said five sons per stirpes and not per capita.

"SIXTH.—Upon the death of my said wife, in case she shall not have disposed of the third part of my estate given and bequeathed to her by the foregoing third paragraph of this, my will, as hereinbefore provided, then I direct my executors, hereinafter named, to divide such third part into five equal parts or portions and to pay over to each of my said five sons the equal half part of such part or portions directly; and the other half to each of said parts or portions they are to hold in trust in the same manner and for the same purposes as the portions given to them in trust by the fourth paragraph of this, my will aforesaid, and, upon the death of any or all of my said sons, such several parts or portions of this particular part of my estate shall go to their issue in the same manner and form and together with the other trust funds under and in accordance with the foregoing fifth

paragraph of this my will as if the same were originally parts of such trust funds."

The will of Catherine C. Squier provides as follows:

"SECOND.—I give, devise and bequeath to my son, Edwin M. Squier, and his heirs forever, all my household goods, furniture, plate, pictures, library books, horses, carriages, farm-tools, live stock and all other personal property in and about the premises of my residence, at the corner of Grand Street and St. George's Avenue in said City of Rahway, together with the house and lot, barns and other buildings thereon, situated at the corner of Grand Street and St. George's Avenue aforesaid.

"THIRD.—I give, devise and bequeath to my son, Frederick C. Squier, and his heirs forever, the lot with the hotel and other buildings thereon, situated at the northwest corner of Westfield Avenue and St. George's Avenue, in said City of Rahway, and the lots adjoining thereto and belonging to me; the lot at the northeast corner of Church Street and Hamilton Street, in said City of Rahway; also the property known as the "farm" located in said City of Rahway and bounded in part by St. George's Avenue, Stone Street and Westfield Avenue and lying and being in the Fifth Ward.

"FOURTH.—I give and bequeath to each of my grandchildren the sum of Fifteen thousand dollars each, in cash or securities of equal market value. Should any of my grandchildren predecease me, leaving him or her issue surviving, such issue to take the share its parent would have taken, if living.

"FIFTH.—I give and bequeath to my coachman Thomas Clark, of the City of Rahway, the sum of one thousand dollars; to my gardner, Alfred Pearce, of the City of Rahway,

the sum of Five hundred dollars; to Catherine O'Brien, and Mary Conroy, should they be in my employ at the time of my death, the sum of Two Hundred and fifty dollars each; to Delia Mullins, of the City of Rahway, Two hundred and fifty dollars; to Margaret Connors, of the City of Rahway, Two hundred and fifty dollars.

"SIXTH.—I give and bequeath to the Rahway Library Association of the City of Rahway, the sum of twenty-five thousand dollars.

"SEVENTH.—I give and bequeath to the Rahway Cemetery of the City of Rahway, N. J., the sum of Five Thousand ($5,000) dollars the income derived therefrom to be used for the perpetual care and maintenance of the various burial plots standing in the name of Squier and in the name of Craig in said cemetery.

"EIGHTH.—I give and bequeath to my son, Stuart C. Squier, the loving cup given to my husband and myself on the Fiftieth Anniversary of our wedding.

"NINTH.—All the rest and residue of my estate, real and personal, not heretofore disposed of, I direct my executors hereinafter named to divide into four equal parts; one of said fourth parts I give, devise and bequeath to my son, Stuart C. Squier, and his heirs forever; another of said fourth parts I give, devise and bequeath to my son, Edwin M. Squier, and his heirs forever; a third of said fourth parts I give, devise and bequeath to my son Frederick C. Squier and his heirs forever; the remaining fourth part shall be retained by my said executor, in trust, to collect and receive the rents, issues and profits thereof and to pay over, annually, to my son, William C. Squier, such part of the net income thence arising as he may wish to have and may ask for, and the balance of such net income, not used or received by my said

son, William C. Squier, my said executors are directed to invest and hold in trust in the same manner as the principal sum herein given to them as aforesaid for my said son, William C. Squier. Upon the death of my son, William C. Squier, I give, devise and bequeath to each of my sons, Stuart C. Squier, Edwin M. Squier and Frederick C. Squier, and their heirs forever, an equal third part of the said fourth part held in trust by my executors as aforesaid."

The second Codicil to the Will of Catherine C. Squier provides as follows:

"I, CATHERINE C. SQUIER, of the City of Rahway, State of New Jersey, having made my Last Will and Testament, bearing date the 30th day of April, 1907, do now make, publish and declare this Codicil thereto, which is to be taken as an addition to and a part of my said Last Will and Testament..

"WHEREAS, my husband, William C. Squier, did by his Last Will and Testament, give, devise and bequeath to me the third part of all the rest and residue of his real estate to be used and enjoyed by me during my natural life, with full power to dispose of the same in as ample manner as if it were my individual private estate by my Last Will and Testament, and

"WHEREAS, I now desire to so dispose of all my interest in and to the real estate situate, lying and being in the Borough of Roosevelt, County of Middlesex and State of New Jersey.

"FIRST: I hereby give, devise and bequeath to my sons, Stuart C. Squier, Edwin M. Squier and Frederick C. Squier, their heirs and assigns forever, all my interest in and to said real estate situate in the Borough of Roosevelt aforesaid. Should said real estate be conveyed during my lifetime, then and in that event such moneys derived from such sale as

are set apart for my use and enjoyment during my natural life, I give and bequeath to my said sons, Stuart C. Squier, Edwin M. Squier and Frederick C. Squier, their heirs and assigns forever, share and share alike; the heirs of any deceased son taking the share which the parent would have taken if he survived me.

"And I hereby ratify and confirm my said Last Will and Testament and the Codicil thereto, heretofore by me made.

"In Witness Whereof, I have subscribed my hand and affixed my seal this 21st day of October, 1912.

"Catherine C. Squier (LS)

"In the presence of:

"David Jones,
"Frederick C. Shotwell,

"Signed, sealed, published and declared by said Catherine C. Squier as a Codicil to her Last Will and Testament in the presence of us who were present at the same time and signed our names hereto as witnesses in the presence of said testator, and each of them, at her request.

"David Jones, Rahway, N. J.
"Frederick C. Shotwell, Rahway, N. J.

Rights of the Contestant Under the Will of William C. Squier, Vested Both Before and After the Decease of Catherine C. Squier, were Confiscated Under the Influence of Houghton in Violation of Duties so Clear to a Lawyer that the Wrong Could not Have Been Other than Deliberate:

It is clear that the last will and testament of William C. Squier gave only a life estate to his five sons in that part of the two-thirds of residue directed to be paid to his sons directly. Otherwise the gift "directly" to the insane son, William C.

Squier, Jr., in the sixth paragraph of the will, of one-half of one-fifth of the one-third residue of Catherine C. Squier in case and to the extent that she made no testamentary disposition of that third, would be in conflict with the whole of the will and would be absurd and unentertainable. It is also clear that Catherine C. Squier received by the last will and testament of William C. Squier only a life estate in a third of the residue for her natural life with a power of disposition thereof by a proper last will and testament and that she failed to execute the said power except as to a single parcel of real estate. It is also clear that any share received by a surviving brother from the share of a deceased brother under the will of William C. Squier was so received only for his life with a remainder over to his issue or in default thereof to the issue of his brothers. That a secondary trust was thus provided for the issue of deceased sons in property held by sons dying without issue for life is clear, whatever construction is applied to the word "directly" as to the halves of fifths left in so many words "in trust." It is equally clear that the contestant's indubitable rights in this secondary trust were swept away by Houghton in his wholesale disregard of the law and the rights of the contestant.

Houghton as Draftsman of Catherine C. Squier's Will Himself Wrote Into it the Construction Contestant now Contends For:

The fact that Catherine C. Squier had only a life estate and power of disposition by will, which she deliberately omitted to exercise, appears plainly on the face of the last will and testament of William C. Squier and the last will and testament of Catherine C. Squier. In Codicil No. 2, to the last

will and testament of the said Catherine C. Squier, she makes the only exercise to be found referred to of her power of disposition which she herself sets forth and defines, as follows:

> "WHEREAS, my husband, William C. Squier, did by his Last Will and Testament, give, devise, and bequeath to me the third part of all the rest and residue of his real estate to be used and enjoyed by me during my natural life with full power to dispose of the same in as ample manner as if it were my individual private estate by my Last Will and Testament, and
>
> "WHEREAS, I now desire to so dispose of all my interest in and to the real estate situate, lying and being in the Borough of Roosevelt, County of Middlesex and State of New Jersey
>
> "FIRST. I hereby give, devise and bequeath to my sons Stuart C. Squier, Edwin M. Squier and Frederick C. Squier, their heirs and assigns forever, all my interest in and to said real estate situate in the Borough of Roosevelt. Should said real estate be conveyed during my lifetime, then and in that event such moneys derived from such sale as are set apart for my use and enjoyment during my natural life, I give and bequeath to my said sons, Stuart C. Squier, Edwin M. Squier, and Frederick C. Squier, their heirs and assigns forever, share and share alike; the heirs of my deceased son taking the share which the said parent would have taken if he survived me."

Houghton Himself Left the One-Third of William C. Squier's Residue Left to Catherine C. Squier for Life in the Residue of the Estate of William C. Squier and Vested in the Beneficiaries Including the Contestant Under His Will:

The last will and testament of William C. Squier, in paragraph Seventh thereof, gave to his execu-

tors and trustees, who were these same Stuart C. Squier, Edwin M. Squier, and Frederick C. Squier, power to make conversion of his real estate as referred to in the said Codicil No. 2 of the Last Will and Testament of Catherine C. Squier and Codicil No. 2 was the exercise in terms and the only exercise in her entire last will and testament of a power to dispose of personal estate or real estate, which power was given by the said paragraph Third of the said last will and testament of the said William C. Squier, in the following words, to wit:

> "THIRD. I do further give, devise and bequeath to my said wife the third part of all the rest and residue of my real estate now owned by me or which may be hereafter acquired by me and wheresoever situate together with the third part of all the rest and remainder of my personal property not hereinbefore bequeathed, to be used and enjoyed by her during her natural life, and with full power to dispose of the same in as ample manner as if it were her individual private estate, in and by her last will and testament. In case she shall not make disposition of the real and personal property in this section mentioned and devised, by a proper last will and testament, the same shall revert to and become a part of my residuary estate and be disposed of as hereinafter mentioned."

The Failure of Catherine C. Squier to Refer to Her Power Vested the One-Third Residue in the Beneficiaries of William C. Squier's Will:

It is a commonplace of the law of wills that in the exercise of a power the donee of such power must refer to or otherwise indicate an intention to exercise such power. This rule is expressed by Vice-Chancellor BACKES in the case of *Farnum* v. *Pennsylvania Co. for Ins. on Lives & Granting*

Annuities, 99A, 145, 87 N. J. Eq. 108, affirmed by the Court of Errors and Appeals in the opinion below at 101 A. 105, 87 N. J. Eq. 652, the learned Vice-Chancellor says:

> "Whether Mrs. Batterson executed the power in the manner prescribed, depends upon her intention to exercise it, which intention, in some form of expression, must be found in her will. The intention to execute a power must always appear in its execution either by express terms or recitals or by necessary implications. A reference to the instrument by which the power is given, is, indeed, not necessary to demonstrate the intention to execute such a power, but it must appear from the will that the intention existed. It need not appear by express terms or recitals in the instrument; it is sufficient if the act shows that the donee had in view the subject of the power. Meeker *v.* Breintnall, 38 N. J. Eq. 345. If the quest were to be confined to an inspection and consideration of the will and codicils, there would be no difficulty in reaching the conclusion that they evince no intention to dispose of the property, the subject of the power. No allusion whatever is made in the many items of the will and codicils to the fund or the testatrix's control over it. By each of the items a specific sum of money is bequeathed, referable *prima facie* to her private fortune, and by the residuary clauses 'the rest, residue, and remainder of my estate' is disposed of. A general devise or bequest by the donee of a power in which the testator refers to the property devised or bequeathed as his property, has been repeatedly held not to be an exercise of the power. Wooster v. Cooper (45 Atl. 681), 59 N. J. Eq. 204; Meeker *v.* Breintnall, *supra;* Ackeman *v.* Ackeman (86 A. 542), 81 N. J. Eq. 437; Lee *v.* Simpson (10 S. Ct. 631), 134 U. W. 572 (33 L. Ed. 1038); Patterson *v.* Wilson (1 A. 68), 64 Md. 193."

Even the Lack of Property to Pay Bequests or Devises Out of Testatrix's Private Estate Would Not Introduce Doubt as to Contestant's Rights:

The above is quoted in *Sketchley* v. *Campton*, 132 Atl. 671, 672, by CHURCH, V. C., in an opinion, March 26th, 1926, deciding that by the will under inquiry the power had not been exercised. In that case the facts were as follows:

> "Daniel Sketchley, by his will, disposed of his estate as follows:
>
> > " 'Secondly: All my estate, real and personal wheresoever and whatsoever (remaining after the payments above mentioned), I give, devise, and bequeath to my beloved wife, Mary A. Sketchley, for and during her natural life, and upon her decease, I give and bequeath the same to my three children (James B. Sketchley, Mary A. Witheridge (wife of Charles Witheridge) and Daniel E. Sketchley), in such proportions thereof to my said children respectively, as my said wife may in and by her last will and testament provide.'
>
> "This clearly gives a life estate to Mary A. Sketchley, with a vested remainder in her three children, subject, however, to be divested as to proportionate parts only by her last will. In other words, Mary could in her last will provide in what proportion these three children should take, provided all three were in some measure considered, or it may be she could exclude one or more entirely. The daughter, Mary, died in her mother's lifetime, childless, leaving a will. Did Mary, the mother, exercise this power of proportionate divisions? Her will provides:
>
> > " 'I give, devise and bequeath to my son James E. Sketchley all the rest residue and remainder of my estate real personal and mixed wheresoever the same may be situate to him and his heirs and assigns forever.'

> "No mention is here made of any power of appointment. Mary, the mother, owned no real estate in her own right. I am of the opinion that she did not exercise the power of appointment given to her under her husband's will."

The case of *Paul* v. *Paul,* 133 Atl. 868, decided June 28th, 1926, by LEAMING, V.-C., and apparently not appealed, but illustrates the principle here asserted upon the above authority ratified by the Court of Errors and Appeals. The facts in the case of *Sketchley* v. *Campton,* 132 Atl. 671, were similar to those presented by the last wills and testaments of the said William C. Squier and Catherine C. Squier, while the facts in the case of *Paul* v. *Paul,* 133 Atl. 868, were essentially different. The Vice-Chancellor expressly said that he did not intend by holding that the use of the words "my estate" did not, when aided by extrinsic evidence, necessarily exclude the interpretation that a trust fund which was all the testatrix had out of which to pay a great number of money bequests amounting to the amount of the trust fund was intended by the testatrix to be disposed of although not specifically referred to, to depart from the rule of the *Farnum* case recognized in this State to the effect that a general bequest by a donee of a power in which testator refers to the property bequeathed as his estate will be held not to be an exercise of the power. The Vice-Chancellor said:

> "This in no way conflicts with the general rule recognized in this state to the effect that a general bequest by the donee of a power, in which the testator refers to the property bequeathed as my estate, will be held not to be an exercise of the power (*Farnum* v. *Pennsylvania Co.,* 87 N. J. Eq. 108, 99 A. 145), if it be accepted as a fact that in the mind or under-

standing of testatrix the term 'my estate' embraced the 'trust estate,' and I am unable to escape the view that in the circumstances of this case the evidence to that effect should not be ignored."

Houghton Himself Wrote Plainly Into Catherine C. Squier's Will That It was of her Private Estate She was Disposing:

The last will and testament of the said Catherine C. Squier contains the Codicil No. 2 above set forth to prove that after having disposed of her own estate she was certifying her knowledge of the manner of identifying the elements of the life estate over which she had power of disposition. Every clause, moreover, of her last will and testament and of Codicil No. 1 thereof discloses beyond controversy that the testatrix was disposing of her own property. Paragraph First directs the payment of the debts and funeral expenses of the testatrix. Those could not be directed by her to be paid out of the corpus of the life estate.

Paragraph Second gives, devises and bequeaths specific personal property and real estate, the property of the testatrix outside the life estate, by the description "all my household goods etc" and "my residence * * * house and lot etc aforesaid."

Paragraph Third gives, devises, and bequeaths real estate of the testatrix outside the life estate under the description "belonging to me" and without such qualification.

Paragraph Fourth gives and bequeaths a certain sum in cash or securities to each of her grandchildren without description.

Paragraph Fifth gives and bequeaths sums to servants.

Paragraph Sixth gives and bequeaths a certain sum to a library association.

Paragraph Seventh gives and bequeaths a certain sum to a cemetery association for care and maintenance.

Paragraph Eighth gives and bequeaths a loving cup, property of the testatrix and her husband.

Paragraph Ninth makes a direction for "all the rest and residue of my estate, real and personal, not heretofore disposed of." In so many words the testatrix describes the residuary estate both real and personal of which she is disposing as a part of the estate out of which she had already "heretofore" disposed of real estate and personal estate belonging to her outside of the life estate. The specific bequest of fifteen thousand dollars to each grandchild without discrimination repels the inference that the testatrix was aiming at disinheritance of any grandchild or at exclusion of any grandchild from participation in the property received for her life by the testatrix from the estate of the grandfather. The sums of fifteen thousand dollars might well be assumed to be of equal value with the specific bequests of property. Here, if anywhere, both Catherine C. Squier and Edwin M. Squier negatived a purpose to discriminate against the contestant or to disinherit him. A small specific bequest to grandchildren without any thought of major principles is the most usual and natural thing in testamentary provisions and does not lend itself to the evil intendment labored out of it by Houghton and the learned Vice-Ordinary.

Paragraph Tenth gives a similar authority to the executors and trustees over personal property and real estate. The testatrix then says:

> "And for the proper and due administration of my estate, I do hereby give them full power to sell and dispose of any and all real estate, not herein specifically devised, of

> which I may die seized, at public or private sale and to give good and sufficient deeds of conveyance for the same to the purchaser or purchasers thereof."

Nothing could be plainer than that the testatrix was disposing of the estate of which she would die seized, namely, her estate owned by her in fee, for she obviously had no power thus to delegate the disposition of any other real estate. Nor would a gift to trustees of a power thus to dispose of personalty be a valid exercise, either expressly or by inference or in legal possibility, of a power of disposition by will. The inference, moreover, that the testatrix intended to strip herself of all her own estate before she came to dispose of the residue is repelled by the provision for real estate of which she might die seized after disposing of property specifically and by the general devise and bequest of the residue. The inference is unavoidable that such real estate would be in the residue of "my" her estate, for the testatrix enumerates "real estate, not herein specifically devised" and gives her executors and trustees power over it and omits to dispose of it otherwise than by the residuary clause. Nothing could be plainer than this declaration by the testatrix that she was disposing of her own property and not of the life estate of the said residuary clause. The real estate in the life estate, moreover, was only an undivided third interest. Nowhere, except in Codicil No. 2, does the testatrix dispose of her "interest" in real estate. If it had been carried by the provisions of her will the codicil would have been, as it is admitted by Houghton it was not, absolutely unnecessary.

Codicil No. 1 merely varies the form of the bequest to the library association and the beneficiary of the bequest of the sum of two hundred and fifty ($250) dollars.

Codicil No. 2 refers to the interest of the testatrix in the real estate of her husband, disposes of such interest by reference to the said real estate and to the power of disposition given to her by the last will and testament of the said William C. Squier, and expresses the desire of the testatrix "to so dispose" of all her interest in the said real estate, the word "so" referring to the manner of her right to dispose. To say that the testatrix, when she made that codicil as a part of her last will and testament and ratified the said last will and testament, thus making the will of the date of the last codicil, or three months before her death, thought that she had disposed in the said residuary clause of any real estate held as to a third for the term of her natural life with power of disposition would be absurd. And the same reasoning applies with equal force to the disposition of personal estate. The bequest and devise of the residuary estate contains no hint of the opinion of the testatrix of the amount thereof and the provisions would be applicable to an estate in absolute ownership of the testatrix of any amount, great or small. There is absolutely no correspondence, therefore, between the dispositions of the last will and testament of the said Catherine C. Squier and the property over which she had a power of disposition under the last will and testament of the said William C. Squier. It is obvious, moreover, that while the testatrix in the case of *Paul* v. *Paul,* 133 Atl. 868, didn't know how to dispose of her "trust estate" so as to make her intention unmistakable, the said Catherine C. Squier, that is to say Augustus S. Houghton, did know how to dispose of the estate over which she had power of disposition and did so, as her lawyer, Houghton, the draftsman of the will, should be the last to deny, in an unmistak-

able manner to the extent that she desired to dispose of it, inconsistent with the theory that she intended by either will or codicil to dispose of anything more or anything else.

The Trusts Under the Will of William C. Squier Also Included the "Directly" Half of the Two-thirds of the Residue of which Catherine C. Squier's One-third for Life Also Became a Part:

It is equally clear that the said William C. Squier did not by his last will and testament give or intend to give more than a life estate in the one-half part of the shares given to his four sons, the said Stuart C. Squier, Charles B. Squier, Edwin M. Squier, and Frederick C. Squier, or in the one-half part of the shares given to the said five sons directly, by paragraph Sixth, upon the decease of said Catherine C. Squier. This conclusion is unavoidable for two reasons: first, the will contains expressions from which it appears that the devise was intended only to convey an estate for life, and second, that the testator made no further devise after the death of the first devisee.

Under the common law the omission of the words "heirs and assigns" would cause a devise to be taken as of a life estate. The Act of August 27th, 1784 (3 Gen. Stat. p. 3763, now Sec. 36, 4 C. S. 5872, Rev. 1877, p. 300), provided a remedy for cases where, as it frequently happens, in making wills and testaments, the words "heirs and assigns," in devises of land or other real estate, are omitted through ignorance or inattention of the writer, though the testator meant and intended to grant an absolute estate in the devised premises. The Act reads as follows:

"36. Devises of Lands in Which the Words 'Heirs and Assigns' Are Omitted; Construc-

TION; FEE CONVEYED.—Sec. 1. That from and after the publication of this act, all devises made of lands or other real estate situated in this state, in which the words heirs and assigns, or heirs and assigns forever are omitted, and no expressions are contained in such will or testament, whereby it shall appear that such devise was intended to convey only an estate for life, and no further devise thereof being made in the devised premises, after the decease of the devisee, to whom the devise shall be given; all such devises shall be taken and understood to be the intention of the testator, thereby to grant and devise an absolute estate in the same, and shall be construed, deemed and adjudged in all courts of law and equity, in this state, to convey an estate in fee simple to the devisee, for all such devised premises, in as full a manner as if the same had been given or devised to such devisee, and to his heirs and assigns forever; any law, usage or custom to the contrary notwithstanding."

The opinion of MAGIE, Chancellor, in *Morris* v. *Le Bel*, 71 Eq. 43, 62 Atl. 501, set forth in substance in the note of this section printed in the Volume 4 of the Compiled Statutes at page 5873, was that whether any intention to give a life estate is expressed in the language of the devise or not, if the testator made no further devise after the life of the first devisee, the devise might, under the statute, be construed as of a life estate. The note reads, as follows:

"POWER TO CREATE LIFE ESTATE.—This section was not designed to prevent a testator from devising an estate for life in lands, either unless he also made a further devise of such lands after the decease of the devisee for life. The legislative intent was to compel the construction of devises which omitted the words 'heirs and assigns' as passing an estate in fee except in two cases—first, where the will con-

> tained expressions from which it appeared that the devise was intended to convey only an estate for life; and second, when testator made no further devise after the death of the first devisee. Although the act connects the description of these two classes of cases by the conjunction 'and,' the plain intent requires 'and' to be read as 'or' and the statutory construction cannot be made if either case appears."

It is unnecessary to establish that the testator nowhere expressed an intention to give to his four sons a fee in the shares of his residuary estate directed by paragraph Fourth of his last will and testament to be paid to them directly. When the testator desired to give a fee, he used unequivocal expressions of his intention, as when he said in paragraph Second of his last will and testament as follows:

> "I give, devise and bequeath to my wife * * * absolutely, all my household goods * * * I do also give, devise and bequeath to my said wife the real estate owned by me * * * to her, her heirs and assigns forever."

When, also, the testator desired to give, as in paragraph Third of his last will and testament, a life estate to his wife, with power of disposition by last will and testament, he used unequivocal expressions of his intention and provided for the disposition of the remainder as a part of his residuary estate. And when the testator desired to give a life estate to his executors in trust, as in paragraph Fourth of his last will and testament, he used unequivocal expressions of his intentions. The pains which the testator took, in Paragraph Fifth of his last will and testament, to give to his five sons a limited power of disposition by will to their issue and only to their

issue must be taken as complete proof that this testator did not omit the words "heirs and assigns forever" through either ignorance or inattention and that the general scheme of his will as to the residuary estate unless the contrary was clearly expressed was declared in the last sentence of Paragraph Fifth as follows:

> "The meaning hereof being, that said several shares so held in trust shall ultimately go and belong absolutely to the issue of my said five sons *per stirpes* and not *per capita.*"

Now, this general scheme would be attained as to the one-half of the two thirds of the residuary estate left "directly" more exactly by the intestacy of the testator as to the said one-half than by the exercise of the power of disposition of the said half left in trust by the said sons in their discretion to their issue, which intestacy is made the rule as to the trust shares, the discriminating between children of any of the sons yielding to equality in the case of the issue of deceased brothers. Also the whole of the share of the son William C. Squier, Jr., in two-thirds of the residuary, with the exception of the sum of ten thousand dollars, was left, in trust subject to three ways of disposition of the remainder: First, by will with power to discriminate between his children; secondly, by his intestacy to brothers and their issues equally *per stirpes* but with no discrimination among the issue of any one brother of the said William C. Squier, Jr., and, thirdly, ultimately with the other shares absolutely to the issue of the five sons of the testator *per stirpes* and not *per capita.* There was, therefore, no distinction made by the testator in his method of creating estates in half shares of the residuary estate left to his five sons. The gift, devise, and bequest as to the whole of

the two-thirds was in the same identical words used once and for all to cover the whole subject at the outset, as follows:

> "I give, devise, and bequeath the remaining two-thirds of all the rest and residue of my estate, real and personal, not hereinbefore disposed of, to my five children, Stuart C. Squier, William C. Squier, Charles B. Squier, Edwin M. Squier and Frederick C. Squier, share and share alike, in manner following."

It is certain that if each of the sons, Stuart C. Squier, Charles B. Squier, Edwin M. Squier, and Frederick C. Squier, had a fee in one-half of his fifth share of two-thirds of the residuary estate while the son William C. Squier, Jr., had only a life estate in the same share, the words "share and share alike" would be rendered meaningless and the intention of the testator thwarted. The word "directly," which alone defines the distinction between the share to be held by the sons individually and the share to be held by the executors in trust has no meaning either in law, usage, or the manner of expression of this testator which would make it constitute an absolute devise. "Of the other share, given as aforesaid, my said executors shall pay to him 'directly' therefrom the sum of Ten Thousand Dollars yielding an annual income * * *." Here, unmistakably "directly" meant that the trustees, representing the issue of deceased sons, were to hold the securities, the same sons being trusted to "hold" the corpus of the similar half of each for life personally, his own issue being primarily interested in the reversion. It was apprehended, apparently, that the son William C. Squier would not need all the income of his life estate in the entire fifth share given him "share and share alike" with his four brothers and the testator gave to the executors a specific direction

to invest and hold in trust income not used or received by the said son William C. Squier "in the same manner as the principal sum herein given to them aforesaid for my son William C. Squier." The income of Ten Thousand dollars given "directly" by the executors was an integral part of the income for the use of the said son William C. Squier derived from the "principal" sum and went to diminish the income "used or received by the said William C. Squier" and to increase the balance of unused income. All five sons were equal with respect to the entire two-thirds of the residuary estate, in that each could use and receive all the income he might "wish to have." There was a complete identity of the individuals as "four sons" to whom one-half part was to be paid directly with the "executors" and the "trustees" and there was no direction for dividing the one-half part to be paid directly or the one-half part to be held in trust into four separate shares any more than there was a direction to divide the share of the said William C. Squier, Jr. And the testator gave to the said four sons as executors and trustees, by paragraph Seventh of his said last will and testament, power as follows:

> "And for the proper and due administration of my estate, I do hereby give them full power to sell and dispose of any and all real estate, not hereinbefore specifically devised, of which I may die seized, at public or private sale and to give good sufficient deeds of conveyance for the same to the purchaser or purchasers thereof."

In paragraph Second of the testator's said last will and testament he specifically devised certain real estate in clear and unmistakable terms. In paragraph Third he devised the rest and residue of real estate for life to the extent of one-third

and in paragraph Fourth he devised without division of specific shares for specific persons two-thirds of the residue of his real estate. If the said residue of two-thirds of the real estate were by the testator's last will and testament devised in fee to his five sons, even the testator's executors as such would have no title thereto and resort to them for title would be unnecessary and useless. The testator makes a clear distinction between real estate specifically devised and the real estate in the residuary estate and the power of sale is not the usual one given to executors. The testator makes that doubly certain by giving the power to "Them" or the "executors and trustees," to whom in the preceding sentence the testator had just given power to sell securities and reinvest the proceeds, and the real estate over which the testator gives power of sale, in the passage of paragraph Seventh of his last will and testament quoted above, is not divided into real estate in the two-thirds or the one-third of the residue specifically devised, devised in fee, and devised for life, but in "any and all real estate, not hereinbefore specifically devised, of which I may die seized." The executors of this testator's last will and testament are trustees. In paragraph Fourth the testator says "shall be retained by my executors hereinafter named in trust" and "my said executors are directed to hold in trust" and in paragraph Fifth "given in trust to my executors" and in paragraph Sixth "they (my executors) are to hold in trust" and "given to them in trust" and in paragraph Seventh "empower my said executors and trustees." The testator does "nominate four sons, beneficiaries of the residuary estate," as the "executors and trustees of this my last will and testament" and provides that the number of "such executors and trustees shall never be less than two," and provided for the

arising of difference of opinion among "said executors as to the proper management of my estate" and that they, "the executors and trustees of this my last will and testament * * * shall execute the trusts and perform the duties required thereby without commissions or compensation."

The third of the residue left to the testator's wife the said Catherine C. Squier, by paragraph Third of the testator's said last will and testament, with a power of disposition, was devised for the life of the said Catherine C. Squier. By paragraph Sixth of the testator's said last will and testament, a direction was given to the executors with respect thereto after the death of the said Catherine C. Squier without having disposed of the said one-third of the residue. No devise was made thereof absolutely but the executors were directed

> "to divide such third party into five equal parts or portions and to pay over to each of my said sons the equal half part of such part or portions directly; and the other half of each of said parts or portions they are to hold in trust in the same manner and for the same purposes as the portions given to them in trust by the fourth paragraph of this, my will aforesaid, and, upon the death of any or all of my said sons, such several part or portions of this particular part of my estate shall go to their income in the same manner and form and together with the other trust funds under and in accordance with the foregoing fifth paragraph of this my will as if the same were originally parts of such trust funds."

It is certain that there is no expression in paragraph Sixth of the last will and testament of the said William C. Squier of an intention to devise the remainder of the third of the residuary estate or any part thereof to any or all of his said five sons absolutely after the decease of the said Cathe-

rine C. Squier. There is no direction of any disposition of any of the said remainder except that "such several parts or portions of this particular part of my estate shall go to their issue," and there is nothing to indicate that by "such several parts or portions of this particular part of my estate," the testator did not mean all the several parts and portions of the said third of his residuary estate. If the testator had meant to indicate a particular part of "the third part of my estate" he would have said so. The testator was contemplating as the condition of the disposition "the death of any or all of my said sons" and a disposition "to their issue in the same manner and form and together with the other trust funds under and in accordance with the foregoing fifth paragraph of this my last will as if the same were originally parts of such trust funds." The testator does not direct that the executors and trustees shall pay "such several parts or portions" to the issue of a son upon his decease but that "such several parts and portions shall go to their issue," an expression which, equally with the assimilation of "such several parts and portions" to trust funds, would apply to any part or portion or share of the said residuary estate.

The meaning of the testator is made clear by his own words. In paragraph Fourth, he was at pains to limit the amount to be received by the said William C. Squier, Jr., to such income as he should, in the event, actually use. Even the amount to be paid to the said William C. Squier, Jr., by the executors and trustees "directly" was to be "in securities yielding an annual income." The source of these securities was the whole fifth share of the said William C. Squier, Jr., in the two-thirds of the rest and residue of the estate, real and personal. That the intention of the testator was that his son William should not dispose of the principal of ten

thousand dollars left to him "directly" is the clearly expressed meaning of his will. The inference concerning the shares given directly to the other brothers is obvious. The testator said:

> "Of the other share, given as aforesaid, to my son William C. Squier, my said executors shall pay to him directly the sum of Ten thousand dollars, in securities, yielding an annual income, and the balance or remainder of his said share they shall hold in trust to collect and receive the rents, issues and profits thereof and to pay to him annually, such part of the net income thence arising as he may wish to have and may ask for, and the balance of such net income, not used or received by the said William C. Squier, my said executors are directed to invest and hold in trust in the same manner as the principal sum herein given to them as aforesaid for my said son William C. Squier."

By paragraph Fifth of the last will and testament of the said William C. Squier, the testator gave a limited power of disposition by will of the shares left in trust to his five sons by paragraph Fourth of his said last will and testament. The limitation was imposed to prevent such disposition as would prevent the said shares or any part thereof going to any beneficiary except issue of the testator's said sons. The four sons, as executors and trustees, had power, under paragraph Seventh of the said last will and testament, to sell and reinvest the proceeds of the said five shares and the unused income of the share of the said William C. Squier, Jr. By paragraph Fourth, the executors and trustees had the same power with respect to the "sum of Ten thousand dollars, in securities, yielding an annual income" provided to be paid "directly" to the said William C. Squier, Jr., from his share, for only by the exercise of that power

could the executors be assured that the annual income from ten thousand dollars would be maintained. Now, it would be the height of absurdity to assume that the testator would limit his devise to his son William C. Squier, Jr., as he did to one-fifth of the two-thirds of his residuary estate immediately payable and at the same time give the same son a fee in one-half of one-fifth of one-third of his residuary estate so carefully limited otherwise after the decease of the said Catherine C. Squier. The testator certainly did not intend to give the said William C. Squier, Jr., a less limited estate in the half of the said one-fifth of the said one-third of his residuary estate left to the said William C. Squier, Jr., "directly" than in the said one-half of the same one-fifth left in trust with a limited power of disposition by will. Such a construction would be based on pure assumption, for there is no expression in the will to sustain it. The general intention of the testator and the inferences from his directions are all against such an assumption. And the executors and trustees, as a matter of fact, did not pay over to the said William C. Squier, Jr., the said one-half directed to be paid to him directly and, thereby, established beyond controversy the construction that the direction of the testator that one-half the said one-fifth of one-third of his residuary estate should be paid over "directly" meant that such share should be paid over for the life of the devisee. The same language must be taken with the same meaning in paragraphs Fourth and Sixth. It is plain, therefore, that the intention of the testator, as expressed in his said last will and testament, was to give not more than a life estate in the two-thirds of his residuary estate as in the remainder of one-third after the decease of the said Catherine C. Squier to any one of his said five sons.

The Disregard of the Trust Provision of The Will of William C. Squier as to Trust Shares Received From a Deceased Brother is Characteristic and Typical of The General Disregard of the Rights of Contestant Under the Will of William C. Squier:

It is perfectly obvious that William C. Squier did not intend that a share received by a surviving brother from a deceased brother dying without leaving issue him surviving would vest absolutely in that brother. The succession of brother to brother is directed as an integral part of that paragraph dealing with undeniable trust shares directed unequivocally to go ultimately to issue of the five sons equally *per stirpes* and not *per capita.* The assimilation of such share received in succession, obviously in trust or for life, by a brother, who, in turn, should come to die without leaving issue him surviving, to the share received "directly" by such brother coming himself to die without leaving issue him surviving is obvious.

Thus a construction of the will of William C. Squier which should permit the absolute vesting in fee of any share in any of the sons of the testator who should die without leaving issue him surviving would lead to the deprivation of issue of a deceased son, of the share so falsely construed to vest, in representation of his father. Also, any construction of the will of Catherine C. Squier which should permit the distribution of the third of the residue of the estate of William C. Squier, excluding the real estate specifically disposed of in execution of the power, otherwise than as a part of the residuary estate of William C. Squier, would lead to the deprivation of issue of a deceased son of the share of his father in that residuary estate.

Respondents' Argument and the Learned Vice-Ordinary's Opinion that Because the Person Presumed to Have Exercised Undue Influence in the *Cooper* Case Was the Testator's Lawyer and a Direct Beneficiary and Houghton Claims He Had No Benefit Under the Purported Will and Was Rather Friend than Lawyer to Edwin M. Squier, Therefore Houghton Neither Under the *Cooper* Case Nor Otherwise May Be Presumed to Have Exercised Undue Influence is as Fallacious as the Claim that Because in the *Williams* Case a Mistake of Fact was Held Not to Justify Rejecting a Will, the Circumstance that Edwin M. Squier Labored Under a Mistake of Fact Alone Makes it Mandatory that the Purported Will Be Upheld, Since Houghton Was Lawyer, False Lawyer as Well as False Friend, and Sustained a Doubly Sacred Relation of Trust and Confidence Which He Grossly Abused, and Received Benefit Direct as Well as Indirect Under the Purported Will, and Exercised Undue Influence as an Individual and as Agent and Attorney for Direct Beneficiaries Who Cooperated With and Authorized Him, and the Mistake of Fact Was One Which Was Part of the *Res Gestae* and Went Vitally to the Matter of Testamentary Capacity and Was Caused and Fostered by the Deliberately False Representation of Houghton and Was an Essential Element of Houghton's undue Influence Which Alone, it is Admitted in Effect, by the Plea of the *Williams* Case by the Respondents and the Statement of Alleged Facts in the "Explanatory" Clause, was Sufficient to and Did Actually Influence Edwin M. Squier to Make, if He Did Make, the Purported Will. The Facts Established Showing Undue Influ-

ence Are So Overwhelming that Argument on the Law and Reliance Upon Presumptions Are Unnecessary. The Orphans' Court and the Prerogative Court Both Relegated the Contestant to the One Point of Presumption of Undue Influence Under the *Cooper* Case and Both Decided it Wrong Under Even the Skeleton Facts Considered and Failed to Consider the Whole Body of Facts Established Through the Hostile Testimony of Houghton and Over Respondents' Opposition and Left the Contestant Erroneously Without Opportunity to Present the Whole Case Either as it Was in or as Contestant Should Have Been Permitted, But Wasn't, to Put It In. The Contestant is Left to His Appeal to This Court for the First Consideration of *the Whole Case as Proved Establishing All Contestant's Contentions*:

The whole question presented to the Court comes down to the simple one whether the certain paper writing purporting to be the last will and testament of Edwin M. Squier was executed by him of his own free will and expressed his independent judgment with a clear mind as to the conditions of his estate and the natural objects of his bounty without undue influence exercised by others. All the separate elements of charge and proof really go to one and the same *res gestae*. Nothing that touches upon any part of the whole matter is immaterial to the whole or any other part. The consideration of the whole matter justifies the contestant absolutely.

Disregard of a Cestui's Rights by Trustees Admittedly Honest and Uninformed Under the Guidance of a Lawyer With those same Fiduciary Obligations, but with the Added Duty

to be Informed, is Conclusive Evidence, if not controverted, of Undue Influence as to Every Transaction Going back to the same Matters by which Property Which the Contestant Was Warranted in Expecting From the Same Source was Diverted:

It must be reiterated that failure to controvert the evidence of neglect of even only the possible rights of the contestant under the will of his grandfather is under the circumstances of the record equivalent to default as to every element of the compliance required of the proponents to support the probate of the purported will and relieves the Court of the duty of resolving as a prerequisite to rejecting the purported will the issues set up favorable to the contestant. The claim of the contestant is that a state of facts appears in the record by which the burden of proving that the purported will was made and executed without undue influence has been shifted to the proponents and that they have neither sustained this burden nor complied with the other requirements for probate.

Proof of Other Objections Confirms Proof of Undue Influence:

Necessarily and unavoidably, the more so since the Orphans' Court indicated that the mere manner of execution and the relations of Augustus S. Houghton and the witnesses to one another and to Edwin M. Squier may not be sufficient, the objections of contestant to the probate may properly be argued so far as the facts in the record supporting those objections bear upon the question of undue influence. These objections are lack of proper execution, lack of testamentary capacity, undue influence, conspiracy, fraud and mistake. Since the contestant now contends that each of

these objections has been sustained by contestant's proof, it must be prefaced that contestant does not admit the contrary by concentrating his argument upon the specific contention that the burden of proof was shifted to the proponents. Each of the six objections to the probate is, in a way, involved in the objection of undue influence, and any proof in support of the other five objections may be urged in support of the objection of undue influence.

Contestant's Natural Expectancy One-Third:

The fundamental fact to which every item of proof must be referred is that the decedent had, as the purported will shows, representatives of three stocks of the five sons of his father, two brothers and the son of a deceased brother, as natural objects of his bounty at the date of the purported will (William C. Squier, 3rd, Orphans' Court Record, pp. 42-43). One brother, Stuart C., had, in 1919, made a trust deed of his property, had in 1909 made his son his attorney-in-fact, had suffered paralysis in 1917, was, concededly, incompetent from 1923, lived most of the time in Europe, renounced as administrator of his bachelor brother William's estate in 1915, and was replaced by Augustus S. Houghton (also despite the fact that Edwin M. Squier and Frederick C. Squier, being two, as required by the will, could have carried on and would have if they had been really acting as trustees), as trustee of his father's estate in 1925. The testator had seen him probably twice in twenty years. He had received a full share of the estate of his father without diminution. He predeceased the testator by three days, leaving six children, who had received the estate in 1919, which testator's purported will would assume testator didn't know. Another brother, Frederick C.

Squier, also received such share without diminution. He survives and has two children, expectant successors to that share. The appellant is the sole issue of his father Charles Burnham Squier, Sr., who predeceased the grandfather and would, if the *per capita* rule were applied, receive one-ninth instead of nothing. The said brother William having died without issue, the appellant, as son of decedent's brother, Charles Burnham Squier, Sr., represented the third stock. According to the *per stirpes* rule, or if the testator died intestate, the appellant would receive one-third. Contestant's father was named as trustee and executor in the will of the appellant's grandfather (p. 141). The relations of the grandmother with Charles Burnham Squier were very good (Orphans' Court Record, p. 312). He was a member of the Passaic Zinc Company with his brothers and handled the greater part of the consolidation and became secretary and treasurer and director of New Jersey Zinc Company (Orphans' Court Record, p. 311). The relations of the brothers toward their brother Charles were decidedly friendly (Orphans' Court Record, p. 316). He died before his father died (Orphans' Court Record, p. 316). His son, the contestant, by the law of this State, and under the terms of the grandfather's will, became entitled to all the share of his father in the estate of the grandfather.

Two Other Stocks Combined in 1913 Against Contestant:

The contention of the respondents is that something caused the natural bond between the testator and the contestant to be destroyed. "Burnham, you are no Squier!" was the decree of the family council at the reading of the will of contestant's grandmother. This decree was pro-

nounced by Frank Keene, one of the sons-in-law of Stuart C. Squier, husband of Helen S. Keene, approved by Frederick C. Squier and by William C. Squier, 3rd, son of Stuart C. Squier, and his attorney-in-fact, and by Houghton, husband of Carol S. Houghton, daughter of Stuart C. Squier, the said son-in-law of Stuart C. Squier having been attorney for the testator and Stuart C. Squier and Frederick C. Squier as trustees and executors of the will of their father and being their attorney as trustees and executors of the will of their mother Catherine C. Squier. Thus the two stocks of Stuart and Frederick combined in 1913 against the status of the contestant as representative of one of the stocks of the issue of William C. Squier (Frederick C. Squier, Orphans' Court Record, pp. 313-316). Frederick C. Squier talked to all the family about the matter (Frederick C. Squier, Orphans' Court Record, pp. 313-316). The sons-in law were angered by the ironclad "anti-in-law" provisions of the will of William C. Squier limiting his property ultimately to the issue of deceased sons *per stirpes* and not *per capita.*

Combination a Partly Consummated Conspiracy To Divide Contestant's Share:

This decree of the family council was not an empty gesture or the expression of a policy of future exclusion of the contestant from the family of his father and grandfather, but of the result proclaimed to have been already obtained of excluding the contestant from his father's share in the estate of his grandmother, both that which was personal to her and that of which she had power of disposition under the will of her husband, contestant's grandfather. The decree proclaimed by Frank Keene and joined in by all of the two stocks of Stuart and Frederick (William

121-128 C. Squier, Orphans' Court Record, pp. 136-142; Frederick C. Squier, Orphans' Court Record, p. 271 286) was not an expression of noble indignation but of a sordid purpose supported by an attack, which Houghton might well call "dastardly" upon the legitimacy of his client and his other clients' *cestui,* and by the not altogether unrelated false pretense that a deceased son of William C. Squier and Catherine C. Squier could for any purpose be considered no longer a son after the father's death to the extinction of the father's issue. For the contestant was and is a Squier and was contemplated by his grandfather as the ultimate object, not only as his father's representative, but also equally *per stirpes,* of his grandfather's bounty to the extent issue failed any brother of his father, and spoke for and in a manner worthy of his father in protest of the excommunication from the family by grafts by marriage upon the family for their generous purpose of sustaining the family honor by dividing up the share of a son of William C. Squier among themselves to the exclusion of his heir.

Edwin M. Squier Not in the Conspiracy:

There was no possible cause in such a protest for anything but praise of the young man standing up for the rights of his father. Houghton, moreover, admits that his pronouncement, which caused the exclusion, was not an interpretation or discussion of Catherine C. Squier's will, but a gratuitous declaration extraneous to the will (Houghton, 437-438 Orphans' Court Record, pp. 452-453). It was admittedly an officious, gratuitous, and undue provocation designed to unite all against the contestant. The contention of the respondents was and is that of two stocks combining against a third stock. That Edwin M. Squier was not in the com-

bination is evidenced by the circumstance that, although talked to on the subject of Catherine C. Squier's will and contestant's claim hundreds of times by Frederick C. Squier and many times in the presence of Augustus S. Houghton (Frederick C. Squier, Orphans' Court Record, pp. 305-315), who urged him also to make a will (Houghton, Orphans' Court Record, p. 484), over a period of thirteen years (he never made another will, Orphans' Court Record, p. 483), and up to within four months of his death at the age of seventy-four, he refrained from making a will and left his affairs in such a way that his brother Charlie's son, the contestant, whom he promised after the provocative announcement and its sequel always to remember as his father's son, would get a third of all he had including, all he, Edwin M. Squier, had got from both William C. Squier and Catherine C. Squier. And the paper purporting to be the will of Edwin M. Squier provides for a division *per stirpes* and not *per capita,* which provision completely negatives the theory that issue of a son of William C. Squier having few children should contribute, as the provocative announcement falsely asserted Catherine C. Squier intended, to children of a son having many. Edwin M. Squier was himself in the position of the contestant, the sole representative of one of the five stocks and the remainderman of any brother dying without leaving issue him surviving. The purported will itself does not, therefore, represent the principle of equalizing grandchildren, since Frederick C. Squier has two children, who have not yet survived him, while Stuart C. Squier left six children. The combination was not, therefore, based upon the theory that the appellant had received and might receive more than one of the children of Stuart C. Squier, since either of Frederick C.

Squier's children would, by reason of the *per stirpes* provision, be in the same relation to his cousins, children of Stuart C. Squier. Nor was either the alleged disposition by Catherine C. Squier or the purported disposition by Edwin M. Squier based upon the theory of equalization of grandchildren, for it would not be known how many children, if any, would survive any living son, and, upon the actual numbers of survivors of deceased sons, the appellant would, upon a *per capita* basis, not be cut off but would receive one-ninth of the estate either of the grandmother or of Edwin M. Squier.

Houghton Worked Out Corrupt Bargain of Two Stocks Without Authority of Testator:

The combination of stocks in 1913 and continuously up to the present time has been a compromise between stocks, a *per stirpes* arrangement to divide the share of William C. Squier's estate not yet disposed of which would have gone to the contestant's father, Charles Burnham Squier, if living. The testator, Edwin M. Squier, was, of course, not a party to the combination to exclude his brother Charles' son from his estate. He had and could have no possible motive for doing so. The motive expressed in the purported will was non-existent and, if Edwin M. Squier had testamentary capacity, he knew that it was false in fact and in theory. The allegation of the pretended cause of the admitted combination of stocks against the son of Charles Burnham Squier, Sr., namely, his complaint, admittedly true as to the fact, whether or not unwittingly false as to law and right, that he had not received a "share" of his grandmother's estate, itself predicates that the contestant had not received the share his father would have received

if living. The purported will of Edwin M. Squier repeats what the respondents contend was the plan of Catherine C. Squier's will, namely, of treating the contestant as not any longer his father's son. The difference is that in Catherine C. Squier's will no such plan was announced but is admitted to have been the officious pronouncement of Augustus S. Houghton (Houghton, Orphans' Court Record, pp. 452-453), while in Edwin M. Squier's purported will the plan is made to appear superficially to be declared expressly. The expression as to Catherine C. Squier's will was made by Houghton to Edwin M. Squier and others when Houghton read Catherine C. Squier's will after her funeral (Houghton, Orphans' Court Record, p. 463) and carried out by Houghton as attorney for the trustees of Catherine C. Squier's will, who "did most of the work," although he mentioned the matter to Edwin M. Squier at no other time than at Catherine C. Squier's funeral (Houghton, Orphans' Court Record, pp. 456-463).

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The Purported Will Negatives Purpose To Cut Off Contestant:

The expression got into Edwin M. Squier's will between two drafts, the circumstances of the preparation of which by Houghton both as explained by him and as not explained by him do not sustain the theory that the expression was that of the will of Edwin M. Squier. Four things in the purported will would, if the will were that of Edwin M. Squier, repel the theory that Edwin M. Squier purposed to be either unjust or ungenerous to the contestant, namely, first, the very expression itself, second, the gift to the appellant of five thousand ($5,000) dollars, third, the ostensible equality of treatment with the other nephews and nieces,

and, fourth, the adherence to the *per stirpes* provision for distribution, in the event of the decease of the brothers of Edwin M. Squier, among their issue.

Contestant's Expectancy the Spoils of the Conspiracy:

When the *per stirpes* provision of the purported will of Edwin M. Squier should become applicable, as it would upon the decease of Stuart C. Squier, the supposed reason for the discrimination against a grandson who had received and would receive his father's share would disappear, since the six children of Stuart C. Squier were not provided with one-half each or even one-seventh each, but only with one-twelfth each, of the estate of Edwin M. Squier and each of the two children of Frederick C. Squier would in like case receive not one-twelfth or one-eighth of that estate, but one-quarter—not so very much less than the third of the contestant upon an uneven *per capita* but even *per stirpes* division. The other two stocks would appear to have compromised in order to make and assure the maintenance of a united front against the contestant. The division would have been made, *per stirpes* also, of that part of the contestant's expectancy from Catherine C. Squier's estate, whether her private estate or that over which she had, whether she exercised it or not, power of disposition, which the contestant's father would have received if living, which Edwin M. Squier received, just as Frederick and Stuart had divided the rest of the contestant's expectancy to the exclusion of the contestant, and of Edwin's remainder from the trust fund of William, Jr., in his father's will, and in William, Jr.'s trust share in the estate defined above of Catherine C. Squier, whether received under her will or half "directly," half in

trust, as it would have been under William C. Squier's will. Every move of Houghton and his associates was, as has already been shown, obstructive of disclosure of the elements of this combination. Likewise, they tried to suppress evidence as to their conduct in effectuation.

Secrecy and Exclusiveness Maintained In the Trial:

For respondents' counsel to sit by and even object (Orphans' Court, Record, pp.), while the attempt was being made to get before the Court through witnesses harbored and paid by them and otherwise, the truth as to Edwin M. Squier's peculiarities, personal habits, and mental condition, and to swear categorically and later retract (Houghton, Orphans' Court, p. 275), that Houghton never represented the testator, just as if it wasn't more "undue" for a lawyer not representing a man to give him advice and urge him on legal grounds to make a will, was the opposite of aid to the Court and an obstruction of the rights of the contestant. The obstruction was designed and deliberate since the point is found in respondents' memorandum and the "opinion" that Houghton was not Edwin M. Squier's lawyer, to avoid the *Cooper* case, but only his friend. It was precisely the same sort of thing as the representation contained in the testimony of George A. Ferris, persisted in with knowledge to the contrary (see belated concession, p. 518, that nobody is disputing that Edwin M. Squier was a cigarette smoker), at page 55, as follows:

> "Q. Who left the room first, if you recall, at the time of the execution of the will? A. I recall Mr. Squier gave us a cigar and we thanked him. If I recall correctly, I think Mr. McCoy probably left before we did because he had a client waiting in his office.

> And I think Mr. Shepard and I lingered for a few moments and talked with Mr. Squier, and we left there together, or shortly after one another.
>
> "Q. So the last people in the room were Mr. Houghton and the testator? A. I think Mr. Houghton left with us, if my recollection serves me correctly. His room adjoins mine, and Mr. Shepard's room adjoins mine on the other side. I think the three of us left together. I THINK MR. SQUIER SAID HE WOULD LEAVE FOR LUNCH, AND I SAID SOMETHING ABOUT MEETING HIM AT LUNCH AT THE LAWYERS' CLUB BECAUSE I SAW HIM FREQUENTLY THERE, HE WAS A MEMBER THERE."

The admissions, contentions, equivocations, irrelevancies, and the persistence in what the evidence, in part, and concessions, in part, show not to be facts, found in the testimony of George A. Ferris, upon being recalled, on pages 68 to 77, disclose a situation of capital importance going to the very essence of the proof of every element of the propounding of the purported will, to which the Court, under the decisions, must inevitably give a construction fatal to the efforts of the respondents. Not only is George A. Ferris a part of the situation made the basis of the rule shifting the burden, laid down in *Estate of Cooper,* 75 N. J. Eq. 177, but he is both combatant lawyer and partisan witness representing all the respondents, as well as partner-lawyer witness to the purported will. The subject-matter of the testimony now being examined goes to the heart of respondents' attempted proof, namely, the state of mind of Edwin M. Squier at the time of the alleged execution of the will, his conduct as referred to normality and cognition of what was taking place, what did take place, and whether any or all of the things testified to did take place, what actually took place,

and in the presence of whom and with what respective knowledge or attitudes. One thing alone, the persistence in the picture of Edwin M. Squier at the Lawyers' Club, chatting and smoking cigars with George A. Ferris, absolutely mistaken beyond controversy now from the evidence, even to the very presence of Edwin M. Squier in the Lawyers' Club, where Edwin M. Squier, as the proof shows, did not lunch frequently or at all, goes to the heart of the testimony as to the alleged execution of the purported will. All the witnesses brought in the cigars and George A. Ferris continued it in his Lawyers' Club version. The carefully selected bits of inconsequential conversation and incident recalled by these three lawyers to the exclusion of the usual words of a testator in this solemn act are worthy of serious examination. The least that can be said, but it is more than enough, is that the Court has not been told the circumstances attending the alleged execution of the will and has been told of things as happening that didn't happen. That these men who had opportunity to observe Edwin M. Squier daily brought in cigars and left out cigarettes is significant.

Houghton Alone Managed the Task of Getting the Purported Will Executed and Probated:

It is true that the name of Edwin M. Squier appears on the fifth of five sheets of paper bound together as a will with the names of three witnesses. But how they came there is another story —in fact four other stories all so different in essentials and so wanting in proof of the elements required to satisfy the law as to leave the purported will quite unproved. The testimony should be read with the fact in mind that one of the witnesses to the will acted as examining counsel putting questions, some leading, to his fellow witnes-

ses, and interposing objections to questions asked of them in cross examination. These objections throw more light on what did or rather did not take place than the testimony itself. The record shows with startling clearness that Houghton feared a disclosure of the truth as to every essential fact.

The Partner Witnesses Having Depended on Houghton in the Alleged Execution Were Unable to Supply the Necessary Testimony:

All the partner witnesses of Houghton avoided assuming responsibility or knowledge of the events essential to be known leading up to the witnessing of the purported will. That is the ordinary result of having partners as witnesses and is just what would be expected. It also fits the Houghton manner of getting people to "leave" it to him. Certainly proof that leaves what took place and the order of events to conjecture is not sufficient and serves to characterize the relations between Edwin M. Squier and Houghton.

When and In Whose Presence Instrument Was Signed Left Doubtful:

Woolsey A. Shepard failed to commit himself as to whether the testator signed in the presence of the three witnesses. Instead he said: "I don't recall the exact sequence of events, but Mr. Squier, I know, *sat down to the table then and signed* his name to the paper which he said was his will" (Shepard, Orphans' Court Record, p. 216). Yet the law required him to certify the order in which the events took place. He had previously testified: "I went in there and *Mr. Squier was,* I think, *standing* by a long table which was in his room; had *some papers* on the table before him" (Shepard,

Orphans' Court Record, p. 216). Before Edwin M. Squier sat down, therefore, and immediately signed, the other witnesses would have had to be in the room and Edwin M. Squier to have *repeated* to them, which didn't happen, according to those witnesses, an announcement previously made to Woolsey A. Shepard that he was going to sign his will and a request, the previous announcement and request obviously having been made, if at all, in the absence of the other two, that they sign as witnesses (Shepard, Orphans' Court Record, p. 216). According to Woolsey A. Shepard the document was signed without preliminaries or examination of the will. The story seems to be that the preliminaries all came afterward.

But Peter J. McCoy testified: "I went into Mr. Squier's room. Mr. Squier was there. *Mr. Squier was seated* at a long table he had in his room, with his back to the safe. * * * Standing on his left, near the head of the table, was Mr. Houghton" (McCoy, Orphans' Court Record, p. 232).

And George A. Ferris testified: "When I entered there *Mr. Squier was seated* at his long table, I think. And Mr. Houghton was there and Mr. Shepard was there. And there was some talk, the substance of which I don't recall. Then we all were waiting for Mr. McCoy, who hadn't yet come into the room. As I recall it, Mr. Houghton went out, and returned, and shortly afterwards Mr. McCoy came in" (Shepard, Orphans' Court Record, p. 240).

Peter J. McCoy did not testify that Edwin M. Squier signed the purported will in the presence of all the witnesses (McCoy, Orphans' Court Record, pp. 230-235). He further testified that he didn't recall anything particularly that Edwin M. Squier said about the execution of the purported will, that what was said between Edwin M. Squier

and George A. Ferris and Houghton, he didn't know; that as soon as he entered the room they proceeded to the execution (McCoy, Orphans' Court Record, p. 237).

George A. Ferris did not testify that Edwin M. Squier signed the will in the presence of all the witnesses.

The Instrument was Not Properly Identified:

There has been, also, no sufficient identification of the paper propounded as the last will of Edwin M. Squier as a paper executed by him in compliance with the requirements of the statute. There appear from the evidence to have been three drafts. One in longhand, somebody, not Houghton, tore up, but as to two others present at the time of the execution, the identity and disposition has been left in doubt, not cleared up by the testimony of Houghton that he destroyed one or that was his custom. The conference of partners, Shepard and Houghton, as to the alleged will, "a week before," preceded the alleged production, July 2nd, 1926, of a draft by Edwin M. Squier, and his request that a will be drawn. The version of Houghton that Edwin M. Squier requested him to draw a will from the longhand draft is in conflict with the obvious fact that Houghton didn't have it at the time and the real evidence of its condition that Edwin M. Squier himself destroyed it. Woolsey A. Shepard said that what was before Edwin M. Squier, standing, so he said, by a long table when Woolsey A. Shepard entered the room, was "some papers" he had "on the table before him" (Shepard, Orphans' Court Record, p. 216). This repels the idea that he, Woolsey A. Shepard, or Edwin M. Squier had examined those papers. Woolsey A. Shepard had entered the room at the request of Houghton and

within a few moments all the witnesses had come into the room and the business of witnessing was dispatched (Shepard, Orphans' Court Record, p. 216). Woolsey A. Shepard sat down at the table and asked Mr. Squier if that was his will. George A. Ferris picked up the paper in rather a formal manner, it having then been signed by Edwin M. Squier, and read the attestation clause to him, not as it appeared on the instrument but in his own language (Shepard, Orphans' Court Record, pp. 216-217). The instrument was drawn "in consultation with" Houghton and Woolsey A. Shepard, but Woolsey A. Shepard didn't know who performed the physical act of drawing it or dictating it. Woolsey A. Shepard, who, according to the testimony of Houghton, had never seen anything but the first draft, recollected that "the morning that he came in to witness the will" before the other partners came in "Mr. Houghton and Mr. Squier asked" him "to look it over ONCE MORE before it was signed." Woolsey A. Shepard's last relation to the will had been a conference with Augustus S. Houghton one week before the final preparation, no notes being made by Woolsey A. Shepard, or, that he recalled, by Augustus S. Houghton, and no stenographer or other third person being present (Shepard, Orphans' Court Record, pp. 218-222). Woolsey A. Shepard could not remember from his own recollection whether the instrument was sealed before it was executed (Orphans' Court Record, p. 221). Seven or eight years before, or shortly after the death of Catherine C. Squier, Houghton had told Woolsey A. Shepard that Edwin M. Squier had spoken to him, Houghton, about drawing a will for him, Edwin M. Squier, and had told him that when he was ready he was going to give him some notes from which to draw it, and "although he had

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spoken about it several times, he had never gone any farther with it" (Shepard, Orphans' Court Record, p. 226). Houghton gave two versions of these alleged conversations, namely, that it was "his property" and that it was "certain property" that Edwin M. Squier was to make up his mind how to leave. The testimony of Woolsey A. Shepard absolutely excluded the possibility of any conference with Edwin M. Squier and Houghton with respect to the contents of the document which is alleged to have been executed, and, although Houghton "asked" Woolsey A. Shepard "to read the will over" before it was signed, as he did, the will was lying on the table and Houghton had nothing to do with the execution of the will (Shepard, Orphans' Court Record, p. 232). Upon redirect examination, Woolsey A. Shepard testified that he read over the document five or ten minutes before he and the other two subscribing witnesses signed it (Shepard, Orphans' Court Record, p. 230), and was, therefore, able to say that the document produced as the purported last will of Edwin M. Squier was the document read by Woolsey A. Shepard ten minutes before its execution and his subscribing as a witness (Shepard, Orphans' Court Record, p. 230). But Augustus S. Houghton testified that what he had shown to Woolsey A. Shepard, who mentioned only one conference and one draft and one reading and excluded the possibility of any other, was not the will but the draft (Houghton, Orphans' Court Record, pp. 469, 494), which draft it was he first presented to Edwin M. Squier, July 6th, 1926, just before the execution, but couldn't say whether he had examined it (Houghton, Orphans' Court Record, pp. 464-466, 489), which draft he, Houghton, had destroyed, or that was his custom (Houghton, Orphans' Court Record, p. 489).

Houghton also contradicted the testimony of Woolsey A. Shepard to the effect that Edwin M. Squier had told him, Houghton, seven or eight years before, or, shortly after the death of Catherine C. Squier, that he was going to furnish notes for his will (Houghton, Orphans' Court Record, pp. 469, 483, 484) and his own testimony to the effect that it was he, Houghton, who made the suggestions, at these times, to Edwin M. Squier, that he make a will (Houghton, Orphans' Court Record, pp. 483, 484).

Even the Contents of Drafts and Final Instrument and Time of Making Left in Doubt:

There was no reason for a failure of memory on the part of either Woolsey A. Shepard or Houghton, since Edwin M. Squier died four months after the purported execution of the document propounded as his will. The making of a will by Edwin M. Squier was no small matter in their office, however lightly they might pretend to treat it. The comment by Woolsey A. Shephard (Shepard, Orphans' Court Record, p. 218), whose nonchalance the Court had occasion to check, that he would not remember the date unless his recollection was refreshed by the paper, the date being after the Fourth of July holiday, is an illuminating commentary on his testimony. The testimony of Houghton, caught but not corrected, that he had discussed "this certain provision" of the purported will, the morning after the notes were received, being Tuesday morning, the sixth, "the morning that was executed" (Houghton, Orphans' Court Record, p. 464), together with the alleged destruction of all drafts (Houghton, Orphans' Court Record, p. 489), confirms the contention now being made that the purported will was not a document ever brought home to the cognition, if he had any,

of Edwin M. Squier. Such an important will would certainly have been initialed on every page if they all were known to the testator. No man, in however complete possession of his faculties, can exercise testamentary capacity through the eyes, ears, tongue, pen, typewriter, will, and brain of another. The day on which the signature of Edwin M. Squier was placed on the document is further placed in doubt by the circumstance that the paper was undated until after George A. Ferris, who came second, came to sign (Ferris, Orphans' Court Record, p. 251). If Edwin M. Squier knew what was in his will, the partners would have disclosed the fact in their testimony. Their silence is eloquent.

Peter J. McCoy, having taken the precaution to look at a copy of the alleged will, to refresh his recollection, without which he would not have remembered the date, attempted to identify the document by his signature and by looking at the last page, which he assumed, from the presence of a ribbon and seal, was affixed to the other papers at the time it was signed. But he only gave his recollection as thus aided and could only say the seal was in "approximately" the same place (McCoy, Orphans' Court Record, pp. 231, 234, 235). The only words of Edwin M. Squier he recalled were: "it sure is," or "something to that effect," or "certainly," "I don't recall the exact words" in response to a question by Houghton, BEFORE ANYBODY SIGNED, "if this was his last will and testament." Peter J. McCoy testified that he recollected that when he entered the room "this will was on the table in front of him," Mr. Squier (McCoy, Orphans' Court Record, p. 236). He also testified that he didn't see it then until Mr. Houghton picked it up" (McCoy, Orphans' Court Record, p. 236). Peter J. McCoy testified that the purported

will was in the same condition as when he was being interrogated by George A. Ferris, that it was IF it was fastened with the blue ribbon and the seal affixed at the time he signed it as a subscribing witness (McCoy, Orphans' Court Record, pp. 233-234).

George A. Ferris, the "trial attorney," who asked the question in the conditional form, of Peter J. McCoy, with respect to the condition of the instrument, himself refused to say that the instrument was the same except as to the last page (Ferris, Orphans' Court Record, p. 242). With respect to the seal, his answer was a reasoned one, just as conversations took place before he came into the room (Ferris, Orphans' Court Record, p. 244), and talk in his presence, the substance of which he could not recall, while they were waiting for Mr. McCoy (Ferris, Orphans' Court Record, p. 240).

The presence of Edwin M. Squier and all the witnesses is a matter of no more importance than the time and order of their departure. The Court and the contestant are entitled to be informed definitely about the matter. It is conceded that something of vital importance took place before the appearance of the witnesses, George A. Ferris and Peter J. McCoy. What it was we are not informed.

Woolsey A. Shepard testified that after the execution of the will they all went out, the three witnesses going first, all together (Shepard, Orphans' Court Record, p. 238). Peter J. McCoy testified: "As soon as we entered the room, why we proceeded to the execution—he executed and we went on with witnessing and I had to go back to my room." He was the last party to come in (McCoy, Orphans' Court Record, p. 237). George A. Ferris testified that the conversations to which he testified "of course took place during the affixing of the signatures * * *," but that, "Mr.

McCoy left before we did, because he had a client waiting for him in his office—and I think Mr. Shepard and I lingered for a few moments and talked with Mr. Squier, and we left together, or shortly after one another * * * I think Mr. Houghton left with us * * *" (Ferris, Orphans' Court Record, p. 249). But Houghton testified that he sealed the will in an envelope and Edwin M. Squier put it in the safe (Houghton, Orphans' Court Record, p. 297); that he returned, a most unbelievable story, to Edwin M. Squier, when the will was drawn and executed, the notes, which he would never have permitted to get out of his hands, marked Exhibit D-4 (Houghton, Orphans' Court Record, pp. 494-496), which Edward M. Squier tore. Houghton preserved, of the purported will, office copies. The appearance of the "notes" is of age. Houghton patched them up. There is nothing to show a sheet isn't missing contradicting the purported will. George A. Ferris testified that Edwin M. Squier, of course not being then engaged with Houghton, expressed his intention to meet him for lunch at the Lawyers Club, and ignored the important details of holograph and other drafts (Ferris, Orphans' Court Record, p. 249). There is absolutely no testimony by Woolsey A. Shepard, Peter J. McCoy or George A. Ferris with respect to drafts of a will or notes said by Houghton to have been both present in the room and *in work* in the office on the morning of July 6th, 1926, while they were waiting to be called or were in the act of signing as witnesses either of two bound but undated wills. If they could be mystified as to two versions of a will, certainly Edwin M. Squier could. The leaving of the date blank under the circumstances claimed is unbelievable. It goes with Frederick C. Squier and Mary Conroy's false testimony that Edwin M. Squier went to New York

every Tuesday, which is contradicted by Edwin M. Squier's own letter and the testimony of other witnesses.

Proof the Instrument Brought to Knowledge of Edwin M. Squier Lacking:

There is an inexcusable default in proof of what, if anything, was shown or explained to Edwin M. Squier as his last will and testament. He appears from the evidence to have taken it, as the Court is asked to do, and the partner witnesses appear to have done, on faith in Houghton, who testified (Houghton, Orphans' Court Record, pp. 374-375) that Edwin M. Squier, in his presence, sealed the paper in an envelope and put it in the place in the safe where he, Houghton, found it sealed, and that he never mentioned it to Edwin M. Squier again (Houghton, Orphans' Court Record, p. 497). It seems certain from the universal testimony that the ceremony of witnessing was gone over *de novo* completely upon the arrival of George A. Ferris; that both Ferris and McCoy were greeted upon their arrival with an undated document purporting to have been signed and not yet bound as it appears now to be. An examination of the will discloses a suspicious proximity of the paper seal, which should have been a wax one, to the signature, and also the makeshift typewritten word ("seal") under it which was used in the hurry to get the thing through with, subject to switching of pages or paragraphs at leisure. The first page discloses the haste with which the job was done in the failure to correct the mistake, although it was noted, in the word "whoses." Admittedly, the draft read by Woolsey A. Shepard at and in and about the execution of the document testified about, was not the purported will propounded by the respondents (Houghton, Orphans' Court Record, pp. 469, 494).

Every Element of Evidence and of Conduct of Houghton Inconsistent With the Assumption that the Purported Will, Which Thus Remains Unproved as Such, was the Valid Last Will and Testament of Edwin M. Squier:

The questions of presumptions of fact and of law and of compliance with the requirements for the proof of wills having been exhaustively examined, it may now be asserted without fear of contradiction, that in every respect the facts repel the assumption that Edwin M. Squier executed the paper writing brought forward for probate by Houghton as his last will and testament without undue influence practised upon him. It is not possible to deduce any other conclusion from the facts than that every contention of the contestant is sustained in a matter of law and of fact.

POINT I.

The facts established operate as a matter of law to shift the burden of proving that the purported will was executed without undue influence to the proponents.

The respondents claim that they have sustained the burden of disproving undue influence. They do not say when or how. But they do admit, thus, inferentially, that the contestant's proof shifted the burden to them. That being so they admit that the ruling of the Orphans' Court and the Prerogative Court were both erroneous and that the contestant was entitled to a ruling, which he never had, putting the respondents to their proof, which they never undertook to make or made. The suppression and obstruction of the respondents would avail them nothing if they

were put to their proof and they would not snap their fingers at the contestant as they did as his only and bitterly hostile and conscienceless witnesses.

The Court of Errors and Appeals, in *Harrison* v. *Axtell,* 76 N. J. Eq. 614, unanimously affirmed the decree of the Prerogative Court, affirming the decree of the Orphans' Court of Morris County, in *In re Cooper's Will,* 75 N. J. Eq. 177. PITNEY, Ordinary, at page 197, noted the agreement of the parties on the principle of law adopted by the Orphans' Court. That principle was stated as follows:

> "Both the will and codicil appear to have been properly executed. The attestation clauses are in proper form, and all the formalities were duly observed at the time each paper was executed. It is not contended that the testatrix was mentally incapable of making a will, but that, owing to her advanced age, her mind was unable to resist the improper influence exerted by her friend and attorney, Charles F. Axtell.
>
> "She was about eighty years of age in 1900.
>
> "Axtell had been her sole legal adviser since January, 1898, and had acted for her in some matters before that time, beginning at least as early as 1888. He had known her well for many years, and intimately since 1883.
>
> "She appears to have had great confidence in his judgment and integrity.
>
> "He claims that, acting under instructions from her, he prepared the rough draft of the will executed in 1900 and that of the codicil executed in 1904.
>
> "Each draft was copied by hand and prepared for execution by a young man named Griffith, who was employed by Axtell in a clerical capacity in 1900 and specially employed for the express purpose of copying the draft of the codicil in 1904.

"Under the will of 1900 Axtell receives a specific legacy of $500, and is the sole beneficiary under the clause disposing of the entire residue of the estate of testatrix receiving thereunder a large part of the whole estate, nearly two-thirds thereof.

"His son, Roland P., receives a legacy of $250.

"In addition, Axtell is the sole executor named in the will, Joseph H. Van Doren having been added as an executor under the codicil of 1904.

"Axtell also procured the witnesses to both the will and codicil and each document was executed under his personal advice and supervision.

"Under this statement of facts it is clear that the legal presumption of undue influence has been raised and that the burden of proving that the will is the spontaneous act of the decedent was thrown upon Axtell, her attorney and confidential adviser.

"In so holding, I do not contend that the presumption of undue influence has been raised *solely* because of the confidential relation existing between Mrs. Cooper and her legal adviser."

In *Will of Richter,* 89 N. J. Eq. 162, STEVENS, Vice-Ordinary, affirmed the decree of the Orphans' Court "In a case not free from doubt" for the reasons that neither the draftsman nor any of the witnesses took anything, the will was just such a will as the testator would naturally have made, and that there was no evidence of conspiring.

In *Matter of the Estate of Banvard,* 83 N. J. Eq. 286, Vice-Ordinary LEWIS, said, at page 288, as follows:

"A clear *prima facie* case as to the execution of the will was established by the subscribing witnesses, and Maes was called to the witness-stand by the appellant and examined at considerable length, and it was shown that he

occupied a position of trust and confidence towards the decedent, and that he had plenty of opportunity to exert influence over her mind, and there can be no doubt that the burden of establishing that he did not use undue influence over her in regard to the making of the will rests upon him.

"The decedent and her mother both had great confidence in Maes, according to his own testimony, and that they consulted him in regard to their business affairs, and he says that he was all the attorney she (meaning the decedent) had, that he did not know any other attorney that she ever consulted."

In the case of *In Re Bishop,* 96 N. J. Eq. 595, at page 596, BACKES, Vice-Ordinary, says as follows:

"An attorney who draws or actively participates in the making of his client's will, by which he substantially benefits, has the burden cast upon him of establishing that it was not the result of undue influence. *In re Cooper's Will,* 75 N. J. Eq. 177."

In the same case, on appeal, under the name of *Ward* v. *Harrison,* 97 N. J. Eq. 309, at page 314, the Court of Errors and Appeals unanimously said as follows:

"* * * we are only concerned whether the result reached by the court below was warranted by the evidence, under the application of correct principles. We think the result reached was a correct one."

At page 314, the Court had said:

"The Courts of this State have not gone to the extent to hold that one actively participating in the drawing of a will, and who is chief beneficiary thereunder, is presumptively chargeable with undue influence. Such a circumstance may or may not be a factor to establish *imposition* upon the testator, for that is what is meant by the charge of undue in-

fluence, and, hence, whether or not there was *imposition,* must be disclosed by other circumstances and conditions than the mere drafting of a will and being a beneficiary thereunder."

The latter paragraph which was expressed before the approval of the principle upon which the Vice-Ordinary arrived at his correct result does not involve the burden of proof at the outset but as a result upon all the evidence.

The principle was applied by BACKES, Vice-Ordinary, in the case of *In Re Morrissey's Will,* 91 N. J. Eq. 480, at page 487, the capitals being raised here for emphasis, as follows:

"While the history of the case does not warrant a finding of actual imposition, the confidential relation of Mrs. Flemming to the testatrix, and the circumstances that have been related and the culpable incident to be adverted to presently, raise the presumption that undue influence has been exerted by her, which, unless countervailed by satisfactory evidence, controls as a conclusion of fact, *Sparks' Case,* 63 N. J. Eq. 242; *Cooper's Will,* 75 N. J. Eq. 177; affirmed, 76 N. J. Eq. 614. The presumption may be overcome by the denial of those implicated (*Sparks' Case, supra; In Re Anastasia Davis,* 73 N. J. Eq. 617; *Crafts' Estate,* 85 N. J. Eq. 125), but to have that weight the testimony must be impeccable and convincing.

"Mrs. Flemming denied the legal imputation, but her testimony does not measure up to the required standard, and for this reason: On February 2nd, 1917, Mrs. Morrissey received $2,000 in cash, in payment of a mortgage, and on July 24th, 1917, after the lunacy proceedings were begun she withdrew $3,000 from a bank. These large sums vanished before the guardian in the proceedings was appointed, November 9th, 1917. Mrs. Flemming professed to be ignorant of what came of the money. She was the old lady's caretaker and knew her

every move. Her story that Mrs. Morrissey carried these bundles on her person—the $3,000 when she was admittedly *non compos*—and her intimations that she frittered them away, are improbable and incredible. I BELIEVE SHE KNEW MORE THAN SHE WAS WILLING TO TELL ON THE WITNESS-STAND, and she she either had the money or knew what became of it. HER DISINGENUOUS DISAVOWAL OF KNOWLEDGE concerning its disappearance IMPEACHED HER TESTIMONY AS A WHOLE AND RENDERS HER DENIAL OF UNLAWFUL COMPLICITY IN THE MAKING OF THE WILL UNTRUSTWORTHY AND UNDEPENDABLE. THE BURDEN CAST UPON THE PROPONENTS OF NEUTRALIZING THE PRESUMPTION OF UNDUE INFLUENCE BY BELIEVABLE EVIDENCE HAS NOT BEEN MET, AND PROBATE MUST THEREFORE BE DENIED."

In the case of Edwin M. Squier, there is an abundance of the thing prescribed by Vice-Chancellor Backes and deliberate suppression of evidence of and by witnesses who were both parties themselves and were controlled by the proponents. In their desire to avoid the imputation of undue influence, which they could not avoid with Houghton proclaimed as their agent past, present and future, they denied knowing or caring whether Edwin M. Squier had made a will. That Houghton hadn't mentioned the matter to Carol S. Houghton and she to her brother and sisters is unbelievable. With Harold M. Searles and Frederick C. Squier the policy was perilous. They saw Edwin M. Squier in his last illness. It is unbelievable that they didn't say or hear something about a will, if Edwin M. Squier knew about it himself. If he did say anything it was obviously something they would not repeat. Among considerations which may properly guide the action of a presid-

ing judge in determining at what point he may reasonably declare that the party having the burden of evidence is discharging it and that, therefore, the burden of evidence has shifted to his opponent is the question as to which of the parties had within his power of control the more precise and conclusive knowledge of the fact or set of facts. Accordingly, it is said that facts which are established to be within the knowledge of a party must be proved by him (*Flemming* v. *People,* 27 N. Y. 329; see also *Clopp* v. *Ellington,* 87 Hun 542). Where fraud is involved in a civil action, it need be proved only by a fair preponderance of the evidence (*Freund* v. *Paten,* 10 Daly 379), and proof beyond a reasonable doubt is not required (*Sommer* v. *Oppenheim,* 19 Misc. 605). The contestant had established more than a *prima facie* case requiring the respondents to sustain the burden of the evidence. This test is adopted in the Courts of this State. In the case of *In re Ulrich,* 96 N. J. Eq. 621, LEWIS, Vice-Ordinary, affirmed, said, at page 625, as follows:

> "After a minute examination of the testimony, I am forced to the conclusion that it was most extraordinary that the testator, in his weakened mental and physical condition, could have refrained from in some way disclosing to his wife, or to some member of the family, that he made his new will, if he retained any recollection whatever of it. It seems very probable to me that the old man never remembered making his last will and forgot it as soon as it was made."

In the same case, LEWIS, Vice-Ordinary, applied the principle of *In Re Cooper,* 75 N. J. Eq. 75, at page 626, as follows:

> "When a gift, by deed or otherwise, than by will, is made to one who stands in a fiduciary

relation to the donor, that gift is presumed to have been obtained by undue influence. However, while that is not strictly applicable to wills, still the fact of a fiduciary relationship, or a relationship of trust and confidence, coupled with other circumstances, indicating a bias or feeling hostile to the natural objects of one's bounty, usually more readily makes a case of undue influence than without the fiduciary or trust relation."

While it is true that the rule which raises a presumption of undue influence in the case of gifts *inter vivos* where a fiduciary relation exists does not apply to testamentary gifts (*Sparks* case, 63 Eq. 242), and undue influence must be proved (*Re Tunison's will,* 83 Eq. 277; *re Will of Mary A. Brengel,* 85 Eq. 487; *Brotherhood of R. R. Trainmen* v. *Anna Etten,* 90 Eq. 612; *Johnson's* case, 80 Eq. 525, and cases cited; *in re Will of Charles Feder,* 93 Eq. 415), yet slight circumstances in addition to such relation will throw the burden on the beneficiary to show that the will was the free act of the testator (*in re Will of Esther J. Cooper,* 75 Eq. 177, aff. in 76 Eq. 61; *in re Will of Annie Eatley,* 82 Eq. 591; *in re Morrissey's will,* 91 Eq. 480). The fact that the beneficiary drew the will is such a circumstance (*Rasling* v. *Rasling,* 36 Eq. 603.

The general rule that he who alleges fraud must prove it, is qualified where the question arises between a trustee and a *cestui que trust,* or between other parties who occupy a fiduciary or confidential or dominant position. In such cases when the complainant proves the relation, the burden of proof is cast on the other party to show that the transaction was fair and honest (*Traphagen* v. *Voorhees,* 44 Eq. 21); that the donor understood the nature of the act; and that the act was not done through the influence of the donee (*Haydock*

v. *Haydock,* 34 Eq. 570). The rule as stated in *Slack* v. *Rees,* 66 Eq. 449, is as follows:

> "In all transactions between parties occupying relations whether legal, natural or conventional in their origin, in which confidence is naturally inspired, or in fact reasonably exists, the burden of proof is thrown upon the person in whom the confidence is reposed, and who has acquired an advantage, to show affirmatively not only that no deception was practiced therein, no undue influence used, and that all was fair, open and voluntary, but also that it was well understood."

The rule has been applied to trustees; (*Porter* v. *Woodruff,* 36 Eq. 174), to gifts to husband from an enfeebled wife; (*Haydock* v. *Haydock,* 34 Eq. 570) to dealings of a child with an aged parent; (*Slack* v. *Rees,* 66 Eq. 447) to a gift to a niece from a dependent uncle; (*Hunt* v. *Naylor,* 84 Eq. 651) to relations of lawyer and client; (*Porter* v. *Bergen,* 54 Eq. 405; *Rhodes* v. *Ries,* 4 Ad. R. 1183) to contracts, (*Traphagen* v. *Voorhees,* 44 Eq. 21) to relations between a clergyman with one of his own faith. (*Corrigan* v. *Pirone,* 48 Eq. 607), (compare *Spark's Will,* 13 E. 242). It has also been said that the fact that the gift was intended to operate as a will is an additional reason why the burden should be on the donee to prove convincingly the validity of the act (*Haydock* v. *Haydock,* 34 Eq. 575).

Where the effect of the gift is to practically strip the defendant donor of his estate a court of equity, moved by the apparent improvidence of the gift, will presume that the donor did not appreciate the consequences of the act and will place upon the donee the burden of overcoming this presumption by showing that the donor had the benefit of proper independent advice. If the donor did not have the benefit of competent and independent ad-

vice a gift containing no power of revocation must be set aside (*Post* v. *Hagan*, 71 Eq. 234). (*Albert* v. *Haeberly*, 71 Eq. 587, affd. in 74 Eq. 451); (*Groff* v. *Stitzer*, 75 Eq. 452, affd. in 77 Eq. 260); (*McGee* v. *McGee*, 78 Eq. 430); (*Ware* v. *Mulford*, 79 Eq. 471); (*Soper* v. *Cisco*, 85 Eq. 165); (*Smith* v. *Schopper*, 86 Eq. 107); (*Jacobus* v. *Waits*, 86 Eq. 149); (*Hunt* v. *Naylor*, 84 Eq. 651); (*Reeves* v. *White*, 84 Eq. 166); (*Clark* v. *Clark*, 87 Eq. 504). This rule has also been applied to an accommodation endorsement (*Bensel* v. *Anderson*, 85 Eq. 395) and to a deed for a nominal consideration (*McCully* v. *Rowland*, 94 Eq. 60).

However, while the rule requiring independent advice was applied in *Post* v. *Hagan* (71 Eq. 235), and *Slack* v. *Reese* (66 Eq. 449), to cases where the effect of the gift was to practically strip the dependent donor of all his property, later cases indicate that it will be applied to all such gifts except trifling ones (*Giudetta* v. *Bonassi*, 95 Eq. 151); (*McCully* v. *Rowland*, 94 Eq. 60) and (*Vass* v. *Warner*, 92 Eq. 295).

Houghton was not only the co-trustee of Edwin M. Squier, but he was his attorney as such and trustee for him under the express trust of William C. Squier's will upon which Edwin M. Squier's right to dispose of property was almost entirely based and the advice giving was directed expressly to the question of the right to dispose. He was hostile to the contestant, a natural object of Edwin M. Squier's bounty, and believed, as he says, that when he was urging Edwin M. Squier to make a will, Edwin M. Squier was estranged from the contestant, who, but for the will, would have received one-third of the estate.

In the case of *In Re Solomon*, 95 N. J. Eq. 706, at page 711, the Court of Errors and Appeals unanimously affirmed the decree of Vice-Ordinary

FIELDER, refusing probate to a will of a person claimed to have been of sound mind, on the ground that the confidential relation the beneficiary bore to the testator and the physical condition of the testator and the circumstances surrounding the preparation and execution of the will, "raise the presumption that undue influence was exerted by Mrs. Milberg to induce the testator to give his whole estate to her to the exclusion of his other children, which presumption, unless rebutted by satisfactory evidence, controls as a conclusion of fact. In *Re Cooper's Will,* 75 N. J. Eq. 177; affirmed 76 N. J. Eq. 614; *In re Morrissey's Will,* 91 N. J. Eq. 480. At the time the will was being drawn and executed two of the testator's children were excluded from the house by Mrs. Milberg, and during that whole period she had the advantage and influence of the presence and services of herself and her attorney with the testator."

In the case of *In Re Feder,* 93 N. J. Eq. 414, the opinion states the principle of *Sparks'* case, 63 N. J. Eq. 242, of *In Re Anastasia Davis,* 73 N. J. Eq., and *In re Cooper's Will,* 75 N. J. Eq. 177, to be based upon the existence of a relation of trust and confidence, ascendancy or dominance on the part of the favored person.

In the case of *In Re Miller's Estate,* 87 N. J. Eq. 287, LEWIS, Vice-Ordinary, said, at page 293, as follows:

> "I cannot agree with the court below in its view that the burden of establishing that Miller did not use undue influence should be borne by the caveator. There is no doubt that the burden shifted to the proponent, he being the chief beneficiary, and occupying a position of trust and confidence, he must show that he did not procure the making of the will by undue influence. The proofs lead me to

the conclusion that the proponent has sustained the burden imposed upon him."

In *Jacobus* v. *Waits*, 86 N. J. Eq. 148, FOSTER, V. C., said, at page 153, as follows:

"I think it is clear that these deeds of conveyance were mere voluntary gifts, made without consideration, and, in contemplation of the grantor's impending death, and are within the rule stated in *Slack* v. *Rees*, 66 N. J. Eq. 447; *Post* v. *Hagen*, 71 N. J. Eq. 235, and approved in *Soper* v. *Cisco*, 85 N. J. Eq. 165, 'that undue influence is not to be presumed from the mere relation of parent and child, in case of a conveyance from a parent to a child, and that this does not conflict with the broad rule that, where parties stand in confidential relation to each other, a conveyance from the weaker to the dominant party is presumed to result from undue influence, and, therefore, where facts are shown, other than the mere relation of parent and child, establishing between the parties a confidential relation in which the child is the dominant party, a conveyance from the parent to the child is presumed to be tainted with undue influence, and the burden is upon the child to show the *bona fides* of the transaction.' *Soper* v. *Circo, supra.*

"The facts established justify the application of this rule in the present case and casts upon the defendant Mrs. Waits the burden of showing that these conveyances were not the product of undue influence.

"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* v. *Haydock*, 39 N. J. Eq. 570."

See also,

Drake v. *Mann*, 81 N. J. Eq. 201, 204;
Bensel v. *Anderson*, 85 N. J. Eq. 391.

In the case of *In re Benson's Will,* 92 N. J. Eq. 618, at page 622, GRIFFIN, Vice-Ordinary, asserts the principle that where the testator left his estate to his daughter with whom he lived during the time he was from seventy-three to seventy-seven years old, instead of distributing the estate between such daughter and two other children who survived him, a presumption against the daughter of undue influence arises.

In the case of *In Re Huncke,* 91 N. J. Eq. 300, LEWIS, Vice-Ordinary, based his decision entirely upon the disinterestedness of a nurse who was a witness and the interest of other witnesses. By this test, the suppression of the true facts as to the physical and mental condition of Edwin M. Squier is proved.

In the *Will of Tunison,* 83 N. J. Eq. 277, the Court, at page 281, said as follows:

> "In this case the charge of undue influence on the part of Clarence arises from the fact that he lived with her and was her constant companion, and that the circumstances show that he was in such a situation as to her, and held such a confidential relation toward her that the burden of proof is shifted to him, to make clear to the court that his actions were free from any attempt to influence her against any of her children. Vice-Chancellor VAN FLEET has furnished us with a definition of what the law calls undue influence which seems to be very complete. He says, in *Earle* v. *Norfolk Company,* 9 Stew. 188: 'All that can be safely said in the way of formulating a definition of what the law calls undue influence is to say that whatever destroys free agency and constrains a person whose act is brought in judgment to do what is against his will and what he would not have done if left to himself is undue influence, whether the control be exercised by physical force, threats, importunity or any other species of

mental or physical coercion. The extent or degree of the influence is immaterial, for the test is, was the influence, whether slight or powerful, sufficient to destroy free agency and render the act brought in judgment rather the result of the determination of the mind of another than the expression of the mind of the actor.'

"The term 'undue influence' has no force or efficacy unless by means of the influence somebody is materially injured. It could hardly be said that a man was unduly influenced to make a will by which he divided his property equally among his children for the reason that in such a case it could not be said that anyone was injured."

See also,

Haydock v. *Haydock,* 33 N. J. Eq. 494;
Turner v. *Cheeseman,* 2 McCart. 243, 265;
Ex'rs of Moore v. *Blauvelt,* 2 McCart. 367;
Lynch v. *Clements,* 9 C. E. Gr. 431.

By this test the urging by Houghton, as he was an enemy, that Edwin M. Squier make a will, under the assumption, held by Houghton, that an estrangement existed as the sufficient competent cause of disinheritance, was beyond possibility of controversy or disproof the application, and successfully, of undue influence.

Undue influence may be established either by direct evidence or it may be inferred from a variety of circumstances.

The statement in 40 *Cyc.* 1155, is amply supported by the authorities. The author states:

"Where the grounds of objection to the validity of the will are fraud and undue influence the evidence is permitted to take a wide range and it is declared that every fact and circumstance, no matter how little its

> probative value which throws light on these issues is admissible. The range of inquiry may cover not only the provisions of the will itself and the circumstances surrounding its execution, but also the mental condition of the testator, ***the motive and opportunity of others to unduly influence him, his relations with persons benefited by or excluded from the will and the acts and declarations of such persons.*** Although none of these matters standing alone, may be sufficient to establish the issues, yet taken together they may have that effect."

In *Fritz* v. *Turner,* 46 N. J. Eq. 515, the Ordinary, at page 518 of his opinion, says:

> "Such influence need not be proved directly, it may be established by inference from circumstances attending the preparation and execution of the will."

In *Sickle's* case, 63 N. J. Eq. 233, REED, Vice-Ordinary, says:

> "It is true that there is no direct testimony that any such threats of removal (which were held to be undue influence) were made at the time the will was established, but undue influence can seldom be proved by direct testimony, for such influences are usually covert and can be proved only by circumstances."

In the application of the legal conception of undue influence as hereinbefore defined to the particular evidence showing such influence, the law has laid down an all important preliminary consideration, *viz.:* the mental condition of the testator as showing susceptibility to such influence, even if he had capacity to make a will if he were not unduly influenced.

Barkman v. *Richards,* 63 N. J. Eq. 211, 213; *Sparks Case,* 63 N. J. Eq. 242.

In considering the testimony with respect to testator's physical and mental condition, counsel for respondents have assumed that the purpose was to prove lack of testamentary capacity. In such a case, of course, the important point of time is that of the execution of the will. But where the testimony is offered for the purpose of showing a weakness which makes the testator susceptible to undue influence, it need by no means be confined to the ***exact*** time of the execution of the will.

The case comes squarely, although at first thought it may appear otherwise, within *Dale* v. *Dale,* 38 N. J. E. 274, in this Court, the headnote of which is:

> "Where a mother, mentally enfeebled by reason of disease, and in a position where one of her two sons could exercise an improper influence over her, made a will leaving nearly all her property to this son, the burden is upon him to show that such instrument was executed without the exercise of undue influence by him."

The principle of this case was approved by this Court as recently as *In re Tutty's Will,* 87 N. J. E. 647.

In *Tutty's* case the testator was eighty-four years old. He left three children. He left the property to one son who was in a position to influence him, and the burden was held to be the son's to show the lack of undue influence.

And the principle of *Dale* v. *Dale* was followed by Vice-Ordinary Reed in *Sickle's* case, 63 N. J. E. 233. In that case it was also held that the fact that the testator, while surrounded by the same influences, expressed his attitude toward the beneficiaries and satisfaction with the will he made are not sufficient to prove the absence of undue

influence. This weakens the effect of the thirteenth-hour attempt of Shepard to decide the contest by his self-serving say-so.

Sickle's case was affirmed in this Court in 64 N. J. E. 791, upon the opinion below.

In *Claffey* v. *Ledwith,* 56 N. J. E. 333, the Ordinary, McGILL, held that the circumstances were sufficiently strong to throw the burden upon the proponent to show that no undue influence was used, and among the circumstances was: "The authority which their daily presence and ministrations to the comfort of the old man gave them over him; the mental enfeeblement of the old man, which made him susceptible to every influence his daughters, who had his confidence, might exert; * * *." And the Ordinary further said:

> "Their force is not negatived by the opinion of the subscribing witnesses, nor by the absence of clandestinity at the execution of the will. Nor is the burden borne by the showing that, at some time during the months covered in the process of will-making, the old father echoed the argument of his daughters, that the respondent's family were extravagant, and would squander his money. It may be that, in his enfeebled state, this argument had been so constantly kept before him as to take possession of him and become irresistible and drive out all other considerations."

In *Caroll* v. *Hause,* 48 N. J. E. 269, the Vice-Ordinary, VAN FLEET, said:

> "Against a beneficiary thus having a testator under his control, with power to make his will the will of the testator, especially in a case where the testator has made an unnatural and unjust disposition of his property, the law presumes undue influence, and puts upon the beneficiary the burden of showing, affirmatively, that when the testator made his will he did not exercise his power over

> the testator to his own advantage and to the disadvantage of others having an equal or superior claim upon the bounty of the testator."

In *White* v. *Starr*, 47 N. J. E. 244, at page 261, the Ordinary, McGILL, said:

> "It is only in exceptional cases that direct proof of undue influence can be had. The proof of it is, generally, by presumptions raised by circumstances, or, in case fraud is an element of the undue influence, by inference from circumstances, which produces satisfactory conviction."

In re Tutty's Will, 87 N. J. E. 647, STEVENS, Vice-Ordinary, said, and his opinion was adopted as that of this Court, quoting from *Lynch* v. *Clements*, 24 N. J. E. 431:

> "In regard to undue influence the cases are almost infinite in number and variety. Where the party to be benefited by the will has a controlling agency in procuring its formal execution, it is universally regarded as a very suspicious circumstance and one requiring the fullest explanation. So, where a will is unreasonable in its provisions and inconsistent with the duties of the testator with reference to his property and family, this will of itself imposes upon those claiming under the instrument the necessity of giving some reasonable explanation of the unnatural character of the will. While undue influence embraces fraud, fraud by no means embraces every species of undue influence, since it is quite supposable that one may really exercise a degree of influence over the testator in producing the testamentary act, which upon every just ground is fairly entitled to be considered extreme and unreasonable either in character or degree without its being fraudulent."

Respondents' counsel brushed aside the allegations of undue influence of their brief by saying that the proofs were ridiculous. Counsel apparently contend that proof of undue influence must be direct. As the courts have so often said it is direct only in very exceptional cases. Usually undue influence is proved by inferences from circumstances and those circumstances which may appear, standing alone, to be ridiculous when taken in conjunction with other circumstances which may, in themselves, likewise be ridiculous standing alone, and with the relations existing between the parties, may convince a trier of fact that undue influence has been exerted and we submit, in this case, that even if the rule of *Dale* v. *Dale* does not apply and that the burden is on the contestant to show the exertion of undue influence, the circumstances in this case clearly show it.

Even if the cause of the disinheritance of contestant was his bitter feeling toward contestant, if Houghton secured the making of the will by undue influence so as to affect the interest of others of the Squier family, the whole will must fall.

If Houghton, by statements which were directed against the contestant only, caused Edwin M. Squier to make the will now offered and change the natural interest of contestant and other members of the family, this undue influence operating against the contestant vitiates the whole will, even if it should be thought that contestant's trouble with Edwin M. Squier was the cause of contestant's disinheritance without regard to the undue influence.

In *re Cooper's Will,* 75 N. J. Eq. 177-178, the question arose as to whether a will could be set

aside in part on account of fraud. It was held that it could not, the Court saying at page 188:

> "It would be impossible to determine to what extent the specific legacies, and in particular the devise to Henry H. Pruden had been tainted and improperly reduced. * * * If Mrs. Cooper's will had been tainted by fraud or undue influence, all of it would have to be set aside."

The language of V. C. VAN FLEET, in *Haydock* v. *Haydock*, 33 N. J. Eq. 494, should be repeated:

> "The extent or degree of the influence is quite immaterial for the test always is was the influence, whether slight or powerful, sufficient to destroy the free agency?"

There is no presumption of testamentary capacity upon which Houghton, situated as he was, could rest at the termination of the case. Presumptions are made to help reveal facts and to prevent concealment. The true nature of such a presumption was set forth in *Crowninshield* v. *Crowninshield*, 2 Gray 524, as follows:

> "When, therefore, a will is offered for probate, to establish it, to entitle it to such probate, it must be shown that the supposed testator had the requisite legal capacities to make the will, to wit, that he was of full age and of sound mind, and that in the making of it the requisite formalities have been observed. The heirs at law rest securely upon the statutes of descents and distribution, until some legal act has been done by which their rights under the statutes have been lost or impaired.
>
> "Upon whom, then, is the affirmative? The party offering the will for probate says, in effect, This instrument was executed with the requisite formalities by one of full age and of sound mind; and he must prove it; and this is to be done, not by showing merely that the instrument was in writing, that it

bears the signature of the deceased, and that it was attested in his presence by three witnesses, but also that it was signed by one capable of being a testator, one to whom the law had given the power of making disposition of his property by will.

"This is the doctrine of the earliest case upon the subject in our reports. *Phelps* v. *Hartwell,* 1 Mass. 71. It was there argued by the appellees that the burden of proof was with the appellants opposing the will; and that it was incumbent on them to show that the testator was not of sound mind at the time of the making of the will. 'But the whole court held that the rule was the same in this case as in all others. The burden of proof is always with those who take the affirmative in pleading. Here the appellees have the affirmative, and must therefore produce reasonable and satisfactory evidence to the jury that the testator was sane at the time of making the will.' In *Blaney* v. *Sargeant,* in the same volume, it was held that the party wishing to establish the will, having the affirmative, was entitled to the opening and close. 1 Mass. 335. And such has been the uniform practice of this court.

"These cases but recognize and confirm a familiar and well-settled rule of pleading, as of logic, that he who affirms the existence of a given state of facts must prove it. There may be different modes and instrumentalities of proof; but the burden is on him who affirms, and not on him who denies. * * *

"The issue throughout is but one: Was the testator of sound mind? And the affirmative of this was upon the party offering the will for probate. Again, that issue is an issue of fact, and is to the jury. And how is the court to determine when the will is 'proved,' or 'sufficiently proved,' by the subscribing witnesses, 'so that the burden of proof shifts from the executor to the heir'? It is a question of the effect of evidence, and could only be solved by probing the mind of each juror.

Suppose the attesting witnesses are divided in opinion; one for the sanity of the testator, one against, the other doubtful; or that two testify against the sanity of the testator, and the third that he was of sound mind, and the jury place greater confidence in the means of observation, intelligence, judgment, and integrity of the one than of the other two; or that all three testify (a case not without precedent), so far as it is matter of opinion, in favor of the sanity of the testator, yet, in view of all the facts and the circumstances detailed by the same witnesses, the jury reach a very different conclusion. If there could be a shifting of the burden upon a single issue, it would be impossible to tell when the burden is to be transferred from the one party to the other. * * *

"If the court were to instruct the jury in the first place to examine and weigh by itself the testimony of the subscribing witnesses, and that, if they should find it sufficient, the burden of proof would shift upon those opposing the will, but, if deficient, it would remain with the executor, it would be compelling them to try the case twice; first, to learn where the burden of proof was, and then where the truth was; and they might be wholly unable to agree as to the weight to be given to the testimony of the subscribing witnesses, though they concurred in the result of the testimony as a whole. It not infrequently occurs, in contested questions of sanity, that, when the evidence is all in, very little importance attaches to the testimony of the subscribing witnesses; because, from want of intelligence or opportunities of observation, they know very little of the matters in issue. * * *

"The ground taken by the counsel of the appellees is, that every man is presumed to be sane till the contrary is shown, and that the burden is cast upon those who impeach the sanity.

"If such presumption exists at all in respect to wills, it does not apply to the case of one

under guardianship, as an insane person. Such guardianship is *prima facie* evidence of insanity. *Stone* v. *Damon,* 12 Mass. 488; *Breed* v. *Pratt,* 18 Pick. 115.

"Nor does the existence of a general presumption that men are sane change the burden of proof. It may stand in the stead of proof; it may make a *prima facie* case; where the question of sanity is made, it may render necessary greater weight of evidence in him who seeks to impeach it; but it does not change the burden of proof. But when the evidence is in, on the one side and the other, the issue still continues as before; and he to whose case the proof of such sanity is necessary has the burden. To use the language of the court in *Powers* v. *Russell*: 'Where the proof on both sides applies to one and the same proposition of fact, the party whose case requires the proof of that fact has all along the burden of proof; though the weight in either scale may at times preponderate.' 13 Pick 76. * * *"

Respondents' counsel contend, in effect, that the burden of proof has always remained with the contestant and that it has never shifted. It is obvious that under the cases the duty is upon Houghton to explain because of his confidential relationship which his own testimony discloses and to explain everything going to the *res gestae,* which includes his dealings with the estates of William C. Squier and Catherine C. Squier and to explain Edwin M. Squier's dealings therewith so far as doubt has been placed upon his capacity by contestant's proof relating thereto. But if, on the other hand, the burden has always been upon the contestant, he has carried that burden.

The language of the Ordinary in *Moore's Executors* v. *Blauvelt,* 15 N. J. Eq. 367, which applies to this purported will foisted by Houghton, as he says, and attempted by him to be foisted upon the Courts, is as follows:

> "It behooves a tribunal of Justice, while maintaining upon the one hand, the right of the testator to that unlimited dominion which the law gives him over his property, to resist, upon the other, ***with watchful jealousy all attempts to interfere with the free and untrammelled exercise of that dominion and to see that, in the testator's hour of weakness and infirmity, the will of another is not substituted for his own.***"

The cases go also on a principle expressed in a citation which for the moment escapes that where the estate is large the charge of undue influence will be more carefully examined and the burden more readily shifted. A common source of the estate in an ancestor or ancestors is another principle which asserts itself. Frederick C. Squier testified also that the appellant's father had the most considerable part in the merger by which the common fortune of the family was consolidated and established and Edwin M. Squier, in the very 1913 letter, said that the contestant's father had helped to make the fortune which was the source not only of what Edwin M. Squier got from William C. Squier under a will designed, as he said and it expressed clearly, to vest all the fortune in the issue of deceased sons, but also of what the contestant's father helped Edwin M. Squier to make in the joint family enterprise outside of that held by William C. Squier.

The case of *Haydock* v. *Haydock,* 34 N. J. Eq. 570, which sets forth the principle that the rule as to gifts *inter vivos* applies to such gifts even when they are contemplated as serving as a testamentary disposition, is authority for the principle so important in the case of Edwin M. Squier that where the testator's capacity is open to some doubt or he has some lapses, the burden of proving undue influence will be more readily shifted. It may be

added that no opportunity to disclose the mental condition of Edwin M. Squier should be barred to the contestant and that a disposition shown by the proponents to do so should be considered in weighing the probability of undue influence and the burden of proving it.

The case of *Brick* v. *Brick*, 44 N. J. Eq. 282, at page 290, emphasizes the importance of evidence of the testator having possession of the will for several days before the execution as tending to show knowledge of the contents. What was shown in the case of Edwin M. Squier was the drafting of two drafts in a very short time, not exceeding the period from nine-thirty to twelve of the same morning, for the entire consideration of a purported will disposing of an estate of six million dollars, and the absence of evidence that he read or understood either or which was which.

It is not true that the persons who exercised undue influence were not beneficiaries, since they got practically the whole estate. They were Houghton's wife and Houghton's clients and Houghton himself. In the *Ulrich* case, a son-in-law, not a lawyer, was supposed to be working for his wife against her brother. The wife discovered her confidence was misplaced. The plea that since Houghton, draftsman and chief executor, gave himself nothing by name, neither he nor his clients exercised undue influence is characteristic of a mental and moral confusion which the Courts of New Jersey neither share nor indulge.

The burden of evidence shifted to Houghton as soon as he offered the purported will through the testimony of his partner witnesses, his name appeared as executor and his relationship to his wife and the other executors and respondents. With each element of fact showing his relations and conduct toward Edwin M. Squier, the

contestant, and the other members of the family, the burden became so heavy that it required more than the say-so of Houghton to lift it. The evidence of suppression and obstruction made the burden heavier until the final load was put on by Houghton himself by showing that he had determined to give himself as executor not only his fees but exemption from a debt to the estate, a direct benefit to himself by him personally suppressed and concealed, and that it was with the idea that Edwin M. Squier was estranged from the contestant, Houghton's declared victim, that Houghton urged the making of a will by Edwin M. Squier.

POINT II.

The testimony discloses fatal defects in proof of due execution which also bear on the proof of lack of testamentary capacity and undue influence.

It is not intended now to argue at length any other question except that of undue influence and the shifting of the burden as to proof thereof. But it would be unfair to the Court not to call attention to the vital importance of the argument on the facts as to the manner of execution. Woolsey A. Shepard testified that he could not remember the sequence of events. George A. Ferris established, however, that at least some of the witnesses signed as such an undated instrument. Without the date, the attestation clause and all words with respect to the publication were ineffective. There can be no doubt that under the statute and the authorities of this State the execution was defective and that probate must be refused. All things required to be done by the testator must precede in point of time the subcription of the witness.

Lacey v. *Dobbs*, 63 N. J. Eq. 325;
Bioren v. *Nesler*, 77 N. J. Eq. 560.

See Opinion of Vice-Ordinary WALKER, 76 N. J. Eq. 573.

This latter case affirmed the denial of probate on the ground that nods and smiles of assent could not take the place of unequivocal words indicating acknowledgment and ratification by the testator of what had been done. If Edwin M. Squier used any words, the Court remains in doubt as to what they were.

No less an authority than the Court of Errors and Appeals, in the case of *In re Sutterlin*, 99 N. J. Eq. 363, at pages 366-367, dignifies the points made with respect precisely to the signature before the entrance of a witness and the attempt to connect the act by the dating of the instrument by denying probate to a paper in the attempt to probate which these points were considered.

POINT III.

The will setting forth a material mistake of fact upon which the entire will was expressly based is a will drawn by mistake and as a result of undue influence and probate must be denied.

It is not intended to argue at length the point that Edwin M. Squier apparently did not understand and appears from the instrument itself to have misunderstood the effect and meaning of the provision introduced by Houghton. In the case of *In re Glucksman's Will*, 87 N. J. Eq. 280, LEWIS, Vice-Ordinary, says that a will drawn by mistake is not a will at all. In the case of *In re Allen's Will*, 88 N. J. Eq. 291, 294, LEAMING, Vice-Ordinary, refers to the case as one considering the effect of misunderstanding of the intestacy laws. As to the point being made, LEWIS, Vice-Ordinary, said, 87

N. J. Eq. 285, in that case of illiteracy, but here of affirmative error as to facts and the application of the laws as a matter of fact, that the proponent must prove to the satisfaction of the Court that the testator fully understood the contents of the will and approved them.

POINT IV.

The conspiracy to obtain a paper purporting to divide the expectancy of the applicant among some of the conspirators is fully established by the evidence.

It is not necessary, nor is it intended, at this time, to argue at length the proof of conspiracy. Certain general principles apply to the established facts. Houghton and Frederick C. Squier committed many overt acts to affect the disposition of Edwin M. Squier's property. They were contemplated beneficiaries of the acts and other beneficiaries joined in the acts. Houghton represented and was joined in interest and in conduct with other conspirators. The law partners also joined in overt acts. The best proof of a scheme is activity in effectuation. The well-known illustration of Abraham Lincoln of the parts of a house brought from different places that joined perfectly to make a house is quite in point. The use of lawyer and law partners and trustee and beneficiary in person and by representation stands condemned as a conspiracy by the *Cooper* case without the activity of these persons with a common purpose, for common employers to sustain the purported will AND TO DEFEAT THE EFFORTS OF THE CONTESTANT TO OBTAIN INFORMATION AND OTHER MEANS TO ASSERT HIS RIGHT TO SHARE IN THE BOUNTY OF HIS

UNCLE. To fight in Court with the witnesses to a will as protagonists is unthinkable. The part of each conspirator appears in the evidence to have been designed to a nicety as to time, place and nature and quality of activity to aid in effectuation of the purpose conceived in the beginning by a master mind. Combination of acts otherwise innocent to take away the right or expectancy of the contestant, even though undue influence is not employed, is a conspiracy.

POINT V.

The learned Vice-Ordinary having decided that there was not a scintilla of evidence and that the letter of 1913 sustained the burden of the respondents the decision against the respondents here of the Special Term of the Supreme Court of New York upon the documents the Vice-Ordinary admitted as material, only to disregard them, may be cited on the issues of fraud and conspiracy, since it was not appealed from and is *res adjudicata* between the parties, to show that these documents were really part of the *res gestae* and that the respondents having attempted to present their full defense on the law and the facts did not present the 1913 letter and knew, when they objected to the admission and consideration of the documents admitted, that they were material evidence of great weight as to *the meaning of which they had assumed a contrary attitude elsewhere.*

In *Squier* v. *Houghton, and others,* a suit in equity brought by the contestant in the Supreme Court of New York County, the respondents here

made a motion to dismiss the complaint on facts adduced by them as their complete defense and on the law. The Special Term decided that the contestant had a good cause of action and that the respondents had no defense. The respondents did not appeal from the decision. It will aid to the understanding of the evidence here which is substantially the same as there presented to have before this Court the considered analysis of the situation by the New York Court accepted by the respondents as final. The decision, as it appears in New York Law Journal, December 30, 1927, and in 226 N. Y. S. 162, is as follows:

> "Squier *v.* Houghton, &c.—Motions have been made by several of the defendants under Rules 106 and 107 to dismiss the complaint. The pleading is anything but 'a plain and concise statement of the material facts, without unnecessary repetition, on which the party pleading relies' (Civil Practice Act, sec. 241). It covers some seventy-eight typewritten pages, abounding in unnecessary repetitions, and includes many matters that on no conceivable theory could be of assistance in stating a cause of action. It is the duty of the court nevertheless to struggle with this unique document and determine its adequacy, indulging in all reasonable intendments in its support. The complaint alleges in substance that the plaintiff became the owner of a large number of remainders under the will of his grandfather, one William C. Squier, who died a resident of New Jersey in 1906, some of such remainders being his by virtue of the will itself and others by virtue of the failure of his grandmother, one Catherine C. Squier, who died in 1913, to exercise a power of testamentary disposition bestowed upon her by the will of her husband; that as the life estates precedent to such remainders expired from time to time, in 1913, 1915 and 1926, the executors and testamentary trustees failed to turn over to him

certain of such remainders, wrongfully transferring them to themselves in their own right or to some of the individual defendants who now withhold the same from the plaintiff; that a portion of the property thus wrongfully withheld consists of a bank account with the defendant Farmers' Loan & Trust Company, which was formerly in the name of Edwin M. Squier, a life tenant who died in 1926; and that other portions of the property comprised in such remainders consisted of shares of stock of four additional corporate defendants, which the latter have permitted to be transferred to the individual defendants although they had actual knowledge of the plaintiff's ownership thereof. Interwoven into the complaint are charges concerning certain probate proceedings instituted in New Jersey in regard to an alleged will of Edwin M. Squier, and the plaintiff's consent thereof in the courts of that state on the grounds of lack of testamentary capacity and undue influence. This court is obviously not the proper forum for a hearing of the plaintiff's grievances as to whether Edwin M. Squier died testate or intestate, and this part of the complaint does not state or assist in stating a cause of action. The relief demanded on the basis of the other allegations of the complaint includes a prayer for an accounting and a delivery to the plaintiff of all property withheld from him, together with an injunction against all parties pending the outcome of the action. In substance, then, the plaintiff alleges a devastavit by the executors and trustees of the William C. Squier estate and of the Catherine C. Squier estate. He seeks an accounting and also seeks to follow the trust property into the hands of the persons who received it from the trustees. He apparently also desires to hold liable the various corporations which he alleges knowingly permitted or assisted in the wrongful disposition of the property. The motion to dismiss the complaint under Rule 106 is made upon four grounds. The first is that the court

has no jurisdiction over the defendants Augustus S. Houghton, Frederick C. Squier, Jr., William C. Squier, 3d, and Harold M. Searles as executors and trustees of the estate of Edwin M. Squier; over the defendants Augustus S. Houghton as substituted trustee and Frederick C. Squier as surviving executor and trustee of the estate of William C. Squier, or over the defendant Frederick C. Squier as surviving executor and trustee of the estate of Catherine C. Squier. As to the defendants sued as executors and trustees of the Edwin M. Squier estate, the complaint itself alleges that they have been ousted from office by the appeal taken by the plaintiff in the Orphans' Court of Union County, New Jersey. It follows that this court has no jurisdiction over them in their defunct representative capacities, and the motion to dismiss the complaint as to these defendants will be granted. The question as to the jurisdiction over the defendants who are sued as executors or trustees of the William C. Squier estate and of the Catherine C. Squier estate raises a more serious problem. Certainly the plaintiff cannot compel the *executors* of foreign estates to account to this court for all of their proceedings, as such an action would be one *in personam*, and no facts are alleged to show that a failure of justice would result if this court should decline to exercise jurisdiction (Helme *v.* Buckelew, 229 N. Y. 363, 368). However, it is a breach of trust which is charged against the executors and the plaintiff seeks to follow the funds into the hands of transferees, who are also made parties defendant. Some of the funds are in this jurisdiction. As to foreign *testamentary trustees* the courts entertain actions more readily than in the case of foreign executors. A testamentary trustee is regarded more as an individual than as an officer of a foreign court, and courts of equity in this state have exercised jurisdiction in suits by and against foreign testamentary trustees, where, in the absence of statute, similar suits

involving foreign executors would have been declined (Toronto General Trust Co. *v.* Chicago, &c., R. Co., 123 N. Y. 37; Putnam *v.* Lincoln Safe Deposit Co., 191 N. Y. 166; Matter of Webb, 11 Hun 124; Everhart *v.* Provident Life & Trust Co., 118 Misc. 852). In the present case plaintiff charges a breach of trust by the trustees, as well as the executors. Moreover, he asserts that he is a resident of this state. I am of the opinion that in an action of this character the court has jurisdiction over the defendants who are sued as trustees, and that it has jurisdiction also over the defendants who are sued as executors, at least to the extent of any assets whose situs is in this state (Holmes *v.* Camp, 219 N. Y. 359, 372; Helme *v.* Buckelew, *supra,* 368). The motion to dismiss as to the defendants sued as executors or trustees of the William C. Squier estate and of the Catherine C. Squier estate is therefore denied. The second objection to the complaint is that the court has no jurisdiction of the subject matter. The motion on this ground must also be denied. The fact that the genesis of the plaintiff's right is the will of a decedent who died a resident of New Jersey does not deprive the court of its ordinary jurisdiction to enforce a trust in personal property. In Matter of Webb (*supra,* at p. 125), the court said: 'If the action had been to enforce, maintain or vindicate a trust, the foreign domicil or appointment of the trustee would have formed no objection to its prosecution against him in the courts of this state.' It is, of course, true that the laws of New Jersey will be resorted to as the measure of the plaintiff's substantive rights, but it would be going too far to hold that the plaintiff must also go to the courts of that state for his remedy (Cross *v.* United States Trust Co., 131 N. Y. 330). The cause of action against the corporate defendants is either on implied contract or on the theory that they have knowingly assisted in a breach of trust, and the court has jurisdiction of such an ac-

tion, not only against domestic, but also against foreign corporations doing business here (Travis *v.* Knox Terpezone Co., 215 N. Y. 259). The third ground of the motion is that there is another action pending between the parties. The reference is apparently to the contested probate proceedings, in which the issue is whether Edwin M. Squier died testate or intestate. As to this point it suffices to say that the objection of the pendency of another action does not properly relate to actions pending in the courts of other states (Barnes *v.* Andrews, 208 A. D. 856; General Investment Co. *v.* Interborough Rapid Transit Co., 200 App. Div. 794, aff'd in 235 N. Y. 133). The fourth ground is that the complaint does not state facts sufficient to constitute a cause of action. The motion on this ground must also be denied. An indicated above, the action is founded upon a breach of trust. The plaintiff is endeavoring to follow trust funds and to hold the present owners liable as constructive trustees; and also to fasten liability on certain corporations alleged to have assisted in the perpetration of the wrong. Such an action is a familiar one in a court of equity. The plaintiff may have a remedy at law, but it is not as adequate as the remedy afforded in equity (Falk *v.* Hoffman, 233 N. Y. 199). A motion to dismiss the complaint is also made under Rule 107. The first three grounds of this motion are the same as the first three under Rule 106. The additional grounds are *res adjudicata,* releases, and the Statute of Limitations. In support of this motion the defendants have presented affidavits, which are replied to by the plaintiff. Annexed to the defendants' affidavits are copies of the wills of William C. Squier and Catherine C. Squier. While the terms of the former's will may not seem to support the construction thereof pleaded in the complaint, the true effect of the will cannot be passed upon by the court on a motion under Rule 107, which does not permit the use of affidavits for the purpose

of establishing the *insufficiency* of part or all of the complaint. For present purposes, therefore, the court must assume that the construction of these wills pleaded by the plaintiff is their proper one, and that under them he became entitled to the remainders claimed in the complaint. The defendants' affidavits, however, set forth additional facts, the significance of which must now be determined. The executors of the William C. Squier estate in 1907 rendered a final account to the appropriate court in New Jersey, the plaintiff being a party to the proceeding. The plaintiff's general guardian filed a release in favor of the executors and a decree was entered passing the account. In 1913, after the widow's death, the executors and trustees of her estate and the trustees of the William C. Squier estate, being the same persons, adopted the view that by her will she had exercised the power of testamentary disposition given to her as to a portion of the William C. Squier estate and they distributed such portion according to the provisions of her will. The plaintiff made no objection until the commencement of the present action. He received a relatively small legacy under this will and gave the executors a general release. In 1915, upon the death of William C. Squier, Jr., who was one of the sons and a life tenant under the will of William C. Squier, the trustees made a distribution of the trust fund held for his life. A large sum of money was paid to the plaintiff as one of the remaindermen of this trust and the plaintiff gave a general release to the trustees. Finally, in 1926, Edwin M. Squier, another son and the life tenant of another trust, died. The trustees thereupon rendered a final account covering that trust in the Surrogate's Court of Union County, New Jersey. The plaintiff was a party to the proceeding. The account was approved and a distribution ordered. Pursuant thereto a large sum was paid to the plaintiff as one of the remaindermen and the plaintiff once more gave a gen-

eral release in favor of the trustees. One of plaintiff's contentions as alleged in the complaint is, however, that at each of these times, 1913, 1915 and 1926, the trustees failed to pay over to the plaintiff certain *other* remainders to which he was entitled under the proper construction of the two wills. The motion to dismiss under Rule 107, upon the grounds of lack of jurisdiction over the defendants sued in their representative capacities (except as to the defendants brought in as executors and trustees of the Edwin M. Squier estate), lack of jurisdiction of the subject-matter and the pendency of another action between the parties, must be denied for the reasons outlined above in connection with the motion under Rule 106. The additional facts revealed by the defendants' affidavits furnish no reason for a different conclusion as to this motion. The matter of *res adjudicata,* although perhaps a good defense by way of answer, is not an adequate ground for dismissing the complaint at the present time. The prior decree relied upon is that of a Surrogate's Court in New Jersey. The jurisdiction of that court and the effect of its decrees under the New Jersey law are matters not judicially known to this court. Whether such decrees are conclusive or merely presumptive this court cannot say on the record before it. The decrees of our Surrogates' Courts are conclusive, but this has been brought about by statute (Surrogates' Court Act, section 274). Moreover, the objection of *res adjudicata* goes only to a part of the cause of action. It applies solely to the funds alleged to have been converted by the trustees of William C. Squier on the death of Edwin M. Squier. Next, as to the ground that the cause of action has been released: The releases given by the plaintiff are phrased as general releases, but it is not clear that they were regarded as such by the parties. For example, upon the death of William C. Squier, Jr., in 1915, the plaintiff gave a general release in favor of the trustees; yet it seems to have

been recognized that he was or might be entitled to further remainders in the estate, one of which was actually paid over to him on the later death of another life tenant. Under the circumstances the releases appear to have the effect of receipts. Moreover, they do not expressly cover all, if any, of the claims now made by the plaintiff, and it is conceivable that he can avoid their effect by showing that he signed them under a misapprehension of the facts and of his rights (Haviland *v.* Willetts, 141 N. Y. 36). The motion on this ground is accordingly denied. The remaining ground is the Statute of Limitations. According to the complaint the various conversions occurred in 1913, 1915 and 1926. The defendants claim that the conversions allleged to have taken place in 1915 and 1926 were mere reconversions of the same funds converted in 1913. This is only partially true, however. It is clearly not true as to those remainders which were never subject to the power of testamentary disposition but which the plaintiff claims directly and solely under his grandfather's will. He alleges, for instance, that as to certain funds Edwin M. Squier was a legal life tenant, and that as to other funds he was the second life tenant, with remainders to the plaintiff and others, and that these funds were converted for the first time in 1926. If the New York law as to limitations of actions were applicable I would be inclined to hold that the plaintiff's right of recovery as to those funds which he alleges should have been paid over to him immediately upon the death of Catherine C. Squier in 1913, and also as to those funds which he alleges should have been paid over to him on the death of William C. Squier, Jr., in 1915, was barred by limitation, but that his right to obtain what he claims should have been paid over to him on the death of Edwin M. Squier in 1926 was not so barred. Ordinarily the Statute of Limitations begins to run against a remainderman when the life tenant dies (Putnam *v.* Lincoln Safe

Deposit Co., *supra*). But as the cause or causes of action apparently arose in New Jersey and as the plaintiff's residence in 1913 and 1915 is not shown it would seem that the New Jersey law of limitations is controlling (Civil Practice Act, sec. 13); and the court has no information upon the record before it as to the statutory period for actions of this character in New Jersey. Consequently the motion to dismiss on this ground must also be denied. Both motions will be denied, except that the motion to dismiss as to the defendants who are sued as executors and trustees of the estate of Edwin M. Squier will be granted."

POINT VI.

The purported will should be denied probate.

Respectfully submitted,

~~Edward Mayer~~,
~~Proctor for Appellant~~.

FRANK HENDRICK,
Of the New York Bar,
~~Of Counsel~~.

Proctor for Appellant,
Pro hac vice.

New Jersey Court of Errors and Appeals

In the Matter of the Estate *of* Edwin M. Squier, Deceased, Charles Burnham Squier, Contestant-Appellant, *against* Frederick C. Squier, as Executor, *et al.*, Proponents-Respondents.	On Appeal from Prerogative Court.

BRIEF ON BEHALF OF PROPONENTS-RESPONDENTS.

This is an appeal on behalf of the contestant, Charles Burnham Squier, Jr. from a decree of the Prerogative Court which sustained a decree of the Orphans' Court of Union County admitting to probate the Will of Edwin M. Squier, deceased.

Counsel hesitates to comment adversely upon the brief prepared and submitted by a fellow attorney but in an experience of twenty-six years as a member of the Bar of the State of New York and some experience in appearing before the Courts of the State of New Jersey, counsel has never seen a brief which is so scurrilous and outrageous as the one submitted on behalf of this contestant. Not only are practically all of the witnesses who testified referred to in so many words as "liars", and not only are reputable members of the Bar and citizens of standing in the community accused of conspiracy and of acts which would subject them to criminal prosecution, if true, but the Court of Equity in this state as rep-

resented by the Learned Vice Ordinary is made the subject of vicious and scandalous attack. On page 2 of his brief the following statement is made:

> "It may be premised that the vigorous opinion of the learned Vice-Ordinary is made up, on the authority, of course, of representations in respondent's brief, entirely of misstatements of the evidence and invention of facts not found in the evidence, such as it was necessary, and would be necessary, for any one, to make, in order to arrive at a conclusion adverse to the contestant."

The brief then proceeds to set forth a quotation from the opinion of the Vice-Ordinary in which he states that he had read the testimony of the Orphans' Court and listened carefully to the testimony given before him, and the brief then goes on to say at page 3:

> "This portion (really a summary of the whole) of the Court's opinion (in which the learned Vice-Ordinary omits to say that he read and considered the exhibits, which he declared material, although excluded by the Orphans' Court, and his opinion, in the part just quoted shows he didn't read or consider them) is shown to be absolutely a misstatement of fact by the circumstance that the Court's entire opinion is based upon a document which was not in evidence before or considered in the Orphans' Court and by the other circumstances that the Court absolutely misconceived the import of this document and absolutely disregarded, although admitted as material, as indeed they were."

Again on page 6, referring to the opinion of the Learned Vice-Ordinary, the brief says:

> "This general misstatement of fact in the opinion is supplemented, as to every part of the case and of the opinion, by broad special

misstatements, all of which misstatements, covering the entire case, will be severally demonstrated upon the evidence to be absolutely false. The principal misstatement of fact, namely, that Edwin M. Squier was estranged from the contestant, obviously a mere afterthought of the respondents, hazarded when they thought the danger of the refutation of what they dared not assert was past, namely, when, free from the peril of oral argument, which was not permitted on exchanged briefs, they came to impose upon the Court the fictions of their briefs, is made the basis of the Court's opinion."

Counsel does not intend to burden this Court further with quotations from the brief showing the virulence of the attack made upon the character of the Learned Vice-Ordinary, but if the Court cares to examine into this phase of the brief any farther further statements of the same general character will be found at pages 8, 38, 39, 89, 92, 93, 94, 95, 96, 99, 100 and 101.

Throughout the brief not only is the Learned Vice-Ordinary accused of deliberate misstatements of fact and of failure to examine the evidence, both verbal and documentary, but also of being wholly prejudiced in favor of the respondents and even by implication of being subject to political influence. Counsel believes that he has done his duty in calling these matters to the attention of this Court at the very outset and that it is unnecessary to dwell upon them further. The course of action to be taken is for this Court to determine and this Court has already indicated in previous decisions that briefs of this character will not be countenanced or even regarded.

Makray v. *McCullen,* 103 N. J. Law Rep. 346;

3 Corpus Juris, pages 1432, 1433 and cases there cited.

Counsel will now endeavor to present to this Court the facts involved in this appeal. They are set forth in the first instance with great clearness in the opinion of the Learned Vice-Ordinary which will be found at pages 989 to 998 of the Printed Record on Appeal. Edwin M. Squier, the testator, died on the 9th day of November, 1926, at the City of Rahway in this state of which city he had been a resident throughout his entire life and where he had also throughout his entire life resided in the house built by and occupied by his ancestors since Colonial times. His death occurred after a short illness of three days as a result of penumonia (page 560, fol. 20, and pages 582-584). Throughout his entire life Mr. Squier had been an active man of affairs having been a Director of the New Jersey Zinc Company, a Vice-President and Director of the Port Morris Land & Improvement Company in New York City and a Director of and actively interested in a corporation known as Shur-Loc Safety Elevator Company. He had continued these activities practically up to the day of his last illness (pages 308-9). For over twenty-six years prior to his death he had maintained an office in the City of New York adjoining the law offices of the firm of Ferris, Shepard, Joyce & McCoy, and the several predecessors of that firm, at No. 111 Broadway, New York City. This office had been occupied by Mr. Squier under a sublease from that firm, and its predecessors (pages 203 and 465). While there had always been a connecting door between his office and that of the law firm there was no business connection in any way between Mr. Squier and the firm. That firm and its predecessors had represented Mr. Squier from time to time in his representative capacity as a Trustee and Executor under the Will of his father and of his mother, but neither the firm nor its predecessors had represented him personally ex-

cept in one instance until Mr. Houghton, a member of the firm, drew the Will which is the subject matter of this litigation (page 434). Mr. Houghton had married a niece of the decedent, the daughter of Stuart C. Squier, one of the decedent's brothers. That a close friendship existed between the decedent and Mr. Houghton is undisputed and the decedent was also on friendly terms with Mr. Shepard and the other members of the firm. Following Mr. Squier's death his Will was first probated in the Surrogate's Court in the County of Union. Shortly before his time to do so had expired this contestant filed an appeal from such probate to the Orphans' Court in the County of Union. After an extended hearing the probate was upheld and the contestant again appealed to the Prerogative Court. On that appeal the Vice-Ordinary heard voluminous testimony. Again, as is indicated by his opinion the decree of probate was upheld. An examination of the record will disclose that both in the Orphans' Court and in the Prerogative Court the contestant was allowed the widest latitude and permitted to present every bit of evidence of which he was able to avail himself. The comments both of the Orphans' Court Judge and of the Vice-Ordinary indicate clearly that they rightly adopted the principle of permitting the contestant to present his evidence without being bound by the strict rules of evidence and without limiting his questions in form to such as are generally permitted in courts of law and equity. He was permitted to introduce evidence which was admittedly pure hearsay and to examine witnesses not only as to their knowledge of facts, but as to their state of mind. Both the Orphans' Court Judge and the Vice-Ordinary at times could not restrain their impatience at the character of much of the testimony that was

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offered by the contestant, yet it is perfectly evident that they intended to and did give the contestant every opportunity to present to each of these courts every possible bit of evidence which could tend in any way to bear out the allegations set forth in his petition. In a case of this character, as has been indicated in various opinions of the courts of this state, it is proper that a contestant should have the widest latitude and it is also proper that the Court should be fully informed of every slight circumstance which may have any bearing upon the issues before the Court and both the Orphans' Court Judge and the Vice-Ordinary rightly and carefully followed this rule. In fact there is no claim made in the contestant's brief that any testimony was excluded in either court which could have the slightest bearing upon the issues involved.

It is significant, however, that the contestant did not take the stand himself although present throughout in the Orphans' Court (page 835). After listening to all of the testimony addressed by the contestant both the Judge of the Orphans' Court and the Vice-Ordinary decided most emphatically that there was not the slightest evidence to sustain any of the allegations of the contestant's petition.

The Will itself was executed on the 6th day of July, 1926, in the office of the testator and was witnessed by Woolsey A. Shepard, George A. Ferris and Peter J. McCoy, all members of the law firm above referred to. The Will will be found in the Printed Papers on Appeal at pages 2 to 7 inclusive. It is not necessary in this brief to do more than give a brief summary of the terms of this Will, for it is comparatively short and will undoubtedly be read by the members of this Court. Various bequests of a public and char-

itable nature are made and various specific bequests to servants who had been in the employ of the testator and his family for a number of years. In the Fifth paragraph of the Will the sum of Five thousand ($5,000) Dollars is bequeathed to each of his nieces and nephews, including the contestant. Certain specific bequests were also made to his brothers who were surviving at the time the Will was made. The residue of his property is bequeathed by the Testator to his two brothers then surviving, namely, Stuart C. and Frederick C. Squier, share and share alike, the issue of either brother who should predecease the decedent to take the share that his parent would have taken if living. The Testator was never married and his only heirs-at-law at the time of making his Will were the two brothers mentioned therein and this contestant who is the son and only child of a deceased brother, Charles Burnham Squier. The basis for this contest is that had the decedent died intestate this contestant, the only son of a deceased brother, would have received one-third of the testator's entire estate, whereas under the terms of the Will he was limited to a specific bequest of Five thousand ($5,000) Dollars.

The petition of appeal to the Orphans' Court by this contestant is dated the 18th day of May, 1927, and the petition of appeal to the Prerogative Court is dated the 19th day of July, 1928, and will be found in the Printed Papers on Appeal, pages 18 to 24 inclusive. This latter petition sets forth first the grounds of the appeal to the Orphans' Court (pages 19 to 21). They are briefly as follows:

> (a) That at the time of the making of the Will and for a long time prior thereto Edwin M. Squier was of unsound mind.

(b) That certain persons named in the petition "unduly, illegally and fraudulently influenced said Edwin M. Squier in respect to the making and supposed execution of the said paper writing".

(c) That the execution of the alleged Will was illegal and insufficient in that the necessary formalities prescribed by statute were not complied with.

(d) That the alleged Will was not voluntarily made by the testator but was procured as the result of a conspiracy on the part of certain persons named in the petition which included all of the next-of-kin, Augustus S. Houghton and the three other members of the law firm who acted as witnesses to the Will. The members of this alleged conspiracy are set forth in the petition at some length.

(e) That the alleged Will was not made or executed by the testator freely or voluntarily but was obtained and procured by fraud practiced upon the testator by persons named in the petition and who are the same ones named in the previous paragraphs of the petition.

(f) That the alleged Will was signed and executed, if at all, under a mistake of fact by the testator.

It will be noted that the charges made in the petition are precise and definite and made in considerable detail. They may be said to constitute the grounds of this contest. They are the allegations upon which the contestant must stand or fall and which must be proved by him by evidence in order that he should succeed.

As has already been said in both the Prerogative Court and the Orphans' Court, this contestant was permitted to and did offer a mass of testimony which is set forth in the Printed Record and

which occupies over seven hundred pages of closely printed matter. He has also presented to this Court a brief which exceeds two hundred and fifty printed pages. Fortunately, neither weight of evidence nor weight of argument is measured by avoirdupois.

It is somewhat difficult for counsel to determine exactly what questions of law the contestant claims are presented for the consideration of this Court. The greater part of the appellant's brief is taken up with what presumably are intended as statements of fact interspersed profusely with attacks of the most virulent nature upon the various witnesses who were heard in the two Courts in which this case has already been presented. As near as counsel can determine, the sole question which this appellant is attempting to present to this Court is as to whether or not the decree in the Prerogative Court is contrary to the evidence and contrary to the weight of evidence. It is practically admitted in the brief of the appellant that if the opinion of the Learned Vice-Ordinary and the decree rendered as a result of the determination set forth in that opinion is supported by the evidence there are no grounds for the appeal to this Court. Counsel believes that the best way to present this case on behalf of the respondents is to take up each of the allegations in the petition in a separate point and discuss both the evidence and such law as may be applicable under the several points.

POINT I.

At the time of the making and execution of his will Edwin M. Squier was of sound and disposing mind and not only does the evidence establish this fact but there is no evidence to the contrary.

As has already been said, the testator was a man actively engaged in affairs of business up to the date of his last illness. He maintained an office in the City of New York and came to that office regularly three times a week (pages 342, 343, 380 and 388).

Not only is there present in this case the presumption which always exists that a person is sane, but all of the evidence shows clearly that in his daily life he was considered by his associates as sane and normal, and his acts are clearly those of a sane man. The conversations testified to by the witnesses to the Will were such as a man in full possession of his faculties would carry on. In order to attack the sanity of the testator the contestant produced certain witnesses. Those witnesses were not Mr. Squier's equals or associates, such as his fellow members on the several Boards of Directors, or his daily business associates, but consisted of waiters in restaurants, a tobacconist and the nurse who attended him in his last illness. He also called various servants who had been in the employ of Mr. Squier and his family and by a process of cross-examination endeavored to elicit from them matters tending to raise doubt as to the sanity of the testator. In that he was wholly unsuccessful, as will be presently shown. On this appeal he presents an elaborate argument claimed to be based on the testimony elicited from the witnesses above referred to, but which it will be

shown has no basis whatsoever in the testimony. His argument is based upon the claim that the decedent was an excessive smoker of cigarettes and an inveterate drinker of liquor and that the combination of these habits had so affected his mind as to make him practically insane and finally cause his death. Counsel for the appellant with a great show of learning and by the use of technical medical terms attempts to show that the symptoms present in the last illness of the decedent must necessarily have been caused by his over-indulgence in cigarettes and liquor and that such alleged over-indulgence must have affected his brain for some years previous to his death. No medical testimony whatsoever was introduced which would bear out in the slightest degree these theories advanced in the argument of appellant's counsel. The testimony of the physician who attended him at his last illness is barren of the slightest suggestion that such illness was caused by indulgence in cigarette smoking or in liquor. Counsel states in his brief that one of the symptoms which would necessarily be induced by an excessive indulgence in cigarettes and liquor was the failure to react to a substantial dose of morphine. In the first place, there is no testimony by the physician that the testator did fail to react to a substantial dose of morphine. His testimony in this respect will be found on pages 546 to 549 of the Printed Record. He testified that the doses which he gave to the patient in an attempt to relieve him from excessive pain were not unusual doses and that when he visited him after administering the morphine for the last time he was feeling easier and was not suffering as much as he had previously. There is no testimony whatsoever given by the physician which would even hint that Mr. Squier's last illness or the

symptoms present were caused by over-indulgence in cigarettes or liquor. Counsel for the appellant argues that the last illness of the decedent was unusual, and that pneumonia does not ordinarily manifest itself in the form in which it did in this instance. The physician testified that the pain which the testator suffered at the beginning of his illness was "a type of onset of pneumonia". He stated that he had never seen that type before, but did not state that the type was unusual or that it was caused in any way by any of the means suggested in the argument of appellant's counsel. So far as his active attempts to prove lack of sanity on the part of the testator are concerned, they were utterly without result in spite of the elaborate statements contained in the brief of the appellant's counsel.

He dwells at length in his brief on the incident when two ladies spoke to Mr. Squier some little time before his death and when, according to the argument of appellant's counsel, he failed to recognize them. This incident will be found in the testimony of Mrs. J. Martin Ayers and of Miss Emma L. Martin. Mrs. Ayers testified that in July, 1926, she and her sister were driving past Mr. Squier's house in her car when they saw him in the garden. They got out of the car and went into the garden to speak to him (page 68, Printed Record on Appeal). According to her testimony she addressed him as follows (page 69):

> "How do you do, Mr. Squier, I don't think you know me."

She then said that he answered no to that question and she then said that she was Jennie Ayers. He did not recognize her then but when she said that she was Jennie Martin (her maiden name) he did know her. On cross-examination she tes-

tified that she had not lived in Rahway since 1904 and that during that period of time the only incident that she could recall when she had seen or spoken to Mr. Squier was on one occasion when she saw him getting off the train when she merely passed the time of day with him and did not mention her name on that occasion (page 71). As far as her sister, Miss Martin, is concerned she testified that he carried on a conversation with them although he did not say very much. She also had not lived in Rahway for some time and while she felt that she had seen Mr. Squier on the train between the time that she had left Rahway and the date when she met him in his garden she was unable to give any specific instance. Neither of the witnesses testified in any way which would seem to indicate that Mr. Squier was lacking in sanity and in fact Miss Martin testified that he talked to them about a sprinkler which he was examining when they came up to him and that when she asked him about his collection of rugs he said that he would like to show them to them some time (page 83). Miss Martin also testified that she had told Mrs. Charles B. Squier about this conversation (page 84). Certainly the fact that two ladies drove up to Mr. Squier's house and went into his garden without warning and while he was busily engaged in connection with the purchase of a sprinkler for his garden and interrupted him but were received by him courteously; and the fact that he did not recognize one of these ladies by her married name and had not seen her for twenty years except to reply to her greeting when he was alighting from the train and the fact that this conversation was of short duration, although apparently perfectly rational, is no evidence as to the insanity of the testator.

The evidence of excessive cigarette smoking and

excessive indulgence of liquors is even less valuable. Counsel for the contestant in attempting to prove his case seems to adopt the method of calling a witness, and when the testimony elicited from that witness is unsatisfactory, to state in his brief "that the witness lied" and that hence the converse of the testimony given must be the truth. He adopted the further method in connection with some witnesses of putting another witness on the stand to testify that the witness examined had made contrary statements on other occasions. Such testimony may tend to impeach the credibility of the first witness called but it certainly does not prove, according to any known rules of evidence, the truth of the statements which the second witness claims that the first one made. Nevertheless this sort of testimony is the testimony on which appellant bases his entire claim as to the lack of sanity of the testator. He states boldly in his brief that it was proved beyond question that Edwin M. Squier smoked cigarettes to excess, often sitting up late at night smoking, and that he drank to excess and was frequently carried up to bed by his aged housekeeper. Here is the testimony on which these bald statements made in appellant's brief are based:

James W. Avery, the gardener for the deceased, was called as a witness by the contestant. He stated that he had been in the employ of the testator for about eighteen years previous to his death (page 383). He was then examined as follows by counsel for the contestant (page 385):

> "Q. Have you recently expressed yourself about Mr. Squier's making a Will? A. No, sir, not that I know of. I don't recall it.
>
> Q. Have you recently expressed yourself to anybody about his habits? A. No, sir, not that I can recall—never.

Q. Tell anybody about his sitting up all night? A. Never.

Q. Say anything to anyone about his drinking? A. Never. Never in my life.

Q. Or about his excessive cigarette smoking? A. No. I might have said as far as * * * I might possibly said he was a great man to smoke cigarettes but not to excess."

The contestant later called one Elizabeth C. Lewis, who styled herself an investigator. She testified that she had interviewed Avery and that he had told her the following (page 401):

"Q. What did he say? A. Well, he said he was an excessive smoker; that at night he was up most of the night smoking. He smoked a Turkish cigarette that was specially made, and that he was very nervous, and that he was an excessive drinker. And that his cellar was full of wines all the time and he went on to say Mr. Squier went to New York —he used to go every day but the last few days he didn't go but more than two or three times a week. Especially since he met with an accident and had broken his leg. * * *"

The contestant called Alfred Pearce who had been in the employ of the Squier family for thirty-four years, but at the time of the trial was in the employ of the Wheatena Company (page 389). His testimony in reference to smoking and drinking was as follows (page 392):

"Q. Did you tell—have you told anybody that—what was Mr. Squier's habit about smoking, if you know? A. Smoking? Why, like every other man he would indulge, have his cigarettes when he felt like having a cigarette; he would have one.

Q. Not very frequently, or much? A. No; some days he would smoke more than others.

Q. How about drinking? A. That I couldn't

answer. I am not interested in the drink question.

Q. You do not know whether he drank or not? A. I suppose he did; most people do today."

Farther on he was asked if he had said that Mr. Squier was doped with cigarettes and he answered that he had not, nor had he ever talked to anybody about his excessive cigarette smoking or drinking. Asked if he had recently talked to a lady about the case he said that he had talked to a lady who was pointed out to him and who came stating that she represented an automobile insurance company, and said that she had called in reference to an automobile accident that had occurred outside of Mr. Squier's house, and that she was trying to locate a Mary Conroy and that he had not discussed Mr. Edwin M. Squier or his habits with her at all (pages 393-399). Mrs. Lewis, the investigator, was asked as to her conversation with the witness Pearce just referred to. She said that Pearce had told her that if called as a witness in the proceedings he would testify as to the truth. She said that he told her Mr. Squier used to stop at a saloon near the station and drink with strangers and that one day he had a check for $75,000. which he pulled out of his pocket and displayed among the crowd (pages 405-406). She also stated that Pearce told her that when he went to Directors' meetings he would get a handful of Twenty dollar gold pieces which he would pull out and show to people and that he ordered cigarettes by the ten thousands and would sit up until late in the night smoking cigarettes.

Mary Conroy was called by the contestant. She testified that she had been a member of Mr. Squier's household for twenty-one years; that she

first went there as a waitress for Mr. Squier's mother and that later on she acted practically as housekeeper (fols. 306-307). She gave no testimony whatsoever as to Mr. Squier's drinking except that she stated that she did not see liquor about the house (page 324) and said nothing at all about excessive cigarette smoking.

Eleanor Miller, the nurse that attended Mr. Squier in his last illness was later called by the contestant. She testified that Mary Conroy told her that Mr. Squier smoked a great deal. She said that she had some of Mr. Squier's cigarettes and that they were unusual (fol. 487). She also testified that Mary Conroy told her that he smoked most of the time when he was up and around, but particularly said that Mary Conroy did not tell her that he smoked to excess (page 489). She said also that Mary Conroy told her that the "policeman used to come in at night sometimes and Mr. Squier would give him a drink". She also said that Mary Conroy told her that "sometimes he would drink to excess and she would wait up for him and take him upstairs to bed" (fol. 488).

Counsel has gone into some length in connection with the previous testimony because it clearly shows what basis there is for the statements contained in the brief of appellant's counsel to the effect that the testator smoked and drank to excess and that he was eccentric and exhibited checks for large amounts and gold pieces received by him as Directors' fees. It will be noted that none of these facts appear in the direct testimony of any witness. The witnesses themselves denied having ever said any such things and gave no testimony that these allegations were true. The only testimony was that of the so-called investigator and the nurse that they had been told these things by the witnesses who denied them on the stand when under oath.

As to the other witnesses in connection with Mr. Squier's alleged excessive cigarette smoking, it is not necessary to go into their testimony in detail. The cigarette dealer who sold Mr. Squier his cigarettes testified that he bought about five hundred a week, but said that Mr. Squier told him that part were for his office and part for his home and, of course, there was no testimony that Mr. Squier smoked all of these cigarettes himself or no testimony as to how many of them he gave away to others. The dealer also testified that Mr. Squier once purchased twenty thousand cigarettes at one time; that this sale was made during the war and the cigarettes were a special brand of imported cigarettes which Mr. Squier was accustomed to smoke and which he feared the war would prevent his obtaining (pages 517-519). As to the other witnesses consisting of the barber who shaved Mr. Squier and the waiters in the restaurant where he was accustomed to eat his luncheon, it is not even worth while to discuss their testimony at any length. The barber merely testified that Mr. Squier used to smoke a cigarette while waiting and usually one cigarette while he was attending him. The cashier in a restaurant merely testified that Mr. Squier usually was smoking a cigarette when he entered the restaurant and lit another one when leaving. He made the interesting statement that there was nothing out of the ordinary in Mr. Squier's manner or appearance (page 503). The two waiters, Sharp and Thomas, merely testified that Mr. Squier generally came in smoking a cigarette and lit another one when he went out.

The foregoing constitutes the entire testimony in the case in reference to Mr. Squier's alleged lack of sanity and his alleged excessive smoking and drinking. Certainly the learned Vice-Ordinary was fully justified in the statement in his opinion reading as follows (pages 994-995):

"The attempt to prove lack of testamentary capacity has utterly failed. It is proverbial to what lengths disappointed kin will go to secure a large estate or a considerable portion thereof, but I will undertake to say that no more shocking instance has been presented to any court in an attack upon the mental capacity of a testator than appears here. The sum total of the testimony is that this man in his life time smoked cigarettes in very large numbers and that from a cellar which he seems to have stocked before January 16th, 1920, he occasionally imbibed intoxicating beverages to an extent that made their effect upon him visible. There is not one direct word of insanity or of any fact upon which insanity might be predicated."

POINT II.

There is no evidence in the entire case that the persons named in the petition or anyone else "unduly, illegally and fraudulently influenced" the testator in the making and execution of his will.

The allegations contained in the appellant's brief as to undue influence, fraud and conspiracy are so interwoven and intermingled that it is very difficult to separate them, but counsel will endeavor to follow the method stated in the early part of this brief and discuss under each point separately the different allegations contained in the petition. The statements made at the beginning of this point constitute the second ground alleged in the petition for refusing probate to the Will. The persons named therein as using undue and fraudulent influence are Mr. Squier's surviving brother, Frederick C. Squier, the children of the testator's deceased brother, Stuart C. Squier,

the executors named in the Will and the three attorneys who witnessed the Will.

It is perhaps necessary at this point to endeavor to summarize as briefly as possible the exact claims which are made on behalf of the appellant not only as to undue influence and fraud but also as to conspiracy. The theory, if it may be called such, is surely as fantastic a one as was ever presented to a court of law. Both the Learned Probate Judge and the Learned Vice-Ordinary who listened patiently on the whole (albeit with occasional natural impatience) to the mass of testimony presented by the contestant and who viewed the witnesses on the stand with full opportunity to judge of their appearance and manner of giving their testimony, stated in most emphatic terms that there was not a scintilla of evidence to sustain these outrageous and reckless charges. According to the theory of the appellant Mr. Hougton had for a period of over twenty years influenced the entire destinies of the Squier family. He had drawn the Will of Catherine C. Squier and had handled her estate. In drawing her Will, according to the appellant, Mr. Houghton had influenced her to deprive this contestant of what he had a right to consider as his rightful share in her estate, but had not in reality accomplished that object because he had drawn the Will in such a way that she had not exercised the power of disposition given to her in the Will of her husband. Nevertheless it is alleged that Mr. Houghton administered her estate as though she had exercised that power of disposition and so for a period of thirteen years this contestant was deprived of moneys to which he was rightfully entitled. According to this appellant all of the sons of William C. Squier, both this testator and his three brothers, were incompetent and unable to handle their own affairs.

They sat about in childlike innocence while Mr. Houghton handled their several fortunes, amounting in the aggregate to many millions of dollars, without regard to their wishes or without consulting them in any respect whatsoever. There is not the slightest evidence to support these absurd contentions as both the Judge of the Orphan's Court and the -Vice-Ordinary forcibly stated in their opinions. It will be noted incidentally that no claim is made whatsoever that Mr. Houghton misappropriated any part of these fortunes to his own use or that he benefitted in any way pecuniarily except for such fees as were paid to his firm as attorneys for the various estates.

It is claimed by the contestant that Mr. Houghton conceived a violent hostility to this contestant. No evidence, however, is presented to support this allegation and counsel has searched in vain through the record on appeal for any evidence which could possibly be construed as supporting this statement. The only possible bit of testimony is that of Mr. Houghton's to the effect that he expressed his approval to the testator of the letter which he wrote to the contestant on February 28, 1913, and which is quoted at length in the opinion of the Vice-Ordinary (pages 993-994). To approve of that letter does not imply hostility to the contestant. On the contrary in view of the strong provocation under which that letter was written by the testator, its moderate language and clear statements would receive the approval of any disinterested person.

The contestant in his attempts to establish this fantastic theory of domination by Mr. Houghton lays stress on the fact that he several times advised the testator to draw a Will. Such advice was admittedly given by Mr. Houghton but such advice is one which every attorney with due regard for the interests of his client gives. No one is

better aware than this Court of the confusion, and even worse, which frequently results when a person of large means, particularly where real estate is concerned, dies intestate. Not only is much greater expense involved in the administration of his estate but situations frequently arise by which the real estate is made unsaleable for many years. Counsel states in his brief that the Will of the decedent was not only physically drawn by Mr. Houghton but that that Will was Mr. Houghton's Will and not Mr. Squier's. Not only is there no evidence to support such a wild statement but there is positive evidence introduced by the contestant himself to refute it in the shape of the notes in the handwriting of the testator which were given to Mr. Houghton for the purpose of drawing this Will and which were followed precisely in the document itself. For some reason or other these notes are not made part of the printed record in this Court but they were offered in evidence by counsel for the contestant and admitted without objection and marked "Exhibit D-4" (page 449). These written instructions Mr. Houghton testified were given to him by the testator some four or five days before the Will itself was drawn (page 448). The only portion of the Will which could in any way be said to have been inserted by Mr. Houghton was that clause in which the testator explained why he had only left the contestant the same amount as he had left to his other nieces and nephews. That particular clause Mr. Houghton testified that he had written out but he also testified that he had written it in conference with the testator and because the testator had wished some explanation made in the Will itself as to the reason for his bequest to the contestant (pages 449, 476-477).

Counsel for the contestant in his brief argues at great length that there was no animosity exist-

ing between the testator and contestant and that there was no reason whatsoever why the testator should not have left to the contestant one-third of his residuary estate, exactly as he would have received it had the testator died intestate. Again, however, the contestant himself supplied the evidence which clearly showed the reasons actuating the testator. These reasons are set forth clearly in the opinion of the Learned Vice-Ordinary. Counsel does not believe that this Court will care to go through the voluminous record for the purpose of picking out here and there the bits of testimony from the lips of the various witnesses which show the facts and circumstances influencing the testator in disposing of his property as he did. Counsel believes that this Court will rely upon the opinion of the Vice-Ordinary for the purpose at least of accepting the statements about to be made by counsel as to the evidence in this respect which is contained in the record. Counsel has tried to identify in some way with the evidence the statements in this respect contained in the appellant's brief but the page numbers for some reason seem to be incorrectly stated and it is practically an impossible task in the time allotted to identify the bits of testimony which appellant claims support his theory, if in fact they are present in the record. To a very great extent the argument of the appellant follows the lines already indicated, namely, to state boldly that the testimony given by Mr. Houghton, Mr. Shepard, Frederick C. Squier and other members of the law firm and the executors to the Will are "lies", and that hence the converse of that testimony must be true.

To revert now to the facts as they appear from the testimony. As the Learned Vice-Ordinary says in his opinion the Squier family were a close-knit family. It is obvious that they had a great

deal of family pride. Their ancestors had lived in Rahway since Colonial times and they had always occupied a prominent and respected position in the community where they lived. At the time of the death of Catherine C. Squier, the grandmother of this contestant, and following the custom still prevailing in many communities her Will was read in the presence of the members of her family who had attended her funeral, including this contestant. Following the reading of that Will and when the contestant saw from it that he had been treated on the same basis as the other grandchildren and not left the same share in her estate which his father would have taken had she died intestate, he arose in the presence of the other members of the family, including this testator and his brothers, and stated that his grandmother was deceitful and tricky and that he intended to contest her Will (page 269). As the Learned Vice-Ordinary indicates in his opinion and as was testified to by Frederick C. Squier, the brother of the testator, it can well be imagined the impression that such a statement made at such a time created in the minds of the members of the family. The evidence clearly shows that from that time on the contestant was treated as an outcast from the family with this exception, that this testator received him when he called at his office and on two occasions at least wrote him letters. The first of these letters is the one already referred to and apparently written in answer to one received by the testator from the contestant and which is quoted from at length in the opinion of the Learned Vice-Ordinary. It will be found in full as Exhibit P-11 in the Printed Record, pages 985 to 988. Its importance lies in the fact that it contains a clear statement made by the testator during his lifetime of his views as to the conduct of the contestant. It bears out

the oral testimony given by Frederick C. Squier at the trial and of others as to the effect that the contestant's actions had on the other members of the family, including the testator. Counsel for the appellant attempts with great ingenuity to show that this is in fact a friendly letter and indicates the kindliest feelings on the part of the testator for the contestant. Suffice it to say that his argument did not impress either the Judge in the Orphans' Court or the Vice-Ordinary and counsel doubts if it will impress this Court to any greater extent. Counsel for the appellant argues that even if that letter does show a feeling of resentment on the part of the testator that that feeling had worn off prior to his death and that when he made his Will he had no such feelings as are indicated in the letter. There is no evidence of any such change of feeling on the part of the testator. The contestant offered in evidence a letter written by the testator to the contestant on May 29, 1923 (Exhibit P-7, page 982), and claims that that letter indicates the change of feeling on the part of the testator. A reading of that letter would not seem to justify any such conclusion. It does not seem to counsel that this is an affectionate letter from an uncle to a favorite nephew. On the contrary it would seem to be purely a business letter and couched in rather cool terms. It is true that at the end of the letter he wishes the contestant success in his mining venture but it is not claimed by anyone that the testator desired his nephew's downfall or had any desire that he should not succeed in life. On the contrary, as he stated in his first letter, in which he indicated his feelings towards the contestant, he could never forget that he was his brother Charles' son and would naturally wish him all success in life which he might gain by his own efforts. That is a very different thing from

wishing to make him the object of his bounty. It must also be borne in mind that this contestant was not a poor man and one who had an actual need of his uncle's monetary assistance. His father had died before his grandfather intestate and he had not only received his share in his father's estate but also the share which his father if living would have received in his own right from his father's estate as well as interest in the various trust estates set up in his grandfather's Will. It is in evidence that all of the Squier family were well-to-do; this contestant being the only son of his father received in point of fact much more money than any of the other nieces and nephews. Counsel must not be understood as arguing that this fact is either fair or unfair. Under the law he stood in his father's shoes and in the case of intestacy of an ancestor would receive the share which his father would have received if living. That is the law and that he was rightfully entitled to, in the absence of any Will of such ancestors to the contrary. The law also, however, gives the right to any man within certain limitations as to the rights of his widow and in some instances certain limitations as to the rights of children to leave his property in any way that he pleases. Burnham Squier's grandmother, for example, had a perfect right if she saw fit to leave her property as she chose. If she believed that it was unfair that this contestant should have a great deal more money than her other grandchildren she had a perfect right to draw her Will so that that condition should be to some extent rectified. As this testator said in his letter to this contestant the grandmother loved all her grandchildren alike and it was perfectly natural, therefore, that she should wish them all to be equally well fixed in this world's goods if such a result could be accom-

plished. This testator then was not doing anything unnatural or reprehensible or grossly unfair in leaving his residuary estate to his two surviving brothers. It is clearly shown that he believed that his nephew was not worthy to take the share which his father would have taken had the testator made no will and he preferred on the other hand to leave to this contestant the same amount that he left to his other nephews and nieces and to state clearly a reason for doing so. The reason given was that this contestant had received the share in the trusts established by his grandfather's Will which his father would have received if living. The contestant claims that this is an incorrect statement of fact. Whether or not this was a correct statement of fact is wholly immaterial. It was the reason given by the testator himself and all that Mr. Houghton had to do with it was to draft the paragraph and insert it in the Will (pages 449-450, 475-477). The question of the correctness of this statement will be covered in Point V of this brief. So far as the question here is concerned, in view of the testimony of Mr. Houghton which was obviously believed by the Learned Vice-Ordinary the provision was suggested by the testator himself and not by Mr. Houghton, and hence there was no influence, undue or otherwise, in connection with this portion of the Will.

Contestant also claims that Mr. Shepard, Mr. Houghton's law partner who had known Mr. Squier and been intimate with him for over twenty-five years had a feeling of hostility against this contestant and used his influence with the testator to the detriment of the contestant. Again, there is no basis in the evidence for any such claim. Mr. Shepard testified that he had known this contestant intimately for some time before the testator's death and that he used to see him fre-

quently, play golf with him and dine with him, and that his relations with him at that time were pleasant. He further testified that they had simply drifted apart and that they had had no differences whatsoever (page 709). He was then asked if he had ever stated that this contestant "was no good" and denied any recollection of ever having made any such statement. He was then asked the rather peculiar question as to whether he had any reason from his personal associations with the contestant for concluding that he was no good and he replied that he did and that such feeling was based partly on personal observation and partly on statements made to him by the testator (page 715). Asked to state the substance of what the testator had said to him he testified that he had shown him a postcard which he had received from the contestant and on which he had written his opinion of women in general and the testator told him that he thought it was a disgraceful thing to do (page 722). (The words "of women" do not appear in the printed record but they were included in the testimony given by the witness and without them the statement in the printed record makes no sense.) Pressed for further conversations he stated that the testator had discussed with him the contestant's divorce proceedings and referred to newspaper articles about them and that the testator had said to him "he said he didn't understand what had come over Burnham; but he supposed it was due to his drinking too much" (page 724). Mr. Shepard testified positively that he had never at any time expressed his opinions of this contestant to the testator (page 717) and hence whatever opinion he may have had could have had no effect upon the testator. That is all the testimony given by Mr. Shepard in this connection and it becomes at once evident that this testimony does

not show any personal animosity towards the contestant. Neither is it to the effect as stated in the brief of the contestant that Burnham drank too much. On the contrary Mr. Shepard's testimony is merely to the effect that the testator *told him* that the only way he could account for Burnham's actions was that he was drinking too much.

So much for the elaborate arguments of counsel for the contestant that this testator was unduly influenced in the making of his Will and was induced to make it by fraud. Counsel may have gone at greater length than was necessary in an attempt to refute these statements and to show that they have no basis in the evidence but the charges are serious ones. They involve men who have for many years been reputable members of the Bar of the State of New York and they involve citizens of standing in the community. As to most of those named in the petition as taking part in the alleged undue influence and fraud no evidence whatsoever was offered to involve them. In his argument counsel for the contestant confines himself mainly to a bitter and violent attack upon Mr. Houghton and what motive does he offer for Mr. Houghton's alleged acts? Admittedly Mr. Houghton received no money whatsoever from any of the Squier estates and particularly is he not named as a beneficiary in the Will of this testator. It is true he is named as an executor but any fees that he may receive for acting in that capacity will presumably be earned by him and will be fixed by the Courts of this state. His wife is named as a beneficiary to the extent of Five thousand ($5,000.) Dollars, the same amount as is left to this contestant. It is true that by reason of the fact that Mrs. Houghton's father (the brother of this testator) died three days before the testator she will receive her portion of the money left to her father by the testator and by

reason of the fact that the testator did not die intestate and did not leave one-third of his estate to this contestant her share in her father's estate according to the statements contained in the contestant's brief is increased by approximately One hundred and Thirty-three thousand ($133,000) Dollars. That could only have occurred, however, through the fact that her father did predecease the testator, and certainly it could not be known at the time that this testator's Will was drawn that such an event would occur. It has been shown that there is no evidence that Mr. Houghton had any personal animosity against this contestant at the time that the Will was prepared. What motive could he have had then for all of this elaborate conspiracy and undue influence which the contestant claims that he took part in and exercised during a period of nearly twenty years. The net result of it all is, as has been said, that Mrs. Houghton's share in her father's estate is about One hundred and Thirty-three thousand ($133,000) Dollars more than it would otherwise have been. How could Mr. Houghton have known twenty years ago that Stuart C. Squier would predecease Edwin M. Squier? The fact that he only predeceased him by three days shows how uncertain that question would have been and yet that is the only way in which it could certainly happen that Mrs. Houghton's share in her father's estate would have been larger by reason of the Will of the testator. The result may best be summed up again in the words of the opinion of the Learned Vice-Ordinary (page 992):

> "It would be an intolerable task to analyze and explain why there is not a scintilla of proof to substantiate this charge of conspiracy. Both in the Orphans' Court and in this Court witnesses have been called, examined and cross examined in a prospecting expedition founded upon the hope that something

might be turned up which would raise a suspicion. I have read through the testimony which the Judge of the Orphans' Court so patiently heard and for three days I listened to what was principally, as the journalistic fraternity would call it, a rehash of the testimony in the Orphans' Court. The result of my investigation leaves me to say without hesitation that there is not a scintilla of proof that Mr. Houghton or any of the others charged were guilty of any fraud, undue influence or conspiracy."

POINT III.

The evidence clearly showed that the will was executed with all of the formalities required by law.

The third objection to the probate of the Will contained in the petition of appeal for the Prerogative Court is substantially to the effect that the formalities required by law as to the publication and declaration of the Will in the presence of the witnesses and in the presence of the testator were not complied with. Examination of the testimony of the subscribing witnesses will at once refute this claim.

The first subscribing witness called was Woolsey A. Shepard. His testimony in reference to the circumstances surrounding the execution of the Will will be found at pages 200 and 201 of the printed record. He testified that he went into Mr. Squier's room first and that Mr. Squier greeted him and said that he was going to sign his Will but that he expected to live a long time. He stated that in a few moments Mr. Ferris and Mr. McCoy, the other two witnesses came in. He said that Mr. Squier sat down to the table and signed his name to the paper stating that it was

his Will. After some little discussion as to who should sign first as witness Mr. Shepard sat down to the table and asked Mr. Squier if that was his Will and he said that it was. Mr. Shepard then asked him if he wished him to sign as a witness and he said that he did and Mr. Shepard then read the attestation clause which was written out at the foot of the Will and signed his name and address. Mr. Ferris was the next one selected to sign and he took the paper up in rather a formal manner, read the attestation clause to the testator and asked him if that was his Will and if he wished him to act as a witness and Mr. Squier replied that he did. Mr. Ferris then signed his name and address and Mr. McCoy, the other witness, did the same.

Mr. Shepard was cross-examined on the question of whether the seal was attached to the Will at the time that it was subscribed by the testator and after looking at the instrument he testified that it was (page 207). Asked by the Court how he could tell by looking at the paper he said that the Will was completely fastened up when it was signed and by looking at it he could see that according to the custom of the office it had been sewn at the top and then the seal put on the end of the tape, and that he was absolutely sure that the seal was on the document at the time that it was signed (page 207). And again at page 215 he testified that the Will was fastened in the manner that it was fastened at the time of writing and a blue seal affixed thereto. Mr. McCoy's testimony is to the same effect. It will be found at pages 217 to 218. Incidentally it may be stated that all of the witnesses were excluded from the room while other witnesses were testifying (page 199). And yet it is clear how the testimony of each of these subscribing witnesses as to what took place at the time of the execution of the Will corroborates the testimony of the others. Mr. McCoy also testified positively that the seal was on the

instrument at the time that it was signed by the testator (pages 219-220). Mr. Ferris, the remaining subscribing witness, testified to precisely the same state of facts (pages 225-227).

The contestant in his brief tries to make considerable capital out of the fact of slight variations in the testimony of these witnesses as to who went into the room first and who went out of the room first. As has been said these variations are extremely slight and are such as might readily occur in the testimony of any men as to the unimportant details of a transaction which took place over a year before their testimony. Obviously the facts which would fix themselves in the minds of these witnessess were the essential facts in reference to the execution of the instrument. They were all lawyers and they knew full well the importance attaching to the observance of the formalities required by law in the execution of a last Will and Testament. They would naturally not only see that all of these formalities were complied with but they would charge their memories with those facts knowing full well that they might be called upon to testify as to those facts at some subsequent time. As to the details regarding which one of them came into the room first or who left first or whether they all went out together, they were unimportant and naturally they would not charge their memories with those facts. The Learned Judge of the Orphans' Court who heard their testimony and who observed them on the stand was satisfied from their testimony that the necessary formalities in the execution of the Will had been complied with and this Court will doubtless not disturb that finding, particularly as their testimony was uncontradicted and there is nothing in the circumstances surrounding the execution of the Will which would in any way cast doubt upon their evidence.

POINT IV.

There is no evidence whatsoever to sustain the claim of the contestant that there was a conspiracy among the other members of the Squier family, Mr. Houghton and the witnesses to the will as alleged in the petition of appeal to the Prerogative Court.

The contestant charges a conspiracy between the other members of the Squier family, Mr. Houghton and the witnesses to the Will to get possession of the testator's property and to exclude the contestant from his share in the estate. As is said in that portion of the opinion of the learned Vice-Ordinary already quoted in Point II of this brief, there is not a scintilla of evidence to sustain such a charge and there is no need of burdening this Court with a long and elaborate argument with innumerable references to the printed case in an attempt to refute this baseless claim. In the first place all of the alleged parties to the conspiracy who were called to the stand denied it flat-footedly and all of them with the exception of those who were present at the making of the Will, namely, Mr. Houghton and the subscribing witnesses, denied that they knew that Mr. Squier had made a Will or was contemplating the making of a Will and the only ones who knew anything about Mr. Squier's Will before he actually signed it were Mr. Houghton and Mr. Shepard. The only evidence of Mr. Houghton's connection with the Will prior to the time when it was drawn and executed was to the effect that Mr. Squier had spoken to him some years before about making a Will and that he had advised him to make one. As has already been said, Mr. Squier furnished Mr. Houghton with notes in his own handwriting

showing the disposition that he wished made of his property and also stated to him that he did not wish to leave any more than he was obliged to to this contestant and all that Mr. Houghton had to do with the making of the Will as appears from the evidence was to put it in proper legal form. All that Mr. Shepard had to do with the making of the Will, according to the evidence, was going over the draft which had been prepared by Mr. Houghton with the view to passing upon its legal sufficiency. This was done in accordance with the rule established in the office of the law firm at that time, that Mr. Shepard should go over all Wills before they were executed in order to pass upon any legal questions which might be involved and to pass upon the legality of their form. This question has already been fully covered under Point II, because, as has already been said, the charges of undue influence, fraud and conspiracy are so interwoven in the brief of the appellant that it is practically impossible to separate them. This charge of conspiracy is a mere creation of the brain of the contestant or his counsel apparently made as a last desperate chance. There is no merit in it and it is not worthy of this Court's serious consideration. The same applies to the fifth ground stated in the petition of the appeal to the Orphans' Court which sets forth again that the alleged last Will and Testament was obtained and procured by fraud.

POINT V.

The will of the testator was not signed and executed under a mistake of fact and even if it were it would not be denied probate.

This is the last objection set forth in the petition of the contestant. It refers, of course, to the statement contained in the Will of the testator as to his reasons for only leaving the contestant the same amount as he left to his other nephews and nieces. That statement reads as follows:

> "I make no further provision directly or indirectly for my nephew, Charles Burnham Squier, as he was and will be the sole beneficiary in the interest his father, if living, would have received from the trusts created by the Will of my father, William C. Squier."

Counsel for the contestant contends that this statement in the Will of the testator is untrue. He contends further that that statement is based upon opinions expressed by Mr. Houghton as Mr. Squier's counsel and as counsel for the estates of the contestant's grandfather and grandmother, and that, therefore, the testator was subject to undue influence in the making of his Will in that he was influenced to make only the specific bequest that he did to this contestant by an incorrect understanding of the facts and the law. In the first place, the Courts of this state have held that mistake in fact or in law is no reason for setting aside a Will. Neither is it necessary for a testator to correctly ascertain the legal status of each person who stands in natural relation to him. He may be led astray by false or insufficient evidence or by mistakes of law and thus exclude from his bounty those who would otherwise share in it. The test, however, is his ability to exercise

reason and reach a rational conclusion regardless of how erroneous it may be.

Re Williams, 95 N. J. Equity 702.

Quoting from *Smith* v. *Smith,* 48 N. J. Equity 566, the Court of Errors and Appeals said:

> "It is alleged, however, that he was suffering from an insane delusion when he executed the Will, and that this is evidenced by the third clause of the Will, which reads:
>
> 'Third—I am not unmindful of my daughter, Florence Mason. She has already benefited, directly and indirectly from my estate; this, together with the fact, that, in my opinion, she has not shown me the affection and respect due a father prompts me to exclude her from any further share or portion of my estate.'
>
> "Continuing the quotation from Smith *v.* Smith, *supra*:
>
> 'It is not required that he shall in fact correctly ascertain the legal status of each person who apparently stands in natural relation to him. In the exercise of reason, he may move upon premises established by false or insufficient evidence, or by mistake of law, and thus determine to exclude from his bounty those whom, but for his error, he would have recognized. The test is his ability to exercise reason and reach a rational conclusion, however erroneous, with reference to them. Stupid error in either his reasoning or conclusion, is not lack of testamentary capacity. But it is otherwise if he suffers from delusion. A delusion is the mind's spontaneous conception and acceptance of that, as a fact, which has no real existence except in its imagination, and its persistent adherence to it against all evidence. Middleditch *v.* Williams, 18 Stew. Eq. 726.
>
> " 'Mistake, whether of fact or law, moves from some external influence which is weighed by reason. Delusion arises from morbid internal impulse, and has no basis in reason.'

"There is sufficient evidence that Williams believed 'that his daughter had benefited from his estate.' While it is true that the 'benefits' he evidently referred to were not from his 'estate', using that term in its legal significance, it is just as true that she benefited from the property which he considered as justly being his estate, that is the estate particularly consisting of the hotel property, known as the New England Hotel, in Atlantic City, a one-half title thereto being in his wife, who predeceased him and which interest he believed was, upon her death, to be his.

"His use of or acceptance of the use of the word 'estate' is not convincing that he meant it in its legal significance, nor is such use convincing proof that he was suffering from a delusion concerning the benefits he believed his daughter had received from that property and which benefits she had in fact received.

"Certainly nothing in the latter portion of the third clause: 'together with the fact that, in my opinion she has not shown me the affection and respect due a father prompts me to exclude her from any further share or portion of my estate' can substantiate the charge of delusion. The facts were sufficient for him to arrive at such an opinion. It is not for us to determine whether such an opinion would be reached by us, but was it a rational conclusion.

"Williams had believed his daughter 'had considered herself somewhat above him, that she apparently did not care for him, that she felt ashamed to see him, and when she did come to see him, it was always for money'. That she had neglected him 'and that Mrs. Mason had involved him in litigation on two occasions.'

"Whether Williams was justified in believing that his daughter did not care for him as a daughter should, is immaterial. He did believe it. She was a party in two suits, one of which was concerning the probate of his wife's Will, and the other in reference to

> the title in and use of the hotel property, the one-half of which Williams believed should have belonged to him. There can be no question as to the legality of Mrs. Mason's conduct in reference to her grandmother's Will or the distribution of that estate. She was without doubt legally justified in the steps she took in the matters, but they were such that Williams could, without delusion, believe that the facts stated by him in his will were true. This conclusion, that Williams was capable and was not suffering from a delusion, is confirmed by consideration of the testimony of Judge Shinn."

Applying the principles set forth in the opinion above cited it becomes evident that there is no basis for the contention of the contestant that the belief of the testator in the truth of the paragraph setting forth his reasons for not leaving more to his nephew constituted undue influence or lack of testamentary capacity regardless of whether the statements were in fact true or untrue. The testimony shows that the testator in fact believed this statement to be true. The testimony further shows that this belief was based upon the handling of his father's estate since the time of his father's death. This testator knew that his nephew had received under his grandfather's Will the share which had been left directly to the contestant's father and which he would have taken if living. He also knew that as each of the trusts established under the Will of the contestant's grandfather fell in, the contestant had taken the share in those trusts which his father would have taken if living. The only question that could arise as to whether this statement in the testator's Will was strictly accurate or not is purely a question of law. While counsel believes that under the authority of the Williams case above cited the question is immaterial, nevertheless, even as

a matter of law, the statement contained in the Will of the testator is absolutely true. That question is raised by an examination of the Will of Catherine C. Squier, the widow of William C. Squier. Under her husband's Will she had been left a third of his estate for life with power to dispose of the same by her last Will and Testament. In her last Will and Testament, after making numerous specific bequests, she divided the residuary among her remaining sons, leaving this contestant only a specific bequest of Fifteen thousand ($15,000) Dollars. She did not specifically state in her Will that she was exercising the power of disposition left to her under her husband's Will. The testimony offered, however, shows that at the time that she made this Will she had not sufficient property of her own to even pay all of the specific bequests (pages 810-11) and the Courts of this State have held that in such an event she will be deemed to have exercised her power of disposition through the residuary clause of her Will.

> *Farnum* v. *Pennsylvania Company,* 87 N. J. Equity, 108, affirmed in the Court of Errors and Appeals, 87 N. J. Equity 652.

The *Farnum* case gives a thorough summary of the law on this question and holds that where there is no reference in the Will of the testator to the power given to dispose of the life estate that the Court will receive evidence of the circumstances surrounding the execution of the Will and that whether or not the testator intended to exercise the power will be determined by all of the facts and circumstances.

Following the *Farnum* case we find the case of *Paul* v. *Paul,* 99 N. J. Equity 498.

In that case, as in the case at bar, the testatrix made substantial specific bequests in her Will which exceeded in amount any personal property which she had outside of the life estate, and the Court held that evidence of that fact was admissible and in that case was sufficient to justify the decision that she intended to exercise the power of disposal given to her by the donor of the life estate. Counsel for the contestant has called attention to the fact that Catherine C. Squier made a Codicil shortly before her death in which she specifically referred to her power of disposition. An examination of that Codicil will show that it refers solely to a certain definite piece of real estate and referred only to that. Counsel for the contestant makes the statement that the title company had required her to make this Codicil because they did not believe that she had exercised her power of disposition in her Will. There is no basis whatsoever for any such statement, and, as counsel for the proponents stated to the Court, the title company would not have been likely to see her Will before her death.

If the law laid down by the cases above cited is the law of this state then the statement contained in the testator's Will is absolutely true both in law and in fact. The contestant claims, of course, that his grandmother did not exercise her power of disposition, and hence the property which composed the life estate left to her under the Will of her husband should have returned at her death to his residuary estate and been divided among his children, this contestant taking the share which his father would have taken if living. That is the sole basis for the contention that the statement in the Will of the testator is untrue. Under the authority of the *Williams* case, however, whether the testator was mistaken or not is absolutely immaterial. There is no evidence whatever to show

that Mr. Houghton influenced the testator in reaching his decision to cut off his nephew with a bequest of Five thousand ($5,000.) Dollars. On the contrary, all of the uncontradicted evidence shows that the testator had every reason for making the disposition that he did of his estate. The reason stated in the Will was merely a stated reason made presumably for the purpose of not humiliating the contestant. It was, nevertheless, believed by the testator to be true, and counsel believes on the authority of the cases cited that in point of fact it was true. Certainly the making of the statement and the circumstances surrounding it lay no basis for a charge either of undue influence or testamentary incapacity and is no reason for disturbing the decree of the Court below.

POINT VI.

The burden of proving that the purported will was executed under undue influence was upon the contestant and was not sustained.

In that portion of the appellant's brief which contains the heading "Point I" and which begins at page 204 he devotes many pages to the argument and to the citation of authorities to the effect that the burden was on the proponents to prove that the Will was executed without undue influence. These same authorities and this same argument were presented both in the Orphans' Court and in the Prerogative Court.

Referring to these authorities the Learned Vice-Ordinary said in his opinion (page 995):

> "I have read the exhaustive collection of authorities that counsel's industry has incorporated in the brief filed on behalf of the contestant. Of course, no one will quarrel with them; but the difficulty is that they have no application to the facts in the case *sub judice.*"

That comment applies equally to the incorporation of these same authorities in the brief of the appellant in this Court under this heading.

The leading case which the appellant seems to rely upon is *In Re Cooper's Will,* 75 N. J. Equity 177. In that case the attorney who drew the Will of the contestant received a specific legacy of $500 and was the sole residuary legatee. He superintended entirely the drawing and executing of the Will and procured the witnesses to both the Will and to a Codicil. The Court held that under those facts a presumption of undue influence had been raised and the burden of proving that the Will was the Will of the decedent was thrown upon her attorney and confidential adviser. The Court is very careful to say, however, in the last paragraph of the opinion quoted at page 206 of the appellant's brief:

> "In so holding, I do not contend that the presumption of undue influence has been raised *solely* because of the confidential relation existing between Mrs. Cooper and her legal adviser."

Counsel for the appellant follows his citation from the Cooper case with numerous other citations holding that where a beneficiary under a Will acted in the position of confidential adviser to the testator and took part in the drawing and execution of the Will that the burden is cast upon such beneficiary of proving the absence of undue influence. All of these cases, however, have no application whatsoever to the case at bar for the very simple but all important reason, if for no other, that Mr. Houghton *was not a beneficiary under the Will of the testator.* Furthermore, as has already been stated, there are no facts whatsoever which would show any reason on Mr. Houghton's part for influencing the testator to draw his Will as he did.

Finally, even if we should assume for a moment that there was any burden cast upon the proponents to prove that the Will was free from undue influence that burden has been amply sustained by the witnesses who were called on behalf of the contestant. The testimony clearly shows that Mr. Squire himself determined the disposition that was to be made of his property and furnished Mr. Houghton with a written memoranda to that effect and no claim is made even that the terms of those written notes were departed from. Those written notes showed clearly that Mr. Squire made no provision for his nephew beyond the specific bequest of the Five thousand ($5,000.) Dollars and they show further that he provided for the other specific bequests and provided for the division of the remainder of his property among his two surviving brothers. While, as has been said, for some reason these notes do not appear in the printed case on appeal counsel for the contestant does not claim that they contain any provisions which are contrary to the Will as finally drawn and judging by the whole tenor of his brief, he would undoubtedly make such a claim were there any basis for it. This fact alone destroys all of the argument on behalf of the appellant to the effect that this Will was executed under a mistake of fact or that anyone procured the execution of it by fraud. What difference can it possibly make whether Mr. Houghton wrote out for the approval of the testator that clause in the Will which gives his reasons for not otherwise providing for this contestant? If in point of fact the testator himself in his written memoranda providing for the disposition of his property had made no other provision for his nephew how can it be material what was written in the Will in explanation of this disposition of his property? Mr. Houghton testified that the testator told him

specifically that he did not wish to leave any more to his nephew. He also testified that Mr. Squire fully approved of the paragraph which was inserted in the Will giving the explanation. The judges in the lower courts heard this testimony of Mr. Houghton's and saw him give it and they both believed him. There is no reason why this Court should do otherwise. As to the other persons who are alleged to have exercised undue influence the testimony is that none of them knew that Mr. Squire contemplated making a Will or had made a Will. The testimony then as to the circumstances surrounding the making of this Will fully sustained any burden of proving the absence of undue influence.

POINT VII.

The decision in the State of New York in the action pending in the Supreme Court of that State has nothing to do with the issues involved in this appeal.

In Point V of his brief (pages 232 to 241) counsel for the contestant for reasons best known to him refers to a decision in the Supreme Court of the State of New York in an action there pending between this contestant as plaintiff and Mr. Houghton and others as defendants and prints that decision in full. He states under this point that the Special Term decided that the contestant had a good cause of action and that the respondents had no defense. If the Court cares to read this opinion, which, as has been said, is printed in full in the brief of the appellant it will find that such statements are throughly unjustified. As the opinion states a motion was made by the defendants under Rules 106 and 107 of the Civil Practice Act

of the State of New York. The motion was based first under Rule 106 upon the ground that the complaint did not on its face set forth a good and sufficient cause of action. That motion, as this Court doubtless knows, takes the place of the old form of a demurrer. All that the decision holds on that phase of the motion is that the complaint *on its face* does set forth a good and sufficient cause of action. In other words that it is not demurrable. That part of the motion which is based on Rule 107 refers to certain affirmative defenses such as the Statute of Limitations, the Plea of a general release and the question of *res adjudicata* and affidavits may be submitted under this rule in support of this motion. As indicated in the opinion of the Court, however, such affidavits must show that these defenses exist without contradiction, otherwise the Court will not dispose of them on motion. This decision merely held that the affidavits did not present sufficient uncontroverted evidence to enable the Court to decide the merits of these defenses on a motion but that they should be pleaded by way of answer and disposed of on the trial. That is all that the Court decided. What in the world this decision has to do with the issues involved in this appeal counsel must frankly state that he does not know.

POINT VIII.

The decree of the Prerogative Court should be affirmed with costs.

To repeat once more the questions raised by this appeal are purely questions of fact. If the evidence presented in the hearings in the Courts below is true the decree of the Vice-Ordinary will not be disturbed. That evidence was believed both by the Judge in the Orphans' Court and by

the Vice-Ordinary, both of whom had full opportunity to see the witnesses, to hear their testimony and to judge of their credibility. Both of them found that there was not the slightest evidence to sustain any of the contentions of this contestant. This contestant was present in the Orphans' Court and failed to go on the stand and contradict any of the statements made by any of the witnesses or to give any testimony himself as to his relationship with the testator, or any other matters which might be pertinent to his appeal. It is perfectly clear as shown in the opinion of the Learned Vice-Ordinary that this contest has not the slightest basis nor the slightest chance of success from the very beginning and that these facts must have been known to the contestant and to his counsel. In view of that fact this contest can have had but one purpose, namely, to tie up this estate for as long a time as possible in the hope that some settlement might be made. Counsel respectfully begs to call this Court's attention to the fact that many of the legatees named in the Will are old servants of the family who have been kept out of their legacies for a period of over three years and that justice so long delayed in many instances comes almost too late. The printed record and the printed briefs are voluminous but counsel begs leave to voice the hope that this Court will reach as speedy a decision as is possible.

Respectfully submitted,

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